

Spring 2006

# Disenfranchising the Black Other: A Critique of American Drug Laws

Heather Dorsey

Follow this and additional works at: <https://dsc.duq.edu/etd>

---

## Recommended Citation

Dorsey, H. (2006). Disenfranchising the Black Other: A Critique of American Drug Laws (Master's thesis, Duquesne University). Retrieved from <https://dsc.duq.edu/etd/496>

This Immediate Access is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Electronic Theses and Dissertations by an authorized administrator of Duquesne Scholarship Collection. For more information, please contact [phillips@duq.edu](mailto:phillips@duq.edu).

Disenfranchising the Black Other: A Critique of American Drug Laws

A Thesis

Presented to the

McAnulty College and Graduate School of Liberal Arts

Duquesne University

in partial fulfillment of

the requirements for the degree of

Master of Arts

by

Heather Marie Dorsey

March 28, 2006



Table of Contents	
Acknowledgements	iii
Chapter One: An Introduction	1
Let's Have a War	1
Difference, Disproportionality, Disenfranchisement	6
A Word on Method	11
Chapter Two: The Question of Race	14
The State of the Disunion	14
Marginalization	18
White Drugs, Black Criminals	21
Chapter Three: Theoretical Framework	30
Marx and Critical Theory	30
The Other	35
Synthesizing Black Otherness and Class Difference	39
Otherness and Cocaine	42
Chapter Four: Disenfranchisement	46
An Overview	46
Disenfranchising the Other	49
Chapter Five: Caveats, Implications, Recommendations	56
References	62

## Acknowledgements

The writing of this work has been a long and interesting journey. Though I can almost smell my sweat and tears in its very pages, their writing was not alone done by me or my hand, but also by the intangible contributions of a number of others. I assure you, these others are no mere objects to me. I would like to thank each in turn for what they have provided to this work.

First and foremost, I would like to thank my thesis committee, Dr. Charles Hanna and Dr. Norman Conti. Their willingness to allow me to engage this topic in a slightly unconventional way, guidance, and encouragement when I experienced frustration were invaluable in this difficult process. In addition, I have gained more insight and knowledge from their wisdom in their classrooms and in our other work together than I know I even now realize. No one could ask for a more enthusiastic and inspiring pair of teachers.

However, it is often the smallest things which make the difference between success and a total disaster, and who can create the conditions for averting disaster better than a fabulous woman like Joan Lapyczak? I want to extend an enormous thank you to Joan for everything she has done for me in my six years at Duquesne University. Nice chats, candy, soda, deadline reminders, and methods to avoid crisis were important parts of Joan's toolkit for making all of our lives better!

I cannot even begin to imagine where I would be right now if I did not have the loving and supporting family with which I have been blessed. My parents, Gregory and Mary Jane, and my big brother John have been dragged through more concerts, presentations, conferences, and general frenzies than any of us care to remember! At every accomplishment and disappointment, they have always told me to pursue what was in my heart, and to be the best person that they knew I could be. I love them more than I can say, and I hope to continue to strive to live up to their expectations.

My life would be dull indeed were it not for the love of my constant companion, David Hoinski. When I needed help or distraction during my graduate work, he was always there to show me new ways to think about and look at the world. He provided me with the big things I needed, like love and support, but also the little things, like taking me out for a much needed dinner after night class or helping me work through a dense chapter in whatever book I was reading. Most importantly, David made me laugh, and for that above all else I love and thank him.

Finally, I want to thank the other four members of the Fearsome Fivesome: Ian Harlow, Kristy Krivickas, Kristine Liebner, and Gabrielle Rebottini. Two years ago, we were strangers, but numerous classes, long hours in the computer lab, frantic late night phone calls and a few trips to the bar later, we have become close friends. For me, they have been fiercely loyal companions on this strange journey through graduate school, always willing to help me whenever I needed it, from ordering pizza for GSO meetings to listening to my raving. Above all, they reminded me of Seneca's important lesson: "It is more fitting for a man to laugh at life than to lament over it."

## Chapter One: An Introduction

### *Let's Have a War*

Perhaps one of the most important features of any government is the power to imprison its own citizens who seek to do harm to other citizens and to the country. In a republican or democratic form of government, those elected by the people empower police, judges, juries, and prisons to seek out offenders of the law, try them for their crimes, convict them based upon evidence of wrong doing, and punish them for their actions. However, not only is this one of the most important duties of any government, it is also one which must be scrutinized and constantly adapted, because the ability to detain citizens is one not free from the potential for injustice and unequal consideration. Criminal laws and their enforcement can make a people safe, but they can also make a people uneasy if the laws and their enforcement are not always in the spirit of the country's most cherished beliefs and values. It is imperative that these laws be written fairly, as well as apply to all equally, and when they are transgressed, that transgression must be punished fairly and equally. When they are not fair, just, and equal, they threaten the freedom and justice upon which all rely in a government based on those principles.

The United States has a government of checks and balances, and its three parts, the legislative, executive, and judicial branches, work together to ensure that the other parts are performing their duties correctly. The executive sees to it that the legislature's laws are carried out properly, the judiciary addresses disputes over the propriety of acts of the legislature and the executive, and so on. This process was designed to see that no one branch

contained all the power of decision making, execution, and judgment of the laws. However, the system is not fool proof, and as it is made of men, it is not perfect. Because of this imperfection, laws which are made by the legislature, enforced by the executive, and evaluated by the judiciary must be examined from all angles by all concerned, and if iniquities are suspected or found, calls must be made to modify these laws so that they embody the spirit of the United States Constitution and its founding values. These judgments must be carefully considered and highly critical, because problems are not always immediately apparent and the viewer may be held by the influence of the same prejudices as those making them, causing flaws to be not apparent at first glance. It is this problem of the influence which holds us, and its effect on our laws, which I would like to examine here by way of providing a new perspective with which to critique our laws to determine if they are truly equal and just.

For quite some time, the United States has confronted the issue of dangerous substances, substances which alter, blunt, and harm the functions of the mind. Each generation has had to deal with its own particular substance of concern, substances which pose a danger to health and a risk to society at large. By outlawing these substances, the United States has made their use not just deviant or problematic, but also subject to the sanctions of the criminal justice system, and their users criminals. Though treatment and rehabilitation have been alternatives with which we have tinkered, by and large we return to punishment of drug users out of concern for their negative effects on the fabric of society.

This country has a history of spreading fear about drugs when they move from fashionable use by the upper class citizenry to the minority classes of the urban streets. The mid- to late-nineteenth century saw a rise in the population of Asian immigrants, particularly

in the West, who came in search of the new jobs to be had in construction and searching for gold (Inciardi 1992). These immigrants brought with them the practice of not simply taking opium orally, but smoking it in opium dens; though the habit was not specifically outlawed, its association with the feared Chinese immigrants in urban cities motivated the regulation of opium dens (Inciardi 1992). Opium's history as a dangerous drug did not stop there, however. In the early twentieth century, opiate-containing drugs were prescribed rather freely by physicians to treat a variety of problems, and they were also widely available on the unregulated drug market, an availability which led to increased use and addiction (Acker 1995). As addiction levels increased, it was speculated that the addicts were not simply people who were treating a medical problem, but also "a new type of addict...: a young man from the city slums who began taking drugs not because of disease, but in search of thrills" (Acker 1995, p. 123). Concerns about over-prescription and addiction caused Congress to pass laws to regulate the labeling of drugs containing opiates, which ultimately led to the Harrison Narcotic Act of 1915, which forbade the selling of opiates and cocaine unless under orders from a physician (Acker 1995). These laws were followed up by the Jones-Miller Bill of 1922 which governed the importation and distribution of narcotic substances, and it was hoped these laws would stop the drug trade and end addiction to such drugs as cocaine and heroin by making it more difficult to obtain these substances (Inciardi 1992). Other memorable interventions into drugs such as cocaine and heroin were the 1970s Rockefeller drug laws of New York, laws so intent on incarcerating those who moved narcotics such as cocaine and heroin that they were used to set people up to boost arrest records of black urban residents allegedly on suspicion of drug dealing (Gonnerman 2004).

Marijuana was also a drug of concern in this period and beyond. In the 1920s, use of marijuana was associated with minority groups, and described as “an ‘intoxicant of blacks and wetbacks’ that might have a corrupting influence on white society, it was considered particularly dangerous because of its alien (spelled ‘Mexican’) and un-American origins” (Inciardi 1992, p. 21), and laws regulating it and propaganda against it emerged strongly in the 1930s. Concern over marijuana continued, even culminating in a fear in the 1960s and 1970s that soldiers in Vietnam carried out their missions under the influence of “Mary Jane,” and that this drug posed such serious dangers to society that it required more strict legal intervention which sought to rehabilitate addicted users (Parenti 2000). One dangerous substance even warranted the creation of an amendment to the Constitution to outlaw its sale and distribution: alcohol. Though the prohibition amendment was not passed until 1917, temperance movements had been active for quite some time before its inception throughout the entire history of the United States, often particularly aimed at preventing the distribution of intoxicating liquors to slaves (Walton, Jr. and Taylor 1971). Though the prohibition of alcohol was repealed and alcohol is no longer an illegal substance in America, its place in the history of the regulation of intoxicating substances is of great importance since concerns over its impact on the morality of society earned it a place in our constitutional history.

This brief sketch introduces an important part of our criminal justice system’s past, and that is the history of laws outlawing mind-altering substances which were considered dangerous to society and its individual members. Often associated with minorities, the economically distressed, and urban areas, drugs have long been believed to lead to immorality and violence, and throughout time its use has been regulated as these concerns became more apparent, not only in the United States but in a number of other countries as

well. Fears of the evils of these drugs leaking from the urbanized areas into the larger society caused us to take action against their users and drug dealers, sometimes only attempting to stop the importation of drugs into the country, sometimes trying to treat addicts, and sometimes punishing those involved in the distribution and use of these substances. Certainly the press behind these regulations was an admirable one: drugs and intoxicating liquors have damaging effects on their users, and addiction to them can lead to further problems. However, has there been something else at work in the regulation of these substances? Is there evidence that another motive lies underneath the propaganda of the immorality of drug use?

No portion of the history of the battle against drug use is more plagued by these questions than the so-called War on Drugs, a fight begun under the presidency of Ronald Reagan in the 1980s which sought to eliminate drug addiction not by regulation of importation or treatment of users, but by punishment of anyone and everyone involved in the drug trade, from the top dealer to the bottom user. Also, no group has experienced the marginalization associated with being targeted as a perpetrator of the evils of drug use as blacks during this period. It was believed that drug use was rampant in the inner-cities of America, and that its dangers would soon inflict themselves on innocent youth in the suburbs and threaten the safety of all. An anti-drug army was formed, the The Organized Crime Drug Enforcement Task Force, to fight not only those who brought drugs into the United States, but also to seek out and arrest users and addicts, who were considered “as much a part of the conspiracy chain as the person who distributes” (Parenti 2000, p. 47). Crack, the villain *par excellence* of the War on Drugs, was of particular importance in the veritable media frenzy which surrounded this moral panic about drug use. The news was full of footage of crime

and poverty ridden urban neighborhoods featuring black crack addicts in run-down crack houses (Hurwitz and Peffley 1997) which no doubt created in the public an image of the War on Drugs as a war against the evil lurking in the poor, minority, urban neighborhoods, an evil which must be controlled.

A theme of all of the wars against drugs has been the association of these substances with urban areas, particularly those which are economically distressed and dominated by minority populations, the dangerous classes. Certainly drug abuse is not exclusive to such areas, but this particular class of users seems to be of the greatest concern in the propaganda of the wars on drugs and is featured as the class of greatest concern in the implementation of these wars. If we are to examine these laws critically, as we should all laws, we must ask ourselves why such attention is paid to these classes. Are these classes more prone to drug use? Are these neighborhoods more greatly affected by drug abuse than others? Or is there something else at work here which shifts our focus on such issues to this class and seeks to punish them and deliver other consequences to them *en masse*? We must always consider the possibilities of injustice in all laws, and I would like to suggest that a critical examination of our current drug laws could yield some disconcerting possibilities.

#### *Difference, Disproportionality, Disenfranchisement*

What concerns those critiquing our drug laws, and that which causes those critics to call the foundations of the drug war into question, are the way in which the laws are written and the differences in the punishments for transgressions of the laws for which they provide. Disparities in data about our criminal justice system produce great concern, such as: if blacks account for only 12.77% of the population (US Census 2004), then why do they account for

40.7% of those incarcerated in our state and federal prisons (Bureau of Justice Statistics 2005)? Why are 8.4% of black males between the ages of 25 and 29 incarcerated, while only 1.2% of white males between those ages are in prison (Bureau of Justice Statistics 2005)? To be imprisoned has serious consequences for those being punished, including removal from society and one's responsibilities, immersion in a captive and often violent environment out of which there is no easy way, and often a restriction or elimination of certain rights. With such a large portion of blacks facing these consequences, and also such a large proportion of blacks as opposed to whites facing this, we are forced to examine reasons behind this difference in incarceration rates.

A cornerstone of sociological study has long been the impact of being a minority amongst the majority population, the plight facing some 12.77% of the black American population. Many of the earliest sociologists had been concerned with inequality in society, a situation in which a dominant class, either overtly or covertly, subjugates a less powerful class in society and works its will upon it (Allen and Chung, 2000). This class often receives unequal and sometimes ill treatment at the hands of the dominant class, and is marginalized by the dominant class, given less opportunities for advancement and excellence, and not permitted to enjoy the full breadth of freedom which belongs to the dominant class. America has had a sordid history with marginalizing its minority classes through law with slavery and segregation, a long period which saw laws that purposefully stripped blacks of their rights first to be free human beings, and later to be free citizens. With the difficulties encountered in the attempts to eliminate these marginalizing laws in the US, such as the Civil War and the battles of conservative whites against integration, we must question whether the ghosts of these unequal laws haunt us. With the high proportion of blacks in prison at the hands of one

of our government's most powerful responsibilities, we must wonder if we have truly exorcized the ghosts of racism's past. If we have not, why do they persist?

The first step in answering these questions is to examine our laws and see where, if anywhere, inequalities exist in the laws themselves which might have the consequence of disproportionately targeting minorities. One body of legislation which presents itself as the starting point for such investigations is the legislation concerning drug offenses. This is so because drug offenders represent such a large proportion of inmates: in 2002, drug offenders accounted for 21.4% of state prisoners and in 2003 drug offenders represented 55% of federal inmates (Bureau of Justice Statistics 2005). With such a large number of incarcerated citizens in prison for drug offenses, we must look at the laws governing drug crimes to ensure that they are doing the job of protecting the general population in a fair and just manner.

If we investigate the drug laws in the United States, we find some interesting features of them to which our attention is called concerning the focus of the War on Drugs of the eighties, a war which obviously continues today: cocaine. Though chemically equivalent, the sentences for powder cocaine and its cheaper relation crack cocaine are quite different. At the beginning of the drug war, it required the possession of one hundred times as much powder cocaine as crack cocaine to receive the same sentence under the Anti-Drug Abuse Act of 1986, and though these differences have changed somewhat, it still requires the possession of ten times as much powder cocaine as crack cocaine to receive a similar sentence (Parenti 2000). Why this difference for two drugs which are chemically the same, particularly when crack is far cheaper than powder cocaine? In cases challenging the laws, arguments in support of the difference claimed that crack was more dangerous and addictive

and required stiffer sentencing, and also that one possessing small amounts of crack is more likely to have intent to deal those drugs than one possessing similar amounts of powder cocaine (Alexander and Gyamerah 1997). Are there alternative answers for the questions about the difference?

Many have indeed suggested alternative answers, answers which are troubling. A number of scholars writing about these issues (Parenti 2000, Reiman 2004, Tonry 1994a) have suggested that the actual purpose of these laws is to disproportionately imprison blacks, a very controversial claim. Those who hold this belief find that the effects of these laws in disproportionately imprisoning blacks results from their predisposition to drug use due to a lack of appropriate job opportunities in the inner cities, and a focus in the war on street level dealers who appear to be more likely to be black than those above them in the drug dealing food chain (Duster 1997). In summary, these laws fight against an epidemic which is more likely to occur in poor minorities in inner cities and particularly target those members of the drug trade who are more likely to be black (or Latino in certain areas of the country). These features have had the effect of putting a high number of blacks in prison for drug related crimes, an effect which we must consider, and ask if it is only a side effect of the drug war, or if it is its very purpose.

What other consequences, besides the accusation of racism in the criminal justice system, are derived from disproportionately putting a particular class of citizens behind bars? Most obviously, the consequence is that more blacks are lifted out of society and separated from it in penal institutions, institutions which can be demoralizing and violent. Putting people in prison does not simply remove them from society, however. It also removes them from civic life, a life which allows citizens in a republic or democracy to have their voices

heard about issues which are of concern to them and call for change. The most important expression of this involvement in civic life is the right to vote, a right cherished by many citizens in the United States, because it permits citizens to select those who will make their laws in a way with which they agree. However, many states strip this right from citizens in prison on felony charges, often not just for the duration of their stay, but for the rest of their lives. In forty-eight states and the District of Columbia, felons in prison are prohibited from voting, in thirty-six felons cannot vote while on parole, in thirty-two felons cannot vote while on probation, and in fifteen states, felons are restricted from voting after they have completely exited the criminal justice system, three of which never reinstate voting rights (The Sentencing Project 2005). Though the constitution does not permit the right to vote to be withheld from any person over the age of 18, the criminal justice system has caused this right to be taken away from many felons. Without this right, they are unable to influence the processes which may affect their position in society.

All the above facts put together, we have created this picture of the state of affairs in the United States: strict drug laws in the United States disproportionately target offenders who tend to be black, thereby creating a larger proportion of blacks in prison than in the total population, and strip them of their voting rights which prevents them from influencing the system which could change these unequal laws. This problematic situation requires careful thought and examination, and if it is found that these laws are truly being used to unequally affect a particular race or class of people and then take important rights away, we must consider changing these laws. Policy makers must tirelessly explore all possible alternatives to our laws to make them as fair and just as possible to eliminate all suggestions of

impropriety in their writing. If we do not, we are in danger of undermining the foundations of the very process which allows citizens to influence changes in the laws which affect them.

This student of policy analysis would like to suggest that there is something at work behind the marginalization of minority races in society which allows us to make laws which subjugate certain peoples to the dominant white race. Behind the tendency to marginalize minority groups is a fear and distrust of that which is different from us, those who are other-than-us. Without realizing it, the dominant group, infused with the power of majority, is able to turn that fear and distrust into action, and take steps to ensure that the other will never be able to take that power away. In the United States, we have created laws which disproportionately target criminals who are more likely to be black, give them a higher sentence because their situation in life predisposes them to a particular crime, and then strip them of the right to be involved in the process which could change this injustice. Whether this fear of the other is conscious or not, we must be on the alert to guard against any process which causes us to target those most at risk for abuse, marginalized minorities. As citizens of the United States, we are all guaranteed the equal protection of the laws by our Constitution, and when the laws themselves are unequal, they require serious scrutiny and change.

#### *A Word on Method*

A number of statistics will be employed throughout this study to illustrate the state of the population of the United States, as well as the prison population, and these statistics will be drawn from the United States Census, the Bureau of Justice Statistics, and a number of authors who have explored the problems of imprisonment and disenfranchisement. These statistics are extremely important if one is to establish the quantitative state of the

populations under consideration. However, the focus of this study is not exclusively these statistics.

The examination of blacks in the American society and in prison provided throughout this discussion is as much an examination of the psyche of the system which has created this situation as it is one of the raw facts. I hope to demonstrate, through an exploration of theories of marginalization and difference of the critical criminologists, how our modern capitalist society has created a class which is an easy target for discrimination and oppression. The theories of Karl Marx have inspired an entire field of criminology that addresses the effects of capitalism on the class of workers, the proletariat, which often must bear the brunt of progress and change through exploitation and often misery. In addition to these theorists, I will use authors such as Simone de Beauvoir to explain the concept of “otherness,” a psychological condition where the self differentiates itself from that which is different in an attempt to maintain power and supremacy. I propose that de Beauvoir’s examination of the othering of women in society in *The Second Sex* (1989) can be applied to racial minorities in the United States, and that the othering of those minorities allows the more powerful classes, namely middle and upper class whites, to purposively attempt to target the minority classes through law in an effort to remove them from civic life by taking away their right to vote. I hope to show that, rather than targeting class to remove those who are othered by their economic disadvantages, race is in reality that which is targeted by drug laws and disenfranchisement statutes.

I will use a combination of a secondary analysis of preexisting statistics on the prison and general population in the United States and a historical study of relevant laws and events surrounding the war on drugs and beyond to explain the state of things today and how we got

here. In addition to this secondary statistical analysis and historical survey, I will focus on a more theoretical discussion of the problem of using race as a master status, and the effect that has on how we look at what is considered deviant. How we define what is deviant has an important impact on what and who we regulate through law. I believe that a combination of critical criminology's considerations of marginalization with an explanation of theories of otherness will highlight the dangers in defining as deviant behaviors to which our society has already predisposed a class of people who are socially classified as different.

## Chapter Two: The Question of Race

### *The State of the Disunion*

Before we can explore the reasons for the proposition that drug laws are written to disproportionately affect blacks, we must investigate the relevant statistics about the current state of the black population in the United States to determine if there are any vulnerabilities in this group in general which may make it susceptible to unequal treatment by the law. If drug abuse, particularly among younger populations, is associated with low educational attainment, economic hardship, and feelings of alienation from the larger society (Moore 1995), are blacks more likely to face these risk factors than whites? Though statistics also tell us that blacks do not report using drugs more than whites (Meier 1992), perhaps other factors are at work which may distinguish blacks from whites for purposes of legal discrimination and increased arrest patterns.

If economic hardship is a risk factor for drug abuse, how do blacks fare in issues of economic distress as compared to whites? For 2004, the Census Bureau (2005b) reports that the average annual household income for non-Hispanic whites was \$48,977, while for blacks it was \$30,134. Individual incomes for whites averaged at \$27,414, while for blacks the average income was \$16,035 (US Census 2005b). Leaving aside reasons for the disparities in these incomes, we at least see that there is a wide difference in the average income between the races. In addition, we find that while 8.6% of whites are in poverty, a staggering 24.7% of blacks are living in poverty (US Census 2005b). A quite alarming difference in unemployment rates for the two races also exists, as 4.1% of whites in January 2006 were unemployed, while more than double that percentage of blacks, 8.9%, was without jobs

(Bureau of Labor Statistics 2006). Similar disparities exist in other indicators of economic and social standing, such as the percentage of the population which is without health insurance (11.3% of whites, 19.7% of blacks), and the percentage which do not own their own homes (24% of whites, 51.1% of blacks) (US Census 2005b). These dissimilarities in wealth and income paint a picture of a black population which is more likely to be poor, unemployed, and without stable housing as compared to their white counterparts.

Differences in educational attainment are also striking. Access to post-secondary education is today becoming a more and more important factor in obtaining well-paying employment, though the costs associated with it often make continuing education difficult for low-income families. As of 2004, 84.4% of non-Hispanic whites had a high school diploma or higher, while 73.3% of blacks had obtained this level of education (US Census 2005a). The disparities in post-secondary educational attainment are greater, with 26.8% of whites obtaining a bachelor's degree or higher, and only 14.4% of blacks (US Census 2005a). These numbers are even lower for black males, 72.3% of whom obtain a high school degree or higher and 13.2% receive a bachelor's degree or higher (US Census 2005a). The ability to obtain quality post-secondary education is an important factor for those wishing to rise out of poverty by attaining the mobility necessary to find skilled employment, a job category which is on the rise with the decline in low skill manufacturing jobs. Those blacks living in the ghettoized inner-cities who do obtain quality post-secondary education and get white collar jobs quickly move out of their neighborhoods, thus removing them from the ability to take on a role as mentor in their home communities (Jargowsky 1996).

Blacks experience other factors which make them more susceptible to traditional explanations for drug use and addiction. In 1990, seven out of eight people living in inner-

city ghettos belonged to a minority group, many of whom were black (Wilson 1996). These inner-cities tend to be racially and ethnically segregated, not just from the less economically distressed areas around them, but also from within (Jargowsky 1996). With such a high proportion of residents of high-risk neighborhoods identifying as black, and the transient nature of living in such a neighborhood with little opportunity for stable employment or housing, these residents are exposed to high levels of risk factors for drug use. Not only are the blacks in these neighborhoods physically segregated from whites, they are also socially segregated. The American history of slavery, discrimination, and racism has, according to some theorists, left blacks feeling alienated from American culture and outsiders in their own country (Moore 1995). With no connection to their own heritage, blacks are forced to assimilate a culture which is not their own, a culture which is dominated by white, European values, though the history of discrimination against them prevents them from successfully assimilating into this culture (Moore 1995). These feelings of separation and alienation, particularly in neighborhoods which are unstable and distressed, create an atmosphere highly conducive to criminal behavior generally and drug related crimes specifically.

Opportunities for employment are important for bringing populations out of poverty and instilling a sense of responsibility, integration, and stability. However, if these opportunities are not available, or if they are just beyond one's reach, the lack of chances to obtain gainful employment can be detrimental if that lack is an epidemic in an entire community. The decrease in low skill manufacturing jobs closer to city centers has had a dramatic impact on poor inner cities, and as these jobs disappear, so do opportunities for the residents of these cities to make a legitimate living (Wilson 1996). We have already stated that rates of unemployment are far higher for blacks than they are for whites, and with so

many blacks living in these poor inner cities, the drop in job opportunities in inner cities is particularly destructive for the poor black population. As jobs have moved from the inner city and in to the suburbs, the inability to find suitable work nearby, as well as difficulties in affording means of transportation to go to the suburbs to obtain employment, large populations of poor blacks have been left without a means of rising out of poverty through earning a legitimate income (Wilson 1996). Since the movement of jobs out of cities is a factor beyond the control of those left jobless, many who are left jobless remain jobless. This inability to obtain employment only further alienates poor blacks from the white working world.

Low levels of post-secondary educational attainment in the black population as opposed to the white population leaves the less educated blacks with few opportunities for skilled or white collar positions in areas outside of their distressed neighborhoods. As previously mentioned, those that do gain access to an advanced degree and employment quickly leave their neighborhoods, only adding to the transient and unstable nature of these urban ghettos. Those left behind still face the same bleak situation: few opportunities for educational advancement which would allow for legitimate employment, employment which would help them to obtain health insurance, transportation, and their own homes. It seems apparent from the statistics that while there are poor whites without access to these things, blacks disproportionately feel the strain of unemployment, poverty, and barriers to educational advancement and must therefore adapt by becoming involved in criminal activity, particularly drug related activity.

### *Marginalization*

We have now speculated that blacks have more risk factors for drug use, though we have also assumed that blacks and whites use drugs in approximately the same proportions: in 1988, as the war on drugs was getting underway, 37% of whites reported having used drugs at some point in their lives, and 36% of blacks reported drug use (Meier 1992). If drug use levels are the same, are arrests and convictions for drug crimes the same for blacks and whites? Once again, let us examine some key statistics relating to the black population's rates of arrest and imprisonment.

Already, we have stated that while blacks account for 12.77% of the US population (US Census 2004), they comprise 40.7% of the total incarcerated population (Bureau of Justice Statistics 2005), a disparity which only widens in the young male population, those most at risk for drug addiction. These disproportions exist also in rates of arrest in general as well as in arrests for drug offenses. According to the Uniform Crime Report, of the 10,021,050 total arrests in 2004, 27.1% were black and 70.5% were white (FBI 2005). Drug offenses accounted for 1,249,088 arrests in 2004, or approximately 12.5% of all arrests, a higher proportion than any of the FBI's index crimes (FBI 2005)<sup>1</sup>. Of those arrested for drug offenses, 65.8% are white, while 32.9% are black, another alarming disproportion from their representation in the general population (FBI 2005). In state prisons, which incarcerated over 1.2 million of the approximately 2.2 million citizens who had spend time in prison by year-end 2004, 21.4% of inmates were in prison for drug offenses, and of those 265,000 drug offenders, approximately 47.5% were black and 24% were white (Bureau of Justice Statistics

---

<sup>1</sup> The Federal Bureau of Investigation defines the following offenses as index crimes: murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson.

2005). Blacks seem to be bearing the brunt of the war on crime in terms of arrests and convictions, though similar proportions of their population to whites have used drugs.

An examination of the above statistics demonstrates for us the consequences of actions of any number of people: police, judges, or the drug users themselves. However, they do little to explain how and why this situation has come to pass. Now that we see that there is clearly an irregularity in the system somewhere which causes us to imprison our black population at a higher rate than our white population, we must determine why this is, because if unequal treatment based on race is at the heart of this situation, it must certainly be changed. In the introduction, we examined the history of the American war against intoxicating substances, and saw how from the days of the temperance movements, it was clearly of concern to the majority population that the use of drugs by minorities was dangerous to the public order, and something which required legislation to control it. The beginning of our most powerful war on drugs in the 1980s seems no less concerned with the affect of drug use on minorities than any of the previous drug wars. The propaganda was certainly targeted at the fears of the white middle and upper classes that minorities were moving into the suburbs from the cities to push drugs on their children, and these somewhat manufactured fears created an acceptance by the public of any measures which needed to be taken to fight this evil menace (Parenti 2000).

By their very nature, minority groups are susceptible to these kinds of attacks by the majority group, that group which holds the power. Because of their low numbers in the population, it is difficult to organize effectively to battle the injustices of the majority, despite the fact that a country like the United States purports to have systems in place to prevent the trampling of the minority's rights by the majority. The United States, like any other country,

has a history of the marginalization of minority groups by the majority, though some of these conflicts have been resolved more quickly and easily than others. During periods of high levels of European immigration into the United States, Italian, German, and Irish immigrants faced discrimination and segregation out of a fear of their difference from the majority US population (Tonry 1994a). However, despite this adversity, these groups have managed to integrate and assimilate into American society with somewhat better success than blacks, a population which has been in the United States much longer than the European immigrants. It is claimed that “race and ethnicity are socially constructed identities that vary across time, space, situation, and perception” (Allen and Chung 2000, p 796), meaning that the marginalization of these groups also varies according to the perception of the majority of the minority groups’ difference and opposition to the majority culture.

Critical theorists in criminology (Lynch, Michalowski, and Groves 2000) tell us that the purpose of making laws is not only to maintain social order, but also to maintain some level of social control, and those making the laws tend to make them to reflect their beliefs in which behaviors reflect threats to their control or, more specifically, which groups represent those threats. After the end of slavery in the United States, “separate but equal” statutes legally allowed the separation of blacks from whites as a method of preventing their encroachment into the dominant white society. Once these laws were finally eliminated in the 1950s and 1960s, however, their underlying purpose and ideology was not so easily swept away, and today “the elimination of legal barriers has done little to improve the welfare of the larger majority of more marginalized people of color who continue to be mired within the historically enforced grips of poverty, broken families, and resource-deprived urban neighborhoods” (Allen and Chung 2000, p. 798). This sad fact is reflected in the

previously-mentioned statistics concerning income, employment, home ownership, health insurance possession, and educational attainment in the black population. While many of the unequal and unjust laws have been eliminated, their force still keeps blacks subservient to whites, the unfortunate effect of being a marginalized group which is perceived as in opposition to the social order.

The issue of marginalization is not unique to our time or our country. Sir Thomas More (1965) summarized this problem in 1516 in his classic work, *Utopia*:

You allow these people to be brought up in the worst possible way, and systematically corrupted from their earliest years. Finally, when they grow up and commit the crimes that they were obviously destined to commit, ever since they were children, you start punishing them. In other words, you create thieves, and then punish them for stealing! (p. 49)

Through our history of segregation and discrimination, we have created a class of black citizens so used to the economic and social consequences of being black, namely being economically disadvantaged and socially ostracized, that it is difficult for them to find a place in our social order. This alienation makes it difficult to find gainful employment and escape the grips of poverty and crime. Though of late our political climate has seen fit to couch their problems in terms of personal responsibility rather than the responsibility of the society (Wilson 1996), it is important for the maintenance of a just social order that we identify aggravating factors to this situation. We must ask: do our laws and policies perpetuate the distressing state of affairs of blacks in the United States?

### *White Drugs, Black Criminals*

Though cocaine had been used among the middle and upper classes for many years, when the official and brutal war on drugs began in the 1980s, it was not images of musicians

and artists using drugs to fuel their creative fires or bored suburban whites using it to get excitement out of life that dominated the media, it was images of poor minorities committing strings of crimes to obtain the resources necessary to fund their crack habits (Reinarman and Levine 1997a). Though the two substances are treated quite differently, as we shall see later, powder cocaine and its cheaper sister, crack, are very similar drugs, derived from the same plant, but processed differently. Morgan and Zimmer (1997) describe the production of crack cocaine, made widely available in 1985:

...cocaine hydrochloride is dissolved in water, sodium bicarbonate (baking soda) is added, and the mixture is heated and then dried into hard, smokeable pellets. These pellets contain not only alkaloidal cocaine, but sodium bicarbonate and whatever other fillers and adulterants had been added earlier to the powder. (p. 134)

This shows that the main difference between powder cocaine and crack is the level and kind of additives and cutting agents in a given amount, of which there are usually more in crack, which leads to its decreased purity and low price on the street. While the comparatively high price of powder cocaine had made it a drug for the upper classes, with the introduction of cheap crack, the poor residents of inner cities now had access to this highly addictive drug.

Crack became the rallying point for the war on drugs, surrounded by anti-drug propaganda to fill America with the fears of the demoralizing possibilities for the crack epidemic. Drugs became, as they often do, an example of the differences between the in-group, in this case white middle and upper class Americans, and the out-group, impoverished blacks: blacks smoke crack and destroy their lives, and whites must protect their youth from the influence of these drugs. To alleviate this fear, in 1986, Congress passed the Anti-Drug Abuse Act, one of the strongest bills of its kind to punish all participants in the drug trade from dealers to, more specifically, users, treating all in between as criminals to be judged

harshly (Parenti 2000). Rather than requiring treatment for drug addicts, as previous bills concerning drugs had, this new law set high minimum sentences for the possession of drugs, though with a curious difference: the bill set a minimum five-year sentence for the possession of five grams of crack cocaine, while it required the possession of five hundred grams of powder cocaine to receive the same sentence (Parenti 2000). For two drugs which are essentially composed of the same mind-altering substance, why the difference?

The unequal provisions of the bill did not go unchallenged, nor did the possibilities for the motivations behind the difference go unnoticed. After the bill was passed at the federal level, several states passed similar laws with the same disparities in sentences. In Minnesota, the law required the possession of three or more grams of crack to receive a sentence of twenty years in prison, while it required ten or more grams of powder cocaine to get a similar sentence (Alexander and Gyamerah 1997). In a 1990 case before its state Supreme Court challenging the sentencing difference as designed to disproportionately punish minorities, the government defended the law by saying that the differences in possession amounts reflected the amount required to deal the drug, and also that crack was a more addictive substance than powder cocaine, thus it required a more harsh sentence; the court did not agree and declared the statute unconstitutional (Alexander and Gyamerah 1997). Despite these few victories against the disparate sentencing, and the alteration of the federal law to allow for only a one-tenth instead of a one-hundredth difference in sentences, the difference still remains. If intent to deal and addictiveness are not sufficient explanations for the differences in sentences, what then can account for this inequity?

There are some readily available answers to our questions of why the war on drugs of the 1980s produced such long sentences for drug users, carried greater sentences for crack

than powder cocaine, and disproportionately imprisoned blacks. Clearly, the introduction of crack cocaine in 1986 was a matter of concern, as the use of such a dangerous and addicting drug can carry significant negative consequences. In addition, since cocaine is an unregulated drug, those who sell it are free to cut it with unsafe substances to increase the amount of drugs available to sell, thereby increasing profits. Like any illicit substance, crack and powder cocaine pose a risk to the unborn children of female drug users, as well as to the mother herself. All of these are relevant reasons for the enactment of laws regulating its use, just as relevant as similar reasons for the regulation of prescription drugs by the FDA. Chemicals with such strong effects on the human body and mind should be scrutinized.

These are certainly not the only reasons why drugs like cocaine, crack, marijuana, and heroin are illegal, however, as plenty of dangerous drugs are legally available in the United States which are also addictive. As discussed above, the moral panics which surrounded the popularization of such substances created pressure to write stringent legislation to control their distribution. However, in light of the fact that certain segments of the population have been affected by this legislation more than others, namely blacks, the other motives behind the writing of drug laws are important for policy makers. In an article published by the *Washington Post*, it was reported that according to a study done by Human Rights Watch, whites use drugs with more regularity than blacks, yet blacks are more likely to be imprisoned for drug offenses (Fletcher 2000). This article states, “black men are sent to state prisons on drug charges at 13 times the rate of white men, according to the study, which analyzes a wide range of Justice Department information for 37 states to come up with its findings” (Fletcher 2000). Though drugs are not exclusively a black problem, the rate at which blacks are arrested for drug crimes has largely made it one. Once the news of drugs

being used by minorities breaks, it seems that, despite the profile of the average user, laws target those so called dangerous populations, those minority populations whose deviance is assessed as threatening to the majority.

Prohibition of the use of dangerous substances has often been touted by its supporters as necessary to maintain the moral and legal order in a society, and the laws which result from these drug scares are supposed to cure numerous social ills (Reinarman and Levine 1997). What ills can we say in general are associated with drug use? One can speculate that the punishment of drug use in the hopes of lessening the widespread nature of its use could potentially diminish poverty, violence, isolation of those prone to addiction, and a number of other problems. Drug users are ostensibly punished for exacerbating these ills through the effects of their drug use: they must steal, kill, and remain unemployed to be drug users, so, if this is true, in theory the attempt to get drugs off the street should alleviate the strain on neighborhoods which these problems cause. This all sounds like fantastic policy, unless of course it is not drug use which causes poverty and a neighborhood burdened by crime, but rather poverty and neighborhoods blighted by crime which cause drug use.

Without even speculating about the rate at which whites may actually use drugs more than blacks, let us assume that the number of drug users arrested somehow serves as a representative sample of drug users, setting aside the possibility that cops may target blacks for arrest, or have blacks more readily available to arrest. If black men are sent to prison for drug charges at a rate of 13 to 1 over whites (Fletcher 2000), and drugs are a “black problem,” could this not mean that blacks are rather more likely to be the victims of poverty, inequality, unemployment, and a number of other disadvantaging factors? We have demonstrated that blacks are disproportionately poor, unemployed, and without stable

housing as compared to their representation in the population. If the causes of drug addiction are these factors of poverty and marginalization, does not targeting drug users necessarily target those who are more at risk for poverty and crime-ridden neighborhoods, or, more specifically, does this not target blacks? Considering that there is a harsher sentence for a particular drug which is cheaper and more readily available to people in poor neighborhoods, crack, than its sister drug which is more expensive and used more by higher-classed whites, not only is a behavior targeted which is caused by factors which plague blacks more, but the form of that behavior to which blacks are more prone is even further targeted! This is a truly troubling situation.

Many theorists have suggested that while claims are made about the role of race in crime and inequality, the concept which requires the most consideration is social class rather than race, and that the disparities in how people are punished and for what depends more on their class than their race (Allen and Chung 2000). This is a valid argument, and certainly one which requires consideration. Without a doubt, the conditions of lower class citizens are likely to make the poor more apt to commit certain crimes, like burglary and drug use. Class is certainly a factor, though I do not believe that it is a sufficient explanation for the phenomenon of the explosion of incarceration rates in the last twenty years. Those living in poor and crime blighted, transient neighborhoods have less access to the tools which would allow them to rise out of poverty, like jobs (Wilson 1996), and this lack of resources is a concern when considering who is likely to commit the crimes we are investigating. However important this consideration of economic inequality may be, it is difficult to deny that there is a racial component to it. Race often serves as a so-called master status in the United States, a status which is more obvious at first glance than class (Allen and Chung 2000). Race

identifies us in the eyes of others, and, I argue, in the eyes of the law. What is peculiar about the race/class issue is that blacks *are* more likely to be impoverished, without health care, without ownership of a home, and undereducated, thus more likely to experience economic inequality. Blacks experience these things disproportionately, and they are, in the mind of the general public, associated with such factors as crime and poverty (Hurwitz and Peffley 1997).

The suggestion, though often contested by theorists on these issues, that blacks may commit more crimes, only aggravates the image in the public's mind that there is something dangerous about blacks. In a telephone interview study of whites' opinions of the criminality of blacks, Hurwitz and Peffley (1997) found that the whites they interviewed in Kentucky, a region with a high black population and high levels of racial tension, were more likely to view blacks as guilty of violent crimes than crimes which may require more savvy and intelligence<sup>2</sup>. Though this survey focused on a particular area of the country, it suggests that whites, who constitute the majority American population, if not outright racist, are likely to hold negative views on the behaviors of blacks. This suggests that race is perhaps a more important factor in framing peoples' perspectives, though it must be kept in mind that the study examined a southern state, states which are more plagued with the issues of racism and marginalization of minority populations. If blacks are highly likely to be poor and disadvantaged, and a preconception exists that blacks are more likely to be lazy and violent, race as master status plays a large role in the perceptions of the public of who is more likely to be criminally disposed.

---

<sup>2</sup> The interviewer in this study would ask the respondent a random variation of the following question by alternating the bracketed terms: "How likely is it that a [black/white] man accused of [a violent car jacking/embezzling money from his place of employment] is guilty?"

How does this issue of racial perception versus economic inequality factor into the question of drug laws and its associated arrests? Every crackdown on drugs, as we have seen, has been preceded by a panic in the public over the potentially disastrous moral and social effects the spread of these drugs could have on the country. Associated as drug use is with factors such as poverty, unemployment, and low educational attainment, the fact that blacks are more prone to these factors necessarily implies that, in addition to being greatly implicated in the moral panic, they are also more prone to its consequences. We target the use of a particular drug which is associated with poverty, and thus we punish poverty itself as the cause of that drug use. By targeting this behavior and this economic condition, we punish those most at risk for the causes of the behavior, and in this case, we tend to punish blacks.

Despite the crack down on drug users, the drug problem is not going away in the United States. In 1995, the Office of National Drug Control Policy reported that Americans spent \$57 billion on drugs, \$38 billion of which was spent on cocaine in all its forms; in 2000, the total amount spent on drugs was \$64 billion, despite the decrease in the price of drugs due to increased availability and purity (Reiman 2004). Americans are spending more and more on drugs, and more of that money is likely being spent on drugs like crack and powder cocaine. As employment opportunities in inner cities lessen, more and more poor young adults are turning to drug use and drug dealing as a way of coping with poverty and attempting to make even an illegitimate living under such circumstances (Duster 1997). The problem of drug use is not going away, and increasingly more and more people are imprisoned for it, and chief among those affected by drug use and imprisonment for it are blacks, particularly young black males. Whatever the effect of the war on drugs since 1986 has been, it has not been to cut down poverty, crime, and immorality. Judging by the

statistics, these issues are just as problematic, if not more so, as they were twenty years ago. The war on drugs has punished the drug use, but has done little to influence the factors which cause it.

Since the 1980s, we have had a boom in our prison population, and in addition we have spent more money on prison construction and incarceration than at any other time in our history (Duster 1997). Rather than spending this money to rebuild neighborhoods shattered by years of poverty and crime, we have put our money into punishing the end result of these conditions instead of trying to improve or prevent them. A small drop recently in the crime rate has given us false hope that locking up so many people is having a real effect on the conditions of criminality (Reiman 2004). The real effect has been an explosion in our prison population, and even more drug users, particularly black drug users. Our laws are targeting a behavior which is more often associated with the poor, and even further associated with the minority poor. Behaviors which are more often connected to wealthy whites, such as neglect of working conditions which leads to employee injury or death, money laundering, and a number of other industrial and business crimes, are punished far less harshly if at all, though they are estimated to cause more physical and economic harm than all of our assembled drug addicts (Reiman 2004). What has motivated us to target poor blacks, and how have we done it so successfully? More importantly, what is the long term impact of these policies on the country as a whole, and who has benefited from them? These questions shall be addressed in the following chapters.

## Chapter Three: Theoretical Framework

### *Marx and Critical Theory*

Karl Marx, the foundational figure of critical theory, in his magnum opus *Das Kapital*, describes his general law of capitalist accumulation:

The greater the social wealth, the functioning capital, the extent and energy of its growth, and therefore also the greater the absolute mass of the proletariat and the productivity of its labor, the greater is the industrial reserve army...The more extensive, finally, the pauperized sections of the working class and the industrial reserve army, the greater is official pauperism. (1976, p 798)

Marx (1976) explains in his discussion of this general law that the very foundation of capitalism is that the more capital is accumulated, the more workers are required to run the machines, the more proletarians must be on call at all times to be hired into the growing industries and fired again when their employment becomes a drain on the accumulation of surplus value for the capitalists. This explanation gives us the reason for the necessity of an impoverished class: there must always be people sufficiently poor and hungry that they will be ready, at a moment's notice, to do the jobs no one else will do. This is the function of the poor, and as long as capitalism is with us, according to Marx, the poor will always be with us. The poor are those who are unemployed and those who cannot work, many of whom are demoralized and criminals. If the industrial reserve army is necessary, it seems that criminals, themselves poor and starving, are inevitable.

What is a crime, then? For some, it is a set of actions so dangerous to society that they must be outlawed and punished (Reiman 2004), for others, a crime could be something which those in power see as immoral and in need of regulation for the good of public order (Lynch et al. 2000), and for still others, what is defined as criminal is that which is seen as in

violation of the cherished norms of society, something which is variable across time (Foucault 1965). With the rise of capitalism, violations of the economic system itself were seen as immoral, as keeping the capitalist system going was as sacred a charge as obeying the church had once been (Foucault 1965). Thus, those who refused to work were sent to jail, or other harsh sanctions, including beatings, were levied against the lazy that were in violation of the religion of capitalism (Foucault 1965; Marx 1976). To this day, those who violate our capitalist system by engaging in black market industries which detract from the legitimate market or who engage in other crimes as part of an inability or unwillingness to work are still punished far more harshly than those white collar criminals who at least are trying to make money (Reiman 2004)!

It seems that we are in a peculiar situation in our capitalist society by requiring a poor, unemployed population for our survival, but at the same time punishing the behaviors which result from that poverty. Once again, we are reminded that this is a situation reminiscent of that described by Thomas More in 1516, when he told us, “In other words, you create thieves, and then punish them for stealing!” (1965 p 49). The conditions are created for poverty and despair in the United States, yet we still look down upon those in that wretched state as immoral and in violation of our social order. We require that people be available to do the dirty work of a capitalist society and bear the brunt of social change, so this surplus population is still a necessity. The question of why we come to define the actions of this necessary group as deviant and criminal is what I would like to explore here.

The poor and criminal serve very important functions to our society: they identify those who cannot or are unwilling to operate within the bounds of capitalism, thereby posing a threat to the established order; they provide a source of cheap, captive labor; and since

often many punished deviants are from the lower classes, proving they are dangerous and at odds with the system legitimates the elevated position of the upper classes (Lynch et al. 2000). Thus, criminals give those in power the opportunity to point to certain behaviors and identify them as at odds with the values and attitudes of their desired order, establishing classes of normal people, those who are willing to work within the bounds of capitalism, and abnormal people, those who violate those boundaries. The behaviors associated with poverty, such as theft, vandalism, assault, and drug use, as violations of property, person, and morality, are punished far more often and harshly than those associated with privilege (Reiman 2004). The implication of this phenomenon is that, not only are we more concerned with protecting the wealthy and influential from punishment, we believe that all the good they do for our capitalist system outweighs the bad of the white collar crimes committed to accomplish that. The poor provide no such good in our minds; they provide only a burden and an eyesore in the neighborhoods in which they reside.

Karl Marx did not himself specifically undertake the task of critiquing criminal justice as he critiqued economic structures, so it was for critical theorists to take up his method of analyzing behavior and action as they related to the historical positioning of the economic system of the time. Critical criminologists have taken up this charge in an attempt to fill in this hole in Marx's work that a critique of the criminal justice system may exist which examines its functions in a capitalistic society. Generally, these theorists attempt to determine how laws and definitions of crime seek to maintain the social order of two classes: the capitalists and the proletariat (Lynch et al 2000). The proletariat exists to be exploited for his labor, and the capitalist seeks to make money. If law does not exist apart from its historical and economic backdrop, how does the form it takes ensure that the poor remain to

do the dirty work of society and the rich are free to keep making money? Critical criminology attempts to answer these questions, and by doing so explain how “[l]aw in capitalism is the official recognition of the fact of the economic relations in which exchangers stand to one another” (Reiman 1987, p 39). The capitalists stand above the workers in economic relations, so law must simply be a reflection of the superiority of one class over another and a desire to see that it stays that way.

In the Foucauldian view of punishment and confinement, the person to be confined is the one whose existence represents the wickedness of man, the violation of norms, and the deviance from society which must be contained in order to define proper existence and behavior in the social order (Foucault 1965). This idea of what proper existence in the social order is changes depending on the needs and desires of the ruling order in each time and place. In a capitalist society, such as the United States, the ruling social order is one of exchange and the generation of profits. Behaviors which inhibit this free exchange, such as the actions that may come from a refusal or inability to work, or exchange which undermines the legitimate market, are deviant and must be punished so that free exchange can continue uninhibited. Property represents that which free actors in a capitalist system have to exchange, so damage to it must be punished; murder and assault are a violation of one’s body-as-property, so they are also criminal, and so on (Reiman 1987).

This is not to express a wholesale acceptance of the entirety of Marxism or Marx’s theories. My point here is to say simply that the way in which critical criminological theory, as it has been born out of Marxian thought, critiques law and punishment, and that critique has merit in light of a historical view of the functions of capitalism. We must make money and protect our property as a representation of the production and exchange of commodities,

including our own bodies. Those whose actions threaten that system must be punished to protect the interests of the powerful whose work keeps capitalism going. Because the worker, or proletarian, is at a natural disadvantage in this system, being seen by the powerful capitalist owners as simply another means of making money, those in the working class are more likely to be targets of this punishment if they are not keeping their end of the bargain. As a surplus population, they are a vast and often desperate population, largely disposable and replaceable to the elites, thus to punish those in their class would not damage their position as labor power. If a few are thrown in prison for stealing cars or dealing drugs, there will be countless others to replace them. Thus, this class is unequal in power to the few capitalists whose money and influence make them not so easily replaced. The poor workers, naturally disadvantaged, will be easier prey for punishment, and easier examples to hold up as violators of the system, than those who employ them.

Punishment, taken up in this way, creates two unequal classes who will receive different treatment under the law. The violations of the more powerful class, even when they are more devastating than the crimes of the lower class, will receive less punishment so that the powerful can continue to make money to perpetuate the capitalist system. The larger, less powerful class, will be punished more harshly for their threat to that system, and their removal from society will go largely unnoticed as more workers move up to fill their places in the production line. The powerful, whose interests are far more important to this order, will have more authority to influence the creation of law which will further their own interests. Since these laws will be designed to maintain their position as powerful in society, they will have no fear of trampling on the less powerful who may endanger them. The laws may not explicitly seek to discriminate based on position in society, but what is chosen for

punishment may more often focus on those actions and behaviors which tend to take place more in the lower classes or are generally associated with them. This will be widely accepted practice, because what is good for capitalism is good for us all.

### *The Other*

This study claims to be one which explores the targeting of particular racial groups by law, but as of yet in this exploration of theory, we have only discussed class! What role does race play in this critique of the law? Marx himself was largely disinterested in questions of race and did not address them in his discussions of class inequality (Allen and Chung 2000). This is not to say that race cannot fit into a theory based on Marx's ideas; Marx himself often accused his philosophical predecessors of being unable to see what he saw in society because their positions in a particular time and economic structure made certain things either irrelevant or obscured (Marx 1976). It is likely that, in the time and place in which Marx wrote, he did not experience the problematic issue of race in the way we experience it today. Rather than adhere rigidly to Marx's belief that all can be explained through the two classes and their relations to the means of production, let us see what role the human psyche plays into the construction of what is deviant, or more importantly, who is deviant and why.

To do this, we must step away from Marx for a moment to attempt to define a term which can be as curious as it is obvious at first glance: otherness. To call someone an other does not seem wholly mystifying: I am me, and he is other than me, or they are other than me. Very simply, to be other is to be something besides the self, or something which is not the subject speaking, or the subject to which everything else is in relation. Since the beginning of philosophical inquiry, otherness has been used to explain relations, similarity,

and difference in the world. Otherness has been “a relation that connects, or, if you will, separates entities. Without the relation of otherness, everything would be identical” (Savery 1942, p. 205). This idea serves to explain how we take up difference in the world, who and what are seen as different, and the effect that difference has.

In a selection of more recent literature, the state of the “big O” Other is a situation of some concern, particularly when it comes to the power relations between the Self as subject and the Other as object. In terms of basic grammar, a subject is that which performs an action, whereas the object is that upon which the action is carried out, thus the subject has active agency and the object passive acceptance. Applied to human interactions, one who acts as a subject has the power as that which defines the action upon its object. The subject, or Self, differentiates itself from the object, or Other, by perceiving itself as different from, and often dominant over, the Other. This allows the Self to manipulate the perception of the Other to distinguish both, while keeping the upper hand in that distinction.

The novelist and philosopher, Simone de Beauvoir, takes up the issue of the Other as it applies to gender relations in much of her work. For Beauvoir (1989), in modern society the male has taken the position of subject and Self, relegating the woman to the role of objectified Other. She supports this claim by explaining that all truth is defined from the point of view of the man, so if the woman disagrees, she is necessarily wrong because of her feminine Otherness (Beauvoir 1989). The world is situated in such a way as to give the male position the power over all, so that a difference between men and women is not simply a difference between the two sexes, but actually between truth and woman’s version of the truth (Heinamaa 1999). The man’s position defines all, for it is the subject, that which is active, and any disagreement can be disregarded as the flaw in the objectified Other of

woman (or any other objectified group). By men defining themselves as Self and subject, they must find ways of defining women as somehow defective and inferior, a task made easy by dehumanizing them or reducing them to their function as silent mothers and homemakers, less intelligent, less human beings (Beauvoir 1989).

To say that it is a man's world is to say that men are dominant, and women are simply living in that world in a way which is defined by the man. Certainly, we must have Otherness as a way to distinguish each of us from one another, but the way in which it is often used is as an excuse for a group with more power to oppress another group. Men have long been considered the more powerful sex allegedly through cunning and physical power, thus to make sure they maintain supremacy, they must prove that women are lacking those qualities which have allowed men to rule: men have strength, so if women tend to be smaller and lack strength, they are inferior; men have cunning, so if it can be proven that women have smaller skulls and brains, they are inferior (Beauvoir 1989). By reducing women to this flawed, inferior creature, man can keep her subjugated, not quite as human as he, and certainly incapable of having agency or defining subjectivity. Woman becomes a dehumanized Other in a man's world and her world is only one in relation to his, making her not a Self in herself (Heinamaa 1999). This forced Otherness allows men to form a sense of collective identity as the dominant group imposing its will on the Other, the less powerful (Dominguez 1994).

This explanation can be applied not only to perceptions of sex, but also to race. With their strength in numbers and dominance in positions of importance and influence, whites are the Self which has defined the subject in the United States, relegating blacks and other minorities to the position of Otherness. Slavery provides the most stark example of how a

Self objectifies the Other: not only were blacks seen as less human in the United States during slavery, they were seen as not really humans at all, but rather property, true objects. While slavery has ended, a legacy of segregation and discrimination has left blacks in a position of being different in a white world, their blackness a sharp contrast to the dominant whiteness of America. In addition to being outnumbered, blacks have struggled to obtain all the rights belonging to an American citizen and all the opportunities that should be equal to everyone, putting them at the mercy of the dominant white discourse.

Definitions of race vary across time and place, largely based on the perceived difference, often physical, between two groups of people (Allen and Chung 2000). As was done to women by men, whites have long looked for the differences between themselves and blacks, trying to identify distinctions other than skin color which prove that blacks are somehow less human. Race, like sex, is a master status, and it provides a precondition upon which one can be immediately judged, and the assumptions of the dominant group can be applied to anyone who has the characteristics of the subordinate group (Allen and Chung 2000). Rather than women and men being seen as two different variations of humanity, men are seen as human and women a deviation from that humanity (Tidd 1999); so it goes also with race, for blacks are not seen as just another version of human, but rather a deviant kind of creature from the white Self. Pointing out the differences which allegedly make blacks inferior to whites allows whites to maintain power over blacks, particularly when these determinations about Self and Other become so internalized in both that everyone fails to see the power dynamics at work (Dominguez 1994). We may not realize it, but we live in a time and place where whiteness is viewed as human, and blackness as Otherness, thus race

becomes one of our most important methods for ensuring that the dominant group maintains its power by dehumanizing the Other.

*Synthesizing Black Otherness and Class Difference*

We have now examined two problems which are relevant to our attempt to determine who law targets for the maintenance of social order. First, the Marxian and critical perspectives have told us that the purpose of law is to maintain the economic relations of the few powerful capitalist elite and the many less powerful workers. Second, Beauvoir's theories of Otherness and sex have been applied to race to point out how whites maintain dominance over a minority Other of blacks by defining the world as white with blacks struggling to remain human in a constructed reality to which they are alien. I believe that, together, these two claims can be used to explain the current situation of law and race relations in the United States as they apply to the regulation of the use of drugs.

Critical theorists prefer to point to class as that which defines and separates us (Lynch et al. 2000), and indeed many others insist that it is the disadvantages of being poor which affect our relations to the social order rather than being black (Wilson 1996). However, race remains an important signifier in the United States, and though we count all as equal, we continue to see each other in terms of skin color. As was demonstrated earlier, blacks are more likely to be exposed to conditions of poverty than whites in terms of income, home ownership, and educational attainment, and in the public eye, they are often associated with violent crime and seen as deserving of harsh punishment for those crimes (Hurwitz and Peffley 1997). Class does matter, as it determines one's relation to the means of production,

and thus one's importance to the capitalist system, but race seems inseparable from class when one race is more susceptible to poverty and disadvantages than another.

Other groups with white skin have experienced a form of racial discrimination in the United States upon immigration from Europe, but somehow they have overcome that position of difference and inequality to be integrated into the social order (Tonry 1994a). How is it that these groups have joined the dominant discourse after such a short period of time in the United States while blacks, whose history is woven throughout the history of the United States, have continued to experience such hardship and discrimination? The United States is certainly not alone in experiencing difficulty in bridging differences in physical characteristics. Indeed, our fellow developed nations such as Canada, England, and Australia also disproportionately imprison racial minorities and experience discrimination against them and an inability to integrate them into the majority culture (Tonry 1994a). While class is undoubtedly significant in relations among peoples in these countries, that race has been so tied to class is indisputable when it is so clear that the majority American psyche has associated blacks with all the trappings of economic disadvantages: laziness, unemployment, and criminality (Hurwitz and Peffley 1997).

The reasons why race and sex are such important master statuses are the same: both are immediately apparent when looking at a person, and a first glance allows someone to be defined as either male or female and either black or white. Class is not so easily determined at first glance, thus an immediate judgment is not as readily made about class as it is about sex and race. That we are quickly able to define each other in terms of our skin and our physical orientation means that our immediate judgments of one another will largely concern our associations with these characteristics. For Beauvoir (1989), when a man sees a woman

he sees a vessel for childbearing and an inferior creature whose physical strength and intellectual cunning is inferior to his own. Americans once looked upon blacks and saw slaves and property, not human beings, and today when whites see the minority population of blacks, they see a class predisposed to conditions of poverty which we interpret as hostility towards the cherished capitalistic order. Indeed, if success is each individual's responsibility, a failure of so many to achieve economic success must be indicative not of society's failure to integrate blacks into the system, but rather of blacks' inability to work legitimately within that system.

Thus, if law is made to maintain social order by punishing those who violate the traditional rules of exchange by taking or harming property, and minority populations in particular are seen as prone to these activities which violate the rules of exchange, we will seek to punish harshly those minority populations which are prone to hostility to the established order. We are vigilant to protect against violations of our most cherished values of life, liberty, and property, so if a group of people is easily identified as other than us and unlike us, we will assume that their very existence is in opposition to those values. Whether this is true or not, it is easier to identify blacks with poverty than it is to identify the consequences of capitalism with poverty, and it certainly shifts the blame for crime away from society and on to a powerless scapegoat. This is the function of the Other: it serves as a way to allow the dominant group to define itself and establish its own identity by distinguishing its characteristics and behaviors from those of the group which is clearly different from itself (Beavoir 1989; Heinamaa 1999; Tidd 1999). Centuries of defining blacks as inferior based on perceived physical difference from whites has allowed us to discriminate against and marginalize them, and a fervent attachment to the individual

responsibility inherent in capitalism allows us to dismiss their inability to rise out of that marginalization as proof of our original assumption of inferiority.

### *Otherness and Cocaine*

The decision to address the issue of substance abuse has frequently risen out of its association with dangerous groups and their threat to the larger society. The use of intoxicants by any and all races and classes has not been unique to the times and places in which moral panics take place, but different periods choose different substances to attack and different groups to target in that attack. At times it has been the punishment of the distributor, the treatment of the addict, or the punishment of the user which has been the focus of wars on illicit substances, but it has always been the fear of a threat to the accepted norms of our capitalist society that has motivated these wars. Often, the use of drugs by these poor minority populations is also associated with other crimes destructive to society such as property crime and physical violence, crimes not as prevalent among those who are able to afford their fix without resorting to other crimes (Stuntz 1998). In addition, the use of drugs in these poor communities is easier to detect, as drug deals are more likely to take place in the open, as opposed to middle and upper class communities where the deals are more likely to take place behind closed doors, away from the eyes of police (Tonry 1994b). Thus, these communities are seen as more dangerous and the deviance within them is more easily detected, so targeting them will naturally yield more arrests.

Despite the prevalence of cocaine use in the United States for many years, fear surrounding it was never as pronounced as when its crack form appeared in 1986. It was instantly associated with the black lower class, and was indeed widely used by poor blacks

because it was cheap and readily available (Reinarman and Levine 1997b). Though crack use did not cause an overwhelming number of fatalities, and indeed addiction to it did not reach the alleged heights of the media frenzy, it was a still a good target for political and media attention because of the alleged danger it posed to America, and particularly its youth (Reinarman and Levine 1997a). The focus on harshly punishing drug users clearly signaled a move towards blaming individuals for a drug addiction which caused poverty and criminality rather than a more liberal position of blaming poverty and crime blighted neighborhoods for the use of drugs as an escape. Previously, the drug addict had been seen as a victim of the drug, but the war on drugs clearly defined the addict as criminally responsible for his actions and subject to harsh punishments.

While all races and all walks of life are using illicit substances to experience a thrill or an escape, blacks have had to bear the brunt of this war on drugs. The disproportionate number of blacks arrested and imprisoned for drug offenses has only aggravated the perception of drug use as a black problem, with black men, notoriously seen as the most dangerous American of all, feeling the sting of the drug war the greatest (Fletcher 2000). We targeted a drug which is more attractive to the poor, and ended up punishing blacks who are more likely to be poor, arresting those in inner city neighborhoods who are overwhelmingly black. By arresting and convicting more and more blacks, we have provided our own evidence as to why this is a black problem: of course blacks are using drugs more than whites, look at how many of them are in prison for drug use! The disproportionate sentences for crack offenses versus powder cocaine offenses do not reflect our fears about its addictiveness or danger, but rather our eye on the bottom line of the business of punishing drug users. If we punish more harshly those who are involved in an activity which is easier

to spot and takes place in neighborhoods along side other obvious crimes, our yield of incarcerated drug addicts will only increase.

The use of drugs demonstrates disregard for the reigning economic order in a number of ways, in accord with the belief of the critical criminologists that law seeks to punish those whose behavior may upset the balance of capitalism (Lynch et al. 2000). The unemployed drug user rejects the notion that everyone is personally responsible to succeed, for he has decided that to get high is more attractive than working. A drug user who must steal or cause physical harm violates property, property which is held sacred as a symbol of our means of exchange. Finally, dealing drugs as part of the underground economy rejects the necessity of taking part in the legitimate economy of the capitalists whose role in society is to own the means of production which will generate capital. Clearly, in a capitalist society, punishing those involved in the drug trade serves to make an example of those attempting to subvert the system and the authority of the powerful.

Our predisposition to view blacks as Others, to objectify them as less powerful than whites and in opposition to the dominant white discourse, already makes them an easy target for our laws. Blacks are disproportionately likely to be victims of economic inequality, and more likely to be present in neighborhoods which are policed for the devil drug trade, and harsher sentences are levied against those who use a substance which is more readily available in those neighborhoods which are more likely to be policed and more likely to attract the use of crack than powder cocaine. As more and more blacks are placed in prison for drug use, we come to define crack as even more a problem of the black poor, because such a high proportion of those in prison for crack use for long terms are black. The cycle of economic inequality, racism, and Otherness perpetuates itself, and poor black neighborhoods

are none the better for losing so many of their own to prison, and will not be improved so long as the public sees the poor ghettos as dangerous black urban landscapes where crack use is attempting to upset the capitalist system.

## Chapter Four: Disenfranchisement

### *An Overview*

The consequences of the disproportionate sentencing of drug users have been many, as demonstrated above. Black drug users have faced higher rates of imprisonment and harsher sentences as a result of being associated with a drug which is feared as destructive to the social order, and their increasing rate of incarceration has further defined illicit drug use as a black problem. A predominately white public already predisposed to Other blacks, objectify and subordinate them, has come increasingly to associate drug use and the poverty that causes it with blacks. These are devastating results to minority classes and race relations in the United States, and the problem is only getting worse as the prison population, and the portion of it incarcerated for drug related offenses, rises. However, there has been another somewhat less obvious, though not less troubling, consequence of this state of affairs.

One of the most cherished rights in the United States, and in any republic or democracy, is the right to vote, the right to influence the system which creates and enforces policy. The United States Constitution, since the ratification of the twenty-sixth amendment in 1971, does not permit the right to vote to be denied to anyone, male or female, black or white, over the age of 18. No poll tax, no literacy test, no requirement of property ownership is permitted as a basis upon which to deny the right to vote. These guidelines seem clear cut, but another requirement exists beyond the Constitution for obtaining the right to vote, and that is that, in many states, one cannot be in prison, on probation or parole, or have ever been in one of these situations for a felony conviction to be permitted voting privileges. A felony conviction is any conviction which carries a sentence of death or more than a year in prison,

thus many inmates and ex-convicts with sentences of more than a year, such as drug related offenses, have at one time or other been denied the right to vote despite having reached the age of majority.

Currently, only Maine and Vermont place no restrictions on felons with regard to the right to vote, thus forty-eight states and the District of Columbia deny voting rights to felons at least while they are in prison (The Sentencing Project 2005). Thirty-six states deny voting rights to felons while on parole, and thirty-two states do not allow voting while on probation; twelve states deny the right to vote to felons after the completion of their sentences, including parole and probation, for some period of time after incarceration, and three states, Florida, Kentucky, and Virginia, never reinstate voting rights (The Sentencing Project 2005). As a result, in 2005 it was estimated that 4.7 million Americans, or one in forty-three, were without the right to vote (The Sentencing Project 2005). It seems curious that in a country whose constitution does not allow the right to vote to be taken from anyone over the age of eighteen that 4.7 million people would at one time be unable to vote under the law.

There are a number of justifications for denying felons and ex-convicts the right to vote based on their status as law breakers. Some believe that in order to maintain the integrity of society, those who are morally questionable must be kept from voting, and others state that the commission of a crime is a violation of the social contract which binds a sovereign to his subjects, thus for a criminal to break that contract, he has relinquished his rights in the society (Reiman 2005). Though these arguments can sound somewhat valid, it does not change the fact that the Constitution does not allow the right to vote to be taken from anyone, even people who are currently incarcerated. Even if one were to argue that incarceration for a crime implies the stripping of the right to freedom which includes the

right to vote, once one has paid his debt to society, why must he still be punished by being unable to participate in civic life by voting? There seems to be no easy answer to this question, so we must investigate the situation a bit more closely and examine the impact of these disenfranchisement laws on the population and voting results.

Throughout this discussion, much emphasis has been placed on the disproportionate representations of blacks in prison and in conditions of poverty, and that concern is no different when discussing the state of citizens who are disenfranchised because of a felony conviction. In 2005, of those who have either temporarily or permanently lost voting rights, approximately 1.4 million were black men, some 30% of those who have been stripped of the right to vote (The Sentencing Project 2005). As previously mentioned, it is this class of people, black men, who are often seen as the most dangerous and the most criminal, so it is consistent with our previous findings that there is unlikely to be much concern that they are removed from civic life because of their violation of the social contract. With so many black men incarcerated for drug offenses serving felony-length convictions, it is likely that many of the blacks who have been disenfranchised have been stripped of their voting rights because of drug use.

The majority of incarcerated felons are in state prisons, and states vary in the way in which they enforce felon disenfranchisement. As stated above, some states never deny voting privileges, in others voting rights are permanently removed, and the rest lie somewhere in between. The Sentencing Project (King and Mauer 2004), an organization committed to gathering data about and suggesting changes to the criminal justice system to make it more fair and equitable, found that in Georgia, a state with a large population of blacks, 12.6% of black males are disenfranchised, and that one third of those were in prison

as a result of a drug conviction. In Florida, a state which proved in the 2000 presidential election that every vote counts, some 31% of black men are unable to vote, as Florida is a state which permanently disenfranchises anyone who has been convicted of a felony (Reiman 2005).

Before the war on drugs, approximately 1% of those who were eligible to vote was disenfranchised because of felony convictions, but with the explosion in the prison population has also come a dramatic increase in citizens who are unable to vote, and in 2000 about 2.3% of the total electorate was without these rights (Uggen and Manza 2002). Clearly, the war on drugs which contributed to this rise in the prison population has had the side effect of taking the right to vote from more and more American citizens, particularly black male citizens. The states which permanently disenfranchise felons and ex-convicts have the potential to seriously affect their electorate and change the face of the voting population, as it is estimated that in those states, given the current rates of incarceration of black males, approximately 40% of black men could be disenfranchised in the current and next generations (The Sentencing Project 2005). Is this practice one which preserves the purity and commitment to the good of society of the voting population, or one which purposefully seeks to alter the composition of the electorate for some other end? To answer this question, we must investigate further the motives and effects of the practice of felon disenfranchisement, particularly as it relates to drug offenders.

### *Disenfranchising the Other*

In addition to imprisoning more of its citizens for the purposes of crime control than any other Western industrialized nation, the United States is practically alone in permanently

removing voting rights from felons once they have been released from prison (Uggen and Manza 2002). It is curious that the United States, a country which cherishes its republican and democratic values and is ever vigilant to protect attacks upon its rights, would blatantly take a right away from a citizen who has fulfilled his obligation to society after committing a crime. Does not this permanent removal of rights constitute a second punishment, certainly unusual, a lifelong punishment which continues even after the necessary reparations for the transgression have been made?

Voting is an activity which allows one to express one's desires for the way the country should be run and the policies that should be enacted and those which should be reversed. Though the United States does not have a direct democracy which would require that every citizen be allowed to vote on every single issue to come up for a vote, the representative system we have gives us the chance to elect people to office who we feel are in line with our beliefs and values. Voting allows everyone a voice in what happens in government, thus if large portions of the citizenry are silenced, those areas in which they live will be underrepresented when it comes time to make important decisions (King and Mauer 2004). However, is it possible that, because of their apparent disregard for the relations of the social order and opposition to the law, those whose voting right have been stripped would simply choose to not vote at all? While there is little hard data on how this portion of the potential electorate would vote, we can make some estimates.

In a study by Uggen and Manza (2002), it was determined that approximately seven senate races may have been different if the ex-convicts in those states had been permitted to vote, accounting for averages in voter participation and the likelihood of which party for which they would vote, and in these cases the vote would have changed in favor of the

Democratic candidate. In a specific case in a Kentucky senatorial election, it was determined that if only a small portion of those who were disenfranchised had been able to participate in the voting, the Democratic, not the Republican, candidate would have won the Senate seat (*The Journal of Blacks in Higher Education* 1998-1999). In the 2000 presidential election, George W. Bush won Florida, the decisive state in his victory, by a slim 537 votes, and in a state which has disenfranchised some 600,000 of its citizens because of felony convictions, it is likely that if even a small portion had voted in the election, their votes could have tipped the scales of power (Reiman 2005). All of these cases suggest that there has been some impact of felon disenfranchisement on voting, and that impact has been to keep many from voting to put Democratic candidates into office. With recent elections at the local and national level as close as they have been in recent years, it is important to consider the impact of the lack of voting privileges for 4.7 million people in the United States.

The literature from which the above cases were taken find that disenfranchisement has leant a small hand in putting Republican candidates in power over Democrats, the party more often associated with social change than maintaining the status quo. Though there is no clear evidence that it is the case, we can muse about the long-term effects of keeping ex-convicts, particularly black ex-convicts who have been incarcerated for drug related offenses, from the voting rolls. If, in the long run, these few races had been shifted in favor of the Democratic party, due to the nearly equally divided party composition of the legislature in recent years, a few more Democratic victories could have shifted the balance of power. Perhaps those who have been convicted for drug offenses would vote for people they believe would work to improve conditions in impoverished neighborhoods, attempt to enact more aggressive treatment programs for drug addicts than incarceration programs, and even

remove the disparity between the sentences for crack and powder cocaine. At the very least, were those who are currently disenfranchised able to vote, their voices would be heard far more clearly than they are now as many neighborhoods in states which have large black populations are slowly losing their representation in the voting population.

The purpose of this exploration is not to propose conspiracy theories, or to accuse lawmakers in general or Republican lawmakers specifically of racism and attempting to silence racial minorities. But, if we are to be critical of our laws and policies, we must look for the unconscious motivations and, most importantly, the devastating long-term effects our policies have. After slavery was ended and blacks were given the right to vote in the United States, many states took advantage of the murky language in the Fourteenth Amendment which explains the restrictions to be placed on states which deny any male under twenty-one years of age the right to vote, unless he has participated in rebellion or other crime, to take the right to vote away from those who committed crimes which they associated with blacks, such as burglary, theft, and arson (Reiman 2005). It is not clear what the “other crime” may be, but since states are largely left with the authority to regulate their voting, this has often been interpreted as the right to deny voting rights to felons, though the reasoning for this language is somewhat ambiguous in light of the later amendments which further open up the population of those who cannot be denied the right to vote. In any event, the ambiguity was used to target crimes associated with blacks so that they could be denied the right to vote ostensibly because of their participation in these activities rather than because of their race. Many Southern states enacted these provisions, and though a few did not withstand judicial scrutiny, many did, and the practice continued (Reiman 2005).

Times are different, and race relations are certainly not as explosive today as they were in the period following the emancipation of the slaves and the enactment of the Thirteenth and Fourteenth Amendments which made unconstitutional slavery and guaranteed the equal protection of the laws of the federal government to all citizens, regardless of the state in which they lived. However, motivations which suggest subtle racism are often so socialized and embedded in a person and his culture that we neither intend nor notice them (Dominguez 1994). This is simply one of the many negative effects of our natural tendency to define Self and Other in an attempt to maintain solidarity, power, and identity, and that is that the objectification of the Other is so deeply ingrained in us that we no longer notice it. Being the subject, that group which has the privilege of defining the dominant discourse, has the benefit of being blind to the detriments caused to those who are Othered, after all, does not objectifying the Other make him less human, and therefore less deserving of the considerations of the effect of the subject's actions on him? We may not call blacks subhuman or even other-than-human, but our collective psyche has infused us with the belief that they are dangerous because of their dissimilarity from the ruling class.

As a consequence of our imprisonment practices, we have targeted for harsh punishment the activities we associate with poverty, such as the FBI's index crimes and drug offenses, and assigned monetary fines and quite short prison sentences to those crimes which are associated with the white elite (Reiman 2004). By choosing to punish these "poor crimes" more harshly, we have defined what is truly dangerous to society, and that is violation of property and person, and the involvement in the underground economy, not the negligence of safety in the workplace, fraud, deceiving consumers, or a number of other white-collar crimes. If what we choose to punish is a reflection of what we consider

important to maintaining the social order, it would appear that we aim to punish those activities which are a result of the very poverty necessary to maintain our economic system. Not only do we feel free to imprison as many of the members of this disposable class as possible, but we feel that they are so dangerous and irrelevant that they must have their voting rights removed, lest they infect our democratic processes with their immorality. We punish the impoverished violators of our social order, but really we punish the Other, the racial minority, that class which can be identified as different from the majority at first glance and associated with activities we find threatening.

These consequences may not be intentional, but as they continue and become ingrained in our social psyche, they perpetuate themselves and become so commonplace that we do not question them. We have removed a significant population of potential voters from the voting pool, potentially shifting the balance of power from what it may have been had those people been able to vote. In Georgia, a state which disenfranchises felons while on parole and probation, approximately one-third of those disenfranchised have lost the right to vote because of a drug violation, and it is likely that this is the case in many other states with significant black populations (King and Mauer 2004). That we have chosen to identify drug use as a crime rather than a disease indicates that we believe drug use is a personal choice, though it is clear to many that it is instead a result of the inevitable poverty which results from needing a surplus population to do the dirty work of society (Moore 1995). Because we associate blacks, who as a racial minority have failed to successfully integrate into society, and as a result are overrepresented in those in poverty, those without stable homes, and those without jobs, with these behaviors, by choosing to pursue excessive punishment of these activities, we have, without intending perhaps or realizing, punished Otherness. By

disenfranchising these felons, we have systematically disenfranchised Others by targeting behaviors which are the consequence of their position in our economic system.

## Chapter Five: Caveats, Implications, Recommendations

The evidence presented here has sought to demonstrate that, as a result of our capitalist order, those behaviors which are considered a threat to capitalism, namely drug use, are punished quite harshly, and a part of that punishment involves the removal of these offenders from civic life by stripping them of their voting privileges. The fact that we target behaviors for punishment which the ruling majority of whites associate with the objectified Other of blacks by focusing on actions which result from the poverty and economic inequality in which blacks are overrepresented means that we in fact target blacks. The strain on race relations which is created by disproportionately imprisoning blacks is all the more aggravated by the enforcement of laws which are more easily detected in the poor urban neighborhoods which are likely to have a high minority concentration. To add insult to this injury, crack cocaine, a drug which is cheaper and more readily available in these black neighborhoods, is punished far more harshly than its white middle and upper class counterpart, powder cocaine. The result of these factors has been an increasing underrepresentation of poor black communities in the civic process and the vanishing of the Other from the democratic process.

These claims are not meant to present absolute truth, and there are certainly weaknesses in my argumentation. Basing a critique of social policy on abstract ideas like “Otherness” is not necessarily ideal social science, but I believe that the methods I have employed have their place in the literature of policy inquiry. I have attempted to use theory as a glue to hold together the statistics I have presented and the policies and historical periods I have analyzed, to show the threads which hang between the problems of the unequal

punishments of crack and powder cocaine users, the disproportionate number of blacks in prison as compared to their representation in the population, and the effects of disenfranchising black felons on the political process.

I have argued that the writing and enforcement of the drug laws has been done in such a way as to target blacks, imprison them as felons, and then disenfranchise them to remove them from the voting process, thus keep them from those activities which would allow them to influence change on their own behalf. Some research has been done on the effects of felon disenfranchisement on voting results, but few conclusive studies have been done from which I could draw definitive evidence on these matters, particularly whether it is true that most of these people would vote for Democrats, or indeed if they would vote at all. Still, in many of these cases, if only a small number of those who are currently disenfranchised had been able to vote, and a portion of them had voted Democratic in proportion to other blacks in their area, there is some evidence that there may have been an alternate outcome had the law been different. Nonetheless, further research should be done on this matter to determine more definitively the impact of these laws on our struggling communities, because if enfranchising ex-convicts in these areas would give poor black neighborhoods the ability to vote for policies which would help them rise out of distress, and we truly desire an equitable society, we must consider more carefully whether or not it is in the national interest to continue withholding voting rights from former felons.

There is also a more obvious question, which is, “What if blacks simply commit more crimes than whites, and that is why there are more blacks in prison?” Studies (D’Alessio & Stolzenberg 2003) indicate that there is little statistical evidence that there is sufficient bias in law enforcement and the judiciary against blacks which would cause them to have a higher

likelihood of being arrested for or convicted of a crime than whites. The implication is that we must consider whether perhaps it is not a case of the police and courts being out to get blacks as much as it is their overrepresentation in participation in felonies. Does this mean there is some reason why blacks tend to be more criminally disposed than whites? Is there some biological predisposition in blacks which makes them more deviant? I do not wish to address the biological question here, but I would like to point out that a large part of how we view our criminal population is what we choose to define as criminal. A crime is something the law defines, something which we consider so dangerous to our society that it must be controlled (Reiman 2004). We can all agree that it is important to punish behaviors which are threatening to others, such as murder, rape, robbery and the like, but other crimes are more ambiguous, like drug use, and different periods time have treated them differently. When we target a behavior because we associate it with a dangerous minority underclass which threatens our social order, are we not targeting the people we fear in addition to the activities we associate with them? In essence, do we not find that blacks are more likely to commit these crimes we have defined because the laws we have made reflect a society which does not take responsibility for the conditions which foster the deviance we punish?

While much of the current literature on the problem of criminal behavior emphasizes the importance of class over race (Wilson 1996), is there still a benefit in belaboring the role of race in crime? Should we not simply ask in general why a certain class of people, black and white, is unable to rise out of poverty and avoid criminal behavior? There is undoubtedly a class element to this problem, as poverty is linked to much serious crime in the United States. However, race is tied to class when we find that blacks are experiencing alienation, poverty, and joblessness in higher proportions than whites. With approximately

one quarter of blacks in the United States experiencing poverty, and rates of unemployment at twice the national average in the black community (US Census 2006), it is difficult to deny the importance of race in the question of class and crime. We must ask ourselves why this race faces such adversity in an allegedly free and equal society, and if the answer is that the ruling class in the country views blacks as Other, as objects at odds with the subjective discourse, we must find a way to integrate them into the society to avoid a continued race war in our country.

The policies of differential punishments for users of crack and powder cocaine have no doubt added fuel to this already out of control fire of racial antagonisms. Arguments about the greater addictiveness of crack and its greater danger to addicts have proven dubious at best (Alexander and Gyamerah 1997), and the explosion of media attention paid towards the black ghettos plagued by crack and crime, along with the impact longer sentences for crack use has had on the incarcerated population after years of cocaine use by the privileged classes in the United States demonstrates that there is a dangerous racial element involved in punishing crack users more harshly than cocaine users. The disparity may not be as large as it once was between the sentences for crack and powder cocaine, but a difference still exists, and that difference must be eliminated as a first step towards addressing the impact the war on drugs has had on the United States.

Most importantly, states should work vigorously to reinstate voting rights to those who have been disenfranchised by laws which are uncomfortably related to statutes which purposefully disenfranchised those accused of crimes which were considered “black” in an effort to keep former slaves from voting (Uggen and Manza 2002). The universal right to suffrage is a cornerstone of our democracy, and keeping drug offenders who have paid their

debts to society and been released from correctional supervision will not taint the ballot box anymore than free citizens with less than perfect motives for voting choices. Because of the high proportion of blacks in prison, and the high likelihood that a black man will face prison time at some point in his life, felon disenfranchisement has begun removing, temporarily and permanently, not just individuals from representation, but has weakened the representation of an entire demographic category. This enfranchisement need not be done all at once, but a gradual reinstatement of one of our most cherished rights should be begun first with those who are no longer under any supervision.

In the total institution of Erving Goffman (1961), members who enter a tightly regulated life, like a prison, are quickly stripped of their individual identity, an identity which includes ties to free life and the community. Under disenfranchisement, not only is the prisoner severed from his community while in prison, he continues to be alienated from it upon release if he is unable to participate in civic life through voting. This alienation from public life can lead to feelings of detachment and a lack of responsibility towards the institutions he is now meant to respect if he plans to reform his life and an inability to participate in his community, a community which likely is desperately in need of more people who will participate to improve it (King and Mauer 2004). If a returning felon with a desire to take responsibility for his actions and his community finds himself without the most obvious way of exercising that desire, will he not feel like a man without a country, a man in a political order in which he has no say?

The ambiguous loophole in the Constitution which does not punish states for withholding the right to vote from those who have participated in some crime may be enough to temporarily disenfranchise felons who are actively in prison, but it should not be used as a

life sentence upon release. Though the country is now far more concerned with punishing the individual choices criminals make than rehabilitating prisoners, we must be ever vigilant about the long term consequences of our policies and on guard against policies which threaten the values of freedom, justice, and equality. Though we are in a capitalistic society which will naturally seek to maintain the economic relations and the power of the owners of the means of production, we cannot maintain this order by targeting racial minorities and removing them permanently from civic life. While we may not consciously and maliciously seek to do this and we believe our motives are for the good of the country, the reality is not so innocent. When 40% of black men in those states with significant poor black population can expect to lose their voting rights (The Sentencing Project 2005) leaving entire communities with inadequate political representation, there is a policy problem, and those policies must be changed.

Certainly the broader issue is the fact that such a large proportion of the black population is poor, alienated, and prone to crimes which we have defined as socially destructive. There is no easy answer to how to solve this dilemma, as it is a natural byproduct of having a race so easily Othered by their appearance and history of subjugation. Differential drug sentences and disenfranchisement laws are relatively easy problems to fix by moving to eliminate these iniquities which are obviously problematic. Perhaps if we can change those policies, we can find a way to tackle the inequality which exists between the owners and the workers to create a tide which will lift all boats. Until such a time comes when we are willing and able to address these larger social concerns, we should attack the smaller ones and keep the war on crime from being a *de facto* war on the Other.

## References

- Acker, Caroline Jean. 1995. "From All Purpose Anodyne to Marker of Deviance: Physician's Attitudes Towards Opiates in the US from 1890-1940." Pp. 114-132 in *Drugs and Narcotics in History*, edited by Roy Porter and Mikulas Teich. New York, NY: Cambridge University Press.
- Alexander, Jr., Rudolph, and Jacquelyn Gyamerah. 1997. "Differential Punishing of African Americans and Whites Who Possess Drugs: Just a Policy or a Continuation of the Past?" *Journal of Black Studies*, Vol. 28, No. 1, 97-111.
- Allen, Walter R. and Angie Y. Chung. 2000. "'Your Blues Ain't Like My Blues': Race, Ethnicity, and Social Inequality in America." *Contemporary Sociology*, Vol. 29, No. 6: 796-805.
- Beauvoir, Simone de. 1989. *The Second Sex*. Trans. H.M. Parshley. New York: Vintage Books.
- D'Alessio, Stewart J. and Lisa Stolzenberg. 2003. "Race and the Probability of Arrest." *Social Forces*, Vol 81, No. 4, 1381-1397.
- Dominguez, Virginia R. 1994. "A Taste for 'the Other': Intellectual Complicity in Racializing Practices." *Current Anthropology*, Vol. 35, No. 4:333-48.
- Duster, Troy. 1997. "Pattern, Purpose, and Race in the Drug War: The Crisis of Credibility in Criminal Justice." Pp. 260-87 in *Crack in America: Demon Drugs and Social Justice*, edited by Craig Reinerman and Harry Levine. Berkley, CA: University of California Press.

- “Felony Disenfranchisement Removes 1.4 Million Black Men from the Voting Rolls.” 1998-1999. *The Journal of Blacks in Higher Education* 22:61-2.
- Fletcher, Michael A. 2000. “More Whites Use Drugs, More Blacks Imprisoned.” *The Washington Post*. June 8.
- Foucault, Michel. 1965. *Madness and Civilization: A History of Insanity in the Age of Reason*. Trans. Richard Howard. New York: Vintage Books.
- Goffman, Erving. 1961. *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*. New York: Anchor Books.
- Gonnerman, Jennifer. 2004. *Life on the Outside: The Prison Odyssey of Elaine Bartlett*. New York: Picador.
- Heinamaa, Sara. 1999. “Simone de Beauvoir’s Phenomenology of Sexual Difference.” *Hypatia*, Vol 14, No. 4, 114-132.
- Hurwitz, Jon and Mark Peffley. 1997. “Public Perceptions of Race and Crime: The Role of Racial Stereotypes.” *American Journal of Political Science*, Vol. 41, No. 2, 375-401.
- Inciardi, James A. 1992. *The War on Drugs II: The Continuing Epic of Heroin, Cocaine, Crack, Crime, AIDS, and Public Policy*. Mountain View, CA: Mayfield Publishing Company.
- Jargowsky, Paul A. 1996. “Take the Money and Run: Economic Segregation in U.S. Metropolitan Areas.” *American Sociological Review*, Vol. 62, No. 6:984-98.
- King, Ryan S. and Marc Mauer. 2004. *The Vanishing Black Electorate: Felony Disenfranchisement in Atlanta, Georgia*. Washington, DC: The Sentencing Project.

- Lynch, Michael J., Raymond Michalowski, and W. Byron Groves. 2000. *The New Primer in Radical Criminology: Critical Perspectives on Crime, Power, and Identity*. Monsey, NY: Criminal Justice Press.
- Marx, Karl. 1976. *Das Kapital*. Trans. Ben Fowkes. New York: Penguin Books.
- Meier, Kenneth J. 1992. "The Politics of Drug Abuse: Laws, Implementation, and Consequences." *The Western Political Quarterly*, Vol. 45, No. 1:41-69.
- More, Thomas. 1965. *Utopia*. Trans. Paul Turner. New York: Penguin Books.
- Morgan, John P. and Lynn Zimmer. 1997. "The Social Pharmacology of Smokeable Cocaine: Not All It's Cracked Up to Be." Pp. 131-70 in *Crack in America: Demon Drugs and Social Justice*, edited by Craig Reinerman and Harry Levine. Berkley, CA: University of California Press.
- Moore, Sharon E. 1995. "Adolescent Black Males' Drug Trafficking and Addiction: Three Theoretical Perspectives." *Journal of Black Studies*, Vol. 26, No. 2:99-116.
- Parenti, Christian. 2000. *Lockdown America*. New York: Verso.
- Reiman, Jeffrey. 2005. "Liberal and Republican Arguments Against the Disenfranchisement of Felons." *Criminal Justice Ethics*, Vol. 24, No. 1:3-18.
- Reiman, Jeffrey. 1987. "The Marxian Critique of Criminal Justice" *Criminal Justice Ethics*, Vol. 6, No. 1: 30-50.
- Reiman, Jeffrey. 2004. *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice*. Boston: Pearson.
- Reinerman, Craig, and Harry G. Levine. 1997a. "The Crack Attack: Politics and Media in the Crack Scare" Pp. 18-51 in *Crack in America: Demon Drugs and Social Justice*,

- edited by Craig Reinerman and Harry Levine. Berkley, CA: University of California Press.
- Reinerman, Craig, and Harry G. Levine. 1997b. "Crack in Context: America's Latest Demon Drug" Pp. 1-17 in *Crack in America: Demon Drugs and Social Justice*, edited by Craig Reinerman and Harry Levine. Berkley, CA: University of California Press.
- The Sentencing Project. 2005. "Felony Disenfranchisement Laws in the United States." Washington, DC: The Sentencing Project.
- Savery, Barnett. 1942. "Identity and Difference." *The Philosophical Review*, Vol. 51, No. 2, 205-212.
- Stuntz, William J. 1998. "Race, Class, and Drugs." *Columbia Law Review*, Vol. 98, No. 7: 1795-1842.
- Tidd, Ursula. 1999. "The Self-Other Relation in Beauvoir's Ethics and Autobiography." *Hypatia*, Vol. 14, No. 4, 163-174.
- Tonry, Michael. 1994a. "Racial Disproportions in US Prisons." Pp. 328-348 in *The Criminal Justice System: Politics and Policies*, edited by George F. Cole, Marc G. Gertz, and Amy Bunger. Belmont, CA: Wadsworth/Thomson Learning.
- Tonry, Michael. 1994b. "Racial Politics, Racial Disparities, and the War on Crime." Pp. 24-40 in *The Criminal Justice System: Politics and Policies*, edited by George F. Cole, Marc G. Gertz, and Amy Bunger. Belmont, CA: Wadsworth/Thomson Learning.
- Uggen, Christopher and Jeff Manza. 2002. "Democratic Contradiction? Political Consequences of Felon Disenfranchisement in the United States." *American Sociological Review*, Vol. 67 No. 6: 777-803.

United States Bureau of Justice Statistics. 2005. *Prisoners in 2004*. Washington, DC: U.S. Department of Justice, Office of Justice Programs.

United States Bureau of Labor Statistics. 2006. *Employment Status of the Civilian Population by Race, Sex, and Age*. Washington, DC: U.S. Department of Labor.

United States Census Bureau. 2004. *Annual Estimates of the Population by Sex, Race, and Hispanic or Latino Origin for the United States: April 1, 2000-July 1, 2004*. Washington, DC: U.S. Census Bureau.

United States Census Bureau. 2005a. *Educational Attainment in the United States: 2004*. Washington, DC: U.S. Census Bureau.

United States Census Bureau. 2005b. *Income, Poverty, and Health Insurance in the United States*. Washington, DC: U.S. Census Bureau.

United States. Federal Bureau of Investigation. 2005. *Uniform Crime Report: Crime in the United States in 2004*. Washington, DC: United States Federal Bureau of Investigation.

Walton, Jr., Hanes and James E. Taylor. 1971. "Blacks and the Southern Prohibition Movement." *Phylon*, Vol. 32, No. 3:247-259.

Wilson, William Julius. 1996. *When Work Disappears*. New York: Alfred.