

Will the Truth
REALLY
Set You Free?
The Bible and Mass Incarceration

Neighborhood Church of Dorchester
Sunday, February 18, 2018

Crime and Punishment: Nationally

- The U.S. is ‘the incarceration capitol of the world.’
- Drug related, non-violent crime:
“The mass incarceration of African American men in our country, primarily through the “War on Drugs,” has created a new, legalized system of racial discrimination and social exclusion.’

The New Jim Crow

Mass Incarceration in the Age of Colorblindness

MICHAEL J. ALEXANDER

Outline

- Christian Restorative Justice
- Policing
- Prosecution
- Sentencing
- Reintegration

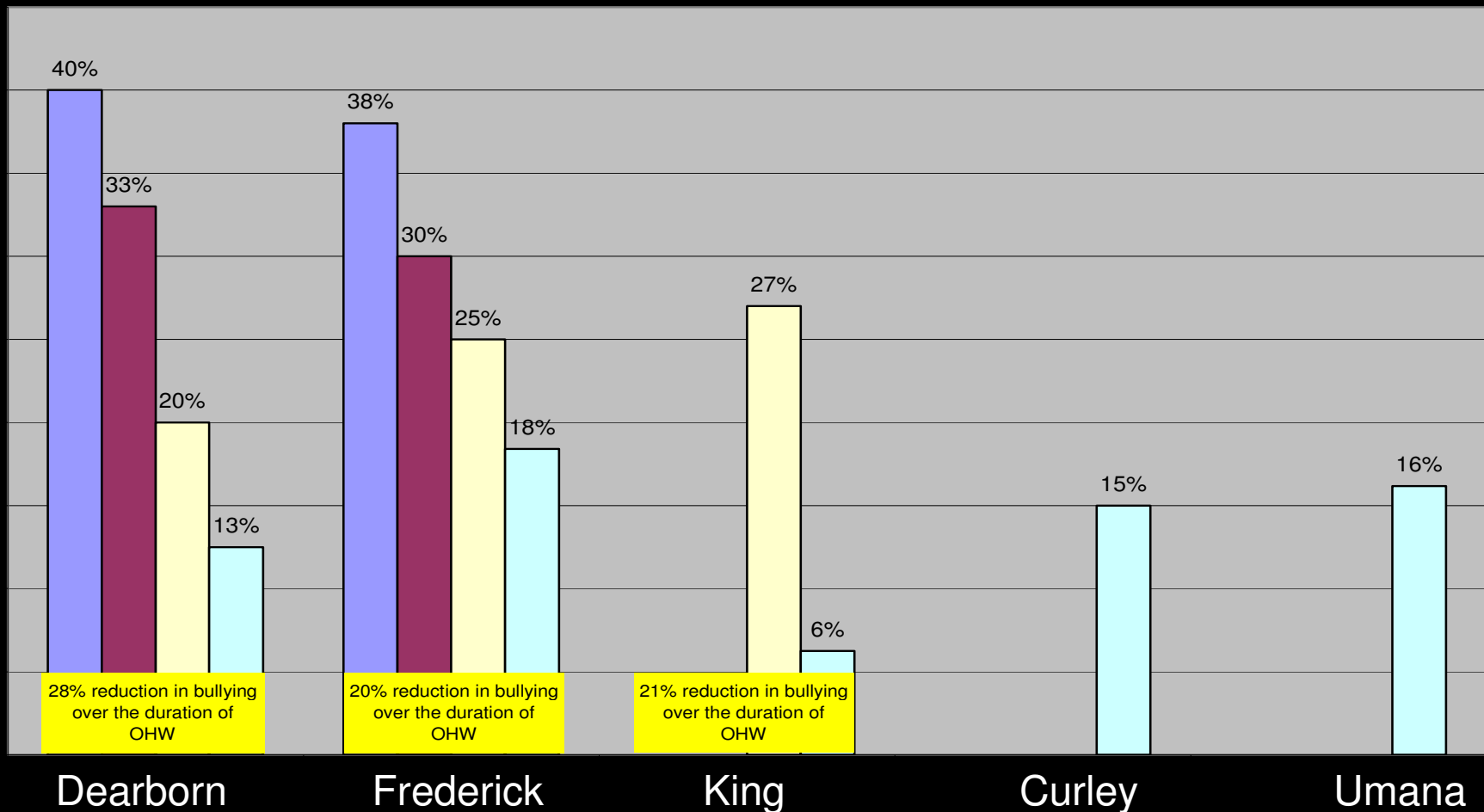
Restorative Justice

- Definition
- Contrast: Retributive Justice

Restorative Justice in Schools

% of OHW Students Who Reported Being Bullied

■ 2006-2007 ■ 2007-2008 □ 2008-2009 □ 2009-2010

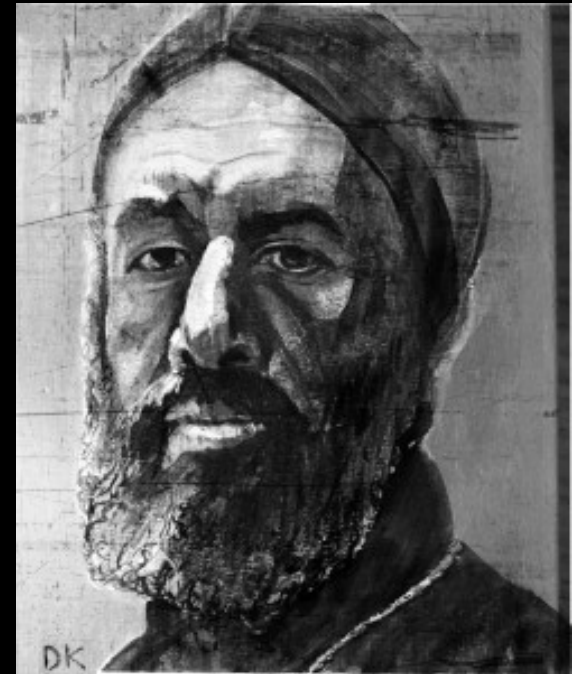


Which God Do We Imitate?

- The Greek “creation-fall” story:
Hesiod’s *Theogony*
- Prometheus gives fire to men, who then cause trouble for Zeus
- Zeus chains Prometheus to a rock to get his liver ripped out every day
- Zeus gives women to men

God Calls Us to Help Heal Harm and Restore Relationship

- ‘But He set a bound to his [state of] sin, by interposing death, and thus **causing sin to cease**, putting an end to it by the dissolution of the flesh, which should take place in the earth, so that man, ceasing at length to live to sin, and dying to it, might begin to live to God.’ • Irenaeus of Lyons, *Against Heresies* 3.23.6 (2nd century)



God Calls Us to Help Heal Harm and Restore Relationship

- ‘In order, then, that man might not be an undying or ever-living evil, **as would have been the case if sin were dominant within him...** God for this cause pronounced him mortal, and clothed him with mortality...

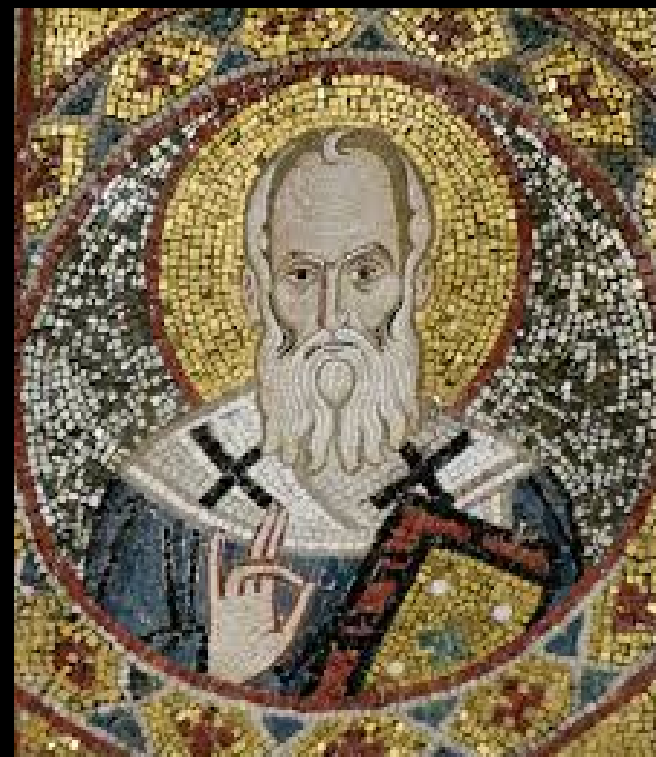
- Methodius of Olympus, *Discourse on the Resurrection* 1.4 – 5 (3rd century)



God Calls Us to Help Heal Harm and Restore Relationship

- ‘Yet here too he makes a gain, namely death and the cutting off of sin, **in order that evil may not be immortal**. Thus, his punishment is changed into a mercy, for it is in mercy, I am persuaded, that God inflicts punishment.’

- Gregory of Nazianzus, Oration 45 (4th century)



Restorative Justice in Scripture: Repair Harm, Restore Relationships

- Partner with God to Heal Your Nature
 - Circumcise **your heart** (Deuteronomy 10:16; cf. 30:6)
 - My son, keep my words and treasure my commandments within you...Bind them on your fingers; write them on the tablet of **your heart** (Proverbs 7:1 – 3)
 - God's Spirit in God's Word (e.g. Pr.1:23; Ps.143:10; Gen.1:1)
 - Jesus did this perfectly (Romans 8:3)

Restorative Justice in Scripture: Repair Harm, Restore Relationships

- Victim-Centered; the Offender Pays the Cost of Healing
 - ¹⁸ If men have a quarrel and one strikes the other with a stone or with his fist, and he does not die but remains in bed, ¹⁹ if he gets up and walks around outside on his staff, then he who struck him shall go unpunished; he shall only pay for his loss of time, **and shall take care of him until he is completely healed.** (Exodus 21:18 – 19)

Restorative Justice in Scripture: Repair Harm, Restore Relationships

- Victim-Centered; the Offender Pays the Cost of Healing
 - ²⁹ If, however, an ox was previously in the habit of goring and its owner has been warned, yet he does not confine it and it kills a man or a woman, the ox shall be stoned and its owner also shall be put to death. ³⁰ **If a ransom is demanded of him, then he shall give for the redemption of his life whatever is demanded of him. (Exodus 21:29 – 30)**

Restorative Justice in Scripture: Repair Harm, Restore Relationships

- Victim-Centered; the Offender Pays the Cost of Healing
 - ‘An eye for an eye’ (Exodus 21:23) is an outer limit of proportionality
 - It represents personal support, financial compensation (Talmud *Bava Kamma* 83b – 84a), or, in some rare cases, lashes (*Makot* 1:1)
 - Jewish rabbis even made a joke of it: If a blind man injures the eye of another...

The Christian Restorative Approach to Criminal Justice and Conflict

- Christian and Christian-Influenced Restorative Criminal Justice: A Partial History
 - Biblical Israel
 - Christianized Roman Empire
 - Nubian Kingdoms
 - Norway, Finland, Sweden
 - U.S. Mennonite Christians
 - New Zealand (youth system)
 - South Africa (Truth and Reconciliation Comm)
 - Rwanda
 - Uganda

Outline

- Christian Restorative Justice
- Policing
- Prosecution
- Sentencing
- Reintegration

Policing

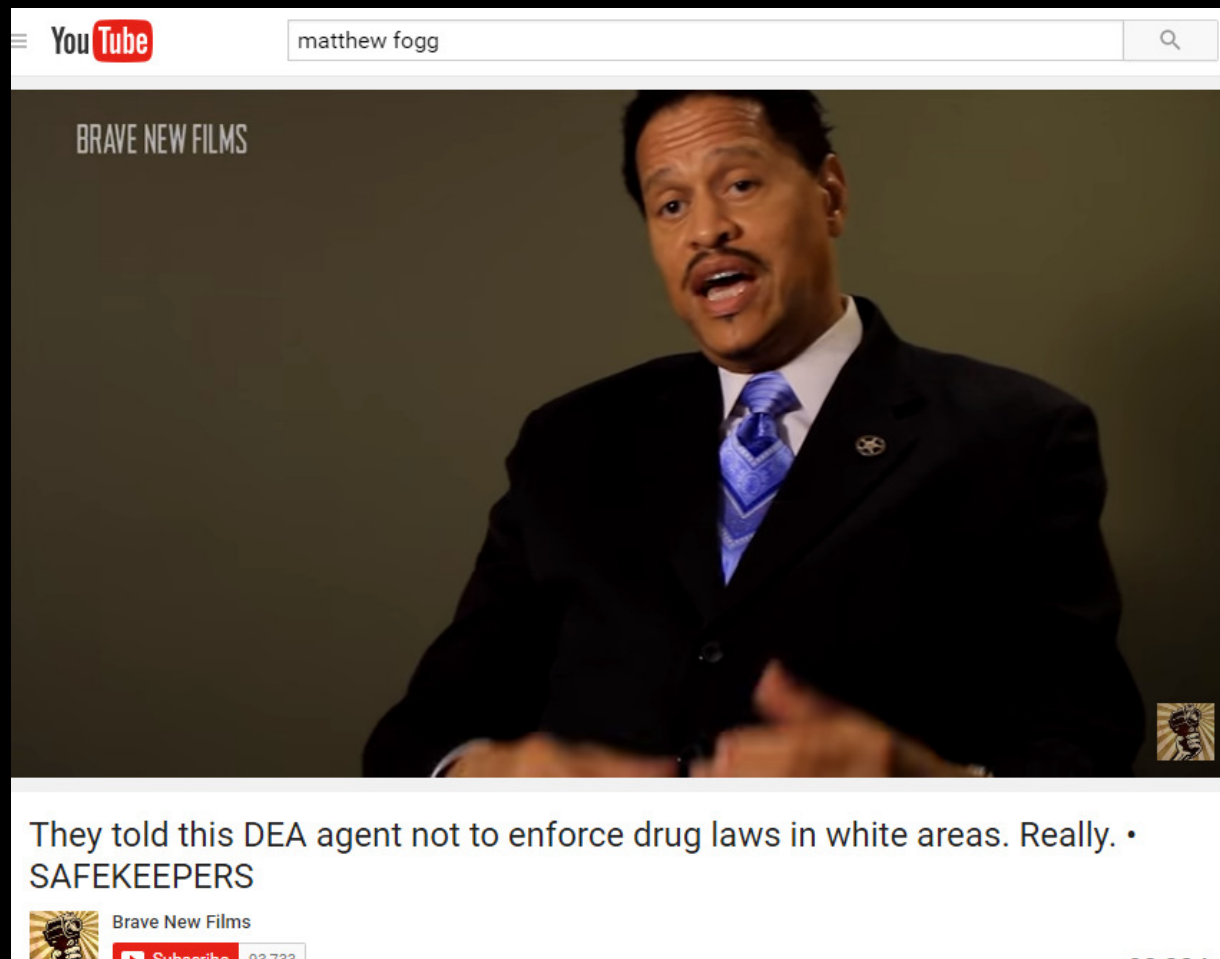
- Residential Segregation and Policing
 - Different policing practices
 - Directing crime to specific areas
- Finances and Policing, “War on Drugs”
 - City financing through tickets, fees
 - Civil asset forfeiture
 - Police militarization
- Police Brutality
 - *City of Los Angeles v. Adolph Lyons* (1983)
 - Lack of citizen control of police

Retribution: The 'War on Drugs'

- 'We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin. And then criminalizing both heavily, we could disrupt those communities... We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.'
- John Ehrlichman, former aide to President Richard Nixon (Tom LoBianco, 'Report: Aide Says Nixon's War on Drugs Targeted Blacks, Hippies,' *CNN*, March 24, 2016)

Retribution: The 'War on Drugs'

- Matthew Fogg, Drug Enforcement Agent and U.S. Marshall



Retribution: The 'War on Drugs'

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THE HOUSE I LIVE IN
A FILM BY EUGENE JARECKI

Preview

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An Excuse for Retribution

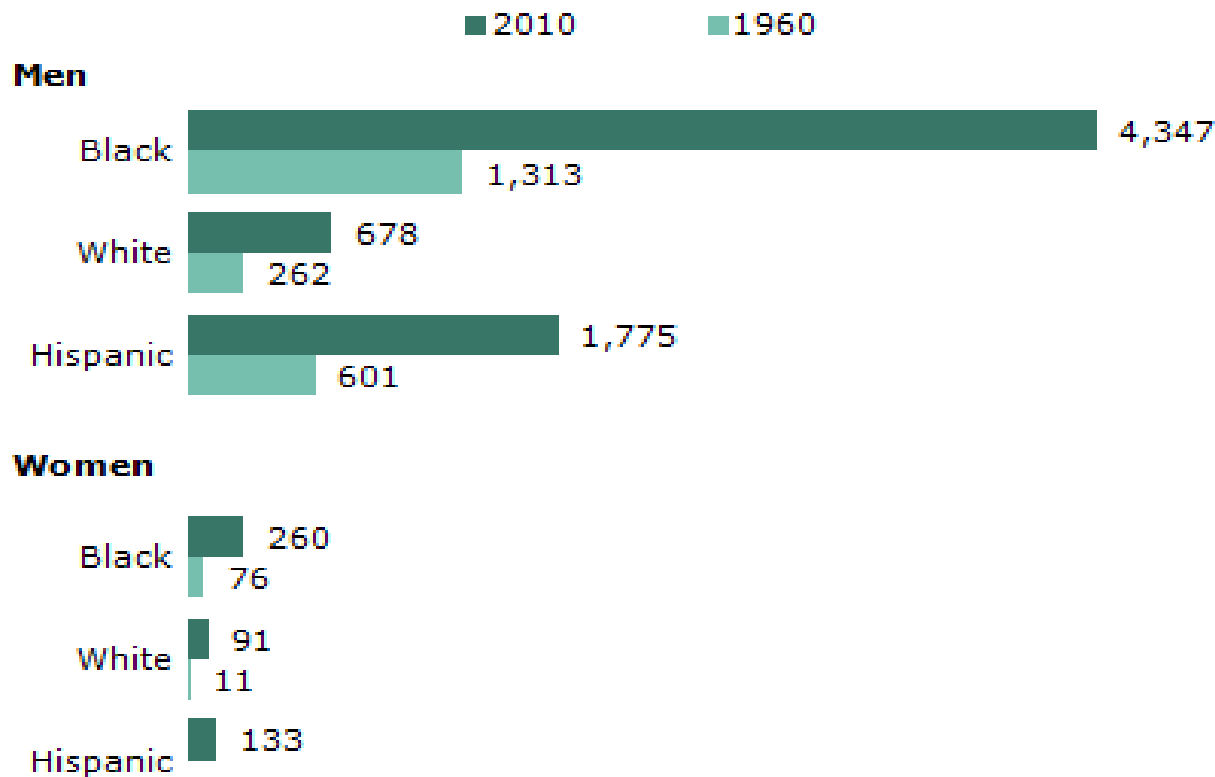
- ‘The first anti-opium laws in the 1870s were directed at Chinese immigrants. The first anti-cocaine laws, in the South in the early 1900s, were directed at black men. The first anti-marijuana laws, in the Midwest and the Southwest in the 1910s and 20s, were directed at Mexican migrants and Mexican Americans. Today, Latino and especially black communities are still subject to wildly disproportionate drug enforcement and sentencing practices.’ Drug Policy Alliance, “Brief History of the Drug War”

Myths and Realities

- ‘People of all races use and sell illegal drugs at remarkably similar rates. If there are significant differences in the surveys to be found, they frequently suggest that whites, particularly white youth, are more likely to engage in illegal drug dealing than people of color.’
 - Michelle Alexander, *The New Jim Crow*, p.99

Incarceration Rates, 1960 and 2010

Inmates per 100,000 U.S. residents



Note: Incarceration rates are for total prisoners in local, state and federal correctional facilities. Total prisoners includes persons under age 18. Hispanics are of any race. Whites and blacks include only non-Hispanics. In 2010, whites and blacks include only those who reported a single race. Asians, Native Americans and mixed-race groups not shown. A figure for Hispanic women in 1960 is not shown due to small sample size.

Source: For 1960, Pew Research Center analysis of Decennial Census data (IPUMS); for 2010, Bureau of Justice Statistics data <http://www.bjs.gov/content/pub/pdf/cpus10.pdf>

PEW RESEARCH CENTER

Retributive Justice and Unequal Treatment

- ¹⁹⁷ If a man has broken another man's limb, his own shall be broken. ¹⁹⁸ If a man has destroyed an eye or a limb of *a poor man*, he shall pay one maneh of silver. ¹⁹⁹ If a man has destroyed an eye or a limb of *the servant* of another man, he shall pay one-half of a mina.
(Babylon, *Code of Hammurabi*)

In Scripture: Restorative Justice and Equal Treatment Under the Law

- ¹⁷ If a man takes the life of *any human being*, he shall surely be put to death...²² There shall be *one standard* for you; it shall be *for the stranger as well as the native*, for I am the LORD your God. (Leviticus 24:22)

In Scripture: Restorative Justice and Equal Treatment Under the Law

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The 14th Amendment: Equal Protection Under the Law

In Scripture: Restorative Justice to Repair Harm, Restore Relationships

- ¹⁹ If a man injures his neighbor, just as he has done, so it shall be done to him: ²⁰ fracture for fracture, eye for eye... [The victim's right to name compensation is in Ex.21:22, 30] (Leviticus 24:17 – 20)

In Scripture: Restorative Justice to Repair Harm, Restore Relationships

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 - ³⁰ If a ransom is demanded of him, then he shall give for the redemption of his life whatever is demanded of him. (Exodus 21:29 – 30)

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Can we bring back equal treatment and restorative justice?

Outline

- Christian Restorative Justice
- Policing
- **Prosecution**
- Sentencing
- Reintegration

Prosecution: Some Problems

- Mandatory Minimums
- The Role of the Prosecutor
 - *Armstrong v US* (1996)
- Plea Bargaining
- Strips Judges of Discretion

Prosecution & Plea Bargaining

- “On Nov. 2, 2000, Erma Faye Stewart, then 30 and a single mother of two, and Regina Kelly, then 24 and a single mother of four, were arrested as part of a major drug sweep in Hearne, Texas.

Prosecution & Plea Bargaining

- “As reported by “Frontline,” the 27 individuals arrested in the sweep was indicted by a single informant later proven to be unreliable. All but one of the 27 are African-American.

Prosecution & Plea Bargaining

- “Both women proclaimed their innocence and were given public defenders who offered them little guidance and insisted that they plead guilty – Stewart’s lawyer reported not remembering Stewart, despite signing her plea agreement.

Prosecution & Plea Bargaining

- “Kelly and Stewart were both told that if they did not agree to a plea bargain, which amounted to probation, they would face “five to 99 years.”

Prosecution & Plea Bargaining

- “With a bail of \$70,000 and two small children at home, Stewart took the deal and was sentenced to 10 years probation. But after a five-month wait for the trial to begin, the state’s case fell apart.

Prosecution & Plea Bargaining

- “Everyone that didn’t take a plea bargain, including Kelly, was found not guilty. Stewart, on the other hand, fell into destitution because of the plea bargain – unable to secure food stamps or federal education money, unable to vote, evicted from public housing and

Prosecution & Plea Bargaining

- “forced to pay a \$1,000 fine and court fees on a minimum-wage salary. Kelly and Stewart’s stories are far from isolated incidents.

Prosecution & Plea Bargaining

- “In the United States, almost 95 percent of all felony convictions are secured without a jury. They are settled via a plea bargain —

Prosecution & Plea Bargaining

- “a unique facet of American law that allows the prosecutor to offer a reduced sentence in exchange for defendants waiving their rights to a jury trial and pleading guilty to the charges presented.”
 - Frontline, “The Plea,” PBS WGBH, June 17, 2004

Innocent Until Proven Guilty, No Judicial Torture

- *Ancient Greece:* 'In the fourth century BCE, Aristotle listed five different ways to prove guilt that may be used in legal proceedings and he included torture among them. In general, torture was used by the Greeks only when it came to the testimony of slaves and, in certain situations, foreigners.'

Innocent Until Proven Guilty, No Judicial Torture

- *Ancient Rome*: ‘The institution of torture...was eventually expanded [from slaves] to include free men... [then] expanded to include new types of people and situations. The various emperors had the power to authorize torture for new cases and were responsible for expanding the institution of torture in Roman law.’

Innocent Until Proven Guilty, No Judicial Torture

- *Pre-Modern and Modern Europe: 'By the sixteenth century... torture was in force from the Kingdom of Sicily north to Scandinavia, from Iberia across France and the German Empire to the Slavic East. Well into the 18th century the law of torture was still current everywhere, and it survived into the nineteenth century in some corners of central Europe.'*

Innocent Until Proven Guilty, No Judicial Torture

- *England*: 'According to available records, between 1540 and 1640 the Privy Council or the monarch ordered torture in eighty-one cases. Many of these cases involved political crimes, such as treason; but more than a quarter involved 'ordinary' crimes such as murder, robbery, burglary and horse stealing.'

Innocent Until Proven Guilty, No Judicial Torture

- ‘Jewish law has never authorized judicial torture. In fact, judicial torture of an accused would serve no purpose in Jewish law because even voluntary confessions are inadmissible as evidence [because of the two eyewitness requirement of Dt.17:16; 19:15]...

Innocent Until Proven Guilty, No Judicial Torture

- *‘Jewish law’s rejection of judicial torture is unique in Western civilization, especially because it is so ancient.’ ‘The law against self-incrimination relates to the accused’s vulnerability.’*
 - Rabbi Dr. Warren Goldstein, *Defending the Human Spirit: Jewish Law’s Vision for a Moral Society* (New York: Feldham, 2006), p.237, 240

Innocent Until Proven Guilty, Defend the Accused

- ‘Jewish law’s criminal law paradigm is based on the Biblical verse, “And the congregation shall save” [Num.35:25]. According to the Talmud, this verse establishes a principle, in terms of which one of the key responsibilities of any criminal court is to protect the interests of the accused by finding legally acceptable ways to “save” him from conviction.’ Goldstein, p.264 – 265

Innocent Until Proven Guilty, No Judicial Torture, Defend the Accused

- Ancient Greece
- Ancient Rome
- Pre-Modern and Modern Europe
- England
- ‘Jewish law’s rejection of judicial torture **is unique in Western civilization,** especially because it is so ancient.’

Innocent Until Proven Guilty, No Judicial Torture

- Ancient Greece
- Ancient Rome
- Pre-Modern Europe
- England

Plea bargaining – a form of judicial torture? Weakening the 5th and 8th Amendments?

especially because it is so ancient.

Outline

- Christian Restorative Justice
- Policing
- Prosecution
- **Sentencing**
- Reintegration

Sentencing

- “Implicit bias research has uncovered widespread and deep-seated tendencies among whites – including criminal justice practitioners – to associate blacks and Latinos with criminality.”

Sentencing

- “White Americans who associate crime with blacks and Latinos are more likely to support punitive policies — including capital punishment and mandatory minimum sentencing — than whites with weaker racial associations of crime.”
 - The Sentencing Project, *Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies*, 2014, p.3;
http://www.sentencingproject.org/doc/publications/rd_Race_and_Punishment.pdf

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**No three-strikes laws
No mandatory minimums**

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Reintegration

- Housing
- Work
- Debt
- Food Stamps
- Voting Rights

Reintegration

- ‘The vast majority of states continue to withhold the right to vote when prisoners are released on parole... No other country in the world disenfranchises people who are released from prison in a way even remotely resembling the United States. In fact, the United Nations Human Rights Committee has charged that U.S. disenfranchisement policies are discriminatory and violate international law.’

Reintegration

- Sabbath Year (Deuteronomy 15)
- Jubilee Year (Leviticus 25): A Garden of Eden Image
 - Ordinary financial debts cancelled
 - *Ebedim* (indentured servants) go free
 - People return to their family land inheritance
 - Family land returns to family
- Jesus' Teaching on Reconciliation

Action Steps

- Consider:

Who wrote the Bible?

Whose story is this?

Who is calling to you?

Action Steps

- Families Against Mandatory Minimums
 - www.famm.org
- Drug Policy Action
 - <http://www.drugpolicy.org/action>
- NHI's *Restoring the Captives* curriculum
 - <http://www.newhumanityinstitute.org>
- Dominique Gilliard's *Rethinking Incarceration*

