

Mass Incarceration: Punitive Laws that
Challenge Equal Rights and Opportunities
for all

Exploring Americans' attitudes toward punishment

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Challenge Equal Rights and Opportunities
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Abstract

Mass Incarceration: Punitive Laws that Challenge Equal Rights and Opportunities for all explores Americans' attitudes toward punishment. In order to say something about Americans' attitudes toward punishment, the U.S. criminal justice system is researched. More precisely, a look at changes in U.S. sentencing laws along with statistics, and a comparison of an American prison and a Norwegian prison is explored in order to say something about the growth of the U.S. prison population, its link to punitive laws, and Americans' view of rehabilitation versus retribution and deterrence.

The thesis looks at various views of punishment as a concept, in particular, the sociological perspective of punishment. The sociological approach asserts that punishment cannot distance itself from the significance and range of effects that reach well beyond the population of criminals. This is an important aspect when looking at Americans' view of punishment because it entails that views of punishment do not contain itself to the individual criminal but looks at it from a broader perspective. The sociological approach urges us to say something about what these perceptions do to a whole society and nation.

Geert Hofstede's cultural dimension model is used in this thesis to search for a national culture related to Americans' dependence on superiors and looks at this from the perspective of power distance, related to the different solutions to the basic problem of human inequality. Inequality occurs in a variety of areas, and it is the distribution of inequality that is interesting to look at because as scholars, Terance D. Miethe and Hong Lu along with other Marxists scholars assert, punishment often functions to maintain power relations in a society and to eliminate threats to the prevailing social order.

The United States of America has the largest prison population in the world and is home to 25% of the world's prisoners. The term, mass incarceration, is used when talking about the U.S. prison population and it is defined by historically extreme rates of imprisonment and by the concentration of incarceration among the most marginalized. Statistics show an alarming racial disparity in imprisonment rates. The discrimination of marginalized groups, especially African Americans, is emphasized throughout the thesis. The racial aspect is used to show resemblances to prior systems of oppression (e.g., enslavement and Jim Crow laws), furthermore, to suggest that the U.S. criminal justice system is a continuation of social control and discrimination of marginalized groups facilitated to maintain existing power relations.

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Sincerely, Sela Nabeit Realfsen

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1 Introduction

In 2018, Congress passed The First Step Act, which in 2019 was signed by the U.S. current president, Donald J. Trump. This is the first time a criminal justice reform has been enacted in response to meet the issues of mass incarceration at the federal level. The First Step Act is the work of several organizations that in recent years have advocated for and worked to inform the American population, public officials, and politicians at large about the urgent need for a criminal justice reform. In essence, the First Step Act concerns sentencing reduction. It only affects the federal criminal justice system, but it is still a positive change in the right direction. The more the federal government does for criminal justice reform will hopefully foster and push for more change at the state and local level as well.¹

The First Step Act is very much needed progress in the right direction. Because even though the United States promotes itself as a country that fights for Human Rights, its treatment of its people tells a different story. The U.S. is only home to 5% of the world's population but is home to an overwhelming 25% of the world's prisoners.² This means that 1 out of 4 people of the world's incarcerated population is locked up in the United States of America. This number extends to 2.2 million prisoners but if we include the people behind bars in jails, and those who are out on parole or probation the number extends far beyond that. On December 31, 2016, that number was at an estimated 6,613,500 people, all supervised by U.S. adult correctional systems.³

In this thesis, I want to look at how the United States looks at the concept of punishment and how the United States' punitive laws and policies have allowed for mass incarceration, a new system of oppression and social control of especially African Americans and poor people, to happen. A significant aspect to focus on will be that of rehabilitation versus retribution and deterrence. It will, therefore, be useful to look at different perspectives of punishment and its role in society, and how it presents itself in the U.S. criminal justice system compared to another country, in this case, Norway. In order to do so, I will use Hofstede's cultural dimension model to search for a national culture related to Americans' dependence on superiors. I will look at this from the perspective of power distance, associated with the different solutions to the fundamental problem of human inequality. The

¹ German Lopez. "The First Step Act, explained." VOX, February 5, 2019. Accessed: April, 2019. <https://www.vox.com/future-perfect/2018/12/18/18140973/state-of-the-union-trump-first-step-act-criminal-justice-reform>

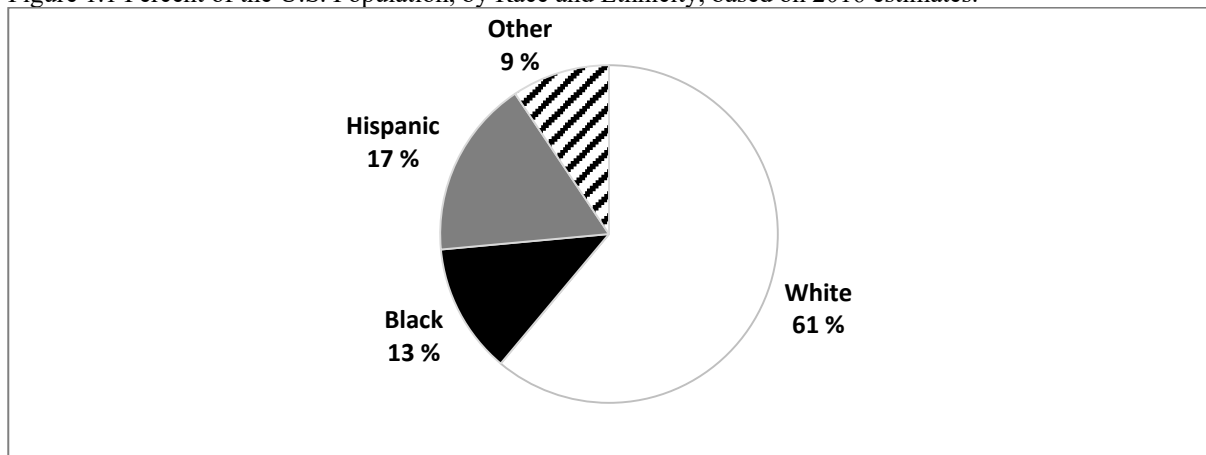
² 13th. Documentary directed by Ava DuVernay (Los Angeles, CA: Kandoo Films, 2016).

³ Bureau of Justice Statistics, *Correctional Populations in the United States, 2016*, by Danielle Kaeble and Mary Cowhig, accessed March 29, 2019. <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>

difference between societies that have a small power distance and societies that have a large power distance will be explored and applied in the theoretical framework.

Mass incarceration is defined by historically extreme rates of imprisonment and by the concentration of incarceration among the most marginalized. There are no other comparable incidents in the history of the United States, neither the history of liberal democracy.⁴ As the definition suggests, it is the most marginalized who suffer the most, and statistics demonstrate this. When looking at the racial composition of all of the American population compared to that of American prisons, the racial disparity is impossible to disregard. African Americans constitute 13% of the total U.S. population, whereas white Americans constitute 61%, Hispanic 17% and other 9% of the total U.S. population, as shown in figure 1.1. Contrastingly, the U.S. state and federal prison population do not represent the same division of race and ethnicity as the country as a whole. Figure 1.2 shows the division of the U.S. prison population by race and ethnicity, there are 34% African Americans, 30% white Americans, 23% Hispanic Americans, and 13% Americans categorized as, other. That means that more than 60% of the people in prison today are people of color.

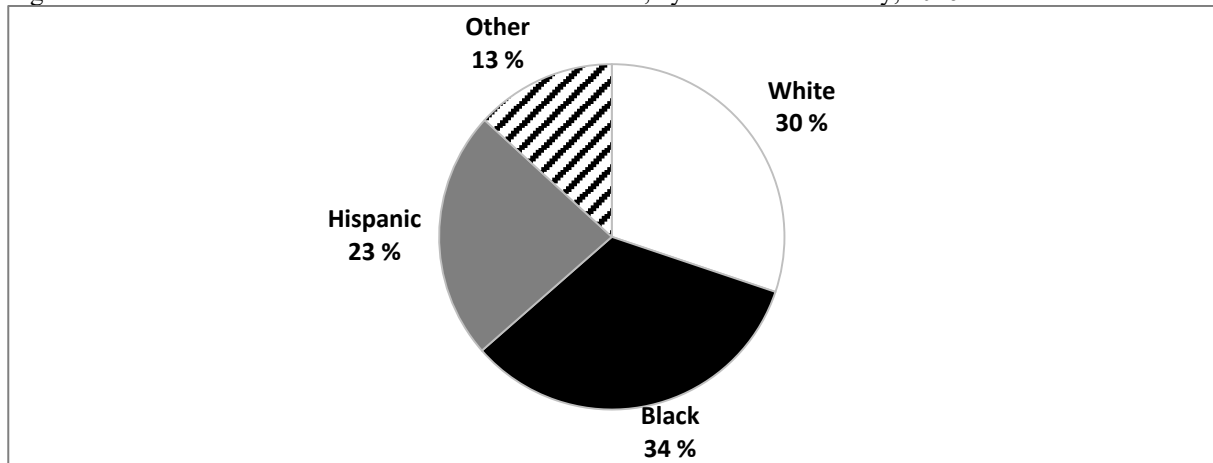
Figure 1.1 Percent of the U.S. Population, by Race and Ethnicity, based on 2016 estimates.



Source: Author's compilation based on figures from U.S. Census Bureau (2012-2016, 2013-2017).

⁴ David Garland, "Mass Imprisonment: Social Causes and Consequences," in *Introduction: The Meaning of Mass Imprisonment*, ed. David Garland (London: SAGE, 2001).

Figure 1.2 Percent of Prisoners in State and Federal Prisons, by Race and Ethnicity, 2016.



Source: Author's compilation based on figures from Bureau of Justice Statistics (2018, table 10).

Numerous authors and scholars have written about mass incarceration, its function, and its devastating consequences. Michelle Alexander writes about the function of mass incarceration and the apparent link to Jim Crow. She begins her book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* with a thought-provoking story. She writes, “Jarvious Cotton cannot vote. Like his father, grandfather, great-grandfather, and great-great-grandfather, he has been denied the right to participate in our electoral democracy.”⁵ She points out that, “Cotton’s family tree tells a story of several generations of black men who were born in the United States but who were denied the most basic freedom that democracy promises – the freedom to vote for those who will make the rules and laws that govern one’s life.”⁶ Cotton’s great-great-grandfather was a slave and had no rights that allowed him to vote. His great-grandfather was killed by the Ku Klux Klan as he attempted to vote. The Ku Klux Klan intimidated his grandfather not to vote. His father could not vote because poll taxes and literacy tests barred him. And today, Jarvious Cotton cannot vote either because he, like many black men in the United States, has been labeled criminal and that is a label that will follow him for the rest of his life.⁷

Jarvious’ story illustrates what Alexander (2012) claims as new tactics in each generation that have shared the same goal, social control of African Americans. The way politicians have implemented and carried out racial exclusion and discrimination of various forms have changed with time and now it is found implicitly all through the criminal justice

⁵ Michelle Alexander, *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*, rev. ed. ed. (New York: The New Press, 2012), 1.

⁶ *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*, 1.

⁷ *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*, 1.

system. Research conducted by the Sentencing Project shows that “one in 13 African Americans of voting age is disenfranchised, a rate more than four times greater than that of non-African Americans.”⁸ This varies significantly by state and in some states, such as Florida, Kentucky, Tennessee and Virginia more than 1 in 5 African Americans are disenfranchised. Not only do we see the same discrimination in voting opportunities, as has existed throughout most of American history. We are also still witnessing discrimination by the United States against criminals when it comes to “employment, housing, education, public benefits, and jury service.”⁹

1.1 Main Sources

American studies is an interdisciplinary field that examines American history, society, and culture. Traditionally it incorporated literature and history; however, today it is a crossroad of several disciplines and their corresponding research methods. It draws on a wide variety of traditions in the humanities and social sciences. Subject matters and their relationship with one another, such as politics, economics, values, art, literature, and racial, ethnic, and gender identity in America are greatly researched today.

This field allows for a variety of approaches and I have chosen to rely significantly on quantitative data and some qualitative data. This thesis is based on government reports, books, reports made my organizations, documentaries, and legislations. The Department of Justice (DOJ) has a statistical office called Bureau of Justice Statistics (BJS), which is the United States’ primary source for criminal justice statistics. They provide annual reports on numbers and facts about prisoner counts, characteristics, admissions, releases, and prison capacity in their *prisoners* series. Data for this series is provided by their National Prisoners Statistics (NPS) Program, which collects annual data from state departments of corrections (DOCs) and the Federal Bureau of Prisons (BOP). Chapter 2, which includes a statistical part, was developed using the *prisoners* series generated by BJS, and their newest report, *Prisoners in 2016*, was especially of use since this report has the most recent numbers. Other government reports from BJS (*Prisoners 1925-81*, *Prisoners in 1990*, *Prisoners and Jail inmates 1995*, *Prisoners in 2000*, *Prisoners in 2005*, and *Jail inmates in 2016*), and statistics from the U.S. Census Bureau (2012-2016, 2013-2017), were also used to create the line

⁸ Christopher Uggen, Ryan Larson, and Sarah Shannon, *6 Million Lost Voters: State-Level Estimates of Felon Disenfranchisement*, 2016. Washington, DC: The Sentencing Project, 2016.

⁹ Alexander, *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*, 2.

graphs, bar graphs, and pie charts found in chapter 2. It was hard to find useful statistics and numbers concerning felony disenfranchisement and life sentences. Fortunately, The Sentencing Project granted me permission to use some of their material. The specific figures and tables that I have permission to use from their reports *6 Million Lost Voters: State-Level Estimates of Felon Disenfranchisement, 2016*, and *Still Life: America's increasing Use of Life and Long-Term Sentences* can be found in appendices D, E, F, G, and H.

There are several organizations that dedicate their work to criminal justice, and in recent years their work concerning criminal justice has shifted towards a focus on issues caused by mass incarceration. Most of the organizations are especially concerned with issues, such as sentencing policy, incarceration rates, felony disenfranchisement, racial disparity, drug policy, juvenile justice, and women. The American Civil Liberties Union (ACLU), The Sentencing Project, and the Worth Rises are all organizations that work to shed light on different problems in the U.S. criminal justice system. Their work is important because they try to inform the American population about the sad consequences that Law and Order, and the War on Drugs have caused, and continue to cause. They advocate for a new criminal justice reform that ensures new and fairer sentencing policies and better opportunities for those already affected by the prison system. By that I mean, laws that reduce and eliminates discrimination of former felons regarding access to the labor market, the right to vote, housing opportunities, student loans, educational prospects, and other public benefits.¹⁰ These organizations have given me insight into the current state of the U.S. criminal justice system through well-made reports and illustrations of statistics.

This thesis, especially the discussion and comparison part in chapter 3, relies heavily on recent documentaries. The ones that I have chosen to use are *Where to Invade Next*; *Vägen Tillbaka* (Eng.: *Breaking the Cycle*); and *Time: The Kalief Browder Story*. A thorough account of the documentaries will be given in chapter 3.

1.2 Delimitation and Limitations

The United States is a vast country. One could argue that a thesis of this size and which concern the topic of criminal justice should delimit to examine a state or compare states. Because they all have their own state laws, which can vary a lot from one state to another, this would definitely be interesting. Despite this, and because I aim to say something about the country as a whole when it comes to attitudes toward the use of punishment, I have

¹⁰ *The New Jim Crow : Mass Incarceration in the Age of Colorblindness, 2.*

decided to concern this thesis with the U.S. as a whole. This delimitation might have some flaws in that it generalizes all Americans. A generalization can never claim to apply for everyone. There will always be people who differ from the common perception. However, it is necessary for me find examples and evidence that apply for the American society as a whole in order to answer the question. The Cultural Dimension by Geert Hofstede is of immense help when I search for a common American culture and its view on punishment.

Since I was not able to travel abroad to the United States to interview guards or inmates, I have relied on other types of materials. Instead of interviews, this thesis relies greatly on statistics as the primary source. Statistics as a quantitative method allows for the gathering of a vast quantity of information. Collecting data on prisoner counts and characteristics were easy because the Department of Justice and its statistical office, Bureau of Justice Statistics, have obtained prisoner numbers for several decades. Despite surveys that extend back many years, what they focused on when collecting information about prisoners and crime have only in recent years included more specific information about prisoner characteristics, such as race and ethnicity. This has restricted the research to look at more recent years instead of including several comparisons with previous years. Moreover, in order to collect data that shed light on and critique the U.S. criminal justice system, I have had to turn to organizations concerned with criminal justice. The statistics have been used to examine the emergence of mass incarceration, and the detrimental consequences criminals are experiencing today. I have looked at the changes in U.S. sentencing policies and the consecutive legislations thereof, in combination with statistics.

There are numerous documentaries and films about prisoners, crime, and other relating topics. It would be impossible to watch them all so the documentaries that I decided to watch are fairly new and very specifically focus on the punitive approach the U.S. criminal justice system execute, and mass incarceration as a phenomenon.

1.3 The Concept of Punishment

This thesis is layered. In order to answer the thesis statement, it is essential, to begin with, a look at the concept of punishment in order to later say something about how the United States views punishment. Punishment is a negative sanction that is used to control behavior that violates norms, or in other words, behavior that deviates from what is considered normal. A

general definition of punishment is “suffering, pain or loss that serves as retribution.”¹¹ Punishment that serves as retribution can be traced back to as “one of the oldest and most basic justification of punishment”¹² and it builds on the idea of revenge. The saying “an eye for an eye” is prominent in retributive thinking. It encourages punishment of the wrongdoer that fits the crime.¹³

Another definition of the word punishment is “a penalty inflicted on an offender through judicial procedure.”¹⁴ This definition refers to criminal sanctions, such as incarceration and death penalty and they are the types of punishment that are issued by state authorities. Criminal sanctions are responses to laws implemented by governments and they serve different purposes. Scholars, Terance D. Miethe and Hong Lu, write that “Criminal sanctions serve to reinforce cherished values and beliefs, incapacitate and deter those who may be considering criminal misconduct, and often function to maintain power relations in a society and to eliminate threats to the prevailing social order.”¹⁵

The various practices of punishment are hugely discussed today, as it has been for centuries. Philosophers, political leaders, and lawyers have come up with various theories of punishment in order to justify its practice and form reasonable objectives. There are various types of punishment used for various purposes, and they vary from country to country, and within countries over time. There are also various views on punishment as a concept, and the way we think and talk about punishment differs. The first definition which talks about punishment serving as retribution can be seen to be found in the “philosophical”¹⁶ discursive tradition, and the second definition that refers to punishment in a structural system, such as a judicial procedure, can be seen to be found in the “penological”¹⁷ discursive tradition. The sociological perspective tries to emphasize that punishment in a penological fashion needs to be viewed in connection to society, and asserts that punishment cannot distance itself from the significance and range of effects that reach well beyond the population of criminals. Penological, philosophical and sociological perspectives of punishment give insight into the various aspects of objectives, function, and justification of punishment that exists.

¹¹ *Merriam-Webster's Learners Dictionary*, s.v. “Punishment,” accessed March 7, 2019, <https://www.merriam-webster.com/dictionary/punishment>

¹² Terance D Miethe and Hong Lu, *Punishment : A Comparative Historical Perspective* (Cambridge: Cambridge University Press, 2005), 15.

¹³ *Punishment : A Comparative Historical Perspective*, 16.

¹⁴ *Merriam-Webster's Learners Dictionary*, s.v. “Punishment,” accessed March 7, 2019, <https://www.merriam-webster.com/dictionary/punishment>

¹⁵ Miethe and Lu, *Punishment : A Comparative Historical Perspective*, 1.

¹⁶ David Garland, "Sociological Perspectives on Punishment," *Crime and Justice* 14 (1991): 115.

¹⁷ "Sociological Perspectives on Punishment," 115.

1.3.1 Penology

When talking about punishment, the common discursive style is to talk about punishment as a technique of crime control. This is the typical way of looking at punishment among the lay public, criminologists, and criminal justice experts, and it is what is called penology.

Penology views penal institutions and the processes of punishment as a necessary means to reduce crime rates and restrain individual criminals. They are concerned with the technical question “What works?” as opposed to “What is just?”. Its discursive style is based on empirical research and technical knowledge. They evaluate and chart the impact of penal measures by using the effectiveness study that looks at the effect specific sanctions have on patterns of offending and recidivism rates. Penology might be more concerned with what works compared to what is just, but penal systems are still built on different theories of punishment, which often come into conflict.¹⁸

David Garland argues that the penological way of looking at punishment is of an instrumental kind, and with that comes limitations. Penology is valuable for those who run the penal enterprise, as it focuses on collecting data that is intended to reduce crime, increase efficiency and lower the costs, however, it tends to neglect that no penal system is cut off of the rest of the society it exists in.¹⁹ Garland supports his claim by pointing out that:

As sociological and historical studies show, penal measures and institutions have social determinants that have little to do with the need for Law and Order, social effects that go well beyond the business of crime control, and a symbolic significance that routinely engages a wide population, making it inappropriate to think of them in purely instrumental terms.²⁰

By looking at the penal system the way Garland presents it, the penal system as a social institution will always be affected by social, political, and economic factors and penologists can, therefore not view punishment as something that stands outside of the society’s forces.

1.3.2 The Philosophy of Punishment

As stated, there are different ways of thinking about punishment. A prominent way of thinking that forms peoples’ understanding of penal issues is the philosophy of punishment. In this tradition, punishment is viewed as a moral problem. The answers to how punishment

¹⁸ "Sociological Perspectives on Punishment," 116.

¹⁹ "Sociological Perspectives on Punishment," 117.

²⁰ "Sociological Perspectives on Punishment," 117.

can be justified, what the objectives to punishment should be, and how it can be imposed are found through ethical reasoning and moral appeal. Moreover, the central question in this tradition is not “What works?” but rather, “What is just?”. This discursive style differs from penological discursive style as it does not rely on empirical research or technical knowledge, but holds its self as true based on ethical reasoning and moral appeal.²¹

Before moving on to the features of the sociology of punishment, it will be valuable to look at different types of perspectives within the philosophy of punishment because it will be used in this thesis to talk about changes in the U.S. sentencing laws and the U.S. prison system concerning the use of power. According to the philosophy of punishment, there are several ways to justify punishment. They are distinctively different from each other, and it is hugely debated amongst criminologists and scholars which approach functions best when it comes to recidivism rates, crime rates, the safety of society, and the wellbeing of offenders.

Retribution

Punishment that serves as retribution can be traced back to as one of the oldest and most basic justifications of punishment. It justifies punishment based on the idea of revenge. The retributive principle of *lex talionis* (i.e., an eye for an eye) was embedded in the Judeo-Christian religious tradition. This tradition is not concerned with offender culpability nor concerned with preventing future wrongdoings, as the main objective of punishment is to restore justice by punishing the wrongdoer the same way as the deviant act the wrongdoer committed. Today, the retributive principle is a bit adjusted as punishment has become institutionalized, and the principle of “an eye for an eye” does not fit today’s judicial procedure. However, the retributive principle of revenge is definitely to be found as a justification for the harshness of laws. The retributive principle argues that the wrongdoer morally deserves to make amends through punishment that is proportionate to the offense; in other words, that the punishment should fit the crime.²²

Incapacitation

Incapacitation is the act of physically decreasing the likelihood for individuals to commit a crime or deviant act, thus, protects the community. This is a primary utilitarian purpose of punishment. Miethe and Lu point out different forms of incapacitation, such as banishment as

²¹ "Sociological Perspectives on Punishment," 116.

²² Miethe and Lu, *Punishment : A Comparative Historical Perspective*, 15-16.

an early tribal practice; transportation of convicts to other colonies; political exile; drunk arrest; house arrest; and various types of incarceration.²³

Deterrence

The principle of deterrence is to search for the relationship between sanctions and human behavior. In order to alter someone's future behaviors, the likelihood of getting punished for a deviant act, and the possible punishment must create an assumed cost that exceeds the benefits. The types of punishments that have deterrent effects and consequently lead to a reduction in deviant behavior and increase conformity depend on whether or not the punishment is "perceived as sever, certain, and swift sanction."²⁴

General deterrence

The goal of the general deterrence approach is to discourage others from committing the same wrongdoing as an offender. The approach does not concentrate on the offender's future behavior but is instead more concerned with the deterrent effect it will have on citizens who hear about the penalties an offender had to encounter.²⁵ If a businessman was caught, prosecuted and sentenced for committing fraud or some type of corporate crime (e.g., financially motivated, nonviolent crime) supporters of general deterrence believe the punishment he was given will prevent others from committing the same crime.

They compare crime rates over time or across jurisdictions in order to ascertain the general deterrent value of punishment. However, it is difficult to prove that a specific punishment has prevented citizens from committing a particular crime because there are so many other factors that interfere.²⁶

Individual deterrence

Individual deterrence, similarly to general deterrence, aims at preventing repeated misbehavior. However, individual deterrence concentrates on the individual being punished, and the essential goal is that the punishment will prevent the offender from committing further crimes. It does not attempt to work as a preemptive measure for all citizens. A lot of informal punishment, such as parental punishment of children, builds on individual

²³ *Punishment : A Comparative Historical Perspective*, 18-19.

²⁴ *Punishment : A Comparative Historical Perspective*, 20.

²⁵ *Punishment : A Comparative Historical Perspective*, 21.

²⁶ *Punishment : A Comparative Historical Perspective*, 21-22.

deterrence. By looking at recidivism rates, it is possible to measure and say something about the specific deterrent value of punishments.²⁷

Rehabilitation

Rehabilitation refers to the idea that the primary purpose of punishment is to demand treatment and reform of offenders. Rehabilitation programs aim to reform offenders' behavior so that they will be capable of returning to society and function as law-abiding members of the community. The principle of rehabilitation stands in sharp contrast to retributive philosophy. While retribution focuses solely on uniform punishments that should be proportional to the deviant act, rehabilitation emphasizes the importance of the individual offenders' characteristics that need treatment and interference.²⁸

Restoration

Restorative justice challenges the previous theories. This philosophy expects the offender to take all responsibility for the misconduct and holds the offender accountable for compensation and the act of making amends with the victim. Miethe and Lu write that "Restorative justice literally involves the process of returning to their previous condition all parties involved in or affected by the original misconduct, including victims, offenders, the community, and even possibly the government."²⁹

1.3.3 The Sociology of Punishment

The sociology of punishment is the third style of thinking about punishment, and it is a style that emerged during the last decades of the twentieth century. It offers a different framework for the analysis of penal issues than that of penology and philosophy. Instead of solely focusing on "What is just?" or what penal measures that prevent crime, sociologists and historians try to add and bring forth other important aspects of punishment to the discourse of punishment. David Garland writes in his article, *Sociological Perspectives on Punishment*, that:

In place of questions about punishment's effectiveness or its justification, these writers have been asking, "How do specific penal measures come into existence?" "What social functions does punishment perform?" "How do penal institutions relate

²⁷ *Punishment : A Comparative Historical Perspective*, 20.

²⁸ *Punishment : A Comparative Historical Perspective*, 22-23.

²⁹ *Punishment : A Comparative Historical Perspective*, 24.

to other institutions?" "How do they contribute to social order, or to state power, or to class domination, or to the cultural reproduction of society?" and "What are punishment's unintended social effects, its functional failures, and its wider social costs?".³⁰

This conceptualization of punishment asserts punishment as a social institution, which Garland explains as “a cultural and historical artifact that may be centrally concerned with the control of crime but that is nevertheless shaped by an ensemble of social forces and has a significance and range of effects that reach well beyond the population of criminals.”³¹

He is careful with suggesting that this tradition is at odds with penology. Moreover, he stresses that the sociological tradition shares “the same subject matter, adopts a similarly empirical or social scientific approach, and makes extensive use of penological materials in its analyses.”³² What Garland is thorough with emphasizing is the important difference in objectives between the two traditions. Whereas, penology is concerned with a declared objective, namely crime control, the sociological approach disassociates and denies that this is even possible for a social artifact to be explained in this way because the penal system is not an institution that can withstand social influence.³³

The sociological approach attempts to highlight the interaction between the social and the penological, as these aspects cannot be separated when talking about punishment. They are wholly intertwined. The sociology of punishment is not one set framework for how to interpret and analyze punishment. Moreover, it is a clash of various sociological and historical ways of looking at the concept of punishment, and they all draw on and go about the problem in various ways, for different purposes. There are three prominent sociological ways to look at deviance and punishment. These are The Durkheimian Perspective which argues that deviance fulfills a function in society, The Marxist Perspective which explains how punishment connects to power and inequality, and The Work of Michel Foucault which claims that power-knowledge changed the usage of punishment to focus on control of the offenders' mind instead of their body.³⁴

³⁰ Garland, "Sociological Perspectives on Punishment," 119.

³¹ "Sociological Perspectives on Punishment," 119.

³² "Sociological Perspectives on Punishment," 119.

³³ "Sociological Perspectives on Punishment," 120.

³⁴ "Sociological Perspectives on Punishment."

2 New problems and change for the worse

This chapter presents the characteristics of the decades leading up to the 1970s, and the beginning of the extraordinary incarceration rates with a focus on the rhetoric used by politicians and public officials that went from being explicitly racist to implicitly racist. Further, the chapter includes an extensive look at changes in the U.S. sentencing laws and specific acts that can be seen to be the reason for the substantial social control of marginalized groups that the U.S. criminal justice system represents today. Last, an in-depth account of statistics that emphasizes and supports the claim that the U.S. criminal justice system is both harshly punitive and vastly racist and discriminative.

1950s and 1960s

The booming prosperity of the 1950s is characterized by the growth of the suburbs; the expansion of the consumer market; a booming economy; and the baby-boom. However, not all Americans were able to benefit from the postwar boom, because for many African Americans, especially those who were situated in the South, faced a reality where they were still subjects of racism and segregation. Due to Jim Crow Laws, they were not allowed to use the same seats on the bus as whites. Certain areas of restaurants and public buildings were excluded for people of color or restricted altogether. Segregation and discrimination when it came to housing (e.g., redlining and segregated neighborhoods), public schools and other public benefits were also prominent all through the nation, but especially evident in the South. African Americans fight against discrimination had already been going on for centuries, but the struggle began for the first time to present itself amongst the general population of America. African Americans, along with many whites, mobilized and began an extraordinary fight for social justice and equal rights during the 1950s.³⁵

The Civil Rights Movement is an extension of the Civil War that began in the 1950s and continued all through the 1960s. The Civil Rights Movement is viewed as a significant part of the American 60s, where activism that offered a feeling of hope for social and cultural change emerged. Riotous and divisive are other, more specific descriptions of the 1960s as a decade. Besides the Civil Rights Movement, the Vietnam War and anti-war protests, political assassinations, and the emerging “generation gap” are significant events of the 1960s. The term counterculture became a description of the white, middle-class, youths’ rejection of the

³⁵ James T. Patterson, *Grand Expectations : The United States, 1945-1974*, ed. C. Vann Woodward, vol. Vol. 10 (Oxford: Oxford University Press, 1996), 61-81.

older generations cultural standards concerning racial segregation, poverty, the Vietnam War, sexual mores, women's rights, flaws of Universities and materialism. Additionally, the counterculture, by many also synonym with hippie, is identified with free love, marijuana use, and other experimental drugs.³⁶ Even though a new Civil Rights Act was pushed through by the federal government, it did not solve the problems facing African Americans. The resentment towards authority grew during the 1960s because of little actual reform by the government to remove social inequalities. A consequence of no real progress was more radical demonstrations and riots.

Race discourse substituted with crime discourse

Michelle Alexander points out that there have been some changes since the abolition of slavery and the fall of Jim Crow. The language that politicians use to advocate for their presidency and use to justify new laws and new policies is not explicitly racist anymore because it is no longer socially permissible. However, that does not mean that the practices they claim to have left behind do not still exist. Since the end of the Civil Rights Movement, politicians have relied on the criminal justice system to label people of color "criminals" and in that way continue with discrimination, exclusion, and social contempt.³⁷ The ways criminals are legally discriminated against today give sad associations to the same ways African Americans have been discriminated against for ages. The label, felon or criminal, is not a label you want to be inked with your name because it is the government's systematic way of legally denying you access to the labor market, the right to vote, housing opportunities, student loans, educational prospects, and many other public benefits.³⁸

We only need to go back a little over a decade, to when the real reason for these issues was not even evident to most Americans. As Michelle Alexander, who is a civil rights lawyer, writes in her book *The New Jim Crow* (2012), most civil rights lawyers and organizations concerned with civil rights and affirmative action were at that time not aware that the U.S. criminal justice system was and is a system of racialized social control that functions all too similar to Jim Crow laws. They knew that it was racially biased, but not in the systematic way that is evident now.³⁹ During the last decade, more and more organizations, such as the American Civil Liberties Union (ACLU), the National Association

³⁶ *Grand Expectations : The United States, 1945-1974*, Vol. 10, 442-57.

³⁷ Alexander, *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*, 2.

³⁸ *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*, 2.

³⁹ *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*, 3-4.

for the Advancement of Colored People (NAACP), the Sentencing Project, the Hamilton Project, and Worth Rises have begun to look into the system of oppression that the U.S. criminal justice system can be seen to be. Now they advocate for the need of total criminal justice reform. They have conducted numerous studies and produced detailed reports that have brought new critical perspectives to the “tough on crime” policies, which the War on Drugs is a big part of.

When one refers to *Tough on Crime*, also known as *Law and Order*, what one then talk about is the demands for a strict criminal justice system that represents and executes strict penalties for violent crime and property crime. Moreover, some scholars argue that these political policies were initially a response to the Civil Rights Movement that by southern governors and law enforcement officials were seen to be a threat to Law and Order in the nation. Instead of being praised for their courage to oppose segregation and social inequality, civil rights protests were portrayed as criminal rather than political in style. The tension that emerged between supporters and opposers of the Civil rights movement was utilized by politicians and media to demonize civil rights activists and their objective.⁴⁰ Around the same time as the Civil rights movement began to gain steam, crime rates in the nation began to rise, and politicians also used this momentum to advocate for the need for Law and Order. The feeling of chaos helped flourish the hate against African Americans because they were flamed as the reason for why the crime rates went up. Ultimately, the notion of what criminality meant changed.⁴¹

Three of the first important leading figures for the Law and Order project were Lyndon B. Johnson, Richard Nixon, and Ronald Reagan. They wanted to restore Law and Order in America with harsh mandatory punishments and used rhetoric that played on peoples’ feelings of fear of chaos that had emerged during the 50s and 60s. Two examples of political rhetoric and campaign ads that fueled peoples already existing fear of the chaos and that generated the belief of a need for stricter laws and sentences are one of Richard Nixon’s presidential campaign ads and the Willie Horton ad made by the National Security Political Action Committee on behalf of George H.W. Bush.

Nixon’s advertisement on Law and Order was broadcasted on television as part of his campaign as a presidential candidate in 1968. In the 1960s was when television established itself as a standard part of all Americans households. This progress meant that news

⁴⁰ *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*, 40-41.

⁴¹ *13th*. Documentary directed by Ava DuVernay (Los Angeles, CA: Kandoo Films, 2016)

broadcastings and advertisements reached a far bigger crowd than ever before, and the possible influential value was tremendous. It promoted a more national culture, but it also displayed the divisions the nation was facing.⁴² The Nixon ad “Law and Order” begins with alternating images of riots, violence, demonstrators, and bloodied people. The visuals, along with a disturbing composition of sounds, makes the whole video feel stressful and chaotic. On top of this, a script is read by a man with a dark voice:⁴³

It is time for an honest look at the problem of order in the United States. Dissent is a necessary ingredient of change, but in the system of government that provides for peaceful change there is no cause that justifies resort to violence. Let us recognize that the first civil right of every American is to be free from domestic violence. So I pledge to you, we shall have order in the United States.⁴⁴

The video ends with a written statement: “This time vote like your whole world depended on it. NIXON.” It is understandable that the advertisement might have generated feelings of fear for chaos and the want for order with the audience, which is exactly what Nixon went for with the ad. He states that he, as the president, will resolve the chaos that was supposedly deterring the nation. Most people knew that the riots referred to in the ad were civil rights related. Thus, the ad demonizes the image of the Civil Rights Movement. Moreover, one can argue that the depiction of African Americans was also affected by this ad because many of whom participated in the Civil Rights Movement were black. This is just one of many examples of political rhetoric that implicitly label blacks as the ones Americans should fear.

In 1988, twenty years after the Nixon ad, another infamous television ad portrayed African American men as someone who should be viewed as someone equivalent to a murderer. The Willie Horton ad made by the National Security Political Action Committee on behalf of George H.W. Bush attacked his opposing presidential candidate Michael Dukakis. The ad begins with a male voice saying:

Bush and Dukakis on crime. Bush supports the death penalty for first degree murders. Dukakis not only opposes the death penalty, he allowed first degree murderers to have weekend passes from prison. One was Willie Horton who murdered a boy in a robbery, stabbing him nineteen times. Despite a life sentence Horton received ten

⁴² Patterson, *Grand Expectations : The United States, 1945-1974*, Vol. 10, 446.

⁴³ Alexander, *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*.

⁴⁴ Note: The idea to include Nixon’s ad is taken from Michelle Alexander. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, see page, 46-47. However, I did search up the video so that I could see it myself and get my own impression of the ad. Source: “1968 nixon Law and Order.” YouTube video, 0:55. “Barbara Millhausen,” September 26, 2016. <https://www.youtube.com/watch?v=cEdtwQ8OguY>

weekend passes from prison. Horton fled, kidnaped a young couple, stabbing the man and repeatedly raping his girlfriend. Weekend prison passes, Dukakis on crime.⁴⁵

While a man is reading the text, two images of Willie Horton is showed throughout most of the ad. He is an African American male. The pictures they use are a mugshot and another picture taken in connection with his imprisonment. They discredit Dukakis and his stand on the death penalty and sentencing policies by claiming that with him as a president people, such as Willie Horton, will go free and not get the punishment they allegedly deserve. They generalize murderers to mean the same as people like Willie Horton, male and black.

The portrayal of a nation that needed more laws to fix the disorder spreading across the nation and the rising crime rates were by the Republicans utilized into a plan that is called Southern Strategy. The southern population was almost entirely democratic, and the goal of the Southern Strategy was for the Republican party to persuade the white southern population to shift views from democratic to republican.⁴⁶

Michelle Alexander talks about this strategy in her book and explains that “Some conservative political strategists admitted that appealing to racial fears and antagonisms was central to this strategy, though it had to be done surreptitiously.”⁴⁷ She supports this by using a quote by H.R. Haldeman, one of Nixon’s Key advisers: “He [President 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 not appearing to.”⁴⁸ In this quote, Haldeman exemplifies that Nixon deliberately pursued a Southern, racial strategy.

More precisely, politicians and public officials utilized poor, and working-class whites’ feelings of anxiousness about the threat and resentment of the many gains African Americans got in the Civil Rights Movement, they used this to appeal on issues regarding crime and welfare. After the Civil Rights Movement, the poor, and working-class whites were the ones who were forced to compete on equal terms for limited jobs with African Americans who had gained new rights. Whites, especially the ones in the south, had been taught their entire lives were inferior to them, and now they had to associate themselves with

⁴⁵ Note: The idea to include Willie Horton’s ad is taken from Ava DuVerney. *13th*. 2016. However, I did search up the video so that I could see it myself and get my own impression of the ad. Source: “Willie Horton 1988 Attack Ad.” YouTube video, 0:32. “Ilehman84” November 3, 2008.

⁴⁶ Patterson, *Grand Expectations : The United States, 1945-1974*, Vol. 10, 702.

⁴⁷ Alexander, *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*, 44.

⁴⁸ Willard M. Oliver, *The Law & Order Presidency* (Upper Saddle River, NJ: Prentice Hall, 2003), 127-28, citing Dan Baum, *Smoke and Mirrors: The War on Drugs and the Politics of Failure* (Boston: Little, Brown, 1996), 13; H.R. Haldeman, *The Haldeman Diaries* (New York: G.P. Putnam’s sons, 1994), 53 (emphasis in original); quoted in *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*, 44.

them on the job market. This state of affairs did create an enormous amount of fear, resentment and anxiety, and a tremendous political opportunity.⁴⁹

Since the beginning of Law and Order campaigns that appealed to racial fear through coded anti-black rhetoric and the Southern Strategy, presidential candidates have had to run a War on Crime program in order to win office. They have had to show what concrete actions they were willing to do in order to protect society against crime.⁵⁰ This is what criminal justice organizations work to change. They advocate for change while they inform and teach the public about what is really happening in the American criminal justice system.

2.1 Punitive laws and policies in the United States

A culture of punishment, combined with race- and class-based animus, has led the United States to rely on incarceration more heavily than any other country in the world does. The politicization of criminal justice policy and a lack of evidence-based assessment result in a one-way ratchet in which law and policy grow ever more punitive. The human and financial costs of mass incarceration are staggering, and the burden falls disproportionately on the poor and people of color.⁵¹

As the American Civil Liberties Union states, the United States relies heavily on incarceration. After the abolition of slavery and the fall of Jim Crow, the continuation of racism and discrimination against African Americans have not only proven itself as a new discourse after the Civil Rights Movement. It is evident all through the U.S. criminal justice system. It is evident in policies and laws, policing (e.g., racial profiling, stop-and-frisk programs), bail bonds, and the commercialization of the criminal justice system can also arguably be seen to be discriminatory and unfair. I have chosen to concern this thesis with punitive laws and policies and will elaborate on changes in the U.S. sentencing laws and legislation examples.

2.1.1 Changes in U.S. Sentencing Laws

During the twentieth century in the United States, rehabilitation as a philosophical principle flourished, and “the main official objective of criminal justice was correction.”⁵² The most well-respected criminologists in the mid-1970s predicted a future where prisons would fade

⁴⁹ “Michelle Alexander: Locked Out of the American Dream.” YouTube video, 35:25. “Moyers & Company” December 20, 2013. <https://www.youtube.com/watch?v=om2hx6Xm2JE&t=774s>

⁵⁰ *13th*. Documentary directed by Ava DuVernay (Los Angeles, CA: Kandoo Films, 2016)

⁵¹ American Civil Liberties Union, “Prisoners’ Rights,” accessed April 8, 2019.

<https://www.aclu.org/issues/prisoners-rights>

⁵² Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006), 57.

away, and the common perception amongst criminologists was that the prison system did not prevent crime but rather create it. The solution to prevent crime and create a safe society was to rely on the principles of rehabilitation facilities in various formats instead of the structure of traditional prisons. This was supported by a recommendation from the National Advisory Commission on Criminal Justice Standards and Goals in 1973.⁵³

A feature of rehabilitative methods is indeterminate sentencing. Indeterminate sentencing allowed judges to have “discretion to decide whether to impose prison, jail, probation, or monetary sentences.”⁵⁴ It was in other words up to the judges to decide if an offender would at all be sent to jail, and if so, how long the maximum time they might serve would be. It was parole boards that held much power in sentencing lengths. The time an offender served was not usually set at trial. Instead, the sentencing length was decided in prison by a hearing of the parole board. This allowed for the discretion of each offender and case. Sometimes this would result in an early release of those with good behavior and those with potential for rehabilitation. Though, this could also result in indefinite incapacitation in cases where the inmate showed little potential of corrigibility and was perceived as dangerous.⁵⁵

The indeterminate sentencing approach valued the importance of the characteristics of the offender and the offender’s prior criminal record when deciding on a sentence. This method was recommended by multiple researchers and scholars, such as “The American Law Institute (1962) in the Model Penal Code, the National Commission on Reform of Federal Criminal Laws (1971) in its Proposed New Federal Criminal Code, and the National Council on Crime and Delinquency (1972) in the Model Sentencing Act.”⁵⁶

The significant support for rehabilitation and indeterminate sentences were eventually challenged by criticism from both conservatives and liberals. The rehabilitative approach was critiqued for several reasons, some of them were: its absence of standards for sentencing decisions and opportunities for appeals⁵⁷; for not being able to keep its rehabilitative

⁵³ Alexander, *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*, 8.

⁵⁴ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, ed. Jeremy Travis, Bruce Western, and Steve Redburn (Washington, DC: The National Academies Press, 2014), 71-72.

⁵⁵ Western, *Punishment and Inequality in America*, 62.

⁵⁶ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, 72.

⁵⁷ Marvin E. Frankel, *Criminal Sentences: Law Without Order* (New York: Hill and Wang, 1972), quoted in *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, 72.

promises⁵⁸; unwarranted disparities and risks of racial bias⁵⁹; lack of procedural fairness, transparency, and predictability⁶⁰; insufficient attention to punishment's deterrent and incapacitative effects⁶¹.

Contrary to indeterminate sentencing, mandatory sentencing and determinate sentencing laws produce a system that makes sentencing outcomes more predictable and consistent, and supposedly make sentencing procedures fairer. The results are a criminal justice system that is based foremost on the philosophy of deterrence and incapacitation. The lengthy and harsh sentences, which are solely focused on the offense and not the characteristics of the offender when determining the punishment, are fundamentally retributive in style.⁶²

2.1.2 Legislation Examples

One of the first bills, a bill signed by Ronald Reagan, which contributed to a lengthening in the average duration of time served by offenders, as well as a reduction in the level of discretion provided by judges and parole boards is the act *Comprehensive Crime Control Act of 1984*⁶³. The act was submitted as part of Reagan's crime control program. It established mandatory minimum sentences and eliminated federal parole. It is viewed as one of the most significant reforms of the U.S. criminal justice system. Moreover, the Comprehensive Crime Control Act of 1984 founded the U.S. Sentencing Commission responsible for collecting information to develop fair federal sentencing guidelines. The act did also focus on drug and narcotic offenses and increased many federal sentences on this issue, however, it was first later that the War on Drugs and the legislations that followed affected the racial disparity for

⁵⁸ Robert Martinson, What Works? – Questions and answers about prison reform. *The Public Interest*, 35 (2), 22-54, (1974), quoted in *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, 72.

⁵⁹ American Friends Service Committee, *Struggle for Justice: A Report on Crime and Punishment in America* (New York: Hill and Wang, 1971), quoted in *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, 72.

⁶⁰ Kenneth C. Davis, *Discretionary Justice: A Preliminary Inquiry* (Baton Rouge: Louisiana State University Press, 1969); Alan Dershowitz, *Fair and Certain Punishment* (Columbus, OH: McGraw-Hill, 1976), quoted in *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, 72.

⁶¹ Macklin Fleming, *The Price of Perfect Justice: The Adverse Effects of Current Legal Doctrine on the American Courtroom* (New York: Basic Books 1974); James Q. Wilson, *Thinking about Crime* (New York: Basic Books, 1975) quoted in *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, 72.

⁶² Michael A. Hallett, *Private Prisons in America : A Critical Race Perspective*, *Critical Perspectives in Criminology* (Urbana: University of Illinois Press, 2006), 123.; Miethe and Lu, *Punishment : A Comparative Historical Perspective*, 16.

⁶³ Comprehensive Crime Control Act of 1984, S. 1762, 98th Cong. (1984), <https://www.congress.gov/bill/98th-congress/senate-bill/1762>

federal drug sentence for African Americans.⁶⁴ Deborag J. Vagins and Jesselyn McCurdy specifies that,

In 1986, before the enactment of federal mandatory minimum sentencing for crack cocaine offenses, the average federal drug sentence for African Americans was 11% higher than for whites. Four years later, the average federal drug sentence for African Americans was 49% higher.⁶⁵

One act that in particular, helped drive this massive increase in drug sentence was the *Anti-Drug Abuse Act of 1986*⁶⁶, which was a big part of the War on Drugs. Legislators in cities, states and nationwide began to lengthen drug sentences. During a time of tough on crime politics and fear of the new drugs and narcotics, the Anti-Drug Abuse Act of 1986 was implemented as a reaction to the death of basketball star Len Bias who died of a drug overdose.⁶⁷ This shocking drug overdose occurred in the middle of the emergence of crack cocaine, and it sparked the media and public's attention towards this new drug. It only took a few weeks after Bias death before Congress passed the Anti-Drug Abuse Act of 1986. Media's immense focus on the supposed death drug, crack cocaine, and the assumption that crack cocaine was infiltrating and ruining America's inner cities, created an enormous fear of crack. All factors that shaped and drove the passing of the act.⁶⁸

The Anti-Drug Abuse Act of 1986 enacted even more mandatory minimum sentences than what already existed. Most significantly, it set a five-year minimum sentence for offenses involving 100grams of heroin, 500 grams of cocaine or 5 grams of crack cocaine. This requirement generates a harsh disparity in sentencing of crack cocaine and powder cocaine as the "distribution of 500 grams powder cocaine – 100 times the amount of crack cocaine – carries the same sentence."⁶⁹ Two years later, in 1988, strict drug laws had not managed to control the epidemic rise of drug-related crimes. Congress reacted to this by enacting the *Anti-drug Abuse Act of 1988*⁷⁰. The new legislation added a five-year mandatory and twenty-year maximum sentence for simple possession of 5 grams crack cocaine, with no

⁶⁴ Deborag J. Vagins and Jesselyn McCurdy, "Cracks in the System: Twenty Years of the Unjust Federal Crack Cocain Law," (2006), ii.

⁶⁵ "Cracks in the System". ii.

⁶⁶ Anti-Drug Abuse Act of 1984, H.R. 5484, 99th Cong. (1984), <https://www.congress.gov/bill/99th-congress/house-bill/5484>

⁶⁷ Vagins and McCurdy, "Cracks in the System".

⁶⁸ "Cracks in the System".

⁶⁹ "Cracks in the System".

⁷⁰ Anti-Drug Abuse Act of 1988, H.R. 5210, 100th Cong. (1988), <https://www.congress.gov/bill/100th-congress/house-bill/5210>

evidence of intent to sell. The maximum penalty remained at no more than one year in prison for simple possession of any amount of powder cocaine or any other drug.⁷¹

Crack cocaine is a dangerous drug, like many other narcotics. Nevertheless, it experienced a disproportionate reputation compared to powder cocaine. Interesting and significant to note is that newer research dismissed many myths surrounding crack cocaine. Research revealed that the effect of cocaine regardless of form is the same; hence, crack cocaine is not more harmful than powder cocaine, which people were led to believe in the 1980s. After the Act of 1986 was passed, it was revealed that Len Bias did, in fact, die of a powder cocaine overdose, not crack as first assumed by the media and the public - a crucial contributing factor in the enactment of the act. It is, therefore, reasonable to argue that the ratio 100:1 cannot be justified scientifically nor penologically like the legislation suggests.⁷²

Sentencing disparities in drug-related crimes limit African Americans to a greater extent than white Americans. Moreover, a punitive law like this challenges equal rights and opportunities to all. Statistics from the ACLU report *Cracks in the System* show that “the 100:1 drug quantity ratio promotes unwarranted disparities based on race.”⁷³ Crack cocaine is cheaper than powder cocaine, and this economic factor regulates who gets access to which drug. “Poor Americans, many of whom are African Americans only have the means to buy crack cocaine whereas powder cocaine is accessible to the more affluent white Americans.”⁷⁴ This difference in accessibility affects who is most likely to be struck by the harsh and lengthy drug sentencing.

What is more alarming than the difference in sentencing for the two various drugs that caused some people to be punished severer for drug use or possession than others, is the inconsistency of crack cocaine users versus crack cocaine defendants when it comes to race. “Table 1” in *Cracks in the System* report conducted by ACLU displays two pie charts *Federal Crack Cocaine Defendants* and *Crack Cocaine Users*. One would think that the percent of people using a particular drug would correlate with the percent of people sentenced for using that same drug. However, that is not the case. The figures illustrate a connection that does not correlate. It is stated in the ACLU report that “In 2003, whites constituted 7.8% and African Americans constituted more than 80% of the defendants sentenced under the harsh federal

⁷¹ Vagins and McCurdy, "Cracks in the System". 2.

⁷² "Cracks in the System". ii, 4-5.

⁷³ "Cracks in the System". i.

⁷⁴ "Cracks in the System". i.

crack cocaine laws, despite the fact that more than 66% of crack cocaine users in the United States are white or Hispanic.”⁷⁵

In 1994, the *Violent Crime Control and Law Enforcement Act of 1994*⁷⁶ was enacted. Not only did this act introduce even longer sentences than the previous acts, but it was also with this act that “three-strikes laws” that sentenced any person with two prior convictions to life without parole, and “truth-in-sentencing” policies that demanded that people serve at least 85% of their full sentences came into action.

Mandatory minimums

Mandatory minimum builds on the principle of retribution, uniform sanctions for the same crimes, and no irregularity in sentencing depending on the judge. This law was supposed to make sentencing fairer, and ensure that certain crimes (e.g., violent crimes and drug-related crimes) were harshly punished as they viewed those crimes as a significant problem for the public and society in general. However, mandatory sentencing has not created a fairer system; on the contrary, it has had the opposite effect.

Many judges oppose mandatory sentencing because it, in many cases, is too harsh. Non-violent, low-level addicts are sentenced for decades, and sometimes they are faced with lifetime sentences in prison. One judge, Judge Mark Bennett, argues that this is a medical problem, not a crime issue, and he states that many of the offenders are non-violent and do not pose any real threat to communities. However, due to the mandatory minimum law, judges are forced to enact harsh and unfair punishments. This law has caused a disparity in the courtroom and all through the criminal justice system and consequently pushed incarceration rates through the roof, creating a mass incarceration phenomenon no one had ever witnessed before.⁷⁷

There are several judges who speak out against these laws, one of them are Judge Mark Bennett and he states,

These mandatory minimums are so incredibly harsh, and they're triggered by such low levels of drugs that they snare at these non-violent, low-level addicts who are involved in drug distribution mostly to obtain drugs to feed their habit. They have a medical problem. It's called addiction, and they're going to be faced with five and 10

⁷⁵ "Cracks in the System". 1.

⁷⁶ Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, 103rd Cong. (1993), <https://www.congress.gov/bill/103rd-congress/house-bill/3355>

⁷⁷ Rob Montz, “How mandatory minimums helped drive mass incarceration,” *Vox*, September 3, 2015, <https://www.vox.com/2015/9/3/9254545/mandatory-minimums-mass-incarceration> (accessed April 11, 2019).

and 20-year and sometimes life mandatory minimum sentences. I think that's a travesty.⁷⁸

This relates to opposers to mandatory sentencing who argue that it goes against the retributive principle it is built on because they believe that the punishment given does not fit the crime. A drug addict who commits crimes to feed their habit is too harshly punished by mandatory minimums. Another judge, Judge Andre M. Davis, Fourth Circuit Court of Appeals, states,

I say with certainty that mandatory minimums are unfair and unjust. These laws, created by an overzealous Congress decades ago, hinder judges from handing out fair and individualized sentences, while prosecutors are given unwarranted power to dictate sentences through charging decisions.⁷⁹

When even judges oppose mandatory sentencing policies, politicians should try to listen because it is ultimately judges who are experts on the field, not politicians.

Three-strikes laws

Three-strikes laws are another example of elimination of judges' sentencing discretion.⁸⁰ These laws make it impossible for judges to look at the offender's characteristics and background when deciding on a sentence. Three-Strikes laws originated in Washington, but the Three-Strikes law made in California in 1994 is the most used example. These laws are adoptions of mandatory minimum sentences for repeat offenders, and all through the 1990s it emerged various versions across the nation, and in mid-1990s forty states had followed Washington and California's examples.⁸¹ Three-strikes laws require judges to impose a very long prison sentence, and because of this, a life sentence can result from a combination of relatively minor offenses.

Bruce Western explains that "The Californian law doubles sentences for serious second-time felony offenders. The third strike carries life in prison. The clearest case for disproportionate punishment arises for third-strike nonviolent felons."⁸² Sometimes an offender is even faced with life without parole because of this law. Three-Strikes laws were

⁷⁸ National Public Radio, *A Federal Judge Says Mandatory Minimum Sentences Often Don't Fit The Crime*, June 1, 2017, <https://www.npr.org/2017/06/01/531004316/a-federal-judge-says-mandatory-minimum-sentences-often-dont-fit-the-crime?t=1555588460827> (accessed April 11, 2019).

⁷⁹ American Civil Liberties Union, "A Living Death: Life without Parole for Nonviolent Offenses," (2013).

⁸⁰ Western, *Punishment and Inequality in America*, 65.

⁸¹ *Punishment and Inequality in America*, 65.

⁸² *Punishment and Inequality in America*, 64.

made with the intention to keep dangerous, and violent re-offenders incapacitated, and these laws build on the idea that if an offender has not been able to be rehabilitated previously, then he or she is beyond rehabilitation. Nevertheless, such laws sometimes lead to incapacitation of non-violent offenders. A law like this is both inhumane and irrational.

Truth-in-sentencing

As part of the tough on crime project, sentencing policies not only required longer sentences for violent crimes, many states also began to abolish parole and enacted “truth-in-sentencing” laws. These measures prevent parole boards from releasing low-risk prisoners and require offenders to serve 85 percent of their increasingly long sentences.⁸³ Parole is seen as a rehabilitative measure because it is part of the process of preparing and helping the offender back in society. By removing parole all together or requiring offenders to serve a more substantial part of the sentence behind bars, the road back to society is harder and longer to walk.

2.2 Statistics

The different labels that refer to race and ethnicity, and what races and ethnicities the labels include can sometimes vary from one survey to another. This can cause confusion for the reader and inaccurate findings for those who want to use the statistics, because of this, I will continue to use the same labels as used in the original table (see Appendix D) for my own graphs and charts. This means that “white” excludes persons of Hispanic or Latino origin, and so do the categories “black” and “other”. “Hispanic” will refer to those with Hispanic and Latino origin. The in-depth account of statistics emphasizes and supports the claim that the U.S. criminal justice system is both harshly punitive and vastly racist and discriminative.

2.2.1 Mass Incarceration

The prison population in the United States have the last 5 five decades experienced a tremendous increase. Figure 2.1 clearly illustrates this by tracing the U.S. state and federal prison population from 1925 until 2016. The Bureau of Justice Statistics only have records of prison counts dating back to 1925 but it still provides an adequate picture of the trends in U.S. prison population. There were 91,669 prisoners held in U.S. state and federal prisons in

⁸³ *Punishment and Inequality in America*, 65.

1925. Since then, the number slowly increased with approximately 100,000 to 196,092 in 1972. Law and Order politics flourished as Michael A. Hallett states on “both conservative and liberal administrations, beginning with Lyndon Johnson in the mid-1960s and lasting all through the 1990s, this brought with it a profound shift in incarceration policy.”⁸⁴

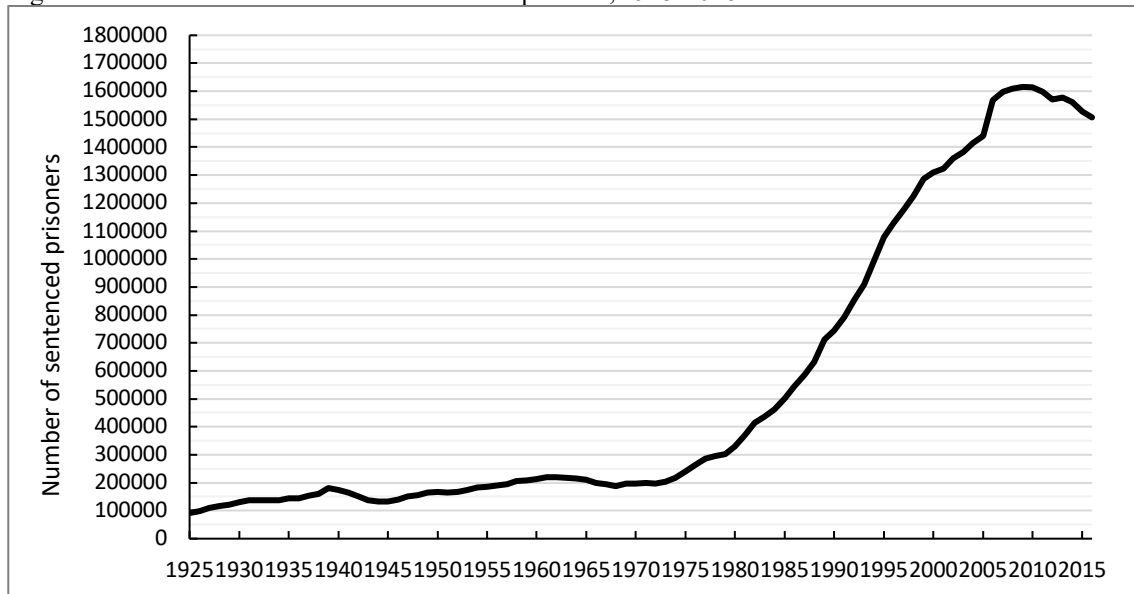
What the new trends in U.S. incarceration policy did to the prison population in the United States is clearly represented in figure 2.1. We can see in figure 2.1 that in 1972, around the same time as the shift in incarceration policies emerged, the line that represents the prison population begins a steep increase. This clear connection between the implementation of more punitive laws and the rise in the prison population can be used to argue that these new incarceration policies and sentencing laws did, in fact, cause the increase in the prison population, which for decades had been stable. From 1972 until 2009 when the prison population reached an all-time high at 1,615,487 prisoners, the prison population had experienced a 724 percent increase in total.⁸⁵

It is most interesting to look at the state and federal level because most of the new punitive laws resulted in long sentences that are carried out in state or federal prison. This is because sentences longer than 1 year are usually not carried out in local jails unless overcrowding in state or federal prison requires so. Changes in U.S. sentencing laws will therefore be most obvious on charts regarding federal and state level. Even so, there has been a clear increase in the jail population as well, which suggests that punitive attitudes have penetrated the whole criminal justice system. Figure 2.2 illustrates the U.S. jail population, 1990-2016, and we see a clear increase in the jail population. It would be interesting to see if the jail population experienced the same increase at the exact time as the state and federal prison population did, but I was unable to get a hold of numbers dating back further than 1990. It is still a valid illustration to include because along with figure 2.1 they represent a negative development in the U.S. criminal justice system that every day impacts numerous lives and families.

⁸⁴ Hallett, *Private Prisons in America : A Critical Race Perspective*, 123.

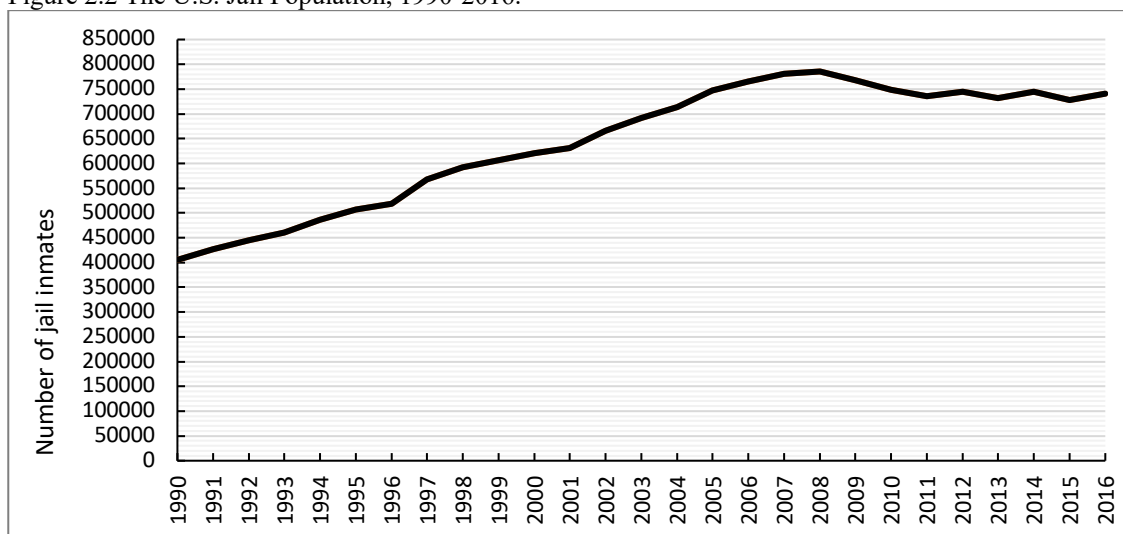
⁸⁵ Note: In order to find the percentage increase, one must find the difference between the two numbers one is comparing: $1615487 - 196092 = 1419395$. Then one must divide the increase by the original number and multiply the answer by 100: $1419395 / 196092 = 7,2384136 * 100 = 723,84136$. The answer is the percentage increase.

Figure 2.1 The U.S. State and Federal Prison Population, 1925-2016.



Source: Author’s compilation based on figures from Bureau of Justice Statistics, *Prisoners 1925-81* (table 1); BJS, *Prisoners in 1990*, by Robyn L. Cohen (table 1); BJS, *Prisoners and Jail inmates 1995*, by Darrell K Gilliard & Allen J. Beck, (table 1); BJS, *Prisoners in 2000*, by Allen J. Beck & Paige M. Harrison, (table 1); BJS, *Prisoners in 2005*, by Paige M. Harrison & Allen J. Beck, (table 1); BJS, *Prisoners in 2016*, by Ann E Carson (table 1). See Appendix A for original notes on figures from each source.

Figure 2.2 The U.S. Jail Population, 1990-2016.



Source: Author’s compilation based on figures from Bureau of Justice Statistics, *Prisoners and Jail inmates 1995*, by Darrell K Gilliard & Allen J. Beck, (table 1); BJS, *Prisoners in 2000*, by Allen J. Beck & Paige M. Harrison, (table 1); BJS, *Prisoners in 2005*, by Paige M. Harrison & Allen J. Beck, (table 1); BJS, *Jail inmates in 2016*, by Zhen Zeng, (table 1). See Appendix B for original notes on figures from each source.

2.2.2 Drug Policy

As elaborated on previously, there is particularly one type of offense that has received significantly stricter sentences since the 1980s, and that is all offenses regarding drugs. The Sentencing Project state that, “Since its official beginning in the 1980s, the number of

Americans incarcerated for drug offenses has skyrocketed from 40,900 in 1980 to 450,345 in 2016.”⁸⁶ This is a percentage increase of 1001% over the last 36 years.

The War on Drugs era was a time of not just the beginning of harsher sentences, which led to steep growth in incarceration rates, but it was also an era that begun the criminalization of drugs in a way that had never been seen before. Those who used to be eligible for drug treatments are now instead eligible for lengthy prison sentences that are both, costly for tax payers and serve little support in helping those harmed by substance abuse. As of 2016, there were 450,345 prisoners in prison and jail with a drug offense sentence, many of whom have a history of substance abuse.

According to Marc Mauer and Ryan S. King, the criminal justice system does little to help prisoners who struggle with substance abuse. They assert that those who committed crimes based on a need to fund their drug habit account for one fifth of the prisoners in state prisons. Moreover, they stress that half the people in state prisons suffer from substance abuse. Despite this obvious need for a prison system that address the need for substance treatment, we are left with a system where professional treatment is decreasingly being received by prisoners for the benefit of peer counseling and drug abuse classes.⁸⁷ Although some form of treatment is provided, there are still many who do not receive any treatment at all. Mauer and King stress that, “only 40.3% of persons in state prison and 48.6% of persons in federal prison have received any treatment or programming since admission.”⁸⁸

2.2.3 Racial Disparity

Black men

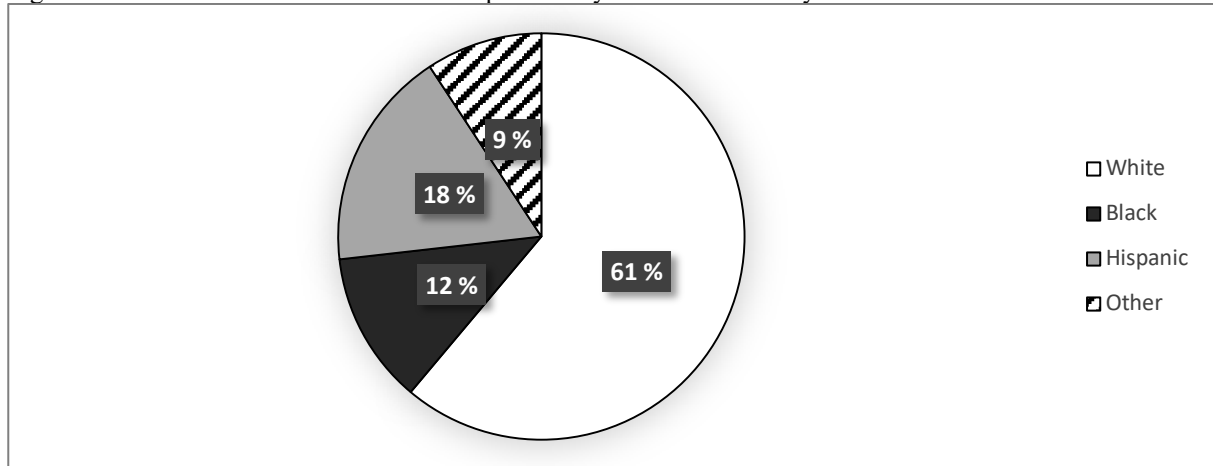
In addition to the figures made to illustrate the racial division in the U.S. population and the racial disparity in prisons, figure 2.3 and figure 2.4 are made to illustrate how the male U.S. population is distributed in the same areas. These figures show similar tendencies as the previous ones. Black men are disproportionately imprisoned compared to their total percent of the U.S. population.

⁸⁶ The Sentencing Project, "Fact Sheet: Trends in U.S. Corrections," (2016). Note: In order to find the percentage increase, one must find the difference between the two numbers one is comparing: $450345 - 40900 = 409445$. Then one must divide the increase by the original number and multiply the answer by 100: $409445 / 40900 = 10,0108802 * 100 = 1001,08802$. The answer is the percentage increase.

⁸⁷ Marc Mauer and Ryan S. King, "A 25-Year Quagmire: The War on Drugs and Its Impact on American Society," (Washington, DC: The Sentencing Project 2007).

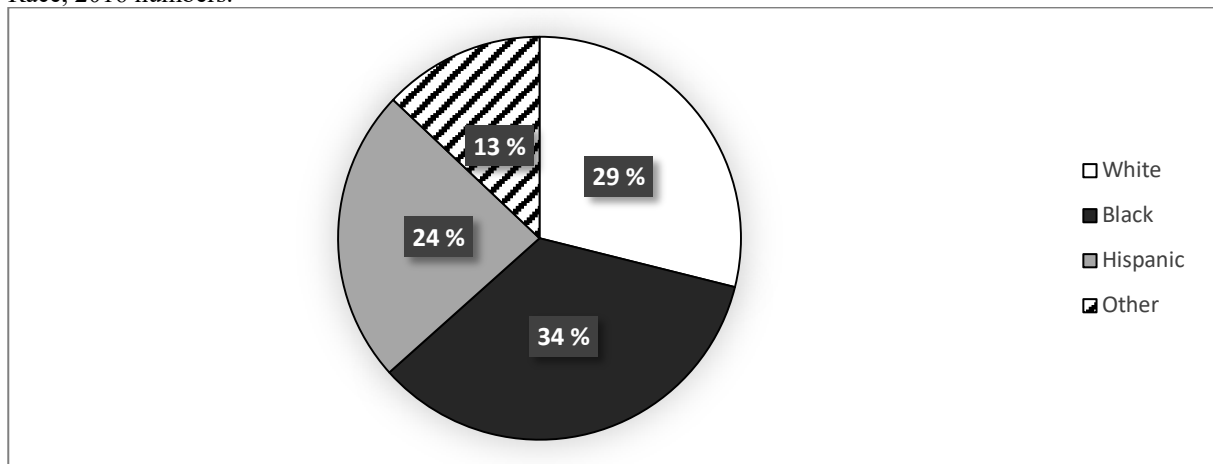
⁸⁸ "A 25-Year Quagmire: The War on Drugs and Its Impact on American Society."

Figure 2.3 Percent of the Total U.S. Male Population by Race and Ethnicity Based on 2016 Estimates.



Source: Author's compilation based on figures from U.S. Census Bureau (2012-2016, 2013-2017).

Figure 2.4 Percent of Sentenced Male Prisoners under Jurisdiction of State and Federal Correctional Officials by Race, 2016 numbers.



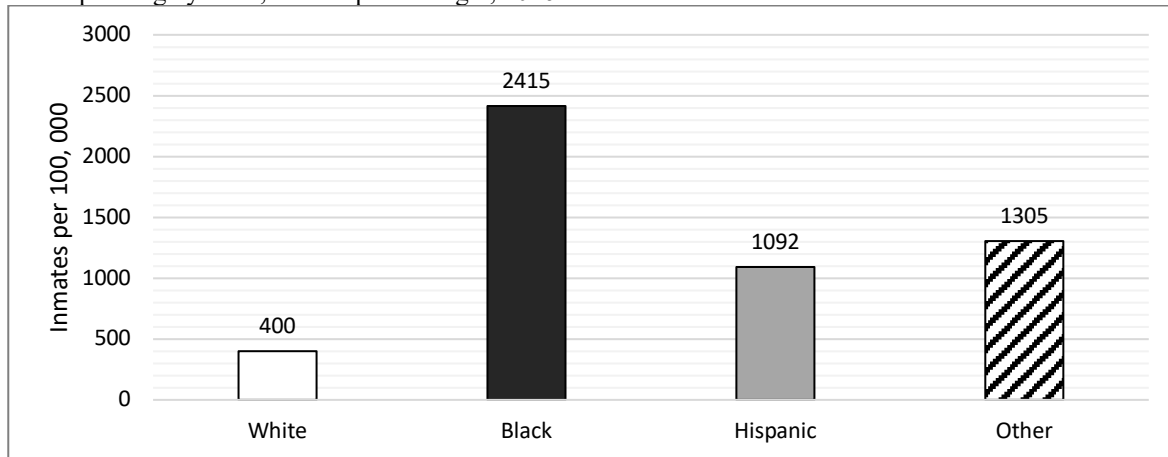
Source: Author's compilation based on figures from Bureau of Justice Statistics (2018, table 10).⁸⁹

It is when we look at the incarceration rate of the male prison population that we more clearly see the racial disparity that exists in U.S. criminal justice system. A system that has led to these numbers must be racial biased on several levels for this to happen. In the U.S. black men are 6 times more likely to be incarcerated than white men. This is illustrated in figure 2.5 which is a bar graph made to illustrate the imprisonment rate of sentenced state and federal male prisoners per 100,000 U.S. residents corresponding by race, and Hispanic origin, 2016. This is an unfortunate trend in the U.S. criminal justice system that politicians have neglected for many decades but are finally beginning to acknowledge. It is important to point out this

⁸⁹ See Appendix C for raw numbers. Note: The numbers exclude prisoners with sentences less than a year who are not under the jurisdiction of state or federal correctional officials. This means that prisoners who are held in jails are not included in these numbers. The same apply for those not sentenced yet but whom are still held in correctional facilities waiting for a sentence.

racial disparity, because if 2,4% of the white male population was incarcerated like the black male population is, there would have been done more to get a criminal justice reform in action.

Figure 2.5 The Imprisonment Rate of Sentenced State and Federal Male Prisoners per 100,000 U.S. Residents Corresponding by Race, and Hispanic Origin, 2016.



Source: Author’s compilation based on figures from Bureau of Justice Statistics (2018, table 10).⁹⁰

By converting the imprisonment rate numbers in figure 2.5 to percent we find that: 0,4% of the white male U.S. population are incarcerated in state and federal prisons; 2,415% of the black male U.S. population are incarcerated in state and federal prisons; 1,092% the male Hispanic U.S. population are incarcerated in state and federal prisons; and 1,305% of the “other” male U.S. population are incarcerated in state and federal prisons (see table 2.1 for conversion).

Table 2.1 Sentenced State and Federal Male Prisoners 2016.

	Male			
	White	Black	Hispanic	Other
Imprisonment rate*	400	2415	1092	1305
Percent of total U.S. male population**	0,4%	2,415%	1,092%	1,305%

Source: Author’s compilation based on figures from Bureau of Justice Statistics (2018, table 10).⁹¹

⁹⁰ See Appendix C for raw numbers. Note: The numbers exclude prisoners with sentences less than a year who are not under the jurisdiction of state or federal correctional officials. This means that prisoners who are held in jails are not included in these numbers. The same apply for those not sentenced yet but whom are still held in correctional facilities waiting for a sentence.

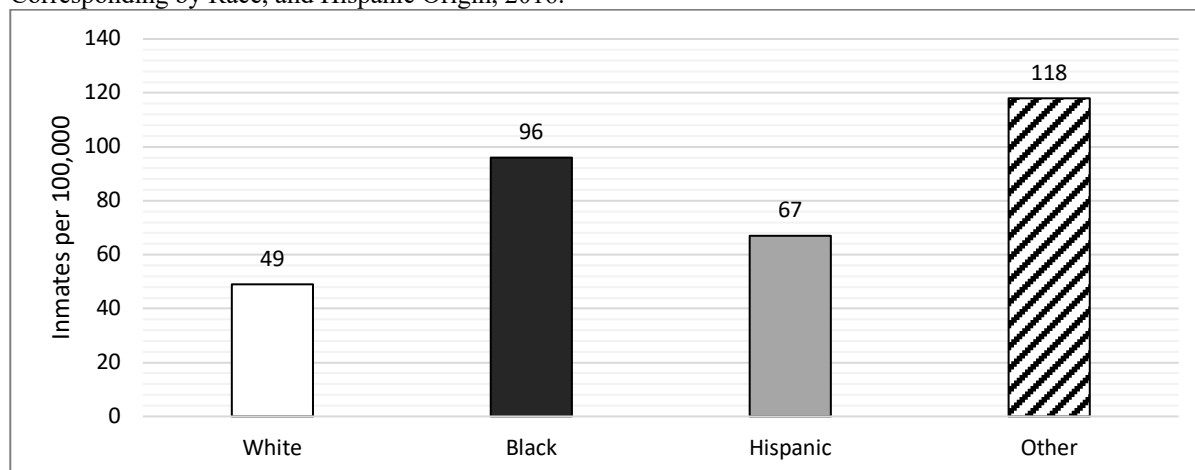
⁹¹ Note: * imprisonment rate of sentenced state and federal male prisoners per 100,00 U.S. residents corresponding by race, and Hispanic origin, 2016.

** Percent of total U.S. male population who are sentenced in state or federal prison corresponding by race, and Hispanic origin, 2016.

Women of color

The female prison population do also signify a racial disparity. The incarceration rates for females of color are disproportionate to that of white females. Figure 2.6 is a bar graph made to illustrate the imprisonment rate of sentenced state and federal female prisoners per 100,000 U.S. residents corresponding by race, and Hispanic origin, December 31, 2016. The imprisonment rate of black females is 96 per 100,000, which is almost 2 times high than that of white females. That means that black females are 2 times more likely to be imprisoned than white females. If we look at the figure 2.6, we see a significant difference in the imprisonment rate of Hispanic and Other females compared to that of white females. These results once again confirm a serious racial disparity in the U.S. prison population.

Figure 2.6 The Imprisonment Rate of Sentenced State and Federal Female Prisoners per 100,000 U.S. Residents Corresponding by Race, and Hispanic Origin, 2016.



Source: Author's compilation based on figures from Bureau of Justice Statistics (2018, table 10).⁹²

2.2.4 Felony Disenfranchisement

In the introduction to the thesis, we learned about Jarvis Cotton's tragic family history of disenfranchisement that began with his great-great-grandfather who was a slave, which immediately meant no rights to vote. This followed his family all the way to present time to Jarvis who is labeled a felon. The thing is, in the U.S. you are not only revoked of your freedom when you are convicted of a crime, violent or non-violent. If you are convicted in one of 48 states that have disenfranchisement restrictions, it is a very big possibility that you

⁹² See Appendix C for raw numbers. Note: The numbers exclude prisoners with sentences less than a year who are not under the jurisdiction of state or federal correctional officials. This means that prisoners who are held in jails are not included in these numbers. The same goes for those not sentenced yet but whom are still held in correctional facilities waiting for a sentence.

will lose your right to vote. How long this period of disenfranchisement lasts varies a lot depending on state regulations. Research conducted by The Sentencing Project on felony disenfranchisement is presented in their report *6 Million Lost Voters: State-Level Estimates of Felon Disenfranchisement, 2016*. Their “Table 1. Summary of State Felony Disfranchisement Restrictions in 2016”⁹³ shows that in some states you are granted your voting rights back once you have completed your prison sentence. However, in other states, such as Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Nevada, Tennessee, Virginia, and Wyoming you are disenfranchised for life.

What this means for certain communities is devastating. Because of the changes in sentencing policies since mid-1970s and the dramatic expansion that followed thereof, many communities today are missing huge parts of their potential political voice. This is especially true of the African American population in states, such as Florida, Kentucky, Tennessee, and Virginia.⁹⁴ There are 2,2 million African Americans who are disenfranchised, that account for 7,4% of the total African American population in the United States.⁹⁵ That is a lot of lost black voices in the political sphere. The racial disparity when it comes to disenfranchisement rates in 2016 is clearly showed in “Figure 2. Total Felony Disenfranchisement Rates, 2016”⁹⁶ and “Figure 7. African American Felony Disenfranchisement Rates, 2016.”⁹⁷ The maps over the United States show that it is a lot more African Americans who are disenfranchised compared to that of the whole of the population.

The disenfranchisement distribution across correctional populations as of 2016 shows that 51% of the correctional population is disenfranchised post-sentence, meaning they will never get their voting-right back unless a criminal justice reform changes this. In total, an overwhelming 6.1 million Americans were in 2016 unable to vote due to state felony disenfranchisement policies in the United States.⁹⁸

⁹³ See Appendix D for the table referred to. Source: Uggen, Larson, and Shannon, *6 Million Lost Voters: State-Level Estimates of Felon Disenfranchisement*, 2016.

⁹⁴ Source: *6 Million Lost Voters: State-Level Estimates of Felon Disenfranchisement*, 2016.

⁹⁵ Source: *6 Million Lost Voters: State-Level Estimates of Felon Disenfranchisement*, 2016.

⁹⁶ See Appendix E for the figure referred to. Source: *6 Million Lost Voters: State-Level Estimates of Felon Disenfranchisement*, 2016.

⁹⁷ See Appendix E for the figure referred to. Source: *6 Million Lost Voters: State-Level Estimates of Felon Disenfranchisement*, 2016.

⁹⁸ See Appendix F for the figure referred to. Source: *6 Million Lost Voters: State-Level Estimates of Felon Disenfranchisement*, 2016.

2.2.5 Life Sentences

Research conducted by The Sentencing Project on life and long-term sentences is presented in their report *Still Life: America's Increasing Use of Life and Long-Term Sentences*. Their “Figure 1. Growth of Life Sentences, 1984-2016”⁹⁹ shows that in 2016, there were 206,268 people who served a life sentence in the U.S. That is an all-time high for the United States. What crimes that get you a life sentence varies a lot from one state to another. However, a life sentence is often given to offenders who commit violent crimes, such as murder, arson, first degree burglary, aggravated robbery, rape, and sometime a third felony conviction under so-called Three-Strikes laws. Being convicted of a third felony under “Three Strikes” laws can sometimes mean that offenders get life sentences for non-violent crimes.

“Figure 2. Comparison of Violent Crime Rate and Life Sentences, 1984-2016”¹⁰⁰ illustrates that the violent crime rate has from 1993 steadily continued to decrease, whereas, the number of life sentences have increased. Logic suggests that the number of life sentences, sentences which predominantly is given to offenders of violent crimes, would only increase if the violent crime rate rose. Unfortunately, that is not the case. There are other factors that have a lot of impact on life sentences trends. One factor is fear. People might hear one story about someone who got released after serving time for a murder and who went on to commit yet another violent crime, and automatically believe this about all previous violent offenders. Stories like these create a desire for safety and too often set the tone for crime policy and practice. The Bush ad “Willie Horton” is a great example of a story that had a significant impact on peoples’ fear of lack of security.

The Sentencing Project states that, “More than 200,000 people were serving life or virtual life prison sentences as of 2016, amounting to 13.9 percent of the total prison population. The majority are male (96.7%), most are people of color (67.6%), and nearly all (91.5%) have been convicted of a violent offense.” Even though most of them are incarcerated for a violent crime, there are still 17,000 individuals who have been convicted of a nonviolent crime and are serving life sentences.¹⁰¹ The life sentences trend reflects the increase of punitive policies and laws enacted as part of the Law and Order project and change is unquestionably very much needed.

⁹⁹ See Appendix G for the figure referred to. Source: Ashley Nellis, *Still Life: America's Increasing Use of Life and Long-Term Sentences*, Washington, DC: The Sentencing Project, 2016.

¹⁰⁰ See Appendix H for the figure referred to. Source: *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

¹⁰¹ *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

3 Punishment as a means for the powerful

This chapter contains a review of the Hofstede Model, a cultural dimension model, with a focus on power distance. Key characteristics of the power distance index will further be used to explore power distance in the United States in general, before an application of the theory, along with a sociological perspective of punishment will be used to do a comparison of Attica Correctional Facility maximum security prison in the U.S. and Halden prison in Norway. This comparison will be used as a starting point for a discussion concerning different use of punishment in the U.S. and Norway. Documentaries will be the main point of references for the comparison.

3.1 Theoretical Framework: The Hofstede model

The Hofstede cultural dimension is a model that helps distinguish one culture from another by scoring each culture on a scale of 0 to 100 for each of 6 different dimensions. These are power distance index (small vs. large); individualism versus collectivism; masculinity versus femininity; uncertainty avoidance index (weak vs. strong); long-term versus short-term orientation; and indulgence versus restraint.¹⁰² Geert Hofstede developed the cultural dimension model by studying values of employees from fifty countries whom all worked for IBM, a large multinational corporation. It was initially only the four original dimensions that were created from his research of IBM employees, but later, in cooperation with Michael Harris Bond and Michael Minkov, the fifth and sixth dimensions were added. By including the work of Bond and Minkov their research of cultural values now altogether comprise research from over 40 years and 70 countries.¹⁰³ Geert Hofstede's research is the source for his book *Cultures and Organizations – Software of the Mind* in which he describes the different dimensions and how people in different cultures think, feel and act in business, family, schools, and political organizations.¹⁰⁴ The book examines what different cultural values that drive people apart when the aim of organizations is collaboration. Knowledge about this is of essential value in a world where people and organizations are set to cooperate across borders at an extreme rate. Moreover, it is useful when searching for a national culture.

¹⁰² Geert Hofstede, "Dimensionalizing Cultures: The Hofstede Model in Context," *Online Readings in Psychology and Culture* 2, no. 1 (2011).

¹⁰³ "Dimensionalizing Cultures: The Hofstede Model in Context".

¹⁰⁴ Geert Hofstede and Gert Jan Hofstede, *Cultures and Organizations : Software of the Mind*, 2nd ed., rev. and exp. ed. (New York: McGraw-Hill, 2005).

3.1.1 Culture - Collective Programming

As human beings, it is impossible to go through life without being affected by our surroundings. From the day we are born the process of creating patterns of thinking, feeling and, acting beings. Most of our learned patterns are acquired during childhood age because that is when we are most susceptible to learning and assimilating. Hofstede compares these patterns to the way computers are programmed, and in his book he calls the patterns of thinking, feeling, and acting, *mental programs*, and so will I when I refer to Hofstede's cultural dimension. Hofstede explains that our mental programs are derived from the social environments we grew up in and the life experiences we collect during our lifetime. That involves our family, the neighborhood we live in, the school we go to, what activities we surround ourselves with, the place we work, and the community we live in.¹⁰⁵

There are many ways to define *culture*, but the definition Geert Hofstede uses when he talks about *culture* is, "It is the collective programming of the mind that distinguishes the members of one group or category of people from others."¹⁰⁶ He points out that it is "always a collective phenomenon."¹⁰⁷ Based on this, we can say that culture is shared amongst the ones whom we live or lived with, and it is together as a group that we create, learn, and carry on a culture. The most profound manifestation of culture is values. Moreover, values are the concept of culture that is hardest to change, if even impossible, and it is, therefore, the concept researched when we try to distinguish between different cultures. One needs a unit that is as close to constant as possible for the research to be reliable.¹⁰⁸

Hofstede writes that "Values are broad tendencies to prefer certain states of affairs over others."¹⁰⁹ In other words, values are our standards of behavior and what we judge as important in life. It is during childhood that we, for the most part, acquire values. Once we have acquired certain values, it is hard to change them. Based on this, we can say that it is our parents and immediate family that have a considerable say in the way we turn out as people. They are the ones who influence our mental programs at an early age and the ones who stimulate our values. Some examples of values are: "evil vs. good; dirty vs. clean; dangerous vs. safe; forbidden vs. permitted; decent vs. indecent; moral vs. immoral; ugly vs. beautiful;

¹⁰⁵ *Cultures and Organizations : Software of the Mind*, 2-3.

¹⁰⁶ *Cultures and Organizations : Software of the Mind*, 4.

¹⁰⁷ *Cultures and Organizations : Software of the Mind*, 4.

¹⁰⁸ *Cultures and Organizations : Software of the Mind*, 6.

¹⁰⁹ *Cultures and Organizations : Software of the Mind*, 8.

unnatural vs. natural; abnormal vs. normal; paradoxical vs. logical; and irrational vs. rational.”¹¹⁰

Culture does not manifest itself only as values. Values are the core of culture and are the hardest to observe. However, rituals, heroes, and symbols manifest themselves as cultural practices and are observable by others. Hofstede talks about culture as an onion. Onions consist of layers, and so does culture according to him. The outermost layer of culture is seen as symbols. He bases this on the idea that symbols are something that is developed easily and that can disappear over time. Hofstede states that “Symbols are words, gestures, pictures, or objects that carry a particular meaning only recognized as such by those who share the culture.”¹¹¹ The second layer is, heroes. Cultures create and look to heroes for guidance. The heroes they look to can be “persons, alive or dead, real or imaginary, who possess characteristics that are highly prized in a culture.”¹¹² In other words, they work as a collective role model. The third layer of culture is rituals. Rituals are activities that are carried out together as a group.¹¹³ Rituals create unity in a culture, and examples of rituals “include ways of greeting and paying respect to others, as well as social and religious ceremonies.”¹¹⁴

Now we know that culture manifests itself in several ways: symbols, heroes, rituals, and values. We also now know that values are acquired during our early years in life, and they are the most profound manifestation of culture, according to Hofstede. Because of this premise, different peoples’ set of values are the concept of culture that he and other scholars research when they try to distinguish one culture from another. Hofstede and his fellow scholars used questionnaires as their research method in order to gain sufficient data on numerous people’s values from different countries. This data was divided into different dimensions according to what cultural problems the questions dealt with. Based on how people from different countries answered, their respective countries were scored on a scale of 0 to 100 for each of 6 different dimensions. Being able to say something about a country’s national culture is of interest for many different reasons. For the thesis, it is especially useful to look at America’s attitude towards the punishment of criminals.

¹¹⁰ *Cultures and Organizations : Software of the Mind*, 8.

¹¹¹ *Cultures and Organizations : Software of the Mind*, 7.

¹¹² *Cultures and Organizations : Software of the Mind*, 7.

¹¹³ *Cultures and Organizations : Software of the Mind*, 8.

¹¹⁴ *Cultures and Organizations : Software of the Mind*, 8.

National culture

The United States of America is a vast country that extends to 3,531,905 square miles,¹¹⁵ contains 50 states, and according to the U.S. Census Bureau's estimated population figures for 2017 the U.S. consist of 325,719,178¹¹⁶ inhabitants. Furthermore, the United States of America is a large salad bowl that consists of people with different ethnic backgrounds. Some people even enjoy multiple ethnicities as their heritage, but, to some extent, they all share the same national culture. Despite the number of different historical cultures that the U.S. encompasses, there is still a national culture to be found in all countries; this is at least something Hofstede claims. Based on Hofstede's findings when looking at peoples' set of values, it is possible to collect a national culture on "a national level, according to one's country."¹¹⁷ In order for this thesis to work, a national culture must be reasonable to claim as existent.

According to Hofstede, we do not belong to only one culture. Instead, one can say that all individuals are representations of multiple layers of culture. People in a group or category of people all carry with them their own set of mental programs that together constitute the group's culture. We usually associate ourselves with multiple groups, and therefore, it is impossible to associate ourselves with only one culture. Instead, our mental program consists of "multiple layers corresponding to various levels of culture."¹¹⁸ Some of the different levels of cultures are a national level; a regional and/or ethnic and/or religious and/or linguistic affiliation level; a gender level; a generation level; a social class level; and for those who are employed, organizational, departmental, and/or corporate levels.¹¹⁹

When we look at the concept of a common culture, it is originally intended that we look at societies, not nations, as the notion of culture applies to societies.¹²⁰ If we were to look at societies in order to distinguish nations apart from each other, we would have a problem. Because the entire world is today divided into nations. Nations are an invention of political units that is a rather new phenomenon. The notion of nations appeared in the mid-twentieth century. Historically, societies are organic developed social organizations, but

¹¹⁵ State symbols USA. *Size of States*. <https://statesymbolsusa.org/symbol-official-item/national-us/uncategorized/states-size> (accessed May 1, 2019).

¹¹⁶ U.S. Census Bureau, Population Division, "Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States: April 1, 2010 to July 1, 2017" release date June 2018, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2017_PEPSYASEXN&prodType=table (accessed May 1, 2019).

¹¹⁷ Hofstede and Hofstede, *Cultures and Organizations : Software of the Mind*, 11.

¹¹⁸ *Cultures and Organizations : Software of the Mind*, 10.

¹¹⁹ *Cultures and Organizations : Software of the Mind*, 11.

¹²⁰ *Cultures and Organizations : Software of the Mind*, 18.

because of the European colonialism many national borders, especially those in Africa, correspond to “the logic of colonial powers rather than the cultural dividing lines of the local populations.”¹²¹ Because of this division of nations, Hofstede can argue the use of “national culture” with: “Using nationality as a criterion is a matter of expediency, because it is immensely easier to obtain data for nations than for organic homogenous societies. Nations as political bodies supply all kinds of statistics about their populations.”¹²²

3.1.2 Power Distance Index

The cultural dimension model is all about distinguishing nations from each other based on how they handle different problems. One of the problems that are looked at is inequalities in society. It is found in all societies and “inequality can occur in a variety of areas: physical and mental characteristics (This is a basic fact of human existence); social status and prestige; wealth; power; and laws, rights, and rules (“Privileges” are private laws).”¹²³ One does not have to look further than at the different groups one are a member of to find examples of such inequalities. There is always someone stronger, smarter, or healthier than someone else. Some people have more power, status, or money than others. These aspects do sometimes go hand in hand, and other times, they do not. This depends on which nation one looks at.

Athletes in Norway who are professional cross-country skiers enjoy both status and wealth, but in other countries they only enjoy status, and political power does not come with the profession. Politicians, on the other hand, enjoy political power and status, and in some countries, they even enjoy wealth. When the way power, status, and wealth are distributed in a country varies from another country, it can cause problems for the integration of foreign people but also cause problems for cooperation across national borders. This can cause problems because people and organizations that do not share the same set of values regarding power distance in this instance will oftener have a tough time collaborating than those who share the same values. As human beings, we tend to work better with those who have similar mental programming, because we can relate and understand each other better. The distribution of power is also interesting to look at when one wants to focus on a country’s treatment of social inequalities, not in comparison with a different country but exclusively for the sake of exploring a country’s attitude towards an issue, in this case, punishment.

¹²¹ *Cultures and Organizations : Software of the Mind*, 18.

¹²² *Cultures and Organizations : Software of the Mind*, 19.

¹²³ Geert Hofstede, *Culture's Consequences : Comparing Values, Behaviors, Institutions, and Organizations across Nations*, 2nd ed. ed. (Thousand Oaks, Calif: Sage, 2001), 80.

The cultural dimension, *power distance*, shows how a country handles inequality. It is this dimension that will be of interest to the thesis. In Hofstede's Power Distance Index (PDI), values for 74 countries and regions are presented. The United States scores 40 on the PDI; this means that the U.S. leans more towards a small-power-distance country than a large-power-distance country considering the score scale goes from 0 to 100. To score a whole country's power distance based on employees in an international corporation (IBM) can easily be criticized. How can such a small representation of a nation act as the general population's truth? Hofstede states that they have considered this and explains that:

The scores that were based on answers by IBM employees paradoxically contain no information about the corporate culture of IBM: they only show to what extent people from the subsidiary in country X answered the same questions differently from similar people in country Y. We found more or less the same differences in populations outside IBM, which proves that they reflect the different national cultures in which people grew up.¹²⁴

In short, Hofstede writes that "PDI scores inform us about dependence relationships in a country."¹²⁵ In small-power-distance countries, subordinates do not depend on their superiors, and when it comes to communication and interaction with their boss, they prefer a consultative method. Because of a relatively small emotional distance between them, subordinates are also more likely to approach or contradict their boss. On the contrary, in large-power-distance countries, subordinates depend on their boss to a greater extent. One would most likely not find any subordinates who approach or contradict their boss because of the large emotional distance between subordinates and superiors. In large-power-distance countries, one will find some people who prefer and others who dislike this dependency.¹²⁶

3.2 Power Distance in the United States

The implication of power distance between authority and citizen is an aspect that is treated differently in different countries. In order to understand the way a nation distributes social power, it is essential to look at what beliefs large sectors of the population hold as true when it comes to the appropriate ways for authorities to behave. This is necessary because it is ultimately these beliefs that the way of handling power is rooted in.¹²⁷ In *Cultures and*

¹²⁴ Hofstede and Hofstede, *Cultures and Organizations : Software of the Mind*, 42.

¹²⁵ *Cultures and Organizations : Software of the Mind*, 45.

¹²⁶ *Cultures and Organizations : Software of the Mind*, 46.

¹²⁷ *Cultures and Organizations : Software of the Mind*, 58-59.

Organizations: Software of the Mind by Geert Hofstede and Gert Jan Hofstede, there is a table (listed as table 2.5), which is called “Key Differences Between Small- and Large-Power-Distance Societies: The State.”¹²⁸ It is included in the thesis as Appendix I. The table will be used as a starting point to talk about power distance in the United States.

Considering that it is a dimension in the form of a spectrum, countries are not exclusively one or the other, but they might have some characteristics from each end. The U.S. is a small-power-distance country but can have traits from the large-power-distance end of the spectrum as well. The United States is a small-power-distance country on the account that it is a pluralist government based on outcome of majority vote. We see this in the way the U.S. Constitution divides the government into three branches the judicial, the executive, and the legislative, which all keep checks and balances on each other. Moreover, it is a democratic republic that votes for representatives.

According to Hofstede’s PDI characteristics, small-power-distance countries endorse equal rights for all, regardless of status, and “inequality is considered basically undesirable; although unavoidable, it should be minimized by political means.”¹²⁹ The United States supports equal rights like other small-distance-countries. It is even stated very clearly in the Declaration of Independence with the declaration, “all men are created equal.”¹³⁰ It entails that all men have the same rights, “among these are Life, Liberty and the pursuit of Happiness.”¹³¹ Despite this, it is debatable whether or not the United States is doing its best to facilitate equal rights and opportunities to everyone. American history demonstrates a national culture where African Americans have been viewed as something less than the rest of the population. The federal government and state governments have excluded them from general definitions like “all men are equal,” and because of that, they have not been able to enjoy the same rights. By enslaving them, creating Jim Crow Laws that separated them from the general white population, and now with the label, criminal, the United States government has on several occasions, facilitated discrimination and racism, both explicitly and implicitly. Further, African Americans have by the broader population been viewed as something different and less than the white population.

As previously cited from Hofstede’s book *Culture’s Consequences: Comparing Values, Behaviors, Institutions, and Organizations across Nations*, “Inequality can occur in a

¹²⁸ *Cultures and Organizations : Software of the Mind*, 67.

¹²⁹ *Cultures and Organizations : Software of the Mind*, 61.

¹³⁰ United States, 1776.

¹³¹ United States, 1776.

variety of areas: Physical and mental characteristics (This is a basic fact of human existence); social status and prestige; wealth; power; and laws, rights, and rules (“Privileges” are private laws).”¹³² There will always be inequality, but whether or not a society attempts to dismiss or preserve disparities, varies. There are two forces that in every society oppose one another when it comes to inequality. “One force tries to eliminate status inconsistency between the various areas,”¹³³ and “The counterforce tries to maintain equality by offsetting rank in one area against another.”¹³⁴ This “battle between the two forces – status consistency versus overall equality – is one of the basic issues in any human society.”¹³⁵ Various philosophers differ on this subject. Plato defends status consistency, whereas Jean-Jacques Rousseau endorses the opposite in his *Contrat Social*, “The fundamental treaty substitutes moral and legal equality for any physical inequality between men which nature may have caused; and while they may be unequal in force or intelligence, they become all equal by agreement and by law.”¹³⁶ The U.S. Constitution is an agreement by law that pledges to assure American citizens equality, much like what Rousseau describes. Despite the Declaration of Independence and the Bill of Rights that by law is supposed to assure equal rights and opportunities several indications dismiss this guarantee.

Hofstede points to a social psychological experiment conducted by Mauk Mulder and David Kipnis,¹³⁷ whom both came to the same conclusion regarding power distance. To this thesis, the most essential hypothesis that will be emphasized is, “The more powerful individual will strive to maintain or to increase the power distance.”¹³⁸ This is a hypothesis that was proven by Mulder in his social psychological experiment written about in his book *The Daily Power Game* and supported by Kipnis. The hypothesis can be used to talk about power distance in the United States and how a social hierarchy, prominent or not, affect and interact with society. A society that is structured in a hierarchy will always have some people who are on top with more power, hold more social status and prestige, and wealth while others are below with less. No societies unaffected by hierarchal structures, but some claim

¹³² Hofstede, *Culture's Consequences : Comparing Values, Behaviors, Institutions, and Organizations across Nations*, 80.

¹³³ *Culture's Consequences : Comparing Values, Behaviors, Institutions, and Organizations across Nations*, 80.

¹³⁴ *Culture's Consequences : Comparing Values, Behaviors, Institutions, and Organizations across Nations*, 80.

¹³⁵ *Culture's Consequences : Comparing Values, Behaviors, Institutions, and Organizations across Nations*, 80.

¹³⁶ Jean-Jacques Rousseau, 1762/1972, 122-123, Hofstede translation, quoted in *Culture's Consequences : Comparing Values, Behaviors, Institutions, and Organizations across Nations*, 80-81.

¹³⁷ Mauk Mulder, *The Daily Power Game*, (Leiden, Netherlands: Martinus Nijhoff, 1977); David Kipnis, *Does power corrupt?* *Journal of Personality and Social Psychology*, 24, 33-41 (1972); ref. in *Culture's Consequences : Comparing Values, Behaviors, Institutions, and Organizations across Nations*, 83.

¹³⁸ Mauk Mulder, *The Daily Power Game*, (Leiden, Netherlands: Martinus Nijhoff, 1977) ref. in *Culture's Consequences : Comparing Values, Behaviors, Institutions, and Organizations across Nations*, 83.

that in the U.S., social classes do not affect peoples' opportunities and rights, because, by law, everyone is equal.

However, Michelle Alexander suggests that the United States criminal justice system has reinvented something similar to a caste system in the United States, she bases this on statistics that show that certain people are wholly restricted from the same rights and opportunities as the rest of the population because of the label, criminal.¹³⁹ The principle of social mobility that is supposed to be present in pluralist societies¹⁴⁰ is not within reach for many African Americans, not the way that the criminal justice system is structured today. It is not that criminals should not get a suitable sentence and face the consequences for their actions if they deviate from the law, but when a system strategically imprisons more African American men, than white men, they systematically deprive whole communities of the same opportunities to succeed.

As the sociology of punishment suggests, punishment cannot merely be viewed and discussed in a penological or philosophical manner. Punishment, such as legislations, policies, and sentences, needs to be assessed and discussed in interaction with its surroundings, namely the society and the people in it. Punishment is used to control behavior that violates norms, or in other words, behavior that deviates from what is considered normal.¹⁴¹ Those who hold the most power tend to be the most influential ones. In the U.S. the power to decide what is considered as a law is held by the legislative branch, however, because the government is constructed in a way that makes sure no one is supposed to dictate any laws, the executive branch, in this case, has to sign the bill for Congress to pass laws. However, society as a whole and lobbying groups can influence Congress into deciding to construct a new law. Nevertheless, as Congress and state and local governmental offices consists of people with a lot of power and which for the most part during American history have been mostly white males, it can, based on Mulder's experiment, be argued that they as the powerful in society have tried to maintain or increase the power distance to the ones who are less powerful than them. This is also supported by the conflict perspective on law and society, which argue that "the primary function of legal sanctions is to preserve and protect interests of those in power."¹⁴² Punitive sentencing policies which disproportionately affect African American males, can be seen to support this claim.

¹³⁹ Alexander, *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*.

¹⁴⁰ Hofstede, *Culture's Consequences : Comparing Values, Behaviors, Institutions, and Organizations across Nations*, 81.

¹⁴¹ Miethe and Lu, *Punishment : A Comparative Historical Perspective*.

¹⁴² *Punishment : A Comparative Historical Perspective*, 4.

The changes in U.S. sentencing policies since the 1970s, which led to the extreme rates of African American males behind bars, needs to be looked at from a sociological perspective not from a perspective that focuses on “What is just?”, or “What works?”. Sociological questions, such as “What social functions do punishment perform?”¹⁴³ need to be answered. If one answers this question with the United States criminal justice system as the object of examination, punishment does what Michelle Alexander argues in her book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, it reinforces caste-like structures where criminals are left outside of the social hierarchy. Legislators and others with power, continue to maintain social inequalities amongst white, wealthy Americans and marginalized groups and by doing so, they not only maintain power distance between the esteemed and marginalized in American society, they prevent them from taking part and contribute in the American society. Furthermore, these discriminatory actions neglect their rights as Americans and human beings.

3.3 Discussion and comparison of American and Norwegian view of punishment

The documentaries used in this thesis to discuss the U.S. use of punishment compared to Norway are relatively new and specifically focus on the U.S. criminal justice system and mass incarceration. The 2016 documentary, *13th* by Ava DuVernay, is a thought-provoking prison documentary named after the Thirteenth Amendment of the United States Constitution. The 13th Amendment officially abolished slavery in 1865, but it includes a loophole that is highlighted in the documentary. The 13th Amendment states as followed “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”¹⁴⁴ If you are criminalized the 13th Amendment does not apply to you because the formulation of the exception clause can hence be said to allow for both slavery and involuntary servitude. Former slaves were often arrested for minor crimes (e.g., loitering), and ones criminalized they could be used as labor force. DuVernay turns to several scholars, activists, and politicians that together analyze the criminalization of African Americans and the U.S. prison boom. It shows the United States’ history of racial inequality

¹⁴³ Garland, "Sociological Perspectives on Punishment," 119.

¹⁴⁴ U. S. Constitution, amend. 3.

and is ultimately a lesson on race, justice and mass incarceration, and the documentary goes as far as to argue that mass incarceration is an extension of slavery and that it was made possible by the loophole in the Thirteenth Amendment.

In the 2015 documentary directed by Michael Moore, *Where to Invade Next*, Moore compares and discusses Norway's and the United States' prison system which are built on rehabilitation and deterrence, respectively. Moore visits two humane maximum-security prisons in Norway, Bastøy and Halden, which illustrate a serious contrast to the harsh and overcrowded prisons in America.

The documentary *Vägen Tillbaka* (English title: *Breaking the Circle*) directed by Thomas Lindh and John Stark follows Jan Strømnes, the deputy warden of Halden maximum security prison in Norway, as he visits Attica Correctional Facility, a maximum-security prison in New York. It gave me a good insight into the differences between rehabilitative and deterrent prisons, and it allowed me to acquire specific information that is of immense value for this thesis. The six-part documentary series, *Time: The Kalief Browder Story* created by Jenner Furst, Julia Willoughby Nason & Nick Sandow, is about Kalief Browder a New York teenager who was wrongfully accused of stealing a backpack, but who was held in Rikers Island jail for three years while awaiting trial. He was later released and acquitted from all charges.

The United States scores 40 on the PDI scale, whereas, Norway with the score 31, scores even lower than the United States. It is interesting to see two countries which both score on the low end of the PDI scale differ so much in their view on punishment and their use of power towards prisoners/offenders/criminals. The Norwegian and the American prison system each represent two very different approaches to punishment. The documentary *Where to Invade Next* and *Vägen Tillbaka* (Eng.: *Breaking the Cycle*) explore and discuss Norway's and the United States' prison system which are built on rehabilitation, and deterrence & retribution, respectively. The documentaries' depictions of the two distinct understandings of punishment are the main sources of information when discussing and comparing the United States and Norway on these accounts.

It is the two maximum security prisons, Attica Correctional Facility in New York with about 2,000 inmates overseen by 875 staff members and Halden Prison (Norway) with 200 inmates overseen by 340 staff members, that are used as examples. As Hofstede argues for in his book *Cultures and Organizations – Software of the Mind*, an institution's values are built on the nation's cultural values, and vice versa. Therefore, to look at the Attica Correctional

Facility as evidence for what kind of views the American nation as a whole hold as true when it comes to punishment and use of power is legitimate.

The United States is a considerable larger country both geographically and population wise than Norway. The U.S. had a national population of 323.9 million at end of 2016¹⁴⁵ and Norway had a national population of 5.32 million at September 2018¹⁴⁶. Despite this difference in population, when one looks at the prison population rate per 100,000 of national population the U.S. had a rate of 655 prisoners per 100,000 American citizens in contrast to Norway which had a rate of 63 prisoners per 100,000 Norwegian citizens.¹⁴⁷ This difference in prison population is a crucial reason for the difference in numbers of prisoners in Attica Correctional Facility and Halden Prison. When it comes to the number of staff members in relation to the numbers of inmates, I would think it has a lot to do with financing and their different approaches and ideologies of punishment. More people are needed to give adequate help to the inmates and to facilitate good rehabilitative programs. When guards' jobs not only revolve around safety, but other tasks as well, the number of staff members are likely to increase.

Jan Strømnes, the deputy warden of Halden Prison, talks about the essential principles of Norwegian prisons, including maximum security prisons, and that is to foster normality. He says that the prison should resemble the society as a whole. In Norway, they look at prison sentences as a way to protect society, but it has other purposes as well, and that is to facilitate change amongst the inmates. Moreover, they provide them with the tools to change and help them set themselves up with better possibilities for a new future. Strømnes also emphasizes the importance of humane treatment of the inmates.

Furthermore, a Norwegian inmate in the Halden Prison said, "In Norway we like to think that we are here as punishment, not to be punished. We already have our sentence, and should not be punished more. The element of revenge is removed from the equation."¹⁴⁸ What the deputy warden and the inmate are describing is a prison system built on the idea of rehabilitation. Rehabilitation refers to the idea that the primary purpose of punishment is to demand treatment and reform of offenders. Rehabilitation programs aim to reform offenders' behavior so that they will be capable of returning to society and function as law-abiding

¹⁴⁵ World Prison Brief, *United States of America*, accessed April 27, 2019.

<http://www.prisonstudies.org/country/united-states-america>

¹⁴⁶ World Prison Brief, *Norway*, accessed April 27, 2019. <http://www.prisonstudies.org/country/norway>

¹⁴⁷ World Prison Brief, *United States of America*, accessed April 27, 2019.

<http://www.prisonstudies.org/country/united-states-america>; World Prison Brief, *Norway*, accessed April 27, 2019. <http://www.prisonstudies.org/country/norway>

¹⁴⁸ *Vägen Tillbaka*, directed by Thomas Lindh & John Stark (Finland: Yle, 2017).

members of the community.¹⁴⁹ Rehabilitation emphasizes the importance of individual offenders' characteristics that need treatment and interference.¹⁵⁰

The idea of rehabilitation as the main principle of American prisons might seem like a utopian thought, but like the deputy of Bastøy maximum security prison points out, the philosophy of rehabilitation originates from the United States and is where Norway adopted it from.¹⁵¹ Moreover, Bruce Western also points this out in *Punishment and Inequality in America*. He explains that during the twentieth century in the United States, rehabilitation as a philosophical principle flourished, and “the main official objective of criminal justice was correction.”¹⁵² Rehabilitative approaches stand as a great contrast to the American prison system most Americans and American prisoners are familiar with today.

Jan Strømnes, deputy warden of Halden Prison visits Attica Correctional Facility in New York, and he asserts that the American prison system is built on a system where thoughts of revenge and retaliation are central.

Offenders held in maximum security prisons are people sentenced because of violent offenses. They are held there because a focus on safety is viewed as particularly important when housing a group of violent offenders. One would think more restrictions and more control would lead to a safer environment. However, Norway and the United States differ in their use of power to maintain safety in their prisons, and only one method seems to achieve the wanted result. In Attica prison, prison guards assert that safety is the central part of all prison guards work. They need to provide safety for the staff, themselves, and their colleagues. Jan Strømnes', take on this is that correctional officers' work does not stop there; it just cannot stop there. There are various ways to create safety. Attica's take on it is to use fear and punishment to get the desired behavior from the inmates. Whereas Halden's take on it is to create mutual respect and a relationship between the inmates and the guards that foster a desire within the inmates to behave properly and live together peacefully. This approach also has immense transfer value to the outside world. In other words, correctional officers' work also entails building relationships.

To achieve a mutual respect and build relationships with the inmates, Strømnes elaborates on the concept of dynamic safety, which is what is central in Nordic countries. Whereas Attica prison bases their policy of safety on fear instead of respect between the staff

¹⁴⁹ Miethe and Lu, *Punishment : A Comparative Historical Perspective*, 22.

¹⁵⁰ *Punishment : A Comparative Historical Perspective*, 23.

¹⁵¹ *Where to Invade Next*, directed by Michael Moore (United States: Dog Eats Dog Films; IMG Films, 2015).

¹⁵² Western, *Punishment and Inequality in America*, 57.

and inmate, Halden prison is far on the other end of the scale. He explains that dynamic safety involves the importance of having a respectful dialogue with the inmate that lays the foundation for the future and change. It creates trust and is necessary for changing the inmates' life. In order to create that respectful dialogue, some valuable perspectives and ideas need to be present. Jan Strømnes explains that "It is all about being good at communication and provide communication, based on respect. You need to be able to see the inmate as not merely a criminal, but a human being who did a crime. If you are able to do so you will have a great foundation to create a respectful dialogue. That is the kind of approach you need in dynamic approach."¹⁵³

Other than just facilitating respectful dialogues that foster relationships between the inmates and staff, they also believe in the principle of equality. In Norway they are pro interaction with the inmates, and they try to interact as much as possible. An example is, the staff at Halden prison play basketball with the inmates if they are short of a player. They also provide programs where the inmates are involved in the whole process, for example they have their own radio show where they with help from staff produce a radio show. Moreover, they have a studio where they play instruments and record songs, not alone but with guidance from staff with relevant background. The possibility to play music not only benefits the individuals who play, but it contributes to the social environment when they are allowed to put on shows for the rest of the inmates and staff. A sense of community is built when people work together to create events.

Jan Strømnes also stresses the importance of nutritious food and the value of meals as a meeting point throughout the day. It is "a time of the day where you sit down with your fellow inmates and talk. It is a potential learning situation for social skills and general experiences that can affect the inmates in a positive and character-building way."¹⁵⁴ The lunch meal that Strømnes observed being served the day he toured Attica appeared to be small and not nutritionally sufficient for an adult male. It was only one hot dog in a bun, an orange, soup, and coleslaw. The latter two of which he noted most inmates declined, so the food they serve must be pretty poor quality for chronically-hungry men to turn down. Contrastingly, in Halden Prison, inmates are served nutritious food that looks a lot like a buffet at a hotel, compared to that of Attica, which has a canteen with a typical American prison movie type of feeling.

¹⁵³ *Vägen Tillbaka*, directed by Thomas Lindh & John Stark (Finland: Yle, 2017).

¹⁵⁴ *Vägen Tillbaka*, directed by Thomas Lindh & John Stark (Finland: Yle, 2017).

An Attica inmate talks about how the inmates of Attica Prison feel about the prison and he states that “People are not eating properly, their stomach is growling and it leads to more anger.”¹⁵⁵ Everyone knows that proper food is necessary to keep the blood sugar level balanced, and insufficient nutrition can lead to poor health. If inmates are provided with enough food and healthy food, it will both benefit the inmates and staff. Furthermore, the Attica inmate sates, “There are a lot of inmates who are dealing with a lot of issues that are not being addressed. Many are still angry for the real reason for what led them to go to prison. Angry at their living conditions and finances.” These unresolved issues and the anger that affect inmates in combination with hunger are destined to cause more unnecessary unrest.

This unrest is by the officers and staff handled with use of intimidation and oppression. An Attica inmate explains that “the belief that is present in the system is the idea that criminals are the scum of the earth and deserve to be punished beyond what the judges have decided our punishment should be.”¹⁵⁶ The inmate does, however, explain that he has seen a change in the last few years because of the installation of cameras. The original purpose of the cameras was to surveil the inmates and contribute to less violence. Moreover, it had a secondary effect, which was the improvement of the treatment of inmates by the guards.

What the inmate says about criminals being viewed as the scum of the earth who deserve to be punished beyond what the judges have decided as an appropriate punishment, reconciles with the extensive use of punishment in Attica prison which goes beyond the revocation of freedom. They are not treated as human beings, but merely as criminals. Criminal is a label that, for some reason, is the notion for something else than a human being in the United States. Human being as a notion does not only apply for criminals when they are behind prison walls, neither after they have served their time in prison. As mentioned before, most inmates are disenfranchised while they are serving a sentence and many are still disenfranchised after serving their time in prison, while they are on parole or probation, in some states, ex-felons will never regain their right to vote. Besides from being disenfranchised, many people who have served time in prison or have a criminal record of some sort, are shun by the society they reenter. They are often denied access to the labor

¹⁵⁵ *Vägen Tillbaka*, directed by Thomas Lindh & John Stark (Finland: Yle, 2017).

¹⁵⁶ *Vägen Tillbaka*, directed by Thomas Lindh & John Stark (Finland: Yle, 2017).

market, the right to vote, housing opportunities, student loans, educational prospects, and many other public benefits.¹⁵⁷

According to Jan Strømnes, the principle of normality is strong in Norway and his claim is strengthened by what it says on the webpage of Kriminalomsorgen (Eng.: Correctional services) under the section *Principle of normality in the Correctional Service*¹⁵⁸. There it is stated that, “The punishment is the restriction of liberty; no other rights have been removed by the sentencing court. Therefore the sentenced offender has all the same rights as all other who live in Norway.”¹⁵⁹ Furthermore, it is stated that “During the serving of a sentence, life inside will resemble life outside as much as possible.”¹⁶⁰ Halden Prison is a clear example of a prison built on rehabilitation that emphasizes the Norwegian belief in the principle of normality.

Strømnes gave some inmates of Attica Prison an assignment to come up with their ideal prison. The only frame they had to follow was that the prison still had to deprive the prisoner of its freedom, other than that, they were free to create their own prison. Attica Inmates focused on: giving the inmates more opportunities and help them prepare for life outside the walls. All they wanted was the opportunity to do better and give something back to the community they have taken so much from. An interesting aspect of this is the notion that all they want is opportunities that they did not get when they were free men. The opportunity to finish high school, get a degree, get a job, pay taxes and be productive citizens are everything they want, and it is something that should be facilitated not once people are incarcerated, but before they fall out of society.

After they had presented their idea, they were told that the ideal prison they had drawn and presented the qualities of, looks a lot like Halden Prison in Norway which Strømnes is a deputy warden at. They were shocked by the idea that a prison like this exists, but they also seemed happy to think that it is actually possible. Nevertheless, this ideal prison is situated in Norway with a very different outlook on criminals and correctional facilities. The deputy warden at Attica, Dale, asks the inmates who came up with the ideal prison what

¹⁵⁷ Alexander, *The New Jim Crow : Mass Incarceration in the Age of Colorblindness.*, 2; 13th. Documentary directed by Ava DuVernay (Los Angeles, CA: Kandoo Films, 2016).

¹⁵⁸ Kriminalomsorgen, *About the Norwegian Correctional Service*, accessed May 19, 2019. <https://www.kriminalomsorgen.no/information-in-english.265199.no.html>

¹⁵⁹ Kriminalomsorgen, *About the Norwegian Correctional Service* accessed May 19, 2019. <https://www.kriminalomsorgen.no/information-in-english.265199.no.html>

¹⁶⁰ Kriminalomsorgen, *About the Norwegian Correctional Service*, accessed May 19, 2019. <https://www.kriminalomsorgen.no/information-in-english.265199.no.html>

they think society would think of a prison like this. The inmates reply that half of the country who believe in punishment instead of rehabilitation would not approve.

This strengthens what seems to be prevailing thoughts amongst Americans when it comes to how criminals should be treated and how severe a punishment should be. Aspects of revenge and retribution color Americans judgment. Furthermore, one can argue for this claim by looking at the punitive sentencing policies that the U.S. have enacted the past 40 years, the current treatment of inmates in prisons, and the treatment of ex-felons after they are released from prison. It is even a common conception amongst Americans that revenge and retribution play a huge part in the U.S. criminal justice system.

Norway's belief in rehabilitation and the principle of normality were challenged in 2011, when Fjotolf Hansen, better known as Anders Behring Breivik, killed 77 people in two terror attacks on July 22, 2011. School shootings and other types of attacks at American society happen more frequently in the U.S. than in Norway where the July 22, 2011 attack stands out as unusual in a Norwegian context. Norway, with its longest prison sentence of 21 years, compared to the United States with life sentences and capital punishment, underwent a brutal challenge when one individual took so many lives. Despite the awful crime committed by Breivik, Norway came together and shielded their longstanding principle of equal treatment of all human beings. Norway did not change its sentencing policies because of Breivik's crime. Instead, they clung to Norwegian values in a time when they were questioned and challenged by a person who attacked Norwegian democracy showing Breivik and the rest of the world that Norway and its people would not give Breivik the satisfaction of achieving his goal of creating fear and unrest. As with all rehabilitation, there is no guarantee that it will work, therefore, in this severe case, Breivik might have to continue additional years behind bars as he was sentenced with preventive detention of 21 years, meaning his prison sentence can be extended indefinitely.

The dad of a teenager who was killed by Breivik, talks to Michael Moore in the documentary *Where to Invade Next*, and he states that he cared about that the mass murderer, like other criminals, had a fair trial. He is challenged by Michael Moore who asks if he wishes he could kill Breivik, but his answer is no, even though Breivik killed his son, his answer is still no. He explains that he does not want to step down at Breivik's level and think that he has the right to take lives. Moreover, he explains that he along with the rest of Norway wanted to continue and expand the contrast of their beliefs to that of Breivik's,

which meant that Norway wanted more openness, more freedom of speech and more democracy.¹⁶¹

Race nor the commercialization of the U.S. criminal justice system is touched upon in the documentary *Vägen Tillbaka*. But they are still important aspects and they are elaborated on in the documentary *13th*. The racial aspect when it comes to sentencing laws and imprisonment rates have been accounted for in extent in previous sections of the thesis, but there are some aspects that have not. Discrimination against blacks is present in all levels of the criminal justice system, all the way from policing where it comes to show in the form of racial profiling when the police use stop-and frisk strategies. Moreover, it is apparent when it comes to bail.

Mandatory minimum sentencing, in combination with bail, has been a real disaster. Mandatory minimums have relocated the power from judges to prosecutors, resulting in a terrifying reality where prosecutors can scare defendants into plea bargains by exploiting the defendant's vulnerable situation. If the prosecutor talks about a possible mandatory minimum sentence for the alleged crime, the defendant might consider or quite possibly enter a settlement in fear of lengthy and harsh sentencing for a crime he/she might not have committed. The bail aspect plays a role in the disparity between poor and wealthy, and black and white. If you are wealthy you are free to go but if you are poor you have to stay in. Due to racial profiling and stop-and-frisk policies, the police arrest more African Americans. An unfortunate, but accurate example of this is the case of Kalief Browder.¹⁶²

Kalief Browder a New York teenager was by the police arrested for allegedly stealing a backpack. He was stopped by the police and taken into custody because he fit the description the victim had given the police. However, the backpack was stolen about a week before Browder was stopped by the police and it was debatable whether or not a witness description was enough evidence. Three years after his arrest the case was decided, he had been wrongfully accused of stealing a backpack. During those three years he was held in Rikers Island jail while awaiting trial, because he could not afford to pay the set bail.¹⁶³ This case is significant because it represents the many occasions when young African American males are stopped by the police for no reason, and the extensive number of African

¹⁶¹ *Where to Invade Next*, directed by Michael Moore (United States: Dog Eats Dog Films; IMG Films, 2015).

¹⁶² *Time: The Kalief Browder Story*, created by Jenner Furst, Julia Willoughby Nason & Nick Sandow (United States: Roc Nation and The Weinstein Company); *13th*. Documentary directed by Ava DuVernay (Los Angeles, CA: Kandoo Films, 2016).

¹⁶³ *Time: The Kalief Browder Story*, created by Jenner Furst, Julia Willoughby Nason & Nick Sandow (United States: Roc Nation and The Weinstein Company).

Americans and poor who are subjects of discrimination by the bail bond laws. A person who would have had the means to pay the set bail that Kalief was not able to could have continued his life outside of prison while awaiting trial. The conditions Kalief lived under during his time in Rikers Island jail, and the toll the case took on his mental health caused him to commit suicide after he was released and acquitted from all charges.¹⁶⁴

The commercialization of the U.S. criminal justice system could be the topic for a whole thesis on its own, but in this thesis, it will only be commented on briefly to illustrate other problems with the criminal justice system. The non-profit advocacy organization, Worth Rises, work to expose the commercialization of the U.S. criminal justice system and addresses issues regarding for-profit prisons.¹⁶⁵ Because of the extreme increase of prisoners from 1970 and until 2008, a need for more prisons developed. States began to offer contracts to private contractors who could facilitate the housing of inmates and meet the need for more prison cells. In some cases, states also lease out the daily operation of prisons to private companies. The industrial prison complex has become a massive source of income for businesses to profit off.¹⁶⁶

In the documentary *13th*, the wide spreading ties between corporations, lobbyists, politicians, and legislators are explored in great detail. The first private corporation who ran prisons and who today owns and manages private prisons and detention centers is CivicCore (previously Corrections Corporation of America (CCA)), with a revenue of 1.7 billion dollars, have been linked to a lobbying group called The American Legislative Exchange Council (ALEC). What is controversial about ALEC is that it is a lobbyist organization that have worked for legislations, such as Three-Strikes laws, truth-in-sentencing, and mandatory sentencing. All legislations that have led to the incarceration of millions of Americans. For a private corporation like CivicCore that gets their income from states based on the number of prisoners they house, an increase of more prisoners due to stricter laws, means more profit for the stakeholders.¹⁶⁷ In other words, criminality is making them rich. The change in the distinction between what is considered a misdemeanor and a felony is therefore essential.

¹⁶⁴ *Time: The Kalief Browder Story*, created by Jenner Furst, Julia Willoughby Nason & Nick Sandow (United States: Roc Nation and The Weinstein Company).

¹⁶⁵ Worth Rises, *About Us*, accessed May 19, 2019. <https://worthrises.org/aboutus>

¹⁶⁶ *13th*. Documentary directed by Ava DuVernay (Los Angeles, CA: Kandoo Films, 2016)

¹⁶⁷ *13th*. Documentary directed by Ava DuVernay (Los Angeles, CA: Kandoo Films, 2016)

4 Conclusion

The extreme imprisonment rates and the punitive laws which have caused a high concentration of incarceration of marginalized groups, in other words, mass incarceration, challenges equal rights and opportunities for all. The in-depth look at changes in U.S. sentencing laws and the comparison of the Norwegian prison system to that of the American prison system show that the American prison system is no longer based on rehabilitation nor on the belief in second chances. Instead, it is based on deterrence and retribution. This is important to be aware of because a criminal justice system where revenge is a part of the equation has resulted in a prison system where the inmates are not viewed as human beings, they are just merely seen as criminals. Their humanity is ignored, and it leaves prisons to be administered based on fear and power. Not only do the suppressive practices in prisons support the claim of a society that is founded on deterrence and retribution, so do their punitive laws.

Values found in the United States criminal justice system and prison system represents the nation's cultural values and vice versa. By looking at this beyond the penological perspective of punishment, these attitudes towards punishment that are found in prisons amongst prison guards, and the punitive laws that were created to eliminate crime and create safety, have, if looked at it from a sociological perspective, significance and range of effects that reach well beyond the population of criminals and crime control.

Considering that the U.S. prison population is racially disproportionate to that of the whole of the American population, not only does it affect the individual who is imprisoned, but it affects whole communities of African Americans. The punitive laws can statistically and historically be seen to affect marginalized groups more, and thus control a large number of certain communities by imprisoning large parts of those communities. The harsh sentencing laws are made not only to revoke criminals of their freedom, and remove them from society, but also to control them if and when they get out of prison. Further, controlling marginalized groups once their prison sentence is completed.

Ex-criminals are left without equal rights and opportunities. Legislations in American society do not just punish people for their crime. They punish them for being an alleged burden to society by restricting their right to vote and rights of receiving social benefits. This leaves them to tackle life obstacles other Americans never have to encounter. Statistics on disenfranchisement, and life sentences agree with the idea that the American view of punishment is harsh.

Punishment, in its original sense, is a negative sanction that is supposed to control a person into doing what is conceived as normal. However, when a power constellation uses punishment as a criminal sanction the affected areas are vastly more extensive. It is dangerous when those who hold power might want to maintain power relations in society and want to eliminate threats to the prevailing social order by the method of punishment. The United States criminal justice system is an excellent example of precisely that. Moreover, the economic aspect also plays a role in that those who run private prisons or other companies who profit off from incarceration, support lobbying groups which advocate for stricter sentencing laws.

It is a complex topic and by no means have I been able to cover all the important aspects of mass incarceration in the United States, its causes and consequences. But this was an attempt to explore the thought-provoking claim of an American culture that continues to socially control and discriminate marginalized groups because of prevailing racist and punitive attitudes in American society. It would also be interesting to look at women in prisons and their treatment in the criminal justice system, that also goes to say for juveniles, Hispanics and immigrants. Despite the United States' Declaration of Independence and several Constitutional amendments that allegedly declare equal rights and opportunities to all, this has never been the case and is not the case today either.

The signing of the First Step Act is much-needed progress in the right direction. However, much more needs to be done. As this thesis suggests, it is American attitudes toward punishment and marginalized groups that limit the need for change.

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Appendix A

Original notes from sources used to create figure 2.1.

Table 1. Sentenced prisoners in State and Federal institutions: Number and incarceration rates, 1925-81.

“Note:

- 1 The incarceration rate is the number of prisoners per 100,000 residential population.
- 2 Data for 1925 through 1939 include sentenced prisoners in State and Federal prisons and reformatories whether committed for felonies or misdemeanors.
- 3 Data for 1940 through 1970 include all adult felons serving sentences in State and Federal institutions.
- 4 Data for 1971 to present include all adults or youthful offenders sentenced to State or Federal correctional institutions whose maximum sentence was over a year.
- 5 Before 1977 only prisoners in the custody of State and Federal correctional systems were counted. After 1977 all prisoners under the jurisdiction of State and Federal correctional systems were counted. Figures for both custody and jurisdiction are shown in for 1977 to facilitate comparisons.”

Source: Bureau of Justice Statistics, *Prisoners 1925-81*, accessed March 15, 2019.

<https://www.bjs.gov/content/pub/pdf/p2581.pdf>

Table 1. Change in the State and Federal prison populations, 1980-90

“Note: All counts are for December 31 of each year and may reflect revisions of previously reported numbers.”

Source: Bureau of Justice Statistics, *Prisoners in 1990*, by Robyn L. Cohen, accessed March 15, 2019. <https://www.bjs.gov/content/pub/pdf/p90.pdf>

Table 1. Number of inmates held in State or Federal prisons or in local jails, 1985, 1990-95

“a Includes prisoners in custody, prisoners in local jails because of prison crowding, and prisoners supervised elsewhere, such as in treatment centers.

b Counts for 1994 and 1995 exclude persons who were supervised outside of a jail. See Methodology.

c Total of persons in custody of State, Federal, or local jurisdictions per 100,000 U.S. residents.”

Source: Bureau of Justice Statistics, *Prisoners and Jail inmates 1995*, by Darrell K Gilliard & Allen J. Beck, accessed March 15, 2019. <https://www.bjs.gov/content/pub/pdf/PJI95.PDF>

Table 1. Number of persons held in State or Federal Prisons or in local jails, 1990-2000

Note: Counts include all inmates held in public and private adult correctional facilities. Jail counts for 1995-2000 exclude persons supervised outside of a jail facility.

a Number of prison and jail inmates per 100,000 U.S. residents at yearend.

b In 1999, 15 States expanded their reporting criteria to include inmates held in privately operated correctional facilities. For comparisons with previous years, the State count 1,137,544 and the total count 1,869,169 should be used.”

Source: Bureau of Justice Statistics, *Prisoners in 2000*, by Allen J. Beck & Paige M. Harrison, accessed March 15, 2019. <https://www.bjs.gov/content/pub/pdf/p00.pdf>

Table 1. Number of persons held in State or Federal prisons or in local jails, 1995-2005

“Note: Counts include all inmates held in public and private adult correctional facilities.

a Total counts include Federal inmates in non-secure privately operated facilities (7,144 in 2005, 7,065 in 2004, 6,471 in 2003, 6,598 in 2002, 6,515 in 2001, and 6,143 in 2000).

b Number of prison and jail inmates per 100,000 U.S. residents at yearend.”

Source: Bureau of Justice Statistics, *Prisoners in 2005*, by Paige M. Harrison & Allen J. Beck, accessed March 15, 2019. <https://www.bjs.gov/content/pub/pdf/p05.pdf>

Table 1. Prisoners under jurisdiction of State or federal correctional authorities, by jurisdiction and sex, December 31, 2006-2016.

“Note: Jurisdiction refers to the legal authority of state or federal correctional officials over a prisoner, regardless of where the prisoner is held.

aIncludes prisoners held in nonsecure, privately operated community corrections facilities and juveniles held in contract facilities.

bTotal and state estimates include imputed counts for North Dakota and Oregon, which did not submit 2016 data to National Prisoner Statistics program. See Methodology.

Source: Bureau of Justice Statistics, National Prisoner Statistics, 2006–2016.”

Source: Bureau of Justice Statistics, *Prisoners in 2016*, by Ann E Carson, accessed March 15, 2019. <https://www.bjs.gov/content/pub/pdf/p16.pdf>

Appendix B

Original notes from sources used to create figure 2.2.

Table 1. Number of inmates held in State or Federal prisons or in local jails, 1985, 1990-95

“a Includes prisoners in custody, prisoners in local jails because of prison crowding, and prisoners supervised elsewhere, such as in treatment centers.

b Counts for 1994 and 1995 exclude persons who were supervised outside of a jail. See Methodology.

c Total of persons in custody of State, Federal, or local jurisdictions per 100,000 U.S. residents.”

Source: Bureau of Justice Statistics, *Prisoners and Jail inmates 1995*, by Darrell K Gilliard & Allen J. Beck, accessed March 15, 2019. <https://www.bjs.gov/content/pub/pdf/PJI95.PDF>

Table 1. Number of persons held in State or Federal Prisons or in local jails, 1990-2000

Note: Counts include all inmates held in public and private adult correctional facilities. Jail counts for 1995-2000 exclude persons supervised outside of a jail facility.

a Number of prison and jail inmates per 100,000 U.S. residents at yearend.

b In 1999, 15 States expanded their reporting criteria to include inmates held in privately operated correctional facilities. For comparisons with previous years, the State count 1,137,544 and the total count 1,869,169 should be used.”

Source: Bureau of Justice Statistics, *Prisoners in 2000*, by Allen J. Beck & Paige M. Harrison, accessed March 15, 2019. <https://www.bjs.gov/content/pub/pdf/p00.pdf>

Table 1. Number of persons held in State or Federal prisons or in local jails, 1995-2005

“Note: Counts include all inmates held in public and private adult correctional facilities.

a Total counts include Federal inmates in non-secure privately operated facilities (7,144 in 2005, 7,065 in 2004, 6,471 in 2003, 6,598 in 2002, 6,515 in 2001, and 6,143 in 2000).

b Number of prison and jail inmates per 100,000 U.S. residents at yearend.”

Source: Bureau of Justice Statistics, *Prisoners in 2005*, by Paige M. Harrison & Allen J. Beck, accessed March 15, 2019. <https://www.bjs.gov/content/pub/pdf/p05.pdf>

Table 1 Inmates confined at midyear, average daily population, annual admissions, and incarceration rates, 2000 and 2005–2016

“Note: Data are rounded to the nearest 100 for confined inmates and average daily population and to the nearest 100,000 for admissions. Results may differ from previous reports in the series due

to data updates received from jails. See appendix table 3 for standard errors. *Comparison year.

**Difference with comparison year is significant at the 95% confidence level.

a Number of inmates held on the last weekday in June.

b Sum of all inmates in jail each day for a year divided by the number of days in the year. Prior to 2015, the average daily population was calculated for the 12-month period ending on the last weekday in June. The 2015 and 2016 average daily population were calculated for the calendar year ending on December 31.

c Annual admissions in 2005 and 2007 through 2014 were estimated based on admissions during a one week period in June. The 2000, 2006, 2015, and 2016 annual admissions were for the calendar year ending December 31.

d Number of confined inmates in local jails per 100,000 U.S. residents at midyear. Source: Bureau of Justice Statistics, Annual Survey of Jails, 2000 and 2006–2016; Census of Jail Inmates, midyear 2005; and Deaths in Custody Reporting Program, 2000 and 2006 (admissions only).” Source: Bureau of Justice Statistics, *Jail inmates in 2016*, by Zhen Zeng, accessed March 15, 2019. <https://www.bjs.gov/content/pub/pdf/ji16.pdf>

Appendix C

“Table 10. The imprisonment rate of sentenced state and federal prisoners per 100,000 U.S. residents, by sex, race, Hispanic origin, and age, 2016”

Age group	Male						Female				
	Total/a	All/a	White/b	Black/b	Hispanic	Other/b	All/a	White/b	Black/b	Hispanic	Other/b
Total/c	450	847	400	2415	1092	1305	64	49	96	67	118
18-19	130	244	72	853	298	338	11	8	25	11	21
20-24	653	1191	453	3371	1417	1831	85	61	141	85	168
25-29	998	1801	803	4725	2249	2485	167	136	216	170	271
30-34	1091	1981	960	5334	2450	3006	186	155	232	193	312
35-39	1053	1944	934	5435	2359	2791	164	136	214	161	263
40-44	886	1655	820	4645	1975	2430	129	108	181	114	213
45-49	710	1333	688	3781	1611	2106	100	79	158	90	150
50-54	575	1093	572	3087	1359	1756	75	56	124	69	133
55-59	377	733	376	2142	1016	1208	40	28	72	41	79
60-64	220	439	229	1246	739	683	19	13	33	22	35
65 or older	76	165	97	430	319	321	5	4	8	8	9
Number of sentenced prisoners/d	1459533	1353850	391300	467000	320300	175300	105683	49000	20400	19300	17000

“Note: Counts based on prisoners with sentences of more than 1 year under the jurisdiction of state or federal correctional officials. Imprisonment rate is the number of prisoners under state or federal jurisdiction with a sentence of more than 1 year per 100,000 U.S. residents of corresponding sex, race, Hispanic origin, and age. Resident population estimates are from the U.S. Census Bureau for January 1, 2016. Includes imputed counts for North Dakota and Oregon, which did not submit 2016 NPS data. See Methodology. aIncludes American Indians and Alaska Natives; Asians, Native Hawaiians, and Other Pacific Islanders; and persons of two or more races. bExcludes persons of Hispanic or Latino origin. cIncludes persons age 17 or younger. dRace and Hispanic origin totals are rounded to the nearest 100 to accommodate differences in data collection techniques between jurisdictions. Source: Bureau of Justice Statistics, National Prisoner Statistics (NPS), 2016; Federal Justice Statistics Program, 2016; National Corrections Reporting Program, 2015; Survey of Prison Inmates, 2016 (preliminary); and U.S. Census Bureau, postcensal resident population estimates for January 1, 2017.”

Source: Bureau of Justice Statistics, *Prisoners in 2016*, by Ann E Carson, accessed March 15, 2019. <https://www.bjs.gov/content/pub/pdf/p16.pdf>

Appendix D

Table 1. Summary of State Felony Disfranchisement Restrictions in 2016

No restriction (2)	Prison only (14)	Prison & parole (4)	Prison, parole, & probation (18)	Prison, parole, probation, & post-sentence (12)
Maine	Hawaii	California ³	Alaska	Alabama ¹
Vermont	Illinois	Colorado	Arkansas	Arizona ²
	Indiana	Connecticut	Georgia	Delaware ⁴
	Massachusetts	New York	Idaho	Florida
	Maryland ⁶		Kansas	Iowa ⁵
	Michigan		Louisiana	Kentucky
	Montana		Minnesota	Mississippi
	New Hampshire		Missouri	Nebraska ⁷
	North Dakota		New Jersey	Nevada ⁸
	Ohio		New Mexico	Tennessee ⁹
	Oregon		North Carolina	Virginia ¹²
	Pennsylvania		Oklahoma	Wyoming ¹³
	Rhode Island ¹⁰		South Carolina	
	Utah		South Dakota ¹¹	
			Texas	
			Washington	
			West Virginia	
			Wisconsin	

Notes:

- Alabama - In 2016, legislation eased the rights restoration process after completion of sentence for persons not convicted of a crime of "moral turpitude."
- Arizona - Permanently disenfranchises persons with two or more felony convictions.
- California - In 2016, legislation restored voting rights to people convicted of a felony offense housed in jail, but not in prison.
- Delaware - The 2013 Hazel D. Plant Voter Restoration Act removed the five-year waiting period. People convicted of a felony, with some exceptions, are now eligible to vote upon completion of sentence and supervision. People who are convicted of certain disqualifying felonies - including murder, bribery, and sexual offenses - are permanently disenfranchised.
- Iowa - Governor Tom Vilsack restored voting rights to individuals who had completed their sentences via executive order on July 4, 2005. Governor Terry Branstad reversed this executive order on January 14, 2011 returning to permanent disenfranchisement for persons released from supervision after that date.
- Maryland - Eliminated the ban on voting for persons on probation or parole supervision in 2016.
- Nebraska - Reduced its indefinite ban on post-sentence voting to a two-year waiting period in 2005.
- Nevada - Disenfranchises people convicted of one or more violent felonies and people convicted of two or more felonies of any type.
- Tennessee - Disenfranchises those convicted of certain felonies since 1981, in addition to those convicted of select crimes prior to 1973. Others must apply to Board of Probation and Parole for restoration.
- Rhode Island - A 2006 ballot referendum eliminated the ban on voting for persons on probation or parole supervision.
- South Dakota - State began disenfranchising people on felony probation in 2012.
- Virginia - When the Virginia Supreme Court overturned Governor Terry McAuliffe's blanket restoration of voting rights for people who had completed their sentences, he individually approved voting rights for 12,832 individuals in August, 2016.
- Wyoming - Voting rights restored after five years to people who complete sentences for first-time, non-violent felony convictions in 2016 or after.

Source: Christopher Uggen, Ryan Larson, and Sarah Shannon, *6 Million Lost Voters: State-Level Estimates of Felon Disenfranchisement*, 2016, Washington, DC: The Sentencing Project, 2016, (Table 1. Summary of State Felony Disfranchisement Restrictions in 2016).

Appendix E

Figure 2. Total Felony Disenfranchisement Rates, 2016

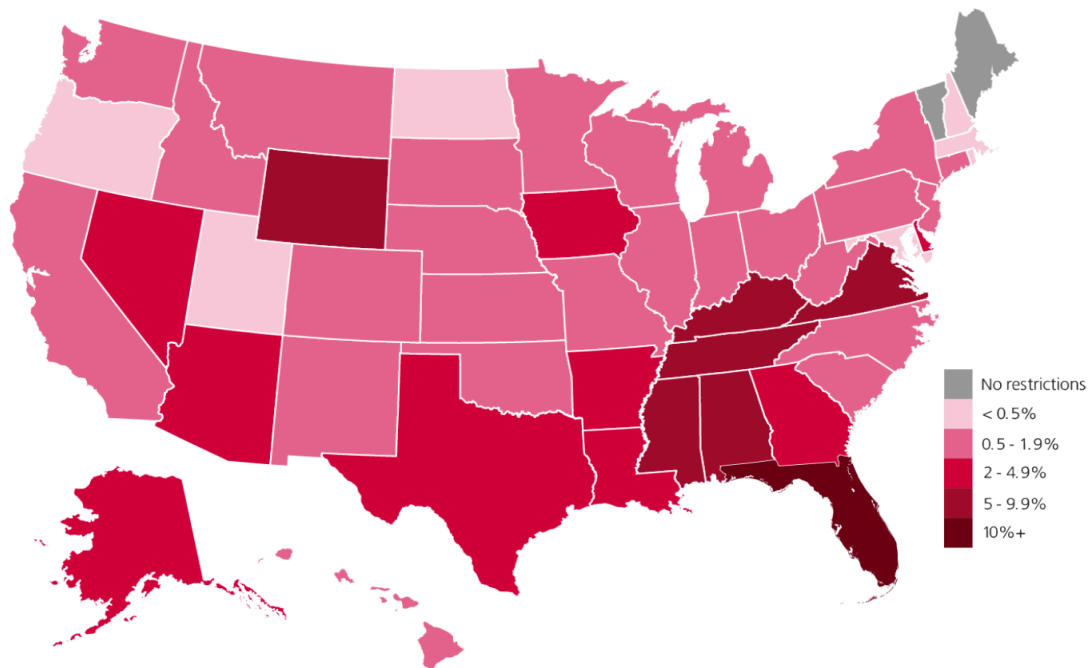
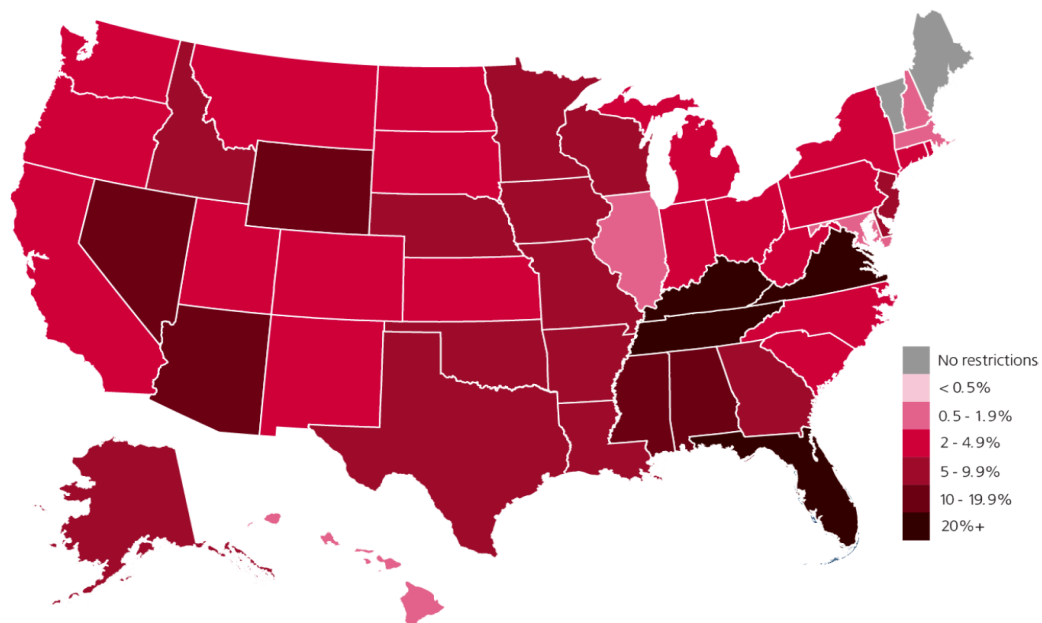


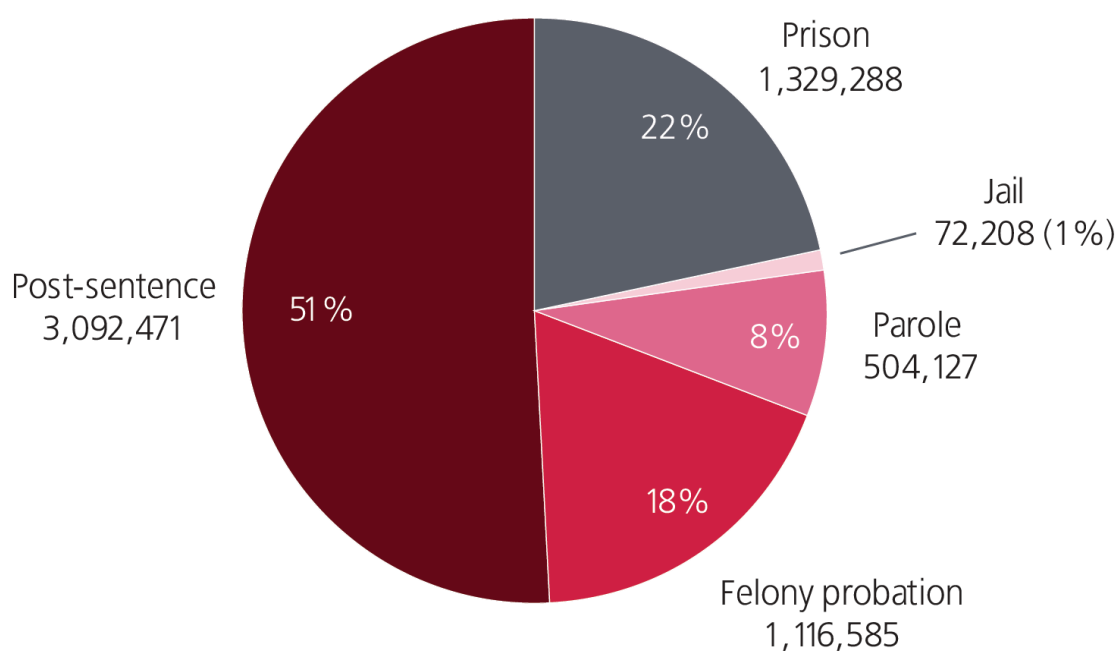
Figure 7. African American Felony Disenfranchisement Rates, 2016



Source: Christopher Uggen, Ryan Larson, and Sarah Shannon, *6 Million Lost Voters: State-Level Estimates of Felon Disenfranchisement*, 2016, Washington, DC: The Sentencing Project, 2016, (Figure 2. Total Felony Disenfranchisement Rates, 2016; Figure 7. African American Felony Disenfranchisement Rates, 2016).

Appendix F

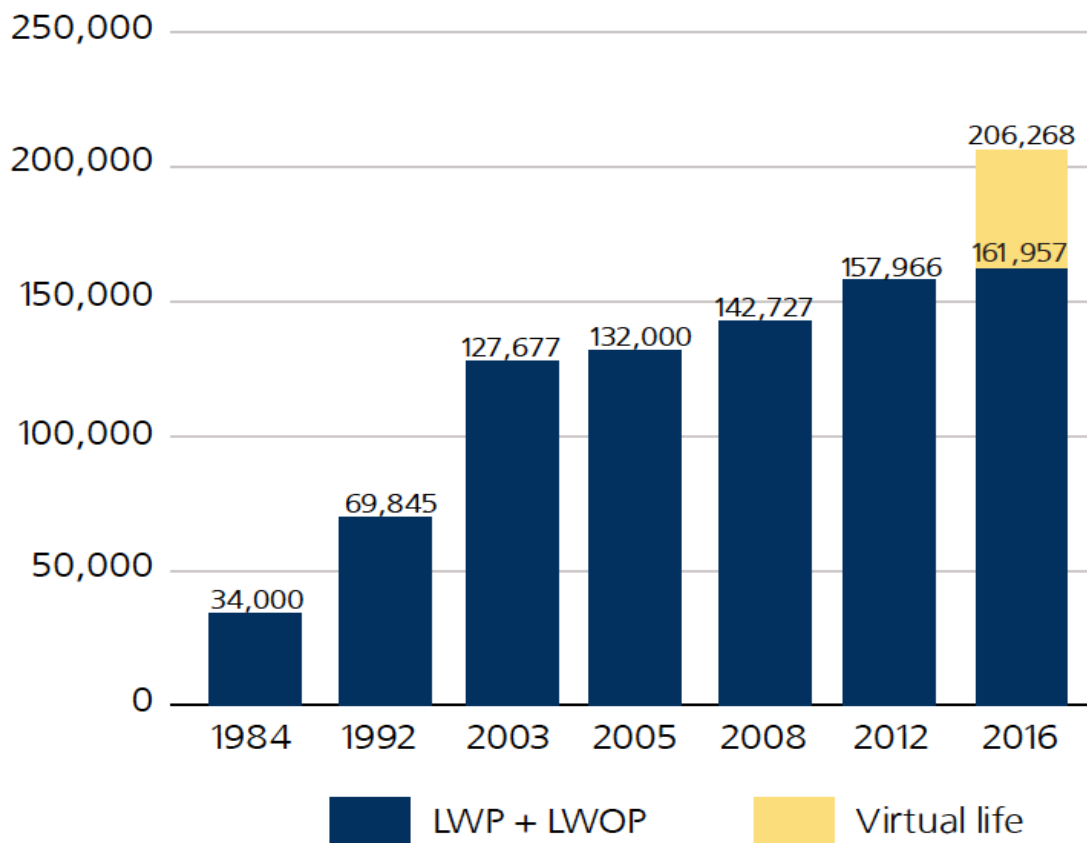
Figure 1. Disenfranchisement Distribution Across Correctional Populations, 2016



Source: Christopher Uggen, Ryan Larson, and Sarah Shannon, *6 Million Lost Voters: State-Level Estimates of Felon Disenfranchisement*, 2016, Washington, DC: The Sentencing Project, 2016, (Table 1. Summary of State Felony Disfranchisement Restrictions in 2016).

Appendix G

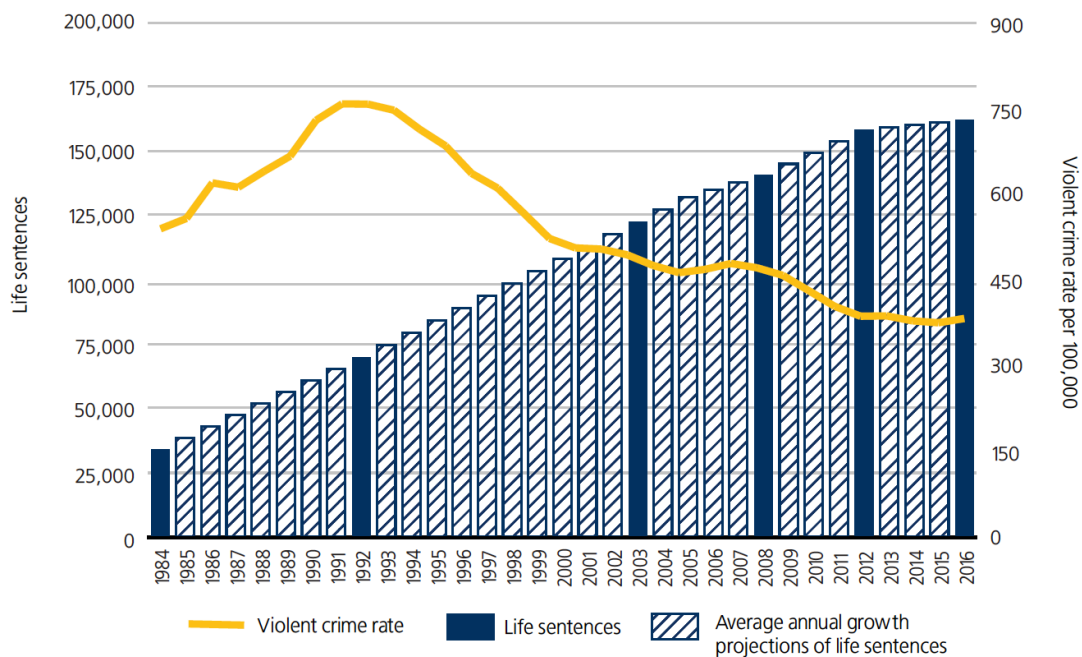
Figure 1. Growth of Life Sentences, 1984-2016



Source: Ashley Nellis, *Still Life: America's Increasing Use of Life and Long-Term Sentences*, Washington, DC: The Sentencing Project, 2016, (Figure 1. Growth of Life Sentences, 1984-2016).

Appendix H

Figure 2. Comparison of Violent Crime Rate and Life Sentences, 1984-2016



Source: Ashley Nellis, *Still Life: America's Increasing Use of Life and Long-Term Sentences*, Washington, DC: The Sentencing Project, 2016, (Figure 2. Comparison of Violent Crime Rate and Life Sentences, 1984-2016).

Appendix I

“TABLE 2.5 Key Differences Between Small- and Large-Power-Distance Societies: The State”¹⁶⁸

Small Power Distance	Large Power Distance
Use of power should be legitimate and follow criteria of good and evil.	Might prevails over right: whoever holds the power is right and good.
Skills, wealth, power, and status need not go together.	Skills, wealth, power, and status should go together.
Mostly wealthier countries with a large middle class.	Mostly poorer countries with a small middle class.
All should have equal rights.	The powerful should have privileges.
Power is based on formal position, expertise, and ability to give rewards.	Power based on tradition or family, charisma, and the ability to use force.
The way to change a political system is by changing the rules (evolution).	The way to change a political system is by changing the people at the top (revolution).
There is more dialogue and less violence in domestic politics.	There is less dialogue and more violence in domestic politics.
Pluralist governments based on outcome of majority vote.	Autocratic or oligarchic governments based on cooptation.
The political spectrum shows a strong center and weak right and left wings.	The political spectrum, if allowed to exist, has a weak center and strong right and left wings.
There are small income differentials in society, further reduced by the tax system.	There are large income differentials in society, further increased by the tax system.
There is less perceived corruption; scandals end political careers.	There is more perceived corruption; scandals are usually covered up.

Source: Hofstede, Geert, and Gert Jan Hofstede. *Cultures and Organizations : Software of the Mind*. 2nd ed., rev. and exp. ed. New York: McGraw-Hill, 2005.

¹⁶⁸ Hofstede and Hofstede, *Cultures and Organizations : Software of the Mind*, 67.