

Position Statement on Mass Incarceration
Arizona Faith Network
Theological Dialogue Commission
ep: 5/31/19

The faith traditions represented by the Arizona Faith Network, AFN, affirm the basic dignity and worth of each human individual and call for reform of a legal system that results in the mass incarceration of persons in the United States. Our faiths tell us that God, as understood in each of our faith traditions, is concerned with the well-being of all persons regardless of gender, race, ability, and/or economic standing, and is merciful and forgiving. Our combined scriptures speak of God as One who seeks to restore relationship and community, is merciful, and punishes in order to bring transformation and renewal, not out of revenge. We understand our own moral imperative to be imitation of these characteristics of the Divine.

Over the past 10 years, many reports across multiple political sectors demonstrate that the United States has the highest incarceration rate of any nation. These studies of the Criminal Justice Systems on the local, state, and national levels have identified the role that poverty and racism play in: who is incarcerated, for how long, and with what long-term economic impact on whole communities. See for example the recent report by the Prison Policy Initiative called *Mass Incarceration: The Whole Pie 2019*, Wendy Sawyer and Peter Wagner. We are appalled that 76% of persons in American jails have not been convicted of any crime, but are awaiting trial, including initial hearings, because they are too poor to post bail. Our faith traditions explicitly call upon us to seek justice - in the broader sense of the word, ironic in this case - for the poor and oppressed. Statistical assessment of jail and prison populations has highlighted the disproportionate rate at which persons of color are incarcerated across the system. Our holy texts decry racism and social control by those with economic or hierarchal power. Thirdly, the data overwhelming shows that persons who have fulfilled their sentences and are released from prison or jail have little to no support enabling them to successfully re-enter society. Our faith traditions remind us that God is merciful and seeks restoration of all persons, calling us to reconciliation and restoration also.

AFN supports and engages calls for reforms of the policies establishing mandatory sentencing, bail, and the for-profit prison industry. We invite our faith communities into reflection and action on these topics. AFN offers the following *Theological Reflection on Mass Incarceration* as a starting point for prayerful/meditative consideration of the issues. AFN's Smart Justice Cafés provide venues for conversations on how persons of faith can engage for reform.

Theological Reflection on Mass Incarceration
Arizona Faith Network
Theological Dialogue Commission
ep: 6/18/19

Our faith traditions encourage us to be imitators of the character of the Divine (For an example from the Christian Tradition see the Bible, New Revised Standard Version (NRSV) Eph.5:1) and to live our lives after the moral imperatives conveyed through our holy scriptures and sacred texts. Our faith traditions affirm that God, however we understand God, is merciful (The Qu’ran, 1:1), and abundantly pardons (TANAKH and NRSV, Is. 55:7). Care for those who are “the poor, the widow and the oppressed, [the differently-abled], and the captives” runs through our sacred texts. Forgiveness and mercy characterizes the Divine (The Bible Ex. 32:32, Matt. 18:35; The Qu’ran 1:1), and is “a virtue of the righteous” (the words of Bahá’u’lláh in the Gleanings) within our faith traditions (See also Alag, 146). These character traits should guide people of faith as they examine the current situation of the U.S. legal system and work for criminal legal reform. Overwhelmingly, our scriptures speak of God as One who seeks to restore relationship and community, is merciful, and punishes in order to bring transformation and renewal. “This letter [The Path of Eloquence of Ali to Malik] ...demonstrates the centrality of justice and equity as well as forgiveness and compassion for a good government according to the traditional Islamic perspective” [Nasr, 249]. Current statistics identify areas where our faith traditions call us to engage in criminal legal reform: poverty, racism, and the role of incarceration as a mechanism of social control rather than a means of restoration. Current calls for reforms of the policies establishing mandatory sentencing, for-profit prisons, the Big Business industries that support all prisons and jails, and the role of charge selection by prosecutors offer areas for reflection and action by all persons of faith.

A recent report by the Prison Policy Initiative called *Mass Incarceration: The Whole Pie 2019* by Wendy Sawyer and Peter Wagner pulls together statistics across federal, state, and local jails and prisons, facilities on Native American land, immigration detention facilities and civil commitment centers. The United States incarcerates more of its citizens than any other nation in the world. In 1972, the U.S held less than 200,000 persons in prisons and jails. As of 2018, more than 2.2 million persons are in prisons and jails. The United States has 5 percent of the world’s population but nearly 25 percent of its prisoners. Even on a per capita basis, the US is the highest, at 698/100,000 [Sawyer 2]. Persons are held in 1,719 state prisons, 109 federal prisons, 1,772 juvenile correctional facilities, 3,163 local jails, and 80 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories. [Sawyer, 1]. Of that number, approximately only half are held for any form of violent crime. “Despite reforms, drug offenses are still a defining characteristic of the federal system” at 81,000 [Sawyer, 5] and responsible for 500,000 incarcerations across the system.” Police make 1 million drug related arrests per year and possession arrests are 6 times those for drug sales [Sawyer, 16]. Many have reported on the disparate percentages of persons of color in American jails and prisons, recently, most notably Michelle Alexander in *The New Jim Crow*.

Most stunningly, 76% of people held by jails are not convicted of any crime [Sawyer, 2]. They are incarcerated while awaiting trial, including initial hearings. So called “jail churn” is also a concern. “Every year, over 600,000 people enter prison gates, but people go to jail 10.6 million times each year. Jail churn is particularly high because most people in jails have not been convicted. Some have just been arrested and will make bail within hours or days, while many others are too poor to make bail and remain behind bars until their trial. Only a small number (less than 150,000 on any given day) have been convicted, and are generally serving misdemeanors sentences under a year” [Sawyer, 7].

Poverty

Pretrial policies drive jail growth. In the U.S. jail system, 540,000 individuals are locked up but have not been convicted or sentenced *because they cannot pay the bail fee*. Average bail is \$10,000 or the equivalent of 8 months income for a typical person detained because they cannot pay bail. Many of the persons in prisons and jails today come from families living under the U.S. poverty level. “Pretrial detention is responsible for all of the net jail growth in the past 20 years” [Sawyer, 9]. Bazelon also notes that certain behavior is criminalized (contrasted with misdemeanors) such as fare-beating and turnstile jumping, that penalize the poor. The “get tough on crime” mindset has on-going economic impacts as well. First, databases used by employers, college admissions, etc., track arrests not convictions [Sawyer, 13]. As many persons have criminal records as have graduated from 4 year colleges (Friedman, Matthew, truthout.org). An arrest record, whether followed by a conviction or not, can affect a person’s employability for the rest of his or her life. “People in prison and jail are disproportionately poor compared to the overall U.S. population...Poverty is not only a predictor of incarceration; it is also frequently the outcome, as a criminal record and time spent in prison destroys wealth, creates debt, and decimates job opportunities” [Sawyer, 15-6]. “Felon disenfranchisement laws have diluted the already minimal political power of these communities” [Stevenson, 339]. Secondly, there are little to no post-incarceration services that enable an individual to re-enter the community. We have all heard the stories of jails opening the door and putting the released person on the street with no money and only the clothes on her or his back. They are true.

Our faith traditions speak strongly of our obligations towards persons in poverty. The primary Hebrew term for the poor translates more fully as “needy and without power.” Our joint Scriptures spend by far the largest proportion of their texts devoted to confrontation of poverty and oppression. The role of government was to protect the poor (Proverbs 31:1-8). Theologians across faith traditions write that human responsibility to meet the needs of the poor reflects the very character of God. The Divine One is described as hearing the cries of the poor in many of our sacred texts. Persons who care for the poor are called blessed in Psalm 41:2. For Latter-day Saints attending to the needs of the poor is service to God (Matthew 25:31-40). Those who have funds are expected to be a “source of strength for the weak, the helpless, hapless, and the shelterless” [Alag, 17]. One element of poverty is it removes personal power, it makes individuals helpless within the legal system. Those without the money to pay \$10,000 bail fee, end in prison sometimes for extended periods of time, regardless of the severity of their crime, their likelihood of not appearing for their trial, or their ultimate guilt. With regard to re-entry into the community after release, our faith traditions also insist that we enable those returning to our communities to fully function within them. “According to Jewish law, the highest form of charity is to ensure that a person not need it, at least not for more than a short period” [Telushkan, 11].

[Wealth is] “...something entrusted to them by Allah...and Zakat [charity] stimulates the flow of money through the economy at all levels...” [The Basics of Islam at a Glance, 18], (Qu’ran 57.7). The Sikh term, “co-sharing” wealth, [Alag, 29] assures there are resources available for all [Alag, 146]. Many studies of recidivism demonstrate compellingly that economic disenfranchisement is a key cause of re-entry into the prison system. See also *A Theological View of Poverty* on the Arizona Faith Network website.

How can persons of faith engage with elements of the criminal legal system that oppress the poor? Study and understand legislation that seeks to reform the bail system. Many of our shared scriptures include the promise that the Divine brings release to the captives (Is. 42:6-7, Is. 62:1, Ps. 146:7, Luke 4: 18-19). Participate in re-entry programs within your local community. One example is the 700+ members of the Church of Jesus Christ of Latter Day Saints who are volunteering to share friendship and backpacks of supplies and food, short-term housing, and employment counseling with inmates. Attend one of AFN’s Smart Justice Café programs.

Racism

“Most people in prison are poor, and the poorest are women and people of color.” [Sawyer, 36] Most are below the US poverty line. Persons of color often face greater rates of poverty. The disparity is greatest among Black Americans but can be seen in other groups as well.

	% of US Population	% of Incarcerated population
White	64	39
Black	13	40
Latinx	16	19
Native American	0.9	1

[data from the 2010 Census as reported in Sawyer.]

“Historically, mass incarceration has its roots right after the Emancipation Proclamation and during Reconstruction, with what is known as the “Black Codes” -- legislation that criminalized blackness with things like vagrancy laws. Blackness in and of itself became criminalized, and that led to the convict leasing system. You had people who were incarcerated, working for people who owned them just months prior” [Gilliard, 6].

“The same is true for women, whose incarceration rates have for decades risen faster than men’s, and who are often behind bars because of financial obstacles such as an inability to pay bail” [Sawyer, 30-1]. The Type of Offense data also demonstrate that the types of offenses that have been criminalized skew prosecution towards persons of color. For example, many return to prison for what are considered “technical offenses” associated with violations of probation or parole, not for new offenses. This is especially true for the 63,000 youth in confinement in the United States. “Too many are [confined] for a “most serious offense” that is not even a crime. For example, there are over 8,100 youth behind bars for technical violations of their probation, rather than for a new offense. An additional 2,200 youth are locked up for “status” offenses, which are behaviors that are not law violations for adults, such as running away, truancy, and incorrigibility. [Sawyer, 25] New work by Bazelon also demonstrates the role of the prosecutor in selecting the charge to be brought before the court. Bazelon reports that more than 90% of cases end in plea bargains that give even more power to prosecutors. She discusses 2 ancillary issues associated with the prosecution portion of the legal system. The first, confirmation bias, is

the tendency to seek and interpret information such that it confirms a previously held belief, such as implicit racism. Secondly, institutional pressures reward conviction rates rather than appropriate application of sentencing. Both of these elements lead to bias in the charges brought against alleged perpetrators.

Racism is antithetical to our Faith Traditions' sacred texts and historic teachings. The founder of Bahá'í, Bahá'u'lláh, said, "Know ye not why We created you all from the same dust? That no one should exalt himself over the other..." [Sobhani, 18]. Abrahamic faith traditions understand that there is something that reflects the Divine One in every person. "Because people are created in God's image, all human life has special value" [Telushkin, 261]. The founder of Quakerism, George Fox, said, "There is that of God in everyone." The Sanskrit word *Namaste*, means "the Divine in me acknowledges and greets the Divine in you." The Sikh Tradition states, "God resides in all, therefore every individual is linked to the other by the ties of mutual co-operation and co-existence. We are tied with other with an invisible string is this in the hands of God '*In all selves art Thou abiding. In Thee are all sharers; to none dost Thou appear alien*' (Sri Guru Granth Sahib, 97)" [Alag, 21-22]. Allah said in the Quran, '*O people, We have created you male and female and made you into nations and tribes that you may know one another. Verily, the most noble of you to Allah is the most righteous of you. Verily, Allah is knowing and aware.*' Quran (49:13). "Racism ascribes false values to human difference. Therefore, it is inherently sinful. The true evil of racism gives license to the use of power to dominate others" [The Episcopal Diocese of Arizona, 1]. See also *Faiths' Response to Racism* on the AFN website.

How can persons of faith engage with elements of the criminal legal system that oppress persons of color? Study and understand legislation that seeks to reform mandatory sentencing. Explore the fwd.us website for information on criminal justice reform and immigration reform legislation. Contact the African American Christian Clergy Coalition for information about bills currently before the AZ legislature. Applaud and support the internal activities of associations of prosecutors who are seeking to eliminate bail for many non-violent offense charges, changing the classification of some offenses from criminal to misdemeanors. Elect District Attorneys who support these changes. Address the School to Prison Pipeline that funnels young people of color into the criminal justice system. Participate in AFN programs such as Smart Justice Café programs and calls for action in its Mission Focus Topic, Criminal Legal Reform.

Justice vs. Revenge

There are four models of incarceration:

- Retribution (punish the perpetrator) - revenge driven,
- Rehabilitative (reform/modify the behavior of the perpetrator),
- Restrictive (restrain the perpetrator in order to protect society),
- Restorative (create reconciliation between the perpetrator, the victims, and society).

Much of the current US criminal justice system sentencing approach is based on the first, punishment. While some convicted offenders are so violent that they do need to be removed from the community as a whole, at least for some period of time, that restrictive aspect of incarceration does not have to be predicated on a punishment model.

Mandatory Sentencing emerged from the "Get Tough on Crime" and "War on Drugs" policies of the 1980's and 1990's. Playing on white middle class fears, many of these penalties were meant

by their harshness to serve both as punishment of the offender and as a deterrent to others. While they have done the former, current studies indicate that they do not serve as deterrents for other persons who might be potential offenders. Economic drivers are the most critical for non-violent crime. Studies show that even murder is most frequently driven by emotional responses rather than rational decisions. In addition, the War on Drugs has incarcerated 6 times the number of persons for possession as for selling drugs, and the drug crises of today includes the misuse of prescription drugs, which are not inherently illegal.

Our faith traditions and sacred texts affirm that the punishment should fit the crime. The oldest law code, Hammurabi's from the 2nd millennium before the common era, limits punishment to "an eye for an eye," rather than the death penalty for stealing bread. Other examples of the concept can be found in TANKH, Ex. 21:23-27, NRSV Luke 6:38-46, and the Qu'ran 16:126 for example. These texts address our human tendencies for escalation and revenge. The repetition of the word Justice in the Hebrew Torah, "Justice, Justice you shall pursue" (Deut. 16:20) "is not only for emphasis, but signifies that just ends must be reached by just means" [Rabbi Bonnie Sharfman, email dated 4/13/2019]. "Clarence Jordan has pointed out that the Greek for "evil" can mean either "by evil means" or "the evil person." Either translation is equally good according to Greek grammar; the decision must come from the context. The context is that Jesus repeatedly confronts evil, but never by evil means, and never by means of vengeful violence. Therefore, the context favors the instrumental "Do not resist by evil means." [Stassen, 138]. "See that none of you repays evil for evil, but always seek to do good to one another and to all" (NRSV, 1 Thes. 2:15; similarly, Luke 6:22-36, Romans 12:15-19). The Qu'ran says, "They give food, in spite of the love for it, to the needy, the orphan and the prisoner." "Shall I inform you of a better act than fasting, alms, and prayers? Making peace between one another: enmity and malice tear up heavenly reward by the roots." [*Prophetic Hadith* in Nasr, 238]. The Hadith reports that the Prophet, Peace be upon Him, said, "I enjoin you to treat the captive well." So the question for persons of faith is whether prison acts to "do good to" or to "love" the prisoner? "No religious group which takes its values seriously should rest content until (we) demand and get a system which will correct and not merely punish, rehabilitate and not debilitate, which will treat prisoners and not merely stigmatize them, which will regard them as human beings whom we must strive to restore to usefulness and not as open targets for social vengeance" [Vorspan, 203]. "The Quran warns Muslims, in no uncertain terms when it states, "Let not hatred of a people cause you to be unjust" (5:8). Grievance can turn to anger and hatred, but that cannot be the basis of blind revenge" [Nasr, 263]. This goes beyond rehabilitative justice to restorative justice. The focus of our faith traditions is on restoration of relationship and community for the victim and victim's family, the offender, and the offender's family, and the community itself.

Mass incarceration has also reduced the amount of support available for individuals when they have completed their sentence. There is little to no governmental system to help persons re-enter society. "Confinement is just one piece of the larger system of correctional control. There are another 840,000 people on parole and a staggering 3.6 million people on probation. Given the onerous conditions of probation and the steep consequences for technical violations, policymakers should be wary of "alternatives to incarceration" that can easily lead to incarceration for people who pose no threat to public safety" [Sawyer, 30]. A staggering 1 in 4 Americans has a criminal record. "Technical violations are the main reason for incarceration of people on parole or probation, not new crimes" [Sawyer, 22]. However, in the conversation

about criminal legal reform and mass incarceration, the term “justice” tends to take on the singular meaning of punishment. The Pew Charitable Trust reports, “...all states have become more punitive. Even though overall crime and arrest rates are down from the early 1990s, states are exacting sentences at a rate 165 times harsher than they were for the same crimes previously. Prosecutors now seek felony charges after an arrest much more frequently than they did even a decade ago” [Stetzer, 2].

However, in our faith traditions, the words translated justice (and in English too, for that matter) all convey a much broader range of meaning:

1. Deliverance of the poor and powerless from the injustice that they regularly experience,
2. lifting the foot of domineering power off the neck of the dominated and oppressed,
3. stopping the violence and establishing peace, and
4. restoring the outcasts, the excluded, the exiles, and the refugees to community.

[see for example Stassen 349].

The Hebrew words *tsedaqah* (deliverance and community restoring justice) and *mishpat* (vindication of the rights, especially of the poor and powerless) and the Greek word *dikaiois* (action or legal decision which vindicates or establishes the right) all include these broader concepts of justice that go beyond punishment. Micah 6:8 (TANAKH and NRSV) links doing justice with steadfast love. The Qu’ran addresses this broader meaning of justice in Sura 5 for example; “O believers, be steadfast before God, witness for Justice (Q5:8)” and “God loves the just (Q5:42).” Bahá’u’lláh said, “The light of men is justice. Quench it not with the contrary winds of oppression and tyranny” [Sobhani, 43]. In fact, imprisonment as punishment does not occur in the Hebrew Torah. It did not exist as punishment in Roman law. “Although these are transgressions against God, repentance is accepted and the *Hadith* strongly limits the application of *hudúd*, as we also see in the case of Jewish Law” [Nasr, 152].

Therefore, people of faith are called upon to do justice on behalf of prisoners by caring for them during their incarceration rather than warehousing them, and for caring nurture as they re-enter the community upon their release from incarceration. “Restoration, not punishment, is at the heart of God’s justice...Divine justice is restorative and reconciling, not retributive and isolating. And the restorative nature of God’s justice is woven throughout Scripture. God works amid brokenness, restoring victims, communities and offenders” [Gilliard, 2]. All our faith traditions affirm that the criminal, too, is a human being and that transformation of all persons is possible (TANKH and NRSV Ez. 3:11; The Qu’ran, 8:70). “With all other forms of punishment, the individual suffers the penalty, is cleansed of his sin, and is then restored to freedom where he is expected to resume a productive life in the making of a more G-dly world. As a prisoner, however, one is denied the freedom to fulfill his divinely ordained mission, and hence, his reason for living. To allow one to live and yet to deprive him of living, is inhumane” [Schneerson, 18]. “Remember the humanity of prisoners and how to uphold the rights of those who have wronged us and most importantly, the ability for reform, *tawbah*, is always there” [Nsour, 3].

How can persons of faith engage with restorative justice? Find ministries within your own faith community with which to participate, such as the Buddhist organization Compassion Works for All, the Presbyterian Church’s Prison Partnership Program, and the Ministry to Arizona Correctional Facilities by the church of Jesus Christ of Latter Day Saints. Read and engage with

your faith tradition's statement on restorative justice. A partial listing is included in the references below.

Capital Punishment

Since this reflection is focused on reforms of mass incarceration, the issue of capital punishment is not addressed in depth. However, many of our faith traditions have taken formal positions against capital punishment.

How can persons of faith engage with the issue of capital punishment? Read and engage with your faith tradition's statement on capital punishment.

The Big Business of Incarceration

“Private prisons are most often situated in sparsely populated rural communities that need jobs and economic revitalization. So when you bring a private prison, you bring jobs. The prison has a contract that dictates bed minimums, which range from 70 percent occupancy every night to 100 percent occupancy. In Arizona, they have three private prisons that require 100 percent bed occupancy every night. If you have unoccupied cells within the facility, you're in violation of the contract and the private prison company can sue the community. That has happened.” [Gilliard, 6].

Although some states have more private prisons than others, in 2016 Arizona ranked third in the nation for the number of prisoners incarcerated in private prisons, 8,285 [sentencingproject.org]. Nonetheless, less than 8% of all incarcerated people are held in private prisons; the vast majority are in publicly owned prisons and jails. [Sawyer, 6]. However, the issue is that the private prison industry has lobbied to maintain high levels of incarceration. In addition to contract fees if 100% occupancy is not maintained, most prisons - public and private - rely on the labor of incarcerated people for various in-house operations, and they pay incarcerated workers far below the minimum wage. Sawyer et al report that on average, incarcerated people earn between 86 cents and \$3.45 per day for the most common prison jobs and many states pay nothing at all. Workers who are incarcerated have few protections. “Forcing people to work for low or no pay and no benefits allows prisons to shift the costs of incarceration to incarcerated people – hiding the true cost of running prisons from most Americans” [Sawyer, 20]. In addition private industries and public agencies profit from the overall prison system - public and private. Contracts for food and health services, telecom, and commissary is a multibillion dollar business with no public oversight. “By privatizing services like phone calls, medical care and commissary, prisons and jails are unloading the costs of incarceration onto incarcerated people and their families, trimming their budgets at an unconscionable social cost” [Sawyer, 18]. Many city and county jails rent space to other agencies, including state prison systems, the U.S. Marshals Service, and Immigration and Customs Enforcement (ICE).

Our sacred texts abhor those who profit from the misfortunes of others and oppress the poor, the weak, and the disenfranchised for economic gain. “The Islamic, and more generally the Semitic, concept of law, which is associated with the Will of God and is meant to determine society rather than be determined by it...” [Nasr, 115]. The Abrahamic faiths understand that God created all humans in God's own image, *tzelem Elokim* in Hebrew, therefore, maintaining human dignity is a foundational principle for our faiths. “Know thou that all men have been created in the nature

made by God [from the Tablets of Bahá'u'lláh in Sobhani, 41]. Right Vocation, the Fifth element of the Buddhist Eightfold Noble Path starts, “One must not engage in any business or profession that involves cruelty or injustice to either men or animals” [Goddard, 648]. Even those who act unjustly require just treatment.

How can persons of faith engage with the Big Business of Incarceration? Ask about oversight commissions on prisoner fees, such as telephone and food, request reports on prisoner employment and remuneration, and continue to advocate for the reduction of private prisons within the state of Arizona and nationally.

CONCLUSION

Starting in the 1990s, the “get tough on crime” policies in America resulted in building a new prison every two weeks. While violent crime has decreased by 51 percent 1991-2019, property crime is down by 43+ percent, and overall crime rate is less than half of its 1991 numbers, nonetheless spending on jails and prisons reached nearly \$81 billion in 2010. Today, nearly 7 million people are incarcerated, on probation, or on parole in the U.S. With the escalation of numbers has come escalation of abuses. People of faith are called to participate in the processes that will lead to reform of the entire system. The Arizona Faith Network invites persons of all faith traditions to participate in AFN’s Mission Focus Topic, Criminal Legal Reform.

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