


Applying the Theory of Social Good to Mass Incarceration and Civil Rights

Research on Social Work Practice
2020, Vol. 30(2) 205-218
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DOI: 10.1177/1049731519872838
journals.sagepub.com/home/rsw


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Abstract

This article illustrates how the underproduction of social goods and services within the domain of diversity and inclusion bolstered mass incarceration in the United States and further marginalized historically oppressed groups, specifically African Americans. The article begins with a discussion of the importance of the social good framework and how it relates to the social problem of mass incarceration. Then, it provides a brief history of racial exclusion within the American context to demonstrate the centrality of race in the social exclusion of African Americans. This is followed by a discussion of the macro-, mezzo-, and micro-roots of mass incarceration, and how the U.S. tolerance for racially based social exclusion helped to propel mass incarceration, especially the overincarceration of African Americans. Finally, this article concludes with suggestions for rectifying this substantial social injustice and the role that social work must play in addressing this issue.

Keywords

social good, mass incarceration, African Americans, discrimination, diversity, inclusion, civil rights, social justice

The powerful never lose opportunities—they remain available to them. The powerless, on the other hand, never experience opportunity—it is always arriving at a later time.

—Martin Luther King Jr. (1968/2010, p. 1612)

Just as is the case with racial health disparities (see Kawachi, Daniels, & Robinson, 2005), there are various explanations given for the disproportionate contact with the criminal justice system in general, particularly incarceration, experienced by minority groups. Two predominant explanations for these racial disparities are racism and class. Those who argue racism as a cause suggest that the criminal justice system reflects society's racial biases against minority groups and that for this reason minorities are overrepresented within the carceral system. Those who support the class hypothesis argue that disparities within the criminal justice system have more to do with socioeconomic status than with race. Specifically, poorer individuals cannot afford to navigate the complexities of the criminal justice system and thus end up with worse outcomes. Due to the disproportionate rate of poverty affecting minority communities, they are disproportionately represented among the incarcerated. Yet, economists have put forth a third reason: statistical discrimination. This argument purports that since there is incomplete information when observing one's criminality or propensity to commit future crimes, and since criminality may be tied to the observable characteristic of race, then what appears to be an overrepresentation is actually a reflection of the racial distribution of criminal behavior within the population.¹ This article addresses all three theories and, within a social good framework, argues that mass incarceration was

bolstered by the historical, economic, and social exclusion of certain marginalized groups in society.

Mor Barak (2018) provides a theory of social good based on “[i]ndividual, community, and society well-being” (p. 2). She purports that there are three domains of the social good: “(1) diversity and social inclusion, (2) environmental justice and sustainability, and (3) peace, harmony, and collaboration” (p. 6). Social goods and services that fall under the category of diversity and inclusion are goods and services that ensure there are no barriers to opportunities that enhance and facilitate individuals to fully participate in society as a productive law-abiding citizen. Social goods and services promoting environmental justice and sustainability would ensure that everyone has access to a clean, safe, and healthy living environment. Finally, peace, harmony, and collaboration goods and services encourage “human beings to live in peaceful, interdependent, and harmonious societies, absent not only of war but also of destructive intergroup conflicts” (p. 6). Although these domains are separate, they may also interact. For example, social goods and services that improve diversity and inclusion may have spillover effects into the domains of environmental justice and sustainability and peace, harmony, and collaboration.

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The concept of social good is closely related to that of a public good. Mor Barak (2018) argues that the social good is distinct from the public good because the latter is predominantly supplied by the state or government. However, public goods do not have to be provided by the government. They could potentially be supplied through market-based solutions (e.g., assigning property rights), provided the correct incentive structure exists to facilitate their production. Nonetheless, the power of the social good approach is that it creates an easily accessible category of goods and services that have positive externalities to society but it does not rely on the strict definition of the pure public good, which is a good that is both nonrivalrous and nonexcludable in consumption. Such a straightforward definition facilitates comparison of the production of these goods and services to market-based goods and services. In fact, the concept of the social good could be thought of as an umbrella term that could include public goods as well as other goods and services that have positive external benefits to society but are not strictly defined as a public good (i.e., quasi-public goods). Moreover, it leaves open the possibility that government systems—typically thought to aid in their efficient production—could negatively impact the production of social goods and services, as was true for the case of mass incarceration.

Developing a theory of social good will also facilitate discussion of the inputs necessary for production of social goods and services, facilitate research to understand the best way to produce these goods and services, and enable measurement of their social benefits and costs. One of the most powerful implications of a theory of social good is its potential to insert into conversations on well-being, which typically focus on economic indicators, the resources needed for the efficient production of social goods and services. For example, human capital includes, among other things, the knowledge, habits, attributes, and behaviors of individuals that allow for participation in tasks to produce market goods and services. Society is typically interested in improving human capital because it improves productivity and, as a result, well-being. However, a social good framework might also force society to not only think about the investments necessary to improve production of economic goods but to also consider the attributes, skills, and investments necessary to produce social goods more efficiently.

One could plausibly argue that the major social problems of today (e.g., high levels of income inequality, mass incarceration, homelessness, discrimination, racial disparities) are a result of too much focus on economic goods, which has led to an overproduction of characteristics and traits needed for efficiency in a market-driven society (e.g., competition, self-interest,²) and an underproduction of the characteristics and traits required for the optimal supply of social goods. For example, focusing solely on the efficient production of economic goods and services does not necessarily take into consideration historical barriers to the development of skills and historical differences in endowments that might lead some groups to disproportionately experience economic hardships while other groups prosper, which will ultimately lead to greater inequality.

Greater attention to the social good could lead to an increase in the production of qualities and traits, such as empathy and cooperation, which are typically not characterized by the market but are necessary to solve social problems and improve human relations. Recognizing the importance of producing social goods and services, in addition to market goods, would help to ensure these characteristics are produced at their optimal levels. To be clear, the theory of social good is not a substitute for theories focusing on the production of economic goods and services but rather a complement. It is a concept meant to change the paradigm of how we think of these more intangible goods and services that have high social benefits. Similar to philanthrocapitalism (Ball & Olmedo, 2011), which could be considered a form of investment that helps to produce social goods and services, the social good is not merely a fix for market failures but may also be a way to connect to the market by creating a bridge across the three social sectors: the state, the private market, and the social economy (Amin, Cameron, Hudson, & Cameron, 2002; Moulaert & Ailenei, 2005). It is similar to Power's (2004) who argues from a feminist perspective for reframing economics within the concept of social provisioning, which highlights the interconnectedness of economic activities and social processes.

I argue that the social problem of mass incarceration stemmed from a shortage³ (i.e., underproduction) in the supply of social goods within the domain of diversity and inclusion. Specifically, I discuss how the over(under)production of social exclusion (inclusion), due to historical racism in the United States, sustained mass incarceration. By increasing production of social goods and services in the domain of diversity and inclusion, such as combating explicit and implicit biases, we can address the root causes of mass incarceration and many of the social costs that stem from this system. The first section of the article provides a brief history of racial exclusion within the American context to demonstrate the centrality of race in the social exclusion of African Americans. This is followed by a discussion of the macro-, mezzo-, and micro-roots of mass incarceration and how the U.S. tolerance of race-based social exclusion helped to propel mass incarceration, especially the overincarceration of African Americans. Finally, the article concludes with suggestions for rectifying this significant social challenge and the role that social work must play in addressing this issue.

Race in America

Hope and fear are two of the most effective tools of persuasion. During the civil rights movement, Martin Luther King Jr. persuaded the hearts of the nation—and the world—with a message of hope. Decades later, Barack Obama became the first Black president of the United States, using hope as the cornerstone of his campaign. On the surface, Obama seemed to fulfill the roadmap for change that King provided over 50 years ago in his "I Have a Dream" speech during the March on Washington. After all, a Black man was voted into the highest office in the nation (and arguably the world) at a time

when only 13% of the nation self-identified as Black (U.S. Census Bureau, 2013). Surely, the fact that a majority of the nation casted their vote for a Black president—not once, but twice—indicates that the United States has made significant progress with diversity and the inclusion of one of the country’s most marginalized groups.

While Barack Obama’s ascension to the White House does suggest that we have made significant advancements since the abolition of slavery, the fight for equality is far from over. For example, Tesler (2013) finds that old-fashioned racism has become more associated with White partisan politics after Obama became the face of the Democratic Party. Moreover, subjective beliefs regarding objective measures of well-being, such as the unemployment rate, became more biased by racial sentiments during Obama’s presidency. Greater racial resentment is associated with poorer subjective beliefs about the performance of the economy (Tesler, 2016).

These beliefs came to the forefront during the 2016 U.S. presidential election when the then-presidential nominee Donald Trump began his presidential bid by espousing that Mexicans “[are] bringing drugs[,] [are] bringing crime[,] [t]hey’re rapists[,] [a]nd some, I assume, are good people” (Reilly, 2016). Despite these statements, Donald Trump was elected as the 45th president of the United States. While many attributed Trump’s election to the White House as a backlash from decreasing economic opportunities for poor Whites, the fact of the matter remains that poverty rates for non-Hispanic Whites are still relatively low,⁴ while poverty rates for non-Hispanic Blacks and Hispanics are significantly greater (by roughly 2–3 times) than for Whites across every age-group (see Figure 1).

As King insinuates in his last book, *Where Do We Go From Here: Chaos or Community?*, the true measure of social inclusion is economic equality but this would only come through an overhaul of the American social structure. M. L. King (1968/2010) purports that the real dilemma for American society is whether to ensure economic equality through equal pay and equal investments in human capital. King understood that there could be no social justice without economic justice because the persistence of economic inequality (e.g., lower wages for equivalent jobs) meant the preservation of the social hierarchy that defined Blacks as only partly human. While the distinction “ceased” in the letter of the law, it persisted within the U.S. economic structure. King did not stop his fight once African Americans attained “equality” under the law because he understood that such equality was virtually costless and that the real price society would have to pay for reversing the mass oppression of people would come in delivering economic parity:

The practical cost of change for the nation up to this point has been cheap. The limited reforms have been obtained at bargain rates. There are no expenses, and no taxes are required, for Negroes to share lunch counters, libraries, parks, hotels, and other facilities with whites. (M. L. King, 1968/2010, p. 197)

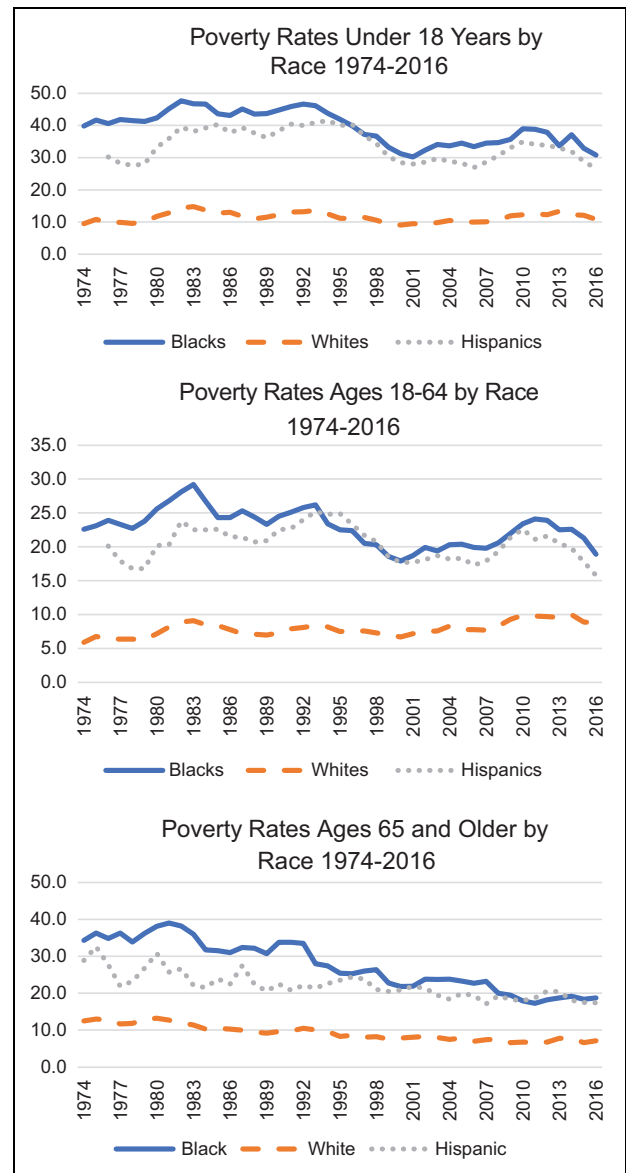


Figure 1. Historical poverty rates by age and race 1974–2016. Source: Semega, Fontenot, and Kollar (2017).

As King wrote, the then-assistant director of the Office of Economic Opportunity, Hyman Bookbinder, estimated the long-term costs of ensuring true social equality to be roughly 1 trillion dollars (p. 205). According to King, Bookbinder did not believe this to be a daunting task, asserting that “... the poor [could] stop being poor if the rich [were] willing to become even richer at a slower rate” (p. 205).

True acceptance and complete integration into the social fabric of society for African Americans would only come through an overhaul of the American social structure. In other words, as is largely true today, complete social inclusion could only result from economic justice. Nonetheless, as he sought genuine social change, King began to encounter heightened resistance, even among White liberals who openly supported the civil rights movement, due to political backlash as the fear

of losing White privilege began to seep into the momentum of the movement (M. L. King, 1968/2010; Steinberg, 1998). As Figure 1 demonstrates, King's dream of economic justice was never achieved.

Fatefully, not long after King's death, the United States began to experience rising income inequality, which by 2013 reached levels not seen since the 1920s, largely due to greater wage growth (at least in the United States) in the top 20% of the income distribution relative to everyone else (Owyang & Shell, 2016). This rising income inequality did not solely impact African Americans but all demographic groups. One has to wonder if there had been more empathy for racial tolerance (Xu, Zuo, Wang, & Han, 2009) toward African Americans (e.g., if society would have increased production of the social good of inclusion through investment in goods and services that would have increased economic equality and justice when advised by Dr. King), would the United States still have experienced such rising income inequality?

S. J. Gould (1996) argues that American polygeny played an important role in the intellectual liberation (argued for by Ralph Waldo Emerson) of the United States from Europe: It was one of the initial theories to garner recognition on the international science scene. Keel (2013) also notes that the theory, which became a scientific movement beginning in 1830, matured during a time of civil and financial uncertainty right before the American Civil War, and "... emerged from within a socio-political setting that was eager and willing to naturalize racial inequalities" (p. 10). At the time, polygeny was considered a valid science "... that entailed a creative mix of scrupulous data collection about human population traits and novel theories about the deleterious consequences of racial mixing" (Keel, 2013, p. 4). The theory postulated that different races originated from different ancestors, with Whites holding superior status above all other groups. This "science" perpetuated the long-held beliefs in the United States that African Americans—as well as other people of color—are a degenerate race of inferior intellect, prone to criminal behavior, and incapable of governing themselves (A. J. Davis, 1998; S. J. Gould, 1996; Steinberg, 1998). Not surprisingly, these opinions are still held and documented today in social psychology experiments that find that Black criminals are typically seen as more immoral than Whites who commit similar crimes (Graham & Lowery, 2004).

M. L. King (1968/2010) advised that in order to progress toward true equality, Whites would have to put forth "... a mass effort to reeducate themselves out of their racial ignorance" (p. 243). Nonetheless, instead of addressing the structural barriers that kept Black Americans from achieving true social justice in a *laissez-faire* economy, mainstream society used the problems in the Black community, which were themselves attributable to systematic oppression, as proof of why African Americans were "undeserving" of this social investment (Crenshaw, 1998; A. J. Davis, 1998; Fredrickson, 1971; M. L. King, 1968/2010; Steinberg, 1998). In fact, one reason the "Moynihan Report" became so prominent was because of its characterization of the African American community as

socially pathological, even though in the report then-Assistant Secretary of Labor Daniel Patrick Moynihan attributes this "pathology" to years of oppression of the Black community (Acs, Braswell, Sorensen, & Turner, 2013; U.S. Department of Labor, 1965).

At the same time, the protest and riots of the 1960s linked the movement for equality to crime and racial violence. Growing racial tensions and civil unrest allowed for tough-on-crime color-blind policies as major agenda items in election campaigns that would later pave the way for future support in policies that led to the mass incarceration of mostly Black men (Hinton, 2016; Loury, 2008; Raphael & Stoll, 2013; Tonry, 1995; Western & Wildeman, 2008). Issues of social exclusion via the intersection of race and class lie at the heart of the problem of mass incarceration, making it highly complex. In fact, the disproportionate incarceration rate of minorities in general and Blacks in particular is arguably one of the most pressing civil rights issues of our time (Alexander, 2010; Loury, 2008) and one whose consequences extend beyond the inmate to the destruction of families (Comfort, 2007) and communities (Clear, 2008).

On the surface, crime and punishment appear to be unsophisticated matters. After all, if someone takes part in a crime, then should they not have to suffer the consequences of their actions? Nonetheless, these are multidimensional problems, inherently tied to social justice and the social good concept of inclusion (Mor Barak, 2018). From a political economy approach, the criminal justice system can be seen as a tool used to maintain the economic and social hierarchy within the United States, expanding and contracting with the business cycle (S. L. Myers & Sabol, 1987). This system has been largely based on the subjugation of African Americans and other marginalized groups such as Native Americans and undocumented workers. Because of the social complexity of crime, the criminal justice system, operating through institutionalized racial prejudice justified by age-old perceptions and beliefs held about African Americans and other minority groups is considered by some (e.g., Alexander, 2010) to be a reinvention and expansion of Jim Crow⁵ policies.

Admittedly, mass incarceration can be viewed from an intersectionality perspective where the interaction of class, race, and gender⁶ leads to increasingly worse outcomes. It is worth noting that the poor of any race are more likely to be incarcerated, and African Americans have a greater proportion of individuals in poverty. However, as Zaw, Hamilton, and Darity (2016) show (see Figure 2), racial disparities in Black male incarceration rates persist even when taking wealth into consideration.

Ignoring the important role that racial intolerance has played in generating the disproportionate rates of poverty and the role that actors in the criminal justice system have played and continue to play in supporting and upholding historically racially biased social structures has only lead to the reproduction of racial disparities within the criminal justice system and social exclusion (see Hernández, 2017 for a thorough case study on Los Angeles). As A. J. Davis (1998) argues

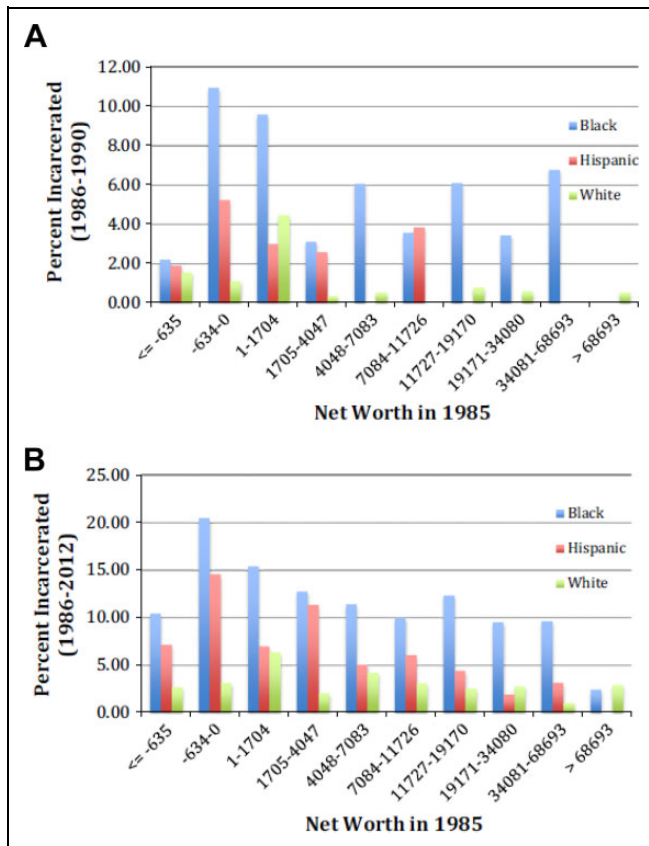


Figure 2. (A) Five-year percentage likelihood of incarceration—males. (B) 27-year (maximum data; does not include members of the supplemental subsample dropped after 1990, as underestimation of their incarceration rates would disproportionately affect White rates) percentage likelihood of incarceration—males. Notes Calculations use NLSY79 sample weights and wealth levels, adjusted to 2012 dollars, are partitioned into the sample's deciles. Missing bars represent zero percentage. Reprinted from Zaw, Hamilton, and Darity (2016), copyright 2016 by Springer Science+Business Media New York.

When the structural character of racism is ignored in discussions about crime and the rising population of incarcerated people, the racial imbalance in jails and prisons is treated as a contingency, at best as a product of the “culture of poverty,” and at worst as proof of an assumed black monopoly on criminality. The high proportion of black people in the criminal justice system is thus normalized and neither the state nor the general public is required to talk about and act on the meaning of that racial imbalance. (p. 265)

Failure to acknowledge the centrality of race will result in the perpetuation of these disparities and may lead to the conclusion that color-blind policies can address racial inequities in the criminal justice system, even if this is not true. The next section discusses how the United States' tolerance for social exclusion, in the form of racial intolerance, which some might argue was propelled by capitalism (see M. A. Myers, 1993; O. C. Cox, 1945), was a driving factor that contributed to the evolution of the current prison industrial complex.

How Did We Get Here? The Causes of Mass Incarceration

Black children born in 2001 are roughly 5.5 times more likely than their White counterparts to be incarcerated (Bonczar, 2003). However, from a historical perspective, this disparity is typical. By analyzing the ratio of the proportion of prison admission rates to the proportion of the population by race (see Figure 3) from 1926 to 1993, it is clear that Blacks have historically experienced incarceration rates above their proportion in society. Nonetheless, it is also apparent that the disparity has exacerbated over time largely, I argue, due to the trickling down of mass incarceration policies from the macro-level down to the mezzo- and microlevels, and the role of racially based social exclusion in this process.

Macro-Determinants of Incarceration: Public Policy

From 1925 until about the mid-1970s, the incarceration rate did not rise above 140 persons imprisoned per 100,000 of the population (see Figure 4). However, the extraordinary growth of the imprisonment rate after 1974 eventually led to unprecedented levels of incarceration. While the increase in incarceration could have been driven by changes in policy (macro) and/or changes in criminal behavior (micro), Raphael and Stoll (2013) empirically estimate that the lion's share of the growth in the prison population can be accounted for by society's choice for tough-on-crime policies (e.g., determinate sentencing, truth-in-sentencing laws, limiting discretionary parole boards) resulting in more individuals being sentenced to serve longer prison sentences for committing less serious offenses. In other words, individuals are imprisoned for crimes that they would not have been incarcerated for in the past, and those who committed offenses that would have previously warranted confinement receive much longer prison terms. Lastly, a large fraction of society is on parole, and parolees are more likely to violate parole and return to prison than in the past (Raphael & Stoll, 2013). They attribute no more than 9% of the increase in state incarceration to changes in criminal behavior. They find little to no evidence for the most common factors posited for the extraordinary increase in the U.S. incarceration rate: (1) changes in the relative returns to legal activity (e.g., declining low-skill wages) relative to illegal activity (changes in drug markets in general and crack cocaine in particular), (2) increases in criminal behavior (e.g., violent crime) due to the introduction of crack cocaine, and (3) the deinstitutionalization of the mentally ill.

While the United States was becoming more punitive, the Reagan Administration enhanced Nixon's war on drugs⁷ through the Anti-Drug Abuse Act of 1986. One significant piece of this legislation, often held responsible for the disproportionate rates of incarceration among African Americans in federal prisons, is the mandatory minimums for drug offenses. A notable aspect of mandatory minimums includes the disparities in sentencing between cocaine and the cheaper crack cocaine (see Raphael & Stoll, 2013). The version of this bill

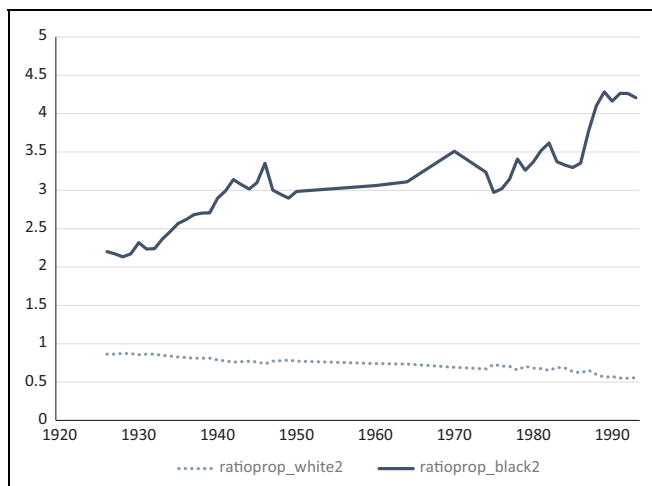


Figure 3. Ratio of proportion admitted to prison to share of population, by race, 1926–1993. *Source:* Figure by author adapted from R.J.A. Cox (2015).

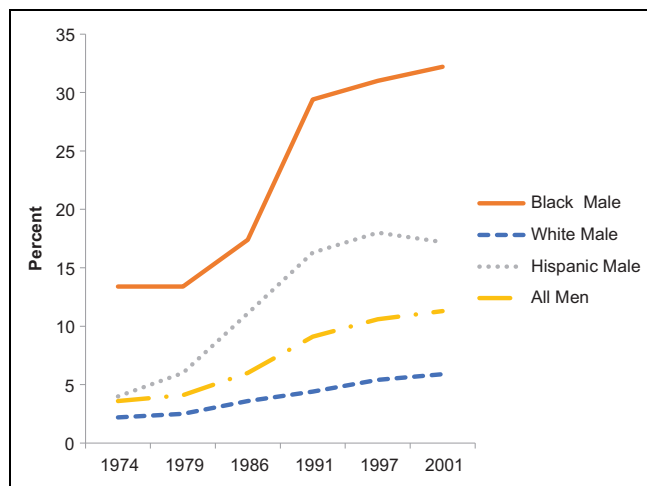


Figure 5. Male lifetime likelihood of going to state or federal prison by race 1974–2001. *Source:* Bonczar (2003).

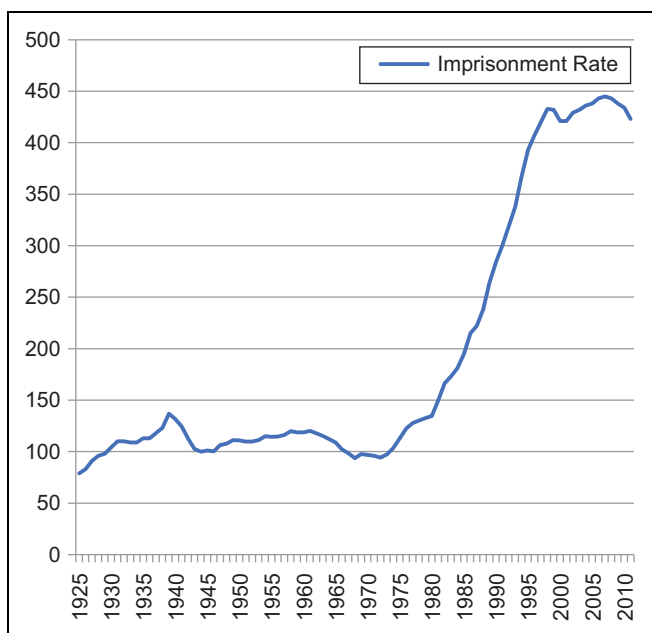


Figure 4. Rate of imprisonment in state or federal correctional facilities 1925–2011. *Source:* Minor-Harper (1986) and Carson and Mulako-Wangota (2013).

passed in 1988 also provided substantial monetary incentives for state and local police agencies to implement the war on drugs (which was not previously a priority) through the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (Byrne Program). A 1993 GAO report states: “Byrne program grants are the primary source of federal financial assistance for state and local drug law enforcement efforts” (U.S. Government Accountability Office, 1993, p. 2).

This grant, along with civil forfeiture laws passed in 1984 allowing state and local police to share in drug-related assets,

provided substantial resources to state and local law enforcement to focus on the drug war. Arguably, these monetary incentives, coupled with Supreme Court rulings empowering police with unprecedented discretion to stop and search citizens with little to no probable cause, have played a role in the excessive policing we see today and the disproportionate imprisonment of African Americans (Alexander, 2010; Benson & Rasmussen, 1996; Blumenson & Nilsen, 1998; Holcomb, Williams, Hicks, Kovandzic, & Meitl, 2018; Russell, 1998; Sandy, 2003; Tieger, 1971). Programs such as civil asset forfeiture laws are dangerous for two reasons: (1) they distort policy and monitoring decisions and (2) these laws produce “... self-financing, unaccountable law enforcement agencies divorced from any meaningful legislative oversight” (Blumenson & Nilsen, 1998), which could have easily led to increases in prison admission rates.

Pfaff (2011) argues that it is the increase in prison admissions led by the decisions of local actors (i.e., prosecutors) to incarcerate more people, which has actually driven incarceration rates. Even though law enforcement decisions are typically made at the state and local levels, it is important to understand that the federal government can influence local law enforcement choices through laws and the type of intergovernmental grants and programs discussed above. While Pfaff does not believe the war on drugs played an integral role in driving mass incarceration, it is interesting to note that policies such as the Byrne Grant program may have led to changes in policing and prosecution (if, e.g., it enhanced collaboration between police and prosecutors) for drug-related and violent crimes (see Dunworth, Haynes, & Saiger, 1997). Ultimately, all of this may have led to increases in the arrests, prosecution, conviction, and eventual incarceration of drug-related felony convictions.⁸

At the same time, due to declining manufacturing and agricultural industries, impoverished rural communities began to use prison construction as part of their economic development strategies. Political officials hoped prisons would be a recession-proof industry that would help to stimulate their

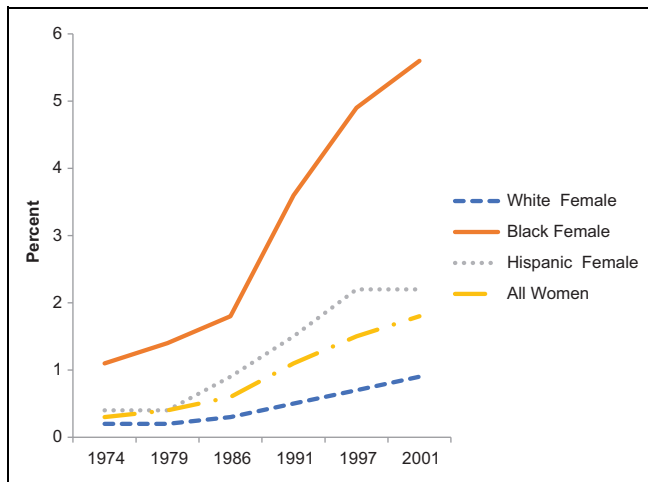


Figure 6. Female lifetime likelihood of going to state or federal prison by race 1974–2001. Source: Bonczar (2003).

economy through job creation and regional multiplier effects (Farrigan & Glasmeier, 2007; R. S. King, Mauer, & Huling, 2004; Kirchhoff, 2010). Among 1,500 prison facilities constructed by 1995, Farrigan and Glasmeier (2007) found that 39% were in rural communities, with the rural facilities holding higher percentages of males and Blacks than urban prisons. In addition, the private sector also began to view the expanding prison population as a source of economic opportunity leading to a US\$80 billion prison industrial complex (Cheung, 2002; Corrections Accountability Project, 2018).

Mezzo-Determinants of Incarceration: The Criminal Justice System and Race

While color-blind policies may have led to mass incarceration, they do not explain how African Americans, who constitute less than 13% of the population, came to account for over half of the prison population during the height of the prison boom. Figures 5 and 6 show the exponential increase in the lifetime likelihood of going to prison for men and women from 1974 to 2001, and the vast racial disparities between African Americans and other races. An African American boy and girl born in 2001, has roughly a 33% and approximately a 6% chance, respectively, of being incarcerated in their lifetime, which is about 5.5 and 6 times, respectively, their white counterparts. I argue that the U.S. tolerance for social exclusion (i.e., the underproduction of social inclusion) worsened racial disparities in the incarcerated population and may have bolstered the existence of these policies over an extended period. Specifically, I argue that mass incarceration can be thought of as a cost to the U.S. tolerance for social exclusion of the most vulnerable groups in society (specifically, African Americans). It is important to note that the suggested motive behind mass incarceration need not be *intentional* racial animus. Rather, it is proposed that racism is so engrained in American society that it can operate similarly to the concept of the invisible hand developed by Adam Smith to explain market equilibrium.⁹ This

systemic bias could explain how seemingly color-blind crime control policies that affected the entire nation turned into a system that disproportionately locks up African Americans and other people of color. One mechanism through which this implicit bias could occur is through the use of selective enforcement (Loury, 2008).

Two criminal justice actors play very important roles in selective enforcement at the initial point of contact with this system: (1) policing agencies and (2) prosecutors. Police have vast discretion over whom they regulate and which violations, if any, they decide to charge. Legal scholars have written about the extraordinary, unchecked discretion allotted to police officers and the effects on the application of the law (Alexander, 2010; Cole, 2001; Tieger, 1971). One highly controversial “method” through which selective enforcement is carried out is racial profiling. It is often argued that policing based on race has merit if it is the result of statistical discrimination (i.e., race used as a signal to identify individuals that are more likely to commit a crime), which is thought to enhance police efficiency.

The merits of racial profiling depend on whether it improves the efficiency of law enforcement. However, Harcourt (2004) argues that racial profiling is only justifiable if (1) it leads to reductions in crime in the long run, (2) it improves the efficient provision of police resources, and (3) it does not bring about a ratchet effect.¹⁰ Biased policing is likely to fail Conditions (1) and (3) because it is probable that Black criminal behavior is less responsive to changes in policing due to inferior employment prospects for Blacks and because it is likely that racial profiling will lead to responses by law enforcement above and beyond what is necessary to affect criminal behavior due to the nation’s history of racism. Even if racial profiling were to satisfy all these conditions, there are still grounds to contest its use based on the historical and institutionalized oppression of African Americans and the need to achieve racial parity within the penal system (Harcourt, 2004).

An anecdotal example¹¹ of the ratcheting up effect of racial profiling can be found in the case of Hearn, Texas. The local drug task force had conducted annual drug raids in low-income Black neighborhoods based on unreliable and sometimes forced statements of confidential informants and fabricated evidence for 15 years. When the time came each year to conduct raids, law enforcement officials reportedly would candidly joke about the raids, stating that “it was ‘time to round up the niggers,’ and would laugh about watching African Americans run in fear during the sweeps” (*Kelly v. Paschall*, 2003, p. 28). Many victims of these raids were arrested and detained. In one invasion, the drug task force arrested 15% of the young Black men in a community. In addition, some victims pleaded guilty to reduced charges instead of risking longer prison terms, and, conceivably, a trial of mostly all White jurors; the likelihood of conviction for Blacks could increase by 16 percentage points when juries are created from entirely White jury pools (Anwar, Bayer, & Hjalmarsson, 2012).

The second type of decision contributing to racial inequities in the criminal justice system is prosecutorial discretion.

Prosecutors are often overlooked for their role in racial disparities within the penal system. Like police officers, they have substantial authorization in determining the final outcome of a case as they have the freedom to pursue, drop, or adjust criminal charges (A. J. Davis, 1998; Rehavi & Starr, 2014). Empirical evidence suggests that a significant portion of the *unexplained* sentencing gap between Blacks and Whites can be explicated by initial charges submitted by the prosecuting attorney. For example, federal prosecutors are almost 2 times as likely to charge a Black defendant with a crime that falls under the mandatory minimum versus a comparable White defendant (Rehavi & Starr, 2014). A more recent meta-analysis finds evidence of racial discrimination in prosecutorial decisions to charge or fully prosecute (Wu, 2016).

Cole (2001) argues that such inequality within the criminal justice system is necessary to balance the trade-off between protecting constitutional rights and guarding against criminal activity. In other words, it is impossible for society to maintain its civil liberties without tolerating greater levels of crime, resulting in the criminal justice system depending on unequal administration of the law (based on race and class) to maintain the constitutional rights of the more privileged. The existence of race and the assignment to the status of criminal based on race allows society to enact a different burden of proof for different races such that the burden of proof for a conviction is low for minorities but high for Whites. This creates a dual criminal justice system under the façade that all persons are equal under the law, thereby avoiding the required trade-off between civil liberties and crime prevention.¹²

Micro-Determinants of Incarceration: Criminal Behavior

Undoubtedly, many might purport that the excessive incarceration rate of Blacks is due to a greater propensity of Blacks to commit crime due to their disproportionate representation among the poor. As Blacks have historically faced barriers to entry into the labor market (W. A. Darity & Mason, 1998) and have historically experienced exorbitant rates of unemployment (R. Cox, 2010), it is not surprising that barriers to human capital investment and lack of employment options might lead to increased participation in criminal activity (Evans, Garthwaite, & Moore, 2016; Grogger, 1992, 1998; Gyimah-Brempong & Price, 2006). Specifically, Grogger (1991) finds that Blacks' criminal behavior more closely resembles the economic model of crime. One conclusion that can be drawn from his finding is that improving labor market opportunities (i.e., employment opportunities and wages) will lower participation in criminal activity.

Other research finds that more, and better quality, education (Deming, 2011; Lochner & Moretti, 2004), lower unemployment (Mustard, 2010; S. L. Myers, 1983; Raphael & Winter-Ebmer, 2001), and higher low-skill wages (E. D. Gould, Weinberg, & Mustard, 2002; Mustard, 2010) would reduce criminal activity while income inequality increases violent crime (Fajnzylber, Lederman, & Loayza, 2002; Kelly, 2000). Findings by Donohue and Siegelman (1998) suggest that if

society redirected money spent on incarceration toward social goods and services (e.g., early childhood education and other types of programs aimed at increasing education and earnings), and if these programs were targeted toward the most at-risk youth (i.e., Black youth), then this would be just as effective, if not more, at abating crime as increasing the prison population. In fact, incarceration may actually lead to increases in criminal behavior (Bayer, Hjalmarsson, & Posen, 2009; Chen & Shapiro, 2007). For example, Pettit and Western (2004) provide an estimate of the cumulative risk of imprisonment by age 30–34 for three different birth cohorts by race and education level. Regardless of race or birth cohort, education is associated with a significant decrease in the likelihood of incarceration. However, racial disparities in incarceration persist over time at *all* education levels. This illustrates that color-blind policies are not enough to address the racial inequalities within the criminal justice system (Loury, 2000). It is imperative to target policies dealing with mass incarceration and criminal justice reform to the groups that are hurt the most, such as African Americans.

Where Do We Go From Here, to Chaos or Community?

M. L. King (1968/2010) urged the country to increase social inclusion and build community by mending race relations. However, it is evident from the mass incarceration policies implemented over the past 40 years that society has up to this point chosen chaos (resulting in the mass incarceration of African Americans) over community-building (restoration of the Black community). The collateral consequences of these policies have been devastating to the Black community, with effects that have only led to more social exclusion, including heightened health disparities, destruction of the Black family, increased barriers to employment and human capital investment resulting in increases in racial economic inequality, and a loss of citizenship status and political power through felon disenfranchisement laws (see Bailey, 2014; Chandra, 2003; Charles & Luoh, 2010; R. J. A. Cox, 2012; R. Cox & Wallace, 2016; Holzer, Offner, & Sorensen, 2005; Holzer, 2009; Holzer, Raphael, & Stoll, 2006; R. C. Johnson & Raphael, 2009; Lee & Wildeman, 2011; Lopoo & Western, 2005; Pager, Western, & Suggie, 2009; Pinard, 2010; Raphael, 2006; Travis, 2002; Uggen, Manza, & Thompson, 2006; Western, 2007; Western & Pettit, 2000, 2005; Western & Wildeman, 2008). For example, R. C. Johnson and Raphael (2009) find that male incarceration explains the majority of the disparity in AIDS rates between Black and White women, and R. Cox and Wallace (2016) find that the shock of an incarceration increases the likelihood that households with children will experience food insecurity.

Although Blacks obtained the right to vote in 1964, mass incarceration policies have effectively taken this entitlement away for numerous African Americans. Imprisonment leads to the loss of an individual's ability to participate in the democratic process, and ultimately one's citizenship, through felon disenfranchisement laws (Karlán, 2008; Uggen et al., 2006).

Most states prohibit individuals in prison or on probation or parole from voting, and although numerous states have developed protocols for restoring voting privileges to ex-offenders, these procedures are so onerous that many do not seek to restore their rights (The Sentencing Project, 2013). So extensive is the incarceration and felony conviction crisis, that it is estimated that had it not been for felon disenfranchisement laws, Al Gore would have won Florida by (at the minimum) approximately 31,000 votes in the 2000 presidential election (Uggen & Manza, 2002).

Mass incarceration, as well as its influence on further marginalizing the Black community, is a byproduct of an underproduction of social goods and services within the domain of diversity and social inclusion. As M. L. King (1968/2010) suggested, the first step in genuinely constructing a socially inclusive community in the United States is coming to terms with the fact that we are a racist nation. In fact, he suggested that Whites should put forth effort to “. . . reeducate themselves out of their racial ignorance” (M. L. King, 1968/2010, p. 243).

Social work, as a field that specializes in human relations, may have a comparative advantage in developing strategies and interventions at the macro-, mezzo-, and microlevels to address racial inequality and social exclusion within public policy, society, and institutions. For example, racial exclusion is inherently tied to the concept of empathy. As previously discussed, racism can be thought of as a tool that has been used to dehumanize and oppress one group for the gain of another. Combating racism through a greater production of empathy toward others could help to decrease racism and resulting social exclusion (J. D. Johnson et al., 2002). This could be done, as King suggests, by encouraging the United States to actively admit and to seek reconciliation and atonement (including, reparations) for the racism against and oppression of, for example, African Americans.

Another strategy would be to promote greater diversity among criminal justice actors (i.e., police officers, prosecutors, and judges), which may help to address the mezzo-level problem of selective enforcement. This could be achieved, for example, through educational loan repayment programs or scholarships for individuals who want to enter public service through the criminal justice sector. However, one barrier to implementation of this intervention that will need to be addressed for African Americans stems from disproportionate contact with the criminal justice system and, as a result, criminal convictions, which will make it difficult for African Americans to be hired in law enforcement and, in turn, for police forces to reflect the diversity of the communities they serve.

Another possible solution is to require not only diversity and inclusion but specific aspects of social work training as a component of the instruction for law enforcement officials. Alternatively, police departments (and prosecutors) could employ more social workers to help assist them in their jobs. Either way, collaboration between police officers and social workers is imperative for solving individual and community problems from a more humanistic approach, as they often deal with

overlapping concerns from the same disadvantaged communities (Lamin & Teboh, 2016).

For decades, politicians have advocated for policies that generally affect the poor with the belief that the benefits would trickle down to the most marginalized in society, such as the black community. However, previously presented evidence suggests that redirecting money used to expand incarceration toward targeted (e.g., poor Black youth) social programs to improve the quality of education and enhance job skills and employment would not only lead to a decline in income inequality but also reduce crime as much as policies to expand incarceration. At the macro-level, social workers could work to advocate for changes in criminal justice policy at the national level and lobby for targeted funding for programs that would promote economic equity specifically for the most marginalized groups in society.

At the mezzo-level, social workers can work with local governments, institutions, and organizations to promote criminal justice reform and the restoration of voting rights, which would allow for formerly incarcerated individuals to vote for policies and representation for issues that matter to them. One idea would be to advocate for laws requiring prosecutors to take into consideration the total costs of the conviction and punishment by gender and race not only to the offender but also to society when deciding how to adjudicate cases. By doing so, prosecutors will be forced to internalize the full costs of their decision to pursue different forms of punishment on society. Moreover, like police officers, prosecutors may also benefit from social work training and/or working with case managers, not only to deal with their own trauma but also to understand the complex conditions that may have led the defendant to make certain choices, as well as to provide a more holistic approach to addressing the underlying criminogenic factors of those involved in the criminal justice system.

Additionally, there is a need at both the mezzo-level (e.g., community) and micro(individual)level to successfully transition individuals from incarceration back into society. Social workers are needed to assist in this transition to help offenders and their families address trauma experienced while incarcerated, to make the psychological and cultural shift required to reenter society from extended periods incarcerated, and to help individuals and families obtain the services and skills they need (e.g., substance use, housing, employment) for successful reintegration (see Cnaan, Draine, Frazier, & Sinha, 2000). Moreover, the mark of a criminal record further isolates individuals and communities that have been disproportionately impacted by the carceral state. This social exclusion disrupts social capital and social network formation that individuals and communities need to be successful and to improve their well-being (Loury, 2000). Wolff and Draine (2004) put forth a comprehensive reentry model of how social workers can provide support to improve the social capital of individuals released from jail or prison. This model highlights the importance of making these social capital investments prerelease and postrelease, as well as providing services to the community, which is imperative to address the social exclusion of communities that have disproportionately felt the burden of mass incarceration

criminal justice policies (i.e., African American communities). We also cannot forget the vital role that the formerly incarcerated must play in this process. Many are already serving as activist and practitioners to push forward criminal justice reform and to help transition others from incarceration to free society. Social work training may not only be a form of healing to their past traumas but would also provide them with formalized training to be effective practitioners and mentors to others with similar shared life experiences.

Nonetheless, we must heed the findings of Findler, Wind, and Mor Barak (2007) who investigate how to improve diversity and inclusion within an organization: Only focusing on changing the individual will not be sufficient to address the structural barriers that led to the social exclusion of individuals with criminal records. Social practice and policy also need to be addressed for successful reentry. One example of a macro-level policy program that could reduce barriers to employment, inequality, and likely crime is the federal job guarantee put forth by W. Darity and Hamilton (2012), which they call the National Investment Employment Corps. One might initially write this program off as politically unfeasible but society is already spending extraordinary amounts of money to sustain individuals in prison: Average costs to house a federal prisoner are estimated to be \$34,704 in the United States (Bureau of Prisons, 2018). W. Darity and Hamilton (2012) propose a mean salary of \$43,924,¹³ and although this figure is roughly \$9,000 more than the direct costs to house an inmate, these costs do not include indirect costs such as apprehension and prosecution costs, costs to the victim, and the costs of incarceration to families and communities. The United States has underinvested in infrastructure and there is an opportunity here to not only improve the lives of socially excluded groups but also to help rebuild America. Why not offer these programs on the front end (prior to incarceration) instead of after it is too late?

Future research should focus on identifying the social goods and services that are most effective in addressing racial disparities in the criminal justice system and other institutions. For example, empathy may play an important role in the decisions made by criminal justice actors (including juries) and, ultimately, the outcomes. Empathy is important in helping others, but as previous research suggests (see Forgiarini, Gallucci, & Maravia, 2011), race may moderate empathetic responses. Understanding the bidirectionality between empathy and race would help to illuminate the role of empathy in overcoming racial bias. We also need to improve our understanding of the mechanisms by which the intersection of race, class, and gender reproduce social exclusion and disadvantages within the criminal justice context. For example, how do macro-level policies interact at the mezzo- and microlevels to reproduce racial disparities and the social exclusion of marginalized groups? Similarly, R. J. Miller (2014) presents a theory of carceral devolution that argues that there has been decentralization in reentry policy such that the state has transferred its responsibility to rehabilitate to community organizations. Within this framework, reentry becomes solely focused on self-improvement and moral retraining at the expense of addressing

structural factors that led to the contact with the criminal justice system. His findings imply that this shift in reentry policy could also play a role in perpetuating social exclusion, disadvantage, and racial disparities, which also warrants further investigation.

Author's Note

This is a substantially revised version of the paper, "Where Do We Go from Here: Mass Incarceration and the Struggle for Civil Rights," written for the Economic Policy Institute. The citation for the report is R. J. A. Cox (2015).

Declaration of Conflicting Interests

The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author received no financial support for the research, authorship, and/or publication of this article.

Notes

1. Nevertheless, at its core, statistical discrimination does not specifically address why the distribution of criminal behavior would be different across races. Economic theory would provide three key justifications for these differences: differences in the opportunity costs (i.e., legal wages) of committing a crime, differences in the expected costs of committing a crime, and/or differences in the taste for criminal behavior.
2. Note that the notion of self-interest as originally conceived by Adam Smith was well-being. However, while self-interested behavior is a key assumption for market efficiency, Hahnel (2007) also argues that this behavior can lead to market failure.
3. A shortage is defined as the supply of a particular good or service at suboptimal levels. A shortage in the supply of a social good or service could result from too little diversity. For example, having less than proportionate representation of female officers might result in greater violence (social bad) against women, especially due to domestic violence. Increasing diversity in this case might result in improvement of police services for women and ultimately the social good of safety (see e.g., A. R. Miller & Segal, 2014).
4. There has been a slight increase in the poverty rates of Whites between the ages of 18 and 64.
5. Note that some scholars object to the use of the term "New Jim Crow" to describe mass incarceration. See, for example, Forman (2012).
6. See R. J. A. Cox (2012) for a discussion of the effects of incarceration on African American women.
7. In 1971, Nixon officially began the war on drugs and declared drugs "public enemy number 1." The Nixon era was the only period where most of the funding was allocated toward treatment rather than law enforcement (Frontline, 2012).
8. See R. J. A. Cox (2015) for a detailed breakdown of changes in arrest rates and distribution of state prison offenses. Although it is often argued that drugs alone can't account for the differences in imprisonment between Blacks and Whites, it is curious that arrest rates declined for all offenses for both Blacks and Whites except for simple assault, drug possession, and drug sales between 1980 and 2009. Moreover, the percentage change in drug possession

and drug sales arrests are much higher for Blacks than Whites. Within the same time period (1986–1999), the proportion of Blacks serving in state facilities for murder declined by 7%, but the proportion serving time for drug offenses increased by 50%.

9. I would like to thank Sarah Jacobson for helping me to formulate this thought.
10. Harcourt (2004) defines the ratchet effect as one where racial profiling creates a situation where the proportion of the supervised population of the profiled group is larger than their proportion of the crimes they are committing.
11. For additional examples, please see Russell (1998).
12. See American Civil Liberties Union, (2013), for a discussion of selective enforcement as it relates to Marijuana, a drug for which blacks and whites use at comparable rates.
13. This number is adjusted for inflation (constant 2018 dollars) to be comparable to the 2018 estimated costs to incarcerate a federal prisoner.

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