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Democracy, Prison, and Public Safety Realignment: Renewing Our Imagination

Kimberly Turner

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Democracy, Prison, and Public Safety Realignment: Renewing Our Imagination

Abstract

The American carceral condition has waged a 200-year-old struggle where the lives of the guilty, the innocent, and the victimized have taken center stage in a debate centered on rehabilitation, reformation, and revenge. The drama has undergone a number of revisions from great scholarly authors, multidisciplinary intellectuals, and literary muses. Despite a number of new renderings, the central themes of the American prison have remained constant, and just as there have been builders of prisons, there have been forces intent on their destruction. The current state of the American carceral condition has burgeoned since the neoliberal political and economic shift began in 1980. The State of California enjoys a political reputation as a socially liberal blue state, yet it is one of the national leaders in prison expansion, penal conservatism, and punitive excess. In 2011, California began the prison realignment system that includes sentencing restructuring and housing long-term felons in local county jails, thus shifting the financial burden and supervised release of inmates to local county Sheriff's offices. The realignment is but one layer of the state's response to the U.S. Supreme Court's decision that California prisons violated the Eighth Amendment, in part, to overcrowding. The system is too young to reach definitive conclusions, but is at a crossroads. Either realignment will serve as another model for prison reformation and possibly prison abolition, or it will extend the carceral reach of the state into "free" space, essentially eliminating the wall, both literally and figuratively, that separates free souls from those held captive.

Keywords

democracy, prison, public safety

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The American carceral condition has waged a 200-year-old struggle where the lives of the guilty, the innocent, and the victimized have taken center stage in a debate centered on rehabilitation, reformation, and revenge. The drama has undergone a number of revisions from great scholarly authors, multidisciplinary intellectuals, and literary muses. Despite a number of new renderings, the central themes of the American prison have remained constant, and just as there have been builders of prisons, there have been forces intent on their destruction. The current state of the American carceral condition has burgeoned since the neoliberal political and economic shift began in 1980. The State of California enjoys a political reputation as a socially liberal blue state, yet it is one of the national leaders in prison expansion, penal conservatism, and punitive excess. In 2011, California began the prison realignment system that includes sentencing restructuring and housing long-term felons in local county jails, thus shifting the financial burden and supervised release of inmates to local county Sheriff's offices. The realignment is but one layer of the state's response to the U.S. Supreme Court's decision that California prisons violated the Eighth Amendment, in part, to overcrowding. The system is too young to reach definitive

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Introduction

While there is a lower class, I am in it, while there is a criminal element, I am of it, and while there is a soul in prison, I am not free.

-Eugene Debs

To begin the complex conversation of incarceration in America, one must start by studying the foundation, as well as subsequent models of the American prison system, which include the Eastern State Penitentiary of Pennsylvania and the Auburn Penitentiary of New York. This essay will address the intellectual and philosophical reasoning for the establishment of these particular prisons, the systems which they produced, and the lingering legacy of reformation associated with them, including California’s prison realignment system.

Commencing with the evolution of Enlightenment, intellectuals such as Benjamin Rush proposed to move the spectacle of public punishment vis-à-vis torture out of the eye of the public domain while, at the same time, not removing its effect on the consciousness of those outside the prison walls (Davis, 2003). By moving the publicly punished prisoner to a controlled and confined space, the reality of punishment went from the street to the hidden imagination of the public. The thought at the time was that the imagination would not unduly harm the capacity of sympathy for the prisoner and that,

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therefore, the free spectator could maintain emotional availability and compassion for the captive, as moving the prisoner to a restricted space was considered a humanitarian gesture (C. Smith, 2009). The idea of hidden punishment was brought to fruition with the establishment of Pennsylvania's Eastern State Penitentiary.

John Haviland, an English architect, was commissioned to design Eastern State. Erected in 1829, Eastern State was an amalgamation of a complex concrete pin-wheel design with modern progressive features, making it the most expensive public building at the time ("History of Eastern," 2013). The architectural style was deliberate and shaped to seduce the imagination of the public with a gothic, dungeon-like façade. While the penitentiary fascia was a purposeful reminder of the terror one may face in the gothic dungeon of the prison, other prevalent features were created to enhance the humanity of the prisoner, which included the physical formation of solitary cells. Each cell was meant to hold one prisoner, and each cell interior was replete with a skylight, a bible, running water, heat, and a toilet ("History of Eastern," 2013). The Eastern State prison building, therefore, was meant to both menace criminals as well as revel in the glory of treating prisoners with humanity and a sense of enlightenment through the practice of solitary confinement (P. S. Smith, 2006). It was believed that solitary confinement would allow the prisoner the opportunity to seek reflection and repentance.

The Christian persuasion of seeking repentance through isolation and being one with God served as the foundation of solitary confinement (Schmid, 2003). Legally, a prisoner is divested of civil liberties and, in essence, considered civilly dead once placed in prison. Therefore, the civil death of the prisoner

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was viewed by many as analogous to the spiritual death of a sinner before he or she is reborn in Christ. The convict's rebirth as a citizen and redeemed member of the human community could only be made possible by the violence of servitude and solitude (C. Smith, 2009). The reformation concept of solitude, coupled with the intriguing design of Eastern State, garnered much public attention, including intellectuals and scholars ("History of Eastern," 2013). One such intellectual was de Tocqueville (2004), who visited the site and later wrote in *Democracy in America* that the imprisoned body is a spiritual figure yearning for redemption and repentance. C. Smith (2009) explains that while the prisoner condemned to civil death and subjected to absolute isolation from the social world takes the shape of his or her confinement, in the imagination of reformers, the prisoner comes to appear as a cellular soul. This concept of the cellular soul is what propelled the institutions of Auburn and Eastern State Penitentiaries, and became the foundational platform of reformation (C. Smith, 2009).

As the requisite models of reformatory captivity, both Auburn and Eastern State were positioned as international role models for humanitarian methods of incarceration. However, they were not without their detractors. Most famously, Charles Dickens visited Eastern State in the early 1840s, and in his critique of solitary confinement, compared the prisoners to ghostly images of prison reform, whose mental anguish in suffering alone was far greater than any lashes upon the body (C. Smith, 2009). The prison was the surprising subject of literary references from those such as Thoreau, Hawthorne, Poe, Faulkner, Emerson, Douglas, and, of course, Dickens (C. Smith, 2009). The argument may be made that, through the imagination of the writer, the public not only vicariously and willfully

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participated in the journey of reformation but also, perhaps more importantly, consented and condoned the construct of prison as the accepted form of punishment. Prison and reformation are inexorably linked and, therefore, are equal partners in the American carceral condition.

Prison Reform and Democracy

The prison is considered so “natural” that it is extremely hard to imagine life without it.

—Angela Davis

The modern American prison as we have grown to know it was initially a reformation movement in response to the violence and inhumanity of public punishment. As the post-revolutionary prisons moved punishment behind walls, a different voice of reform began to speak about the horrors of isolation. As C. Smith (2009) explains, solitary confinement was a reflection of the moral code, a means by which a prisoner’s captive but damaged soul would have the opportunity to seek and embrace repentance, and restore itself to civility. However, critics, such as Charles Dickens, wrote about the tortuous soul suffering that occurred in solitude and were very critical of the Eastern State practice of solitary confinement (C. Smith, 2009).

If solitary confinement, the grandfather of the Super-Maximum (supermax) prison, was controversial in the 1840s, how did it become so unavoidable and essential to the penitentiary and modern carceral condition today? The first and obvious answer is the belief that solitary confinement would help manage prison population (P. S. Smith, 2006). As a method of oppression reinforced with physical violence, solitary confinement reiterated the concept that the solitary cell was the tangible sign of civil death. While prisoners held in solitary

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confinement were no longer alive in society, and no longer possessing of any rights of citizenship, the morphed Christian principles of isolation and solitude could still carry any prisoner from the darkness of living death to the light of rebirth and, ultimately allow for the complete indoctrination of the prisoner's mind. Solitary confinement, therefore, became standard practice because prison reformists believed that prisoners could liberate their souls through the process and experience true reformation. Thus, prisoners could successfully be reintegrated into society (Schmid, 2003).

There have been other forms of reformation ideology, however. Perhaps the most aggressive and progressive stance has been Davis's (2003) challenge in *Are Prisons Obsolete?* In this work, she posits that if we are truly interested in justice, liberty, and freedom, then surely we must be interested not in prison reform, but in prison abolition. Davis proposes that we need to re-conceptualize our idea of the role the prison plays within a democratic state, particularly within the relationship of race and those historically marginalized in a capitalist economy. If we do this, Davis argues that our concept of prison will be forever changed because we will imagine and create alternative schemes and institutions to address the collective and sociopolitical landscapes of our society. The framework for prison revolution and, ultimately, prison abolition cannot be a replication under a different name, but must be a true justice system that is focused on restitution and reconciliation (Davis, 2003, p. 107). Only through this new framework based on true justice can we effectively resolve the problems that are currently embedded in our modern incarceration system, including issues of race and repression.

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The context of race, marginalization, and incarceration is an intricately woven pattern of dehumanization, repression, and civil death. The only two instances in our democratic rules of law where a person is legally considered civilly dead are under the conditions of slavery and imprisonment. The civil death of felony has replaced the social death of chattel slavery (C. Smith, 2009). The parallels regarding the spectacles of control—convicts and slaves, prisons and plantations—reinforce the rhetoric of racialized subjectivities of whiteness and blackness. As Wacquant (2009) clarifies in *Punishing the Poor*, institutions such as slavery and the penitentiary are mechanisms of symbolic production, where the lines of social distinction are drawn.

The white prisoner, through the solitude of confinement, is provided with a vehicle of repentance and the restoration of the soul. The black prisoner, on the other hand, has simply changed hands from the slave master to the state, which has now taken on the symbolic responsibilities of the slave master and extols punishment previously uncensored by the white master. By moving the violence of punishment, the violence associated with nonconformity, and the violence of solitude behind the dark gothic doors of imprisonment, the criminal justice system has, in essence, replaced the structure of slavery (Lichtenstein, 1996) — a structure devoid of humanity and civil liberties.

The American democratic concept guarantees civil liberties via the Constitution. Yet, at the same time, the subjects held captive by the American carceral condition are denied the very liberties that allow one to be civilly alive within the democratic state. The two concepts are contradictory and thus beg the question: how can we, as participants in a free society, cosign on the existence of prisons and overwhelmingly endorse the punitive turn? It is as if our collective imagination has embraced

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the concept that prisoners are subordinate to the state and that they benefit from the violence of incarceration (Melossi & Pavarini, 1981).

The concept that prisoners benefit from the violence of incarceration may help explain the acceptance of a more antagonistic stance toward penal sentencing and prison conditions that began with the advent of the supermax prison, where punishments turned more restrictive and retributive. Supermax prisons, designed with guard safety in mind, house prisoners in solitary cells for 23 hours a day (Pizarro & Stenius, 2004). Gone are the days when prisons were designed to enhance the humanity of the prisoner and solitary confinement was viewed as an opportunity for the prisoner to seek reflection and repentance. Furthermore, supermax prisons are designed to ensure that the violence of solitude, of the cellular soul, occurs outside of the public view, and, as a result, we have become immune to the harming effects of the carceral condition.

Reform has taken shape in literary descriptive journals documenting the failure of solitary confinement, the torture of inmates behind gothic corridors, and the dungeon-like prison cells (Patterson, 2013; Foucault, 1977; Schmid, 2003; P. S. Smith, 2006). While the poor treatment and living conditions of prisoners have led to riots and protests, the most famous being the Attica Prison riot of 1971, recent prison reform policies in California were not driven by inmate rebellion or even grassroots campaigns (Totenberg, 2011). Reform has occurred because of a few individual lawsuits and an American Civil Liberties Union (ACLU) lawsuit that called into question the mental health care provided within prison facilities. Calls for reform, therefore, have largely come from the inside—from those who have direct or indirect access to prison facilities and who have witnessed its

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harming effects (Patterson, 2013). By locking prisoners away and out of public view, supermax prisons have effectively kept the public in the dark regarding what prisons are really like and the kind of violent treatment inmates face on a daily basis.

The public imagination of captivity has been painted in broad strokes by those not directly affected by the violence of incarceration. Our mindset is polarized by political speak and entertainment media, and, therefore, the impetus for reformation does not have a foothold for grassroots support (Matthews, 2013; Ito, 2011; Novek, 2009). The economic downturn that began in 2008 may be the singular reason why the State of California put forth a plan of reformation. While the state has been under court order to create change since 1995, it was only after the tremendous economic post-recession losses that an actual concrete plan was put into effect (State of California, 2013). The plan put forth is the Public Safety Realignment Plan, more appropriately thought of as the prison realignment system. This plan may be an important step in the dismantling of prisons in the State of California and the first realistic opportunity for us to imagine a prison without prisoners.

Prison Realignment

The State of California is the poster child for 21st-century reformation. In 2011, the U.S. Supreme Court ruled in a 5-to-4 vote that severe overcrowding in state prisons resulted in extreme suffering and even death, which is a deprivation of the inmates' constitutional rights (Totenberg, 2011). The high court's decision was the final act of a 16-year legal battle between the state and various civil liberties organizations and individuals that sued over the prisons' conditions, specifically related to prison overcrowding and a lack of mental and physical

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health care services for inmates (Caffiero, 2013; Megerian, 2013). Justice Kennedy wrote that California's prison system is "incompatible with the concept of human dignity and has no place in a civilized society" (Totenberg, 2011, p. 1). Furthermore, the overcrowded conditions violated the Eighth Amendment as related to cruel and unusual punishment, and the courts "must not shrink from their constitutional obligation to 'enforce the rights of all persons, including prisoners'" (Totenberg, 2011, p. 1).

California Governor Jerry Brown instituted prison realignment, in part, to shore the state's financial burden for penitentiaries and also to address overcrowding by sending inmates to local county jails for housing. The thinking behind this move was that county jails could house prisoners cheaply and the burden of overcrowding could then shift from the state level to the local level (State of California, 2013). In 2011, Assembly Bill 109, the Public Safety Realignment Act, was passed by state legislators. While the law does not shift existing state prisoners to local county jails, it does attempt to address the issue judicially at the time of sentencing. Those individuals sentenced to non-serious, non-violent, or non-sex offenses, also known as "triple-non," will serve their sentences in county jails instead of state prisons (State of California, 2013).

Triple-non inmates have changed the landscape of the local carceral state. In 2012, approximately 25,000 inmates were sentenced to local county jails in lieu of state prison (State of California, 2013). As a result, local jails are facing overcrowded conditions. Despite not having an infrastructure designed to house inmates for longer than one year, local jails are now required to house inmates who, depending on their conviction, may serve up to three years (Fox, 2013). The additional strain on

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the local communities is the virtual dismantling and elimination of parole officers. Prisoners released from state prison after October 01, 2011 are now being supervised locally by the probation department, a task historically relegated to the parole office (State of California, 2013).

Carceral Complex Expansion

The local probation departments in each of the 58 counties in the state of California have been tasked with the post-release supervision of all triple-non inmates. While the implementation of prison realignment has affected all counties in California, I was provided the unique opportunity to conduct a short interview with a Supervising Probation Officer of San Bernardino County (Scarano, personal communication, 2013). Of note, San Bernardino is the largest county in the contiguous U.S., with jurisdictional boundaries that exceed 20,000 miles and border the two states of Arizona and Nevada. The county also has the third largest population of parolees in the country, at nearly 10,000 (Muckenfuss, 2011). The themes of the interview are incorporated within the context of this chapter.

Of interest was how realignment has affected the mission and goals of the probation department, which traditionally has focused on prevention, intervention, and suppression services. While the probation department adheres to their traditional values and core services of prevention, intervention, and suppression, it is also tasked with the additional responsibility of providing supplemental amenities throughout the county. One example is the Day Reporting Center (DRC), which was developed for the purpose of providing several services at one location in order to benefit the probationer. Services provided include behavioral health, substance abuse, and job placement

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needs. There are two DRCs located within the San Bernardino County jurisdiction. The eastern-most DRC, located in the county seat, has partnered with California State University at San Bernardino, making it the larger of the two centers (Muckenfuss, 2011). Providing services in a “one-stop shop” is an interesting departure and a more aggressive approach toward eliminating recidivism (Scarano, personal communication, 2013).

The Realignment Act has brought with it new and added responsibilities for post-release supervision for the San Bernardino County Probation Department, including case management and community supervision services that required the hiring of over 100 new probation officers. Notably, realignment has propelled the probation department toward a law enforcement structure. This is a dramatic and distinct shift in philosophy because it moves the department from a service provider mentality to an enforcement agency that strengthens and lengthens the social control mechanisms in place within communities. These mechanisms have been traditionally under the auspices of the police and parole departments, never probation. With probation always excluded from enforcement, probation officers never needed to wear uniforms or carry weapons. In fact, it was often difficult to discern a probation officer from his or her client (Scarano, personal communication, 2013).

Realignment has also fostered a significant paradigm shift in the idea and application of penology. Probation officers are now armed and wear paramilitary uniforms. Newly formed apprehension teams are paired with local police agencies for the purposes of conducting “probation sweeps.” Additional layers of control, such as criminal intelligence and canine units, as well as

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supplementary resources that were not available before the implementation of realignment, reinforce and retrench state control and the infiltration of traditionally marginalized communities, shrinking our free space and helping to create a society with a permanent underclass and a culture of suspicion and fear.

It has yet to be determined if those on supervised release have caused an increase in local crime, but the perception that they do is a viable argument from both the community's and the probation department's perspective. Moreover, the economic downturn the county has experienced since 2008 has severely impacted local cities and governments. The housing market in the Inland Empire had the second greatest number of foreclosures in the nation, only behind the Central Valley in Northern California (Kolko, 2008). Moreover, a shortage of employment opportunities, coupled with the fact that many of those on supervised release are no longer employable, creates a microcosm within which are those who are politically disenfranchised and economically nonviable. Their existence creates a politically divided society where some argue that those on supervised release provide the force necessary for physical labor and others claim that they are a burden on government services. It is as if the neoliberal political philosophy of the past three decades has turned on itself and splintered the conservative argument that less government is more. Meaning, the economy of labor in a capitalist environment is dependent on a sustainable labor force, but the punitive measures associated with the neoliberal agenda in relation to crime and punishment excludes those bodies from the work force. Specifically, the additional penalizing policies, such as drug tests, voting rights restrictions, certain exclusions from holding public office and obtaining

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professional licensure, and restrictions on where and with whom one may live, all add to permanently marginalizing those on supervised release and maintaining them as a subordinate underclass (McGreevey, 2012; McCarty, Aussenberg, Falk, & Carpenter, 2013; Davis, 2003). They are in a “punitive purgatory,” if you will—a space between civil life and death.

Punitive Purgatory—the Space between Civil Life and Death

The relationship between carceral civil death and the concept of the cellular soul that was central to the conceptualization of Auburn and Eastern State Penitentiaries has transcended and morphed into a present punitive purgatory for those no longer physically locked behind the cast iron bars of prison. Those released from prison find themselves locked behind the soft walls of restriction in a semi-free space cloaked as reformation. The repentant and rehabilitated probationer realistically may never again achieve civil wholeness by the mere absence of the ability to vote, a constitutional right that is forfeit upon a felony conviction (Allen, 2003). Voting is considered such a foundational civil liberty that five constitutional amendments, the 15th, 19th, 23rd, 24th, and 26th, address it. Moreover, as Alexander (2012) explains in *The New Jim Crow*, the exclusion from the civil liberty of voting is an extension of Jim Crow. While pundits of the criminal justice system have relabeled and reclassified exclusionary racist behavior with new language coding of “criminal” and “probationer,” the end results are the same—the same segment of the “free” population is prohibited from being completely, civilly free.

The state of punitive purgatory is also consistent with the argument that Melossi and Pavarini (1981) present in *The Prison and the Factory*—that the solitude the inmate experiences in prison transforms the individual into someone who has accepted

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a state of subordination just as the exclusion from the free economy snares the probationer into a forced state of subordination. The subject accepts probation as a favorable alternative, but is, in reality, being held under figurative lock and key. Without the opportunity to be restored and completely, civilly free, probationers embrace this in-between state, or punitive purgatory, bestowed upon them by their political captors as the best possible option available.

The same black and brown bodies that filled urban centers and provided a skilled labor force necessary to forge the capitalist industrial marketplace (Rusche & Kirchheimer, 1939) are the same black and brown bodies that now live in punitive purgatory as former members of the prison-industrial complex. Gone are the textile industries that once provided a livable wage for deskilled wage laborers. Today, these deskilled wage laborers—in this case, probationers—only experience increased marginalization (Wacquant, 2009). The redistribution of wealth experienced during the last 30 years of neoliberal, socioeconomic policies has coincided with the punitive turn and expansion of the prison-industrial complex (Alexander, 2012; West, 2005). The concrete walls of prison, pregnant and swollen from the sudden growth of inmates, are now billowing into local county jails. Each county has a distinct and defined choice: abort the expansion of the carceral state or give birth to new, viable social programs that address the needs of the populace it serves.

It appears that the San Bernardino County Probation Department is paving two coexisting roads: one where DRCs are answering the needs of probationers and the other where the sphere of the law enforcement community is being extended. Will prison realignment facilitate true reformation and expedite the emptying of prisons or will realignment serve to deepen and

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further entrench the power and control of the state into local communities that were previously immune to the exacting authoritative hand of policing?

Regardless of what becomes of prison realignment, the current path chosen by the county is that the probationers living within the carceral condition do so in-between civil life and death, without having the ability to fully restore their civil liberties. It is a rendering of the world described by C. Smith (2009) in *The Prison and the American Imagination*, where the carceral gothic mediates not only between the free self and the captive other, but also between antebellum America's two great figures of captivity—the prisoner and the slave. In this instance, the prisoner lives in a semi-state of freedom, but does not benefit from labor because economic and political conditions exclude him from the economy of labor. I would argue that the soul, in this condition, cannot be free and remains inextricably linked with the captive other despite the obvious removal of bars, concrete, and gothic exteriors. Just as C. Smith (2009) explains that the connection between prisoner and slave is not one of humanity, but of a reckoning with the “imprisoned other” that disturbs the very foundation of humanity, so is the added third state of purgatory—punitive purgatory.

The physical and literal wall of prison is the distinction between a captive space and a free space. That line of distinction is provisional and unstable, constantly changing shape and becoming so blurred that even those who are “free” are, at times, held in “captive” space. The lengthening of the carceral reach expressed as social control has permeated the layer of free space by exponentially increasing the number of control agents, represented as armed probation officers, into our neighborhoods and other formerly free spaces.

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Conclusion

“Martin Luther King, Jr., didn’t want to create a Christian nation. He used his Christian beliefs to create a just nation”.

- Michael Eric Dyson

The crossroads at which we find ourselves may represent the most important choice since the neoliberal shift after the 1980 election of Ronald Regan. The punitive turn, part and parcel with the dynamics associated with the economy of labor, has led us to a literal fork in the road. In the tradition of Emerson and Melville (West, 2005), we must exercise our democratic truth and either choose to realize that a just democratic society would rationally discern the difference between proper rehabilitation and violence, subjection, and oppression, or continue down the path that has led us to sensationalize the violence and exploitation of prison through different forms of narrative and media, thus leaving us numb to the argument of justice.

Solitary confinement, once legitimately thought by Christian reformers to be the most appropriate path to soulful restoration, has, in modern practice, exhibited a form of torture and dehumanization. As Patterson (2013, p. 11) articulates in *Criminal Injustice*, “no one was ever punished into a change of heart.”

Perhaps the anesthesia will begin to wear off on those still blind to the violence of incarceration and punitive excess when they come face-to-face with external enforcement measures, manifested as armed probation officers, in previously free spaces. The failure of prison is our collective failure, and now the rebirth and regeneration of our social condition has been left only to our imagination. Democracy is not just a noun; it is a verb, a call to action against oppressiveness and a moral truth telling in our collective culture. Only by reimagining, redefining,

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and reinstituting the organic form of agape within our individual humanity can we begin to reconstruct our world and metamorphose the carceral condition.

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Kimberly Turner was born and raised in Los Angeles. She has dedicated the past quarter century of her life to public service as a law enforcement professional. She holds a bachelor's degree in Communications from Loyola Marymount University, and an MPA from the University of Southern California, and expects to complete her master's degree in Justice Studies from San Jose State University in 2014. Kim combines practical work experience and advanced education to create paradigm shifts in local policing customer service and training models. Her master's thesis focuses on the effects of stress on 9-1-1 dispatchers. Later this fall, she will embark on a research project incorporating all 454 public safety answering points in the State of California.

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