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Punishment vs. Rehabilitation: A Discourse on American Prison Reform & Comparative Analysis to Swedish Incarceration

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Abstract:

The infrastructure of the United States prison system continues to evolve through a series of policy changes and reforms. Throughout these developments, however, the institution continues to remain rooted in the philosophy of harsh penalization. This thesis incorporates a comparative analysis between the concept of perpetrator punishment within the American federal prison system to the concept of rehabilitative justice found in the Swedish system. I conceptualize the underlying "goals" of imprisonment within the United States and Sweden and examine how they serve as an operational foundation for both institutions. I analyze American prison reform that took place during the "War on Drugs" under the Reagan administration in the 1980s, as this was a major pivotal point in modern incarceration. Using a similar timeframe to examine prison reform that occurred in Sweden, I highlight the key differences between domestic and Swedish policy. I argue that these resulting differences are symptomatic of the distinct cultural values positioned at the heart of each system.

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Introduction

In the early spring of 2020, the American criminal justice system faced global scrutiny after a horrific display of police brutality was captured in broad daylight. On May 25, George Floyd was murdered at the hands of a Minneapolis police officer after being suffocated under the weight of his knee for eight minutes and fifteen seconds (Hill et. al, 2020). The grotesque scene was broadcasted to the world after bystander footage capturing the altercation went viral on the internet (Kennedy, 2020). Public outrage and disdain spread throughout the country, resulting in an eruption of protests and mass demonstrations in all 50 states (Kennedy, 2020). Not long after, citizens in more than forty countries around the globe took to the streets and marched in solidarity with American protestors (Kennedy, 2020; Smith et al., 2020). Despite the risk of gathering in large numbers during the onset of an international pandemic, people of all backgrounds came together to raise awareness of structural injustice and mistreatment (Kennedy, 2020). At the heart of all these mass demonstrations was a collective disdain for the American justice system- an institution that has an extensive history of permitting murder at the hands of law enforcement.[1]

This collective outrage prompted a larger breadth of discourse concerning the American justice system's historical mistreatment of criminal offenders. In many ways, the murder of George Floyd was a wake-up call that compelled our nation to reflect on the American criminal justice system as a whole. Our focus expanded beyond institutionalized brutality within the police force, but also within criminal sentencing, crime policies, and mass incarceration. What started as a local movement in Minneapolis soon became a national topic of conversation,[2]

[1] American police have killed over 1,000 people over the course of 2020 (Mapping Police Violence, 2020).
[2] Presidential candidates Trump and Biden spoke on their campaign platform for criminal justice reform during live debate (Moore, 2020). Harvard professors added their perspectives to conversation about reform (Smith et al.,

serving as a central discussion point during this year's live presidential debates. Presidential candidates Donald Trump and Joe Biden provided blueprints for criminal justice reforms[3] and potential ways the American government could implement change to circumvent its deep-seated history with brutality (Moore, 2020). Working towards a solution to solve the injustices occurring in one institutional frame, however, necessitates the implementation of initiatives that "also encompass [the] criminal justice system [in its entirety]," as they are all intertwined as a carceral complex (United Nations Office on Drugs and Crime, 2020). The criminal justice system is composed of three basic parts- law enforcement, the court system, and corrections- that individuals involved in criminal activity interact with. The research within this thesis will be concentrated on the corrections component of the justice system and its punitive origins.

The American prison system is notorious for its use of harsh punishment tactics. The Equal Justice Initiative (2020), a human rights initiative committed to fighting against excessive punishment, compares American prison conditions to those of slavery. Although slavery has been abolished in the United States since 1865, a loophole stated within the 13th amendment of the United States Constitution grants an exception. The amendment itself legalizes and justifies individuals being subjected to involuntary servitude if used as a means of "punishment for a crime" (History.com Editors, 2009). Consequently, the concept of dehumanization and exploitation manifests itself as a tool of operation in our modern-day carceral state (Wang, 2018). These punitive policies exist on both state and federal levels, having substantial effects on the individuals' life both within prison and upon their release (Abu-Jamal, 2014).

2020). Discourse featured in *Time* magazine's article, "From Easing Drug Laws to Increasing Police Oversight, Criminal Justice Reform Won Big in the 2020 Election" (Chan, 2020).

[3] Reports, news articles, and political statements centered around prison reform in the year 2020 (Justice Roundtable, 2020).

Before the United States is able to move towards a resolution of these issues, the nation must analyze its origins. I begin this thesis by examining historical approaches of imprisonment in the United States to gain an understanding of American punitive philosophy. This analysis will focus on the origins, motivation, and "goals" of punishment within our criminal justice infrastructure. I then assess how the philosophy of punishment continues to manifest itself in modern-day incarceration, specifically by examining punitive policy and legislation enacted over the last 50 years following the national War on Drugs.[4] In order to gain a broader understanding of how philosophies impact prison reform and incarceration, I conduct a comparative analysis between the United States and Sweden. As both nations underwent a major reformative process during the same time period, this comparison is useful when illustrating the differences in imprisonment when two different philosophies are applied to policy reform. I analyze the resulting distinctions in incarceration and attribute them to differences in cultural values located at the heart of each system.

The Origins of American Incarceration

Some of the earliest accounts of incarceration can be traced back to Biblical times under the Roman Empire (McRay, 1995; David, 2016; United Nations of Roma Victrix, 2021). Under Roman rule, wealthy individuals were encouraged to go into voluntary exile and were usually placed on house arrest while awaiting their trial (United Nations of Roma Victrix, 2021). Actual prisons served as a place to hold convicted criminals and Roman enemies until their execution (United Nations of Roma Victrix, 2021; David, 2016). Roman imprisonment featured an array of harsh punishments, including "being stripped naked and then flogged," being starved to death, or being quietly executed by the method of strangulation (McRay, 1995; David, 2016). Most

[4] The 1908s War on Drugs declared under the Reagan administration was a critical pivot in criminal justice policy (Mauer, 2001).

prisons were characterized by their “unbearable cold, lack of water, cramped quarters, and sickening stench from few toilets [that] made sleeping difficult and waking hours miserable” (McRay, 1995). The most famous prison in Rome, the Forum Romanum, was constructed during the reign of Servius Tullius during 640-616 B.C. (United Nations of Roma Victrix, 2021). This dungeon-like structure was roughly twelve feet underground and is known for its darkness, isolation, and miserable conditions (United Nations of Roma Victrix, 2021). Sometimes, the bodies of those who had died while imprisoned were “displayed” on its marble stairs as a symbol of defeat (United Nations of Roma Victrix, 2021). The Tullianum prison, utilized by the Roman Republic around the fourth century B.C., was another dark dungeon-like structure that eventually came to be known as the “antechamber to Hell” (David, 2016). The idea behind the use of this particular underground holding cell was that the leaders of enemy populations “had no rights to be part of human society, so they were symbolically removed from the world and confined to the underworld” (David, 2016). These long-term forms of imprisonment, however, were relatively uncommon in the Roman world (David, 2016; United Nations of Roma Victrix, 2021). Other modes of punishment, such as “monetary fines, enslavement, and various cruel and incentive forms of execution,” were more common methods used to punish criminals (David, 2016).

Prison emerged for the purpose of behavioral corrections during the Middle Ages (Hallinan, 2003). This era was marked by the spread of the Christian religion throughout Europe. As Christianity began to dominate culture and everyday practices, concepts such as crime were examined in a religious context. Crime came to be viewed as a sin that was open to correction. “The confinement of the Nun of Watton” is one of the most well-known stories to illustrate this cultural shift (Constable, 1981). Around the year 1160, the Nun of Watton was held in a cell after being impregnated by a fellow counterpart of the religious order. This was considered an act of rebellion against her oath to a life of celibacy. This story is considered an essential illustration of one of the first examples of confinement by prison historians[5], as it highlights the foundational philosophy behind modern-day imprisonment: punishment as a means for moral corrections.

Detaining religious and political debtors and offenders became the conventional method of punishing criminal behavior in Europe during the late eighteenth century (Barnes, 1921). Everyday “commoners” that were not of religious or political leadership status, however, were subject to much harsher treatment. For instance, during the 18th and 19th centuries the “Bloody Code” served as the main criminal system in England (National Justice Museum, 2019). Under the old English system, remotely every crime was punishable by death. Over 200 offenses were punishable by public hanging, including seemingly trivial crimes such as “forgery, cutting down trees, stealing a rabbit, pickpocketing goods, and stealing from a shipwreck” (National Justice Museum, 2019).

Although the infrastructure of this system was altered when adopted into the American system, the principle of penalization remains at the foundation of the American criminal justice institution (Barnes, 1921; Hallinan, 2003). In his piece titled “Prison Discipline,” penology and prison reform scholar Frances Lieber (1838) expands on the adoption of this philosophy into the American criminal justice infrastructure. He states that our method of punishment is rooted in the belief that the American justice system has a right to punish those who violate the law. In other words, “if the law is just, justice requires the punishment of the transgressor (Lieber, 1838). Considering how punishment is an integral part of the American justice system, Lieber asserts that our conception of imprisonment can be summarized using the following objective: “it is of the utmost importance to the public peace, order, and security, that offenses should be properly,

[5] Giles Constable was a historian of the 11th and 12th centuries, writing a plethora of articles and literary works on his research of the Middle Ages.

certainly, and duly punished; and it is very desirable, on the other hand, that the offender should be arrested, reformed, and restored to society" (1838: 3).

In the aftermath of the American Revolution, the penitentiary was established in response to a need for societal order (Hindus, 2012). The construction of this new system was an attempt to separate America from the harshness of England's "Bloody Code" while still maintaining the philosophy of penalization (National Justice Museum, 2019). The eighteenth century was marked by a "transition from corporal punishment to imprisonment" in the years following the war (Barnes, 1921: 36). The subsequent decades involved states' reorganization of their judicial and criminal institutions "as part of the general overhaul of the political system demanded by both the rebels and by the fact of independence" (Hindus, 2012: 4). During this period, there were two penitentiaries in existence that would later contribute to the creation of the modern prison system: the Pennsylvania System and the Auburn System (Barnes, 1921).

In some cases, the treatment of criminals began to evolve, centering around the approach of "inner" rehabilitation of one's soul and mindset (Hallinan, 2003). Inspired by the religious influence of the Quakers, the Pennsylvania system introduced reformative incarceration as the typical form of punishment for those involved in criminal activity (Barnes, 1921). The Quakers "abhorred corporal punishment… [leading to the creation of] their [own prison system that] would rely not on the whip or crack, only on work and solitude" (Hallinan, 2003: 62). In early documentation of the Pennsylvania criminal code, legal reform substituted "the barbarous existing methods of corporal punishment" for imprisonment where convicts were subject to "hard and productive labor" (Barnes, 1921: 47-48).

The Eastern State penitentiary, adopted under the Pennsylvania Quaker System in 1829, was the brainchild of this approach. Its distinguishing feature was the application of inmate reform (Barnes, 1921). Lieber published his observations of the solitary system upon visiting it in its beginning stages: “The Pennsylvania system… separates each convict from the presence of his fellows, and confines him to labor in an apartment by himself, where he also eats and sleeps; thus secluding him night and day from all intercourse with the world; and suffering none to see or converse with him but the officers and inspectors of the prison, or such as have authority by law” (Lieber, 1838: 3). The entirety of the inmates would be served inside their cell, completely alone with his thoughts to repent of his sin of criminal activity (Hallinan, 2003). Inmates were forced to wear large hoods that would cover their heads and prevent them from seeing the other inmates (Hallinan, 2003). Prisoners would “work alone, eat alone, pray alone… [and] would never be allowed to speak to, or even see, another inmate” (Hallinan, 2003: 62). In a collection of journals titled *American Notes*, Charles Dickens wrote a reflection of his own personal account when visiting Eastern State penitentiary. In his description, he wrote a statement illustrating the living conditions of the prisoners he observed: “He is a man buried alive; to be dug out in the slow round of years” (Hallinan, 2003: 69). Dickens’ recorded observations criticized the tactics of silencing and isolation used in the penitentiary, which he argued were dehumanizing and an infliction of torture (Hallinan, 2003). He described these methods as an instance where the humanity was stripped from the psyche of prisoners, and that this psychological “torture” was a worse suffering than that of physcial abuse (Hallinan, 2003).

Despite Dickens’ dismay of this system, the majority of the public welcomed its tactics. Eastern State grew to become a popular model for the establishment of other penal institutions, as “virtually every country in Europe and many in South America copied its principles” (Hallinan, 2003: 68). However, privately decided amongst the prison officials themselves, solitary confinement did not prove to be a useful method of reform. After closely observing the mental deterioration of a generation of inmates living in this institution, officials concluded that this practice drove men mentally insane (Hallinan, 2003: 69). As a result of this observation, the Pennsylvania System was brought to a halt and abandoned in the mid-1860s (Hallinan, 2003).

During the same time, another penal institution was established in New York. Reformists looked to the Pennsylvania system as a model for imitation to create what would eventually be called the Auburn System (Barnes, 1921). The Auburn System featured congregate work “in the prison shops and yards during the day” and solitary confinement at nighttime, with silence enforced at all times (Barnes, 1921: 54). In contrast to the Pennsylvania System, this system was characterized by strict military order and harsh forms of discipline. The implementation of brutality can be attributed to the influence of New York legislator Samuel M. Hopkins, who argued the necessity of implementing severe forms of punishment in order to have an effective incarceration system (Pillsbury, 1989). Hopkins believed that to “suppress crime and maintain civil order,” the administration needed to implement “more terror and suffering” (Pillsbury, 1989: 737). Prison keeper Elam Lynds was employed at the institution to inflict beatings on the inmates as a means of “preserving order and securing obedience” (Barnes, 1921: 54). Infamous for his brutality, Lynds threatened prisoners to maintain a productive work ethic during the day and “used flogging to punish even minor infractions” (Cayuga Museum of History and Art, 2020). After the state of New York outlawed beatings, “keepers turned to other forms of punishment, including the shower bath, in which a naked prisoner was forced to endure cascades of freezing water, and the yoke, in which a prisoner’s wrists were shackled to a beam held in the back of his neck.” After being appointed by England to inspect the Auburn System, senator William Crawford emphasized their use of “separate cellular confinement” and prisoner isolation (Forsythe, 1979). By 1914, “most forms of corporal punishment…, the dehumanizing lock step…, [and] enforced silence" were abolished but solitary confinement is a practice that still continues in prisons today (The Cayuga Museum of History and Art, 2020).

The Auburn System is considered one of the "most important penal institution[s] in the western hemisphere, if not the world" as it "furnished the architectural and administrative patterns for an overwhelming majority of the prisons in the United States" (Barnes, 1921: 35). This institution "was visited and studied by the leading penologists and jurists of every important European country during the first half of the century" as its influence spread across the world (Barnes, 1921: 35). It is important to note the example this system set, as it would soon become our national standard. Essentially, the American prison system originated from the belief that kindness fails and that no penal system will survive if it appears to be too "soft" on its criminals (Pillsbury, 1989).

Under the Three Prisons Act of 1891, the first three federal penitentiaries were authorized: USP McNeil Island, USP Atlanta, and USP Leavenworth (Federal Bureau of Prisons, 2020). In 1930, the federal Bureau of Prisons was established with the Department of Justice and granted the agency to manage and regulate "all Federal penal and correctional institutions" (Federal Bureau of Prisons, 2020). Fast-forward to the current day, the Bureau of Prisons now oversees 122 federal prisons that have been established across the country (Federal Bureau of Prisons, 2020).

Throughout the growth of the institution, the system continues to operate heavily on the principle of punishment. Currently, the official mission statement of the United States Department of Justice includes the following phrase: "to seek just punishment for those guilty of unlawful behavior" (U.S. Department of Justice, 2019). The inclusion of the term "punishment" demonstrates how integral this idea is to our nation's conception of criminal justice.

Northwestern University Law Professor Ernest Van den Haag asserts that the American criminal justice system operates off of the credibility of “punishments the law may threaten and impose” (1982: 769). Dr. Van den Haag conceptualizes the American system as an administration whose effectiveness and legitimacy depend on the influential power of the force it uses to threaten those who do not abide by its terms. Van den Haag’s assertion helps introduce the social implications and intentions behind the utilization of punishment. The intentions, or “goals,” of punishment are critical to understanding its function in the American justice system. This proposes a discussion regarding the significance of punishment as an underlying concept of imprisonment, the role it plays in our penal institutions, and its effects on prisoners after being employed.

According to the most recent statement endorsed by our National Criminal Justice Reference Service, some major goals of punishment that are emphasized in the practice of imprisonment are “retribution, deterrence, incapacitation, and rehabilitation” (Kifer et al., 2003). In this thesis, I will utilize these goals as a lens to focus my examination of the many different forms of punishment employed by the American justice system. Throughout this thesis, I will analyze how different acts of federal legislation embody and connect back to these goals.

For the purposes of this thesis, I will utilize the concept of “revenge” in place of the concept of “retribution.” Retribution can be defined as “punishment inflicted on someone as vengeance for a wrong or criminal act.”[6] The concept of retribution and revenge both “arise out of the same basic psychological dynamics and structures,” however, “revenge” aligns more with suffering while “retribution” emphasizes justice (Vidmar, 2001). Reflecting back on Hopkins' philosophy of successful prisons operating at the expense of human suffering, the term “revenge” would provide a more authentic lens when examining the functions of punishment. Secondly, I

[6] Oxford Languages and Google - English. (n.d.).

omit the terms “rehabilitation” and “incapacitation” with the understanding that they both fit under the goal of “reduced recidivism.” Recidivism can be defined as the extent to which a criminal reoffends, “measured by criminal acts that resulted in rearrest, reconviction or return to prison… during a three-year period following the prisoner’s release” (National Institute of Justice, 2020). According to the National Institute of Justice (2020), both rehabilitation and incapacitation fall under the umbrella of recidivism. If inmates are properly rehabilitated and successfully live out a reformed lifestyle with the intention of breaking cycles of criminal behavior, it can greatly reduce the rate of recidivism. This can also be said for the effect of incapacitation. The U.S. The Department of Justice defines incapacitation as the placement of “individuals behind bars [so that they] cannot commit an additional crime.”[7] Holding convicts in a state of stagnation where they are physically unable to continue their cycle of criminal activity prevents the rate of recidivism from increasing, as these specific individuals are off the streets and incarcerated. In the next few sections, I subsume these various goals into the following three related concepts: **revenge, deterrence, and reduced recidivism**.

Goal #1: Revenge

One core element of punishment is revenge. The Oxford dictionary defines revenge as “the action of inflicting hurt or harm on someone for an injury or wrong suffered at their hands.”[8] For thousands of years, this concept has served as an integral part of the criminal justice system (Ryan, 2020). “From the Code of Hammurabi,[9] to the Bible, to modern Supreme Court jurisprudence, revenge, or ‘getting even,’ has been a consideration in how wrongdoers are punished” (Ryan, 2020: 175). The Bible’s conception of revenge can be found in the book of

[7] U.S. Department of Justice. (2016). Five Things About Deterrence.
[8] Oxford Languages and Google - English. (n.d.).
[9] Law Code dating back earlier than Biblical laws erected by the 18th century king of Babylon (Claire, 2009).

Exodus where it states "you are to take life for life, eye for eye, tooth for tooth…" providing the standard that vengeance should be taken in proportion to the act of the aggressor (Ryan, 2020: 179). We see a similar sentiment captured in the era of European colonization, where writings by English jurist Sir James Fitzjames Stephens remarks that "the criminal law… proceeds upon the principle that it is morally right to hate criminals, and it conforms and justifies that sentiment by inflicting upon criminal punishments which express it…" (Eisenstat, 2007: 26). In essence, the concept of revenge came to be known and accepted as a morally sound aspect of criminal justice. It was thought that the infliction of vengeful punishment was what one *deserved* in return for committing a wrongful act.

In modern Western societies, however, the negative connotation associated with the desire for "vengeance" has resulted in a rejection to accept this concept as a motivating factor for punishment. The idea of wishing suffering upon aggressors "or any other form of malice or ill will" is heavily looked down upon (Eisenstat, 2007). Although revenge may in some sense be a natural inclination, the widely accepted notion that it is justified seems to have been replaced with the belief that "it is not a healthy or 'virtuous' one" (Struhl, 2015: 124). In today's Western societies, "revenge is frowned upon and is treated with disgust… [as] there seems to be a curious ambivalence in attitudes toward revenge in our culture" (Barton, 1999: 14). At face value, revenge is often paired with a sense of "messy and volatile emotion" (Struhl, 2015: 118). It is seen as something that could eventually lead to the extremes of dehumanization, inflicting unnecessary harm and detracting from the overall progressive goals of American society (Ryan, 2020). Notions of revenge are often simultaneously linked with the notion of outrage that is grounded in undomesticated "blood lust for retaliation" (Struhl, 2015: 118). This being said, it should not come as a surprise that the word "revenge" is not endorsed within our nation's justice department. Although not explicitly stated in any mission statement or official documentation, it is still very much a significant institutional principle within our system.

Contemporary trends signifying an increase of public support for punitive policies in the United States, however, suggest that the opposition towards vengeance is more so directed towards the connotation of the word rather than its infliction of punishment (Scheingold, 2010). In an analysis of a public study conducted in the 1980s regarding attitudes towards the response to criminal activity, Stuart Scheingold (2010) asserts that punitive sentiments of the American public were at their peak. For instance, when asked about their feelings towards criminal sentencing, a large portion of citizens felt that courts "were not harsh enough" (Scheingold, 2010: 46). Furthermore, "support for capital punishment [had] increased consistently throughout the period" indicating a positive trend in punitive approval (Scheingold, 2010: 45-46). Scheingold discovered that "people are significantly less supportive of economic and social approaches to crime and more inclined toward such punitive responses as longer and tougher sentences" (2010: 46). These observations led him to conclude that American culture as a whole places a high value in punitiveness within the justice system.

Perhaps we recoil at the thought of revenge being present in our justice system only because we fail to see how the concepts of vengeance and punishment are so closely related. We see this similarity in the definitions of "vengeance" and "punishment" provided by the *Oxford English Dictionary*. The definition of "vengeance" includes the word "punishment": "'the act of avenging oneself or another; retributive infliction of injury or punishment; hurt or harm done for vindictive motives'" (Zaibert, 2016: 72). Furthermore, the principles of punishment and revenge are both applicable to the following statement: the avenger "reacts to what [they] believe was someone's wrongdoing and seeks to inflict suffering upon [them]" (Zaibert, 2016: 72). Revenge gives purpose to the infliction of punishment and conceives the notion of state-sanctioned 'retaliation' that is currently utilized by the American justice system (Ryan, 2020). However, we fail to recognize it as such, instead painting over the concept with the words "retribution" or "justice" in an attempt to sanitize its negative connotations (Struhl, 2015; Feinberg, 1965). Legal definitions of punishment reserve terms that are "morally disquieting," interpreting government-inflicted sanctions as "regulatory" or "punitive" instead of "vengeful" or "vindictive" (Feinberg, 1965: 409).

Nevertheless, there are times when the use of revenge becomes acceptable under certain circumstances. A shift has occurred in the American justice system "whereby revenge, so long as administered by the state, is an acceptable and legitimizing justification for punishment" (Ryan, 2020: 198). This can be referred to as 'state-sanctioned revenge,' where if carried out by the state and not those personally victimized by the aggressor, the act of vengeance will not be defined as revenge (Eisenstat, 2007). The state establishes a form of revenge sought on behalf of the victim that "institutionalizes the *law of talion*[10] so that punishment will not exceed the bounds of the crime" (Struhl, 2015: 108). English philosopher John Locke describes this substitution while analyzing the right to punish as part of the social contract. The right to punish the offender is taken by the government where the victim is required to accept the verdict provided to them under the jurisdiction of the justice system (Struhl, 2015). To Locke's discretion, this constitutes a transformation of private, personal revenge into an act of public revenge where the government assumes the "role of the surrogate avenger" (Struhl, 2015: 118). In this case, it can be seen as a distinctive act taken out in the name of retribution where those that have violated rights and laws established by the state are brought to justice.

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[10] A principle developed in early Babylonian law that criminals receive punishment equal to the injuries they inflicted, stemming from the "eye-for-an-eye" exchange principle (Britannica, 2011).

Although it may be limited in transparency to the public eye, vindictiveness plays a significant role in this process. This is especially true when it comes to the consideration of victims' rights. American philosophy professor and historian Robert Solomon asserts that "if it ignores not only the rights but the emotional needs of the victims of crime, then punishment no longer serves its primary purpose" (Eisenstat, 2007: 23-24). This is one of the ways that the emotional aspect of vengeance is allowed to penetrate the legal sphere. Perhaps one of the most obvious ways that this occurs is the permittance of victim impact statements or oral testimonies. Whether read out loud by the judge during the court hearing or presented by the victim themselves, these statements "attempt to articulate the horror of the crime and the impact it has had on their lives" with the intention of influencing the sentencing decision (Struhl, 2015: 120). The law is seen as one of the arenas in which victims are able to be provided recovery and "regain their sense of power and honor" (Eisenstat, 2007: 39). This allows victims the chance to reclaim and reassert the societal status that was violated in the wrongful act committed against them. "The central claim is that victim justice… requires the substantial empowerment of victims by law, giving them the legal right to become involved in the relevant legal processes, some of which may culminate in impositions of punishment on their wrongdoers" (Barton, 1999: 14). These coincidences with the notion that if the government was *not* positioned to act on behalf of victims in this regard, that citizens would seek out revenge on their own, leading back to the "days of the blood feud" and undomesticated violence (Ryan, 2020: 198).

It is also imperative to consider the broadness of the term "victim" when applied to punishment. In his piece about the place of revenge in the criminal justice system, Kevin Levy makes the observation of the role the state plays in the act of vengeance against those who break the law. During prosecution, the state itself has the ability to act as the "victim" subjected to the criminal acts of any individual that may have deviated from the law. Levy observes that in this position, the state argues its relation to the societal damage inflicted by the wrongful act of the criminal and justifies vengeance based on the concept of retaliation. In effect, the state takes out revenge on the criminal for victimizing it and “implicitly denouncing its moral values” (Levy, 2014: 32). This concept can be extended not only to individuals, but also bodies, or entities that were potentially affected by the wrongdoer’s actions.

One last important piece of information to consider when pondering the concept of revenge in the justice system is the potential for the U.S. justice system to continue cycles of cruelty and inhumanity in spite of their attempts to shy away from justifying revenge. There still exists a great “emotional need for tough and dramatic retaliation against criminals" that continues to hold the modern penal system firmly in place (1989: 736). There is still a widely held belief that “in order for a punishment to be just, it must contain an element of suffering” (Eisenstat, 2007: 23). We insist that punishment is justified in its purpose to match the “moral gravity and pain” of the convicted crime and to “give each offender exactly that amount of pain the evil of his offense calls for” (Fienberg, 1965: 421). For example, in the late nineteenth century, a reform movement gave way to harsher forms of penalization that aimed to “crush [prisoners’] spirit” (Abu-Jamal, 2014). The vengeful sentiment within the intent to “crush a prisoner’s spirit” serves to emphasize the value placed on retaliation. As long as vengeful sentiment lingers within the infrastructure of punishment, the “system tends to reproduce and reinforce the brutality and dehumanization that is largely responsible for the kinds of criminal actions the criminal justice system seeks to eradicate” (Struhl, 2015: 124). While there have been a lot of issues that may have been solved by the domestication of lawless forms of violence, “they tend to reemerge in the punitive cruelty of the police, of the courts, of the lawmakers, and especially of the prison system" (Struhl, 2015: 124).

Goal #2: Deterrence

The threat of punishment is also expected to deter crime. Deterrence theory has been the essential foundation for many American criminal justice practices and policies throughout history (Tomlinson, 2016). The premise of modern deterrence theory is derived primarily from an *Essay on Crimes and Punishments* by Italian philosopher Cesare Beccaria. In this essay, Beccaria (1986 [1764]) argues that individuals operate based on their own desires, making decisions based on what will bring them pleasure and avoid pain. Unless they are deterred from doing otherwise, they will give in to their own desires, even if that means engaging in criminal activity (Beccaria, C. (1986 [1764]). The National Institute of Justice (2016) conceptualizes deterrence as "a theory of choice in which individuals balance the benefits and costs of crime" in order to determine the opportunity cost of committing a crime. Our system upholds the belief that increasing the consequences for a particular action will deter other individuals from performing that same action (Katyal, 1997). In its most basic form, deterrence may be thought of as "the omission or inhibition of a criminal act because of the fear of legal punishment" (Bushway & Paternoster, 2009: 131). With the presumption that humans are minimally rational and self-interested, "deterrence theorists hypothesize that would-be offenders will refrain from committing crimes if legal punishment is certain enough to be credible, severe enough to be costly, and swift enough so that the offender clearly forms as association between the criminal act and its punishment" (Bushway & Paternoster, 2009: 131).

There are two different types of deterrence utilized by the American justice system: general deterrence and specific deterrence. *General* deterrence is the threat of actual punishment that intercedes the will of any individual about to commit an unlawful act (Van den Haag, 1982). This deterrence is directed at society at large, dissuading people from participating in criminal activity. The certainty of being caught is perhaps one of the most influential factors of general deterrence (U.S. Department of Justice, 2016). Certainty can be defined as “the likelihood of being caught and punished for the commission of a crime” (U.S. Department of Justice, 2016: 2). In theory, increasing the certainty of punishment will deter potential offenders by the apprehension of receiving a consequence (Wright, 2010). For instance, the increase of state troopers patrolling an area during the holiday season may cause some drivers to decrease their speed in fear of getting pulled over and receiving a ticket (Wright, 2010). The severity of punishment is another important aspect of general deterrence. The logic behind increasing the severity level of a consequence is that harsher punishments will discourage potential offenders from carrying out an unlawful act (Wright, 2010). Examples of this include elongating prison sentences for certain crimes, making the threat of punishment a greater cost to the livelihood of the potential offender (Wright, 2010).

Denunciation is another form of deterrence that is commonly associated with general deterrence. This approach utilizes public condemnation of offenders to influence the societal school of thought surrounding criminal activity (Thomas et al., 2016). Legal philosopher Joel Feinberg (1965) references the concept of denunciation while discussing how the expressive functions of punishment. Punishment itself is used to express “the community’s strong disapproval of what the criminal did” in a symbolic way of expressing resentment (Feinberg, 1965: 403). It also operates for the purposes of publicly acknowledging an individual’s wrongdoing and deviation from legal mandates, serving as a form of communal reprobation (Feinberg, 1965: 403). Furthermore, when a person is found guilty of a crime, this individual is “subjected to shame and public criticism” (Thomas et al., 2016). Typically, this approach is aimed at those who avoid breaking the law on the basis of the penalties involved with having a public criminal record (Thomas et al., 2016). Criminal records can be accessed on an online database and are readily available to anyone with internet access in all 50 states. These records cover a vast amount of different criminal activities, including “violations, infractions, misdemeanors, felonies, and general crime” (U.S. Records, 2021). They include details regarding “the circumstances leading to the arrest, information on the individual arrested, the trial, the outcome of the trial should it result in a guilty verdict, incarceration, probation, parole information and more” (U.S. Records, 2021). Furthermore, personal and physical details that can be used to identify the individual in question are also included: “name, birthdate… mugshots, fingerprints, height, weight, eye and hair color, and race” (U.S. Records, 2021). These records follow the individual for the remainder of their lives following conviction, as the permanency of their criminal history is something that can never be redeemed.

With public shame comes a larger scope of limitation and social exclusion. In effect, “hundreds of thousands of [individuals] are separated from the fabric of society” as criminal activity leaves a permanent stain on their lives (Abu-Jamal, 2014: 2). The imprint of a criminal record impedes an individual’s ability to utilize their full citizenship rights and has an adverse set of consequences. Legal scholar and professor Dr. Gabriel Chin asserts that the most detrimental effect of conviction is not imprisonment, but rather the secondary consequences involving the “loss of civil rights, parental rights, public benefits, and employment opportunities” (Jones, 2015: 3). These factors can greatly impact the trajectory of an individual’s life after imprisonment. For example, a criminal record alone affects “the ability of an individual to vote,… the prospect of marriage,... and employment opportunities” (Wolfgang, 1972: 4). If an individual has a history of being incarcerated, the effects are even more extensive. For many Americans, the limitations imposed after release lead to a “loss of employment and housing, threatened immigration status, and disqualification from welfare benefits, student loans, and certain licenses condemn formerly incarcerated people and their families to lifelong poverty” (Equal Justice Initiative, 2021). Among all of these ramifications, securing a job is arguably the greatest challenge posed to ex-prisoners (Decker, Ortiz, & Hedberg, 2015). The societal stigma has led some employers to “block” or prevent ex-convicts from seeking employment at their place of employment (Martin, 2011). This leads to even greater difficulties in the long run: the struggle for financial stability, wealth and asset accumulation, decreased ability to receive loans, and decreased security of funds during a wave of a financial crisis (Martin, 2011). This plethora of burdens and limitations imposed on ex-convicts after committing a crime has the power to deter potential actors.

The second type of deterrence, *specific* deterrence, specifically targets the individual who has already committed a crime and attempts to dissuade them from reoffending. This type of deterrence promotes the production of changed, law-abiding behavior upon release of a convicted criminal back into society (Van den Haag, 1982). The effectiveness of specific deterrence is often measured by examining the conduct of the offender post-release (Thomas et al., 2016). One method utilized under this approach is increasing the severity of punishment during the period of incarceration in order to psychologically condition prisoners with negative associations. Oftentimes this is administered in the form of physical limitations and infliction. In older prison models, it was common for prison wardens to “humble or degrade [prisoners] by cropping, branding, flogging [them]... with a view” of deterring them from the like offense (Lieber, 1838: 5). It was thought that loading men with “chains and fetters,” while subjecting them to physical exhaustion and abuse, was a method utilized to reform prisoners' criminal behavior (Lieber, 1838, 10). This method has proven to be consistent in the evolution of current prison conditions. Today, inmates all over the nation are living in horrific, and oftentimes fatal, prison conditions (Ford, 2019). In 2019, the Justice Department's Civil Rights Division released a summary of some conditions reported in national prisons, asserting that some circumstances are "severe, systemic, and exacerbated" acts of violence (Ford, 2019). According to Courthouse News Service, the Federal Bureau of Prisons is an institution that has been consistently besieged by chronic violence and abuses (Associated Press, 2019). The American prison system is notorious for uncontrolled danger and instability, positioning itself as a place that one would never want to return to after being freed from its traumatic living conditions (Equal Justice Initiative, 2021, Ford, 2019). They suggest, "the severity of the punishment may influence behavior if potential [re-]offenders weigh the consequences of their actions and conclude that the risks of punishment are too severe" to outweigh the benefits of experiencing prison again (Wright, 2010: 2).

Another practice used to deter repeat offenders is the increase of prison sentencing and the likelihood of enduring greater degrees of punishment. The probability of an individual being convicted is "substantially greater for defendants possessing a prior criminal record" (D'Alessio & Stolzenberg, 2017). Furthermore, the defendant's criminal history can be used to impeach their personal testimony, making them more vulnerable to conviction as jury members tend to have very unfavorable views of defendants with a previous criminal history (D'Alessio & Stolzenberg, 2017). According to a study conducted by the National Center for State Courts, having a previous criminal record "turns out to be one of the strongest predictors of a guilty verdict… even than the testimony of an eyewitness" (Laudan & Allen, 2011: 499). Individuals who re-offend are also more likely to accept plea deals, which “effectively circumvents the onerous beyond a reasonable doubt standard of proof threshold required for a criminal conviction” (D’Alessio & Stolzenberg, 2017). The amount of jail time also increases, as repeat offenders not only face harsher sentencing for reoffense, but also are more likely to be held in jail before even going to trial (Stolzenberg, D’Alessio, & Eitle, 2013). All of these factors drive up the certainty of punishment and the risk of going back into the prison system.

Goal #3: Reduced Recidivism

Ideally, punishment should reduce recidivism rates. Recidivism refers to “a person’s relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime” (National Institute of Justice, 2020). The concept of prisoner reentry is one of the main concerns in the American criminal justice system (National Institute of Justice, 2020). In many ways, recidivism can also be thought of in terms of a “failure of deterrence,” as relapse demonstrates an ineffectiveness to dissuade the offender from committing another crime (Van den Haag, 1982: 770). The concept of deterrence is related to recidivism in that the more effective the deterrent factor, the lower the resulting rates of recidivism (National Research Council, 2014). Recidivism theorists emphasize the use of the following two methods to bring about the reduction of recidivism rates: incapacitation and rehabilitation (National Institute of Justice, 2020). Although both rehabilitation and incapacitation fall under the umbrella of reduced recidivism, they are completely different modes of punishment and possess distinct policy implications. Both methods are approached with the intent of reducing recidivism rates, but they utilize distinct avenues to arrive at that goal. In this section, therefore, I refer to them as separate entities and discuss them independent of one another.

Incapacitation.

The National Institute of Justice (2020) defines incapacitation as the act of a sanction "removing the offender from the community" and restraining their individual freedom to re-offend. In its most basic form, incapacitation refers to "the act of making an individual 'incapable' of committing a crime" (Thomas et al., 2016). This is perhaps one of the most direct ways to prevent criminal activity, as it serves to completely immobilize an individuals' potential to carry out criminal activity. While committing crimes in prison is not impossible, it is highly unlikely under the surveillance and direct control of the correctional system (Bushway, 2014). Prison deprives incarcerated individuals of the "occupation of both mind and body," placing them behind bars and detaining them in a controlled environment separate from the outside world (Leiber, 1838: 10). Prisoners are often shut out from "the scenes of an active life which one has been accustomed to," and met with a monotonous "routine of duty, day after day, month after month, [and] year after year" (Lieber, 1838: 10). There are two distinct types of incapacitation used in today's justice system: **selective** and **collective**.

Selective incapacitation philosophy incarcerates specific individuals for a longer period of time than others (Carter, 2019). This is a crime control strategy that selectively targets the "most active and serious offenders" (Bushway & Paternoster, 2009: 127). Criminologists believe that criminal offenses are highly skewed, with a "relatively small minority of all offenders responsible for the majority of all crimes" (Bushway, 2014: 38). Incapacitation theorists emphasize the selective focus on high-risk individuals, as they believe that accurate identification and incapacitation will prevent a greater amount of criminal activity (Bushway, 2014). It is argued that "by incarcerating those offenders with the highest rates of criminal behavior for longer periods… the greatest crime- reduction benefit can be obtained with the least increase in prison populations" (Haapanen, 1990: 1). In order to go about this in the most effective manner, it is important to assess the individual nature of the offender when assigning them punishment (D'Alessio & Stolzenberg, 2017). All information regarding "criminal history, contact with the criminal justice system, and dynamic characterizations of the individual's current state of mind [are considered in order] to predict the individual's potential for future offending" (Bushway & Paternoster, 2009: 127). Criminologists believe that criminal offenses are highly skewed, with a "relatively small minority of all offenders responsible for the majority of all crimes" (Bushway, 2014: 38). Therefore, longer sentences are established for specific offenders deemed most dangerous to society or most likely to commit repeated crimes (Thomas et al., 2016). In the special case of those convicted of sexual crimes, incapacitation can involve "chemical castration" with "hormonal drugs that supposedly reduce or eliminate the sex drive" of offenders (Thomas et al., 2016).

On the other hand, *collective* incapacitation refers to "the incarceration of large groups of individuals to remove their ability to commit crimes for a set amount of time in the future" (Carter, 2019). Perhaps the most obvious example is the implementation of harsher sentencing guidelines, most namely mandatory minimum sentencing (Criminal Justice Policy Foundation, 2020; Carter, 2019). During the later half of the 1900s when lawmakers and politicians began to crack down on criminal activity, part of their "tough on crime" agendas focused on longer incarceration periods (Carter, 2019). Mandatory minimum sentencing eliminated judicial discretion in sentencing, obligating them to impose a specified minimum prison term for a specific crime (Criminal Justice Policy Foundation, 2020). During the 1970s and 1980s, these sentencing reforms "prevented an estimated 10 to 30 percent of potential crimes through collective incapacitation strategies" (Visher, 2006). Application of this philosophy is said to “prevent additional crimes, but prison populations would increase substantially” as a result of targeting a *group* rather than singular individuals (Visher, 2006). All of the above practices are ultimately linked to the overarching goal of reducing recidivism, as they result in the removal of the offender from an environment in which they were previously able to engage in crime.

Rehabilitation.

Another method that falls under this goal is rehabilitation while serving time in prison. Rehabilitation refers to “the extent to which a program is implicated in the reduction of crime by ‘repairing’ the individual in some way by addressing [their personal] needs or deficits” (National Institute of Justice, 2020). Criminal rehabilitation is rooted in the belief that “the purpose of punishment is to apply treatment and training to the offender so that [they are] capable of returning to society and functioning as a law-abiding member of the community” (Thomas et. al). Under this philosophy, “the purpose of punishment is to apply treatment and training to the offender so that he is made capable of returning to society and functioning as a law-abiding member of the community” (Clarke et al., 2016). In our criminal justice system, rehabilitation takes on many different forms.

When this concept was initially introduced as a legal practice in the 19th century, rehabilitation took on a more penal form. In many instances, “rehabilitation meant that an offender would be released on probation under some condition; in other cases it meant that he would serve a relatively longer period in custody to undergo treatment or training” (Clarke et al., 2016). Another widely used approach was the concept of indeterminate sentencing. Here, the length of the term was “governed by the degree of reform the offender exhibited while incarcerated” (Clarke et al., 2016). The principle underlying this sentencing type is “the hope that prison will rehabilitate some offenders, and that different people respond differently to punishment" (Portman, 2021). The goal behind indeterminate sentencing is "that offenders who show the most progress will be paroled closer to the minimum term than those who do not (Portman, 2021). This method gives parole boards the flexibility to determine the fate of different offenders, while also providing offenders the incentive to behave while imprisoned (Clarke et al., 2016; Portman, 2021). In the current climate of overcrowded prisons, this method of penal rehabilitation is regaining traction.

Other forms of rehabilitation are more specialized toward the offenders themselves. According to the National Institute of Justice, "rehabilitation programs reduce recidivism if they incorporate proven principles and are targeted to specific offenders" (Petersilla, 2011). The federal prison system incorporates various types of correctional programs "including work, education, and drug treatment programs" that allow for the individual to change how they interact with their external environment (Bushway & Paternoster, 2009: 129). Research on these programs demonstrates that "offenders who earn a high school equivalency diploma while behind bars are more likely to get jobs after release" and those who "receive vocation skills training are more likely to get jobs and higher wages after release" (Petersilla, 2011). Other rehabilitation programs center around mental health and psychological therapy. Psychologists and psychiatrists will provide group therapy, substance abuse programs, and crisis counseling to help inmates reconcile with mental illness or addictions that may have contributed to their criminal behavior (Benson, 2003). If the criminal justice system were to implement successful and effective rehabilitation programs, they "could expect to reduce recidivism by 15 to 20 percent" (Petersilla, 2011).

It is important to recognize that public support for rehabilitative measures in many instances directly counters the support for vengeful forms of punishment (Scheingold, 2010).

Referring back to Scheingold's analysis of public attitudes towards criminal justice policy, he observed that as support for harsh penalization rose in 1970, the support for rehabilitation decreased. However, a decade later in 1981, he observed that rehabilitation as a response to crime began to gain more public support in comparison to harsh punishment (Scheingold, 2010). Due to this observation, he concludes that categorizing the early 1980s as either "more punitive" or "less moderate" in its approach to crime remained an open question (Scheingold, 2010). Contrasting "rehabilitation" with "penalization" suggests that some scholars look at these two concepts as mutually exclusive, where the absence of one indiciates the presence of another. On the other hand, as we can see detailed above, these concepts may be observed as more dynamic and able to occur simultaneously under the same justice system.

The insights from this literature demonstrate the position of these three underlying "goals" in the framework of penal policy. These concepts serve as essential justifications for punishment utilized by the United States justice system in sustaining certain practices throughout the history of corrections. In the next section, we examine how this framework serves as the foundation for criminal justice policy implementation. I specify this framework by studying major legislative acts passed on a federal level from the 1980s "War on Drugs" era through the 2020 Trump presidency.

The American Penal System

America has higher incarceration rates than any other nation in the world. According to the American Prison Policy Initiative, "the U.S. locks up more people than any other nation, at the staggering rate of 698 per 100,000 residents" (Prison Policy Initiative, 2020). In 2012, the United States was home to less than five percent of the world's population, yet it "has 25% of the world's prisoners" (Abu-Jamal, 2014: 2). Fast-forwarding to the present, the United States represents only four percent of the world's population and 22% of the world's prisoners (Stevenson, 2019). The drastic difference in incarceration rates between the United States and the rest of the world begs the question of what factors caused this stark contrast to occur. Not only is this difference evident in comparison to other nations, but it is also apparent when looking at the history of prison rates in the United States itself. In the early 1970s, our prison system held fewer than 300,000 inmates nation-wide; since then, however, it has grown exponentially (Stevenson, 2019). The current number of prisoners our prisons hold today measures around 2.2 million, which is a 500% increase in the last four decades (The Sentencing Project, 2020). This trend in recent years raises another question: What changes in our criminal justice system caused such a drastic increase to occur in incarceration rates from the 1970s to the current day? I analyze these questions by studying the impact of major legislation and legal policies enacted since the early 1970s that have had a major influence on the criminal justice system.

Before conducting a qualitative study of major acts of legislation impacting the American penal system, I wish to explain the significance of the War on Drugs as it pertains to this analysis. In 1971, President Nixon declared a national "war on drugs" in which he dramatically expanded the number of federal drug control agencies and implemented invasive measures, such as no-knock warrants and mandatory sentencing guidelines (Drug Policy Alliance, 2020). President Ronald Reagan, however, is the most well-known for accelerating the drug war and jump-starting the momentum that gave way to today's mass incarceration crisis. Reagan pledged his commitment to this "national security" objective amidst the rise of crack cocaine in February of 1982, rapidly increasing federal funding for narcotics control programs (Bagley, 1988). He dedicated seven out of his eight years in the executive office to these efforts, pushing tougher drug bills through Congress and pumping billions of dollars into combative agendas (Bagley, 1988). According to the United States Drug Policy Alliance Headquarters (2020), his presidency "marked the start of a long period of skyrocketing rates of incarceration." In just under two decades, "the number of people behind bars for nonviolent drug law offenses increased from 50,000 in 1980 to over 400,000 by 1997" (Drug Policy Alliance, 2020). This marked the beginning of the highest increase in the prison population seen in American history (Mauer, 2001). The 1980s were a significant turning point in history, making it a key starting point for examining the reformative progression of the American prison system.

Another factor of this study I would like to clarify is the use of federal legislation as opposed to those enacted by individual states. The tenth amendment in the Constitution allows for a large amount of residual power and sovereignty to be left in the hands of individual states (U.S. Const. amend. X). State imprisonment practices are left up to the discretion of the state legislature. Criminal policies across the fifty states are characteristically diverse, resulting in a great degree of variability in policy and incarceration rates across territory lines. State legislators are sensitive to the unique demands of their respective constituents, creating laws that favor citizens within that specific state (Liptak, 2008). Therefore, punitive policy and attitudes in one state may be vastly different from another, resulting in a weak representation of national attitudes. To account for this, examining the entire breadth of state-wide specific legislation is necessary, however, is far too vast a study for this paper. The use of federal legislation will be used to control for state variance in criminal justice policy and bring attention to national trends. Although separate, the enactment of federal legislation greatly impacts the legal climate of the nation and the proceeding actions of the states (Ball, 2014). Examining federal law provides a general basis for the motivations behind penal policy and punitive attitudes during each era of legislation.

This section of the thesis draws parallels between the three “goals” of punishment and the enactment of different penal policies in the aftermath of the “drug war.” Due to the limitations of time allotted to this project, I have chosen five major acts of legislation passed from the onset of the War on Drugs under the Reagan administration (see Fig. 1). These acts have all been influential as it pertains to sentencing guidelines and federal penalization in the past few decades. I will examine these acts in detail, analyzing the reforms articulated within the legislation and implications of these reforms as they relate to revenge, deterrence, and reduced recidivism.

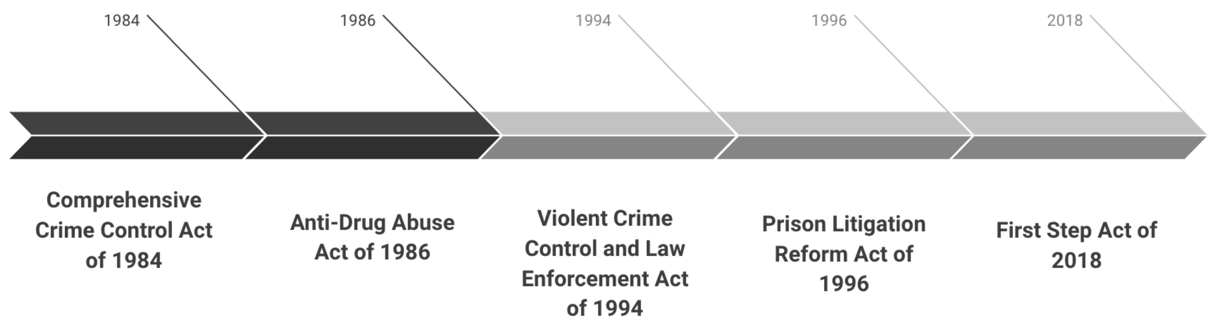

Figure 1: Comprehensive Timeline of Major Legislation Impacting Prison Sentencing and Penalization Since the Declaration of the Federal “War on Drugs” Under the Reagan Administration.

Comprehensive Crime Control Act of 1984

On October 12, 1984, President Reagan signed what would be considered one of the most critical changes to the federal justice system: The Comprehensive Crime Control Act (Trott, 1985). Attorney General William French Smith granted this legislation top Congressional priority on the premise that “it would ‘restore the proper balance between the forces of law and the forces of lawlessness” (Werner, 1984). Assistant Attorney General, Stephen S. Trott, refers to the provisions in this package of crime measures as “some of the most significant changes in the federal criminal justice system ever enacted at one time” (Trott, 1985: 795). The act contains 23 chapters detailing extensive alterations to be made to the United States Justice system to equip it with stronger jurisdiction in the efforts to control criminal activity (Trott, 1985). In the Public Administrative View written about this act, Trott illustrates the main areas of focus this act targets: “bail provision, the sentencing system, the insanity defense, and forfeiture law, as well as created several new substantive offenses" (Trott, 1985: 795). The major effect of this act was a revision increasing penalties for certain crimes, the creation of a victims’ compensation program, and tightening the reins on defenses so that the federal government would have greater jurisdiction over the fate of the offenders (Werner, 1984).

Revenge.

An important aspect of revenge in the American justice system is the consideration of avenging victims’ loss. This sentiment was emphasized in the Comprehensive Crime Control Act. Concern for crime victims is reflected in the legislation’s requirements that “the victim’s needs be identified and considered at the time of sentencing, in imposing fines and restitution, and in granting reimbursement through compensation programs” (DiGenova & Belfiore, 2021). This act established a Crime Victims Fund with the U.S. Treasury. This fund is financed by fines and penalties such as “federal criminal fines, forfeited bail bonds, penalties, and special assessments collected by the U.S. Attorneys’ Offices federal courts, and the Federal Bureau of Prisons” (Office of Justice Programs, 2021). The cap that had initially placed a limit on how much could be donated to this Fund was lifted in 1993, allowing for the full collection of these deposits to be put towards crime victim compensation programs and support services (Office of

Justice Programs, 2021). Each year, funds are distributed throughout the states and given to associated assistance programs (Werner, 1985).

This law also considers situations in which the state falls victim to crime. In the Address to the Nation on the Campaign Against Drug Use, Ronald Reagan victimizes the nation and its children in opposition to the surging rates of drug abuse. In this speech, he states that “drugs take away the dream from every child’s heart and replace it as a nightmare” however, “we can defeat this enemy” (National Archives, 1986). He goes on to say, “drug abuse is not a so-called victimless crime… drug abuse costs you and your fellow Americans at least $60 billion a year” (National Archives, 1986). In response to this loss that the nation suffers as a result of drug abuse, the Comprehensive Crime Control Act implements ways to regenerate that wealth. The law “permits Federal law enforcement agencies to share seized assistance with the state and local authorities participating in the investigation that led to the seizure” of drug paraphernalia (Werner, 1985).

Deterrence.

This act not only increased penalties for participating in various criminal activities but also increased the certainty of punishment. Provisions included the abolition of parole for federal prisoners, and “arson, murder-for-hire, trademark violations, credit card fraud, computer crime and scores of other offenses” became federal crimes (Werner, 1985). This act also heavily increased the federal penalties for most drug and narcotic offenses. The Drug Enforcement Amendments aspect of the legal package states: “Controlled Substances Penalties Amendments Act of 1984 - Increases the fine levels for drug trafficking. Increases the penalties for trafficking large amounts of controlled substances. Provides increased penalties for distributing controlled substances in or near a school” (Thurmond, 1984). The Comprehensive Forfeiture Act of 1984 made it “unlawful to invest the income of a felony drug violation” (Thurmond, 1984). This Act also established the National Drug Enforcement Policy Board in the executive branch to specialize in drug enforcement policies. Countless other provisions are included in this legislation involving international money laundering, penalties for tax offenses, strengthening federal laws regarding trademarks, expanding the capabilities of federal wiretapping, and creating a new offense for individuals involved in credit or debit card fraud (Thurmond, 1984).

Furthermore, this act was the first time that Congress had ever dealt with the concept of insanity (Trott, 1985). The insanity defense allows the defendant to utilize an excuse defense under the condition that they do not possess the mental ability to comprehend the nature of the wrongfulness of the criminal act they have committed (Cornell Law School, 2021). Before the enactment of this legislation, the burden of proof rested on the government and psychiatrists. This act made the successful use of this defense much more difficult, as it no longer would pertain to individuals who claimed they acted on uncontrollable impulse and transferred the burden of proof to the defendant (Trott, 1985). This made it nearly impossible for defendants to utilize this excuse defense in the court of law, raising the probability of incarceration for individuals that failed to adequately prove their insanity.

Reduced Recidivism: Incapacitation.

This act was also the first time law provided a legal basis that permits an offender to be held in detention before trial (Werner, 1984). If a prosecutor was able to prove that a defendant posed a major threat to society and needed to be detained until trial, they could be held in jail until their respective court date (Trott, 1985). Under this act, however, these precautions were loosened with the reasoning that a substantial threat outweighs the need for proof. Courts were authorized to consider the level of danger an individual poses to the community when setting their bail (Panter, 1985). Furthermore, the defendant can be placed in a holding cell if deemed necessary by the courts while waiting for an appeal, “even if he or she does not pose a risk of flight or danger to the community” (Trott, 1985). This aspect of sentencing added to the amount of time an individual is incapacitated and displaced from civilization. The amount of time spent behind bars increased exponentially as a result, employing the concept of general deterrence and mandatory sentencing (Trott, 1985; Criminal Justice Policy Foundation, 2020).

These new policies have imposed longer sentences on convicts of nonviolent crime and drug offenses, and as a result, sentences “became significantly disproportionate to the crime committed” (Abu-Jamal, 2014; 2). For the first time in history, individuals are serving much harsher punishments and longer penalties for victimless crimes. Victimless crimes such as illegal drug possession are being treated to similar or greater degrees as crimes with an identifiable victim, such as murder, violent physical assault, and rape (Alexander, 2020). In effect, more prisoners are behind bars than ever for a larger diversity of crimes.

A Culmination of All Three Goals.

One significant change that came about as a result of this legislation was the establishment of the United States Sentencing Commission. Both the Supreme Court and members of Congress discovered that variance in state discretion “had led to significant sentencing disparities among similarly situated offenders” (United States Sentencing Commission, 2018: 1). With concern for this issue and a desire to create more proportional sentencing measures, the Commission was created as an additional agency within the judicial branch. The Commission’s staff is composed of about 100 “attorneys, social scientists, and other professionals with expertise in criminal justice and sentencing” (United States Sentencing Commission, 2018: 2). According to this agency’s “Federal Sentencing” handbook states that its main function is to collect information and provide sentencing recommendations for federal judges. Under Senate approval, the president of the United States appoints seven voting members of the Commission (United States Sentencing Commission, 2018).

Within the "Federal Sentencing" document are seven factors the Commission considers to be a critical part of how sentences are determined. The second factor explicitly highlights all three goals of punishment: "the need for the sentence imposed to reflect the four primary purposes of sentencing, i.e., retribution, deterrence, incapacitation, and rehabilitation" (United States Sentencing Commission, 2018: 3). The seventh factor includes "the need to provide restitution to any victims of the offense" when assigning proper means of punishment United States Sentencing Commission, 2018: 3). As previously stated, "retribution" is closely tied to the concept of revenge, especially in consideration of victims' testimonies. Secondly, both "incapacitation" and "rehabilitation" are important aspects of recidivism. The inclusion of these terms within the sentencing guidelines shows the lasting dedication to upholding these "goals" in the American criminal justice system. If the federal courts chose not to follow these provisions, the Commission mandates the issuance of a written statement explaining their reason for doing so (United States Sentencing Commission, 2018).

Anti- Drug Abuse Act of 1986

On October 27, 1986, Ronald Reagan signed the Anti-Drug Abuse Act in response to the national "crack" cocaine epidemic (Weld, 1987). This legislation was passed after the death of University of Maryland basketball player Len Bias died of an overdose, establishing mandatory minimum sentencing for different amounts of cocaine (American Civil Liberties Union, 2006). The Act consists of 15 sections that focus federal efforts to "promote international drug law enforcement cooperation, to improve enforcement of U.S. drug laws and to enhance interdiction efforts, to provide leadership in developing drug abuse prevention programs, and to expand Federal support for drug treatment programs" (U.S. Congress, 1986). It also contained provisions related to international narcotics control, expanded the authority for seizure and forfeiture of assets derived from criminal activity, and authorized a budget of $230 million for three years to be utilized for state drug enforcement (Teasley, 2001). One of the most significant alterations this legislation created was the "100-to-1" crack versus powder cocaine sentencing distinction (Weld, 1987). Caroline Fredrickson, Director of the ACLU Washington Legislative Office, asserts that this act resulted in a drug policy that established a "false distinction" between crack cocaine and powdered cocaine, which ultimately perpetuated a "racial caste system" in sentencing that proved to be detrimental in communities of color (American Civil Liberties Union, 2006).

Revenge.

The early stages of the American "drug war" sought out revenge on specific individuals that were deemed public enemies of the state interest: hippies and Black people (Fullwood III, 2016; Drug Policy Alliance, 2020; Sherman, 2016; Equal Justice Initiative, 2016). John Ehrlichman, Counselman and Assistant to the President for Domestic Affairs, remarked the following statement after leaving office: "You want to know what this was really all about. The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying. We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news" (Drug Policy Alliance, 2020). The state positioned itself as a victim in the ‘drug war’ on the opposing side of these groups, and enacted legislation that would seek vengeance in favor of the state’s interest.

The Anti-Drug Abuse Act of 1986 continued this sentiment. This targeted the influx of lower-costing crack cocaine in low-income African American communities, in contrast with more expensive powdered forms of cocaine found in affluent white areas (American Civil Liberties Union, 2006). In effect, “the average federal drug sentence for African Americans was 49 percent higher,” resulting in Black people being “more than 80 percent of defendants for crack offenses" when 66% of crack users are white (American Civil Liberties Union, 2006). This act was not detrimental to high-level drug traffickers, but to “street-level dealers, couriers or lookouts" in underprivileged neighborhoods (American Civil Liberties Union, 2006). The racial disparities that occurred in sentencing resulted in “devastating collateral consequences" for African Americans, as they were disproportionately affected by the consequences of this legislation (Vagins, 2006).

Deterrence.

The enactment of the Anti-Drug Abuse Act further established a culture of increased harshness and certainty of punishment. This legislation instituted mandatory minimums ranging from five to forty years depending on the amount of illegal substance in possession (Weld, 1987). In discussing the mandatory minimum, Senate Minority Leader Robert Byrd proclaimed that drug offenders “must know that there will be no escape hatch through which he can avoid a term of years in the penitentiary. He must know in advance exactly how lengthy that prison term is going to be… And that will be because the laws we pass will henceforth make it abundantly clear that a jail term must be imposed and must be served” (Weld, 1987: 13-14). The sentiment reflected in this statement echoes the significance of inevitable punishment in deterring criminal activity. This relates to the aspect of general deterrence, emphasizing the power of a law's harshness to dissuade individuals from committing an act.

The punishments within this bill are more severe for the possession of crack. This disparity means that the "distribution of just 5 grams of crack carries a minimum 5-year federal prison sentence, while the distribution of 500 grams of powder cocaine carries the same 5-year mandatory minimum sentence" (Vagins, 2006). This deters potential offenders specifically from the possession of crack cocaine, as the stakes are higher. Furthermore, any individual with a previous drug-related felony conviction "must be sentenced to a mandatory minimum term of imprisonment of ten years with a maximum of life imprisonment" (Weld, 1987: 6). This aspect of the legislation features specific deterrence, which could dissuade a potential offender from committing another unlawful act related to drugs, as their penalties for possession would increase.

Reduced Recidivism: Incapacitation.

Lengthy mandatory minimum sentences result in more extended periods of incapacitation. Expanding on these guidelines, the Anti- Drug Abuse required " a *minimum* sentence of 5 years for drug offenses that involved 5 grams of crack, 500 grams of cocaine, 1 kilogram of heroin, 40 grams of a substance with a detectable amount of fentanyl, 5 grams of methamphetamine, 100 kilograms or 100 plants of marijuana, and other drugs (Criminal Justice Policy Foundation, 2020). Furthermore, the law also required a "*minimum* sentence of 10 years for drug offenses that involved 50 grams of crack, 5 kilograms of cocaine, 1 kilogram of heroin, 400 grams of a substance with a detectable amount of fentanyl, 50 grams of methamphetamine, 1000 kilograms or 1000 plants of marijuana, and other drugs" (Criminal Justice Policy Foundation, 2020). In essence, this legislation removed the discretion of federally appointed judges, which contributed heavily to the growth of the prison system in the last forty years and the collective incapacitation of thousands of prisoners (Criminal Justice Policy Foundation, 2020).

Violent Crime Control & Law Enforcement Act of 1994

In 1994, Bill Clinton signed the largest crime bill ever passed in the nation's history: The Violent Crime Control and Law Enforcement Act (Office of Justice Programs, 2020). Three years before its enactment, violent crime has reached its peak (Eisen, 2019). The fear of this climate was articulated by President Clinton who declared "Gangs and drugs have taken over our streets and undermined our schools" (Eisen, 2019). The enactment of this legislation is what many consider to be a major cause of the nation's current mass incarceration crisis (Chung et al., 2019). At its most basic level, this bill provided for the expansion of the police force with the addition of 100,000 new officers, and the increase of funding, granting $9.7 billion towards prisons and $6.1 billion towards prevention programs (Office of Justice Programs, 2020). Under this act, the number of federal crimes punishable by death rose to 60 (Teasley, 2001). This act contained a "three strikes" provision, mandating life imprisonment for three-time federal violent crime offenders without the possibility of parole (U.S. Department of Justice, 1994). This legislation also banned the possession and manufacture of nineteen types of semiautomatic assault weapons (Eisen, 2019; Teasely, 2001). It granted additional funds for the expansion of correctional facilities, incentivizing states and localities to build more prisons through the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants Program (Chung et al., 2019; Eisen, 2019). This increase in funding demonstrates the government's role in driving states towards more punitive measures (Eisen, 2019).

Revenge.

The Violent Crime Control and Law Enforcement Act contains various measures that take into account victims of crime. One of these is the permittance of victim impact statements and testimonies during the trial. This bill contains provisions that allow “victims of Federal violent and sex crimes to speak at the sentencing of their assailants” (U.S. Department of Justice, 1994). Also, the Crime bill features the Violence Against Women Act (VAWA) which established the national Office for Violence Against Women and is designed to protect the victims of domestic violence (Office of Justice Programs, 2020). This is considered “a landmark piece of legislation that sought to improve criminal legal and community-based responses to domestic violence, dating violence, sexual assault, and stalking the United States” (National Domestic Violence Hotline, 2020). VAWA of 1994 provided resources that fostered support for domestic violence shelters and rape crisis centers across the nation, federally prosecuted offenders of interstate sexual assault, granted protection for undocumented battered women and increased the recognition of Native American domestic violence and sexual assault survivors (National Domestic Violence Hotline, 2020). Under this statute, the Domestic Violence Hotline was established under the Department of Health and Human Services (U.S. Department of Justice, 1994). Furthermore, this act prohibited the sale and possession of firearms to perpetrators of domestic abuse that are under restraining orders (U.S. Department of Justice, 1994).

Deterrence.

This bill included extensive punitive measures for various crimes. As mentioned above, this legislation fortified the barriers to firearms possession. The bill banned “the manufacture of 19 military-style assault weapons, assault weapons with specific combat features, "copy-cat" models, and certain high-capacity ammunition magazines of more than ten rounds” (U.S. Department of Justice, 1994). It prohibited the manufacture, for 10 years after enactment, of semiautomatic assault weapons and the possession or transfer of such firearms if they were not lawfully possessed on the date of enactment (Teasley). It also strengthened the federal licensing standards for firearms dealers across the nation to tighten the distribution of weapons (U.S. Department of Justice, 1994). Juvenile offenders 13 years of age or more were permitted to be prosecuted as adults if involved in crimes involving a firearm (U.S. Department of Justice, 1994). In effect, the mass-circulation of these weapons would decrease and those without a license to carry would be dissuaded from involving themselves in the purchase or possession of these firearms.

The Crime bill also increased the penalties for sex offenders and created a national public registration of sexual predators. Repeat federal sex crime offenders were subject to a doubled maximum term of imprisonment (U.S. Department of Justice, 1994). All states are mandated to alert respective agencies on the release of these individuals and notify the public through the use of national registration. This statute “requires states to enact statutes or regulations which require those determined to be sexually violent predators or who are convicted of sexually violent offenses to register with appropriate state law enforcement agencies for ten years after release from prison” (U.S. Department of Justice, 1994). As these are publically accessible records, this file shows up when employers, neighbors, or any other individual with access to the internet looks up your name in the national registration database (Decker, Ortiz, & Hedberg, 2015). This aspect of the crime bill relates to the increase of public denunciation that falls under the motivations of punishment.

This bill also increases the certainty of punishment for various crimes. This bill creates new crimes and enhances the penalties for the following: “drive-by-shootings, use of semi-automatic weapons, sex offenses, crimes against the elderly, interstate firearms trafficking, firearms theft, and smuggling, arson, hate crimes, and interstate domestic violence" (U.S. Department of Justice, 1994).

Reduced Recidivism: Incapacitation.

The Violent Crime Control and Law Enforcement Act includes several provisions that increase incapacitation for criminal offenders. Perhaps one of the most straightforward methods of incapacitation is the loss of life. As mentioned above, the Federal death penalty was expanded "to cover 60 offenses, including terrorist homicides, murder of a federal law enforcement officer, large-scale drug trafficking, drive-by-shootings resulting in death and carjackings resulting in death" (U.S. Department of Justice, 1994). Criminal offenders that fall under these categorizations, in effect, are subject to permanent incapacitation by the state. The crime bill also implements a "three strikes and you're out" provision that imposes life sentences on offenders with three or more violent felonies (U.S. Department of Justice, 1994). It establishes a mandatory life sentence for these individuals, preventing them from committing further criminal activity by extending their time served behind bars. This bill also includes a section titled "Immigration Initiatives" which contains enforcement provisions involving undocumented persons. This increased authorization for the deportation of "criminal aliens," extending $1.2 billion to be put towards measures for border control, criminal alien tracking, and incarceration of illegal criminal aliens (U.S. Department of Justice, 1994). This includes "enhanced penalties for failure to depart the United States after a deportation order or reentry after deportation" (U.S. Department of Justice, 1994). This section is meant to loosen barriers to the incapacitation of undocumented immigrants and ease the process of deportation.

The passage of this legislation is heavily criticized for the disproportionate impact it had on communities of color (Shannon, 2019; Chung et al., 2019; Ray et al., 2020). According to

Yale law professor James Forman Jr., Black communities were overly incarcerated and left unprotected by the police, making the crack epidemic one of “the greatest evils that African Americans had ever suffered” (Ray et al., 2020). These tough-on-crime policies heavily targeted and overly criminalized African Americans, making their communities more susceptible to incapacitation (Ray et al., 2020; Chung et al., 2019). This particular bill contributed to “ongoing rampant police misconduct and racial profiling by deploying hundreds of thousands of officers into nieghborhoods of color,” and jeopardizing potential “reentry for returning people of color by eliminating their Pell Grant eligibility”[11] while imprisoned (Shannon, 2019).

Furthermore, this established a grant program that provided funding “for state correction agencies to build and operate correctional facilities, including boot camps and other alternatives to incarceration, to ensure that additional space will be available to put - and keep - violent offenders incarcerated” (U.S. Department of Justice, 1994). Expanding the corrections facilities’ operation increases the chance of incapacitation.

Reduced Recidivism: Rehabilitation.

In contrast to legislation passed under the Reagan and Nixon administrations, this bill also includes rehabilitative measures. This act featured provisions for drug addiction and substance abuse programs. It allocated “$383 million for prison drug treatment programs, including $270 million in formula grants for states” (U.S. Department of Justice, 1994). It also provided grants for education and prevention efforts to reduce sexual assault against women. Administered under the Department of Health and Human Services, $205 million was authorized to be put towards “rape prevention and education programs in the form of educational seminars, hotlines, training programs for professionals and the preparation of informational materials”

[11] Federal Pell Grants are awarded to undergraduate students who display “exceptional financial need” in order to afford their education (Federal Student Aid, 2020).

(U.S. Department of Justice, 1994). These programs are vested in the initiative to treat and rehabilitate past and potential criminal offenders. In turn, successful and effective implementation of these programs is predicted to reduce recidivism.

Prison Litigation Reform Act of 1996

The Prison Litigation Reform Act (PLRA) was passed by Congress in 1996. During the mid-1990s, the news and media were saturated with “the perceived excess of prisoner lawsuits” (Belitz, 2018: 291). The PRLA was passed in response to this, imposing a vast number of barriers to filing lawsuits, “including a requirement of exhaustion, limitations on attorney fees, and an increase in filing fees for civil actions or appeals” (Belitz, 2018: 292). This act also mandates that a prisoner has suffered a nonconsensual sexual act or physical injury before they can form a suit for mental or emotional injury (Belitz, 2018). The PLRA subjects prisoners to a host of restrictions and obstacles that do not apply to any other person (Human Rights Watch, 2009). Individuals seeking court protection “against unhealthy or dangerous conditions of confinement, or those seeking a remedy for injuries inflicted by prison staff and others, have had their cases thrown out of court” (Human Rights Watch, 2009). It also imposed a scope of limitations, usually relevant only to litigated injunctions, to injunctive settlements (Schlanger, 2015). In effect, this act denies “equal access to the courts to more than 2.3 million incarcerated persons in the United States (Human Rights Watch, 2009).

Revenge.

The Prison Litigation Reform Act possesses a very definite “anti-plaintiff tilt” (Schlanger, 2015: 163). The sponsors of this legislation argue that the purpose of this law was “to deal with ‘frivolous’ lawsuits brought by prisoners” (Human Rights Watch, 2009). The PLRA includes requirements that prisoners must go through a preliminary screening process to determine whether their cases are “frivolous or malicious,” and can be subject to immediate dismissal (Human Rights Watch, 2009). These cases may also be dismissed if the plaintiff fails to state a claim with which relief can be granted (Human Rights Watch, 2009). Comprehensive studies show that the passage of this act resulted not only in prisoners voluntarily filing fewer lawsuits, but they are also succeeding at much smaller rates than they file (Schlanger, 2015; Human Rights Watch, 2009). This demonstrates that PLRA has “tilted the playing field against prisoners across the board” rather than just simply filtering out “meritless” lawsuits within the judicial system (Human Rights Watch, 2009). As the state falls victim to the remedies of prisoners granted by the courts, this enactment minimizes the repercussions of their success. In effect, the prisoner’s access to relief from conditions violating their health and well-being is negatively impacted. This ties into the prioritization of the crime victim aspect in the philosophy of revenge.

Deterrence.

The certainty of punishment was increased under the Prison Litigation Reform Act, as its provisions made it difficult for prisoners to have success in cases filed against the government. The “sweeping and unprecedented changes” brought by this act greatly prevent prisoners' access to their full citizenship rights, stripping away the freedom to petition the government in the face of injustice (Human Rights Watch, 2009). This act, for example, “falls short of providing prisoners with sufficient recourse for all sexual abuse” and the ability to receive compensatory damages for the mental and emotional harm they have experienced (Belitz, 2018: 295). The Fourth Amendment of the Constitution encompasses the provisions of bodily privacy and integrity, extending the potential for sexual abuse to be considered a violation of one’s rights (Belitz, 2018). In essence, therefore, PRLA “closes the door to civil liberties” by stripping away the protections of this freedom for prisoners (Belitz, 2018, 298). The potential of having one's access to state protections and fullness of citizenship rights taken threatens the livelihood of all criminals that pass through the justice system.

Reduced Recidivism.

The limitation imposed on attorney fees is a provision that feeds into the prisoner's level of incapacitation. If a prisoner's litigant fees are too low, it weakens the incentive for lawyers to represent prisoners when their rights have been violated (Belitz, 2018). Litigation in a court of law is increasingly difficult for prisoners, as they lack access to resources such as "libraries, legal material, computers, the Internet, and even… paper, pens, and telephones" (Belitz, 2018: 326). Therefore, without the guidance and expertise of an attorney, "prisoners have little to no chance of having their rights vindicated" (Belitz, 2018: 326). In effect, PLRA cuts the prisoner off from vital resources one would need to be successful in court. Cutting ties with access to the outside world and furthering one's limitation to freedom falls under the incapacitative motive of punishment.

First Step Act of 2018

On December 21, 2018, Donald Trump signed the First Step Act. Upon endorsing this bill, Trump remarked "we're all better off when former inmates can receive and reenter society as law-abiding, productive citizens" (Nwanevu, 2018). The American Bar Association (2019) proclaims this action to be the "most significant legislative progress towards criminal justice reform in a generation." FIRST STEP is an acronym for: "Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person" (RED Restorative Justice Program, 2021). The First Step Act is expected to correct some of the excessive policies enacted during the "drug war" by relaxing methods and implementing more rehabilitative programs (RED Restorative

Justice Program, 2021; Greene, 2020). This legislation allows judges to use their discretion, easing the pressure to grant mandatory sentences and relaxing the "three strikes" law "from life imprisonment to 25 years" (American Bar Association, 2019). This also provides inmates the opportunity to reduce their prison sentences by partaking in an expansion of vocational and training programs (American Bar Association, 2019; RED Restorative Justice Program, 2021). Its overall goal is to allow deserving prisoners to get "a shortened sentence for positive behavior and job training and giving judges and juries the power that the Constitution intended to grant them in sentencing" (RED Restorative Justice Program, 2021). In essence, this act serves to reverse some of the damaging effects that occurred as a result of "tough on crime" bills throughout the latter half of the 20th century.

Revenge & Deterrence.

Upon conducting extensive research, I have not found any aspects of the First Step Act that effectively apply these aspects of punishment. Most of the provisions in the bill, if not all, work against the tides of inflicting revenge on prisoners and make an effort to avenge those that they have wronged through excessive sentencing (RED Restorative Justice Program, 2021; RED Restorative Justice Program, 202; Greene, 2020). Instead of claiming victimhood and imposing prisoners to lengthy sentences that threaten their freedom, this act extends discretion to judges, allowing them to determine sentences depending on the circumstance of the offender (RED Restorative Justice Program, 2021). This gives them "additional ways to circumvent damaging mandatory minimum sentence guidelines in many cases… [and] ensures that a 19-year-old offender without a criminal history won't be locked away for life for a minor mistake (RED Restorative Justice Program, 2021). All mandatory minimums that were previously enforced for major drug crimes will be reduced, and minimums of 20 years will be cut down to 15 years

(Greene, 2020). Additionally, this law eliminates life sentences without parole, juvenile solitary confinement, "makes retroactive sentencing reforms enacted in 2010 that bring crack cocaine sentences more in line with powder cocaine sentences" (American Bar Association, 2019). All federal facilities will incorporate an annual assessment, referred to as the Post-Sentencing Risk and Needs Assessment System, that considers prisoners' obligations (Greene, 2020). The incentives to dissuade offenders are concentrated in this legislation's emphasis on rehabilitation and vocational training programs (Greene, 2020). As the purpose of this bill is, perhaps, to reverse some of the adverse consequences of punishment, the greater portion of analysis for this act will be concentrated on the goal of "reduced recidivism."

Reduced Recidivism: Rehabilitation.

The First Step Act provides measures for the prison system to expand rehabilitation. This law incorporates programs that allow inmates to reduce their sentences on account of "good behavior" and vocational training (American Bar Association, 2019). Some incentives for the successful completion of these programs are "increased phone and visitation privileges, increased commissary spending levels, and opportunities to serve sentences in facilities closer to home" (Greene, 2020). Furthermore, some federal prisoners, "based on their risk level and conviction, may use these credits to complete more of their sentence outside of prison in home confinement or a residential reentry center" (Greene, 2020). The training prisoners receive by participating in evidence-based programs will increase their chances of success and opportunities once released from prison, as opposed to "winding back in the system" (RED Restorative Justice Program, 2021). Participation allows prisoners to earn "as many as 47 days per year knocked off their sentence" (RED Restorative Justice Program, 2021). Furthermore, "recidivism-reducing programs" allow prisoners to be released on account of them being elderly and terminally ill

(American Bar Association, 2019). Overall, the First Step Act encourages a shift in the American criminal justice system towards the use of rehabilitative justice measures.

The Swedish Prison System

Comparing the evolution of the American prison system to that of other nations allows us to examine how different values result in different conceptions of incarceration. In this section of the thesis, I analyze the Swedish prison system. Similar to my analysis of the American system, I begin by examining the punitive origins of the Swedish system from its historical beginnings. This provides an understanding of "Scandinavian exceptionalism" as a foundational principle in their society. This concept stresses the importance of incorporating egalitarian values throughout the infrastructure of their criminal justice system, including the prison system (Pratt, 2008). This will allow me to then analyze the underlying goals within this concept and how they operate in the Swedish correctional system. I will analyze reforms to the Swedish penal policy that took place during the 1990s during their version of a national "drug war." As in the United States, the Swedish government went under an extensive reform process in the wake of increasing national crime rates (Lappi-Seppala, 2007). This serves as a key entry point for analyzing what has led to a vastly different system between Sweden and the United States.

Before I begin this section, I would like to explain the background of why I chose to study Sweden. For one, the roots of Scandinavian penal policies and prison reforms are vastly different from the United States and other countries in Western Europe. In criminological comparisons, the welfare theory[12] treats the Scandinavian countries as a cluster of distinct regimes, referred to as the "Nordic welfare state" (Lappi-Seppala, 2007: 217). They differ from

[12] This theory emphasizes "humanistic, egalitarian, and democratic philosophy" (Stoez, 1989).

many countries in terms of penal policy but greatly resemble one another based on enforcement and methods (Lappi-Seppala, 2007). As aforementioned, this similarity is based on a shared conception of collectivism and equality adopted within their institutional frameworks (Pratt, 2008).

According to the United Nations Development Programme (2020), Sweden and the United States are both countries under the “developed economies” category. Sweden and the United States also both share similar levels of industrialization (Kästle, 2017). The comparison of two “developed” nations also controls for the following confounding variables: wealth and developmental levels. In studying the similarities in the development of these nations, I also determined their respective levels of *human* development, using the Human Development Index (HDI). The HDI is “a summary measure of average achievement in key dimensions of human development: a long and healthy life, being knowledgeable and having a decent standard of living.” The most recent HDI conducted in 2020 ranked the United States at #15 on its index while Sweden falls slightly above at #8. This study also provided that the United States has an average life expectancy of 78.9 years, while Sweden’s average life expectancy is 82.7 years. Furthermore, the average individual in Sweden is expected to go to school for 18.8 years, while the average amount of schooling is 12.4 years. The average individual in the United States is expected to go to school for 16.3 years, while the average amount of schooling is 13.4 years. Sweden has a gross national income (GNI) per capita of $47,955 US dollars while the United States has a slightly higher GNI of $56,140 US dollars. Overall, Sweden has an HDI value of 0.937, while the United States has a value of 0.920. In many of these categories, the United States and Sweden possess similar values.

The selection of a Scandinavian country that most closely resembles the demographic of the United States helps alleviate the influence of diversity, in terms of race or ethnicity, as a confounding variable[13]. According to the U.S. Census Bureau (2019), the racial makeup of the United States consists of 76.3% White, 13.4% Black, and 10.3% other races. Before examining the racial makeup of Sweden, it is important to acknowledge how they treat the concept of "race." In contrast to the United States, Sweden utilizes the category of "ethnicity" instead of "race" to label different groups of citizens. Rather than having "racial minorities," the Swedish have "national minorities." According to the Swedish Institute (2020), "there are five national minorities in Sweden: the Jews, Roma, Sami, Swedish Finnes, and Tornedalers." Although the concept of "race" is less salient, they still recognize the potential for discrimination to occur in the face of difference. In 2010, Sweden passed the National Minorities and Minority Languages Act to formally recognize minorities' rights to information, protect their culture and language, and preserve their influence and participation in Swedish society (Swedish Institute, 2020). Of the three countries that make up Scandinavian territory, Sweden possesses the most ethnically diverse population. According to the most recent data from the Central Intelligence Agency (2018), Sweden's population is 80.9% Swedish (white), while the remaining 19.1% consists of ethnicities of Asian and African descent. The level of diversity is greater here than in comparison with Norway whose population is 83.2% Norwegian (white) and 16.8% is made up of other ethnicities. These percentages are even smaller for that of Denmark, whose population is 86.3% Danish (white) while only 13.7% is made up of other ethnicities. For the purposes of research, the greater the distribution of percentages between the categories of "race" and "ethnicity" will

[13] Sweden does not have official statistics on "racial" categories. In contrast to the United States, Sweden utilizes the category of "ethnicity" not "race" to group citizens. For the purposes of this essay, differing percentages of both "race" and "ethnicity" signify diverse demographics. The more diverse, the less concentrated the percentages are across groups.

signify diverse demographics. Although Sweden and the United States do not experience the same levels of racial and ethnic diversity, the difference equates to less than 4% when considering the ratio of White to Black individuals.

The Origins of Swedish Imprisonment

Before the 1800s, most crimes in Sweden were met with death and suffering (Kühlhorn, 1981). Old Swedish law, dating back to what is predicted to be the 14th century, compared criminals and wrongdoers to that of “weeds” that need to be “uprooted and discarded so that they do not stifle the good fruit” (Johansson, 1999: 4). Death sentences were a common punishment if one were to commit theft, regardless of the value of items stolen. Men receiving the death penalty would be hanged, while women were buried alive. There were also “specular punishments” in which the punishment for the crime would reflect the harm done as a way to “undo” the act. For example, arsonists would receive death while being burned on pyres. In the Middle Ages, the courts consisted of a Council that met in the rådstugurätter, or “cottage,” and decided the fates of wrongdoers. Brutal punishments assigned under the Council were utilized as a way to deter the public from carrying out similar acts. Children under the age of 15, however, could not be punished by the court of law unless they killed or injured another individual. The only punishment they would receive were monetary fines, which were less money in comparison to the fines imposed on adults. It was expected that in place of state punishment, the children would be handed over to their parents and be physically beaten (Johansson, 1999).

In the early 16th century, Sweden adopted Protestantism (Johansson, 1999). Penal laws became harsher under the fear that God would punish the legislators who allowed crime to roam freely in certain communities (Johansson, 1999). It became illegal to have sexual intercourse outside of marriage, and the death penalty was extended to crimes such as “banning” (speaking harshly against one's mother or father) (Johansson, 1999). At the beginning of the 1800s, the state became more established, and Sweden was able to create a criminal justice system that could administer order more efficiently (Johansson, 1999). The 1743 Law was passed, permitting the death penalty for only "some" crimes, and proposals for "humanizing" the prison system were published (Johansson, 1999; Kühlhorn, 1981). In the mid- 1800s, Sweden began to employ prison chaplains permanently. They were given administrative roles, prescribed daily talks with individual prisoners, and instructed to hold frequent religious services. Prison chaplains were supposed to focus on the criminal as an individual; they "were not supposed to be disinterested and neutral observers, but human beings that should lead the sinners to the road to salvation" (Nilsson, 2015). Their "most important" role was an assessment of each inmate's "moral condition" (Nilsson, 2013: 57). Prison chaplains believed that solitary confinement "curbed the prisoner's temperament and broke down his (criminal) will," while also providing a silent space to reflect on one's sins (Nilsson, 2013: 58).

Swedish penologists studied the development of the Philadelphia and Auburn systems overseas in America intending to utilize the American system as models to build their penal institutions (Nilsson, 2013). Reforms passed between 1941 and 1864 "eliminated all forms of punishment except fines, prison, death, loss of civil rights, and prison at hard labor" (Brush, 1968: 71). S*trafflagen*, the criminal code of 1864, installed "imprisonment at the center of the system of sanction, as opposed to the older emphasis on bodily punishments (Brush, 1968: 71). Between 1846 and 1881, upwards of forty new Swedish penitentiaries were built based on the Philadelphia model. Utilizing the provision of solitary confinement "strengthened the chaplains' position visà-vis the prisoners" (Nilsson, 2013: 58). The spatial isolation was thought to increase the order of prison functioning and "provide an extremely effective form of exclusionary power"

(Nilsson, 2013: 59). In this new order, chaplains were entrusted with the task of converting the prisoner into “a true Christian and to make him an obedient and law-abiding subject” (Nilsson, 2013: 59). In the late 1860s, the famine in Sweden resulted in incarceration rates four times higher than they are today (Nilsson, 2013; Kühlhorn, 1981). It was during this period that chaplains started to pay greater attention to the causes of incarceration, marking their notes with social and economic problems that may facilitate criminal activity (Nilsson, 2013).

By the turn of the twentieth century, prison chaplains came to “undermine their positions in the prison system” as they discovered the methods used within the penitentiary did not prove successful in rehabilitating criminal offenders (Nilsson, 2013: 71). The status of religion within the penitentiary began to change, and in 1945, the Swedish penitentiary system was abolished (Nilsson, 2013; Kühlhorn, 1981). During this same year, “open” prisons were established as a normal form of imprisonment. Under this reform, the Correctional Administration made efforts to implement institutions that lacked “surrounding walls, grillwork or other security measures” (Ward, 1972: 240). Closed institutions would still be used for dangerous criminals and individuals serving a longer sentence. If an individual were to misbehave in an “open” institution, they would be transferred to a closed facility. This reform was passed to assist inmate’s reintegration into society. In the text of the Swedish code, “no measures may be taken which inflict suffering on prisoners in addition to the mere loss of liberty … prisoners shall be treated with consideration for their human dignity” (Ward, 1972: 240).

In 1965, the Swedish Penal code was established to dictate all crimes and provisions for the punishment of these acts (Bishop, 1999; Kühlhorn, 1981). These include mandatory maximums for several crimes that should generally not exceed the time of ten years (Government Offices of Sweden, 2020). This Code categorizes injunctions based on the following classifications: “imprisonment, imposed from 14 days to 10 years or life; youth imprisonment, imposed on offenders 18 to 20 years old; internment, reserved for persons who commit serious crimes; surrender for special treatment, such as psychiatric care, child welfare, treatment for inebriates, etc.; and fines, conditional sentence, and probation” (Kühlhorn, 1981).

Shortly after this establishment, inmates at Osteraker correctional facility had staged an unprecedented hunger strike in 1971 that led to further reforms to be enacted in the following years (Ward, 1972). One resulting reform was the establishment of the National Prison and Probation Administration which serves to recognize “inmates' right to organize and be represented by inmate associations” (Kühlhorn, 1981). After “negotiating” with prisoners, the National Correctional Administration incited new provisions that included agreements such as being granted “good behavior” leaves for those serving longer sentences, the permittance of holiday leave, visitation rights at least twice a month for two hours, that guards give notice to inmates before entering a room, and that “violations of furlough rules, such as late return or ‘having too many beers,’ should not affect future leaves” (Ward, 1972: 251).

In 1974, Swedish prison and probation services were restructured (Kühlhorn, 1981). During this time “crime policy was characterized by social engineering, by a belief in rehabilitation and by humanitarian values” (Tham, 1998: 410). During the early to mid-1970s, there were significant tendencies towards implementing a solidaristic welfare state under the power of radical social-democratic prime minister Olof Palme (Östberg et al., 2019). This greatly impacted the number of individuals who were being held in prison. The prison population was virtually cut in half as a result of “decriminalization and depenalizations” during the 1970s, resulting from an era of “explosive radicalism” and extensive socialist reform (Tham, 1998: 411; Östberg et al., 2019).

During the 1980s, however, the concept of "drug-free Sweden" emerged during the onset of spiking drug abuse and crime rates. The Swedish justice system enacted legislation that tightened control over both users and dealers. Influenced by the women's rights movement, penalties were also increased in two other categories: sexual assault and violent crimes. In 1981, "domestic violence crimes were prioritized for public prosecution, and penalties were increased in 1984, 1993, and 1999" (Lappi-Seppala, 2007: 249). Police were also given extended powers to conduct "modern searches," such as wiretapping and undercover operations (Lappi-Seppala, 2007). In the 1980s, only about 12,000 of Sweden's 8 million citizens served prison sentences despite this decade being one of the highest for drug abuse crime rates (Fink, 1982; Kühlhorn, 1981; Tham, 1998).

In 1994, the Social Democratic government implemented policy changes that moved towards a less repressive penal policy. The "expansion of the use of electronic supervision in the home" reduced prison populations, community service mandates provided a prison alternative for younger crime offenders, and a national program for crime prevention was introduced, "stressing the involvement and responsibility of the local community" (Tham, 1998: 411). In 1998, however, tides changed. The Prime Minister stated that "every crime could be combatted forcefully," foreshadowing the implementation of 'tougher on crime' policies to come in the future (Tham, 1998: 411). As a result of multiple drug legislation enactments, designer drugs were criminalized, the use of steroids was placed on the same level as other drug offenses with the threat of six months imprisonment, a zero-tolerance policy was granted for those driving under the influence, and "a new drug commission was set up in the spring of 1998 restating the strict prohibition model of Swedish drug policy and the goals of 'a drug-free society'" (Tham, 1998: 412). The consideration of sex and gender in these reforms resulted in the criminalization of child pornography possession, an extended definition of 'rape,' criminalization of the failure to report serious sex crimes, criminalization of payment for sexual services, and the enforcement of monetary damages for any employer who does not actively try to prevent sexual harassment in the workplace (Tham, 1998). The government also enacted several provisions extending their ability to surveil citizens including the acceptance of hidden surveillance cameras, the possession of computer records for pre-investigation purposes, and DNA profiles (Tham, 1998). The Social Democratic government also instated provisions increasing the severity of prison sentences, such as allowing inmates sentenced to more than two years of prison to be eligible for parole only after two-thirds of their time has been served (Tham, 1998). Surprisingly, however, the number of crimes reported by police in 1999 was still much lower than the rates experienced in 1990 (Tham, 1998).

Fast-forwarding to the modern-day, Sweden has had to remove spaces within its correctional facilities due to steady decreases in incarceration rates (Kriminalvården, 2017). In 2013, Sweden announced that "it had closed four correctional facilities and a remand center" as the prison population has "been dropping by around one percent per year since 2004" (Zoukis, 2014). Swedish prisons possess an average capacity of 4,253 spaces in their facilities, and in the year 2016, only 89% of those spots were filled (Kriminalvården, 2017). Criminology professor at Stockholm University, Hans von Hofer, attributes the drop-in rates to a shift in sentencing policy that reflects Sweden's emphasis on reintegration into society over incapacitation (Zoukis, 2014). To put things into perspective, the United States ranks first in the world for the prison population, while Sweden ranks 112th (Zoukis, 2014). This stark contrast in numbers is potentially impacted by the underlying philosophies of each system.

After the reform of the Swedish penitentiary, the concept of punishment and harsh penalization was replaced with that of rehabilitative justice (Tham, 1998). Legislators began to craft a system that responds to the needs of the prisoners and provides opportunities for them to rebuild their lives upon reentry. This sentiment is extracted from the broader social concept of "Scandinavian exceptionalism." This term was first coined by John Pratt, a professor at Victoria University studying the presence of collectivism and equality in the current day era of penal excess (Pratt, 2008). Pratt asserts that egalitarianism was "institutionalized and embedded in their social fabrics through the development of the Scandinavian welfare state" (Pratt, 2008: 120). This concept of welfarism has "led to more lenient attitudes about punishment" (Wepsäläinen & Wikström, 2014: 44). When society collectively adopted this concept as a significant part of their culture, it allowed Sweden to "sharply diverge from those in the Anglo-American world… and [to] have remained distinct from them" (Pratt, 2008: 120). Other scholars expound upon this idea, referring to "exceptionalism" as "positive and exceptionally good aspects within the penal area" (Wepsäläinen & Wikström, 2014: 44). This concept is rooted in Scandinavian countries' "relatively low levels of imprisonment and [the fact that they] are considered to have exceptionally good prison conditions, thus Scandinavian penal policies and prison systems are being used as positive examples to a great extent around the world" (Wepsäläinen & Wikström, 2014: 44). The intentions, or "goals," of Scandinavian exceptionalism are critical to understanding its function in the Swedish justice system.

According to the Swedish Prison and Probation Service government agency (Swedish: Kriminalvården), their "most important mission is to enforce punishment and reduce recidivism" (Kriminalvården, 2020). For this analysis, both of these aspects can be thought of as a means of deterrence. The agency conceptualizes deterrence as the enforcement of "punishment as it may enable it to outweigh the profit not only on the individual offense but of such other offenses as are likely to be committed with impunity by the same offender." When successfully deterred, they suggest that the reduction of recidivism occurs as a result.

Kriminalvården (2020) also states that one of their most important goals is "helping the convicted person not relapse into crime." One of the programs the justice system provides to help with potential relapse is a treatment for drugs and rehabilitation measures that allow the prisoners to work towards the "opportunity of a stable life after punishment" (Kriminalvården, 2020). Rehabilitation is a fundamental aspect of the Swedish prison system that is heavily emphasized during incarceration. Another one of their objectives is to create an institution that is "as normal as possible," mirroring the regular activities in everyday life (Kriminalvården, 2020). This condition was fought for in a series of strikes and confrontations involving Swedish prisoners in the late 1960s who insisted that normal living conditions would improve their quality of life while imprisoned (Mathiesen, 1974). This standard is compatible with the concept of "Scandinavian exceptionalism" as it attempts to mimic, and therefore equalize, the experiences of those who are imprisoned with those who are free. In the next few sections, I will be analyzing the three following dimensions of Scandinavian exceptionalism: **deterrence, rehabilitation, and normalization.**

Goal #1: Deterrence

One core element of Scandinavian exceptionalism is deterrence through only the loss of individual freedom. This tactic is used in replacement for harsh punishment. "In the Swedish prison system, the goal is not to further punish the incarcerated offenders since being deprived of one's freedom is considered punishment enough (Hedstrom, 2018). Kriminalvården emphasizes how "exceptionalism" alters the use of punishment, diminishing its negative effects on prisoners

(Hedstrom, 2018). Withholding is the operation of punishment here, not infliction. This practice is part of a broader cultural acceptance. In 2010, a study conducted by Danish criminologist Flemming Balvig had shown “that the political demands for stricter punishments appear to not have support by the Swedish public’s informed and concrete legal consciousness” (Wepsäläinen & Wikström, 2014: 21). Deterrence is implemented pragmatically, coinciding with “penal minimalism and the defense of human rights" (Carrier, 2015).

The death penalty is prohibited in Sweden and the longest sentence is the “life sentence,” which means a prison term of “seventeen to twenty years” (Lappi-Seppala, 2007: 223). This provision may be adjusted taking into account the case of a repeat offender. Imprisonment is only used for major offenses. The majority of penalties are less severe alternatives, such as fines, which serve as the major form of punishment for crimes. With the imposition of monetary penalties, the justice system factors in affordability depending on the offender’s financial situation. Furthermore, children under the age of fifteen cannot be held liable for criminal activity in a court of law. If a child were to engage in unlawful activities, only child welfare authorities are allowed to intervene with the mandate that all assistance provided is in the best interest of the child. Juveniles are “often diverted from criminal proceedings by withdrawal from prosecutions” (Lappi-Seppala, 2007: 226). The most common punishments given to young offenders are fines and parole. There are no punishments involving the infliction of any pain to the human body.

John Pratt (2007) observes how in most Scandinavian countries, “punishment to the human body was quickly scaled down or abolished in the early modern period.” He claims that the Swedish system operates on the notion that “the social solidarity rather than division that is produced, the forms of knowledge and power relations characteristics of them are likely to act as preventative barriers" by themselves. The philosophies of deterrence that the prison emphasizes are largely “self-regulating and norm-compliant,” aligning with the concept of specific deterrence. This form of deterrence the presence of other actors to commit a crime to deter the potential offender away from the possibility of committing that same crime is not necessary. This emphasizes self-regulation and individuality, humanizing the prisoners. These pragmatic strategies can “alleviate the conditions of penalized individuals (Carrier, 2015). The aim of the Swedish prison system is characterized by: “a humane attitude, good care of and active influence upon the prisoner, observing a high degree of security as well as by due reference to the prisoner’s integrity and due process” (Lindström & Leijonram, 2007: 564). Operations within the prison system “shall be directed towards measures, which influence the prisoner not to commit further crime,” while simultaneously ensuring the promotion and maintenance of “the humane treatment of offenders without jeopardizing security” (Lindström & Leijonram, 2007: 564). Along these same lines, Kriminalvården (2017) expresses the importance of reducing criminality and improving the potential for prisoners to live a life without committing new crimes upon release.

Unlike the United States, where prison systems are owned by both the state and private entities, Swedish “egalitarianism ensured that the prisons were all run by the state to avoid [partial private interests] and interference upon authority” (Grant, 2017: 11; The Sentencing Project, 2021). Being run by the state, “Swedish prisoners have an input into the prison governance at meetings where they can present their views to wardens" who are in charge of administering their punishment (Grant, 2017: 11). The prison system does not have any armed guards, maintaining the demilitarization of the justice system. This practice ensures the implementation of the Scandinavian exceptionalism thesis “of low imprisonment rates and humane” conditions within their penal system (Grant, 2017: 11).

Goal #2: Normalization

Normalizing prisoners’ experience is consistent with the egalitarianism aspect of “Scandinavian exceptionalism.” Kriminalvården (2020) states the following: “the time you spend in an institution should be as normal as possible.” The Swedish prison system is dedicated to creating an experience for incarcerated individuals to have a sense of normalcy. They attempt to incorporate “the same rules concerning social and medical care and other forms of public service” that should “apply to prisoners as they apply to ordinary citizens” (Lindström & Leijonram, 2007: 564). The system aims to place prisoners in an area that is familiar to them, being a facility that is relatively close to their hometown (Lindström & Leijonram, 2007: 564). Unlike the overcrowded, violent, and inhuman jails in the United States, the Swedish institution provides each individual with their personal and comfortable living space. “Everyone has their own living room (Equal Justice Initiative, 2020). The room has a bed, desk, TV, bookshelf, and wardrobe” (Kriminalvården, 2020). All inmates are entitled to practice their religion or faith freely and openly while in prison. “Most institutions have a priest from the Swedish Church and a pastor for a free church” and they are allowed to congregate for religious services (Lindström & Leijonram, 2007: 568). In the case of the need for medical attention, prisoners are referred to physicians or treated by outside medical services (Lindström & Leijonram, 2007: 568). Even smoking is permitted, just not inside the doors of the facility (Kriminalvården, 2020).

While incarcerated, each prisoner has to work, meaning they “must work, study, or attend treatment programs” (Kriminalvården, 2020). Working in an institution could be “different types of assembly or packaging, working in a mechanical workshop, operation, and maintenance, carpentry, laundry or cleaning" with the oversight of production managers (Kriminalvården, 2020). "Most prisoners… will work an average of 6 hours a day, 5 times a week" with an hourly compensation of 13 SEK[14] (Hedstrom, 2018: 78). "One day a week, the institution's kiosk is open" where inmates are welcome to buy "newspapers, tobacco, sweets, and hygiene items" much like a regular corner store. Furthermore, just about every facility has a space designated for studying. An inmate "can study subjects from compulsory basic school level and upper secondary school level" (Lindström & Leijonram, 2007: 566). They also make it possible for Swedish immigrants to obtain reading and writing competency training (Kriminalvården, 2020). Productivity and continuity of labor are highly encouraged. It allows the individual to maintain a sense of autonomy (Kriminalvården, 2020).

Relationships with the community and maintenance of communal ties are a large part of instilling a sense of normalcy. The institutions allow inmates to have visitation rights from their families and legal representatives (Grant, 2017). "'Conjugal relations' are encouraged… and provide accommodation where families can stay on monthly intervals" (Grant, 2017: 10-11). The accommodation of an inmate's family during their stay is free of charge, and prisoners are unsupervised during this entire period. The lack of supervision is made possible by the installment of trust and positive relationships between the inmates and security guards (Grant, 2017: 12). The trust of the administration and individuals in positions of authority is critical to establishing a comfortable environment that is free of hostility (Grant, 2017:12).

Goal #3: Rehabilitation

Scandinavian exceptionalism coincides with the restorative justice aspect of rehabilitation. The Swedish correctional system "encourages noncustodial sanction and has an

[14] According to the Money Exchange Rate, this is approximately 1.56 USD.

overall focus on rehabilitation in the prison system… used to help inmates reintegrate back into society" (Hedstrom, 2018: 67). Perhaps the most direct form of rehabilitation is the medical treatment of drug addicts and inmates who are accustomed to substance abuse. The Swedish prison system has seven prisons that specialize in the treatment of drug abuse (Lindström & Leijonram, 2007). They also incorporate special units "for those who wish to undergo treatment for drug or alcohol abuse while other units concentrate on motivating and influencing prisoners to participate in such programs" (Lindström & Leijonram, 2007: 568). Other treatment programs include the following skill acquisition: "self-control, social skills, conflict resolution, the relationship thought-feeling-action, and to change their habits" (Kriminalvården, 2020). These are featured in the form of "group programs, individual programs, [or] programs for men only and women only" (Kriminalvården, 2020).

Sweden has a long tradition of treatment-oriented measures, with the "widest array of community sanctions" next to Denmark (Lappi-Seppala, 2007). Regular contact with the outside world is seen as an important part of effective rehabilitation. The institutions and prisons allow for the opportunity to have visitors and to leave the premises. A prisoner may "leave the prison for a certain number of hours to, for example, go to the Public Employment Office, go to a meeting with Alcoholics Anonymous (AA) or visit the family" (Kriminalvården, 2020). Leave is not a right. "The purpose of leave is to prepare [the prisoners] for a life after imprisonment" (Kriminalvården, 2020). An inmate also may have visitation rights of an outsider, possession of a phone under the rules of the institution and can receive letters and packages without them being opened (Kriminalvården, 2020). Sweden is also a nation that allows prisoners to exercise their voting rights while incarcerated. All prisoners are allowed to vote, preventing the disenfranchisement of prisoners during elections (BBC, 2012).

Discussion: Comparative Analysis

Throughout the course of this study, I discovered several distinctions between the American penal system and the Swedish rehabilitation system. For one, the origins of both systems were vastly different. The Swedish system was originally rooted in gruesome cruelty and harshness, with the hopes of deterring potential criminal offenders and cleansing the population of those who engage in wrongdoing (Kühlhorn, 1981; Johansson, 1999). Old Swedish law was heavily influenced by the belief that brutality and fear tactics were an efficient way to dissuade the public from crime. The death penalty was the default punishment utilized under this system, even for trivial crimes (Johansson, 1999). In contrast, American penitentiaries were an attempt to progress beyond the crudeness of the “Bloody Code” inherited by England. Delineating from a system that utilized the death penalty as a default punishment, the American system employed religious rehabilitation as the main philosophy in their prison systems. The Pennsylvania system was conceived out of the belief that solitary confinement and silence were the proper conditions for rehabilitating one’s corrupt “soul” (Hallinan, 2003; Barnes, 1921). Inmates were subject to a sentence that was to be carried out in complete solitude with no inside or outside interaction with other individuals (Hallinan, 2003). Under the Auburn System, inmates were subject to hard, strenuous days of labor and then dismissed to one’s single cell at night where prisoners were expected to honor a code of complete silence (Barnes, 1921; Hallinan, 2003). At one point in time, however, both systems were heavily influenced by the Christian religion and used faith as a method of treatment to rehabilitate their inmates. Under the Pennsylvania system, inmates were encouraged to pray and repent of the sins that caused them to commit crimes (Hallinan, 2003). Swedish prisons went as far as employing prison chaplains to speak with and counsel inmates to help them become “ideal” Christians (Johansson, 1999;

Nilsson, 2013). Both countries utilized the premise of Protestantism to foster solutions within their respective justice systems.

The fundamental principles of each institution are also different. After Sweden abolished their penitentiary, they created a new system built upon the concept of "Scandinavian exceptionalism." This concept emphasizes a collectivist approach that garners equality and social welfare as an integral part of society. "Scandinavian exceptionalism" is rooted in a focus towards positivity and unified efforts towards establishing a better community (Pratt, 2008). This allowed the Swedish to depart from the Anglo-American ideal and remain separate from them while creating their own institutions (Pratt, 2008). The foundations of the Swedish criminal system are meant to reengineer the social aspects of criminals through instilling in them humanitarian values and dignity (Ward, 1972; Tham, 1998). Incorporating this principle into the prison system fosters leniency with punishment that allows the Swedish prison system to focus on rehabilitative aspects of criminal detention versus the penal aspect of criminal detention. It also encourages the implementation of rehabilitative measures that allow prisoners the opportunity for a second chance at life upon release (Kriminalvården, 2020; Mathiesen, 1974). As stated earlier when examining Scheingold's argument regarding punitive culture, the presence and public support of rehabilitative values within a national culture establishes a climate that is inhospitable to the concept of harsh penalization.

In contrast, the American prison system is built upon the concept of vindictive punishment and penalization. This institution derives its power and legitimacy utilizing the threat of force (Van den Haag, 1982). It is rooted in the philosophy of using state-imposed sanctions in order to dissuade the public from engaging in criminal activity. Scheingold argues that America's punitive attitudes are directly associated with its symbolic importance in our culture

(2010). The cultural value we place on crime and retribution heavily affects policy implications and the implementation of criminal legislation (Scheingold, 2010). The American system utilizes the implicit power of threat and force to impose order in its society (Van den Haag, 1982). Not only do harsh sentencing policies and incapacitation add to the penal aspect of the American system, but also the permanence of the social barriers and restrictions individuals are subject to for participation in illegal activity. Contrary to Sweden, the punitive nature of American culture encourages harsh policies and establishes a climate that is relatively inhospitable to "Scandinavian exceptionalism."

Sweden and the United States share similar "goals," however the distinct principles these "goals" are rooted in result in very different methods of imposition. For instance, both institutions share the goal of "deterrence." In the United States, however, deterrence operates under the threat of punishment. In this theory, individuals weigh the cost and the benefits of committing the act and are expected to choose to comply with the law if the punishment poses a greater risk (National Institute of Justice, 2016). The American system uses severity and certainty of punishment to dissuade both the public and potential re-offenders from committing crimes (Wright, 2010; U.S. Department of Justice, 2016; Van den Haag, 1982). The system operates on the belief that if all humans are rational beings, potential offenders will refrain from crimes if the threat of punishment is certain enough to have credibility (Bushway & Paternoster, 2009). Increasing the severity level of punishment is also said to be an influential aspect of deterrence, as the costs of punishment begin to outweigh the benefits of carrying out a potential crime (Wright, 2010). In contrast, the Swedish system utilizes the element of deterrence through the loss of individual freedom. Under this system, the simple physical removal of an individual from society and loss of their autonomy is believed to be enough of an incentive to deter potential criminals (Carrier, 2015). Withholding offenders from the freedom to act within the full capacity of their own will while detained is believed to be an effective form of deterrence (Hedstrom, 2018). Unlike the increase of sentencing and penalties inflicted in the American system, the Swedish system limits the severity of its punishments with the belief that criminal divergence will result from detention itself (Hedstrom, 2018). The philosophy Swedish imprisonment employs is one that empowers individuals to become “self-regulating” and “norm-compliant” without the force of the state (Pratt, 2007; Carrier, 2015).

Both systems employ the concept of rehabilitation, however the Swedish system utilizes this method to a much greater extent and is more established than that of the United States. Rehabilitation is the central focus of the Swedish correctional system, helping to reintegrate criminal convicts back into the fabric of society (Hedstrom, 2018). Medical treatment geared toward helping those with substance abuse issues is perhaps the most obvious form of this method employed in Sweden, while classes and programs where inmates can gain social skills designed to change their habits upon reentry (Lindström & Leijonram, 2007). Beyond programs expected to reduce recidivism rates, the Swedish system allows for “open” prisons, equitable pay, and loosened visitation rights for inmates (Kriminalvården, 2020). The United States, on the other hand, includes rehabilitation under its overarching goal of reduced recidivism. Rehabilitation under the American system consists of programs that assist individuals with drug abuse and vocational training. Due to the overwhelming presence of punitive sentiment in the American system, the rehabilitative aspect of the prison system is not as well- established (Scheingold, 2010). The American system employs rehabilitation with the hope that spending time behind bars will change the mindset of some offenders, encouraging them to change their lifestyle and subscription to criminal behavior upon reentry (Clarke et al., 2016). The American system also includes similar programs to Sweden that assist those with drug abuse problems with overcoming their dependence on addictive substances. In addition, imprisonment has been reformed to include incentives for participating in vocational programs under the passage of the First Step Act of 2018, offering inmates reduced sentencing for good behavior and attempts to improve their lifestyles.

Sweden and the United States diverge on the opposing nature of their other two goals. Sweden works to achieve normalization within its prison system, allowing inmates to vote and maintain contact with the outside world while still serving their sentences (BBC, 2012; Kriminalvården, 2020). On the other hand, the concept of revenge under the American prison system works to create a harsh climate for the individual in hopes of avenging the harm done to the victim of the crime.

Another area where these institutions slightly converged is in the enactment of penal legislation. In the wake of the "war on drug" the American system consistently passed laws that tightened restrictions, increased the degree of punishments and penalties, and stripped prisoners' rights. Each act of legislation mentioned throughout "The American Penal System" section of this thesis included harsher provisions. Examples of these provisions include the abolition of parole, "three strikes and you're out law, and youth imprisonment for federal felonies. Likewise, during the time of their own crime rate insurgence, Sweden tightened their punitive policies under rule of the Social Democratic government. In 1994, the Prime Minister pushed through legislation criminalizing designer drugs, various instances of sexual violence, and increased surveillance (Tham, 1998). However, the timeline of which these Swedish reforms and their ability to set a precedent in the criminal justice system for the passage of similar reforms was much more short-lived than in the United States.

Sweden quickly reverted back to its rehabilitative model, focusing its legislation on the improvement of prisoner rehabilitation. For example, after the Osteraker hunger strike in 1971, Sweden established a National Prison and Probation Administration that serves to empower prisoners and allow them to organize as would a union (Kühlhorn, 1981). In 1974, Sweden decriminalized and depenalized various crimes mentioned in the Swedish section. In this same year, Sweden underwent an extensive process of restructuring of their rehabilitative measures, granting inmates measures where they could lessen sentences on behalf of good behavior and compliance. The only American act passed at the Federal level that shared a similar sentiment was the First Step Act passed in 2018 under the Trump administration. This act increased the breadth of rehabilitative measures available to prisoners and emphasized the importance of allowing inmates to rebuild their lives while incarcerated (Nwanevu, 2018: RED Restorative Justice Program, 2021). This act also instated provisions for lessening an inmate's sentence on terms of “good behavior” and compliance to vocational rehabilitation.

Overall, the implication of this study leaves me with the following conclusion: the difference in punishment models values greatly impacts the construction of national institutions. The Swedish system diverges from the American system in the way that the Swedish system largely adheres to “Swedish exceptionalism” and a dedication to equality. This principle allowed the Swedish government to create the current prison system; one that operates on rehabilitative justice and social welfare. Inversely, the culture of harsh penalization and punitiveness at the heart of the American system fosters a justice system that operates on the power of threats and deterrence. Although both nations have similar levels of development and are both considered part of the Western world, the difference in underlying culture places the two nations on opposite sides of the spectrum when it comes to criminal justice.

Limitations

Within academic research, it is expected that all studies possess certain limitations. This section addresses some of the challenges I encountered while conducting my research and the conditions through which I analyzed my findings. Below, I demonstrate the limitations of some of the findings included in this study, as well as potential areas for future research.

Ethnicity & Race.

As aforementioned, the United States and Sweden have different classifications when it comes to defining the ethnicities, nationalities, and/or racial categorizations of individuals that reside in their country. Across the globe, there is a wide variety of different terms nations employ when it comes to drawing distinctions within their populations, such as “race,” “ethnic origin,” “nationality,” “ancestry” and “indigenous,” “tribal” or “aboriginal” (Morning, 2005: 1). Furthermore, as we see in the case of this particular study, what is referred to as “race” in one nation may be labeled “ethnicity” elsewhere, while “nationality” may pertain to ancestry in certain countries or citizenship in another (Morning, 2005). As Sweden has no conception of “race,” it was quite difficult to measure their level of “racial diversity” as opposed to that of the United States. When drawing a comparison between two nations on behalf of cultural aspects that affect policy, racial and ethnic politics must also be considered (Blakemore, 2021). Racial and ethnic constructs “affect the distribution of wealth, power, and opportunity, and create ending social stratifications” (Blakemore, 2021). As all nations have different conceptions of these categories, they are not comparable to each other (Morning, 2021). One way to circumvent this limitation is to include other nations within my comparative study that have similar ethnic demographics. This would allow me to further analyze how cultural values and conceptions of justice affects the type of policies and reforms implemented within different nations.

Federal vs. State.

Due to the nature of this project, I chose to focus on federal legislation to circumvent the variability within state prisons. Federal prisons are more uniform, operating under the jurisdiction of the Federal Bureau of Prisons. The main difference between federal prisons is the levels of security they fall under, designed to best meet the nature of different types of criminal offenders: minimum, low, medium, high, and administrative. On the other hand, state prisons differ vastly as each has its own unique method of operation (Brooks, 2019; Ball, 2014). “States differ in their stances on capital punishment, the percentages of offenders released on probation, and the racial makeup of their prison populations” (Brooks, 2019). Because not one singular state has identical policies and legislation changes between state lines, the study of one state’s punitive policies would not be representative of the entire nation. Consequently, this study does not include state statutes that reflect different levels of incarceration or punishment and solely focuses on laws enacted on a federal level.

Criminal Justice Reforms.

This study utilized the punitive methods articulated in five federal acts of legislation. In selecting laws to focus on to conduct a comparative analysis, there were some that did not get chosen. Some other impactful acts of legislation include the Police and Criminal Evidence Act of 1984, the Prosecution of Offenders Act 1985, and the Criminal Justice Acts of 1987 and 1988 (Savage, 1990). Utilizing other acts of legislation in future research would paint a fuller picture of the nature of punitive policy and penalization within the United States.

Ideas for Further Research

On-going Analysis of Future Reforms.

There are several reforms in the United States criminal system that are currently on "pending" status or are awaiting approval.[15] These reforms contain provisions that will increase the rehabilitative nature of the American system that was recently introduced by the passed of the First Step Act in 2018. An analysis of these reforms alongside a study of public attitudes regarding methods of penalization will illustrate the evolution of our justice system and potential projections for the future of our institutions. Due to the nature of our democracy, the American system is one that is continually transforming with the passage of legislation and societal values regarding acceptable forms of punishment. Regarding the future of American incarceration, I wonder: How will these new reforms change the current system, and how will they impact the fate of prisoners?

Exploration of State-Wide Variation.

These punitive policies exist on both state and federal levels, serving to "systemically [block prisoners] from reintegrating into society" (Abu-Jamal, 2014: 2). Due to the separation of state and federally run penal institutions, crossing state lines where certain criminal laws may differentiate, there exist vastly different criminal policy outcomes (Bureau of Justice Statistics, 2021). Not only does the severity of punishment and sentencing vary across all fifty American states, but also the rate of prison privatization (Bureau of Justice Statistics, 2021). Regarding this distinction, I wonder: How does state-wide differentiation impact the current state of punitive policy in the United States? How does privatization play a role in penalization and the infliction of punishment on prisoners?

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[15] The following are legislative reforms currently being introduced to Congress on behalf of the American Prison Fellowship: Sentencing Reform and Corrections Act, Second Chance Reauthorization Act, and Comprehensive Justice and Mental Health Act (Prison Fellowship, 2021).

Abolition.

When I began this research paper, I was initially interested in exploring the implications of prison abolition in the American criminal justice system. Many abolitionists make the argument that the American prison system cannot be reformed adequately to avenge the harm excessive penalization has caused (Prashar, 2020). Diving deeper into the concept of abolition, the systems that could potentially replace the American prison system, and the possibilities of implementing them here in the United States are all plausible topics for this area of research. Given this argument, I wonder: Is it possible to reform the American justice system, or is the only way we can avenge its punitive past to completely abolish it? If so, what are the steps towards abolishing the American prison system and how would we go about doing it?

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