

**ОБЩЕТЕОРЕТИЧЕСКИЕ И ИСТОРИЧЕСКИЕ
ПРОБЛЕМЫ ФОРМИРОВАНИЯ ПРАВОВОГО ГОСУДАРСТВА**

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RACE, ETHICS AND PUBLIC POLICY

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There is reform and there is revolution. The fragility of Black lives in white spaces is long overdue for both reformation and revolution within the criminal justice organizational model. It is with particular urgency that current litigation within the Department of Justice be examined as it is an example of latent responses of American government to societal fracture and potential policy reform. There is no more representation of the fragility of Black lives in white spaces than American prison systems and relative to this; sentencing policies that disproportionately affect Blacks. This paper is drawn from deontological ethics, holding that human rights are a moral obligation that should not be excluded in the formation of public policy or the application of justice. It is a further suggestion that within reforms are potentials for revolutions. Salient questions proposed by this research are there accommodation for healing within structurally racist systems. Is reform enough or is there cause for revolutionary actions? The Department of Justice has launched an investigation into an alarming string of deaths within the Mississippi Department of Corrections. This paper will examine potential public policy changes that may emerge from that investigation as well as societal responses. Additionally, this paper is drawn from deontological ethics, holding that human rights are a moral obligation that should not be excluded in the formation of public policy or the application of justice.

Key words: race; ethics; public policy; Black lives; American government; investigation; revolution.

Mass Incarceration in American Prisons and the advancement of Retributive Justice

As much as the term mass incarceration has become integrated into everyday lexicon, according to researchers it was first used by “specialists in the field of punishment and society to describe tremendous changes in the scale of

incarceration that began in the 1970s and became visible to readers of imprisonment charts by the middle 1980s” (Simon, 2014). These same specialists voiced a myriad of concerns as the numbers of incarcerated Americans soared, namely the identified issues and criticisms were centered around; racial disproportionately; high collateral costs to the communities of highest incarceration (Simon, 2014).

The framework of the American prison is centered on retributive justice; however within this centering are salient questions of equitable distribution of retributive justice and race. Questioning the intersections of race, justice and retribution are necessary as the United States is the world’s leader in punishment, boasting a 2.2 million prison population (Materni, 2013). Scholars have longed questioned is there justice in punishment? The answer was perhaps best answered by the late Supreme Court Justice Anthony Scalia, who remarked during Oral Argument for *Miller v. Alabama*, “Well, I thought that modern penology has abandoned that rehabilitation thing, and they – they no longer call prisons reformatories or – or whatever, and punishment is the – is the criterion now. Deserved punishment for crime” (Materni, 2013).

What is revealed in Scalia’s remarks is there is no space within retributive punishment for healing or reform; mostly certainly this lack of accommodation for healing is not made in policy considerations or legislative actions. What space is made available for humanity to receive full bodied justice? Better explained beyond retribution what is there that exists for individuals in the American prison system.

Prison is a micro society reflecting on a smaller scale, the society individuals have been subtracted from – within the space they now reside, they play out in smaller patterns the complexities of larger society complete with its push and pulls of humanity; never subtracted from the multifariousness of living is the need for justice. Therefore, it is reasonable to then ask if there is no reformation is this justice. Scholars have reasonably proposed salient questions of why should there be concerned of applications of justice for those who are incarcerated. The answers are embedded in who is the majority population within American prisons and the communities that are fractured as result of these imprisonments. At least one article finds weight in how individuals are sentenced, but does not engage in the discussion of how these contribute to inequitable distributions of justice and the advancement of retribution in the place of actual justice (Materni, 2013).

Death in Mississippi and Institutionalized Racism as Public Policy

The Department of Justice announced on February 5, 2020, that is investigating the conditions of four Mississippi Prisons. The investigation will examine conditions at the Mississippi State Penitentiary (Parchman), Southern Mississippi Correctional Institute, Central Mississippi Correctional Facility, and the Wilkinson County Correctional Facility. The State of Mississippi is responsible for

all four facilities. According to a DOJ statement, the decision was made to investigate whether the Mississippi Department of Corrections adequately protects prisoners from physical harm at the hands of other prisoners at the four prisons, as well as whether there is adequate suicide prevention, including adequate mental health care and appropriate use of isolation, at Parchman.

The human rights violations within the Mississippi Department of Corrections are not isolated and speak to broader implications of public policy and institutionalized racism. Department of Justice investigations are not reform or revolutionary, they are reactionary and a response to wrong doing. Institutional racism is described as a barrier to access, if applied to those individuals who are within the criminal justice organization model – it is a barrier to access to full-bodied justice, institutional racism is in service to disadvantage blacks in America. Mass incarceration and retribution has been the most effective tool of destabilization and devaluation of Black lives in America after slavery.

Institutionalized racism “It is a term encompassing the, often unintentional, barriers and selection/promotion procedures which serve to disadvantage members of ethnic minority groups”, (Ward, 2016) at least one definition is extended further to include indirect or institutional racism and asserts that institutionalized racism is “is virtually unrecognized by organizations but is an extremely contentious issue in the public sector” (Braham et al as cited in Ward, 2016). Retributive justice is in service to white American interests, as well as institutionalized racism – it matters not if the retribution is meted out in inequitable portions, one quite literally is in service to the other.

Racism is woven into the fabric of American life, its normalization would then be likely be present in public policy, it is quite literally impossible in any corner of America. Ward (2016) citing, Dominelli (2002, 157) writes, that it is “often the veiled presence of racism in everyday activities which coincides with the failure to make connections between the various incarnations of racism.” Extracting racism from public policy would require a revolution of societal norms. Public policy responds to the white majority in American culture and has traditionally marginalized Black people. Marginalization is oppression and violence. Research supports that oppression fragments the individual American experience (Dominelli, 2002) this fragmentation leaves individuals “without alternatives or incapable of taking action to change his or her situation” (Dominelli, 2002). Therefore, it is surmised this oppression and fragmentation works as an effective stratagem towards making Blacks physically and emotionally unavailable to active participants in the policy formation processes. When individuals come together in groups, they reverse this process (Dominelli, 2002). DOJ responses to injustice is not necessarily a reversal of injustice, or change in policy. Retributive justice remains intact even when under litigation – the policy is not unraveled, because it is the product of societal demand.

Policy analysis is purposely ignorant of race and inequality. Myers (2002) writes that issues of significance have escaped the policy analysis community and suggests, “The tools and techniques of modern policy analysis—particularly those that emphasize the tension between equity and efficiency—certainly ought to be of use in finding solutions to nagging problems confronting communities of color” (Myers, 2002). The root of the problem is white supremacy and imperialism operating within the educational discipline of policy analysts.

The Costs of Racism and Policy Formation

What is most perplexing about policy analysis, is there not a solid definition of policy. This is a direct hit to understanding how policy is then formed if it essentially escapes definition, it is open to constant defining by a myriad of individuals who will consistently find reason to not involve in the necessity of race to be included. “Economists who teach policy analysis often have a propensity to think of the subject as the application of quantitative or microeconomic tools to the investigation of public policy problems. Political scientists tend to have a broader view of what constitutes policy analysis” (Myers, 2002).

Myers writes that his students are disinterested in economic analysis of policy formation, rather they “are primarily interested in resolving perplexing social problems that arise from the involvement of public agencies, bureaucracies, and public decision making mechanisms and from the nature of the policy issue itself” (Myers, 2002). Myers writes that many quantitative skills are taught in policy analyst courses and there is a focus on efficiency, he asserts this efficiency criterion is often at odds with “alternative criteria that do and must enter into the political decision making process” (Myers, 2002). Myers further asserts there is an evident tension within the discipline; the strain exists between equity and cost-efficiency and the inherent trade-offs between the two (Myers, 2002).

Myers gives salient examples of policy trade-offs that have failed to benefit stakeholders who have not been considered by analysts because of the focus on efficiency, “Transportation policies that seek to impose congestion taxes on drivers inherently disadvantage those whose income is low or who must use public transportation (Myers, Chung, and Saunders, 2001; Myers and Saunders, 1996). Environmental policies that seek to reduce pollution often pit gainers in some industries against losers in other industries” (Myers, 2022).

It is not difficult to draw parallels between prison policies that are short on protections for human rights and further devalue Black lives, particularly when there is evidentiary support for a on focus cost-efficiency in the decision making process. There is no escaping an income analysis and the reality that even justice is an allocated resource in America, “Analysis of income-transfer policies typically confronts the tensions between efficiency and equity.⁴ Indeed, one could argue that the tension between equity and efficiency is characteristic of virtually every resource allocation dilemma confronted by modern policy

analysis” (Myers, 2022). Given that Black Americans are marginalized in every aspect of their lives and systematically denied resources that will increase their capacity to enjoy full participation in their American experiences; justice is yet another resource in which they receive in limited and adulterated portions.

Myers writes that microeconomic analysis is a strength in policy analysis as it provides an ability to make tensions and trade-offs explicit “in order to make policymaking and the advice to policymakers more effective and useful” (Myers, 2002).

Ethics, Race and Justice

A salient question relative to ethics is who bears the responsibility for justice? It is proposed that justice is an emotion, it is a cognitive process, however procedural justice an arguably fungible good within the criminal justice system; it has been exchanged at the expense of Black lives and humanity. This is the ethical crossroads of the DOJ investigation and Mississippi Department of Correction; litigation is neither reform nor revolution – it is reactionary and evidence of continued ethical failure of the criminal justice system to support the lives of Blacks.

Jonathan Wolff in his seminal work, *Ethics and Public Policy: A Philosophical Inquiry* (2011) aimed to show there is a definitive place within public policy for philosophy; more poignant is that Wolff presents an argument that philosophy can benefit from its interactions with public policy “Wolff argues that philosophical reasoning can contribute to the resolution of controversial public policy matters and that philosophers' interactions with the public policy world can improve how philosophy is done” (Vladman, 2013).

Sustaining his arguments Wolff provides evidentiary support by beginning each chapter of book with various interactions of public policy and philosophy; “There is a chapter on animal experimentation, gambling, drugs, safety, crime and punishment, health, disability, and the free market. Each chapter surveys the current state of philosophical debate, describes recent movements on the public policy front, and suggests ways that philosophical reasoning can make a contribution” (Vladman, 2013).

Little writes in *Ethics, Economics, and Politics; Principles of Public Policy* (2002) what is right is a necessary discussion, “People create and acquire rights as parts of the process of socialization. It is a convention that promises create both duties and rights.” If Little is correct, then America has broken a promise to Black Americans; all men are created equal according to the language within the United State Constitution. The treatment of Blacks within the criminal justice organizational model is a gross ethical abrasion and an egregious breach of contract. Any litigation by the DOJ is reactionary and not reformatory or revolutionary.

Little writes the state acquires duties and rights conventionally, and “that have 100 years many states have acquired a right to enact redistributive

taxation that has become part of the moral ethos that regulate society” The moral ethos of America reflect that of the ruling, dominant class – whites. This same group shapes public policy which advances the rule of the state – if the ethics of the state are utilitarian/consequential then it is a direct reflection of desires of society.

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РАСОВАЯ ПРИНАДЛЕЖНОСТЬ, ЭТИЧНОСТЬ И ГОСУДАРСТВЕННАЯ ПОЛИТИКА

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Существуют реформы, и существуют революции. Проблема уязвимости жизни чернокожих среди белокожих людей давно назрела в качестве основания и для реформирования и для революционной реорганизации системы уголовного правосудия. В кратчайшие сроки необходимо рассмотреть текущее судопроизводство в Министерстве юстиции, поскольку оно служит примером скрытых ответных мер американского правительства на раскол общества и потенциальные политические реформы. Нет более показательного примера уязвимости жизни чернокожих среди белых, чем в

американских тюремных и связанных с ними системах; непропорционально много приговоров выносится чернокожим. Эта статья основана на деонтологической этике, согласно которой права человека являются натуральным обязательством, которое нельзя исключать при формировании государственной политики или осуществлении правосудия. Также предполагается, что в рамках реформ существуют потенциальные возможности для революций. Актуальные вопросы, поднятые в этом исследовании, касаются условий для оздоровления ситуации в рамках систем, являющихся расистскими по своей структуре. Достаточно ли одних реформ или есть повод для революционных действий? Министерство юстиции начало расследование тревожной череды смертей в Департаменте исполнения наказаний штата Миссисипи. В данной работе будут рассмотрены потенциальные изменения государственной политики, а также реакция общества на них.

Ключевые слова: раса; этичность; государственная политика; жизни чернокожих; американское правительство; расследование; революция.

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PSYCHOLOGY OF INTEREST IN SOCIAL AND LEGAL RELATIONS

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The psychology of the category of interest has a multifaceted character, which is the semantic line of human life. At the same time, interest begins with individual's psychology, then there is a transition to interests in social and legal relations, and then the interest again turns into personal motivation, but already in a social environment. The main psychological feature of interest is its emotional component, without which the interest loses its subjective meaning. It is reflected in legal relations between the state and society. Purpose: to consider the concept and characteristics of interest in social and legal relations. Methods: empirical methods of comparison, description, interpretation; theoretical methods of formal and dialectical logic. Results: the author comes to the conclusion that the construction of a person's interest at the present time does not come from two