

## **“Amending Legal Flaws: The Thirteenth Amendment and Mass Incarceration.”**

### TALKING POINTS

#### SLIDE 1

“Unjust Law is no law at all.” Our conversation today begins with this wisdom by Augustine of Hippo, a theologian of the Early Church, born in Algeria region on the Africa continent.

Then Roman 4:15 picks up the strand: ...“For the Law brings about wrath, but where there is no law, there also is no violation.” These are stunning words since, in today’s political area, some appear to be above the law. Does the 13<sup>th</sup> Amendment reflect ‘unjust law’ by its ‘except as punishment for crime...’

#### SLIDE 2

Has the 13<sup>th</sup> Amendment language generated the calamity called mass incarceration?

#### SLIDE 3

Welcome! To this discussion on “Amending Legal Flaws: The Thirteenth Amendment and Mass Incarceration.” The topic of today’s workshop focuses on the carceral policy aspect of the 13<sup>th</sup> Amendment purported to have abolished slavery in the United States. Except. Except... Except it did not. Slavery has long continued past the December 6, 1865 ratification date, the effects of its disparate impact as a powerful carceral policy growing in intensity over the 150 years of its enactment---so that today, the United States has skyrocketed to number 1 position among the nations of the world in incarcerating its people.

#### SLIDE 4

In what fashion does the 13<sup>th</sup> Amendment redefine slavery and re-create systemic racial injustice? By converting slavery by private owners to slavery by public owners. It re-established slavery by public owners.

#### SLIDE 5

What is procedural justice? Is it observable? Does procedural justice compose and comprise Common Good? What carceral policy underlies this scene? Who is highly likely to be included in the ‘safe’

category of American ethnic groups? Who is less likely to be excluded? Does this scene provide the language of inclusion?

SLIDE 6

**Justice implies** a behavior or treatment: a concern for peace, and genuine respect for people.

**Procedural justice** is the idea of fairness in the processes that resolve disputes and allocate resources.

SLIDE 7

As research shows, slavery as chattel bought and sold, held by **private owners**, was abolished by the language of the 13<sup>th</sup> Amendment to the Constitution.

SLIDE 8

This illustration, showing on the screen, gives in one comprehensive glance the scope and content of what is widely called The Prison Industrial Complex. At the center, you can see that all roads to one destination: Prison. Called Jails and Detention centers by other names. Within the green inner circle are phenomena that can be considered the 'big boys' of the industry: Corporate welfare; Big industry and corporations; Urban Developers; Big Agri-Business. Bordering the inner circle are the primary influences driving the growth of the system: Private Prisons for-profit; Law enforcement; Prison Guard Unions; Prison Construction Companies; the secondary influences sustaining the complex including Politicians (tough on crime); Courts; Investment Banks; Prosecuting Attorneys and DA's; and all the adverse outlying Results of Inequality: Exclusion; Surveillance; Homelessness; Racial Profiling and all the malaises of society heaped upon the poor and people of color. This schema is among your handouts so that you may study it yourself.

SLIDE 9

Who is entitled to PROCEDURAL JUSTICE? To legal representation? The child, George Stinney, Jr. was **electrocuted under color of law in year 1944 at age 14 and weighing 90 lbs., this underage citizen was acquitted in 2014 of murder 70 years later.**

SLIDE 10

Briggs v. Elliott. What is the history of imprisonment? The top priority of The Episcopal Church is expressed in General Convention RESOLUTION #C019 on Systemic Racial Injustice. What response will the work of The Organization on Procedural create?

SLIDE 11

Is it possible to effect systemic change? To repeal unjust law? To enact justice?

SLIDE 12

The Episcopal Church RESOLUTION #C005 ON GUN VIOLENCE AND RESOLUTION C019 look to Emanuel African Methodist Episcopal Church shootings as work for equality in a new era of RACIAL INJUSTICE HISTORY.

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### SLIDE 13

Prison-like environments in schools. The “duly convicted” the language of the 13<sup>th</sup> Amendment means that persons accused of crime must be brought before a judge. Judges have sentenced children to **extended stays** in juvenile detention for offenses as minimal as **mocking a school principal** on MySpace, **trespassing** in a vacant building, and **shoplifting DVDs from Wal-Mart**, says a February 24, 2009 CNN article titled “Pennsylvania rocked by 'jailing kids for cash' scandal.” **Two judges sentencing over 5,000 children** secretly received more than **\$2.6 million in prison industry kickbacks**. The system increases the number of inmates in **privately-owned** for-profit **detention centers**. Moreover, sentencing kids award monetary **kickbacks** to some judges in return for **imposing harsh sentences on juveniles brought before their courts**. Minors charged with nonviolent crimes were often given harsher sentences than what probation officers recommended, court documents say. Other investigators say the trials lasted a few minutes at most. Few kids have legal representation. There are no school-based legal offices although there are school-based arrests by police stationed in schools.

### SLIDE 14

Does the application of criminal law in schools provide safety for children? **Do school suspensions feed incarceration systems?** Here the percentage of students suspended for at least one day during 2009, shown by race and school district. Chicago public schools suspension rate for black students is higher than the statewide percentage in Illinois.

**Pertaining to RESOLUTION #D067 FOR-PROFIT PRISONS AND #D068 SCHOOL TO PRISON PIPELINE, can the establishment of school-based legal services stem the flow of imprisonment pipelines?**

### SLIDE 15

And in the arena of higher education...

The Shanker Institute research report by The Schott Foundation for Public Education September 23, 2015 titled *The State of Teacher Diversity in American Education*, brings attention to a major problem in education: While the percentage of students of color has been rising, the number of teachers of color has failed to keep up. For black educators, the situation is even worse. Over the past decade, the number of black educators has declined in all the cities surveyed in this study. In some places, like New Orleans and Washington, D.C., that drop has been huge. Greater teacher DIVERSITY IS CRITICAL: Teachers of color tend to have higher expectations for students of color, serve as important role models, expose students to a larger variety of cultural and racial groups, and help to establish stronger communities of color as well, says the Shanker report, which calls such diversity “valuable to student success.” Students of color currently make up over half of students in **public** education.

### SLIDE 16

What is the history of INJUSTICE as defined by the Constitution’s Comprise of 1787 that counted non-citizen slaves as 3/5<sup>th</sup> of a ‘whole’ person, a vote gerrymandering policy and practice that augmented the Southern plantation owners’ representation in the Congress? Today, what gerrymandering challenges do the people yet face? What are the economics of safety? The sociology? The Patterns and

Practices? Who is considered to be 'above the law'? And according to the featured stories of NBC, ABC, and CBS nightly newscasts, on whose bodies is "excessive force" usually applied?

#### SLIDE 17

Who, then, who are **the duly convicted**? And relating to the School to Prison Pipeline, what are the re-enslavement processes and practices of law? If you look closely, the script indicates that there exists a socio-political and economic strategy to marginalize and oppress youth for the goal incarceration. Here depicted on this screen are the methodological practices that continually assault the psyches of young students of color via **the Five (5) S's**: The students are **1) Stigmatized** by race and history. **2) Segregated** from access to quality education. **3) Silenced** by No Child Left Behind standardized testing of non-standardized teaching and learning. **4) Suppressed** by prison-like in-school law enforcement criminalizing management practices that handcuff kindergartners for throwing a tantrum. **5) Sentenced**. Students of color face harsher punishments in school than their white peers, leading to a higher number of youth of color incarcerated. Black and Hispanic students represent more than 70 percent of those involved in school-related arrests or referrals to law enforcement. Currently, African Americans make up two-fifths of incarcerated youth.

E. Ann Carson, Ph.D., "*Prisoners in 2014*", BJS Statistician, September 17, 2015 NCJ 248955, presents final counts of prisoners under the jurisdiction of state and federal correctional authorities as of December 31, 2014, collected by the National Prisoner Statistics program. This report includes the number of prison admissions, releases, noncitizen inmates, and inmates age 17 or younger in the custody of state or federal prisons. It presents prison capacity for each state and the Federal Bureau of Prisons (BOP), examines the use of private prisons by state and the BOP from 1999 to 2014, and describes the offense and demographic characteristics of yearend federal and state prison populations. The report also includes year end counts for territorial and military correctional populations.

#### SLIDE 18

What are the challenges of race and law do the people yet face? The first notification comes from a statement by author Herbert Aptheker: "Oppression exists because the dominant rulers of society find it highly profitable." Remember this saying. And then re-read the wording of the 13<sup>th</sup> Amendment abolishing slavery that says: "Neither slavery nor involuntary servitude, except as a punishment for crime **whereof the party shall have been duly convicted**, shall exist within the United States..."

#### SLIDE 19

What I learned from my stint as an executive managing the State's EEO and Minority Business Enterprise Programs was that all policy originates in the language the law: the Constitution of the United States; the Ohio Constitution; the Ohio Revised Codes and the Administrative codes. It is the from these governing sources that the authority to create the program implementation patterns and practices, and formulate the structures supportive of the enforcement power essential to accomplishment of the mission goals inherent to the language of the law. The phrase "except as punishment for crime whereof the party shall have been duly convicted..." has created 2016 Prison Industrial Complex. Google the Ohio State Constitution's language...OR read the HANDOUT ON THE OHIO LEGISLATIVE BLACK CAUCUS.

SLIDE 20

Slavery has never ended: some form of the 'exception' appearing in the Constitutions of 24 states.

SLIDE 21

While the old saying notes that crime doesn't pay, that doesn't hold true for America's system of incarceration, which has seen spending more than triple since 1980. That means each U.S. resident is paying about \$260 per year on corrections, up from \$77 per person in 1980, thanks to the country's annual \$80 billion price tag for incarceration, according to a report from The Hamilton Project think tank of The Brookings Institution.

SLIDE 22

The Prison Industrial Complex is indeed a self-fulfilling enterprise, fed by lobbyists pressuring politicians to pass more and more punitive laws for authorizing court convictions for growing lists of crime topics which sentence more people to prison for longer terms which engender the building of more prisons.

SLIDE 23

The states in pink contract with Private Prison companies. Ohio is among them. Private prison companies are in the business to make money, policies that maintain or increase incarceration boost their revenues and their business model rests on incarceration. The more individuals locked up, the more shareholders profit. Increases in private prison earnings and stock prices invigorate **America's incarceration boom** via laws that **criminalize longer lists of citizen conduct** and **require that those convicted serve longer sentences**. Private prisons own contracts requiring a guaranteed occupancy rate for its prisons which in turn encourage tough law enforcement and longer-sentencing policies that deter reform. Google **Corrections Corporation of America (CCA)** of Ohio.

SLIDE 24

At least 37 states have legalized the contracting of prison labor by private corporations that mount their operations inside state prisons. The list of such companies contains the cream of U.S. corporate society.

SLIDE 25

Profiteering and punishment go hand in hand.

SLIDE 26

Since *Terry v. Ohio* 392 U.S. 1 (1968), Supreme Court decision, stop-and-frisk racial profiling has become the tactic of choice used by police departments against African-Americans suspected of crime. Even though the Supreme Court recognized more than 45 years that a frisk is a "frightening, and ...humiliating experience," the practice continues. *Terry v. Ohio* decision held that the Fourth Amendment prohibition on unreasonable searches and seizures is not violated when a police officer stops a suspect on the street and frisks that person without probable cause to, if the police officer has a reasonable suspicion or hunch that the person has committed, is committing, or is about to commit a crime and has a reasonable belief that the person "may be armed and presently dangerous."

SLIDE 27

I have spent more than half of my life's career in education. These statistics are unconscionable. 68% of all males in state and federal prison do not have a high school education. 70% of inmates in California state prison are former foster care youth. 25% of young people leaving foster care will be incarcerated within a few years after turning 18. Is it true that foster care kids are turned out on the street at age 18?

70% of students involved in "in school" arrests or referred to law enforcement are Black or Latino. Black students are 3 and a half times more likely to be suspended than whites. Black and Latino students are twice as likely to not graduate from high school. 40% of students expelled are black. Shall we stand idly by?

SLIDE 28

Northwest Territory language uses "otherwise". SEE HANDOUT ON THE OHIO BLACK LEGISLATIVE CAUCUS PUSH TO EXPUNGE THE INVOLUNTARY SERVITUDE LANGUAGE from the Ohio Constitution.

SLIDE 29

The work of justice never ceases. It passes on to future generations. At the NAACP website I read the history of Charles Hamilton Houston and his protégé Thurgood Marshall, of how they developed a strategy and implemented a battle plan against "separate but equal" doctrine established in 1896 by the U.S. Supreme Court concerning Plessy v. Ferguson case. What in our generation will we do to increase the levels of justice outcomes for future generations? Shall we stand idly by?

SLIDE 30

The answer is no. Moral Voice will not stand idly by. The mission goal of The Organization on Procedural Justice (OPJ), is to amend the legal flaws of the 13th Amendment language authorizing prisoners as 'slaves of the state'

SLIDE 31

The 'duly convicted' requirement of the Thirteenth Amendment 'except as punishment for crime' of the U.S. Constitution is the fundamental authorization for the legal incarceration of the massive 2.2 million men, women, and children behind bars today.

Here reads the proposed new language:

"All persons are equal under the law, so NO person SHALL be held neither as a slave nor as an unpaid laborer within the country, its territories or possessions." -The Organization on Procedural Justice

SLIDE 32

In summation, like race perception, color science considers the perception of color by the human eye and brain. Moreover, it considers the origin, the ancestry of color in materials. Color theory in art examines the physics of electromagnetic radiation in the visible range, commonly referred to simply as light. Therefore, the beauty of flowers in nature lies in the **appreciation of the variances** in colorations.

Were it not for the **ability and the willingness** to see color, much of the beauty of the world would be lost to human souls.

I recommend and am deeply thankful that we live in a world where light and color exist in broad spectra, where one can **look for** and **accurately perceive** the beauty of **human faces** among the flowers. **Justice for the protection of the lives of future generations** lies in the **willingness to see**.

My name is Merelyn Bates-Mims. Thank you for listening. I am grateful.

“Amending Legal Flaws: The Thirteenth Amendment & Mass Incarceration” has been our topic of discussion today.