

©Copyright 2013
Crystal Campbell

The War with No End: Sentencing Disparities in the “War on Drugs” and National Trends that are Defining the Nation

Crystal Campbell

A thesis
submitted in partial fulfillment of the
requirements for the degree of

Master of Arts in Interdisciplinary Studies

University of Washington
2013

Committee:
Michael Honey
Charles Williams

Program Authorized to Offer Degree:
Interdisciplinary Arts and Sciences

University of Washington

Abstract

The War with No End: Sentencing Disparities in the “War on Drugs” and National Trends that are Defining the Nation

Crystal Campbell

Chair of the Supervisory Committee:

Michael Honey

Ph.D. Professor, Labor and Ethnic Studies and American History
Interdisciplinary Studies

The most industrialized nation in the world is the country with the highest rate of incarceration. Of over 2 million people incarcerated in the United States, over half of those imprisoned are Black-Americans. This report examines the “War on Drugs” and the policies and practices contributing to increased incarceration rates from a geographical perspective with a focus on Washington State. The research examines if the incarceration rates in the state are lining up with national trends, and the contributing factors.

Washington State has a small African-American population of about three percent yet its prison population aligns with national trends with Blacks representing over 25 percent of those incarcerated, 11 times their percentage of the population. The war has been going on for 30 years and for 30 years prison rates have steadily risen across the country. The “War on Drugs” is part of a long sustained pattern of white dominance over Blacks. The war that began in the 1980s is not catching the drug kingpins its intended to. Instead, prisons are filled with many nonviolent low-level offenders with substance abuse

problems. Facing cutbacks Washington State offers offenders alternatives to incarceration with treatment as an option, but the policies and practices of the state are not benefitting disenfranchised groups. Through the “War on Drugs,” employment, housing, and educational discrimination have been legalized with an already marginalized group suffering the consequences. The War on Drugs has influenced the face of the prison population, and is turning into a legalized form of discrimination across the country.

The War on Drugs, and sentencing policies created out of the war have redefined criminality. With the US prison population reaching an unprecedented 2 million people, the United States has the highest rate of incarceration among the developed nations of the world.¹ The War on Drugs and policies designed to be race neutral in application are unequally infringing upon the rights of minority groups. Looking at the composition of prisoners, Black Americans represent 12 percent of the US population yet over 50 percent of those incarcerated.² Through historical analysis, this research examines the different factors contributing to increased prison rates among Black Americans. Using geography as a factor, this research also seeks to examine how the prison population in Washington State differs from national rates. The advent of the War on Drugs has increased visibility of drug-related issues.

Since the declaration of the War on Drugs, the focus on drug law enforcement increased substantially.³ The 1980s saw a surge in the number of people arrested for drug offenses. In 1980, the number of arrests for drug offenses reached 581,000; by the year 2005, that number more than tripled, reaching 1,846,351 arrests for drug offenses.⁴ In the 30-year span since the War on Drugs began, the number of people incarcerated for drug offenses has increased 1100%.⁵ With the prison population expanding so vastly, there are

¹ Adam Liptak, "U.S. Imprisons One in 100 Adults, Report Finds," *New York Times*, Accessed on February 27, 2009 <http://www.nytimes.com/2008/02/29/us/29prison.html?_r=2>

² Ibid

³ Marc Mauer and Ryan S. King, "A 25 Year Quagmire: The War on Drugs and its Impact on American Society," *The Sentencing Project*, September 2007, page 2.

⁴ FBI, "Crime Statistics," *Crime in the United States*, Accessed on January 15, 2007 <<http://www.fbi.gov/stats-services/crimestats>>

⁵ Mauer and King, "A 25 Year Quagmire: The War on Drugs and its Impact on American Society", op. cit., page 3

Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York : Perseus Distribution, 2010), page 12

Michael Tonry and Mathew Malewski, "The Malign Effects of Drug and Crime Control Policies on Black Americans," *Crime and Justice* 37, No. 1 (2008): 12.

now questions of whether the US's current form of drug control is effective, if the war on drugs can be won, and what factors are allowing for disparity in sentencing?

Many factors converge with one another to determine a person's likelihood of imprisonment. Looking at information taken to gather arrest and imprisonment rates, factors such as socioeconomic status, educational level, poverty, and race can intertwine with one another so much that at times one cannot separate one aspect from another. Research on social stratification finds contemporary drug and crime control policies to be part of a sustained historic pattern of White political and economic dominance over Blacks.⁶ In examining the composition of the prison system, the issue of poverty is important to acknowledge but for purposes of this paper race will be the causal factor used in investigating inequality in the drug war.

The War on Drugs is not designed to be racist in nature but laws created in conjunction with the War on Drugs have increased the imprisonment rates of Blacks. Across the United States, the War on Drugs has changed the face of American prisons. To understand the present condition of Black Americans incarcerated in the criminal justice system, one must understand the history of the nation which exhibits a pattern of White dominance. Although overt forms of racism are no longer legally or socially acceptable, covert forms remain present in the criminal justice system. Present-day America has taken great strides from institutionalized racism against minorities such as the institution of slavery, Jim Crow, and Black Codes, but the application of justice remains an area of contention.

⁶ Michael Tonry, "The Social, Psychological, and Political Causes of Racial Disparities in American Criminal Justice System," *Crime and Justice* 39, No. 273 (2010): 1-21
Angela Y. Davis, *Are Prisons Obsolete?* (New York, Open Media, 2003)

Black-Americans arrived to the United States as a source of slave labor. After slaves gained their freedom, the criminal justice system became an instrument in containing Blacks, both politically and socially. Today, the three decade old War on Drugs provides a contemporary mechanism of political and social control working to keep Black Americans suppressed.

Foundation of the Disproportioned Criminal Justice System

White dominion over Blacks has existed since the founding of the country, and although the mechanisms change the basic attributes remain the same. The current War on Drugs disproportionately places hundreds of thousands of Blacks behind bars each year. Slave labor shaped the Southern economy and after slavery ended, criminal justice became an alternative system that continued White dominion over Blacks.

After the Civil War, African-Americans gained freedom, “but laws were passed to ensure they remained subjugated and bound by white authority. African-Americans were free according to the law but using social law, the beatings, lynching, murders, and psychological abuse” continued.⁷ Eager to maintain their dominion over Blacks, beginning in 1865, White legislatures enacted Black Codes to control the lives of former slaves. Of over 1200 prisoners leased out in 1878 Georgia, Blacks represented all but 115 of the prisoners.⁸ Black Codes regulated the civil and legal rights of the Black Americans.

⁷Joy Degruy Leary, *Post Traumatic Slave Syndrome: America’s Legacy of Enduring Injury and Healing* (Portland: Uptone Press, 2005), 83

⁸Jaron Browne, “Rooted in Slavery: Prison Labor Exploitation,” (*Urban Habitat / Race Poverty and the Environment*). Accessed on March 1, 2009 <<http://www.urbanhabitat.org/node/856>>

The criminalization of Black Americans led to an increase in the prison population. With slavery abolished, creating and enacting laws that legally maintained inequality ensured that Whites could continue to benefit from a form of white privilege. Through the 13th Amendment, slavery shall not “exist within the United States, or any place subject to their jurisdiction.” But, built into the 13th Amendment (1865) is a clause that states that slavery is abolished, “except as a punishment for crime.” Once slavery ended, southern states introduced the system of convict leasing to regulate relationships between private individuals and to control the application of freedom.⁹ The state established rights for Black Americans while maintaining structures of racism.

Southern Whites legitimized slavery through their belief in white supremacy. Under slavery, slaves engaged in back breaking physical labor, farming and cultivating products, such as tobacco and cotton, and Whites thought the genetic disposition of Blacks made them better suited for physical labor. Premised on the notion that the law applied to all convicts equally, after slavery the system of convict-leasing came into existence. Through the system of convict-leasing, Whites continued to rely upon Black labor on Southern farms, in the railroad and construction industries. Blacks worked on chain gangs in greater proportions than non-Blacks.¹⁰ The imprisonment of thousands of Blacks through convict-leasing served to benefit the state and perpetuated a pattern of Black suppression.

This historical background links current trends to a pattern of racial inequality and oppression. Although the justice system is supposed to be “colorblind,” an intensive

⁹ Kim Gilmore, “Slavery and Prison—Understanding the Connections,” *Social Justice* 27 (2000): 195-206.

¹⁰ Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (London: Verso, 1996), 3-10.

study of that system by Michelle Alexander shows that it is not. Convict-leasing laid the foundation for the disproportional imprisonment of African-Americans, and with time the criminal justice system, continued to negatively impact the lives of millions of Blacks. Blacks trying to escape their conditions of being discriminated against in the South began to migrate North in the 20th century, only to find the same barriers to their integration. Blacks relegated to the most menial jobs suffered high unemployment rates across the country. With time, Blacks concentrated into areas of poverty contributed to growing crime rates in the city. Unemployed Blacks engaging in illegal activities remain more likely to be arrested and convicted for their crimes.¹¹ Up until the 1980s, the homicide rates for Blacks remained drastically higher than the rates committed by every other group.¹² Surging crime rates contributed to the creation of the get tough on crime legislation.

Getting tough on crime

Minorities have often been mistreated and targeted because of race, religion, gender, sexual orientation and a host of other qualities. In a time of tension about race and equality, the Civil Rights Movement that gained momentum in the 1960s generated political upheaval in which the public challenged many societal norms. In the 1970s, reform in sentencing statutes became a major area of national debate.¹³ “Legal scholars and political leaders have expressed discontent with excessive disparities in the sentences

¹¹ Lee Bernstein, *African Americans and the Criminal Justice System* (ProQuest LLC: Cambridge, UK, 2009) 16-18. Accessed February 2, 2010

<http://gateway.proquest.com.offcampus.lib.washington.edu/openurl?url_ver=Z39.88-2004&res_dat=xri:bsc:&rft_dat=xri:bsc:ft:essay:30BERN>

¹² Ibid

¹³ Joan Petersilia and Peter Greenwood, “Mandatory Prison Sentences: Their Projected Effects on Crime and Prison Populations,” *The Journal of Criminal Law and Criminology* 69, (1978): 604.

imposed and served under present statutes. It has been repeatedly shown that persons of similar criminal history convicted of similar crimes are treated differently.”¹⁴ Outraged by increased crime rates, the public associated judicial leniency with growing crime rates in the United States.

Following deindustrialization, Black unemployment reached an all-time high, which also correlated with an increase in crime. Many wanted the government to “get tough” in the courtroom and protect the public from criminals by incarcerating the criminals for longer periods of time. Legal advocates hoped to deter criminals from committing crimes by instilling the fear that committing the crime will guarantee a harsh sentence once caught.

Policymakers sought to alter state codes with the hope of assuring “more certain and equal justice.”¹⁵ State legislators broke crime and sentencing down into categories, i.e., violent (rape, homicide, kidnapping), burglary, or other felonies (auto theft, drug offenses) allowing for sentencing to be based on the type of crime committed. For purposes of this research, the focus will be on drug offenses. With the new statutes enacted, mitigating circumstances such as socio-economic status or unknowingly living with a person that sold drugs no longer mattered because sentencing depended on a set of uniform standards.

Through rhetoric of the 1970s legislation, the courts created the Federal Sentencing Act to “impose rationality and to reduce discrimination and other disparities in criminal sentencing for non-capital cases.”¹⁶ The new legislation created a set of

¹⁴ Ibid

¹⁵ Ibid, 605

¹⁶Susan M. Klein and Jordan R. Steiker, “The Search for Equality in Criminal Sentencing,” *The Supreme Court Review 2002* (2002): Rev 223.

sentencing guidelines that supposedly ensured that defendants in similar situations get treated similarly.

Under the previous system, judges had used a great deal of unguided discretion in determining who and how a person gets sentenced for a crime, creating disparity in sentencing. Many felt the only way to promote equality in the justice system entailed a set of comprehensive guidelines used by administrators in determining sentencing.¹⁷ Without guidelines, “judges (or juries) are free to implement any particular theory to which they subscribe, or, worse, to indulge in invidious discrimination.”¹⁸ Courts and the decisions made within them hold someone’s life in their hands and the public did not want the courts to go unchecked or be open to bias. For these reasons along with other forces at work as well, came the introduction of mandatory guidelines in sentencing.

The Reagan Era- Political rhetoric surrounding the creation of the War on Drugs

Policies created by President Ronald Reagan in conjunction with the War on Drugs had significant implications for US crime control. Under President Reagan, punishment for crimes related to drug use became increasingly significant. A time of political upheaval, the 1980s brought the implementation of new policies that changed the composition of the jail population.

President Reagan came into office, as all Presidents, with political agendas in mind. The nation attempted to recover from a recession, while unemployment rates remained high and urban crime rates rose. Amidst fears of increasing crime rates, Reagan

¹⁷ Ibid, page 224-225.

¹⁸ Ibid

placed an emphasis on crime control as a means of getting the nation back to its founding principles. In Proclamation 4925, Reagan stated,

The rule of law is fundamental to the preservation of the democratic principles and ideals that law-abiding Americans cherish. Our commitment to criminal justice goes far deeper than our desire to punish the guilty or to deter those considering a lawless course. We must never forget that our laws represent the collective moral voice of a free society -- a voice that articulates our shared beliefs about the rules of civilized behavior, and reflects our basic precept that men and women should be treated as free individuals, responsible for the consequences of their action. When we countenance the suffering of innocent victims of crime, we thus threaten to undermine the faith of our citizens in a legal system that lies at the heart of much that is unique and precious about our Nation itself. We cannot afford for law-abiding Americans to lose that faith. At a time when crime remains a serious national problem, we must be ever-more zealous in our pursuit of law and justice.¹⁹

Political rhetoric surrounding Reagan's Presidency thus placed a focus on the nation's crime problem and the need to restore law and order to society.

In a radio address to the nation concerning federal drug policy, both the President and his wife Nancy Reagan referenced the growing "drug epidemic" plaguing America. Mrs. Reagan said that "few things in my life have frightened me as much as the drug epidemic among our children."²⁰ Mrs. Reagan placed an emphasis on drugs being partially responsible for the degradation of society, in that drugs caused people to lie, steal, and hurt one another.²¹ During this radio broadcast President Reagan began to place an emphasis on the strategies being implemented by his administration for the prevention of drug abuse and trafficking.

¹⁹ "Proclamation 4929 -- Crime Victims Week, April 14, 1982," *The Public Papers of President Ronald W. Reagan*, Ronald Reagan Presidential Library. Accessed 15 May 2011
<<http://www.reagan.utexas.edu/archives/speeches/1987/061287d.htm>>

²⁰"Radio Address to the Nation on Federal Drug Policy October 2, 1982," *The Public Papers of President Ronald W. Reagan*, Ronald Reagan Presidential Library. Accessed 15 May 2011
<<http://www.reagan.utexas.edu/archives/speeches/1987/061287d.htm>>

²¹ Ibid

The President told of his administration's strategy of "beefing up the number of judges, prosecutors, and law enforcement people."²² In placing an emphasis on the changes the administration had made, which included using military radar and intelligence to detect drug traffickers, the President set the foundation for "getting tough" on crime, a slogan that contributed to increasing incarceration rates. In a speech concerning drug policy, the President stated,

Previous administrations had drug strategies, but they didn't have the structure to carry them out. We now have that structure... The mood toward drugs is changing in this country, and the momentum is with us. We're making no excuses for drugs -- hard, soft, or otherwise. Drugs are bad, and we're going after them. As I've said before, we've taken down the surrender flag and run up the battle flag. And we're going to win the war on drugs.²³

In his *The War on Drugs*, Reagan introduced key laws and called on the American citizenry to defend their country against the threat of drugs.

The "Drug War" produced enemies that had the faces of drug lords, drug pushers, and corrupt politicians.²⁴ In fighting the enemy, policy and enforcement began to take on new agendas. The laws undertaken in winning the war redefined the criminal justice system.

Under the Reagan administration, the 1980s produced major federal anti-drug bills that drastically changed sentencing laws. The 1984 Sentencing Reform Act had the goal to "reduce unwarranted disparity, increase certainty and uniformity, and correct past patterns of undue leniency for certain categories of serious offenses."²⁵ Using the guidelines, defendants convicted of similar offenses with similar aggravating and

²² Ibid

²³ Ibid

²⁴ Susan Mackey-Kallis and Dan Hahn, "Who's to Blame for the Drug Problem? The Search for Scapegoats In the War on Drugs," *Communication Quarterly* 42, no. 1 (Winter 1994): 1-22.

²⁵ Amie Nielsen, "American Attitudes Toward Drug Related Issues from 1975-2006: The Roles of Period and Cohort Effects," *Journal of Drug Issues* 40, no. 2 (April 2010):464.

mitigating factors, received presumably just and proportional sentences.²⁶

The 1984 Sentencing Reform Act established sentencing provisions designed to alleviate the problem of unwarranted sentencing disparities. It reformed the federal system, “(1) by dropping rehabilitation as one of the goals of punishment; (2) creating the US sentencing Commission and charging it with establishing sentencing guidelines; (3) making all federal sentences determinate; (4) and authorizing appellate review of sentences.”²⁷ The Anti-Drug Abuse Act of 1986 and the Anti Drug Abuse Act of 1988 created definitions for mandatory sentences and defined what constitutes drug trafficking.²⁸ The introduction of these three key bills drastically altered the criminal justice system. The War on Drugs called for increased funding, stricter law enforcement policy, and increasing penalties for drug use and sales.²⁹ These bills led to an increase in the prison population, both at the national and at the state levels.

Laws that changed the face of prison

To implement the goals of the Sentencing Reform Act, Congress created the United States Sentencing Commission as an independent agency of the judicial branch.³⁰ The seven member panel appointed by the Senate consists of bipartisan judges and non-judges, experts in the criminal justice arena.³¹ The overarching goal of the Commission

²⁶ Ibid

²⁷ Lisa M. Seghetti and Alison M. Smith, “Federal Sentencing Guidelines: Background, Legal Analysis, and Policy Options,” *Congressional Research Service Report for Congress* . June 2007. Accessed May 12, 2011 <<http://www.fas.org/sgp/crs/misc/RL32766.pdf>>

²⁸ “Report on Cocaine and Federal Sentencing Policy Chapter 6,” *The National Legislative and Law Enforcement Response to Cocaine*, United States Sentencing Commission. Accessed May 14, 2011 <http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Drug_Topics/199502_RtC_Cocaine_Sentencing_Policy/CHAP6.HTM>

²⁹ Nielsen, “American Attitudes Toward Drug Related Issues from 1975-2006: The Roles of Period and Cohort Effects,” *op.cit.*, page 465.

³⁰ Ibid

³¹ Ibid

consists of determining the appropriate types and lengths of sentences for more than 2000 federal offenses. Of the federal offenses, there are over 60 criminal statutes that contain mandatory minimum penalties, yet of the 60 statutes only four typically result in conviction; the four relate to weapon and drug offenses.³² The majority of non-violent offenders in prison today are there for crimes related to drugs. Mandatory minimums are contributing to a prison population of non-violent offenders.

Although crime rates in the United States have been decreasing since the early 1990s, the rate of imprisonment continued to increase with mass incarceration remaining an epidemic. Mandatory sentencing looks at a single aggravating factor and undermines the discretionary powers judges once used in looking at the different factors that may explain why someone engaged in a criminal activity.

The power to determine if an offender will be charged rests in the hands of the prosecutor. Mandatory minimums transfer power from the court to the prosecutor. Nationally, 85 percent of cases that reach a prosecutor do not proceed to trial.³³ “Sentencing ranges for drug offenses sentenced under the federal sentencing guidelines are determined by drug quantity and type, the presence of aggravating factors (e.g. aggravating role, weapon involvement) and mitigating factors (e.g. minor role), and the offenders criminal history.”³⁴ Prosecutorial preference allows for discrepancy in sentencing, with some individuals being sentenced based on mandatory statutes and

³² Ibid

³³ “Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System August 1991,” *United States Sentencing Commission*, Accessed January 2, 2012
<http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/199108_RtC_Mandatory_Minimum.htm>

³⁴ “Report to Congress: Cocaine and Federal Sentencing Policy May 2007,” *United States Sentencing Commission*, Accessed January 2, 2012,
http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Drug_Topics/200705_RtC_Cocaine_Sentencing_Policy.pdf

others in similar circumstances not being sentenced based on the minimums.³⁵

The Anti-Drug Abuse Act of 1986 established the basic framework of statutory mandatory minimum penalties.³⁶ As a result of the 1986 Act, first-time offenders found with certain quantities of certain drugs face mandatory sentences. Under the act the possession of 5 grams of crack cocaine requires a five-year mandatory minimum penalty for a first time trafficking offense, the same punishment as possession of 500 grams of powder cocaine.³⁷ It takes 100 times more powder cocaine to trigger the same mandatory minimum penalty, and this penalty structure is commonly referred to as the 100-to-1 drug quantity ratio. The penalties are created to be equal in nature but are proven to be unequal in application.

Crack cocaine is typically a drug used by poorer consumers. Current crack cocaine penalties mostly impact minority groups.³⁸ Although the rate of crack cocaine use has been declining, the vast majority of crack offenders are Black. In 1992, 91.4 percent of crack offenders were Black, and by 2006, 81.8 percent of offenders were Black, while the proportion of white offenders in 1992 was 3.2 percent and by 2006 rose to 8.8 percent.³⁹ Persons prosecuted for crack cocaine face increased penalties. Black adults are four times more likely to be under the correctional control of the criminal justice system than Whites.

The current quantity-based penalties overstate the harmfulness of crack cocaine as compared with powder cocaine, and are broadly sweeping across whole groups of

³⁵ “Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System August 1991,” *op. cit.*

³⁶ “Report to Congress: Cocaine and Federal Sentencing Policy May 2007,” *op. cit.*, Chapter 1.

³⁷ *Ibid*

³⁸ *Ibid*, Chapter 2.

³⁹ *Ibid*

people, leading to the imprisonment of low-level offenders.⁴⁰ Mandatory minimum sentences create harsher sentences for low-level crack cocaine offenders when compared with major drug dealers.⁴¹ Imprisoned federal crack cocaine offenders consistently serve longer sentences than powder cocaine offenders, and that difference has widened since 1992.⁴² “Between 1997 and 2004, the difference in average sentences was relatively stable, with crack cocaine sentences between 49.4 percent and 55.8 percent longer than powder cocaine sentences.”⁴³ But mandatory minimums imposed to catch higher level offenders are instead filling prisons with low street level dealers. Despite its intent, mandatory minimums create disparities in incarceration rates, with Blacks being the most incarcerated group in the country. The laws are designed to apply to all criminals equally yet, Blacks are imprisoned at higher rates.

The Public Outcry toward Getting Tough on Crime

Before the declaration of the War on Drugs, Blacks represented about one third of those in prison, but by the mid-1990s, Blacks grew to represent over 50 percent of those imprisoned.⁴⁴ Today, African-Americans are overrepresented in the prison population in that they are seven times more likely to be imprisoned than Whites.⁴⁵ Shifts in law enforcement practices over the last three decades have greatly affected the criminal justice system, while the public perception of drug use has greatly influenced changes in policy.

⁴⁰ Ibid, Chapter 1.

⁴¹ “Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System August 1991,” *op. cit.*

⁴² “Report to Congress: Cocaine and Federal Sentencing Policy May 2007,” *op. cit.*, Chapter 1.

⁴³ Ibid

⁴⁴ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness.* *op. cit.*

⁴⁵ Ibid

Angela Davis. *Are Prisons Obsolete?* *op. cit.*

The 1980s represented a time of social outcry against drug use. As the crack epidemic hit major cities, political hype surrounding the “crack problem” led the public to demand action. The incidence of cocaine use peaked in 1983 with 1.5 million new users reported.⁴⁶ Increasing media, police, and public attention associated crack use with the rise in crime and spread of HIV.⁴⁷ A 1986 Gallup poll asked Americans,

‘Which one of the following do you think is the MOST serious problem for society today: Marijuana, alcohol abuse, heroin, crack, other forms of cocaine or other drugs?’ At 42%, “crack” and “other forms of cocaine” beat “alcohol abuse” by eight percentage points -- even though there are far more alcoholics than crack addicts.⁴⁸

Responding to the public outcry, politicians introduced policies designed to combat the drug problem by incarcerating threatening individuals, many of them being people of color.⁴⁹

Public intolerance of drug use tended to hold Black Americans responsible for rising crime rates. The incidence of serious crime peaked in 1981, when Blacks committed 40.4 violent crimes per 1,000, compared to 19.7 violent crimes per 1,000 committed by Whites.⁵⁰ Following World War II, crime rates hovered between 93 and 116 per 100,000 people, or approximately one per 1,000.⁵¹ Prior to the 1980s crime remained relatively stable. Following policy changes that came with the “War on Drugs,”

⁴⁶ “Trends in Initiation of Substance Use,” SAMHSA, an agency in the Department of Health and Human Services, Accessed June 16, 2008
<<http://www.oas.samhsa.gov/NHSDA/2k1NHSDA/vol1/Chapter5.htm>>

⁴⁷ David F. Musto, *The American Disease: Origins of Narcotic Control* (New York: Oxford University Press, 1999).

Nielsen, “American Attitudes Toward Drug Related Issues from 1975-2006: The Roles of Period and Cohort Effects,” *op. cit.*, 464.

Alexander. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. *op.cit.*

⁴⁸ Jennifer Robison, “Decades of Drug use: The “80’s” and “90’s,” July 9, 2002, Accessed May 5, 2011”
<<http://www.gallup.com/poll/6352/decades-drug-use-80s-90s.aspx>>

⁴⁹ Michael Tonry, “The Effects of American Drug Policy on Black Americans, 1980-1996,” *European Journal on Public Policy and Research* 4, no. 2: 36-40.

⁵⁰ “Trends in Victimization by Race,” *Bureau of Justice and Statistics*, Accessed May 13 2011
<<http://bjs.ojp.usdoj.gov/content/glance/tables/racetab.cfm>>

⁵¹ Elliott Currie, *Crime and Punishment in America* (New York: Metropolitan Books, 1998), 2-5.

over 30 percent of those incarcerated reported engaging in drug use prior to their involvement in criminal activity.⁵² The association of drug use with crime created increased pressure from the public to take action against the drug epidemic. The War on Drugs inadvertently turned disadvantaged minority groups into the enemy of the war, with Blacks in particular associated with rising crime rates.

Although the 1980s saw a decrease in drug use by the American public, national attention on drug related issues increased substantially.⁵³ Politicians and the public began to advocate toughened drug laws and enforcement policies.⁵⁴ Since the War on Drugs began, policies created with the intention of deterring people from buying and using drugs has contributed to an increase in the number of people in jail for crimes related to drug use and distribution. The number of drug arrests prior to the declaration of War on Drugs stood at 580,900, but almost 10 years after enacting the War on Drugs, the number grew to 1,361,700 arrests by the year 1989, while continuing to rise.⁵⁵

The War on Drugs is significant in reshaping the way Americans respond to crime. Responding to a perceived problem of increased drug abuse and increasing levels of crime, the war on drugs led to a shift in government funding, putting an emphasis on drug enforcement rather than prevention and treatment.⁵⁶

⁵² “Drug and Crime Facts,” *Bureau of Justice and Statistics*, Accessed May 13 2011 <<http://bjs.ojp.usdoj.gov/content/DCF/duc.cfm#drug-related>>

⁵³ “Trends in Initiation of Substance Use,” *SAMHSA*, an agency in the Department of Health and Human Services. June 16, 2008 <<http://www.oas.samhsa.gov/NHSDA/2k1NHSDA/vol1/Chapter5.htm>>

⁵⁴ Mauer and King, “A 25 Year Quagmire: The War on Drugs and its Impact on American Society,” *op. cit.*

⁵⁵ “Drug and Crime Facts: Drug law violations – Enforcement,” *Drug and Crime Facts*, Bureau of Justice and Statistics, Accessed May 13 2011 <<http://bjs.ojp.usdoj.gov/content/DCF/tables/arrtot.cfm>>

⁵⁶ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, *op. cit.*

Angela Y. Davis, *Are Prisons Obsolete?*, *op. cit.*

Mauer and King, “A 25 Year Quagmire: The War on Drugs and its Impact on American Society,” *op. cit.*, page 3

Drug Use in the United States

Since the 1980, the rates at which people use drugs have actually been declining. However, the rates of people imprisoned for crimes related to drug use and distribution have steadily risen. Looking at statistics taken from the Substance Abuse and Mental Health Services Association (SAMSHA), there is no statistically significant difference in the rate of illicit drug use among any racial/ethnic groups, except for Asian-Americans who use drugs at lower rates than all other groups.⁵⁷ In 2010, among persons aged 12 and over, 3.5 percent of Asian-Americans engaged in drug use, among Pacific Islanders and Native Hawaiians the rate stood at 5.4 percent, among people reporting two or more races the rate reflected 12.5 percent, among Native Americans the rates showed 12.1 percent, among Blacks 10.7 percent, among Whites 9.1 percent, and Hispanics 8.1 percent.⁵⁸ Looking at the different racial groups that are representative of the United States, Blacks do not engage in more drug use than most other groups yet they are imprisoned at greater rates than any other group.

Policies practiced by the police also contribute to the mass incarceration of Blacks both nationally and regionally. Selective enforcement of drug laws is also a contributing factor to racial disparities in sentencing.⁵⁹ Factoring in geography, the place one lives also determines the likelihood that a person will be incarcerated at some

⁵⁷ "Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings," *U.S. Department of Health and Human Services. Substance Abuse and Mental Health Services Administration Center for Behavioral Health Statistics and Quality*, Accessed September 2011 <<http://www.samhsa.gov/data/NSDUH/2k10Results/Web/PDFW/2k10Results.pdf>>

⁵⁸ *Ibid*

⁵⁹ Paul Butler, "The People, One Hundred Years of Race and Crime," *The Journal of Criminal Law and Criminology* 100, No.3 (2010):1059.

point in their life, with Southern states hosting some of the highest incarceration rates in the country.⁶⁰

Examining the Case of Washington State

The next section of this paper will look at the “War on Drugs” and rhetoric surrounding the creation and sustaining of the war through the lenses of race and geography with a particular focus on the state of Washington. The “War On Drugs” is a political slogan created to advance political platforms of the 1980s, and in response to the crack epidemic. The previous sections of this paper examined the “War on Drugs” from a national perspective. Policies created as a response to the “War on Drugs” brought harsher sentencing penalties, resulting in Blacks serving longer sentences for crimes related to drugs. The war also led to a shift in government funding, putting an emphasis on drug enforcement rather than prevention and treatment. The Black population in Washington State is low, but disparity in sentencing for drug crimes allows for the imprisonment of high numbers of Black Americans. Though all races in Washington use illegal drugs at similar rates, the state’s relatively small number of minorities are still more likely to be the target of law enforcement officers.⁶¹

In fact, according to the National Survey on Drug Use and Health, drug use in Washington State is among the ten highest in the country. A 2008 survey found that 9.59 percent of Washington residents reported illicit drug use in the past month while the

⁶⁰ Pew Center on the States, “One in 31: The Long Reach of American Corrections,” *Pew Charitable Trusts*, Accessed June 2009, <http://www.pewtrusts.org/our_work_report_detail.aspx?id=49694>

⁶¹ *Ibid*, page 1049-1050.

national average stood at 8.02 percent.⁶² In looking at deaths related to drug use, at a rate of 15.5 per 100,000, Washington State drug-induced deaths exceed the national average of 12.7 per 100,000. Rates of drug use in Washington State contribute to the growing problem of drug distribution and rising incarceration rates in the state.

In Washington, methamphetamine use has steadily risen over the course of the last decade, while the rate at which people are imprisoned for methamphetamine possession/ distribution remains relatively stable. According to the Washington State Division of Alcohol and Substance Abuse, treatment admission for methamphetamine abuse rose from 980 in 1994, to 5,700 by the year 2001.⁶³ During that same period, admission rates per 100,000 increased from 18 to 95.4.⁶⁴ Methamphetamine use has increased fivefold in the most recent decade alone. In Washington State, the principal distributors of methamphetamine are Whites. Yet those arrested for drug distribution are more likely to be arrested for crimes related to crack distribution.⁶⁵ A 2002 study for the Seattle Needle Exchange program found that whites composed 69 percent of users who exchanged needles for crack cocaine. Blacks, representing 15 percent of crack cocaine users, get arrested at a rate of 63 percent, while whites only get arrested at a rate of 26.3 percent despite their higher usage.⁶⁶

Washington laws Contribute to Disparaging Sentencing Patterns

⁶² “Washington Drug Control Update,” *Office of National Drug Control Policies*, Accessed March 21, 2012, <http://www.whitehouse.gov/sites/default/files/docs/state_profile_-_washington.pdf>

⁶³ “Washington Drug Threat Assessment,” *US Department of Justice*, Accessed February 22, 2012, <<http://www.justice.gov/ndic/pubs3/3138/3138p.pdf>>

⁶⁴ Ibid

⁶⁵ bid

⁶⁶ Katherine Beckett, Kris Nyrop, Lori Pflingst, Melissa Bowen, “Drug Use, Drug Possession Arrests, and Question of Race: Lessons from Seattle,” *Social Problems* 52, no. 3 (2005):426-427.

Prior to 1981, Washington's sentencing laws gave judges and correctional officers unconstrained discretion.⁶⁷ Judges could select prison or probation for convicted felons with very few mandatory terms of imprisonment. In 1975, King county prosecutor Christopher T. Bayley began to advocate a departure from the individual treatment model for sentencing.⁶⁸ The legislature began to demand more accountability and to move away from programs allowing for disparity in sentencing.

In 1981, Washington established the Sentencing Reform Act (SRA), which provides "determinate and presumptive guidelines for the sentencing of adult felons."⁶⁹ The system of determinate sentencing, used today by only 14 states, allows judges to use standard legislatively-adopted sentencing grids when sentencing convicted offenders. The SRA requires that sentences be based on the criminal history of the offender, i.e., their likelihood to re-offend, and the seriousness of the offense, i.e., was the crime violent or non-violent.⁷⁰ The legislature designed the guidelines with the goal to decrease disparity in sentencing for people with similar histories.

Since the passing of the Sentencing Reform Act, the prison population in Washington State has risen. Adult incarceration rates remained relatively stable in the years 1925-1980. However, between 1980 and 2000 incarceration rates jumped 125 percent.⁷¹ The United States as a whole saw a 220 percent increase in imprisonment rates since 1980, making Washington's rate about half the national rate, at 55 percent.⁷² In

⁶⁷ David Boerner and Roxanne Lieb, "Sentencing Reform in the Other Washington," *Crime & Justice* 28 (2001): 72-74.

⁶⁸ Ibid

⁶⁹ Rodney L. Engen, Randy R. Gainey, Robert D. Crutchfield, and Joseph G. Weis, "Discretion and Disparity under Sentencing Guidelines: The Role of Departures and Structured Sentencing Alternatives," *Criminology* 41 (2003): 100

⁷⁰ Ibid, 106

⁷¹ Ibid, 100

⁷² Ibid

2002, drug offenders made up 21 percent of the prison population, a figure that remains relatively stable. Washington's reliance on sentencing alternatives may be a factor in why the states imprisonment rates do not align with national rates.

Alternatives slowing Washington prison growth

With prisons facing overcrowding and increased expenses, Washington established alternatives to incarcerating non-violent offenders. Washington's SRA provides opportunities for offenders to be sentenced outside of the criteria established by mandatory minimums. In Washington, mandatory minimums are reserved for murder in the first degree, assault in the first degree, and rape in the first degree.⁷³ In looking at crimes related to drug possession and distribution, a law under the SRA called the Alternative Sentence Conversion, allows judges to remove "total confinement" sentencing which is, continuous incarceration for a set of amount of time, and instead impose partial confinement, which can include work release, home detention, or sentenced to a work crew, in lieu of serving a set minimum amount of time imprisoned.⁷⁴

Washington's sentencing reform allows for disparity in sentences in that prosecutors are allowed discretion in bringing charges. Guidelines are voluntary and effective only in so far as prosecutors use them.⁷⁵ Prosecution in Washington is decentralized and one can see regional differences in prosecution rates. Prosecutors are accountable to the districts upon whose votes they rely.⁷⁶ The majority of Washington's population is concentrated on the western portion of the state, particularly the King and

⁷³ Boerner and Lieb, "Sentencing Reform in the Other Washington," *op.cit.*, 105.

⁷⁴ Engen, Gainey, Crutchfield, and Weis, "Discretion and Disparity under Sentencing Guidelines: The Role of Departures and Structured Sentencing Alternatives," *op. cit.*, 106.

⁷⁵ Boerner and Lieb, "Sentencing Reform in the Other Washington," *op. cit.*, 20-121.

⁷⁶ *Ibid*

Pierce county areas. Convicted felons serve longer sentences in King county. King County has consistently maintained a policy of not reducing drug sale charges to possession. The drug dealer conviction rate is 61 percent, while the rest of the state convicts drug dealers at a rate of 30 percent.⁷⁷ Policies adopted by King County allow for the incarceration rate to be higher than the entire state.⁷⁸

In 1985, King county prosecutor Norm Maleng, who served for 28 years, began to advocate tougher sentences for crimes related to drug.⁷⁹ In a bid to get re-elected and in response to the national outcry on the war against drugs, Maleng's political attention turned to the harm caused by crack cocaine in particular. Passed in 1981, under the Sentencing Reform Act the initial sentence range for delivery of Schedule 1 drugs, such as heroin and cocaine, called for a prison sentence of 12 to 14 months, while first time offenders received a sentence of zero to 90 days of confinement.⁸⁰ Maleng advocated that those who "deal" drugs deserve prison, and argued for increased sentence severity. The King County Council adopted his amendment in 1989. Presumptive sentences ranges for first time offenders increased to between 21 and 27 months, and a 24 month enhancement gets added to those who delivered drugs within one thousand feet of a school or park.⁸¹ With this amendment, imprisonment rates began to rise.

In 1991, the Washington State Department of Corrections proposed the Drug Sentencing Alternative (DOSA), in response to concern over people with chemical dependencies.⁸² Under DOSA, the standard sentence is split between prison confinement

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ Ibid, 99-101

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ibid, 111.

and community custody.⁸³ DOSA can only apply to two categories, drug offenders convicted for small amounts of a controlled substance and drug-involved property offenses.⁸⁴

Special drug enforcement sentencing alternatives combine an option of drug treatment in conjunction with a prison sentence. Under DOSA, judges are authorized to impose a prison sentence of one half the standard range, followed by one year of community based drug treatment. Those who violate their conditions, return to prison for the remainder of their standard sentence.⁸⁵

DOSA is shown to decrease recidivism rates by 50 percent yet some question the validity of the bill in that it allows for judicial discretion in who gets a DOSA sentence. Whites are more than twice as likely to receive a sentence below the presumptive range and are sentenced below the range at a rate of 33 percent, whereas Blacks are sentenced below the range in only 15 percent of cases.⁸⁶

Another SRA includes the First-Time Offender Waiver, which allows judges to order treatment or rehabilitative programs in lieu of jail time, as long as the person is not convicted of a drug delivery, or a violent or sex offense. Sentencing alternatives allow for offenders to be rehabilitated and to create other ways for courts to deal with offenders outside of imprisonment. In 1999, the legislature modified the alternative sentencing provision and included Work Ethic Camps. Sentences under one year could be converted to partial confinement, and in lieu of a prison sentence workers can instead be sent to

⁸³ Steven Aos, "Washington's Drug Offender Sentencing Alternative: An Evaluation of Benefits and Costs," Olympia: *Washington State Institute for Public Policy*, Document No. 05-01-1901 (January 2005): 1.

⁸⁴ *Ibid*

⁸⁵ Boerner and Lieb, "Sentencing Reform in the Other Washington," *op. cit.*, 99.

⁸⁶ *Ibid*, 125.

Work of Ethic Camps, in which convicts participate in community service. One day of confinement converts to eight hours of community service. Defendants and their attorneys preferred the option because it calls for less confinement time. Judges and prosecutors preferred the option over drug treatment because it was simple and flexible. But sentencing alternatives slowly reintroduced discretion that allowed for certain minority groups to be overrepresented in the prison population.

Sentencing alternatives allow for judges to make decisions outside the standard range and may therefore be contributing to unwarranted sentencing disparities, in that African-Americans are convicted at higher rates than other racial groups.⁸⁷ Judges in Washington are allowed to sentence outside the standard range under “substantial and compelling” circumstances, provided they can prove that sentencing under the standard sentencing guidelines is considered inappropriate.⁸⁸ Acceptable reasons for sentencing outside the standard range include examining the degree of harm inflicted, defendant’s blameworthiness, efforts by a defendant to assist a victim, and a victim’s role in precipitating the crime.⁸⁹ Structured alternatives emphasize proportional punishment to fit the crime yet disproportional sentencing is taking place in that Blacks are overrepresented in the prison population.

Statistically, Washington judges are more likely to impose sentences that fall below standard guidelines for Whites with 85 percent of sentences fall within the standard range.⁹⁰ Despite having a smaller Black population and offering sentencing alternatives whereas other states do not, Washington State continues to demonstrate

⁸⁷ Ibid

⁸⁸ Ibid, 105

⁸⁹ Ibid

⁹⁰ Engen, Gainey, Crutchfield, and Weis, “Discretion and Disparity under Sentencing Guidelines: The Role of Departures and Structured Sentencing Alternatives,” *op.cit.*, 121

disparities in sentencing. Washington State's African-American population is three percent, yet Blacks are 25 percent of those incarcerated in the state.⁹¹ Blacks in the state are 11 times more likely to be imprisoned than Whites. The state ranks 12th nationwide in the disparity between Black and White incarceration rates.⁹² One hopes that incarceration rates reflect each group's population percentage in the state. Blacks do not necessarily engage in more drug use or drug crimes yet they are imprisoned at greater rates.

In crime prevention, tactics used by the police in surveying and arresting those suspected of using and selling drugs contribute to the disproportionate numbers of Blacks represented in prison. The media and the police in Washington have placed an emphasis on outdoor drug markets, despite that most complaints about drug transactions coming from residential neighborhoods.⁹³ One study in Seattle looked at open air drug markets that specifically targeted Blacks, and found that officers stood in a Seattle area known for drug trafficking and arrested offenders on site, with the majority of those arrested being African-American.⁹⁴ Crack is more likely to be obtained in an outdoor market. Of the top four drugs, which include meth, powder cocaine, heroin, and crack, 75 percent of possession arrests made in Seattle are for crack possession, a drug typically associated with African-Americans.⁹⁵ Blacks are also 70 percent more likely than Whites to be searched at traffic stops.⁹⁶ In Seattle, Blacks are eight percent of the population yet account for 57 percent of drug arrests.⁹⁷

⁹¹ Jonathan Martin, "Washington State Felons should have Voting Rights, Federal Courts Rule," *Seattle Times*, January 5, 2010.

⁹² David Olsen, "Disparity of Prison Odds seen in State," *Seattle Times*, July 11, 2011.

⁹³ Butler, "The People, One Hundred Years of Race and Crime," *op. cit.*, 1048.

⁹⁴ Beckett, Nyrop, Pflugst, Bowen, "Drug Use, Drug Possession Arrests, and the Question of Race :Lessons from Seattle," *op. cit.*, 420

⁹⁵ *Ibid*, 432

⁹⁶ Martin, "Washington State Felons should have Voting Rights, Federal Courts Rule," *op. cit.*

⁹⁷ David Olson, "Disparity of Prison Odds seen in State," *op. cit.*

The Department of Justice published a study in 2011 that accused the Seattle Police Department of engaging in excessive force. Following a series of video recordings, the Seattle police department's policies and procedures, force reports, complaints and investigative files in which residents made complaints against the police department, the United States Department of Justice Civil Rights Division launched an investigation into the department. Over half of excessive force incidents that take place within the city involve nonwhite citizens despite Seattle residents being 70 percent White.⁹⁸ The report found that 20 percent of incidents that use excessive force use it unnecessarily. Community members accused the department of engaging in discriminatory practices, such as unlawful pedestrian stops without reasonable cause in which youth are stopped and searched with little to no explanation given.⁹⁹ The officers are also charged with using racially charged language. The report did not find Seattle engaged in discriminatory practices but instead blamed inadequate policy, training, and supervision for the problem.¹⁰⁰ The findings suggested a list of recommendations for the department to improve race relations and help the minority community to believe in the fairness of the legal system but few new policies have been implemented.

In the past three decades, Washington State has increased spending on the criminal justice system. There are more police officers in the state and an increase in the use of prison yet mass incarceration is having little to no effect on crime in Washington. "The number of crimes committed by its average prisoner dropped from 62 in 1980 to 37

Beckett, Nyrop, Pfingst, Bowen, "Drug Use, Drug Possession Arrests, and the Question of Race :Lessons from Seattle," *op. cit.*, 424

⁹⁸ Thomas E. Perez and Jenny A. Durkan, "Investigation of the Seattle Police Department," *United States Department of Justice Civil Rights Division*, December 16, 2011, page 3

⁹⁹ *Ibid*, 6- 7

¹⁰⁰ *Ibid*

in 1990 and 18 by 2001.”¹⁰¹ Research in the state has found that prison expansion is not capturing dangerous offenders, and incarcerating drug offenders is costing more than it’s worth hence the change in policy.

The Cost of Incarceration, the Price Society Pays

Crimes stemming from drug use and unemployment account for the majority of people incarcerated. Society as a whole is paying a high price for the incarceration of over a million non-violent offenders. Families are destroyed as family members are sent to jail. When asked how the War on Drugs has impacted your life, a former convict states,

I guess I could be further along in life. I could have more stuff and have not had to do as much jail time as I did or treatment or suffer the consequence I was facing if I had listened but once you get in it, drugs, it’s a struggle so the impact is that I got to think about stuff every day, the money I have spent, you know over the years I could see a huge impact. My daughter has seen a lot of stuff at an early age. She has issues, separation issues due to my addiction.¹⁰²

The criminalization of hundreds of thousands of Blacks is destroying the community. Not only does the War on Drugs affect the criminal but the family as a whole suffers the consequences.

The getting tough on crime policies created out of the Reagan administration led to the politicization of the criminal justice system.¹⁰³ Upon release from prison, Black criminality plays a significant role in the ex-convict’s life. Once a prisoner is released or on parole an ex-convict or anyone fitting such a description can be stopped and searched

¹⁰¹ Pew Center on the States, “One in 31: The Long Reach of American Corrections,” *op.cit.*, 18

¹⁰² Name withheld, interview by Crystal Campbell, his home in Tacoma, WA, March 14, 2013.

¹⁰³ Devah Pager, *Marked: Race, Crime, and Finding Work in an era of Mass Incarceration* (Chicago: University of Chicago Press, 2007), 9

at any time based on police discretion.¹⁰⁴ A 31 year-old former offender convicted of unlawful possession of a controlled substance, whom I will simply refer to as Markus for his privacy, says one of the biggest challenges he faces is being labeled a criminal.

The way society looks at me, I guess, uh you know. Kind of judges you and I'm automatically labeled a felon. People knowing because I'm open about what happened, and my past addiction. Being a felon you have to be upfront about what's happened in your life, especially in job interviews because they're going to find out regardless. My background follows me. I can't own a weapon which sucks cause I like to shoot guns, I can't vote. If I get pulled over I'm already labeled. I'm getting searched automatically because of my rap sheet.¹⁰⁵

African-Americans are more likely to be stopped, arrested, charged with a felony and convicted in comparison with Whites.¹⁰⁶ The threat of police violence through police supervision, monitoring, and harassment makes the ex-convict unable to escape the label of criminal.

Washington State has racially neutral policies with racially disparate effects.¹⁰⁷ Among felony drug offenders, Black defendants are 62 percent more likely to be sentenced to prison when compared with similarly situated White defendants. In Seattle alone the Black arrest rate for any other drug outside of marijuana is twenty-one times higher than the White arrest rate for the same offense, and Washington State has one of the highest levels of such disparity found in the country.¹⁰⁸ With a population of three percent, and a jail population of 28 percent, the Black prison population in Washington is nine times greater than their share of the general population.¹⁰⁹

¹⁰⁴ Alexander, *New Jim Crow*, op. cit., 141

¹⁰⁵ Name withheld, interview by Crystal Campbell, phone interview in Tacoma, March 10, 2013.

¹⁰⁶ Ibid

¹⁰⁷ "March 2012 Preliminary Report on Race and Washington's Criminal Justice System," *Washington Law Review* 87, no.1, 5.

¹⁰⁸ Ibid, 5

¹⁰⁹ Ibid, 12

In trying to combat racial profiling, six states, including Washington State, adopted laws that require officers to police themselves when arresting subjects.¹¹⁰ Recording racial data during traffic stops exposes the racial component of traffic stop, and a record exists to show whether race is a factor in the arrest.¹¹¹ Drawing attention to profiling is designed to make the profiler modify their behavior.¹¹² With the project still in its beginning phases, there remains a question as to the effectiveness of the new laws.¹¹³

The Washington State Patrol (WSP) suggests that race does not affect police discretion regarding stops and searches, yet in reality Seattle drug arrests patterns are shaped by race. In 2005, the black incarceration rate in Washington was 2,522 per 100,000 residents, greater than the national average.¹¹⁴ Concerned with disproportionality within the criminal justice system, The Task Force on Race and Criminal Justice System formed. Racial and ethnic disparities in Washington's incarcerated population are indisputable, yet collecting ethnic demographic information is difficult in that many local jails are not required to do so, as in the case of King County jails. A State Trooper who joined the force in 1999, referenced a law passed in 2000 saying, "troopers have to keep a record of every interaction we have with every motorist we come in contact with. It doesn't matter if they are stopped, searched, cited, arrested or sent off with a warning, we

¹¹⁰ John Nagy, "States use Data to Wrestle with Racial Profiling," *Pew Center on the States*, July 24, 2000. Accessed January 14, 2013

< <http://www.pewstates.org/projects/stateline/headlines/states-use-data-to-wrestle-with-racial-profiling-85899392062>>

¹¹¹ Nagy, "States use Data to Wrestle with Racial Profiling," *op. cit.*

Jim Brunner, Anne Koc, and Susan Gilmore, "Is there Racial Profiling? City Vows to Find Out," *Seattle Times*, August 2000.

Thomas E. Perez and Jenny A. Durkan, "Investigation of the Seattle Police Department," *op. cit.*, 29-31.

¹¹² Thomas E. Perez and Jenny A. Durkan, "Investigation of the Seattle Police Department," *op. cit.*, 6

¹¹³ "March 2012 Preliminary Report on Race and Washington's Criminal Justice System," *op. cit.*, 6

¹¹⁴ *Ibid*, 17

have to report on that interaction and make a note of that driver's race and ethnicity. We can look at them and make an observable assessment based solely on our perception.¹¹⁵ Statistics gathered by the WSP, show that Black, Native American, and Hispanic drivers are stopped at higher rates than White motorists yet, when searching a vehicle, the search of a vehicle operated by a White driver is more likely to result in a seizing of assets.¹¹⁶ Minorities are racially profiled and stopped at higher rates, yet those stops do not result in the seizing of assets. Instead, assets are more likely to be seized from the significantly smaller numbers of white drivers whose vehicles get searched.

Differences in reporting practices and offending patterns contribute to the overrepresentation of Blacks in the criminal justice system.¹¹⁷ The State Patrol is required to list demographic information about the stops and arrests they make, but other law enforcement entities do not have to adhere to the same practices, and local police in some jurisdictions are not required to list the race of arrestees and disparities can go on unnoticed.

Seattle has one of the highest rates of racial disparity in drug arrests in the United States. Blacks are eight percent of the population yet make up 67 percent of those arrested for delivery of a serious drug.¹¹⁸ Powder cocaine and ecstasy are the most widely used drugs in Seattle, yet crack cocaine arrests account for 74.1 percent of all arrests for delivery of a drug, and 73.4 percent of those arrested for delivery of crack-cocaine are Black.¹¹⁹ Washington States forfeiture laws allow local law enforcement

¹¹⁵ Name withheld, interview by Crystal Campbell, phone interview, March 17, 2013.

¹¹⁶ "March 2012 Preliminary Report on Race and Washington's Criminal Justice System," *op. cit.*, 34-36

¹¹⁷ *Ibid*, 20

¹¹⁸ *Ibid*, 29

¹¹⁹ *Ibid*, 30

agencies to retain 90 percent of net proceeds from drug-related assets seized.¹²⁰ A Washington State Trooper says “yes, if an officer suspects there is a drug crime going on we can seize the property right there on the spot and take the offender to jail.¹²¹” When his home was raided in connection with his drug activities Markus says, “[The Police] they took it all. They took vehicles, jewelry, money, electronics, phones, anything that looked like it was of value or could have been bought, purchased, bartered or traded for drugs, they took.¹²²” Markus had his young daughter with him at the time of his arrests and even she became a victim of forfeiture laws when police refused to release her car seat so that her grandparents could take her home as her father was placed in the back of the police car. “My parents had to go to Wal-Mart in the middle of the night to purchase a car seat to take my daughter away. They wouldn’t let them put her in the car without a seat, yet they wouldn’t allow them to take the seat. The police could take anything they deemed as bought with drug money, but I mean come on, it was a car seat for my 19 month old daughter at the time.¹²³”

Section 69.50.505, of Washington’s Rev. Code, requires that law enforcement officers only have to have “probable cause” to believe the property is linked to criminal activity in order to seize it. Police discretion allows for millions of dollars of property to be seized each year and the burden of proof is placed on the victim. An article in the *Seattle Post Intelligencer*, found that two out of 10 persons whose property is seized are never charged with a crime, and in cases where the individual is charged four out of 10

¹²⁰ Ibid 31

¹²¹ Name withheld, interview by Crystal Campbell, phone interview in Tacoma, March 17, 2013.

¹²² Name withheld, interview by Crystal Campbell, his home in Tacoma, WA, March 14, 2013.

¹²³ Ibid

are never charged, yet they still do not get their property back.¹²⁴ Asset forfeiture is a form of punishment yet it is beneficial to the state, in that money from forfeitures support police operations. Author Michelle Alexander states, “we haven’t ended racial caste in America, we have merely redesigned it... Today, as she sees it, ‘poor folks of color are shuttled from rundown and underfunded schools to brand-new, high-tech prisons — and then out to life as a permanent undercaste.’¹²⁵” The prison system of today is exploitative and perpetuates a system of racial caste. Incarceration can also be a form of profit in that the prison itself can gain profits through prison labor.

The Exploitation of Convicts through Prison Labor

There are more people in the United States prison and jail system than there have ever been in history, while corporations turn imprisonment into profit. Throughout history, African-Americans have had their labor exploited and the growth of prisons is an extension of that exploitation. Through the United States prison system, the remnants of slavery and the exploitative free labor provided by the system become evident in today’s society¹²⁶.

While many sectors of the economy struggle with the recession, the prison industry is booming. Almost concurrently with the rise in incarceration rates there has been a rise in prisons for profit. Crime rates have dropped yet the privatization of the prison system has given companies an incentive to keep jails full. Throughout history the criminal justice system has been integral in keeping Blacks disenfranchised. Through

¹²⁴ Sam Skolnik, “Initiative to Limit Police Seizure Power Falls Short,” *Seattle Post Intelligencer*, January 2, 2002.

¹²⁵ Jack Lessenberry, “Detroit Audience Hears of New Racial Caste System,” *The Blade*, December 7, 2012.

¹²⁶ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, op. cit.

imprisonment, corporations have access to a pool of cheap labor that keeps the economy broken, yet is beneficial to big business.

Following slavery, Black Codes controlled the movement of Blacks and basic acts such as sitting or standing in a prohibited area warranted a conviction. Through convict-leasing, businesses entered prisons and selected laborers forced to work for the business or individual until their debt is paid or their sentence completed.¹²⁷ Following the Civil War, prison labor helped with the construction of roads, railroads, and in the industries of lumber, mining, steel work. Convict-leasing ended only when it came in opposition with labor unions.

Labor unions lobbied against the leasing of convicts to private corporations.¹²⁸ Through the Depression years, unionists held a belief that the use of prison labor threatened an already overcrowded workforce, interfere with the free market, and represented a threat to capitalism, in that prison labor did not adhere to the same laws and regulations as free labor.¹²⁹ The government created a “state-use” system to alleviate the concerns of labor unions. Under the “state-use” system, prison labor could be used solely for state projects, making convict and union labor no longer in competition with one another, while at the same time allowing prisoners to offset their costs to the state.¹³⁰ In the wake of New Deal Legislation, the Hawes-Cooper, Ashurst Sumners, Walsh-Healey, and Wagner Acts each worked to protect the labor movement by prohibiting the sale of

¹²⁷ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, op. cit. Davis, *Are Prisons Obsolete?*, op. cit.

¹²⁸ Kim Gilmore, “Slavery and Prison: Understanding the Connections,” *Social Justice* 27, no. 3 (2000): 195-206.

¹²⁹ Ibid

¹³⁰ Ibid

prison labor goods to any entity other than state owned institutions.¹³¹ American workers and unions no longer had to worry about prison labor interfering with free labor.

Union membership gave Blacks access to better wages, Social Security benefits, and seniority rules. No longer relegated to menial, unskilled position, Blacks represented competition within the labor market, in schools, and neighborhoods. In housing, redlining denied Blacks homeowner and business bank loans, segregating them to areas of poverty.¹³² After World War II, Seattle's Black population contended with restrictive covenants and other forms of housing discrimination to keep the group concentrated in certain areas.¹³³ Between, 1940-1960, through the use of covenants 78 percent of the Black community of Seattle concentrated in an area called the "Central District," also the area with the highest crime rates for the city. With the passage the Civil Rights Act of 1964, which outlawed discrimination in public facilities, Blacks slowly gained access to better jobs and areas outside the "Central District." Although residential discrimination is no longer legal, its effects continue to reverberate in society.¹³⁴ After gaining ground through legislation, the mechanization of jobs once held by Blacks took away African-Americans' newly established position within the working class.¹³⁵

As de-industrialization gripped the nation and record job losses and unemployment occurred, along with get tough on crime laws being passed, imprisonment rates rose. Citing overcrowding and inadequate facilities, legislatures built hundreds of new prisons in the U.S. despite no clear evidence of rampant crime. Many of the people

¹³¹ Heather Ann Thompson, "The Prison Industrial Complex: A Growth Industry in a Shrinking Economy," *New LaborForum* 21, no. 3 (2012): 40

¹³² Martha Biondi, *To Stand and Fight: The Struggle for Civil Rights in Postwar New York City* (Cambridge, Massachusetts: Harvard University Press, 2003), 112.

¹³³ "March 2012 Preliminary Report on Race and Washington's Criminal Justice System," *op. cit.*, 11

¹³⁴ *Ibid*

¹³⁵ Robert H. Zieger, *American Workers, American Unions: The Twentieth Century* (Baltimore: The Johns Hopkins University Press, 2002)

facing incarceration in the United States get “criminalized for crimes stemming from unemployment, suggesting that if the state had had a handle on unemployment, there may not have been a need for more prisons.”¹³⁶ Prison lease programs made the imprisonment of African-Americans profitable for the state despite its repercussions on the African-American community.

A New Deal Project formed in 1933, called the Prison Industries Reorganization Administration (PIRA), carried out a massive study of prison labor in the 50 states.¹³⁷ The study took place over the course of 50 years and with no indication of violent crime rates rising in the United States, the PIRA recommended expanding the prison system and the construction of new prisons in almost every state.¹³⁸ New Deal laws made it impossible to re-access prison labor but later on, with the accelerating imprisonment rates that followed de-industrialization, businesses applied legislative pressure to reconsider the barriers.¹³⁹ The Justice System Improvement Act of 1979 allowed businesses to once again tap into prison labor.

The American labor movement is facing a crisis. In April of 2012, the unemployment rate for American workers remained at 7.1 percent, and for African-Americans the rates nearly doubled at 12.5 percent.¹⁴⁰ Union membership has been on the decline since 1983, when Unions represented 20.1 percent of workers, but today that

¹³⁶ Gilmore, “Slavery and Prison: Understanding the Connections,” *op. cit.* 203-206

¹³⁷ Steve Fraser and Gary Gerstle, *The Rise and Fall of the New Deal Order, 1930-1980* (Princeton: Princeton University Press, 1989)

¹³⁸ *Ibid*

¹³⁹ Thompson, “The Prison Industrial Complex: A Growth Industry in a Shrinking Economy,” *op. cit.*, 40.

¹⁴⁰ “Table A-2. Employment Status of the Civilian Population by Race, Sex, and Age,” *Bureau of Labor Statistics Economic News Release*, Accessed January 27, 2013
<www.bls.gov/news.release/empst.t02.htm>

number has fallen to Unions representing 11.8 percent of workers¹⁴¹ America's poor and working class citizens are facing a crisis partially created several decades ago with the tough on crime policies that came about in the 1980s, and the reintroduction of prison labor.

In May 2004 the Washington State Supreme Court ruled that the prison program ran afoul of the state Constitution. The Department of Corrections closed the program down and over a dozen businesses had to clear out.¹⁴² In November of 2007, voters changed the Constitution so prisons could invite companies to set up shop within the state's 17 prisons and provide jobs and training skills to inmates to prepare them for their release.¹⁴³ Unions and private businesses still showed concern in regard to the unfair competitive advantage prison programs have with the outside world, but Correction Industries assured them they would "make sure we're not recruiting someone who will be a challenge for other businesses."¹⁴⁴ Many Washington State Correction Industries programs are in the business of making furniture, but the furniture can only be used if it is bought by state agencies, and other government and non-profit organizations. So long as the product isn't sold to the public, it is not in competition with private-sector companies. Companies in Washington are in the business of making eyeglasses for the Department of Social and Health Services, food, furniture and more, and prisoners can get paid as little as 42 cents an hour for working in the prison cafeteria.

The prison system of today is exploitative and its origins date back to pre-Civil

¹⁴¹ "Union Members Summary," *Bureau of Labor Statistics Economic News Release*, Accessed January 27, 2013 <www.bls.gov/news.release/union2.nro.htm>

¹⁴² Joseph Turner, "Jobs for Prison Inmates on the Way Back in State," *The News Tribune*, August 25, 2008.

¹⁴³ Ibid

¹⁴⁴ Ibid

War America. Convict leasing is no longer legal yet many companies engage in a form of convict leasing. Prisoners of the 21st century engage in textile work, construction, service work, manufacturing , shoes, clothing, detergent, and recycling metal and wood products.¹⁴⁵ 37 percent of states have legalized the use of prison labor by private organizations. Paying well below minimum wage, businesses do not have to outsource and go overseas for cheap labor when there is such a large supply of cheap labor within the borders of the United States.

Under the guise of helping prisoners develop job skills, corporations are closing down shops and moving their businesses into prisons, where they are not held to the same regulations in order to maximize profit. Businesses such as IBM, Revlon, Motorola, Boeing, Microsoft, Honeywell, Intel, Nordstrom's, Victoria's Secret, and Chevron use prison labor at a fraction of the cost.¹⁴⁶ Prison labor produces products such as night-vision goggles, body armor, jeans, t-shirts, communication devices, aircraft components, jars, containers, etc. Convicts produce products that many people use on a daily basis without knowing the cost to an individual's well-being that went into the product. Prison labor is beneficial to employers in that prisoners are not afforded the same rights or wages as workers outside prisons.

In prison, corporations do not have to contend with competition from other businesses for their employees. Corporations are running prisons-for-profit, and operating as “multi-billion dollar industries in every state, and throughout the federal prison

¹⁴⁵ Jaron Browne, “Rooted in Slavery: Prison Labor Exploitation,” *Urban Habitat / Race Poverty and the Environment*, Accessed March 1, 2009 <<http://www.urbanhabitat.org/node/856>>

¹⁴⁶ Angela Y. Davis, "Masked Racism: Reflections on the Prison Industrial Complex," *Colorlines*, Fall 1998.

system.”¹⁴⁷ Corporations using prison labor do not have to worry about Union organizing, health benefits, unemployment insurance or workers’ pay.¹⁴⁸ Prisons supply a readily available, dependable source of labor that doesn’t require vacation or overtime pay.¹⁴⁹

When asked about his experience in prison Markus says,

In the old jail I got to go outside twice a week on the roof for an hour but it was winter so it was cold, raining, snowing. In jail, you don’t get warm clothes, you’re in flip flops and coveralls. In new jail your partially outside, you go out to get fresh air, can’t see anything it’s a foggy piece of plastic that you’re looking through. Its daylight and you can’t see anything, nobody can see you and you can’t see them. It’s [prison] an institution, trying to get you institutionalized going on their speed. People come in and think they are gonna do what they want to do and that’s not the case. You know like at your mom’s house, at your dad’s house, prison you got a whole new set of parents when you get there, they tell you when to go to sleep and when to get up. They treat you like you’re a grown man daycare babysitting camp, treat you like your 13, that’s how they talk to you. Doesn’t matter if you are big or small, or old, you are a machine.¹⁵⁰

18 federal prisons in the business of making furniture do not pay any of their workers the \$13.04 average wage that workers outside of prison demand; instead, the range is from \$0.12 to \$1.15 per hour in federal prisons, while state prison wages range from \$0.13 to \$0.32 per hour.¹⁵¹ Corporations have learned that prison labor can be as profitable as the sweatshops found in third world countries.

State agencies can force inmates to do landscaping, painting, and other maintenance work.¹⁵² Prison labor can be used on any state projects so long as that prison is awarded by a contract. In states such as Virginia, Ohio, New Jersey, Florida, and Georgia, inmates are not paid for their work but instead receive time off their sentences in exchange for their work. While working, some are subject to detrimental health and

¹⁴⁷Browne, “Rooted in Slavery: Prison Labor Exploitation,” *op.cit.*

¹⁴⁸ Ibid

¹⁴⁹ Thompson, “The Prison Industrial Complex: A Growth Industry in a Shrinking Economy,” *op. cit.*, 41.

¹⁵⁰ Name withheld, interview by Crystal Campbell, phone interview, March 10, 2013.

¹⁵¹Thompson, “The Prison Industrial Complex: A Growth Industry in a Shrinking Economy,” *op. cit.*, 40-41

¹⁵²Ibid, 42

safety conditions. In Florida's Federal Prison Camp, clouds of cadmium and lead dust engulfed both guards and prisoners to the point where they required medical attention. Despite the health defects that come with lead exposure, people at the prison did not get protective wear, such as masks, gloves, or coveralls. This took a toll on their health, but no one entity is held accountable for the health of prisoners. Businesses are flourishing with the use of prison labor, at the cost of the prisoners themselves. A group of people that are already poor and marginalized are being exploited while imprisoned. Prison labor is profitable for private companies, but the penal system as a whole does not produce wealth through prison labor.¹⁵³ Through prison labor, social wealth is devoured.¹⁵⁴ Although less than 10 percent of prisoners are subject to prison labor that number is climbing with the construction of more privatized prisons in more states.

Instead of spending so much money on incarceration, more money should be allocated to the contributors of incarceration, namely crimes that stem from joblessness. Drug treatment programs, education, job training, and subsidized housing will be better ways of spending the money. But few people see these alternatives, nor can prisoners see the larger picture. When asked about alternatives to prison, an ex-convict says,

A lot of people when they get into it they don't think there is a life afterward. It's scary, change is scary. I'm not used to change but I like change cause it's the unknown so you know, rehabilitation or just I guess, going into programs there's stuff out there's NA. A lot of people, like I said they don't like change don't want to take first step they are scared. Maybe a way to get to the people. I don't know. Incarceration for some, everyone is different. Not the same engine in every car, you know, what might work for me might not work the same for the next person.

I went to treatment, two programs one for behavior modification, the other was a thirty-ninety day whatever they feel you can complete. It helped. Behavior modification brings you back to reality its upfront, in your face, they are effective in some ways, in some ways they weren't. But that's how it is you got to find the good in the bad, the light inside

¹⁵³ Davis, "Masked Racism: Reflections on the Prison Industrial Complex," *op. cit.*

¹⁵⁴ *Ibid*

the dark place.¹⁵⁵

Life After Imprisonment

Through the criminal justice system, there are more people under correctional control than there ever was at the height of slavery.¹⁵⁶ The stigma of having a criminal record continues to affect the lives of Blacks following their release. With a criminal record in their background, Blacks suffer discrimination in nearly all faucets of life. They face discrimination in employment as employers don't want to hire ex-convicts. They are unable to attend college because of the high cost of tuition and inability to get student loans. Having a drug conviction on one's record makes the individual ineligible for Pell grants or student loans. Ex-convicts also face discrimination in public assistance programs such as TANF or public housing in that a conviction means they cannot receive welfare benefits.¹⁵⁷ Programs designed to help the impoverished are not reaching their intended targets in that thousands of ex-convicts released each week are ineligible for aid. Unable to find meaningful employment, attend college, or provide for their families, many reengage in criminal activity.¹⁵⁸ An ex-convict reflecting on his time states,

Prison life is down time, makes you think, makes you better yourself. A lot of people take it and try to become better criminals and use it to figure out how can I use it and not get caught. They converse amongst each other, but if you take it in, and say I don't like this or the food, or sleeping situations, I'd rather be independent then you are better off. The first time I sold anything illegal was when I was ten. It started out as fireballs, I was selling them for 1 dollar a piece in elementary school. I started listening to older kids talking about how they were getting money, this and that selling weed, and I heard people at school talking about how they smoked, and they needed some, so that's how it started. 5th grade, ten years old I said I'll get you some tomorrow, got some money and got some weed and that's how it started. I don't even know [how many times I have been incarcerated], I would say less than ten, more than 5. I finally stopped because it's not a fun place to be. Having a reunion like seeing the same people there like oh man I saw you in there last time or see them on the street doing the same thing

¹⁵⁵ Name withheld, interview by Crystal Campbell, his home in Tacoma, WA, March 14, 2013.

¹⁵⁶ Alexander, *New Jim Crow*, op. cit., 180

¹⁵⁷ Ibid, 141

¹⁵⁸ Pager, *Marked: Race, Crime, and Finding Work in an era of Mass Incarceration*, op. cit, 30

over and over. And I don't like to be told to get on my bunk, you know bunk up. You're sharing a bunk bed with a grown man. I don't know, just being in there so many times it just wasn't fun anymore¹⁵⁹.

Imprisonment carries with it a stigma that can last a lifetime.

Once convicted of a felony, options for reintegration are limited. After finding work, financial shackles make it difficult for ex-offenders to maintain a productive life for themselves. The debt, prisoners worked off during convict-leasing, is now a debt being worked off for the government. Following release, ex-prisoners are required to make payments to a host of agencies including probation departments, court costs, child-support payments, and drug treatment and testing programs.¹⁶⁰ Ex-offenders can have 35-100 percent of their wages garnished. In addition, felons must also report to parole officers, and minor parole violations can land them back in jail making it difficult to maintain employment.

When a person is convicted in a Washington State superior court, the court may order a payment of a "legal financial obligation (LFO)." Legal Financial Obligations can be a supplement to prison, jail, and probation sentences for people convicted of crimes in Washington courts. All first time felons must be assessed a 500 dollar Victim Penalty Assessment Fee for each conviction and a one hundred dollar DNA Collection Fee at the time of their conviction.¹⁶¹ Although fines and fee amounts are specified by statutes, judges have a great deal of discretion when imposing fees and fines. In 2004, one defendant convicted of methamphetamine was assessed \$610 in fees and fines, and a similarly situated defendant in a different county within the same time period was

¹⁵⁹ Name withheld, interview by Crystal Campbell, his home in Tacoma, WA, March 14, 2013.

¹⁶⁰ Alexander, *New Jim Crow*, op. cit., 154-155

¹⁶¹ "March 2012 Preliminary Report on Race and Washington's Criminal Justice System," *op. cit.*, 26

assessed \$6,710 in fees and fines.¹⁶² In 2004, the average fees owed by defendants were \$11,471 over the defendant's lifetime. Washington state charges 12 percent interest on unpaid LFO's and the financial obligations often persist for years following conviction and release. Legal debt and an inability to pay off debts further limits access to housing, education, and the economic market.¹⁶³ Ostracized people who are already in poverty become further impoverished following their conviction with the fees that have mounted up during their incarceration, in addition to the cost of living. Unable to pay their mandated fees, some end up remanded to the prison system.¹⁶⁴ The prison system uses indebted servitude in its functioning, in that after release ex-offenders continue to pay back into the system and be denied their basic inalienable rights.

Following the Civil War, Blacks contended with poll taxes, "grandfather clauses," literacy and "good character" tests in keeping them from asserting their right to vote.¹⁶⁵ Testing barriers are no longer socially acceptable yet thousands of Blacks are unable to enact their voting rights. In the year 2009 in Washington 37,000 felons in prison or on community supervision are unable to vote.¹⁶⁶ The long running case of *Farrakhan V. Gregoire* contends that the law banning ex-convicts from voting violates the Voting Rights Act of 1965. Washington State incarcerates a disproportionate number of minorities, leading to a disproportionate number being denied the right to vote. In a surprise ruling, the law was ruled to be in violation of the Voting Rights Act but the ruling was overturned the following year by the 9th Circuit Court in September 2010. After imprisonment, in many states including Washington, Blacks are banned from voting for a

¹⁶² Ibid

¹⁶³ Ibid, 27

¹⁶⁴ Alexander, *New Jim Crow*, op. cit., 156

¹⁶⁵ Ibid, 192.

¹⁶⁶ Martin, "Washington State Felons Should have Voting Rights, Federal Court Rules," *op. cit.*

period of time or sometimes for life. 25 percent of Black men in Washington are disenfranchised from voting.¹⁶⁷ In the days of slavery the 3/5 rule determined a state's representation in government. Although slaves could not vote, they were counted as 3/5 of a person to increase a slave holding states representation in politics.¹⁶⁸ Today, incarcerated individuals cannot vote, yet they are counted toward a state's representation in government.

The average cost of imprisoning a person is over \$23,000 a year.¹⁶⁹ Despite measures being taken to curtail crime, the number of people in prison has risen drastically. Society, as a whole is paying a high price for the incarceration of over a million non-violent offenders. Washington State has a small Black population yet, disproportionality means that Blacks are 13 times more likely than whites to be incarcerated for crimes related to drugs, far exceeding the national average of seven times more likely. Federal spending on inmates is well over 50 billion dollars a year, and the government is spending three times more on incarceration than on education.¹⁷⁰ With the financial crisis that the United States is now facing it seems as if too much money is being spent on incarceration. Money spent on incarceration should be allocated to things such as education, healthcare, job creation, etc. Equality is the law, but social practices do not always match the law. For all the advancements the United States has made African-Americans remain disproportionately represented as defendants in the legal system.

¹⁶⁷ Ibid

¹⁶⁸ Alexander, *New Jim Crow*, op. cit., 192.

¹⁶⁹ Liptak, "U.S. Imprisons One in 100 Adults, Report Finds," *op. cit.*

¹⁷⁰ Ibid

African-Americans are incarcerated at alarming rates across the United States. Discriminatory policies criminalize African-Americans and keep them in a subjugated position. African-Americans have been disenfranchised for generation upon generation and the “war on drugs” is amplifying the problem. Although slavery is illegal, social policy that seems racially motivated is keeping a whole group of people in bondage through the prison system, not only in Washington State but across the United States as a whole. Change will have to take place one state at a time, and although Washington’s shift to focusing on drug treatment rather than incarceration is a step in the right direction, much work is still needed.

Work Cited

- Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: Perseus Distribution, 2010.
- Aos, Steven. "Washington's Drug Offender Sentencing Alternative: An Evaluation of Benefits and Costs," *Olympia: Washington State Institute for Public Policy*. Document No. 05-01-1901. January 2005.
- Beckett, Katherine, Nyrop, Kris, Pfingst, Lori, Bowen, Melissa. "Drug Use, Drug Possession Arrests, and Question of Race: Lessons from Seattle." *Social Problems* 52, no. 3 (2005):419-441.
- Bernstein, Lee. *African Americans and the Criminal Justice System*. (ProQuest LLC: Cambridge, UK, 2009) 16-18. Accessed February 2, 2010
<http://gateway.proquest.com.offcampus.lib.washington.edu/openurl?url_ver=Z39.88-2004&res_dat=xri:bsc:&rft_dat=xri:bsc:ft:essay:30BERN>
- Biondi, Martha. *To Stand and Fight: The Struggle for Civil Rights in Postwar New York City*. Cambridge, Massachusetts: Harvard University Press, 2003.
- Boerner, David and Lieb, Roxanne. "Sentencing Reform in the Other Washington." *Crime & Justice* 28 (2001): 71-136.
- Brunner, Jim, Koc, Anne, and Susan Gilmore. "Is there Racial Profiling? City Vows to Find Out." *Seattle Times*, August 21, 2000.
- Browne, Jaron. "Rooted in Slavery: Prison Labor Exploitation." (*Urban Habitat / Race Poverty and the Environment*). Accessed on March 1, 2009
<<http://www.urbanhabitat.org/node/856>>
- Butler, Paul. "The People, One Hundred Years of Race and Crime." *The Journal of Criminal Law and Criminology*, Volume 100, No.3 (2010): 1043-1069.
- Currie, Elliot. *Crime and Punishment in America*. New York: Metropolitan Books, 1998.
- Davis, Angela. *Are Prisons Obsolete?*. New York: Open Media, 2003.
- Davis, Angela Y. "Masked Racism: Reflections on the Prison Industrial Complex," *Colorlines*. Fall 2008.
- "Drug and Crime Facts." *Bureau of Justice and Statistics*. Accessed May 13 2011
<<http://bjs.ojp.usdoj.gov/content/DCF/duc.cfm#drug-related>>
- Engen, Rodney L., Gainey, Randy R., Crutchfield, Robert D. and Weis, Joseph G.. "Discretion and Disparity under Sentencing Guidelines: The Role of Departures and Structured Sentencing Alternatives." *Criminology* 41 (2003): 99-130.

- FBI. "Crime Statistics." *Crime in the United States*. Accessed on January 15, 2007.
<<http://www.fbi.gov/stats-services/crimestats>>
- Fraser, Steve and Gerstle, Gary. *The Rise and Fall of the New Deal Order, 1930-1980*. Princeton: Princeton University Press, 1989.
- Gilmore, Kim. "Slavery and Prison: Understanding the Connections," *Social Justice* 27, no. 3 (2000): 195-205.
- Klein, Susan R. and Steiker, Jordan M. "The Search for Equality in Criminal Sentencing." *The Supreme Court Review* 2002, (2002): Rev. 223.
- Leary, Joy Degruy. *Post Traumatic Slave Syndrome: America's Legacy of Enduring Injury and Healing*. Portland: Uptone Press, 2005.
- Lessenberry, Jack. "Detroit Audience Hears of New Racial Caste System." *The Blade*, December 7, 2012.
- Lichtenstein, Alex. *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South*. London: Verso, 1996.
- Liptak, Adam. "U.S. Imprisons One in 100 Adults, Report Finds." *New York Times*. Accessed on February 27, 2009
<http://www.nytimes.com/2008/02/29/us/29prison.html?_r=2>
- Mauer, Marc and King, Ryan S. "A 25 Year Quagmire: The War on Drugs and its Impact on American Society." *The Sentencing Project*. September 2007: 1-29.
- Mackey-Kallis, Susan and Hahn, Dan. "Who's to Blame for the Drug Problem? The Search for Scapegoats In the War on Drugs." *Communication Quarterly*, Volume 42, no. 1 (Winter 1994): 1-22.
- "March 2012 Preliminary Report on Race and Washington's Criminal Justice System," *Washington Law Review* 87, no.1: 1-89
- Martin, Jonathan. "Washington State Felons should have Voting Rights, Federal Courts Rule." *Seattle Times*, January 5, 2010.
- Musto, David F. *The American Disease: Origins of Narcotic Control*. New York: Oxford University Press, 1999.
- Nagy, John. "States use Data to Wrestle with Racial Profiling." *Pew Center on the States*, July 24, 2000. Accessed January 14, 2013
<<http://www.pewstates.org/projects/stateline/headlines/states-use-data-to-wrestle-with-racial-profiling-85899392062>>

- Nielsen, Amie. "American Attitudes Toward Drug Related Issues from 1975-2006: The Roles of Period and Cohort Effects," *Journal of Drug Issues*, Volume 40, no. 2 (April 2010): 461-493.
- Olsen, David. "Disparity of Prison Odds seen in State." *Seattle Times*, July 11, 2011.
- Pager, Devah. *Marked: Race, Crime, and Finding Work in an era of Mass Incarceration*. Chicago: University of Chicago Press, 2007.
- Perez, Thomas E. and Jenny A. Durkan, Jenny A. "Investigation of the Seattle Police Department." *United States Department of Justice Civil Rights Division*, December 16, 2011.
- Petersilia, Joan and Greenwood, Peter. "Mandatory Prison Sentences: Their Projected Effects on Crime and Prison Populations." *The Journal of Criminal Law and Criminology* 69, no.4 (1978): 604-615.
- Pew Center on the States, "One in 31: The Long Reach of American Corrections." *Pew Charitable Trusts*, Accessed June 2009, <http://www.pewtrusts.org/our_work_report_detail.aspx?id=49694>
- "Proclamation 4929 -- Crime Victims Week, April 14, 1982." *The Public Papers of President Ronald W. Reagan*. Ronald Reagan Presidential Library. Accessed 15 May 2011 <<http://www.reagan.utexas.edu/archives/speeches/1987/061287d.htm> >
- "Radio Address to the Nation on Federal Drug Policy October 2, 1982." *The Public Papers of President Ronald W. Reagan*. Ronald Reagan Presidential Library. Accessed 15 May 2011 <<http://www.reagan.utexas.edu/archives/speeches/1987/061287d.htm>>
- "Report on Cocaine and Federal Sentencing Policy Chapter 6." *The National Legislative and Law Enforcement Response to Cocaine*. United States Sentencing Commission. Accessed May 14, 2011 <http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Drug_Topics/199502_RtC_Cocaine_Sentencing_Policy/CHAP6.HTM>
- "Report to Congress: Cocaine and Federal Sentencing Policy May 2007." *United States Sentencing Commission*, Accessed January 2, 2012 <http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Drug_Topics/200705_RtC_Cocaine_Sentencing_Policy.pdf>
- "Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings." *U.S. Department of Health and Human Services*. Substance Abuse and

- Mental Health Services Administration Center for Behavioral Health Statistics and Quality Accessed September 2011
<<http://www.samhsa.gov/data/NSDUH/2k10Results/Web/PDFW/2k10Results.pdf>>
- Robison, Jennifer. "Decades of Drug use: The "80's" and "90's." July 9, 2002 Accessed May 5, 2011" <<http://www.gallup.com/poll/6352/decades-drug-use-80s-90s.aspx>>
- Seghetti, Lisa M. and Smith, Alison M. "Federal Sentencing Guidelines: Background, Legal Analysis, and Policy Option.," *Congressional Research Service Report for Congress* . June 2007. Accessed May 12, 2011
<<http://www.fas.org/sgp/crs/misc/RL32766.pdf>>
- Skolnik, Sam. "Initiative to Limit Police Seizure Power Falls Short." *Seattle Post Intelligencer*, January 2, 2002.
- "Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System August 1991." United States Sentencing Commission, Accessed January 2, 2012,
<http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/199108_RtC_Mandatory_Minimum.htm>
- "Table A-2. Employment Status of the Civilian Population by Race, Sex, and Age." Bureau of Labor Statistics Economic News Release. Accessed January 27, 2013
<www.bls.gov/news.release/empstat.t02.htm>
- Thompson, Heather Ann. "The Prison Industrial Complex: A Growth Industry in a Shrinking Economy." *New Labor Forum* 21, no. 3 (2012): 38-47
- Tonry, Michael. "The Effects of American Drug Policy on Black Americans, 1980-1996." *European Journal on Public Policy and Research* 4, no. 2: 36-62.
- Tonry, Michael and Malewski, Matthew. "The Malign Effects of Drug and Crime Control Policies on Black Americans." *Crime and Justice* 37, No. 1 (2008): 1-44.
- Tonry, Michael. "The Social, Psychological, and Political Causes of Racial Disparities in American Criminal Justice System." *Crime and Justice* 39, No. 1 (2010): 273-312.
- "Trends in Initiation of Substance Use." *SAMHSA*, an agency in the Department of Health and Human Services. June 16, 2008
<<http://www.oas.samhsa.gov/NHSDA/2k1NHSDA/vol1/Chapter5.htm>>
- "Trends in Victimization by Race." *Bureau of Justice and Statistics*. Accessed May 13

- 2011 <<http://bjs.ojp.usdoj.gov/content/glance/tables/racetab.cfm>>
- Turner, Joseph. "Jobs for Prison Inmates on the Way Back in State." *The News Tribune*, August 25, 2008.
- "Washington Drug Control Update." *Office of National Drug Control Policies*. Accessed March 21, 2012, <http://www.whitehouse.gov/sites/default/files/docs/state_profile_-_washington.pdf>
- "Washington Drug Threat Assessment." *US Department of Justice*. Accessed February 22, 2012, <<http://www.justice.gov/ndic/pubs3/3138/3138p.pdf>>
- Zieger, Robert H. *American Workers, American Unions: The Twentieth Century*. Baltimore: The Johns Hopkins University Press, 2002.