



A Long Repentance

Exploring Christian Mistakes
about Race, Politics, and Justice
in the United States





*A Long Repentance:
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Revision 1.0

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A Publication of the *New Humanity Institute*

The New Humanity Institute is a Christian education organization dedicated to resourcing Christian leaders and churches with curriculum and training on restorative justice and healing atonement to holistically teach and proclaim the healing of humanity in Jesus Christ. The New Humanity Institute creates curriculum that brings the story of Jesus into dialogue with modern movies, songs, and art; early Christian understandings of human nature into dialogue with trauma studies and neuroscience; and Christian restorative justice into dialogue with ethnic studies, political science, and law.

Contributing Authors

Mako Nagasawa, Executive Director

Mako is the founder and director of the New Humanity Institute and has been serving in Christian ministry for over 20 years. He is the co-author of the *Lazarus at the Gate economic discipleship curriculum*, with Dr. Gary VanderPol. He contributed to the *Justice Study Bible* as a commentator on *Ezekiel*. Since 1999, Mako, his wife Ming, and their two children John and Zoe have lived among friends in a Christian intentional community house in a mostly black neighborhood in Dorchester, MA. They enjoy their current church, Neighborhood Church of Dorchester, and do urban community gardening. In addition to Christian ethics, theology, biblical studies, and early church history, Mako enjoys food, tea, and stories from around the world. Mako holds degrees from Stanford University in Industrial Engineering and Public Policy, with a focus on education, and in May 2019 completes his Master's of Theological Studies at Holy Cross Greek Orthodox Seminary.

Sangwon Yang, Director of Curriculum and Instruction

Sang leads New Humanity Institute's curriculum and instruction ministry, where he is responsible for writing and teaching theological curricula centered around restorative justice and healing atonement for churches and Christian organizations. Sang's passions for theological education led him to join the Admissions Office at Boston University School of Theology as the Admissions Officer in December 2018. His work in Admissions allows him to continue sharing his passion for theology while walking alongside others as they begin or continue their theological journey. Sang sees his ministerial goals as empowering others through theological education while making that education more accessible and approachable to a diverse range of people and communities. In his free time, Sang enjoys talking about Christian theology, Thomas Aquinas, Atonement, Tolkien's *The Lord of the Rings*, the examples of restorative justice that he saw in post-civil war northern Uganda, and issues of race and culture. He lives in Watertown with his wife, Joanne, and his dog, Toby. Sang holds a B.A. from Boston College in Theology, and a Master's in Divinity from Duke Divinity School focused on systematic theology.



Table of Contents

Introduction: Why a Long Repentance?	5
Blog Post #1: Introducing John Winthrop and Roger Williams	6
Blog Post #2: Winthrop and Williams on Native Americans	7
Blog Post #3: The Catholic Doctrine of Discovery	8
Blog Post #4: How “Race” Emerged from Colonialism	10
Blog Post #5: Why Americans Believe in the Illusion of Meritocracy	11
Blog Post #6: The Illusion of Meritocracy in Housing, Part 1	13
Blog Post #7: The Illusion of Meritocracy in Housing, Part 2	14
Blog Post #8: The Illusion of Meritocracy in Schooling, Part 1	15
Blog Post #9: The Illusion of Meritocracy in Schooling, Part 2	16
Blog Post #10: The Illusion of Meritocracy in Policing, Part 1	17
Blog Post #11: The Illusion of Meritocracy in Policing, Part 2	19
Blog Post #12: The Illusion of Meritocracy in Policing, Part 3	22
Blog Post #13: Restorative Justice Over Meritocratic-Retributive	



Introduction

Often, people talk about issues of race and justice in the United States as issues of ‘justice and injustice.’ Sometimes we launch into debates about ‘the proper role of government.’ But is that the original framework from which these issues were asked and debated?

The purpose of the blog post series called *A Long Repentance: Exploring Christian Mistakes About Race, Politics, and Justice in the United States* is to remind our readers that these issues began as Christian heresies. Since Christians enacted and institutionalized what we believe to be heretical ideas, they were very destructive and harmful, then as now. And we bear a unique responsibility for them. As a result, we believe we must engage in a long repentance. We must continue to resist the very heresies that we put into motion. Thus the title of this blog series, *A Long Repentance*. The journey is long and challenging. It may be impossible to see the end. But along the way, it is also inspiring and sometimes breathtaking.

We also encourage you to explore this booklet, *A Long Repentance: A Study Guide*, for further reflections and discussion questions.

The blog posts may be found on the blog site of the New Humanity Institute:
www.newhumanityinstitute.org.



Blog Post #1: Introducing John Winthrop and Roger Williams

Questions for Discussion

1. As we begin these reflections on the role of Christian faith in colonialism, justice and injustice, and our political culture today, let's make this somewhat personal.
 - a. How have you and your family experienced 'a sense of place'? Are there places that you have affection for? Like a neighborhood park, the house of friends or relatives, a local YMCA, a public library, etc.
 - b. How have you and your family experienced dislocation by not having 'a sense of place'? Like if your family moved around because you were a military family, or because of immigration, or a job change, or gentrification, or being placed on a reservation, or totally unfamiliar faces.
2. What do you think about how John Winthrop and Roger Williams each treated Native Americans and their 'sense of place'? Which do you find to be faithful enactment of Christian Scripture?
3. Periodically, *A Long Repentance* will re-present at least these two Christian traditions, which flow out of real positions that those Christians held.
 - a. Have you heard of this contrast before?
 - b. What would it mean today if Winthrop was wrong and Williams was right?



Blog Post #2: John Winthrop and Roger Williams on Native Americans

Questions for Discussion

1. What did you learn here about the differences between John Winthrop and Roger Williams?
 - a. What are the major differences?
 - b. Did it surprise you to read about the major disagreement between Christians at the founding of the American colonies?
2. Who do you think was reading the Bible more accurately? John Winthrop or Roger Williams? And why?
3. Many Protestants have this view of church history: (1) Jesus, (2) Paul, (3) the New Testament gets canonized, and then (4) Martin Luther and John Calvin get back to the Bible. Did it surprise you to learn about how Christians before the Protestant Reformation and the Age of Colonialism interpreted Genesis 1 as God giving land-wealth to all people in common?
4. What does repentance mean here?
 - a. Does repenting mean that you only lose?
 - b. What do you gain by repenting?



Blog Post #3: The Catholic Doctrine of Discovery

Questions for Discussion

1. Did the rulings and reasoning of the Oneida Nation vs. City of New York case surprise you? If so, why? If not, why not?
 - a. Do you know of any other incidents in American law when the Doctrine of Discovery was cited?
 - b. Leader's note: review other instances when the Doctrine of Discovery was cited.
<https://doctrineofdiscovery.org/>
 - i. White v. University of California (2014)
 - ii. Ottawa v. Logan (2009)
 - iii. Onondaga Nation v. New York (2012)

2. Please review footnote #2, reproduced here:

“The “doctrine of discovery” became formalized into American law in the early 19th century by Chief Justice John Marshall in *Johnson v. M’Intosh* (1823). Johnson had inherited land purchased from the Piankeshaw tribes, but McIntosh claimed the same land, having purchased it under a grant from the United States. It is important to note that Justice Marshall had financial stakes in the case, and refused to recuse himself. The case was raised on who had the official title to the land and the right to sell the land. The Doctrine of Discovery was used to say that the United States was the lawful owners of the land, having inherited it from the British Empire. Chief Justice Marshall noted, “On the discovery of this immense continent, the great nations of Europe... as they were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements, and consequent war with each other, to establish a principle which all should acknowledge as the law by which the right of acquisition, which they all asserted, should be regulated as between themselves. This principle was that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession. ... The history of America, from its discovery to the present day, proves, we think, the universal recognition of these principles.” (John Marshall, *Johnson v. M’Intosh*, 21 U.S. 543, 5 L.Ed. 681, 8 Wheat. 543 (1823))

- a. Do you think the incorporation of the Doctrine of Discovery into American law was a fair and just process? Or had legal justification? Why or why not?
3. What is your reaction to the Papal declaration called *Dum Diversas* of 1452?
 - a. Does this history of Christian partnership in colonization and slavery surprise you? Why or why not?
 - b. On what grounds do you think Pope Nicholas V made these declarations?
 - c. How do you understand his reasoning?
 - d. What would all the consequences be if Pope Nicholas V was wrong?
 - e. Below are some moments in Roman Catholic history that are significant to keep in mind:

In 1537, Pope Paul III, in *Sublimus Dei*, repudiated the substance of the Doctrine of Discovery:

“We... consider... that the Indians are truly men and that they are not only capable of understanding the Catholic Faith but, according to our information, they desire exceedingly to receive it... Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ; and that they may and should, freely and legitimately, enjoy their liberty and the possession of their property; nor should they be in any way enslaved; should the contrary happen, it shall be null and have no effect.”



But unfortunately, the Spanish and Portuguese kings, who were already invested in colonialism, refused to support the Pope's position.

In 1992, Pope John Paul II went to Santo Domingo, Dominican Republic on the 500th anniversary of Columbus' landing and begged forgiveness for the sins of the Church in the Spanish Conquest. On March 12, 2000, he knelt at the Holy Doors of the Vatican during the year-long event called the Great Jubilee, he begged forgiveness for Catholics who had trampled 'the rights of ethnic groups and peoples, and [for showing] contempt for their cultures and religious traditions.'



Blog Post #4: How “Race” Emerged from Colonialism

Questions for Discussion

1. What is your initial reaction to the information provided in this post?
 - a. Were you surprised? Is it believable? Is it helpful in your understanding of race?
2. Can you relate to associating a place of origin with your own identity?
 - a. If so what are some examples?
 - b. Illustration: Recently when I (Sang) visited my old college campus, I was greatly distraught by the fact that one of my favorite dorm buildings was demolished, rubble and dirt being the only remains of Edmonds Hall. Maybe I was too sentimental, but that particular building and I had a long history; it was the first building I entered as an admitted student before my freshman year, I visited my sister there during my freshman year, where I lived with my friends my sophomore year, where I met my wife for the first time, where we had our first kiss, where we found live-long friends, and had deep long conversations over New Hong Kong take-out. Edmonds Hall was the physical embodiment of my college experience because so many of my college stories started or ended in Edmonds Hall. It felt strange to see the campus without Edmonds. Although I still carried the memories of college in my mind, it still felt like a part of my college experience was demolished along with the building. Does my reaction to the demolition of my old dormitory seem extreme?
3. In the post, we explain how racial stereotypes about intelligence and morality originates from the “distorted theological” identity for race.
 - a. Why do most Americans consider it more sophisticated or “rational” to conjugate the verb “to be” as: I *am*; you *are*; he/she/it *is*; we *are*; you *are*; and they *are*? Why isn’t it just as “rational” to conjugate it as I *be*; you *be*; he/she/it *be*; we *be*; you *be*; and they *be*? Is it because the former is “white” and the latter is “black”? Yet which makes more sense when you look at it?
 - b. By the same token, why does it feel more sophisticated to say “to dine on beef” than to say “to eat cow”? Because in 1066, the Normans invaded England, and set up French as the dominant language of government and the upper class. To this day, the French words (like “to dine on beef”) sound more sophisticated than the original English words (like “to eat cow”) because of that history.¹ The powerful say that certain characteristics of other people are “irrational,” “less rational,” or “less sophisticated.”
 - c. What are some other racial stereotypes used for high or low intelligence?
4. What are your thoughts on the history of Christian faith in America, and the methodologies of evangelism adopted by priests and missionaries like José de Acosta and Alessandro Valignano?
 - a. How can we as the church acknowledge this history, and repent of its sins?
 - b. Note that it wasn’t just the Popes who believed in using racial categories, but all kinds of representatives of the Catholic Church, and later the Protestant Church.

We would highly encourage all participants to read Willie James Jennings’ *The Christian Imagination* for more information on this topic!

¹ Alan Massie, “In Everything We Say, There Is An Echo of 1066,” *Telegraph UK*, October 13, 2012; <https://www.telegraph.co.uk/history/9606163/In-everything-we-say-there-is-an-echo-of-1066.html>. See Barbara A. Sasso, “In Code Switching: Celebrating Cultural Dialects in American Speech,” *Yale-New Haven Teachers Institute*, 2015, <http://teachersinstitute.yale.edu/curriculum/units/2015/2/15.02.10.x.html> on how to teach the history of the English language in a way that is relevant to modern debates about English, Ebonics, Spanish.



Blog Post #5: Why Americans Believe in the Illusion of Meritocracy

Questions for Discussion

1. What are some ways in which you see how Locke's understanding of 'labor' working within a racial hierarchy?
 - a. Who defines what 'labor' looks like?
 - b. What does 'improvement' look like?
 - c. White Americans have accused various other groups of being 'lazy.' For example, in the early 20th century, there was the popular 'Sambo' character used to portray black people as lazy, carefree, and irresponsible.² Or, there was a caricature of Mexican people as lazy, even though Mexican people work harder than American people.³ What do you think motivates that stereotype?
2. What are some ways in which we still exemplify the 'white people' as the norm or the standard for what is 'proper'? Consider the following example as you answer the question.

In the early 20th century, Ivy League schools felt they had too many Jewish students. So they broadened their admissions criteria to include 'extracurricular activities' to reduce the number of Jewish students and admit more white Americans.

'By 1926, Harvard moved away from admissions based strictly on academics to evaluating potential students on a number of qualifiers meant to reveal their "character."

When the faculty formally approved the report eight days later, Lowell was further elated, for they also approved measures making the admissions process even more subjective. In particular, the faculty called on [Committee on Admissions chairman Henry Pennypacker] to interview as many applicants as possible to gather additional information on "character and fitness and the promise of the greatest usefulness in the future as a result of a Harvard education." Henceforth, declared the faculty, a passport-sized photo would be "required as an essential part of the application for admissions."

Elite colleges also began to use legacy admissions during this period — giving preference to children of alumni — in order to maintain a predominantly Protestant student body, Karabel explains.⁴

Many white Americans maneuver the definition of 'merit' when reminded of Asian-American achievement. They de-emphasize objective measures like GPA and SAT scores, and include subjective factors like 'leadership' as important.

'Specifically, [Frank L. Samson, assistant professor of sociology at the University of Miami] found, in a survey of white California adults, they generally favor admissions policies that place a high priority on high school grade-point averages and standardized test scores. But when these white people are focused on the success of Asian-American students, their views change.

² Andrew Kaczynski, Chris Massie, and Nathan McDermott, 'Homeland Security's Head of Community Outreach Once Said Blacks Turned Cities to 'Slums' with 'Laziness, Drug Use and Sexual Promiscuity', CNN, November 16, 2017; <https://www.cnn.com/2017/11/16/politics/kfile-jamie-johnson-dhs/index.html>

³ Lacey Young and Mari Hall, 'The Lazy Mexican: A Damaging Stereotype That's Far from the Truth,' *Montana Kaimin*, May 3, 2017; http://www.montanakaimin.com/opinion/the-lazy-mexican-a-damaging-stereotype-that-s-far-from/article_8ef41c22-3034-11e7-95b9-83d270d08b2d.html writes, 'According to the Organization for Economic Cooperation and Development, the average Mexican worked 2,246 hours in 2015, exceeding all other countries involved in the study. The average American worked 1,790 hours that same year.'

⁴ Peter Jacobs, 'Harvard Is Being Accused Of Treating Asians The Same Way It Used To Treat Jews,' *Business Insider*, December 4, 2014; <https://www.businessinsider.com/the-ivy-leagues-history-of-discriminating-against-jews-2014-12>



The white adults in the survey were also divided into two groups. Half were simply asked to assign the importance they thought various criteria should have in the admissions system of the University of California. The other half received a different prompt, one that noted that Asian Americans make up more than twice as many undergraduates proportionally in the UC system as they do in the population of the state.

When informed of that fact, the white adults favor a reduced role for grade and test scores in admissions -- apparently based on high achievement levels by Asian-American applicants. (Nationally, Asian average total scores on the three parts of the SAT best white average scores by 1,641 to 1,578 this year.)

When asked about leadership as an admissions criterion, white ranking of the measure went up in importance when respondents were informed of the Asian success in University of California admissions.

“Sociologists have found that whites refer to ‘qualifications’ and a meritocratic distribution of opportunities and rewards, and the purported failure of blacks to live up to this meritocratic standard, to bolster the belief that racial inequality in the United States has some legitimacy,” Samson writes in the paper. “However, the results here suggest that the importance of meritocratic criteria for whites varies depending upon certain circumstances. To wit, white Californians do not hold a principled commitment to a fixed standard of merit.”

Samson raises the idea that white perception of “group threat” from Asians influences ideas about admissions criteria -- suggesting that they are something other than pure in their embrace of meritocratic approaches.

He adds: “While the principle of fairness may be a driving concern in people’s attitudes towards policies such as affirmative action, social welfare, and fair housing, the malleability of white respondents’ attitudes towards the importance of university admissions criteria in response to racial considerations indicates that public opinion about the importance of such criteria is anything but fair, at least if the definition of fairness entails a procedural fairness by which all groups should be subject to the same procedural process, i.e., same weighting of admissions criteria, when determining whether an individual should be admitted to a prestigious public university system, an opportunity that will significantly shape that person’s life outcomes.”⁵

3. Is the United States of America a meritocratic society or country? Why or why not?

⁵ Scott Jaschik, ‘Meritocracy or Bias,’ *Inside Higher Ed*, August 13, 2013; <http://www.insidehighered.com/news/2013/08/13/white-definitions-merit-and-admissions-change-when-they-think-about-asian-americans>



Blog Post #6: The Illusion of Meritocracy in Housing, Part 1

Questions for Discussion

1. It may be surprising to learn that Nazi German lawyers studied America's policies in the 1930's, before the U.S. entered World War II. Let's look at that in more detail.

(From part 1, footnote 9) It is true that FDR had to win support from Southern politicians, who wanted racist policies. But it wasn't just because of the American South that the New Deal was enacted in the way it was. "Such views were held not only by crude southern demagogues, but by the president of the United States himself. In a document from 1939 (first published by this author more than 10 years ago), President Franklin D. Roosevelt was reliably quoted by a friendly senator as boasting, "We know that we do not have any Jewish blood in our veins.""⁶

America's housing policies before and after the New Deal can be described as an apartheid system of segregation. Of course, we know about how white Americans displaced Native Americans, and created reservations. But also, black folks in previous decades had been 'confined to the most dilapidated housing in the least desirable sections of the cities to which they fled. In densely populated destinations like Pittsburgh and Harlem, housing was so scarce that some black workers had to share the same single bed in shifts.⁷ Many whites had set up restrictive covenants, which 'were clauses written into deeds that outlawed African-Americans from buying, leasing or living in properties in white neighborhoods, with the exception, often explicitly spelled out, of servants. By the 1920s, the widespread use of restrictive covenants kept as much as 85 percent of Chicago off-limits to African-Americans."⁸

- a. In light of these legal and sub-legal practices, do you think it is accurate to call the American housing market 'a free market'?
 - b. Is the 'free market' a 'free to be racist market'?
2. We often think of government-funded housing projects. But what has been the role of government-funded insurance policies for financing housing?
 - a. Note that before there was government stabilization of mortgage financing (also in part 1, footnote 4), 'in 1911 – 1914, the average down payment for (new and existing) single-family houses in 22 cities was almost 68 percent of the purchase price, and 46 percent of homes were acquired debt free.' What do you think of the 'free market' in mortgage loans without government interference?
 - b. Why do you think these types of government funded housing programs are not as well known as, say, food stamps or public housing?

⁶ Rafael Medoff, "Book Review Was Hitler Inspired by Racist American Laws?", *Haaretz*, March 29, 2017; <https://www.haaretz.com/life/books/was-hitler-inspired-by-america-s-race-laws-1.5452180>

⁷ Isabel Wilkerson, "The Long-Lasting Legacy of the Great Migration," *Smithsonian Magazine*, September 2016; <https://www.smithsonianmag.com/history/long-lasting-legacy-great-migration-180960118/>

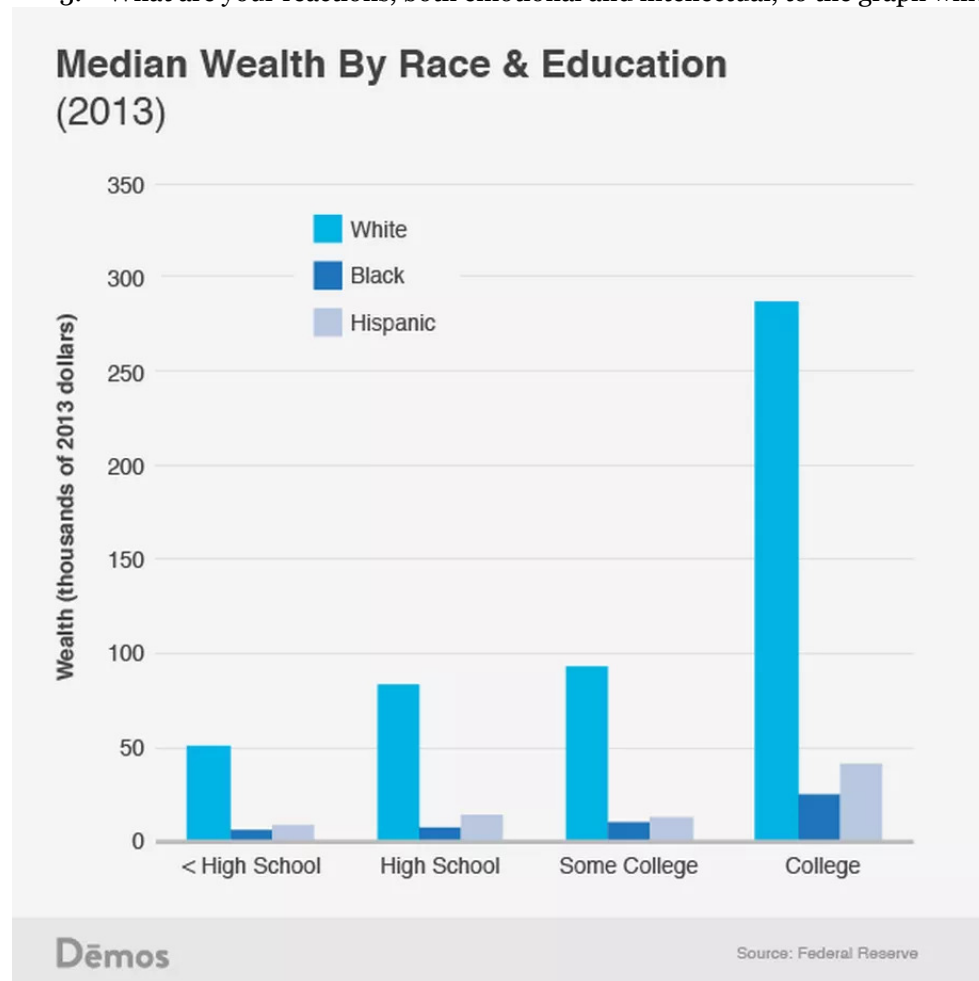
⁸ Ibid



Blog Post #7: The Illusion of Meritocracy in Housing, Part 2

Questions for Discussion

1. Describe the differences between Michaela's family's experience, and Brian's.
2. Michaela's grandfather and grandmother were able to buy a house. Do you think that their house made a million dollar difference in the life of their family? Why or why not?
3. What are your reactions, both emotional and intellectual, to the graph which closes out the post?



4. Why is it possible for someone like Michaela to say, “I worked hard to achieve everything I did,” and for someone like Brian to also say, “But the system does not treat everyone fairly. In fact, someone could work just as hard as you, but achieve almost nothing.”



Blog Post #8: The Illusion of Meritocracy in Schooling, Part 1

Questions for Discussion

1. As discussed in the blog, how does residential segregation fuel the unequal school systems?
2. Have you seen teachers caught between seeking jobs in serving students in poorer school districts, and working in better paying school districts? How have they navigated that?
3. Do you think the current school system is just according to the Fourteenth Amendment, our constitutional commitment to treat people equally under the law? Why or why not?
4. In both the Old Testament and New Testament, there is a concern for the well-being of children.
 - a. In Genesis 1 - 11, there is a hope that a future child will fulfill the “seed of the woman” prophecy of Genesis 3:14 - 15, and be God’s champion to defeat evil. So there was a concern to protect children (which made Cain’s murder of his brother Abel so additionally tragic).
 - b. In Genesis 12 - 50, the story culminates in Joseph, who became advisor to Pharaoh in Egypt, and became God’s partner to build a garden in Egypt, a representation of the garden of Eden which humanity lost. With that power, he fed people in the entire region during a seven year drought. The Bible points out that Joseph especially took care of the ‘little ones’ of Israel (Gen.43:8; 45:19; 46:5; 47:12) and the ‘little ones’ of Egypt (Gen.47:24).
 - c. When God brought Israel into a new garden land, He declared that He would regift the garden land to all of His children, the people of Israel. He declared a ‘jubilee year’ every fifty years, which was an economic reset button (Lev.25). All the land went back to its original family boundaries. People were released from debt-servitude and debt-bondage, so they could return to their ancestral land. This meant that God prevented children from inheriting all the economic advantages and disadvantages that they possibly could. In every generation or two, God intervened to declare His love for each of His children.
 - d. When Israel was in exile from the garden land, and served under Babylon, the Hebrew prophet Daniel became the advisor to the King of Babylon. His policy advice was to ‘show mercy to the poor’ (Dan.4:27).
 - e. When Jesus was a child, even an infant, the existing king sought to kill him, so his family was forced into refugee status (Mt.2). On a human level, he identified with vulnerable children.
 - f. Jesus expanded the boundaries of God’s loving concern from just Israel to the whole world. Within that concern, Jesus expressed surprising personal care for children (Mt.19:13 - 15; Lk.18:15 - 18). The New Testament writings show a concern for economic equality and community (2 Cor.8:9 - 15; 1 Jn.3:16 - 18). The New Testament sometimes sees failure to give to the poor as theft from them (Mt.18:18; Lk.19:1 - 10; Eph.4:28; Jas.5:1 - 6).
 - g. After considering these biblical passages on the care of children, how does our system of education, built on top of a racially segregated residential system, compare?



Blog Post #9: The Illusion of Meritocracy in Schooling, Part 2

Questions for Discussion

Leader: If you and your group members have the time, take the Harvard Implicit Bias Test online, before you convene the group. It takes 10 minutes. <https://implicit.harvard.edu/implicit/Study?tid=-1>. You don't need to discuss it with each other, although you certainly could. It's just something that will help each person be aware of what "implicit bias" is, and how it might affect a teacher, a police officer, a nurse or doctor, etc. serve people from different communities.

1. Have you ever been disciplined in the American public school system? Or seen someone else disciplined?
 - a. How was the discipline administered in your (or that person's) school experience?
 - b. Did you ever witness "misconduct" that was caused mainly by a misunderstanding?
2. How have you seen school funding levels affect the way schools handle discipline?
 - a. In terms of what facilities were available in the school building?
 - b. In terms of cultural and implicit bias training given to teachers?
3. Should cultural competency and implicit bias training be required for professionals in the school systems? Why or why not? Are they required in your school district or state?
4. Is your state more punitive or more constructive when dealing with disciplinary issues in schools?
 - a. Can you do a little research on your state or your school district?
5. Brian said, "Can you really maintain that white students today face more discrimination than students of color? On the issue of learning opportunities, that's not true. Nor is it true on the issue of school discipline. We Americans like to claim that the school system is "meritocratic." We claim that schools treat kids fairly. But in light of all this evidence, can you honestly say that our school system is actually fair?" How would you respond to Brian?
6. Recall that in Leviticus 25, God instituted His "no child left behind" practice. He started the "jubilee year" principle every fifty years, where He regifted the garden land to all of His children. This was an element of "fairness," since God prevented children from inheriting this basic advantage or disadvantage from their parents. Keep in mind that land was Israel's basic form of wealth, work, schooling, peace of mind, etc. How does that compare to our modern day practices with our nation's children?
7. In future posts and discussions, we will discuss other ways to actively combat the school-to-prison pipeline, such as "restorative justice" practices. It may be challenging to just be learning without doing something to remedy the situation. But hold on. We'll get there.



Blog Post #10: The Illusion of Meritocracy in Policing, Part 1

Questions for Discussion

1. What have your experiences been with the police?
2. Do you know any police officers personally? What is that relationship like?
3. Do you think your answers to questions 1 and 2 have been affected by what you look like or where you live?
4. What do you think about the corruption and misconduct cases narrated in the blog?
 - a. What do you think about the quote from Matthew Fogg, the retired Chief Deputy U.S. Marshall who was quoted in the beginning of the post?
 - b. Consider the testimonies and lawsuits filed by police officers against police departments.
 - c. Do you agree that police departments violate the Fourteenth Amendment when they don't protect their black and brown citizens equally as white citizens?
5. Did you know the Fourteenth Amendment comes from the Jewish and Christian tradition on equal human rights? Compare and contrast the Code of Hammurabi and the Jewish Law. If you are not a Christian, you can still appreciate this text as influential. How do the two law codes compare? And in the U.S., to which are we closer, in practice?

<p style="text-align: center;">The Code of Hammurabi <i>Persons Unequal, Retributive Justice</i></p>	<p style="text-align: center;">The Jewish Law: <i>Persons Equal, Restorative Justice</i></p>
<p><i>The Code of Hammurabi</i> comes from Babylon about 1754 BC, about 400 years before Moses. Despite the difference in time, Moses and the Israelites probably would have been aware of law codes like this.</p>	<p><i>The Jewish Law:</i> Jewish tradition holds that this was given by God to Moses while Israel was in the wilderness. It takes the form of case law examples based on the Ten Commandments, so principles need to be reasoned out.</p>
<p>Code of Hammurabi: 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 <i>poor man</i>, he shall pay one maneh of silver. ¹⁹⁹ If a man has destroyed an eye or a limb of <i>the servant</i> of another man, he shall pay one-half of a mina. ²⁰⁰ If a man has made the tooth of another to fall out, one of his own teeth shall be knocked out. ²⁰¹ If the tooth be that of a <i>poor man</i>, he shall pay one-third of a maneh of silver.</p> <p>Judging from use of 'one third of a maneh of silver,' the amount seems non-trivial and perhaps</p>	<p>Leviticus 19 ¹⁸ You shall not take vengeance, nor bear any grudge against the sons of your people, but you shall love your neighbor as yourself; I am the Lord.</p> <p>Leviticus 24 ²² There shall be <i>one standard</i> for you; it shall be <i>for the stranger as well as the native</i>, for I am the LORD your God.</p> <p>'<i>An eye for an eye</i>' is a principle in Exodus 21:23 – 25 and Leviticus 24:17 – 23 that Jewish rabbinical commentators interpret as <i>not</i> retributive. It is an outer limit of proportionality for cases of bodily harm, meant to represent proportional financial compensation (<i>Talmud BavaKamma</i> 83b – 84a) or, in some cases, lashes (<i>Makot</i> 1:1). They actually reason that because of the possibility that the</p>



significant for a poor person, but not enormous either. ⁹	offender is already blind: One cannot blind an already blind man! So they believe that the ‘eye for an eye’ is meant as proportional compensation: If you blind someone’s eye, <i>you</i> become his ‘second eye.’ ¹⁰
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- a. How do they compare in time? These law codes are roughly contemporary.
- b. How do they compare in their view of people?
 - i. In the Babylonian Code of Hammurabi, clearly people are not equal. You are punished for a crime based on how rich or important your victim as. If rich, you’re punished hard. If poor, you can just pay some money.
 - ii. The Jewish law, by contrast, treats everyone equally. Including foreigners and servants. This is astounding because no one else did this!! Even today, our legal system allows for very different outcomes in how laws play out. It allows for implicit racial bias to police, prosecute, and sentence people differently according to race.
- c. Is our American criminal justice system more like the Code of Hammurabi or the Jewish Law? Why?

⁹ Converting to present dollars is difficult, but as points of comparison, within the Code, one-third of a maneh of silver was the compensatory worth of a slave fatally gored by an ox, the penalty for causing the death of a pregnant slave girl, the penalty a creditor would have to pay if he wrongfully seized collateral from a debtor, and the payment a poor man would have to pay his wife to divorce her.

¹⁰ This restorative justice reading is reinforced by these facts: (1) In Exodus 21:18 – 19, just before this example of bodily harm, the offender must care for the injured victim until he is ‘completely healed.’ (2) In Exodus 21:22 and 30, financial compensation is named there, too. (3) In Leviticus 19:17 – 18, the law instructs Israelites to ‘not take vengeance.’ ‘The Torah’s command to love one’s neighbor is put in parallel with a prohibition against taking vengeance upon one’s neighbor,’ such that these commands are mutually interpreting. Darren W. Snyder Belousek, *Atonement, Justice, and Peace: The Message of the Cross and the Mission of the Church* (Grand Rapids, MI: Eerdmans, 2012), p.408 says, ‘In fact, the text gives us parallel sets of contrasting parallels. Taking these separate, we see the contrasts: in the first set, hating a neighbor in one’s heart (A) contrasts with reproving one’s neighbor (B); in the second set, taking vengeance upon a neighbor (A’) contrasts with loving one’s neighbor (B’). Taking these together, we see the parallels: hating one’s neighbor (A) is parallel with taking vengeance upon one’s neighbor (A’) – and both are prohibited; likewise, reproving one’s neighbor (B) is parallel with loving one’s neighbor (B’) – and both are commanded. Repaying harm for harm and injury for injury in due measure, while following the rule of the law (lex talionis), does not fulfill God’s intent for his covenant people. Not retribution but reproof fulfills the righteousness that God wills; not hate but love is the holiness that God desires.’ The entire book is an argument that God’s justice is not retributive but restorative, and reparative. (4) God anticipated Israel’s exile from the garden land and loss of political sovereignty (Dt.27 – 28; cf. Ex.20:4 – 6), reenacting Adam and Eve’s exile from their garden land (Gen.3:20 – 24); and Israel would not be able to enact capital punishment while being ruled by another nation; so the principle of restoration and compensation was important to establish from the start. Therefore, Jewish law was victim-oriented and restorative, not primarily retributive in nature.



Blog Post #11: The Illusion of Meritocracy in Policing, Part 2

Questions for Discussion

1. What do you think about the so-called “War on Drugs”?
2. What do you think of the disproportionate impact on people of color?
 - a. This might involve you or someone within your circle of family and friends. Please share personally if you feel comfortable.
 - b. Also, recall the quote from former U.S. Marshall and DEA agent Matthew Fogg, from the last post: “So when I would go into the war room, where we were setting up all of our drug and gun and addiction task force determining what cities we were going to hit, I would notice that most of the time it always appeared to be urban areas. That’s when I asked the question, well, don’t they sell drugs out in Potomac and Springfield, and places like that? Maybe you all think they don’t, but statistics show they use more drugs out in those areas than anywhere. The special agent in charge, he says ‘You know, if we go out there and start messing with those folks, they know judges, they know lawyers, they know politicians. You start locking their kids up; somebody’s going to jerk our chain.’ He said, ‘they’re going to callus on it, and before you know it, they’re going to shut us down, and there goes your overtime.’ What I began to see is that the drug war is totally about race. If we were locking up everybody, white and black, for doing the same drugs, they would have done the same thing they did with prohibition.”
3. How has the “War on Drugs” and other elements of mass incarceration eroded our constitutional rights?
 - a. 6th and 14th Amendments
 - i. *Purkett v. Elem* (1995) was decided 7 – 2. Rehnquist (Reagan), O’Connor (Reagan), Scalia (Reagan), Thomas (Bush 1), Souter (Bush 1), Ginsburg (Clinton). About 30% of black men are already ineligible for jury service for life because of the legal status attributed to their criminal background. And in many previous cases, the Supreme Court had already upheld convictions of black defendants by all-white juries in situations where the exclusion of black jurors was obvious. But *Purkett* went a step further. The prosecution used ‘jury shuffling’ to reduce the number of black jurors, and used different questions of juror candidates based on race. But as long as race was never explicitly stated, the Court upheld whatever reason the prosecutors gave for not selecting a particular juror. In *Purkett*, the prosecutor used the following explanation for why he struck black jurors from being empaneled:

‘I struck [juror] number twenty-two because of his long hair. He had long curly hair. He had the longest hair of anybody on the panel by far. He appeared not to be a good juror for that fact... Also, he had a mustache and a goatee type beard. And juror number twenty-four also had a mustache and goatee beard... And I don’t like the way they looked, with the way the hair is cut, both of them. And the mustache and the beards look suspicious to me.’ See Michelle Alexander, p.122, citing *Purkett v. Elem*, 514 U.S. 765, 771 n.4 (1995) Stevens, J., dissenting and quoting prosecutor
 - b. 8th Amendment: Right to trial by a jury of your peers, vs. plea bargaining
 - i. Compare Jewish Law with other cultures’ legal history, on the subject of judicial torture. Is plea bargaining a form of judicial torture?



Western Law	Jewish Law
<p><i>Ancient Greece:</i> ‘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.’¹¹</p> <p><i>Ancient Rome:</i> ‘Early Roman law is similar to Greek law in that it also limited torture to slaves... The institution of torture...was eventually expanded to include free men... Between the second and fourth centuries the institution was 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.’¹²</p> <p><i>Pre-Modern and Modern Europe:</i> Roman law experienced a revival in Europe in the twelfth century, which included torture. ‘By the sixteenth century a substantially similar law of 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 eighteenth century the law of torture was still current everywhere, and it survived into the nineteenth century in some corners of central Europe.’¹³</p> <p><i>England:</i> ‘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.’¹⁴</p>	<p>‘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 Deuteronomy 17:16; 19:15]... <i>Jewish law’s rejection of judicial torture is unique in Western civilization, especially because it is so ancient.</i>’ ‘The law against self-incrimination relates to the accused’s vulnerability.’¹⁵</p> <p>‘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.’¹⁶</p>

- c. Are there other ways you’ve seen how race and racial bias contributed to the mass incarceration of black and brown people?
- i. Do you think there have been successful ways to call the impact of racial bias in criminal justice into question?
 - ii. Michelle Alexander, *The New Jim Crow*, p.114 says as evidence of the impact of McCleskey, consider the Georgia Supreme Court decision in 1995:

‘[The Court held] that 98.4 percent of the defendants selected to receive life sentences for repeat drug offenses were black required no justification... To date, not a single successful challenge has ever been made to racial bias sentencing...’

¹¹ Rabbi Dr. Warren Goldstein, *Defending the Human Spirit: Jewish Law’s Vision for a Moral Society* (New York: Feldham, 2006), p.225

¹² Ibid, p.226 – 228

¹³ Ibid, p.230, quoting John Langbein, *Torture and the Law of Proof*, 3

¹⁴ Ibid, p.234

¹⁵ Ibid, p.237, 240 italics mine

¹⁶ Ibid, p.264 – 265; also, ‘Under ancient Jewish law, if a suspect on trial was unanimously found guilty by all judges, then the suspect was acquitted. This reasoning sounds counterintuitive, but the legislators of the time had noticed that unanimous agreement often indicates the presence of systemic error in the judicial process, even if the exact nature of the error is yet to be discovered. They intuitively reasoned that when something seems too good to be true, most likely a mistake was made.’ See Lisa Zyga, “Why Too Much Evidence Can Be a Bad Thing,” PHYS.ORG, January 4, 2016; <http://m.phys.org/news/2016-01-evidence-bad.html>



4. If you're wondering what is the difference between restorative justice versus retributive justice, hold on for next time. We will discuss in the next post.
5. What is implicit bias? How does it work? How does it impact people?
 - a. If you and your group members have the time, watch this 2.5 minute video put together by the New York Times: <https://www.nytimes.com/video/us/10000004818663/peanut-butter-jelly-and-racism.html>.
 - b. Take the Harvard Implicit Bias Test online, before you convene the group. It takes 10 minutes. <https://implicit.harvard.edu/implicit/Study?tid=-1>. You don't need to discuss it with each other, although you certainly could. It's just something that will help each person be aware of what "implicit bias" is, and how it might affect a teacher, a police officer, a nurse or doctor, etc. serve people from different communities.
 - c. See this free online training on implicit bias hosted by the Kirwan Institute for the Study of Race & Ethnicity at Ohio State University. It includes a module on what individuals and organizations can do to address implicit bias: <http://kirwaninstitute.osu.edu/implicit-bias-training/>
 - d. Have you seen implicit bias in yourself? Others? (This might require some vulnerability. Leaders, if you are using this study guide in a group setting, use your discretion about whether to ask people to share. However, please do say that implicit bias is important, simply because of how the brain works: Our brains always find it helpful to make patterns. Skin color becomes one of those patterns that our brains perceive. That's why police officers and other people involved in the criminal justice system, for example, need to have regular positive encounters and exposure to people of color, not to mention trauma processing resources available. It offsets the personal experiences and media exposure they might have.)
6. Do you believe that the criminal justice system is "meritocratic?" Why or why not?



Blog Post #12: The Illusion of Meritocracy in Policing, Part 3

Questions for Discussion

1. One possible objection that could be raised is that violent crime rose in 2015 and 2016, although it fell again in 2017 and 2018.¹⁷

“Violent crime, including homicides, rose for the second consecutive year in 2016, driven by increases in a few urban centers including Baltimore, Chicago and Las Vegas, according to F.B.I. data released Monday.”¹⁸ This article offers two important reminders to its readers. On the one hand, (1) “What’s going on? No one really knows. And if someone says they do know, you ought to be deeply suspicious. It’s too early to tell anything.” On the other hand, (2) “But one theory that has gained traction of late is that violence has increased as police legitimacy has been questioned after the fatal police shootings of unarmed African-Americans... in cities where police departments treat citizens with disrespect and engage in brutality, residents will eventually stop cooperating with the police, which will diminish officers’ ability to solve crimes. The result, according to the argument, is that the most violence-prone people in a particular area will be free to continue committing crimes with little fear of arrest.”

Having read this post and the previous two blog posts about crime, does the 2015 – 16 violent crime spike in Chicago, Baltimore, Charlotte, and St. Louis fit with what the blog posts have discussed?

2. What do you think of the disproportionate impact on people of color?

¹⁷ German Lopez, “After 2 Years of Increases, the US Murder Rate Officially Fell in 2017,” *Vox*, September 24, 2018, <https://www.vox.com/2018/9/24/17895572/murder-violent-crime-rate-fbi-2017> and John Gramlich, “5 Facts About Crime in the U.S.” *Pew Research Center*, January 3, 2019, <http://www.pewresearch.org/fact-tank/2019/01/03/5-facts-about-crime-in-the-u-s/>.

¹⁸ Timothy Williams, “Violent Crime in U.S. Rises for Second Consecutive Year,” *New York Times*, September 25, 2017, <https://www.nytimes.com/2017/09/25/us/violent-crime-murder-chicago-increase-.html>.