

University of Nevada, Reno

**A Philosophical Analysis of the ‘War on Drugs’:  
Applying Derridian Concepts to Racial Injustice**

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

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Program

by

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We recommend that the thesis  
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## Abstract

The goal of this thesis is to break down Jacques Derrida's philosophy in order to apply his work to the War on Drugs. Derrida analyzes the complex connection between *authority, law, justice, and language*. In the thesis, first I intertwine these concepts to provide my understanding of his philosophy and then I apply his philosophy to the systemic racism produced by the War on Drugs. I mainly analyze Derrida's essay, "Force of Law: The Mystical Foundation of Authority" (1989). Key concepts in chapter one include three aporias and the arbitrary nature of authority. In the second chapter, I apply the philosophical concepts to the racial injustice in the War on Drugs utilizing Michelle Alexander's perspective in her book, *The New Jim Crow* (2012). The application of Derrida's work provides a new understanding by analyzing how the interconnected issues of *authority, law, and justice* contribute to systemic racism in the War on Drugs.

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## Introduction

Philosophers have pondered the concept of justice since early Greek philosophy. Socrates' questions regarding justice to Thrasymachus, Glaucon, and Adeimantus are taught to most college students. Nevertheless, justice remains an elusive concept. As society evolves to become more complex, concepts also increase in complexity. The issue of justice has become so complex that an entire criminal justice system has been constructed in the attempt to achieve justice. Now analyzing justice requires analyzing the criminal justice system, the historical context of the system, and societal factors such as public perception and support. A complex analysis is necessary which is one reason this thesis uses Jacques Derrida's work. The postmodern philosopher Jacques Derrida provides a complex body of work that analyzes the complexities of numerous concepts. Specifically, Derrida's (1989) essay "Force of Law: The Mystical Foundations of Authority" considers the intersections of law, justice, and authority. Derrida problematizes the assimilation of justice and law while also recognizing the two are intertwined. Justice and law also require authority, and Derrida analyzes where authority comes from when laws are made. The intricate analysis of law, justice, and authority provides a philosophical framework that examines the three interconnected concepts. A criticism of Derrida is that his work is impractically complex and detached from material conditions (McCormick 2001). However, the complexity of Derrida's work is necessary when analyzing a complex society. My thesis demonstrates the utility of Derridian philosophy by applying Derridian concepts to a modern issue.

The complex modern issue I selected to analyze is the War on Drugs. The War on Drugs refers to the criminalization of drugs with media strategies, policy initiatives, and

strict enforcement of the laws. The War on Drugs provides a case of the justice system in action from the process of gaining power to creating legislation to enforcing the law. The results have been well-documented because the drug war began in the 1970s. The result of the War on Drugs has been the creation of a racialized system of injustice. The justice system has become racialized because the system targets individuals based on race.

While the Barack Obama Administration largely rolled back the policies of the drug war, the Donald Trump administration has vowed to reinvigorate the War on Drugs (13<sup>th</sup> 2016). I will not attempt to prove that the War on Drugs is racist. However, the evidence given throughout this work provides substantial evidence to convince any reader that the result of the drug war has been systematically racist. The formation of the policies and generation of public support to criminalize drugs demonstrate the use of authority and law to create injustice.

In order to analyze the complexity of law, authority, and justice in modern society, in what follows, I apply Derrida's philosophical work to the War on Drugs. First, I explain the philosophical framework relevant to the application, I analyze the racial construction and results of the War on Drugs through a philosophical lens. The application provides a unique understanding of the issue of legal racism in the United States by highlighting the interconnected issues of authority, law, and justice in modern society.

### **Literature Review**

As an application, my project will contain two literature areas. This review will parallel the structure of my thesis by first discussing the philosophy literature that I will

draw from and then discussing the relevant literature on racial inequalities in mass incarceration specific to drug policies.

While the central piece of my project is the essay “Force of Law: The ‘Mystical Foundations of Authority’,” several concepts in Derrida’s essay are drawn from Derrida’s other works (Derrida 1989). The “Force of Law” also follows a general argumentation structure, as noted in *Stanford Encyclopedia of Philosophy*, that explains Derrida’s basic argumentation in the following:

The basic argumentation always attempts to show that no one is able to separate irreplaceable singularity and machine-like repeatability (or “iterability,” as Derrida frequently says) into two substances that stand outside of one another; nor is anyone able to reduce one to the other so that we would have one pure substance (with attributes or modifications). (Lawlor 2006)

This argumentation style holds a long tradition in Derrida with early uses in philosophy of language pieces, such as “Differance,” that attempt to demonstrate the openness of a seemingly closed interpretation of ‘different’ through playing with the word and the roots (Derrida 1982). Another of his works, *Of Grammatology*, discusses writing and language to critique the problem of single interpretations and the issue of logocentrism, or stable meaning (Derrida 1967). A common problem Derrida isolates is the tendency for people to declare a universal truth and simultaneously fail to consider other views or interpretations. To highlight the problem, Derrida often utilizes a method called ‘deconstruction’ which first appears in his work *Dissemination*, and is utilized to critique the Western tradition--specifically Platonic thinking (Derrida 1981). However, the use of deconstruction changes throughout Derrida’s works and later is a method of discussing paradoxes and aporias.

Derrida shifts his focus throughout his career from language in his early works to discussing politics, justice, and religion in his later works. However, he remains critical of the West and even questions the legitimacy of the American Declaration of Independence in his essay “Declarations of Independence” (Deutscher 2005). Moreover, Derrida (2003) writes about political philosophy in a discussion of states and democracy in *Rogues*, and establishes the idea of a democracy ‘to-come’ that parallels the discussion of justice ‘to-come’ in “Force of Law.” The idea is that democracy and justice are never achieved in one moment, but always are in motion, and also re-establishing themselves at different points in time where principles are being put into practice.

In “Force of Law,” the second part reinterprets the essay “Critique of Violence” by the 20th century German theorist, Walter Benjamin (1921). In the original text, Benjamin (1921) makes distinctions between *law-instating* and *law-preserving* violence with a discussion of different types of violence that he terms mythic and divine violence. Both the *law-instating* and *law-preserving* are mythic violence, because the two are trapped in a cycle of instating law and then preserving law. Benjamin argues that this entrapment “is a clear indicator that there is something fundamentally ‘rotten in law’” (Khatib 2011, 5). The escape from the cycle of mythic violence is then divine violence which provides a ‘pure means’, or method without a final goal, to absolve individuals from false guilt. In Judith Butler’s piece (2006, 206) that discusses Benjamin’s essay she explains that “Derrida made clear that he thought Benjamin went too far in criticizing parliamentary democracy.” Butler also mentions that Benjamin and Derrida were influential for Hannah Arendt’s book *On Violence* (1970) that argues for a possible separation between violence and law. A more modern work “Necropolitics” (Mbembe

2003) goes as far as declaring that sovereign power is the power to control who lives and who dies. Determining life and death makes violence necessary to obtain power and create law in a more extreme manner than Derrida and Benjamin. However, the discussions by Derrida, Benjamin, Arendt, and Mbembe lack specific connections to a current legal issue. While a few of the pieces deal with the beginnings of modern states, the only issue singled out is the holocaust, which is a rare example, but still the main focus of these pieces is theoretical discussions of law and violence. Thus, my project attempts to discuss another literature base in relation to the philosophical discussion that applies the theory to a specific issue.

The contemporary issue of racial discrimination that results from strict drug laws has some recent scholarly literature that analyzes the extent of the inequality and some of the contributing factors. A recent book by Michelle Alexander, *The New Jim Crow* (2012), discusses parallels of Jim Crow laws to the way that drug laws have been used since the Nixon era in the late 1960s to decimate populations of color in the United States. Alexander (2012) discusses that the facts of mass incarceration are strikingly unequal for African Americans and also elaborates on several injustices at various stages of the criminal justice system, from being stopped by a cop, receiving bail, and accepting plea bargains. Alexander (2012) also spoke in an interview in a documentary released in 2016 with several other scholars, politicians, activists, and attorneys that provided a genealogy of the subtle use of law and media to increase rates of incarceration for individuals of color in the United States (*13<sup>th</sup>* 2016). The powerful film begins with discussing how the 13th amendment provided a legal loophole by excluding criminals from the rights to citizenship and explains various ways in which that loophole has been

capitalized on to continually oppress racial minorities (13<sup>th</sup> 2016). The 13<sup>th</sup> amendment states the following:

**Section 1.** Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. **Section 2.** Congress shall have power to enforce this article by appropriate legislation. (US Constitution, amend. 13, sec.1-2)

Another author interviewed in 13<sup>th</sup> is Khalil Gibran Muhammad. Muhammad wrote *The Condemnation of Blackness* (2010) that discusses the criminalization of the black body in America. Muhammad (2010) outlines how America has perpetuated the idea that black individuals are criminals and how the idea of black criminality has influenced policy and societal development. These works on race set the background and provide evidence to support the philosophical application in this project. None of the scholars in 13<sup>th</sup> is a philosophy scholar, but rather cover disciplines, such as history, political science, and identity studies including race and gender studies. Thus, my specific application of postmodern legal theory to the War on Drugs is a new application.

### **Chapter 1: Philosophical Framework**

In this chapter, I provide a philosophical framework of Derridian philosophy that will be utilized for application in the following chapter. Common themes run throughout Derrida's philosophical works and are vital to explain here prior to applying the concepts to the War on Drugs. The foundational elements will be described in this introductory section, while the following sections will provide explanations of concepts contextualized to specific areas of his philosophy including *language, force and authority, law and justice, and drugs*.

As previously quoted, the structure of Derridian philosophy follows a basic argumentation format described in the following:

The basic argumentation always attempts to show that no one is able to separate irreplaceable singularity and machine-like repeatability (or “iterability,” as Derrida frequently says) into two substances that stand outside of one another; nor is anyone able to reduce one to the other so that we would have one pure substance (with attributes or modifications). (Lawlor 2006)

This argumentation style highlights the uniqueness of meaning. Meaning is always presented in singularity. This style also demonstrates how meaning can be repeated in each and every new evolution of meaning in different iterations. However, singularity requires every iteration to be changed slightly, because any repetition creates a different meaning than the one before while simultaneously retaining some of the previous meaning. The point of the argumentation style is often to criticize logocentrism, or stable meaning. Logocentrism is intertwined with the metaphysics of presence. Derrida (1967, 50) “identi[fies] logocentrism and the metaphysics of presence as the exigent, powerful, systematic, and irrepressible desire for such a signified.” The issue with logocentrism is that the reliance on a single, stable meaning excludes other possibilities. Logocentrism focuses on the presence of meanings and leads to exclusion of alternatives meanings, or the absence.

In order to challenge logocentrism, Derridian philosophy frequently utilizes a methodology called ‘deconstruction’. Deconstruction has many forms, but only the following will be applicable in this thesis:

A deconstructive questioning that starts...by destabilizing, complicating, or recalling the paradoxes of values like those of the proper and of property in all their registers, or the subject, and thus of the responsible subject, of the subject of right, the subject of law, and the subject of morality..., and so forth.... Such a deconstructive questioning is through and through a questioning of law and

justice, a questioning of the foundations of law, morality, and politics. (Derrida 1989, 235)

Derrida means that questioning the assumptions of law, morality, authority, and justice through paradoxes complicates individual notions of justice and justice's relation to law. Thus, paradox deconstruction can highlight complexities in the relationship of law and justice.

The following four sections will cover the specific uses of overarching concepts in Derrida's philosophy of language, discussion of authority and force, of law and justice, and of drugs.

### **Philosophy of Language**

In Derrida's early works, he focuses on linguistic issues arguing that language in every form deals with meaning through signs. Through deconstruction, Derrida problematizes previous linguistic preferences for speech over writing.

In arguing that all communication involves absent aspects, Derrida argues that all meaning occurs through signs that are not immediately present. Derrida (1967, 50) states "from the moment that there is meaning there are nothing but signs. *We think only in signs.*" Every object is a sign. The meaning attributed to objects creates signs, and meaning gives every object a sign. Every form of communication occurs from a distance because meanings take the form of a sign that is then interpreted by someone else through his or her interpreting the meaning of the sign. The original sign given by one person takes a different form through being interpreted by another person, and the interpretation is a sign of its own that can also be interpreted. Each meaning sign is both singular and also an iteration, and the sameness and uniqueness of the meaning follows through the

‘trace’. The notion of the trace “is to affirm that... *all is not to be thought at one go*” which means that different meanings occur within the same meanings with some at the forefront at different times (Derrida 1967, 92). Furthermore, “The trace, where the relationship with the other is marked, articulates its possibility in the entire field of the entity [*étant*],” meaning that when one meaning is at the forefront the other meanings are not irrelevant, but rather remain in the trace of meanings (Derrida 1967, 111). Since the trace holds varying meanings, the trace brings together the difference in various meanings in different iterations. With this understanding, the trace provides a rupture in logocentrism. Logocentrism would prefer singular interpretation applied universally without the differences present via the trace.

Following from logocentrism, Derrida argues that the utilization of only certain meanings through language is violent. Violence in this context comes from inscribing a singular meaning to the exclusion of alternative meanings such as to utilize one meaning to be on the inside while pushing other meanings outside. A well-known example is Derrida’s use of *différance*, which means to differ and to defer. When one meaning is utilized the other meaning is pushed to the periphery, but that does not mean the other meaning no longer exists. The deconstructive alternative is provided by arche-writing that “cannot and can never be recognized as the *object of a science*. It is that very thing which cannot let itself be reduced to the form of *presence*. The latter orders all objectivity of the object and all relation of knowledge” (Derrida 1967, 119). Derrida means that writing is all relational to individuals and cannot hold a single meaning regardless of whether the communicative style is speech or written. This description articulates that arche-writing is not connected to phonetics or to graphics. Rather all meaning is writing, because all

meaning is transferred through signs. Any form of creating meaning that removes other meaning is writing. Therefore, speech would also be writing making a preference for one nonsensical, because speech and writing are both writing.

### **The ‘Mystical Foundation of Authority’**

Derrida can be considered an anti-foundationalist. The use of ‘mystical foundation of authority’ is indicative of his view that authority has no solid origin. The topics of force and violence are both relevant to authority of laws that then relate to notions of justice. Moreover, the arbitrary nature of authority coupled with the necessity of force create an opening for unfortunate consequences.

Derrida borrows the ‘mystical foundation of authority’ from Montaigne to demonstrate the inability to trace authority to an origin, stating:

Nothing according to reason alone is just in itself; all changes with time. Custom creates the whole of equity, for the simple reason that it is accepted. It is the *mystical foundation of authority*... Lawes are now maintained in credit, not because they are just, but because they are laws. (Derrida 1989, 239)

What Derrida means here is that authority is arbitrarily decided by societal norms that accept authority or not. Since no origin exists, trying to find the origin would expose the baseless nature of authority. The founding of authority on custom has implications for the founding of institutions, which are also founded by the very act of founding. The example of the Declaration of Independence is used in the following:

There was no signer, by right before the text of the Declaration, which itself remains the producer and guarantor of its own signature.... A signature gives itself a name. It opens for itself a line of credit, its own credit for itself to itself” (Derrida 1976, 50).

The authority or founders of an institution do not exist before a document founds the institution, and the elevated position of authority comes from the act of granting the self-

authority through signature. Before the founding documents are created, no one person has a natural right to exercise control over others. Only after a document is created and authorized through signature do the individuals delegated authority gain any power. Authority is self-granted and legitimized through acceptance of the authority whether implicitly or explicitly. The result is “the superstructures of law...both hide and reflect the economic and political interests of the dominant forces of society” allowing for a structure to set up a system based on the elites’ version of equity (Derrida 1989, 241). Since societal norms are directed by the elites in a society, the founding documents are forged by the elite. The authority of the founding documents gives the creators authority. The combination creates a foundation that is in the best interest of the elites in society because those elites are the dominant forces that will be accepted and written into the foundation of the legal structure.

In order for authority to take shape and institutions to arise, an amount of force is necessary. The force and/or founding violence occurs through the inscription of writing itself, through signature and the creation of the signer, a place of authority, through the signature. Derrida explains this through the following:

The operation that amounts to founding, inaugurating, justifying law, to *making law*, would consist of a *coup de force*, of a performative and therefore interpretative violence that in itself is neither just nor unjust and that no justice and no earlier and previously founding law, no preexisting foundation, could, by definition, guarantee or contradict or invalidate. (Derrida 1989, 241)

The quotation means that the *coup de force* is the act of creating law and provides a violence that is two-fold. The single act of force generates both performative and interpretative violence. The performative violence means that once law is written the law holds authority. After instatement of the law, interpretative violence occurs when the law

is then utilized through being interpreted to apply to situations. Since the law holds authority after inscription, the act of writing a statute into law is a violence of asserting meaning through performing the act of law creation. The law will then continually be used for interpretation in future scenarios, and each of the future interpretations of the law is interpretative violence. The use of force from the beginning follows throughout the use of the institution due to the necessity of enforcing law. The founding violence becomes interpreting violence, and the structure builds on the arbitrary foundation built through the signature of those who granted authority to themselves.

### **Law and Justice**

In true Derridian style, Derrida argues that law and justice are related, but different. Fundamentally, justice cannot be deconstructed, but rather is deconstruction, while law is constructed making law deconstructable. The core argument is that law provides a stability and presence that when applied mechanically excludes a necessary openness to the absent, or other, that justice requires. The concepts are explained through deconstructing via paradox, described in ‘Section 1’. The three aporias will be described here followed by the framework for my idea of injustice through idiom.

#### First Aporia: The *Epokhe* of the Rule

The first aporia establishes how law cannot be justice due to the requirement of a just decision to suspend the rule or reinvent the rule. Derrida argues that:

for a decision to be just and responsible, it must...be both regulated and without regulation, it must preserve the law [*loi*] and also destroy or suspend it enough to have [*pour devoir*] to reinvent it in each case, rejustify it, reinvent it at least in the reaffirmation and the new and free confirmation of its principle. (Derrida 1989, 251)

The quotation means that the decision cannot simply rely on the coded law because a lack of interpretation of the unique instance would be an injustice. Therefore, the suspension of law to reinterpret an application for a just decision separates justice and law while simultaneously requiring the relationship between the two. Furthermore, law and justice are separate since a decision cannot be said to be simply due to rule conformity. Simply conforming to law does not make a decision just, because a just decision must be free and fresh and cannot simply be a calculation of previous law. If the decision is simply a calculation, the decision would be attempting to universally apply a singularity thereby excluding the singularity of the given situation.

#### Second Aporia: The Haunting of the Undecidable

The second aporia provides the concept of the trace and the undecidable as important to justice. The undecidable is explained in the following:

Undecidable--this is the experience of that which, though foreign and heterogeneous to the order of the calculable and the rule, must [*doit*] nonetheless-it is of *duty* [*devoir*] that one must speak- deliver itself over to the impossible decision while taking account of law and rules. A decision that would not go through the test and ordeal of the undecidable would not be a free decision....it would not be just. (Derrida 1989, 252)

The undecidable results from parting from the calculation of direct application of law to freely think and determine a decision. The undecidable cannot be entirely bound by calculation, but justice must use the incalculable to attempt to formulate a decision that is not a pure calculation of only the present law.

Moreover, the trace of the undecidable is important in order to allow for memory of the decision, and the elements not included in the decision. Since justice cannot be

fully present, the trace is necessary to avoid the violent exclusion of the absent. In

Derrida's words:

The memory of the undecidability must keep a trace that forever marks a decision as such), the decision has again followed a rule, a given, invented or reinvented, and reaffirmed rule: it is no longer *presently* just, *fully* just. At no moment... can a decision be said to be presently and fully just: either it has not yet been made according to a rule... or it has already followed a rule..., moreover, if it were guaranteed, the decision would have turned back into calculation and one could not call it just. (Derrida 1989, 253)

This passage articulates the need for balancing the presence and absence discussed earlier in terms of the decision and the undecidable. Thus, the decision asserting full presence cannot be just. A just decision necessitates the consideration of the trace, because a just decision can never be fully present.

### Third Aporia: The Urgency That Obstructs the Horizon of Knowledge

The third aporia argues that justice requires immediacy, but that immediacy shuts down the collection of knowledge required by law. In other words:

A just decision is always required *immediately*, right away, as quickly as possible. It cannot provide itself with the infinite information and the unlimited knowledge of conditions, rules, or hypothetical imperatives that could justify it... [T]he moment of *decision as such... must [il faut]* always remains a finite moment of urgency and precipitation; it must not be the consequence or the effect of this theoretical or historical knowledge. (Derrida 1989, 255)

The argument from this passage is that the legal history and application requires far too much knowledge-gathering to allow a decision to be done urgently. Without the urgent moment of decision, the decision is not reinvented, but tethered to a calculation of past decisions making the decision unjust. By bringing the past, the decision loses the performative for the decision, because instead the decision is using a constative of a past

performative. By using past performatives, the decision closes to the openness of the future.

### Justice To-Come

All three aporias demonstrate an inability for law to be utilized as the sole means to justice. The pure calculation of law provides a presence, or logos, that cannot be universally applied in the name of justice. The pure calculation destroys justice and especially the *avenir* of justice. The French term *avenir* is composed of two parts, the *à* (to) and *venir* (to come) and is one of two common words in French for *future*. Derrida describes his use of the term in the following:

The future can always reproduce the present, announce itself or present itself as a future present in the modified form of the present. Justice remains *to come*, it remains *by coming*....it deploys the very dimension of events irreducibly to come.... There is an *avenir* for justice and there is no justice except to the degree that some event is possible which, as event, exceeds calculation, rules, programs, anticipations and so forth. (Derrida 1989, 256-7)

This quotation suggests that justice is continuously occurring and justice requires the possibility of future moments of going beyond the stable calculative mechanisms in legal structure. Therefore, the closing off of justice to-come would provide an injustice. Each aporia explains how overreliance on legal calculation creates an exclusion inconsistent with justice.

However, justice and law are not mutually exclusive. The answer is not simply apathy or nihilism. Rather, justice requires the consideration of the singularity of each application and also what that singularity excludes so as to remain open to the other. The consequence of the relation between law and justice is that “each advance in politicization obliges one to reconsider, and so to reinterpret the very foundations of law

such as they had previously been calculated or delimited” (Derrida 1989, 257). Justice requires constant evaluation of both the present and absent aspects of calculation to avoid singular application of logos universally at the expense of the other.

### Idiomatic Injustice

My idea of idiomatic injustice encompasses a connection between idiom, the mystical foundation of authority, and the calculated force of law. An idiom provides a singular meaning shared by a specific group of individuals that cannot be fully translated or understood by individuals outside of that group. The mystical foundation of authority presents the opportunity for idioms to be utilized in founding institutions and laws due to the self-legitimizing nature of institutions and laws. If the authority writes into law a form of idiom, then the force behind that law can be utilized to create injustice. Derrida (1989, 246) argues, “however slight or subtle the difference of competence in the mastery of the idiom would be here, the violence of an injustice has begun when all the members [*partenaires*] of a community do not share, through and through, the same idiom.” This passage means that certain subjects, who do not comprehend the idiom for various reasons, have violent injustice done to them due to lack or inability of understanding. Therefore, conflicting understandings of arbitrarily selected idioms combined with the force of law generate violent injustice, or *idiomatic injustice*. More specifically, *idiomatic injustice* refers to the instance of enforcing through law a singular idiom onto subjects who do not universally share the meaning of the idiom. In conjunction, these concepts imply that a selected law allows an idiom to be weaponized through the interpretation of the law giving the idiom the force of law that creates violent injustice. Thus, instated law

utilized in a purely calculative manner creates violence that occurs against people who understand the law according to a different idiom.

### **The Social Construction of Drugs**

Derrida briefly discussed drugs in an interview that highlighted some of his thoughts regarding drugs. The term ‘drugs’ is “both a word and a concept” (Derrida 1991). The word ‘drugs’ is a single word that can be applied to name varying objects but also has an entire network of connotations and practical implications that allow ‘drugs’ to form a concept. Derrida explains the implications of drugs as a concept in the following:

The concept of drugs supposes an instituted and an institutional definition: a history is required, and a culture, conventions, evaluations, norms, an entire network of intertwined discourses, a rhetoric, whether explicit or elliptical.... The concept of drugs is not a scientific concept, but is rather instituted on the basis of moral or political evaluations. (Derrida 1991)

The quotation means that ‘drugs’ has been constructed from arbitrary societal notions that are not based in objective science but rather constructed through subjective evaluations.

The subjective evaluations provide an opportunity for society’s elites to dictate the direction of evaluations. The construction of the concept of ‘drugs’ has prescribed the following ideas about drugs:

We believe that our society, our culture, our conventions require this prohibition. Let us rigorously enforce it. We have at stake here the health, security, productivity, and the orderly functioning of these very institutions. By means of this law, at once supplementary and fundamental, these institutions protect the very possibility of the law in general, for by prohibiting drugs we assure the integrity and responsibility of the legal subject, of the citizens, etc. (Derrida 1991)

Society holding the above beliefs is not necessarily negative. However, these beliefs serve to create a negative perspective on drugs providing support for stringent legal enforcement. The dominant social narrative of ‘drugs’ is one of danger that necessitates

action. Different beliefs lead to different plans of actions for dealing with the drug crisis, such as prohibition or liberalization.

## **Chapter 2: The Racial Injustice in the ‘War on Drugs’**

The criminalization of the black body in America has become prevalent due to multiple factors including social and political norms, media coverage, and the criminal justice system. Since the authority for creating structures lies in the dominant societal forces, the political elites have constructed a legal and political system that has been enforced in a manner that creates injustice. Michelle Alexander (2012), a practicing attorney and leading figure in writing about racial injustice, discusses the role of the criminal justice system and politics in constructing the ‘War on Drugs’ as a racially discriminatory system in *The New Jim Crow*. I argue that Derrida’s philosophy of deconstruction can illuminate factors of the construction of a discriminatory and unjust socio-politico-juridical system in order to provide a different perspective on a structure that has been empirically proven to discriminate.

### **The Logos of Black Criminality**

I argue that the notion of black criminality creates a logos, or thought, that people of color are criminals and reifies the idea as a truth in American society. The stereotyping that occurs against populations of color takes a single individual act of crime and then assumes that one individual criminal means that every member of the race is a criminal. The connection of being a criminal as inherent to blackness creates a stable meaning of blackness as criminal. The notion of blackness as criminal is used to justify stricter laws and enforcement, which is an example of logocentrism. The utilization of a single idea to support actions centralizes a logos. Thus, logocentrism occurs.

In order to be classified as a logos, black criminality must be a stable ideology that excludes other meanings. The idea of black criminality in a simple form is “that the Negro in our country is more criminal than the white” (Sellin 1928, 52). This belief has been held for a long time and has been emphasized through media as far back as the film ‘Birth of a Nation’ that illustrated black men as a danger to society (13<sup>th</sup> 2016). The striking ability of ‘Birth of a Nation’ to turn a single instance of rape into the belief that black men as a whole endanger white women is an instance where a single criminal act was applied to the entire demographic of black males. Sellin explains the application of an individual’s action to the entire race in the following:

The color criminal does not as a rule enjoy the racial anonymity which cloaks the offenses of individuals of the white race. The press is almost certain to brand him, and the more revolting his crime proves to be the more likely it is that his race will be advertised. In setting the hallmark of his color upon him, his individuality is in a sense submerged, and instead of a mere thief, robber, or murderer, he becomes a representative of his race, which in its turn is made to suffer for his sins. (Sellin 1928, 52)

The problem indicated by Sellin is that one instance is projected as a truth onto an entire race of people. The uniqueness of an action disappears when the racial aspect is involved. Instead of society seeing an individual crime committed, society sees a crime committed by an entire race and attributes violence more to the race aspect than to the individual.

The racial component has not been equally applied to the white community, but rather a different rhetoric is utilized when discussing white crime versus black crime. The acceptance of black criminality throughout society is indicated by the common rhetoric between groups with vastly differing views. Khalil Gibran Muhammad writes:

the gap in the racial crime rhetoric between avowedly white supremacist writers and white progressives narrowed significantly when it came to discussing black crime, vice, and immorality. Progressive era white social scientists and reformers

often reified the racial criminalization process by framing white criminals sympathetically as victims of industrialization. They described a “great army of unfortunates” juxtaposed against an army of self-destructive and pathological blacks who were their “own worst enem[ies]”. (Muhammad 2010, 8)

This passage suggests that a significant gap in rhetoric existed regarding white crime and black crime. While white crime is considered a product of circumstance largely out of the individuals’ control, black crime is seen as an innate condition of the black identity. The result is that “race and crime linkages fueled an early antiliberal resentment that pushed African Americans to the margins of an expanding public and private collaboration of social, civic, and political reform” (Muhammad 2010, 8). Thus, the melding of criminal nature with race has created a notion of black criminality that negatively impacts an entire race by pushing them to the periphery.

As explained in Chapter 1, stable meaning and presence provide universals that can be utilized to marginalize meanings. In other words, the meaning of a single experience or act is applied to other instances. Even though other instances are different from the previous experience, people assume the experiences are the same and ignore the unique parts of the new experience. In the case explained above, the act of ignoring any meaning other than that a person of color being criminal marginalizes a demographic of people. The single act of rape in the movie showed one black male putting a white woman in danger. The idea then solidified that all black men are dangerous. The view that one individual represents all black males means that all black men are considered dangerous. People act to securitize themselves from all black men based on one act of a single black male. The result is that black men are marginalized because one act may or may not be applicable to other individuals. When people of color are determined to have

innate character issues then other material conditions are ignored. The exclusion of other possibilities generates the notion that people of color are violent and criminal by nature, which stabilizes the connection of criminality to the black identity. The idea of “black criminality had become the most significant and durable signifier of black inferiority in white people’s minds since the dawn of Jim Crow” (Muhammad 2010, 3). The contribution of criminality as inferiority connected crime, color, and subordination into one symbol of black criminality thus generating black criminality as a logos.

### **The Logocentric Use of ‘Black Criminality’**

The process of permanently connecting an innate criminal nature to blackness in the United States’ criminal justice system has contributed to the disproportionate incarceration rates of minorities in American prisons. Disproportionate results are often justified by defending the idea that people of color are criminals. The statistical evidence of higher crime rates in minority communities are frequently used to justify the idea that black people are criminals leading to unequal treatment of crime in white and black communities (Sellin 1928, 59).

The use of statistical analysis frequently rejects explanations for black conviction and imprisonment rates that do not include race as a reason. Material conditions such as higher rates of poverty in communities of color and less access to quality education are frequently ignored (13<sup>th</sup> 2016). The reliance on the explanation of an innate criminal nature in black people is utilized to ignore alternative factors for the disproportionate incarceration rates. Muhammad argues that the color-blind statistics are utilized to ignore alternative factors in the disproportionate crime statistics. Muhammad states:

Statistical and racial identities forged out of raw census data showed that African Americans, as 12 percent of the population, made up 30 percent of the nation's prison population. Although specially designated race-conscious laws, discriminatory punishments, and new forms of everyday racial surveillance had been institutionalized by the 1890s as a way to suppress black freedom, white social scientists presented the new crime data as objective, color-blind, and incontrovertible. Neither the dark color of southern chain gangs nor the pale hue of northern police mattered to the truth of black crime statistics. (Muhammad 2010, 4)

This color-blind use of pure quantitative data did not calculate any factor but race and incarceration rates and ignored alternative factors such as income inequity and access to education. Factors such as conviction rate and sentencing disparities have been proven to effect minorities disproportionately. Sellin (1928) analyzes studies that find both convictions and sentencing disparities. Sellin writes about the disparities in the following:

The Negro is not only convicted more frequently than whites, but he seems to receive heavier sentences. In studying 1,521 chain gang prisoners in North Carolina, Steiner and Brown found that 'seven percent of the white prisoners and eleven percent of the Negroes were serving sentences shorter than three months. On the other hand, six percent of the white prisoners and eleven percent of the Negroes were serving sentences of three years or more.... The larger percentage of short sentences imposed upon the negroes as compared with whites probably means that there is a larger percentage of Negroes who are unable to pay a small fine or costs in cases of petty offenses. On the other hand, the fact that the chances of receiving a sentence to the roads of three years or longer, are two to one against the Negro as compared with the white man, suggests that justice is not blind to the color of a man's skin.' (Sellin 1928, 59).

The study Sellin (1928) cites suggests that the color-blind statistics are misguided, because when a comparison of white versus black conviction and sentencing rates are analyzed evidence to the contrary of a color-blind justice system appears.

However, the use of color-blind statistical analysis provided justification for unequal treatment of crime on racial lines. The crime prevention efforts largely left behind the black community. One problem was that "white social workers and white

philanthropists failed to invest sufficient material resources into the uplift of African American urbanites, advising these communities to ‘work out their own salvation’ before others could help them.” (Muhammad 2010, 10) The unwillingness to participate in crime prevention for African American communities was directly justified through the idea that African Americans’ have an inherent inclination to commit crimes. The notion of black criminality separated out black and white individuals and led to unequal distributions of resources as well as continued legal discrimination.

The separation along racial lines generated a societal divide leading to inequitable treatment and prejudicial ideas of innate differences between individuals of different races. Two Derridian ideas come into play with the notion of black criminality. First, the idea of presence pertains to the tangibility of media imagery that has depicted black individuals as criminals. The media image of Willie Horton, a black male, as a violent criminal provided an image to the public. The image was utilized in George Bush’s presidential campaign to push the idea that Michael Dukakis was soft on crime. The image was used in a mass media campaign that eventually cost Michael Dukakis the presidency. Scholars in 13<sup>th</sup> argue that the projection of Willie Horton’s image solidified a radicalized notion of criminals being black in the mind of the American public (13<sup>th</sup> 2016). The media imagery gave the public a tangible image of crime that is a presence. That presence makes the connection of crime and race tangible. The presence makes a strong connection that is easier for the public to retain. The connection then allows people to reference the presence in order to believe that the connection between race and crime is not arbitrary but justified and accurate. The presence of black criminality is the constant connection of black individuals as criminals. The idea of black people being

criminals is a tangible notion to most Americans, because of media imagery such as Willie Horton. The tangibility is a presence created by media images and experiences of black people being criminal. The refusal of believing black people are not criminals is the reliance on the tangible idea that black people are criminals. The presence of black criminality makes the logos much stronger, because a stable meaning is propped up by physical evidence of a well-known black criminal.

The second Derridian notion then is the logos of black criminality. Willie Horton's image is then connected to more individuals than just Willie Horton. The connection of a single violent black criminal to the entire race creates a logos. A stable meaning takes place when people begin to believe that every member of the race is a criminal. By determining a stable meaning of the black body as criminal, other factors of crime such as wealth and lack of education are easily ignored. The understanding of black criminality as a truth then justifies the disproportionate statistics, because believing that crime is innate to African Americans seems true. The logos of black criminality can then justify the inadequate distribution of crime prevention leading to further racial disproportion in crime statistics that can be utilized to support black criminality. The use of logocentrism pushes out consideration of alternative factors, or what could be called the absence, continually pushes other explanations out of the discussion that strengthens the logos and is supported by the presence. By filtering explanations of criminality through the presence of black criminality to support a logos, the system relies on logocentrism. The use of logocentrism then pushes a racial demographic to the periphery by focusing on the logos of black criminality. Scholars have brought in other

explanations, but the criminal justice system and society largely ignores the discussion of systemic factors that contribute to higher crime rates.

### **Understanding *Idiomatic Injustice***

The notion of idioms is primary in the creation of injustice as can be defined by what I call *idiomatic injustice*. An idiom is a word or group of words that hold a unique meaning to a certain group of people. Idioms cannot be translated and retain all of their meaning. When translated the full extent of the meaning of an idiom cannot be fully comprehended by others who do not share the original idiom. As stated previously, the concept of *idiomatic injustice* refers to the instance of enforcing an idiom onto subjects who do not share the meaning of the idiom. In order to argue for *idiomatic injustice* defining the relevant idioms is necessary. While the previous section focused on a longer period and broader sense of historical discrimination, the discussion from here forward will focus in on the ‘War on Drugs’ as the primary example of modern racial injustice. Accordingly, I argue that two main idioms generate violence because the idioms are applied to subjects who do not fully understand the idiom. The first idiom is ‘War on Drugs’ and the second is a collective of idioms that are inaccessible to a vast majority of society in the form of technical legal language.

The ‘War on Drugs’ provides an idiom that only certain individuals fully comprehend. The declaration of the war on drugs was part of the ‘Southern Strategy’ (13<sup>th</sup> 2016). The ‘Southern Strategy’ is a late 1960s Republican political strategy for winning support from southern states and a major method for accomplishing winning the popular votes in the South is suppressing suffrage to minority populations that do not favor the Republican party (13<sup>th</sup> 2016). The ‘War on Drugs’ consists largely of the

initiative to imprison people of color in order to suppress that voting demographic. Understanding the ‘War on Drugs’ as targeted policy against populations of color is a single translation of ‘War on Drugs’ that is not shared by the entire population of the United States. People generally understand the ‘War on Drugs’ as a necessary response to increasing crime that only targets kingpins, big time dealers, and the most dangerous drugs (Alexander 2012, 38). By understanding ‘War on Drugs’ as only a response to increased criminal activity and drug consumption, strong community support for being tough on crime becomes popular and easy to summon.

The societal construction of drugs was built around both a negative and racial connotation. As Derrida explained in “The Rhetoric of Drugs,” drugs are constructed negatively by society as damaging and unnatural or dissocializing (Derrida 1991). The idea of drugs generally invokes a ‘fix it’ mentality because of the negative construction. However, “drug use, once considered a private, public-health matter, was reframed through political rhetoric and media imagery as a grave threat to the national order.” (Alexander 2012, 63). The negative connotation surrounding drugs was turned into an issue with a sense of urgency that could not be left alone. The drug problem was connected to race:

Jimmie Reeves and Richard Campbell show in their research how the media imagery surrounding cocaine changed as the practice of smoking cocaine came to be associated with poor blacks. Early in the 1980s, the typical cocaine-related story focused on white recreational users who snorted the drug in its powder form. These stories generally relied on news sources associated with the drug treatment industry, such as rehabilitation clinics, and emphasized the possibility of recovery. By 1985, however, as the War on Drugs moved into high gear, this frame was supplanted by a new “siege paradigm,” in which transgressors were poor, nonwhite users and dealers of crack cocaine. Law enforcement officials assumed the role of drug “experts,” emphasizing the need for law and order responses—a crackdown on those associated with the drug. These findings are consistent with

numerous other studies, including a study of network television news from 1990 and 1991, which found that a predictable “us against them” frame was used in the news stories, with “us” being white, suburban America, and “them” being black Americans and a few corrupted whites. (Alexander 2012, 63-4)

The drug threat to the nation became racially constructed through the media. The solutions for fixing drug problems turned from mental health solutions to heavy law enforcement (Alexander 2012, 63-4). The connection of drugs as harmful to society overshadowed the connection of drugs as a racial problem. The ‘War on Drugs’ came to be considered a natural response to a national threat.

The argument that ‘War on Drugs’ is an idiom rests on the two different understandings of the phrase. The ‘War on Drugs’ has racial meaning, but often the support for policy and heavy enforcement in the name of the ‘War on Drugs’ is ignorant of the racial meaning embedded in the idiom. An idiom was made by rhetoric used to talk about the ‘War on Drugs’. Alexander states that:

a new race-neutral language... appealing to old racist sentiments..., proponents of racial hierarchy found they could install a new racial caste system without violating the law or the new limits of acceptable political discourse, by demanding “law and order” rather than “segregation forever.” (Alexander 2012, 28)

The masking of meaning obfuscates the original meaning of ‘War on Drugs’ to hide the connection of drugs to race. The term ‘law and order’ also plays a role to generate support for strong enforcement. Strong enforcement ensures that the ‘War on Drugs’ is mobilized and supported by the public and law enforcement. However, the strong enforcement does not change the racial connection to the way policies are enforced. The racial enforcement of drug policies are never absent from the outcomes of the drug war, but the slogan ‘War on Drugs’ finds a way to suppress the immediacy of the racial impact

by utilizing rhetoric that is not explicitly racist. The scare quality of drugs hides the fact that the anti-drug policies are directed at black people. The ‘War on Drugs’ is an idiom, because the full meaning is untranslatable or incomprehensible to various populations within the United States. The meaning of the ‘War on Drugs’ is to keep the black population suppressed through various ways such as removal of voting rights and relegation to second-class citizens. Suppression is easy once an individual is convicted of a felony because the 13<sup>th</sup> amendment removes persons’ rights once criminally convicted. People often only understand the threat of drugs requiring action against without comprehending the racial portion of the idiom that cannot be separated from the meaning of ‘War on Drugs’. Whether some groups of people understand the full meaning is irrelevant. The reality that many individuals do not understand the full extent of the meaning proves that an idiom exists.

Another idiom is the collective of legal language in the justice system. The highly technical and specialized way laws are written is an idiom. After all, there is a reason three intense years of schooling is required to obtain a general understanding of law designated by a legal degree. The highly technical and specialized language of the legal system is limited to the demographic of legal specialists that includes attorneys and judges. The lack of understanding of law and individual rights among the general public limits access to the legal system to those capable of affording the services of quality legal counsel. Even though the Supreme Court decision *Gideon v. Wainwright* “ruled that poor people accused of serious crimes were entitled to counsel,” the practice of adequate representation is nearly nonexistent (Alexander 2012, 53). The lack of right to counsel is supported by the following:

In 2004, the American Bar Association released a report on the status of indigent defense, concluding that, “All too often, defendants plead guilty, even if they are innocent, without really understanding their legal rights or what is occurring. Sometimes the proceedings reflect little or no recognition that the accused is mentally ill or does not adequately understand English. The fundamental right to a lawyer that Americans assume applies to everyone accused of criminal conduct effectively does not exist in practice for countless people across the United States.” (Alexander 2012, 53)

The report indicates that understanding of the legal system is woefully inadequate and access to a specialist often does not provide an effective understanding of the system. The legal system consists of an exclusive knowledge that most individuals do not possess, but regardless of knowledge every person is subject to the law. One result is stated here:

Reliable estimates of the number of innocent people currently in prison tend to range from 2 percent to 5 percent. While those numbers may sound small (and probably are underestimates), they translate into thousands of innocent people who are locked up, some of whom will die in prison. (Alexander 2012, 55)

The inability to navigate the system winds up with innocent people going to jail due either to plea bargains or other reasons. Many individuals face making decisions with minimal information that affect the rest of their lives.

The two idioms isolated are applied over populations that do not hold complete understandings of the idioms. The lack of understanding idioms creates violence against subjects. Some of the injustices were discussed and more will be highlighted throughout this chapter. Nevertheless, the concept of *idiomatic injustice* applies to both ‘War on Drugs’ and legal language in the United States. The application of these idioms to subjects who do understand the meaning of the idiom does a form of violence and generates injustice. Further exploration of how enforcement of the two idioms follows and will highlight how both have been utilized in a discriminatory manner.

### **The Mystical Foundation of the ‘War on Drugs’**

The origin of authority is arbitrarily decided and self-enforcing based largely on social custom as we have seen. The political or social elites in society shape society by asserting authority and then justifying enforcement by referring to that authority. The political elite in America is the white demographic. The social and political power being held by white men means that white men wrote the founding documents of the United States. The constitution then created a foundation that is enforced through law. The entire drug war is constructed through the ‘mystical foundation of authority’ via law’s self-enforcing nature.

The United States Constitution was founded similarly to the Declaration of Independence. The signers of the Constitution founded a document that has since been maintained because it is the supreme law of the land. The Constitution and the signatories hold no authority until the document is forged and then upon the enforcement of the laws the authority self-maintains. The determination of the contents of the document is arbitrarily based on societal norms and dominant forces in society. As Derrida (1989, 239) writes, “nothing according to reason alone is just in itself; all changes with time. Custom creates the whole of equity, for the simple reason that it is accepted.” The quotation means that society determines justice, because there is no innate determination of justice. An example of the arbitrariness of justice is the practice of slavery post-ratification of the Constitution. The practice of slavery is indefensible as a just or even humane practice, but the dominant societal forces condoned and even supported the practice.

It was not until the 13<sup>th</sup> amendment was ratified that slavery was legally abolished.

However, the end of slavery did not end racial prejudice. Michelle Alexander states:

The emergence of each new system of control may seem sudden, but history shows that the seeds are planted long before each new institution begins to grow. For example, although it is common to think of the Jim Crow regime following immediately on the heels of Reconstruction, the truth is more complicated. And while it is generally believed that the backlash against the Civil Rights Movement is defined primarily by the rollback of affirmative action and the undermining of federal civil rights legislation by a hostile judiciary, the seeds of the new system of control—mass incarceration—were planted during the Civil Rights Movement itself, when it became clear that the old caste system was crumbling and a new one would have to take its place. (Alexander 2012, 17)

This passage highlights that the system maintains through a longer process than most people recognize. The systems of control change with societal changes such as less acceptance of blatant, explicit racism. However, the groundwork for the changes occurs before most people recognize. An example is the 13<sup>th</sup> amendment that reads:

**Section 1.** Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. **Section 2.** Congress shall have power to enforce this article by appropriate legislation. (US Constitution, amend. 13, sec.1-2)

The portion of the 13<sup>th</sup> amendment that provides an exemption for criminals holds a powerful loophole in the right to freedom. The loophole means that slavery can essentially stay legal as long as a person is a convicted criminal (13<sup>th</sup> 2016). Since slavery was an economic system, the use of chain gangs in prison maintained cheap labor through criminalizing former slaves (13<sup>th</sup> 2016). The use of the 13<sup>th</sup> amendment in this way supports the idea that legal frameworks are established early on to establish new systems of control later. Alexander states

As the rules of acceptable discourse changed... segregationists distanced themselves from an explicitly racist agenda. They developed instead the racially

sanitized rhetoric of “cracking down on crime”—rhetoric that is now used freely by politicians of every stripe. Conservative politicians who embraced this rhetoric purposefully failed to distinguish between the direct action tactics of civil rights activists, violent rebellions in inner cities, and traditional crimes of an economic or violent nature. Instead, as Marc Mauer of the Sentencing Project has noted, “all of these phenomenon were subsumed under the heading of ‘crime in the streets.’” After the passage of the Civil Rights Act, the public debate shifted focus from segregation to crime. The battle lines, however, remained largely the same. Positions taken on crime policies typically cohered along lines of racial ideology.... As Weaver notes, “rather than fading, the segregationists’ crime-race argument was reframed, with a slightly different veneer,” and eventually became the foundation of the conservative agenda on crime. (Alexander 2012, 29)

The utilization of crime decades later transformed the racial dynamics from being more explicit to implicit, but the result is still racial inferiority. The authority of laws maintains and can be enforced in varying ways. The social shifting of acceptable norms may change more specific laws, but the authority of the founding documents remains intact. Once the amendment is written into the Constitution, the supreme law of the land, the ability to enforce and maintain the law is instantiated.

Influence on politics and law was limited if not non-existent for African Americans during the formative years of the United States in the late 1700s. The reality of all white founding fathers and slavery should provide enough proof of the formation of founding documents without minority influence. As America has aged the access to governance has increased for minorities, but the access to shaping institutions for the vast majority of people of color remains unequal to white influence. The backlashes to expanding rights for African Americans provide fertile ground for constructing new political lines that would bring political power to the white demographic at the expense of minorities. The Southern Strategy is explained in the following:

Conservative Republican analysts [believed] that a “new majority” could be created by the Republican Party, one that included the traditional Republican base, the white South, and half the Catholic, blue-collar vote of the big cities. Some conservative political strategists admitted that appealing to racial fears and antagonisms was central to this strategy, though it had to be done surreptitiously. H.R. Haldeman, one of Nixon’s key advisers, recalls that Nixon himself deliberately pursued a southern, racial strategy: “He [President Nixon] emphasized that you have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognizes this while not appearing to.” (Alexander 2012, 30)

The Southern Strategy worked well considering Nixon was elected President. The racial approach brought to power by a racist majority solidified the authority of the government being white and covertly racist. Reagan followed in Nixon’s footsteps building “on the success of earlier conservatives who developed a strategy of exploiting racial hostility or resentment for political gain without making explicit reference to race.” (Alexander 2012, 32). The result was new political lines being successfully drawn on race lines with success and wide-support for white governance. The success of the Southern Strategy illuminates that societal acceptance provides support for authority and that authority can then self-legitimate through power in governance. The acceptability of covert racism in politics allows the superstructure of society to remain white dominant.

The construction of the war on drugs arose from this era of white political authority with overwhelming support from the white majority. The ‘tough on crime’ and ‘law and order’ rhetoric that support race-based political platform of Nixon and Reagan was able to go into full swing once political power was established. “In October 1982, President Reagan officially announced his administration’s War on Drugs” even though drugs were not considered the most pressing issue in the nation (Alexander 2012, 33). The reasoning behind the drug war “had little to do with public concern about drugs and

much to do with public concern about race.” (Alexander 2012, 33) The position of power allowed Reagan to initiate policies that cracked down on drugs and a media campaign “to sensationalize the emergence of crack cocaine in inner-city neighborhoods—communities” drawing support for the aggressive spending on law enforcement against drugs (Alexander 2012, 33). The authority of the Reagan administration was able to utilize policy implementation and societal acceptance to grant legitimacy to the program through media campaigns that further supported the drug war. Gathering support was working as “the War on Drugs proved popular among key white voters, particularly whites who remained resentful of black progress, civil rights enforcement, and affirmative action.” (Alexander 2012, 35). The support remained in line with the racial lines drawn within the political parties with research finding “that racial attitudes—not crime rates or likelihood of victimization—are an important determinant of white support for ‘get tough on crime’ and antiwelfare measures.” (Alexander 2012, 35) The racially neutral attack on crime was drawing support along racial lines through societal acceptance of racist governance.

The declaration of the War on Drugs created a *coup de force* producing both performative and interpretative violence. As earlier stated:

The operation that amounts to founding, inaugurating, justifying law, to *making law*, would consist of a *coup de force*, of a performative and therefore interpretative violence that in itself is neither just nor unjust and that no justice and no earlier and previously founding law, no preexisting foundation, could, by definition, guarantee or contradict or invalidate. (Derrida 1989, 241)

The quotation means that the *coup de force* is the act of creating law and provides a violence that is two-fold. The performative act of writing constitutes a violence of inscribing a meaning. That meaning is interpreted as what be enforced as law. The act of

declaration provides the performative substantiating the notion of declaring the War on Drugs, and as the slogan progresses, the actions taken in the name of the War on Drugs are justified as interpretations of the performative. Simply the act of declaring the War on Drugs made the War on Drugs begin. After President Nixon termed the War on Drugs the heavy enforcement and criminalization of drugs were written into law and acted upon by law enforcement. The performance of the War on Drugs called for vigorous enforcement seen by policy changes that gave the following result:

Between 1980 and 1984, FBI antidrug funding increased from \$8 million to \$95 million. Department of Defense antidrug allocations increased from \$33 million in 1981 to \$1,042 million in 1991. During that same period, DEA antidrug spending grew from \$86 to \$1,026 million, and FBI antidrug allocations grew from \$38 to \$181 million. (Alexander 2012, 33)

The vast increase in spending written into law as an interpretative act of the performative built monetary policy framework for enforcing the War on Drugs. The War on Drugs executed through law continually provides performatives via making law that are interpreted in application across society. The foundation of the *coup de force* is founded in the arbitrary whims of custom building structures upon the initial moment of signing into law. The *coup de force* occurs and then to enforce the law there needs to be support. An individual or entity with power uses the *coup de force* such as declaring a War on Drugs to create a new law. Power and support come from society's acceptance of the new law which is arbitrary. Societal customs determine who is in power and what those individuals in power can do. Thus, a *coup de force* is determined by societal customs. Reagan's stamp of approval and literal signature on legislation provided the authority for the drug war and the system of racial oppression that has followed the founding and enforcing of stringent drug laws.

In sum, the signature instating authority for the founding laws of the Constitution and the laws constructing the War on Drugs generate authority through a *coup de force*. The statutes from the founding moment are then continually justified due to the status of law that was created through the signatory act. The mere acceptance of the laws occurs from acceptance of the laws through custom. The laws are created by the political and social elite that is the wealthy, white demographic in the United States. Thus, the foundation of authority in the US is arbitrarily constructed through white dominance and the enforcement of the laws continually reifies the legitimacy of inequitable race relations written into the legal foundations.

### **Law Cannot Be Justice**

The terms ‘criminal justice system’ and ‘legal system’ are often used interchangeably implying that through the application of law comes the creation of justice. There is no doubt that law and justice relate to each other, but law and justice are distinctly different from one another. The previous chapter explained three aporias that each explain how law cannot be utilized as the sole means to justice. An attempt to use law as the sole means to justice tries to make justice solely calculative though it is not. The War on Drugs has several policies and legal practices that conflate the distinction between law and justice. Government legislation, executive orders, and judicial decisions have approached the War on Drugs with the mentality that law and expansive enforcement creates justice.

The demand for law and order from political leaders such as Nixon and Reagan mobilized a ‘tough on crime’ mentality in government, and the majority of American society embraced the declaration to wage war against drugs. Policies were passed that

limited judicial discretion and expanded law enforcement resources and techniques.

Alexander provides examples in the following:

In September 1986..., the House passed legislation that allocated \$2 billion to the antidrug crusade, required the participation of the military in narcotics control efforts, allowed the death penalty for some drug-related crimes, and authorized the admission of some illegally obtained evidence in drug trials. Later that month, the Senate proposed even tougher antidrug legislation, and shortly thereafter, the president signed the Anti-Drug Abuse Act of 1986 into law. Among other harsh penalties, the legislation included mandatory minimum sentences for the distribution of cocaine, including far more severe punishment for distribution of crack—associated with blacks—than powder cocaine, associated with whites. (Alexander 2012, 34-5)

The stringent drug legislation increased punishments and the mandatory minimum sentencing statutes took all discretion away from judges to determine sentences for drug offenses. Drug policies continued to get stricter with new and harsher mandatory minimums passed in 1988 along with punishments that disqualify any person convicted of a drug-offense from accessing a variety of federal benefits (Alexander 2012, 35). The legislation implemented categories of crimes and each case that fit the criterion of a category was subject to identical treatment. In other words, the legislation universalized punishments for drug crimes.

The Anti-Drug Abuse Acts neglect all three aporias that Derrida articulates about law and justice. All three aporias indicate that justice must be a free decision that addresses each unique situation. Justice utilizes law, but cannot rely solely on law. A just decision must be a new interpretation of law applied to the unique situation, include a non-calculative consideration of the situation, and occur in a moment of decision separate from past decisions. The first aporia argues that the pure calculation of law ignores the uniqueness of each new situation that requires attention. The strict application of a legal

formula assumes situations are identical and attempts to universalize a rule that cannot encompass the unique aspects of each new situation. Mandatory minimums implement exactly what the first aporia is arguing cannot produce just decisions. Mandatory minimums set fixed penalties that are applied in every instance a particular crime is committed. The sentencing decision is essentially pre-made and will be instituted upon conviction. No external details or consideration of circumstantial factors are allowed to factor into the decision. The law calculates the just punishment without attention to anything but existing law. The approach explained here follows the logic of the first aporia by solely relying on the rule of law to determine justice. The result of the aporia is not justice achieved through law. Rather, the result is an inability for justice to be achieved. Justice requires a reinvention of law to be applied in each unique case. Since the sole focus on law excludes the reinvention of law by only applying a previous standard, law used in this way is not justice. Mandatory minimums also exclude any moment of undecidability and moment of decision. In other words, consideration of a just punishment cannot consider incalculable factors and the moment of decision only follows a pre-made decision. Essentially no decision is made at all with mandatory minimums. Once the minimums are set, a single decision reoccurs. The recurrence of one decision eliminates any new decision. Without a new decision for each situation, the law inhibits justice.

The logic applied to mandatory minimums is also applicable to more policies that were passed for the War on Drugs. In 1994, a new crime bill advocated for by President Clinton established the three-strike law, which established a minimum life sentence for every third-time violent or serious felony offender (Alexander 2012, 37). The rigid law

parallels the logic of mandatory minimums, because both laws remove all judicial discretion and establish pre-set punishments. The crime bills attempted to reduce justice to law. However, the reduction is impossible. Law is not justice and justice is not law. Statistical evidence of the results of the War on Drugs will be provided later to support that the use of law as justice resulted in injustice.

In addition to legislative action by Congress and the President, the US Supreme Court played a key role in advancing the War on Drugs. Several court rulings set precedents for law enforcement practices that arguably violate the Fourth Amendment. The result of Supreme Court rulings has been likened to the creation of a virtual ‘drug exemption’ in the Bill of Rights (Alexander 2012, 39). The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized. (US Constitution, amend. 4)

The Fourth Amendment is commonly referred to as the ‘search and seizure’ right. The Fourth Amendment “was adopted in response to the English practice of conducting arbitrary searches under general warrants to uncover seditious libels.” (Alexander 2012, 39) Nevertheless, a series of decisions soon after the declaration of the drug war significantly increased law enforcements ability to utilize expansive search and seizure techniques. In 1968 a Supreme Court decision in *Terry v. Ohio* had the following result:

The Supreme Court modified [the previous understanding of the 4<sup>th</sup> Amendment] by ruling that if and when a police officer observes unusual conduct by someone the officer reasonably believes to be dangerous and engaged in criminal activity, the officer “is entitled for the protection of himself and others in the area” to conduct a limited search “to discover weapons that might be used against the officer.” Known as the stop-and-frisk rule, the Terry decision stands for the proposition that, so long as a police officer has “reasonable articulable suspicion”

that someone is engaged in criminal activity and dangerous, it is constitutionally permissible to stop, question, and frisk him or her—even in the absence of probable cause. (Alexander 2012, 40)

The decision in *Terry v Ohio* removed the requirement that officers have probable cause before searching people. In “*California v. Acevedo*, a case upholding the warrantless search of a bag locked in a motorist’s trunk,” the court decided evidence obtained from warrantless auto searches is admissible in court (Alexander 2012, 39). In *Florida v. Bostick* concerning ‘bus sweeps’, “the Court ruled that Bostick’s encounter with the police was purely voluntary, and therefore he was not ‘seized’ within the meaning of the Fourth Amendment” because he should have known he could have refused a police search (Alexander 2012, 41). The result of the case supported the practice of ‘bus sweeps’, which are police stopping an entire bus and searching everyone and everything on the bus. The court argued that citizens should know that they have the right to refuse the search so the Fourth Amendment is not violated. However, the likelihood that a citizen is aware he or she can refuse the search and feels empowered enough to reject a police officer’s request is extremely low. The court also legitimated a practice known as pretext stops, where police pull people over for minor traffic violations with the intention of searching for drugs. In *Whren v. Brown*, “The Court ruled that the police are free to use minor traffic violations as a pretext to conduct drug investigations, even when there is no evidence of illegal drug activity.” (Alexander 2012, 43) Shortly after *Whren v. Brown*, the Supreme Court went further with the ruling on *Ohio v. Robinette*. The case *Ohio v. Robinette* was about the following:

In that case, a police officer pulled over Robert Robinette, allegedly for speeding. After checking Robinette’s license and issuing a warning (but no ticket), the officer then ordered Robinette out of his vehicle, turned on a video camera in the

officer's car, and then asked Robinette whether he was carrying any drugs and would "consent" to a search. He did. The officer found a small amount of marijuana in Robinette's car, and a single pill, which turned out to be methamphetamine. (Alexander 2012, 43)

The decision on the case followed that of the ruling in *Florida v. Bostick* and maintained that Robinette should have refused the search. Without refusing the search, the evidence found on Robinette was permissible for conviction. The Supreme Court then ruled in another case regarding citizens' ability to say no to police searches. The Court took away the ability to deny a police officers request to search in the following:

In *Atwater v. City of Lago Vista*, the Supreme Court held that the police may arrest motorists for minor traffic violations and throw them in jail (even if the statutory penalty for the traffic violation is a mere fine, not jail time). (Alexander 2012, 43)

Thus, the ruling determined that citizens who refused searches can be jailed for exercising the right to refuse. The result of the series of Supreme Court rulings is a completely new interpretation of the Fourth Amendment that allows police significant discretion for searches on civilians. The Fourth Amendment no longer protects citizens from arbitrary police searches, and the police have extreme discretion in more invasive policing techniques.

Each decision by the Supreme Court creates a precedent and the decisions explained above all granted a precedent of wide-reaching police discretion. The problem is that the decisions give power to the police to decide justice in each situation after the decisions. The setting of a precedent is applied to every case from there on, which creates a rule to be applied universally. Arguably, the use of discretion by police allows for more reinterpretation of justice. The reinterpretation of each unique situation could potentially achieve justice better, because the police would not be purely calculating law to justice.

However, the police only collect evidence for the courts. The reality that courts decide the fate of individuals and that most individuals never see the inside of a court room means that police get the final decision on justice. The police do not know what they will find when they make the decision to search someone. The decision is purely arbitrary. If the police find something on a person, then the individual is determined guilty. The collection of knowledge about the situation is ended promptly. The decision is made urgently without much information. The ability to gather the necessary knowledge to make a just decision cannot occur. The third aporia regarding the urgency of justice obstructing the horizon occurs. The third aporia argues that justice requires immediacy, but the immediacy of the decision stops information collection. The fast decision is tethered to a calculation of past decisions that form an unjust decision. The law enforcement officers become tethered to the Supreme Court decisions that allow the officers to make decisions on justice. The policing practices employed are done so because of the permissibility granted by the Court. The fate of each individual relies on the precedent set by the Court. Therefore, the decisions of the police officers cannot be just, because the decision does not collect information necessary to determine justice and comes from prior legal calculations.

Certain Supreme Court decisions directly denied consideration of situational factors. Two cases challenged the courts on the grounds of racial discrimination. In both cases the Court ruled that racial discrimination cannot be considered in court. In *Whren v. United States*, the Court ruled that ‘pre-text stops’ were permissible, and also determined the following:

[The Court] ruled that claims of racial bias could not be brought under the Fourth Amendment. In other words, the Court barred any victim of race discrimination by the police from even alleging a claim of racial bias under the Fourth Amendment. According to the Court, whether or not police discriminate on the basis of race when making traffic stops is irrelevant to a consideration of whether their conduct is “reasonable” under the Fourth Amendment. (Alexander 2012, 66)

The Court essentially denied that certain information could be considered when ruling on a case. The result parallels the problems discussed with the other Supreme Court rulings above. The Supreme Court shut down the consideration of a situational factor and further knowledge when the court attempts to make decisions on justice. The blanket rejection of any racial discussion disregards certain factors pertinent to justice. The precedent of rejection applies to all future scenarios unless replaced with a new precedent. The precedent functions as a calculated rule that is applied consistently to all new situations that treats each situation identically. The result is an inability to achieve just decisions. The Supreme Court created the same problem in *McCleskey v. Kemp*. The Court did the following:

The Supreme Court ruled in *McCleskey v. Kemp* that racial bias in sentencing, even if shown through credible statistical evidence, could not be challenged under the Fourteenth Amendment in the absence of clear evidence of conscious, discriminatory intent.... The Court’s answer was that racial bias would be tolerated—virtually to any degree—so long as no one admitted it. (Alexander 2012, 66)

The Court shut down the ability to challenge racist practices. The unjust practice of racial discrimination was essentially legalized, because individuals could no longer challenge discrimination in court. The inability to challenge even with statistical evidence took the ruling previously discussed to a new level. The *McCleskey v. Kemp* case is a clear instance of a precedent being an unjust decision and prompting future decisions to be unjust.

All three branches of government participated in constructing the War on Drugs that creates problems with law and justice. The War on Drugs demonstrates a use of law that creates injustice. The three branches of government utilized different methods, but the result is the same. The War on Drugs set up a system that makes justice unachievable. The creation of laws in the search for justice attempts to combine law and justice. However, law and justice are unable to be combined. The attempt to combine law and justice generates unjust decisions.

### **The Expansion of the War on Drugs**

The War on Drugs used cash incentives to expand strong enforcement throughout the country. The result of the drug war is statistically proven to disproportionately affect people of color. The drastic discrepancies in results support the indictment that the ‘War on Drugs’ has created vast injustice.

Initially local and state governments did not support the ‘War on Drugs’ because “the federalization of drug crime violated the conservative tenet of states’ rights and local control.” (Alexander 2012, 46) The federal government needed to gain support so the federal government used cash. Alexander states:

Huge cash grants were made to those law enforcement agencies that were willing to make drug-law enforcement a top priority.... In 1988, at the behest of the Reagan administration, Congress revised the program that provides federal aid to law enforcement, renaming it the Edward Byrne Memorial State and Local Law Enforcement Assistance Program after a New York City police officer who was shot to death while guarding the home of a drug-case witness. The Byrne program was designed to encourage every federal grant recipient to help fight the War on Drugs.... This federal grant money has resulted in the proliferation of narcotics task forces, including those responsible for highway drug interdiction. Nationally, narcotics task forces make up about 40 percent of all Byrne grant funding, but in some states as much as 90 percent of all Byrne grant funds go toward specialized narcotics task forces. (Alexander 2012, 46)

The powerful use of cash incentives via grant funding prompted support across the nation for massive increases in drug war operations. Congress created more financial incentives in 1984 “when Congress amended the federal law to allow federal law enforcement agencies to retain and use any and all proceeds from asset forfeitures, and to allow state and local police agencies to retain up to 80 percent of the assets’ value” (Alexander 2012, 49). These law changes were not the last. More incentives and legislation have been created through federal legislation to support the drug war.

The federal government’s cash incentive strategy worked well and soon the political slogan ‘War on Drugs’ incited an actual war (Alexander 2012, 47). The success is explained in the following:

In 1972, there were just a few hundred paramilitary drug raids per year in the United States. By the early 1980s, there were three thousand annual SWAT deployments, by 1996 there were thirty thousand, and by 2001 there were forty thousand. The escalation of military force was quite dramatic in cities throughout the United States. In the city of Minneapolis, Minnesota, for example, its SWAT team was deployed on no-knock warrants thirty-five times in 1986, but in 1996 that same team was deployed for drug raids more than seven hundred times. (Alexander 2012, 47)

The local police agencies across the nation became actively involved in drug law enforcement. The drug war became a top priority as law enforcement departments sought after federal funds by participating in the drug war. The escalation of the drug war does not constitute injustice. However, the striking mobilization of law enforcement demonstrates the power of federal legislation.

The result of the ‘War on Drugs’ has been a large increase in the number of incarcerated people. From 1980 to 2001, the “prison population leapt from approximately 350,000 to 2.3 million.” (Alexander 2012, 58) Once a person goes to prison, that person

loses many opportunities and rights even after being released. The adjustment back into society fails more often than not as supported by the following:

According to a Bureau of Justice Statistics study, about 30 percent of released prisoners in its sample were rearrested within six months of release. Within three years, nearly 68 percent were rearrested at least once for a new offense. Only a small minority are rearrested for violent crimes; the vast majority are rearrested for property offenses, drug offenses, and offenses against the public order. (Alexander 2012, 58)

The recidivism rates are extremely high for released prisoners in the United States. The reality is that after someone goes to prison once the system is stacked against him or her. Another harsh reality is that the ‘War on Drugs’ has affected people of color at a far greater rate than white people. Alexander states some results of the ‘War on Drugs’:

Human Rights Watch reported in 2000 that, in seven states, African Americans constitute 80 to 90 percent of all drug offenders sent to prison. In at least fifteen states, blacks are admitted to prison on drug charges at a rate from twenty to fifty-seven times greater than that of white men.... When the War on Drugs gained full steam in the mid- 1980s, prison admissions for African Americans skyrocketed, nearly quadrupling in three years, and then increasing steadily until it reached in 2000 a level more than twenty-six times the level in 1983. The number of 2000 drug admissions for Latinos was twenty-two times the number of 1983 admissions. Whites have been admitted to prison for drug offenses at increased rates as well—the number of whites admitted for drug offenses in 2000 was eight times the number admitted in 1983—but their relative numbers are small compared to blacks’ and Latinos’. Although the majority of illegal drug users and dealers nationwide are white, three-fourths of all people imprisoned for drug offenses have been black or Latino. (Alexander 2012, 60)

The ‘War on Drugs’ has clearly targeted people of color and adversely affected minorities at a much greater rate. Once arrested, the likelihood of normal participation in society is virtually gone and the people being arrested are people of color. The statistics indicate an extreme amount of discrimination in the criminal justice system. A system that discriminates on a level of this scale cannot be a just system.

## Conclusion

The use of Derrida's philosophy highlights key aspects of the unjust system of the War on Drugs. The problematic use of logocentrism, idiom, and law as the sole means to justice are exemplified in the War on Drugs. The examples discussed demonstrate authority figures enacting laws that are enforced and frequently have problematic results.

Derrida's work analyzes the connection between law, authority, and justice. The application of the philosophy further demonstrates connections between the three concepts. The problems with racial discrimination and the justice system provide concrete examples of outcomes that Derrida argues in his philosophical works. The arbitrary nature of authority allows problematic structures to be constructed. The system then supports itself through mechanisms such as the creation and enforcement of law. The determination of what laws are passed depends largely on society which can be shaped by individuals with authority as shown with the media messaging that solidified the notion of black individuals as criminals. The use of idioms allows control over populations who are unaware of the full meaning of the idiom resulting in idiomatic injustice. The inability to obtain justice through the use of laws such as with the Supreme Court is in part because the structure of law is calculative and the use of problematic laws to calculate only compounds the problem. The War on Drugs exemplifies the problems with idiom, logocentrism, law, justice, and authority.

However, the result is not that the system is inherently doomed to be unjust. Derrida's concept 'justice to-come' provides an optimistic view. The flawed systems do not have continually to be flawed. Justice requires openness to the potential for justice openness to other meanings. Justice and law can both exist, but the two are not the same.

Each situation must be examined as a unique situation that requires a new judgment. The judgment needs to consider the circumstances and not rely on notions of minorities as criminal. Considerations of the system as racially biased should not be discounted, but explored. Justice is constantly coming. The possibility is ever-present. The War on Drugs shuts down the justice to-come with a system that has laws made to force calculation and shut down justice. Nevertheless, opening up the system to allow for meanings that have been excluded is necessary to open up the possibility for justice. In other words, the racist notion that minorities are criminals must be criticized, and laws must be reformulated. The War on Drugs must end because the War on Drugs has closed off the possibility for a 'justice to-come' via systemic elimination of the other. Metaphysical deconstruction is not enough. Physical deconstruction of the system that has been built is now required. Nonetheless, the metaphysical deconstruction reveals the depth of the problems of the War on Drugs and the necessity to cease and desist. Now.

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