

MOTHERHOOD IN PRISON: SOCIALLY CONSTRUCTING THE “BAD MOM” AND  
EVALUATING FAMILY POLICY IN U.S. AND DANISH PRISONS

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Zoë Parkel: Motherhood in Prison: Socially Constructing the “Bad Mom” and Evaluating Family Policy in U.S. and Danish Prisons

This thesis uses an intersectional approach to examine the experience of mothers of color in prisons in the United States and how these experiences compare to those of incarcerated parents in Denmark, where a strong welfare state and very homogenous society dictate prison policies that are dramatically different. Chapter 1 focuses on the disproportionate rates at which women of color’s pregnancies are criminalized, these women are framed as bad mothers, and how these occurrences explain policies in prison that are harmful to incarcerated mothers. Chapter 2 investigates Denmark, where a strong welfare state virtually eliminates poverty and society is highly homogenous, as an informative comparative case, but tracks recent policy changes that the influx of nonwestern immigrants into Denmark as a result of the 2015 refugee crisis caused. Chapter 3 investigates the reasoning in many articles evaluating the condition of women in prison today and scholars’ tendency to advocate for prison reform for its instrumental value in achieving objectives other than advancing incarcerated women’s rights. The thesis concludes with an explanation of the importance of studying how race and class affect sentencing and prison practices and the danger of appealing to the instrumental value of women’s rights without sufficiently addressing institutionalized sexism and racism.

## **Section of Thesis**

**Title Page**

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<b>Abstract .....</b>	<b>ii</b>
<b>Table of Contents .....</b>	<b>iii</b>
<b>Introduction.....</b>	<b>1</b>
<b>Chapter 1: The War on Drugs, “Crack Babies,” and Embedded Moralism .....</b>	<b>4</b>
<b>Poor Treatment of Mothers in Prison .....</b>	<b>21</b>
<b>How Do We Explain These Practices? .....</b>	<b>26</b>
<b>Chapter 2: Comparing Prisons in the U.S. and Denmark .....</b>	<b>27</b>
<b>Parallels Between Social Stigma in the U.S. and Denmark.....</b>	<b>32</b>
<b>Chapter 3: The Instrumental Value of Advancing Women’s Rights in Prison .....</b>	<b>38</b>
<b>Bibliography:.....</b>	<b>46</b>

## **Introduction:**

In the United States, the nation leading the world in incarceration, the number of women (and, more specifically, mothers) in prison is dramatic. In 2019, the United States held 231,000 women and girls in prison. (Kajstura 2019). State prisons held 99,000 of these women (Kajstura 2019), and roughly 60% of those 99,000 women were mothers (Levin 2019). Jails hold roughly half of incarcerated women and contain a higher proportion of mothers: almost 80% of women in jail are mothers of minor children (Levin 2019). Finally, since 1980, the number of women in prison has increased by more than 750 percent (Levin 2019). Given the unique challenges that women (particularly mothers) face in U.S. prisons, this statistic demands a closer look. Beyond the severity of the numbers alone, the U.S. prison system subjects incarcerated mothers to a number of harsh practices, including (but not limited to) shackling during childbirth, extreme violations of privacy, termination of parental rights, and difficulty seeing their children. The socially constructed notion of the “good mother” and society’s desire to punish those who deviate from the public’s concept of what it means to parent in the proper way largely explain this horrific treatment of women and mothers in prison. Using an intersectional approach to evaluate the poor treatment of women in prison, specifically focusing on socioeconomic status and race, is especially illuminating when it comes to discovering who the justice system disproportionately punishes and why.

Women of color, whom society regularly labels “bad mothers,” face unfair treatment by the justice system, strict scrutiny in motherhood, and harsh practices in the context of prison. The negative stigma surrounding and mistreatment of mothers of color

and lower socioeconomic status is rooted in the United States' history of slavery, devaluation of women, and the War on Drugs.

To understand the influence of the United States' history on the development of attitudes and policies toward incarcerated mothers, namely women of color and lower socioeconomic status, one must look to a country where inequality and racism are not so persistent. Denmark, a country with comparatively progressive policies toward parents in prison, serves as an informative comparative case due to the homogeneity of its population and the strength of its welfare state, which renders poverty virtually nonexistent. While Denmark's policies toward incarcerated people are far more progressive than policies in the United States, the 2015 refugee crisis prompted an influx of nonwestern immigrants into the country that has since exposed the sensitivity of Scandinavian exceptionalism to racial, ethnic, and socioeconomic diversity.

Finally, in reviewing literature on policies toward mothers in prison, one must consider the framing of advocacy for incarcerated women's rights and prison reform. While promoting the advancement of incarcerated women's rights is highly necessary, scholars regularly frame these rights with an emphasis on their instrumental value in achieving ends other than improving the condition of women in prison. This approach, which is pervasive in literature on the necessity of prison reform, is concerning due to its tendency to devalue women and failure to address institutionalized sexism and racism. Ultimately, a review of policies toward mothers in prison in the United States and Denmark and how advocates frame their criticism of these policies exposes the role that racism, sexism, and classism *still* play in attitudes and actions toward incarcerated women and the advancements in prison policy that have yet to be made.

My intellectual journey writing this thesis began at an open prison in Denmark during my semester abroad. In the prison, I was struck by the fact that the Danish government provided prisoners with unlimited visitation rights, child-friendly visitation rooms, and numerous educational opportunities. What made the experience especially striking was its stark contrast with my previous experiences in Louisiana prisons, where women detailed how difficult they found it to support their children from prison and maintain familial ties despite incarceration. These opposite experiences of parenting in prison motivated me to further investigate the experiences of mothers in Denmark and the United States and to find an explanation for why treatment of incarcerated mothers in the U.S. is so unkind.

In reading about maternal incarceration in the United States, I quickly learned about the double standard that society applies to maternal drug use (adopting relatively permissive attitudes toward drug use by white mothers while condemning it among mothers of color) and how it has contributed to the socially constructed notion of the “good mom” vs. the “bad mom.” This led me to utilize an intersectional approach to maternal incarceration in the United States, which illuminated how both race and socioeconomic status are highly influential in framing pregnant women as criminals. Society’s tendency to frame women of color as socially deviant and unfit to parent has roots in the United States’ history of slavery and serves to, at least partially, explain why U.S. prisons have subjected these women to such cruel practices. Comparatively, a strong welfare state and small, highly homogenous population in Denmark have allowed for more humane practices in Danish prisons. While Danish prisons initially appear superior, however, I realized that the influx of ethnic diversity following the 2015 refugee crisis

led to a rise in policies that disproportionately criminalize nonwestern immigrants in Denmark. What these policies suggest is that, though Denmark initially appears far more progressive than the United States, its policies also disproportionately criminalize ethnic and racial minorities.

Finally, while researching incarcerated mother's experiences and prison conditions in the United States and Denmark, I was struck by the discourse on women's prison reform. I noticed that in advocating for improving the condition of mothers in prison, scholars regularly appeal to the instrumental, rather than intrinsic, value of women's rights. I found this discourse problematic, as it devalues women and fails to address institutionalized racism and sexism by placing children's wellbeing at the center of the debate on improving conditions for mothers in prison. Moving forward, I hope to see prison conditions improve for women and mothers around the world and an emerging dialogue on prison reform that promotes women's rights for their intrinsic value and adequately targets systemic racism and sexism.

### **Chapter 1: The War on Drugs, "Crack Babies," and Embedded Moralism**

In the late half of the 20<sup>th</sup> century, the media and general public's heightened focus on crack cocaine as a result of the War on Drugs and the resulting crack baby phenomenon of the 1980s placed notions of the "good" vs. "bad" mother at the forefront of the national conscience. While public opinion and society at large were critical of maternal drug use, "[revealing] an embedded moralism about women and drugs" (Crutchfield, Kubrin, Bridges & Weis 2008, 37), the double standard of public opinion in evaluating maternal drug use along racial lines resulted in relatively permissive attitudes toward drug use by white mothers and the disproportionate criminalization of drug use by



black mothers. The media's racially disparate portrayal of drug use and society's double standard regarding maternal drug use indicate the socially constructed notion of the "bad" mother who uses drugs while pregnant; most specifically the poor woman of color. In order to understand how ideas of "correct" and "incorrect" motherhood developed to influence the criminalization of pregnancy and policies toward incarcerated mothers, it is imperative to highlight the intersectionality of racism and classism in socially constructing motherhood ideals; especially in relation to drug use.

Media portrayal of and popular narratives surrounding maternal drug use vary greatly depending on the mother in question's race and socioeconomic status. In the 1980s, crack "captured the imagination of media reporters and the U.S. public," and the media blamed the drug for "urban deterioration, increases in gang violence, drive-by shootings," and a new phenomenon of the 1980s: the crack baby (Litt and McNeil 1997). As legal scholar Rachel Roth notes, media and Americans in general were more critical of certain women's drug problems (2002, 151), specifically African-American and Latina women. Moral panic, understood as an "overreaction to forms of deviance or wrongdoing believed to be threats to the moral order" (Drislane and Parkinson 2016), explains public opinion on and media portrayal of crack babies in the 1980s. NBC presented the stereotyped image of the crack mother to the American public on television in 1988, and "the nightly news was engaged in a war against crack mothers, who were all but definitionally black," from 1988 to 1990 (Ortiz and Briggs 2003, 46). Newspapers and television programs "bombarde[d] [viewers] with regular images of women using crack cocaine during their pregnancies, characterizing their offspring as likely to be born early..., to be born addicted and quivering..., and to be headed toward a childhood of

learning difficulties, hyperactivity, and, ultimately, delinquency and jail” (Ortiz and Briggs 2003, 44). From 1997-2002, results from a search of prominent newspapers “turned up only two stories about ‘meth babies,’ but 469 stories on ‘crack babies’” (Roth 2002, 151). What makes this difference noteworthy is that “babies born exposed to methamphetamine share many of the same symptoms as those exposed to cocaine, but tend to be different in one important respect: they tend to be white, not black” (Roth 2002, 151).

The U.S. government and media’s discourse on the current opioid crisis is also reflective of a double standard on drug use along racial lines. One important difference between the War on the Drugs in the 1980s and the current crisis is the opioid epidemic’s “whiteness: the large majority of people using, misusing, dependent on, and dying from opioids are white people” (Bridges 2020, 788). The public, media, and doctors alike have largely framed opioid addiction as an illness, a framing that Khiara Bridges asserts is largely based on the epidemic’s whiteness:

For decades, researchers specializing in substance use disorders have described these disorders, commonly called ‘addictions,’ as ‘chronic disease[s] of the brain’ that make affected individuals seek out drugs despite the known negative consequences of that behavior. Experts have shown that quite frequently, persons with these disorders have histories with physical or sexual violence and are also struggling with anxiety, depression, post-traumatic stress disorder, and other forms of mental illness. In this light, persons with substance use disorders are not bad actors who have behaved irresponsibly and need to be scared straight or penalized for their bad acts. Rather, this light casts people with substance use disorders as sick, as victims themselves- doing the best to silence the demons in their heads. In the throes of the opioid epidemic, the nation has been more willing than ever to understand substance dependence in these terms. The whiteness of the epidemic, observers say, explains this willingness (Bridges 2020, 790).

Dialogue attributing white mothers’ drug use to illness stands in stark contrast with the attribution of mothers of color’s drug use to bad moral character. These differing

standards for drug use along racial lines are also evident in media portrayal of pregnant mothers: “with regard to substance use during pregnancy, commentators have observed that white women who use opioids while pregnant have enjoyed portrayals in political and popular discourse that are more sympathetic than those of their crack-cocaine using counterparts of the 1980s” (Bridges 2020, 792). As noted by journalist Joyce McMillan, a *New York Times* article detailing opioid use by pregnant white women gave “complex” accounts of the women’s stories, and the writer “[made a] great effort to mute her judgments and witness the mothers nurturing their children” (Bridges 2020, 92). McMillan notes how this tone is starkly different than the tone of articles about pregnant women of color who used drugs, which depicted the women as “sex-crazed cocaine addicts” (Bridges 2020, 792).

The media’s sympathy for pregnant white women, in contrast with its harsh evaluation of pregnant women of color, is one of many examples of the double standard that has historically been applied to maternal drug use. Interestingly, despite the fact that the vast majority of the individuals that the media portrayed as crack users in the 1980s were African American (Ortiz and Briggs 2003, 46), the most frequent users of both cocaine and crack in 1985 were young, white males. (Ortiz and Briggs 2003, 46).

Punishment for crack use was also much more severe: per the Anti-Drug Abuse Act of 1986, a case “involving five thousand grams of powder cocaine triggered the ten-year mandatory minimum, but a case involving [only] fifty grams of crack cocaine had the same penalty” (Lazarus 2013, 716). Despite the fact that white young males were the typical users of both powder and crack cocaine in 1985, “nearly one hundred percent of all crack defendants were non-white” (Lazarus 2013, 717) and “approximately eighty-

five percent of [people serving life sentences for crack cocaine offenses in federal prison] are African-American” (Lazarus 2013, 714). The fact that “55 percent of women portrayed in network TV news stories about crack were black” from 1988 to 1990, but that this increased to 84 percent between 1991 and 1994 (Ortiz and Briggs 2003, 46), further highlights the media’s misrepresentation of maternal drug use.

The widespread misrepresentation of women of color and low socioeconomic status as “bad moms” and moral panic related to the crack baby phenomenon is rooted in preconceived notions of socially acceptable drug use among women and the ideology of mothering as women being “self-sacrificing, giving, and pure” (Arditti 2012, 49). This ideology of what it means to be a “good mother,” at least by the general public’s standards, also includes “the opinion that mothers will only use legal drugs in the manner [that an expert prescribes]” (Arditti 2012, 49). As Joyce Arditti noted, “while patriarchal assumptions about what constituted a good woman may shape the system’s response to female crime, the most profound contributor to the steep rise in the female prison population is undeniably the drug war” (2012, 49). Mainstream ideals about femininity and the “good” woman are related to “the increased focus on and social disapproval surrounding use of illicit drugs” (Arditti 2012, 49), and while drug use by women was “previously associated with legal drug use by white women for anxiety (e.g. mother’s little helper during the 1950s),” it became racialized as cultural formations yielded the ‘demonized figure of the crack mom’ (Arditti 2012, 49).

While society did not deem all maternal drug use unacceptable and even adopted a permissive attitude toward white mothers’ use of anxiety medication, it applied a different standard to mothers of color who used crack. These assumptions about

femininity, the “good” woman, and the acceptability of drug use based on one’s race also translated to media portrayal of drug use by mothers. Television networks “constructed a portrait of crack mothers based on race, by showing film footage of black women, without ever addressing troubling questions about racism” (Crutchfield, Kubrin, Bridges & Weis 2008, 37). Television “networks had shown an unusual degree of tolerance toward white middle-class women [who used drugs], filming them in conventional maternal poses, bathing and caring for their babies” (Crutchfield, Kubrin, Bridges & Weis 2008, 37). Not only did the media portray these women fulfilling traditional maternal duties; it also depicted them reflecting on their drug use and moral growth. The white women “expressed an appropriate level of remorse [and appeared] on television to warn other women about the dangers of cocaine use during pregnancy” (Crutchfield, Kubrin, Bridges & Weis 2008, 37). Rather than highlighting the supposed immorality of drug use during pregnancy by white women, networks elected to put the spotlight on their embrace of maternal duty and commitment to recovery. For white mothers, “in the war against cocaine, their commitment to recovery [...] was more important than were their infractions as bad mothers” (Crutchfield, Kubrin, Bridges & Weis 2008, 37).

Stories about the success of white mothers in their recovery stand in stark contrast with the media’s portrayal of black women who used cocaine during pregnancy. According to sociologist Joyce Arditto, “the crack mom not only violated norms around social deviance but also represented the most abhorrent social failure with regard to ‘putting herself first and giving in to individual desires rather than subordinating those desires to her reproductive status and family roles. Boyd (1999) argues that women of color and poor women (disproportionately one and the same) are excluded from

motherhood ideology. Rather, they are perceived as ‘incapable of nurturing and socializing children,’ sexually promiscuous, and having one baby after another” (Arditti 2012, 49).

The portrayal of African-American women as unfit mothers dates back to the eighteenth century. According to Dorothy Roberts, “from the moment they set foot in this country as slaves, black women have fallen outside the American ideal of womanhood” (1997, 10). In contrast with the “ideal” white mother, “black mothers had their own repertory of images that portrayed them as immoral, careless, domineering, and devious” (Roberts 1997, 10). Following slavery’s end, the “myth of the lascivious black woman was systematically perpetuated (Roberts 1997, 11). Historian Philip A. Bruce’s writings strengthened the public’s belief in black female degeneracy, particularly through the “exposition of black women’s lascivious impulses, which he claimed had been loosened by Emancipation” (Roberts 1997, 11). Bruce “explicitly tied black women’s sexual impurity to their dangerous mothering,” claiming that black mothers led their families into “depravity” and “raised their children to follow their own licentious lifestyle” (Roberts 1997, 11). These beliefs carried into the early twentieth century, when sociologists “reiterated the thesis that dominant black women, by perpetuating the slave legacy of unwed motherhood, were the cause of family instability” (Roberts 1997, 16). In the 1960s, there was a resurgence in this theory, when “white sociologists once again held black mothers responsible for the disintegration of the black family and the consequent failure of black people to achieve success in America” (Roberts 1997, 16). Through demoralizing black men and transmitting a “pathological lifestyle” to their children, sociologists asserted, black women damaged their families and “[perpetuated]

poverty and antisocial behavior from one generation to the next” (Roberts 1997, 16). It is evident that these theories play a role in the heightened scrutiny of drug use by Black mothers and the socially constructed notion of the “bad mom.”

Throughout the War on Drugs, the media targeted women who were, for the most part, “black, poor, and addicted to crack cocaine” (Roberts, 1991; Kraus, 1991;), and as sociologist Enid Logan argued, the crack baby was not the result of illicit substances’ negative effects on an unborn child, but of “a broad conjunction of practices and ideologies associated with race, gender, and class oppression, including the war on drugs and the discourse of fetal rights” (Logan 1999, 115). Images of the crack baby “became a potent symbol of all that was wrong with the poor, the black, and the new mothers” and “provided society with a powerful iconography of multiple social deviance (nonmarital sexuality, criminality, drug addiction, aberrant maternal behavior) perpetrated upon the most innocent, by the least innocent: women who are in fact ‘shameless’ and ‘scandalous’” (Logan 1999, 116).

Finally, a widespread discourse about mothers of “crack babies” that described them as irresponsible, criminal, and incompetent incorrectly explained “a multitude of things caused by Reagan-era economic policies, such as homelessness and increasing infant mortality, especially among African Americans” (Ortiz and Briggs 2003, 46). Rather than making the public aware of “the economic causes that led communities of color, and urban youth of whatever race, to be disproportionately involved in the drug trade, or the ways that cuts to social services and government transfer payments left working-class families scrambling” (Ortiz and Briggs 2003, 46), the crack baby crisis pointed to “bad parenting, moral failure, and a criminal recklessness about [unborn

children]” (Ortiz and Briggs 2003, 47). Ultimately, this falls in line with the women of color’s perceived failure to uphold traditional, socially constructed maternal roles and society’s tendency to villainize them as a result.

Beyond the media’s portrayal of mothers of color as bad women and incompetent caretakers, moral panic surrounding crack babies also led to an increase in the criminalization of pregnancy in communities of color. Despite differences in media portrayal of drug use based on race, society generally considers maternal drug use a universally negative phenomenon. While maternal drug use and drug use during pregnancy can have adverse effects independent of a mother’s race, the legal consequences for said drug use varied by race just as much as the media coverage. A significant number of states sought out ways to punish women of color for drug use during pregnancy, and “two routes presented themselves: the criminal justice system, and the civil child protective system” (Cohen 2018, 1302). Ultimately, prosecutors in cities all over the U.S. used criminal statutes that were already in place to try and punish pregnant drug users (Cohen 2018, 1302). In the South in particular, “[law enforcement mostly made these charges] against low-income African Americans and Latina women, despite the fact that patterns of drug use during pregnancy [were] similar across class and racial lines” (Litt and McNeil 1997). Because the prosecution of women who used drugs during pregnancy varied greatly based on race, a more widespread criminalization of pregnancy in poor communities of color followed. Between 1987 and 2002, “over 200 women [were] accused of committing crimes of ‘foetal abuse’” (Roth 2002, 150), and prosecutors “based criminal charges against women on delivery of drugs to a minor [...];



assault with a deadly weapon; homicide or manslaughter; and child abuse or infant neglect” (Litt and McNeil 1997).

One of many examples of the criminalization of pregnancy is the prosecution of Jennifer Johnson, a young African American mother who “was the first in the nation to be convicted of ‘distributing drugs to a minor’ through her umbilical cord” in 1989 (Roth 2002, 150). Johnson gave birth to a son in 1987 and daughter in 1989, both of whom tested positive for cocaine, but were also “born healthy and at full term” (Lewin 1992). Nonetheless, Johnson was “charged and found guilty under laws intended to apply to drug traffickers” (Lewin 1992). While the Supreme Court of Florida ultimately overturned Johnson’s conviction in 1992, it is only one of many instances of law enforcement officers and medical professionals subjecting women of color’s pregnancies to heightened scrutiny.

In 1997, following Johnson’s case, the South Carolina Supreme Court heard the issue of pregnant women being criminally liable for actions with the potential to adversely affect their unborn children in *Whitner v. State* (Burdge 1999, 277). Cornelia Whitner was a mother of three, and the state of South Carolina initially terminated her parental rights and charged her with child neglect (Burdge 1999, 278). While Whitner was pregnant with her third child, she went to trial for child neglect, pled guilty, and was sentenced to probation, which included the requirement that she abstain from drug and alcohol use. Whitner gave birth to her third child on February 2<sup>nd</sup>, 1992, who tested positive for cocaine (Burdge 1999, 278). Without notifying Whitner in person, “the police chief, a detective and two social workers entered the maternity ward and took custody [of her son]” (Burdge 1999, 278). The following day, the police returned to arrest

Whitner for child neglect. On April 20, 1992, she “pled guilty to criminal child neglect for ‘causing her baby to be born with cocaine metabolites in its system by reason of Whitner’s ingestion of crack cocaine during the third trimester of her pregnancy” (Burdge 1999, 278). In the words of prosecutors, Whitner failed to provide proper medical care for her unborn child, and she was sentenced to eight years in prison (Hewson 2001, 14).

Whitner later filed for Post Conviction relief, claiming ineffective assistance of counsel and that the circuit court lacked subject matter jurisdiction (Burdge 1999, 279). Whitner cited her attorney’s “failure to advise her that the statute under which she was being prosecuted might not apply to prenatal drug use” as the basis for her ineffective assistance of council claim (Burdge 1999, 279). The court granted her petition. Whitner was released from prison in November of 1993 after being held for nineteen months by “a court of common pleas judge who said child abuse could not apply to [an unborn child], and Whitner therefore, could not plead guilty of a crime that did not exist” (Burdge 1999, 279). Shortly thereafter, the South Carolina Attorney General, Travis Medlock, appealed to the South Carolina Supreme Court in an attempt to reinstate Whitner’s sentence (Burdge 1999, 279). On May 31<sup>st</sup>, 1995, the South Carolina Supreme Court heard the State’s appeal.

In the oral argument, the South Carolina Supreme Court “focused on the fact that Whitner admitted to having ingested crack cocaine during the third trimester of her pregnancy [and] stated that ‘[t]here can be no question here that Whitner endangered the life, health, and comfort of her child.’” (Burdge 1999, 282). In 1997, the South Carolina Supreme Court “held in a 3-2 decision that a mother’s prenatal use of crack cocaine after her [unborn child] had become viable falls within the scope of the state’s criminal child

neglect statute” (Burdge 1999, 277). In doing so, the Court “rejected decisions from other states holding that a mother’s prenatal misconduct does not support criminal prosecution under child endangerment or drug distribution laws (Burdge 1999, 277). The dissent pointed out that the Court’s opinion ‘render[s] a pregnant woman potentially criminally liable for myriad acts which the legislature has not seen fit to criminalize” (Dubler 1996, 937). Following *Whitner*, for a woman to be held liable, her actions do not even need to actually harm her unborn child. Rather, the standard is that they are “likely to endanger” the unborn child (Dubler 1996, 937). As a result, the number of behaviors that law enforcement officers and judges can consider dangerous for an unborn child increased dramatically, and “pregnant women are constantly vulnerable to prosecution under the *Whitner* Court’s theory” (Dubler 1996, 938). This vulnerability also has significant racial implications, as African-American women “have been and are likely to be the primary targets of such prosecutions” (Dubler 1996, 938). In addition to its racial implications, the *Whitner* decision is reflective of attempts to control maternal behavior and force it into the socially constructed mold of the “good mother.” As Ariela Dubler noted,

*Whitner* evokes a history of judicial attempts to control the behavior of pregnant women and the practice of motherhood. Courts have long sought to regulate motherhood, invoking the language of fetal protection to impose a duty on a woman to curtail her choices in the name of protecting her [unborn child] (Dubler 1996, 938).

Because many members of society believe that mothers should devote their lives to caring for their children, this seems like a reasonable duty for women, and “the argument acquires its persuasive force from unarticulated assumptions about the maternal role” (Dubler 1996, 938). These “unarticulated assumptions” play a large role in reinforcing motherhood ideals and the conception of the “good” vs. “bad mother,” as they “draw upon a range of moral and social institutions about how mothers should behave

and what they should sacrifice for their children” (Dubler 1996, 939). As Kristin Luker argues, “when personhood is bestowed on the embryo, women’s non-reproductive roles are made secondary to their reproductive roles” (Dubler 1996, 940). A woman’s pregnancy then becomes the focal point of her existence, and when a pregnant woman behaves in a way inconsistent with society’s ideals about the proper way to be a mother, she risks imprisonment for following “her own conception of her spiritual imperatives and her place in society” (Dubler 1996, 940). Ultimately, a punitive approach to drug use in pregnant women of color may “operate more to maintain a social distinction between insiders and deviants than to protect children” (Litt and McNeil 1997), which upholds the theme of punishing women who don’t fit into the socially constructed role of the “good mother.”

*Ferguson vs. City of Charleston* also reveals how society often punishes women that behave in ways it deems contrary to how a “good” mother would. *Ferguson* serves to illuminate the role of racism in the social construction of the “bad mother” and the criminalization of pregnancy, predominately in communities of color, as a result. In the case, Crystal Ferguson challenged the city of Charleston for developing a policy with the Medical University of South Carolina (MUSC) that prosecuted mothers who gave birth to children that tested positive for drugs. While the plaintiff “filed suit challenging the policy’s validity on the theory that warrantless and nonconsensual drug tests conducted for criminal investigatory purposes were unconstitutional searches” (*Ferguson*), others were quick to point out the policy’s racially and socioeconomically discriminatory implementation. The case demonstrated that the policy had a disproportionate effect on poor African American women because it was only applied at MUSC (a hospital

primarily serving individuals of low socioeconomic status), the departments did not apply it equally, and because it focused specifically on the use of cocaine (Kornblau 2005).

Further, the American Civil Liberties Union argued at the Supreme Court as *amicus* that the “MUSC’s policy on targeting ‘crack cocaine, a drug more prevalent among inner-city communities of color, rather than other substances like methamphetamines, which is a drug more often used by white rural and suburban women, [would] unfairly result in the arrests of women of color in Charleston” (Perez 2013, 773). Despite the fact that drug use is largely the same for black and white women, it is evident that race plays a large role in the prosecution and criminalization of women. This racial impact was directly reflected in practices at MUSC, where the hospital’s records “indicated that, among its maternity patients, an equal percentage of white and African American women consumed illegal drugs [...], yet 29 of the 30 women under POLICY M-7 were African American” (Perez 2013, 773). The bias was twofold: in addition to hospital officials admitting to creating the policy “in response to a perceived increase in the number of babies born exposed to crack cocaine, a drug [that was] associated with inner-city [people of color],” employees of MUSC “used their personal power to single out African American women for punishment” (Roth 2002, 151). One of the nurses at the hospital, Shirley Brown, helped facilitate the arrests of new mothers and was vocal about her racist beliefs. “According to court documents, Brown, who is white, told people that she did not believe in ‘race mixing’ and favored putting birth control in the water in black communities. [Additionally], she made a point of recording in the chart of the one white woman arrested that her boyfriend was black” (Roth 2002, 151). Considering the evidence that policies at MUSC targeted women of color and lower socioeconomic status and that these

women of color were criminalized or deemed bad mothers as a result, *Ferguson vs. City of Charleston* serves as an important demonstration of the intersection of classism and racism in socially constructing the “bad mother” and the criminalization of pregnancy as a result.

Cases nearly identical to those of Jennifer Johnson, Cornelia Whitner, and Crystal Ferguson continue to occur, which suggests that notions of the “bad mother,” rooted in stereotypes about women of color and lower socioeconomic status that result in the criminalization of pregnancy, remain. Most recently, in June of 2019, a grand jury in Alabama indicted a pregnant woman by the name of Marshae Jones for manslaughter after a fight between Jones and another woman resulted in the death of Jones’ unborn child. Newspapers reported that Jones was five months pregnant when she got into an argument with another woman, Ebony Jemison, outside of a Dollar General store. The argument led Jemison to shoot Jones in the stomach, and the gunshot wound that Jones sustained caused her to miscarry (Brice-Saddler and Horton 2019). Despite the fact that Jones herself sustained a gunshot wound, police involved in the case claimed that “the only true victim [was] the unborn baby” and that “it was the mother of the child who initiated and continued the fight which resulted in the death of her own unborn baby” (Brice-Saddler and Horton 2019). The grand jury that indicted Jones “declined to indict Ebony Jemison, the shooter” (Brice-Saddler and Horton 2019), and the indictment said that “Jones ‘intentionally’ caused the death of her unborn [child] by ‘initiating a fight knowing she was five months pregnant’” (Brice-Saddler and Horton 2019).

The District Attorney’s office ultimately dropped the charges against Jones in July of 2019, as Lynneice Washington, the District Attorney who signed the indictment,

“determined that it [was] not in the best interest of justice to pursue prosecution of Ms. Jones on the manslaughter charge for which she was indicted by the grand jury” (Stockman 2019). While a jury never convicted Jones of manslaughter, her charge alone speaks volumes about the unique challenges that mothers of color and lower socioeconomic status face. The public’s criticisms of the District Attorney’s Office’s choice to indict Jones, “some of which centered on the notion that Ms. Jones, a working-class black woman, was being treated in a way that no wealthy white woman would have been” (Stockman 2019), highlight these challenges. Comments by Amanda Reyes, the executive director of the Yellowhammer Fund (part of a nationwide advocacy group), also shed light on the unfair scrutiny that law enforcement officials and public opinion subject women of color to: “Tomorrow, it will be another black woman, maybe for having a drink while pregnant. And after that, another, for not obtaining adequate prenatal care” (Stockman 2019). Finally, Reyes made the comment that by indicting Jones, Alabama “[proved] yet again that the moment a person becomes pregnant their sole responsibility is to produce a live, healthy baby and that it considers any action a pregnant person takes that might impede in that live birth to be a criminal act” (Stockman 2019). This construction of women of color as dangerous or indifferent connects to an alternate explanation for Jones’ sentence, which is the “personhood” movement in Alabama. Though it is undeniable that race and socioeconomic status played a role in Jones’ sentence, “activists have also cited it as a demonstration of the dangers of the ‘personhood’ movement, which pushes for the rights of [unborn children] to be recognized as equal to, or even more important than, the rights of mothers who carry them” (Stockman 2019). Conversations in Pleasant Grove (the city where Jones was

convicted) that focused on “how harshly Ms. Jones [should have been] punished” rather than considering her a victim reflect this movement, which is gaining momentum in Alabama (Stockman 2019).

While an evaluation of Jones’ case would be incomplete without considering the pro-life movement in Alabama and public opinion that does not favor reproductive rights, the case highlights many of the issues surrounding the social construction of the “good” mother and how it varies based on a woman’s race and socioeconomic status. Comments by Alabama citizens and law enforcement officials alike about Jones being “irresponsible” and putting her child in harm’s way despite the fact that Jones was a victim of gun violence herself speaks volumes about the heightened scrutiny that poor mothers of color face.

In the cases of Cornelia Whitner, Crystal Ferguson, Jennifer Johnson, Marshaé Jones, and many more, it is evident that the social construction of drug use varying based on race and the stigma surrounding poor mothers of color is pervasive in law enforcement, media, and the legal community. Following Jennifer Johnson’s prosecution (the woman convicted of “distributing drugs” via her umbilical cord)’s, “the Florida judge who found [her] guilty remarked: The choice to use cocaine is just that... a choice. Once the defendant made that choice, she assumed responsibility for the... consequences” (Eckenweiler 2004, 90).” This comment suggests that, because of her drug use, Johnson was irresponsible and unequipped to care for her newborn, which reflects social norms and beliefs about what it means to be a “good mother” and how this regularly excludes women of color. Further, the comment also fails to acknowledge systematic disadvantages that often result in drug use and the fact that drug addiction is



an illness, not a choice. Such remarks are not limited to Jennifer Johnson's case, and various figures in the criminal justice system have made similar statements. In California, regarding a mother in the justice system who was a drug user, a prosecutor "remarked: 'I have no sympathy for these people [sic]... my belief is that they should be prosecuted, and I have no difficulty saying that. [W]e should be punishing mothers for doing this to their children and sticking society with this enormous burden'" (Eckenwiler 2004, 90). This comment, which reflects a belief in the socially constructed idea of the "bad mom," is consistent with numerous other evaluations of mothers of color and lower socioeconomic status. Finally, remarks by Los Angeles Judge Frank Eppes in a similar case (one involving Malissa Ann Crawley, a woman who used cocaine during her pregnancy) reveal disdain for mothers deviating from beliefs about the "good" mother. In the case, Judge Eppes made the following comment: "I'm sick and tired of these girls having these bastard babies on crack cocaine and... the law they gave me said I could put them in jail" (Eckenweiler 2004, 90).

The law enforcement officials' comments reflect the criminal justice system, the media, and the general public's widespread judgment and unfair evaluation of poor mothers of color. Society's belief that these mothers are recklessly harming their children and general failure to acknowledge that drug use often is not a choice is unfair, and these attitudes may begin to explain the excessively punitive nature of policies toward mothers in prison.

### **Poor Treatment of Mothers in Prison**

The cruelty that mothers in prisons around the United States face is largely reflective of negative attitudes and stigma surrounding poor mothers of color. In U.S.

prisons, the pervasive use of shackles on pregnant women and limited visitation abilities both provide strong examples of the abuse and challenges faced by incarcerated mothers. Practices and policies in prison that both neglect and harm incarcerated pregnant women of color have roots in the immediate post-Civil War era, and stories of pregnant incarcerated women being forced into taxing physical labor in prison camps, neglected by prison guards when asking for medical help, and periodically giving birth without the help of a medical professional span more than the past century. Shackling, an especially harmful practice affecting pregnant women of color in prison, emulates conditions of slavery and can be traced to the 19<sup>th</sup> century. Its “widespread use [...] is premised on constructions of Black feminine deviance that were outgrowths of earlier regimes of punishment, such as post-Civil War era convict leasing and chain gangs” (Ocen 2012, 1244). The origin of these practices, the post-Civil War era where most incarcerated women were African American, created a “punitive orientation toward female prisoners,” and “the presumed race and gender identity of female prisoners has played an essential role in normalizing the use of shackles on pregnant prisoners” (Ocen 2012, 1246). At any given time, five to ten percent of incarcerated women are pregnant, and an estimated 2000 children are born to incarcerated women every year (Ocen 2012, 1251). In prison, “shackling is often standard operating procedure for the transport of women in labor and is also used as a mechanism to control and demean them during childbirth” (Ocen 2012, 1251). Shackling practices highlight the unique challenges and cruelties that incarcerated women of color face. As Priscilla Ocen notes, constraints (both figurative and physical) upon incarcerated women’s reproduction are a paradigm:

The constraints that have come to be the hallmark of women’s incarceration are part of a larger trend of reproductive subordination that has impacted racially marginalized women within the carceral apparatus. Indeed, the

reproductive capacities of Black women have historically served as a primary site for punishment within the criminal justice system. The intersection of race and gender in the lives of women of color, and Black women in particular, render them vulnerable to a host of ideological constructions—including sexual promiscuity and bad mothering—that portray them as lacking fundamental aspects of feminine gender identity. Because of these ascribed failings, women who have been criminalized or incarcerated are subject to the prevention of or punishment for their choice to reproduce, often as a formal part of their sentences (2012, 1252).

As recently as 2012, national studies showed that at least 36 states employ shackling practices during childbirth and that around one third of prisons in the study reported using handcuffs during prenatal visits or labor (Ocen 2012, 1255). Furthermore, despite attempts by prison officials to justify shackling practices by “citing concerns for the safety of correctional officers and the public,” advocacy groups “have demonstrated that [correctional officers use] shackles [...] on all women, regardless of security threat, even when alternative security mechanisms are available” (Ocen 2012, 1256).

The physical consequences of shackling during pregnancy and childbirth are numerous. The restrictive nature of shackles and resulting prevention of necessary movements during childbirth can harm both the mother and child. Further, shackling can delay necessary treatment in medical emergencies and hinder the appropriate response to complications during childbirth. For example, “if there were a need for a [cesarean] section, the mother [would] need [] to be moved to an operating room immediately and a delay of even five minutes could result in permanent brain damage for the baby” (Amnesty International 1999, 76). Beyond being physically harmful to both mother and child, shackling during pregnancy and childbirth is concurrent with other psychologically traumatic experiences, as the following description of a pregnant incarcerated woman’s experience demonstrates:

Every time I went for a "medical" run, I had to get a humiliating strip search when I left and returned to prison. Prisoners are placed in belly

chains and our hands are cuffed for the duration of the visit unless the doctor asks that they be removed. At about the sixth month of pregnancy, the strip-searches become difficult. By this time, my emotional state was up and down, and most of the time I left the "strip room" in tears from shame and humiliation" (Ocen 2012, 1257).

As a practice, shackling is undeniably harmful, both physically and psychologically. It also goes along with other practices, such as the strip search described above, which stand alone as additional forms of punishment. Further, shackling is reflective of ideas about the social construction of the "bad" and socially deviant mother, how this label is typically reserved for women of color, and how various institutions seek to punish these women. As Priscilla Ocen notes, the use of shackling "rests on an assumption that incarcerated women are dangerous as individuals and as mothers, [which] rests on stereotypes of female prisoners informed by prior regimes of racialized punishments that viewed Black women as lacking in maternal instincts, driven by sexual desires, and physically threatening" (2012, 1257).

In *Nelson v. Correctional Medical Services*, plaintiff Shawanna Nelson challenged the legality of using shackles on pregnant prisoners under the Eighth Amendment. In the case, Nelson testified that "the shackles prevented her from moving her legs, stretching, or changing positions" during childbirth and that, as a result, she suffered "extreme mental anguish" and "pain, permanent hip injury, torn stomach muscles, and an umbilical hernia requiring surgical repair" (*Nelson*, 6). While the Arkansas Department of Corrections has policies on shackling incarcerated people, including that correctional officers should use shackles "only when circumstances require the protection of inmates, staff, or other individuals from potential harm or to deter the possibility of escape" (*Nelson*, 7), it was evident that Nelson posed no flight risk. Nelson's claim was that one of the correctional officers in question, Officer Turensky,

“subjected her to cruel and unusual punishment by shackling her legs to a hospital bed while she was in the final stages of labor” (*Nelson*, 7). Ultimately, the Eighth Circuit Court of Appeals found that Officer Turensky’s actions did indeed constitute cruel and unusual punishment and violated the Eighth Amendment.

Since the Eighth Circuit Court’s decision in *Nelson*, legislators have made attempts to prohibit or limit shackling practices in prison. On December 21<sup>st</sup>, 2018, President Trump signed the First Step Act into law, which aims to reduce recidivism and addresses cruel practices such as shackling in prison. Most notably, one of the Act’s provisions bans shackling, stating that “...beginning on which pregnancy is confirmed by a healthcare professional, and ending at the conclusion of postpartum recovery, a prisoner... shall not be placed in restraints” (Harvard Law Development 2019). While this is an important step toward ending the shackling of women in prison, it is not enough. The First Step Act outlines two exceptions to the ban on shackling, which are “when (i) the woman ‘is an immediate and credible flight risk that cannot reasonably be prevented by other means;’ or (ii) ‘poses an immediate and serious threat of harm to herself or others that cannot reasonably be prevented by other means’” (Harvard Law Development 2019). The broad nature of these exceptions is worrisome, especially given that they “perfectly mirror the two irrational reasons shackling proponents typically cite for engaging in the practice in the first place: fear that incarcerated women in labor are (1) a flight risk, and (2) a security risk” (Harvard Law Development 2019). Another weakness of the First Step Act is that it does not apply to state prisons or county jails. As of January 2020, 23 states did not have laws against shackling incarcerated pregnant women (John Jay College Center on Media Crime and Justice 2020). While the First Step

Act is an important step toward ending the practice of shackling pregnant women in prison, the exceptions it outlines and the failure of state governments across the United States to ban the use of shackles indicate that more progress must be made.

Beyond the physically distressing practice of shackling incarcerated mothers, policies limiting visitation pose greater challenges to mothers in prison by straining their relationships with family members and children. Limited visitation rights make it difficult for family members to regularly visit incarcerated loved ones, and the distances that family members have to travel to make visits and the associated travel costs pose additional challenges. These difficulties often deter family members from visiting at all, which has the potential to strain and even destroy familial ties. As a result, incarcerated women face the additional burden of losing familial support and facing reentry without assistance from their loved ones. In *Overton v. Bazzetta*, the U.S. Supreme Court “upheld severe limits on visiting by children... and an indefinite denial all non-legal visiting for prisoners convicted of infractions related to substance abuse” (ACLU 2008). Further, in the same case, the court held that “visitation restrictions do not violate the Constitution unless they have no reasonable relationship to a legitimate penological goal,” (ACLU 2008), i.e. one related to rehab or prison management. Highly restricted visitation already places a strain on relationships between mother and child, but other practices within the U.S. prison system place a disproportionate burden on incarcerated mothers.

### **How Do We Explain These Practices?**

The cruel, inhumane practices that U.S. prisons subject many mothers to are horrific, but one can more easily understand these practices when taking into consideration the widespread narrative about poor mothers of color, society’s narrow

definition of a “good mother,” and the public’s generally held beliefs about how she should behave, her socioeconomic status, and her race. From the systematic disadvantage that drug policy created and the media sensation of the “crack baby” during the War on Drugs to modern beliefs about fetal rights and mothers being “irresponsible” when committing any action that could possibly harm their unborn child, it is evident that the negative stigma surrounding mothers of color has spanned decades and has yet to be dismantled.

## **Chapter 2: Comparing Prisons in the U.S. and Denmark**

The unjust, inhumane practices that are standard treatment of women and mothers of color in U.S. prisons stand in stark contrast with policies and practices in Scandinavian prisons. Scholars often tout the Scandinavian penological model as a paragon of prison reform. The Scandinavian model focuses on rehabilitation rather than punishment and allows for the maintenance of familial ties despite the incarceration of a family member. In recent years, the Danish government’s research on children of incarcerated parents has spurred policy changes that enable easier and more frequent facilitation of family visits and more child-friendly practices within Scandinavian prisons.

The superiority of Scandinavian family policy and support for parents is not limited to the context of prison and stands in stark contrast with family policy, specifically policy pertaining to new mothers, in the United States. In Denmark, new parents are entitled to a combined 52 weeks of maternity and paternity leave. Four weeks prior to their expected birth date, Danish mothers begin pregnancy leave. The government then grants mothers 14 weeks of maternity leave after giving birth, while fathers are granted two weeks of paternity leave. Beyond these designated time periods,

the government gives new parents an additional 32 weeks of leave to split as they choose (Ismiris 2018). The differences between parental leave policies in the United States and Denmark are stark, and compared to the United States, Danish approaches to family leave following childbirth are far more generous and supportive of both new mothers and families. Nationally, the Family Leave Act (FMLA) in the United States “provides up to 12 weeks of unpaid leave during a 12-month period to care for a newborn” (NCSL 2016). While states have the ability to set individual standards, only three states (California, New Jersey, and Rhode Island) offer paid family leave (NCSL 2016). The availability of maternity leave varies on a state by state basis in the United States, but the bare minimum is not enough to significantly support new mothers.

The support for new mothers that is embedded in Danish social policy extends beyond generous maternity leave. After giving birth, Danish mothers receive visits at home from nurses who conduct check-ups on newborns, provide advice on child care, and look for signs of postpartum depression (Johnson 2015). New mothers are also assigned to “playgroups,” which are groups of roughly five new mothers that are “designed to meet the very real needs for community during [the] new time of life [after giving birth]” (Johnson 2015). Whether it be playgroups or paid maternity leave, the social, medical, and financial support that the government provides to new mothers in Denmark alleviates many of the pressures and challenges associated with new motherhood. Given how supportive the Danish government is of families and new mothers in general, it is no surprise that Danish prison policy also reflects an emphasis on and support for the family unit.



Various features and practices of Scandinavian prisons contribute to the maintenance of relationships between incarcerated family members and their spouses and children, educational attainment, and successful reentry of formerly incarcerated people into society upon their release from prison. The prison system in Denmark is characterized by “relatively low rates of imprisonment and humane prison conditions.” “State formation, religious homogeneity, comparatively egalitarian social relationships, a high value on education and expert knowledge, and the particular model of the welfare state that was developed in [the] region,” (Pratt and Eriksson 2011, 19) play a role in the construction and maintenance of a more humane and equitable prison system. In Danish prisons, it is common for incarcerated people to work, attend classes, and shop and cook for themselves (Foote 2012). Further, open prisons in Denmark outnumber closed prisons. Open prisons “are campus-style facilities with no secure perimeter,” and “prisoners are often permitted to leave prison grounds during the day for work, education or healthcare, and on the weekends for overnight visits with family” (Reiter, Sexton & Sumner 2018, 109). While closed prisons that only allow for prisoners to leave the facility with an escort still exist in Denmark (Reiter et al. 2018, 109), open prisons outnumber closed prisons and allow for the greater wellbeing of prisoners and the maintenance of a relationship with one’s family. Another distinctive feature of Danish prisons is that they allow children to live with an incarcerated parent and their spouse up until the age of three. As of 2015, on any given day, there will “be up to five children in the age group of [newborn] to three years living with an imprisoned parent in the Danish prisons (remand, closed and open), while you can also find a few more and older children living with their parents in some of the prison service’s halfway houses,” (Smith 2015,

157) which “offer residential living in the community for offenders who are completing the last 3 months of a prison sentence” (Parker 1997, 72). While these options are available for incarcerated parents in Denmark, the Danish government must grant approval for children to reside with their parents in prison and only does so after deeming the conditions inside the prison suitable (Smith 2015, 157). Another strength of the Scandinavian system regarding the maintenance of familial ties is “the relatively extensive use of home leave, which allows a lot of prisoners to maintain a much more normal contact with [their] family and can create a more gradual return to society” (Smith 2015, 157). In 2012, the Danish Prison and Probation Service granted “15,341 home leaves for prisoners to see family members and 16,959 leaves in connection with education or work” (Smith 2015, 157).

While scholars describe a few Danish prisons, specifically remand prisons (where individuals are held prior to their conviction), as “quite bad and not at all child-friendly” (Smith 2015, 156), the majority have features that cater to greater visitation rights for families and a better quality of life for incarcerated people. In November of 2012, the Danish parliament and government mandated children’s officers on a national basis (Eddy and Poehlmann-Tynan 2019, 274). Children’s officers, “selected prison staff... who worked in their respective institutions to firmly anchor the child’s perspective in the individual prisons” (Smith 2015, 274), provided valuable insights on the hypothetical child’s experience in Danish prisons. Since the establishment of children’s officers, government initiatives have introduced “parenting study groups for imprisoned parents and funding for the transportation of visiting children” (Eddy and Poehlmann-Tynan 2019, 274). Additionally, “almost all prisons in Denmark now have child-friendly visiting

facilities and procedures” (Eddy and Poehlmann-Tynan 2019, 274) as a result of this policy, including less restricted visitation hours and visitation facilities designed to make children feel comfortable.

While Danish prisons appear to be highly progressive in some contexts, it is impossible to fairly evaluate them without pointing to certain shortcomings and recognizing areas for improvement. “Although prisoners in Denmark undeniably experience a variety of unusual (relative to prison systems in the United States, for instance) freedoms across the system, even within the more constrained closed prisons, both prisoners and staff consistently emphasized the limits of this freedom” (Reiter et al. 2018, 98). Prisoners’ behavior and freedom of movement and association is limited, which is most evident “in the many forms of isolation experienced by Danish prisoners: pre-trial solitary confinement, short periods of isolation as punishment for breaking prison rules, and more extended periods of isolation based on their status as gang members of prison security threats” (Reiter et al. 2018, 98). While such practices are not pervasive, some Danish prisons’ deployment of “frequent and extended terms of isolation” (Reiter et al. 2018, 93) indicate that the Scandinavian penological model is far from perfect. Despite the use of isolation and solitary confinement in Danish prisons, which is inhumane and should be the target of prison reform efforts, the access to education, vocational opportunities, and time with one’s family that is standard in Danish prisons stands in stark contrast with the minimal opportunities provided to incarcerated people in the United States. Opportunities for prisoners in the United States to maintain relationships with their family members fall extremely short of those in Denmark, and the

superior visitation rights for Danes with an incarcerated family member are far more conducive to prisoners' well-being and successful reentry into society upon their release.

While Scandinavian prisons are apparently superior, one must also consider the ethnic and racial homogeneity of Scandinavian societies in order to properly evaluate their differences from prisons in the United States. As noted by Doran Larson,

Scandinavian prisons are roughly as racially and ethnically homogenous as American prisons: 70 percent of Nordic prisoners are ethnically white citizens; the other 30 percent are foreign-born (mostly from other EU countries). In U.S. prisons, ethnic and racial minorities make up over 60 percent of the population. The difference is that the majority of Scandinavian prisoners look like the majority-- including the voting majority-- outside. Laws, enforcement policies, and prison practices are those that the majority of citizens assume would work for themselves. Whatever other differences may exist between law-abiding families and people convicted of crimes, the prison system itself does not seek to widen the social distance between them" (2013).

This description of Scandinavian prisons illuminates a significant difference between prison populations in Scandinavia and the United States. While prison populations in Scandinavia reflect the majority, the United States prison population does not reflect the majority. Further, it is evident that law and enforcement policies in the United States, more so than those in Scandinavia, do (in effect) widen social distances between people convicted of crimes and those who have not been convicted.

### **Parallels Between Social Stigma in the U.S. and Denmark**

Historically and in the present day, laws and enforcement policies in the United States have unfairly targeted individuals of color and of lower socioeconomic status. These policies and practices are reflective of a racial and socioeconomic hierarchy that has existed in the United States over time and a tradition of unjust and discriminatory practices towards people of color and lower socioeconomic status, ranging from slavery to the previously mentioned disparities in drug sentencing. In Denmark, the lack of diversity, both in prisons

and society at large, allows the country to function as an informative comparative case that shows the centrality of race in both the prosecution and subsequent treatment of individuals in prison. Given the demographic differences between populations in the United States and Scandinavia, it is difficult to fully understand the hypothetical impact of race and socioeconomic status on sentencing and prison policies in Denmark.

While Danish prison populations are relatively homogenous and reflective of the majority, making policies in Danish and U.S. prisons difficult to compare and effectively evaluate, Denmark's response to the 2015 refugee crisis illustrates an introduction of greater diversity into Danish society and the discriminatory response that came as a result. Scholars have described the Danish model as a system "intended to serve a small, homogenous population" (Barry and Sorensen 2018), and Denmark's response to an influx of immigrants and efforts to integrate these immigrants has exposed the system's shortcomings. First and foremost, a policy proposed in response to the influx of non-Western immigrants into Denmark called for doubling the punishments for crimes in underprivileged areas, which directly targets individuals who are not of Danish descent. The measure under consideration would have allowed "courts to double punishment for certain crimes if they are committed in one of the 25 neighborhoods classified as ghettos, [which are defined as such] based on residents' income, employment status, education levels, number of criminal convictions and 'non-Western background'" (Barry and Sorensen 2018). Denmark's Prime Minister, Lars Lokke Rasmussen, justified the policy by claiming that "cracks have appeared on the map of Denmark" because of ghettos and warned that they could "reach out their tentacles onto the streets" and spread violence (Barry and Sorensen 2018). The policy's efforts to target individuals of lower

socioeconomic status and a non-Western background are reminiscent of policies in the United States that unfairly target people of color and lower socioeconomic status, prosecute and punish them at disproportionate rates, and make it difficult for them to get back on their feet following a criminal conviction. Beyond criminalizing immigrants of non-Western descent and lower socioeconomic status, Danish attempts to “integrate” immigrants also represent an incursion into family life and mothers’ abilities to make choices about their children. At birth, children of parents living in low-income immigrant neighborhoods (described as “ghettos” by the Danish government) are designated ghetto children, and they must “be separated from their families for at least 25 hours a week, not including nap time, for mandatory instruction in ‘Danish values’” (Barry and Sorensen 2018). Should their parents refuse these conditions, the government could stop issuing their welfare payments. While this intervention in family life occurs after the children of immigrants turn one, the rule does not apply to other Danish citizens, who are allowed to choose whether or not to enroll their children in preschool until the children are six years old (Barry and Sorensen 2018).

Although efforts to integrate immigrants into Danish society and the experiences of pregnant women of color with the U.S. justice system and parenting are considerably different, the commonalities of intervening in the parenthood of certain groups that society has deemed “unfit” and criminalizing individuals based on race and socioeconomic status alone is difficult to deny. Much like law enforcement officers and the public often deem poor mothers of color “unfit” to take care of their own children and prevent them from doing so, the Danish government robs female immigrants of the right to make choices about their child’s education because of their deviance from Danish social norms.

Parallels between incarceration and social injustices in the United States and Denmark exist beyond similarities surrounding mothers and children who are refugees. In the United States, three groups that are most visibly affected by disproportionate incarceration, detainment, and other social injustices are African Americans, Native Americans, and Latino individuals trying to immigrate to the United States. Issues more specific to the latter two groups provide grounds for comparison with current social issues in Denmark that have resulted in greater social stratification and disproportionate incarceration despite the country's seemingly progressive social model and prison system. It is evident that the disproportionate incarceration of African Americans in the United States has roots in slavery, whereas the incarceration of Latino individuals in the United States has roots in immigration and the incarceration and marginalization of Native Americans has roots in the colonial history of the United States. While Denmark's history of slavery differs from the history of slavery in the United States, the modern experiences of immigrants and native people in Denmark and the United States are remarkably similar.

The marginalization and disproportionate incarceration of Native American individuals in the United States are parallel to the struggles of the Greenlandic Inuit residing in Denmark. The Danes assumed control of Greenland in 1776, and their relationship with the people of their former colony has been troubled ever since:

To maintain its exclusive stranglehold on the island's resources, Denmark claimed to be safeguarding traditional Nordic culture from corrupting outside influences. Under the same justification, Denmark compelled Greenlanders to remain in occupations like hunting and fishing. The state also pursued a so-called "civilizing" mission, including forced conversions to Christianity, the suppression of language and traditions, and the destruction of existing communal structures. According to the prevailing Danish rationale, Greenlanders were naïve and childlike, in need of protection and incapable of governing themselves (Birkhold 2019).

In the second half of the 20<sup>th</sup> century, Danish action in Greenland “[resulted] in the forced relocation of Greenlanders” (Birkhold 2019) and “new laws dictated that civil servants born in Greenland could be paid only 85 percent of salary of those born in Denmark” (Birkhold 2019). The state split many families apart, “children were sent to Denmark for schooling, [...] and increased suicide rates, alcohol abuse and violence followed” (Birkhold 2019).

The Danes’ colonial influence on Greenlanders still persists. Despite Denmark’s “international renown as a champion of indigenous people’s rights, it has so far been quite reluctant to take a similar stance on the home turf” (Madsen and Sullivan 2004). Denmark ratified the European Council’s Framework Convention for the Protection of National Minorities in 1997, but failed to grant national minority status to any groups other than Germans living in Southern Denmark (Madsen and Sullivan 2004). The intense social stigma that Greenlandic individuals living in Denmark face reflects this failure to champion indigenous people’s rights at home. “To most Danes, being Greenlandic means having serious substance abuse problems, and to some it even means coming from a backward culture” (Madsen and Sullivan 2004). In a 2012 poll of Danish citizens, 40 percent of 1,017 Danes polled “associated Greenlanders with binge drinking, substance abuse, and social problems” (Amundsen 2013). Further, “43 percent thought that over half of Greenlanders were on public assistance,” even though the actual number is closer to 16 percent. According to Nivi Christensen, who works for the Greenlandic House (an NGO in Copenhagen that educates the public on Greenland and helps accommodate Greenlanders living in Denmark), “native-born Danes actually drink more than Greenlanders, [...] and the numbers of indigent or dependent [individuals from each



demographic] are comparable” (Amundsen 2013). According to Søren Thuesen (a professor of cross-cultural and regional studies at the University of Copenhagen), even though the statistics are comparable across both groups, “there is no doubt that most Greenlanders, as well as immigrants from other countries, experience prejudices in Denmark” (Amundsen 2013).

Colonial forces’ destruction of Greenlandic culture bear remarkable similarities to the behavior of European settlers in North America. “Dating back to the early American colonies, Native Americans have consistently undergone substantial oppression, ranging from the extremes of military conflict to their eventual consolidation onto reservations” (Franklin 2011, 313). As a result, society has “severely marginalized” Native Americans and “[placed them] ‘at the economic and political edge of society’” (Franklin 2011, 313). Native Americans in the United States are also the targets of numerous negative stereotypes, much like Greenlanders in Denmark. “Currently, Native Americans are commonly typified as the ‘drunken Indian’ who is genetically predisposed to alcohol abuse and likely to engage in criminality as a result of intoxication... [Further, they] are frequently viewed as uncivilized ‘savages that are outcasts of dominant society’” (Franklin 2011, 314). Beyond these negative stereotypes, “researchers have also identified stereotypes indicating that European Americans view Native Americans as unreliable, distrustful, suspicious, unpatriotic, and lazy individuals” (Franklin 2011, 314).

Ultimately, when considering the social stigma faced by both Greenlanders in Denmark and Native American populations in the United States and its roots in the colonial history of each country, it is evident that this is yet another parallel to be drawn between social issues in Denmark and the United States. Finally, immigrants to the

United States and Denmark face similar challenges. As previously mentioned, Latino immigrants to the United States are the third of the three of the groups in the United States that are the most visibly affected by incarceration. Latino immigrants to the United States also appear to be facing challenges similar to those faced by immigrants to Denmark beyond disproportionate incarceration rates. According to the ACLU, the Trump administration has separated around 5,500 migrant children from their parents (Aguilera 2019). While less extreme than the forced separation of families at the U.S. border by ICE, policies in Denmark mandating the separation of the children of immigrants from their parents for a minimum of 25 hours a week for instruction in Danish values (Barry and Sorensen 2018) are reminiscent of the separation of families attempting to enter the United States. The separation of immigrant families is yet another example of parallel social problems and unfair treatment of minority groups in the United States and Denmark.

While scholars regularly highlight Denmark as a paragon of progressive social policy, the introduction of racial, ethnic, and socioeconomic diversity into Danish society exposed underlying racism and classism and highlighted the fact that Danish policy best serves a small, homogenous population. The Danish government's response to and unfair treatment of nonwestern immigrants and native people is reminiscent of how the United States government treats people of color and lower socioeconomic status, contrary to exemplifying social justice and equality. Altogether, these examples of unfair treatment along racial lines in both the United States and Denmark show how pervasive racism and classism are in shaping what it means to be a criminal.

### **Chapter 3: The Instrumental Value of Advancing Women's Rights in Prison**

Literature on incarcerated mothers regularly highlights the challenges that those other than incarcerated mothers themselves face, ranging from unborn children to mature family members. Scholars often evaluate maternal incarceration with a primary focus on the children of women in prison and make suggestions to advance the rights of incarcerated women with the ultimate goal of benefitting those others than the women themselves. These approaches deem women's rights instrumentally valuable, and while they can be effective strategies in advancing women's rights that even feminists sometimes use, they fail to fully value women and acknowledge that gender equality is intrinsically valuable. Leading scholars such as Smith, Burdge, and Levin who write about mothers in prison frame the social problem as bad for children and therefore society at large rather than bad for mothers who are incarcerated. None of these scholars who advocate for change center their arguments around the inherent value and the rights of incarcerated women. Such a dangerous approach devalues women.

Roger Burdge's description of fetal abuse and prenatal care in *Whitner v. South Carolina: Child Abuse Laws Apply to Viable Fetuses* is evidence of framing women's rights as instrumentally valuable. Burdge writes, "even if states decide to prosecute pregnant mothers for 'fetal abuse,' the question of if prosecution and incarceration is the best approach to protecting the unborn" (Burdge 1999, 8) remains. Implicit in Burdge's statement is that prosecuting and incarcerating pregnant women *is* problematic, but mostly because it has the potential to negatively affect unborn children, rather than because it subjects women to unfair treatment and creates conditions that are both unsafe and unethical. Further, the reading suggests that one of the biggest deterrents of prosecution is that drug-using women will be scared "away from prenatal care because

that could alert authorities to the potential of drug abuse, and bring child abuse charges" (Burdge 1999, 8). Burdge's statement makes clear the prioritization of prenatal care which, although a worthwhile concern, should not outweigh the reality of pregnant women hesitating to pursue drug treatment out of fear of being prosecuted. We may be able to convince anti-abortion activists and racists to care about mothers in prison by focusing on their concern for unborn life, but it could come at an unknown cost to mothers in prison. As Burge implies, when deciding whether or not to prosecute and incarcerate pregnant women, the fate of the unborn child is a priority. While the fate of children is still important, placing fetal rights above concern for pregnant women going through the criminal justice system is cause for concern. In evaluating the trajectory of pregnant women in the criminal justice system, concerns for a woman's well-being should be strongest. Contrary to the suggestion in Burdge's article, which is that women failing to get drug treatment is worrisome because it also means that their unborn child will fail to receive prenatal care, what is equally (if not arguably more) worrisome is women failing to receive drug treatment in the first place and the harm that a failure to receive treatment will cause them personally.

Dan Levin's article, *As More Mothers Fill Prisons, Children Suffer 'A Primal Wound,'* also illuminates concern for the children of women in prison over concern for incarcerated women themselves. In the article, Levin highlights the extrinsic value of promoting incarcerated women's relationships with their families, primarily through illustrating how limited opportunities for visitation pose challenges for children rather than incarcerated women. One way Levin communicates the strain on children is through the statement that "children in many ways share the sentences with their parents" (Levin

2019). As Levin points out, “the consequences [of having an incarcerated mother] are exacting, from unstable homes to lasting effects on well-being” (Levin 2019). These effects include “increased risk of psychological and behavioral problems, insufficient sleep and poor nutrition, and higher odds [of children with an incarcerated parent] entering the criminal justice system themselves” (Levin 2019). Brittany Barnett, the founder of Girls Embracing Mothers (a nonprofit that helps facilitate prison visits for children of incarcerated women) likened having a parent in prison to having a “primal wound” (Levin 2019). Further, Levin asserts that “the toll it takes on children is often far more severe when the inmate is their mother” (Levin 2019). The challenges that children with parents in prison face are undeniably important consequences of mass incarceration and, as Levin’s article notes, mothers going to prison “devastates the home and the family” (2019). Levin’s framing of the issue, however, highlights challenges that *children* of incarcerated women face rather than those that the women themselves face as the reason that policies toward mothers in prison should change. As such, the article’s implicit suggestion that visitation policies should be more lenient and allow incarcerated women greater access to their families is not done to promote the wellbeing of mothers in prison. Rather, it seems to be suggesting that greater visitation rights for women in prison are *instrumentally* valuable because of how they benefit incarcerated women’s children.

Finally, Peter Smith’s evaluation of prison reform efforts in Denmark also suggests an agenda prioritizing children’s rights rather than those of incarcerated people themselves. As Smith comments on prison reform in Denmark,

When taking office in 2002, the Danish Minister of Justice Lene Espersen explained that she wanted to govern with her “inner sense of justice,” which she claimed to share with “ordinary citizens,” while she clearly regarded criminological advice and research as less important (Smith & Jakobsen,

2010). The general influence of penal populism meant that it was difficult to seriously discuss prisons and punishment. But perhaps serious research on prisoners' children would produce a different result? What would happen, for example, if the public sense of justice was informed about these children, their situation, and *their* sense of justice? (Smith 2019, 273)

As the article suggests, only when scholars proposed bringing a discussion of *children's* rights to the table was the public moved to seriously discuss prison reform. Smith's focus on children's rights supports the inference that, rather than pursuing prison reform for the inherent value in improving incarcerated people's conditions, it is only done because better conditions for parents in prison are instrumentally valuable in improving the lives of their children.

As O'Neil, Domingo, and Valters of the Overseas Development Institute note, "although there is a consensus that women's empowerment is both an end in itself and a means to other social and economic objectives" (2014, 4), the degree to which women's empowerment is encouraged as means to an end rather than for the sake of empowering women alone varies. Often, "feminists stress the intrinsic value of women's empowerment and its fundamental contribution to the collective political struggle for gender equality and other forms of social justice" (O'Neil, Domingo, & Valters 2014, 5). While gender equality is reason enough for women's empowerment, in certain cases, "gender advocates have [...] made a strategic choice to argue for the positive contribution of empowerment to economic growth and poverty reduction" (or perhaps, child development in the case of maternal incarceration) in an attempt to "[engage] non-gender specialists who otherwise would pay little attention to addressing gender-based inequalities" (O'Neil, Domingo, & Valters 2014, 5).

Even feminists, who do not devalue women, occasionally try to persuade others to alleviate the suffering of women by appealing to instrumental values. While a focus on the instrumental value of women's rights is occasionally useful, it can also be dangerous. In the case of women's prison reform, appealing only to the instrumental value of women's rights in the interest of children is dangerous, because it fails to target systemic sexism and racism. Prison reforms in Denmark serve as a strong example. As Peter Smith's article shows, appealing to the plight of children with incarcerated parents was an effective strategy in improving visitation rights in Danish prisons. As a result, family policy in Danish prisons was kinder to incarcerated mothers and provided for greater visitation rights and more comfortable conditions for visiting family members. While this discourse about children's rights was effective in improving conditions for incarcerated parents, it failed to address systemic racism. This is especially evident when considering Denmark's response to the refugee crisis: despite apparently progressive prisons in Denmark, upon the introduction of ethnic diversity into the Danish justice system, policies targeting ethnic minorities emerged and racism persisted. Progressive policies in Danish prisons were motivated by efforts to alleviate children's struggles, not to eliminate institutionalized racism, which has resulted in a failure to properly address the role of racism in disproportionately criminalizing and prosecuting minority groups. As a result, despite its initially progressive appearance, I argue that the Danish justice system is equally as influenced by racism as the U.S. criminal justice system is.

**Conclusion:**

Despite the United States and Denmark's varied histories and the fact that Danish penological models initially appear far more progressive than American ones, it is

evident that racism persists in both systems. Further, beyond the degree to which racism is evident in evaluating Danish and American prison policies, much of the existing literature on both systems only focuses on advancing women's rights in prison for their instrumental, rather than intrinsic, value.

Racism's impact on policy and practices in U.S. prisons exposes a serious lack of progress in terms of mitigating discrimination in the criminal justice system and promoting racial and gender equality. By highlighting the disproportionate criminalization of pregnant women of color and practices in prison that are not only unsafe but cruel, this thesis seeks to point out some of the most serious problems that women in U.S. prisons face. Moreover, it is evident that racism's influence on prison policy and sentencing is not exclusive to the United States. Studying these racial and socioeconomic disparities is essential, as recognizing them and acknowledging the cruelties that incarcerated women face are necessary first steps in reducing the criminalization of pregnancy in communities of color, minimizing sentencing disparities along racial lines, and completely ending inhumane practices like shackling pregnant women in prison. Furthermore, while Denmark's prison system is imperfect, Danish prison policies that allow for greater visitation rights and the maintenance of familial bonds despite incarceration would benefit incarcerated women and their children alike and should be modeled in U.S. prisons. If U.S. prisons implemented these policies, which would help facilitate social support and foster family ties, incarcerated people's families would be more likely to provide support upon their release, and reentry into society would likely be less challenging. As residents of the United States and, more importantly, as humans, that is the very least that incarcerated women and their families deserve.



Finally, while promoting incarcerated women's rights for their instrumental value can occasionally be an effective strategy, its failure to address the institutionalized sexism and racism that largely explain why incarcerated women of color are treated so poorly renders it ineffective in truly dismantling bias and oppression in the U.S. prison system.

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