

American Exceptionalism in Mass Incarceration

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May, 2018
Faculty Adviser: Dr. Sarah Hampson

Essay completed in partial fulfillment of the requirements for graduation with Global Honors,
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*“The nature of the criminal justice system has changed. It is no longer primarily concerned with the prevention and punishment of crime, but rather with the management and control of the dispossessed.”—Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of**

Colorblindness

Introduction

The United States, which Francis Scott Key dubbed “The Land of the Free” in 1814—when slavery was still legal and women did not have voting rights— constitutes only 5% of the world’s population (United States Census Bureau, 2018), yet the United States hosts 22% of the world’s prison population (Centre on Prison Studies, 2013). The level of imprisonment within the United States of America has rapidly increased over the past forty years largely due to the start of the War on Drugs in the 1970s and especially the “tough on crime” policies of the 1980s and 1990s—such as the stop and frisk and three-strikes laws. Although the total population of the United States of America is 323.1 million people (United States Census Bureau, 2018), over 2.3 million people are held within the criminal justice system—which comprises state and federal prisons, juvenile correctional facilities, local jails, Indian Country jails and military prisons, immigration detention facilities, civil commitment centers, and prisons within U.S. territories (Prison Policy Initiative, 2017). Mass incarceration is an even greater injustice when analyzing the demographic breakdown: black people are incarcerated at a higher rate than any other racial background: 2,207 people per 100,000 black people as compared to 380 people per 100,000 white people (Prison Policy Initiative 2012). Systemically incarcerating people of color at a higher rate than white people is highly antithetical to the modern American ideology of freedom and democracy.

The American concept of freedom written into the Declaration of Independence (1776) by the Founding Fathers states:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

It is evident that “all men are created equal” has not been secured within the United States as mass incarceration disproportionately affects people of color, which perpetuates negative economic and social outcomes, such as diminished employment opportunities and the breakdown of families.

American exceptionalism is the idea that America is positively unique in its ideals of freedom and government. However, in comparison to other nations, America has created a cycle of injustice which strips away the seams of freedom even worse than communist nations which maintain human rights violations and deny humans civil liberties. Syria, for instance, has an incarceration rate of 60 people per 100,000 people in comparison to the United States’ 693 people per 100,000 people (Prison Policy Initiative, 2016). On a scale from 1 to 7, with 1 being the best rating and 7 being worst rating regarding freedom in the world, Syria ranks 7 for overall freedom, compared to the United States’ 1.5 rating of overall freedom in the world (Freedom House, 2018). This ranking is especially compelling considering how few citizens in Syria—a nation that is governed by dictator Bashar Al-Assad, who repeatedly denies his citizens basic human rights—are locked behind prison bars and disenfranchised for life. Another nation which denies dissent from the government and maintains restrictions on the press is Cuba, which has an incarceration of rate of 510 people per each 100,000 people (Prison Policy Initiative, 2016) and maintains an overall freedom rating of 6.5, political rights rate of 7, and civil liberties rate of 6

(Freedom House, 2018). Though both countries do maintain a smaller population, it is important to note the rate is evenly distributed among each nation. Additionally, most individual states in America, according to the rates calculated by Prison Policy Initiative, have a higher incarceration rate than both Cuba and Syria respectively. Another comparable nation is Russia, which is close in population to the United States of America and has a relatively more democratic governmental structure than both Syria and Cuba. Russia maintains an incarceration rate of 453 people per 100,000 people (Prison Policy Initiative, 2016) with the same scores of liberties as Cuba (Freedom House, 2018).

Formerly incarcerated individuals are not guaranteed any discrimination protection, which means that employers, landlords, and educational institutions are able to deny jobs, housing and education to those who have a criminal record. 6.1 million people have been disenfranchised from asserting the right to vote after having a felony conviction (Felon Voting, 2016). Additionally, young males of color and low-income individuals and communities are disproportionately affected by mass incarceration. As the nation with one of the highest freedom ratings, the United States should not be disadvantaging men, women and *even children* from reintegrating into society. This practice is incredibly oppressive and is in direct contrast with the ideology of American Exceptionalism by the great freedoms the United States is said to provide.

This paper will review literature related to the development of mass incarceration within the United States along three lines: the history of race, the government structure, and the development of policy. This paper will use a comparative evaluation to create a conversation about the punitive nature of the United States' criminal justice system through comparing the United States to both England and Germany through the three qualities previously listed. England has many similarities in terms of government structure and policy development

compared to the United States, but on a much smaller scale. In addition, England's history of race contrasts greatly with the United States; while the United States' history of race is largely founded on interactions with the Native Americans and the enslavement of African Americans, there was very little presence of either of these racial interactions in England. Rather, there was prominent ideology about race and racial differences, as the English became the largest colonial power in the world. This history with race, coupled with the similar government structure, continues to contribute to modern policy regarding incarceration. In Germany, however, this research shows that racial ideology that plagued England also influenced Germany, but because of the smaller scale of colonization and the limited presence of slaves in Germany, racial history does not permeate the German criminal justice system today. Instead, Germany has recently accumulated increased tensions with immigrant populations.

This paper concludes by claiming that the United States of America maintains an incredible incarcerated population because of the country's history with race, government structure, and development of policy, all of which are unique solely to the United States. Though the United States cannot fix the past history with race and can't truly fix the structure of the government, there are other steps that the nation can take towards decreasing the incarcerated population. By using Germany as a model, the United States can implement policies on state and national levels to first minimize the use of incarceration, and second, implement humane practices within criminal justice facilities. Lastly, the United States needs to abolish laws that allow businesses, housing and educational institutions to discriminate against the formerly incarcerated, so that they are not further disadvantaged from society.

Literature Review

The United States of America is truly an exceptional nation, such that it is the only country plagued by mass incarceration. The United States' exceptional party system and the decentralization of electoral democracy within the country are primary factors contributing to this issue. Due to the nature of the U.S. electoral system, social policies—such as criminal justice policy—are less likely to garner votes to invest in laws and policy reform in a local election. Local election voters are typically those have not previously been incarcerated, such as homeowners, who do not see a benefit in criminal justice reform. In effect, they are more likely to vote for harsher punishments, as a way to diminish crime. The United States' societal structure of promoting individualism, in addition to the history of racism and its lasting effects, also contribute greatly to the mass incarceration of nearly a third of the country's population.

The structure of the United States' political system is especially important in understanding the ever-increasing population of incarcerated citizens. American exceptionalism is the idea that the United States is positively unique in its ideals of freedom and government. Compared to other Western democracies and liberal market economies, The United States' highly decentralized governmental structure is indeed abnormal. While other predominantly white countries, such as England or Germany, set criminal justice policies mainly at the national levels, the United States allots significant democratic power to local elections, which negatively impacts criminal justice policy by promoting punitive policies. Nicola Lacey and David Soskice, authors of *American Exceptionalism in Crime, Punishment and Disadvantage* (2017), discuss that the three branches of government in the United States (judicial, executive and legislative) and federal structure rarely impact criminal justice policy. Instead, the area with the most power to revise criminal justice policy is at the local level. Lacey and Soskice argue that local elections strongly affect punitive policies and social policies because “voters have a relatively constrained

view of the relevant externalities”, meaning that voters will not vote for policies that do not directly benefit them (p. 9). This effect is magnified many times by the amount of electoral competition within local elections. Not only are voters electing governors and mayors, they are also electing school board officials, zoning officials, police chiefs, and judges. These local officials often support and pass tough-on-crime policies to demonstrate their concern and resolve to lower the crime rate, seeking to make their constituents feel safer. An underlying factor that results in local policy promoting punitive laws and practices is the extraordinary number of homeowners who vote in local elections. Lacey and Soskice evaluate how the effects of the homeowner vote in local elections and determined that homeowners are interested in protecting their investments (housing price, good school districts, etc.): “These voters will be likely to favor effective policing outside disadvantaged, high-crime areas, while being indifferent to the need to invest in ‘community’ policing in poor areas” (p. 11). This, in effect, leads to heavy military-style policing in poorer areas. Because democratic autonomy is largely ceded to the local level, homeowners have a large amount of power to disadvantage the poor and promote harsh punitive policies that contribute to mass incarceration.

The United States’ criminal justice system has not always had a mass incarceration problem: “...The United States not only performs differently from other advanced democracies but does so to a startling degree. Moreover these differences have become more extreme over the last half-century,” (Lacey and Soskice, 2017, p. 1). The United States, like many Western countries, has long had a battle with racial division, but these problems have not yet been resolved. Because the United States’ history is so short, yet so fast-paced, racial division is still an open wound. Many Americans of color in today’s society are the first generation in their families to be born as equals of their white counterparts. Since America has not yet recovered

from its past history of oppression of Black citizens, the criminal justice policies are largely based on previous racialized campaigns which sought to criminalize non-white citizens. The promotion of these policies and practices has led to institutionalized racism, allowing large amounts of predominantly African American men and women to be imprisoned. The United States suffers from a unique case of institutionalized racism in comparison to their Western counterparts, largely exemplified in the election of President Barack Obama: while being the first Western nation to elect a person of color to lead the nation, there was large debate regarding his nationality in attempts to undermine his presidency (Jouet, 2017).

Bruce Western and Steve Redburn (2014) lay out how race has played a massive role in mass incarceration and is a uniquely American problem. Western and Redburn state that post-World War II America was a postwar society that was enduring rapid changes, and politicians responded by implementing harsher practices, policies, and laws (p. 104). Some factors that left America vulnerable to reform within the criminal justice system, according to Western and Redburn, were the political unrest following World War II, the realignment of the Democratic Party, the escalation in nation crime rates starting in 1961, and the disappearance of high-paid low skilled work in urban economies (p. 104).

Additionally, the reaction to the Civil Rights Movement and the greater equalities provided to African Americans led to a reform in the criminal justice system based on racialized campaigns for federal government intervention in criminal justice, as these policies were largely left to the states. Western and Redburn believe that the American political institutions—especially the political appointment of members of the legal system (such as judges and district attorneys) and the winner-take-all two-party electoral system—left the United States as the most

vulnerable democracy to begin the politicization of the criminal justice system, allowing local elections to implement punitive policies (p. 104).

Western and Redburn (2014) state:

During this period, whites in the south and increasingly in the north also demanded that greater attention be paid to problems of crime and disorder. Many of them believed that these problems could be solved only with tougher laws; tougher sanctions; and tougher police, prosecutors, and judges. They sought greater protection from what they perceived to be disorderly protests by blacks and their allies seeking to desegregate U.S. society (p. 107). In response, President Harry S. Truman called for more “law and order”; though most of Truman’s administration’s bills did not pass, they set the stage for federal government’s involvement in the criminal justice system, as criminal policies were largely implemented and enforced by the states. (p. 108).

The Johnson Administration in the mid-1960s allowed for increased federal funding of state and local crime policy with the Law Enforcement Assistance Act of 1965. This formed the Office of Law Enforcement Assistance that provided federal grants and training to improve law enforcement at the state and local levels (p. 110). Subsequently, Johnson established the President’s Commission on Law Enforcement and Administration of Justice. Congress responded to the Commission’s findings by creating the Omnibus Crime Control and Safe Streets Act of 1968. This led to major modifications in the hands of Southern Democrats and their Republican counterparts, such as granting state governments the ability to use significant amounts of federal funds for criminal justice policies. Though there was much debate surrounding the Omnibus Crime Control and Safe Streets Act of 1968, the assassination of

Robert F. Kennedy helped to push votes in favor of the bill, with President Johnson signing the bill into law two weeks later.

From 1961 through 1981, national crime rates were continually rising, yet political and law enforcement officials could not come to an agreement about how to combat this problem. The fear of crime mixed with the uncertainty of how to combat it grew public concern, which eventually led to the implementation of punitive policies and racialized campaigns that are still prevalent in the United States' criminal justice system today. The "southern strategy", a campaign started by Republican Party strategists, worked to appeal to the white working-class voters through racially coded language, which then translated to the greater American political landscape (Western and Redburn, 2014, p. 115). Crime and civil disorder had become associated with "blackness" as a result of the Civil Rights protests; however, towards the end of the Civil Rights Movement, racial equality became a more accepted ideology and so racial appeals were detrimental to political campaigns. Richard Nixon's top aide, H.R. Haldemann, notably pointed out that Nixon "emphasized that you have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognizes this while appearing not to," (quoted in Western and Redburn, 2014, p. 116). However, violent demonstrations conducted by African Americans as protests against the denial of civil rights left many white Americans resistant to the idea of equality, and political strategists used this resistance to associate the African American identity with that of a violent criminal.

According to Walker Newell (2013), the first years of prison expansion took place in the early 1970s under President Nixon, with African American men becoming the face of violent crime (p. 12). This established the Republican Party as the defenders of "law and order", but it wasn't until Ronald Reagan's presidency that punitive policies came to fruition. Through

campaigning for governor of California, Reagan was a strong advocate for the death penalty, aligning himself with the offenders' victims. Additionally, Reagan was able to claim that the substantially rising crime rates in California were because of the liberal tolerance of disorder and unrest (p. 17). During his presidency, Reagan acknowledged the significance of criminal justice policy in relation to economic attainment, proposing to prevent the federal government "from interfering in areas where it doesn't belong, but at the same time strengthen its ability" to punish crimes (p. 18). Reagan was able to successfully support this belief by expanding Nixon's previous War on Drugs policies, which led to a rapid increase in the rate of incarceration. Additionally, mandatory minimum prison sentences were implemented through the passage of the Anti-Drug Abuse Act in 1986, garnering heavy controversy as the usage of crack cocaine (largely attributed to Black Americans) was given longer prison sentences than powder cocaine (largely attributed to white Americans) ("War on Drugs, 2018).

The United States' current criminal justice policies, many of which have their origins in the 1980s and 1990s, are detrimental to society. The United States claims to be a free nation, yet incarcerates more people, per capita, than any other nation in the world. This research evaluates the exceptional qualities in American politics that contribute to the problem of mass incarceration and compares these differences with Germany, which has less recidivism, less crime and more positive outcomes through their criminal justice policies. Additionally, this research compares the United States to England that while there are many similarities between these nations, the United States still remains exceptional in mass incarceration. This research leads to a greater conversation about the necessary reforms the nation needs to make to hold true to the values of "liberty and justice for all".

Methods

In order to fully understand the United States' susceptibility to punitive policies and inherent racial bias, this research paper conducts a comparative evaluation of England and Germany in comparison to the United States, along the lines of past history with race, the government structure (to understand how criminal justice policies are implemented), and the current policies that are in effect and how they are shaping their respective societies.

England has had a similar backlash in recent years over the increasingly punitive nature of their criminal justice system, with many calling for reforms to reduce the increasing population of incarcerated individuals. England will not be compared to the United States as an example of a model to follow; England will be compared to the United States because of the similar governmental structure that makes England more susceptible to punitive policies.

The government structure is not nearly as similar as England's to the United States, but there are democratic practices. Additionally, though Germany's experience with slavery was not to the extent of the United States' experience, there are inherent racial biases in their society—that have been present much longer than African American intolerance in the United States—that are not as prevalent in their criminal justice system. Evaluating Germany and England will create a conversation about the excessively punitive nature of the criminal justice system in the United States of America, while demonstrating ways to reform the system.

Comparative Evaluation Analysis

England: History of Race

Understanding the perception and the ingrained culture of race differentiation in England is important because these ideologies continue to permeate the English criminal justice system.

Understanding these racial differentiations is only possible when tracing European history to the first instances of racial recognition. These first instances occur as early as the 16th Century for England, which sent explorers and merchants to Africa to pursue trading interests, but what outshined the trading commodities were the deeper skin-tones of the African people. Unlike the Portuguese or Spanish traders who generally traded along the North African region, the English encountered the West African region, where the African people have much deeper skin-tones than the Europeans and North Africans. The physical differences came to be grounded in a religious worldview:

The negative meanings that the English ascribed to African blackness were consistent with already existing conceptualizations of blackness and its opposite, whiteness, in English vocabulary prior to English contact with Africans. Whilst blackness ultimately came to represent every symbol of the 'devil incarnate' exemplified in its ugly and evil characteristics, whiteness, in contrast, was inscribed in English ideology as a symbol of godliness evidenced in a range of positive attributes such as beauty and purity. (Kalunta-Crumpton, 2010, p. 5).

This worldview about “whiteness” and “blackness” was translated into the discourse about Africans and was derived from the understanding that “all creations and differences were the act and will of God” (2010). As an overwhelmingly Christian nation, the skin coloring differences seemed to embody the idea of good versus evil; God gave the holy and the pure white and light skin tones, while condemning those who were “evil” by giving them deeper skin tones. Skeptics of religious understandings of race came to theorize about potential scientific reasoning for skin color: perhaps because they were closer to the sun, their skin tone had

deepened. However, because many Europeans lived in hot weathered areas, they believed the former to be true as their skin did not seem to be deepened by the sun.

Between the 16th and 19th centuries, the arrival of the Europeans to the “New World” and its raw goods propelled the start of the Trans-Atlantic Slave Trade. The number of Native Indians and impoverished whites, who provided the initial amount of slave labor for the colonial powers, was too small to substantiate the amount of trade the colonial powers were exporting. England became the central trader; they shipped goods to West Africa, shipped slaves to Europe and the “New World”, and then shipped produce from the “New World” back to Europe (Kalunta-Crumpton, 2010). Because of England’s lead role as slave trader, justifying the slave trade was of the utmost importance. Not only were Africans described as “filthy”, “unclean”, “wicked” and “stupid”, the Europeans continued to justify slavery by describing Africans as “sub-human and barbaric”, while claiming that housing slaves in the New World would expose them to Christianity, allowing slave-owners to do their Christian duty (2010).

These negative ideologies were not unique to the Africans; in fact, after the British loss in the American War of Independence in 1781 which resulted in the loss of their colonies, India became a prime focus for political and economic expansion (Kalunta-Crumpton, 2010, p. 10), with Hong Kong also being colonized. In these territories, the English sought to spread Western tradition and discourse, deeming the natives in both India and China were as inferior as the Natives in the Americas. Just as the British and other European nations sought to justify African enslavement in the New World, the colonization of Asia was also legitimized by claiming their need to spread civilization to the un-civilized.

The colonization of Asia led to the scientific discussions of evolution and later developed into the practice of eugenics. The English naturalist who expanded on the idea of “survival of the

fittest”, Charles Darwin, had discussed how natural selection would allow for the rise and survival of the fittest species as well as the dissolution of the feebler race, which allowed Social Darwinists to discuss how physical characteristics and their interpretations of superior and inferior, which were the white European race versus the non-white races in Africa and Asia (Kalunta-Crumpton, 2010). During the 19th century, this scientific work by Charles Darwin led to the movement of eugenics as a means to maintain racial purity and prevent racial degeneration. Eugenics, a practice that was founded by British scientist Francis Galton, argued that there was a need for strategies to eradicate negative hereditary qualities through selective breeding (2010):

Criminals, alcoholics, and the lower classes are among the social categories defined as unfit and undesirable. Arguably, their reproduction rates were far higher than those of the biologically and mentally ‘fit’ and the ‘desirable’. Eugenicians therefore campaigned for policy interventions that aimed either to eliminate or at best to control the reproduction of the ‘inferior’ stock. (Kalunta-Crumpton, 2010).

In the 20th century the roots and ideologies of “blackness” and “crime” began to form that would later pervade most European ideologies in the twenty-first century. Race came to be discussed as a biological determinant of intelligence (or lack thereof) as well as criminality through the works of Cesare Lombroso (1835-1909), an Italian criminologist who shifted the study of criminology from studying legality to studying criminals. He perceived and claimed in his book *Criminal Mind* (1876) that criminals were the “primitive forms of human species” and were “identified by many anatomical similarities which they shared with savages and non-white races” (2010). Thus, the “primitive criminal” came to be associated with the “other”—those who were black and other non-white groups—reinforcing the premise that white groups were

superior. The perception of the criminal as a black or non-white individual may have initiated in the 20th century, but it continues to permeate England's criminal justice system today.

Once the strongest colonial power in the world, race and racial ideology has permeated the English society since the early 16th century. Although slave-holding, for the most part, did not take place physically in England as it did in the United States, slave-holding and slave-trading was an acceptable culture, as well as colonizing various groups of people. In England, since the first introduction to race, "whiteness" had been perceived as good and pure and intelligent, whereas "blackness" was associated with evil, wicked, and stupid that had stemmed from religious belief. These ideologies, combined with the English economic pursuits, allowed slave-holding to be an acceptable practice, and even a duty.

These ideologies also later lead to scientists to theorize about natural selection, survival of the fittest, and biological determinants of crime. Today, black men are 26% more likely than white men to be remanded in custody in England (Prison Reform Trust, 2018). Additionally, Prison Review Trust reports that the Lammy Review has found a direct association between receiving a custodial sentence and being non-white: "With black people 53%, Asian 55%, and other ethnic groups 81% more likely to be sent to prison for an indictable offence at the Crown Court, even when factoring in higher not-guilty plea rates" (Prison Reform Trust, 2018). Modern racial ideology in England is derived from the early 16th century actions to the early 20th century academia.

The United States' racial history has also affected the prison population to a greater extent than England. The United States also hosts a bigger population and has had an arguably shorter and more recent history with race than that of England, which contributes to the incredible amount of racial bias in the criminal justice system. For instance, during the peak of

high incarceration in the mid-2000s, young Black Americans were nearly eight times as likely as young white Americans to be incarcerated (Pettit and Sykes, 2017, p. 25). The significance of race and its unfortunate history is intensely important to the conversation of punitive criminal justice policies in both the United States and England.

Government Structure: England

England and the United States have similar government structures, as the United States' government was largely influenced by the English. However, today, England as a nation is governed as part of the United Kingdom, comprised of England, Scotland, Wales, and Northern Ireland. Additionally, though the United Kingdom has a central Prime Minister and Parliament, there are devolved local governments established in Scotland, Wales, and Northern Ireland which are responsible for maintaining domestic policy such as healthcare, education, public transit and the environment.

Understanding the breakdown of the political government structure is important to understanding how criminal justice policies are formed. In the United Kingdom, there are three separate jurisdictions which deal with criminal justice functions: England and Wales comprise the first jurisdiction, with Scotland and Northern Ireland both maintaining their individual jurisdictions. The police and other criminal justice institutions all operate separately across these three jurisdictions. There are interesting trends in incarceration between the three separate jurisdictions. For instance, rates of recidivism in England and Wales was much higher than both Scotland and Northern Ireland. According to data compiled by Seena Fazel and Achim Wolf (2015), England and Wales not only has the most diversity in length of time for recidivism (i.e., following up with prisons from one to nine years to record data), but also maintained the highest rate of recidivism. Scotland only had one follow up year with a rate of recidivism of 46%; in

England and Wales, after nine years, there was a 78% rate of recidivism (2015). Northern Ireland had three follow up time periods: six months, one year, and two years respectively (2015). The rate of one year recidivism, compared to the aforementioned countries, was merely 25% rate of recidivism (2015).

While the United States maintains the greatest number of individuals incarcerated in the world, it is important to evaluate the significance of the differences between each state. Criminal justice policies and key players in criminal justice (prosecution, police chief, etc.) vary immensely not only along state lines, but also within separate counties and localities. Additionally, policy that is implemented by state governments that operate correctional facilities is left completely up to the state government, who operate based on the way their constituents vote. For instance, in Washington State, the state Department of Corrections works to implement sustainability practices to involve prisoners in particular crafts that would allow them to have jobs upon release. This is in stark contrast to states like Louisiana, which maintains the highest rate of incarceration out of all of the states, so much so that federal courts ruled Louisiana needed to reduce its prison population, and many claimed that Louisiana had faced an “extreme public emergency” (Pelot-Hobbs, 2018). England as a nation does not have these discrepancies among its localities and can operate more cohesively than that of the United States because of the political structure which allows stark contrasts among state and local lines.

The evidence is compelling. While the United States’ locality differences in incarceration can largely be attributed to governmental policies and voting practices in the country, the United Kingdom as a whole should not be solely attributed to government structure, but rather to the populations in each jurisdiction and the diversity maintained between them. England has the highest concentrated population, but combined with Wales, the population is over 58 million

people. In comparison, Scotland is a mere 5.3 million people, and Northern Ireland maintains a population just barely over 1 million. In addition, England and Wales host the most diverse population compared to Scotland or Northern Ireland; 7.5% of the population is Asian/Asian British, and 3.3% is Black/African/Caribbean/Black British (Ethnicity and National Identity, 2011). Scotland maintains a 2.7% Asian/Scottish Asian/British Asian population, and a 0.1% Caribbean or Black population. Northern Ireland is 98.21% white, 1.06% Asian, and 0.53% Black (Census, 2011). England and Wales' jurisdiction maintains the highest amount of diversity which greatly contributes to their high incarceration rate.

History of Race: Germany

In the modern context, Germany is often thought of as a nation that has overcome its xenophobia and the dark history under Hitler, which led to World War II in 1939 until 1945. The recent nature of World War II has led many to overlook past history with race in Germany, which can be greatly attributed to the cause of World War II. Much of the same rhetoric regarding race—specifically regarding the black race—that was prominent in England after the 16th century permeated German society as well, leading to the occupation of colonies in South Africa and engraining negative ideology about “whiteness” and “blackness” that is still prominent today, though as a consequence of the war, racial data is no longer recorded. Germany's prison system is seemingly unaffected, though, by racial ideologies about “blackness” and “whiteness”; in fact, Germany heavily incarcerates foreigners, who make up 31.3% of the total imprisoned population (World Prison Brief, 2018). By comparison, France's foreign population makes up 21.7% of their prison population (World Prison Brief, 2018), whereas England's foreign population makes up 11.1% (World Prison Brief, 2018). This speaks most to the historical tensions Germany has had with foreign populations and immigrants, that

we now see becoming increasingly prevalent in the United States. Regardless, crime is not punished to the extent that it is in the United States and that it is becoming in England.

In the 17th and 18th centuries, Germany co-occupied much of South Africa with the Dutch (who later lost their occupation to the English in the 19th century). While not a slave-holding nation, Germany had partaken in the partition of Africa, implementing an apartheid policy which saw whites as superior to blacks (Kalunta-Crumpton, 2010). Colonization is the first instance of black racial prevalence in German history, but it isn't until the end of the 19th century that ideas about racial superiority had truly been expanded on in German literature. German scholars became highly invested in Social Darwinism, which resulted in “the need to fight for white domination” (El-Tayeb, 1997, p. 31).

Two divisions occurred within the German Social Darwinist Movement: those who were social anthropologists, and those who were eugenicists (p. 31). The eugenicists—those that supported ideas about “purification”—were steadfast on the discipline being accepted as a basic human science, so eugenicists aligned with Charles Darwin and Francis Galton's works to be viewed as a more respectable science (p. 33). By contrast, social anthropologists were “populist, fanatic supporters of race theories” that believed “race was the basis of all politics” (p. 34). The social anthropologists studied “‘racial stratification’ of the White European nations, on the ‘colored peoples’ and their relation to the ‘white race’ and again and again, on the dangers of ‘racial mixing’,” (p. 34). What is thoroughly interesting about the race conversations in Germany at this time is the discussion of Asians, which confused the population about how they should treat the “white” and “yellow” races. Much of the German academic community held the Asian population in a higher esteem, while still maintaining the white race as superior (p. 35).

Scientists in Germany long advocated for racist measures, which promoted the implementation of strict segregation in German colonies during the early twentieth century. Fatima El-Tayeb (1997) writes that while using the literature about Blacks in the United States, “social anthropologists as well as eugenicists insisted that the ‘Negro’s peculiarities’ resisted all civilizing influences,” (p. 37). This thinking permeated the nation, leaving many to believe that “[Black people] might show a certain progress, if guided rightly, but would never reach the cultural level of whites” if they resisted colonization (p. 37). German scientists continued to promote “research” regarding the United States and the treatment of African Americans, admiring the nation’s ability to segregate the country: “complete separation was hailed as the ‘natural solution’ to the ‘American problem’”, leading to the implementation of segregation in the German colonies (p. 38).

Much of this research not only contributed to racial discrimination and segregation in the colonies, but also in German society in the nation. This treatment wasn’t solely relegated to Blacks either; the promotion of the “white race” as superior greatly contributed to the Holocaust; while the Jews were the main victims and targets of these executions, what is often undiscussed is the persecution of African Germans under National Socialism as well. Fatima El-Tayeb (1997) states:

Those who had survived could expect neither compensation nor any recognition of their suffering. The often painful and slow process in which African Germans had to fight for the return of their German citizenship instead shows that the Federal Republic was as unwilling to see them as part of the nation as were all governments before... The unwillingness of politics, population, and science to deal with this part of German history meant that the tradition that had determined the treatment of black Germans since the

late nineteenth century could survive into postwar Germany...African Germans were perceived as a group only when they were to signify a (violent) disruption of normalcy, a danger to Germany's homogeneity and sovereignty," (p. 53).

Although Germany has had a very prevalent history with racism, segregation and even eugenics in very similar and also very radical ways compared to the United States and England, their racial history—specifically against Black people—does not seem to translate into bias in their criminal justice system. The uprising tensions between German nationals and foreign populations seems, based on current data, to permeate the criminal justice system slightly more, yet their rate of incarceration is overall incredibly low compared to the United States and England: Germany hosts 64,351 people in prison, whereas England and Wales hosts 83,673 people in prison total (World Prison Brief, 2018). Because of their lower rate of incarceration, it is evident that systemic and institutionalized racism does not play a strong role in the German criminal justice system.

Government Structure: Germany

After World War II, the failures of the Weimar Republic were largely on display. This led to the Federal Republic of Germany transferring power from the nation's President towards their "Bundestag", or the legislative branch, and promote political majorities' passage of legislation (Schulze, 2017). Today, Germany is a constitutional, parliamentary democracy, which places much of the power in the hands of the executive and legislative branches. The Bundestag is voted on every four years and is the most important election in Germany.

The voting process in Germany is simple, yet complicated. There are merely two votes: one vote goes towards a candidate in their constituency, and the other vote goes towards the political party they want to represent in the Bundestag (Schulze, 2017). To ensure there is limited

ability for extremist groups to assert power, political parties need to receive at least five percent of the second votes in a state in order to be elected for a seat (Schulze, 2017). Lastly, the chancellor is voted on by the newly-elected Bundestag. A chancellor needs to receive more than half of the votes, creating an absolute majority, in order to be elected (Schulze, 2017).

State elections are also impactful in Germany. There are 16 different states, known as *Länder*, which each have a regional parliament (*Landtag*). The states are responsible for culture, education, environment and policing, while also sharing a number of responsibilities with the federal government over legal and penal issues (Gosciniak and Stevens, 2006). City-level governments do not contribute to the criminal justice policies the way that they do in the United States; this is solely a responsibility largely delegated to the states, but informed by the federal government. Though the United States has a vast amount of federal policy regarding the prison system, states may also implement their own criminal justice policy, but the most impactful players in the criminal justice system are prosecutors, sheriffs, judges and even school board officials at the local level.

Germany's most prominent criminal justice law, the Federal Prison Act of 1976, places emphasis on enabling prisoners to lead a life of "social responsibility free of crime" upon release, but also that "society should be protected from further acts of crime by the guilty" (Prisons in Germany, 2018). Much of the act breaks down the criminal population by those who have never committed a crime, those who are recidivists and those who have committed sex crimes. The difference is astounding; those who have never been imprisoned, or were imprisoned for three months or shorter, were assigned to first-time offenders' prisons. Those who are recidivists are housed in regular confinement. More violent offenses are assigned longer sentences, which would be housed at maximum security facilities. Females, juveniles, and those that have special

health or psychiatric needs are provided special institutions, and those being punished for sex crimes are sent to social-therapeutic prisons (Prisons in Germany, 2018). These social-therapeutic prisons are especially interesting, as they house groups of 10-15 prisoners together, with each group supported by social workers, psychologists, and correction officers (Prisons in Germany, 2018).

Germany's government structure maintains similarities to our government, but policies are executed much differently. There are national, state, and local governments where German citizens can vote, but the national and state governments are most responsible for prison policy. In the United States, much of the prison policy is relegated to the federal and state governments, but local elections shape whether or not those policies may be implemented, whether the school-to-prison pipeline is perpetuated, etc. Additionally, in the United States, our prisons are not broken down the way that German prisons are. Many first-time offenders, especially with drug offenses, can still be punished to the highest extent of the law. Prison facilities are not always differentiated by non-violent or violent offenders, either. Lastly, the United States does not maintain prisons solely for sexual offenders, and often, health services are not provided to the offender or the victim. Instead, sex offenders are frequently tried to the highest extent of the law, which arguably perpetuates further sex violence after release.

Recommendations

The United States has a mass incarceration problem. This is largely due to the punitive nature of the criminal justice system, the racial biases derived from the racial history, and the way the government is structured, which allows the citizens (many of whom have not been previously incarcerated) to vote for tough-on-crime policy makers and key players. There is hope for reform in the near future, however, with the recent passage of the First Step Act. This act

“seeks to add educational and vocational training and mental health treatment in federal prison” (George, 2018). Additionally, it will ban the shackling of pregnant women, calls for placing prisoners in facilities within 500 miles of their families, and seeks to help inmates achieve identification cards upon their release from prison (George, 2018).

The First Step Act is, indeed, just that: a first step to potential prison reform in the near future. What’s missing in the current government’s conversation about prison reform is policy implementation and policy change before convictions. Because of the punitive nature of the United States, minor offenses are so often punished with lengthy sentences, hefty fines, etc. that are inconsistent with the nature of the crime. The United States is incredibly reliant on incarceration as punishment, but too often it is inappropriately used. TIME reports that 39% of the nation’s prison population is incarcerated with very little public safety rationale; “25% of prisoners (364,000 people) are almost all non-violent, lower-level offenders that would be better served by alternatives to incarceration such as treatment, community service, or probation,” (Eisen and Chettiar, 2016). Sentencing reform is greatly needed in the United States so the offenders are provided meaningful sentences, so that the length of time served is proportional to the type of crime committed.

While policy reform is indeed necessary, the most impactful type of change is, again, the local elections. Being conscious of those that are imprisoned, previously imprisoned, or involved in the criminal justice system in some capacity, is important to remember when voting for not only prison reform policy, but also key players in the criminal justice system. Over-incarceration is not making us any safer; in fact, it creates conditions that can foster anti-social behavior by damaging economic prospect of prisoners’ families and harming the social fabric (Head and Norquist, 2015). By voting for key players in local elections who do not advocate for tough-on-

crime policies, but rather for policies such as restorative justice, sustainability in prisons, rehabilitation and more will help to decrease the prison population.

Conclusion

Mass incarceration is an incredible phenomenon that has—so far—plagued the United States in unique ways. The uniqueness of both the racial history in comparison to other Western nations, as well as the Democratic-Republic government structure that allows localities to persuade criminal justice policies, contribute to the uniquely racial nature of mass incarceration's exclusiveness in the United States: the Black population in the United States makes up only 14.5% of the population (Black Demographics, 2018), yet is 3.6 times more likely to be incarcerated locally than their white counterparts (Subramanian, Riley and Mai, 2013). The United States' government structure is often praised as the reason this nation is so exceptional: The United States remains ranked as one of the freest nations in the world because of the freedoms provided through the Constitution by limiting government's powers. However, this paper argues that the negative American Exceptionalism should not be overlooked, and that the combination of the government and the history of race is also what contributes to the problem of mass incarceration.

While England has a growing incarceration problem, the nation is not nearly as susceptible to the overwhelming amount of incarceration that currently exists in the United States today. First, English experience with race is highly different than that of the United States; slavery, for the most part, had not occurred in the country of England, but rhetoric about racial ideology was exacerbated. While the United States has had to learn how to accept race and racial equality after experiencing slavery and segregation in the country, England has had to accept race and racial equality through relieving perceptions.

Additionally, England's government structure is very similar to the United States', but is combined with two other jurisdictions, as well as Wales. In the United Kingdom, all three jurisdictions have separate policing mechanisms and all operate differently. Not only do England and Wales maintain the highest population rate, but both nations combined also make up the highest rates of diversity in the United Kingdom. In connection with England's history with race, the government structure allows and perpetuates the incarceration of citizens, especially those of color. America is still exceptional in this regard, however, because of the immense size of the United States, and the 50 "jurisdictions" that govern policing and various court processes.

Germany's history with race contrasts greatly from the United States' and England. Firstly, slavery and colonization was not to the same extent as either nation, yet racial ideology permeated German society, so much so that these ideologies contributed to the start of World War II. Because of the government structure of the Weimar Republic, after World War II, a new form of government was implemented so that a radical persuasion could not take over Germany again. With this new government, criminal justice policy is largely the responsibility of the states, but is heavily informed by the federal government. It contrasts from the United States' forms of government because the United States' key players in the criminal justice system are local level policy-makers and officials, like the school board, the sheriffs, and the judges.

The United States of America is positively exceptional in many regards, but the nation is most exceptional in its promotion of mass incarceration. The uniqueness of the United States' history with race, its government structure and the policies that shaped today's current situation are all three separate components of what makes the United States exceptional to other nations. By working towards sentencing reform, minimalizing the use of incarceration as a punishment, and by voting at the local level, the United States can change the outcome of this exceptionalism.

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