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## A Theology of Welcome: Faith-Based Considerations of Immigrants as Strangers in a Foreign Land<sup>+</sup>

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*When an alien resides with you in your land, you shall not oppress the alien. The alien who resides with you shall be to you as the citizen among you; you shall love the alien as yourself, for you were aliens in the land of Egypt . . .<sup>‡</sup>*

### I. INTRODUCTION

On Wednesday, August 7, 2019, United States immigration authorities raided seven food processing plants in small towns outside Jackson, Mississippi, leading to arrests of 680 mostly Latino workers.<sup>1</sup> In the raids' aftermath, Jackson Mayor Chokwe Antar Lumumba called on his city's churches and faith communities to provide sanctuary for "our immigrant

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<sup>‡</sup> *Leviticus* 19:33–34 (NRSV) (hereinafter any and all scriptural references are from the New Revised Standard Version of the Holy Bible, unless expressly noted otherwise).

<sup>1</sup> See generally, Claire Hansen, *Largest Workplace Immigration Operation in Decade Results in 680 Arrests*, U.S. NEWS & WORLD REP. (Aug. 7, 2019), <https://www.usnews.com/news/national-news/articles/2019-08-07/largest-workplace-immigration-operation-in-decade-results-in-680-arrests>.

neighbors.”<sup>2</sup> This was not the first time Mayor Lumumba and Jackson defied President Donald Trump’s administration on the issue of immigration. “The Department of Justice under then-Attorney General Jeff Sessions referred to the city of Jackson and 28 other localities as sanctuary cities in 2017,”<sup>3</sup> because they offered protection to so many undocumented immigrants. Indeed, Sessions previously threatened the “sanctuary cities” with losing eligibility to seek some \$4.1 billion available in federal grant funding.<sup>4</sup>

The August 7<sup>th</sup> raids were not the Trump Administration’s first controversial act related to immigration.<sup>5</sup> Some might argue immigration has been Trump’s *most controversial* policy matter.<sup>6</sup> Trump’s most popularized immigration controversy resulted in the United States government being closed from December 28, 2018 to January 25, 2019.<sup>7</sup> This extended thirty-five day shutdown—the longest in American history—was the result of the executive and legislative branches failing to reach a budget compromise and pass an appropriation bill to fund governmental operations.<sup>8</sup> The heart of this

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<sup>2</sup> Justin Vicory, ‘Dehumanizing’: Jackson Mayor Slams ICE Raids, Asks Churches to Become Safe Havens, MISS. CLARION LEDGER (Aug. 7, 2019), <https://www.clarionledger.com/story/news/politics/2019/08/07/immigration-raids-jackson-mayor-calls-church-leaders-shelter-immigrants/1946239001/>.

<sup>3</sup> See *id.*

<sup>4</sup> See generally, *AG Sessions Threatens ‘Sanctuary Cities,’ Mayors Fight Back*, NBC News & The Associated Press, (Mar. 27, 2017), <https://www.nbcnews.com/news/us-news/ag-sessions-threatens-sanctuary-cities-mayors-fight-back-n739171>.

<sup>5</sup> Earlier examples of Trump’s clear biases manifested with the Administration’s September 2017 announcement of its intent to winddown the Deferred Action for Childhood Arrivals Program, popularly known as “DACA.” See, e.g., Richard Wolf, *Supreme Court to Hear Trump Administration Plea to End DACA Program for Immigrants Who Came as Children*, USA TODAY (Jun. 28, 2019), <https://www.usatoday.com/story/news/politics/2019/06/28/immigration-supreme-court-consider-donald-trumps-plan-end-daca/2660091002/>.

<sup>6</sup> Less than one week after assuming the presidency, on January 27, 2017, Trump signed Executive Order 13769, titled “Protecting the Nation from Foreign Terrorist Entry into the United States,” more popularly known as “The Muslim Ban,” or “The Travel Ban.” See generally, Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017). While litigation ensued, the Order was in effect until March 6, 2017, when Trump signed the superseding Executive Order 13980. See generally, *Wash. v. Trump*, No. 2:17-cv-00141 (JLR), 2017 U.S. Dist. LEXIS 97837 (W.D. Wash. June. 23, 2017); *Wash. v. Trump*, 847 F.3d 1151 (9th Cir. 2017) (per curiam) (order denying stay of District Court’s Temporary Restraining Order); See also, *Wash. v. Trump*, 858 F.3d 1168 (9th Cir. 2017) (order denying vacatur of stay order). For an excellent analysis of the original Order’s due process implications, in the context of immigration, see Amy L. Moore, *Even When You Win, You Lose: Executive Order 13769 & The Depressing State of Procedural Due Process in the Context of Immigration*, 26 WM. & MARY BILL OF RTS J. 65 (2017). Furthermore, controversy also surrounds the Trump Administration’s immigration policies in that they have also been disproportionately aimed at Mexican nationals. See e.g., Michael D. Shear et al., *Trump’s Policy Could Alter the Face of the American Immigrant*, N.Y. TIMES (Aug. 14, 2019), <https://www.nytimes.com/2019/08/14/us/immigration-public-charge-welfare.html>; See also, Clair Felter & Danielle Renwick, *The U.S. Immigration Debate*, THE COUNCIL ON FOREIGN REL. (July 25, 2019), <https://www.cfr.org/background/immigration-debate-0>.

<sup>7</sup> Clare Foran, *Trump Signs Bill to Reopen the Government After Record Shutdown*, CNN (Jan. 25, 2019), <https://www.cnn.com/2019/01/25/politics/congress-reopens-government-shutdown/index.html>.

<sup>8</sup> Jacob Pramuk, *Shutdown Talks Collapse: Trump Won’t Sign Spending Bill Without Wall Money*, CNBC (Dec. 20, 2018), <https://www.cnbc.com/2018/12/20/ryan-says-trump-will-not-sign-senate-pass-ed-bill-to-avoid-government-shutdown.html>.

failure was, both figuratively and literally, a wall of separation. While there was an unquestionable ideological wall separating the Congress from Trump's extreme stances on immigration, the fiscal division was over Trump's demand for \$5.7 billion dollars to build a U.S.-Mexico border wall.<sup>9</sup>

The hotly contested government shutdown debate had very little to do with national security. Instead, as a consequence of Trump's race-based 2016 campaign rhetoric,<sup>10</sup> the debate had everything to do with immigration policies stemming from a series of controversial Executive Orders, and the Administration's enforcement of the same, punitively separating children from their families at the border.<sup>11</sup> Passions were further enflamed regarding border separation because then-Attorney General Sessions publicly attempted to justify the separation of migrant families by citing Romans 13—the same scriptural reference used to sanction slavery in the antebellum South.<sup>12</sup>

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<sup>9</sup> Tessa Berenson, *Here Are the White House's Latest Demands to End the Shutdown*, TIME (Jan. 7, 2019), <https://time.com/5496179/mike-pence-donald-trump-border-wall-proposal-shutdown-demo-crats>. (“The White House is holding firm in its request for \$5.7 billion for a border wall to end the shutdown, while also demanding billions of dollars more to address other priorities at the southern border, according to a proposal it gave Congressional Democrats . . .”).

<sup>10</sup> As a result of Trump's race-based statements, in a 2016 law review article, published during the presidential campaign but prior to Trump's election, the authors write:

[Trump] has built a campaign on promises to build a wall on the United States-Mexico border to prevent illegal immigration; to deport all of the estimated twelve million Mexican immigrants who are not legally authorized to live in the United States (“U.S.”); to prohibit Syrian refugees from entering the U.S. and to exclude all Muslims who are not U.S. citizens from entering the country.

David B. Oppenheimer, Swati Prakash, & Rachel Burns, *Playing the Trump Card: The Enduring Legacy of Racism in Immigration Law*, 26 BERKLEY LARAZA L.J. 1, 1 (2016); see also, Michelle Ye Hee Lee, *Donald Trump's False Comments Connecting Mexican Immigrants and Crime*, WASH. POST (July 8, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/07/08/donald-trumps-false-comments-connecting-mexican-immigrants-and-crime>.

<sup>11</sup> Miriam Jordan, *No More Family Separations, Except These 900*, N.Y. TIMES (July 30, 2019), <https://www.nytimes.com/2019/07/30/us/migrant-family-separations.html>.

<sup>12</sup> See, e.g., Julia Jacobs, *Sessions' Use of Bible Passage to Defend Immigration Policy Draws Fire*, N. Y. TIMES (Jun. 15, 2018), <https://www.nytimes.com/2018/06/15/us/sessions-bible-verse-romans.html>. John Howard Yoder, a former professor of theology at the University of Notre Dame, also addressed the evolving ethical responses to Romans 13:1-7 among faith adherents. See generally, JOHN HOWARD YODER, “Let Every Soul Be Subject: Romans 13 and the Authority of the State,” *THE POLITICS OF JESUS* 193-210 (2d ed.) (1994) [1972]. In continuing the African Methodist Episcopal Church's social justice focus, her bishops issued a public statement condemning Sessions' rhetoric and also held a “Call to Conscience” political rally opposite the White House, sending a clear message of prophetic resistance. See generally, COUNCIL OF BISHOPS, *AME Church Condemns Use of Scripture by Attorney General Sessions to Separate Immigrant Families*, (Jun. 15, 2018), <https://www.ame-church.com/news/cob-statement-re-condemning-immigrant-family-separation>; See also. Hamil Harris, *Black Church Leaders Send Message to Trump: Ongoing Efforts Aimed at Increasing Voter Registration, Turnout*, THE WASH. INFORMER (Sept. 12, 2018) (“Participants young and old from across the nation, led by bishops from the African Methodist Episcopal (AME) Church, gathered for the rally . . . and unbridled demands aimed at President Trump who they say must change his ways”); see also Hazel Trice Edney & Hamil Harris, *Black Church Sends Message to Trump: Church Leaders Strategize for Midterm Elections at ‘Call to*

While such immigration policies have fueled the weekly sermons of many politically progressive preachers (including yours truly), they have also created a tension for faith adherents.<sup>13</sup> When the “laws of the land” conflict with the moral “laws of God,” this tension can place people of faith in a conundrum.<sup>14</sup> I use this Essay as an interdisciplinary exploration in connecting faith and legal communities through the common thread of “social justice,”<sup>15</sup> while simultaneously promoting a theology of welcome

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*Conscience’ in DC*, ST. LOUIS AM. STATESMAN (Sept. 20, 2018), [http://www.stlamerican.com/religion/local\\_religion/black-church-sends-message-to-trump/article\\_8078\\_1134-bc66-11e8-8bf7-b314e787d6e0.html](http://www.stlamerican.com/religion/local_religion/black-church-sends-message-to-trump/article_8078_1134-bc66-11e8-8bf7-b314e787d6e0.html) (“Lafayette Square was filled with prayers, songs of praise and calls for social justice as the bishops of the African Methodist Episcopal (AME) Church hosted a rally across from the White House.”). In the realm of faith-based social justice, it bears noting that the Call to Conscience was not the only time the AMEC lead opposition to certain Trump policies. Opposition has also included a nationally organized campaign against the administration’s attempts to repeal the Patient Protection and Affordable Care Act of 2010, popularly known as either “the ACA” or “Obama Care.” See, e.g., RELIGION NEWS SERV., *African Methodist Episcopal (AME) Church Council of Bishops Responds to American Healthcare Act* (Mar. 21, 2017), <https://religionnews.com/2017/03/21/african-methodist-episcopal-ame-church-council-of-bishopsresponds-to-american-healthcare-act>.

<sup>13</sup> For an excellent analysis of how faith adherents in five major Christian traditions (Catholic, Reformed, Lutheran, and Anabaptist, as well as the black church in its prophetic role) differ on church involvement with secular politics, see generally, AMY E. BLACK & STANLEY N. GUNDRY (eds.), *FIVE VIEWS ON THE CHURCH AND POLITICS* (2015).

<sup>14</sup> An excellent historical exploration, written from a Christian ethicist’s perspective, of whether Christians are called to be engaged in or refrain from political activity, is woven throughout H. RICHARD NIEBUHR, *CHRIST AND CULTURE* (50th ann. ed. 2001). Furthermore, with respect to the ongoing conflict that exists within the black church’s ranks, Raphael Warnock chronicles a tension between pietistic and liberationist strands in the African American community that was arguably best illustrated by the initial resistance to Martin Luther King, Jr.’s liberationist theology during the Civil Rights Movement. RAPHAEL G. WARNOCK, *THE DIVIDED MIND OF THE BLACK CHURCH: THEOLOGY, PIETY & PUBLIC WITNESS* 53–61 (2014).

<sup>15</sup> From an ecclesial perspective, “social justice” and social justice ministries are often scripturally based as part of the prophetic domain of ministry. Although a comprehensive list of social justice-oriented scriptures is well beyond this Essay’s scope, I take this opportunity to briefly contextualize three popular pericopes. First, the famous narrative in the book of Daniel about Shadrach, Meshach, and Abednego refusing to bow down to King’s Nebuchadnezzar’s golden deity is often associated with civil disobedience. See generally, Daniel 3:1–18; see also, Jonathan C. Augustine, *The Fiery Furnace, Civil Disobedience, and the Civil Rights Movement: A Biblical Exegesis on Daniel 3 and Letter from Birmingham Jail*, 21 RICHMOND PUB. INT. L. REV. 243 (2018). I argue civil disobedience was at the heart of the Civil Rights Movement and was a key organizing tactic employed by clergy and laity alike. See generally, Jonathan C. Augustine, *The Theology of Civil Disobedience: The First Amendment, Freedom Riders, and Passage of the Voting Rights Act*, 21 S. CAL. INTER DISC. L. J. 255 (2012). Secondly, after a period of fasting and praying, in preparation for public ministry, the writer of Luke famously records Jesus entering a synagogue and exclaiming, in a social justice vein, words from the scroll of the prophet Isaiah:

The Spirit of the Lord is upon me, because he has anointed me to *bring good news to the poor*. He has sent me to *proclaim release to the captives* and recovery of sight to the blind, *to let the oppressed go free*, to proclaim the year of the Lord’s favor.

*Luke* 4:18–19 (emphasis added). Finally, in his letter to the church at Galatia, the Apostle Paul writes what is arguably the Bible’s most famous social justice scripture in that it speaks to true egalitarianism for all peoples, regardless of gender, ethnicity, or class. Paul famously wrote:

that is rooted in scripture. In using both scripture and legal authority, this Essay's central thesis is that the United States' current immigration policies are deeply flawed and the appropriate response—especially toward migrants fleeing persecution in neighboring countries—should be a theology of welcome.

Although the concept of welcome might manifest in any number of ways, as a pastor leading a historic congregation in the African Methodist Episcopal Church (“AMEC”), the denomination that began the “black church” tradition,<sup>16</sup> with a history of active engagement and prophetic resistance in social justice movements,<sup>17</sup> I specifically urge faith adherents

[F]or in Christ Jesus, you are all children of God through faith . . . There no longer is Jew or Greek, there is no longer free of slave, there is no longer male and female; for all of you are one in Christ Jesus. And if you belong to Christ, then you are Abraham's offspring, heirs according to the promise.

*Galatians* 3:26–29. In addressing the significance of this pericope, as it relates to egalitarianism and social justice, Brad Braxton argues, “When Paul says, ‘There is neither Jew nor Greek, there is neither slave nor free, there is neither male and female,’ he is not asserting the obliteration of difference, but rather the obliteration of *dominance*.” BRAD R. BRAXTON, NO LONGER SLAVES: GALATIANS AND AFRICAN AMERICAN EXPERIENCE 94 (2002) (emphasis in original). In this context, the obliteration of dominance deals with the elimination of ethnic, social, and class divisions, as well as hierarchal social practices that were common in the Greco-Roman world. *Id.* This egalitarianism and elimination of dominance is at the heart of social justice.

<sup>16</sup> I draw a distinction between classic evangelical theology and black theology, in attempting to identify and define “the black church.” This distinction is also necessary to note a historic and ongoing conflict existing within the black church's realm. As an initial matter, the expression “the black church” includes members and congregations affiliated with the seven independent, historic, and African American-governed denominations founded after the Free African Society of 1787. Specifically, the denominations include the: (1) African Methodist Episcopal Church; (2) African Methodist Episcopal Zion Church; (3) Christian Methodist Episcopal Church; (4) National Baptist Convention, U.S.A., Incorporated; (5) National Baptist Convention of America, Unincorporated; (6) Progressive National Baptist Convention; and (7) Church of God in Christ. See Vaughn E. James, *The African American Church, Political Activity, and Tax Exemption*, 37 SETON HALL L. R. 371, 371–412 (2007); see also C. ERIC LINCOLN & LAWRENCE H. MAMIYA, *THE BLACK CHURCH IN THE AFRICAN AMERICAN EXPERIENCE* 1 (1990). As Raphael Warnock argues, however, “such a limited designation is too narrow, given the current reality of black Christianity and given the development of independent black reflection (black theology) among black people and black causes in predominately white denominations.” WARNOCK, *supra* note 14, at 9. I agree and adopt Warnock's more contemporary and inclusive reference, defining the black church as “the varied ecclesial groupings of Christians of African descent, inside and outside black and white denominations, imbued with the memory of a suffering Jesus and informed by the legacy of slavery and segregation in America.” *Id.*

<sup>17</sup> The AMEC originates from a 1787 breakaway from the then-Methodist Episcopal Church (the precursor to the United Methodist Church), in Philadelphia, Pennsylvania. African American worshipers formed the Free African Society, a precursor to the legal establishment of the AMEC, because they were treated in a discriminatory manner during worship. See RICHARD S. NEWMAN, *FREEDOM'S PROPHET: BISHOP RICHARD ALLEN, THE AME CHURCH, AND THE BLACK FOUNDING FATHERS 173–76* (2008). With a liberationist history, the AMEC is the oldest Black-governed denomination, owning the first parcel of property purchased by African Americans, Mother Bethel AMEC, in downtown Philadelphia. See generally, Mother Bethel African Methodist Episcopal (AME) Church, *Overview*, <https://www.visitphilly.com/things-to-do/attractions/mother-bethel-african-methodist-episcopal-ame-church> (last visited Jan. 24, 2020).

to embrace the scriptural view of immigration. As Glenn Utter writes, “Christian denominations express an openness to immigration of people from other countries and a willingness to help them succeed in the United States. In justifying a humane immigration policy, members note a fundamental Christian value that strangers be made welcome. They cite scripture in support of this position.”<sup>18</sup> In agreeing with Utter, I also rely on scripture to support the social justice premise of the arguments raised herein.

Insofar as I encourage a theology of welcome, I also understand there are differences in ecclesiology regarding the church’s role in social justice. Mike Slaughter and Chuck Gutenson address this theological dichotomy in their 2012 book, *Hijacked: Responding to the Partisan Church Divide*. They write:

Former Fox News talk-show host Glenn Beck made a statement on his March 2, 2010 show that became the litmus test from theological fidelity for some conservative Christians in the evangelical church. Beck said: ‘I beg you, look for the words ‘social justice’ or ‘economic justice’ on your church Website, if you find it, run fast as you can.’ Social justice and economic justice, they are ‘code words,’ terms he believes indicate communism or Nazism. He also said: ‘If you have a priest that is pushing social justice, go find another parish. Go alert your bishop.’<sup>19</sup>

There is clearly a tension in the ways various theologies embrace social justice and whether the church should be engaged in its realm.

Furthermore, in addition to varied perspectives on the place of social justice in the church, in general, there is also a dichotomy of theological views specific to immigration. In *Seeking Refuge*, for example, the authors write from a Christocentric perspective and argue:

For those who profess to follow Jesus, our top authority on any topic—but particularly on a complex one—ought to be the Bible. For many evangelical Christians, though, refugees and immigration are thought of as political, economic, and cultural issues, rather than as a biblical concern. A recent LifeWay Research survey of American evangelical Christians found that just 12 percent said that they thought about immigration issues primarily from the perspective of the Bible.<sup>20</sup>

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<sup>18</sup> GLENN H. UTTER, MAINLINE CHRISTIANS AND U.S. PUBLIC POLICY 55 (2007).

<sup>19</sup> MIKE SLAUGHTER & CHARLES E. GUTENSON, HIJACKED: RESPONDING TO THE PARTISAN CHURCH DIVIDE 17 (2012).

<sup>20</sup> STEPHAN BAUMAN ET. AL., SEEKING REFUGE: ON THE SHORES OF THE GLOBAL REFUGEE CRISIS 29 (2016).

This Essay's intent is to address head-on the issues of immigration and refuge, as they relate to biblical scriptures and the ministry of social justice.

My appreciation of the numerous instances wherein immigration appears in scripture suggests God uses immigration to bring people to a greater understanding of God's will for human creation. Consequently, I urge faith communities to provide sanctuary to those facing deportation, as they stand against "unjust laws" (executive orders) and distinguish between laws that uplift human personality and those that do not square with morality or the law of God.<sup>21</sup> In the context of Christian faith communities being engaged in immigration, I agree with Utter that "welcoming and assisting immigrants is considered a biblical mandate."<sup>22</sup>

Matthew Sorens and Jenny Lang address this very point, in the context of the Civil Rights Movement:

When unjust laws remain in place, there may be times when civil disobedience is permissible or even required if we are to practice 'divine obedience.' The African American Christians who led the civil rights movement violated unjust laws in order to expose their injustice and end legalized segregation. Brave Christians such as Corrie ten Boom harbored Jewish people during the Holocaust. Today, many churches send missionaries to countries where it is illegal to preach the gospel.<sup>23</sup>

Indeed, writing while incarcerated for violating segregation laws he deemed morally unjust and in detailing a basis for civil disobedience, Martin Luther King, Jr. ("King") argued, "I would agree with St. Augustine that 'an unjust law is no law at all.'"<sup>24</sup>

To support the foregoing thesis, that the United States' current immigration policies are deeply flawed and should be met with a theology of welcome, this Essay proceeds in five parts. Part One is an introductory overview, detailing the theological tension between "laws of the land" and "moral laws," causing faith adherents to deem certain manmade laws unjust. Part Two builds upon Part One's foundation by providing a biblical framework for specifically understanding immigration as a moral guide and a basis for embracing policies rooted in a theology of welcome. I agree with Utter that "policies established to maintain border security should be

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<sup>21</sup> MARTIN LUTHER KING, JR., "LETTER FROM BIRMINGHAM JAIL," THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR. (Clayborne Carson, ed.) 193 (1998).

<sup>22</sup> UTTER, *supra* note 18, at 56.

<sup>23</sup> MATTHEW SORENS & JENNY YANG, WELCOMING THE STRANGER: JUSTICE, COMPASSION & TRUTH IN THE IMMIGRATION DEBATE (revised & expanded) 96 (2018) (internal citations omitted).

<sup>24</sup> KING, *supra* note 21, at 193.

informed by humanitarian values.”<sup>25</sup>

Part Three progresses from a scriptural to a legal analysis, briefly overviewing immigration’s legal history in the United States. In following Part Three’s analysis, Part Four calls for action. It urges faith-based communities to respond to unjust immigration laws by using the same prophetic position of civil disobedience as did King during the zenith of the Civil Rights Movement.<sup>26</sup> Insofar as the Movement began in December 1955, with King’s leadership of the Montgomery Bus Boycott, it reached a highpoint in April 1963 when he wrote *Letter from Birmingham Jail*.<sup>27</sup>

Part Four builds upon Part Three by urging faith adherents and congregational leaders to follow King’s example of civil disobedience and participate in a (renewed) Sanctuary Movement, the 1980s religious and political campaign that encouraged congregations to offer sanctuary to migrant refugees.<sup>28</sup> Others have also advocated similar positions. “The

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<sup>25</sup> UTTER, *supra* note 18, at 56.

<sup>26</sup> In previous scholarship, written from a purely legal perspective, I argued the Movement was already underway, in 1954, when the Supreme Court decided *Brown v. Board of Education*, 347 U.S. 483 (1954). Jonathan C. Augustine, *The Interest Convergence of Education Reform and Economic Development: A Response to ‘The State of Our Unions,’* 51 LOUISVILLE L. REV. 407, 408 (2013). In writing from an interdisciplinary perspective, I later argued the Movement began with Rosa Parks’ December 1, 1955 act of civil disobedience, “refusing to vacate her seat on a Montgomery, Alabama municipal bus, in favor of a white person.” Augustine, *The Theology of Civil Disobedience*, 21 S. CAL. INTERDISC. L.J. at 257, n.2. From an interdisciplinary and faith-based perspective, however, I most recently argued the Montgomery Bus Boycott was the act of civil disobedience that placed the (black) church squarely within the realm of political activism at the Movement’s onset. Jonathan C. Augustine, *And When Does The Black Church Get Political?: Responding in the Era of Trump and Making the Church Great Again*, 17 HASTINGS RACE & POVERTY L.J. 87, 96–98 (2020). Indeed, Ms. Parks’ civil disobedience, an act precipitating the Montgomery Bus Boycott, catapulted King’s fledgling ministry as the new pastor of Dexter Avenue Baptist Church in Montgomery, Alabama. *See generally*, Richard Lischer, *THE PREACHER KING: MARTIN LUTHER KING, JR AND THE WORD THAT MOVED AMERICA* 10–11 (1995).

<sup>27</sup> *Letter from Birmingham Jail* earned King a notable place in history, along with Mahatma Gandhi and Henry David Thoreau, because of his effective use of civil disobedience as a nonviolent tool of resistance. *See, e.g.*, JONATHAN RIEDER, *GOSPEL OF FREEDOM: MARTIN LUTHER KING, JR.’S LETTER FROM BIRMINGHAM JAIL AND THE STRUGGLE THAT CHANGED A NATION* xvi (2013). Because of *Letter from Birmingham Jail*’s analysis of civil disobedience and sociopolitical importance, the letter has been reprinted in *Atlantic Monthly* magazine and in various law review articles. *See, e.g.*, Martin Luther King, Jr., *Letter from Birmingham Jail*, reprinted in 26 U. C. DAVIS L. REV. 835 (1993). In separate scholarship, I contextually defined civil disobedience as “an outward act in contravention to a known prohibition or mandate, based on a moral duty to violate that which is deemed immoral, with the understanding that the moral prohibition or mandate was government imposed.” Augustine, *A Theology of Civil Disobedience*, 21 S. CAL. INTER. DIS. L.J. at 262. I adopt the same contextualized definition herein. I have also argued that *Letter from Birmingham Jail*, a treatise on civil disobedience, was King’s most significant theological work in that it foundationally undergirded the Civil Rights Movement’s most empirically successful accomplishment, passage of the Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as 42 U.S.C. § 1973, *et seq.* (1965)). Augustine, *The Fiery Furnace, Civil Disobedience, and the Civil Rights Movement*, 21 RICH. PUB. INT. L. REV. at 261.

<sup>28</sup> Under current federal law, it is *not* illegal for congregations and faith-based organizations to provide ministry-related assistance to immigrants, whether they be documented or undocumented. In addressing this point, Sorens and Yang write:



Executive Council of the Episcopal Church . . . called on church members to ‘follow the call of the Baptismal Covenant’ in their ministry to illegal immigrants even though a proposed federal law might make such assistance a criminal act.”<sup>29</sup> Accordingly, after Part Four’s call to action, this Essay concludes with Part Five serving as a synthesizing statement of the salient points addressed herein.

## II. IMMIGRATION IN SCRIPTURE

This Essay’s undergirding argument is that a theology of welcome is the appropriate response to America’s immigration policies, insofar as immigrants *are not* treated in ways that are consistent with biblical teachings. As a starting point, however, before exploring scriptural examples of immigration, it is important to first identify “immigrants” in the American context.

Immigrants are typically classified as either documented or undocumented people who are nationals of another country but are living in the United States. In relevant part, Sorens and Yang write:

In any discussion about undocumented immigrants, it is important to remember that most foreign-born people in the United States have legal status. Of an estimated 44.7 million people born outside but living inside the United States, about twenty million are already naturalized U.S. citizens, and roughly twelve million are Lawful Permanent Residents . . . [M]ost foreign-born individuals—about three out of four—are present lawfully. The rest of the immigrants currently in the United States—an estimated eleven million people—have no legal status, meaning either that they entered the country without inspection or overstayed a visa.<sup>30</sup>

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Fortunately, at least in most cases and as of this writing, most US citizens need not cross the bridge: we can love, serve, and welcome immigrants, regardless of their legal status, and still be fully in compliance with the law. With the exception of employing someone who is undocumented and not authorized to work, (which is quite clearly unlawful) none of the ways that a church as an institution . . . would interact with undocumented immigrants—welcoming them into a local church, offering English classes, running a food pantry or clothing closet, teaching them in Sunday school, or allowing them to teach Sunday school (so long as it is not a paid position)—is against the law. There is no legal requirement or expectation that a citizen report someone they suspect might not be lawfully present in this country.

SORENS & YANG, *supra* note 23, at 96 (internal citations omitted).

<sup>29</sup> UTTER, *supra* note 18, at 58.

<sup>30</sup> *Id.* at 23 (internal citations omitted).

With this contextualized definition as a baseline, I now consider immigration in the biblical canon.

### *A. Migration in the Old Testament*

In considering migration trends in the Old Testament, Sorens and Yang argue “immigration is a common theme in the [s]criptures. There are several words in the original Hebrew of the Old Testament rendered into English as *alien, stranger, sojourner, foreigner, or immigrant*, depending on the translation.”<sup>31</sup> Notwithstanding translations, however, the Bible is a sacred narrative of God’s interaction with humanity wherein migrants play key roles in an unfolding story. As Sorens and Yang also write, “[t]hroughout [s]cripture God has used the movement of people to accomplish his greater purpose. Like immigrants today, the protagonists of the Old Testament left their homelands and migrated to other lands for a variety of reasons.”<sup>32</sup> One can easily make the same argument regarding the 608 mostly Latino factory workers arrested in the August 7<sup>th</sup> raids and the hundreds of Mexican nationals who were detained in border facilities and separated from their children.<sup>33</sup>

In Genesis 11, *Abram*, later *Abraham*, is introduced as an immigrant from Ur to Haran. As an Ur-born immigrant, he later journeyed to Canaan, with a stay in Egypt. “Abraham’s decision to leave Ur and bring his family to Canaan parallels the stories of many historical and contemporary immigrants who leave the lands they know and cross borders in pursuit of . . . promise . . .”<sup>34</sup> Abraham’s immigrant journey of faith—a direct parallel to so many that have been detained and/or deported under current United States policies—is a critical foundation of America’s three most popular religions, Christianity, Judaism, and Islam, all considered Abrahamic faith traditions.

The Genesis 18 narrative also shows Abraham as an exemplar for hospitality to foreigners. When three strangers arrived at this home—unbeknownst to Abraham, they were messengers from God—Abraham was eager to be hospitable. Consider the following pericope:

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<sup>31</sup> *Id.* at 85–86 (emphasis in original).

<sup>32</sup> *Id.* at 86.

<sup>33</sup> On August 21, 2019, the Trump Administration released a Rule to amend the Flores Settlement Agreement, regulations adopted in 1997 after *Flores v. Meese*, 681 F. Supp 665 (C.D. Cal. 1988), that would now allow indefinite detention of children. *See generally*, 84 FR 44392 (2019). As promulgated, in addition to usurping the Flores Agreement, this new rule would also terminate protections for migrant children who arrive at the border. Jaclyn Kelley-Widmer, *A New Trump Administration Rule Allows Children to be Detained Indefinitely. Here’s What You Need to Know*, WASH. POST. (Aug. 24, 2019), <https://www.washingtonpost.com/politics/2019/08/24/new-trump-administration-rule-allows-children-be-detained-indefinitely-heres-what-you-need-know/>.

<sup>34</sup> SORENS & YANG, *supra* note 23, at 86.

The Lord appeared to Abraham by the oaks of Mamre, as he sat at the entrance of his tent in the heart of the day. He looked up and saw three men standing near him. When he saw them, he ran from the tent entrance to meet them, and bowed down to the ground. He said, ‘My lord, if I find favor with you, do not pass by your servant. Let a little water be brought, and wash your feet, and rest yourselves under the tree. Let me bring a little bread, that you may refresh yourselves, and after that you may pass on—since you have come to your servant.’ So, they said, ‘Do as you have said.’ And Abraham hastened into the tent to Sarah, and said, ‘Make ready quickly three measures of choice flour, knead it, and make cakes.’ Abraham ran to the herd, and took a calf, tender and good, and gave it to the servant, who hastened to prepare it. Then he took curds and milk and the calf that he had prepared and set it before them; and he stood by them under the tree while they ate.<sup>35</sup>

Abraham’s theology of welcome was no doubt the consequence of his own experiences as an immigrant in a foreign land. This is arguably like modern-day immigrants to the United States, being embraced by earlier immigrants, helping them acclimate and orient themselves to American culture.<sup>36</sup>

Furthermore, a few generations later in Genesis 37, Joseph, Abraham’s great-grandson, also became an immigrant. Unlike Abraham, however, Joseph’s journey into immigrant status *was not* a choice.<sup>37</sup> It was instead, like many Africans who came to what is now the United States, in shackles. “Though the exact date has been lost to history (it has come to be observed on August 20, 1619), that was when a ship arrived at Point Comfort in the British colony of Virginia, bearing the cargo of 20 to 30 enslaved Africans.”<sup>38</sup> From an African American perspective, therefore, one can argue Joseph’s forced journey as an immigrant parallels the origins of the African existence in America.

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<sup>35</sup> *Genesis* 18:1-9.

<sup>36</sup> See SORENS & YANG, *supra* note 23, at 87.

<sup>37</sup> The *Genesis* narrative records Joseph as meeting his brothers’ enmity and being sold into slavery, in much like the modern-day context of human trafficking. In relevant part, *Genesis* records the following:

Then Judah said to his brothers, ‘What profit is it if we kill our brother and conceal his blood? Come, let us sell him to the Ishmaelites, and not lay our hands on him, for he is our brother, our own flesh.’ And his brothers agreed. When some Midianite traders passed by, they drew Joseph up, lifting him out of the pit, and sold him to the Ishmaelites for twenty pieces of silver. And they took Joseph to Egypt.

*Genesis* 37:27–28.

<sup>38</sup> Jake Silverstein, *Introduction, The New York Times Magazine: The 1619 Project* 4 (Aug. 18, 2019).

Furthermore, not all Old Testament immigrants were from Israel. There was also migration *into* Israel. In the book of Ruth, the narrative's namesake is a woman from Moab who married a foreigner in her home country. After her husband's death, however, Ruth decided to follow her mother-in-law, Naomi, to the foreign land of Judah, after being cautioned to do otherwise.

So she said, 'See, your sister-in-law has gone back to her people and to her gods; return after your sister-in-law.' But Ruth said, 'Do not press me to leave you or turn back from following you! Where you go, I will go; where you lodge, I will lodge; your people shall be my people. And your God shall be my God. Where you die, I will die—there will I be buried. May the Lord do thus and so to me, and more as well, if even death parts me from you!<sup>39</sup>

Ruth's clear determination embodied the spirit of so many contemporary immigrants who also leave their homelands for the sake of family.<sup>40</sup> Unfortunately, however, while attempting to maintain familial unity, there are countless migrants who have been detained at the Mexican-American border, with numerous children being separated from their families.<sup>41</sup>

In Exodus, God used Moses to lead the Israelites from an oppressive, dictatorial government rule in Egypt, essentially as migrant refugees who were promised eventual habitation of the land Canaan.<sup>42</sup> In addressing this scriptural recordation, Sorens and Yang write: "The Israelites, under Moses' leadership, became refugees, fleeing persecution in Egypt and escaping, with God's help, to a new land where, like many refugees today, they found new challenges."<sup>43</sup> Indeed, in drawing a parallel between the cited Old Testament scriptures and America's current immigration issues, I anecdotally argue that many migrants also face significant challenges in the United States today.

### *B. Migration in the New Testament*

In the New Testament, the most popularly contextualized example of

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<sup>39</sup> *Ruth* 1:15–17.

<sup>40</sup> SORENS & YANG, *supra* note 23, at 88. In further connecting Judaism and Christianity, two of the three most popular religions in the United States, it is important to note that, from an immigration perspective, scripture records Ruth's migration to Israel, and subsequent marriage to Boaz, as forming the familial lineage of Jesus. *Matthew* 1:5, 17. Further, as Sorens & Yang highlight, "Ruth's great-grandson David was thus born as the descendant of an immigrant. In God's perfect plan, that did not stop him from becoming Israel's greatest king." *Id.*

<sup>41</sup> See generally, Rick Jervis & Alan Gomes, *Trump Administration has Separated Hundreds of Children from Their Migrant Families*, USA TODAY (May 2, 2019), <https://www.usatoday.com/story/news/nation/2019/05/02/border-family-separations-trump-administration-border-patrol/3563990002/>.

<sup>42</sup> See *Exodus* 3:7–8.

<sup>43</sup> SORENS & YANG, *supra* note 23, at 88.

migration is arguably the life of ministry of Jesus, the itinerant preacher from Galilee who was born as his family fled persecution, similar to many Latinos who have also fled persecution in their homelands.<sup>44</sup> Matthew 2 records Jesus fleeing persecution, as an infant, because Mary and Joseph feared King Herod would kill them if they remained in Bethlehem of Judea. “Now after they had left, an angel of the Lord appeared to Joseph in a dream and said, ‘Get up, take the child and his mother, and flee to Egypt, and remain there until I tell you; for Herod is about to search for the child, to destroy him.’”<sup>45</sup> The writer of Matthews then goes on to record, after Joseph followed the admonition to flee, “When Herod saw that he had been tricked by the wise men, he was infuriated, and he sent and killed all the children in and around Bethlehem who were two years old or under . . . .”<sup>46</sup> Indeed, the narrative of Jesus fleeing persecution as an immigrant is similar to many immigrant families fleeing dictatorial rule in their native lands.

Although the New Testament speaks less expressly about immigrants as compared with the Old Testament, there is an implied reference to immigration where the author of Hebrews advises readers to welcome strangers with hospitality because, in doing so, one may be entertaining angels without knowing it.<sup>47</sup> Further, the Book of Acts also notes how God used migration to spread the gospel. When Stephen was martyred “a severe persecution began against the church in Jerusalem, and *all* except the apostles were scattered throughout the countryside of Judea and Samaria.”<sup>48</sup> As Sorens and Yang note, “God used this dispersion of Christ-followers to spread the gospel throughout Judea and beyond. For example, Phillip went south toward Gaza and encountered an Ethiopian pilgrim who accepted the good news and presumably brought it back to Africa.”<sup>49</sup> A scripturally-based argument can therefore be made that God has used migration as a means of bringing disparate groups into community with one another while simultaneously spreading the gospel. This is part of the reason I argue for a theology of welcome.

### III. A BRIEF HISTORY OF IMMIGRATION LAW IN THE UNITED STATES

The U.S. Constitution unequivocally provides that “Congress shall have the Power to . . . establish a uniform Rule of Naturalization . . . .”<sup>50</sup> In recognition of this constitutional enumeration, Erwin Chemerinsky writes, “Congress has been accorded broad power to regulate immigration and

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<sup>44</sup> See generally Anthony W. Fontes, *Migrants’ Stories: Why They Flee*, LATINO USA (Apr. 11, 2019), <https://www.latinousa.org/2019/04/11/whytheyflee>.

<sup>45</sup> *Matthew* 2:13.

<sup>46</sup> *Id.* at 2:16.

<sup>47</sup> See generally *Hebrews* 13:2.

<sup>48</sup> *Acts* 8:1 (emphasis added).

<sup>49</sup> SORENS & YANG, *supra* note 23, at 89 (citing *Acts* 8:26–30).

<sup>50</sup> U.S. CONST. art I, §8, cl. 4.

citizenship. Indeed, the Court had held that ‘over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.’<sup>51</sup> More importantly, however, Chemerinsky goes on to highlight that “Congress has thus been recognized as having *plenary power* to set the conditions for entry into the country, the circumstances under which a person can remain, and the rules for becoming a citizen.”<sup>52</sup>

Although argument can be made that executive orders controlling immigration usurp congressional authority with presidential action,<sup>53</sup> such a complex constitutional argument is beyond this Essay’s scope. Instead, my purpose herein is to briefly overview: (1) the racially prejudicial origins of Congress’ plenary power over immigration; and (2) the potential for prejudicial abuse (realized by the Trump Administration) as the executive branch, a coordinate branch of government, is designated as “political” for the purpose of immigration.<sup>54</sup> Foundationally, the second part of this legal analysis lends moral support for my undergirding argument for a theology of welcome.

#### A. The Plenary Power’s Racially Prejudicial Origin

Insofar as Congress has the enumerated power over naturalization, that power has become known as the plenary power, a rule that congressional power over the admission of aliens to the United States is absolute.<sup>55</sup> This plenary power emanates from the Supreme Court’s decision in *Chae Chan Ping v. United States*,<sup>56</sup> aka the Chinese Exclusion Case, a ruling regarded as the fountainhead of the plenary power doctrine.<sup>57</sup> Moreover, as discussed below, the doctrine was further solidified by the Court in *Fong Yue Ting v. United States*.<sup>58</sup> Both cases present a troubled racial history of immigration

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<sup>51</sup> ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 289 (4th ed., 2011).

<sup>52</sup> *Id.* (emphasis added).

<sup>53</sup> The scope of this Essay does not include a constitutional argument regarding the appropriate separation of powers with respect to immigration and whether the executive branch’s regulatory actions usurp enumerated legislative branch authority. Such an analysis has, however, been perfected by other constitutional law scholars. *See, e.g.*, Adam B. Cox & Christina M. Rodriguez, *The President and Immigration Law Redux*, 125 YALE L.J. 104 (2015); *see also* Adam B. Cox & Christina M. Rodriguez, *The President and Immigration Law*, 119 YALE L.J. 458 (2009).

<sup>54</sup> In *Fong Yue Ting v. United States*, 149 U.S. 698, 731 (1893), the Court opined as follows:

The question whether, and upon what conditions, these aliens shall be permitted to remain within the United States being one to be determined by the political departments of the government, the judicial department cannot properly express an opinion upon the wisdom, the policy, or the justice of the measures enacted by Congress in the exercise of the powers confined to it by the Constitution over this subject.

<sup>55</sup> Gabriel J. Chin, *Segregation’s Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1, 5 (1999).

<sup>56</sup> *Chae Chin Ping v. United States*, 130 U.S. 581 (1889).

<sup>57</sup> David A. Martin, *Why Immigration’s Plenary Power Endures*, 68 OKLA. L. REV. 29, 30 (2015).

<sup>58</sup> *Ting*, 149 U.S. at 728, 731.

law in the United States.

Acting pursuant to its enumerated power over naturalization, Congress has a history of drawing race-based lines in immigration. Gabriel Chin illustratively chronicles this history by writing, “[t]he first naturalization act, in 1790, permitted only free white persons to become naturalized citizens; persons of African nativity and descent were added in 1870. When persons of ‘races indigenous to the Western Hemisphere’ were added in 1940, only members of Asian races could not naturalize.”<sup>59</sup> Indeed, it was Congress’ history of discrimination against Asians that was the subject of the Chinese Exclusion Act of 1882,<sup>60</sup> the statute that was upheld in *Chae Chan Ping*.

Chae Chan Ping was an alien attempting to return from an overseas visit after having lived in San Francisco for over a decade. Although he was lawfully in possession of a certificate entitling him reentry into the United States, as he was sailing, Congress voided all such certificates without exception.<sup>61</sup> Consequently, the Chinese Exclusion Act made it illegal for Chae Chan Ping and others like him to enter the United States. The Court upheld the law’s constitutionality, ruling that the power to prohibit the immigration of all people of Chinese ancestry was within congressional authority.<sup>62</sup>

Four years later, in *Fong Yue Ting*, the Court emphasized the plenary power doctrine by upholding a requirement that only Chinese residents of the United States register with the federal government upon pain of deportation.<sup>63</sup> Over the course of its analysis, “the Court determined that aliens could in fact be deported solely because of their race.”<sup>64</sup> *Chae Chan Ping* and *Fong Yue Ting* are both important, therefore, because they each allow racially-based regulation of immigration as an exclusive power reserved to legislative and, by extension, executive branches, as political departments of government.<sup>65</sup> Moreover, since those decisions, the Supreme Court has repeatedly held that the plenary power includes the right to exclude aliens based on race.<sup>66</sup>

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<sup>59</sup> Chin, *supra* note 55, at 13 (internal citations omitted).

<sup>60</sup> Chinese Exclusion Act of May 6, 1882, ch. 126, 22 Stat. 58, 59, *repealed by* Act of Dec. 17, 1943, ch. 344, 57 Stat. 600.

<sup>61</sup> *Ping*, 130 U.S. at 582.

<sup>62</sup> *Id.* at 596.

<sup>63</sup> *Id.* at 727. *See generally* Alien Registration Act of 1940, 54 Stat. 670 (Alien registration, as is customary today, was not a legal requirement until 1940).

<sup>64</sup> Chin, *supra* note 55, at 13.

<sup>65</sup> *Ping*, 130 U.S. at 606 (“The government, possessing the powers which are to be exercised for protection and security, is clothed with authority to determine the occasion on which the powers shall be called forth; and its determination, so far as the subjects affected are concerned, are necessarily conclusive upon all its departments and officers.”).

<sup>66</sup> *See, e.g.,* *Harisiades v. Shaughnessy*, 342 U.S. 580, 599 (1952) (Douglas, J., dissenting); *Yamataya v. Fisher*, 189 U.S. 86, 97 (1903); *see also* *United States v. Ju Toy*, 198 U.S. 253, 261 (1905).

*B. The Plenary Power's Potential for Prejudicial Abuse*

After 1924, most Asians could not immigrate and almost all who were in the United States were barred from becoming naturalized citizens.<sup>67</sup> With passage of the Immigration and Nationality Act of 1952, Congress lifted the absolute bars to the immigration and naturalization of Asians, but established quota systems for Asian countries.<sup>68</sup> By 1965, however, during the height of the Civil Rights Movement, Congress eliminated the last vestige of anti-Asian racial policy with passage of the Immigration and Nationality Act Amendments of 1965.<sup>69</sup> In highlighting the significant effect of the 1965 Amendments, Chin writes:

Under current law, no races are explicitly favored in the awarding of immigrant or nonimmigrant visas, and many believe that no particular nations are advantaged or disadvantaged as an indirect means of racial preference. Yet, the power to select immigrants on the basis of race is said to remain at the ready. *Chae Chan Ping* and *Fong Yue Ting* continue to be cited in modern decisions of the Supreme Court; because all constitutional immigration law flows from these cases, even decisions that do not cite them must rely on cases that do.<sup>70</sup>

Accordingly, given the impact immigration law's history of discrimination has on current policies, it begs the question of whether the Trump Administration's immigration policies have been discriminatory.

To the extent the use of quotas is still a part of the political branches' consideration in their plenary power to regulate immigration, the system is still filled with a potential for prejudicial abuse and division. As the authors of *Identity Crisis* note, Trump's penchant for driving divisions is unequivocally evident.

It was not quite six months into his presidency, and he was looking at a list of how many immigrants had received visas to enter the United States in 2017. He had campaigned on limiting immigration, and now he thought the United States

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<sup>67</sup> See generally Immigration Act of 1924, Pub. L. No. 139, 43 Stat. 153 (1924).

<sup>68</sup> See generally Immigration and Nationality Act of 1952, Pub. L. 414, § 201(a), 43 Stat. 159, 175 (1952).

<sup>69</sup> Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 639, 911 (1965) (codified as amending several sections of 8 U.S.C.). It should nonetheless be noted that even the 1965 amendments are still "discriminatory" in that they retained per-country limits. See Immigration and Nationality Act § 202(a)(2), 8 U.S.C. § 1152(a)(2); see also Howard F. Chang, *Immigration Policy, Liberal Principles, and the Republican Tradition*, 85 GEO. L. J. 2105, 2108 (1997).

<sup>70</sup> See Chin, *supra* note 55, at 15 (internal citations omitted).



was still letting in too many immigrants—and from the wrong places. Trump called Afghanistan, which had sent 2,500 immigrants, a terrorist haven. He said that the 15,000 immigrants from Haiti ‘all have AIDS.’ He said that once the 40,000 Nigerian immigrants had lived in the United States, they would never ‘go back to their huts.’ Trump’s staff proceeded to argue about who was to blame for admitting these immigrants.

The White House denied that Trump had made those remarks, but seven months later, in January 2018, similar remarks surfaced. This time Trump was meeting with members of Congress in the Oval Office to discuss a possible immigration reform deal. When the topic of protecting immigrants from Haiti, El Salvador, and Africa came up, Trump said, ‘Why are we having all of these people from shithole countries here?’ The White House did not dispute the facts initially, but later two Republican senators who were at the meeting said they had heard Trump say ‘shithouse’, not ‘shithole.’ Of course, the distinction between ‘house’ and ‘hole’ was not exactly the source of the controversy.<sup>71</sup>

In order to move away from such blatant prejudice, I urge faith adherents to embrace a theology of welcome based on the scriptural and moral arguments raised herein.

#### IV. A FAITH-BASED CALL TO ACTION: OFFERING SANCTUARY THROUGH CIVIL DISOBEDIENCE

But a religion true to its nature must also be concerned about man’s social conditions. Religion deals with both earth and heaven and, both time and eternity. Religion operates not only on the vertical plane but also on the horizontal. It seeks not only to integrate men with God but to integrate men with men and each man with himself. This means, at bottom, that the Christian gospel is a two-way road. On the one hand, it seeks to change the souls of men, and thereby unite them with God; on the other hand[,] it seeks to change the environmental conditions of men so that the soul will have a chance after it is changed. Any religion that professes to be concerned with the souls of men and is not concerned with the slums that damn them, the economic conditions

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<sup>71</sup> JOHN SIDES, ET AL., *IDENTITY CRISIS: THE 2016 PRESIDENTIAL CAMPAIGN AND THE BATTLE FOR THE MEANING OF AMERICA 201–02* (2018) (internal citations omitted).

that strangle them, and the social conditions that cripple them, is a dry-as-dust religion.<sup>72</sup>

In light of scripture's consistent position on immigration, an initial consideration must be whether the United States' immigration practices reconcile with the believer's moral compass. Although recently reignited, this debate and ongoing theological conundrum is not new. Indeed, the Sanctuary Movement began in the 1980s as a faith-based response to immigration policies that made political asylum difficult for Central Americans fleeing civil conflict.<sup>73</sup> As part of social justice-based call to renew it, Utter chronicles:

In March 2007, Alexia Salvatierra, executive director of Clergy and Laity United for Economic Justice [and a pastor in the Evangelical Lutheran Church in America] announced that religious leaders from various denominations, including the Catholic Lutheran, Methodist, and Presbyterian churches, were planning to revive the sanctuary movement to provide illegal immigrants with shelter and help them avoid deportation.<sup>74</sup>

What, therefore, is a person of faith called to do when conflicted by civil laws they morally deem unjust? In this part of the Essay, I briefly contextualize civil disobedience in both the 1980's Sanctuary Movement and the 1960's Civil Rights Movement.

#### *A. Civil Disobedience and the Faith-Based Sanctuary Movement*

In his 1984 article, *Church Sanctuary*, Richard Feen chronicles the rise of civil disobedience in ecclesial communities that took moral issue with governmental policies adversely affecting immigrants seeking refuge.

[S]anctuary [wa]s being invoked as a means of civil disobedience to protest the government's practice of deporting undocumented Salvadorans back to their country. The harboring of illegal aliens under the name of sanctuary is thus being offered by the churches as a symbol of resistance to United States support for the governments of

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<sup>72</sup> MARTIN LUTHER KING, JR., *STRIDE TOWARD FREEDOM: THE MONTGOMERY STORY* 36 (2001) [1958].

<sup>73</sup> See generally Judith McDaniel, *The Sanctuary Movement, Then and Now*, RELIGION & POL. (Feb. 21, 2017), <https://religionandpolitics.org/2017/02/21/the-sanctuary-movement-then-and-now>.

<sup>74</sup> UTTER, *supra* note 18, at 58–59 (internal citations omitted).

El Salvador and Guatemala.<sup>75</sup>

Feen also describes the church-state relationship that originally gave rise to the civil disobedience of sanctuary.<sup>76</sup> In viewing the church's political activism in hindsight, he writes:

Theologians and others have been quick to point out that the current practice of offering sanctuary to fugitives is but a continuation of a Judeo-Christian tradition. In part, their justification is based upon the claim that they are simply observing a custom which can be traced back to the Old Testament and medieval canon law. In their eyes, 'sanctuary' has always been of deep 'religious-political significance.' As one minister explained, since the earliest of times, 'God's law could be invoked in opposition to civil law.'<sup>77</sup>

With this theological position, many took significant issue with the Reagan Administration in the early 1980s for denying refuge to Central American applicants for political asylum.<sup>78</sup>

The Sanctuary Movement really began in response to the Reagan Administration's policies on immigration, particularly its denial of political asylum, an issue with which many Christians took moral exception.

Religious leaders in Arizona and California reacted against these government policies in 1981 by helping Central American refugees enter and remain in the United States. In 1982, Rev. Jim Fife of the Southside Presbyterian Church in Tucson declared his church to be a sanctuary for Central American refugees, and churches in many parts of the country have since taken similar steps. As of early 1985, over 200 churches were involved in this movement. People from these churches have assisted refugees from Central America by providing them with transportation away from border areas, housing and food, and help in finding

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<sup>75</sup> Richard H. Feen, *Church Sanctuary: Historical Roots and Contemporary Practice*, 7 IN DEFENSE OF THE ALIEN 132 (1984).

<sup>76</sup> Feen traces the original Levitical cities, detailed in the Old Testament's Book of Leviticus, wherein priests were designated as arbitrators and protectors of those seeking refuge, before using this Old Testament foundation to explain the development of "sanctuary" with respect to church-state relations, in the New Testament's Greco-Roman world. *Id.* at 133–35. This background enables the reader to greater appreciate the clergy person's unique role in the resistance politics of civil disobedience.

<sup>77</sup> *Id.* at 132.

<sup>78</sup> See generally James W. Nickel, *Sanctuary, Asylum and Civil Disobedience*, 8 IN DEFENSE OF THE ALIEN 176, 176–87 (1985).

employment.<sup>79</sup>

It seems clear that religious activism, in the form of civil disobedience as associated with the 1980s Sanctuary Movement, was theologically similar to the 1960s civil disobedience of the Civil Rights Movement.

*B. Civil Disobedience and the Faith-Based Civil Rights Movement*

Almost ten years after writing *Stride Toward Freedom*, a book chronicling the Montgomery Bus Boycott's success, King responded to ecclesial leaders' refusal to allow the church to be engaged in secular politics. In 1963, after an act of civil disobedience leading to his arrest in Birmingham, King famously wrote *Letter from Birmingham Jail* to squarely address fellow members of the clergy who criticized his activism.<sup>80</sup> King wrote:

You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court's decision of 1954 outlawing segregation in public schools, it is rather paradoxical to find us consciously breaking laws. One may well ask, 'How can you advocate breaking some laws and obeying others?' The answer is found in the fact that there are two types of laws: there are *just* and there are *unjust* laws.<sup>81</sup>

In elaborating on King's logic, Peter Paris writes, "King had advocated time and again that those who acquiesce to evil participate in promoting evil and are, therefore, as much the agents of evil as the intimidators themselves."<sup>82</sup>

Furthermore, King also expounded on his discernment between "just" and "unjust" laws in *Letter from Birmingham Jail*:

Now, what is the difference between the two? How does

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<sup>79</sup> *Id.* at 176.

<sup>80</sup> In beginning the letter, King expressly indicated that he was writing in response to fellow clergy members who criticized his actions. He also implied that critics of his work were legion.

While confined here in Birmingham city jail, I came across your recent statement calling our present activities 'unwise and untimely.' Seldom, if ever, do I pause to answer criticism of my work and ideas. If I sought to answer all of the criticism that cross my desk, my secretaries would be engaged in little else in the course of the day, and I would have no time for constructive work. But since I feel that you are men of genuine good will and your criticisms are sincerely set forth, I would like to answer your statement in what I hope will be patient and reasonable terms.

KING, *supra* note 21, at 188.

<sup>81</sup> *Id.* at 193.

<sup>82</sup> PETER J. PARIS, BLACK RELIGIOUS LEADERS: CONFLICT IN UNITY 120–21 (1991).

one determine whether a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a law that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law not rooted in eternal law or natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority and the segregated a false sense of inferiority.<sup>83</sup>

Considering King's explanation, I argue the very genesis of the Civil Rights Movement—Rosa Parks' refusal to move to the back of the bus in Montgomery—was the consequence of a suffering servant theology juxtaposed with civil disobedience.<sup>84</sup> In the context of desegregation, while battling Jim Crow's racial discrimination, *Letter from Birmingham Jail* addressed this tension.

On Good Friday, April 12, 1963, King was arrested for violating an injunction. In *Walker v. City of Birmingham*, the Supreme Court records that in the days prior to King's arrest in Birmingham, he and other black ministers unsuccessfully applied for a parade permit, as required by municipal ordinance, to protest against the city's discriminatory conditions.<sup>85</sup> In denying their permit application, Birmingham Police Commissioner, Eugene "Bull" Connor, publicly remarked, "No, you will not get a parade permit in Birmingham, Alabama to picket. I will picket you over to City Jail."<sup>86</sup> After the Alabama courts enjoined the ministers from assembling, the Supreme Court affirmed.

The Supreme Court did not consider the merits of the ministers' action.

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<sup>83</sup> KING, *supra* note 21, at 193.

<sup>84</sup> For a comprehensive analysis and unpacking of the suffering servant theology, as it influenced the view of suffering as redemptive, see generally Augustine, *The Theology of Civil Disobedience*, *supra* note 15, at 274–81. Parks' dissident act of civil disobedience was in response to the 1950's sociopolitical climate. After she was arrested for refusing to follow a bus driver's order to vacate her seat for a white passenger, King and almost all the other Black ministers in Montgomery led a boycott of the city's bus system. See KING, *supra* note 72, at 43–48; see also JAMES H. CONE, RISKS OF FAITH: THE EMERGENCE OF A BLACK THEOLOGY OF LIBERATION, 1968-1998, 57–58 (1999) (discussing King's study of Thoreau while a student at Morehouse College and Gandhi while at Crozier Seminary as influences on his philosophical development regarding civil disobedience.) It bears noting that Joseph Jackson, then-leader of the National Baptist Convention U.S.A., Inc., vehemently opposed King's use of civil disobedience, attempting to malign Thoreau and distinguish Gandhi. See PARIS, *supra* note 82, at 89–92.

<sup>85</sup> *Walker v. City of Birmingham*, 388 U.S. 307 (1967).

<sup>86</sup> *Id.* at 325 (Brennan, J., dissenting). Andrew Young, then one of King's lieutenants in the Civil Rights Movement, writes that Connor was "a man who made no secret of his contempt for black citizens. Connor had become a sort of folk hero to racist everywhere." ANDREW YOUNG, AN EASY BURDEN: THE CIVIL RIGHTS MOVEMENT AND THE TRANSFORMATION OF AMERICA 200 (1996).

Instead, it looked only at the fact that they assembled without the requisite permit.

The rule of law that Alabama followed in this case reflects a belief that in the fair administration of justice no man can be judge in his own case, however exalted his situation, however righteous his motives, and irrespective of his race, color, politics or religion. This Court cannot hold that the petitioners were constitutionally free to ignore all the procedures of the law and carry their battles to the streets. One may sympathize with the petitioners' impatient commitment to their cause. But respect for judicial proceedings is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom.<sup>87</sup>

For King to therefore march without the requisite permit, disobeying what he morally deemed an "unjust law," and readily accepting incarceration as the consequence of his actions, King's theology was rooted in civil disobedience.<sup>88</sup> Further, it was also biblically based.

After his arrest and subsequent incarceration, King also addressed the ongoing necessity for oppressed, religious groups to engage in the resistance of civil disobedience in taking on their governmental oppressors. With a biblically based ethic, he wrote:

Of course, there is nothing new about this kind of civil disobedience. It was seen sublimely in the refusal of Shadrach, Meshach and Abednego to obey the laws of Nebuchadnezzar because a higher moral law was involved. It was practiced superbly by the early Christians who were willing to face hungry lions and the excruciating pain of chopping blocks before submitting to certain unjust laws of the Roman Empire.<sup>89</sup>

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<sup>87</sup> *Walker*, 388 U.S. at 320–21.

<sup>88</sup> See DAVID J. GARROW, BEARING THE CROSS: MARTIN LUTHER KING, JR. AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE 224 (1986).

<sup>89</sup> KING, *supra* note 21, at 194. In illustrating this implied connection between a suffering servant theology and civil disobedience in King, James Cone wrote:

*King saw in Jesus' unmerited suffering on the cross, God's answer to black suffering on the lynching tree. Even in the fact of the killing of four little girls in the Sixteenth Street Baptist Church in Birmingham (September 15, 1963), King did not lose his faith that love is redemptive, even for the whites who committed the unspeakable crime. In his 'Eulogy for the Martyred Children,' King said that 'they did not die in vain. God still has a way of wringing good out of evil. History has proven over and over again that unmerited suffering is redemptive.'* He

Moreover, King also defended the so-called “extremist” nature of his actions by showing their moral justification:

As I continued to think about the matter, I gradually gained a bit of satisfaction from being considered an extremist. Was not Jesus an extremist in love . . . Was not Amos an extremist for justice: ‘Let justice roll down like waters and righteousness like an ever-flowing stream.’<sup>90</sup>

King was therefore proud to lead a movement that continued centuries’ old prophetic political resistance. It was the essence of social justice.<sup>91</sup>

To follow King’s logic in the context of America’s current immigration policies, as the previous scriptural discussion shows, “it is evident from the many references to immigrants and immigration, aliens, sojourners, and strangers in both the Old and New Testaments that God has clearly commanded his people to welcome and care for foreigners.”<sup>92</sup> Accordingly, from both biblical and social justice perspectives, I urge faith adherents to embrace of a theology of welcome.

The Old Testament prophet Micah calls on people of faith to “do justice, love mercy, and walk humbly with your God.”<sup>93</sup> In conversely examining my call for civil disobedience, faith adherents like former Attorney General Sessions, a Sunday School teacher in the United Methodist Church, arguably embraced a philosophy of “doing justice” by enforcing punishment for violating laws.<sup>94</sup>

### *C. Civil Disobedience in the Modern Immigration Reform Context*

The tension between “just” and “unjust” laws, for faith adherents, is literally as old as the scriptures themselves. In *Seeking Refuge*, the authors remind their readers that, “In December 2015, as Canada was receiving the first of twenty-five thousand Syrian refugees that the country resettled over the course of three months, an Anglican church in Newfoundland posted this

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contended that their ‘innocent blood’ could serve as a ‘redemptive force’ to transform ‘our whole Southland from the low road of man’s inhumanity to man to the high road of peace and brotherhood.’

JAMES H. CONE, *THE CROSS AND THE LYNCHING TREE* 87 (2011) (emphasis added) (internal citations omitted).

<sup>90</sup> KING, *supra* note 21, at 198.

<sup>91</sup> See *supra* note 15.

<sup>92</sup> SORENS & YANG, *supra* note 23, at 93–94.

<sup>93</sup> *Micah* 6:8.

<sup>94</sup> See generally RNS Press Release Service, *AME Church Condemns Use of Scripture by Attorney General Sessions*, RELIGION NEWS SERV. (Jun. 15, 2018), <https://religionnews.com/2018/06/15/press-release-ame-church-condemns-use-of-scripture-by-attorney-general-sessions-to-separate-immigrant-families>.

sign: ‘Christmas: A story about a Middle East Family Seeking Refuge.’<sup>95</sup> Perhaps those who feel that the church’s role is not to be engaged in politics should (re)consider the fact that Jesus, the one who gave us the “church,”<sup>96</sup> was born while fleeing political persecution.<sup>97</sup>

In highlighting some aspects of this tension and the moral imperative to disobey unjust laws, Soren and Yang write:

In many situations throughout history, the laws of civil authorities have not been just according to the principles that God gives to his people. Nor were civil authorities in the Bible always just: the Egyptian government of Pharaoh commanded Hebrew midwives to murder newborn boys (Ex. 1:15–21), Babylonian King Nebuchadnezzar required people to bow before a statue of his image (Danial 3), and the authorities forbade the earliest apostles from proclaiming the name of Jesus (Act 5:27–28). In response to these unjust laws, God’s people insisted that, ‘We must obey God rather than human beings’ (Acts 5:29), defying the unjust injunctions—while remaining nonviolently subject to the authorities . . .<sup>98</sup>

Arguably, therefore, with respect to the renewed immigration debate, the Bible calls on faith communities to ascribe to a higher law, when the laws of the land do not reconcile with morality. In addressing the prospects for success in the Sanctuary Movement, Feen opined that its success would depend on what moral obligations sway the American public.

Generally speaking, Americans vacillate between ‘minimal altruism,’ (which entails that one help others when it can be done so without great cost) and ‘heroism’ (which calls for major personal sacrifice) when it comes to questions of helping the less fortunate in the world. While the Judeo-Christian ethic does not obligate us to assist the less fortunate, our Social Darwinist tradition prevents

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<sup>95</sup> BAUMAN, ET AL., *supra* note 20, at 31 (internal citations omitted).

<sup>96</sup> See WARREN CARTER, “Matthew”, THE NEW INTERPRETER’S STUDY BIBLE: NEW REVISED STANDARD VERSION WITH THE APOCRYPHA 1776 (2003). See generally *Matthew* 16:13–19 (often called “Peter’s Confession,” this passage includes the first time the term “church” is used in scripture. Church is referred to as “*ekklesia*.” The literal translation is an “assembly” and not a brick and mortar structure.) Church is only used twice in all four gospels. Both times occurred in *Matthew* 16:18, 18:17. While it may refer to Israel as God’s covenant people, its association with an assembly can be traced to people gathering together to receive God’s law from Moses.

<sup>97</sup> BAUMAN, ET AL., *supra* note 20, at 31–32 (discussing *Matthew* 2:13–15).

<sup>98</sup> SORENS & YANG, *supra* note 23, at 95.



compulsion toward heroic behavior.<sup>99</sup>

Regardless of the extent to which assistance is offered, in a renewed sanctuary movement, I encourage this Essay's readers to engage in a theology of welcome, to whatever extent possible.

In writing to the Philippians, just as St. Augustine drew a distinction between "just" and "unjust" laws, the Apostle Paul drew a distinction between the morals of the world and a citizenship that is in heaven.<sup>100</sup> I respectfully urge congregational leaders and faith adherents to embrace a theology of welcome, an immigration perspective that is consistent with "God's law," as cited in the introductory epigraph.<sup>101</sup> The authors of *Seeking Refuge* argue:

The plight of refugees in our world today is an unprecedented global crisis. For the church, though, it also presents a unique moment to live out our theology. The refugees of the world—some of them persecuted brothers and sisters in Christ, other of them not yet followers of Jesus—are watching how the church will respond, whether guided by faith or fear.<sup>102</sup>

I urge all those who read this Essay, especially in the era of Trump, to reject the politics of fear and instead be guided by faith!

## V. CONCLUSION

This Essay calls on congregation leaders, faith communities, and individual adherents to take a position on America's immigration policies that is consistent with their moral compasses. In response to America's recent immigration crisis and race-based rhetoric against Mexican nationals, a renewed Sanctuary Movement is underway. I have argued that such is not only appropriate, but I also encourage people of faith to be a part of the Movement.

Although some faith adherents, like former Attorney General Sessions, clearly interpret certain scriptural references as a basis to punish those who violate the United States' immigration laws, a careful consideration of scripture reveals a clear and unambiguous theology of welcome for

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<sup>99</sup> Feen, *supra* note 75, at 139.

<sup>100</sup> See *Philippians* 3:20 ("But our citizenship is in heaven. And we eagerly await a Savior from there, the Lord Jesus Christ."); see also STANLEY HAUERWAS & WILLIAM H. WILLIMON, *RESIDENT ALIENS: LIFE IN THE CHRISTIAN COLONY* (1989) (playing upon the popularity of the previously cited passage from *Philippians* to argue that because members of the church can neither conform themselves to or change society, they are "resident aliens" living temporarily in another land).

<sup>101</sup> See *Leviticus* 19:33–34.

<sup>102</sup> BAUMAN, ET AL., *supra* note 20, at 113.

immigrants. Moreover, as a natural tension arises when one is unable to reconcile the laws of the land with the laws of God, the same scriptural canon provides numerous examples of why civil disobedience is morally appropriate. Indeed, at the Movement's zenith, King's most famous act of civil disobedience in 1963 catapulted the Movement over the next two years with the successful passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Those landmark laws became measurable hallmarks of the Civil Rights Movement's success.

Just as the fight for civil rights is an ongoing movement, so is the concept of immigration reform. Considering the United States' current immigration posture, however, I urge faith adherents to take a position and be engaged, consistent with the call issued by Jackson, Mississippi's mayor, Chokwe Antar Lumumba, and presumably in keeping with the mayors of the other sanctuary cities. Scripture calls on faith adherents to provide welcome to strangers in a foreign land. The children of Israel were once strangers in a foreign land, as too were African Americans. In the proverbial Melting Pot that is the United States of America, I would also anecdotally argue that history records the majority of Americans as having an ancestry that placed them as strangers in a foreign land, too.