

Overview: Law, Order, And Neoliberalism

Philomena Mariani, Guest Editor

THE ESSAYS PRESENTED IN THIS ISSUE OF *SOCIAL JUSTICE* WERE COMMISSIONED AND completed before September 11. At the time, the U.S. prison population had topped two million, police jurisdictions were under intense scrutiny for racial profiling, and a debate was on whether to televise executions. Contributors were asked to explore the relationship between neoliberalism and models of criminal justice, the political and ideological factors driving criminal justice policy in the United States, and the willingness of other countries to follow the U.S. in adopting the most punitive forms of social control. The salient features of U.S.-style criminal justice are well known to readers of this journal: a massive expansion of the prison-industrial complex, an increasingly harsh roster of punishments, brutal and corrupt policing practices masquerading as quality-of-life campaigns, the erosion of defendants' rights and a parallel expansion of prosecutorial power and discretion. All are underwritten by the purported urgency of crime control and the public's demand for security at any cost.

Are these integral features of a neoliberal regime? In this volume and elsewhere, Neil Smith and Loïc Wacquant have mapped a straight path from neoliberal macroeconomics to the carceral state. For Smith, the trajectory begins with New York City's fiscal crisis of the 1970s, resolved through austerity measures that signaled the demise of liberal urban policy in the U.S. and — as a prototype for later IMF structural adjustment programs — the “first intimations of global neoliberalism.” The “vacuum of authority” created by the neoliberal state's abdication of social responsibility “is being filled by a whole range of authoritarian practices,” such as zero-tolerance policing, here traced by Smith from its origins in the now-discredited “broken windows” thesis to its official implementation in New York and subsequent export to cities around the globe. Likewise, addressing the rebirth of the European prison, Wacquant argues that the “conversion of the ruling classes to neoliberal ideology” involves a triple operation — “erasing the economic state, dismantling the social state, and strengthening the penal state” — whereby the criminal justice apparatus is crucial to the post-Keynesian management of insecurity.

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Taking a somewhat different tack, Diana Gordon examines the pressures at work in South Africa's painful capitulation to neoliberal doctrine and simultaneous embrace of "get-tough" crime-control strategies, many imported directly from the U.S. Gordon questions, not the link between neoliberalism and a bloated criminal justice apparatus, but "what influences have favored the punitive trend" over more benign alternatives such as reparative probation and community service. Certainly, as discussed in this issue by Vivien Stern, some governments, although captivated by market ideology, have rejected "mega-prisons" and the policies designed to fill them, opting for programs that will reduce prison populations. Gordon concludes, however, that the shift to neoliberalism "creates a penumbra of influences that includes an imperative for harsh, state-centered social control." In the case of South Africa, on the one hand, the ANC is pressured by popular demands to "do something" about rampant crime. On the other hand, it is precluded from addressing the crime problem in a meaningful way by its own macroeconomic policies. Unable to deliver on its pledge to build social and economic equity, a tarnished government shores up authority with spectacular crackdowns on "thugs and predators," which is guaranteed to grab headlines (and achieve "penal saturation," to borrow an apt phrase from criminologist Jean-Paul Brodeur).

Neoliberalism and repressive social control would seem to be a package deal, in which the poisonous rhetoric of criminalization and punishment legitimizes states that have reneged on their commitment to the social wage, as Cindi Katz argues. The neoliberal state thus has an investment in fueling fear of crime — persuading the public of imminent danger by overstating the threat, inflating or distorting crime statistics, and creating the false impression that all citizens are equally at risk of victimization. (The ludicrous private defensive technologies indulged in by the owning classes are symptomatic of the latter.) But the overarching objective is to sell the public on the idea that policing and punishment are the solution to all social-economic problems. In the U.S., where fear-of-crime discourse haunts every electoral campaign, and media obsession with crime vies with coverage of the weather, this tactic has been highly successful. Americans are in the grip of criminal justice ideology. There is apparently no problem that cannot be fixed with "more police, more prisons, more punishment," to quote Jeffrey Reiman. Apart from race- and class-based conflicts over *degrees* of punitiveness, public consensus on this formula is near complete, reflected in diverse phenomena, from grass-roots participation in "community policing" — documented by Eric Klinenberg in the city of Chicago — to the micro-scale reproduction of neoliberal law-and-order in privileged households via the home surveillance industry. Surveying the boom in privatized forms of "child protection" — e.g., nanny cams, tiny sensory devices placed under a child's skin — Cindi Katz observes that in the "household state," "parents become spies...involved in surveillance and censorship...with little regard for inhabitants' rights to privacy,

self-determination, or the presumption of innocence.” The “enormous retreat from politics” manifest in the “broadening of surveillance across the domestic frontier” is evident as well in what Klinenberg describes as a “new form of American governance and community organization, collective policing,” which “has motivated civic participation and neighborhood activism throughout the United States.” Couched in the language of empowerment through self-help, the recruitment of civilians to crime control represents “democracy in its most desperate and depraved form.”

Such is the paradigm of “governance” proffered by the United States to the rest of the world. Most contributors to this volume note the heavy hand of the U.S. in the global spread of neoliberal law-and-order and attendant validating dogma. The appeal of American criminal justice can be credited, in part, to the cerebral support provided by researchers and scholars: fabricating erudite justifications for crude repression is an academic growth industry. Smith notes the “pseudo-scientific gloss” of zero tolerance that lends an aura of professionalism and efficiency to corrupt police forces (precisely its function for the NYPD); Wacquant discusses the bogus scholarship purveyed across the Atlantic by a network of right-wing think tanks (“In France, some academics live solely off the secondhand resale of American security ideologies.”) Tom Naylor’s critique of asset-forfeiture law suggests another attraction: the possibility of transforming security functions into profit-making ventures. Originally intended to “attack the flow of criminal profits,” asset-forfeiture laws are “converting police forces into self-financing bounty-hunting organizations.” Operating through multilateral organizations such as the U.N. and OECD, the U.S. has pressured governments into adopting legal statutes that are, in effect, a recipe for corruption.

Not surprisingly, neoliberal law-and-order turns soft in the face of corporate crime. In fact, as discussed by Laureen Snider, a key aim of the neoliberal project is the “disappearance” of the crimes *of* capital — as object of state regulation and sociological analysis — and the defining of new crimes *against* capital perpetrated by workers. Witness recent attempts in the U.S. Congress to criminalize the strike as a form of extortion under interstate commerce statutes. Snider traces the evolution of a new type of offense, *theft of time*, arguing that while “the study of ‘unproductive’ employees...is not new...translating such concepts into the discourse of criminality is. And the shift is important because calling something ‘criminal’ [is] a call for the state to take action, pass criminal laws, and marshal state forces against employees, now reconceptualized as offenders....” Retreating from every social obligation save the (selective) enforcement of order, the neoliberal state polices the street and the workplace — rather than the Street and the boardroom, where the real explosion in crime has occurred.