

# **SOCIETAL GRACE IN CRIMINAL JUSTICE: A Theological Perspective on Probation and Parole Policies<sup>1</sup>**

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**Abstract:** Reintegration into society has long been a problem for ex-felons. The United States has one of the highest recidivism rates, with over three-quarters of ex-felons returning to prison within five years of their original incarceration. Ex-felons face court costs, oppressive policies, and implicit bias from employers and other community members when they reenter society after incarceration. This paper considers U.S. probation and parole policies under which they must live through a Christian lens of grace. It considers how two aspects of Christian grace, incongruity and non-circularity, could define a concept of societal grace for ex-felons reentering society. If our political institutions could view ex-felons through this lens of grace, we could begin policy discussions about how to fully reaccept as free and equal members of society ex-felons whom our system currently leaves at the margins.

*Key terms: grace, solidarity, incongruity, non-circularity, reacceptance, society*

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Nineteen-year-old Linda Davis sat dejected in a concrete conference room, tearfully trying to parse through the events leading up to her arrest and arrival at the Guilford County jail. Ms. Davis had been cited for a probation violation after her probation officer had been unable to track her down for several hours the previous day. What the officer had not realized was that Ms. Davis, prohibited from her mother's public housing building because of a prior felony conviction, had been living in a car with her infant daughter at the time of her arrest. Through restrictive probation policies, the criminal justice system was punishing Ms. Davis for drug crimes long past. She couldn't live in public housing with her mother. Along with thousands of other Americans, she was 63 percent less likely to get a job interview because of her criminal record.<sup>2</sup> These and other restrictive reintegration policies set on probationers and formerly incarcerated individuals bar many from reestablishing themselves in society. Intended to make sure ex-felons are held accountable even after they have "done their time," these reintegration policies often result in a quick return to prison. With one of the highest recidivism rates in the world, our criminal justice system fails to offer true reintegration for people who have served their "debt to society" and look to move forward in their lives.

Modern policy discussions regarding reintegration policies often fail to consider the role of societal forgiveness. A theologically-based conception of grace places consideration of forgiveness at the center of policy debate. Grace has been called "that which underlies all religion and faith."<sup>3</sup> Yet, while more than ninety percent of Congressmen purport to be Christian,<sup>4</sup> the criminal justice policies they enact do not offer grace to offenders in any

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<sup>2</sup> Agan and Starr, 1

<sup>3</sup> Grace has been called that which underlies all religion and faith. See *Encyclopedia of Religion* on grace.

<sup>4</sup> Pew Research Center's Religion & Public Life Project

meaningful way. Only recently has theological ethics turned toward enhancing and renewing capabilities.<sup>5</sup> I use this consideration as the starting point of my paper.

In this paper, I intend to focus on two themes of grace which I will argue are vital to understanding divine action and its implications for human interaction with formerly-incarcerated individuals. I will borrow a modern theologian's language in describing these two themes as grace's incongruity and non-circularity. Incongruity and non-circularity are central to the teaching of three theologians – St. Augustine of Hippo, Martin Luther, and Dietrich Bonhoeffer. Focusing on their interpretations of incongruity and non-circularity and drawing out the common themes in each thinker, I will establish a definition of societal grace which imitates the action of divine grace in interactions between people. Internalizing this definition of grace will provide policymakers a lens through which they can consider reconstructing reintegration and probation policies. I will argue that using grace as a basis for reasoning is acceptable in public discourse despite, and perhaps even because of, its foundation in a comprehensive Christian doctrine. Applying a concept of grace to reintegration policies will promote justice by promoting liberties for individuals who currently do not have the right to vote, become gainfully employed, or otherwise participate fully in society. Ultimately, I will conclude that grace belongs in the public discussion about criminal justice policies because it sheds light on public policy discussion and reform which stem from its unique concern with forgiveness.

### **Part 1: Establishing the Scope**

Unfortunately, Ms. Davis' situation is not an isolated event. In January of 2017, the Virginia parole board granted parole to just 15 incarcerated individuals out of 150 who were

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<sup>5</sup> Beckley (32) writes about the renewal of capabilities, combining language from Amartya Sen with theological terms of grace and love. Using a Calvinist conception of Common Grace, he discusses the lack of attention paid to the possibility of “renewing capability” by incorporating “reasonable demands” on peoples suffering the burden of guilt, even if the guilt they feel is deserved.

eligible.<sup>6</sup> In all of 2016, 144 people were granted parole while approximately 1500 people were eligible, an average of 12 people released per month.<sup>7</sup> The Virginia Parole Board makes decisions based on arbitrary criteria which comes from its policy manual.<sup>8</sup> This manual serves as the sole guiding document that the parole board considers, and the reasons used for parole denial are based in the document rather than legislation. This should concern people for a variety of reasons. All parole decisions in Virginia are made by five unelected individuals, and they have sole authority to grant or deny release to individuals. Almost every decision gives a reason that “release at this time would diminish seriousness of crime,” and such arbitrary and vague language makes challenging decisions of the Board difficult. Thus, earning parole in the first place is a huge hurdle for thousands of Americans.

Even those individuals who are lucky enough to receive parole struggle upon leaving prison. Fifteen states preclude incarcerated individuals from voting, and an additional three states prevent individuals on probation from voting.<sup>9</sup> Only Maine and Vermont place no restriction on voting rights for felons at all. Twelve states restrict voting rights even for individuals who have completed their prison sentences and their terms of parole or probation. That is, states including Alabama, Virginia, and Kentucky disenfranchise people who have committed a single felony from voting for the rest of their lives. In total, 6.1 million individuals today are banned from the ballot box, and the policies disproportionately affect black adults, like Ms. Davis, which works against their successful reentry as full citizens. Excluding so many people from voting fails to secure the blessings of liberty that our Constitution seeks to promote. Parole boards, in deciding

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<sup>6</sup> Virginia Parole Decisions, January 2017

<sup>7</sup> Virginia Parole Decisions

<sup>8</sup> Virginia Parole Board Policy Manual, 2006

<sup>9</sup> All information in this paragraph comes from a policy brief from The Sentencing Project. The project notes that disenfranchisement policies likely affected the results of several Senatorial election in 2000. Regardless of one's political affiliation, the fact that these policies could be so impactful certainly deserves attention.

whether to grant parole, make a huge decision about not only an individual's incarceration status, but also a decision about the individual's ability to participate as a member of democracy. Even if they grant parole, parole boards have no power to lift voting restrictions, and so many individuals have no clear path to enfranchisement.

In addition to losing their right to vote, many formerly incarcerated individuals and individuals on probation are legally excluded from the job market. In Georgia, for instance, people who have “been arrested, charged, and sentenced for... any felony, or any crime involving moral turpitude” are prohibited from obtaining licenses for over eighty different jobs – including a barber's license, scrap metal processor, and air conditioner contractor, among others.<sup>10</sup> In Virginia, a Licensing Board has sole discretion over whether or not an individual can receive a license and “may deny licensure or certification to any applicant...for any felony or misdemeanor.”<sup>11</sup> Preventing violent offenders from serving as bus drivers might make sense, given the nature of the crime and the nature of the job. But when society prevents people from being elevator mechanics because of a drug conviction, we must question ourselves and ask “to what end?”. Why do we not want former drug offenders serving as elevator mechanics? Is it simply because they have been labeled felons and thus are unfit to be employed? History can provide some context for the harshness of policies for individuals who are trying to reintegrate after serving time incarcerated or on probation.

The above data reflect policies of several politicians who ran their campaigns promising to be “tough on crime.” Ronald Reagan campaigned for a tough stance on crime in opposition to the “softness” of liberal opponents.<sup>12</sup> He put the issue of drug crimes in the public eye, with the

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<sup>10</sup> 2015 Code of Georgia Chapter 1 - GENERAL PROVISIONS § 43-1-3

<sup>11</sup> *Fighting Crime Through Education*, 46.

<sup>12</sup> Newell, 18

result that, “in 1989, 27% of Americans believed that drug abuse was the most serious problem facing the country,” and they believed the Republicans were the only ones responding.<sup>13</sup> Democrats responded to the accusation that they were soft on crime, with President Bill Clinton passing the “three strikes and you’re out” policy, in his 1994 crime bill.<sup>14</sup> As politicians vied back and forth to be the toughest on crime, public policy followed campaign rhetoric, and the number of people under the control of the criminal justice system exploded. The number of Americans on probation or parole at the end of 2015 was 4,650,900<sup>15</sup> compared to fewer than 1,500,000 in 1981.<sup>16</sup> Both Clinton and Reagan identified as Christians during their time in office,<sup>17</sup> yet their policies toward people our society has deemed criminals (read “sinners”) have been less-than forgiving. The politicians – and their policies – have failed to provide the possibility of reintegration into society and left many individuals condemned forever to legal disenfranchisement, exclusion from public housing, and discrimination in the job market.<sup>18</sup>

## **Part 2: Theologies of Grace**

### *2.1 Two Perfections of Grace*

At the outset of this paper, I claimed that a tension existed between unforgiving reintegration policies and the centrality of forgiveness in Christian theology. Having established the abundance and severity of unforgiving policies for ex-felons reintegrating into society, we must turn to forgiveness in Christian theology. According to Christian theology, God’s grace is like the grace of the father of the prodigal son, a character in Christian scripture who did not consider the past sins of his son to be of any significant importance when he accepted him back

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<sup>13</sup> *Ibid* 19

<sup>14</sup> H.R. 3355 Violent Crime Control and Law Enforcement Act of 1994

<sup>15</sup> *Probation and Parole in the United States, 2015*

<sup>16</sup> *Probation and Parole 1981*

<sup>17</sup> Masci, David. "Almost All U.S. Presidents, Including Trump, Have Been Christians."

<sup>18</sup> H. Holzer, *What Employers Want: Job Prospects for Less-Educated Workers*. New York: Russell Sage, 1996 citing data that 2/3 of employers would refuse to hire someone whom they knew was on probation or parole

to his family.<sup>19</sup> In the parable, a son squanders his inheritance and, upon returning to the father during a famine, is ready to submit as a slave to repay his father. The father, rather than punish the son beyond the starvation he has already endured, receives him back into his household. The other son in the parable must now halve his own inheritance for his brother, who will never be able to repay the inheritance he squandered. Ambrose, a bishop of Milan in the 4<sup>th</sup> century, believed the story of the prodigal son compelled believers to “confer again the grace of the heavenly sacrament on those guilty even of the greatest sins.”<sup>20</sup> Ambrose’s willingness to reaccept even the guiltiest sinner into communion reveals the primacy he gives to the forgiveness of the father in this parable.

Thinking of grace as re-acceptance went against prevailing thoughts of the day and against common concepts of gift-giving today. Stephen Edmonson, reflecting on a working group held by several Episcopal churches<sup>21</sup>, writes that the “radicality of God’s grace,” is best captured in the parable of the prodigal son.<sup>22</sup> Grace is radical because unmerited forgiveness, granted by grace, is “the central theological dynamic of the gospel.”<sup>23</sup> Christian theology does not simply think grace is important, it claims that grace is central to human interaction. The father’s relationship with his prodigal son has already been broken because of the son’s past transgressions, and the son resigns to the fact that he is “no longer worthy to be called (his father’s) son.”<sup>24</sup> Despite the prodigal son’s unworthiness, the father fully reaccepts him and grants him a share of his inheritance.

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<sup>19</sup> Luke 15.13

<sup>20</sup> *Concerning Repentance* 2.3.19

<sup>21</sup> Edmonson is the rector of St. Thomas Episcopal Church in McLean, Virginia, and has taught at Virginia Theological Seminary.

<sup>22</sup> Edmonson 219-220

<sup>23</sup> Edmonson 218

<sup>24</sup> Luke 15.21

The father did not consider his son's unworthiness when bestowing the gift of grace, for while the son did not even deserve to be called son, the father fully reaccepted him. The father's acceptance speaks to an aspect of Christian theological ethics which counters a modern notion of the "deserving poor." Dorothy Allison, in a chapter of *Growing Up Poor*, discusses the phenomenon of being the "bad poor: men who drank and couldn't keep a job...women, invariably pregnant before marriage..."<sup>25</sup> The prodigal son is one of these "bad poor," yet this parable tell the Christian that he must not see the son or the poor or ex-felons as "they... the ones who are dismissed."<sup>26</sup> Rather, the Christian must recognize that just as "there is neither Jew nor Greek, slave nor free, male nor female" in Christ Jesus, so can there be no distinction among human beings living in community with one another.<sup>27</sup>

In addition to challenging traditional conceptions of deservedness, the father gives his son the gift of reacceptance in such a way that the son has no way of repaying for his gift. The father freely bestows the gift of communion upon his son, refusing to take the son's previous brokenness into consideration. In doing so, he brings his prodigal son back into his inheritance by taking half of his other son's inheritance and redistributing it to the prodigal son. The prodigal son will never be able to repay his father or his brother for the additional inheritance he has taken. These two aspects of the father's gift – that it was given without consideration of previous merit and with the knowledge that it could never be repaid – depict two defining aspects of grace.

Are these the only two aspects of grace needed to define it? Implicit in the notion of defining a term is a logical conclusion that, if the right threads are pulled, one can find the

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<sup>25</sup> *Growing Up Poor* 78

<sup>26</sup> *Ibid* 76

<sup>27</sup> Galatians 3.28



overlapping themes which exist among varied definitions of a term.<sup>28</sup> All denominations have different understandings of grace which focus on different aspects of the divine gift. John Barclay, the Lightfoot Professor of Divinity at Durham University, England, has found six unique aspects which comprise an essence of grace in his book *Paul and the Gift*.<sup>29</sup> Considered by modern theologians one of the most influential books on Paul in the last twenty years,<sup>30</sup> *Paul and the Gift* provides us with language we can use to describe theologies of grace offered by some of the most influential theologians of history. Competing claims about the “perfect” definition of grace abound, and the mysterious nature of God makes it impossible to hold one true, universal definition perfect grace.<sup>31</sup> The definition of divine grace used in this paper, which will inform the definition of societal grace, uses Barclay’s terminology to explicate two themes of grace found in the prodigal son parable and expounded by three theologians.

Barclay considers grace as a gift – much like the gift of acceptance given by the father in the parable of the prodigal son – and as it is something we do not merit and we cannot repay. No action will make us deserving of the gift, it simply comes out of generosity and love. In addition to coming out of generosity and love, the gift is something we can never pay back. We can try to repay God by living a life in Christ, but we can never repay him for the gift we receive. Barclay describes the undeservedness and the non-repayable aspect of gift as their incongruity and non-circularity, respectively. He sums it up nicely when he says “God... gives freely (incongruous to our merits) and without strings attached (non-circular to our ability to repay), and Christians are to do likewise.”<sup>32</sup> Several theologians rely heavily, if not exclusively, on the incongruity and

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<sup>28</sup> *Permanence and Change* 292

<sup>29</sup> Barclay, J.M.G. (2015). *Paul and the Gift*. Grand Rapids, MI: Eerdmans.

<sup>30</sup> Schreiner, Thomas R. "Paul and the Gift: A Review Article."

<sup>31</sup> *Paul and the Gift* 69

<sup>32</sup> *Paul and the Gift* 57

non-circularity of grace as central aspects of their definitions of grace. These two perfections are also essential in the definition of societal grace that describes human interaction. Thus, I offer that the incongruity and non-circularity of grace, when understood through their historical development under three theologians, tie together competing definitions and form the foundation of a basic essence of the term grace.<sup>33</sup>

## 2.2 Augustine

### a) *Incongruity*

According Augustine, a bishop who wrote during the 4<sup>th</sup> century, even the ability to have faith in Christ is not an internal, active decision, but rather a gift granted by God in order that through faith the believer might actively accept the grace of God. Augustine writes that the sinner, who deserves only damnation based on his works, receives grace from God because of faith, which is also given by God.<sup>34</sup> He cannot do any work to receive this faith, either, but through grace is granted even the ability to believe and thus receive grace. God, through grace, calls us to believe. The believer does nothing to merit this initial call from God to believe, but once the believer's will has been freed by the call, he must follow the call, whereby he will receive the Holy Spirit.<sup>35</sup> Thus, the initial call to follow can only come from God. The call is incongruous because it does not consider the believer's background or previous deeds.

### b) *Non-Circularity*

Augustine says that the true grace of God is that he initiates the call to the believer, regardless of his background, and delivers him from his "evil merits" so that he may acquire good merits through the Holy Spirit.<sup>36</sup> Augustine makes clear that even those good works which

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<sup>33</sup> *Paul and the Gift* 68

<sup>34</sup> *Ibid*

<sup>35</sup> *On Romans* 60, 15.

<sup>36</sup> *On Romans* 60.15

we do after accepting the call to grace “are not due to ourselves, but to him who justified us by grace.”<sup>37</sup> Important to note is that God does not condone the prior action of the believer. Implicit in his forgiveness is the recognition by God that the believer’s previous actions are, in fact, heinous and deserving of damnation<sup>38</sup>: they have jeopardized the believer’s relationship with God.

Despite the believer’s broken relationship with God, God grants grace to the believer with an eye toward the future. Inherent in His perfect gift of forgiveness and acceptance is a forward-looking reciprocity<sup>39</sup>, whereby the recipient of grace, though he cannot repay God, begins a new way of life.<sup>40</sup> The inability of the recipient of grace to repay God through his works or his faith is precisely where Augustine’s theology, without using Barclay’s language, locates the non-circularity of grace. Everything about the believer’s existence proceeds from this grace: he owes God everything. The believer must recognize that in his human interactions, his worth is not merely a product of his own merits. Rather, the believer realizes that his will has been freed to do good works only by the grace of God.<sup>41</sup> His entire existence is reliant on God’s acceptance into communion with Christ. Grace comes from God and calls the believer to Him, delivering the believer from evil merits<sup>42</sup> and allowing him to acquire good merits through his own will, which has been freed by grace.<sup>43</sup>

### 2.3 *Luther*

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<sup>37</sup> *Ibid* 21.2

<sup>38</sup> *Ibid*

<sup>39</sup> This is a term borrowed from Harlan Beckley. He contrasts it with the full retributive reciprocity John Rawls calls for, and indicates that it allows the ex-felon to accept judgment while still falling under societal grace. This acceptance paves the way for a future reciprocity.

<sup>40</sup> *On Romans* 60.15

<sup>41</sup> *Grace and Free Will* Chapter 7.17

<sup>42</sup> *Grace and Free Will* Chapter 1.1

<sup>43</sup> I am indebted to Zach Taylor for helping me work through these theological points, particularly those of St. Augustine.

*a) Incongruity*

Martin Luther was cast into the limelight of church politics after challenging church practices in 1517. Luther's doctrine of justification by faith through grace alone<sup>44</sup> (*sola fidei*) follows Augustine's teaching in stating that the works of humans do not play a role in his reception of righteousness from Christ. As Luther notes, the law exists to restrain sin, and thus when the believer follows the law, he does not do it out of love or virtue – both of which would be worthy of righteousness – but rather out of fear that he will be put into prison.<sup>45</sup> Luther believes that humans have used the law to gain accolades and praise from the communities that they use to justify themselves before God.<sup>46</sup> Thus, humans fail even when they good works, because their motivations are twisted and they seek self-gratification in doing good works for others. The law is thus God's "mighty hammer" which humbles the Christian because of his inability to fulfill it.<sup>47</sup> Even in striving to fulfill the law, ulterior motives stain the believer's fulfillment, and thus he realizes that fulfillment of the law is utterly impossible. Luther says this recognition of inadequacy should leave the believer with a feeling of hopelessness.<sup>48</sup> Despite the believer's inadequacy, God accepts the believer, who has been justified by faith. Thus, justified, the Christian receives Christ's imputed righteousness and enters communion with him.<sup>49</sup>

*b) Non-Circularity*

In his absolute inadequacy, Luther says the believer is accepted by God's grace and called to receive Christ's imputed righteousness. But Christ does not expect anything as reciprocity for the righteousness he bestows upon the believer. Rather, Christ participates in the

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<sup>44</sup> *Freedom of a Christian* 56

<sup>45</sup> *Commentary on Galatians* 139

<sup>46</sup> *Ibid*

<sup>47</sup> *Ibid* 141

<sup>48</sup> *Freedom of a Christian* 109

<sup>49</sup> *Commentary on Galatians* 111

punishments which the believer deserves, and “makes them his own and acts as if they were his own and as if he himself had sinned.”<sup>50</sup> Christ accepts the believer into righteousness while simultaneously participating in the believer’s suffering. Christ offers the believer solidarity through grace, which the believer has no way of reciprocating because his lack of merits provides him with nothing to offer Christ. Luther posits that the justified believer will seek out ways to live a life of righteousness, recognizing his radical acceptance and solidarity with Christ. Once he is justified, Luther says, the believer will devote his time to the welfare of others not to repay God for his imputed righteousness, but because he has “regard for nothing but divine approval.”<sup>51</sup> The believer, freed from works by his justification, will want to use his freedom to empty himself for others.<sup>52</sup> However, Luther does not see this as necessary, since requiring anything at all in return for imputing righteousness would make Christ’s grace less-than perfect. Many Christians have disagreed with Luther’s liberal application of grace, believing that it releases the Christian from any moral obligation to reciprocate for such an incongruous gift, whether in their spiritual relationship or their personal relationships. Regardless, Luther’s exposure of ulterior motives in good works reinforces the believer’s total inability to merit grace and thus highlights the perfect incongruity of God’s grace.

#### *2.4 Bonhoeffer*

As a Lutheran some four hundred years after Luther, Dietrich Bonhoeffer took issue with modern beliefs that believers have no obligation to fundamentally change their existence upon learning that they have are justified by faith through grace. Born in Breslau, Germany in 1906, Bonhoeffer was executed by the Nazis at a concentration camp at Flossenbug in 1945 for his

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<sup>50</sup> *Freedom of a Christian* 61.

<sup>51</sup> *Freedom of a Christian* 74

<sup>52</sup> *Ibid* 75

protestation against Hitler. Bonhoeffer thought that the greatest heresy of his time was the preaching that, having been justified by faith through grace, the Christian could “live like the rest of the world... and not presumptuously aspire to live a different life under grace from his old life under sin.”<sup>53</sup> He calls this idea “cheap grace,” and admonishes his readers that most believers of his time had fallen victim to believing in cheap grace whereby their sin was forgiven but they themselves had not departed from sin and sin had not departed from them.<sup>54</sup>

Commenting on Luther, Bonhoeffer notes that Luther’s reception of grace, through faith, forced him to give up his old life and begin a new life in “absolute obedience of Christ.”<sup>55</sup> Dying to his old self, Luther found himself obeying Christ in perfect solidarity with him. He bore the yoke of Christianity and found it an easy burden to bear compared to his old life in which he lived unredeemed. When Christ grants grace, the believer must give up his old life of sin and find a new life, participating with Christ in solidarity by being obedient to him. Key to his new life of solidarity with Christ is the believer’s recognition that his old life was sinful: he must acknowledge that while he is justified by faith through grace, the action or actions of his old life are not justified, and thus not accepted, in his new life in Christ.

Bonhoeffer tells his readers that they must acknowledge that they cannot avoid their sins, but, by embracing their inescapability from sin, they simultaneously embrace how much they need God’s grace every day.<sup>56</sup> In embracing this dependence, the believer acknowledges that he will do anything which Christ calls him to do. He has a responsibility for total obedience to Christ, what Bonhoeffer calls “single-minded obedience.”<sup>57</sup> A rich young man in the Gospel of

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<sup>53</sup> *Cost of Discipleship* 35

<sup>54</sup> *Ibid* 36

<sup>55</sup> *Ibid* 41

<sup>56</sup> *Cost of Discipleship* 44

<sup>57</sup> *Ibid* 69

Matthew is called to obey, but he refused to do so and thus, “because he could not obey, he could not believe.”<sup>58</sup> Bonhoeffer and scripture both tie belief to obedience. If the believer cannot or will not obey the standards of Christ, he or she does not believe in Christ.<sup>59</sup> To believe in Christ is to accept the yoke of a new life in Christ: the cost of discipleship, in Bonhoeffer’s terms.

### 2.5 Societal Grace

These theologies of grace are based in incongruity and non-circularity. How does the centrality of these two aspects of grace translate to inter-personal relationships, specifically those with ex-felons? I propose these theological perspectives should lead Christians to conclude that current criminal justice policies fail to reflect an ethic of grace toward ex-felons. First, current policies do not encourage non-felons to live in solidarity with ex-felons. Ex-felons are both spatially and economically cast out of society, even upon reentering, through housing discrimination and employment bias.<sup>60</sup> The Christian should see that he is compelled to live in solidarity with the ex-felon, and “give himself as a Christ to his neighbor.”<sup>61</sup>

As I mentioned above,<sup>62</sup> Christian scripture pushes back against the notion of the “deserving poor” in the parable of the prodigal son. Augustine believes that the incongruity of divine grace is primal because it frees his will to even take faith in God. God grants grace to the believer before any action, good or bad, on the believer’s part. Luther expands on Augustine by writing that even in trying to do good works, the believer has a nefarious ulterior motive, and thus his good works cannot merit the grace of God. The “undeservedness” of ex-felons

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<sup>58</sup> *Cost of Discipleship* 70

<sup>59</sup> *Ibid* 54

<sup>60</sup> BJS Recidivism Report

<sup>61</sup> *Freedom of a Christian* 75

<sup>62</sup> See page 8 on Dorothy Allison’s *Growing Up Poor*. Although she refers to “they” as people in poverty, her analogy fits the current discussion well. If anything, notions of deservedness and undeservedness are heightened in policy discussions of ex-felons, because their previous crimes make them inherently less-than in the eyes of the public, especially those who view all criminals as dangerous (see page 20 for an example of such people).

reentering society pales in comparison to the utter undeservedness of all believers in the eyes of God. God's radical acceptance of the believer is both incongruous and non-circular, and the Christian is called to reflect those aspects in his interactions with others. His own undeservedness confronts the believer with the fact that he is accepted by God freely and with no strings attached. When the Christian recognizes that our criminal justice policies prevent the sort of radical acceptance into society that he is granted with God, he is compelled to radically reaccept ex-felons as fully free and equal citizens into society. Societal grace is the compulsion to radically reaccept ex-felons as free and equal citizens. When adopted by policy makers, the lens provided by societal grace could drastically change the way our institutions handle probation and parole cases.

### **Part 3: An Interpersonal Relationship**

#### *3.1 Imitatio Dei*

I should pause briefly to address two counterarguments to an application of societal grace in public discourse about probation and parole policies. Some Christians argue that Christianity is a private, personal affair, what the individual does with his own solitariness.<sup>63</sup> However, Christian scripture directly counters this definition, telling Christians that they should strive to live *imitatio dei*, or in the imitation of Christ. The Apostle Paul explicitly lays out, at the beginning of his first letter to the Corinthians, the necessity of Christians to “follow (his) example, even as (he) follows Christ.”<sup>64</sup> Living in the imitation of Christ bears special attention in the present discussion of criminal justice reform. Gospel accounts describe Christ himself as a victim of an unjust system of criminal justice, which legally condemned him to an unjust death. He tells his disciples that he will reward those who, “when I was in prison, you came and visited

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<sup>63</sup> Whitehead, *Religion in History*

<sup>64</sup> 1 Corinthians 11



me.”<sup>65</sup> When His disciples ask when they came and visited him in prison, Christ simply replies “whatever you did for one of the least of these brothers of mine, you did for me.”<sup>66</sup> The Christian’s relationship with Christ is not defined by his solitary interaction with God. It is characterized by the Christian’s relationship with other humans. The Christian cannot serve God without service to others, even those who are imprisoned. The Christian is to give himself over to service toward the least of the members of his society. The traditional primacy ascribed to this belief of imitating Christ in the service of others has flourished in recent years with the “What Would Jesus Do” movement among Christian youth groups around the United States. Understanding grace is just the first step for Christians trying to imitate God’s grace in human interaction.

Implicit in the invitation for ex-felons to reintegrate in society is the responsibility of the probationer to adhere to the standards of the society. Reintegration includes full and active participation, and society is obliged to promote complete solidarity in recognition of its members’ shared brokenness. This theology of grace does not conceive grace as forgiveness alone, but grace as an invitation to fully participate in society. This is like the yoke under which Bonhoeffer says the Christian lives after his acceptance by Christ. The “cost” of living in a society is obeying the laws and regulations by which all other citizens live. By this invitation, we come as close as possible to achieving perfect non-circularity because we extend to the probationer the same thing we extend to everyone else in society – the right to fully participate as a free and equal citizen. The probationer does not owe anything more to society than his obedience, since society requires that of all its other members, too. In fact, to not require obedience of the ex-felon would be to exclude him from participation in society as a free and

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<sup>65</sup> Matthew 25.37-40

<sup>66</sup> Matthew 25.40

equal citizen. Societal grace achieves incongruity because society would not take into consideration the status of a probationer or ex-felon as such when he attempts to participate in the normal functionings of society in any way.

### *3.2 Grace in Public Reason*

Many people, of course, are not Christian, so talk of imitating God does not hold sway in public discussion with them. Richard Rorty suggests that religion is a conversation-stopper when used as a basis for discussion and argument in the political realm.<sup>67</sup> Rorty writes that a specifically religious argument cannot be accepted in public reason because it is made with premises acceptable only because “these premises express the will of God.”<sup>68</sup> Rorty believes that since he does not ascribe to Christian doctrine, using grace as reason for any public policy discussion regarding criminal justice reform would be impermissible. The expression of grace as the divine gift of God must remain privatized. Religious premises for any reasoning which leads to public policy, in his eyes, must be eliminated so that “voices claiming to be God’s, or reason’s, or science’s, are put on par with everybody else’s.”<sup>69</sup>

John Rawls provides a way for religious arguments to participate in public discussion through public reason, by which someone appeals to a political conception when debating fundamental political questions.<sup>70</sup> He says that public reason proceeds entirely within a political conception of justice, and so the content we discuss in public reason comes from conceptions of justice like equality and liberty. In pursuing this end, people can introduce their “comprehensive doctrines,” including religious doctrines, so long as they provide, in due course, properly public

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<sup>67</sup> *Ethics of Citizenship* 138

<sup>68</sup> *Ibid* 139

<sup>69</sup> *Ibid* 139

<sup>70</sup> *Collected Papers* 584

reasons.<sup>71</sup> Public reason is strengthened when we declare what our own comprehensive doctrines are.<sup>72</sup> I hope I have done this by offering a Christian theological conception of grace derived from comprehensive Christian thought derived from scripture and theology. The conception of grace I propose endorses a “reasonable public political conception of justice”<sup>73</sup> because it seeks to “promote the civil rights of free and equal democratic citizens” by engaging ex-felons as free and equal, something our current system does not do.<sup>74</sup> The restrictions on voting rights, housing opportunity, and job opportunity infringe on these civil rights, excluding ex-felons from the rest of free and equal democratic citizens.

### *3.3 A Secular Understanding*

Rawls says that public reason aims for public justification.<sup>75</sup> We can give public justification for the conclusions of our comprehensive doctrines “in terms of political values.”<sup>76</sup> Bryan Stevenson, in his work as a death row litigator, would be able to endorse from a secular perspective.<sup>77</sup> He would ascribe to the “reasonable political conceptions” of equality and liberty which the above theological argument promotes. Stevenson has written about his litigation in a recently-released book *Just Mercy*, which attempts to anecdotally discuss the miscarriages of justice that our criminal justice policies allow. In one instance, Stevenson is approached by a prison guard who has realized that he and a death row prisoner had similar childhood experiences:

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<sup>71</sup> *Ibid*

<sup>72</sup> *Ibid* 594

<sup>73</sup> *Ibid*

<sup>74</sup> *Ibid* 588

<sup>75</sup> *Collected Papers* 593

<sup>76</sup> *Ibid* 594

<sup>77</sup> Stevenson may himself have a theological basis to his work, but his language and his argument are put forth in purely secular terms, thus, I believe, many non-Christians would endorse his view of brokenness.

“Man I didn’t think anybody had it as bad as I did... listening what you was saying about Avery made me realize there were other people who had it as bad as I did. I guess even worse... I got so angry coming up that there were plenty of times when I really wanted to hurt somebody, just because I was angry. I made it to eighteen, joined the military, and you know, I’ve been okay.”<sup>78</sup>

Stevenson uses this anecdote to describe how the guard’s entire disposition toward the prisoner changed when he acknowledged that he shared a brokenness with the death row prisoner. Later reflecting on the imminent execution of a death row inmate, Stevenson writes:

“We all share the condition of brokenness even if our brokenness is not equivalent. I desperately wanted mercy for Jimmy Dill... I couldn’t pretend his struggle was disconnected from my own. the ways in which I have been hurt – and have hurt others – are different from the ways Jimmy Dill suffered and caused suffering. But our shared brokenness connected us.”<sup>79</sup>

Like Luther, who says that we deserve the pangs of hell for our sins<sup>80</sup>, Stevenson recognizes that we all deserve to be condemned for our brokenness. Though this inmate’s transgressions have been different and more severe than Stevenson’s, so have his sufferings been different, and more severe. The finality of the death penalty seems excessive for Stevenson, especially in light of the brokenness he himself experiences. Later, when an exonerated death row inmate is taken into a mental health facility after his release, a nurse tells Stevenson that “a lot of people here think once you go to prison, whether you belong there or not, you become a dangerous person.”<sup>81</sup> His response to both the guard and this nurse reflects the same sentiment that the incongruity of grace captures: “bad things that happen to us don’t define us... everyone needs mitigation at some point.”<sup>82</sup>

The guard’s and nurse’s failure to recognize shared humanity disrupts the Christian understanding of grace established by scripture, as well as traditional and modern theology. Luther

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<sup>78</sup> *Just Mercy* 201

<sup>79</sup> *Just Mercy* 289

<sup>80</sup> *Freedom of a Christian* 61

<sup>81</sup> *Just Mercy* 280

<sup>82</sup> *Ibid*

writes that we all receive divine grace by which we are justified. Stevenson's writing illustrates the tragic consequences of failing to acknowledge that we share with all humans a brokenness in our relation to other members of society. The people with whom we interact daily can look past our flaws because they recognize that we have other virtues, despite our flaws. Institutions lose the Christian perspective that we all receive grace despite our shared flaws and punish people perpetually for an action or actions that do not comprise the whole of the individual's being. When we recognize that every person, himself included, is broken, the concept of reacceptance becomes much easier to grasp and understand as necessary for human interaction.

### **Conclusion: A Different Perspective**

Following a theological concept of grace will not, in the short term, provide us with any specific policies that will radically change the criminal justice system. What may change, however, is the lens through which we consider the people and practices involved in reintegration policies, and that could lead to policy innovations over time. Two recent innovations deserve brief attention. In Illinois, the Department of Corrections has started an initiative to focus on viable career paths for reentering inmates in areas where job openings are available.<sup>83</sup> Inmates go through classroom training for up to 12 months before entering the labor force. At the beginning of participation in the program, inmates "meet with industry representatives" and are "paired with mentors" in the industry in which they will work. The program thus serves two purposes. Inmates are well-positioned for employment upon reentering society, thus establishing a stable source of income and thus decreasing the likelihood of recidivism.<sup>84</sup> The program also, importantly, pairs participants with industry mentor.<sup>85</sup> These

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<sup>83</sup> Rubin 1

<sup>84</sup> Brookings Institute, "'Ban the Box' does more harm than good"

<sup>85</sup> Rubin 2

mentors help participants with coursework, the job search, and eventual employment. Having a connection with an industry leader upon release will likely help individuals reintegrate more seamlessly, since relationships have been built outside prison before release from prison.

Another important innovation is the state of Ohio's law allowing community service to serve in lieu of court costs for ex-felons, with a maximum of 500 hours of service allowed to be assigned.<sup>86</sup> This law is important because court costs are a large reason recidivism occurs in the criminal justice system. Ex-felons, like Linda Davis at the beginning of this paper, are stigmatized from the workplace because of their probation status, and since they cannot earn an income, they cannot pay court costs and return to prison. The Ohio law intervenes in this caustic cycle. Additionally, research has shown that when ex-felons are assigned to do community service for nonprofit or governmental organizations, it "fosters prosocial interaction between (ex-felons) and community members."<sup>87</sup> Thus, ex-felons can pay off their court fees by giving to their communities while simultaneously reintegrating through work with important nonprofits in their communities.

Neither of these programs is a panacea for helping to fully reintegrate ex-felons into society in a meaningful way. Rather, they serve as two examples of how viewing probation and parole policies through a lens of grace might look, practically. I have argued that a theological conception of grace, applied to our public discourse about the reintegration of ex-felons into society, would promote their liberty and equality as citizens. When we say that ex-felons must be considered equal, we mean that they must be considered equal with the rest of society, that is, with each of us. We must be willing to let them get a job before us, if they are more qualified. We must be willing to actively advocate for their right to vote so that they have a voice in

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<sup>86</sup> O.R.C. 2947.23

<sup>87</sup> Wood 148

shaping policies which affect them, as we do. We must, in short, treat them as we would any other fellow citizen in our community.

In response, ex-felons should heed the words of Dietrich Bonhoeffer and recognize that they have received a call to join community. Believing she can “live like the rest of the world... and not presumptuously aspire to live a different life under grace from his old life under sin”<sup>88</sup> is not an acceptable response to God’s call to grace. Similarly, it is not an acceptable response from the formerly incarcerated individual – or any individual – to society’s call for solidarity. I have shown that this conception of grace can be used in public reason because, although it is based on a comprehensive doctrine, it pushes to promote basic liberties outlined in our Constitution. That is, the content of the discussion in which grace enters is concerned with a liberal political conception of justice. This paper has focused on using theological language to acknowledge that we share a common humanity, even a common brokenness, with ex-felons who are trying to move past their criminal convictions. Going back to the statistics with which I opened this paper, we must acknowledge that the decision to grant or deny parole, or to grant or deny a job license, is made by a board of people who are, like all of us, broken. Though many laws and regulations explicitly forbid granting grace to certain individuals, we find an implicit lack of grace in many decisions, as the vague laws leave much power in the hands of people. If we change our way of thinking so that reintegration is viewed through a lens of granting grace on behalf of our common brokenness, we could begin to look at actual policies that would make this possible.

Ultimately, using grace in public discourse about the criminal justice system gives us a unique perspective through which we can view our reintegration policies. The theological perspective of grace simultaneously promotes a concern for others while also acknowledging the

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<sup>88</sup> *Cost of Discipleship* 35

brokenness of those who are concerned. The language of grace focuses on forgiveness and communion, acknowledging shared brokenness. My hope is that this paper lay the groundwork for policymakers and citizens to start viewing reintegration through a lens of grace. The disjoint between political practice and this commonly-held belief in grace continues to be stark. If interpersonal interactions can be radically changed by grace, it seems that we can change institutional structures to reflect societal interactions, too.



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