

Towards a Gender-Responsive Restorative Justice in the Post-War on Drugs Era

By

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Submitted to

Central European University

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*In partial fulfilment of the requirements for the degree of Master of Arts in Critical Gender
Studies*

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Vienna Austria

June 2024

Abstract

On March 31, 2021, New York State Legislation signed into law, the Marihuana Regulation and Taxation Act (MRTA), legalizing cannabis for adults 21+. Legislators debated over several years to reach an agreement on what the law would contain. Activists and academics lobbied hard to ensure that the bill would not only legalize marijuana, but that it would provide an avenue for the state to right past wrongs. Several initial drafts of the bill were pulled for not being comprehensive enough or providing enough recognition for the history of racially uneven arrests.

The state claims that the bill is intended to stop treating marijuana usage and sales as a law enforcement issue, but rather as a public health issue by building a framework within which marijuana is safely tested and regulated; and as a means of restorative justice, by expunging the records of those with certain cannabis related arrests, providing people and communities directly affected by the consequences of the War on Drugs priority access to marijuana dispensary licenses in order to bolster economic growth, and promising 40% of the taxation revenue to a social equity fund for communities and people that have been directly impacted by the war on drugs and the general policies/legislation that sprung from it.

In this work, I explore what the effects of the War on Drugs were, to understand why a restorative justice framework would be necessary to alleviate the issues that sprung forth from it. In this study, I investigate gender and the War on Drugs to understand the intersecting ways that women of color, an often-overlooked demographic, were disproportionately affected by anti-drug, anti-crime, and neoliberal economic reforms. I look into gender-neutrality in War on Drugs policy, and the results of it in practice, to understand the mismatch between what is purported to occur, and the actual results. In doing so, I provide a framework for

understanding what elements that MRTA could address or provide allowances for now or in the future in order to be a gender responsive-restorative justice policy.

Keywords: gender and the war on drugs; gender-responsive restorative justice; intersectionality; race and crime

Acknowledgements

I would like to thank my husband, Fabian, for supporting me throughout my studies at CEU. You have been a wonderful and supportive partner, and I am grateful that you encouraged me to begin my studies and helped me make it to the end.

I would like to thank my little sister, Nanaefua; thanks for being the best sister in the world.

I would like to thank my supervisor Andrea Krizsan for being incredible and patient with me throughout this work. Without your guidance, support, and effective feedback, this work couldn't have been done.

I would like to thank my second reader Nadia Jones-Gailani, for being a wonderful and supportive mentor throughout my time here at CEU.

Declaration

I hereby declare that this thesis is the result of original research; it contains no materials accepted for any other degree in any other institution and no materials previously written and/or published by another person, except where appropriate acknowledgement is made in the form of bibliographical reference.

I further declare that the following word count for this thesis are accurate:

Body of thesis (all chapters excluding notes, references, appendices, etc.): 20,956

Entire manuscript: 24,629

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1 Introduction

In this work I will analyze how responsive the newly adopted policy is to the gender specificities of minority women that were affected by the drug war in both proposal and execution. I argue that although this policy does take a great step forward with regards to general restorative justice, it does not provide adequate consideration of the collateral damage that minority women in the US, and particularly in New York faced because of drug war policies that affected them not-only because of their race, but because of their gender as well.

To do so, I first explore the intersections of race, gender, poverty, and crime, within the context of the war on drugs. I show how loose definitions of crime coalesce to mask targeted racialized and gendered oppression, particularly through economic deprivation, by allowing it to be represented as a legitimate or appropriate response to wrongdoing. (Nunn 2009, 285) After, I explore the theoretical underpinnings of restorative justice in marijuana drug policy and construct an analytical framework for best practices of a gender-responsive drug policy.

I will then provide a general overview of the history of marijuana (and narcotic) legislation at the federal and state level, and how drug prohibition laws throughout the history of the US, has been used as a means of control over disparate or “out,” groups. Then I will review how the drug war has disproportionately affected Black and Latina women, evidence how key “gender neutral,” drug war policies have had collateral damage including and beyond overincarceration, show the connection between federal and state anti-drug policies and neoliberal welfare reform, and reckon throughout this examination with how the masculinization of the war on drugs, by policymakers, media, and even scholars allows for the erasure of women’s experiences throughout and post-the war on drugs. Then I review how gender-responsive NY State’s Marijuana Regulation and Taxation Act (MRTA) policy is in proposal, and in practice. I conclude with

my recommendations for NY state's policy, as well as for future drug/marijuana restorative justice policies.

2 Literature Review

2.1 Introduction

When anti-drug policies and welfare reform began to take place in the US (1980s-1990s) early academic research on drug usage, addiction, convictions, and policy focused primarily on men. When there was research being done on women, more focus was directed towards drug usage by pregnant women or women in drug treatment. Additionally, how these policies could directly or indirectly impact women that were not felons or criminals themselves, but had family or community members that were, was also rarely assessed in their passage.

However, since the late 1990s, there has been a growing field of study on gender and the war on drugs, which considers the unique and unfair ways that women, and particularly women of color were affected. Scholars note that welfare and public housing reforms coincided with and were informed by inflexible and ostensibly “gender neutral,” anti-drug policies and definitions of crimes which disproportionately affected women of color. Simultaneously as these anti-drug use and production laws came into existence, neoliberal economic policies, war on drugs policies, and war on crimes policies pushed many Black and Latina women into a cyclical criminality. Here, I hope to engage with key feminist scholarly works that provide insight into the ways that women were affected by policies that came forth from the war on drugs, and how restorative justice policy can be utilized to support those most greatly affected by draconian and unevenly implemented anti-drug policies.

After directly engaging with existing literature on women, gender, and the war on drugs, I then investigate the literature on restorative justice, the possible uses it has as an effective vehicle for justice in the post-war on drugs era.

2.2 Gendered Differences in Incarceration

When discussing the effects or victims of overincarceration due anti-drug policies, public perceptions, as well as academic and scholarly discussions often focus on elevated male incarceration rates. Here, I investigate the literature on gendered differences in incarceration.

There has been much research done into the incredible rise in imprisonment within the United States in the last three decades since the start of the war on drugs in the mid-1980s.

Federal mandatory sentencing requirements from the mid-1980s onward, which enacted draconian minimum sentencing on violent, and particularly non-violent drug-related offenses, have been credited with the extreme boom in the prison population throughout the late 20th and early 21st century within the United States. (Allard 2002; Boyd 2017; Bush-Baskette 2000; Chesney-Lind 2003; Dollar 2019; Hirsch 1999, 2001; Lennox 2011; Mauer and King 2007; Reynolds 2008)

Marylee Reynold's writes in "The War on Drugs, Prison Building, and Globalization: Catalyst for the Global Incarceration of Women," that the neoliberal economic policies in the United States that worked in conjunction with, throughout and after the so-called war on drugs have disproportionately marginalized poor women of color, and ultimately led to a sharp rise in the number of incarcerated women. (Reynolds 2008, 72) Reynolds' notes that neoliberal economic policies are undergirded by a "belief in free-market capitalism; an emphasis on individualism; social relationships that are formally egalitarian, yet extreme income differentials exist; a welfare state that is minimalist; a right-wing political orientation; the social exclusion of economically marginalized and "deviant" members of society; a high receptivity to prison privatization; a high imprisonment rate; and a central penal ideology of 'law and order.'" (Reynolds 2008, 74) The United States government incarcerates more women than any other nation in the world, due largely to the war on drugs, an initiative that was originally intended to stop drug production and usage. (Reynolds 2008, 72)

Curry and Corral-Camacho argue that, by coalescing or acknowledging that “social statuses like race/ethnicity and gender do not exist from each other,” those that have been most affected by the war on drugs are in effect, “young minority males.” (Curry and Corral-Camacho 2008, 253, 257) For much of the research into prison populations in the 1990s and 2000s, it has been argued that there were sentencing disparities between female and male offenders, with women receiving less severe sentencing. (Curry and Corral-Camacho 2008; Johnston et.al 1987; Sarnikar et. al 2007) DeCourcy’s research, along with studies utilizing incarceration statistics from 2000-2006, brings greater insight into the incarceration rates and outcomes of women throughout the late 20th and early 21st century, contradicts the assertion that women’s sentencing is less severe and argues that new research shows “that women no longer enjoy significantly shorter sentences, have lower odds of incarceration, or have better chances at a sentencing departure than their male counterparts,” particularly for drug-related offenses or crimes, and that women are the fastest growing population within prison. (DeCourcy 2020, 406)

Using the term “drug-related,” or “violent versus nonviolent,” crime can be a misnomer, and ungirds how research into the effects and collateral damage of the war on drugs has often, even when done through a quasi-intersectional lens— focusing on race, gender, class— paints an incredibly wide brush on minority women have experienced through anti-drug policy when contrasted with those experiences of men; and appears at times to even downplay or view the direct and collateral harms experienced by women as secondary, or less punitive, than those men have had. (Allard 2002; Boyd 2017; Bush-Baskette 2000; Chesney-Lind 2003; Dollar 2019; Lennox 2013) Particularly because a lot of research which intends to describe the racial and gendered ramifications of the war on drugs policies, such as Curry and Corral-Camach, argues that women either receive less harsh sentencing than men or that because women as a whole represent less than ten percent of the United States’ entire prison population, they are

not victimized by these policies to the extent that men are. They also appear to often not differentiate between non-violent and violent drug-related crime although women are overwhelming more likely to be arrested and sentenced for “non-violent,” drug-related offenses. Radosh notes in her work, “War on drugs: gender and race inequities in crime control strategies,” that generally, women’s overall involvement in crime is far lower than men’s, with men being 14 times more likely to be incarcerated in either federal or state prison. (Radosh 2008, 168) Additionally, the share of women that have been incarcerated for nonviolent drug-related crime, is significantly larger than the women that have been incarcerated for violent crime. (Radosh 2008, 168) Women’s incarceration rates appear to primarily stem from drug addiction and use, as well as other non-violent crimes that can be linked to drug usage, such as property crime or prostitution to support drug usage, rather than violent crime. (Radosh 2008, 168; Chesney-Lind 2002)

Thus, it is clear from the literature that women’s incarceration rates, when not viewed simply from aggregates, but rather from percentage increases, have seen astronomical rates of increase throughout the duration of the War on Drugs; and that percentile increase has been far greater amongst women, than men.

2.3 “Gender,” Neutral Policies: Motherhood and Intimacy

In this section, I review the literature on gender neutral policy, within the context of the war on drugs. Gender neutrality, *prima facie*, can be viewed as an effective way to enact policy. However, gender neutral policies and legislation, often ignore the realities of a gendered society, wherein gendered norms and expectations exist. To that, I investigate the literature on gender neutral anti-drug policies, and the ways that they can affect women directly, and uniquely, despite appearing to be “neutral,” in their implementation. In this section, I investigate what “gender neutral,” policy means within the context of the war on drugs; and how “gender” neutral policies do not necessarily have gender neutral outcomes.

Feminist scholars argue that the starkly increased incarceration rates of women over the last forty years, particularly when compared to those of men, is a direct result of “gender neutral,” mandatory prison sentencing which did not allow for judges to consider the circumstances or characteristics of offenders. (Boyd 2004, 2017; DeCourcy 2020; Goldfarb 2002; Hirsch 1999, 2001; Raeder 1993,1993) Lenox argues in, “Neutralizing the Gendered Collateral Consequences of the War on Drugs Note,” that although legislation that imposes collateral consequences on those that have felony drug convictions does not explicitly discriminate against women, these types of laws are reflexive and indicative of institutional gender biases which ultimately do disenfranchise and enact unequal consequences. (Lenox 2011, 280) Raedar goes further in arguing that, “guidelines cannot be truly gender neutral if they do not recognize the gender-based realities of criminal activity and child-rearing.” (Raedar 1993, 20-211) Mandatory sentencing guidelines require that material circumstances are ignored, and by adopting a rigidly gender-neutral framework, ignore circumstances or characteristics that are gender specific, or connected to gendered societal/institutional expectations, and in practice disenfranchise women more than men. (Raedar 1993)

Although a similar number of incarcerated men and women are reported as having children under the age of 18, incarcerated women in both state and federal prison were more than three times as likely to have been the sole parent living with their children in the month preceding their arrest or having had sole or primary responsibility for their children. (Lennox 2011, 291; Raedar 1993, 906) This was the case in the late 20th century, and feminist scholarly findings show that gendered expectations of caregiving and parenthood have remained the same throughout the decades. Nearly all incarcerated men in prison with minor children reported that those children resided with their mothers; however, 80% of women in prison reported that their minor children were living with relatives, in a foster home, or under the control of a child welfare agency, and not their fathers. (Lennox 2011, 292) Prior to the gender-neutral

sentencing guidelines, prison sentences for mothers were intended to lead to family reunification as soon as possible, due to this reality of gendered childrearing responsibilities; thus, increased incarceration rates have led to a greater number of children placed within the foster care system within the United States. (Lennox 2011, 291) Ignoring the gendered reality of childrearing, is not possible for women in prison; and those women who have been incarcerated, as well as their immediate family members suffer.

Additionally mandatory-minimum sentencing requirements, in combination with the facially gender neutral and inflexible sentencing guidelines does not allow for sentencing to account for the degree of involvement that women actually have to drug offenses and has led to “length incarceration of such women whose actual role in drug cases is often quite limited.” (DeCourcy 2020, 409; Raedar 1993) The majority of women who are incarcerated for drug offenses, played an ancillary role in drug trade, and often became involved in drug crime through a male partner or family member that they may either be financially dependent upon or their abuser. (DeCourcy 2020, 409; Lennox 2011, 288) These types of women, known by Gaskins and other scholars as, “women of circumstance,” are minimally involved with their family member or partner’s drug activity, and their roles typically consisted of phone answering, door opening, or allowing/having contraband in their presence or homes. (Gaskins 2004, 1533; DeCourcy 2020, 409-410; Lennox 2011, 288; Raedar 1993) Gaskin notes that conspiracy laws are particularly unfair to women offenders because male defendants are often intimately linked to themselves or their children, and unlike other types of conspirators or offenders, these, “women find themselves involved in criminal activity because of social or cultural pressures, and their criminal activity is an uninvited and often unforeseen repercussion of choosing an intimate relationship.” (Gaskins 2004, 1535)

To that, the literature shows that gender neutral anti-drug policy has had an outsized effect on women throughout the war on drugs. For gender-neutral policy to work effectively, equitably

or equally, there must be no gendered differences, or a “gender,” neutral society. Gendered norms and expectations continue to exist, and those realities must be taken into consideration in any form of policy.

2.4 Criminality, Race, Gender, and Poverty

In investigating the direct effects and the collateral damage of the War on Drugs, it is essential to understand the intersection of race, class, gender, and crime. In this section, I investigate the literature on how these multiple elements and categories can and have intersected, and the collateral socioeconomic damages that poor women of color have experienced throughout the war on drugs.

Race, crime, and gender coalesce in different ways; but when activists and scholars describe how the war on drugs or the greater, war on crime is an attack on the Black community, or Blackness, the implicit gender of blackness, whether as criminals or as victims of unfair institutions or policies, is male. (Cammett 2016, 363) Ann Cammet writes on what she calls a “well-intentioned,” but not completely true narrative of black criminality that is often peddled by activists and academics alike. This narrative claim that the high number of Black male prosecutions and arrests in the United States, has been used to shape the discourse on crime; and this conflation of criminality and blackness, and more importantly, of black male criminality, has then been used by the state to aggressively control black communities. Cammet argues that this well-intentioned narrative, which may even be true, is, “a gendered framework [that] obscures the complex nature of state intervention experienced by black women.” (Cammett 2016, 363)

When the lifetime welfare ban and the HUD one-strike policy was enacted—little more than a decade after the start of the “war on drugs,” in the mid-1980s—the public image and ideas of drug felons, were based on a presumption that they were men. (Hirsch 2001, 160) Subsequently, women’s drug usage, the connections between physical and sexual abuse and

drug-usage, women's drug-related incarceration rates as well as the collateral damage that anti-drug or crime policies could enact on them, were rarely researched until the late 1990s and early 2000s. (Hirsch 1999, 2001; Allred 2002) It was through early research into women-oriented drug-related issues, that academics and activists alike quickly recognized the potential impact that the lifetime ban on welfare benefits or implementation of the one-strike HUD policy could have on women, their families and their communities. (Hirsch 1999, 2001) In fact, it has been noted by several academics that that when women were addressed or included in discussions of welfare, policy makers were typically highlighting highly racialized and sexist stereotypes of the Black, drug addicted, jobless, "welfare queen," which only served to impress upon the public a greater urgency for these types of draconian social service policies. (Cammatt 2016; Perry 2011; Bauman 2007) Those suffering under poverty, typically women of color suffer from overlapping accusations and stereotypes of multifaceted criminality, which are actively and intentionally produced and reproduced.

Kaayrn Gustavson writes in "Degradation Ceremonies and the Criminalization of Low-Income Women," about the complex ways in which low-income women, particularly women of color, face criminalization and degradation explicitly through the criminal justice system, as well as implicitly through the state's treatment of their need for financial support or assistance. (Gustavson 2013, 330) In fact, Bauman goes even further in his article, "Collateral Causalities of Consumerism," in which he argues that the media colludes with the police to present the so-called "usual suspects," (poor, women of color) as, "greedy...lurid pictures of the crime, drug- and sexual promiscuity-infested 'criminal elements,'" whose only crime is that there are of color and experiencing socioeconomic hardship. (Bauman 2007, 31) Gustavson and other scholars note that anti-drug legislation, coupled with welfare reforms which contain bans on working requirements, and public housing reforms which allow Public

Housing Associations to easily evict or deny housing, affect poor women of color because of their gender, socioeconomic class, and race. (Davis 1993; Fineman 2010; Gustavson 2013)

Dzubow writes in “Fear-Free Public Housing: An Evaluation of HUD's One Strike and You're out Housing Policy,” about the possible effects that extreme housing policies could have (or already were having) on poor minorities. He argues that anti-crime/drug policies could be seen as “political grandstanding at the expense of the poor,” and, in the case of several aspects of the one-strike HUD policy, an attack on the civil liberties of the tenant. (Dzubow 1996, 55)

It was clear to Dzubow and other scholars that those that would be the most affected by such draconian housing policy would be the groups of people that needed it the most. The fears that academics showed in 1996, were confirmed by Patricia Allard in 2002 when she conducted a groundbreaking and definitive national analysis on the effects that the welfare ban introduced in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), has had on women and their children. (Allard 2002, 1) Allard posited that PRWORA has disproportionately affected women of color, and particularly Black and Latina women, because of a) racially biased drug policies, enforcement of drug laws, and the unequal or draconian manner in which drug offenses or crimes are calculated have led to the rapid growth of Black and Latina women under criminal justice supervision and b) due to historical and modern race and gender-based socioeconomic inequalities, Black and Latina women are more economically vulnerable, and “are disproportionately represented in the welfare system.” (Allard 2002, 2)

Allard’s study results then, have continued to confirm the debilitating harm that welfare loss has, particularly for those that have been most disenfranchised.

2.5 Restorative Justice

After having situated the theoretical underpinnings of gender and the war on drugs—and why we would need these policies to change—I investigate the literature of “restorative justice,”

within the context of marijuana legalization, and reckon with the gendered considerations or implications of restorative justice in theory, policy, and practice.

To provide a base understanding of what “restorative justice,” is I turn to Carrie Menkel-Meadows, “Restorative Justice: What is It and Does it Work,” which provides an adept and clear definition of restorative justice can be. Restorative justice is an effort, by activists and academics, to “transform the way we think of punishment.” (Menkel-Meadow 2007, 10.2; Braithwaite 2002, 2003;; Daly 2002, 2005, 2015; Chesney-Lind 2006; Umbreit 2001; Zehr 1995) This means, that first, “crime,”—which does not always necessarily mean only legally criminal activity, but acts that are viewed as outside accepted societal norms— and subsequently, “criminals,” cannot be seen of or thought of as independent from greater social and cultural structures that they exist within. When a “crime,” occurs, it does not just affect the victims or perpetrators, but in fact, it affects, “victims, interested bystanders (such as family members, employees, or citizens), and the larger community within which it is imbedded. (Menkel-Meadow 2007, 10.2) From there, restorative justice can be then understood as a relatively broad concept and set of practices that can, “including apologies, restitution, and acknowledgments of harm and injury, as well as to other efforts to provide healing and reintegration of offenders into their communities, with or without additional punishment.” (Ibid) There is as such, no one way to do restorative justice; however, the general aim of restorative justice is to facilitate communication between offenders and victims, with recognition and support of the communities that have been affected; acknowledgement of the harms that have been wrought onto the victims and their communities; restitution of some form for the victims, which can and should include both apologies/acknowledgment alongside some form of remuneration; and an agreement to go forward with new, and more open understandings and reckonings. (Ibid.) The ideal format of restorative justice consists of the four Rs: repair, restore, reconcile, and reintegrate. (Ibid.) Repairing the broken trust (whether institutional or

personal); restoring the victims rights or dignity; reconciling the differences or issues that exist between victims and offenders; and finally, allowing a full reintegration of victims and offenders into their communities. (Braithwate 2002, 2003;; Daly 2002, 2005, 2015; Menkel-Meadow 2007)

Michael O’Hear, writes in, “Rethinking Drug Courts: Restorative Justice as a Response to Racial Injustice,” that as of the time he wrote in 2009, it had become very clear that the war on drugs had failed in its objectives of restoring public safety and health, aided in the mass incarceration due to disproportionate over policing of minority groups, and led to greater socioeconomic disparities within already vulnerable communities. (O’Hear 2009, 463) He argues that there has been growing outcry over racial disparities in prisons, within the United States as a whole and particularly, within the state of Wisconsin, due to disproportionate implementation of anti-drug policies. (O’Hear 2009, 467) He goes on to discuss how some argue that this disparity can be mitigated through the drug courts; however, he posits that, the drug courts are ineffective or unable to fix the problem, because they are the problem. (Ibid.) The drug courts and the legal system prosecute a disproportionately high number of Black offenders, and yet, “data indicates that the Black share of drug crimes is almost exactly equal to the black share of the population at large.” (Ibid.) It’s just that Black people are far more likely to be arrested by the courts. He argues that the effectively mitigate the racial disparities in incarceration, restorative justice must be undertaken. Restorative justice, differs from retributive justice, as a theory because it does not “not recognize the infliction of pain on wrongdoers as a good in and of itself.” (O’Hear 2009, 488) Restorative justice in practice, must then focus on community restoration, and facilitate communication between the victims and offenders; and active efforts to repair and acknowledge harms. (Ibid.)

Deborah Ahrens’ writes in “Retroactive Legality: Marijuana Convictions and Restorative Justice in an Era of Criminal Justice,” provides a framework for restorative justice policy

creation for those affected by anti-drug policy, in a time when marijuana legalization is slowly picking up throughout the United States. (Ahrens 2020, 381-382) Ahrens argues that in states where marijuana is becoming legalized, policymakers should acknowledge and address the failings of the war on drugs and the uneven socio-economic consequences that it has had on most communities within the United States. (Ahrens 2020, 384-385) She further argues, that for restorative justice in the post-war on drugs era to be truly equitable, policies must be fully retroactive legal. Retroactive legality to Ahrens, requires the full expungement of all misdemeanor and felony marijuana related convictions, as well as direct and explicit reparations. (Ahrens 2020, 440) Ahrens notes that it may be difficult to fully address all the collateral damages of marijuana convictions, as within the criminal justice system, drug-convictions, and the breadth of punitive cascading effects of that have affected communities directly and indirectly due to convictions, must also be addressed. (Ahrens 2020, 415-423)

Restorative justice policy can be a vehicle for meaningful change or effective amelioration of anti-drug policy harms. However, it appears that when scholars have tried to wed the principles of restorative justice as a vehicle for post-war on drugs policy alternatives, they have focused on the racialized effects on the war on drugs, and with it, have centered men's experiences. Ahren does an excellent job outlining what effective restorative justice can be; however, she does not do a gendered framework, and provides rather a powerful general framework on the possible effects of a restorative justice-based marijuana legalization policy, and how restorative justice can be utilized. Her restorative-justice framework for marijuana forms the basis of much of this work's understandings of restorative justice, particularly within the framework of what could possibly be gender-responsive restorative justice.

2.6 Conclusion

The policies that were written for and throughout the war on drugs and even much of the excellent academic work that has been written about the consequences of the introduction of the

multiple arms of anti-drug policy, failed to grasp that women of color were the most likely to be heavily affected by these types of one-strike policies, and that therefore, thee. Nevertheless, several scholars have noted that for there to be legislative reforms in the aftermath of the war on drugs, one-strike HUD policies, based on punitive and exclusionary zero-tolerance policies must be amended. Gender and the war on drugs, has been undergirded by masculinized understandings of crime and race. The scholars that have written about women, and their experiences throughout the war on drugs, have provided interesting and compelling ways to see the multifaceted and unique ways that women were directly impacted throughout the war on drugs. However, in those theorizations and understandings, there has not been much done with regards to creating a possible framework for directly and effectively addressing those women affected by the War on Drugs.

Consequently, the work that has been written about restorative justice, and how it can help those affected by draconian policies, is limited to gender-neutral language, or centering the male experience as the universal experience throughout the war on drugs. However, it provides a comprehensive framework for assessing what effective restorative justice policy is, and how it can (or if it is) being effectively implemented. Thus, in this work, constructing a gender-responsive restorative justice policy, would provide a mechanism for effectively addressing all victims of the war on drugs.

3 Theoretical Framework

This work ultimately aims to analyze how gender-responsive restorative justice policy (specifically New York State's MRTA) is. To do this, a theoretical framework that provides a comprehensive theoretical understanding of gender and the war on drugs and restorative justice must be made. To build this theoretical framework, several feminist and social justice theories must be synthesized and understood: gender and the war on drugs, intersectionality, and justice.

To understand the gendered effects of the war on drugs, and subsequently, how a gender-responsive restorative justice policy can (or should) be constructed, I have reviewed several key concepts and theories that comprise "gender and the war on drugs," and how they can conjoin with the theories of restorative justice.

3.1 Race and Crime and the War on Drugs

The War on Drugs has had a devastating and disproportionate impact on the African American and Latino American communities within the United States. Thus, the relationship between crime and race must be explored on the theoretical level, to understand how public perceptions or understandings of race undergirded the severity of the War on Drugs.

Critical race theory is a theoretical framework, which allows for some insight into race and the war on drugs. CRT provides a lens in understanding two aspects of race, particularly within the context of the war on drugs: the racialization of crime, and structural inequality. (Bell 1972; Crenshaw 1989; Hawksworth 2003; Lopez 1996; Nunn 2002)

Racialization of crime allows for the majority group of a population to legitimize their oppression against minority groups and allows for the maintenance of racial or ethnic hierarchies.

What is defined as a crime, is defined by those in positions of power. The constitution of crime is established through a consensus of societal norms and legal definitions—which are

determined, influenced, and defined by power relations within a group, people, state, or nation. (Hall 1982/2005, 55; Nunn 2002, 428) This concept, coined or attributed to Stuart Hall, is an offshoot of the Gramscian theory of hegemony. The consensus isn't constituted through popular opinion, but rather through power and authority. A consensus within a society is accepted—even when it appears to be a new ideology or framework—only when it is compatible with preexisting institutions of power. (Hall 1982/2005, 55; Nunn 2002, 428) For those in authority to exert their power and govern, there must be a consensus; otherwise, governance is ineffective, or their power can be threatened. (Ibid.) Thus, it is in the best interests of power, when governing, to influence, shape, or direct the consensus. (Nunn, 428) It is by these processes, that subsequently, crime is constituted as deviant to the norms outlined through consensus. As the societal norms and legal definitions are delineated through the consensus, crime is co-constituted. By labeling and defining specific actions, behaviors, or customs as the norm, the dominant group can situate their beliefs as morally grounded and treat other values and priorities that do not conform to their norms, as immoral, and worthy of social stigmatization or even legal punishment. (Nunn 2002, 429) Thus, there is much power in defining crime, because it in turn defines, what ideologies, and who (or what groups) “should,” be represented within a society. (Ibid.) The existence of crime, therefore, allows for certain social behaviors to be constituted as morally sound or righteous, and provides legitimate power to mobilize “law-abiding,” or “morally righteous,” citizens, against it. (Ibid.) And new definitions of crime, are built on preexisting definitions, understandings, or moral reservoirs or prejudices of crime.

The state, and certain individuals, referred to by Stuart Hall as, “definers of crime,” coalesce to define what crime is. (Hall et. al 1978, 58) Primary definers are government officials or mainstream academics from influential/elite institutions; and they are presumed to have greater expertise or accurate information than most of the population. (Hall et. al 1978, 58;

Nunn 2002, 431) Secondary definers are those that publish or disseminate the definitions provided by the primary definers as secondary sources, like the media. (Hall et. al 1978, 59; Nunn 2002, 431) And subsequently, there are “counter-definers,” activists or academics, who produce alternative definitions of crime, but their ability to disseminate these definitions or values is restricted because they do not have easy access to mainstream media, and they are only able to, “respond in terms pre-established by the primary definers and their privileged definitions.” (Hall et. al 1978, 64; Nunn 2002, 431)

The state, in such a position, has a monopoly (through primary definers), on defining crime. And the threat of crime can and is used by the state to legitimize the government and its policies. In such a position, the state can define certain actions as criminal, to change public perceptions towards such behavior, as well as to punish those that engage in those types of behavior or associate with people that commit such actions. (Nunn 2002, 432)

Defining a crime determines who is a criminal. Actions that are defined as crime, is understood to be asocial behavior that “law-abiding,” members of society do not partake in; and those that commit “crimes,” are therefore relegated to the peripheries of society, and viewed as, “other.” It is this “other,” that commits crimes, and must be excluded or removed from normal society. Those that are “other,” are constructed through the consensus because they constitute characteristics or behaviors that are excluded and viewed as negative by those belonging to the dominant group. (Stuart Hall 1982/2005)

Racial minorities are often racialized as the “other,” because they do not belong to the dominant group, and certain, real or imagined, behaviors and actions associated to them, are constituted as being outside of social norms, and subsequently, the consensus. (Gordon 2006, 59) And if what is excluded or repudiated as belonging to the consensus is a crime, then those that are “others,” particularly racial minorities, are conceived of as criminal. Thus, crime, defines race. And not coincidentally, because conduct or behavior that is associated with racial

minorities, particularly Black and Latino Americans, can become criminalized, either because negative connotations are promulgated through that behavior's association with racial minorities or because by controlling that conduct, racial minorities can be controlled. (Nunn 2002, 433) As a result, actions and behaviors associated with minority groups, real or imagined, can be constituted as crime, and the state can rely on support from those in the community that follow or agree with the consensus, in its fight against crime. (Ibid.) And once someone or some group is defined as a criminal, oppression is justified. As a result, the suppression of crime can and does constitute the legitimization of racial oppression.

During the War on Drugs, crime (in this case, anything "drug," related) and those who committed those crimes, were presented as the enemy of the state through the evocation of, the use of rhetoric from, and the extreme methods of fighting against, "war." (Chesney-Lind 2006, 9; Nunn 2002, 390; Tonry 1994, 28) Through bipartisan collaboration between Republicans and Democrats throughout the executive and legislative branches of government, and the usage of longstanding prejudices and stereotypes about people of color's drug usage and propensity toward criminality, Ronald Reagan's administration constituted racial minorities (Black and Latino Americans) not only as criminals, but as enemy combatants in a real war that required extreme tactics and weapons to be defeated. (Ibid.) For a state to win such a

war, it would need to rely on extreme methods, and assume that all those belonging to “the other side,” must be eliminated.

Thus, with on the onset of the War on Drugs, although the policies enacted were ostensibly “race neutral,” and targeted only criminals, through the racialized construction of crime, to be a racial minority was/is the same as being a criminal.

Going further than “race,” or perhaps, to ingratiate it further, we must include here “gender.”

3.2 Gender and the War on Drugs

Gender is a multifaceted concept, that is socially constructed, through gendered expectations, based on presumptions of gendered roles within a given society. Gender, much like race or crime, is society bound, with different societies and cultural backgrounds attaching different values or expectations subjectively. Within this framing, it can be understood then, that just as race and crime are tightly wound together, so too is gender. Definitions of race and crime have often been intermingled, and so too is gender. Gendered understandings of given roles or positions within society, in conjunction with race, also inform what is or is not a “crime.”

Much research on “gender,” and the war on drugs, has been criticized for removing agency from women or lamenting their lack of power. (Muehlmann 2018, 324) Understanding how agency and power is negotiated or constructed for women, within a male-dominated society is incredibly important. However, in this piece, the very purpose of this work, is to find out what were the exact consequences that the war on drugs had on women, qua women. Because to have gender-responsive restorative justice, it is essential to define, and understand the ways in which anti-drug policies affected women, so that the policies can explicitly accommodate and rectify those issues.

In this section, I aim to grapple with the concept of gender within the context of war on drugs as an identity marker within male-dominated and orientated social structures, institutions, and

cultural imagination wherein women, and particularly, poor minority women, are considered an afterthought. To do this, I investigate the ways in which gender, race, crime, poverty, and justice can coalesce or be constituted within the context of the war on drugs. Throughout this piece, I will write in binary (women/men). This not because I believe that gender is binary, or that gender can be accurately delineated into women or men. However, this gendered binary, as well as binary gendered cultural and societal expectations and understandings undergird much of the drug policies of the war on drugs and facilitated the gendered experiences and expectations of women throughout the war on drugs. (Giacomello 2020) “Gendering,” the problem provides a framework for viewing how war on drug policies affected women. Understanding “gender,” in policies, criminal justice, and particularly during the War on Drugs is essential in understanding how women have been affected. Why gender? Because, as will be seen throughout this piece, in policy writing and execution, gender neutral language or application, can result in gendered consequences.

3.2.1 Gender and the War on Drugs

Race and crime have been touched upon earlier, and in constructing this theoretical framework, it is essential to reiterate and synthesize them with gender. Racial “other,” and crime—are constituted through consensus. (Hall 1982, 2005; Nunn 2005) Those that belong to racial minority groups are construed as other, and crime, is construed as all that lays in opposition to set social norms or legal definitions. Gender, and the “norm,” is also constituted. Thus, like race and crime, gender belies a presumption of status or position within a society. Within the context of the war on drugs, gender, and its positionality with race and crime, is essential to understanding the effects of war on drugs, and subsequently, how to directly combat those effects. Only through an intersectional framework, which includes, race, class, gender, and “crime,” can a theoretical framework for assessing gender and the war on drugs be constituted. (Chesney-Lind 2006, 11-14; Crenshaw 1989) Because, as I will show throughout this

piece: the greatest, unsung victims of war on drugs policies, federally in the United States, and at the state-level in New York state are poor women of color. Thus, for any piece of legislation to actively conduct gender-responsive restorative justice, it is essential then, that it addresses this need, by analyzing these key aspects through a gendered lens: crime, punishment, justice, and socio-economic factors.

3.2.2 Gender and Justice

Feminist scholars throughout, have debated and continue to debate on “gender,” and “womanhood,” particularly in relation to concepts of justice. Before feminist scholars can find an understanding of “justice,” before the law, it must be understood as to who is the Subject of the law. And is the Subject before the law “gendered” or gender neutral? (Daly 2006, 3) It is important to engage with several different debates within feminist thought or conceptualization when discussing the gender, of gender and justice: is gender a stable or unified category, or is gender, and what categorizes “gender,” fluid? (Daly 2006, 3; Butler 1990; Hudson 2003; Young 2005) Even within these two categorizations it is important to discuss the differences in debate within them, to understand what elements can, may, or should undergird definitions or pursuits of justice. Within the first category, wherein gender is a presumed or stable category, or “woman,” and “man,” there can be presumptions or assumptions therein that all women’s experiences are the same, regardless of their socioeconomic backgrounds, race/ethnicity, or sexuality. (Daly 2006, 3) This, as will be seen throughout this work, is not the reality that has been afforded to many of those affected by the War on Drugs. Therefore, we should delve into the understandings of gender, as a fluid category, wherein multiple things can be factored together to construct or understand the relation that gender would have to crime, and subsequently, to the necessary justice. (Crenshaw 1989; Hawksworth 2003; Young 2006) The subjectivity of gender based on location, can also not be understated, and in this work, of gender and justice, I address gender and its multiple facets, as well as justice, within

the traditions and socializations of North American, and consequently Central/Western European, schools of thought.

Within the Global North, it can be understood that the law has reflected the “subjectivity of the dominant white, affluent, adult, male,” which in turn, simply reflects society. (Hudson 2006, 30) And within this framework, it can then be understood that the law, has been written for and by such a Subject. (Hawksworth 2003, 529-531; Lopez 1996,79) And those that deviate from this can be viewed as existing outside of this framework; and that any form of justice (or punishment) that is put forth from such a framework of law, will subsequently reflect the positionality of that Subject within a society. If the presumed gender is “man,” before the law, is reflected within general society, then those that are “not-man,” will subsequently find that they are treated before the law, the same way that they are treated in general society. (Hudson 2006, 31; MacKinnon 1989) But even that, is not so simple. The positionality of the Subject before the law, is precipitated on multiple factors or intersections, that converge to create favorable or unfavorable conditions for them. Particularly before the law, the varying ways that race, class, and gender (amongst many other subjectivities) converge, can lead to varying results. (Hawksworth 2003, 529-531; Crenshaw 1989)

Within North American society, it can be stated that there are existing gendered norms and expectations that are binaried, and that within this binary of “man,” and “woman,” (with its gendered norms/expectations), “woman,” as a category can and often is treated in different ways before the law, based off these “general,” gendered norms. (Hudson 2006; McKinnon 1989) However, within this framework, a problematic exists because in this category of “woman,” the subject is presumed to be white, affluent, adult, and female. (hooks 1989) The

positionality of such a person before the law, would be, and is influenced by their gender, but also by their race and class.

As written earlier, race plays very heavily into the constitution of crime, and subsequently notions of criminal justice, and “justice”; therefore, it must be understood that what constitutes a crime that must be rectified before the law, and those that are viewed as criminals before the court, will and are affected by their gender, their race, and their class. Criminal justice, critical race, and feminist scholars have consistently noted that criminal justice in the Global North is, “white man’s justice.” (Gbrich 1993, 134-136; Hudson 2006, 30; Ngair Naffine 1990) Thus, when we theorize upon the gender and justice we must understand how the Subject before the law is treated and understand that the “harms that they suffer in virtue of their gender and/or race/ethnicity,” and the ways they are discriminated against or over-penalized is influenced, “to the degree that they are removed from the characteristics of white masculinity.” (Hudson 2006, 30) This is particularly important, when understanding gender and the War on Drugs, and subsequently, restorative justice as a possible framework for true “justice.”

If the law itself has perpetrated injustice against groups or persons due to their gender and/or race and/or class, in their pursuit of, “justice,” through the criminal justice system, how then can this mismatch be rectified? Through restorative justice, and particularly gender-responsive restorative justice. Anti-drug policies that are enacted, and the criminal justice system that constituted and was co-constituted through those policies, can and has affected different groups of people, even if they are the same gender, or even the same race, differently, depending on how their personal subjectivities intersect. (Harris 1990; 585; Crenshaw 1989) Therefore justice, from these injustices is not possible, unless the unique ways that societal positionality influences how one is treated before the law, and the collateral damage that comes from legislation and policies even when not-explicitly engaging in “legally,” criminal

activities, but rather, “morally,” frowned up on behaviors (due particularly with their associations with gender and/or race and/or class), is acknowledged. (Hudson 2006, 31; Daly 2006; Young 2005) An intersectional feminist lens must consider the fluidity of gender and gender expression; however, the reality of binaried gendered norms and expectations within the greater cultural structures and institutions, the ways that race, gender, and socioeconomic background converge to make something a “crime,” and the varying ways that multiple intersections collide to create victims of injustice. (Daly 2006,4; Crenshaw 1989; Young 2005) Any notion of justice, must be ground on intersectionality. Restorative justice provides a possible framework of justice. Restorative justice, and its proponents are heavily advocate and delineate that there is relationship and correlation between race and criminal (in)justice; however, the gender of the Subject, in much of this renewed understanding of “justice,” is predicated, or presumed to be “man,” once more. (Goodmark 2018, 373-374) For restorative justice to be truly effective and ensure that all victims of injustice receive justice; there must be a gender-responsive framework, that undergirds the theories and practices of restorative justice. One that recognizes and acknowledges the harms or injustice that racial minorities have experienced through the criminal justice system, and one that also acknowledges the ways that all genders have been affected, not just men.

3.2.3 Gendered Crime and Punishment

War on drugs policies have directly affected women, qua women. Just as race coalesce to constitute crime, and vice versa, so too does gender. And it is important to understand and address the ways in which anti-drug policies can have a highly gendered effect, despite being superficially “gender neutral.” Gender neutrality in policy language, as well as implementation, does not necessarily mean that there will be gender neutral effects. (Bacchi 1999; Chesney-Lind 2006; Goldfarb 2003; Lenox 2011; Mackinnon 1989; Raedar 1993) Just as certain behaviors or actions that are associated or stereotyped with certain races can be and are

constituted as crimes, so too can—and particularly when viewed through an intersectional lens—certain behaviors which are associated with those belonging to certain races and genders.

Throughout the war on drugs, anti-drug policies, and subsequent general “anti-crime,” policies, have been implemented that have had direct or collateral damage on women of color. Policies have been constructed, in this vein, that often criminalize behaviors directly associated with socioeconomically or materially disadvantaged women, who, within the United States, are overwhelming women of color. (Muehlman 2018) War on drug policies did not just affect those that directly dealt with or conducted illegal drug trades, but rather, an entire matrix of, ostensibly gender-neutral policies were enacted, which ultimately affected women uniquely in direct and collateral ways in their actual implementation. (Goldfarb 2003; Lennox 2011; Raedar 1993) The gendered effects of policies on welfare access, as well as extremely broad definitions of what constitutes a drug crime, has meant that for many women throughout the war on drugs, gendered-societal expectations have placed them into positions which present them as or make them as culpable in certain criminal cases.

For others essentialized gendered expectations of motherhood, caretaking, or heterosexual relationship norms, have caused them to be affected as collateral damage in the execution of many of the different types of drug-war /war on crime policies. Throughout this work, it is essential to understand this gendered aspect. If we do, then we understand, what exactly it is, that a gender-responsive restorative justice policy could do.

4 Analytical Framework

4.1 Restorative Justice Policy Analysis and Anti-Drug Legislation

As written earlier a new body of work is being actively undertaken on how to effectively conduct restorative justice within the backdrop of the war on drugs, particularly considering changing attitudes towards marijuana at the state and federal level.

This work will be utilizing multiple scholars, academics, and activists' definitions of restorative justice. However, Deborah Ahrens' "Retroactive Legality: Marijuana Convictions and Restorative Justice in an Era of Criminal Justice," understandings of restorative justice is what undergirds much of this analytical framework, particularly due to how they engage explicitly with the type and class of policies that MRTA belongs to (restorative justice in times of marijuana legalization). In the post-war on crime and war on drugs era, there has been a marked shift in how criminal justice is wrought onto those that have been affected by unfair or unequal criminal justice policies. Restorative justice can be understood as framework of policy creation or practices which aim to repair the harm that was caused by past over criminalization and over policing and address the ongoing social and economic disparities that resulted from these uneven arrests and incarceration. (Ahrens 2020; Braithwaite 2003; Daly 2003, 2005; Hudson 2006; Silva and Lamber 2015; O'Hear 2009) Restorative justice is a framework for policy and practice which originates in criminal justice theory and can be utilized effectively through an intersectional feminist framework. The purpose of restorative justice policy and what undergirds this framework is an approach that emphasizes restoring the rights and civic status to persons that have been affected by over-policing and criminalization, to that which they would have, had their actions and behaviors, as well as those of their loved ones, not been criminalized or overpoliced. (Ahrens 2020, 384-385) Post-war on drugs, marijuana-related restorative justice policy emphasizes acknowledgement of harm, automatic expungement of all marijuana related convictions (including retroactively clearing records), and

inclusive/reparative measures which are intended to alleviate both the direct and collateral harms that anti-drug policy has had on different communities. (Ahrens 2020, 385) A gender-response restorative policy framework goes further, by addressing effectively, the gendered harms that have been wrought by anti-drug or anti-crime policies.

4.2 Acknowledgement of Harm or What is the Problem?

For there to be restorative justice the first step of any piece of legislation or policy is acknowledgement. Acknowledgement of harm is the first and most crucial step of any restorative justice policy. (Menkel-Meadow 2007, 10.2) It is important to understand and know what has been done, who has been affected, and why this policy or legislation needs to be fixed. In this acknowledgment of harm, it is important to recognize the profound negative effects of criminalization, in this case, through anti-drug or anti marijuana legislation. This acknowledgment must address and recognize the racial and socioeconomic disparities as well as the collateral consequences that have come forth through anti-drug policies. This first step of acknowledgement is in line with many other understandings of policy proposal in general. Acknowledgement of harm within this framing amounts to the same question of, what is the problem, that is presented in Bacchi's Women, Policy, and Politics, within a restorative justice policy framework who the victims are and what the offenders have done must be put forth. (Bacchi 1999, 1-5; Menkel-Meadow 2007, 10.2) Because every policy must contain or an explicit or an implicit diagnosis of what the problem is. (Bacchi 1999, 1-5) Within restorative justice policy this presumption is that there have been negative and/or collateral effects of policy, which are directly related to, uneven or unequal policy implementation. Thus, for any policy to present itself as a restorative justice policy it must then present and frame what it is that needs to be restored. Thus, to take it one step further, if a restorative justice policy acknowledges the racial and socioeconomic harms that have affected certain groups due to uneven or unequal policy implementation; then gender responsive restorative justice policy acknowledges racial,

socioeconomic, and gender-specific harms that policies have had on group of people. With this understanding of restorative policy comes the recognition that, most attempts at drug-related restorative justice policy, is ultimately a progressive attempt at policy.

In understanding or analyzing restorative justice policies, it is important to note or understand the framing of the problem. Acknowledgement of harm in restorative justice is an amazing first step, however what is just as important in analyzing any restorative justice policy, is what policymakers do not address. In creating or writing restorative justice policy and trying to frame or understand the problem, it is important to understand why and what language is being utilized to frame the problem or acknowledge harm. Because the way in which the problem is situated, framed, or defined can ultimately result in differing results.

4.3 Language, Gender-Neutrality, and Discourse in Policy Analysis

Language and gender-neutrality are essential to understanding any policy but particularly marijuana-related restorative justice policy. (McPhail 2003) These aspects allow us to view who the policymakers believe to be the victims of anti-drug policy, and how they acknowledge the harm that has been done (which needs to be restored). Throughout this article, language and gender neutrality in policy both anti-drug policy and restorative justice policy, particularly the Marijuana Regulation and Taxation Acts (MRTA), will be assessed. The language that is used and how actions or crimes are framed, as well as understandings of victims or offenders, can provide insight in how the policy will be implemented, or how effective this implementation will/has been.

Through language or a gender neutrality stakeholders can be identified. In restorative justice policy, particularly marijuana legislation or restorative justice policy there are a myriad of stakeholders that must be identified: the victims, the offenders, the policymakers, and law enforcement. In an ideal restorative justice policy, the beneficiaries would be those that were most affected by law policies. Language and gender-neutrality can allow us to analyze more

clearly and effectively, what the specific objectives are that the policy aims to achieve, objectives that are theoretically measurable, achievable, and time bound. (Ibid.) Understanding the purported or claimed objectives of a policy, allows us to see the policymakers' ultimate goals. And in the case of a marijuana-based restorative justice policy, the policy must have explicitly inclusive and reparative measures that engage with and provide for the communities most affected. (Ahrens 2020; Montgomery and Allen 2023)

4.4 Evaluating the Outputs of the Policy

Throughout this work the aim is to understand the problem that the MRTA and other marijuana restorative justice policies, are trying to solve. To do this we must understand what the problem that they need to solve is. Is the problem that is presented in the policy adequate in two ways: a) the way they present themselves and the problem within the policy itself and b) what they have allotted to implement this policy, and are those allotments in line with what would constitute a restorative justice policy. Throughout this work we will grapple with policy intent and output, and how the problem which MRTA, aims to solve, can and will affect certain groups of people. Then, we can assess the likelihood of the, the policy/ proposed solution is feasible. With an eye to restorative justice, it is important to analyze and assess how equitable the policy is in theory and in practice. Because the policy can purport to do one thing vocally and publicly, and result in something else entirely in execution. There are several aspects that need to be considered when conducting a restorative justice policy, where in the policy, for the policy to be truly equitable, it must have inclusive and reparative measures. All policies claim to be fair, but with restorative justice policy, this need is tenfold. The policy must ensure that the key stakeholders—the victims—are the greatest beneficiaries of the policy. Next, it is important to understand the feasibility of the policy. How the policy will be administered, the political ramifications, and the technical and economic feasibility or effectiveness must be assessed. (Bardach and Luger 2012) Policies, and particularly, restorative justice

policies, can have extremely high-minded or progressive ideas or proposals; however, how likely or easily these proposals can be implemented must also be acknowledged and addressed. As the MRTA is a recently implemented policy change, it is difficult, but not impossible, to fully assess the actual impact that it has had or can have, both economically (as a vehicle for socio-economic change, growth, and state taxation), as well as socially (how the policy proposals can or already have positively or negatively affected those that the policy claims to help).

By contextualizing and analyzing the history of anti-drug policy in the United States, and the disparate ways that people of color, and particularly, women of color have been affected by historical policies, as well as explicitly, war on drug policies, we can understand what measures a gender-responsive restorative justice policy that aims to rectify some of those wrongs, should address. And with this, we can then assess how effective or feasible, the proposed actions are in the Marihuana Regulation and Taxation Act are.

5 Contextual Analysis of Federal and NY State Anti-Drug and Marijuana Policies Prior to MRTA

5.1 Introduction to Previous Policies

Most academics agree that the Drug War or the War on Drugs, though only officially enacted in the 1970s under Richard Nixon, existed somewhat in different forms and under different legislation for decades prior, but only reached its true zenith from Ronald Reagan's presidency onwards, building on "white fear of black crime." (Chesney-Lind 2006, 9) The now rejected policy was ostensibly intended to prevent drug abuse and trafficking, particularly within the most vulnerable groups within the United States. However, it has come to understood as a failure in policy through the work of academics, activists, and politicians. A failure in policy that reified and exacerbated socioeconomic, racial and gender inequalities within society—much has been written about the War on Drugs and the effects it has had in American society writ large from the late twentieth century onwards.

From the outsized American prison complex to police brutality and ineffective mechanisms against abuse, the consensus amongst scholars, particularly within the last two decades, has been that failures by policymakers to adequately address uneven or unequal law enforcement, alongside discriminatory implementation, contributed to increased socio-inequality amongst minorities and those belonging to minority communities. (Dollar 2018, 306) Within the United States, policies that aim for the criminalization of drug usage and possession, have been typically undertaken to discriminate against non-dominant groups; and this criminalization alongside uneven law enforcement has led to, "uneven enforcement of neutral law."

(Weis 2017, 8) Scholarly research shows that US policies intended to criminalize drug usage and possession are often done to discriminate against certain non-dominant groups; however, when dominant groups are shown to be primarily or directly affected by those policies, policies geared towards medicalization have been enacted. (Ibid.) Medicalization can of course,

still does pathologize certain traits within certain groups, and can continue to provide easy avenues for discrimination, isolation, and even, criminalization. Academics and activists of present have ensured that failures of the policies are understood, especially when those laws were intended to deal with marijuana and marijuana usage. It has become generally understood that marijuana, a drug that millions of Americans used across racial lines and class lines at the time that the “War on Drugs” officially began has had an incredibly unique position with regards to policy making.

5.2 Federal Marijuana (And Drug) Policies Throughout the Decades

Marijuana has had a unique position within the United States for the last century, and the pendulum to criminalize, decriminalize, and even legalize its usage has swung from one side to another consistently. However, throughout the decades, racism and gender bias undergirded much of the marijuana prohibition that took place within the United States, first in the early twentieth century, post-World War II, and in the 1970s with the advent of the War on Drugs. Marijuana laws, alongside other such drug prohibition laws were intended to provide federal and state governments the means to directly target presumed drug-using minority groups, who comprised of Mexican Americans, Asian Americans, and Black Americans, amongst others. At different points of time throughout the twentieth and twenty-first century, different drugs and drug paraphernalia have been legislated through a confusing and muddling labyrinth of laws and policies. Depending on the decade, the preferred target of the law, and the presumed jurisdiction, laws pertaining to the sale, production, and/or consumption of a diverse array of drug paraphernalia have sought to criminalize, pathologize, and/or medicalize drug usage. Drug legislation in the United States has always been utilized as a tool to control certain groups of the population. And the frameworks through which these drug laws and policies

have been constituted within are informed by understandings of, but not limited to, race, class, and gender.

In 1910, due to the Mexican Revolution, the US saw a surge of migrants from Mexico arrive, with some bringing with them, marijuana smoking. (Campos 2018, 6; Slaughter 1987, 418; Patton 2020, 5-6) Marijuana smoking soon become associated first with Mexicans, Black people, and generally subversive groups from this period onwards. (Earp 2021, 5) There was a pervasive fear that was stoked by key groups (e.g., religious groups, racist groups, government lobbyists) that marijuana usage led to criminal insanity and criminal activity. (Peterson 1985, 246) In 1914, the Harrison Narcotics Act was passed in response to general narcotics use, as a sort of compromise of regulation; wherein those who sold and distributed narcotics, were subject to regulation and taxation. (Bonnie and Whitehead 1970, 976; Patton 2020, 6) In 1915 California became the first of many states west of the Mississippi which enacted laws that required a doctor's prescription for residents for marijuana possession. (Slaughter 1987, 418) Less than two decades later, the Federal Bureau of Narcotics was formed in 1930, and marijuana was listed as a proscribed drug; as such, by 1936 eighteen states had signed into legislation laws that limited or prevented marijuana possession. (Ibid.) By 1937, Congress had passed the Marijuana Tax Act, legislation which limited the possession of marijuana only to authorized medical and industrial users and eliminating entirely personal recreational possession and usage. (Campos 2018, 9; Musto 1991, 46) Post World War II, federal and state agents, led by the Bureau of Narcotics argued that marijuana was a gate way drug that led to the usage of heroin and opium, and they recommended the outright banning of marijuana possession and distribution. (Slaughter 1987, 419; Patton 2020, 11-13) This gateway drug theory, alongside marked heroin and opiate usage by a generation traumatized by World War II, led to a flurry of legislation across the United States in the late 1940s and early 1950s at the state

and federal level which called for mandatory prison sentencing for possession and usage of any drug, regardless of the efficacy or deadliness. (Peterson 1985, 246; Slaughter 1987, 420)

By the mid-1960s however, marijuana was taken up en masse by millions of middle-class youths, despite these laws criminalizing possession. (Peterson 1985, 248) As soon as the primary consumers of marijuana became members of the dominant group, there was a swift turn to decriminalize and defang much of the legislation that had been passed over the course of the prior three decades. From 1965 to 1972 marijuana users grew from one million, to, "twenty-four million people had smoked marijuana at least once, eight million people were using it regularly, and at least half a million people were consuming it daily." (Slaughter 1987, 420) Throughout the 1970s, consumption of marijuana only grew, and arrests for marijuana possession, usage, and selling grew with it. (Slaughter 1987, 421) This marked growth of marijuana usage led Congress to pass in 1970 The Comprehensive Drug Abuse and Control Act, which distinguished marijuana from other drugs and significantly lowered the penalties for possession, usage and even selling. (Slaughter 1987, 422) In fact, by the 1970s, marijuana had stopped being simply for those in the "counterculture," and had become the third most popular drug in the United States, after alcohol and tobacco. (Peterson 1985, 246; Slaughter 1987, 422) In conjunction with the Comprehensive Drug Abuse and Control Act, Congress formed the National Commission on Marihuana and Drug Abuse, with members appointed by Nixon. The Commission ultimately "recommended that federal and state laws be amended to legalize possession of small amounts of marijuana in private and provide for confiscation of marijuana found on a person in public." (Slaughter 1987, 422) Nixon rejected their findings stating, "I oppose the legalization of marihuana," the President declared, "and that includes its sale, its possession, and its use. I do not believe you can have effective criminal justice based on a philosophy that something is half legal and half illegal." (Slaughter 1987, 423) And he refused to legalize or loosen laws regarding marijuana on the federal level, famously

declaring the War on Drugs. However, although the War on Drugs was declared in 1969/1971 during Nixon's presidency, it was largely rhetorical, and the behemoth policy which led to the mass incarceration of members of vulnerable communities and minority groups would only come into fruition from the 1980s onward. (Roberts 2022, 845-7)

From the late 1970s onward, cocaine had become a popular drug. Cocaine, and its derivative, crack-cocaine comprised a significant portion of the overdose deaths in the 1980s. (Murch 2015, 316) Parents, legislatures, and activists argued that there needed to be stronger laws and protections for drug pushers and users, to prevent these seemingly preventable deaths. As a result, the United States government tightened its control over drug legislation and began the War on Drugs. It is important to note that there was no true differentiation between different types of drugs based on effects alone, but rather the presumed consumer. Even though by the early 1980s drug usage had declined significantly, public fearmongering was enough for the government to receive support for their pursuits. (Roberts 2022, 847-9) By the mid-1980s there were fourteen different federal agencies dedicated to fighting drug use, trafficking, and possession; and these agencies included the Drug Enforcement Administration, the United States Forest Service, and the State Department's Bureau of International Narcotics Matter, among others. (Slaughter 1987, 443)

By the 1980s, the Comprehensive Drug Abuse and Control Act that Congress which had passed in 1970, allowed Congress to pass more encompassing laws, including Continuing Criminal Enterprise (CCE) and Racketeer Influenced Corrupt Organization (RICO), which allowed for a marked rise in state and federal prosecutor's ability to go after drug users, possessors, and sellers. (Slaughter 1987, 445; Murch 2015, 317; Roberts 2022, 850-5) These were soon followed by the Comprehensive Control Act of 1984, which allowed for pretrial detention of defendants charged with drug crimes, and most ominously, expanded civil forfeiture laws to the extent that the government could seize any assets, including real estate that could

have “plausibly,” been used to conduct drug activities. (Taifa 1994,95-6) This expansion of civil forfeiture laws heavily incentivized federal and local law enforcement to aggressively pursue presumed drug users, possessors, and sellers at record rates; particularly because these agencies were able to keep all assets seized through drug related civil forfeiture. (Taifa 1994, 107-9) In fact, in 1987 the DEA seized \$506 million, which was more than their budget of \$490 million dollars. (Slaughter 1987, 447) Following this was the Anti-Drug Abuse Act of 1986, and the Anti-Drug Abuse Act of 1988, imposing mandatory minimum federal prison sentences for marijuana possession, along with other drugs. (Slaughter 1987, 448) This federal anti-drug legislation was often followed by even more restrictive state law and policy.

5.3 NY State Marijuana and General (Anti-Drug) Policies Prior to 2021

Almost all federal level anti-drug policies during the war on drugs (1980s-2000s) were taken up by NY State. In fact, in 1973 NY State implemented the Rockefeller Drug Laws, under Governor Nelson Rockefeller, which served as the model for other states and the federal government for anti-drug legislation. (Kohler-Hausmann 2010, 72) In early 1973, Governor Rockefeller announced in his annual address to the legislature that he believed that the state’s drug policies, which he had previously championed hitherto, which focused on creating or expanding drug treatment programs, was a failure; and that a reversal in drug policy was required, to battle the menace of addiction and distribution. (Kohler-Hausmann 2010, 71) By May 1973, he signed The Rockefeller Drug Laws. The Laws, which were intended to combat drug use, were the harshest and most stringent anti-drug laws when they were enacted because they had mandatory sentencing and made no difference between first-time offenders and repeat offenders. (Kohler-Hausmann 2010, 71; Williams 2021,67) These laws mandated a minimum mandatory sentence of 15 years to life imprisonment, for possession of four ounces or more of narcotics or the selling of two ounces or more. (Kohler-Hausmann 2010, 83) And most importantly, those convicted, were not eligible for parole. Even those caught with

relatively small amounts of cocaine, heroin, or marijuana were to be immediately remanded in prison. These laws came into being, because during the 1970s, there was heightened fear about heroin overdoses in NY, and legislators (without the consultation of drug treatment experts), implemented what they felt, was the most prescient solution for the problem at hand. The Rockefeller Drug Laws provided the framework for the soon to follow, federal-level and nationwide War on Drugs. (Kohler-Hausmann 2010, 88) Already, when these Laws were implemented in the 1970s, politicians, academics, and activists criticized the extremely draconian handling of vulnerable communities and recognized that minority communities were going to be disproportionately affected by these laws, due to over policing within their neighborhoods. (Farrell 1973) This led to a massive increase of NY State's incarcerated population; and thousands of non-violent, and low-level drug offenders were sent to prison for incredibly long periods of time, due to the mandatory minimum sentencing of the Rockefeller Drug Laws. New York Police Department (NYPD), through these laws, as well as changes in street-level policing particularly in NYC, led a concerted and heavily effective campaign against drug-related offenders. (Williams 2021, 68) In New York City, "the rise of 'proactive,' 'order maintenance,' and 'problem-oriented' policing paradigms in the mid-to-late 1970s (recast as 'broken windows' policing in the early 1980s) provided an intellectual rationale for street-level enforcement." (Williams 2021, 69) In the late 1970s and early 1980s, felony drug offenses accounted for under 10 percent of felony incarcerations in New York, and by the end of the 1980s, had risen to roughly 35 percent. (Williams 2021, 68) These laws were only reformed recently in 2004 and 2009 to allow judge's more flexibility and discretion when sentencing, and these reforms also saw the reduction of years for mandatory minimum sentencing. Thus, within NY State there has been a history of incredibly harsh state-level anti-drug policies even before the onset of the nationwide war on drugs policy, and those policies, have over-penalized and disproportionately affected people of color.

6 Gender and War on Drugs Policies: How Women Were Targeted & Affected

6.1 Introduction

Throughout the United States history, people that belonged to minority groups, and/or were economically disadvantaged, have been the likely to be scrutinized and incarcerated at incredibly high rates. (Dollar 2018, 305; Weis 2017, 1-3) The criminalization of certain drugs, and making it so that even innocuous drugs such as marijuana are treated with the same impunity as heroin and cocaine in the 1980s corresponds with a marked fear that pervaded white America of so-called “crack attack,” a mass panic wherein laws targeted individuals not only on a socioeconomic and racial level, but a highly gendered one. (Dollar 2018, 309) Dollar argues that:

While [poor] men of color were often deemed vicious, weapon-carrying threats to social order and convention, women of color, especially poor Black women, were depicted as irresponsible, hypersexual, and reliant on social welfare. Stories of “crack mothers” and “crack babies” proliferated, which resulted in cooperative efforts between medical and legal actors who criminally prosecuted women of color using or assumed to be using drugs.

Women with substance abuse disorders and their failed femininity and/or motherhood, featured prominently as the face of the depraved “drug user,” (e.g., the derogatory “crack whore,” and the “welfare queen,”) and impetus for the draconian measures undertaken in what would become the war on drugs. Whether they were users, possessors, sellers, or family members of drug users, women of color, women belonging to marginalized communities and women with

migrant backgrounds faced highly gendered, classist, and racist scenarios. They were women whose lives were torn apart by an unrelenting regime, oftentimes barred from public housing due to stringent anti-drug or anti-conviction policies, had their children ripped from them at birth, or their families irreconcilably broken due to the American prison complex. Under President Reagan the drug menace was turned into a mechanism to consolidate state and federal law enforcement power and reach whilst simultaneously shrinking and crippling the social welfare state. (Gootenberg 2022, 475) The movement to remove or reduce social services and enact extremely punitive sentencing on drug users would continue after Reagan was gone and gain its zenith under later presidents. It is clear that through the manufacturing of certain cultural attributes (drug usage amongst them), politicians were and are able to, “stoke white resentment, trigger implicit bias, and short-circuit empathy for poor black women.” (Cammatt 2016, 367) By sufficiently linking the failures of the drug using mother to so-called welfare queens, anti-poverty measurements were dismantled, denying support to the most vulnerable communities, and reifying a moralistic society wherein the minority groups are blamed for their own socio-economic inadequacies that have caused their circumstances. What is particularly innocuous about the, “Welfare Queen,” is that it appears within an “ostensibly race-neutral frame,” but in practice exists to confirm, “many people’s implicit biases about black women’s poor mothering, inherent sexual excesses,” and lazily leeching from governmental funds while leading lives that the white American voter were diametrically opposed to. (Cammatt 2016, 368)

All this resulted in a crisis wherein vulnerable communities were actively overpoliced, and communities belonging to the dominant group becoming under policed. This was particularly egregious because federal and state policies ensured that drugs that were associated with counterculture, minority groups, and disenfranchised people, such as marijuana and crack-cocaine were treated far harsher than those drugs presumed to be used by the upper White classes, like cocaine. Despite cocaine and crack-cocaine having the same chemical makeup, crack

possession, like marijuana possession had mandatory prison sentencing, whereas cocaine possession did not, and was more likely to be fined or have the punishment at the discretion of the judge. (Roberts 2022, 847) In this system where the police and federal law enforcement agencies acted with impunity, the people that suffered the most were those that were the most powerless.

In the sections below, I will go through and analyze how key federal policies (which were then taken up at the state level) throughout the War on Drugs, though written and treated as though they were gender, class, or race neutral, but disproportionately affected vulnerable women of color.

6.2 Incarceration

Congress passed the Sentencing Reform Act of 1984 and continued to create other mandatory-minimum sentencing requirements throughout the 1980s and 1990s; the US Sentencing Commission, alongside other state and federal legislative bodies created binding sentencing requirements and guidelines nationwide, which rejected rehabilitation sentencing policies for prisoners and rather pushed sentencing that was excessively punitive and retributive. (Lennox 2011, 286) Mandatory sentencing guidelines existed for many crimes or offenses, but throughout the war on drugs were used frequently for drug offenses, and required judges to sentence an offender who has committed a specific crime to an explicitly specified minimum term in prison. (DeCourcy 2020, 409)

From the 1990s, and particularly since the early 2000s, there has been much research done on differentiating how the ever-expanding American prison-industry complex has affected different races and ethnicities within the United States. Curry and Corral-Camacho found through an analysis of Texas felony drug offenders sentenced during the height of the war on drugs that the probability of receiving prison time was greater, and that the sentences more severe when the offender was Black American or Hispanic. (Curry and Corral-Camacho 2008, 253)

Focusing on the entire aggregate prison population, they, along with several other academics argued that due to explicit population percentage, Black men had the greatest odds of being arrested, charged with a drug-related crimes, and tended to have harsher or longer sentencing, when compared to white people, irrespective of gender, and to Black women. (Curry and Corral-Camacho 2008, 253, 257) They state that women receive milder sentences than men, that minorities receive harsher sentences than White Americans, and that those that were in their 20s tended to be sentenced at a more punishing rate than those that were older or younger.

Although a lot of scholarly research on the effects of the war on drugs, has touched readily on the failures of those policies, particularly the prison-industrial complex through the intersectional lens of race, class, and gender, such as Curry and Camacho do above, the Black or Hispanic male experience has stood at the center. This has historically been because research into anti-drug policies has typically constructed the primary victims of anti-drug legislation through aggregate statistics of those incarcerated for anti-drug crimes, and the subsequent research into direct or indirect damages place those subjects at the most affected. It can also be argued that such framing shows how research that is intended to understand discriminatory policies, can be guilty of privileging male experiences, whilst simultaneously overlooking some highly gendered or gender-specific effects or damages that anti-drug legislation has had.

In 1980 women accounted for 4.1% of all prisoners nationwide, by 2006 they were 7.2% of the population. (Reynolds 2008, 75) By 2022, that number has gone down to 6.7%, however, most academics see this drop because of Covid-era responses, and not as a significant reduction to prison population or changes in policy. (Carson, 2023; Vera Institute, 2021) Between 1986 and 1995 drug offenses made up a significant percentage of the women sentenced to prison in key states: 91% in New York, 55% in California, and 26% in Minnesota. (Lenox 2011, 281) Furthermore, in that same period there was a 487% increase in women that were incarcerated nationally, whereas for men there was a 203% increase; additionally, the number of women

incarcerated in state prisons for drug offenses rose 888% during that time, and for men it was 522%. (Lenox 2011, 281, 284) In state prison in the early 2000s, drug offenses accounted for 29% of all women incarcerated, but only 19% for all men. (Ibid) Between, 1980-2004, women's incarceration rates increased fivefold, whereas for men, it was threefold; and in 2023, the population of women in prison is six times higher than it was in 1980. (Monazzam and Budd, 2023; Radosh 2008, 168) Academics overwhelmingly agree that this increase in the US's incarcerated population is the direct result of mandatory prison sentencing. (Allard 2002; Boyd 2017; Bush-Baskette 2000; Chesney-Lind 2003; Dollar 2019; Hirsch 1999, 2001; Lennox 2011, Mauer and King 2007; Reynolds 2008) The United States Sentencing Commission's "Sentencing Guidelines," for mandatory-prison requirements for drug-related crimes was drafted with congressional instructions for the guidelines to be emphatically gender neutral; consequently, the "Guidelines explicitly mandate that sex is not relevant in the determination of a sentence." (Raedar 1993, 906)

Mandatory sentencing minimums are terrible in general, but when combined with federal or state "conspiracy laws," pertaining to drugs conspiracy or drug trafficking, they can and have been used against innocent female partners or family members. Gaskins describes conspiracy laws as the greatest tools that prosecutors can have in their arsenal because the burden of proof is so much lower, and all that is required for a "conspiracy," to exist, is two people. (Gaskins 2004, 1536) Through the implementation of both minimum sentencing and federal/state drug conspiracy enforcement from the late, a new type of drug offender came to exist: the woman of circumstance. (Ibid.) Women of circumstances are women who are minimally or tangentially involved with a drug crime through a male partner or family member but are treated under minimum sentencing statute and drug conspiracy laws as though they were fully involved. These women of circumstances upon arrest are typically charged with drug conspiracy or aiding and abetting. Under federal drug conspiracy laws just a woman's mere presence within a shared

home with a male partner or family member accused of illegal drug activity can be taken by law enforcement and used as circumstantial evidence of their participation in the drug conspiracy, regardless of their actual level of involvement or knowledge of these drug activities. (Gaskins 2004, 1533; DeCourcy 2020, 410) What is even more insidious is that for the mandatory minimum sentencing of federal drug conspiracies, the sentencing guidelines require that judges consider only the quantity of drugs seized, alongside the size and scope of the conspiracy—the degree of involvement that the offender may have actually had in the conspiracy, nor circumstances of coercion or abuse cannot be accounted for in the length of their sentencing. (Gaskins 2004, 1533; DeCourcy 2020, 410) Conspiracy laws, in combination with mandatory minimum sentencing statutes does not allow for these complicated situations to be considered, even though, “their culpability is undoubtedly less than that of co-conspirators not faced with such gender and familial constraints.” (Ibid.)

Additionally, because these women often played secondary or subsidiary roles in their partner or family member’s drug activity, although prosecutors can “strike deals,” and negotiate more lenient sentencing within the minimum sentencing guide framework for information that leads to the prosecution of other offenders, these women are typically not privy to any such information, and sentenced as if they were the primary conspirators. (Chesney-Lind 2006; Gaskins 2004, 1535;-1538; Goldfarb 2002, 280; Lennox 2011, 288) What is ironic is that the wives of white-collar criminals charged under federal conspiracy laws are not treated in the same manner as women who are charged under federal drug conspiracy laws—highlighting the classist and racist underpinning federal drug conspiracy laws, in addition to their highly unequal applications on gender-specific circumstances. (Gaskins 2004, 1538; Raedar 1993, 20,21) Under the federal drug conspiracy laws, the criminal activity of the woman of circumstance is commissioned through her intimate or personal relationship with a partner or family member; and yet when being charged or sentenced as a conspirator or for aiding and abetting, the context and

nature of this relationship cannot be considered. (Gaskins 2004, 1538) In essence, for a woman of circumstance to avoid being charged in a drug conspiracy, she must sever all ties with her husband/boyfriend, children's father, etc.; and yet this would be never asked of women whose partners or family members have been accused of conducting white collar conspiracies. (Ibid.)

Another paradox of the American penitentiary system is that because women make up less than 10% of the overall prison population, when compared to the breadth of vocational or training programs that men's prisons have, female inmates typically have less access to educational or vocational treatment programs in prison. (Lenox 2011, 295) When they do receive any type of continued educational training, it is usually in fields or occupations that are gendered as woman-center; unfortunately, most states prohibit those with felony convictions from getting occupational or professional licenses in most professions that women are overrepresented in. (Ibid.) Thus, most of the training that women receive in prison is in effect useless to them once they leave prison because they are unable to practice in those fields.

6.3 Welfare, Public Assistance and Public Housing

In August 1996, then President Clinton signed into action a welfare reform policy known as the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), that continues to be the basis for most federal and state welfare programs in the United States, as of 2024. PRWORA renamed and revised the cash assistance program into Temporary Assistance to Needy Families (TANF) which had work requirements for recipients, and limited the length of time that families could continue to receive benefits; PRWORA also renamed and changed the requirements for the federal food stamp program, the Supplemental Nutrition Assistance Program (SNAP). (Allard 2002, 1; Lennox 2011, 208; Mauer and McCalmont 2013, 1) Nestled amongst the many changes that PRWORA made to welfare, was a provision that was added due to the then ongoing "war on drugs." (Allard 2001; Hirsch 2001; Mauer and McCalmont 2013) This provision, known as Section 115, stipulated that "persons convicted of a state or

federal felony offense involving the use or sale of drugs are subject to a lifetime ban on receiving cash assistance and food stamps.” (Allard 2002, 1) At that time, due both to the policy’s many other controversial amendments and the nation’s generally high support for harsh “tough on crime,” policies, this provision was overlooked, and the PRWORA, was endorsed and ratified by a bipartisan congress after just two minutes of debate. This lifetime ban permanently banned only drug offenses—no other types of felony convictions were permanently excluded from receiving federal or state aid.

That same year, President Clinton and his Department of Housing and Urban Development (HUD) proposed and enacted a brand new, “One Strike and You’re Out,” policy which was ostensible designed to tackle crime as a part of the “war on drugs,” and greater “war on crime.” (Dzubow 1996, 55) This one-strike policy is still in use, has not been repealed, and forms the foundation of current HUD policy, despite being almost three decades later. This policy was purported to improve the living conditions of those living in public housing by allowing for the easy removal, eviction or rejection from public housing of those who committed crimes or sold drugs. (Dzubow 1996, 55-56; McCarty et.al 2013, 38) This HUD policy provided public housing associations or agencies (PHAs) at the state level two different methods for the goal of crime eradication. Either criminals were to be kept out of public housing through intensive screening programs, which made it easier to reject any public housing applications or requests of those found to be “criminals,” or, far more often, were suspected or presumed to be criminals or have criminal associations or family. Or if they already lived in public housing, a tenant could be evicted if they committed, “crimes which threaten[ed] the health, safety or right to peaceful enjoyment of the premises by the tenants or who engag[ed] in any drug-related criminal activity...on or off the premises.” (Dzubow 1996, 56; McCarty et.al 2013, 38) Already, in 1996 when this housing policy was ratified, academics argued that it seemed probable to exacerbate crime, rather than prevent it. Although due to minimum sentencing requirements of “war

on drugs,” policies there were increasing incarceration rates, the rates and occurrences of violent crime were in fact, stagnating or in some areas, decreasing. (Dzubow 1996, 56) Despite this, public perceptions of rampant or unchecked violent crime, particularly by drug users or dealers, which led to increasingly harsher legislation that was intended to severely punish crime.

If a tenant or their guest was convicted of a crime, they and their cohabiting family members could be immediately, removed from public housing. Although guilt of a crime in a courtroom belies a personal status, for those in public housing, the one-strike HUD policy dictated that PHAs could evict an entire family for the prohibited actions of a single family member or a guest, even those actions which occurred off the housing premises. (Dzubow 1996, 60; McCarty et.al 2013, 38) Tenants could be evicted without having been convicted of a crime for two reasons: if the offence was deemed by the PHA of being, “criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants,”; or if there had been any, “drug-related criminal activity,” by a tenant or their guest. (Dzubow 1996, 63) Drug-related criminal activities were defined as the, “the illegal manufacture, sale, distribution, use, or possession with the intent to manufacture, sell, distribute, or use, of a controlled substance.” (Ibid.) With how broad and encompassing the definition of drug-related criminal activity was, it was clear that drugs were thought to be the cause of most crime and violence in public housing. Therefore, if a tenant or their guest robbed a bank, or committed murder, so-long as these actions occurred off the premises, they would presumably not be evicted from their public housing. However, for those who engaged in “drug-related criminal activity,” if their activities could be sufficiently linked to the housing premises, then they and their family members could be evicted. This policy also encouraged neighbors and other residents of a housing development to report real or imagined criminal activity so that they wouldn’t be evicted.

At the time that the one-strike policy began white Americans made up 35% of public housing residents, with Black and Hispanic Americans making up 54% of the residents of public

housing, despite being 17% of all households in the US. (Dzubow 1996, 69) Furthermore white Americans tended to live in public housing that was privately owned, in the suburbs, and up-kept; this was very much in contrast with the urban, publicly owned, rundown housing developments that housed most minorities. (Ibid.) It was clear to academics in the mid-to late 1990s that the one-strike HUD policies would affect minority families more so than white ones. Some academics also expressed fears about the creation of “ghettos within ghettos,” which they believed would occur if there were no accessible public housing options for residents or families who had been evicted or refused placement.

Historically, most academics have focused on the race and class of those who lived in public housing or were otherwise receiving some form of support, such as housing vouchers (also known as Section 8), rather than their gender makeup. Statistics on the gender of head-of-households living in public housing developments, as well as the gender of the primary recipients of Section 8 were not explicitly kept as part of census materials in the 1990s, but race, gender, family status/type, marital status, income levels, and living situation were kept; unfortunately from this time period, those that were childless did not receive an in-depth differentiation, the way that those with families that had children under the age of 18 did. From the 1990 Census, several things could be seen: 30% of Black families with children under the age of 18 in the USA lived in public housing, with 42.7% of all Black families with children below the age of 18 living below the poverty level, and 49.5% living below 125% of the poverty level. (US Census 1990) In addition 35.3% of all Black households with children under 18 were single parent households; and of those households 93.5% were single-mother households, with 81% of them being head-of-households. (US Census 1990)

Subsequently, 13.7% of Hispanic families with children under the age of 18 in the USA lived in public housing, with 35.9% living below the poverty level, and 45.7% living below 125% of the poverty level. (US Census 1990) 23.1% of all Hispanic households with children under

the age of 18 were single parent households; and of those households 90.2% were single-mother households, with 79.1% of them having women as head-of-households. (US Census 1990)

Allard wrote in 2002, that the PRWORA, and particularly the welfare ban, as well as continued welfare reform past PRWORA's passage in 1996, combined with reforms in the criminal justice system, and the war on drugs, and unequal gender-societal expectations have combined and intersected to have an immense impact on Black and Latina women; and that the implementation of the one-strike HUD policies would also disproportionately impact women of color. (Allard 2002, 2) In 2001, 42 states were enforcing the ban either in full or in part with 8 states and Washington DC., opting out; and by 2013 37 states were still enforcing the ban; those states that enforced the welfare ban also had one-strike HUD policies that typically covered more than federally mandated. (Allard 2002; Mauer and McCalont 2007) Roughly 30% of women that are incarcerated, had been receiving some form of public assistance before their arrest, and would indubitably return to using public assistance as a form of transitional income after their prison sentence; however, due to welfare reform, they are immediately banned from having access to TANF or food stamps (SNAP). (Allard 2002, 8) With welfare reform or the welfare ban, a woman who has been convicted of drug-related offense would lose access to TANF and food stamps for the rest of their life; thus, a single mother who had a felony drug conviction would receive TANF and food stamps to support their child, but not themselves. (Ibid.) And even if a woman has not been convicted of a crime herself and can receive some welfare payments work requirements under PRWORA effectively penalize single mothers by requiring that they "leave their homes and search for low-wage employment." (Lenox 2011, 296) For those women receiving TANF and raising children, work requirements effectively penalize them if they are not

a part of a two-parent household—wherein one parent working would fulfill the work requirement for benefits and allow the other parent to provide effective childcare. (Lenox 2011, 296)

And although New York state mostly opted out of the welfare ban, it maintained and continues to maintain several aspects of the PRWORA and included certain restrictions in its implementation of state welfare policy which disproportionately affect poor women of color. There is no welfare ban that explicitly prevents people with drug-related convictions from receiving welfare benefits or public assistance; however, there are several other laws that control the ability of persons that either have drug offenses or intend to live with people that have drug offenses to get welfare assistance. Firstly, NY State provides 2 types of Temporary Assistance (or Public Assistance) that provide families or single persons with cash assistance: Family Assistance and Safety Net Assistance (SNA). Family Assistance is limited to eligible indigent families who consist of a minor child living with a parent/parent or a caretaker, and has a lifetime limit of 60 months, with Temporary Assistance to Needy Families (TANF) payments made in other states counting towards that lifetime limit. SNA is for single persons and counts towards the lifetime allotted amount per adult. (NY State OTDA 2024) If any adult member within a household has exhausted their 60 months of TA payments, then no adults within the household qualify. Additionally, although there is technically no welfare ban for drug felonies, it is at the discretion of the Office of Temporary and Disability Assistance, when releasing TANF funds, to conduct Drug/Alcohol Abuse screening and willingness to participate in drug/alcohol treatment, to determine the recipient's eligibility, and whether they received cash assistance (TANF) or food stamps (SNAP). (Ibid.) So, under current federal law, those that have had felony drug convictions can receive a lifetime ban from welfare benefits. New York State does not technically implement this type of a ban, but rather a modified version which allows the State great leeway

in deciding if someone that has had a drug conviction is eligible for welfare, through set conditions and requirements, which are at the discretion of the State.

Furthermore, in New York State, there does continue to be a one-strike housing policy following federal guidelines—and these guidelines allow for eviction or refusal for drug or alcohol offenses. Thus, although there may be some leeway with explicit cash benefits; housing restrictions continue.

Now, in 2023, there is much more statistical data about the gender or the race of public housing residents, but more restrictions about explicit familial and race and gender status. What is clear though is that as of 2021, women make up 75% of heads-of-households that live in public housing, and 74% of those that receive Section 8 housing vouchers; and that in fact, only a quarter of those that are eligible for housing assistance, receive it. (Center on Budget and Policy Priorities, 2017; HUD, 2021)

What can be deducted from empirical studies and statistics from the 1990s, 2000s, and today is this: women were and are the group most likely to live in public housing or receive some other form of housing assistance, as well as the group most likely to receive public assistance. Despite many strides made in gender and racial equality, historic exclusion from well-paying jobs, lack of affordable or accessible daycare, as well continued expectations of gendered labor in the family, has ensured that women, and that women of color have a greater dependence on governmental assistance. (Lennox 2011, 295) Therefore, women were and are the most likely gender to be affected by one-strike HUD policies, or welfare work requirements, limitations, or

outright bans; and woman of color, in particular Black and Latina women, are the most negatively affected by welfare reform or housing assistance policies. (Allrad 2002; Lenox 2011)

6.4 Conclusion

The War on Drugs enriched multiple government agencies, private enterprises and corporations while simultaneously targeting communities of color and immigrants. It was a mechanism used by the dominant group to oppress those viewed as “other,” and the effects of this criminalization have been felt deeply. This extreme attack on a group of people that should have been primarily treated with compassion occurred because of the differing ways in which certain activities and proclivities have been criminalized or medicalized depending on the presumed target groups. The War on Drugs of the late 1970s-early 2000s, was a war imposed on vulnerable groups, due to their race, socioeconomic status, and gendered existence. It was a war wherein persons belong to marginalized communities were target for the enrichment of the majority population, and the consequences of the draconian policies enacted still affect those communities today. However, despite the laws and policies of the late-20th century War on Drugs being acknowledged as a failure by policymakers on the state and federal level, rolling back this legislation has been a difficult uphill battle which continues to be fought today, as activists hope to help its victims and their family members gain back the rights and dignities that they lost as casualties of this unnecessary war.

7 A Feminist Policy Analysis of War on Drugs Policy and MRTA

7.1 Introduction: The Objectives and Goals of the War on Drugs

Since the mid-1970s in New York State, and the mid-1980s for the entire United States, there has been anti-drug and anti-crime legislation, under the umbrella policy the “War on Drugs.” Throughout the 1970s and onward, there was an increased panic, by the dominant groups within society of rampant drug use, amongst the youth, but particularly among racial and ethnic minorities. This fear of rampant drug use, and at the time, what appeared to be high overdose rates from heroin, and other narcotics, led initially, New York State, and then subsequently the United States federal government, to push for policies that they felt could control the drug-use within the country. The policy that came forth, was a one that, addressed key topics that policymakers at the time purportedly felt were necessary, including:

- a) The first and most ardent, was to reduce drug supply and demand. This was to be done through a multi-faceted campaign that targeted drug users, sellers, and anyone that aided in any such activity. Increased funding for law enforcement, coupled with a greater legislative apparatus to apprehend those selling drugs or using them, was heralded as a solution for eradicating the use of drugs within the United States.
- b) Ensure that public health and safety standards were ensured in the United States. There were fears of drug-fueled crimes creating unsafe environments for the public, alongside unbridled addiction, and by controlling the drug users/sellers through harsh penalization, it was thought that public health and safety could be maintained.

These were some of the issues that policymakers, and their constituents believed needed to be addressed by rigid anti-drug policy. As shown throughout this work, these lofty ideals ultimately had rather far-reaching ramifications; and anti-drug policy disproportionately affected materially lacking racial minorities. Over the course of the last few years, there have become more and more states within the United States rejecting the rigid anti-drug policies of yore,

particularly those related to marijuana. It has become clear, that war on drugs policy, and its expressly punitive nature is untenable, due to its disproportionate direct and collateral impact on certain groups of people within the nation, and that an alternative to anti-drug policy is needed. More and more states are beginning to legalize marijuana, and many activists are fighting to ensure that legislation and policies that aim to legalize marijuana, do not forget the many victims of the War on Drugs. And New York State, is no different.

In this section, I will assess the new MRTA policy of New York State. This policy is intended to be an alternative to the anti-drug policies of yore. Additionally, and most importantly for this analysis, this policy is intended to be an explicitly restorative justice policy; wherein they intend to address and incorporate the four Rs of restorative justice: repair, restore, reconcile, and reintegrate. However, as shown throughout this work, for any form of justice, and particularly restorative justice to truly be equitable within the context of the war on drugs, it must be gender responsive. “Gender” neutral anti-drug policies, combined with general anti-crime policies, had an outsized and unique effect on poor minority women; and the unique ways that they were disadvantaged or impacted, should also be considered in policy proposal and implementation.

7.2 Purported Intent and Output of MRTA

The Marihuana Regulation and Taxation Act aims to provide restorative justice to those disproportionately affected by decades of cannabis drug enforcement through a newly formed state apparatus which would oversee the legalization of cannabis within New York State. I will first lay out the policies intent; and then output, or the methods or instruments which they intend to

utilize to achieve those objectives, and then finally, who the key stakeholders of this policy are. By having a clear framework of understanding, we can assess the feasibility of the policy.

The policy has several key objectives/intent:

- a) To legalize adult usage of marijuana in New York and create a market wherein the state can regulate and tax the sale of marijuana. (S. 854-A 2021, 2, 19)
- b) To acknowledge and address past wrongs and harms that have been inflicted upon communities that were disproportionately affected by state and federal anti-drug laws. (S. 854-A 2021, 2)
- c) To, through the legalization and taxation of marijuana create more economic opportunities, for the state, and particularly for those that were most affected by anti-drug/marijuana policy. (Ibid.)
- d) To ensure that public health, including drug addiction, can be maintained and supported. (Ibid.)

With these outputs:

- a) To create a license system that allows people within New York State to grow, cultivate, and sell marijuana; with preferential treatment for licenses going to victims of the war on drugs. (S. 854-A 2021)
- b) Creating a taxation system from which 40-50% of the taxes received from the multiple licensing channels, alongside sales, goes to help victims of the war on drugs in various community grants, and education, and supports public health initiatives; but only after the state apparatus needed to maintain the tax and licensing framework had utilized

whatever revenue had come in from the taxes to cover their overhead. (S. 854-A 2021, 118-126)

- c) There would be an expungement of marijuana criminal convictions. (S. 854-A 2021, 93)

The stakeholders in this policy are the policymakers and law enforcement, the victims of the war on drugs, and their communities, potential licensees that are not direct victims of the war on drugs (marijuana farmers and business owners), and those adults that will purchase and use marijuana. (S. 854-A 2021, 2-12) Policymakers includes state and local representatives and senators, who represent constituents that may or may not support the reversal in law regarding marijuana. Law enforcement is state and local police: a key stakeholder that gained a lot of financial support and authority throughout the duration of the war on drugs, particularly through pretexts of smelling marijuana. Victims of the war on drugs and their communities, comprise of those that were disproportionately targeted by law enforcement and/or saw their civic rights removed or limited throughout the war on drugs. Licensees and businesses are those that can gain economic footing within the marijuana industry, now that it has been legalized. And the end consumer is the adult that can now buy marijuana legally.

7.3 Language in: Legislative Intent in MRTA

In this section, I will analyze the language used within the MRTA' legislative intent section; where the policy itself lays out its intent. In this section language utilized in constructing the legislative intent of the policy will be scrutinized.

The MRTA begins with the legislative finding that anti-drug legislation has, “resulted in devastating collateral consequences including mass incarceration and other complex generational trauma,” that has disproportionately affected, “African American and Latinx communities,” (S. 854-A 2021, 2) In this introduction whilst acknowledging the ineffectiveness of previous anti-cannabis legislation, MRTA abstains from explicitly addressing the ways in which communities

have been affected beyond “mass incarceration,” and its consequences. This emphasis on, “mass incarceration,” and its consequences, is important to note. Although women’s incarceration rates have been rapidly increasing over the last decade, drug-related, and cannabis-related mass incarceration in New York State and the United States writ large have historically been associated with Black and Hispanic/Latino men. This section of the introduction, does succeed in heeding the first part or tenant of a marijuana-based restorative justice policy, as laid out by Ahrens. The New York State government acknowledges the disproportionate harm that state and federal anti-drug policies have had on minority communities and does apologize for them. Although limited in its breadth, there is admittance of state culpability, and failure of policy, and policymakers.

The MRTA then goes to lay out its core intent, “to regulate, control, and tax marihuana, heretofore known as cannabis, generate significant new revenue make substantial investments in communities and people most impacted by cannabis criminalization...end the racially disparate impact of existing cannabis laws.” (S. 854-A 2021, 2) MRTA ostensibly aims to make substantial investment into all those disproportionately affected by anti-cannabis legislation, but it appears that the base presumption of victimhood, couched in gender-neutral language, is that of the minority man. This is made all the clearer, when visiting the NY State website cannabis.ny.gov, where they go in depth on why marijuana legislation is needed. The website goes into explicit details, and provides an incredible number of statistics, first, about general arrest disparities amongst races in NYC; and then, when the stress the unfairness and disparity that the war on drugs has had on minority men. (cannabis.ny.gov) This supposition of the gender of the victims, even when actively taking into consideration race and class, means that the unique experiences of women due to anti-cannabis legislation and uneven law enforcement are presumed to be the same as men. This presents a conundrum: how can MRTA effectively provide the communities and people disproportionately affected by anti-cannabis legislation with

restorative justice (which here means not just marijuana dispensary licenses, but community/program funding) when the experiences of a unique, and significant portion of the population are ignored or subsumed by another's? The gender of the victims of the problem that the policymakers are trying to solve through MRTA is presumed from the onset. This is problematic because in doing so the present-day consequences of anti-cannabis legislation for women that are not explicitly tied to or like that of male victims of anti-cannabis legislation, may not be adequately addressed or even acknowledged as a byproduct of anti-cannabis/anti-drug legislation.

7.4 Language: Applicant, Person, Equity

After providing a short introduction, along with the intent of the legislation, MRTA lists out what it views as the most important definitions for proceeding through this section (and the following ones) of the policy, as well as the different stakeholders that comprise of the policy. The policy painstakingly provides definitions for differentiations of cannabis, different types of care facilities, labor agreements, and more; they also take care to address the different stakeholders within the state and government that are meant to implement and oversee the administration of the MRTA; however, a few words and their definitions are noticeably over defined such as: applicant and person. And one word, or perhaps, title/stakeholder, is noticeably under-defined: chief of equity. Applicant is defined as, “a person applying for any cannabis...license or permit issued...” with person, subsequently defined as, “an individual, institution, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.” (S. 854—A) This definition of “person,” is what is used throughout this policy, and it is remarkably gender neutral. Despite having every possible legally encompassing definition of what a person would or should be, and differentiating between the many possible entities that could find themselves under that umbrella of being, it does not acknowledge gender differences. Person or “persons,” throughout the policy is used

to denote primarily applicants for licenses, or victims of anti-cannabis legislation. Minority group member, as defined for an applicant is , “black persons having origins in any of the black African racial groups,” or, “Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race,” or “Native American or Alaskan native persons having origins in any of the original peoples of North America,” which belies the continuation of this façade of gender neutrality, until “woman,” as a category of applicant is explicitly denoted immediately after, and minority women are defined as, “minority group member who is also a woman.” (S. 854—A, 55) Meaning that the base presumption of what a minority group member is by MRTA, even when using the seemingly gender-neutral term, “person,” or “persons,” is male. Thus, “person,” as a category in this policy is in fact not gender neutral, but a means to covertly privilege or center men as the standard. This lack of gender differentiation renders the experiences of minority women invisible particularly when, “person,” or “persons,” often is used as a synonym for men, unless otherwise explicitly stated. Instances where “person,” or “persons,” are meant to be explicitly gender neutral, “he or she,” is added, such as:

A person is guilty of criminal possession of cannabis in the third degree when: he or she knowingly and unlawfully possesses cannabis and such cannabis weighs more than five pounds...A person is guilty of unlawful sale of cannabis when he or she knowingly and unlawfully sells cannabis or concentrated cannabis.(Ibid.)

This usage of “person,” or “persons,” as a stand-in for men, unless explicitly gender differentiated, is made all the clearer when used within this context, when they do explicitly differentiate between “he or she,” which they do in rather specific sections. Another problematic that is shown in this layout of stakeholders, is this placement of the general term, “women,” as victims

of drugs and requiring particular care; with another asterisk needed for “minority women.” The policymakers take care to differentiate that minority men—not all men—were victims of the war on drugs. As shown earlier, not all women were victims of the war on drugs. Women of color, and particularly poor women of color were the most likely to end up victims of war on drugs policies in the United States. When social and economic equity for all members of disproportionately affected communities and is stated as the intent, but gendered expectations and gender-neutral language render women, and particularly minority women invisible, how equitable can the program be?

7.5 MRTA: Restorative Justice?

One of the main intents of MRTA, is to be a vehicle for restorative justice, within the context of the war on drugs. Menkel-Meadow’s base definition of restorative justice provides some guidance here, and emphasizes that a restorative justice framework for policy, would include “apologies, restitution, and acknowledgments of harm and injury, as well as to other efforts to provide healing and reintegration of offenders into their communities, with or without additional punishment.” (Meadows 2007, 10.2) We then take elements from Ahrens’ marijuana restorative justice policy requirements wherein she notes that, the first step in true restorative justice, is retroactive legality, and complete expungement of all—not piecemeal— marijuana misdemeanor and felony convictions. Marijuana restorative justice policy is unique because, as a stakeholder within this policy, the state is an offender—as in, they have enacted undue and disproportionate harm onto minority communities throughout the war on drugs—and those that were denoted throughout the war on drugs and through anti-drug policy as “offenders,” before the criminal court system, are also the victims of incredibly disproportionate legislation. That is where, the need for expungement of convictions is so essential, to illustrate that those convicted, were not in fact “offenders,” and are amongst the true victims of draconian and discriminatory anti-drug policy. Consequently, despite this acknowledgement/expungement of

convictions, there must also be a framework for healing and reintegration, for those that have been convicted and/or incarcerated for marijuana offenses, and for those that experienced many of the various collateral damages of the war on drugs. Finally, a gender-responsive framework, which acknowledges the different ways that men and women experienced direct or collateral damages from or through the war on drugs and is incorporated into the entire framework of restorative justice, and recognizes the many ways that anti-marijuana policy, and subsequent anti-crime or neoliberal economic policies affected vulnerable communities. Thus, a complete gender-restorative marijuana restorative justice policy should include acknowledgement of harm by the offenders and victims, efforts to promote healing and reintegration into society alongside material and monetary reparations to alleviate the socioeconomic disparities that have come forth or have been greatly exacerbated due to the overarching war on drugs apparatus.

It is here that we evaluate the intent and outputs that are predicated through the policy proposal, to see if, within the general framework of restorative justice, they can be called as such, and the likelihood of implementation, based on the asserted intent, and the instruments to be allotted in doing so:

- a) Expungement: New York State, as of the passing of the MRTA, automatically expunged all misdemeanor and some felony convictions of marijuana. (S. 854-A 2021, 93-94)
- b) Equitable Licensing and Regulation: New York State, after the passing of MRTA, would appoint a “chief of equity,” who would provide the licensing, trainings, and guidance/technical assistance in the preparation of license application materials and in opening a business, and would ensure that 50% of all licenses would be set aside for the victims of the war on drugs and their communities. They would also create a licensing

board for the MRTA and a general regulatory board to oversee the operations of the MRTA. (S. 854-A 2021, 2)

- c) Community Grants Investment Funds: New York State, in further acts of reconciliation, and to provide material support to the victimized communities of the war on drugs, would ensure that most, 40% of the revenue from taxation would go into community based initiatives and efforts directed at victims of the war on drugs; after the needed maintenance fees and deductions are taken by the regulatory and licensing boards and any other administrative bodies directly tied to MRTA. (S. 854-A 2021, 118)

The expungement of records, is a great reality that, as intended, has already passed. However, not all marijuana convictions were covered, and even within the context of those marijuana convictions that are covered, the policy does not account for the collateral damages of arrest or conviction: further arrests and convictions. The reality is that many marijuana convictions, led to other or were the cause of further convictions (e.g., parole violations, reoffending), and they are not considered within this framework. However, this action was the most easy and straightforward way to allow a significant amount of people to reintegrate into regular society. In the United States, and particularly in New York, misdemeanor or felony convictions can affect one's ability to procure employment, get federal or state student loans and/or grants for higher education, access to housing, and more. By expunging these records, many have been given an opportunity to regain the civic rights and status.

The efforts to ensure equitable licensing and regulation are admirable; however, the framework to effectively create these boards appear to precipitate on funding from the taxation of marijuana—which can only come from these boards. (S. 854-A 2021, 110-130) Therein appears a great quandary, as the state is not providing the revenue to create these boards, but somehow expects that the funding for creating the boards, will come from the very thing that these boards are intended to constitute, license, and regulate. As addressed earlier about the use of language

and gender-neutral or race-neutral framing, there appears to be a mismatch of who the MRTA frames as victims of the war on drugs, and who they intend to set aside licensing for. The “socially equitable,” license board also includes “farmers,” (without race or gender) amongst many of the so-called disadvantaged people that would be earmarked to receive a license through the process. (S. 854-A 2021, 55) And although they do provide support in applying for a license to open a marijuana related business for those that were disadvantaged or victimized through the war on drugs, they do not appear to provide a framework for personal funding of any of these endeavors. Many of the victims of the war on drugs became economically depressed or saw a loss in their socioeconomic prospects throughout and post-the war on drugs; a disparity that cannot be easily rectified through expungements but requires direct and explicit financial support and capital. Getting business loans approved is often arduous and based on already existing/current economic ability or equity. Additionally, the banks that would or could provide business loans to these would-be entrepreneurs in the United States have also had a history of discrimination against the same groups of people that were victims of the war on drugs. (Morial 2023)

Finally, the Community Grants Investment Funds, is also a great way to ensure that the communities that have been most impacted are able to receive funding for a wide range of “community,” oriented actions. In addition to the 40% that is meant to go to the Investment Funds, 40% is meant to go towards the state lottery fund for public education, and 20% to the public health and addiction support fund. (S. 854-A 2021, 118) There are several issues at hand, however. First, the Community Grants Investment Funds: where are the funds? The Community Grants Investment Funds is to be paid out with the leftover proceeds, of the administrative costs of the MRTA, including any “reasonable,” costs incurred by the regulatory boards and licensure, the state and local police ensuring that the MRTA is maintained, and several other governmental administrators. (Ibid.) As a result of being the last thing to be paid out from any funds

received from the taxation and regulation initiatives, it is questionable the amount of funding that will reach the victims of the war on drugs. Furthermore, the “community harms,” meant to be address or achieved, are incredibly broad, and do not denote effectively how the funds would be utilized to help different groups of people (particularly women) who became economically depressed through the war on drugs.

7.6 Findings and Recommendations

The current MRTA framework for restorative justice, seems rather untenable. The records of most marijuana convictions have been expunged, and that is a genuine vehicle of equity for those that were affected directly by the war on drugs through conviction and incarceration. This does allow people to reintegrate into society and have their civic statuses returned. However, all other aspects of the MRTA which are intended to provide restorative justice, seem difficult to implement because the funds have not been allocated to create the administrative apparatuses necessary to regulate and tax. The governmental entities that have been or are to be created for them, due to this lack of funding, are not able to do the tasks that they were intended to do, such as providing licenses or giving those social/equity applicants the support needed to create their own businesses; economically disadvantaged applicants, despite expungements may still experience hardships and due to existing discrimination or lack of personal capital, are unlikely to receive bank loans to open these businesses; and the framework within which the Community Investment Funds is meant to come into fruition, is ripe for underfunding, and does not seem as though it would provide funding for certain collateral damages that were experienced by women such as public assistance or housing assistance, but at best, provide some community members with funding for projects that are explicitly for “community-building.”

The MRTA takes some core elements from restorative justice, such as the expungement, and does execute them. And for that they should be commended. However, the current instruments

provided in the policy do not appear to have the full capacity to properly administrate their intentions or originally stated objectives.

This piece of legislation is not gender responsive. However, as laid out throughout this work, the collateral damages and policies that came forth throughout the War on Drugs, did not only affect men or some generalized notion of “communities.” They affect women directly and explicitly because of the gendered norms and expectations that exist within North American society. A gender-responsive element that could have been provided, that would directly tackle the needs of women, as seen throughout, is greater provisions going towards those that lost access to public housing or were/are single parents that have exhausted their allotments of public assistance or funding.

Nevertheless, MRTA, is a boon for social justice, and for restorative justice. By expunging the records of the majority of those with marijuana convictions, this policy has ensured that people that had been unjustly convicted are once again able to have access to crucial federal and state systems, that had been effectively removed from their grasp through conviction.

8 Conclusion

In conclusion, this thesis has examined the impact that the War on Drugs in the United States has had on women, and how policies like New York State's Marihuana Regulation and Taxation Act or MRTA. Through analyzing pre-war on drugs drug policy, war on drugs policy, and ultimately the MRTA, I aimed to explore and understand what would necessitate a gender-responsive framework for equitable justice for those women that were affected by war on drugs policies, and in what ways that women were directly affected.

Firstly, I engaged with the body of literature on gender and the war on drugs. Through this, it became clear that women throughout the War on Drugs were affected in ways that were distinct and unique, and occurred because of their gender, race, and class. From there I investigated what entailed restorative justice, to understand what would quantify or constitute an act or policy of restorative justice. In exploring the literature that existed for both Gender during the war on drugs and all aspects of restorative justice, it became clear that I needed to create a theoretical framework that constituted of theoretical notions and ideologies coming from critical race theory, feminist theory, and justice theory.

Throughout this theoretical framing, it became clear how race and crime are constituted and co-constituted through a consensus in that given (and in this case, North American) society, and that gender, within this framework of understanding is also constituted through the consensus. From there I questioned and grappled with what gender is and meant during the war on drugs, and how justice can be found, that recognizes and acknowledges the many intersecting structural inequalities that exist for those women that have been forgotten through the war on drugs.

To do this, I reviewed historical drug policies and contextualized the many facets of war on drugs anti-drug policy, providing a general overview of the history of marijuana (and narcotic) legislation at the federal and state level, and how drug prohibition laws throughout the history

of the US, has been used as a means of control over disparate or “out,” groups. From there, I examined the actual effects that the war on drugs has had on women and found how gender-neutral policy does not result in gender-neutral execution. Throughout this examination, it became clear that women, and particularly, poor women of color were affected at astronomical rates and in a myriad of different ways, through direct anti-drug policies, and the overarching policies that came forth from the war on drugs were undeniably gendered in nature, even when they were ostensibly intended to be gender neutral. Gender-neutral policy only works, when there is a framework of neutrality in the society that it exists within; policies are not enacted within a vacuum, and their actual implementation and execution are deeply influenced by the biases and ideologies of the states that they come forth from.

It was with that, that I analyzed New York State’s MRTA, to examine if, it could be a possible vehicle for effective gender-response restorative justice for those women who were affected by the direct and collateral damages of the war on drugs. New York’s MRTA purported intent was to create a vehicle for reconciliation for those that had been victimized by the war on drugs, whilst simultaneously creating a framework for a new regulated market that the state could tax and utilizing the proceeds to support vulnerable communities. Although the Act was championed as an extremely progressive and groundbreaking policy, which would rectify all wrongs of the war on drugs, through this analysis, it has become clear that many of its current objectives and goals are difficult to implement due to a lack of budget, funding, and establishment of administrative processes. Additionally, MRTA lacks gender-responsive or conscious considerations, and precipitates all policy objectives and intent in gender-neutral language, and often time conflating gendered experiences as one. That does not mean that MRTA is a failure or even bad policy. The policy, from its onset, ensures that the majority of persons within New York State that have marijuana convictions had them immediately expunged. This

expungement is the beginning of a new reality for many that lost their civic status and their ability to exercise their rights as citizens.

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