

BOOK REVIEW

Unusually Cruel: Prisons, Punishment, and the Real American Exceptionalism

by Marc Morjé Howard

Oxford: Oxford University Press (2017), 296 pp.

Reviewed by Jason Warr

Dear Christ! the very prison walls
Suddenly seemed to reel,
And the sky above my head became
Like a casque of scorching steel;
And, though I was a soul in pain,
My pain I could not feel.

– Oscar Wilde, *The Ballad of Reading Gaol*

Howard's (2017) impressive text focuses on the nature and development of American penal exceptionalism. Unlike Scandinavian exceptionalism, which is nominally predicated on the joint ideals of welfarism and humanism (Pratt, 2008), the United States is very different. There the exceptionalism is one of harshness, punitivity and deprivation. The American penal system is one marked by fiscal austerity and Stygian starkness. It is a context where the justifying rhetorics of punishment, shrouded and enmeshed as they are in neo-Christian ideologies, ignore the thorny issues of race, economy and politics that inevitably underpin the realities of penal policy. These rhetorics often obfuscate the dark and painful realities that so many American citizens are subjected to. This may then explain, to some degree, a further aspect of American exceptionalism: a societal embracing of, and a reveling in, the very harshness that destroys the lives of many. The obfuscation positions the convict, who in the United States is cast into such an othered and tainted position, as someone deserving of such inhumane deprivations at the hands of the State. Their fate becomes just, becomes righteous.

Viewing penalty and carcerality in the United States through this particular lens does not mark out Howard's book as especially original. However, it is the manner in which he has chosen to explore this exceptionalism that does. Howard has opted for a comparative approach – reasoning that if you truly want to understand the peculiarities (for they are such) of the penal system in the United States which ruthlessly punishes

those it captures, then you must need compare it to the criminal justice practices of alike juridical/political/societal systems. This is the central premise of the book and of his overall enterprise. It is through direct and matched comparison that the cold realities of justice in the United States, and the constructed lies of a fair and equitable system, are exposed. It is also here that his foremost conclusion, that justice and punishment in the United States are unusually cruel, and his main bias, his personal relationship with said system of penalty, are laid bare.

Howard begins this account by detailing his own brush with the law in the United Kingdom when he was travelling in this country with his ninth grader football (soccer) team in 1985. Here, he and a co-misadventurer got themselves into bother with the police for shoplifting items from a popular music outlet. They received a police caution (i.e. a formal slap on the wrist) and were allowed on their way. Whilst this was the only misdemeanour for which he was caught and punished, his relationship with the criminal (in) justice system of the United States went beyond this after a college friend was wrongfully convicted for murder. Over the years, until his friend's exoneration, he became closely and intimately involved in his friend's case, the law (he took the bar exam) and the vagaries of justice in America.

The introduction is perhaps the clearest and most sophisticated of his chapters as it sets out the core arguments for a comparative lens and the practical problems of doing such. Nevertheless, it provides a sophisticated examination of crime statistics in multiple state jurisdictions – especially the United States, the United Kingdom, France, Germany and Italy. Here, the differences in the systems begin to become stark. For instance, his examination of incarceration rates across countries per 100,000 of their population highlights the issue: whilst the United King (which also over incarcerates its population) rate is about 150, the United States is over 700. This is the same story on every metric that you wish to measure. The simple truth that Howard reveals is that the United States punishes its population, especially certain aspects of its population, more than any other country with an alike juridical system. In highlighting the discrepancies that these metrics reveal, Howard also identifies some of the core assumptions upon which mass incarceration is pinned, particularly the erroneous link between mass incarceration and lowering crime rates. His argumentation here echoes that of others who have gone before him, but Howard makes his claims persuasively and supports his contentions with a wealth of verifiable and publicly available data.

Howard also begins to establish the other elements of American exceptionalism. He notes that one of the contributing factors of the overt, and incontrovertible, harshness of American justice is the incomparably aggressive and militarized nature of policing in the United States. A clear example of this is the sheer lethality of police interventions in the country when compared to other nations. For instance, he notes that in the United Kingdom over a period of 24 years British police had fired their weapons on average 5 times a year and killed 55 people. In fairness, the United Kingdom is somewhat unique in this regard as the standard police officer is not armed. However, even in jurisdictions where they are there is a distinct difference. Take Germany; in 2014, the police had killed 7 people. Canada averages 25 police shooting fatalities per year. However, in the United States police had killed 59 people in the first 24 days of 2015. This aggression, which has an overt racial dimension, extends into all other areas of policing in the United States from stop and frisk to the deceptive tactics utilized in investigations. All of these elements, Howard argues, engender and contribute to the greater criminalization of people than elsewhere and make the United States system of justice an obvious exception to the norm.

This theme then becomes the launch pad for the rest of the book and the foundation of his argument. Once Howard has established the exact nature of United States exceptionalism, he then seeks to explicate the exact causes. From policing and charging decisions, he examines the issues of plea bargaining, sentencing, prison conditions, rehabilitation, parole, and social re-entry in order to highlight how exceptional the United States is and why that is. An example of this is when it comes to sentencing, juveniles and life without possibility of parole. He notes, even with various Supreme Court decisions eroding the use of this sentence, it remains a popular sentence for juveniles that kill. He notes that in the United States 2,500 children have been sentenced to life imprisonment without the possibility of parole, where this is expressly forbidden in other jurisdictions. Even in relation to adults, other jurisdictions rarely if ever sentence people to life without the possibility of parole. The United Kingdom is an exception in Europe – but even here there are less than 60 people serving whole life sentences (Ministry of Justice, 2017) compared to the 50,000 in the United States. Such examples as this mount and mount. In every chapter, Howard laminates his argument with examples until his central conclusion is not only established but you are, somewhat, bludgeoned with his evidence.

The one criticism I have of *Unusually Cruel* is that in his comparative endeavour Howard makes some errors in describing, or simplifies, the complexities and vagaries of the differing crimino-judicial systems that he examines. For instance, when talking about plea-bargaining and court disposals (he notes that 95 percent of cases in United States are resolved through plea bargaining – the practice of which he argues undermines the very ideations of justice it purports to protect) he fails to distinguish between the Magistrate and Crown Court systems in the United Kingdom. This is important because the majority of court disposals occur in the magistrate’s courts where sentencing is limited to a maximum of 12 months imprisonment (Ministry of Justice, 2017). This is not comparable to the United States in terms of the impact of sentences that accrue due to plea bargains. In addition, his figures are occasionally out of date as he is quoting an article by Garoupa and Stephen (2008). Howard states that in the United Kingdom, the rate of plea bargains is 90 percent, but the Ministry of Justice’s (2017) own figures highlight that since 2014 the rate of guilty pleas (which may or may not involve some form of bargaining) has fallen from 70 to 67 percent in 2016. There are a few such errors. Whilst these do not detract from his overall argument, they nevertheless rankle.

However, beyond these minor issues, *Unusually Cruel* definitively achieves its stated aims. It makes a clear case for the punitively charged, focused, obsessed, and inherently cruel criminal justice system that American lawmakers have created and supported. It clearly lays out the differences, at every level, between the United States and its comparators. It clearly makes the case that the United States is exceptional in creating an unusually cruel form of justice. The book itself is well structured, engagingly written, persuasive, well evidenced, well argued and easy to read. Howard has produced an important contribution to the conversation on punishment in general, and the notion of American penal exceptionalism in particular. I would highly recommend *Unusually Cruel* to any academic, any penology student and anyone with an interest in the notion of justice, or injustice – depending on your position – in the United States.

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