

Democracy in the Age of Mass Incarceration

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Abstract

The country that served as Tocqueville's model for democracy and freedom is now that world's largest captor. Since 1980, a situation of mass incarceration has persisted in the United States. The growth of the US prison population took off in 1980 and continues to grow at the highest rate in the world (Kaeble and Cowhig 2018: 4). It also continues to lead the world in its total prison population of 2,121,600 (International Centre for Prison Studies 2018). How is democracy in the United States affected by this situation of mass incarceration? I argue that this situation of mass incarceration has undermined American democracy and created a situation of despotism in the US by eroding the associational life of those incarcerated by the US criminal justice system. After their imprisonment, former prisoners have reduced engagement in civil and political associations due to the increased costs of participating in associational life. As a result, a growing portion of the US population is becoming increasingly isolated and disengaged from political life. A skewed proportion of the population forms, maintains, and enforces the laws in the US and have thus become the keepers of the rest of the population, creating the situation of despotism of which Tocqueville ([1835] 2010) warned.

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1 Introduction

The country that served as Tocqueville's model for democracy and freedom is now that world's largest captor. Since 1980, a situation of mass incarceration has persisted in the United States.² The growth of the US prison population took off in 1980 and continues to grow at the highest rate in the world: 830 people per 100,000 of US adult residents (Kaeble and Cowhig 2018, 4). It also continues to lead the world in its total prison population of 2,121,600 (International Centre for Prison Studies 2018). The population of people under the authority of the US criminal justice system extends beyond those currently incarcerated in prison. In 2016, the number of adults under the supervision of the US correctional system (which includes those in prison, jail, probation, and parole) in 2016 was estimated to be 6,613,500 people (Kaeble and Cowhig 2018: 1). This translates to 1 in 38 adults currently being under correctional supervision in the US (Kaeble and Cowhig 2018: 1).

Although the population under the supervision of the US criminal justice system is a small proportion of the total US population, it "represents a high percentage of residents in many neighborhoods" (Burch 2013: 4). The effects of being involved in the US system of mass incarceration extends beyond the individual who is incarcerated to their family and larger community. This is particularly concerning when one recognizes that the US also has a large racial disparity in its prison population. Relative to the overall population, a disproportionate amount of those incarcerated are African Americans. In 2016, 41.3 percent of federal inmates and 34.9 percent of state inmates reported themselves as black, despite the fact that African Americans make up only 13.4 percent of the US population (Carson 2018: 7; US United States

² In this chapter, I use mass incarceration to refer to the high rate of incarceration, large prison population, expansive prison facilities, and legislation affecting the lives of former prisoners and their families post incarceration.

Census Bureau 2018). In 2016, black adults were incarcerated at a rate of 1,609 per 100,00 US residents—almost eight times that of whites (Carson 2018: 8). Hispanic adults were likewise incarcerated at a disproportionate rate of 857 per 100,000 residents—which was almost four times that of white adults (ibid). As a result, those communities that are affected by mass incarceration are uniquely poor, minority communities.

Despite its extensiveness, the US prison system fails to rehabilitate its prisoners. Eighty-three percent of released prisoners are re-arrested within nine years of their release, meaning almost all the current correctional population will return to a situation of being surveilled by the US government (Alper, Durose, and Markman 2018: 1). Due to the racial disparity of US prison populations, African Americans constitute a disproportionate amount of those who return to the custody of the US criminal justice system.

Literature on the carceral state has explored how the ever-expanding US criminal justice system affects American democracy.³ Lerman and Weaver (2014) argue that contact with the criminal justice system provides citizens with an impression of the US government as their keeper. Contact with the criminal justice system dissuades citizens from engaging in political processes and makes them feel as though their voice does not matter. These “custodial citizens” come to view government as a keeper rather an entity which they can influence (Lerman and Weaver 2014). Gottschalk (2014) draws on Beaumont and Tocqueville’s insight that prisons in the US embodied situations of despotism. She argues that the prison system is growing into a central institution in the US and has begun to define the main character of life in the US. As a result, the integration of the prison system into every aspect of society has begun to undermine

³ Gottschalk (2006) specifies three characteristics that define the US carceral state: “the sheer size of its prison and jail population; its reliance on harsh, degrading sanctions; and the persistence and centrality of the death penalty” (1).

American democracy and transform it into a situation of despotism. She, like Lerman and Weaver (2014), identifies the causal mechanism as citizens' conception of their relationship with the state—namely one of ward and warden. Avarmenko and Gingerich (2014) argue that because the penitentiary system in the US explicitly seeks to isolate inmates and undermine their voluntary association, it fosters an equality of servitude, leading to the despotism that Tocqueville feared. Additionally, there is a large literature on the collateral consequences of incarceration (Burch 2013, Genty 2003, McGinnins 2018, Petit and Lyons 2007, Uggen et al 2002), to which these authors contribute, that documents and tries to explain what has reduced civil and political participation by former prisoners.

Much of the carceral state and collateral consequences of incarceration literatures conclude that the criminal justice system in the US pushes those who have come into contact with it into a position where they are no longer equal citizens in the US, undermining democracy. For Tocqueville, the primary character of democracy was equality.⁴ What character that equality takes, however, depends on the associations that citizens form. Tocqueville's challenge to readers in *Democracy in America* was identifying what sort of associational life facilitates the maintenance of equality in liberty. Equality in liberty meant that citizens have equal economic opportunities as well as equal political opportunities (Tocqueville [1835] 2010: 306n.e). His fear was that Americans' love of material well-being would cause them to give up their liberty and accept equality in servitude, i.e. despotism, in order to preserve that material well-being.

Taking up Tocqueville's challenge from *Democracy in America*, Vincent Ostrom (1997) argues that associations are the key to the maintenance of democracy. It is through participation

⁴ For Tocqueville, equality did not refer to actual equality in wealth or ability, but an absence of class structures that prevent a group of people from having an opportunity to participate in the political or economics spheres.

in associations that individuals learn how to be self-governing, meaning they know how and have the language necessary to engage in the formation, reformation, and maintenance of constitutional rules. His and Elinor Ostrom's work in constitutional political economy explores, through a Tocquevillian lens, what type of participation in associations facilitates the development of people's ability to be self-governing (Ostrom 1997, Ostrom [1990] 2015). In particular, Ostrom ([1990] 2015) explores what institutional frameworks facilitate people's participation in associations and the development of their ability to be self-governing.

I contribute to these literatures by exploring how mass incarceration affects democracy in the United States through a political economy lens. I argue that mass incarceration undermines American democracy and creates a situation of despotism in the US by eroding the associational life of those incarcerated by the US criminal justice system. After their release, former prisoners have reduced engagement in civil and political associations due to the increased costs of participating in associational life. As a result, growing portion of the US population is becoming increasingly isolated and disengaged from political life. This population is disproportionately drawn from poor and minority communities. A skewed proportion of the population forms, maintains, and enforces the laws in the US and, thus, have become the keepers of those negatively affected by the criminal justice system, creating a situation of despotism.

The chapter proceeds as follows: Section 2 outlines what role Tocqueville attributes to associations in a democracy. Section 3 compares Tocqueville's evaluation of the US prison system in the 19th century to the US prison system today. Section 4 presents empirical evidence of mass incarceration's effect on former prisoners' associational life. Section 5 concludes.

2 The Role of Associations in Democracy

For Tocqueville, democracy in America is defined by the presence of equality of conditions and political equality that its citizens enjoy. Equality of conditions involves the removal of class hierarchies that prohibit some groups from improving their material well-being. With the movement away from hierarchy, economic opportunities became available to all. It was no longer just the elites who could grow their wealth. This equality of conditions included more than just equality in wealth; in fact, Tocqueville saw inequality of wealth as inescapable. Rather, “[w]hat is important for democracy, is not that there are no great fortunes; it is that great fortunes do not rest in the same hands. In this way, there are the rich, but they do not form a class” (Tocqueville [1835] 2010: 306n.e). In Tocqueville’s view, the key in the American experience was that all citizens had equal access to “all that contributes to happiness: personal consideration, political rights, easy justice, intellectual enjoyments, and many other indirect sources of contentment” (Tocqueville [1835] 2010: 286). Primary to equality of conditions is the inclusion of all citizens in the affairs of government. Equality in material conditions coincided with equality in political power. As material wealth across society grew, so did the influence of the average citizen in government. No longer were the laws singularly decided by the elite. This is what Tocqueville referred to as “sovereignty of the people” (Tocqueville [1835] 2010: 76). Through engagement in the constitutional level of decision making, people govern themselves (E. Ostrom 1990; V. Ostrom 1997).

Tocqueville suggests that the very tendencies that allowed Americans to achieve a democratic state may lead them into despotism. He feared that their achievement of equality of conditions and the shared level of well-being that accompanied equality of conditions would lead Americans to love equality more than liberty. Thus, he saw them easily chasing a state of despotism for the ends of maintaining equality of conditions and the situations of well-being to

which they had become accustomed, even if it meant giving up their liberty. For Tocqueville, despotism refers to equality of conditions in a situation of servitude; whereas democracy refers to that equality of conditions in a situation of liberty. This distinction between equality of conditions in a situation of servitude versus a situation of liberty refers primarily to the degree of political agency that citizens have. In a democratic state, every citizen is able to influence the laws of their state. In a despotic state, however, citizens are no longer citizens. Instead, they would be more properly called wards of the state. In a despotic state, there is one person—a dictator—or group that has full and sole control over the laws of a state. Citizens have abdicated their rights to influence the political sphere of society.

Tocqueville identifies participation in associations as the mechanism through which democracy is maintained. Associations—civil and political—teach individuals how to interact and communicate with each other. Through engagement in associations, they learn the knowledge and language necessary to be engaged in the political sphere (V. Ostrom 1997). It is through constant engagement with and refinement of constitutional rules that people maintain and further develop their self-governing abilities. To maintain democracy and avoid despotism, citizens need to be engaged in constant reformation and maintenance of constitutional rules (V. Ostrom 1997: 141). The associations necessary for the maintenance of democracy are the political associations through which individuals actively vie to influence the constitutional rules of their community and their enforcement of those rules.

As Tocqueville lays out, there are many different associations in which individuals take part in democracies. The only permanent associations that are created by law, for Tocqueville, are townships (Tocqueville [1835] 2010: 302). Otherwise, civil and political associations are created only by people voluntarily coming together to pursue a shared interest. Civil associations

constitute broader forms of organizing than political association. Tocqueville lays out the range of civil associations in American society saying,

[n]ot only do [Americans] have commercial and industrial associations in which they all take part, but also they have a thousand other kinds; religious, moral, [intellectual,] serious one, useless ones, very general and very particular ones, immense and very small ones; Americans associate to celebrate holidays, establish seminaries, build inns, erect churches, distribute books, send missionaries to the Antipodes; in this way they create hospitals, prisons, schools (Tocqueville [1835] 2010: 896).

Civil associations, in Tocqueville's view, include charitable organizations, local assemblies, juries, religious organizations, the work place, etc. (Drolet 2003: 190, Estlund 2003: 193).

Political associations consist of political parties and interest groups that engage directly with law makers and organize people to facilitate the election representatives (Tocqueville [1835] 2010: 303-304, 306).

Civil and political associations replace the interpersonal obligations that are laid out in an aristocracy. In aristocracy, individuals had obligations to each other that were defined and enforced by the social structure. In democracy, however, those obligations fall away. Individuals have no obligations to each other or the commons except those they construct for themselves through associations. "Associations, among democratic peoples, must take the place of the powerful individuals that equality of conditions has made disappear" (Tocqueville [1835] 2010: 901). Associations are at the heart of individuals' ability to self-govern and solve collective action problems.

Tocqueville refers to political associations as the "great free schools where all citizens come to learn the general theory of association" (Tocqueville [1835] 2010: 109). Citizens can associate in civil life without forming associations in the political sphere, but these associations will be weaker and less common. It is politics that "brings about the desire to unite and teaches

the art of associating to a host of men who would have always lived alone” (Tocqueville [1835] 2010: 109). Through the persistence of political associations and the engagement in political associations by all members of society, democracy persists. If, however, groups of people fail to engage in political associations, the “power with” relationships that characterize democracy transform into “power over” relationships (V. Ostrom 1997). As people fall out of political engagement through political associations, constitutional rules are created and maintained by fewer interest groups unrepresentative of the overall population who become the keepers of everyone else. They are responsible for structuring and enforcing how people may interact with each other. Without being active in the political sphere, people become increasingly distant in their private lives as well. If they are not engaged in the political sphere, the tendency of individualism to isolate those in a democracy institutes for them a warden (Tocqueville [1835] 2010). Democracy turns into despotism.

3 Prisons Shape Associations

In On the Penitentiary System in the United States and its Application to France, Beaumont and Tocqueville (1833) see the penitentiary system in the US as revolutionizing the role of the prison in society. Rather than simply containing criminals, the penitentiary system sought to fundamentally reform them so that they could be integrated into society. Tocqueville saw the success of prisons in reforming criminals as deriving from the pairing of two seemingly contradictory elements: isolation and laboring. Isolation kept inmates free from the corrupting influence of other inmates and gave them time to reflect on their crimes and commune with the Lord. “As for us, as much as we believe that the system founded on isolation and silence, is favourable to the reformation of criminals, we are equally inclined to believe that the reformation

of convicts who communicate with each other is impossible” (Beaumont and Tocqueville 1833: 89). Labor provided the relief from isolation that kept inmates from dying or going insane, while also teaching inmates useful skills and love for work that would allow them to easily integrate into civil society upon their release. Thus, the penitentiary system, in Tocqueville’s judgment, provided an effective way to transform the wicked into engaged citizens. In this way, the penitentiary system was essential for maintaining those social mores that undergird the democratic spirit in the US. Having developed those social mores and experienced the withering away of criminal inclinations and association, individuals would be ready to engage in the civil and political associations integral for democratic society.

US prisons were formed by voluntary associations that directly monitored the rehabilitation of prisoners.

Each city or town with a prison had its own prison association. Membership of these voluntary organisations included local businessmen, notables, administrators, teachers and members of the clergy. Through these associations local communities became wedded to the success of their prison. The young magistrates believed the best American prisons involved the whole of the community in the administration and efforts to reform inmates, for businessmen furnished prisoners with work and instruction in a trade (Drolet 2003: 124).

Most prisons were small and had a small population of prisoners.

Beaumont and Tocqueville saw the management of prisons by town associations and their small size as contributing fundamentally to their success: “It is the small number of the prisoners in Wethersfield which forms one of the greatest advantages of that penitentiary, there the superintendent and the chaplain are thoroughly acquainted with the moral state of each individual, and after having studied his evil, they endeavor to cure it.” (Beaumont and Tocqueville 1833: 102).

By the early 20th century, however, prison operation in the US had changed dramatically. Practices of isolation and enforced silence had fallen away. Prisoners were allowed to interact. Additionally, prisons are not the “total institutions” that Goffman (1961) suggests and that Beaumont and Tocqueville (1833) present. Prison officials assert less influence over inmates’ lives than these presentations of prisons would have us believe. Instead, prison gangs assert immense influence over the daily lives of inmates (Skarbek 2014: 9). Due to the presence of prison gangs, prisons now serve as schools of crime where being incarcerated serves as a “badge of honor” and a “career maker” in that prisoners meet the established gang members who are serving longer sentences (Skarbek 2014: 141).

Prison gangs arose to serve the governance needs of inmates that arose with the immense increase in the prison population. With the influx of new inmates and ever-expanding prison system, the previous system of governance—the convict code—no longer served to govern inmate behavior.⁵ Inmates began forming informal groups for protection and resource acquisition rather than relying on the informal norms of interaction that the convict code had provided. With the large influx of new inmates, the percent of the prison population that knew the convict code fell rapidly.

The informal groups that inmates had previously formed for protection eventually formalized into prison gangs with direct connections to street gangs. Now, in order to survive prison, inmates have to join a prison gang—and that membership is for life. Leaving the gang results in “an automatic death sentence” (Skarbek 2014: 113). In 1985, gang membership was

⁵ The convict code was a spontaneous order development in which prisoners adhered to norms of interaction (Skarbek 2014: 27). Those prisoners who had experience serving time knew the code well, having learned it during their previous sentences. They taught it to first-time prisoners.

approximately 13,000 and prison gangs were active in 49 different states (Skarbek 2014: 9). In 1992, gang membership had increased to 46,000 (Skarbek 2014: 9). In 2002, gang membership in California alone was between 40,000 and 60,000 members (Skarbek 2014: 9). This means that post release, a growing number of former prisoners have obligations to those gangs, despite no longer being incarcerated (Skarbek 2014: 113).

This change in internal prison structure occurred when the size of the prison population sky-rocketed and the prison system was expanded. These changes directly contradict what Tocqueville saw as one of the virtues of the US prison system: small prisons with few inmates. In fact, the spike in incarceration rates may actually increase crime. Liedka, Raymond, and Useem (2006) find that incarceration rates above 325 of 100,000 residents may lead to more crime rather than less. This implies that the high level of incarceration in the US is actually working against the deterrent effect prisons are intended to have. Several explanations for this have to do with the changing composition of an inmate's social capital when he goes to prison. For one, prisons today have the opposite effect on inmates' network ties than what Tocqueville postulated. Serving time in prison is associated with a deterioration of an inmate's community and family ties and a strengthening of their criminal ties. This effect is exacerbated by the presence of prison gangs (Skarbek 2014: 166). Additionally, Hutcherson (2012) suggests that being incarcerated increases future earnings in the illegal sectors. This, in addition to incarceration being destigmatized in communities leads to a greater participation in criminal activity after release by former prisoners (Burch 2013: 4, Skarbek 2014).

Applying the theory of democratic maintenance developed in section two to the US today, we see the perversion of associational life by mass incarceration. Prisons no longer serve the rehabilitative role that Beaumont and Tocqueville (1883) outlined. Rather than shape inmates so that they are able to participate in associational life, the US prison system undermines the associational life necessary for the maintenance of democracy by raising the costs of participating in civil and political associations for current and former prisoners. Those who serve time in prison develop social capital in the criminal sphere and face legal barriers to rejoining free society. They are unable to participate in civil and political associations and instead participate in extra-legal ones. As a result, they never learn the knowledge and tools of self-governance necessary for the maintenance of democracy (V. Ostrom 1997). Additionally, legal barriers are erected that bar them from even the most basic political engagement, such as voting. As a result, when they rejoin society, they are unable to engage in the political process and remain isolated from society despite their freedom from imprisonment. Mass incarceration is shifting American society away from democracy and towards a situation of despotism.

4 Associational Life after Incarceration

The system of mass incarceration in the US raises the costs to rejoining associational life after incarceration. As a result, former prisoners participate less in the civil and political associations that Tocqueville saw as core to democratic life. Former prisoners have reduced participation in family life, religious communities, industry, juries, political offices, and voting. Because of this, mass incarceration has created a permanent outgroup in American society, transforming American democracy into despotism. Despite the number of those incarcerated being small relative to the US population overall, those incarcerated disproportionately come from poor and minority communities. Those pushed out of the political sphere will not affect

interest groups in the US proportionately. Additionally, as Burch (2013) shows, incarceration has an effect beyond those who serve time in prison. The withering of the social and human capital of former prisoners leads to the withering of social and human capital in their communities (Burch 2013: 4). Former prisoner's reduced access to resources leads to their communities having fewer resources with which to support their local civil and political associations (Burch 2013: 37). As a result, incarceration reduces political participation by members of communities from which a higher percentage of people are incarcerated. (Burch 2013: 37). The result is that poor and minority communities are increasingly removed from the political sphere.

4.1 Mass incarceration reduces participation in civil association by former prisoners.

4.1.1 Mass incarceration reduces participation in family life by former prisoners.

Participation in family life defends against the individualism that Tocqueville ([1835] 2010) sees as threatening democracy. Individualism causes “each man forget his ancestors, but it hides his descendants from him and separates him from his contemporaries” (Tocqueville [1835] 2010: 884). Through individualism, Tocqueville sees a tendency in democracy for people to become wholly focused on themselves and their economic well-being, removing themselves from the political sphere.

Family structure and formation are most impacted by the perverse effects of incarceration (Genty 2003). Incarceration leads to reduced parental involvement, pushes children of incarcerated parents into the foster care system, and reduces marriage rates in prisoners' communities. Those looking at the effect of incarceration on families suggest that incarceration may reduce crime in the short run, but that the negative effects on children may ultimately cause an increase in crime (Lynch and Sabol 2004).

The separation of prisoners from their families leads to reduced parental involvement by both the incarcerated parent and the remaining parent. Most prisoners in the US are parents. Glaze and Maruschak (2008) find that over half of state prisoners and over sixty percent of federal prisoners are parents. Just under a quarter of prisoners in the US have at least three children (Glaze and Maruschak 2008). Of children in the US, 2.2 million have at least one incarcerated parent (Western 2006, Wildeman 2010). Parents are often incarcerated in prisons that are over 100 miles away from their family's place of residence, making visitation prohibitively costly (Genty 2003). This is especially the case for mothers because of the limited number of women's prisons in the US (Genty 2003). Because of this distance, over half of incarcerated parents never get a visit from their children while they are incarcerated (Genty 2003: 1674). Even when parents maintain contact with their family while incarcerated, "parenting from a distance' places serious undeniable limitations on the parent-child relationship" (Genty 2003: 1673). This separation has become longer as sentencing laws have increased in severity. Parents are often separated from their children for a significant portion of their children's lives. On average, fathers would be incarcerated between seven and nine years while mothers would be incarcerated from four to five and a half years (Genty 2003: 1672). Due to the absence of one parent, they experience less involvement with their remaining parent as more of the economic burden of the family falls on the remaining parent (Comfort 2008).

Many parents lose custody of their children once incarcerated, leading to reduced involvement with their children after their release. Some parents have no relatives who can care for their children forcing those children into foster care (Edin et al 2004). According to the federal Adoption and Safe Families Act (ASFA) of 1997, relatives of those incarcerated may not

care for children if they have been convicted of a crime in the past. Due to the federal Adoption and Safe Families Act (ASFA) of 1997, even when those incarcerated have a family support system, if their family members have previously been convicted of a crime, their relatives cannot take care of any children left parentless as a result of incarceration (Samuels and Mukamal 2004). As incarceration tends to affect poor and minority neighborhoods disproportionately, there is a higher probability that children from poor and minority families will be put into foster care due to a parent being incarcerated (Samuels and Mukama 2004; Lynch and Sabol 2004). More than seven percent of African-American children in the US (1 in 14) had at least one currently incarcerated parent (Uggen et al 2006: 299). The ASFA places a time limits of 22 months on when a child is put into foster care due to parent incarceration and when parents lose their parental rights (Baker et al. 2001: 7; Hort 2001). Since minorities tend to receive longer sentences than their white counterparts, minority parents lose their parental rights at a higher rate (Burch 2013: 28).

High-rates of incarceration and recidivism have led to two-parent families being less common, especially among minorities (Charles and Luoh 2010, Wakefield and Uggen 2010, Western 2006). Comfort (2008) finds that incarceration puts a unique strain on partners trying to maintain a relationship, leading to a high rate of divorce for parents who have been incarcerated (Lopoo & Western 2005: 721). Incarceration is grounds for divorce in twenty-nine states (Uggen et al 2006: 297). Spouses of those incarcerated may choose to file for divorce and remove the incarcerated parent's parental rights (Weaver and Lerman 2010: 820). This leaves the incarcerated person without a family post-release. This struggle to maintain an intact family uniquely plagues African American communities (Petit & Western 2004, Western 2006, Wildeman 2010).

High rates of incarceration in a community also reduce the rate at which families are formed. As adult men are the main population incarcerated in the US, the high rates of incarceration reduce the supply of eligible men. When the men being incarcerated disproportionately come from poor and minority communities, then the rate of family formation is especially affected there (Lynch and Sabol 2004: 280). Charles and Luoh (2010) find that as the rate of incarceration of black adult males increases, the rate of marriage of black adult females falls (624). “Whereas 50% of white and Latinos are married by the age of 25, only 25% of African American women are married” (Wakefield and Uggen 2010: 397).

4.1.2 Mass incarceration reduces participation in religious associations by former prisoners.

For Tocqueville ([1835] 2010) religious associations are a key factor underlying American democracy. He argues that the values and social institutions of the Puritan were a main contributor to the success of the democratic experiment in the US (Tocqueville [1835] 2010). Continued participation in religious life is central to the maintenance of the social mores that undergird democracy. For this reason, priests had an important role in molding prisoners to rejoin society in early US prisons (Beaumont and Tocqueville: 1833).

There is little research on the rate of religious participation by former prisoners. Most (DiIulio 2009, Dodson 2011, Johnson 2004, 2008, 2014, O’Connor 1998, Leary 2018, Kaufman 2018, Mowen et al 2017, Roberts and Stacer 2016, and Stansfield 2017) focus on the success of religious programs in preventing former prisoners from recidivating. Because of this, the percent of former inmates participating in these programs and religious organizations broadly is ignored. Research by Ulrich and Cold (2011) and Visser et al (2004), however, suggests that participation

in religious organizations by former prisoners is low when compared to their nonincarcerated counterparts.

Ulrich and Cold (2011) followed 800 former prisoners after their release to see what factors were important for preventing them from behaving violently. Of 800, only 44 (or 7.9 percent) participated in religious activities—including church attendance and other religious services) after release (386). Similarly, Visher et al (2004) found that only 6.9 percent of former prisoners in Maryland found religious participation useful for their reentry into society (4). These studies suggest that former prisoners tend to participate in religious communities at a lower rate than their nonincarcerated counterparts. This rate of participation is low when compared to national rates of religious involvement. According to the Pew Research Center (2018), 36% of the US adult population attends religious services weekly and 30% of the US adult population attends religious services weekly. The low rate of religious participation by former prisoners is less striking when compared to the percent of the US black adult population's rate of religious participation. The Pew Research Center (2018) found that 15% of black Americans attend religious services once a week, and 12% of black Americans attend religious services once a month.

4.1.3 Mass incarcerations reduces participation in industry by former prisoners.

In addition to family and religious communities, industry, or participation in the work place, is integral for the maintenance of democracy (Estlund 2003, Tocqueville [1835] 2012). By industry, he means participation in business life (Estlund 2003). While Tocqueville warns that narrow focus on the economic sphere at the cost of political involvement could lead the US into

despotism, he acknowledges industry as an important space for individuals to develop their self-governing capacity.

The literature on the collateral consequences of incarceration outlines the severe effects that incarceration has on current and former prisoners' ability to participate in the economic sphere of life. Chief among these is the low rate of employment of former prisoners (Pager 2009). Barriers to obtaining occupational licenses and state laws that allow employers to consider arrests in hiring and firing decisions are the main contributors to the low rates of employment among former prisoners. Additionally, the human and social capital of those incarcerated erode during their sentence, making it more difficult for them to find a job upon release.

Jobs available to former prisoners are severely limited due to legislative barriers. Former prisoners are barred from holding jobs that require professional and occupational licenses, such as hazardous waste transporters, real estate brokers, RV sales people, and airplane pilots (McGinnis 2018: 70, 71). Former prisoners are similarly prohibited from holding jobs that involve contact with children or health or security services (Uggen et al 2006: 298).

Former prisoners will have a harder time finding jobs in the legal sphere due to their experiencing greater discrimination from potential employers than those without prior convictions (Pager 2003, 2009). This increases the likelihood that former prisoners will return to crime as their returns from illegal work far exceed the returns they can expect from working in the legal employment (Hutcherson 2012, Skarbek 2014: 166). In their study of the legal barriers faced by ex-convicts, Samuels and Mukamal (2004) find that most states allow employers to make hiring and firing decisions based on someone's criminal record (10). Thirty-eight states

allow employers to use arrest records in hiring and firing decisions even if the arrest did not lead to conviction of any crime (Legal Action Center 2009: 10).

The human and social capital for work in the legal sphere that prisoners had prior to being incarcerated erodes during their sentence, making finding a job post-release difficult. Uggen, Manza, and Behren (2006: 269) note that former prisoners usually have few of the “weak ties” that are necessary for accessing better paying, better quality jobs (Granovetter 1973). Lounsbury (2007) highlights that many poor blacks have few connections outside their neighborhood communities already. When a high percentage of residents from that community are incarcerated, it further reduces the ability of black former prisoners to find well-paying legal work post-release. If they find a legal job, they receive fewer work hours and lower wages than their peers. Former prisoners tend to receive lower paying and lower-status jobs due to their spotty work histories and the stigma that accompanies incarceration (Samuels and Mukamal 2004, 8).

Instead of developing connections that will facilitate legal work, prisoners develop social capital and skills that make earning income in illegal endeavors easier (Hagan 1993; Hutcherson 2012, Skarbek 2014). For this reason, many former prisoners find that their earning potential in illegal endeavors far exceeds their earning potential in the legal sector (Sullivan 1989; Hagan 1993; Bourgois 1995). In fact, those who were previously incarcerated may experience a wage penalty in legal work ranging from ten to thirty percent as a result of their being previously incarcerated (Pettit & Lyons 2007, Pettit and Western 2004, Waldfogel 1994, Western 2002).

African Americans bear a larger wage penalty than other ethnic groups. Western (2006) finds that African American males experience a 4.0% wage penalty from incarceration,

compared to the 1% wage penalty experienced by white men, and the 2.4 % wage penalty experienced by Latino men (127). The wage penalty also endures longer for African American men than for other ethnic groups (Petit & Lyons 2007). This finding comports with Loury's (2006) discussion of the lack of social capital that African Americans have outside their communities being a main contributor to the divergence in economic performance across racial groups.

Adding to the costs of finding and maintaining a job, many states restrict or revoke offenders' driver's licenses. In some cities, finding and maintaining a job without the use of a car further impedes ex-prisoners' success in legitimate work spheres (Alexander 2012: 150-151). Twenty-seven states suspend licenses automatically for drug offenses. Twenty-three states suspend offenders' licenses only for driving related offenses (Samuels and Mukamal 2004: 17).

4.2 Mass incarceration reduces participation in political associations by former prisoners.

Tocqueville ([1835] 2010) identifies political associations as the main bulwark against despotism and tyranny of the majority. In discussing political associations, he says that "freedom of association has become a necessary guarantee against the tyranny of the majority" ([1835] 2010: 306-7). Through participation in political parties, office holding, and juries, citizens ensure that those operating in the political sphere of society do actually represent them. With regard to juries, Tocqueville ([1835] 2010) writes that "the man who judges in a *criminal court* is really the master of society...the institution of the jury, therefore, really puts the leadership of society into the hands of the people" ([1835] 2010: 445). The ubiquity of political associations and widespread participation ensures that those elected to public office are representative of the majority ([1835] 2010: 310).

In the current system of mass incarceration, however, legislative restrictions on former prisoners' ability to engage in the political sphere "deny felons the full *rights* of citizenship. This denial, in turn, makes performing the *duties* of citizenship difficult" (Uggen et al 2006: 283). Former prisoners are barred from serving on juries and running for office (McGinnis 2018: 67; Weaver and Lerman 2010: 824). Overall, former prisoners, and those in the communities in which they live, engage in political activities at a lower rate than those in communities unaffected by incarceration (Burch 2013).

Thirty-one states and the federal courts prohibit ex-felons from serving on juries (Alexander 2010: 240; Lerman and Weaver 2014). Even those incarcerated for as little as six months are barred from jury service in Maryland (McGinnis 2018: 66). Due to the racial disparity of those incarcerated, thirty-seven percent of black adult men are excluded from serving on juries (Lerman and Weaver 2014: 85). Compared to only 6.5 percent of all adults being excluded from jury duty due to felony conviction, the African American population is significantly underrepresented in jury service (Lerman and Weaver 2014: 85; Kalt 2003). Among those who are not prohibited from serving on juries, there is still reduced participation in jury service by former prisoners (Weaver and Lerman 2010: 824).

Former prisoners are also barred from holding public office at all levels—from the state legislature to their local schools. (Morenoff and Harding 2014: 414). This prohibition extends beyond positions such as mayor and governor. Former prisoners are prohibited from holding elected positions as school board members, as well as other low-level offices such as local water district administrators, public notaries, or registrars of deeds (McGinnis 2018: 66, 67).

Due to the barriers to political participation, former prisoners exclude themselves from less formal forms of political participation. Former prisoners have a lower rate of participation in civic and political groups (Weaver and Lerman 2010: 827; Burch 2013: 105). They also engage less in political activities like protests and signing petitions (Burch 2013: 75). The result is the creation of a class of “custodial citizens” (Weaver and Lerman 2010: 819). These citizens have no voice in the political sphere of their communities. Rather, their situation embodies that of despotism. Their involvement in the political sphere consists of “one way transactions” (Soss 1999: 366). Weaver and Lerman (2010: 819) describe the relationship between custodial citizens and political authorities: “decisions are made about them, not in response to their claims; where their input in decision making is minimal.” Instead of being equal participants in the political process, they are “objectified and dependent” (Fairchild 1977: 296).

4.3 Mass incarceration reduces participation in voting by former prisoners.

For Tocqueville, universal suffrage is necessary to avoid the tyranny of the majority and despotism. He says that,

In countries where universal suffrage is accepted, the majority is never in doubt, because no party can reasonably set itself up as the representative of those who have not voted. So, the associations know, and everyone knows, that they do not represent the majority. This results from the very fact of their existence; for, if they represented the majority, they would change the law themselves instead of asking for its reform ([1835] 2010: 311).

When groups of people are denied a vote, they potentially fall into a situation of despotism as elected leaders can claim to represent that excluded group. In situations of universal suffrage, “the purpose of associations is to convince and not to compel” since no association has the majority ([1835] 2010: 309). Through universal suffrage, a situation of despotism—in which associations would impose their will—is avoided.

Mass incarceration has eroded universal suffrage in the US today. By raising legal barriers and reducing expected benefits, mass incarceration increases the cost of voting for current and former prisoners. In the US, felon disenfranchisement laws constitute the main legal barrier to voting for those currently and formerly incarcerated. In all but two states (Maine and Vermont) states, felons lose their voting rights while they are incarcerated (National Conference of State Legislature 2018).

In most states, prisoners' voting rights are restored after they are released from prison. In 14 states and the District of Columbia, voting rights are restored automatically upon release (National Conference of State Legislature 2018). In 22 states, voting rights are restored upon the completion of a person's sentence—which includes the probation or parole period after release and the payment of fees associated with their sentencing (National Conference of State Legislature 2018). In 12 states, those convicted of a felony must first complete their full sentence and then request a governor's pardon in order to restore their voting rights (National Conference of State Legislature 2018).

Due to disenfranchisement laws, as of the November 2016 elections, 6.1 million people were unable to vote (Uggen, Larson, and Shannon 2016: 3). Twenty-three percent of those who are disenfranchised are currently incarcerated (or 1.4 million people). The rest (77 percent or 4.7 million people) have been released and are working and paying taxes, and yet still cannot vote (Uggen, Larson, and Shannon 2016: 6, 14). A substantial enough portion of the population is barred from voting that if they had been allowed to vote, they would have likely affected the results of US Senate races from 1970 to 1998 and the 2000 presidential election (Uggen and Manza 2002).

African Americans make up a disproportionate number of those unable to vote due to felony convictions. In 2016, one in thirteen black adults were barred from voting (Chung 2018, 6). African Americans are disenfranchised at a rate four times that of non-African Americans, despite African Americans making up only 13.4 percent of the national population (Uggen, Shannon, and Manza 2012, 2; United States Census Bureau 2018). The degree of disenfranchisement of African Americans is also striking when you compare the percent of the disenfranchised African-American population (7.7 percent) to that of non-African-American population (1.8 percent) (Uggen, Shannon, and Manza 2012: 2). The disparity is especially striking in states like Florida, Kentucky, Tennessee, and Virginia where more than one in five black adults was barred from voting due to felony convictions (Chung 2018: 6)

Those who had previously lost their right to vote due to a felony conviction but have had their voting rights restored also tend turnout to vote at a lower rate exacerbating the degree to which former prisoners are unrepresented by those in political offices. Meredith and Morse (2014) suggest that the low turnout for voting by former prisoners may be due to misinformation. Many who were previously incarcerated for felony offenses are misinformed about the status of their voting rights. They believe that they are unable to vote when, in fact, their voting rights have been restored. Drucker and Barreras (2005) found that about half of the incarcerated population they surveyed in Connecticut, New York, and Ohio, were ignorant of whether their felony conviction permanently disenfranchised them. Part of their being misinformed is that criminal justice officials are misinformed themselves about whether and when ex-felons regain their voting rights (Meredith and Morse 2014: 223). Additionally, Allen (2011) found that some New York election boards were requiring ex-felons to provide additional documentation that was

not legally required before allowing them to vote, increasing the cost of voting for former prisoners beyond what is legally required.

Those who have been incarcerated, but retain their right to vote, turnout at a lower rate than those in the population with similar characteristics who had not been convicted of any criminal offense (Hjalmarsson and Lopez 2010). Lerman and Weaver (2014: 222) find that any contact with the criminal justice system reduces voter turnout—controlling for other factors that correlate with lower voter turnout. For those with a history of being arrested—but not convicted—the probability that they would turnout to vote fell by sixteen percent. Those who had been convicted of a crime had an eighteen percent lower probability of turning out to vote. Those who had ever served time in jail or prison had a twenty-two percent lower probability of turning out to vote. Those who had been incarcerated for a year or more had the lowest probability of coming out to vote with a twenty-six percent fall in the probability that they would vote.

Consistent with Tocqueville’s claim that participation in civil and political associations feed into and reinforce each other, Sugie (2015) finds that decreased participation in civil associations—family, religious organizations, and employment—leads to reduced participation in political associations—voting, political groups, etc.

5 Conclusion

In contrast to Tocqueville’s view of prison in his time, prisons today transform power relationships in society from “power with” relationships to “power over” relationships. Mass incarceration has perverted people’s associational lives such that they are systematically disengaged from civil associations and the political sphere. Those who are disengaged from

associational life in this way lack the tools and knowledge Tocqueville says is necessary for the maintenance of democracy. They have become “custodial citizens,” managed by political authorities rather than being engaged with the political process. The system of mass incarceration in the US is transforming American democracy into despotism.

Several implications follow from my analysis for anyone interested in the maintenance of democracy in the US First, laws that raise the costs for former prisoners to rejoin civil society may contribute to a permanent criminal group—a permanent political outgroup. Such laws undermine democracy and should be reformed or abolished. For example, federal laws that prohibit ex-felons from obtaining certain occupational licenses raise the cost to obtaining legal work, increasing the likelihood that ex-felons return to crime., Laws that require former prisoners to file for the restoration of their voting rights from governors should be amended to allow for automatic restoration of voting rights upon release. Adding costs to voting for former prisoners further reduces their participation in the political sphere, undermining democracy. Laws barring former prisoners from holding certain elected positions (especially low-level ones like school board positions) should be amended to allow for increased participation of former prisoners in the political life of their community.

Second, incarceration may not serve its intended purpose. Imprisonment, while intended to be a punishment in itself, is also accompanied by goals of rehabilitation. With the undermining of association life, however, this rehabilitation cannot completely occur. As demonstrated by O’Connor et al. (1998), Johnson (2004, 2008, 2014), and Sugie (2015), aftercare of released prisoners is integral for ensuring successful reentry of former prisoners into society. By imposing high costs to participating in civil and political associations for offenders, we increase the likelihood of their recidivating. As suggested by Cowen (2018), we should

consider alternative forms of punishment, such as increased use of home arrest. The more that offenders can be kept in their home communities, the lesser the likelihood that they will become part of a permanent criminal group. If offenders can maintain their involvement in civil associations, it will bolster their participation in political associations, and, thus, democracy.

Third, programs that provide occupational licensing to current inmates should be expanded. Currently, participation in such programs is restricted to those serving life sentences and those who have gained trusty status in the prison (Federal Bureau of Prisons 2016). If these programs were made available to those serving shorter sentences, we may see a reduction in recidivism and less of a decrease in former prisoners' participation in associational life.

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