The United States of Exception:
Securitization and Law as a Vehicle to Disenfranchisement

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Abstract

The exploration of the relationship between securitization and law is a privileged area of inquiry as it surfaces ontological questions on the relationships between states and citizens; policy and institution building; social control and the power of law, among others. The construction of threathood, an integral component to securitization, leans on its association with national values and identity, the perception of a specific issue and the entity which originates the threat (Ibek, 2015). Securitization is operationalized through the use of regulatory and administrative legal apparatus in efforts to exercise social control through penological tools (Miller, 2005: 123).

To examine the issue, I identified the following question as my primary research question: *How and to what extent does plea bargaining, in the context of a history of securitization, become a vehicle for disenfranchising minorities?* To aid in answering this question, I applied the analysis to the case of the United States as it offers a particularly interesting case of fast-tracked convictions within a history of securitization, given its global reputation as a pioneer in the en-masse use of plea bargaining.

The findings of this thesis attribute the construction, operationalization and impersonation of threathood to the theory of securitization and its relationship to law. Through a historical perspective, I demonstrate tactics utilized to influence the production of law in efforts to both control specific groups and to preemptively justify the use of invasive strategies. In addition, I illustrate the use of the plea bargaining system as a mechanism to operationalize securitization, making the process of arrest, detainment and conviction appear legitimate and rational. In actuality, I argue that the law is utilized to produce states of exception to permanently redefine the way in which the institution of criminal justice operates. In evaluating the disenfranchisement of minorities, I demonstrate the effects of conviction and imprisonment through the adoption of Foucault's 'carceral archipelago' to describe extended punitive consequences outside the penal system and into public and private institutions.

Keywords: securitization, law, disenfranchisement, international relations, plea bargaining, criminal justice, immigration

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This thesis is written in honor of Kalief Browder, who should be alive.

Chapter 1: Introduction

1.1 Introduction

Securitization requires that particular issues are framed as matters of grave importance in order to gain the popular support necessary to enable the political elite to enforce critical risk management (Balzacq et al., 2016). Balzacq et al. describe securitization as a performative act which merges “the politics of threat design with that of threat management” to fundamentally transform a specific social reality (2016: 495). Traditional approaches to securitization, such as the Copenhagen School, attribute the design or construction of a threat to a speech act, subsequently utilizing discursive analyses to explore how a threat comes into being. The linguistic framing of a threat offers valuable insight as to how a securitized issue is received by the national political class and how risk management actions are justified. Critical approaches urge a transdisciplinary framework in examining matters labeled as security issues (Bigo, 2016: 1076). The latter approach, inclusive of the former, allows for meaningful analyses into the organization of power in the context of security. This approach allows for an examination of the “regulatory, administrative legal” apparatus employed to operationalize the construction and response to threathood (Miller, 2005: 123). While securitization research typically looks outward to transnational tensions and external threats, this paper applies the theory to look inward toward domestic matters attributed to national security. In particular, this paper examines the mobilization and reconfiguration of public infrastructure, specifically the role of law, as both an instigator and catalyst of domestic threathood.

The exploration of the interconnection between securitization and law is a privileged area of inquiry as it surfaces ontological questions on the relationships between states and citizens; policy and institution building; social control and the power of law, among others. Law, in comparison to other institutions that are more commonly discussed in the context of securitization, is of particular significance because it “expresses the ‘character and development of the nation’s ‘self-consciousness’” and, thus, of it’s identity (Ferreira da Silva, 2009: 223; Robin, 2004; Ibek, 2015; Bigo: 2016). It is through law that the state exercises, often with the use of force, its regulating powers to seek legitimacy by both determining and reproducing its own identity through structured morality (Ibid.: 224). It is in this practice that a uniform political class emerges (Bigo, 2016). Those that are not active beneficiaries, to which there are many, are entities which threaten the universalities fundamental to the national political class. Therefore, it is through the juxtaposition of securitization and law that national identity both emerges and is reinforced. This paper argues that it is also through their interconnection that regulating powers are used to practice systemic exclusion, often at the expense of society’s most vulnerable members.

This paper utilizes the United States as its case study to explore the state's relationship between securitization and law. In this paper, I argue that the United States is rooted in the historical use of security campaigns to produce specific laws that uplift its national political class, the white political elite. Looking at the United States offers a particularly interesting case as its criminal justice system has experienced significant developments within the last thirty years in the context of the ongoing War on Drugs, as well as other thematic periods of national insecurity (Alexander, 2012). These developments include the production of severe policies, militarization of local police forces and the shift of the administration of justice from a trial-based system to an overwhelming use of plea bargaining, which refers to a negotiated settlement between prosecutors and defendants (Standen, 1993; Langbein, 1978). These policies are often at the expense of minorities, who disproportionately suffer the effects of criminalization and harsh policies.

1.2 Research Question

The primary research question that this paper seeks to explore is: *How and to what extent does plea bargaining, in the context of a history of securitization, become a vehicle for disenfranchising minorities?*

Given the increasingly widened international popularity of plea bargaining as a mechanism to quickly and efficiently administer justice, the research question focuses on the administration of justice via the plea bargaining system, rather than the larger criminal justice system. To examine this question, I will be applying the theoretical framework to the context of the United States. I have chosen this method given the well-documented development, expansion and adaptation of the American criminal justice system in the context of a deeply-entrenched history of domestic security campaigns. The theory of securitization allows for

The focus on the disenfranchisement of minorities is intended to look at both the penal system's consequential formalities and the less visible effects within what Beckett and Murakawa refer to as the "shadow carceral state" (2012: 222). The term disenfranchisement refers to a "statute [that is] nonpenal" and "imposes a disability, not to punish, but to accomplish some other legitimate governmental purpose" (Karlan, 2004: 4). The term 'minority' is a popular term which refers to typically non-white groups that do not 'belong' to the national political class. Although the case study requires the specific exploration of the American context, the paper balances between ensuring the case study is given sufficient detailed information to be considered meaningful and reserving the space to instigate a larger reflection on the theories and concepts discussed throughout the text.

This thesis contributes toward the area of critical security studies. Critical approaches to securitization actively seek to center the "lived experiences of the victims" of securitization processes through a transdisciplinary framework (Bigo, 2016: 1070-76). Through its case application, this thesis is able to contribute to this area of inquiry by: (i) exploring the historical relationship between securitization and law; (ii) engaging in meaningful analyses into the

organization of regulatory power through the apparatus of the penal system; and (iii) by looking at the impact of the formal penal system and its extension to those who impersonate threathood.

1.3 Theoretical Framework

Political fear is a vessel which breeds conviction and commitment to our political values (Robin, 2004). These values often emerge as part of political ideologies, rooted in conflict between social groups with varying access to power (Robin, 2011). It is through fear that worth is attributed to political values, primarily because we are forced to both (i) reinforce our passion for values that resonate with our identity and (ii) confront perceived threats to those values (Robin, 2004). Only when faced with literal or perceived risk of our political values is its worthiness evaluated, in which we must declare if its loss would result in an existential threat (Ibid.). It is through this tension, of perceiving threat and utilizing power to retain what is at risk of being lost, that we can observe the importance of fear in building momentum and implementing defining measures (Robin, 2011). One such political value that is constantly in the purview of both society and those in power is the rule of law; the written rules of engagement between states and citizenry (Schuilenburg, 2011).

This chapter seeks to introduce the concept of securitization, define the structures that interconnect securitization and law, as well as engage with categorical representations that impersonate the perpetuation of threathood. The theoretical framework is, therefore, organized in three sections. The first section outlines theoretical approaches to the concept of securitization, primarily focusing on the Copenhagen School's *speech act* and critical approaches to securitization studies. The second section seeks to highlight the institutional operationalization of securitization through law, looking specifically at the role of criminal justice. The third section discusses the emergence of categories to classify those assigned the impersonation of threathood.

1.3.1 Performing Security Through Law

The Copenhagen School (CS) argues that the political state is organized in accordance to the vision of political elite's worldview through the securitization of specific issues (Buzan et al., 1998; Waever, 1995). The CS argues that securitization occurs through a process of discursive construction referred to as *speech act*. Leaning on linguistic theory, they claim that the labeling of an issue as an existential threat[1] constructs the threat itself. The securitization process is launched by characterizing something that is not traditionally related to as an issue of security as a threat that must be immediately dealt with as a matter of survival, regardless of whether the identified threat is actually a real, objective threat (Buzan et al., 1998; Waever, 1995; Waever, 2010).

[1] Central to perceptions of existential threats is the notion that everything is at stake and, therefore, that response to a threat is both critical and urgent.

The CS argues that following the speech act, the audience exercises its critical role in either supporting or rejecting the threat claim. Responses from influential entities and the wider audience[2] that call for iron-handed acts to 'eliminate' the threat and secure the referent object contribute toward the legitimacy of the threat (Ibek, 2015). This response strengthens ideological cohesion, which facilitates the mobilization of necessary resources and deters public hostility (Waever, 2010). Evading opposition from the audience strengthens the role of fear elicited by the speech act, creates a harsher terrain for resistance and births an environment in which extraordinary action may be taken (Ibek, 2015). The role of the audience is to produce the minimum support essential to propel the operationalization of the securitization process. Securitizers rely on the audience to fulfill two primary functions: (i) provide moral support and (ii) supply the formal mandate (Balzacq et al., 2015: 500). The latter refers to the formal procedures and structures[3] which operationalize the securitization process (Ibid.) In summary, securitization works in two parts: (i) the speech act, which enacts performativity to construct a threat through a sense of fear and urgency and (ii) the construction of a response to the existence of a threat, which allows for the operationalization of extraordinary measures. This dynamic produces an intrinsic threat-defense structure, looking toward institutions to enforce these measures.

The CS subscribe to the social constructivist approach to securitization, which centers around the notion that the state is (i) the manufacturer of identified threats, (ii) the responsible actor in formulating the appropriate response, as well as (iii) the sole entity to evaluate the critical consequences of the threat-defense approach. This approach dilutes the nuanced roles and variety of actors that contribute toward the construction of threathood, including entities and structures that benefit from existence of particular threats (Wilkinson, 2011; Booth, 2005). Therefore, this approach cannot be exclusively used as a framework to explore cases in which the state operationalizes itself to manage domestic threats (Ibek, 2015). What other approaches to securitization are able to engage with some of the complexities discussed?

Critical theorists Williams (2003) and Jones (1999) apply Habermas' theory of "communicative action" to argue that a speech act is subjected to a process of justification and legitimization, beyond the limited dialogue between the audience and the securitizer (Charette, 2009). This process, known as the discursive ethical approach, facilitates the space necessary to challenge and refute the securitization of a particular issue (Ibid.). Critical theorists acknowledge that the structures of power often exclude the voices of those who are targeted and impacted by securitization, rendering resistance external to the contestation of securitization processes (Ibid.). Other critical theorists challenge the exclusivity of a speech act as a commencement to securitization, pointing to the regular political practices that frame specific issues as matters of security (Ibek, 2015).

[2] As noted in Balzacq et al. (2015), the wider audience does not necessarily undermine the role of the political elite to further the securitization of a particular issue, but the extent of subsequent actions may be impacted if popular support is lacking.

[3] Balzacq et al. describe critical securitization as a combination of "political threat design and with that of threat management" (p 495). The formal structures refer to the latter of the quote; threat management.

Critical securitization theorists argue that “security, as a concept and a political tool, is able to promote subjectivities of fear and it often materializes as the product of oppressive or undemocratic acts as well as process of social and political exclusion” (Charette, 2009: 15). In the relationship between securitization and law, legal practices mirror the impact of the speech act within formal structures (Huysmans, 2002). The production of law and subsequent procedures to address a threat are measures which mirror the role of speech act; criminalization becomes the adopted mechanism to protect the values of the political elite (Cohen, 1996). How does the application of crime-centered framework further the interests of securitization processes and what are the benefits to criminalizing a security issue?

Securitization theory inherently engages with questions of structural power, requiring a nuanced exploration of the systemic layers that precede and accommodate securitization. Balzacq et al. argue that “securitizing practices owe their form and content to the power relations characterizing [the field of insecurity]” (2015: 505). These dynamic practices reside within states’ formal mandates[4] (Buzan, 1997). Objectivity is not meaningful to these practices, as their intent is to paint a chaotic and insecure world in need of reinforcements. Bigo asserts that securitization is used as a “discourse of justification” to fortify the dominant ‘regime of truth’ primarily informed by power relations (2002: 1076). Theorists subscribing to this approach argue that engaging with security requires the evaluation of “structural power relations within the securitization process and critically evaluating the social and political power of the securitizing actor” (Charette, 2009: 23). As argued by Charette, this approach requires analysts to critically engage with the inherent power the political elite have over language[5] to deconstruct the institutional power of the securitizer (Ibid.: 38).

1.3.2 Structures of Securitization

Schuilenburg (2011) references the work Foucault to explain the structural operationalization of security processes. In Foucault's lecture series on Security, Territory and Population, Foucault utilizes the systematic measures exercised in the attempt to control the smallpox outbreak of the nineteenth century to exemplify the governance of security (Ibid.). These measures include: (i) preventative control through the dissemination of a vaccination, (ii) targeting an entire population (group), in which they become an “object of surveillance, analysis, intervention, modifications, and so on” and (iii) applying a ‘normality’ for comparison (Ibid.:75). These measures valued the existence and preservation of normality through “prevention, population, regulation, and risk”, deriving power by identifying abnormalities, or rather “a potential risk to the social order” (Ibid.: 76).

[4] Formal mandate refers the practices utilized to mobilize and operationalize the resources necessary to securitize.

[5] As noted in Charette (2009: 26), Bigo (2002) refers to the political elites’ power over language to constitute the ‘regime of truth’.

Transitioning Foucault's example into the realm of securitization, Schuilenburg refers to the concept as the 'securitization of society', in which security techniques are widely applied to society as an exercise of power and control (2011: 77). In efforts to 'address' insecurity, the emphasis is placed on preventative approaches (Schuilenburg, 2011; Bigo, 2012). Preventative approaches are practices that are based on the predictive security, an approach which bases risk management on uncertainty and suspicion (Bigo, 2012: 1078). The popularity of this approach accompanied a general shift in the administration of criminal justice from a form of rehabilitation to a mechanism which identifies and classifies threats to the social order (Schuilenburg, 2011: 77). This approach operationalizes a particular regime of truth, void of objectivity, to pathologize "undesirable conduct" as "potential future criminal conduct"[6] (Ibid.: 80). Bigo interprets the work of Edelman (1988) to further the performativity of this logic, which he deems part of the "political spectacle" of securitization (2002: 68), giving rise to the increased presence of the state in our daily lives under the means of security through prevention.

In Foucault's analysis of the smallpox outbreak, preventative measures are supplemented by the surveillance of an entire group based on their possibility to contract smallpox. In securitizing an issue, political regimes often attribute a threat as belonging to a particular group. This practice attributes the perceived characteristics of a group to indicate a higher risk of criminality, a form of selective distinguishment based entirely on suspicion. An exemplary manifestation of this behavior is the Stop and Frisk program in New York City. Under the leadership of then-New York City Mayor Rudy Giuliani and former Police Commissioner William Bratton, the New York Police Department (NYPD) implemented a mass-scale zero-tolerance surveillance program called Stop and Frisk which continues in operation today. The program was initiated as part of a supposed tactic to target low-level infractions as a method to prevent high-level crime, arguing that one influenced the other, despite no such evidence (Robinson, 2013; Newberry, 2017).

The third pillar of Foucault's analysis is the component of comparison of normality, in which different measurements constituting as 'normal' are used to compare between differentiated groups. Schuilenburg argues that instituting a 'normal' and implementing it as an en-masse metric of comparison does two key things: (i) identifies those that "form a potential risk to the social order" and (ii) strengthens a political regime's regulation of a 'normal' social ordering (2011: 76).

The modalities of the "securitization of society", specifically prevention, surveillance and enforcement, are found within the administration of law and order. The term 'law' refers to criminal law as a mechanism in which the state exercises control over its citizens, requiring a formal space in which the tension between protection of citizenry and state interests is evaluated (Schuilenburg, 2011; Wonders, 2016). The term 'order' refers to the "science of order", which grapples with the classification of differences in the common space to formalize a universality of both "simple and complex observable things" (Ferreira da Silva, 2009: 217). This

[6] What constitutes as undesirable conduct and who perpetrates potential future criminal conduct is dynamic between political regimes.

process of ordering is systematically embedded in societal structures. It is the practice of producing "a formal mapping of [territories, bodies and modes of existence used to designate human varieties] without having to [answer] how they come into being" (Ibid.). This logic constitutes the "structural principle of the criminal trial" (Schuilenburg, 2011: 81). In theory, the criminal trial allows for the legitimacy of claims against citizenry to be reviewed within a framework of formal universalities, which typically includes principles such as reasonable doubt (Schuilenburg, 2011).

Adhering to these formal mandates of order is intended to indicate a state's moral structure and functions as a mechanism to maintain its legitimacy (Buzan, 1997). Nonadherence to these structures produces what Agamben refers to as "states of exception"[7] (Wonders, 2016: 202). States of exception operate outside the framework of democratic formal mandates to create a voluntary "permanent state of emergency", giving rise to: (i) spaces outside the purview of law and rights-based discourse, (ii) outsourcing mandates of social control to entities external to governance accountability and (iii) expansive surveillance (Ibid.). This is not to say that law does not exist, quite the opposite (Ibid.: 207). Wonders argues that it is in these spaces that law is utilized as a tool to redefine "democratic tools of governance and social control" (Ibid.: 206).

Instead of a formal mandate to ensure checked power, law is utilized as a platform of political performativity to produce the legal framework to accompany specific ideologies (Bigo, 2002; Spencer, 2012). This tension is particularly visible in the state's exercise of violence. As argued by Ferreira da Silva, the "state and law [both] comprehend violence in the authority to check individuals' threats to one another, external threats to the collective… and in the authority to decide when to deploy its protective and punitive instruments" which it used to configure the extent of "self-determination" (2009: 216).

The engagement in a deliberative process makes the state appear rational and fair, applying universal formalities through its mandates of control (Ibid.; Lowman & Menzies, 1986). While actually, through this process of formalized deliberation, it reinforces its positioning as the exclusive entity capable of exercising violence, particularly as a "regulating tactic" (Buzan, 1997; Wonders, 2016; Ferreira da Silva, 2009: 212; Brucato, 2014). The state manipulates its legal framework to strengthen its own position, utilizing precedence two fold: (i) as a mechanism of exclusion and (ii) to alienate it from meaningful critique and analysis. The acts of structural violence are not morally questionable as the "bodies and the territories [that state violence targets] inhabit… already signify violence", positioning the state's actions as acts of "self-preservation" (Ferreira da Silva, 2009: 213; Koram, 2017).

The political elite have understood and grasped the power of this concept, particularly through capitalizing and adapting to difference. Their ideological convictions acknowledge that inequality is a human craft that can be dismantled and recreated, and therefore it requires "preservation through transformation" (Robin, 2011: 53; Siegel, 1997: 1119).

[7] States of exception embody the selective application of justice (Wonder, 2016).

1.3.3 Impersonation of Threathood

The application of regulating tactics can only be justified if the regulating entity appears to behave rationally. Feeley & Simon argue that classification systems create a framework of rationality which associates risk to specific patterns, characteristics and other attributes, enabling managerial strategies to "regulate levels of deviance" (1992: 452). The techniques used to "identify, classify and manage groupings sorted by dangerousness" are central to conceptualizing the embodiment of threathood (Ibid.). These defined groups are conceptualized as the *dangerous classes* by Hobsbawm or the *underclass* by Wilson (Feeley & Simon, 1992: 467; Cohen, 1996: 17). These groups are attributed with static marginalization as "a self-perpetuating and pathological segment of society", the anti-citizen, that is distinct and "not integratable" into the national political class (Feeley & Simon, 1992: 467; Brucato, 2014: 38).

What are the implications of this form of distinction? A state's social architecture is organized through moral differentiation to produce a group defined as "free and honest men", the national political class, which perpetually requires protection from "social ills" (Ferreira da Silva, 2009: 227). The classification of social ills is tied to social groups that are "permanently excluded" due to what are deemed as inherently amoral cultural differences that actively produce threats to a nation's social fabric (Feeley & Simon, 1992: 467; Cohen, 1996; Huysmans, 2002) This form of exclusion requires a forceful application of laws to "enforce, sustain and continually reproduce the divisioning between inside and outside, mine and yours, ours and theirs, and so on" (Cuevas, 2012: 608). The use of morality to formulate the distinctions between groups facilitates the designation of risk based on actuarial indicators (Feeley & Simon, 1992). These indicators are formulated through algorithms derived from specific samples that are then applied to subpopulations (Ibid.; Berk & Freedman, 2001). This application is then used to generate claims on the probability of a collective to engage in crime (Ibid.). How has this form of data collection and representation legitimized the use of policies to address these uncertainties? The actuarial discourse frames the state's claim that certain subpopulations harbor greater threats to the ambitions of the national political class (Ferreira da Silva, 2009). This framing allows states to reason the permanent state of risk management and regulation of particular groups deemed 'unruly' (Feeley & Simon, 1992: 455).

This condition impacts the way in which we approach unpacking this form of collective criminalization. Beyond theories of securitization and criminology, we must also engage with what Feeley & Simon call "the new penology" (1992: 452). Their text, written nearly twenty years ago, lays out a series of trends which value the greater quantification of criminality through a systemic approach to crime. This is best understood through the theory of incapacitation, in which crime is not regulated through addressing socio-economic and political roots of criminal behavior, but instead it seeks control by "rearranging the distribution of offenders" (Ibid.: 458). In other words, this method seeks to manage crime through the identification and management of groups classified as sources of risk. This results in correctional institutions' hyper-involvement and presence in public life, including expansion to community self-policing (Cohen, 1996: 11).

The use of incapacitation is furthered through its selective application, in which punitive consequences are disproportionately applied to particular groups and, therefore, the extraordinary presence of law enforcement in the geopolitical spaces associated with these groups (Ibid.).

So what happens to these groups that are targeted due to their designated risk factor? The use of criminal punishment as a mechanism for control has given rise to a number of correctional techniques, from incarceration to varying degrees of surveillance. Groups designated as high-risk[8], the enemy named by the political elite, are portrayed owing an "incalculable debt to 'society'" which exists only in difference to the national political class (Cuevas, 2012: 611; Ferreira da Silva, 2009). As these groups are deemed permanently excluded, belonging to a *dangerous class* or a fixed *underclass*, they are also heavily stigmatized, in part leaning on outstanding colonial rhetoric of racialized savages (Cohen, 1996: 9; Cuevas, 2012: 609; Kurzban & Leary, 2001). Therefore, all measures taken to control and regulate these groups, including active devaluation through the loss of rights and privileges, are seen as both justified and necessary.

1.4 Methodology

The primary research question that this paper seeks to answer is: How and to what extent does plea bargaining, in the context of a history of securitization, become a vehicle for disenfranchising minorities? To aid in answering the paper's primary research question, I curated three sub-questions to guide each subsequent chapter:

- How has the relationship between securitization and law historically developed?
- How does the criminal justice system, in particular the roles of policing and prosecution, enable the implementation of securitization processes?
- What is the impact to those that impersonate threathood?

The purpose of this study is to utilize existing literature produced by scholars, state institutions, legal organizations and individual narratives to gain an understanding of the relationship between securitization and law, particularly how they aid and abide each other through operational mechanisms, and examine their subsequent effects. The research design for this thesis applies a qualitative approach in which a single case study, specifically the context of the United States, is utilized to explore the research question. Due to the wealth of information existing on the topic of security and law, I exclusively used transdisciplinary secondary material within my research. I approached the literature review through the framework of securitization theory, thus international relations, subsequently identifying and integrating bodies of work from the fields of political science, criminology, sociology, criminal justice and post-colonial studies. As with all theories and concepts within the scope of research activities, the approach I employ in this text seeks to test the credibility of central theories, such as *securitization*, *social control* and *incapacitation*.

[8] In the American context, these groups are overwhelming comprised of nonwhites.

I utilized Alexander's *The New Jim Crow: Mass Incarceration in the Age of Colorblindedness* (2012) as a stepping stone to begin thinking about interlinkages between security and law. Alexander's text provides a comprehensive historical account and unique articulation of racialized social control in the United States. Various security campaigns, although often not explicitly acknowledged as such, are highlighted in the context of a criminal justice system that has expedited the imprisonment and close surveillance of tens of millions of people largely facilitated through the plea bargaining system. Legal scholars representative of a full spectrum of political ideologies acknowledge the use of plea bargaining as a necessary mechanism to sustain the American criminal justice system as it exists today (see Langer, 2004). The case of the United States, specifically, epitomizes the applicability of theories and concepts central to the research question, while still allowing for a meaningful reflection to the larger, internationalization of the research problem. As the use of plea bargaining continues to garner global popularity, both in other countries and within international institutions, I argue that there is scholarly value and relevance it looking directly at the cyclical effects of the administration of justice, in the context of decades-long securitization campaigns, that have systematically criminalized and disenfranchised minority groups (Langer, 2004).

To make this argument, I draw on different forms of material, including: academic research from scholars in the areas of security studies, political science, criminology, sociology, criminal justice and post-colonial studies; non-academic political texts which aggregate unique sources of information; legal texts and case summaries; data from government institutions; research and data from non-profit organizations; and, when necessary, the use of news articles to reference specific events. Particular attention is provided to the aforementioned Alexander text and Robin's two texts: (i) *The Reactionary Mind: Conservatism from Edmund Burke to Sarah Palin* (2011) and (ii) *Fear: The History of a Political Idea* (2004). Robin's texts centralize the roles of fear and reactionary politics, both of which are important to draw upon in discussing the relationship between securitization and law. These three texts carry unique presentations of data and unparalleled articulations of important arguments relevant to the primary research question.

In designing this research project I considered many approaches to the aggregation of data and the deliberation of an appropriate theoretical framework that would contribute to the area of critical security studies. Due to the scope of the research question and the abundant data that already exists on the case study, I exclusively relied on secondary material. Upon evaluating existing material, I concluded that a qualitative aggregation of information and analysis would allow me to adequately explore the research question.

1.4.1 Material Collection

The compilation of secondary material was curated through various tools. First, the use of academic material pertaining to the relationship between security and law was largely mined in seeking scholarship on the topics of securitization, criminal justice and social

domination/control. These three topics in particular were essential in conducting the literature review and informing the structure of the thesis. Second, Alexander's text provided great insight on relevant legal texts and cases that aid in illuminating shifts in public policy through the medium of rhetoric-driven law. Notable cases presided by the Supreme Court were significant due to the impact of particular decisions, as well as the information and rationale provided in judicial dissents. Cases particularly relevant to the issue of securitization were organized in a database format by theme, political context and constitutional impact.

Third, government institutions provide regular reports which typically list activities and statistics owing to a specific matter. In particular, the use of police databases has been of great value in illustrating patterns and language relevant to criminalization. Fourth, non-profit organizations, particularly those that provide legal aid, conduct investigative activities as part of specific cases or as a unique contribution to an area of knowledge production. Fifth, news articles are sometimes the only resource that has comprehensively tracked and reported particular issues that are relevant to this thesis. Although material originating from news agencies, organizations and governments often echo a specific political point of view, some forms of data and information are exclusive to these spaces. Therefore, with great care, they are included to support academic texts. Several individual narratives are also included in the text. These narratives are not intended to sensationalize specific issues or to necessarily be representative of entire groups. The decision to include these narratives is part of critical security studies' ambitions, which aim to prioritize centering the experiences of real people in the context of systemic issues.

1.4.2 Material Processing & Analysis

The three theoretical sections were constructed as a format to approach the primary research question: *How and to what extent does plea bargaining, in the context of a history of securitization, become a vehicle for disenfranchising minorities?* I processed and analyzed relevant material in an iterative format akin to building blocks in application to the case study.

- The second chapter sought to answer the first sub-question: *How has the relationship between securitization and law historically developed?* To answer this question, I:
    - applied the CS approach to securitization theory to unravel the relationship between securitization and law;
    - utilized post-colonial and political science literature, in addition to legal texts, to complement securitization theory and draw out relevant contextual information and developments; and
    - analyzed a historical account of securitization campaigns aided and/or incited through the use of law, revealing the use of security rhetoric to construct and legitimize threats.

- The third chapter sought to answer the second sub-question: *How does the criminal justice system, in particular the roles of policing and prosecution, enable the implementation of securitization processes?* To answer this question, I:
    - heavily relied on the use of criminal justice and sociology literature, as well as information provided by new agencies, government institutions and non-profit organizations to illustrate the gravity of particular developments;
    - analyzed two key components of criminal justice administration: policing and prosecution; and
    - identified significant changes in policing and prosecutorial tactics and their immediate effects, in reflection of the history of securitization and law.

- The fourth chapter sought to answer the third sub-question: *What is the impact to those that impersonate threathood?* To answer this question, I:
    - utilized Cohen's (1979) dystopian description of a punitive city as a path to dissect the shadow carceral state;
    - drew on statistical data and legal texts that reflect the state of welfare for targeted groups; and
    - analyzed the effects of the penal system in the context of securitization, in which perpetual punitivity is a permanent staple for the collective that has been designated to impersonate threathood.

1.5 Limitations

1.5.1 Observations

Security studies is a relatively new area of scholarship in the sense that its history spans no more than thirty years. As the offspring of International Relations, traditional approaches to security studies have intently applied specialized scopes to security analyses, resisting flexibility to expand the applicability of securitization theory to other areas outside the traditional discourse (Buzan, Waever, etc.). In contrast, critical security studies have embraced and called for further interdisciplinary approaches in applying securitization theory (Bigo, etc.). This is not to say that traditional approaches are incomplete, but rather, that their rigidity may result in the absence of social dimensions that further inform a specific issue. A similar observation extends to the study of criminology in its tensions between traditional and critical approaches.

1.5.2 Interdisciplinary Research

One clear limitation that I faced throughout the research process and analysis was in relation to holistically capturing each discipline included in this paper. A thorough collection, review and analysis of data was conducted, but due to the interdisciplinary nature of the topic a statement expressing a confident exhaustion of all existing research on the subject is not possible within the parameters of this endeavor. Given the limitations of this endeavor's time, scope and the objectives, additional work could and should be done to further interdisciplinary applicability.

1.5.3 Resource Disparities

As noted within the material collection section, the use of government publications and resources, as well as news articles and reports produced by non-profit organizations is that they each evoke a particular political perspective. Often, these publications directly counter each other's claims. Some of which are subjected to the academic gaze, but others are not. As these publications are not necessarily held to standards of scientific rigour, I use them sparingly throughout the text and only when necessary to further illustrate a specific claim.

1.5.4 Contemporary Reflections

While the ambition of the paper was to examine the historical account of securitization and law through today, the current political climate in the United States requires a period of reflection and analysis that is challenging to conduct without a period of adequate scientific reflection. While the government publishes official statements, news agencies focus on current developments and non-profits produce position papers and other resources, these resources are often in contradiction with each other. Given the dynamic current and recent security developments, this paper does not engage in diagnostics of the current administration.

1.6 Reading Guide

1.6.1 Chapter 2: A History of Securitization and Law

The second chapter asks: *How has the relationship between securitization and law historically developed?* This chapter examines the dovetail of securitization and law in the context of the United States as a foundation to discuss the operationalization of criminal justice administration. The first section focuses on security campaigns and the accompanying legislation that preceded the so-called Jim Crow era, namely settler-colonialism, chattel slavery and post-Reconstruction. The second section highlights the white political elite's segregation movement and the emergence of oppressive Jim Crow legislation. The third section discusses the transition from overtly racist security campaigns to container initiatives utilizing metaphorical war, such as the War on Drugs, which has been credited with militarizing and streamlining the administration of criminal justice. The final section looks at developments following the attacks of September 11th, in particular hyper-surveillance and decentralization. Through a critical procedural method in the application of security theory, I aim to: (i) critically engage with the inherent power the American political elite have over the use of language in securitizing an issue, (ii) analyze the experiences of those impacted by the securitization processes and (iii) deconstruct the dominant security narratives used in specific periods in efforts to challenge securitization's normative dilemma.

1.6.2 Chapter 3: The Administration of Criminal Justice

The third chapter asks: *How does the criminal justice system, in particular the roles of policing and prosecution, enable the implementation of securitization processes?* This chapter examines two components to the administration of criminal justice: policing and prosecution. Beginning with the former, this section explores the role of fear-based tactics to expand the use of policing in all areas of public and private life. By patrolling the streets or engaging in militaristic activities, the police exercise maximum discretion in distinguishing between 'wrong' and 'right'; illegal or legal. From schools to homes, the role of police has replaced social services in favor of social control through constant surveillance. I argue that the overrepresentation of police has been deeply strengthened through the militarization of local police forces. The second section grapples with the use of plea bargaining to process the extraordinary amount of individuals swept up by harsh policies that stem from security campaigns. This section discusses the diminished role of judges, the inflation of prosecutors' discretion and the cooperation of public defenders in streamlining convictions. This chapter reflects on mechanisms of social control to examine the operationalization of security through the criminal justice system.

1.6.3 Chapter 4: Disenfranchisement

The fourth chapter asks: *What is the impact to those that impersonate threathood?* This chapter investigates the remaining effects of securitization campaigns operationalized through the plea bargaining system. In addition to unprecedented rates of incarceration, the ever-lasting effects of securitization processes in targeting entire groups of people classified as prospective threats has resulted in permanent socio-economic and political exclusion of millions of people. This section examines practical consequences of felony convictions, including loss of access to social welfare and challenges in finding employment, as well as the less tangible consequences, including the expansion of state control.

1.7 Conclusion

This chapter aimed to provide an overview of the ambitions and objectives of this paper. The first section introduced the relationship between securitization and law, in particular the use of legal institutions to operationalize securitization campaigns. The section section presented the primary research question: *How and to what extent does plea bargaining, in the context of a history of securitization, become a vehicle for disenfranchising minorities?* In addition, this section also presented the intended area of contribution. The third section outlined the theoretical framework employed to structure the substance of this paper in efforts to answer the primary question. Three key areas of analysis were identified in this section: (i) securitization, (ii) structures of securitization and (iii) impersonation of threathood. The fourth section discussed the methodological approach to this paper, including research design, material collection, processing and analysis. The fifth section highlights three areas of limitations: (i) observations,

(ii) interdisciplinary research and (iii) resource disparities. The chapter concludes with a comprehensive outline of subsequent chapters to facilitate the readers experience.

Chapter 2: A History of Securitization and Law

2.1 Introduction

In the United States, the hierarchical distribution of power has historically manifested along the lines of race and class. Race functions as a political category interwoven with settler colonialism, slavery and "the privileged status of those who participate as white citizens" within a "white democracy" via the synchronized operation of "colonialism and anti-blackness" (Brucato, 2014: 36; Leroy, 2016: 4). Inspired by the work of W.E.B. DuBois, Olson (2004) defines a white democracy as a political project in which the "participation as citizens is guaranteed for whites and strictly limits the participation of all others" (Brucato, 2014: 35). Accordingly, poor and working class whites have often acted against their own interests in efforts to 'belong' to the ruling class (Alexander, 2012).[9] While nonwhites were formally deemed secondary citizens, certain immigrant groups had to 'prove' their commitment to whiteness, "often by enforcing the color line with violence" (Brucato, 2014: 36) This behavior contributed toward the construction of two distinct political categories that exist through today: white and non-white (Brucato, 2014: 36). The exercise of racialized social order, inclusive of class divisions, remains central to the realm of contemporary American politics, particularly in the production of legislation.

In this chapter, I seek to explore spaces in which the institution of law has been operationalized within security campaigns by asking: *How has the relationship between securitization and law historically developed?* Wonders references the research of famed criminologist Chambliss, who evidenced the role of political elite in the production of law to manage "the dilemmas and conflicts [that emerge]… as a consequence of the contradictions that inherit the economic, political and ideological structure of the times" (2016: 204), to argue that the structures of law and order have been transformed to facilitate a flexible application of justice. What does it mean when the structures echoing a nation's consciousness are used to advance specific interests? In the United States we can observe flexibility in both domestic and foreign policies, as the protection of vested state interests has fueled the narrative of constant threathood, allowing for states of exception to emerge largely external to democratic formalities of accountability and constraints (Wonders, 2016). In this chapter, I seek to apply securitization theory to examine instances in which law as been operationalized to create a state of emergency to justify extreme measures, while insisting on an ever-expanding impersonation of threathood.

[9] Strong alliances between white and black laborers grew during the period of colonialism, in which plantation owners sought to protect their economic position through providing concessions to poor whites to sustainable slave labor (Alexander, 2012). Although class divisions remained embedded in the social hierarchy between whites, the economic benefits poor whites received were successful in encouraging their expansion through centralizing the interests of the white elite (Ibid.).

2.2 The rise of Jim Crow

The liberation struggles of the anti-colonial and emancipation movements were deeply intertwined. Not only were many of the same tactics used to oppress both the indigenous communities and the enslaved population, but the struggles share a “mutual constitutive origin”; a dovetailed history (Leroy, 2016: 9). In the United States, European settlers seeking to expand their imperial ambitions were met with resistance from the indigenous population. Accordingly, in efforts to justify the impending genocide of the native people, negative imagery and language were used to depict American Indians as subhuman savages (Alexander, 2012). As quoted in Leory, Byrd argues that “the United States has used executive, legislative and juridical means to the ‘Indian’ those peoples and nations who stand in the way of US military and economic desires” (2016:5).

The first two cases the United States Supreme Court ruled on concerning the status of the indigenous population were *Cherokee Nation v Georgia* (30 U.S. 1, 1831) and *United States v William Rogers* (45 U.S. 567, 1846). These cases drew on judicial bodies to formulate a legal status that formally designated control over the remaining indigenous population, while ensuring that “formal political standing [was granted to] whites and denied to all others… defined by the paradigm of whiteness… [to] build white domination into democracy” (Brucato, 2014: 36; Leroy, 2016). Following the abolition of slavery, legislators attempted to prescribe a similar logic in determining the status of the black population. People of color, but the black population in particular, were viewed as “anti-citizens… members of the social compact who simultaneously threatened and consolidated it” (Brucato, 2014: 37). Any semblance of freedom ‘granted’ to nonwhites was only to be provided within the interests of the state project; a formality perceived as an extension of the state’s generosity. This logic allowed the political elite to paint themselves as “victims of their own generosity”, a position that was important to appeal to the cross-class white population (Alexander, 2012: 42).

In the 1830’s, approximately 30 years before the abolition of slavery, former Vice-President John Calhoun attributed the beginning of the end for the system of slavery when Congress chose to receive petitions from abolitionists (Robin, 2011: 6). Calhoun understood that merely engaging with the enslaved as a legitimate counterpart, capable of agency and political thought, contrasted the construction of the slavery narrative (Ibid.). Calhoun also knew that this would inevitably lead to the confrontation of the legal structures that permitted slavery to exist (Ibid.). During the period in which the constitution was written, a mere half of a century preceding Calhoun’s position, the Constitutional Convention agreed to tackle the issue of representation through the Three-Fifths Compromise, ensuring the interests of the white, slaveholder population (referred to as the ‘free Persons’ in the Constitution) remained central to legislative decision-making (Alexander, 2012). The Compromise did so by: (i) assigning overrepresentation to ‘free persons’ , (ii) excluding Native Americans that did not pay taxes and (iii) accounting for “three-fifths of all other persons”, referring to slaves (Ibid.).

Nearly a century later, this principle remained a nostalgic component of the constitutional conventions of the late 19th century. As quoted in Robin, a convention delegate shared "the great underlying principle… was the elimination of the negro from the politics of this State" (2011: 6). This logic shaped the relationship of political elite to movements of resistance and emancipation. The political elite perceived the prospect of the black population's self-determination as a direct threat to a hegemonic power structure that required unwavering racial categories, systemic control and unrestricted exploitation (ACLU, 2014.; Leib & Chapman, 2011). The perception of this threat reinforced the political elite's conviction of their political values (Robin, 2011).

Central to these political values is distinguishment and difference, in particular through the roles of agency and submission (Robin, 2011: 7). The former belonged strictly to 'free persons'; an unequivocal category (Ibid.). The latter was to be understood as a fundamental duty 'of all other persons' (Ibid.). The ruling class did not engage in the dystopian nightmare of equality. For the political elite, the concepts of equality and freedom were topics of debate, not legitimate exercises within the nation's legal framework (Siegel, 1997). The white population were primarily concerned with prospective compromises to their unilateral rule. The political elite feared "a rotation in the seat of power", which would "change and pervert the natural order of things"(Robin, 2011: 8-9).

Following the enactment of the 13th Amendment[10] and the emancipation of slaves, Southern states adopted a set of legislative measures known as the Black Codes (Alexander, 2012). The political elite depicted the formerly enslaved black population as unmotivated laborers and black men specifically as aggressive predators who were likely to commit criminal offenses (Alexander, 2012). Thus, as a preventative measure to control the perception to their inherent danger, the political elite mobilized legislators to enact the Black Codes. As quoted in Alexander, an Alabama plantation owner stated:

> "We have the power to pass stringent police laws to govern the Negroes--this is a blessing--for they must be controlled in some way or white people cannot live among them" (2012: 28).

The Black Codes were a series of laws which intended to maintain the racial hierarchy cultivated through the institution of slavery. The laws attributed to the Black Codes included: (i) requirements for the black population to adhere to annual labor contracts, (ii) apprenticeship laws, which required black youth to conduct unpaid plantation labor, and (iii) established segregation between whites and nonwhites in selected public spaces, among other measures (Robinson, 2015; Alexander, 2012). Violations of these laws were equated to vagrancy, the conviction of which carried sentences of forced unpaid labor and/or heavy fines (Robinson, 2015). The Black Codes were deemed unlawful in 1866 following the enactment of the 14th[11]

[10] The 13th amendment abolished slavery.
[11] The 14th amendment provides citizenship to all people born in the United States.

and 15th[12] Amendments, but their content formed the basis for the Jim Crow laws (Robinson, 2015; Alexander, 2012).

The social status and political power of African-Americans grew significantly with the enactment of both the 14th and 15th Amendments. The importance of representation in electoral politics and its relationship to tangible, legislative power was not lost on the freedmen. Black communities proved to be significant voting bases throughout the South, resulting in pockets of representation at both state and local levels (ACLU, 2014).[13] The political elite shuttered at the "appearance of democracy in the private sphere" (Robin, 2012: 14). The short period of freedom between the Black Codes and Jim Crow was perceived by the political elite to have been tainted with "a spirit of insubordination so intense that all order" was threatened with extinction (Ibid.). Leaders of the Southern movement worked steadily to construct a new system that would adapt to the new parameters of law and order, while carefully reintegrating the key message of the so-called Founding Fathers: "[E]ach should know his place and be made to keep it" (Ibid.).

2.3 Jim Crow

Following the abolition of slavery, only a short period existed after the Reconstruction period before another form of overtly racist social control was implemented to manage nonwhites. Political campaigns gained traction throughout the South to ensure a new mechanism would be put in place to control black labor, a crucial element to the South's survival (Andrew, 2008). Southerns depicted African-Americans in need of control due to their supposed "improvidence, lack of ambition and natural docility", without which they posed a serious threat to the nation-state (Ibid: 331). These fears were long embedded in the colonial imagination, in which rhetoric and imagery of slave rebellions and the resistance of the indigenous population threatened the state's survival. The Black Codes emerged as a mechanism to exercise racialized control without the blatant inclusion of slavery, except in the case of imprisonment. Within a year, the Black Codes, too, were deemed unlawful, but not before providing a legitimate structure that would require redesign. The political elite were able to see the benefits of a legal structure that protected their interests through differences, giving way to the Jim Crow laws.

The political elite utilized their political positions and existing structures to establish what they referred to as "redeemer governments" throughout the South (Alexander, 2012). These 'governments' sought to adjust the structure of social control through an overtly racist legislative initiative which produced laws to enforce racial segregation in all aspects of public and private life (ACLU, 2014: 5). The so-called Jim Crow laws sought to challenge the very notion of freedom for the black population, primarily by focusing on rules of engagement and labor mobility. The rules of engagement scripted the enforcement of hierarchy in every aspect of

[12] The 15th amendment grants all Americans the right to vote.
[13] By 1872, 16 African Americans were elected to Congress, 600 served state legislatures and hundreds held local positions (ACLU, 2014: 4).

verbal and physical communication between whites and nonwhites, from the use of courtesy titles to all the unconscious aspects of daily interactions (Robinson, 2017).

Dismantling labor mobility was essential to the maintenance and strengthening of the nation-state project, as economic growth and activity fiercely depended on the imposition of the "democratic will of workers" (Wonders, 2016: 204). Labor restrictions included: (i) the enactment of enticement laws to limit market competition, (ii) vagrancy laws, similar to what we saw in the Black Codes, (iii) emigrant-agent laws, which weakened labor recruitment and (iv) the convict-lease system, which allowed convicted criminals to be auctioned to private bidders for forced labor (Robinson, 2017: 556; Alexander, 2012).[14] This form of control was a staple in the securitization processes for the political elite.

The enforcement of these represented a shift in tactics from the old regime's engagement with surveillance. During chattel slavery, the slave-master relationship was constant and proximate, in which the possibility to inflict violence at any time was a dynamic slaveholders cherished as it facilitated a direct form of control (Alexander, 2012). In contrast, the Jim Crow laws required distance through separatism. Exclusivity of space and services through spatial segregation minimized direct engagement between races. The complete submission through physical violence was replaced by the absolute restriction of life (Robinson, 2017).

This logic was applied to other nonwhites in the country as rhetoric concerning foreign policy loomed over national security discourse. Following years of anti-Japanese and anti-Chinese sentiment in the West Coast, the Japanese attack on Pearl Harbor provided then-President Roosevelt an ideal opportunity to institute collective punishment and harsh policies geared to 'contain' the subpopulation (Tateishi, 1999). Through newspapers and radio, citizens and non-citizens with even partial Japanese origin were depicted as responsible for the attack on Pearl Harbor and portrayed as direct threats to the nation's security (Robin, 2011; Tateishi, 1999). Roosevelt seized the opportunity and immediately issued an executive order for the mass detainment of the Japanese community.

The process of identifying individuals was aided through the confidential information obtained through United States Census Bureau's survey (Minkel, 2007). The protection of confidential information on individuals was lifted with the enactment of the Second War Powers Act of 1942, a measure passed with the specific purpose of extracting information on the Japanese community and collectively denying constitutional rights in the name of security (Ibid.; Tateishi, 1999). Despite no evidence or review correlating the activities and livelihoods of Japanese communities in America with the threat of violence, over one hundred thousand people of all ages were incarcerated in concentration camps throughout Hawaii and Western states without ever being charged with a crime (Tateishi, 1999). These camps "accomplished what local pressure groups on the West Coast had been unable to achieve for half of a century: the

[14] Slave labor as a form of punishment remained an exception to the 13th Amendment (Alexander, 2012). The Virginia Supreme Court in its case Ruffin v Commonwealth asserted that convicted criminals are "in a state of penal servitude to the State… He is for the time being a slave of the State" (Ibid.: 31).

complete removal of the entire ethnic Japanese population from the coastal states" (Tateishi, 1999: 14).[15]

In the context of Cold War rhetoric, both phases of the so-called Red Scare, post-WWI and McCarthy-era, were central sources of political fear throughout the country. Under the direction of Congress, with support from the Supreme Court, citizens rights and liberties were frequently bypassed as paranoia over "American radicals" and curated a manhunt to tackle mere suspicion of subversion (Murray, 1955: 20; Zeigler, 2015). During the first phase of the Red Scare, law enforcement frequently raided political offices, while courts applied espionage laws to the majority of cases involving socialists, leading to decades-long prison sentences (Murray, 1955). During the second phase, Congress, under then-President Truman passed the 'concentration camp bill', which gave the Attorney General "emergency powers to round up and detain suspected subversives" without trial (Robin, 2004: 168).

As the end of Jim Crow grew nearer, conservatives and the media injected anti-communist rhetoric into the struggle for civil rights, in attempt to associate any progress toward civil rights as a 'win' for the communists. Cold War rhetoric painting Soviets as "godless Communists", fueled the political elites' opposition narrative on desegregation along religious lines (Leib & Chapman, 2011: 581).[16] Herman Talmadge, in his book *You and Segregation* (1955), argued that segregation was "divinely inspired" and that desegregation would be a "sign of Soviet ideological success", intended to "destroy the Bill of Rights and our American way of life" (Leib & Chapman, 2011: 581).[17] Given the significance and active involvement of the church in all aspects of political life, such a claim carried weight in the Southern states. This message was further amplified with the famous *Brown v Board of Education case*, in which the Supreme Court ruled segregated schools as unconstitutional. The South equated the measure and subsequent action to enforce the decision was "indicative of the break down of law and order", arguing that the measure rewarded "lawbreakers", referring to civil rights activists (Alexander, 2012: 40).

Resistance to Jim Crow was fueled by direct action and civil disobedience. The political elite played on remaining fears of violent reprisals and the "moral indictment" fostered by oppressed groups (Robin, 2011: 45). Media outlets featured imagery of different manifestations, which ranged from sit-ins to riots. A contentious rising crime rate accompanied a period of economic destitution in growing urban areas all over the country, which the political elite attributed to the civil rights movement for turning cities into "crime-ridden slums" (Alexander, 2012: 42). While the end of Jim Crow was near, the political elite attempted to find new sources of fear and anxiety to build on the future ahead.

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[15] Local pressure groups refers to the white nationalist groups such as the Native Sons of the Golden West, the California Grange Association, the American Legion, the Japanese Exclusion League and the American Federation of Labor in California (Tateishi, 1999: 15).

[16] Religiosity and the involvement of church leaders in selling political narratives to the public were central elements to life in the South (Leib & Chapman, 2011).

[17] Herman Talmadge was the former Governor of Georgia and, later, U.S. Senator (Leib & Chapman, 2011). He also belonged to one of the most powerful political families in the state (Ibid.).

The Jim Crow laws were ultimately deemed illegal with the enactment of the Civil Rights Act of 1964 (Alexander, 2012). The Act passed with a nearly 20% voting gap between the political parties in the House of Representatives, the bill "formally dismantled the Jim Crow system" and ordered the immediate halt of its practice (Ibid.). Yet, the racial caste system manifested through Jim Crow was merely an heir of American slavery, settler-colonialism and European political thought, as a racialized form of social control was already woven into the fabric of American identity and, certainly, pumped the heart of the American political economy (Ibid.; Leroy, 2016). Jim Crow emerged "after the old regime [was] destroyed" (Robin, 2011: 47). Yet, waiting in the wings, a new regime of racialized social control was being constructed. While overt racialized securitization tactics were no longer acceptable in framing the threat to ideological political values, the necessary adjustments were to be made to ensure the old regime's "preservation through transformation" (Siegel, 1997: 1119).

2.4 The War on Drugs

The succeeding period following Jim Crow ushered in a structure which acknowledged social changes and redesigned its approach to a covert system of racial control, popularly referred to as the *colorblind* era (Brucato, 2014: 37). Economic policies which secured the interests and influence of the nation's most wealthy individuals took center, while cloaking racially motivated approaches to crime and drug use under economic rhetoric. The systemic change marked the beginning of mass incarceration through the use of laws no longer laced with race-specific language. Instead, neutral language was used to design a legal framework to disproportionately punish poor drug addicts, while the media worked in collaboration with the government to construct social ills as a source of national insecurity.

For over 25 years, beginning after the enactment of the Civil Rights Act, the political elite used a fiscally conservative narrative to target welfare and other social institutions to deplete programs working to tackle social issues on the ground. In turn, extraordinary investments were made at state and federal levels to build a comprehensive prison system to approach social issues with grave, punitive measures. This section describes the birth of mass incarceration through the pathologization of crime and drug use as inherent to poor communities of color. Below, I point to many of the laws that were put in place between the Civil Rights Act and September 11th to repeatedly and systematically imprison gross percentages of the nation's minorities in the name of security. In this section, I also demonstrate the emergence of a new, covert method of social control as a tool to disproportionately target minorities by framing issues deserving of social assistance and care through security language. This approach was further weaponized upon the metaphorical use of *war* to incite national urgency and preemptively attempt to justify war-like brutality.

Nixon's presidential campaign aimed to appeal to white voters that would typically cast their ballot for liberal policies that benefited their economic class, but would also readily identify with fear-based rhetoric pertaining to racialized crime (Alexander, 2012; Robin, 2011). This group of

voters was referred to as the “silent majority”, who have historically acted against their own interests in efforts to secure their privileges above minorities (Brucato, 2014; LoBianco, 2016). Nixon understood that his efforts had to go beyond the “simple appeals to white racism”, requiring a codification to adapt to the parameters of the post-Civil Rights era (Robin, 2011). Ehrlichman claimed that Nixon’s primary strategy of the War on Drugs was to incite the “the public to associate... blacks with heroin and criminalize them heavily to disrupt those communities”.[18] Republican strategist Lee Atwater stated that instead of overtly racist language, to adjust to design the appearance of a new system of control, conservatives began saying things like “forced busing, states’ rights and all that stuff” (Robin, 2011: 50). He continued by explaining how this allowed for a discussion of the more abstract, such as tax cuts and other fiscally conservative economic strategies, as “a by-product… [in which] blacks get hurt worse than whites” (Ibid.).

To ensure fiscal and social conservative policies were intertwined, conservatives utilized terms like ‘welfare cheat’ to alienate the roots of crime and poverty from their structural causes. In turn, the utilization of these terms sought to redesign social problems as culturally-rooted choices that actively defy the rule of law and order (Alexander, 2012). Nixon’s administration relied on third-party narratives that empowered conservative political values to legitimize this logic. An example of which is the publication titled *The Negro Family: The Case For National Action* (1965), known widely as the Moynihan Report. The Report attributed misconduct in poor communities to what he referred to as ‘ghetto culture’ (Hinton, 2016). The report claimed that due to a lack of employment, commodified skillset and quality education, black communities, and in particular black men, exhibited reprehensible character flaws that produce crime and other social problems (Ibid.). This circumstance, Moynihan argued, led to the emergence of single, black women managing families entirely on their own, resulting in further poverty and violence (Alexander, 2012).

Much like the short period between the Black Codes and Jim Crow, in which African-Americans obtained some political representation and cultivated forms of social empowerment, poor and working class whites felt an uneasy grasp of their political and economic power as they perceived minorities in direct competition with their economic standing (Brucato, 2014). Eager to hold on to political power over minorities in the age of civil rights, poor and working class whites readily accepted a covertly racialized fiscally conservative narrative (Ingraham, 2018). This narrative recalled language used to instill fear prior to Jim Crow, which portrayed communities where nonwhites lived as inherently lazy, lacking substantial work ethic and reliant on government handouts on the backs of hardworking whites (Brucato, 2014).

The political elite further capitalized on the momentum of this narrative to fuel campaigns specifically pointing to minorities and communists as sources of the degradation of law and order (Alexander, 2012). They played on existing racial fears and stereotypes, as well as foreign

[18] Following his death, Ehrlichman’s family has expressed disagreement on the use of this quote and its accuracy.

anxieties, such as Cold War (Robin, 2011). During the 1968 election year, Nixon made seventeen speeches on the issue of threats to law and order (Ibid.). One of Nixon's television advertisements illustrated his message:

> "The advertisement began with frightening music accompanied by flashing images of [civil rights activists' protesting], bloodied victims and violence. A deep voice then said: It is time for an honest look at the the problem of order in the United States… Let us recognize that the first right of every American is to be free from domestic violence. So I pledge to you, we shall have order in the United States." (Alexander, 2012: 47).

Nixon's leadership of this narrative birthed widespread imagery of the urban poor as "Black welfare cheats and their dangerous offspring" (Alexander, 2012: 45). H.R. Haldeman, an advisor to Nixon, explained the former president's position: "[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: 44). A pathological approach was utilized to depict poor communities of color as the source of "street crime, illegal drug use and delinquency", and thus, as epicenters of the nation's crime and perpetual disobedience (Ibid.). The media painted a grim picture of a future without a formal racial caste system, convoluting imagery of civil disobedience, violence in urban areas and the mere existence of crime as one of the same (Alexander, 2012: 43). This practice coated American political thought by calling on the old regimes' association of minorities to social ills and citing communities primarily comprised of minorities as legitimate sources of the nation's insecure future. The framing of entire communities as demographic threats merged the fiscal and social ambitions central to new conservative policies and normalized a new form of codification to talk about race.

A Gallup Poll taken in 1968 showed that over 80% of respondents resonated with the messaging of these campaigns (Alexander, 2012: 46). Laced in racially neutral language, oppositionists were challenged to prove the racist undertone that they claimed to weave through rhetoric, imagery and election promises for the road ahead (Ibid.). Dissentients found it challenging to prove what was not being said, further strengthening the argument that the new system was colorblind; void to racial predispositions of the American past (Brucato, 2014).

Once elected, Nixon sought to further these fears, using his platform to declare a "War on Drugs". His speech deemed illegal drugs, and therefore all associated crime, as the nation's "public enemy number one" (Alexander, 2012: 48). The metaphorical use of *war* in the context of securitization is profoundly impactful in its ability to preemptively justify extreme responses that would otherwise not be deemed permissible or rational (Waever, 2010). As quoted in Waever, Prussian general Carl von Clausewitz described war as "an act of violence intended to compel our opponent to fulfil our will" (2010: 6). Waever (2010) used this quote to illustrate *war* as a term that capitalizes on the irrationality necessary to defeat an existential threat. In the context of the United States, it also allowed for "undesirability" of groups to be "pegged to criminality" (Hernandez, 2013: 1514). It is precisely this logic which gave weight to Nixon's declaration of the War on Drugs and to the radical measures that were to follow for the next several decades.

Reagan's election, owed to the defection of 34% of Democrats who believed "civil rights leaders were pushing too fast", intended to reinforce the insecurities of the 'silent majority' (Alexander, 2012: 49). By the time Reagan came to power, he readily adopted Nixon's securitizing language and furthered many of his ambitions. Reagan, too, practiced the sensationalization of ideological stereotypes of poor people of color through his prefered terms "welfare queens" and "criminal predators" (Alexander, 2012: 48). The term 'welfare queen' was rooted in Reagan's tale of choice: the story of Linda Taylor, a Chicago woman convicted of welfare fraud (Kohler-Haussman, 2007). Reagan's sensationalization of this story was used to continue the efforts of the 1970's to stigmatize welfare recipients as "fraudulent and deceptive"; constantly at ends with the rule of law and order (Ibid.: 329). This narrative constructed the welfare recipient as a criminal, fraudulent minority, recalling old regimes' distinction of those that are deserving and those that are not (Ibid.; Alexander, 2012).

Reagan capitalized on this imagery to push for both social and fiscally conservative legislation. This resulted in two key developments: (i) the production of the Economic Recovery Tax Act of 1985, one of the most brutal crackdowns on social welfare in American history, and (ii) Reagan's reincarnation and expansion of Nixon's 'War on Drugs'. The Act significantly decreased taxes for nation's wealthiest citizens and entities, which resulted in a federal deficit and a subsequent economic recession. Funding was shifted from social welfare to drug-centered law enforcement to support policy initiatives for the War on Drugs (Robin, 2011). In just a period of four years: (i) federal law enforcement's budget against illegal drugs jumped from $8 million to $95 million, excluding an additional $150 million for funding allocations (ii) the Department of Defense received an increase of $1,009 million for drug-related activities and (iii) the Drug Enforcement Agency (DEA) received an additional $20 million to expand its anti-drug efforts (Alexander, 2012: 49). Simultaneously, all federal spending for drug prevention and treatment was nearly depleted in comparison. The National Institute on Drug Abuse's budget was reduced to $57 million; 20% of their 1980 operating budget (Ibid.). Anti-drug education was also not spared, as the Department of Education's programs on the topic were also cut by the similar margins (Ibid.).

Capitalizing on public fear and calls for social control, the Anti-Drug Abuse Act was enacted in 1986, complementary to a preceding $2 billion allocation of funds to fuel the War on Drugs. The Act produced cruel sentences, including mandatory minimums and, in some cases, even the death penalty (Bogazianos, 2012; Alexander, 2012). The Act equated the punitive consequences of possessing five grams crack cocaine as equivalent to five hundred grams of powdered cocaine (Cose, 2007; Doyle, 2001). Known as the 100:1 differential, this disparity was "deliberate and intentional" (Bogazianos, 2012: 32). Although the two drugs are almost "pharmacologically identical", the most significant difference between them was the public perception of the consumer base (Alexander, 2012: 51). Crack cocaine's composition allowed for it to be sold at much more affordable rates in comparison to its counterpart, powdered cocaine (Alexander, 2012). Therefore the crack cocaine consumers were associated with the image of poor, inner-city African-Americans that were hooked on drugs and reaping the benefits

of welfare, while powdered cocaine was associated with middle class white America (Doyle, 2001; Alexander, 2012). The Act also granted the Immigration and Naturalization Service (INS), now a branch of the Department of Homeland Security, to ability to detain and subsequently deport immigrants who commit a drug-related offense (Hernandez, 2013: 1512). A revision to the Act two years later produced even harsher sentencing, further expanding the use of the death penalty and institutionalized what are referred to as 'civil penalties', which essentially eliminated federal benefits extended to the nation's most vulnerable groups (Ibid: 53).

While the dynamics of law enforcement will be further discussed in the next chapter as part of a discussion on the administration of criminal justice, it is important to note the role of the Supreme Court in enabling the operationalization of this security campaign through mass arrests and diluted civil liberties. Law enforcement filled the streets as budgets inflated, material resources were allocated and the criminal justice system was readily prepared for war. Police were provided with nearly unlimited discretion to lead search and seizures on the mere notion of suspicion. Between the years of 1982-1991, the Court heard thirty cases pertaining to alleged abuses against citizenry in the context of the War on Drugs (Alexander, 2012: 62). In this period, the Court ruled in the favor of law enforcement policy in all but three cases (Ibid.). Each case created precedence for the next, making the ability to meaningfully constrain police activities more and more challenging while simultaneously diminishing civil liberties. The implications of this predicament were not lost on all members of the Court. In *Skinner v Railway Labor Executive Association* (1989), a case arguing the constitutionality of mandatory drug testing, Justice Thurgood Marshall noted in his dissent: "Precisely because the need for action against the drug scourge is manifest, the need for vigilance against unconstitutional excess is great." Marshall cited cases such as *Hirabayashi v. United States* (1943), from the time of Japanese internment camps, and *Dennis v. United States* (1951), McCarthy-era subversions targeting communists, to remind his colleagues of the regrets the Supreme Court has harbored by legitimizing the actions of the government that were at odds with constitutional law.

Despite Marshall's call for constraint and care, the War on Drugs continued forward. The War was inherited by the succeeding administrations, some more eager than others to place extended resources on waging a war that was forcing millions of Americans into prison. Then-presidential candidate Bill Clinton and the so-called New Democrats echoed the rhetoric of Reagan's rule, indicating Clinton, too, would champion conservative policies that appealed most to the 'silent majority' (Robin, 2011). During Clinton's reign, he too was eager to reinvigorate war-like measures. Committed to principles of the decades-long War on Drugs, Clinton managed to further the brutal sentencing attributed to the Anti-Drug Abuse Act by passing the 'three strikes and you're out" law. The law cost taxpayers $30 billion and in turn, it "created dozens of new federal capital crimes, mandatory life sentences for some three-time offenders and authorized more than $16 billion for state prison grants and expansion of state and local police forces (Alexander, 2012: 56). Under Clinton, the nation experienced its largest increase of incarceration in the history of the nation (Ibid.).

Accompanying measures included immigration reforms that allowed ‘criminal aliens’ to be “detained and deported… regardless of particular mitigating circumstances” (Miller, 2005: 82). These reforms were enacted as a container to the racialized stereotypes associated with immigrants primarily originating from Central America and the Caribbean (Hernandez, 2013).

Following the enactment of the Civil Rights Act, the political elite was faced with a challenge on how to assert racial and class dominance without utilizing racially overt language and tactics. Between rhetoric of prevention, risk management and control, a period of just over 30 years constructed a nation-wide threat out of the nation’s most poor communities. Low-income areas in America were riddled with poverty, drug use and an racial composition that the political elite was able to sensationalize to their benefit. By categorizing the approach to social problems as a war, the state laid the groundwork for justifying extraordinary measures that followed. Through the interweaving of fiscal and social conservative policies, low-income communities primarily comprised of people of color became a target for the new system that emerged. This tactic, as I will demonstrate below has continued to been adopted by succeeding presidents in efforts to target the nation’s minorities through the furtherance of ever-stringent punitive consequences to drug addiction, poverty and, later, migration.

2.5 Post-9/11

The tactics employed during the War on Drugs laid the foundation for even more aggressive, draconian measures to emerge following the attacks of September 11th (9/11), a period referred to as the War on Terror. The covert component intrinsic to political mobility in the preceding period suddenly faded away following 9/11 as the public, the media and the political elite were thirsty to gain a clear picture of the enemy of the state. Afterall, retribution could only occur if the state knew who to blame. In my school, it was Deena Khan, an Afghan-American, who bared the brunt of reactionary middle schoolers. On the streets, it was any man, woman or child who seemingly did not appear to have European features. In the media, it was an entire region and religion. Paranoia was high as an arrow indicating the daily level threat was featured on every digital and print news outlet. Just five days following the attacks, then-President George W. Bush declared a War on Terrorism, now popularly referred to as the War on Terror.

The impersonation of threathood expanded to the Arab-Muslim community. In the United States, a pre-packaged rhetoric surrounding the relationship between Islam and terrorism was a common theme in post-9/11 messaging by influential politicians and media platforms that remains active today. Campaigns color-coding the daily level of terrorist threat contributed toward the public’s general acceptance of limitations to widespread violations to rights and civil liberties (Wonders, 2016: 208). The image of Muslims and Arabs, in particular men, was depicted as unruly, barbaric or savage; “a lower standard of human being” (Spencer, 2012: 405). This one-dimensional narrative amplified by reactionary voices and looming fear not only became popular, but dissent was perceived as ‘un-American’. The faulty ‘guilt by association’ logic enforced systemic suspicion and differentiated treatment to those who ‘fit the mold’ (Spencer, 2012: 410). It is precisely this labeling which gave way for civil liberties to be

discarded to accommodate for state surveillance of "the uncertainty of the unknown", (Schuilenburg, 2011: 77; Dixit, 2016).

The American Civil Liberties Union (ACLU) alleges that between 2002-2014, a program spanning 100 miles outside of New York City, utilized visual and electronic surveillance, police informants, individual tracking and undercover agents to collect detailed data on individuals and entire communities without their consent or knowledge (Dixit, 2016: 41-42).[19] This program infiltrated Muslim spaces under the guise of preventative security and unfounded suspicion, attributing an entire religious group as "a cause for insecurity" (Ibid.: 42). Despite not providing any information on terrorism, the existence of this program provided a structure to legitimatize a securitized approach to Muslims in America.

Other surveillance programs in the name of security through prevention were recharged in the wake of 9/11, justifying the use of wide-spread surveillance as a matter of public safety. As briefly described in the section outlining the paper's theoretical framework, a mass-scale on-ground operation called Stop and Frisk was responsible for over five million stops in New York City between 2002 through 2013 (Newberry, 2017). The highest amount being in an eight-block radius of Brownsville, Brooklyn, one of the city's poorest areas primarily populated by minorities (Alexander, 2012). Brownsville residents were stopped 13 times more than the city average (Ibid.). Specialized paramilitary groups, such as the NYPD Street Crime Unit, were created specifically to aggressively detain and arrest illegal gun holders, despite weaponry only appearing in 2.5% of stops (Ibid.).

The Stop and Frisk program was officially initiated as a preventative measure to tackle crime in the city, although the practice has been used systematically by police officers all over the country since the abolishment of slavery (Newbury, 2017; Alexander, 2012). A 2017 lawsuit filed by the New York Civil Liberties Union (*NYCLU v New York Police Department*), claimed that the crime-based rhetoric attempting to justify these stops has failed to evidence any correlation between diminished crime and the policy, it has instead participated in the mass surveillance of the city's residents based on racial profiling tactics and called for public access to the NYPD's database (NYCLU, 2018). The database lists a number of reasons to describe why people were stopped, these include: "wearing clothes commonly used in a crime", "furtive movements", "other", "suspicious bulge", among others (Stop, Question & Frisk Data, 2018).

Police officers are required to document basic information on stops, including: (i) reason for making the stop, (ii) suspected offense, (iii) outcome of the stop (arrest, etc.) and (iv) the demographic information on the temporarily detained suspect (Newberry, 2017). These stops are documented on a database that is published annually.[20] Although minorities only make up 54% of the population, the database shows that Blacks and Latinos accounted for nearly 90% of

[19] The program was driven by the intelligence division of the New York Police Department.
[20] Although police officers should transfer their written reports to the digital database, a study by the National Bureau of Economics noted that it was not required and that, therefore, an undefined, but likely significant number of stops are not accounted for (Coviello & Persico, 2013).

all stops, process facilitated by spatial segregation in urban communities (Newberry, 2017). Out of those stops nearly 90% of all stops, across all races, resulted in no arrest or fine (Ibid.). Police have defended these practices with claims that minorities disproportionality commit more crimes than whites (Gelman et al., 2005). This deeply problematic approach is void of the more complex, systematic, nation-wide practice of allocating higher rates of arrest and conviction to people of color in comparison to the same crimes committed by whites (Robinson, 2013). This is particularly important to note in reflection of the War on Terror. The "watchful visuality" of groups deemed dangerous has been a leading strategy in the War's "homefront" operation (Amoore, 2007: 139).

Programs like Stop & Frisk continue to thrive all over the country, disproportionately targeting minorities in both urban epicenters and in the countless small towns scattered throughout the nation. As highlighted in Denton and Massey's book *American Apartheid* (1993), the implementation of these programs have been facilitated by federal housing policies that confine and isolate poor people of color. The trickle down and expansion of practices from Reagan's reincarnation of the War on Drugs continues to prey upon the spatial vulnerabilities of poor minorities (Alexander, 2012). The systematic nature of physical and hidden surveillance are evident in these spaces, where "youth [of color] automatically 'assume the position'", referring to the placement of hands on the head and the spreading of legs (Alexander, 2012: 125). A law student from the University of Chicago described her observations after accompanying members of the Chicago police during a patrol exercise:

> "Each time we drove into a public housing project and stopped the car, every young black man in the area would almost reflexively place his hands up against the car and spread his legs to be searched. And the officers would search them… This repeated itself throughout the entire day" (Ibid.: 125).

These programs, largely based on systematic racial profiling, function as the offspring of historically embedded mechanisms of racialized social control and of the security institutions that emerged following the attacks of September 11th in the name of protection through prevention. By using racialized language to define threat, overt racial profiling gained traction as a legitimate and critical tool for the state's administration of security mechanisms (Wonders, 2016: 208). This infrastructure included the establishment of the Department of Homeland Security and the U.S. Immigration and Customs Enforcement (ICE) agency, as well as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (Patriot) Act of 2001, the blacksite prisons in Guantanamo Bay, and the collective criminalization of Muslim and Arabs (Robin, 2011).

These institutions began implementing narrow border control and immigration policies, many of which were developed prior to the attacks, as part of an ongoing, transnational strategy (Rygiel, 2006). Legislators have capitalized on the post-September 11th securitization environment to pass laws that would otherwise not be considered acceptable (Beckett & Murakawa, 2012: 232). For example, the state adopted a bill which criminalizes anyone who isn't carrying immigration documents, thus providing pretext for police to request to see immigration documents at any

time (Ibid.). Prior to this law, Arizona officials were using the charge of human trafficking to prosecute undocumented immigrants “for smuggling themselves” (Beckett & Murakawa, 2012: 232). The state propelled the application of these policies by using the attacks and the subsequent War on Terror to justify their strict implementation (Rygiel, 2006). Military defense funds increased dramatically in the span of five years, once again, deflecting funds from other key areas such as health and social security. These policies were not only upheld by military and law enforcement actors, but also bled into people’s daily lives, from their workplaces to schools to airports (Rygiel, 2006).

2.6 Conclusion

Security is operationalized through social, political and economic structures and entities. The use of law and order has been a successful tool in reinforcing the legitimacy of the state. This chapter has outlined the historical utilization of securitization tactics to influence the production of law in efforts to both control specific groups and to preemptively justify the use of invasive strategies. The assumption that the use of law and order promotes an “order of peace” denies the history of crimes enabled through law (Koram, 2017: 245).

The chapter began by exploring the nation’s roots in settler-colonialism and chattel slavery, the language of which contributed toward the securitization tactics used to eventually give rise to Jim Crow legislation. The second section on Jim Crow, which enacted racial segregation throughout the Southern states, discussed the laws that were put in place to control so-called ‘unruly’ African-Americans. The second section also depicted the impact of foreign wars on domestic policy, specifically focusing on the internment camps of the Japanese-American population following Pearl Harbor and the persecution of communists during both phases of the Red Scare. I also noted how the fears of communism were entangled in the struggle for civil rights to instill further fear in the white population.

The third section discussed the War on Drugs, a metaphorical war declared by former-President Nixon, furthered by Reagan, and capitalized by Clinton, which continues to thrive with minimal reform in today’s America. This section described the shifting of traditionally social issues into the realm of national security to justify harsh punitive consequences primarily affecting poor minorities. In that section, I argued that the laws that emerged between the enactment of the Civil Rights era and September 11th gave rise to the system of mass incarceration that holds the world’s largest prison population by migrating funding reserved for social welfare to law enforcement. The final section examined securitization processes that followed the attacks of September 11th. I argued that under an intense climate of fear and the expansion of protection through prevention, the infrastructure that has emerged to facilitate these actions has become a significant recipient of public investment. Through the funding of complex law enforcement programs and institutions, the interests and rhetoric of the political elite have readily compromised civil liberties while driving the production of harsh laws at every level in the nation. While the impersonation of different security campaigns was flexible to the intended audience and political climate, each directly affected the lives of minorities.

Chapter 3: Criminal Justice

3.1 Introduction

In this chapter, I examine the institution of criminal justice administration, in particular law enforcement, as a tangible instrument to operationalize securitization processes. I argue that the inheritance and expansion of security campaigns has resulted in the 'securitization of society' (Schuilenburg, 2011). How does the securitization of society manifest? The securitization of society is attributed to three main activities: prevention, surveillance and enforcement (Ibid.). Practically, these activities appear through predictive police tactics, which attribute threats to particular subpopulations, mass surveillance, and mechanisms of prosecution to enforce a particular social ordering (Bigo, 2012; Ferreira da Silva, 2009). Within the framework of securitization campaigns, in which fear is high and urgency is palpable, the state may exercise strategies within 'states of exception' (Waever, 2010; Wonders, 2016). States of exception allow adjustments to institutions such as the law, in which the state redefines mandates of social control to exert exclusion as a tactic of regulation (Bigo, 2002; Buzan, 1997; Wonders, 2016; Ferreira da Silva, 2009). The criminal justice system functions based on the choices of multiple decision-makers including police, prosecutors, defenders and judges (Schoenfeld, 2018). It is within this group of interpreters of the law that many discretionary decisions are made and securitization is operationalized.

This chapter asks: *How does the criminal justice system, in particular the roles of policing and prosecution, enable the implementation of securitization processes?* The United States has experienced unprecedented rates of incarceration, hosting 25% of the world prison population, with an additional 4.8 million people under correctional supervision through parole, probation and other forms of vigilance (Southern Poverty Law Center, 2018). The American political landscape allows for an opportunity to analyze how prosecutorial mechanisms, such as plea bargaining, facilitate the implementation of security policies geared toward collective punishment of entire communities. In this chapter I examine the impact of predictive police strategies and discretionary prosecution in expanding the role of the state in both public and private life. I argue that the uncurtailed power exhibited by different actors within the criminal justice system, fueled by the political elite's rhetoric of perceived threat, has disproportionately focused its resources to criminalize and exert control over particular groups and communities.

3.2 Policing

Ferreira da Silva (2009) argues that the state uses police to seek "legitimacy of power" by masking brute, superficial domination within the structure of law enforcement. The role of law

and order is essential in reinforcing a nation's sovereign powers, but more importantly, it provides the basis to mandate obedience to those laws (Ferreira da Silva, 2009: 200). The state utilizes its executive power and resources to seek adherence by all necessary means. Which, according to Weber (1946), includes "the [exclusive and] legitimate use of coercive, violence force" (Brucato, 2014: 32). The role of police is to operationalize that force on behalf of the state in efforts to enforce a social order in line with its specific cultural and political identity (Ibid.). In the United States, the control of nonwhites is a key historical characteristic of the criminal justice system, one which reproduces institutionalized white supremacy (Brucato, 2014: 31). Policing, specifically, is rooted in the administration of the institution of chattel slavery in the context of settler-colonialism as "slave patrols" or "paddy rollers" (Brucato, 2014: 31; Hinton, 2016; Robinson, 2017). Until the enactment of the 13th amendment, slave patrols were considered "the first line of defense" (Robinson, 2017: 553). These local militias, comprised of poor whites, were responsible for policing the enslaved and exerting control over the free black population, utilizing maximum discretion in all areas of public and private life to stop, search and prosecute any person of color (Robinson, 2017: 553). The origin of police in the United States is important in reflection of their professional development and social construction. Today, police are regulated through formal procedure, which they practice with discretion, limited supervision and, largely, court-sanctioned impunity (Alexander, 2012; Skolnick, 2015; Reynolds, 2015).

While the current discussion on criminal reform tends to focus on those that have been arrested, convicted and imprisoned, it tends to exclude the patterns of policing that exist in the background of these activities. Specifically, the psychological and often physical violence that police subject communities of color to on a daily basis that does not necessarily lead to tangible consequences central to the discussions on criminal reform (Brucato, 2014; Cuevas, 2012). Throughout the country, police presence remains a constant feature of low-income communities primarily populated by people of color (Hinton, 2016). With the depletion of welfare programs throughout the last several decades, leaving the unemployed and working poor dependent on non-profit efforts, police tend to be the only representative of the state that these communities ultimately interact with (Ibid.). What does it mean for people in these communities if their only relation to the state is based on the surveillance and their engagement the criminal justice system?

3.2.1 Preventative Securitization

The main pillar of police activities is the exercise of judgement (Hazard, 1966). Police are expected to filter social observations through a subjective perception of right and wrong. By actively seeking behavior outside of social norms, police construct a perception of 'ordinary' or good behavior (Ibid.). In turn, they also develop a normative understanding of 'abnormal' or wrong and therefore criminal behavior, even if such behavior is in itself not illegal (Ibid.). This reflects a key feature of securitization, in which different values and behaviors are compartmentalized through the binary of acceptable and unacceptable (Crick, 2011: 408). How are these behaviors examined in public life?

Police use a number of tactics manage potential criminal behavior, effectively translating securitization campaigns into administrative practices (Feeley & Simon, 1992). Two of the main activities of preventive policing are patrolling and surveillance of 'high-crime' neighborhoods. Street surveillance programs have existed for decades throughout the country, accompanying War on Drug strategies to target the demand rather than supply side of the drug trade (Crick, 2011: 411). In certain areas police presence has become a permanent staple as part of a strategy to monitor and control a "chronically troublesome population" by ensuring constant presence further enabling programs like Stop & Frisk (Feeley & Simon, 1992: 456). The construction of the so-called chronically troublesome population has resulted in extensive police presence. Some residents refer to this as "the occupation" and their communities as "occupied territories" (Alexander, 2012: 125).

The use of surveillance is not just limited to street patrolling. The tactic to systemically 'stop and search' which grants police access to surveille the general public under the guise of security processes. The War on Drugs introduced a strategy to utilize routine police practices as part of targeted securitization processes to systematically 'stop and search' large quantities of people through what is referred to as 'broken windows policing (Kelling & Wilson, 1982). This method describes opportunistic policing, in which a small violation offers the opportunity for police to conduct further inquiries (Ibid.). The Drug Enforcement Agency has conducted trainings for police officers all over the country on using the broken windows method as a pretext to search people's vehicles for drugs (Alexander, 2012: 70).[21]

Police officers may conduct a search of a vehicle during a traffic stop based on reasonable suspicion (Alexander, 2012). While officers are not allowed to conduct searches based on race, they can legally consider the element of race if it is a factor linked with a specific crime (Rojek et al., 2012). Officers can use other tools to arrive at reasonable suspicion, such as the presence of drug-sniffing dogs (Glaser, 2015). So what exactly constitutes reasonable suspicion? The concept of reasonable suspicion was established via *Terry v Ohio* (392 U.S. 1, 1968) in which an undercover Cleveland police officer argued two men, Terry and Chilton, were behaving suspiciously and, therefore, searched their belongings upon which he found both of the men carrying concealed weapons. Terry argued that his Fourth Amendment[22] rights had been violated. The court ruled in favor of the state, noting:

> "Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where, in the course of investigating this behavior, he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing

[21] Despite there being no overtly racist language in these trainings, DEA training materials demonstrate the use of latino last names and depiction of particular ethnic groups in association with specific crimes (Glaser, 2015).

[22] The Fourth Amendment prohibits unreasonable searches and seizures.

> of such persons in an attempt to discover weapons which might be used to assault him" (392 U.S. 1, 1968: 30).

Justice Douglas rightfully stated in his dissent: "The term "probable cause" rings a bell of certainty that is not sounded by phrases such as "reasonable suspicion" (392 U.S. 1, 1968: 37). *Terry v Ohio* launched a series of restrictions on the Fourth Amendment, transforming post-Jim Crow encounters between citizens and police. This ruling later became known as the "stop-and-frisk rule", a tactic which allows police to "stop, interrogate and search you for any reason or no reason at all" based on your consent, or rather, your voluntary participation (Alexander, 2012: 63-64). This ruling legitimized the use of preventative measures as legitimate forms of public protection, reinforcing the "political spectacle" of securitization (Bigo, 2002: 68).

Using reasonable suspicion to gain access to people's property facilitates the so-called "volume" approach. This approach allows police to stop and search huge numbers of people to "conduct utterly unreasonable and discriminatory stops and searches" (Alexander, 2012: 70). This form of policing is also not particularly effective, as the overwhelming majority of people that are stopped and searched are not arrested or charged with a crime (Rojek et al., 2012). In terms of the War on Drugs, where this tactic has been widely applied, the numbers speak for themselves: "99% of traffic stops made by federally funded narcotics task forces result in no citation and 98% of task-force searches during traffic stops are discretionary searches in which the officer searches the car with the driver's verbal 'consent' but has no legal authority to do so" (Alexander, 2012: 71).

In *Schneckloth v Bustamonte*, a 1973 case argued in front of the Supreme Court in which a car was stopped and searched during a routine traffic stop resulting in a conviction of one of the passengers (412 U.S. 218, 1978: 219). The court ruled that the state does not need to prove that someone is aware of their right to withhold consent. Through their decision, the court sent a message that the "effective use of consent searches by the police depends on the ignorance (and powerlessness) of those who are targeted (Alexander, 2012: 66). In Justice Marshall's dissent, he pointed to how the ruling reverses the decision of the court in *Miranda v Arizona*, in which the court ruled that "certain warnings must be given to suspects prior to their interrogation… to protect the suspect against acceding to the coercive aspects of police interrogation", commonly referred to as Miranda rights (412 U.S. 218, 1978: 281).

The role of stop and search and the court rulings that facilitated the activity are indicative of the state of exception propelled by the security campaigns of that time and impacting the way in which police work has been and continues to be conducted. But what are the implications of this kind of police work? Stop and search allows everyone to be a suspect at the discretion of police. Of course, this doesn't mean that everyone *is* suspect. The disproportionate application of these policies and procedures to minority groups is correlated with a greater amount of arrests of minorities (Mastrofski et al., 2002). This is not because minorities commit more crimes, but because they are more closely surveilled than their white counterparts (Alexander, 2012). The rate at which minorities are more likely to be stopped in these traffic stops varies throughout the

country, but the overwhelming body of research on the topic shares the conclusion that drivers of color, in particular those who are black or latino, are statistically more likely to be stopped by police officers in comparison to white drivers (Rojek et al., 2012: 999).

The issue of consent in stop and search procedures is worthy of consideration in reflection of the "social ecology" of policing in relation to minority communities (Brunson & Miller, 2005: 614; Robinson, 2017) This consideration will remain relevant later in this chapter within the discussion on plea bargaining. Consent is an important aspect within the framing of securitization as it's a key legitimizing and justifying factor to give rise and sustainability to securitization processes (Charette, 2009). What does the issue of consent mean for those that are stopped and seized and who are also classified as impersonating threats? How does the complicated relationship between police and minorities limit the ability to provide consent? Many policies that would not be considered acceptable in non-securitized setting were created and strengthened through accompanying discourse (Crick, 2011: 408). The policies utilized to operationalize securitization processes were produced in a climate of urgency, beyond the democratic accountability of 'normal' policy-making (Ibid.). Perhaps what remains, the effects of judicial decision-making and restrictions of constitutional rights, constitutes a permanent state of exception.

3.2.2 Militarization of a Metaphorical War

The previous chapter outlined the construction of the so-called War on Drugs, beginning with the Nixon administration and, later, dramatically expanding under Reagan's rule and continuing under subsequent administrations through today. In that discussion, I highlight that when the war was declared, drug use was not considered a national priority by 98% of Americans and, accordingly, drug use was diminishing across the country. Nonetheless, war was called for and it was war that was constructed. I also mention that Reagan's administration reallocated funds from welfare and other public services to invest $4.3 billion in building the infrastructure necessary to conduct a domestic war (Bagley, 1988). But how did the nation adjust to readily prepare and encourage law enforcement to move forward with a war that seemed out of sync with the nation priorities?

The government's $4.3 billion investment went to fund prison building, but also in incentive programs to garner law enforcements' enthusiasm for the mission ahead (Rahman, 2015). In 1981, the Military Cooperation with Law Enforcement Act was passed to encourage intelligence and weaponry sharing between military forces and local law enforcement (Alexander, 2012: 77).[23] Several initiatives were launched accordingly specifically for police departments and networks committed to drug enforcement: (i) federal grants to police departments all over the country, (ii) access to DEA intelligence, technology and training, (iii) access to Pentagon military equipment and intelligence and (iv) permission for law enforcement to keep any assets found during search

[23] The enactment of this policy is not only significant due to the impact it had on how local enforcement was to be organized, but also because its passing has severe implications on Civil War-era legislation which sought specifically to prevent the militarization of local police (Balko, 2014).

and seizure operations (Alexander, 2012: 73-74; Rahman, 2015). What does it mean for local law enforcement to play leading roles in the performativity of war?

Police officers were expected to produce a minimum amount of arrests, a minimum quantity of seized drugs and meet other requirements in order to keep their funding (Ohlheiser, 2013). These numbers were used as the basis for evaluating individual performance and for the political elite to demonstrate the effectiveness of their hard-line strategy (Balko, 2014). Local law enforcement units morphed into SWAT teams for even the most low-level drug busts to perform what are called 'no-knock raids', which allowed officers to enter homes with force and unannounced to search a property (Balko, 2014).[24] SWAT teams would "blast into people's homes, typically in the middle of the night, throwing grenades, southing, and pointing guns and rifles at anyone inside, often including young children" (Alexander, 2012: 75). The normalization of these particularly violent tactics was rooted in the rhetoric that drug dealers are armed, dangerous, and fearless (Balko, 2014). Parenti (2001) describes police activity in a primarily African-American neighborhood in Fresno, California, referred to by police as the 'Dog Pound'. Parenti describes up to thirty local policy officers, members of Fresno's Violent Crime Suppression Unit (VCSU), dressed in full militarized gear carrying heavy artillery and supported by two helicopters with infrared scopes and an armored personnel carrier (Ibid.).

Public housing projects were particularly targeted in SWAT operations. Entire communities have been left traumatized as a result of SWAT raids (Balko, 2014; Parenti, 2001). A public hearing on SWAT practices was held in New York City, in which with dozens of black and latino victims whose homes had been subjected to SWAT raids (Alexander, 2012). As cited in Alexander, a *Village Voice* report described the repetition of a similar narrative from person-to-person of "police ransacking their homes, handcuffing children and grandparents, putting guns to their heads, and being verbally (and often physically) abusive" (Ibid.: 76). The SWAT tactic was extended to other crimes completely unrelated to drugs. For example, in 2010, Orange County police led a raid on several barber shops within the Florida town (Balko, 2014). SWAT teams ransacked these businesses, holding guns to the both barbers and their customers, arresting nearly 40 barbers for cutting hair without a license (Ibid.).

The last five decades of domestic war mongering led to the equipping and training of local police forces across America, by both by national and foreign[25] militaries. The federal government's hyper-resourcing of law enforcement has resulted in the emergence of thousands of specialized paramilitary groups comprised of ambiguous culminations of local police forces and active-duty soldiers (Hernandez, 2013: 1500; Brucato, 2014: 34). The formation of a

[24] No-knock raids are rooted in the Nixon's administration's declaration of the War on Drugs, in which police were encouraged to search homes without warrants (Balko, 2014). After a number of grave errors and public outcry, the policy was repealed by Congress and then reintroduced during Reagan's regime (Ibid.).

[25] In addition to military-grade resources, American police departments from all over the country including Oakland, St Louis, New York City, among others, have attended military trainings by Israeli counterterrorism forces (Leroy, 2016).

militarized body has enacted part of the performativity of securitization and reinforced its relevance through reported high rates of arrest and the publication of other indicators. Police have, therefore, contributed toward the construction of security issues, as well as operationalized the securitization process.

3.2.3 Expansion of State Presence

The dimensions of the state of exception in public life extended beyond America's streets and roads. Public institutions were also reflected in securitization processes; welfare recipients were required to take drug tests, public housing complexes were required to evict convicts, federal financial aid was eliminated for drug users (Budd, 2011; Alexander, 2012; Moore & Elkavich, 2008). Public schools in particular illustrate the expanding presence of the state in public life. In the United States, public schools are funded largely through property taxes and student allocations often depend on their physical address. Therefore, areas that are concentrated with public, low-income housing do not generate a fraction of school funding for schools in their communities as high-income areas, in which most residents own property (Cuevas, 2012). As cited in a 2018 *Jacobin* article, based on a 2016 study conducted by the Government Accountability Office, "more than 20 million students of color now attend racially and socioeconomically isolated public schools", a practice rooted in Reagan-era districting policies (Stivers, 2018). This form of segregation structurally reinforces the social inequalities that we observe in society and effectively constructs schools into racialized spaces (Ibid.; Neely & Samura, 2011). While there are a number of implications to segregation that studies have found to negatively impact students' academic performance and future prospects, another consequence is the transference of community issues into the school setting.

In the early 1990's, there was a dramatic shift in school discipline policies via the introduction of the zero-tolerance policies on violence and drug use[26], resulting in 3 million suspensions (7% of the student population) in 1997 alone (McCarter, 2016: 53-54). The turn of the century welcomed Bush-era policies such as the No Child Left Behind Act, which imposed minimum standardized testing scores on under-performing schools all over the country (Ibid.). Instead of increasing resources for schools to meet these requirements, the policy placed additional pressure on already underfunded schools by making federal funding contingent on achieving specific outcomes (Hewitt et al., 2010).

Due to inadequate resourcing, many early intervention programs that are found in middle and high income schools for students struggling with behavioral or learning issues were replaced with "suspensions, expulsions and law enforcement" (Hewitt et al., 2010: 34; Cuellar & Markowitz, 2015). This resulted in many high-pressure districts eagerly pushing so-called "problem children" out of schools and into the juvenile justice system, despite studies showing one suspension increases students' chances to coming into contact with the criminal justice system (Ibid.: 78; McCarter, 2016: 53). Unsurprisingly, it is students of color, disabled students, undocumented students, as well as LGBTQ+ and homeless youth that suffer the effects of these

[26] Approximately 94% of schools have adopted zero-tolerance policies (McCarter, 2016).

policies the most (McCarter, 2016.). By the mid-2000's some states were imposing suspension on over 10% of the annual student population, the overwhelming majority of which constituted students of color (Ibid.).

Schools across the country, including the one I attended, contain school resource officers[27] (SROs), surveillance cameras[28] and other monitoring tools as part of preventative strategies employed by law enforcement throughout the country and partially in response to the dramatic rise of school shootings within the last several decades (McCarter, 2016; Cuellar & Markowitz, 2015). In efforts to address the alleged roots of student misconduct, schools have also engaged in a number of violent police search and seizure tactics akin to raids in public housing projects (Alexander, 2012). Many low-income schools have instituted random drug testing, searches and even interrogation practices (Hewitt et al., 2010). As cited in Hewitt et al. (2010), the National Center for Education Statistics reported that it was increasingly common for low-income schools to be subjected to the use of drug-sniffing dogs to detect drugs and other contraband.[29] SWAT teams have been called to conduct operations based on the mere suspicion of drug use (Alexander, 2012). Alexander cites a well-known example of a 2003 SWAT raid conducted in a South Carolina high school:

> "Students as young as fourteen [were] forced to the ground in handcuffs as officers in SWAT team uniforms and bulletproof vested [aimed] guns at their heads and lead a drug-sniffing dog to tear through their book bags. The raid was initiated by the school's principal, who was suspicious that a single student might be dealing marijuana. No drugs or weapons were found during the raid and no charges were filed. Nearly all of the student searched and seized were students of color" (2012: 76).

Zero-tolerance policies have been and continue to be damaging to the nation's most vulnerable communities. What does it mean when schools choose to call on law enforcement intervention in place of educational resources? Instead of improving academic performances, the American Psychological Association Zero Tolerance Task Force argues that the implementation of these policies have gravely contributed to the rise of serious misconduct and school dropouts (McCarter, 2016).[30] Students all over the country are being charged with disorderly conduct, misdemeanor assault and battery (Kim & Geronimo, 2009). Others face felony drug charges for possessing the smallest amount of marijuana on school property (Alexander, 2012). But what happens to these students? Allocation of criminal charges often result in the separation of children from their families, sending them to juvenile detention centers to serve sentences (Ibid.). Others face fines, sometimes resulting in imprisonment due to their inability to pay (ACLU, 2017). At the discretion of prosecution, children charged with criminal offenses may be

[27] SRO's are often "sworn in police officers employed by local police departments" that patrol schools full-time (Kim & Geronimo, 2009). As law enforcement officers, SRO's are not required to attend any trainings relevant to adolescent or childhood development (McCarter, 2016).
[28] Today, over 80% of schools use surveillance cameras to monitor students' behavior (McCarter, 2016).
[29] In 2012 alone, 57% of schools in the U.S. conducted dog-sniffing operations (McCarter, 2016).
[30] Studies show that the mere inclusion of law enforcement agents via SROs in the school environment has a direct correlation with likelihood of school-based arrests; in some areas school-based arrests have increased by over 90% (Kim & Geronimo, 2009: 11; ; Cuellar & Markowitz, 2015).

processed as adults and, thus, face sentences in adult prisons (Alexander, 2012: 115).

Kim & Geronimo note that arrest "nearly doubles the odds of [students] dropping out of school, and, if coupled with a court appearance, nearly quadruples the odds of dropout; lowers standardized test scores; reduces future employment prospects; and increases the likelihood of future interaction with the criminal justice system" (2009: 10). The school-to-prison pipeline is symptomatic of the ever-expanding presence of law enforcement in public institutions as part of federal and state policies' trend to systematically reallocate funds typically reserved for social programs into law enforcement (Alexander, 2012; McCarter, 2016). These strategies, deemed imperative to the security and efficiency of schools, remove one of the few dimensions of state presence beyond law enforcement.

3.3 Prosecution

The state of exception cultivated to operationalize securitization processes extend beyond the actions of policing. As illustrated in the previous chapter, countless numbers of people, primarily people of color, have been implicated through surveillance, arrest and detention throughout a history of security campaigns. Yet, the worth of an arrest can only be levied by its charges, a role reserved for the prosecuting power (Sudnow, 1965). The power to allocate charges is a central aspect to operationalize security campaigns, as it is an action with measurable implications. Those who interpret the law identify what is acceptable and what is unacceptable by administering social order through regulating tactics, such as punitive consequences (Crink, 2011). The criminal trial is the defined space in which tensions between citizenry (defendant) and state (prosecution) are subjected to thorough examination and deliberation in a court of law. In the United States, the criminal trial also includes the role of a jury to evaluate innocence or guilt (Schuilenburg, 2011). The transparent deliberation over evidence in which an impersonator is able to represent themselves is not a feature of the securitization process as the severity of threathood is central to security operations (Ferreira da Silva, 2009).

In the United States, the criminal trial is a concept referred to almost entirely in the past tense. Today, over 95% of criminal cases are administered through the plea bargaining system (Southern Poverty Law Center, 2018). The overwhelming amount of individuals that have been arrested within the last thirty years completely overburdened the previous criminal justice system (Alexander, 2012). This resulted in an allocation of funds for prison building, as discussed in Chapter 2, and the militarization of police, as examined in the preceding section. Funding was not extended to functions of the court, despite the massive rise in processing needs. A state of exception emerged that transformed the administration and power dynamics of criminal justice: the plea bargaining system. In this section I argue that plea bargaining operationalizes securitization and contributes toward the construction and impersonation of threathood.

3.3.1 Plea Bargaining

On the brink of the 20th century, American courts began to see a significant increase in civil litigation (Fisher, 2004). Given the amount of time, effort and resources required to respond to the sudden increase in caseloads, mounting pressures required judges to welcome prosecutorial intervention to regulate their time and contributions (Fisher, 2004; Langbein, 1978). The transition of delegation from judge-concentrated decision-making to prosecutor-lead settlement was a natural progression that required no formal modifications to constitutional law. This development paired well with the long held tradition of valuing the workings of pre-trial, in particular the gathering of evidence, over the presentation of positions inherent to the trial process (Langbein, 1978). Legislators favored this approach, as judge's neutral roles provided space to engage in the ambiguity of certain crimes and other measures (Hernandez, 2013: 1498). This perception was solidified through the issuance of the Sentencing Reform Act of 1984, which prescribed mandatory sentences (Ibid.: 1499). Diminishing the judge's involvement in favor of direct interaction between prosecutors and defendants modified the administration of justice into a settlement format, rather than one which required an arduous consideration and evaluation of positions inherent to trials (Damaska, 1973). It also provided prosecutors with extraordinary discretion and diminished supervision (Davis, 2007).

As quoted in Standen, Schulhofer describes plea bargaining, as "any process in which inducements are offered in exchange for a defendant's cooperation in not fully contesting the charges against him" (1993: 1474). Schulhofer argues that plea bargaining in itself is not limited to the formalities attributed to the criminal trial process, but includes "the wide variety of informal, sub rosa behavior patterns in which indirect inducements, unspoken commitments, and covert cooperation" functions in favor of both the defendant and the prosecution (Standen, 1993: 1474). Promises of leniency are intrinsic to the plea bargaining process, therefore, any trade-offs are considered part of the negotiation process. The objective of the prosecutorial component of the securitization process is not necessarily to inflict maximum suffering to those that impersonate threathood. This role is limited to legislators, who produce laws, define their content and advise on sentencing (Luna & Wade, 2010). Instead, the objective of the prosecution is to ensure a guilty verdict, no matter the ultimate charge, as a demonstration of efficient and effective law enforcement (Standen, 1993).

Legal scholars critical of the plea bargaining process argue that the use of leniency as a negotiation tool is coercive due to the imbalance of power between prosecutors and defendants (Langbein, 1978). This issue has repeatedly emerged in the dichotomy between coercion as authorized by law and coercion as a method to overcome the guarantees and protections of law (Ibid.). This is tension is rooted in the state of exception produced through securitization. The state appoints itself the unique position to regulate a threat through the assertion of force, utilizing the formal mandates at its disposal to exert control. In the case of the court favoring plea bargaining, the state of exception is manifested outside the 'normal' means of deliberation. This concern has not been been limited to scholarly debates. In 1975, the *New York Times*

reported that the state of Alaska outlawed the use of plea bargaining, deeming it an illegitimate form of administering justice. Then-Governor Jay Hammond claimed that the lack of transparency and uniformity in its application was inciting a general public distrust in the criminal justice system. Yet, since then, the use of plea bargaining has expanded throughout the country.

But what impact does this pose to the way in which cases are processed? In 1929, Justice Benjamin Cardozo stated that "in the long run, there is no guarantee of justice except the personality of the judge" (Neubauer & Meinhold, 2017: 150). Neubauer & Meinhold (2017) have attributed two key factors to the rise and sustainability of plea bargaining. The first attribution is in relation to a consistently large volume of cases which has resulted in a chronically overburdened court system, thus, requiring a speedy and resource efficient process (Ibid.: 248). The second is related to the working dynamic between courthouse actors (judges, prosecutors, public defenders, etc.), which focuses on "coordination and collaboration" (Ibid.). Both factors value concentrated prosecutorial discretion as a method to enhance their working synergy. Today, over 95% of cases in a given year are administered through plea bargaining, which requires defendants to accept a guilty verdict and rescind their right to an appeal (United States Sentencing Commission, 2017; Langbein, 1978; Alexander, 2012). What does it mean if 95% of people that face charges accept plea deals? How does the practice of plea bargaining tie to police practices?

As people of color are statistically more likely to be stopped and searched by police, they are also more likely to be arrested, face charges and, ultimately, accept a plea bargain. Incarceration statistics in the United States help to illustrate what these practices ultimately look like. Gehi describes the demographic composition of American prisons:

> "African Americans represent 12.7% of the US population, 15% of US drug users (72% of all users are white), 36.8% of those arrested for a drug-related crime, 48.2% of American adults in state and federal prisons and local jails, and 42.5% of prisoners under sentence of death. Additionally, one in three black men between the ages of twenty and twenty-nine live under some form of correctional supervision or control. African American children (7.0%) were nearly nine times more likely to have an incarcerated parent in prison than white children (0.8%). Similarly, Latino children (2.6%) were three times as likely as white children to have a parent in prison. Native Americans represent less than one percent of the U.S. population, but over four percent of Native Americans are under correctional supervision (compared to two percent of whites)" (2012: 372).

3.3.2 Prosecutors

Plea bargaining transformed the administration of justice by concentrating unilateral discretion and decision-making on prosecutors (Langbein, 1994). Prosecutors hold the unique power to allocate charges and the ability to offer an early settlement to evade criminal trial in the form of a plea offer (Luna & Wade, 2010; Davis, 2007). Luna & Wade note the extend of prosecutors'

power:

> "They decide whether to accept or decline a case, and on occasion, whether an individual should be arrested in the first place; they select what crimes should be charged and the number of counts; they choose whether to engage in plea negotiations and the terms of an acceptable agreement; they determine all aspects of pretrial and trial strategy; and in many cases, they essentially decide the punishment that will be imposed upon conviction. These and other discretionary judgments are often made without meaningful internal and external review or any effective opposition. In many (if not most) American jurisdictions, the prosecutor is the criminal justice system. For all intents and purposes, he makes the law, enforces it against particular individuals, and adjudicates their guilt and resulting sentences" (2012: 1415).

As probabilities of winning criminal trials are fairly low, especially for people of color, the plea offer is an inciting option, even for those with weak cases or positions of innocence (Gehi, 2012). The court actors' working dynamic is geared toward efficiency and effectiveness (Neubauer & Meinhold, 2017). But how does this practice reflect the ambitions of securitization processes? The value of securitization processes is both dependant on the manifestation of its objectives and the sustainability of its threat (Waever, 2010). Law enforcement alone, without the influence of meaningful programs cannot tackle a social problem, but it can attempt to control its appearance in society (Feeley & Simon, 1992). Controlling the appearance of a threat in society, yet still ensuring its visibility, legitimizes the extreme tactics employed by securitizing actors (Ibid.). Through the plea bargaining structure, prosecutors are able to process large quantities of cases, using unfavorable trial probabilities, pre-trial detention and unaffordable bail requirements to pressure defendants into "pleaing out", which refers to accepting a plea agreement (Langbein, 1994; Alexander, 2012; Gehi, 2012).

This structure is facilitated by legislation, in which the law provides a mere framework rather than a guide for prosecutorial decision-making (Neubauer & Meinhold, 2017). Prosecutors exercise decision-making over the cases that they work on and they so with a great amount of personal discretion (Neubauer & Meinhold, 2017; Davis, 2007). In the United States, prosecutors are not forced to abide by internal guidelines, many of which are deemed confidential and are not accessible external to courts (Luna & Wade, 2010). This discretion is particularly tangible in the charging and sentencing processes.

As noted above, following arrest it is prosecutors who ultimately decide if the alloted charge(s) is legitimate and, if so, if it is sufficient (Davis, 2007). In the plea bargaining structure, a defendant can be charged with a crime and then be offered an unrelated charge during the negotiation phase, this is referred to as situational inclusion (Sudnow, 1965). This allows for prosecutors to draw conclusions based on a charge's "membership in a class of events" based on the knowledge garnered by prosecuting bodies as to how a particular crime is typically committed (Ibid.: 259) For example, in consideration of a charge such as public drunkenness, a district attorney may consider charging the accused with a relevant, reduced charge, for example disturbing the peace (Sundnow, 1965). The latter charge carries a reduced sentence, which

may convince a defendant to plea out. Another tactic employed by prosecutors is to overcharge a defendant with crimes that would not be arguable in a court of law, just so long as they are rooted probable cause (Davis, 2007). These decisions are entirely at the discretion of the prosecuting body and are not outlined within a penal code or elsewhere (Sundow, 1965: 262).[31] Unlike criminal trials, in which a record is produced for each case, there is also no way to track or verify discussions inherent to plea bargaining as no formal mechanism is used to record the plea bargaining process (Cloyd, 1979; Davis, 2007).

As discussed in Chapter Two, as part of the strategies inherent to the War on Drugs, the Anti-Drug Abuse Act issued mandatory minimum sentencing for drug-related crimes. Mandatory minimums have largely worked in the favor of prosecuting bodies. In facing such extraordinarily severe sentences, spanning decades of imprisonment to the death penalty, prosecutors are able to offer harsh, yet comparatively tame alternatives in exchange for an admittance of guilt and "substantial assistance" (Davis, 2007; Alexander, 2012: 86; Alschuler, 2006). Substantial assistance refers to information regarding other criminal activities, which is ultimately shared with police in efforts to conduct raids and arrests (Alschuler, 2006; Alexander 2012). As the only alternative to facing extreme punitive consequences, defendants often choose this route both due to the unfavorable odds individuals face when taking their case to trial[32] and as the only mechanism to obtain a reduced sentence (Davis, 2007; Gehi, 2012).

The power of plea bargaining extends to criminal trials, as the discretion of prosecutors remains paramount in ultimately deciding what charges are brought to review by the court and can be enhanced if a defendant denies or is not offered a plea bargaining (Davis, 2007; Alschuler, 2006; Alexander, 2012). This is especially dangerous in cases of mandatory minimum sentencing, which generate a fixed minimum sentencing in the case of conviction (Alschuler, 2006). This type of sentencing format effectively renders a judge symbolic, as their ability to exercise judgement is replaced with an enforced subscription to mandatory minimum sentencing (Ibid.).

Consider the case of Sandra Avery, who was indicted by a federal grand jury for possessing 50 grams of crack cocaine and sentenced to life in prison without parole (HRW, 2013). This sentence was facilitated by the prosecutor's decision to induce a sentencing enhancement based on a prior drug conviction. A sentencing enhancement allows prosecutors to argue maximum charges against defendants (Alschuler, 2016). Avery's twenty-year-old former conviction had required her to perform community service for (HRW, 2013). Due to the prosecutor's aggressive pursuit of charges in reflection of former convictions, Avery's indictment required the presiding judge to sentence Avery through a mandatory minimum sentencing structure (Ibid.). Mandatory minimum sentencing and the concentration of prosecutorial power reflect the state of exception of an overburdened court system, which requires efficient

[31] Further examples to clarify the dynamics of this type of decision-making see Sundow (1965: 19).
[32] The indictment rate for trial-based cases is over 85% (Luna & Wade, 2010). In a 2013 report, *Human Rights Watch* stated that federal drug offenders that go to trial on average receive sentences three times as long as those who accept a plea bargain.

processing techniques.

3.3.3 Public Defense

Through the late 18th century, the ultimate safeguard of the accused was the right to directly address the court in response to charges, as defense counsel was not legal at the time (Langbein, 1994). If a defendant refused to speak, the court would have considered the measure a “forfeiture of all defense” (Langbein, 1994: 1048). By the late 18th century, with the rise of defense counsel, trial became the only space for defendants to probe into the evidence leveraged against them (Ibid.). The initial role of the defense counsel was limited to the facilitation the role of cross-examination or to clarify any confusion. Defense counsel only began to speak on behalf of their clients much later on, birthing the legal right to evade self-incrimination, capitulated within the Fifth Amendment (Ibid.). The historical development of self-incrimination is relevant and necessary to understand the performativity of defense inherent to the use of plea bargaining.

In 1963, *Gideon v Wainwright* established the right to adequate representation for those charged with serious crimes. For those that cannot afford legal defense, courts offer the service of public defenders.[33] Public defenders are employees of the court that are tasked with acting in the interest of the defendant. Sudnow describes the privileges granted to public defenders: Public defenders may utilise the clerk’s phone if they require more information on a case; request continuances and other exceptional measures directly to the prosecution; have access (and vice versa) to the prosecution’s calendar and availability; are able to consult with prosecution outside of formal structures (1965: 263). This to say that public defenders and prosecutors are colleagues, jointly taking on the court’s activities (Ibid.). Given the high cost of legal fees attributed to private representation and the socio-economic status of the majority of individuals charged with a crime, 80% criminal defendants require the assistance of public defenders (IAALS, 2013; Alexander, 2012).[34] How has this dependence on public defense impacted the use of plea bargaining?

At any given time, public defenders may be engaged in over one hundred cases, sometimes only dedicating mere minutes with clients before representing defendants in trial or within plea bargaining negotiations (Davis, 2007; Alexander, 2012). This is not to under represent the role and importance of public defense, but to demonstrate how chronically overburdened public defenders are (Davis, 2007). As court actors themselves, they share the interests of efficiency with the court. For defenders, this means that the most efficient method to conduct their work is through engaging in the plea bargaining system (Fisher, 2004).

[33] Public defender funds have consistently been diminished (Neubauer & Meinhold, 2017). Some states have employed unreasonable limitations on the allocation of defense based on a household income (Alexander, 2012).

[34] Sudnow illustrates the rate at which public defenders perform in court by describing when cases in which private attorneys are defending clients, the public defender often leaves their belongings on the desk, “and temporarily relinquishes [their] station” (1965, p 264).

What does it mean when the majority of defendants are entirely dependent on an ever-shrinking and chronically overburdened resource as their only form of legal representation? What is the impact to low-income defendants when legal representatives share the interests of the court? Alexander cites a 2004 report issued by the American Bar Association which argued that defendants dependent on public defense overwhelming plea out not because they are necessarily guilty, but that they are generally unaware of their rights and options (2012: 85). The report goes on to argue that public defenders are essentially facilitating the plea bargaining process by packaging it to their clients as the only option and insisting on their clients' cooperation with prosecutors' demands and offers (Ibid.). As noted, this framework is conducive to the immediate objectives and working dynamics of other court actors, even strengthening their relationship, as working with public defenders ensures a higher level of cooperation and flexibility when needed (Fisher, 2004). How does the role of public defense fortify the appearance of a rational system that in actuality operates based on pockets of concentrated power, limited options and resource constrictions?

3.4 Conclusion

The role of prosecutors in charging crimes impacts both criminal trials and the plea bargaining system. The influence over defendants' interests allows for 95% of criminal cases to be processed through plea bargaining (United States Sentencing Commission, 2017). This means that 95% of defendants that are charged with crime(s) plea out based on a reduced sentence to their initial charge(s) or a modification of charges. This outcome either reflects a successful impersonation and management of threats or calls for the meaningful questioning as to how threat is manufactured and securitization processes are designed. While the former is possible, it is quite challenging to measure as one key element to plea deals is the withdrawal of the right to appeal a conviction. The latter allows for a reflection on how the concentration of power is used to reinforce the idea of threathood.

I argue that the extraordinary rates of conviction produced through plea bargaining, based on the police tactics outlined in the first section, fulfils the objective of securitization processes (the appearance of control over a threat). These rates also simultaneously construct and legitimize the impersonation of threathood. The use of plea bargaining has facilitated unprecedented rates of conviction and subsequent incarceration. These practices have strengthened the perception of law enforcement, in particular the unilateral power exerted by the state, as a valid and legitimate mechanism to manage threats.

Considering the practices outlined throughout this chapter, the rates of conviction should inspire questions on the legitimacy of these practices. How can structure operationalized to fulfill objectives of securitization be considered rational? What happens to those that have been designated as the source threathood? How does the penal system impact the way in those that impersonate threats interact with social, economic and political structures?

This chapter examined two components to the administration of criminal justice: policing and prosecution. The first section grappled with preventative policing, the militarization of police and the extension of state presence through the expansion of law enforcement in public institutions. The second section examined the use of plea bargaining to process the extraordinary amount of individuals swept up by harsh policies that stem from security campaigns. This section discussed the diminished role of judges, the inflation of prosecutors' discretion and the cooperation of public defenders in streamlining convictions. This chapter reflected on mechanisms of social control within states of exception created as part of law enforcement.

The operationalization of security through the criminal justice system feeds into the performativity of the "political spectacle" by appearing rational. The use of law, in particular the application of plea bargaining, allows for securitization processes to adhere to formal mandates while operating within a state of exception. This method provokes the appearance of a rational and fair deliberation process, with all actors present, while utilizing states of exception to permanently redefine the way in which the institution of criminal justice operates. What does it say about these mechanisms if they function as part of a securitization strategy not to eliminate the existence of a threat, but rather to further the construction of threathood?

Chapter 4: Disenfranchisement

4.1 Introduction

In Cohen's 1979 article *The Punitive City: Notes on the Dispersal of Social Control*, he premeditates the future we live in today. Cohen illustrates the expansion of dispersed state-driven social control mechanisms that extend far beyond formal penal structures, producing "net-thinning and mesh-widening effects" widening the "carceral circle" (1979: 350-360). In his dystopian illustration, Cohen describes "blurred boundaries between inside and outside" of the formal control system featuring "broadened and fuzzy definitions of crime" (Beckett & Murakawa, 2012: 222). Although nearing four decades of age, Cohen's pessimistic outlook on the "carceral archipelago" echoed Foucault's preceding assessment:

> The frontiers between confinement, judicial punishment and institutions of discipline, which were already blurred in the classical age, tended to disappear and to constitute a great carceral continuum that diffused penitentiary techniques into the most innocent disciplines… the carceral archipelago transported this technique from the penal institution to the entire social body. Incarceration with its mechanisms of surveillance and punishment functioned, on the contrary, according to a principle of relative continuity. The continuity of the institutions themselves, which were linked to one another (public assistance with the orphanage, the reformatory, the penitentiary, the disciplinary battalion, the prison; the school with the charitable society, the workshop, the almshouse, the penitentiary convent; the workers' estate with the hospital and the prison). A continuity of the punitive criteria and mechanisms, which on the basis of a mere deviation gradually strengthened the rules and increased the punishment" (1975: 297-298).

Beckett and Murakawa refer to the ever-extending mechanisms of social control as the "shadow carceral state" in which institutions enforce policies produced outside of the penal system that "mimic traditional punishment" and "create pathways to, and entanglement in, the criminal justice system" (2012: 222). The shadow carceral state expands into public life to "regulate the unruly" and protect "free and honest men" from the permanent threat of the "social ills" of the "ungovernable" and "permanently excluded" (Ferreira da Silva, 2009: 227; Feeley & Simon, 1992: 455; Cohen, 1996: 9; Cuevas, 2012: 609).

This chapter examines those that impersonate threathood within securitization constructs, who face an "incalculable debt to society" merely for existing (Cuevas, 2012: 611). In this chapter I ask: *What is the impact to those that impersonate threathood?* The preceding chapters demonstrated the construction of a securitization campaign and the importance of the allocation of an "enemy named by the political elite" (Ferreira da Silva, 2009). This was followed by an examination of social control mechanisms through fast-track systems like plea bargaining, that

function with limited transparency and accountability. I have shown that the culmination of these factors have bred an environment of hyper-criminalization. In the United States, these practices have birthed an unprecedented incarceration rate, implicating tens of millions of people. This chapter looks beyond the incarceration itself and into the shadow carceral state, in which institutions and policies outside the penal system enforce "submerged, serpentine forms of punishment" that lead to the "social death", the systematic social, economic and political disenfranchisement of those who impersonate threathood (Beckett and Murakawa, 2012: 222; Koram, 2017). These extended forms of punishment "increasingly punish marginalized groups, especially the economically disadvantaged, undocumented populations and Black and Latino people" (Ibid.: 224).

4.2 Classification Systems

The impersonation of threathood is curated through the classification systems inherent to securitization processes (Feeley & Simon, 1992). The construction of these systems is facilitated through the identification of patterns and characteristics of groups, an effort spearheaded by experts which formulate indicators based on a specific set of data (Ibid.; Huysmans, 2002). But how are these indicators conceived? The role of expertise in the field of securitization studies is worthy of exploration as it provides an understanding of how classification systems garner legitimacy. Bigo argues that expertise is rooted in an epistemological shift in an interdisciplinary space, in which experts serve a formative role as "intermediaries between disciplines" (2016: 1070). Classical approaches to securitization "strategize the everyday"[35] through "geopolitical reasoning" (Ibid.). The construction of this reasoning is enabled through the use of prejudice, stereotypes and the production of terminologies merging crime and war to the point that they are indistinguishable from each other (Ibid.).

The classification of groups is organized in opposition to the national political class, the audience of the political elite, claiming a direct threat to the social fabric (Cohen, 1996). An example of this trend may be illustrated through the examination of the political positioning of immigrants. The political elite may use statistics recorded, interpreted and published by state or affiliated institutions, which claim immigrants harbor high crime rates and, therefore, may utilize that statistic to assert that immigrants collectively pose a risk to society (Bigo, 2016: 1076).[36] This assertion may also play on other rhetoric related to immigrants, using the element of "crime as a racial signal" (Beckett & Murakawa, 2012: 222). Yet, the formulation of this statistic is not necessarily a reflection of the high frequency that immigrants' commit crimes in comparison to non-immigrants. Rather, as discussed in the previous chapter, this statistic could be a reflection

[35] The phrase "strategization of the everyday" encapsulates "discourses of justification" attributed to the political elite and their institutions who engage in war-mongering without discussing details (Bigo, 2016: 1076).

[36] Following the process of securitization, the political elite's speech act (equating high levels of crime to immigrants) is accompanied with calls for measures to eliminate their perceived threat through harsh measures.

of targeted policing practices, the subsequent allocation of charges by prosecutors and the pursuit of a criminal trial or acceptance of a plea offer resulting in a conviction (Alexander, 2012). As quoted in Lowman & Menzies (1986), Miles and Irvine suggest:

> "Official statistics are… not just a product, but a particular product whose form and content are structured by much more than individual and organizational practices" (97).

The cyclical motion of this behavior can result in disproportionate crime rates attributed to specific groups. This may then contribute to the formulation of other interrelated indicators based on neighborhoods, education, income, etc. This statistic, which is likely to be presented without the context of its aggregation, is then utilized as the pretext to fuel rhetoric to justify policies calling for the "selective incapacitation" of foreign nationals to classify the collective as an "underclass" and, thus, in need of regulation (Feeley & Simon, 1992; Cohen, 1996: 17; Bigo, 2016). The rhetoric that ensues is that immigrants "are people to be feared, their risk assessed, and the threat they pose managed" (Hernandez, 2013: 1458). Legislators capitalize on the opportunity to keenly demonstrate commitment to 'toughness' against high-risk groups by producing racially-charged criminal laws and policies to gain popular backing (Beckett & Murakawa, 2012: 222; Hernandez, 2013). For those who live 'underground' as undocumented immigrants, this circumstance is progressively worse. Undocumented immigrants are hyper-criminalized two-fold both due to the framing of immigrants under securitization and due to their immigration status (Beckett & Murakawa, 2012).

In the United States, this strategy has been especially effective when tied to overarching post-September 11th political fears. As discussed in Chapter 2, the United States Immigration and Customs Enforcement (ICE) agency was created through the 2003 Homeland Security Act (ICE, 2018).[37] In 2017 alone, ICE deported 226,119 people and detained 143,470, with an average of 39,322 people held daily (ICE, 2018; NIJC, 2017).[38] By law, immigrants, with the exception of those who are found to have a "reasonable fear of persecution", are detained pending their deportation hearing (Noferi, 2014: 5).[39] Yet studies show that over half of those detained have never been convicted of a crime[40] and that 95% of asylum seekers are detained pending the finalization of their cases (Beckett & Murakawa, 2012: 226). This is largely due to the expanding definition of 'criminal alien', which has widened the legal classification criteria, leading hundreds of thousands of people to be detained over non-criminal violations (Ibid: 233). A federal program called Secure Communities also requires that the fingerprints of those charged with a crime are checked against the Federal Bureau of Investigation's (FBI) records and the database of the Department of Homeland Security (Ibid.).

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[37] ICE is a specialized paramilitary agency of the Department of Homeland Security operating on a $6 billion annual budget, created as part of a post-September 11th national security strategy in which they enforce federal immigration laws throughout the country (ICE, 2018). It is also the "largest detention agency in the United States" (Hernandez, 2013: 1515).

[38] Detainment processes have occurred through similar SWAT raids as discussed in the previous chapter.

[39] The formal procedures and detainment practices are constantly changing. Therefore, this specific procedure refers to the period preceding the current administration.

[40] For some immigrants, charges, not convictions, are sufficient to elicit a criminal label (Hernandez, 2013).

Following arrest, detained immigrants[41] are subjected to the pressures of the penal system. As quoted in Beckett & Murakawa, Camayd-Freixas explains the use of plea bargaining to ensure both criminal conviction and ultimate deportation of undocumented immigrants:

> "If you plead guilty to the charge of 'knowingly using a false Social Security number,' the government will withdraw the heavier charge of 'aggravated identity theft,' and you will serve 5 months in jail, be deported without a hearing… If you plead not guilty, you could wait 6 to 8 months in jail for a trial (without right of bail since you are on an immigration detainer). Even if you win at trial, you will still be deported" (2012: 233).

These harsh practices, dubbed "crimmigration law", have largely gone under the radar due to the securitization rhetoric surrounding immigrants, which "reimagined non-citizens as criminal deviants and security risks" (Hernandez, 2013: 1458). A history of harsh policies[42] directed toward those racialized as non-white consistently utilized the "ostensibly apolitical" issue of crime as a container to reiterate a vision of immigrants as a self-perpetuating, pathological subpopulation that requires exclusion at all levels, including forceful removal whenever possible for even the most minor of crimes (Ibid.: 1457-1513; Feeley & Simon, 1992; Gessen, 2018). Criminalizing immigration requires the mobilization of institutions, expert knowledge and expectations (Huysmans, 2002: 42). This is echoed in the current administration's policies. In April 2017, current U.S. Attorney General Jeff Sessions directed federal prosecutors to seek "judicial orders of removal" for immigrants charged with crimes whenever possible (Williams & Musgrave, 2017; Speri, 2017). This has led to several reports claiming that immigrants are being offered plea deals with non-negotiable text to evade immigration court which claims they have "no present fear of torture" or in some cases, plea offerings trade imprisonment with self-deportation (Ibid.).

4.3 Warfare-Welfare State

In demonstrating the disenfranchisement of minorities, I argue that the social construct of race plays a clear role in the history of securitization and the practices of policing and conviction through plea bargaining (Brucato, 2014: 36). How does racial disparity manifest in the so-called color-blind era? The experience of difference between the national political class and minorities can be illustrated through measurable differences. For example, in the United States, the national political class (comprised of the white subpopulation) holds twenty times more accumulated wealth in comparison to people of color; people of color earn less than 60% in comparison to their white counterparts, in which African-Americans are the lowest of earners; 42% of the African-American subpopulation lives in poverty, compared to 15% of whites (Bructo, 2014: 37). Reflecting on this point has value to both understand the contemporary economic context relevant to the case study, but also in consideration of the expanded effects of the racialization of poverty as they manifest within the shadow carceral state.

[41] This refers to immigrants that have not been found to harbor a reasonable fear of persecution, thereby ineligible to apply for asylum.

[42] For a thorough historical account of "crimmigration" in the United States see Hernandez, 2013.

The exclusionary implications of conviction in the United States extend beyond imprisonment (Kurzban & Leary, 2001: 201).[43] Over 60% of convicts report annual incomes under $12,000 prior to conviction, an annual income that is just below the federal poverty level (Alexander, 2012: 152).[44] Finding employment is sometimes a requirement for subsequent probation or parole program, therefore ex-offenders are pressured to quickly find stable employment (Alexander, 2012). Yet, throughout the United States, the majority of job applications require applicants to note whether the applicant has ever been convicted of a crime (Agan & Starr, 2016). Critics argue that this question prevents ex-offenders from being considered for employment as the securitized construct associated with those that have been convicted of a crime is perceived as a negative credential (Alexander, 2012).

The extension of securitization campaigns from formal mandates to institutional behavior produces "a unique mechanism of state-sponsored stratification" (Ibid.: 151). In the early 1970s, prisons offered a number of educational and rehabilitation-focused programs to facilitate convicts' reintegration (Kethineni & Falcone, 2007). Following Reagan's reincarnation of the War on Drugs, these programs diminished as the system prioritized prison's function as a form of "retribution and punishment" (Ibid.: 39). How does the social welfare net cater to the increased vulnerability of those with tainted criminal records?

During Clinton's administration, the federal welfare program was eliminated in order to finance the ever-expanding carceral project. As part of his "get tough on crime" stance, Clinton sensationalized the welfare queen rhetoric to portray poor minorities as permanent "consumers of debt" (Kohler-Haussman, 2007). Clinton replaced the federal welfare system with the Temporary Assistance to Needy Families (TANF) program, instituting a lifetime ban for convicted felons and a five year cap for all welfare recipients (Ibid.).[45] These measures were extended to those dependent on public housing, requiring the eviction of residents living in public housing based on the mere suspicion of drug use, arrest or conviction (Alexander, 2012).

In addition, payments for fines and services are expected to begin immediately following release from prison (Beckett & Murkawa, 2012). The criminal justice system is generally fragmented and controlled by a number of private and public entities (Alexander, 2012). Therefore, former convicts may receive bills for pre-conviction services (i.e. jail book-in fees, pretrial detention, public defender application fees), services they received while in prison (i.e. administered drug tests), post-conviction fees (i.e. public defender recoupement fees, pre-sentence report fees, fees for those in work-release programs) and any back payments mandated by courts (i.e. child support) (Ibid.: 155). For those that are able to find employment, some are forced to hand-in their entire monthly earnings to just cover these expenses. In many states, the restoration of the

[43] In 2001, the Bureau of Justice Statistics reported that nine out of ten incarcerated individuals are ultimately released from prison (Kethineni & Falcone, 2007: 36).
[44] The 2018 poverty threshold for a one person household is $12,140 (ASPE, 2018).
[45] Over $19 billion of funds for public housing and social welfare were redirected toward expanding prison building to facilitate the impeding growth of the carceral state (Alexander, 2012: 57).

right to vote, a measure revoked following felony convictions, is tied to the complete payment of the aforementioned fees (Alexander, 2012: 158).[46] These fees, some totaling tens of thousands of dollars, are significant quantities for ex-offenders amounting to a lifetime of debt (Ibid.).

4.4 Conclusion

What does it mean if minorities, who already face structural disadvantages, are unable to participate in the formal economy? The prejudiced opinions harbored by private employers and the policies enacted by social welfare institutions widens the net of social control, blurring the distinction between formal and informal methods of containment (Kleuskens et al., 2016). The inclusion of "formal control agencies, state agencies and systems of private justice" and non-state actors enable each other to expand the formal mandate of the penal system to further exert punitive consequences (Lowman & Menzies, 1986: 106).

This form of stigmatization regards the possibility of a moral violation as "tainted or diseased" (Kurzban & Leary, 2001: 202). This entanglement further alienates those collectively classified as 'high risk' from the prospect of socio-economic reintegration and political participation, extending only the lowest form of citizenship (Karlan, 2004: 26). The inability to find adequate employment may result in diverting ex-offenders back into prison, as dependence on the informal, criminal economy may be the only accessible option (Lowman & Menzies, 1986). The revocation and denial of social welfare, particularly for those reintegrating into society, births the conditions that produce crime in the first place. Disenfranchisement, then, can only be understood as a retributive extension, a collateral consequence, of criminal punishment, suggesting that those that are convicted of crimes are "beyond redemption" (Karlan, 2004: 23). Thus, the shadow of the carceral state casts its shade to ensure the permanent social, economic and political disenfranchisement of those that impersonate threathood.

[46] A 2016 study published by *The Sentencing Project* estimated that approximately 6.1 million people were ineligible to vote due to their felony conviction, which amounts to one in every forty adults. Inmates in forty-eight states are unable to vote while incarcerated, while ex-convicts must seek permission with the relevant state agencies to restore their right to vote (Alexander, 2012: 158).

Chapter 5: Conclusion

The construction of threathood leans on its association with national values and identity, the perception of a specific issue and the entity which originates the threat (Ibek, 2015). In this paper, I attributed the construction, operationalization and impersonation of threathood to the theory of securitization and its relationship to law. I argued that regulatory and administrative legal appartai are operationalized under the framework of securitization to exert social control through penological tools, particularly the use of plea bargaining (Miller, 2005: 123). To examine the issue, I asked: *How and to what extent does plea bargaining, in the context of a history of securitization, become a vehicle for disenfranchising minorities?* To aid in answering this question, I applied the analysis to the case of the United States as it offers a particularly interesting case of fast-tracked convictions within a history of securitization, given its global reputation as a pioneer in the en-masse use of plea bargaining.

To understand why securitization and law work well to advance the ambitions of securitzers and the penal system, we have to understand the nexus of its relationship. Where does one support the other to advance overarching systemic ambitions? How do these relationships form and how do they appear? In what language and which dress? These questions are at the root of the analysis implored in the second chapter of this text. Using securitization theory, I sought to examine the history of securitization and law as it has manifested in the United States by asking: *How has the relationship between securitization and law historically developed?* With this exercise, I identified tactics utilized to influence the production of law in efforts to both control specific groups and to preemptively justify the use of invasive strategies.

This historical perspective was imperative to the next step in the analysis which looked directly into the legal apparatus utilized in the operationalization of law. In this chapter I asked: *How does the criminal justice system, in particular the roles of policing and prosecution, enable the implementation of securitization processes?* Here, I examined extraordinary measures used by American police and prosecutors, in particular the use of plea bargaining, to advance the interests of securitization campaigns through the penal system. I analyzed the role of penological tools to exert control over entire communities and groups as part of ‘states of exception’ (Wonders, 2016). I argued that the plea bargaining system is utilized as a component of the performativity of securitization. I found that although the detainment, charging and conviction process appears as a rational and fair deliberation process it utilizes states of exception to permanently redefine the way in which the institution of criminal justice operates.

In the next chapter, I examined the role of the ‘carceral archipelago’ in which the political elite utilizes classification systems and the warfare-welfare model to disenfranchise minorities (Foucault, 1975; Lowman & Menzies, 1986). I utilize the term disenfranchise as it embodies the

loss of key privileges integral to the socio-economic and political participation of citizenry. In this chapter, I ask *What is the impact to those that impersonate threathood?* I examined the challenges that ex-offenders encounter following conviction to reintegrate into society. I found that the challenges ex-convicts, especially minorities, face is due to the expansion of punitive consequences outside the penal system into public and private institutions, rooted in a history of securitization.

The case study allowed me to observe the use of threathood to construct, identify and portray nonwhites through varying narratives. These narratives have leaned on the language of othering, ongoingly adapting their specific formulation to reflect political developments, as well as existing political infrastructure to support and instrumentalize the linguistic framework of threathood. The history of the relationship between securitization and law has capitalized the use of procedures such as plea bargaining. The act of attributing normal crime as threats to national security has intrinsic value in its obfuscation of rational responses. Securitization processes elicit responses appropriate to existential threats, which allows for extraordinary measures to be taken.

Legislators facilitate both the policing and prosecution components through unparalleled funding allocation to police programs, enacting legislation which imposes harsh and sometimes mandatory sentences. The critical nature of securitized issues makes the questioning or even close examination of these processes an act of treason.The American criminal justice system has amending its administration of justice to facilitate maximum efficiency. This has resulted in two primary developments: (i) a significant expansion of resources allocated to law enforcement and (ii) a migration from a trial-based court system to that of a plea bargaining system.

In turn, institutions and programs that were previously positioned and resourced to assist the most vulnerable members of society have either been eliminated or severed. It is a widely accepted view that the legitimacy of liberal democracies is dependent on practices such as elections, access to welfare, the protection from existential threats and “a robust legal order and the rule of law” (Wonders, 2016: 203). Without these key factors, states would be deemed illegitimate (Ibid.). But what it does mean when pillars of democracies are used against a state’s own citizenry? In the United States, I argue that minorities, who are already at a greater disadvantage in access to wealth, significantly suffer from the alienation from social, economic and political life. The socio-economic mobility of those that need it the both is eliminated through pre-existing racial prejudice, only to be furthered due to collective classification systems and convicts’ incalculable debt to society (Cuevas, 2012). The disenfranchisement of tens of millions of people is facilitated through the metastases of the penal system, embodied in the carceral archipelago.

This thesis has demonstrated that through successful securitization campaigns operationalized by the penal system, the United States has surveilled, arraigned, convicted, imprisoned and subsequently disenfranchised tens of millions of people, effectively producing a permanent underclass. But many questions still remain: Is it possible to argue that a state is secure if those

that impersonate threathood are detained, convicted, disenfranchised or even forcibly removed? How can we associate rationality to a process that controls through compartmentalization and elimination rather than meaningful change? What does it mean when the structures which create poverty and crime are depleted further while regulating structures are boosted? To what limits can states claim fast-track convictions as legitimate outcomes to their security efforts? These securitization campaigns that absorb political interests, public resources and often determine the fate of a country need to be carefully examined as the lines remain ever-blurred, the nets thinner and the mesh wider.

Closing Note

The purpose of this thesis is not to solely examine the American context, but to be able to apply the framework and research design of the project elsewhere. The theoretical framework, methodology and analytical approach can be transferred to examine the relationship between securitization and law as it manifests elsewhere in the world. It may be of particular interest for researchers to consider nations in which plea bargaining is gaining rapid popularity, such as Georgia.

Bibliography

ACLU. *The Truth About Jim Crow*. 2014.

Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press, 2012.

Amoore, Louise. “Vigilant Visualities: The Watchful Politics of the War on Terror.” *Security Dialogue*, vol. 38, no. 2, 2007, pp. 215–32, doi:10.1177/0967010607078526.

Andrew Jr., Rod. *Wade Hampton: Confederate Warrior to Southern Redeemer*. University of North Carolina Press, 2008.

Balzacq, Thierry, et al. “‘Securitization’ Revisited: Theory and Cases.” *International Relations*, vol. 30, no. 4, 2016, pp. 494–531, doi:10.1177/0047117815596590.

---. “The Three Faces of Securitization: Political Agency, Audience and Context.” *European Journal of International Relations*, vol. 11, no. 2, 2005, pp. 171–201, doi:10.1177/1354066105052960.

Barkawi, Tarak, and Mark Laffey. “The Postcolonial Moment in Security Studies.” *Review of International Studies*, vol. 32, no. 2, 2006, pp. 329–52, doi:10.1017/S0260210506007054.

Beckett, Katherine, and Naomi Murakawa. “Mapping the Shadow Carceral State: Toward an Institutionally Capacious Approach to Punishment.” *Theoretical Criminology*, vol. 16, no. 2, 2012, pp. 221–44, doi:10.1177/1362480612442113.

Berk, Richard, and David A. Freedman. “Statistical Assumptions as Empirical Commitments.” *Statistics*, 2001.

Bigo, Didier. “Rethinking Security at the Crossroad of International Relations and Criminology.” *British Journal of Criminology*, vol. 56, no. 6, 2016, pp. 1068–86, doi:10.1093/bjc/azw062.

---. Security and Immigration: Toward a Critique of the Governmentality of Unease. *Alternatives 27*: Special Issue 63-92.

Bigo, Didier, and Frederic Gros. *Foucault and the Modern International*. 2017, doi:10.1057/978-1-137-56153-4.

Brucato, Ben. “Fabricating the Color Line in a White Democracy: From Slave Catchers to Petty Sovereigns.” *Theoria*, vol. 61, no. 141, 2014, doi:10.3167/th.2014.6114103.

Brunson, Rod K., and Jody Miller. “Young Black Men and Urban Policing in the United States.” *British Journal of Criminology*, vol. 46, no. 4, 2006, pp. 613–40, doi:10.1093/bjc/azi093.

Bruun, Kari. “Problematising Internal Security: Crime, Community and Social Exclusion.” *Cogent Social Sciences*, vol. 2, no. 1, Cogent, 2016, doi:10.1080/23311886.2016.1178092.

Budd, Jordan C. “Pledge Your Body for Your Bread: Welfare, Drug Testing, and the Inferior Fourth Amendment.” *Wm. & Mary Bill Rts. J.*, vol. 19, HeinOnline, 2010, p. 751.

Buzan, Barry. “Rethinking Security After the Cold War.” *Cooperation and Conflict*, vol. 32, no. 1, 1997, pp. 5 - 28, doi: 10.1177/0010836797032001001.

Buzan, Barry, Ole Waever and Jaap de Wilde. “A New Framework for Analysis.” Boulder: Lynne Rienner Publisher Inc., 1998.

Capehart, Jonathan. “‘Stop and Frisk: Bloomberg and Me.’” *The Washington Post*, 2013.

Charrett, Catherine. “A Critical Application of Securitization Theory: Overcoming the Normative Dilemma of Writing Security.” *Ssrn*, 2011, doi:10.2139/ssrn.1884149.

Cloyd, Jerald W. “Prosecution’s Power, Procedural Rights, and Pleading Guilty: The Problem of Coercion in Plea Bargaining Drug Cases.” *Social Problems*, vol. 26, no. 4, 1979, pp. 452–66.

Cohen, Stanley. “Book Reviews Visions of Social Control: Crime, Punishment and Classification.” *The Journal of Criminal Law and Criminology*, vol. 78, no. 2, 1987, pp. 430–41.

---. “Crime and Politics : Spot the Difference Author (s).” *The British Journal of Sociology*, Vol . 47 , No . 1 (Mar ., 1996), Pp . 1-21 Published by : Wiley on Behalf of The London School of Economics and Political Science Stable URL. Vol. 47, no. 1, 2018, pp. 1–21.

---. “Ideology? What Ideology?” *Criminology & Criminal Justice*, vol. 10, no. 4, 2010, pp. 387–91, doi:10.1177/1748895810382371.

---. “The Punitive City: Notes on the Dispersal of Social Control.” *Contemporary Crises*, vol. 3, no. 4, 1979, pp. 339–63, doi:10.1007/BF00729115.

---. “Visions of Social Control : Crime , Punishment and Classification.” *American Journal of Sociology*, vol. 92, no. 1, 1986, pp. 240–42.

Coviello, Decio, and Nicola Persico. “An Economic Analysis of Black-White Disparities in the New York Police Department’s Stop-and-Frisk Program.” *The Journal of Legal Studies*, vol. 44, no. 2, June 2015, pp. 315–60, doi:10.1086/684292.

Crick, Emily. “Drugs as an Existential Threat: An Analysis of the International Securitization of Drugs.” *International Journal of Drug Policy*, vol. 23, no. 2012, Elsevier B.V., 2012, pp. 407–14, doi:10.1016/j.drugpo.2013.10.014.

Cuevas, Ofelia O. “Welcome to My Cell : Housing and Race in the Mirror of American Democracy.” *The Johns Hopkins University Press*, vol. 64, no. 3, 2012, pp. 605–24.

Davis, Angela J. *Arbitrary Justice: The Power of the American Prosecutor*. Oxford University Press, 2007.

Dixit, Priya. “Securitization and Terroristization: Analyzing States’ Usage of the Rhetoric of Terrorism.” *State Terror, State Violence Global Perspective*, 2006, pp. 31–50.

Feeley, Malcolm M., and Jonathan Simon. “Week 8: The New Penology : Notes on Th e Emerging Strategy of Correction s and Its.” *Criminology*, vol. 30, no. 4, 1992, pp. 449–75, doi:10.1111/j.1745-9125.1992.tb01112.x.

Ferreira da Silva, Denise. “No-Bodies: Law, Raciality and Violence.” *Griffith Law Review*, vol. 18, no. 2, 2009, pp. 212–36, doi:10.1080/10383441.2009.10854638.

Foucault, Michel. “Discipline and Punish: The Birth of the Prison.” *Contemporary Sociology*, vol. 7, no. 5, 1977, doi:10.2307/2065008.

García Hernández, César Cuauhtémoc. “Creating Crimmigration.” *Ssrn*, vol. 17, no. 2009, 2014, pp. 1457–516, doi:10.2139/ssrn.2393662.

Garland, David, and Kelly Hannah-Moffat. “The Culture of Control: Crime and Social Order in Contemporary Society.” *Contemporary Sociology*, vol. 31, no. April, 2002, pp. 109–12, doi:10.2307/3090074.

Gehi, Pooja. “Gendered (In) Security: Migration and Criminalization in the Security State.” *Ssrn*, vol. 1370, 2012, doi:10.2139/ssrn.2120847.

Gessen, Masha. “In America, Naturalized Citizens No Longer Have an Assumption of Permanence.” *The New York Times*, June 2018.

Goldstein, Tom. “A New Verdict On Plea Bargaining.” *The New York Times*, 14 May 1978.

Greer, Steven. “Reply to Marie Breen-Smyth, ‘Theorising the “Suspect Community”: Counterterrorism, Security Practices and the Public Imagination.’” *Critical Studies on*

Terrorism, vol. 7, no. 3, Routledge, 2014, pp. 468–71, doi:10.1080/17539153.2014.945308.

Hall, Steve. “Synopsis of Theorizing Crime and Deviance: A New Perspective.” *Journal of Theoretical & Philosophical Criminology*, vol. 6, no. 2, 2014, pp. 145–55.

Hernandez, Cesar Cuauhtemoc Garcia. “Creating Crimmingration.” *Brigham Young University Law Review*, 2013, pp. 1457-1515.

Hinton, Elizabeth. *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America*. Harvard University Press, 2016.

Huysmans, Jef. “Defining Social Constructivism in Security Study: The Normative Dilemma of Writing Security.” *Alternatives*, vol. 27, no. Special Issue, 2002, pp. 41–62, doi:10.15713/ins.mmj.3.

Ibek, Anna. “The Concept of Securitization.” *Internal Security*, vol. 7, no. 1, 2015, pp. 173–86, doi:http://dx.doi.org/10.5604/20805268.1192776.

ICE. “Fiscal Year 2017 ICE Enforcement and Removal Operations Report.” *US Immigration and Customs Enforcement*, 2017, https://www.ice.gov/removal-statistics/2017.

---. “History of ICE.” *US Immigration and Customs Enforcement*, 2018, https://www.ice.gov/history#wcm-survey-target-id.

Karlan, Pamela S. “Convictions and Doubts: Retribution, Representation, and the Debate over Felon Disenfranchisement.” *Stanford Public Law and Legal Theory Working Paper Series*, 2004.

Kethineni, Sesha, and David N. Falcone. “Employment and Ex-Offenders in the United States: Effects of Legal and Extra Legal Factors.” *Probation Journal*, vol. 54, no. 1, 2007, pp. 36–51, doi:10.1177/0264550507073325.

Kim, Catherine, and India Geronimo. *Policing In Schools Developing a Governance Document for School Resource Officers in K-12 Schools*. no. August, ACLU, 2009.

Kleuskens, Shanisse, et al. “Reconsidering the Boundaries of the Shadow Carceral State: An Analysis of the Symbiosis between Punishment and Its Memorialization.” *Theoretical Criminology*, vol. 20, no. 4, 2016, pp. 566–91, doi:10.1177/1362480616631818.

Koram, Kojo. “‘Order Is the Best We Can Hope For ’: Sicario and the Sacrificial Violence of the Law.” *Discourse*, vol. 39, no. 2, 2017, pp. 230–52.

Kurzban, Robert, and Mark R. Leary. “Evolutionary Origins of Stigmatization: The Functions of Social Exclusion.” *Psychological Bulletin*, vol. 127, no. 2, 2001, pp. 187–208, doi:10.1037/0033-2909.127.2.187.

Langbein, John H. “The Historical Origins of the Privilege against Self-Incrimination at Common Law.” *Michigan Law Review*, vol. 92, no. 5, 1994, pp. 1047–1085. *JSTOR*, JSTOR, www.jstor.org/stable/1289628.

---. "Torture and Plea Bargaining" (1978). Faculty Scholarship Series. 543. http://digitalcommons.law.yale.edu/fss_papers/543.

Langer, Máximo. “From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure.” *Harvard International Law Journal*, vol. 45, no. 1, 2004.

Leib, Jonathan, and Thomas Chapman. “Jim Crow , Civil Defense , and the Hydrogen Bomb Race , Evacuation Planning , and the Geopolitics of Fear in 1950s Savannah , Georgia.” *Southeastern Geographer*, vol. 51, no. 4, 2018, pp. 578–95.

Leroy, Justin. “Black History in Occupied Territory : On the Entanglements of Slavery and Settler Colonialism.” *Theory & Event*, vol. 19, no. 4, 2016, pp. 1–10.

Lipsitz, George. “‘In an Avalanche Every Snowflake Pleads Not Guilty’: The Collateral Consequences of Mass Incarceration and Impediments to Women’s Fair Housing Rights.” *UCLA Law Review*, vol. 59, no. 6, 2012, pp. 1746–809.

Lowman, John, and Robert J. Menzies. “Out of the Fiscal Shadow : Carceral Trends in Canada and the United States.” *Crime and Social Justice*, no. 26, 1986, pp. 95–115.

Luna, Erik, and Marianne Wade. “Prosecutors as Judges.” *Wash. & Lee L. Rev.*, vol. 1, no. 67, 2010, pp. 1413–532.

Lynch, Mona. “From the Punitive City to the Gated Community: Security and Segregation across the Social and Penal Landscape.” *University of Miami Law Review*, vol. 56, 2001, pp. 1689–99, doi:10.1017/CBO9781107415324.004.

Mastrofski, Stephen, et al. “Police Disrespect Toward the Public: An Encounter-Based Analysis.” *Criminology*, vol. 40, no. 3, Aug. 2002, pp. 519–52, doi:10.1111/j.1745-9125.2002.tb00965.x.

Miller, Teresa. “Blurring the Boundaries between Immigration and Crime Control after September 11th.” *Boston College Third World Law Journal*, vol. 25, no. 1, 2005, pp. 81–123, doi:10.3366/ajicl.2011.0005.

Minkel, JR. “Confirmed: The U.S. Census Bureau Gave Up Names of Japanese-Americans in WWII.” *Scientific American*, 30 March 2007. https://www.scientificamerican.com/article/confirmed-the-us-census-b/, Accessed 09 July 2018.

Neely, Brooke, and Michelle Samura. “Social Geographies of Race: Connecting Race and Space.” *Ethnic and Racial Studies*, vol. 34, no. 11, 2011, pp. 1933–52, doi:10.1080/01419870.2011.559262.

New York Civ. Liberties Union v New York City Police Dept. Vol. 2011, no. No. 115928/09, NY: Supreme Court, 2011.

Noferi, Mark. “Making Civil Immigration Detention ‘Civil,’ and Examining the Emerging U.S. Civil Detention Paradigm.” *Journal of Civil Rights and Economic Development*, vol. 27, 2014, pp. 533–85.

NYPD. “Stop, Question and Frisk Data Publications, Reports - NYPD.” *NYPD Official Website*, https://www1.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page. Accessed 11 July 2018.

Office of the Assistant Secretary for Planning and Evaluation (ASPE) “Poverty Guidelines.” *ASPE*, https://aspe.hhs.gov/poverty-guidelines.

Pinard, Michael. “An Integrated Perspective on The Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals.” *Boston University Law Review*, vol. 86:623, pp. 624–90.

Prewitt, Kenneth, et al. “The Politics of Fear after 9/11.” *Social Research*, vol. 71, no. 4, 2004, pp. 1129–46, doi:10.2307/40971995.

Reynolds, Paul Davis. *The Impact of Fairness, Organizational Trust, and Perceived Organizational Support on Police Officer Performance*. Texas State University, 2015.

Robin, Corey. *Fear: The History of a Political Idea*. Oxford University Press, 2004.

---. *The Reactionary Mind Conservatism from Edmund Burke to Sarah Palin*. Oxford University Press, 2011.

Robinson, Eugene. “Good Steps on ‘Stop-and-Frisk,’ Drug Arrests.” *The Washington Post*, 19 Aug. 2013.

Robinson, Michael A. “Black Bodies on the Ground: Policing Disparities in the African American Community—An Analysis of Newsprint From January 1, 2015, Through

December 31, 2015." *Journal of Black Studies*, vol. 48, no. 6, 2017, pp. 551–71, doi:10.1177/0021934717702134.

Schoenfeld, Heather. "The War on Drugs, the Politics of Crime, and Mass Incarceration in the United States." *Journal of Gender, Race & Justice*, vol. 15, no. 2, 2012, pp. 315–52.

Schuilenburg, Marc. "The Securitization of Society: On the Rise of Quasi-Criminal Law and Selective Exclusion." *Social Justice*, vol. 38, no. 1/2, 2012, pp. 73–89.

Siegel, Reva. "Why Equal Protection No Longer Protects : The Evolving Forms of Status-Enforcing State Action." *Stanford Law Review*, vol. 49, no. 5, 1997, pp. 1111–48.

Spencer, Alexander. "The Social Construction of Terrorism: Media, Metaphors and Policy Implications." *Journal of International Relations and Development*, vol. 15, no. 3, 2012, pp. 393–419, doi:10.1057/jird.2012.4.

Speri, Alice. "Top Trump Official John Kelly Ordered ICE to Portray Immigrants as Criminals to Justify Raids." *The Intercept*, 2017.

Standen, Jeffrey. "Plea Bargaining in the Shadow of the Guidelines." *California Law Review*, vol. 81, no. 6, 1993, pp. 1471–1538. *JSTOR*, JSTOR, www.jstor.org/stable/3480956.

Sudnow, David. "Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office." *Social Problems*, vol. 12, no. 3, 1965, pp. 255–276. *JSTOR*, JSTOR, www.jstor.org/stable/798932.

Stivers, Mike. "The Socialist Case for School Integration." *Jacobin Magazine*, July 2018.

Tateishi, John. "And Justice for All: An Oral History of the Japanese American Detention Camps." University of Washington Press, 1999.

Terry v. Ohio BT - US. Vol. 392, no. No. 67, Supreme Court, 1968.

Tillotson, Michael. "Book Review: Invisible Jim Crow: Contemporary Ideological Threats to the Internal Security of African Americans " *Journal of Black Studies*, vol. 43, no. 4, 2012, pp. 470–73, doi:10.1177/0021934711433130.

Uggen, Christopher, and Jeff Manza. "Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States." *American Sociological Review*, vol. 67, no. 6, 2002, pp. 777–803, doi:10.2307/3088970.

United States Sentencing Commission. "Overview of Federal Criminal Cases Fiscal Year 2017." 02 July 2018.

Wendt, Alexander. “Anarchy Is What States Make of It: The Social Construction of Power Politics.” *International Organization*, vol. 46, no. 2, 1992, doi:10.1017/S0020818300027764.

Williams, Brooke, and Shawn Musgrave. “Federal Prosecutors Are Using Plea Bargains as a Secret Weapon for Deportations.” *The Intercept*, 15 Nov. 2017.

Wilson, James Q., and George L. Kelling. “Broken Windows: The Police and Neighborhood Safety.” *The Atlantic Monthly*, vol. March, 1982, pp. 29–38, doi:10.4135/9781412959193.n281.

Wilson, William Julius. “Another Look at The Truly Disadvantaged.” *Political Science Quarterly*, vol. 106, no. 4, pp. 639–56.

Wonders, Nancy A. “Just-in-Time Justice: Globalization and the Changing Character of Law, Order, and Power.” *Critical Criminology*, vol. 24, no. 2, Springer Netherlands, 2016, pp. 201–16, doi:10.1007/s10612-015-9305-4.