

Crafting the Neoliberal State: Workfare, Prisonfare, and Social Insecurity¹

Loïc Wacquant²

In Punishing the Poor, I show that the ascent of the penal state in the United States and other advanced societies over the past quarter-century is a response to rising social insecurity, not criminal insecurity; that changes in welfare and justice policies are interlinked, as restrictive "workfare" and expansive "prisonfare" are coupled into a single organizational contraption to discipline the precarious fractions of the postindustrial working class; and that a diligent carceral system is not a deviation from, but a constituent component of, the neoliberal Leviathan. In this article, I draw out the theoretical implications of this diagnosis of the emerging government of social insecurity. I deploy Bourdieu's concept of "bureaucratic field" to revise Piven and Cloward's classic thesis on the regulation of poverty via public assistance, and contrast the model of penalization as technique for the management of urban marginality to Michel Foucault's vision of the "disciplinary society," David Garland's account of the "culture of control," and David Harvey's characterization of neoliberal politics. Against the thin economic conception of neoliberalism as market rule, I propose a thick sociological specification entailing supervisory workfare, a proactive penal state, and the cultural trope of "individual responsibility." This suggests that we must theorize the prison not as a technical implement for law enforcement, but as a core political capacity whose selective and aggressive deployment in the lower regions of social space violates the ideals of democratic citizenship.

¹ This article is adapted from "A Sketch of the Neoliberal State," the theoretical coda to my book *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham and London: Duke University Press, "Politics, History, and Culture" series, 2009). It is part of a transdisciplinary and transnational symposium, with responses by John Campbell, Bernard Harcourt, Margit Mayer, Jamie Peck, Frances Piven, and Mariana Valverde (published in English in *Theoretical Criminology*, 14, no. 1, February 2010), as well as critics from the corresponding countries, published in German in *Das Argument* (Berlin); in French in *Civilisations* (Brussels); in Spanish in *Pensar* (Rosario); in Brazilian in *Discursos Sediciosos* (Rio de Janeiro); in Italian in *Aut Aut* (Rome); in Portuguese in *Cadernos de Ciências Sociais* (Porto); in Norwegian in *Materialisten* (Oslo); in Danish in *Social Kritik* (Copenhagen); in Greek in *Ikarian Journal of Social and Political Research* (Athens); in Ukrainian in *Spilne* (Kiev); in Russian in *Skepsis* (Moscow); in Hungarian in *Eszmelet* (Budapest); in Slovenian in *Novi Plamen* (Ljubljana); in Romanian in *Sociologie Romaneasca* (Bucarest); and in Japanese in *Gendai Shiso* (Tokyo). I am grateful to Mario Candeias and the Rosa Luxemburg Stiftung in Berlin for starting the ball rolling on this project, and to the editors of the journals listed above for their enthusiastic support of this project. This article benefited from reactions to presentations made at the 4th Conference on Putting Pierre Bourdieu to Work, Manchester, United Kingdom, June 23–24, 2008, and to the Sociology Department Colloquium at Yale University, February 26, 2009.

² University of California, Berkeley, and Centre de sociologie européenne, Paris, France; e-mail: loic@berkeley.edu.

KEY WORDS: Bourdieu; citizenship; neoliberalism; prison; poverty; state; welfare; workfare.

INTRODUCTION

In *Punishing the Poor*, I show that the return of the prison to the institutional forefront of advanced society over the past quarter-century is a political response, not to rising *criminal* insecurity, but to the diffuse *social* insecurity wrought by the fragmentation of wage labor and the shakeup of ethnic hierarchy (Wacquant, 2009a).³ The punitive slant of recent shifts in both welfare and justice policies points to a broader reconstruction of the state coupling restrictive “workfare” and expansive “prisonfare” under a philosophy of moral behaviorism. The paternalist penalization of poverty aims to contain the urban disorders spawned by economic deregulation and to discipline the precarious fractions of the postindustrial working class. Diligent and belligerent programs of “law and order” entailing the enlargement and exaltation of the police, the courts, and the penitentiary have also spread across the First world because they enable political elites to reassert the authority of the state and shore up the deficit of legitimacy officials suffer when they abandon the mission of social and economic protection established during the Fordist-Keynesian era.

Punishing the Poor treats the United States after the acme of the civil rights movement as the historic crucible of *punitive containment* as technique for the management of marginality and living laboratory of the neoliberal future where the convergent revamping of the social and penal wings of the state can be discerned with particular clarity. Its overarching argument unfolds in four steps. Part 1 maps out the accelerating decline and abiding misery of the U.S. social state, climaxing with the replacement of protective welfare by disciplinary workfare in 1996. Part 2 tracks the modalities of the growth and grandeur of the penal state and finds that the coming of “carceral big government” was driven not by trends in criminality, but by the class and racial backlash against the social advances of the 1960s. Part 3 heeds the communicative dimension of penalty as a vehicle for symbolic boundary drawing and explains why penal activism in the United States has been aimed at two “privileged targets,” the black subproletariat trapped in the imploding ghetto and the roaming sex offender. Part 4 follows recent declinations of the new politics of social insecurity in Western Europe to offer a critique of the “scholarly myths” of the reigning law-and-order reason, prescriptions for

³ The fragmentation of wage labor and its reverberations at the lower end of the class structure are documented by Freeman (2007) for the United States and by Gallie (2007) for the European Union. Ethnic hierarchy is anchored by the ethnoracial division between whites and blacks in the United States (other categories finding their place in this dichotomous ordering through a process of triangulation) and by the ethnonational duality between citizens and postcolonial migrants in Western Europe. Massey (2007) and Schierup et al. (2006) display similarities and differences in ethnic stratification on the two sides of the Atlantic, including the massive overrepresentation of dishonored populations behind bars.

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escaping the punitive policy snare, and a characterization of the distinctive shape and missions of the neoliberal state.

Three analytic breaks proved indispensable to diagnose the invention of a new government of social insecurity wedding supervisory "workfare" and castigatory "prisonfare," and to account for the punitive policy turn taken by the United States and other advanced societies following its lead onto the path of economic deregulation and welfare retrenchment in the closing decades of the twentieth century. The first consists in escaping the crime-and-punishment poke, which continues to straightjacket scholarly and policy debates on incarceration, even as the divorce of this familiar couple grows ever more barefaced.⁴ The second requires relinking social welfare and penal policies, inasmuch these two strands of government action toward the poor have come to be informed by the same behaviorist philosophy relying on deterrence, surveillance, stigma, and graduated sanctions to modify conduct. Welfare revamped as workfare and the prison stripped of its rehabilitative pretension now form a single organizational mesh flung at the same clientele mired in the fissures and ditches of the dualizing metropolis. They work jointly to invisibilize problem populations—by forcing them off the public aid rolls, on the one side, and holding them under lock, on the other—and eventually push them into the peripheral sectors of the booming secondary labor market. The third rupture involves overcoming the conventional opposition between materialist and symbolic approaches, descended from the emblematic figures of Karl Marx and Émile Durkheim, so as to heed and hold together the instrumental and the expressive functions of the penal apparatus.⁵ Weaving together concerns for control and communication, the management of dispossessed categories and the affirmation of salient social borders, makes it possible to go beyond an analysis couched in the language of prohibition to trace how the rolling out of the prison and its institutional tentacles (probation, parole, criminal databases, swirling discourses about crime, and a virulent culture of public denigration of offenders) has reshaped the sociosymbolic landscape and remade the state itself.

A single concept sufficed to effect those three breaks simultaneously: the notion of *bureaucratic field* developed by Pierre Bourdieu (1994) in his lecture course at the Collège de France in the early 1990s to rethink the state as the agency that monopolizes the legitimate use not only of material violence (as in

⁴ A simple statistic suffices to demonstrate this disconnect and reveals the futility of trying to explain rising incarceration by escalating crime: the United States held 21 prisoners for every 1,000 "index crimes" in 1975 compared to 113 convicts per 1,000 crimes in 2000, for an increase of 438%; for "violent crimes," the jump is from 231 to 922 convicts per 1,000 offenses, an increase of 299%. This means that the country became four to five times more punitive in a quarter-century *holding crime constant* (a lagged index turns up the same trend). See Wacquant (2009a:125–133) for further elaboration and Blumstein and Wallman (2000) and Western (2006:ch. 2) for different approaches leading to the same conclusion.

⁵ Garland (1989) dissects the materialist (Marxist) and symbolic (Durkheimian) lineages in the study of punishment and proposes that they, along with Foucault, Weber, and Elias, offer "resources to be drawn upon selectively rather than inviolable world-views which can only be swallowed whole" (1989:278).

Max Weber's well-known capsule), but also of symbolic violence, and shapes social space and strategies by setting the conversion rate between the various species of capital. In this article, I extend Bourdieu's formulation to draw out the theoretical underpinnings and implications of the model of the neoliberal government of social insecurity at century's dawn put forth in *Punishing the Poor*. In the first section, I revise Piven and Cloward's classic thesis on the regulation of poverty via public assistance and contrast penalization as a technique for the management of marginality in the dual metropolis with Michel Foucault's vision of the place of the prison in the "disciplinary society," David Garland's account of the crystallization of the "culture of control" in late modernity, and David Harvey's characterization of neoliberal politics and its proliferation on the world stage. In the second section, I build on these contrasts to elaborate a thick sociological specification of neoliberalism that breaks with the thin economic conception of neoliberalism as market rule that effectively echoes its ideology. I argue that a proactive penal system is not a deviation from, but a constituent component of, the neoliberal Leviathan, along with variants of supervisory workfare and the cultural trope of "individual responsibility." This suggests that we need to theorize the prison not as a technical implement for law enforcement, but as a core organ of the state whose selective and aggressive deployment in the lower regions of social space is constitutively injurious to the ideals of democratic citizenship.

WHEN WORKFARE JOINS PRISONFARE: THEORETICAL IMPLICATIONS

In *The Weight of the World* and related essays, Pierre Bourdieu proposes that we construe the state not as a monolithic and coordinated ensemble, but as a splintered space of forces vying over the definition and distribution of public goods, which he calls the "bureaucratic field."⁶ The constitution of this space is the end result of a long-term process of concentration of the various species of capital operative in a given social formation, and especially of "juridical capital as the objectified and codified form of symbolic capital," which enables the state to monopolize the official definition of identities, the promulgation of standards of conduct, and the administration of justice (Bourdieu, 1994:4, 9). In the contemporary period, the bureaucratic field is traversed by two internecine struggles. The first pits the "higher state nobility" of policymakers intent on promoting market-oriented reforms and the "lower state nobility" of executives attached to the traditional missions of

⁶ The concept is sketched analytically in Bourdieu (1994), illustrated in Bourdieu (1999), and deployed to probe the political production of the economy of single homes in France in Bourdieu (2005). Several issues of the journal *Actes de la recherche en sciences sociales* offer further cross-national empirical illustrations, including those on "The History of the State" (nos. 116 and 117, March 1997), "The Genesis of the State" (no. 118, June 1997), the transition "From Social State to Penal State" (no. 124, September 1998), and "Pacify and Punish" (nos. 173 and 174, June and September 2008).

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government. The second opposes what Bourdieu, riding off Hobbes's classic portrayal of the ruler, calls the "Left hand" and the "Right hand" of the state. The Left hand, the feminine side of Leviathan, is materialized by the "spendthrift" ministries in charge of "social functions"—public education, health, housing, welfare, and labor law—which offer protection and succor to the social categories shorn of economic and cultural capital. The Right hand, the masculine side, is charged with enforcing the new economic discipline via budget cuts, fiscal incentives, and economic deregulation.

By inviting us to grasp in a single conceptual framework the various sectors of the state that administer the life conditions and chances of the working class, and to view these sectors as enmeshed in relations of antagonistic cooperation as they vie for preeminence inside the bureaucratic field, this conception has helped us map the ongoing shift from the social to the penal treatment of urban marginality. In this regard, *Punishing the Poor* fills in a gap in Bourdieu's model by inserting the police, the courts, and *the prison as core constituents of the "Right hand"* of the state, alongside the ministries of the economy and the budget. It suggests that we need to bring penal policies from the periphery to the center of our analysis of the redesign and deployment of government programs aimed at coping with the entrenched poverty and deepening disparities spawned in the polarizing city by the discarding of the Fordist-Keynesian social compact (Musterd et al., 2006; Wilson, 1996; Wacquant, 2008a). The new government of social insecurity put in place in the United States and offered as model to other advanced countries entails both a shift from the social to the penal wing of the state (detectable in the reallocation of public budgets, personnel, and discursive precedence) and the colonization of the welfare sector by the panoptic and punitive logic characteristic of the postrehabilitation penal bureaucracy. The slanting of state activity from the social to the penal arm and the incipient penalization of welfare, in turn, partake of the *remasculinization of the state*, in reaction to the wide-ranging changes provoked in the political field by the women's movement and by the institutionalization of social rights antinomic to commodification. The new priority given to duties over rights, sanction over support, the stern rhetoric of the "obligations of citizenship," and the martial reaffirmation of the capacity of the state to lock the trouble-making poor (welfare recipients and criminals) "in a subordinate relation of dependence and obedience" toward state managers portrayed as virile protectors of the society against its wayward members (Young, 2005:16): all these policy planks pronounce and promote the transition from the kindly "nanny state" of the Fordist-Keynesian era to the strict "daddy state" of neoliberalism.

In their classic study *Regulating the Poor*, Frances Fox Piven and Richard Cloward forged a germinal model of the management of poverty in industrial capitalism. According to this model, the state expands or contracts its relief programs cyclically to respond to the ups and downs of the economy, the corresponding slackening and tightening of the labor market, and the bouts of social disruption that increased unemployment and destitution trigger

periodically among the lower class. Phases of welfare expansion serve to "mute civil disorders" that threaten established hierarchies, while phases of restriction aim to "enforce works norms" by pushing recipients back into the labor market (Piven and Cloward, 1993:xvi and passim). *Punishing the Poor* contends that, while this model worked well for the age of Fordist industrialism and accounts for the two major welfare explosions witnessed in the United States during the Great Depression and the affluent but turbulent 1960s, it has been rendered obsolete by the neoliberal remaking of the state over the past quarter-century. In the age of fragmented labor, hypermobile capital, and sharpening social inequalities and anxieties, the "central role of relief in the regulation of marginal labor and in the maintenance of social order" (Piven and Cloward, 1993:xviii) is displaced and duly supplemented by the vigorous deployment of the police, the courts, and the prison in the nether regions of social space. To the single oversight of the poor by the Left hand of the state succeeds the *double regulation of poverty by the joint action of punitive welfare-turned-workfare and an aggressive penal bureaucracy*. The cyclical alternation of contraction and expansion of public aid is replaced by the continual contraction of welfare and the runaway expansion of prisonfare.⁷

This organizational coupling of the Left hand and Right hand of the state under the aegis of the same disciplinary philosophy of behaviorism and moralism can be understood, first, by recalling the shared historical origins of poor relief and penal confinement in the chaotic passage from feudalism to capitalism. Both policies were devised in the long sixteenth century to "absorb and regulate the masses of discontented people uprooted" by this epochal transition (Piven and Cloward, 1993:21).⁸ Similarly, both policies were overhauled in the last two decades of the twentieth century in response to the socioeconomic dislocations provoked by neoliberalism: in the 1980s alone, in addition to reducing public assistance, California passed nearly 1,000 laws expanding the use of prison sentences; at the federal level, the 1996 reform that "ended welfare as we know it" was complemented by the sweeping Violent Crime Control and Law Enforcement Act of 1993 and bolstered by the No Frills Prison Act of 1995.

The institutional pairing of public aid and incarceration as tools for managing the unruly poor can also be understood by paying attention to the structural, functional, and cultural similarities between workfare and prisonfare as "people-processing institutions" targeted on kindred problem

⁷ By analogy with "welfare," I designate by "prisonfare" the policy stream through which the state gives a penal response to festering urban ills and sociomoral disorders, as well as the imagery, discourses, and bodies of lay and expert knowledge that accrete around the rolling out of the police, the courts, jails, and prisons, and their extensions (probation, parole, computerized databanks of criminal files, and the schemes of remote profiling and surveillance they enable). Penalization joins socialization and medicalization as the three alternative strategies whereby the state can opt to treat undesirable conditions and conduct (Wacquant, 2009a:16–17).

⁸ Piven and Cloward (1993:20, note 23) acknowledge penal expansion and activism in the sixteenth century in passing in the rich historical recapitulation of the trajectory of poor relief in early modern Europe in which they ground their investigation of the functions of welfare in the contemporary United States.

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populations (Hasenfeld, 1972). It has been facilitated by the transformation of welfare in a punitive direction and the activation of the penal system to handle more of the traditional clientele of assistance to the destitute—the incipient “penalization” of welfare matching the degraded “welfarization” of the prison. Their concurrent reform over the past 30 years has helped cement their organizational convergence, even as they have obeyed inverse principles. The gradual erosion of public aid and its revamping into workfare in 1996 has entailed restricting entry into the system, shortening “stays” on the rolls, and speeding up exit, resulting in a spectacular reduction of the stock of beneficiaries (it plummeted from nearly 5 million households in 1992 to under 2 million a decade later). Trends in penal policy have followed the exact opposite tack: admission into jail and prison has been greatly facilitated, sojourns behind bars lengthened, and releases curtailed, which has yielded a spectacular ballooning of the population under lock (it jumped by over 1 million in the 1990s). The operant purpose of welfare has shifted from passive “people processing” to active “people changing” after 1988 and especially after the abolition of AFDC in 1996, while the prison has traveled in the other direction, from aiming to reform inmates (under the philosophy of rehabilitation, hegemonic from the 1920s to the mid-1970s) to merely warehousing them (as the function of punishment was downgraded to retribution and neutralization).

The shared historical roots, organizational isomorphism, and operational convergence of the assistential and penitential poles of the bureaucratic field in the United States are further fortified by the fact that the social profiles of their beneficiaries are virtually identical. AFDC recipients and jail inmates both live near or below 50% of the federal poverty line (for one-half and two-thirds of them, respectively); both are disproportionately black and Hispanic (37% and 18% vs. 41% and 19%); the majority did not finish high school and are saddled with serious physical and mental disabilities interfering with their participation in the workforce (44% of AFDC mothers as against 37% of jail inmates). And they are closely bound to one another by extensive kin, marital and social ties, reside overwhelmingly in the same impoverished households and barren neighborhoods, and face the same bleak life horizon at the bottom of the class and ethnic structure.

Punishing the Poor avers not only that the United States has shifted from the single (welfare) to the double (social-cum-penal) regulation of the poor, but also that that “the stunted development of American social policy” skillfully dissected by Piven and Cloward (1993:409) stands in close causal and functional relation to America’s uniquely overgrown and hyperactive penal policy. *The misery of American welfare and the grandeur of American prison-fare at century’s turn are the two sides of the same political coin.* The generosity of the latter is in direct proportion to the stinginess of the former, and it expands to the degree that both are driven by moral behaviorism. The same structural features of the U.S. state—its bureaucratic fragmentation and ethnoracial skew, the institutional bifurcation between universalist “social insurance” and categorical “welfare,” and the market-buttressing cast of

assistance programs—that facilitated the organized atrophy of welfare in reaction to the racial crisis of the 1960s and the economic turmoil of the 1970s have also fostered the uncontrolled hypertrophy of punishment aimed at the same precarious population. Moreover, the “tortured impact of slavery and institutionalized racism on the construction of the American polity” has been felt, not only on the “underdevelopment” of public aid and the “decentralized and fragmented government and party system” that distributes it to a select segment of the dispossessed (Piven and Cloward, 1993:424–425), but also on the overdevelopment and stupendous severity of its penal wing. Ethnoracial division and the (re)activation of the stigma of blackness as dangerousness are key to explaining the initial atrophy and accelerating decay of the U.S. social state in the post civil rights epoch, on the one hand, and the astonishing ease and celerity with which the penal state arose on its ruins, on the other.⁹

Reversing the historical bifurcation of the labor and crime questions achieved in the late nineteenth century, *punitive containment as a government technique* for managing deepening urban marginality has effectively rejoined social and penal policy at the close of the twentieth century. It taps the diffuse social anxiety coursing through the middle and lower regions of social space in reaction to the splintering of wage work and the resurgence of inequality, and converts it into popular animus toward welfare recipients and street criminals cast as twin detached and defamed categories that sap the social order by their dissolute morality and dissipated behavior and must therefore be placed under severe tutelage. The new government of poverty invented by the United States to enforce the normalization of social insecurity thus gives a whole new meaning to the notion of “poor relief”: punitive containment offers relief not to the poor but from the poor by forcibly “disappearing” the most disruptive of them, from the shrinking welfare rolls on the one hand and into the swelling dungeons of the carceral castle on the other.

Michel Foucault (1977) has put forth the single most influential analysis of the rise and role of the prison in capitalist modernity, and it is useful to set my thesis against the rich tapestry of analyses he has stretched and stimulated. I concur with the author of *Discipline and Punish* that penalty is a protean force that is eminently fertile and must be given pride of place in the study of contemporary power.¹⁰ While its originary medium resides in the application of legal coercion to enforce the core strictures of the sociomoral order,

⁹ The catalytic role of ethnoracial division in the remaking of the state after the junking of the Fordist-Keynesian social compact and the collapse of the dark ghetto is analyzed in full in my book *Deadly Symbiosis: Race and the Rise of the Penal State* (Wacquant, 2010). The depth and rigidity of racial partition is a major factor behind the abyssal gap between the incarceration rates of the United States and European Union, just as it explains their divergent rates of poverty (Alesina and Glaeser, 2004).

¹⁰ Foucault's writings on incarceration are dispersed and multifaceted, comprising some 60 texts written over 15 years cutting across disciplinary domains and serving manifold purposes from the analytic to the political, and it is not possible to consider them in their richness and complexity here (these are captured by Boullant [2003]). Instead, I focus on the canonical tome, *Surveiller et punir. Naissance de la prison* (Foucault, 1975). I give my own translation with page references to the original French edition, followed by the pagination in the U.S. edition.

punishment must be viewed not through repression, but by recourse to the new. The out of the penal state has indeed emerged novel administrative bodies and governance associated forms of knowledge across (Wacquant, 2008b). But, from here, Foucault's view of the emergence of the state at least four ways.

To start with, Foucault erred in his view of Disciplines. Disciplines may have diversified across the society, but the state has not lost its historical stage and “lost its raison d'être.” On the contrary, penal confinement has reaffirmed itself among the central mechanisms of the state. His followers were forecasting its decline and the consolidation of the 1800s. The third “age of confinement” that he forewarned about in 1990. Next, while disciplinary technologies have no doubt created a more elaborate and voracious carceral system of order and elaborate time schedules, nonidleness and control of the body: these techniques have rendered wholly impracticable by overpopulation, bureaucratic rigidity, indifference if not hostility of penal institutions, of the *dressage* (“training” or “taming”) of productive bodies” postulated by Foucault toward brute neutralization, rote discipline by default if not by design. If there are “orthopedists of individuality” at work today (Foucault, 1977: 301/294), they are the agents of corrections.

In the third place, “devices of control” in the institution have not spread through society, irrigating the entire body social. Instead, under neoliberalism has been remarkable bursts of corporate crime (epitome of the late 1980s and the folding of the state) essentially the denizens of the lower class. Indeed, the fact that the social order has been maintained, nay reinforced, a

¹¹ This is particularly glaring in the county of Los Angeles (Bureau of Prisons), the California Department of Corrections (the state packs 170,000 convicts in 33 prisons). Dysfunction combine to make a mockery of

punishment must be viewed not through the narrow and technical prism of repression, but by recourse to the notion of production. The assertive rolling out of the penal state has indeed engendered new categories and discourses, novel administrative bodies and government policies, fresh social types, and associated forms of knowledge across the criminal and social welfare domains (Wacquant, 2008b). But, from here, my argument diverges sharply from Foucault's view of the emergence and functioning of the punitive society in at least four ways.

To start with, Foucault erred in spotting the retreat of the penitentiary. Disciplines may have diversified and metastasized to thrust sinewy webs of control across the society, but the prison has not for that receded from the historical stage and "lost its *raison d'être*" (Foucault, 1977:304–305/297–298). On the contrary, penal confinement has made a stunning comeback and reaffirmed itself among the central missions of Leviathan just as Foucault and his followers were forecasting its demise. After the founding burst of the 1600s and the consolidation of the 1800s, the turn of the present century ranks as the third "age of confinement" that penologist Thomas Mathiesen (1990) forewarned about in 1990. Next, whatever their uses in the eighteenth century, disciplinary technologies have *not* been deployed inside the overgrown and voracious carceral system of our *fin de siècle*. Hierarchical classification, elaborate time schedules, nonidleness, close-up examination and the regimentation of the body: these techniques of penal "normalization" have been rendered wholly impracticable by the demographic chaos spawned by overpopulation, bureaucratic rigidity, resource depletion, and the studious indifference if not hostility of penal authorities toward rehabilitation.¹¹ In lieu of the *dressage* ("training" or "taming") intended to fashion "docile and productive bodies" postulated by Foucault, the contemporary prison is geared toward brute neutralization, rote retribution, and simple warehousing—by default if not by design. If there are "engineers of consciousness" and "orthopedists of individuality" at work in the mesh of disciplinary powers today (Foucault, 1977: 301/294), they surely are not employed by departments of corrections.

In the third place, "devices for normalization" anchored in the carceral institution have *not* spread throughout the society, in the manner of capillaries irrigating the entire body social. Rather, the widening of the penal dragnet under neoliberalism has been remarkably discriminating: in spite of conspicuous bursts of corporate crime (epitomized by the Savings and Loans scandal of the late 1980s and the folding of Enron a decade later), it has affected essentially the denizens of the lower regions of social and physical space. Indeed, the fact that the social and ethnoracial selectivity of the prison has been maintained, nay reinforced, as it vastly enlarged its intake demonstrates

¹¹ This is particularly glaring in the country's second largest carceral system (after the Federal Bureau of Prisons), the California Department of Corrections, in which grotesque overcrowding (the state packs 170,000 convicts in 33 prisons designed to hold 85,000) and systemic bureaucratic dysfunction combine to make a mockery of any pretense at "rehabilitation" (Petersilia, 2008).

that penalization is not an all-encompassing master logic that blindly traverses the social order to bend and bind its various constituents. On the contrary: it is a skewed technique proceeding along sharp gradients of class, ethnicity, and place, and it operates to divide populations and to differentiate categories according to established conceptions of moral worth. At the dawn of the twenty-first century, America's urban (sub)proletariat lives in a "punitive society," but its middle and upper classes certainly do not. Similarly, efforts to import and adapt U.S.-style slogans and methods of law enforcement—such as zero tolerance policing, mandatory minimum sentencing, or boot camps for juveniles—in Europe have been trained on lower-class and immigrant offenders relegated in the defamed neighborhoods at the center of the panic over "ghettoization" that has swept across the continent over the past decade (Wacquant, 2009b).

Lastly, the crystallization of *law-and-order pornography*, that is, the accelerating inflection and inflation of penal activity conceived, represented, and implemented for the primary purpose of being displayed in ritualized form by the authorities—the paradigm for which is the half-aborted reintroduction of chain gangs in striped uniforms—suggests that news of the death of the "spectacle of the scaffold" has been greatly exaggerated. The "redistribution" of "the whole economy of punishment" (Foucault, 1977:13/7) in the post-Fordist period has entailed not its disappearance from public view as proposed by Foucault, but its institutional relocation, symbolic elaboration, and social proliferation beyond anything anyone envisioned when *Discipline and Punish* was published. In the past quarter-century, a whole galaxy of novel cultural and social forms, indeed a veritable industry trading on representations of offenders and law enforcement, has sprung forth and spread. The theatricalization of penalty has migrated from the state to the commercial media and the political field *in toto*, and it has extended from the final ceremony of sanction to encompass the full penal chain, with a privileged place accorded to police operations in low-income districts and courtroom confrontations around celebrity defendants. The Place de grève, where the regicide Damiens was famously quartered, has thus been supplanted not by the Panopticon but by Court TV and the profusion of crime-and-punishment "reality shows" that have inundated television (*Cops*, *911*, *America's Most Wanted*, *American Detective*, *Bounty Hunters*, *Inside Cell Block F*, etc.), not to mention the use of criminal justice as fodder for the daily news and dramatic series (*Law and Order*, *CSI*, *Prison Break*, etc.). So much to say that the prison did not "replace" the "social game of the signs of punishment and the garrulous feast that put them in motion" (Foucault, 1977:134/131). Rather, it now serves as its institutional canopy. Everywhere the law-and-order *guignol* has become a core civic theater onto whose stage elected officials prance to dramatize moral norms and display their professed capacity for decisive action, thereby reaffirming the political relevance of Leviathan at the very moment when they organize its powerlessness with respect to the market.

This brings us to the question of the political proceeds of penalization, a theme central to David Garland's book *The Culture of Control*, the most

sweeping and stimulative account forth since Foucault.¹² Acco-
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¹² Since its publication in 2001, Garland's "culture of control" (e.g., Garland, 2004), revising space and consistency, I concentrate on the elements that contrast Garland's "punitivity" with the analysis of neoliberalism. For instance, Garland's analysis of adaptations to the "high-crime society" is irrelevant to the characterization of crime in France and Italy.

¹³ See Shea (2009) for a comparison of crime in France and Italy.

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sweeping and stimulative account of the nexus of crime and social order put forth since Foucault.¹² According to Garland, “the distinctive social, economic, and cultural arrangements of late modernity” have fashioned a “new collective experience of crime and insecurity,” to which the authorities have given a reactionary interpretation and a bifurcated response combining practical adaptation via “preventative partnerships” and hysterical denial through “punitive segregation” (Garland, 2001:139–147 and *passim*). The ensuing reconfiguration of crime control bespeaks the inability of rulers to regiment individuals and normalize contemporary society, and its very disjointedness has made glaring to all the “limits of the sovereign state.” For Garland, the “culture of control” coalescing around the “new criminological predicament” pairing high crime rates with the acknowledged limitations of criminal justice both marks and masks a political failing. On the contrary, *Punishing the Poor* asserts that punitive containment has proved to be a remarkably successful political strategy: far from “eroding one of the foundational myths of modern society,” which holds that “the sovereign state is capable of delivering law and order” (Garland, 2001:109), it has revitalized it. This is true not only in the United States, where the leaders of both parties have reached complete consensus over the benefits of punitive penal policies targeted at the inner city (Chih Lin, 1998), but also in Europe: Blair in the United Kingdom, Berlusconi in Italy, and Chirac and Sarkozy in France have all parlayed their martial images of stern “crime fighters” intent to clean up the streets into victories at the polls.¹³

By elevating criminal safety (*sécurité*, *Sicherheit*, *sicurezza*, etc.) to the frontline of government priorities, state officials have condensed the diffuse class anxiety and simmering ethnic resentment generated by the unraveling of the Fordist-Keynesian compact and channeled them toward the (dark-skinned) street criminal, designated as guilty of sowing social and moral disorder in the city, alongside the profligate welfare recipient. Rolling out the penal state and coupling it with workfare has given the high state nobility an effective tool to both foster labor deregulation and contain the disorders that economic deregulation provokes in the lower rungs of the sociospatial hierarchy. Most importantly, it has allowed politicians to make up for the deficit of legitimacy that besets them whenever they curtail the economic support and social protections traditionally granted by Leviathan. *Contra* Garland, then, I find that the penalization of urban poverty has served well as a vehicle for the

¹² Since its publication in 2001, Garland has engaged in extensive debates on the “culture of control” (e.g., Garland, 2004), revising and qualifying his thesis on multiple fronts. For reasons of space and consistency, I concentrate on the model presented in the book and spotlight those elements that contrast Garland’s portrayal of the crime-and-punishment duet in “late modernity” with the analysis of neoliberal penalization offered in *Punishing the Poor* (I do not discuss, for instance, Garland’s analysis of “shifts in private behaviors” spurred by cultural adaptations to the “high-crime society” by households, businesses, victims, etc., as these are irrelevant to the characterization of the penal state proper).

¹³ See Shea (2009) for a comparison of the electoral success of law-and-order campaigns in France and Italy.

ritual reassertion of the sovereignty of the state in the narrow, theatricalized domain of law enforcement that it has prioritized *for that very purpose*, just when the same state is conceding its incapacity to control flows of capital, bodies, and signs across its borders. This divergence of diagnosis, in turn, points to three major differences between our respective dissections of the punitive drift in First-world countries.

First, the fast and furious bend toward penalization observed at the *fin de siècle* is not a response to *criminal* insecurity but to *social* insecurity. To be more precise, the currents of social anxiety that roil advanced society are rooted in *objective* social insecurity among the postindustrial working class, whose material conditions have deteriorated with the diffusion of unstable and underpaid wage labor shorn of the usual social "benefits," and *subjective* insecurity among the middle classes, whose prospects for smooth reproduction or upward mobility have dimmed as competition for valued social positions has intensified and the state has reduced its provision of public goods. Garland's notion that "high rates of crime have become a normal social fact—a routine part of modern consciousness, an everyday risk to be assessed and managed" by "the population at large," and especially by the middle class, is belied by victimization studies. Official statistics show that law breaking in the United States declined or stagnated for 20 years after the mid-1970s before falling precipitously in the 1990s, while exposure to violent offenses varied widely by location in social and physical space (Wacquant, 2009b:144–147). Relatedly, European countries sport crime rates similar to or higher than that of the United States (except for the two specific categories of assault and homicide, which compose but a tiny fraction of all offenses), and yet they have responded quite differently to criminal activity, with rates of incarceration one-fifth to one-tenth the American rate even as they have risen.

This takes us to the second difference: for Garland the reaction of the state to the predicament of high crime and low justice efficiency has been disjointed and even schizoid, whereas I have stressed its overall coherence. However, this coherence becomes visible only when the analytic compass is fully extended *beyond the crime-punishment box and across policy realms* to link penal trends to the socioeconomic restructuring of the urban order, on the one side, and to join workfare to prisonfare, on the other. What Garland characterizes as "the structured ambivalence of the state's response" is not so much ambivalence as a predictable organizational division in the labor of management of the disruptive poor. Bourdieu's theory of the state is helpful here in enabling us to discern that the "adaptive strategies" recognizing the state's limited capacity to stem crime by stressing prevention and devolution are pursued in the penal sector of the *bureaucratic* field, while what Garland calls the "nonadaptive strategies" of "denial and acting out" to reassert that very capacity operate in the *political* field, especially in its relation to the journalistic field.¹⁴

¹⁴ The analytic and historical differentiation of the political from the bureaucratic field, and their respective locations inside the field of power, is discussed in Wacquant (2005:esp 6–7, 14–17, 142–146).

Third, like other Jock Young (1999), F. Tonry (2004), Garland, and right-wing politicians, I think of poverty as not a situational innovation and of neoconservative policy as not one that was employed and refined. Indeed, the president who was elected in 1980 in U.S. history is not Reagan; across the Atlantic, it is the German Chancellor Helmut Kohl, not Helmut Schmidt. In France, it is Jacques Chirac, not François Mitterrand. In Germany, Jospin in France, not Helmut Kohl in Germany, negotiated the shift from social democracy to neoconservatism. This is not a new *modernity but neoliberalism*, and it is the politicians of the Right who have shaped it.

The jumble of trends of late modernity—the "market exchange," shift in urban ecology and culture, and mass media, the "democratization" of politics—increasingly vague and loosely defined over the decades of the twentieth century—has produced their most pronounced effects in Europe that have *not* been matched in the United States.¹⁵ Moreover, the overall trend is not revolutionary, whereas the recent changes are.

Punishing the Poor is about "the open, porous, porous" (Garland, 2001:165) that has been perceived as undesirable. It is a specific *social* insecurity, the hardening of class division and hierarchy guaranteeing the expansion and consensus in the United States and not a culturally reactive

¹⁵ Read the extended analysis of Finland, Sweden, and Norway for social equality and welfare of Scandinavia to neoliberalism. The thesis is Canada, which is not low and stable over time (100,000 residents between 1980 and 1990 per 100,000).

Third, like other leading analysts of contemporary punishment such as Jock Young (1999), Franklin Zimring (Zimring et al., 2001), and Michael Tonry (2004), Garland sees the punitive turn as the reactionary spawn of right-wing politicians. But *Punishing the Poor* finds, first, that the penalization of poverty is not a simple return to a past state of affairs but a genuine institutional innovation and, second, that it is by no means the exclusive creature of neoconservative politics. If politicians of the Right invented the formula, it was employed and refined by their centrist and even "progressive" rivals. Indeed, the president who oversaw by far the biggest increase in incarceration in U.S. history is not Ronald Reagan but William Jefferson Clinton. Across the Atlantic, it is the Left of Blair in the United Kingdom, Schröder in Germany, Jospin in France, d'Alema in Italy, and Gonzalez in Spain who negotiated the shift to proactive penalization, not their conservative predecessors. This is because the root cause of the punitive turn is *not late modernity but neoliberalism*, a project that can be indifferently embraced by politicians of the Right or the Left.

The jumble of trends that Garland gathers under the umbrella term of late modernity—the "modernizing dynamic of capitalist production and market exchange," shifts in household composition and kinship ties, changes in urban ecology and demography, the disenchanting impact of the electronic media, the "democratization of social life and culture"—are not only exceedingly vague and loosely correlated; they are either not peculiar to the closing decades of the twentieth century, specific to the United States, or show up in their most pronounced form in the social-democratic countries of Northern Europe that have *not* been submerged by the international wave of penalization.¹⁵ Moreover, the onset of late modernity has been gradual and evolutionary, whereas the recent permutations of penalty have been abrupt and revolutionary.

Punishing the Poor contends that it is not the generic "risks and anxieties" of "the open, porous, mobile society of strangers that is late modernity" (Garland, 2001:165) that have fostered retaliation against lower-class categories perceived as undeserving and deviant types seen as irrecoverable, but the specific *social* insecurity generated by the fragmentation of wage labor, the hardening of class divisions, and the erosion of the established ethnoracial hierarchy guaranteeing an effective monopoly over collective honor to whites in the United States and to nationals in the European Union. The sudden expansion and consensual exaltation of the penal state after the mid-1970s is not a culturally reactionary reading of "late modernity," but a ruling-class

¹⁵ Read the extended analysis of the sociopolitical foundations of the "penal exceptionalism" of Finland, Sweden, and Norway by John Pratt (2008a,b), in which the cultural commitment to social equality and welfare state security play a pivotal role, as they do in the sturdy resistance of Scandinavia to neoliberal nostrums. Another notable anomaly for the "culture of control" thesis is Canada, which is as "late modern" as the United States and yet has kept its incarceration low and stable over the past three decades (it even decreased from 123 to 108 inmates per 100,000 residents between 1991 and 2004, while the U.S. rate zoomed from 360 to 710 inmates per 100,000).

response aiming to redefine the perimeter and missions of Leviathan so as to establish a new economic regime based on capital hypermobility and labor flexibility and to curb the social turmoil generated at the foot of the urban order by the public policies of market deregulation and social welfare retrenchment that are core building blocks of neoliberalism.

TOWARD A SOCIOLOGICAL SPECIFICATION OF NEOLIBERALISM

The invention of the double regulation of the insecure fractions of the postindustrial proletariat via the wedding of social and penal policy at the bottom of the polarized class structure is a major *structural innovation* that takes us beyond the model of the welfare-poverty nexus elaborated by Piven and Cloward just as the Fordist-Keynesian regime was coming unglued. The birth of this institutional contraption is also not captured by Michel Foucault's vision of the "disciplinary society" or by David Garland's notion of the "culture of control," neither of which can account for the unforeseen timing, steep socioethnic selectivity, and peculiar organizational path of the abrupt turnaround in penal trends in the closing decades of the twentieth century. For the punitive containment of urban marginality through the simultaneous rolling back of the social safety net and the rolling out of the police-and-prison dragnet and their knitting together into a carceral-assistential lattice is not the spawn of some broad societal trend—whether it be the ascent of "biopower" or the advent of "late modernity"—but, at bottom, an exercise in *state crafting*. It partakes of the correlative revamping of the perimeter, missions, and capacities of public authority on the economic, social welfare, and penal fronts. This revamping has been uniquely swift, broad, and deep in the United States, but it is in progress—or in question—in all advanced societies submitted to the relentless pressure to conform to the U.S. pattern.

Consider trends in France: in recent years the country has eased strictures on part-time employment as well as limitations on night-time and weekend work. Its governments of both Left and Right have actively supported the development of short-term contracts, temporary jobs, and underpaid traineeships, and expanded the latitude of employers in hiring, firing, and the use of overtime. The result is that the number of precarious wage earners has risen from 1.7 million in 1992 to 2.8 million in 2007—or from 8.6% to 12.4% of the employed workforce (Maurin and Savidan, 2008). In June 2009, France instituted the RSA (Revenu de solidarité active), set to gradually replace the RMI (Revenu minimum d'insertion, the guaranteed minimum income grant provided to some 1.3 million), a program designed to push public aid recipients into the low-wage labor market via state subsidies to poor workers premised on the obligation to accept employment (Grandquillot, 2009). Simultaneously, the oversight of unemployment benefits is being farmed out to private firms, which can terminate beneficiaries who reject two job offers and receive a financial bonus for each recipient they place in a job. On the penal

front, accelerating the punitive Jospin in 1998–2002, the successes have adopted sweeping measures policing centered on low-income recourse to incarceration for streetization of corporate crime), plea for low-level delinquents, mandatory annual targets for the expulsion of civil commitment of certain categories, their sentence. The country's budgeted 22,000 guards confining 24,000 guards and 64,000 inmates.

Tracking the roots and mechanisms of hyperincarceration opens a unique window on the Leviathan. It leads us to articulate *the penal apparatus is a core organ* instrumental in imposing categories and molding relations and behaviors and physical space. The police, the appendages for the enforcement of order, but vehicles for the political project of the deprived and defamed social order (Wacquant, 2008b). Students of Elias to Charles Tilly to Gianfranco Polization of force, and thus the policing, judging, and punishing society, was central to the building of the neoliberal era notice that the Keynesian social compact has been fostering international competitiveness (Jessop, 1994; Levy 2008). Most distinctively, the forceful reorganization of a pornographic and managerialist

Indeed, the second thesis of the ongoing capitalist "revolution" entails the enlargement and expropriation of the field, so that the state may check the diffusion of social insecurity in the city as well as assuage popular demands for economic and social duties. Neoliberal "culture of control" remains an old fact that "control is now being exercised with the singular and startling extension of the domain most of today's major emphasis supplied). The neoliberal

front, accelerating the punitive turn taken by the Socialist government of Jospin in 1998–2002, the successive administrations of Chirac and Sarkozy have adopted sweeping measures of penal expansion (Bonelli, 2008): intensified policing centered on low-income districts, youth night curfews, enlarged recourse to incarceration for street crimes (in sharp contrast to the depenalization of corporate crime), plea bargaining and accelerated judicial processing for low-level delinquents, mandatory minimum sentences for youth recidivists, annual targets for the expulsion of undocumented migrants, and the indefinite civil commitment of certain categories of sex offenders after they have served their sentence. The country's budget for corrections jumped from 1.4 billion euros for 22,000 guards confining 48,000 inmates in 2001 to 2 billion euros for 24,000 guards and 64,000 inmates in 2009.

Tracking the roots and modalities of America's stupendous drive to hyperincarceration opens a unique route into the *sanctum* of the neoliberal Leviathan. It leads us to articulate two major theoretical claims. The first is that *the penal apparatus is a core organ of the state*, expressive of its sovereignty and instrumental in imposing categories, upholding material and symbolic divisions, and molding relations and behaviors through the selective penetration of social and physical space. The police, the courts, and the prison are not mere technical appendages for the enforcement of lawful order (as criminology would have it), but vehicles for the political production of reality and for the oversight of deprived and defamed social categories and their reserved territories (Wacquant, 2008b). Students of early modern state formation, from Norbert Elias to Charles Tilly to Gianfranco Poggi, fully recognized that the monopolization of force, and thus the construction of a bureaucratic machinery for policing, judging, and punishing miscreants capable of minimally pacifying society, was central to the building of Leviathan. It is high time that students of the neoliberal era notice that the remaking of the state after the breakup of the Keynesian social compact has entailed not only renewed activity aimed at fostering international competitiveness, technological innovation, and labor flexibility (Jessop, 1994; Levy 2006; Streeck and Thelen, 2005) but also, and most distinctively, the forceful reassertion of its penal mission henceforth set in a pornographic and managerialist key.

Indeed, the second thesis advanced by *Punishing the Poor* is that the ongoing capitalist "revolution from above," commonly called *neoliberalism*, entails the enlargement and exaltation of the penal sector of the bureaucratic field, so that the state may check the social reverberations caused by the diffusion of social insecurity in the lower rungs of the class and ethnic hierarchy as well as assuage popular discontent over the dereliction of its traditional economic and social duties. Neoliberalism readily resolves what for Garland's "culture of control" remains an enigmatic paradox of late modernity, namely, the fact that "control is now being re-emphasized in every area of social life—with the singular and startling exception of the economy, from whose deregulated domain most of today's major risks routinely emerge" (Garland, 2001:165, emphasis supplied). The neoliberal remaking of the state also explains the

steep class, ethnoracial, and spatial bias stamping the simultaneous retraction of its social bosom and expansion of its penal fist: the populations most directly and adversely impacted by the convergent revamping of the labor market and public aid turn out also to be the privileged "beneficiaries" of the penal largesse of the authorities. This is true in the United States where the carceral boom has corralled (sub)proletarian blacks trapped in the bare hyperghetto. It is also the case in Western Europe, where the primary clientele of the expanding prison is composed of precarious workers and the unemployed, postcolonial migrants, and lower-class addicts and derelicts (Wacquant, 2009b:87-102).

Finally, neoliberalism correlates closely with the international diffusion of punitive policies in both the welfare and the criminal domains. It is not by accident that the advanced countries that have imported, first, workfare measures designed to buttress the discipline of desocialized wage work and, then, variants of U.S.-style criminal justice measures are the Commonwealth nations that also pursued aggressive policies of economic deregulation inspired by the "free-market" nostrums come from the United States, whereas the countries that remained committed to a strong regulatory state curbing social insecurity have best resisted the sirens of "zero tolerance" policing and "prison works."¹⁶ Similarly, societies of the Second world, such as Brazil, Argentina, and South Africa, which adopted super-punitive penal planks inspired by U.S. developments in the 1990s and saw their prison populations soar as a result, did so not because they had at long last reached the stage of "late modernity," but because they have taken the route of market deregulation and state retrenchment.¹⁷ But to discern these multilevel connections between the upsurge of the punitive Leviathan and the spread of neoliberalism, it is necessary to develop a precise and broad conception of the latter. Instead of discarding neoliberalism, as Garland (2001:77) does, on account of it being "rather too specific" a phenomenon to account for penal escalation, we must expand our conception of it, and move from an economic to a fully sociological understanding of the phenomenon.

Neoliberalism is an elusive and contested notion, a hybrid term awkwardly suspended between the lay idiom of political debate and the technical terminology of social science, which moreover is often invoked without clear referent. Whether singular or polymorphous, evolutionary or revolutionary, the prevalent conception of neoliberalism is essentially *economic*: it stresses an array of market-friendly policies such as labor deregulation, capital mobility, privatization, a monetarist agenda of deflation and financial autonomy, trade

¹⁶ In a major comparative study of the linkages between penal policy and political economy in 12 contemporary capitalist countries, Cavadino and Dignan (2006) find that the nations they characterize as neoliberal (as distinct from conservative corporatist, social democratic, and oriental corporatist) are consistently more punitive and have become much more so in the past two decades.

¹⁷ The international diffusion of "made in USA" penal categories and policies and its springs are treated at length in *Prisons de Poverty* (Wacquant, 2009b). For further analyses of this near-planetary spread, read Jones and Newburn (2006) as well as Andreas and Nadelmann (2006).

liberalization, interplace con expenditures.¹⁸ But this con sely bound up with the seri ism. We need to reach beyo notion that identifies the ins which neoliberal tenets are b

A minimalist sociologic Neoliberalism is a *transnatio* market, state, and citizensh bal ruling class in the makin transnational firms, high-ra of multinational organizatio European Union), and cultu them economists, lawyers, training and mental categor the reassertion of the prerog place, but the close articulatio

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¹⁸ This is the common core one across the disciplines, among wh for sociology, Campbell and Pe (2001) for anthropology, Brenne (2004) for economics.

liberalization, interplace competition, and the reduction of taxation and public expenditures.¹⁸ But this conception is thin and incomplete, as well as too closely bound up with the sermonizing discourse of the advocates of neoliberalism. We need to reach beyond this economic nucleus and elaborate a thicker notion that identifies the institutional machinery and symbolic frames through which neoliberal tenets are being actualized.

A minimalist sociological characterization can now be essayed as follows. Neoliberalism is a *transnational political project* aiming to remake the nexus of market, state, and citizenship from above. This project is carried by a new global ruling class in the making, composed of the heads and senior executives of transnational firms, high-ranking politicians, state managers and top officials of multinational organizations (the OECD, WTO, IMF, World Bank, and the European Union), and cultural-technical experts in their employ (chief among them economists, lawyers, and communications professionals with germane training and mental categories in the different countries). It entails not simply the reassertion of the prerogatives of capital and the promotion of the market-place, but the close articulation of four institutional logics.

1. *Economic deregulation*, that is, reregulation aimed at promoting "the market" or market-like mechanisms as the optimal device not only for guiding corporate strategies and economic transactions (under the aegis of the shareholder-value conception of the firm), but for organizing the gamut of human activities, including the private provision of core public goods, on putative grounds of efficiency (implying deliberate disregard for distributive issues of justice and equality).
2. *Welfare state devolution, retraction, and recomposition* designed to facilitate the expansion and support the intensification of commodification and, in particular, to submit reticent individuals to desocialized wage labor via variants of "workfare" establishing a quasi-contractual relationship between the state and lower-class recipients, treated not as citizens but as clients or subjects (stipulating their behavioral obligations as condition for continued public assistance).
3. *An expansive, intrusive, and proactive penal apparatus* that penetrates the nether regions of social and physical space to contain the disorders and disarray generated by diffusing social insecurity and deepening inequality, to unfurl disciplinary supervision over the precarious fractions of the postindustrial proletariat, and to reassert the authority of Leviathan so as to bolster the evaporating legitimacy of elected officials.
4. *The cultural trope of individual responsibility*, which invades all spheres of life to provide a "vocabulary of motive"—as C. Wright Mills would say—for the construction of the self (on the model of the

¹⁸ This is the common core one can extract from a vast (and uneven) literature on the topic across the disciplines, among which can be singled out the pointed analyses of Fligstein (2001) for sociology, Campbell and Pedersen (2001) for political economy, Comaroff and Comaroff (2001) for anthropology, Brenner and Theodore (2002) for geography, and Duménil and Lévy (2004) for economics.

entrepreneur), the spread of markets and legitimization for the widened competition it subtends, the counterpart of which is the evasion of corporate liability and the proclamation of state irresponsibility (or sharply reduced accountability in matters social and economic).

A central *ideological* tenet of neoliberalism is that it entails the coming of "small government": the shrinking of the allegedly flaccid and overgrown Keynesian welfare state and its makeover into a lean and nimble workfare state, which "invests" in human capital and "activates" communal springs and individual appetites for work and civic participation through "partnerships" stressing self-reliance, commitment to paid work, and managerialism. *Punishing the Poor* demonstrates that the neoliberal state turns out to be quite different *in actuality*: while it embraces *laissez-faire* at the top, releasing restraints on capital and expanding the life chances of the holders of economic and cultural capital, it is anything but *laissez-faire* at the bottom. Indeed, when it comes to handling the social turbulence generated by deregulation and to impressing the discipline of precarious labor, the new Leviathan reveals itself to be fiercely interventionist, bossy, and pricey. The soft touch of libertarian proclivities favoring the upper class gives way to the hard edge of authoritarian oversight, as it endeavors to direct, nay dictate, the behavior of the lower class. "Small government" in the economic register thus begets "big government" on the twofold front of workfare and criminal justice. Between 1982 and 2001, the United States increased its public expenditures for police, criminal courts, and corrections by 364% (from \$36 to \$167 billion, or 165% in constant dollars of 2000) and added nearly 1 million justice staff. In 1996, when "welfare reform" replaced the right to public aid by the obligation to accept insecure employment as a condition of support, the budget for corrections exceeded the overall sums allocated to AFDC and food stamps, the country's two main assistance programs. That same year, corrections vaulted to third largest employment in the land after Manpower Incorporated and Wal-Mart (see Wacquant, 2009a:152–161). The results of America's grand experiment in creating the first society of advanced insecurity in history are in: *the invasive, expansive, and expensive penal state is not a deviation from neoliberalism but one of its constituent ingredients.*

Remarkably, this is a side of neoliberalism that has been obfuscated or overlooked by its apologists and detractors alike. This blind spot is glaring in Anthony Giddens's celebrated reformulation of neoliberal imperatives into the platform of New Labour. In his manifesto for *The Third Way*, Giddens (1999) highlights high rates of crime in deteriorating working-class districts as an indicator of "civic decline" and curiously blames the Keynesian welfare state for it (not deindustrialization and social retrenchment): "The egalitarianism of the old left was noble in intent, but as its rightist critics say has sometimes led to perverse consequences—visible, for instance, in the social engineering that has left a legacy of decaying, crime-ridden housing estates." He makes "preventing crime, and reducing fear of crime" through state-locality partnerships central to

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"community regeneration," and he embraces the law-and-order mythology of "broken windows": "One of the most significant innovations in criminology in recent years has been the discovery [sic] that the decay of day-to-day civility relates directly to criminality. ... Disorderly behavior unchecked signals to citizens that the area is unsafe" (Giddens, 1999:16, 78–79, 87–88). But Giddens studiously omits the punishment side of the equation: *The Third Way* contains not a single mention of the prison and glosses over the judicial hardening and carceral boom that have everywhere accompanied the kind of economic deregulation and welfare devolution it promotes. This omission is particularly startling in the case of Britain, since the incarceration rate of England and Wales jumped from 88 inmates per 100,000 residents in 1992 to 150 per 100,000 in 2008, even as crime receded continually for the first 10 years of that period (Hough and Mayhew, 2004), with Anthony Blair presiding over the single largest absolute increase of the convict population during a prime ministership in the country's history—matching the feat of Clinton, his co-sponsor of the "Third Way" on the other side of the Atlantic.

A similar oversight of the centrality of the penal institution to the new government of social insecurity is found in the works of eminent critics of neoliberalism. David Harvey's (2005) extended characterization of "the neoliberal state" in his *Brief History of Neoliberalism* is a case in point, which appositely spotlights the obdurate limitations of the traditional political economy of punishment that *Punishing the Poor* strives to overcome. For Harvey, neoliberalism aims at maximizing the reach of market transactions via "deregulation, privatization, and withdrawal of the state from many areas of social provision." As in previous eras of capitalism, the task of Leviathan is "to facilitate conditions for profitable capital accumulation on the part of both domestic and foreign capital," but now this translates into penal expansion: "The neoliberal state will resort to coercive legislation and policing tactics (anti-picketing rules, for instance) to disperse or repress collective forms of opposition to corporate power *The coercive arm of the state is augmented to protect corporate interests and, if necessary, to repress dissent.* None of this seems consistent with neoliberal theory" (Harvey, 2005:2–3, 77, respectively, emphases supplied).

With barely a few passing mentions of the prison and not one line on workfare, Harvey's account of the rise of neoliberalism is woefully incomplete. His conception of the neoliberal state turns out to be surprisingly restricted, first, because he remains wedded to the repressive conception of power, instead of construing the manifold missions of penalty through the expansive category of production. Subsuming penal institutions under the rubric of coercion leads him to ignore the expressive function and ramifying material effects of the law and its enforcement, which are to generate controlling images and public categories, to stoke collective emotions, and accentuate salient social boundaries, and well as to activate state bureaucracies so as to mold social ties and strategies. Next, Harvey portrays this repression as aimed at political opponents to corporate rule and "dissident internal movements" that

challenge the hegemony of private property and profit (such as the Branch Davidians at Waco, the participants in the Rodney King riots in Los Angeles in 1991, and the antiglobalization activists who rocked the G-8 meeting in Seattle in 1999) (Harvey, 2005:83), when the primary targets of penalization in the post-Fordist age have been the precarious fractions of the proletariat concentrated in the tainted districts of dereliction of the dualizing metropolis who, being squeezed by the urgent press of day-to-day subsistence, have little capacity or care to contest corporate rule.

Third, for the author of *Social Justice and the City* the state "intervenes" through coercion only when the neoliberal order breaks down, to repair economic transactions, ward off challenges to capital, and resolve social crises. By contrast, *Punishing the Poor* argues that the present penal activism of the state—translating into carceral bulimia in the United States and policing frenzy throughout Western Europe—is an ongoing, routine feature of neoliberalism. Indeed, it is not economic failure but economic success that requires the aggressive deployment of the police, court, and prison in the nether sectors of social and physical space. The rapid turnings of the law-and-order merry-go-round are an index of the reassertion of state sovereignty, not a sign of its weakness. Harvey does note that the retrenchment of the welfare state "leaves larger and larger segments of the population exposed to impoverishment" and that "the social safety net is reduced to a bare minimum in favor of a system that emphasizes individual responsibility and the victim is all too often blamed" (Harvey, 2005:76), but he does not realize that it is precisely these normal disorders, inflicted by economic deregulation and welfare retrenchment, that are managed by the enlarged penal apparatus in conjunction with supervisory workfare. Instead, Harvey invokes the bogeyman of the "prison-industrial complex," suggesting that incarceration is a major plank of capitalist profit-seeking and accumulation when it is a disciplinary device entailing a gross drain on the public coffers and a tremendous drag on the economy.

Fourth and last, Harvey views the neoconservative stress on coercion and order restoration as a temporary fix for the chronic instability and functional failings of neoliberalism, whereas I construe authoritarian moralism as an *integral constituent of the neoliberal state* when it turns its sights on the lower rungs of the polarizing class structure. Like Garland, Harvey must artificially dichotomize "neoliberalism" and "neoconservatism" to account for the reassertion of the supervisory authority of the state over the poor because his narrow economistic definition of neoliberalism replicates its ideology and truncates its sociology. To elucidate the paternalist transformation of penalty at century's turn, then, we must imperatively escape the "crime-and-punishment" box, but also exorcise once and for all the ghost of Louis Althusser (1971), whose instrumentalist conception of Leviathan and crude duality of ideological and repressive apparatuses gravely hamstringing the historical anthropology of the state in the neoliberal age. Following Bourdieu, we must fully attend to the internal complexity and dynamic recomposition of the bureaucratic field, as well as to the constitutive power of the symbolic structures of penalty to

trace the intricate meshing of economic, welfare, and criminal (2005:133–150).

CONCLUSION: PENALITY

In his meticulous comparative work camps in the 1950s United Kingdom and the United States that "illiberal social policies" are "intrinsic to liberal democratic contradictions. Even as they promote liberty, such programs are prone to highlighting and enforcing conformity; they are fleet vehicles for elites to tackle offensive conduct; they derelict or deviant categories materialize the symbolic operations of the neoliberal government workfare and expansive prison state that are illiberal but in the workings of America's punitive Fordist-Keynesian order and neoliberalism brings about not a *centaur state*, liberal at heart but presents radically different faces, a smiling and caring visage toward the citizen and a frowning mug toward the criminal.

It bears stressing in closing that the practicing liberal paternalist scheme concocted by omniscient authorities to meet the systemic necessities of social order or panopticism (as in various forms of surveillance as well as in the activist discipline) is not. Rather, it arises from *struggles* to redefine the perimeter, mission, and authority of state authorities with respect to discipline. These struggles involve, crucially, the negotiation between civil society and state authority in various sectors of the bureaucratic field. The social problem at hand and the expertise they anchor (medicine, law, etc.), and within the penal institutions and postcustodial

trace the intricate meshing of market and moral discipline across the economic, welfare, and criminal justice realms (Bourdieu, 1994:15–16; Wacquant, 2005:133–150).

CONCLUSION: PENALITY IN THE BUILDING OF A CENTAUR STATE

In his meticulous comparison of eugenic measures in the 1920s, compulsory work camps in the 1930s, and workfare schemes in the 1990s in the United Kingdom and the United States, Desmond King (1999:26) has shown that “illiberal social policies” that seek to direct citizens’ conduct coercively are “intrinsic to liberal democratic politics” and reflective of their internal contradictions. Even as they contravene standards of equality and personal liberty, such programs are periodically pursued because they are ideally suited to highlighting and enforcing the boundaries of membership in times of turmoil; they are fleet vehicles for broadcasting the newfound resolve of state elites to tackle offensive conditions and assuage popular resentment toward derelict or deviant categories; and they diffuse conceptions of otherness that materialize the symbolic opposition anchoring the social order. With the advent of the neoliberal government of social insecurity mating restrictive workfare and expansive prisonfare, however, it is not just the policies of the state that are illiberal but *its very architecture*. Tracking the coming and workings of America’s punitive politics of poverty after the dissolution of the Fordist-Keynesian order and the implosion of the black ghetto reveals that neoliberalism brings about not the shrinking of government, but the erection of a *centaur state*, liberal at the top and paternalistic at the bottom, which presents radically different faces at the two ends of the social hierarchy: a comely and caring visage toward the middle and upper classes, and a fearsome and frowning mug toward the lower class.

It bears stressing in closing that the building of a Janus-faced Leviathan practicing liberal paternalism has not proceeded according to some master scheme concocted by omniscient rulers. Nor does it spring mechanically from the systemic necessities of some grand structure such as late capitalism, racism, or panopticism (as in various neo-Marxist and neo-Foucauldian approaches, as well as in the activist demonology of the “prison-industrial complex”). Rather, it arises from *struggles over and within the bureaucratic field*, aiming to redefine the perimeter, missions, priorities, and modalities of action of public authorities with respect to definite problem territories and categories. These struggles involve, crucially, not only battles pitting organizations stemming from civil society and state agencies, but also internecine contests between the various sectors of the bureaucratic field, which vie to gain “ownership” of the social problem at hand and thus valorize the specific forms of authority and expertise they anchor (medical, educational, social welfare, penal, economic, etc., and within the penal domain, the police, courts, and confinement institutions and postcustodial means of control). The overall fitness of punitive

containment to regulating urban marginality at century's dawn is a rough *post hoc functionality* born of a mix of initial policy intent, sequential bureaucratic adjustment, and political trial and error and electoral profit-seeking at the point of confluence of three relatively autonomous streams of public measures concerning the low-skill employment market, public aid, and criminal justice. The complementarity and interlocking of state programs in these three realms is partly designed and partly an emergent property, fostered by the practical need to handle correlated contingencies, their common framing through the lens of moral behaviorism and the shared ethnoracial bias stamping their routine operations—with (sub)proletarian blacks from the hyperghetto figuring at the point of maximum impact where market deregulation, welfare retrenchment, and penal penetration meet.

Whatever the modalities of their advent, it is indisputable that the linked stinginess of the welfare wing and munificence of the penal wing under the guidance of moralism have altered the makeup of the bureaucratic field in ways that are profoundly injurious to democratic ideals.¹⁹ As their sights converge on the same marginal populations and districts, deterrent workfare and the neutralizing prison foster vastly different profiles and experiences of citizenship across the class and ethnic spectrum. They not only contravene the fundamental principle of equality of treatment by the state and routinely abridge the individual freedoms of the dispossessed, they also undermine the consent of the governed through the aggressive deployment of involuntary programs stipulating personal responsibilities just as the state is withdrawing the institutional supports necessary to shoulder these and shirking its own social and economic charges. And they stamp the precarious fractions of the proletariat from which public aid recipients and convicts issue with the indelible seal of unworthiness. In short, the penalization of poverty splinters citizenship along class lines, saps civic trust at the bottom, and saws the degradation of republican tenets. The establishment of the new government of social insecurity discloses, *in fine*, that *neoliberalism is constitutively corrosive of democracy*.

By enabling us to break out of the crime-and-punishment box to relink welfare and justice while fully attending to both the material and symbolic dimensions of public policy, Bourdieu's concept of bureaucratic field offers a powerful tool for dissecting the anatomy and assembly of the neoliberal Leviathan. It suggests that some of the pivotal political struggles of this century's turn—if not the most visible or salient ones—involve not the confrontation between the mobilized organizations representing subaltern categories and the state, but battles internal to the hierarchical and dynamic ensemble of public bureaucracies that compete to socialize, medicalize, or penalize urban marginality and its correlates. Elucidating the nexus of workfare, prisonfare, and social insecurity, in turn, reveals that the study of incarceration is not a

technical section in the criminology of the state and social inequity.

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¹⁹ For a specification of the republican and liberal conceptions of democracy at stake here, read David Held's (1996) *Models of Democracy*.

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Punishing the Poor

THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY

Loïc Wacquant

Duke University Press
Durham and London
2009

ISBN

976-0-82234422-3

The Great Confinement of the Fin de Siècle

It is in 1973, in the immediate aftermath of the Attica riot, in which forty-three prisoners and guards held hostage were massacred in the assault launched by the national guard, that the carceral population of the United States reached its postwar low.¹ That year, the National Advisory Commission on Criminal Justice Standards and Goals, a group of experts charged with evaluating the state of the judicial system, submitted a report to President Nixon that recommended closing down juvenile detention centers and freezing prison construction for a decade. This governmental commission noted, on the one hand, that far from curbing insecurity, imprisonment feeds it through its criminogenic action, while, on the other hand, the existing number of beds in the country's custodial institutions "[was] more than enough to meet the needs of the foreseeable future."² And it called for the vigorous development of job training and education programs aimed at the reintegration of convicts.

It is true that the imprisoned population had declined steadily since the beginning of the 1960s, by about 1 percent per year. Penologists were then debating opening the carceral environment, developing alternative or "community" sentences, and moving toward general "decarceration." Breaking with their wait-and-see attitude, the courts extended the protection of constitutional rights to inmates and, for the first time, attacked the rampant illegality that plagued correctional administrations. The American Correctional Association, the main professional body bringing together the various incarceration trades, established an "accreditation program" aiming to upgrade and harmonize detention norms across the country. One seriously envisaged reserving custody for the hard-core minority of "dangerous predators" whom criminology had just discovered commit the vast majority of

¹National Advisory Commission on Criminal Justice Standards and Goals. *Task Force Report on Corrections* (Washington, D.C.: U.S. Government Printing Office, 1973), 349. The commission emphasized in its conclusions that "the prison, the reformatory, and the jail have achieved a shocking record of failure. There is overwhelming evidence that these institutions create crime rather than prevent it" (397).

violent crimes.² Research on imprisonment levels focused on the so-called homeostatic theory of Alfred Blumstein, according to which each society has a "normal" threshold of punishment, determining a rate of incarceration stable over the long term. And the revisionist history of the penal question inaugurated by David Rothman and canonized by Michel Foucault heralded the irreversible decline of the prison: whereas it had held a central place in the disciplinary framework of industrial capitalism, it was now said to be destined to play a minor role in advanced societies, in which forms of social control at once more subtle and more diffuse were being invented and deployed.³

Hyperinflation and Overpopulation

The about-turn of US carceral demographics after 1973 proved to be as sudden as it was spectacular. Contrary to all expectations, the country's confined population took to growing at a vertiginous speed such that, in a development without precedent in the history of democratic societies, *it doubled in ten years and quadrupled in twenty*. Starting from less than 380,000 in 1975, the number of people held behind bars approached 500,000 in 1980 before leaping beyond 1 million in 1990 (see table 6). It continued to expand at an infernal rate of 8 percent per year on average—corresponding to 2,000 net additional inmates every week—during the 1990s, until on June 30, 2000, America officially sported 1,931,850 under lock, including over 620,000 held in county jails (more than the population of Washington, D.C.) and 1.31 million confined in federal and state prisons.* If it were a city, the carceral system of the United States would be the country's fourth-largest metropolis, behind Chicago.

The US carceral system is organized into three distinct levels. The first is made up of some 3,300 municipal or county jails in which are confined persons held by the police, awaiting trial, or sentenced to terms of custody with less than one year remaining. The second comprises state prisons (which number 1,450, including 309

*Unless otherwise specified, all the penal statistics in the text are taken from various publications from the Bureau of Justice Statistics of the US Department of Justice, which compiles them on the basis of data collected by state correctional administrations and county sheriff's offices. They exclude 3,000 individuals confined in the country's 28 military prisons as well as some 110,000 minors locked up in juvenile detention centers and several tens of thousands held at any given time in police lockups around 2000.

Table 6. The carceral boom in

City and county jails
State and federal prisons
Total incarcerated
Cumulative increase
Annual rate of growth (%)

SOURCE: Bureau of Justice Statistics, *Prisoners in the United States, 2000* (Washington, D.C.: Government Printing Office, 2001); and *Prisoners in the United States, 1999* (Washington, D.C.: Government Printing Office, 2000).

The carceral archipelago, four

1. New York City
2. Los Angeles
3. Chicago
4. Jails and prisons
5. Houston
6. Philadelphia
7. Phoenix
8. San Diego
9. Dallas
10. Detroit

SOURCE: Deirdre Gaugin and Mark A. Rothstein, *Prisoners in the United States, 2000* (Lanham, MD: Rowman & Littlefield, 2001).

"maximum security" facilities. In 1975, the number of prisoners in federal prisons, facilities prosecuted and convicted of crimes, mainly white-collar offenses, was 169,000. By 2000, the number of prisoners in federal prisons, facilities prosecuted and convicted of crimes, mainly white-collar offenses, was 169,000. By 2000, the number of prisoners in federal prisons, facilities prosecuted and convicted of crimes, mainly white-collar offenses, was 169,000.

This carceral mesh is a complex of facilities, internal organizations, surveillance technologies, and procedures that operate twenty-three hours a day, seven days a week, with scant human oversight.

Table 6. The carceral boom in the United States, 1975–2000

	1975	1980	1985	1990	1995	2000
City and county jails	138,800	182,288	256,615	405,320	507,044	621,149
State and federal prisons	240,593	315,971	480,568	739,980	1,078,357	1,310,710
Total incarcerated	379,393	498,262	737,183	1,145,300	1,585,401	1,931,850
Cumulative increase	100	131	194	302	418	509
Annual rate of growth (%)	—	6	10	11	8	4

SOURCE: Bureau of Justice Statistics, *Historical Corrections Statistics in the United States, 1850–1984* (Washington, D.C.: Government Printing Office, 1986); idem., *Prison and Jail Inmates at Midyear 2000* (Washington, D.C.: Government Printing Office, 2001).

The carceral archipelago, fourth-largest “city” in the United States

1. New York City	7,380,906
2. Los Angeles	3,555,638
3. Chicago	2,721,547
4. Jails and prisons	1,931,850
5. Houston	1,744,058
6. Philadelphia	1,478,002
7. Phoenix	1,159,014
8. San Diego	1,171,121
9. Dallas	1,053,292
10. Detroit	1,000,272

SOURCE: Deirde Gaugin and Mark S. Littman, *1998 County and City Extra: Annual Metropolitan, City, and County Data Book* (Lanham, Md.: Bernan, 1998).

“maximum security” facilities), which hold convicts sentenced to more than one year, called “felons” (a felony is any criminal offense punishable by a prison term exceeding one year). In addition to these two types of institutions, there are 125 federal prisons, facilities placed under the authority of Washington, for individuals prosecuted and convicted for infractions of the federal penal code—covering mainly white-collar offenses, narcotics violations, and organized crime.⁴ In thirty years, the number of penal establishments in the country tripled to surpass 4,800 (by comparison, mainland France currently has 180 penal establishments, compared to 169 in 1975), so that the states leading the race to hyperincarceration are now literally carpeted with jails and prisons.

This carceral mesh is a remarkably diversified and heterogeneous ensemble. Facilities vary widely according to their age and size, architecture and amenities, internal organization and disciplinary regime, level of security and surveillance technologies, programs on offer and inmate profile. Some prisoners spend twenty-three hours a day alone in a steel cage under continuous electronic supervision with scant human contact for years (in the case of reinforced security cen-

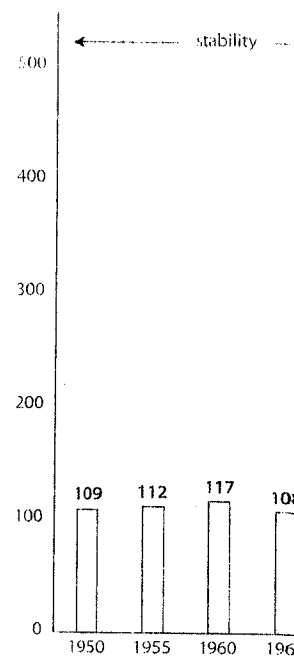
ters called "Supermax," which have proliferated in the past decade). Others are packed into rundown gaols where, rather than isolation and sensory deprivation, they suffer above all from forced promiscuity and ambient insalubrity. Still others serve their time in work camps in the countryside or in "weekend prisons" without fences or bars, which they are authorized to leave during the week to attend to their regular jobs. Some establishments deploy the latest electronic and computer technologies; others are more akin to the reformatories of the nineteenth century in their functioning and atmosphere. Beyond this dispersion, the modal experience of penal confinement is that of the denizens of large state facilities that are satellites to the cities, for whom prison is a "place of deadening routine punctuated by bursts of fear and violence," perpetuated by forced idleness and endemic overcrowding.⁵

It is necessary to stress that *penitential trajectories and carceral experiences are powerfully stratified* according to a series of social and juridical factors, the former comprising class position, gender, and ethnoracial identity, and the latter the nature of the offense and length of sentence, access to legal resources, jurisdiction, possibility of recourse to external agents, etc. The effects of the judicial factors tend to reinforce those of the social factors, since the former often do little more than retranslate the latter into the categories and practices proper to the penal field.* Thus, in the US case, the bulk of white-collar criminals, who are overwhelmingly whites of higher social origins, serve their sentences in so-called open facilities (with neither bars nor fences), where they enjoy better supervision and a level of comfort and services (work, training, health, food, fitness, recreation) that cannot compare to the austere and oppressive regime of the "big houses," wherein rot the vast majority of "street" criminals, essentially drawn from the marginal sectors of working class blacks and Latinos (as previously demonstrated in chapter 2).

The curve displaying the evolution over a half-century of the confinement rate for convicts sentenced to more than one year in federal or state prison (thus excluding those in jails on remand detention and struck by short sentences) spotlights a sharp opposition between two carceral regimes (see figure 1). During the three decades following the

"The mechanisms that ensure that 'the poor' in prison experience a more rigorous incarceration than the 'rich,' and all the more so as the [specific] establishment itself is poorer" are described by Anne-Marie Marchetti in *Pauvreté en prison* (Ramonville Saint-Ange: Cérès, 1997). Remarks to the same effect can be found in the beautiful article by Michael Pollak analyzing how class (and, secondarily, gender) competencies determine chances of survival even within this radically leveling institution that is the concentration camp. Michael Pollak, "Des mots qui tuent," *Actes de la recherche en sciences sociales* 41 (September 1982): 29-45.

Figure 1. Evolution of imprisonment (convicts per 100,000 residents)

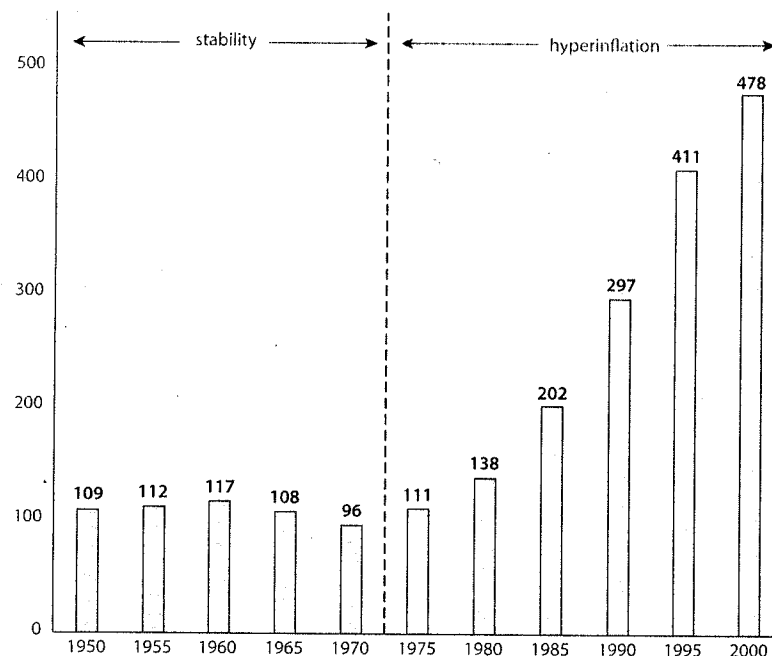


SOURCE: Bureau of Justice Statistics, *Prisoners in the United States, 1960* (Washington D.C.: US Government Printing Office, 1962).

Second World War, as during the Vietnam War, the US dealt to the forsaking of the black ghetto, this rate fluctuated around 100, reaching 115 prisoners per 100,000 residents in 1960, a level that led Alfred Blumstein to describe the US incarceration level. However, this theory was made obsolete in 1973, the imprisonment rate crossed the 200-mark in the population confined in the third millennium, the US has 100,000 inhabitants, five times the population of the

Carceral hyperinflation of the nation's territory. Thus, all members of the Union

Figure 1. Evolution of imprisonment rate, 1950–2000
(convicts per 100,000 residents).



SOURCE: Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics 2000* (Washington D.C.: US Government Printing Office, 2002), 634.

Second World War, as during the interwar period, that is, from the New Deal to the forsaking of the Keynesian compromise and the crisis of the black ghetto, this rate fluctuated within a narrow band between 90 and 115 prisoners per 100,000 inhabitants. It is this “impressive stability” that led Alfred Blumstein to formulate his homeostatic theory of the incarceration level. However, as the eminent criminologist conceded, this theory was made obsolete in the mid-1970s⁶ by the shift to an unprecedented *regime of permanent and accelerating carceral inflation*. After 1973, the imprisonment rate increased continually and exponentially to cross the 200-mark in 1985 and the 480-bar in 2000. If we include the population confined in city and county jails, on the threshold of the third millennium, the US incarceration rate stood at 702 prisoners per 100,000 inhabitants, five times its level of the mid-1970s.

Carceral hyperinflation affects all the jurisdictions that make up the nation’s territory. Thus, with the exception of Maine and Kansas, all members of the Union posted a correctional population increase

Table 7. States leading carceral inflation in 1996*

Population imprisoned		Imprisonment rate		% Growth 1991-96	
California	147,712	Texas	686	Texas	156
Texas	132,383	Louisiana	615	Wisconsin	64
Federal prisons	105,544	Oklahoma	591	North Carolina	62
New York State	69,709	South Carolina	532	Mississippi	60
Florida	63,763	Nevada	502	Iowa	53
Ohio	46,174	Mississippi	498	New Mexico	52
Michigan	42,349	Alabama	492	South Dakota	50
Illinois	38,352	Arizona	481	Utah	50
Georgia	35,139	Georgia	462	Hawaii	49
Pennsylvania	34,537	California	451	Minnesota	49
(number of convicts)		(convicts per 100,000)			

*Figures exclude inmates convicted to sentences of less than one year and inmates awaiting trial in city and county jails.

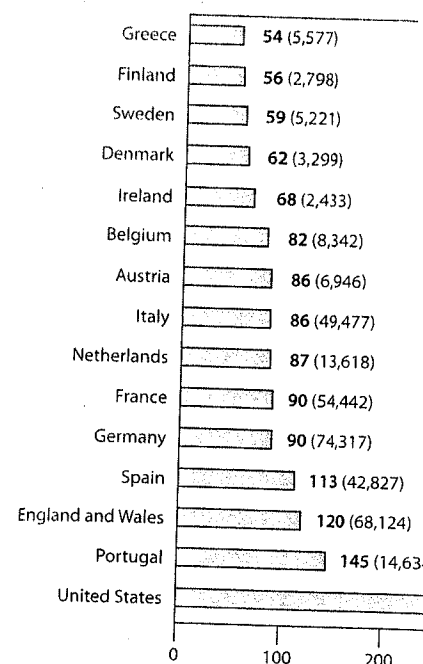
SOURCE: Christopher Mumola and Allen Beck, *Prisoners in 1996* (Washington, D.C.: Government Printing Office, 1997), 4 and 5.

exceeding 50 percent between 1986 and 1996; half of them recorded a doubling of the number behind bars during this period; Texas and Colorado did even better, with a tripling in ten years.⁷ Twenty-five different states figure on the roster of the top ten leaders in penal confinement according to three criteria—number of inmates, imprisonment rate, and increase of prison population (excluding jails) between 1991 and 1996 (see table 7).

All these figures converge to indicate that a new type of relation has been forged between American society and its prisons during the past quarter-century. For, as we shall see below, this stupendous increase in the numbers under lock occurred during a period in which crime was first stagnant and then rapidly decreasing. A detailed statistical analysis of correctional evolution in the fifty states of the Union reveals moreover that carceral inflation is a *deep-seated national trend* that asserts itself independently of the individual characteristics of states, their crime level, and the political color of the local executive branch.⁸

Indeed, no democratic nation has ever experienced such carceral bulimia—even in times of acute social crisis or military conflagration. As a result, the United States now caracoles far ahead of the other postindustrial countries when it comes to confinement. The US incarceration rate is six to twelve times that of the members of the European Union, whereas it was only one to three times their rate only thirty years ago

Figure 2. Incarceration rate in the U.S. (inmates per 100,000 residents in brackets).

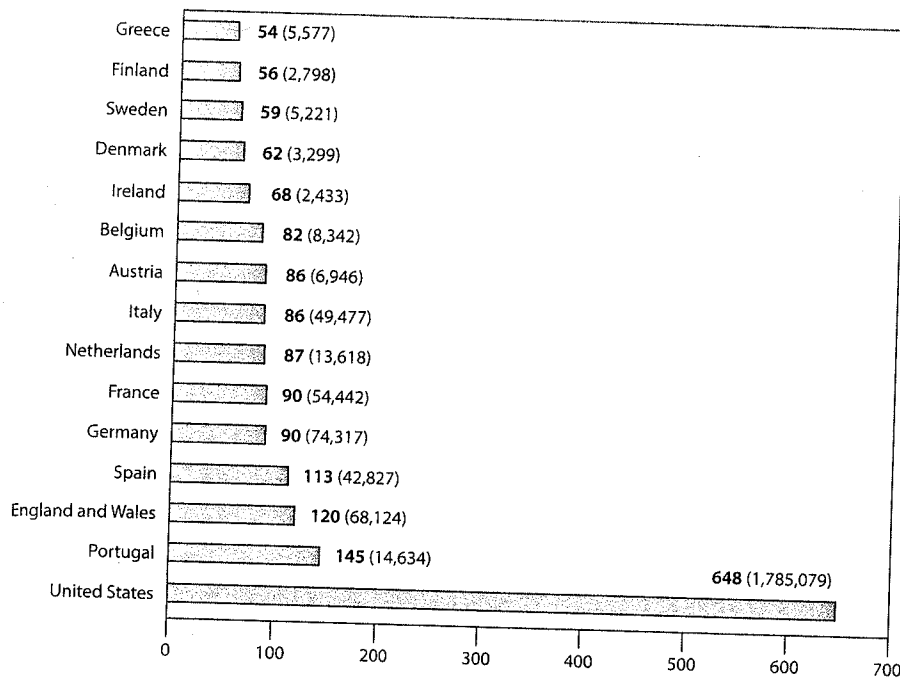


SOURCE: Bureau of Justice Statistics, *Prisoners in 1996* (Washington D.C.: Government Printing Office, 1997); and *Annuaire du conseil de l'Europe* (Strasbourg, 1997).

(see figure 2). On the cusp of the 21st century, the U.S. incarceration rate is six to twelve times more than France, Germany, Sweden or Denmark, even though the U.S. has a larger population (outside of homicide) similar to that of the U.S. (table 8). The fifteen EU countries with 370 million inhabitants, one-fifth the U.S. population, have 267 million inhabitants.

Even South Africa at the close of the 20th century had 369 inmates per 100,000 inhabitants, a rate that is 2.5 times that of the U.S. people proportionately as the prison population. Today only Russia, which went in from a communist to savage capitalism, is in a position to challenge the U.S. front, as its incarceration rate dou-

Figure 2. Incarceration rate in the United States and European Union, 1997
(inmates per 100,00 residents in bold; total number of inmates in thousands
in parentheses).



SOURCE: Bureau of Justice Statistics, *Prison and Jail Inmates at Midyear 1997* (Washington D.C.: Government Printing Office, 1998); Pierre Tournier, *Statistique pénale annuelle du conseil de l'Europe* (Strasbourg: European Council, 1999).

(see figure 2). On the cusp of the new century, America locked up seven times more than France, Germany, or Italy and ten times more than Sweden or Denmark, even though these countries have levels of crime (outside of homicide) similar to that of the US (as we shall see in chapter 8). The fifteen EU countries sported a total of 351,000 inmates for 370 million inhabitants, one-fifth the confined population of the US for 267 million inhabitants.

Even South Africa at the close of the civil war against apartheid, with 369 inmates per 100,000 inhabitants in 1993, imprisoned *half as many people* proportionately as the prosperous America of President Clinton. Today only Russia, which went in a short decade from dying Sovietism to savage capitalism, is in a position to vie with the United States on this front, as its incarceration rate doubled since 1989 to perch around 740

inmates per 100,000 inhabitants in 1999, just ahead of the American rate.* The other republics born out of the collapse of the Soviet empire also post astronomical incarceration rates, but these are nevertheless well below that of the United States: 246 for Latvia, 351 for Lithuania, 385 for Ukraine, and 500 for Belarus. The great victor of the Cold War, sole superpower to survive the arms race, self-proclaimed policeman of the planet, America has raised itself in two short decades to the rank of world leader in imprisonment.

The most palpable consequence of this unprecedented carceral hyperinflation is that, despite their proliferation, America's custodial establishments are literally bursting at the seams. Overcrowding is so extreme that most cities and states have been compelled by the courts to release criminals by the thousands after having been prohibited from locking up more in an effort to prevent further deterioration in conditions of confinement. In 1999, thirty-three members of the Union were under court supervision for this reason. Nine had seen their entire carceral system declared in violation of Article 8 of the Constitution, which protects citizens from "cruel and unusual punishment." Only three states, Minnesota, New Jersey, and North Dakota, had managed to shelter their correctional administration from the wrath of the judges. One in five jails is currently subject to a *numerus clausus* imposed by a county court. And fewer than half of state prison systems meet the minimum norms necessary to be "accredited" by the American Correctional Association.⁹

In 1995 the official occupancy rate of state penitentiaries exceeded 133 percent as a national average, with peaks above 150 percent in six states, including Ohio (177 percent), Illinois (166 percent), and California (161 percent), where it neared 200 percent by 2003. And yet these figures are low estimates. The occupancy rate is commonly manipulated by correctional authorities to conceal the real overpopulation and thereby avoid possible judicial troubles—courts can inflict on them stiff fines by the day for seriously and repeatedly exceeding their housing capacity.** One example: New York State (which held 69,709 prisoners

*In 1997 President Boris Yeltsin proposed—in vain—to amnesty a half-million convicts in order to bring the conditions of custody in Russian prisons closer to the international norm. See Nils Christie, "Éléments de géographie pénale," *Actes de la recherche en sciences sociales* 124 (September 1998): 68–74. By 2003, an active policy of decarceration for those awaiting trial had allowed Russia to fall below 600 inmates per 100,000 inhabitants.

**As the Bureau of Justice Statistics coyly notes: "The extent of prison crowding is difficult to determine because of the absence of uniform measures for defining ca-

in its penitentiaries in 1996) had capacity," 65,700 in terms of "open space," of no fewer than 68,996—yielding an occupancy rate of no fewer than 131 percent. The difference between the fact that everywhere, gymnasiums, showers, closets, and recreation halls have been doubled by setting up bunk beds, and dormitories. In a majority of states, the space has been tripled by adding a mattress stacked on top of the wall during the day ("triple celling"). In 27 states were forced to confine inmates in municipal jails for lack of space. Another 15 rented 7,000 "outsourcing" facilities located outside their borders.

As the first rampart against the expansion of the carceral network, county jails are the most visible of the facilities for poor and precarious populations—of bodies—and soak in billions of dollars each hold over 5,000 in their jails (the carceral stock of Sweden)*: at the time of the Los Angeles jail, with a total of 2,000; Cook County, for Chicago (17,500); Cook County, home of Houston, and finally Dade County (17,500); and finally Dade County (17,500). In 1993, 76 municipal jails held more than 23 housed over two thousand. Jail overcrowding in state prisons because they have been unable to pressure from the courts. Moreover, the overcrowding offload an excessive surplus of inmates awaiting trial under judicial supervision. Yet this did not prevent overcrowding in Los Angeles, 146 percent in December 1999.

capacity." Christopher Mumola and Allen J. Beck, Bureau of Justice Statistics, 1997), 7.

*It should be noted that these figures are based on a publication for the same dates according to the Bureau of the Census. In effect, in winter carceral establishments are overcrowded. I was arrested voluntarily in order to find shelter. I was told in an interview that his inmate count was 146 percent when the rigors of the Chicago winter

in its penitentiaries in 1996) has 53,366 beds according to its "design capacity," 65,700 in terms of "operational capacity," and a "rated capacity" of no fewer than 68,996—yielding an occupancy rate ranging from 101 to 131 percent. The difference between these figures is explained by the fact that everywhere, gymnasias, libraries, bathrooms, classrooms, closets, and recreation halls have been hastily converted into extra cells and dormitories. In a majority of jurisdictions, the number of beds has been doubled by setting up bunk beds ("double bunking") and even tripled by adding a mattress stored under the bed or leaned against the wall during the day ("triple ceiling"). Despite this, at the end of 1996, 27 states were forced to confine some 30,000 inmates with long sentences in municipal jails for lack of space in their penitentiaries. And another 15 rented 7,000 "outsourced" beds in public or private facilities located outside their borders.

As the first rampart against social disorders and point of entry into the carceral network, county jails have become huge storage and sorting facilities for poor and precarious populations that churn millions of bodies—and soak in billions of dollars—every year. Thirteen cities each hold over 5,000 in their jails at any given time (equal to the carceral stock of Sweden)*: at the top of the list as of June 1998 came the Los Angeles jail, with a total of 21,000 inmates, followed by New York City (17,500); Cook County, for Chicago and its vicinity (9,300); Harris County, home of Houston, and Dallas (with 7,800 and 7,100 respectively); and finally Dade County, seat of Miami (7,100).¹⁰ As early as 1993, 76 municipal jails held more than one thousand inmates each and 23 housed over two thousand. Jails are generally less overcrowded than state prisons because they have increased their capacity more under pressure from the courts. Moreover, they enjoy greater latitude to periodically offload an excessive surplus of bodies by releasing detainees awaiting trial under judicial supervision or accelerating early releases. Yet this did not prevent occupancy rates from reaching 151 percent in Los Angeles, 146 percent in Dallas, and 113 percent in Chicago in 1999.

capacity." Christopher Mumola and Allen Back, *Prisoners in 1996* (Washington, D.C.: Bureau of Justice Statistics, 1997), 7.

*It should be noted that these figures fluctuate perceptibly from publication to publication for the same dates according to the time of year when the population is counted. In effect, in winter carceral establishments fill up with the homeless who get arrested voluntarily in order to find shelter. The director of Cook County Jail confessed to me in an interview that his inmate count increases quasi-mechanically five to ten percent when the rigors of the Chicago winter set in.

Everywhere city gaols are buckling under the mountains of bodies poured onto them by a police and judicial apparatus seized by a voracious appetite. This gives rise to astonishing, even surreal, scenes. New York City renewed an old London tradition extinct since the mid-nineteenth century: it turned barges moored on the docks of the Hudson River into "floating prisons" to warehouse its overflow of inmates. In Chicago, the residents of Cook County Jail slept by the thousands on mattresses strewn on the floor, even on mere blankets thrown onto the concrete ground, and, for some, packed into the bathrooms, even as the courts periodically ordered the automatic release of thousands of detainees awaiting trial. In Los Angeles, the jail discretely resorted to using dozens of buses to "stretch" its housing capacity by keeping entire loads of inmates in them overnight: the buses drove around the city or simply parked at the entrance of the jail's admission center and waited in the lot for hours on end for cells to be freed up. In Nashville, Tennessee, 200 detainees slept in the underground tunnel connecting the local jail to the courthouse, without showers or bathrooms, because the facility, designed for 300 inmates, held 1,100, including several hundred pressed like sardines onto the gymnasium floor.

In Phoenix, the sheriff of Maricopa county, Joe Arpaio, set up an outdoor camp of army tents and bunk beds (with surplus wares from the Korean War) in the middle of the Arizona desert—where the temperature nears 120°F in the shade—surrounded by chain link fences and concertina wire, and rounded up some 2000 inmates in it. At the entrance, he hung a blinking neon sign flashing "Vacancy," similar to the one used by motels to signal that they have rooms available. This stratagem and a few others, such as issuing striped uniforms, distributing pink jail underwear, and using leg-irons on chain gangs, and making detainees pay for their meals (Arpaio was proud to point out that feeding detainees cost only 90 cents per day compared to \$1.10 for guard dogs), quickly made him a national, and then an international, media star. And turned Arpaio's carceral dormitory under the stars into a mandatory stop for politicians eager to burnish their image of "crime fighters."²

In Silicon Valley, the onrush of detainees was so strong that the jail of Santa Clara (seat of San Jose, California's second largest city) had ATM kiosks installed at its gates so that people brought in for minor offenses (drunk driving, vandalism,

²The flap cover text gives a good idea of the pitch of Joe Arpaio's autobiography: "America's Toughest Sheriff is an unfiltered account of Sheriff Joe's 'get smart and get tough' approach to jail. Tents are only the beginning. Green bologna, pink boxer shorts, and chain gangs are all part of his philosophy that jail should be punishment, period. He believes that criminals should never live better in jail than they do on the outside." The tome's front cover bears the urgent endorsement of extreme-right-wing talk-show host Rush Limbaugh: "This book demands to be read." Joe Arpaio and Len Sherman, *America's Toughest Sheriff: How We Can Win the War against Crime* (Phoenix: Summit Publishing Group, 1996).

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the 10-percent payment re-
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ties hoped thereby to free
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realize mammoth savings
country's 75 largest urban
more than one year in pris-
in detention do so followin-
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or possession of small quantities of narcotics) having a credit card could withdraw the 10-percent payment required to go free on bail—to the hew and cry of the bond agencies, which complained loudly about unfair competition. The authorities hoped thereby to free up a dozen beds in their cells each weekend. "That may seem like a little, but over the course of a year that's a benefit to us," explained the jail spokesperson. "We're looking for any way to give us flexibility to deal with crowding issues."¹¹

Far removed from academic debates about the purposes of incarceration—to punish, neutralize, deter, or rehabilitate—the primordial concern of the managers of these gigantic warehouses for the undersirables that American jails have become is pragmatic and functional: to "process" the endless torrent of arrestees and convicts as quickly as possible through "the system" so as to minimize costs and reduce incidents linked to the packing and mixing of disparate, difficult, and often (mutually) hostile populations. But this managerial approach is powerless to stem the deterioration of accommodations and access to basic services—hygiene, health care, exercise, visiting rooms, and lawyers, not to mention education, vocational training, and work, which have been elevated to the rank of luxuries.

In point of fact, conditions of detention in big-city jails are so punishing that the majority of those remanded in them rush to plead guilty and negotiate a reduced sentence with the prosecutor responsible for their case in exchange for dispensing with a trial, so as to be either immediately released on probation or quickly transferred to a state penitentiary, where the regimen is typically less erratic and stressful. Anything rather than vegetate in the promiscuity and dull violence of jail for months on end waiting to come before a judge. So much so that one may consider that one of the main functions of the jail in the hypertrophic penal apparatus the United States has developed is to *extort a guilty plea from its denizens* and allow the judicial system to realize mammoth savings by cutting out the costly trial phase: in the country's 75 largest urban counties, 92 percent of those sentenced to more than one year in prison in the twelve months after being placed in detention do so following a barter of this kind.¹² For the vast majority of the urban poor sent behind bars, a trial has become a judicial oddity they encounter only on television shows such as "Law and Order."

The Saga of the New York Penal Barges

In January 1992, on the docks of the South Bronx not far from the Hunts Point fish market, the New York City authorities inaugurated a ship unlike any other: a flatbed barge made entirely of steel, 600-feet long and 150-feet wide, custom-built for \$161 million on the Mississippi by a Louisiana shipyard. The *Vernon C. Bain* was then the latest addition to the city's carceral facilities. Its four lower decks accommodate a cluster of dormitories with a total of 700 bunk beds, a clinic, a law library, a church, a refectory, and kitchens. The bridge is occupied by a span of individual cells that can house some hundred detainees and an exercise yard surrounded by fences topped with concertina wire. The carceral ship can, if need be, function in autarky: it is endowed with a powerful electrical generator, a water desalinator, an industrial-capacity laundry, and it has its own sewage system.

If New York turned to this rather unusual device, it is because in six short years, between 1986 and 1992, the population crammed into its eighteen jails doubled to more than 21,500 (equivalent to the total carceral stock of Scandinavia and the Benelux countries put together). At the high point of use of these "floating detention centers"—as the local correctional administration likes to call them—the city confined 2,000 people on five barges, including two old Staten Island ferries refitted for this purpose and two British troop transport ships retired after having seen duty in the Falklands War. But they had no sooner been put in service than their wardens sought to decommission these warehouse-vessels, owing to their prohibitive maintenance costs and the ease with which detainees could hide in their innumerable nooks and crannies (two vessels were still in service at the end of 1999, at the piers of Rikers Island, where they moored to absorb the chronic overflow of residents).

In 1993, San Francisco studied the possible purchase of the penal barges New York no longer wanted. Like all major American cities, the metropolis that inspired Jack Kerouac was battling with a serious shortage of cells, forcing it to rent 350 beds on the other side of the bay, in the jail of neighboring Oakland, for a daily tab of \$20,000. In spite of which, in a single year, San Francisco had had to pay \$2 million in fines inflicted by the county court for repeatedly exceeding the *numerus clausus* imposed on its correctional administration. It was a complicated and delicate project, since it would require first towing these barges through the Panama Canal, then ferrying them to the northern California coast, and, after passing under the Golden Gate Bridge, finding an anchor location that would not raise too virulent an opposition from the local population. And so the attempt failed.

In March 1997, one of these barges, the *Bibby Resolution*, completed a 3,000-kilometer journey to dock at Portland Harbor, near Weymouth in Cornwall, where it was promptly rebaptized *Her Majesty's Prison Weare*: the former British troop transport vessel had been purchased back by the UK prison service to serve as a floating dormitory for 500 "low-security" inmates, in spite of protests by the

representatives and inhabitants of it. It had been elevated to the rank of showpiece and in Europe, England was experiencing a similar phenomenon: the confined population had leaped 50 percent in a year—and it no longer knew where to go. The *Bibby Resolution* to its original homeland was a ship that had bought it from New York City. The British government for eight years had been a cum-penal farce was the City of New York. The barge for a total exceeding \$41 million.

The "Penal Net" Tightens and V

This sudden inversion of the current of events, a seemingly unstoppable takeoff, occurred during a period in which the incidence of crime was declining. Indeed, contrary to the claims of the legal and media discourse, the incidence of serious offenses did not change fundamentally during the mid-1970s.¹³ The national homicide rate, for example, and 10 per 100,000 inhabitants, the rate of robbery oscillated between 2 and 3 per 100,000, playing a particular trend in one direction. These two crimes account for one-third of the total in state prisons). The rate for serious crimes, on the other hand, out the period, at around 30 per 100,000, aggravated assault declined from 1970 to 1990, a third of a century. As for proper crimes, the aggregate rate of victimization fell from 100,000 in 1975 to less than 30 in 1990, the incidence of all categories of crime was heading down.

The quadrupling of the US prison population cannot be explained by the rise of violence, but by the *reversion of recourse to confinement* for minor offenses that did not previously lead to imprisonment: minor drug infractions and behavioral offenses, as well as from the *correctional system*. After the mid-1970s and even before, the US government declared its "War on Crime," which was applied with growing frequency and

representatives and inhabitants of its new port of call. This is because, having acceded to the rank of showpiece and pilot of the "Americanization" of penal policy in Europe, England was experiencing unprecedented carceral hyperinflation—its confined population had leaped 50 percent in just four years to reach 62,000 that year—and it no longer knew where to store its convicts. The return of the *Bibby Resolution* to its original homeland was a boon to the European shipping company that had bought it from New York City for less than one million dollars and resold it to the British government for eight million. But the real turkey of this maritime-cum-penal farce was the City of New York, which had acquired and outfitted the barge for a total exceeding \$41 million.

The "Penal Net" Tightens and Widens

This sudden inversion of the curve of carceral demography followed by a seemingly unstoppable takeoff is all the more remarkable for having occurred during a period in which *crime was stagnant and then declining*. Indeed, contrary to the assertions of the prevailing political and media discourse, the incidence of the main categories of criminal offenses did not change fundamentally in the two decades following the mid-1970s.¹³ The national homicide rate was confined to between 8 and 10 per 100,000 inhabitants from 1975 to 1995, while the frequency of robbery oscillated between 200 and 250 per 100,000 without displaying a particular trend in one direction or the other (by themselves, these two crimes account for one-quarter of the population confined in state prisons). The rate for simple assault remained stable throughout the period, at around 30 per 100,000, while the frequency of aggravated assault declined from 12 to 9 per 100,000, its lowest level in a third of a century. As for property crimes, they declined markedly: the aggregate rate of victimization for theft and burglary fell from 550 per 100,000 in 1975 to less than 300 twenty years later. And, since 1995, the incidence of all categories of crimes and misdemeanors have been heading down.

The quadrupling of the US carceral population in two decades cannot be explained by the rise of violent crime. It results from *the extension of recourse to confinement* for a range of *street* crimes and misdemeanors that did not previously lead to a custodial sanction, especially minor drug infractions and behaviors described as public disorders and nuisances, as well as from the *continual stiffening of sentences* incurred. After the mid-1970s and even more so after 1983, when the federal government declared its "War on drugs," incarceration has been applied with growing frequency and increased severity to the gamut of

offenders, be they career criminals or occasional lawbreakers, big-time bandits or small-time hoodlums, the violent and the nonviolent.¹⁴ The only exception to this punitive pattern was economic crimes and misdemeanors that are the preserve of the privileged classes and corporations: fraud, embezzlement, breach of trust, insider trading, credit or insurance fraud, check fraud, money laundering, violations of the commerce or labor codes. Despite a slight toughening at the end of the period, these "crimes in the suites" were treated with a leniency increasingly out of harmony with the atmosphere of extreme penal severity prevailing at the bottom of the class structure. "Class advantage" à la Sutherland, rooted in the sociocultural affinity of justice officials with bourgeois offenders, an edge in juridical resources available to corporate scofflaws, and laws promulgating restrictive definitions of economic crime and favoring civil remedies for them, have combined with the inherent complexity and furtiveness of white-collar crime as violations of trust in complex chains of agency to shield corporate criminals from the renewed zeal of the penal state.¹⁵

"White-collar" offenders are, first of all, much less likely to be detected, prosecuted, and sentenced in criminal court than street scofflaws. Next, when they are convicted, the penalties meted out for the most part exclude custodial sanctions. Finally, in the exceptional cases where white-collar convicts are incarcerated, the sentences they serve are considerably shorter than those inflicted upon the run-of-the-mill offenders. For example, at the beginning of the 1980s, 96 percent of those convicted of robbery were punished by a prison sentence averaging 60 months (for burglary, it was 82 percent for an average of 26 months), whereas only 31 percent of those convicted of embezzlement were sent to prison, and the minority who were served an average of 11 months.¹⁶

Thus, the same decade that saw small-time drug dealers and consumers from poor neighborhoods thrown by the hundreds of thousands behind bars for sentences measured in years (nay decades) and the homeless overfill jails on the sole ground that they engaged in panhandling or inconvenienced storeowners on "Main Street" was also the decade when "collective embezzlement," the typical crime of finance-driven capitalism, proliferated, and fraud reached its acme on "Wall Street" with near-total impunity.¹⁷ A detailed study of the policing of the stock market by the New York Securities and Exchange Commission reveals that only 12 percent of operators who committed proven fraud were dispatched before a criminal court, a mere 6 percent were charged, and just 3 percent were eventually sent to prison.¹⁸ The 2,500 bank directors and managers convicted after the biggest financial scandal in national history, the fraudulent bankruptcy in 1992 of thousands of Savings and Loan associations with funds guaranteed by the federal government, leaving

American taxpayers with a mop-up operation by 18 months imprisonment for motor vehicle theft, 54 months for motor vehicle theft with no priors meted out this after the FBI had, for want of space, the supplemental appropriation of \$195,045 complaints registered by the banking sector. Even the small minority sent to prison served but a fraction of the sentence, statistically reduced by judges in the country (from fifteen to 2 years). The restitution ordered by the courts came to only 4% and the costs incurred in the debacle; and only \$1.5 million recovered (less than 0.5% of the fines assessed were paid).¹⁹ Many of the most notorious criminals in jail, including Arthur Kick, CEO of a bank who was sentenced to three years and a fine of \$1 million or Ted Musacchio, CEO of Columbia Gas, who received 3 years probation for having stolen \$1 million from the company.

Michael Milken, the junk-bond gal stock maneuvers on Wall Stre country's history for "insider trad open work center (according to ir years of prison"). After paying a r was estimated at \$150 million (and He was no sooner released than t of Management, a high-powered " Universe (along with Rupert Murc services industry," the head of a lar against cancer (he survived prostat

Proof for this shift in penal activity is the striking increase of the ratio of the number of prisoners to the number of offenses committed during the last three decades (see table 8). This ratio was 103 prisoners per thousand crimes in 1965, before jumping to 113 in 1995, and to 133 in 2005. This shows that *the United States has experienced a 30% increase over this quarter-century*. The figure is markedly superior to the parallel increase in the ratio for *violent crimes alone* (538 per

American taxpayers with a mop-up bill estimated at one *trillion* dollars, were sanctioned by 18 months imprisonment on average (compared to a mean of 38 months for motor vehicle theft, 54 months for burglary, and 64 months for narcotics violations with no priors meted out by federal courts during the same period). And this after the FBI had, for want of sufficient funds (Congress having refused to pass the supplemental appropriation required), dropped a full three-quarters of the 95,045 complaints registered by the federal office responsible for regulating this banking sector. Even the small minority of executives successfully prosecuted and sent to prison served but a fraction of their sentences after these were systematically reduced by judges in the closing phases of the procedure (typically, from fifteen to 2 years). The restitution of \$355 million and fines of \$11 million ordered by the courts came to only 4% and 0.13% respectively of the losses of \$8.2 billion incurred in the debacle; and only \$26 million of the restitution was actually recovered (less than 0.5% of the fines and restitution stipulated for the top 100 referrals were paid).¹⁹ Many of the most notorious defendants never spent a single night in jail, including Arthur Kick, CEO of the North Chicago Federal Savings and Loan, who was sentenced to three years of probation for having embezzled \$1.2 million, or Ted Musacchio, CEO of Columbus Marin Savings and Loan, who received five years probation for having stolen \$9.3 million.

Michael Milken, the junk-bond king responsible for billions of dollars in illegal stock maneuvers on Wall Street, served the longest prison sentence in the country's history for "insider trading" as of 2000: a total of 22 months in a semi-open work center (according to inflated press reports, he had faced "up to 520 years of prison"). After paying a record fine of \$1.1 billion, his personal fortune was estimated at \$150 million (and that of his wife and children at \$325 million). He was no sooner released than he became a star lecturer at the UCLA School of Management, a high-powered "strategic consultant," a director of Knowledge Universe (along with Rupert Murdoch), a leading firm in the new "educational services industry," the head of a large charitable foundation devoted to the fight against cancer (he survived prostate cancer), and a hero to the business press.²⁰

Proof for this shift in penal attitude is the continual and accelerating increase of the ratio of the number of convicts over the volume of offenses committed during the corresponding year during the past three decades (see table 8). This index of "punitiveness" rose from 21 prisoners per thousand crimes in 1975 to 37 per 1,000 in 1985 to 75 in 1995, before jumping to 113 in 2000. In short, controlling for crime shows that *the United States has become nearly six times more punitive over this quarter-century*. The fact that the growth of this indicator is markedly superior to the parallel increase in the imprisonment index for *violent crimes alone* (538 percent versus 399 percent) confirms that

Table 8. Escalating punitiveness of penal authorities, 1975–2000

Number of inmates per 1,000 crimes	1975	1980	1985	1990	1995	2000	% increase
Punitiveness for "index crimes"	21	23	37	49	75	113	538
Punitiveness "index crimes" lagged 5 years	29	27	35	57	71	95	327
Punitiveness for "violent crimes"	231	227	350	392	577	922	399
Punitiveness "violent crimes" lagged 5 years	326	292	347	536	570	732	225

Index crimes: murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, arson.

Violent crimes: murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault.

SOURCE: Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics 2000* (Washington, D.C.: Government Printing Office, 2001), 528; Federal Bureau of Investigation, *Uniform Crime Reports* (Washington, D.C.: Government Printing Office, various years).

the greater severity of the American state has been directed primarily, not at the "predators" who threaten bodily mayhem, but at run-of-the-mill delinquents who commit nonviolent offenses, the overwhelming majority of whom are dredged from the lower strata of the urban proletariat, and especially its black and Hispanic components.* A lagged index of punitiveness dividing the number of inmates by the volume of crimes committed five years earlier (to take account of the delay in police action, judicial processing, and media echo) yields essentially the same result, save for a dip in the years 1975–80. Indeed, the overall increase in punitiveness is similar for the simultaneous and lagged indicators when the lagged period is shifted to cover the quarter-century from 1980 to 2005: the rise in the lagged index reaches 455% for all crimes and 344% for violent crimes. The trough observed in 1975–80 confirms that it is the penal treatment of crime after the mid-1970s (and not the evolution of the crime rate itself) that has driven the steep rise in incarceration in America.

What changed during this period is not the nature or frequency of criminal activity but the attitude of the public authorities—and the white middle class that makes up the bulk of the active electorate—toward the black proletariat and subproletariat taken to be crime's main hotbed and to whom the penal state took charge to reaffirm the

*Only a feat of intellectual bad faith or sheer ignorance of these elementary facts, which are attested by all data sources, could lead one to speak of the "myth of punitiveness" in the United States and support the bizarre claim that, "rather than being in the ascendancy, punitive and emotive sanctions may in reality be becoming increasingly untenable." Roger Matthews, "The Myth of Punitiveness," *Theoretical Criminology* 9, no. 2 (May 2005): 175–201, citation at 196.

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civic imperatives of work and morality with all the more vigor as the growing instability of employment and the withering away of state charity made their situation worse.²¹ Reinforced by the class and caste bias of the police and judicial system, penal austerity aims at and strikes the categories most affected by the economic insecurity and social austerity instituted as a response to the "stagflation" of the 1970s. This is to say that *hyperincarceration in the United States does not concern the "dangerous classes" so much as the precarious sectors of the working class*—and by direct implication the black subproletariat of the collapsing ghetto, insofar as it is the living intersection of these two categories. Rediscovering the mission of its historical origins, the carceral institution henceforth serves as a major instrument for managing poverty in the United States.²²

Indeed, America's carceral hyperinflation has been fed by the concomitant growth in two factors which comparative penology shows rarely vary in the same direction in modern societies, especially with such amplitude, namely the length of detention and the volume of those sentenced to confinement.* *The lengthening of sentences expresses the toughening of judicial policy* in the United States outlined in chapter 2: multiplication of offenses punishable by imprisonment; rise in the quantum inflicted for minor infractions (such as theft, auto theft, and drug possession) as for violent crimes; mandatory minimum sentences for certain categories of law breaking (narcotics and sexual offenses) and automatic lifetime imprisonment for a third conviction (under "Three Strikes and You're Out" statutes); a steep escalation of sentences for repeat offenders; the processing of defendants below the age of sixteen as adults; and the reduction or elimination of parole. Thus, owing especially to "truth in sentencing" measures requiring that at least 85 percent of a sentence be served, inmates in state prisons convicted of offenses against persons served an average of 60 months in 1997, seven months more than in 1990, while those convicted of simple drug possession served 30 months instead of 24. However, for the great mass of prisoners, the lengthening of sentences remains in the end limited due to the swelling share of those convicted for minor offenses and the stubborn dearth of cells to house them in:²³ the average length of effective incarceration for first-time state convicts rose from 20 months in 1985 to 25 months ten years later (compared to eight months in France).^{**}

* Recall that, at any moment in time, the *stock* of inmates (the number of individuals under lock) is the algebraic product of the *flow* of those held in deprivation of liberty (measured by the number of "admissions" to custodial establishments) by the average *length* of their confinement.

** Strong regional disparities should be noted here: the average duration of incar-

	%
2000	increase
113	538
95	327
922	399
732	225

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Table 9. Flow of convicts entering and leaving state prison, 1980-95
(in thousands)

	1980	1982	1984	1986	1988	1990	1992	1994	1995
Admissions	159	203	218	273	347	461	481	500	522
Releases	144	164	195	234	305	405	430	419	455
Difference	15	39	23	39	42	56	51	81	67

SOURCE: Bureau of Justice Statistics, *Correctional Populations in the United States, 1995* (Washington, D.C.: Government Printing Office, 1997), 13.

If American prisons posted an explosive growth over the past three decades, it is not only because the American penal system "strikes" harder over the years; it is also and primarily because it "rakes" in vastly more bodies. When Reagan began his presidency, the police made some 10.4 million arrests yearly, of which about two-thirds (69 percent) led to placement in custody. Fifteen years later, the annual number of arrests reached 15.2 million, and nearly all of them (94 percent) resulted in jailing. Over the same period, admissions to state penitentiaries quadrupled, jumping from 159,000 in 1980 to 522,000 in 1995 and 665,000 in 1997 (see table 9). And the gap between admissions and exits deepened by about 50,000, the equivalent of the carceral population of France or Italy.

From this angle, America's carceral evolution diverges strikingly from that of Western European countries—at least up to the mid-1990s. With some variations, the member states of the European Union have implemented penal policies of "dualization," which consist of punishing crimes considered serious more severely while making greater use of noncustodial sanctions for less serious infractions: suspended sentences, day fines, public service work, intensive parole supervision, and probation. Between 1985 and 1995, at the height of carceral hyperinflation in the United States, the number of annual admissions in jails and prisons remained stable in France (82,917 and 82,860) and in Italy (91,702 and 93,051); it rose slightly in Holland (from 24,980 to 29,232) and in Greece (from 7,054 to 8,889); and diminished elsewhere, slightly in Belgium (from 19,979 to 16,320) and dramatically in Spain (from 73,058 to 53,728). The growth of the confined population in Europe over the past two decades is explained solely by the lengthening of sen-

ceration (measured by the sentence served by prisoners released in 1997) runs from 8 months in Delaware to 62 months in West Virginia. Nineteen states lock people up for over 30 months on average. Camille Graham and George M. Camp, eds., *The Corrections Yearbook 1998* (Middletown, Conn.: Criminal Justice Institute, 1999), 56-57.

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tences handed down by the courts.²⁴ There was no such "dualization" of punishment in the United States, where all scofflaws were subject to an increasingly punitive regime and an ever-larger volume of individuals found themselves in the clutches of the carceral apparatus.

The systematic recourse to the police and judicial institutions to contain the disorders of everyday life in poor neighborhoods and households explains why American prisons today are overfull, not with "violent predators," as the partisans of all-out incarceration drone, but by nonviolent criminals and petty delinquents, most of whom, as we emphasized in chapter 2, are drawn from the most vulnerable fractions of the working class. As can be seen upon reading table 10, the overwhelming majority of the half-million people admitted to state prisons (73 percent) and federal penitentiaries (94 percent) in 1994 were "sent down" for nonviolent offenses. Even grasped from the point of view of stocks, where their weight is necessarily greater insofar as they serve considerably longer sentences, those convicted of crimes of violence (homicide, manslaughter, forcible rape, assault, robbery) represent only 26 percent of the residents of county jails, 13 percent of those confined in federal prisons, and less than one-half of the clients of state facilities. This was also the case with the 110,000 minors incarcerated in 1998, only 15 percent of whom were accused or convicted of crimes against persons.

At the beginning of the 1990s, at the height of the carceral wave sweeping the country, the typical convict entering a state penitentiary in America was an African-American male (54 percent as against 19 percent for whites), under 35 years of age (for three-quarters of them), without a high-school diploma (62 percent), convicted for a nonviolent crime in more than seven of ten cases.²⁵ The most common offenses committed by the new entrants were possession or sale of narcotics (29 percent), theft or concealing stolen goods (19 percent), burglary (15 percent), and public order violations (8 percent). Barely one-quarter were sent down for violent crimes, including robbery (11 percent), assault (7 percent), sex offenses (5 percent), or murder and kidnapping (4 percent together). And this breakdown does not include the almost one-third of entries who were unsuccessful parolees, many of whom were returned behind bars not as a result of a new court conviction but due to a mere administrative revocation sanctioning a violation of the terms of their conditional release.

Here is another indication that penal confinement serves above all to control the disruptive street "rabble" more than combat the crimes of blood whose specter haunts the media and feeds a thriving cultural industry of fear of the poor, led by such television programs as

Table 10. Share of violent offenders in the flow and stock of inmates, 1995

	Flow Admissions	% violent	% property	% drugs	% public order
jails	—	—	—	—	—
State prisons	337,192	28.8	29.5	30.8	10.2
Federal prisons	31,805	6.9	21.1	44.2	27.7

SOURCE: Bureau of Justice Statistics, *Correctional Populations of the United States, 1995* (Washington, D.C.: Government Printing Office, 1997), 12 for flow, and 6-7 for stock in state prisons; 14-15 for flow and 8-9 for stock in federal penitentiaries; Caroline Wolf Harlow, *Profile of Jail Inmates 1996* (Washington, D.C.: Bureau of Justice Statistics, 1998), 5 for jails.

"America's Most Wanted" and "Cops":²⁶ the number of convicts held for violent crimes in state prisons increased 86 percent between 1985 and 1995, while the number of their comrades locked up for drug and public order offenses grew by 478 percent and 187 percent, respectively. The former accounted for 39 percent of the increase of the population under lock during this period, the latter for 43 percent. Similarly, the share of those convicted of narcotics possession or distribution in federal prisons went from one-third in 1985 to 60 percent ten years later. By themselves, violators of drug laws accounted for 71 percent of the population growth in these establishments.²⁶

Based on in-depth interviews with a representative sample of prisoners in Illinois and Nevada allowing them to go beyond the rough aggregate figures of correctional statistics, John Irwin and James Austin demonstrated that over half of the clients of state penitentiaries were locked up for petty infractions entailing no physical violence and negligible material damages, and thus presenting none of "the features that would cause ordinary citizens to view the crime as particularly serious."²⁷ A detailed examination of their social and judicial trajectories reveals that six in ten prisoners are occasional criminals who committed their misdeed by association, impulsively, or because they were cast adrift. Far from being "vicious predators" (the term consecrated by the mainstream media and politicians), 60 percent of "habitual of-

²⁶These programs broadcast in prime time videos of real police interventions, typically in dispossessed black and Latino neighborhoods, in utter disregard of the rights of those arrested and humiliated on camera. Aron Doyle, "Cops: Television Policing as Policing Reality," in *Entertaining Crime: Television Reality Programs*, ed. Mark Fishman and Gray Cavender, 95-116 (New York: Aldine, 1998).

Stock Population	% violent
507,026	26.3
989,005	46.5
88,101	13.1

fenders" are low-level "discipline who rarely commit by default, as it were, due to occupational footing. "They are drunken car thieves who are being caught in a clumsy a shopping cart full of stolen goods to undercover agents. They know no other way to live."

Impressive as they may be, they understate the hold that the state has on those consigned to the nether world. They do not take into account the constant surveillance and control of the deskilled fractions of the population, the precarization of precarious wage offered by the state.

First of all, the mass of prisoners at any moment is composed of probation and former prisoners. The greater share of their sentences on probation grew from twenty years later, while the total to nearly 726,000.²⁹ In total, the sight grew by more than 50 percent from 1.84 million in 1980 to 6.47 million in 2000, a figure that corresponds to the adult population, correspond-

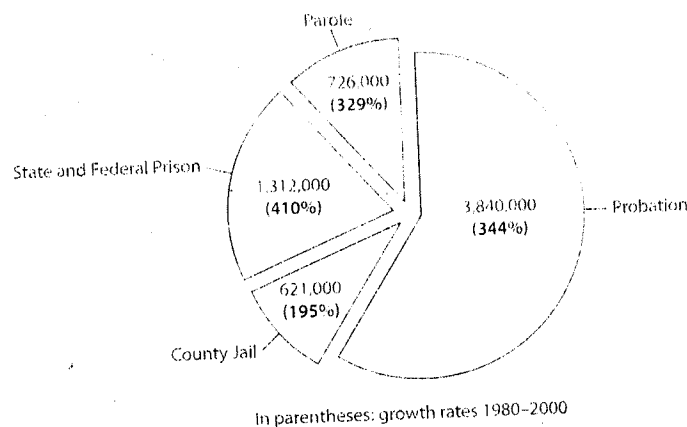
<i>Stock Population</i>	% violent	% property	% drugs	% public order
507,026	26.3	26.9	22.0	24.3
989,005	46.5	22.9	21.5	8.7
88,101	13.1	8.7	59.9	18.3

fenders" are low-level "disorganized offenders without skills or discipline who rarely committed acts of violence" and who turned to crime by default, as it were, due to their inability to find a stable and durable occupational footing. "Their crimes are petty and pathetic. These are drunken car thieves who fall asleep in their victim's car, shoplifters being caught in a clumsy attempt to brazenly walk out of a store with a shopping cart full of stolen goods, and crack-heads selling \$2 rocks to undercover agents. They are, in many respects, aging offenders who know no other way to live."²⁸

Impressive as they may be, carceral statistics nonetheless seriously understate the hold that judicial institutions have on the populations consigned to the nether regions of American social space. For they do not take into account the spectacular expansion of indirect modes of surveillance and control which the authorities have evolved to regulate the deskilled fractions of the working class in the age of the generalization of precarious wage labor and the retraction of the protections offered by the state.

First of all, the mass of people under "criminal justice supervision" at any moment is composed not of inmates but of persons placed on *probation* and former prisoners released on *parole* after having served the greater share of their sentence (see figure 3). The number of offenders on probation grew from 1.12 million in 1980 to some 3.84 million twenty years later, while the population on parole took off from 220,000 to nearly 726,000.²⁹ In total, *the stock of Americans under penal oversight grew by more than four and a half million in twenty years*: starting from 1.84 million in 1980, it rose to 4.35 million in 1990 and reached 6.47 million in 2000, a figure that represents 3 percent of the country's adult population, corresponding to one adult male in twenty and one

Figure 3. 6.5 million Americans under criminal justice supervision in 2000



SOURCE: Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics 2000* (Washington, D.C.: US Government Printing Office, 2002), 145.

black man in ten. In 1998, eleven states each held in excess of 100,000 probationers under their heel; that is more than France holds (87,000). By themselves, Texas (with 429,000 convicts on probation), California (287,000), Florida (237,000), and New York State (174,000) controlled more than one million. Aside from the sheer volume of convicts outside the walls and its continual growth, what must be noted is that the four and a half million people kept in the shadow of the prison were in an eminently precarious judicial position since they had a good chance of landing in it (again): two in five probationers and six in ten parolees who exited this status in 1997 were thrown behind bars, either because they committed a new offense or because they violated one or another administrative condition of their release (by failing an alcohol test or failing to hold a job, missing an appointment, leaving their county of assignment, etc.).

Next, the extension of judicial supervision itself does not fully capture the multiform processes by which the mesh of the penal net has been at once reinforced and expanded—a process that criminologists designate by the visually evocative concepts of “net strengthening” and “net widening.”³⁰ Thus, in addition to the deployment of “intermediate sanctions” such as house arrest and boot camps, “intensive supervision,” day reporting, community service, and telephone or electronic surveillance (with the help of bracelets and assorted technological gadgets), the grasp of the American judicial system has been considerably enlarged thanks to the proliferation of criminal databanks and the

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In *The Justice Juggernaut* ture” function, in the 197 developed its “observatic deviant or dangerous.”³¹ U ministration Agency, the the fight against crime ir the diffusion of the disco over \$8 billion in subsid the police, courts, and co have created centralized proliferated in all directio

The result is that the c and federal) now hold so million a decade earlier— ing to nearly *one-third* of t these databanks varies by only by judicial authoritie accessible not only to oth Bureau of Investigation, th its successor agencies (res services, but also to privat These “rap sheets” (police are commonly used, for ex applying for jobs. And it n them is frequently incorre illegally disseminated: the those suspected of offense borhoods, into the sight of

As of December 31, 1997, the (Criminal History Record Info files, 7.4 million of them mar of these arrest records with fir fication Index (III), the compi all persons arrested for crime

multiplication of the means and points of control-at-a-distance they authorize.

Identify, Test, (Re)capture

In *The Justice Juggernaut*, Diana Gordon shows how, alongside its "capture" function, in the 1970s and 1980s the American state energetically developed its "observation" function regarding populations considered deviant or dangerous.³¹ Under the impetus of the Law Enforcement Administration Agency, the federal bureaucracy entrusted with activating the fight against crime in response to the citizen "demand" elicited by the diffusion of the discourse of "law and order" (the LEAA distributed over \$8 billion in subsidies during the twenty years of its existence), the police, courts, and correctional administrations of the fifty states have created centralized computerized databanks, which have since proliferated in all directions.

The result is that the country's various police agencies (local, state, and federal) now hold some 55 million "criminal files"—as against 35 million a decade earlier—on about 30 million individuals, corresponding to nearly one-third of the nation's adult male population.³² Access to these databanks varies by case and jurisdiction. Some can be consulted only by judicial authorities and strictly for judicial purposes. Others are accessible not only to other public bureaucracies, such as the Federal Bureau of Investigation, the Immigration and Naturalization Service, or its successor agencies (responsible for policing foreigners), and welfare services, but also to private persons and organizations via the internet. These "rap sheets" (police reports, court records, and correctional files) are commonly used, for example, by employers to weed out ex-convicts applying for jobs. And it matters little that the information included in them is frequently incorrect, out of date, harmless, or sometimes even illegally disseminated: their circulation places not only criminals and those suspected of offenses, but also their families, friends, and neighborhoods, into the sight of the police and penal apparatus.

As of December 31, 1997, the so-called "criminal history" archives of the states (Criminal History Record Information, or CHRI) contained 54,210,800 individual files, 7.4 million of them manual and 46.8 million automated. Some 18 million of these arrest records with fingerprints were also stored in the Interstate Identification Index (III), the computerized national registry containing the profiles of all persons arrested for crimes deemed serious by the country's various police

services and which can be consulted online by the 39 states participating in the program.³³ Finally, in 1997 the FBI received and entered 8.6 million new sets of fingerprints into its NFF (National Fingerprint File) databank, 3 million of which were passed on for nonjudicial purposes.

The geometric growth of police and judicial databanks is part of a broader movement of extension and diversification of "undercover" police surveillance, which has become more proactive and diffuse over the years with the growth of the number of agents and agencies involved—and, with them, the number and variety of their targets.³⁴ The absence of national legislation regulating the use of this information and the massive (although relatively late) recourse to computers in effect make it possible to expand, routinize, and automate the collection and circulation of data harvested by the forces of order, the courts, and correctional administrations and their satellites. And there is still plenty of room for growth: only half of the states have contributed more than 70 percent of their arrest records accumulated over the past five years to the CHRI; the entry or exit of inmates is systematically recorded in only thirty states in the case of prison convicts and in fifteen for jail detainees.

This is well illustrated by the proliferation of electronic databanks on juvenile delinquents—or those thought to be such. During the 1980s, with the support of the federal Department of Justice, most big American cities established computerized registries called "SHODI youths" (the acronym means "serious and habitual offender/drug infraction"), which catalog teenagers believed to be real or potential delinquents—a convenient pretext for placing segregated neighborhoods and their residents under reinforced police and penal surveillance. As a result, in 1993 the Denver police had garnered files on some 6,500 youths "suspected" of being gang members, even as, according to their own estimates, there were fewer than 500 gang members in the entire city. This is because, to figure in these files, it sufficed to be arrested at the same time as a (presumed) gang member, to wear (supposed) gang colors, to be reputed to know an (alleged) gang member, or simply to have been seen in his company. By virtue of this loose definition, over nine youths in ten on this list were African American (57 percent) or Latino (33 percent), although the population of Denver was 80 percent white. One understands the intermingled furor and fury of the black community at discovering that no fewer than 3,691 of its youth, amounting to fully two-thirds of African Americans ages 12 to 24 residing in the city, were considered suspect if not guilty on principle by the authorities.³⁵ The judicial fuzziness and flagrant ethnic bias that affect the compiling of such lists do not prevent the police from relying on them to target their

patrols and arrests at them with redoubled

In 1997, Illinois put the internet site of its accessible. With a few the slightest control of the state's prison (normally held secret markings ("a description including its physical of their judicial records (nature, category go back twenty or twenty also find out when arrested, their anticipated supervision. Thanks lord can, before hiring has no criminal background of his judicial record of Corrections explained, after all, surely protect themselves. public domain."³⁶

The Texas Department that state is called—internet inquirer (but one warns that the data may or deceptive, if only by 1994 and many convicted cannot engage the res has to pay to consult \$3.15 per request, plus is less rich, since it depends the convict (on the other more immediately disseminates searches by combining "Wilson" brought up 2 added "B" as middle A similar search for " delivered more than 9

patrols and arrests and prosecutors from impeaching those included on them with redoubled severity.

In 1997, Illinois put the files of all its current and recent inmates on the internet site of its corrections administration and made them freely accessible. With a few mouse-clicks, and without any justification or the slightest control, anyone can read or download the profiles of all of the state's prisoners—name, date of birth, social security number (normally held secret), "race," height and weight, intimate distinctive markings ("a description of each mark, scar, tattoo worn by the inmate, including its physical description and location")—as well as a summary of their judicial records comprising an enumeration of their convictions (nature, category, and number of infractions, some of which can go back twenty or thirty years, and place of judgment). Anyone can also find out when and where such and such an inmate was incarcerated, their anticipated (or effective) date of release and of the ending of supervision. Thanks to "Look Up an Inmate," every employer or landlord can, before hiring or renting, check that the applicant in question has no criminal background, and thus discriminate at will on the basis of his judicial record. As the spokesperson of the Illinois Department of Corrections explained with a tone of self-evidence, "these are criminals, after all, surely people have the right to have this information to protect themselves. It's the same as seeing them on television, it's in the public domain."³⁶

The Texas Department of Public Safety—as the correctional administration of that state is called—is more cautious: its site records the identity of the internet inquirer (but one can easily provide fanciful information to get through) and warns that the data made available to the public may be incomplete, incorrect, or deceptive, if only because they have been systematically collected only since 1994 and many convicts are listed in it under borrowed names, and so these data cannot engage the responsibility of the state. It is more interested, too, since one has to pay to consult the registry of convicts, which comprises 2 million files: \$3.15 per request, plus a connection fee of 57 cents. The information provided is less rich, since it does not include the distinctive physical markings born by the convict (on the other hand, it contains hair and eye color, which after all are more immediately discernable than private tattoos), but it allows more elaborate searches by combining variables: for example, in May 1999 a query about "John Wilson" brought up 216 files, which fell to 69 if one specified "black," then 7 if one added "B" as middle initial (including 4 individuals for whom this was an alias). A similar search for "Robert Smith" in the databank reserved for sex offenders delivered more than 50 files.

But it is Florida that is the pacesetter in the race to disseminate the personal data and criminal history of convicts "in the interest of public safety": the "Corrections Offender Network" rubric on the web site of its correctional administration, which has received over 12 million visitors since its inauguration in March 1998, offered the usual private and carceral information, a large-format color photograph, as well as the address at which recently released convicts were presumed to reside.

The relentless growth of official criminal databases is dwarfed by the unregulated proliferation of private companies offering criminal background checks and commercial information banks amassed by the "data mining" industry, which dredges, sifts, compiles, buys, and resells information drawn from a vast array of public and private registries (rolls of voters, holders of drivers licenses, civil records, real estate transactions and property taxes, census data, credit ratings, medical records, military personnel receiving a "dishonorable discharge," war veterans committed to psychiatric hospitals, etc.), all of which can be connected to judicial files culled from court reports and correctional records. In 2004, 472 companies offered databases to ascertain the criminal justice background of individuals for the entire United States.³⁷ Such verification has become routine because advanced digital technologies and online services allow firms to obtain immediate checks at a very low cost. For instance, the company InstantCriminalChecks.com offers online criminal background verification for \$19.95 for one state, \$39.95 for three states, and \$45.95 for the entire country. It promises its "customers the best criminal data, the easiest ordering process, and the most detailed criminal reports INSTANTLY." The "criminal check" purchased contains the name, Social Security number, and profile of the offender; the offense type, code, and disposition; custody and case information, as well as jail and probation data.* In reaction to an increasingly litigious work environment and the shock of the 9/11 attacks, the proportion of companies running such criminal

*The firm vaunts its services thus: "Performing a comprehensive criminal background check before you hire a new employee can save your company from big headaches including monetary and legal costs. With repeat criminal offenders applying for work, you need to keep your company and your employees as safe as you can. Conducting a criminal background check with InstantCriminalChecks.com is easy, fast and affordable." In addition to employment decisions, verification is encouraged for "self checks, nanny checks, babysitter criminal background checks, and private investigations." A list of legal disclaimers follows, including the concession that "users should not assume that this data provides a complete or accurate history of any person's criminal history."

checks on applicants prior to hiring. In 2004, making background checks as common as checking prior employment with the Society for Human Resource Management, and small, also verify education and skills, and 35% of them even run criminal background checks (up from 19% a decade earlier).

The diffusion of criminal background checks by private agencies specializing in background checks is not but drastically reduce the cost of hiring, or having gone through the process, the stated reluctance of employers to hire. A representative sample of 800 businesses in New York, Boston, Detroit, and Los Angeles found that 80% of applicants who have either a criminal background, with a "queue" of desirable candidates, are open to hiring a person with a criminal background, and one-half would employ a person with a criminal record for entry-level jobs, but *two-thirds would not hire someone sentenced to prison or jail*. No other factors—those where employment opportunities are most likely to seek applicants.³⁸ Moreover, in a number of states, by law to inform their employers of a person's criminal history having their release revoked. In some states, on conditional release to community supervision, their parole officer will routinely check their work (according to inmates' feedback on the subject, this is the most common reason for revocation of supervision, since it instantly identifies employees).

A questionnaire survey of 300 employers, representative of the local economy, found that with barely 12 percent of them hiring an ex-convict.³⁹ The percentage of employers who followed a job applicant with a criminal record falls to less than 5 percent in cases of violent crimes or sex offenses. To be hired, an applicant approaches one-third in the case of a felony degree while behind bars, since the US Congress cut off

checks on applicants prior to hiring jumped from 30 percent in 1996 to 80 percent in 2004, making the verification of judicial background as common as checking prior work history. According to a study by the Society for Human Resource Management, one-half of those firms, big and small, also verify education transcripts and motor vehicle records and 35% of them even run checks on the credit history of job applicants (up from 19% a decade earlier).

The diffusion of criminal justice files through internet sites or private agencies specializing in "background checks" on employees cannot but drastically reduce the occupational chances of people placed under, or having gone through, judicial supervision, given the demonstrated reluctance of employers to hire them. A study of a representative sample of 800 businesses employing unskilled labor in Atlanta, Boston, Detroit, and Los Angeles reveals that these firms tend to reject applicants who have either an intermittent employment record or a criminal background, with ex-convicts coming way at the end of the "queue" of desirable candidates. Thus 68 percent of firms said that they are open to hiring a person who has been unemployed for over a year, and one-half would employ an individual who has only worked temporary jobs, but *two-thirds would refuse on principle to hire any applicant sentenced to prison or jail*. Now, almost half of businesses in the service sectors—those where employment is growing and unskilled former inmates are most likely to seek a job—check the criminal background of applicants.³⁸ Moreover, in a number of states ex-convicts are required by law to inform their employer of their judicial status under pain of having their release revoked. It is, all the same, very difficult for those on conditional release to conceal their status from their employer since their parole officer will routinely check up on them at their place of work (according to inmates from San Quentin state prison questioned on the subject, this is the most humiliating aspect of being put under supervision, since it instantly makes them lepers among their fellow employees).

A questionnaire survey of 300 employers in Dallas and Houston representative of the local economy deliver still more discouraging results with barely 12 percent of them stating that they would be prepared to hire an ex-convict.³⁹ The percentage rises to just 22 percent for former prisoners who followed a job training program while in custody and falls to less than 5 percent in the case of those convicted of violent crimes or sex offenses. To be sure, the rate of welcoming businesses approaches one-third in the case of ex-convicts who obtained a college degree while behind bars, but this is a highly improbable scenario since the US Congress cut off all public funding for higher education

in prison in 1994. This places former prisoners before this impossible choice: either admit their criminal background and thus be immediately excluded from the pool of viable job applicants, or falsify their application form at the risk of being sent back to prison later (by the correctional administration) or fired for having lied on their application when the firm proceeds to a routine background check of the judicial status of its employees.* As a result, "those who have (or are suspected of having) criminal records or checkered work histories will have difficulty getting hired in even the lowest-wage jobs and least skill-intensive sectors of the economy."⁴⁰ The virulent ostracism to which "ex-cons" are subjected on the job market explains why a stint behind bars cuts their average length of employment by half (as measured by the number of hours worked annually) and consequently their income. For African-American convicts returning to life outside, the negative effect of incarceration is even more pronounced, with their postimprisonment income reaching an average of only 44 percent what it was before.⁴¹ And everything indicates that this ostracism is being reinforced by the broader diffusion of personalized criminal data, on the one hand, and the crystallization of a genuine public culture of loathing of prisoners, on the other.

What is more, the same techniques of digital fingerprinting deployed to supervise convicts released on parole are used to "downsize" the welfare rolls and prevent public aid fraud. In winter 1996 the governor of New York State boasted that compulsory identification by "fingerprinting" (the optical reading of fingerprints) had allowed the "weeding out" of more than 25,000 public aid recipients during the program's first year. "I am confident that my plan to reform welfare by replacing the aid check with a paycheck will be as great a success as our fingerprinting program."⁴² In one year, the welfare administration submitted 747,000 people to digitalized checks and excluded 35,000 from its rolls.

*In order to safeguard against possible lawsuits in a business environment getting ever-more litigious, a growing number of firms systematically check the "criminal background" of their employees, not only upon hiring (by means of a written questionnaire and during the individual hiring interview) but also periodically, by having the list of their employees scoured annually by a specialized agency. There were about 70 "background checking" companies in the United States, 71 of which posted earnings in excess of one million dollars in 1999. The leaders of this booming market (especially for checking backgrounds for drug use) are Medtox Scientific Incorporated and Westshore Clinical Labs (with annual revenue approaching \$50 million that year), Research Services Inc. and Occupational Health Services (between \$10 million and \$20 million each), and Avert Inc., Borg Warner Information Services, Worksigns, and Blue River Services (between \$5 and \$10 million each). *American Business Database of 10,000,000 Firms and Private Companies in the United States* (CD-ROM, 1999).

amounting to (sociology), for computer data later, but only the files purge indigent adults director of social permanent file who would otherwise

In any case, rough records themselves in the precise, and more of the individual states have already years, done by representative categories (as prostitutes in But a new era of when Congress lion to facilitate their countrywide source registry, thusiasm for getting to Seattle and I sure that will finally violence by effective criminals.

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The existing legal prisoner convicted on parole. of these sentences first or second fingerprint assault, but and carjack several disaster; M

amounting to 5 percent of their "clients" (according to the official terminology), for having failed to register their fingerprints in the state's computer databank. Ten thousand of them had their rights restored later, but only after losing their benefits for several months. Among the files purged, 16,000 received "home relief," a program for single indigent adults that paid out \$350 per month to 271,000 people. The director of social services celebrated these results: "The high rate of permanent file closure shows that digital fingerprinting deters people who would otherwise use multiple identities to defraud welfare."

In any case, all these "old-style" files, manually put together from rough records based on physical fingerprints and mugs shots, are themselves in the process of being superseded by infinitely larger, more precise, and more powerful databanks containing the *genetic fingerprints* of the individuals caught in the police and penal dragnet. Forty-eight states have already used some variant of "biological filing" for several years, done by means of a blood sample taken at release of certain sensitive categories of prisoners such as murderers and sex offenders (as well as prostitutes in Connecticut, or all juvenile offenders as in Virginia).^{*} But a new era of penal panopticism opened in the United States in 1994 when Congress passed the DNA Identification Act, releasing \$25 million to facilitate the systematization of computerized criminal files and their countrywide interconnection through the creation of a common source registry, the CODIS (Combined DNA Information System). Enthusiasm for genetic filing has since spread like wildfire from Savannah to Seattle and El Paso to Chicago. Some even present it as the miracle cure that will finally allow America to rid itself of the plague of criminal violence by effectively isolating the supposed "hard core" of incorrigible criminals.

On October 13, 1998, the FBI officially put in operation its national genetic databank containing the DNA profile of 25,000 felons as well as the "forensic data" for 4,600 unresolved criminal cases. Since this milestone date, the states that wish to can connect to this central registry to transfer their own genetic samples and get access to the samples

^{*}The existing legal frameworks vary widely. For example, Colorado stipulates that any prisoner convicted for sexual assault must supply a DNA sample before being released on parole. Kansas authorizes "the collection of blood and saliva samples for all those sentenced to prison for more than one year [felons] due to an illegal sexual act, first or second degree murder, incest, aggravated incest, or child abuse." Ohio uses genetic fingerprinting for those convicted of murder, kidnapping, forcible rape, and sexual assault, but excludes theft. Florida, to the contrary, includes theft with violence, assault, and carjacking. Alaska extends this practice to any person implicated in a natural disaster; Maine to juvenile offenders. And so on.

collected by the others. The number of prints already amassed by the different correctional administrations waiting to enter into the FBI databank was then estimated at 350,000, and the cost of the operation at \$22 million. For example, California's correctional genetic databank alone contained some 100,000 saliva and blood samples taken from convicts for sexual offenses, homicide, and kidnapping.⁴³ A national competition immediately started to see which state would solve the most crimes by a simple check of its genetic databank: in April 1999, Florida claimed to have scored 155 "cold hits," but all envied Great Britain, which proudly posted 30,000 cases solved thanks to DNA identification. By 2004, according to an FBI brochure, the CODIS databank contained just over 2 million offender profiles, including 94,000 forensic profiles (DNA prints developed from crime scene evidence such as blood or stains), which had allowed 13,800 "offender hits" nationwide.

The forces aiming to check the vertiginous expansion of genetic databanks in police and penal matters—as elsewhere in the field of health and life insurance, employment, and civil disputes such as paternity suits—are fighting a rear-guard battle that seems lost in advance, so great is the fascination for this new technique of identification and surveillance. It appears indeed to marry legal rigor, moral neutrality, financial frugality, and scientific infallibility. And it benefits to the full from the predilection that Americans have for technological solutions to social problems.⁴⁴ Finally, its advocates can emphasize the possibility it affords of proving the innocence of those falsely convicted: the country's major newspapers are suddenly teeming with moving stories about prisoners freed after years of unwarranted confinement thanks to a simple DNA test,* as if to counterbalance the usual dismal and alarming daily coverage of violent crimes and gruesome trials.

In December 1998 the New York City chief of police, always on the lookout for gadgets liable to help him to uphold his city's planetary reputation as the Mecca of law enforcement, proposed taking the genetic fingerprints of all individuals apprehended by the city's police

*Sixty-two prisoners had been retroactively cleared by this means as of spring of 1999 ("DNA Tests are Freeing Scores of Prison Inmates," *New York Times*, 19 April 1999), a figure which nearly doubled by 2005. A populist plea for genetic testing as a means for exonerating the wrongfully convicted typical of a new genre of books on the topic is Harlan Levy, *And the Blood Cried Out: A Prosecutor's Spellbinding Account of DNA's Power to Free or Convict* (New York: Avon, 1997). For a narrative account of how devious interrogation tactics, faulty identification, overaggressive prosecutors, and incompetent defenders routinely combine to produce wrongful convictions, see Dave Eggers, Lola Vollen, and Scott Turow, *Surviving Justice: America's Wrongfully Convicted and Exonerated* (Boston: McSweeney, 2005).

by having an officer armed with a cotton swab collect a saliva sample at booking. Meanwhile, Louisiana and North Carolina were discussing bills going in the same direction, and several weeks later, the annual national convention of police chiefs offered enthusiastic support for adopting such a measure.⁴⁵ In spring of 1999, in response to this groundswell, a group of government experts, the National Commission for the Future of DNA Evidence, was directed by attorney general Janet Reno to examine the legal and technical problems posed by the establishment of a national megabank of genetic identification data concerning not only criminals convicted of violent or sexual offenses, nor even all those convicted by the courts, but *all those arrested* by the various police services, amounting to a dozen million Americans every year. Such a system of systematic mass police filing could very quickly become reality, considering the combined progress of biotechnology and computers as well as the economies of scale that the generalization of this technique of identification would offer: experts predict that it will be possible within a few years to collect, store, and analyze a DNA sample for under ten dollars. The recent development of a portable "DNA mini-laboratory" the size of a briefcase allowing for the analysis of blood, saliva, hair, or fingernail samples *in situ* and the deciphering of the genetic code of individuals present at crime scenes within a half-hour cannot fail to encourage this practice.

In theory, genetic fingerprinting and data collection is intended to enable the authorities to train the sights of the penal system on "career" criminals and hardened multirecidivists and, in the process, reduce its "collateral impact." In practice, their generalization translates into an unprecedented widening of surveillance and indirect control as well as their indefinite extension in time:⁴⁶ an individual recorded in CODIS or the genetic databank of his city police will be in it for life. He will thus be liable to being identified and apprehended even for minor infractions committed years or decades earlier following a routine police check, a simple arrest functioning in the manner of an instantaneous minitrial. There is no more "right to oblivion" for the Americans caught in the trap of the police and penal apparatus that is gradually replacing the remnants of the welfare state in the lower regions of the national social space: they have already entered into a society of continual and perpetual punitive surveillance.

One last transformation, at once qualitative and quantitative, completes the tightening of the penal noose around the fractions of the working class destabilized by the rise of precarious wage labor and the withering away of social protection: the drying out of early release and the mutation of parole into a policing program devoted, not to helping

convicts reintegrate into society (to the degree they were ever "integrated"), but to recapturing the greatest possible number by subjecting them to intensive surveillance and punctilious discipline, especially by means of drug testing (which has become the main activity of probation and parole services in many jurisdictions). Each year, half a million convicts are released from state prisons; the vast majority (around 85 percent) are then placed under the supervision of a parole officer for a period averaging 23 months. In the three years following their release, 60 percent will find themselves back behind bars, most for committing minor offenses such as causing a public disturbance, theft, or a drug infraction. The "springboard" of parole has become a "trapdoor": between 1985 and 1997, the rate of parolees who successfully completed their period of "community supervision" dropped from 70 percent to 44 percent. And the share of recaptured parolees among prison admissions doubled nationwide in two decades, going from 16 percent of new entries in 1980 to 34 percent in 1997.⁴⁷

In California, the number of parolees sent back behind bars—which the state correctional administration refers to by the acronym PVRC ("Parole Violators Returned to Custody")—exploded from 2,995 in 1980 to 75,400 in 1996, 58,000 of them following a simple administrative revocation.* According to the latest figures from the California Department of Corrections (CDC), 85 percent of the state's parolees suffer from chronic alcohol or drug dependency, 10 percent are without a regular home (that rate exceeds one-half for inmates from Los Angeles), more than half are functionally illiterate, and 70–90 percent are unemployed when they come out. Upon release, the correctional administration gives them \$200 in pocket-money and a bus ticket to the county in which they lived at the time of their arrest (they are legally required to reside there so long as they are under supervision of the criminal justice system), without any assistance or preparation for release in more than nine out of ten cases. Thus, the CDC has 200 beds in shelters for 10,000 homeless parolees, four clinics for 18,000 parolees in need of serious psychiatric care, and 750 beds in detoxification wards while 85,000 ex-convicts on parole suffer from known drug addiction or alcoholism.

*For comparison, with a national population double that of California, France's correctional administration sported 525 revocations of parole release in 1996, corresponding to 11 percent of those supervised under this status: 233 were returned behind bars following a new conviction, 186 for failing to fulfill the terms of their parole, and 40 for "notorious misconduct." Administration pénitentiaire, *Rapport annuel d'activité* 1996 (Paris: Ministère de la justice, 1997).

This change of parole procedures and outcomes is the product of the jettisoning of the ideal of rehabilitation in the wake of the converging criticisms of the Right and the Left during the 1970s. Rehabilitation was effectively replaced by a managerialist philosophy that is content to handle flows and contain costs by carefully eluding the question of the causes and consequences of hyperincarceration, and that turns away from the social fate of the inmate once his sentence has been served. In this perspective, the prison serves to isolate and neutralize deviant or dangerous categories through standardized surveillance and the stochastic management of risks, according to a logic more akin to operational research or the processing of "social waste" than to social work.⁴⁸ Indeed, thirty years ago parole officers graduated from schools of social work and studied the basics of sociology and psychology. Today, while their caseload has doubled, they are trained in schools of criminal justice where they learn police techniques and the handling of firearms. The new panoptic philosophy that guides them is confirmed by this semantic slide: parole programs have recently been renamed "controlled release" in Florida, "community control" in Minnesota, and even "community detention" in Washington State.⁴⁹ For, under the new liberal-paternalist regime, the parolee is less an ex-convict returned to freedom than a quasi-inmate waiting to be sent back behind bars.

The new-style parole programs exhibit a pronounced penchant for drug testing (and secondarily alcohol detection) verging on obsession. This obsession would be incomprehensible, if not for the fact that this permanent checking allows the authorities to dramatize their determination to crack down and draw a sharp dividing line between good and bad parolees, those who behave in accordance with the law (and public morality) and those who continue to violate it, be it in a discrete and harmless way. They reveal how a punitive logic has now openly superseded therapeutic treatment even in the case of offenses that pertain at least partly to the medical register. A recent survey of 22 parole administrations across the country emphasizes that only 7 offer detoxification programs (and only 14 jobs programs), whereas all of them without exception make intensive use of drug testing.⁵⁰

In 1998 Maryland allocated \$5 million for a drug-testing program called "Breaking the Cycle," which aimed to impose "forced abstinence" on its 15,000 probationers and parolees by subjecting them to two mandatory drug tests every week. "Stay clean, or stay in jail": to implement this slogan in seven counties, Maryland increased the annual number of tests from 40,000 to one million by subcontracting them to a specialized firm.⁵¹ The professed objective of this heightened

surveillance campaign for convicts on the outside is not to heal a drug-addicted population but to improve the "quality of life" of "law-abiding citizens" by reducing the nuisances, panhandling, and petty crime connected to narcotics trafficking on the street, and to reaffirm the principle of inflexible intolerance toward all drugs by enlisting medical personnel as auxiliaries to the forces of order. "Therapists are policemen," a clinical psychologist charged with administering a version of this program in Michigan said proudly.

Subjected to conditions of release ever more numerous and difficult to satisfy while supervision is bolstered and focused on technical violations, and caught in the pincers of a reduction of support and a rise in public intolerance for any failure owing to the media stir around crimes committed by ex-convicts, the majority of parolees "remain dependent on others or the state, drift back and forth from petty crime to subsistence, menial, dependent living, or gravitate to the new permanent underclass—the 'homeless'"—unless they die prematurely of illness, drug overdose, or violent crime.⁵² They are condemned to survive by hook or by crook, flushed from under the protective wing of the welfare state, in direct reach of the punitive arm of the penal state.

"Controlled Chaos" in the Leading Penal Colony of the Free World

Since the end of the 1980s, the Los Angeles County Jail (LACJ) has held the title of largest penal colony in the Western world, edging out its rival in New York—the county sheriff's office boasts about it on its web site. In 2000, its seven establishments in operation held around 23,000 detainees, as against fewer than 9,000 in 1980 (by comparison, the largest prison in Western Europe, Fleury-Mérogis, twenty miles south of Paris, holds 3,900).

As one would expect, the bulk of the jail's clients come from the lower reaches of Angelino social space: 46 percent are Latino and 33 percent black, as against only 18 percent white, whereas whites make up 51 percent of the population in the county. One-half are between 18 and 29 years old and seven in ten did not complete high school. Much like the country's other big jails, three perennial problems afflict the LACJ: overpopulation, violence, and ethnic conflict.

The network of Angelino gaols holds 11,000 more detainees than it officially has beds, since its establishments were designed to accommodate 12,000. Worse, if judges were to enforce all of the prison sentences they inflict on the 120,000-odd persons placed under the county's penal supervision, they would contain 39,000! But space is sorely lacking, with the result that, despite the suffocating