

Introduction

Since 1993, crime in the United States has fallen to historic lows. This has provided extraordinary legitimacy to the peculiar mix of welfare and punishment that the country enforces, with ever stingier social programs for the poor and the highest rates of incarceration in the world. This book sets out to explain this peculiar mix.

There is amazing variation in how different countries arrange welfare and punishment. The Western European safety net is vastly more generous than the American one, which is still far superior to Brazil's. Punishment is equally diverse. In the United States, police officers kill about 900 civilians in the streets per year; police in Japan, France, Germany, and the United Kingdom put together barely kill thirty.¹ Prison conditions offer a range of experiences: in Brazil, "at one prison in Manaus, severed heads and limbs were stacked on the floor" after a riot.² In Finland, prisoners can go to the sauna.

The Upper Limit proposes a new theory of welfare and punishment that explains why such variations exist. This theory is an original reformulation of the Victorian principle of "less eligibility": every society has to make welfare less attractive than minimum-wage work and arrange punishment so that crime is less attractive than welfare.³ The living standards of the lowest class of workers in a society determine the upper limit for the generosity of welfare and for the humanity of punishment in that society. This new theory provides an elegant and compelling framework to make sense of why societies manage their poor the way they do. In Scandinavian countries, the minimum wage is so high that the upper limit for welfare and punishment allows for generous subsidies toward the poor and lenient punishment; in the United States, generalized low-wage work at the bottom of the labor market only allows for stingy welfare and harsh punishment. In Brazil the poor survive through the informal economy and under the threat of death squads.⁴

The Upper Limit puts this theory to work to explain the rise of mass incarceration and the transformations of the welfare state in the United States. Doing so, it con-

tributes to the rich literature on the transformations of American punishment. Many of the recent studies have promoted two competing accounts, the exceptionalism and the convergence theses. Exceptionalists have documented sequences of historical events, typically policy decisions, that have led to the present situation and the political actors that have been influential in adopting three-strikes-and-you're-out or mandatory minimums.⁵ These accounts tend to present the American case as an outlier among other developed countries. By nature, histories of policy decisions tend to draw on historical contingencies and national specificities. In this respect the legacy of slavery for American punishment is enormous. Many of these political histories have emphasized the racist nature of the criminal justice system, in particular Michelle Alexander's *The New Jim Crow*.⁶ Another body of work, represented by David Garland's *The Culture of Control* and Loïc Wacquant's *Punishing the Poor*, presents the United States as the vanguard of a global movement of penal convergence, where the rest of the world is supposed to follow American penal footsteps.⁷

This book's starting point is a triple observation: penal convergence didn't happen, sequential histories of policy decisions are not explanations, and racism doesn't explain why the United States incarcerates its whites at a rate probably ten times greater than Western Europeans incarcerate their own whites. A quick glance at history makes it unclear that Western European countries (or Japan) are any less racist than the United States. Against both the exceptionalism and the convergence theses, *The Upper Limit* provides a structural explanation for patterns of punishment and welfare in time and space. All societies have to deal with their poor, and where the poor are comparatively better off, welfare is more generous and punishment more lenient. Because the United States is a more unequal society, where low-wage workers struggle to a degree unknown in most Western European countries, social policy is less generous and penal policy less humane.

The Upper Limit proposes a new interpretation of postwar American history based on a close tracking of low-wage living standards. In short, rising living standards during postwar affluence made for the policy breakthroughs of the 1960s (the Great Society), and declining living standards since the 1970s have lowered the upper limit, forcing all-too-happy policy makers to enforce a punitive adjustment. This adjustment started in the 1970s, in the context of rising crime rates and widening fears among conservatives about the collapse of social order. Between the 1960s and the early 1990s, homicide rates doubled in the United States. During the 1970s and 1980s, crime became a central concern in American life. Punishment became more severe. The rate of incarceration increased sharply in the 1980s, to become the highest in the world. Meanwhile, states and federal government reforms radically downgraded social policy in an effort that culminated with the 1996 welfare reform, which was explicitly designed to get the poor out of welfare and into labor markets.

At the same time, in the 1990s, crime fell in the United States in historic proportions. Homicides dropped by almost half between 1990 and 2010. Violent and property crime, as registered by victimization surveys, dropped in similar proportions.⁸ This decrease in crime is one of the great social facts of the turn of the millennium, but ascertaining its causes is extraordinarily difficult. The consequences of the crime

drop for the population have been immense: “the poorest Americans are now victimized at about the same rate as the richest Americans were back at the start of the 1990s.”⁹ The effects of the crime drop were particularly visible in large cities like New York, where there was an 82 percent decline in homicides between 1990 and 2009.¹⁰ The crime drop steered criticism away from mass incarceration and normalized the welfare reform, by implying that a weakened safety net was compatible with restored public order.

In short, over the past thirty years, American policy makers have made welfare less generous and punishment harsher. Such a trend seems like a recipe for disaster, or so twentieth-century social scientists might think. Yet American society has not collapsed, to the chagrin of progressives around the world. In fact, while many see the American mix of welfare and punishment as aberrant, irrational, and unsustainable, it is hailed by American conservatives as a historic policy success.¹¹ In their view, crime, riots, and general mess were born out of the optimistic policies of the 1960s (the Great Society, the War on Poverty). Mass incarceration and welfare reform have (seemingly) restored order. Crime is now at historical lows; urban nuisances such as panhandlers and homeless people are pushed out of the way of the well-to-do; cities have become transformed for consumerist enjoyment. No expensive social redistribution was needed, just a strong police force and courts willing to enforce the full extent of the law. In American and international policy circles, the crime drop in the United States has strengthened the idea that punitive law enforcement and restrictive access to poor relief is a perfectly adequate way to handle the nuisances of poverty.

A key assumption of this book is the importance of crime’s role in shaping societies. When bodies start piling up in the streets, the daily lives of people across social groups are completely transformed. People suddenly need to take costly precautions that dramatically diminish their quality of life.¹² Conversely, declining crime rates are highly consequential in everyday life.¹³ This assumption sets me apart from scholars who harbor a systematic suspicion of crime statistics. Their perspective, often labeled “constructivism” in social scientific circles, sees statements of fact about crime and welfare as using the authority of seemingly neutral knowledge for possibly nefarious political ends. Constructivists typically analyze fear of crime as an illusion manipulated by the media and politicians.¹⁴ They are quick to dismiss empirical data on sensitive topics as normative or conceptual non sequiturs.¹⁵ It is true that in public discourse, crime and welfare are used as coded innuendoes to stigmatize people and communities of color. But this cannot prevent social scientists from addressing the world as it is. This point was made thirty years ago by William Julius Wilson. In *The Truly Disadvantaged* he sought to explain why “joblessness, out-of-wedlock births, single families, welfare dependency, and serious crime” had increased in black neighborhoods.¹⁶ He regretted that “liberal scholars shied away from researching behavior construed as unflattering or stigmatizing.”¹⁷ I believe social scientists need to take seriously variations in crime rates and other social problems as clues to assess the workings of a given mix of welfare and punishment.

To this end I propose a theory of unusual range. The only way to falsify the theory is the “Piketty option”: to collect data in dozens of countries over six centuries and to systematically prove its universal validity. This strategy poses overwhelming empirical challenges, and I will not pursue the Piketty option in *The Upper Limit*. Instead, I will use the theory to make sense of the history of punishment and welfare in the postwar United States and, in particular, of the punitive adjustment that happened from the 1970s on. I will then explore the local consequences of this punitive adjustment in a poor urban neighborhood called East New York in Brooklyn (New York City), where I conducted field research from 2006 to 2011. This book is thus about the mix of social and penal policies that are implemented to enforce a measure of civil peace that allows for the continuation of normal economic activity, where “normal economic activity” is insufficient to integrate large swaths of the population. East New York was a high-crime neighborhood between the 1960s and the 1990s, before becoming one of the places where crime has fallen most since the early 1990s. East New York is a neighborhood where unemployment is high; that is, the labor market on its own has been unable to provide for social order. Instead, order comes about through the iron fist of social and penal policy. The case of this neighborhood forces us to take seriously the benefits of falling crime rates, along with the costs of implementing a harsher mix of welfare and punishment.

A WORD ON METHOD

I did most of my fieldwork in East New York with a nonprofit organization called Family Justice, which is part of a huge industry of nonprofits delivering direct services in poor neighborhoods. Family Justice was initially based in Manhattan’s Lower East Side, where it ran a program to reduce drug abuse. As the Lower East Side achieved near-complete gentrification in the 2000s, Family Justice’s customer base shrank. In 2006 Family Justice’s founder and CEO, Carol Shapiro, planned an outreach phase in East New York and tasked a young project manager, Jenn, to establish ties with community stakeholders. The plan was to open an office to help the families of prisoners, in response to growing concerns over prisoner reentry. Because of mass incarceration, one-fourth of all black children born in 1990 have had a parent incarcerated.¹⁸ Family Justice thus worked at the intersection of welfare and punishment.

This outreach phase involved working with other organizations in East New York, such as law enforcement agencies, other nonprofits, housing authorities, churches, and so forth. Carol Shapiro and Jenn both agreed to let me follow Jenn on a daily basis in East New York, and I am thankful to them for this. During 2006 I spent six months with Jenn, meeting people and attending community events in East New York on a daily basis. We met with people involved with various aspects of social and penal policy: policing, reentry, social services delivery, homelessness. We attended police-community meetings, talked to officers, and did ride-alongs in police patrol cars. We met with homeless shelter operators, politicians, public housing administrators, and pastors. While I was embedded with Family Justice I also ob-

served the inner workings of a nonprofit. Family Justice did not pay me or refund anything that I can recall; I maintained full financial independence throughout my fieldwork. I came back on my own once a year between 2007 and 2011 for periods of two weeks to three months and revisited former respondents. In total I have about eighty interviews and notes from thirty meetings in East New York.

The Upper Limit draws on this fieldwork to illuminate what the principle of less eligibility means for ordinary individuals after a punitive adjustment. My East New York fieldwork will not prove the validity of the principle of less eligibility. But it will show why American policing is so brutal and why policing cannot be courteous and debonair in a violent, unequal society. It explains why the experience of returning prisoners is made so vexing: it is impossible to give to former criminals what is routinely denied to law-abiding citizens, even if this means more recidivism. It demonstrates how New York City's homelessness policy wastes a great deal of money to make shelters unpleasant and to force people back to paying rent in the private market. It explains how the rise of nonprofits delivering social services is the symptom of an inferior welfare state, belonging to a society without a meaningful minimum wage.

Unlike other scholars who have shadowed nonprofit organizations,¹⁹ I do not intend to document the substance of Family Justice's work or the effect it is supposed to have on clients. Nor am I trying to describe the "ghetto." I am after the big picture of the mix of punishment and welfare and its overarching logic. My neighborhood focus has enabled me to observe the common patterns organizing different sectors of policy. I followed an organization dealing with other organizations, and my interest is in the objective logic of organized systems, not in individual experiences.²⁰ This is why I avoid long quotes or careful descriptions of what people did and what they said. East New York is a setting where I observe the consequences of an adjustment of less eligibility.

The empirical chapters of this book are based primarily on notes taken during my fieldwork in East New York. Ethnography has recently come under fire for loose accuracy standards. According to some, ethnographers are less rigorous in the presentation of evidence than reporters, are held to weaker standards of evidence, and don't have editors or fact-checkers who will look into their stories.²¹ Although there is no newsworthy revelation in this book, there is a concern for accuracy. This is why I have used a wealth of contemporary news reports, policy documents, and blog posts related to crime and welfare to back up my claims and analysis. I have benefited in this procedure from New York's special situation. On any given day there are thousands of journalists writing stories about the city, with informative press articles available on any given topic appearing in publications ranging from upscale magazines to local blogs. The reliance on journalism in my work, which sometimes relegates my original data to the background, is a deliberate attempt to consolidate the veracity of my own field research.

In addition to my own notes, I have used Jenn's field notes. Jenn worked for Family Justice as a project manager, but she also was curious about social science. I did not see her as a research subject and don't have a single interview with her in my

files. Instead, we spent countless hours discussing our interviews and observations. I even lent her a copy of Emerson's *Writing Ethnographic Field Notes*. So she wrote field notes for a number of interviews and meetings. We wrote our notes on the same file, which we sent back and forth over email a few hundred times. For some of the events we both attended, I have both our accounts; for most, only mine; and for the events when she went alone, her account. Each of these accounts was read by the other at the time, commented on, amended, corrected, and discussed over lunch or during commutes. This gives me hope that "my" notes are not unchecked solipsism and that trivial misunderstandings and English language mistakes are under control. The interpretations of the notes I make today, almost 10 years later, are mine. I am deeply thankful to Jenn for her contribution to this book.

CHAPTER OVERVIEW

The first chapter of *The Upper Limit* is about the big picture, and it rests on conceptual work and comparative-historical studies of welfare and punishment. The concept of less eligibility has been around for about two hundred years but had yet to be properly formulated. This chapter explains the logic of the evolution of social and penal policy across societies. For a society to function, welfare must be less attractive than low-wage work, and punishment must make crime less attractive than welfare. Punishment and welfare are capped by the situation of the lowest class of workers on the labor market—the upper limit of social and penal policy. The principle of less eligibility explains, for instance, why relief for the English poor in 1834 was meager and why today's Finnish prisons have saunas. The logic of less eligibility, I argue, has been at work for centuries and can help us understand recent patterns of welfare and punishment.

Chapter 2 narrows the focus to the evolution of social and penal policy in the United States and offers a reinterpretation of recent American history. Before the 1960s there were two separate societies in the United States, with two distinct structures of welfare and punishment. One was for whites and followed the European trajectory; the other was for southern blacks and, with slavery followed by Jim Crow laws, was horrifically cruel. The unification of these two societies through the Great Migration of southern blacks to the largely white North and West caused a breakdown in less eligibility, with both crime and welfare rolls increasing sharply. The range of options available to solve this breakdown in less eligibility was restricted by economic transformations: since the 1970s, structural change had caused living standards to decline for low-income Americans across the board. The upper limit for welfare and punishment was being brought down at a moment of crisis and only allowed for a thorough reengineering of less eligibility, which subsequently followed an ever less generous, ever more punitive route.

In chapter 3 I propose an empirical investigation of the outcome of this punitive adjustment of less eligibility in East New York, Brooklyn. Its residents, mostly poor and low-income, have suffered the most from welfare retrenchment and punitive penal policies, but they have also benefited from the ensuing crime drop, improving

conditions, and rising property values that have transformed their daily lives. East New York exemplifies the implementation of a mix of social and penal policy that “works,” in the sense that crime is contained.

But at what price? The four remaining chapters document the social and human cost of implementing tough punishment and meager welfare, with a particular focus on East New York. Punishment consists not only of incarceration rates but also of everyday police work. An extraordinary number of police killings have begun to shed light on the reality of policing in the United States. Chapter 4 explains how the crime drop has brought tremendous legitimacy to the New York Police Department (NYPD) and documents how police abuse and misconduct have led to discontent among many in East New York. Yet as the crime drop increases the value of their homes, many others in the neighborhood, especially homeowners, demand more policing. The chapter shows that police behavior is to be understood in its structural context.

One consequence of aggressive policing and mass incarceration that is observable in a neighborhood is prisoner reentry. Many prisoners means many people returning from prison. They need housing, but it is forbidden for people with a criminal record to live in public housing, and leaseholders may be evicted for granting hospitality to a husband or a son who comes back from prison. I explain in chapter 5 why this ban is counterproductive for law enforcement agencies, and I document how parole and the New York City Housing Authority (NYCHA) have worked with a nonprofit—Family Justice—to circumvent the law and reach out to parolees and their families in public housing. I then turn to explaining the logic of how vexing the reentry experience is made to be.

In chapter 6 I discuss the rise and significance of nonprofits such as Family Justice in delivering welfare services. Nonprofits are products of the privatization and devolution of the welfare state. The way contracts are distributed and the legal constraints on government spending have created a situation where two types of nonprofits survive: highly professional, managerial ones (such as Family Justice), on one hand, and gritty, politically connected local ones, on the other. The vast majority of both types of nonprofits do their best to meaningfully help the poor. But because resources are scarce, nonprofits tend to send their clients into endless loops of referrals while administrators try frantically to meet performance indicators. This organization of relief is the symptom of a society where living conditions at the bottom of the labor market are so bad that welfare generosity has to be reduced accordingly.

Chapter 7 argues that New York City’s right-to-shelter policy creates a rift in less eligibility: given New York City’s astronomical housing costs, right-to-shelter makes relief dangerously attractive. I therefore document how the city both upholds the law (to provide shelter) and reengineers less eligibility on the housing market by spending a lot of money to make shelter deliberately unpleasant. Shelter policy is designed to make the shelter experience less appealing than renting a private apartment at market rate. For those sleeping rough, there is always jail and prison—which underlines the continuity in social and penal policy on which the theory of the upper limit rests.

I reflect on policy implications in the conclusion. The principle of less eligibility is in itself conceptually agnostic about which mix of welfare and punishment should be implemented. The theory of the upper limit suggests that only when the living conditions of the lowest paid workers improve will the upper limit of welfare and punishment rise. This means that change is dependent on higher wages for low-income workers. I submit that the theory of the upper limit is one small step in the direction of acknowledging the world as it is.