

2011

# Engendering Injustice: Drug Laws, Drug Economies, and the Marginalization of Women in New York State

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## Recommended Citation

McGee, Kate, "Engendering Injustice: Drug Laws, Drug Economies, and the Marginalization of Women in New York State" (2011). *American Studies Senior Theses*. 9.  
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Engendering Injustice: Drug Laws, Drug Economies, and the Marginalization of Women  
in New York State

Kate McGee

December 16, 2010

American Studies Thesis

Professors Aronson and Cahill

On November 8, 1983, Elaine Bartlett left her apartment in Harlem, and headed to Grand Central Station. There, she met her boyfriend, Nate. They were headed to the Monte Mario Hotel in Albany. To any bystander, they may have looked like any other couple. But Elaine Bartlett knew different. That's because she had a four-ounce bag of cocaine stuffed down the front of her pants. In 1983, Bartlett was a twenty-six year old woman with four children. A male friend, George Deets—although she knew him as Chris at the time—told her that if she delivered the drugs, she could earn \$2,500. Instead, she was caught up in a police sting, and she and her boyfriend were arrested for selling drugs. In January 1984, Bartlett and her boyfriend were convicted of an A-1 felony: 15 years to life. Bartlett's boyfriend had previously been to jail, but this was Bartlett's first confrontation with the law.<sup>1</sup> To understand the extent of that conviction, we must go back a decade.

It's now May 8, 1973. New York Governor Nelson Rockefeller is sitting in the Red Room of the Capitol, relishing in the moment that defined his term as governor: the signing of the Rockefeller Drug Laws. This stringent set of laws required judges in the state to automatically sentence a convicted individual fifteen years to life for selling two ounces of drugs or possessing four ounces of drugs. Those drugs were usually cocaine, heroin, and crack cocaine, when it appeared in the mid-1980s.

Historically, the Rockefeller's drug laws have been seen as “‘law and order’ crusades” that were a result of the “urban riots, rising crime rates and protest movements, especially by African Americans, of the 1960s.”<sup>2</sup> In early 1972, Rockefeller asked a

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<sup>1</sup> Gonnerman, Jennifer. *Life on the Outside: the Prison Odyssey of Elaine Bartlett*. New York: Farrar, Straus, and Giroux, 2004. Print, 14-22

<sup>2</sup> Kohler-Hausmann, Julilly. "'The Attila the Hun Law': New York's Rockefeller Drug Laws and the Making of a Punitive State." *Journal of Social History* 44.1 (2010), Print, 72.

random department store executive, William Fine, —a man Rockefeller met at a party whose son suffered from drug addiction—to go to Japan and discover why they had the lowest addiction rate of any industrialized nation.<sup>3</sup> When Fine returned home, his report included various aspects of the country’s anti-drug program, but “Rockefeller...fixated on a single component: life sentence for drug pushers.”<sup>4</sup> Fine also noted the Japanese’s view of the rights of the drug addict, reporting, “public interest is above human rights when it comes to an evil. In other words, it becomes a detriment to the public interest when there is drug abuse; therefore, the human rights of those who get involved in narcotics or push narcotics, are brushed aside quickly, aggressively and with little or no recourse.”<sup>5</sup> This event marked a distinct change in Rockefeller’s plans to solve the drug problem in New York.

These draconian laws were highly significant because they moved, “from a policy rhetorically committed to reintegrating drug addicts to a policy of social expulsion.”<sup>6</sup> Yet Rockefeller was not the only crusader for tough punitive drug policies. Julilly Kohler-Hausmann cites letters written to Governor Rockefeller that reveal a desire for stricter law and order. His mail, “blamed rising crime rates on the permissiveness of the courts and social programs, asserting a casual connection between newly won legal and social rights for marginalized populations and ‘worsening’ conditions in society.”<sup>7</sup> It was apparent to Rockefeller that people wanted change.

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<sup>3</sup> Ibid, 79.

<sup>4</sup> Ibid, 79.

<sup>5</sup> Ibid, 79.

<sup>6</sup> Ibid, 73.

<sup>7</sup> Ibid, 76.

Prosecutors praised these new laws, stating they gave them more leverage to get drug kingpins, using the lower level drug dealers who were caught up in the system as leverage. However, critics argued the laws gave those low level dealers unnecessarily lengthy sentences, and did not aid the war against drugs because the high level drug lords were still out on the streets while their minions continued to face arrests and convictions. In 1979, the laws were amended to reduce the penalties of drug charges against marijuana possession. However, the laws were reduced only for marijuana because it was, “ruining the lives of a great many middle and upper income white kids...”<sup>8</sup> The laws concerning drugs such as cocaine and heroin—drugs associated with inner city communities—remained the same.

The critics of these laws were not wrong about their fears about the types of repercussions the drug laws could produce. After their implementation, the increase in drug-related arrests and incarcerations increased exponentially. By the early 1990’s, sixty percent of federal prisoners were incarcerated for drug-related offenses.<sup>9</sup> However, these drug laws did not affect all those involved in drug economies on an equal level. Most times, low-level drug dealers were arrested at greater rates than kingpins. Those low-level drug dealers were predominantly poor, African American or Latinos, and many times, female. In 2002, there were 3,133 women in New York State prisons. 1,423, or 45% were incarcerated in those prisons for drug offenses. 80% of women who entered the state prisons in 2000 were convicted of non-violent drug or property offenses.

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<sup>8</sup> Gonnerman, Jennifer. "New York's Drug-Law Debacle." *The Village Voice* [New York] 12 May 1998. Print.

<sup>9</sup> *Women in Prison Fact Sheet*. Fact Sheet. New York: Correctional Association of New York, 2002. *Women in Prison Project*. Web.

Overall, ninety-one percent of the entire increase of women sentenced to prison from 1986 to 1995 was a result of drug offenses.<sup>10</sup>

When Elaine Bartlett was sentenced to fifteen years to life in jail, she stated, “I feel that I am being railroaded and doing someone else’s time for the man.”<sup>11</sup> This project will investigate how sweeping drug laws, like the Rockefeller Drug Laws have impacted women involved in drug economies throughout New York State, and why the implementation of the laws has resulted in a dramatic increase in female incarceration rates over the past three decades. This does not suggest that there are not men who have suffered from the sweeping effects of these laws. However, this essay will demonstrate that women are more likely to be placed in these low level positions and tend to be at a greater disadvantage in drug economies. This leads to a greater number of arrests. Their position within these economies offers a specific platform in which to discuss the injustices the laws enforce.

Myths encircle society’s view of drug offenders, and the desire society has for strict drug laws to protect themselves from dangerous drug dealers. There are also certain myths and ideologies in which Americans prescribe to which concern women. Within this paper, we will define ideology as “a systematic body of concepts especially about human life or culture.” We will define a myth as “a popular belief or tradition that has grown up around something or someone; *especially*: one embodying the ideals and institutions of a society or segment of society.”<sup>12</sup> In order to understand these myths, we must recognize that a dominant ideology exists concerning gender in our society. When

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<sup>10</sup> *Women in Prison Fact Sheet*. Fact Sheet. New York: Correctional Association of New York, 2002. *Women in Prison Project*. Web.

<sup>11</sup> "Sentencing Papers." *Life on the Outside*. Web. <<http://www.lifeontheoutside.com/sentencing03.html>>.

<sup>12</sup> *Dictionary and Thesaurus - Merriam-Webster Online*. Web. 17 Dec. 2010. <<http://www.merriam-webster.com/>>.

people deviate from those norms, society collectively ostracizes them. These ideas and sets of beliefs fuel the ways women are controlled by societal norms, which reach into the public and private sphere. Typically, women are socially controlled differently than men. They are categorized by their gender in specific ways. When we look at their involvement in illegal drug economies these societal norms are not only present, they are reinforced and exploited within those drug economies, the media and through the law. This is because of certain ideologies, which involve race, gender and class. These ideologies state how a woman should act based on ideals created by these myths in our societies. When she does not fulfill that stereotype, she is demonized.

The first myth which society uses to control women within society is seen in the social environments in which women exist. This is the myth of women's roles within the family and the ideology of motherhood. Author Judith Worell organizes the motherhood myth into two groups; "perfect mother myths and bad mother myths."<sup>13</sup> Perfect mothers are considered natural mothers who nurture their offspring. They raise perfect children. Contrarily, bad mothers are inferior to fathers, and require the advice of experts to raise their children. They are needy and dangerous. Women who use drugs or are involved in drug economies are labeled as bad mothers because they fit that mold as dangerous and needy. Scholar Barbara Welter notes these ideas stem from the nineteenth century idea of the cult of womanhood, which include pillars with which women and society viewed other women. They include domesticity, submissiveness and purity. She writes, "put them all together and they spelt mother, daughter, sister, wife—woman. Without them, no matter whether there was fame, achievement or wealth, all was ashes. With them she

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<sup>13</sup> Worell, Judith. *Encyclopedia of Women and Gender: Sex Similarities and Differences and the Impact of Society on Gender*. San Diego, CA: Academic, 2001. Print, 791

was promised happiness and power.”<sup>14</sup> Although society has changed, the myth still holds some weight in the way in which women should act, if they are to be deemed proper.

Specifically in black communities, the matriarch of a family is seen as the head of the house that is not dependent on a man. This is a historically popular point of view, dating back to slavery, when men were often separated from their families, leaving the women to take care of the children.<sup>15</sup> Sharpe looks to, “black family literature in particular [which] highlights the importance of the historical role of mother as stabilizing force and conduit of socialization. Conversely, the roles of men in the family context are frequently characterized as intermittent, secondary and dependent on women.<sup>16</sup> Since they deviate from the desired norm, one all women should strive to achieve, they are viewed as promoting a negative image of the gender; an image that is unworthy and depicts them as fallen from their primary role within society.

This myth of motherhood is contested in the African American community by the occupation of prostitution, especially by those who have sex for drugs. In general, women who deviate from this image of the strong, independent mother are looked down upon. Judgment is worse towards “women who use [drugs. They] become further marginalized within their own smaller communities and become stigmatized as traitors to the venerated status of a black mother. The role of the crack user is antithetical to motherhood.”<sup>17</sup>

Prostitution has a very negative image in society viewed as a job that employs “fallen”

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<sup>14</sup> Welter, Barbara. "The True Cult of Womanhood." *American Quarterly* 1st ser. 18.2 (1966). Print, 152.

<sup>15</sup> Birns, Beverly, and Dale F. Hay. *The Different Faces of Motherhood*. New York: Plenum, 1988. Print, 187.

<sup>16</sup> Sharpe, Tanya Telfair. *Behind the Eight Ball: Sex for Crack Cocaine Exchange and Poor Black Women*. New York: Haworth, 2005. Print, 73.

<sup>17</sup> Sharpe, 53.



women, the greatest deviants in our society. It is seen as a challenge to the myth of motherhood. Although there are many single mothers who are struggling to raise their children on a limited income, they are still perceived as a strong individual in African American culture. Tanya Sharpe suggests, “motherhood in black culture is a symbol of power, a source of family stability and a focal point for community organization. Women who exchange sex for crack thus challenge the meaning of motherhood. The degradation that these women face and the subsequent devaluation of women’s roles is antithetical to the traditional image of motherhood in black—especially poor black—communities.”<sup>18</sup> They further create an image of women as fallen, desperate women that are easily disposable to men.

Since there is such a standard to uphold, many resort to drugs as a way to cope with their “inability to ‘maintain culturally defined gender roles.’”<sup>19</sup> These women predominantly live in low-income communities where jobs are rare and many times they are scrambling to make ends meet. One study of 50 African American women conducted by R. Arnold found that black women specifically resort to crime because they are victims of “class oppression... Growing up in extreme poverty means that African American girls may turn earlier to deviant behavior...One woman told Arnold that, ‘my father beat my mother and neglected his children...I began stealing when I was 12. I hustled to help feed and clothes the other kids and help pay the rent.’”<sup>20</sup> Since society has created an ideology of the mother that many poor women cannot live up to, they resort to crime to attempt to fulfill that role. Chesney-Lind further notes that, “women continued

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<sup>18</sup> Sharpe, 74.

<sup>19</sup> Chesney-Lind, Meda. *The Female Offender: Girls, Women, and Crime*. Thousand Oaks, CA: Sage Publications, 2004. Print, 135.

<sup>20</sup> Ibid, 110.

to see their criminal roles as forms of caretaking; taking care of their children and of their abusive boyfriends.”<sup>21</sup> However, when they enter this drug world, they further explode that myth. While these women engage in illegal activity to achieve that sense of matriarchal power, it is still male dominated and a place that is not receptive to their involvement. When they enter into this male dominated sphere, they are not only deviating from the hegemonic path to achieve the ultimate sense of mother and caretaker, they enter into an occupation that is unwelcoming to them as a gender. Therefore, they disappoint the majority of society, and make themselves vulnerable to exploitation by dominant male force within the drug world.

One study of women drug users noted that, “although men use drugs for ‘thrills or pleasure,’ or in response to peer pressure, women are more likely to drink or use illegal drugs for ‘self-medication.’”<sup>22</sup> Many women use drugs to also cope with previous sexual abuse, which has happened to a majority of female drug users. Generally, 70% of those sexually abused are women who are more likely to be abused by a family member. Specifically, one 1999 study found that 80% of inmates at Bedford Hills Correctional Facility—a women’s prison in upstate New York—have a childhood history of physical and sexual abuse and more than 90 percent have experienced battering and sexual assault during their lifetime.<sup>23</sup> Plus, the National Center on Addiction and Substance Abuse at Columbia University reports that 70% of women in treatment were abused as children compared with 12% of men.<sup>24</sup> These women are controlled by the idea of passiveness,

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<sup>21</sup> Ibid, 110.

<sup>22</sup> Chesney-Lind, 129.

<sup>23</sup> *Women in Prison Fact Sheet*. Fact Sheet. New York: Correctional Association of New York, 2002. *Women in Prison Project*. Web.

<sup>24</sup> *Women in Prison Fact Sheet*. Fact Sheet. New York: Correctional Association of New York, 2002. *Women in Prison Project*. Web.

where they are supposed to exist as a submissive sexual object to men, regardless of the psychological and emotional repercussions.

One study of gender and psychology states, “typically, heterosexual sexual scripts involve an aggressive, lustful, initiating man, and a coy, passive, sexually limiting woman. Cultural messages about women’s sexual passivity are so ubiquitous that many women have internalized these messages...and implicitly associate sex with submission ...”<sup>25</sup> Therefore, women who are sexually abused by boyfriends, husbands or other family members rationalize these experiences as typical sexual encounters, where a man is aggressive and a female must simply “take it.” Yet these experiences are traumatizing and emotionally damaging. When a woman who has been sexually abused cannot rationalize the situation herself, they may turn to drugs. The correlation between sexual abuse and drug use demonstrates a clear path that leads so many women to become users.

The type of marginalization created by social norms that has previously been discussed in this paper primarily concerns women’s personal lives within the private sphere as mothers, breadwinners and victims of sexual abuse within the home. Yet those social controls within the home follow women outside, into a professional, public sphere when these women become involved in drug economies. Only here, male gang leaders physically display this marginalization through direct sexist treatment, which stems from the preconceived myth of women as physically and mentally inferior beings to men. In these economies, these drug lords push women into the periphery within the system. Specifically, in the drug hierarchy, women are placed at the bottom of drug distribution, serving as low-level drug dealers and couriers. Sociologists Lisa Maher and Kathleen

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<sup>25</sup> Chrisler, Joan, and Donald McCreary. *Handbook of Gender Research in Psychology/ Gender Research in Basic and Experimental Psychology*. Berlin: Springer, 2009. Print, 299.

Daly summarize four reasons women are restricted to low-level jobs in drug economies, which include established sexism in the drug world, work as part time employees, personal relationships and alternative money sources, primarily found in prostitution.<sup>26</sup>

Maher and Daly's previously state four reasons why women are marginalized within drug economies are helpful to understand the ways women are treated within drug economies. It helps classify the jobs they are pushed into, and how that relates to the societal myth that women are simply unable to do the same jobs as men, whether they are within legitimate or illegal economies. The way in which women are treated within these drug economies, whether or not they are in a relationship with a man involved, place them within these subservient roles because of a myth that they are inferior to men.

Darrell Steffensmeier calls this "Institutionalized Sexism."<sup>27</sup> Steffensmeier and Robert Terry interviewed twenty-nine men convicted of various crimes about the level in which they work with women. They discovered, "relative to men, women are apparently viewed as physically weaker, more emotional, less reliable, and as not having enough daring endurance to make it in crime."<sup>28</sup> The men indicated characteristics of a "good" criminal, noting the most important qualities are trustworthiness, physical strength, the ability to remain calm and cool, and to remain emotionally stable. Seventy-nine percent of those questioned thought males had much more physical strength to be a successful criminal. Thirty nine percent thought men possess the emotional stability for crime. Only seven percent believed females have somewhat more emotional stability to be "good" at

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<sup>26</sup> Maher, Lisa, and Kathleen Daly. Women in the Street Level Economy Continuity or Change? *Gendered (In)justice: Theory and Practice in Feminist Criminology* Ed. Pamela J. Schram and Barbara Koons-Witt. Long Grove, IL: Waveland, 2004. Print, 126.

<sup>27</sup> Steffensmeier, Darrell J., and Robert M. Terry. "Institutional Sexism in the Underworld: A View From the Inside." *Sociological Inquiry* 56.3 (1986): 304-23. Print.

<sup>28</sup> Steffensmeier, Darrell, and Robert Terry, 304-305.

criminal activity.<sup>29</sup> They described women as people who, “break down under pressure...don’t take time to think...super-hyper...and sooner or later the woman is gonna [sic] nag you to quit.”<sup>30</sup> These ideas of women as flighty and unable to complete an intense, risky and potentially violent crime have followed women, even if the ideas are not true. Since criminal activity is seen as a predominantly masculine trade, it is twice as hard for women to break that illegal glass ceiling. Therefore, they remain minimal parts of drug economies.

Between 1989-1992, Maher and Daly, profiled forty-five women involved in their neighborhood’s drug economy, tracking their involvement within that economy and the places in which they fell on a hierarchical scale. They discovered that, “women were overwhelmingly concentrated at the lowest levels. They were almost always used as temporary workers when men were arrested or refused to work, or when it was “hot” because of police presence.”<sup>31</sup> Some women (14) made minimal amounts of money copping drugs for others, and most acted as “steerers,” recommending different types of drugs to new users for a couple of dollars or “change.” Most of the time, these women were unable to rise within these drug economies.

Maher and Daly propose this is because gendered perceptions of women are perceived to lack, “the necessary qualities...These traits, whether grounded in cultural perceptions of biology and physiology, mental states, or kinship, are primarily differentiated along the lines of gender and race-ethnicity.”<sup>32</sup> They are not seen as strong as men, or as tough. This is based on the popular belief that has transcended American

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<sup>29</sup> Ibid, 307.

<sup>30</sup> Ibid, 313-315.

<sup>31</sup> Maher and Daly, 131.

<sup>32</sup> Maher and Daly, 140.

society since the Republican women and the cult of domesticity that women are fundamentally weaker and unable to perform the same kinds of tasks as men. It seems decades later that idea can still be seen in Bushwick.

Women are further marginalized within these economies through their husbands or boyfriends. Drug lords and dealers exploit their girlfriends and wives who are willing to do menial tasks for their loved one. Scholar Susan Martin notes most women are “holders and lookouts, while men did the violent work associated with the criminal enterprise.”<sup>33</sup> Since women are seen as more emotional, they are also considered more loyal to men with who they are romantically involved by law enforcement, which usually couples together, when the women is almost always less involved.

For example, we must look at the case of Kemba Smith, a woman who was sentenced to federal prison for 24.5 years because of a non-violent drug offense. In her testimony to the Inter-American Commission on Human Rights, Smith explained that her sophomore year in college—at Hampton University in Virginia—she became romantically involved with a man who, “unbeknownst to me at the time, according to the government, he was head of a violent 4 million dollar crack cocaine ring...The prosecutor stated during my court hearing that I never handled, used or sold any drugs involved in the conspiracy. Yet I was sentenced as a first time nonviolent drug offender.”<sup>34</sup> The government held Smith accountable for the total amount of drugs in the conspiracy after her boyfriend was murdered. President Clinton awarded her clemency in

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<sup>33</sup> Martin, Susan. Female Drug Offenders and the Drug/Crime Subculture. *Rethinking Gender, Crime, and Justice: Feminist Readings*. Ed. Claire M. Renzetti, Lynne Goodstein, and Susan L. Miller. Los Angeles, CA: Roxbury Pub., 2006. Print, 114.

<sup>34</sup> Solinger, Rickie, Paula C. Johnson, Martha L. Raimon, Tina Reynolds, and Ruby Tapia, eds. *Interrupted Life: Experiences of Incarcerated Women in the United States*. Berkeley: University of California, 2010. Print, 343.

2000. Although Smith's case took place in Virginia and she was, therefore, not convicted under the Rockefeller Drug Laws, her case demonstrates how strict drug laws following the implementation of the Rockefeller laws affected women in intimate relationships nationwide. Smith labeled this issue as, "the girlfriend problem," which I will discuss in more detail later in the paper.

Although the strong, single matriarch is a dominant character in African American culture, women who become involved in drug economies usually do not encompass those qualities. A survey conducted with 29 convicted men by criminologist Darrell Steffensmeier and Robert Terry found that eighteen of the men said when they worked with women they occasionally worked with their girlfriend or wife. Eight said they worked with their significant other often.<sup>35</sup> One man interviewed commented, "I would say that a woman that you're close with can keep her mouth shut...Lucille (my wife) dropped us off for years. We trusted her all the way. She did it for me and for the extra benefits, the money, you know..."<sup>36</sup> Although this man trusted his wife, he still placed her within a lower role as driver. This demonstrates that men continue to view women within the preconceived notions of society, believing women are a fundamentally weaker, and keeping women at the bottom of drug hierarchy.

Women are also limited to part time work within the drug economy, which also leads to further marginalization, as they are required to complete other tasks within their prescribed gender roles before they can deviate from them and enter the drug economy. Their, "household and childcare responsibilities may have limited their full

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<sup>35</sup> Steffensmeier, Darrell, and Robert Terry, 308.

<sup>36</sup> Ibid, 312.

participation...”<sup>37</sup> They also cite a “shortage of male workers,”<sup>38</sup> during times of heavy police activity in the area that results in higher arrests of men. Therefore, they are only used as a last resort for many drug rings to complete work.

Since many women are unable to truly advance and make a meaningful contribution to the work done within drug economies, some women are forced to resort to prostitution to make money for themselves and their families, or acquire drugs for their addictions. Steffensmeier argues, “the relative lack of opportunities and career options, in turn, helps explain why females select, among alternatives, criminal behaviors congruent with sex roles. Like male offenders, female offenders gravitate to those activities which are easily available, are within their skills, provide satisfactory return and carry the fewest risks.”<sup>39</sup> Prostitution is an illegal activity which women definitely control. It is also an occupation where women are constantly exploited and degraded due to their sex.

Prostitution also perpetuates the myth that women are inferior to men on a physical level, and therefore can be used by men at the drop of a hat, as long as they have money or drugs to supply them. Tanya Sharpe argues that with the rise of crack cocaine increasing ambiguity between male and female gender roles diminished. She asserts that crack returned social and sexual power back to men, stating, “The female vulnerability attributable to her sexualized identity has evolved into the site for these power-fantasy plays. The poorest man with as little as ten dollars (sometimes much less) or a crack rock can often demand sex from any crack-using poor black woman...Crack has become an

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<sup>37</sup> Maher and Daly, 127.

<sup>38</sup> Ibid, 141.

<sup>39</sup> Ibid, 321.



instrument of power in the hands of whoever possesses it and is a powerful, uplifting tool for a disenfranchised male.”<sup>40</sup> Since women were marginalized within drug economies, they rarely possessed the drugs they wanted or needed, and were forced to go to men for those drugs.

The rise of crack-cocaine in the 1980s increased the number of women who used prostitution and a sex for drugs exchange to get their daily fix. This created the idea of the “crack ho,” or “crack mother,” which painted women as irresponsible, and dangerous to the human rights of the newly born children. It further spread a negative image of poor, black women to the rest of society. As the crack epidemic grew, the media depersonalized the plight of these women, categorizing them as “black and urban, this group of women became a threatening symbol of everything that was wrong with America. Its cities, its poverty, and its welfare dependency were laid at the feet of crack mothers, who were blamed for undermining the family...”<sup>41</sup> In the last 1980s and early 1990s the media played a large role in spreading the image of these women as incapable, negligent mothers to the American public, without discussing other factors that have placed these women in these situations. Instead, they are portrayed as women who cannot complete their roles as women and mothers. One *New York Times* article from 1989 begins, “Crack can overwhelm one of the strongest forces in nature, the parental instinct, specialists in drug addiction say.”<sup>42</sup> Immediately, the reader who knows nothing about women in poor urban communities sees them as irresponsible and inept mothers within those societal gender roles. The media helped perpetuate this image of women

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<sup>40</sup> Sharpe, 52.

<sup>41</sup> Humphries, Drew. *Crack Mothers: Pregnancy, Drugs, and the Media*. Columbus: Ohio State UP, 1999. Print, 19.

<sup>42</sup> De Courcy Hinds, Michael. "The Instincts of Parenthood Become Part of Crack's Toll." *The New York Times* 17 Mar. 1990. Print.

who use crack cocaine, and in turn, boosted the argument of lawmakers who advocated stricter laws for drug offenses.

These myths of motherhood, passiveness and inferiority, coupled with the media's stereotyping and overarching portrayal of these women has created a social environment that has controlled women and organized them into specific roles within these illegal economies. In drug economies, specifically, these women are placed in low-level positions that increase their vulnerability and chance of arrest, pushing them into the criminal justice system at greater rates. With the implementation of the Rockefeller Drug Laws, the criminal justice system has been forced to de-contextualized cases. Judges could no longer take specific situations into account, and everyone, no matter the situation, were convicted under the same mandatory minimum sentence. As I have explored through the first part of this argument, women are typically placed on the lower end of the spectrum, conducting smaller, non-violent crimes. They are, in turn, arrested and convicted under these laws at greater rates. That has negatively impacted those on the lower end of the spectrum because they are the individuals who are arrested and convicted, even though they have committed smaller, non-violent crimes.

In his State of the State speech in 1973, Rockefeller called drug addicts an "invading army" who destroyed neighborhoods. Kohler-Hausmann notes, "in calling addicts an invading army, the governor not only positioned them as outsiders, without claims to citizenship protections, but also as a military enemy solely responsible for the destruction of entire communities."<sup>43</sup> This comment had racial implications, however, since the majority of drug addicts, pushers and drug lords were black or Hispanic. In a

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<sup>43</sup> Ibid, 80.

*New York Times* article written shortly after Governor Rockefeller's State of the State address, Yale psychologist Dr. David Musto provided the observation that, "the current mood was 'more diffuse and complicated' but characterized by the threat of social disruption from minorities who have achieved greater political power, as well as a feeling that 'crime is out of hand.'"<sup>44</sup> However, judges argued that Rockefeller's new plans for stricter drug laws would create a chaotic court system. The top two New York City judges at the time warned against the increased court traffic that would result from these types of laws. Justice Stevens and Rabin also argued the laws did not differentiate between "small time addict pushers and the big-time drug dealer."<sup>45</sup> As we have seen, their concern was valid, as many small, first time offenders began to receive lengthy, mandatory sentences when the laws were passed.

Those small time addict pushers tend to be women, placed in those situations because of relationships, poverty, or prostitution, among other reasons. Women were so commonly found within those situations, so they began to be arrested, convicted and incarcerated under these new laws at greater rates. Although the laws were passed in the early 1970s, the numbers did not dramatically increase until the late 1980s and 1990s. In 1973, there were 384 women in prison. 102 were in jail for drug offenses, and "since 1973, the number of women in prison for drug crimes has increased 825%."<sup>46</sup> In 1996, the number of women in New York prisons was 3, 728.<sup>47</sup>

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<sup>44</sup> Markham, James. "Earlier Efforts and Errors in War on Drugs." *New York Times* 6 Jan. 1973. *Proquest Historical Newspapers New York Times*. Web.

<sup>45</sup> Oelsner, Lesley. "Two Judges See Court Paralysis Under Drug Plan." *New York Times* 6 Jan. 1973. Print.

<sup>46</sup> *Women in Prison Fact Sheet*. Fact Sheet. New York: Correctional Association of New York, 2002.

*Women in Prison Project*. Web.

<sup>47</sup> *Ibid*.

Although the majority of individuals in New York state prisons are male, it is important to not make a comparison of sheer numbers between men and women in prison. Instead, it is important to look at the increase in the number of women in prison from the early 1970s and onward. Since the actual number of men and women in prison is so different, we can look at their separate rates of increase to understand the extent to which the number of females in prison has increased. Journalist Eda Tinto notes, “in New York, 156% more women received prison sentences in 1995 as compared to 1986; men experienced only a 49% increase during this time. Of this increase in women prisoners, 91% was due to the imposition of prison sentences for drug offenses. From 1986 to 1995, there was a 487% percent increase in incarceration commitments for female drug offenders, for male drug offenders, this rise was 203%.”<sup>48</sup> Although the specific number of women in prison may not seem that drastic compared to the sheer number of men in prison, the increase of incarcerated women since the implementation of the Rockefeller Drug Laws is staggering.

These sweeping drug laws made the war on drugs, the war on women. They reinforced the way in which society controls and marginalizes women within the myths, which describe how women are supposed to exist within our society. A study by the Department of Justice found, “women are typically low-level, non-violent drug dealers, with minimal or no prior history of crime, but that they receive similar sentences to men with much higher levels of involvement in the drug trade.”<sup>49</sup> This is because these extensive drug laws do not take into account the extent to which an offender is involved.

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<sup>48</sup> Tinto, Eda K. "The Role of Gender and Relationship in Reforming the Rockefeller Drug Laws." *New York University Law Review* 76 (2001). Web.

<sup>49</sup> Young, Vernetta D., and Rebecca Reviere. *Women behind Bars: Gender and Race in US Prisons*. Boulder, CO: Lynne Rienner, 2006. Print, 78.

The automatic, mandatory sentences de-contextualize cases where judges could separate a trial of a first offender for a nonviolent drug crime and a drug lord with multiple convictions. Stephanie Bush-Baskette writes, “The actual role the offender plays in the crime can no longer be considered in the determination of the sentence, except for sentence enhancement.”<sup>50</sup> The inability to place context within these drug laws punishes women disproportionately to the crimes they commit.

Furthermore, since these women have been placed into low-level roles within drug economies and are forced into roles based on societal myths, when arrested they rarely know enough information to negotiate a plea bargain or a reduced sentence. In New York, “a drug crime with a minimum penalty of three years to life could be reduced to life-time parole if the suspect provided ‘material assistance’ leading to the arrest of a drug dealer.”<sup>51</sup> This is no different than other areas of business, where a secretary of a large company would not hold the information that a CEO or President would have. Thirty-two year old Dolores Donovan—mother of three children—was arrested in 1980 for picking up cocaine for her boyfriend. According to a report by the Correctional Association of New York, “as Donovan’s boyfriend was significantly more involved in drug trafficking than Donovan, he was able to provide information to prosecutors in exchange for the ability to plead to a lesser charge for which he received lifetime probation. Being only on the periphery of the drug operation, Donovan did not know any drug dealers, so she could not provide information to help prosecutors and thereby

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<sup>50</sup> Bush-Baskette, Stephanie. *The War on Drugs and the Incarceration of Mothers. Gendered (In)justice: Theory and Practice in Feminist Criminology* Ed. Pamela J. Schram and Barbara Koons-Witt. Long Grove, IL: Waveland, 2004. Print, 126.

<sup>51</sup> Young, Vernetta D., and Rebecca Reviere, 78-79.

receive a reduced sentence.”<sup>52</sup>

This is an example of the “girlfriend problem,” in which Kemba Smith describes in her testimony that I discussed earlier. She explained, “the drug trafficker pleads guilty, cooperates in the prosecution of his colleagues, and is sentenced below the mandatory minimum. His girlfriend, having no information about the criminal organization other than the acts of her boyfriend, feels morally and emotionally compelled not to testify against him. Therefore she is unable to qualify for the “substantial assistance” departure and receives the full mandatory minimum sentence, even though, in fact, her culpability is substantially less than that of the principal offender.”<sup>53</sup> Many times, women have nothing to offer prosecutors or do not want to reveal information that would incriminate their husbands or boyfriends. This punishes them even further.

When Jan Warner was arrested for possession and sale of drugs in 1987, she was offered a plea bargain of eight and a half years to life in prison if she provided information and the names of prominent drug dealers. Jan had been caught in a sting operation in Rochester, in an attempt to make some money to take her sixteen-year-old daughter, Erin back to California where she grew up. However, Jan had been dating a drug dealer named Jim for some time, and refused to offer any information to the prosecutors. She was sentenced to fifteen years minimum.

While Governor Rockefeller and his supporters believed these new laws would eradicate the rising drug use and crime in inner cities, in fact, the laws did the opposite. They reinforced the ways in which society marginalizes women under the myths in which

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<sup>52</sup> "Stupid and Irrational and Barbarous: New York Judges Speak Out Against the Rockefeller Drug Laws." *A Report of the Public Policy Project of the Correctional Association of New York*. Dec. 2001. Web. <<http://www.correctionalassociation.org/publications/download/ppp/judgesreport.pdf>>.

<sup>53</sup> Solinger, Rickie, Paula C. Johnson, Martha L. Raimon, Tina Reynolds, and Ruby Tapia, eds. *Interrupted Life: Experiences of Incarcerated Women in the United States*. Berkeley: University of California, 2010. Print, 344.

they exist within our society, and literally placed them behind bars. Nagel and Johnson note, “These reforms were designed to substantially reduce judicial sentencing discretion, to reduce unwarranted sentencing disparities, and to reduce race, gender, and class discrimination.”<sup>54</sup> Yet they simply reinforce inequalities in our society and incarcerated non-violent drug offenders—who tend to be women—when many male kingpins were able to remain free.

In 2009, Governor David Paterson worked with the state legislature to reform the draconian laws. The deal repealed many of minimum mandatory sentences put in place for low-level felons. When the Rockefeller Drug Laws were enacted, it removed much of the discretionary power from judges. These reforms gave judges the option to send drug offenders to treatment, rather than jail. New York Assemblyman Jeffrion Aubry from Queens led the efforts for repeal. He stated, “we’re putting judges in the position to determine sentences based on the facts of a case, and not on mandatory minimum sentences.”<sup>55</sup> These reforms brought context back into the courtroom.

While it seems that the reforms would benefit women and reduce the lengthy sentences, which they have been given for minimal, non-violent crimes, it reveals a dilemma that exists within the legal world and one that has been debated for some time. That dilemma is whether it is better to treat women as legally equal to men, or to give them special treatment in a court of law. Restoring context can also be seen as a different form of sexism within the criminal justice system, where women could be treated

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<sup>54</sup> Nagel, Illene, and Barry Johnson. *The Role of Gender in a Structured Sentencing System: Equal Treatment, Policy Choices and the Sentencing of Female Offenders. Gendered (in)justice: Theory and Practice in Feminist Criminology* Ed. Pamela J. Schram and Barbara Koons-Witt. Long Grove, IL: Waveland, 2004. Print. 199.

<sup>55</sup> Peters, Jeremy W. "Albany Reaches Deal to Repeal '70s Drug Laws." *New York Times* 25 Mar. 2009. Print.

differently and unequally during sentencing because they are not staying within the boundaries of their prescribed gender roles.

There are two ways this could occur. Either a woman could be given a harsher sentence because she is acting outside of their sex roles, or she could be given preferential treatment because she is considered more passive and less threatening as a gender, and is therefore less responsible for the crime they committed. In a study by Nagel and Johnson, they cite interviews with judges who admit to treating women with more lenience than men. They were also more inclined to sentence a woman with rehabilitation rather than prison time.<sup>56</sup> Contrarily, some studies have shown that paternalist assumptions about crime and drug use negatively effect women in the courtroom. Nagel and Johnson cite the idea of the “‘evil woman’ thesis—which hypothesizes that women whose criminal behavior violates sex-stereotypical assumptions about the proper role of women are treated more harshly than their male counterparts.”<sup>57</sup> This causes one to question whether special treatment would solve the problems that the sweeping, across the board laws like the Rockefeller Drug Laws created. This further creates a dilemma that is still up for debate, even though the Rockefeller Drug laws have been reformed.

The impact in which the Rockefeller Drug laws had on women reveals an imbalance within the criminal justice system that still exists today. While it is obvious that sweeping laws like these drug laws have negative impacts upon certain groups of people, the alternative does not entirely solve the situation. Instead, it leaves women exposed to further kinds of sexist treatment in the courtroom where they could be given

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<sup>56</sup> Nagel and Johnson, 202-203.

<sup>57</sup> Ibid, 203.



harsher or more lenient sentences based on how they are perceived. The way in which they are perceived is based on gender ideals that permeate society. As we have shown, if women deviate from those standards—in this case become involved in drug use and distribution—they are looked down upon by society. If they try to become involved in drug sales, they are pushed into lower positions because they are seen as weak, physically and mentally. This dysfunctional dynamic allows women to be exploited, used and more vulnerable. Sweeping drug laws punish them unfairly if they are, in fact, arrested and convicted, but special treatment, “perpetuates damaging stereotypes of female weakness, implying a moral inferiority that undermines claims to full citizenship and even personhood... Thus, when women are granted special treatment, they are reduced to the moral status of infants.”<sup>58</sup> The Rockefeller Drug laws highlight this complexity, and the difficulties that could ensue if either tactic is adopted.

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<sup>58</sup> Nagel and Johnson, 197.