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THE POLITICS OF JUSTICE:
NAVIGATING THE WATER BETWEEN LEGAL EFFICACY AND RACIAL
PROFILING IN THE STATE OF MAINE

JOSEPH G.E. GOUSSE

*An Honors Thesis
Political Science, 2012*

ABSTRACT

This thesis examines the issue and causal factors of racial disparity in Maine's contemporary penal system. More pointedly, this thesis examines the ways in which contemporary Maine society functions to procure the causal factors responsible for conditioning racial minorities as "criminalized" populations, thus stimulating overrepresentation in the criminal justice system. This thesis focuses on Native American populations in the state of Maine and the historical, socio-economic, political, and legal ways in which the state has interacted with and subsequently disenfranchised them. Through a comparative examination of the work of legal scholar Michelle Alexander, the well-established argument of the American racial caste system as it pertains to black minorities is considered and redefined to fit a Maine-specific, Native American-specific context. A theoretical analysis is constructed using the work of Michele Foucault to typify Maine's criminal justice system and the social structures that support it as belonging to a system of incumbent power and privilege for white citizens. Collectively, this thesis relies on data collected with the permission and assistance of the Maine Department of Corrections in examining and explaining the extent and causality of racial disparity in Maine prisons from complimentary empirical and theoretical perspectives.

INTRODUCTION

This thesis examines the extent and causality of racial disparity as it exists in the contemporary Maine penal system. Specifically, this thesis examines the unique ways in which Maine—being nearly homogeneous with regard to race—fits into the context of national trends surrounding discussion of overrepresentation of minority inmates in American prison systems.

Despite widespread discussion of this topic, this thesis offers a perspective unique from the traditional responses of academics and social scientists who study the effects and causation of overrepresentation of racial minorities in the criminal justice system. The startling truth of the debate surrounding racial disparity in the prison systems—when it comes the state of Maine—is that hardly any research exists that explores racial minority overrepresentation in the state’s prisons. Worse yet, what little research does exist is generally appropriated from a purely empirical perspective and fails to examine the root causal factors of racial disparity among inmates in Maine. In order to appropriately examine the topic of race and justice in Maine, the historical context of the state cannot be ignored and, as a result, the historic social plight and continuing contemporary struggle of Maine’s Native American population cannot be ignored. Maine social history is deeply intertwined with the history of those Native Americans who lived and continue to live in the state. Often times, it is this social relationship—in the context of the racialized society—that acts to establish a tradition of disenfranchisement of racial minorities and degradation of their culture. This thesis will examine and define the myriad ways in which minority overrepresentation is not just a problem that exclusively plagues black citizens on a national level; it will explore the ways in which Maine’s unique historical relationship with the tribal population continues to impact Native Americans and their incarceration levels. Largely, this thesis will establish a connection between societal disempowerment and subjugation of

Native Americans along racial lines with overrepresentation and racial disparity in Maine's penal system, arguing that social mechanisms of disempowerment that act specifically to affect racial minorities are the driving mechanisms behind the perpetuation of disproportionately rising incarceration rates of minorities.

A study of the causality of racial disparity in Maine cannot be complete without considering the ways in which the state of Maine, through the institutionalization of racism and white privilege, has suppressed and disenfranchised Native Americans living within its borders. This thesis examines these relationships and, in so doing, tells a portion of the long, painful story of the historic social limitations placed on Native Americans in Maine.

CONCEPTS

As the purpose of this thesis will be to examine, specifically, institutionalized racism in the state of Maine as primarily directed through the criminal justice system, the main question that will be addressed is:

How does the unique, nearly homogenous racial and ethnic makeup of the State of Maine impact the distribution and application of power relations, as perpetuated through racially-charged practices within local communities?

The purpose of this essay will be to place Maine society in the context of the national crisis we now face regarding institutionalized racism and the evidentiary racial disparity that results in our nation's prisons.

When one begins examining the national societal construct of contemporary America at-large, it becomes clear to them that the populations of minority groups are dramatically increasing, with recent demographic projections suggesting that whites will comprise the national minority in as little as “a few years” due to the increase in minority births.¹ What is of note however is not this marked increase in minority populations, but instead the rates at which minority populations are incarcerated in the United States. Nowhere is social disparity among minority populations and the white population in America more clearly evidenced than by the criminal justice system. As a result, some states, like Louisiana and Maryland (where blacks² comprise 33% and 28% of the state population, respectively) disproportionately convict black citizens so that 76% and 77% of these respective states’ prison systems are comprised of black inmates.³ This blatant disparity has been proven a national trend, with few exceptions. According to *Mother Jones* magazine there are only four states in the Union where minority inmates do not outnumber their white counterparts, and Maine is a member of this unique group.⁴

Maine’s racial homogeneity establishes it as a curious case. Some preconceptions would seem to indicate that because Maine has less racial minorities, its prisons are consequently

¹ NPR. *U.S. Will Soon Have Minority Whites Sooner, Says Demographer.*

<http://www.npr.org/2011/06/27/137448906/us-will-have-minority-whites-sooner-says-demographer>

² During the writing of this thesis, great care was taken when designating specific racial groups with regard to written classification. For example, this thesis makes expansive use of the terms “black” and “Native American” to refer to individuals of African or Native/tribal descent, respectively. Please note that it is nearly impossible to appropriate a racial classification that both accurately signals and is accepted by the ethnic individuals it seeks to label. The reasons for dissent among racial classifications are both historic and complex, nevertheless, minority groups have come to some majority consensus on racial references under which they prefer to be classified. Specifically, this thesis makes use of the term “black” as opposed to “African American” to refer to a specific racial grouping of the population based on published preference by the black community (the argument being that “black” is more appropriate than “African American” in contemporary society as many black Americans are not from Africa. Likewise, the term “Native American,” while not universally accepted by the myriad of people indigenous to the North American continent, is a term frequently used by Native people to classify their racial status. Terms such as “colored” and “Indian” have been largely rejected for a variety of factual and social reasons and have thus been excluded from this work.

³ Gibbs Magazine. *States and Black Incarceration in America.*

http://www.gibbsmagazine.com/blacks_in_prisons.htm

⁴ *Ibid*

among a limited group where white inmates outnumber their minority counterparts. This is in stark contrast to the majority of American prisons where minorities constitute an overwhelming majority of the inmate populations. What's alarming however, is not the near-exclusivity of Maine's racial profile. What's of great concern, rather, is the extent to which social conceptions of racially near-exclusive states, like Maine, assume that because their minority populations are so small, racial disparity could never manifest itself in their criminal justice system. This assumption is fundamentally flawed. As this thesis will prove, not only does Maine's diminutive minority population not preclude it from susceptibility to racial disparity forming in its prisons, it also acts to magnify the effects of said disparity when a social system of institutionalized racism operably exists.

METHODOLOGY

In an effort to answer the primary question set forth in this thesis, the Maine penal system will be examined with specific regard the state's Native American population. In particular, Native Americans have been selected for a very specific purpose in this study: as with most questions of race, the foundations for current phenomena are *historical* in nature and Maine has a deep history (and active present interaction) with Native tribes in the state. The reason for this is that, should a system of institutionalized racism exhibiting white-dominance exist within the state of Maine, one would expect the Native American population in Maine to serve as *the* primary group to indicate its presence.⁵ How one of these systems manifests itself is unique to

⁵ This conditional understanding is the result of historical trends in general American history which suggest that racial groups of extended presence in a region generally suffer disparity in their treatment from predominant white society (ex. the systematic disenfranchisement of blacks in the South for the greater part of American history or that of Asians in California during World War II).

the regional society in which the study (in this case Maine) is conducted. By this token, the limited ethnic diversity of Maine works against the masking of any would-be system of racial caste, magnifying the importance of the Native American-white relationship due to the limited number of racial minorities available for possible conflict to arise. In this way, the Native American population of Maine is of critical importance to any study that focuses on racial disparity in Maine society and prisons.

Ultimately, the objective at hand will be to provide evidence for, and answer, the presented thesis question not only through an exploration of the statistical prison data, but via a theoretically critical analysis of the dimensions of power that are intimately connected to incarceration in the state of Maine.

To accomplish this task, this thesis will rely on both primary and secondary sources. Drawing from primary sources, this thesis will examine raw Census population data from the last year (2011-2012) to derive factual context for Maine and national populations by race; population and demographic data from the Maine Department of Corrections and Bureau of Justice Statistics reports to derive factual context for Maine and national prison populations by race; and the complete series of legislative, personal, and political texts offered by the *Donna Loring Papers* as well as a personal interview with Ms. Loring herself. Secondary sources that will be utilized include the works of social historian and law professor Michelle Alexander (in framing a context for issues of institutionalized racism), Michel Foucault (in producing a theoretical framework for analysis of findings), and, again, those secondary source materials available in the *Donna Loring Papers*.

First, the population data sources will be analyzed so that a careful review of both national and Maine-specific general and prison populations can be conducted. This analysis will be conducted in conjunction with a socio-political analysis of the history of race relations specific to Native Americans within the state of Maine. This analysis will evidence the extent to which (and how) Maine prisons evidence racial disparity. Next, the works of Michelle Alexander will be used to clearly define the ways in which, historically and socially, racial disparity in American prisons has come to be and, more importantly, the connection that exists between systems of socially institutionalized racism and disproportionate incidence of minority incarceration. From Alexander's evaluation of national race-relations as they pertain to disenfranchisement and incarceration, a *Maine-specific narrative* that focuses exclusively on Native American populations and their unique social struggles within the state will be derived. Given the scarcity of contemporary academia that considers this Maine-specific perspective, the narrative derived by this thesis will serve to identify and examine four main mechanisms within Maine society that serve to systematically disenfranchise and condition Native American populations for elevated susceptibility to criminal activity and/or incarceration:

- historical disregard;
- legislative impotence;
- the compromising of Native American youth; and
- the persistence of state governmental involvement with tribal lands as a form of institutional control.

In drawing its conclusion, this thesis will examine the theoretical connections between those societal mechanisms of power and the analysis of discipline and punishment as a means of retaining power incumbency as delineated through a Foucauldian perspective. Through a

transposition of the Foucauldian critique of modern prisons as a mechanism of power, this thesis will draw its ultimate conclusion from the relationships between Foucault's analyses of social forms of discipline and disempowerment and those that manifest themselves within the state of Maine.

REVIEW OF RELEVANT LITERATURE

The literature relied upon for the factual, contextual, and theoretical establishment of this thesis is diverse in its scope and content. The relied upon text—Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*—establishes a contextual framework from which a Maine-specific analysis of institutionalized racism can be rendered. Professor Alexander's work analyzes race relations between black and white Americans ranging from the antiquated practices of slavery and Jim Crow law to the contemporary phenomenon of mass minority incarceration in America. Alexander's work presents and explains multiple social mechanisms and trends that, rooted in American historical fact, have evolved into a system for disenfranchising modern minorities under what she classifies as a system of white privilege. Because Alexander's text focuses extensively on black populations, its use in a Native American-specific, Maine-specific thesis may be criticized as inapplicable given the narrow lens through which its argument is focused. However, Alexander's analysis of race relations in America is broad enough to—and indeed does—apply to more than just black citizens. In those instances where black-specific issues are discussed by Alexander and cited in this thesis, careful consideration has been lent to ensuring that said issues are transposed and interpreted so that they are applicable to Native issues in Maine. In effect, Alexander's narrow focus on black citizens,

while highly specific, can be used to examine the equally narrow focus of this thesis if applied more generally. For example, when Alexander references facially valid yet discriminatory laws, this mechanism of social domination may be applied to more than one racial group, as it affects many racial minorities. In this way, Alexander's work serves as a framework for examining racial disparity and disproportional incarceration of black Americans, appropriating a comparative method for examining the (until now) relatively unexamined issue of overrepresentation of Native Americans in Maine prisons. This thesis has been produced with a heightened sensitivity to Native American issues- they are unique and thus deserve a unique examination. Reliance on Alexander's text does not serve as a substitute for expressing Native American issues in Maine, rather, it serves as a starting point from which this thesis's narrative gains its independent footing.

The theoretical analysis of the social mechanisms of power offered in this thesis rely heavily on the text *Discipline and Punish: the Birth of the Prison* by Michele Foucault. In his work, Foucault offers a post-modernist critique of contemporary imprisonment. Temporally, Foucault begins by analyzing antiquated forms of punishment which often included public torture and execution. According to Foucault, this "spectacle" afforded dying prisoners the rare ability to transfer upon the audience a sense of pity and empathy, despite their criminal nature. Seen as a threat to sovereign power, this form of punishment was, over time, privatized with the invention of prisons. Punishment became more focused on containment of the body and soul as opposed to overt mutilation and torture. It is in this distinct way, Foucault argues that modern systems of hegemony and power have survived the transition from the rule of the Sovereign to manifest themselves in modern forms of societal rule. Through the imprisonment of the body, Foucault describes how those in power in a given society are able to control *knowledge* and the

opportunity for the punished to exact empathy from his fellow citizens. In this way, the Foucauldian critique is especially compelling because it offers a framework against which the Maine criminal justice system may be analyzed. Even at surface level, the connections drawn by Foucault between incarceration, discipline, and power retention are strikingly similar to the system of power incumbency present in Maine society that functions to limit the social and legal progression of Native Americans. Thus, the Foucauldian analysis offers a stunning commentary on modern systems when incarceration and imprisonment of the body is focused, disproportionately and more intensely, on racial minorities.

Lastly, this thesis relies frequently on materials (both primary and secondary sources) from the *Donna Loring Papers*. The *Donna Loring Papers* are a collection of legislative, political, and personal documents that were donated by former Tribal Representative to the Maine State Legislature and member of the Penobscot Nation, Donna Loring. Located at the Maine Women Writers Collection of the University of New England in Portland, ME, Loring's papers offer a stunningly rare opportunity to access personal and historical documents written by and about Native American issues, struggles, and society in Maine. The importance of the *Donna Loring Papers* cannot be stressed enough given the paucity of publicly-available collections that serve the sole purpose of examining and preserving the Native American experience in Maine, from a Native perspective. As such, the perspective gained from these sources offers this thesis a unique platform for Native Americans to present their own voice and account of the context and practice of institutionalized racism in Maine. Only through the sources made available through the *Donna Loring Papers*, is this thesis able to explore both historical and contemporary issues as they relate to Native Americans in Maine and their struggle for social equity.

Collectively, these sources will be utilized to establish the bulk of references relied upon throughout the following analysis of racial disparity and systems of social dominance in Maine.

THE RACIAL SOCIETY:

THE HISTORIC LEGACY OF AMERICAN RACISM AND THE INCUMBENCY OF POWER

The word “race” holds a strange place in the context of American society. As part of the English vernacular, it refers to a competitive venture of sorts where two or more parties are vying for a timely finish to an ultimate goal. However this is not its only meaning. The word “race” was made applicable, somewhere along the line, to human beings as a means of classifying them amongst one another. When an individual is said to belong to a particular “race,” what is really meant is that the person displays the physiological, phenotypical manifestations of appearance associated with persons indigenous to a given region of the planet (e.g. a typical member of a sub-Saharan African “race” has characteristically dark skin). While this is a commonly accepted application of the word,⁶ what’s far less *openly* considered are the underlying assumptions and concessions made in its appropriation for this purpose.

Contemporary American society is thus faced with the assumption that its citizens can be justifiably divided into different species. Genetically, this is an impossibility; the existence of human life constitutes but one, singular race and to argue otherwise challenges objective science. To assume that individuals, based on their appearance, are members of a different *race* not only

⁶ The application of word “race” to denote various ethnic groupings of human beings is troublesome. However, in an effort to avoid any confusion that may be produced through the appropriation of a substitute word-choice, this thesis will persist with the tradition of denoting physical differences amongst like members of an ethnic class by using the word “race.” While scientifically incorrect, this term is the socially acceptable vocabulary used at the time of this writing to describe humans along genetic lines.

serves to establish the foundations upon which biases and prejudices are easily formed, but also validates the practice of classifying humans by race via socially-constructed, *subjective* means, not truth-based, principles. More disturbingly perhaps, societal acquiescence to academics, politicians, and social leaders to continue using the word as the sole means for denoting individuals of differing ethnic backgrounds undeniably signals a confirmation of the racial mindset. This social prerequisite in turn gives way to an unjust system of class hegemony predicated on the belief that *social differences can indeed be, at their root, the result of race*. This is a false belief and one that, for centuries, has both dominated and stunted American society with regard to equal treatment of minority populations. What manifests itself as a result is an oft-unconsidered, yet socially present example of disparity that permeates American society today—particularly as seen through the lens of the American penal system.

It can be said with confidence that no other social mechanism has played a more profound role in influencing the evolution of America more so than race and race-relations. Since the inception of this nation, race has played an integral role in defining and shaping the societal and political landscapes of American customs, law, and legacy. In her book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, professor Michelle Alexander makes a similar observation: “(i)t may be impossible to overstate the significance of race in defining the basic structure of American society. The structure and content of the original Constitution was based largely on the effort to preserve a racial caste system...while at the same time affording political and economic rights to whites, especially propertied whites.”⁷

⁷ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, NY: The New Press, 2010), p. 25.

The question then must become, how and why is this relevant today? Surely, the Civil Rights movement of the 1960's and the repeal of blatantly racist laws (like Jim Crow) brought an end to most *overtly* racist policies and practices throughout the United States. But were such sentiments put to rest for good? The answer is undoubtedly 'no.' Instead, what manifested itself was a system of camouflaged racism through the introduction of practices, laws, and social constructs that sought to continue channeling power to white populations despite the recent gains of minority groups. Manifesting itself in myriad ways, this new system was nearly identical to the old regime that oversaw the suppression of minorities through legal, economic, and educational means with the exception being that it was appropriated in a much less overt manner. Gone are the days of historic 'Indian' genocide, lynching in the Deep South, and segregation in public places. Instead, these horrors have been replaced with a specific system—one established with the purpose of funneling power and privilege to the same "race" of humanity that, for centuries, had dominated American society—the white population.

While institutionalized, racially inequitable practices have existed for centuries as an entrenched facet of American society, the modern manifestations of this phenomenon are nowhere better seen than in contemporary prisons. American prisons—those harrowing grounds where the souls of desecrated civilians are sent to be punished for their crimes—have become receptacles for a vastly disproportionate number of American minorities. Numerous academic studies have identified the relationship between prisons, racial disparity, and the incumbency of white-dominated social power. The resulting theories have held that, on the whole, American prisons exhibit immense racial disparity as a result of systematic social constructs purposely designed to disenfranchise (and increase the incarceration of) minorities. While critical in their aim and achievements, what the majority of these competing theories fail to investigate is how

racial disparity manifests itself regionally. Specifically, the questions that are lacking become: does the symptom of racial disparity in American prisons extend into all areas of the United States? Are predominantly white states, like those in New England, subject to the same trends, causes, and effects that have come to define the race-prison dilemma in America? Most narrowly, where does a state like Maine- considered to be the most racially homogenous in the nation- fit in a national context with respect to this issue?

A COMPARATIVE ANALYSIS OF NATIONAL VS. STATE RACIAL DEMOGRAPHICS CONCERNING RACIAL DISPARITY IN MAINE PRISONS

The case of Maine is a striking one for many reasons. Primarily, Maine is an intriguing case study when exploring issues of racial disparity due to the fact that over 95% of its residents are white.⁸ According to most reports, this ranks Maine as the “whitest” state in the nation with regard to its population percentages by race. As a result, it has become a commonly held assumption that Maine “does not have racial disparity” in its prison system, because there are not enough minorities for disproportion to flourish “in the first place,”—the logic at hand being that in order for racial disparity to exist, a prerequisite is a fairly sizeable minority population from which to draw potential inmates (certainly greater than Maine’s minority population, at least). The crux of this assumption relies on the following logic: because the greatest racial disparities in prison systems are found in states where minority populations are high, one would expect that Maine prisons would not exhibit great racial disparity, given the near-exclusive racial makeup of Maine’s general population. Indeed, this is a facially plausible assumption to make—less

⁸ Traditionally, the racial classification of “white” has been used in a variety of ways including: only those individuals of European descent; individuals of both European and Hispanic descent; individuals of European and North African descent; or individuals of European, Hispanic, and North African descent. For the purposes of this study, the racial classification “white” will be used to denote individuals of primarily European descent. Should individuals of Hispanic or North African descent be mentioned in this study, they will be denoted as such.

interaction between races means less potential for conflict, ensuing incarceration, and thus potential for disparity. However, a deeper statistical analysis of the facts reveals a truth that is decidedly opposite these conceptions.

Racial Disparity in America's Prisons: National Data

Before Maine's place in the context of this study may be appropriated, the landscape of the majority of other states with regard to racial disparity in their prison systems must first be discussed. It is critical that the racial landscape of the country is first defined, so that comparative analysis may be applied when examining the differences and similarities between general and prison populations.

Recent United States Census data indicates there are approximately 308,745,538 legal citizens currently residing within our nation's borders.⁹ Of these citizens, approximately 196,670,908 are considered racially white; 38,901,938 are considered black; and 2,778,710 are considered to be Native American.^{10, 11} Figure 1.1 provides a percent-based perspective of these figures.

⁹ U.S. Census Bureau. *National Quick Facts*. <http://quickfacts.census.gov/qfd/states/00000.html> (2011).

¹⁰ *Ibid*

¹¹ Note: Only whites, blacks, and Native Americans are considered for the purposes of this study due to their direct and drastic representation in the state of Maine. Other racial groups, such as Hispanic, Asian, and individuals of Middle Eastern ethnicity have been consciously excluded from this study due to their near non-existence in Maine and congruent representation in its penal system. However, careful consideration was lent to interpreting national data with specific regard to these groups, as racial discrimination manifests itself differently (and for different racial groupings) in different regions of the country (ex. Hispanics account for a vastly disproportionate number of inmates in the American Southwest).

Figure 1.1

U.S. Population (2011) by race

| Citizen race | Number of Citizens | Percentage of Total Pop. |
|---------------------|---------------------------|---------------------------------|
| All | 308,745,538 | 100% |
| White non-Hispanic | 196,670,908 | 63.7% |
| Black | 38,901,938 | 12.6% |
| Native American | 2,778,710 | 0.9% |

The national makeup of the United States, from a racial-classification perspective, thus indicates that white non-Hispanics represent more than half of the country's population, outnumbering black Americans by a ratio of 5:1 and Native Americans, 73:1. At this point, it becomes very clear that if there is indeed a *national* precedent for racial disparity in U.S. prisons (wherein minorities such as blacks and Native Americans are overrepresented), then its effects and implications would be crippling and drastic with regard to minority communities, given their substantially-fewer populations. This question begs further investigation through an analysis of national prison data.

The Problem:

On a global scale, the United States currently ranks first among all nations for incarceration per-capita and total inmates incarcerated.¹² Statistically, the United States incarcerates approximately 743 per 100,000 of its citizens, accounting for approximately one

¹² Criminal Justice USA. *10 Facts You Should Know About Our Prison System*.
<http://www.criminaljusticeusa.com/blog/2011/10-stats-you-should-know-about-our-prison-system/>

fourth of all inmates currently held in the entire world.¹³ In fact, U.S. incarceration rates are so high, a comparative view is necessary to truly understand the breadth and depth of the issue: the nation that ranks second amongst all others is Russia with 577 incarcerated individuals per 100,000—a number diminutive in size to America’s 743 when one considers that every tally mark means one individual human life. The impact goes beyond mere numbers and digits—we are dealing with human beings.

Home to the most frequently incarcerated individuals on the planet, America’s prisons warrant further inspection of their racial makeup. As of mid-2011, U.S. prisons were home to some 2,096,300 individual men, women, and (at least in some cases) children.¹⁴ On a percentage-based scale, that means that approximately 0.7% of all American citizens are currently behind bars—a number that, while not facially alarming, does no justice in explaining the trends of rising incarceration rates and potential future prison populations. Of the 2,096,300 persons currently in the custody of American criminal justice system 693,800 are white; 841,003 are black; and approximately 26,014 are Native American.¹⁵ As before, Figure 1.2 provides a percent-based perspective of these figures.

¹³ *Ibid*

¹⁴ Bureau of Justice Statistics. *Bureau of Justice Statistics: Prison inmates at Midyear 2011*. <http://bjs.ojp.usdoj.gov/>

¹⁵ *Ibid*

Figure 1.2

U.S. Prison Population (mid-2011) by race

| Inmate race | Number of Inmates | Percentage of Total Prison Pop. |
|--------------------|--------------------------|--|
| All | 2,096,300 | 100% |
| White non-Hispanic | 693,800 | 33.1% |
| Black | 841,003 | 40.1% |
| Native American | 26,014 | 1.2% |

Clearly, these figures indicate expansive growth in the representative percentages of both black and Native Americans when compared closely with general population data from the U.S. census. The black community in the United States comprises 12.6% of the total national population, yet we see that in prison, the black community accounts for close to half of all inmates in the country, with 40.1% representation. Similarly, Native Americans (who, historically, are a fast-disappearing community in the U.S.) represent less than one percentage point of the entire U.S. population, yet manage to comprise 1.2% of all inmates. More disturbingly, these figures indicate that, in total, the percentage by race of *all individuals* incarcerated in the United States are as follows: 0.4% of all white citizens; 2.2% of all black citizens; and 0.9% of all Native American citizens are currently behind bars in the U.S.

Putting things into perspective, the white population of the United States—a clear majority of 63.7% of the national population—constitutes a less than half of all prisoners with a 33.1% cumulative representation. Put simply, the disparity—on a national level, at least—is clear.

It then becomes fact that black Americans and Native Americans are disproportionately represented as inmates in the criminal justice system. However, the purpose of this thesis is not to simply compute percentages which state the obvious. Rather, this understanding—that minorities in America are vastly overrepresented in the national penal system—must serve as the steppingstone that prompts the more important question: *why* does a disparity exist among minority inmates and, once known, how do Maine’s prisons factor into the discussion?

INSTITUTIONALIZED RACISM IN AMERICA:

Examining causality:

Before moving into a full-fledged investigation of the Maine penal system, the causality of racial disparity in the United States prisons at large must first be engaged in order to gain a national perspective from a Maine-specific analysis can be differentiated or compared.

According to Michelle Alexander, there are a vast variety of reasons why all minorities, particularly black Americans (on a national scale), are disproportionately incarcerated for crimes in the U.S. including, but not limited to: the establishment of high-crime ghettos; the legislation and upholding of facially valid, yet highly discriminatory laws against specific crimes; determinative reasoning; and “civic death.” Through an examination of these mechanisms, Alexander’s analysis of American legal and social society offers clear and definitive explanations for overrepresentation and disproportional incarceration of minorities.

The persistence of the American Ghetto

First, the issue of the ghetto is a commonly referenced phenomena that is often expressed as a punch line to a cruel joke in American popular culture. The dictionary defines the term

‘ghetto’ as the following: “a section of a city, especially a thickly populated slum area, inhabited predominantly by members of an ethnic or other minority group, often as a result of social or economic restrictions, pressures, or hardships.”¹⁶ For David Lyons, a professor at Boston University, the establishment of high crime ghettos is as much an historical consequence as it is a mechanism of modern social systems. According to Lyons “(t)he black urban ghetto was created by the migration of blacks to urban areas and periodic housing shortages that resulted from exclusionary actions by private parties and policies of local officials and federal agencies. One such policy was ‘redlining,’ which identified black neighborhoods within which home purchase and home improvement loans were denied or interest rates inflated.”¹⁷ Lyons’s insight evidences that the initial establishment of ghettos was a direct consequence of governmental interference with equal opportunities for minority homeowners. Furthering his position, Lyons contends that the modern implications of “ghettoization,” (that of minority communities becoming, effectually, excommunicated from society-proper) are the result of modern housing projects designed and urban renewal (in conjunction with the eviction of slum-areas) to fail: “(a)s the projects accommodated fewer ghetto dwellers than slum clearance displaced, more pressure was placed upon housing in the ghetto. Public housing authorities employed segregation policies that further promoted (minority) isolation.”¹⁸ Based on the history provided by Lyons and numerous other academics, the story of the American ghettos is undeniably linked to government intervention (up until and even after the Fair Housing Amendment Act of 1988) acting as the motivating force behind the establishment of racially exclusive communities in two ways: the excision and

¹⁶ Dictionary Online. *Definition- ghetto*. <http://dictionary.reference.com/browse/ghetto>

¹⁷ David Lyons. *The Role of the Federal Government in Slavery and Jim Crow*.
<http://academic.udayton.edu/race/02rights/repara36.htm>

¹⁸ *Ibid*

relocation of minorities into ghettos, and the establishment of white-dominated society elsewhere.

The development of ghettos, says Alexander, is a key factor in feeding the growing disparity between minority and white inmates in the U.S. In essence, ghettoization serves as a form of de facto segregation, given the known, historical impacts that it has specifically on impoverished racial minorities. According to Alexander, individuals who live in impoverished areas and ghettos are financially destitute, exposed to constructed conditions that invite criminal activity, and—as a result—are policed at disproportionate levels. Disproportional levels of police force patrol/allocation of officers increases the likelihood (and actual occurrence) of disproportional minority arrests.

Critics of the argument that ghettos, by their nature, produce disproportionate minority arrests because they are more heavily patrolled by police who seek to target specific suspects by race, often cite the “violent nature” of these areas as evidence that “violence breeds violence,” and that the patrolling of ghettos is not a race-related issue, but a response to safety concern. In response to these critics, Alexander and her peers argue that “(s)ubjecting people to stops and seizures because they live in ‘high crime’ ghettos cannot be said to be truly race neutral, given that the ghetto itself was *constructed* to contain and control groups of people defined by race.”(emphasis added)¹⁹ This becomes especially true when one considers the troubling paradox that presents itself in relation to “constructed crime,”—that is, the understanding that disproportional patrol and police activity in a given area automatically renders an area more “criminally active,” and arrests more frequent due to the high-level of surveillance concentrated

¹⁹ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, NY: The New Press, 2010), pp. 129-130.

on the location. The underlying sentiment becomes one of unwarranted presumption. Society has developed an image of ghettos as high-crime areas as opposed to that of general society when, in reality, the extent of criminality in general and upper-class societal locales is hardly known due to *lacking* police surveillance resulting from the over patrolling of minority ghettos.

The American Legal System: Racially Just or Facially Satisfactory?

If the establishment of ghettos serves to produce a racially-segregated pool of potential suspects who are targeted and patrolled at disproportional rates by police, then it must be true that laws which are facially valid, but discriminatory in their enforcement and effect are contributing factors as well.

Citing *Yick Wo v. Hopkins*, a United States Supreme Court decision, Alexander explores how many laws can be “fair on (their) face, and impartial in appearance, yet, . . . (still be) applied and administered by public authority with an evil eye and unequal hand, so as practically to make unjust and illegal discriminations, between persons in similar circumstances.”²⁰ In *The New Jim Crow*, Alexander launches into a lengthy discussion of a modern application of facially valid, yet clearly discriminatory laws in her examination of domestic cocaine laws in the United States. It is well-established that the sentencing and conviction rates for crimes related to crack cocaine use are much more severe and frequent than those for standard powdered cocaine use and Alexander (in appropriating the context of minority “drug wars” in her argument) references the disparity created through the enforcement crack cocaine laws. While facially valid laws (crack *is* a different drug than cocaine, thereby arguably necessitating different punishments) the punishment for crack cocaine use carries a much more severe sentence and conviction rate. This

²⁰ *Ibid.* pp 113-144. Citing *Yick Wo v. Hopkins*.

is concerning because largely, crack cocaine is a substance consumed and sold by impoverished black citizens whereas the use, distribution, and production of powdered cocaine is more prevalent amongst white citizens. Conclusively, Alexander makes the case that laws such as these play a significant role in tipping the scales so that more minority drug users are incarcerated than their white counterparts.

Determinative Reason: The Impact of Racial Profiling

Building off prior concern for inequitably frequent patrolling of ghettos for criminal activity, Alexander's third causal factor in bolstering racial disparity in American prisons is "determinative reason." Appropriated in her chapter *the Color of Justice*, Alexander explains determinative reason in the context of race as it relates to police interaction with minorities: "...although race is rarely the sole reason for a stop or search (of a minority suspect), it is frequently a *determinative reason*."²¹ Alexander gives an illustrative example of her meaning: "(a) young white male wearing baggy pants, standing in front of his high school and surrounded by his friends, might well be ignored by police officers. It might never occur to them that a group of young white kids might be dealing dope in front of their high school. Similarly situated people inevitably are treated differently when police are granted permission to rely on racial stereotypes when making discretionary decisions."²² Self-supporting, Alexander's argument that determinative reasoning is conducive to increased levels of incarcerated minorities makes sense. The concern (and witnessed effect) here is when police officers are allowed to openly rely on race, with great frequency in a limited area such as a ghetto, then the obvious result will be targeting and incarceration of a greater number of minorities. The argument's crux rests on a

²¹ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, NY: The New Press, 2010), p. 129.

²² *Ibid*

simple allocation of resources: if police forces spend a disproportionate amount of time monitoring minority population centers, while canvassing suspects on the grounds of race, it is illogical to conceive of any result other than the formation of a racial disparity amongst incarcerated individuals.

“Civic Death”

Lastly, review of the American penal system—that of intermingled law and power—warrants the exploration of “civic death.” Regardless of race, the U.S. remains the number one incarcerator in the world and, as such, the fate of its criminals is one which impacts some two million individual lives. This problem is only exacerbated when Americans are confronted with the moral dilemma of racial disparity among inmates. Of great concern to Alexander is what is known as “civic death.” According to her text, “(m)any laws, rules and regulations operate to discriminate against ex-offenders and effectively prevent their reintegration into the mainstream society and economy. These restrictions amount to a form of ‘civic death’ and send the unequivocal message that ‘they’ are no longer part of ‘us.’”²³ This construction becomes especially troubling when aligned with the blatant racial disparity of the American penal system. The heart of the issue gets at the fact that because the general population only harbors minimal percentages of minorities, and these minorities are incarcerated at exceptionally disproportionate rates to whites, the resulting scenario is that a large portion of minority populations are forced into some type of “civic death.” In short, minorities are losing their societal claim to equal rights through a propensity for disproportional incarceration, coupled with national sentiment that seems to advocate the “civic death” and abandonment of convicted criminals.

²³ *Ibid.* p. 139

Collectively, the above causal factors clearly evidence how contemporary society has established a system that feeds racial disparity in American prisons. As the current state of affairs clearly favors white offenders and criminals (in fact, the system allows most whites who break the law to escape labels of criminality), many skeptics have come to the conclusion that current legislation, police protocol, and institutional regulations are merely an extension of the racist society that was “defeated” during the 1960’s. Some, like legal scholar Reva Siegel have ventured as far as to accuse the current system of incarceration as being an extension of slavery and Jim Crow. For Siegel, the current system is essentially a mechanism to carry out “‘preservation through transformation’...the process through which white privilege is maintained though the rules and rhetoric change.”²⁴ Others with a similar view, like Alexander, view the current system as a rejuvenated racial caste in post-Jim Crow America; they view the system as one wherein minority citizens are unjustly set-up for failure, aggressively screened, and inequitably processed through the criminal justice system. For Alexander, the current state of America’s criminal justice system is predicated on an historic realization by whites during the 1960’s that “the old caste system was crumbling and a new one would have to take its place.”²⁵

²⁴ Reva Siegel. *“Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing Action,”* Stanford Law Review 49. 1997. p. 1111.

²⁵ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, NY. The New Press, 2010), p. 22.

“DIRIGO”:

RACE, POWER, AND INCARCERATION IN MAINE

The question now becomes how, in the cacophonous debate that surrounds the context of *national* issues of racial disparity in prisons, can a clear analysis of the Maine system be made? As before, a quantitative analysis of the current state of affairs of Maine general and penal populations is required.

According to the most recently available Census date at the time of this study, there are approximately 1,328,361 individuals currently living in the state of Maine.²⁶ Of these citizens, approximately 1,261,943 identify as racially white; 15,940 black; and 7,970 Native American.²⁷ Figure 1.3 provides a percent-based perspective of these figures.

Figure 1.3

Maine State Population (2011) by race

| Citizen race | Number of Citizens | Percentage of Total Pop. |
|---------------------|---------------------------|---------------------------------|
| All | 1,328,361 | 100% |
| White non-Hispanic | 1,261,943 | 95.2% |
| Black | 15,940 | 1.2% |
| Native American | 7,970 | 0.6% |

Earlier, Maine’s population was cited as being “nearly homogenous”—the reasons for which should now be clear. With a white constituency of 95.2% of the total population, Maine is easily the “whitest” state in the Union. When compared with the national population landscape,

²⁶ U.S. Census Bureau. *Maine State & County Quick Facts*. <http://quickfacts.census.gov/qfd/states/23000.html>

²⁷ *Ibid*

we see that white representation in Maine increases 31.5% from the national average, while Maine's black and Native American populations *decrease* by 11.4% and 0.3% from the national averages, respectively. This means that Maine's minority communities are especially sensitive/subject to racial disenfranchisement due to their lesser-populations; any social limitations placed on Native Americans in Maine would be drastically felt due to their small population base.

In Maine, the ratio of white citizens to the selected minority groups of blacks and Native Americans thus becomes: 79:1 and 158:1, respectively. Compared to national data, these ratios place Maine well above typical trends for states' population percentages when it comes to white-exclusivity. Continuing along this line of logic, *if* a racial disparity *does in fact* exist within the Maine penal system, the implications for such a scenario would be all the more drastic.

With so very few minorities to incarcerate, a disproportional amount of minority inmates would be strongly indicative of a biased system.

To examine this issue further and develop a thorough understanding of the racial landscape of Maine's penal system, statistical, quantitative data was obtained and derived from independent research conducted with the Maine Department of Corrections.²⁸ Said research yielded data that was interpreted so that, categorically, it matched that of the Bureau report used to appropriate national prison data referenced earlier when discussing national prison populations. Collected data indicates that as of mid-2011, the Maine penal system housed 2,094

²⁸ Research for this thesis conducted with the Maine Department of Corrections entailed submitting a proposal and gaining clearance from the Commissioner of the Department of Corrections to conduct research on the subject matter. Once approved, a research inquiry was submitted to database custodians who selected for a variety of indicated fields on the query including: race, religion, crime(s) committed, town of residence, sentence, holding facility, gang affiliation, age, sex, and a variety of other similar, pertinent areas of interest. Once collected, data was interpreted on a case-by-case basis until all 2,094 entry returns for each inmate were categorized and recorded.

inmates.²⁹ On a percentage-based scale, that means that approximately 0.1% of all Maine citizens are currently incarcerated. While, like the national figure of 0.7% (for total individuals incarcerated), this figure is not facially alarming, the comparatively microscopic population of the state of Maine to that of the nation drastically magnifies the inherent effects. Of the 2,094 persons currently in the custody of Maine penal system 1,826 are white; 136 are black; and approximately 56 are Native American.³⁰ Again, Figure 1.4 provides a percent-based perspective of these figures.

Figure 1.4

Maine Prison Population (mid-2011) by race

| Inmate race | Number of Inmates | Percentage of Total Prison Pop. |
|--------------------|-------------------|---------------------------------|
| All | 2,094 | 100% |
| White non-Hispanic | 1,826 | 87.2% |
| Black | 136 | 6.5% |
| Native American | 56 | 2.7% |

Before proceeding, a brief aside must be taken to address the primary criticism likely to arise at this juncture: that Maine’s percentages of minorities are drastically less than national averages, and thus, Maine’s racial disparities are **a.)** non-existent due to the large number of whites in Maine prisons or **b.)** minute prison populations cannot be said to constitute a racial disparity.

²⁹ Maine Dept. of Corrections, (2011). *Maine Inmates Custom Query Report: June 2011*. Maine Department of Corrections Database independent research results.

³⁰ *Ibid*

The first assumption—that racial disparity is non-existent in Maine prisons due to a leading percentage of incarcerated whites, some 87.2%—is ill-founded. The primary issue with this approach is that having a majority representation (in prison) of a racial group that constitutes the *majority* of the general population does not preclude a given system from the contagion of racial disparity. It is entirely possible, even with 87.2% of Maine inmates being of white racial backgrounds, for a minority group to fall victim to overrepresentation. In short, minority groups need not constitute a *majority* of *all* prisoners for a given system to be considered disproportionately overrepresented. This brings us to the next assumption.

The assumption that minute prison populations (136 black and 56 Native American inmates in Maine) cannot constitute a racial disparity in a prison system is flawed for similar reasons. If logic tells us that a minority population needn't be a representative *majority* in a given system to constitute racial disparity, then it must also be conceded that the actual number of inmates is of little magnitude in comparison to the populations from which they are drawn. More pointedly, it may be assumed that critics of those who point to racial disparity in Maine prisons will argue that a racial disparity is ill-proven by a group numbering no more than 192 persons, but an analysis of their general populations quickly puts such challenges to rest. Comparatively, the general populations for minorities from which inmates are extracted in Maine are notably small- less than 16,000 and 8,000 persons for black and Native Americans, respectively. Compared to the population of whites in Maine- some 1,261,943 individuals- it becomes evident that the foundation for disproportional extraction has been laid; *because* minority populations are so small in Maine, they are all the more susceptible to yielding a racial disparity in incarcerated individuals if, and when, said individuals are in fact incarcerated. Racial disparity can manifest

itself, despite the absence of a majority representation when a significant portion of a minute population is adversely affected or disproportionately targeted.

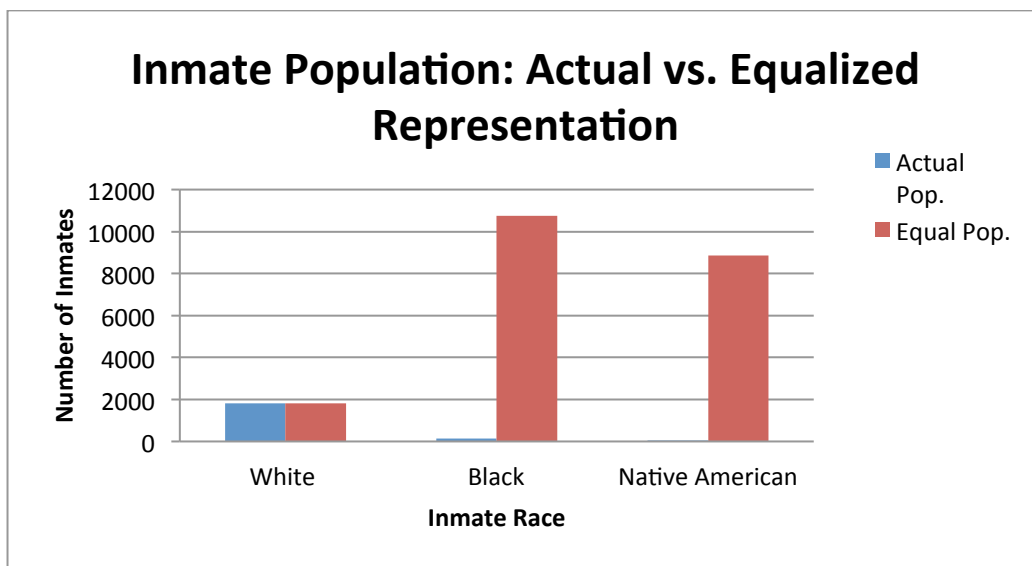
To this end, trends in Maine incarceration reveal that per the current general state population of 1,328,361 individuals **1 out of approximately 691 white individuals is incarcerated**. Quite oppositely, **1 out of every 117 black individuals and 1 out of every 142 Native American individuals are incarcerated in Maine**. These figures speak for themselves in evidencing the level to which minorities are selected for by the criminal justice system in Maine. A racial disparity unequivocally exists in Maine prisons.

But Maine's penal system, unlike the more popularly examined systems that are located in states with 'clear' racial disparities such as Louisiana and Maryland, is unique in the context of the national crisis regarding overrepresentation in prisons. Unlike many states where a majority of inmates are minorities and a slight majority of the general population is white, Maine provides a unique scenario where the population, being almost uniformly white, still yields racial disparity in the prison system (albeit it through a percentage disparity). The common perception that Maine's racial makeup precludes it from fostering racial disparity in the incarceration process is a false one; *statistical relationships between general and prison populations show that, in Maine, minorities are almost six times more likely to be incarcerated than white citizens.*

To illustrate this point more clearly, a graph (Figure 2.1) has been rendered from the Maine Department of Corrections data previously collected and examined. In it, the blue bars represent the populations of inmates currently held in Maine prisons based on the current, general populations of said groups (i.e. 1,826 white inmates based on the general white

population of 1,261,943 individuals). The red bars represent the amount of inmates for each racial group that would be expected *based on current trends and incarceration ratios* if the general populations of blacks and Native Americans were made equal to that of whites- 1,261,943 individuals. In essence, the white population acts as a sort of control. As you can see, the ratio of 1 out of every 117 black and 1 out of every 142 Native Americans incarcerated holds significant implications when minority populations are increased. In this inflated scenario, Maine becomes ‘on-par’ with some of the most racially disproportional prison systems in the nation, a la Louisiana, indicating that racial disparity in Maine’s prisons is not a statistical illusion or coincidence. In total effect, this graphic depiction serves to evidence the levels of disproportional incarceration, by race, in Maine.

Figure 2.1



The ultimate conclusion that is drawn from a statistical analysis of Maine’s prison system is that a racial disparity exists among the state’s inmate population. However, the case of Maine is unique not only because the majority of those incarcerated are white, but also due to the target

groups affected. Unlike most systems wherein the overrepresented individuals are primarily black and come from impoverished urban environments, (like those explored by Alexander in her analysis of the American race/prison issue) Maine is unique in yet another way— it has a deep historical, institutional, and contemporary relationship with the Native Americans who populated the area centuries before the arrival of the first European “settlers” set foot in America. As a result, an analysis of racial disparity in Maine prisons could ill-afford to rely solely on a critique such as Alexander’s which, while providing valuable mechanisms for evaluating the institutionalized power-structures inherent to incarceration in the U.S., focuses almost exclusively on blacks. Contemporary examination of the criminal justice system in America has, for the most part, continued the tradition of exclusion of Native concerns and issues when considering the causal link between racial disparity and the disenfranchisement of minorities. Contemporary scholarship has, largely, ignored the relationship between Maine and its Native population in the context of racial disparity in the prison system. In examining the racial disparity that exists in Maine’s criminal justice system, the historic, social, and political treatment of Native Americans by dominant white culture can no longer be ignored.

THE SYSTEMATIC DISENFRANCHISEMENT OF NATIVE AMERICANS IN MAINE:

A FOUCAULDIAN PERSPECTIVE

The current racial disparity that exists amongst Native Americans in Maine is, in large part, the result of a lineage of racist and discriminatory policies designed to disenfranchise them. Specifically, the state of Maine has acted to stymie the progression of Native Americans through the insidious development of a societal system that (through social conditioning and disparate legal treatment) forces the production of lower-class citizens born into a racial caste, much like

that theorized by Alexander in her analysis of black incarceration. As a result, Native Americans in Maine are born into a society that, from the outset, rejects them as equal citizens, denies them access to equal opportunity for advancement, deprives them of basic societal rights and liberties, and attempts to force upon them a predetermined fate of decadence and immobility. This is predicated on the operative purpose of the white-dominated social system currently in place in the U.S., as analyzed by Chisom and Washington:

“(E)very institution in the United States is ultimately controlled by (upper class) whites: from local governments to the national government, etc... Despite the fact that the United States is a multi-cultural society, all of the institutions function to render greater benefits to white people. By never challenging the institutional policies which grant them privileges over non-whites, white people maintain more human worth and social status than non-whites and racism remains in place. Hence, in white societies, the institutions must function to legitimize and perpetuate superiority.”³¹

This system of social privilege and supremacy is present in Maine, as it is in the national theater as well. Through four distinct mechanisms—**historical disregard; legislative impotence; the compromising of Native American youth; and the persistence of state governmental involvement with tribal lands³² as a form of institutional control**—the state of Maine has established a societal system that Michel Foucault would recognize as a model to enforce his own theories on discipline and punishment.

³¹ Chisom & Washington, *Undoing Racism: The Philosophical Basis for an Equitable and Just Society* (New Orleans, LA. The People’s Institute for Survival and Beyond, 1996), pp. 40-41. *The Donna Loring Papers*.

³² In Maine, Native Americans contest the use of the term “reservation,” instead referring to those sovereign lands upon which they live as tribal lands. The word “reservation” is typically used to denote land given to and controlled by Native American people as reparations for past injustices perpetuated by white settlers. In an effort to provide sovereign tribal nations with a sovereign territory, many states across the nation have reserved blocks of land upon which tribal members have exclusive access. In Maine, the Native people are *indigenous* to the land, meaning that unlike those Native Americans living in Oklahoma, for example, the “reservations” upon which their tribes are headquartered aren’t truly reservations at all. Logically, it is impossible to “reserve” land for a particular group if it is already in their possession. Despite this logic, the term “reservation” persists in Maine amongst the majority culture and, in an effort to clarify what an more appropriate term, this thesis refers to tribal lands as just that—tribal lands. The term “reservation(s)” may however appear in cited materials and, when doing so, is in reference to the type of Native properties that this thesis refers to as “tribal lands.”

To best understand the reasons why racial disparity exists and minorities are incarcerated at exorbitantly higher rates than their white counterparts in Maine, the context of the Native Americans relationship to predominantly white society—past historical and present—must be analyzed. Only through the progression of local history and the history of Maine institutions and Native relations can such a deeply historic society of people as Maine Native Americans be accurately contextualized within the context of greater Maine society. In doing so, the Foucauldian critique of power-incumbency and the mechanisms of punishment for power retention will be relied upon to analyze the four previously mentioned mechanisms that categorize, largely, Maine-Native relations. In the end, the goal will be to have established a clear narrative of the ways in which the state of Maine, being comprised of primarily white citizens, has enacted a historillogical bevvvy of programs and policies that have acted to suppress and dismember Native progress both past and present.

Historical Disregard

By the vary nature of its locality, Maine has historically had more contact with Native Americans than a majority of other states in the U.S. Throughout this history, interaction between Native Americans and the state of Maine has been bound by traditions such as land ‘acquisition,’ genocide, and governmental control perpetuated, largely, by white society. For example, widely dispersed public flyers dating back to colonial America in 1755 (when Maine was under the dominion of Massachusetts) offer us a glimpse of a portion of the foundation upon which white interaction with Native Americans was wrought. For “act(ing) contrary to their solemn Submission unto His Majesty (George II)” a bounty was placed on the head of every Native American in what is today sovereign Maine territory:

“For every Male Penobscot Indian above the Age of Twelve Years, that shall be taken...and brought to Boston, Fifty Pounds.

For every Scalp of a Male Penobscot Indian above the Age aforesaid, brought in as Evidence of their being killed as aforesaid, Forty Pounds.

For every Female Penobscot Indian taken and brought in as aforesaid, and for every Male Indian Prisoner under the Age of Twelve Years, taken and brought in aforesaid, Twenty-Five Pounds.

For every Scalp of such Female Indian or Male Indian under the Age of Twelve Years, that shall be killed and brought in as Evidence of their being killed as aforesaid, Twenty Pounds.”³³

The blood-letting that, from the start, embodied the relationship between white Europeans and Native Americans would only prove to intensify as Americans, themselves, gave birth to a nation.

Other, less violent but no less discriminatory, means were used by Maine after 1820, when it gained statehood, to directly subdue its Native inhabitants. Specifically, laws were established in 1879 that “determined that Indians could sell their houses and lots within their reservation to each other but could not sell them to non-members of the tribe. Another case...in 1836...had resulted in a similar decision regarding trees, timber, and grass from Passamaquoddy reservation lands.”³⁴ Other laws were established barring the intermarriage of Natives and “non-Indians,” the text of which provided that no white man, outside of being labeled an “idiot” or “insane” shall be permitted to intermarry or form relations with Native women. The effect of these laws was to preserve the “purity” of the white bloodline and white society save those individuals already deemed “unfit” for it. Those individuals, the castaways of the general public, were deemed fit for reproducing with Native Americans. These laws, like the others, serve to

³³ Spencer Phips, Esq. (1755). A proclamation concerning the Penobscot Indians. *By order and decree of HRH George II.* Pamphlet. *The Donna Loring Papers.*

³⁴ Dean Snow. (1999). *The Historical Development of Official Indian policy in Maine: A Unique Case.* Orono, ME: University of Maine. *The Donna Loring Papers.*

exhibit the extent to which white society looked down upon Native Americans in Maine as an “inferior race.”

Perhaps though, one of the most visible legacies of the historical disregard for Native peoples in Maine has come in the form of racist namesakes, specifically the frequency with which white-named landmarks and geographic features are given the name “Squaw.” According to Donna Loring, a former Tribal Representative of the Maine State Legislature, the term “Squaw” is “used derogatorily” and “never in a nice way as a term of endearment or respect.”³⁵ One Tribal Representative reflected “the word is best suited for bathroom walls. The word denegrates women because it is synonymyous with crude references to female genitalia and prostitutes.”³⁶ Despite a resounding uproar from Native American communities and leaders, the tradition and persistence of the “Squaw” label is still today prevalent. As a result, the geographic map of Maine is marred by mountains and creeks donning the ugly moniker, despite legislative outcry from Maine’s Native community as recently as the early 2000’s. The message sent by Maine’s general population: we don’t care enough to change the names- they don’t offend the rest of us. This is a contemporary embodiment of historical disregard for Native peoples.

Historical disregard for Native Americans in Maine is clear and pervasive, but the question remains how and why it connects to the Native condition *today*. The answer is rooted in the progression of historically active self and societal perceptions of the “worth” of Native Americans.

As a result of these historical hauntings, the socio-psychological implications of Native-Caucasian relations run deep and are considerable. While the history of American-Indian

³⁵ Deborah DuBrule. (1999). Stamping Out the "S" Word. *American Indian Report*, 28. *The Donna Loring Papers*.

³⁶ *Ibid*

relations is widely known to be one of violence, deception, and genocide, what's often misunderstood is the magnitude that such events have had on the contemporary mindsets of *both* racial groups. Throughout Maine's own, specific history regarding Native American interaction there has been a tradition of barbarism and governmental control as seen through the historical progression of forced evacuation of tribal lands; forced settlement of tribal lands (eliminating expansive use of tribal lands through Maine); and the historic genocide suffered by Native Americans at the hands of white society. As a result, the spirits of Native American people have been beaten back considerably. While critics may argue that this is impossible to quantify, there is a psychological precedent for such an analysis which dictates: "(w)hen non-whites (in a racial society) internalize inferior and subordinate images of themselves, they become fearful of challenging the institutions that have disempowered them."³⁷

Unedniably made to feel inferior through racially cruel slurs plastered on public maps and integrated into the local vernacular as well as through centuries of bloody persecution and forced submission, the legacy of white dominance over the Native people in Maine is as much a part of the Native psychological mindest as reverence of the Founding Fathers is for many Americans today. It is entirely feasible that this psychological mindset, permeating generations of Native Americans, allows for the persistence of perceived inferiority- a complex that serves to disenfranchise the Native social condition and perpetuate negative, or even criminal, self-image.

The Foucauldian perspective on the issue of historical disregard for Native Americans in Maine is easily applied. Foucault, in offering his post-modernist critique of modern institutions- particularly prisons- notes that punishment has drastically evolved from ruthless barbarism, to a

³⁷ Chisom & Washington, *Undoing Racism: The Philosophical Basis for an Equitable and Just Society* (New Orleans, LA. The People's Institute for Survival and Beyond, 1996), p. 22. *The Donna Loring Papers*.

more controlled punishment of the body. In this way, Foucault observes that modern institutions and those individuals in power have developed a form of punishment where the punished are no longer martyrs that may be sympathized with but instead are objects from which repentance must be extracted and upon whom punishment is warranted.

Foucault notes “(t)he public execution is now seen as a hearth in which violence bursts again into flame,” in his analysis of modern punishment.³⁸ For Foucault, the removal of public torture- in *this* case the overt demand for “Indian scalps,” or the public tendency to mar an exorbitant amount of landmarks with the word “Squaw”- is predicated on a desire to remove from the process of punishment, the sinews of sympathy that connect human beings to one another. For Foucault, the individual who is punished more “humanely” is more easily accepted by society as a guilty criminal. In this way, the historical disregard of native Americans can be seen as akin to the pre-modern forms of punishment as prescribed by Foucault- the “torturous” punishments of Maine society upon Native Americans, so to speak.

Legislative Impotence

Next, we come to Maine’s legislative dealings with Native Americans. It is a proud fact for many Maine politicians to announce that their state is the only one in the entire nation wherein Native peoples are allowed to be a part of the legislature. While admirable in its attempt at democracy, this gesture is as impotent as the Native American political voice in Maine. Yes- it *is* true that Maine stands alone in offering its Native American citizens a chance to sit amongst the state legislature. What is not as readily advertised, however, is that Native American Legislative Representatives are disempowered with regard to their authority to effect change in

³⁸ Michel Foucault, *Discipline & Punish: The Birth of the Prison* (New York, NY. Vintage Books, 1995), p. 9.

policy via voting. Native American Tribal Representatives in the Maine Legislature are not allowed to vote; this does not mean that *Native American citizens* are barred from voting in the legislature. (For, should a Native American win a seat as a Representative, they would surely have the right to vote.) But when one inspects the way Maine is districted, it soon becomes painfully clear that the vast majority of Maine's Native American population live on concentrated tribal lands, and are thus required to channel their diplomatic concerns through a vote-less Tribal Representative.

Another stark example of the legislative impotence of the Native American people, as rendered by the state government, is embodied in the personal testimony of a former official with the Maine Department of Indian Affairs, Edward Hinckley, who served from 1965-1969. Hinckley, reflects on the inability of Tribal Representatives to carry the desires and suggestions of their constituents to the legislature floor, noting their failure to curry favor with legislative officials and their disallowance to form independent departments in an effort to meet tribal needs despite their best and tireless efforts. More pointedly, Hinckley offers a glimpse into the inner-workings of the political mechanisms at the state level with regard to the limitations placed on Tribal officials by state 'Indian Agents':

"Early in the existence of the new Department of Indian Affairs I was told by many tribal members, and particularly by the two Tribal Representatives to the Legislature (and by the Tribal Chairmen and Councils) of many previous efforts to have their own department established. I understood that these efforts had generally not progressed to the point of actually having a bill introduced into the legislature's biennial sessions. Indeed, I was told that in times past, when the Passamaquoddy Legislative Representative had taken hand-written suggestions of proposed legislation to the 'Indian Agent,' he would often push them off his desk into his wastebasket as the Tribal Representative watched!"³⁹

³⁹ Edward C. Hinckley, *Some Memories of The Maine Department of Indian Affairs (1965-1969)*. (Vienna, ME. Unpublished memoir. 2003), p. 4. *The Donna Loring Papers*.

Hinckley’s testimony offers a grotesquely vivid vignette of the state of relations between Native Americans and Indian Agents appropriated by the Maine State government. Although Hinckley’s recollection stands alone in its specificity, the implications it offers of the degradation suffered by Native Americans in Maine when coupled with similar accounts cannot be ignored. At its most basic level, this example of Native-white relations serves to embody the guttural distaste that Maine governmental officials (whether acting through or as Indian Agents) had for tribal concerns.

Simply put, the Maine Legislature has repeatedly refused to acknowledge Tribal Representatives as “constitutional representatives,” resulting in policy which professes “(Tribal Representatives) do not have powers and authority as *members* of the Legislature, and have no vote.”⁴⁰ Most disturbingly, the state of Maine, in eliminating the Tribal vote, has launched a *direct attack* on the sovereignty of Tribal Nations.⁴¹ As recognized by both state and federal legislation, Native American tribes in Maine are considered to be independent, sovereign nations with a special relationship to the state. As such, the deprivation of the Tribal vote, while technically legally valid, strongly evidences the state’s disregard for the authority and decision-making capabilities of the tribes, especially when the Legislature is discussing and voting on issues that *most directly* impact the tribes—land conservation and the installation of casinos in Maine. According to former Representative Loring, the issue of equal voice in representation in appropriating votes and support for Native-owned casinos has faced disproportionately harsh

⁴⁰ Joseph E. Brennan. Personal letter to Rep. Gerald Talbot. Jan. 3, 1975. *The Donna Loring Papers*.

⁴¹ Donna Loring. Personal Interview. Mar. 31, 2012. University of New England, Portland, ME.

opposition (always put to a vote) as opposed to state-owned casinos such as Hollywood Slots in Bangor, which was subject limited social approval.⁴²

As if this wasn't enough to stymie efforts by Native Americans to derive equal voice throughout the legislative process, the state of Maine for decades forced the "services" of Indian Agents upon tribes in an effort to prevent, as previously described, legislation and/or Tribal issues from ever taking hold in the legislature. To be sure, this does not preclude Tribal Representatives from affecting change (surely Representative Loring serves as a shining example of what *powerful individuals* with a will to affect change can do, as she was the sponsor of the Maine State Education Act—a piece of legislation signed into law requiring the teaching of Penobscot, Passamaquoddy, and Maliseet culture and history in Maine schools), however it does make the process immensely arduous and inconvenient- in complete contrast to the freely offered, constitutionally supported rights afforded to non-Native citizens.

The effects of disallowing a group of people—people recognized as independently sovereign by the U.S. Constitution no less!—to vote is devastating to their ability to properly interact with the governmental system at hand. A parasitic relationship is formed, where power is derived, extracted, and concentrated in the hands of one group over another. Since its inception in 1820, the state of Maine has operated in this quasi-democratic fashion, allowing its Native citizens to have a voice, but providing no means of publication for it. The reason? "The state did not believe that the Tribe(s) could handle their own affairs..."⁴³ Despite the historic refusal of the legislature to allow Tribal Representatives a vote, there have been advocacy groups aiming for such rights. The response is always the same, if masked differently each time the issue is

⁴² *Ibid*

⁴³ Gail Rae Carter, *History, Ethics and the Wabanaki*. (Donna Loring Papers. Teaching Academy curriculum model. 1990), p. 2. *The Donna Loring Papers*.

addressed. More dated responses included a refusal to allow Indians to handle their own affairs for fear of their inability to govern themselves, while more modern qualms rest on the Constitutionality of the issue. Modern skeptics of these rebuffs of Native legislative equality claim that “(these) type(s) of arguments appear to be used exclusively by the ‘haves’ when the ‘have-nots’ threaten to unseat previous patterns of dominance... (these arguments have been) used against Blacks, women, domestic minorities, and for maintaining countries in colonial or semi-colonial status.”⁴⁴

Again, the Foucauldian critique is applicable and striking in its proficiency to moderate these injustices. Foucault makes the summation, in one of his arguments, that the evolution of punishment has gone “from being an art of unbearable sensations... to become an economy of suspended rights.”⁴⁵ Clearly, in this case the Foucauldian view that punishment, when institutionalized, must be “regarded as a political tactic” embodies the issue at hand. Thus, the legislative processes in Maine, while unique in their affordance of Tribal Representation to Native Americans, are revealed to be yet another mechanism through which the interests of those in power (whites) are able to subdue the political efficacy of those minority groups who threaten to unseat incumbent regimes of racially-based power. In relation to the issue of racial disparity amongst incarcerated individuals, we see that Alexander’s racial caste system is affirmed, and Native American people are made to be second-class citizens within the Maine justice system.

Compromising Native American Youth: Cultural Genocide

Perhaps more unsettling than any other form of control exercised by the state of Maine in creating unfavorable socio-psychological conditions for Native Americans has been the

⁴⁴ Bob Reuman. *The Land Claim is an Old One*. p. 8. *The Donna Loring Papers*.

⁴⁵ Michel Foucault, *Discipline & Punish: The Birth of the Prison* (New York, NY. Vintage Books, 1995), p. 11.

compromising of their youth. For decades, the state of Maine (until as recently as 2001⁴⁶) perpetuated both the practices of controlled Native education as well as the coordinated removal and relocation of Native children from their homes into foster care. Beginning with educational control, the state of Maine has a long-seated history that entails a variety of laws and programs designed to limit the publication of Native American culture, religion, language, and history in classrooms across the state- particularly to Native children. For the greater part of Maine's statehood, "Indians were...denied a free public education (and) schools on (Indian Island) were run by the church, and therefore (were) not public schools."⁴⁷ As a result, not only was education for Native American students filtered through the religious doctrine of an alien culture to the point of exclusivity, but tuition was required- a burden that many Native families could not afford.⁴⁸ The resulting circumstance produced was that, from 1820 until the mid-1950's, the majority of Native Americans in Maine were denied the basic right of education, one to which all children are entitled through Grade 12. Worse yet, what education Native American youth *did* receive was costly, exclusively religious in its nature and scope, and void of any mention of the personal history and culture of the students themselves. In effect, "the delivery of educational services became a tool to promote assimilation and led to a paternalistic, rigid, militaristic schooling that had as a goal the destruction of Indian family and tribal structures."⁴⁹ Through the denial of Native American students to learn about their own culture and racial struggles, the state of Maine acted, in effect, to commit cultural genocide.⁵⁰ At the most vulnerable circle of their community- their children- Native American people were suffering the erasure of their personal

⁴⁶ Donna Loring. Personal Interview. Mar. 31, 2012. University of New England, Portland, ME.

⁴⁷ Gail Rae Carter, *History, Ethics and the Wabanaki*. (Donna Loring Papers. Teaching Academy curriculum model. 1990), p. 3. *The Donna Loring Papers*.

⁴⁸ *Ibid*

⁴⁹ Joan LaFrance, *Indian Education in the Eighties* (Arlington, MA. Donna Loring Papers), p. 4.

⁵⁰ Donna Loring. Personal Interview. Mar. 31, 2012. University of New England, Portland, ME.

culture, knowledge, and struggle. This is and continues to be a disgustingly blatant invalidation of Native American culture for which the state of Maine has yet to apologize.

The question thus becomes- if American children are spoon-fed, at every level of their public education, volumes of history regarding the founding of the United States, what interest did the state of Maine have in suppressing the true history of its Native American citizens?

Again, Foucault's post-modernist critique of institutions, particularly schools, is resoundingly relevant. Foucault, in his analysis of educational institutions spoke of a hierarchizing penalty- which essentially argues the embodiment of the separation of pupils (students) based on their aptitude for academics.⁵¹ In the case of Native American students, the Foucauldian mechanism of hierarchizing penalty is directly applicable as Native American students who, for more than a century, were deliberately and forcefully penalized via educational segregation. With regard to "hierarchizing penalty," Foucault writes: "it distributed pupils according to their aptitudes and their conduct, that is, according to the use that could be made of them when they left school; it exercised over them a constant pressure to conform to the same model, so that they might all be subjected to 'subordination, docility, attention in studies, and exercises, and to the correct practice of duties and all the parts of discipline.' So that they might all be like one another."⁵² When considered against the reality of Native segregation in education, Foucault's observation has profound and astounding implications. It becomes clear that the state of Maine, in creating private, church-led schools for Native children actually established a form of institutionalized control that, for decades, has perpetuated a negative self-

⁵¹ Michel Foucault, *Discipline & Punish: The Birth of the Prison* (New York, NY. Vintage Books, 1995), p. 182.

⁵² *Ibid*

image for its students or deprived them the opportunity to discover their cultural self-image altogether.

The internalization of subjugation again comes into play, as Native students are made to feel inferior, are conditioned to *be inferior* in their post-schooling endeavors, and are perceived to *behave in an inferior manner* as a class of citizens. Through control of Native education, Maine has acted to disenfranchise Native children for over a century by disallowing them to learn about the inner-workings of their own culture and heritage and, in its place, forcing them to conform to societal “norms” that are designed to reject them from the outset.

More disturbing has been Maine’s repeated history of utilizing Child Protective Services to “aid and assist” children living in Native homes. Extending into the at least the year 2001, Maine state officials assigned to the department of child services would frequently extract Native children from their homes and relocate them with foster families.^{53, 54} As a result of this “service,” hundreds of Native American children in Maine were taken from their parents and from the tribal lands where their Native culture was practiced. Most disturbingly, this practice extended into the 21st century, specifically regarding the taking of Maliseet children from their tribal lands in Houlton, Maine. For a five-year period extending into 2001, the Houlton Band of Maliseets lost some 29 Native American children to CPS custody.⁵⁵ According to tribal authorities, children “walking down the street in their towns” were taken into custody and adopted into white foster homes “for their betterment.”⁵⁶

⁵³ The reason behind this practice remains unclear to this day, and as a result the state of Maine has *just* recently (within the last year) begun a Truth and Reconciliation process with Native Americans in the state to determine the reasons as to why such tragedies occurred.

⁵⁴ Donna Loring. Personal Interview. Mar. 31, 2012. University of New England, Portland, ME.

⁵⁵ *Ibid*

⁵⁶ *Ibid*

Unfortunately, but not unpredictably, a large number of the children adopted into foster homes suffered horrendous sexual, mental, and physical abuse at the hands of their foster families. Despite the complaints of many former-adoptees, this practice has persisted for decades. Now leading the Maine Truth and Reconciliation process, Native American and former adolescent adoptee, Denise Altvater is an advocate for individuals who, like herself suffered immensely under this system of youth relocation comparable to the Aboriginal Assimilation program carried out in Australia during the 18th and 20th centuries. Altvater's experience as a former adoptee is harrowing:

“When I look back at my experience- you can pretty much take what happened to me and (use my experience) to look at what happened to many Native people across the country. I have six sisters. We were very young, very isolated on the reservation and they came and took us. They threw our clothes in garbage bags and took us away in a station wagon. I had never been in a car before in my life. I didn't know where I was going- they just kept driving, driving, driving, driving. So, there was so much trauma *just in the taking*. If nothing else had happened- that trauma- I felt like...to me I didn't know anything but the reservation, and I thought my world was gone. And I didn't know where it went. My mother disappeared. My older sister disappeared, and nobody ever said anything. So when we got into the foster home, for me it was a torturous experience for four years of what they did to us. It's a miracle that we actually survived four years in that place; I don't know how these people thought up some of the things they did to us.”⁵⁷

Altvater's experience is shared by many Native American adults currently living in Maine today, as evidenced by the TRC Program.⁵⁸ While the mission of the program is to reveal the reasons for *why* Maine officials relocated children to homes that were decidedly *opposed* to the well-being of Native children, it also has offered survivors like Altvater a unique perspective.

“I learned through the TRC process that my grandfather had been in Carlisle School in Philadelphia- and I didn't know that. It kind of makes sense, when I heard what happened, how he raised my mother- I understood a little bit more about why my mother did what my mother

⁵⁷ Denise Altvater. *Truth and Reconciliation in Maine: a Model of Collaboration and Process of Decolonization*. Donna M. Loring Lecture Series. Lecture. University of New England, 2011.

⁵⁸ *Ibid*

did (raising me). So I started having children and I couldn't parent my children. I had nothing to give them. I had no love. I had nothing. There was nothing in me to give to my kids. And then they started having my grandchildren. So when you look down the generations from my grandfather to my grandchildren, you can see the historical trauma has just moved right along because nobody ever talked about it."⁵⁹

This observation, offered by Altvater, is perhaps the single most important contribution that has been made to understanding the implications of the compromising of Native American youth in Maine. Stemming back decades ago to the institutionalization of Native Americans at the Carlisle School, Altvater notes that the power structure established to control, assimilate, and “educate” Native children, is actually a system of repression that promotes the degradation of their emotional stability and viability as future parents and productive citizens. As a result, Altvater’s observation of the historical lineage of institutionalized child abuse perpetuated by the state of Maine through educational “reform” and child services bridges the divide between familial struggle (an inability to parent and raise productive citizens as a result of one’s own misfortunes) and susceptibility to criminal behavior. It is no wonder, then, that Native Americans are incarcerated at alarming rates in Maine when the Native American population has been historically traumatized, thus producing a legacy of mental, emotional, and social hardships which function to condition young Native Americans in the same mold. Race becomes a non-factor when this type of suffering is considered. Regardless of race, any human being would find it entirely impossible to overcome the legacy of such deeply-engrained practices designed to plant the seeds of generational dysfunction and disenfranchisement. From the Foucauldian perspective, this is punishment manifested as a complex social function designed to be passed along, like some perverse gene, through generations.⁶⁰

⁵⁹ *Ibid*

⁶⁰ Michel Foucault, *Discipline & Punish: The Birth of the Prison* (New York, NY. Vintage Books, 1995), p. 23.

Institutionalized Control of Tribal Lands

The final mechanism identified in this thesis which serves to disenfranchise Native Americans living in the state of Maine is the persistence of state governmental involvement with tribal lands as a form of institutional control. For Foucault, nothing was more characteristic of institutionalized punishment and control than was the formation of *physical, architectural properties* designed to force the body of the condemned into submission.⁶¹ According to Foucault some “architecture is no longer built simply to be seen...but to permit an internal, articulated, and detailed control- to render visible those who are inside it; in more general terms an architecture that would operate to transform individuals: to act on those it shelters, to provide a hold on their conduct, to carry the effects of power right to them, to make it possible to know them, to alter them.”⁶² In this distinct way, it is clear that Native American lands in the state of Maine are susceptible to becoming mechanisms of empowerment for those in power. Controlled physically, sometimes legally, and always socially, these lands and the people who live on them are constantly subjected to (often) unjust authority and decree of the state.

The institutional manifestations of control and interference with the sovereignty of tribal lands as perpetuated by the Maine State Government present themselves aptly at this time. Surely, Foucault’s discourse on the controlling properties of architecture in the context of modern punishment were made in reference to actual prisons, however, the theoretical value of this contribution is transferrable to tribal lands as well, as both structures are state-monitored, state-involved facilities designed to control given populations of specific groups of people. In Maine there are two *primary* locations where a majority of Native American populations can be

⁶¹ *Ibid* p. 148

⁶² *Ibid* p. 172

found- Indian Island near Old Town (home of the Penobscots) and the Princeton tribal lands at Indian Township (home of the Passamaquoddy). These tribal lands should be viewed as a mechanism of power-relations in the context of the causality of racial disparity in Maine due to the vast number of restrictions and conditions placed on the individuals who live within their territories.

To begin, contemporary tribal lands in Maine share some distinct similarities with the ghettos described by Alexander in her critique of the racial disparity amongst American inmates today. Like the ghettos, these lands are fixed areas, of government design and decree (the state of Maine ordered Native Americans to settle down into permanent tribal lands by law), that are home to a near-exclusive racial class of citizens. Moreover, tribal lands, like ghettos, are widely known to harbor inhabitants with lower life expectancy than that of the general population, offer limited access to transportation, produce little to no economic activity, as well as represent disproportional levels of alcoholism, depression, and *detected* criminal activity (that is to suggest that society outside of tribal lands is just as likely- if not more- to represent these maleffects, however detection of them is far less patrolled and examined). These similarities are no coincidence; like the ghettos which Alexander examines, tribal lands in Maine are too the products of governmental neglect and malevolence.

Like disenfranchised blacks inhabiting the bulk of American ghettos, many Native Americans in Maine have little choice in the matter of living on tribal lands. A recorded conversation in 1977 between professors Robert Rueman, Willard Walker and former director of the Maine State Housing Authority, James Mitchell, regarding the then-recent land claim brought to federal court evidences a definitive factor in decision Natives make to reside on tribal lands:

“State services have only been given to those Indians on reservations in Maine.”⁶³ While it is of note that many Native Americans cite immersing themselves within their community’s culture and preservation of their people as a reason for gathering on tribal lands, what cannot be ignored is that many Native Americans often choose to live on these lands in an effort to extract what little state benefits are afforded to them beyond traditional welfare and medicaid. There exists, then, a compelling similarity between the historical genesis of American ghettos (“the result of G.I. Bills which allowed whites to escape the projects but kept African Americans in the inner-city because of government programs...claiming not to have the money to lend them”) and tribal lands in Maine. Both are, historically speaking, the result of a governmental design purposed to confine and control target groups in a specific area.⁶⁴ The inhabitants are thus compelled by incentives beyond their ability to refuse or limitations beyond their ability to overcome, to stay.

The irony of the situation, however, is that the trade-offs for state assistance are possibly more severe than the rewards for Maine Natives living on tribal lands. For example, Donna Loring, in a speech on economic injustice within Maine, noted that living on tribal lands often precluded (until recently) tribal members from: “securing bank loans for home buying, VA loans, business enterprises, home repair, auto loans, and keeping monies within the Native communities.”⁶⁵ As recently as the 1960’s and even late 1980’s, it was common practice for Maine state officials to deny Native Americans items and services that, for other white citizens, were commonly distributed. For example, one letter from the Maine State Housing Authority, dated May 11, 1989 and addressed to Penobscot Indian Nation Governor Francis Mitchell from

⁶³ Mitchell, Walker, and Reuman. *Recorded conversation regarding Indian Land claims in the 1970’s-1980’s*. August 27, 1977. China, ME. *The Donna Loring Papers*.

⁶⁴ Chisom & Washington, *Undoing Racism: The Philosophical Basis for an Equitable and Just Society* (New Orleans, LA. The People’s Institute for Survival and Beyond, 1996), p. 20. *The Donna Loring Papers*.

⁶⁵ Donna Loring. *Lecture Notes: Series 5, #12. The Donna Loring Papers*.

the Director of the Housing Authority, cites “unfortunate decisions” facing the MSHA which forced them to recall some \$108,835 of Housing Preservation grant monies from the Penobscot community because it had been “obligated for nearly two years without being used” causing MSHA to “assign (said funds) to a community able to utilize them immediately.”⁶⁶ No mention is made of possible (and likely) Penobscot intentions to gather funds for a large-scale project and, despite the MSHA’s observation of the “clear needs” of the Penobscot Nation, the funds were still withdrawn without reservation.

Perhaps more shocking are the personal accounts kept by Native Americans living on tribal lands as recently as the 1960’s who, channeled through their “Indian Agents,” requested supplies for the purposes of basic hygiene and survival, and were denied such privileges. One letter, dated January 1963 reads:

“Dear Sir,

Will you please help me? I need wood badly. I have been asking for wood since first of November from Mr. Hall the Indian Agent looks to me he is not going to give me any.

I’m nearly seventy years old and I like to live by myself. I had to go to my next door nabor (sic) after the big storm to keep warm. And I cannot afford to buy my wood what little I’m getting.

So please help me.

Thank you

from M.S.”⁶⁷

⁶⁶ Elisabeth H. Mitchell. MSHA letter to Penobscot Governor Francis Mitchell. May 11, 1989. *The Donna Loring Papers*.

⁶⁷ M.S. (identity protected). Personal letter to Department of Indian Affairs. Jan. 1963. *The Donna Loring Papers*.

The extensive records in which this letter was found had no record, nor indication, that Ms. S's letter was ever answered by the Department of Indian Affairs in Augusta or that she was ever the recipient of the heating wood she had requested.

A similar letter, dated November 1963, reads:

"Dear Mr. McClay (Director of Indian Affairs),

I wonder if there is a toilet set, flush and water tank in the vast city of Augusta, that you could let me have?

My flush works by putting a pale of water (in), it flushes down. My water tank has been broken for 3 or 4 years. I can't seem to get enough to buy a new set.

Do let me know what you can do.

*Truly, M.N."*⁶⁸

The response (according to the records in which the letter was found) issued to Ms. N was directly from then-Director of Indian Affairs Paul McClay. In his response, Director McClay notes that "(a)ll requests for any type of aid or assistance should, of course, be directed to Mr. Hiram Hall, Indian Supervisor. However, there are no provisions in our appropriations for the furnishing of such items."⁶⁹ Director McClay goes on in his response to Ms. N to write that "(i)ncidentally, I note from State Office records that you did not re-apply for Medical Aid for the Aged when your previous application expired on June 30, 1963 and I would suggest that you obtain an application from Mr. Hall and re-apply in the event that you may be in need of hospitalization within the next year."⁷⁰

⁶⁸ M.N. (identity protected). Personal letter to Paul D. McClay, Director of Indian Affairs. 21 Nov. 1963. *The Donna Loring Papers*.

⁶⁹ Paul D. McClay. Official response to M.N. regarding request letter to DIA. 27 Nov. 1963. *The Donna Loring Papers*.

⁷⁰ *Ibid*

In response to a request for a working septic system -a necessity afforded to the majority of Maine citizens in 1963- Ms. N was denied services; referred to an “Indian Supervisor” who, records show, failed to fulfill his duties to supply necessary materials on one other such occasion; and also “reminded” to reapply for Medical Aid for the Aged, should she require hospitalization. Seemingly threatening and utterly ineffectual, response to Ms. N’s interaction with the Department of Indian Affairs embodies the typical scenario for many Native Americans living on Maine tribal lands in recent decades.

Ultimately, it is difficult to investigate the subject of Maine’s tribal lands without drawing a connection to Foucault’s discussion of architectural domination. As evidenced by the preceding letters, Maine State Housing Authority interaction, and government compulsion to inhabit tribal lands, it is increasingly clear that these residential areas exist for reasons beyond tribal sovereignty or “reparation for lost territory” as the state sometimes claims. Rather, tribal lands (whether designed for this purpose or no) have been utilized in a manner that allows the state of Maine to regulate the population distribution of its Native American citizens. With regard to disproportional racial incarceration, this has drastic effects as the trends observed by Michelle Alexander regarding increased yield of minority inmates due to the existence of ghettos are directly applicable to Native Americans and tribal lands. It is a fact that these lands are more heavily patrolled (by agencies such as CPS) than others in the state of Maine. Put simply, tribal lands have acted as a mechanism to embolden and produce the mal effects of the three aforementioned mechanisms of subjugation: historical disregard, the compromising of Native American youth, and legislative impotence.

It is because Native Americans are concentrated on tribal lands that the compromising of their youth- the extraction of their next generation of intelligent young minds- is so troublesome.

Without properly educated (requiring exposure to their unique cultural heritage), progressive future generations, what chances does *any* society stand for improvement of their social condition? It is because Native Americans are concentrated on tribal lands that they are far less likely to run for legislative office outside of tribal positions, thus continuing a political tradition of vote disallowance for their community. It is also because Native Americans most densely populate remote, Maine tribal lands that the outside communities in contemporary Maine society remain relatively unaware of their existence, and thus remain ignorant of the historical disregard and subjugation that has plagued these people for centuries.

CONCLUSIONS

Heretofore examination of racial disparity in Maine prisons as it relates to Native Americans within the state has been sparse, at best. Of the very little that *has* been published examining this issue, no research has attempted to provide legitimate evidence of the causal relationship between social systematic disenfranchisement and disproportional incarceration. As such, this thesis has made it a prerogative to fill-in the gap of information that serves to explain the correlation between social stultification of Native Americans in Maine and the congruent racial disparity that plagues Maine's penal system. As there is no academic precedent for narrating the correlation between social disenfranchisement of Native Americans in Maine and racial disparity in the state's prisons, this thesis has sought the establishment of legitimacy behind these claims. At the very least, this thesis has served to establish at least some social interest in a crisis that, outside of the Maine Native American community, is relatively undiscussed. If nothing else at all, this thesis may be considered to have served its purpose if just

one person who, previously unaware of the existence of, or the extent to which social disenfranchisement of Native Americans in Maine has impacted their overrepresentation in Maine's prison system, is made to examine the evidence, be it empirical, historical, or theoretical.

Ultimately, the four afore-examined mechanisms act in a very specific and detrimental fashion in prohibiting the progression of Native people in the state of Maine. Their effect is to promote the power incumbency of the white majority population of Maine through continued, systematic disenfranchisement of both Native American and other minority people. More specifically, they act upon one another to produce the breeding grounds wherein forced, constructed criminalization of Native society is fostered- because as Alexander points out, disenfranchised minorities often turn to criminal activity as a means of *survival* once the general public has rendered them outcasts or societal systems of power have left them without other viable options afforded to the rest of the population. *In the end, the perpetuation of constructed criminalization and disenfranchisement through the overlap of generational experience within the parameters of these mechanisms remains the underlying reason why white society in Maine has been able to maintain its system of power and privilege at the expense of racial minorities, particularly Native American people.*

When the case of racial disparity in Maine prisons is examined amongst the backdrop of national trends, it stands out as unique. This is because, unlike the incumbent regime of white privilege that permeates the national theater, disparity in Maine's criminal justice system is predicated not on a *majority* basis, but instead by percentages. The resulting effect is the appearance of low incarceration levels amongst racial minorities in contrast to a high incarceration rate amongst the majority, white population. This illusion is one of the reasons that

the current system of racial disempowerment is socially permitted, allowed to persist. It is not viewed as a problem by greater society for both historical and facially deceptive reasons.

However, the reality of the situation is that Maine's miniscule minority populations provide for a greater-than-expected impact where minority inmate populations are concerned. As we have seen, minorities in Maine are approximately six times more likely to be incarcerated than their white counterparts.

The state of Maine falls under a comparable categorization to Alexander's prescription of the racial caste that plagues the American social theater. Unlike the national phenomenon that focuses on the subordination of primarily *black* culture, white superiority in Maine is directly related to societal perception and mistreatment of Native Americans. This is the result of the historical relationship between Maine and Native Americans, for Maine has not interacted with any minority group more so than Native Americans in appropriating a racially-based attack of sovereignty and social rights to feed and maintain a system of civic power-incumbency and retention.

Ultimately, white privilege in Maine is derived from a successful effort to continue to subliminally promote the antiquated image of the "savage Indian" to its general population through myriad social mechanisms and actions that serve to disenfranchise and promote the image of the "helplessly disenfranchised" as a supposed self-legacy of Native Americans in Maine. In the Foucauldian sense, this works to legitimize, for the public, the justification of a people's subjugation. For greater society, the institutionalized persecution of Native Americans becomes subliminally accepted because "they deserve it." In this very distinct way, the state of Maine has continued the progression of centuries of racial discrimination against the state's only true native population.

What we are faced with, in the end, is a complex web of interconnected, parasitic power relation mechanisms by which Native Americans have been institutionally and systematically disenfranchised by the state of Maine. As a result, a historical, psychological, and social condition has arisen which acts to appropriate poverty, deny access to adequate and truthful education, produce political impotency, and together, give rise to disproportional opportunity for incarceration of Native American citizens. *Collectively, these conditions establish the foundation upon which discriminate incarceration and racial disparity are fostered in Maine's criminal justice system.* Permeated by the mal effects of such conditions on a variety of levels, it is no wonder minorities in Maine, specifically Native Americans, are at significantly greater risk for being processed by the criminal justice system. Ultimately, the effects that these circumstances have on conditioning Native Americans into disenfranchisement and subsequent criminality are undeniable.

The racial disparity that exists today in Maine prisons is the direct result of the civic death forced upon minorities by the state government over decades of institutionalized subjugation. To disregard this correlation is the root cause of the problem as it exists today. For, institutionalized subordination of a "race" of humans is not appropriated without public complacency. Complacency empowers this system of reserved privilege. In the end, the words of Indian philosopher Jiddu Krishnamurti are well-applied to societal acquiescence in the face of institutionalized racism: "it is no measure of good health to be well adjusted to a profoundly sick society." Without this fundamental understanding, Maine society, like that of the United States, is forever doomed to continue perpetuating injustices against those racial minorities who have no choice but to call contemporary America "home."

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