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Say Something Theological: The Student Journal of Loyola Marymount University Theological Studies

Prison Parts: The Theological-Ethical Problem of Using Prisoners as Living Organ Donors

By Eryn Reyes Leong

Abstract: This paper is a theological and ethical reflection of Massachusetts House Bill 2333, which would reduce prison sentences on the condition that state prisoners donate bone marrow or an organ. Looking specifically at agency and bodily integrity as the two facets of *imago Dei* that are implicated by House Bill 2333, I address the crucial question: Does House Bill 2333 distort the dignity of prisoners as *imago Dei* by incentivizing living prisoners to donate their body parts in exchange for freedom? Using Margaret A. Farley's justice framework articulated in *Just Love: A Framework for Christian Sexual Ethics* (2006), this paper: (1) argues that House Bill 2333 deforms the *imago Dei* of prisoners and the Christian concept of love of neighbor; and (2) proposes the Scandinavian Prison Model as a possible restoration of *imago Dei* and love of neighbor. House Bill 2333 objectifies prisoners, treating them as a means to address the organ shortage in Massachusetts, and raises various issues relating to ethics, morality, the body, and the law. However, the Scandinavian model, with its emphasis on freedom, bodily integrity, and relationality, promotes just love, treating prisoners as human persons and ends in themselves.

Keywords: Incarceration, Justice, Theological Anthropology, Theological Ethics, Theology of Embodiment

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Introduction

Freedom is exercised in relationships between human beings. Every human person, created in the image of God, has the natural right to be recognized as a free and responsible being. All owe to each other this duty of respect. The *right to the exercise of freedom*, especially in moral and religious matters, is an inalienable requirement of the dignity of the human person. This right must be recognized and protected by civil authority within the limits of the common good and public order (original emphasis).¹

The Catechism of the Catholic Church illumines the inextricable link between freedom and human dignity. Our freedom is relational and interconnected, and each one of us, as a reflection of the *imago Dei*,² has the right to exercise our freedom. The Church asserts that this right must be protected by a civil authority, but in circumstances where the right to freedom is restricted, what is the role of the State in safeguarding freedom and human dignity?

One civil authority, the Massachusetts House of Representatives, has a peculiar answer when it comes to prisoners. On January 20, 2023, the House proposed Bill 2333, which would incentivize prisoners to reduce their sentences on the condition that they donate bone marrow or an organ. State Representative Carlos González, a co-sponsor of Bill 2333, remarked that the bill “respect[s] prisoners’ human dignity and agency by respecting their choice to donate.”³ Such a statement, while using the positive language of dignity and agency, turns the Church’s Catechism on its head by exacting a physical cost to freedom in the form of bodily donation upon vulnerable and marginalized prisoners. Bill

¹ John Paul II, *Catechism of the Catholic Church: Revised in Accordance with the Official Latin Text Promulgated by Pope John Paul II*, 2nd ed. (Washington, D.C.: United States Conference of Catholic Bishops, 2011), sec. 1738, accessed April 16, 2023, <https://www.usccb.org/sites/default/files/flipbooks/catechism>.

² *New Catholic Encyclopedia*, 2nd ed. (Detroit: Gale, 2003), s.v. “image of God.” *Imago Dei* is the Christian theological definition of the human person as created in the image and likeness of God (Gen 1:27). This concept will be elaborated in Part 3.2.1 in my discussion of Massachusetts House Bill 2333 as a distortion of the *imago Dei* of prisoners.

³ Ivan Pereira, “Massachusetts Legislator Walks Back Bill to Reduce Sentences if Inmates Sign Up for Organ Donation,” *ABC News*, February 9, 2023, <https://abcnews.go.com/US/massachusetts-bill-allowing-prisoners-donate-organs-reduced-time/story?id=96989325>.

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2333 gives new meaning to penal substitutionary atonement, with the notion that prisoners can atone for their crimes and purchase their redemption by donating their body parts to the State of Massachusetts.⁴

The incongruity revealed by Representative González's statement raises a significant theological-ethical question: Does Bill 2333 distort the dignity of prisoners as *imago Dei* by incentivizing living prisoners to donate their body parts in exchange for their freedom? I answer this question in the affirmative. In spite of their crimes, prisoners have an inalienable dignity that bears on their freedom and flourishing, simply by virtue of being human. At their core is the *imago Dei*, which is universal and applicable to all human persons. Such dignity is intrinsically tied to their bodies and expressed through their agency. Margaret A. Farley's *Just Love: A Framework for Christian Sexual Ethics*⁵ sheds light on this topic, with its discussion of freedom and relationality, and will ground my theological-ethical critique of Bill 2333.

This paper argues that Massachusetts House Bill 2333 is unethical and unconscionable, deforming the *imago Dei* of prisoners and the Christian concept of love of neighbor. Furthermore, it proposes the Scandinavian Prison Model as a possible restoration of *imago Dei* and love of neighbor. While *imago Dei* encompasses the totality of the person as created in the image and likeness of God, I will primarily focus on freedom and bodily integrity as the facets of *imago Dei* that are specifically implicated in House Bill 2333. Part 1 provides an overview of Bill 2333 and the problems of organ transplantation in the United States and around the world. Part 2 examines the various issues surrounding the use of prisoners as living donors for organ transplantation. Part 3 is a critique of Bill 2333 using Margaret A. Farley's justice framework articulated in *Just Love*. Finally, Part 4 offers the Scandinavian Prison Model as a new way to imagine incarceration in the United States in order to safeguard and promote the freedom and human dignity of prisoners.

⁴ Traditionally, penal substitutionary atonement holds that Jesus died on the cross as a substitute for humanity's sins, thereby purchasing humanity's redemption.

⁵ Margaret A. Farley, *Just Love: A Framework for Christian Sexual Ethics* (New York: Continuum, 2006).

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1. Massachusetts House Bill 2333 and Organ Transplantation

1.1 Overview of House Bill 233

Although Massachusetts House Bill 2333 is short on words, it will have far-reaching consequences beyond its mere two pages should it be enacted into law. The intent of the bill is to allow prisoners to bypass the red tape and donate bone marrow or organs to family members.⁶ Bill 2333 establishes the Bone Marrow and Organ Donation Program within the Department of Correction, permitting eligible prisoners to commute their sentences for a minimum of sixty days and a maximum of 365 days, on the condition that they donate bone marrow or organs.⁷ The text does not explicitly limit the donation only to prisoners' family members. Bill 2333 also creates the Bone Marrow and Organ Donation Committee that is responsible for implementing the Program and promulgating standards of eligibility,⁸ which are not outlined in the text. No commissions or monetary payments are to be made to the Department of Correction for bone marrow donated by prisoners.⁹ This provision fails to mention the same application to organs.

After Bill 2333 was proposed, it was met with immediate outrage from both prisoners' rights groups and advocates for organ donations who decried the bill as a quid pro quo due to its sentence reduction incentive.¹⁰ State Representative Carlos González clarified that Bill 2333 was not intended to be a quid pro quo for prisoners; however, he promised to work with prison legal services and advocates to amend the bill's language and remove the incentive.¹¹ According to González, "No law currently prevents incarcerated individuals from being donors. Inmates should have the same basic rights every citizen has in Massachusetts."¹² While González is correct in saying that there is no Massachusetts law

⁶ Pereira, "Massachusetts Legislator Walks Back Bill."

⁷ General Court of the Commonwealth of Massachusetts, House, *An Act to Establish the Massachusetts Incarcerated Individual Bone Marrow and Organ Donation Program*, H.2333, 193rd General Court of the Commonwealth of Massachusetts (2023), <https://malegislature.gov/Bills/193/H2333>.

⁸ "Bill H.2333," 2.

⁹ "Bill H.2333," 2.

¹⁰ Pereira, "Massachusetts Legislator Walks Back Bill."

¹¹ Pereira, "Massachusetts Legislator Walks Back Bill."

¹² Pereira, "Massachusetts Legislator Walks Back Bill."



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that prevents prisoners from becoming living donors, his words point to crucial problems underlying organ transplantation.

1.2 The Issue of Organ Transplantation

The shortage of organs is a critical issue around the world. Although there has been progress in access to transplantation, with the number of transplants increasing two-fold during the last three decades, it has been offset by the shortage of organs, with the number of patients on waitlists increasing six-fold.¹³ As countries struggle to close the gap between supply and demand, some have resorted to means that exploit vulnerable and marginalized groups. In China, there are reports of the government removing organs from live dissidents and executed prisoners.¹⁴ In the United States, there are allegations that organ brokers within our country are illegally trafficking prisoners' organs from China.¹⁵ In India, the sale of kidneys from the poor has led to a multi-million dollar industry,¹⁶ even though such sales are banned.¹⁷

The issue of organ shortage is grave in the United States. The huge disparity between supply and demand is a matter of life or death: In 2021, 41,354 patients received transplants, but 116,556 remained on waitlists and 6,564 died waiting.¹⁸ On average, 6,000 patients die each year, and twenty die each day, waiting.¹⁹ Exacerbating this disparity is the reality that lifesaving organs are recovered from only 1 in 4 potential donors.²⁰ Some patients wait for years for an organ match, while others, who are

¹³ Jerzy W. Kupiec-Weglinski, "Grand Challenges in Organ Transplantation," *Frontier Transplant* 1 (2022).

¹⁴ Drew Leder, *The Distressed Body: Rethinking Illness, Imprisonment, and Healing* (Chicago: University of Chicago, 2016), 127.

¹⁵ "The Ethics of Organ Donation from Condemned Prisoners," Organ Procurement and Transplantation Network, accessed April 30, 2023, <https://optn.transplant.hrsa.gov/professionals/by-topic/ethical-considerations/the-ethics-of-organ-donation-from-condemned-prisoners/>.

¹⁶ Leder, *The Distressed Body*, 127.

¹⁷ Leder, 121.

¹⁸ Jerzy W. Kupiec-Weglinski, "Grand Challenges in Organ Transplantation."

¹⁹ Nada Hassanein, "The U.S. Organ Transplant System is Outdated — and Costing Lives. An Overhaul is Underway," *USA Today*, March 26, 2023, <https://www.usatoday.com/story/news/health/2023/03/26/organ-transplant-system-overhaul-unos/11522346002/>.

²⁰ Hassanein, "The U.S. Organ Transplant System is Outdated."

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disproportionately people of color, are less likely to receive a referral for a transplant or be placed on a waitlist.²¹

The racial and health inequities of organ transplantation are magnified in the State of Massachusetts. There are more than 4,600 individuals waiting for a transplant in the state, and Black and Latino communities are at higher risk for developing health conditions that might require transplantation.²² However, discriminatory incarceration rates of Black and Latino bodies have led to the exclusion of many likely donor matches, creating longer waitlists for Black patients in particular, compared to their White counterparts.²³ These inequities have prompted State Representative Judith Garcia to join State Representative González in sponsoring House Bill 2333 in order to address “the vicious cycle of unjust incarceration and over-policing of Black and Brown communities.”²⁴ As a result, “the movement to close the ever-widening gap between the demand and supply of organs has recently arrived at the prison gate.”²⁵

2. The Bodies of Prisoners as Sources of Organs

2.1 Imprisonment and Transplantation in the United States

On the world stage, the United States has the contemptible distinction of being the leader in mass incarceration.²⁶ We imprison individuals at rates “six to ten times greater than similar Western

²¹ Hassanein, “The U.S. Organ Transplant System is Outdated.” For example, while Black patients are four times as likely to be diagnosed with kidney failure, they are less likely to be referred for a transplant or placed on a waitlist. Although it is beyond the scope of this paper, racism and implicit racial bias are areas to explore as to why people of color have not received adequate care when it comes to organ transplantation.

²² Steve LeBlanc, “Organs in Exchange for Freedom? Bill Raises Ethical Concerns,” *Associated Press*, February 8, 2023, <https://apnews.com/article/organ-donation-massachusetts-state-government-health-a11a7f93dd13ad018bbb1899dbb4623a>.

²³ LeBlanc, “Organs in Exchange for Freedom?”

²⁴ LeBlanc, “Organs in Exchange for Freedom?”

²⁵ Arthur L. Caplan, “The Use of Prisoners as Sources of Organs—An Ethically Dubious Practice,” in *Replacement Parts: The Ethics of Procuring and Replacing Organs in Humans*, ed. Arthur L. Caplan, James J. McCartney, and Daniel P. Reid (Washington, D. C.: Georgetown University Press, 2015), 198.

²⁶ “Growth in Mass Incarceration,” The Sentencing Project, accessed March 30, 2023, <https://www.sentencingproject.org/research/>.

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industrialized countries.”²⁷ There are over two million people in our country’s prisons and jails,²⁸ with 1.2 million in state prisons.²⁹ This alarming number marks a 500% increase in the prison population over the last forty years³⁰ and is colored by racial and ethnic disparities.

Our country’s prisoners are disproportionately people of color, with Black Americans greatly overrepresented.³¹ In 2019, Blacks comprised “14% of the U.S. population, 33% of the total prison population, and 46% of the prison population who had already served at least ten years.”³² Black men are six times more likely to be imprisoned than White men.³³ Blacks are in state prisons more than four times the rate of Whites.³⁴ Finally, Blacks represent 55% of the prison population serving a life sentence without parole.³⁵ As for Latino Americans, Latino men are 2.5 times more likely to be imprisoned than White men.³⁶ Latinos are in state prisons at 1.3 times the rate of Whites.³⁷ In the State of Massachusetts, this particular disparity between Latinos and Whites is acute, with an ethnic differential of 4.1:1.³⁸

The United States’ carceral systems do not have a standard policy governing prisoners and organ transplantation.³⁹ Only 40% have policies on this matter, with fifteen systems allowing living prisoners

²⁷ Michelle Ye Hee Lee, “Does the United States Really Have 5 Percent of the World’s Population and One Quarter of the World’s Prisoners?,” *Washington Post*, April 30, 2015, <https://www.washingtonpost.com/news/fact-checker/wp/2015/04/30/does-the-united-states-really-have-five-percent-of-worlds-population-and-one-quarter-of-the-worlds-prisoners/>.

²⁸ The Sentencing Project, “Growth in Mass Incarceration.”

²⁹ Ashley Nellis, “The Color of Justice: Racial and Ethnic Disparity in State Prisons,” The Sentencing Project, October 13, 2021, <https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>, 4.

³⁰ The Sentencing Project, “Growth in Mass Incarceration.”

³¹ Ashley Nellis, “Mass Incarceration Trends,” The Sentencing Project, January 25, 2023, <https://www.sentencingproject.org/app/uploads/2023/01/Mass-Incarceration-Trends.pdf>, 1.

³² Nellis, “Mass Incarceration Trends,” 9.

³³ Nellis, 4.

³⁴ Nellis, “The Color of Justice,” 5.

³⁵ Nellis, “Mass Incarceration Trends,” 9.

³⁶ Nellis, 4.

³⁷ Nellis, “The Color of Justice,” 5.

³⁸ Nellis, 5.

³⁹ The United States’ carceral systems refer to fifty state prisons; the jail in Washington, DC; the Federal Bureau of Prisons; and Immigration and Customs Enforcement. Yoshiko Iwai et al., “US Prison Policies on Organ Donation for Individuals Who Are Incarcerated,” *National Library of Medicine*, March 8, 2023, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9996393/>.

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to donate an organ, thirteen allowing registration for posthumous organ donation, and twelve restricting organ donation to family members.⁴⁰ The Federal Bureau of Prisons, which manages our country's federal prison system, falls into the third group, permitting living donation to immediate family members only but denying posthumous donation.⁴¹ Despite the lack of uniformity, there remains the push for using prisoners as organ sources in order to close the ever-widening gap between the supply and demand of organs.

While the issue of organ shortage is critical, the status of prisoners as a vulnerable and marginalized group, disproportionately comprised of people of color, cannot be ignored. When the ostracized bodies of prisoners are asked to bear the burden and remedy the shortage of organs in a country or state, this raises grave concerns about prisoner participation in organ donation.

2.2 Overview of Main Issues Relating to Organ Transplantation and Sentence Reduction

Much literature has been written about prisoners and organ transplantation, whether the prisoners are living or posthumous donors, and the complex issues surrounding prisoners' bodies.⁴² Due to the scope of this paper, this section will specifically address House Bill 2333 and the incentivization of living prisoners to trade their body parts in exchange for freedom. I will highlight four issues, which touch on the multilayered implications of Bill 2333: (1) ethics, (2) morality, (3) the body, and (4) the law.⁴³ Although there is significant overlap between all four, each issue is critical to understanding Bill 2333 and will undergird my theological critique in Part 3.

⁴⁰ Iwai et al., "US Prison Policies on Organ Donation."

⁴¹ Iwai et al., "US Prison Policies on Organ Donation." Massachusetts House Bill 2333 is silent as to whether the donation of bone marrow or organs is restricted to the family members of prisoners.

⁴² For further discussion of the problem of prisoners as living and posthumous donors, see Arthur L. Caplan's article, "The Use of Prisoners as Sources of Organs," cited above.

⁴³ Although the words "ethics" and "morality" tend to be used interchangeably in public conversation, they are distinct but related concepts. Ethics is a branch of philosophy that studies what types of human actions are considered "good, right, and to be done (or bad, wrong, and not to be done) that individuals may live well." *New Catholic Encyclopedia*, 2nd ed. (Detroit: Gale, 2003), s.v. "ethics." Morality refers to "[t]he quality attributable to human action by reason of its conformity or lack of conformity to standards or rules according to which it should be regulated." *New Catholic Encyclopedia*, 2nd ed. (Detroit: Gale, 2003), s.v. "morality."

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2.2.1 Ethics

The first issue concerns the ethics of organ donation from living prisoners. A deontological ethical perspective would likely find Massachusetts House Bill 2333 to be highly problematic.⁴⁴ Immanuel Kant, a deontological philosopher best known for *Critique of Pure Reason*,⁴⁵ introduced the concept of the categorical imperative: an objective, unconditional, and fundamental principle of our moral duties that each one of us must follow, regardless of our natural desires.⁴⁶ In *Groundwork of the Metaphysics of Morals*, Kant establishes four formulations of the categorical imperative: (1) the Formula of the Universal Law of Nature; (2) the Humanity Formula; (3) the Autonomy Formula; and (4) the Kingdom of Ends Formula.⁴⁷ While each of these formulations are critical to understanding Kant's deontological ethics, Bill 2333 specifically implicates the Humanity Formula in which Kant states, "So act that you use humanity, in your own person as well as in the person of any other, always at the same time as an end, never merely as a means" (4:429).⁴⁸ Under Kant's categorical imperative, Bill 2333

⁴⁴ Deontological ethics examines a person's duties or obligations, grounded in the principle "that certain acts ought never to be done." It opposes consequentialism, which believes that the good justifies the means. See *New Catholic Encyclopedia Supplement 2012-2013: Ethics and Philosophy* (Detroit: Gale, 2013), s.v. "deontological ethics."

⁴⁵ "Categorical Imperatives and the Case for Deception: Part I," Columbia University, accessed April 30, 2023, <https://www.tc.columbia.edu/institutional-review-board/irb-blog/2020/categorical-imperatives-and-the-case-for-deception-part-i/>.

⁴⁶ Robert Johnson and Adam Cureton, "Kant's Moral Philosophy," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta and Uri Nodelman (Fall 2022 Edition), <https://plato.stanford.edu/entries/kant-moral/#HumFor>.

⁴⁷ Johnson and Cureton, "Kant's Moral Philosophy."

⁴⁸ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, 1785, quoted in Robert Johnson and Adam Cureton, "Kant's Moral Philosophy." Johnson and Cureton's work employs a standard approach to Kant's moral philosophy by primarily examining Kant's *Groundwork of the Metaphysics of Morals*. Regarding the Humanity Formula, Johnson and Cureton observe that "the word 'humanity' denotes the collection of features that make us distinctively human," such as the rational capacity to pursue our own ends. Although House Bill 2333 mainly implicates the Humanity Formula, I will briefly provide an overview of the other three formulations, again using Johnson and Cureton's work. When Johnson and Cureton discuss the Formula of the Universal Law of Nature, they cite Kant's instruction to "act only in accordance with that maxim through which you can at the same time will that it become universal law." See Kant, 4:421. Regarding the Autonomy Formula, they note how it directs us to act so that our maxims could become universal laws that bind every rational being. See Kant, 4:432. While this formulation is similar to the Formula of the Universal Law of Nature, Johnson and Cureton make the distinction that the Autonomy Formula emphasizes "our status as universal law *givers* rather than universal law *followers*" (original emphasis). Finally, they note that the Kingdom of Ends Formula concerns universal laws that could

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violates the Humanity Formula by treating the bodies of prisoners as a means to address the organ shortage in Massachusetts. Personhood is divorced from the concrete as bodies are treated as objects whose parts are to be removed and transplanted. Bill 2333 disregards and disrespects prisoners who, as rational moral agents, are subjects and ends in themselves. In spite of their crimes, prisoners are still human persons and have not forfeited their humanity. Rather than protecting and promoting their humanity, the bill exacts a physical cost to freedom, reducing prisoners to their very bone marrow and organs.

Moreover, House Bill 2333 raises the ethical concern of free and voluntary consent, which involves the ability to make a choice without undue pressure, coercion, or manipulation. Experts argue that the constraints of the carceral system impinge on prisoners' ability to give free and voluntary consent to become living donors.⁴⁹ In prison, freedom, movement, and agency are restricted by the State, and prisoners are physically separated from their loved ones and the community for an extended period of time. The substandard living conditions and power imbalances behind prison walls can lead to abuse, violence, and exploitation. The carceral system is demoralizing and dehumanizing, suppressing human flourishing and relationality.

The particular vulnerability of prisoners regarding consent has been recognized by the United States government in regulations governing prisoner research subjects.⁵⁰ In 1976, the National Commission for the Protection of Biomedical and Behavioral Research, a group charged with developing federal human research subject protections for biomedical and behavioral research, concluded that prisoners should only participate in research that concerns serious health problems and offers direct benefit to prisoners.⁵¹ In its report, "Research Involving Prisoners," the National Commission questioned whether incarceration truly allowed for free choice, asserting that "the availability of a population living in conditions of social and economic deprivation make it possible for researchers to bring to these populations types of research which persons better situated would ordinarily

be accepted by fully rational agents, each of whom has the capacity to legislate universal laws that Kant describes as "a merely possible kingdom of ends." See Kant, 4:439.

⁴⁹ Caplan, "The Use of Prisoners as Sources of Organs," 204.

⁵⁰ Caplan, 204.

⁵¹ J. Richard Thistlethwaite and Lainie Friedman Ross, "Prisoners as Living Donors: A Vulnerabilities Analysis," *Cambridge Quarterly of Healthcare Ethics* 27, no. 1 (2018): 94-95.

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refuse.”⁵² As a result, federal regulations have been designed to protect vulnerable prisoners from participating in research against their better judgment by eliminating two sources of undue influence that could interfere with free and voluntary consent: (1) large financial incentives and (2) sentence reduction.⁵³

Due to the vulnerability of individuals within the prison system, Bill 2333’s incentive for sentence reduction defies the notion of free choice. Prisoners would probably not make the decision to donate their bone marrow or organs but for the inducement to leave prison early with a sentence reduction.⁵⁴ This inducement is powerful and coercive, implicating their very freedom and personhood. It not only touches on the power dynamics between the State and prisoners, but also on the desperation of individuals to be reunited with their loved ones.⁵⁵ Under these circumstances, it would be difficult for prisoners to exercise their ability to make a free and voluntary choice when their vulnerability and marginalization are being exploited. Even if they decided to become living donors, their choice is still made within the confines of the carceral system.

2.2.2 Morality

The second issue relates to the morality of the exchange between organs and freedom. In his 2000 address to the 18th International Congress of the Transplantation Society, St. Pope John Paul II described organ transplantation as a genuine act of love and a decision of great ethical value, requiring informed consent.⁵⁶ It is a gratuitous gift that “is not just a matter of giving away something that belongs to us but of giving something of ourselves.”⁵⁷ However, he warned that the commercialization of organs

⁵² J. Richard Thistlethwaite and Lainie Friedman Ross, “Prisoners as Living Donors,” 95.

⁵³ Thistlethwaite and Ross, 95.

⁵⁴ “But-for test,” Cornell Law School, accessed April 30, 2023, https://www.law.cornell.edu/wex/but-for_test. The “but-for test” is generally used in tort law and criminal law and asks, “[B]ut for the existence of X, would Y have occurred?”

⁵⁵ Pereira, “Massachusetts Legislator Walks Back Bill.”

⁵⁶ John Paul II, “Address of the Holy Father John Paul II to the 18th International Congress of the Transplantation Society,” August 29, 2000, Vatican, sec. 3, https://www.vatican.va/content/john-paul-ii/en/speeches/2000/jul-sep/documents/hf_jp-ii_spe_20000829_transplants.html.

⁵⁷ John Paul II, sec. 3.



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and the treatment of organs as goods to be traded are morally unacceptable.⁵⁸ The human body is more than a “mere complex of tissues, organs and functions . . . rather it is a constitutive part of the person who manifests and expresses himself through it.”⁵⁹ To commercialize or trade an organ is to objectify the body and violate human dignity.⁶⁰

House Bill 2333 is not a moral act of free choice nor a free gift of self. Although the bill’s sponsors may have good intentions, they drafted a piece of legislation that is an explicit exchange, an almost Faustian bargain in which body parts are traded for the reward of freedom. Our human dignity is inalienable and embodied, and Bill 2333 divorces the dignity of prisoners from their concrete selves. The body constitutes who we are as the *imago Dei* and to reduce the body to an object is to diminish who we are as human persons. Given the vulnerability of prisoners and the power imbalance between prisoners and the State of Massachusetts, the bill could also be viewed as a demand of bodily sacrifice, one that is only acquiesced to on the condition of freedom. As noted above, Bill 2333 gives new meaning to penal substitutionary atonement by tying bodily sacrifice with the purchase of sentence reduction and human redemption.

2.2.3 The Body

The third issue involves the bodies of prisoners. Even if an ethical and moral argument could be presented for the use of living prisoners as sources of organs,⁶¹ there are significant health challenges. In

⁵⁸ John Paul II, sec. 3.

⁵⁹ Congregation for the Doctrine of the Faith, *Donum Vitae*, sec. 3, as quoted in John Paul II, “Address to the Transplantation Society,” sec. 3

⁶⁰ John Paul II, “Address of the Holy Father John Paul II to the 18th International Congress of the Transplantation Society.”

⁶¹ See L.D. de Castro, “Human Organs from Prisoners: Kidneys for Life,” *Journal of Medical Ethics* 29, no. 3 (2003): 171-75. L.D. de Castro, a lecturer at the University of the Philippines Dilliman, argues that despite the constraints of the Philippine prison system, these do not prevent prisoners from making a free choice to donate their kidneys for a reduction in sentence. See de Castro, 172. He views organ donation as an opportunity for prisoners to make reparations for their “sins,” a possible vehicle for atonement in a country like the Philippines that has a long tradition of physical forms of penitence (e.g., self-flagellation during Holy Week). See de Castro, 173. Despite his contentions, de Castro fails to (1) meaningfully examine the inherent, coercive nature of the prison regime or (2) engage the ethical, moral, bodily, and legal issues surrounding organ donation by living prisoners.

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general, prisoners are considered a high-risk group for infectious diseases, such as tuberculosis, HIV, and hepatitis.⁶² Most prisoners have histories of intravenous drug use and continue using drugs in prison with the help of drug smugglers.⁶³ Additionally, unsafe sexual practices and tattooing with unsterilized needles can contribute to the transmission of diseases between prisoners.⁶⁴

Due to the health issues of prisoners, transplant recipients are at increased risk of contracting serious diseases from prisoner organ donations.⁶⁵ There are screening tests for prospective donors; however, they are not 100% accurate and subsequent confirmatory tests can be costly.⁶⁶ The status of prisoners as a high-risk group is acknowledged by federal agencies that warn against using prisoners as donors,⁶⁷ further complicating their status as potential donors. For example, the United States Food and Drug Administration's Center for Biologics Evaluation and Research has cautioned blood and plasma centers from accepting donations from prisoners, finding that the high-risk activity of prisoners is associated with a high rate of infection.⁶⁸ Given these concrete challenges, it is unlikely that Massachusetts House Bill 2333 will produce a viable supply of healthy bone marrow and organs from state prisoners, should it become law. The screening process would likely remove most prospective donors, and transplant recipients, while desperate, may refuse bone marrow or organs from prisoners out of fear of contracting a transmissible disease. Prisoners are already vulnerable in terms of their agency due to the constraints of the prison system, and their bodies reveal the additional vulnerability of compromised health.

⁶² Whitney Hinkle, "Giving Until It Hurts: Prisoners are not the Answer to the National Organ Shortage," *Indiana Law Review* 35, no. 2 (2002): 604-605.

⁶³ Hinkle, "Giving Until It Hurts," 604-605.

⁶⁴ Hinkle, 605.

⁶⁵ Lawrence O. Gostin, "Prisoners Shouldn't Be Allowed to Donate Their Organs," *New York Times*, April 26, 2013, <https://www.nytimes.com/roomfordebate/2013/04/25/should-prisoners-be-allowed-to-donate-their-organs/prisoners-shouldnt-be-allowed-to-donate-their-organs>.

⁶⁶ Gostin, "Prisoners Shouldn't Be Allowed to Donate Their Organs".

⁶⁷ Hinkle, "Giving Until It Hurts," 605.

⁶⁸ Hinkle, 605.

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2.2.4 The Law

Finally, the fourth issue concerns the legality of House Bill 2333 and its inducement of sentence reduction. The bill explicitly states that “eligible” prisoners can reduce their sentences “on the condition that the incarcerated individual has donated bone marrow or organ(s).”⁶⁹ The Ethics Committee of United Network for Organ Sharing, the nonprofit organization which manages the United States’ national transplant waiting list, has considered the implications of this type of quid pro quo involving prisoners, warning that if sentence reduction is solely based on the act of donation, then it would discriminate against prisoners who are found to be medically ineligible as donors, such as those with tuberculosis, HIV, and hepatitis.⁷⁰ Such is the case with Bill 2333, which is an explicit quid pro quo involving state prisoners as living donors. Although the bill’s language expresses the general offer of freedom to prisoners, it does not provide equal opportunity for all prisoners to donate. Not only does the bill fail to define the terms of eligibility for donation, but it would also likely discriminate against individuals with transmissible diseases which, as we have discussed, are prevalent among the general prison population. Given the bodily challenges that most prisoners face, House Bill 2333’s offer of freedom could create further marginalization within an already marginalized group and provide fodder for a legal challenge based on discrimination.

Furthermore, federal law may preclude the enactment of House Bill 2333 under the National Organ Transplant Act (NOTA), which governs organ transplantation in the United States. Section 301(a) of Title III states, “It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.”⁷¹ There are three key operative terms here that must be unpacked. “Human organ” means bone marrow, kidney, heart, bone, skin, and any other organ.⁷² “Valuable consideration,” while negatively defined in NOTA as not including reasonable payments related to the transplantation process,⁷³ is generally defined as “an equivalent or compensation having value that is

⁶⁹ “Bill H.2333,” 1.

⁷⁰ Organ Procurement and Transplantation Network, “The Ethics of Organ Donation from Condemned Prisoners.”

⁷¹ National Organ Transplant Act of 1984 (NOTA), Pub. L. No. 95-507, 98 Stat. 2339 § 301(a) (1984).

⁷² NOTA, § 301(c)(1).

⁷³ NOTA, § 301(c)(2).

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given for something acquired or promised.”⁷⁴ Finally, “interstate commerce” is defined by Section 201(b) of the Federal Food, Drug, and Cosmetic Act⁷⁵ and means: “(1) commerce between any State or Territory and any place outside thereof, and (2) commerce within the District of Columbia or within any other Territory not organized with a legislative body.”⁷⁶

Under NOTA, the bone marrow and organs of state prisoners, as described in Bill 2333, would likely constitute valuable consideration. The bone marrow and organs are of value and would be donated by prisoners in exchange for their freedom from the State of Massachusetts. Nevertheless, NOTA’s application to Bill 2333 turns on whether the transfer of organs affects interstate commerce. If marrow and organs are donated only to recipients who are residents of Massachusetts, then it could be argued that NOTA does not apply because the organs do not cross state lines. If, however, the marrow and organs are donated to a non-resident on the national transplant waiting list, handled by an out-of-state entity, or transferred for storage outside of Massachusetts, then it could be argued that NOTA does apply. These are only three examples of how the issue of interstate commerce could detrimentally affect Bill 2333 by raising a myriad of legal scenarios. The transplantation process is complex and given these variables, the question of whether Bill 2333 violates NOTA will depend on the facts of the case.

Although NOTA may foreclose the possibility of Massachusetts House Bill 2333 from ever being signed into law, Bill 2333 raises salient questions when it comes to ethics, morality, the body, and the law. It is not a simple bill that merely addresses the shortage of organs; Bill 2333 implicates the very personhood of prisoners and how personhood is manifested through the body and human rights. Using Margaret A. Farley’s justice framework, the next section explicates both the dignity of prisoners as *imago Dei* and the Christian notion of love of neighbor in order to critique Bill 2333 as a distortion of these two theological concepts.

⁷⁴ Merriam-Webster Dictionary, s.v. “valuable consideration,” accessed April 30, 2021, <https://www.merriam-webster.com/dictionary/valuable%20consideration>.

⁷⁵ NOTA, § 301(c)(3).

⁷⁶ Federal Food, Drug, and Cosmetic Act of 1938. Pub. L. No. 117-328, § 201(b) (1938).

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3. Massachusetts House Bill 2333 as a Deformation of *imago Dei* and Love of Neighbor

The four issues outlined above illustrate how House Bill 2333 disembodies and disconnects prisoners from their very selves. This separation through organ transplantation exemplifies what American medico-philosopher Drew Leder describes as the Cartesian “Body-Machine.”⁷⁷ Philosopher René Descartes conceptualized the human person as a compound of two distinct substances: (1) the soul, which he associated with the true self; and (2) the body, which he viewed more as a material object.⁷⁸ As Leder puts it, “[t]he body is more something I *have*” (original emphasis),⁷⁹ rather than an integral part of one’s humanity. Organ transplantation then, as a Cartesian science, attempts to understand and control the human body by dissecting the body into its component organs, which can be extracted, transplanted, or even substituted by machine analogues.⁸⁰

According to Leder, this Cartesian dualism betrays an important truth: that “[w]e are so intimately one with our bodies that if the body is treated in a reductionist way, the self is also diminished.”⁸¹ When the self is diminished, the body can be objectified and commodified.⁸² The reduction of self is especially notable for human persons whose bodies are considered dispensable and viewed as sources for organs, from those whose personhood is least established, such as newborn anencephalic babies, to those whose personhood is socially marginalized, such as the poor.⁸³ Once the self is detached from the body, it also becomes disconnected from others, with commodity production and exchange supplanting relationality.⁸⁴

⁷⁷ Leder, *The Distressed Body*, 122.

⁷⁸ Leder, 122.

⁷⁹ Leder, 122.

⁸⁰ Leder, 124.

⁸¹ Leder, 127.

⁸² Leder, 135.

⁸³ Leder, 127.

⁸⁴ Leder, 127.



3.1 Margaret A. Farley's Justice Framework

Just Love by Margaret A. Farley expounds the centrality of embodiment and relationality through ethics. The book offers a framework for a contemporary human and Christian sexual ethics whereby justice “norm[s]” human sexuality.⁸⁵ Although this framework involves norms that are particular to sexual intimacy, it posits important principles that can be generally applied to all human relationships⁸⁶ and which are essential to my theological-ethical critique of Massachusetts House Bill 2333 and its distortion of *imago Dei* and love of neighbor.

Farley's justice framework is rooted in transcendent embodiment and offers a vision of human beings as “embodied spirits” or “inspired bodies.”⁸⁷ These two terms are identical in meaning and are used by Farley to capture the totality of the human person, “whereby our bodies and our spirits are one — distinguishable as aspects of our personhood, but unified in a way that they are neither mere parts of one whole nor reducible one to the other.”⁸⁸ In the same vein as Leder, Farley notes how we can be “natural dualists,” despite the unity of our body and spirit.⁸⁹ Sometimes, “[w]e experience our body as something we *have*” (my emphasis), comprised of component organs that can be donated.⁹⁰ Sometimes, we only see the body of our brothers and sisters, bodies that we can possess or control.⁹¹ Sometimes, we only see the spirit of our brothers and sisters, oblivious to the body's needs.⁹² These perceptions or actions around our body and those of others belie the Christian theological belief that the body is good and intrinsic to our being human.⁹³

Farley's framework also revolves around this formal ethical principle of justice: “*Persons and groups of persons ought to be affirmed according to their concrete reality, actual and potential*”

⁸⁵ Margaret A. Farley, *Just Love*, 206.

⁸⁶ Farley, 231.

⁸⁷ Farley, 116-117.

⁸⁸ Farley, 116-117.

⁸⁹ Paul Bloom, *Descartes Baby: How the Science of Child Development Explains What Makes Us Human* (New York: Basic Books, 2004), xii, quoted in Farley, *Just Love*, 118.

⁹⁰ Farley, *Just Love*, 119.

⁹¹ Farley, 119.

⁹² Farley, 119.

⁹³ Farley, 131.



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(original emphasis).⁹⁴ As a result, a “just love” is right and good when love (1) affirms the concrete reality of the beloved and (2) is “true” to the lover and to the relationship between the lover and beloved.⁹⁵ It is a “justice *in loving*” between human persons (original emphasis),⁹⁶ and the “material” principles of justice, which give the aforementioned formal ethical principle its body, will be shaped by how we interpret the concrete realities of persons.⁹⁷ This particular contextual reality of the beloved illumines two obligating features of personhood: (1) freedom or autonomy and (2) relationality.⁹⁸ Freedom and relationality “ground an obligation to respect persons as *ends in themselves* and forbid, therefore, the use of persons as mere means” (original emphasis).⁹⁹ First, human persons are ends in themselves because they possess the self-determination to decide their actions, ends, and loves.¹⁰⁰ Second, the capacity for relationality compels us to respect human persons as ends in themselves because we are dependent on others and each person has unconditional self-worth.¹⁰¹

In the end, Farley asserts that “we are *terminal centers, ends in ourselves, because in some way we both transcend ourselves and yet belong to ourselves*” (original emphasis).¹⁰² We both possess and transcend ourselves in autonomy and relationality.¹⁰³ Through freedom, we are our own person yet still in the process of becoming, acting, and transcending our past and present.¹⁰⁴ Similarly, through relationship, we belong to ourselves and to others, transcending our being to know and love and to be known and loved.¹⁰⁵ Thus, autonomy and relationality, as features of the human person, are intimately and intrinsically connected.¹⁰⁶ Our freedom grows and flourishes in nurturing relationships, and freedom

⁹⁴ Farley, 209.

⁹⁵ Farley, 200.

⁹⁶ Farley, 207.

⁹⁷ Farley, 209.

⁹⁸ Farley, 211-214. The term “obligating features” constitutes the basis of requirement to respect persons, sexually or otherwise.

⁹⁹ Farley, 212.

¹⁰⁰ Farley, 212.

¹⁰¹ Farley, 212-214.

¹⁰² Farley, 213.

¹⁰³ Farley, 213.

¹⁰⁴ Farley, 214.

¹⁰⁵ Farley, 213-214.

¹⁰⁶ Farley, 214.

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is directed towards those relationships that are connected to our deepest selves.¹⁰⁷ As embodied spirits or inspirited bodies, we possess an embodied freedom and an embodied relationality.¹⁰⁸

3.2 An Embodied and Inspirited Critique of House Bill 2333

Massachusetts House Bill 2333 proposes a “body/spirit disunity”¹⁰⁹ by incentivizing living prisoners to trade their body parts in exchange for freedom. Each human being, created by God, is “call[ed] to a destiny in relation and in wholeness as embodied spirit, inspirited body.”¹¹⁰ In spite of their crimes, prisoners also share in this destiny of relationship and wholeness; however, Bill 2333 obstructs prisoners from claiming their own authentic spirit-embodiment. Informed by Margaret A. Farley’s justice framework and sexual-ethical norms, the next two sections probe how Bill 2333’s disunity distorts the *imago Dei* of prisoners and love of neighbor, implicating the two aforementioned features of human personhood and the notion of just love.

3.2.1 Deformation of *imago Dei*

As discussed above, the Christian concept of *imago Dei* expresses and affirms the human person as created in the image and likeness of God. Jesus Christ, the Son of God, embodies “the authentic and fulfilled *imago Dei*, to which humans are called to be conformed in a gradual process that will reach its culmination only in the eschaton.”¹¹¹ While *imago Dei* encompasses the totality of the human person, House Bill 2333 distorts two particular facets of *imago Dei*: (1) freedom and (2) bodily integrity. These two facets embrace autonomy, the first essential feature of personhood articulated by Farley’s justice framework.

First, Bill 2333 detrimentally affects the freedom of prisoners in terms of their capacity for free choice, which involves the power to exercise their agency as subjects and to construct the meaning of

¹⁰⁷ Farley, 214.

¹⁰⁸ Farley, 216.

¹⁰⁹ Farley, 118-119. Farley uses this term to describe “the lack of internal unity between body and spirit.”

¹¹⁰ Farley, 131.

¹¹¹ *New Catholic Encyclopedia*, 2nd ed. (Detroit: Gale, 2003), s.v. “*imago Dei*.”

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their own lives.¹¹² According to Farley, when we use other human beings as a mere means, we violate their autonomy, seeking to control and “absorb” them instead of respecting their choices and ends.¹¹³ We disrupt their self-unity as embodied spirits or inspirited bodies, objectifying and limiting who they are as human persons.¹¹⁴ Individuals are “put in a box” that constrains their identities based on our own judgments and expectations of them.¹¹⁵

Despite State Representative Carlos González’s contention that House Bill 2333 is not a *quid pro quo*, Bill 2333 does in fact treat living prisoners as a means to address the shortage of organs in Massachusetts. In prisoners, the State of Massachusetts sees no spirit but only bodies to be used as a means to an end. The grave problem of organ transplantation in Massachusetts, exacerbated by health and racial inequities, should not be placed on the bodies of prisoners who are vulnerable and disproportionately Black and Latino. Prisoners, as human beings, can still create meaning and determine their own lives, even if their options are limited by the carceral system. However, should Bill 2333 become law, its coercive and exploitative nature, magnified by the constraints of the carceral system, will bear heavily on prisoners as they decide whether to trade their body parts for freedom. Bill 2333 boxes prisoners in, literally and figuratively, preventing escape from prison unless there is an exchange of organs. It wrongly tells prisoners that their life and freedom have no meaning unless they sacrifice their bodies for society. As a result, the life and identity of prisoners are reduced to the value of their body parts.

Second, House Bill 2333 hurts the bodily integrity of prisoners. As expounded by John Paul II, Leder, and Farley, the body is intrinsic to being human. Farley rightly notes how God calls us to a destiny of relationship and wholeness, one that centers on the body and reveals a God “who became embodied and whose own body now still lives in this world and the reign of God.”¹¹⁶ We “live” our bodies, and our choices are embodied and inspirited.¹¹⁷ Accordingly, the body is intrinsic to the humanity of prisoners, and prisoners have the right to feel safe and whole in their own bodies, without

¹¹² Farley, *Just Love*, 212.

¹¹³ Farley, 212.

¹¹⁴ Farley, 121.

¹¹⁵ Farley, 121.

¹¹⁶ Farley, 131.

¹¹⁷ Farley, 129.

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the law or the State trying to coerce or exploit the vulnerability of their bodies. However, Bill 2333 violates the incarnation of prisoners as *imago Dei*. By treating their bodies as mere means, Bill 2333 attempts to both burden the body and divide the body from the spirit. In doing so, the State of Massachusetts, when addressing prisoners, sees no-body.

Besides implicating Farley's justice framework, these two facets of *imago Dei* also exemplify Farley's sexual-ethical norm of free consent. Free consent in this context denotes "the right of human persons to determine their own actions and their relationships in the sexual sphere of their lives." The norm emphasizes freedom of choice and opposes situations in which this freedom is violated, threatened, or denied, such as rape, sexual harassment, and pedophilia. Free consent also encompasses bodily integrity, asserting "'Do not touch, invade, or use' . . . unless an individual freely consents." Free consent and bodily integrity are intimately intertwined, promoting autonomy and respect for persons as ends in themselves.¹¹⁸

When applied to prisoners, the norm of free consent protects their embodied and inspirited autonomy.¹¹⁹ Prisoners have the right to choose their actions, ends, and loves and to be free from bodily harm or coercion. But, as we have discussed, House Bill 2333 and the constraints of the prison system can severely impact the freedom and bodily integrity of incarcerated individuals. The grim reality of life behind bars and the utter desperation to be free and reunited with loved ones — exacerbated by the power imbalance between prisoners and the State — make Bill 2333's inducement of sentence reduction look awfully tempting, even if it would require the sacrifice of one's own body parts. The bill ultimately objectifies prisoners, failing to respect their fundamental concrete reality as human beings. This objectification is "not a reduction of the other to body or spirit, but an effort to dominate an *embodied spirit*" (original emphasis).¹²⁰

¹¹⁸ Farley, 218-219.

¹¹⁹ Farley, 218.

¹²⁰ Farley, 123.

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3.2.2 Deformation of Love of Neighbor

Love of neighbor is a classical Christian concept relating to God and human beings. In the Synoptic Gospels of the New Testament, Jesus Christ “uses the term love to designate the total devotion to God the Father and to Himself that He demands,” proclaiming the command to love God as the greatest commandment and love of neighbor as the second greatest commandment. Jesus stretches the command to love our neighbor to all persons, including religious persecutors. For Jesus, to love our neighbor is to imitate God, a meaningful and transcendent action by which all humanity will be judged in the eschaton.¹²¹

Love of neighbor involves relationality, the second essential feature of human personhood, and touches on Farley’s notion of just love. As emphasized by Farley, relationality establishes an obligation to respect persons as ends in themselves. We exist in some form of relatedness, with our relationships constituting our lived experience and who we are as human persons.¹²² Love, then, “is true and just, right and good, insofar as it is a true response to the reality of the beloved.”¹²³ A just love acknowledges and respects this particular concrete reality.¹²⁴ Consequently, the lover “do[es] not say simply, ‘You are,’ but rather, ‘I want you to be, and to be full and firm in being.’”¹²⁵

While the relationship between prisoners and the State cannot and should not be characterized by sexual or romantic love, it nonetheless implicates the Christian concept of love of neighbor. In spite of their crimes, prisoners do not forfeit their humanity and love of neighbor must still be extended to them. They remain terminal centers and ends in themselves, even if the prison system constrains the expression and movement of their freedom. Moreover, their concrete reality and human potential must still be attended to, even if they are confined behind prison walls. Instead of recognizing prisoners as neighbors, who are vulnerable and marginalized, House Bill 2333 deforms love of neighbor, seeking to control state prisoners by treating them as a means to an end. Bill 2333, rather than promoting relationality, suppresses it, demonstrating the tremendous power of the State of Massachusetts to both

¹²¹ *New Catholic Encyclopedia*, 2nd ed. (Detroit: Gale, 2003), s.v. “love of God and neighbor.”

¹²² Farley, *Just Love*, 201.

¹²³ Farley, 198.

¹²⁴ Farley, 202.

¹²⁵ Farley, 201.



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incarcerate bodies and to ask for bodily sacrifice in exchange for freedom. In my view, this is double punishment. It is not just love.

4. Proposal of the Scandinavian Prison Model as a Restoration of *imago Dei* and Love of Neighbor

Besides providing a theological-ethical lens to critique Massachusetts House Bill 2333, Margaret A. Farley's justice framework can inspire us to reimagine and reconstruct the prison system in the United States in a new and transformational way. One particular reconstruction is the Scandinavian Prison Model, which offers the possibility of restoring and promoting the *imago Dei* of prisoners and love of neighbor. Unlike our country's carceral systems, which are punitive, dehumanizing, and built to warehouse people, the Scandinavian model is designed to help prisoners become good neighbors and the best version of themselves.¹²⁶ The model is not perfect; it remains a prison regime where prisoners are still prisoners.¹²⁷ Nevertheless, the model is a mode of confinement that respects prisoners as human persons, acknowledging the redemptive potential of prisoners and attempting to counter the damage that imprisonment causes.¹²⁸ In this way, the model offers prisoners the possibility to still live authentically in relation and wholeness.

The Scandinavian Prison Model is the carceral system of Norway, Sweden, Finland, and Denmark. Various historical and sociological factors, along with "cultures of equality," transformed the purpose of prison in these countries. Beginning in the early twentieth century, there were significant changes to the prison system with civil society questioning the punitiveness of prison and the role of priests in prison. Separate confinement facilitated efficient control of prisoners, and priests could facilitate the relationship between prisoners and God in this setting. However, "prison farms" and

¹²⁶ Anita Chabria, "California to Transform Infamous San Quentin Prison with Scandinavian Ideas, Rehab Focus," *Los Angeles Times*, March 16, 2023, <https://www.latimes.com/california/story/2023-03-16/newsom-wants-to-transform-san-quentin-using-a-scandinavian-model>.

¹²⁷ John Pratt, "Scandinavian Exceptionalism in an Era of Penal Excess. Part I: The Nature and Origins of Scandinavian Exceptionalism," *British Journal of Criminology* no. 48 (2008), 123, quoted in John Pratt and Anna Eriksson, "In Defence of Scandinavian Exceptionalism," in *Penal Exceptionalism?: Nordic Prison Policy and Practice*, eds. Jane Dullum and Thomas Ugelvik (New York: Routledge, 2012), 3.

¹²⁸ John Pratt and Anna Eriksson, "In Defence of Scandinavian Exceptionalism," in *Penal Exceptionalism?: Nordic Prison Policy and Practice*, ed. Jane Dullum and Thomas Ugelvik (New York: Routledge, 2012), 9-10.

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“prison colonies” emerged between 1910 and 1913, ushering a new era that fostered relaxed conditions and collective living within prisons. Consequently, the purpose of prison changed, “becom[ing] a means of integrating criminals to society rather than terrorizing them into submission to its rules.” Incarcerated individuals now had the opportunity to learn, work, and experience a meaningful change in their material conditions. Most importantly, moral differences that had once distinguished prisoners from the community were minimized, leading to a new concrete reality for prisoners that focused on how they could “better themselves during their sentence, rather than insisting that they should spend their time in misery and suffering.”¹²⁹

These significant changes led to the present-day Scandinavian Prison Model. In the United States, some jurisdictions have adopted the Scandinavian model with pilot programs in Pennsylvania, Oregon, and North Dakota. Beginning in 2025, California will follow suit, using the Scandinavian model to transform its first and most notorious prison, San Quentin. The maximum security facility will be converted into a place focused on empowering prisoners to become good neighbors. California Governor Gavin Newsom describes the innovative plan as an opportunity to “hold ourselves to a higher level of ambition and look to completely reimagine what prison means.”¹³⁰

Unlike House Bill 2333, the Scandinavian Prison Model embodies just love, grounded and expressed in (1) freedom, (2) bodily integrity, and (3) love of neighbor. A powerful example of this is the “Little Scandinavia” unit in the Pennsylvania State Correctional Institution in Chester, a breakthrough in our country’s carceral system that follows the Scandinavian model.¹³¹ The unit revolves around the redemptive potential of its residents rather than traditional, punitive measures.¹³² First, the model cultivates prisoners’ capacity for free choice, encouraging the expansion and possibilities of self. Luis, a prisoner who was convicted of first degree murder, “credits Little Scandinavia with giving him a chance of success on the outside by offering him the dignity, calm, and opportunity to figure himself

¹²⁹ John Pratt and Anna Eriksson, “In Defence of Scandinavian Exceptionalism,” 8-11. The term “cultures of equality” refers to the “*relatively* egalitarian social relations” (original emphasis) of Norway, Sweden, Finland, and Denmark. See Pratt and Eriksson, 8.

¹³⁰ Anita Chabria, “California to Transform Infamous San Quentin Prison.”

¹³¹ Chabria, “California to Transform Infamous San Quentin Prison.”

¹³² Chabria, “California to Transform Infamous San Quentin Prison.”

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out.”¹³³ Before living in Little Scandinavia, Luis had never cooked a meal or washed dishes.¹³⁴ Now, in the kitchen that he shares with fifty-four other men, he has discovered a new and profound freedom through the ability to clean up after himself.¹³⁵ Before, he had viewed himself as “conditioned and dependent,” believing that violence and crime were an inescapable destiny for him.¹³⁶ Now, through the freedom he has found in the kitchen, he imagines cooking dinner for his son and growing a relationship with him, once his sentence is completed.¹³⁷ Because of Little Scandinavia, Luis can exercise his autonomy to a greater extent, determining the meaning of his life and exploring his potential as a human person behind prison walls.

Second, the Scandinavian model respects bodily integrity. In Little Scandinavia, prisoners live in clean and humane conditions,¹³⁸ protecting their inviolable dignity and allowing their body to remain safe and whole. Although it is still a prison regime, Little Scandinavia attempts to maintain life within its walls as normal as possible, without fear and violence.¹³⁹ With their bodily integrity safeguarded, this, in turn, has given prisoners the opportunity to flourish as human persons. This connection between bodily integrity and human flourishing can be observed in Luis’ comparison between the traditional prison system and Little Scandinavia: “As humans, we adjust. So if the environment is bad, eventually you start to drift . . . Here, it’s productive. So by the time you get out, you’re a better person.”¹⁴⁰ In Little Scandinavia, Luis is not terrorized or humiliated by his fellow prisoners or prison guards; instead, he can be secure in his body and develop his personhood safely.

Finally, the model promotes love of neighbor, transforming relationality among the various groups inside prison walls. In Little Scandinavia, relationships are fostered and peace is maintained through mutual respect and listening, not through force.¹⁴¹ Matt, a Pennsylvania corrections officer, once

¹³³ Chabria, “California to Transform Infamous San Quentin Prison.”

¹³⁴ Chabria, “California to Transform Infamous San Quentin Prison.”

¹³⁵ Chabria, “California to Transform Infamous San Quentin Prison.”

¹³⁶ Chabria, “California to Transform Infamous San Quentin Prison.”

¹³⁷ Chabria, “California to Transform Infamous San Quentin Prison.”

¹³⁸ Chabria, “California to Transform Infamous San Quentin Prison.”

¹³⁹ Chabria, “California to Transform Infamous San Quentin Prison.”

¹⁴⁰ Chabria, “California to Transform Infamous San Quentin Prison.”

¹⁴¹ Chabria, “California to Transform Infamous San Quentin Prison.”



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imagined a good day at work as returning home alive to his family.¹⁴² However, his outlook changed in 2019 when he traveled to Norway, Sweden, and Denmark to work with his counterparts who practiced the Scandinavian Prison Model. When a Scandinavian officer described “a good day as one where he changed an inmate’s life for the better,” it opened Matt to the possibility of being able to change another person’s life.¹⁴³

Now, in Little Scandinavia, Matt and other American officers have become mentors, looking out for the men assigned to them and serving as their main contact for help. Matt shared, “I still deal with a lot of individuals with different personalities, different problems, different complexes, and it can still be emotionally draining. But the trade-off is a lot easier when you realize you can make a difference.” His experience describes the general consensus among experts, correctional officers, prisoners, and former prisoners: prisoners are better places when the “us vs. them” wall is dismantled between officers and prisoners. There is the possibility of building authentic relationship when officers value the people in prison.¹⁴⁴ Thus, under the Scandinavian model, even prison guards are invited to grow in relation and wholeness. Secure in his bodily integrity, Matt is able to determine the meaning of his own life as a correctional officer and to enter into relationship with the prisoners assigned to his care. It is a horizontal relationship in which walls are broken down, literally and figuratively, allowing guards and prisoners to encounter one another as human beings. Fear and violence are replaced by respect and peace. In Little Scandinavia, there can be love of neighbor.

In the end, the Scandinavian Prison Model exemplifies the material principles of justice that treat and respect prisoners as ends in themselves. The model offers the possibility to restore the *imago Dei* of prisoners and love of neighbor, fostering personhood and a sense of community that transcends prison walls and is life-giving and life-affirming for both prisoners and prison guards. In this way, both groups can be affirmed in their concrete reality and invited to a destiny in relation and wholeness as embodied spirits, inspirited bodies. Such is the case in Little Scandinavia. As prisoners and prison guards grew in autonomy and relationality, they discovered that they could transcend themselves and that they belonged to themselves and to one another.

¹⁴² Chabria, “California to Transform Infamous San Quentin Prison.”

¹⁴³ Chabria, “California to Transform Infamous San Quentin Prison.”

¹⁴⁴ Chabria, “California to Transform Infamous San Quentin Prison.”

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Conclusion

Massachusetts House Bill 2333 is a deformation of the *imago Dei* of prisoners and the Christian concept of love of neighbor, with its incentivization of living prisoners to donate their body parts in exchange for freedom. Besides raising various issues involving prisoners and organ transplantation, Bill 2333 disrupts the authentic spiritual embodiment and human flourishing of prisoners. Under Margaret A. Farley's justice framework, Bill 2333 objectifies prisoners, treating them as a means to address the issue of organ shortage in the State of Massachusetts. This objectification implicates autonomy and relationality, the two obligating features of human personhood, as well as the notion of just love, bearing heavily on freedom, bodily integrity, and love of neighbor.

In response to House Bill 2333's disorder and disunity, I propose the Scandinavian Prison Model as a restoration of the *imago Dei* of prisoners and love of neighbor. The Scandinavian model, with its promotion of freedom, bodily integrity, and relationality, exemplifies just love and treats prisoners and prison guards as ends in themselves. Although I have examined the *imago Dei* and love of neighbor through life inside prison walls, this paper can be enriched by further scholarship as to how the *imago Dei* of prisoners can be restored outside prison walls.¹⁴⁵ The rehabilitation of the freedom and human dignity of prisoners requires a radical commitment to their good, once again implicating *imago Dei* and love of neighbor. Nevertheless, the trailblazing path that states like Pennsylvania and California have paved offers a new way to envisage incarceration, one that respects human dignity and promotes human flourishing, even behind prison walls.

¹⁴⁵ One potential area of scholarship is the restoration of the rights of prisoners in public life (e.g., restoring voting rights for individuals with felony convictions).

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