PUNISHING THE ‘OTHERS’: CITIZENSHIP AND STATE SOCIAL CONTROL IN THE UNITED STATES AND GERMANY

A Dissertation in

Sociology

by

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Abstract

This dissertation examines the punishment consequences of citizenship status in U.S. and German criminal courts. The conceptual and analytical models of sentencing merge two distinct theoretical traditions – citizenship studies and the sociology of punishment. Utilizing an ideal-type comparison of case outcomes in the United States and Germany – two advanced western democracies with strong rule of law traditions but markedly different conceptions of citizenship and nationhood – this dissertation investigates the sentencing of non-state members using a unique cross-national, mixed-methodological research design. Specifically, data from the U.S. federal courts and German court system from 1998 to 2010 are used to estimate the punishment gap between citizen and noncitizen offenders across a range of statistical analyses. These results are then combined with judge interviews from both countries to identify and explicate the mechanisms linking national membership to punishment considerations.

Two main findings emerge from this analysis. First, citizenship is a powerful predictor of increased punishment in U.S. and German courts. The results indicate that the effect of citizenship on sentencing is equal to or greater in magnitude than factors traditionally stressed in legal inequality research, such as race/ethnicity or gender. Particularly in U.S. federal courts, the evidence is clear that national boundaries are more salient than racial/ethnic distinctions. Second, noncitizens are punished more harshly in both countries despite fundamentally different legal, political, and normative conceptions of citizenship, suggesting that national boundaries are significant in criminal courts even in countries that have distinct definitions of national membership.

The interviews suggest a variety of intervening mechanisms explain these findings. First, a prominent theme emerged that judges in both countries resented that noncitizens would
compound their immigrant status with criminal transgressions and violate their countries hospitality. Second, foreigners lack of social bonds to society affected judges sentencing decisions through a variety of pathways, including defendants’ lack of gainful employment or native language proficiency. In the U.S., some judges also felt their sentencing options were limited because foreign defendants would likely be deported. Third, several judges viewed noncitizens criminality as rooted in cultural practices, and thus a message needed to be sent to other members of the immigrant group. These themes often overlapped, demonstrating an intricate web of relationships that explain the differential legal treatment of non-state members.
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Chapter 1: Introduction – Citizenship and Punishment

As rights have come to be predicated on residency, not citizen status, the distinction between ‘citizen’ and ‘alien’ has eroded.

- Jacobson (1996: 8-9)

In the modern age…all major modes of inclusion and exclusion are bundled together around the principle of national membership.

- Wimmer (2002: 64)

There is considerable debate on the legal relevance of citizenship in an increasingly globalized world. One view holds that as international migration has increased, so too has the diffusion of international norms of ‘personhood’ (Soysal 1994). The result is a new ‘postnational’ citizenship which has made national membership ‘inventively irrelevant’ (Soysal 1997) by challenging the sovereignty of the nation-state as the primary source of rights (Spiro 2008). In doing so, this new ‘postnational’ citizenship has effectively eroded the differences between citizens and aliens under the law (Jacobson 1996). Some question the scope of this thesis, noting that while globalization may make national economies more inclusive to immigrants,\(^1\) citizenship remains an essential and stable feature of modern life (Howard 2008).

As a legal status, citizenship highlights the enduring power of the nation-state in creating laws that shape immigrant integration, including work, rights, and social benefits (Calavita 2005). In addition, while the forces of globalization may have devalued citizenship somewhat, they may have brought about a reverse trend of ‘re-evaluated’ citizenship (Schuck 1998), resulting in new barriers and legal obstacles to immigrants and reaffirming the symbolic, cultural, and political distinctions between citizens and noncitizens (Miller 2003; Menjivar 2006). Others outright...

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\(^1\) To avoid redundancies, I sometimes use the term ‘immigrant,’ ‘foreigner,’ and ‘noncitizen’ interchangeably, though it should be noted that the main focus of this dissertation is citizenship status.
reject that the significance of citizenship has declined, arguing that the boundaries of national membership represent the central axes of exclusion in the modern world (Wimmer 2002).

However, research in this area has focused primarily on analyses of immigration and naturalization policies (Joppke 1999; Howard 2008), the historical development of nation-states (Brubaker 1992) or constitutional legal reviews (Rubio-Marín 2000). As a result, empirical tests of the salience of citizenship under the law are scant, and cross-national comparisons are non-existent. This is a particularly notable omission as one of the most authoritative and symbolic forms of national sovereignty – the power to punish – has dramatically increased in recent decades in both the United States and Europe, particularly against immigrants (Bosworth and Kaufman 2011; van Kalmthout et al 2007). In the past several decades there has been a steep increase in the number of foreigners entangled in coercive state controls. In the U.S., one out of every two offenders sentenced in a federal court lacks U.S. citizenship (USSC 2010) and the population of noncitizens incarcerated in federal prisons increased sixfold between 1985 and 2000. These trends are mirrored in many European countries. In Germany, for example, there were over 20,000 non-German citizens incarcerated or detained in 2005, representing 28 percent of all inmates and nearly 25 percent of all adult prisoners, up from just 6 percent in 1976 (van Kalmthout et al 2007).

Utilizing an ideal-type (Weber 1978) comparison of sentencing outcomes in the United States and Germany – two advanced western democracies with strong rule of law traditions but markedly different conceptions of citizenship and nationhood (Joppke 1999) – this dissertation looks to fill this gap in the citizenship literature by examining the punishment consequences of being an “outsider” of the state. This inquiry is motivated by five central research questions.
First, are citizens and noncitizens treated differently in U.S. and German courts? The extant citizenship literature has failed to consider punishment and its implications for ongoing citizenship debates, and the voluminous punishment literature has largely neglected the role of citizenship status, instead remaining focused on racial/ethnic distinctions. As a result, notable gaps remain in both scholarly areas.

Second, does the treatment of noncitizens differ between the United States and Germany? Modern nation-states and their boundaries of inclusion and exclusion (i.e. citizenship) are grounded in unique historical incarnations and different national self-understandings, each characterized by distinct immigration experiences (Joppke 1999). Despite being two of the largest immigrant destinations, the United States and Germany differ distinctly in their political, cultural, and normative conceptions of state membership and have developed fundamentally different responses to large scale international migration. Comparing the U.S. and Germany thus provides powerful insights into sociological debates on the contemporary importance of citizenship by empirically assessing the salience of national membership in two countries with significantly different conceptions of nationhood.

Third, how do the effects of citizenship status compare to the oft-documented sentencing ‘penalty’ paid by racial/ethnic minorities? Against the backdrop of decades of increased immigration from Latin America, legal inequality research in the U.S. has turned towards the role of Hispanic ethnicity. However, the body of research noting the shifting axes of legal inequality towards Hispanics has largely neglected the role of citizenship status. This is a glaring omission in view of the growing number of non-U.S. citizens and the significant overlap between citizenship and Hispanic ethnicity. This dissertation looks to address a salient question in sociolegal scholarship – how have the axes of legal stratification shifted in the wake of
increasing international migration? While prior work points to the increased salience of ethnic distinctions, this study seeks to broaden the current discourse and conceptualizations of the mechanisms of legal inequality beyond race and ethnicity by clarifying the theoretical linkages between citizenship and criminal court decision making.

Fourth, to the extent that foreigners are punished differently than citizens, did this association change over time? International migration has become a particularly heated social issue in recent decades. While immigration has always had implications for national self-understanding, in the decade following the September 11th attacks the focus of international migration has shifted from demographic, economic, and political concerns to issues of security, terrorism, and international organized crime (Kanstroom 2003; Crawford 2002). These trends might suggest increased punitiveness against immigrants under the law. Yet, during this same period the European Union continued to integrate and Germany sought to liberalize its citizenship policies, perhaps suggesting a weakening of distinctions between citizens and aliens and a countervailing force against the enhanced social control of foreigners. In either event, a focus on the temporal changes in the treatment of immigrants is crucial for testing postnational arguments, which posit a decline in the significance of citizenship over time.

Finally, what are the possible mechanisms that explain any differential legal treatment between citizens and aliens? While I draw from detailed court data in the U.S. and Germany to test whether citizens and noncitizens receive equal treatment under the law, this approach alone cannot capture the social processes that yield disparate treatment, and no research has yet to be undertaken investigating the punishment consequences of citizenship using both statistical and ethnographic methods. This dissertation shines a light on this understudied area of research by combining detailed sentencing information with qualitative interviews with judges in both the
United States and Germany. The goal is to use the ethnographic data to elucidate the mechanisms behind the statistical effects and make the observed results visible in real contexts.

The Agenda

In answering these questions this dissertation has four central aims. First, this study looks to expand the scope of inquiry in citizenship research beyond focusing on the political policies and the judicial constraints involved in migration control (Joppke 1999; Rubio-Marín 2000; Calavita 1992). While the study of these factors is no doubt important for understanding citizenship in contemporary society, they are also limited in important respects. Perhaps most notably, by focusing on abstract legal rights the explanatory scope of previous research cannot speak to the possible gap between ideal and substantive legal equality. That is, while noncitizens are afforded equal legal rights under constitutional doctrines and international conventions, does this correspond to equal treatment under the law. The lack of attention to this possible gap reflects one of the often stated though rarely tested assumptions of the citizenship debates – that noncitizens now enjoy broad social and legal rights on par with those of citizens (Rubio-Marín 2000). Because legal equality is assumed, empirical tests of the consequences of lacking state membership under the law are rare (but see Demuth 2002; Wolfe et al. 2011). Drawing from a long line of sociolegal scholarship examining the degree of legal equality given to socially marginal groups (Sellin 1935; Black 1976), this dissertation questions this assumption. As Glenn (2011: 2-3) states, “social rights are necessary but they are not sufficient or people to enjoy substantive citizenship” and that “one must take into account local practices that recognize or deny standing to certain groups and individuals irrespective of their formal standing under constitutional provisions or statutory law.”
Besides the rather obvious point that questions regarding legal equality should be examined through empirical analyses rather than through political or judicial claims (e.g. the law on the books vs. the law in action), punishment is a conspicuous omission from the citizenship literature given its symbolic implications for national sovereignty. According to Max Weber (1978) and Anthony Giddens (1987), the legitimate exercise of violence and punishment is the defining function of the modern state, and the enforcement of coercion presents the ultimate test of state capacity (Ellermann 2009). Because the monopoly on punishment is one of the defining features of the modern nation-state (Giddens 1987), courts are a suitable – indeed perhaps ideal – venue for assessing whether ‘citizen’ and ‘noncitizen’ remain consequential statuses in contemporary society. This is particularly true since judicial systems have been identified by scholars as crucial in developing ‘postnational’ forms of citizenship by enforcing international human rights laws and norms (Jacobson 1996). In this regard, this dissertation challenges the citizenship field’s general research focus by exploring if and how state membership impacts the severity of punishment for individuals convicted in U.S. and German courts. Through the lens of criminal punishment, and a specific examination of punishment differences by citizenship, the present research informs debates about the role of the nation-state and the institution of citizenship.

The second aim of this dissertation is to include citizenship status alongside other markers of stratification in sociolegal scholarship. Just as the citizenship literature has failed to consider the salience of punishment, the extant punishment literature has elided a sustained focus on citizenship status. This is somewhat surprising given the trends of enhanced social control and increased criminalization of immigrants in recent decades (Welch 2003; Stumpf 2006). Indeed, several scholars suggest that national borders now represent the new criminal justice frontier
(Simon 1998) and that “noncitizens are the next and newest enemy” in the War on Crime and terrorism (Bosworth and Kaufman 2011: 431). Though the analytical focus of recent sentencing research has somewhat shifted in the wake of increased international migration, this field still largely remains in the purview of racial/ethnic relations, for example by focusing on Hispanics or Asians (Steffensmeier and Demuth 2000; Johnson and Betsinger 2009). As international migration increases and non-state members become a growing and permanent presence in U.S. and European societies, this approach may be untenable. Research is needed that looks beyond racial/ethnic legal stratification to capture this new reality.

The paucity of empirical work on citizenship and legal inequality is symptomatic of a more general lack of focus in sociolegal inquiry beyond those markers that traditionally stratify within society. As Bosworth and Kaufman (2011: 430) note, “most sociologists of punishment and imprisonment remain wedded to a nationalist vision of state control, one unaffected by growing transnational flows and mobility.” Though citizenship is not a legally relevant sentencing criterion under U.S. or German law, this dissertation argues for the theoretical and empirical importance of examining criminal punishments for non-state members and seeks to widen the lens of legal stratification research to include citizenship as an emerging axis of inequality.

Third, this dissertation looks to add to the small yet important body of cross-national comparative research in criminology and punishment. Despite recent arguments that “it is with an international comparative approach” to crime and justice that “the greatest gains will be made” (Sampson and Lauritsen 1997: 365), little sociolegal research has examined inequality in international punishment contexts and no study has systematically studied the sanctioning of non-state members across different countries. Through a cross-national examination of the
punishment consequences of state membership, this dissertation takes a step towards filling this gap and towards answering calls from international scholars to incorporate the factors of globalization, national identity, and their countervailing forces into the study of crime, punishment, and social control (Bosworth 2012). In doing so, this study leverages one of the principle strengths of comparative research, testing whether observed relationships are unique to certain social or cultural circumstances, or whether they are ‘etiological universals’ – relationships that are robust across diverse international contexts. In this regard, this study aligns with the view that “[m]ore cross-national and comparative research would greatly broaden knowledge of sentencing and sentencing disparity as related to larger patterns of social stratification” and that “without such research, our understanding of the overlap between criminal sanctions and social inequality will be limited, especially in the global society of the twenty-first century” (Ulmer 2012: 32).

Finally, a broader goal within this dissertation is to situate the study of citizenship within a sociological frame. While others have advanced this agenda in important ways (Brubaker 1992; Glenn 2011), the study of citizenship still largely remains the province of immigration scholars from other academic fields, mainly law and political science. This dissertation seeks to use the lens of criminal punishment to demonstrate the sociological import of citizenship and national membership. In doing so, this research speaks to a number of salient themes germane to sociological inquiry, including group membership, stratification, and social control.

In this vein this study takes guidance from recent prominent calls from within sociology that highlight the unique contributions sociological research brings to the study of citizenship. As Evelyn Glenn stated in her recent Presidential Address to the American Sociological Association "sociology’s special strength may lie in its focus on the social processes by which citizenship
and its boundaries are formed. In particular, sociologists can highlight how citizenship is constructed through face-to-face interactions and through place-specific practices that occur within larger structural contexts” (2011: 2). By using the theoretical and empirical tools from the impressive literature in the sociology of punishment, this dissertation aims to situate the study of citizenship and ongoing citizenship debates within the gamut of sociology by examining the salience of state membership within U.S. and German courts.

The remainder of this introduction briefly lays out the citizenship debates to situate my research within this broader context. It then presents my theoretical expectations regarding citizenship and punishment, justification for my case selections, analytical approach, and the organization of the dissertation and the individual chapters.

The Decline of Citizenship?

Foundational sociological work has augured the waning significance of nation-states and national ties for well over a century. Indeed, Marx, Durkheim, Weber and Parsons all thought “the growing differentiation, rationalization and modernization of society gradually reduced space for ethnic and national sentiments” (Wimmer 2002: 42). In each case, classical social theory saw the foundations of nationalism, the nation-state, and national membership increasingly diminished by the forces of modernity.

In more recent decades, traditional notions of citizenship have been challenged by large-scale trends in international migration, international human rights conventions, and the development of international legal norms. Between 1970 and 2010 the number of international migrants increased from 82 million nearly 214 million. According to some scholars, these trends have undermined the relevance of a nation-state centered notion of citizenship (Bauböck 1994;
Smith and Bakker 2008; also see Bloemraad et al. 2008 for a review). In this spirit, several scholars have conceptualized citizenship as an increasingly borderless status and have identified several trends that ostensibly underscore this development; trends I broadly refer to as part of the ‘postnationalist’ perspective (Soysal 1998).  

The postnationalist perspective implies that forces of globalization have eroded the nation-state as the predominant unit of social organization by shifting power away from national levels and toward transnational levels (Koopmans and Statham 1999). Whereas rights in many Western societies have been traditionally based on citizenship status alone, postnationalists view rights as increasingly determined by residency, and hence the distinction between ‘citizen’ and ‘alien’ under the law has waned (Jacobson 1996). Rather than rights rooted in nation-states, postnationalists argue that noncitizens have obtained legal and social rights in many countries by appealing to universal rights of “personhood” engrained in international human rights. Thus, from the postnationalist perspective, international institutions and universal views on human rights have fundamentally replaced the role of national citizenship as the main source of rights. As summarized by Soysal (1998: 210-11), “in a world within which rights derive their legitimacy from discourses of universalistic personhood, the limits of nationness, or of national citizenship, for that matter, become inventively irrelevant.”

According to a postnationalist perspective, then, there should be few differences in the punishment of citizens relative to noncitizens or between illegal and legal aliens, and any association between citizenship and criminal punishment likely pales in comparison to the oft-documented racial and ethnic disparities in sentencing. Moreover, to the extent that differences

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2 While some characterize these trends as “multicultural” or “transnational” (see Bloemraad et al. 2008 for a discussion), a common thread is the declining role of the nation-centered view of citizenship, and by implication, that citizenship should be decreasingly consequential in several institutional realms, including criminal law.
between citizens and noncitizens exist, the postnationalist perspective suggests these differences should be less consequential over time. This set of ideas should be particularly relevant in the field of law as scholars have argued that the courts – more than any other institution – have been fundamental to the erosion of citizen-alien distinctions (Spiro 2008). Jacobson (1996), for instance, argues that the U.S. judiciary, by acting on international laws and norms to ensure legal equality, has been crucial in developing postnationalist forms of citizenship:

The court’s role is a metaphor for the evolving place of the state in the new world order: the state is now a forum where transnational laws and norms are administered, mediated, and enforced. The courts, through realizing and enforcing international human rights instruments, may have indeed become the midwives of the new world order (Jacobson 1996: 106).

The judiciary has played an equally transformative role in the European Union. As Joppke notes, “worthy to be labeled ‘postnational’ if there ever was justification of the term, EU citizenship in its presently expansive form is entirely the product of court rules” (2010: 164). In Germany too, the courts have played a much more prominent role in eroding the divisions between ‘citizens’ and ‘aliens’ than any political changes. According to Joppke, “in Germany, the legal process is key to explaining the expansiveness and inclusiveness towards foreigners…the political process only caught up with positions that have long been established and determined by the legal process” (1999: 75).

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3 An important example is the landmark decision handed down by the European Court of Justice in September 2001 in Rudy Grzelczyk v. Centre public d’aide sociale d’Ottignies-Louvain-la-Neuve in which the court declared that “Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality.”
While postnationalists posit that a weakening of boundaries between citizens and noncitizens is underway, others challenge this position and instead emphasize the continued relevance of national membership (Calhoun 2007; Wimmer 2002). This ‘nation-centered’ perspective questions the empirical veracity of the postnational claims (Calhoun 2007; Bloemraad et al. 2008), arguing instead that citizenship remains one of the primary units of social organization globally and retains important legal, normative, and symbolic significance (Brubaker 1992; Wimmer 2002; Koopmans and Statham 1999). This perspective emphasizes the dual nature of citizenship as being both “internally inclusive” and “externally exclusive” (Brubaker 1992: 21). Wimmer (2002), in particular, argues that as the rights and privileges of citizenship become more inclusive, the boundaries between members and non-members become more salient and citizenship increasingly becomes a mechanism of stratification. From this nation-centered perspective, citizenship does more than simply confer rights upon individuals; it is also a contested field for redefining the boundaries – real and symbolic – of national identity and a status marker with implications for noncitizen residents of a state (Koopmans and Statham 1999). It follows from this nation-centered perspective that the line between members (citizens) and non-members (noncitizens) remains consequential for determining national identity and distinguishing between ‘insiders’ and ‘outsiders.’ A pressing concern for sociologists is determining the scope and impact of this distinction.

This dissertation examines whether and to what extent national membership affects punishment outcomes. That punishment has remained outside the purview of citizenship studies is surprising given the emphasis on the role of domestic and supra-national courts in postnational arguments. It is also surprising given the punitive turn against immigrants and the stepped-up social control of noncitizens in recent decades. Responding to the perceived link between
international migration and increased crime and drug problems, the United States and Europe have witnessed a blurring of the boundaries between immigration and crime control over the past several decades (Miller 2005; Albrecht 2002). The result has been a punitive turn in migration control, characterized by increased border security, expanding criminal prosecutions for immigration violations, escalations in criminal deportations, and a dramatic increase of immigrants under state social control. As shown in Figure 1.1, the number of noncitizens incarcerated in the U.S. Federal Bureau of Prisons increased from less than 6000 to over 35,000 between 1985 and 2005. Though the U.S. is so often an outlier in the context of punishment, dramatic increases of incarcerated foreigners place the U.S. within a notably broader penal trend (Bosworth and Kaufman 2011). Across Europe, noncitizen prisoners have increased rapidly in recent decades – in both absolute and relative terms (van Kalmthout et al. 2007; Wacquant 1999). Today, there are over 100,000 foreign prisoners in Europe, representing approximately 20 percent of all those incarcerated, well above their share of the general European population. In Germany, the number of incarcerated foreigners went from 4,000 to nearly 13,000 between 1985 and 2005 (see Figure 1.1). Depending on the region, noncitizens are overrepresented in the prisons of Germany ranging from 2.3 to 7.3 times their share of the population (van Kalmthout et al. 2007).

Combined, these trends point to the increasing importance of citizenship for research on sociolegal inequality and highlight an interesting ‘judicial paradox’ regarding the role of the courts and their relationship to migration and citizenship. On the one hand, postnationalists point to the judiciary as the key institution ensuring the legal and social rights of foreigners despite public and political push-back. On the other hand, legal studies suggest the courts have played a

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4 These figures represent the number of adult foreigners serving incarceration sentences in German prisons. Those below age 18 and those who are administratively detained are excluded from these figures.
prominent part in the broader trend of punitive social control of foreigners, resulting in dramatic increases of noncitizens snared in coercive state controls. That different fields view the courts as playing such divergent roles suggests a need for further inquiry into other areas of justice research. This dissertation goes beyond the field of judicial case law which deals with the rights of aliens, and also beyond the political and criminal justice policies that differentially affect immigrants by examining the actual treatment of ‘outsiders’ of the state at criminal punishment. An examination into the treatment of accused criminal foreigners is timely because it speaks directly to ongoing citizenship debates by focusing on the intersection of the two key issues at the heart the ‘judicial paradox:’ on the one hand courts are responsible for ensuring migrant’s rights, while on the other hand they are charged with the protection and security of their citizenry from the criminality of migrants. How these tensions unfold at criminal punishment is the focus of this dissertation. Are we indeed postnational, and by implication does citizenship pale in comparison to the importance of more traditional markers of stratification such as race and ethnicity? Or consistent with a nation-centered perspective, does citizenship have pronounced and increasingly powerful effects with respect to criminal case dispositions?

The Argument

If citizenship is now indeed ‘postnational’ (Soysal 1994) and there are no longer differences between aliens and citizens under the law (Jacobson 1996), we should expect few (if any) sentencing differences between citizens and noncitizens. However, as Bloemraad and colleagues (2008: 160,166) note, “postnational scholars appear to be making a prediction or outlining a normative desire, rather than describing objective conditions,” and that “future research needs to address the gap between philosophy and practice…” This study speaks to this
gap directly by examining the extent to which postnational ideals relate to the reality in U.S. and German courts. However, this dissertation departs considerably from the postnational perspective and instead builds off two related strands of research noting the stratifying function of citizenship (Walzer 1983; Brubaker 1992; Wimmer 2002) and merges these ideas with a central premise in the social control literature – treatment in the legal system is partially dependent on one’s position in the social structure. The first area suggests that citizenship can best be characterized as a mechanism of social closure (Brubaker 1992; Wimmer 2002). By defining membership to the state, citizenship confers a variety of social, economic, legal, and political rights and privileges (Marshall 1964), but only those recognized by the state are able to fully realize these benefits. In this regard, citizenship is inherently an instrument of stratification and exclusion. The second area describes how the boundaries of national membership are drawn. Wimmer (2002) suggests that nation-states determine membership through a process of cultural compromise based on historically grounded conceptions of a common origin. In this view, citizenship is a dividing line between cultural ‘insiders’ and ‘outsiders,’ between the familiar and the foreign.

Viewing citizenship as social closure and cultural compromise has significant implications for the study of sociolegal inequality. As marker of exclusion, it suggests that the line between citizens and noncitizens should be a salient consideration in institutions of state social control. This is because courts are charged with protecting and enforcing ‘state interests.’ State interests, however, are framed and shaped by the cultural conceptions of nationhood (Brubaker 1992), suggesting that courts will be more punitive against the criminality of non-members since noncitizens implicitly stand outside that normative cultural boundaries of the nation. It also suggests citizenship will be a salient measure of cultural distance, even more so
than race or ethnicity and other factors that have historically stratified individuals within the
nation-state. Bridging these ideas with theoretical work suggesting punitive consequences for
socially and culturally marginal members of society brought before the law (Black 1976), I argue
that those classified as noncitizens – literal ‘outsiders’ to the state – are inherently on the
periphery of society by virtue of their precarious position resulting from their lack of
membership, and thus will be punished more severely than their citizen counterparts.

Combining theoretical work on citizenship as a mechanism of stratification and an
outcome of cultural compromise with sociolegal research on inequality and cultural distance in
legal institutions provides a framework to hypothesize the punishment consequences of lacking
state membership. While I describe more detailed hypotheses in Chapter 3, it is important to note
that this theoretical framework does not rely on any single conception of citizenship in predicting
harsher penalties for noncitizens. That is, this framework suggests non-state members will be
punished more harshly regardless of the distinct historical incarnations of nationhood and
citizenship. It is precisely for this reason that I test this argument in two countries that have
markedly different conceptions of both.

**Case Selection**

The United States and Germany lend themselves to fruitful comparison for several
reasons. First, they are both home to large numbers of diverse international migrant groups.
Indeed, the United States is the largest immigrant destination in the world with nearly 40 million
foreign born residents in 2010 representing 13 percent of the total population (Grieco et al.
2012), and Germany is the third largest with 9.8 million foreign born individuals (12 percent of
the population) (Eurostat 2012). Second, both countries are Western and industrialized, with
capitalist economies, democratic governments, and strong rule of law traditions and constitutional protections for citizens and noncitizens under the law (Savelsburg 1994; Rubio-Marín 2000). Yet, they differ distinctly in their normative definitions of citizenship and nationhood and have developed markedly different responses to large influxes of immigrants. The United States represents the ideal typical case of a *jus soli* (right of soil) citizenship regime. The historical conception of the U.S. as a ‘nation of immigrants’ has negated a purely ethnic form of nationhood and has allowed the U.S. to remain relatively inclusive to international migrants.

In contrast, Germany is one of the only advanced nations with a long-standing tradition of citizenship by ethnic descent (*jus sanguinis*) and has stuck to the maxim that Germany is “not a country of immigration” (*kein Einwanderungsland*) for much of the 20th century (Brubaker 1992). While recent changes have loosened the strict descent rules for citizenship (Joppke 1999), the cultural idioms (Brubaker 1992) that conceive of Germany as an ethno-cultural nation still factor prominently in German society, drawing stark boundaries between Germans and non-Germans. As Brubaker notes, “the *kein Einwanderungsland* claim articulates not a social or demographic fact but a political-cultural norm, an element of national self-understanding” (1992: 174). This is evidenced by Germany’s history of remarkably inclusive naturalization policies towards ethnic Germans from the former Soviet Union, juxtaposed with the extraordinary barriers towards inclusion for non-German immigrants.

While recent national policies have moved Germany slowly towards a more territorial form of citizenship (*jus soli*), there are still stark differences in how Germany and the U.S. conceive nationhood that allow meaningful comparisons. In fact, recent citizenship research has gained considerable analytical leverage by comparing the immigration and deportation policies,
constitutional regimes, and political debates of the United States and Germany based on these distinctions (Joppke 1999; Ellerman 2009; Rubio-Marín 2000). Comparing the U.S. and Germany provides powerful insights into the citizenship debates by empirically assessing the salience of national membership in two countries with markedly different conceptions of nationhood. If noncitizens receive more severe sanctioning in both countries, as I predict, this provides strong evidence of the continuing significance of citizenship in the modern world and a substantial counterargument to the ‘postnational’ view by demonstrating that ‘outsider’ status remains consequential even in countries that define ‘outsider’ in qualitatively different ways.

**Analytical Approach**

The central question of this dissertation asks whether noncitizen offenders receive more severe punishment compared to similarly situated citizens in U.S. and German courts. To answer this question I draw from detailed court information in both countries from 2009-2010 for the primary analysis and data from 1998 to 2010 to examine the trends over time in the treatment of non-state members. The U.S. data comes from the U.S. Sentencing Commission’s (USSC) data files on U.S. Federal Courts. As one of the largest systems of formal social control in the United States, the decisions made with respect to incarceration and sentence length are both consequential to individuals and theoretically telling. In all, the federal system incarcerates nearly 210,000 offenders, over 35,000 more than any state system (Guerino et al. 2011). Moreover, the federal system often exerts both direct and indirect influences on the administration of justice at state and local levels through its visibility and legal prominence coupled with its symbolic representation of national criminal justice policy (Johnson et al. 2008).
The German data comes from the *Strafverfolgungsstatistik* (Prosecution Statistics) data series provided by the German Federal Statistical Office (Statistisches Bundesamt). Germany has no direct parallel to the state-federal distinction in the United States, so this data covers all German prosecutions throughout the country. In both countries courts are required to report on all offenders adjudicated in their district, which obviates concerns regarding the generalizability of results. Each dataset provides detailed information on both the offense and legal characteristics associated with a crime as well as additional offender characteristics. These detailed measures allow for an extensive and comprehensive set of controls to assess whether and how citizenship affects sentencing outcomes in both countries.

While these data provide a powerful test of the salience of citizenship at criminal sentencing, they offer limited information on the mechanisms driving the observed effects. Despite prominent calls for punishment research to incorporate ethnographic methods (Spohn 2000; Ulmer 2012), qualitative studies of sentencing decisions are comparatively rare, and qualitative analyses investigating citizenship in a cross-national comparison has not yet been undertaken. This dissertation goes well beyond extant research by combining quantitative statistical analyses of court information with qualitative interview data from judges in both the United States and Germany to identify and explicate the underlying processes linking issues of national membership to punishment concerns. Taking guidance from the symbolic interactionist tradition of using statistical data to guide in-depth research into social processes (Blumer 1956), I look to situate the sentencing findings in proper context by providing a thick description (Geertz 1973) of how judges view the criminality and punishment of noncitizen offenders.
Overview and Logic of Dissertation

This dissertation builds off prior research in two distinct fields – citizenship studies and the sociology of punishment. Chapter 2 develops the theoretical linkages between these two traditions, drawing attention to the theoretical literature in sociology that suggests punishment is an important indicator for understanding state sovereignty, cultural boundaries, and group membership – three themes at the core of citizenship debates. Chapter 3 further merges the citizenship and punishment literatures by highlighting the exclusionary aspects of national membership and linking these ideas with theories of law and social control that emphasize the detriments of being on the social periphery of society.

The data and methods are then presented in Chapter 4. I first discuss the basic structure of the court data in both countries, and then present the focal independent and dependent variables. Next I detail the empirical methods and rationale for each approach, placing particular emphasis on the strengths of combining quantitative statistical analyses with in-depth ethnographic interviews. The analytical goal of this mixed-methodological approach is to offset the disadvantages of any single method and to derive a more complete set of results to help understand the causal process underlying the statistical effects. The chapter concludes with a description of the selection of the judges, the interview protocols, and ethnographic analysis.

Chapters 5 and 6 then present the results from the data analysis from the United States (Ch. 5) and Germany (Ch. 6). Working from basic association models to multivariate regression, the results present a clear and consistent picture of the relationship between citizenship and punishment. Using multiple analytic procedures and across a variety of alternative analyses, the results show that lacking state membership in U.S. and German courts is a powerful determinant
of increased punishment. Over the past decade though, this effect has lessened in Germany but increased somewhat in the United States.

Chapter 7 uses excerpts from judge interviews in the United States and Germany to make the legal disparities observed in Chapters 5 and 6 visible in judicial decision-making. The interviews revealed several distinct yet overlapping themes that help unpack the social processes that produce the association between citizenship and punishment. This chapter concludes with a discussion of the similarities and differences between the interview findings and extant theoretical accounts in the punishment literature.

The final chapter (Ch. 8) discusses the sociological implications of this body of research. With over 200 million international migrants in the world today and the prison systems of many countries, including the United States and Germany, increasingly being filled by non-state members, the implications of this research are considerable. In regards to ongoing citizenship debates, it calls for a more concerted emphasis on the degree of substantive legal equality afforded to non-state members, and suggests that claims that citizenship is ‘irrelevant’ under the law are premature. For the study of law and society, the results from this dissertation place citizenship firmly within the scholarship on punishment and inequality, thus expanding the discourse on contemporary legal stratification and placing citizenship alongside other markers of inequality.
Figure 1.1: Number of Noncitizens Incarcerated in U.S. Federal Prisons (Panel A) and German Prisons (Panel B), 1985-2005

A. U.S. Federal Prisons

B. German Prisons

Source: Authors compilation from Sourcebook of Criminal Justice Statistics (United States) and Bundesamt für Statistik: Strafvollzugsstatistik 1976-2005 (Germany)
Chapter 2: Understanding Citizenship through Punishment

This chapter is dedicated to developing the theoretical linkages between punishment, citizenship, and the state. Though the substance and focus of ongoing citizenship debates has varied, at the heart of these debates is a basic question: is citizenship still relevant today? While stated simply, beneath the surface of this question are broad and complex legal, political, economic, normative, and symbolic factors that interact, intersect, and often contradict each other. For this reason, defining what citizenship is and what it entails is crucial for understanding how state punishment can inform the relevance of citizenship in contemporary society.

On the most basic level citizenship is a legal category that bestows upon individuals formal membership in a ‘national political community’ (Bendix 1977). Access to this community is regulated and determined entirely by the nationality laws dictated by the state. As such, citizenship is directly implicated with state sovereignty – final control over a bounded territory and population. As Joppke notes (1999: 9), “sovereignty and citizenship are two generic principles of the modern nation-state,” ones rooted in determining the boundaries of state membership. Thus, citizenship determines who has access to the state, and also the obligations that individuals and state owe each other.

For this reason, citizenship necessarily implies who is excluded from national membership. In other words, there is a dualism implicit in the boundaries of the national community. Brubaker was the first to capture this dualism in sociological terms. Borrowing from Max Weber, Brubaker argued that citizenship is a powerful mechanism of social closure in that it is at the same time ‘internally inclusive’ and ‘externally exclusive’ (1992: 21). Describing this dualism in the context of the French revolution, Brubaker argues that the division between ‘citizens’ and ‘foreigners’ is inherent in the logic of the nation-state:
A nation-state is a nation’s state, the state of and for a particular, bounded, sovereign nation, to which foreigners, by definition, do not belong. Legally homogenous internally, it is by virtue of this very fact more sharply bounded externally than an internally heterogeneous state such as pre-Revolutionary France. By inventing the national citizen and the legally homogeneous national citizenry, the Revolution simultaneously invented the foreigner. Henceforth citizen and foreigner would be correlative, mutually exclusive, exhaustive categories (1992: 46).

Thus, according to this perspective citizenship is a group membership separating ‘insiders’ from ‘outsiders,’ but this distinction goes well beyond simple legal definitions. Citizenship is also an identity, one that is dependent upon but also reinforces shared values and understandings of a common culture. In this respect, citizenship is not just state membership but ‘nation membership,’ in which the political community is ‘simultaneously a cultural community, a community of language, mores, or belief’ (Brubaker 1989: 4). According to Wimmer (2002), the modern principles of national exclusion and social closure are inherently connected to cultural self-understandings. Specifically, he argues that the boundaries of national membership are determined through cultural compromise which can be understood as a consensus over the validity of collective norms, social classifications, and worldview patterns which separate the homogenous domestic realm of the nation-state (i.e. the collective “us”) from the heterogeneous external one (the collective “them”).

Taken together, extant research suggests that questions concerning the salience of citizenship are inextricably connected to questions regarding three essential elements of nation-states – (1) state sovereignty, (2) cultural understanding, and (3) group membership. In the following sections I argue that punishment has important theoretical and empirical implications
for each of these elements, and thus is an important lens through which the citizenship debates can be viewed and analyzed.

**Punishment and Sovereignty**

The link between state violence and state sovereignty features prominently in classical sociological accounts of the nation-state. For Weber, the legitimate exercise of violence was the *sine qua non* of the modern state (Weber 1978; Ellerman 2009). More precisely, Weber’s definition of the ‘state’ involved three central elements: (1) the existence of a regularized administration capable of (2) sustaining the claim to the legitimate monopoly of control of the means of violence and (3) to maintain that monopoly within a given territory (Giddens 1987: 18).

Giddens (1987) makes this argument even more forcefully, but offers an important qualification to Weber’s general approach. Like Weber, Giddens argues that the nation-state is inherently associated with the control of the means of violence in which the administrative order relates to defined territorial boundaries, but suggests that Weber’s conception gives too little weight to the differences between traditional and modern states in the same institutions he singles out as defining the modern nation-state – the administrative monopolization of violence. While traditional societies often claimed control over the means of violence, only in modern states, Giddens argues, can the state apparatus generally lay *successful* claim to the monopoly of violence, and this was accomplished primarily *through the law*. For this reason, Giddens offers the following modified definition of the modern ‘state:’ “the nation-state, which exists in a complex of other nation-states is a set of institutional forms of governance maintaining an administrative monopoly over a territory with demarcated boundaries (borders), its rule being
sanctioned *by law* and direct control of the means of internal and external violence” (emphasis added, 1987: 121).

Because Giddens argues the legal order is the administrative apparatus that has successfully monopolized and centralized violence in the modern state, it is not surprising that he places considerable emphasis on the role of legal sanctioning and punishment in the expansion and continuation of state sovereignty. As he puts it, “the creation of a perceived ‘law and order’ is the reverse side of the emergence of conceptions of ‘deviance’ recognized and categorized by the central authorities and by professional specialists. These are intrinsic to the expansion of the administrative reach of the state, penetrating day-to-day activities – and to the achievement of an effective monopoly of violence in the hands of the state authorities” (Giddens 1987: 184). The link between modern day sanctioning and modern day ‘states can be observed in the shift from states’ occasional symbolic acts of violence, such has public executions, to the pervasive use of legal administrative power in sustaining state rule. Whereas the maintenance sovereign authority in traditional societies was concerned primarily with only local control combined with the possibility of armed conflict, in the modern nation-state the police and the prison have largely replaced both of these influences. In this light, punishment can be viewed as a social necessity in contemporary society in that a significant failure to punish can undermine the sovereignty and authority of the state (Garland 1990).

From this perspective, the enforcement of laws and declarations of criminal punishment are the most significant expressions of the state, which on the one hand have effectively monopolized violence while on the other legitimately uses violence to maintain social, political, and economic order (Albrecht 2007: 303). Punishment thus speaks directly to state sovereignty and social control, partially because it defines the boundaries of acceptable and unacceptable
behavior, but also because it has more grave implications for individual rights and freedoms than other state entities – literally depriving people of liberty and in some cases life. And it is important to note that this is not a marginal activity – one confined to only those who receive sanctions. But rather, penalty – which refers to the “network of laws, processes, discourses, representations, and institutions which make up the penal realm” – is the literal embodiment of the law, acting as the authoritative voice of society and portraying a specific relationship between the ‘state’ and the individual (Garland 1990: 17). As Garland explains, “Implicit within every penal relation and every exercise of penal power there is a conception of social authority, of the (criminal) person, and of the nature of the community of social order that punishment protects and tries to recreate.” For this reason “the exercise of punishment is one of many ceremonies in which the distance between sovereign and subject is measured and the ascendancy of authority revealed” (Garland 1990: 265-66).

In summary, punishment is an important institution through which broader conceptions of sovereignty, order, and ultimately – citizenship – can be understood. Punishment and state social control define the relationship between individual rights and government power and social authority, between punisher and punished, and between authority and ‘deviant.’ It also characterizes the basic social relationship and the mutual obligations between sovereign and subject. However, penalty should not be viewed as simply reflecting these relationships. Rather, punishment projects and recreates state authority through routine penal practices. In doing so, punishment both generates and maintains the social relations it is designed to express (Garland 1990).

If punishment provides a framework and institutional setting for understanding state sovereignty and the relationship between individuals and the state, then the punishment of non-
state members offers a lens through which to study the relationship between states and those who fall outside ‘the people’ that define the boundaries of the sovereign. In both cases – defining who is a member of the state and enforcing penal sanctions – nation-states have complete monopolization and sovereign authority. And understanding how states enforce the physical boundaries of their territory, the cultural boundaries of their membership, and punish those who fall outside these boundaries has important implications for understanding modern day sovereignty and whether citizenship remains consequential in contemporary society.

**Punishment and Culture**

If punishment informs our understanding of state sovereignty, it follows that it also speaks to the cultural underpinnings and self-understandings that separate ‘the people’ of one sovereign from another. As described above, citizenship conveys far more than legal status – it is a normative boundary signifying cultural divides between those who are ‘members’ to the national community and those who are not. In this regard, culture can be understood as the shared understanding of collective norms, frameworks of meaning, value systems, and ‘sensibilities’ which are derived through a process of negotiated meaning and compromises, which in turn leads to social closure and corresponding cultural boundaries (Wimmer 2002: 34). This is the process Wimmer (2002) describes as ‘cultural compromise,’ and in this section I detail the how these socially constructed cultural ‘sensibilities’ and patterns influence penal institutions and practices, and thus serve to embody and express society’s cultural forms simultaneously (Garland 1990).

The links between punishment and culture have received only limited attention in extant research. Instead, scholars have focused more on the material, instrumental, or political dynamics
said to be shaping penal discourse and practices. While these factors no doubt influence punishment, the focus of much of this prior work, both empirically and theoretically, is needlessly narrow. As Garland explains:

Even if one wishes to argue that economic or political interests form the basic determinants of penal policy, these ‘interests’ must necessarily operate through the medium of the laws, institutional languages, and penal categories which frame penal actions and organize their operation. Punishment, then, can be viewed as a complex cultural artifact, encoding signs and symbols of the wider culture in its own practices. As such it forms one local element within the interlocking circuits of meaning which compose a society’s cultural framework and can be analyzed to trace its patterns of cultural expression (1990: 198-99).

This is not to claim that cultural meaning takes precedence over economic, political, or other factors that influence punishment, but simply that punishment is shaped by symbolic cultural practices while at the same time influenced by structural dynamics. In reality the two always coexist – punishment takes place within a defined penal culture which is made meaningful by broader cultural patterns and practices. These are in turn, rooted in society’s material life and structural forces. However, it is important not to place too much emphasis on punishment as merely an expression of cultural sentiment. Rather, punishment should be properly viewed as a dialectic institution – one influenced by broad patterns of cultural meaning but also where “punishment and penal institutions help shape the overarching culture and contribute to the generation and regeneration of its terms” (Garland 1990: 249).

But in which areas of punishment should cultural expression be observed? Prior research has tended to focus on occasional public pronouncements of crime and punishment from the
media, court opinions, or in the political realm to view the cultural reflections of punishment, but this focus misses the routines that make up the day-to-day practices of penal institutions which are guided by and reflect the cultural foundations of punishment. To properly understand the cultural messages punishment conveys “we need to study not just the grandiloquent public statements which are occasionally made but also the pragmatic repetitive routines of daily practice, for these routines contain within them distinctive patterns of meaning and symbolic forms which are enacted and expressed every time a particular procedure is adopted, a technical language used, or a specific sanction imposed” (Garland 1990: 255).

Thus, this dissertation’s focus on patterns of differential punishment between citizens and noncitizens that occur on a daily basis and are repeated over a number of years is a fitting venue for understanding not only penal culture, but cultural patterns more generally. If punishment conveys cultural messages that are based on and reinforce cultural sensibilities, it should speak to the cultural divide that exists between ‘insiders’ and ‘outsider’ of the state. At every stage in the penal process cultural understandings of what noncitizens are like, and how they ought to behave, operate to define the appropriate response to their misconduct and to structure the punishment of those who lack membership to the national community. If conceptions of culture are inherently linked to cultural boundary making (e.g. conceptions of ‘us’ and ‘them’), these sensibilities will be reflected in penal practices and punishment outcomes. Viewed in this way, punishment can be useful for gauging cultural distance between citizens and noncitizens. The extent to which cultural understandings between those who belong to the ‘state’ and those who do not frame appropriate punishment responses, as I suspect they do, this divide should be evident in differential punishment practices and how judges view the criminality of citizens and noncitizens.
Punishment and Group Membership

This section describes the theoretical linkages between legal sanctioning, social solidarity, and group membership. Foundational sociological work holds that punishment plays a pivotal role in enforcing and reinforcing the bonds of social solidarity that define community membership. This perspective features most prominently in the work of Emile Durkheim who argued that penal sanctioning represented a tangible example of the ‘collective conscience.’

According to Durkheim, criminality draws forth the punitive expressions of moral outrage that define the collective because crime brings together and concentrates upright and ‘healthy’ consciences. Thus, punishment ‘serves an occasion for the collective expression of shared moral passions, and this collective expression serves to strengthen these same passions through mutual reinforcement and reassurance’ (Garland 1990: 33). For Durkheim, the sanctioning of ‘deviants’ is sociologically important not because it attempts to rehabilitate current criminals or deter future criminality, but because it plays a critical role in reaffirming and strengthening the social bonds of society. In his words:

Although [punishment] proceeds from a quite mechanical reaction, from movements which are passionate and in great part non-reflective, it does play a useful role. Only this role is not where we ordinarily look for it. It does not serve, or else only serves quite secondarily, in correcting the culpable or in intimidating possible followers. From this point of view its efficacy is justly doubtful and, in any case, mediocre. Its true function is to maintain social cohesion intact, while maintaining all its vitality in the common conscience (Durkheim 1984: 108).

5 Durkheim discusses the theoretical import of punishment for sociological analysis in three major texts: The Division of Labor (1984); ‘Two Laws of Penal Evolution’ (1902), and; Moral Education (1973).
Though Durkheim’s rather simplistic ‘functional’ account of punishment has been shown to be deficient in several regards (see Garland 1990: Ch. 3), his view of legal sanctioning as an expression of group sentiment has played a major role in subsequent theoretical work in the sociology of punishment.

For example, Kai Erikson’s seminal study of the ways in which criminal law and punishment were used to establish the boundaries of social order and group identity among the Puritan settlements in Massachusetts draws heavily from Durkheimian themes (also see Jensen 2006). In developing the theoretical ties between penal sanctions and group membership Erikson explains that “the interactions which do the most effective job of locating and publicizing the group’s outer edges would seem to be those which take place between deviant persons on the one side and official agents of the community on the other. The deviant is a person whose activities have moved outside the margins of the group, and when the community calls him to account for that vagrancy it is making a statement about the nature and placement of its boundaries” (1966: 10-11).

Theoretical work from social psychology also suggests that Durkheim’s views on the emotional aspects of punishment are important for defining and reaffirming group boundaries. George Herbert Mead perhaps best captured this in his analysis in “The Psychology of Punitive Justice” when he declares “seemingly without the criminal, the cohesiveness of society would disappear” (1918: 592). However, whereas Durkheim focused largely on the functional aspects of punishment for society as a whole, Mead discusses the emotional and psychological responses invoked among individuals which reinforce their group identification. According to Mead, the individual’s aggressions against the ‘outsider’ are provoked and their identification with the ingroup is reinforced by participating in the emotional defense of society’s interests against

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criminal transgressions. As he puts it, “the revulsions against criminality reveal themselves in a sense of solidarity with the group, a sense of being a citizen” (emphasis added, Mead 1918: 586).

This dissertation takes guidance from the sociology of punishment work of Durkheim, Mead, and others, and asks what it means when communities (or nation-states) punish those whom already lie outside the boundaries of the group (e.g. noncitizens)? How does the punishment of ‘outsiders’ speak to the boundary separating state and non-state members, and what role (if any) does it play in reaffirming the already existing social boundary between citizens and noncitizens? Though little sociolegal research has focused on the issue of citizenship, a substantial amount of research has investigated the differential application of the criminal justice system against other socially marginal groups, particularly racial and ethnic minorities. This body of research provides an important frame in which to situate the current study’s focus and also offers significant lessons on the difference between legal ideals and legal reality central to the motivation for this dissertation.

**Previous Research: Group Boundaries and the Criminal Justice System**

The study of racial and ethnic influences on legal and criminal justice decision making has been a major enterprise in sociology, law, and criminology. To highlight this attention, Rosich (2007) cites over 1200 sources (including books, articles, and reports) that have been published on racial/ethnic inequality under U.S. law, most of this research conducted over the past 30 to 40 years. This emphasis is paralleled in many European countries as well, where dramatic increases in international migration during the second half of the 20th century focused

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7 Because this select bibliography focused mainly on social science sources, this is almost certainly a conservative estimate. For example, the Web of Science database returns nearly 2700 results when I search the words “law” and “race.”
attention among international scholars on the legal treatment of minorities in increasingly heterogeneous societies (see Tonry 1997; Tonry and Frase 2001).

This focus reflects the significance of the laws’ purported role in upholding equality and promoting the state’s legitimacy as fair and neutral. Whether the criminal justice system discriminates on the basis of racial or ethnic group membership also adjoins larger substantive, political, and policy concerns. Substantively, because race and ethnicity stratify society, racial/ethnic bias under the law encompasses broader concerns within social stratification and inequality (Ferree and Hall 1996). Politically, legal inequality based on discriminatory factors threatens the heart of the legal system – the symbolism of equality before the law (Hagan 1987). Legal stratification has also taken on added public policy significance in recent decades as evidence mounts that mass incarceration of racial and ethnic minorities plays a principle role in broader trends of racial/ethnic stratification in areas such as employment, political participation, and health (see Wakefield and Uggen 2010 for a review for the United States, and Wacquant 1999 for a European perspective).

Though legal inequality research has focused on a variety of different aspects of justice, including differential policing, arrests, and charging (among others), research on criminal sentencing has generated the greatest interests among those studying racial/ethnic disparities (Sampson and Lauritsen 1997). Indeed, racial discrimination in the criminal justice system dates back to the turn of the century and the work of Thorsten Sellin, who famously concluded that equality before the law is a social fiction (Sellin 1935). Since that time, the field has witnessed numerous theoretical and methodological improvements. Rather than asking simply whether race mattered at criminal punishment, researchers began addressing the question in a more sophisticated way by including more legally relevant controls and investigating the indirect,
interactive and contextual influences that condition the relationship between race and sentencing. For example, Peterson and Hagan (1984) examined whether the punishment of black drug dealers relative to whites depended on their status in the drug hierarchy and found that while low level black drug dealers received more lenient treatment, black drug ‘kingpins’ were sentenced more harshly than their white counterparts. In a similar vein, Steffensmeier and colleagues (1998) looked at the interaction between race and other offender attributes and found that young, black males were most at risk of severe sanctioning compared to other groups (see also Doerner and Demuth 2009). Most recently, research has begun looking at how various court contextual measures condition racial disparities at sentencing (Ulmer 2012). King and colleagues (2010), for example, recently investigated the role of the demographic make-up of the local legal profession and found that racial disparities waned with increasing racial diversity in the bar (see also Ward at el. 2009).

Despite some inconsistencies in this body of research, the weight of the evidence suggests black offenders are disadvantaged at sentencing relative to similarly situated whites, though the effect of race is “often subtle, indirect, and typically small relative to legal considerations” such as criminal history and crime severity (Johnson and Betsinger 2009: 1048; see Mitchell 2005 for a recent meta-analysis). This pattern of disadvantage is generally consistent in Germany also, where evidence suggests that ethnic minorities are slightly more likely to receive a prison sentence upon conviction (Albrecht 1997).

While the purview of scholarship in the U.S. has historically been limited to the dichotomy between blacks and whites, more recent research argues for a concerted emphasis on Hispanic ethnicity for understanding contemporary legal stratification (Steffensmeier and
Demuth 2000, 2001; Spohn 2000). This turn towards Hispanic ethnicity in legal inequality research occurred against the backdrop of decades of increased immigration from Latin America.

Drawing from the minority threat perspective (Blalock 1967), this trend plays a prominent role in contemporary theoretical accounts of criminal punishment (Feldmeyer and Ulmer 2011). According to Steffensmeier and Demuth (2000: 710), “the specific social and historical context involving Hispanic Americans, particularly their recent high levels of immigration, exacerbates perceptions of their cultural dissimilarity and the ‘threat’ they pose” which in turn “contribute[s] to their harsher treatment in criminal courts.” Using data from U.S. federal courts, the authors show that Hispanics receive more severe punishment than both white and black defendants. Subsequent research from both state and federal courts suggest that Hispanic offenders are punished more severely than whites (Albonetti 1997; LaFree 1985), and may even have replaced African Americans as the most disadvantaged group at sentencing (Steffensmeier and Demuth 2000, 2001; Doerner and Demuth 2009).

Though rarely discussed in such terms, the research on racial/ethnic legal inequality is highly relevant to the idea of substantive citizenship and societal participation that are central to ongoing citizenship debates. Like racial/ethnic minorities, noncitizens in the United States and Germany are guaranteed equal protection of the law (Rubio-Marín 2000). That is, there is no distinction between citizens and noncitizens rights when it comes to criminal punishment, just as there is no legal basis to discriminate against racial/ethnic minorities. However, the voluminous literature documenting minority legal inequality clearly demonstrates that there is often a substantively meaningful gap between the ‘law on the books’ and the ‘law in action’ that works to the detriment of socially marginal groups. Thus, the research on race, ethnicity, and legal
inequality offers an important lesson for the field of citizenship studies – focusing only on legal rights is a myopic strategy for adjudicating questions on the significance of citizenship.

Against the backdrop of this large body research in both the United States and Europe on the punishment consequences for minorities, it is rather surprising that citizenship scholars have paid scant attention to the issue substantive legal equality. This is especially the case given the implications of state sanctioning for sovereignty, cultural sensibilities, and group membership identified in prior theoretical and empirical research. Similarly, given the emphasis on group membership in prior sentencing research, it is surprising that noncitizens have not garnered more attention among punishment scholars as international migration has increased.

Indeed, work emphasizing the importance of Hispanic ethnicity has paid little or no attention to the role of citizenship, a significant omission given that 26 percent of all Hispanics in the U.S. today lack U.S. citizenship. In state court studies, this is partially a reflection of data limitations as information on defendant citizenship is rarely if ever collected. In federal courts, however, this information is readily available but rarely utilized. Steffensmeier and Demuth (2000) and Doerner and Demuth (2009) for instance, simply remove noncitizens from their analyses. This is somewhat surprising as four out of every five Hispanics punished in U.S. federal courts between 1992 and 2009 lacked U.S. citizenship and half of all federal offenders today are non-U.S. citizens (USSC 2010). If noncitizens are punished more harshly than U.S. citizens, this raises the interesting possibility that due to the strong overlap between Hispanic ethnicity and citizenship status, the Hispanic ‘penalty’ may be overstated in state court studies and incomplete in federal court research. For example, Steffensmeier and Demuth (2001) found

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8 Author’s calculation from 2010 American Community Survey estimates.

9 Logue (2009) takes the opposite approach. Her investigation looked at Mexicans compared to non-Mexican Latinos in federal courts but limited the analysis to only noncitizens, thus precluding an examination of Hispanic ethnicity and citizenship.
that the effect of Hispanic ethnicity was greater in Pennsylvania courts than in federal courts, and argued that this could reflect that elected judges in Pennsylvania are less insulated from constituent expectations than appointed federal judges, and thus are more inclined to respond punitively to the influx of Hispanics to local communities. But absent citizenship information in state court data, this remains conjecture.¹⁰

The lack of consideration of citizenship alongside Hispanic ethnicity in federal courts largely reflects the punishment fields’ focus on traditional markers of stratification, such as race and ethnicity. Even research arguing for a more expansive view of sociolegal inequality largely remains in the purview of race and ethnicity, for example by concentrating on Asians or Native Americans (Johnson and Betsinger 2009; Alvarez and Bachman 1996). The increasing prevalence of international migrants in the U.S. and across Europe suggests this approach may be too narrow, and that researchers should expand the gamut of sociolegal scholarship beyond racial/ethnic legal stratification.

Summary

Punishment speaks to several issues germane to understanding citizenship and its relevance in the modern world. Whether the significance of state membership is declining is necessarily implicated in questions regarding state sovereignty, cultural boundaries and sensibilities, and group membership. The sections in this chapter have laid out the theoretical linkages between punishment and each of these factors. Classic sociological accounts suggest that legal punishment, through the monopolization of violence, is a central feature of the modern nation-state. The power to punish is one of the most significant acts and pronouncements of state

¹⁰ According to 2007-2011 American Community Survey estimates, 15 percent of all Hispanics in Pennsylvania are non-U.S. citizens.
sovereignty – literally declaring the nature of social order, state authority, and portraying a specific image of the distance between sovereign and subject.

Beyond legal status, punishment also helps us understand the cultural self-understandings that divide ‘the people’ of one sovereign nation from another. Cultural sensibilities, which are rooted in wider cultural forms and practices, help shape the form and function of punishment which in turn contribute to and reinforce broader cultural expressions and understandings. Because conceptions of culture necessarily imply cultural boundaries, the frameworks of meaning that divide ‘insiders’ from ‘outsiders’ should be expressed in how the criminality of noncitizens is viewed and understood, as well as the appropriate punishment responses to their transgressions.

Punishment also contributes to our understanding of the boundaries of group membership. From Durkheim to contemporary scholarship, research on the sociology of punishment suggests that punitive interactions between authority figures and deviants is important for understanding social solidarity, community sentiment, and group boundaries. Inequality under the law also adjoins broader stratification concerns that have been central to sociological inquiry for over a century. In this vein, the work on racial/ethnic legal inequality is especially important for the current study because it suggests considerable gaps between legal rights and legal treatment for socially marginal groups – a distinction entirely underappreciated in current citizenship research.

Indeed, the link between punishment and group membership appears particularly important in contemporary society as international migration has increased along with punitive state responses towards the criminality of immigrants and immigration generally. Describing this
increasingly important nexus and the theoretical links between citizenship and criminal court
decision making is the subject of the next chapter.
Chapter 3: Citizenship and Social Control

The previous chapter developed the theoretical argument for using punishment as a lens through which to understand citizenship and its correlate foundations – sovereignty, culture, and group boundaries. This chapter builds off this theoretical foundation and further merges the citizenship and punishment literatures by drawing attention to the exclusionary aspects of national membership in two primary ways. The first section describes the punitive turn in migration control in recent decades. While international migration may have challenged traditional notions of citizenship and state sovereignty, few have appreciated the state’s ability to respond to such challenges. In the U.S. and across Europe, it appears that states have reasserted their sovereignty through a series of coercive state policies and practices aimed at controlling the flow of unwanted migration through detention, incarceration, and exclusion. The second section explicitly develops the theoretical argument to be tested in the proceeding chapters. Guiding my argument is a central premise of research on sociolegal inequality – one’s location in the social structure has implications for treatment within the legal system. In the case of citizenship, I highlight two aspects of lacking state membership that I argue lead to increased punishment, social marginalization and cultural distance. Thus, as a mechanism of stratification and measure of cultural dissimilarity, those without citizenship will be subject to more severe punishment than similarly situated citizens.

Immigration and Social Control

Across western nations, immigration has become an intense source of debate, controversy, and anxiety in recent decades. Concerns regarding the impact of immigration for host countries stem from several primary sources including questions about cultural self-
understandings, the economic strain on public resources, and the security implications immigrants and migration networks entail. Anxiety over the cultural influence of mass immigration and its threat to national identity has featured prominently in public and political discourse. In the U.S., this concern is perhaps best captured by the title of Samuel Huntington’s book *Who Are We: The Challenges to America’s National Identity*. Indeed, many politicians echo Huntington’s (2004: 30) sentiment that “[t]he persistent inflow of Hispanic immigrants threatens to divide the United States into two peoples, two cultures, and two languages. Mexicans and other Latinos have not assimilated into mainstream U.S. culture, forming instead their own political and linguistic enclaves…and rejecting the Anglo-Protestant values that build the American dream.” For instance, representative Steve King and other congressional Republicans introduced the English Language Unity Act in 2007, 2009 and again in 2011 aimed at making English the official language of the United States because “we need to encourage assimilation of all legal immigrants in each generation. A nation divided by language cannot pull together as effectively as a people” (Montopoli 2011). These anxieties are also reflected in American public opinion. In 2006, 42 percent of Americans viewed immigration as a “very big problem” facing the nation, and 48 percent said the growing number of newcomers from other countries “threatened traditional American customs and values” (Pew 2006).

In Germany and across Europe more generally, immigrants’ threat to cultural integrity has played a major role in framing political and public debates on how to respond to increased migration. Responding to the increasing number of immigrants in Germany from non-European

11 See also the English Language Empowerment of 1996.

12 The 2009 Eurobarometer shows that 39 percent of Europeans fear the ‘loss of our national identity and culture’ as a result of European Union integration. In addition, 61 percent of Europeans believe ethnic discrimination is ‘widespread’ across Europe, greater than any other form of discrimination (e.g. religion, age, disability).
countries during the 1980s, mainly Turkey, the social liberal coalition government expressed concern that that the foreigner population is increasingly dominated by nationalities that “stand at greater distance from our culture” (quoted in Joppke 1999: 79). Though Germany has experienced liberalization of their citizenship policies since this time, the national self-understandings that conceive Germany as an ethno-cultural nation-state remain salient in German society. For example, while the German Nationality Act of 2000 for the first time introduced a limited form of jus soli (right of soil) citizenship and also eased some naturalization requirements, the debate leading up to the act also heavily mobilized anti-foreigner political opposition and public opinion, particularly against the proposal to allow for dual citizenship. As the head of the CDU, Wolfgang Schäuble put it, “regularly allowing dual citizenship is poison to integration as well as to domestic order” (quoted in Howard 2008: 51). In response to the proposed changes, the opposition party mobilized a signatures campaign against dual citizenship. In less than six weeks the petition had gathered over five million signatures and opposition to dual citizenship in public opinion polls increased from 57 percent to 63 percent (Howard 2008). In the end, the dual citizenship proposal was defeated. However, it is important to note that only non-ethnic Germans are ineligible for dual citizenship – ethnic Germans are not required to renounce their other citizenship when they acquire a German passport. According to Green (2000), this policy distinction represents a “blatant hypocrisy” that demonstrates the continuation of Germany’s ethnocultural identity despite the new laws’ significant liberalization.

Economic concerns are another major source of anxiety over immigration. Consider, for example, the passage of California’s Proposition 187 – which barred undocumented immigrants from attending public schools and receiving nonemergency health care. Passed by a wide margin in 1994, the discourse surrounding Proposition 187 focused almost entirely on the perceived
financial burden of illegal immigration (King et al. 2012). Though never fully enacted due to
court injunction, Proposition 187 sent broader symbolic messages about the resurgence and
framing of nativism in a global economy characterized by economic uncertainty. As Calavita
explains, “the initiative evokes a belief system in which illegal immigrants are the scourge of
efforts to control spending...As economic insecurity and anger intensify with the continued
globalization of the economy and the displacement of domestic labor, Proposition 187
simultaneously channels that anger into anti-immigrant nativism and legitimates the backlash”
(1996: 300). Framing immigrants as economic burdens features prominently in American public
opinion as well. In 2006, 52 percent of Americans agreed that ‘immigrants are a burden because
they take jobs, housing, and health care” (Pew 2006).

These same anxieties are prevalent in Germany and across Europe. In 1995 nearly half of
all Europeans and Germans feared that EU integration would increase the number of foreign
workers. In 2001, 51 percent of Germans (compared to 42 percent of all Europeans) feared EU
membership would result in higher unemployment and 86 percent of Germans felt that the
economic development of a country should be close to that of other member states prior to
joining the European Union (Eurobarometer). These tensions have been amplified somewhat in
recent years as the European economic crisis continues, drawing foreign workers from struggling
countries to Germany where the economy remains strong.\textsuperscript{13} Though Germany has increasingly
looked at immigration to fill their need for skilled labor, there is considerable concern about the
influx of poor and low-skilled foreign workers. A recent internal memo from the German
Association of Cities expressed worry about low-skilled workers from Romania and Bulgaria,
auguring “significant costs as a result of this poverty migration” and stating that “the social

\textsuperscript{13} In October 2012, Germany’s unemployment rate was 5.4 percent. In Spain, it stood at 26.2 percent
(Birnbaum 2012).
balance and social peace is extremely endangered” as a result of these immigrants (Villarreal 2013).

Unease over national identity and economic security have converged with and compounded a third source of anxiety over immigration – the threat of migrants to national security and community safety. In both the United States and Europe, the perceived external threat posed by immigrants has profoundly shaped public, political, and criminal justice discourse and policy-making on immigration. Despite considerable evidence to the contrary, large portions of the public believe immigration is casually linked to crime and deviance. In the 2000 U.S. General Social Survey 73 percent of respondents believe that more immigrants are somewhat or very likely to cause higher crime rates, and nearly 90 percent of Americans agree that “protecting our borders is important to prevent drug trafficking and organized crime” (Ipsos 2010). In 1997, nearly 90 percent of Germans thought fighting international organized crime and drug trafficking should be a key priority for the European Union, and 65 percent of Germans in 2006 feared an ‘increase in drug trafficking and international organized crime’ from further European Union integration. According to Albrecht, “presumptions about casual links between migration and crime and deviance [in both the U.S. and Europe] suggest there exist powerful belief patterns concerning the potential for conflict and instability” as a result of the immigrant ‘stranger’ or ‘other’ (2002: 165).

Conservative politicians have echoed and exploited the presumed dangerousness of the immigrant ‘stranger,’ often invoking images of war or invasion. For example, Newt Gingrich has dramatically decried the “war at home against illegal immigrants as more deadly than the battlefields of Iraq” (quoted in Sampson 2008: 29), and former Senator and Republican presidential candidate Fred Thompson has argued that “twelve million illegal immigrants later,
we are now living in a nation that is beset by people who are suicidal maniacs and want to kill countless innocent men, women and children around the world…We’re sitting here now with essentially open borders” (Associated Press 2007). Political commentators have also increasingly framed immigration as a pressing safety concern. Lou Dobbs, for example, has lamented “the federal government’s apparent unwillingness to protect us from criminal illegal aliens” (March 3, 2005), while Bill O’Reilly alleges that the “nation’s prisons are full of men from foreign countries who have come to the USA and hurt people” (May 11, 2005).

Similar sentiments have framed debates on immigration across Europe, especially in the wake of the September 11th terrorist attacks and subsequent bombings in London and elsewhere throughout Europe. According to Bauman (2002), immigration, security and crime have become interwoven in much political discourse across Europe, where contemporary immigrants now poignantly represent today’s ‘figures of fear.’ Indeed, authoritarian voices in European societies, new right-wing political parties and extremist groups have used the potential of immigrants to threaten safety and order as a rallying point for restrictive and punitive immigration measures. Take, for example, Prime Minister Tony Blair’s warning that British society was “under threat…from those who come and live here illegally by breaking our rules and abusing our hospitality,” and justifying increased barriers against migration as protection against “extremists” (2005: 5). The perceived link between immigration and crime has also played a significant role in mainstream European Union policies, particularly those regarding the external borders of the EU. For example, the Tampere European Council of 1999 declared that the union needed to provide for “the consistent control of external borders to stop illegal immigration and to combat those who organize it and commit related international crimes” (European Council 1999: para. 3). As Albrecht explains, in recent decades “foreign national laws…have been enacted with the
aims of regulating the risks and dangers associated with foreign nations (or immigrants): basic risks that have been made the grounds for expelling (or excluding) foreign nationals on account of concerns regarding crime, poverty and prostitution” (2002: 179).

By framing immigration in the rhetoric of crime and security, Krasmann (2007) suggests nation-states are increasingly practicing a new “enemy penology” in which both the prison and immigration play central roles. Garland provides a useful lens for exploring the intersection between immigration and state social control through what he terms the new criminology of the ‘other.’ This perspective views deviants as “the threatening outcast, the fearsome stranger, the excluded and the embittered” and “represents criminals as dangerous members of distinct racial and social groups which bear little resemblance to ‘us’” (1996: 461). Though Garland sees this criminological shift as a reflection of a broader culture of control, it appears particularly well suited for understanding the increasingly significant tie between migration and crime control, as immigrants are already a distinct social group – strangers bearing little resemblance to ‘us.’

The result of increased coercive state regulation of migration is that the traditional boundaries between crime control and immigration have blurred in recent decades (Miller 2005). Legal scholars have coined the term “crimmigration” to capture the importation of criminal justice strategies into migration policy (Stumpf 2006). Bosworth and Kaufman (2011: 440) describe this increasingly important nexus as the process through which “both the imagery and the actual mechanisms of criminal justice – such as the police and the prison – are adopted for the purpose of border control,” and point to several policy and legal developments to underscore this convergence. These include increased policing of the border, enhanced penalties and prosecutions for immigration crimes, and rises in criminal deportations (Ellerman 2009).

14 This concept is similar to Jock Young’s discussion of “demonization” in contemporary conceptions of crime and deviance: “Demonization is important in that it allows the problems of society to be blamed on ‘others’ usually perceived as being on the ‘edge’ of society” (Young 1999: 110).
In the U.S., Congress responded to the perceived link between uncontrolled immigration and increased crime and drug problems (Hagan et al. 2008) by taking unprecedented steps towards revising U.S. immigration laws to deal with criminal aliens in recent decades. These laws include the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), and the Patriot Act. Combined, the IIRIRA and the AEDPA increased the penalties for immigration violations and expanded the list of deportable crimes while the Patriot Act significantly expanded the government’s authority and capacity to monitor and detain noncitizens.

Perhaps nowhere is the trend of increased criminalization of immigration better captured than in the link between the U.S. ‘War on Drugs’ and immigration control (Yates et al. 2005). One of the most prominent developments in this intersection is the development and expansion of the ‘aggravated felon’ classification. Created in 1988 as part of the Anti-Drug Abuse Act, this new category specified the types of crimes for which aliens could be deported. Initially these included serious offenses such as murder, drug trafficking, and firearms trafficking. Subsequent legislation however, expanded the aggravated felon classification to include relatively minor drug offenses (Yates et al. 2005) and applied the label retroactively (Miller 2005).

While much of this work focuses on the U.S. context, Europe has also witnessed a dramatic expansion of punitive migration control practices. Drawing parallels to the mass incarceration of African-Americans in the U.S., Wacquant (1999: 216) suggests foreigners are ‘suitable enemies’ in the new punitive migration policies of ‘Fortress Europe’ and that “foreigners and quasi-foreigners would be ‘the blacks’ of Europe” (emphasis in original). Discussing the broader international trends in punitive migration control, Bosworth and colleagues argue “state power to immobilize and expel the ‘unwanted,’ the reliance on detention
as a coercive form of social control, escalating prison populations and longer periods of confinement for a range of non-citizens, exemplify ‘a globalizing culture of control’ driven by ‘perceptions of difference and putative threats’” (2008: 265).

The result of the convergence between criminal and immigration law has been the dramatic increase of immigrants under state social control in the U.S. and Europe. Some statistics are illustrative of the scale and growth of this punitive turn. In 1980, 391 criminal aliens were deported from the U.S. (Yearbook of Immigration Statistics 2004: cited by King et al. 2012, pp. 787). By 2010, this increased to nearly 170,000 (Sourcebook of Criminal Justice Statistics 2011). In Germany fewer than 10,000 noncitizens were forcibly removed in 1985, but by 2000 this was had increased to roughly 35,000 (Ellerman 2009). The trends in the courts and prisons are equally dramatic. Between 1992 and 2009 non-citizens increased from roughly 8,000 offenders, representing 22 percent of the federal docket, to over 34,000 offenders and constituting 48 percent all convicted cases. In fact, immigration offenses were the leading source of federal prison admissions between 1998 and 2010, more so than drugs, weapons, and all other federal offenses (Mallik-Kane et al. 2012). By 2010 there were nearly 100,000 noncitizens incarcerated in state and federal prisons throughout the United States, roughly the same number of immigrants incarcerated in European countries. In Germany, while the number of German national prisoners increased only 35 percent between 1976 and 2005 (from approximately 30,000 to 40,000), the population of incarcerated foreigner grew by approximately 575 percent during this time (from 1900 to almost 13,000) (van Kalmthout et al. 2007).

Combined, these trends illustrate the increasing significance of citizenship for sociolegal scholarship, and vice versa. As the interconnection between migration and crime control has enhanced, prisons are now becoming the new borderlands charged with protecting citizens from
both internal and external threats (Bosworth 2008). In addition, “by raising anxieties about cultural and legal citizenship, [immigration controls] work to re-inscribe the state at the precise moment that national borders appear to be less and less relevant” (Bosworth and Guild 2008: 714). Yet, while this growing body of research highlights the increased state control of immigrants in recent decades, relatively little is known about the treatment of noncitizens within social control institutions over this period. I extend this research by going beyond the political and criminal justice policies that differentially affect immigrants to another area of justice research: criminal punishment. In the following section I build off the work on immigration and social control by linking citizenship to sociolegal perspectives on legal decision making. First, however, I briefly review the existing research in this area.

**Previous Research: Citizenship and Punishment**

Given the convergence between immigration and the criminal justice system combined with the emphasis on inter-group relations and group membership in previous penal research, it is surprising that citizenship has received only limited attention in the extant punishment literature. Still, as immigration has become an increasingly contentious social issue, some recent studies have taken up the call to examine how immigrants fare at criminal sentencing.

However, this body of work fails to explicitly consider citizenship alongside traditional measures of legal inequality, and moreover, findings from this research have been inconsistent. One line of work suggests no sentencing differences between citizen and noncitizen offenders net of controls for guideline related factors and offense type (Kautt and Spohn 2002; Everett and Wojtkiewicz’s 2002). Another body of work, however, finds that noncitizens are treated more harshly in federal courts even after accounting for criminal history, offense severity, and other
legally relevant factors (Albonetti 2002; Mustard 2001; Hartley and Armendariz 2011). A third body of work balances these conclusions and suggests a more nuanced relationship between citizenship and sentencing. Demuth (2002) for instance, finds that legal and illegal aliens are more likely to be incarcerated, but finds no sentence length differences (see also Albonetti 1997). Wolfe and colleagues (2011) and Wu and DeLone (2012) also find that noncitizens are disadvantaged at incarceration, but actually receive shorter prison sentences than U.S. citizens.

In Germany too, research on the sanctioning of immigrants has received only limited attention and results have been equivocal. For example, Dittmann and Wernitznig (2003) examined the sentencing of youth burglary offenders and found no evidence of discrimination against foreigners, while Ludwig-Mayerhofer and Niemann (1997) found that Turkish and Yugoslavian youths received considerably harsher penalties compared to their German counterparts.

Various factors may account for these mixed findings. In Germany, the scope of previous studies varies on a range of important factors from focusing on youth courts, to select offenses, and different years of data (mostly pre-2001). As a result, fundamental questions remain about the sentencing of adults (the overwhelming majority of prisoners) and the generalizability of findings. Furthermore, the dated nature of these studies likely cannot inform ongoing citizenship debates as the 1990s and 2000s witnessed dramatic increases in anti-foreigner sentiment and violence in Germany (Semyonov et al 2006; Pettigrew 1998), and there is now increased attention to the security concerns migrants entail in the wake of the September 11 terrorist attacks (Givens et al. 2009).

In the U.S., studies vary considerably in their methodological approaches and research purposes (Wu and DeLone 2012), such as focusing on select districts (e.g. border districts),
analyzing specific offense types (e.g. drugs), or by treating citizenship as a control variable (Ulmer 2005). Another plausible reason for these inconsistent findings is that scholars often rely on samples from different years. Mustard (2001) for instance, uses data from 1991-1994 while Wu and Delone (2012) use data from 2006-2008. This approach reflects the methodology in the broader punishment literature in both countries, which largely relies on data from either a single year (Pasko 2002; Albonetti 2002; Kautt and Spohn 2002) or a block of years (Steffensmeier and Demuth 2000, 2001; Steffensmeier et al. 1998; Bushway and Piehl 2001). The few studies that have addressed longitudinal trends have been limited in several important respects, including focusing on a limited number of jurisdictions, investigating a relatively narrow temporal range, or neglecting ethnicity (Pruit and Wilson 1983; Miethe and Moore 1985; Stolzenberg and D’Alessio 1994; Wooldredge 2009; Kramer and Ulmer 2009). Perhaps most important for the current study, no prior research has systematically investigated the long-term trends in citizenship disparities in either country. As a result, the literature lacks a systematic assessment of the trends in punishment disparities over the past two decades generally, and citizenship disparities specifically.

While the equivocal findings from existing research imply a need for further inquiry, two additional points are noteworthy. First, prior work infrequently places citizenship at the core of a theoretically grounded investigation and citizenship remains under-theorized in the extant punishment literature. This is particularly evident when comparing work on citizenship to the voluminous literature on race and ethnicity. For example, in their study of Asians sentenced in U.S. courts, Johnson and Betsinger (2009) investigated the punishment gap between citizen and noncitizen minority offenders, although citizenship was a relatively minor focus of their analysis and there was little theoretical rationale to explain the citizenship effects. In addition, the
findings were not discussed in the context of broader citizenship debates that are at the core of this dissertation. Second, a number of important empirical questions remain, and the answers bear on theoretical debates central to the salience of citizenship status. For instance, have the effects of citizenship status at sentencing changed over time? The public has become increasingly hostile toward immigrants, yet at present it remains unknown if this sentiment is paralleled by changes in sentencing practices.

Are the effects for citizenship and legal status on par with those for race and ethnicity and how much of the sentencing difference between Hispanics and whites emphasized in recent research is attributable to citizenship status? As I described in Chapter 2, what prior work identifies as an ‘ethnicity effect’ may in fact be a ‘citizenship effect.’ The lack of attention to the longitudinal trends in Hispanic and noncitizen disparities in the U.S. is a particularly important gap given the changing social contexts surrounding contemporary immigration and the escalating social control of immigrants. Discussed throughout this chapter, there has been an increasing criminalization of immigrants and immigration crimes that has resulted in dramatic growth in the relative and absolute number of immigrants entangled in coercive state controls in the United States and Europe. That these trends have occurred alongside with the expansion of universal human rights, the strengthening of the European Union, and increasing international migration suggests a concerted emphasis on the state sanctioning of migrants is a timely addition to the study of citizenship.

Finally, and most importantly, does the punishment of noncitizens vary in different countries? As I highlighted in Chapter 1, the United States and Germany have markedly different political, cultural, and normative conceptions of nationhood, yet both offer legal rights to non-state members, guaranteeing them equal standing under criminal law and punishment provisions.
Thus, these countries offer an ideal-type comparison to test the salience of citizenship under the law. The central question is whether noncitizens receive similar punishment consequences in countries that define state membership in fundamentally distinct ways.

Citizenship, Stratification, and Cultural Distance

Despite being one of the primary units of social organization (Brubaker 1992; Wimmer 2002; Koopmans and Statham 1999), the study of citizenship has not traditionally been a major focus of sociolegal scholarship or sociological inquiry. Only recently have scholars begun investigating the function and consequences of citizenship across a variety of social domains (Glenn 2011; Bloemraad et al. 2008).

One area focuses on the function of citizenship in the modern world. According to Brubaker (1992), Wimmer (2002), and others, citizenship can best be characterized as a mechanism of stratification and social closure; for while it is internally inclusive, it is externally exclusive. Just as citizenship connotes a region of equality (Marshall 1964), it also draws the boundaries between those who are included and those who are excluded from this region. By defining membership to the state, citizenship confers rights, privileges, and distributes life opportunities (Marshall 1964; Smith 1997). Recent research in the U.S. noting the rise of anti-immigrant sentiment in both public opinion and political rhetoric (Massey 2007; Sampson 2008) coupled with the disadvantages faced by noncitizens and undocumented immigrants in the labor market (Hall et al. 2010), education system (Suárez-Orozco et al. 2011), and during the transition to adulthood (Gonzales 2011) are consistent with this view. With over 22 million non-U.S.

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15 According to Giddens (1987), this largely reflects the endogenous bias of the discipline, which has tended to take the existence of bounded national “society” for granted and focuses on the internal dynamics of that society.
citizens residing in the U.S. and more than 11 million unauthorized immigrants (Passel and Cohn 2009), some scholars suggest that citizenship and legal status are now central axes of stratification and that illegal immigrants are forming the new American ‘underclass’ (Massey 2007). As a legal distinction, this research suggests citizenship is a principal mechanism of stratification as formal exclusion interacts and amplifies other social inequalities (Glenn 2011; Calavita 2005). As Ngai (2004: 2) puts it, “marginalized by their position in the lower strata of the workforce and even more so by their exclusion from the polity, illegal aliens might be understood as a caste, unambiguously situated outside the boundaries of formal membership and social legitimacy.”

Despite increased EU integration, the legal standing of individuals in the eyes of the state remains a powerful mechanism of stratification in Europe as well. As Howard (2009: 8) puts it, “whether in terms of politics and elections, welfare state benefits, public-sector employment, social integration, or demographic and pension systems, national citizenship remains an essential and enduring feature of modern life – even in the ‘supranational’ European Union.” Indeed, the basic social and economic conditions for many immigrant minorities throughout Europe worsened during the 1990s as a result of their illegality or precarious statuses of ‘asylum seeker’ or ‘refugee.’ As a result, research across European countries suggests that many immigrants remain in socially marginal positions in terms of socioeconomic status, income, housing conditions, education and employment (Albrecht 2002). The increased marginalization of immigrants has coincided with coercive social control efforts to regulate their risks. Though many groups or suitable targets for state punitiveness (e.g. sexual predators, drug addicts, corrupt officials), “over the last two decades or so…it is the precarious group of new immigrants who have…attracted hate and produced fear and feelings of unsafety (Albrecht 2002: 163-64). Just as
Massey argues that illegal immigrants are becoming the new U.S. underclass, Albrecht (2002: 179) suggests that in Europe “illegal immigrants have slipped into the role once occupied by the Lumpenproletariat – the ‘dangerous classes.’”

A second area focuses on the development of the world population into distinct and mutually exclusive polities and nation-states. While states are often characterized as territorial units, modern nation-states involve larger cultural, normative, and symbolic debates about who has legitimate claims and access to the state (Wimmer 2002: Ch. 4). As Brubaker states (1992: 182) “The politics of citizenship today is first and foremost politics of nationhood… The ‘interests’ informing the politics of citizenship are ‘ideal’ rather than material. The central question is not ‘who gets what?’ but ‘who is what?’” A central feature of the modern nation-state involves determining membership to the nation through citizenship. According to Wimmer (2002), the boundaries of membership are determined through cultural compromise, which centers around the ‘imagined community’ (Anderson 1983) of the nation – a political community grounded on common origin and historical experience. As detailed in Chapter 2, the result of this compromise is the consensus over the world-view patterns, social classifications, and collectively held norms which separates the domestic realm of the nation-state (e.g. “us”) from the external one (e.g. “them”) (Wimmer 2002).

Conceptualizing citizenship as an outcome of cultural compromise and a mechanism of stratification has important implications for the study of legal inequality. First, as a mechanism of stratification, this places citizenship squarely within the gamut of scholarship on inequality and criminal punishment. An underlying premise of this research suggests that treatment within the legal system is partially dependent on one’s relative location in the social structure, and scholars have put forth multiple explanations for why minorities and the socially disadvantaged
are prone to more coercive treatment by legal officials. These include (1) lack of political resources and the inability to resist negative labels (Chambliss and Seidman 1971; Turk 1969), (2) threatening the economic interests of powerful groups (Lofland 1969), and (3) perceiving those who are culturally dissimilar as more dangerous (Liska, Logan, and Bellair 1998; Steffensmeier and Demuth 2000).

Though largely applied to minorities and the poor, each of these perspectives are equally if not more relevant to noncitizens and suggest considerable disadvantages for non-state members. First, while previous research points to minorities’ lack of a political strength to raise concerns about unfair legal practices, this pales in comparison to noncitizens’ actual disenfranchisement. Indeed, it is hard to imagine a group with less political power, as noncitizens are barred from voting in all national elections and many local elections in the U.S. and Germany16 (Tienda 2002), though non-nationals from EU member states have greater access to political participation than immigrants from non-EU countries (Groenenidijk 2008). Second, as detailed above, the economic threat of immigrants has played a prominent role in public and political discourse in Europe and the United States, suggesting that if punitive reactions are partially driven by the economic threat of different social groups, noncitizens should be at a considerable disadvantage in the court room compared to their citizen counterparts. Beyond political and economic concerns, additional factors compound the status of noncitizens, including perceived threats to the racial, linguistic, and cultural integrity of the U.S. and Germany.

16 To give an example of the precarious political position of non-German citizens, in 1990 the German Constitutional Court declared unconstitutional the voting rights legislation of certain German Länder (federal states) which enfranchised non-German citizens, asserting that the constitutional clause granting voting rights to the German people could only apply to those with German nationality (Groenendijk 2008).
Here, the minority threat perspective – which holds that large increases in subordinate group numbers over a brief period leads to conflict with dominant groups and the intensification of efforts to maintain the status quo through increased punitiveness and social control – appears particularly apt (Blalock 1967). Indeed, with the influx of immigrants to the U.S. from Latin America, the minority threat perspective features prominently in contemporary punishment research (Steffensmeier and Demuth 2000, 2001). However, this body of work largely stresses the role of Hispanic ethnicity, but places almost no emphasis on citizenship status. Given that the foreign born accounted for 30 percent of the growth in the U.S. Hispanic population between 2000 and 2010 (Motel 2012), and non-U.S. citizens made up 80 percent of the growth in Hispanics punished in U.S. federal courts between 1992 and 2010, this is likely a consequential omission. If the shifting demography of criminal offenders correlates with changes in legal stratification, as previous research suggests, any changes over time in the punishment of Hispanics will be inextricably linked to changes in the treatment of immigrants.

Taken together with the stratification literature, it is clear that citizenship has profound implications for one’s location in the social structure which in turn affects (1) how their crimes are perceived, (2) the appropriate punishment response, and (3) their ability to navigate the criminal justice system. As Koopmans and Statham (1999: 662) note, “the different symbolic labels that nations attribute to migrants directly influence the distribution of material resources to them, and their potential for mobilizing challenges and participating within … society.” Consistent with the literature on inequality and punishment, it follows that noncitizens will receive harsher treatment at sentencing.

Viewing citizenship as a measure of cultural distance compliments this work on stratification and may offer insights on the punishment consequences of citizenship relative to
other offender statuses. It follows from this perspective that those who fall outside the national community will be viewed, by definition, as culturally dissimilar (i.e. not one of “us”). Additionally, membership in the national community should be more relevant for gauging social and cultural distance than race or ethnicity alone.

I argue that there is a conceptual link between this perspective – which posits that citizenship is the key determinant of cultural dissimilarity – and theoretical work on the impact of social and cultural distance on legal outcomes. In his theories of law and social control, Black (1976: 44) suggests “it is possible to measure the distance between a citizen and law itself” and that “those who are marginal to social life are more likely to be blamed. In general, their conduct is more likely to be defined as deviant, and whatever they do is more serious” (Black 1976: 59). Furthermore, according to Black legal officials are more conciliatory towards those viewed as cultural “insiders” and more punitive towards those who are not (i.e. “outsiders”). As a salient measure of cultural distance between legal officials (e.g. attorneys and judges) and defendants, it follows that noncitizens will receive more severe punishment in criminal courts. In addition, if citizenship is a more salient cultural distinction than race or ethnicity alone, this suggests that citizenship should be more consequential than racial/ethnic distinctions in determining punishment outcomes. If this is the case, any increasing trends in Hispanic disparity in the U.S. should be considerably diminished once the trends in citizenship disparities are taken into account. Furthermore, if lacking membership to the state places individuals on the social and cultural periphery of society, it follows that illegal aliens are particularly marginal due to both their foreign birth and the absence of legitimate credentials in the eyes of the state. Thus, the punishment consequences of lacking citizenship will be particularly pronounced for illegal immigrants.

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Taken together with the broader ‘crimmigration’ literature and the minority threat perspective, the effects of citizenship should be particularly pronounced during the study period (1998-2010) as illegal immigration has become a more controversial and heated social issue across Western nations and international migration has been perceived to be linked to crime, drug trafficking, and terrorism (Givens et al. 2009). Moreover, just as previous research predicts that the increase of Hispanics may have resulted in greater ethnic disparities, it is likely that the dramatic influx of noncitizens in U.S. and German courts has induced threat responses along cleavages of national identity and belonging, suggesting that citizenship may matter more over time. However, this study also captures a period of German liberalization of citizenship policies and enhanced legal protections for non-state members (especially for nationals for other EU members) under supra-national treaties and conventions unique to the European Union, suggesting that the salience of citizenship in Germany may have waned over this period. How these countervailing trends play out at criminal punishment is the subject of Chapter 6. Finally, given the perceived link between immigrants and drugs in public and criminal justice discourse, it is possible that any citizenship ‘penalty’ will be exacerbated in cases involving drugs.

The remainder of this dissertation empirically tests the arguments developed in this chapter. That is, it examines whether noncitizens receive equal legal treatment in U.S. and German courts at criminal sentencing. I first briefly review and summarize the competing theoretical expectations at the heart of this analysis.
Summary: Theoretical Predictions

The postnationalist argument holds that the salience of citizenship has declined over time, suggesting that there should be few (if any) punishment differences between citizens and aliens. Contrary to this position, I draw from two literatures that have heretofore remained distinct – citizenship studies and sociolegal inequality – and argue that citizenship is a highly salient instrument of stratification and a powerful measure of cultural dissimilarity and suggest that the boundaries of national membership will color the punishment responses of legal officials and limit immigrants ability to resist negative labels and navigate the justice system. As a result, noncitizens will be punished more severely than similarly situated citizens. I expect to this relationship to hold in both the U.S. and Germany, despite having markedly different cultural and normative conceptions of nationhood. That is, I predict the normative boundaries of citizenship to confer legal disadvantages to those who lie outside the community of national membership, regardless of the political, legal, and cultural practices that uniquely define citizenship in these two countries. Moreover, given the perceived link between immigration and drug crimes in public, political, and legal discourse across Western societies, it follows that any observed citizenship ‘penalty’ may be particularly pronounced in cases involving drugs. In addition, because I predict citizenship to be a stark division between individuals at sentencing, the punishment consequence will be observed for all groups lacking state membership. In other words, regardless of national origin or race/ethnicity, those who do not have legitimate claim to the state will be punished more severely.

Competing predictions also motivate the temporal trends in the citizenship effect. Though I predict punishment consequences for non-state members, the postnational position suggests a lessening impact over time. This perspective especially applies to Germany where the recent
liberalization of their historically rigid definition of national membership combined with continued EU integration and supra-national legislation and legal bodies might predict waning influence of citizenship on judicial outcomes over the past decade. However, over this same period both countries experienced marked increases in foreign prisoners, which could suggest increased punitiveness over time, in line the ‘crimmigration’ research and the central tenets of the group threat perspective. As I detail in the following four chapters, the analysis is exceptionally well-suited to adjudicate the conflicting predictions motivating this dissertation.
Chapter 4: Data and Analytical Strategy

This chapter describes the data, variables, statistical models, and ethnographic analysis. First I present complete descriptions for the data and measures used in the U.S. and German analyses. The next section details the analytical procedures and the rationale for each approach. Here I pay particular attention to the strengths of combining quantitative statistical analyses with in-depth ethnographic interviews. The final section describes the selection of participants, interview protocols, and analysis of the ethnographic data.

Statistical Analysis

I address the above research questions using individual-level data from U.S. and German courts. The primary analysis utilizes data from 2009 to 2010 and the time trend analysis uses data from 1998-2010. As discussed in the previous two chapters, this is a particularly interesting time period for the study of citizenship as it captures important countervailing forces. On one hand are pressures exerting liberalization of citizenship including international factors such as economic globalization and new norms of “postnational” human rights as well as domestic causes such as interest group politics. On the other hand, public opinion surveys across Europe and the United States continually demonstrate considerable levels of xenophobia and

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17 The main analysis uses 2009-2010 data because they are the most recent years available from both sources and detailed citizenship information was only collected on offenders in the German data after 2008. Prior to this time the categories were limited to German, Stateless, Greek, Italian, other E.U. state, former Yugoslavia, Turkish, or other. Starting in 2009, the Federal Statistical Office began collecting information on over 200 different nationality codes, which allows for more detailed analyses of different noncitizen groups.

18 Though the USSC data is available starting in 1992 and the Strafverfolgsstatistik is available going back to 1995, there were major changes to the German Legal Code in 1998 and there was inconsistent data coverage in Germany prior to 1998. For example, in all years from 1998-2010 there is data from at least 14 of the 16 German Federal States (Länder). In 1995, data were collected from only 11 of the German States.
hostility towards immigrants, thus creating a restrictive force (Howard 2009). This counter trend is clearly evident in the renewed calls for the end of “birthright” citizenship for children of immigrants in the United States, particularly in the wake of the September 11 attacks. In addition, this time period marks a dramatic increase of state social control of immigrants. By the late 2000s there were nearly 100,000 noncitizens in state and federal custody in the U.S. (Guerino et al. 2011) and over 100,000 foreign prisoners in European countries, representing over 20 percent of all those incarcerated in Europe (van Kalmthout et al. 2007).

The primary analysis uses two years of data to reduce the influence of any single year and to ensure an adequate sample size for supplemental analyses (see Appendices). The court information comes from two primary sources. The U.S. data comes from the U.S. Sentencing Commission’s (USSC) research files and the German data comes from the Strafverfolgungsstatistik (Prosecution Statistics) data series provided by the German Federal Statistical Office (Statistisches Bundesamt). Both datasets are rich sources of information on sentencing and provide detailed information on both the offense and legal characteristics associated with a crime (e.g., offense type, criminal history) as well as extralegal characteristics (e.g., age, gender) of defendants. These detailed measures allow for an extensive and comprehensive set of controls to assess whether and how citizenship affects sentencing outcomes in both countries. Moreover, both countries require that courts report on all offenders adjudicated in their district, which obviates concerns regarding the generalizability of results.

In the USSC data, the unit of analysis is each sentenced case and the universe is all offenders sentenced in U.S. federal courts. Federal court data are utilized because, more so than in state courts, the issues of national membership and state sovereignty that are at the heart of

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19 In 2011 Republican Congressman Steve King introduced the “Birthright Citizenship Act of 2011” which sought to ban birthright citizenship for the children of undocumented immigrants.
this discussion are likely more relevant in federal institutions and because available state court
data do not collect information on citizenship. Furthermore, federal courts are the primary court
of enforcement for many of many of the crimes committed by foreign offenders, including
immigration and drug importation cases. These data are also publicly available and have been
used in numerous prior studies (see Mitchell and MacKenzie 2004). The unit of analysis in the
Strafverfolgungsstatistik data is each prosecution and the universe is all defendants in German
courts. Because only those who are convicted are at risk of punishment, this analysis removes
all cases where the charges were dropped by the prosecution or where the defendant was found
not guilty.

Because U.S. district courts do not handle minor traffic offenses, I removed all cases
involving traffic violations from the Strafverfolgungsstatistik (Straßenverkehrsgesetz). I also
eliminate cases that involve juveniles because in both countries there are different sets of laws
and procedures for juvenile offenders (Teske and Albrecht 1992). It is important to note that
under German law individuals between the ages 18 and 20 can be sentenced under the Juvenile
Court Act (Jugendgerichtsgesetz or JGG) to take into account that (i) many people under 21 are
still in the developmental stages of a juvenile, or (ii) the offense is of a distinctly juvenile
character (Bohlander 2012). Because the U.S. federal sentencing guidelines do not apply to
defendants sentenced under the Federal Juvenile Delinquency Act (USSC 2012), I limit my
analysis of German courts to only those sentenced as adults (Erwachsene) under the German

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20 While the federal system incarcerates only 13 percent of all prisoners in the United States, 32 percent of
the incarcerated noncitizen population is in federal custody (Guerino et al. 2011).

21 Between 1998 and 2001 the data contain information on 14 of the 16 German Federal States. Between
2001 and 2006 15 of the German States are represented. After 2006, information on all 16 German States
is available. As I discuss below, I account for these differences in data coverage in longitudinal analysis
of the citizenship.
criminal code. As a practical matter, this analysis removes offenders charged for unlawfully entering or remaining in the United States (USSC, § 2L1.2) because U.S. citizens are not at risk of being sentenced under this provision. For this same reason, I eliminate all asylum law violations (Asylverfahrensgesetz) in the Strafverfolgungsstatistik.

It is important to note that noncitizens are afforded considerable legal protections in both countries. Since the late 1980s the U.S. federal courts have been mandated to follow the U.S. Sentencing Guidelines, which were designed in theory to be “entirely neutral as to race, sex, national origin, creed, and socioeconomic status of offenders” [28 U.S.C. § 994(d)]. In fact, among the primary goals of federal sentencing reform was a reduction in sentencing disparities (USSC 2004) and nowhere in the sentencing guidelines is citizenship status considered a legitimate criterion for punishment decisions for non-immigration offenses. Moreover, the U.S. Supreme Court has consistently ruled that noncitizens are afforded due process protections under the Constitution (Rubio-Marin 2000) in matters relating to criminal law and punishment. As legal scholar David Cole (2003: 379) puts it, “there is no dispute that noncitizens are entitled to equal protection of the laws.” The German Supreme Court (Bundesgerichtshol) has similarly ruled that noncitizens are to receive the same due process rights as German citizens in criminal courts (Albrecht 2007; Rubio-Marin 2000). Furthermore, these protections have been codified in several “supra-national” treaties and conventions including the Universal Deceleration of Human Rights and The International Covenant on Civil and Political Rights, as well as by judicial bodies unique to Germany including the European Court of Human Rights and the European Court of Justice. According to the postnationalist perspective, these bodies have fundamentally replaced the nation as the source of legal equality and have eroded any legal distinctions between citizens and noncitizens in criminal courts (see Soysal 1994; Jacobson 1996; Spiro 2008 generally).
In sum, citizenship status is not a legally legitimate criterion for differential punishment in either country. Thus, to the extent that U.S. Constitutional protections are enforced and the guidelines have been effective at curbing sentencing practices that yield disparate outcomes there should be no punishment differences between U.S. and non-U.S. citizens. Similarly, if the German Constitutional protections for noncitizens’ legal rights combined with international and European rights conventions have successfully eliminated the legal distinctions between citizens and aliens, there should be few differences at sentencing once legally relevant factors are taken into account. Given these multiple legal safeguards in both countries, this analysis is a rather strict test of the effects of citizenship status under the law.

Dependent Variables

I assess sentencing as a two-stage process: whether to incarcerate and how long to incarcerate (Steffensmeier and Demuth 2000). Therefore, I examine sentencing disparities using two dependent variables: (1) the decision to incarcerate, and (2) sentence length for those incarcerated. In both the U.S. and German data, incarceration is measured as a dichotomy for whether an offender was sentenced to prison (1 = yes). Important to note, unlike in the U.S. courts where “truth in sentencing” ensures that offenders serve a significant amount of their sentenced prison time, Germany makes considerable use of suspended sentences. For example,

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22 Some scholars suggest is may be more appropriate to model these decisions simultaneously using tobit regression (Bushway and Piehl 2001). While treating these as distinct stages is more common in the extant literature, supplemental analyses in Appendix A show the results of tobit models combining the incarceration and sentence length decisions in the U.S. These results are entirely consistent with those reported in the main body of the dissertation. As I discuss below, I include tobit regression in the German analysis along with the separate analyses of each sentencing decision to account for any selection into the incarcerated population for the sentence length analysis.

23 According to §56 of the German criminal code (Strafgesetzbuch), judges can suspend a term of incarceration if the sentence is two years or less.
while 123,938 convicted offenders received a prison sentence (20 percent) in 2010, only 37,229 did not have their sentences suspended (30 percent of all those sentenced to prison, and only 6 percent of all convicted offenders). I only count those whose sentences were not suspended as actually being incarcerated.

For the USSC data, the sentence length measure is the number of months of incarceration (capped at 470 months). To reduce skewness, I follow prior research and use the natural log of sentence length (Bushway and Piehl 2001). In the German data, the Strafverfolgungsstatistik only releases information on the sentence range. There are 9 different sentencing categories, ranging from less than 6 months to life imprisonment (see Table 4.2 for a description of the categories). Again, I only include the sentence length for offenders who actually received a term of incarceration and recode all suspended sentences as 0 (no prison). Because the sentence categories are not uniform, a one unit increase in the regression models is not directly interpretable in the standard regression framework. For example, category 5 corresponds to a sentence between 6 and 9 months of incarceration, but those in category 6 received sentences between 1 and 2 years. For this reason, I place greater emphasis on the direction of the citizenship effect relative to other variables in the model for the German analysis. To increase the comparability of the analyses, in supplemental models with an alternative German data source I recode the sentence length variable to mirror the coding for the U.S. analysis (logged number of months). Coding and descriptive statistics for all variables in the analysis are shown in Table 4.1 for the U.S. data, and Table 4.2 for the German data (see Appendices for correlation matrix).
Independent Variables

Focal Predictor Variables

The focal independent variable is the defendant’s citizenship status. Citizenship status is coded 1 for non-U.S./German citizen and 0 otherwise. In 2009-2010, nearly a quarter of all non-illegal reentry offenders lack U.S. citizenship in U.S. federal courts (23%), and just over 20 percent of all offenders are noncitizens across German courts. In the U.S. data I further code noncitizens along two different dimensions, legal and illegal aliens, with U.S. citizens serving as the reference group. In both data sources I utilize more specific information on defendant’s citizenship and further code noncitizens along their country or region of origin. In the U.S. data I use indicators for Mexican, European Union countries, Other European countries, Central or South American, Middle Eastern, and African/Asian. In the German data I use indicators for European Union countries, Other European, Turkish, Middle Eastern, those from the Americas, and African/Asian.

Legal and Case Characteristics

Previous research demonstrates that the most salient determinants of sentencing are the severity of the offense and the defendant’s criminal history (see Spohn 2000, Zatz 2000, and Albrecht 1997 for reviews). In the U.S. data, I capture the crime severity by controlling for the presumptive sentence length which is the recommended sentence set forth by the sentencing guidelines (Engen and Gainey 2000; USSC 2004). This approach accounts for the 43 point offense severity level, the 6-point criminal history scale, and accounts for any sentencing adjustments (i.e., mandatory minimum penalties) that affect the final presumptive sentence. Consistent with prior studies I include an additional control for the offender’s criminal history.

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24 I use the terms legal and illegal aliens throughout because these are the terms used by the courts and also reflect the language recorded in the USSC data files.
score (Johnson and Betsinger 2009). In short, this measure accounts for the complexity of the
 guideline sentence calculation and represents the minimum length of incarceration judges can
 sentence an offender without departing from the guidelines. In the German data I capture the
 offense severity by including a measure for the statutory prescribed sentencing range for each
 offense. This measure of severity is consistent with research conducted in the United States in
 non-guideline jurisdictions (e.g. Peterson and Hagan 1984). This variable ranges from a 6 month
 statutory maximum sentence (coded 1) to a possible life sentence (coded 17).  

 I also include two measures of the defendant’s criminal history: the number of prior convictions (continuous
 measure ranging from 0 to 9) and the most severe penalty received from a prior conviction
 (ranging from no criminal history to a prison sentence exceeding 2 years).

 Previous research has shown that sentencing disparities vary by offense type
 (Steffensmeier and Demuth 2000). As such, in both datasets I control for the sentencing offense
 using 8 dummy variables. In the U.S. data I include measures for drugs, immigration, violent,
 firearms, sex offenses, fraud, and other offenses, with property offenses as the reference
 category. In the German analysis I include indicators for crimes against the public, fraud, drugs,
 sex offenses, violent, immigration, and other offenses, with property/theft offenses serving as the
 reference category. While the offense types largely overlap, there is some difference in the

 25 Under German law, the severity of the offense is largely measured by the statutory prescribed minimum
 penalty. For example, an offense with a 5 year maximum penalty is considered less serious than an
 offense where the sentencing range is 3 months to 5 years because there is a higher minimum penalty.
 Moreover, because sentences tend to be near the low end of the range in Germany, research confirms that
 the minimum prescribed sentence is a much better predictor of punishment than the maximum sentence
 (Höfer 2003).

 26 Because “unlawful enterers” were removed from this U.S. analysis the remaining offenses in the
 immigration category include crimes such as smuggling or harboring aliens, trafficking in false
 documents, and fraudulently acquiring false documents. Similarly, by eliminating asylum violations in the
 German data, offenses under this category include crimes that both citizens and noncitizens can commit
 such as harboring or smuggling illegal aliens.
coding to reflect the unique aspects of the legal codes in each country as well as the unique emphasis of certain offenses within each country. For example, firearms offenses in federal courts often carry mandatory minimum penalties and are punished more severely relative to other offense in the U.S. than in Germany. Given the identification between foreigners and drug crime in popular and political culture in both countries, I pay particular attention to the relationship between citizenship and drug offenses throughout the analysis.

In the USSC data I further control for whether the individual was convicted at trial\(^{27}\) (coded 1) as opposed to a guilty plea (coded 0) and whether they received a departure from the presumptive sentence length, which can be upward or downward (using dummies for upward, downward, and substantial assistance departures\(^{28}\)).\(^{29}\) In both data sources I include a control for whether the individual was sentenced for multiple convictions (1= yes) and a dummy variable for the year of sentencing to account for any policy and legal changes between 2009 and 2010.

Finally, I account for two other important offender characteristics in both sources: the offender’s age (continuous measure) and sex (male=1). In the U.S. data I further control for the defendant’s race/ethnicity with dummies for black, Hispanic, and other race (white as

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\(^{27}\) Because defendant’s are not asked to enter a formal plea, there is no direct equivalent to the U.S. procedures of guilty pleas in Germany (but see Frase 2001 for a discussion of the similarities and differences between U.S. and German procedures for “plea bargaining”).

\(^{28}\) Judges can depart from a guideline-specified sentence when there is "an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." Defendants who are judged to have provided “substantial assistance” to the government in the prosecution of another federal case are eligible for downward departures under Federal Rule 5K1.1.

\(^{29}\) Some scholars argue that including departures into the prediction equation is inappropriate because they are endogenous. Though most literature on federal sentencing includes these as predictors, to ensure the robustness of my findings I re-estimated my main models excluding the departure variables (see Appendix A). The results from this analysis are entirely consistent with the results presented in the main body of this dissertation.
Several victim characteristics are also accounted for. The U.S. sentencing guidelines explicitly incorporate victim enhancements into the presumptive sentence for harm to “vulnerable victims” (e.g., harm to a minor, harm to an individual in the defendants’ care; see §3A1.1 of the U.S. Sentencing Guidelines). Hence, if noncitizens were more likely to victimize “vulnerable” populations, this is accounted for in the presumptive sentence measure. Similarly, I include a control for the number of victims under the age of 14 involved in the offense (ranging from 0 to 9) in the German analysis. However, it is important to note that previous research has indicated that victim characteristics such as race and gender may be important for the sentencing process (Baldus et al. 1983; Johnson et al. 2010), and neither data source contains this level of detail. Thus, it is possible that the reported results may be biased from this exclusion, particularly if noncitizens are more likely than citizens to harm certain types of victims that are historically associated with harsher punishment (e.g., women). I devote significant attention to this issue in the throughout my analysis by demonstrating the consistency and robustness of findings among “victimless crimes.”

Analytical Strategy and Logic of Analysis

In the U.S., all cases are adjudicated within 94 district courts, and cases handled within the same court likely share similarities and cannot be treated as independent. If variation in sentencing outcomes is partially determined by district level processes, this could potentially bias the model estimates (Ulmer and Johnson 2004; Kautt 2002). This is also true of sentencing processes in Germany, where sentencing outcomes could vary across the 119 Landgerichtsbezirk (Judicial Districts). In the both data sources I include dichotomous variables for each district to

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30 A result of Germany’s history of ethnic and racial conflict has been the removal of all variables referring to race and ethnicity from official data sources (Albrecht 2007).
capture any inter-district variation in sentencing. In effect, this approach captures all time-stable, unmeasured characteristics of district court communities, and accounts for any intra-class correlation that might exist between individual cases sentenced in the same district/state (Johnson and Betsinger 2009). Additionally, in all models I adjust the standard errors to account for the unmeasured interdependence of individuals sentenced within the same district court.31

My treatment of incarceration and sentence length as distinct decisions raises the possibility of selection. That is, those in the sentence length model may represent a non-random selection of those sentenced generally, and some prior research has attempted to deal with this potential bias using the Heckman two-step selection procedure (Bushway et al. 2007). While I provide a detailed discussion of this issue in Appendix A, I note here that this type of selection is likely less problematic in the U.S. federal courts where over 87 percent of offenders in the analysis received some form of incarceration, though it could potentially be more problematic in German courts where incarceration is used more sparingly. However, the supplemental analyses in Appendix A demonstrate that the Heckman correction is likely inappropriate for this analysis as the selection term introduces problematic collinearity into the model due to the lack of exclusion restrictions available in both data sources (see Bushway et al. 2007 for a detailed discussion). For these same reasons, recent studies using U.S. sentencing data have excluded the correction factor from sentence length models (Johnson and Betsinger 2009; Johnson et al. 2008; Wu and DeLone 2012). However, I note here that the pattern of results for the sentence length analysis is identical with the inclusion of the Heckman selection factor for both data sources (see Appendices).

An alternative method for handling the threat of selection bias is to combine these decisions into one dependent variable and model them simultaneously using tobit regression (see

31 This is accomplished using the “cluster” command in Stata.

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Bushway and Piehl 2001 for a detailed discussion). By combining these decisions, the model specification for sentence length is slightly more complicated due to the distributional properties of this measure. Only a subset of offenders receives incarceration, which means that offenders who receive probation or alternative sanctions have sentence lengths of zero. The result of this left censoring is that the outcome variable is not normally distributed. Tobit models account for truncated data by assuming that the outcome measure would be normally distributed if it was fully observed. In this regard, it accounts for both the probability that the outcome exceeds zero (i.e. that the offender was incarcerated) and the mean value of the outcome variable as adjusted by covariates (King et al. 2010). Due to the highly select nature of incarceration in Germany, I thus specify tobit models of sentence length and report the results in the main body of the text in Chapter 6 along with the results from models looking at incarceration and length separately.

There are four main analytical sections to address the punishment consequences of citizenship status. I investigate the main question of this dissertation by estimating models on the German and U.S. data that test the direct effect of citizenship status at sentencing, net of legally relevant controls. Formally, these models can be expressed as follows:

\[ Z_i = \ln \left( \frac{\pi_i}{1 - \pi_i} \right) = \beta_0 + \beta(\text{noncitizen}) + \beta_jX_{ij} + \alpha_k \]

\[ Y_i = (\hat{\mu}) = \beta_0 + \beta(\text{noncitizen}) + \beta_jX_{ij} + \alpha_k + \varepsilon_i \]

where \( Z_i \) represents the log odds of incarceration for individual \( i \) in a logistic regression equation, \( Y_i \) represents the logged number of months of imprisonment (\( \hat{\mu} \)) for individual \( i \) sentenced to incarceration in an OLS regression equation for the U.S. data, and the severity score of total imprisonment (ranging from 1 to 9) in the German data; \( \beta \) estimates the focal independent variable – noncitizen status –, \( X_{ij} \) represents a vector of \( j \) control variables, and \( \alpha_k \) is a block of \( k \)-
1 federal districts (in the U.S.) or *Landgerichtsbezirk* (in Germany) in the analysis. The tobit estimators for the German analysis are formally presented as:

\[ Y_i^* = \beta_0 + \beta(*noncitizen*) + \beta_i X_{ij} + \alpha_k + \varepsilon_i \]  \hspace{1cm} (3)

This equation is nearly identical to the OLS model in equation 2 except rather than modeling the prison sentence for only those who were incarcerated, \( Y^* \) is a latent variable that is observed for all values greater than 0 and censored otherwise. The observed \( Y \) is defined by the following measurement equation:

\[ Y_i = \begin{cases} Y^* & \text{if } Y^* > 0 \\ 0 & \text{if } Y^* \leq 0 \end{cases} \]  \hspace{1cm} (4)

Combined, equation 3 corresponds to the traditional linear regression model of sentence length among those incarcerated, while equation 4 corresponds to the relevant probabilities that an individual received incarceration. Thus, this approach provides estimates of the overall punitive effect of the independent variables. One shortcoming of this approach is the model assumes that sentencing is a one-stage process, and that the causal factors that lead to incarceration are identical to those that increase the length of the prison term. Because previous research suggests that several factors have varying effects across different sentencing stages (Steffensmeier and Demuth 2001), I report the tobit results alongside the logistic and least squares models. While each of these methods has their own strengths and weaknesses, the goal of drawing on multiple statistical techniques is to strengthen confidence that the patterns in the data are not dependent on any one particular estimation procedure.

This first section has two general aims. The first is to establish the relationship between national membership and punishment outcomes. The second is to assess the magnitude of the citizenship penalty relative to other factors that have dominated research in the field of legal inequality, particularly race and ethnicity.
While this section answers the fundamental focus of the dissertation, several additional analyses are needed to bolster the theoretical argument developed here – that noncitizens, *regardless of race, ethnicity, and national origin* are more likely to receive harsher punishment compared to their citizen counterparts. In other words, the punishment consequences are not reserved only for one particular group, but are experienced by nearly all those who fall outside of the of the national community. The key distinction being that it is not about being a particular group that constitutes the “other,” but rather that all groups who lack membership to the nation-state are viewed inherently as “other.” If this is indeed the case, we should see punishment consequences are most or all noncitizen groups. To test this argument I utilize the same analytical framework as above, but in subsequent models I use more refined measures of citizenship status as either legal status or country/region of origin.

The third analytical section investigates trends in the citizenship effect over time. This analysis is particularly important for evaluating many of the “postnational” claims because it could be that while there is an overall effect in the main analysis, the gap between citizens and noncitizens may have declined in recent decades. If this is the case, it would still refute the arguments that claim the “end of citizenship” (Spiro 2008), but would be consistent with the central argument of postnational claims that the importance of citizenship has declined. If on the other hand, the consequences of national membership at sentencing have remained consistent or increased during this time, this would be a strong refutation of the claim that the legal distinction between citizens and aliens has eroded, particularly given the emphasis of the role of the judiciary for ushering in this new postnational form of citizenship in previous research (see Soysal 1998; Jacobson 1996; Spiro 2008 as examples). To test these competing views, I estimate identical main effects models for the incarceration and sentence length decisions for each year.
from 1998 to 2010 in both the U.S. and Germany, which I display graphically to examine changes over time.32

While these analyses can demonstrate the relationship between citizenship and sentencing, one shortcoming is the inability to identify the mechanisms through which national membership impacts punishment. In other words, a necessary limitation of focusing solely on aggregate case outcomes is the inability to capture the interactional and social processes that generate these outcomes (Ulmer 1997). To provide a fuller and more nuanced explanation of these processes, my final analytical section draws on semi-structured interviews with judges in major cities within the United States and Germany on several issues germane to the study of citizenship and punishment.

**Methodological Strengths of the Quantitative-Qualitative Approach**

Despite several prominent calls for punishment research to go beyond statistical analyses (Spohn 2000; Ulmer 2012), qualitative research of sentencing decisions is relatively rare (but see Ulmer 1997; Steffensmeier et al. 1998; Ulmer and Kramer 1998; Bridges and Steen 1998). The more common approach in legal disparity research is to test whether factors such as race or gender statistically predict sentencing after relevant controls are accounted for in a multiple regression framework (sometimes referred to as the “residual variance” approach). The shortcomings of this “variable analysis” methodology have been well known to sociologists and criminologists for a long time. As Blumer noted over 50 years ago, “the variable relation is a single relation, necessarily bare of the complex of things that sustain it…a difficulty with this

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32 An alternative method for testing these trends is to combine the all years of data (1998-2010) and use interaction terms for citizenship status and year sentenced. As a robustness test on my year-over-year trends, I display these interaction coefficients in Tables 5.4 and 6.4, which show identical patterns to those reported in the figures.
scheme is that the empirical reference of a true sociological variable is not unitary or distinct. When caught in its actual social character, it turns out to be an intricate and inner-moving complex” (1956; 685, 688). The analytical strategy adopted here mitigates such oversimplification. By supplementing my statistical analysis with qualitative interviews in a cross-national research design, this research is the most thorough and comprehensive study of the consequences of citizenship in international punishment undertaken to date for several reasons.

First, as mentioned above, this mixed-method design goes considerably beyond prior studies by focusing on the mechanisms that link issues of national membership to punishment. While the variable methodology can be both effective and consistent with theoretical predictions, this “residual variance” method cannot actually test or identify the mechanisms said to be driving the predicted relationship. By contrast, this study first establishes the relationship between citizenship and punishment statistically but then looks to situate these quantitative results in proper context by providing a thick description (Geertz 1973) of how judges view the criminality and sentencing of noncitizen offenders. This approach is squarely within the symbolic interactionist tradition of using quantification and statistical analyses of outcomes to sensitize and lay the groundwork for qualitative study of the social processes that produce these outcomes (Ulmer and Wilson 2003; Blumer 1956). Because judges in both countries make the final sentencing decisions, a focus on judges is both warranted and necessary to provide this context and to identify and explicate these mechanisms.33

33 This is not to claim that other actors in the criminal justice system do not affect sentencing outcomes. For example, a prosecutor deciding to charge a defendant with a crime that carries a mandatory minimum penalty obviously would affect the final sentence, if convicted. However, I argue that the measures included in the statistical models, particularly the measure for presumptive sentence, capture these earlier influences and decisions. The central question of this study is once these legally relevant factors are accounted for, are there still disparities at punishment. Because only judges make decisions beyond the conviction stage and are responsible for determining the sentence, the analytical focus on judges is justified.
A second strength of this mixed-methodological approach is the ability to triangulate the results and to offset the disadvantages of any single method (Denzin 1989; Firebaugh 2008; Johnson and Turner 2003). That is, what the quantitative analysis gains in breadth, it lacks a certain degree of depth. By contrast, the qualitative component provides great detail into the sentencing process. Together, the goal is to derive a more complete set of results from which to draw stronger inferences. This method of triangulation also helps unpack the causal process driving the effects shown in observational data. As Seawright and Collier (2004: 277-278) note, this type of “causal-process observation is an indispensable supplement to correlation-based inference in quantitative research.”

Third, using mixed-methodologies is important for this study because it is one of the first to focus exclusively on the topic of citizenship and legal inequality. As I elaborate on in Chapter 7, there are strong theoretical reasons to think that the mechanisms linking citizenship to punishment may be qualitatively different in theoretically telling ways than other offender statuses discussed in prior research. Thus, this study is in one part a confirmatory analysis of the theoretical argument that citizenship is a mechanism of legal stratification, but also an exploratory analysis into the processes that link national membership to punishment considerations. In this regard, my analysis leverages one of the fundamental strengths of mixed-methodology – “it enables the researcher to simultaneously answer confirmatory and exploratory questions, and therefore verify and generate theory in the same study” (Teddlie and Tashakkori 2003: 15).

Finally, this study represents the first quantitative-qualitative approach to international punishment research. Just as a combination of methodologies strengthens inferences, using this approach across multiple contexts strengthens the robustness of the conclusions, as there is much
to be gained in crime and punishment research by looking across national boundaries (Tonry and Frase 2001). The markedly different conceptions of citizenship as well as the highly divergent normative and institutional responses to crime and punishment in the United States and Germany produces complexity that is likely unsuitable for one method alone. To properly address the questions of this dissertation, a variety of data sources and analyses are needed to understand such complex and multifaceted social phenomena. Mixed-methods provide such tools.

In summary, this approach attempts to combine quantitative analyses displaying differential punishment outcomes in U.S. and German courts with qualitative interviews that make the realization of legal disparities visible in real contexts. The analytical value of this approach has long been noted in sociology, “[Qualitative] studies…place flesh, blood, and nervous system on the skeleton of statistical information. Everything they reveal adds to and none of it subtracts from the quantitative information. Furthermore…the quantitative analyses reveal certain contours of behavior which help to focus qualitative observations” (Taylor 1947: 7). This project is thus consistent with calls from various other quarters of sociology and criminology for more fine-grained attention to explanatory detail, whether in the microlevel study of social interaction or in the macrolevel study comparative cross-national criminology (Lutfey and Freese 2005).

**Qualitative Analysis**

The interviews were conducted between May and September 2012 and consisted of four U.S. Federal Court judges in one “East Coast District” and four judges in a “West Coast District” court, as well as five *Landgerichte* (District Court) judges in one “West German District.” The scope of the findings from these interviews merit attention. While the research sites for these
interviews were chosen strategically (discussed below), the findings are not meant to be general statements about the views of all judges in each country, or even all judges within these chosen districts. Thus, the interviews are not meant to necessarily generalize to a population of judges. Rather, within this intentionally narrow domain, my goal is to use ethnography to capture *in depth* the diversity and intricacy of pathways that may operate to explain the relationship between citizenship and punishment. Given this focus, the important consideration is not the number of interviews but the social position of the judges to offer strategic knowledge about the sentencing process generally, and the punishment of foreigners specifically (Glaser and Strauss 1967). To this end, this analysis is well situated.

Each research site is home to a large and diverse set of immigrant groups and few cities in either country process more noncitizens in their criminal courts. Indeed, as shown in Table 4.3, in both U.S. districts noncitizens account for over 30 percent of the overall docket and there are over 50 different nationalities represented. In “West German District,” noncitizens accounted for over 20 percent of all of those punished, with over 100 different national-origin groups. In addition, these sites were chosen strategically so that the noncitizen groups did not strongly overlap with one particular race or ethnicity. For example, in the Western District of Texas, 98 percent of noncitizens are also Hispanic ethnicity. Given my theoretical argument on the distinction between race/ethnicity (particularly Hispanic ethnicity) and citizenship status, this district would be inappropriate for my research purposes. By contrast, only 64 percent of noncitizens in East and West Coast Districts are Hispanic, thus providing an ideal location to discuss issues of national membership with judges beyond Hispanic ethnicity.

Although Germany has no direct parallel to the distinction between state and federal courts in the U.S., I focus on *Landgerichte* court judges because these courts tend to process
more serious crimes, similar to U.S. federal courts, and thus are more likely to make decisions regarding incarceration. For example, in 2004 while only 5 percent of all those convicted in a German court received incarceration, 67 percent of offenders sentenced in a Landgerichte courts received a prison sentence, which is much more in line with the 84 percent of U.S. federal offenders in this same year.

The interviews, which lasted anywhere between 30 minutes and 2 hours (average ~ 1 hour), were digitally recorded and transcribed in full. Two interviews with judges in “East Coast District” were conducted over the phone, and all interviews in “West German District” were conducted with the aid of a researcher from the Max Planck Institute. While several judges spoke periodically in English, the discussions were mainly in German. As such, all interviews were professionally interpreted, then transcribed. The specific focus and content of these interviews centered on several topics and questions, including:

- Are there differences in the case process both before and after sentencing for citizen and noncitizen offenders (i.e. pre-trial detention, charging, plea agreements, trials, sentencing, corrections, etc.)?
- Do you consider the defendant’s citizenship status at sentencing in any way? If so, how?
- Does the availability of deportation as an eventual outcome for noncitizen criminals weigh in the consideration of their sentencing options?
- What are the key elements in your decision when you have to choose between incarceration and probation? What are the key elements when deciding the length of

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34 These data were graciously provided to me by Carina Tetal of the Max Planck Institute for Foreign and International Criminal Law.

35 I am especially indebted to Dr. Volker Grundies for his help with the interviews.
incarceration? Do any of these elements differ in key respects when dealing with noncitizen offenders?

- Nationally, statistics show that there are sometimes differences between the sentences citizens and noncitizens get, and that citizens get probation more often. Do you think that happens in your state/region/court? What might be some reasons for this?

Analysis of the ethnographic data followed the open, axial, and selective coding procedures described in Strauss and Corbin (1990). Descriptive or “open” coding focused on descriptively identifying interview segments pertaining to core categories of interest, centering on the meaning of citizenship for German and U.S. judges, and its role in case processing and sentencing decisions. Axial coding then centered on sorting and classifying interview data according to descriptive content properties and variation, as connected to citizenship and punishment in the U.S. and German contexts. Finally, selective coding compared and integrated the results of axial coding, which involved refined and focused comparisons within and between U.S. and German courts. The key goals of this selective coding was to: 1) identify the meaning citizenship has for judges, and its relevance, if any, in U.S. and German judges’ punishment decision processes, 2) to conduct within- and between-country comparisons of judges’ responses to questions about citizenship and punishment, looking for key similarities and differences, and 3) to relate judges interpretations of citizenship and judges’ consideration of it in punishment to broader temporal contexts and issues linking national membership to punishment concerns.

The next chapter investigates the punishment consequences of citizenship status in U.S. Federal Courts. Consistent with the logic previously detailed, this chapter first establishes the relationship between citizenship and punishment net of legally relevant controls, next examines the pattern for different legal status and national origin groups, and finally displays the trends in
the citizenship effect over time. After presenting the results for the U.S. analysis, the following chapter replicates this strategy for German courts. The proceeding chapter (Chapter 7) then examines the results from the interview data with U.S. and German judges.
Table 4.1: Descriptive Statistics for U.S. and Non-U.S. Citizens Sentenced in U.S. Federal Courts, 2009-2010

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coding and Description</th>
<th>Total</th>
<th>U.S. Citizen</th>
<th>Non-Citizen</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dependent Variables</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Incarcerated</td>
<td>Did the offender receive a prison sentence? (1=yes, 0=no)</td>
<td>88%</td>
<td>85%</td>
<td>96%</td>
</tr>
<tr>
<td>(ln) Sentence Length (N=85,100) standard deviation</td>
<td>Natural log of the total months of imprisonment (capped at 470)</td>
<td>3.8</td>
<td>3.9</td>
<td>3.4</td>
</tr>
<tr>
<td><strong>Independent Variables</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Offender Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Alien</td>
<td>Is the offender a legal non-U.S. citizen? (1=yes, 0=no)</td>
<td>7%</td>
<td>--</td>
<td>30%</td>
</tr>
<tr>
<td>Illegal Alien</td>
<td>Is the offender an undocumented or illegal non-U.S. citizen? (1=yes, 0=no)</td>
<td>16%</td>
<td>--</td>
<td>70%</td>
</tr>
<tr>
<td>Mexican</td>
<td>Is the offender a Mexican citizen? (1=yes, 0=no)</td>
<td>15%</td>
<td>--</td>
<td>66%</td>
</tr>
<tr>
<td>European Union</td>
<td>Is the offender a citizen of an EU country? (1=yes, 0=no)</td>
<td>0%</td>
<td>--</td>
<td>1%</td>
</tr>
<tr>
<td>Other European</td>
<td>Is the offender a citizen of a non-EU European country? (1=yes, 0=no)</td>
<td>1%</td>
<td>--</td>
<td>2%</td>
</tr>
<tr>
<td>Central/South American</td>
<td>Is the offender a citizen of a central or south American country? (1=yes, 0=no)</td>
<td>5%</td>
<td>--</td>
<td>22%</td>
</tr>
<tr>
<td>Middle Eastern</td>
<td>Is the offender a citizen of a middle eastern country? (1=yes, 0=no)</td>
<td>0%</td>
<td>--</td>
<td>2%</td>
</tr>
<tr>
<td>African/Asian</td>
<td>Is the offender a citizen of an African or Asian country? (1=yes, 0=no)</td>
<td>1%</td>
<td>--</td>
<td>6%</td>
</tr>
<tr>
<td>White (reference)</td>
<td>Is the offender White non-Hispanic? (1=yes, 0=no)</td>
<td>35%</td>
<td>40%</td>
<td>15%</td>
</tr>
<tr>
<td>Black</td>
<td>Is the offender Black non-Hispanic? (1=yes, 0=no)</td>
<td>29%</td>
<td>36%</td>
<td>5%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>Is the offender Hispanic? (1=yes, 0=no)</td>
<td>31%</td>
<td>19%</td>
<td>75%</td>
</tr>
<tr>
<td>Other Race</td>
<td>Is the offender Some Other non-Hispanic race? (1=yes, 0=no)</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Male</td>
<td>Is the offender male? (1=yes, 0=no)</td>
<td>84%</td>
<td>83%</td>
<td>90%</td>
</tr>
<tr>
<td>Age</td>
<td>Continuous measure of age (in years) at time of sentencing</td>
<td>35.8</td>
<td>36.3</td>
<td>34.0</td>
</tr>
<tr>
<td>Less than High School</td>
<td>Offender did not graduate high school (1=yes, 0=no)</td>
<td>41%</td>
<td>33%</td>
<td>66%</td>
</tr>
<tr>
<td>High School Graduate</td>
<td>Offender graduated high school (1=yes, 0=no)</td>
<td>34%</td>
<td>39%</td>
<td>18%</td>
</tr>
<tr>
<td>Some College</td>
<td>Offender attended some college (1=yes, 0=no)</td>
<td>18%</td>
<td>21%</td>
<td>10%</td>
</tr>
<tr>
<td>College Graduate (reference)</td>
<td>Offender graduated college (1=yes, 0=no)</td>
<td>7%</td>
<td>7%</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Legal / Case Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trial</td>
<td>Was offender convicted at bench or jury trial? (1=yes, 0=no)</td>
<td>5%</td>
<td>5%</td>
<td>4%</td>
</tr>
<tr>
<td>Property (reference)</td>
<td>Most serious offense type - Property (1=yes, 0=no)</td>
<td>3%</td>
<td>3%</td>
<td>1%</td>
</tr>
<tr>
<td>Drug</td>
<td>Most serious offense type - Drug (1=yes, 0=no)</td>
<td>44%</td>
<td>42%</td>
<td>54%</td>
</tr>
<tr>
<td>Immigration</td>
<td>Most serious offense type - Immigration (1=yes, 0=no)</td>
<td>8%</td>
<td>4%</td>
<td>23%</td>
</tr>
<tr>
<td>Violent</td>
<td>Most serious offense type - Violent (1=yes, 0=no)</td>
<td>3%</td>
<td>4%</td>
<td>1%</td>
</tr>
<tr>
<td>Firearms</td>
<td>Most serious offense type - Firearms (1=yes, 0=no)</td>
<td>15%</td>
<td>17%</td>
<td>5%</td>
</tr>
<tr>
<td>Sex Offense</td>
<td>Most serious offense type - Sex Offense (1=yes, 0=no)</td>
<td>3%</td>
<td>3%</td>
<td>0%</td>
</tr>
<tr>
<td>Fraud</td>
<td>Most serious offense type - Fraud (1=yes, 0=no)</td>
<td>19%</td>
<td>20%</td>
<td>13%</td>
</tr>
<tr>
<td>Other Offense</td>
<td>Most serious offense type - Other Offense (1=yes, 0=no)</td>
<td>5%</td>
<td>6%</td>
<td>3%</td>
</tr>
<tr>
<td>Upward Departure</td>
<td>Did offender receive an upward departure from the guidelines? (1=yes, 0=no)</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>Substantial Assistance Departure</td>
<td>Did offender receive a 5K1.1 departure from the guidelines? (1=yes, 0=no)</td>
<td>18%</td>
<td>19%</td>
<td>12%</td>
</tr>
<tr>
<td>Other Downward Departure</td>
<td>Did offender receive a non-5K1.1 downward departure from the guidelines? (1=yes, 0=no)</td>
<td>28%</td>
<td>28%</td>
<td>29%</td>
</tr>
<tr>
<td>Multiple Counts of Conviction</td>
<td>Was offender convicted of multiple counts? (1=yes, 0=no)</td>
<td>23%</td>
<td>24%</td>
<td>20%</td>
</tr>
<tr>
<td>Criminal History</td>
<td>USSC scale rating prior criminal history 1-6 (6 is most severe)</td>
<td>2.4</td>
<td>2.6</td>
<td>1.4</td>
</tr>
<tr>
<td>Presumptive Sentence (months)</td>
<td>Adjusted minimum number of months of incarceration recommended by the guidelines</td>
<td>71.7</td>
<td>76.8</td>
<td>53.6</td>
</tr>
<tr>
<td>Ln (presumptive sentence)</td>
<td>Natural log of adjusted minimum number of months of incarceration recommended by the guidelines</td>
<td>3.6</td>
<td>3.7</td>
<td>3.2</td>
</tr>
</tbody>
</table>

**Sentencing Year**

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>53,946</td>
</tr>
<tr>
<td>2010</td>
<td>50,870</td>
</tr>
</tbody>
</table>

**Number of Cases**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>104,816</td>
<td>81,659</td>
</tr>
<tr>
<td>2010</td>
<td>5,870</td>
<td>23,157</td>
</tr>
</tbody>
</table>
Table 4.2: Descriptive Statistics for German and Non-German Citizens Sentenced in German Courts, 2009-2010

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coding and Description</th>
<th>Total</th>
<th>German</th>
<th>Non-German</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dependent Variables</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Incarcerated</td>
<td>Did the offender receive a prison sentence? (1=yes, 0=no)</td>
<td>5.7%</td>
<td>5.5%</td>
<td>6.3%</td>
</tr>
<tr>
<td>Sentence Length Range (N=74,038)</td>
<td>Length of Incarceration</td>
<td>27%</td>
<td>29%</td>
<td>20%</td>
</tr>
<tr>
<td>Less than 6 Months</td>
<td></td>
<td>9%</td>
<td>9%</td>
<td>7%</td>
</tr>
<tr>
<td>6 Months Incarceration</td>
<td></td>
<td>11%</td>
<td>12%</td>
<td>9%</td>
</tr>
<tr>
<td>Between 6-9 Months</td>
<td></td>
<td>10%</td>
<td>10%</td>
<td>8%</td>
</tr>
<tr>
<td>Between 9 Months and 1 Year</td>
<td></td>
<td>16%</td>
<td>16%</td>
<td>15%</td>
</tr>
<tr>
<td>Between 1-2 Years</td>
<td></td>
<td>13%</td>
<td>12%</td>
<td>17%</td>
</tr>
<tr>
<td>Between 2-3 Years</td>
<td></td>
<td>10%</td>
<td>8%</td>
<td>16%</td>
</tr>
<tr>
<td>Between 3-5 Years</td>
<td></td>
<td>4%</td>
<td>3%</td>
<td>6%</td>
</tr>
<tr>
<td>Between 5-10 Years</td>
<td></td>
<td>0.3%</td>
<td>0.2%</td>
<td>0.6%</td>
</tr>
<tr>
<td>Life Sentence</td>
<td></td>
<td>0.3%</td>
<td>0.3%</td>
<td>0.3%</td>
</tr>
<tr>
<td><strong>Independent Variables</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Offender Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>European Union</td>
<td>Is the offender a citizen of an EU country? (1=yes, 0=no)</td>
<td>3%</td>
<td>--</td>
<td>18%</td>
</tr>
<tr>
<td>Other European</td>
<td>Is the offender a citizen of non-EU European country? (1=yes, 0=no)</td>
<td>7%</td>
<td>--</td>
<td>37%</td>
</tr>
<tr>
<td>Turkish</td>
<td>Is the offender a citizen of Turkey? (1=yes, 0=no)</td>
<td>4%</td>
<td>--</td>
<td>23%</td>
</tr>
<tr>
<td>Middle Eastern</td>
<td>Is the offender a citizen of a middle eastern country? (1=yes, 0=no)</td>
<td>1%</td>
<td>--</td>
<td>7%</td>
</tr>
<tr>
<td>Americas</td>
<td>Is the offender a citizen of an American country (1=yes, 0=no)</td>
<td>0%</td>
<td>--</td>
<td>2%</td>
</tr>
<tr>
<td>African/Asian</td>
<td>Is the offender a citizen of an African or Asian country? (1=yes, 0=no)</td>
<td>3%</td>
<td>--</td>
<td>14%</td>
</tr>
<tr>
<td>Male</td>
<td>Is the offender male? (1=yes, 0=no)</td>
<td>80%</td>
<td>79%</td>
<td>82%</td>
</tr>
<tr>
<td>Age</td>
<td>Continuous measure of age (in years) at time of sentencing</td>
<td>36.0</td>
<td>36.4</td>
<td>34.4</td>
</tr>
<tr>
<td><strong>Victim Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Young Victims</td>
<td>Number of victims under 14 (ranging 0-9)</td>
<td>0.005</td>
<td>0.005</td>
<td>0.004</td>
</tr>
<tr>
<td><strong>Legal / Case Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property/Theft (reference)</td>
<td>Most serious offense type - Property/theft (1=yes, 0=no)</td>
<td>19%</td>
<td>17%</td>
<td>24%</td>
</tr>
<tr>
<td>Public</td>
<td>Most serious offense type - Public Order (1=yes, 0=no)</td>
<td>22%</td>
<td>23%</td>
<td>15%</td>
</tr>
<tr>
<td>Fraud</td>
<td>Most serious offense type - Fraud (1=yes, 0=no)</td>
<td>30%</td>
<td>30%</td>
<td>28%</td>
</tr>
<tr>
<td>Drug</td>
<td>Most serious offense type - Drug (1=yes, 0=no)</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
</tr>
<tr>
<td>Sex Offense</td>
<td>Most serious offense type - Sex Offense (1=yes, 0=no)</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Violent</td>
<td>Most serious offense type - Violent (1=yes, 0=no)</td>
<td>14%</td>
<td>14%</td>
<td>15%</td>
</tr>
<tr>
<td>Immigration</td>
<td>Most serious offense type - Immigration (1=yes, 0=no)</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Other Offense</td>
<td>Most serious offense type - Other Offense (1=yes, 0=no)</td>
<td>7%</td>
<td>7%</td>
<td>8%</td>
</tr>
<tr>
<td>Multiple Counts of Conviction</td>
<td>Was offender convicted of multiple counts? (1=yes, 0=no)</td>
<td>19%</td>
<td>18%</td>
<td>22%</td>
</tr>
<tr>
<td>Offense Severity</td>
<td>Statutory prescribed sentencing range (1=6 months max.; 17=up to life)</td>
<td>5.6</td>
<td>5.5</td>
<td>6.0</td>
</tr>
<tr>
<td>Prior Convictions</td>
<td>Number of prior adult convictions (0-9)</td>
<td>2.3</td>
<td>2.4</td>
<td>1.8</td>
</tr>
<tr>
<td>Criminal History Severity</td>
<td>Severity of prior sanctioning (0=no prior incarceration; 7=incarceration for more than 2 years)</td>
<td>1.7</td>
<td>1.8</td>
<td>1.5</td>
</tr>
<tr>
<td><strong>Sentencing Year</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td></td>
<td>663,898</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td></td>
<td>643,311</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Cases</td>
<td></td>
<td>1,307,209</td>
<td>1,046,548</td>
<td>260,661</td>
</tr>
</tbody>
</table>

86
Table 4.3: Description of Judges and Courts used in Qualitative Analysis

<table>
<thead>
<tr>
<th>Court</th>
<th>Judges</th>
<th>Percent Non-Citizen</th>
<th>Number of Nationalities</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;West Coast District&quot;</td>
<td>2 White Males; 1 White Female; 1 Black Male</td>
<td>~ 30-40%</td>
<td>&gt; 50</td>
</tr>
<tr>
<td>&quot;East Coast District&quot;</td>
<td>2 White Males; 1 White Female; 1 Black Female</td>
<td>~ 30-40%</td>
<td>&gt; 50</td>
</tr>
<tr>
<td>&quot;West German District&quot;</td>
<td>3 White Males; 2 White Females</td>
<td>~ 20-30%</td>
<td>&gt; 100</td>
</tr>
</tbody>
</table>

Note: Approximations and categories are used to describe the percentage of noncitizens and the number of national-origin groups to ensure anonymity among the judges who participated in the study.
Chapter 5: Punishing the ‘Others’ in U.S. Federal Courts

This chapter investigates the punishment consequences of citizenship in U.S. federal courts. As previously discussed, the federal judiciary provides a suitable if not ideal venue for assessing the legal relevance citizenship. Not only does the data provide detailed measures to isolate the independent effect of national membership on punishment outcomes, but the courts are a direct representation of state social control. To this end, the results presented here are well situated to speak to ongoing debates on whether the boundaries of citizenship remain consequential legal statuses. This analysis begins by presenting basic differences in incarceration for citizen and noncitizen offenders. Figure 5.1 shows the percent of convicted offenders who received a prison sentence by citizenship status.

According to Figure 5.1, noncitizen offenders are more likely to be incarcerated, with 85% of U.S. citizens receiving a prison sentence compared to 96% of noncitizens who are incarcerated upon conviction. However, whether these differences are due to their citizenship status remains an open question. There are other factors that could differentially expose noncitizens to increased punishment. For instance, as shown in Table 4.1, relative to citizens, noncitizens are less likely to have completed high school, more likely to be convicted of a drug offense, and are far more likely to be Hispanic. Thus, in Table 5.1 I assess whether differences in sentencing remain after controls related to both citizenship status and punishment are included.

Model 1 in Table 5.1 presents coefficients with citizenship status omitted from the model. Consistent with previous research, offenders who have more severe criminal histories, those convicted at trial, and those with higher presumptive sentences are more likely to be sentenced to prison. Interestingly, relative to property offenders, those convicted of immigration violations are far more likely to be sentenced to prison – even more so than drug and violent offenders – which
is consistent with other research noting the increased use of state control against immigrants (Miller 2003; Ellermann 2009; Bosworth 2008). In addition, male offenders, those with less than high school education and younger offenders are more likely to be incarcerated. I also find significant differences based on race and ethnicity, where blacks are about 16 percent more likely to be incarcerated, ‘other race’ offenders have 26 percent higher odds, and Hispanic offenders are more than twice as likely to receive a prison sentence (odds ratio = 2.23; p < .001) compared to non-Hispanic white offenders, net of legally relevant controls.

Model 2 includes my focal independent variable, citizenship status, and the results are rather striking. Compared to U.S. citizens, noncitizen offenders are four and a half times more likely to be incarcerated, and this effect is larger than the effects for race, ethnicity, gender, age, education, being convicted at trial, and any of the offense types. In short, using methods and model specifications virtually identical to much published work in the area (e.g., Ulmer et al. 2011; Johnson and Betsinger 2009), the effects of citizenship status are stronger than almost all of the extra-legal variables that have factored prominently in prior research. For instance, in Model 2, the magnitude of the coefficient for citizenship is approximately four times stronger than that for Hispanic ethnicity. Moreover, citizenship status explains a significant amount of the extra-legal disparities shown in model 1. Introducing citizenship status into the model reduces the education effect (‘less than high school’) by 27 percent [1- (.355/.488) = .27], the immigration offense effect by 29 percent, and perhaps most notably, the Hispanic effect by just over 60 percent. In short, a substantial portion of the disparity for Hispanics appears attributable to the differential treatment of noncitizens. Furthermore, I note here that the relationship between
Hispanic ethnicity and citizenship status is not symmetrical in that ethnicity explains virtually none of the overall citizenship effect.\textsuperscript{36}

Model 3 further analyzes the effect of citizenship status by assessing the sentencing differences between legal and illegal aliens (compared to U.S. citizens). The results show that both noncitizen types have significantly higher odds of being incarcerated and these effects are stronger than the race, gender, or education effects. While both groups have elevated rates, illegal aliens are nearly ten times more likely to be incarcerated while legal aliens are over twice as likely to be imprisoned. The results in Table 5.1 suggest that citizenship status is a consequential sentencing criterion and a salient measure of legal stratification.

The models in Table 5.2 are identical to those in Table 5.1 except I model the length of incarceration. Again, in model 1 I find results largely consistent with prior research; males, the poorly educated, and minorities (blacks and Hispanics relative to whites) receive longer prison sentences. In model 2 I introduce citizenship status, and similar to the results in Table 5.1, I find that the effect of citizenship status (\(b = 0.050; p < .001\)) is roughly twice as large as the race/ethnicity measures (Black = 0.020; Hispanic = 0.026).\textsuperscript{37} Interpreted differently, if the average U.S. citizen offender is sentenced to 76 months in prison (mean sentence length for U.S. citizens is 75.7), net of legally relevant controls, the average noncitizen receives a sentence length of nearly 80 months (76 * \(e^{(0.050)} = 79.9\)). An alternative measure to gauge the punishment consequences of citizenship at sentencing is an estimate of the aggregate increase in prison time as a result of lacking U.S. citizenship over the study period. Adjusting for all legal and extralegal variables, this is

\textsuperscript{36} Supplementary analysis indicates this is not simply an issue of collinearity, and that the bulk of the Hispanic effect is actually attributable to lacking citizenship status. I direct interested readers to the Appendix, where I discuss in detail models that demonstrate the trivial mediating effect of Hispanic ethnicity on the citizenship effect.

\textsuperscript{37} This pattern is identical when looking at standardized Beta coefficients, where the \(\beta\) for citizenship status (.02) is roughly as large as those for Hispanic ethnicity (.011) and black race (.009).
legal variables in the analysis, the estimates presented in Table 5.2 suggest that lacking citizenship status in U.S. courts resulted in defendants being sentenced to an additional 7,871 prison years in U.S. Federal prisons.\textsuperscript{38} Given that the model does not account for the likelihood of receiving a prison sentence, this is likely a conservative estimate. When combining the sentence length results in Table 5.2 with the finding on the increased likelihood of incarceration presented in Table 5.1, the cumulative increase in incarceration is 11,926 total prison years.\textsuperscript{39}

Similar to the incarceration decision, introducing citizenship status to model 2 mediates nearly half of the Hispanic effect, and citizenship status appears to matter more than race or ethnicity. Also consistent with the findings from Table 5.1, relative to their citizen counterparts, both types of noncitizens are considerably disadvantaged at sentencing, with illegal aliens receiving longer sentences than noncitizens residing here legally.

The results in Tables 5.1 and 5.2 show three clear patterns. First, the application of law is differentially applied depending on an offender’s citizenship status, with noncitizens more likely to be incarcerated and to receive longer prison sentences compared to U.S. citizens. On this issue, I also find notable differences when disaggregating noncitizens by legal status, with illegal aliens being most at risk for severe punishment compared to legal aliens. Second, the effects of citizenship and legal status are considerably larger than the effects of race and ethnicity. Third, the results show that the harsher punishments Hispanics receive are largely attributable to their

\textsuperscript{38} This estimate is derived from modeling sentencing length identical to model 2 in Table 5.2 but leaving the dependent variable in the original metric (months). The citizenship coefficient for this model was 4.92 (SE = 0.720) which is consistent with the coefficient presented in Table 5.2 when using the log transformation. I then multiplied this 4.92 month increase by the number of noncitizens in the analysis (19,198) and divided by 12 to estimate the approximate number of prison years attributable to citizenship status (see Huber and Gordon 2004 for a similar application).

\textsuperscript{39} Using a tobit model, which incorporates both the incarceration and sentence length decisions, I estimated that noncitizens receive 6.18 months longer (SE = 0.858), net of controls. This corresponds to an aggregate effect of 11,926 prison years (+/- 1655) based on the following calculation [(6.18 * 23,157) / 12].
citizenship status. Moreover, it is worth noting that these results are not dependent on any particular offense type and are also consistent across victimless crimes as well. For example, the interaction effect between noncitizen status and drug offenses in the incarceration model (results not shown) is significant and positive (b=0.825; p<.01), suggesting that the citizenship penalty observed across all cases is even more pronounced for noncitizen drug offenders. This is perhaps not surprising given the increasing punitiveness towards immigration and immigrants in the “War on Drugs” (Musto 1973) and the widespread perceived link between foreign groups and drug trafficking in public, political, and criminal justice circles (Steffensmeier and Demuth 2000).

While these results are in line with theoretical predictions on the role of social and cultural distance at punishment, several questions remain regarding the scope of these citizenship results that speak to the strength of the argument developed here. Most important among them, does the main effect of citizenship status mask heterogeneity among different noncitizen groups? That is, according to my argument, noncitizens are more likely to receive harsher punishment under the law compared to their citizen counterparts, but it could be the case that the main effects of citizenship are driven mostly or even exclusively by one group. For example, Mexicans make up the largest group of noncitizens in federal courts by far, and have also been the subject of intense controversy regarding immigration and crime in the last several decades (Sampson 2008). If the punishment consequences of citizenship status are reserved only for Mexicans, this would undermine the main theoretical argument of this dissertation. If, on the other hand, most or all noncitizen groups are targeted for increased punitiveness, this would provide a considerable degree of support for my contention. The next section addresses this question.
The Punishment of Different Noncitizen Groups

Table 5.3 reports incarceration and sentence length models using six different noncitizen categories based on nationality or region, compared to U.S. citizen offenders (note that both models include all controls reported in Table 5.1 and 5.2). To situate these findings within the existing literature on legal inequality, I also include the effects for black race and Hispanic ethnicity.

The pattern of results in Table 5.3 is clear across both the incarceration and sentence length decisions – all noncitizen groups, including those from Europe, receive more severe punishments compared to U.S. citizens (though there is some variation among different noncitizen groups). Moreover, for all noncitizen groups, the effect sizes dwarf those traditionally discussed in punishment research. That is, the relative gap between all noncitizen groups and U.S. citizens far exceeds the gap between racial/ethnic minorities and whites. Indeed, at the incarceration stage (model 1), the effect of being a Mexican noncitizen is over 10 times larger than Hispanic ethnicity alone, net of legally relevant controls. Even the smallest effect size – observed for Middle Eastern noncitizens – is over 3 times larger than the effect of Hispanic ethnicity and over 5 times larger than black race. This pattern for noncitizen groups relative to race and ethnicity holds for the sentence length decision as well. However, for the length decision I observe a similar, albeit slightly different pattern of variation among the noncitizen groups. Whereas Mexican noncitizens appear most disadvantaged at the incarceration

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40 Wald tests from model 1 show that the effect for Mexican noncitizens is statistically different from all other groups.

41 Though rarely used in logistic regression models, an alternative method for gauging the relative strength of the independent variables is through standardization (see Long and Freese 2005 for a detailed discussion). The results from this procedure (performed using the “listcoef” command in Stata) are in line with those reported in the main body of the text. For example, the standardized coefficient for Mexican (standardizing for $X$) is still 8 times the standardized coefficient for Hispanic ethnicity (0.757 compared to .093).
stage, Wald tests show that none of the effects for noncitizen groups are statistically different from each other in the sentence length model. In other words, the punishment consequences of lacking U.S. citizenship are relatively uniform across all noncitizen groups at the sentence length stage.

Overall, the results in Table 5-3 show that the citizenship penalty displayed in the main effect models is not reserved for one particular group, but rather is applied to all groups who fall outside the boundaries of the national community. In short, the pattern of enhanced punitiveness in the data suggest that it is not just about being from Mexico or from the Middle East that leads to increased punishment, but about not being a U.S. citizen that yields disparate treatment. Together with the findings in Tables 5.1 and 5.2, these results suggest that citizenship is a salient measure of legal stratification in the application of U.S. law.

The Salience of Citizenship over Time

In this final analytical section I consider the salience of citizenship over time. Figure 5.2 shows the trends from 1998 to 2010 for the effects of race and ethnicity on the incarceration decision without controlling for citizenship status in panel A, and the trends for race, ethnicity, and citizenship in panel B. Panel A shows a pattern of relative stability in racial disparity from 1998 to 2010, and perhaps slight evidence of increasing ethnic disparity over the past 6-7 years. Consistent with prior research, the figure shows a clear and substantial Hispanic effect, with Hispanic offenders approximately twice as likely to be incarcerated as whites, while the black incarceration effect was consistently close to zero (i.e. the same odds of imprisonment as whites).
The story changes dramatically when I introduce citizenship status (Panel B). By far the most significant trend shown is the dramatic increase in the effect for citizenship status. From 1998 to 2010 the citizenship effect increased in near linear fashion, where by 2010 noncitizens were virtually assured of being incarcerated if they were sentenced in federal courts. In addition, and consistent with the results shown in Tables 5.1 and 5.2, citizenship status mediates well over half the Hispanic effect. Thus, the data suggest that what emerged most dramatically over the past decade is not the Hispanic sentencing penalty, but the citizenship penalty. Overall then, and in direct contradiction to the postnationalist perspective, this analysis suggests that citizenship has become considerably more salient over time. Next I examine whether this pattern is consistent for the sentence length decision.

The results in Figure 5.3, while showing a different pattern than those at the incarceration stage, are still at odds with the postnational view. Two main findings from panels A and B illustrate this point. First, since the late 1990s, the gap between citizens and noncitizens has been far greater than the disparity between racial/ethnic minorities and white offenders, often on the magnitude of 2:1. Second, there is no evidence to suggest that the citizenship penalty has decreased in recent years. Rather, the citizenship effects are exceptionally stable over the study period, unlike those observed for race and ethnicity.

The trends shown in Figures 5.2 and 5.3 are substantively identical when I combine all years of data into one model and interact citizenship status with the year of sentencing. As evidenced by the interaction terms in models 1 and 2 of Table 5.4, the citizenship effect has increased over time at the incarceration stage, but has remained unchanged for the sentence length decision.

Z-tests confirm that the citizenship effect is significantly stronger in the late 2000s compared to the late 1990s.
Summary

This chapter sought to answer three interrelated questions: 1) what are the punishment consequences of lacking U.S. citizenship? 2) how does citizenship compare to factors traditionally emphasized in research on legal stratification? and 3) how has the punishment of noncitizens changed over time? The results presented throughout this chapter present a remarkably consistent picture of the relationship between citizenship status and punishment outcomes in U.S. federal courts. Using multiple analytic procedures and across a variety of alternative analyses, the results show that lacking U.S. citizenship is a powerful determinant of increased punishment. The first phase of the analysis showed the magnitude of the citizenship penalty relative to other factors discussed widely in legal inequality research. Two notable findings emerge from this phase of the analysis. First, the effect of citizenship status is greater in magnitude than nearly all other factors traditionally associated with legal inequality, particularly at the incarceration stage. Stated differently, net of controls for legally relevant factors, the relative punishment disparity between citizens and noncitizens is greater than the gap between minorities and whites, between males and females, between the young and the old, and between the highly educated and dropouts. Second, as illustrated in Tables 5.1 and 5.2, ethnic differences at sentencing are substantially reduced (between 40 and 60 percent) when citizenship is considered. To that end, this analysis suggests that many Hispanics in federal courts fare worse than other groups largely because they are often noncitizens. In short, societal membership appears to trump ethnicity when determining appropriate punishments for those who violate U.S. law.

43 This is true for the sentence length analysis as well, with the exception of the disparity between males and females.
Building upon these findings, subsequent analysis investigated the salience of the line dividing citizens and noncitizens at sentencing in two ways. First, models using more refined measures of citizenship show punishment disparities are observed for legal and illegal aliens alike, though the effects are particularly pronounced for undocumented offenders. Additionally, models were estimated using six different noncitizen groups, based on country or region. The results from these models are unambiguous – the citizenship penalty displayed in the first phase of the analysis is observed for all noncitizen groups (though there is some evidence of variation among these groups). In other words, noncitizens receive harsher punishment not because of who they are, but because of who they are not. In this regard, the differences between U.S. citizens and noncitizens outweigh any inter-group differences observed among noncitizens punished in federal courts.

The final phase investigated the direction disparate treatment against noncitizens appears to be trending. For both the incarceration and sentence length decisions, the results highlight the importance of citizenship under the law over the entire study period. When determining whether to incarcerate offenders upon conviction, the results show a clear pattern of increasing disparity from 1998 to 2010 between citizens and noncitizens. For the length of imprisonment, the trend can be best characterized as one of stable disparity.

Taken in sum, the results present and clear and consistent picture of the relationship between citizenship and punishment. Across different model specifications and using different estimation procedures, lacking U.S. citizenship has a significant effect at sentencing. These effects are present even after accounting for a multitude of legal and extra-legal factors. Moreover, the results in Tables 5.1 and 5.2 suggest that much of the ethnic differences at sentencing can be attributed to citizenship status. Including citizenship in models predicting
incarceration reduces the Hispanic-white gap by over 60 percent. In addition, there is no evidence to suggest the citizenship penalty has ebbed in recent years. On the contrary, this penalty has dramatically increased at the incarceration stage. Against the backdrop of the dramatic rise in noncitizens sentenced in federal courts and incarcerated in federal prisons, the empirical results suggest that citizenship has become a key mechanism of legal stratification.

Having demonstrated the salience of citizenship in U.S. courts, the next chapter presents the findings that investigate this relationship in Germany. The structure of this chapter is similar to Chapter 5; it begins with basic associations between citizenship and punishment, then progresses to multivariate models showing the main effects of citizenship as well as the effects of various noncitizen groups, and concludes with an analysis of citizenship disparity over time.
Figure 5.1: Percent Incarcerated in U.S. Federal Courts by Citizenship Status, 2009-2010

Note: Author's calculation of 2009-2010 USSC data. N for U.S. citizens (81,659); N for non-U.S. citizens (23,157)
<table>
<thead>
<tr>
<th>Measure</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>b</td>
<td>SE</td>
<td>OR</td>
</tr>
<tr>
<td><strong>Focal Measures</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Citizen (reference)</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Non-U.S. Citizen</td>
<td>--</td>
<td>--</td>
<td>1.521</td>
</tr>
<tr>
<td>Legal Alien</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Illegal Alien</td>
<td>--</td>
<td>--</td>
<td>2.284</td>
</tr>
<tr>
<td><strong>Offender Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>0.148</td>
<td>0.047</td>
<td>1.16</td>
</tr>
<tr>
<td>Hispanic</td>
<td>0.800</td>
<td>0.089</td>
<td>2.23</td>
</tr>
<tr>
<td>Other Race</td>
<td>0.235</td>
<td>0.072</td>
<td>1.26</td>
</tr>
<tr>
<td>Male</td>
<td>0.576</td>
<td>0.041</td>
<td>1.78</td>
</tr>
<tr>
<td>Age</td>
<td>-0.012</td>
<td>0.002</td>
<td>0.99</td>
</tr>
<tr>
<td>Less than High School</td>
<td>0.488</td>
<td>0.066</td>
<td>1.63</td>
</tr>
<tr>
<td>High School Graduate</td>
<td>0.040</td>
<td>0.047</td>
<td>1.04</td>
</tr>
<tr>
<td>Some College</td>
<td>-0.041</td>
<td>0.047</td>
<td>0.96</td>
</tr>
<tr>
<td><strong>Offense Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trial</td>
<td>0.409</td>
<td>0.098</td>
<td>1.51</td>
</tr>
<tr>
<td>Drug</td>
<td>1.127</td>
<td>0.150</td>
<td>3.09</td>
</tr>
<tr>
<td>Immigration</td>
<td>1.585</td>
<td>0.146</td>
<td>4.88</td>
</tr>
<tr>
<td>Violent</td>
<td>1.082</td>
<td>0.130</td>
<td>2.95</td>
</tr>
<tr>
<td>Firearms</td>
<td>0.797</td>
<td>0.096</td>
<td>2.22</td>
</tr>
<tr>
<td>Sex Offense</td>
<td>1.043</td>
<td>0.193</td>
<td>2.84</td>
</tr>
<tr>
<td>Fraud</td>
<td>0.844</td>
<td>0.069</td>
<td>2.33</td>
</tr>
<tr>
<td>Other Offense</td>
<td>0.258</td>
<td>0.064</td>
<td>1.29</td>
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<tr>
<td><strong>Legal Measures</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Upward Departure</td>
<td>2.872</td>
<td>0.335</td>
<td>17.66</td>
</tr>
<tr>
<td>Substantial Assistance Dep.</td>
<td>-1.852</td>
<td>0.090</td>
<td>0.16</td>
</tr>
<tr>
<td>Downward Departure</td>
<td>-1.204</td>
<td>0.097</td>
<td>0.30</td>
</tr>
<tr>
<td>Multiple Counts</td>
<td>0.299</td>
<td>0.061</td>
<td>1.35</td>
</tr>
<tr>
<td>Criminal History</td>
<td>0.400</td>
<td>0.022</td>
<td>1.49</td>
</tr>
<tr>
<td>Presumptive Sentence</td>
<td>0.090</td>
<td>0.007</td>
<td>1.09</td>
</tr>
<tr>
<td>2010</td>
<td>-0.031</td>
<td>0.032</td>
<td>0.97</td>
</tr>
<tr>
<td>Constant</td>
<td>-2.122</td>
<td>0.124</td>
<td>1.09</td>
</tr>
<tr>
<td>-2 log likelihood</td>
<td>41834.0</td>
<td>40449.0</td>
<td>40031.4</td>
</tr>
<tr>
<td>Chi-square test</td>
<td>13768.0</td>
<td>161.3</td>
<td>238.9</td>
</tr>
<tr>
<td>N</td>
<td>104,816</td>
<td>104,816</td>
<td>104,816</td>
</tr>
</tbody>
</table>

* p < .05   ** p < .01   *** p < .001

Note: Standard Errors are clustered on judicial district. All models include controls for district.
### Table 5.2: OLS Models of Sentence Length in U.S. Federal Courts, 2009-2010

<table>
<thead>
<tr>
<th>Measure</th>
<th>b</th>
<th>SE</th>
<th>b</th>
<th>SE</th>
<th>b</th>
<th>SE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Focal Measures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Citizen (reference)</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Non-U.S. Citizen</td>
<td>--</td>
<td>--</td>
<td>0.050</td>
<td>0.009</td>
<td>***</td>
<td>--</td>
</tr>
<tr>
<td>Legal Alien</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>0.040</td>
<td>0.011</td>
</tr>
<tr>
<td>Illegal Alien</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>0.056</td>
<td>0.011</td>
</tr>
<tr>
<td><strong>Offender Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>0.020</td>
<td>0.005</td>
<td>***</td>
<td>0.020</td>
<td>0.005</td>
<td>***</td>
</tr>
<tr>
<td>Hispanic</td>
<td>0.045</td>
<td>0.009</td>
<td>***</td>
<td>0.026</td>
<td>0.008</td>
<td>**</td>
</tr>
<tr>
<td>Other Race</td>
<td>-0.006</td>
<td>0.013</td>
<td></td>
<td>-0.012</td>
<td>0.015</td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>0.074</td>
<td>0.007</td>
<td>***</td>
<td>0.068</td>
<td>0.006</td>
<td>***</td>
</tr>
<tr>
<td>Age</td>
<td>0.000</td>
<td>0.000</td>
<td></td>
<td>0.000</td>
<td>0.000</td>
<td></td>
</tr>
<tr>
<td>Less than High School</td>
<td>0.025</td>
<td>0.010</td>
<td>*</td>
<td>0.020</td>
<td>0.010</td>
<td>*</td>
</tr>
<tr>
<td>High School Graduate</td>
<td>0.013</td>
<td>0.009</td>
<td></td>
<td>0.013</td>
<td>0.010</td>
<td></td>
</tr>
<tr>
<td>Some College</td>
<td>0.002</td>
<td>0.010</td>
<td></td>
<td>0.002</td>
<td>0.010</td>
<td></td>
</tr>
<tr>
<td><strong>Offense Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trial</td>
<td>0.052</td>
<td>0.009</td>
<td>***</td>
<td>0.051</td>
<td>0.009</td>
<td>***</td>
</tr>
<tr>
<td>Drug</td>
<td>0.036</td>
<td>0.018</td>
<td>*</td>
<td>0.031</td>
<td>0.018</td>
<td></td>
</tr>
<tr>
<td>Immigration</td>
<td>0.037</td>
<td>0.034</td>
<td></td>
<td>0.025</td>
<td>0.033</td>
<td></td>
</tr>
<tr>
<td>Violent</td>
<td>0.046</td>
<td>0.017</td>
<td>**</td>
<td>0.047</td>
<td>0.018</td>
<td>**</td>
</tr>
<tr>
<td>Firearms</td>
<td>0.013</td>
<td>0.017</td>
<td></td>
<td>0.012</td>
<td>0.017</td>
<td></td>
</tr>
<tr>
<td>Sex Offense</td>
<td>0.073</td>
<td>0.018</td>
<td>***</td>
<td>0.075</td>
<td>0.018</td>
<td>***</td>
</tr>
<tr>
<td>Fraud</td>
<td>-0.032</td>
<td>0.016</td>
<td>*</td>
<td>-0.034</td>
<td>0.016</td>
<td>*</td>
</tr>
<tr>
<td>Other Offense</td>
<td>-0.047</td>
<td>0.022</td>
<td>*</td>
<td>-0.049</td>
<td>0.022</td>
<td>*</td>
</tr>
<tr>
<td><strong>Legal Measures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Upward Departure</td>
<td>0.665</td>
<td>0.026</td>
<td>***</td>
<td>0.665</td>
<td>0.026</td>
<td>***</td>
</tr>
<tr>
<td>Substantial Assistance Dep.</td>
<td>-0.651</td>
<td>0.024</td>
<td>***</td>
<td>-0.649</td>
<td>0.024</td>
<td>***</td>
</tr>
<tr>
<td>Downward Departure</td>
<td>-0.460</td>
<td>0.011</td>
<td>***</td>
<td>-0.459</td>
<td>0.011</td>
<td>***</td>
</tr>
<tr>
<td>Multiple Counts</td>
<td>0.053</td>
<td>0.006</td>
<td>***</td>
<td>0.052</td>
<td>0.006</td>
<td>***</td>
</tr>
<tr>
<td>Criminal History</td>
<td>0.024</td>
<td>0.001</td>
<td>***</td>
<td>0.026</td>
<td>0.001</td>
<td>***</td>
</tr>
<tr>
<td>(ln) Presumptive Sentence</td>
<td>0.937</td>
<td>0.008</td>
<td>***</td>
<td>0.938</td>
<td>0.008</td>
<td>***</td>
</tr>
<tr>
<td>2010</td>
<td>-0.001</td>
<td>0.003</td>
<td></td>
<td>-0.001</td>
<td>0.003</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-0.034</td>
<td>0.035</td>
<td></td>
<td>-0.042</td>
<td>0.035</td>
<td></td>
</tr>
<tr>
<td>R²</td>
<td>0.899</td>
<td>0.899</td>
<td></td>
<td>0.899</td>
<td>0.899</td>
<td></td>
</tr>
<tr>
<td>F-test</td>
<td>20884.2</td>
<td>***</td>
<td>30.1</td>
<td>***</td>
<td>14.9</td>
<td>***</td>
</tr>
</tbody>
</table>

* p < .05    ** p < .01    *** p < .001

**Note:** Standard Errors are clustered on judicial district. All models include controls for district.
### Table 5.3: Incarceration and Sentence Length Models for Different Non-Citizen Groups in U.S. Federal Courts, 2009-2010

<table>
<thead>
<tr>
<th>Measure</th>
<th>Incarceration</th>
<th>ln Length</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Model 1</td>
<td>Model 2</td>
</tr>
<tr>
<td>U.S. Citizen (reference)</td>
<td>0.000</td>
<td>0.000</td>
</tr>
<tr>
<td>Mexican</td>
<td>2.104</td>
<td>0.217</td>
</tr>
<tr>
<td>European Union</td>
<td>1.414</td>
<td>0.175</td>
</tr>
<tr>
<td>Other European</td>
<td>1.430</td>
<td>0.228</td>
</tr>
<tr>
<td>Central/South American</td>
<td>1.445</td>
<td>0.123</td>
</tr>
<tr>
<td>Middle Eastern</td>
<td>0.664</td>
<td>0.157</td>
</tr>
<tr>
<td>African/Asian</td>
<td>0.788</td>
<td>0.143</td>
</tr>
<tr>
<td>Black</td>
<td>0.130</td>
<td>0.043</td>
</tr>
<tr>
<td>Hispanic</td>
<td>0.199</td>
<td>0.078</td>
</tr>
<tr>
<td>Pseudo R² / R²</td>
<td>0.490</td>
<td>0.899</td>
</tr>
<tr>
<td>N</td>
<td>106,323</td>
<td>85,018</td>
</tr>
</tbody>
</table>

* * p < .05   ** p < .01   *** p < .001

*Note*: Standard Errors are clustered on judicial district. All models include all variables reported in Tables 5.1 and 5.2 as well as controls for district.
Figure 5.2: Race, Ethnicity, and Citizenship Effects for the Incarceration Decision, 1998-2010

Source: Estimates based on year-over-year models from 1998-2010. Trend lines are smoothed for illustration. Models are identical to those shown in column 2 of Table 5.1.
Figure 5.3: Race, Ethnicity, and Citizenship Effects for the Sentence Length Decision, 1998-2010

Source: Estimates based on year-over-year models from 1998-2010. Trend lines are smoothed for illustration. Models are identical to those shown in column 2 of Table 5.2
Table 5.4: Long-term Trends in Citizenship Disparities for Incarceration and Sentence Length Decisions, 1998-2010

<table>
<thead>
<tr>
<th>Measure</th>
<th>Incarceration</th>
<th>ln Length</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Model 1</td>
<td>Model 2</td>
</tr>
<tr>
<td>U.S. Citizen (reference)</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Non-U.S. Citizen</td>
<td>0.939 (0.122)</td>
<td>0.045 (0.014) ***</td>
</tr>
<tr>
<td>Black</td>
<td>0.049 (0.027)</td>
<td>0.023 (0.003) ***</td>
</tr>
<tr>
<td>Hispanic</td>
<td>0.283 (0.041)</td>
<td>0.014 (0.006) ***</td>
</tr>
<tr>
<td>Year</td>
<td>0.003 (0.004)</td>
<td>0.006 (0.001) ***</td>
</tr>
<tr>
<td>Non-Citizen x Year</td>
<td>0.049 (0.010)</td>
<td>0.001 (0.002)</td>
</tr>
<tr>
<td>N</td>
<td>652,248</td>
<td>533,498</td>
</tr>
</tbody>
</table>

* p < .05  ** p < .01  *** p < .001

Note: Standard Errors are clustered on judicial district. Models include all variables shown in Tables 5-1 and 5-2 as well as controls for district.
Chapter 6: Punishing the ‘Others’ in German Courts

This chapter investigates the association between citizenship and punishment in Germany. Perhaps more so than the United States, Germany as a case study is exceptionally well positioned to inform our understanding of the legal consequences of citizenship in wake of ongoing globalization and under the umbrella of supra-national governing bodies. Setting aside their own self-imposed legal constraints, as one of the original members of the European Union Germany is considerably limited by the many protocols, conventions, and guidelines governing the legal rights and punishment of non-state members. In addition, Germany’s legal decisions, especially those that involve noncitizens, are subject to review by the Court of Justice of the European Union. In short, not only are human rights ‘norms’ codified in Germany, but there is also a vast infrastructure for monitoring and enforcing the legal rights of non-state members both within and beyond the German state. Against this backdrop, Germany may offer an even more stringent test of citizenship as a mechanism of legal stratification. On the other hand, Germany provides an interesting test because – juxtaposed with these legal protections – it has a more rigid legal, cultural, and normative conception of national membership than the United States. To the extent that the punishment of noncitizens is conditioned by these distinct views of nationhood, we might expect different results concerning the punishment of non-state members.

Similar to the U.S. analysis, this chapter begins with the basic differences in incarceration for citizen and noncitizen offenders. Figure 6.1 shows the percent of convicted offenders who received a prison sentence by citizenship status. The first notable finding is the significantly lower levels of incarceration overall compared to the United States. This partly reflects the

44 To name but a few, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Charter of Fundamental Rights of the EU, and the European Prison Rules.
seriousness of crimes that are brought before U.S. federal courts, but even compared to U.S. state courts German judges are far more reluctant to impose a prison sentence. Despite the dramatically different incarceration rates between the two countries, the patterns regarding the punishment of noncitizens are quite similar, particularly in drug cases. Consistent with the basic findings in the U.S., noncitizens are more likely to be imprisoned upon conviction, though across all offenses this difference is slight (5.5 percent compared to 6.3 percent). The gap is considerably larger in cases involving drugs, on par with the gap observed in U.S. courts (8 percent). These initial results suggest that any observed sentencing differences between Germans and non-Germans may be particularly pronounced in drug cases. To address whether noncitizens pay a sentencing ‘penalty’ in German courts once relevant legal controls are introduced, I turn now to the multivariate results in Table 6.1.

Consistent with existing literature, those convicted of more severe offenses and individuals with more serious criminal histories are more likely to be incarcerated upon conviction, and are also imprisoned for longer periods of time. The consistency with prior research, including research conducted in the U.S., is also evident in several of the offender characteristics. For example, males and younger offenders receive harsher penalties compared to their female and elderly counterparts.

Most important for this study is the consistency in the relationship between citizenship status and punishment in the United States and Germany. Net of legally relevant controls, non-German citizens have 30 percent higher odds of receiving a prison sentence. In addition, among those who are incarcerated, noncitizens receive significantly longer prison terms. Though not directly comparable to the U.S. analysis due to different independent measures and somewhat distinct dependent variables, the pattern of results is highly consistent with those reported in
Chapter 5. The citizenship effect is even more pronounced once the incarceration and length decisions are combined (model 3). Consistent with the results in models 1 and 2, the results from the tobit model (model 3) suggests that the citizenship penalty is cumulative across the sentencing stages. That is, noncitizens are disadvantaged when determining whether to incarcerate, and are also disadvantaged when determining the length of incarceration even after accounting for their increased likelihood to receive a prison sentence. The supplementary results in Appendix B using the Heckman selection model show the same pattern. Using the Heckman model to account for selection into the imprisoned population, the effect of noncitizen status on sentence length increases to .188 ($p < .001$), more than double the size of the effect shown in model 2. Taken together, the results reported in models 1 and 2 show that citizenship has pronounced effects on punishment decisions, and the tobit and Heckman models suggest that if anything these results are quite conservative.

To further explore the relationship between national membership and punishment, Table 6.2 examines whether the observed citizenship penalty from Table 6.1 is more marked in drug cases. In line with theoretical predictions and consistent with the findings from the U.S., the results in Table 6.2 show the punishment gap between Germans and non-Germans is considerably greater in drug cases, as evidenced by the positive and significant interaction terms between noncitizen status and drug offenses. This pattern holds for the logistic model of incarceration (model 1), the OLS model of sentence length (model 2), and the combined tobit model (model 3).

Against the backdrop of the results from the U.S. analysis, three points stand out from the findings in Tables 6.1 and 6.2. First, in both the U.S. and Germany citizenship is a powerful predictor of increased punishment. This pattern holds across multiple analytic procedures and
with the inclusion of many legal and extra-legal controls. Perhaps more important is the consistency of results across these different national contexts. As discussed in earlier chapters, Germany and the United States vary markedly in their approaches to crime, punishment, and above all else, citizenship. Were the patterns of results different in these countries, any number of these factors, either separately or in conjunction, could potentially play a role in explaining the divergent findings. The corollary of this statement is that none of these factors can explain the consistency of the citizenship results. Stated more directly, the citizenship penalty observed in the U.S. courts cannot be solely attributed to the exceptionally high degree of punitiveness in the United States because noncitizens pay a similar penalty in Germany – a country with an incarceration rate roughly one-tenth that of the United States (Walmsley 2012). Similarly, the mechanisms driving the punishment disparities between citizens and non-state members do not appear contingent on any particular conception of citizenship. As highlighted in Chapter 1, Germany and the United States have markedly different normative conceptions of citizenship and nationhood. While previous research has highlighted the impact of these distinctions on the different immigration policies, political initiatives, and constitutional systems of the United States and Germany (Joppke 1999; Ellerman 2009; Rubio-Marín 2000), the results presented here suggest that the boundaries of citizenship result in legal disadvantages at sentencing for non-state members regardless of how these boundaries are drawn.

Second, the punishment gap between citizens and noncitizens appears particularly acute in drug cases. This finding is perhaps not surprising. Across the United States and Europe the criminality of foreigners has largely been associated with organized crime and drug trafficking in political and criminal justice discourse (Wacquant 1999; Albrecht 1997). Given this focused
attention, judges may view foreign drug offenders as especially deserving of increased punishment.

Third, the punishment disadvantages of lacking state membership are cumulative across the sentencing stages. Net of legally relevant controls, in both the U.S. and Germany noncitizens are more likely to receive a prison term upon conviction and among those who are imprisoned, noncitizens receive longer sentences compared to their citizen counterparts. Combining both decisions using tobit and Heckman models suggests these disparities are cumulative. That is, the sentencing penalty at the length of incarceration stage is even more pronounced after accounting for the probability of being incarcerated.

The results in Tables 6.1 and 6.2 establish the direct effect of citizenship in German courts. As with the U.S. chapter, the next step in the analysis investigates whether this pattern is the same for different groups of noncitizens. While postnational arguments posit a decline in the legal significance between citizens and noncitizen generally, a look at different noncitizen groups is particularly important for the German case because unlike the U.S., Germany is member to a supra-national political and legal organization – the European Union – which clearly demarcates member states from non-member states. Thus, Germany’s membership to EU raises the possibility that the postnational position could still be correct but in a more limited way. To the extent that EU citizenship has replaced national membership as the important legal status, we should observe no difference between Germans and other EU citizens, but may still observe sentencing disadvantages for those who fall outside the European Union. The next section addresses this possibility.

45 The tobit and Heckman models for the U.S. analysis are presented in Appendix A.
The Punishment of Different Noncitizen Groups

Table 6.3 reports logistic models of incarceration, OLS models of sentence length, and tobit models which combine both decisions using six different noncitizen categories based on nationality or region. In all models the reference group is German citizens. Models 1-3 show the results for all offense types, while models 4-6 specifically target the effects in drug cases. Though the picture of noncitizen disadvantage from the results in models 1-3 is not as clear as the U.S. analysis, it shows very little support for the postnational position. Particularly important is the finding that net of legally relevant controls, foreign offenders from other EU countries receive more severe sanctions compared to their German counterparts. According to model 1, EU members are 28 percent more likely to receive incarceration \( (e^{.244} = 1.28) \), and model 2 shows that they also receive significantly longer prison sentences. As with the results reported in Tables 6.1 and 6.2, the tobit models show that the combined decisions display considerably larger sentence length effects.

Turning to the other groups, with the exception for Turkish noncitizens, all noncitizen groups in model 1 have higher odds of incarceration than German citizens, though the effect for noncitizens from the Americas is not quite significant at the .05 level \( (p < .055) \). Interestingly, while Turkish noncitizens are less likely to be incarcerated than Germans when all offenses are considered, the results in model 2 show that they receive somewhat longer prison sentences \( (b = .159; p < .001) \). However, because so few offenders in general receive incarceration, the overall punitive effect from comng these decisions in the tobit model is negative \( (b = -.219; p < .05) \). Still, the overall picture presented from model 3 is one of disadvantage for nearly all noncitizen groups and for the overwhelming majority of noncitizens in German courts, even those that come from other EU countries. Turkish noncitizens, while comprising a sizeable group in the German
courts, still only make up 23 percent of the noncitizen population in the sample. In other words, for the other five noncitizen groups who comprise 77 percent of all foreigners convicted in German courts, the overall story is one of increased punishment compared to similarly situated Germans.

Turning to the results for the different noncitizen groups in drug cases (models 4-6), the pattern is unambiguous – all those who lack German citizenship receive harsher punishment at sentencing. Across all three models the effects are positive and statistically significant, with the exception of noncitizens from the Americas in the incarceration model which is significant at the .053 level. Not only is the pattern of results more obvious in drug cases, but the effect sizes are considerably more pronounced. For example, the average increase in the incarceration effects between models 1 and 4 was 0.374. This corresponds to a 45 percent increase in the odds of incarceration ($e^{0.374} = 1.45$).

Consistent with the theoretical argument developed in Chapter 3, the results in Table 6.3 clearly show that most noncitizen groups pay a sentencing penalty compared to German citizens, and these effects are particularly prominent in cases involving drugs. Like the U.S. analysis however, the results do show that the effects vary somewhat across groups. Even in the case of drugs where the pattern is identical across all noncitizens, there is variation in the size of the punitive effects shown in model 6. For example, Wald tests show that while the effect of EU membership is not significantly different than being from a non-EU European country, or from the Middle East, or from the Americas, the effect is actually significantly stronger than the Turkish effect, but significantly weaker than the effect for African/Asian noncitizens.

Taken as a whole, the results in Table 6.3 are highly consistent with both the theoretical argument developed in Chapter 3 and the empirical results presented in Chapter 5 for the U.S.
federal courts. The punitive consequences of lacking German citizenship are not reserved for only certain groups, and there appears to be no sentencing advantage to being noncitizen from another EU country. Particularly in drug cases, the findings in Table 6.3 demonstrate that the sentencing penalty observed in the main effect models in Tables 6.1 and 6.2 apply to all groups who fall outside the boundaries of German national membership. As with the U.S. case, it appears that the key distinction is not who you are, but who you are not. That is, nearly all those that lack membership to the German national community, even those who are members to the supra-national EU community to which Germany is a founding member, receive harsher punishment at sentencing. While the EU and other supra-national institutions have no doubt enhanced the legal rights of non-state members, there remains a considerable and significant gap in the treatment of non-German citizens, one that disproportionally incarcerates non-state members and imprisons them for longer periods compared to their German counterparts.

The Salience of Citizenship over Time

In this section I examine the long term relationship between citizenship and punishment in German courts. It is important to note that the postnational argument (and its variants) necessarily implies a time dimension. That is, according to this argument the significance of citizenship under the law has waned in recent decades. While the results presented throughout this chapter clearly show that the legal distinction between citizens and aliens has not eroded, it is possible that over time the sentencing penalty for non-state members has decreased. The results presented in this section investigate this possibility.

Figure 6.2 shows the trends from 1998 to 2010 for the effects of citizenship on the incarceration decision for all offenses and drug offenses specifically. The overall effects are
consistent with those shown in Tables 6.1 and 6.2 – across the entire time period non-German citizens are more likely to receive a prison sentence compared to Germans, and these effects are more pronounced in drug cases (note that all effects shown are statistically significant). However, despite the evidence of legal stratification between citizens and aliens, the pattern over time, even for drug cases, clearly shows a closing of the gap between Germans and non-Germans, consistent with the postnational perspective. That is, non-state members were significantly more disadvantaged in German courts in the late 1990s than they were in the late 2000s. Recall that this is the opposite pattern observed in U.S. courts over this same period, a point I will return to in the discussion below. First, I turn to the results looking at whether this same pattern holds for the sentence length decision.

In line previous results, across all years the citizenship penalty is greater in drug cases. Though the overall results are consistent with those observed previously, the pattern over time is slightly different than those observed for the incarceration decision. The citizenship trend for all offenses shows a slight increase over the study period. While there was no significant difference between citizens and noncitizens from 1998-2000, since that time the gap has increased steadily, albeit modestly. On the contrary, like the trends for the incarceration decision, the sentence length results for drug offenses show a steady decline over time. However, because few offenders in general receive a prison sentence, the trends for the overall punitive effect using the tobit model are likely the most accurate description of how the citizenship penalty has changed over the study period. Figure 6.4 presents these results.

The results presented in Figure 6.4 show virtually the same pattern observed for the incarceration decision. While there remains a substantial punishment gap between citizens and foreigners (particularly in drug cases), this gap is significantly less in 2010 than in 1998. The
patterns observed in Figures 6.2-6.4 are the same when I combine all years of data and interact noncitizen status with the year of sentencing. Focusing on the overall punitive effect of citizenship in the tobit models, the significant interaction effects in models 3 and 6 demonstrate that the gap between citizens and noncitizens has lessened between 1998 and 2010 for all offenses and even in drug cases.

Robustness Checks: Comparability between U.S. and German Courts

Though Appendix B provides detailed sensitivity analyses that bolster the findings presented in this chapter, the comparability between U.S. and German courts warrants discussion. While Germany has no direct parallel to the federal/state court distinction in the United States, a more important concern is whether the types of crimes handled in German and U.S. federal courts are comparable. That is, while this analysis draws important conclusions from the similarity in the citizenship penalty across these different national contexts, are the analyses comparing ‘apples to apples?’

One important consideration which has been noted in the sentencing literature is that U.S. federal courts, on average, tend to handle more serious offenses compared to state courts. For example, whereas most low-level drug offenders (especially for crimes of possession) are prosecuted in state and local courts, high-level drug traffickers (especially those that import drugs into the country or across state lines) are more likely to be prosecuted in federal court. This raises the possibility that the offenders in the German analysis are not directly comparable to the more serious cases used for the U.S. analysis.

I address this concern in two ways. First, I replicated the main effects models on a subset of more serious offenses in German courts. Specifically, this analysis was restricted to only those
offenses for which the minimum statutory penalty included prison time. The results from this analysis are shown in Table 6.5. Though this restriction significantly reduced the sample size (N = 136,430 compared to 1,307,209), the substantive results are identical. Net of legally relevant controls, non-German citizens are far more likely to be incarcerated and also receive longer prison sentences. Thus, it appears that the similar pattern of results between the U.S. and Germany regarding the punitive consequences of lacking state membership is not dependent on the types of crimes brought before their respective courts.

In the second supplement, I again replicated the main effects models but this time limited the analysis to only those offenders sentenced in Landgerichte courts. By their design, Landgerichte courts only handle serious offenses – cases involving a potential penalty of more than three years (Teske and Albrecht 1992). Thus, by focusing only on offenses for which a prison sentence is likely, the Landgerichte courts are arguably the most comparable to the U.S. federal courts. Unfortunately, the Strafverfolgungsstatistik only contain information on the district of jurisdiction, not whether the case was handled in a Landgerichte (District) or Amtsgericht (local) court. Therefore, I draw from an additional data source for this supplement. These data include all offenders who were sentenced in 2004 and come from the German Federal Register of Criminal Records (Bundeszentralregister or BZR). The key strength of this source is that it contains information on the type of court (e.g. Landgerichte or Amtsgericht).

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46 This corresponds to the all cases where the offense severity score was greater than 6. Beginning with offense severity 7, the statutory range is between 3 months and 5 years. All ranges 6 and below only include a maximum penalty, but do not require any amount of incarceration.

47 Supplemental models show that, like the previous set of analyses, the citizenship effect is more pronounced in drug cases.

48 These data were made available to me by researchers at the Max Planck Institute for Foreign and International Criminal Law. Many of the variables available in this data are similar to those used in previous analyses. For example, the offense type, offense severity, multiple convictions, number of prior convictions, gender, age, and citizenship status are all identical to the measures used in Table 6.1.
Table 6.5 reports the results from these Landgerichte court models. Consistent with previous results, non-German citizens are far more likely to be incarcerated net of legally relevant controls (odds ratio = 1.88). The results in model 2 merit attention because unlike previous analyses, the dependent variable is identical to that used in the sentence length models for the U.S. courts (natural log of the number of months of incarceration). This allows for a more substantive interpretation of the length effects as well as a more direct comparison to the U.S. models. The results in model 2 suggest that non-German citizens receive sentences that are roughly 3.4 percent longer than similarly situated Germans in Landgerichte courts. Interpreted substantively, this corresponds to about 2 months of additional incarceration for noncitizens compared to the average German citizen offender, net of controls. Interestingly, the observed sentence length effect in the Landgerichte court model is statistically indistinguishable from the length effect in the U.S. model, though the incarceration effect appears stronger in the U.S. federal courts (based on z-tests). In line with previous results, the sentence length effects are considerably stronger in the tobit models when the incarceration and length decisions are combined ($b = .592$).

In sum, supplemental analyses on (1) more serious offenses in the 2009-2010 Strafverfolgungsstatistik and (2) Landgerichte court convictions from 2004 reveal substantively

However, there are several key differences between the data sources. First, the BZR data do not include information about the severity of the defendant’s criminal history beyond the number of prior convictions, but it does include important information on the offender that is unavailable in the Strafverfolgungsstatistik. For example, in the BZR data I am able to include measures for whether the court ruled the offender suffered from drug or alcohol dependency. Second, the BZR data has more detailed information on the sentence length measure. Whereas the Strafverfolgungsstatistik contains only information on the sentence range, the BZR data collects information on the exact amount of prison time ordered. This allows for a direct comparison between the dependent variables used in the U.S. and Germany.

Based on comparing the results from model 1 in Table 6.5 to model 2 of Table 5.1 for the incarceration decision, and model 2 of Table 6.5 to model 2 of Table 5.2 for the length of sentence.
identical results to those reported throughout the main analysis in this chapter. While there no doubt remain important differences between the U.S. and German legal systems, the pattern of increased punishment for non-state members in both countries is not a reflection of the types of offenders brought before these different jurisdictions. Thus, the supplemental models presented here demonstrate that the results, and more importantly the similar pattern of findings between the U.S. and German courts, are robust and substantively meaningful.

**Summary and Discussion**

Chapter 5 established that noncitizens received considerably harsher penalties at sentencing in U.S. federal courts. The goal of this chapter was to examine whether this same pattern is observed in Germany. The results presented throughout this chapter leave little doubt that this is the case. Two patterns are clear: net of controls (1) there is a significant and consequential punishment gap between German and non-German citizens, and (2) this gap increases in drug cases. The association between citizenship and punishment in Germany is evident in relatively simple procedures such as bivariate associations and descriptive statistics; more stringent multivariate tests that account for a multitude of legal and extra-legal variables; and across a variety of supplemental models and sensitivity analyses presented in the chapter and Appendix B.

The strength of this relationship was also evident when the main citizenship effect was broken down for different groups. With the exception of Turkish noncitizens, all non-German groups were punished more severely than similarly situated Germans, including those from other European Union countries. This pattern was even more prominent in drug cases, where all noncitizen groups received substantially increased sentences net of legally relevant controls.
The findings regarding noncitizens from other European Union countries merit discussion. In all analyses EU citizens received significantly harsher punishment than German citizens. This is important to the postnational debate for two reasons. First, if postnational citizenship exists, it would be in the European Union. As Joppke puts it, “European citizenship is postnational citizenship in its most elaborate form” (2010: 164). Second, EU citizens are clearly disadvantaged in the very institution that has been said to give rise to postnational citizenship – the courts. Indeed, according to Joppke (2010), absent court intervention EU citizenship would have remained ‘socially inconsequential’ and that the courts are solely responsible for the expansion of EU rights over the past two decades. The results presented here underscore the importance of looking beyond the expanding rights of non-state members to the implementation of these rights in real practice. Even in the courts where there are clear legal precedents on the equal standing of citizens and foreigners (especially EU citizens), there remain large and substantively meaningful gaps between the punishment of those included in the national community, and those who are not.

However, an important element of the postnational argument is that the significance of citizenship has lessened over time. On this point, the postnational position receives qualified support. Focusing on the overall punitive effect of citizenship in German courts, the trend analyses presented in Figure 6.4 and Table 6.4 clearly show that the effect of citizenship status has declined between 1998 and 2010. This is true across all offense types, and even for cases involving drugs. That said, these findings need to be balanced against the remaining punitive effects. According to the results in Figure 6.2, non-German citizens in drug cases are still nearly twice as likely to be incarcerated compared to similarly situated German citizens (odds ratio =
Thus, despite the declining trend, citizenship remains a potent measure of legal stratification in German courts.

It is important to note however, that the trends in Germany do not mirror those in the U.S. Recall that the U.S. incarceration analysis showed a clear picture of increasing disparity between citizens and noncitizens, whereas the German results illustrate the opposite. One possible explanation for this divergence is the distinct national trends regarding citizenship and immigration policy in the U.S. and Germany over this time. While U.S. citizenship laws have not undergone any substantive changes in recent decades, immigration has certainly become a prominent and divisive social issue. During this time, anti-immigrant public opinion and immigration policy have increased substantially, particularly following the 9/11 terrorist attacks. Similarly, over this period Congress has increasingly criminalized immigration offenses, dramatically stepped up border enforcement, and substantially increased the number of criminal prosecutions and deportations of aliens.

By contrast, while Germany has historically been unwelcoming towards immigrants, the past 15 years have witnessed the most dramatic liberalization of its citizenship policies in its history. Indeed, the German Nationality Act of 2000 not only reduced the residency requirement for citizenship from fifteen to eight years (albeit with some restrictions), but more importantly, for the first time introduced a limited form of *jus soli*, though with certain specifications and peculiarities. This marked an important departure for a country that for decades stuck to the maxim that Germany was “not a country of immigration” (*kein Einwanderungsland*) despite being the largest immigrant destination in Europe. The increased liberalization of citizenship in Germany over this period may suggest that the normative boundaries of German citizenship may be less exclusive than in earlier periods. Still, the changes to German citizenship brought on by
the new law were not easily won, and the liberalizing trend was considerably stunted once the German public became involved and anti-immigrant sentiment was mobilized (Howard 2009). Despite these changes, several researchers have noted that the cultural conceptions of Germany as an ethno-cultural nation remain significant and continue to mark clear boundaries between Germans and foreigners (Green 2005; Howard 2009). Combined, the liberalizing trend juxtaposed with the continued normative and symbolic significance of German citizenship likely explains why lacking national membership remains an influential determinant of increased punishment in German courts, despite its decreasing importance over the last decade.

Taken in sum, the results from both analyses indicate that citizenship is a powerful predictor of punishment in U.S. and German courts. Especially in Germany, this effect is more pronounced in drug cases. In regression models predicting incarceration and sentence length in both countries, the strength of the citizenship effect is on par with or exceeding the effects of other offender characteristics. This is particularly true in the U.S. where the relative effect of citizenship is considerably greater than other factors traditionally discussed in legal inequality research. Moreover, citizenship status explains the majority of the sentencing disparity between white and Hispanic offenders in U.S. federal courts. In both countries, numerous sensitivity analyses and robustness tests confirm the strength of these findings. From the results of multiple analytic procedures and different model specifications, a clear and consistent relationship emerges: non-state members receive substantially increased punishment in U.S. and German courts.

The strength of this association is even more apparent when considering the remarkably different conceptions of citizenship and nationhood in these countries. As discussed in earlier chapters, the United States and Germany have fundamentally different notions of national
membership, nationhood, and citizenship – one representing the ideal typical case of a *jus soli* citizenship regime which places the greatest emphasis on birth-right citizenship for determining membership to the national community (the U.S.); the other stands out as one of the few countries in the West with a strong right of descent (*jus sanguinis*) tradition, which above all else emphasizes ethno-cultural boundaries for determining citizenship (Germany). Despite these fundamentally different approaches to defining state membership, the consequences of lacking citizenship status is the same on each country – those who fall outside the national community, however defined, are punished more harshly than those who are members. The following chapter attempts to uncover the mechanisms that might explain this relationship through interviews with judges in the United States and Germany.
Figure 6.1: Percent Incarcerated in German Courts by Citizenship Status, 2009-2010

Note: Author's calculation of 2009-2010 Strafverfolgungsstatistik. N for German citizens (1,046,548); N for non-German citizens (260,661); N for German drug offenders (79,383); N for non-German drug offenders (21,483)
Table 6.1: Incarceration and Sentence Length Models in German Courts, 2009-2010

<table>
<thead>
<tr>
<th>Measure</th>
<th>Model 1 Incarceration</th>
<th>Model 2 Length</th>
<th>Model 3 Tobit (length)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>b</td>
<td>SE</td>
<td>OR</td>
</tr>
<tr>
<td><strong>Focal Measure</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>German Citizen (reference)</td>
<td>--</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>Non-German Citizen</td>
<td>0.273</td>
<td>0.044</td>
<td>1.31 ***</td>
</tr>
<tr>
<td><strong>Offender Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>0.418</td>
<td>0.026</td>
<td>1.52 ***</td>
</tr>
<tr>
<td>Age</td>
<td>-0.020</td>
<td>0.001</td>
<td>0.98 ***</td>
</tr>
<tr>
<td><strong>Offense Characteristics</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crimes Against the Public</td>
<td>-0.409</td>
<td>0.044</td>
<td>0.66 ***</td>
</tr>
<tr>
<td>Fraud</td>
<td>-0.498</td>
<td>0.026</td>
<td>0.61 ***</td>
</tr>
<tr>
<td>Drugs</td>
<td>-0.313</td>
<td>0.049</td>
<td>0.73 ***</td>
</tr>
<tr>
<td>Sex Offense</td>
<td>0.368</td>
<td>0.063</td>
<td>1.44 ***</td>
</tr>
<tr>
<td>Violent</td>
<td>-0.751</td>
<td>0.034</td>
<td>0.47 ***</td>
</tr>
<tr>
<td>Immigration</td>
<td>-0.283</td>
<td>0.238</td>
<td>0.75</td>
</tr>
<tr>
<td>Other Offense</td>
<td>-1.222</td>
<td>0.081</td>
<td>0.29 ***</td>
</tr>
<tr>
<td># of Young Victims</td>
<td>0.137</td>
<td>0.072</td>
<td>1.15</td>
</tr>
<tr>
<td><strong>Legal Measures</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offense Severity</td>
<td>0.334</td>
<td>0.008</td>
<td>1.40 ***</td>
</tr>
<tr>
<td>Multiple Convictions</td>
<td>0.795</td>
<td>0.027</td>
<td>2.22 ***</td>
</tr>
<tr>
<td>Prior Convictions</td>
<td>0.199</td>
<td>0.009</td>
<td>1.22 ***</td>
</tr>
<tr>
<td>Criminal History</td>
<td>0.331</td>
<td>0.011</td>
<td>1.39 ***</td>
</tr>
<tr>
<td>2010</td>
<td>-0.007</td>
<td>0.016</td>
<td>0.99</td>
</tr>
<tr>
<td>Constant</td>
<td>-6.770</td>
<td>0.071</td>
<td>1.00 ***</td>
</tr>
<tr>
<td>-2 log likelihood</td>
<td>356049.4</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>Pseudo R² / R²</td>
<td>0.37</td>
<td>0.62</td>
<td>0.24</td>
</tr>
<tr>
<td>N</td>
<td>1,307,209</td>
<td>74,038</td>
<td>1,307,209</td>
</tr>
</tbody>
</table>

* p < .05    ** p < .01    *** p < .001

*Note: Standard Errors are clustered on judicial district. All models include controls for district.*
Table 6.2: Interaction b/w Citizenship and Drug Offenses in Incarceration and Sentence Length
Models in German Courts, 2009-2010

<table>
<thead>
<tr>
<th>Measure</th>
<th>Model 1 Incarceration</th>
<th>Model 2 Length</th>
<th>Model 3 Tobit (length)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>b</td>
<td>SE</td>
<td>b</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Main Effects</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>German Citizen (reference)</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Non-Citizen</td>
<td>0.150</td>
<td>0.053</td>
<td>**</td>
</tr>
<tr>
<td>Drug</td>
<td>-0.498</td>
<td>0.046</td>
<td>***</td>
</tr>
<tr>
<td>Non-Citizen x Drug</td>
<td>0.697</td>
<td>0.121</td>
<td>***</td>
</tr>
<tr>
<td>N</td>
<td>1,307,209</td>
<td>74,038</td>
<td></td>
</tr>
</tbody>
</table>

**Note**: Standard Errors are clustered on judicial district. Models include all variables shown in Tables 6-1 as well as controls for district.
Table 6.3: Incarceration and Sentence Length Models for Different Non-Citizen Groups for All Offenders and Drug Offenders Only in German Courts, 2009-2010

<table>
<thead>
<tr>
<th>Measure</th>
<th>Model 1 (Incarceration)</th>
<th>Model 2 (Length)</th>
<th>Model 3 (Tobit (length))</th>
</tr>
</thead>
<tbody>
<tr>
<td>German Citizen (reference)</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>European Union</td>
<td>0.244 (0.051)***</td>
<td>0.210 (0.036)***</td>
<td>0.722 (0.126)***</td>
</tr>
<tr>
<td>Other European</td>
<td>0.492 (0.080)***</td>
<td>-0.011 (0.070)</td>
<td>1.216 (0.167)***</td>
</tr>
<tr>
<td>Turkish</td>
<td>-0.125 (0.037)***</td>
<td>0.159 (0.042)***</td>
<td>-0.219 (0.102) *</td>
</tr>
<tr>
<td>Middle Eastern</td>
<td>0.266 (0.062)***</td>
<td>0.102 (0.071)</td>
<td>0.728 (0.163)***</td>
</tr>
<tr>
<td>Americas</td>
<td>0.667 (0.348)</td>
<td>-0.004 (0.084)</td>
<td>1.731 (0.892)</td>
</tr>
<tr>
<td>African/Asian</td>
<td>0.480 (0.039)***</td>
<td>-0.027 (0.038)</td>
<td>1.166 (0.099)***</td>
</tr>
<tr>
<td><strong>N</strong></td>
<td>1,295,587</td>
<td>73,496</td>
<td>1,295,587</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Measure</th>
<th>Model 4 (Incarceration)</th>
<th>Model 5 (Length)</th>
<th>Model 6 (Tobit (length))</th>
</tr>
</thead>
<tbody>
<tr>
<td>German Citizen (reference)</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>European Union</td>
<td>0.597 (0.107)***</td>
<td>0.325 (0.072)***</td>
<td>1.842 (0.285)***</td>
</tr>
<tr>
<td>Other European</td>
<td>0.653 (0.092)***</td>
<td>0.106 (0.050) *</td>
<td>1.868 (0.264)***</td>
</tr>
<tr>
<td>Turkish</td>
<td>0.271 (0.070)***</td>
<td>0.286 (0.077)***</td>
<td>0.911 (0.229)***</td>
</tr>
<tr>
<td>Middle Eastern</td>
<td>0.577 (0.089)***</td>
<td>0.164 (0.076) *</td>
<td>1.671 (0.249)***</td>
</tr>
<tr>
<td>Americas</td>
<td>1.189 (0.615)</td>
<td>0.238 (0.078)***</td>
<td>3.516 (1.666) *</td>
</tr>
<tr>
<td>African/Asian</td>
<td>0.984 (0.083)***</td>
<td>0.153 (0.063) *</td>
<td>2.818 (0.245)***</td>
</tr>
<tr>
<td><strong>N</strong></td>
<td>100,236</td>
<td>12,435</td>
<td>100,236</td>
</tr>
</tbody>
</table>

* p < .05   ** p < .01   *** p < .001

Note: Standard Errors are clustered on judicial district. Models include all variables shown in Tables 6-1 as well as controls for district.
Figure 6.2: Citizenship Effects for the Incarceration Decision in German Courts, 1998-2010

Source: All effects are statistically significant at the $p < .05$ level. Estimates based on year-over-year models from 1998-2010. Trend lines are smoothed for illustration. Models are identical to those shown in column 1 of Table 6-1.
Figure 6.3: Citizenship Effects for OLS Models of Sentence Length in German Courts, 1998-2010

Source: All effects are statistically significant at the $p < .05$ level except those where the 95 percent confidence interval includes 0. Estimates based on year-over-year models from 1998-2010. Trend lines are smoothed for illustration. Models are identical to those shown in column 2 of Table 6-1.
Figure 6.4: Citizenship Effects for Tobit Models of Sentence Length in German Courts, 1998-2010

Source: All effects are significant at the $p < .05$ level. Estimates based on year-over-year models from 1998-2010. Trend lines are smoothed for illustration. Models are identical to those shown in column 3 of Table 6-1
Table 6.4: Long-term Trends in Citizenship Disparities for Incarceration and Sentence Length Decisions for All Offenders and Drug Offenders Only in German Courts, 1998-2010

### All Offenses

<table>
<thead>
<tr>
<th>Measure</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Incarceration</td>
<td>Length</td>
<td>Tobit (length)</td>
</tr>
<tr>
<td>German Citizen (reference)</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Non-German Citizen</td>
<td>0.539</td>
<td>0.043</td>
<td>***</td>
</tr>
<tr>
<td>Year</td>
<td>-0.027</td>
<td>0.005</td>
<td>***</td>
</tr>
<tr>
<td>Interaction Effects</td>
<td>-0.023</td>
<td>0.005</td>
<td>***</td>
</tr>
<tr>
<td>Non-Citizen x Year</td>
<td>0.008</td>
<td>0.005</td>
<td>-0.050</td>
</tr>
<tr>
<td>N</td>
<td>875,382</td>
<td>52,723</td>
<td>875,382</td>
</tr>
</tbody>
</table>

### Drug Offenses

<table>
<thead>
<tr>
<th>Measure</th>
<th>Model 4</th>
<th>Model 5</th>
<th>Model 6</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Incarceration</td>
<td>Length</td>
<td>Tobit (length)</td>
</tr>
<tr>
<td>German Citizen (reference)</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Non-German Citizen</td>
<td>1.052</td>
<td>0.088</td>
<td>***</td>
</tr>
<tr>
<td>Year</td>
<td>-0.043</td>
<td>0.009</td>
<td>***</td>
</tr>
<tr>
<td>Interaction Effects</td>
<td>-0.038</td>
<td>0.012</td>
<td>**</td>
</tr>
<tr>
<td>Non-Citizen x Year</td>
<td>-0.001</td>
<td>0.009</td>
<td>-0.102</td>
</tr>
<tr>
<td>N</td>
<td>55,512</td>
<td>8,511</td>
<td>55,512</td>
</tr>
</tbody>
</table>

* * p < .05 ** p < .01 *** p < .001

Note: Models based on 10 percent random sample from 1998-2010 data files. Standard Errors are clustered on judicial district. Models include all variables shown in Table 6-1 as well as controls for district.
<table>
<thead>
<tr>
<th>Measure</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
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<td>1.13</td>
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<td>108947.82</td>
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<tr>
<td>Pseudo R² / R²²</td>
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<tr>
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<td>34,209</td>
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</table>

* p < .05  ** p < .01  *** p < .001

Note: Standard Errors are clustered on judicial district. All models include controls for district.
Table 6.6: Incarceration and Sentence Length Models in German Landgerichte Courts, 2004

<table>
<thead>
<tr>
<th>Measure</th>
<th>Incarceration</th>
<th>ln Length</th>
<th>Tobit ln (Length)</th>
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<tbody>
<tr>
<td></td>
<td>b</td>
<td>SE</td>
<td>OR</td>
</tr>
<tr>
<td><strong>Focal Measure</strong></td>
<td></td>
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<tr>
<td>German Citizen (reference)</td>
<td>--</td>
<td>--</td>
<td>1.88 ***</td>
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<tr>
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</tr>
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<td>2.27 ***</td>
</tr>
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<tr>
<td>Fraud</td>
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<tr>
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<td>1.13 ***</td>
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*p < .05    ** p < .01    *** p < .001

Note: Standard Errors are clustered on judicial district.
Chapter 7: Discourses on Punishing ‘Others:’ A View from the Bench

The results in Chapters 5 and 6 present a remarkably consistent picture on citizenship’s role as a powerful mechanism of legal stratification in U.S. and German courts. Having established the relationship between citizenship and punishment in both countries, this chapter attempts to go beyond traditional quantitative approaches by unpacking the mechanisms that may be driving this relationship using interview data with judges in the United States and Germany. As I discussed in Chapter 4, this approach has several theoretical and methodological strengths. Perhaps most important of these is the ability to go beyond the “black box” of statistical effects to make the legal disparities observed in Chapters 5 and 6 visible in judge’s punishment decisions. Though interview data is relatively rare in punishment research, there is a substantial theoretical literature on criminal justice decision making and the processes that lead to legal disparities. To properly situate my analysis within the existing research, I first briefly review this literature, and then discuss why it may be incomplete for explaining the relationship between citizenship and punishment. The remainder of the chapter is dedicated to the analysis of interviews with U.S and German judges.

Focal Concerns and Criminal Stereotypes

Recent punishment research, particularly research interested in explaining sentencing disparities, has drawn heavily from the focal concerns perspective (Steffensmeier 1980; Steffensmeier et al. 1998; Steffensmeier and Demuth 2000; Kramer and Ulmer 2009; Ulmer and Johnson 2004). Stated briefly, this perspective suggests that judges are guided by three focal concerns in reaching sentencing decisions: (1) the offender’s blameworthiness and the degree of harm caused to the victim, (2) protection of the community, and (3) practical implications of sentencing decisions. Blameworthiness is associated with the offender’s culpability, which
judges assess based on factors such as the severity of the offense, offender’s criminal history, and the offender’s role in the offense. Protection of the community is focused more on the need to incapacitate the offender or to deter would-be offenders, and practical constraints are linked to factors such as the costs of long incarceration sentences and prison over-crowding. The use of these focal concerns leads to disparate minority treatment when judges, in an effort to reduce uncertainty, rely not only on offense severity and defendant criminal history “but also on attributions linked to the defendant’s gender, race, social class or other social positions” (Steffensmeier and Demuth 2000: 709). In other words, judges may attribute meaning to previous behaviors and make predictions on future criminality consistent with criminal stereotypes based on offender attributes.

This perspective is consistent with several other theoretical statements on disparity in criminal justice decision making. According to Albonetti’s (1991) causal attribution theory, judges develop “patterned responses” using stereotypes that link individual characteristics such as race, age or gender to expectations about criminal responsibility and dangerousness. In a similar vein, Farrell and Holmes (1991: 536) argue that “stereotypes about crime and social status are part of courts’ normative organization and structure court actors’ cognitive schemata, thus providing a basis for judgments regarding appropriate legal responses.” Likewise, in explaining racial disparities among juvenile offenders, Bridges and Steen (1998) show that race influences probation officer’s assessments of the moral character of the juvenile and their perceived risk for future criminality, which in turn influenced their recommendation at sentencing and led to increased punishment.

While the majority of research using “stereotype” theories and the “focal concerns” perspective has examined racial disparities, the limited amount of research on the punishment of
noncitizens also draws heavily from these perspectives (Wu and Delone 2012). For example, Wolfe et al. (2011) argue that enhanced punishment of noncitizens at the incarceration stage is attributable to the widespread perception that immigrants are crime-prone, which likely affects judges’ assessments of their dangerousness and threat to the community. Similarly, Hartley and Armendariz (2011: 44) argue that “increased violence on the U.S.–Mexico border along with current anti-immigration sentiment may cause the noncitizen federal drug offender to also be stereotyped as dangerous and therefore subject to harsh punishment.”

By applying the stereotype and focal concerns perspectives to noncitizens, this research makes two implicit assumptions, both of which may be suspect. First, implicit in this framework, and many other theoretical statements on legal disparities, is that while criminal justice actors are concerned with legally relevant considerations to assess appropriate punishments, defendant social statuses – such as race, ethnicity, or citizenship – operate in the background of these judgments. In other words, defendant statuses are rarely directly linked to punishment considerations, but may condition these considerations indirectly. Second, this research largely assumes that the mechanisms that link race and ethnicity to sentencing decisions are the same as those linking citizenship to punishment considerations (i.e. concerns about drugs, violence, etc.). It is important to note however, that none of the extant research on citizenship and punishment uses interview data to understand the sentencing of noncitizens, thus precluding a full examination of the mechanisms linking national membership to punishment. Moreover, there are strong theoretical reasons to think that citizenship may lead to disparate treatment for reasons other than those linking factors such as race and ethnicity to increased punitiveness.

First, a growing body of social-psychological research on inter-group conflict suggests that traditional conceptions of prejudice and threat obscure a rich diversity of responses evoked
by different groups (Cottrell and Neuberg 2005; Neuberg and Cottrell 2002). That is, while
different out-groups may elicit similar levels of ‘threat’ and ‘prejudice’ from in-group members,
these general concepts may be too broad to capture the qualitatively different reactions and
perceived threats that undergird expressions of prejudice. For example, in a study of European
American undergraduate students, Neuberg and Cottrell (2002) found that while participants
expressed similar levels of prejudice against African and Native Americans, African Americans
were much more likely to elicit feelings of anger and fear, whereas Native Americans prompted
expressions of pity. In the same study the authors found that African Americans and
fundamentalist Christians were viewed equally on a general measure of ‘threat,’ but were
perceived very differently depending on the specific form of threat. For instance, African
Americans were seen as safety threats while fundamentalist were seen as threats to respondents’
values. These findings suggest that a consequence of a more general application of ‘threat’ in
previous punishment research is the inability to explore the possibility that noncitizens evoke
different reactions than native racial/ethnic minorities, thus obscuring the mechanisms driving
legal disparities for both groups and hindering accurate description of the social phenomenon
and the development of effective theory.

Second, citizenship, unlike race or ethnicity, is formal and institutional and is far more
robust and immune to the charge of “discrimination” (Joppke 2010). By defining the terms of
legal, political and social inclusion and exclusion, the nation-state “must discriminate between
citizens and foreigners” (Brubaker 1992: 47). As a result, citizenship raises normative questions
about identity, belonging, and state obligations far more than race or ethnicity alone. These
normative assessments not only help explain why citizenship is a powerful determent of legal
stratification, but also suggest alternative mechanisms than those stressed in previous punishment
literature. Rather than simply invoking criminal stereotypes, the line between citizens and noncitizens may be a salient consideration in institutions of state social control because courts are charged with protecting and enforcing ‘state interests,’ which are in turn framed and shaped by the cultural conceptions of nationhood (Brubaker 1992). This suggests that state institutions and judicial actors will be more punitive against the criminality of non-members for reasons explicitly linked to their citizenship status, rather than criminal stereotypes or ‘threats’ that operate in the background of decision making.

In summary, there are good reasons to think that the considerations that link citizenship to punishment concerns may be more explicit than previously described in extant literature. Given the cultural, legal, political, symbolic, and normative boundaries that citizenship defines, it is likely that criminal justice actors use national membership not as a ‘proxy’ for attributing negative qualities, but as an explicit status that is deserving of increased punishment. If this is indeed the case, it not only suggests that the mechanisms linking citizenship to punishment considerations may be distinct from other factors (e.g. race, ethnicity, class), but more importantly, that at least part of the relationship between national membership and punitiveness is driven by factors that have no parallel to these other factors. This is not to suggest that the focal concerns or criminal stereotypes are necessarily inappropriate in their application to understanding legal disparities associated with citizenship, but rather that they may be somewhat incomplete for a full understanding of the causal processes linking issues of national membership to sentencing considerations. To better understand these processes, I turn to the interviews from U.S. and German judges.
Explaining Citizenship Disparities Under the Law

As detailed in Chapter 4, interviews were conducted with a total of eight U.S. federal judges and five Landgerichte judges in Germany between May and September 2012. All interviews were recorded, transcribed, coded and analyzed with the general aim of identifying and explicating if and how defendants’ citizenship status was relevant for judges during criminal justice processing generally, and sentencing specifically.

Coding of the judge interview data revealed several themes that shed light on the mechanisms and processes that produced the results shown in Chapters 5 and 6. The most prominent of these, among judges in both the United States and Germany, were expressions of resentment linked to the criminality of non-state members. In fact, this was one of the only themes discussed widely and repeatedly by judges in both countries, suggesting that this may be central for understanding how and why citizenship yields disparate legal outcomes. Given this emphasis, much of this chapter attempts to unpack this resentment theme from the standpoint of judges. However, the interviews also revealed several other factors that may explain why noncitizens are more at risk for harsher punishment. These include aliens’ lack of social bonds and societal integration, judges’ observations of different cultural practices regarding noncitizen groups, and the lack of alternative sentencing options for noncitizen offenders. These themes, however, often overlapped and interacted with each other as well as the central theme,

50 Throughout this chapter I focus on themes brought up by judges that go beyond those captured in the statistical analyses presented in Chapters 5 and 6. For example, multiple judges suggested that any observed sentencing differences are likely due to differences in the types of offenses citizens and noncitizens commit (i.e. noncitizens are disproportionately convicted of crimes that receive incarceration, such as drug offenses). However, because I control for the type of offense in both analyses, this cannot wholly explain observed citizenship effects. For this reason, I do not devote time in this chapter to these explanations, other than to note them here.
resentment. Throughout this chapter I draw on excerpts from the interviews to elucidate each of these themes and their interactions.

It is important to note at the outset that most judges, though not all as I show below, when asked directly, explain that factors such as race or ethnicity or citizenship never weigh in their sentencing decisions. That said, decades of scholarship on racial/ethnic disparities and the results from the previous two chapters clearly illustrate that extra-legal factors, such as citizenship, at least sometimes play a role at sentencing, whether consciously or subconsciously. As I show in the following sections, the insights from the interview data are useful for gaining analytical leverage on the complex and multiple pathways through which issues of national membership play out in criminal courts, even amongst judges who claim to not consider citizenship at sentencing. The next sections are dedicated to illustrating these pathways. I then discuss the interview findings in the context of the statistical results shown in Chapters 5 and 6, and conclude with a discussion of the similarities and differences between the mechanisms linking citizenship to enhanced punishment and those identified in previous empirical and theoretical research.

Resentment

Is there an annoyance because some of these criminals are basically biting the hand that feeds them? Yes. -U.S. Judge

As the above quote illustrates, the criminality of non-state members engenders responses that explicitly and clearly link citizenship status and punishment. That is, many of the judges resented that those who are not members of their society, especially those who entered illegally, would compound their status by committing crimes. This was often framed by judges in terms of violating their countries’ hospitality. The following quote from a German judge illustrates:
“When I give reasons for the judgment I would certainly say that in some way it is objectionable to abuse the right of hospitality in order to take advantage of the benefits and then to commit crimes in addition… if it was the case I would punish it more severely” Another German judge touched on this theme as well in discussing the arguments that resonate with her at sentencing:

It is often expressed in the final speech…and it might be carried on by the judges, the idea that “You are here as visitors and you should at least adjust.” And this is what is meant by the aggravated sentence. *It is something that doesn't apply to the natives. And that is an additional factor and not because the offence is bad, but because the right of hospitality so to speak has been abused.* Or sometimes they say: “If you are here, you should adjust to the local customs.” Sometimes it even goes as far as: “We are not in Turkey or in Saudi Arabia, maybe it would work there but not here.” This is an additional factor (author’s emphasis).

Not only did these ideas resonate with other judges in both the United States and Germany, but were also often expressed as legitimate sentencing considerations. As one German judge put it:

“the thinking that you come to Germany, receive benefits and then commit a crime. That this comes extra on top of things I can well imagine that it has an impact. *I wouldn’t want to avoid that. I would think of it as understandable.*” The legitimacy of this consideration was stated even more pointedly by a U.S. Judge,

I certainly can understand that as a view and, you know, there is something to be said for that; you come to my country, my birthplace, the land that I love and I've sworn to uphold and protect, and what do you do here? You commit crimes, and some of these crimes are absolutely devastating to American citizens. So I don't think there's anything wrong with that sentiment. Whether one can fit that into one of the 3553a factors, I suppose you
could; I suppose you could say something about the history and characteristics of the defendant, that he came to this country, he obviously claimed he hadn't committed crimes or wouldn't commit crimes, and violated that. So is that worse than an American citizen who does it? I certainly wouldn't chastise the person who concluded that that was the case.

This quote is illustrative for several reasons. Not only does it clearly demonstrate the resentment felt when noncitizens commit crimes, but it also shows how this sentiment can be expressed as a legitimate punishment criterion. In addition, it very plainly highlights the salience of citizenship as a dividing line between judges and the offender. Consider the quote again with this division more clearly emphasized: “you come to my country, my birthplace, the land that I love and I've sworn to uphold and protect, and what do you do here? You commit crimes, and some of these crimes are absolutely devastating to American citizens.” A German judge drew the line between herself as part of the German citizenry, and noncitizen offenders even more explicitly when asked whether foreign criminals bred resentment: “That's true. I'm quite sure about that. It would be strange if it wasn't the case… We are also a part of society.”

It is important to note that this bitterness was not just expressed in abstract terms either, but rather was discussed in reference to specific sentencing considerations. As the U.S. Judge above stated, under U.S. law section 18 USC § 3553 (a)(1), when determining the particular sentence to be imposed judges are to consider “the nature and circumstances of the offense and the history and characteristics of the defendant.” According to this judge, along with others, the defendant’s immigration status can be considered as a relevant consideration in the assessment of the characteristics of the defendant. In this sense, many of the judges felt that aliens, as guests of the state, and especially those who were in the country illegally, had a special obligation to obey
the law. And when they did not, their crimes can legitimately be viewed as qualitatively worse than those committed by citizens.

Another way in which this sentiment affected specific sentencing considerations was through the consideration of mitigating circumstances. Most of the judges interviewed discussed family background characteristics as a key factor they consider at sentencing, particularly poor upbringing as a mitigating factor. As one U.S. Judge put it, “In mitigation are some of the horrible, horrible examples of just the most abused and neglected childhoods that these people have had to endure…that there is – it seems to be a foregone conclusion that they’re going to end up in a courtroom one day. I have to admit that I really do take that into consideration when it comes to sentencing.” However, this same judge viewed troubled backgrounds differently when it came to the punishment of foreigners. The following discussion, taken in the context of the judge’s perception that certain immigrant groups often attempt to defraud the U.S. government, illustrates:

Judge: Invariably, the Armenians and some of the Russian immigrants will tell me a story of their childhood and how oppressive it was living under some of those totalitarian governments and how they wanted to come to the United States for a much better life. Well, and I'm thinking to myself, then why are you screwing the country that's saving you, which has rescued you…? It actually pisses me off.

Interviewer: That they're trying to game the country that they came to?

Judge: Yes. Yeah, that is so – this is your rescuer. Then why are you ripping it off? It really annoys me…And I know that their lawyers give me this information because they want me to consider it as a mitigating factor, but I don't. It has just the opposite effect on me.
Interviewer: Is there a similar of annoyance for those who came here illegally and then break laws?

Judge: Yeah, there is…I don't understand why they don't try to legalize their residency here. I don't understand that. Is there an annoyance because some of these criminals are basically biting the hand that feeds them? Yes. Does that translate into an enhanced sentence? Probably not. What it does do, it will offset, perhaps, some other mitigating factors, okay? Then I'll consider it a wash, probably, okay?

... I do, I feel it, and it really does upset me, and I've said as much on the record, particularly when the plea is the terrible conditions that this person was living in, in Uzbekistan and how they've come to the promise land. I'm going, “Well, damn it. Why are you crapping all over the promise land?” And once again, what happens is that if you have raised some legitimately mitigating factors, it gets washed out. So you'll probably end up with a straight guideline sentence, okay? All right, now all that being said, citizenship doesn't play a role in this. I am merely annoyed then you screw over the country who has welcomed you and given you opportunities that your home country denied you. I am really annoyed at that. And I don't understand it. You're not going to get a break. That's what it comes down to. So you come in with your bleeding-heart stories about all the bad things that you've had to endure in your life. It's not gonna mean a thing, because you as a grown person of your own free will have shat upon the United States. And I do take exception to that. So that will wipe out whatever mitigating circumstances which might have militated your sentence.

Several aspects of this exchange stand out. First, despite pronouncements to the contrary, clearly citizenship does impact sentencing in ways that disadvantage aliens, at least for this
judge. In this case, the annoyance that an alien would ‘bite the hand that feeds’ them cancels out other mitigating factors, even those that the judge concedes would otherwise be ‘legitimate’ factors in cases involving U.S. citizens (i.e. troubled childhood). Second, consistent with the results in Chapter 5, the ire over the crimes committed by noncitizens is especially targeted at those who came illegally. As I elaborate on below, their unlawful entry was viewed as a negative marker on their criminal history but also compounded any additional crimes they committed. As the judge elaborated, “it’s bad enough you wanna sneak in and you wanna get a job as a landscaper, auto body shop or whatever…But you start hurting the community and dealing drugs in the community just wreaks havoc.” Finally, the mechanisms discussed by this judge, as well as many of those discussed above, are inextricably linked to issues of national membership. In this regard, not only do they differ in several respects from many of the factors identified in previous literature, but the specific ties to citizenship highlighted have no equivalent to other offender statuses, such as race, ethnicity, or class.

Though not all judges expressed feelings of resentment as direct as those discussed above, nearly all acknowledged such sentiments could play a role in explaining sentencing disparities between citizens and noncitizens, but suggested that this largely occurred among other judges, in different localities, in other areas of the criminal justice system, or in the past. For example, though this particular U.S. judge did not adhere to what he called “nationalist views,” he acknowledged that such sentiments are strongly held among members of the community and likely other judges as well. As he explained,

The basic idea that you don't have a right to be here anyway. Just go home, there's an awful lot of people who will just kneejerk that and I don't mean that – it's a legitimate position. I think that's a nationalist position… but when you look at the foreigner thing;
that really is very real. You don't belong here… Those questions are very, very hard, but your basic question is that real in this community. Yes, it is. Can it be real among specific judges? I assume it. I don't know it, but I wouldn’t be surprised because it's a very, very common response. Doesn't belong here.

Other judges similarly thought this view could be playing a role among their peers. According to another U.S. judge “it may very well be that the vast majority of the judges are thinking this. How dare you, number one, sneak in or come here illegally, and then on top of that, wanna terrorize our people.” Another U.S. judge opined that such sentiments could be interconnected with judges’ desires to send a symbolic message about harsh punishment: “I mean there may be some judges who feel that tough on crime, you're here, you shouldn't be here, sentence you more severely than somebody who, when they get out, is not going to be thrown out.” Other judges simply conceded that while they thought issues of citizenship, nationalism, or resentment towards foreign criminals had no place in the courtroom, such sentiments still likely held sway among other judges: “Are some judges shit? Damn right. Are some judges not doing their job the way they should? Damn right. But my view, I think my view is it shouldn't make a difference” (U.S. Judge).

In both the U.S. and Germany, the negative assessments of other judges and other communities were particularly targeted at outside districts. According to one German judge, while her particular district did not experience much inter-group conflict with immigrants or hold negative sentiments towards criminal aliens, she acknowledged that during her training in another region of Germany she “got the impression [from her colleagues] that foreigners have a much worse reputation.” A U.S. judge similarly viewed his district as largely devoid of anti-immigrant sentiment, but thought that this was not the case in other parts of the United States,
particularly those where foreigners represented a small part of the population: “you know that the more you’re in the middle of the country, the more of that's very real. Who the hell's this guy? He's not exactly your next-door neighbor after all. And if he's not your next-door neighbor…then he doesn't belong here.”

Interestingly, in discussing the cross-national comparison of the research project, judges in both countries expressed that inter-group conflict was less a problem in their own country. As one German judge stated “I believe here in Germany we don't have problems like those in America.” Conversely, several U.S. judges expressed multiple reasons, from economic to cultural, for why citizenship would matter more in German courts.

…in the countries where it's crystal clear that people are coming to that country because the crime they're gonna commit is more profitable there than at home, and less likely to get caught. Yeah, people do resent that. They don't like it. And I think you probably can count on that happening. This country, it's less evident (U.S. Judge)

I think my hunch would be that the German judges would sense the alien as being much more threatening than the American judges for the simple reason that I think we have a sense that a good part of the strength of the country has come from aliens, that is people who've come from other places, and I think the recent experience in Germany and the other European countries could be the people who have come here have come to scoop up the goodies (U.S. Judge).

Other judges also thought that citizenship may play a role in other stages and among different actors throughout the criminal justice system. For example, one German judge explained that the police and the prosecutor often treated German and foreign suspects differently.
And there for example if the shoplifter was a foreigner, the police would always be called and they would be arrested and brought to the accelerated proceedings. Of course that wouldn't happen to Germans. And although they were Poles and had an address available, they could have been given a penalty order. It would have been easier. But despite that they have been detained and presented to the judge. And it was also communicated in the way: They cross the border and steal from us. The circumstances were considered worse in this case and the idea was: They should be stealing at home and things like that...you would often hear public prosecutor express that in the last statement.

Such observations were not limited to state actors either. This same judge also perceived differences among the defense attorneys depending on the nationality of their clients.

The fact that someone defends foreigners doesn't mean that this person doesn't have any resentments towards them. You would notice that in some circumstances that the defender could be more committed but it could also be the case with Germans. When the defender disapproves of the offense or thinks of his own client as awful, that is noticeable sometimes and you would think that somebody could have been defended with more commitment. I think that happens more frequently to foreigners than to Germans.

Taken together, the above excerpts demonstrate that resentment is a particularly salient consideration in the sentencing of non-state members. As actors of the state and members of the citizenry, judges in both countries viewed the crimes committed by non-members of society, especially those who are uninvited (i.e. unauthorized or illegal immigrants), as particularly morally reprehensible. Consequently, these sentiments translated into sentencing considerations in several ways, including: 1) as a direct effect through judges’ outrage that immigrants would
‘bite that hand that feeds them;” 2) by cancelling out otherwise relevant mitigating circumstances, or; 3) as a consideration of the defendant’s criminal background.

Social Marginalization and Societal Integration

Foreigners don’t have a permanent residence here or any social bonds so it would be harder for them to receive suspension of imprisonment compared to Germans…

-German Judge

Here I examine a second theme discussed by judges in both the U.S. and Germany – issues linked to foreigners’ lack of social bonds and societal integration. These considerations manifested in several distinct ways, including (1) the fear of absconding, (2) through ‘secondary effects’ such as foreigners’ inability to obtain gainful employment, and (3) language proficiency and the inability to navigate the criminal justice system. Throughout this section I draw from judges’ comments to highlight each of these mechanisms as well as the ways they interact to disadvantage alien offenders.

Absconding

The fact that many noncitizens brought before their courts had little or no connection with the United States or Germany weighed heavily on judges in two primary ways. First, without a permanent residence or steady employment, many judges considered foreign offenders as posing a particularly high flight risk. This not only affected detention decisions, but as the quote above illustrates, also whether they would consider suspending the sentence in favor of a non-incarceration sentence. As one German judge explained, “When somebody goes to Turkey; he can prove his identity there and stay in the country because he also has the Turkish citizenship. If he got many years, of course there are less chances for the suspension of imprisonment because he has an option to disappear and stay somewhere else legally. And I can't discriminate the natives because of that.”
Consideration of the offender’s ability to flee was particularly pronounced for foreigners who only crossed the border for the purposes of committing crimes. As another German judge explained,

...in case of foreigners, who are true foreigners, there are offenders who come to the Germany only in order to commit crimes and then leave after that. They don't have any place of residence here. Automatically, the risk of absconding is considerably higher.

That's when there is a strong suspicion of committing a crime. It's also present among the others, however they can provide evidence of social ties and permanent residence and so on which can be related to the fact that the detention is not imposed on them as often as it is on real foreigners in the truest sense of the word.

Interestingly, while weak social bonds within the host country worked to the disadvantage of foreign offenders, weak social bonds to their country of origin also led several judges to consider more punitive sentences. This concern overlapped with the fear of absconding discussed above but for a different reason – judges understood that many of the noncitizens in their court immigrated as children and thus had very little connection to their country of origin, culturally, linguistically, or otherwise. For some judges, this meant that offenders who feared eventual deportation to a country to which they have no real connection would have a strong incentive to flee the terms of their sentence if given the opportunity. This was more of a concern in the United States where most noncitizens convicted in federal criminal courts would eventually be deported after serving their sentence.\(^{51}\) The following exchange with a U.S. judge captures this dynamic.

\(^{51}\) This was less of an issue for judges in Germany where deportation is used considerably less and is more complicated than in the U.S. For example, German law requires that duration of prior legal residence and family ties be taken into account when deciding removal orders for noncitizens. In addition, approved asylum seekers who have legitimate residence in Germany are specially protected against removal and
Judge: There are so, so, so many people that are here illegally, and I really don't understand fully why. But they've gone to school here from— I mean they've been here since they were two years old. I have no idea why their family didn't do those things necessary to secure their citizenship. But they speak fluent English. They know nothing other than the United States…And so if you have them in your clutches, you better hang onto them because if you're talking about sending them back to Chile, they're gonna, “What? No.” They're in the wind. “No, you can't do that. That's a completely—” talk about a foreign country. That is truly foreign to them. That is not their homeland, all right? So there is every incentive in the world, absolutely. “You're telling me you're gonna send me to Yugoslavia? Oh, I'm gone. That isn't gonna happen.” And we see so much of that. They have no connection whatsoever to these countries, yet we want to send them there. I'm not understanding it.

Interviewer: …do you think that that also might be driving what we see as far as these differences in just whether or not you go to prison – these gaps between noncitizens and US Citizens?

Judge: Could be.

Consistent with this view, the eventual deportation of noncitizens meant that some judges felt that they had limited sentencing options. When asked why there was a gap in the incarceration rates between citizens and noncitizens in federal courts one judge offered the following explanation:

This is custodial. That's all it is. We're just gonna warehouse you. Maintain custody of you until ICE [Immigration and Customs Enforcement] gets you. Maybe that's all there

German law forbids expulsion of individuals who risk human rights violations in their home country (van Kalmthout et al. 2007; chapter 10).
is...We're not going to give you a noncustodial sentence, for example, even if you might give someone else probation. We're not gonna do that. Because, what, we're gonna put you on five years' probation? Oh, by the way, sometime during the course of that probation, ICE is gonna come pick you up. Yeah, good luck with that.

Issues surrounding deportation also influenced judges’ consideration of mitigating circumstances, particularly those linked to families within the host country. Especially in the United States where noncitizen offenders are likely to be deported, judges put less emphasis on familial ties at sentencing because regardless of whether the offender is incarcerated, eventually these ties will be severed. This was described by a U.S. judge, “it [family ties] doesn't become less of a mitigating factor. It's simply – if it might otherwise be a factor, it just drops out.” In other words, what might otherwise be a consideration for an offender who would be released back into the United States simply “drops out” for offenders who face eventual deportation.

**Recidivism**

The second way through which foreigner’s lack of social bonds affected judges’ decision making was in their evaluation of the offender’s ability to reintegrate, and thus their likelihood to recidivate. Consistent with prior research (Ulmer 1997), a major factor in judge’s sentencing decisions was whether they thought the defendant would reoffend, and a large part of this assessment was based on how well integrated the defendant appeared to be. As one U.S. judge put it, “you're gonna have to – you gotta show me you got a marketable skill. If you don't have a marketable skill, then I'm gonna be thinking you have no legitimate way of making it right, and remedying your wrong. And so I'll just punish you.” For foreigners, especially those with few ties to society, judges routinely saw little chance for successful reintegration. As a U.S. judge described:
...because of their status, they don't have a snowball's chance in hell of going straight because they can't get a job. So I will see them for supervised release violations, which starts the cycle all over again. So I think that the options for them, both in terms of retraining and in terms of rehabilitation, in terms of treatment – I mean like for mental or physical or substance abuse – there are very few.

Two German judges expressed similar views:

Ultimately, education and access to legal job market is the key. In my view this is a problem among Arab offenders. They are usually not allowed to work here. They are long term tolerated refugees form Palestine with very complicated possibilities of employment and earning something legally. They seize the opportunity to make a lot of money with little effort and by doing so take some hidden risks until they get caught at some point...These people want to gain financial opportunities that are not available in the legal way; therefore they resort to these illegal methods of earning money.

Germans of course are the most promising candidates of the rehabilitation facilities because they are easier to manage and have better possibilities to be integrated, in terms of therapy through occupational integration.

In these instances, most the judges saw their primary consideration to be evaluating whether the offender will one day recidivate, and only considered the defendant’s citizenship status as indirectly affecting that consideration.

*Interviewer:* In case of the suspended sentence, another judge was of the opinion that their [noncitizens] prospects were poor as they couldn't provide a place of employment.
Judge: Yes, it's because they are a little disadvantaged and this is also reflected in the society. Certainly, somebody who is sitting there with a contract of employment would get a suspended sentence. Yes.

Or as another U.S. judge put it,

I would suspect it might be, that if you were a noncitizen, you have a harder time getting a job, that will have a corollary effect on the factors that go into sentencing consideration. But I don't – I think it's – Isn't it – What we're talking about, isn't it a secondary consideration? It's not a direct – In other words, you get a PSR [Pre-Sentence Report] and it says this guy is not a citizen. So that's sort of ho-hum. Who cares? But if this guy's never had a job, then you say, Oh, well, maybe he's never had a job because he's not a citizen and maybe illegal.

While most judges spoke in terms of some foreigners lacking important signs of integration, others expressed this more directly as being marginal members of society. This German judge’s comments are representative:

… somebody from the margin of society may not get a suspended sentence because we make a prediction whether he would commit criminal offences in the future. If we look at any of the marginalized groups of society, such as alcoholics, unemployed, drug addicts and so on, where nothing ever changes, we make a realistic prognosis…It can be a welfare recipient, for example a non-German citizen who lives in the parallel society. We don't know much about these people, they don't want to tell us much about their lives here. They wouldn't say that they live in a parallel society but we can get a sense that they aren't super integrated but we can't know that for sure…The typical case is the complete
absence of realistic perspectives for the future, no plan for life, immaturity and looking for the short-term kick from drugs and alcohol and so on.

Even for judges who did not express this lack of ties as a negative attribute, many conceded that it affected their decisions because they had little information to make a positive assessment of the offender. The following quote from a German judge illustrates:

If it's a Romanian offender who is travelling around and I know very little about his personal background as he would tell me very little, besides the fact that his family is sick and that he has been committing robberies out of many reasons that are understandable. In that situation I have very few points of reference for making any social prognosis, especially for a positive one.

Language Proficiency

Often considerations about offenders’ likelihood of reintegration were intimately linked with language proficiency, which ultimately interacted with other social ties such as employment. This was particularly the case in Germany, where due to their legal system judges and defendants interacted a great deal throughout the trial. For example, in discussing why Germans may receive favorable treatment at sentencing, one German judge opined that:

Because of the fact that the natives grow up here and get a native command of the language, on principle they will naturally have a more favorable prognosis, options for job placement on the job market or something like that. It is usually reported in the trial.

Then all of the sudden they would all start examining the employment. And the defenders

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52 Unlike in the United States, which draws heavily from English Common Law, judges in the German Legal System are not neutral arbiters in the dispute. Rather, judges are to 1) decide the guilt or innocence of the accused based on the evidence and their own investigation as well as 2) determine the appropriate punishment. Thus, part of the judges’ role is to discuss the details of the alleged offense and offender’s background with the defendant throughout the trial.
are working on providing all the necessary documents. And that is of course much easier for a native who knows the language and has a completed education or attended some courses and can at least be employed in some capacity compared to someone who doesn't meet these favorable conditions. It will more often be the case for foreigners, probably. And the favorable prognosis will possibly be reflected in the sentence.

The following excerpts from other German judges support this view.

Asylum seekers who came to stay here with the brother or a cousin who has provided a place for them to live and then they have traded with heroin in kilogram amounts...this kind of offender usually presents himself poorly. I notice it pretty well during the judicial hearing where I have to make a predictive decision. And in case of an individual who doesn't speak the language and has no education and no job, the prognosis is pretty easy to make and it's not good.

It's certainly good when somebody can present oneself well at the main court hearing. Certainly, when you can't express yourself it's already a disadvantage for sure...When it comes to the question – yes or no to the suspended sentence – the person who is able to present oneself in a positive light has certainly an advantage.

One of the specific ways lacking native language proficiency disadvantaged foreign offenders was through their inability to effectively express remorse. As one German judge explained, “…these are things that would be important to us to get the impression that he has realized that something isn't right. So the tendency is that it's harder to express that and it also doesn't come across that well through the interpreter.” They went on to say “from my experience at the judicial hearings at the execution of the sentence, that the language and ability to express
oneself are things that allow somebody to score some points, in a positive way, if somebody can convincingly express that he or she will change something and makes every effort to prove that he is contrite and sorry. It has a lot to with the language and self-presentation. On average the self-presentation is probably not as good if somebody isn't speaking their own language.”

It is important to note that just as various aspects of societal integration interacted and overlapped in the minds of the judges, so too did these factors overlap with the resentment theme discussed above. While much of the discussion of social bonds considered citizenship somewhat indirectly, lacking native language ability also had a more direct effect on judges’ views of the offender. Indeed, the following quote captures this sentiment discussed by several judges in Germany: “But when people speak German poorly it doesn't make them likeable, when they have no ability to express themselves.”

Because judges have considerably less interaction with defendants in the U.S. justice system, it is perhaps not surprising that these issues were discussed less among the U.S. federal judges. However, U.S. judges did discuss noncitizens lack of English language proficiency as a problem for defendants to navigate the criminal justice system and to understand the criminal proceedings.

And to have someone have to deal with it who doesn't even speak the language, and to spend a lot of time assuring myself that they do understand the process – a plea agreement. Seven single spaced pages of legal jargon. And I say, “Do you understand? Did you understand it?” And then at some point I will probably say something like, “Well, I'm glad he understood it, because very few other people do.” And it's true. I mean it's almost a farce. Because they're written in such legalese. And then they have to be translated into the language that the individual will be able to understand. Compound
that with I get very few Oxford educated noncitizen defendants. I am trying to have a rough equivalency of, well, if he went through the third grade in China, what does that translate to in terms of grade here?...The reality is most English as a first language speaking people who have graduated from high school do not understand, really, what's going on. So to get someone who doesn't speak English, who did not go to get an education, or some of them never went to school at all, and then you have to really think about what is it that they understand? (U.S. Judge)

Several factors should be noted about the role of societal integration for these judges. First, evaluating how well foreign offenders were integrated into society clearly affected their sentencing decisions. In addition, there were multiple pathways that linked concerns about social integration to punishment decisions. For many judges, citizenship status colored their assessment of offender’s ability to successfully reintegrate. This largely occurred through what one judge referred to as ‘secondary effects,’ such as foreigners (particularly illegal aliens) inability to gain legitimate employment. These findings are consistent with previous research on the role of employment at sentencing (Spohn and Holleran 2000), and it is important to note that this research shows that these considerations also play of role for native offenders.

However, while some factors discussed were not tied exclusively to national membership, several other topics discussed were either entirely unique to noncitizen offenders, or at the very least differentially impacted alien defendants. For example, while lacking permanent residence was a general concern for judges, this was particularly acute in the case of noncitizen offenders presumably due to their ties in other countries and their likelihood to flee. As several judges discussed, these considerations played significant roles in whether foreigners received a non-incarceration sentence. Even more obvious are the discussions related to
deportation, which clearly would never play a role for citizen offenders. For some judges, the 
expectation of deportation affected whether they would give a noncustodial sentence, while for 
others it cancelled out any family considerations because these ties would inevitably be severed 
regardless of the judge’s sentencing decision.

But even for those considerations that also apply to native offenders, national 
membership often added an additional concern that in many respects altered the judges’ 
prognosis at sentencing. Native language proficiency, particularly in Germany, played a large 
role for judges because offenders had the ability to present themselves well and to sincerely 
express remorse. For those who could not, judges had little information to make a positive 
assessment, and often times found those who could not communicate not very “likeable.”

Taken together, these quotes are highly consistent with the earlier theoretical discussion 
on the punitive consequences of social marginalization. As the above quotations illustrate, these 
concerns primarily worked through judges evaluations of offenders’ likelihood to flee, their 
likelihood of recidivism, and their “likeability,” all of which were affected either directly or 
indirectly by citizenship and immigration status. While these quotes help demonstrate the various 
ways social marginalization affects punishment decisions as well as how these considerations 
often overlap and interact with issues of immigration and national membership, they only partly 
touched the issue of cultural dissimilarity. The following section discusses this theme in greater 
detail.

Cultural Practices

Now one of the things I’ve noticed from a lot of the Hispanic illegal aliens that I find here…they don't 
seems to have a great deal of problem in beating up their women, and that bothers me… It just seems to 
be a cultural thing I keep encountering.

-U.S. Judge
Judges in both countries discussed the role of cultural differences in the handling of foreign offenders. Such considerations affected their sentencing decisions in a number of distinct ways. One of which was through the consideration of the defendant’s criminal history. Consistent with the focal concerns and causal attribution approaches, some judges attributed meaning to defendants’ behavior consistent with criminal stereotypes. However, these attributions were linked in specific ways to citizenship. As the above quote illustrates, the cultural practice of partner abuse was not perceived as a problem among minorities or even Hispanics, but rather was reserved only for Hispanic *illegal aliens.*

This clearly played a role in deciding appropriate punishment for these offenders, as the judge explained: “So if this is your way of life, I'm probably gonna hurt you…Violence against women, violence against children, you're gonna either be looking at high end, or may just simply go outside the guidelines.” In Germany too, some judges held the view that foreigners were more violence prone than natives: “based on my experience, the readiness to use a weapon is higher among foreigners with immigration backgrounds than among Germans” (German Judge).

German judges also often viewed cultural differences as a problem for foreigner’s ability to complete rehabilitation programs. This is a particularly important consideration for judges because it directly affected whether offenders received an incarceration sentence. For those offenders who were deemed good candidates for rehabilitation, a non-incarceration sentence or a suspended sentence was much more likely. Assessing whether an offender was a good candidate often was tainted, however, by perceived cultural dissimilarity between Germans and non-Germans. For some judges, foreigners’ cultural distinctions were viewed as a hindrance to successfully completing rehabilitation: “Staying in a facility like that is very difficult for foreigners, because they don't want to submit themselves to the rules, all of the sudden no drugs,
no tobacco, and no alcohol and only tee and doing real work for eight hours per day (German
Judge).”

Because some criminal practices were perceived as rooted in ‘culture’ as opposed to
individuals, this meant that one of the goals of punishment, at least for some judges, was to send
a message to that immigrant community in an attempt to deter such practices. While deterrence is
one of the primary goals of sentencing for all offenders, these symbolic messages were aimed at
specific immigrant groups. The dialogue below illustrates:

_Interviewer:_ And so do you see other kinds of sort of cultural practices that you may
consider or that you take into account?

_Judge:_ I make note of. For example, Russian immigrants, Armenians, look at the US
Treasury as their personal piggy bank. And I've noticed that they will engage in all
manner of fraud against the government. It could be setting up shops to dispense durable
medical equipment… on a huge scale, a huge scale. The entire family. It looks like half
the community. They're all involved in these things. And it's one after another, and it's
gotten to the point where, yeah, now it's gotten my attention. It's like this is a cottage
industry… And we [judges] also look at in terms of communities…I really do think about
the deterrent effect that the message needs to be sent. This isn't acceptable. It won't be
tolerated.

When asked about the practice of sending symbolic messages to certain groups within the
community, another federal judge thought that this could be viewed as a legitimate goal of
sentencing but acknowledged that this could be viewed as problematic by some: “So I can see
the people who consider that important, that may be something that people are interpreting as
cultural distinctions. And, you know, depending on what side you're looking at, you can describe it in a way that is perfectly justified or in a way that seems unjustified.”

In summary, though cultural distinctions between citizens and foreigners were not discussed by all judges, or to the extent that resentment or societal integration came up, for some judges in both countries it clearly played a role in their decision making. This occurred primarily through three distinct pathways. The first was the perception that part of offenders’ criminal history was rooted in the cultural practices of certain foreign groups, as the discussion of violence against women among Hispanic illegal aliens and the Armenian communities’ fraud against the U.S. government demonstrate. Second, the link between foreigner criminality and community culture meant that a symbolic message needed to be sent to these communities that such practices would not be tolerated. Obviously, judges’ only means to accomplish such a goal was to punish members from this community more severely. Third, foreigners’ cultural differences, particularly in Germany, affected judges’ assessments of their suitability for rehabilitation. Because judges viewed the cultural divide between Germans and other groups as a hindrance to successfully completing these programs, they were less inclined to consider non-incarceration sentences.

Other Explanations

Narcotics don't grow in Germany. That's how it is. They either grow in South America or Asia. Germans don't have any influence there.

-German Judge

While resentment, social marginalization, and cultural differences capture the three major themes from the interviews, judges offered several other alternative explanations for explaining differences in the punishment of citizen and noncitizen offenders. This section elaborates on these other explanations. Similar to the discussion above on “secondary effects,” many of the
explanations centered on the idea that citizenship only has an indirect impact on the sentencing process through other factors that are legally relevant, or only mattered in some limited circumstances. Consistent with the quote above, one such circumstance involved the importation of drugs.

Due to their foreign connections and ties to countries that manufacture drugs, several judges in Germany viewed the importation of drugs, especially hard drugs, almost exclusively as a problem among immigrants. As one German judge explained:

I don't have any statistics about that but when I was working for the criminal division and the crimes related to narcotic drugs, the people there were mainly from Turkey and Lebanon. Because they had these foreign contacts available they are able to bring it here on a large scale which is connected with illegal importation. So I would think that through their advantage of having foreign contacts, this would more often be the case for people with an immigration background. This is noticeable in our trial records that there are more people with an immigration background. In case of the drug trade when heroin is imported in kilogram amounts, the penalties are very, very harsh.

Several other German judges made similar observations on the unique aspects of the drug trade. What I can think of spontaneously is the fact that the drug market is divided by ethnicity to a certain extent. We observe that for example the marijuana trade is mostly in the hands of Germans or nationalized immigrants, whereas the heroin trade is controlled by Arabs.

Unfortunately, it's because of the nature of the crimes…The narcotic drugs are brought here from abroad and the foreign defendants simply have better foreign connections.
They are the main perpetrators or highly ranked accomplices, in my trials. Germans are lower-ranking accomplices, sellers, messengers or something like that. Because of the particular structure of the gang and things like that, they don't want to have any Germans in the gang. They speak with one another in Kurdish or Turkish on the phone and normally Germans can't do that.

Similar views were acknowledged by U.S. judges who spoke about the high number of drug trafficking cases seen among noncitizen offenders. The perceived strength of the association between drug trafficking and immigrant groups may help explain the interaction effects observed between citizenship and drug crimes in the previous two chapters.

Some judges also perceived a difference in the level of organized crime among citizens and noncitizens, which they argued could contribute to the differences observed in incarceration rates. As one German judge explained:

The Romanian gangs are involved in that and they find some naive Germans from the margins of society, who have nothing to lose, alcoholics, homeless, or on the verge of becoming homeless, who would provide their identity, or a face for a false identification document. And then they go to twenty different stores in one day to sign a contract. And then it will all be delivered to their man in the back and the guy would get 50 Euros for it as it doesn't matter to him anymore whether he incurs more debt or not… What also has an impact on enhancing the penalty is the fact that they purposefully select marginalized individuals in order to exploit them in their pitiful situation. And also the organized crime in addition to that. For every act there is a minimum penalty of one year in prison, because this is considered both robbery and organized crime, which must be recognized.
This explanation is illustrative because it describes how the targeting of marginal Germans, and not just any marginal member of society, by foreign groups is considered particularly heinous. As the judge described, this consideration would increase the penalty for these foreign groups. It is important to note the opposite situation – German organized criminal groups preying on marginal foreigners or even marginal Germans – was never mentioned by any of the judges.

For other judges, the level of criminal involvement among foreigners, particularly those who made considerable amounts of illegal income or played major roles in criminal enterprises, was especially aggravating. These feelings largely interacted with the previous discussion of resentment, especially when foreign criminals were able to hire expensive defense attorneys to delay or slow down the criminal proceedings. As the following German judge described, “There is so much money involved and like I said before they have stashed it away. That means that they are using the best lawyers. The quality, especially in case of foreigners due to the high financial possibilities that they have. If you are a good defense attorney, you could sabotage the criminal proceedings for a blatantly long amount of time. There are a lot of things that could cause us a lot of annoyance.” According to this judge, many of the lawyers hired by foreign defendants in drug cases come from outside of the district with the goal to drag the proceedings out in court to receive a more favorable deal. At least for this judge, it had just the opposite effect. According to him, “when I hear about somebody [defense attorney] who I don’t know anything about it’s like a direct confession of guilt.”

A second theme that emerged among U.S. judges was the relationship between offender’s immigration status and the consideration of the defendant’s ‘relevant conduct’ and criminal history. Under U.S. law, judges are permitted to use information beyond the offense of conviction when determining appropriate punishment, including criminal activity for which the
defendant was never convicted or even prosecuted (see *U.S. v Booker*). Because undocumented immigrants, by their presence in the U.S. have undertaken illegal activity, this could be a consideration for an increased sentence even in cases where their immigration status is not at issue. This was described by a U.S. judge:

*Judge*: Would I sentence him differently if he is illegal and no detainer has been filed? … It's another area in which a violation has occurred, whether it's being prosecuted or not. It is, in effect, I guess, another crime. Yeah, you probably would think about it.

*Interviewer*: …most of the noncitizens in the federal court system are illegal aliens. So you're saying that only would play out to the extent that –

*Judge*: It's another crime.

*Interviewer*: You think that could play a role [at sentencing] as far as the fact that it's an additional crime but maybe it wasn't charged?

*Judge*: Well, sure.

Another U.S. judge thought that this same consideration may also affect how prosecutors handle cases involving undocumented immigrants: “I wouldn't be surprised if the government were less likely to give a break to someone who is here illegally, regardless of whether they've ever been deported and returned or whether they have a conviction for illegal reentry that shows in their criminal history. The mere fact that they are here establishes that they have in fact committed an additional crime.”

Despite the discussion in the above sections, many of the judges stated that there was likely little conscious effort among judges to treat citizens and noncitizens differently, at least

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53 Though the federal sentencing guidelines allow for the incorporation of ‘relevant conduct’ considerations and thus could be captured by the ‘presumptive sentence’ measure, the quotes suggest the defendants’ immigration status could also subjectively influence the judge’s decision making beyond the guideline calculation.
when it came to sentencing. Several judges, however, did acknowledge the possibility that citizenship may be a factor playing out subconsciously. As one U.S. judge put it, “You know, I’m sure there are studies that show that people don’t necessarily actually do what they perceive themselves to be doing, but I certainly don’t perceive myself to be doing that, and it’s certainly not anything that I do intentionally.”

Other judges thought subconscious considerations of immigrant offenders might overlap with their assessment of how “likeable” the defendant is. According to one German judge, I would imagine that there would be some reasons but they would only be subconscious, sympathy and antipathy obviously have an impact on the sentencing. We somehow have to decide upon the number that is within the sentence range while contemplating the sentence. And I can imagine that the number is higher when somebody thinks, “What an asshole!”…If you have an impression that this man is a horrible, notorious evildoer then the punishment is harsher, compared to thinking: “Poor boy, things just went wrong”. There would be some kind of sympathy…It may be a more of a subconscious notion, an inclination to consider people with an immigration background as not very likable and to show less understanding towards them.

A similar sentiment was echoed by a U.S. judge.

Am I going to, at some level, say to myself, “Eh, he's a Dominican, he's probably in the drug business”? I may do that. If I do, I'm a naughty boy… I mean three people are sitting here. One's a Frenchman, one's a German, one's an American, and you walk into the room, you meet them, which one do you like? That's all you know. Probably the American…it's very likely that it may color someone's mind, that the defendant is a noncitizen, but it should be an irrelevant factor. My view.
Explaining the Quantitative Results

The findings in Chapters 5 and 6 show a consistent pattern: noncitizens in the United States and Germany are punished more harshly than similarly situated citizens within each country. This quantitative relationship set the stage for the qualitative study of judges to unpack the social processes that produce the association between citizenship and punishment. The interviews demonstrate a rich and complex system of interpreted meaning among judges in both countries that work to the detriment of noncitizen offenders. From these interviews several themes emerged that help understand the processes that yield legal disadvantages for non-state members. These themes are summarized in Table 7.1.

Most prominent and direct among these were expressions of resentment. As the excerpts above demonstrate, judges in both countries clearly viewed the criminality of non-state members in qualitatively different terms than citizens. For many, the crimes committed by aliens were compounded by the fact that they did not rightfully belong to the state. Several judges expressed this directly as either resentment or annoyance. The consequences of this added element clearly played out at sentencing for many judges. In several instances judges stated directly that citizenship status is a legitimate sentencing enhancement. This was often framed as ‘violating the right of hospitality’ or ‘biting the hand that feeds you,’ both of which warranted more severe sanctioning. In other cases, the resentment of immigrant criminality simply ‘washed out’ legitimate mitigating factors. Some judges stated that immigrant background could legitimately be used as a sentencing enhancement linked to the defendant’s criminal history and character. That is, those who would enter as either a guest or illegally and then break the laws of the country that graciously provided them opportunities clearly betray a crime-prone background.
Moreover, as members of the host society and also agents of the state, judges viewed noncitizens criminality as particularly deserving of punishment.

For many of these judges, the undercurrent of this theme was that those who are guests of the state, and especially those who are there unauthorized, have special obligations to adhere to the norms of the host society and especially to the laws. In this regard, several judges thought immigrant status should rightfully be an additional factor stacked on top of their crimes, and this should be dealt with more severely. This idea is consistent with Sayad’s (2004) concept of the ‘double punishment’ aliens face in criminal courts. Indeed, Sayad’s discussion appears remarkably apt and is worth quoting at some length:

The fact of being an immigrant is far from being a neutral element within the whole gamut of evaluations and judgments that are passed… the fact of being an immigrant delinquent constitutes, as a general rule, something of an aggravating circumstance… Before we can even speak of racism or xenophobia, the notion of ‘double punishment’ is therefore present within any judgment passed on the immigrant. It is rooted in state thought… All immigrant behavior, and especially deviant behavior, has repercussions on the phenomenon of immigration itself, and leads to greater disapproval, greater disqualification, and greater stigmatization. [Some] do not conceal or hide their satisfaction at seeing two different modalities of crime and the two punishments that sanction them overlapping and aggravating one another – in their view, this is only fair, and basically, something that is quite right and that should be the rule…Breaking the law means more than the infraction in question: it is an error of a different order, a lack of politeness (Sayad, 2004; 282-285).
The above excerpt from Sayad’s discussion of ‘double punishment’ captures much of the resentment that the judge interviews revealed. In addition to the fact that this was one of the most prominent themes that emerged in the interviews, two factors make resentment fundamentally important for understanding the punishment gap between citizens and noncitizen observed in U.S. and German courts, as well as strength of the association between sentencing and state membership. First, resentment makes the link between citizenship and punishment direct. That is, rather than working through other factors that impact sentencing (i.e. employment, social ties, stereotypes, etc.), lacking membership to the state leads to increased punishment directly because the status of being a noncitizen itself breeds resentment for those who violate the law. Second, the resentment discussed by judges is exclusive to non-state members. In other words, there is no parallel to resentment described throughout this chapter for other offender statuses. While previous research – and indeed the current research – demonstrates that other offender attributes affect sentencing decisions (i.e. race, ethnicity, sex), the discussions of ‘hospitality’ are tied exclusively and necessarily to conceptions of state membership.

That the resentment link between citizenship and punishment is both direct and exclusive may also help explain why the citizenship findings are not unique to any single group of noncitizens. Recall that the overwhelming majority of noncitizen groups in both countries received more severe sanctions compared to their citizen counterparts. While different groups no doubt vary in terms of their ties to the host country, financial means, and cultural distinctiveness, the sentiments of resentment discussed by judges throughout this chapter apply equally well to all those who are not members of the state. That is, any noncitizen that would compound their status by committing crimes, and thus violate their countries hospitality, is deserving of increased punishment.
The discussion of the direct and exclusive links between citizenship and punishment raises another important point, one that helps explain the similar pattern of noncitizen disadvantage in both countries. Judges’ feelings of resentment and the various ways that they affected the sentencing process were entirely independent of the process through which state membership was granted. In other words, for these judges it did not appear to matter how membership to the national community was determined. Rather, the chief concern was simply that these boundaries of exclusion were normatively and symbolically meaningful. This helps explain why noncitizens pay a similar sentencing penalty in two countries with qualitatively different conceptions of citizenship and nationhood.

The scope of these interview findings merits discussion. Because this is the first study to explicate the mechanisms linking citizenship to punishment concerns, there was an intentionally narrow focus to capture in-depth the pathways that relate citizenship to sentencing considerations with a relatively small number of judges in both countries. However, indirect evidence suggests that the resentment theme discussed throughout this chapter may be applicable beyond the judges in this study. Take for example the justification for a sentence at the top of the guideline range for a noncitizen offender by a federal judge in the case United States v. Onwuemene (1991), “You are not a citizen of this country. This country was good enough to allow you to come in here to confer upon you . . . a number of the benefits of this society, form of government, and its opportunities and you repay that kindness by committing a crime like this. We have got enough criminals in the United States without importing any (as cited in Demleitner and Sands 2002, p. 249).” This sentiment echoes those discussed by judges throughout this chapter almost identically.
Other research suggests that resentment may play a role in the punishment of foreigners in other countries as well. In their research on the punishment of foreign workers in Israel, Ajzentradt and Shapira (2012) conducted narrative analysis on court records. Several of the themes they identify are highly consistent with those discussed by judges in the United States and Germany. Take the following two examples from Israeli judges (quoted from Ajzentradt and Shapira, 2012: 697):

Were it not for the plea bargain, the accused should have gotten a severe punishment, in order to deter potential delinquents who dare to abuse Israel’s hospitality, offending the state hosting them and allowing them to make their living there.

Often we come across sexual assaults in which foreign workers are involved…it is the court’s duty to send a message to the potential criminals not to dare to use Israel’s hospitality to commit such severe criminal offenses.

By drawing from sources outside the current study, the goal is to consider the potential pervasiveness of this mechanism to explain the relationship between state membership and punishment. Though hardly conclusive, these additional sources make it unlikely that the sentiments of resentment and the varied ways through which they affected punishment considerations are unique to only those judges interviewed, or to only these two countries. Recall that the U.S. and Germany are among many countries where noncitizens are over-represented in the prison populations, though the other themes that emerged from these interviews also likely play a role in explaining these citizenship disparities.

Social marginalization and lack of social bonds also emerged as a prominent theme. The pathways through which these considerations played out at sentencing varied. For some judges,
citizenship was a factor that weighed on the offenders likelihood to abscond. This was often framed as a combination of lacking ties to the host country – such as no permanent residence or long-term employment – combined with having social ties to their country of origin as well as the ability to flee (i.e. family members in Mexico or Turkey combined with documents showing they were citizens of that country). Taken together, many judges viewed noncitizens as particularly high flight risks, and thus unsuitable for a non-incarceration sentence. That is, judges saw little reason to think that a noncitizen offender would complete the terms of their probation or rehabilitation, and thus were more inclined to give a prison sentence. This explanation is highly consistent with the quantitative results from both countries, which showed that noncitizens were more likely to receive incarceration.

Interestingly, in the U.S. case, social bonds within the United States worked somewhat as a ‘double-edge’ sword. While those with weak ties had strong incentives to flee back to their country of origin, some judges thought those with strong social ties also had strong incentives to flee the terms of their sentence to avoid deportation. In these cases, judges feared noncitizens would not comply with the requirements of probation sentences because they wanted to avoid being deported away from their family to a country to which they have little or no attachments.

The link between citizenship and deportation clearly affects only non-state members, and the fact that judges anticipated that certain offenders would likely be deported also weighed on them beyond the offender’s likelihood to flee. In cases where deportation is the eventual outcome, for some judges this canceled out considering some mitigating circumstances such as keeping families intact. While this consideration may have been a factor for a citizen, regardless of whether the judge orders incarceration the family for a noncitizen offender is likely to be
separated by deportation. In these cases, mitigation worked differently based on the defendant’s citizenship in a way that disadvantaged non-state members.

For several judges, offender’s level of societal integration and social bonds also impacted their likelihood to recidivate. Many judges saw lacking citizenship status as a barrier to successfully reintegrate back into society, and thus viewed many noncitizens as unlikely to desist from crime. Some judges viewed this as a direct consequence of their status and noncitizens’ inability to gain long-term legal employment. For other judges, lacking long-term bonds affected their ability to make a positive assessment of foreign offenders. Without signs that the offender would be able to reintegrate, there is little to warrant a lenient sentence.

A major factor of societal integration is native language proficiency. Judges in both countries touched on this issue. In Germany this was a more prominent theme due to the high level of interaction between the judge and the defendant at trial, unlike in the United States. Several judges in Germany noted that without the ability to communicate to the court, defendants were unable to present themselves well and could not sincerely express remorse. As one judge stated simply, those that cannot speak German are not particularly ‘likeable.’ In the U.S., judges viewed English language proficiency as essential for navigating the criminal justice system and understanding the judicial process. For many noncitizen offenders, judges questioned their ability to understand the criminal proceedings. Clearly, this works against foreign offenders throughout their processing, and may culminate in increased punishment.

Combined, noncitizens lack of social bonds and the multiple ways through which these considerations impacted judges’ decision making, likely plays a role in explaining their disadvantage at sentencing. It deserves mention here, however, that social ties likely cannot explain the entire punishment gap observed between citizens and noncitizens. As I demonstrate
in Appendix A, even when I re-estimate the main effect models in U.S. courts for college educated fraud offenders – defendants who likely have considerable ties to the U.S. – the results hold. This suggests that while social bonds likely play a role in explaining how judges sentence noncitizens, other factors discussed in this chapter – especially those that are difficult to measure directly such as resentment and cultural dissimilarity – still likely play a role in explaining the observed statistical effects.

Perceived cultural differences between citizens and foreign groups were also discussed by judges. In both countries judges viewed certain cultural behaviors among noncitizens to be more conducive to crime. Several quotes above illustrate this, including the perception that Hispanic illegal immigrants were more likely to abuse women or that foreigners were more likely to use a weapon compared to Germans. The perception that these were cultural practices affected how judges viewed the appropriate response. In several cases judges spoke about the importance of sending a message to the community (presumably from which the cultural practices derive) that these crimes would not be tolerated. Perceived cultural dissimilarity also played a role in determining noncitizens ability to complete their rehabilitation. Particularly in Germany, judges viewed foreign offenders as poor candidates for rehabilitation, and thus were more likely to impose a sentence of incarceration.

Finally, judges offered a series of explanations for why citizenship may indirectly affect sentencing outcomes. These included 1) noncitizens being more likely to be involved in the importation of hard drugs, 2) considering unauthorized entry as a part of their criminal conduct even if it is not prosecuted, and 3) subconsciously through several other factors including criminal background and character of the defendant. The emphasis on foreigners and their links
to the drug trade may help explain why the citizenship penalty is particularly pronounced in drug cases.

Taken together, the interviews provide in-depth description of the intervening mechanisms responsible for the quantitative association between citizenship and punishment. The themes described in this chapter – resentment, social marginalization, cultural dissimilarity – illustrate multiple and complex ways citizenship can affect sentencing decisions. Often, these themes overlapped, demonstrating an intricate web of relationships among them. Such description would not have been possible with quantitative methods alone.

The value of this mixed-methodological approach is the description of concrete casual pathways between citizenship and punishment with the depth of observational detail. As noted in Chapter 4, there are multiple analytical strengths by combining court data with ethnographic methods. First, interview data place the statistical results in proper context by making the legal disparities between citizens and noncitizen observable in the justice system. Second, the ethnographic analysis bolsters confidence in the statistical effects through triangulation. That is, much of the discussion with judges paint a picture of noncitizen disadvantage throughout the sentencing process, consistent with the pattern demonstrated in Chapters 5 and 6. Third, the interview analysis provides the tools necessary to capture the unique and intricate ways through which citizenship impacts punishment across different legal and cultural contexts. While several of the mechanisms that link citizenship and sentencing overlapped considerably among judges in both the United States and Germany, citizenship did not play out in the courts of these countries identically. The interviews vividly showed how certain considerations were unique to each country – such as deportation in the U.S. – and also illustrated how certain considerations
received greater emphasis in one country over another (i.e. the ability to speak the German in order to express remorse). These distinctions would be missed without the ethnographic analysis.

While the combination of methods provides important analytical strengths, perhaps nowhere is the utility of this approach more evident than in its theoretical contributions.

**Similarities and Differences with Extant Theories**

In Chapter 3 I argued that citizenship status is a salient measure of social and cultural distance and that those who lack membership to the state are inherently on the periphery of society. Taking guidance from Black’s (1976) work on cultural distance and legal outcomes, I hypothesized this degree of cultural dissimilarity and social marginalization would result in increased punishment for non-state members. The discussions of distinct cultural practices among foreign groups and noncitizens’ lack of societal integration (both structurally and normatively) among the judges in this study are highly consistent with these ideas. In this regard, theoretical mechanisms of marginalization and cultural distance were confirmed by the ethnographic analysis.

These results are in line with other extant theories as well. For example, previous applications of the focal concerns perspective stress the role of cultural dissimilarity (see Steffensmeier and Demuth 2000), and various aspects of this perceptive as well as casual attribution theory highlight the role of social marginalization and its links to criminal stereotypes. Similarly, there were some aspects of community protection discussed by judges, which is consistent with the focal concerns framework. However, it is important to note a significant qualification – the ‘community’ to which the judges referred was often confined to citizens. Take for instance the U.S. federal judge who argued that citizenship may be a legitimate consideration
for enhanced punishment because noncitizens “commit crimes, and some of these crimes are absolutely devastating to American citizens.” Also consistent with the focal concerns perspective were judges’ concerns for the practical implications of their decisions. This is perhaps most evident in the discussions of deportation among U.S. judges. According to some, that convicted non-U.S. citizens likely face deportation regardless of their sentence makes judges more inclined to ‘warehouse’ defendants. German judges touched a similar theme when discussing their reticence to suspend sentences for foreigners for fear they will likely flee. Thus, the findings here suggest that the broad application of the focal concerns and ‘stereotype’ perspectives to the sentencing of noncitizens is appropriate in some respects.

However, an in-depth look into mechanisms such as ‘criminal threat’ reveals important differences between those highlighted here and those discussed in previous research. For example, to say that judges interpret behavior consistent with criminal stereotypes raises a series of questions about which types of behaviors and for which groups? Perhaps most importantly, are these factors the same for all groups? The interview data suggest that several of the stereotypes discussed were unique to noncitizens. Take for example the quote regarding Hispanic illegal aliens’ proclivity for abusing women. While consistent with the broad notion of ‘criminal stereotype,’ the specific application of these stereotypes varies depending on the group. In other words, the process may be similar to those discussed in extant theoretical treatments, but the mechanisms are distinct, a difference entirely glossed over when references to stereotype, threat or prejudice are broadly used.

A more important and substantive break from extant theoretical accounts is the role of resentment in the interview analysis. Rather than stressing the culpability or dangerousness of noncitizen defendants, judges spoke a great deal about how they resented that non-state members
would break their country’s laws. As noted, this is a critical distinction because resentment makes the links between citizenship and punishment direct and exclusive. That is, the resentment discussed by judges has no parallel to other offender statuses, such as race and ethnicity. An illustration may help clarify this point.

In one of the few empirical analyses of the effect of citizenship at sentencing, Wolfe et al. (2011) argue that the observed citizenship penalty can be explained by the focal concerns perspective. To support their argument, they too draw from the United States v. Onwuemene case where the judge stated “we have got enough criminals in the United States without importing any.” While one can make the argument, as the authors do, that this represents an example of blameworthiness, I argue that this may be painting with too wide a theoretical brush. What this designation misses is the fact that this specific instantiation of ‘blameworthiness’ is entirely dependent on the fact that the offender lacks membership to the national community. For this reason, the mechanisms driving the citizenship effects are somewhat distinct than those identified in extant theoretical accounts. At the very least, the interviews reveal qualitative distinctions between the elements that comprise ‘blameworthiness’ identified here and those discussed in previous research.

Summary

The goal of this chapter was to give a “thick” description of the various ways through which national membership affects punishment. In this way, this chapter took an altogether different approach than most studies on differential punishment. Going beyond the ‘variable approach’ I used ethnographic materials to try and articulate concretely some of the ways that state membership translates into legal advantages and thus may be implicated in the reproduction
of the quantitative association between citizenship and punishment demonstrated in Chapters 5 and 6. This chapter also sought to go beyond extant treatments of “threat” or “blameworthiness” to give detailed accounts of how the criminality of foreigners was viewed from the standpoint of judges. Hopefully this chapter has demonstrated the analytical and theoretical import of this approach. Not only do the results from the interviews show that citizenship matters in a variety of ways, but that many of these pathways are unique to the division between citizens and noncitizens. In this regard, the results are highly consistent with the theoretical arguments laid out in Chapter 3, and also help elucidate the mechanisms driving the legal disparities observed in Chapters 5 and 6.
<table>
<thead>
<tr>
<th>Themes</th>
<th>United States Federal Judges</th>
<th>Germany Landgerichte Judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Resentment</td>
<td>Resented that noncitizens (especially those who entered illegally) would compound their status by committing crimes. Citizenship often expressed as a legitimate sentencing consideration. Can eliminate otherwise mitigating circumstances.</td>
<td>Resented that noncitizens would compound their status by committing crimes. Felt noncitizens violated their countries' hospitality. Citizenship often expressed as a legitimate sentencing consideration.</td>
</tr>
<tr>
<td>2) Social Marginalization</td>
<td>Fear of absconding; often linked to deportation considerations. Without citizenship, offenders were unlikely to reintegrate and more likely to recidivate. Lack of English language proficiency makes it difficult to navigate criminal justice system.</td>
<td>Fear of absconding (may have multiple passports). Without citizenship, offenders were unlikely to reintegrate and more likely to recidivate. Lack of German language proficiency makes it difficult to express remorse; unlikely to be viewed in positive light.</td>
</tr>
<tr>
<td>3) Cultural Dissimilarity</td>
<td>Some immigrant groups engage in distinctive crimes rooted in cultural practices. Symbolic message to immigrant group needs to be sent.</td>
<td>Immigrants more prone to use weapons. Foreigners cultural practices make them poor candidates for rehabilitation.</td>
</tr>
<tr>
<td>4) Other Explanations</td>
<td>Illegal immigration is another criminal offense to consider, even if not prosecuted. Citizenship may affect judges subconsciously.</td>
<td>Only foreigners have the ability to import drugs, and immigrant groups are responsible for 'hard drugs.' Foreigners are leaders in organized crime. Citizenship may affect judges subconsciously.</td>
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Chapter 8: Conclusion – Citizenship, State Social Control, and the Punishment of ‘Others’

We must move our thinking beyond crime and its control within territorial borders, not only in order to take account of the multiple effects of migration control, but also to grasp its crucial constitutive role in defining and underpinning modern citizenship and belonging itself.

-Mary Bosworth and Mhairi Guild (2008: 715)

Despite considerable controversy on whether citizenship remains legally relevant in a world increasingly characterized by international migration, recognized human rights, and domestic legal protections for aliens, our knowledge of the salience of citizenship under the law is limited, especially from an international comparative perspective. With over 210 million international migrants globally and rapidly increasing numbers of foreign prisoners, understanding the legal significance of state membership in criminal courts is paramount.

Bridging two scholarly fields that have heretofore remained largely distinct – citizenship studies and the sociology of punishment – the main aim of this dissertation has been to take a step towards filling this gap by examining the punishment consequences of lacking national membership in U.S. and German courts. The results presented in chapters 5 and 6 suggest citizenship is a powerful predictor of punishment in both countries, resulting in noncitizens paying a substantial sentencing ‘penalty’ upon conviction. The association between citizenship and punishment in both countries was clear in fairly simple analytical procedures; more rigorous multivariate tests that account for multiple legal and extra-legal factors; and across a variety of supplemental models and sensitivity analyses.

By examining the punishment costs associated with citizenship status this dissertation not only informs on-going citizenship debates but also speaks to a number of significant themes germane to several fields within sociology, including stratification, sociolegal inequality, and state social control. In this concluding chapter I first revisit the citizenship debates motivating this research, placing the results from this analysis in broader context. The following section then
discusses these findings within the body of research documenting increases in coercive state controls against international migrants, and what this means for debates on the role of citizenship and legal status as an emerging mechanism of larger stratification processes. The next section considers the importance of citizenship for punishment research, paying particular attention to the theoretical import of citizenship to the study of legal inequality. The final section discusses this dissertation’s contributions to a broader sociological study of citizenship.

Revisiting the Citizenship Debates

The national idea has become the central principle according to which modern society structures inclusion and exclusion, not only in the sphere of culture and identity, but also in the legal, political, military and social domains.

- Wimmer (2002: 57)

Rights increasingly assume universality, legal uniformity, and abstractness, and are defined at the global level. As an identity, national citizenship…still prevails. But in terms of its translation into rights and privileges, it is no longer a significant construction.


A substantial body of research has been produced in recent decades on the present and future of citizenship and the nation-state (see Bloemraad et al. 2008). In light of this considerable scholarly attention, how is that in 2008 one author can claim that the decline of citizenship is “irreversible” (Spiro 2008) while in 2009 another claims citizenship is “back with a vengeance” (Shachar 2009: 2)? Joppke (2010) suggests that the answer to this question is a matter of perspective, one dependent on which immigration policies scholars focus on and how they view them. Throughout this dissertation I have argued for a different perspective to inform these
citizenship debates, one that looks beyond state *policies* altogether. By focusing almost exclusively on the policy realm, the citizenship literature has produced a sizeable gap between philosophy and practice (Bloemraad et al. 2008), especially in regards to the handling of immigrants in the legal system. This is perhaps understandable given that rights to due process under the law have been well established for aliens for several centuries in the United States and Western Europe (Joppke 1999). Indeed, even scholars who suggest that the ‘decline of citizenship’ talk is “alarmist” and “fashion-pandering” concede that basic legal rights are not dependent on citizenship status (Joppke 2010). Because little has changed in regards to these basic rights in recent decades, the extant citizenship literature has paid limited attention to the actual processing of noncitizens throughout the criminal justice system.

Looking beyond the policy making realm, this dissertation asked whether noncitizens receive equal *treatment* in U.S. and German criminal courts despite having recognized equal legal *rights*. The series of empirical tests – and additional robustness checks – presented in this dissertation suggest lacking citizenship status is a strong determinant of punishment outcomes. Beginning with the U.S. analysis, the findings presented in chapter 5 paint a remarkably consistent picture of the relationship between citizenship status and sentencing outcomes in federal courts – net of legally relevant controls, non-U.S. citizens are significantly more likely to be incarcerated and also receive longer prison terms than similarly situated U.S. citizens. Subsequent analyses further illustrate the salience of the division between state and non-state members in two important ways. First, separating non-U.S. citizens into legal and illegal residents revealed substantial legal disadvantages for both groups, with undocumented immigrants receiving particularly harsh punishment. Second, categorizing noncitizens into six different groups based on country or region showed that the punishment costs of lacking
citizenship were observed for all groups. In short, the key division was between those who were members of the national community and those who were not. While there was some variation among noncitizen groups, these differences were slight in comparison to the gap between citizens and noncitizens generally. Moreover, the punishment gap between citizens and noncitizens is pronounced for the entire study period (1998-2010), and the trend analysis revealed clear patterns in the citizenship effect during this time. At the incarceration stage, the trend is unambiguous – the punishment consequences of lacking U.S. citizenship have increased since 1998. For the length of imprisonment, findings suggest citizenship disparity has remained stable, neither increasing nor decreasing appreciably.

The pattern of results regarding the punishment of noncitizens in Germany is strikingly similar. Accounting for numerous legal and case characteristics, foreigners convicted in German criminal courts are more likely to be imprisoned and receive longer incarceration terms. These effects are particularly pronounced in drug cases. Like in the U.S., the most important division appeared to be that between German and non-German citizens, as opposed to different noncitizen groups. This is evidenced by the fact that with the exception of Turkish citizens, all non-German groups were at greater risk of severe sanctioning, including citizens from other EU countries. In cases involving drugs, the pattern was even more obvious – all noncitizen groups (including Turks and other EU citizens) received harsher punishments. The only major difference between the U.S. and Germany was observed in the time trend analyses. In German courts, while citizenship has pronounced effects on punishment outcomes, the sentencing gap between citizens and noncitizens has decreased over the past decade.

What are the implications of the findings from U.S. and German courts for contemporary citizenship debates? At the most basic level, the results from this dissertation suggest citizenship
remains significant under the law, and leave little doubt that citizenship is a salient mechanism of legal stratification. In this regard, the findings offer little support to the postnational argument that citizenship is legally ‘irrelevant.’ The findings regarding the legal treatment of EU citizens in German courts are particularly important for informing the citizenship debates. Though both countries have well-established domestic legal protections for aliens, Germany is one of the original members of the European Union, the supra-national organization often heralded as the future and best example of postnational citizenship (Soysal 1998; Joppke 2010). If EU citizenship has now become the fundamental status of European membership, trumping traditional nation-centered conceptions of citizenship, it should be observed in comparisons between citizens of other EU countries. On this front, once again the postnational argument receives little support. Noncitizens from EU countries are just as disadvantaged in German courts as other non-German citizens – nearly all noncitizen groups are punished more harshly than comparable German citizens. The only place where postnational predictions received support was in the trend analysis from German courts. Between 1998 and 2010, the punishment gap between citizens and noncitizens in Germany appears to have waned.

Still, this finding needs to be balanced against the fact that despite lessening effects over time, noncitizens still pay a considerable sentencing penalty in German courts. In drug cases, for example, foreigners were still twice as likely to be incarcerated in 2010, net of legally relevant controls. Another important qualification is the results from the U.S. analysis. Though not a member of the European Union, the United States has played a major role in citizenship research (Joppke 1999; Rubio-Marín 2000) and several scholars have included the U.S. has one of the countries where citizenship no longer matters (Jacobson 1996; Spiro 2008). In terms of legal rights, this claim is debatable. It terms of legal treatment, this claim is false. Non-U.S. citizens
pay a substantial sentencing penalty in U.S. federal courts, resulting in higher odds of incarceration and longer terms of imprisonment. Moreover, at the incarceration stage, the punishment gap between citizens and noncitizens has widened over the past decade, making it unlikely that the legal differences between citizens and aliens will erode any time soon.

The findings from the judge interviews also speak to the salience of citizenship. In positing the “end of citizenship” (Spiro 2008), postnational scholars suggest that while citizenship as an identity may still remain relevant in contemporary societies, it is still rendered “inventively irrelevant” (Soysal 1998: 211) because the rights, privileges, and benefits traditionally associated with national membership are now based on residency. I argue that this view places too little emphasis on the role of identity, neglecting how it shapes the ways we understand, frame, and react to those we view as ‘other,’ which in turn can affect the implementation civil and social rights. In terms of criminal transgressions, the interview findings suggest that citizenship as an identity affected how judges thought foreigners should behave and what the appropriate punishment response was for those who committed criminal acts. Take for example the U.S. judge who stated she could understand the view that crimes committed by foreigners could reasonably be viewed as worse than those committed by U.S. citizens because “there is something to be said for that; you come to my country, my birthplace, the land that I love and I've sworn to uphold and protect, and what do you do here? You commit crimes, and some of these crimes are absolutely devastating to American citizens.” In this case, the judge’s identity as an American citizen, juxtaposed against a criminal who is not a U.S. citizen, is clearly at the fore of the judge’s assessment of the appropriate punishment response. Or consider the German judge who similarly stated “When I give reasons for the judgment I would certainly say that in some way it is objectionable to abuse the right of hospitality in order to take advantage of
the benefits and then to commit crimes in addition… if it was the case I would punish it more severely.” The concept of ‘hospitality’ only applies after individuals are separated and categorized into ‘insiders’ and ‘outsiders,’ a process which inherently involves group identification. While not all of the judges held these views, what is clear from the interviews is that for many judges in both the countries, citizenship retains important normative, symbolic, and cultural significance in ways that, through a variety of mechanisms that were laid out in chapter 7, affect how they approach the punishment of non-state members. These results suggest that postnational scholars may be too hasty in dismissing the importance of citizenship as an identity and how it can continue to make citizenship salient in other areas of social life. As the interview findings reveal, such identity considerations can have important implications for the treatment of noncitizens in criminal courts resulting in harsher punishment, findings confirmed by the statistical analyses.

Another important implication of this analysis for the citizenship literature is the consistency of the results across countries with fundamentally different views on national membership. As I detailed in chapter 1, though the United States and Germany are two of the world’s largest immigrant destinations, they have markedly different conceptions of citizenship and nationhood – the U.S. representing the ideal typical case of a *jus soli* citizenship regime while Germany places substantially more emphasis on ethno-cultural boundaries for determining state membership (*jus sanguinis*). Yet, despite these fundamentally different approaches, those who fall outside the boundaries of national membership are subject to harsher punishment in both countries. In short, irrespective of the process through which states define ‘insiders’ from ‘outsiders,’ there are punitive consequences for those who lack membership. These results provide a partial answer as to why, despite substantial variation in immigration histories and

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conceptions of national membership, foreigners are over-represented in the prison systems of the U.S. and most European countries – lacking national membership confers a variety of legal disadvantages for those brought before criminal courts regardless of how citizenship is defined. It is difficult to reconcile this finding with postnational claims.

Taken together, the findings from this dissertation align more with the nation-centered view of citizenship which holds that national models of citizenship have important consequences for identities, forms of organization, and immigrant incorporation and that the state continues to hold great power through its laws by delimiting and constraining privileges, duties, and responsibilities (Koopmans and Statham 1999; Menjivar 2006). Far from being a symbolic relic from a period when nation-states and national sovereignty mattered, citizenship continues to organize political participation, national loyalty, culture and identity, and thus remains one of the fundamental features of contemporary societies (Calhoun 2007: 48). As Calhoun (2006: 27) describes, nationalism and citizenship are discursive formations that give shape to the modern world as ways of talking, writing, and thinking about the basic units of culture, politics, and belonging that help to constitute nations as powerful dimensions of social life. Despite the challenges of globalization to traditional notions of states and state sovereignty, citizenship and nationalism remain pervasive in the modern world because they are widely used to give shape to the social world, not merely found within it. This dissertation investigated whether and to what extent citizenship was used by judges in U.S. and German courts. The interview findings revealed multiple and complex ways citizenship shaped judicial attitudes towards the criminality of foreigners and the appropriate punishment response to their transgressions. In this regard, the discourse surrounding national membership displayed in chapter 7 clearly demonstrates that citizenship is still used to think, talk about, and act in the social world.
The site of this research is in many ways suitable for investigating citizenship because the courts are an institution which signifies enormous actual and symbolic power (Loveman 2005) about the nation-state and one of the primary institutions research has suggested is responsible for ushering in the new order of postnational citizenship (Jacobson 1996). The key findings from this dissertation suggest that scholars on all sides of the citizenship debates need to rethink the role of the judiciary as one of the key liberalizing forces of citizenship. The results presented here show that while higher level courts may be champions of legal rights in domestic and international circles, non-state member are disadvantaged in lower criminal courts where these legal rights play out in practice. I do not question the larger notion that legal recognition of international laws and treaties rooted in universal human rights are important and potentially transformative in some respects, yet the results suggest that unequal treatment under the law for noncitizens remains prevalent in U.S and German courts. These results suggest that citizenship scholars need to look beyond the grand pronouncements from appellate, supreme, and supranational courts (e.g. the European Court of Justice) to the daily experiences of noncitizens in criminal courts where these legal principles are implemented.

That citizenship studies have not considered punishment is somewhat surprising given the relationship between punishment and the fundamental structures of citizenship – state sovereignty, cultural boundaries, and group membership. Drawing from theoretical work in the sociology of punishment, in chapter 2 I detailed the theoretical linkages between punishment and each of these different features of the citizenship debates. In that chapter I argued that punishment is a useful lens through which to understand citizenship and its correlate foundations because 1) sovereignty is necessarily implicated in the state’s monopolization of force and violence, 2) punishment reflects and reinforces broader cultural patterns and sensibilities, and 3)
punitive interactions between authorities and deviants is important for understanding group solidarity and community boundaries. Implicit in this argument is that punishment should properly be viewed as a ‘social institution,’ one that on the face of things “is an apparatus for dealing with criminals – a circumscribed, discreet, legal – administrative entity. But it is also…an expression of state power, a statement of collective morality, a vehicle for emotional expression, an economically conditioned social policy, an embodiment of current sensibilities, and a set of symbols which display a cultural ethos and help create a social identity” (Garland 1990: 287). Linking this view with the citizenship literature, I argued punishment helps define our cultural and political identity, and that the punishment of foreigners plays a constitutive role in establishing both the physical borders of the state and the normative and symbolic boundaries of the national community (Bosworth and Guild 2008: 713).

_Punishment and a Global Culture of Control_

The globalizing forces of capital, technology, and migration have unquestionably challenged the nation state and traditional modes of citizenship. But Aron suggests that ‘a great illusion of our times’ is to believe that rapidly increasing economic interdependence fosters a submerging of sovereignty (quoted in Giddens 1987: 284; see also Hansen 2009) and postnational scholars did not predict the response, if not revenge, of the state to these challenges (Joppke 2010). Globalization has indeed created greater opportunities for international migration and cross-national economic, communication, and technological ties, creating a perception that states have lost control of their sovereign borders, both physically and symbolically. However, these same processes have at the same time provided new sites of social control, and ultimately an opportunity for the expansion of state power through coercive state actions aimed at
controlling unwanted migration through detention and exclusion. As Peter Andreas (2000) reminds us, loss-of-control arguments serve as powerful narratives that generate calls for and justify increased state authority. These calls have become louder and more punitive in the decade after the 9/11 terrorist attacks.

Anti-immigration discourse has shifted over the past 15 years or so, where traditional questions of economic strain and cultural integrity are now adjoined by concerns over security, crime, and terrorism. As a result, the state social control responses have shifted as well. Many western nations have witnessed a convergence between their immigration and criminal justice systems, resulting in dramatic increases in border apprehensions, immigration detention, incarceration, and deportations of noncitizens. As nation-states increasingly govern migration through crime (Simon 2001; Bosworth and Guild 2008), more and more noncitizens are brought before criminal justice authorities and adjudicated in criminal courts, where the results from this dissertation suggest they are vulnerable to harsh punishments.

These trends have important implications for future of citizenship, the nation-state, and migration control. By conflating immigration control with crime control, nation-states are contributing to a criminological paradigm which increasingly views lawbreakers as menacing strangers who threaten public safety and social order generally (Garland 2001). Garland (2001: 135) refers to this mode of thought as the *criminology of the other* which “trades in images, archetypes, and anxieties”…and “relies upon an archaic criminology of the criminal type, the alien other.” Consistent with Cohen’s (2002) description of moral panic, the *criminology of the other* sensationalizes criminal threat, withdraws into authoritarianism, and reinforces an ‘us versus them’ worldview (Welch and Schuster 2005; Young 1999). The criminalization of migration and punishment of foreigners within this criminological view thus draws stark
boundaries between those who need be controlled (e.g. aliens) from those who need state protection (e.g. citizens). As Bosworth and Guild (2008: 714) remind us, the increased use of coercive state controls against migrants has significant ramifications for questions regarding the future of the nation-state because “they work to re-inscribe the state at the precise moment that national borders appear less and less relevant.” Using the ‘others’ to help define the nation-state (Weber 1995) at the moment its influence is in question, the current crimmigration approach and punishment practices against migrants “works to discipline the identities of citizens as well as those of foreigners” (Bosworth and Guild 2008: 715), thus reinforcing the division between ‘us’ and ‘them,’ between members and nonmembers, between the citizen and the ‘other.’

The culture of control towards foreigners which above all else stresses ‘otherness’ and punitive sanctions, combined with the results from this dissertation showing differential legal treatment for non-state members, is likely to have profound implications for broader stratification processes as international migration increases.

Citizenship and Stratification

The results from this study align with scholars who argue nation-states and the boundaries of national membership matter, perhaps even more today than in the past in certain institutions. This nation-centered approach intimates that citizenship delimits rights, state responsibilities, and ultimately distributes life opportunities (Shachar 2009). Consistent with this view, Massey (2007) and Albrecht (2002) argue that lack of legal status is now a central axis of stratification in American and European societies. This analysis supports this proposition by demonstrating that citizenship status is an important factor in determining punishment outcomes.
and, indeed, suggests citizenship may, in part, contribute to the making of a new “underclass” in Western societies (Massey 2007).

With the rise of the U.S. “carceral state” (Gottschalk 2008) scholars have increasingly investigated the link between incarceration and stratification and have shown that a record of imprisonment reduces job prospects (Pager 2003), depresses earnings over the life course (Western 2002), diminishes prospects for stable marriage (Sampson and Laub 1993), destabilizes families (Wakefield and Uggen 2010), and causes multiple long-term health problems (Massoglia 2008; Schinttker and John 2007). With this in mind, I raise a question for future research to consider: If, in fact, citizenship and legal status represent statuses central to stratification, how do the disadvantages of incarceration interact with the structural and symbolic barriers that noncitizens already encounter? The problems faced by inmates upon release from prison are well document, yet almost nothing is known about the unique challenges of noncitizens upon release from prison, in either the U.S. or in Europe. Examining these questions adjoins larger stratification concerns as the criminalization of immigrants will likely push migrants, especially those who are undocumented, further towards the margins of society and produce the very criminogenic effects these actions are designed to combat (Wacquant 1999; Merton 1968).

An important starting point for considering citizenship within the gamut of existing inequality research is to examine the key differences between national membership and traditional markers of stratification. Because debates surrounding immigration are often framed in terms of race or ethnicity (Hagan et al. 2008), I will focus on citizenship in reference to these markers. Unlike race or ethnicity, citizenship is a recognized legal category designed with the expressed purpose of defining the boundaries of inclusion and exclusion to a host of legal,
political, and economic privileges. In other words, while racial and ethnic classifications can be discriminatory, citizenship is inherently discriminatory – its entire foundation being built on exclusion and social closure. This view is consistent with Sayad’s (2004) sociological research which suggests that the symbolic crusades against immigrants cannot be reduced merely to ‘racism.’ Rather, categories such as ‘citizen’ and ‘immigrant’ reflect how the state discriminates along markers of national membership, creating a stratified system of rights and belonging (Portes and Zhou 1993). While racial/ethnic distinctions can no doubt affect visions of nationhood and national membership (as evidenced in Germany), citizenship is not reducible to these distinctions. Citizenship involves larger normative, symbolic, and political distinctions that divide along the lines of national membership, regardless of racial/ethnic differences.

The results from this dissertation align with this view in several ways. First, in the United States citizenship is a powerful predictor of punishment outcomes even after accounting for the race and ethnicity of the defendant. Additionally, in both the United States and Germany, nearly all noncitizen groups were subject to harsher punishment compared to their citizen counterparts. These groups almost certainly covered a tremendous amount of racial and ethnic diversity – spanning groups from European Union countries, South America, the Middle East, and Africa (among others). Yet, despite considerable racial/ethnic heterogeneity among noncitizens, the division between national members and ‘others’ remains salient in criminal courts. In terms of legal treatment at least, it is clear that citizenship is not reducible to race or ethnicity, and the weight of the evidence suggests that legal status trumps race and ethnicity when determining appropriate punishments for those who violate U.S. and German law.

This is not to suggest that race and ethnicity are inconsequential to legal research or stratification studies generally. Rather, the goal of this discussion is to consider the uniqueness of
citizenship as a measure of stratification. An important avenue for future research is to consider the joint and multiplicative effects of national membership and race/ethnicity for broader patterns of inequality. In pursuing this research however, the findings from this dissertation caution researchers against treating these constructs as one and the same. As prison populations balloon and states increasingly turn to the prison to provide social control and to police the physical and symbolic boundaries of the nation-state, is it clear that the criminal justice system, and the decisions made within it, will continue to play important roles in both migration control and broader stratification processes. For this reason, citizenship needs to become a serious research focus within sociolegal scholarship.

**Citizenship and the Sociology of Punishment**

Throughout this dissertation I have argued that citizenship has been underappreciated and undertheorized in previous punishment research. Racial and ethnic inequality under the law has been a central focus among legal scholars for nearly a century, and more recent research from the U.S. suggests Hispanics may have replaced African Americans as the most disadvantaged group at criminal sentencing. The findings from this study suggest this is partially correct: the axes of legal inequality have indeed shifted in recently, but the emphasis on Hispanic ethnicity may be misplaced. Rather, my inquiry into the punishment trends for noncitizen and minority offenders suggests that non-U.S. citizens may be the new face of legal inequality in the United States.

Not only are noncitizens treated more harshly at sentencing, but the relative gap between citizens and noncitizens at punishment is substantially greater than the gap between white and minority offenders. In addition, the results suggest the punishment gap between citizens and noncitizens has widened considerably at the incarceration stage in over the past decade. Taking
these trends into account significantly alters the Hispanic effect over this period – reducing it by more than half. In short, what appears to be increasing Hispanic disparity has been driven primarily by increased punitiveness against non-U.S. citizens.

Given the traditional focus on race in stratification research generally and legal studies specifically, it is perhaps not surprising that contemporary research on legal inequality has stayed largely within the confines of racial/ethnic relations. However, as international migration continues and noncitizens become an increasingly prominent group in society, perhaps the time has come to look beyond these traditional markers of stratification. Estimated at over 22 million, the population of noncitizens in the U.S. today constitutes over 7 percent of the total population and is larger than the total foreign born population during the first wave of mass migration at the turn of the 20th century.\(^{54}\) In Germany, there are currently over 7 million noncitizens, representing roughly 9 percent of the population. These numbers are comparable to other western nations. For example, in 2010 6.5 percent of the EU population lacked citizenship in their country of residence (Vasileva 2011). As international migration increases and the criminal justice plays an ever increasing role in migration control, the results from this dissertation suggest citizenship should be a central focus of punishment research.

By clarifying the theoretical linkages between citizenship as a mechanism of stratification and an outcome of cultural compromise with sociolegal work on inequality and cultural distance in legal institutions, one of the goals of this study has been to widen the theoretical and empirical scope of legal inequality research. Just as one’s location in the social structure has implications for the treatment of citizens in legal institutions, noncitizens occupy a disadvantaged and unique niche in U.S. and European societies, as their formal exclusion exacerbates other social

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\(^{54}\) At its peak, the foreign born population reached just over 14 million in 1930 during the first mass migration (Gibson and Lennon 1999).
inequalities. The theoretical discussion and findings from the current study place citizenship firmly within the scholarship on punishment and inequality, thus expanding the discourse on contemporary legal stratification and placing citizenship alongside other markers of inequality.

My findings are in line with Black’s suggestion that cultural dissimilarity between legal authorities and defendants leads to enhanced punishment. As literal ‘outsiders’ of the state, I find that noncitizens pay a significant ‘penalty’ at sentencing. The findings are also consistent with recent research on the convergence between criminal and immigration law. A centerpiece of this nexus is the increasing reliance on incarceration for migration control. During the same period that the state sought to dramatically increase the social control of immigrants, the findings presented here suggest that the likelihood of receiving incarceration for non-U.S. citizens increased substantially. It is important to note that this relationship is observed among non-immigration offenders. Thus, while this dissertation adds to an emerging literature that finds noncitizens increasingly entangled in coercive state controls, it also suggests that the punitive turn in migration control stretches well beyond the border.

This study also contributes to the small yet increasingly important field of international criminological research. Despite near unanimity among criminologists that cross-national research is a major gap in the field (LaFree 2007), the comparative study of punishment is still in its relative infancy. Much of the empirical study on punishment has focused on a single country (Johnson et al. 2010) or has been concentrated in edited volumes (see Tonry 1997; Tonry and Frase 2001). While the case study approach is certainly valuable and provides a better understanding of the punishment policies and practices in specific countries, it precludes systematically examining variation across diverse national contexts. Similarly, although edited volumes collectively cover many countries and often include strong individual chapters, they
lack comparative work on sentencing and punishment. As Johnson et al. (2010: 1010) reminds us, “this lack of research is unfortunate because investigating punishment outcomes in an international context can substantially advance contemporary research and theorizing” about judicial processing and sociolegal inequality.

This dissertation moves in this direction by investigating the punishment consequences of lacking state membership in the United States and Germany. The strength of this comparative approach is to test whether the relationship between citizenship and punishment holds across diverse international contexts. The results leave little doubt that citizenship affects punishment outcomes in both countries, thus bolstering confidence that the findings are substantively meaningful and not idiosyncratic to one particular nation. Because many countries have witnessed increases in both international migrants and foreign prisoners in recent decades, there is no reason why similar analyses could not be conducted with other countries or in other regions of the world. The findings presented here give prima facie reason to think that citizenship will play at least some role in punishment decisions across different national contexts.

Going beyond recent international criminological research that has sought to understand how the incarceration of foreigners informs theoretical linkages between state social control, the nation-state, and citizenship (Bosworth et al. 2008), this study asked how the relationship between state sovereignty, national membership and migration control affect the process through which noncitizens are incarcerated, and what this means for on-going citizenship debates. On this point, a particularly important aspect of this dissertation is the mixed methodological approach. By combining judge interviews with the statistical analysis of case outcomes, this study offers the first cross-national comparative analysis capable of explicating the mechanisms

55 Though it should be noted that several studies have examined cross-national variations in incarceration rates (see Ruddell 2005; Sutton 2004).
driving the statistical effects observed in chapters 5 and 6 and in previous work on citizenship and punishment. This portion of the analysis revealed important similarities, but also key differences with extant theoretical accounts of judicial decision-making.

Though the broad application of the focal concerns perspective – which holds that judges consider defendants’ blameworthiness (or culpability), dangerousness, and the practical constraints of sentencing when making punishment decisions – is relevant to the sentencing of noncitizens, the interview findings suggest that the punishment of non-state members is qualitatively different than for other groups (e.g. racial/ethnic minorities) in ways that have not been discussed in prior literature. In this regard, this analysis provides a more refined understanding of the ‘focal concerns’ in that it highlighted a mechanism, resentment, which directly linked citizenship status to punishment considerations in a way that has no parallel to other offense attributes – judges in both countries resented that foreigners would compound their status by committing crimes. Just as recent social-psychological research suggests general concepts of ‘threat’ or ‘prejudice’ may mask the qualitatively different reactions evoked by different groups, the results from this dissertation suggest the ‘focal concerns’ do not capture all of the mechanisms linking citizenship to sentencing concerns. Specifically, resentment appears qualitatively different from culpability in theoretically important ways, suggesting that factors such as ‘blameworthiness’ may be too broad to provide nuanced understanding of the multiple and complex ways various offender statuses affect punishment considerations.

While the findings from this research are important and the current study provides an important foundation for future research to expand the scope of legal inequality scholarship, several aspects of this research merit discussion. First, one must always be cautious to draw conclusions that disparity implies discrimination. It is possible that additional information about
case characteristics or processing could reduce the effects shown. Having said that, the U.S. and German data are remarkably inclusive with regard to controls, and the results presented are in line with theoretical predictions, thus diminishing the likelihood that the results are solely due to unobserved heterogeneity. Moreover, the results are robust across a multitude of alternative analyses and robustness checks, and the interview findings clearly suggest that at least part of the punishment gap is directly linked to national membership and not unobserved factors. Second, this analysis could not fully account for decisions made prior to sentencing in the criminal justice process, including arrest and prosecutorial charging practices. While some studies have investigated disparities at these earlier stages (Demuth 2003; Bushway and Piehl 2007), like the extant punishment literature, this research largely focuses on racial/ethnic minorities (but see Shermer and Johnson 2010 for an exception). As a result, citizenship remains understudied at these stages as well. Future research should not only investigate noncitizens in these earlier phases, but should also identify the cumulative influence of citizenship status through criminal case processing. That said, it is important to stress that if noncitizens are disadvantaged at these earlier stages as well, the results from this analysis are likely conservative.  

Another area for future consideration is the effect of citizenship in U.S. state courts. Though the extant research largely points to the punitive turn in migration control at the federal level, state and local authorities are playing a growing role in border security today as Congress has gradually broadened the authority for state and local law enforcement officials to enforce immigration law (Seghetti et al. 2009). In addition, some of the nation’s most contentious immigration battles have occurred at the state level – California’s Proposition 187 and Arizona’s SB 1070 being two of the most prominent examples in recent decades. Noncitizens also

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56 The only way these earlier stages would yield inflated estimates would be if citizens were disadvantaged in ways that my model did not measure. However, it strains credulity to think noncitizens are advantaged at these earlier stages.
represent sizeable populations in several state prison systems, including over 18,000 in California, nearly 10,000 in Texas, and roughly 6,000 in New York and Florida (Guerino et al. 2011). Research on state court outcomes would further refine the understanding between citizenship and punishment. Future work in this area would benefit from new data collection, as citizenship is rarely collected in state court sentencing statistics.

Beyond these issues, there are a number of areas remaining for additional inquiry. Given the relative scarcity of empirical analyses in this area, the overall intent of this analysis was to answer two relatively simple questions: 1) Are noncitizens punished more harshly than citizens, and 2) what are the mechanisms driving this relationship. In answering these questions, this dissertation lays the groundwork for a burgeoning research agenda. In some respects, the focus on these two questions, in only two countries, comes at the expense of more focused analyses on race and ethnicity interaction effects, as well as regional variation in the punishment of noncitizens.

Beginning with race, this analysis is relatively silent as to whether the punishment consequences of lacking state membership vary by race or ethnicity. Moreover, the inclusion of race was limited to the U.S. analysis. While race, ethnicity, and citizenship were all included in the U.S. analysis, further developments of the multiplicative effects of both noncitizen and minority status are warranted. Specifically, whether minority noncitizens are punished more harshly than white noncitizens appears fertile for investigation. Though the argument developed here suggests all noncitizen groups are at risk of more severe sanctions, including whites, it is plausible that the additive status of racial/ethnic minority and being a noncitizen is likely to further marginalize a criminal defendant and increase the cultural distance between the defendant and legal officials.
Additionally, there are strong theoretical reasons to suspect the citizenship effect at punishment will vary across different regional contexts. Briefly, the increased use of state controls in response to the large influx of noncitizens is in line with central tenets of the minority threat perspective (Blalock 1967; Blumer 1958). This perspective posits that outgroup discrimination occurs when a dominant group feels its position is in jeopardy because of the actions or numeric presence of another group. In turn, under such threatening conditions some members of the majority harden and sometimes act on their prejudices, including through harsher criminal punishment (Jacobs and Helms 1996; Jacobs, Carmichael and Kent 2005; Feldmeyer and Ulmer 2011). This perspective proposes dramatic increases in the immigrant population will worsen the punishment gap between citizens and noncitizens, suggesting that the court demographic context will condition the sentencing of non-state members.

Despite the many avenues for further development of this project, the cross-national mixed methodology research design is novel, the findings from this dissertation are robust, and the implications of the results are important across multiple scholarly areas. Utilizing a range of methodological approaches to study citizenship and punishment in two different countries significantly strengthens the quality of analysis and the confidence in the conclusions. To this end, the weight of the evidence is clear – noncitizens are punished more harshly than similarly situated citizens in U.S. and German courts. However, the quality of this dissertation rests not only on the originality and rigor of the analysis, but ultimately on the relevance of the research question and its contribution to the discipline. By this measure, this study is well positioned to contribute to the sociological study of citizenship.
Towards a Sociology of Citizenship

Throughout this conclusion I have highlighted the importance of the findings from this dissertation across different research traditions. However, perhaps the more lasting sociological contribution of this research is not the results from the analysis, but the study itself. Going beyond legal pronouncement and political claims, this dissertation empirically examined the actual punishment consequences of lacking state membership. Just as Thorsten Sellin (1935) investigated the gap between legal ideals and the legal treatment of African Americans in the U.S. to raise questions regarding the substantive meaning of ‘equality before the law’ over 75 years ago, this study investigated this same gap for noncitizens on a global stage. In doing so this dissertation used an explicitly sociological frame to ask what citizenship means for certain social actors and how this plays out in a specific institutional setting – the courts? Thus, aside from the contributions to citizenship studies and the sociology of punishment, this dissertation takes a modest step towards developing sociological study of citizenship, one interested in understanding the size, scope, and processes that produce the gap between abstract rights and rights in practice, between formal membership and substantive membership, and between the rule of law and the practice of law. It is precisely this sociological frame that motivated this dissertation.

As foreigners increasingly fill the prisons of western societies, understanding the processes through which they are incarcerated can tell us a great deal about the salience of citizenship under the law, a nation’s sense of identity, and the prison’s place within the new globalized world. With the prison playing an ever larger role in protecting the borders of the state, the results from this dissertation suggest that as international migration increases, the
central axes of legal inequality may no longer be defined by internal divisions *within* society, but by the division between ‘insiders’ and ‘outsiders’ of the state.
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Appendix A: U.S. Methodological Appendix

Although the methodological decisions made in the body of this dissertation are well supported by existing research and consistent with recent work on sentencing outcomes, I am mindful that other ways of testing my hypotheses are plausible. In this appendix I present the results of a series of alternative models to demonstrate the robustness of my findings. I organized the supplementary analyses around five issues.

1. Estimation Procedure

There is some debate in the sentencing literature as to the appropriate modeling approach to sentencing outcomes, with some researchers preferring a Tobit model. Table A.1 model 1 shows the citizenship effect when estimating a Tobit regression model of sentence length (with non-prison sentences coded 0 and left censored). The results are substantively identical, and if anything, suggest even stronger effects. This implies that my approach to treat incarceration and sentence length as distinct outcomes may conservatively estimate the disadvantage faced by noncitizens regarding their terms of imprisonment. Another approach used in previous literature is to treat these as distinct sentencing stages but account for the selection into the length equation using the Heckman two-step correction, as those who are sentenced to incarceration may represent a non-random selection of those sentenced generally. This type of selection is likely less problematic in federal courts as over 87 percent of offenders in this study were sentenced to incarceration. Moreover, the Heckman procedure is most applicable when appropriate exclusion restrictions can be identified. That is, when variables can be used to model the selection process but not the actual equation of interest. However, appropriate exclusion restrictions are difficult (or impossible) to identify in sentencing datasets, and the result of using the same variables to predict the selection equation (in this case the incarceration decision) and the substantive
equation (i.e. the length of sentence) is that there is often problematic collinearity between the selection factor and other variables in the model. Indeed, I find this to be the case in my supplemental model of sentence length using the Heckman two-step procedure in Stata and modeling the selection equation with the same predictors as the length equation. Following Bushway et al. (2007) I then computed the condition number for the selection factor, and found that the condition number (43) far exceeds the suggested criteria of 20, suggesting that the selection term (lambda) is highly collinear with other independent variables. However, to bolster the robustness of the results, in model 2 I show that using the Heckman two-step correction to model the sentence length yields substantively identical results as those reported in the body of the dissertation.

2. Pre-Sentence Detention

The models reported in the text do not control for whether the defendant was detained prior to sentencing. I omit this variable from the models because I argue it essentially constitutes a distinct punishment outcome in its own right rather than a statistical control (Demuth 2003). Mindful that readers may not entirely share this view, I ran additional models that include pre-sentence detention as a control variable. As shown in model 3 of Table A.1, the pattern of results are consistent with those shown in the text – noncitizens are far more likely to be incarcerated and also receive longer prison terms than similarly situated citizen offenders, even after controlling for pre-sentence detention and other covariates.

3. District Effects

There is variability in the number of noncitizen offenders across districts. For example, noncitizens constitute only 4 percent of all offenders in the Southern District of Mississippi, but almost 67 percent of offenders in the District of Arizona. To demonstrate that the findings are
robust across these varying contexts I re-estimated the models for districts with varying levels of noncitizens. In models 4-6 of Table A.1, I show models for districts in which noncitizens represented at least 20, 30 and 40 percent of the district offender population, respectively. The results are consistent in each of the three models.

4. Departures from the guidelines

There is some debate in the literature as to whether departures from the guidelines are ‘control’ variables or whether they are explanatory variables. While most of the research on federal courts tends to treat departures as predictors of incarceration and sentence length, some scholars argue that including departures into the prediction equation is inappropriate because they are endogenous. In model 7 I show the effects of citizenship status without including controls for judge-initiated departures, and the results are nearly identical to those reported in Chapter 5.

5. Confounding Effects

Just over 75 percent of noncitizens sentenced in federal courts are Hispanics and the correlation between ‘Hispanic’ and ‘noncitizen’ is statistically significant (r=0.52). My argument is that citizenship status mediates the apparent “Hispanic” penalty emphasized in other work. As shown in Chapter 5, when I include citizenship status in the model, the coefficient for Hispanic ethnicity is reduced by more than 40 percent. If I run a parallel set of models in which the first includes citizenship and the second adds Hispanic ethnicity, the citizenship effect is mediated by only 6 percent, which is consistent with my interpretation that citizenship status matters considerably more than ethnicity. I further performed a sensitivity analysis using the Variance Inflation Factor to obviate concerns that the results regarding citizenship and legal status are confounded by collinearity issues with Hispanic ethnicity. For both the incarceration and
sentence length models, the VIF values for Hispanic ethnicity and legal status variables are below 1.5, well below the recommended cutoff of 4. This suggests that collinearity cannot explain the observed citizenship effects.
Table A.1: Robustness Analyses - The Salience of Citizenship on Punishment Outcomes in U.S. Federal Courts, 2009-2010

<table>
<thead>
<tr>
<th>Select Effects</th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
<th>Model 5</th>
<th>Model 6</th>
<th>Model 7</th>
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<td>0.039 0.004</td>
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<td>0.018 0.009</td>
<td>0.074 0.017</td>
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</tr>
<tr>
<td>Non-U.S. Citizen</td>
<td>1.557 0.169</td>
<td>0.044 0.011</td>
<td>1.529 0.206</td>
<td>0.041 0.012</td>
<td>1.620 0.291</td>
<td>0.042 0.019</td>
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<tr>
<td>Non-U.S. Citizen</td>
<td>1.602 0.124</td>
<td>0.062 0.011</td>
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</tbody>
</table>

**BOLD** denotes \( p < .05 \)

*Note*: The unique model specifications are detailed below. All models include all variables reported in Tables 5.1 and 5.2 and account for judicial district. Standard errors are clustered on judicial district.

**Model Descriptions:**
- **Model 1**: Tobit model of incarceration and sentence length decisions combined.
- **Model 2**: Heckman two-step model of sentence length correcting for selection.
- **Model 3**: Includes a measure for whether the defendant was detained prior to sentencing.
- **Model 4**: Includes only Districts where noncitizens comprise at least 20% of all offenders (34 District Courts)
- **Model 5**: Includes only Districts where noncitizens comprise at least 30% of all offenders (16 District Courts)
- **Model 6**: Includes only Districts where noncitizens comprise at least 40% of all offenders (7 District Courts)
- **Model 7**: Excludes ‘Judge Initiated’ Departures
Table A.2: Correlation Matrix for Covariates in U.S. Analysis (N = 104,816)

|-------|------------|---------------|----------------|------------------|----------|---------|--------------|---------|--------|--------|-----------|-----------------|------------------|---------------|----------------|----------|---------------|---------|---------------|---------|------------|----------|---------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|----------------|-----------------|-----------------|-----------------|
Appendix B: German Methodological Appendix

Similar to U.S. supplementary analyses, this Appendix examines alternative models of German sentencing outcomes to demonstrate the robustness of my findings. I organized the supplementary analyses around three issues.

1. District Effects

Like the U.S. federal courts, the proportion of noncitizens across districts in Germany varies markedly. In models 1-4 I re-estimated the Tobit models of incarceration and sentence length on districts where noncitizens represented at least 20 and 30 percent of offenders brought before the court (only one court at more than 40 percent). These models were estimated on all offenses (models 1 and 3) and drug offenses only (models 2 and 4). Across all of the models the results are consistent with those reported in Chapter 6.

2. Pre-Trial Detention

The models reported in Chapter 6 do not control for whether the defendant was detained pending adjudication. As with the U.S. analysis, I view this variable as a distinct punishment outcome that may help explain the punitive sentences non-German citizens receive, rather than a statistical control to isolate the effects of citizenship (Demuth 2003). The results in models 5 and 6 confirm this view while maintaining the same pattern of results as those in Chapter 6. The results for all offenders (model 5) and drug offenders separately (model 6) suggest that part of the explanation for why non-German citizens receive harsher punishment is because they are incarcerated prior to their adjudication.

3. Estimation Procedure

Given the limited use of incarceration in German courts, selection into the sentence length equation may be problematic because those who receive incarceration may represent a
non-random selection of those sentenced generally. In Chapter 6 I attempted to obviate these concerns by reporting the incarceration and sentence length decisions together using Tobit estimation. An alternative to this approach used in previous research is to treat these as distinct sentencing stages but account for the selection into the length equation using the Heckman two-step correction. Models 7 and 8 of Table B.1 report the sentence length effects using the Heckman two-step correction for all offenses (model 7) and drug offenses only (model 8). In both cases the pattern of results is identical to those reported in Chapter 6 – non-German citizens receive longer prison sentences net of legally relevant controls, even after accounting for selection into the incarcerated population.
### Table B.1: Robustness Analyses - The Salience of Citizenship on Punishment Outcomes in German Courts, 2009-2010

<table>
<thead>
<tr>
<th>Select Effects</th>
<th>Model 1</th>
<th>Model 2</th>
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<th>Model 5</th>
<th>Model 6</th>
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<td>Tobit (length)</td>
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<td>Non-German Citizen</td>
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<td>b 0.854 0.131</td>
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<tr>
<td>Non-German Citizen</td>
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<td>b 0.645 0.059</td>
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**BOLD** denotes \( p < .05 \)

**Note**: The unique model specifications are detailed below. All models include all variables reported in Table 6.1 and account for judicial district. Standard errors are clustered on judicial district (except Models 7 & 8).

**Model Descriptions**:

- **Model 1**: Inclues only Districts where noncitizens comprise at least 20% of all offenders (53 Courts)
- **Model 2**: Inclues only Districts where noncitizens comprise at least 20% of all offenders - Drug Offenses
- **Model 3**: Inclues only Districts where noncitizens comprise at least 30% of all offenders (8 Courts)
- **Model 4**: Inclues only Districts where noncitizens comprise at least 30% of all offenders - Drug Offenses
- **Model 5**: Inclues a measure for whether the defendant was detained prior to adjudication.
- **Model 6**: Inclues a measure for whether the defendant was detained prior to adjudication - Drug Offenses
- **Model 7**: Heckman two-step model of sentence length correcting for selection.
- **Model 8**: Heckman two-step model of sentence length correcting for selection - Drug Offenses
Table B.2: Correlation Matrix for Covariates in German Analyses (N = 1,307,209)

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EDUCATION
2013 Ph.D., The Pennsylvania State University, Sociology
2010 M.A., The Pennsylvania State University, Crime, Law and Justice
2007 B.A., Albion College, Albion, MI, Sociology (Cum Laude)

PROFESSIONAL POSITIONS
2013- Assistant Professor of Sociology. Purdue University

JOURNAL ARTICLES


HONORS, AWARDS & FELLOWSHIPS
2012-13 Crawford Family Fellowship in Ethical Inquiry, Rock Ethics Institute, Penn State University.
2012 Visiting Research Scholar, Max Planck Institute for Foreign and International Criminal Law.
2012 Rock Ethics Dissertation Research Award, Rock Ethics Institute, Penn State University.
2010 1st Prize, ASA Student Paper Award in Crime, Law, and Deviance section (with Casey T. Harris)
2010 2nd Prize, ASC Gene Carte Student Paper Award (with Casey T. Harris)
2010 1st Prize, Penn State Crime, Law & Justice Graduate Student Paper Competition (w/ Casey T. Harris)

FUNDED RESEARCH
2012-13 National Science Foundation Dissertation Improvement Grant. “Punishing the ‘Others’: Understanding Citizenship through Punishment in the United States and Germany.” (PI) $18,074 (SES-1226453).