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# Black White and In-Between: Race and Ethnicity in the Criminal Justice System 1885-1915

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# **Black White and In-Between: Race and Ethnicity in the Criminal Justice System 1885-1915**



Honors Thesis

Elizabeth M. Wilhelm

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Advisor: Karen Bartley, Ph.D.

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## **Abstract**

Events in the past year have brought racial and ethnic discrimination in the criminal justice system to the forefront of American consciousness. In reality, race has been used to create stereotypes for centuries, often supported by “scientific” and “statistical” evidence to support the idea that certain races are more likely to commit crimes than others. In my research, I trace the development of these ideas as well as the evidence used to support these racial notions primarily by drawing upon conference transcripts from two professional organizations: The National Prison Association and the National Conference of Charities and Corrections covering the years 1885-1915. While the analysis of these stereotypes includes African Americans, I focus on the stereotyping of foreign-born and second-generation Americans as well as those who were not considered white a century ago, such as “Chinese, Japanese and civilized Indians.”

## **Acknowledgements**

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## Introduction

In the years 2014 and 2015, racial and ethnic discrimination in the criminal justice system has become a “hot topic” in the media. In the United States, one would be hard pressed to find an adult who is unaware of the events that took place in Ferguson, Missouri, as well as several other incidents across the country that have highlighted problems surrounding racial profiling and police brutality. In March of 2015 reports were released after an investigation of the Ferguson police force, which found statistically significant discrimination within the police force that specifically targeted African Americans. These events taking place one hundred and fifty years after the Civil War and fifty years after the march in Selma, Alabama, have made apparent the significant problems surrounding race and ethnicity in the criminal justice system today.

The paper will address the stereotypes and ideas that led to disproportionate representation of minorities in the criminal justice system both in the past and present. Current social science research has argued that much of this disproportionate incarceration is due to the ways laws are written and enforced. For example, certain crimes, such as drug possession, carry longer mandatory sentences than other non-violent crimes. Those convicted of these types of crimes that carry harsher punishments tend to belong to minority groups living in low-income neighborhoods. People outside these areas are just as likely to participate in this illegal activity, but are less likely to be caught, convicted, or given the maximum sentence. Prejudicial writing and enforcement of the laws causes this stratification within prisons.<sup>1</sup>

This stratification within the criminal justice system is not a new problem. Using historical and sociological methods, my research examines racial and ethnic disparity and prejudice in the criminal justice system between 1885 and 1915 primarily through the use of conference transcripts from the *National Prison Association* and the *National Conference of Charities and Corrections* published during this time span. Through the context of these

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<sup>1</sup>See Michelle Alexander's, *The New Jim Crow: Mass Incarceration in the Age Colorblindness*, for more information.

conference transcripts I examine the types of crimes that were commonly convicted, the demographic profile of those convicted of these crimes, conviction rates, what type of punishment these crimes carried, and the thoughts and conclusions those present at the conferences drew from these examinations as well as how they responded to these conclusions.

This period was chosen because of the important social changes that occurred at the end of the 19<sup>th</sup> and early 20<sup>th</sup> centuries and which formed the foundation of the penal system today. This system as well as prejudices against minorities was greatly impacted by rapid industrialization, urbanization, and migration; these influenced and strained social relationships. In order understand these social relationships and hierarchies in today's society; a better understanding of the depth of historical prejudice is required.

## Literature Review

Several studies have looked at institutionalization of peoples as a whole. These institutions include asylums, prisons, and convict leasing systems as a form of punishment. While the majority of current studies look at issues of mass incarceration and the expansion of the prison system in the past fifty years, others argue that this imprisonment is not a new phenomenon, but rather is a shift in the form of institutionalization. Bernard E. Harcourt's uses statistical analysis of asylums, mental health facilities, and prisons to conclude that combined institutionalization early in the 20<sup>th</sup> century do not differ significantly from the prison rates of the late 20<sup>th</sup> century. Therefore, he argues, the overall institutionalization of the population remains about the same. He identifies this consideration as a gap in the field of criminology.<sup>2</sup> While Harcourt does not extensively comment on differences in institutionalization in regards to race, he proposes a possible correlation between the increase of minorities in mental hospitals and the increase of imprisonment. He asks, "Is it possible that, as the population in mental hospitals became increasingly African American and young, our society gravitated toward the prison rather than the mental hospital as the proper way to deal with at-risk populations?"<sup>3</sup> Harcourt also draws from the theories of Erving Goffman and David Rothman that locate asylums and prisons as the same categories because they perform similar functions of incapacitation and separation from the rest of society. Published over a century prior to Harcourt's, the *Proceedings of the National Conference of Charities and Correction* edited by Isabel Barrows, shows the historical relationship between different forms of institutionalization. The proceedings of this conference, which occurred in 1889, discuss the challenges those in the field were encountering at the state and national levels. This conference included representatives from prisons, reformatories, orphanages, jails, workhouses, and asylums. This source differs in that it provides more of a

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<sup>2</sup> Bernard E. Harcourt, "From the Asylum to the Prison: Rethinking the Incarceration Revolution," *Texas Law Review* 84, no. 7 (2006): 1751-1786, *Business Source Complete*, EBSCOhost (accessed February 24, 2014).

<sup>3</sup> Harcourt, 1783.

context of the social understandings and thoughts in regards to those who were institutionalized rather than the empirical evidence of Harcourt.<sup>4</sup> Considerations of different forms of separation from society must be taken into consideration in order to really identify the motivations of a shift to disproportionate incarceration of minority groups today.

The unique experience of females will also be important to consider. Attitudes toward women and crime were much different than those toward men. The article “‘One Female Prisoner is of More Trouble Than Twenty Males’: Women convicts in Illinois Prisons, 1835-1896” by Mara Dodge, considers the problems evolved as the first females are convicted and serve prison sentences. This article explores the often disregarded of experience of women who served time in men’s prisons because states lacked a separate facility to house women. Although women made up a much smaller portion of the prison populations, their presence in men’s prisons created a different set of issues than men who were incarcerated.<sup>5</sup> While my research does not delve into these differences, many of the primary sources cite the marked differences between treatment of men and women.

Related to this idea of institutionalization involves the issue of imprisonment as a way to systematically “re-enslave” African- Americans after the civil war. Douglas A. Blackmon in *Slavery by another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* makes the argument that many African Americans were re-enslaved after the American Civil war through the convict leasing system. He focuses on the South. Blackmon describes the deplorable living conditions of time prisoners spent in mines. He describes common attitude many held that if one convict dies you can get another because their lives do not matter.<sup>6</sup> In

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<sup>4</sup> Isabel C. Barrows ed., *Proceedings of the National Conference of Charities and Correction*, (Boston: P.S. King and Son, 1900).

<sup>5</sup> Mara L. Dodge, “‘One Female Prisoner is of More Trouble Than Twenty Males’: Women convicts in Illinois Prisons, 1835-1896,” *Journal of Social History* 32, no. 4 (Summer 1999): 907-24.

<sup>6</sup> Douglas A. Blackmon, *Slavery by another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*, (New York: Anchor Books, 2009).



comparison, William Staples also looks at the use of prison labor in the article "In the Interest of the State: Production Politics in the Nineteenth Century Prison." While he does not make any comments on the use of prison labor for race, he looks at the formation of prison labor within an industrial structure. Staples also places imprisonment within forms of institutional control along with mental health practices of the time. Rather than a system of control of a specific race, he argues that the use of prison labor emerged out of economic utility for the state. By using prison labor, whether through lease, contract, piece-price, state account or state-use, the state was able to defer some of the costs of incarceration. Staples presents the idea that it was a common understanding among most members of society that it was expected for prisoners to work.<sup>7</sup>

Research focused on disparity today also points to the mass imprisonment phenomenon as a form of re-enslavement for minority groups. One of the major works that has contributed to the understanding of this issue is Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. Looking at the increase in incarceration, in the last fifty years, Alexander examines and how laws are written and enforced to target African- Americans. She focuses mainly on the example and impact of drug laws. Overall she claims that today the outcomes and enforcement of law has result in the disenfranchisement and labeling of more African Americans than during Jim Crow era. Labeling people as criminals is a way to justify discrimination in jobs, housing, welfare, and other important parts of societal structure.<sup>8</sup>

In communities where incarceration rates are particularly high, problems lend to creating single parent or grandparent run households, limited role models, and jobs prospects, leads to issues of poverty for entire communities. Robert Defina and Lance Hannon in their article, "The Impact of Mass Incarceration on Poverty" draw from empirical evidence between mass incarceration and poverty in communities from the years 1980 to 2004. The researchers conclude

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<sup>7</sup> Staples, William C. "In the Interest of the State: Production Politics in the Nineteenth Century Prison." *Sociological Perspectives* 33, no. 3 (Fall 1990): 375-395. *America: History & Life*, EBSCOhost (accessed February 28, 2014).

<sup>8</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, (New York: The New Press, 2010).

that as incarceration increases the poverty rate also increase.<sup>9</sup> Several other researchers have found this correlation between the concentration of poverty and the impact of incarceration on communities. William Julius Wilson has published a theory on the impacts of the concentration of poverty. He also finds that poverty and incarceration create a cycle for poor communities.<sup>10</sup> An article by Steven Raphael "Explaining the Rise in U.S. Incarceration Rates" looks in detail at policies that have contributed to the rise in U.S. incarceration rates.<sup>11</sup>

In order to understand how policy and enforcement are shaped and cause increased rates of incarceration for minority groups, one must understand how race is ultimately constructed and stereotyped for each particular group throughout the period of study and how this construction also determines the segregated space. Thomas Sugrue in, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* writes about racial tension in Detroit as the population grows. He discusses how these tensions contributed to problems of segregation in housing, employment, and crime.<sup>12</sup> Another book that is considers the formation of African American ghettos in *Harlem: The Making of a Ghetto* by Gilbert Osofsky. This book presents the example of Harlem, New York, between 1890-1930 and the different influences that shape the community of Harlem.<sup>13</sup>

The history of immigration and immigrants in United States is another important aspect to consider race and ethnic discrimination in the criminal justice system. One relationship to consider is the impact of immigration and migration within the United States on African Americans. Lonnie Stevans looks at the impact of immigration and migration on the earnings of

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<sup>9</sup> Robert Defina and Lance Hannon, "The Impact of Mass Incarceration on Poverty," *Crime & Delinquency* 59, no. 4 (2013) 562-586, *Academic Search Complete*, EBSCOhost (accessed February 24, 2014).

<sup>10</sup> William Julius Wilson, *The Truly Disadvantaged* (Chicago, IL: The University of Chicago Press), 1987.

<sup>11</sup> Steven Raphael, "Explaining the rise in U.S. incarceration rates: Explaining the prison boom (English)," *Criminology & Public Policy* 8, no. 1(March 2009): 87-95. *FRANCIS*, EBSCOhost (accessed February 24, 2014).

<sup>12</sup> Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit*, (Princeton: Princeton University Press, 1996).

<sup>13</sup> Gilbert Osofsky, *Harlem: the Making of a Ghetto*, (New York: Harper Torchbook, 1968).

African Americans.<sup>14</sup> Christopher Muller also looks at the correlation between northward migration and racial disparity in incarceration. He uses historical sources in combinations with statistical analysis of census data as well as analysis of data from other federal and state institutions. This article focuses on migration patterns, particularly the impact of the Great Migration. Although he mentions and examines to an extent the impact of first wave immigration, this is not his focus and he does not comment on any specific groups of immigrants. He points to this as an area for further research.<sup>15</sup>

Several works look at the change in the nature of immigration over time. Aaron Fogelman discusses the impact that immigrants had on society prior to the North American Revolution. He argues that many of the immigrants came under some form of limited freedom, such as indentured servitude, but as the United States moved toward democracy, this constraint upon immigrants began to change except for African Americans. He also argues that understanding this transformation of social thought regarding immigrants is important to understanding ideas surrounding freedom, servitude, and crime.<sup>16</sup>

As immigration increased, more social problems began to be blamed on immigrants. This resulted in a changing social construction of who was considered white and therefore who was not. The books *The Color of Race in America, 1900-1940* by Matthew Gutler<sup>17</sup> and *How the Irish Became White* by Noel Ignatiev<sup>18</sup> consider this process. After the civil war the more immigrants

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<sup>14</sup> Lonnie Stevans, "The Relationship Among African American Male Earnings, Employment, Incarceration and Immigration in the United States: A Time Series Approach," *Review Of Black Political Economy* 36, no. 3 (August 2009): 151-160. *Business Source Complete*, EBSCOhost (accessed February 24, 2014).

<sup>15</sup> Christopher Muller, "Northward Migration and the Rise of Racial Disparity in American Incarceration, 1880-1950," *American Journal Of Sociology* 118, no. 2 (September 2012): 281-326. *SocINDEX with Full Text*, EBSCOhost (accessed February 24, 2014).

<sup>16</sup> Aaron S Fogelman, "From slaves, convicts, and servants to free passengers: The transformation of immigration in the Era of the American Revolution," *Journal Of American History* 85, no. 1 (n.d.): 43-76. *SocINDEX with Full Text*, EBSCOhost (accessed February 28, 2014).

<sup>17</sup> Matthew P. Gutler, *The Color of Race in America, 1900-1940*, Cambridge: Harvard University Press, 2001.

<sup>18</sup> Noel Ignatiev, *How the Irish Became White*, New York: Routledge, 1995.

came from southern and eastern Europe rather than the traditionally Northern and western Europeans. More immigrants also tended to be Catholic than before.

Two historians who look at the idea of “becoming white” are David Rodiger and Matthew Frye Jacobson.<sup>19</sup> As race is socially constructed, when immigrants particularly from certain countries arrive, they are often not considered white; it is only through the process of assimilation and leaving the ethnic enclave that they can begin to be accepted as white.

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<sup>19</sup> David Rodiger, *Working Toward Whiteness: How America's Immigrants Became White*, New York: Basic Books, 2005.  
Matthew Frye Jacobson, *Whiteness of A Different Color: European Immigrants and the Alchemy of Race*, Cambridge: Harvard University Press, 1998.

## Methodology

Understanding prevailing racial and ethnic discrimination requires both quantitative and qualitative examination in order to grasp the social consequences of prejudice. While many primary sources offer either qualitative or quantitative evidence, conference transcripts offer both. Many sources, such as court records, prison records, arrest records, and census reports, are widely available but extremely limit one's ability to understand the full impact of race and ethnicity in the criminal justice system. Court records only present the cases that made it past the arrest. Court records do not show the numbers of people who are released before going to court. Prison records do not show the people who are never caught or are never convicted, yet still commit crimes. Census reports, while in many cases combining various data, are conducted every ten years and the types of data collected often changes from one census to another. For example, the 2010 census was the first U.S. census in which people were allowed to identify themselves as more than one race.

None of these aforementioned sources (other than maybe transcripts from trials) allow a researcher to understand the thoughts and feelings about race and ethnicity. Newspapers, personal journals, and other stories can be used to better understand these thoughts and feelings, but very few sources bring the quantitative data together with qualitative data. The conference transcripts bring these data sets together. Often speakers cite statistics or quantitative data, and they share their personal evaluations and conclusions from this data, and then discussion from the group follows. The statistics cited in the journals may or may not be trustworthy according to current standards. Methods of collection and analysis are not usually cited within the documentation. Regardless of the accuracy of these statistics, their original use played a significant role in shaping the social constructions of race and subsequently policy and enforcement of crime.

I analyze the material within these journals to examine the terminology used, the ideas presented and justifications used by experts in the field between 1885 and 1915. From this context I hope to gain a better understanding of the influence of social views of race and ethnicity

on outcomes and practices within the criminal justice system. These conference journals provide the perfect medium to begin to grasp some of these ideas.

## Chapter 1: Professional Organizations devoted to Solving the Problem of Crime in Society

If men were in right relations with each other and with God, there would be no Indian or Chinese or negro question, no conflict between capital and labor, no antagonism between the employer and the employed, no scorn of the poor by the rich, no envy of the rich by the poor, no corruption in politics, no bitter and unreasoning partisanship, no race prejudice, no class distinctions, no caste. The theological controversies that disgrace Christendom would come to an end, and the unity of the Church would be secured by the recognition of the unity of the race, the universal brotherhood of man.<sup>20</sup>

### General Conference Purposes

As noted above, many people in the 19th and early 20th centuries believed that religion, specifically Christianity, could bring an end to crime and other problems in society. This was the impetus behind many reform movements of the era. The National Prison Association and The National Conference of Charities and Corrections are organizations that discussed, lobbied for the interests of prison industries, and influenced the shape of prisons and other forms of institutionalization. In the opening remarks of the 1887 from the National Prison Association meeting, “The Association has been organized and is maintained for the purpose of influencing legislation, executive control, and prison management, in the direction of a humane and intelligent effort to prevent the spread of the contagion of crime, within or without prison walls, and to afford the prisoner himself every possible opportunity and inducement to regain his lost manhood.”<sup>21</sup> This lobbying group does not necessarily include work in all prisons and all members are not necessarily speaking in a professional capacity, but all have the common interest of trying to impact and make change within the system.

These two organizations focused on understanding criminals, influencing policy, and ultimately preventing crime. While some of the discussions include specifics about prison structures, the purpose still focused on the impact on individual prisoners with the hope of reform and rehabilitation of the individual prisoner. As stated in the 1887 Proceedings of the National

<sup>20</sup> Isabel Barrows, ed. *Proceedings of the National Conference of Charities and Corrections* (Boston: Press of Geo. H. Ellis, 1900), 24.

<sup>21</sup> *Proceedings of the Annual Congress of the National Prison Association of the United Held at Toronto, September 10-15, 1887.* (Chicago: Knight & Leonard Co., 1889), 4.

Prison Association, “it thinks more about the prisoner than about the prison. It seeks to enlist, in the prisoner’s behalf, the powerful agencies of the pulpit and the press; it strives perpetually to effect a change in public opinion as to the possibility, necessity, and desirability of making the reformation of the convict a prominent aim in criminal legislation and in prison discipline.” This statement demonstrates the interest of changing and influencing public opinion and legislation based on findings presented in these conference settings. Another interest of the conference was “preventing crime, by timely interference in the case of children and young persons exposed to the contamination of a vicious or criminal atmosphere, as well as by a purer and more efficient system of police oversight and control, both in cities and in rural districts.”<sup>22</sup> By holding these conferences the attendees attempted to change the public opinion and legislation both within the conference and for the general public. While the individuals who presented information did not always agree with one another, the discussions that took place are representative of the different opinions surrounding crime, criminality, and race during this time period.

Throughout the conferences many reasons for studying crime and criminality were cited. One hope of the conference was to advance the morality of society as a whole. For example, Dr. Roland P. Faulkner states,

The frequency of crimes seems as a barometer of the morals of society; the form which crime assumes points us to the weak points of our social organisms; the personal characteristics of criminals teach us what forms of punishment are most required; the repetition of crime by the same individuals warns us of the inefficacy of our present repressive agencies; the increase of crime, in spite of the growth of wealth, cultural and intelligence, demonstrates the necessity of reform of our penal legislation.<sup>23</sup>

For him quantitative measures of crime are indicators of morality within society. As he states, he hoped that studying crime and criminality could shape future systems of crime control to reduce crime and increase morality. If these same measures were applied to today, Faulkner would probably say that society has been unsuccessful in this venture as the United States today has one

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<sup>22</sup> Ibid, 5.

<sup>23</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1890), 48.



of the highest incarceration rates per capita in the world. As the rate of crime increased, according to Faulkner's explanation, morality decreased. Whether or not crime and immorality have actually changed today are not the main focuses of this study, but understanding that people in 1891 linked crime rate with morality is important to understanding the social understanding of crime between 1885 and 1915. These understandings help to explain why many tried to identify physical factors, which led to criminality with the goals of eventually preventing crime before it was committed.

Many during this time were extremely concerned about the high cost crime has for society. William H. Brewer at a National Charities and Corrections conference in 1895 remarked:

We are not obliged to keep a standing army to protect us from a foreign foe; but we have an ever-present foe at home, which costs us more than any foreign one. Because of crime, we have to maintain a great standing army of police, with the incident courts and places of punishment, all of which are enormously expensive. Our charities and corrections cost us much more than war; and, under our present system, or rather practice,— for we have no system,— it is increasing so rapidly that, if it continues, it will swamp our civilization.<sup>24</sup>

As Brewer emphasized that crime was not only a menace to society, but cost enormous amounts of money. Because of this enormous cost understanding crime, criminality, and the strain on society was important. Once these matters were better understood efforts could be made to change the system and hopefully reduce the costly burden for society. In addition to reducing monetary costs, they also wanted to prevent recidivism, by hopefully understanding the root causes of crime and criminality. In a discussion about recently released convicts, one speaker argued about the nature of criminals saying,

In the Southern states largely colored and impulsive, in the Western roving and daring, while in the middle states we have the foreign and alien from every country of the globe, a motley array of undesirable persons, with little thought of obeying the laws of our country, and unable to speak the English language. This class generally find their haunts of sin and it is difficult to know what to do with them on their discharge. In this connection I am firmly of the opinion that the most efficient way to aid a discharged prisoner will be to prepare him while in prison to be a fit subject for discharge, and under

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<sup>24</sup> Isabel Barrows, ed. *Proceedings of the National Conference of Charities and Corrections* (Boston: Press of Geo. H. Ellis, 1895), 148.

an indeterminate sentence he should not be released until this is accomplished.<sup>25</sup>

This speaker clearly has strongly held stereotypes about multiple groups of people, especially any one who is not from the Northeast part of the United States. In this statement he essentially claims that all non-white people have criminal nature and that there is little hope for rehabilitation. He seems to believe that rehabilitation to the point that prevents recidivism requires an unimaginable amount of time, so he is arguing that, to prevent recidivism from these classes of criminals, indeterminate sentences may be a good idea.

### **Use of Statistics**

Statistics are commonly used throughout many of the Conference journals. Rev. Frederick Wines at the 1888 conference held in Boston seems to be one of the most prolific of these speakers.<sup>26</sup> Early in his speech he argues for the increased use of statistics to better understand crime and the distribution of criminals within the general population.<sup>27</sup> He explains the way in which the groups of people are divided and these groupings carry on throughout the subsequent conferences. Wines states, “The population of the United States is divided, in the census, into what are technically known as ‘the six elements’ of population; namely the white, male and female, the foreign –born whites, male and female; and the colored, (including Chinese, Japanese, and civilized Indians,) male and female.”<sup>28</sup> According to his findings, “The highest ratio is that for the colored population; the next highest for males; then come, in order for the foreign-born; the native, the white, and the female, the latter being very much the lowest.”<sup>29</sup> While these findings may or may not be considered accurate or complete by today’s standards, they did inform those present who were often working directly in prisons or influencing

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<sup>25</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States*, (Pittsburgh: Shaw Brothers Printers, 1899), 187.

<sup>26</sup> Wines does not only speak at this conference in 1888, but also several other National Prison Association Conferences and also at the National Conference of Charities and Corrections.

<sup>27</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1888), 253.

<sup>28</sup> *Ibid*, 254.

<sup>29</sup> *Ibid*, 254.

legislation. One critique and observation is that throughout his talk Wines uses statistical evidence loosely based on census criteria in which he finds discrepancies between different races and groups of people. In the course of the thirty-page discussion he never addresses why he is looking for differences based on race, ethnicity, and gender between groups of people. The whole analysis of these statistics are embedded in the assumption that these differences exist. At the end of the talk, none of the audience members raises this question or appears to recognize these assumptions. This lack of recognition provides evidence of how deeply embedded racism was in society.

One of the major issues with statistical data from our prison systems today is that available data is not usually representative of the actual populations that commit crimes. This problem was also recognized in 1888. Frederick Wines remarks, “the amount of imprisonment is not always the measure of the amount of crime; it may, on the other hand, be the measure of the vigor with which crime is prosecuted.”<sup>30</sup> Michelle Alexander and Douglas Blackmon also cite this enigma. People often cite the prison population and the races associated with imprisonment as evidence to support perceived discrepancies in criminality between races. Also supporting current trends, Wines finds racial trends in sentencing. He explains the average prison sentences as follows:

Native white (male) 4.95 years, (female) 3.75; foreign-born white (male) 5.23, (female) 2.78; colored (male) 6.41, (female) 5.50; for all classes 5.45. The colored convict receives on average, a sentence one year longer than that given to a white convict. The average sentence of a foreign-born white convict is, on the whole, a trifle shorter than that pronounced against the native white; if the foreign-born prisoner is a man, he receives a somewhat longer sentence, but a foreign-born woman receive one year less than her native sister.<sup>31</sup>

At the conference the following year Dr. Ronald P. Faulkner argued that “We can by the proper combination of data, trace the connection of race, age, sex, social condition and outward

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<sup>30</sup> Ibid, 266.

<sup>31</sup> Ibid, 272.

circumstances with the commission of crime.<sup>32</sup> Faulkner also remarks, “In the absence of reliable facts and figures, problems of vital importance are discussed without the possibility of solution, and the cause of science as well as the cause of prison reform suffers much in consequence.”<sup>33</sup> As evidenced by Rev. Frederick Wine’s and Dr. Faulkner’s arguments, as well as arguments made by individuals in some of the other journals, the relatively new field of statistics plays a major role in trying to understand what the prison system and criminality looked like between 1885 and 1915 in much the same way statistics are used today. These statistics shape conclusions and often can be skewed to support or oppose prejudices against certain groups.

The crowning jewel of statistics collection at the time was the development of the Bertillion system. This system was a method used for tracking criminals within jails and prisons, as fingerprinting had not been developed. Many saw this system being used in combination with statistics in much the same way fingerprints are used today. This system was also a reflection of the eugenics movement at the end of the 19<sup>th</sup> and beginning of the 20<sup>th</sup> centuries. In a discussion of registration and parole in 1891, one person remarked,

According to the statistics, we had in 1850, one criminal in every thirty-five hundred person; in 1880, one in every eight hundred; and we have one in every five hundred or less now. What does that tell? That the ethical force of this country is being destroyed. It is stricken with poison. The wave is carrying us backward. How are you going to check it? How are you going to restore equilibrium? You cannot restore it by romance. You have one criminal in every five hundred persons; what are you going to do with them? One way is to mark these criminals so that you will know them. The bones do not change much after they are twenty-one. Accurate measurements show that no two persons will measure exactly alike.<sup>34</sup>

This speaker, as Faulkner states earlier, clearly believes the crime rate is a demonstration of the morality of the country as a whole. The language he uses to express his beliefs emphasizes how much faith he has in the Bertillion system and statistics with relation to the gravity of crime.

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<sup>32</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1889), 51.

<sup>33</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1890), 48.

<sup>34</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1891), 63.

Although these researchers and speakers place a lot of faith in statistics and the future of statistics in solving the problem of crime, they also offer some critiques of statistical practices and measurements. Many demand more support from governments, recognizing that much of the data necessary to produce statistical understandings of crime goes uncollected and recorded. Rev. Wines states, “There is, and can be, no hope of the collection and collation of the statistics of criminal procedure in courts of criminal jurisdiction, until the general government shall undertake this important and useful task.”<sup>35</sup> As stated earlier, many also recognize that the statistics are not always accurate representations of reality.

### **Different prison systems within the United States**

Today, other than the security level of the prisons, most of our prisons are set up in similar ways with locked cells that sometimes hold individuals or are sometimes shared by multiple people. During this time, different types of imprisonment were being used. In 1897 the state of New York had two types of penal institutions- a penitentiary and a workhouse. Wines states that “Of the 58, 609 prisoners, properly so-called, 30,659 were found in penitentiaries; 7,865 in workhouses and houses of correction; 12, 691 in county jails; 1,666 in city prisons; 499 in military prisons; 350 in hospitals for the insane; and 4,879 were leased out to private parties”<sup>36</sup>

Particularly in Southern states, systems of convict leasing were commonly in use. The work completed by convicts was often work formerly completed by slaves. One speaker claims, “The imprisonment of convicted felons is unlike in its character and its duration. In most southern states, the lessee system is in force, and in Georgia it is carried to such an extreme that the state maintains no penitentiary of its own, but places all its convicts in the hands of private parties.”<sup>37</sup> Douglas Blackmon’s work examines this as a system of re-enslavement. Many of the details presented in these conferences support Blackmon’s argument. In many cases non-whites who had

<sup>35</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1888), 253.

<sup>36</sup> *Ibid*, 254.

<sup>37</sup> *Ibid*, 252.

mental health problems were imprisoned or sent to workhouses instead of asylums, as asylums were not open to non-whites.<sup>38</sup>

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<sup>38</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1895), 171.

## Chapter 2: Immigration Legislation

Because influencing policy was one of the tenants of these two organizations and immigration to the United States was rapidly increasing at this time, discussions about immigration legislation occurred quite frequently at these conferences. Often stereotypes and ideas about the amount of crime caused by immigrants influenced opinions about future legislation.

One type of legislation discussed was to reduce overall immigration to the United States by adding more requirements to be allowed entrance into the country. This type of legislation was influenced by the opinions such as “The people of this country, by the Congress of the United States, should prevent the landing of persons not likely to become good and useful citizens.” This particular speaker suggests that this can be judged by requiring immigrants to have certificates “of their mental and physical capacity to earn a living and maintain themselves here.” His fear is that “we have too much freedom” and that U.S. born citizen will face consequences of “improper immigration.”<sup>39</sup>

Another major concern was that the immigration laws allowed too many criminals to enter the United States. At the National Charities and Corrections conference in 1885, one person stated, “The statistics of our prisons, penitentiaries, poorhouses, asylums, and other institutions, show that there are proportionately many more of the criminal, insane, pauper, and helpless alien classes in them than in former years; and the evils from these sources, apparently, are constantly and heavily increasing.”<sup>40</sup> While these statements would later be found to be untrue, these beliefs that these institutions were growing with classes of poor, insane, and helpless immigrants drove restrictive legislations such as the 1891 Immigration act. Concerns such as this led to suggestions for legislation that would add elements screening and also increase consequences for non-citizens who commit crimes. Others recognized that not all immigrants were the same. One person stated:

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<sup>39</sup> Isabel Barrows, ed. *Proceedings of the National Conference of Charities and Corrections* (Boston: Press of Geo. H. Ellis, 1885), 472-474.

<sup>40</sup> *Ibid*, 409.

The strong, robust, industrious, and frugal, when their work is completed, generally return to the countries whence they were brought; while the criminal, disabled, and indolent classes remain, to burden our penal and charitable institutions through life, or swell the ranks of tramps and worthless vagabonds, to infest and prey upon society. We make no objection to laborers from abroad, if they come to us of their own accord; but it is clearly our duty to protect the country and its institutions against the inroads of imported serfdom, with its inherent hereditary and cumulative evils.<sup>41</sup>

As in this statement some were more concerned about the reasons for emigration, believing that persons who came for their own reasons rather than being compelled for menial labor would become responsible citizens while those compelled by large companies would be more likely to be deviant.

Many found the legislation flawed because confusing jurisdiction made enforcement of laws difficult. As one person said,

These evils, it is believed, are due largely to defects in the federal law, in that its execution depends upon local officers, likely to be influenced, more or less, by local considerations; in the generally hurried and superficial examination of immigrants at the time of their landing; in the absence of any reciprocal action between the officers of the various ports; and in the failure of the statute to prescribe any penalty for its violation.

For these reasons many felt the legislation left room for too many of those whom they considered problematic classes of immigrants to gain admittance to the country. He suggested:

To remedy these evils, the execution of the law should be placed in the hands of federal officers, untrammelled by local influences, and free to act in the interest of the entire country; the examinations should be thorough and vigilant, and the capacity of each immigrant for self- support be conclusively established before he is permitted to land; the procedure at the various ports, so far as practicable, should be uniform and reciprocal; and violations of the statute in bringing criminals, insane, and other helpless persons to the country should subject the owners of the vessels implicated to a fine in each case, in the nature of a libel on the vessel, to be enforced in the proper courts.<sup>42</sup>

These suggestions reflect many of our current immigration policies and procedures today. For example, today we have the Bureau of Immigration and Customs Enforcement, which is under jurisdiction of the Immigration and Naturalization Service fulfilling the request for federal

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<sup>41</sup> Ibid, 411.

<sup>42</sup> Ibid, 409-410.



enforcement of immigration laws. These ideas discussed in 1885 would become a part of the 1891 Immigration Act.

Others hoped the Bertillon system would address some of the problems associated with immigration. One person suggested that “At some time, the United States government will pass laws protecting our citizens from the presence of these objectionable and dangerous foreign-born people; and the Bertillon method would be a great aid in determining their identification.”<sup>43</sup> They believed the Bertillon system would assist in identifying criminals better and argued immigrants who commit a crime should “be punished as are other criminals: their citizenship annulled, if they have become citizens; and when their terms of imprisonment have been served they should be returned to the country from which they migrated; the penalty for their return to our country being, imprisonment at hard labor for, possibly, the remainder of their lives.”<sup>44</sup> While many of these suggested punishments might seem harsh, they do not differ greatly from punishments enforced for immigrants today, particularly illegal immigrants.

Some express more neutral opinions in regards to immigration legislation. They understood the need for some legislation, but felt that some measures and restrictions went too far. For example, in 1891 one person stated, “The admission that the immigrant of to-day is of the same race and lineage as the colonist of an earlier century does not preclude a denial of his equality with him, physically, intellectually, or morally, nor does the admission that the apparent condition of arriving immigrants is fully equal to that of their earlier congeners warrant the determination of their potential equality, their possession of equal latent possibilities.”<sup>45</sup> This statement neither really supports nor denies any particular treatment of immigrants compared to earlier immigrants who arrived as colonists and this discussion comes in the same year some of

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<sup>43</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1901), 234.

<sup>44</sup> *Ibid*, 236.

<sup>45</sup> Isabel Barrows, ed. *Proceedings of the National Conference of Charities and Corrections* (Boston: Press of Geo. H. Ellis, 1891), 189.

our most significant immigration legislation is passed. Another example of a more neutral response to immigration legislation comes from a 1912 National Conference of Charities and Corrections committee, which avowed:

The statement that the immigrants supply an undue proportion of criminals and paupers has been found to be based upon unfair comparisons, as the proportion of adults among the immigrants is greater than among the native-born. Many members of the committee protest against requiring a literacy test and increased head tax, or a physical test such as is required of men for the army. The committee further protests against requiring passports or excluding or deporting political refugees and revolutionists.<sup>46</sup>

This statement came thirty years after many of the earlier statements, which called for stricter immigration legislation, while this committee claimed this strictness was unnecessary, as more recent statistics had shown that previous beliefs of higher criminality among immigrant populations was unfounded.

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<sup>46</sup> Alexander Johnson, ed. *Proceedings of the National Conference of Charities and Corrections* (Fort Wayne: Fort Wayne Printing Company, 1912), 234.

### Chapter 3: Immigrants and Crime

In analysis of the journals, I focused most specifically on the ideas surrounding the foreign-born population in the United States and its perceived relationship to crime and criminality. This has been quite interesting in that no one can seemingly make a strong argument during any of the conferences as to the impact of immigration and the relationship to crime and criminality. Some make positive comments about foreign-born compared to native-born populations while others will make terribly racist comments. Seemingly more often than not arguments are contradictory. These contradictions occur over the course of a couple of pages, a paragraph, and sometimes even in the same sentence. Many of these contradictions are statements that support some groups of immigrants while remaining suspicious of others, and often these comments are highly dependent on the particular crimes being discussed. Often, statistics, such as those that Faulkner and Wines discuss at length, are manipulated to support highly opinionated statements and are often a reflection of discriminatory practices within policing and the judicial system.

#### **Immigrants no different than U.S born citizens**

Although many opinions about regarding immigrants and immigrations existed, some recognized the benefits that immigrants could bring to communities rather than immediately associating them with crime. For example, one man claimed that their small prison population was due to foreign immigrants and said “With the exception of a few Irish and Scotch, our immigration is almost entirely Scandinavian, quiet and law-abiding people.”<sup>47</sup> Although most people do not make such strong claims in support of immigrants, particularly further into the 20<sup>th</sup> century, the conversations tend to become less anti-immigrant and statistics begin to disprove the

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<sup>47</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1895), 56.

idea that immigrants commit more crime. In 1907 one speaker cited, “Unlike the colored, the foreign-born white appear to be of decreasing importance among prisoners. In 1890 the immigrant class formed 28.3 per cent. of the total number of white prisoners but by 1904 this percentage had decreased to 23.7. On the other hand, the percentage of native white in the total number of white prisoners increased from 71.8 in 1890 to 76.3 in 1904.”<sup>48</sup> Similar figures are cited at the National Conference of Charities and Corrections five years later (1912), they state, “The allegation that immigrants contribute more than their quota to our prisons, is negated by an examination of the facts.... ‘The figures give little support to the belief that the foreign born contribute to the prison class.’ greatly in excess of their representation in the general population,’ and a close analysis shows as a matter of fact, that they contribute less than their proportion.”<sup>49</sup> In some cases, statistics show “the foreign born having less and the native born more than their proportion.”<sup>50</sup>

Another example of a more positive comment in regards to foreign-born comes from the 1891 National Prison Association and a discussion specifically talking about possible policies that would restrict immigration. In this particular quote the speaker is talking about conditions in Wisconsin, which has one of the largest immigrant populations in the nation at this time.<sup>51</sup> The speaker states:

And I also find that there is no greater amount of drunkenness in the eastern counties where the people do not believe in prohibition than in the southern counties where the people believe in total abstinence. This was against my prejudice as a temperance man, but I have to admit the facts. While the ideas, the languages, and the tendencies in directions of our foreign populations are different from our own, and while we should be glad if they were different in some respects, yet we cannot be blind to the fact that the foreigners in Wisconsin are industrious, economical, and home-loving, and that they are building up a population which is self-supporting and law-abiding at least in equal degree

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<sup>48</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Indianapolis: WM. B. Burford, Printer, 1907), 210.

<sup>49</sup> Alexander Johnson, ed. *Proceedings of the National Conference of Charities and Corrections* (Fort Wayne: Fort Wayne Printing Company, 1912), 243.

<sup>50</sup> *Ibid*, 244.

<sup>51</sup> This is the measure stated in the conference journal.

with the earlier citizens. In one or at the most two generations they will have become thoroughly Americanized.<sup>52</sup>

Although this speaker begins with a negative comment about drunkenness, his overall message is a compliment to the value immigrants can bring to a community. Despite the early skepticism stated at the beginning, he points to commonly shared values between foreign-born and native-born. Comments such as this, which are overtly supportive of foreigners, are few and far between within the discussions at the various conferences.

### **Neutral reactions to immigrants**

Many of the statements made with regards to immigrants at these conferences have a more neutral tone. For example, one speaker explained:

This change is common to all sections of the country. Even the North Atlantic States, which have absorbed most of the late immigration, show a larger percentage of native prisoners and a smaller percentage of foreign than they did in 1890. It is evident, therefore, that the recent huge additions of foreigners to the population are not reflected in the prison returns in the degree the prison statistics of 1890 might have led one to expect.<sup>53</sup>

This “change” the speaker is referring to is overall increase of the prison population between 1890 and 1904 and he explains that this increase does not seem to be caused by immigrants as previous findings might lead one to believe. In this case his preconceived notions and that of his audience have been disproven by more recent statistics. This same speaker then immediately contradicts himself stating:

A diminished percentage of foreign-born prisoners in 1904 as compared with 1890 does not prove, however, that the foreign-born now contribute to the prison class in smaller proportion than to the general population. The most reasonable basis for determining this is obtained by comparing the percentage of foreign-born among white prisoners with the percentage of the foreign-born in the general white population fifteen years and over as nearly all prisoners are over fifteen years of age. Such a comparison shows that, while the foreign-born formed 23.7 per cent. of all white prisoners, only 21.9 per cent. of the general white population (census of 1900) fifteen years of age and over were foreign-born. These figures give little support to the popular belief that the foreign-born

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<sup>52</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1891), 386-387.

<sup>53</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Indianapolis: WM. B. Burford, Printer, 1907), 210.

contribute to the prison class greatly in excess of their representation in the general population. The North Atlantic States group is the only important one where the foreign-born are relatively more numerous among the white prisoners than in the general white population. In the North Central States, on the other hand, the foreign-born form 23.3 per cent. of the general white population of the ages under consideration, but only 16 per cent. of the prisoners. As no allowance has been made for the great influx of foreign-born since 1900, which affects chiefly the North Atlantic States, the figures presented cannot be regarded as indicating a greater criminal tendency among the foreign-born whites than among the native."<sup>54</sup>

Because of this complete contradiction within his main argument, the audience is left without any understanding of the actual argument and very confused by the “neutral” manner in which the information was quickly presented.

### **Negative attitudes toward criminals**

Negative comments about foreign-born are made more frequently and are often use statistics to “code” the racism. For example, one speaker comments, “The ration of crimes against the person, in comparison with crimes against property, is greater among the foreign population than it is even among the negroes, and very much greater than among the native whites.”<sup>55</sup> This comment may not seem overtly racist at first glance, but the speaker compares African Americans to immigrants to make a statement that the foreign-born commit more crimes of violence. In one swift comment, the speaker discriminates against foreign-born and African Americans and makes the assumption that his audience believes that African-Americans are more violent than whites. Other comments are very swift and direct in their overt prejudice. For example, one speaker remarks, “It must be remembered in this connection, that these foreigners that come to our prisons, are the very worst, as a rule, of their own country.”<sup>56</sup> Comments such as this convey the ideas that will drive the highly restrictive immigration policies that emerge in the early 20<sup>th</sup> century and continue to be debated today.

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<sup>54</sup> Ibid, 210.

<sup>55</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1888), 267-268.

<sup>56</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1890), 191.

Sometimes these statements are so bogged down in language and comparisons manipulated to support an opinion that the argument is confusing and contradictory. One example of this tricky use of language is this:

The percentage of foreign-born prisoners, as compared with that of natives is very much less now than it was in 1850; now it is a little less than double, but then it was more than five times, that of native prisoners. In other words, the increase of crime has been very much greater among the native than among the foreign population. The emigrants whom we are receiving now are probably no worse, on the average, than those of thirty years ago, and possibly they are even better.<sup>57</sup>

He is essentially saying that foreign-born prisoners make up a smaller proportion of the prison population in 1888 than in 1850, but that the overall crime rate has increased. Therefore native-born are more responsible for the overall increase in crime and the “emigrants” are similar to those of 1850. Later in the same speech he argues, “foreign disregard for law shows itself far more in immorality and disorder, than it does in dishonesty or violence. Nevertheless, the fact remains that the foreign-born do commit more than their share of crimes.”<sup>58</sup> While this second statement does not necessarily negate the earlier statement, it does make the line of argument quite difficult to follow.

Many comments are very straightforward in their expression of opinions about immigrants and crime. For example, one speaker cites, “The ration of foreign-born population of this country is very nearly double that of native prisoners to the native population. About one fifth of all the crime punishable by imprisonment is chargeable to the foreign-born.”<sup>59</sup> At a conference a year later a different person stated, “Again, the foreign born were in 1880, 14.4 per cent. of the long term prisoners but as much as 35.9 per cent. of those serving short terms of less than a year.”<sup>60</sup>

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<sup>57</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1888), 255.

<sup>58</sup> *Ibid*, 264.

<sup>59</sup> *Ibid*, 263.

<sup>60</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1889), 56.

The country of origin, when talking about foreign-born, matters to many of the speakers. Some comments and statements will apply to certain groups, but not others. When broken down by country of origin the ethnic prejudices against certain groups of foreign-born become more obvious. These prejudices and representations are typically reflections of anxiety concerning the increased arrival of immigrants from countries that differ more from Anglo-Saxon and North Western European ancestries. For example, one speaker demonstrated,

If a similar comparison is made between offenses against public morals and against public peace, the smallest amount of disorder and the largest of immorality, relatively, are found among the native whites; the most disorder and the least immorality, among negroes; and the foreigners occupy the middle ground between the two. Speaking generally, there is more disorder among the Swiss, the Mexicans, the Italians, the Scotch, the Germans, and the Irish; but more immorality among the Scandinavians, the Canadians, the Welsh, The French, and the English.<sup>61</sup>

To an extent, the speaker's analysis makes sense in that morality and disorder can be defined differently in different cultures, but he also only uses one measure of morality and disorder, which seems to be from the White Anglo-Saxon Protestant tradition. Note that Mexicans, Italians, Scottish, Germans and Irish tend to be Catholic.<sup>62</sup> An almost identical comparison is made nearly ten years later:

This relation of the various foreign nationalities to crime assumes another aspect when the prisoners are classified as major and minor offenders. The following countries contributed percentages of major offenders in excess of their relative representation among the foreign-born population: Austria, Canada, France, Hungary, Italy, Mexico, Poland, Russia, and Scotland. Comparisons of this sort are, of course, not conclusive evidence of the criminal tendencies of the different nationalities. Yet it is highly significant to learn that, while the Irish, as stated, contributed 36.2 per cent. of all the foreign-born prisoners committed in 1904, they furnished only 10.7 per cent. of the foreign-born major offenders, or a smaller percentage than the Italians, Canadians, and Germans.<sup>63</sup>

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<sup>61</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1888), 268.

<sup>62</sup> While the French also have a rich Catholic heritage, religion plays less of a role in stereotypes surrounding the French.

<sup>63</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Indianapolis: WM. B. Burford, Printer, 1907), 215.



While this speaker is slightly more democratic in his analysis the overall basis and conclusions of comparisons are identical.<sup>64</sup>

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<sup>64</sup> Not a reference to political background, but the philosophical argument.

#### Chapter 4: African Americans and Crime

Unlike the fluctuation of prejudice against the foreign-born, prejudice against African-Americans is extremely apparent and fairly consistent. There is also no indication that blacks were ever included as delegates to these conferences. While some contradictions are perceivable to a reader, with different understandings of race more than a hundred years later, they would not be considered illogical or contradictory to the audience present at the conference. One speaker states “ The tendency manifested by them [African Americans] to commit crimes against property is fifty per cent greater than among the native white population. But, if they are much more thievish than the whites, and much more violent, they are at least far more submissive and orderly.”<sup>65</sup> To a 21<sup>st</sup> century reader the idea that a more violent group can be more submissive and orderly makes little logical sense, but according to racial prejudice around the 19<sup>th</sup> and 20<sup>th</sup> centuries, this would have been evidence to support commonly held ideas. Many comments made against African Americans at these “professional” conferences are outrageous compared to the social ideas surrounding race today. A speaker stated “A lower race, negroes for example, when brought into contact with more complex conditions furnish a very large number of homicides, not because they have thick lips and curly hair, not because of atavism, but from a variety of deeper causes, which pertain to man as a spiritual being.”<sup>66</sup> In this comment individual tendencies are applied to an entire racial group and are never questioned or debated.

Throughout all of the conference journals speakers claim that African Americans make up a higher percentage of the prison population. For example, at the National Prison Association conference in 1888, one person cited “The percentage of the colored population in prison is two and a-half times as great as that of the whites, being, for the latter 964 to the million, but for the

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<sup>65</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1888), 265.

<sup>66</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1895), 267.

former 2,480.”<sup>67</sup> The same speaker later states, “The number of long-term prisoners who belong to the negro race is more than double that of the foreigners, although the number of foreigners and of negroes in the United States is very nearly equal. The two together furnish very nearly as many prisoners of this grade as do the total native white population.”<sup>68</sup>

At the National Conference of Charities and Corrections in 1893 the state of Virginia reported,

At the end of the last year there were in custody 300 white and 1,230 colored prisoners,—a total of 1,530. In 1880 the proportion of colored convicts to the colored population was 6 to every 5,000, that of the whites 1 to every 4,000. Since that date crime among the white people has not increased; while, according to Superintendent Lynn's estimate, there are now about 9<sup>1/2</sup> negro convicts to every 5,000 of the colored population.<sup>69</sup>

In 1900 a “Race Conference” was held in Montgomery, Alabama from which information was shared at the National Conference of Charities and Corrections also held in 1900. One speaker revealed that “The records show that 89 per cent, of all our convicts are negroes, while they constitute scarcely 45 per cent, of our population. We have now confined in the penitentiary or at hard labor: White, men, 251; women, 2; total, 253. Colored, men, 2,038; women, 109; total, 2,147. Of these, 193 white and 1,567 colored are state convicts for the most serious offences.”<sup>70</sup>

Reports such as this and the other statistics cited in 1888 demonstrate the extent to which the prison system served as a re-enslavement structure for African Americans just by looking at numbers compared to the overall population. Similar statistics are cited in 1907, for example, “It is also evident that the colored furnish a disproportionately large part of prisoners. According to the last census, the whites formed 87.9 of the general population, yet only 67.4 of the prisoners were white. The colored formed 12.1 per cent. of the general population, but furnished 32.6 per

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<sup>67</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1888), 264.

<sup>68</sup> *Ibid.*, 270.

<sup>69</sup> Isabel Barrows, ed. *Proceedings of the National Conference of Charities and Corrections* (Boston: Press of Geo. H. Ellis, 1895), 387.

<sup>70</sup> Isabel Barrows, ed. *Proceedings of the National Conference of Charities and Corrections* (Boston: Press of Geo. H. Ellis, 1900), 292.

cent. of the prisoners.”<sup>71</sup> This same speaker explains that this disproportionate representation of African Americans in prisons “exists in States with a small admixture of colored as well as in States in the ‘black belt’ of the South.”<sup>72</sup>

In many cases particular crimes are more likely to be attributed to African Americans. For example a speaker in 1888 explained, “the tendency of the negro seems to be crimes of violence, of all descriptions.”<sup>73</sup> He also tries to present reasons for their “propensity” for certain crimes asserting, “Their disregard for the rights of property is a natural consequence of their previous condition of slavery. Their propensity to murderous assaults and affrays may be attributed partly to their strong emotional nature and partly to the fact that, in their new condition of personal freedom, they have not yet learned to adjust their relations to the stronger race.”<sup>74</sup> While many of these explanations seem unwarranted, no one at the conference presented alternative reasons, and most accepted these theoretical causes as accurate.

Attempts to suggest causes of increased criminality among African Americans frequently occurred. Sometimes a lack of proper parenting and general character was cited. For example in 1895 at the National Prison Association one presenter suggested:

The prime cause that brings a large majority of the inmates to our state prisons is the want of proper discipline in childhood. The colored race furnishes four fifths of the inmates of the Virginia Penitentiary, mainly young people brought up since the war without proper parental control; idle and lazy, lacking in character and self respect, they naturally drift into crime and land in the state prison.<sup>75</sup>

Although this speaker brings up the Civil War, he blames the parenting, idleness, and laziness, as reasons for increased criminality in African Americans rather the social conditions created for

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<sup>71</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Indianapolis: WM. B. Burford, Printer, 1907), 209.

<sup>72</sup> *Ibid*, 209.

<sup>73</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1888), 265.

<sup>74</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1888), 265.

<sup>75</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1895), 199.

African Americans during slavery and with little change after the Civil War. Social structures created by whites to keep African Americans from achieving the level of whites are not recognized and cited. This general understanding among whites is exemplified by a speaker in 1907 who stated, “There has been and is no more serious and menacing a condition than the so-called race problem. The main reason that there is any race problem is found in the fact that black men assault white women. It may as well be taken as a fixed fact that so long as such assaults continue, lynchings will continue and will be justified by the communities in which the outrages occur.”<sup>76</sup> This speaker blames African Americans for lynchings, saying they are a response to targeted assaults against white women by black men, and he does not recognize that white men lynch African Americans based on the accusation of white women without due process of the law.<sup>77</sup>

Throughout the conferences whites deny unfair or discriminatory treatment of African Americans with regards to increased imprisonment by placing all blame on African Americans. A speaker in 1905 claimed, “The people of the South have been accused of treating the negroes most unfairly. I know not how this is in other States, and neither do I know to what extent the negro of the North is superior mentally, morally or physically, if any, to his brother of the South. I do know, however, that in Florida it is the negro who treats himself unfairly.”<sup>78</sup> He then justifies this statement painting the picture of life in slavery as healthy, living under the control of benevolent masters. He blames too much freedom and a disregard for responsibility for the perceived disregard for laws. What he fails to recognize is that the system created by whites makes it nearly impossible for blacks to meet societal expectations. For example, the difference in

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<sup>76</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Indianapolis: WM. B. Burford, Printer, 1907), 190.

<sup>77</sup> For more examples see Ida B. Wells *Southern Horrors*.

<sup>78</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Indianapolis: WM. B. Burford, Printer, 1907), 273.

incarceration rates between whites and blacks most likely had more to do with discriminatory enforcement of laws than actual increased criminality.<sup>79</sup>

### **Prison Labor**

Once in prison differential treatment of African Americans was justified and widely practiced. This treatment was some of the most gruesome results of discrimination against African Americans. In 1888 one speaker claimed:

Their condition is for the most part deplorable in the extreme, especially in the county chain-gangs. Of this class of convict, 4,404 of nine-tenths, are negroes; and it is urged, in the extenuation of the system, that the states named are unable to furnish suitable labor for negroes inside of prison walls. It is also said that the negro lacks pride of character, and that he does not regard confinement in a penitentiary as particularly disgraceful, nor does he dread it as white prisoners do.<sup>80</sup>

According to the speaker typical imprisonment does not rehabilitate African Americans the same way for whites and therefore harsher punishment is required. Today this comment would be viewed as utterly ridiculous.

At a later conference in 1890, one person explained, “Where they tried the experiment, it soon became evident that they could not furnish remunerative employment for ignorant unskilled negroes, apart from machinery within the prison walls.”<sup>81</sup> As similar statement is made at the National Prison Association Conference in 1898, where it stated that:

In our northern prisons the population is about 90 per cent. white, while here in the south I presume the percentage is reversed. With a white population it is possible to teach almost any trade, while with the class of colored convicts which you have in the South, their natural laziness and lack of education, would, I judge, make it necessary to employ them at something akin to common laboring work rather than at a skilled trade.<sup>82</sup>

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<sup>79</sup> Enforcement of vagrancy laws provide excellent examples of discriminatory enforcement. Douglas Blackmon discusses this extensively in *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*.

<sup>80</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1888), 269.

<sup>81</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1890), 87.

<sup>82</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Pittsburgh: Shaw Brothers, 1899), 383.

At the same conference it was planned “to divide the convicts into three classes. The stout negroes were to be put to building the levees, the second class not quite so strong, were to work in the cotton belt on state plantations. Our negroes are fitted to do this work. The third class would consist of white men and intelligent negroes and they would stay in Baton Rouge and remodel the prison there.”<sup>83</sup> This division of people within prison based on race and the type of work delegated to different races clearly demonstrates the low regard many had for African American. As prisoners were often sent to build public works and also to work for private enterprise, this tied imprisonment to revenue for the state as well as for the private enterprise that benefitted from the selling of cotton and other goods produced. The work in cotton fields in particular clearly demonstrates the use of black prison labor as a form of re-enslavement for African Americans.

Many explanations are given for why this differential treatment is justified. One speaker explained, “Often negro prisoners have told me they preferred a whipping to being sent to prison—punishment usual prior to the civil war, for petty offenses in the southern states. But I doubt the efficacy of the lash in our northern prisons. It is brutalizing to the man who uses it, and it makes the recipient vengeful in the extreme.”<sup>84</sup> This speaker seems more focused on the emotional impact of using a whip for white men than the person being beaten. A speaker in 1902 helped to explain this perspective when he explained

It is hard to convince most people in our state [Louisiana] that the negro is capable of much reformation, certain offenses and sins seem almost innate with him, his conviction of crime makes no appreciable difference in the general estimation in which he is held by persons of his own color. It is unfortunate that there should be two standards of morals: one for the white man the other, too low to be called a standard, for the black man, and until the negro in Louisiana judges himself according to the same rules of decency and morality, holds himself as burdened with the same moral responsibilities, as is the white man, the number of real reformations wrought among negro convicts must be very, very few.<sup>85</sup>

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<sup>83</sup> Ibid pg. 386.

<sup>84</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Chicago: Knight & Leonard Co., 1893), 113.

<sup>85</sup> *Proceedings of the Annual Congress of the National Prison Association of the United States* (Pittsburgh: Shaw Brothers, 1902), 272.

Again what the speaker fails to recognize are the separate set of standards of behavior, not morality, that were devised to be self-fulfilling prophecies for blacks.

One of the most deplorable comments made against African Americans at these conferences comes from a speaker at the National Conference of Charities and Corrections in 1903. This speaker said:

You know, therefore, how my heart goes out toward the Negro, and how I would like to have him restored to the plane of morality and law abiding character which existed under the enforcement of the plantation law. Mr. Frank B. Sanborn.— Substantially the same information as that given by General Evans has come to me before concerning the time when this enforced morality prevailed among the colored people of the south. The fact was then and is now that the colored people of the north furnished much more than their due proportion of criminals. I began to investigate prisons during the Civil War, and I had some acquaintance with the subject before; I found that the colored people furnished an undue proportion of criminals. We had an idea that the great preponderance of southern convicts was due to the fact that they were punished for what we should call trivial offenses; but that was not the case in the north. I suppose that the nature of the race is substantially the same, both north and south.<sup>86</sup>

Almost forty years after the end of the Civil War this speaker is suggesting that life for African Americans was better under slavery because they had more morality and were more law abiding. He reasons that because there is just as high of a proportion imprisoned in the north that the fault lies with African Americans as a race. This type of reasoning demonstrates that racism was so thoroughly embedded into society that to blame discrimination and racism is not even a possibility considered by the speaker.

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<sup>86</sup> Isabel Barrows, ed. *Proceedings of the National Conference of Charities and Corrections* (Boston: Press of Geo. H. Ellis, 1903), 590.



## Conclusion

What is presented in this paper is only a portion of most important patterns I have identified so far. Although I did not refer to any specific comments made at the National Conference of Charities and Corrections over the course of the same period of time, the discussions and conclusions are almost identical, but tend to have a more activist oriented tone than statistically measured tone that permeates the discussions of the National Prison Association. Discussions at these conferences reflect the social understandings of race and ethnicity in very interesting ways. Very few concrete conclusions are ever drawn during the speeches and discussions and the transcripts are laced with contradictions. Anxieties about “the other” are frequently expressed through coded language, but also overtly.

This study is far from complete, but the importance of understanding the deeply embedded roots of racism, and prejudice, particularly in the criminal justice system grows in importance each day. When I first started this research, the issue of mass incarceration was gaining increased attention, but the various incidents regarding the racial motivated tension between police officials and the public had not yet garnered national media attention or the massive public debates that have occurred in the past year. As debates continue to shape future policies for law enforcement and immigration, a historical understanding of these ideas and their consequences is required.

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