



Department of  
Political Science

Chair of History of Political Institutions

The United States Incarceration  
System:  
History, Impact, and Reform of  
the Institution

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*Be ready to inspire others,  
through academic works, words, and actions,  
it is absolutely still possible to make a difference.*

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## **Introduction**

Among the various political institutions that shape our society we can also find the Penitentiary System, which is inevitably linked to both political systems and judicial systems. However, is mass incarceration the solution to the increasing crime rate? Is it improving the safety among citizens in our society? To give an answer to these questions we must take into consideration the Country with the highest incarceration rate in the World: The United States of America. By studying the history of the US Penitentiary System and the policies that led towards the creation of this institution, but also by studying the following consequences that affected the United States as a whole, we can understand if the incarceration system in the United States is actually effective or not.

Understanding the effectiveness of the Penitentiary System is a matter of extreme importance, since the potency of this institution impacts more people that we can even imagine, affects markets, people's finances, and lives. Therefore, grasping the pros and cons of the institution as a whole will be extremely useful for shaping new policies aimed at improving the society while respecting Human Rights and basic human dignity, by not judging people for their social position or the color of their skin, therefore keeping *Lady Justice* blindfolded.

To better understand this institution and its impact, this dissertation will take into account the history of the system and of the United States, together with the works of political scientists, policy analysts, and historians. The study of social movements, abolitionists, and reformists will help us evaluate the effectiveness, the issues, and the need of reform of the US Penitentiary System. In the end, the final chapter will focus on one of the States with the highest incarceration rate: California, will consider the counterproductive policies and bills that have raised California's Incarceration Rate, the excessiveness of enhancements, and death penalty and life without parole sentences. Finally, the last sub-chapter will show the data gathered from a research survey ran between the people with an incarcerated Loved One, in order to underline the emotional, social, and economic impact that incarceration had on 216 people who have been willing to share their answers in an anonymous form.

## **1 History of the United States Prison system**

### ***1.1 Confinement as a more human punishment – from England to the US***

To clearly understand the United States Penitentiary System and its history we must first learn about the system in the Old Continent, specifically in England. The Incarceration System, being it extremely tied to our society, our judicial and our political systems is an institution that evolves with the evolving of times; therefore, it is really difficult to find the starting point of this institution. However, going back to the 12<sup>th</sup> century in England, we can find the construction of the

first jails as part of the Assize of Clarendon of 1166 instituted by Henry II. The Assize of Clarendon was an act instated with the aim of giving the Crown more control over the administration of justice, leading to the transformation of English Law and laying the foundations to a system made of trials by jury not only in England but also in common law countries worldwide. Under the reign of Henry II, the prisons had the intent of keeping people awaiting trial while royal judges debated either a punishment or their innocence. In 1188, Newgate was the first institution to be established and it was located inside the city of London, remaining in use for over 700 years. Some decades later, in 1215, the Magna Carta was signed by King John marking the establishment of judicial rights for people who committed crimes, where in article 39 is stated that *no person should be imprisoned without having a fair trial*.

During the following centuries, the penitentiary system in England continued to evolve and with its evolution some issues have arisen. Firstly, in the 14th century, the conditions inside prisons were crude, with the incarcerated population being nourished only with bread and water, and jailers charging for every good needed by the population behind the bars such as food and blankets. By the 17th century incarceration was surging, with people being sentenced to prison only for being homeless or for petty crimes, resulting in prison overcrowding.<sup>1</sup> However, incarceration was not the only punishment for crimes. Misdemeanors or petty crimes could have been pardoned if the convicted people would have joined the army or the navy, but for many offences capital punishment was the solution of the Crown. In fact, in the 18th century, more than 200 offenses were considered as serious to receive capital punishment.<sup>2</sup> Inevitably, the Crown needed to alleviate the overcrowding of prisons, and the newly instituted British colonies on the east side of America quickly became the solution. Therefore, since 1615, the courts began to send convicts to the colonies to diminish the criminal population in England, but transfers were quickly stopped by 1697, when colonial ports started to reject the so-called *convict ships*. To overcome this obstacle, the Parliament passed the *Transportation Act* of 1718, therefore creating a legal basis for the transportation of incarcerated people from England to the colonies in the New Continent, inevitably exporting the Crown's penitentiary system. It is between 1700 and 1775 that the majority of incarcerated people were transported to America, counting for a total of approximately 52,200 convicts<sup>3</sup>. As a matter of course, it created huge disparities between people, in a society where slavery was not uncommon; unskilled, and skilled English offenders were sold at an even cheaper price than the contracted white or African servants.<sup>4</sup> Inevitably, the punishment for noncapital crimes became the transportation of the incarcerated population from Britain to the colonies, and it became a profitable economy, not only for England but also for tradesmen and householders that

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<sup>1</sup> (BBC News 2006)

<sup>2</sup> (UK Parliament n.d.)

<sup>3</sup> (Salmon 2020)

<sup>4</sup> (Salmon 2020)

could have bought workers and servants at a low price. In the case of householders, they would have not had the duty to pay the end of their *servants'* term, something that actually had to be paid for voluntarily contracted servants.

Prior to the American Revolutionary War fought between 1775 and 1783 the American Criminal Justice system was the result of the influence of the English common law and the Old Continent's system. For all the duration of the 17<sup>th</sup> and 18<sup>th</sup> centuries, physical punishment and public shaming were the solution for minor and other crimes. Unlike in England, in this period American courts tended to be not as harsh as the English system. Indeed, in American colonies pardons were common, and the use of capital punishment was not applied for minor crimes, therefore differentiating the system from the one in use in the Old Continent. In the American colonies, workhouses were implemented, holding offenders for longer periods of time, where they could pay off their debts with the society by working day and night. These workhouses were not considered an instrument of punishment, but rather of correction. On the other hand, jails were still used to house people awaiting for trials.<sup>5</sup>

In April of 1775 the battles of Lexington and Concord led to the beginning of the American Revolutionary War that has been fought for almost a decade. Since 1764, the tensions between the 13 Colonies and the English Crown arise, as a result of the series of measures enacted by Great Britain to make a revenue from the American Colonies, such as the Sugar act, the Stamp Act, and the Townshend Acts. The latter was a series of maneuvers passed by the British parliament in 1767 that taxed all the imported goods and were seen as an abuse of power by the colonists therefore intensifying the tensions between Great Britain and the American Colonies. Hence, the colonists started protesting against a *taxation without representation*, since they had no representation in the British Parliament, the body that was passing laws even for the 13 American Colonies. Amid all the colonies, Massachusetts became the point of resistance, also becoming the site of the Boston Massacre in 1770 and of the Boston Tea Party in 1773 which was a political protest against the British Taxation and saw the colonists dumping tea imported by British East India Company into the port.<sup>6</sup>

On July 4<sup>th</sup> of 1776, the 13 American Colonies adopted the Declaration of Independence which was approved during the Second Continental Congress meeting in Philadelphia. It stated three main basic concepts such as the equality of men with the rights of life, liberty, and pursuit of happiness; the government's business to protect the rights; and the duty of people to revolt if such rights are not protected. Among all of these things, the Declaration of Independence also cited a list of abuses linked to the trade of incarcerated people, the obstruction of justice by the Crown, and the

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<sup>5</sup> (Cornell University n.d.)

<sup>6</sup> (History.com Editors 2009)

deprivation of trial by jury. Thomas Jefferson also added a protest against slavery, which was deleted at the requests of two colonies: Georgia and South Carolina.<sup>7</sup>

Soon after the end of the American Revolutionary War, at the beginning of the 19<sup>th</sup> Century, the sense of need for a reforming movement arisen in the United States. According to Rothman and Hirsch, this first major reforming movement for prisons was mostly shaped by an uproar for action while the population and social mobility were uprising. It inevitably led to a revision of corrective techniques by post-colonial legislators and reformers to replace the ineffective system of corporal punishment and stressed the need of hard labor.<sup>8</sup> In this Century, reformers were trying to step away from the English penal practice, trying to conclude the barbarism of the punishment system of the post-colonial era. By the second decade of the 19<sup>th</sup> century all the States had amended their legislation to improve the use of incarceration and hard labor as the main punishment for most offenses, with the exception of the States of Florida, North and South Carolina. Of course, the shift towards incarceration did not happen immediately, therefore, the break from the traditional forms of punishment was slow and most of the times at the discretion of judges and jurors, hence, resulting in some States lagging in this shift towards incarceration.

## ***1.2 The three major criminal justice waves***

### *1.2.1 Jacksonian Era - imprisonment as the primary penalty for most crimes in nearly all states by the time of the American Civil War*

Only during the period that runs from 1827 and ends in 1837 marked by the presidency of Andrew Jackson, called *Jacksonian Era*, the incarceration system actually begun to take place at a faster pace with the use of imprisonment as the main form of punishment. It is during this era that the penitentiaries started to appear, becoming a focal point for the American criminal justice system. During Jackson's presidency, the aim of penitentiaries was mostly an experiment of combining moral and personal reform with punishment. However, it led to the isolation of the incarcerated population from the outside world, with the imposition of a strict routine, solitude, and work. Different prison systems had developed during this era, one is known as the *Pennsylvania system* or *separate system* and was a regime of solitary confinement. This system had been studied even by Beaumont and De Tocqueville, sent by the French Government to study the American Prison System, but later on expanded their work to the study of the American Society as a whole. In De Tocqueville's work "*De la démocratie en Amérique*" (Democracy in America) it has been observed that advocates of this system had thought that

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<sup>7</sup> (Law Library - American Law and Legal Information n.d.)

<sup>8</sup> (D. J. Rothman 1971)

*absolute separation of the criminals can alone protect them from mutual pollution, and they have adopted the principle of separation in all its rigor. According to this system, the convict, once thrown into his cell, remains there without interruption, until the expiration of his punishment. He is separated from the whole world; and the penitentiaries, full of malefactors like himself, but every one of them entirely isolated, do not present to him even a society in the prison.*<sup>9</sup>

An opposite system from the Pennsylvania one developed in New York, and it is referred to as the *congregate system* or it simply takes the name of the *Auburn Prison*, where the population slept in single cells, but was able to eat, work and exercise together. However, as noted by De Tocqueville, “*here everything passes in profound silence*”, therefore, keeping a strictly silent prison regime, but still laying the foundation to the current prison system. In both cases, the penitentiary system was considered as a noble experiment in the reform, thus, women and minorities, which were barely considered as humans, could not benefit from it. Only few women were incarcerated into penitentiaries, warehoused in secluded settings where they were often left unsupervised, inevitably leading to abuse. Whilst African Americans were secluded on slave plantations. Hence, fostering the idea that even in the incarceration system there was no place for African Americans or Women, as if they were considered unworthy of having a fair chance of redeem themselves through penitence as suggested by the penitentiary system.<sup>10</sup>

The divisions between Northern and Southern States were highlighted even in this field, especially during the period preceding the American Civil War. Indeed, Southern states experienced a period of indecision whether to construct prisons and penitentiaries. In fact, for Southerners, crime was a Northerners’ issue. The raising republican spirit, or *republicanism*, in Southern States was translated to *freedom from the will of anyone else* and that *centralized power whether it was in the name of an activist republican administration promised more evil than good*<sup>11</sup>, as stated by the historian Edward L. Ayers. However, the establishment of the penitentiary system in the South was not supported by the majority of the population. Public punishments and shame were seen as the most republican and transparent mechanisms of punishment and an implementation of the penitentiary system would have also restricted the use of the Death Penalty that for the evangelical population and clergymen was seen as a biblical requirement for certain crimes. The antebellum period caused an abrupt move to penitentiaries, even in southern States, therefore changing the geography of the United States criminal justice system, segregating the people convicted of crimes and hiding them from the *public eye*, thus ending the involvement of communities in the system. While many prisons permitted the visits of authorized visitors who paid a fee on penitentiary

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<sup>9</sup> (De Tocqueville 1835)

<sup>10</sup> (Johnson, Dobrzanska and Palla 2005)

<sup>11</sup> (Ayers 1984)



grounds, this fostered the perception of a possible profit deriving from the incarceration system which is still embedded in today's prison system.

### 1.2.2 Reconstruction and Progressive Eras – the aftermath of the civil war

The Progressive Era was preceded by a period of reconstruction, also named Reconstruction Era,

which renewed the efforts to reform America's criminal justice system and its justification for imprisonment. The conditions of the prisons that remained untouched since the development of the Penitentiary Institution during the Jacksonian Era, were now in organizational and physical deterioration. Moreover, the penology and political thought derived from this Reconstruction Era focused an unfolding affirmation that criminality was related to both race and heredity. It is during this period that prison administration started declining, while facing an increasing prison overcrowding and severe understaffing complications, which led to aberrant methods of maintaining power over the incarcerated population with the use of Solitary Confinement, known nowadays as *The Hole*, where convicts were locked in dark single cells. Other punishments were the use of straitjackets; brick bags, used on the incarcerated population that would not want to work forcing people to wear a heavy bag; the use of a case composed of rods around neck and shoulders on the imprisoned; and the popular punishment of suspension by the wrists that could have gone on for hours too as suggested by the works of David Rothman and Scott Christianson.<sup>12</sup> During the reconstruction period, the States continue to lease the labor of the imprisoned population to private businesses, which was now justified by the *Thirteenth Amendment* adopted in 1865, at the end of the Civil War which permitted slavery only *as a punishment for a crime whereof the party shall have been duly convicted*. During this era the guards' misconduct had been increasingly investigated, specifically for abuses and mistreatment of the incarcerated people that already lived in inhumane conditions. Additionally, this post-war era was signed by increasing immigration rates, and soon prisons, jails and penitentiaries became the house of the poor, and the people born outside of the United States. Already in the 1890s, California was counting a really high percentage of foreign-born incarcerated population, almost the 45 percent of people behind the bars were Mexican, Irish, or Chinese.<sup>13</sup> Considering the post-war years, we can find that the rate of imprisonment for non-United States born was twice of the native-born and when black Americans were incarcerated, the rate was three times the one of white Americans.<sup>14</sup> It is at the end of this reconstruction phase that a new thought of prison reform emerged, which maintained the rooted optimism for the incarceration system, but initiated efforts towards a rehabilitation of the incarcerated population, however, is only during the Progressive Era that the system adopted significant structural changes.

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<sup>12</sup> (D. J. Rothman 2002); (Christianson 1998)

<sup>13</sup> (D. J. Rothman 2002)

<sup>14</sup> (Christianson 1998)

The Progressive Era for this institution was, of course, marked by some significant structural changes, but they were not as progressive as the contemporary prison reformers may imagine. Indeed, this Era's reform was mostly based on abandoning the convict lease system where convicts were working for private companies while being incarcerated. The South faced a gradual exit of the convict lease system that was implemented in the years following the Civil War, and in 1890s southern incarcerated people were still in convict camps run by businessmen. However, this decade noted the beginning of the shift towards a compromise: the State-run prison farms took over the convict camps.<sup>15</sup> The State-run prison farms were actually pretty similar to the previous convict camps, focusing mostly on agricultural and plantation work, which was supposed to create adequate food resources to feed the incarcerated population, people in orphanages and asylums, and then the remaining resources would have been sold for a state profit. This system did not have a long-lasting life and was replaced by Big Houses and then by Correctional Institutions that resembled more like the contemporary prisons.

*Big Houses* was the colloquial term for Maximum-Security prisons and were the direct descendant of the Jacksonian Penitentiary System. These prisons were characterized by discipline, silence, and work. In southern prisons, the incarcerated population was often divided in chain gangs where group of people were chained together during their work time, and it was a form of control of prison official over the prison population. The chain gangs were affected by the previous slave plantations system which was composed by African Americans. With the end of slavery, the newly emancipated people of color were incarcerated with the most trivial pretexts, laying the foundations of the Mass Incarceration Era. Chain Gangs and hard field labor were not reserved to white people, the brutal work regime seemed to be aimed at impacting the people of color.<sup>16</sup> These Big Houses developed into Correctional Institutions, that were colloquially considered as *softer Big Houses* presenting the same characteristics of the previous model, but in a more relaxing and accommodating regime, for as much as prison can be accommodating. The Big Houses and the following Correctional Institutions, have outlined the first half of the 20<sup>th</sup> Century, laying the basis for a political thought aimed at incarcerating as many individuals as possible.

### 1.2.3 *Mass Incarceration Era*

The Mass Incarceration Era has no clear starting point, many scholars set its beginning with the Johnson's Administration, others with Reagan's Administration. However, for a better understanding of this institution, there is a need to outline any single event that may have caused the development of this Mass Incarceration phase that still survives nowadays. During the presidency of Lyndon Johnson, 36<sup>th</sup> President of the United States of America, a *War on Crime* was called, and all

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<sup>15</sup> (Ayers 1984)

<sup>16</sup> (Johnson, Dobrzanska and Palla 2005)

prisons, jails and law enforcement systems operated as an engine for American Inequality. The War on Crime was a punitive campaign born during a period of liberal reform, under the weight of the civil rights revolution, while the nation seemed to be ready to embrace policies rooted in an egalitarian value. In 1964, when the Civil Rights Act passed, the launch of specific federal initiatives started a War on Poverty that shaped a legislative framework for the following two *wars*, which later on developed in a War on Crime, and then on a War on Drugs, inevitably fostering the incarceration rate in every State. The following year, 1965 the Country started, in the words of President Johnson, *a thorough, intelligent, and effective war against crime*, which started with the Law Enforcement Assistance Act. The Act came before the Voting Right Act, after a summer highlighted by urban unrest in all major cities. The Law Enforcement Act had the purpose of responding to the threat of future disorders, implementing the presence of the federal government in local matters, policing, courts, and State Prisons.<sup>17</sup> The War on Crime was followed by Reagan's War on Drugs in the early 1980s which was intensified with Clinton's Administration which imposed longer and tougher conviction standards for drug offenses.<sup>18</sup> During this era funds for law enforcement agencies increased drastically, leaving nothing to both federal and state agencies that were meant to provide drug rehabilitation, prevention, education and investments.

It is under both Ronald Reagan and George Bush administrations that several minimum sentencing laws were approved by the Congress. These laws are either created by the Congress or by a state legislature, obliging courts and judges to give a mandatory minimum sentence to a person convicted of a crime, ignoring social or unique circumstances of either the offender or the offense. During the War on Drugs many Acts passed, the most famous is the Anti-Drug Abuse act of 1986 which established a minimum sentence for the distribution of cocaine and added severe consequences for the distribution of various prohibited controlled substances, such as marijuana or crack. This act had a tremendous impact on the justice system, giving birth to a lifelong punishment enforcing not only civil penalties, but also the removal of access to federal financial aids for education such as student loans or scholarships.

The higher increase in the incarceration rate withing both state and federal prisons appeared under Clinton's Presidency which saw harsher sentencing laws and political rhetoric. The incarceration explosion was mostly given by the *three strikes law* which charged people that committed three felonies to life in prison; it is a law that is still alive in 29 States which contemporary prison reformers are trying to abolish since it fosters the prisons overpopulation. During the 30 years of the mass incarceration era, the prison population has grown 500 times, counting almost 2.3 million Americans being incarcerated in prisons and jails. However, this era seems to have come to an end, even though that with the current pace it would take more than a

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<sup>17</sup> (Hinton 2016)

<sup>18</sup> (Alexander 2010)

century to reach a normal incarceration rate. A mass movement is rising against the incarceration system, which seems to have proven itself to be ineffective, and costly. Change at a policy level is appearing too, the 1970s-Rockefeller Drug Laws have been rewritten and many States are rethinking the incarceration system. Since 2009, the statistics have shown a decrease in the people population, with States rethinking the effectiveness of the system and releasing people. Trust in the prison system is inevitably declining, therefore scholars and policymakers are questioning what will replace the imprisonment system. Reformers and Abolitionists look towards a community supervision focused on rehabilitation, yet in the last decades incarcerated people, people on parole or probation and formerly incarcerated people have received little to not help in re-entering society.<sup>19</sup>

### ***1.3 Incarceration as a political institution***

Incarceration has been considered by scholars of punishment as “intensely political” as highlighted by the politicization of Criminal Justice policies, and by the wide changes in sentencing patterns that, as we have seen in the previous chapter, have led to the imprisonment of an average of 2.1 million people in the United States of America. Being incarceration an exercise of power, it is inevitably influenced by various factors that guide political actors in modern society, such as public sentiment, political forces, policy choices, and even media interpretations. Incarceration also impacts political choices, but of course it varies from Nation to Nation. In the United States of America, more than 5 million people are prevented from voting due to a felony conviction. Therefore, imprisonment lead to government and political distrust among current and formerly incarcerated individuals, fostering the idea that politics cannot be influenced.<sup>20</sup>

Prisons have become a pillar of the West’s contemporary society, becoming a way of addressing anxiety and risks. From the 1960s onward increasing crime rates, urban decay, declines in economic prosperities, together with pessimism and distrust of the state have characterized the punitive side of the imprisonment system. The harsh critique of the rehabilitative model pushed towards a more punitive sentencing policies and increased a focus on the containment and management of the incarcerated population rather than rehabilitation.<sup>21</sup> The dismantling of the rehabilitative purpose of imprisonment, which throughout the 20<sup>th</sup> century was implemented through the use of indeterminate sentences, educational programs, treatments and parole boards, quickly started to fad away since the mid of 1970s with sentencing laws aimed to be tough on crime. Inevitably, the increase of use of incarceration as a form of punishment and longer prison sentences have fueled the increase of the incarceration rate. Scholars have noticed that the incarceration rate increases during republican presidencies, and that during the period of political

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<sup>19</sup> (Vogel 2012)

<sup>20</sup> (Manza and Uggen 2006)

<sup>21</sup> (Garland 2001)

campaign both parties tend to enact more punitive policies. This phenomenon, studied by Jacobs and Helms, has been named *political-imprisonment cycle* where both parties, together with electoral factors, impact incarceration.<sup>22</sup>

Scholars have studied how the penal-decision making is affected by the society, by examining different states. It has been found out that political context, public sentiment, and participation in politics contribute to the variation of the incarceration rate. Moreover, it is suggested by Gilmore's analysis of the Californian "prison fix" that the government may use incarceration as a way to face a fiscal crisis which through prison expansion will alleviate unemployment and diminish the impact of an economic recession.<sup>23</sup>

## 2 Impact of prisons on society

The previous chapter has outlined the history of the United States incarceration system, highlighting the impact social inequality had on prisons and their population, creating a rapid growth of the imprisonment rate. Prisons and Jails in the US have led to the creation of a new social group that shares the experience of racial minority, poverty, low education, and crime followed by incarceration. The social and economic disadvantage created by penal detention is passed on from one generation to the following one. Consequently, class and race disadvantages are renewed through an institutionalized inequality generated by the imprisonment system.

The prison system's generated inequality can be noticed among ethnic minorities. Indeed, the product of this inequality is an astounding incarceration rate among African Americans born since the 1970s and is mostly hitting the ones with a lower level of education. Thus, serving life in prison became a normal event for some specific minorities. The social inequality created by the imprisonment system is characterized by its invisibility, by it being cumulative and intergenerational. The former, is because the incarcerated population lies outside the standardized official accounts that trace the economic well-being. Therefore, the extent of the disadvantage of the groups that face a high incarceration rate is actually underestimated.<sup>24</sup>

As seen in the previous chapter, the incarceration rate has been increasing over time since the British colonization, throughout the Jacksonian Era until Johnson and Regan's Administrations that gave birth to the Mass Incarceration Era with the War on Crime and the following War on Drugs. From 1980 to 2008, the United States has experienced a drastic rise in the incarceration rate, becoming eight times the historic average of 100 per 100,000 inhabitants.

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<sup>22</sup> (Jacobs and Helms 1996)

<sup>23</sup> (Gilmore 2007)

<sup>24</sup> (Western and Pettit 2010)

The already existing disparities of race and class have produced extraordinary rates of incarceration among young African American men. A graph from the *Technical Report on Revised Population Estimates and NLSY79 Analysis Tables for the Pew Public Safety and Mobility Project*, shows the huge racial disparity in the growth of the incarceration rate from taking into consideration 1980 and 2008. Moreover, it shows the great role that school education plays. The path from school to prison is a phenomenon called *school-to-prison pipeline*, which highlights the tendency of teenagers and adolescents from disadvantaged backgrounds to become incarcerated as the result of harsh municipal and school policies fostered by educational inequality. The patterns of criminalization in which the Mass Incarceration Era is rooted translate into the school context through the use of *school disturbance laws* and *zero tolerance policies*. The former, is also known

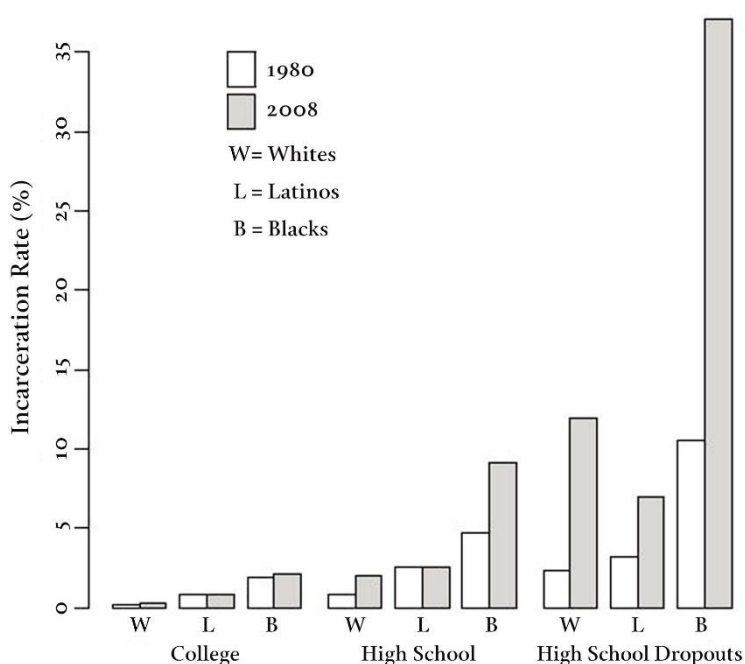


Table 1: Becky Pettit, Bryan Sykes, and Bruce Western, “Technical Report on Revised Population Estimates and NLSY79 Analysis Tables for the Pew Public Safety and Mobility Project” (Harvard University, 2009)

as *school disruption laws*, according to which in at least 21 states of the US even disturbing school is a crime, channeling students into the criminal justice system and reducing their ability to stay in the educational system. The latter was meant to avoid students and adults from bringing weapons or controlled substances into schools, however critics to these policies highlight that the policies have contributed to juveniles and prison overcrowding

and disproportionately target minorities without actually reducing the use of drugs or

weapons.<sup>25</sup>

### 2.1 Social and Political consequences of incarceration on society

The increased incarceration rates in the past five decades in the United States of America have created a population of more than 16 million of incarcerated and formerly incarcerated individuals. The American incarceration rate started its slow decline in 2010, reaching a total of 1,215,800 at yearend 2020, as stated by the report of the *United States Bureau of Justice Statistics*.<sup>26</sup>

<sup>25</sup> (Skiba 2000)

<sup>26</sup> (Carson 2021)

Imprisonment is not the only form of punishment, accompanying the incarceration growth there has been also an increase in the use of *parole* and *probation*, also known as *community corrections*. In 2008, 5.1 million of people in the United States were under community corrections, with 84% of them being on probation.<sup>27</sup> However, imprisonment is considered the most severe penalty a state has at its disposal if we do not take into account the death penalty.

Incarceration does not only impact families and people behind the bars. The removal of an individual from the general population for an extended period of time severs ties to family, social support, and other social institutions, affecting not only society and politics, but also the labor market and the economy. Considering the labor market, the unemployment rate is artificially lowered by high incarceration rates that remove people in the working-age population from the labor force. Moreover, incarceration creates a credential that disqualifies men and women from the labor force under the name of a criminal record, which inevitably impacts on the reduction of wages and lifetime earnings. Again, racial disparities play an important role in this phenomenon, indeed African Americans are the most affected by the reduction of earnings and employment.<sup>28</sup>

Families are extremely impacted by imprisonment as well, first and foremost it has consequences on family finances. The prison system is created in such a way that system-impacted individuals<sup>29</sup>, so families and their incarcerated loved ones, have to spend money for any basic necessity, almost going back to the British system of the 14<sup>th</sup> century where jailers were paid for blankets and food. The current incarceration system in the United States created a market with companies providing quarterly packages, which are packages sent every quarter with non-perishable food, clothes, and stationery. Moreover, the whole system is based on phone expenses. In fact, the market is filled up with companies providing secure phone lines to the Departments of Corrections, with recorded phone calls and a system that flags any word that might lead to criminal activity. Added to the phone costs there are also the costs for e-messages through controlled devices and applications, videocalls, together with the cost of self-help programs, and commissary money to support the incarcerated individual.

At a social level, incarceration affects families that end up suffering some *informal costs* such as societal stigma and loss of social support, added to the effect parental incarceration has on behavioral and mental health of children with an imprisoned parent. Moreover, health of both

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<sup>27</sup> (Glaze and Bonczar 2008)

<sup>28</sup> (Shannon and Uggem 2012)

<sup>29</sup> Social movements for the rights of incarcerated people in the US are focusing on finding non-derogatory words for all the people impacted by the prison system, trying to avoid words such as: *inmate*, *felon*, *convict*, and *ex-prisoner*, and working towards an implementation of words such as: *incarcerated individuals*, *system impacted individuals*, *formerly incarcerated person*. This final thesis supports the request of a non-denigratory choice of words made by the system-impacted community, nonprofit organizations, and many others, in order to reduce the social stigma created by the imprisonment system.

families and incarcerated individuals is extremely affected by the prison system. The damaging conditions in which the incarcerated population lives in have an impact on their physical and mental health, but also on the health of their loved ones on the outside that experience high levels of stress and anxiety regarding the wellbeing and safety of their family members behind the bars. As seen previously, even in this case African Americans are at a greater risk of experiencing poorer health conditions, because of the disproportionate impact to the exposure to imprisonment.<sup>30</sup>

It is extremely important to consider the impact of imprisonment on politics and political behaviors. Indeed, as found out by many researchers, such as Manza, Uggen, and Clear, high levels of incarceration in a community can lead to social instability and diminish the not only the civic but also the political engagement.<sup>31</sup> The effects of incarceration on politics can be found not only at a state level, but also at national and international levels. Still in 2020, the United States has prohibited to about 5.2 million Americans to vote as a result of a phenomenon called *felon disenfranchisement* or *felony disenfranchisement*, which consists in suspending or withdrawing voting rights to people convicted of a criminal offense. It is not an unknown practice, many other countries all around the Globe suspend the voting rights of incarcerated individuals. However, in the United States of America, the practice is extended to formerly incarcerated individuals as well. The felony disenfranchisement laws vary from state to state in the USA, with Maine, Vermont, the District of Columbia, and the US unincorporated territory of Puerto Rico have currently no restrictions, allowing incarcerated and formerly incarcerated individuals to vote. Currently, Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Tennessee, Virginia, and Wyoming are the only 11 states withdrawing voting rights to people in prison, under community corrections and even to formerly incarcerated individuals. Moreover, 21 States, such as California, Hawaii, and Illinois, only restrict voting rights to incarcerated individuals, meanwhile 16 other states, such as Idaho, South Carolina, and Texas, restrict voting rights to both people behind the bars and individuals under community corrections.<sup>32</sup> As a matter of course, the nonparticipation of incarcerated and formerly incarcerated individuals in political decisions has a great impact, especially considering the high rate of imprisonment in the United States of America.

Incarceration also affects the Government spending; the GDP and what policies strive for. As a matter of facts, the United States spends about \$81 billion per year on mass incarceration,<sup>33</sup> which includes prisons and community corrections, according to the Bureau of Justice Statistics. A higher government expenditure leads to a better Gross Domestic Product, which creates a tendency

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<sup>30</sup> (Massoglia 2008)

<sup>31</sup> (Manza and Uggen 2006); (Clear 2007)

<sup>32</sup> (Chung 2021)

<sup>33</sup> (Khun 2021)



to strive for incarceration policies rather than decreasing imprisonment and working on rehabilitation.

## ***2.2 Impact of prisons on impoverished communities***

The prison system has an important effect on disadvantaged neighborhoods, which are the ones with a higher incarceration rate. The impact of prisons on such neighborhoods comes into play with the re-entry of incarcerated individuals and the increasing use of community corrections, especially parole when it comes to the return into society of individuals that have been previously imprisoned.<sup>34</sup> Before going further into acknowledging the impact of both types of corrections on poorer urban neighborhoods it is important to underline what parole and probation are. The former is either the temporary or the permanent release of an incarcerated individual on the promise of good behavior. On the other hand, probation is a community sentence, where the individual is under supervision and must keep a good behavior to avoid continuing a sentence in jail or prison.

In the past decades the community correction system started playing an important role in the economic and social life of poor neighborhoods in the United States, with a dramatic increase of the number of Americans in the system. Both prisons and community corrections have a huge impact on these neighborhoods, especially after we have considered the relation between mass incarceration and social inequality. Therefore, while there is evidence that incarceration is concentrated in a disproportionate way in a number of specific communities which are typically urban neighborhoods, the studies about incarceration's effects on communities are sporadic. The existing studies show multiples issues, which prevent from understanding what is the cause and what is the effect. An important statement to be made is that the high incarceration rate in urban neighborhoods is extremely related and linked to previously existing social issues and disadvantages, starting of course with social inequality, and continuing with a high poverty rate, lack of investment by the government and lower public spending on specific neighborhoods. All these factors, lead to an increase in violence and consequently to a rise in the crime rate. Hence, it can be stated that the severe impact of incarceration rate only adds up to other non-resolved social issues, fostering the creation of an even more difficult environment. However, since there is a lack of current statistical evidence, the impact of prisons on communities can only be theorized and not stated with confidence.<sup>35</sup> With the data that can be currently taken into consideration, it is possible to notice that rates of incarceration are uneven, becoming extremely concentrated in specific neighborhoods, meanwhile other areas have extremely low level of imprisonment. It has been noticed by various scholars, such as Travis and Western that high rates of incarceration appear in communities with high rates of poverty, unemployment, and racial segregation. As stated

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<sup>34</sup> (Harding, Morenoff and Herbert 2013)

<sup>35</sup> (Travis, Western and al 2014)

previously, it seems that the criminal justice system, and therefore imprisonment, mostly affects African American communities.

In the affected neighborhoods, imprisonment fosters the creation of more issues and more violence, despite the thought of it being effective to reduce the use of brutal force and to foster safety. Creating further difficulties in the reentry of previously incarcerated individuals. In fact, to understand the difficulties of reentry it must be taken into consideration the conditions in which incarcerated individuals live in prior to their release. Considering the fact that incarcerated individuals are the result of their living conditions preceding their imprisonment, where lack of mental health support and violence play some important role, it must be stated that violence does not stop when individuals end up in the system. Actually, prisons are rooted in violence, with the creation of a sub society behind the bars made of its own rules, politics, and economy, that knows violence as the only mean of dialogue. The lack of effective behavioral and anger management programs in most prisons all across the United States, together with the insufficient mental health support and rehabilitation, racial disparities and the unification of Protective Custody Yards, Sensitive Needs Yards and General Population Yards in the institutions lead to an increase in violence that obstacles the effective rehabilitation on incarcerated individuals, that during their reentry will inevitably show lack of political interest, no high probabilities of finding a job, and propensity to anger in neighborhoods that are already violent.

Scholars have been studying the impact of prisons on communities and have taken two different approaches. The first hypothesis is that a high rate of incarceration should reduce the crime rate, because it takes crime-involved individuals off the streets creating a safer environment. However, even before the COVID-19 pandemic appeared, studies have shown that incarceration is often associated with recidivism when compared to community probation.<sup>36</sup> The second hypothesis is that high levels of incarceration disrupt the stability of a community, weakening forces of social control and having a subversive effect on crime, resulting therefore in more crime.<sup>37</sup> According to scholars like Clear, the focused incarceration on specific communities, which are already impoverished, leads to the break up of family ties, weakens social control capacity of families, creating a distorted political view and behavior, therefore leading to an increase in crime rather than a decrease in it.<sup>38</sup> Thus, it can be said that communities are directly impacted by incarceration and, as it has been already theorized by Sampson, the impact arises from the gender gap created by prisons into an affected community, where males are taken away from the society and from the

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<sup>36</sup> (Spohn and Holleran 2002)

<sup>37</sup> (Travis, Western and al 2014)

<sup>38</sup> (Clear 2007)

employment market, creating an even more impacting disruption.<sup>39</sup> Moreover, the incarceration system splits families by ripping people away from them and their community, placing them in chaotic, abusive and violent environments such as prisons. Indeed, prisons create an even more damaged individuals, that are forced not to show emotions and desensitize themselves in order to survive to the violent reality behind the bars. The difficult situation between prison walls is mostly made of tortuous conditions made of physical assaults, verbal abuse and sexual abuse from both prison staff and other incarcerated individuals.<sup>40</sup> Hence, as previously stated, the loss of working-age adults has a harmful effect on communities, is one of the effects of incarceration on communities and it has to be added to the shifting of public resources from health and social support system to the penal one as pointed out by the researcher Elizabeth Joanne Gifford in the North Carolina Medical Journal.<sup>41</sup>

Therefore, it can be stated that the impact of incarceration on impoverished communities fosters violence and crime, a decreasing presence of men and women in the employment market, and an always more increasing gender gap with men being most affected by incarceration. Moreover, it increases racial disparities as African Americans and Latinos are the most affected by the penal system. In addition, the use of incarceration as a primary form of punishment does not deter or incapacitate people from committing crimes, rather a high incarceration rate leads to the opposite. The lack of investments in social support system, education, health, the job market and in the better-off of specific neighborhoods is given by the fact that public resources are shifting to the penal system, thus enhancing the distrust in the government and its linked institutions as individuals can see a tendency in imprisonment rather than in helping and improving the communities living in disadvantaged neighborhoods. Additionally, incarceration fosters poverty, since families have to spend money on food, commissary items, phone calls, visits, to support their incarcerated loved ones.

### ***2.3 Violation of Human Rights behind the prison walls***

Prisons in the United States of America appear to be rooted in racial disparity, linked to the communities' political distrust in the government, and extremely tied to social disruption and poverty. Therefore, it is easy to see a red thread that binds together poverty, crime, and mass incarceration; this linkage leads to an infinite cycle of violence that is passed over from one generation to another. The prison system becomes the cause generational trauma and societal brutality instead of being a place of penitence and rehabilitation as it was thought and meant to be. As previously stated, prisons tend to be degrading and tortuous environments that desensitize the

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<sup>39</sup> (Sampson and Wilson 1995)

<sup>40</sup> (Law 2021)

<sup>41</sup> (Gifford 2019)

incarcerated individuals in the system. Many scholars and many organizations have pointed out that the conditions inside prisons and jails in the United States are a violation of human and civil rights, and basic human dignity. To better understand the lack of compliance with human rights inside the

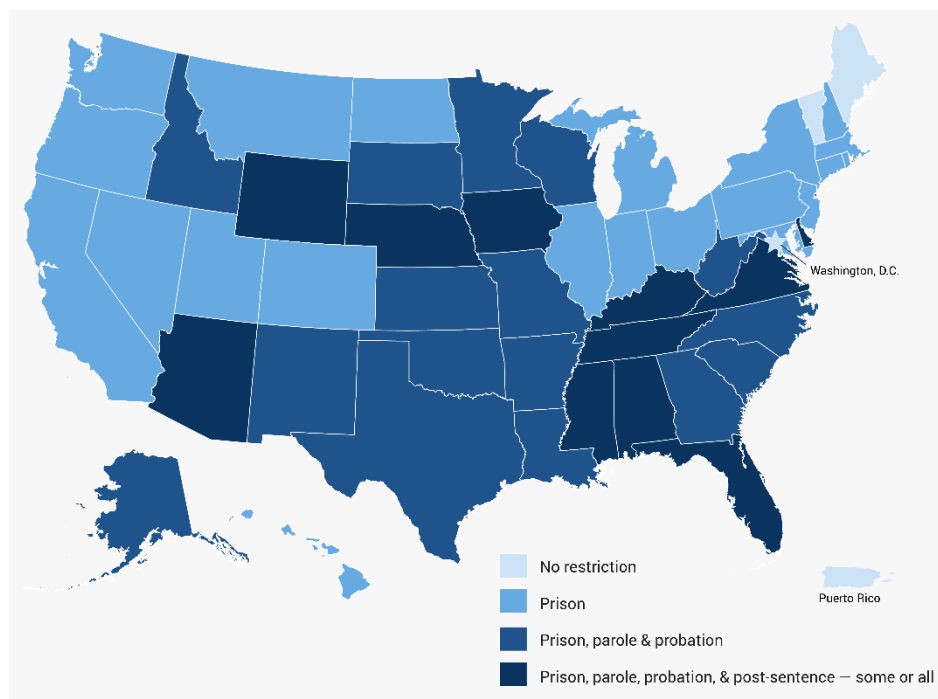


Figure 1: Voting Restrictions by State, 2021 - The Sentencing Project, *Voting Rights in the Era of Mass Incarceration: A Primer* by Jean Chung. July 28, 2021

United States incarceration system, it is better to first analyze some amendments of the US constitution and acknowledge which civil rights incarcerated individuals are able to keep once they enter into the imprisonment system. It is important to remember, before going further into this, that the United States of America is a federal

system, which means that the power is shared between national and state governments. Thus, it may happen that some civil and human rights are integrated into the punishment system of one state but not of another, such as for example voting rights. As previously stated, voting rights for incarcerated individuals vary from state to state, with only four 2 states, a federal district, and an independent territory that offer no voting restriction to incarcerated individuals, 21 states that withhold the voting right for the whole duration of the individual’s incarceration, 16 states that restrict voting rights to people in either prison or community corrections and 11 states that prohibit voting to currently and formerly incarcerated individuals and people under community corrections, as shown by the 2021 voting restriction map published by the Sentencing Project organization.<sup>42</sup>

There are two major Amendments in the United States constitution that protect the rights of incarcerated individuals. The amendment we have to take into consideration when talking about incarcerated people’s rights are the Eight and the Fourteenth. The former guarantees protection from cruel an unusual punishment, when talking about cruel and unusual punishment it is not really clear what the constitution means, this is why the Supreme Court of the United States has outlined which punishments fall in this category such as the execution of people with mental illnesses, life-without parole sentences for juveniles that have not committed homicide and handcuffing an

<sup>42</sup> (Chung 2021)

incarcerated individual to an horizontal bar while being exposed to the sun for several hours.<sup>43</sup> However, it applies also to the prohibition of excessive use of force and requires *humane conditions of confinement*, as stated in the case court *Farmer v. Brennan* of 1994 where it has been deliberated that the indifference by prison officials to a risk of harm to an incarcerated individual violates the Eight Amendment's clause against cruel and unusual punishment.<sup>44</sup> On the other side the Fourteenth amendment has a specific clause named *Equal Protection Clause* that courts recognized to be applied even to incarcerated individuals and protecting them from discrimination and unequal treatment based on sex, race, nation of origin, religion, and creed.<sup>45</sup>

At an international level, the United States of America has played an important role in setting out an international system of human rights protection in the past five decades. However, as pointed out by Amnesty International, the United States has not ratified some important treaties or has not implemented specific provisions of ratified treaties aimed at preventing human rights violations behind the bars, not only for men but also for women. With the non-implementation of specific provisions, the US has avoided that people within the Country would bring complains about human rights breaches to international overwatching bodies. It can be taken as an example the *ICCPR* or *International Covenant on Civil and Political Rights*, a treaty aimed at laying out fundamental civil and political rights for everyone and to which the USA became a party in 1992 reserving its right to not implement some specific provisions. For example, the United States of America considered itself to be bound by the prohibition of cruel and unusual punishment only in the meaning of cruel and unusual punishment as set out by the Constitution of the United States of America, and as a matter of fact was not going to prohibit more than was already prohibited by the US law.<sup>46</sup>

At a national level, the use of solitary confinement increased as a form of punishment implemented by the departments of corrections that has lead in 2011 the American Civil Liberties Union (ACLU) to submit a request to the Human Rights Council to address the violations of human rights deriving by the use of solitary confinement. ACLU pointed out how Solitary Confinement was supposed to be a short-term punishment for prison rules violations, but increasingly became a long-term form of punishment. Moreover, incarcerated individuals in solitary confinement are more like to face harsher punishment, excessive use of force, and physical abuse as often happens those correctional officers misuse of physical restraints.<sup>47</sup> Also, the common idea among prison staff that the worst people are in solitary confinement creates a tendency to not report abuse or staff

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<sup>43</sup> (Schwartzbach n.d.)

<sup>44</sup> (Farmer v. Brennan 1994)

<sup>45</sup> (HG.org n.d.)

<sup>46</sup> (Amnesty International 2011)

<sup>47</sup> (Isaacs and Lowen 2007)

misconduct by other staff members.<sup>48</sup> Amnesty International in another report supported what the American Civil Liberties Union stated and suggested the implementation of policies to ensure that Solitary Confinement is no longer used, together with reviewing the criteria for the confinement of individuals in supermax prisons since those are violent places that would not improve the conditions of already mentally ill, at risk of mental illness, or disabled people. Additionally, Amnesty International has also highlighted the conditions of women inside prisons and jails, where pregnant individuals are forced to give birth while having physical restraints such as cuffs on wrists and ankles. In addition to this abuse, there is also sexual abuse perpetrated by prison staff and physical searches made by male correctional officers. The latter is not illegal, according to the anti-discriminatory employment laws of the United States of America, however it is inconsistent with the *United Nations Standard Minimum Rules for the Treatment of Prisoners*, as pointed out by Amnesty International.<sup>49</sup>

Together with abuse and solitary confinement, activists have also pointed out that the living conditions of incarcerated individuals, the food given inside prisons and jails, and the prolonged periods of lockdowns or modified programming can actually be considered Human Rights violations, or at least disrespect towards basic human dignity.

#### ***2.4 Prisoners' rights movements, abolitionists, and reformists***

The incarcerated people's living conditions raised the attention of multiple people, citizens, legislators, scholars, and impacted individuals, giving birth to social movements aimed at improving imprisoned individuals' conditions. The first social movement for incarcerated individual's rights was born within the prison population, a century after the ruling of 1871 that established the forfeit of liberties and personal rights, becoming slaves of the states, the prison population found itself to having constitutional rights denied.<sup>50</sup> This denial led to the demand, from the prison population, for constitutional rights in the early 1960s, demonstrated the need for a change, and demanded dignity and humanity inside prisons. In 1971 the *Attica Prison rebellion* wrote a Manifesto that ended with the famous quote "*We are firm in our resolve, and we demand, as human beings, the dignity and justice that is due to us by our right of birth*". This pushed the development of the Prison Movement of the 60s and 70s, formed by several smaller movements, riots and rebellions aimed at sensitizing people on prison condition and require a humanization of prisons living standards, furthermore, requesting to implement the "rehabilitative ideal" of prisons through the use of civil rights activism, and disobedience through riots and rebellions behind the bars. Moreover, what this prison movement really wanted was a reduction of the population among

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<sup>48</sup> (American Civil Liberties Union 2011)

<sup>49</sup> (Amnesty International 2011)

<sup>50</sup> (Jacob 1980)

the prison walls, the exposure of abuse and of the increasing ghettoization of the incarceration population which led to hate and discrimination among different ethnicities and fostered the creation of more prison gangs.<sup>51</sup>

In 2011 another important event signed the prisoners' rights social movement, the *Pelican Bay's Prisoner Human Rights Movement* that was characterized by a major hunger strike in 2011 and a following one in 2013. It was launched in the supermax Pelican Bay State Prison in California as a consequence of individuals being moved from general population and placed to solitary-confinement units as a result of gang affiliation accusations. The movement highlighted the inadequacies of the California Department of Corrections and Rehabilitation, also known as CDCR. Such inadequacies were mostly the systemic and deep-rooted issues of the institution itself and its own chain of command, however it also shed a light on brutality and injustices.

The hunger strike of July 2011 caught the attention of the United Nations, and the United Nation General Assembly published a Human Rights Council report about torture, degrading, inhumane and unusual treatment of incarcerated individual. It outlined an international consensus on the cruelty of solitary confinement, considering it as a torture. In 2013 a second hunger strike arise and mobilized a total of 30000 incarcerated individuals from prisons all across California. It ended with a court order of force-feeding incarcerated individuals after the 59<sup>th</sup> day of hunger strike. However, Pelican Bay's movement pushed the Republic of California to work on rehabilitation-oriented policies. The results of this huge social movement, that has been characterized by the work of system-impacted individuals, incarcerated and formerly incarcerated people, organizations, assembly members and senate representatives can be seen specifically in California with the 2021 approved bills which goal seem to be willing to improve the reduction of harsh sentences and enhancements, together with the improvement of educational programs and the foster system to reduce the impact of the school-to-prison pipeline.

As a consequence of prisoners' rights movements, in the past few decades two different groups of activists have differentiated themselves, distancing from one another, although both were already existing: Abolitionists and Reformists. Despite working together on a common issue, they have two different perspectives of the system's reform. The latter, inevitably wants to improve the conditions inside prisons and jails while maintaining them. On the other side the former aims at an abolishment of the system as a whole, stating that prisons are not working as a deterrence and actually lead to an increase in crime. However, considering the current predisposition of the United States to reform the prison system, it can be said that abolition is far away from the policymakers' mindset, nevertheless it can be considered the final step of a long path that starts from the reform of the

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<sup>51</sup> (Berger, et al. 2016)

system and ends with its replacement into community rehabilitative programs with a subsequent abolition of prisons.

It can be stated that there has never been a lack of activism inside prisons. Indeed, incarcerated people and their Loved Ones have always raised their voice against injustice, retaliation, and the systemic issues of the system. People behind the bars have been stigmatized through the years, therefore the change towards a reform of the system and consequently an abolishment of it can happen only when the society will detach from the rooted ideal of punishment and governments will focus more on rehabilitation, education, equality, and mental health.

### **3 California**

The United States incarceration rate of each state are much higher if compared to the rest of the world. As found out by the Prison Policy Organization the disparity in incarceration can not be explained by the differences between nonviolent and violent crime. In fact, as highlighted by the Justice Policy Institute, the distinction between violent and nonviolent crimes can not be considered clear, as what is seen as a violent crime varies from state to state, thus setting the basis for the creation of inconsistencies among the United States of America<sup>52</sup>. A report of the Vera Institute of Justice, regarding the year-end count of incarcerated individuals, shows a slowly decreasing trend from 2019 to 2021 among all states. According to this report, Texas and California are the states that lead the incarceration system in the United States, with a total of 133,424 incarcerated individuals in Texas and 101,032 imprisoned people in California by the end of 2021.<sup>53</sup> Incarceration also affects federal agencies, with a total of 242,847 incarcerated individuals among the Bureau of Prisons, the United States Marshals Services (USMS) and the Immigration and Customs Enforcement (ICE).

This chapter will focus on the State of California and will analyze different sentences focusing on the most controversial ones: Death Penalty and Life Without Possibility of Parole (LWOP) also known as death by incarceration. Moreover, excessive enhancements and counterproductive policies will be discussed in order to lay out the effects of long sentences and a tough-on-crime approach on society, incarcerated individuals, and outcomes of incarceration. Then, it is important to analyze the way in which California is softening the tough-on-crime approach through the bills passed in the last decade that push more towards a rehabilitative system rather than a punitive one. Finally, this chapter will explain the data gathered in a research survey shared among Facebook Support groups for individuals with an incarcerated Loved One in the State. The research survey has the aim to highlight the voice of 216 people that have been willing to share their answers in an

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<sup>52</sup> (Justice Policy Institute 2016)

<sup>53</sup> (Vera Institute of Justice 2022)



anonymous form, and to underline the impact of incarceration at an emotional, social, and financial level.

### ***3.1 Death Penalty and LWOP – death by incarceration***

The Death Penalty, or capital punishment, is considered a legal penalty in the state of California. From 1778, when it was firstly instituted, until 1972, when the punishment's statute was put under a judicial review as a result of the *People v. Anderson* case, a total of 709 people has been executed in the State. The *People of the State of California v. Robert Page Anderson* case was a turning point in the use of Death Penalty for the state and outlawed its use. In this case the defendant was found guilty of first-degree murder and was convicted with the use of the death penalty, however, the decision was automatically appealed to the court under section 1239b of the California Penal Code which provides an automatic appeal to the California Supreme Court after that a death sentence is issued. The defendant proved that the *veniremen*, the people summoned for jury service, were excluded from the jury panel, thus violating the standards set out in *Witherspoon v. Illinois* by the Supreme Court, thus unconstitutionally imposing the capital punishment. The court ruled, in a third hearing, the cruel and unusual foundations of the capital punishment, as it dehumanized the parties involved. Furthermore, highlighting that a growing population, with a decreasing number of executions, was evidence in the American society that this type of punishment was no longer accepted. The grounds for the punishment's unconstitutionality came from *Article 1, section 6* of the California Constitution of the time, which now has been moved to *Article 1, section 17*, which states that no cruel or unusual punishments should be inflicted, thus prohibiting either of two conditions, therefore the court found the death penalty unconstitutional at a state level since it violated a state provision, but declined to consider if it violated the Eight Amendment of the United State Constitution as it was already found to be violating the state's one.<sup>54</sup> The ruling has been overturned in the following few months after that California voters reintroduced the capital punishment through the use of a referendum that passed with a 67% of votes being pro to the death penalty. This led to the creation of *Proposition 17* of 1972 that reintroduced the capital punishment. Since the implementation of Proposition 17, the state of California has put hundreds of incarcerated individuals on the death row, however only 13 people have been executed. In 2006, the last execution took place as executions were put on hold as a result of a federal court order over a concern about lethal injections. As a matter of facts, during the execution of an incarcerated individual, Michael Angelo Morales, on February 21, 2006, the execution was stayed as he claimed that the lethal injection administered by the state of California would violate the Eight Amendment of the United States Constitution and subject him to an unnecessary risk of pain, thus violating the protocol on cruel and unusual punishment. As pointed

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<sup>54</sup> (People v. Anderson 1972)

out by the California Department of Corrections and Rehabilitation's website, in 2007 the court has identified some deficiencies in the lethal injection protocol of the state of California, which arose from the case *Morales v. Tilton*. According to the court decision, there are five inadequacies: the inconsistent and unreliable screening of the execution team; the lack of training, supervision, and oversight of the team; an unreliable record keeping which is also inconsistent; and improper mix, preparation, and administration of the lethal injection; and the inadequate conditions and poorly designed facilities in which the team works. The death penalty in the state of California is not allowed to be carried out, despite it being legal, because the Governor Gavin Newsom halted it through an official moratorium, that at the end of Newsom's term will reestablish the legality of the punishment. Moreover, in 2012 and 2016, California voters have rejected the repeal of the capital punishment, and a proposal to expedite the appeal process was adopted in 2016.<sup>55</sup>

Another controversial sentence is the *Life Without Parole*, or *Life Without Possibility of Parole* (LWOP). Life without parole is the harshest sentence short for the death penalty and is a prison sentence where a defendant is committed to life in prison. It is also mentioned as *death by incarceration* because people sentenced to it are extremely unlikely to see freedom ever again. However, as any other sentence, it can be challenged after being imposed through petitioning the governor for a *commutation*, filing an *appeal*, or filing a *writ of habeas corpus* decision. The governor commutation is an executive clemency that will reduce or eliminate an incarcerated individual's sentence; thus, it can be used for any sentence, but in this specific case would make an individual eligible for parole in front of the California's Board of Parole Hearings, hence increasing the chances of release. The process for appeal is more difficult, as there must be grounds for improper admission or exclusion of evidence, prosecutorial or jury misconduct, ineffective assistance, or counsel; therefore, it is harder to file an appeal. In the case the incarcerated individual has filed all possible appeals, the last path to take is a writ of habeas corpus, a legal petition in which a person can challenge his or her conviction or sentencing conditions. However, three requirements must be met: the petitioner must be an incarcerated individual, must have exhausted all other appeals, the issues must not be already resolved by a court of appeal. Thus, an approved habeas corpus seems to be even more difficult than the previous two paths.

California has approximately 5200 people serving life without parole. The sentence was first enacted as a more humane form of punishment that had to be an alternative to the death penalty. The controversy of this sentence is that it is considered to be the same as of the capital punishment, since time reduction bills do not apply to incarcerated individuals sentenced without possibility of parole, hence they can not prove growth, change, and rehabilitation in order to go through a

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<sup>55</sup> (California Department of Corrections and Rehabilitation n.d.)

possible release, accordingly, they are stripped of hope. Life without possibility of parole is widely seen as an alternative to death penalty, as its level of punitiveness seems to match the one of capital punishment. It is often preferred as an alternative even by death penalty abolition advocates, however among abolitionists and reformists a lot of people see it as cruel and unusual as the death penalty. As suggested by Haines, the idea of finding an alternative to capital punishment is not a contemporary pursuit, but it is rooted in the abolitionist movement. The use of Life without parole, was suggested by Cesare Beccaria, the penal philosopher that has been considered one of the greatest thinkers of the Enlightenment Age. Beccaria argued in *An Essay on Crimes and Punishment*, *Dei Delitti e Delle Pene* in Italian, that the death penalty has to be replaced by a perpetual penal sentence:

*The death of a criminal is a terrible but momentary spectacle, and therefore a less efficacious method of deterring others, than the continued example of a man deprived of his liberty...reduced to that miserable condition for the rest of my life. A much more powerful preventive than the fear of death.*<sup>56</sup>

Even Beccaria, paradoxically, has agreed that the penal slavery he proposed to replace the death penalty with was actually even more painful and cruel, thus making him a heavily criticized person due to his inconsistency.

The controversy with life without parole is actually that it is seen as a more humane punishment, but it is actually not as it strips away any possibility of hope and freedom that people may have. Thus, prison abolitionists and reformists argue that the impact of life without parole is the same of death penalty but prolonged in time.

### ***3.2 Excessive Enhancements, counterproductive policies, and a path towards reform of the Criminal Justice system***

The state of California is one of the many in the United States to still use the Three Strikes' Sentencing Law, which was originally enacted in 1994 and in essence required any defendant convicted on any felony, that already had a prior conviction of a serious felony, to be sentenced to state prison for twice the convicted time. In the case of the defendant being convicted of any felony with two or more prior convictions, the law mandated a state prison term of at least 25 years to life. However, this law has been amended in November 2012 by Proposition 36 with two provisions: the requirements for sentencing a defendant as a third striker requires the new felony to be serious or violent to qualify for the 25 year-to-life sentence. Moreover, it added a mean by which specific

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<sup>56</sup> (Beccaria 1764)

incarcerated people that are currently serving as third strikers can petition for a reduction of their term to a second-strike sentence.<sup>57</sup> Added to the impact of the three strikes law in how sentences are applied, there is also the impact of enhancements which in most cases exceed the base term of the sentence. This not only has a huge effect on how families live the incarceration of a Loved One, that becomes a long-lasting expense both for the State and for family members outside prison, but also has an effect on the length of sentences, prison overcrowding and possibilities of rehabilitation. As a matter of facts, longer sentences diminish hope in most individuals, and when they are put in an already violent and overcrowded environment it adds trauma, and tendency to violence as an answer to issues or as a defense mechanism.

The state of California has done some big steps towards a criminal justice system reform, both thanks to more open-minded policymakers, but also thanks to a developing mentality that being harsh on crime is not the path for safer society. The road is inevitably still long, and obstacles can arise at any time, such as pandemic, a change in the political mindset of the state due to a different party being elected, but the work of organizations is not being unnoticed.

The last decade tendency on being softer on crime and actually focus on rehabilitative programs rather than punishment is showing off with the bills that have been passed. Clear examples are SB 1437, authored by skinner that limits the use of the felony murder rule, which was passed in 2018 and has been in effect since 2019, thus reducing the possibilities of people being held liable for murder only when assisting or being a witness. Other bills that have passed are AB965, authored by stone that improved the expanding of credit earning possibilities for people that are eligible of youth parole, it was passed by the California legislature in 2019 and has been implemented in 2022. Some politically important measures that passed are ACA6, AB 646 a Proposition 17 of 2020, the first two are also known as Free the Vote Act measures, which were needed to pass the legislature so that Proposition 17 could be on the ballot. The goal of all three was restoring voting rights to every person who has completed their prison term in California. In 2020, thanks to Proposition 17 passed, and restored voting rights for all formerly incarcerated individuals. To highlight the importance of rehabilitation and programs inside prisons, AB 292 passed in 2021 and was implemented starting January 2022. It is also called The Access to Programming Act, authored by Stone, that aimed at reducing barriers to programs in prison, thus minimizing long waitlists, transfers and inflexible work schedule that would create a conflict in the attendance of programs. It also ensured the continuity of programs during lockdowns since they are an important part of rehabilitation.<sup>58</sup>

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<sup>57</sup> (California Courts: The Judicial Branch of California n.d.)

<sup>58</sup> (Initiate Justice n.d.)

Currently, there are six bills that are going through the legislative process in California, one of them is particularly important as it highlights the need to find alternatives to incarceration and stop an overuse of imprisonment.<sup>59</sup> Another extremely important bill is AB 22632 introduced by Holden that places a limit on the use of solitary confinement, with the possibility of actually abolishing it for vulnerable groups, and suggest the need of a clear record-keeping over the use of solitary confinement. This last bill has currently passed the Assembly Public Safety Committee, the Assembly Appropriations Committee, and the Assembly Floor. It is a bill of a crucial importance, as the reduction in the use of solitary confinement would lessen the harsh punishments incarcerated individuals have to go through and that most of the time create more damage than rehabilitation.<sup>60</sup>

### 3.3 Impact of incarceration on people with a Loved One in Prison

The impact of incarceration on families has been argued in the previous and current chapter, however, to further show the social, psychological, and financial impact incarceration has, a survey has been run among Facebook support groups for people with an incarcerated Loved One in California. A total of 216 people has answered to the survey, hence showing the impact of imprisonment on the individuals that have been willing to anonymously answer to questions.

The first question in the survey was about the confidence people with an incarcerated individual have in the California Criminal Justice System, with a total of 85.2% of people having very little confidence in the criminal justice system of the state of California and 14.4% people having just some confidence. The two following questions are about rehabilitation inside federal and state prisons, and jails. In the survey it was asked whether people believed if the system is

rehabilitative and if they believed that their loved ones are being rehabilitated.

How much confidence do you have in the California Criminal Justice System?  
216 responses

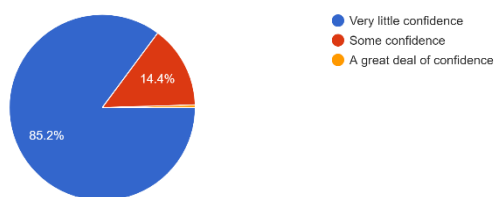


Chart 1: Confidence in the California Criminal Justice System

answer to these questions.

The two following pie charts are the

In general, do you believe that prison is rehabilitative?  
216 responses

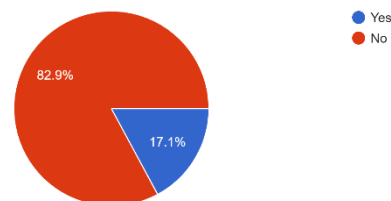


Chart 2: Is prison rehabilitative?

<sup>59</sup> AB 2167 Alternatives to Incarceration (Kalra)

<sup>60</sup> (Initiate Justice 2022)

Do you think that prison is rehabilitating your Loved One?  
216 responses

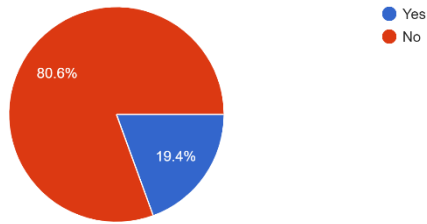
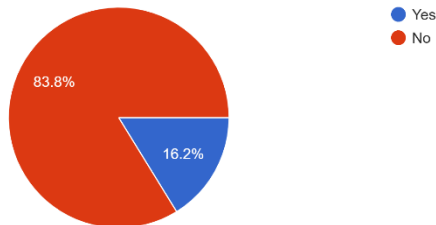


Chart 3: Is prison rehabilitating your Loved One?

The charts clearly show that the majority of the people that have answered to the survey does not believe that incarceration is actually rehabilitative. As a matter of facts, following question asked about the presence of rehabilitative programs inside of institutions and jails, which for the majority

Does the Institution/Jail where your Loved One is incarcerated offer enough rehabilitative programs?  
216 responses



of people that answered are not enough and are barely run.

Chart 4 Are enough rehabilitative programs offered?

The survey also tried to analyze whether incarceration of a loved one has impacts on emotions, and finances, added to the decreasing trust in the system

itself. When it comes to emotions, people answering to the survey showed that they are extremely impacted by it. As the chart shows, a total of 182

From 1 to 5, how much does your LO Incarceration have an impact on your emotions?  
216 responses

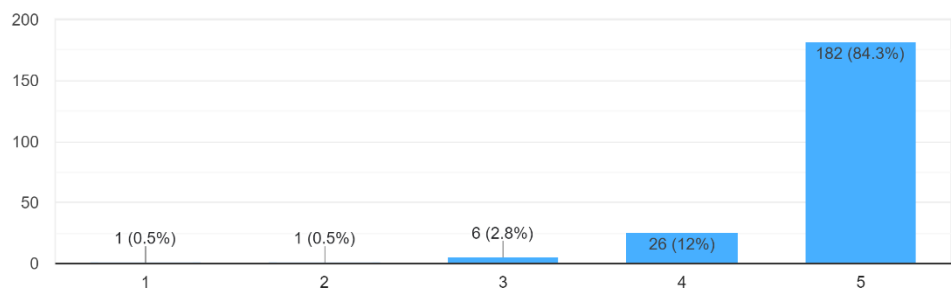


Chart 5: Impact of incarceration at an emotional level

people have answered that incarceration has a great impact on their emotions.

Regarding family expenses, incarceration plays an ever more important role, as people need to spend money in supporting their imprisoned loved one. The following chart shows on what people with an incarcerated individual spend money on. The expenses of a family with an incarcerated

individual are mostly on quarterly packages, phonecalls, letters and stamps, e-messaging devices for the facilities that have provided tablets, all of this added to expenses for

in person visits which tend to be quite high since prisons are not placed near cities, but tend to be outside of populated areas.

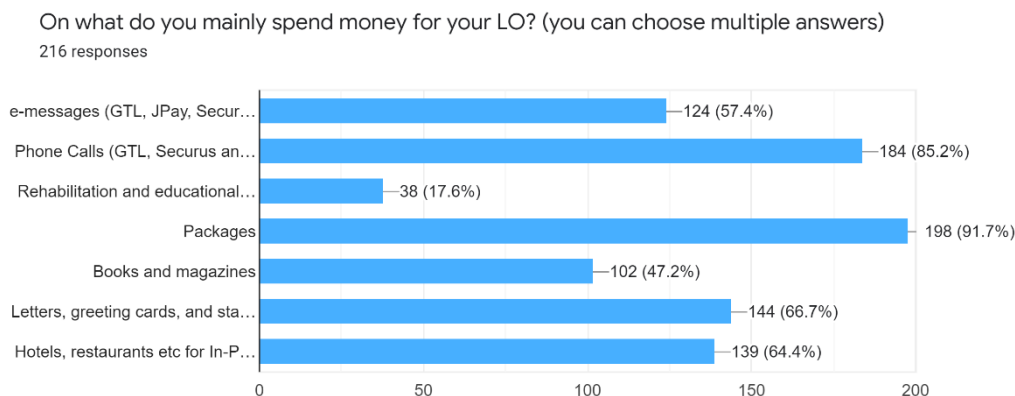


Chart 6: Expenses for families with an Incarcerated Loved One

The survey also found out that many of the people that answered are worried about Correctional Officers' retaliation against their loved ones, which creates a tendency of inaction when it comes to issues in prisons or jails. Moreover, many people are constantly worried about their loved ones health, safety, and diet, which can be the result of acknowledging the violent environment that prison is, and it highlights the distrust in the system. Many people feel also socially impacted by incarceration, with a total of 88.9% of people stating that having a loved one incarcerated changes how people see and talk to them.

Moreover, demographic questions have been asked and among 216 people answering, the 56.9% of people has an incarcerated loved one that is either hispanic or latino, 20.8% have a black or African American incarcerated loved one, and 18,1% a white incarcerated individual. The rest are either Native Americans, Asian or Pacific Islanders. Even in this case, the survey showed the great racial disparity of incarceration, even if it is a small sample of people, with hispanic and african americans being the most hit individuals in this population. The most hit age group is the one between 35 and 44 years old, with a total of 200 people having a loved one incarcerated in a California State Prison, 7 in a county jail, and 9 in a federal prison.

Even though this survey has no important relevance because it considers a small sample of people, it already gives an hint of the impact of incarceration on individuals and families with an incarcerated loved one, not only at an emotional level but also at a social and financial one. It also showed a decreasing trust in the criminal justice system for people being directly affected by

incarceration. At a political and policymaking level, the effect of incarceration on society should be a concern for the creation of an effective policy framework that aims at reducing both the crime and the incarceration rates, by taking into account social backgrounds, impact on incarcerated individuals and families, and impact on politics.

## **Conclusion**

This thesis has outlined the history of the United States Imprisonment system, going from the creation of the first colonies by the British crown, through the Jacksonian Era and the Reconstruction and Progressive Eras, until the current situation in the Mass Incarceration Era, where social movements composed by abolitionists, reformists and incarcerated individuals have arisen and raised their voices in order to show the deficiencies of a punitive system that is mostly rooted in racism and punitive measures, rather than an effective rehabilitation and reintegration into society.

Incarceration in the United States of America is therefore the outcome of a war on drugs, followed by a never-ending war on crime, that fostered a tough-on-crime policy framework which focused only on imprisonment as a punitive measure, thus creating the idea that incarceration creates a safer society, but forgetting the impact it has on individuals directly impacted by it. As a matter of facts incarcerated individuals are expected to reenter society without being violent, after being placed for years, or decades, in violent environments with lack of programs aimed at facilitating a reenter in society and rehabilitation. However, incarceration does not have an impact only on social behaviors, but it also impacts markets and politics. At an economic level, it takes away people from the working force, and the stigma on formerly incarcerated individuals is reflected when they try to reenter the labor market with extreme difficulties, thus creating an imbalance in the unemployment rate. On a political level, incarceration among the United States of America takes people away from the voting population, inevitably changing the voting trends during elections.

The last chapter focused on California, the second state per incarceration in the United States. It appears to be a state where the three strikes laws and enhancements have led to an increasing overpopulation inside prisons, but it is also the home of incarcerated individuals' rights movements such as the San Quentin's Hunger Strike and is currently moving towards a legislative perspective that comprises not only rehabilitation, but also alternatives to incarceration. Inevitably, the path towards a reform is long, but California seems to be pushing towards this direction as many system-impacted individuals speak up and join organizations to implement and help in supporting the creation of assembly and senate bills that will lay the foundation for a reform of the California criminal justice system itself. Despite the presence of the death penalty in the state, which is



currently halted by a governor's moratorium, California seems to be the center of a thriving justice reform.

Finally, it can be said that the Penitentiary System of the United States of America has been effective in the past, but the incarceration trend created more issues than benefits, negatively impacting communities, politics, markets, and most importantly people's lives. In the same way as our society evolves, even the criminal justice system needs to transform, stepping away from the slavery ideal of incarceration and from racism, looking more towards human rights and human dignity, rather than looking at previous mistakes and increasing sentences as an effect of it. The United States Incarceration System is not effective anymore, it creates generational trauma, fosters violence and does not provide safety in society. It is, now more than ever, extremely important to focus government expenses on education, and investments in developing neighborhoods, which on the long term will provide a reduction in poverty, crime, and incarceration.

## Riassunto

Il principale obiettivo di questa tesi di laurea, riportato sin dall'introduzione della stessa, è quello di analizzare il sistema penitenziario degli Stati Uniti d'America, per capirne l'efficacia e l'impatto sociale. L'importanza di questo tema è cruciale per la stesura di un quadro di riferimento per le politiche volte a ridurre il tasso di crimine e di conseguenza quello di incarcerazione, ma altrettanto per comprendere se abbia una funzione positiva all'interno della società stessa. La società americana si è sviluppata con l'idea che l'incarcerazione di massa sia la soluzione al tasso di crimine e che di conseguenza crei una maggiore sicurezza nella società.

Per comprendere l'efficacia del sistema penitenziario americano ed il suo impatto sugli individui, questa tesi si è sviluppata in tre capitoli, percorrendo la storia del sistema penitenziario americano, partendo dal sistema inglese, fino ad arrivare all'istituzione delle prime colonie americane. Infatti, è proprio da qui che il sistema penitenziario americano si inizia a formare, quando la corona inglese, con il *Transportation Act* del 1718, inizia a dirigere i detenuti britannici nelle colonie americane, così da alleggerire il sovraffollamento delle prigioni inglesi.

Il sistema di incarcerazione degli Stati Uniti d'America si è però sviluppato durante tre ere ben specifiche: l'era Jacksoniana, l'era della ricostruzione e l'era progressista ed in fine l'era dell'incarcerazione di massa, considerando come la guerra al crimine (*war on crime*) e la guerra alle droghe (*war on drugs*) abbiano delineato l'era dell'incarcerazione di massa, inevitabilmente creando un aumento nel tasso di incarcerazione.

È importante considerare, nel momento in cui si decida di studiare questa istituzione, il profilo intensamente politico della stessa. Infatti, il sistema penitenziario, specificatamente quello Americano, è stato considerato da vari studiosi e ricercatori come intensamente politico, dove le normative di giustizia penale sono state estremamente influenzate dal pensiero politico delle varie presidenze e dall'influenza del partito repubblicano o di quello democratico. Le politiche intraprese di presidenza in presidenza, partendo dalla guerra alla povertà ed arrivando alla guerra alle droghe, hanno portato all'incarcerazione di circa due milioni di persone negli Stati Uniti d'America. Per comprendere l'impatto del sistema penitenziario sulla società americana è importante tenere in considerazione le differenze socioculturali che caratterizzano gli Stati Uniti d'America, in quanto ineguaglianza sociale e le differenze etniche formano una parte estremamente importante dell'incarcerazione americana, la quale crea un ciclo infinito di trauma generazionale. L'ineguaglianza sociale frutto delle prigioni americane può essere notata nell'alto tasso di incarcerazione di afroamericani e latinoamericani, il quale delinea la differenza tra bianchi e persone di differenti etnie. Perlopiù, il tasso di incarcerazione ed il trauma creato da esso aumenta

con le leggi di non interruzione delle scuole e con le politiche di non tolleranza, le quali creano un percorso che dalle scuole porta gli adolescenti in prigione, questo fenomeno viene chiamato *school-to-prison pipeline*.

L'incarcerazione non colpisce solo le famiglie e le persone dietro le sbarre. La rimozione di un individuo dalla popolazione generale per un lungo periodo di tempo recide legami con la famiglia, con il sostegno sociale e con altre istituzioni non solo sociali e politiche, ma anche quelle che interessano l'economia. Considerando il mercato del lavoro, il tasso di disoccupazione è artificialmente abbassato da alti tassi di incarcerazione, i quali rimuovono le persone in età lavorativa dalla forza lavoro. Inoltre, l'incarcerazione crea una credenziale che squalifica gli uomini e le donne dalla forza lavoro sotto il nome di un *casellario giudiziario*, che influisce inevitabilmente sulla riduzione dei salari ed i guadagni nel corso della vita. Ancora una volta, le disparità razziali svolgono un ruolo importante in questo fenomeno, infatti gli afroamericani sono i più colpiti sia dalla riduzione dei guadagni che dell'occupazione.

È estremamente importante considerare anche l'impatto della detenzione sulla politica e sui comportamenti politici. Infatti, come evidenziato da molti ricercatori, come Manza, Uggen e Clear, alti livelli di incarcerazione in una comunità possono portare ad instabilità sociale e diminuire non solo l'impegno civile ma anche l'impegno politico. Gli effetti dell'incarcerazione sulla politica si riscontrano non solo a livello statale, ma anche a livello nazionale e internazionale. Considerando il 2020, così come nel 2022, negli Stati Uniti era ancora presente un divieto, per circa 5,2 milioni di americani, di votare a causa di un fenomeno chiamato *felony disenfranchisement* o privazione del diritto di voto, il quale consiste nella sospensione o nella revoca dei diritti di voto a tutte le persone condannate per un reato penale. Non è una pratica sconosciuta, molti altri paesi in tutto il mondo sospendono i diritti di voto degli individui incarcerati. Tuttavia, negli Stati Uniti d'America, la pratica è estesa anche agli ex detenuti ed a coloro in libertà condizionale.

L'incarcerazione influisce anche sulla spesa pubblica; sul PIL e su quali politiche vengono perseguite. Gli Stati Uniti spendono circa 81 miliardi di dollari all'anno in incarcerazioni di massa, che includono prigioni e correzioni comunitarie, secondo il *Bureau of Justice Statistics*. Una spesa pubblica più elevata porta a un migliore prodotto interno lordo, che crea una tendenza a lottare per politiche di incarcerazione piuttosto che diminuire la reclusione e lavorare sulla riabilitazione.

Il secondo capitolo di questa tesi ha perciò delineato come le prigioni negli Stati Uniti d'America sembrano essere radicate nella disparità razziale, legate alla sfiducia politica nel governo da parte delle comunità, ed estremamente legate alla disgregazione sociale e alla povertà. Pertanto, è facile vedere un filo rosso che lega insieme povertà, criminalità e incarcerazione di massa; questo legame porta a un ciclo infinito di violenza che viene trasmesso da una generazione all'altra. Il sistema

carcerario diventa la causa del trauma generazionale e della brutalità sociale invece di essere un luogo di penitenza e di riabilitazione come si pensava e si voleva che fosse. Come affermato in precedenza, le prigioni tendono ad essere ambienti degradanti e tortuosi che desensibilizzano gli individui incarcerati nel sistema. Molti studiosi e molte organizzazioni hanno sottolineato che le condizioni all'interno delle prigioni e delle carceri negli Stati Uniti sono una violazione dei diritti umani e civili e della dignità umana di base. È proprio dalle condizioni degradanti all'interno delle carceri americane che si sono creati i primi movimenti social per i diritti dei detenuti in America. Il primo movimento sociale per i diritti dei detenuti nacque all'interno della popolazione penitenziaria stessa, un secolo dopo la sentenza del 1871 che stabilì la decadenza delle libertà e dei diritti personali, facendo perciò diventare i detenuti schiavi dello stato stesso, facendo sì che la popolazione dietro le sbarre si trovasse ad avere diritti costituzionali negati. Questa negazione ha portato alla richiesta, per i diritti costituzionali nei primi anni 1960, dimostrando la necessità di un cambiamento, e richiedendo dignità ed umanità anche per gli individui in carcere.

Il terzo capitolo di questa tesi analizza lo stato della California, secondo stato per incarcerazione dopo il Texas. La crescente sovrappopolazione all'interno delle prigioni nello stato della California sembra essere la conseguenza della *three-strikes law*, o legge dei tre reati, insieme ad una politica giudiziaria che prende in considerazioni aggravanti eccessive e crimini precedenti. Nonostante ciò, la California è anche la sede di movimenti per i diritti delle persone incarcerate come lo sciopero della fame di San Quintino. Lo stato attualmente si sta muovendo verso una prospettiva legislativa che comprende non solo la riabilitazione, ma anche alternative all'incarcerazione. Inevitabilmente, il percorso verso una riforma è lungo, ma la California sembra spingere verso questa direzione. Nonostante la presenza della pena di morte nello stato, che è attualmente fermata da una moratoria del governatore, la California sembra essere il centro di una riforma della giustizia fiorente. Alla fine di quest'ultimo capitolo, vengono analizzati i dati ottenuti tramite un sondaggio eseguito tra vari gruppi di Facebook adibiti al supporto di persone con un familiare incarcerato in California. Avendo ricevuto 216 risposte anonime, il sondaggio non può essere considerato come rappresentativo della popolazione presa in considerazione la quale è estremamente più vasta, ma può aiutarci a comprendere l'impatto del sistema penitenziario su molti individui. Il sondaggio dimostra che tra 216 individui molti non hanno più fiducia nel sistema penitenziario, il quale non viene considerato riabilitativo dal 80.2% dei partecipanti al sondaggio.

Infine, si può dire che il Sistema Penitenziario degli Stati Uniti d'America è stato efficace in passato, ma la tendenza all'incarcerazione di massa ha creato più problemi che benefici, influenzando negativamente le comunità, la politica, i mercati e, soprattutto, la vita delle persone. Perciò attualmente è necessaria un'evoluzione del sistema stesso. Nel medesimo modo in cui la nostra società si evolve, anche il sistema di giustizia ha necessità di trasformarsi e focalizzarsi

maggiormente sui diritti umani e la dignità delle persone. Ora più che mai, è estremamente importante concentrare le spese governative sull'istruzione e sugli investimenti nello sviluppo dei quartieri, che a lungo termine forniranno una riduzione della povertà, della criminalità e dell'incarcerazione.

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## Tables and Figures

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