

Hyperincarcerated

by Adèle Momméja

**Can journalism advance knowledge in the field of social science?
Two investigations published by the *New York Times* have
highlighted racial inequalities and their links to prison. By contrast,
these rigorous investigations emphasize the lack of knowledge of
this situation in the French context.**

On 4th¹ and 5th² December 2016, the *New York Times* devoted its front page to the publication of a large-scale investigation into racial discrimination in New York State prisons. This survey, conducted by three reporters over a period of more than one and a half years, combined interviews with inmates and analysis of approximately 100 judicial decisions. Published in two parts, the investigation focused on the disciplinary process in prison and the parole process. It highlighted the gross racial inequalities that continue to blight the prison system of a U.S. state that is sometimes held up as an example of a post-racial America that has taken stock of its racist heritage.

The publication of this long-term inquiry is evidence of the increasing interest shown by the American progressive elites over the past few years in the question of racial discrimination in prison. The public success of *The New Jim Crow* and the television series *The Night Of*³, as well as the debates they have sparked, are the most recent examples of how this issue has erupted in the American public sphere. The Black Lives Matter movement, which condemns a spate of black murders by police officers, recently helped to strengthen this discussion by highlighting the fate of racialized minorities in contemporary America.

¹ "The Scourge of Racial Bias in New York State's Prisons" *The New York Times*, Schwirtz Michael, Winerip Michael, Gebeloff Robert, 4 December 2016.

² "For Blacks Facing Parole in New York State, Signs of a Broken System", *The New York Times*, Schwirtz Michael, Winerip Michael, Gebeloff Robert, 5 December 2016.

³ The first condemns an organised system of incarceration for African Americans. The second tells the story of the imprisonment of a student of Pakistani origin who is the victim of a judicial error.

The social sciences have also contributed to this debate by analyzing the functional role of mass incarceration in the perpetuation of ethno-racial inequalities. Several studies have highlighted the *hyperincarceration* of African American men, that is, the targeting of this section of the population by the police and penal system⁴. The *New York Times* investigation provides a useful complement to these sociological studies by studying racial discrimination inside prisons. The reporters provide a practical description of the unequal experience of black inmates, using excerpts from interviews, letters and medical records provided by inmates. They also point out the role of the white local elite in perpetuating a racial order according to its own interests.

The study's originality lies primarily in its combination of quantitative and qualitative methods, which makes it possible to give a practical description of racism in prison and a statistical study of racial discrimination. On the one hand, the field survey conducted in prison visiting rooms reveals the racist violence experienced by black inmates on a daily basis. On the other hand, work carried out on the databases of the prison administration situates this minority experience within a numerical analysis of ethno-racial inequalities.

While the findings of this study cannot really be applied to France – given that they relate to the specific history of the racial question in the United States – this American perspective calls for an empirical re-evaluation of the discussion on the introduction of ethno-racial statistics in France. Beyond any considerations of the merits of a counting system that is contrary to the color-blind principle of the French model of integration⁵, this survey gives an insight into the role these statistics could play in altering people's ordinary perceptions of racial discrimination.

Racist violence and institutional discrimination

“Whether loud and vulgar or insinuated and masked, racial bias in the state prison system is a fact of life. It is also measurable.” This quote from the investigation summarizes the dual perspective of an inquiry that addresses racism as both a form of social interaction and a systemic phenomenon separate from individual intentions. Descriptions of ordinary scenes of prison life expose the racist violence that peppers interactions between prisoners and supervisors:

⁴ Western Bruce, *Punishment and Inequality in America*, New York, Russel Sage Foundation, 2007; Wacquant Loïc, “Class, race and hyperincarceration in revanchist America”, *Dædalus. Journal of the American Academy of Arts and Science*, Summer 2010.

⁵ For a presentation of this controversy, see Sabbagh Daniel, Shanny Peer, « French Color-Blindness in Perspective: The Controversy over ‘Statistiques Ethniques’ », *French Politics, Culture, and Society*, 26 (1), 2008.

The racism can be felt from the moment black inmates enter New York's upstate prisons. They describe being called porch monkeys, spear chuckers and worse. There are cases of guards ripping out dreadlocks.

As well as racist insults, inmates describe the guards' humiliating treatment, such as the "credit card swipe", when officers frisk the prisoners and then swipe their hands aggressively between their buttocks. The part played by race in altercations between inmates and prison guards is not easy to determine, however, since it depends on individual perceptions. While some black inmates play down the role of their skin color in altercations with the guards, others cite it as the main reason for the violence they suffer. Such is the case of a prisoner sentenced to 270 days in solitary confinement for disobeying an officer by helping himself to water outside the common room opening hours. His account of the assault – by seven officers, all white, who handcuffed and then beat him – leaves little doubt that he experienced the altercation as an explicitly racist act: "They took me out there and beat me like I got caught drinking at the whites-only fountain."

The statistical survey has the advantage of observing individual perceptions of racism from a more objective standpoint in order to statistically corroborate perceived discrimination. The data analyzed makes it possible to ascertain that black inmates are punished at significantly higher rates and are sent to solitary confinement more often and for longer periods than white inmates. The figures are an indicator of these inequalities: in the 54 prisons in New York State, black inmates are 30% more likely to get a disciplinary ticket and 65% more likely to be sent to solitary confinement than white inmates.

Racism and territorial disparities: prisons and their surrounding environment

The survey also attempts to re-establish racist violence as part of a wider analysis of the geographical location of prisons. The aim is not to study correctional facilities as microcosms operating in isolation, but rather as institutions whose functioning is linked to the territories that surround them. Most of the prisons are located in the north, east and center of New York State. They are surrounded by poor, rural areas inhabited by predominantly white communities. Racist symbols are all too present in this northern state, which did not inherit a system of legalized segregation like the southern regions of the United States. In these rural landscapes, reporters state that it is not uncommon to see the Confederate flag – a symbol of white supremacists – flying from the back of a pick-up or on the terrace of a pavilion.

Prisons in these areas have employed members of the same families for generations. By providing employment to local populations, they also compensate for the loss of local industries following de-industrialisation. These mines of employment are fiercely protected by the elected representatives of these regions, for whom they guarantee re-election. While

prisons mainly recruit among the white populations of the region, the inmates who are imprisoned there are predominantly blacks and Latinos displaced from the urban areas where they grew up. More than half of the state's inmates are from New York City and its suburbs. The variation in micro and macro approaches thus allows us to grasp the links between these territorial disparities and the violent interactions between staff and prisoners: "So many of the racial problems in New York's prisons stem from a fundamental upstate-downstate culture clash that plays out daily on the cellblocks."

Racial inequalities and ethnic uniformity of staff

The comparative standpoint taken in the survey, which examines several prisons in different areas of the state, makes it possible to identify extreme cases of racial discrimination. The prison with the most blatant inequalities is Clinton, near the Canadian border. Black inmates are four times more likely to be sent to solitary confinement where they are held for an average of 125 days, compared to 90 days for whites. At the other end of the spectrum of racial inequality lies Sing Sing Correctional Facility, which is an exception among state prisons. The data shows that there is no difference in disciplinary treatment between black and white inmates.

The investigation cites the ethnic composition of the supervisory staff as the reason for these disparities. The Clinton jail employs 998 white guards but only one black guard. This racial uniformity among staff creates inequalities between prisoners who are treated differently according to their skin color. Affinities and enmities between staff and inmates are defined along a racial line that the survey helps to make visible. The reporters recount anecdotes that reveal the existence of a white privilege resulting from the ties forged between supervisors and white inmates, who sometimes come from the same region. At Clinton, two white convicts sentenced for murder escaped using tools they obtained after making friends with a guard and an officer, both white. This is a privilege of which black inmates are fully aware, as seen from the term "the complexion for the connection" used by one interviewee.

Sing Sing Correctional Facility, on the other hand, located less than half an hour by train from New York's Grand Central Station, is the only prison in the state with a majority of black guards. The racial diversity of staff does not make interactions between inmates and supervisors less violent, but it does away with any unequal treatment based on skin color. Excerpts from interviews with inmates confirm the specific situation of this prison with regard to racial equality. A black man explains that Sing Sing's guards often come from the same neighborhoods as the inmates, that they "identify with us" and "see things from our perspective." In a letter analyzed by the New York Times, a young black man suffering from psychiatric problems explains to his father the relief of having been moved to this prison: now

close to the place where he grew up, he can tune into his favorite hip-hop radio station in his cell.

“Blaming the Black Inmate”: deconstructing prison ideology

Attempts to objectify racial inequalities in prison are confronted by a powerful ideology denying the role of race in the care of prisoners. The investigation highlights the role of the corrections’ officers unions, which are powerful political organizations in the United States with significant financial resources, in perpetuating this ideology. In Albany, the local prison guards’ union has erected a roadside billboard showing photos of injured supervisors. It condemns manipulation by the media and political organizations that support the cause of violent prisoners.

This political message aims to highlight violence inflicted by prisoners and the threat it can pose to the lives of prison guards. Anecdotes from the field show that some guards are also engaged in an ideological battle against civil rights organizations. The reporters describe their meeting with one inmate in a visiting room where the guards had hung a sign saying *All Lives Matter*, a response to the Black Lives Matter movement condemning the murders of black youths by the police.

When asked to comment on the findings of their investigation, prison officials reiterated this argument of prisoner violence, albeit in a more subtle way. One member of the State Department of Corrections and Community Supervision acknowledged that there were racial issues in any large organization, but claimed these had little impact on the disciplinary system in the prisons. The fact that black inmates are more frequently held in isolation could, he said, be explained by data to which reporters have not had access, particularly inmates’ full record of previous disciplinary offenses. This explanation reflects a recurring argument used by the conservative American right to justify the hyperincarceration of African Americans: if black prisoners are overrepresented in prison it is because they are more violent than the rest of the population.

In order to neutralize this argument, reporters combine a number of methods. The first consists in comparing the prison records of black and white prisoners.

The prison record of a black youth sentenced for theft is compared to that of a white man sentenced for mugging and robbing a woman. The black inmate has a disciplinary record showing one minor infraction and a certificate indicating that he has completed all rehabilitation programs. He has also expressed remorse. The white inmate has a serious criminal record for theft and drug possession, he has not carried out the rehabilitation programs and has not expressed any remorse. The black inmate was sent back to prison

for at least a year while the white inmate was freed, before being re-arrested for robbery shortly after his release from prison.

Given that racism is an “elusive” phenomenon, the reporters focus on providing evidence of differential treatment of black and white inmates. When comparing prison records, they list all the reasons that might explain the black inmate’s continued imprisonment and the white inmate’s release: criminal record, behavior in prison, expression of remorse, and completion of rehabilitation programs. Once all the data examined by the parole board is taken into account, the black inmate appears more likely to be released. Unable to find any rational explanation for parole decisions, journalists call this process “inscrutable”. Although not explicitly presented as such, the color of inmates’ skin – illustrated by the photographs of two inmates accompanying the article – is the only plausible explanation for this difference in treatment.

Another means of objectifying discrimination is to describe the injuries sustained during altercations. Cross-referencing the data reveals inconsistencies between supervisor reports and injuries identified in medical records.

In October 2014, an inmate was stopped by an officer who asked him to remove his glasses, even though he had a medical permit authorizing him to wear them. According to the inmate, a sergeant said to him, “Monkeys don’t wear glasses.” When the inmate refused to take them off, the officer and several guards jumped him. In their internal reports, the officers said the inmate had punched them several times and had to be subdued. After the encounter, the officer had a minor injury, according to the medical report, while the other officers were uninjured. The same report said that the inmate had bruises all over his body, he had trouble walking and his glasses were broken. He was found guilty of assault and spent the next six months in solitary confinement.

Once again, this example shows how rigorous these reporters were in their investigation, which is primarily concerned with producing evidence of discrimination. They provide accounts from both parties involved in the altercation and give details of their respective injuries by examining medical records. They thus highlight “a disturbing pattern” in the reports written by supervisors. While the latter are quick to make out reports for “disobeying orders,” they appear, in light of medical data, to deal out the most blows and receive the fewest.

The reporters use statistical work as their final method of deconstructing the argument of inmate violence as an explanation for unequal treatment. Their survey of parole hearings held from 2013 to 2016 shows that racial discrimination does not apply to violent crimes (murder, rape) for which inmates, whether black or white, are very rarely released. Racial discrimination, on the other hand, is blatant when the persons interviewed are nonviolent offenders, that is, prisoners convicted of second-degree felonies such as theft or burglary.

Database journalism and the power of objectifying racial inequalities

The quantified objectification of racial inequality is the fruit of a long process of gathering, cross-checking and analyzing thousands of pieces of data. The reporters base their work on sixty thousand cases of disciplinary proceedings collected through a Freedom of Information Act (FOIA) application.

Public access and data sensitivity : the transatlantic gap

One explanation for the existence of highly detailed surveys of ethno-racial inequality in the United States relates to the specificities of United States law regarding access to government data. The *New York Times* investigation would not have been possible were it not for the Freedom of Information Act (FOIA). This law, passed in 1966 following a mobilization in Congress and in civil society in favor of greater government transparency, is a central lever of citizens' access to the functioning of public institutions. It gives every citizen, regardless of nationality, the right to access on request documents written by government administrations, provided that they are not protected by special restrictions, particularly regarding matters of national security.

In France, the Commission for Access to Administrative Documents (CADA) was established in 1978 as a response to the same need for transparency of public data. However, the commission does little to further this transparency objective, as it excludes broad areas of public action, including judicial documents.

France also differs from the United States in that it is not possible to access the ethno-racial characteristics of inmates, since the criminal statistics system is not authorized to register such data, which is considered sensitive. Didier Fassin nonetheless emphasizes that it is possible to identify an over-representation of ethnic minorities in prison based on data regarding the countries of birth of inmates' parents and the language spoken at home⁶. The dynamics of ethno-racial differentiation that accompany mass incarceration cannot, however, be analyzed in detail because the data does not extend beyond the third generation of immigrants, who nonetheless may be liable to suffer racial discrimination.

Obtaining these disciplinary reports is, however, only the first step in the reconstruction of racial discrimination. The administration censors certain information that is essential in order to identify racial inequalities. The demographic characteristics of inmates are thus absent from the disciplinary reports provided by the prison authorities. Statistical

⁶ Fassin Didier, *Punir. Une passion contemporaine*, Paris, Seuil, 2017, p. 128.

work has helped to fill this data gap. The quality of this investigative work stems from the fact that one of the three reporters is a specialist in data analysis. He practices database journalism, which uses numbers to quantify and confirm the results established by traditional forms of reporting and has been practiced since the 1960s⁷.

In a methodological annex provided in a hyperlink, this reporter gives the reader access to the databases and method used to exploit them. The cross-checking of disciplinary reports with the list of inmates kept by each prison made it possible to determine the age, ethno-racial characteristics and type of crime committed. A standard statistical method was then used to neutralize any factors that might explain the difference in treatment for black and white inmates. By analyzing the impact of the racial criteria, all other things being equal, the survey was able to eliminate the theory that differences in treatment can be linked to age, violent behavior and the number of previous prison terms.

Beyond popular racism: the responsibility of the white elite

The second *Times* article provides an analysis of the Board of Parole, the commission responsible for deciding whether to release inmates on parole. This analysis gives access to social worlds that exist outside of prison, but which nonetheless have an influence on its functioning. The survey shows that the members of the Board of Parole, nominated by the governor and then confirmed by the Senate, are often generous donors who finance the election campaigns of elected representatives, both Democrats and Republicans. The issue of the ethno-racial representativeness of the board would appear to be of secondary concern in this system of clientelistic nomination. Most of the members of the board are white men from the northern part of the state who have previously had a career in law enforcement. In 2012, the Senate confirmed the appointment of a white woman, five white men and a Hispanic woman, thus validating the composition of a parole board without a single black man.

Studying this system of patronage enables the reporters to move up the chain of responsibility and study the involvement of local white political elites in the persistence of ethno-racial inequalities. Decentering their perspective in this way makes it possible to broaden the analysis beyond poor, white, rural America where most prison guards are from⁸. The practice of naming and shaming also helps to point out the role of the elites in perpetuating inequalities. By identifying the places and people who are involved in this

⁷ Dagiral Eric, Parasie Sylvain, "Portrait du journaliste en programmeur : l'émergence d'une figure du journaliste 'hacker'", *Cahiers du journalisme*, n°22-23, fall 2011.

⁸ This is the same poor, white America that the liberal elite regularly blames for the increase in racism. See Isaac William Martin, "Redneck Blues", *La Vie des idées*, 9 November 2016. URL : <http://www.laviedesidees.fr/Redneck-blues.html>, consulted on 13 January 2016.

clientelistic system, the investigation exposes and jeopardizes their public image. This is particularly true of one Republican senator and former sheriff who is revealed to have backed the appointment of his former deputy sheriff as a parole commissioner. The two men are named and a photo of the senator appears on a full page of the newspaper.

The concern shown for independence and transparency in the production of data, such as the decision to study the role of political elites, illustrates the specificities of the journalism used in this investigation. In its desire to guarantee the egalitarian functioning of American institutions, “watchdog” journalism – as its supporters call it – represents the opposite of “expert journalism”, which denounces popular beliefs without specifying the data that it uses or the political objectives that guide it.

Racial discrimination as an interaction and an institution: American teachings

As several researchers have pointed out, comparison is not always a basis for understanding the phenomenon of racism in France and the United States. The race question has surfaced in these two countries in very different ways and according to time frames that are particular to their respective histories⁹. A number of recent studies have nonetheless identified the convergences that are starting to emerge with regard to inequality before incarceration, as reflected by the hyperincarceration of Muslim men in French prisons reported in several recent studies¹⁰.

The *New York Times* investigation highlights the role played by quantitative data in providing evidence of unequal treatment of populations according to their skin color. More broadly, it is an example of how statistics can be used to situate racist interactions in a quantitative analysis of ethno-racial inequalities. The investigation’s focus on the subjectivity of black inmates in prison also shows that the use of statistics does not necessarily eliminate the experience of racism behind disembodied statistical aggregations.

By contrast, this American perspective highlights the French media’s treatment of the violence suffered by people who belong to racialized minorities and which involves institutional representatives. Such violence is often dealt with as contextual incidents where

⁹ Bourdieu Pierre, Wacquant Loïc, “Sur les ruses de la raison impérialiste”, *Actes de la recherche en sciences sociales*, vol. 121, n°1, 1998.

¹⁰ As Nicolas Duvoux points out (http://www.lemonde.fr/societe/article/2014/06/29/prison-le-contre-exemple-americain_4447501_3224.html), this over-representation of Muslims in French prisons was – symptomatically – highlighted in an article in the American newspaper *The Washington Post*: <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/28/AR2008042802560.html?hpid=topnews&sid=ST2008042802857>.

the versions reported by the parties involved are given equal treatment¹¹. This has important consequences because it individualizes discrimination and prevents it from becoming part of a more general reflection on the state of ethno-racial inequalities in France. It makes discrimination a specific issue for victims but not for society and its institutions¹².

The changes that took place in representations of racism following the adoption of a policy to combat discrimination in the late 1990s¹³ do not seem to have penetrated the French media, which continues to perceive racism as a moral issue, with its culprits and victims, and not as an institution with its anonymous mechanisms. Undoubtedly this French specificity has several possible explanations, relating to the lack of ethno-racial representativeness in the editorial offices of the major newspapers; the more recent emergence of the racial question in France; and the relative impermeability between the social sciences and journalism. The establishment of a system of ethno-racial statistics would in any case be an important first step towards making visible racial discrimination which, in many sectors of French society, still refuses to be named as such.

Further reading

- [Letters from New York State prisons](#)
- [Interactive tool based on recordings of hearings by the New York Board of Parole](#)
- Simon Patrick, “Statistics, French Social Sciences and Ethnic and Racial Social Relations”, *Revue Française de Sociologie*, 51, n°5, July 2010, p. 159-174.
- Stavo-Debaugue Joan, “Prendre position contre les catégories ethniques. Le sens commun constructiviste, une manière de se figurer un danger” in Laborier Pascale, Trom Danny (ed.), *Historicités de l'action publique*, Paris, Presses Universitaires de France, 2003, pp. 11-45.

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¹¹ See, for example, the *Télérama* newspaper's reporting of the “altercation” between students from a Seine-Saint-Denis high school and the staff of the Musée d'Orsay: <http://www.telerama.fr/scenes/musee-d-orsay-un-incident-qui-fait-mauvais-effet,151542.php>.

¹² The term “the Théo affair” (*l'affaire Théo*) used by most press publications to refer to the assault and rape of a young black man during a police check in Aulnay-sous-Bois is indicative of the individualization of the phenomenon of police violence.

¹³ Fassin Didier, “L'invention française de la discrimination”, *Revue française de science politique*, vol. 52, n°4, August 2002, pp. 403-423.

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