The Social Covenant and Mass Incarceration: Theologies of Race and Punishment

Rima Vesely-Flad*

Introduction

A discourse of divinely sanctioned moral law undergirds the foundation of American penal institutions. Sixteenth-century Christian European settlers believed that the first being, Adam, disobeyed God, and subjected all human descendants to God's punishment. Over the course of time, the colonists racialized their interpretations of divine judgment of human nature and behavior: they linked perceptions of immoral character and evil to dark skin. These theological constructs gained extraordinary influence. In the present day, such views have buttressed the building and expansion of the largest prison system in the world.[1]

This article argues that Reformed theology provided justification for antebellum, postbellum, and post-Civil Rights civic leaders to implement and sustain punitive institutions of punishment that disproportionately penalized people of African descent. I chart theologies of race and punishment to demonstrate how religious and political leaders have associated blackness with violence and disorder.[2] I conclude with thoughts on a social ethic to counter a culture of punishment that

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* Rima Vesely-Flad is a doctoral student in social ethics at Union Theological Seminary and a visiting professor of public policy at Sarah Lawrence College. She is the founder of the Interfaith Coalition of Advocates for Reentry and Employment (ICARE), an education and policy organization based in New York State. From 2004–2006 she taught religion courses at Sing Sing Prison.

[1] "One in 100 Behind Bars in America," Pew Charitable Trusts, 2008. http://www.pewcenteronthestates.org/uploadedFiles/One in 100.pdf.

[2] Stephen R. Haynes, *Noah's Curse: The Biblical Justification of American Slavery* (Oxford: Oxford University Press, 2002); Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996); Michelle Alexander, *The New Jim Crow: Mass Incarceration in an Age of Colorblindness* (New York: The New Press, 2010).

has resulted in supervision of seven million adults—nearly half of whom are African American—under the "penal-industrial complex."[3]

Inherent Depravity and Punishment in Calvinist and Puritan Theology

The sixteenth-century Genevan reformer John Calvin believed that God provided the human soul with a mind to distinguish good from evil and right from wrong, with reason as a guide.[4] And yet because the first human Adam freely destroyed himself and corrupted his blessings, all human beings "have contracted from him a hereditary taint" (*Inst.* 1:15:8). Calvin drew from Paul's writings in Romans 3 to explain the depth of human corruption and "unavoidable calamity" in each soul (*Inst.* 2:3:2).

Calvin suggested that humans become aware of their destitution while meditating on the Ten Commandments. He elaborated on the meaning and purpose of the Decalogue by delineating three uses: (1) to show God's righteousness and condemn all persons of their unrighteousness; (2) to restrain unbelievers; and (3) to admonish and sustain believers.

The first purpose of the law, known commonly as the "pedagogical" or "theological" use, showed God's righteousness by warning, informing, convicting, and condemning "every man in his own unrighteousness" (*Inst.* 2:7:6).

The second use of the law was to restrain those who harm the community but are forced to respond to the threat of legal consequences. Calvin believed that God ordered the restraint imposed by government because, if unbridled, the wickedness of men and women would destroy the human race. "The law is like a halter to check the raging and otherwise limitlessly ranging lusts of the flesh," Calvin wrote (*Inst.* 2:7:10). Thus magistrates and laws are in place to rein in wickedness. In describing the chief tasks of the civil government, Calvin proposed that magistrates and legislators care for physical needs as well as prevent idolatry, sacrilege, blasphemy against God, and

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[3]   Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (New York: Oxford University Press, 1997). Beckett introduces the phrase "penal-industrial complex."

[4]   John Calvin, *Institutes of the Christian Religion*, ed. John T. McNeill, trans. Ford Lewis Battles (Louisville, Ky.: Westminster John Knox Press, 1960), 1:15:8. Hereafter cited in text.

other public offenses against religion. "In short, [the government] provides that a public manifestation of religion may exist among Christians, and that humanity may be maintained among men" (*Inst.* 4:20:3). Public morality allowed for believers as well as the reprobate to live in a measure of peace and stability, and enabled all persons to know the rudiments of Christian morality and to fulfill the vocations to which God called them.

The third and principal use of the law was to instruct believers, "in whose hearts the Spirit of God already lives and reigns" (*Inst.* 2:7:12). The inner freedom already achieved by the Christian was not constrained by the law, but such a state of being inclined the conscience to observe the law. Now under grace, it was in the law—and the gospel—that the believer would continue to know the will of God. To be in conformity with the will of God—the natural law—one only had to contemplate the Decalogue, where God made moral teachings explicit. "The law is to the flesh like a whip to an idle and balky ass, to arouse it to work," Calvin wrote. "Even for a spiritual man not yet free of the weight of the flesh the law remains a constant sting that will not let him stand still" (*Inst.* 2:7:12).

Calvin's doctrine of moral law and civil law, along with his theology of idleness and work, were inseparable from recommendations for a hierarchical social order, in which religious leaders occupied powerful positions within the civil sphere. His theological descendants—the English Puritans who sought to establish a moral order in the "New World" colonies—built a theocratic, racially stratified society that included slaves from the coast of Africa. New England Puritans evolved Calvinist theology to emphasize biblical references to the covenant. In Puritan communities, covenantal theology fostered social commitment and morality. Indeed, covenantal theology realized the very identity of the new colonists, who delineated four covenants. The covenant of works (the law) elaborated God's commandments; the covenant of grace (the gospel) extended mercy; the church covenant supported the faithful in communal endeavor; the political covenant structured civil society.[5]

The covenant was understood as a bond or a mortgage, an agreement between two participants, signed and sworn to, and binding

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[5] John Witte, Jr., "How to Govern a City on a Hill," in *God's Joust, God's Justice: Law and Religion in the Western Tradition* (Grand Rapids, Mich.: Eerdmans Publishing Company, 2006), 150.

upon both. This theological interpretation elevated the role of law in theology and civic relations. Sin was seen as externalized, a violation of the contract, a punishable crime, rather than an original stain stemming from Adam's transgression. Disobedience amounted to a broken bond, a violated lease, a punishment that dwelt not on inner deprivation but rather on the infliction of a judicial sentence.[6] Thus, when individuals sinned, they were asking for punishment to be imposed by God, the divine lawgiver and judge.

Puritan leaders emphasized the Calvinist doctrine of the three uses of the moral law, which they understood as (1) educational and didactic; (2) civil and political; and (3) theological and spiritual.[7] Theologians produced massive tomes which demonstrated beyond a shadow of a doubt that humans, created upright, fell of their own choice into a corruption so horrible as to deserve the worst of punishments and so abject as to preclude all hope of recovery by their unaided efforts. The responsibility for depravity, therefore, fell entirely upon human beings, as God only created good. This theological concept had extraordinary consequences for perceptions of work; idleness was understood as the most extreme of all vices: an unwillingness, rather than an inability, to do good.[8]

Indeed, the upright were perceived as active, responsible, driven by reason and intellect, thoughtfully looking ahead, intent on imposing order and control, unwilling to allow things and people to determine existence.[9] In contrast, the idle were inherently immoral. Slaves resistant to work, then, were akin to a "balky ass." When slaves resisted forced labor, they challenged biblical ideals of divinely ordained character and social order. Puritan New Englanders viewed the idleness of slaves in light of theological concepts of sinfulness and inhumanity, and determined that enslaved persons of dark hue lacked the inherent qualities, such as an inspired work ethic, that were essential for Christian redemption.

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[6]   Perry Miller, *The New England Mind: The Seventeenth Century* (Cambridge, Mass.: Harvard University Press, 1939), 400–404.

[7]   Samuel Willard, "Sermon 149, Question 40 (January 14, 1700)," in *A Compleat Body of Divinity [of 1726]* by Samuel Willard, quoted in Witte, *God's Joust, God's Justice,* 274–275 (spelling modernized and citations and numbering omitted).

[8]   Winthrop D. Jordan, *White Over Black: American Attitudes Toward the Negro, 1550–1812* (Chapel Hill, N.C.: University of North Carolina Press, 1968), 51.

[9]   Max Weber, *The Protestant Ethic and the "Spirit" of Capitalism and Other Writings,* edited, translated, and with an introduction by Peter Baehr and Gordon C. Wells (New York: Penguin Books, 2002).

Throughout the colonies the terms *Christian, free, English,* and *white* were used indiscriminately as metonyms.[10] It was not until after the Revolutionary War, when northern states successively outlawed slavery, utilizing theological as well as natural law arguments, that conservative northern intellectuals and prominent southern leaders increasingly became the intellectual guardians of biblical proslavery arguments.[11]

Religion, Race, and Slavery in the Antebellum South

In the quest to maintain a plantation economy and racially distinct social hierarchy, slave owners in the South utilized theological concepts of honor and order to codify civil law.[12] Southern civil leaders regarded themselves as patriarchs in the tradition of Noah, and thus as men who demanded filial respect from family members and slaves alike. In the antebellum decades, southerners elaborated upon a century of English exegesis, in which the concept of blackness was loaded with theological meaning—blackness evoked baseness, evil, danger, and repulsion, as opposed to white purity, virginity, virtue, and godliness. Lawyers and ministers alike assumed that slavery was in various ways connected with sin. Southerners believed, as did their colonial forebears, that "slavery was inseparable from the evil in men; it was God's punishment upon Ham's prurient disobedience. Enslavement was captivity, the loser's lot in a contest of power. Slaves were infidels or heathens. On every count, the Negro qualified."[13]

The belief that irredeemable baseness distinguished the person of African descent provided clear justification for harsh practices of punishment, particularly to counter idleness and ensure manual labor for whites. Proslavery apologist Samuel Cartwright, in an 1843 treatise, determined:

> Certain it is that nothing but compusion [*sic*] has ever made [the black slave] lead a life of industry, temperance and order; and nothing but compulsion has ever converted him into a civilized being. When the compulsive hand of arbitrary power is withdrawn,

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10   Jordan, *White Over Black*, 97.
11   Sydney E. Ahlstrom, *A Religious History of the American People*, second edition (New Haven, Conn.: Yale University Press, 2004).
12   Haynes, *Noah's Curse*, 66, 88–93, 107–112.
13   Jordan, *White Over Black*, 56.

he invariably lapses into barbarism; proving that when he has his personal liberty, he is not a free agent to choose the good and avoid the evil—whereas, under that government which God ordained for him, the excesses of his animality are kept in restraint and his free agency is restored.[14]

Conservative southern religion buttressed ideas of black heathenism and white superiority. The Methodist Church's support of slavery and the Confederacy was unstinting. The Baptists opposed seminaries and other institutions of higher education which were associated with modernity and, hence, abolitionism. The Southern Presbyterian church formally resolved in 1864 that "we hesitate not to affirm that it is the peculiar mission of the Southern Church to conserve the institution of slavery, and to make it a blessing to both master and slave."[15]

The South as a whole became the center of conservative religion, adopting a racist creed in every denomination.[16] Theologians and laity alike learned to recite the standard biblical texts on Negro inferiority, patriarchal and Mosaic acceptance of servitude, and St. Paul's counsels of obedience to masters. Indeed, proslavery theology shaped the cultural bedrock of the South. The clergy were the official custodians of the popular conscience; the majority of proslavery advocates were ministers.[17]

The notion of blackness as befitting the condition of slavery, and thus as a manifestation of God's punishment, was reinforced by biblical interpretations of Genesis 9, in which Noah curses his son Ham by rendering Ham's son Canaan a slave to his brothers.[18] By the early 1830s, when the antislavery and abolitionist movements had become visibly organized, the scriptural defense of slavery—in particular, Noah's curse—had become the most elaborate and systematic statement of proslavery theorists. Such interpretations of Genesis 9 explained

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[14]   Quoted in Haynes, *Noah's Curse*, 98.

[15]   Ahlstrom, *A Religious History of the American People*, 717, 721, 672.

[16]   E. Brooks Holifield, *Theology in America: Christian Thought from the Age of the Puritans to the Civil War* (New Haven, Conn.: Yale University Press, 2003), 273–290.

[17]   Larry E. Tise, *Proslavery: A History of the Defense of Slavery in America, 1701–1840* (Athens, Ga.: The University of Georgia Press, 1987), 126.

[18]   Haynes, *Noah's Curse*, 23–40.

Ham's essential "blackness" as being evident in his character and be-
havior. By comporting himself as a dishonorable son, Ham had embod-
ied the very traits that distinguished the slave population: disorderly,
offensive, criminal. Southern intellectuals believed that Ham's act of
gazing on his father's nakedness and Noah's subsequent curse of the
descendants of Ham and Canaan to be "servants of servants" were held
as definitive proof that the enslavement of black Africans was God's
will. That Ham had dishonored his father meant that Ham refused to
honor all governors—natural, civil, ecclesiastical, and divine. Thus ra-
cial slavery was established as a penalty for transgression.

The exegesis of Noah's curse fed the southern culture of honor as
new slave codes were enacted. Indeed, antebellum penal laws re-
flected the fearful mindset of southern whites, the vast majority of
whom identified themselves as Christian. In the early nineteenth cen-
tury, as biblically-based proslavery arguments multiplied, slave codes
grew increasingly harsh to curtail the mobility and gathering of slaves,
who would potentially run away or revolt. At the onset of the Civil
War, slave codes ruled every facet of slave life.

Theology, Race, and Punishment in the Postbellum South

Slave codes morphed into criminal laws known as "Black Codes"
upon the conclusion of antebellum slave society. Utilizing the theo-
logically resonant language of "idleness" to conjure images of sinful-
nesss, southern officials enacted Black Codes to introduce a new
penal system that in practice became "worse than slavery."[19]

The Thirteenth Amendment abolished forced labor, but per-
mitted involuntary servitude solely as a punishment for a crime.[20]
Southern state officials justified Black Codes as pragmatic. These
laws addressed fears of criminality—particularly theft—and provided
sought-after workers for plantations and new industries; at the same
time, they maintained the antebellum racial hierarchy utilizing theo-
logical language. The Florida Convention, for example, was indiscreet
in enacting by special ordinance an interim vagrancy law which or-
dered that anyone "leading an idle, profligate or immoral course of

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[19] David M. Oshinsky, *Worse than Slavery: Parchman Farm and the Ordeal of Jim
Crow Justice* (New York: Simon and Schuster, 1996).
[20] Lichtenstein, *Twice the Work of Free Labor*, 2.

life" should be punished by fine, imprisonment, or "by being sold for a term not exceeding twelve months."[21]

Similar to Florida's code, Mississippi's Black Code ordered that each Negro must have a written labor contract or a license from local officials authorizing him or her to do irregular work. If any Negro under contract left "without good cause," civil officers should, and any person might, arrest him and carry him back. The reward was five dollars plus ten cents per mile traveled and was to be held out of the culprit's wages.[22] Mississippi's Black Code further stated "An Act to Amend the Vagrant Laws of the State." Its definition of "vagrant" included runaways, drunkards, pilferers; lewd, wanton, or lascivious persons, in speech or behavior; those who neglect their employment, misspend their earnings, and fail to support their families; and "all other idle and disorderly persons." The penalty for this kind of vagrancy was a fine not exceeding $100 and not more than ten days in jail.[23]

Legislators in South Carolina, Georgia, Florida, Alabama, Louisiana, and Texas copied Mississippi's Black Code, sometimes word for word.[24] On February 10, 1866, the Freedman's Bureau in Savannah, Georgia, issued the command:

> *To all idle and dissolute Freedmen:*
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> You are hereby kindly exhorted to go to work at once and make contracts for the year. . . . We do not wish to resort to extreme measures, but we warn you that unless you procure some useful employment within three days from this date, you will promptly be arrested and proceeded against as vagrants: the chain gang will be your inevitable fate.[25]

Although the federal government outlawed Black Codes in 1867, new statutes restricting black mobility and opportunity quickly replaced

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[21]   Theodore Brantner Wilson, *The Black Codes of the South* (University, Ala.: University of Alabama Press, 1965), 66.

[22]   Wilson, *The Black Codes of the South*, 66.

[23]   Wilson, *The Black Codes of the South*, 68.

[24]   Oshinsky, *Worse than Slavery*, 21.

[25]   Wilson, *The Black Codes of the South*, 84.

them. These new statutes were not race-specific, but it was widely perceived that they would rarely, if ever, be applied to whites.[26]

Reminiscent of the masters of the antebellum slave era, local sheriffs took on a symbolically religious role as divinely ordained authority in the postbellum period. This new dimension of power led to an extensive system of exploitation in which payment for crimes was enforced at the resolution of every court proceeding, with the accumulated fees lumped into the penalties ordered by the judge. The vast majority of persons found guilty and charged with fines were unable to pay, and thus the companies that acquired the prisoners paid the additional fees and subsequently added extraordinary lengths to their sentences. An organized market for prisoners began to evolve, with labor agents pursuing able-bodied black men and sheriffs receiving the proceeds of a prisoner's lease.[27]

Many men rounded up and charged with crimes bargained for labor contracts closer to home, often on the same plantations in which they had been enslaved. Thus, they returned to conditions of uncompensated hard labor, in shackles, under the lash, physically compelled to work. Indeed, the very punishments endemic to racial slavery were incorporated into the postbellum penal system. Prisoners died in such drastic numbers, Texas officials contended, because the average black convict was a moral degenerate who entered prison with the "seeds of disease" already in his system. The convict appeared normal until he was "put to hard labor"—at which time the seeds flowered and he died. Florida's chief prison doctor concluded that an array of "debasing habits," led by "lust" and "passion," had produced the high mortality rate among Negro convicts.[28]

The postbellum penal systems thus reestablished patterns of antebellum slavery. Broader patterns of southern racial oppression, reinforced culturally and systemically since antebellum slavery, remained legally unchallenged under a system of Jim Crow segregation. As cultural institutions that transmitted popular mores, southern

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[26]   Douglas Blackmon, *Slavery by Another Name: The Re-Enslavement of Black People in America from the Civil War to World War II* (New York: Doubleday, 2008), 53–54; William Cohen, *At Freedom's Edge: Black Mobility and the Southern White Quest for Racial Control, 1861–1915* (Baton Rouge, La.: Louisiana State University Press, 1991), 225–226.

[27]   Blackmon, *Slavery by Another Name*, 61–67.

[28]   Oshinsky, *Worse than Slavery*, 84.

churches reinforced racial hierarchies.[29] Although most Protestant denominations had both black and white members—albeit who worshipped in separate churches on Sunday mornings—southern white theologians asserted that people of African descent embodied disorder and immorality.[30]

Civil Rights and the Conservative Offensive

In the 1930s, the perception of pervasive black criminality advanced in civil discourse.[31] At the same time, multiple social forces were coalescing in response to the New Deal and the success of liberal political ideology. Liberal Christian churches dominated theological education. Conservative Christians found themselves institutionally marginalized. As part of a growing movement to strengthen fundamentalist and evangelical institutions, white southern denominations joined forces with other culturally conservative churches. Leading evangelicals debated with liberal Christians, asserting the need for a social ethic that recognized the reality of human sinfulness and the need for salvation from God.[32] The prominent evangelical scholar Carl F. H. Henry declared, "Only an anthropology and a soteriology that insists upon man's sinful lostness and the ability of God to restore the responsive sinner is the adequate key to the door of Fundamentalist world betterment." He furthermore believed in salvation when one proclaimed the sovereignty of God as redeemer for the "black background of human nature."[33] This distinctly Calvinist interpretation of human nature provided a foundation for engagement in world affairs.

Evangelical leaders promoted interpersonal interaction rather than policy change as a distinctly evangelical social ethic. Such an approach conveniently supported coalition building with segregationists in the South, who, like the emerging evangelicals in the West, were

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[29]   Ahlstrom, *A Religious History of the American People*, 724–726.

[30]   Haynes, *Noah's Curse*, 112–114.

[31]   Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (New York: Oxford University Press, 2006), 47.

[32]   Gary Dorrien, *The Remaking of Evangelical Theology* (Louisville, Ky.: Westminster John Knox Press, 1998), 40–49, 28–32.

[33]   Carl F. H. Henry, *The Uneasy Conscience of Modern Fundamentalism* (Grand Rapids, Mich.: Eerdmans Publishing Company, 1947), 15, 7.

simultaneously courted by Republican Party operatives seeking to congeal conservative politics in response to New Deal liberalism.

A burgeoning reaction to the "welfare state" resurrected the image of the lazy black person who resisted honest work. This image of idleness—and hence, social disorder—defied a Calvinist ethic that promoted purposeful labor as evidence of spiritual faithfulness.[34] Social conservatives utilized coded language to racialize the image of welfare recipients, borrowing from historical impressions of black indolence and describing such images as the reason for street crime, civil disobedience, and overall social decay.[35]

The southern wing of the evangelical movement was, from the outset, a stronghold for fostering a conservative presence; it influenced the founding of national denominations, missionary organizations, Bible schools, publishing houses, and religious broadcasting. These cultural institutions in turn supported political groups and institutions. Numerous evangelicals backed Strom Thurmond's decidedly segregationist States' Rights Party in 1948.[36] The National Association of Evangelicals (NAE), although considered "moderate," made no mention of the 1954 *Brown v. Board of Education* decision requiring racial desegregation of public schools, for the outcome had led many fundamentalist churches, mostly in the South, to start so-called "Christian academies." More broadly, many evangelicals outside of the South who ostensibly supported integration of social spheres opposed legal integration of public institutions.[37]

On March 18, 1957, as founder of the magazine *Christianity Today*, Henry published the following editorial:

> Forced integration is as contrary to Christian principles as is forced segregation. The reliance on pressure rather than persuasion has resulted in a marked increase of racial tensions in some areas. . . . Paul did not outlaw slavery legally, but he outlawed it spiritually;

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[34]   Weber, *The Protestant Ethic*, xviii–xix.

[35]   Beckett, *Making Crime Pay*, 28–43.

[36]   John C. Green, "Seeking a Place," in *Toward an Evangelical Public Policy,* ed. Ronald J. Sider and Diane Knippers (Grand Rapids, Mich.: Baker Books, 2005), 24. He also notes that some evangelicals supported George Wallace's American Independence Party in 1948.

[37]   Richard Cizik, "A History of the Public Policy Resolutions of the National Association of Evangelicals," in *Toward an Evangelical Public Policy,* 43–46.

> he sent Onesimus back to Philemon as a brother in Christ. He
> knew that the Church's weapons are spiritual, not carnal; that
> Christian progress is not revolutionary but regenerative.[38]

He further declared that "a voluntary segregation, even of believers, can well be a Christian procedure. . . . Churches in which integration is not practiced may be just as Christian as those where it is found."[39]

Further editorials on race in America, particularly those addressing the 1963 March on Washington, supported the evangelical stance of spiritual brotherhood as more important than racial equality before the law. Evangelicals feared social movements would lead to disorder and sustained anarchy. In 1962 and 1963, many conservatives feared that social bonds of family, neighborhood, and "civility" were coming apart. An August 30, 1963 editorial on the March on Washington suggested that "if mob ultimatums more than juridical processes become the means of securing legislative changes . . . democracy will deteriorate to anarchy."[40] Much of the protest on the part of white voters coalesced around increased rates of individuals receiving public assistance: "welfare cheats" and their dangerous offspring were heightened in media outlets, and inevitably these images promoted the idea that African Americans were undeserving, violent beneficiaries of liberalism.

Indeed, the conservative view that the causes of crime lie in the human "propensity towards evil" became a staple of political discourse.[41] This argument elevated images of black men in particular, and fueled fears of racial integration. The *National Review*, a conservative magazine, argued that support for segregation and the backlash against civil rights was essential to reviving the conservative agenda.[42] Republican Party elites took advantage of white disaffection with the Democratic Party, particularly in light of its alliances with African Americans, and devised a "Southern Strategy" with the idea of joining the "Negrophobe" South and West in a conservative coalition. In

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[38]   Carl F. H. Henry, "The Church and the Race Problem" (editorial), *Christianity Today* 1, no. 12 (March 18, 1957).

[39]   Henry, "The Church and the Race Problem."

[40]   *Christianity Today* 7, no. 23 (August 30, 1963).

[41]   Beckett, *Making Crime Pay*, 10–11.

[42]   Joseph Lowndes, *From the New Deal to the New Right: Race and the Southern Origins of Modern Conservatism* (New Haven, Conn.: Yale University Press, 2008), 49–54.

1964, evangelicals rallied behind the Arizona Republican presidential nominee, Barry Goldwater, who promoted a law-and-order message. His racially conservative image gained so much credence that he swung the Deep South into the Republican column; in essence, Goldwater won where Strom Thurmond had won in 1948, largely for the same reasons.[43] Goldwater blamed the "welfare state" for the breakdown in civic order and downplayed the differences between urban riots, political demonstrations, and street crime by associating all of these distinct phenomena with an overall threat to society.[44]

The NAE explicitly opposed the passage of the 1964 Civil Rights Act and the 1965 Voting Rights Act. These federal laws, known as the "Second Reconstruction," were seen as popularizing civil disobedience and promoting disrespect for law and authority. White Americans overwhelmingly associated street crime with African Americans, who were seventeen times as likely as white men to be arrested for robbery.[45] As riots unfolded in Watts in 1965, and in Detroit and Newark—among one hundred other cities—in the "long hot summer" of 1967, fear in white America swelled. After the assassination of Martin Luther King, Jr., in April 1968, nearly one hundred fifty cities across the U.S. erupted in racial confrontations and riots, resulting in numerous deaths and arrests.[46] Vietnam protestors also sparked a residual antipathy in white working class voters. All demonstrations represented lawlessness and disorder.

Evangelical associations sprang into action. Collectively, they reasserted a belief that America was in moral decline and spiritual chaos, alienated from God and in need of the church. Prominent leaders launched the "Christian Right" movement to influence the conservative agenda. The NAE believed it could "make [its] influence felt as citizens where concrete social action is justified in areas of domestic relations, education, law enforcement, employment, housing, and equal opportunity."[47]

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[43] Kevin Phillips, *The Emerging Republican Majority* (Garden City, N. Y.: Anchor Books, 1970), 232, 204.

[44] Michael Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (New York: Columbia University Press, 2005), 33.

[45] Flamm, *Law and Order*, 3–5.

[46] Vesla Mae Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development* 21 (Fall 2007): 259.

[47] Cizik, "A History of the Public Policy Resolutions of the National Association of Evangelicals," 48.

In 1968, white evangelicals flocked toward Alabama Governor George Wallace, a strident segregationist, and former California Senator Richard Nixon, as the 1968 Republican presidential contenders.[48] After Nixon received the nomination, he adopted numerous tactics from Wallace's campaign.[49] With explicit, detailed promises of law and order, Nixon promised tough responses to liberalism and blamed the Democratic Party for rising rates of crime. Law and order became the vehicle by which whites transmitted their antipathy to integration and fear of racial violence.[50] Nixon won narrowly and proceeded to address crime rates through a federally mandated "war on drugs" that promised to alleviate disorder and fear of violent attacks. In 1969, he declared drug abuse to be the most important problem in the United States. In 1970, he formed the Office of Drug Abuse Law Enforcement (ODALE) to increase policing and surveillance in black communities.[51]

Nixon's law-and-order presidential administration influenced the election of Republican governors, who began a massive onslaught of prison building. Republicans governed five out of the six states with the highest rates of imprisonment growth during the period that state prison populations increased most rapidly. Elected officials on the state level passed harsh sentencing and prison policies: lengthy mandatory sentences for possessing or selling drugs; truth-in-sentencing laws which required serving 85 percent of a sentence; three-strikes laws, in which persons with three convictions—even for nonviolent crimes—were mandated to prison for life; and increased use of solitary confinement in "supermax" prisons.[52]

Mandatory minimum drug laws were directly responsible for the rapid rise of the prison population.[53] Led by New York's 1973 "Rockefeller Drug Laws," which stipulated fifteen years to life for possession or sale of narcotics, every state enacted mandatory minimums. As a result, the prison population doubled between 1972 and 1984,

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[48]   Green, "Seeking a Place," 24.
[49]   Lowndes, *From the New Deal to the New Right*, 100.
[50]   Flamm, *Law and Order*, 9.
[51]   Flamm, *Law and Order*, 261.
[52]   Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006), 60, 2–3.
[53]   Marc Mauer, *Race to Incarcerate* (New York: The New Press, 1999), 142–161.

and again between 1984 and 1994.[54] Although statistics revealed that blacks and whites engaged in drug offenses—possession and sales—at comparable rates, in every year from 1980 to 2007 blacks were arrested nationwide on drug charges at rates 2.8 to 5.5 times higher than white arrest rates.[55]

Conservative Christians influenced increasingly harsh crime laws. From 1971 to 1991, prison populations were higher in states where a larger percentage of the population was identified as conservative and where greater numbers of residents were fundamentalist Christians.[56] National evangelical organizations such as the NAE supported enforcement of laws against marijuana and drug trafficking.[57]

The Ronald Reagan administration (1980–1988) appealed to conservatives by adopting similar strategies to Nixon's war on drugs and by arguing that crime derives from human vice rather than socio-economic conditions. "Choosing a career in crime is not the result of poverty or of an unhappy childhood or of a misunderstood adolescence," Reagan determined. "It is the result of a conscious, willful choice made by some who consider themselves above the law, who seek to exploit the hard work and, sometimes, the very lives of their fellow citizens."[58] In October 1982, Reagan officially announced his administration's "war on drugs," and four years later he signed the Anti-Drug Abuse Act into law.[59]

The success of law-and-order rhetoric prompted Democrats to adopt increasingly harsh stances on crime.[60] Under President Bill Clinton, the Violent Crime Control and Law Enforcement Act of 1994 increased the use of federal law to sentence people to prison,[61]

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[54] Devah Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration* (Chicago, Ill.: The University of Chicago Press, 2007), 11.

[55] "Targeting Blacks: Drug Law Enforcement and Race in the United States," Human Rights Watch, May 4, 2008; http://www.hrw.org/en/reports/2008/05/04/targeting-blacks. See also "Decades of Disparity," Human Rights Watch, March 2, 2009; http://www.hrw.org/en/reports/2009/03/02/decades-disparity.

[56] Harold G. Grasmick, et al., "Protestant Fundamentalism and the Retributive Doctrine of Punishment," *Criminology* 30, no. 1 (1992): 21–45.

[57] Cizik, "A History of the Public Policy Resolutions of the National Association of Evangelicals," 49.

[58] Quoted in Beckett, *Making Crime Pay*, 49.

[59] Beckett, *Making Crime Pay*, 58.

[60] David F. Greenberg and Valerie West, "State Prison Populations and Their Growth, 1971–1991," *Criminology*, 39, no. 3 (2001): 625.

[61] Flamm, *Law and Order*, 183–184. See also Weaver, "Frontlash," 237.

so that by the end of the 1990s, black men in their thirties were more likely to have been to prison than to have graduated from college with a four-year degree.[62]

Perceptions of Immorality: Mass Incarceration in the Present Day

As the number of people in prison has swelled to more than 2.3 million, the U.S. Department of Justice reports that young black men make up the demographic most likely to be incarcerated: one in nine black men aged 20–34 are in prison.[63] These men—and increasing numbers of women—find themselves under the absolute authority of "correctional officers" in the prison setting.[64] Hostile relations between officers and inmates, harassment, sexual abuse,[65] and excessive use of force shape every aspect of prison life.[66] Upon reentry into the community, people with felony convictions are barred from certain types of employment and from participating in the political process.[67]

Consequently, civil rights gained in the 1960s have been systematically rolled back for African Americans with felony convictions. Whereas the Civil Rights Act of 1964 prohibited discrimination against African Americans in the workplace, and the Voting Rights Act of 1965 guaranteed African Americans access to the voting booth, neither act promised civil rights for individuals with criminal convictions. Thus it is legal to exclude large numbers of African Americans from the social covenant.

Indeed, thirty-three states, as well as the District of Columbia, impose some kind of legal restriction on public employment following a felony conviction. Several states stipulate that employers and licensing agencies have the right to reject applicants if they are judged to lack "good moral character." Formerly incarcerated persons seeking jobs face widespread employer discrimination. A 2007 study revealed that the consequences of a criminal conviction disproportionately

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[62] Western, *Punishment and Inequality in America*, xii.
[63] "One in 100 Behind Bars," Pew Charitable Trusts, 6.
[64] Ted Conover, *Newjack: Guarding Sing Sing* (New York: Vintage Books, 2001), 96.
[65] See the "National Prison Rape Elimination Commission Report," June 23, 2009; http://www.ncjrs.gov/pdffiles1/226680.pdf.
[66] Manza and Uggen, *Locked Out*, 50–55.
[67] Pager, *Marked*, 33–34, 69, 107.

affect black job applicants. Interviews with employers reveal reluctance is due to perceptions of black laziness.[68]

Similarly, the mass imprisonment of African Americans has had a direct impact on the political power spurred by the 1965 Voting Rights Act. Forty-eight states have enacted some kind of restriction to voting on the basis of a felony conviction: only Maine and Vermont—the two states with the lowest number of African Americans—allow incarcerated persons access to the ballot. Disenfranchisement based on a criminal conviction severely dilutes the civic impact of African Americans. In fourteen states, more than one in ten African Americans has lost the right to vote due to a felony conviction, and in five of those states, 20 percent of black adults have been disqualified.[69] Today the social perceptions of black criminality are so pervasive that black job applicants without a criminal conviction receive the same rate of callbacks as white applicants *with* a criminal record. Researchers conclude that the darkness of one's skin evokes perceptions of criminality.[70]

And indeed, present-day criminal law retains interconnected interpretations of crime and Protestant religion. The three uses of the law outlined by Calvin and New England Puritans—(1) to show God's righteousness and condemn all persons of their unrighteousness; (2) to restrain unbelievers; and (3) to admonish and sustain believers—continue to be taught in law schools today:

> God has created a moral or natural law. He has vested in this moral law three distinctive uses. He imposes divine punishments to ensure that each use is fulfilled. State magistrates are God's vice-regents in the world. They must represent and reflect God's authority and majesty on earth. The laws which they promulgate must encapsulate and elaborate the principles of God's moral law, particularly as it is set out in the Ten Commandments. The provisions of criminal law, therefore, must perforce parallel the provisions of the moral law. The purposes of criminal punishment must perforce parallel the purposes of divine punishment. . . . From these premises, the English and American jurists argued that the criminal law serves three uses or purposes in the lives of the criminal and the community. These they variously called: (1)

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[68]   Pager, *Marked,* 28–39.
[69]   Manza and Uggen, *Locked Out*, 50–51, 79.
[70]   Pager, *Marked*, 91.

> deterrence or prevention; (2) retribution or restitution; and (3) re-
> habilitation or reformation—the classic purposes of criminal law
> and punishment that every law student learns still today.[71]

In the goal of manifesting a particular vision for social order, a conservative discourse has recreated a society in which racial divides echo the pre-Civil Rights era, and indeed, reflect a nineteenth-century retributive orientation toward crime and punishment. Mandatory minimum drug laws are the Black Codes of the present day. Industries and politicians depend upon prisons for economic development.[72] Throughout the expansion of the penal system, a racialized discourse of moral degeneration, sinful idleness, and violent behavior has stymied the genuine social integration promised by the Civil Rights Movement. [73]

A uniquely American context—inclusive of Puritanism, slavery, postbellum criminal laws, partisan politics, prison industries, a vitriolic antipathy to idleness, and a constant apprehension about integration—is nonetheless a context that honors social covenants. Yet rather than addressing and repairing the deep divisions wrought by racism and punitive laws, the public conversation on incarceration has emphasized individual repentance. Evangelical organizations have played a prominent role in shaping this limited framework. For example, prominent evangelicals backed the federal "Second Chance Act," which in 2008 distributed grants to organizations working with newly released prisoners.[74] Christian organizations operate private prisons that emphasize individual redemption.[75] Prison Fellowship, Inc., a national nonprofit organization founded by Christian Right leader Chuck Colson, remains an important force in legislative advocacy on the state and federal level.

As these organizations emphasize individual sin and forgiveness, rather than acknowledging the origin of harsh criminal laws and

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[71] John Witte, Jr., "The Three Uses of the Law: A Protestant Source of the Purposes of Criminal Punishment?" in *God's Joust, God's Justice,* 279–280.

[72] Tracy Huling, "Building a Prison Economy in Rural America," in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment,* ed. Marc Mauer and Meda Chesny-Lind (New York: The New Press, 2002), 197–213.

[73] Western, *Punishment and Inequality in America*, 5. By 2000, over one million black children—9 percent of those under eighteen—had a father in jail or prison.

[74] http://reentrypolicy.org/announcements/bush_sign_SCA.

[75] http://www.onenewsnow.com/Culture/Default.aspx?id=760912.

disproportionate policing tactics carried out in impoverished communities of color, they further a discourse on immorality that is inseparable from perceptions of race. People in prison—the majority of whom are black and Latino—are cast as fundamentally flawed in character.

Toward a Liberationist Ethic to Challenge the Penal-Industrial Complex

An alternative discourse on crime and punishment, rooted in liberal and liberation theology, has been largely absent from the public domain.[76] In an attempt to fill this void, I offer approaches that can be incorporated into a liberationist ethic. Given the history of racism and penal policies in the United States, as well as the eighteenth-century belief that all human beings have the capacity for rational decision-making, it is incumbent upon members of the dominant culture to insist upon the possibility for *all* people to embody morality. Indeed, Reformed theologians and Enlightenment philosophers upheld reason as an innate faculty present in all humans. A fundamental aspect of transcending racism in our culture is dismantling the correlation between pale skin and moral action, and thus uplifting the ability of all human beings—including those with dark skin—to reflect and act upon their conscience. An important aspect of the 1960s Civil Rights Movement was the altered perception of black immorality as black clergy and students resisted oppression nonviolently and uplifted a new image of African Americans as embodiments of Christian moral values.

Yet this image has not been sustained for people living in impoverished communities. If we acknowledge black people living in disproportionately policed neighborhoods as the same demographic that was relegated to second-class citizenship during one hundred years of legal segregation, then the imperative for a present-day movement for civil rights becomes all the more clear. Rather than shaking our heads at crime reporting in the evening news, we must strive to see the entirety of the penal-industrial complex and genuinely affirm that disproportionately policed human beings are rightfully resentful. In her thoughtful text reflecting on the treatment of young people of color in institutional settings, educator Erica Meiners writes: "Anger is a

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[76] James Samuel Logan, *Good Punishment? Christian Moral Practice and U.S. Imprisonment* (Grand Rapids, Mich.: Eerdmans Publishing Company, 2008), 7.

legitimate response to institutions that set you up for failure, or a political state that systematically denies you the right to participate, but it is dangerous to be angry in public spaces."[77] Legitimizing outrage and resistance to penal authorities, indeed seeing the outrage and resistance *as moral responses*, allows members of the dominant culture to penetrate the point of view of the excluded minority. As theologian Reinhold Niebuhr says, "The oppressed, whether they be the Indians of the British Empire, or the Negroes in our own country or the industrial workers in every nation, have a higher moral right to challenge their oppressors than these have to maintain their rule by force."[78] Resistance to oppression is a moral response. Furthermore, liberation theology lifts up the marginalized community as precisely the place where God is encountered. As theologian James H. Cone writes: "There is no truth in Jesus Christ independent of the oppressed of the land—their history and culture. And in America, the oppressed are the people of color—black, yellow, red, and brown."[79] To encounter God is to locate one's consciousness in the social reality of oppressed communities.

An encounter with God in a context of social oppression demands change. Such confrontation with systemic abuse, Niebuhr tells us, is inseparable from an analysis of power, for "any kind of significant social power develops social inequality."[80] Indeed, Neibuhr refuted the utopian ideals of theologians and philosophers and sought to portray power dynamics from the perspective of the working class. In so doing, he reflected to the middle class their desire to maintain the status quo. This powerful indictment is a profound mirror for all privileged individuals and collectives who profess Christian love but uphold oppressive structures of authority. In the context of the penal-industrial complex, it is also an analysis that leads us to ask how conservative political elites have exploited perceptions of black people as criminals and shaped the dominant culture in order to reverse civil rights gains.

What, then, does change look like? For we are all indicted in the interlocking structures that make up our punitive system: We vote; we pay taxes which fund jails and prisons; we distance ourselves from the

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[77]   Erica R. Meiners, *Right to Be Hostile: Schools, Prisons, and the Making of Public Enemies* (New York: Routledge, 2007), 28.

[78]   Reinhold Niebuhr, *Moral Man and Immoral Society* (New York: Charles Scribner's Sons, 1932), 234.

[79]   James H. Cone, *God of the Oppressed* (New York: HarperCollins, 1975), 34.

[80]   Niebuhr, *Moral Man and Immoral Society*, 7–8.

communities that are directly affected; we sustain racist attitudes and institutions that perpetuate second-class citizenship of people with felony convictions. A movement to transform the penal-industrial complex must manifest quite differently from the Civil Rights Movement; it will not take place in sit-ins, mass marches, or voter registration drives. It must counter the very specific policing practices and legal provisions that uphold, and indeed increase, the alarming numbers of people charged with felonies and incarcerated for extraordinary periods of time.

While the following suggestions do not provide a comprehensive picture for dismantling the penal-industrial complex, they are a blueprint for beginning to reverse the tragedy and political exploitation that have occurred over the centuries. First, Christian theology and the church have a significant role to play in uplifting the humanity of people with criminal convictions. As a worldview and an institution that emphasizes the human conscience under God, Christianity can be a force for changing dominant cultural perceptions about people, including marginalized and oppressed people. Sermons and ministries that highlight the process of reflection, interpersonal connection, and social analysis can be powerful practices for changing an oppressive culture. It is important, further, that Christian communities work in interfaith contexts, for the religious diversity of incarcerated people necessitates multifaceted support.

Second, sermons and ministries must feed into political engagement; they must strengthen the social covenant. Due to the politicized framework of crime policies, mass support for changing oppressive laws is necessary for creating a safe context in which legislators can vote for progressive crime-related bills. Numbers result in strength. Thus public advocacy for laws that remove barriers and promote opportunity is essential for any efforts to chip away at the interlocking systems that make up the penal-industrial complex.

Finally, the constant policing practices that result in racial profiling—stopping and frisking black and brown people, searching their purses and bags without justification, rounding them up for a trip to the precinct—must stop. These practices are different from the abuses taken up by police accountability boards. Indeed, they are the daily rituals that fulfill quotas and expectations from superiors. How we, as ordinary citizens, can penetrate police culture is still unclear, but certainly it is critical to be in constant conversation with

elected representatives about the devastating consequences of these practices.

In the sphere of ethics, we must consider whether our activities contribute to our own and others' well-being.[81] Thus each and every one of us must engage in the spiritual and political work that contributes to collective peace. In the context of the penal-industrial complex, we must wrestle, time and again, with the dominant messages *and* with the punitive laws that perpetuate racist violence in our culture. For the oppression that has subjugated African Americans for centuries persists, insidiously, in our notions of the good and in our institutions of punishment.

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[81] Beverly Wildung Harrison, "Doing Christian Ethics," in *Justice in the Making: Feminist Social Ethics* (Louisville, Ky.: Westminster John Knox, 2004), 33.