

THERESA LADRIGAN-WHELPLEY: Welcome to INTEGRAL, a podcast production out of the Ignatian Center for Jesuit Education at Santa Clara University. Exploring the question: “Is there a common good in our common home?”

I’m Theresa Ladrigan-Whelpley, the Director of the Bannan Institutes in the Ignatian Center and your host for this podcast. We’re coming to you from Vari Hall on the campus of Santa Clara in the heart of Silicon Valley, California.

In the first season of INTEGRAL, we’re exploring how issues of racial and ethnic justice intersect with the common good. There have been serious obstacles to a forthright engagement with issues of racial privilege, and implicit and explicit racial and ethnic injustice in the United States. Because as theologian Father Brian Massengale notes, “We don’t know how to talk about it, and we don’t really want to talk about it.”

Our hope this season, is to talk about it.

BILL O’NEILL, S.J. (audio clip): The original sin of our country is racism. I truly believe that there can be no redemption for our country and no greatness of this country until black lives matter.

THERESA LADRIGAN-WHELPLEY: To engage these pressing questions of racial justice and the common good today, particularly within the US criminal justice system, we’re joined by Bill O’Neill, associate professor of Social Ethics at the Jesuit School of Theology of Santa Clara University, and a Jesuit priest. His writings address questions of social reconciliation, human rights, and refugee policy. His most recent publication is entitled, “First Be Reconciled: Restorative Justice and Deliberative Democracy.” Welcome, Bill.

BILL O’NEILL, S.J.: Thank you Theresa, it’s wonderful to be here. Let me first say a word about the phenomenon of mass incarceration and racial bias and then look to the underlying rationale of retributive justice in the sentences “we meet and dole”.

According to recently published figures our US Bureau of Justice, today inmates incarcerated and jailed number 2.2 million, an increase of 500% over the last 40 years. This is the highest official rate of incarceration in the world. Including those in probation or on parole, the total number of citizens under the aegis of corrections departments now reaches 7.1 million.

Today, one out of every 137 Americans is incarcerated. Overall, African Americans are more likely than white Americans to be arrested; once arrested, they’re more likely to be convicted; and once convicted, they are more likely to face stiff sentences. Black men are six times as likely to be incarcerated as white men. And Hispanic men are more than twice as likely to be incarcerated as non-Hispanic white men.

Felony disenfranchisement deprives “1 out of 13 African Americans” of the right to vote. Such systemic inequities, writes Michelle Alexander, perpetuate the “New Jim Crow” of “racial caste”

and “racialized social control.” In Adam Gopnik’s words, “[m]ass incarceration on a scale almost unexampled in human history is a fundamental fact of our country today... as slavery was a fundamental fact of 1860. In truth, there are more black men in the grip of the criminal-justice system now... than were in slavery then.”

Our current incarceration practices differ markedly from those of other Western democracies with comparable crime rates. Amnesty International reports that the “USA stands virtually alone in the world in incarcerating thousands of prisoners in longer-term or indefinite solitary confinement.” So too, racial and ethnic minorities disproportionately suffer the ultimate sanction, capital punishment, where “poor and marginalized groups have less access to the legal resources needed to defend themselves.”

A similar punitive stance favors summary apprehension, detention, and deportation of the some 11.2 million undocumented migrants - so-called “illegal aliens” - in the United States. The Department of Homeland Security and Immigration and Customs Enforcement detain up to 33,400 immigrants and asylum seekers each day. In my ministry at the Federal Women’s Prison in Dublin, California, many of the women I serve are migrants, some of whom will be deported after completing their sentence. Many of the women are forcibly separated from their children for five to twenty years, their punishment exacerbated terribly by the punishment thus inflicted on their children. It is not surprising to hear a woman pray for her child who is now also incarcerated.

I began my ministry at the Federal Correctional Institution some 15 years ago, and today serve as the volunteer Catholic chaplain, coordinating services for the inmates. Now mine, as Theresa said, is a privileged role: I am a professor at the Jesuit School of Theology and immensely blessed in my Jesuit life. But among the greatest blessings is my ministry to these women. They have suffered far more than I will in my life. Their children have been taken from them; indeed, their children are the primary victims of our retributive regime as are their parents for whom they are the primary caregivers. These women are the expendable ones and our punitive ‘moral squint’ renders them, in the words of the liberation theologian, Gustavo Gutierrez, “non-persons.”

There are, it seems, unimportant failures. But I have come to see the beauty of their lives. They have great courage and faith to endure when so much is lost and taken. They have taught me what it is to hope. At the end of our mass, when we pray for those women who will finally be leaving, having completed their sentences, the women sing a song in Spanish, “*Mujer Libre*,” free woman. Women who still have years to serve, separated from families and friends, they sing for another free woman. And I wonder, if my own life were so broken, my future so marred, could I look beyond my own suffering and sing? I am not sure but they do, and it is grace, mercy given, by those who need it most (see credits below).

Roman Catholic bishops have joined other religious leaders in opposing such a punitive regime, and yet their words fail to awaken us from our undogmatic slumbers. Let me say about what we

might call our “retributive squint.” Today, adversarial adjudication of guilt and punishment restores the formal rule of abstract right or law, but not the thicker bonds that bind us together in society. Under the rubrics of an individualistic social contract, where the bonds of “civic friendship” are frayed and our “natural” solidarities fragment, repaying the offender’s “debt to society” favors neither reparations for victims, nor reintegration of the offender into community.

Indeed, social bonds are further attenuated as punishment is officially privatized. Crime may not pay but punishment increasingly does, creating incentives for higher incarceration rates. In our modern regime of incarceration, incapacitation and/or deterrence suffice to protect the body politic, reaffirming the coercive prerogatives of the bureaucratic state. And if these prerogatives discipline citizens, think even more so do they penalize “aliens” whose bodies become illegal.

In our punitive regime, the economy of exclusion signified by the social contract, proceeds apace as “criminals” or “illegal aliens” are denied the very “right to have rights.” The will to punish, independent of consequential considerations like deterrence, remains a potent force in politics where social bonds are already frayed and violence naturalized. Vengeance, especially against “frightening symbols of difference,” seems to have its own cathartic rationale, even where less punitive measures suffice for deterrence.

At play here, I believe is a perverse dialectic, where our punitive regime constructs its own object: the alien becomes “illegal,” the young black man, the “criminalblackman.” So bodies become illegal, criminal. In the words of Bryan Stevenson in his book *Just Mercy*, “We’ve institutionalized policies that reduce people to their worst acts and permanently label them ‘criminal,’ ‘murderer,’ ‘rapist,’ ‘thief’ - identities they cannot change regardless of the circumstances of their crimes or any improvements that they might make in their lives.”

Difference is feared and punished. As Alexander argues, our ostensibly impartial, “colorblind” criminal justice system thus rationalizes, and effectively erases, its racial and ethnic partiality or bias.

In recent years, restorative justice has emerged as an alternative moral squint. In their pastoral letter, “Responsibility, Rehabilitation, and Restoration,” our own American bishops write:

“An increasingly widespread and positive development in many communities is often referred to as restorative justice. Restorative justice focuses first on the victim and the community harmed by the crime, rather than on the dominant state-against-the-perpetrator model.”

One of its leading theorists, the Mennonite theologian Howard Zehr, describes restorative justice in a similar vein, as “a process to involve to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible.”

For proponents of restorative justice or victim-offender reconciliation programs, sentencing circles, or family group conferences, represent an effective alternative to prevailing regimes of retributive justice. Such restorative justice seek the participation of those most affected by crime, victims and offenders, yes, but likewise family and community members.

While punitive practice in our country views crime primarily as a legal offense against the body politic, restorative justice sees crime as a breach of our natural sociality. In the words of the Archbishop Desmond Tutu, Chair of the South African Truth Commission:

“Retributive justice - in which an impersonal state hands down punishment with little consideration for victims and hardly any for the perpetrator - is not the only form of justice. I contend there is another kind of justice, restorative justice where the central concern is not retribution or punishment, but the healing of breaches, the redressing of imbalances, the restoration of broken relationships.

ARCHBISHOP DESMOND TUTU (audio clip): I would hope that the world would realize that there is no situation that is not transfigurible, that there is no situation of which where we can say that is absolutely, totally devoid of hope (see credits below).

BILL O'NEILL, S.J.: Now in interpreting such breaches, both Archbishop Tutu and modern Roman Catholic social teaching invoke the modern conception of human rights. But here, basic human rights are less properties of sovereign selves abstracted from our relationships than the moral grammar of our public deliberation. This is the critical, or what we might call deconstructive, use of rights rhetoric - a moral squint letting us see crime but, no less, the systemic inequities of white privilege and racial caste in our society.

What must be restored is not the status quo ante, but the bonds of moral community - that is, the rights-based common good of mutual respect and recognition necessary, in Alexander's words, for a “thriving, multiracial, multiethnic democracy free from racial hierarchy.” For, she says, “the failure to acknowledge the humanity and dignity of all persons has lurked at the root of every racial caste system.”

Our rights talk must be rich enough to name both victim and offender, while essentializing or objectifying neither. Indeed, under the rubrics of the common good, our moral entitlement to indiscriminate respect justifies preferential treatment for those whose basic rights are most threatened.

In the words of Bryan Stevenson,

BRYAN STEVENSON (audio clip): “Ultimately, you judge the character of a society, not by how they treat the rich and the powerful and the privileged, but by how they treat the poor...the condemned, the incarcerated, because it's in that nexus that we actually begin to understand truly profound things about who we are” (see credits below).

BILL O'NEILL, S.J.: What policies and social arrangements, we must ask, best protect the rights of the most vulnerable, including the liberties of effective-democratic participation for those who are so often consigned to the margins of history? That is the question of the common good.

And finally the deconstructive and reconstructive uses of rights rhetoric combined in interpersonal redress. As Alexander reminds us, justice, to be just, must recognize the face - the unique face of victim and offender alike. Crimes are not primarily an offense against abstract right. Crimes, even crimes against humanity, may indeed be legion, but they are always transgressions of the ineluctably unique, concrete other. While our prevailing incarceration system neglects both victim and offender, restorative practices provide a social stage for interpersonal redress, emphasizing effective participation of victim, offender, and the local community affected by crime.

In identifying systemic distortions of racism, ethnic bias, and white privilege, and in redressing both interpersonal and systemic inequities, such justice “restores” the social bonds presupposed in our democratic deliberation. Above all, and we must never forget, persons never cease to matter. The basic rights of offenders always retain their moral force: cruelty is never permissible, vengeance is never justified. Here, as Tutu reminds us, “the central concern is not retribution or punishment but [as in Catholic social teaching on the common good] the healing of breaches, the redressing of imbalances, the restoration of broken relationships.

Yet these distinctive religious demands of discipleship underwrite a secular, or better, political lingua franca of dignity, rights, and the common good. For citizens of faith, love - agape - may never be less than just, but the love that inspires biblical justice, Dr. King’s “beloved community” demands more.

Well how then can we respond? I would recommend first reading Bryan Stevenson’s *Just Mercy*, and then Michelle Alexander’s *The New Jim Crow* as background. The Sentencing Project and the Pew Charitable Trust both offer excellent analyses and pertinent data. Finally, if you can, I would encourage you to come to know those imprisoned, who sometimes, in surprising ways, show us the face of Christ.

THERESA LADRIGAN-WHELPLEY: Thanks for listening to INTEGRAL, a Bannan Institute podcast of the Ignatian Center for Jesuit Education at Santa Clara University. Special thanks to Professor Bill O’Neill for his contribution to today’s episode.

Coming up next week, is Cruz Medina, assistant professor in the English Department at Santa Clara who will explore how the question of the common good intersects with issues of diversity, inclusion, and American identity across social media platforms.

Technical direction for INTEGRAL was provided by Craig Gower and Fern Silva. Our production manager is Kaylie Erickson. Special thanks to Mike Whalen, Katrina Story, Preston Yeung, and

Charmaine Nguyen for advisory and editorial support. You can find us on the web at scu.edu/integral. Listen and subscribe to INTEGRAL on iTunes, Soundcloud, or PodBean.

CREDITS:

- Lucia Sanchez Saornil, *Himno de Mujeres Libres* (1937), available at: <https://www.youtube.com/watch?v=ya0NMF8I35s>
- Archbishop Desmond Tutu, "Apartheid, Perpetrators, Forgiveness" (2008), available at: https://www.youtube.com/watch?v=eRDBWoV_hA0
- Bryan Stevenson, "We Need to Talk about Injustice," *TEDTalk* (2012), available at: <https://www.youtube.com/watch?v=c2tOp7OxyQ8>