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Latino/a Mass Incarceration in relation to the “War on Drugs”

I. Introduction

There is a widespread view, promulgated by the media, that America has ended racial inequality. The election of Barack Obama as president of the United States seems to have officially marked the end of an unequal nation. A contrary view was expressed, however, by Michelle Alexander, who argues in *The New Jim Crow* that mass incarceration is the modern way of maintaining a racial caste system that was believed to have ceased with the death of the Jim Crow laws. However, Alexander’s research solely focused on data for African American men. The limits of her thesis are explored in this research in relation to Latino/a populations in America. She put it best when she stated in her book, “This book focuses on the experiences of African American men in the new caste system. I hope other scholars and advocates will pick up where the book leaves off and develop the critique more fully and apply the themes sketched here to other groups and other contexts” (16).

This essay analyzes the state and federal data collected by major government agencies for the state of Wisconsin. The analysis concluded that the data for Latino/a Americans drug arrests and conviction is drastically insufficient or incomplete. This deficiency of data leads to a significant discovery within the American legal context. It exposes the American legal system’s tendency to define race in binary terms: black and white. America has a multiracial diversity and this dichotomous paradigm forces other minority populations into a struggle for legal identification. Latino/a Americans are particularly affected by this racial binary because they can

legally identify themselves as “white” or “black,” yet do not share the privileges of either. This research explores how empirical government data and Alexander’s work reproduces the tendency of the American legal system to define race in binary terms. Furthermore, the deficiency of Latino/a American data and statistics in Wisconsin for mass incarceration reflects the deficiency of Latino/a academic research for mass incarceration nationwide.

II. The War on Drugs

As Alexander points out, many Americans are unaware or misinformed about the war on drugs for several reasons. First, since the war began in the 1970s, several generations of Americans were not present when the media coverage was prevalent and politicians publicized it. Second, following the events of 9/11, the public coverage of the war on drugs was largely overshadowed by the contemporary “War on Terrorism.” As Alexander cunningly states, “Crack is out; terrorism is in”(176). Lastly, the war on drugs has integrated into American society so well over the past decades that it has become a norm in our culture. This is demonstrated by the modern use of colloquialisms such as “crack babies” and “crack moms,” which were actually sensationalized terms introduced by the media during the coverage of the war in the 1970s (Alexander 173-176). Given these points, it is important to understand the war on drugs and its origins as it is the foundation of Alexander’s thesis.

Prior to the official enactment of the war on drugs in 1971, the origin of the war has roots that extended nearly a hundred years. In the early 19th century, anti-opiate laws explicitly targeted Asian immigrants in America that were fueled by anti-Asiatic attitudes (Boyd 45). For example, as early as 1875, San Francisco enacted ordinances to prohibit the use of opium smoking and other cities afterwards continued by drastically raising tariffs on opium to

discourage use (Boyd 45). The anti-opiate laws culminated with the Harrison Act, passed in 1914, which severely taxed imported opium and created strict regulations to the possession and use of opium based on the irrational fear that Chinese immigrants were creating a society of drug addicts (Browning 111). However, opium was not the only drug that received scrutiny from the government. Around the same time the government was cracking down on opium in the early 20th century, cocaine use was becoming controversial in America as it evolved from an exclusively “white” drug to an African American drug. According to Michael J. Reznicek in *Blowing Smoke*, cocaine was a popular non-medicinal agent in America in the late nineteenth century (35). Several products were sold that contained cocaine, such as cocaine laced cigarettes made by Parke-Davis, Coca-Cola beverages, cocaine wine from Vin Mariana, and even syringes with a small dose of the substance were sold by Sears & Roebuck (Reznicek 35-36). However, in 1900, when the *Journal of the American Medical Association* proclaimed that blacks were becoming increasingly addicted to cocaine, white Americans raised public concern over the use of the substance (Reznicek 36). As a consequence, anti-cocaine ordinances were included alongside anti-opium ones in the Harrison Act. The U.S. Treasury also generated revenue from the high taxes imposed by the Harrison Act and was able to keep track of narcotics more efficiently (Reznicek 37). Additionally, anti-marijuana ordinances appeared as early as the 1920s and were fueled by antipathy towards foreigners because marijuana was considered a Mexican drug (Reznicek 37). Furthermore, states began to categorize marijuana as an addictive substance in 1929, and in 1937 the Marijuana Tax Act, similar to the Harrison Act, was passed federally (Browning 116). Up to this point, the racial affiliation of a drug in America had more of an impact on its legality than its potential health risks. This paradigm becomes problematic because it encourages a punitive approach as opposed to a rehabilitative one. A punitive approach

addresses the breaking of the law, in regards to drug abuse, as oppose to a rehabilitative approach that actually addresses drug abuse itself. Rehabilitate approaches to drug abuse are proven to be more effective in treating drug abuse (Iiyama, Setsuko, and Johnson 18-19). An Institute of Medicine put it best when they stated, “When policymakers view drug abusers as untreatable or undeserving of public support, treatment programs, and research and training programs may be underfunded” (Reznicek 63). Most importantly, the punitive approach that America has adopted leads to incarceration of minorities targeted by these unequal drug laws and policies.

Furthermore, it justifies harsh policies, such as the Narcotic Drug Control Act of 1956, which contain extreme punishments for drug offenses. Under its provisions, the punishment for the sale of narcotics to minors was anywhere from a minimum of ten years in prison to death (Browning 117). Most importantly, the punishment paradigm set up the perfect platform for the Nixon administration to declare the “War on Drugs” in 1971.

Under the Nixon administration, America witnessed the official enactment of the war on drugs come to fruition. It was formally described by Nixon as a federal policy initiative to combat drug abuse and reduce drug trafficking in America. According to Frank Browning in *Smack*, Nixon was inspired by the popularity that John Lindsay, former Mayor of New York and member of Congress, was receiving when he acknowledged drug abuse as a problem in the United States (106). At the time the general public had an unrealistic notion of drug abuse which was purported by government officials such as Harry J. Anslinger, head of U.S. Federal Bureau of Narcotics, who linked drugs like marijuana to immorality, crime, and insanity (Boyd 46). As a result, Nixon demonstrated his acknowledgement of the issue by submitting a drug control bill to Congress in the fall of 1969. That same year, Nixon appointed Robert Ingersoll as head of the Bureau of Narcotics and Dangerous Drugs who told a congressional committee, “ Our major

concern is with [drug traffic's] criminal aspects . . . A greater effort will be expended now and in the future to apprehend and prosecute major drug traffickers and also to prevent the violation of the drug and narcotic laws, especially among the young, the naive, and ordinary law-abiding public" (Browning 119). The following year, the Bureau of Narcotics and Dangerous Drugs budget nearly doubled (Browning 120). The drug control initiative was not, however, limited to the control of the Bureau of Narcotics and Dangerous Drugs. Nixon created and approved funding for several agencies in 1973, the same year he was running for reelection, such as the Drug Enforcement Administration (DEA), the National Household Survey on Drug abuse (NHSDA) and Monitoring the Future (MTF) (Robinson and Scherlen 28) . .

A shift in the drug control paradigm took place during the Ford and Carter administrations. Following the resignation of Nixon, the Ford administration took a minimalistic approach to drug control given the public's increasing acceptance of drug use and the realization that drug abuse was not the epidemic that Nixon portrayed (Musto and Korsmeyer 140). The Nixon administration left a conflicted and disheveled cabinet bureaucracy for the Ford administration to reorganize (Musto and Korsmeyer 143). After realizing that many of the problems were linked with the drug enforcement agencies created by Nixon, Ford termed his new governance the "new realism" in which he deemphasized the criminalization of drug abuse (Musto and Korsmeyer xix). Following this new strategic governance, the Carter administration also deemphasized drug abuse. Peter Bourne, psychiatrist and Carter's head advisor on drugs, played a large role in Carter's reluctance to revive Nixon's war on drugs. Borne, like many of his contemporaries in the drug field, were beginning to accept that to a degree recreational drug use was inevitable (Musto and Korsmeyer xx). It was Borne's hope, as well as Carter's, that the public would adopt this view without much opposition. However, during the final years of the

Carter Administration, a counter-revolt from parents who raised concern that their children should not grow up in a society with recreation drug use demolished the Carter Administration's efforts (Musto and Korsmeyer xxi).

The Reagan administration seized on the opportunity to exploit the public's negative sentiments toward drug abuse. Not only did Reagan revive the political rhetoric of Nixon's drug war, but he advanced the criminalization of drugs to a new extreme. In 1981, his administration lobbied for the revision of *posse comitatus*, a fundamental tenet of the American legal system that restricted military forces from policing a citizen's domestic domain (Robinson and Scherlen 29). That same year, new legislation was enacted that allowed the use of military forces for domestic policing on the basis of drug control (Robinson and Scherlen 29). Subsequently, in 1983 the Drug Abuse Resistance Education (DARE) program that originated in Los Angeles spread nationwide into the educational system to almost half the schools in the United States, even though studies have consistently demonstrated that the program is ineffective and at times even counter productive. The scholar Adam Clymer, in regards to the DARE program, commented, "That is, students who graduate from DARE are sometimes more likely than others to drink or do drugs" (Robinson and Scherlen 29). Moreover, First Lady Nancy Reagan began the "Just Say No" drugs strategy. Her campaign was publicized through almost every media outlet yet still proved as ineffective as the DARE campaign (Robinson and Scherlen 29).

However, Reagan's drug enforcement continued and in 1984 the Comprehensive Crime Control Act increased sentences for drug abuse violation, increased bail amounts for suspects of drug crimes, and facilitated money laundering investigations (Robinson and Scherlen 29-30). In 1986, the Anti-Drug Abuse Act demanded mandatory sentences for drug offenders and even more shockingly, mandatory life sentences for individuals that purported criminal enterprises.

Most importantly, in 1988 the Office of National Drug Control Policy was created. Scholars Matthew B. Robinson and Renee G. Scherlen both argue that the ONDCP proliferated the drug war with skewed statistics and unrealistic policies. Furthermore, they believe the ONDCP is one of the main reasons that the war on drugs survived when Reagan left office and still exists today (30-36).

III. Alexander's Thesis

With this in mind, now we will identify Alexander's thesis and the three main claims she uses to support it. As previously mentioned, her thesis argues that the Jim Crow laws were not abolished. She believes that they were transformed into an apparently neutral legal system that discriminates against minorities, specifically African American men, through drug laws. Accordingly, the way she believes that the government implements this regime can be broken down into three major constituents. First, she suggests that policies enacted by the war on drugs have given power to policing authorities to facilitate racial profiling. For example, police officers are trained to target urban areas where minority populations happen to be high. As Alexander states, "Known as the stop-and-frisk rule, the Terry decision stands for the proposition that, so long as a police officer has 'reasonable articulable suspicion' that someone is engaged in criminal activity and dangerous, it is constitutionally permissible to stop, question, and frisk him or her—even in the absence of probable cause"(62). Second, she believes that once arrested, minorities usually plead guilty or are convicted because of the fear of harsh mandatory sentences or legal misrepresentation. She asserts that, "Tens of thousands of poor people go to jail every year without ever talking to a lawyer, and those who do meet with a lawyer for a drug offense often spend only a few minutes discussing their case and options before making a decision that

will profoundly affect the rest of their lives” (83). Lastly, Alexander terms the most salient aspect of her thesis the “prison label” (92). Once an individual goes through the penal system they are permanently kept in lower class status because of the negative stigma associated with the prison label. Felons are disenfranchised, subject to discrimination from potential employment, and excluded from government aid such as financial aid for college. This unfortunate disposition is what maintains the racial caste system because it only allows the felon to reintegrate into society as a lower class member (Alexander 58-94).

However, her research in *The New Jim Crow* tends to only corroborate African-Americans, as was previously mentioned, even though several times in her book she mentions how “black and brown” are affected by mass incarceration such as in page 190 when she states, “It [mass incarceration] achieves racial segregation by segregating prisoners-the majority whom are black and brown- from mainstream society.” There is several examples and evidence throughout her book to substantiate this claims for “black” African Americans. Unfortunately, there was no mention of statistics or data to support this claim for the “brown” Latino/a populations. The following sections address this issue.

IV. Methodology

It is important that we take into consideration the reasons why we will be focusing on the state level as oppose to the federal level to gather data for the Latino/a populations in relation to Alexander’s thesis. First, drug abuse and control has always been the responsibility of each state and the federal government only recently intervened with federal policies that accompanied the war on drugs. Figure 1 below lists the varying racial disparities in 2003 and demonstrates that different states have vastly different rates of racial disparities. This indicates that drug violations

are still largely contingent on the particular regulations of each state even though federal drug policies have been enacted. Second, if in fact mass incarceration is “The New Jim Crow” than it is even more important to remember that Jim Crow laws, like drug laws, were regulated at the state level. This is one of the many reasons that there was no official end to the Jim Crow Laws. Alexander notes how the end of the Jim Crow laws was unclear because their abolishment was largely due to a combination of many civil rights efforts against states, such as in 1949 when the supreme court ruled against Texas’s segregated laws schools. Additionally, in the case of *McLaurin v. Oklahoma*, the court declared that Oklahoma also could not segregate law schools (35-36). Therefore, by focusing on the state level we can conclude many things about how drug laws contribute to mass incarceration that we could not at the federal level.

One of the states that has one of the greatest racial disparities for drug arrests in nation is Wisconsin. Figure 1 demonstrates for every forty-black men is one white sentenced for violations.

Figure 1
This is a chart from the NY Times article, "Reports find Racial Gap in Drug Arrests" By Erik Eckholm, Published May 6, 2008

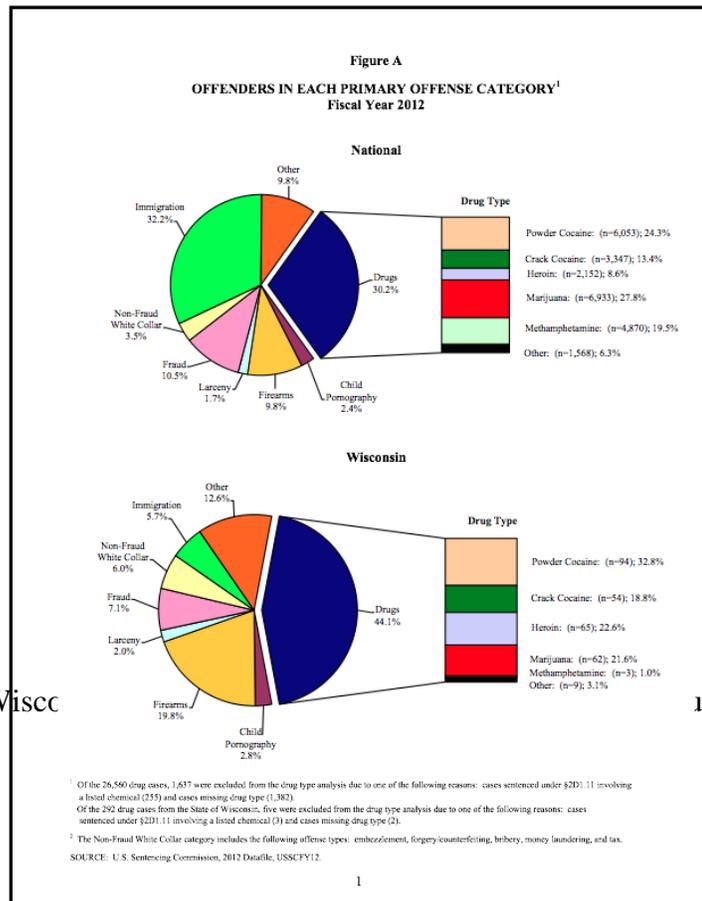


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Additionally, the United States

Sentencing Commission prepares a statistical information packet every year and the most current packet shows that Wisconsin is actually above the national average for drug offenders as is shown in Figure 2.

Figure 2
This is "Figure A" from the USSC that shows that Wisconsin is 14.1 percentage points above the nation for drug violations.



Wisc

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also noted that Wisconsin has the greatest racial disparities. The report concluded that:

The prison population in Wisconsin has more than tripled since 1990, fueled by increased government funding for drug enforcement (rather than treatment) and prison construction, three-strike rules, mandatory minimum sentence laws, truth-in-sentencing replacing judicial discretion in setting punishments, concentrated policing in minority communities, and state incarceration for minor probation and supervision violations (1-2).

Even Alexander recognized Wisconsin as a major location for racial disparities for drug convictions in *The New Jim Crow*. In one of her references, she illuminated the massive increase of drug arrests in Jackson County, Wisconsin (77). Furthermore, she also focused on an exposé by the *Capital Times* in Madison, Wisconsin on the conspicuous SWAT team expansion. The paper reported that although SWAT teams expansion was largely credited to anti-terrorism efforts, “they [SWAT teams] were rarely deployed for those reasons but instead were sent to serve routine search warrants for drugs and make drug arrests” (76).

Since Wisconsin demonstrates the highest racial disparities in drug arrests, data retrieval and analysis for the Latino/a populations in regards to drug violations in Wisconsin will, therefore, be the focus. With this in mind, I consulted the four major databases from the Bureau of Justice Statistics(BJS), the United States Census Bureau, the Wisconsin State Department of Corrections (D.O.C.), and lastly the Wisconsin Legislative Fiscal Bureau for evidence for Latino incarceration statistics. To commence, data retrieval for drug arrests was needed because, as already mentioned, that is the first indicator of racial discrimination according to Alexander’s thesis. The Bureau of Justice Statistics (BJS) was the first government database consulted for data on Latino American drug arrests in Wisconsin. The BJS offers five major sub-databases that include the Arrest Data Analysis Tool, FBI Uniform Crime Reports (UCR), Federal Criminal Case Processing Statistics (FCCPS), the National Victimization Analysis tool (NCVS), and the Prisoner Recidivism Analysis Tool to facilitate data searches among agencies for both federal

and state statistics. Starting with The Data Analysis Tool, the retrieval of data became problematic because after narrowing down the search criteria by crime (drug violations) and state (Wisconsin) a stalemate was reached when refining the search by race. The options were: White, Black, American Indian/Alaskan Native (AIAN), or Asian/Pacific Islander (API). It is quite astounding that a large demographic of the American population is omitted. Subsequently, under the UCR, the same problem was encountered as it listed the same limiting categories for race found in the Data Analysis Tool. The FCCPS also did not offer statistics for Latino/a Americans, yet did manage to include an extra race category that the previous two bases did not label "Missing/Unknown" which was inconclusive. No progress was made and unfortunately this trend held true for the two remaining sub-databases of the BJS.

The United States Census Bureau also proved to be inconclusive, in respect to Latino/a drug arrest data, because they derive their data from the BJS. However, the Wisconsin Department of Corrections (DOC) does provide some information, although it was not particularly useful for drug arrest data. In their 2012 Inmate Profile they reported the following demographics for males already imprisoned: 53% were White, 43% were Black, 3% were American Indian or American Native, and 1% were Asian or Pacific Islander. Additionally, for females they reported 65% were White, 29% were Black, 5% were American Indian or American Native, and finally 1% were Asian or Pacific Islander. Of all of these totals they reported 9% were of "Hispanic Origin." Lastly, the Wisconsin Legislative Fiscal bureau prepares the Informational Paper 57 that details several aspects of the state's adult correctional programs. However, it did not provide data for drug arrests but did provide a table, Figure 3, that included Hispanic as its own race for the Wisconsin prison population overall.

EXHIBIT B Race and Ethnicity	Exhibit B-1 2011-12 Prison Population				Exhibit B-2 2011-12 Prison Admissions				Exhibit B-3 2011-12 Prison Releases			
	Male % of	Total % of	Female % of	Total % of	Male % of	Total % of	Female % of	Total % of	Male % of	Total % of	Female % of	Total % of
White	8,783	41.2	776	31.9	4,524	46.1	207	26.3	4,599	47.9	307	39.3
Black	9,196	42.8	339	27.3	6,140	51.8	318	32.1	6,108	52.0	304	31.4
Hispanic	1,953	9.1	56	4.5	827	7.0	40	4.0	852	7.3	49	5.1
Asian	209	1.0	11	0.9	76	0.6	8	0.8	71	0.6	5	0.5
No Data	37	0.2	1	0.1	14	0.1	3	0.3	20	0.2	3	0.3
Total	21,478	100.0	2,481	100.0	9,821	100.0	792	100.0	9,570	100.0	776	100.0

Figure 3
Table from the Wisconsin
Legislative Bureau Information
Paper 57

The Wisconsin DOC and the Wisconsin Legislative Bureau do not help find drug arrest data specifically for the Latino/a population but, however, also demonstrate that they are at least part of the overall incarcerated population.

Moreover, it is important to also recognize how the media portrays mass incarceration in relation to drug-related racially disparities when there appears to be a lack of statistics offered for Latino/a populations in Wisconsin, the nation’s leader in drug related racial disparities. This article takes into consideration two national news publications, the *New York Times* and *The Nation*, to understand the media’s national portrayal of mass incarceration. There is an article by *The Nation* written in 2007 by Silja J.A. Talvi titled “Incarceration Nation” that gives offers statistics for how much American taxpayers give to the penal system, how many Americans are currently in the penal system, and even the likelihood of a black man going to jail. More importantly, it references racial disparities due to unequal drug policies such as the Anti-Drug Abuse Act but only emphasizes how African Americans were targeted by its anti-cocaine regulations. Furthermore, the article states that “the grossly disproportionate incarceration of people of color and poor people should be an urgent, front-burner issue for the country as a whole” but it does not reference any other minority except for African Americans (Talvi). For example, it discusses black civil rights organization’s fight for equality such as the NAACP involvement in the reversing of drug roundups in Tulia, Texas based on the unfounded

accusations of one police officer. No references or examples for the Latino/a population were made.

Then there is the *New York Times* that published an article in 2011 called “A Country of inmates” written by Albert R. Hunt. This article closely mirrors *The Nation* article; however, it does reference the Latino/a population in a unique way. The author states, “ More than 60 percent of the United States’ prisoners are black or Hispanic, though these groups comprise less than 30 percent of the population.” Notice the importance of the “or” that connects the black and Hispanic population in the previous quote. The rest of the article mentions several statistics corroborating black racial disparities in the penal system but offers zero statistics or data for Hispanics alone such as, “The U.S. prison population has more than doubled over the past 15 years, and one in nine black children has a parent in jail.” What is more, Michelle Alexander is cited in the article which makes one suspect if her book is where the news publication is basing all of its information. This becomes problematic because Alexander’s work does not cover the multiple populations of minorities in the nation, yet articles such as these generalize about all minority demographics from limited statistics and data.

V. Implications

The United States Census reported in 2008 that Latino/a Americans are the largest minority. However, major government databases in Wisconsin either ignored Latino/a populations altogether or reported very incomplete data. Patrick Langan, senior statistician of the BJS, prepared the report *Racial Disparities in U.S. Drug Arrests* that summarized his findings of racial disparities in the nation in connection with drug arrests. In his report he concluded that African American minorities were affected the most by drug related racial disparities. However,

he expressed concern about the validity of data offered by the government. Langan wrote, “Information on race is not 100% complete in available arrest statistics. To illustrate, in 1993, race was known in 86% of drug abuse violation arrests. The racial composition of the unknowns may differ from the knowns.” Accordingly, without data for Latino/a populations there can be only limited investigation conducted for Latino/a populations in relation to Alexander’s thesis.

With Alexander, government databases, and the media recognizing drug related mass incarceration as an exclusively black epidemic, it appears as if Latino/a populations have no place in this debate. However, in *Unequal Justice*, Coramae Richey Mann states in her critique of the FBI’s Uniform Crime Report, “The dubious validity of official crime measures has handicapped studies of crime and deviance and the scope of public policies they address” (Mann 27). In the case of Latino/a populations, the absence of data proves to be as important as its presence. The scholar Tom Romero brings to light a significant race issue within the American legal system. In Romero’s article, “Multiracial Ambivalence, Color Denial, and the Emergence of a Tri-Ethnic Jurisprudence at the End of the Twentieth Century,” he argues that American Jurisprudence has only defined race as either black or white. As an example, he describes how America overlooked the Latino/a civil rights movements of the 1960s and 70s, known in the Latino/a community as *El Movimiento*, that fought for equality and recognition Latino/a populations as a non-white and non-black race. Furthermore, Romero analyzes the *Keyes vs School District No. 1* case in 1973 in which Mexican American petitioners sought relief from the overt racial segregation in the Denver School district. Initially, the case was dismissed by the district court because it did not recognize the plea as a deliberate discrimination against African Americans. In this *post-Brown v. Board of Education* era, Mexican Americans paralleled their

discrimination with African American discrimination in order for the Supreme Court to finally recognize that, “though of different origins Negroes and Hispanos . . . suffer identical discrimination in treatment when compared with the treatment afforded Anglo students” (254). However, Romero explicitly points out that the court’s decision to recognize Latino/a as a distinct non-white and non-black group in *Keyes* has been ignored in subsequent rulings by grouping Latino/as and African Americans into one category (249-255).

VI. Conclusion

Alexander’s thesis argued that mass incarceration maintained a racial caste in America similar to the one during the Jim Crow era. Through the use of discriminatory drug laws that began with the “War on Drugs,” she believed minority populations have been legally targeted and imprisoned. Her research solely focused on African Americans; therefore, it was important to examine Latino/a populations in relation to her thesis. Wisconsin, the nation’s leader in racial disparities in connection with drug violations, was examined for government statistics corroborating Latino/a population’s role in mass incarceration. However, the limited availability of data from major government agencies proved inconclusive. Moreover, the implications for this deficiency of data brought forth an issue that goes beyond Alexander’s thesis and into the overall American legal system’s treatment of race. As Romero points out, America only recognizes race through binary terms: black and white. In light of this, Alexander’s research reproduces the tendency of the American legal system to define race in the binary terms of black and white. Additionally, news media outlets reinforce this idea because they derive their evidence from Alexander and statistical data that underrepresent Latino/a populations.

The findings of this research are but a preliminary endeavor into the legal construction of race, in regard to Latino/a populations. As this research attempted to demonstrate, future

research on the legal categorization of Latino/a populations is critically needed to analyze Latino/as role in relation to the war on drugs.

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