

**Rethinking the Relationship between Justice and Mercy:
Toward Repairing America's Excessively Punitive Criminal Justice System**

**Proposal by Professor Timothy W. Floyd
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"Doing Justice without Doing Harm"**

Over the last generation, criminal justice in the United States has become remarkably punitive. Our incarceration rates are the highest in the world, and we cling to the death penalty when the countries of Europe and the other nations of the Western hemisphere have abandoned it. Moreover, Americans continue to express support for torture, with a majority believing that torture was justified in response to the September 11, 2001 terrorist attacks.

I submit this American distinctiveness stems from a particular understanding of justice. We in the United States tend to equate "justice" with punishment. Justice consists of giving people what they deserve, and when they do evil and cruel things, justice demands that they receive suffering in return. This mindset sees justice as primarily a matter of retribution, the world as sharply divided into good and evil, and violence directed against "evil-doers" as necessary and indeed God's will. Indeed, we can only be saved from evil acts by inflicting suffering on wrongdoers. Under this view of justice, mercy is the exception to justice, exercised only rarely to prevent unduly severe punishment.

The late Christian theologian Walter Wink called this set of beliefs "The Myth of Redemptive Violence." This mindset is a *myth*; according to Wink, violence is never redemptive. Indeed, in Christian terms, it is idolatry—a belief in a false God.

In my presentation, I will argue against American policies on criminal justice and torture from within the Christian tradition. It is significant that, in addition to its distinctiveness in terms of policies on criminal punishment and on torture, the United States is also distinctive in terms of religious belief and practice. Christianity has far more adherents in the United States than it does in Europe, and Christianity plays a far larger role in American politics. Christians, especially Protestant evangelicals, express support for the death penalty and for torture at higher rates than do most other Americans.

I submit that Americans' support for excessively punitive policies is in reality a manifestation of belief in the Myth of Redemptive Violence. I believe, however, that the biblical tradition offers resources for a much richer understanding of justice, mercy, and punishment than does the Myth of Redemptive Violence. Jesus unequivocally rejected retributive punishment. Jesus taught his followers: "Judge not, lest ye be judged." "Blessed are the merciful." "Love your enemies." "Pray for those who persecute you." "Turn the other cheek." Jesus lived out that message: he willingly suffered death on a cross rather than resist with violence or seek vengeance.

Justice is a prominent theme in the Bible--but biblical justice is a far deeper concept than punishment. Biblical justice is a rich blend of truth, peace, mercy, and righteousness. Justice is the power of God to bring about reconciliation among neighbors, redemption for individuals, and

restoration of community. In a violent, punitive world -- a world of fallen individuals and broken relationships and communities -- God's healing power of redemption and reconciliation is an abiding reality.

The death penalty, torture, and lengthy incarceration are often justified on the ground that certain people are wholly evil and are incapable of redemption. But biblical faith insists that God's mercy and grace extend to all, and no one is beyond the possibility of redemption. Indeed, Jesus commands his followers to love their enemies precisely because God loves them.

Understanding justice differently must be accompanied by a corresponding vision of mercy. Mercy in biblical faith is not primarily forgiveness or pardon; mercy is *compassion*. The parable of the Good Samaritan poses the question "Who was the neighbor?" It provides as an answer: the one who showed mercy, that is, compassion, to the robbery victim. Justice and mercy are not opposites. Compassionate mercy is at the core of justice. I am convinced that if we can recover a biblical view of justice and mercy, we can reconsider our excessively punitive policies and begin to enact more restorative and healing ways of dealing with wrongdoers.

Timothy W. Floyd Bio

Timothy W. Floyd is Tommy Malone Distinguished Chair in Trial Advocacy and Director of Experiential Education at Mercer University School of Law. His responsibilities include supervision of clinical and other experiential learning courses such as externships. He also teaches a variety of courses in criminal law and in legal ethics.

Floyd has published two books and is the author of numerous articles in the area of legal ethics, law and religion, and criminal law and the death penalty. He served as editor of the Faith and Law Symposium issue of the *Texas Tech Law Review*, and he is the co-editor of the book *Can A Good Christian Be A Good Lawyer? Homilies, Witnesses, and Reflections*. He is currently completing a book entitled *Near the Cross: Reflections on Justice, Mercy, and the Death Penalty*.

Floyd has a particular interest in the law, policy, and morality of the death penalty. He has represented several defendants in death penalty cases, including Louis Jones, Jr., the first person convicted under the Federal Death Penalty Act of 1994. Floyd's representation in that case included an appearance in the United States Supreme Court and a petition for executive clemency to the President. He served on the Georgia Assessment Team of the ABA's Death Penalty Moratorium Project.

He received B.A and M.A. from Emory University and his J.D from the University of Georgia, where he served as Editor-in-Chief of the *Georgia Law Review*. After graduation, he clerked for Judge Phyllis Kravitch of the United States Court of Appeals for the Eleventh Circuit and practiced law with Sutherland, Asbill & Brennan. He began his career in legal education in 1982 at the University of Georgia School of Law, as Associate Director and then Director of the Legal Aid Clinic. He was on the faculty of Texas Tech University School of Law from 1989 to 2004, becoming the J. Hadley Edgar Professor of Law and Co-Director of Clinical Programs.