The Crime of Poverty

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LOÏC WACQUANT HAS EXPANDED THE THEORY of the neoliberal state beyond the usual economic definition. He has linked the criminal justice system with the welfare system as two parts of the same policy of enforcing conformity to an unstable job market of temporary, part-time, low-paid, and flexible employment. Other criminal justice scholars and welfare scholars have analyzed these as separate spheres. While they have seen both as repressive, they have not seen them as interconnected.

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In this review, I add material from my own research and experience, which supports Wacquant's theory.

Wacquant does not subscribe to a conspiracy theory about the state's "building a Janus-faced Leviathan" (312) that increased the penal system while retrenching welfare. Nor does he think officials were following a carefully laid out master plan. Rather, he believes that bureaucrats, legislators, and politicians engaged in a trial-and-error "post-hoc functionality" to create a universal neoliberal system. He disagrees with the prevalent conception of neoliberalism, which is essentially economic. His own definition of neoliberalism is as follows:

> Neoliberalism is a *transnational political project* . . . 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 departmental categories in the different countries). It entails . . . the articulation of four institutional logics: l. *economic deregulation* . . . 2. *welfare state devolution, retraction, and recomposition* . . . 3. *the*

cultural trope of individual responsibility . . . 4. *an expansive, intrusive, and proactive penal apparatus.* (306-307)

While the ideology of neoliberalism emphasizes small government and laissez-faire at the top, 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." (308)

This "post-Keynesian era of insecure employment" creates a "deficit of legitimacy" which the state handles by using the penal apparatus to hold as a club over those members of the working class who resist the discipline of the new fragmented service wage-labor by increasing the cost of exit strategies into the informal economy of the street. Those who are disruptive or who have been "rendered wholly superfluous" are neutralized or warehoused. This state could be called "liberal-paternalist" — *liberal* and permissive at the top, with regard to corporations and the upper class, and *paternalist* and authoritarian at the bottom," establishing a "new government of social insecurity." (8)

The neoliberal revolution began in the United States from 1973 to l996, in the wake of the progressive movements of the 1960s. The social state has atrophied and poverty has been increasingly criminalized, culminating with the 1996 law on Personal Responsibility and Work Opportunity, which replaced the right to "welfare" with the obligation of "workfare." This was the "forsaking of the Fordist wage-work compact and the Keynesian compromise in the mid-1970s." Concurrently, the penal state expanded as a response to the Civil Rights Revolution and the urban riots. The state has created an assistance-correctional mesh without precedent or equivalent in the Western world. (106) Nobody can opt out of wage labor without exposing himself or herself to a material and symbolic degradation worse than the most demeaning job. The public aid bureaucracy is now an administrative springboard into poverty-level employment. It inculcates the duty of working for work’s sake among poor women (and indirectly their children). The war on poverty has turned into a war on poor people, in what Wacquant describes as the current government policy on poverty—prisonfare and workfare.

Both the men in the penal system and the women in the welfare system are considered morally deficient unless they periodically provide visible proof to the contrary. Their behavior must be supervised and regulated. If they do not conform to rigid bureaucratic requirements, they are cast "outside the civic community of those entitled to social rights, in the case of public aid recipients, outside the society of ‘free men’ for convicts," a kind of "social death for moral failing." (15-16)

Wacquant believes that this suggests an overall "(re)*masculinizing of the state*" in the neoliberal age, an oblique reaction against the social changes wrought by the women’s movement "and their reverberations inside the bureaucratic field." (15) This may be true in an oblique sense, but some women colluded in this. Many feminists did not oppose welfare reform, and 90 percent of those affected by the reform are women. The leadership of the National Organization for Women (NOW) opposed it militantly, but they were unable to bring along most of their members. In fact, some of their members made nasty comments to the leadership about their opposition to welfare reform. Many middle-class women did not view forcing poor women to work in low-wage jobs as a threat to their own well-being. When the welfare law was passed, the Urban Institute warned that it would bring down wages for the lower third of the work force, but many middle-class women were not particularly concerned about the lower third of the work force. Now that many of these women are part of that lower third and are applying for food stamps and/or cash assistance, they may look at the issue differently.

Shredding the safety net

THE SHREDDING OF THE SAFETY NET began in the 1970s. This included:

- Welfare for the childless unemployed virtually disappeared. Michigan, Pennsylvania, Ohio, Illinois, and Los Angeles County ended General Assistance. Massachusetts ended it for the able-bodied unemployed when Governor Dukakis was governor in the 1970s. It now gives some disabled and elderly people and children only about $300 a month. The food stamp program contained a work requirement for childless adults until the current recession, when the stimulus package removed the requirement.
- Public housing and subsidized housing for the poor declined. The middle class received the lion's share of housing assistance in the form of mortgage subsidies. Public subsidies for private development residential projects for the affluent increased.
- Unemployment insurance declined. Although the Obama administration increased unemployment insurance and food stamps as part of the stimulus package, it is never enough to cover the large numbers of unemployed people.
- Welfare payments for AFDC declined dramatically. They have continued to decline under TANF. In Massachusetts, for example, the inflation adjusted value of the maximum TANF monthly grant has declined $448, or 41 percent, since 1988.[1] The average grant is less than $500 a month. That is in the top range of states' payments, and much more than what Southern states pay.
- Free medical coverage in charity hospitals for the poor was cut back. However, the Children's Health Insurance Plan has been expanded.

The cutbacks proceeded apace with an explosive increase in military spending and spending on prisons.

Welfare reform

WHEN THE REPUBLICANS TOOK OVER CONGRESS in 1994, led by Newt Gingrich, they and the overwhelming majority of Democrats in Congress ended entitlement to the Aid to Families with Dependent Children program, which gave cash assistance to low-income parents and their children. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 was a cornerstone of the Republican "Contract With America," and was introduced by Rep. E. Clay Shaw, Jr. (R-Florida) who believed welfare was partly responsible for bringing immigrants to the United States. The U. S. Chamber of Commerce heralded the law as a "reassertion of America's work ethic."

President Clinton signed the bill, and justified his support of welfare reform by arguing that remaking "welfare" into "workfare" "is the price to pay to achieve efficiency and success in the pitiless capitalist competition that now spans the globe." (78) He argued that the poor would ultimately benefit because it opens up the gates of employment to them. In fact, it was not reform but a counterrevolutionary measure that abolished the right to assistance for the country's most destitute children. "Under cover of a reform intended to benefit the poor, the PRWORA instituted one of the most regressive social programs promulgated by a democratic government in the twentieth century." (79)

In the public mind, welfare has been linked with black women. President Reagan's image of the "welfare queen" going to the welfare office in a Cadillac instilled a vision of black women defrauding the welfare system. In fact, most welfare fraud is done by vendors—pharmacies, doctors, dentists, nursing homes, hospitals, and sellers of medical equipment. A Massachusetts study found that 93

percent of fraud was done by vendors. But the image of recipient fraud has been so pervasive that even recipients subscribe to it, often protesting that they "are not like those other lazy people."

Frances Fox Piven once said, "I am constantly amazed by how little facts matter in the debate on welfare." The image of welfare as a program for blacks persisted even though, until recently, the majority of recipients were white. Wacquant cites 1995 statistics showing that 39 percent of recipients were white, 35 percent were African-Americans, and 18 percent were Hispanic. But after 1996, white recipients left the rolls faster than black recipients, due partly to job discrimination. Statistics for FY 2007 show that of 1,696,951 families, 32.4 percent were white, 35.5 percent were African-American, and 27 percent were Hispanic.[2]

In the wake of the Civil Rights Movement in the 1960s, a powerful welfare rights movement led to a sharp rise in the welfare rolls, which became blacker and browner. The majority of participants in the movement were African-American mothers. The movement enlisted a new cadre of federally financed legal services lawyers and newly receptive federal courts. In 1968, the U.S. Supreme Court decided that the 1935 New Deal statute created a legal right to help—an "entitlement." The benefit levels, always well below the poverty line, were still up to the states, but they could not turn away anyone whom the federal statute defined as eligible for assistance.

The conservative war against welfare began in the late 1960s. A work requirement was included in the AFDC program by the Work Incentive Program in 1967 (called WIN by officials and WIP, pronounced whip by welfare recipients and their advocates). The plan required recipients to work if adequate childcare arrangements could be made. Expanded public day care facilities were to be provided, but they never materialized. A follow-up study found that WIN failed to achieve its objective of putting welfare recipients to work. It said, "WIN will probably never do much more than deal with a revolving group of the most employable clients, most of whom may well have found employment even with WIN."[3] This is also true of the TANF program.

The WIN work requirement was tightened even further by the Talmadge Amendment of 1971, which forced recipients to work and eliminated several components of the original program, including training, job search counseling, and family support.

The 1967 WIN program, the strengthened work requirement of the Talmadge Work Incentive amendments (WINII), and the Earned Income Tax Credit (EITC) redefined the terms and target populations of welfare, instituting a "workfarist" approach to federal antipoverty policy. Federal assistance turned away from needs-based New Deal welfarism and toward the principle of rewarding, encouraging, and enforcing work. These initiatives helped to create the political capacity for doing away with the entitlement status of Aid to Families with Dependent Children (AFDC).

President Reagan’s budget director David Stockman said, "There are *no* entitlements. Period." The attack on Social Security has been unsuccessful so far because the program is popular with the middle class, especially the aged. Welfare had no politically powerful advocates.

The main message of PRWORA was to downsize the rolls. The program was transformed into a block grant to the states. States had no obligation to help anyone and could impose time limits far shorter than the new five-year ceiling on a family’s eligibility. Many did that, but states also had the flexibility to reframe their programs in positive ways. The state of Wisconsin was considered a model in implementing workfare and eliminating cash assistance. The governor of the state was Tommy Thompson, who later was appointed head of the United States Health and Human Services by President George W. Bush. Ironically, Wisconsin is now one of the leaders in food stamp recipients. "Milwaukee won fame a decade ago by ‘ending welfare,’ but nearly 40 percent of its children receive food stamps" in 2009.[4]

The techniques of radical reduction were: "shut the front door almost completely; staff the back door with the equivalent of a tough nightclub bouncer; and, in between, hassle applicants to the point where they just give up and go away."[5] (There are two state policemen stationed at the Department of Transitional Assistance in the Roxbury section of Boston, where I do outreach.) In some states, clients are fingerprinted and photographed.

I can testify to the hassle that clients face. To establish their eligibility for assistance, clients must often produce over 20 documents. They sometimes wait for hours to see a worker and, more often than not, can't reach their worker by phone because the workers' mailboxes are full. Workers lose documents, make mistakes entering data on the computer, and some are rude to clients. In interviews, workers are glued to their computers entering data, and often have little communication with clients.

At the back door, people are sanctioned for a variety of reasons and for no reason — being late to a work assignment (no excuses for sick children, late buses, or car breakdowns) or didn't show up for an appointment at the welfare office (no excuses for failure to receive notice of an appointment or inability to understand English). In some states multiple infractions of this sort can result, legally, in lifetime disqualification.

The welfare rolls dropped precipitously, particularly after 2002, when the five-year cut-off period was reached by the first wave of recipients. In many states, cash assistance for low-income mothers with children virtually disappeared, "Overall, the rolls shrank from 14.3 million mothers (and a few fathers) and children in 1994 to under four million in 2007. In 1995, nine million of the 145.5 million children then poor were in families that received welfare. By 2006, only four million of the 12.8 million poor children were in families getting TANF.[6] Since the beginning of the recession, the rolls increased by one million. By 2009 there were about five million people on the rolls, just a little over a third of what there were 15 years before.[7]

Welfare reform not only aimed to take away cash assistance from families; it also aimed to reform them. It assumed that mothers' child rearing practices were deficient—mothers lose their grant if they don't get their children vaccinated and if their children are truant from school. The law promoted marriage as a way to get out of poverty. This was both a privatizing move and a patriarchal move, "conferring economic security only to those mothers who conform to traditional father-mother norms."[8] The preamble to the law said, "Marriage is the foundation of a successful society." It went on to give a laundry list of numerous social ills caused by nonmarital childbearing and single motherhood—among them child abuse, truancy and crime. If a mother gave birth to a child while receiving a grant, she was denied any money for that child, a provision called the "Family Cap." Teenage parents have to live with their parents or another guardian, or live in a supervised group home. They cannot receive TANF unless they attend school or a G.E.D. program. Program rules promote abstinence, and compel mothers to identify biological fathers and cooperate with child support enforcement.

When TANF was reauthorized in 2006, it included $1.5 billion dedicated to promoting married fatherhood. It also gave states incentives to spend their TANF block grants and their own state funds to support pro-marriage, pro-father activities. Other federal policies funded marriage and fatherhood promotion, including the Office of Child Support Enforcement and the Office of Refugee Resettlement. Even Head Start got involved.

PRWORA does not support more than a year of higher education, and that must be vocational education. Therefore, welfare recipients are unable to get a college degree and so are blocked from advancing on a career ladder and earning higher wages. At about the same time, the government stopped funding college programs for prison inmates, thus insuring that they too could not advance

in a career. "Funding for prison colleges was eliminated in 1995, at the peak of the ‘tough on crime’ frenzy in American electoral politics. Within that year some 350 such programs closed nationwide, ending the presence of the most affordable and transformative programs in American criminal justice."[9]

PRWORA as well as SSI ended cash assistance to all legal immigrants, although their children who were born in the United States were still eligible for assistance. (Undocumented immigrants were already ineligible for most government programs.) A few years later, the rules were eased to allow some immigrants who had been in the United States legally for five years after August 22, 1996 to receive assistance from both TANF and SSI. States were given the option of giving or denying noncitizens cash welfare, Medicaid, block grant benefits, and other state and local public assistance, and some states picked up the cost of TANF for immigrants.

As people were kicked off the welfare rolls, poverty increased. During the first year of the recession the number of people living in poverty increased by 2.5 million.[*] The poverty rate in 2008 was 13.2 percent, up from 12.5 percent in 2007. There were 39.8 million people in poverty in 2008, up from 37.3 in 2007. The poverty rate for children was 19 percent, 14.1 million, up from 13.3 million in 2007. The 2008 poverty rate was the highest since 1997—24.7 percent for blacks and 23.2 percent for Hispanics.[10] Over half (53.3 percent) of children growing up alone with their mother were living in poverty.[11] The government reported that nearly 50 million Americans are experiencing what it delicately calls "food insecurity."[12] In 2008, 22.5 percent of all children experienced food insecurity (going hungry), including 25.7 percent of blacks, and 26.9 percent of Hispanics.[13] Food stamp use is at a record high and surging by the day. About six million Americans receiving food stamps report they have no other income. One in eight Americans now receives food stamps, including one in four children.[14]

The number of people without health insurance rose from 45.7 million in 2007 to 46.3 million in 2008.[15]

According to the National Law Center on Homelessness & Poverty, the number of homeless Americans is up by 61 percent since the recession began in December 2007.

Fleeing felons, fleeing benefits

PRWORA stipulated that anyone convicted of a felony that involved the possession, use, or distribution of a controlled substance was prohibited from receiving both TANF and food stamps for life. However, it said that states could exempt people from that ruling. Individuals wanted in connection with a felony or violating terms of their parole or probation (called "fugitive felons" or "fleeing felons") were prohibited from receiving SSI, TANF, or food stamp benefits. The law also made the "fugitive felon" status grounds for the termination of tenancy in housing assistance programs.[16] In 1998, the Higher Education Act was amended to prohibit anyone with a drug conviction from receiving federal financial aid for post-secondary education.[17]

The Social Security Administration said that between September 1996 and April 2007, the "fleeing felons" policy stopped benefits for about 323,000 people and led to the apprehension of 44,500.[18]

The Veteran’s Education and Benefits Expansion Act of 2001 prohibits veterans who are fugitive felons, or their dependents, from receiving veteran’s benefits in health care, Vocational Rehabilitation and Education Service, Insurance Service, and Loan Guaranty service. As of June 2004, the VA had run 2.2 million warrant files against 11million VA records and found 32,346 matching files. These matches led to 11,153 referrals to various law enforcement agencies and the

apprehension of 402 felons. As a result of the matching program, 8,299 fugitive felons were referred to the VA for benefit suspension, resulting in $54.5 million in overpayments.[19]

The definition of "fleeing felon" is confusing and imprecise. Databases are often inaccurate and are not kept current. The Bureau of Justice Statistics reported in 2001 that "In the view of most experts, inadequacies in the accuracy and completeness of criminal history records is the single most serious deficiency affecting the Nation's criminal history record information system" and found through in-depth audits of state criminal history records "unacceptable levels of inaccuracies."[20] Since the Bush administration exempted the National Crime Information Center from the Privacy Act, there is no requirement for government agencies to maintain its accuracy and no opportunity for an individual to challenge incorrect information in it. People have no way to know if there is a warrant out for them and cannot easily correct errors in the databases.[21]

In 2002, the GAO (General Accounting Office) issued a report on implementation of the fleeing felon provisions in various programs.[22] They found that there is confusion over the meaning of "fleeing" and that both federal agencies and states have differing interpretations of the term. For example, could a person be considered "fleeing" if they do not know there is a warrant or if they are not arrested due to lack of law enforcement resources? The GAO recommended that the fleeing felon program be strengthened. They recommended that Housing and Urban Development (HUD), Health and Human Services (HHS), and Food and Nutrition Service (FNS) match their files with the National Crime Information Center. They also recommended that legislation be enacted to apply fugitive felon rules to Old Age, Survivor, and Disability Insurance (OASDI) and Social Security Disability Insurance (SSDI). The Social Security Protection Act of 2004 added those programs to the fleeing felon prohibition.[23]

HUD agreed to identify tenants in housing assistance programs who are fugitive felons and subject to eviction. HUD estimated that because of this program, they would be able to "avoid" subsidies of $24 million annually.[24]

HHS disagreed with the GAO, as they wanted to give states flexibility to implement their own eligibility rules and procedures in TANF and food stamp programs.

FNS did not go along with the GAO recommendation. Congress amended the Food and Nutrition Act in the 2008 Farm Bill to prevent states from disqualifying needy households from federal SNAP benefits if the individuals were not intentionally fleeing justice. Twenty-nine states have now opted out of the 1996 ban on food stamp benefits to persons with drug felony convictions.[25]

There has been considerable litigation across the country regarding what constitutes a "fleeing felon." A nation-wide class action suit, *Martinez v. Astrue*, forced Social Security to change its definition of "fleeing." Beginning April 1, 2009, SSA had to prove "intent" to flee before it could deny benefits. SSA was ordered to pay benefits that had been wrongly withheld since January 1, 2007. Approximately 80,000 people were potentially eligible for full retroactive reinstatement of benefits totaling over $500 million. In response to a request from SSA, Congress quickly acted upon legislation that would bar prisoners from receiving those benefits, and President Obama signed it into law.[26]

Expanding the penal apparatus

WACQUANT DESCRIBES THE SURGE OF THE PENAL STATE as "the result of a policy of penalization of poverty that responds to the rise of social insecurity and the collapse of the ghetto as a mechanism of control of a population doubly marginalized on the material and symbolic planes.[27] The "'invisible hand' of the deregulated market called for and necessitated the 'iron fist' of criminal

justice at the bottom of the class structure."[28]

The confined population doubled in ten years after 1973 and quadrupled in twenty. By the end of the twentieth century, America locked up seven times more than France, Germany, or Italy and ten times more than Sweden or Denmark. Over the last 30 years, the United States has seen unprecedented numbers of people imprisoned, and the rates of the incarcerated—particularly of minority men—have skyrocketed.

The prison population numbered 2,250,000 in the year ending June 30, 2006 (the latest official data available). Of these, 191,080 were in federal custody, 1,365,438 in state or state-contracted prisons, and nearly 944,000 were serving sentences in local or county jails.[29] According to a Pew report, in 2009 one in every 31 adults is either in jail or prison or on parole or probation, a total of 7.3 million Americans, at a cost that exceeds $68 billion annually, not counting juveniles.[30]

This dramatic rise can't be explained by the rise in violent crime. Rather, it results from the "extension of recourse to confinement to a range of *street* crimes— misdemeanors that did not previously lead to a custodial sanction, especially minor drug infractions" (126) after the federal government declared its "war on drugs" in 1983. The only exception to this punitive pattern was the economic crimes and misdemeanors of the privileged classes and corporations. The state penal apparatus

has been expanded to contain social disorders (as opposed to responding to crime) in decaying lower-class and ghetto neighborhoods ravaged by economic deregulation and welfare curtailment. It feeds a thriving cultural industry of fear of the poor. TV programs on crime increased 86 percent between 1985 and 1995 (132), and have continued to increase since then. Of all pubic expenditures, "corrections" had the fastest expansion from 1975 to the present. The carceral system is the third largest employer in the nation, just behind Manpower Incorporated and Wal-Mart.

This increased reach was achieved by implementing four major penal planks:

1. "Determinate sentencing," which drastically reduced judicial and correctional discretion.
2. "Truth in sentencing," which requires every convict to serve a minimum portion of his sentence before he becomes eligible for parole.
3. "Mandatory minimums," which established a plank of compulsory and irreducible sanctions for specific offenses, without regard for the injuriousness of the crime.
4. "Three strikes and you're out," which refers to the inflexible sanctions imposed on recidivists and the implementation of life sentences (or twenty-five to life) when the accused has committed three specially designated felonies.

The numbers of people under "criminal justice supervision," including probation and parole, also expanded dramatically from 1980 to the present. The FBI Identification Record called the Criminal History Record Information (CHRI), often referred to as a "Rap Sheet," contained 54,210,800 individual files by 1997.[**] These records, available to employers and housing managers, prevent released prisoners from finding housing or getting a job.

Other policies that added to the prison population include the "zero tolerance," and "broken windows" theories. These policies blur the distinction between actual crime and merely bothersome or offensive behavior. And they divert public attention from white-collar and corporate crime, human damage and economic costs of which are vastly greater and more insidious than those of street delinquency. Wacquant debunks the "zero tolerance" theory of crime, as administered by Mayor

Guiliani in New York City and his police chief William Bratton. They increased the number of police and transferred police from desk jobs to street patrols. At the same time, Guiliani transferred nearly one billion dollars from social services to public safety.

Between 1993 and 1998, the number of arrests increased by 41 percent, mainly by arrests for minor offenses, even as the total number of offenses reported to the authorities plummeted by 46 percent. As a result, "by the third year of Guiliani's first term, the city police were making *more arrests than there were offenses reported to them*, and the number of complaints for police brutality . . . had jumped 50 percent." (263)

The "broken windows theory" postulated that the "immediate and stern repression of the slightest violations or nuisance on the streets stems the onset of major criminal offenses by (re)establishing a healthy climate of order." (264) Wacquant says that even the inventors of the theory had no link whatsoever with any criminological theory. It was a posteriori theory designed "to dress up in rational garb measures that were popular with the (mostly white and bourgeois) electorate." (265) In fact, criminologists have established that there is "no robust correlation—in any country and at any time— between the rate of imprisonment and the level of crime." (275) "Across the country, FBI data show that crime in 2009 fell to lows unseen since the 1960s—part of a long trend that has seen crime fall steeply in the United States since the mid-1990s."[31] Yet there has been a steady rise in the percentage of Americans who believe crime is getting worse. "The vast majority of Americans—nearly three-quarters of the population—thought crime got worse in the United States in 2009, according to Gallup's annual crime attitudes poll."[32]

Wacquant points out that other countries have followed the lead of the United States in implementing these repressive polices. The "broken windows" theory has been recommended to mayors of French cities by the French Ministry of the Interior, in what Wacquant calls "such an outpouring of falsehoods, not to say transatlantic tripe." (267) In almost all Western countries, the prison population has expanded. It has doubled in France, Belgium and England; it has tripled in Holland, Spain, and Greece; and it has quintupled in the United States. (7)

While politicians of the Right invented the penalization of poverty, it was "employed and refined by their centrist and even 'progressive' rivals." (302). The biggest increase in incarceration in America occurred under the administration of President Clinton. "Across the Atlantic, it is the Left of Blair in England, Schröder in Germany, Jospin in France, d"Alema in Italy, and Gonzalez in Spain that negotiated the shift to proactive penalization." (302) The root cause of the punitive turn is not late modernity, as some claim, but neoliberalism, "a project that can be indifferently embraced by politicians of the Right or the Left." (303) Wacquant did not mention the 2008 presidential election, which added Obama to the roster of leaders who embrace neoliberalism.

Welfare reform led to a dramatic rise in privatization. Rather than a mammoth expansion of public bureaucracies that would defeat the goal of shrinking the welfare state, the state resorted massively to private operators in both the for-profit and the nonprofit sectors. This increased administrative complexity and unpredictability destabilized nonprofit agencies by eroding their traditional role as self-professed protectors of the poor, and weakened government by draining experienced managers away from public bureaucracies just when the state needs to augment administrative oversight over contracts to guarantee basic accountability. Due to the lack of oversight, private contractors engaged in massive fraud and corruption. The same thing happened on the penal side, leading to the stupendous growth of private correctional operators that were more concerned about cutting costs than the welfare of prisoners in their care.

Delinquency

DURING THE 1980S, American cities, with the support of the federal Department of Justice, established databanks that catalog teenagers believed to be real or potential delinquents. Wacquant describes this as "a convenient pretext for placing segregated neighborhoods and their residents under reinforced and penal surveillance." (136) He gives a detailed discussion of the rise and fall of juvenile crime, emphasizing the lack of secure wage work. The fight against street delinquency became a moral spectacle that enabled political leaders to "reaffirm the authority of the state at the very moment they declare its impotence on the economic and social front." (273)

The goal of rehabilitation of the 1970s changed to a tough-on-crime approach. In the 1970s, the Commissioner of the Department of Youth Services Jerome Miller closed all the reform schools in Massachusetts and placed the inmates in alternative settings that aimed at rehabilitation and community integration. In a 2008 letter to the *Boston Globe*, Miller bewailed the fact that

> Managerialism has become the prevailing ideology of DYS. A Faustian bargain was struck that set loose the all-too-familiar dark impulses that tend to haunt those who impose services on inmates, be they captives of the euphemistically labeled "juvenile justice" system or the more bizarrely limned "child welfare" system.[33]

Words like "care," "help," or "concern" have been replaced by terms such as "alternative punishments," "setting limits," and "structured environments"—"usually code words for rationalizing isolation, neglect, and occasional staff violence."[34]

Immigrants

WACQUANT DISCUSSES the privatization of prisons in detail, but he doesn't discuss how the dramatic rise in imprisoning undocumented immigrants has contributed to that. Much of this expansion has occurred in recent years. Immigrant detention is the fastest growing sector in the private prison business. By the end of 2009, while the nonimmigrant prison population has recently leveled off, the U.S. government admitted over 440,000 people a year in immigration custody in approximately 400 facilities at an annual cost of more than $1.7 billion.[35] The system is set to triple again even without new legislation. Already 6,300 additional beds were added in 2007 and 4,150 in 2008. With ICE's 2009 budget approved, the number of beds will reach a record high of 33,400.[36]

After 9/11, Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) worked with local police to target both legal and illegal immigrants with criminal records for deportation. CBP's border patrol began to turn over illegal border crossers to the justice system for criminal prosecution instead of simply deporting them, as they had in the past. Many of these criminal immigrants are long-term legal residents of the United States and are also the parents, children, or siblings of U.S. citizens and lawful residents. CBP and ICE call this policy "enhanced enforcement" and "zero tolerance."[37]

The use of private prisons began in 1983, when the Immigration and Naturalization Service (INS) outsourced immigrant detention to the newly established Corrections Corporation of America; GEO Group (formerly Wackenhut) got its start imprisoning immigrants in the late 1980s. These prisons are publicly owned by local governments, privately operated by corporations, publicly financed by tax-exempt bonds, and located in depressed communities. They are marketed to municipal county governments by promising job creation and new revenue without taxes. Although they are technically in the custody of the federal government, they are in fact in the custody of corporations with little or no federal supervisions. They have racked up record profits.[38]

Unlike the U.S. criminal justice system, immigration law provides no guarantee that all accused

have the right to a court-appointed lawyer. At least 104 immigrants have died in ICE custody since 2003. "Given the lack of oversight and legal protections, the gains to be made from cost-cutting, and the apathy surrounding prisoner well-being, these deaths are predictable."[39]

> The men and women held behind the (prison fences) are never seen, never discussed. The prison is treated as a waste dump, similarly placed on the community's edge, where property values and low, and there are no neighbors. The prisoners themselves are society's refuse, its discards, outcasts, and outsiders who have lost their membership rights in the human community.[40]

Virginia Democratic Senator Jim Webb said that the fact that the United States has the highest incarceration rate in the world indicates that "we are doing something dramatically wrong in our criminal justice system," yet he apparently saw no contradiction in advocating an end to mass incarceration while supporting legislation calling for increased immigration enforcement and the doubling of immigrant-detention beds.[41]

The Obama administration has not stopped the flood of prosecutions or contested the misperception that immigrants are disproportionately responsible for crime. Instead it has supported Secure Communities, a new criminal aliens program, extended federal-local cooperation in immigration enforcement through the 287(g) program, which allows DHS to delegate immigrant-detention to local law enforcement; and has deployed more U.S. marshals, ICE agents, and federal prosecutors to the Mexican border. Since 2003 the combined budgets of CBP and ICE have more than doubled, rising from $7.4 billion to $14.9 billion in 2009.[42]

Sex offenders

SEX OFFENDERS EVOKED HYSTERICAL REACTIONS from the public and officials. The passage of Megan's Law in 1996 began a nationwide proliferation and laws and regulations that continually shrank the physical and social life spaces accessible to sex offenders. Formerly treated as a medical problem, sex offenses became criminalized. Incidents of vigilantism multiplied after Megan's Law was passed. In both the United States and Western Europe, sexual offenses have risen to the top of the public agenda, even as their incidence decreased.

Medical and mental health professionals opposed such laws and supported a medical approach to rehabilitate sex offenders, pointing out that the penal treatment only aggravated the problem. "The main effect of the laws named after little Megan Kanka may paradoxically be to *amplify risk* and *increase* the chances that convicts for sexual offenses will commit new crimes by condemning them to a manner of social exile without recourse or return and subjecting them to relentless pressure and intransigent surveillance."[43] Wacquant says that when sex offenders are correctly diagnosed and treated, they have the lowest rate of recidivism of all the various kinds of offenders.

Race

WACQUANT SAYS THAT THE GHETTO FUNCTIONS as a "social prison," a continuation of slavery and Jim Crow, all of which functioned as instruments for "the extraction of labor and social ostracism of an outcast group." (198). While whites begrudgingly accepted "integration" in principle, "they abandoned public schools, shunned mixed public space, and fled to the suburbs by the millions to avoid mingling and to ward off the specter of 'social equality' in the city, thanks to federal government support for suburban development upholding the color line." (203) The virulent backlash against the Civil Rights movement fueled the retrenchment of welfare, the abandonment of cities, and the aggressive expansion of the penal apparatus of the local and federal state. "The

prevalence of imprisonment among the black lower class results in family, occupational and legal disruptions, curtailment of social entitlements and civil rights, and the temporary or permanent loss of the right to vote." (198)

A Pew Foundation report gives the following statistical breakdown of the prison population:

- 1 in every 11 African-American adults is in jail or prison.
- 1 in every 27 Hispanic American adults is in jail or prison.
- 1 in every 45 white American adults is in jail or prison.44

Most of the juveniles who have been sentenced to die in prison are black. Of those sentenced to life without parole, the majority are black. Some were as young as 13 when they were sentenced.45

The vast disparities in federal sentencing for crack vs. powdered cocaine have unfairly imprisoned tens of thousands of nonviolent African-Americans. In August 2007, the U.S. Sentencing Commission issued new guidelines for sentencing crack cocaine users, modifying a 100-1 disparity between sentences meted for crack and powder cocaine possession, saying it was unfair because while the drugs are virtually the same, crack cocaine sentences are often five times as long. About 3,000 crack offenders were eligible for release within the year. The Sentencing Commission said that most of the convicts eligible for release were small-time offenders who were nonviolent. The Bush administration opposed the commission's decision to make the new guidelines retroactive for inmates currently service sentences for crack cocaine crimes, but the guidelines remained in force.46

Since Obama took power, Attorney General Eric Holder has voiced support for eliminating the disparity, and the Democrats have introduced bills to get rid of it. Republicans opposed those bills. Obama has not pushed the issue. When asked about it he said, "Do we really want to spend all our political capital on a very difficult issue?" He wondered whether instead we should "spend more of that political capital" on school programs. This is an example of Obama's reluctance to pay special attention to the black community. Derrick Jackson has this to say about it:

> Even though Obama is president of "all the people," he knows that the black male unemployment rate of 16.9 percent needs disproportionate remedies, compared to the 9.8 percent unemployment rate of white men. Yet he remains wedded to the trickle-down rhetoric of, "The most important thing I can do for the African-American community is the same thing I can do for the American community, period, and that is get the economy going again."[47]

Other countries follow the U.S. lead in welfare reform

MANY COUNTRIES have followed the lead of the United States in introducing work requirements in means-tested transfer programs. Britain enacted work-based welfare reform in the 1990s. It became "a policy orthodoxy, a social-policy counterpart to 'flexible' modes of labour-market governance. Increasingly, this is celebrated as a paradigmatic example of 'Third Way' policy-making."48

The federal government of Canada instituted work requirements for welfare recipients in 1995. It gave the provinces block grants, which increased provincial power over social programs. Ontario introduced Ontario Works in 1997, following the election of the province's first neoliberal government. It is a compulsory work-first program administered in ways similar to TANF in the

United States, and with the same rhetoric of "preventing dependency" and fostering "self-sufficiency."49

New Zealand instituted work-based welfare reform in 1998. Their requirements were more lenient than U.S. requirements. In the United States, states are allowed to require work of recipients whose youngest child is one year old. In New Zealand, parents of children over age 14 are required to look for full-time work. Those with children 7 to 14 are required to look for part-time work. Those with children younger than 7 are required to attend an annual meeting to discuss their prospects for future employment.50

In Australia, recipients are required to look for paid part-time work of at least 15 hours a week when their youngest child turns 6 years, if the parents are married, and 8 years if the parent is single.

States face a budget crisis

WACQUANT SAYS THAT IT IS HARD to see how the expansion of the penal state can go on indefinitely since it "threatens to bankrupt the large states that lead the pack in the frantic race for hyperincarceration, such as California, New York, Texas, and Florida." (42) In fact, states are facing a budget crunch and are beginning to reevaluate their penal policies. The New Jersey legislature introduced a bill in December 2009 that contained a comprehensive package of reforms that would help ex-offenders rejoin society's mainstream and lower the chances, and costs, of recidivism. About two-thirds of people released from prison in New Jersey had ended up back inside within three years, costing the state about $48,000 per prison inmate per year. The proposed reforms seek to end practices under which former prisoners are denied employment because of minor convictions, even in the distant past, and crimes that have nothing at all to do with the work being sought. The bill would lift the ban on food stamps and welfare benefits on people with felony drug convictions and would expand education and training opportunities for inmates. And it would end the practice under which the prison system earns a profit by overcharging poor families for the collect calls they receive from relatives.51

In February 2009, a federal three-judge panel in California ordered the prison system to reduce overcrowding by as many as 55,000 inmates within three years to provide a constitutional level of medical and mental health care. The ACLU argued that prisons are so overcrowded that they represent "cruel and unusual punishment." California's prison system was the nation's largest, with more than 150,000 inmates. The court estimated that the state could save $803 to $906 million annually if it reduced its prison population. California faced a $26 billion budget gap. The 2009 budget included severe cuts to social welfare programs, schools, and health care.52

Governor Arnold Schwarzenegger initially supported the reform and planned to reduce the prison population by 27,000 inmates, but law enforcement and victim's rights groups stopped that. The state's Attorney General Jerry Brown said that he planned to appeal the ruling all the way to the U. S. Supreme Court. Mr. Brown was in the process of raising money for a possible run for governor. Gov. Schwarzenegger has shifted between supporting the court-ordered changes and fighting them, as political pressures intensified, but in January 2009, in response to protests against cuts at California's universities and state colleges, he proposed a constitutional amendment barring the state from spending a higher percentage on prisons than on higher education. He said that in the past 30 years, prison spending increased from 3 percent of the state general fund to 11 percent while spending for higher education declined from 10 percent to 7.5 percent. While university officials and students cheered the proposal, powerful corrections unions condemned it. Gov. Schwarzenegger proposed prison savings through privatization.53

A 2009 study by the Boston Foundation in Massachusetts found that spending on corrections agencies has exploded in the past decade despite only a modest increase in the number of people incarcerated, and accounts for a bigger chunk of the state budget than each of the budgets that oversee higher education, social services, and public health. During the recession—when the state slashed spending on local aid, higher education, and public health—corrections funding has largely been spared. The report predicted that spending on prisons and jails would surpass spending on higher education in the following year. The report called for Massachusetts to enact prison reform, including making more nonviolent prisoners eligible for supervised parole, shortening sentences for offenders who complete education and substance abuse programs, and eliminating certain mandatory minimum drug sentences.54

States are beginning to review their policies on capital punishment. In 2009 the country had the fewest death sentences since the U.S. Supreme Court reinstated the death penalty in 1976. New Mexico became the 15th state to abolish the death penalty.55 A study by researchers at the University of Texas found that the death penalty is hopelessly flawed, irreparable, does nothing to reduce or prevent crime, and has been known to execute innocent people.56

States are also reevaluating their policies on mandatory minimum sentences for drug offenses. The Massachusetts Senate passed a bill that would restore parole eligibility to drug offenders. Inmates would also be eligible to participate in work release and other reentry programs during the mandatory minimum part of their sentences. New York is putting more discretion in the hands of judges and more treatment options in the hands of offenders. Michigan has repealed most of its mandatory minimum drug sentences and established new sentencing guidelines.57

Theory

WACQUANT STUDIED WITH PIERRE BOURDIEU and describes his theory as "a Bourdieuan theory that attempts to avoid the rigid opposition between the materialist and symbolic lineages." The key concept is "bureaucratic field."58 Wacquant draws on Bourdieu's distinction between the left hand of the state, meaning the maternal and nurturing policies of the welfare state, and the coercive and controlling police functions of the state. (6) The bureaucracies that administer social functions—public education, health, housing, welfare, and labor law—compete with the bureaucracies charged with enforcing the new economic discipline via budget cuts, fiscal incentives, and economic deregulation.

Bourdieu proposes to view the state "not as a monolithic entity but as a splintered space of forces vying over the definition and distribution of public goods, which he calls 'the bureaucratic field.'" (289)

Michel Foucault predicted in the 1970s that the prison was an institution in inevitable decline, destined to be replaced by more diffuse and diversified instruments of social control. Wacquant says that this theory has been disproved by the dramatic rise in imprisonment in almost all Western societies. He says that the theory of Frances Fox Piven and Richard Cloward, as set forth in their book *Regulating the Poor*, worked well for the Fordist-Keynesian age and accounts for the two major welfare explosions during the Great Depression and in the 1960s, but the model "has been rendered obsolete by the neoliberal remaking of the state over the past quarter-century." (290)

Wacquant presents his theory as a "provisional account," which he admits is one-sided and overly monolithic. It doesn't take into account the vagaries of policy implementation or the resistance efforts from below "which have been variegated if remarkably ineffectual in the United States." (xix)

Piven believes that Wacquant has stretched functionalism too far. While the criminal justice

system does function to discipline the people in the lower social class to accept the "post-Fordist" labor market, as Wacquant says, it also functions to provide jobs for people in depressed rural areas of the country, and getting people elected to public office on a "tough on crime" platform, fueled by a media that inflames people's fears of crime, even as the actual rate of crime declines. Piven points out that welfare has always been puny and stigmatized. Welfare policy has always been integrated with the labor market by "the principle of less eligibility," which ensures that welfare grants will be kept lower than the lowest wages so that paid work is a more attractive choice. Piven says,

> What was new in the 1996 reform was not work enforcement so much as its administrative reinvigoration, a shift that was justified by the broader movement of women into the workforce. Much of the 1996 law was directed at the incentive structure of the program and had the effect of increasing the pressures on state governments and local administrators to use sanctions freely and more vigorously enforce wage work or at least work-like routines. This meant that whatever cultural and political protection gender roles had once allowed lower class women who were mothers was now stripped away. To be sure, lower class women, and especially black women, had always been workers. Nevertheless, dominant ideas about the obligations of mothers that had once justified what little support they were allowed by the welfare system were now discredited."[59]

I have done activist work in both the welfare and prison fields, but until I read Wacquant I had not realized how intimately interwoven they were. Reforming prisons will not only free a lot of prisoners, but it can also free a lot of money to spend on social services, education, and welfare.

This is not the easiest book to read. Some of Wacquant's sentences are convoluted and hard to decipher. He is sometimes a bit repetitive. But the book is, as Piven says on the book jacket, a tour de force.