

## The New New Poor Law A Chapter in the Current Class War Waged from Above

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Article abstract

This essay is an attempt to outline recent trends in the criminalization of working-class lives. It casts the net broadly, both historically and geographically, situating capitalist austerity's recent turn to mass incarceration in the United States and Canada in early 19th-century poor law sensibilities. What is happening now differs from the workhouse regime of industrial capitalism's new poor law, of course, but it has undoubted connections to this older regime of regulation. The new new poor law of our times is part of a long history of how dispossession has been pivotal to capitalism's project of uninhibited accumulation and suppression of those driven to defiance and dissent. It reveals how, as profit declines in the productive sphere, incarceration itself can be made to pay. The new new poor law is fundamental to contemporary capitalist political economy as the politics of austerity, the dismantling of the welfare state, and an assault on working-class entitlements and trade unionism are complemented by the rise of a prison-industrial complex. Driven by class antagonisms and racialized scapegoating, the new new poor law inevitably draws into its sphere of influence public-sector workers employed in the criminal justice system. It also unleashes intensified grievances of the incarcerated, stimulating the birth of movements of protest in which prisoners and proletarians search out ways of making common cause.

## ARTICLE

# The New New Poor Law: A Chapter in the Current Class War Waged from Above

**Bryan D. Palmer**

IN 1866 MARX WROTE, with characteristic bluntness and equally characteristic acuity, that in the United States, “every independent movement of the workers was paralyzed so long as slavery disfigured a part of the Republic. Labor cannot emancipate itself in the white skin where in the black it is branded.”<sup>1</sup> More than a liberal argument for abolition, this understanding of the racialized nature of class struggle in the Americas rested on Marx’s appreciation of primitive accumulation’s long reach throughout what would now be considered colonial capitalism’s combined and uneven development. Non-capitalist forms of extracting surplus nurtured capitalist development and, with the making of a racialized working class, perpetuated intensified processes of exploitation that fed the insatiable appetite of accumulation.<sup>2</sup>

1. Marx first penned these thoughts in a letter to Francis Lafargue and later reproduced them in *Capital: A Critical Analysis of Capitalist Production*, vol. 1 (1867; New York: International, 1967), 301.

2. See, for instance, discussions in Bryan D. Palmer, “Social Formation and Class Formation in North America, 1800–1900,” in *Marxism and Historical Practice: Interpretive Essays on Class Formation and Class Struggle*, vol. 1 (Chicago: Haymarket, 2017), 308–379; Steve Fraser, *The Age of Acquiescence: The Life and Death of American Resistance to Organized Wealth and Power* (New York: Little, Brown, 2015), esp. 39–67; Michael Perelman, *The Invention of Capitalism: Classical Political Economy and the Secret of Primitive Accumulation* (Durham: Duke University Press, 2000); Marx, *Capital*, esp. 1:713–774; Rosa Luxemburg, *The Accumulation of Capital* (1913; London and New York: Routledge & Kegan Paul, 1951); Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014); Vic Satzewich & Tony Witherspoon, *First Nations: Race, Class, and Gender Relations* (Scarborough, Ontario: Nelson, 1993), 18–28; Michael Paul Rogin, *Fathers and Children: Andrew Jackson and the Subjugation of the American Indian* (New York: Vintage, 1976), 165–205.

So disfiguring has been this history that Marx's concern with the freedom of a diverse and fragmented working class can now be applied to the entire civil society of the United States and its adaptive neighbour to the north, Canada, both outposts of settler colonialism.<sup>3</sup> Neither men nor markets, women nor wants, children nor communities can truly be free with the ominous shadow of disfiguring differentiation ordered by a politics of coercive, often racialized, inequality and segregation, hovering over historical development. This is the case with respect to the original violent and relentless dispossession of Indigenous peoples, just as it also holds for the subsequent class formation that this original expropriation conditioned.

Marx, so often pilloried unfairly for his economism, did write that "society with the hand-mill gives you society with the feudal lord; the steam mill, society with the industrial capitalist." This formulaic assessment has the appearance of reductionism, but it was actually posed as a critique of the use of barren analytic categories and an insistence that "economic categories are only the theoretical expressions, the abstractions, of the social relations of production."<sup>4</sup> Like Henry George, an American radical who followed in Marx's anti-capitalist wake, Marx also appreciated that "the 'tramp' comes with the locomotive, and almshouses and prisons are as surely the marks of 'material progress' as are costly dwellings, rich warehouses, and magnificent churches."<sup>5</sup> Indeed, Marx wrote in "Pauperism and Free Trade – The Approaching Commercial Crisis" (1852) that "a matter of a million paupers in the British workhouses is as inseparable from British prosperity, as the existence of eighteen to twenty millions in gold in the Bank of England."<sup>6</sup> Less likely to latch on to a panacea like George's "single tax," Marx theorized capitalist development as dependent on the various crises that constituted its ongoing project of dispossession. These periodically (and sometimes permanently) reduced swaths of working humanity to the scrap heaps of unemployment, casualized labour

3. See the important discussion in Michael Goldfield, *The Color of Politics: Race and the Mainsprings of American Politics* (New York: New Press, 1997). In this essay I understand that the development of Canada and that of the United States contain important differences, but I also accept that the shared histories of these two North American nation-states embrace reciprocal tendencies and that their political trajectories, sociocultural practices of everyday life, and political economies are entwined.

4. Karl Marx, "The Poverty of Philosophy: Answer to the *Philosophy of Poverty* by M. Proudhon," in Karl Marx & Frederick Engels, *Collected Works*, vol. 6, 1845–1848 (New York: International, 1976), 165–166.

5. Henry George quoted in Steven Pimpare, *The New Victorians: Poverty, Politics, and Propaganda in Two Gilded Ages* (New York: New Press, 2004), 20; Fraser, *Age of Acquiescence*, 39. Marx's discussion of "The Working Day" in *Capital*, 1:231–302, is indicative of his attention to subjectivity.

6. Karl Marx, "Pauperism and Free Trade – The Approaching Commercial Crisis," in Karl Marx & Frederick Engels, *Collected Works*, vol. 11, 1851–1853 (New York: International, 1979), 359.

markets of outcasts, and the kinds of irregular and insecure employments that William Blake associated with the charter'd thoroughfares of commercial London. There, in the 1790s, the labouring poor's countenance exhibited "Marks of weakness, marks of woe," its collective voice edged with the discordant clanging of "mind-forg'd manacles."<sup>7</sup> The proletariat, Marx knew well, was born precarious.<sup>8</sup> And as Foucault made abundantly clear, following Marx, this precarity was always related to poverty and penalty.<sup>9</sup>

7. William Blake, "London," quoted and interpreted in E. P. Thompson, *Witness against the Beast: William Blake and the Moral Law* (New York: New Press, 1993), 174–194.

8. For an elaboration of the importance of this in light of recent claims that the precariat forms a distinct class apart from the working class as a whole, see Bryan D. Palmer, "Reconsideration of Class: Precariousness as Proletarianization," in Greg Albo, Leo Panitch & Vivek Chibber, eds., *The Socialist Register, 2014: Registering Class, 50 Years, 1964–2014* (London: Merlin, 2014), 40–62.

9. Marx's approach to proletarianization, poverty, and penalty haunted much of Foucault's thinking on the punitive society. Ghosts of class struggle and capitalism's deep structures of determination are nothing less than the analytic inspiration of Foucault's insights in his 1972–73 lectures at the Collège de France and his subsequent studies of the birth of the prison and a 19th-century patricide. Foucault's insights into the making of the punitive society are considerable, extending into important discussions of the "illegalism" of broad working-class practices and sensibilities, as well as the necessity of bourgeois forces to contain and constrain this discursive counter to power. But these insights are also often overwhelmed by Foucault's insistence on *understating* the contributions of past commentaries, such as those of Marx, and especially more recent writers, many of whom were engaged in extending Marxist analysis. A careful reading of the annotated lectures on the punitive society, for instance, reveals abundant indications of how Foucault refused to engage forthrightly with positions he was distancing himself from in ways that routinely overstate his own interpretive innovations. Among those Foucault can be seen to have derived arguments from, but failed to either acknowledge or adequately explore, are E. P. Thompson and Louis Althusser. In addition, in his reflections on the punitive society, Foucault's insistence that resistance constituted a civil war rather than a class struggle is a strained attempt to reach beyond conventional Marxist understandings in ways that elevate his own positions to something new. The interpretive innovation is largely semantic, relying on a questionable amalgam of anarchist and Maoist thought of the early 1970s. See Michel Foucault, *The Punitive Society: Lectures at the Collège de France, 1972–1973* (New York: Picador, 2015), especially the useful "Course Context" discussion by Bernard E. Harcourt (pp. 265–310), which raises issues of Foucault's unacknowledged dialogues with Thompson and Althusser. Subsequent works of relevance include Foucault, ed., *I, Pierre Rivière, having slaughtered my mother, my sister, and my brother...: A Case of Parricide in the 19th Century* (New York: Pantheon, 1975); Foucault, *Discipline and Punish: The Birth of the Prison* (London: Allen Lane, 1977). Foucault's early work, as recently noted by Didier Eribon, was organized around "a confrontation between exclusion and access to speech, pathologization, and protest, subjugation and revolt," culminating in the deeply researched *History of Madness* (London and New York: Routledge, 2006), first published as *Folie et Déraillement: Histoire de la folie à l'âge classique* (Paris: Librairie Plon, 1961). See Eribon, *Returning to Reims* (London: Penguin, 2013), 214. Later, as Foucault turned to understandings of governmentality, it often seemed as though "civil society seems to have worked its charms on Foucault." Mackenzie Wark, *General Intellects: Twenty-One Thinkers for the Twenty-First Century* (London: Verso, 2017), 179.

Almshouses, prisons, and the criminalization of the out-of-work – tramps, the “residuum,” and the “dangerous classes” in 19th- and early 20th-century parlance;<sup>10</sup> hoboing as an especially early 20th-century migratory phenomenon, bindlestiffs in search of illusive work;<sup>11</sup> the underclass in our times<sup>12</sup> – will figure below. The former are institutions associated with classic poor law, and the latter is an ever-present response to class formation’s underside, the displacement of labour and the extremes of dispossession that become increasingly commonplace as capitalist crises accelerate. In the argument that follows, an understanding of classic poor law as an integral component of the transition from feudalism to capitalism is developed, with attention paid to the always gendered nature of socioeconomic development.<sup>13</sup> How and

10. On tramps, see Edmund Kelly, *The Elimination of the Tramp by the Introduction into America of the Labour Colony System Already Proved Effective in Holland, Belgium, and Switzerland, with the Modifications Thereof Necessary to Adapt this System to American Conditions* (New York: Knickerbocker Press, 1908); Paul T. Ringenbach, *Tramps and Reformers: The Discovery of Unemployment in New York, 1873–1916* (Westport, Connecticut: Greenwood, 1973); Michael B. Katz, *Poverty and Policy in American History* (New York and London: Academic Press, 1983), 157–189; David Montgomery, *Citizen Worker: The Experience of Workers in the United States with Democracy and the Free Market during the Nineteenth Century* (New York: Cambridge University Press, 1993), 87–88; Bryan D. Palmer & Gaétan Héroux, *Toronto’s Poor: A Rebellious History* (Toronto: Between the Lines, 2016), 42–66; James M. Pitsula, “The Treatment of Tramps in Late Nineteenth Century Toronto,” *Canadian Historical Association (CHA), Historical Papers* 15, 1 (1980): 116–132; Richard Anderson, “‘The Irrepressible Stampede’: Tramps in Ontario, 1870–1880,” *Ontario History* 84, 1 (1992): 33–56. On “the residuum,” a term often utilized in Victorian Britain, see Gareth Stedman Jones, *Outcast London: A Study of the Relationship between Classes in Victorian Society* (Oxford: Oxford University Press, 1971); on the “dangerous classes,” see Louis Chevalier, *Laboring Classes and Dangerous Classes in Paris during the First Half of the Nineteenth Century* (New York: Howard Fertig, 1973).

11. Hoboes were often distinguished from tramps, the former being those who wandered to work, the latter those who wandered and did not work. Studies include the older Nels Anderson, *The Hobo: The Sociology of the Homeless Man* (Chicago: University of Chicago Press, 1923); the more recent Frank Tobias Higbie, *Indispensable Outcasts: Hobo Workers and Community in the American Mid-West, 1880–1930* (Urbana: University of Illinois Press, 2003); and the imaginative Todd McCallum, *Hobohemia and the Crucifixion Machine: Rival Images of a New World in 1930s Vancouver* (Edmonton: Athabasca University of Press, 2014).

12. On the underclass, see Ken Auletta, *The Underclass* (New York: Random House, 1982); Michael B. Katz, ed., *The “Underclass” Debate: Views from History* (Princeton: Princeton University Press, 1993).

13. See, as examples only of this fulsome scholarship on ways in which poor law and welfare have been historically gendered in the United States and Canada, Mimi Abramovitz, *Regulating the Lives of Girls and Women: Social Welfare Policy from Colonial Times to the Present* (Boston: South End Press, 1988); Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare, 1890–1935* (New York: Free Press, 1994); Dorothy E. Chun, *From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario, 1880–1940* (Toronto: University of Toronto Press, 1992). Given the long view taken in this essay, and the range of concerns it addresses, it is always worth bearing in mind that the poor as subject are not being presented as normatively male. Note the useful discussions in Judy Fudge, “Reconceiving Employment

why poor law was incompletely ensconced in the development of capitalism in the New World is addressed, especially as this related to the racially fractured formation of class in the United States and the racialization of working and dispossessed populations in Canada.<sup>14</sup> Capitalism's catastrophic 1930s economic collapse, with its massive unemployment and unprecedented mobilizations of the out-of-work, prompted state policy initiatives that led to the creation of an incomplete welfare state, although this ameliorative turn never quite managed to transcend the limitations of a regulatory function. This in turn set the stage for unique responses to poverty arising out of the 1960s. Yet even the constricted gains achieved in the post-World War II period could not survive capitalism's post-1973 history of proliferating crises.<sup>15</sup> A new new poor law would result, one that returned, in altered circumstances, to carceral clarifications.

Most obvious in the United States, but present in Canada as well, this recent history marks an intensification of capitalism's punitive essence. It illuminates how, in the reconfigured political-economic climate of austerity, a new poor law both constructs and expands populations of the criminalized, doing so in ways that inevitably and necessarily dismantle established safety nets. These modest "protections" had been struggled for and secured in the years reaching from the 1940s into the 1960s. As Joe Hermer and Janet Mosher explain,

Disorder and the people constructed as embodying disorder have become a central *resource* of political power ..., one that is produced and managed as an essential feature of neo-conservatism across a wide range of government activities . ... [D]isorder has created a climate where poverty and other expressions of social and economic inequality are translated into

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Standards Legislation: Labour Law's Little Sister and the Feminization of Labour," *Journal of Law and Social Policy* 7, 1 (1991): 73–89; Jane Lewis, "Gender and the Development of Welfare Regimes," *Journal of European Social Policy* 2, 3 (1992): 159–173; Joanne Canaghan, "Labour Law and Feminist Method," *International Journal and Comparative Labour Law* 33, 1 (2017): 93–114.

14. Much has been written on racialization in Canada. One useful study is Wendy Chan & Dorothy Chun, *Racialization, Crime, and Criminal Justice in Canada* (Toronto: University of Toronto Press, 2014).

15. The literature addressing these modern developments is vast. Gaétan Héroux and I outline the struggles of the poor that prompted the creation of a limited welfare state, and its ultimate erosion in the post-1973 years. See Palmer & Héroux, *Toronto's Poor*. Other Canadian studies of relevance include Heather Whiteside & Stephen McBride, *Private Affluence, Public Austerity: Economic Crisis and Democratic Malaise in Canada* (Halifax: Fernwood, 2011); Stephen McBride, *Working? Employment Policy in Canada* (Oakville: Rock's Mills Press, 2017). On capitalist crisis, the literature is growing and includes Greg Albo, Sam Gindin & Leo Panitch, *In and Out of Crisis: The Global Financial Meltdown and Left Alternatives* (Oakland: PM Press, 2010); Leo Panitch & Sam Gindin, *The Making of Global Capitalism* (New York and London: Verso, 2012). At odds interpretively with aspects of such interpretations of capitalist crisis is Murray E. G. Smith, *Invisible Leviathan: Marx's Law of Value in the Twilight of Capitalism* (Leiden and Boston: Brill, 2018), which provides an important theoretical statement on the nature and meaning of capitalist crisis as it relates to Marx's understanding of the falling rate of profit.

narrow questions of criminal justice and law and order. And in carrying out this broad moral campaign, neo-conservatives have been able to effectively occupy a moral “high ground,” infused with vague and contradictory notions of “civility,” “citizenship,” “responsibility,” “safety” and “security.” ... [W]hat is new and radical about the type of disorder manufactured ... is that it is intentionally designed to dismantle both the material and emotional infrastructure of the welfare state.<sup>16</sup>

The *new new* poor law of our times, relentless in its widening of criminality (both quantitatively and qualitatively), constitutes nothing less than a critically important *political capital* at the same time that it is a lucrative source of profit in a time of capitalist crisis and declining productive capacities.

### **Classic Poor Law, the Speenhamland Solution, and the First New Poor Law**

POOR LAW HAS ITS ORIGINS in pre-capitalist England. Born of primitive accumulation's erosion of the ostensibly settled relations of feudal overlords and their subordinate subjects, the transformation of agriculture under the pressures of the initial development of market society unleashed processes of dispossession that resulted in visible populations of “masterless men” and their destitute domestic units.<sup>17</sup> Sir Thomas More provided a 1516 account of the debilitating consequences of this revolution in rural production, driven as it was by power's adroit use of might and malevolence:

The husbandman be thrust out of their own, or else either by covin or fraud, or by violent oppression they be put besides it, or by wrongs and injuries they be so wearied that they be compelled to sell all: by one means therefore or by other, either by hook or by crook they must needs depart away, poor, silly, wretched souls, men, women, husbands, wives, fatherless children, widows, woeful mothers, with their young babes, and their whole household small in substance and much in number, as husbandry requireth many hands. Away they trudge, I say, out of their known and accustomed houses, finding no place to rest in. All their household stuff, which is very little worth, though it might well abide the sale, yet being suddenly thrust out, they be constrained to sell it for a thing of naught. And when they have wandered abroad till that be spent, what can they then else do but steal, and then justly party be hanged, or else go about a begging. And yet then also they cast in prison as vagabonds, because they go about and work not: whom no man will set at work, though they never so willing proffer themselves thereto.<sup>18</sup>

The consequences of this dispossession and displacement, the initial divorcing of producers from their means of subsistence, however meagre the resulting

16. Joe Hermer & Janet Mosher, introduction to Hermer & Mosher, eds., *Disorderly People: Law and the Politics of Exclusion in Ontario* (Halifax: Fernwood, 2002), 16–17.

17. See Christopher Hill, *The World Turned Upside Down: Radical Ideas during the English Revolution* (New York: Viking, 1972).

18. Sir Thomas More quoted in Frances Fox Piven & Richard A. Cloward, *Regulating the Poor: The Functions of Public Welfare* (New York: Vintage, 1972), 13.



livelihoods, were indeed, as Marx would later note, roughly written into historical development in harsh pages of "blood and fire."<sup>19</sup>

In the ensuing process of class formation, centuries of discord and dissent flowed, evidence of the agency of the poor and plebeian masses who, in the throes of proletarianization, fought back with riotous tumult and mobilizing demand reaching from Wat Tyler's Rebellion (1381) to the Norfolk Rising (1549).<sup>20</sup> Fear of such rebelliousness prompted the evolution of a moral economy conceded from above and defended vigorously from below. One component of this moral economy, as E. P. Thompson has so brilliantly argued, was the regulation of the price of bread, a material staple of the poor: the households of the lowly defended, through street crowds of violent appropriation often led by women, the entitlement of the hungry to sustenance.<sup>21</sup> Another dimension of this moral economy, implemented from above but not perhaps without cognizance of pressures from below, was Elizabethan Poor Law. Between 1531 and 1601 this series of Tudor enactments, stipulating how taxes were to raise funds for the support of the indigent, provided the cornerstone for relief provisioning over almost two and half centuries, the pivotal legislation, an Act for the Relief of the Poor, instituting a three-tiered system of administration.

Overseeing poor law policy were the central authorities: the Crown, Privy Council, and Parliament. Beneath them were the local magistrates, justices of the peace, and a plethora of local officers, a hierarchical order whose component parts audited accounts, settled disputes, and exercised a general supervisory function within the poor law structure. At the bottom, and closest to the actual poor themselves, were the parish authorities who dispensed relief and handled the day-to-day functioning and dispensations of the poor law regime. Always a paternalist construction, this regime was ordered by understandings of the deference owed their providers by the poor. In turn, the socially superior were responsible for the poor's maintenance, which of course had its limits and was premised on expectations, which were to be fulfilled in workhouses. These institutions, however, always locally run, were often small and informally administered, which weakened their deterrent capacities. This Old Poor Law's purpose was to preserve the established but changing *ancien régime*, confirming the obeisance of the subject population to its betters, by relieving the aged, infirm, and impotent and setting the able-bodied, industrious poor to work. Those refusing work were to be jailed, and the so-called undeserving poor, judged vagrants, were subject to the penal arm of Poor Law provisioning, the Vagrancy Act, which provided for bloody whippings, imprisonment in one of the newly constructed Houses of Correction, and even, for repeat offenders,

19. Marx, *Capital*, 1:715.

20. Note the discussion in Rodney Hilton, *Bond Men Made Free: Medieval Peasant Movements and the English Rising of 1381* (New York and London: Routledge, 1977).

21. E. P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century," *Past & Present* 50 (February 1971): 56–97.



transportation for up to seven years to the convict colonies. Such a system necessarily contained as much or more coercion as humanitarian concern and was animated by authority's commitment to preserve order amid dispossession's discord. Over time, however, it was hampered by its parish parochialism and unsystematic regulation.<sup>22</sup>

During the long gestation of capitalism, which saw the agricultural revolution displaced by a nascent industrial revolution and the parallel challenge of late 18th-century political revolution, poor law became ensconced in the class relations of a society increasingly threatened by popular struggles and articulations of "the rights of man." Devolving to the autonomous purview of the local magistrates and parish authorities, the Elizabethan statutes on indigent relief were entwined with the new structures and sensibilities of this late 18th-century age of revolution. This meant that poor law practice was more and more mindful of the presence of the concentrated massing of workers in mines, mills, and factories. A landless labouring force proved a threatening contingent that, along with the rising political consciousness of the metropolitan artisans, now meeting in Corresponding Societies that demanded universal male suffrage, marked the 1790s, in particular, with intensified disorder that more than hinted at popular reckonings of revolutionary agitations. As the moral economy of the poor seemed on a collision course with the political economy of a developing market society, the Old Poor Law practice of taxing the landed gentry to pay the costs of parish relief broke down under a widening differential between the wages of the rural village and the urban towns. The parish's rising costs of providing for those long recognized as the deserving poor eventually reached the point where sustaining the entitlements of the impoverished proved difficult, if not impossible. With the periodic crises of the developing capitalist marketplace throwing more and more landless toilers into cul-de-sacs of unemployment, classification of the deserving and undeserving poor became increasingly difficult. The notion, so fundamental to the Old Poor Law order, that no relief recipient should receive aid that placed them above the material station of the least well remunerated of the population actually working, a maxim that came to be known as "less eligibility," was

22. For a brief introduction to the development of Poor Law that accents its community humanitarianism as well as its potential for violence and coercion, see John Knott, *Popular Opposition to the 1834 Poor Law* (London: Croom Helm, 1986), 13–38. More accent is placed on coercion and the search for order in Sidney Webb & Beatrice Webb, *English Poor Law History: The Old Poor Law*, part 1 (Hamden, Connecticut: Archon Books, 1963), a source often drawn on by Piven & Cloward, *Regulating the Poor*, 12–32. The literature on the administration of the Old Poor Law is extensive and includes Geoffrey W. Oxley, *Poor Relief in England and Wales, 1601–1834* (Newton Abbott: David and Charles, 1974); on the brief summary of patterns of power under the Old Poor Law, see Anthony Brundage, *The Making of the New Poor Law: The Politics of Inquiry, Enactment, and Implementation, 1832–1839* (New Brunswick, New Jersey: Rutgers University Press, 1978), 1–15. On vagrancy, see the important early statement of William J. Chambliss, "A Sociological Analysis of the Law of Vagrancy," *Social Problems* 12 (Summer 1964): 67–77.

called into question, at least as far as practically insuring adherence to it was concerned. As Polanyi long ago argued, “A dam had to be erected to protect the village from the flood of rising wages. Methods had to be found which would protect the rural setting against social dislocation, reinforce traditional authority, prevent the draining off of rural labor, and raise agricultural wages without overburdening the farmer.”<sup>23</sup>

The “Speenhamland System,” named after the meeting place of some Berkshire magistrates who met there in 1795 to address the crisis of the poor law regime, codified a system of allocation that had likely been operating informally within parish relief for 100 and more years. It thus gave the veneer of new authority to old practices of relieving the distress of the deserving poor by supplementing wage rates with a sliding scale of allowances. Relief rates fluctuated according to the price of bread (a precipitating factor in the wave of riots that punctuated 1795 with the poor’s demands) and the size of families. Speenhamland extended the use of allowances – relief in aid of wages – so that the most distressed portions of the labouring population (agricultural workers at the end of the 18th century and outworkers in the declining handicraft trades of the early 19th century) secured some measure of respite in the economic disorder of the first years of the Industrial Revolution. Coupled with the relaxation of restrictions on the mobility of labour (which were themselves linked to the Anti-Combination Laws curtailing the possibilities of trade union organization and other acts suppressing the possibility of dissent), Speenhamland undoubtedly bought some peace in a time of distress and escalating popular discontent. The 1795 initiatives, reconfiguring the poor law regime as it was, made it both less imperative for landless workers to uproot themselves in search of paid employment and more attractive for them to do so. Minimalist relief being codified, the push out of the parish was seemingly lessened, while the pull toward greener pastures was potentially enhanced as the sway of the increasingly important labour market opened new and sometimes more lucrative employment opportunities across differentiated regional economies. By the late 1790s, wages were constituted as two-thirds payment by employers and one-third by the poor law parish rates. Over time, however, the modest Speenhamland allowances, a few shillings a week per family, actually tended to depress agricultural wages. They did not so much create a functional minimum wage as provide aid-in-wages that, in conjunction with the legislation that opened the floodgates to the creation of a national labour market, drove “the wages of the laborer down to subsistence levels and below.”<sup>24</sup> All of this also, of course, reinforced gendered understandings of work and wages

23. Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (1944; Boston: Beacon Press, 2001), 98–99.

24. Polanyi, *The Great Transformation*, 128, 173, 231, 288–289, 300; E. P. Thompson, *The Making of the English Working Class* (Harmondsworth, England: Penguin, 1968), 244.

that would structure 19th-century social and economic relations, situating males and females in the consolidating labour market in particular ways.<sup>25</sup>

In the crucible of revolution and counterrevolution that fired oppositional thought in the 1790s this was seldom grasped by conservative spokesmen. The distaste for the “swinish multitude” evident in Edmund Burke’s writings manifested itself in the cold insistence that *any* formal poor relief was an affront to the reigning deities of the unfettered marketplace. “Labor” was “a commodity ... an article of trade.” The laws of nature and God were but the laws of commerce, which cried out against all attempts to “remove any calamity under which we suffer, or hangs over us.” It was not “in the power of government” “to provide for us in our necessities.” Charity “to the poor” was a Christian obligation, but “let there be no lamentation of their condition.” Rather, the poor were the just recipients of recommendations for their improved behaviour: patience, labour, sobriety, frugality, and religion would be their saviour, not allowances that, like so much else that passed as rights, were nothing but “downright *fraud*.” Burke’s 1795 tirade was complemented by Thomas Malthus’ *Essay on the Principle of Population, as It Affects the Future of Society with Remarks on the Speculations of Mr. Godwin, M. Condorcet, and Other Writers* (1798). Malthus insisted that all members of a society “should live in ease, happiness, and comparative leisure,” feeling “no anxiety about providing the means of subsistence for themselves and family.” But Malthus considered “the laboring poor” little more than a “vulgar expression.” Living from hand to mouth, such people lacked a sense of the future, “present wants” employing “their whole attention. ... Even when they have an opportunity of saving, they seldom exercise it; but all that is beyond their present necessities goes generally speaking to the ale house.” An unrepentant critic of the Poor Laws, Malthus was adamant that if the poor “didn’t know they could rely on parish assistance for support in case of accidents” they might be prodded to save, rather than succumb to “bodily cravings.” The labourer, Malthus claimed, would behave differently if assured that his “family would starve” if he failed to embrace prudence and the productive life.<sup>26</sup>

These arguments intensified after the Napoleonic Wars, with the expansion of the poor rates seeing expenditure rise from under £2,000,000 (1780s) to more than £4,000,000 (1803), finally exceeding £6,000,000 (after 1812). They found vociferous expression among the employing farmers and home-spun local “feelosophers.” Bedfordshire’s Dr. Macqueen wrote to the Board of Agriculture in 1816, expressing his distaste for the indulgent poor rates, which

25. If Anna Clark, in *The Struggle for the Breeches: Gender and the Making of the British Working Class* (Berkeley: University of California Press, 1995), overstates the gendered differentiation of class experience, she nonetheless extends our appreciation of how the masculine and feminine spheres of working life were materially and ideologically ordered in ways that often diverged.

26. Burke and Malthus quoted in Gareth Stedman Jones, *An End to Poverty? A Historical Debate* (London: Profile Books, 2004), 88–89, 98–99.

were always coupled with “idleness and depravity of the working classes,” whose morals and manners the good doctor claimed had been degenerating “since the earliest ages of the French Revolution.”<sup>27</sup>

Indeed, there was no denying that the poor, relying on custom and tradition in their defence of entitlements, were buttressed by a revolutionary Jacobin insistence, voiced in radical tracts as well as countless and cogent lectures on “the theme of want.” The very reverse of the Burkean-Malthusian repudiation of the Poor Laws, these agitations, in which John Thelwall figured prominently, had extended the crisis of relief that precipitated Speenhamland into a crisis of political order. Thelwall envisioned “the whole nation ... combined in one grand political Association, or Corresponding Society, from the Orkneys to the Thames, from the Cliffs of Dover to the Land’s End.” He spoke at the London Corresponding Society-sponsored 26 October 1795 demonstration at Copenhagen Fields, Islington, at which a massive crowd of 100,000 to 150,000 may have assembled. A “Remonstrance” was addressed to the King: “Whenceforth, in the midst of apparent plenty, are we thus compelled to starve? Why, when we incessantly toil and labour, must we live in misery and want?” This was one part of the crisis of order that prompted the passage of the notorious Two Acts, directed against ostensibly seditious assembly, and enabled reformers’ lecture rooms to be closed as “disorderly houses.”<sup>28</sup>

As Thelwall well knew, however, the real nurseries of discontent were larger and less obscure edifices. Their labouring populations, in which “large bodies of men assemble,” were increasingly schooled in doctrines and discourses antithetical to the new ideology of the market: “Monopoly, and the hideous accumulation of capital,” wrote Thelwall, “carry in their own enormity, the seeds of cure. ... Whatever presses men together ... though it may generate some vices, is favorable to the diffusion of knowledge, and ultimately promotive of human liberty. Hence every large workshop and manufactory is a sort of political society, which no act of parliament can silence, and no magistrate disperse.”<sup>29</sup>

One part of this knowledge related to different understandings about poverty than had come to be enshrined in the laws, customs, and rates of the Poor Law, from Elizabethan times to Speenhamland. Citizen Tom Paine expounded a thoroughly modern alternative to the Poor Laws in his *Rights of Man* (1792), advocating not for relief but for actual monetary grants and a termination of the

27. Thompson, *Making of the English Working Class*, 244–246. For an extended discussion of the advocates of poor law “reform,” who generally agreed that the poor rates were spiralling out of control and that social discontent was rising alarmingly, presenting a threat to social order and political stability, see J. R. Poynter, *Society and Pauperism: English Ideas on Poor Relief, 1795–1834* (London: Routledge & Kegan Paul, 1967).

28. Thompson, *Making of the English Working Class*, 156–158.

29. John Thelwall, *The Rights of Nature*, letter 1, 21, 24, quoted in Thompson, *Making of the English Working Class*, 203.

regressive, hidden taxes that were levied on the poor through their purchase of necessities. Granting labouring families four pounds per annum would allow the children of the poor to attend school. Providing monetary aid to the elderly from six to ten pounds yearly, depending on age, preserved the security of a critical section of the deserving poor and relieved families of a part of the economic responsibility that pressured them into poverty. These cash grants would be supplemented by smaller allowances for children's school supplies, for soldiers and sailors, for funeral expenses for the destitute and displaced, and for others in need. Shelters and employments should be secured for the "the casual poor," whose mobility now marked too many migrations to distress. Such reform would, according to Paine, supersede the Poor Laws, which he described as little more than "instruments of civil torture" encumbered by "the wasteful expense of litigation." The consequence of such a restructuring of civil society would, according to Paine, register in social advances of all kinds:

The hearts of the humane will not be shocked by ragged and hungry children, and persons of seventy and eighty years of age, begging for bread. The dying poor will not be dragged from place to place to breathe their last, as a reprisal of parish upon parish. Widows will have a maintenance for their children, and not be carted away on the death of their husbands, like culprits and criminals; and children will no longer be considered as increasing the distress of their parents. The haunts of the wretched will be known, because it will be to their advantage; and the number of petty crimes, the offspring of distress and poverty, will be lessened. The poor, as well as the rich, will then be interested in the support of government, and the cause and apprehension of riots and tumults will cease.<sup>30</sup>

Paine's influence would be great, well into the 1830s and beyond, but his strictures against the Poor Law and its Speenhamland reconfiguration, which included an attempt to address poverty's gendered particularities, were not destined to prevail.

Nonetheless, as Thompson has argued, discontent with the embattled post-Speenhamland Poor Law and its allowance rates rode the collective class experiences of 1815 to 1834, an albatross of alienation. The poor rates of this period were the "labourers' last 'inheritance,'" a legacy clung to doggedly but without much in the way of optimism, because the arguments for alternatives espoused by authority were so dispiriting. "On the side of the gentry and overseers," writes Thompson, were "economies, settlement litigation, stone-breaking and punitive tasks, cheap labour gangs, the humiliations of labour auctions, even of men harnessed in carts." Against this tide of *travails*, "On the side of the poor, threats to overseers, sporadic sabotage, a 'servile and cunning' or 'sullen and discontented' spirit, an evident demoralization." Labourers deplored being kept on the poor rates, "like potatoes in

30. Thomas Paine, *The Rights of Man*, part 2 (1792), quoted in Stedman Jones, *An End to Poverty?*, 23–25.

a pit," taken out only when "they can no longer do without us."<sup>31</sup> Still, a right in hand, the last entitlement the landless labourers could command, was not to be tossed aside without protest. As John Knott has concluded, "Was it any wonder that the labouring population of England and Wales came to regard relief under the Old Poor Law as their *right*? It was this old moral economy notion, that the poor had a *right* to relief, which was to clash head-on with the political economy beliefs embodied in the New Poor Law."<sup>32</sup>

Indeed, the outbreak of labouring revolt in the Swing Riots of 1830, following in the wake of bad harvests and decades of distress, brought the Old Poor Law regime to its break point.<sup>33</sup> A Royal Commission of Inquiry was appointed and dispatched commissioners to survey Poor Law practices and provide reports. Maladministration, many in the governing inquiry concluded, could be corrected by centralization, whittling down the Poor Law administration from its 2,000 magistrates and 30,000 overseers. The need to "compel parishes to use workhouses" more effectively, and more punitively, emerged as a central concern, tied to the view that outdoor relief had to be curbed. A wide range of other issues were raised, from amending the settlement provisions of relief practices to the need for clauses addressing bastardy. On 14 August 1834 the Act for the Amendment and better Administration of the Laws Relating to the Poor in England and Wales received royal assent.

This New Poor Law constituted a radical revision of older practices, its primary architect, the Benthamite Edwin Chadwick, proclaiming proudly that it was "the first piece of legislation based on scientific or economical principles." Critics, including Tory paternalists, bemoaned the destructive abolition of "the whole body of our Poor Laws." The hallmark of the New Poor Law of 1834 would be the explicit repudiation of parish parochialism, the implementation of cost efficiencies in administration being overseen by a select trio of Poor Law Commissioners. Beyond economies of scale, the import of the New Poor Law would register in the material and ideological significance of the workhouse, formerly understood as a mere institution of economy. But as Sir George Nicholls, the Nottinghamshire "reformer," Poor Law commissioner, and future author of a history of English Poor Law, declared, the disciplinary role of larger and well-run workhouses was now paramount: "the full consequence of the *mitigated kind of necessity* imposed on the working classes, by a well-regulated workhouse, were understood and appreciated. We saw that it compelled them, *bred* them, to be industrious, sober, provident, careful of themselves [and] of their parents and children." Even if the New Poor Law was never quite able to entirely eliminate outdoor relief to the able-bodied poor, curbing this indulgence and confining, as much as possible, relief to the workhouse undoubtedly realigned poor law practice. The pandering to

31. Thompson, *Making of the English Working Class*, 246–247.

32. Knott, *Popular Opposition*, 34.

33. See E. J. Hobsbawm & George Rudé, *Captain Swing* (New York: Pantheon, 1968).



and encouraging of pauperism had to be replaced with a regulatory regime that induced the poor to be industrious and dependent on their own labours, however meagre the compensation and whatever the barriers to its waged realization.<sup>34</sup>

As Knott has detailed, the New Poor Law workhouses were hated “Bastilles.” Those confined to them were in a constant state of agitation about the deplorable conditions and terrible food, the debilitating consequences of separation of families, and the proliferation of disease and threat of death. Protests were mounted, and the arson’s torch was not unknown in attacks on the workhouses, at least one of which, at Heckingham, was reduced to smouldering ashes in April 1836. Assistant commissioners of the new relief order were physically assaulted, and the revised Poor Law was subject to ongoing attack by Chartists and the Rebecca Riots in Wales. Working women, in particular, often led the charge against the workhouse, their centrality in budgeting the pinched domestic economies of declining handicraft production putting them on the front lines of the 1834 protests against the New Poor Law. Such women also took acute umbrage at the gendered and sexualized clauses of legislation that targeted bastardy, suggesting that unwed mothers were little more than schemers willing to use their bodies for relief advantage. Women confined to the workhouse, moreover, were subject to branding abuse, such as having their hair cropped or being clothed in shoddy uniforms, both shaming practices that marked them more obviously and publicly than anything comparable their male counterparts were forced to endure. And, finally, women being separated from their children elicited strong opposition that animated militant protest. At times the poor won concessions because of their determination to resist the provisions of the New Poor Law. Yet constituted authority dug in its heels in resistance and retaliation. The fallout from the push for a new regulatory regime hardened the class animosities of industrializing Britain. This fed into the creation of invigorated policing and widening understandings, on the part of the working class, of the oppressions of the factory system and the politicians and “reformers” who constituted the personnel of its consolidating state.<sup>35</sup>

Advocates of the New Poor Law actually used the protest against their 1834 initiatives to good effect, pointing to the militant demonstrations and clandestine attacks on the deterrent workhouse as proof that troubled Boards of Guardians had to dig in their heels in stiff resolve, offering no surrender to

34. In general, see Brundage, *Making of the New Poor Law*; Knott, *Popular Opposition*, esp. 39–49. Nicholls is quoted in H. G. Willink, “Life of Sir George Nicholls,” in Nicholls & Thomas Mackay, *A History of the English Poor Law*, vol. 1 (1854; New York: Putnam’s, 1898), xiii–xiv. Background on Nottinghamshire’s significance can be gleaned from J. D. Marshall, “The Nottinghamshire Reformers and Their Contribution to the New Poor Law,” *Economic History Review*, 2nd ser., 13 (1961): 383–396.

35. Knott, *Popular Opposition*.



“the mob.” “A riot is rather desirable,” wrote one poor law official, for “it opens the eyes of the Guardians – and aids the progress of the new system.”<sup>36</sup>

And the system was new. The workhouses of the Old Poor Law statutes had never been welcoming refuges from want and worry, as evidenced by George Crabbe, in his poetic denunciation in *The Borough* (1810):

Your plan I love not; – with a number you  
Have placed your poor, your pitiable few;  
There, in one house, throughout their lives to be,  
The pauper-palace which they hate to see:  
That giant building, that high-bounding wall,  
Those bare-worn walks, that lofty thund’ring hall!  
That large loud clock, which tolls each dreaded hour.  
Those gates and locks, and all those signs of power:  
It is a prison, with a milder name,  
Which few inhabit without dread or shame.<sup>37</sup>

Marx cultivated no illusions in the poorhouses of the 18th century, which he understood were anything but asylums for maintaining plentifully fed and well and warmly clothed paupers. Contemporary advocates of advancing capitalist exploitation thought the “*ideal workhouse*” must be an antidote to the instinctual laziness of a propertyless population. “The cure will not be perfect,” wrote one bourgeois-minded commentator, “till our manufacturing poor are contented to labour six days for the same sum which they now earn in four days.” The workhouse, under the Old Poor Law, was nothing less, in Marx’s words, than a “House of Terror.”<sup>38</sup>

This notwithstanding, the workhouses of the New Poor Law of 1834 were something else again. “Our intention,” wrote one assistant commissioner, “is to make the workhouses as like prisons as possible.” One of his co-workers in this project of punishment added, “Our object ... is to establish therein a discipline so severe and repulsive as to make them a terror to the poor and prevent them from entering.” The new Bastilles were, in Thompson’s words, “the most sustained attempt to impose an ideological dogma, in defiance of the evidence of human need.” But this seeming success of the New Poor Law’s workhouses on the front of carceral coercion was offset by a failure. For as awful as these institutions were, they did not discourage entry: “the pitiable few” of Crabbe’s *The Borough* were now the repugnant multitudes. Overseers like Norfolk’s Dr. John Kay managed to drive “twelve able-bodied female paupers” from one Union workhouse, confiscating their possessions, in which the miscreant women had secreted some bread and soap. Subject to this monitoring and dispossession, the women left, “saying they preferred labour out of doors.” As Thompson comments, “A notable victory .... Twelve able-bodied

36. Knott, *Popular Opposition*, 77.

37. Quoted in Thompson, *Making of the English Working Class*, 294–295.

38. Marx, *Capital*, 1:276.

females made frugal and prudent ... at a blow!" A "pitiable few" indeed. But the magnitude of the actual problem of the poor registers unmistakably in the returns from 443 Union workhouses in England and Wales (by no means a complete tally of all such institutions) in 1838, where over three months the inmates numbered 78,536. Five years later the figure had risen to 197,179. The New Poor Law had done anything but end poverty; it was witness to its expansion, its ostensible cure having been made more punitive. As Thompson notes, the New Poor Law, driven by an irrational ideological insistence that the poor desired their station, was blind to the reality that it would be "hard put ... to create institutions which simulated conditions worse than those of garret masters, Dorset labourers, framework-knitters, and nailers." But it did its best, issuing circulars to abolish or savagely reduce out-relief in depressed industrial districts, cutting back on dietary intakes inside workhouses and using them as sites of psychological class warfare, the battleground drawn in absolutes of "minute and regular enforcement of routine." This included silence during meals, religious devotionals, prompt and total obedience to instruction and orders, routinized labour, confinement and separation from articles of personal ownership, total separation of the sexes, and the breaking up of families, even when members were of the same sex.<sup>39</sup>

### The New Poor Law and the "New World"

NOTHING AS CLEARLY CODIFIED and coherent as the Elizabethan Poor Law, Speenhamland, or the 1834 New Poor Law ever quite established itself in British North America and the settler colonial societies that emerged, over the course of the late 18th and 19th centuries, into present-day Canada and the United States. Indeed, colonies were, in the 16th and 17th centuries, fantasies of colonial purpose. Treatises such as Richard Hakluyt the Younger's *A Particular Discourse Concerning the Greate Necessite and Manifold Commodityes That Are Like to Growe to this Realm of England by the Western Discoveries Lately Attempted* (1584) and John White's *The Planters Plea* (1630) saw colonies as a solution to the problems addressed by the Elizabethan Poor Law. "Colonies," wrote White, "ought to be Emmunctories or Sinkes of States; to drayne away the filth." Hakluyt envisioned a colonial America as, in the interpretation of Nancy Isenberg, "one giant workhouse," a place where the surplus poor would be "converted into economic assets." Convicts might be the first human material in this project of class reclamation, their debts to society repaid to the metropolitan commonwealth by labouring in the hinterland, producing commodities for export, thus allowing themselves to be spared being "miserably hanged" or imprisoned to "pitifully pine away." Poor law's failures in the old world, in these tracts of transportation, would become a new world's resource. Small wonder that in this colonial longing for transcendence, the Old Poor

39. Thompson, *Making of the English Working Class*, 294–296.

Law would be incompletely established in the new societies of British North America.<sup>40</sup>

But the Old Poor Law nonetheless cast a long shadow in the New World. The mirages of miraculous conversion of the “offals of our people” overcoming their penchant for idleness in the abundance of opportunity and material largesse that was ostensibly not only the dream but the reality of the North American colonies never, of course, came entirely to pass. Poverty was present in the New World as it had been in the old. Locales evolved poor law practices that drew on the long historical gestation of understandings of relief in England. Lacking an overtly feudal past, and ideologically influenced by the mythologies of rugged acquisitive individualism, rooted in the material relations of privatized property, the societies of British North America tended toward poor law practices that accentuated the informality of charity and voluntarism; this was always supplemented by more formal institutional and administrative responses, however piecemeal and community-based they were. Nonetheless, on the eve of the economic collapse of the 1930s, one pioneering social work commentator would describe the “poor law machinery” of the United States as “antiquated,” stressing the “weakness and the inadequacy of the local relief system.”<sup>41</sup>

Canada and the United States diverged somewhat in their poor law practices, with the United States perhaps drawing more on the localized, parish-based experience of Elizabethan Poor Law and Canada taking somewhat more heed of the 1834 New Poor Law developments, with their push toward administrative centralization. Such distinctions were no doubt a product of the timing of poor law implementation in the respective and different explicitly colonial and nation-state contexts. To all intents and purposes, however, the Canadian and US experiences converged by the late 19th century. The brutally punitive enforcement of settlement as the basis of poor relief weakened with the discontinuance in various American states of the auctioning off or contracting out of the poor to those who would bid for their labour and maintenance. In both

40. See Nancy Isenberg, *White Trash: The 400-Year Untold History of Class in America* (New York: Penguin, 2016), 17–24. Foucault (in *Punitive Society*, p. 50) quotes a French text on vagabonds from the 1760s that stressed the need to curb the wandering poor, even to the point of extending servitude indefinitely. Vagabonds were to become the property of the state, to be assigned to galleys and mines. If such sites filled to capacity, “we can also send them to the Colonies.”

41. See, for instance, Piven & Cloward, *Regulating the Poor*, 34, 45–48; Katz, *Poverty and Policy*, 1–16; Katz, *In the Shadow of the Poorhouse: A Social History of Welfare in America* (New York: Basic Books, 1986), 3–35; Judith Fingard, “‘The Winter’s Tale’: The Seasonal Contours of Poverty in British North America, 1800–1860,” *CHA, Historical Papers* 9, 1 (1974): 65–94; Rainer Baehre, “Paupers and Poor Relief in Upper Canada,” *CHA, Historical Papers* 16, 1 (1981): 57–80; Palmer & Héroux, *Toronto’s Poor*, 25–86; Edith Abbott, “Introductory Note,” in Aileen E. Kennedy, *The Ohio Poor Law and Its Administration* (Chicago: University of Chicago Press, 1934), vi. See also Sophia Breckenridge, *Public Welfare Administration* (Chicago: University of Chicago Press, 1927).

Canada and the United States, houses of industry or workhouses/poorhouses/almshouses had become the foundation of poor law practice, although in the British Dominion the system of relief administered through these houses was more centralized, highlighting how institutions like penitentiaries and workhouses were twinned in structuring the lives of the poor.<sup>42</sup>

One crucial piece of legislation that followed on the heels of Canadian Confederation in 1867, for instance, was the Prison and Asylum Inspection Act. It defined provincial responsibilities for social welfare. Criminalization, incarceration, and the relief of the indigent were not just associated as part of a common response to proletarianization but were now bureaucratically congealed in a statute that assigned responsibility for these spheres of “correctional intervention” to a single inspector, in Ontario: John Woodward Langmuir. Langmuir would later come to see state formation in the Canadas, culminating in Confederation, as, insightfully, “one of the most complete charitable and correctional systems on the continent.” This fusion of the penitentiary and poor relief was thus part and parcel of what Michael B. Katz, Michael Doucet, and Mark J. Stern have called “the social organization of early industrial capitalism.”<sup>43</sup> In spite of a far less systematic poor law regime in the United States, the development of relief practices in the entire period leading up to the crisis of allocation in the Great Depression was dominated in both countries by the determination to cut back on outdoor relief.<sup>44</sup> Those who received aid offered in the workhouse would be subject to certain “labour tests” that “earned” them their meagre sustenance and allowed them anything but welcoming accommodations.

The poor, as Gaétan Héroux and I have shown in the case of Toronto, were not always accepting of this poor law regime and routinely resisted and refused demands that they “crack stone” for their daily allocation of stale

42. A recent study elaborates on the gendered resistance to this process. See Ted McCoy, *Four Unruly Women: Stories of Incarceration and Resistance from Canada's Most Notorious Prison* (Vancouver: UBC Press, 2019).

43. Richard B. Splane, *Social Welfare in Ontario, 1791–1893: A Study of Public Welfare Administration* (Toronto: University of Toronto Press, 1965), 43–51, with Langmuir quote, 49; Bryan D. Palmer & Gaétan Héroux, “‘Cracking the Stone’: The Long History of Capitalist Crisis and Toronto’s Dispossessed, 1830–1930,” *Labour/Le Travail* 69 (Spring 2012): 23–27; Michael B. Katz, Michael Doucet & Mark J. Stern, *The Social Organization of Early Industrial Capitalism* (Cambridge, Massachusetts: Harvard University Press, 1975). Useful accounts of the 19th-century penitentiary include Peter Oliver, *“Terror to Evil-Doers”: Prisons and Punishments in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1998); Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada* (Edmonton: Athabasca University Press, 2012). See, as well, Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941* (New York: Cambridge University Press, 2008), 53–86.

44. The war on outdoor relief in the United States is usefully delineated in Katz, *In the Shadow*, 36–57, which also suggests that the practice was more resilient than is commonly acknowledged.

bread and thin gruel and their place on the crowded floor of what came to be known as the "Wayfarer's Lodge." Conditions in the more decentralized poor-relief system of the United States, which up to the 1930s meant that a state like Ohio had over 1,500 different districts responsible for allocating aid to the impoverished, were acknowledged to be abysmal as early as the mid-19th century. Overcrowding, privies backed up and disgusting, floors unwashed, and bedding alive with vermin were but small parts of the litany of complaint, which was exacerbated by corrupt administration and the callousness of superintendents who dealt directly with the poor.<sup>45</sup>

Much research on the poor law regime that developed in Canada and the United States remains to be done, and Katz is undoubtedly right that it should be "rewritten from the bottom up ... through a series of local case histories set in a comparative framework and through an analysis of the lives and experiences of the poor themselves."<sup>46</sup> This is congruent with Piven and Cloward's insistence that it is only by their own activity and militancy that the poor have secured amelioration of their lot and achieved fundamental and significant reform of poor law regimes.<sup>47</sup>

That said, there is no denying the relentless ideological assault on the poor that featured prominently in the changing contours of 19th- and 20th-century relief practices. It was a premise of the North American poorhouse that it "was in the interest of no one to have persons there who could support themselves outside." That paupers would think of the country workhouses as "places of rest and repose, intended to shield them from effort and labor," utilizing such resorts to "avail themselves of their comforts and without scruple, as often and as long as it suits their convenience," drove a dagger of resentment and antagonism deep into the bosom of bourgeois authority.<sup>48</sup> All of this had its origins in the Old Poor Law's distinction between the deserving and the non-deserving poor and the doctrine of less eligibility. As we have seen, this reached back to Elizabethan times and would figure forcefully in the creation of our modern poor law regime. Mimi Abramovitz and Linda Gordon have shown, moreover, that colonial and 19th-century Poor Laws, slave codes, evolving family relations law, provisions for single mothers, and early 20th-century welfare

45. Palmer & Héroux, "Cracking the Stone," 9–62; Josephine Chapin Brown, *Public Relief, 1929–1939* (New York: Henry Holt, 1940), 14–15; Katz, *In the Shadow*, 25–28.

46. Katz, *Poverty and Policy*, 14.

47. Piven & Cloward, *Regulating the Poor*; Piven & Cloward, *Poor People's Movements: Why They Succeed, How They Fail* (New York: Pantheon, 1977); Cloward & Piven, *The Politics of Turmoil: Essays on Poverty, Race, and the Urban Crisis* (New York: Pantheon, 1972). Other scholars demand that more attention be paid to the benevolence and effectiveness of some state actors, systematic philanthropy, and institutions such as the Catholic church. See Katz, *Poverty and Policy*, 5–6; James T. Patterson, *America's Struggle against Poverty, 1900–1980* (Cambridge, Massachusetts: Harvard University Press, 1981), 180–181.

48. For a full discussion of the 19th-century ideological assault on the poor, see Katz, *In the Shadow*, 22–35.

initiatives all converged in assuring the supply of labour, encouraging the formation of “proper” families, and shoring up the growing authority of capital and its patriarchal sensibilities.<sup>49</sup>

Of the many explanations for why poor law did not establish itself in a more organized and coherent manner in the United States, none is perhaps more significant or more bypassed analytically than the existence of the slave South. As Steve Fraser has argued, “So long as the perpetual enslavement of four million human beings lasted, conflicts over the real nature of ‘free labor’ remained marginal if heated, a premonition, not an overriding reality.”<sup>50</sup> And one significant part of this meaning of “free labour” was poverty and the poor law that might alleviate it and in what ways. There was, however, little impetus to establish anything resembling a systematic poor law in the South, where a seigneurial, aristocratic regime was sustained by slave labour and the ideology of white supremacy. What W. E. B. Du Bois once called the “public and psychological wage” of whiteness functioned for the downtrodden poor whites of the slave South as a hate-driven substitute for actual poor law allowances.<sup>51</sup> The racism of these impoverished Southern yeomen was a delusion masking what George Weston, in *The Poor Whites of the South* (1856), early recognized as an ongoing process of degradation. These non-slaveholding labouring poor were, in Weston’s words, “sinking deeper and more hopelessly in barbarism with every succeeding generation.” Writers like Harriet Beecher Stowe, in *Dred: A Tale of the Great Dismal Swamp* (1856), and Hinton Rowan Helper, whose *Impending Crisis of the South* (1857) sold over 140,000 copies, chronicled the social exile of poor whites to the miserable margins of a class/caste/colour order. It had few mechanisms to alleviate poverty outside of the ugly comfort afforded by ideologies and practices of racial superiority.<sup>52</sup> And with these poor whites seemingly content to live with Black labour enslaved, indeed often physically taking up the branding irons themselves, poor law was neither necessary nor advocated by the planters. This elite preferred the option of chattel ownership of its workforce and the voluntarism of Christian charity for those whites who could not muster this racial entitlement.

In the aftermath of slavery, during Reconstruction, the continuity of white supremacy was insured not through the establishment of poor law but with the extension of criminalization and a new penal order. Du Bois, for instance, long ago reflected on how “the penitentiary system began to characterize the whole

49. Abramovitz, *Regulating the Lives of Women*; Gordon, *Pitied But Not Entitled*.

50. Fraser, *Age of Acquiescence*, 107.

51. W. E. B. Du Bois, *Black Reconstruction: An Essay toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860–1880* (New York: Harcourt, Brace, and Company, 1935), 700–701. See the stimulating and influential application of this concept in David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York and London: Verso, 1991).

52. For discussion of this literature, see Isenberg, *White Trash*, esp. 136–153.



South.” Under slavery, Du Bois noted, Blacks were disciplined and punished on the plantation, but with emancipation “the whole criminal system came to be used as a method of keeping Negroes at work and intimidating them.” There arose in the aftermath of the Civil War “a demand for jails and penitentiaries beyond the natural demand due to the rise of crime.” Federal officials embraced the practice of leasing convicts to private persons for work, a system in which both the state and individuals profited from ostensible crime. One English critic, horrified by the inhumanity of work relations in the 1870s South, commented that a consolidating criminal justice order seemed little more than a “return to another form of slavery.” Fraser concludes that the whole judicial system of the South “conspired to replenish the supply of convict labor as a lucrative source of self-enrichment and government revenue.” In Alabama, 73 per cent of state revenues for some late 19th-century years came from the convict lease system, where the mortality rate of prisoners was 45 per cent.<sup>53</sup>

Another measure of the limits of poor law in the South was the treatment of Black children. Many African American infants and youth were orphaned in the Civil War and Reconstruction period. They seldom found refuge in anything approximating an institutionalized poor law regime. Mississippi was a case in point, passing laws that allowed orphaned children of slaves or the offspring of impoverished free Blacks to be apprenticed by the state. But the law stipulated that this indenture would only take place “provided that the former owner of the said minor shall have the preference when in the opinion of the court he or she shall be a suitable person for that purpose.”<sup>54</sup>

The branding of Black skins thus continued as the promise of Reconstruction gave way to the racial codes and customary segregations of Jim Crow. These were far-reaching, passing well beyond drinking fountains, seating arrangements on public transportation, and access to services: they structured employment relations; access to libraries, books, the ballot box, other rights of citizenship, and educational possibilities; and, of course, sexual relations. Jim Crow’s American apartheid permeated all aspects of society: cultural, economic, and political.<sup>55</sup>

53. Du Bois, *Black Reconstruction*, 506, 698–699; Du Bois, ed., *Some Notes on Negro Crime, Particularly in Georgia: Report of a Social Study made under the direction of Atlanta University; Together with the Proceedings of the Ninth Conference for the Study of Negro Problems, held at Atlanta University, May 24, 1904* (Atlanta, Georgia: Atlanta University Press, 1904), esp. 2–9; Fraser, *Age of Acquiescence*, 50–52; Douglas A. Blackmon, *Slavery by Another Name: The Re-enslavement of African Americans from the Civil War to World War II* (New York: Doubleday, 2008). On convict leasing, see also Sven Beckert, *Empire of Cotton: A Global History* (New York: Knopf, 2015), 290–291; E. Merton Coulter, *James Monroe Smith: Georgia Planter* (Athens: University of Georgia Press, 1961).

54. Abramovitz, *Regulating the Lives of Women*, 169; John Hope Franklin, “Public Welfare in the South during the Reconstruction Era, 1865–1868,” *Social Service Review* 44, 4 (1970): 386.

55. A useful introduction remains C. Vann Woodward, *The Strange Career of Jim Crow* (1955; New York: Oxford University Press, 1964), but on one esoteric subject alone – that of libraries



Nor were the truncated poor law statutes of northern free labour states, such as Ohio, exempted. There, too, Blacks were marked out. Aileen E. Kennedy noted that an 1805 enactment stipulated the following: “A Negro or a mulatto could enter the state and gain settlement only by giving to the clerk of the common pleas court a freehold security to the amount of five hundred dollars, which was later used for his support in case he became a pauper. Any Negro or mulatto who was found to have come into the state without giving security was removed immediately in the same manner as a pauper without settlement.” Twenty-five years later this restriction was revised, but only to prohibit Blacks from having any settlement rights in the state, even if they managed to come up with the punitive surety. Other legislation further restricted the poor law rights of people of colour, with Kennedy concluding that “although Ohio was admitted to the Union with the understanding that slavery would not be permitted, it is indeed obvious that there was a determination that the Negroes should not be publicly supported.”<sup>56</sup> Between slavery and freedom, and beyond, what poor law existed in the United States was constructed to stigmatize Black labour with the marks of both unfreedom and no eligibility.

This state of racial affairs would prevail, virtually unabated, until the civil rights movement of the post–World War II era demanded redress and the anti-poverty and Black power mobilizations of the 1960s forced steps toward emancipation and broadened entitlements. But with these gains came new, underappreciated constraints that, as austerity lowered its curtain on limited decades of state largesse, would evolve into a *new* new poor law of restricted rights and the rise of mass incarceration.

## The Political Economy of the New New Poor Law

THIS *NEW NEW POOR LAW* struck harsh blows at two constituencies, organized labour and the poor. Both of these constituencies were layered in socioethnic and racialized constructions that will be discussed below and that were central to vigorous human and civil rights campaigns that paralleled and were related to advances of workers, be they waged or unwaged.<sup>57</sup>

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and books – see the discussions in Eliza Gleason, *The Southern Negro and the Public Library* (Chicago: University of Chicago Press, 1941); Matthew Battles, *Library: An Unquiet History* (New York and London: W. W. Norton, 2015), 180–184; Richard Wright, *Black Boy: A Record of Childhood and Youth* (New York: Harper and Brothers, 1945).

56. Kennedy, *Ohio Poor Law*, 23, 25, 36.

57. For Canada, see Dominique Clément, *Canada's Rights Revolution: Social Movements and Social Change, 1937–1982* (Vancouver: UBC Press, 2008); Clément, *Human Rights in Canada: A History* (Waterloo, Ontario: Wilfrid Laurier University Press, 2016); Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930–1960* (Toronto: University of Toronto Press, 2005). Discussions of the interface of civil rights and labour struggles in the United States are extensive but see, among many other works, Michael J. Honey, *Going Down Jericho Road: The Memphis Strike, Martin Luther King's Last Campaign* (New York: W. W.

These entitlements, however inadequate and usefully mythologized as proof of democracy's deliverance of material security, were achieved by a century and more of vehement struggle. Labour's campaign to win collective bargaining rights, initiated in the 19th century, finally leaped forward in both the United States and Canada with a series of intensified class struggles in the 1930s and 1940s, prodding enactments that culminated in the legal codification of collective bargaining rights.<sup>58</sup> Welfare provisioning, such as the Ontario Mothers' Allowance Act of 1920 (amended in 1921), was, in spite of means testing and other limitations, groundbreaking because for the first time the state assumed direct responsibility for maintenance of the dependent poor outside of institutions bearing the stigma of the 19th-century poorhouse.<sup>59</sup> The limitations of the labour relations regime and the welfare state that consolidated over the long course of popular struggles from the late 19th century into the 1960s were always evident to combative workers, the destitute, and racialized immigrant newcomers.<sup>60</sup> But the existence of trade union and welfare regimes, as well as civil rights advances, whatever their truncated trajectory in the period between 1945 and 1975, at least gestured toward the *rights* of the deserving, be they hard working or locked out of the labour market for reasons that were judged (by an admittedly censorious monitoring authority) to be no fault of their own.<sup>61</sup> This state of balance, however tilted toward property, propriety,

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Norton, 2007); Honey, *To the Promised Land: Martin Luther King and the Fight for Economic Justice* (New York: W. W. Norton, 2018).

58. See, for instance, Bob Russell, *Back to Work: Labour, State and Industrial Relations in Canada* (Toronto: Nelson, 1990); Cy Gonic, Paul Phillips & Jesse Vorst, eds., *Labour Gains, Labour Pains: Fifty Years of PC 1003* (Halifax: Garamond, 1995); Judy Fudge & Eric Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900–1948* (Toronto: Oxford University Press, 2001); Peter S. McInnis, *Harnessing Labour Confrontation: Shaping the Postwar Settlement in Canada, 1943–1950* (Toronto: University of Toronto Press, 2002); James Gray Pope, "The Western Pennsylvanian Coal Strike of 1933, Part I: Lawmaking from Below and the Revival of the United Mine Workers," *Labor History* 44, 1 (2003): 15–48; Rebecca Zietlow & James Gray Pope, "The Toledo Auto-Lite Strike and the Fight against 'Wage Slavery,'" *University of Toledo Law Review* 38 (2007): 839–854; Bryan D. Palmer, *Revolutionary Teamsters: The Minneapolis Truckers' Strikes of 1934* (Chicago: Haymarket, 2013); Christopher L. Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1860–1960* (Cambridge: Cambridge University Press, 1985); Melvyn Dubofsky, *The State and Labor in Modern America* (Raleigh: University of North Carolina Press, 1994); Nelson Lichtenstein, *State of the Union: A Century of American Labor* (Princeton: Princeton University Press, 2002).

59. Chun, *From Punishment to Doing Good*, 50.

60. Note the discussion in Palmer & Héroux, *Toronto's Poor*, 245–280. On racialized immigrants, see Franca Iacovetta, *Gatekeepers: Reshaping Immigrant Lives in Cold War Canada* (Toronto: Between the Lines, 2006).

61. On the gendered censoriousness of the monitoring state, see Margaret Jane Hillyard Little, "No Car, No Radio, No Liquor Permit": *The Moral Regulation of Single Mothers in Ontario, 1920–1997* (Toronto: Oxford University Press, 1998); Gordon, *Pitied But Not Entitled*. This is, of course, a persistent theme in women's resistance to the nature of welfare and its ongoing

and power, was about to end. The *new new* poor law would go a long way toward writing *finis* to the very notion of the deserving poor.

Hoisted on the petard of perpetual crisis, modern capitalism and its servile state developed a new poor law. Unnamed as such, the new poor law is composed of distinct strands. They are woven together in a tripartite melange of legislative deregulation and ideological and practical initiatives. The three components of this new poor law's construction are (1) dismantling long-established welfare programs under the guise of downsizing and neoliberal restructuring and rationalization, all of which erode economic support for the poor and whittle down or eliminate various entitlements; (2) extending capital's power and authority, and arming opponents of the poor and of organized labour with invigorated weapons, both ideological and material; and (3) expanding the punitive capacities of a "carceral state." All of this is premised on an austerity-driven dismantling of the incomplete advances registered in the post-World War II period. Piven and Cloward have shown that where the poor and the trade unions achieved unprecedented access to state protections and support, it was largely as a consequence of movements of protest initiated in the hard times of the 1930s and the expanding expectations of the 1960s.<sup>62</sup> The progressive and humanitarian considerations bred in the militant bone of these periods of upheaval registered less decisively in the worsening economic climate of the 1970s and beyond.<sup>63</sup> Intrusions into the collective experience of the dispossessed on the part of the tightening tentacles of state institutions of regulation and punishment, themselves ironically established and prepared for future use in the "reform" era of the 1960s, widened. With the political economy of late capitalist crisis that has been evident since the mid-1970s, fiscal constraint dominated state policy. An ideological reification of the determinations of the market has licensed a mean-spirited austerity, in which state expenditures have been cut back drastically and the terms of trade between capital and labour, with respect to a wide range of legal entitlements, including the right to freedom of association and collective bargaining, have shifted dramatically, favouring capital.<sup>64</sup>

Overall, this powerful post-1970s set of developments constitutes nothing less than a new poor law. It is composed of a cluster of developments that have the ideological appearance of distinct and separate undertakings, when in fact they are related and part of a coherent class struggle waged from above. Parts of this process are codified in legislation, but other features are far less formal, constituting significant shifts in the practices of the everyday. Like all poor

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curtailment. See Mimi Abramovitz, *Under Attack: Women and Welfare in the United States* (New York: Monthly Review, 2000).

62. Piven & Cloward, *Poor People's Movements*.

63. Piven and Cloward address this in *The New Class War: Reagan's Attack on the Welfare State and Its Consequences* (New York: Pantheon, 1982).

64. See, for instance, Whiteside & McBride, *Private Affluence*.

law, to varying degrees of severity, this has as its fundamental purpose the regulation of labour, regardless of whether workers are employed or marginalized in cul-de-sacs of casualization or outright pauperization.<sup>65</sup>

Piven and Cloward suggested that this post-1970s retrenchment would, in its blatant embrace of capitalist inequality and subversion of democracy, unleash a new class war. It was the new poor law's explicit purpose to nullify the mobilizing energies and initiatives of those most adversely affected by the spreading urban crisis, bringing wide-ranging punitive provisions to bear on a volatile socioeconomic situation. As the relentless march away from the left dominated the 1970s and 1980s, the political spectrum reconfigured rightwards. The state was undeniably captured by conservatizing neoliberals over the course of the 1990s, as outlined for Canada by Pat Armstrong.<sup>66</sup> In this political realignment, crime and law and order figured forcefully, even if the actuality of undisputed, illegal, and violent acts was lessening. As socially constructed crime became, in Dianne Martin's words, "a commodity of political significance," the ideological reach of "criminalization" was reciprocally related to questions of trade union power and welfare's reconfiguration.<sup>67</sup> Reagan Republicans and Clinton Democrats converged on these questions in the United States, where race was always an incendiary ideological weapon in the arsenal of reaction. The racialized and gendered assault of United States "welfare reform" from 1994 to 1996 culminated in the passage of the 1996 Personal Responsibility and Work Opportunity Act. This punitive legislation imposed a five-year lifetime limit on welfare eligibility, demanded strict work requirements on those receiving entitlements, denied aid to children born while their mothers were on welfare, and curtailed educational opportunities for women dependent on state aid.<sup>68</sup> In Canada, the seeming mosaic of

65. This regulatory function of poor law (welfare) with respect to labour, conceived broadly, is fundamental to progressive comment, from Sidney and Beatrice Webb to Piven and Cloward. "The coincidence between the coming of the free wage-labourer and an organized public provision for the destitute cannot, in the nature of things, be exactly proved," wrote the Webbs (*English Poor Law History*, 44), a statement quoted approvingly by Piven and Cloward, who note that "the indications are convincing, and were to become more convincing still as the system of free labor expanded and changed" (*Regulating the Poor*, 16). See, as well, the discussion of unemployed, industrial, civil rights, and welfare mobilizations in Piven & Cloward, *Poor People's Movements*.

66. Pat Armstrong, "The Welfare State as History," in Raymond B. Blake, Penny E. Bryden, and J. Frank Strain, eds., *The Welfare State in Canada: Past, Present, and Future* (Concord, Ontario: Irwin Publishing, 1997), 52–73.

67. Dianne Martin, "Demonizing Youth, Marketing Fear: The New Politics of Crime," in Hermer & Mosher, eds., *Disorderly People*, 92.

68. The congealing of Republicans and Democrats on issues relating to welfare, crime, and punishment is central to much of the new scholarship that links poverty, race, class, and criminalization from the 1960s to the 1990s. See, for instance, Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010); Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass*

political difference blurred in a melting pot of revitalized conservatism, corporate-ordered liberalism, and a back-peddling social democracy. With the historic 1990 victory of the Ontario New Democratic Party, a so-called social contract rolled back unionized collective agreements and cut welfare rates, paving the way for Conservative Party successors who would up the ante with a “common sense revolution” that waged a vicious war on the most vulnerable. Brand-naming of the criminalized, a marketing of the malevolent, resulted in Megan’s Laws (sex-offender notification legislation) in the United States and Brian’s Laws (forcing mentally ill persons into treatment) in Canada.<sup>69</sup> Pockets of ardent resistance remained, of course, such as the Toronto-based Ontario Coalition against Poverty, with its animating slogan of “Fight to Win!” Women continued, across North America, to mount resistance to the dismantling of the welfare state and the gendered nature of much of the new poor law’s criminalization. But the agitational turmoil that Piven and Cloward had so astutely explored in their engaged scholarship and public interventions relating to 1960s New York and its rent strikes, public-sector upheavals, Black power, community control experiments, and low-income organizing undoubtedly dissipated over the course of the 1970s and 1980s, necessitating new kickstarts of resistance.<sup>70</sup>

From the 1960s war on poverty, arguably a high-water mark in the admittedly checkered history of provisioning for the poor, the terms of trade in the relationship of welfare and the poor have altered. Attack is the new

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*Incarceration in America* (Cambridge, Massachusetts: Harvard University Press, 2016). On the gendered nature of US “welfare reform” in the 1990s, and women’s resistance, see Abramovitz, *Under Attack*, 139–152.

69. Sylvia Bashevkin, *Welfare Hot Buttons: Women, Work, and Social Policy Reform* (Toronto: University of Toronto Press, 2002); George Ehring & Wayne Roberts, *Giving Away a Miracle: Lost Dreams, Broken Promises, and the Ontario NDP* (Oakville, Ontario: Mosaic Press, 1993); Tom Walkom, *The Rise and Follies of the NDP* (Toronto: Key Porter, 1994); Stephen McBride, “The Continuing Crisis of Social Democracy: Ontario’s Social Contract in Perspective,” *Studies in Political Economy* 50, 1 (1996): 64–95; David Rapaport, *No Justice, No Peace: The 1996 OPSEU Strike Action against the Harris Government in Ontario* (Montréal and Kingston: McGill-Queen’s University Press, 1999); Palmer & Heroux, *Toronto’s Poor*, 324–372. On brand-naming criminalization, see Martin, “Demonizing Youth,” 99.

70. See, for instance, Piven & Cloward, *The New Class War*; Cloward & Piven, *Politics of Turmoil*. For a detailed local study, see Palmer & Heroux, *Toronto’s Poor*, 273–428, which addresses the Ontario Coalition against Poverty, as does John Clarke, “Ontario’s Social Movements: The Struggle Intensifies,” in Colin Leys & Marguerite Mendell, eds., *Culture and Social Change: Social Movements in Québec and Ontario* (Montréal: Black Rose Books, 1992), 215–223; Norman Feltes, “The New Prince in a New Principality: OCAP and the Toronto Poor,” *Labour/Le Travail* 48 (Fall 2001): 125–157; Jonathan Greene, “‘Whatever It Takes’: Poor People’s Organizing, OCAP, and Social Struggle,” *Studies in Political Economy* 75, 1 (2005): 5–28. See also many of the essays in Hermer & Mosher, eds., *Disorderly People*, which detail the criminalization and resistance of squeegee cleaners, at-risk urban youth, impoverished single mothers, and others. Women’s activism in the United States is explored in Abramovitz, *Under Attack*.

watchword, with the transparent purpose of cutting back on the largesse dispensed through welfare programs. The result is a new war on welfare itself, which is being jettisoned in the interests of workfare-like programs (which recycle reactionary thinking of the 1930s) and a return to the voluntarism of earlier ages, when provisioning for the poor was premised on private works of charity rather than public policies of support.<sup>71</sup> Poor people of colour, women, and children are, not surprisingly, especially vulnerable in this dismantling of the welfare state, the “hot button” issues of crime, drugs, welfare cheating, taxes, and affirmative action all weighted down to the point of distortion with racialized and gendered representations of long historical standing.<sup>72</sup> Skocpol, Weir, and Orloff argue that “economically pressed lower ‘middle-class taxpayers,’ disproportionately white ethnics in male-headed families, could soon be pitted against impoverished public assistance recipients (or recent graduates of workfare), disproportionately women of color and their children.”<sup>73</sup> But then one feature of all poor law, and especially the *new new* poor law regime of late capitalism, is to stigmatize, divide, and pit various stratified components of the dispossessed against one another.

### **New New Poor Law Ascending/Trade Unionism Descending**

AS THE WAR ON WELFARE – an attack on the seemingly weak – was being waged, so were the apparently strong in the organized trade union movement subject to assault. The demon of trade union strengths and entitlements that emerged out of the upheavals of the Great Depression and that consolidated (albeit amid the deformations of the Cold War) in the immediate post–World War II years with the brief victories of mass-production unionism and the limited successes, by the 1960s, of public-sector organizing was targeted by capital and its servile state in the 1970s. This protracted, and ongoing, class war from above has eviscerated the North American trade union movement.<sup>74</sup>

71. See, for instance, Jamie Peck, *Workfare States* (New York: Guilford, 2001); Michael B. Katz, *The Undeserving Poor: From the War on Poverty to the War on Welfare* (New York: Pantheon, 1989), 223–233; Eric Shragge, ed., *Workfare: Ideology for a New Underclass* (Toronto: Garamond, 1997). For a reactionary embrace of workfare that illuminates problems in its implementation, see Maeve Quaid, *Workfare: Why Good Social Policy Ideas Go Bad* (Toronto: University of Toronto Press, 2002), and for a discussion of charity’s pitfalls, see Walter Stewart, *The Charity Game: Greed, Waste, and Fraud in Canada’s \$86-Billion-a-Year Compassion Industry* (Vancouver: Douglas & McIntyre, 1996).

72. Katz, *The Undeserving Poor*; Bashevkin, *Welfare Hot Buttons*; Jean Swanson, *Poor-Bashing: The Politics of Exclusion* (Toronto: Between the Lines, 2001); Little, “No Car, No Radio.”

73. Theda Skocpol, Margaret Weir & Ann Shola Orloff, “Why Welfare Reform Won’t Work – and What Would,” *Baltimore Sun*, 22 February 1987, quoted in Katz, *The Undeserving Poor*, 232.

74. Michael Goldfield, in *The Decline of Organized Labor in the United States* (Chicago: University of Chicago Press, 1987), presents an excellent account of the declining fortunes



The war on organized labour has been a perennial struggle, in which capital has only reluctantly conceded limited and always constrained rights to a combative working class willing to push the limits of legality to extend entitlements, establish benefits, and improve wages and working conditions.<sup>75</sup> Adversarial relations and embittered class conflict have never been far from the surface of labour-capital relations, in which the period from the mid- to late 1940s into the 1960s consolidated gains that had been in the making because of decades of difficult struggle. A significant part of the *new* new poor law was to turn back this seeming tide of working-class advance. Pierre Trudeau's "wage and price control" campaign of coercion in Canada, initiated in 1975 and revived in the early 1980s, led to ongoing state repression of organized workers, directed particularly at government employees. In the United States, Ronald Reagan's assault on the air traffic controllers in 1981 signalled that the climate of labour relations had taken an irrevocable turn against the working class, state policy deepening the already traumatic effects of deindustrialization and job loss.<sup>76</sup> Lichtenstein describes the 1970s and 1980s as "a disaster" for US trade unionism, with organized labour as a proportion of the entire workforce declining from a high of almost 43 per cent in the late 1940s to 29 per cent in 1973 to just above 16 per cent in 1991. In strongholds of labour organization such as the

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of trade unionism in the United States since 1954, attributing the worsening lot of organized labour to employer opposition and state policy. The situation has only worsened subsequently. See also the long view presented in Lichtenstein, *State of the Union*. Barry Eidlin, in *Labor and the Class Idea in the United States and Canada* (Cambridge: Cambridge University Press, 2017), contrasts the experiences of Canada and the United States in terms of the respective class politics of the two countries, but there is no denying that the trajectory of both labour movements is following a similar course of demise, as outlined in Michael Goldfield & Bryan D. Palmer, "Canada's Workers Movement: Uneven Developments," *Labour/Le Travail* 59 (Spring 2007): 149–177.

75. See Bryan D. Palmer, "'What's Law Got to Do with It?': Historical Considerations on Class Struggle, Boundaries of Constraint, and Capitalist Authority," *Osgoode Hall Law Review* 41, 2/3 (2003): 465–490.

76. A. M. Maslove & G. Swimmer, *Wage Controls in Canada, 1975–1978: A Study of Public Decision Making* (Montreal: Institute for Research in Public Policy, 1980); Leo Panitch & Donald Swartz, *The Assault on Trade Union Freedoms: From Wage Controls to the Social Contract* (Toronto: Garamond, 1993); Yonatan Reshef & Sandra Rastin, *Unions in the Time of Revolution: Government Restructuring in Alberta and Ontario* (Toronto: University of Toronto Press, 2003); Thom Workman, *If You're in My Way, I'm Walking: The Assault on Working People since 1970* (Halifax: Fernwood, 2009); McBride, *Working?*, 210–220; Jefferson Cowie, *Stayin' Alive: The 1970s and the Last Days of the Working Class* (New York and London: New Press, 2010); Joseph A. McCartin, *Collision Course: Ronald Reagan, the Air Traffic Controllers, and the Strike That Changed America* (New York: Oxford University Press, 2011); Barry Bluestone & Bennett Harrison, *The Deindustrialization of America: Plant Closings, Community Abandonment, and the Dismantling of Basic Industry* (New York: Basic Books, 1982); Steven High, *Industrial Sunset: The Making of North America's Rust Belt, 1969–1984* (Toronto: University of Toronto Press, 2003).



auto industry, construction, the garment trades, and transportation, membership losses in US unions ran from 400,000 to 1,000,000.<sup>77</sup>

This trend only worsened during the period reaching from the 1990s to the present, as 5,000,000 US manufacturing jobs disappeared and union densities in the private sector plummeted to less than 6.5 per cent in 2016. Only the public sector shored up these rates of trade union affiliation in the United States, with government workers struggling valiantly but often unsuccessfully to hold their own against constant attack by reactionary political opponents. The percentage of these white-collar workers organized in unions dropped slightly from a 1996 peak of 37 per cent to a 2016 level of 34.4 per cent. All indications are, however, that with the willingness of state legislatures in the United States to up the ante in their declared animosity to public-sector unions, this bulwark of organized workers' uphill fight is about to experience significant setbacks.<sup>78</sup>

The downturn in union strength, then, has been a consequence of state policies that fostered deindustrialization and undermined the legal place and historically secured entitlements of organized labour, drawing together liberals and conservatives and, indeed, even finding favour among some social democrats, as the Canadian case reveals. Much is made of union densities being more robust in Canada – at 28.4 per cent – than in the United States, and there is no denying that public-sector workers have maintained high rates of unionization (roughly 70 per cent). Private-sector union densities, however, have been dropping significantly in Canada. From a high point of roughly 40 per cent in the 1980s, the percentage rates of unionization in the Canadian private sector have declined from 36.4 in 1997 to 25.2 in 2016 and, among manufacturing workers, the rate of representation in 2016 fell to 16.1 per cent. More telling, deindustrialization hit this core Fordist sector of the Canadian economy particularly hard, with the absolute numbers of workers covered by collective agreements in the manufacturing sector dropping almost 42 per cent from 1997 to 2016. If public-sector unions are facing attack in the United States, moreover, government clerks north of the 49th parallel face many of the same neoliberal challenges as those increasingly common south of the border. Stephen McBride, for instance, has compiled a list of 218 provincial and federal pieces of legislation passed in Canada between 1982 and 2016 that restrict collective bargaining and trade union rights, many of them directed against those working for various levels of government.<sup>79</sup>

77. Lichtenstein, *State of the Union*, 213–214.

78. Fraser, *Age of Acquiescence*, 341–373; Lichtenstein, *State of the Union*, 213–214; Eidlin, *Labor and the Class Idea*.

79. McBride's data on legislation curbing organized labour is in *Working?*, 210–214. Figures on Canada come from the 2017 Statistics Canada data that Canadian Labour Congress research director Chris Roberts assessed and synthesized in his comments on a panel at *Transcending Pessimism, Reimagining Democracy: A Conference in Honour of Leo Panitch*, York University,

The result is a labour movement in serious decline. The sorry state of the unions registers not only in the shrinking numbers of workers organized and declining proportion of the workforce affiliated with the trade unions but also in the eclipse of militancy and mobilization and the descent into parochial protectionism. As evident as this victory of reactionary and posturing populism was in Donald Trump's electoral uncorking of his successful rhetorical "America First" 2016 presidential campaign, that unfortunate articulation of parliamentary cretinism may well have captivated the most retrograde of trade union bosses and a part of the white working class. Yet this was not the unadulterated repudiation of basic proletarian politics and class interests that so many have claimed.<sup>80</sup> It has certainly had a retrograde effect, however, exacerbating racism within the working class, giving a platform to the most vicious expressions of white supremacy, and, internationally, breaking the back of solidarities that once seemed to at least have a chance to thrive. The formerly militant internationalist Canadian Automobile Workers (now renamed Unifor after a merger with the Communications, Energy and Paperworkers Union in 2013), for instance, responded to Trump's threats between 2016 and 2018 to "tear up NAFTA" with a troubling display of cozying up to the Liberal state. This defeatist strategic move can only unleash the hounds of bellicose nationalism as Canadian workers' jobs are pitted against those of Mexican "competitors" in a chauvinistic war of each nation's workers against all others.<sup>81</sup>

Confidence in class struggle and its capacity to secure workers' gains diminishes daily, expressed in an ongoing decline in strike rates and numbers of workers involved in class conflicts that began in the 1980s. The opening years of that decade saw the totals of US workers involved in large strikes fall from 2,500,000 in the early 1970s to between 100,000 and 300,000. The same trend prevailed in Canada, where between 1982 and 1985 the annual strike count declined precipitously, down 30 per cent from comparable figures for the 1970s. In 1990 time lost to strikes in Canada dropped 66 per cent in one short year, and between 1976 and 2012, person-days lost to strikes plummeted from just under 1,200,000 to approximately 100,000. Annual strike tallies in Canada, which approached 1,000 at peak points of the 1970s, fell off from slightly less than 300 in the mid-1990s to around 200 in the opening years of the new century and then collapsed to a mere 125 in 2006. By 2018 the yearly

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Toronto, 6 October 2017.

80. See, for a more nuanced and informed analysis, Mike Davis, "The Great God Trump and the White Working Class," *Catalyst* 1, 1 (2017): 151–172.

81. See, for one comment, Herman Rosenfeld, "CAMI Strike 2017: After Another Setback Can Unifor Move On?," *The Bullet* 1500 (24 October 2017). The late November 2018 announcement that the Oshawa General Motors plant would be closed, along with a number of GM auto factories in the United States, led to calls by Unifor president Jerry Dias for a 40 per cent tariff on automobiles produced in Mexico. James McCarten, "Unifor Head Jerry Dias to Trudeau: Get Tough with GM, Trump Style," *HuffPost Canada*, 28 November 2018, [https://www.huffingtonpost.ca/2018/11/28/jerry-dias-gm-canada-trudeau\\_a\\_23603786/](https://www.huffingtonpost.ca/2018/11/28/jerry-dias-gm-canada-trudeau_a_23603786/).

total had further fallen to half that number. As the days lost to strikes annually plunged in the United States from a post–World War II high of 60,000,000 to a mere 180,000 in 2010, one young militant commented that “it might be an exaggeration to state that today the strike is nearly extinct, but not by much.” Collective experiences of this kind, reflected in material losses of income, also have a way of imprinting themselves on the consciousness of individuals. Alongside intensification of work and increasingly sophisticated technologies of surveillance integrated into the labour process, the consequence has been not only less resistance on the job but, more ominously, an increase in fear. As Robert Fitch stated in 2006, “Millions in the Home of the Brave are afraid to risk being seen going to the toilet on company time.”<sup>82</sup>

This neoliberal shift in the terms of trade between the contending classes, driven by fiscal austerity and targeting both the welfare state and the trade union movement, constituted nothing less than a successful class war waged from above. It drove back the gains of the dispossessed, whether their place in the unequal social order was secured by the rights of organized labour or by the welfare entitlements of the poor. If these disciplining attacks seemed colour blind, they undeniably undermined the material lives of Blacks and other people of colour, who had benefitted disproportionately as the construction of the welfare state and the trade union and civil rights movements marched vigorously forward in tandem from 1945 to 1970.<sup>83</sup>

### Poor Law and Criminalization: The Culture of Poverty Revisited

IN THE THIRD COMPONENT of the modern North American poor law regime, criminalization of everyday life among the dispossessed, the targeting of Indigenous peoples, Blacks, and Latinos is all too clear. When *Time* magazine announced, in 1977, that a menacing underclass was terrorizing America’s inner cities, there was no mistaking the racialized essence of this “unreachable” stratum. The underclass, according to *Time*, was defined by drug use, juvenile delinquency, dropping out of school, crime, teenage pregnancy, high

82. Cowie, *Stayin’ Alive*, 363; Goldfield & Palmer, “Canada’s Workers Movement,” 164–165; Workman, *If You’re in My Way*, 60–78; McBride, *Working?*, 214; Micah Uetricht, *Strike for America: Chicago Teachers against Austerity* (London: Verso, 2014), 114; Kristie Ball, “Workplace Surveillance: An Overview,” *Labor History* 51, 1 (2010): 87–106; Robert Fitch, *Solidarity for Sale: How Corruption Destroyed the Labor Movement and Undermined America’s Promise* (New York: Public Affairs Press, 2006), 36.

83. For instance, in the United States over the course of the 1960s, the proportion of Black males in white-collar jobs increased from 11 per cent to 28 per cent, compared with a much smaller increase for white males, from 37 to 43 per cent. Between 1959 and 1977 the median income of Black male employees rose from 59 per cent to 69 per cent of the median for whites. See Katz, *In The Shadow*. Frances Fox Piven notes that “between 1960 and 1968 ... welfare expenditures nearly tripled, and most of that increase occurred in the 121 most urbanized counties ... with blacks getting a disproportionate share.” Piven, “The Great Society as Political Strategy,” in Cloward & Piven, *Politics of Turmoil*, 282.

unemployment, and dependence on welfare. Classified by Ken Auletta in 1982, the underclass was coded in a discourse of race. It was composed of long-term welfare recipients; street criminals associated with drug addiction and truncated educational histories; urban hustlers whose political economy was that of the underground; and a permanent traumatized population of homeless vagrants, the lowest of Skid Row's drunks, drifters, and denizens of the urban alleyways peopled with non-reserve "Indians," shopping-bag ladies, and refugees from a faltering mental health industry.<sup>84</sup>

"Broken Windows," "Streets to Homes," and "Safe Streets" responses to ostensible urban crisis, evolving from the 1980s to the 2000s, were the proactive aggressive policing of inconsequential street offences committed by the homeless and the poor, many of whom were youth of colour in the United States, and a reform-minded removal of the most destitute from downtown cores. Toronto, like New York City before it, became subject to an "architecture of the evicted." The summer of 1999 witnessed a war on squeegee cleaners, whose innovative entrepreneurial twist to begging and solicitation by cleaning car windows at stoplights was hailed as blighting urban space in Ontario's metropolis. The resulting "Safe Streets Act" banned "aggressive," space-specific personal requests for "the provision of money," targeting an easily identifiable contingent of street youth.<sup>85</sup>

84. "The American Underclass," *Time*, 29 August 1977, 14–15; Auletta, *The Underclass*, xvi. Auletta's typology did not mention Indigenous peoples, but there is no doubt that urban Aboriginals are often presented as part of the underclass. That the underclass designation was racialized, and applied particularly to Black people, is evident in the essays in Katz, ed., *The "Underclass" Debate*. For Indigenous peoples, note the discussion in Christina Heatherton, "Policing the Crisis of Indigenous Lives: An Interview with the Red Nation," in Jordan T. Camp & Christina Heatherton, eds., *Policing the Planet: Why the Policing Crisis Led to Black Lives Matter* (London and New York: Verso, 2016), 109–119; Coulthard, *Red Skin, White Masks*, 175–176; Bonita Lawrence, *"Real" Indians and Others: Mixed-Blood Urban Native Peoples and Indigenous Nationalism* (Vancouver: UBC Press, 2004); Hugh Shewell, *"Enough to Keep Them Alive": Indian Welfare in Canada, 1873–1965* (Toronto: University of Toronto Press, 2004); Ian Adams, William Cameron, Brian Hill & Peter Penz, *The Real Poverty Report* (Edmonton: Hurtig, 1971), 68–74; Hugh Brody, *Indians on Skid Row* (Ottawa: Northern Science Research Group, Department of Indian Affairs, 1971).

85. On the ideology of "broken windows," a New York policing initiative that targeted relatively minor offences deemed to negatively affect "the quality of urban life," such as youth breaking windows in abandoned buildings, smashing lighting, loitering, being rowdy, or even wearing clothing deemed inappropriate by police, see the many essays in Camp & Heatherton, eds., *Policing the Planet*, and the original influential statement: George L. Kelling & James Q. Wilson, "Broken Windows: The Police and Neighborhood Safety," *Atlantic*, March 1982 – expanded on in Kelling & Catherine Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities* (New York: Free Press, 1996). The "broken windows" policies, implemented first and most decisively in New York City, were soon reproduced across the country. On the Los Angeles case, see Mike Davis, *City of Quartz: Excavating the Future in Los Angeles* (London and New York: Verso, 1990), 221–263. Such policing practices in Toronto, associated with Ontario's Safe Streets Act and the war waged on "squeegee entrepreneurs," are outlined in Palmer & Héroux, *Toronto's Poor*, 350–359; and in many of the essays in Hermer

In Canada, three consecutive Conservative governments led by Stephen Harper developed “tough on crime” policies that significantly expanded the number of offences under the Criminal Code and the Controlled Drugs and Substances Act that carried mandatory minimum penalties, as well as placing barriers in the way of securing pardons. By its more draconian sentencing practices and by doubling the wait time required before applying for a pardon, designating certain categories of the criminalized as unpardonable, and imposing extortionate user fees of over \$600 for pardon applications, Harper’s Tories necessarily reconfigured the rate of imprisonment upward. Tougher and often irrational bail conditions, as well as trial and sentencing delays, exacerbated a trend that kept more people in jail even before conviction, warehousing those unfortunate enough to be remanded and increasingly forced to await their “day of reckoning” in maximum-security superjails. A rhetoric of rehabilitation, commonplace in the correctional language of penology for a century and more, went by the wayside as crime and its treatment were subject to a harsh, often militaristic model of deterrence-based accountability. This, as Dawn Moore and Kelly Hannah-Moffat have argued, borrowing from US theorist Jonathan S. Simon, was premised on a new “penalty of cruelty,” in which a politics of vengeance takes “satisfaction at the suffering implied by, or imposed by, punishments,” which also, as will be addressed below, were being looked to for profitable purpose. Between 1960 and 2006 the incarceration rate in Canada had been relatively stable, but thereafter, through to 2015, it increased 20 per cent at the provincial level and 14 per cent at the federal. Needless to say, the increase in prisoners registered most decidedly among certain groups: Canada’s prisons saw the number of Black individuals incarcerated soar by 78 per cent, women’s imprisonment climb equally startlingly, by 77 per cent, and the Indigenous inmate population, already significantly overrepresented, jump by 52 per cent.<sup>86</sup> Such figures suggest that even if the

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& Mosher, eds., *Disorderly People*. See also Todd Gordon, “The Political Economy of Law and Order Policies: Policing, Class Struggle, and Neoliberal Restructuring,” *Studies in Political Economy* 75, 1 (2005): 53–77; Rosalyn Deutsche, “Architecture of the Evicted,” *Strategies: A Journal of Theory, Culture, and Politics*, no. 3 (1990): 159–183. “Streets to Homes” programs target the homeless poor and relocate them to accommodations, a seemingly benign approach that in fact further marginalizes, isolates, and harms dispossessed populations. Such initiatives often remove the poor from visible downtown locations, where they congregate to access services, and relocate them on urban peripheries where the housing stock is rife with problems and social services addressing the health and welfare of the poor are often absent.

86. Jarrod Shook & Bridget McKinnis, “More Stormy Weather or Sunny Ways? A Forecast for Change by Prisoners of the Canadian Carceral State,” *Journal of Prisoners on Prisons* 26, 1/2 (2017): 271–272, 276, 297; Elizabeth Comack, Cara Fabre & Shanise Burgher, *The Impact of the Harper Government’s “Tough on Crime” Strategy: Hearing from Frontline Workers* (Winnipeg: Canadian Center for Policy Alternatives, 2015), 3; Dawn Moore & Kelly Hannah-Moffat, “Correctional Renewal without the Frills: The Politics of ‘Get Tough’ Punishment in Ontario,” in Hermer & Mosher, eds., *Disorderly People*, 105–121; Jonathan S. Simon, “Entitlement to Cruelty: The End of Welfare and the Punitive Mentality in the United States,” in Kevin Stenson

incarceration rate in Canada lags significantly behind the astronomically high figures for the United States, similar trends are at work in the penal practices of both countries.

Indeed, little distinguished these Canadian policing and “social betterment” practices and policies from the racist theorizations of Black pathology and urban dysfunction associated with Daniel Patrick Moynihan’s 1960s understanding of the maternalist deformation of the African American family. This could easily develop, in the different context of the 1990s, into a typecasting of the chiselling Black welfare mother.<sup>87</sup> At the core of such conceptualization were racialized assumptions evident in earlier and influential paradigms, like Edward Banfield’s *The Unheavenly City* (1974) and Oscar Lewis’ earlier and more nuanced “culture of poverty” thesis. Historically rooted cultural differences in specific racial and ethnic groups, rather than capitalist crisis and its myriad restructurings, along with ever-present systemic exclusion and racial segregation/marginalization, explained poverty, inequality, and the social dysfunction that seemed to some poised to overwhelm urban living in America.<sup>88</sup> Such views even influenced the more rurally focused arguments in Michael Harrington’s influential social democratic *exposé*, *The Other America* (1962).<sup>89</sup>

All of this also complemented a cavalier turning of a blind eye to epidemics of murdered and missing Indigenous, Black, and Latino women. Erupting from Boston to Charlotte to Seattle and across Canada (Winnipeg and Vancouver

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& Robert R. Sullivan, eds., *Crime, Risk and Justice: The Politics of Crime Control in Liberal Democracies* (Cullompton, England: Willan, 2001), 126–127.

87. For a discussion and republication of Moynihan’s report, “The Negro Family: The Case for Action” – originally submitted by Moynihan, then working in the Office of Planning and Research of Lyndon Johnson’s Department of Labor – see Lee Rainwater & William L. Yancey, *The Moynihan Report and the Politics of Controversy* (Cambridge, Massachusetts: MIT Press, 1967). An extensive historical criticism, directed against Moynihan’s explanation of the pathologies of the Black family as rooted in slavery’s destruction of Black families composed of fathers and mothers, is Herbert G. Gutman, *The Black Family in Slavery and Freedom, 1750–1925* (New York: Pantheon, 1976). The “Culture of Poverty” syndrome seems to be having something of a recent revival; see Chris Maisano, “The New ‘Culture of Poverty,’” *Catalyst* 1, 2 (2017): 195–208.

88. Edward C. Banfield, *The Unheavenly City Revisited* (Boston: Little, Brown, 1974); Oscar Lewis, *The Children of Sanchez* (New York: Random House, 1961); Lewis, *La Vida: A Puerto Rican Family in the Culture of Poverty – San Juan and New York* (New York: Random House, 1966); Lewis, “The Culture of Poverty,” *Scientific American* 215, 4 (1966): 19–25; Lewis, “The Culture of Poverty,” in Daniel Patrick Moynihan, ed., *On Understanding Poverty: Perspectives from the Social Sciences* (New York: Basic Books, 1969), 187–220. Banfield and the “culture of poverty” are usefully discussed in Katz, *The Undeserving Poor*, 9–78. As Robin D. G. Kelley has pointed out, this kind of cultural explanation had long been associated with American social commentary, hearkening back to the 19th-century writings of Herbert Spencer and William Graham Sumner. See Kelley, “Thug Nation: On State Violence and Disposability,” in Camp & Heatherton, eds., *Policing the Planet*, 25–26.

89. For a discussion of the “culture of poverty” and Harrington’s *The Other America* (New York: Macmillan, 1962), see Katz, *The Undeserving Poor*, 20.



being specific centres), these sexualized “ethnic cleansings” troubled police and politicians all too little. They simply confirmed a deep-seated prejudicial stereotyping of women of colour, whose lives were largely defined by the street, their persons regarded as illicit and diseased bodies of no consequence. Reduced to litter to be disposed of in campaigns of containment, these disappeared women mattered so little because they had been subject to a long process of denigration, a social construction that defined them as problematic human refuse that was better off gone.<sup>90</sup>

This was all, finally, very much related to a longer post-civil rights-era criminalization and over-incarceration of Red, Black, and Brown populations that reached back to the 1960s and seemingly liberal reforms of “race-blind” laws. This punitive legislation supposedly aimed to protect respectable peoples of colour from the “bad apples” in their midst, prone to riot and threaten, disfiguring the urban streetscape with their nefarious doings.<sup>91</sup> At the same time that a seemingly ascendant and successful civil rights movement established the potential for building solid foundations of equality, and an ostensible “war on poverty” sounded the rhetorical cry of elevating all to an acceptable standard of living, the cornerstones of the “carceral state” were being laid.

90. Combahee River Collective, “Why Did They Die? A Document of Black Feminism,” *Radical America* 13, 6 (1979): 41–51; Kelley, “Thug Nation,” esp. 19–20; David Hugill, *Missing Women, Missing News: Covering Crisis in Vancouver’s Downtown Eastside* (Halifax: Fernwood, 2010).

91. Black and Latino over-incarceration is well known, and prisoners from these designated groups constitute 59 per cent of incarcerated peoples, although they make up roughly 25 per cent of the United States population. Black males are 6.5 times more likely to be living behind bars than white men, and more than half of young Black men in major urban centres are either incarcerated or saddled with criminal records that limit their rights as citizens and constrict their opportunities. See Hinton, *War on Poverty*, 5; E. Ann Carson, “Prisoners in 2013,” *Bureau of Justice Statistics Bulletin*, US Department of Justice, Office of Justice Programs, Washington, DC, last revised 30 September 2014, 1; Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006), 31, 195; Alexander, *The New Jim Crow*, 16. On the historic over-incarceration of Indigenous peoples in Canada, which is now at a rate ten times that of non-Aboriginal people, see Canada, Office of the Correctional Investigator, “Backgrounder: Aboriginal Offenders – A Critical Situation,” modified 16 September 2013, <https://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx>; Dick Fidler, *Red Power in Canada* (Toronto: Vanguard, 1970); Jeremy Hull, *Natives in a Class Society* (Saskatoon: One Sky, 1981); Satzewich & Witherspoon, *First Nations*, 90; Bryan D. Palmer, *Canada’s 1960s: The Ironies of Identity in a Rebellious Era* (Toronto: University of Toronto Press, 2009), 385. Critical commentary on the over-incarceration of African Americans in the United States has prompted a conservative Black response, dismissive of white liberals and radicals who, it is claimed, would rather defend degenerate elements among the Black population than respectable working- and middle-class Black individuals who are besieged by crime. See James Forman Jr., *Locking Up Our Own: Crime and Punishment in Black America* (New York: Farrar, Straus and Giroux, 2017); Michael Javen Fortner, *Black Silent Majority: The Rockefeller Drug Laws and the Politics of Punishment* (Cambridge, Massachusetts: Harvard University Press, 2015).



## The Carceral State's Prison-Industrial Complex

ELIZABETH HINTON AND Marie Gottschalk have painted an unmistakable portrait, whatever the nuanced hues of difference, of how Black and Latino militancy and demands for community control were subverted by a subtle and relentless state-orchestrated set of anti-crime policies.<sup>92</sup> Especially in the aftermath of the explosive “race riot” conflagrations that rocked American inner cities in the mid- to late 1960s, this carceral turn monitored welfare programs. It focused on Black youth as a criminal subgroup, waged war on gangs through increasingly militarized police forces and severe sentencing guidelines, reconfigured urban space in a relentless quest for “security,” and developed new methods of surveillance directed at “tracking” deviant populations. By 1992 the Los Angeles Police Force (LAPD) had 47 per cent of the city’s African American males aged 21 to 24 in their gang database. Mike Davis pioneered an exploration of this developing “carceral city” in his 1990 study, *City of Quartz: Excavating the Future of Los Angeles*. He noted how law-and-order land use had “taken the form of a de facto urban renewal program,” headed by police agencies and innumerable private security companies, threatening to “convert an entire salient of Downtown-East Los Angeles into a vast penal colony.” In the wake of plant closures and the deindustrialization of the once manufacturing-proud East LA during the 1970s and 1980s, overcrowded jails, housing some 25,000 prisoners, vied with hospitals and the health sector as the most important employer and economic force in the west coast metropolis.<sup>93</sup>

Ongoing austerity only naturalized this carceral expansion, a development highlighted by the ways in which the Canadian government, hosting G8 and G20 summits in 2010, utilized the threat of dissent in Toronto to expand the parameters of “securitization.” In the deployment and outfitting of 21,000 federal, provincial, and municipal police, at a cost approaching \$1 billion, the political climate was structured toward the reification of security and surveillance that feeds into the carceral mindset. Moreover, the vast expenditure, which included over \$700,000 that the Toronto Police Services subsequently invested in repurchasing closed-circuit television cameras and fibre optic network technology, was justified by Police Chief Bill Blair on the grounds that these recycled devices would be put to good use in city neighbourhoods

92. Hinton, *War on Poverty*; Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press, 2015).

93. Greg Howard, “A Lamentation for a Life Cut Short,” *New York Times Book Review*, 13 October 2017; Davis, *City of Quartz*, 254. See also Todd Gordon, *Cops, Crime and Capitalism: The Law-and-Order Agenda in Canada* (Halifax: Fernwood, 2006); Kevin D. Haggerty & Richard V. Ericson, *The New Politics of Surveillance and Visibility* (Toronto: University of Toronto Press, 2006); Stephen Graham, *Cities under Siege: The New Military Urbanism* (New York and London: Verso, 2010); Todd Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (New York: Oxford University Press, 2007).

plagued with “violence and difficulty.” These were code words that signalled a racialized fixation on drugs, gangs, and the containment of Black youth.<sup>94</sup>

Episodic mega-events such as summits easily feed into the infrastructure of a new poor law regime. Monitoring movements, of both threatening populations and mobilizations of opposition, gives rise to what scholars have called “public order policing,” “spectacular security,” and “securitized policing.”<sup>95</sup> Inside Canadian prisons, moreover, this securitization was increasingly evident in the early 21st century in expansion of the drug-detector dog program, new search practices implemented with greater frequency, the rising number of random urinalysis tests conducted on prisoners, and expanding budgets for scanning technologies used to secure prison perimeters. Much of this intensified surveillance was directed at prisoners deemed to be dissidents and involved a program of National Radicalized Offender Threat Assessment that partnered the Canadian Security Intelligence Service (CSIS) and American bodies such as the Federal Bureau of Prisons (FBI) and the Federal Bureau of Investigation (FBI).<sup>96</sup> In 2011, the GEO Group, one of America’s largest private prison conglomerates, purchased Behavioral Interventions, a corporate pace-setter in electronic monitoring. The GEO Group, acutely aware of arguments and public pressure for decarceration, decided to get ahead of the curve. Recognizing that more and more of those convicted for minor offences would be allowed to forego imprisonment by agreeing to be electronically monitored,

94. See, for instance, Donna Murch, “Crack in Los Angeles: Crisis, Militarization, and Black Response to the Late Twentieth-Century War on Drugs,” *Journal of American History* 102, 1 (2015): 162–173.

95. I draw on an excellent master’s thesis: Evan Brockest, “Dissent Denied: Public Order Policing and the Criminalization of Protest at the 2010 Toronto G20,” MA thesis, Trent University, 2016. See, as well, Philip Boyle & Kevin D. Haggerty, “Spectacular Security: Mega-Events and the Security Complex,” *International Political Sociology* 3, 3 (2009): 257–274; Luis A. Fernandez, *Policing Dissent: Social Control and the Anti-Globalization Movement* (Piscataway, New Jersey: Rutgers University Press, 2008); Veronica Kitchen & Kim Rygiel, “Privatizing Security, Securitizing Policing: The Case of the G-20 in Toronto, Canada,” *International Political Sociology* 8, 2 (2014): 201–217; Jeffrey Monaghan & Kevin Walby, “‘They Attacked the City’: Security Intelligence, the Sociology of Protest Policing and the Anarchist Threat at the 2010 Toronto G20 Summit,” *Current Sociology* 60, 5 (2012): 653–671; Alex S. Vitale, “From Negotiated Management to Command and Control: How the New York Police Department Polices Protest,” *Policing & Society* 15, 3 (2005): 283–304; Neil Smith & Deborah Cowen, “Martial Law in the Streets of Toronto: G-20 Security and State Violence,” in Tom Malleon & David Wachsmuth, eds., *Whose Streets? The Toronto G-20 and the Challenges of Summit Protest* (Toronto: Between the Lines, 2011), 139–164.

96. Shook & McInnis, “More Stormy Weather,” 272–273; Jeffrey Monaghan, “Security Traps and Discourses of Radicalization: Mapping the Surveillance of Muslims in Canada,” *Surveillance & Society* 12, 4 (2014): 485–501; Ivan Zinger, “Human Rights and Federal Corrections: A Commentary on a Decade of Tough on Crime Policies in Canada,” *Canadian Journal of Criminology and Criminal Justice* 58, 4 (2016): 609–627.

paying fees of up to \$2,500 yearly for this surveillance, GEO opted to exploit a profitable technological niche in the criminal justice marketplace.<sup>97</sup>

The rise of mass incarceration is thus strikingly pervasive, marketed with aplomb.<sup>98</sup> Not only can it not be reduced to a consequence of either a narrow politics or the mega-event, but its potential for paying dividends extends even into its seeming negation, a scaling down of actual prison confinement. It is undoubtedly driven by tough-on-crime conservatism and the political economy of profit-making privatization. Yet it also finds support among other, more liberal constituencies, as developments of the reform-minded 1960s and the Clinton administration's policies on crime in the 1990s demonstrate.<sup>99</sup> Moreover, as crime became a commodity, through which the surplus-producing poor could be exploited by the new magnates of the prison-industrial complex, processes of criminalization, job creation, and provisioning and disciplining the dispossessed fused.<sup>100</sup> In late capitalism's unique neoliberal constellation of deindustrialization, the declawing and decertifying of unions, and the dismantling of welfare, the prison has emerged as one of the few "factories" able to keep producing in a rare market of shrinking possibilities, its wages bill ceiling being considerably lower than that of non-prison labour.<sup>101</sup>

Moreover, as Donna Murch has shown insightfully, the burgeoning criminal justice system "makes money though asset forfeiture, lucrative public contracts from private service providers, and by directly extracting revenues and unpaid labor from populations of color and the poor." Many states charge prisoner fees, ranging from \$9.25 a day to as much as \$49, and if the accumulated debt is not paid, the sentence is extended. As Murch suggests, this constitutes a vicious cycle culminating in a new "debtors' prison," the origins

97. Donna Murch, "Paying for Punishment: The New Debtors' Prison," *Boston Review*, 1 August 2016, <http://bostonreview.net/editors-picks-us/donna-murch-paying-punishment>.

98. See, for instance, Justin Piché, Shanisse Kleuskens & Kevin Walby, "The Front and Back Stages of Carceral Expansion Marketing in Canada," *Contemporary Justice Review* 20, 1 (2017): 26–50.

99. On the Clintons and crime, welfare, and other issues of relevance, see a number of the essays in Liza Featherstone, ed., *False Choices: The Faux Feminism of Hillary Rodham Clinton* (New York and London: Verso, 2016).

100. To my knowledge, use of the term "prison-industrial complex" became commonplace in the 1990s. It may well have first been used in the second edition of Angela Y. Davis, *Women, Race and Class* (New York: Vintage 1989), and elaborated on in Davis, "Masked Racism: Reflections on the Prison Industrial Complex," *Colorlines*, 10 September 1998. Mike Davis also used the term in his "Hell Factories in the Field: A Prison-Industrial Complex," *The Nation*, 20 February 1995, 229–234. See Kimberlé W. Crenshaw, "From Private Violence to Mass Incarceration: Thinking Intersectionally about Women, Race, and Social Control," *UCLA Law Review* 1418 (2012): 1420n1.

101. Note the discussion in Heather Ann Thompson, "Rethinking Working-Class Struggle through the Lens of the Carceral State: Toward a Labor History of Inmates and Guards," *Labor: Studies in Working-Class Histories of the Americas* 8, 3 (2011): 15–45.

of which lie in the soaring use of the criminal justice system to recover bad debt in the first place. With the poor paying in this way it is not surprising that some locales, such as Ferguson, Missouri, whose tax base has perhaps eroded in an era of capital flight and job loss, have turned to what Murch rightly designates a “public predation on black residents.” Public-safety court fines comprised 20 per cent of the municipality’s operating revenue in 2013, this “income” of roughly \$2,500,000 derived from issuing thousands of warrants for minor violations. Such local ordinance “ticketing” represented an increase of an astounding 80 per cent in a two-year period. Not surprisingly, 95 per cent of the people cited in Ferguson for such trivial and largely harmless offences as “failure to comply” and “manner of walking in the roadway,” were African American, subjected to a form of poor law taxation both punitive and perverse. This was the all-too-often unappreciated background of the police killing of eighteen-year-old Michael Brown in Ferguson on 9 August 2014, an event that, along with earlier examples of police murders of young Black men, precipitated the Black Lives Matter movement into prominence.<sup>102</sup>

Beyond cities, in rural and small-town outposts of a “rustbelt” Canada and the United States, the prison-industrial complex has also established itself as a rare employment opportunity for white youth, a development highlighted in the personalized narratives that structure Heather Ann Thompson’s recent exploration of upstate New York’s Attica prison uprising of 1971. That this development – poorly trained white “corrections officers” securing work in non-metropolitan settings, their jobs being to guard burgeoning prison populations facing awful and worsening conditions and overwhelmingly made up of Blacks and Latinos from the inner city – resulted in intensified racism is hardly surprising. Yet, for capitalism caught in the throes of obvious and proliferating crises, the cost-benefit analysis of this deteriorating state of affairs seemed clear. Mike Davis noted, in 1995, that the mushroom-like growth of the rural Californian prison system had become a dominant force in the west coast countryside, competing with “land developers as the chief seducer of legislators in Sacramento.” Its “uncontrollable growth,” Davis wrote, “ought to rattle a national consciousness now complacent at the thought of a permanent prison class.”<sup>103</sup>

But little effective rattling of the anti-prison-industrial complex sabres was indeed forthcoming, even as “realignment” Supreme Court decisions established that crises of overcrowding and inadequate medical and health care within penitentiaries were nothing less than violations of prisoners’

102. Murch, “Paying for Punishment.”

103. See, for instance, Heather Ann Thompson’s discussion of Michael Smith in Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy* (New York: Pantheon, 2016), 43–44; Davis, “Hell Factories in the Field,” 229. On California, see Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Oakland: University of California Press, 2007).

constitutional rights. Indeed, by 2012 California had approved applications from 21 counties seeking to build facilities costing \$1.2 billion and providing 10,000 new jail beds. As the construction of various correctional facilities and penitentiaries became an alternative to deindustrialization, prison building, in the words of one commentator, had essentially “gone local.” Critics found it almost impossible to monitor the abysmal conditions in California’s often isolated and wildly expanding jail system, where 150 crime containment centres were scattered across 58 counties. The pride of California’s carceral state system is undoubtedly the 275-acre Pelican Bay penitentiary complex at Del Norte County’s Crescent City, nestled in the state’s forested Oregon border and housing the “supermax” solitary confinement unit constructed to keep the “worst of the worst” prisoners locked down for 22 to 23 hours a day in complete isolated confinement. But it is supplemented by scores of smaller and less ultra-modern institutions. If Pelican Bay boasts of being the most secure, intimidating, and isolating penitentiary complex in the United States, its lesser equivalents, spreading across California counties like a poor law infrastructural plague, have contributed to the gilded reputation of Golden State jails as “the worst blight in American corrections.”<sup>104</sup> Out of conditions like these developed, in the summer of 2016, the largest prisoners’ strike in the penal history of the United States.<sup>105</sup>

Canadian developments may seem benign by comparison. Yet they invariably parallel and draw on the US example. A preference for “administrative centralization,” evident since Confederation, coincided in the 1990s with the changing political climate to produce a Canadian shift toward the creation of large regional prisons. These replaced scattered local jails with massive correctional facilities “specializing” in particular kinds of inmate populations and constructed along the lines of US “supermax” penitentiaries. Such penal complexes are often “American” by design. At the level of a visionary remaking of the social order, they are inspired by neoliberal understandings of how best to restructure the state, privatize the political economy, and profit from the incarceration industry, while in the nuts and bolts of their actual construction, these Canadian prisons rely on prefabricated cells imported from the United States.<sup>106</sup>

104. See Gottschalk, *Caught*; Heather Schoefield, “Mass Incarceration and the Paradox of Prison Conditions Litigation,” *Law & Society Review* 44, 3/4 (2010): 731–768; Keramet Reiter, 23/7: *Pelican Bay Prison and the Rise of Long-Term Solitary* (New Haven: Yale University Press, 2016).

105. Mike Elk, “The Next Step for Organized Labor: People in Prison,” *The Nation*, 11 July 2016; Alice Spier, “The Largest Prison Strike in U.S. History Enters Its Second Week,” *The Intercept*, 16 September 2016; Joe Palazzolo & John R. Emshwiller, “Prisoners Stage Co-ordinated Strikes in Several States,” *Wall Street Journal*, 14 September 2016.

106. Amy Johanna Buitenhuis, “Public-Private Partnerships and Prison Expansion in Ontario: Shifting Governance, 1995 to 2012,” MA thesis, University of Toronto, 2013; Greg McElligott, “A Tory High Modernism? Grand Plans and Visions of Order in Neoconservative Ontario,”

Judah Schept has provided a suggestive ethnography of how this growth of the penitentiary in times and places of economic downsizing can encapsulate “justice campuses” that address the closing down of conventional workplaces, the building of prisons, and the devolution of welfare. In Bloomington and the surrounding Monroe County, Indiana, studied by Schept, a proposed carceral complex seemed to many a direct answer to three major employers that had closed their doors. An 85-acre site was earmarked for development as an entrepreneurial criminal justice suite of institutions and programs that would include a jail, a juvenile facility, and a work release centre. There were suggestions, often emanating from progressives, even ostensible socialists, to integrate into this institutional articulation of the justice system specialty courts and various initiatives, some consciously constructed as models of child saving, that Schept argues “collapsed welfare and carceral into a singular vision.” This imagined community proved something of an “archipelago of alternatives extending beyond the justice campus,” constructing the county’s poor as “not only occupying fragile economic situations but also as possessing a set of racialized and inferior behavioral and cultural practices” that could only be ameliorated by “education, treatment, and acculturation to middle-class status.” A redemptive project of this magnitude and ideological character demanded nothing less than an expanding carceral state, a *new new poor law* regime “capable of extraordinary incarceration [relying on] racial and class tropes from prior eras to justify increased detention of youth.” In the post-1999 envisioned conversion of a derelict site of capital departures, once home to the largest television production facility in the world and abandoned successively by RCA, General Electric, and the French conglomerate Thomson Electronics, the Monroe County experience neatly captures parallel trajectories. A political economy of deindustrialization and a new poor law’s racialized ideological underpinnings and ultimate class purpose fuse. This underscores precisely how carceral expansion can be promoted as “a project of therapeutic justice and rehabilitation rather than of punishment,” a process extending a post-civil rights movement racial amnesia at the same time that it promises answers to capitalism’s crisis of accumulation. As Schept shows, what happened in this case study of deindustrialization and mass incarceration took place within a particular context: “the exodus of manufacturing jobs, shady partnerships between private capital and public policy, and incarceration as the catchall solution to problems raised by capital’s departure.” Schept provides nothing less than a revealing excavation of the making of the new poor law regime. It is all the more valuable for its insight not only that this development relies on the ideological stick of reactionary retribution (as important as that is in recent history) but also that it can be guided by the carrot of ostensibly caring liberal (albeit racialized and paternalistic) humanism.<sup>107</sup>

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*Critical Criminology* 16, 2 (2008): 123–144.

107. Judah Schept, *Progressive Punishment: Job Loss, Jail Growth, and the Neoliberal Logic of*



## A Punitive Theatre of the Absurd

IN AN UNDERAPPRECIATED political satire of the politics of accommodation in the 1990s, Warren Beatty's *Bulworth* (1998) provides a stark, if outlandish, commentary on the class and race realities that undergirded such developments. A jaded Clinton Democratic senator, Jay Billington Bulworth (Beatty), asks the streetwise Black daughter of a 1960s militant, Nina (Halle Berry), "Why do you think there are no more black leaders?" Nina's staccato-like response is telling: "Some people think that it is because they all got killed. But I think it has more to do with the decimation of the manufacturing base in the urban centres. An optimist energized population throws up optimistic energized leadership. ... When you shift manufacturing to the Sun Belt and the Third World you destroy the blue-collar base of the black activist population. ... I am just a materialist at heart. Look at the economic base. Higher domestic employment means jobs for African Americans. ... That is what energized the community for the civil rights movement of the 1950s and 1960s. An energized hopeful community will not only produce leaders, but leaders they will respond to." Bulworth, despairing of life in the fake politics of capitalism, corruption, and the unbridled power of class interests, takes his ultra-cynicism to a political rally at a Black church in Compton. He is asked by an irate African American woman if he is actually telling his constituents that the Democratic Party does not care about Black well-being. "Isn't it obvious?" Bulworth rants. "You've got half of your kids out of work, and the other half in jail. Do you see any Democrat doing anything about it? ... Come on, what are you going to do? Vote Republican?" And the background to this political reality is an urban core patrolled by drug gangs harassed by racist police, the Los Angeles of Mike Davis' post-Chandler noir, where Bloods, Crips, and their metaphorical off-spring war with an LAPD cast in the image of Chief Daryl Gates.<sup>108</sup>

This is the theatre in which the new punitive poor law has been staged. It is orchestrated, in part, by a purposively performative war on drugs that the capitalist state benefits from losing. Targeting the small corner pushers and already marginalized users, the state's assault on the street-level commerce of the drug trade largely leaves the powerful critical suppliers in the international criminal cartels to flourish, often in ways that shore up capital's

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*Carceral Expansion* (New York: New York University Press, 2015), 25–27.

108. *Bulworth*, dir. Warren Beatty (Los Angeles: Twentieth Century Fox, 1998); Davis, *City of Quartz*, 25–322. For a congruent discussion of Black leadership that touches on a labour-Black alliance, see Thomas F. Jackson, "The State, the Movement, and the Urban Poor: The War on Poverty and Political Mobilization in the 1960s," in Katz, ed., "*Underclass*" Debate, 403–439. Of course, some of the militant Black (and Aboriginal) leadership of the 1960s was killed. See Ward Churchill & Jim Vander Wall, *Agents of Repression: The FBI's Secret War against the Black Panther Party and the American Indian Movement* (Boston: South End Press, 1988); Jeffrey Haas, *The Assassination of Fred Hampton: How the FBI and the Chicago Police Murdered a Black Panther* (Chicago: Chicago Review Press, 2011).

power and sustain imperialism's authority.<sup>109</sup> The war on drugs thrives amid manufacturing's decimation, welfare and trade union dismantling, and mass incarceration. These are the cornerstones of an imposing, if inherently unstable, new poor law edifice, a structure that aligns, once again, Democrats and Republicans, liberals and conservatives.

## Labour and the Prison-Industrial Complex

AS THE 1960S GAVE WAY to the 1990s the waning military-industrial complex, no longer able to be bankrolled so lucratively and easily by state largesse ceding large capitalist corporations cost-plus-profit contract certainties on armaments and outfitting the soldiery of a defeated (Vietnam) imperialism, was supplemented with a prison-industrial complex. It incorporates federal, state-run, and private-sector prisons, with a proliferating cast of supporting institutional, criminal justice, welfare, and trade union characters. Indeed, prison labour is now a major military supplier with the formerly named Federal Prison Industries, a government corporation in charge of penal workers, rebranded in 1977 under the trade designation UNICOR. It holds defence contracts for helmets, protective goggles, and missile cables, among other martial products. Nearly half of UNICOR's \$900,000,000 in 2011 revenues came from military contracts, putting it on a par with Xerox and making it the country's 56th-largest contractor with the United States Armed Forces.<sup>110</sup>

Developments of a comparable kind in Canada are less robust. Nonetheless, by the 1970s Ontario's Ministry of Correctional Services led the way in establishing temporary absence programs (TAPS), allowing prisoners to work in community settings, and outside managed industrial programs (OMIPs), which introduced private management of prison industries. If such programs did not affect large numbers of prisoners, they paved the way for Ontario Federation of Labour–government discussions that would lead to the possibility of prisoners, who worked for catering, automobile parts, meatpacking, and wheelchair-producing enterprises, being represented by unions, their work and its conditions covered under collective bargaining agreements.<sup>111</sup>

This carceral state-economy was a rare oasis of seeming economic opportunity in the desert of deindustrialization, and one that public-sector unions could rally around in the arid climate of job loss. Gottschalk notes that the

109. Of many possible studies, see Julilly Kohler-Housmann, "The Attila the Hun Law: New York's Rockefeller Drug Laws and the Making of a Punitive State," *Journal of Social History* 44, 1 (2010): 71–96; Murch, "Crack in Los Angeles"; Philippe Bourgeois, *In Search of Respect: Selling Crack in El Barrio* (Cambridge: Cambridge University Press, 1995).

110. Gottschalk, *Caught*, 59.

111. Jordan House, "When Prisoners Had a Union: The Canadian Food and Allied Workers Union Local 240," *Labour/Le Travail* 82 (Fall 2018): 12–19; Ernie S. Lightman, "The Private Employer and the Prison Industry," *British Journal of Criminology* 22, 1 (1982): 36–48.

California Correctional Peace Officers Association (CCPOA) was catapulted into prominence by the explosive growth of the state's prison system, allowing it to become a powerful, economically militant union. But in this transformation CCPOA also championed some of California's more egregiously punitive legislative initiatives, including the infamous "three-strikes law." An astounding 43,500 prisoners in the state are serving draconian sentences of 25 years to life under what some refer to as "the other death penalty" ordinance. Moreover, although African American men constitute a mere 3 per cent of California's population, they comprise a whopping 44 per cent of three-strikers among the state's prison inmates. Of all those incarcerated for three-strike infractions, fully half of them are serving their hard and long time because of infractions considered neither violent nor serious, including petty theft, minor drug possession, or, in one particularly egregious instance, snatching a piece of pizza from children. This is poor law with a vengeance. Even if CCPOA has moderated its get-tough-on-prisoners stand in recent years, and some unions of guards have periodically called attention to overcrowding and other unhealthy and unsafe prison conditions that harm and threaten the well-being of both correctional officers and prisoners, the role of organized labour has been all too clear. Trade unions now representing corrections personnel are, like police associations, prone to support law-and-order agendas, including practices such as solitary confinement, and to oppose reform measures on sentencing and other justice-related matters that would derail the juggernaut of mass incarceration. The American Federation of State, County and Municipal Employees (AFSCME) rallied behind the "supermax" prison complex at Tamms, Illinois, when its closure was broached. It is difficult not to see public-sector unions representing correctional officers and others whose wages are generated by the prison-industrial complex as defenders of the mass incarceration industry, even as it becomes crystal clear that this growing job-creation enterprise is undeniably a racialized hellhole.<sup>112</sup>

With 70 per cent of the imprisoned being people of colour, and Indigenous peoples in both Canada and the United States the single demographic group suffering the largest per capita rate of incarceration, there was no denying this. Indeed, the growing outcry over solitary confinement/segregation in Canadian penitentiaries highlights racialized difference, with increasing admissions to

112. Gottschalk, *Caught*, 71, 181–184; Heather Ann Thompson, "Downsizing the Carceral State: The Policy Implications of Prison Guard Unions," *Criminology and Public Policy* 10, 3 (2011): 771–779; James Ridgeway & Jean Casella, "Solidarity and Solitary: When Unions Clash with Prison Reform," *Prison Legal News*, June 2013, 12–14; Joshua Page, "Fear of Change: Prison Officer Unions and the Perpetuation of the Penal Status Quo," *Criminology and Public Policy* 10, 3 (2011): 735–770; Page, *The Toughest Beat: Politics, Punishment, and the Prison Officers Union in California* (New York: Oxford University Press, 2011). Contrast the position on prison guards as workers in Rebecca Hill, "'The Common Enemy Is the Boss and the Inmate': Police and Prison Guard Unions in New York in the 1970s–1980s," *Labor: Studies in Working-Class Histories of the Americas* 8, 3 (2011): 65–96; and Thompson, "Rethinking Working-Class Struggle."

segregation (8,300 in 2014–15) skewed toward Black and Indigenous prisoners but not affecting white inmates disproportionately.<sup>113</sup> In Canada, the evidence of Aboriginal over-incarceration is overwhelming and reaches back to the mid-20th century, accelerating in the 1960s and 1970s. By 1970, it was estimated that 30 per cent of the country's prisoners were from First Nations, although they constituted no more than 3 per cent of the population. In certain provinces, such as Saskatchewan, in which Indigenous peoples comprised less than 10 per cent of the total population, they nonetheless numbered 60 per cent of those incarcerated. Ratios of "Indian"/Métis to non-Aboriginal rates of imprisonment varied in the late 1960s and 1970s from 88 to 1 to 19 to 1, depending on gender and status.<sup>114</sup>

Indeed, the child services wing of the welfare system seemed a conduit to the penitentiary as the 1960s unfolded, with provinces like British Columbia seeing Indigenous children as a portion of the total number of youths and infants under the care of state agencies jump from less than 1 per cent to more than one-third. This was one part of the infamous Sixties Scoop, which saw Indigenous children removed by the state from their homes and adopted out to white families. This forcible removal would later be exposed as cruel and dysfunctional, ripping Aboriginal children out of their cultures of familiarity and sustenance. It paralleled the earlier experience of residential schools and, ultimately, over the life course, replaced educational institutions and adoptive families with reformatories, jails, and penitentiaries. Over-incarceration of Indigenous peoples, African Americans, Latinos, and women (whose US imprisonment rate jumped 125 per cent in the 1990s, with Black women being the fastest-growing group of prisoners) was but the most obvious indication of the high price paid by the already oppressed in the *new new poor law's* extension of coercion, containment, and criminalization, trade union support for the prison-industrial complex notwithstanding.<sup>115</sup>

This is the context in which approximately 2,200,000 US citizens were behind bars in 2015, representing, in Michelle Anderson's estimation, a 943 per cent increase over the preceding half century. Millions more found the tentacles of the prison-industrial complex encircling their withering freedoms. With the largest prison system on the planet, and a rate of incarceration

113. Shook & McInnis, "More Stormy Weather," 275.

114. Satzewich & Witherspoon, *First Nations*, 90; Fidler, *Red Power*, 4; Hull, *Natives in a Class Society*, 22; Palmer, *Canada's 1960s*, 385.

115. See, for instance, Patrick Johnson, *Native Children and the Child Welfare System* (Toronto: Lorimer, 1983), 23; Raymond Breton & Gail Grant, eds., *The Dynamics of Government Programs for Urban Indians in the Prairie Provinces* (Montréal: Institute for Research in Public Policy, 1984), xxxv–xxxvi; Palmer, *Canada's 1960s*, 382–385. On the uses of criminalization of Indigenous girls and women in Canada, especially relating to sexuality, see Joan Sangster, *Regulating Girls and Women: Sexuality, Family, and the Law in Ontario, 1920–1960* (Toronto: Oxford University Press, 2001), esp. 168–193. Crenshaw's "From Private Violence to Mass Incarceration" (pp. 1420–1472) is an excellent introduction to these issues in the United States.

at least five to ten times higher than that of comparable nations, and second only to Seychelles (an East African nation of immense income disparity), the ratio of prisoners per 100,000 population skyrocketed from 108 in 1965 to 698 approximately 50 years later.<sup>116</sup> These numbers leave aside issues such as the increasingly brutalizing nature of incarceration, encompassing the death penalty and the debilitating and rising use of solitary confinement. They are undoubtedly related to the ways in which the justice system and its incursions include punishments such as immigrant detention and deportation, which take on increasing significance in an age of globalization and massive population displacement.<sup>117</sup>

Such developments are new, to be sure, in their intensification and the expansion of their considerable reach. But they are not historically *sui generis*. They represent a quantitative realignment of the state's and capital's tools and practices, but they are nothing if not a qualitative continuity, an extension of the necessary and long-standing arsenal of dispossession that has been pivotal to capitalism's project of uninhibited accumulation and suppression of those driven to defiance and dissent. This history reaches back to the 17th century and by the 1830s had generated protests against convict labour that seem to cry out for a contemporary revival, albeit in more enlightened ways.<sup>118</sup>

116. Alexander, *The New Jim Crow*, esp. 5, 364; Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* (New York: Oxford University Press, 2014); Hinton, *War on Poverty*; Thompson, *Blood in the Water*.

117. Peter Linebaugh, "Gruesome Gertie at the Buckle of the Bible Belt," *New Left Review*, 1st ser., 209 (1995): 15–33; Reiter, 23/7; Juliet Stumpf, "The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power," *American University Law Review* 56, 2 (2006): 367–419; Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (Cambridge, Massachusetts: Harvard University Press, 2007); Kelly Lytle Hernández, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965* (Chapel Hill: University of North Carolina Press, 2017). Canadian deportation, with attention to the politics of the state's use of its prerogative to exile, is outlined in Barbara Roberts, *Whence They Came: Deportation from Canada, 1900–1935* (Ottawa: University of Ottawa Press, 1988); Gregory S. Kealey, "State Repression of Labour and the Left, 1914–20: The Impact of the First World War," *Canadian Historical Review* 73, 3 (1992): 281–314.

118. See Glen A. Gildenmeister, *Prison Labor and Convict Competition with Free Workers in Industrializing America, 1840–1890* (New York: Garland, 1987); John R. Commons, David J. Sapos, Helen L. Sumner, E. B. Mittelman, H. E. Hoagland, John B. Andrews & Selig Perlman, *History of Labor in the United States*, vol. 1 (New York: Macmillan, 1918), 155, 443; Rebecca M. McClennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the Penal State, 1776–1941* (New York: Cambridge University Press, 2008); Abbot Emerson Smith, *Colonists in Bondage: White Servitude and Convict Labor in America, 1607–1776* (Chapel Hill: Institute of Early American History, 1947); John Gibbons, *Tenure and Toil, or the Rights and Wrongs of Property and Labor* (Philadelphia: J. B. Lippincott, 1888); Bryan D. Palmer, "Kingston Mechanics and the Rise of the Penitentiary, 1833–1836," *Histoire Sociale/Social History* 13, 25 (1980): 7–32; McCoy, *Hard Time*. Examples of early 20th-century accounts of prison labour written by incarcerated radicals include Kate Richards O'Hare (Sometime Federal prisoner number 21669), *In Prison* (New York: Alfred A. Knopf, 1923), 99–112; Alexander Berkman, *Prison Memoirs of an Anarchist* (New York: Mother Earth, 1912), esp. 128–135, 473–480.

The repressive climate of our particular times resonates especially with developments in the 1920s, which, in the aftermath of mobilizations of labour, the left, immigrants, and Blacks, saw a resurgent right counter with campaigns waged against the unions, dangerous foreigners, and African Americans.<sup>119</sup> C. Vann Woodward long ago noted, in *The Strange Career of Jim Crow* (1955), that the 1920s were a decade that saw the revived Ku Klux Klan, reorganized in Georgia in 1915, reach its peak membership of 5,000,000, its influence arguably greater outside of the South than inside of it. Two states, Oklahoma and Texas, elected governments dominated by this new Klan, and throughout the South the decade was one in which the legislative passage of Jim Crow codes accelerated. The African American historian John Hope Franklin thought the last six months of 1919 “the greatest period of interracial strife the nation had ever witnessed.”<sup>120</sup>

The Klan also made inroads into Canada, especially in Saskatchewan, where it struggled to keep the Dominion British, pouring its vitriol on Catholic immigrants and lending its vigilante voice to the province’s legal prohibition of white women working for Chinese employers.<sup>121</sup> Labour-recruitment needs, and the legal requirement of state registration of those, such as the Chinese,

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Blackmon, in *Slavery by Another Name*, notes that it was commonly held that protests against prison labour by trade unions had virtually disappeared by the mid-20th century, it being thought that the problem of convict workers competing with wage labour had been resolved. Yet, as Heather Ann Thompson has argued, in “Rethinking Working-Class Struggle,” prison labour continued after World War II and was the cause of increasing prisoner grievance and complaint. See also Kanyakrit Vongakiatkajorn, “Prison Labor Is Unseen and ‘Utterly Exploitative,’” *Mother Jones*, 6 October 2016.

119. For instance, compare the post-1919 attacks on trade unionism (the open-shop drive and criminal syndicalist legislation and trials), assaults on immigrants (deportation and the nativism and hostility to alien radicals that culminated in the execution of Sacco and Vanzetti), and the explosive racist pogroms and prominence of brazen vigilante and Ku Klux Klan activity that, retrospectively, stamp the 1920s with a depressingly eerie contemporaneity. See William Preston Jr., *Aliens and Dissenters: Federal Suppression of Radicals, 1903–1933* (Cambridge, Massachusetts: Harvard University Press, 1963), 181–272; David Montgomery, *The Fall of the House of Labor: The Workplace, the State, and American Labor Activism, 1865–1925* (New York: Cambridge University Press, 1987), 370–410; William M. Tuttle Jr., *Race Riot: Chicago in the Red Summer of 1919* (New York: Atheneum, 1970); Barbara Foley, *Spectres of 1919: Class and Nation in the Making of the New Negro* (Urbana and Chicago: University of Illinois Press, 2003); Donald Avery, “Dangerous Foreigners”: *European Immigrant Workers and Labour Radicalism in Canada, 1896–1932* (Toronto: McClelland & Stewart, 1979); Reinhold Kramer & Tom Mitchell, *When the State Trembled: How A.J. Andrews and the Citizens’ Committee Broke the Winnipeg General Strike* (Toronto: University of Toronto Press, 2010).

120. C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press), 100–103, on the new Klan, Jim Crow, and quoting John Hope Franklin.

121. James M. Pitsula, *Keeping Canada British: The Ku Klux Klan in 1920s Saskatchewan* (Vancouver: UBC Press, 2013); Constance Backhouse, *Color Coded: A Legal History of Racism in Canada, 1900–1950* (Toronto: University of Toronto Press, 1999), 132–225; Julian Sher, *White Hoods: Canada’s Ku Klux Klan* (Vancouver: New Star, 1983).



who fulfilled them at specific times but were excluded at other historical conjunctures, punctuates the history of immigration, deportation, and criminal law from the late 19th century to the present. Organized workers, protective of their status and privilege, often lent their voice and collective strength to the coercive authority of capital and the state.<sup>122</sup>

### From the Workhouse to the Factory to the Prison

LIKE THE ABOLITION OF THE OLD Speenhamland poor law in post-Napoleonic War Britain, this new, modern poor law is fundamentally draconian, tightening the punitive penal twist. The New Poor Law of Britain in the 1830s constituted relief of the poor on the foundation of “the deterrent workhouse,” in which rates of relief were set lower than that of the lowest wage. Conditions in these early 19th-century so-called houses of industry were such that “dependent poverty” would be lived out as a “degradation and at all times less desirable than independent industry.” This was the famous doctrine of “less eligibility,” a new poor law principle that owed much to Jeremy Bentham’s late 18th-century criticisms of the Old Poor Law and his utilitarian prods to create a more centralized relief system premised on the following notion:

If the conditions of persons *maintained* without property *by the labour of others* were rendered more eligible, than that of persons maintained by their *own* labour then, in proportion as the existence of this state of things were ascertained, individuals destitute of property would be continually withdrawing themselves from the class of persons maintained by their own labour, to the class of persons maintained by the labour of others: and the sort of idleness which at present is more or less *confined* to persons of *independent* fortune, would thus extend itself sooner or later to every individual ... till at last there would be *nobody* left to labour at all for anybody.

This apparent truism soon translated, in new poor law doctrine, into the maxim that recipients of relief “shall not be made really or apparently as eligible as the independent labourer of the lowest class.”<sup>123</sup>

This, however, was a poor law constructed in the context of ascendant industrial capitalism, with a need for expanding and securing the exploitation of labour. Production dictated that workhouses be ordered by deterrence; yet

122. Alexander Saxton, *The Indispensable Enemy: Labor and the Anti-Chinese Movement in California* (Oakland: University of California Press, 1971); W. Peter Ward, *White Canada Forever: Popular Attitudes and Public Policy towards Orientals in British Columbia* (Montréal and Kingston: McGill-Queen’s University Press, 2002); Patricia Roy, *The Oriental Question: Consolidating a White Man’s Province, 1914–1941* (Vancouver: UBC Press, 2003); Hilda Glynn-Ward, *The Writing on the Wall: Chinese and Japanese Immigration to BC, 1920* (1920; Toronto: University of Toronto Press, 1974); David Goutor, “Drawing Different Lines of Colour: The Mainstream English-Canadian Labour Movement’s Approach to Blacks and the Chinese,” *Labor* 2, 1 (2005): 55–76; Goutor, *Guarding the Gates: The Canadian Labour Movement and Immigration, 1872–1934* (Vancouver: UBC Press, 2007).

123. Brundage, *Making of the New Poor Law*, 7–13. Bentham is quoted and his influence discussed in Knott, *Popular Opposition*, 45–48; Poynter, *Society and Pauperism*, 125–126.

they actually had to relieve something of the poor's misery even if, in doing so, they regulated the dispossessed and drummed into those in dire need that their lot as dependents was to be fed and housed in ways that marked them as inferior. The new poor law of our times has, in contrast, less of a need to stigmatize and separate the deserving and undeserving poor and more of an inclination to lessen the distinctions between these social constructions, drive the deserving into the undeserving, and criminalize and imprison masses of people, especially those who find themselves occupying skins that have been branded.

In the deindustrializing United States of late, and decrepit, capitalism, with the welfare state in the throes of dismantlement, the principle of "less eligibility" is a blunt instrument to beat back all who cannot secure work at any rate of wages. Eligibility has been eroded to the point that it is scarcely recognized at all, those deserving poor being both obviously destitute and undeniably virtuous. The few who actually qualify, moreover, must forsake all avenues of advancement and succor to secure rates of relief that are constantly put under the microscope of austerity's parsimonious pinch, the paring back of allowances being merciless and seemingly never-ending. Age-old distinctions of the deserving and undeserving poor that, for all of their problems and discriminatory essence, have been central to the history of poverty and its amelioration seem fundamentally reconstructed in ways designed to *extend and deepen* the punitive nature of relief of the poor.<sup>124</sup> Welfare is about restricting all manner of aid and, indeed, forcing many, including significant numbers of Black, Latino, and Indigenous youth, into "choices" likely to end in incarceration: the ranks of the undeserving poor have been criminalized in ways that undeniably shrink the numbers of the so-called deserving poor to insignificance. Age and infirmity have become the hallmarks of the ostensibly truly deserving poor, while youth, race, even gender (Black welfare "queens") expand designations of the undeserving poor exponentially. In the process, the deterrent workhouse is an anachronism, no longer either necessary or even acceptable, and certainly not affordable, in the current political climate. It has been replaced by the prison, which is strong on the ideology of deterrence but devoid of anything resembling a house, the language of the incarcerated notwithstanding. As Julilly Kohler-Hausman has recently suggested, imprisonment and rampant

124. See Katz, *The Undeserving Poor*. A legal instance of redefining the deserving poor was recorded in a 2000 Supreme Court of Canada decision to uphold an earlier lower court judgement to deny a disabled worker a pension. Justice Ian Binnie observed in passing that Beethoven, Franklin Delano Roosevelt, Terry Fox, and Stephen Hawkins all suffered impairments, but this did not curtail their capacities to earn a living. See *Granovsky v Canada* (Minister of Employment and Immigration), [2000] 1 SCR 703, 2000 SCC 28; Mary Ann McColl, Rebecca Bond, David W. Shannon & Charles Shortt, "People with Disabilities and the Charter: Disability and the Supreme Court of Canada under the Charter of Rights and Freedoms," *Canadian Journal of Disability Studies* 5, 1 (2016): <https://doi.org/10.15353/cjds.v5i1.251>.

criminalization rationalized the dismantling of welfare programs in neoliberalism's austerity-driven 1970s agenda.<sup>125</sup>

Prisons are, in the current epoch of mass incarceration, an industry of expanding employments for those who, if unable to secure productive jobs, can find payment in the guarding, monitoring, and also, it must be said, oppressing and abusing, often to the point of physical brutality, an expanding population of the jailed.<sup>126</sup> As an increasingly important site of exploitation, in which the essentially unpaid labour of prisoners and the profits of channelling the massive inmate population are congruent with the new poor law's justice system, penal institutions constitute a lucrative business growth sector in contemporary North America. The penitentiary is currently engaged in production within its walls and outside of them, contracting and leasing out labour to Fortune 500 enterprises such as Chevron, Bank of America, AT&T, and IBM. Prison workers now make office furniture, take hotel reservations, fabricate body armour, butcher meat, and sew garments, including expensive lingerie. They also staff call centres, clean streets, and are visible along highways and country roads, in chain-gang-like formations cutting back weeds and gathering garbage. In moments of crisis, such as the ecological catastrophes of California wildfires, prisoners can be commandeered as firefighters, utilized to battle raging conflagrations.<sup>127</sup> All of this parallels the demise of trade unions and the welfare state, imposing a punitive regulation of labour that is also an increasingly obvious regimentation of women and peoples of colour.

125. Julilly Kohler-Haassman, *Getting Tough: Welfare and Imprisonment in 1970s America* (Princeton: Princeton University Press, 2017).

126. As Foucault noted, "The bourgeoisie does not give a damn about delinquents, or how they are punished or rehabilitated, as that is of no great economic interest. On the other hand, the set of mechanisms whereby delinquents are controlled, kept track of, punished, and reformed does generate a bourgeois interest that functions within the economico-political system as a whole." Foucault, "*Society Must Be Defended*": *Lectures at the Collège de France, 1975–1976* (New York: Picador, 2003), 33.

127. Alexander, in *The New Jim Crow*, 218–220, points out that the proliferation of prisons and the explosion of prisoner populations rests on a US Department of Justice infrastructure that is immense, with 2003 figures indicating \$185 billion spent on police protection, detention, and judicial and legal activities. This constituted a tripling of the budget since 1982. The justice system employed almost 2,400,000 people in 2003. Decarceration, which had been the trend over the course of the 1950s and into the 1960s, would thus result in job losses topping 1,000,000 workers. But mass incarceration is now the decided trend, with prisoner populations breaking new records in 2008 and this expansion estimated to continue, with at least ten states projected to maintain growth rates of incarceration of 25 per cent or more. All of this had the private prison sector CEOs waxing eloquent about profit prospects. The net income of Corrections Corporation of America (since rebranded as CoreCivic) jumped 14 per cent in 2008; president and CEO Damon Hininger saw fantastic opportunities for the prison sector in the future. See also Gottschalk, *Caught*; Fraser, *Age of Acquiescence*, 50; Richard Harvey Brown, *Culture, Capitalism and Democracy in New America* (New Haven: Yale University Press, 2005), 31; Rania Khalek, "Twenty-First Century Slaves: How Corporations Exploit Prison Labor," *AlterNet*, 21 July 2011; Thompson, "Rethinking Working-Class Struggle," 15–45.

Poor law has always been this fundamental vehicle of disciplining and punishing, a decisive means of capitalist regulation of labour. Jeremy Milloy has recently noted that mass incarceration serves as a tool in the containment of class struggle within the very core of North America's Fordist production, Detroit's auto plants. Workers at Chrysler's Dodge Main plant, argues Milloy, frequently "travelled between wage work and incarceration" in the years from 1965 to 1980. Management spokespersons in these years insisted that crime was as much of a problem in inner-city plants as it was in inner-city neighbourhoods. Workers were frequently fired for falsifying their criminal records when applying for employment, their subterfuge surfacing as they faced discipline for crimes on the shop floor such as assaulting a supervisor. So common was the problem that the United Automobile Workers eventually filed a general union grievance complaining that workers who were discovered to have been dishonest about their histories of incarceration were being subject to humiliating and unduly harsh company treatment. As Milloy suggests, workers fired for such acts of employment-application falsification were immediately escorted out of the workplace by Plant Protection personnel, a public shaming that he likened to the "perp walk" that police use to publicly identify ostensible criminals and convicted felons. Some Chrysler foremen apparently came to work armed. A local union president claimed that, according to company executives, one in three Dodge Main workers had a firearm in their possession during working hours. The violent undertones of criminalization and the beginnings of the mass incarceration order were never far from the surface in Detroit auto plants in the immediate post-1965 years.<sup>128</sup>

Marx noted in his discussion of the working day in *Capital* that "the 'House of Terror' for paupers of which the capitalistic soul of 1770 only dreamed, was realised a few years later in the shape of a gigantic 'Workhouse' for the industrial worker himself. It is called a Factory." And in the struggle to emancipate labour within this factory, Marx understood that however much white workers might yearn for freedom, lives of exploitation and oppression would continue as long as outside of the factory system, in slavery and other forms of unfree labour, a segment of humanity was branded.<sup>129</sup> Today, this history and this fundamental insight find their living reality in a new set of capitalist imperatives, some coded in law, some not, the totality of which constitute nothing less than an ensemble of developments that we can designate a *new new poor law*. Its purpose is unmistakable: to deepen the unfreedom of all of the dispossessed by curbing working-class mobilizations and initiatives, dismantling entitlements to the poor, and extending processes of incarceration, especially in ways that are racialized and gendered. If 19th-century industrial capitalism gave us society with the workhouse, deindustrializing capitalism

128. Jeremy Milloy, *Blood, Sweat, and Fear: Violence at Work in the North American Auto Industry, 1960–1980* (Vancouver: UBC Press, 2017), 42–44.

129. Marx, *Capital*, 1:277, 301.

has given us society with the prison-industrial complex. The oppression and exploitation of labour continues, indeed intensifies, for peoples of all colours, the brutalizing branding of some taking on disturbing meanings under the modern poor law regime.

The chains that bind the working class are now too often more and more likely to be real rather than metaphorical. Losing these confining and destructive shackles will necessitate new understandings of class struggle that link *all* of the dispossessed, be they waged or incarcerated, free or unfree, organized in unions or fighting for the maintenance of welfare entitlements. In this new class struggle the resilience of a diversity of the exploited and oppressed will have to transcend the particularities of multitudes of peoples – Blacks and whites, Latinos and Indigenous nations, men, women, transgender people – in order to link the intersected realities of lives divided by capitalist power intent on conquering all who stand in the path of unbridled accumulation. It is becoming more and more apparent, especially with the summer 2018 prison strike that spread across the United States and into Canada, that the incarcerated and exploited, whether they be working in prisons or labouring on factory assembly lines, in offices, or throughout a variety of other workplaces, have common interests.<sup>130</sup>

The history of prisoners' movements, which includes the successful but quite limited trade union organization of inmates at the Guelph Correctional Centre, in Ontario, is indicative of how free and unfree labour can come together. Meat cutters in the jail's abattoir were represented by Local 240 of the Canadian Food and Allied Workers Union from 1977 into the late 1980s or early 1990s. Their precedent-setting inclusion in collective bargaining, as Jordan House has recently shown, offers insight into the legal regimes of constraint that were briefly breached in Canada, inspiring the noteworthy but unsuccessful attempt by federal prisoners to secure trade union certification in 2011 through the Canadian Prisoners' Labour Confederation.<sup>131</sup> In the United States such initiatives face an even more entrenched opposition, with the Supreme Court's decision in *Jones v North Carolina Prisoners' Labor Union* precluding inmates from trade union entitlements and protections.<sup>132</sup> The forces arrayed against such a necessarily audacious project of resisting

130. Ed Pilkington, "US Inmates Stage Nationwide Prison Strike over Modern Slavery," *Guardian*, 21 August 2018; Toussaint Losier, "The 2018 National Prison Strike: A Movement Making Its Mark," Verso Books blog, 27 August 2018, <https://www.versobooks.com/blogs/3993-the-2018-national-prison-strike>; Kim Kelly, "How the Ongoing Prison Strike Is Connected to the Labor Movement," *teenvogue*, 4 September 2018, <https://www.teenvogue.com/story/labor-day-2018-how-the-ongoing-prison-strike-is-connected-to-the-labor-movement>; Jordan House, "Why Canadian Prisoners Are Participating in the US Prison Strike," *Jacobin*, 5 September 2018, <https://www.jacobinmag.com/2018/09/canada-prison-strike-burnside-jail-incarceration>.

131. House, "When Prisoners Had a Union."

132. Donald F. Tibbs, *From Black Power to Prison Power: The Making of Jones v. North Carolina Prisoners' Labor Union* (New York: Palgrave Macmillan, 2012).

modern poor law and championing the organization and emancipation of all of the dispossessed are clearly both wide ranging and powerful. Yet as the *new* new poor law extends the reach of oppression and exploitation it also inevitably gives rise to widening and more inclusive protests and resistance, in which prisoners and proletarians search out ways of making common cause.

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