

## ESSAY

## A Review Essay of Dominique Gilliard's *Rethinking Incarceration*

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Dominique DuBois Gilliard is a former pastor of urban churches in Oakland, Chicago, and Atlanta, now Director of Racial Righteousness and Reconciliation in the Evangelical Covenant Church. His *Rethinking Incarceration: Advocating for Justice that Restores* (2018), though conceived to inform, engage, and mobilize serious Christians, goes beyond those more limited objectives to expose the core of American culture.

In the brilliance of three books by other authors on caste and inequality that collectively frame his work, Gilliard charts his own course, aptly appreciating and incorporating, but also intensifying and complicating them. The first of these precedents, is the corporeal realism of Ta-Nehisi Coates' graphic uncovering of the nature of "white" construction of categoric race in his *Between the World and Me* (2015). It echoes in Gilliard's observation that "black bodies have historically evoked a peculiar surveillance and distinctive enforcement of the law" (3). His examples include working to death slaves and convict lessees, and making black female servitude particularly miserable during the entire period from slavery through the postbellum period. Even more than Coates' influences, Michelle Alexander's superb analysis of the trajectory of massive acceleration of incarceration since the 1980s in *The New Jim Crow: Mass Incarceration in an Age of Colorblindness* (2011) fixes Gilliard's concentration on that phenomenon. He writes: "While many knew our criminal justice system was flawed, virtually no one dared to ponder something ... [as] dire [as the creation of] a lower caste ... permanently barred by law and custom from mainstream society" (4). He borrows and augments Alexander's testament of statistics of urban poor African Americans felonized and therefore barred forever from civil rights such as voting and jury duty, and virtually unemployable, often literally prevented from work. Alexander writes:

The War on Drugs is the vehicle through which [many] black men are forced into the cage.... [P]eople are swept into the criminal justice system by police conducting drug operations primarily in poor communities of color.... [Police] can stop, interrogate, and search anyone ... with "consent." Because there is no meaningful check on ... police discretion, racial biases are granted free rein ... in whom to stop.

Conviction [and] formal control [are] the second phase. [T]he vast majority... are eventually released ... to a much larger, invisible cage.

The final stage [is] the period of invisible punishments ... imposed on individuals after they step outside the prison.... [S]anctions are imposed by operations of law rather than decisions of a sentencing judge ... to ensure that the vast majority ... will never integrate into mainstream, white society. They will be discriminated against legally for the rest of their lives...

[T]hey enter a separate society.... They become members of an undercaste – an enormous population of primarily black and brown people who ... are denied basic rights and privileges of American citizenship and permanently relegated to an inferior status. (Alexander 2011:185-187)

The third foundational book is Bryan Stevenson's *Just Mercy: A Story of Justice and Redemption* (2014). Stevenson devoted his legal career and life, foremost, to defending death row inmates, almost all of whom were proven innocent but who spent up to and beyond 30 years in prison awaiting execution. But Stevenson did not end there. Independently, he decried and advocated against mass incarceration, representing people too poor to beat their accusations, or who were guilty of breaking laws, and unlucky enough to be poor, black, and often beaten or otherwise coerced into confessions. Gilliard cites inspiration from Stevenson's words in *Just Mercy*: "The power of just mercy is that it belongs to the undeserving. It's when mercy is least expected that it's most potent – strong enough to break the cycle of victimization and victimhood, retribution and suffering" (5).

Gilliard's own urgent rethinking of incarceration adopts Stevenson's ethos, but with the potent identification of "restorative justice as a philosophical practice that enables Christians to practically embrace mercy as we pursue justice that reflects God's heart" (5). So, as an urban pastor who prizes historical, social, and political analysis, he pitches this book, with its acerbic critique of evangelical Christianity, at confessing Christians, challenging them to pursue biblical justice. Perhaps non-Christian-confessing readers will find more with which to agree in this book than a segment of the Christians who read it.

*Rethinking Incarceration* does not have the dense legal case history found in Alexander's *The New Jim Crow*. Nor does it have *Just Mercy's* impressive roster of Stevenson's landmark legal cases argued before the US and state Supreme Courts to exonerate prisoners who had languished in prison. But Gilliard's work is rich in social analysis. He demonstrates the particular, similar effects of structural inequality and ways that sociocultural forces such as the successive regimes of slavery, Jim Crow, and mass incarceration, though each unique, have on stratification and caste.

Gilliard makes three major (and several less conspicuous) unique contributions to a call for criminal justice and mass incarceration reforms. One is a historical and social sketch of how justice in America was skewed away from serving citizens of color. In another, he discerns how conceptions of justice developed, and the part religion played in them. Third, he deploys the concept of restorative justice and argues for its basis on religious principles. He prioritizes

attention on the poor, powerless, and marginalized, especially in attacking mass incarceration's deadly impact on the social order and lives of those interred in the system.

## Part One: Roots and Evolution of Mass Incarceration

The 1865 13<sup>th</sup> Amendment to the U.S. constitution contains the consequential words: "Neither slavery nor involuntary servitude, *except as a punishment of a crime whereof the person shall have been duly convicted*, shall exist within the United States or any place subject to their jurisdiction" (31, italics added).

Gilliard discusses the early days of the post-slavery period when states of the defeated Confederacy frantically sought means to maintain the order previously based on slavery. All former confederate states held constitutional conventions in the summer of 1865, with only white delegates, as allowed by Lincoln's successor, Andrew Johnson (Steinberg 2001:173-200, and Constitutional Rights Foundation website n.d.). By the end of that year, three states adopted "black code" laws, with eight more in 1866. These codes, enacted into laws in most states, prohibited African Americans from voting, attending free public schools, traveling without permission, marrying outside their race, bearing arms, buying, selling, or making alcohol, selling farm products, and a host otherwise rights. Most grievous was vagrancy or being without a job – restricted to contracted jobs for white people or certain self-sustaining trades. Though the combined effect of the 14<sup>th</sup> (1868; due process and equal treatment) and 15<sup>th</sup> (1870; right to vote) Amendments made these black codes illegal, their spirit and practice remained. And when federal northern troops were removed from the South in 1877 and the right of the southern states was restored – except as limited by the Constitution and its Amendments – Reconstruction was finished. Almost all black codes were revived surreptitiously in a panoply of so-called Jim Crow laws.

To show the antecedents of today's patterns in mass incarceration, Gilliard focuses on an especially pertinent feature of the Jim Crow system, using the works of Matthew J. Mancini, Douglas A. Blackmon, and Mary Ellen Curtin, *inter alia*. Vagrancy law was one of many categories carried over from the scuttled black codes into Jim Crow laws. Not having a job could trigger one of several ways one could break a law. A person out of work gets arrested, and cannot afford bail or legal representation, is convicted, and gets imprisoned. This is where the 13<sup>th</sup> Amendment's lurid phrase "except as punishment for a crime whereof the party shall have been convicted" becomes a lethal loophole. On its basis, thousands of people were summarily arrested, convicted of vagrancy, and their services sold by prisons to private holders. After the removal of these codes, the "convict leasing" scheme took over, whereby people who may have been jailed for minor reasons were leased to one of many plantations, factories, or other hard labor projects where they were likely to get worked to illness or death (34-35). Multiplied by thousands of similar scenarios, the result is a massive pool of free labor by way of incarceration

from a caste of people caught in the vice of a system designed to segregate and exploit people by this means until convict leasing was formally made illegal in 1941. (39).

But it doesn't end there. In the hiatus between 1941 and the 1971, though prison rates were not rising during the WWII years and prosperous post-war period (Sentencing Project 2018:1), the civil rights years of 1954-1968 saw increasing protests for equality in voting, jobs, fair housing, and political participation. Many whites, including politicians and white Christians, defined these protests and strategic civil disobedience as lawlessness and disorder. Meanwhile, rigged trials were common and there were 21 recorded lynchings between 1945 and 1964 (Linder n.d.), the most publicized being that of Emmett Till in 1955. The bombing deaths of four children in a Birmingham church in 1963, and the assassinations of Medgar Evers in 1963 and Dr. Martin Luther King, Jr. in 1968 also horrify. In spite of the progressive laws in the 1960s, there was deep racism. Presidential candidate Barry Goldwater campaigned in 1964 that voters could choose for his law and order or Lyndon Johnson's "mobs in the street" (49). Virginia Senator Robert Byrd speculated that there would be no police brutality if "blacks would get themselves in order and under control" (49; and Alexander 2010:42). Richard Nixon famously kicked off the war on drugs by alluding to the need for "law and order." This is what John Ehrlichman, one of the chief Watergate co-conspirators told *Harper's Magazine* reporter Dan Baum about that for his April, 2016 article:

The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people.... We knew we couldn't make it illegal to be either against the war or blacks, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily ... 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.

All this opened the gate for the war on drugs to serve as proxy for stereotyping and incarcerating African Americans. Gilliard points out that "Christians are taught that laws provide structure ... [and] order society by providing ethical standards and social accountability" (53). He asks, however, "What happens when law does not provide the structures ... for societies to thrive? ... [W]hen laws ... create and sustain injustice, oppression, and immorality..." (53)? He answers by citing Augustine's dictum: "An unjust law is no law at all," followed by recalling Martin Luther King saying, "One has not only a legal, but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws." "Don't forget," King told an audience, "everything Hitler ever did in Germany was legal" (54).

Into his section on the limitations of a raging "law and order," Gilliard introduces the principle of God's justice, evident in Jesus' relativizing of the Law of Moses by a careful exercise of grace and mercy. He re-tells the New Testament's John 8 story of a woman caught in adultery and brought before Jesus. The teachers of the law told Jesus that Moses demanded death by stoning. When they demanded his answer, Jesus looked up and suggested that the man who had never committed a sin be the first to cast a killing stone at the woman. "Where

the law demanded punishment of the woman, Jesus offered grace,” Gilliard notes. “Where it required bloodshed, he offered restoration, repentance, and forgiveness. When law orders purging by death, Jesus restores the woman to her community” (59).

Gilliard claims this as Jesus’ declaration of grace above the simple penalty of the law, in contrast to figures that he solemnly submits showing 67% of white evangelical Christians favor the death penalty, but only 55% of unaffiliated people, 37% of Hispanic Catholics, and 33% of black Protestants.

Instead of the Jim Crow era laws that generated a deliberately dependable stream of bodies for incarceration, Gilliard traces more recent pipelines. The means to balloon the prisons and lead to a rush of massive imprisonment came with an American fixation on forcible, arrest-driven concern for law and order associated with the attempt to stop the smuggling, sales, and use of illegal drugs. Gilliard points to President Nixon’s 1971 legislation that began the so-called War on Drugs by introducing no-knock search warrants mandatory minimum sentencing for drug possession. In 1974, he created the powerful, costly Drug Enforcement Administration that globalized this war on drugs (17).

After a softer approach to drug possession during the Jimmy Carter’s administration, Ronald Reagan accelerated and intensified drug enforcement and penalties. He incentivized raids by allowing police departments to keep seized cash and property for further enforcement. Possession of 500 grams of cocaine powder or 5 grams of crack cocaine both brought a 5-10 year minimum sentence – with noted severity placed on crack cocaine, which was more frequently used by blacks. Drug enforcement was heavily aimed at black neighborhoods, resulting in highly disproportionate black incarceration (19). Bill Clinton’s 1994 Violent Crime Control & Enforcement Act, gave *life sentence* to anyone with three drug offences, as long as one of them was a felony. The state of Georgia gave life for only two such offences, while discretionary sentencing saw prosecutors awarding life to only 1% of white offences, but to 16% of blacks. The result: 98% of prisoners for this offense were black (19). Clinton also gave away millions of pieces of military surplus weapons, vehicles, and armor to local police departments, thus militarizing forces and drastically increasing SWAT capabilities – mainly visited on black communities – and sweeping thousands more people into the prison systems. These practices accelerated during the George W. Bush administration but decreased slightly under Obama, only to surge during the Trump years (“Brief History of the Drug War,” Drug Policy Alliance website, n.d.).

Gilliard cites Loic Wacquant’s observation that the USA currently has more incarcerations than South Africa had at its *apartheid* height, or the Soviet Gulags had (21), with an 1100% increase in drug-related incarcerations from 1980-2016 (cf. Sentencing Project June 2018:3).

In addition to the war on drugs, which Alexander, Stevenson, Cato Institute, Washington Policy Center, and others consider the greatest cause of the explosion of mass incarceration,

Gilliard features four other significant contributors. One of these is the birth and growth of private prisons. By 2013, 10% of U.S. prisons were private. He presents several reasons why this contributes to the incarceration boom, four of which are mentioned here. First, building such facilities causes less furor because they attract less attention, not requiring immediate government construction, and locating in rural communities. Second, they contribute to growth most dramatically by providing large facilities with a negotiated number of spaces and then further negotiating “bed quotas” of 70-100% occupancy, the most common being 90%. Fourth, if that quota is not met, they still get paid for the stipulated number. State departments of correction tend to strive to provide prisoners to meet these quotas, with the entire apparatus from legislatures, to police officers, prosecutors, and judges tending to use them as benchmarks to satisfy an increasingly fearful electorate, and the businesses and prison staff who benefit from full houses. The two largest contractors made a combined total of \$3.5 billion in 2015 (Gotsch and Basti, August 2018:6).

Gilliard’s second overlooked conduit is immigration, with offence arrests totaling 400,000 a year already by 2011 (and an increase of 610% from 1990-2000 alone). Private facilities hold 90% of these people, which in some areas amounts to 50% of arrests. Criminal and immigration offenders are imprisoned in the same facilities (64, 65). Though Donald Trump had not yet reached his peak in demanding border enforcement when this chapter’s 2017 data was cited, his call already then was for 5000 additional border patrol and 10,000 more ICE agents (64-67).

The third pipeline to mass incarceration that Gilliard considers overlooked is the funneling of mentally compromised persons who may have committed crimes, but who are imprisoned rather than treated in accordance with their condition. Gilliard points to studies that claim that in 1998, 283,800 mentally impaired people were incarcerated – 14% of the U.S. prison population. That number exceeded 400,000 by 2016 (64-69).

Gilliard’s fourth pipeline – other than the War on Drugs, which everyone acknowledges – is school-to-prison. This conduit warrants an entire chapter in the book. It taps into neglected, challenged schools where kids come up hard, and whose parents are themselves victims of a hard and unequal world. Gilliard writes, “The school-to-prison pipeline traces the well-worn path of predominantly impoverished urban youth of color from decrepit, underfunded, antiquated schools to luxurious, earmarked, state-of-the-art prisons” (81). These are schools where children and teens do not get the understanding they deserve, complete with low expectations, worn-out facilities and books, sometimes gang loyalties, and zero tolerance disciplinary methods that frequently involve detention, suspension, and expulsion. Students in some of these schools bring their own traumas, lack of preparation and interest, negative attitudes, and difficult behaviors that leave teachers frustrated. Gilliard also lists typical problems in schools, themselves in poor regions or neighborhoods. This set of problems includes implicit bias by the outsiders who are in control of funding and resources, or

sometimes by people within the school itself; limited funds; high stakes testing with inadequate student preparation; restricted or absent cultural and technical options such as art, music, shop, and mechanics; and a dearth of adequately trained and well-suited personnel to deal with traumatized, wounded, or belligerent students.

Gilliard especially drills into the newly preferred practice of hiring armed security staff to deal with students. And he cites data and studies showing that this option more often resorts to harsh methods that quickly escalate to extreme means of control. Assault or other misdemeanor or felony charges by those specialists are common. Since such positions are often staffed by designated or off-duty police officers who may have little knowledge of and training in psychology and juvenile behavior, misdemeanor or felony charges by those specialists are common. This leads to early and usually indelible exposure to the juvenile justice system and a record that may last a lifetime (82-84). Gilliard notes that 40% of U.S. expelled students are black, and suspended at a rate three times higher than white students. A 2011 Annie E. Casey Foundation study found that “black youths are five times more likely to be incarcerated than their white peers; Latino and Native American youth are two to three times more likely” (85).

So these are Gilliard’s five pipelines to mass incarceration: the War on Drugs, the trend to private for-profit prisons, immigration law enforcement, paucity of mental health treatment and facilities, and the school-to-prison pipeline. As an aside to the “pipelines” discussion, he points out that 2500 people who committed crimes as a juvenile have life sentences, with no option for parole; 70% of those are black. Two hundred thousand juveniles (maximum 17 years old, but there are some as young as 8) were tried and convicted as adults (92).

What Dominique DuBois Gilliard does in the Part One of his book, reviewed above, is immerse the reader in the recent literature about mass incarceration. In many aspects, he cites and follows Michelle Alexander, Bryan Stevenson, and Douglas Blackmon’s research and analyses, though he is not a mere cover of their work, and cites them responsibly when he uses them. Interpolations of novel ideas emerge even in the first part of the book, where he is treading where others trod. His questioning of the cries against “social pathology” by liberal reformers such as Daniel Patrick Moynihan, and for “law and order” by the Nixon, Reagan, and Trump types, is outstanding (51, 52). He then laces into evangelical Christians, the likes of Billy Graham and Jerry Falwell and their sons Franklin Graham and Jerry Jr. and their hosts of followers, for buying that rhetoric and providing theological sanction and a voter base for it. He pertinently asks, “How do we make sense of the law when it [does the opposite of structurally helping communities thrive], when laws disproportionately create and sustain injustice, oppression, and immorality in certain communities” (53)? In countering with a reminder of systemic injustice, he writes, “Protesting evil and counteracting injustice will require nonviolent protests that expose the system and the collaborating structures supporting it” (56), and reminds us that, when confronted with a woman about to be stoned to death for breaking the law, Jesus counteracted with grace (58).

Gilliard accuses the emphasis on merit in Christian theology of justifying the fixation on law-and-order. He points, instead, to the covenant basis of community that accentuates mutuality and deep *shalom*, appealing to Jesus' gracious ministry and reconciling posture as a human. He perceives the essence of Christ's suffering, death, and resurrection as the final and ultimate divine gesture to humanity that God's love, salvation, and righteousness are oriented to restoration, not law-and-order justice. He chastises Christians for abandoning grace and adopting the theological construct of human penal substitution that "punishment will correct unrighteousness and lead to restoration and reconciled relationships" (156).

The first half of the book is a historic transit from slavery through black codes and Jim Crow to the formation of communities of poverty and the onslaught of arrests and convictions that swept thousands of African Americans into an explosive prison system that is implicitly and explicitly designed for them. That crucial foundation, however, is not his unique contribution to the case against mass incarceration.

## **Part Two: The Church's Witness and Testimony**

Gilliard establishes his own place in the discussion of both incarceration and critique of the criminal justice system with a distinctly Christian perspective, advocating for a restorative alternative to the retributive system. He begins by noting how British Sheriff John Howard's reform legislation of the 1770s came to the attention of American Quakers and other religious leaders who pressed for penal reform and humane treatment of prisoners (103). For a time beginning around 1804, they were granted access to prisons and introduced humane practices because government was attuned to the penitential and rehabilitative potential of religious influence. When these efforts were rebuffed by advocates of harsh punishment, Protestant Christian leaders of a different theological stripe engaged in a formative alliance between institutional religion and the early 19<sup>th</sup> century prisons. The perspective of these new mainstream ministers emphasized what American religious historian Susan Graber called "a religiosity of citizenship focused on ethical behavior and obedience to secular authority" (106). These people referred to incarceration as a "furnace of affliction" in which suffering would open the way for prisoners to seek God's grace and forgiveness, and to reform their lives (107). New York chaplain John Stanford "laid the groundwork for a theology of redemptive suffering" that Gilliard contends affirmed "state sanctioned violence and torture" to make prisoners "come to terms with their guilt and ... reconcile with God" (123).

He builds a case that the retributive penchant in U.S. criminal justice was based on the theological position of penal substitution. In its *original* theological use, it describes God as angered by human sin and requiring payment that humans cannot give. So Christ came as a human, paid the penalty, and satisfied God's wrath. Gilliard contends that this doctrine developed into an ethos that also applied to humans: that, because God is angry with sin and

went so far as to come to earth to pay for it, that same principle must apply to human sin and restitution as well. This secondary version of penal substitution led to the support of the state system of punishment by evangelical and some mainline U.S. churches:

[P]enal substitution [holds] that ... crime, [as] ... sin, is ... an affront to God, [and] must be both punished and atoned for. [It] emphasizes the need for penalties, retribution, and recompense.... Justice comes through indictment, sentencing, and punishment, [which] will correct unrighteousness and lead to the restoration of individuals and reconciled relationships. (156)

Gilliard contends, first, that the penal substitutionary explanation of Christ's life ministry and sacrificial violent death is an inaccurate way to understand the Incarnation. Second, it is even more erroneous to present God's treatment of human sin and wrongdoing as vengeful and punitive. Even if one accepts that the reason for Christ's death was to satisfy God's wrath against sin, this need not become the basis for a prison system's practices.

Gilliard argues that this penal substitutionary model of Christ's mission, nevertheless, led Christians to believe that the physical and psychological punishment of imprisonment brings redemptive suffering (123,128). He writes, "Christians largely see the state as morally obligated to punish offenders, exclusively responsible for criminal justice, and divinely ordained for human governance. Our criminal justice system has thereby become an ordained agent of divine retribution. Passages such as Romans 13: 1-7 and I Peter 2 13-14 are integral in this divine sanction of our government and ... its criminal justice system" (157).

Alongside the penal substitution interpretation in dominant evangelical theology is what he calls meritocracy, or the belief that one gets what one deserves. If one breaks the law, then one deserves punishment, which leads to repentance and restoration. Instead, he says, Christianity "is predicated on grace and opposed to meritocracy and rugged individualism..., which insidiously compromises our vision [and] distorts how we see ourselves and ... interact with our neighbors" (170). It also "engenders anxiety that clings to fearmongering and embraces jail cells, border walls, and ethnic exclusion ... that [some feel] will protect *us* from *them*" (170). It becomes easy to let the state punish or banish people rather than obligate citizens to relate to them.

Considering Christian involvement in the matter of punishment and incarceration, Gilliard contends that there has not been an emphasis on structural change. As an example, he looks at the work of Prison Fellowship, led by Chuck Colson, whom he respects for his deep involvement and effective ministry in the lives of thousands of inmates. He cites Colson's critiques of the system: description of prison conditions as "revolting;" critique of mandatory minimum sentences; the biases in the system; abhorrence of "law and order tropes;" and many other instances of Colson's impact on the system and its participants. Gilliard also expresses appreciation for the organization's present CEO, who described the failures of incarceration and who turns resources toward addressing them. However, he questions Colson's position that he feels "convey[s] that sociological analysis distract[s] Christians [and prevents them] from

fulfilling the Great Commission” [109]. Gilliard says this would only be an accurate assessment if the entire criminal justice system – police scrutiny, arrest assumptions and procedures, prosecution, court judgments and sentencing, and prisons – were impartial.

Gilliard cites many examples of the brokenness of the system. Here are a few:

- Census data from 2010 show that of the 2.3 million U.S. combined jail, state and federal prison population, 39% were white, 40% black, and 19% Hispanic. This means that the number per 100,000 people in each ethnic category was white, 450/100,000; Hispanic, 831; and black, 2,306. (Sakala 2014:1)
- Implicit bias in schools leads to differential suspension rates (84, 85), and schools with school resource officers (SROs) have higher rates of arrests leading to criminal charges (88, 89).
- Though 65% of homicide victims are black, 80% of death row inmates had white victims (167).

With an unjust and broken system, Prison Fellowship, as an expression of Christ’s concern for justice, can do– and in many cases does – more than minister to the spiritual needs of inmates. Its prominence and supporters give it great stature to promote awareness of the caste-creating conditions caused by the system inequalities Gilliard identifies in this book.

While minding the context of his earlier analysis of the U.S. criminal justice system, Gilliard shifts attention to the theological bases of restorative justice. The biblical model for a harmonious society begins with the concept of *shalom* or “the right relation of human beings to God and to one another.” Jews were taught to maintain harmony in community, according to Walter Burghardt’s *Justice: A Global Adventure* (2004). Gilliard writes, “punishment cannot satisfy the demands of justice, [which is only] satisfied when repentance, restoration, and renewal occur” (163). Citing Burghardt again, we need “new approaches that understand crime as a threat to community, not just a violation of law, that demand new efforts to rebuild lives, not just build more prisons, and that demonstrate a commitment to reweave a broader social fabric of respect for life, civility, responsibility, and reconciliation” (163).

Gilliard also focuses on the concept of biblical justice, which he quickly distills to a biblically based version of restorative justice. Christopher Marshall is his primary source on this, and he quotes from a 2012 Marshall article: “Much of what the Bible says about social justice has direct relevance to the criminal justice domain. If we took more seriously the biblical imperative to care for the poor and dispossessed, to avoid the unjust accumulation of wealth and power ... and to set at liberty those ... oppressed by debt or exploitation, we would have less cause to employ criminal sanctions against those ... who feel no stake in society” (140). Gilliard presages sociological insight as he characterizes “Justice [as] primarily about how systems, structures, and institutions relate to people” (140), adding “and [justice] is consistently referenced in relation to the vulnerable” (142). Justice presumes that we are in relation to people, all of whom must be treated impartially and equitably, whether in ensuring their

physical needs and access to sufficient resources, their human, social and civil rights, or in punishing them for violations of the common good and relations. “The Bible uses how we treat the “widow, orphan, sojourner, and the poor” as the measure for justice” (141-149).

Next, Gilliard uses both Marshall and Timothy Keller to back his observation that the term “righteousness” in the Bible refers to the virtue of “treat[ing] all people – rich, poor, or condemned – with justice, generosity, and equity,” not abstractly, but in the context of relationships. He quotes Marshall again to reinforce the importance of relationality: “the biblical notion of righteousness refers broadly to doing, being, declaring, or bringing about what is right. [It] is a comprehensively *relational* reality ... not a private moral attribute [of] one’s own.... To be righteous is to be true to the demands of a relationship” (149; italics added).

Pressing this further, he notes that justice and righteousness are often conjoined. Using the theologian Jorge Jeremias, Gilliard says, “righteousness cannot be experienced without justice” and “justice is the foundation of righteousness” (144). He cites theologian Dave Doty’s conclusion that “righteousness is justice enacted” (146).

To contrast this biblical view of justice with a typically North American presumption, he uses Fr. John Heagle in his book *Justice Rising: The Emerging Biblical Vision* (2010). Heagle stresses that justice ought not to be restricted to individual rights, which focuses on making and keeping laws to protect rights, property, and safety, and punishing those who break them. In that view, justice is served when offenders are treated with retribution and punishment so both the victim and offender are supposed to get what they deserve. Heagle challenges the satisfaction and effectiveness of the “just dessert” assumption, because it presumes that “crime is a violation against the state and not a relational transgression that cause relational ... and communal breaches” (160).

In his penultimate chapter, Gilliard issues an urgent call for Christians to adopt a restorative justice model as most suited to address the problem of mass incarceration. He opens with a recurrent accusation: “Mass incarceration’s origins, sustainment, and ... growth are inherently linked to Christian theology. The church often unwittingly affirms that crime is primarily a legal offense committed against the state rather than [seeing it as] a sin that relationally harms individuals and communities, infringing on the *shalom* that God intends for us all.... As fallen people, our judgment is never completely pure; everyone is embedded in culture.... [so that] ... [those who] enforce and govern ... are often unable to do so without bias” (169).

He debunks the notion that restorative justice is “soft on crime” by explaining that restorative justice has established means by which the perpetrator, victim, members of an affected community, and sometimes public officials are involved. People acknowledge their relations and how they are harmed by violation, and the perpetrator must acknowledge the offence. Together, the affected parties develop ways to recompense, repair, restore, rehabilitate, and move on. He lists a score of accomplishments and data to show the successful

resolutions of restorative justice, and provides specific stories that concretize the ways those affected by a violation come to some form of healing. Though complete healing cannot always be achieved, the results are almost always better than the available alternatives (178).

He lays before people of faith that, though Scripture reveals punishment, isolation, and suffering to be the consequences of broken relations, divine justice still seeks restoration and redemption. It is “connected to healing the harmed, restoring loss, and reconciling the estranged to God and community” (178). He also exegetes the stories of Aaron and Miriam’s bigotry toward Moses and Zipporah, and of Jesus and tax collector Zacchaeus, to articulate the humane principles that inhere within restorative justice. When God strikes Miriam with leprosy for demeaning Zipporah as a non-Israelite, Moses – though one of the victims of their sin – pleads with God for her healing, and she is accepted back into the community. Likewise, after Jesus visits the cheating Zacchaeus’ house, the latter repents of his complicity and crimes and restores all that he grafted from his community. In return, he is restored to communion and faith.

Gilliard’s last chapter brims with individual, institutional and communal instances of restorative justice at work, drawn from the Christian Scriptural testaments, from the work and platforms of Dr. Martin Luther King, and from contemporary applications, all giving sturdy muscle and grace to this magnificent work from a passionate, scholarly proponent, practitioner and evangelist of restorative justice. This work has already and should continue to have broad use in secondary, university, and seminary classrooms, reading clubs and discussion groups, Christian pulpits, and street protests and demonstrations across America.

## References

**Note:** Although this essay is primarily a review of Dominique DuBois Gilliard’s *Rethinking Incarceration*, the following references were selected as especially significant from the immense list of works that Gilliard employed, along with several others consulted separately.

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