

UNTANGLING PRISON EXPANSION IN OREGON: POLITICAL NARRATIVES  
AND POLICY OUTCOMES

by

SARAH DIANE CATE

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Professor Daniel HoSang, Chair of the Examining Committee

05-29-2010  
Date

Committee in Charge: Professor Daniel HoSang, Chair  
Professor Daniel Tichenor  
Professor Joseph Lowndes

Accepted by:

---

Dean of the Graduate School

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## CURRICULUM VITAE

NAME OF AUTHOR: Sarah Diane Cate

PLACE OF BIRTH: Salida, Colorado

DATE OF BIRTH: April 6, 1986

## GRADUATE AND UNDERGRADUATE SCHOOLS ATTENDED:

University of Oregon, Eugene

## DEGREES AWARDED:

Master of Arts, Political Science, 2010, University of Oregon.

Bachelor of Arts, English and Political Science, 2008, University of Oregon and  
Robert D. Clark Honors College.

## AREAS OF SPECIAL INTEREST:

American Politics and Race Politics.

## PROFESSIONAL EXPERIENCE:

Teaching Assistant, University of Oregon, 2008-10.

Receptionist, Oregon Athletic Ticket Office, 2006-8.

Teller, Rogue Federal Credit Union, 2002-7

## GRANTS, AWARDS AND HONORS:

Graduate Teaching Fellowship, University of Oregon, 2008-10.

Barbara C. Pope Award for Honor's Thesis, *Black Radicalism and Prisoner Writings*, University of Oregon, 2008.

Honor's Thesis Passed with Distinction, *Black Radicalism and Prisoner Writings*, University of Oregon, 2008.

Centurion Award, University of Oregon, 2006.

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## CHAPTER I

### INTRODUCTION

*“We live in a country that is addicted to incarceration as a tool for social control. As it stands now justice systems are extremely expensive, do not rehabilitate but in fact make the people that experience them worse and have no evidence based correlatives to reducing crime. Yet with that track record they continue to thrive, prosper and are seen as an appropriate response to children in trouble with the law.”*

*—James Bell, Americans Who Tell the Truth*

The prosperity of prisons in the United States is a policy area that deserves attention as it affects communities across the entire country. The remarkable rise in the number of people incarcerated in the United States has not been caused by crime rate increases (Pew, 2008). Rather, states have chosen to instate sentencing laws in the past three decades that have put more people in prison and kept them there much longer than any previous standards of sentencing (Pew, 2008). This thesis addresses the state of Oregon as one such place in which there has been a surprising growth of prisons. In order to explain the evolution of Oregon’s prison growth, this thesis analyzes the ways discourses and representations of crime have justified and explained voter approval for punitive policies in Oregon.

The United States has the highest documented incarceration rate and total documented prison population in the world. As of 2008, the total documented prison population reached about 2.3 million people. One in every 100 adults in America is either in jail or prison and 1 in every 31 adults in America are under correctional control (Pew, 2008). While the United States comprises 5% of the world’s population it houses 25% of

the world's prison inmates (Loury, 2008). The United States' prison system stands out due to its gaping racial disparities, its uniquely long sentences, its documented brutality and degrading abuses within prisons, its use of the death penalty and its punitive policies towards non-violent crimes (Gottschalk, 2006). The two largest female prisons in the world are located in the United States (Justice Now, 2010). While African Americans make up 13% of the United States' population, they comprise 50% of the prison population (Gottschalk, 2006). Finally, the United States is the only country in the world that permits a sentence of life without parole for offenders under the age of 18 (Gottschalk, 2006).

The state of Oregon is no exception to this nationwide phenomenon. Sentencing policies that were implemented in the mid-1990s have exploded the prison population in Oregon. As of 2009, 1 in every 33 citizens of Oregon is under correctional control (behind bars, on parole, or on probation) (Pew, 2009). In the past fifteen years 8 prisons have been constructed or expanded in Oregon, doubling the capacity of the prison system (Oregon Criminal Justice Commission [OCJC], 2007). Between 1994 and today the prison population in Oregon has gone from 6,700 offenders to 14,000 (OCJC, 2007). Offenders as young as 15 years old are tried as adults for certain crimes under the state's mandatory sentencing policies. Further, Oregon is exceptional in the budgetary impact of its corrections policies. Oregon has the distinction of being the state that spends the greatest percentage of its general fund on prisons in the nation (Pew, 2008). Devoting \$763 million dollars to the criminal justice system, Oregon spends 11% of its general fund on corrections. The next closest state, Florida, spends 9% (Pew, 2008).

Oregon has struggled with state-budget shortfalls and yet has chosen the expensive path of creating and approving policies that contribute to an ever-expanding prison system. Oregon is just one of four states in the nation that spends more on corrections than higher education (Pew, 2008). It is peculiar that a state such as Oregon that frequently underfunds most all other state programs has steadily increased and maintained funding for corrections. The expansive prison system in the state of Oregon is imbued with issues of human and fiscal cost that have great impacts on its citizens. How did Oregon get here? This research project seeks to explain how prison expansion has occurred in Oregon.

#### *National Level Literature*

There is a growing literature seeking to explain America's massive rates of incarceration. In particular there has been an emerging set of scholars who have focused on the relationship between race and prison expansion. Naomi Murakawa in "The Origins of the Carceral Crisis: Racial Order as 'Law and Order' in Postwar American Politics" connects the histories of racial oppression to her analysis of the modern carceral state. Murakawa traces how concerns for racial order were articulated over the entire postwar period and thus did not just arise in reaction or in retaliation to the civil rights movement (2008). Murakawa's central argument is that the conflation between race and crime has been instrumental in fomenting political support and efforts to expand and grow America's prisons. While many scholars point to Barry Goldwater's campaign in 1964 as the influential year in which race was used to garner public support for a "tough on crime" candidate, Murakawa traces back the connection further. Murakawa argues that

the association between blacks and crime was a critical portion of the Jim Crow years and early civil rights activity, all of which precede Goldwater.

Scholar Vesla M. Weaver has also contributed a similar argument to the explanation of America's rise in incarceration. In her article, "Frontlash: Race and the Development of Punitive Crime Policy," she argues that the development of punitive crime policy was a "frontlash" to the civil rights movement. Weaver defines frontlash as "preemptive, innovative, proactive...elites aim to control the agenda and resist changes through the development of a new issue and appropriation and redeployment of an accepted language of norms" (Weaver, 2007, p. 238). She uses the term "issue capture" as a shorthand signifier of this idea. Weaver's thesis is that defeated groups in the civil rights struggle used punitive crime policy as a new avenue to promote the same racial order they were fighting for by opposing civil rights (Weaver, 2007). Both Weaver and Murakawa identify the role punitive crime policy has played in explicitly maintaining a racial order of white dominance and black oppression. According to these authors, the narratives of crime and race converged in a powerful way, allowing black citizens to be denigrated and disenfranchised in a cloaked and less explicitly racialized way.

Economist Glenn Loury has also recently published similar findings in his analysis of the extraordinary mass incarceration in America. In *Race, Incarceration, and American Values*, he argues that America's move to become a more punitive society is connected to its history of racial oppression. Like Weaver and Murakawa, Loury marks the post-civil rights years as the influential period in which a punitive culture emerged. He argues that crime policy has become the means by which the United States has been

able to reproduce the racial hierarchies of the pre-civil rights era. He describes the criminal justice system as the location for producing a lesser class of Americans that is disproportionately “black and brown” (Loury, 2008, p. 6).

Legal scholar Michelle Alexander has also added to this argument in her book, *The New Jim Crow*. Alexander similarly argues that the American criminal justice system functions as a modern system of racial control (2010). For Alexander, like the previously mentioned authors, race is at the heart of the explanation and existence of the expansive carceral state in America. She views the prison system as a site of redesigning a racial caste that continues to ensure that large populations of African Americans are disenfranchised and subordinated (Alexander, 2010).

This growing literature is provocative and well evidenced through examples used from regions of the country such as the south where there has been a very visible exchange between explicitly racially oppressive policies such as slavery and Jim Crow laws to the more insidiously racially oppressive policies of a punitive criminal justice system. However, the literature describes areas of the country that look very different from Oregon. Most of the literature connects prison-expanding policies to the lockdown of large segments of the African-American and Latino population and densely urbanized areas that struggled over issues of integration. While these are compelling arguments for the emergence of the carceral state, they narrowly describe urbanized areas of the country with racial diversity.

Oregon does not fit the popularly perceived conditions in which massive incarceration would be supported. Oregon does not have large densely populated urban

centers nor does it have the racial diversity of other big cities and the south. Finally, it has largely suppressed and unacknowledged histories of struggles over slavery, racial integration and civil rights, unlike other regions in the country that are closely examined and documented concerning these issues.

Oregon ranks 39<sup>th</sup> in the nation for population density. There are 39 people per square mile in Oregon compared to 408 in New York and 242 in California (“Oregon 2008”). There are only about four areas in Oregon with a population density high enough to be defined as “urban,” meaning more than 500 people per square mile. The following map illustrates the minimal number of areas that qualify as urban centers shown in Figure 1:



*Figure 1.* Population density per square mile from the U.S. Census Bureau Census 2000.

The largest urban center in Oregon, the city of Portland has a population of 582,130. The next largest cities are significantly smaller, Eugene (157,100) and Salem (156,955). Oregon is a small state with a total population of just about 3.6 million people, about a third of the population of Los Angeles (9.8 million) and less than a fifth of the population of New York City (19.1 million) (U.S. Census Bureau [USCB], 2010). According to the U.S. Census Bureau Oregon has a population that is 90.1% white (UCSB, 2010).

States with similar demographics, population density and overall size have significantly different rates of incarceration. The states that fall at the bottom of the list for rates of incarceration have similar demographics and populations to Oregon. Oregon stands out in comparison to the seven states with the lowest incarceration rates in the country as shown in Table 1:

Table 1

*This table compares state population, percentage of white population, incarceration rates and the use of initiative and popular referendum amongst eight states.*

State	Population in millions	Percentage of Population that is White	Incarceration Rate, persons per 100,000	Has Initiative and Popular Referendum?
<b>Oregon</b>	<b>3.6</b>	<b>90.10%</b>	<b>531</b>	<b>Yes</b>
Maine	1.3	96.40%	273	Yes
Minnesota	5.2	89.00%	300	No
North Dakota	0.6	91.40%	359	Yes
Vermont	0.6	96.40%	317	No
Rhode Island	1.0	88.50%	313	No
New Hampshire	1.3	95.50%	319	No
Massachusetts	6.5	86.20%	356	Yes

(Pew, 2008; USCB, 2010; Initiative and Referendum Institute, 2010)

Oregon has a median population compared to the listed states and comparable demographics of a large white majority; however, the state has an incarceration rate from one third to double that of the other states. The institutional opportunity of having an initiative process in the state certainly is of central importance to the path of prison expansion in Oregon. The main focus of this thesis is Measure 11, which passed in 1994 and is broadly agreed to be the reason Oregon has the prison system that it has today. Yet, there is evidently more to the explanation than the institutional makeup of the state as about half of the states with the lowest rates of incarceration in the nation also have systems of initiative and popular referendum.

While the particular literature that connects the United States' racial history to the growth of incarceration does not address the perplexing case of Oregon, it is still a theoretical tool this analysis will draw from. The literature seems to describe well why there are low rates of incarceration in the New Hampshire and Minnesotas of the nation, but why does "lily white," largely rural Oregon incarcerate at such a comparably higher rate? While race does not operate in the same way in Oregon as it does in places like Los Angeles or Alabama, it is still of central importance. Issues of vulnerability and of protecting whiteness transcend the demographic and geographic differences of Oregon and are influential in describing the story of this particular state's prison expansion.

In order to understand why Oregon has experienced such tremendous growth of its prisons it is important to pay attention to the role of discourse. The representation and framing of crime and crime control in Oregon have justified and garnered support for the heavy reliance on punitive policy in the state. This research project analyzes the discourse

of the debate over a crucial set of policies in 1994 that are responsible for the dramatic growth in prisons that has occurred in the past 15 years. The discourse that was employed in the mid 1990's did not come out of nowhere. Similar to the work done by the prominent scholars mentioned previously, the framing and discourse of this case will be contextualized in history to understand its power and successful resonance.

*Methodology- Using a Discourse Analysis*

This project will largely be based on an analysis of the language and ideas in the debate over punitive crime policy in Oregon. In order to explore the political and social consequences of the discourse it will be helpful to outline the theoretical work that will ground the tools used to perform this analysis. A basic assumption grounding the theory of discourse analysis begins with the idea that “all objects and actions are meaningful and their meaning is conferred by historically specific systems of rules” (Howarth, Norval & Stavrakakis, 2000, p. 2). The understanding of a specific object such as a prison depends on “the orders of discourse that constitute its identity and significance” (Howarth, Norval & Stavrakakis, 2000, p. 3). As prominent theorists Jonathan Potter and Margaret Wetherell articulate, “social texts do not merely *reflect* or *mirror* objects, events and categories pre-existing in the social world. Rather, they actively *construct* a version of those things. They do not describe things; they *do* things” (Citcher, 2003, p. 167).

There are endless “orders of discourse” that can be examined to analyze their production of meaning for a given object. In this project, one way of examining discourse will be to closely analyze the public debate as it appears in Oregon's major newspaper, *The Oregonian*. By no means is this an exhaustive evaluation of discourse. Using just

once news source limits the geographic scope of the public debate as *The Oregonian* is based out of Portland, Oregon. This neglects publications found in diverse areas across the state. It also covers the public debate and does not provide an examination of the discourse being proffered by lawmakers behind closed doors at the state capital. However, it is one location in which to unearth the “meaning” being conferred at specific points in time in the trajectory of this political issue of prison expansion.

Adopting from prominent theorists Ernesto Laclau and Chantal Mouffe, the “discursive” can be defined as a “theoretical horizon within which the being of objects is constituted” and “discourse” as “systems of meaningful practices that form the identities of subjects and objects” (Howarth, Norval & Stavrakakis, 2000, pp. 3-4). Finally according to Laclau and Mouffe, a “discourse analysis” is defined as “the practice of analyzing empirical raw materials and information as discursive forms. This means that discourse analysts treat a wide range of linguistic and non-linguistic data...as ‘texts’ or ‘writing’” (Howarth, Norval & Stavrakakis, 2000, p. 4). These definitions are helpful in grounding this research project because they describe the large scope of what constitutes discourse and theorize a way of understanding politics. Their definition of the “discursive” instructs that while objects exist external to thought they can’t be thought of or conceived outside of discourse (Howarth, Norval & Stavrakakis, 2000).

There are specific dynamics of discourse that will be closely examined in this project. The first comes from a claim made by Laclau that discourses are intrinsically political, meaning the formation of discourse, “involves the construction of antagonisms and the drawing of political frontiers between ‘insiders’ and ‘outsiders.’” In addition,

therefore, they always involve the exercise of power, as their constitution involves the exclusion of certain possibilities” (Howarth, Norval & Stavrakakis, 2000, p. 4). It is these precise dynamics that will be of central concern in this research project: locating antagonisms and the exercise of power. Analyzing the way in which discourse affects “possibilities” is also key to understanding why corrections policy has unfolded in the way that is has in Oregon.

Essential to the understanding of antagonisms is identity. Laclau and Mouffe write, “social antagonism arises because of the inability of differently located social agents to achieve their respective identities” (Howarth, Norval & Stavrakakis, 2000, pp. 10-1). The theorists distinguish that it is this clash of actively pursuing identity, rather than a clash of pre-existing forms of identification that comprises “antagonism” (Howarth, Norval & Stavrakakis, 2000). This project acknowledges locations of identity formation and how these construct a political frontier that separates two sides. In combination with the methodology of discourse analysis, this project is also grounded in a public policy literature that builds on these ideas and theorizes ways in which policy formation is dependent on subject positions and framing.

### *Public Policy Literature*

In seeking to address the relationship between how people think about crime policy and how policy is shaped, there is a useful body of literature that focuses on the struggle over ideas as a mode of analyzing policy formation. Deborah Stone is a prominent voice in this field for providing a framework of analysis that diverges from the theory of the market model in her book *Policy Paradox*. The market model posits that all

behavior can be explained as people “striving to maximize their own self-interest” (2002, p. 10). The market model also treats the preferences of individuals as relatively fixed (Stone, 2002). Stone offers a more complex explanation of behavior by arguing that policy formation is best detected and studied as a struggle over ideas (2002). In contrast to the market model, Stone argues that the reality of society is that preferences are not fixed and are in fact greatly dependent on “loyalties and comparisons of images” (Stone, 2002, p. 10). Therefore, she contends that explaining behavior does not simply follow from determining individuals’ self-interests, but rather from examining the polis and the fluidity of ideas as expressed through images, metaphors and symbols. Stone’s unit of analysis is community because she argues, “politics and policy can happen only in communities” (Stone, 2002, p. 18). Thus, in contrast to the market model where the individual is the unit of analysis, Stone suggests that understanding policy formation entails examining group dynamics of consensus, membership, influence, cooperation and coercion, and loyalty (Stone, 2002).

While Stone provides a framework for examining the role that ideas play in the formation of crime policy in Oregon, other theorists provide helpful arguments for the importance and implication of the various ideas being debated and formulated. Anne Schneider and Helen Ingram in *Policy Design for Democracy*, provide a theory for explaining the implications of the ideas that Stone puts at the center of her policy analysis. Similar to Stone, Schneider and Ingram’s approach to studying policy-making focuses on the important role played by the interaction between ideas and power. In this sense, neither of the authors proposes that policy formation is rational or linear, but

instead is largely dependent on the social construction of ideas. One helpful idea that Schneider and Ingram provide in their book about target populations is relevant to the study of crime policy formation. Schneider and Ingram propose that, “much of the policy making in the United States is produced in policy-making systems dominated by divisive social constructions that stigmatize some potential target populations and extol the virtues of others” (1997, p. 102). The authors theorize a relationship between political power and social constructions that illustrates how policy formulation is impacted by the interaction between these two elements.

In their analysis, “deviants” fall in the category of being both socially constructed as “undeserving” and also lacking political power. The authors assert that deviant populations play a distinct role in policy formulation. The following excerpt provides an analysis of how crime policy formation might be understood,

Political leaders have much to gain from punishing those who lack power and who are constructed as deviant.

Some powerless groups offer easy scapegoats for societal problems, and policies directing punishment at such groups offer straightforward evidence of government control and power...Providing punishments to persons constructed as deviants yields little to no resistance as these groups have essentially no political power, and the actions are generally applauded by the broader public because they believe deviants deserve to be punished. (Schneider & Ingram, p. 120)

This framework will be applied to examine how the construction of a deviant criminal class occurs and how it shapes and gets shaped by resulting crime policy. In the specific case of Oregon, Schneider and Ingram’s work directs this research towards an analysis of who holds political power, what are perceived “societal problems,” how punishing deviants conveys a “solution” and how government control and power is felt and responded to by the populace.

Schneider and Ingram's work, alongside Stone's, offer ways of examining the influence and role of ideas and perceptions in this case of criminal justice policymaking. These keystones in a body of literature that comes in opposition to the market model of policy analysis, offer room for exploring the paradoxes and complexities of the case of Oregon prison expansion. The emergence of crime policy in Oregon is founded on the notion of a public threat that must be dealt with and solved. In this regard, there is valuable literature that seeks to explore the elements and processes of policy formation that surround a concept of "moral panics."

Nachman Ben Yehuda and Erich Goode's *Moral Panics: Culture, Politics, and Social Construction* offers a thorough description of the various theories of analysis on this subject. Theories on moral panics seek to explain why at certain times there are explosions of fear and concern about a specific perceived threat (1994). While explaining why this occurs, the theories also describe that though moral panics tend to be fleeting, they frequently leave behind institutional and policy legacies (Goode & Ben Yehuda, 1994). The work on moral panics is closely tied to Stone and Schneider and Ingram's contributions because the theory behind moral panics is that often the fear and perceived threats animating the "panics" are socially constructed. Goode and Ben-Yehuda write that, "the agents responsible for the threat – 'folk devils'-are stereotyped and classified as deviants" (Goode & Ben Yehuda, 1994, p. 149). The idea of target populations plays an important role in the analysis of moral panics.

Goode and Ben-Yehuda set a standard definition for what constitutes a moral panic by describing five key characteristics. These criteria are as follows: a heightened

level of concern, an increased level of hostility, a consensus in the society that the threat is real and serious and caused by the wrongdoing of group members and their behavior, the concern is disproportional to what a “sober empirical evaluation” of the threat could support, and finally, that the panic is volatile (Goode & Ben Yehuda, 1994, pp. 156-8).

The theory of moral panics grounds the examination of how social problems and their proposed solutions get defined in society. The theory of moral panics combines usefully with a discourse analysis by placing importance on the public representation and perceptions of the particular issue. As Stone, Schnieder and Ingram theorize, political narratives found in the public discourse have implications for policy possibilities and outcomes. This thesis will use evidence from a media analysis to examine the social constructions of subject positions as well as threats and solutions in the debate over punitive crime policy.

## CHAPTER II

### PRISON EXPANSION IN OREGON

In 1994 Oregon voters faced the decision of whether or not to approve the largest crime initiative in the history of the state. When Oregonians opened their ballots they had the option to check “yes” or check “no” to pursue policies of retribution and strict, long mandatory sentencing. Measures 10, 11 and 17 were a powerful bundle of punitive crime legislation that, if passed, would dramatically change the criminal justice system in Oregon. Kevin Mannix, proponent and author of the measures, campaigned, “quit babying kids...give youths swift, sure consequences...if that means warehousing them, then that’s what we’ll do.” This unequivocal call for incarceration was a bold new direction for Oregon crime policy.

From Oregon’s founding in 1859 until the mid-1990s, two ideological constraints ensured that the growth of prisons in the state did not exceed overall increases in the state’s population. First, Oregon has long held the ideological commitment to fiscal conservatism and has been reluctant to incur public debt. Oregon Governor La Fayette Grover demonstrated this devotion when he stated in 1872, “if there is one sentiment in our constitution more prominent than any other it is the mandate to be free from debt” (Heider, Douglas & Dietz, 1995). This ideological commitment was premised on the privileged political identity of “the taxpayer,” depicted as needing protection from the expansion of the state and its spending excesses (Thompson & Green, 2004).

The second restraint was a broad ideological commitment to rehabilitation that correlated with the expectation that the criminal justice system would not become a venue of unrestrained state authority (HoSang & Cate, 2010). The Bill of Rights in Oregon's original 1857 constitution specifically described the state's commitment to rehabilitation. It stated: "Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice" (Oregon Blue Book, 2010). These positions were broadly ideological because they related to particular constructions and articulations of political identity and community (HoSang & Cate, 2010). The stipulations in the Oregon constitution that ensured a degree of protection for the convicted and a commitment to rehabilitation were meant to ensure that the criminal justice system would not become a tool of unbridled state power (HoSang & Cate, 2010). Oregon therefore had maintained a tempered growth in its prison system that mostly corresponded to population growth. Mannix's calls for warehousing were in strict opposition to these long-standing commitments: the new measures would be very expensive and would result in the lockdown of thousands of Oregonians.

Yet, the national atmosphere was similarly opposed to these ideological constraints. This was the era of three strikes. In 1994 alone 8 states enacted three strikes laws. The campaign also came just after the passage of President Clinton's Omnibus Crime Bill, the largest crime bill in the history of the U.S. (National Criminal Justice, 1994). The national trend of passing punitive policies and expanding the U.S. prison system was growing and reaching all corners of the nation. However, it was not a foregone conclusion that Oregon would follow similarly. While a state like California

had been passing significant punitive crime legislation for almost two decades, Oregon had no precedent of passing legislation of this kind (Domanick, 2005). The idea of “warehousing” was newly formulated in the public discourse in Oregon.

There was some significant political work that had to be done to ensure the success of the proposed measures in the 1994 election. In order to break through the ideological constraints that had prevented Oregon from considerable prison expansion, the employment of a redesigned political narrative was necessary to tap into the hearts and minds of Oregonians and convince them to approve the punitive policies proposed in 1994. Except for reinstating the death penalty in 1984, Oregon voters had not faced or approved any significant punitive initiatives leading up to 1994. There was no crime spree or particularly menacing criminal overtaking the state and violent and property crimes were on the decline (Oregon Department of Corrections, 2010). How then would Mannix’s petition to “warehouse them” be received by Oregonians? Who was “them” and who was “us”? While the passage of the measures was in no way inevitable, voter support for the initiatives and for “locking them up” did not come out of nowhere. There were important pre-conditions and a historic context for the public debate over the initiatives of 1994 that help explain why Oregonians passed all three measures overwhelmingly.

#### *Oregon’s Foundation of Exclusion*

Oregon has a successful history of exclusion. The homogenous makeup of Oregon, a state frequently described as “lily white” has developed as such by no accident. The very fabric of Oregon and its political culture have been founded on the premise of

exclusion. The notion that white Oregonians were vulnerable to the intrusion of outsiders fueled the influential, fundamental pieces of legislation that were passed with the inception of the state. Oregonians founded the state on the premise that the mere presence of African Americans in the state, even in a position of servitude, would threaten their freedom. Thus, for the opening decades of Oregon's state history it was a crime to be black and reside in Oregon. Being an Oregonian meant being white and being protected by the law from the migration of African Americans into the state. For Oregonians whiteness was equated to security, and safety was equated to the act of exclusion.

Oregon is the only state to be admitted to the union with a black exclusion clause in its original constitution (Taylor, 1979). Oregon passed more anti-black legislation than any other Pacific Northwest state. The notorious black exclusion laws in Oregon remained in the constitution 60 years after they had been nullified by the 14<sup>th</sup> and 15<sup>th</sup> Amendments. Oregon was also just one of six states that rejected the 15<sup>th</sup> Amendment (Xing, 2007).

In 1857, Oregonians began the process of petitioning for statehood. The questions of exclusion and slavery were greatly contested, so the delegates scheduled an election in order to allow the voters to make the decision (Taylor, 1979). The voters were asked to vote on whether they approved of the constitution, if they wanted to allow slavery, and if they wanted to allow "free Negroes in Oregon" (Taylor, 1979, p. 69). A large majority approved the constitution: slavery was voted down (2,645 in favor and 7,727 against) and allowing free Blacks into Oregon was overwhelmingly voted down (1,081 in favor and 8,640 against) (Taylor, 1979).

A great motivation for wanting anti-slavery legislation at this time was closely connected to the desire to exclude Blacks. Settlers in the region feared that if they allowed slaves, that once the slaves were free they would create agitations and problems with the Native population. Thus, for the most part, the anti-slavery sentiment was not rooted in a moralistic condemnation of slavery but rather a broad fear and resentment of having Black residents in the area in any capacity.

Hostility and assuring that Oregon's whiteness would remain intact continued in full force through the 1920's when the Ku Klux Klan politically and socially dominated the state. In the Oregon Black History Project Oral History Collection an African American Portlander states, "Oregon was a Klan state...a southern state transplanted to the north...a hellhole when I grew up. It has always been a very prejudiced state. It is today, believe it or not" (Xing, 2007, p. 78).

White supremacy groups had existed in Oregon during the Civil War, but in the 1920's the Ku Klux Klan ascended in Oregon. During the 1920's the entire Portland city council was comprised of KKK members (Stein, 2001). Also a women's auxiliary of the Ku Klux Klan, the Ladies of the Invisible Empire (LOTIE), gained a great deal of popularity in Portland (Stein, 2001). In just one month the organization was able to recruit over a thousand women (Stein, 2001). The mission of the organization was to "cleanse and purify the civil, political and ecclesiastical atmosphere of the nation" (Stein, 2001, p. 175). They fought for restricting immigration and they opposed racial equality and interracial marriage (Stein 2001).

Just when the Klan was growing, at the turn of the century, a brutal lynching took place in Coos Bay, Oregon (Xing, 2007). Alonzo Tucker, accused of assaulting a white woman in the community, was captured and lynched and had his body hung on a bridge in the southern end of the city (Xing, 2007). The murder was briefly looked into and it was concluded that no crime had taken place (Xing, 2007). An *Oregonian* article reporting on the event stated, “The sentiment of the community is in sympathy with the lynchers, and it is extremely improbable any arrests will be made” (Xing, 2007, p. 87).

In 1924, when the Klan was officially reorganized, another black resident, Timothy Pettis, of the Coos Bay area was murdered (Xing, 2007). The NAACP responded when they learned that Pettis’ body had been found mutilated in the bay with the following statement, “Marshfield is infested with the Ku Klux Klan, and we are of the opinion...that all efforts are being made to cover up the crime” (Xing, 2007, p. 87).

A klavern in Medford, Oregon performed several acts of terrorism that were widely known in the state. They intimidated and harassed minorities and political opponents. The Oregon History Project records that they performed “neck tie hangings” that were essentially non-fatal lynchings (Allen, 2003). The Medford klavern influenced the election of 1922, helping Klan endorsed candidate, Walter Peirce win the election. Roman Catholics were the main object of Klan hatred and opposition in Oregon. In 1922, the Klan successfully backed a statewide ballot measure making it mandatory for children to attend public school (Allen, 2003). The purpose of the law was to close down all Catholic private schools in the state. Federal courts later ruled the measure

unconstitutional (Allen, 2003). Hostility and violence towards black citizens was widely popular and easily adopted by Oregonians in this era.

In the episode of KKK ascendancy in Oregon, the predominant effort of the organization was to discriminate against other whites in the state. "Purifying" Oregon included both oppressing and disempowering white citizens not just racial minorities. The affirmation of white superiority was invested in regulating the parameters of whiteness itself, a policing of the white race. In fact, Oregon's history of the KKK was uniquely occupied with the oppression of Roman Catholics and "new" immigrants from Southern and Eastern Europe, perhaps because of the racial homogeneity of the state.

This relative homogeneity was somewhat disrupted in the era of World War II when thousands of African Americans migrated to the state to work in defense related industries (Taylor, 1979). In the brief period when Oregon's exclusion of African Americans was less activated, the hostility and denigrating treatment of Black residents continued to reign supreme. Between 1940 and 1950, the African American population rose by 280% (Taylor, 1979). The impact of this burgeoning population was an increase in racial agitation, intra-racial conflict, and the problem of overcrowding. Virtually overnight a housing project was created in a new city called Vanport (Taylor, 1979). In 1945 Vanport had 30,842 residents, was the second largest city in Oregon and was the largest wartime housing project in the nation (Taylor, 1979). This is in contrast to just a few years previous when the neighboring city, Vancouver, Washington had less than 10 black residents.

With the influx in workers and a minority population came resentment for “outsiders” and Oregonians anxiously awaited the end of the war when they hoped they would all leave (Taylor, 1979). Black workers faced many varieties of discrimination and all black residents faced housing discrimination, segregation and racial hostility. Blacks were refused services in nearly all businesses outside of their neighborhoods (Taylor, 1979). The city of Vanport was a veritable Jim Crow south in Oregon. In 1948, a flood destroyed Vanport. Thousands of flood refugees were relocated to a black neighborhood, Albina, in Portland. The Red Cross and the welfare agency both deferred responsibility to help the residents (Taylor, 1979).

To replace explicit exclusion, segregation became the method of racially oppression and separation. Portland was deeply segregated. Even after segregation of public housing projects had been outlawed in 1950, leading into the 1960’s Portland had “a much higher concentration of Blacks in certain projects than did Seattle, San Francisco or Los Angeles” (Taylor, 1979). As a result, schools experienced “de facto” segregation as a result of housing segregation (Taylor, 1979). Schools in Portland that were almost entirely black were underfunded and overcrowded (Taylor, 1979).

Along with segregation, refusing to serve Black patrons and housing discrimination, African Americans faced police harassment and brutality through these years. In Portland, special police forces were hired to work in Black “high crime” areas (Taylor, 1979). In 1943, police shot and killed Erwin Jones, a Black man, in his home while looking for a fugitive (Taylor, 1979). When the family of Mr. Jones sued the police officer that killed Jones, the city paid the legal fees of the officer (Taylor, 1979). In 1945,

a police officer shot one of three Black soldiers during a celebration of the end of the war; reportedly a “near riot” broke out in response (Taylor, 1979, p. 213). The problem of police harassment continued to be a problem through the 1950’s. Historian Quintard Taylor writes, “police abuse of Black residents in large and small cities of the region occurred frequently following the migration of the 1940’s” (1979, p. 239).

The vulnerability felt by white citizens that fueled the desire to instate black exclusion laws and that fomented hostility towards the black race and really anyone deemed “impure” continues to thread through Oregon’s history. These long resonances of connecting security to exclusion and oppression emerged again in the 1980’s in a dynamic time of fearing the threat of gangs. This particular episode in Oregon’s history demonstrates well the long-standing political tradition of fearing outsiders and promoting exclusion. It also offers an important description of the mounting fear and agitation over questions of crime and crime control that came to a head in 1994.

#### *The 1980’s- Emerging Fear of Gangs*

According to a comprehensive history of the Oregon state legislature by the Oregon Historical Society,

In the 1980’s drug related crimes and the emergence of gangs, particularly in Portland, aroused the citizenry. To many, crime was the most important issue and prisons were the answer. (Heider, Douglas & Dietz, 1995, p. 205)

Booming attention paid to the problem of gangs and drugs in Oregon animated an emerging discourse that positioned gangs as a serious crime problem and the need to “get tough” and secure Oregon from outside infiltration as paramount. In the late 1980’s, the problem of gangs animated the media coverage of crime and community anxiety over

issues of crime and safety. The coverage of gangs in the *Oregonian* was extensive. In 1988, there were approximately 150 articles that centrally focused on the “gang problem.” Common themes found in this exceptional year of gang coverage were the conflation of the gang problem in Los Angeles with Portland, the infiltration of gangs from the outside, and the conflation of gangs with Blacks, drugs and violence.

The most prominent element of the early coverage of gangs in Oregon is the intimate connection that was made between L.A. and the emerging problem in Portland. It is important to note that in 1988, the majority of the articles focus on an impending problem, one that had not yet arisen in Portland, but was feared to be “coming.” While there were a growing number of cases that were suspected to be “gang-related” the tone of most coverage and the reality of gang crime in Portland was that it had not explicitly or provably taken root. The conflation of L.A.’s gangs with Portland served to skew what was actually occurring in Portland. Further, the conflation of the two cities served to animate a dire and frightening consciousness of crime that was deeply racialized.

The tone of prevention from an impending problem exemplifies how L.A. was envisioned as the bastion of gang crime that would be “coming” to Portland to infiltrate and disrupt. For example, in 1987, one of the very first articles addressing the issue of gangs in Portland is titled, “Task Force on Youth Gangs Asks United Public Action.” Reporter Matt Bailey covering a Task Force meeting at a public forum in Portland writes, “without a unified effort, gang-related drug trafficking and violence, commonplace in Los Angeles and other major U.S. cities, will proliferate in Portland, members of the task force said” (Bailey, 1987, p. B6).

In the same article, city Commissioner Dick Bogle, a member of the task force states, “We have a tradition in this city that we don’t tolerate organized criminal activities and we don’t tolerate gangs. And we are sending a message to these gangs that they will not be tolerated” (Bailey, 1987, p. B6). Similarly Portland police officer Neal Crannell states, “Gangs are attracted to Portland largely for economic reasons...In Portland they can get double the money they can get in L.A., where so much cocaine is available” (Bailey, 1987, p. B6). Crannell’s quote, adjacent to Bogle’s statement affirms that the gangs are treated as an outside agitation, a parasite that will come to Portland to prey on the economic opportunity the city affords. Notably, in this article and the many other similar articles that were printed in the late 1980’s, there is little to no mention of the notion that the demand for drugs in Portland is a part of the “problem.” Instead the focus is highly concentrated on the outsiders, from L.A. who will bring/have brought crime to Portland.

Another article published a few months later, further illustrates the conflation of the gang problem in L.A. with Portland. The article, titled “Groups Form to Fight Back Gang Threat” emphasizes the geographic vulnerability of Portland. The article opens with a description of recent graffiti on walls in some neighborhoods of Portland that prompted a workshop on the threat of gangs. Reporter Fran Gardner writes, “Portland sits on Interstate 5, on a direct route between known gang strongholds in Los Angeles and recently established gang activity in Seattle” (Gardner, 1988, p. D11). Mentioning Portland’s location on I-5 is commonly repeated in articles about the infiltration of gangs in Portland. The subtle contrast of “sits” and “activity” in the sentence demonstrate the

tone of the piece and the emerging conversation over the gang threat to Portland. While Portland “sits,” connoting susceptibility, the gangs are “active” and have “strongholds” implying they have the control and agency to disrupt.

In the same article, the reporter describes a presentation that was made by an anti-gang activist, sponsored by the Portland School District. In the presentation there was a slide show that based on the report illustrates well the conflation of L.A. gangs with Portland. At the presentation there were,

dozens of slides [from police patrol in Los Angeles] showing gang members, their tattoos, graffiti, some of their hand signs and clothing patterns. Interspersed were a couple of slides depicting the victim of a gang shooting. Next in the slide show comes a set of slides from Portland, showing mainly the same sort of gang graffiti that can be found in Los Angeles. (Gardner, 1988, p. D11)

The murdered body revealed from L.A. was associated with Portland and any signs of gangs (even if just non-violent acts of graffiti). The article follows with the statement, “educators left the room shaking their heads, worried about a problem they had not considered before” (Gardner, 1988, p. D11).

Another article published in January of 1988 Gayle McCormack a member of the Youth Gang Task Force says, “we need to let people know that there are some scary things out there. There are some violent and dangerous people. It isn’t the way it was when we were in school” (Richards, 1988, p. C7). McCormack’s quote echoes the sentiment that there is a “traditional” Portland that is vulnerable to the infiltration of gangs. In another article Capt. Wayne Inman a commander of the Police Bureau’s East Precinct states, “In Los Angeles, some parks are now known as dead parks. We don’t

want that to happen here. We're trying to send a message to the gangs: 'Don't settle in Portland, because you are not welcome'" (Durbin, 1988, p. D1).

As was referenced in the race history of Oregon, the legacy of exclusion laws and segregation were foundational to the state's inception and identity. These sentiments have manifested in modern state history as well. A quote made by Oregon's most celebrated Governor, Tom McCall, in a CBS interview in 1971 is widely known in the lore of Oregon. McCall stated, "Come visit us again and again. This is a state of excitement. But for heaven's sake, don't come here to live" (Walth, 2006).

In the 1980's the decline of Oregon's timber industry began to devastate large portions of the state's population (Stein, 2001). In the 1980's 80% of Oregon's families saw their income decline (Stein, 2001). The decline in the state's "male breadwinner economy" was coupled with increased migration from California (Stein, 2001, p. 16). Between 1987 and 1992 Oregon's population increased by 10% and Californians comprised one third of the "new arrivals" (Stein, 2001, p. 52). These changes in the makeup of many of Oregon's cities intensified the distinction made between "newcomers" and those who had been in communities for multiple generations (Stein, 2001).

In Arlene Stein's book, *The Stranger Next Door*, in which she conducts extensive interviews in a small Oregon town addressing a debate over homosexuality, she finds in her interviews this disdain for Californian newcomers (2001). She quotes an eighty-two-year-old woman who stated, "all those people coming up here who tell you how to run Oregon, I just wish they would all pack up and go home" (Stein, 2001, p. 57). Stein also

found that a person is believed to be more credible the longer they have lived in Oregon (Stein, 2001). She frequently heard her interviewees state, “as a fourth-generation Oregonian” or “as a person whose roots go back to Jesse Applegate [an Oregon pioneer]” as a statement of authority (Stein, 2001, p. 144). Stein writes,

Across the state it is common to see people ride around in pickup trucks bearing bumper stickers that read ‘Oregon Native.’ Long-standing animosity towards Californians made such appeals attractive: it gave self-ascribed natives legitimacy and authenticity, and positioned them as insiders. (Stein, 2001, p. 144)

The evocation of Oregon nativism wields a great deal of power in Oregon political culture and cuts across ideological and partisan lines. Residents and politicians from the entire political spectrum utilize this influential political tool of appealing to Oregon nativism. This is particularly significant as it bears on the understanding of the formation of policies such as Oregon’s prison expansion that receive cross-ideological support.

It is helpful to consider the groundwork developed by previous policies and cultural history in order to understand how the hyper focus on gang infiltration fits into Oregon politics and why it arises in the late 1980’s. The fear of gangs relates to previous policy decisions and depends on a demonized other.

The other predominant aspect of the articles is the way in which “gang” refers to a distinct image of crime that is frequently racialized and connected to drugs, youth and violence. As evidenced by the previous theme of outside infiltration, gangs are treated as a particular threat, one that is violent and dangerous. This is largely fueled by images emanating from Los Angeles. The conflation of gangs, youth, violence and drugs is influential because by breeding the discourse, the “problem of crime” becomes monolithic and exaggerated.

In one of the articles titled, “Drug-Related Youth-Gang Problem Draws Attention,” there is a repeated epithet, “youth gang-drug culture” that is coupled with descriptions such as “flashy lifestyle,” “disadvantaged teenagers who are susceptible,” and “easy money” (Bodine, 1987, p. B7). The title itself collapses three distinct issues into one: Drug, Youth, Gang Problem. One of the results of this conflation was the focus and control placed on the Portland School system. The number of crime reports filed annually by the School Police indicated that in 1988, the number of reports was less than previous years (Gardner, 1987, p. B1). Yet, with the emergence of the media coverage, the task force meetings and public forums, there was an increased effort for schools to exhibit controls over students such as locker searches and dress codes. In March of 1988 in an article titled, “Schools Take Watchful Stance on Gang Threat” reporter Fran Gardner writes,

A month after Superintendent Matthew Prophet’s announcement that he was cracking down on gangs, business continues as usual in the Portland School District.

District officials and school police say no students have been suspended or expelled because of suspected gang behavior. No weapons have been taken from students on school grounds, nor has anyone been disciplined for wearing suspected gang clothing.

Prophet said Wednesday that guidelines were being written for random periodic locker searches that could occur at any of the district’s schools. (Gardner, 1987, p. B1)

The discourse dispersed the threat to include all “youth” by conflating youth with gangs. It compelled the need to control and monitor Portland’s youth even when the number of crimes reported in the school districts was down and there were no signs of gang problems in the schools.

The articles in *The Oregonian* in the late 1980s echoed the national discourse on the topic of drugs. Similar to what was occurring on the national scene, Oregon too was being introduced to “crack” through the media. Listed in nearly every article mentioning gangs at this time was also the mention of “crack,” the drug that would fuel the gang problem in Portland. Crack was described as a “highly addictive form of cocaine” that is “peddled” on the “underground market” (Gardner, 1987, p. D11; Dulken, 1988, p. B1). In the articles crack is explicitly connected to the Crips and Bloods from Los Angeles.

It is important to note that when mentioning the L.A. gang problem and the gang members that would be immigrating to Portland, almost always this was referring to the Crips and Bloods. The connotations of crack and Crips and Bloods were greatly racialized in the national consciousness. In numerous articles it was explicitly described as “black Los Angeles gang members” (Durbin, 1988, p. D1). Thus, what emerges is a chain of equivalence between black, Los Angeles, crack, gangs and youth. It is interesting to note that the potential gang problem and the actual gang activity that was observed in Portland included Asian gangs and white “skinheads.” Yet, in this period of frequent mention and discussion of gangs the predominant image of gangs was connected to L.A. Crips and Bloods.

#### *Portland’s Drug Free Zones*

Similar rhetoric was manifested in coverage of an influential Portland policy, which sought to address the issue of curbside drug dealing (frequently associated with gang activity). In 1992, the Portland City Council instituted a trespassing ordinance entitled Drug Free Zones (DFZ) (Wyse, 2004). The intention of the policy was to break

up visible markets for drugs in high crime areas (Wyse, 2004). The policy lasted from 1992 to 2007, a fifteen year span. Under the DFZ policy, if an individual was arrested in one of the zones, they would receive an exclusion, banning them from the neighborhood for ninety days (Wyse, 2004). If then the arrestee reappeared in the neighborhood where they were arrested, they would be subject to immediate re-arrest, “having committed no crime at the time, nor necessarily having been convicted of the original arrest” (Wyse, 2004, p. 1). If an individual was convicted of the criminal charge they had been arrested for, they were excluded from the zones for a year (Anderson, 1997). Anyone issued a notice of exclusion had five days to appeal. However, the appeals process was used infrequently (Franzen, 2000, p. A1).

In just 1999 alone, 3,700 exclusions were issued (Franzen, 2000). Policy analyst Jessica Wyse, who conducted a comprehensive study of the DFZ’s, writes, “this movement [community policing] grew out of an increasing concern not with violent crime, but rather threats to quality of life” (2004, p. 3). This stereotyping and degradation of non-“quality” was expressed in *Oregonian* articles covering the inception of the policy. Throughout the coverage of DFZ’s, those being targeted for exclusion or receiving exclusion were referred to by the journalists and by quoted community members as, “lowlives,” “troublemakers,” “menaces,” “bad guys,” “those folks,” and “traffickers.” In one such article, a storeowner Al Jasper in Old Town states, “the bad guys won’t attack the average citizen on the street, but the image thing is killing business” (Kiyomura, 1991, p. E1). Jasper continues, “I harass drug dealers all the time to

drive them off. I verbally assault them and tell them to get the heck out of Old Town” (Kiyomura, 1991, p. E1).

After just the first year of having the policy in effect, racial bias was a legitimate concern. The policy went into effect in two zones in 1992 to begin with and in the first weeks, the *Oregonian* reported that, “60 percent of the dealers arrested were Hispanic men – and half of those were illegal aliens” (Tomlinson, 1992, p. B5). Despite many protests that there be an investigation done on the racial impact of the DFZ’s, it was not until 15 years later that a comprehensive study was performed, ultimately leading to the dissolution of the policy. Here is a brief list of the findings in 2007 of the racial impacts of the Drug Free Zones in Portland:

- Police ban African American’s arrested for drug crimes at significantly higher rates than whites or Latinos.
- More than 2/3 of African Americans got exclusion notices, compared with slightly more than half the whites and Latinos arrested for the same crimes.
- In 2006: 59% of the exclusions went to African Americans, while 34% went to whites. (Portland’s population: 6% African American, 79% white)
- 70% of people arrested for qualifying cocaine crimes were excluded
- 30% of people arrested for qualifying methamphetamine crimes were excluded (whites accounted for 233 of the 285 meth arrests, African Americans accounted for 19). (Dworkin, 2007, p. A1)

The defense of the DFZ policy was rarely explicitly racist, yet echoed the “they are coming to get us” sentiment of both the early exclusion laws and the fearfulness of a gang problem. An *Oregonian* article published in 2000 highlights the predominant discourse coming from the leaders and defenders of the policy:

New police Chief Mark Kroeker defends the zones, saying they make streets safer...

Kroeker concedes that some police-issued exclusions would not stand up in court, and that it’s difficult to say whether officers are targeting suspects by race, because that ‘depends on the heart of the officer.’ The race numbers simply

reflect who's out there dealing and buying drugs in the zones, police and zone activists say.

'People are asking, 'Is this proper?' It's a legitimate questions,' said Kroeker, who has started a task force on racial profiling in police work. 'But your challenging a covenant with the neighborhoods. It's not like this is mean-spirited police tactics.' (Franzen, 2000, p. A1)

Kroeker stands behind the "will of the people," implying that he is simply carrying out something that is universally agreed upon by the neighborhoods, a "covenant." In another article, Northeast Portland activist Richard Brown states,

why should these folks be able to just stand on the corner selling dope? It's important to me that people who are ill get help. I think it's important that treatment be available. But absent that, I still want them off the corners. I still want them out of the community. (Mitchell, 2003, p. C1)

Brown's quote alongside Kroeker's characterize the prevailing discourse of the proponents of the DFZ's, a discourse that naturalizes exclusion, hegemonizes the definition of "community" and condemns street drug dealing.

Another essential statement from the Kroeker excerpt that, "race numbers simply reflect who's out there dealing and buying drugs in the zones" is particularly important to note. The zones were not arbitrarily drawn, but happened to include the neighborhoods Alberta and Lloyd that are part of inner Northeast Portland and have historically been segregated and have high numbers of Black residences. Ian Haney Lopez writes in *White by Law* about racial disparities in criminal sentencing and describes how these patterns affirm a mythology of Black criminality and White victimhood. He states, "law makes these notions self-fulfilling prophecies that entrench further racial differences" (1996, p. 99). The statement made by police and zone activists in the article exemplifies the rationale that disparities in who gets excluded are merely a reflection of reality. However,

according to Lopez, these outcomes are not natural but stem from racially biased policies. Further, using the outcomes as a justification for the “prophecies” of the criminality of minorities is a false conclusion that just further entrenches stereotypes and perceptions.

### *1980's Legislation*

In this atmosphere of the fearful threat of an allegedly rising gang problem and the take-over of Portland's streets from Southern California, the legislature and voters responded by passing key legislation promoting tougher sentencing laws, punishment and imprisonment as a way of deterring and controlling crime. While the following laws were important pre-conditions that paved the way for the measures of 1994, they were not inevitable moves towards mass increases in imprisonment. Even though the following pieces of legislation reflected a move towards more punitive policies, they were still part of a long history of restraining growth of Oregon's prisons.

In 1984, Oregon voters passed Measure 6 with a 55% majority to reinstate the death penalty (Oregon Department of Corrections [ODOC], 2000). Measure 6 amended the Constitution to once more make the death penalty legal (Yes: \*653,009 No: 521,687). Measure 7, a statutory measure passed in the same year, required a separate sentencing hearing before a jury in cases of aggravated murder and required by statute death or mandatory imprisonment for aggravated murder (Yes: \*893,818, No: 295,988) (ODOC, 2000). Since Oregon voters reinstated the death penalty in 1984, two men have been executed by the state, one in 1996 and one in 1997 (Mooney, 2009).

Four years later, Oregon voters approved another influential ballot initiative. In 1988 Denny Smith, a key player in the 1994 campaign, placed an anti-crime bill on the

ballot (Denny Smith). Smith, then a Republican member of Congress, created and led the organization Oregonians Against Crime, which fought to get the initiative on the ballot and was successful in getting the measure passed. The anti-crime bill, Measure 4, required full sentences without parole or probation for certain repeat felonies (List of Oregon Ballot Measures). The measure to deny parole to repeat felons passed overwhelmingly, 78 percent to 22 percent (List of Oregon Ballot Measures). Another major step in the direction of increasingly punitive crime policy was the sentencing guidelines passed in 1989.

Coupled with the ballot measures of 1984 and 1988, the most significant piece of legislation leading up to the 1994 election was the sentencing laws passed in 1989. The laws passed by the legislature in 1989 thoroughly laid the groundwork for the passage of Measure 11 in 1994, which is the most significant piece of legislation in the prison expansion in Oregon.

In 1989 the legislature dramatically changed Oregon corrections. Previous to 1989, when someone was convicted of a felony in Oregon, a judge decided whether the convicted should be put on probation or sent to prison (Taylor, 2004). For those who were sent to prison, the judge set a maximum sentence that the convicted would have to serve, termed an “indeterminate sentence” (Taylor, 2004, p. 1). Then, a Parole Board would review the offender and decide how much of the sentence would be served based on the nature of the crime and the “history risk score” of the convicted felon (Taylor, 2004, p. 1). In general, offenders would not serve the maximum sentence set by the judge

(Taylor, 2004). The Sentencing Guidelines passed by the Oregon Legislature dramatically changed this process.

The new sentencing guidelines abolished parole release, so that since 1989 state prisoners serve at least 80 percent of their prison sentences (Taylor, 2004). Under the old system of “indeterminate sentencing” convicts served on average 25 percent of their sentences (Manzano, 1994, October 1). By 1994, because of the implementation of the 1989 sentencing guidelines, offenders served an average of 83 percent of their sentences (Manzano, 1994, October 1). The new guidelines, established “truth in sentencing” whereby offenders would serve a sentence much closer to what the judge imposed upon conviction (Taylor, 2004, p. 2). The guidelines also established sentence uniformity with the goal of reducing sentencing disparities among judges (Taylor, 2004). Finally, the guidelines required, “maintenance of correctional capacity consistent with sentencing policy, so the criminal justice system will be able to deliver proposed penalties” (Taylor, 2004, p. 2). In sum, the new sentencing guidelines removed judge’s discretion, prioritized punishment, and committed to expanding the prison system to accommodate the increases in the incarcerated population.

The bill was introduced at the request of the Joint Interim Committee on Judiciary, for the Oregon Peace Officer's Association, the Oregon District Attorneys' Association, the Oregon State Police, and the Oregon Association of Chiefs of Police (State of Oregon Archives, 1989). By the final vote, it passed by the House 59-1 and by the Senate 28-2 (State of Oregon Archives, 1989). These influential pieces of legislation and initiatives are important because they helped set the stage for the major initiatives

that passed in 1994. Also, they occurred at the same time that the concern over gangs was being featured in the media. This highlights the relationship between pursuing punitive policies and a discourse of fearing and wishing to exclude the “other.”

While the sentencing guidelines of 1989 were a major influence in the direction that Oregon criminal justice policy was headed, they would not have led to the increases that occurred because of the measures passed in 1994. The policies passed by the voters five years later were a propelling force that ensured Oregon would expand incarceration at the rate that it did. The following section examines how voters were convinced that Oregon had not done enough and needed to up the ante. The conditions were in place, but it would take a compelling campaign to secure approval of the largest crime initiative in the history of the state.

## CHAPTER III

### CAMPAIGN OF 1994

#### *Background*

The year that Measures 10, 11 and 17 were put on the ballot was also a year in which there was other controversial citizen's initiatives, a media frenzy on the national scene and a heated gubernatorial election. A brief description of these factors in the election help to set the political scene.

The Oregon Citizens Alliance (OCA), a conservative Christian political activist organization, founded in 1986 by Lon Mabon put two initiatives on the ballot in 1994. Mabon's organization and its political activism in the 1980s and 1990s were significant because they marked a significant evolution of Oregon conservatives. Arlene Stein writes, "Oregon conservatives had long been of the *laissez-faire*, live-and-let-live variety" (2001, p. 24). Departing from this, Mabon's organization took a dramatically different approach and mobilized conservative Christians to support anti-abortion and anti-homosexual policies. In the 1994 election Measures 13 and 19 were both sponsored by the OCA. Measure 13 sought "to prevent schools from using materials that were deemed to legitimize homosexuality" (List of Oregon Ballot Measures). Measure 19 sought "to amend the Oregon Constitution, limiting free speech protection for obscenity and child pornography" (List of Oregon Ballot Measures).

This was also the year of the infamous O.J. Simpson trial. Media coverage of the trial was extensive and captured the attention and eyes of many Americans. The trial

brought to the fore many debates over the criminal justice system and race. In June of 1994, just at the onset of the debate over Oregon's ballot initiatives and political campaigns, Time published its controversial and later condemned cover story of O.J. Simpson (O.J. Simpson). The story titled, "An American Tragedy," used a mug shot photo of Simpson and was digitally enhanced to make him appear darker (as evidenced in comparison to the same photo used by Newsweek magazine), shown in Figure 2:



(O.J. Simpson)

*Figure 2:* A comparison of the front covers of Time and Newsweek magazines depicting O.J. Simpson.

The photo manipulation was broadly criticized for appearing to have been done in order to make Simpson look more “menacing” (O.J. Simpson). The Simpson trial was a tabloid sensation and an episode in American political history that captured tensions over the racialization of criminality. The Simpson trial drew on the theme of “family in jeopardy” which has a long history of racial connotations (Lipsitz, 1998, p. 107). Whiteness scholar George Lipsitz writes, “media images and political discourse over the past two decades

have hinged upon stories that connect crime, drugs, and family disintegration to nonwhite communities, while presenting whites as besieged” (1998, p. 112). The Simpson trial was a highly public case that demonstrated this long running trend in media messaging.

While the incident bears little direct relationship to the debate over Measure 11, it is a notable element of the political landscape at the time. This was a moment in which the tried image of black criminality was plastered all over the newsstands and also a time of serious debate over the effectiveness of the criminal justice system. The anxiousness to lock people up and seek retribution cannot be easily divorced from the anxiousness over a highly racialized criminal specter and a perceived “failed system.”

In 1994, voters were faced with three policy proposals. Measure 11 would set mandatory minimum sentences for crimes such as murder, kidnapping and robbery. The measure would apply to all offenders over the age of 15, requiring that for the chosen crimes youth offenders would be tried as adults. Measure 10, as a part of reifying Measure 11, would instate the requirement of a two-thirds majority vote by the Legislature in order to reduce voter-approved prison sentences. Measure 10 would solidify mandatory minimums in Oregon making it very difficult for the legislature to reduce any sentencing laws passed by the voters. Finally, Measure 17 would require all prison inmates to work full time or be in a job-training program (List of Oregon Ballot Measures).

### *Key Players*

Measure 11 was a citizen’s initiative that was placed on the ballot by an initiative petition conducted by the political organization Crime Victims United (CVU). CVU was

founded in 1983 by members of Parents of Murdered Children. Founders Bob and Dee Dee Kouns had become members of the Portland chapter of Parents of Murdered Children after their daughter was abducted in San Francisco in 1980 (Crime Victims United [CVU], 2010a). CVU's mission statement is "to promote a more balanced justice system through legislative action and public awareness" and they list their philosophy as, "laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions, and reformation" (CVU, 2010a). The motivation of the organization is to correct a criminal system that they believe re-victimizes victims of crime (CVU, 2010a). In 1994, members of CVU believed Oregon's crime rates were "out of control" and because of overcrowding and indeterminate sentencing the system was a "joke" (CVU, 2010a). Kevin Mannix, a state representative at the time, sponsored the ballot initiative.

Kevin Mannix has been involved in Oregon state politics since 1989. From 1989 through 1996, Mannix served in the Oregon House of Representatives as a Democrat. In 1997, he became a Republican and was appointed to the Oregon State Senate. He was elected back into the Oregon House as a Republican in November 1998 and served through 2000. He has unsuccessfully run for Oregon Attorney General and for Governor. Mannix has made a name for himself through the ballot initiative process. He has advocated many state ballot measures both while in office and out of office. He and others have dubbed him the "father" of Measure 11. Many consider his authoring and campaigning for the ballot initiatives in 1994 as an attempt to increase his statewide profile for his Attorney General run in 1996 (Thompson, 2008).

Mannix has been successful in earning a statewide profile; he is one of Oregon's most well known politicians and initiative activists. Further, his association with "tough on crime" policies has been central to his political career (Thompson, 2008, p. 2). Mannix's work on crime measures has earned him the monetary and political support of Loren Parks, an out of state billionaire who has been a primary funder of Mannix's statewide office bids and his sponsored initiatives.

There was little to no organized opposition to Measure 11. The Oregon chapter of the national organization Families Against Mandatory Minimums (FAMM) was one of the only organized forms of opposition. In late October FAMM organized a protest of 35 people at the Waterfront Park in Portland opposing Measures 10, 11 and 17 (Waterfront, 1994). During the week of the election, former Governor Neil Goldschmidt organized a "contingent of elected officials" to gather at the Justice Center in downtown Portland as a last-minute appeal to oppose Measure 11 (Manzano, 1994, November 6). The Democratic Party in Oregon came out in opposition to Measures 10 and 11 stating simply that the Measures were "both not well thought out" (State Dems, 1994, p. B4).

Attorney General in 1994, Ted Kulongoski, came out in opposition to Measure 11 and was a major leader in juvenile corrections reform. He offered an alternative strategy to Measure 11, heading a task force focused on reforming the juvenile justice system; he supported the idea of a three tiered youth corrections system. In this system he proposed that the juvenile system would be organized in tiers to include maximum-security jails, boot camp style restitution centers and community based parole and probation programs (Baker, 1994). His proposal strongly rebuked the stipulation under Measure 11 that

juveniles be tried as adults. Kulongoski later served on the Oregon Supreme Court and in 2002 he defeated Mannix in the election for Governor and is currently still holding the position of Oregon Governor.

Another big factor of the 1994 election was the highly contested run for Oregon Governor between Democrat John Kitzhaber and Republican Denny Smith. The heated battle played off of the ballot initiatives. The respective campaigns and political stances of the two candidates aptly illustrated the contradictions and paradoxes of Oregon politics. Denny Smith, the founder of Oregonians Against Crime and the author of the 1988 anti-crime initiative came out in support of Measures 10, 11 and 17 while Kitzhaber came out in opposition to Measures 10 and 11 and had no position on Measure 17. However, their campaigns used conflicting political messages in order to manipulate these stances. Smith contradictorily came out in strong opposition to new taxes and “big government.” And Kitzhaber flexed “tough on crime” rhetoric despite opposing the punitive policies of Measure 11.

The following is the text of a television attack ad put out by Smith’s campaign: It’s about time we got something straight with criminals. Denny Smith wants to restore our state police force to full strength. Kitzhaber doesn’t. Denny wants violent career criminals behind bars for their full sentences. It’s time to get tough. If you do the crime, you do the time. Elect Denny Smith governor and help solve our crime problem. (Mapes, 1994, p. B5)

While clearly staking the claim of a “tough on crime” candidate, Smith also depicted himself as a fiscal conservative who would not raise taxes or increase public spending. An *Oregonian* article analyzing another television ad by Smith stated, “Smith’s steady opposition to new taxes is another cornerstone of his campaign, and he has steadily worked to portray Kitzhaber as a tax-and-spend liberal” (Mapes, 1994, p. B5).

Similarly, Kitzhaber vacillated on his positions in the campaign. While he publicly came out in opposition to Measure 11, he also gestured as a “tough on crime” politician. In one of the Kitzhaber campaign attack ads on Smith, the ad denigrated Smith for not supporting an increase in spending for police and prison beds (Walth, 1994). The text of the television ad stated, “the official record of Congress. Here’s what it says about Denny Smith’s years in Washington D.C. Crime: Smith voted repeatedly against putting more police on Oregon streets and against more prison cells” (Walth, 1994, p. B4). Kitzhaber professed to be more committed to supporting Oregon’s police force and to increasing Oregon’s prison capacity than Smith.

After distilling these campaigns and messages, it becomes clear that being “tough on crime” was a crucial political label. Both sides were unwilling to make any gestures that “toughness” may not be the best policy direction for Oregon. Further, Smith’s campaign enveloped two seemingly contradictory policy positions: he both supported tougher and longer sentences and opposed taxation and an active government.

#### *Discourse of the Public Debate*

The following sections are an analysis of about 52 articles mentioning Measure 11 that appeared in *The Oregonian* from July up until the election in November 1994 and the arguments that were printed in the Voter’s Pamphlet. Of the 52 articles that were the most relevant and illustrative of the discourse of the debate a rough breakdown went as such: 8 in support of the initiatives, 20 opposed to the initiatives, 11 that included coverage of both stances, and 13 that were neutral (either explanations of the measures or analyses of their financial impact). However, as the following sections will show, beyond these

cursory assessments there was something more interesting found in the convergences of the debate. There were three notable themes that captured elements of the discourse that animated the debate over Measure 11 and criminal justice in Oregon generally: the fiscalization of punishment, criminal stigmatization and “us vs. them.”

Race has always played an important part in the development of prison policy and the formation of “freedom” in the United States. To quote Joy James, “the encoding of slavery or criminality onto blackness reflected a counterpart construction: the inscription of ‘whiteness’ and non-incarceration as freedom and civility” (2005, p. xxv). These inscriptions have a major influence on the discourse and policy formulation of prisons today. In the case of Oregon, the “inscription of ‘whiteness’” bears a significant relationship to understanding how discourse has shaped the debate over prison expansion.

Though Oregon may not have the same racial dynamics concerning crime policy as the places that most of the literature on race and prisons have been performed, a racial analysis is still a helpful method. Oregon does not have a large African American population; however, it is still significant to note that African Americans are disproportionately represented in the prison population. About 10% of the people imprisoned in Oregon are African American while only about 2% of the population is African American. Themes and ideas of racial exclusion and dehumanization shed light on how crime is dealt with in Oregon. Beyond these thematic resonances, engaging whiteness literature provides a useful framework to dive deeper into understanding how race and issues surrounding histories of racial formation have impacted and shaped the story of Oregon’s prison expansion. These ballot initiatives and the language they engage

connect to a long history of race and prisons. Whiteness literature engages the often overlooked and naturalized components of race relations. It challenges the disavowal that whiteness means anything (Lipsitz, 1998).

Rather than solely focus on the bearers of oppression, whiteness literature focuses also on the rewards and benefits of racism. In this particular case study, given that the population of Oregon is predominantly white, this literature provides a way of assessing how race operates even when the predominant images and evidences of racism are not easily discernable. For example, there is not a large black population locked up in Oregon's prisons, a trend that is commonly cited to argue that the U.S. prison system is a racist institution that incapacitates large segments of the black population. However, though this explicit evidence of racism and racist effects of the prison system do not operate in the state of Oregon in the same way, the argument might be that the terms of whiteness, the possession of whiteness, the benefits of whiteness, and the formation of white identity are an important factor in describing and understanding the history of prison expansion in Oregon. Therefore, while describing the three prominent themes found in the public debate over the crime measures of 1994, whiteness literature will be threaded through the discussion in order to pull out the nuanced, yet influential ways in which race helps explain prison expansion in Oregon.

### *Fiscalization of Punishment*

One formative part of the debate over Measure 11 was the role of economically coated rhetoric. While a debate is rarely ever just about the money, the attempts by both sides of the debate over the Measure frequently distilled the issue down to the question of

spending. This is one aspect of the discourse that deserves attention because it pervaded both sides of the issue. During the Measure 11 debate in 1994, the use of an economic framework was employed in various ways by proponents and opponents of the measure. The largest sword yielded in opposition to Measure 11 was the idea that it was too costly. This had substantial consequences for the range of possibilities and outcomes of the Measure and the ongoing debate over criminal justice policies.

Along with the hyper focus on spending, budgets and economic impact was the concerted effort to privilege the “taxpayer.” Both sides pitted their arguments in defense of the “Oregon taxpayer” as the most valued, the most vulnerable and the most important interest to serve. This predominant subject position in the rhetoric of both the opponents and proponents is an important element of understanding the larger issues of power and privilege. As whiteness scholar George Lipsitz writes, “whiteness is a matter of interests as well as attitudes...it has more to do with property than with pigment” (1998, p. 233). Thus, though a vast majority of Oregon’s population shares the same pigment, this does not mean that they share the same “property” or privilege. Employing the ideas from whiteness literature helps situate the impact of the prominent role of the privileged taxpayer in the public debate over these measures. Through the subject position of the taxpayer, the jockeying for privilege can best be observed. It is this portion of the debate that illuminates that debates over punitive crime policy are about both punishing and privileging. Whiteness literature helps to describe that racism is not just about oppressing others, but about privileging those who can claim “whiteness.”

Rather than address the substantive portions of the bill and rather than oppose the initiative in any deep manner, the opposition simply took the “it’s too expensive” line. In an *Oregonian* editorial printed on October 19, 1994 titled, “No on Measures 10, 11, 17,” while being firmly opposed to the measures and encouraging “no” votes for all three Measures, the editorial demonstrates how the opposition stabilized the need and approval of the Measures themselves and merely destabilized and admonished paying for them. The editorial opens with the observation that polls have shown the three ballot measures are enjoying “wide appeal” among Oregon voters. In response, the editorial follows, “who can be against longer sentences for violent criminals, as Measure 11 would require, and making prisoners work for their keep, as prescribed by Measure 17? But voters inclined to support these measures should either vote ‘no’ or be prepared to leave their wallets at the polling places” (No on Measures, 1994, p. B10).

The editorial positions economic reasoning as the most fundamental element of the issue to be considered in determining whether to support or oppose the initiative. The column stabilizes and naturalizes the desire to lock up criminals and force them to work by subordinating any need to problematize this notion. The column dares the reader to not agree with the common knowledge that longer sentences are just and right: “who can be against longer sentences?” Any room for debate over the issue of sentencing policies is briskly cast away and is replaced by the core argument: do you want to pay for it? The opposition, by using these economic arguments, connects prison expansion and harsher sentencing to the wallets of Oregon citizens. In this way the opposition also connects the expansion of the prisons to the economic detriment of the “taxpayer.” The opponents

warn that the initiatives will strip the voters of “their wallets.” Implied is that the economic privilege of voters would be at stake. Thus, what is most at stake is maintaining the economic privilege and sanctity of the taxpayer, not protecting those who would be most harmed by the policies: citizens accused and convicted of crimes, their families and the community at large.

The opposition was almost solely confined to this economic line of argument. For example, in an article by Phil Manzano published the day before the editorial, on October 13, 1994, titled, “Voters Solidly Back Crime Initiatives” the debate is framed as cost versus solving the problem of crime. Rather than any discussion or debate over *how* to solve the “problem” of crime, the debate is largely determined by this commitment to an economic argument.

Manzano writes, “both measures come with hefty price tags, but even that may not dampen public frustration over crime” (Manzano, 1994, October 13, p. B5). In this sentence the debate is set: hefty price tag vs. public frustration. Later in the article, “public frustration” gets connected to its solution, Measure 11. After a description of what one Oregonian perceives to be a rising crime rate and a crime problem, Manzano, in what seems to be an objective definition of the measure writes, “Measure 11 would set hard and fast prison sentences” (Manzano, 1994, October 13, p. B5). However, the positioning of this definition is anything from objective. It is positioned in response to the Oregonian’s complaint about a crime problem and it is then followed by the comment, “These measures, however, will cost hundreds of millions of dollars” (Manzano, 1994, October 13, p. B5). In this organization of the article, Measure 11 gets situated, without

any commentary, as the solution to this crime problem with the only hang up being the cost. The article then concludes with a parade of numbers of the cost the measure will have. In presenting the opposition as merely a “hefty price tag” the discourse works to stabilize and naturalize the ideas that there is a crime problem and that Measure 11 is a solution to this problem. It also further validates and demonstrates that the popularly agreed upon opposition is that the measures, while understandably attractive, are just “too expensive.”

This common framework employed by the opposition did not go unnoticed by the proponents of the measure. In an *Oregonian* article printed on October 1, 1994, Mannix sought to collapse the difference between the budgetary cost of prisons and a more abstract cost of criminals going unpunished. In this way, he used the framework of fiscal cost to connect to the measure’s motivation to be “tough on crime” and tried to argue that “cost” can be variedly defined. Reporter Phil Manzano writes, “Mannix said that while more violent offenders were being punished, it comes at a cost, namely that 80 percent of convicted felons don’t go to prison, that those convicted of property crimes are apt to get probation in order to keep state prisons open for violent offenders” (Manzano, 1994, October 1, p. E1). Mannix continues, “I think the tradeoff, the price we’re paying for that, is the wrong price, the wrong kind of currency” (Manzano, 1994, October 1, p. E1). While Mannix is actually downplaying the importance of monetary currency by saying that it is less important than the cost of offenders only getting probation, he uses economic terms to do so. He equates the lack of prison time offenders receive to the “price we’re paying for.” By framing his point in these economic terms, Mannix is

seeking to connect offenders getting probation rather than prison time to fiscal cost. His articulation undermines the critique that the Measure is just too expensive by associating not passing the Measure to a “cost.” Mannix is arguing that it is actually fiscally prudent to pass these initiatives.

Likewise, he trumps the argument that the measures are harmful to the taxpayer’s “wallet.” Mannix, like the opponents, positions the taxpayer as the most valued and most in need of protection. In the following sections it will be clearer who is being placed in the “we” camp of taxpayers and who is being left out and the implications of these groupings. However, for this portion it is important to note that Mannix along with the opponents explicitly affirms that what is of the most concern is whether or not “Oregonians” are “paying the right price.” Consequently, the debate over the three initiatives is not just about who gets punished but also who gets privileged.

The relationship between punishing and privileging can be further observed in the following quote by Mannix. This excerpt is from the ballot argument printed in the voter’s pamphlet in 1994, Mannix stated:

It costs money to keep criminals in prison. While it may save government money to set these criminals free, the cost to society and victims is incredible. We all pay this cost. By enacting this measure, we will at least be getting justice for our money. (CVU, 2010b)

Another proponent of the measure, Jeanette Basl, similarly contended: “Measure 11 is cost effective to society. Incarcerating a prisoner for one year is a mere \$18,000. The cost of not incarcerating that offender is more than \$400,000 per year...Do not let the cost of INJUSTICE exceed the cost of JUSTICE” (CVU, 2010b).

Thus, while the measures are most certainly about retribution and punishment they are also about getting a just return on Oregonians' "investment" and adhering to fiscal conservatism. By arguing that the passage of the measures is fiscally prudent, the proponents of the measures ensure the taxpayers that they will be best served. The safety of having violent criminals locked up is joined with the safety of not being economically harmed. Thus, the proponents weave a solid and convincing safety net for the public: safe from violence, safe from fiscal excessiveness.

The opponents of the measure did nothing to oppose the privileging of the taxpayer. Just like the proponents, they focus the debate on the need to be fiscally prudent. Consequently, they avoid any deeper discussion of the policies themselves. For example, Measure 11 opponent Dave Adams, a spokesperson for the advocacy group Citizens for Common Sense Corrections asserted in the ballot argument: "DON'T SIGN A BLANK CHECK...MEASURE 11 IS A POLITICIAN'S DREAM AND A TAXPAYER'S NIGHTMARE" (CVU, 2010b). Adams urged voters not to be fooled by the "GET TOUGH ON CRIME line" insisting that "THE CRIME IN THIS BALLOT MEASURE IS AGAINST THE TAXPAYER" (CVU, 2010b).

The implication of both sides adhering to this framework is to make the debate over corrections policy largely constrained by economic arguments. Rather than talk about people and the more personal aspects of the measure, the economic framework turns the attention towards more seemingly neutral territory such as budget sheets and dollar signs. Lisa Duggan in *The Twilight of Equality?* writes about how economics are treated as neutral, technical and separate from politics and culture. She states,

the most successful ruse of neoliberal dominance...is the definition of *economic* policy as primarily a matter of neutral, technical expertise. This expertise is then presented as separate from *politics* and *culture*, and not properly subject to specifically political accountability or cultural critique. (2003, p. xiv)

Duggan's argument is helpful in discerning the impact that an economic framework has on a policy debate. Framing the corrections debate in these economic terms is a way in which the debate becomes viewed as neutral and emotion free rather than needing a cultural or political evaluation.

In positioning the opposition in this way, the rhetoric seeks to divorce "emotion" or any ethical or moral critique from being opposed to the measure. It allows a framework in which one can be unequivocally supportive of the punitive policy, but merely opposed to the financial cost. This further stabilizes and naturalizes support for the policies.

### *Criminal Stigmatization*

Both sides of the debate over the crime measures of 1994 use and further the stigmas of criminals to support their arguments. In terms of the broad boundaries of the debate over corrections policy, this section will illuminate that stigmatizing criminals is a popular tool and a strict framework that rarely gets challenged. A strong boundary of the debate is found in the stigmatization of criminals, a line that is rarely crossed by either side and shapes the possibilities of policies. Whether for rehabilitation or for incarceration, or in favor of both, there is a broad agreement and rhetorical dependency on establishing "the criminal" and the brokenness and corruptness of people in our society. This contributes to establishing "us" and "them" dichotomies as well as contributes to defining powerful subject positions in the debate.

This portion of the analysis borrows from discourse analysis theorists Elgar Howarth and Igor Stavrakakis's definition of social antagonism. The authors write, "social antagonism arises because of the inability of differently located social agents to achieve their respective identities" (2000, p. 10-1). The active pursuit of identity that the authors describe is precisely what is at stake in the stigmatizing discourse of this debate (Howarth, Norval & Stavrakakis, 2000). The denigration of the "criminal" is as much about those denigrating as those being denigrated. For the authors and perpetrators of the stigmatization, there is a noticeable inverse identity that affirms non-criminality. In the rhetoric, non-criminality is invested with many positive attributes: privilege, goodness and freedom. Each of these attributes is closely connected to social hierarchy and personal advantage.

The importance of stigmatization also draws from the work done by Schneider and Ingram. The authors argue that policymaking is driven by divisive social constructions that position populations as degenerate while extolling the virtues of others (Schneider & Ingram, 1997). Their analysis suggests that not only are stigmatization and affirmation essential to policymaking, but also that these discursive projects are closely related to political capital, control and power.

Similar to the work of Howarth and Stavrakakis, as well as that by Schneider and Ingram, whiteness literature provides a framework for addressing the implications of stigmatization. Richard Dyer in "The Matter of Whiteness" writes, "as long as white people are not racially seen and named, they/we function as a human norm. Other people are raced, we are just people" (1997, p. 10). He then claims that, "there is no more

powerful position than being ‘just’ human” (Dyer, 1997, p. 10). Dyer points out that normativity serves as a subject position of power. In the discourse over crime, criminality is based on non-normativity. Being classified as “society” or non-criminal is not merely being void of stigmatization but is actually empowering. Being whatever is opposed to the identification of criminal is assuming this position of being “human” and thus grants certain power as a subject position. As all three sets of theorists point out, stigmatization is about disempowering and empowering. The dehumanization of criminals makes palatable their foul treatment and it also justifies the privilege of those on “the other side.”

In Measure 11 the focus is on violent criminals and youth offenders, the two segments that would be most affected by the mandatory minimum laws being proposed in the measures. One *Oregonian* article published on August 4, 1994 titled, “You Better Have That One Empty Bed” serves as an example of the process of creating negative images and connotations of the “criminal.” The article weds quotes by a Democratic Senator, a lobbyist for the state sheriffs, the state’s Corrections director and Kevin Mannix all of whom address the inadequacy of the parole system.

The *Oregonian* reporter, Steve Duin, quotes Sen. Catherine Webber, a Democrat from Salem, who states that the underfunding of Oregon’s parole system is “one of society’s best-kept secrets.” Duin then writes, “For high society, perhaps, but not for the cons” (Duin, 1994, p. B7). Duin claims that savvy, violent “sex offenders with a sweet tooth for kids” know the weakness of the parole system and thus are not intimidated or coerced by it and can easily bypass the punishments in order to “blissfully indulge” their

sweet tooth. He writes that the sex offender after 60 days is “back on the street ready to indulge that sweet tooth again.” He also describes, without any evidence, that “an ex-con connects with his parole officer long enough to collect his subsidy check, then often blows him off” (Duin, 1994, p. B7).

Though offenders of all sorts of crimes would be subjected to this analysis of parole abuse, the author chooses a “sex-offender.” In this selection he establishes the most sensational and one of the most ill regarded of all “types” of criminals. A sex offender, especially one “after kids” is despicable, inhuman and completely unsympathetic. Sex offenders are seen as pathological, incurable, evil and the “other.” They are generally depicted as lurking, alone and totally separate from any “normal” person in one’s life. Aside from this sensationalized and dehumanizing choice of a criminal representative, the article also furthers other stereotypes of a criminal.

A difference is established between “high society” and “cons.” The difference is greatly hierarchical with cons being depicted as lowly and unsociable. Early in the article, the “cons” are also referred to as, “vicious thug[s]” (Duin, 1994, p. B7). Evoking the “back on the streets” statement is a way of identifying that criminals are associated with urban settings, ghettos, and “street life.” The statement is loaded with racial connotations such as curbside drug dealing, prostitution in parks or gang activity. Placing the criminal on the “street” also further isolates and separates the criminal from society or community both spatially but also culturally. Evocations of the “street” have many negative connotations especially in the context of the agitation over gangs in the 1980s.

Finally, the statement about the parolee seeking only a “subsidy check” and then blowing off their parole officer further articulates the characterization of the criminal. Pulling from well-established stereotypes of welfare recipients, the sentence describes a criminal as one who is mischievous and lazy. Most importantly, the criminal is positioned as a leech of society, one who only takes and costs rather than contributes. Thus, the rhetoric affirms a frontier between taxpayer and “leech.” Those on the side of “society,” as members of the community that contribute, are positioned as deserving in contrast to the undeserving criminal. Thus, the stigmatizations of the criminals further justify the privilege of the non-criminal.

The chief proponent of Measure 11, Kevin Mannix blatantly stigmatized the targets of his drafted legislation. In an article titled, “Measure 11 Would Change Juvenile Justice” Mannix states, “quit babying kids...give youths swift, sure consequences...if that means warehousing them, then that’s what we’ll do” (Baker, 1994a, October 7, p. A16). Mannix’s unflinching use of the term “warehousing” is exemplary of the ways in which youth offenders were dehumanized in the debate. Mannix equates responsibility, “swift, sure consequences” to “warehousing.” Further, he positions this form of crime control as natural and inevitable as though this is what “we” *have* to do, so “that’s what we’ll do.”

Much of the debate during 1994 surfaced over the portion of Measure 11 that would punish youth offenders as adults for certain crimes. This led to an extensive debate about what is to be done with youth offenders. At times the “youth offender” is treated as helpless and in need of guidance and control. At other times, the “youth offender” is

stigmatized as “delinquent” and lacking proper consequences and punishment. In the following article the latter is evoked and contributes to the stigmatization and “otherness” of youth offenders. In an article titled, “Juvenile Justice: Testing the Limits” youth offenders are presented as a group and as a problem. Though overall the article is not promoting Measure 11 and is actually arguing for more treatment for youth offenders, it still stigmatizes the offenders. The reporter, Nena Baker, writes,

The bottom line: From petty crimes to probation violations to violent offenses...the juvenile corrections system statewide finds itself unable to meet the demands of delinquent youths.

The crunch stems from a spike in violent crimes committed by young people, spurred largely by gang activity and the availability of guns.  
(Baker, 1994b, October 7, p. A16)

Though the quote begins with the identification that youth crimes consist of both petty and violent crimes, by the end of the quote, the problem and the youth offender has been illustrated as violent and corrupt. Evocations of “gang activity” are frequently used in describing youth offenders.

The definition of “gang activity” is spurious and comes with many racial connotations as evidenced by the *Oregonian* articles covering the “gang problem” in the 1980s. Gang activity is generally associated with an urban setting and connotes a stereotype of a “ghetto lifestyle,” which is viewed as a subculture and separate from mainstream society. The words “demand,” and “spike” further this image of a shapeless mob-like representation that comes with the “gang” image. Youth offenders get grouped together and are treated as a coalition against order.

Later in the article Baker writes, “Court officials say they are forced to channel streams of delinquents back into Oregon communities before they are ready for release”

(Baker, 1994b, October 7, p. A16). Again, though the motivation behind this claim is to argue for better treatment and effective handling of the youth population in the juvenile system, there is still an idea that youth criminals are particularly dangerous and problematic because they come in a “stream.” The effect of this infinite imagery is to dehumanize the youth offender.

As Leo Chavez writes in *Covering Immigration*, this form of imagery has certain connotations. Though Chavez is writing specifically about immigration images and symbolic meanings, his analysis can support the claim in this example that the massing of youth offenders contributes to their lack of individuality and to an alarmism. Chavez writes, “the infinityline image is primarily an alarmist image” (2001, p. 69). He writes that in images where there is a mass group with no particular faces, that this makes it hard to distinguish individuality (Chavez, 2001). While this particular quote by Baker does not have all of the visual elements that Chavez references, the ideas are similar. A mass group image has negative, fearful and non-individualized connotations. Rather than address that each youth offender is different and motivated for different reasons, they are instead positioned as all being the same and all being together in almost a conspiratorial way. The reason for the spike in crimes is distilled to gang activity and gun availability. Both reasons position youth offenders as violent and as an assemblage of “trouble.” They are not seen as sons, students, or petty criminals, but instead gun toting gang members.

This rhetoric is not at all unfamiliar in crime discourse. The criminal is frequently dehumanized and set apart as the other. The process of stigmatizing the criminal in the debate over crime serves many purposes. The absence of a human and thus sympathetic

figure means there is little pause or concern over the idea of stripping someone of freedom and subjecting them to years and years of punishment and nightmarish conditions. The process of stigmatization also creates a distinct image of the criminal. Patching together the language of the debate forms a fairly clear picture of the criminal: lurking, dangerous and predatory, male, adolescent, evil, mischievous, a leech on society. Consequently, in partnership with these images and behavioral markings emerges the outline of a lesser class.

As Lipsitz writes, “the possessive investment in whiteness is a matter of behavior as well as belief” (1998, p. 233). Further, another whiteness scholar, Allan Johnson writes, “you can lose privilege if people think you don’t belong to a particular category” (Rothenberg, 2002, p. 118). The function of discerning, “the criminal” is a way in which to articulate how the citizens of Oregon are policing the category of “citizen” and “Oregonian.” In order to be a member of the privileged group of non-criminals, one must *not* be a part of the deviant group of criminals. The stigmatizations draw these boundaries. Thus, the process of racialization is at work in the debate over crime policy in Oregon. All of the characteristics associated with the racialized other are present in the characterizations of the criminal: undeserving of freedom, unintelligent, unworthy, heathenly, violent and drug induced. This powerful overlap helps explain how it is both the adoption of apparatuses of racism for the control of criminals and the specter of the “other” that help to explain the support of prison expansion in Oregon. As Howarth and Stavrakakis describe, social antagonism such as that evidenced in the debate over crime policy in Oregon is about a struggle over achieving identity. The rhetoric of the debate

illustrates this jockeying for inclusion in the privileged camp of non-criminals and the specific and well articulated exclusion of those in the condemned camp of criminals.

### *Us vs. Them*

This final thematic portion flows directly from the previous sections because the three themes are intricately related. The establishment of us vs. them elements of the debate is a broad theme that encompasses much of what occurred in the debate in 1994 from the privileging of the taxpayer to the stigmatization of the criminal. The definitions of “us” and of “them” are greatly subjective and take on many different forms. Generally, what is helpful is the acknowledgment that it is this very fluidity that makes an analysis of the debate important and instructive of how policies of prison expansion found success in Oregon.

Borrowing from Howarth and Stavrakakis, this portion of the analysis is based on their claim that discourses are intrinsically political. This means the formation of discourse, “involves the construction of antagonisms and the drawing of political frontiers between ‘insiders’ and ‘outsiders.’ In addition, therefore, they always involve the exercise of power, as their constitution involves the exclusion of certain possibilities” (Howarth, Norval & Stavrakakis, 2000, p. 4). It is this political nature of the discourse that is most interesting to flush out, as the literal and figurative frontier between “insider” and “outsider” is precisely what is at stake in the debate over the crime initiatives of 1994. Two prominent “us vs. them” dynamics that occur in the debate will be closely examined in the following section. The first is the opposition between the “people” and

the “system.” The second, which has already been touched upon, is the opposition between “society” and “criminals.”

An important element of the Measure 11 debate is how the measure is pitted against the “establishment” which tends to be articulated as government, judges, and other power elites. Measure 11 is continually defined as the “will of the people” and a reflection of public sentiments. Both sides in reference to criminals largely agree upon how people (non-criminals) gets defined and articulated in the debate. Neither side of the argument wishes to take criminals into the “us” coalition. The “people” is not inclusive of criminals. Criminals are not positioned as members of the society; they are described as antagonistic and thus given outsider status.

Measure 11 is positioned as coming out of a wide consensus of public frustration and dissatisfaction with how crime is being dealt with in Oregon. The proponents of the measure claim that Oregonians are, as a whole, frustrated, frightened, and anxious about crime. In an article that reported recent polling for Measures 11 and 17, the idea that respondents’ approval (7 out of 10 supported the measures) was a product of frustration over crime is asserted (Manzano, 1994, October 13). Tim Hibbits whose company Davis and Hibbits Inc conducted the poll states, “people are fed up with crime” (Manzano, 1994, October 13, p. B5). This very general identification of “people” is a strategic word choice because it casts a wide net of who could identify with this sentiment. As “crime” or “criminal” have been imagined as something distant, anti-society and dehumanized, the “people” are everyone else. The idea of “people being fed up with crime” would not make sense without being coupled with a sense of who the “criminal” is. Further the

emotion of being “fed up” is one that many can identify with. Few Oregonians voting in the election are going to be completely satisfied with the state or with their communities no matter what their political ideology is. Thus, the idea of public frustration creates a unified “us.” Though “us” is unclearly defined, it is easily joined.

In another article a very similar statement and connection is made between voters’ approval of the measures and their opinion on crime. The article written in October arguing for a “no” vote on all three crime measures states, “as a recent poll shows, the anti-crime Ballot Measures 10, 11 and 17 on the Nov. 8 election ballot enjoy wide gut-level appeal among Oregon voters sick of violent crime” (No on Measures, 1994, p. B10). This “gut-level appeal” infers that Oregonian voters on a natural and instinctual level are “sick” of crime. Again, the stigmatization and unnaturalness that was professed in the images of the criminal as a predator connect well to this idea that a natural reaction is to be disgusted by crime. Further, what also gets naturalized and connected is that Measure 11 is the embodiment of this natural frustration and the answer to the problem of crime. It is as though a voter who is sick of crime could never be in opposition to Measure 11 and that the reason people support the measure is only because of this idea that they are fed up with crime.

Because Measure 11 is set up as a declaration of the will of the people, this greatly benefits the proponents of the Measure. The initiative is seen as being a tool of public directive. In another Phil Manzano article written in November, 1994 he reports, “the sponsors of Measure 11 believe that it is a populist revolt on the crime issue, that the public is tired of waiting for the Legislature to enact harsher criminal penalties. In that

way, Oregon voters may be poised to take matters into their own hands and revolutionize Oregon's justice system" (Manzano, 1994, November 3, p. A1). The quote is telling of the manner in which the initiative process is observed and particularly how this ballot measure was framed. The ideas of "taking matters into their own hands" coupled with "populist revolt" and "revolutionize" all position the ballot initiative in the hands of "the people" and against the elite power holders as well as against criminals. Mannix declares this division in an article published on October 26, 1994 in which he states, "I'm tired of these bureaucrats and politicians making excuses. That's why we went to the people with this" (Bella, 1994, p. D5). Mannix contrasts the measure and the people to the "system" of bureaucrats and politicians.

Mannix and the proponents of the measures capitalized on the populism that is associated with the initiative process. Initiatives have been widely advertised and perceived as a form of self-governance and direct democracy from the people (Schmidt, 1989). The initiative process is a prideful institution in Oregon, one that is popular amongst voters. Proponents of Measure 11 were able to use this powerful framing to their advantage and the opposition did not challenge a "people" versus "system" construction.

Voices in opposition supported this framing of the debate by taking the stance that the system was working fine. They did not collapse the distinction made between the people and the system. Rather than challenge the idea that Measure 11 and mandatory minimums are a way of solving crime problems or even challenging the notion of a "crime problem," the opposition contended that the system was already working. Both sides then supported and operated within the dichotomy that a yes vote meant you were

not satisfied with the system and a no vote meant you were happy with the system. Rather than collapse this “us” versus “them” of the people against the system, the opponents of the measure also upheld this division by basing their argument against Measure 11 in defense of the system.

In several different articles, the opponents reiterate that the system does not need to be changed. In an article directly opposing all three crime measures it is argued that Oregon is already “tough” enough. The article states,

sentences have overall gone up by nearly a third under the sentencing guidelines adopted by the Legislature in 1989. Sentences for person-to-person crimes have increased 41 percent. The death penalty is back, along with life without parole, dangerous-offender verdicts that forbid a prisoner’s earning ‘good time,’ fixed-length terms for repeat offenders and mandatory minimums for crimes committed with guns. Twelve hundred Oregon inmates are serving these kinds of enhanced sentences now. (No on Measures, 1994, p. B10)

The catalog of harsh penalties Oregon already has on its books is a way of arguing that Measure 11 is unnecessary and too expensive. What gets affirmed in this line of argument is that the “system” or the penalties that are already handed out are just and effective. Thus, by supporting these punitive policies, though it is a line of the opposition, it further naturalizes that policies such as mandatory minimums and the death penalty are appropriate responses to crime.

Similarly, a letter to the editor in opposition to Measure 11, titled “Measure 11 Poorly Written, A Costly and Poor Solution to Crime” written just a week before the election stated, “juveniles who commit crimes should do the time, yes, but the juvenile system already has the ability to remand to the adult system for such crimes” (Measure, 1994, September 24, p. B6). Rather than challenge the very arguments being made by the

proponents, such as that juveniles should be tried as adults for certain crimes, the opponents affirm these very practices. The opponents nod in agreement and then just tack on, “but we already have this.” These moments of convergence in the discourse demonstrate the limited space of the debate.

Another article, again in opposition to Measure 11 similarly defends the system, upholding the terms of the antagonism as being between the people and the system. The article is summarized, “Frank A. Hall says the initiatives are misguided attempts to correct old problems already brought under control.” In the article, Hall, the Oregon Corrections Director states, “if it ain’t broke, don’t fix it—and the state’s corrections system definitely ain’t broke” (Bella , 1994, p. D5). Hall’s statement falls right into the hands of Measure 11 proponents who all along claimed that the measure is a way of circumventing bureaucrats just like Hall who do not see the problem and who are not able to fix it. Hall does not challenge the measures fundamentally in terms of the merits they have for achieving public safety and reducing recidivism, rather he allows the contention to be over whether or not the “system is broken.” As these opponents applaud the idea of mandatory minimums they support the discourse that prisons are effective and keep society protected. This helps explain why the most prominent mode of opposition is to just say it costs too much. There is little popular discourse that challenges the merits of the prison system on an ideological level.

The opposition does not collapse the self-defeating argument that the system is just fine. Similarly, the opposition does not collapse the “society” vs. “criminals” aspect of the debate. By not complicating these divisions, the discourse, through the language

used on both sides, effectively silences the criminal “other.” Neither side accepts the voice of the criminal as legitimate or non-adversary. Coupled with the stigmatizations of the criminal, the very “class” being targeted is sacrificed by both sides making opposition to the policies nearly impossible. Schneider and Ingram writes, “providing punishments to persons constructed as deviants yields little to no resistance as these groups have essentially no political power” (1997, p. 120). In this particular debate, it is both the stigmatization and deviant status rendered to the “criminal” and also their being caste outside as the “them” by both sides that results in them having no political power. Given the strength of these two forces in the debate, it is not surprising that efforts to defeat these crime initiatives failed.

Even the opposition, though sympathetic to the just treatment of convicted felons, has a clear stake in drawing a line between themselves and “cons.” In a letter to the editor in September of 1994, co-chairs of House of Umoja Northeast Portland (the Portland chapter of an internationally recognized organization serving inner city boys), Jerry Jones and Iris Bell write in fierce opposition to Measure 11. They write about the damage and harm inflicted on young boys who are incarcerated as punishment for first time crimes. They specifically address the portion of Measure 11 that stipulated 15-17 year old boys would be tried as adults for Measure 11 crimes (Measure 11, 1994, September 24, p. D5). They celebrate the low recidivism rates of participants in their program and conclude, “if this measure passes, our young men will be in penitentiaries learning from other cons, rather than learning from us and the many volunteers who support them” (Measure 11, 1994, September 24, p. D5). Their statement draws a clear line between “us,” “our young

men” and the “cons.” Jones and Bell distinguish themselves and even the young men from the “cons” further affirming that those locked behind bars are wholly threatening and harmful.

In an article that addresses the concerns about the overcrowding of juvenile facilities the division between society and criminals is further declared. While the article tends to lean in the direction of supporting an increase in rehabilitative efforts rather than the punitive plan of Measure 11, the stance is hard to discern because the main effect is to affirm the threat of juveniles. The article titled, “Juvenile Justice: Testing the Limits” describes that the juvenile detention centers are overcrowded and continues,

As a result, only the most violent and dangerous youths go to jail. But even these offenders rotate through a revolving door of juvenile corrections—sometimes with horrific results.

Fifteen-year-old Lydell White was committed to the MacLaren School on Feb. 18, 1993. The Salem youth had convictions for theft, robbery, burglary, carrying a concealed weapon, harassment and assault dating to 1991.

But instead of proceeding through treatment program at MacLaren, White never even made it out of an intake unit before being transferred to a work camp. He then spent two months at the camp and was released on May 19.

Four months later, on Aug. 16, Lydell White and his twin brother, Laycelle, broke into the home of a Salem couple who were in their 80s. The brothers were convicted of murder earlier this year for clubbing the couple to death.

In the eyes of juvenile probation authorities who must decide which youths to rotate out of MacLaren to make room for new residents, Lydell White was considered less of a risk to society than many others. (Baker, 1994, September 17, p. D2)

This excerpt is filled with paradigmatic elements of the public debate over the crime initiatives of 1994. Beginning with the image of a “revolving door,” this portion of the article affirms the stark division between offenders and society. The metaphor of the “revolving door” is a commonly evoked image in debates over criminal justice.

The “revolving door” image describes offenders as perpetually damaged and a menace to society. It highlights their dangerous entry back into society and frequently depicts the criminal as even more damaged upon exiting the prison. While the metaphor of the “revolving door” can be positioned as a claim for better treatment while in prison (such as in this particular article) it affirms stigmas and a division between the “inside” and the “outside.” It also, regardless of a larger purpose of advocating punishment or rehabilitation, always affirms the desire to keep offenders *locked up*. The “revolving door” is a danger because it opens back up, releasing criminals into society. It is not positioned necessarily as a metaphor for preventing someone from going in the door, but rather from exiting.

The article continues with the detailed story of Lydell White. The graphic murder of an elderly couple being clubbed to death is a horrific example that conjures an emblematic scenario: a vulnerable citizen and a predatory criminal. In no way should the horror of the case be minimized, it is certainly a terrible tragedy. However, it is important to note the way in which using this case directs the debate. The example of a brother team of brutal murderers suggests that criminality is innate and stems from truly and fundamentally broken members of society. Further it distills a variety of crimes and motivations for crimes into one extreme example in which the offenders are depicted as cold-hearted, indiscriminate violent menaces.

The article concludes that authorities are stressed to make a decision of the level of threat that the juveniles in their programs pose to society. In this way it is clear that the system directly mitigates between society and offenders. The implication in relation to

the example the article cites is that the release of White was a great example of this relationship being poorly mitigated. Clearly, the moral of the story is that White should not have been released. The statement that the authorities decide “which youths to rotate out” again further implies that their release will inevitably result in their return. Again, though the article is *not* in favor of Measure 11 and is arguing for more treatment not more punishment, the article affirms the brokenness of the “criminal,” which is the Lydell Whites of the state, and calls for a stricter boundary and buffer to exist between society, the innocent 80-year-old couple in bed, and the offender, Lydell White.

Not surprisingly, the proponents of the measures also relied on a strict division between society and “cons.” Mannix’s ballot argument repeatedly pitted society against the criminal: “This measure brings back the idea that the criminal justice system means justice for all - not just the criminal, but the victim, and society....Society should demand that the criminal pay the price for [violent] crimes.” In this equation, the criminal is positioned as owing society and subject to the demands of society. The criminal is clearly lower and lesser and not only excluded from but in direct opposition to the subject positions “victim” and “society.”

Similarly, in another article supporting the passage of Measure 11, the piece ends with the story of Patricia Ireland and powerfully illustrates this “us vs. them” notion:

On Easter morning, Patricia ‘Tish’ Ireland snapped awake to the sound of wood creaking and snapping as two men tried to kick in her front door.

Ireland, a widow, lives alone on her Ontario farm, and all around it the vast fertile land of Malheur County stretches relentlessly to the east. She had to take the law into her own hands.

As a third burglar broke open a window with a pool cue, she fired a warning shot from her .357-caliber Magnum police special.

The burglars fled.

All three men, who were later caught, had been in trouble with the law before, she said. One was on probation—a product of Oregon’s sentencing guidelines.

She still has nightmares about the attempted break-in. She has guns strategically hidden throughout her house. She is installing lights and an alarm system.

‘What makes me angry is I feel I have to be armed in this house,’ She said. ‘It is not right for people to have to feel afraid in their own homes. But then again I’m not going to move. I’m going to be prepared.’ (Manzano, 1994, November 3, p. A1).

The article is yet another demonstration of the common scenario of again a vulnerable citizen (widowed woman, alone, asleep in bed) and predatory criminals. But, Ireland takes matters into her own hands. The empowerment of Ireland bears a direct relationship to the populist aspect of the initiative process. The beleaguered law enforcement and criminal justice system is highlighted: “a product of Oregon’s sentencing guidelines,” but, the people, like Ireland can do something.

While all of these important staples of the debate are well illustrated in this excerpt, it is important to note the concluding statement made by Ireland. In the concluding quote to the article the problem is on the outside and is threatening an internal order. Ireland declares she will not move; she will ward off the problem. Her statement evokes the exclusionary sentiments that have been explored throughout this project. Quite similar to the rhetoric examined in the articles about gangs in the 1980s, Ireland affirms the “right” she has to her home and to protect it from outside agitation. Her quote demonstrates the way in which the crime rhetoric taps into and connects to a sentiment that Oregon is just in defending its “purity” at the cost of outsiders. Therefore, not only is there a strict division between the citizen and the criminal, but there is also a clear hierarchy of rights.

The “us vs. them” aspects of the discourse have great implications for subject positions and consequently privilege. Implicit in the frontier between “society” and “criminal” is the frontier between “free” and “not free.” Here the whiteness literature helps to describe the impact and meaning of these frontiers. Connecting to the ideas from the whiteness literature that describe the power of “naturalness” and the argument that the power of whiteness is that it goes unnamed is another claim that “whiteness is synonymous with freedom” (Lipsitz, 1998, p. 3). Further, that whiteness is constructed by who is not white (Lipsitz, 1998). These two claims describe how in this debate being free relies on marking who is *not* free.

For example, in an article discussing the issue of juvenile corrections and arguing against Measure 11, the privilege of freedom is brought up. The article details a new proposal by “child-welfare advocates, counselors, victims, police, prosecutors, judges and other court officials” that would “emphasize greater accountability for youths who commit crimes” (Baker, 1994, October 7, p. A16). Their proposal is in direct opposition to Measure 11 mandates. However, while being opposed they gesture “toughness.” The article concludes:

The idea is to place the burden on youths to establish whether they have benefited from treatment and rehabilitation efforts.

Success or failure, then, would mean the difference between freedom or a direct line to the adult prison system. (Baker, 1994, October 7, p. A16)

Here is an example of how freedom is connected to the un-stigmatized group as a reward of their “purity.” Getting cleaned up, “treated” and “rehabbed” would earn a juvenile freedom. Failure to comply or benefit from the treatment they receive would mean revoking freedom and punishing the youth. These particular statements

demonstrate well the stakes of the subject positions in this debate: namely one's legitimate claim to freedom.

### *Election Results*

Voters overwhelmingly approved Measures 10, 11 and 17 in 1994. All three initiatives received 65% approval or more, the final vote results are shown in Table 2:

Table 2

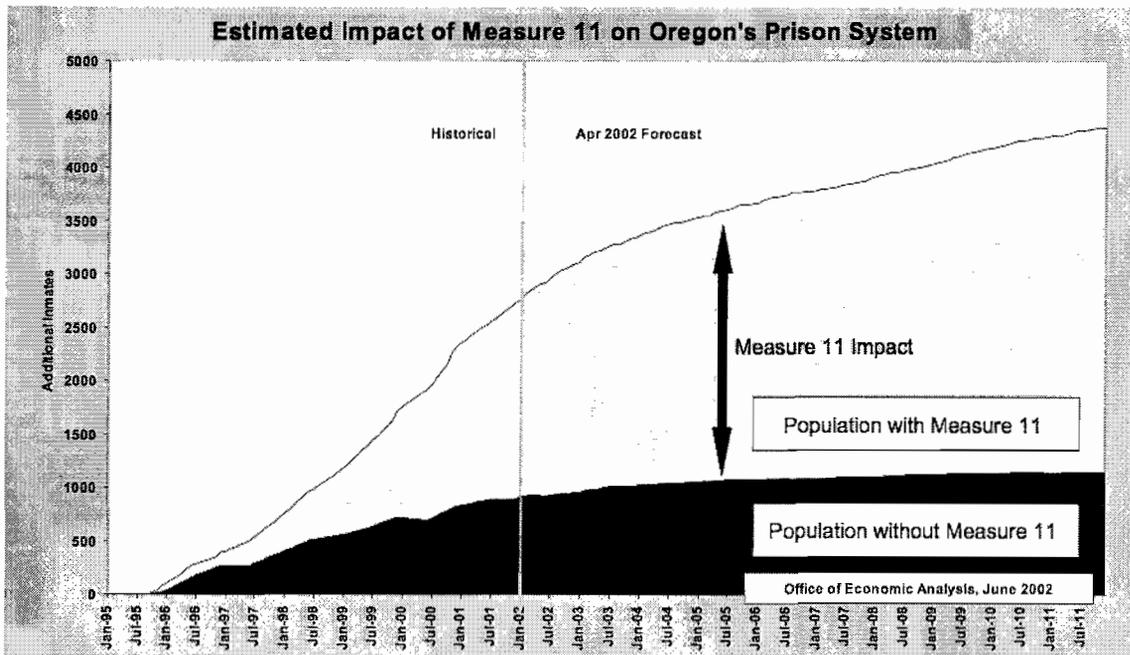
*Election results for Measures 10, 11, 17 in 1994.*

Year	Measure #	Passed ?	% YES	%NO	Description
1994	10	YES	64.7	35.3	Legislature Cannot Reduce Voter-Approved Sentence Without 2/3 Vote
1994	11	YES	65.6	34.4	Mandatory Sentences for Listed Felonies
1994	17	YES	71	29	Requires State Prison Inmates to Work Full Time

(List of Ballot Measures)

Every single county in the state voted more than 50% in favor of Measure 11. A county-by-county breakdown of the vote for Measure 11 is shown in Graph 1:

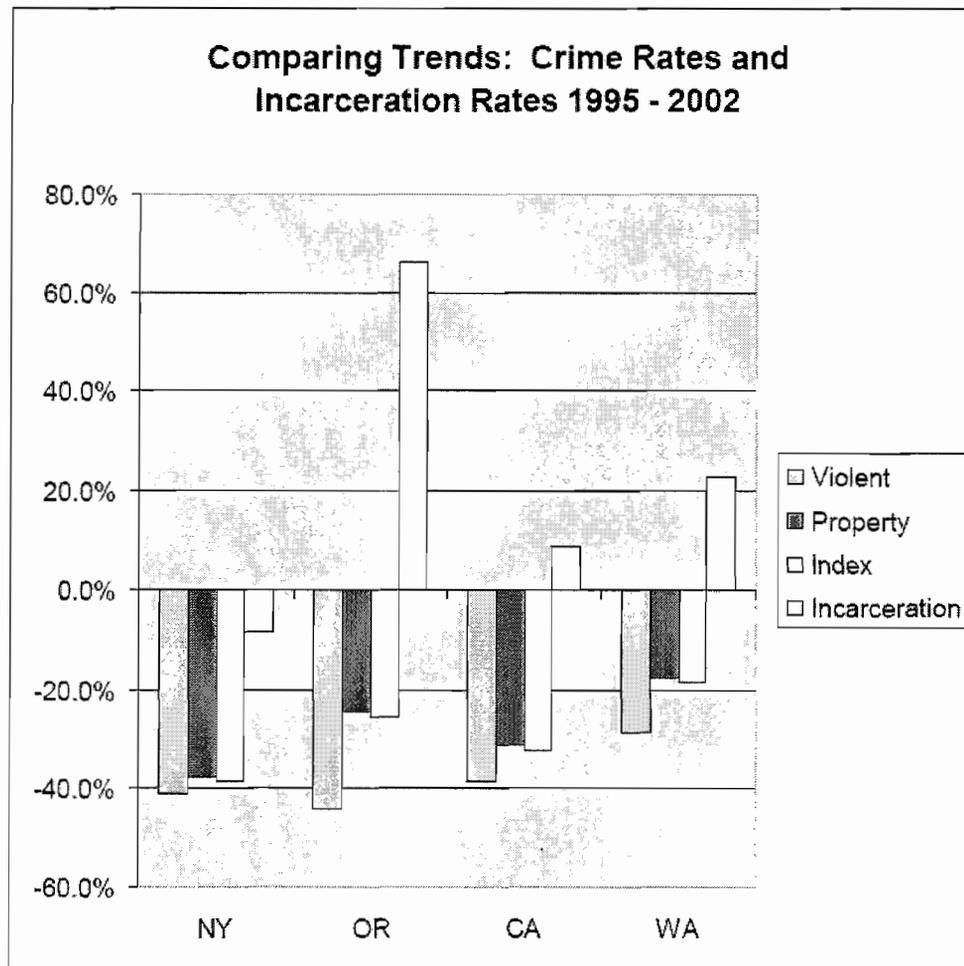




(Partnership for Safety and Justice [PSJ], 2009)

*Graph 2:* Estimated impact of Measure 11 as of June 2002 and the historic impact of Measure 11 from June 1995 to June 2002.

Comparing Oregon to its neighboring states and New York illuminates the relationship between crime rates and incarceration growth. While states across the nation have seen steady declines in crime rates, they have varied in the amount of increases they have seen in incarceration. For example, New York's prison population has declined but has experienced comparable crime rate declines as the other states listed as shown in Graph 3:

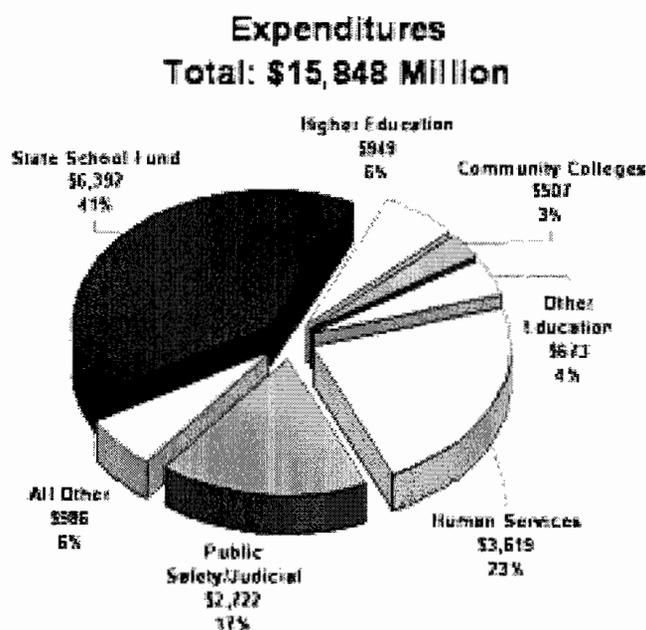


*Graph 3:* Comparing crime rates and incarceration rates between 1995 and 2002 for New York, Oregon, California and Washington.

More inmates has meant more cost. The Department of Corrections' budget has grown by 20 percent each biennium since 1995, and every household in the state pays \$1,414 every two years to fund corrections (PSJ, 2009). To accommodate the burgeoning prison population of the decade following the passage of Measure 11, 8 state prisons

were built or expanded, doubling the capacity of the prison system (HoSang & Cate, 2010). Absent from the measures was any way of funding the expensive changes that were made to the corrections system. Even more destructive, the measures passed at the same time that a series of measures limiting taxes were passed putting a serious strain on the state budget. Funds for other state services and higher education were funneled to the state corrections budget which in 2006 was \$1.26 billion (HoSang & Cate, 2010).

In the Governor's Recommended Budget for 2009-11, public safety is the third largest expenditure of the general fund as shown in Graph 4:



(PSJ, 2009)

*Graph 4:* Oregon Governor's Recommended Budget for 2009-11 with a list of expenditures by type of spending.

The impact of Measure 11 has come with serious human and fiscal costs. The increasing cost of prisons has put a hefty burden on the state's strained budget and has had more far reaching economic impacts. Despite promises otherwise, the prison expansion has had a meager impact on economic development in the state. Rural communities were promised that the prison expansion of the 1990's would bring prosperity to their communities. This has been sorely untrue.

According to an article in Oregon Business, "Employment and income numbers indicate that Oregon's massive investment in prison expansion has brought local gains that are modest at best. The rural counties that gambled biggest on large prisons after the passage of Measure 11, Malheur and Umatilla, have continued to struggle." The incarceration rates have soared. Oregon's general fund has funded corrections at such a high rate it has beleaguered funding for other essential state programs and higher education. Beyond these tangible effects of Measure 11, what has been most damaging has been the continued and affirmed shrinkage of political space.

One emblematic article printed in the *Oregonian* just a day after the election on November 9, 1994 illustrates the sentiments that were ushered in with the victory of the three initiatives. The article aptly titled, "Still No Solution For Schools—Voters Are Clearly Tough on Crime, But Decide to Do Nothing about Tax Reform" reports,

the desire to get tough on crime came through with a vengeance at the polls with a triple-impact punch to Oregon's criminal justice system...the sweep emphasized Oregonians' anxieties about crime, and their willingness to use the initiative process to force a tougher stance on sentencing, prison terms and inmate work programs. (Lee, 1994, p. B1)

The assertion that the initiative passage uniformly equates to the “will of the people” was prominent in the subsequent years and continues to be a motto of the ballot system in Oregon.

In the same article, a quote by Kevin Mannix was eerily foretelling of the coming era of a successful victim’s rights movement. Mannix states,

‘We’ve landed on Normandy, and we’ve established a beach head,’ said an enthusiastic Kevin Mannix, the state legislator who sponsored the measures. ‘This is just the beginning in pushing back crime in Oregon.’ (Lee, 1994, p. B1)

Mannix could not have been more right. The success of Measures 10, 11 and 17 in 1994 paved the way for an onslaught of crime initiatives on Oregon’s ballot. Victim’s Rights organizations, headed by Mannix, were emboldened by their victories in 1994 and in the following years flooded the ballot with their initiatives. During the next five years 11 new corrections-related measures were presented to the voters. Almost every single one passed and they generally challenged any principles of rehabilitation as shown in Table 2.

Most exemplary of this shift away from rehabilitation was Measure 26, a 1996 ballot measure that sought to change the original language in the 1857 constitution stating, “principles of reformation, and not of vindictive justice” in favor of more punitive ideals: “Laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions and reformation.” Sixty-seven percent of Oregon voters approved (CVU, 2010c).

Table 2

*Crime and prison related measures on statewide Oregon ballot from 1996 to 2004.*

Year	Measure #	Passed ?	% YES	%NO	Description
1996	26	YES	66.6	33.4	Changes the Principles that Govern Laws for Punishment of Crime
1996	40	YES	58.9	41.1	Gives Crime Victims Rights, Expands Admissible Evidence, Limits Pretrial Release – passed, but nullified by the Oregon Supreme Court for affecting multiple portions of the constitution. Spawned multiple measures in 1999.
1997	49	YES	90.8	9.2	Restricts Inmate Lawsuits; Allows Interstate Shipment of Prison Made Products
1998	57	NO	33.5	66.7	Makes Possession Of Limited Amount Of Marijuana Class C Misdemeanor
1998	67	YES	54.6	45.4	Allows Medical Use Of Marijuana Within Limits; Establishes Permit System - legalized medical marijuana
1999	68	YES	58.4	41.6	Allows Protecting Business, Certain Government Programs From Prison Work Programs
1999	69	YES	58.2	41.9	Grants Victims Constitutional Rights In Criminal Prosecutions, Juvenile Court Delinquency Proceedings
1999	70	YES	41.6	58.4	Gives Public, Through Prosecutor, Right To Demand Jury Trial In Criminal Cases
1999	71	YES	58	42	Limits Pretrial Release Of Accused Person To Protect Victims, Public
1999	72	NO	45.3	54.7	Allows Murder Conviction By 11 To 1 Jury Verdict
1999	73	NO	46.4	53.6	Limits Immunity From Criminal Prosecution Of Person Ordered To Testify About His Or Her Conduct
1999	74	YES	53.2	46.8	Requires Terms Of Imprisonment Announced In Court Be Fully Served, With Exceptions
1999	75	YES	57.7	42.3	Persons Convicted Of Certain Crimes Cannot Serve On Grand Juries, Criminal Trial Juries
2000	94	NO	26.5	73.5	Repeal Measure 11 mandatory minimum sentencing.

(List of Ballot Measures)

In 2000, Measure 94 was introduced to repeal Measure 11. It was overwhelmingly voted down 26.5% (yes), 73.5% (no) (List of Ballot Measures). The campaign to repeal Measure 11 brought to the public debate a personal voice in opposition to the impact the initiative was having. Many parents of young offenders who were serving time in adult prisons spoke out. Stories of the brutality and violence being rendered under the law were exposed, such as the story of four female inmates serving time under Measure 11 who committed suicide in 1998. However, any discussion of the human, moral or ethical costs the initiatives gained no traction and were dismissed as being weak and acquiescing to violence and lawlessness. These claims were unable to combat the well-established public support of “tough on crime” rhetoric.

Further, Measure 11 has become a political tool for Kevin Mannix’s bids for political office. Though he has been largely unsuccessful in his personal political career, he has still been a major face in Oregon politics. Being tough on crime has been the platform from which Mannix has sprung his career.

In Mannix’s 2000 race for Attorney General he ran a brutal attack ad against his competitor Hardy Myers (Thompson, 2008). The ad featured Kip Kinkel, a student of Thurston High School who killed his parents and two fellow students. The incident received nationwide media attention and was the first of many high profile cases of student shootings. The ad disparaged opponent Myers for not supporting Measure 11 and stated that without Measure 11 Kinkel would have been released after four years rather than receive his 111-year long sentence under Measure 11 sentencing guidelines. In effect, the ad was an Oregon version of the Willy Horton attack ad of the 1988

Presidential race. The ad was pulled after being questioned for its accuracy and also for being criticized as inflammatory and unfair by editorial boards in Oregon (Thompson, 2008). This is one of many examples of how Mannix has used this particular policy area as a major political tool and identity for himself as a politician.

## CHAPTER IV

### ELECTION OF 2008

Nearly 15 years after the passage of Measure 11, Kevin Mannix put another mandatory minimum initiative on the ballot. In 2008 Oregon faced a \$4 billion state budget shortfall and failing local economies. By this time there were 35,000 people under the supervision of the Oregon Department of Corrections. Mannix's newest initiative project, Measure 61, was designed to create a set of mandatory minimum sentences for property and drug related crimes. The measure was projected to put between 4,000 and 6,400 new people in the system in the first three years of its implementation (PSJ, 2009). This would be a 45% increase in the state's prison population. The initiative was estimated to cost between \$250 to \$400 million a biennium (not including the cost of new prison construction) (PSJ, 2009). The influx of Oregon's prison population was projected to require the construction of three new prisons.

Measure 61 and its dramatic threats to the state budget paralyzed the legislature. Knowing the initiative would destroy the state's budget but also knowing it would be very difficult to defeat put lawmakers in a predicament. The strategy of the opponents of Measure 61 was greatly influenced by early polling. In November of 2007, when it became apparent Mannix's measure would make it to the ballot, poll results suggested a straight "no" campaign would cost millions of dollars. The polling indicated that Measure 61 could only be beat with a very expensive campaign. Given that there were a number of

other regressive measures heading for the 2008 ballot, it became clear that a legislative referral would be the viable option.

On the very last day of the February legislative session of 2007 the legislature referred a measure to the November ballot challenging Mannix's property crime measure (PSJ, 2009). The legislative measure (Measure 57) included a superseding clause, which meant it would cancel out Measure 61 if it received more votes. The alternative proposal would create longer sentences for some drug and property crimes but would not be nearly as extensive as Measure 61 and it would also provide investment in drug treatment and drug courts.

The punitive aspects of Measure 57 were a concession to the political climate where a "tough on crime" gesture had become the necessary currency to receive any broad public or political support. The rhetoric of the campaign in 1994 and the subsequent years of solidifying support for the passed policies dramatically shrunk the political space available to oppose punitive policies. The contradictions and complications of using mandatory minimums to defeat mandatory minimums became the emblematic intrigue of the 2008 election. Opponents of Measure 61, who rallied in support of Measure 57 came to the campaign with a very diverse set of political goals, ideological commitments and interests.

The Better Way to Fight Crime Committee was a PAC that was the primary vehicle in the work to pass Measure 57 and defeat Measure 61. Law enforcement officials were strategically used as the public face of the campaign in order to secure a "tough on crime" visibility. However, the committee was comprised of a broad coalition

from DA's to unions to the Oregon prison reform organization Partnership for Safety and Justice (PSJ). Members of the coalition such as the unions had little investment in fundamentally changing the ideology and practices of corrections in Oregon. These members were most concerned with preserving a place in the budget that would seriously be dismantled if Measure 61 were to pass.

Contrastingly, PSJ is an organization deeply committed to long-term changes in the correctional system in Oregon. PSJ strongly disagreed with the notions promoted by Mannix's measure that mandatory minimums are the appropriate strategy to maintain public safety and the idea that we need more punishment (PSJ, 2009). Measure 61 and its listed impacts were in fundamental opposition to PSJ's principles. PSJ director David Rogers stated in a public statement, "Sinking billions of dollars into building more prisons and warehousing people in a system ill-equipped to reduce future crime is obviously not the answer. Rejecting Measure 61 is the first step in finding a more effective and fiscally responsible approach to public safety" (PSJ, 2009). PSJ's dilemma of having to support a measure that created mandatory minimums in order to defeat a measure that created more and harsher mandatory minimums really illuminated the difficulty of a political environment where being "tough" was the familiar and necessary ingredient to pass a crime initiative. But the organization also provides an example for the ways in which these limits could be pushed.

The strategy and campaign were a success. Measure 57 was passed by a 61.4% (yes) to 38.6% (no) margin and Measure 61 was voted down 49% (yes) to 51% (no). The success of defeating Measure 61 and passing Measure 57 shifted the discussion over

prisons and crime policy in Oregon. The success of Measure 57 created new ground for how legislators could define the public will.

As PSJ Director David Rogers put it, “this election suggests Oregonians believe our future will not be found behind bars but in a prevention-minded approach to public safety, that invests in treatment, restores judicial discretion and rejects Mannix’s mandatory minimum madness” (PSJ, 2009).

Building from well-established paradigms in public perception of crime, PSJ, through their messaging, was able to shift the narrative to a set of different policies and different solutions. In an environment where crime is easily exploited and crafted as a major problem that proffers fear mongering, PSJ decided to work within the framework but to create a new space of reasoning and reaction. PSJ framed the alternative measure as a “better fight” and “smarter.” Thus, while not fundamentally challenging the misperceptions of crime and the problem it poses, they were able to fundamentally shift the ideas about how this problem should best be dealt with. The key message and re-articulation of the campaign was a shift from “tough on crime” to “smart on crime.”

It is important to note the subtlety of this narrative transformation. The narrative was not completely new or radically different from the elements of the political environment that had been molded by Measure 11 and the years of its implementation. Many of the verbs remained the same in the shift from “tough” to “smart” such as the ideas of “dealing with” crime and “solving” the problem. The narrative pivoted, remaining anchored by the familiar. Maintaining a connection to the old standards of discussions over crime policy made the change in policy less abrupt and more palpable to

the public and to legislators because it was a proven narrative that has frequently found success in Oregon politics. While the narrative shift was far from radical, the policy implications of the change proved to be a major victory.

The results of the election opened up the political landscape for a renewed interpretation of what is effective policy and what is favorable to voters. With this momentum and the newly constructed groundwork for different strategies for crime policy, PSJ headed into the 2009 and helped secure a legislative victory: passage of the Corrections Savings Omnibus Bill. As David Rogers states, “the omnibus bill that passed the Oregon Legislature in late June, was a major victory for Oregon’s progressive criminal justice reform efforts. It is exactly the type of sentencing reform that our movement, in theory, hopes to pass particularly in a tough economic climate” (PSJ, 2009).

The legislation contained several major steps in the direction of prison reform. The bill stipulated a phase in of Measure 57, suspending its implementation from February 2010 to January 2012, it increased earned time for non-violent offenders, created earned time for felony probationers, reduced re-incarceration for technical probation violations and reduced the term of active post-prison supervision and probation.

The passage of the Omnibus Bill was greatly influenced by the work done in the election. The victory in defeating Measure 61 and passing Measure 57 broke down the stalemated commitment of legislators to support “tough on crime” policies. The changing tides marked by the 2008 election exposed to legislators that the public wants different

solutions than just punitive policy and also does not want Corrections to eat away the budget at the expense of so many other vital state programs.

### *Oregon Today*

The election of 2008 seemed to have changed the political possibilities that for so long were unwaveringly committed to punitive policies and expanding the prison system in Oregon. However, the past year has proven that the small change may have been exactly that: small and not lasting. In 2009, voters passed two influential tax initiatives, Measures 66 and 67 that increased the corporate minimum tax in Oregon. With the passage of these measures, Oregonians let out a sigh of relief as it appeared the state budget had been mended and the state's financial outlook had improved.

This shift in the economic and political climate in Oregon opened the door for an immediate re-attack by the victim's rights organizations. While the state legislature met in a special session in 2010, the victim's rights organizations led by Mannix launched an aggressive campaign to repeal the changes that were made in the Corrections Savings Omnibus Bill. In particular, the increased earned time for non-violent offenders that passed under the bill became the central focus of attack. The group, now titled, The Anti-Crime Alliance, released a series of radio ads and bombarded the local newspapers with letters. One such ad had the following text,

A woman is asleep in her own apartment. Suddenly, she's attacked by a registered sex offender and convicted burglar. Even worse, he got out of prison early because of a law Oregon politicians passed last summer.... And he's not the only one... (Guson, 2010)

The campaign invoked all of the standby elements of the previous decade's debate: a vulnerable citizen, a predatory criminal, a spineless politician and a beleaguered law

enforcement community (HoSang & Cate, 2010). Notably, none of these subject positions or fear mongering scenarios were ever challenged in the 2008 election. The debate that erupted over earned time became one that pitted “victims advocates” against “lawmakers aimed at saving the state money.” Proponents of preserving the earned time increases were depicted as callously endangering the public only to save the state money (Yeagar, 2010). With the state’s financial outlook improved, and a Mannix-led demand that the lawmakers be “tough on crime,” the legislature relented, and restored the original earned time policy (HoSang & Cate, 2010). The small gain that had been made in the aftermath of the 2008 election was lost just a little over a year later.

The campaign of 2008 demonstrated the influence of context on policy formation. The argument that punitive policies are “too expensive” completely fell short as anything convincing when the budget was perceived to be repaired through Measures 66 and 67. Likewise the standby fear mongering and evocations of a violent criminal that will attack you in your sleep was yet again a successful tool as it, or any deeper discussions of crime and crime control, were never challenged.

The use of prisons as a solution to problems of crime never changed, nor did the stigmatizing depiction of the criminal or the distinction between the “taxpayer”/society and the criminal. But, the context changed. The plea to be both punitive *and* approach a “cheaper” strategy of crime control gained traction during the dire economic climate of 2008. However, the decades long strategy to only attack the economic impact of punitive policies rather than culturally or politically evaluate the policies meant that in a time of improved financial outlook there was no basis to oppose a punitive directive. The

predominant discourse, on both sides of the debate, always focuses and privileges the “victim,” “society,” and the “taxpayer” in strict antagonistic opposition to the “criminal” and this greatly limits the realm of possibility in the debate.

## CHAPTER V

### CONCLUSION

This policy puzzle seems to be less paradoxical upon a closer examination of Oregon political culture and history. Certainly it is still confounding that a state that generally adheres to fiscal conservatism when it comes to funding state programs would depart from this commitment in the specific policy area of corrections. However, broader themes of exclusion, “othering,” and condemning are in the very fabric of Oregon’s political history. Further, the effective framing that building prisons is economically prudent seems to have seriously aided this paradoxical outcome. Oregon is a convincing case for examining the major role that language and discourse have in the process of policy formation. Though Oregon does not have densely populated urban centers or high crime rates or deeply impoverished pockets that are normally associated with a state that might commit itself to an expansive prison system, in the discourse all of the threats and specters of criminality are very much present.

Oregon serves as an example of the ways in which policy is formulated based on the meanings that are granted through language and framing. The actual threat of gangs is irrelevant when it is alive and well in Oregon’s newspapers. O.J. Simpson need not enter the state, let alone any particular Oregonian’s home, to be a threat that voters react against.

The debate over punitive crime policy in Oregon has limiting factors that dramatically affect policy possibilities and outcomes. The rhetoric used by proponents and opponents of punitive policies converge in several influential ways. Both sides of the debate operate in a framework in which the “taxpayer” is privileged and where fiscal conservatism is paramount. The fiscalization of punishment serves to push from view any political and cultural evaluations of policies such as mandatory minimums. When the constant focus across the board is on cost, budgets and money, any other concerns are silenced, minimized and delegitimized. The discourse of the debate over the initiatives of 1994 exemplified the ways in which this naturalizes the policies being contested. By basing opposition only in terms of cost, the policy itself is positioned as fundamentally appropriate, just not on a budget sheet.

The two sides of the debate converge in establishing the damaging stigmatizations of criminals. The very subject position most affected by prison expanding policies, the criminal, is never afforded a voice in the debate. The “criminal” is universally agreed to be broken, despicable, and dangerous. This essential and most obvious element of the discourse is the most powerful in assuring that punitive policies will succeed and garner approval. Scholar Kathlyn Gaubatz argues that in the United States criminals are an acceptable group to hate (Gottschalk 26). Her frank statement goes a long way in describing the path of prison expansion in Oregon. The “criminal” is the most uncontested denigrated subject to function as the “other” from which freedom and civility are defined against.

The stigmas placed on criminals serve to describe the strictly drawn line between “us” and “them.” The criminal functions to affirm the identity of non-criminals. The distinctions that are explicitly made between those on the inside and those on the outside, articulated by voices across the ideological spectrum, give meaning to identities such as “citizen” and “free.” As was detailed in Oregon’s race history, the very foundation of being an Oregonian was *not* being Black. Similarly, in the discourse over crime policies, the very definition of being a worthy and valued Oregonian is in *not* being a criminal. Further, the very freedom of Oregonians is positioned as depending on the incapacitation of criminals. The inability of any voice in the public debate to bridge the gap between the us and them camps profoundly describes why the state finds itself with so many of “them” physically removed from communities and held behind bars.

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