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# The Prison System and the Media: How “Orange Is The New Black” Engages with the Prison as a Normalizing Agent

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THE PRISON SYSTEM AND THE MEDIA: HOW “ORANGE IS THE NEW BLACK”  
ENGAGES WITH THE PRISON AS A NORMALIZING AGENT

A thesis submitted in partial fulfillment of the  
requirements for the degree of

MASTERS OF ARTS

in

ENGLISH

by

Eunice Louis

2015

To: Dean Michael R. Heithaus  
College of Arts and Sciences

This thesis, written by Eunice Louis, and entitled *The Prison System and the Media: How “Orange is the New Black” Engages with the Prison as a Normalizing Agent*, having been approved in respect to style and intellectual content, is referred to you for judgment.

We have read this thesis and recommend that it be approved.

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ABSTRACT OF THE THESIS

THE PRISON SYSTEM AND THE MEDIA: HOW “ORANGE IS THE NEW BLACK”  
ENGAGES WITH THE PRISON AS A NORMALIZING AGENT

by

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Florida International University, 2015

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The purpose of this project is to ascertain the ways in which “Orange is the New Black” uses its platform to either complicate or reify narratives about the prison system, prisoners and their relationship to the state. This research uses the works of Giorgio Agamben, Colin Dayan, Michelle Alexander and Lisa Guenther to situate the ways the state uses the prison and social narratives about the prison to extend its control on certain populations beyond prison walls through police presence, parole, the war on drugs and prison fees.

From that basis, this work argues that while “Orange” does challenge some narratives about race and sexuality, because of its reliance on bad choices as a humanizing trope and its reliance on certain racialized stereotypes for entertainment, the show ultimately does more to reify existing narratives that support state interests.

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## Introduction

In June of 2013 Netflix released a new TV show, *Orange is the New Black*, loosely based on the memoirs of the same title of Piper Kerman, a self-labeled ex-lesbian turned prison reform advocate. The show follows Piper Chapman, a rich, privileged, thirty-something year old woman who is serving a fifteen-month sentence in a minimum-security federal women's prison for her role in a drug trafficking operation ten years before. The first two seasons detail her blunders and triumphs adjusting to her time in prison. More importantly, she begins to learn to like and trust many of the inmates she had been so vehemently convinced were dangerous and nothing like her. Since its introduction, the show has garnered much critical and public praise, generally regarding its unique cast and nuanced narrative. Hank Stuever, TV critique for the *Washington Post*, said that the series was "magnificent and thoroughly engrossing...filled with the entire range of human emotion and stories." Dylan Matthews, also of the *Washington Post*, entitled his piece, "'Orange is the New Black' is the Best TV Show about Prison Ever Made" and supported his assertion with comparisons between the show's representation and actual prison data and regulations. David Helmore of *The Observer*, said, *Orange* is "the first TV series to bring America's enduring "war on drugs" home to the wealthy white "exurbs" of the east coast." And, Lorne Manly of *The New York Times* said that *Orange* "plays with and subverts the clichés of women's prison dramas, bringing a complexity to its portrayal of multiracial female characters that's rarely if ever seen on television." In most popular news circles and with the general public at large, *Orange* has made an overwhelmingly positive impression.

I don't think it is a coincidence that *Orange* has so thoroughly captured the American Public's imagination at this time. *Orange is the New Black* responds to a tradition of media portrayals of prisons, particularly women in prison, police procedurals and legal dramas. In the late 1960s the Women in Prison (WiP) subgenre of exploitation films was born. These films were generally intended as pornography, however they share many commonalities with future depictions of women in prisons such as, innocent girls being sent to prison or reform school, rape or sexual assault amongst prisoners or perpetrated by guards and officials, lesbian sex between prisoners, strip searches, fights between prisoners and prisoners performing hard labor (usually in the nude). One of the most notable American versions of (WiP) films was *Caged Heat* released in 1974. Many of these same elements are found in *Orange is the New Black*.

Police procedurals and legal dramas, which had focused primarily on the police officers and district attorneys as sympathetic protagonist became popular a little while later. The most notable of these was *Law & Order* (1990-2010), which spawned 4 spinoffs and a movie. Moreover, recent shows such as *Weeds* and *Breaking Bad* have diversified the usual depiction of black, brown and other minority people as invaders trafficking drugs into the country by choosing homegrown, white, middle class protagonists as drug kingpins.

Moreover, *Orange* was released after a number of issues relating to the American penal system were covered on major print and TV news outlets. For example, in 2008, questions about the effect of for profit prisons on sentencing were brought to the fore when two Pennsylvania Judges were indicted on racketeering, fraud, money laundering,



extortion and bribery charges for accepting payment for sentencing juveniles to harsher sentences at Robert Mericle's for profit juvenile facilities. The Pennsylvania case in particular, inspired two documentaries, one released as recently as February 2014, and several portrayals in fictional works such as *Law and Order: SVU*, *The Good Wife*, and *Cold Case*. In 2011, after numerous petitions, the Supreme Court decided that California prisons were unconstitutionally overcrowded. In 2012, the shooting of Trayvon Martin sparked public discourse about racial profiling, in June of 2013 California prisoners began a hunger strike to protest the use of solitary confinement and in August of the same year, New York's Stop-and-Frisk policy was deemed unconstitutional because it was disproportionately applied to minorities. Two thousand fourteen was punctuated with cases like Michael Brown, Eric Garner and Tamir Rice captivating public attention. These events, heavily covered on mainstream TV news and newspapers and social media, have helped to create a cultural climate that is more receptive to talking about prison reform and racial profiling.

Long before the public interest in the carceral however, academic and activist circles had been grappling with the issue of prisoner's rights and the prison industrial complex. In the 1960s, concomitant with the civil rights movement, was the Prisoner's Rights movement. Many figures and organizations feature prominently in both movements. Three of the ten points of the Black Panther Party's Platform aimed to reverse unjust imprisonment of Black men, ensure a fair trial by choosing black jurists, and called for an end to police oppression and brutality. Assata Shakur, fought vigorously for prisoner's rights throughout her incarceration. The term prison industrial complex has its roots in Angela Davis's 1997 speech of the same name. Davis herself had been a

prison reform/abolition activist since the 60s and had close ties with the Civil Rights movement and the communist party. Both Assata Shakur and Angela Davis continue to speak about the prison industrial complex and race within the United States. In 2012 Michelle Alexander, lawyer, activist and law professor released her book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* to much critical and popular acclaim (or contention in some cases). In October of the same year, the ACLU launched the National Prison Project, whose goals were to reduce the prison population in general and several other vulnerable populations within the prison in particular. *Orange* dialogues with both academic and popular interest in prisoners and their rights.

Because of the renewed focus on the carceral, (i.e. the prison, police and state violence and the legal system which supports them), the resultant anti-policing movements and *Orange's* success, the public seems on the cusp of questioning or challenging some of the precepts that influence their understanding of prison, punishment, the prisoner/criminal, the state and the relationship between them. That act in turn could have profound and material consequences for the individual's imagining of the public and his/her own subjectivity. This is especially true because of the diverse cast of characters in *Orange*. Groups which traditionally do not get much or varied screen time in the mainstream public sphere are given the opportunity to challenge assumptions and broaden representations on the show. The challenges the show faces because of the traditionally limited and limiting representations of minority groups bring to mind Melissa Harris-Perry's "crooked room" described in *Sister Citizen*. Harris-Perry describes the crooked room as the collection of stereotypes, biases and perceptions that permeate the public imaginary about Black women. Harris-Perry's metaphor comes from a

cognitive psychology experiment during which participants were placed on a crooked chair in a crooked room and asked to sit up straight. Some people responded that they were sitting straight when they were tilted as much as 35 degrees because they positioned themselves in relation to the other objects in the room. A few participants were able to get more or less straight despite their surroundings. For Harris-Perry, Black women exist in such a crooked room because warped representations of their humanity directly affect the way they are perceived in public and in turn affect the way they perceive themselves and their community. In short, some bend and twist to fit the distortion and others work against it to find their own version of Black Female subjectivity marked by humanity. Harris-Perry uses this metaphor exclusively in regards to the experience of Black women in America. However, I think that metaphor can be extended to other underrepresented groups, such as the ones presented in *Orange's* cast.

In addition, because of this current interest in the US prison system both in fictional and non-fictional genres, studying viewer's response to *Orange*, and the representations within the show itself, may offer a unique opportunity to garner some insight into current public perception of prisons and prison reform. The cases that have captured media attention, and the varied public and legal reaction to them, are demonstrative of the prison's long history as an institution which informs how the public perceives individual groups and their suitability for inclusion within society. From the slave trade to the "War on Drugs", the carceral system as a whole, has long been used as a means to delineate the state's idealized norm from the rest of society. Often, these lines were drawn along racial and sexual lines, targeting Blacks, other minorities, homosexuals and sex workers. A study of the carceral in its entirety would be too big of an undertaking

for this thesis. Consequently, I will focus solely on the prison and the politics of representation that underpin its structural power within the social and political sphere. The prison, through its targets and treatment of prisoners both informs the public of what the norm should be and normalizes the population by removing undesirable people. In light of that, I ask several questions: In what ways does *Orange* contribute to the normalization process of the prison? In what ways does it demonstrate the prison's power as a normalizing agent? And finally, in what ways does *Orange* work to challenge assumptions and stereotypes that support institutional lines of power which support the prison?

To answer these questions, I have organized my thesis into two parts. The first, Chapter one, will first look at the history of punishment, particularly solitary confinement, in the United States to illuminate the ways in which the prison, in conjunction with the media, have historically acted as a normalizing agent and how they continue this work today. Chapter 2 will focus on the show itself, delving into the show's presentation of the prison's relationship to the public and the role representation plays in resisting or reifying existing power structures.

## CHAPTER 1

In light of the success of many Black figures such as the Oprah, Beyoncé and the election of Barack Obama to two terms in office as president of the United States, a significant number of the public, especially the white public, are more than willing to admit that different races and minority groups experiences with social and political institutions were different from whites interactions with those institutions in the past, but that this is no longer so. They believe that we live in a post-racial America. Even in the wake of the Trayvon Martin shooting, the shooting of Michael Brown and the resulting protests in Ferguson, the notion that we live in a post-racial America continues to be vigorously defended. For many, any minority who feels disadvantaged, is using America's past as a crutch. For example, Fox news hosts insisted that Ferguson protesters "were playing the race card", and Washington Times article, "Ferguson-like attack in Utah Escapes Media Notice: Race Bias Seen", by Valerie Richardson claims that the media fails to cover high rates of "black-on-black" crime and instead focuses on race. Moreover, like many other reporters of the Michael Brown shooting, Richardson chose to focus on Brown's supposed guilt and Officer Darren's injuries during the supposed altercation as justification for the shooting. This trend of dismissing race as a factor in violence or police brutality is supported by a recent Pew Survey conducted after the Ferguson shooting. The survey found that 80% of Blacks said the shooting raised important issues about race. Only 37% of whites felt the same ("Stark Racial Divisions in Reactions to Ferguson Police Shooting"). For many, these shootings are indicative of class issues or a police brutality epidemic and not an indication of racial bias. For them,

racial bias is no longer a pressing concern for the United States. However, the lived experience of Blacks and Latinos/as continue to be shaped by institutional and personal racism. This experience is all the more marked within the prison. In fact, our conception of the purpose of prison and the justification for the use of solitary confinement have changed as a direct response to the changing racial composition of the prison.

### *Solitary Confinement Then and Now*

Before I begin discussing the ways I see the prison behaving as a normalizing agent, I think it is important to trace the history of the prison and punishment, particularly solitary confinement, to highlight the ways the threads of that particular form of punishment inform the fabric of what we consider to be the modern prison. Solitary confinement was not used as a method of punishment until the 18<sup>th</sup> century and at first, it was presented as a humanitarian response to capital punishment. In its infancy, U.S. penal law took much from Britain's penal codes. Punishment was swift and brutal because it was a show of sovereign strength and power. Prisons in this period were generally used as holding places for those awaiting trial and punishment. In the US, Quaker reformers helped move conceptions of punishment from showy corporal affairs to a means of correction and redemption through The Great Law of Pennsylvania in 1682 (Guenther 3-5). Whereas before, very few private offenses and behaviors we now consider antisocial were punished by law, the Great Law of Pennsylvania encouraged a more restricted use of the death penalty (saved for murder alone) and a more extensive list of private punishment for private crimes such as cursing and drunkenness. In this

way, prisons became a way to correct society's ills. Solitary confinement played a particular role in this endeavor.

Foucault posits that biological concerns, the ability and fitness to reproduce functioning and well-adjusted members of society, became the focus of the state when government moved from the feudal/monarchical governments, which viewed punishment as a means to demonstrate state power and reach, to modern republics (“The Body of the Condemned” *Discipline and Punish*). For example, this focus on biological concerns is expressed in the United States’ enshrinement of human rights within its constitution. The United States’ Declaration of Independence and Constitution declare that it is the government's duty to protect the humanity and welfare of its people; “We hold these truths to be self-evident, that all men are created equal, *that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness*”; “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, *promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity*, do ordain and establish this Constitution for the United States of America” (italics mine, National Archives).

The shift in focus from a show of monarchical power to biopolitical concerns is also reflected in the shift in the method and justification of punishment; the shift from flogging, amputations and public death to imprisonment and solitary confinement. Unfortunately the Great Law of Pennsylvania was not quite as successful as Quaker reformers had wished it to be. More than a hundred years later, public punishment was

still a major facet in the US penal code. For example in 1789, the Wheelbarrow Law required prisoners to perform hard labor "publicly and disgracefully with shaved heads and their crime clearly displayed on their shirt fronts (Masur qtd Guenther 4). For Guenther, this form of punishment turned the physical death of the original death penalty into a living death by "giving the prisoners a taste of social death by putting the degrading consequences of their life on display, both exposing the prisoners to public view and excluding them from membership in the public" (Guenther 4). Despite vigorous dissent from Benjamin Rush, noted physician, psychiatrist, essayist, abolitionist and signatory of the Declaration of Independence, it took nearly 40 years before solitary confinement was put to systematic use and overshadowed the use of public punishments such as the Wheelbarrow law. Unlike Quaker reformers, Benjamin Rush used a biomedical justification for the use of solitary confinement. For Rush, the body is comprised of sympathetic and sensible matter. Properly stimulating those nerves was the cure to both physical and social ills. Society, like the body, could be cured by isolating the improper stimuli and encouraging proper stimuli. For him, isolating the criminal both removed him from negative stimuli or overstimulation, offering the opportunity to reform, and also removed a negative stimulus from society promoting its continued good health (Guenther 6-7). Regardless of the justification, the purpose and the end goal was the same, a breakdown of the old personality and the reformation of a new useful member of society.

And so the penitentiary, such as it is known today, was born. The Eastern State Penitentiary, the second built in the US and the prototype of the Pennsylvania System, was built on the premise of solitude and utility. It was made to be as dreary and



depressing as possible. The commissioners requested that the "exterior of a solitary prison should exhibit as much as possible great strength and convey to the mind a cheerless blank, indicative of the misery that awaits the unhappy being that enters its walls (qtd Guenther 13). The dimensions of the prison cell were designed along the same lines as the exterior. Cells were 12x8x10 of bare stone with a single door which had a one way peephole for the guards. Furnishings included a bed, a workstation, a toilet and a bible. Prisoners were alone day and night and had access to a 20ft exercise yard, also alone, for 1hr a day. The first two weeks in the prison were spent in total isolation. They were allowed no reading materials and no work. They had limited contact with the guards and inspectors and were not allowed to sleep during the day. After the first two weeks, prisoners were given a bible and given work to complete inside their cells. Letters and visits occurred at most once a year. New York created a similar prison called the Auburn prison 29 years later. Auburn prison too began with strict adherence to solitude and silence, however because of riots and crises caused in part by the total solitary confinement, Auburn instilled periods of communal work. Such work was still to be completed in silence however. Despite harsh criticism from contemporaries such as Hans Christian Anderson, Charles Dickens, and Alexis de Tocqueville, prison founders saw the penitentiary as a place of death and resurrection. The solitary nature of prison afforded time to reflect on one's sins, the Lord's works, and produced useful habits. Rush described the intent best when he said of prisoners leaving, "This our brother was lost and is found, was dead, and is alive (qtd 15 Guenther).

During first wave solitary confinement, "resurrection", meaning rehabilitation, was far from guaranteed for the prisons intended clients, and not even a possibility for

black prisoners. In the pre-emancipated south, prison was a distinctly white institution (Guenther 42). Enslaved Blacks were punished by their masters for transgressions and these punishments were intended to be wreaked on the slaves body since they were seen as "animal[s]...who [do] not reflect" (Jefferson qtd Guenther 43). As a consequence, punishments were often brutal and focused on containment, control and exploitation. Legally, enslaved Blacks had no standing so long as they obeyed their masters. If they disobeyed however, then the law recognized them as criminals to be punished and controlled. For example, in Creswell's *Executor v Walker*, John T. Creswell's will was thrown out because he stipulated that four of his slaves be given a choice between going to a non-slave state, Liberia, or remaining under bondage under his sister Zernula Walker. Judge R. W. Walker in his decision for the Majority in the Alabama Supreme court where the case was tried, cited several other cases from various states, which did not automatically void a trust which contained a decision to be made by the enslaved person but stated that these cases did not address the legality of the enslaved person's choice directly. Within the same document, Judge Walker recognized enslaved Blacks as "human beings...endowed with intellect, conscience and will" (Alabama Supreme Court 236) and made it clear that while such capacity in life increased their value, it had no bearing on their legal status in regards to civil law. It did however confer them the status of person "in respect to acts involving criminal responsibility. Because they are rational human beings, they are capable of committing crimes" (Alabama Supreme Court 236).

The resistance to grant full legal personhood to Blacks was neither isolated (the cases cited by Judge Walker in his decision came from northern and southern states) nor did it disappear with the abolition of slavery. Forced to recognize slaves as legal persons,

southern states shifted their method of control from master/property rights to the prisons. The southern prison population boomed after the civil war, particularly after the implementation of vagrancy laws and the Black Codes (Guenther 49). For example, from 1868-1908 Georgia's prison population expanded ten-fold. North Carolina accomplished that same feat in just 20 years and Mississippi increased four -fold in just 8 years (Sheldon qtd Guenther 49). It is unmistakable that the increase in vagrancy laws was an attempt to rein in a large population of now free Blacks. One southern planter plainly stated " we have the power to pass stringent police laws to govern the negroes--this is a blessing --for they must be controlled in some way or white people cannot live among them (qtd Guenther 28). In *The New Jim Crow*, Michelle Alexander demonstrates that these laws were intended to recreate the racial caste system of labor that had just been abolished. Of the nine states that adopted vagrancy laws, eight allowed prisons to hire out convicts (Alexander 28). Vagrancy laws were selectively applied to Blacks, Black men especially. One vagrancy act didn't even bother to hide its intent and listed Blacks as a target within the text of the law itself (Alexander 28). During this same time period, the deadly practice of convict leasing became popular. In this arrangement, convicts were loaned to companies and plantation owners. As the convicts were not owned, there was little incentive to treat them well and many convicts died while on loan. Again, the convict leasing program was a decidedly Black targeted institution. Some years in Mississippi, not a single white person left the penitentiary to join the convict leasing program (Guenther 50) and mortality rates for Blacks was nearly eight times that of whites (Bosworth and Flavin 27). In essence, the program recreated slavery for the Southern United States.

Consequently, during the period of first wave solitary confinement, the prison experience was extremely different for Blacks and whites and the disparity only grew larger when comparing the prison experience of southern Blacks to other prisoners. In this period they were not the intended target of the reformatory effects of solitary confinement. This changed however, in the second wave of solitary confinement during the 50's, 60's and 70's at which point, Blacks, Latinos/as, Native Americans, especially those who participated in revolutionary efforts such as the Black Panthers, La Raza Unida and the American Indian Movement, were targeted. During this period, the focus was on behavior modification. Solitary confinement was used in conjunction with behavior modification techniques to rehabilitate criminals and reintegrate them into larger society. Like previous justifications for the use of solitary confinement, the goal was to breakdown the old personality, in this case an antisocial personality, and to rebuild a new personality more consistent with "dominant social norms" (Guenther 66). Guenther traces the use of behavior modification programs such as START and Asklepieion to Communist thought reform, or "brainwashing" techniques, researched in the 1950s in the wake of the Korean War.

In the early 1950's, the US government contracted a number of psychologists and social scientists to study Communist thought reform and interrogation techniques. Among them were Lawrence E. Hinkle and Harold G. Wolff, authors of the 1956 special report "Communist Interrogation and Indoctrination of Enemies of the State: Analysis of Methods Used by the Communist State Police", which was later used as a basis for refining the CIA's KUBARK Counterintelligence Manual. Hinkle and Wolff found that in addition to solitary confinement, the Chinese used a combination of intensive group

confinement and interrogation to "convert" the prisoner. After being starved of emotional and social contact, the prisoner was placed within a group whose behavior already resembled goal behavior and social pressure was used to convince the prisoner to renounce his revolutionary ideals. In words that strongly echo the stated goals of Benjamin Rush and the Quaker reformers, this process is described as "an agonizing drama of death and rebirth. The "reactionary spy" who entered the prison must perish; in his place must arise a "new man" resurrected in the Communist image" (Lifton qtd Guenther 68).

At the same time second wave solitary confinement was reemerging as a primary tool in prisons, the rest of the country was going through its own transformation. By the 1950s the Civil Rights Movement was already brewing. Frustrated citizens led by civil rights leaders, activists and socially conscious clergymen, began protesting, marching, boycotting and launching sit-ins to force the recalcitrant south to remove the Jim Crow system. By 1963, it was impossible to ignore the momentum of the movement. Between autumn of 1961 and the spring of 1963, twenty thousand people, including children, had been arrested. In 1963 alone, there were one thousand protests, in over one hundred cities across the southern region, against segregation. And by 1969, the effects that these protests had wrought was undeniable. The number of Blacks registered to vote soared, department stores, schools, busses and water fountains were accessible to people of all races and miscegenation laws were declared unconstitutional (Alexander 37-38). After it seemed social change was well underway, Civil Rights activists turned their eye to economic reform. Already a multicultural movement, the focus on economic reform aligned with the political goals of working-class white activists. Martin Luther King Jr.

specifically, saw economic reform as the "next front in the 'human rights' movement" and envisioned a protest at D.C. which included thousands of the nations "Appalachian whites, Mexican Americans, Puerto Ricans, and Native Americans demanding jobs and a living wage" (Alexander 40). The Poor People's Movement, as it was called, demanded nothing less than a radical restructuring of power within the United States. This was, to say the least, unacceptable to many in the white majority lead congress, courts and executive branch as this radical restructuring of power targeted them and the institutions that supported them directly.

In an effort to curb the growing movements, a rhetoric of "law and order" was implemented by Southern Governors and law enforcement officials. They argued that the direct-action tactics used by civil rights activists were criminal. Supporting civil rights activists and legislation was equated with supporting lawbreakers. Dr. Martin Luther King Jr.'s philosophy of civil disobedience was depicted as the leading cause of crime and opposition to the Civil Rights Movement as a whole was framed under a call to law and order. Rising national crime rates and higher crime rates in the north were offered as proof that the civil rights movement was the harbinger of crime and thus, criminality was linked with blackness. Imprisoning the activists proved to pose its own problems however, as many employed the same resistance tactics they learned outside the prison to advocate for prisoners' rights. Both Angela Davis and Assata Shakur staged strikes during their prison stays and I believe, had Malcolm X not been incarcerated, the Nation of Islam may never have experienced the boom in membership it gained between the early 50's and 60's. These activists became the particular target of second wave solitary confinement.

The first stirrings of second wave solitary confinement began in 1961, at a conference attended by the foremost researchers of behavioral science and prison wardens, called "The Power to Change Behavior". This conference revealed and expanded upon the theoretical underpinnings supporting current attitudes toward dealing with prisoners and prison research going forward. At this juncture, criminals were seen as ill and in need of treatment. A criminal act was not just an unlawful act but a rejection of society as a whole. If allowed to thrive, that rejection of society could spread and "infect" others. Behavior modification was seen as a means to "reset" the antisocial individual to accept society's standards and reintegrate them. Communist "brainwashing" techniques featured heavily at the symposium and in an effort to cleanse them of their admittedly cruel reputation, researchers urged attendees to view the methods as simply "a deliberate changing of behavior and attitudes by a group of men who have relatively complete control over the environment in which the captive population lives" (qtd Guenther 87). If attached to the right ends these methods would be beneficial to the prisoner and society after all, as one researcher stated:

Do we not feel it to be legitimate to destroy the emotional ties of one criminal to another, or of a criminal to a sick community? Do we not break up gangs and denigrate idolized gang leaders in our attempts to rehabilitate the delinquent? And do we not put criminals with the wrong attitude in the midst of others with the right attitude in the hope that they will learn the right ones through the pressures of the group? (qtd Guenther 87)

Guenther argues that despite the striking similarities between the goals and methods of 18th/19th century and 20th century prisons, there are important differences. She points out that while Rush emphasized the supposed health benefits of prolonged solitude, Cold War thought reform researchers relied on the pain of social deprivation in KGB and Chinese incarceration techniques. Both groups recognized the importance of social relationships however Guenther argues that only the Cold War researchers recognize the damaging effects of isolation on the prisoners' identity (68-69). I would argue though, that it would be more beneficial to compare the researchers' justification for using brainwashing techniques in the United States on US citizens to 18th and 19th century justification for the continued use of solitary confinement. After all, the researchers had reason to be especially critical of communism; at the time the first wave of research was requested, McCarthyism had just ended but the US was still in the midst of a cold war with the USSR. Any hint of pro-communist sentiment would be met with harsh repercussions. In addition, 18th and 19th century thinkers were aware of the damage solitary confinement caused prisoners. Auburn was forced to abandon its policy of total solitary confinement in just six months due to deaths and serious physical and emotional problems brought on by the lack of human contact. In his criticism of Eastern State, Dickens noted the prisoners shaking, nervous tics and inability to meet anyone's eyes or sustain conversation as indicative of the violence of total solitary confinement. His prison guide described this phenomenon as not a trembling, so much as "a complete derangement of the nervous system" (qtd 19). The fact of the matter is, in both cases, this violent dismantling of the criminal's personality and relationships was the intent and it was only possible because the criminal was seen as both tainted and corrupting and thus



could be placed within what Agamben described as a sphere of exception (I will return to both Agamben's work on the state of exception and Dayan's tracing of blood taint and corruption later).

With the focus on behavior modification and the political and social climate in mind, it is clear that third wave solitary confinement is the culmination of the desire to control undesirables and the known method of solitary confinement. The direct products of the Power to Change Behavior conference were two controversial research programs, START and Asklepieion, which were in turn, the kernels that founded the conception of modern day Control Units and Supermax prisons. START was an incentive based program which rewarded "good behavior" such as keeping good personal hygiene and avoiding physically and verbally assaulting fellow inmates or the guards with greater freedom, comfort and social contact (Guenther 92). Participants were chosen for the program and were not allowed to opt out. In practice however, prisoners reported being chained naked in solitary and being "rewarded" with items such as clothes and writing utensils. Any infraction could set the prisoner back at the beginning.

Asklepieion borrowed heavily from Edgar Schien's contribution to the Power to Change Behavior symposium, "Man against Man: Brainwashing". The paper focused heavily on Schien's research on Communist Brainwashing techniques and offered suggestions as to how those techniques could be implemented in American prisons. Nearly all of the suggestions were implemented in Asklepieion in addition to new methods conceived by program founder, Dr. Martin Groder. At Marion Penitentiary, where Asklepieion was implemented, even those who did not "volunteer" for the program

felt its effects. The social isolation Schien recommended (which would make the prisoners more dependent on prison authorities) prompted prison officials to use elements of the program on the general population. For example, visitors would arbitrarily be removed from visiting lists and prisoners could be strip-searched at will. These tactics were used most often on interracial families (Guenther 95). Like 18th & 19th century prisoners and POWs in Chinese prisons, participants of Asklepieion at Marion Penitentiary were explicitly asked to perceive their experience in terms of death and rebirth. However, Groder claimed that some inmates the "typical non-thinking tough guy thug[s]", had no hope of resurrection because they had already committed social suicide (qtd Guenther 105). Those who had committed white-collar crimes or violated selective service had not committed social suicide and could be reformed. His recommendation for dealing with these "thugs" was to "contain and control them, protecting society from those who have perversely rejected them" (Guenther 94). In their case, the methods of the program were an end in themselves and not a means of redemption.

Both programs, despite their supposed success were eventually abandoned in part because of several lawsuits based on human rights violations in the 60s and 70's. However, many aspects of behaviorism continue to be a part of prison management today. Alan Eladio Gómez argues in "Resisting Living Death at Marion Federal Penitentiary" that Marion birthed Control Units (CU) which in turn brought forth Special Housing Units (SHU) and Supermax prisons. In response to the beating of a Chicano inmate, several inmates banded together to form the Political Prisoners Liberation Front (PPLF). In reply, prison officials beat and gassed members of PPLF and locked them in special sections in the segregation unit. They stayed in complete isolation for eighteen

months and were forced to participate in Marion's behavior modification program, Control And Rehabilitation Effort (CARE) (Gomez 59). Through a legal suit, prisoners were able to argue that their 8<sup>th</sup> amendment rights were being violated and the sensory deprivation cells were shutdown. Instead of discouraging this practice however, prison officials officially converted the Segregation Units into Control Units and this time the courts supported them. In *Bono v. Saxbe* the courts ruled that while solitary confinement could not be used as punishment, it could be used as a means of preventative detention to control the prison population (Gomez 77). From this point on, it seems as though prisoner's fights for prison reform have unintentionally created the template for supermax prisons. Guenther cites, *Gates v. Collier*, *Pugh v. Locke*, *Hutto v. Finney* and *Rhodes v. Chapman* as cases in which violations of prisoners' are acknowledged in connection to punitive isolation but the punishment itself is never condemned. The minimum requirements for the treatment of prisoners are followed to the letter creating legal but inhumane conditions. For example, requirements for adequate lighting have given way to prison units which are lit 24hrs a day (Dayan, *The Story of the Cruel and the Unusual*)

### ***The Prison as a Normalizing Process***

When we look at punishment within the United States, American prisons seem to be conflicted regarding their purpose. Are prisons for rehabilitation, retribution or punishment? Considering the history of punishment in American, this confusion is not surprising. As demonstrated earlier, US penal practices were at first offshoots of the British monarchical system, which according to Foucault, focused on publicizing the physical pain and agony of the body in punishment for the to reinforce the power of the

sovereign (*Discipline and Punish* Foucault 35-36) . One of the major tenets of the American government was its duty to preserving the personhood and humanity of its citizens and this sort of public display of pain and cruelty seemed at odds with that stated goal. At its core however, punishment has retained an element of performativity; it still functions as a demonstration of state power through the use of civil and social death. That demonstration in turn, contributes to the creation of a normative personhood the public can recognize and adopt. Personhood is a term fraught with various often competing meanings. For the purpose of this essay, I use as a base the *Black's Law Dictionary* definition of personhood. *Blacks* describes a person as legal entity recognized by law by the rights and duties ascribed to them. There exist natural persons (i.e., human beings) and legal persons (corporations, firms, labor organizations etc.). Legal persons and natural persons do not have the same legal standing. A natural person has the right to peacefully assemble and the right to vote. A legal person does not. Historically, what people consider fundamental human rights are assumed to be the rights of natural persons. However, because the law does not recognize humans as persons on the basis of their humanity, but rather on the ability to ascribe rights to them, we have a situation in which the law can sever recognition of humanity and legal (as in recognized before the law) personhood. As I will show later, status as a human being does not automatically grant personhood before the law despite the Declaration of Independence's promise of unalienable rights. Moreover, the state grants full legal personhood only to those subjectivities it finds acceptable. A subject position which conforms to the type of subject position the state is willing to grant full personhood falls within normative subjectivity. Those subject positions which do not fall within that range are punished with limited

personhood. At its most crude and basic form, this is how the state creates the image of the “normal” citizen.

In order to understand how the prison works as a normalizing agent, we must first understand civil and social death. Colin Dayan traces the history of civil death in her book, *The Law is a white Dog: How Legal Rituals Make and Unmake Persons*, from its medieval usage to its modern application on the body of the felon. In ancient common law, there were three principal punishments for treason or felony; the forfeiture of property to the king, corruption of blood and the revocation of civil rights. Of these three, corruption of blood and revocation of civil rights are the most pertinent to my analysis of the efficacy of *Orange* in challenging the prison’s role as a normalizing agent. Corruption of blood doctrine held that the blood of the attainted person was “corrupt” and which meant that he could no longer transmit his estate to his heirs, nor could the felon inherit anything from any other ancestors” (45, 47). Later in Blackstone’s expatiation of condition of a felon sentenced to death, he says the felon is “called attain, *attinctus*, stained or blackened” (qtd Dayan 46). Because this stain was thought to be in the blood, the felon’s misdeeds had serious consequences for his decedents. While he may eventually be physically dead, his kin had to endure civil death because of their family member’s actions. The felon and his family could only escape such civil death by being pardoned. The pardon then gave the felon or his son “new inheritable blood” from which he could inherit property, title and participate in civil discourse (Blackstone qtd 49).

This focus on blood tainted by felony eventually gave way the idea of blood tainted by biologically inherent inferiority. The rhetoric surrounding corruption of blood,

particularly phrases which tied it to tincture, blackness and color seemed particularly apt when white Europeans encountered Black Africans. George Best, explorer and chronicler, postulated that the pigmentation of Africans was due to “some natural infection of the first inhabitants of that country, and so all the whole progenie of them descended, are still polluted with the same blot of infection” (qtd Dayan 49). In this case then, the “taint”, already associated with illness, corruption and criminality, became a literal mark upon the skin of Black people. This taint too lead to civil death for Black people. In order to prevent this taint from infecting the nation, the state codified into law the inheritance of blackness (in some cases up until the 4<sup>th</sup> generation) as a means of protecting and legitimizing whiteness.

Dayan’s description of civil death has many similarities to Agamben’s notion of *homo sacer*, or the man abandoned by the state. Agamben ties his notion of *homo sacer* to his theory of the state of exception. Agamben describes the state of exception in terms of the sovereign. The sovereign, as the one who governs and administers the law, defines the conditions under which the normal rule of law can be suspended. This exception in turn provides the condition of possibility for the law (i.e. by saying that the law holds sway in every situation except this one, you are by definition providing the conditions of the existence of the law; you provide and define the scope of its authority).

The figure of *homo sacer* is similarly related to the notion of the state of exception and helps us understand how the civilly dead function within the state. In *Homo Sacer: Sovereign Power and Bare Life*, Agamben describes the figure of *homo sacer* as abandoned by the law and therefore reduced to “bare life”. In Judge Robert

Earl's dissent from the *Avery v. Everett* case in which the court decided not to divest a man sentenced to life imprisonment of his land and title, he says of the convict: "He became civilly dead in the law, and *the law ceased to know or to take any notice of him*. He no longer possessed any rights growing out of organized society, or depending upon or given by law. As to all such rights he was *in law dead and buried*" (italics theirs qtd Dayan 56). This echoes Blackstone's statement about the convict set to be executed; "For when it is now clear...that the criminal is no longer fit to live upon the earth...*the law sets a note of infamy upon him, puts him out of its protection and takes no further care of him barely to see him executed* (italics mine qtd Dayan 46). Thus, those who are civilly dead are *homo sacer*.

Agamben also describes *homo sacer* as being placed within the sovereign sphere and describes the sovereign sphere as "*the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice and sacred life – that is, life that may be killed but not sacrificed* (italics theirs, Agamben 53). For me, "killing...without celebrating a sacrifice and sacred life" means to kill without regard for personhood or citizenship. In other words, those who are *homo sacer* in addition to having their position in the polis removed, also have their personhood and subjectivity attacked. As such, the person who is *homo sacer* can have their physical body assaulted or killed by any citizen with impunity as they are no longer persons in the social or legal sense. In their treatment by the legal system and in many cases in their very being, those deemed *homo sacer* define what it is to no longer have personhood in the eyes of the law. In this way, the figure of the *homo sacer* relates to the populous similarly to the way the state of

exception relates to sovereignty: it defines the borders of what is normative subjectivity by virtue of being outside of it.

Moreover, those who are deemed *homo sacer* are placed within the state of exception. The rule of law that governs the states behavior with regards to its citizens no longer apply to them. Today, laws no longer explicitly define who is white and who is Black, however, they still use civil death to define white normative behavior. Dayan's analysis focuses on racial demarcations; however, civil death is used to limit the movements of all manner of "undesirables". And, while civil death has legally shifted back to the criminal and the felon, like the family member in ancient Europe who suffered civil death because of the felonious acts of an ancestor, entire populations suffer civil death because of the felonious acts of a few.

Thus those who are civilly dead not only highlight the exclusion through which the state gains its power but also help to define the limits of that power. In the United States, that power is rooted in whiteness, in ablebodiedness, wealth and heteronormativity. As Dayan's work demonstrates civil death has historically been rooted within the criminal justice system and therefore the prison has been and currently is both a physical and figurative space of exception. By creating a space which houses the deviant and abnormal, the prison system is able to convey to the public the state's expectations of subjectivity, namely white, heterosexual and able-bodied men and women. Conveying these expectations is accomplished in several ways but the two most prominent are the physical limitations/expectations imposed upon prisoners and the more amorphous effects of being "related by blood" to those caught by the prison.



## *The Tainted*

To begin to deepen our analysis of the ways in which this state-authorized practice of we might ask: who is being targeted for civil death? What indications do we have that they are considered tainted? The composition of our prisons is one place to start to answer these questions. However, the interpretation of some of the laws that govern law enforcement and analysis of media portrayals also give indications of which populations are considered tainted.

Dayan's description of blood taint make it clear that there was a clear link between slavery, criminality and social death. An oft-repeated line by liberal and conservative whites (and to some extent people of color) in article comments, reddit posts, blogs and even some news stations however, is that since the civil rights movement, America has for all intents and purposes abandoned racism, that the playing field for minorities and whites are the same. Or, that if there is a difference, it lies in class not race. Obama and Oprah are proof that the country has let racism go. While America has dropped nearly all obvious outward signs of racism, there is a case to be made that America has simply shifted the way it performs its racial biases. Nearly half of the prison population consists of African Americans. African Americans and Latinos together make 58% of the prison population despite making up only about a quarter of the US population (NAACP. "Criminal Justice Fact Sheet) Because of the focus on Black (and increasingly Latino people), these populations live in constant fear of "stop and frisk" policies that erode at their 4<sup>th</sup> amendment rights and assault their personhood. They understand that they are more likely to end up in prison than any other racial group in

America; and, that their prison record will make it extremely difficult for them to find gainful employment. What is worse, studies show that racist thought schemas operate both at a conscious and unconscious level and that implicit racial biases are disassociated from explicit racial biases. In other words, avoiding racist comments/behavior, having a black significant other, black friend or black relative, or even being Black oneself, does not absolve oneself from unconscious racist thoughts.

Looking at the political climate and media representations in the last few decades allows us to uncover some of the many elements that encourage these unconscious racist thought schemas. In the late 70's and early 80's inner-city communities were collapsing under economic pressures because of the advent of globalization and the post-industrial complex. Before then, inner-city workers were able to find work in factories with little to no education. However as manufacturing jobs were moved away from American cities to lands with cheaper labor, reliance on highly skilled, and thus more highly educated workers ensued. African American workers were obviously at a disadvantage when competing for these skilled jobs since they had struggled under decades of attending segregated and poorly funded schools. Employment for Black men plummeted from 70% in 1970 to 28% by 1987 (Alexander 104). The lack of legitimate employment among inner-city workers made selling drugs as a means to making ends meet both more compelling than an often fruitless struggle against systemic prejudices and, for some, a matter of survival. At the time, the post popular drug was crack cocaine. By 1985, over a decade after Nixon's declaration of the "War on Drugs", Reagan began to shore up support for the Republican Party's erstwhile losing "war" in order to justify the inordinate shift in spending needed to house these deviant drug users. To do this, he

turned to the media. In 1988-89 the *Washington Post* alone printed over 1,500 stories about the crack epidemic. *Times* and *Newsweek* both considered the “crack epidemic” the story of the year. Hundreds of stories about the crack scourge appeared on newsstands and televisions everywhere and the stories were decidedly racial in nature. Images of Black “gang bangers” and Black “crack whores” having “crack babies” further perpetuated the already damaging image of the “welfare queen” which had become popularized by this period. These images coupled with the seemingly race neutral rhetoric of the “get tough on crime” platform that emerged as a response to the civil unrest of the 1960’s civil rights movement, allowed Reagan and his administration to code drug use, violence and economic failure and the need for government assistance as typically Black issues.

After this point, the mere mention of drugs and welfare were intimately tied to the public’s perception of Blackness. Violence had already become associated with Black people, both because of the law and order rhetoric of the 60’s and because of some of the racist justification of slavery. Defenders of slavery claimed that Africans were clearly savage and in need of civilization. In addition, Blacks were believed to be inherently shiftless and lazy. Slavery was the perfect institution to purge them of this terrible habit (William Harper “Memoir on Slavery”). In the words of Rudyard Kipling, civilizing people of color was the white man’s burden. Tying Blackness to criminality had material implications for the subject position of Black people in the US, both the personal creation thereof and their subject position in the public imaginary. In the years since the declaration of the War on Drugs, the prison population has grown by a factor of 6, from 300,000 to 2 million people. The majority of this boom has come from drug arrests.

The media representation of Blacks and later Latinos/as had a profound impact on the public, including law enforcement's, perceptions of the innocence of these populations. In one study cited by Alexander in *The New Jim Crow*, respondents were asked to quickly decide whether or not to shoot a subject. The images presented showed a variety of Black and white people holding either a gun or some other innocuous object such as a phone or a wallet. Both Black and white participants were more likely to shoot a Black target thinking he or she was armed when the target was not. They were also more likely to mistake an armed white person as unarmed. This means that both Black and white participants unconsciously believe that Blackness itself is an indicator of danger (*Harris-Perry 104*). This very phenomenon was recently brought to the fore in national media in 2012, when George Zimmerman fatally shot Trayvon Martin, a young 17 year old Black male. Zimmerman, coordinator of the neighborhood watch, called 911 on February 26<sup>th</sup> 2012 to report a "suspicious" person, who was "up to no good" and "looked Black" in his Twin Lakes gated community. Zimmerman then followed the suspicious person, Trayvon, and eventually approached him despite direct recommendation from police dispatchers to not engage with the young man. Trayvon was returning from a nearby 7-Eleven while visiting his father who lived in the community and was unarmed at the time of the attack. The incident sparked a national hoodie movement in protest of Zimmerman's accusations of suspicious behavior from an unarmed Black youth with legitimate business in the community. During Zimmerman's trial and in media reports of the shooting before and after the trial, Martin's character was put on the line as defense of Zimmerman's actions. Reports claimed he was returning from a "drug deal", reporters mentioned that he was suspended from school for drug

related offenses (traces of Marijuana were found in his back pack). Often these news broadcasts were accompanied by pictures of Trayvon looking rather serious in a hoodie, smoking or with middle fingers raised. Trayvon's facebook and email were combed for incriminating information. In short, every effort was made to emphasize Trayvon's Blackness and to tie his character to already negative images of Blackness as thuggish, violent and dangerous derived, in part, from American's War on Drugs

The initiatives taken in the name of the "War on Drugs" have different but equally damaging effects on the subjectivity of women. While women are incarcerated less often and given shorter sentences than their male counterparts, Black women have also felt the effects of the increased portrayal of Black "crack whores", "crack babies" and "welfare queens" which perpetuated the notion that Black women were selfish, or otherwise unfit mothers and women (Harris-Perry). Two myths in particular were reinforced for Black woman, that of the Sapphire and Jezebel. The Sapphire portrays Black women and perpetually angry and irrational while Jezebel depicts Black women as overly sexual and manipulative. Melissa Harris-Perry calls the prevalence of those misrepresentations and their effect on Black women's experiences and subjectivity, "the crooked room". Understanding the "crooked room", especially as it relates to black and Latina women, helps to frame the degree to which *Orange* (with its large contingent of Black/Latina cast members) is either engaged in radical subversion of or articulating a normalizing agenda or some strange admixture of both.

The prevalence of the Jezebel and Sapphire myths and other myths like them, directly impact Black women lives. For example, a 1997 study reports that 42% of Black

women felt the need to avoid discussing issues of race at work and in another study 56% of Black women in management positions indicated that they were aware of stereotypes about Black women in their companies (91). In addition, the intersection of these myths with broader myths about femininity and Blackness mean that women often find themselves adjusting their behavior within their communities and homes as well in order to accommodate racial and gendered expectations of the men closest to them. Sometime however, Black women use these stereotypes to their advantage. For instance, a forty-two year old woman in Harris-Parry's Chicago focus group recounts her experience being a Black overweight woman in corporate America:

You have to think about how to use the force of being a black woman. When I am at work, and I work in corporate America, I'm not heard. It is because of my color and also because of my size. But sometimes I have to get heard. Then I go up against some fifty-year-old white male and I am up in his face saying 'You know what? "You are wrong, And this is what we need to do" It is sad and you shouldn't have to do that. (*Harris-Perry 91*)

Alice is able to use the Sapphire myth to her advantage but playing into the myth feels like a Pyrrhic victory. Thus, Black women may be to resist the tools used by the state to target their population by subverting the purpose of that tool and making it work in their favor. However, as Alice's commentary about the need to use such stereotypes demonstrates, the use of such stereotypes may lead to a complex, sometimes vexed relationship with the self and one's position in society. These women know first-hand the damage such stereotypes can cause themselves and other women. Making use of such

stereotypes perpetuates them, strengthens them and allows them to survive and harm other women. Harris-Perry uses the “crooked room” metaphor solely to describe Black women’s experiences, however, the Crooked Room is an apt metaphor to describe the way representation affects any marginalized group. Latina women too exist in a crooked room of sorts. They are typically portrayed as either la Virgen or La Punta in media. The myths traditionally deal with La Virgen de Guadalupe, the virtuous and pure mother and La Malinche the defiled concubine. In terms of representation in the media, this usually presents as Latina women either being presented as “good” Christian women, usually maids, or sensual, sexual Latina lovers. Latina women, much like Black women must work against these presentations and like Black women sometimes they succeed and sometimes they fail. In addition to these gendered Crooked Rooms, the “War on Drugs” with its attendant race coded language create a Crooked Room for Black and Latino populations as a whole by ousting them from the norm. Since these aberrant characteristics (violence, lasciviousness, selfishness etc.) supposedly describe the group and not individuals, they describe “Blackness” and “Latinoness” as inherently deviant and serve as a counter point to “whiteness”.

Moreover, “Blackness” and “Latinoness” become inheritable traits and as such, those groups’ children are seen as fully culpable for their actions much earlier than white children. Phillip Atiba Goff et al. in their study, “The Essence of Innocence: Consequences of Dehumanizing Black Children, found that white respondents were more likely to overestimate the age of Black Children, Black boys specifically, after they reached about 10 years old. These boys were also rated as less innocent when accused of crimes than their white counterparts. This bias was also present in police officers; it is no

surprise then that police officers were more likely to use force with Black children than white children, a phenomenon clearly depicted in the police killing of young Tamir Rice. On November 22, 2014 two police officers, Timothy Loehmann and Frak Garmback, responded to a call reporting “a male sitting on a swing and pointing a gun at people” (“Tamir Rice Shooting-Cleveland Police Dispatch Radio” Youtube). The caller stated twice that he believed the gun to be fake and that the male was likely a juvenile. Video of the incident records Loehmann firing two shots at Tamir Rice within two seconds of arriving on the scene. Neither police officer administered first aid to Tamir and he died from his wounds the following day. After the shooting, one officer reported that the black male was “maybe 20”. Tamir was 12 years old (Video shows Cleveland Officer shooting 12 year old Tamir Rice within Seconds” *Washington Post*). Comments on *Washington Post* article and other articles reporting on the incident echo’s the callousness demonstrated by the responding police officers. Many commenters blamed Tamir and his parents for the incident and dismissed any attribution to race relations. User RDNKTXN remarked “The boy pulled that very real looking hand gun out of his waistband and point at the police! That’s a fatal thing to do no matter what color you are, White, brown, black!” The video clearly showed that the “weapon” was not in sight at the time of the shooting. User John said Tamir’s parents “share this fault for not watching their child and for letting him have this toy” This point of view was not left unchallenged however. Protesters took to the streets in peaceful resistance of police violence against black youth. Moreover, Tamir’s case joined the national conversation about racialized police violence in the wake of the death of Michael Brown in Ferguson, MS.



Race is not the only measure used to target individuals and populations. Sodomy laws have existed within the English tradition in some form since the early to mid-1500. At the time, sodomy was considered a sin against God and included all forms of non-procreative sex including masturbation, oral and anal sex. Both men and women, and heterosexuals and homosexuals were punished under these laws (William Eskridge *Gaylaw: Challenging the Apartheid of the Closet*). When the state began to move from its religious ties to more secular governing, it took with it the condemnation of sodomy. Eventually, Sodomy and sodomy laws became almost exclusively tied to and applied to homosexuals, especially in the United States. Homosexuals were legally or effectively barred from working as teachers, counselors, government or state officials or immigrating to the United States as they were considered diseased. Until *Lawrence v Texas* in 2003, the constitutionality of sodomy laws was upheld. Even after the ruling, 12 states kept those now defunct laws on the book. Louisiana's legislature voted, 66-27, specifically to keep their sodomy law in April of 2014. The state's sodomy law came under scrutiny the year before when police officers arrested and charged a young man under the state's sodomy law. However, amid public outcry and the District Attorney's refusal to repeal the law, the case failed. Despite this, the legislature voted to keep the law on the books as a reminder of Louisiana's values. This case highlights both the law enforcement and judicial system's interest in retaining the legal sanction to target homosexuals despite changing public opinion.

The mentally ill and those addicted to illegal and prescription drugs have also been deemed *homo sacer*. Since the implementation of the War on Drugs in the 80's funding for agencies responsible for drug treatment and prevention were dramatically

reduced in favor of federal law enforcement programs. Between 1981 and 1984 the budget for the National Institute on Drug Abuse was reduced from 274 million to 57 million. Funds for antidrug programs allocated to the Department of Education were cut from 14 million to 3 million. In addition, despite a successful push in the late 90's to reduce the number of mentally ill persons in the prison system, the number of prisoners with mental health conditions has surged in the last couple decades. Estimates place the number of prisoners and parolees with mental health issues at two to four times the number in the general population (National Institute of Corrections).

### *Litchfield and Us*

In season one of *Orange*, an inmate, Ms. Claudette, tells Piper, "You better watch yourself little girl. This is not America, this is the Litch" (47:10, "Lesbian Request Denied"). It is doubtful show writers meant to invoke Agamben and yet this quote suggests to viewers that their prison somehow lies outside the realm of the government despite being on state property. Here, Ms. Claudette's words evoke Agamben's description of the state of exception. The prison operates both inside and outside the bounds of state purview. The prison is state property, on state grounds and yet the laws that govern elsewhere in the state do not apply here. As the show proceeds to demonstrate, the prison seems to operate under a separate set of rules which seem at odds with the ideals of the state. The quote and the situation at Litchfield beg the question, how would we position Litchfield, or any prison, with regards to the state? With the history of the prison, punishment and civil and social death in mind we can begin to ask questions of *Orange* which will help illustrate how show creators and the public might

view the relationship between prison and the state with regards to the state's desire to create normative persons. For example, in *Orange*, what appears to be the purpose of prison? Is it punishment? Reform? Or, is it something else entirely? Does *Orange* highlight institutional biases that reveal the states' *homo sacer*? How does *Orange* deal with race, gender, sexuality or class? Does it see any relationship between race gender and class and the prison system? In chapter two, I hope to address these questions.

## CHAPTER 2

Undoubtedly, the most common praise of *Orange* stems from its diverse cast and casting of Laverne Cox as Sophia Bursset. The cast of *Orange* has significant, white, Black and Latino populations, spans generations, with inmates ranging from late teens to 60+, and portrays a range of sexual orientations and relationships. The narrative itself is punctuated by a series of flash backs. Kohan chose to adopt this structure for two reasons. First, it allows viewers to contextualize the women's lives outside of prison, to see them as women who are imprisoned, but who are nonetheless women and second, it allows the narrative to move outside the oppressive space of the prison. In this way, the show's temporal movement creates the opportunity to demonstrate institutional inequalities and racial and gendered stereotypes that target particular populations. And in truth, the writers do use a variety of visual and narrative techniques to highlight various detrimental aspects of the prison industrial complex such as the continuing use of behavior modification and the effects of the Secure Housing Unit (SHU), or solitary confinement. The show seems to work diligently to dismantle bigoted and racist representations of minority populations by consciously attempting to be inclusive and avoid tokenization. However, structural inequalities that target certain populations as inherently criminal are ignored or deemphasized (some consciously and some not) in the name of entertainment. The obscuring of state influence on the conditions of possibility for target populations is compounded by the show's focus on "Bad Choices" rather than structural inequalities, its depiction of organized resistance as harmful and its presentation of the social and political issues surrounding the prison serves to undermine current prison reform movements within the public consciousness.

### ***Presenting the Prison***

*Orange* opens with a voiceover of Piper narrating a montage of shower scenes that begin with baby Piper in the sink and end with middle aged Piper being interrupted by Taystee in the prison shower. Piper's revelation that she "loved getting clean" and baths and showers were her "happy place" ("I Wasn't Ready" 00-1:37) are Kohan's nod to prison sexploitation films but more importantly this scene abruptly and unceremoniously places the audience into the cramped, privacy-less place that is prison. Despite the fact that the show takes place in a minimum security prison, show creators make sure to highlight the behavioral modification techniques that persist in prisons. These techniques persist both because of and in spite of the prison officials' lack of interest in the prisoners. Like the commissioners of Eastern State recommended, the prison complex itself is gated and inhospitable, a fact Piper and her fiancé, Larry remark upon when pulling in for her to surrender. Piper's first encounter with an administrator is cold, impersonal and bureaucratic. Show creators intensify the feeling of disorientation and confinement in these early scenes by using abrupt transitions, juxtaposing scenes from outside the prison with scenes from within, and using clipped and/or jarring sounds as transitional markers. These early scenes take pains to express and reflect the prisoners' lack of control and agency. For example, when taking her picture for the intake process, Correctional Officer (CO) Mendez, aka Pornstach, brushes off Piper's rather sensible suggestion to connect the camera to get the system working. After finally coming to the realization that Piper is correct, Mendez retaliates by taking Piper's photo as she is looking away from the camera; her complaint about her treatment is met with a brusque "tough shit" and instructions to move along. This scene serves dual purposes. Not only does it serve to

highlight Piper's helplessness in this situation, but it also highlights a system that is totally deaf to its inmates.

Furthermore, the regimented nature of prison is foregrounded to varying degrees in every episode of Orange. One constant reminder occurs during opening credits which highlight the restriction and confinement through the juxtaposition of the prisoners' open and emotive faces with the bars surrounding the prison, the orange prison garb and the sound of metal doors sliding shut. Narratively the writers take care to depict both subtle and overt acts of restriction and lack of agency. Prisoners are restricted to two hugs from visitors (notice of which is both written on signs on the prison walls and brusquely shouted to the room full of visitors by guards), male guards routinely perform pat-downs which somehow always require lingering hands near breasts and buttocks, prisoners are counted with a clicker like cattle every day and are subjected to random room searches during which there is a real possibility that any attempt to make their cells more homey or inviting will be torn down and strewn across the floor. Throughout the show, many CO's call the women "inmate" in lieu of using their names. Some are more consistent with this tactic than others. Joe Caputo, Assistant to the Warden, explains why this appellative is recommended procedure when he counsels CO Susan Fischer on maintaining her authority with the inmates; " It [being referred to as inmate] reminds them that they aren't really people...They are sheep. We feed them. We herd them from one room to the next. They're not like you ("Fool Me Once" 27:07-27:58). Inmates who actively resist, such as Janelle who refused to be patted down by a male CO, as was her right, are punished severely. For her resistance, Janelle is sent to SHU for days until they can find a female CO "to conduct a thorough, through search". This punishment occurs despite having

three full-time female COs on staff, and clearly indicates that solitary was used as retribution and not correction ("Imaginary Enemies" 21:30). Once her punishment is served, she is returned to the prison population at large and is placed with inmates who have already adopted "the ideal" behavior. Again, this desire to break down the inmate's personality to remake it into a more compliant and socially acceptable personality echoes the desire of both 18<sup>th</sup> and 19<sup>th</sup> century reformist and the behavior modification specialists of the late 20<sup>th</sup> century. At no point are the CO's actively involved in getting to know the inmates as people (notable exceptions are Fischer, who takes an interest in everyone and Bennet who forms a relationship with Dayanara). What is most disheartening however, is the prisoners' apparent resignation to their circumstances. None of the women (except Piper) on the Women's Advisory Council attempt to make any lasting change because they understand that "Healy [a Prison Councilor] ain't gunnin' for change" ("Blood Donut" 5:15-8:48) and that they don't have the access to the power structures necessary to effect lasting transformation.

*Orange* also takes great pains to frame solitary confinement in such a way that the audience gets a glimpse of the damage it can do to inmates. The writers chose to use a slow gradual suspense surrounding SHU which comes to fruition in the latter half of season 1. The first mention of SHU is in episode one when DeMarco tells Piper, "You don't want it [SHU], honey. Trust me" (32:39 "I wasn't Ready"). However, the audience doesn't see SHU on screen until Piper is sent there in episode 9 of season one. From episode one onward, the audience is incrementally introduced to SHU and shown how it is often used within the prison system --as retaliation. Third wave solitary confinement proponents justify the use of solitary confinement as "necessary to protect prisoners and

guards from violent super predators”. However, it is often used as punishment or retribution against individual sometimes non-violent offenders. The first person the audience is informed has been to SHU was sent there because she was rude to a CO. Janelle is sent there later when she is accused of losing a screw driver and insists on being searched by a female CO. When Piper is finally sent to SHU it is because Healy is angry that she is “lesbianing” with Alex Vause (“F\*cksgiving”). In *Orange*, it is clear that SHU is wielded as weapon to penalize inmates who challenge the standing power structure.

When the audience is finally allowed to see SHU, show creators chose to intensify the feeling of claustrophobia and the sense of limited agency previously depicted in earlier episodes. Piper is led by a single guard down a dimly lit corridor. Through the single small window (which we later learn has a sliding shutter) built into the heavy steel doors, Piper can look upon the desperate, screaming faces of the inmates in SHU. The composition of the scene is tight. Piper and the guard take up the majority of the space on screen making the tight corridor seem narrower. While sleeping arrangements at Litchfield resemble barracks more than cells, SHU is more accurately described by the 19<sup>th</sup> century builders. Like the commissioners of Eastern State recommended, Piper’s cell is a small concrete box with minimal amenities. It has a bed, a toilet/sink combo and a single entry/exit point. The door is locked from the outside and besides the window, contains a single slot used to deliver food. When Piper asks how long she has to stay in SHU, the guard responds with a terse “Till we let you out” (14:45 “F\*ucksgiving”). The scene ends with the guard walking back the way he came however, the camera’s focus is wider, creating the illusion of more space. The camera also angles upward making the



guard seem taller. Overall, the visual effect is quite stark and emphasizes the experiential differences between the guard and Piper in this space. She feels boxed in, scared and vulnerable, he, as a representative of the state projects authority and confidence.

Moreover, Piper's behavior and the behavior of others who have returned from SHU mirror the deleterious psychological effects of solitary confinement Guenther mentions in her book. The Center for Constitutional Rights' essay, "Torture: the Use of Solitary Confinement in U.S. Prisons", repeats and expands upon Guenther's remarks. They list the effects associated of prolonged solitary confinement as:

persistent and heightened state of anxiety and nervousness, headaches, insomnia, lethargy or chronic illness, nightmares, heart palpitations...obsessive ruminations, confused thought processes, an oversensitivity to stimuli, irrational anger, social withdrawal, hallucinations, violent fantasies, emotional flatness, mood swings, chronic depression...and suicidal ideation (1).

Piper is sent to SHU 3 times over the course of season one and two and while each venture into solitary demonstrates some of the damaging effects of prolonged solitary confinement. Her first foray into SHU is the most telling. During her first stay, the screams of inmates are clearly audible from Piper's cell. Although it is impossible to tell time within Piper's solitary cell, it seems as though the inmates screams are unending, filling the halls both day and night. The tedium of Piper's solitude is captured in a montage of Piper's attempts to keep busy which include peeing, cleaning the toilet and laying down in varying positions about the room until finally she returns to the door and falls down crying in defeat. At one point, Piper hears a voice speak to her from one of the

vents. It asks rather hauntingly “Are you real?” When Piper returns the question, the voice responds “I don’t know” (36:36 “F\*ucksgiving”). In Piper’s subsequent trips to SHU, she exhibits more disturbed behavior. In the opening scenes in season 2, Piper has sheets upon which she has kept track of the guards’ shifts. In this way, she is able to keep track of time. She has also scrawled something on the wall that vaguely resembles a bird and a flower out of the cooked egg yolks she has been given which she claims is art. While in her cell, Piper is visibly anxious and nervous. And although the audience does not see Janelle’s experience in SHU, she returns angrier and more withdrawn than before. In sum, it is clear that Solitary is a particular target of the show’s critique of the prison system. Viewers are meant to be disgusted and disheartened by the prison and the use of SHU in particular.

### ***On Representation***

One of the most notable and oft-discussed characters is Sophia Burset, a Trans character played by Trans actress Laverne Cox. In the show, Sophia, a former firefighter, uses credit card fraud/ identity theft to secretly fund her sex transformation. In a series of flashbacks, we learn that Sophia’s wife struggles to be understanding and accommodating and that Sophia’s son has trouble coming to terms with the change Sophia’s transformation has wrought. It is suggested that her son is the one who tips the police off to Sophia’s illegal activities. Sophia herself is at turns funny and vulnerable and through a series of close ups, music and emotive acting from the supporting cast who play Sophia’s family, the audience can see analogues of themselves, their wives or their children. Sophia’s wife, Crystal, played by Tanya Wright, expresses the her difficulty coming to terms with Sophia’s transition and explains how important it is for her to make

sure that her son grows up with a father even if that father is now a woman. Sophia's son, Michael, finds it even more difficult to come to terms with his father's transition and it is insinuated that Michael may have been the one who tips the police off to Sophia's credit card fraud. Crystals desire to be a good mother, her discovery of love again and Michael's anger at Sophia are all experience and reactions the audience can relate to. On the whole, Sophia's character gets significant screen time and her narrative arc aims to create empathy. It is clear that despite the "bad" choices Sophia made, the audience is meant to empathize with Sophia.

Laverne's casting was just as momentous as the role since this was one of the few times a major TV show used a Trans actor of color to play a Trans character. The exposure most Americans have had Trans representation in the media have generally been cis actors playing Transgendered characters. For example, Hilary Swank's Academy award winning portrayal of Brandon Teena in *Boys Don't Cry* and Jared Leto's Academy Award and Golden Globe award winning performance of Rayon in *Dallas Buyers Club*. Laverne's casting and story line in *Orange* have done quite a bit to push Trans issues, such as routinely being misgendered, difficulty obtaining adequate and consistent medical care and the repercussions of coming out, into the mainstream public sphere. Laverne Cox was an activist long before her involvement with *Orange*; however, *Orange*'s popularity has afforded her the opportunity to portray, represent and engage Trans issues with a large captive public audience. In her interview with Michelle Dourvis of *Entertainment Monthly*, Laverne suggests that creating empathy is an important part of reshaping public imaginary regarding Trans people. Particularly because of *her* casting, the audience is empathizing with a "real" Trans person, not someone who gets to shrug

that label off once the show is over. If they fall in love with the character or with her portrayal of the character, they are engaging with an actual Trans person. As a consequence, both the representation itself and the complexly rendered storyline are important, particular for Trans people in general and Trans people of color in particular who are finally able to see “one of their own” telling a story to which they can relate.

Criticism of *Orange's* success at breaking other stereotypes is arguably far less generous. While many argue that the show attempts to dismantle negative representations of black women as “welfare queens”, Jezebels, or inherently criminal, others find fault in the representations of poor women, queer women, women of color and the premise of the narrative (a fish-out-of-water girl-next-door opens the world of the prison to the public) entirely. Aura Bogado argues in her article, "White is the New White", diverse cast or not, *Orange's* narrative is ultimately framed by a white woman's perspective. This framing is reminiscent of the authenticating prefaces found in 19th century slave narratives and was a feature used both to confirm the narrative's veracity in addition to lending the author and his/her text more weight. Jenji Kohan justifies her choice to use Piper as the main lead in an interview with Terry Gross on NPR's Fresh Air. She called Piper her "Trojan horse" and claimed that "it's a hard sell to just go in and try to sell those [black, Latina, old women and criminals] stories initially (NPR Fresh Air with Terry Gross). She goes on to say that " the girl next door, the cool blond, is a very easy access point, and it's relatable for a lot of audiences and...Networks looking for a certain demographic". Unfortunately, Kohan's comments only reinforce Bogado's point. Kohan admits in the interview that the one of the most compelling elements to Piper Kerman's memoirs were the stories of the women around Piper. However, in both the show and the

memoir, the stories of Black, Latina and other women who are members of groups deemed *homo sacer* by the state are decentered in favor of using more the more "relatable" white protagonist. In fact, Kohan's statement and journalists ready acceptance of it, makes it apparent that the prevailing assumption in Hollywood is that the lives of women of color and other marginalized groups are so foreign that a reliable guide is needed to access their world and authenticate their stories. And in the end, it is Piper Kerman who profits from the commercialization of these women's stories.

In truth however, Black characters do get substantive screen time in the show; they are essential to the plot and are not relegated to simply being Piper's "black sidekick". Poussey and Taystee are witty, intelligent and creative women and several conversations between Poussey, Taystee, Black Cindy and Sophia demonstrate an awareness of the "white gaze", especially the "liberal" one, and how it limits these women's options when presenting their subjectivity. For example, the conversation at Sophia's "hair salon" prior to Taystee's parole hearing includes a discussion of what version of blackness Taystee should perform in order to impress the parole board and what racial/gender make-up of the committee would give Taystee the best chances for release. Poussey argues that white women would be most helpful because, "Y'all know how they love drinking wine with their friends talking about how sad it is black people ain't got their fair shakes. What, giving their house keepers a extra day off and shit" ("Blood Donut" 39:30). The women understand the care in those instances is facetious. It is a care borne of self-interest and not a genuine appreciation of the Black person's personhood. At most, this kind of "help" or assistance is palliative, there is no risk for the white person because it does not in fact challenge any existing power structures. The

women fully recognize this power dynamic and as a consequence, their final suggestion is that Taystee assume the persona of “Black best friend in the white girl movie” (“Blood Donut” 39:40). Sophia, Taystee and Poussey understand that they must contort themselves into a version of Blackness that is safe and non-threatening, even to those who supposedly are out for their best interests. This particular representation of Black consciousness and overt commentary on the social-constructedness of race, positions racial stereotypes at the level of performance and as such is potentially a vehicle through which to work against institutional lines of power. This may be an important glimpse “behind the veil” for many audience members. As Jennifer Pozner, media critic and author of *Reality Bites Back*, notes “this show opens up options of Black actresses and for views abilities to identify with women of color as main characters... [t]he ability for women viewers of color that have characters that look like them that are main and ensemble characters that are not the sassy friend or dead victim of a procedural is a real breakthrough moment” (qtd Zerlina Maxwell, “Why We Love ‘Orange is the New Black’”).

Moreover, despite *Orange's* apparent wealth of diversity and depth of character background, the show occasionally slips into racist stereotypes that support existing power structures and reinforce negative associations with racialized bodies whether intentionally or unintentionally in the name of entertainment. One such problematic representation is Janelle's. Janelle was a rising young track star before feeling left out of her peer group and ignored in love prompts her to become involved with some bad association and eventually rob a convenience store. In a rather token nod toward systemic inequalities that Black men may face, Janelle is told she can't stay at Three-D's party

because she's "the real deal; " in other words she can have everything his 'thug' crew dreamed of because she has a shot at an education and they are just some uneducated thugs (OitNB "Blood Donut 45:32-48:24). Here the stereotypical image of the black male as dangerous and ignorant, if noble in this moment, is readily apparent. In addition, Janelle's characterization is also problematic because while viewers will likely sympathize with her loneliness once they've seen her backstory, by the time she reaches the prison she is the stereotypical Sapphire. She is angry, combative, sometimes validly so and sometimes not. While the anger itself is not always unwarranted, the narrative dismisses her anger at every turn. Her refusal to work for pennies gets her dismissed as "one of those" and is called a "monkey in a cage." Yoga Jones dismisses Janelle's anger as useless and unproductive by saying that she "gets" Janelle's anger and that she too once "thought the world owed [her] something" ("Blood Donut" 25:18-26:59). And though Janelle eventually proves that even Yoga Jones still has something to be angry about the display garners shock and disapproval from her peers and it is Janelle who eventually extends an olive branch to Yoga Jones. Yoga Jones never recognizes the patronizing nature of her comments to Janelle and viewers are left with the impression that Yoga Jones was right, and Janelle will eventually be cured of her "angry black woman" syndrome. In the end, anger is raced, gendered and depoliticized.

The representation of Latina women is also problematic. There is a sizable group of Latina women as recurring actresses but all of them fall squarely along the virgin/puta dichotomy. Aleida Diaz and her 17 year old daughter Dayanara (Daya) are both in prison. Aleida is depicted as frequently leaving her younger children with Daya to spend time with her (Aleida's) boyfriend, César. She becomes jealous of the sexual attention César

pays Daya, allows him to cut drugs in her kitchen while her children sit in the next room and eventually takes the fall for him. While in prison, Daya becomes intimate with a young prison guard, Bennett and gets pregnant. Her own mother convinces her to lie about being raped by another guard to protect Bennett from being fired. And although the young women are given more screen time in season two, complete with more expansive lines, their conversation is still dominated by sex and drugs. As of now, only Gloria Mendoza has had her story told in a more complicated fashion. And yet her character, despite dabbling in Santeria, a religion typically associated with witchcraft, falls within the virgin side of the virgin/puta dichotomy. Unlike Aleida, Medoza is always mothering, is responsible, and only occasionally speaks about sex. After taking over the kitchen, she is more often than not the one to curb the younger women's talk of sex and drugs in order to force them to concentrate on their work. Moreover, after the audience sees her history as a battered woman attempting to save her children from her ex-boyfriend, it becomes difficult to see her as a sexual being. At this point, even if the backstories of the younger Latina women are told at a later date, it may be difficult to disabuse the public of their first impressions of these young women. In short, while *Orange* contains numerous characters who have central narrative roles and a serious attempt is made to flesh the characters out, incorporating histories and numerous interaction with other characters, the show does consistently use negative stereotypes in the name of entertainment which ultimately reify the supporting the narratives, such as inherent deviant sexuality amongst Latinas, and unjustified anger amongst Black women, that justify the social death of the characters.



### *Activism is Dead*

One of the more memorable scenes in season two occurs when Piper makes an impassioned speech in defense of her furlough. In this scene, Piper has just been given furlough to see her sick grandmother, a normally impossible feat in the prison system. Other inmates are understandably upset as they too have had dead or dying relatives and were not allowed to leave to say their goodbyes. To the prisoners, it is apparent that Piper's whiteness and class have helped her obtain furlough. It is here that we have the first and only articulation of modern critical race theory. Vee notes that the situation in which the prisoners find themselves is an example of the New Jim Crow. This comment and Black Cindy's insinuation that Piper gave Healy sexual favors in exchange for the furlough prompts Piper to give an impassioned, apologetic speech which expressed her regret that Black people "got a raw deal" and asserted that her grandmother "may be a whitey, too, but she's a fucking person" who needs to see her granddaughter. The other inmates are not impressed with Piper's speech. Much like the white women Poussey highlighted in season one, Piper's apology and her subsequent attempt to return her furlough is motivated by self-interest rather than any full understanding of race dynamics, and especially her white privilege. Unfortunately, this clear allusion to Poussey's earlier assessment does nothing to give Vee's comment any more weight because by this point in the narrative, Vee has garnered the reputation as a damaging influence to the group. She is the one responsible for changing the fun loving dynamic of the group of Black women. Vee's entire platform with her girls rests upon reestablishing Black dominance within the prison and unfortunately, unified, active black anger and solidarity is used as a

plot device which hurts the women. So the critical and incisive racial commentary which might be rendered in the show, is diminished by virtue of the speaker chosen to articulate.

This undercutting of the critique of institutional racism unfolds insidiously. While Taystee, Poussey, Sophia and Black Cindy were once a close knit group which openly discusses the ways racist stereotypes affect their performance of subjectivity and limits their educational and occupational activities, they do not move to make any sort of effort to effect change to their conditions. The women make no effort to organize protests, make legal challenges to unjust laws or treatment or create groups like La Raza Unida. That is to say, they recognize the oppressiveness of institutional systems but work within them to obtain their goals rather than making an attempt to dismantle the system. In the end, the characters' discussion of their position and experience within the prison encourages the audience to see them sympathetically while their inaction assures that they remain non-threatening. When characters actively resist in this show, not only are they punished within the narrative but they are also framed negatively to viewers. Janelle's character is trapped by both these characterizations. She is framed both as an angry sapphire and punished with SHU for her resistance to mistreatment within the prison. Thus, the writers reiterate the same condemnation of active resistance to racist systems. In season two, this trope is most notable with the introduction of Vee, Taystee's "adopted" mother figure. Vee's characterization within the show also reinforces a rather dangerous assumption about active and vociferous discussions about race and power imbalances, namely that such open discourse serves only to harm others. In season one, Taystee, Poussey, Sophia and Black Cindy talk about race and racism often but it is usually undertaken in either a joking manner and/or the discussion included no active

plan and no specific blame was placed. In short, they expressed frustration more than anger and they took no steps to change their position. This changes when Vee is introduced in season two. While most characters get at least the suggestion of a nuanced portrayal, Vee is portrayed as a bad person through and through. No kindness comes without a price. She builds Suzanne's self-esteem but only so she can have a devoted lackey and scapegoat. She gives Taystee a taste of family but only in exchange for Taystee selling drugs for her. She actively destroys Taystee and Poussey's relationship because she perceives Poussey as a threat to her control over Taystee and the rest of the Black women. In short, Vee is portrayed as manipulative and destructive in a way that none of the other women have expressed and it is through her that the audience first hears mention of the New Jim Crow. It's Vee who rallies the Black girls into advocating for better treatment of their race within the prison. Because of her reputation and her effect on the women, it is hard not to discredit Vee's reference to the New Jim Crow.

More to the point, the overall picture regarding resistance and change is wholly inconsistent with reality and history. Defenders of *Orange* claim that the women's refusal to advocate for change and Piper's willingness to fight for better treatment in season one is just a demonstration of Piper's naivety and the black and brown people's recognition of the oppressiveness and implacability of the system that surrounds them. Vee's harmful use of critical race theory can be seen as no different from Figueroa recognizing the unfairness of mandatory sentencing laws and the difficulty of obtaining a fair trial with a competent attorney, Healy's depression at the lack of adequate counseling or Caputo's suggestion that they have failed the women at Litchfield. Each of these characters have been portrayed in a negative light within the prison. Figueroa embezzled money and

routinely skirted mandatory reporting in an effort to maintain good PR. Healy is virulently homophobic, sexist and nearly allowed Piper to be killed by Pennsatucky and Caputo clearly considers the inmates as a little less human than himself and other COs. However, each of these characters is portrayed as more than just a one dimensional "bad" character, unlike Vee. Despite his insistence that the inmates "are not like us", Caputo fights to keep them adequately fed, clothed in sanitary conditions and prevents a number of transfers that would have further broken families. Healy believes in the power of counseling and attempts to rekindle that flame. Both Healy and Figueroa have problems in their marriage with which audiences can readily sympathize (Figueroa's Husband is cheating and Healy is trapped in a loveless marriage).

However, what all of the arguments provoked by and around *Orange* fail to take into account, is the long history of people of color advocating for change within the prison system specifically and for people of color more generally. As I stated in Chapter One, groups like La Raza Unida, The Black Panthers and the American Indian Movement lead human rights challenges in prisons during the second wave Solitary confinement in the 1960s and individuals like Assata Shakur and Angela Davis continue to advocate for prison reform and/or prison abolition. Moreover, in the wake of Ferguson, the deaths of Tamir Rice and others, the Black community's protests against police brutality and unjust sentencing practices have been pushed to the forefront of public news broadcast for months. Each of these narrative choices regarding activism within the prison on its own is not necessarily antithetical to prison abolition and radical prison reform. Not every use of critical race theory aligns with the theories and values of the activists in that community, not every Black person is interested in challenging systemic injustices and not every

prison movement is started by a Black person. However, together the narratives seems to point to an overall apathy among the Black women depicted in *Orange* toward the Black condition in the United States. This particular false sentiment is already embedded in the American public imaginary despite overwhelming proof to the contrary. A show as popular and well received as *Orange* only cements the notion that Black people are unable or unwilling to take steps to change systemic injustices and need a white knight, like Piper or Soso, who is who is willing to advocate for them.

### ***I Made Bad Choices***

Despite the great strides in humanizing Trans people in the public imaginary, *Orange's* focus on “bad” choices, a trend amongst all the narratives, not just Sophia's, ultimately reifies systemic discriminations. It seems that goal of these narratives is to get audience to realize that if it weren't for their “bad” choices, the inmates would be just like them. Officer Fischer even says so explicitly several times. While his comments are meant as a humanizing gesture, they only serve to hide the way the prison works as a space of exception that works in concert with other institutions to create inequalities which target specific marginalized groups. For example, Sophia's story while heart-warming begins after she's already begun stealing identities and makes no mention of the struggle she likely faced trying to obtain insurance coverage the legal way. Many insurance plans don't cover important procedures and medications for Trans individuals and the costs to perform them individually are prohibitive. Ms. Claudette's story begins with her entrance into the US and subsequent entrapment in an illegal child labor ring, but ignores the discriminatory and prejudicial immigration laws that foster these markets in labor and makes no comment on the current turmoil in the United States regarding

immigrants. Tricia's story of living on the streets and keeping track of all of her "debts" in a little Black notebook, trivializes her Kleptomania by turning it into an endearing trait instead of the serious mental health issue that it is. This in turn masks the appalling lack of support for those with mental health and drug issues. Since the implementation of the War on Drugs in the 1980's, funding for agencies responsible for drug treatment and prevention were dramatically reduced in favor of federal law enforcement programs. This problem persists.

In season one especially, the show's writers have Piper, the audience's point of entry into the prison, reflect upon the "choices" she made that have landed her in prison. Yasmin Nair points out in her piece, "White Chick Behind Bars", that this message, 'we're all equal but for our choices', seems to be a central message of the show. So much so, that the scene between Chapman and her mother, bemoaning the fact that her daughter had to be incarcerated with such dirty and morally bankrupt people is placed in the trailer for the show. Here Piper insists: "I am in here because I am no different from anybody else in here. I made bad choices. I committed a crime and being in here is no one's fault but my own (6:01-6:27 "Wac Pack"). This moment is framed visually and narratively as an important moment/message. During this scene, the camera focuses on Piper's face. The framing is tight and while we do get the occasional reaction shot from Mrs. Kerman, the camera draws viewers to Piper through its tightening focus into an extreme close up of Piper. By the end of Piper's speech, only her face is included in the shot while the reaction shots from her other have remained a stagnant med close. Moreover the show implies through this message that the inmates are in control of their lives outside of prison. In "Bora, Bora, Bora" Piper again gives a speech, this time to a young disabled

girl participating in *Scared Straight*. She tells the young armed robber that on the outside she “was somebody...somebody with a life that I chose for myself”. She contends that “Other people aren’t the scariest part of prison...Its coming face-to-face with who you really are” (43:50-45:50). Again, this speech makes no mention of the young black girl’s race or her disability and how they might affect or have affected her choices and opportunities.

The only possible exception to the personal responsibility trend is Taystee's story arc. "Looks Blue, Tastes Red" opens with Taystee as a child at a Black adoption fair serenading a possible couple. They seem interested until a fairer skinned girl cuts in front of Taystee to speak to them. Taystee rather rudely warns her off and is carted away by a social worker. It is here that she meets Vee, who tells her that she's not likely to get adopted because she's big, her hair is "ratsy", she's too eager and too dark (1:30-2:17). Predictably, Taystee does not get adopted. Later we see Taystee attempting to stay above the law by attending school and obtaining gainful employment. Unfortunately, in order to avoid being sent to yet another group home, Taystee goes to Vee for help. After years of resistance, Taystee finally joins Vee’s drug ring and it is here that she finally feels as though she has found a family.

Later on, Taystee’s arc makes brief mention of the trouble former prisoners’ face when attempting to reintegrate into society. In season one Taystee is released on probation, but again we get only one brief scene to show us that Taystee does not in fact have a place to live and an even briefer mention of fines, the inability to find work with a record, and the constant surveillance Taystee is burdened with upon leaving the prison. Taystee was out of prison for some time. Kohan could have chosen to show more about

Taystee's time outside of prison as she did when Piper was released on furlough in season two; however she did not. Despite the brevity of portrayal, the show presents a marked difference in the support systems available to Piper and Taystee. Piper was able to get furlough and stay at the home she shared with Larry despite their no longer being together. Piper comes from money, her visitors are prominently depicted in the show and she owns her own business. Unlike Taystee, Piper will likely be just fine when she leaves prison in spite of the fines and the felony on her record. However, because institutional racism is not depicted in the show, the differences between Piper and Taystee are designated ones of class alone and do not foreground and explicate the intersectionality of race and class.

Without institutional markers, despite the empathy felt by viewers, any interpretation of the subjectivity and experience of Orange's characters is incomplete. In fact, because the show decides not to show the institutional mechanisms that influence the decisions the inmates make and the subject positions they adopt, it perpetuates the social norms (namely white, heterosexual, able-bodied men and women) which are themselves embedded within the prison system, the prison industrial complex, and indeed society at large because it places full responsibility for the inmates' condition on the inmates themselves.



## CONCLUSION

*Orange* is currently renewed for a third season set to premier sometime in June of 2015. Speculation abounds regarding the content of season three. What has been confirmed thus far leads me to believe that *Orange* will likely continue to excel in areas that it currently excels in and continue to falter in challenging the prison industrial complex as a whole. The premise of the show has not changed and thus the framing of the narrative will always be through a white, cis, heteronormative woman's perspective. Show creators attempted to move away from the use of Piper's perspective in season two, but because the narrative is at its base about her, the show returned to her narrative fairly quickly. Moreover, because of *Orange's* past treatment of Black activism and racial solidarity, the advent of a new season does not bode well for future treatment of critical race theory and prison abolition or any movement seeking the radical restructuring of state and societal expectations of people of color in the show.

Things are not completely bleak however; show producers have confirmed that Poussey, Taystee, and Big Cindy will all play more prominent roles in season three. Thus show creators have the opportunity to delve more deeply into these women's stories and expose state pressure and societal stereotypes that have affected their experience in the US. In addition, the focus on these characters may turn the tide against the show's current bias against Black activism. Season two ended with Vee's character being the victim of a hit and run. It is unclear if Vee has died, however actress Lorraine Toussaint who plays Vee will not be returning to *Orange* in season 3 (Buzzfeed "You won't be Seeing Vee on "Orange is the New Black" Season 3"). The relationship between the women following

Vee's absences could either reify the show's current trend toward portraying active racial solidarity negatively or alter that trend by depicting the girls taking up the mantle of prison reform and Black solidarity to advocate for change.

Moreover, Netflix confirmed the introduction of two new characters, Stella Carlin, played by Ruby Rose and CO Mendez's mother played by Mary Steenburgen. According to Ruby Rose, in her interview for *Elle* magazine, Stella will be introduced as a love interest for both Piper and Alex. Still these new characters' introductions indicate a focus both on Piper (which isn't surprising) and a focus on Dayanara and her relationship with Bennett, Pornstache and her child, but also a possible refocusing on Daya's relationship with her mother, which was a major point in her story arc in seasons one and two. Perhaps shifting the focus of their relationship away from their past sexual competition will diminish these characters' association with the conventional Puta trope. In addition, Matt McGorry hinted in his interview with Yahoo TV that the prison will also be a focus in Daya and Bennett's illicit relationship; "the situation [between Daya and Bennett] becomes infinitely more complicated as time goes on. Its exponentially so in the strange love triangle of Pornstache, Bennett, and Daya—or maybe a love rectangle if you include the prison in one of the points as well" (SAG Awards Social Media Ambassador Matt McGorry Talks Selfies, 'Orange is the New Black' and 'How to Get Away With Murder'). Only time will tell if these opportunities to reveal the prison industrial complex as part of the state's means of creating normalized persons will be exploited to positive effect by *Orange's* writers and creators.

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