Comparative analysis of the evolution of penalty in the advanced countries over the past decade reveals a close link between the ascendancy of neoliberalism, as ideological project and governmental practice mandating submission to the “free market” and the celebration of “individual responsibility” in all realms, on the one hand, and the deployment of punitive and proactive law-enforcement policies targeting street delinquency and the categories trapped in the margins and cracks of the new economic and moral order coming into being under the conjoint empire of financialized capital and flexible wage labor, on the other hand.

Beyond their national inflections and institutional variations, these policies sport six common features. First, they purport to put an end to the “era of leniency” and to attack head-on the problem of crime, as well as urban disorders and the public nuisances that border the confines of penal law, baptized “incivilities,” while openly disregarding their causes. To do so, they claim to rely on the recovered or renewed capacity of the state to bend so-called problem populations and territories to the common norm. Whence, second, a proliferation of laws and an insatiable craving for bureaucratic innovations and technological gadgets: crime-watch groups and “guarantors of place”; partnerships between the police and other public services (schools, hospitals, social workers, the national tax office, etc.); video surveillance cameras and computerized mapping of offenses; compulsory drug testing, “Tazers” and “flash-ball” guns; fast-track judicial processing and the extension of the prerogatives of probation and parole officers; criminal profiling,

*One would need to deconstruct these two notions, which function in the manner of mutually supporting magical incantations. Such an exercise would remind us that, just as no durable system of commodity exchange can exist without a vast infrastructure of social relations and a recognized juridical framework, the autonomous individual and her free will are, as Durkheim showed long ago, not universal anthropological givens but creations of the modern society and state. Émile Durkheim, *Leçons de sociologie* (Paris: Presses Universitaires de France, 1950), esp. 93–99. Translated by Cornelia Brookfield as *Professional Ethics and Civic Morals* (London: Routledge and Kegan Paul, 1957), 57–64.
satellite-aided electronic monitoring, and generalized genetic fingerprinting; enlargement and technological modernization of carceral facilities; multiplication of specialized detention centers (for foreigners waiting to be expelled, recidivist minors, women and the sick, convicts serving community sentences, etc.).

Next, the need for these punitive policies is conveyed everywhere by an alarmist, even catastrophist discourse on "insecurity," animated with martial images and broadcast to saturation by the commercial media, the major political parties, and professionals in the enforcement of order—police officials, magistrates, legal scholars, experts and merchants in "urban safety" counseling and services—who vie to propose remedies as drastic as they are simplistic. Woven of amalgamation, approximation, and exaggeration, this discourse is amplified and ratified by the prefabricated productions of a certain magazine sociology that shamelessly lumps together schoolyard brawls, stairwell graffiti, and riots in derelict housing projects, in accordance with the demands of the new political common sense.*

Fourthly, out of a proclaimed concern for efficiency in the "war on crime" as much as for proof of solicitude toward this new figure of the deserving citizen that is the crime victim, this discourse overly revalorizes repression and stigmatizes youths from declining working-class neighborhoods, the jobless, homeless, beggars, drug addicts and street prostitutes, and immigrants from the former colonies of the West and from the ruins of the Soviet empire, designated as the natural vectors of a pandemic of minor offenses that poison daily life and the progenitors of "urban violence" bordering on collective chaos.2 Following which, on the carceral front, the therapeutic philosophy of "rehabilitation" has been more or less supplanted by a managerialist approach centered on the cost-driven administration of carceral stocks and flows, paving the way for the privatization of correctional services. Lastly, the implementation of these new punitive policies has invariably resulted in an extension and tightening of the police dragnet, a hardening and speeding-up of judicial procedures, and, at the end of the penal chain, an incongruous increase in the population under lock, even though their impact on the incidence of offenses has never been established other than by pure proclamation, and without anyone raising the question of their financial burden, social costs, and civic implications.

These punitive policies are the object of an unprecedented political consensus and enjoy broad public support cutting across class lines, boosted by the tenacious blurring of crime, poverty, and immigration in the media as well as by the constant confusion between insecurity and the "feeling of insecurity." This confusion is tailor-made to channel toward the (dark-skinned) figure of the street delinquent the diffuse anxiety caused by a string of interrelated social changes: the dislocations of wage work, the crisis of the patriarchal family and the erosion of traditional relations of authority among sex and age categories, the decomposition of established working-class territories and the intensification of school competition as requirement for access to employment.3 And how would the rolling out of the penal arm of the state not be popular when the parties of the governmental Left in all of the postindustrial countries have converted to a narrowly behaviorist and moralistic Rightist vision that counterposes "individual responsibility" and "sociological excuses" in the name of the (electoral) "reality principle"? It follows that penal severity is now presented virtually everywhere and by everyone as a healthy necessity, a vital reflex of self-defense by a social body threatened by the gangrene of criminality, no matter how petty.4 Caught in the vise of the biased alternative between catastrophic and angelic visions, anyone who dares to question the self-evident commonplaces of the pensée unique (one-way thinking) about "insecurity" that now rules uncontested is irrevocably (dis)qualified as a vain dreamer or an ideologue guilty of ignoring the harsh realities of contemporary urban life.

The Generalization of Social Insecurity and Its Effects

But reality, properly speaking, is not what we are made to think it is. The sudden proclamation of a "state of emergency" on the police and penal front in the United States starting in the mid-1960s, and then in Western Europe according to the same schemas a quarter-century later, does not correspond to a rupture in the evolution of crime and
delinquency, which we shall see did not abruptly change in scale and physiognomy at the start of the two periods in question on either side of the Atlantic. Neither does it translate a forward leap in the efficiency of the repressive apparatus that would justify its reinforcement, as the zealots of "zero tolerance" now spread around the world would have us believe. And it is not the spawn of advances in criminological science authorizing a refinement of deterrence and judicial pressure, as claimed by the myth of the "broken window." It is not criminality that has changed here so much as the gaze that society trains on certain street illegalities, that is, in the final analysis, on the disposessed and dishonored populations (by status or origin) that are their presumed perpetrators, on the place they occupy in the City, and on the uses to which these populations can be subjected in the political and journalistic fields.

These castaway categories—unemployed youth left adrift, the beggars and the homeless, aimless nomads and drug addicts, postcolonial immigrants without documents or support—have become salient in public space, their presence undesirable and their doings intolerable, because they are the living and threatening incarnation of the generalized social insecurity produced by the erosion of stable and homogeneous wage work (promoted to the rank of paradigm of employment during the decades of Fordist expansion in 1945-75) and by the decomposition of the solidarities of class and culture it underpinned within a clearly circumscribed national framework. Just as national boundaries have been blurred by the hypermobility of capital, the settlement of migration flows, and European integration, the normalization of desocialized labor feeds a powerful current of anxiety in all the societies of the continent. This current mixes the fear of the future, the dread of social decline and degradation, and the anguish of not being able to transmit one’s status to one’s offspring in a competition for credentials and positions that is ever more intense and uncertain. It is this diffuse and multifaceted social and mental insecurity, which (objectively) strikes working-class families shorn of the cultural capital required to accede to the protected sectors of the labor market and (subjectively) haunts large sectors of the middle class, that the new martial discourse of politicians and the media on delinquency has captured, fixating it onto the sole issue of physical or criminal insecurity.

Indeed, the generalized hardening of police, judicial, and correctional policies that can be observed in most of the countries of the First World over the past two decades partakes of a triple transformation of the state, which it helps simultaneously to accelerate and obfuscate, wedding the amputation of its economic arm, the retraction of its social bosom, and the massive expansion of its penal fist. This transformation is the bureaucratic response of political elites to the mutations of wage work (the shift to services and polarization of occupations, flexibilization and intensification of work, individualization of employment contracts, discontinuity and dispersion of occupational paths) and their ravaging effects on the lower tiers of the social and spatial structure. These mutations themselves are the product of a swing in the balance of power between the classes and groups that struggle at every moment for control over the worlds of employment and their proceeds. And in this struggle, it is the transnational business class and the "modernizing" fractions of the cultural bourgeoisie and high state nobility, allied under the banner of neoliberalism, that have gained the upper hand and embarked on a sweeping campaign to reconstruct public power in line with their material and symbolic interests.

Three trends implicate and interlink with one another in a self-perpetuating causal chain that is redrawing the perimeter and redefining the modalities of government action: (1) the commodification of public goods and the rise of underpaid, precarious work against the backdrop of working poverty in the United States and enduring mass joblessness in the European Union; (2) the unraveling of social protection schemes, leading to the replacement of the collective right to recourse against unemployment and destitution by the individual obligation to take up gainful activity ("workfare" in the United States and the United Kingdom, ALE jobs in Belgium, PARE and RMA in France, the Hartz reform in Germany, etc.), in order to impose desocialized wage labor as the normal horizon of work for the new proletariat of the urban service sectors; and (3) the reinforcement and extension of the punitive apparatus, recentered onto the disposessed districts of the inner city and the urban periphery which concentrate the disorders and despair spawned by the twofold movement of retrenchment of the state from the economic and social front.

The Keynesian state, coupled with Fordist wage work operating as a spring of solidarity, whose mission was to counter the recessive cycles of the market economy, protect the most vulnerable populations, and reduce the most glaring inequalities, has been succeeded by a state that one might dub neo-Darwinist, in that it erects competition and celebrates unrestrained individual responsibility—whose counterpart is collective and thus political irresponsibility. The Leviathan then withdraws into its regalian functions of law enforcement, themselves hypertrophied and deliberately abstracted from their social environment, and its symbolic mission of reasserting common values through the public anathematization of deviant categories—chief among them the unemployed “street thug” and the “pedophile,” viewed as the walk-
ing incarnations of the abject failure to live up to the abstemious ethic of wage work and sexual self-control. Unlike its belle époque predecessor, this new-style Darwinism, which praises the "winners" for their vigor and intelligence and vituperates the "losers" in the "struggle for [economic] life" by pointing to their character flaws and behavioral deficiencies, does not find its model in nature. It is the market that supplies it with its master-metaphor and the mechanism of selection supposed to ensure the 'survival of the fittest.' But only after this market itself has been naturalized, that is to say, depicted under radically dehistoricized trappings which, paradoxically, turn it into a concrete historical realization of the pure and perfect abstractions of the orthodox economic science promoted to the rank of official theodicy of the social order in statu nascendi.

Thus the "invisible hand" of the unskilled labor market, strengthened by the shift from welfare to workfare, finds its ideological extension and institutional complement in the "iron fist" of the penal state, which grows and redeploy in order to stem the disorders generated by the diffusion of social insecurity and by the correlative destabilization of the status hierarchies that formed the traditional framework of the national society (such as the division between whites and blacks in the United States and between nationals and colonial immigrants in Western Europe). The regulation of the working classes through what Pierre Bourdieu calls "the Left hand of the state," that which protects and expands life chances, represented by labor law, education, health, social assistance, and public housing, is supplanted (in the United States) or supplemented (in the European Union) by regulation through its "Right hand," that of the police, justice, and correctional administrations, increasingly active and intrusive in the subaltern zones of social and urban space. And, logically, the prison returns to the forefront of the societal stage, when only thirty years ago the most eminent specialists of the penal question were unanimous in predicting its waning, if not its disappearance.*

*Recall that, in the mid-1970s, the three leading revisionist historians of the prison, David Rothman, Michel Foucault, and Michael Ignatieff, agreed with radical sociologists Stanley Cohen and Andrew Scull, as well as with mainstream penalists Hermann Mannheim and Norval Morris, that it was an institution in inevitable decline, destined to be replaced in the medium run by more diffuse, discrete, and diversified instruments of social control. See Franklin E. Zimring and Gordon Hawkins, The Scale of Imprisonment (Chicago: University of Chicago Press, 1993), chap. 2. The penal debate then turned decisively toward the implications of "decarceration" and implementation of community sentences. Since this Malthusian prognosis, the evolution of punishment structures has made an about-face in almost all Western societies: the population behind bars has doubled in France, Belgium, and England; it has tripled in Holland, Spain, and Greece; and it has quintupled in the United States.

The renewed utility of the penal apparatus in the post-Keynesian era of insecure employment is threefold: (1) it works to bend the fractions of the working class recalcitrant to the discipline of the new fragmented service wage-labor by increasing the cost of strategies of exit into the informal economy of the street; (2) it neutralizes and warehouses its most disruptive elements, or those rendered wholly superfluous by the recomposition of the demand for labor; and (3) it reafirms the authority of the state in daily life within the restricted domain henceforth assigned to it. The canonization of the "right to security," correlative to the dereliction of the "right to employment" in its old form (that is, full-time and with full benefits, for an indefinite period, and for a living wage enabling one to reproduce oneself socially and to project oneself into the future), and the increased interest in, and resources granted to, the enforcement of order come at just the right time to shore up the deficit of legitimacy suffered by political decision-makers, owing to the very fact that they have abjured the established missions of the state on the social and economic front.

Under these conditions, one understands better why, throughout Europe, the parties of the governmental Left smitten with the neoliberal vision have proven so fond of the security theatics incarnated by "zero tolerance" that have come from the United States in the past decade, or its British cousins such as "community policing." For, in their case, the adoption of policies of economic deregulation and social retrenchment amounts to a political betrayal of the working-class electorate that brought them to power in the hope of receiving stronger state protection against the sanctions and failings of the market. Thus the punitive turn taken by Lionel Jospin in France in the fall of 1997, like those negotiated by Anthony Blair in Britain, Felipe Gonzalez in Spain, Massimo d'Alena in Italy, and Gerhard Schroeder in Germany around the same years, after William Jefferson Clinton had plainly adopted the ultra-repressive agenda of the Republican Party in the United States in 1994, has little to do with the alleged "explosion" in youth delinquency or with the "urban violence" that have invaded public debate toward the end of the past decade. (The climax of this media crescendo in France was reached during the presidential campaign of 2002, which saw the Socialist Party mimicking the positions of the RPR, the main right-wing party, which had aligned itself with the more punitive stance movement; has made an about-face in almost all Western societies: the population behind bars has doubled in France, Belgium, and England; it has tripled in Holland, Spain, and Greece; and it has quintupled in the United States.)
of the National Front, reducing the debate on “insecurity” to a frantic bidding up in severity.” It has everything to do with the generalization of desocialized wage labor and the establishment of a political regime that will facilitate its imposition. It is a regime that one may call “liberal-paternalist,” insofar as it is liberal and permissive at the top, with regard to corporations and the upper class, and paternalist and authoritarian at the bottom, toward those who find themselves caught between the restructuring of employment and the ebbing of social protection or its conversion into an instrument of surveillance and discipline.

“Sociological Excuses” and “Individual Responsibility”

Just as neoliberal ideology in economic matters rests on an impermeable separation between the economic (supposedly governed by the neutral, fluid, and efficient mechanism of the market) and the social (inhabited by the unpredictable arbitrariness of powers and passions), so the new penal doxa come from the United States postulates a clean and definitive caesura between (social/) circumstances and (criminal) acts, causes and consequences, sociology (which explains) and the law (which regulates and sanctions). The same behavioristic mode of reasoning then serves to devalue the sociological point of view, implicitly denounced as de-mobilizing and “de-responsibilizing”—and thus as infantile, even feminizing—in order to substitute for it the virile rhetoric of personal uprightness and responsibility, tailor-made for deflecting attention away from the abdications of the state on the economic, urban, schooling, and public health fronts. This is indicated by this typical statement of prime minister Lionel Jospin in an interview of January 1999, curiously entitled “Against the International ‘Pensée Unique’” even though it would appear to have come straight out of the mouth of an expert from a “think tank” of the new American Right:

*According to the UBMM index (Unité de bruit médiatique, Unit of Media Noise, elaborated by the firm TNS Media Intelligence, to measure the space occupied in eighty press outlets and television and radio news segments in France), “insecurity” weighed eight times more than unemployment in public debate during the election campaign of winter 2002 (even as official crime figures were declining and those for joblessness were rising). On the eve of the second round of the election, the mad race for audience ratings even led Le Monde to cover the magazine kiosks of Paris with a poster promoting a “Special Dossier” on “Insecurity” with this panicked interpellation: “Is France a Dangerous Country?” (which senior editor Thomas Ferenczi answered in the positive, thus illustrating the very observation of sociologist Philippe Robert in the same supplement on “the poverty of the French debate”). The political mistake of candidate Jospin in that race was to believe that he could draw electoral profits from manipulating the themes of crime in order to mask the rise of precariousness and poverty under an allegedly Left government.

From the moment we took office, we have insisted on problems of security. To prevent and to punish are the two poles of the action we are conducting. These problems are linked to serious issues of badly managed urbanism, family breakdown, and social misery, but also to the deficit of integration of part of the youths living in the cités (public housing projects). But these do not constitute, for all that, an excuse for delinquent individual behaviors. One must not confound sociology with law. Each remains responsible for his acts. So long as we allow sociological excuses and we do not implicate individual responsibility, we will not resolve these questions.

Social and economic structures disappear to make room for reasoning of a marginalist kind that debases collective causes to the rank of “excuses” in order to better justify individual sanctions. Being assured of having little durable traction on the mechanisms generative of delinquent conduct, these sanctions can have no other function than to underline the authority of the state on the symbolic level (with a view toward electoral dividends) and to reinforce its penal sector on the material level, to the detriment of its social sector. It is therefore not surprising to find this same individualistic and repressive philosophy in countless speeches by leaders of the Right in the United States, such as in this “Address to Students on the ‘War on Drugs’” delivered by President George H. W. Bush in 1989:

We must raise our voices to correct an insidious tendency—the tendency to blame crime on society rather than on the criminal. . . . I, like most Americans, believe that we can start building a safer society by first agreeing that society itself does not cause the crime—criminals cause the crime.*

In March 1999, in a speech delivered via video to the “National Meetings of Agencies for the Prevention of Delinquency,” justice minister Elisabeth Guigou bid up on the imperative necessity to dissociate social causes from individual responsibility, in conformity with the root schema of the neoliberal vision of the world. And she even found Reaganite tones in which to excoriate a “culture of indulgence” allegedly fostered by “prevention” programs, bluntly dismissing the advocates of the social treatment of precariousness as utopians:

The turn we undertake together must be a turn towards the reality principle. . . . Who does not see that certain methods of prevention support, sometimes inadvertently, a certain culture of indulgence that relieves individuals of responsibility [literally: “de-responsibilizes”]? Can one develop a young person’s autonomy by ceaselessly concealing that his infractions have sociological, even political, causes—causes which, more

*George Bush, “Remarks at a Briefing on Law Enforcement for United States Attorneys,” 16 June 1989. My emphases. This *forte pensée* can be found over and over again in the statements of French Socialist leaders ten years later, for example on the lips of Paris congressman Christophe Caresche, who asserted with remarkable aplomb in *Le Parisien* of 31 October 2001: “We know that delinquency has no social nature whatsoever and that it pertains to the individual responsibility of each person.”
It is abundantly clear that much of our crime problem was provoked by a social philosophy that saw man as primarily a creature of his material environment. The same liberal philosophy that saw an era of prosperity and virtue ushered in by changing man’s environment through massive federal spending programs also viewed criminals as the unfortunate products of poor socioeconomic conditions or an underprivileged upbringing. Society, not the individual, they said, was at fault for criminal wrongdoing. We were to blame. Well, today, a new political consensus utterly rejects this point of view.

One can measure how much this “new consensus” on the individual foundations of social and penal justice, which reduces delinquency to the simple sum of the private acts of delinquents, each exercising their free will the better to invite repression, transcends the traditional political divide between the Right and the governmental Left in France by noting the frank and full agreement between congressman Julien Dray, the Socialist Party “expert” on security issues, and Nicolas Sarkozy, the human spearhead of the hyperactive law-and-order policy engaged by the Right after its return to power in the spring of 2002, during the parliamentary debate on the implementation of that policy. Under the approving exhortations of the Right deputies, the socialist Dray held forth:

Following our Prime Minister, Jean-Pierre Raffarin…, for us, a delinquent is a delinquent. So there is not, on the benches of this Assembly, on the one side those who are undecided and, on the other, those who are determined—contrary to the Manicheans for whom life is so simple and whose views are often expressed the loudest. Yes, there exists a propitious soil for delinquency. But to recognize this neither excuses delinquency nor, for all that, justifies it. If you do not choose where you were born, you do choose your life and, at a given moment, you choose to become a delinquent. Whence society has no other solution than to repress these acts… For the well-being of our country and fellow citizens, … I can only wish your success. Your project is an extension of the strategic plan prepared by the previous [Socialist] government and comes out of the discussion of November 2001.

Taking much care to distance himself from any “sociological complacency,” Julien Dray then struck up the anthem that serves as the slogan (and screen) for the repressive policy of Tony Blair’s New Labour, which is responsible for an unprecedented increase in the incarceration rate in England. “It is necessary to be tough on crime, but also on the causes of crime.” To which Nicolas Sarkozy was happy to respond:

I would like to say to you, and through you to all the members of the Socialist Party, that I found your intervention courageous and useful. It rests on your competence as a grassroots representative and it expresses your refusal to make something ideological out of the issue [sic]. … Monsieur Dray, it gave me such pleasure to hear you hail the American model, and with such talent, such honesty, and such exactitude! Never would I have dared to go so far. Thank you for doing me this service! [Laughter and applause from the benches of the Union pour la Majorité Présidentielle and the Union pour la Démocratie Française, the two main right-wing parties.]

An American Invention with Planetary Implications

The resolutely punitive turn taken by penal policies in advanced societies at the close of the twentieth century thus does not pertain to the simple diptych of “crime and punishment.” It heralds the establishment of a new government of social insecurity, “in the expansive sense of techniques and procedures aimed at directing the conduct of the men” and women caught up in the turbulence of economic deregulation and the conversion of welfare into a springboard toward precarious employment, an organizational design within which the prison assumes a major role and which translates, for the groups residing in the nether regions of social space, in the imposition of severe and supercilious supervision. It is the United States that invented this new politics of poverty during the period from 1973 to 1996, in the wake of the social, racial, and anti-ethnic reaction to the progressive movements of the preceding decade that was to be the crucible of the neoliberal revolution. This is why this book takes the reader across the Atlantic to probe the entrails of this bulimic penal state that has surged out of the ruins of the charitable state and of the big black ghettos.

The argument unfolds in four steps. The first part (“Poverty of the Social State”) shows how the rise of the carceral sector partakes of a broader restructuring of the US bureaucratic field tending to criminalize poverty and its consequences so as to anchor precarious wage work as a new norm of citizenship at the bottom of the class structure while remedying the derailing of the traditional mechanisms for maintaining the ethnoracial order (chapter 2). The planned atrophy of the social state, culminating with the 1996 law on “Personal Responsibility and Work Opportunity,” which replaced the right to “welfare” with the obligation of “workfare,” and the sudden hypertrophy of the penal state are two concurrent and complementary developments (chapter 3). Each in its own manner, they respond, on the one side, to the forsaking of
the Fordist wage-work compact and the Keynesian compromise in the mid-1970s, and, on the other side, to the crisis of the ghetto as a device for the sociospatial confinement of blacks in the wake of the Civil Rights Revolution and the wave of urban riots of the 1960s. Together, they ensnare the marginal populations of the metropolis in a carceral-assistential net that aims either to render them "useful" by steering them onto the track of deskillled employment through moral retraining and material suasion, or to warehouse them out of reach in the devastated core of the urban "Black Belt" or in the penitentiaries that have become the latter's distant yet direct satellites.

The second part ("Grandeur of the Penal State") dissects the modalities and identifies the engines behind the ascent of the penal state in the United States. Chapter 4 retraces the onset of a regime of permanent and generalized carceral hyperinflation without precedent in a democratic society, while crime rates stagnated and then receded, and sketches the lateral expansion of the "penal dragnet" that now holds several tens of millions of Americans in its mesh by means of judicial supervision and criminal databanks. Chapter 5 documents the stupendous expansion of the means devoted to the punitive supervision of the poor and weighs the astronomical financial and social costs of the ascent of the correctional institution among public bureaucracies while the economic and social weight of the state diminishes. It also shows how the country's authorities have strived to enlarge their carceral capacity by resorting to private imprisonment, by hardening conditions of detention, and by shifting part of the cost of their confinement onto the inmates and their families.

The third part ("Privileged Targets") explains why the "great confinement" of fin-de-siècle America strikes first and foremost the subproletariat of the black ghettos undermined by deindustrialization, among the declining fractions of the working class (chapter 6), and the reviled figure of the "sex offender," among vectors of deviance in violation of the Puritan ethic of work and domestic order (chapter 7). It gives us an opportunity to stress the properly symbolic effects of the unleashing of the penal system, especially how the latter reinforces, by dramatizing it, the legal, social, and cultural demarcation between the community of "law-abiding citizens" and criminals, so as to turn the latter into a sacrificial category that concentrates within itself all of the negative properties (immorality, poverty, blackness) that this community wishes to expel outside itself. The penalization of poverty thus vividly reminds everyone that, by its sole existence, poverty constitutes an intolerable offense against this "strong and definite state of the collective con-

science"* of the nation that conceives of America as a society of affluence and "opportunity for all."

The central thesis of the present book resides in its very architecture, that is, in the empirical and analytical rapprochement it effects between social policy and penal policy. These two domains of public action continue to be approached separately, in isolation from each other, by social scientists as well as by those, politicians, professionals, and activists, who wish to reform them, whereas in reality they already function in tandem at the bottom of the structure of classes and places. Just as the close of the nineteenth century witnessed the gradual disjunction of the social question from the penal question under the press of working-class mobilization and the reconfiguration of the state it stimulated, the close of the twentieth century has been the theater of a renewed fusion and confusion of these two issues, following the fragmentation of the world of the laboring classes**—its industrial dismantlement and the deepening of its internal divisions, its defensive retreat into the private sphere and crushing feeling of downward drift, its loss of a sense of collective dignity, and, lastly, its abandonment by Left parties more concerned with the games internal to their apparatus than with "changing life" (the motto of the French Socialist Party in the late 1970s), leading to its near disappearance from the public scene as a collective actor.*** It follows that the fight against street delinquency now serves as screen and counterpart to the new social question, namely, the generalization of insecure wage work and its impact on the territories and life strategies of the urban proletariat.

In 1971, Frances Fox Piven and Richard Cloward published their classic book Regulating the Poor, in which they argue that "relief programs

*To borrow the language of Durkheim, who reminds us that "to gain an accurate idea of punishment, one must reconcile the two contrary theories that have been offered of it: that which sees in it an expiation and that which makes it a weapon for social defense." Émile Durkheim, De la division du travail social (Paris: Presses Universitaires de France, 1930 [1893]), 77. My translation. Translated as The Division of Labor in Society (New York: Free Press, 1984), 69.

**In the French case, this dissociation was accomplished between 1888 and 1914, as shown by Christian Guitton, "Le chômage entre question sociale et question pénale en France au tournant de siècle," in Aux Sources du chômage, 1880-1914. Une comparaison interdisciplinaire entre la France et la Grande-Bretagne, ed. Malcolm Mansfield, Robert Salais, and Noel Whiteside, 63–91 (Paris: Belin, 1994). Future historians will perhaps date their renewed conjunction to October 1987, the date of the famous Villeplaine Symposium organized by the Jospin government on "Safe Cities for Free Citizens" ("Des villes sûres pour des citoyens libres"—note in passing the masculinist character of this designation, which partsakes at the discursive level in the virilization of state action, and the priority it gives to security over freedom).
are initiated to deal with dislocations in the work system that lead to mass disorder, and are then retained (in an altered form) to enforce work. Thirty years later, this cyclical dynamic of expansion and contraction of public aid has been superseded by a new division of the labor of nomination and domination of deviant and dependent populations that couples welfare services and criminal justice administration under the aegis of the same behaviorist and punitive philosophy. The activation of disciplinary programs applied to the unemployed, the indigent, single mothers, and others "on assistance" so as to push them onto the peripheral sectors of the employment market, on the one side, and the deployment of an extended police and penal net with a reinforced mesh in the dispossessed districts of the metropolis, on the other side, are the two components of a single apparatus for the management of poverty that aims at effecting the authoritarian rectification of the behaviors of populations recalcitrant to the emerging economic and symbolic order. Failing which, it aims to ensure the civic or physical expurgation of those who prove to be "incorrigible" or useless. And much as the development of modern "welfare" in the United States from its origins in the New Deal to the contemporary period was decisively shaped by its entailment in a rigid and pervasive structure of ethnoracial domination that precluded the deployment of inclusive and universalist programs, we shall see (especially in chapters 2 and 6) that the expansion of the penal state after the mid-1970s was both dramatically accelerated and decisively twisted by the revolt and involutive collapse of the dark ghetto as well as by the subsequent ebbing of public support for black demands for civic equality.

In the era of fragmented and discontinuous wage work, the regulation of working-class households is no longer handled solely by the maternal and nurturing social arm of the welfare state; it relays also on the virile and controlling arm of the penal state. The "dramaturgy of labor" is not played solely on the stages of the public aid office and job placement bureau as Diven and Cloward insist in the 1993 revision of their classic analysis. At century's turn it also unfolds its stern scenarios in police stations, in the corridors of criminal court, and in the darkness of prison cells. This dynamic coupling of the Left and Right hands of the state operates through a familiar sharing of the roles between the sexes. The public aid bureaucracy, now reconverted into an administrative springboard into poverty-level employment, takes up the mission of inculcating the duty of working for work's sake among poor women (and indirectly their children): 90 percent of welfare recipients in the United States are mothers. The quartet formed by the police, the court, the prison, and the probation or parole officer assumes the task of taming their brothers, their boyfriends or husbands, and their sons: 93 percent of US inmates are male (men also make up 88 percent of parolees and 77 percent of probationers). This suggests, in line with a rich strand of feminist scholarship on public policy, gender, and citizenship, that the invention of the double regulation of the poor in America in the closing decades of the twentieth century partakes of an overall (re)masculinizing of the state in the neoliberal age, which may be understood in part as an oblique reaction to (or against) the social changes wrought by the women's movement and their reverberations inside the bureaucratic field. Considering that feminist social scientists have conclusively demonstrated that one cannot explain the constitution and trajectory of welfare states without factoring gender into the core equation, there is reason to think that fully elucidating the rise of the penal state will likewise require bringing masculinity from the periphery toward the center of the analysis of penalty.

Within this sexual and institutional division in the regulation of the poor, the "clients" of both the assistantial and penitential sectors of the state fall under the same principled suspicion: they are considered morally deficient unless they periodically provide visible proof to the contrary. This is why their behaviors must be supervised and regulated by the imposition of rigid protocols whose violation will expose them to a redoubling of corrective discipline and, if necessary, to sanctions that can result in durable segregation, a manner of social death for moral failing—casting them outside the civic community of those entitled to....

*This coupling of the assistantial and penitential sectors of the state rises to the level of a deliberate strategy for remaking public authority among some apostles of the new government of poverty in America, such as Lawrence Mead, ed., The New Paternalism: Supervisory Approaches to Poverty (Washington, D.C.: Brookings Institution, 1997); for discussion, see Wacquant, Les Prisons de la misère (Paris: Raisons d’agir Editions, 1999), 38–44.
social rights, in the case of public aid recipients, outside the society of “free men” for convicts. Welfare provision and criminal justice are thus animated by the same punitive and paternalist philosophy that stresses the “individual responsibility” of the “client,” treated in the manner of a “subject,” in contraposition to the universal rights and obligations of the citizen, and they reach publics of roughly comparable size. In 2001, the number of households receiving Temporary Assistance to Needy Families, the main assistance program established by the 1996 “welfare reform,” was 2.1 million, corresponding to some 6 million beneficiaries. That the same year, the carceral population reached 2.1 million, but the total number of “beneficiaries” of criminal justice supervision (tallying up inmates, probationers, and parolees) was in the neighborhood of 6.5 million. In addition, as we shall demonstrate in chapter 3, welfare recipients and inmates have germane social profiles and extensive mutual ties that make them the two gendered sides of the same population coin.

It follows that if one wishes to decipher the fate of the precarious fractions of the working class in their relation to the state, it is no longer possible to limit oneself to studying welfare programs. One must extend and supplement the sociology of traditional policies of collective “well-being”—assistance to dispossessed individuals and households, but also education, housing, public health, family allowances, income redistribution, etc.—by that of penal policies. Thus the study of incarceration ceases to be the reserved province of criminologists and penologists to become an essential chapter in the sociology of the state and social stratification, and, more specifically, of the (de)composition of the urban proletariat in the era of ascendant neoliberalism. Indeed, the crystallization of a liberal-paternalist political regime, which practices “laissez faire et laissez passer” toward the top of the class structure, at the level of the mechanisms of production of inequality, and punitive paternalism toward the bottom, at the level of their social and spatial implications, demands that we forsake the traditional definition of “social welfare” as the product of a political and scholarly common sense overtaken by historical reality. It requires that we adopt an expansive approach, encompassing in a single grasp the totality of the actions whereby the state purports to mould, classify, and control the populations deemed deviant, dependent, and dangerous living on its territory. The study of welfare-turned-workfare must thus be closely coupled with the investigation of what I call prisonfare: the extended policy stream that responds to intensifying urban ills and assorted socio-moral turbelences by boosting and deploying the police, the courts, custodial institutions (juvenile detention halls, jails, prisons, retention centers), and their extensions (probation, parole, criminal data bases and assorted systems of surveillance, supervision and profiling such as “background checks” by public officials, employers, and realtors), as well as the commanding images, lay and specialized idioms, and bodies of expert knowledge elaborated to depict and justify this deployment (chief among them the tropes of moral indignation, civic urgency, and technical efficiency).

In the 1993 edition of their classic study Regulating the Poor, Piven and Cloward note that “the welfare state literature generally is plagued by theoretically significant definitional problems, such as the question of whether education is a welfare-state policy, or whether non-governmental services and income supports are appropriately part of the definition.” But at no point do they envisage the possibility of including in their perimeter of study the penal sector of the state. The prison and the jail appear fleetingly in their historical account of the invention of relief policies in Europe: carceral institutions are mentioned a total of five times, in Piven’s and Cloward’s discussion of their use in the sixteenth century to stem rising vagrancy and begging in France and England, in response to popular disorders in England in the early nineteenth century, and later as penal sanction for the wayward husbands of welfare clients in the twentieth century. But they are never granted even a marginal role as a labor-clearing or labor-shaping device in the contemporary period. Indeed, in the chapter added to the 1993 edition to cover “Relief, Deindustrialization, and the War Against Labor, 1970–1990,” the very period when the carceral boom took off in the United States, Piven and Cloward concentrate solely on work and welfare developments, on grounds that “the workhouse is no longer a politically feasible way to enforce market discipline.” Alluringly, they remark in a passing footnote: “However, imprisoning the poor—the US has the highest incarceration rate among Western countries—could be construed as a partial equivalent of the poorhouse,” not realizing that this footnote misses the advent of a new regime of poverty regulation combining restrictive workfare and expansive prisonfare.

Similarly, the canonical works of Theda Skocpol, Michael Katz, Linda Gordon, and Jill Quadagno are silent on the targeting of the poor by judicial policies, in spite of the pivotal role of punishment in the early history of state institutions in the country—as demonstrated, among others, by David Rothman’s The Discovery of the Asylum and Thomas Duran’s Democracy and Punishment. The thorough discussion of “current policies, efforts, and programs designed to deal with the poor” offered in We the Poor People by Joel Handler and Yeshel Hasenfeld on the morrow of the 1996 “welfare reform” typically leaves penal institutions en-
entirely out of the picture. A comprehensive overview of recent scholarship on social policy in the United States by Edwin Amenta and his colleagues contains all of one line and a single cursory reference to the part played by criminal justice in the management of precarious populations. A similar survey of scholarship on urban poverty research and policy in America after "welfare reform" by Alice O'Connor published in 2000, the year the United States passed the two-million-inmate mark, is blissfully mum on how the penal state patrols that novel solocultural landscape. The same conspicuous absence is found in a broad panorama of comparative studies of changing welfare regimes in political science by Paul Pierson, when comparison would seem to highlight America's distinctive move to mate workfare with prisonfare just as it captures the title of world leader in incarceration. The penal state has surged suddenly, grown voraciously, and forced itself into the center of the institutional horizon faced by America's poor, directly and dramatically impacting their life chances and conditions, without students of poverty and welfare seeming to notice it.

On the penal front, scholars have likewise overlooked the roots and ignored the significance of the restrictive and punitive revamping of welfare into workfare for the established clientele of criminal justice. In spite of their growing and glaring disconnection, criminologists have continued to study the causes, shape, and consequences of carceral trends strictly in relation to crime and its suppression, without regard to the broader reconstruction of the American state of which these trends are but one fractional indicator. The typical textbook in correctional studies contains no analysis of social policies aimed at marginalized populations outside of prison walls. Two notable yet only partial exceptions to this entrenched analytic myopia are legal scholars Michael Tonry and David Garland, in Malign Neglect: Race, Crime, and Punishment in America, Tonry discerns well that "crime control and social welfare policies are inextricably connected." He points to the concurrent debasement of both policy streams, based on the activation of the same racial enmity toward blacks ("Willie Horton is to crime control as the Welfare Queen is to welfare policy"), and he highlights the disastrous impact of the War on drugs on the African-American community. But he sees changes in social welfare and penal control as parallel and conflicting developments, which he attributes to the fact that both "have been converted by conservative politicians from subjects of policy to objects of politics." In reality, we shall show that they are fully congruent and linked transformations converging into a novel disciplinary apparatus to supervise the poor in the post--civil-rights era of deregulated low-wage work, and an apparatus whose diligent erection has transcended partisan politics—we will see in chapter 3 that it is William Jefferson Clinton who orchestrated its completion on both the welfare and the prison front in the mid-1990s.

In The Culture of Control, Garland stresses similarly that "the institutional and cultural changes that have occurred in the crime control field are analogous to those that have occurred in the welfare state more generally." But he sees these changes as parallel and independent responses to the advent of "late modernity" and "the cluster of risks, insecurities, and control problems" that come with it. Even as they become invested by the same "discursive tropes and administrative strategies," these two domains of state action toward the poor remain empirically separate and theoretically separable. For, according to Garland, "the changes that have occurred in the crime control field" as on the social welfare front "have been mainly a matter of redeploving and redirecting the practices of existing institutions. It has not been a process of inventing new institutions." In his eyes, they entail not the creation of novel structures of control—those that now effectively mate restrictive workfare with expansive prisonfare—but operate primarily "at the level of the culture that enlivens these structures, orders their use, and shapes their meanings." Isolating penal policy from its social welfare counterpart leads Garland to conclude that "the problem of crime control in late modernity has vividly demonstrated the limits of the sovereign state." Coupling the analysis of the changing roles of the Left and Right hands of the state reveals, on the contrary, that the "sovereign state strategy" pursued by advocates of the penalization of poverty has been enormously successful, not only in its historic cradle of the United States, but increasingly in other First-World countries that have imported the punitive government of social insecurity precisely because it enables them to stage the newly reasserted potency of the state.

Thus is resolved what could appear to be a doctrinal contradiction, or at least a practical antinomy, of neoliberalism, between the downsizing of public authority on the economic flank and its upsizing on that of the enforcement of social and moral order. If the same people who champion a minimal state in order to "free" the "creative forces" of the market and submit the dispossessed to the sting of competition do not hesitate to erect a maximal state to ensure everyday "security," it is because the poverty of the social state against the backdrop of deregulation elicits and necessitates the grandeur of the penal state. And because this causal and functional linkage between the two sectors of the bureaucratic field gets all the stronger as the state more completely sheds all economic responsibility and tolerates a high level of poverty as well as a wide opening of the compass of inequalities. *

*Proof is the fact that the inverse correlation established between the incarceration rate and the level of welfare support across the fifty states has increased over the past two decades. Katherine Beckett and Bruce Western, "Governing Social Marginality: Welfare, Incarceration, and the Transformation of State Policy," Punishment & Society 3, no. 1 (January 2001): 43–59. Additional evidence is provided by going comparative and mapping the trajectory of punishment in Second-World countries combining...
But the interest in excavating the economic underpinnings and the socioracial incubation of carceral bulimia in the New World is not merely archeological or limited to the sole domain of American studies. For to dissect the penal state in the United States is to offer indispensable materials for a historical anthropology of the invention of neoliberalism in action. Since the rupture of the mid-1970s, this country has been the theoretical and practical motor for the elaboration and planetary dissemination of a political project that aims to subordinate all human activities to the tutelage of the market. Far from being an incidental or teratological development, the hypertrophic expansion of the penal sector of the bureaucratic field is an essential element of its new anatomy in the age of economic neo-Darwinism. To journey across the US carceral archipelago, then, is not only to travel to the "extreme limits of European civilization," to use the words of Alexis de Tocqueville. It is also to discover the possible, nay probable, contours of the future landscape of the police, justice, and prison in European and Latin American countries that have embarked onto the path of "liberating" the economy and reconstructing the state blazed by the American leader. In this perspective, the United States appears as a sort of historical alembic in which one can observe on a real scale, and anticipate by way of structural transposition (and, emphatically, not replication), the social, political, and cultural consequences of the advent of neoliberal penalty in a society submitted to the joint empire of the commodity form and moralizing individualism.

A "European Road" to the Penal State?

By retracing the making, in the United States, of this new government of social insecurity that weds the "invisible hand" of the deregulated labor market and contractualized public aid to the "iron fist" of the punitive state, this book takes us into the living laboratory of the neoliberal revolution. In so doing, it brings to light the springs and reason for the diffusion of the "one-way security-think" (pensee unique securite) that is taking hold everywhere today in Europe, and particularly in France since 2001. For the United States has not been content to be the forge and locomotive of the neoliberal project on the level of the economy and welfare; over the past decade, it has also become the premier global exporter of "theories," slogans, and measures on the crime and safety front. In her panorama of carceral evolution around the planet, Vivien Stern stresses that "a major influence on penal policy in Britain and other Western European countries has been the policy direction taken in the United States," an influence to which she attributes "the complete reversal of the consensus prevailing in the post-war developed world and expressed in UN documents and international conventions" that "deprivation of liberty should be used sparingly," and the general discarding of the ideal of "the rehabilitation and social reintegration of the offender."

The fourth part of the book ("European Declinations") analyzes how France's state nobility has fallen—or, rather, has enthusiastically thrown itself—into the law-and-order trap set from the other side of the Atlantic. Seduced by the "scholarly myths" that dress it in rational garb (chapter 8), France has rallied to the "Washington consensus" in matters of crime fighting, to the point that it is currently experiencing a gust of carceral inflation comparable to that posted by the United States twenty years ago at the acme of its correctional boom (chapter 9). Besides, we need do no more than examine the main provisions of the so-called Perben II Law on Crime, promulgated by French parliament in the spring of 2004—but this demonstration would hold mutatis mutandis for the Everyday Security Act, called the Vaillant Law, passed on 15 November 2001 at the initiative of a Socialist government—to detect the clear and deleterious influence of the US model, based on the intensification of police activity, the escalation of judicial sanction, the reduction of professional discretion, the subservience of penal authorities to political fad, and the relentless extension of the scope of imprisonment.

This controversial law, which, uniquely in the annals of French justice, triggered a near-unanimous strike by the judicial professions, swift economic liberalization with extreme inequalities, such as postauthoritarian Argentina and Chile, post-Soviet Russia, and postapartheid South Africa.
highlighted by solemn street demonstrations held by judges walking out in their robes and ermines, effects the fifteenth reform of the penal code in ten years on the pretext of adapting judicial procedures to the evolution of delinquency—but, curiously, it omits white-collar and official criminality, in spite of their spectacular growth in recent years. It increases the powers and prerogatives of the police through a set of measures, such as authorizing nocturnal searches and video recording in private places, extending provisional detention (garde à vue) without charges from 48 to 96 hours, providing monthly remuneration for police informants and creating the legal status of "repentant," exempting from penalty any criminal who would identify his accomplices, a practice directly inspired by American programs that have normalized the use of denunciation and "snitches" in police operations in the black ghetto. Perben II enlarges the definition of "organized crime" and increases the penalties set for a whole series of infractions (extortion, corruption of minors, weapons manufacturing, etc.), as the United States has already done. It institutes a "guilty plea" procedure copied after American plea bargaining that authorizes a defendant to receive a reduced sentence (typically one year in prison for offenses punishable by five) in exchange for dispensing with a trial, allowing the courts to economize on prosecution costs. It extends to some fifty new offenses the application of composition pénale, whereby a prosecutor can impose a fine, suspend a driver's license, or assign a stint of community service to the presumed perpetrator of a misdemeanor who admits to the facts. It creates a national database with the files of sex offenders, which, in addition to abolishing the traditional "right to oblivion" for this category of convicts, includes the genetic fingerprints of minors, of individuals who have been found innocent, and of persons suspected of but not charged with infractions of a sexual nature, and this measure also requires former sex offenders to register with the police—awaiting the day when they will be obliged to publicize their presence, on the pattern of Megan's Law in the United States, the ins and outs of which we examine in chapter 7. Finally, the Perben II Law extends post-penal-control by generalizing furloughs into community facilities and release under electronic supervision for those leaving prison, which will not fail to increase the rate of return to custody. By normalizing measures of exception, accelerating procedures, hardening penalties, and extending the perimeter of judicial supervision, this renovation of the penal code encourages the use of confinement for all (those shorn of economic and cultural capital) and facilitates a slaughterhouse approach to justice to cope with the predictable influx of inmates.

In its motives as well as its architecture and anticipated effects, Perben II is emblematic of the de-autonomization of the penal field and its growing subordination to demands issued from the political and media fields. In this, it vividly illustrates the Americanization of criminal justice in France.* As for the "automatic baseline sentences" for "habitual offenders" that Interior Minister Nicolas Sarkozy promised to establish during the regional election campaign of winter 2004, to the delight of audiences reveling in the public vituperation of criminals, and which promises to be a staple of the political debate over criminal justice for years to come, it is also a French imitation of the "mandatory minimums" that have engorged America's prisons with petty offenders serving terms of imprisonment running into the decades. The fact that the transplantation of this mechanism is impossible in France—since the automaticity of penal sentences is contrary to constitutional texts—does not prevent it from serving the law-and-order guignol.**

Whether through importation or inspiration, the alignment or convergence of penal policies never entails the deployment of identical replicas. No more than other European countries with a strong statist tradition, Catholic or social-democratic, the adjustment that France is effecting in its politics of poverty does not imply a mechanical duplication of the US pattern, with a sharp contraction of welfare as well as a clear and brutal swing from the social to the penal treatment of urban marginality leading to hyperincarceration. The deep roots of the social state in the framework of the bureaucratic field as well as in the national mental structures, the weaker hold of the individualist and utilitarian ideology that undergirds the sacralization of the market, and the absence of a sharp ethnoracial divide explain that the countries of the European continent are unlikely to shift rapidly to an all-out punitive strategy. Each must clear its own path toward the new government of

*In this regard, the current outburst of penal activism contrasts sharply with the previous lurch toward penalization in France during the decade prior to 1997, when increased recourse to confinement was accompanied by the growing professional latitude and public authority gained by judges. Antoine Garapon and Denis Salas, La République pénalisée (Paris: Hachette, 1996).

**In his time, Daniel Vaillant, the last Interior minister of the Plural Left government of Jospin, had also proposed instituting automatic prison terms for recidivists, with full knowledge that the measure could not be adopted.
social insecurity in accordance with its specific national history, social configurations, and political traditions. Nonetheless, one can sketch a provisional characterization of a "European road" to the penal state (with French, Dutch, Italian, etc., variants) that is gradually coming into being before our eyes through a double and conjoint accentuation of the social and penal regulation of marginal categories.

Thus, during the past decade, the French authorities have stepped up both welfare and justice interventions—even if their "social" action has been increasingly stamped with the coin of punitive moralism. On the one side, they have multiplied assistance programs (public utility work with Contrats Emploi-Solidarité, subsidized youth employment, training schemes, the TRACE program, etc.), raised the various "social minima" (targeted government aid to various destitute categories), established the Universal Medical Cover, and broadened access to the Revenu Minimum d'Insertion (RMI, the guaranteed minimum income grant). On the other, they have created special surveillance units (celules de veille) and nested riot police squads inside the "sensitive zones" of the urban periphery, replaced street educators with magistrates to issue warnings to occasional youth delinquents, passed municipal decrees outlawing begging and vagrancy (decrees which are perfectly illegal), multiplied "crackdown" operations and sweeps inside low-income housing projects and routinized the use of comparution immédiate (a fast-track judicial procedure whereby an offender caught in the act is brought before a judge and sentenced within hours), increased penalties for repeated offenses, restricted parole release and speeded up the deportation of convicted foreign offenders, and threatened the parents of juvenile delinquents or children guilty of school truancy with withholding family benefits, etc.

A second contrast between the United States and France, and the countries of continental Europe more generally: the penalization of poverty à l'europeenne is effected mainly through the agency of the police and the courts rather than the prison. It still obeys (but for how much longer?) a predominantly panoptic logic, rather than a segregative and retributive rationale. The correlate is that social services play an active part in this criminalizing process, since they possess the administrative and human means to exercise a close-up supervision of so-called problem populations. But the simultaneous deployment of the social and penal treatments of urban disorders should not hide the fact that the former often functions as a bureaucratic fig-leaf for the latter, and that it is ever more directly subordinated to it in practice. Encouraging state social assistance, health, and education services to collaborate with the police and judicial system turns them into extensions of the penal apparatus, instituting a social panopticism which, under cover of promoting the well-being of deprived households, submits them to an ever-more precise and penetrating form of punitive surveillance.

The Police to the Rescue of "Youths Having Trouble Integrating"

One finds a concrete and caricatural illustration of this at the beginning of 2000 in the southern French city of Nîmes. The regional daily Le Midi Libre confirmed a public rumor according to which the local police had, on order of the prefect, compiled in complete illegality a database of individual files on 173 youths with whom its services had had run-ins. In blatant violation of laws protecting privacy, this data bank combined personal information collected on these youths by the national education authority, the Protection Judiciaire de la Jeunesse (juvenile justice bureau), the Agence Nationale Pour l'Emploi (ANPE, the national employment agency), the Mission Locale d'Insertion (a state job-placement program), Jeunesse et les sports (the antenna of the ministry of sports), and the local social welfare services. These youths (19 of whom were under age sixteen) all came from only five "sensitive neighborhoods"; 83 percent of them had North-African-sounding surnames and most of the others Gypsy surnames. The alphabetical listing produced by the prefecture within the framework of the Commission d'Accès à la Citoyenneté (an administrative council charged with facilitating access to rights among the low-income immigrant population) included the youth's name, date of birth, and the neighborhood they lived in, followed by annotations supplied by the various services involved: the regional police headquarters (Direction Départementale des Services de Police) indicated those who were "dossiers prioritaires" and "repeat offender minors"; the school district director summarized their academic trajectory over eight columns; the ANPE detailed their experience in the area of employment according to ten variables; as for the Mission Locale d'Insertion, it listed the "first contact," "last contact," and in some cases measures taken for the youth considered ("vocational degree in painting," "ANPE" "Absent. ent. indiv. [Truancy, individual Interview], etc.).

The fact that the chief of staff of the prefect of Gard (the district containing Nîmes) dared to publicly justify this flagrant violation of the national legislation on privacy* he was supposed to enforce by invoking—perhaps even sincerely—his desire to help a "panel" of "youths having trouble integrating" speaks volumes

*The law "Informatics and Liberties" of 6 January 1978, modified in July 2004, protects the privacy of personal data on French citizens and residents. It established a national agency, the Commission nationale Informatique et Libertés, that strictly regulates the production, storage, and access to computerized data files containing nominal information by public and private bureaucracies.
about the normalization of recourse to the penal apparatus to regulate marginal categories: "In practical terms, and once again in a republican spirit, it is necessary to work on concrete cases to wage the fight against exclusion." The assurance and even pride with which the chief of staff for the interior minister then defended the appropriateness of this operation before the civil service unions who questioned its justification as "an extension of the decisions made in the conseils de sécurité intérieure [periodic cabinet-level meetings supposed to help coordinate different ministries in 'security' matters and meant to signal to the electorate that the government is actively fighting crime]" show the extent to which the equivalence between "youths in a situation of marginality" or "having trouble integrating" and youths accused by the police is taken for granted in the minds of state managers. This incident, which is but the tip of an immense iceberg of invisible administrative practices crossing the border of legality, shows well how the activities of educational and social services can be annexed, even subordinated, to a police and punitive logic contrary to their basic philosophy.

It remains to be seen whether this "European road" to liberal paternalism is a genuine alternative to penalization in the mold of the United States or merely an intermediate stage or detour leading, in the end, to sustained increases in incarceration. If neighborhoods of relegation are saturated with police without enhancing employment opportunities and life chances in them, and if partnerships between the criminal justice system and other state services are multiplied, there is bound to be an increase in the detection of unlawful conduct and an increased volume of arrests and convictions in criminal court. Who can say today where and when the ballooning of the jails and penitentiaries visible in nearly all the European countries will stop? The case of the Netherlands, which has shifted from a humanist to a managerial penal philosophy and gone from laggard to leader in incarceration among the original fifteen members of the European Union, is instructive and worrisome in this regard.

*According to this senior ministry official, the approach of the prefect of Gard aimed to "make the action of state services toward youth in serious difficulty more coherent and more pertinent" and to arrive at an expert evaluation, on their behalf, of the effectiveness of the public programs mobilized to help them, so that they could "reach the point of making real life choices" and "fully exercise their citizenship." And he concluded that "it is to the credit of the Republic when it mobilizes such an effort for its most underprivileged children" (Letter by Jean-Paul Proust, staff director for the minister of the Interior, to the president of the UPEES-SNUJ union for the judicial protection of youth, Gard section, dated 19 January 2000). But then what grounds are there to reserve such generous intention for these 179 youths from the most notorious neighborhoods of the town singled out by the police?

It bears stressing here that, in Western Europe at least, the social regression toward flexible employment, "freed" from the administrative restrictions and legal protections erected through a century and a half of working-class and trade-union struggles, does not entail a simple return to the government of poverty characteristic of the savage capitalism of the close of the nineteenth century, founded on the naked violence of industrial relations of power, local solidarities, and state charity. There are four major reasons for this. Firstly, the rolling out of the penal state is limited by the fact that, unlike their counterparts of a century ago, the poor citizens and assorted marginal categories circulating in the lower regions of social and urban space enjoy an extensive array of well-established social, economic, and civil rights, and the minimal organizational means to see those respected to some degree. This is true even of nonresident foreigners, who nowadays benefit from a range of legal and administrative protections afforded by human rights statutes and conventions as well as by the diffusion of more inclusive conceptions of membership. Secondly, the resurgence of conditions of employment worthy of Dickens is taking place against the backdrop of collective enrichment and sustained prosperity for the majority of the population. This renders all the more incongruous and unacceptable the crumbling of living standards and the sudden shrinking of the life space and possibilities visited upon the new urban (sub)proletariat.

Next, casualization comes up against the dike constituted by the continual elevation of collective expectations of dignity, produced in particular by the universalization of secondary education and the institutionalization of social rights independent of labor performance, which soften if not practically contradict the sanction of the market. Witness, on the one side, the pressure from business and the international institutions colonized by corporations (such as the OECD [Organisation for Economic Cooperation and Development] or the European Commission) to pare or eliminate "social minima," and, on the other side, the multiplication of legal and activist challenges mounted before public bureaucracies by recipients swindled of their benefits by the permanent recomposition of assistance or employment programs (e.g., in France the annual demonstrations staged every December by the unemployed for a "Christmas bonus," or the successful court action against Unédic launched in spring 2004 by France's first wave of welfare recipients).

*Contrary to the suggestion of Balibar, for whom the reduction of the state to its repressive functions "seems to take us back to a 'primitive' stage in the constitution of the public sphere in bourgeois societies." Etienne Balibar, "Sécurité, sûreté, sécurité, sûreté," Cahiers marxistes 201 (1995): 193.
To wit also the persistent public demand for the protective and corrective action of the welfare-state throughout the developed world, in spite of the vigorous media and political campaigns aimed at stifling it. Finally, the generalization of wage-labor instability has itself spawned novel forms of mobilization and transversal solidarities, illustrated by the burgeoning of associations to defend the dispossessed and the sudden spread of labile alliances (called coordinations) among precarious workers (thus, in France recently, among the staff of McDonald’s, Pizza Hut, and Go Sports, but also FNAC, Arcade, Maxi-Livres, etc.). These solidarities are rooted in the possession of a cultural capital devalorized by the fragmentation of positions, tasks, and work schedules, as well as in the refusal of the docile deference commonly demanded in face-to-face relations with clients in personal commercial services.

There is, however, a major difference on the penal side that pushes in the opposite direction. The state of the dawn of the third millennium is endowed with budgetary, human, and technological resources without equivalent in history for their volume, reach, and degree of rationalization, which bestow upon it a bureaucratic capacity for quadrillage and control that its industrial-era predecessors could never have imagined. Nowadays a suspect or convict can be detected, spotted, tracked at a distance, and captured virtually at any time and in any location, owing to the interconnection of a plethora of instruments of quasi-instantaneous identification and surveillance (video cameras, electronic cards, global positioning devices, satellite-relayed telecommunications, administrative and commercial databases, background checks by employers and realtors, etc.) that cover the most remote corners of a given country, whereas at the end of the nineteenth century it sufficed for an individual to change his name and move to a different city or region and melt into the surrounding landscape for the authorities to lose track of him. Indeed, as the state disengages itself from the economy and defaults on its mission of social protection, its "infrastructural power"—that is, its ability to penetrate the populations under its aegis and rule over their behaviors—operates increasingly through the networks woven by its repressive apparatus, which thus become one of the main vectors of unification of its territory at the national or supranational level (as with Europe’s Schengen space). Besides, the dispossessed categories that are the favorite prey of criminal justice are already placed right in the sights of the bureaucracies of public assistance that supervise their ordinary conducts and even their intimate life with neither scruples nor respite.

The Penalization of Precariousness as Production of Reality

Just as the emergence of a new government of the social insecurity diffused by the neoliberal revolution does not mark a historical reversion to a familiar organizational configuration but heralds a genuine political innovation, similarly the deployment of the penal state cannot be grasped under the narrow rubric of repression. In point of fact, the repressive trope is a central ingredient in the discursive fog that enshrouds and masks the sweeping makeover of the means, ends, and justifications of public authority at century’s close. The leftist activists who rail against the “punishment machine” on both sides of the Atlantic—castigating the chimerical “prison-industrial complex” in America and denouncing a diabolical “programme sécuritaire” in France—mistake the wrapping for the package. They fail to see that crime fighting is but a convenient pretext and propitious platform for a broader redrawing of the perimeter of responsibility of the state operating simultaneously on the economic, social welfare, and penal fronts.

In this regard, I emphatically reject the conspiratorial view of history that would attribute the rise of the punitive apparatus in advanced society to a deliberate plan pursued by omniscient and omnipotent rulers, whether they be political decision-makers, corporate heads, or the gamut of profiteers who benefit from the increased scope and intensity of punishment and related supervisory programs trained on the urban castoffs of deregulation. Such a vision not only confuses the objective convergence of a welter of disparate public policies, each driven by its own set of protagonists and stakes, with the subjective intentions of state managers. It also fails to heed Foucault’s advice that we forsake the “repressive hypothesis” and treat power as a fertilizing force that remakes the very landscape it traverses. Interestingly, this is an insight that one finds in Karl Marx’s erstwhile dispersed remarks on crime, which suggest that the advent of “liberal paternalism” is best construed under the generative category of production:

The criminal produces an impression now moral, now tragic, and renders a “service” by arousing the moral and aesthetic sentiments of the public.

He produces not only textbooks on criminal law, the criminal law itself.

*If the notion of dominant class is invoked on occasion in this book, it is only as a stenographic designation pointing to the balance of patterned struggles over the remolding of the state going on within the field of power—which, analytically speaking, is the pertinent category. This point is developed in Pierre Bourdieu and Loïc Wacquant, “From Ruling Class to Field of Power,” Theory, Culture & Society 10, no. 1 (August 1993): 19–44.
and thus legislators, but also art, literature, novels and the tragic drama. . . . The criminal interrupts the monotony and security of bourgeois life. Thus he protects it from stagnation and brings forth that restless tension, that mobility of spirit without which the stimulus of competition would itself be blunted.  

In other words, Marx himself invites us to break out of the materialist register of a strict economic model to take account of the moral effects of crime and the symbolic import of punishment and assorted societal responses to offending—concerns conventionally associated with his chief theoretical rival, Émile Durkheim. Pursuing this insight reveals that the transition from the social management to the penal treatment of the disorders induced by the fragmentation of wage labor is indeed eminently productive. First, it has created new categories of public perception and state action. The transition from the social management to the penal treatment of the disorders induced by the fragmentation of wage labor is indeed eminently productive. Echoing the alleged discovery of “underclass areas” in the United States, in the closing decade of the twentieth century Europe has witnessed the invention of the “quartier sensible” in France,  

The same goes with the bureaucratic notion of “viences urbaines” (plural), coined in France by the minister of the interior to amalgamate offensive behaviors of widely divergent nature and motives—mean looks and rude language, graffiti and low-grade vandalism, vehicle theft for joy riding, brawls between youths, threats to teachers, drug dealing or fencing, and collective confrontations with the police—so as to promote a punitive approach to the social problems besetting declining working-class districts by depoliticizing them. In her candid recounting of its accidental birth, the police press officer (and former philosophy high-school teacher) who elaborated it reveals that the jumbled category of violences urbaines and the new police department devoted to its promotion and measurement were forged in direct response to the multiplying banlieues upheavals of 1990–91. Its purpose was to “give their due to grassroots police staff” and help exculpate them from accusations of ethnic discrimination in dispossessed areas; prevent the “contagion” of collective disturbances in the same; and ward off “the risk of a drift towards an Americanization of our neighborhoods” by pointing police suppression onto the “small handful of deviant youths” deemed responsible for the spreading riots, due to their virulent “refusal of authority” which “very simply reflects a total absence of social bonds” as well as “a system of thought stamped by affectivity” fostering “irrationality.” The category has since assumed an epicentral role in the public discourse and policy on crime and safety in France as well as in urban planning.

New social types are another byproduct of the emerging social insecurity regime. The irruption of “superpredators” in the United States, “feral youth” and “jobs” in the United Kingdom, or “sauvageons” (wildings, a social-paternalistic variant of a racial insult scoffing at the alleged deculturation of the lower classes) in France has been used to justify the reopening or the expansion of custodial centers for juveniles, even though all existing studies deplore their noxious effects. Not to forget the “sexual predator” or maverick pedophile, who, as we shall discover in chapter 7, stands as the vilified embodiment of every threat to the integrity of the family, and who is all the more feared as the latter is more submitted to the strains induced by the casualization of labor. To these can be added the renovation of classic types such as the “career recidivist,” the latest avatar of the uomo delinquente invented in 1884 by Cesare Lombroso, whose distinctive psychophysiological and anthropometric characteristics are now being researched by experts in criminal “profiling” as well as guiding the gigantic bureaucratic-scholarly enterprise of “risk assessment” for the release of sensitive categories of inmates.

For the policy of penalization of social insecurity is also the bearer of new bodies of knowledge about the city and its troubles, broadcast by an unprecedented range of “experts” and, in their wake, journalists, bureaucrats, the managers of activist organizations, and elected officials perched at the bedside of the “neighborhoods of all dangers.” These alleged facts and specialist discourses about criminal insecurity are given form and put into wide circulation by hybrid institutions, supposedly neutral, situated at the intersection of the bureaucratic, academic, and journalistic fields, which ape research to provide the appearance of a scientific warrant for lowering the police and penal

* Lucienne Bui-Trong, Viences urbaines, des vérités qui déraignent (Paris: Bayard, 2000), 15–16, 18–19, 33, 57, 30, 42–43, and 52. It is worth noting that the incubation of the notion, which manages to be at once illogical and tautological, was informed early by a “training mission” to the United States (in Chicago and Hartford, Connecticut) in spring of 1991 to study street gangs and relied “especially on publications by the police departments of the major US cities.”
boom on neighborhoods of relegation. This is the case, in France, with the Institut des hautes études de la sécurité intérieure, an agency created by the Socialist minister of the interior Pierre Joxe in 1989 and then developed by his neo-Gaullist successor Charles Pasqua. This institute, "placed under the direct authority of the minister of the interior" in order to promote "rational thinking about domestic security," irrigates the country with the latest novelties in "crime control" imported from America. It is assisted in this enterprise by the institut de criminologie de Paris, an officine in law-and-order propaganda which has this remarkable characteristic that it does not number a single criminologist among its distinguished members.

Two Official Organs of Law-and-Order Propaganda

Staffed by some sixty "police officers, gendarmes, customs officers, academics, and judges" but bereft of credentialed researchers, the IHESI (Institut des hautes études sur la sécurité intérieure, Institute for Higher Studies in Domestic Security) is the main platform for diffusing the new law-and-order doxa within the state apparatus and the mainstream media in France. Its priorities are "to train security actors" and to supply technical assistance to "partners within the societal body who wage a difficult struggle against insecurity on a daily basis or who are its privileged witnesses," but also and more broadly to "sensitize" the political, economic, and intellectual elites through the training and pedagogical action of its network of graduates (numbering in excess of 1,300 at the end of 2003).

Notwithstanding a resolutely technicist and ostensibly neutral approach, the instructors of the IHESI cannot conceal their fascination with the policing and penal "experiments" of the United States, a country "where imagination is at work" and whose law-and-order boldness demonstrates that "it is possible to push down real delinquency and the subjective feeling of insecurity."** Thus the

In July of 2004, the IHESI was replaced by the INHES (Institut national des hautes études de sécurité), a very similar outfit presented by interior minister Nicolas Sarkozy as "the elite school of security that France needs." Its board of overseers features not a single researcher.

**According to Frédéric Ocqueteau, in his edited volume Community Policing and Zero Tolerance à New York et Chicago. En faisant avec les mythes, La sécurité aujourd'hui (Paris: La Documentation française, 2003), hired by the Institute in 1990 on the basis of a doctorate in law, Ocqueteau is editor-in-chief of the in-house journal of the IHESI. He is the author of Défis de la sécurité privée (Paris: L’Harmattan, 1997) and Vigilance et sécurité dans les grandes surfaces (Paris: L’Harmattan, 1999), a survey of supermarket managers that describes how their "services of vigilance" ensure the "protection of goods and customers, and thus commercial peace." (Releasing a book published in its internal journal, Les Cahiers de la sécurité intérieure, a French translation of the "foundational" article by James Q. Wilson and George Kelling on the American "theory of the broken window" (but none of the critiques that demolished it on the US side of the Atlantic, as we shall discover in chapter 8). The IHESI has produced and distributed countless technical reports on "police de proximité," inspired by the recent experience of "community policing" in Chicago, and (without fear of contradiction) it hails "zero tolerance," as incarnated by that of New York City, in the practical crossovers it publishes to guide elected officials in establishing Local Security Contracts with the central state. It is in the classrooms of this institute that Socialist deputy and future interior minister Daniel Vaillant took "courses" that convinced him, along with others (Gérard Le Gall, Bruno Le Roux, Julien Dray, and Alain Bauer, csq of Alain Bauer Associates, a leading firm in "urban security" consulting), to push his party to openly assume its punitive turn by recognizing that "security" is "a republican value" and is "neither of the Right nor of the Left."**

Housed by the University of Panthéon-Assas (Paris 2), since 1996, the Institut de criminologie de Paris has offered a postgraduate degree in the "analysis of menaces criminelles contemporaines" (MCC, contemporary criminal threats), which easily rivals the doctorate in "astro-sociology" granted in 2001 to Elizabeth Tessier by the neighboring University of Paris 5-Sorbonne.* Set up with the collaboration of senior police officials converted into the juicy sector of security "consulting" for business and local government, this degree program is codirected by Xavier Raufus, the author of numerous works on security co-signed with Alain Bauer and Stéphane Quére (the documentarian of Alain Bauer Associates, misleadingly presented on the back cover of books as a "criminologist").** A former activist with L’Harmattan, a low-grade house that requires authors to shoulder the full cost of production and famously grants royalties of zero percent, is tantamount to self-publication. He is also the sole "academic" member of the Conseil de l’Observatoire de la délinquance established by Interior Minister Sarkozy in November 2003 and placed under the stewardship of the omnipresent Alain Bauer.

* In April 2001, the astrologist and television celebrity Elizabeth Tessier (famous for the personal "astral counsellor" of President Mitterrand) was granted a doctorate in sociology by the University of Paris-Sorbonne, under the direction of Michel Maffesoli, for a "thesis" advocating the scientific validity of astrology and the primacy of astral over social causality. The scientific community mobilized to get the degree rescinded, but without success.

** The peddlers in law-and-order ideology and services are fond of dressing themselves out in academic titles and posts that they do not have, with the complicity of the journalists and publicists who promote them. For example, the publisher of La Guerre ne fait que commencer (The War Has Just Begun) (Paris: Jean-Claude Lattès, 2002), a work warning that "virulent forms of urban violence" in the French urban periphery "could soon evolve toward terrorism pure and simple," joining up with "the global war" that opened with the September 11 attack on America, writes about its authors...
the extreme right-wing group Occident, close to US intelligence services, Rauf er (whose real name is Christian de Bongain) is a journalist specializing in terrorism. He became a “security consultant” on the basis of his political contacts, which he parlayed into being named editor of the “international Criminality” series at Presses Universitaires de France (he was hired there by Pascal Gauchon, the leader of the extreme-right Parti des Forces Nouvelles) and then as an adjunct “lecturer in methodology” (sic) at Paris 2-Assas. His criminological oeuvre comprises 165 short articles that appeared in the weekly news magazine L’Express and writings published internally in the Notes & Etudes de l’Institut de Criminologie; it does not include a single scholarly publication.

The MCC Department, whose program of “Études” is directed by Rauf er, has made its mission to describe, detect, and prevent the “chaotic, rapid, and volatile dangers” born of the “hybridization of criminalities stimulated by globalization.” The faculty in charge of the seemingly academic “training” it delivers includes a divisional police commissioner, a senior customs official, the security director of the Alcatel telecommunications multinational, a retired prefect, novelists, directors of “security firms” (among them the inevitable Alain Bauer and the CEO of Fichet-Bauche, a leading lock and armored-door company), a reporter for the news weekly Le Point, an infantry officer from Malta, and a Colombian journalist. The supervision of the students’ theses leading to the granting of the MCC diploma at the end of a single semester of biweekly, two-hour courses is entrusted to an “entrepreneur, holder of the MCC degree.” The lucky recipients of this “education” include student officers from the gendarmerie, who undergo 200 hours of courses bearing in particular on “urban violence,” “trafficking,” and “fanaticisms” (sic).

It would take pages to list the full roster of all the agents and devices that contribute, each on its level, to the collective work of material and symbolic construction of the penal state henceforth charged with reestablishing the state’s grip over the populations pushed into the cracks and the ditches of urban space, from private firms of “safety consultants” to “adjoints de sécurité” (assistant police officers, hired as part of a state plan to fight unemployment in low-income areas, and entrusted with police chores outside of law enforcement), to publishing houses eager to peddle books on this hot topic (among whom a special mention must go to L’Harmattan and Presses Universitaires de France), the “citoyens relais” (volunteers who anonymously tip the police about law-enforcement problems in their neighborhoods), and a whole series of judicial innovations—rappel à la loi (formal legal warning by a magistrate for a petty offense), juges de proximité (adjunct community judges), composition pé nale (a variant of plea bargaining for misdemeanors), and so on, which, on the pretext of bureaucratic efficiency, establish a differential justice according to class and place of residence. In sum, the penalization of precariousness creates new realities, and realities tailor-made to legitimize the extension of the prerogatives of the punitive state according to the principle of the self-fulfilling prophecy.

A brief illustration: by treating jostling in the school corridors, rudeness in the classroom, or playground ruckus not as matters of discipline pertaining to pedagogical authority in the establishment but as infractions of the law that must be tallied and centrally compiled via a dedicated computer software (the Signa program) and systematically reported to the local police or magistrates, and by assigning a “police correspondent” (officier référent) to every secondary school (rather than a psychologist, nurse, or social worker, who are direly lacking in lower-class districts), the authorities have redefined ordinary school troubles as matters of law and order and fabricated an epidemic of “school violence,” even as surveys of students consistently show that over 90 percent of them feel completely safe at school. With the help of mass-media amplification, this “explosion” of “violence” serves in turn to justify the “school-police partnership” that produced it in the first place, and validates the enrollment of teaching staff in the declining neighborhoods of the urban periphery in the police missions of surveillance and punishment. Besides, the staging of “school violence” allows state managers to avoid confronting the professional devaluation and bureaucratic dilemmas created within the educational sphere by the near-universalization of access to secondary schooling, the growing submission of the school system to the logic of competition, and the imperatives of the “culture of results” imported from the corporate world.61

Finally, let us note for the benefit of readers who might be surprised that a work on the penal state in America does not address the question of the death penalty that this omission is deliberate.62 It arises from the conviction, acquired through historical and comparative observation, that the capital sentence does not constitute a major cog in the contemporary economy of punishment in this country. To be sure, the spec-
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A spectacular resurgence of judicial executions after the quasi-abolitionist interlude of 1966 to 1983 (during which the United States did away with only fourteen convicts, and killed none between 1968 and 1976) does partake on its own level of the ascent of punitive populism that gradually seized the country after the mid-1970s as the social, urban, and penal policies of the state were revamped with a view to anchoring the diffusion of desocialized wage labor and containing the repercussions of the crumbling of the black ghettos. And it is endowed with a particular emotive charge that has led it to be commonly depicted as the emblem of US judicial rigor or cruelty, by its supporters as well as its detractors, especially abroad—two scholars of judicial cultures attest that “over the past 25 years the death penalty has become one of the main stumbling blocks in the dialogue between the two versions of Western civilization, the European and the North American.”

Moreover, it is not by chance that the United States is the sole Western democracy that not only routinely applies capital punishment, but also the only one which, under the hold of a narrow legalism wedded to unrestrained moral individualism and tenacious racial contempt, inflicts it upon minors, women, the mentally handicapped, and convicts sentenced for nonviolent crimes, in spite of the social biases and procedural failings that have been amply documented in its implementation. Yet, for all its symbolic salience, the death penalty remains structurally marginal and functionally superfluous.

Indeed, although capital punishment figures in the penal code of 38 states and the federal government, only 13 of them applied it in 2002 and two-thirds of the 820 executions carried out since 1977 have taken place in just five jurisdictions: Texas (with 289 judicial killings), Virginia (87), Missouri (59), Oklahoma (55), and Florida (54). If tomorrow the federal Supreme Court (the only instance empowered to pronounce at the national level on the constitutionality of a penal sanction whose application falls under the authority of the fifty members of the

*At the end of the 1990s, only 13 of 38 states that applied the death penalty excluded the mentally handicapped from its field of application; sixteen authorized its use in the case of minors (including seven that do not specify any minimum age). Roger Hood, “Capital Punishment,” in The Handbook of Crime and Punishment, ed. Michael Tonry, 739–75 (New York: Oxford University Press, 1998).

**Thomas Bonczar and Tracy L. Snell, Capital Punishment, 2002 (Washington: Bureau of Justice Statistics, 2003). The number of judicial executions since 1977 passed the 900 mark in February of 2004. In 2003, the United States put to death 65 convicts, compared to 64 in Vietnam, 198 in Iraq, and 726 in China (according to the official figure, which is vastly inferior to the estimates from the best scholars on the question, which range from 10,000 to 15,000 per year if extrajudicial executions are included).

Union and their legislatures) were to render the ultimate penalty unlawful or legally impracticable, as it did between 1972 and 1976 with the Furman v. Georgia decision, such a measure would certainly ease the psychological torture inflicted upon the 3,560 convicts currently roiling on death row. And it would save the lives of the several dozens of them who are put to death every year by lethal injection or electrocution (over the past decade, the members of the Union have executed between 31 and 98 convicts per year).

But legal or de facto abolition would diminish neither the immense scope of the US carceral archipelago nor the tightening material and symbolic hold that the penal apparatus exerts on the societal body. It would change nothing about the fates of the other 2,262,700 adults stacked in the country’s correctional establishments at the start of 2003 and the roughly 4,748,000 of their compatriots placed under criminal justice supervision outside their walls at that time. It would leave untouched the prevalence of confinement and its extreme concentration on the populations situated at the very bottom of the ethnic and class hierarchy, which ensures that one black American citizen in six is doing or has done hard time and one in three is destined to serve a sentence of imprisonment in the future.* The practical disconnection between hyperincarceration and capital punishment is amply demonstrated by the recent experience of California: the Golden State held 614 convicts on death row among its 200,000 jail and prison inmates in 2002, but it executed only one of them that year. Such a disjunction confirms that the question of the implementation or extinction of capital punishment in America pertains to the register of the debate on civic morals and political philosophy more than to the sociology of the penal state.

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*This figure is an estimate of the cumulative probability of being sentenced to at least one year of imprisonment over the course of a lifetime, calculated on the basis of the national rate of incarceration in a state or federal establishment for 2001. Thomas P. Boczar, Prevalence of Imprisonment in the U.S. Population, 1974–2001 (Washington: Bureau of Justice Statistics, 2003), 1 and 5.
I. POVERTY OF THE SOCIAL STATE

Any permanent, regular, administrative system whose aim would be to provide for the needs of the poor will breed more miseries than it can relieve, deprave the population it seeks to help and comfort, in time reduce the rich to no more than farmers of the poor, dry up the sources of savings, stop the accumulation of capital, curtail the growth of trade, sap human activity and industry, and culminate by bringing about a violent revolution in the State.

—ALEXIS DE TOCQUEVILLE, Mémoire sur le paupérisme, 1835*