Note

A Punitive Bind: Policing, Poverty, and Neoliberalism in New York City

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Narrowly conceived, neoliberalism is a system of economic ideas and policy initiatives that emphasize small government and market-based solutions to social and economic problems. Adopted in response to the fiscal, welfare and racial crises of the Keynesian state, neoliberalism has become the dominant governing principle in the United States over the last forty years. A growing body of literature has shown how the rise of neoliberalism has underwritten the massive expansion of the American criminal justice system and the growth of its incarceral arm. Yet theorists of neoliberalism have largely ignored how the rise of neoliberalism has affected policing practices and, in turn, have failed to consider the role that police play in the neoliberal state.

This Note considers policing practices and policies in New York City under the rise of neoliberalism. It argues that the rise of neoliberalism has led to significant and lasting changes in the accountability structures, enforcement priorities, and policing strategies and tactics of New York City's policing apparatus. While new approaches to policing have been heralded by some as making the NYPD internally more efficient and more effective at fighting crime, this Note contends that the adoption of neoliberal policing techniques cannot be evaluated without a broader account of the historical, social, political and economic contexts in which they are implemented. An analysis of policing within these broader contexts reveals that there is good reason to be concerned about many facets of neoliberal policing, which

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include shifting accountability structures, the policing of disorder and the deployment of stop-and-frisk policing. Collectively, these neoliberal policing practices constitute the punitive governance of disproportionately marginalized communities, which erodes police legitimacy and may ultimately make poor people and people of color less secure.

INTRODUCTION

During the 1990s, New York City Mayor Rudy Giuliani cut taxes, eliminated thousands of city jobs, and significantly decreased funding to the city's university system, health system, and housing support system.[1] The cuts to city government reflected a continuation of a philosophy of city governance that began over a decade earlier under Mayor Ed Koch who announced that the job of the government was to "get out of the way."[2] Yet this downsizing of New York's government was accompanied by the simultaneous upsizing of its police force. Over the 1990s, New York City added 6,000 new police officers to its ranks, giving it the most police officers per capita of any out of the ten largest cities in the United States, and expanded public safety funding by fifty three percent.[3] The larger police force was put to task with a more active and expansive approach to policing. The New York Police Department (NYPD) launched new policing initiatives that resulted in over 175,000 individuals in New York being stopped and frisked by police officers in one fifteen-month period,[4] a number that would grow to over 575,000 in 2009.[5] Stops were also accompanied by a massive increase in arrests. In 1998, the NYPD arrested over 100,000 more people than it had in 1993, despite the fact that the number of reported crimes had dropped by nearly 300,000.[6] If the NYPD was any indication, the New York City government was doing anything but getting out of the way.

While the expansion of New York's police force in an era of small urban governance may appear to be anomalous, the rise of neoliberalism helps resolve this apparent contradiction. In its most narrow definition, neoliberalism is a system of economic ideas and policy initiatives that emphasize small government and market-based solutions to social and

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1. KIM MOODY, FROM WELFARE STATE TO REAL ESTATE: REGIME CHANGE IN NEW YORK CITY, 1974 TO THE PRESENT 132-41, 151 (2007).
2. ERIC LICHTEN, CLASS, POWER & AUSTERITY: THE NEW YORK CITY FISCAL CRISIS 18 (1986).
3. BERNARD E. HARCOURT, ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING 94-96 (2001); MOODY, *supra* note 1, at 151.
4. ELLIOT SPITZER, OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL, THE NEW YORK CITY POLICE DEPARTMENT'S "STOP AND FRISK" PRACTICES 88 (1999), *available at* www.oag.state.ny.us/press/reports/stop_frisk/stop_frisk.html.
5. CENTER ON RACE, CRIME AND JUSTICE AT JOHN JAY COLLEGE OF CRIMINAL JUSTICE, STOP, QUESTION & FRISK POLICING PRACTICES IN NEW YORK CITY: A PRIMER 3 (Mar. 2010) [hereinafter STOP, QUESTION & FRISK].
6. LOÏC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY 263 (2009).

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economic problems.[7] Adopted in response to the fiscal, welfare, and racial crises of the Keynesian state, neoliberalism has become the dominant governing principle in the United States over the last forty years.[8] Several scholars have shown that the rise of neoliberalism has significant implications for how American society deals with crime. Loic Wacquant, Bernard Harcourt, Jonathan Simon, and Ruth Gilmore have argued that the neoliberal turn in the United States has underwritten increasing government intervention around the idea of crime and has led to the creation of a punitive state that turns to incarceration as a solution to structural economic inequality and political instability.[9] In these scholars' view, then, the expansion of New York's police force amidst austerity measures reflects the neoliberal turn in which the government gets out of the way except in the penal sphere.

Although scholarship on neoliberal policy and state governance addresses how the rise of neoliberalism has changed the workings of the criminal justice system as a whole, scholars have not fully considered how policing fits within the neoliberal criminal justice apparatus.[10] Scholars' failure to fully theorize the police as an independent site of governance within neoliberalism is a mistake. Most interactions residents of cities have with the criminal justice system are with the police, and most of those interactions do not end in an arrest, prosecution, and incarceration.[11] Indeed, out of the over 575,000 individuals stopped and frisked by the NYPD in 2009, nearly ninety percent were innocent of any crime.[12] These numbers suggest that the police are playing a significant, independent, and, as of yet, under-theorized role in regulating and disciplining the subjects of the neoliberal state.

This Note explores policing practices and policies under neoliberalism. How does the rise of neoliberalism alter police practices and policies? What role do the police play in the construction and entrenchment of the neoliberal state? I attempt to answer these questions through a detailed analysis of policing in New York City in the 1990s, the quintessential neoliberal city, on which other cities model reform.[13]

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7. *See infra* notes 32-34 and accompanying text.

8. *See* discussion *infra* Part II.A.

9. *See* discussion *infra* Part II.B.

10. This Note takes the following as the key texts on neoliberalism and criminal justice: WACQUANT, *supra* note 6; BERNARD HARCOURT, THE ILLUSION OF FREE MARKETS: PUNISHMENT AND THE MYTH OF NATURAL ORDER (2011); JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR (2007); RUTH WILSON GILMORE, GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA (2007).

11. For example, one study in New York City found that the NYPD detained and frisked about nine individuals for every person they arrested. SPITZER, *supra* note 4, at 111. Given that police to not detain most people they interact with, it is safe to assume that the vast majority of citizen-police interactions do not lead to incarceration.

12. *See* STOP, QUESTION, AND FRISK, *supra* note 5, at 11 (citing New York Civil Liberties Union Report). The New York Civil Liberties Union refers to individuals who are neither arrested nor issued a summons during a police stop as "Innocent New Yorkers." *Id.*

13. *See* DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 48 (2005) (reporting that the

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The rise of neoliberalism has led to significant and lasting changes in the accountability structures, enforcement priorities, and policing strategies and tactics of New York City's policing apparatus. While new approaches to policing have been heralded by some as making the NYPD internally more efficient and more effective at fighting crime, I contend that the adoption of neoliberal policing techniques cannot be evaluated without a broader account of the historical, social, political, and economic contexts in which they are implemented. An analysis of policing within these broader contexts reveals that there is good reason to be concerned about many facets of neoliberal policing, which include shifting accountability structures,[14] the policing of disorder,[15] and the deployment of stop-and-frisk policing.[16] Collectively, these neoliberal policing practices constitute the punitive governance of disproportionately marginalized communities, which erodes the police's legitimacy and may ultimately make poor people and people of color less secure.

This Note is organized as follows. Section II establishes a theoretical framework for understanding how neoliberalism impacts crime and changes how American society thinks about and governs crime. It starts by tracing the history of the rise of neoliberalism in the United States and in cities. I argue that the rise of neoliberalism brings about new social conditions that may in turn create new patterns of crime to which the police must respond.[17] At the urban level, neoliberalism has important implications for the spatial development and governance of cities, which in turn affect patterns of crime, governance of police departments, and policing strategies and priorities.[18] I conclude by briefly reviewing the work of scholars who have argued that the rise of neoliberalism produces a massive expansion of the state's criminal justice system, especially its incarceral arm.[19] Although this scholarship lays a solid foundation for understanding the rise of hyper-incarceration in an era of neoliberalism, it does not fully address the ways policing changes under neoliberalism or consider how policing functions as an independent site of neoliberal governance.[20]

Section III of this Note takes an in-depth look at policing practices in New York City to consider how policing has transformed under neoliberal state practices. I contend that neoliberalism brings about new structures of accountability, which give elite and corporate institutions unprecedented influence over the city's policing function.[21] While policing services in the city have become more accountable to the interests of elite institutions, the

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neoliberal restructuring of New York City "pioneered the way for neoliberal practices both domestically . . . and internationally.").

14. *See* discussion *infra* Part III.B.
15. *See* discussion *infra* Part III.C.
16. *See* discussion *infra* Part III.D.
17. *See* discussion *infra* Part II.A.
18. *See* discussion *id*.
19. *See* discussion *infra* Part II.B.
20. *See* discussion *id*.
21. *See* discussion *infra* Part III.B.

NYPD has become less accountable to the articulated concerns of the city's poorer residents.[22]

The lack of structures to ensure police accountability to the concerns of poor communities is particularly troubling given the new policing strategies pursued by the NYPD, which I discuss in the third sub-part of Section III. In the early 1990s, the NYPD adopted the strategy of order-maintenance policing, which emphasizes the policing of low-level disorder.[23] Although its definition is heavily contested,[24] social disorder can be thought of as "incivility, boorish, and threatening behavior" and may encompass behaviors like public drinking, vandalism, and panhandling.[25] The implementation of disorder policing has led to the widespread use of punitive policing techniques against poor communities.[26] Unlike earlier eras, state policies under neoliberalism primarily approach the problems of poverty through the police.[27] These practices of policing create a punitive bind, where the state relies on police power to address the consequences of poverty.[28] This approach fails to address the underlying causes of disorder and leads to increased incarceration of poor communities.[29]

In the final sub-part of Section III, I consider the rise in the prevalence of stop-and-frisk policing techniques by the NYPD in the 1990s alongside neoliberal order-maintenance strategies. These harsh policing tactics have been used disproportionately against people of color and poor communities, a result which serves to undermine police legitimacy, breed insecurity, and even potentially increase crime.[30] I argue that stop-and-frisk policing techniques represent a form of public punishment, a symbolic assertion of state power utilized as a tool to regulate poor communities in a neoliberal era of small government in other arenas.[31]

In discussing neoliberalism throughout this Note, I rely primarily on a definition put forth by David Harvey. Harvey defines neoliberalism as "a theory of political economic practices that proposes that human wellbeing can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade."[32] Proponents of neoliberalism assert that government should be restricted from interfering with economic matters except to the extent that it protects private property, creates new

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22. *See* discussion *id*.
23. *See* discussion *infra* Part III.C.
24. WESLEY G. SKOGAN, DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS 3-9 (1990).
25. GEORGE L. KELLING & CATHERINE M. COLES, FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES 14-15 (1996). Disorder also refers to physical disorder (as opposed to social disorder), like broken windows, run-down buildings, and vacant lots. SKOGAN, *supra* note 24, at 4.
26. *See* discussion *infra* Part III.C.
27. *See* discussion *infra id*.
28. *See* discussion *infra id*.
29. *See* discussion *infra id*.
30. *See* discussion *infra* Part III.D.
31. *See* discussion *infra* Part III.D.3.
32. HARVEY, *supra* note 13, at 2.

markets, and facilitates free trade.[33] In contrast to more collectivist forms of government, in which governing authorities use state power to organize the economy and may be broadly invested in mediating social relations, neoliberalism seeks to make the market and its attendant logics the central organizing mechanism of the economy and the fundamental tool of governance of social relations. It is important, therefore, to understand neoliberalism not merely as a narrow economic theory but as a much broader political/sociologic theory that seeks to reorganize society around the market. As Harvey explains, "[i]n so far as neoliberalism values market exchange as 'an ethic in itself, capable of acting as a guide to all human action, and substituting for all previously held beliefs,' . . . it seeks to bring all human action into the domain of the market."[34]

II. THE RISE OF A NEOLIBERALISM: NEOLIBERAL NATION, NEOLIBERAL CITIES, AND NEOLIBERAL INCARCERATION

This section seeks to establish a rough theoretical conception of how neoliberalism may influence the shape and scope of urban policing in the United States. I start by briefly tracing the historical rise of neoliberalism as a set of policy initiatives, a principle of governance, and an ideology. From the 1970s through the 1990s, Neoliberalism replaced Kenyesianism as the dominant paradigm of national and urban governance. The rise of neoliberalism had several consequences for the policing of cities. First, neoliberal policies have created new social conditions, which in turn affected patterns of crime and reshaped communities that police were expected to keep secure. Second, the rise of neoliberalism led to the implementation of new governance regimes that gave corporate and financial elites unprecedented influence on urban government decision-making. As a result, policing in the neoliberal era would have to be increasingly responsive to the elite and corporate interests within cities. Finally, neoliberalism changed the way American society thinks about crime and how the state addresses populations that are chronically poor and unemployed. While scholars have come up with a robust explanation of why the neoliberal state expands its criminal justice function in an age of austerity, I argue that there has not yet been a complete account of the role the police play as an independent site of governance under neoliberalism.

A. National and Urban Rise of Neoliberalism

In the United States, neoliberalism as an intellectual framework and set of policy initiatives gained popularity in response to the crises of the Keynesian state. Keynesianism was the dominant macroeconomic theory

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33. *Id.*

34. *Id.* at 3 (quoting Paul Treanor, Neoliberalism: Origins, Theory, Definition (no longer available, previously available at http://web.inter.nl.net.users/paul.treanor/neoliberalism. html/).

behind the New Deal and later the Great Society, emphasizing the role of government fiscal intervention in stabilizing the business cycle, thereby improving economic outcomes.[35] American Keynsianism's belief in government spending helped lay the groundwork for the American semi-welfarist state, which under the New Deal and Great Society sought to redistribute wealth, create full employment, and fight poverty.[36]

The managerialist and welfarist approach of the Keynesian state was the target of criticism by neoliberal theorists. The Chicago School, a group of economists, law professors, and other scholars at University of Chicago, helped create a neoliberal intellectual movement in the United States starting in the years after World War II.[37] The Chicago School's works collectively underwrote a basic theory of neoliberalism (though it would not be called that until later), which, according to its leader Milton Friedman, stood "for the belief in the efficacy of the free market as a means of organizing resources [and] for skepticism about government intervention into economic affairs . . . ."[38] David Harvey has shown that an array of corporate and elite-funded think tanks and corporate interests groups took up the Chicago School's cause and began pushing the neoliberal cause in the 1970s and would soon capture the platform of the Republican party.[39] President Ronald Reagan's election in 1980 symbolized the rise of neoliberalism as a powerful political force and ideology. Reagan ran on a platform that was anti-welfare, anti-taxes, and smaller government, and as president he attempted to pursue these broad neoliberal reforms,[40] although the success of his neoliberal legislative project is contested.[41] But Reagan's most significant contribution to the spread of neoliberalism was that he took "what had hitherto been minority political, ideological, and intellectual positions and made them mainstream."[42] The Reagan

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35. Michael B. Katz, In the Shadow of the Poorhouse: A Social History of Welfare in America 245 (1996). John Maynard Keynes advocated for strong central government fiscal policies, typically in the form of spending, to ease the economic crisis of the Great Depression. Alice O'Connor, Poverty Knowledge: Social Science, Social Policy, and the Poor in Twentieth-Century U.S. History 140 (2001).

36. Wacquant, *supra* note 6. *See* O'Connor, *supra* note 35, at 140 (noting the "redistributive public spending and aggressive full employment guarantees" of early American Keynesianism); Katz, *supra* note 35, at 259-80 (describing the War on Poverty and the expansion of welfare spending). None of this is to suggest that Keyensianism was the sole factor that enabled that rise of the semi-welfare state. For a comprehensive history of the rise of the American semi-welfare state, *see generally* Katz, *supra* note 35, at 117-282.

37. *See generally* Harcourt, *supra* note 10, at 121-150 (describing the intellectual history of the neoliberal thought of Chicago School intellectuals, especially as it relates to crime).

38. *Id*. at 131 (quoting Milton Friedman, *Schools at Chicago,* Archives of the Communications Department of the University of Chicago (1974), at 2).

39. Harvey, *supra* note 13, at 43- 44.

40. *Id*. at 51-54 (describing President Reagan's policy platform).

41. *Compare* Katz, *supra* note 35, at 295-99 (detailing federal cuts to welfare programs under President Reagan), *and* Harvey, *supra* note 13, at 51-54 (describing President Reagan's tax reforms, deregulation measures, and anti-labor efforts), *with* Paul Pierson, Dismantling the Welfare State? Reagan, Thatcher, and the Politics of Retrenchment 53-128 (1994) (showing that with the exception of housing, President Reagan was unable to retrench most federal welfare programs).

42. Harvey, *supra* note 13, at 62.

revolution led the transformation of neoliberal ideals into widespread ideology that sought to limit the size of government (especially in the economic sphere), let the free market reign, and hold individuals responsible for their economic success (or lack thereof).

The rise of neoliberal ideology was so successful that when Bill Clinton was elected president, "he could not help but sustain" the processes of neoliberal reform of the Keynesian state.[43] This reality was particularly pronounced when President Clinton passed the Personal Responsibility and Work Opportunity Act, the single largest downscaling of welfare since the beginning of the modern welfare state.[44] Neoliberalism has become so entrenched and fundamental as the preferred form of American government that that both major political parties must contend on its terrain to win national elections. In his 2008 campaign for president, Barack Obama repeatedly deployed neoliberal themes, announcing in one speech that "[t]he market is the best mechanism ever invented for efficiently allocating resources to maximize production . . . I also think that there is a connection between the freedom of the marketplace and freedom more generally."[45]

The rise of neoliberalism has led to neoliberal policy reforms at the federal, state, and local levels.[46] While most neoliberal policy reforms do not directly relate to law enforcement, several policy developments under neoliberalism indirectly impact the policing of cities by changing the material conditions that may produce crime. Of particular significance for the policing of cities are policy reforms that rolled back welfare benefits and that increased socioeconomic inequality. Starting with President Reagan's rhetorical war on welfare and culminating with President Clinton's welfare reform legislation,[47] welfare for the poor has been cut and restructured to make welfare recipients more responsible for their economic status.[48]

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43. *Id.*

44. *See* KATZ, *supra* note 35, at 324-34 (describing Clinton's welfare reform efforts).

45. HARCOURT, *supra* note 10, at 240 (quoting Barack Obama). Another rhetorical theme of Obama's campaign was that the solution to poverty and other social ills was greater personal responsibility and not government intervention. *See, e.g.,* Susan Page, *Obama to NAACP: Blacks Must Seize Responsibility*, USA TODAY, JUL. 15, 2008, http://www.usatoday.com/news/politics/election2008/2008-07-14-obama-naacp_N.htm (emphasizing personal responsibility instead of government support for the poor).

46. Scholars have described the neoliberalization of government policies and governing institutions as one of destructive creation, where the vestiges of the Keynesian state are destroyed while market-building neoliberal institutions and governmental forms are created. Jamie Peck & Adam Tickell, *Conceptualizing Neoliberalism, Thinking Thatcherism*, *in* CONTESTING NEOLIBERALISM: URBAN FRONTIERS 26, 33 (Helga Leitner et al. eds., 2007). In other words, "neoliberalization involves the simultaneous and iterative roll-back of institutional and social forms (especially those associated with Keynesianism) together with the roll-out of restructured institutional and state forms." *Id.*

47. This act is formally known as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

48. *See generally* KATZ, *supra* note 35, at 283-334 (detailing the war on welfare and various welfare reform efforts); WACQUANT, *supra* note 6, at 48-58 (showing decreasing direct payments under Aid for Families with Dependent Children and public employment and disability insurance schemes, increasing administrative barriers to accessing welfare, and cuts

Between 1975 and 1995, the inflation adjusted median welfare payment for a family of four decreased by about forty-six percent.[49] Federal government support has similarly fallen over this time period for unemployment insurance, occupational disability insurance, housing for the poor, and job training.[50] At the same time, neoliberal tax structures and economic policies have brought about unprecedented levels of socioeconomic inequality. Since President Reagan and his Laffer curve-based tax cuts, the income tax has become increasingly regressive and no longer redistributes income in any meaningful way.[51] Critics of neoliberal reforms blame the undoing of the progressive income tax system, along with corporate tax breaks, for the unprecedented levels of socioeconomic inequality.[52] In 1980, the top ten percent of wealthiest Americans earned around thirty five percent of all income, but by 2007 they earned nearly fifty percent.[53] The United States' Gini Ratio, an index of socioeconomic inequality, has risen from .40 in 1980 to .46 in 2007,[54] and is now one of the highest among industrial countries.[55]

The retraction of the welfare state and rising socioeconomic inequality may impact the policing cities. Poverty and socioeconomic inequality are both positively correlated with crime and particularly with violent crime.[56] To the extent that neoliberal reforms to welfare exacerbated the effects of

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to public services essential to the poor).

49. WACQUANT, *supra* note 6, at 49.

50. *Id*. at 52-53.

51. HARVEY, *supra* note 13, at 26. For example, between 1980 and 2003 the marginal tax rate for the top income bracket fell from 70 percent to 35 percent. *History of Federal Individual Income Bottom and Top Bracket Rates*, NATIONAL TAXPAYERS UNION, http://www.ntu.org/tax-basics/history-of-federal-individual-1.html (last visited June 20, 2011). The effective tax rate on capital dropped from 45 percent in 1981 to 37 percent in 1996. Duane Swank, *Tax Policy in an Era of Internationalization: Explaining the Spread of Neoliberalism,* 60 INT'L ORG. 847, 849 (2006). One notable exception to this trend is the Earned Income Tax Credit, a progressive scheme which provides tax credits on a progressive basis to working low-income families. *See generally* V. Joseph Hotz, *The Earned Income Tax Credit, in* MEANS-TESTED TRANSFER PROGRAMS IN THE UNITED STATES 141, 141-51 (Robert A. Moffitt ed., 2003), *available at* http://www.nber.org/chapters/c10256.pdf (tracing the history of the Earned Income Tax Credit).

52. *See,* HARVEY, *supra* note 13, at 16-18 (various graphs showing higher socioeconomic inequality in the neoliberal era). *But see* Timothy Noah, *United States of Inequality: Can We Blame Inequality on Republicans?*, SLATE, (Sep. 09, 2010, http://www.slate.com/articles/news_and_politics/the_great_divergence/features/2010/the_united_states_of_inequality/can_we_blame_income_inequality_on_republicans.html (arguing that government policies and practices unrelated to taxes more completely explain the growth in economic inequality than do changes to the tax system).

53. Emmanuel Saez, *Striking it Richer: The Evolution of Top Incomes in the United States* (Jul. 17, 2010), http://elsa.berkeley.edu/~saez/saez-UStopincomes-2008.pdf.

54. *Gini Ratios for Households, by Race and Hispanic Origin of Householder: 1967 to 2007*, U.S. CENSUS BUREAU, http://www.census.gov/hhes/www/income/data/historical/household/h04.html (last visited Jun. 20, 2011).

55. OECD Forum on Tackliny Inequality, *Growing Income Inequality in OECD Countries: What Drives it and How Can Policy Tackle It?* (May 2011), http://www.oecd.org/dataoecd/32/20/47723414.pdf, at 6.

56. *See* Ching-Chi Hsieh & M. D. Pugh, *Poverty, Income Inequality, and Violent Crime: A Meta-Analysis of Recent Aggregate Data Studies,* 18 CRIM. JUST. REV. 182 (1993); Richard Wilkinson, *Why is Violence More Common Where Inequality Is Greater?*, 1036 ANNALS N.Y. ACAD. SCI. 1 (2004).

poverty and increased socioeconomic inequality, they may have produced new patterns of crime to which police departments would have to respond. The retraction of welfare and higher levels of socioeconomic inequality may also contribute changing ecological conditions of the neighborhoods that the police are expected to keep safe, as poor neighborhoods may face more physical decay and be less able to resist the pressures of gentrification.[57]

Just as national and state governmental structures have undergone a process of neoliberalization, so too have cities. The neoliberalization of cities has particularly important consequences for policing as it has led to significant reordering and reconfiguring of urban spaces and urban governance, each of which has direct consequences for how urban police departments operate and police. Starting in the 1970s, the federal government began divesting from urban development and renewal programs that it funded under post-WWII Keynesian programs, which city governments in large part controlled.[58] Other federal programs were effectively privatized.[59] The slashing of federal outlays for urban development that occurred in the 1970s and 1980s led to soaring municipal debts, often to the point of crisis.[60] With no help from the federal government to get a handle on mounting debt, cities turned to financial institutions for help. Cities' increasing reliance on financial institutions to cover municipal debts transformed the shape of urban governance. Banks and bond-rating agencies, which "incentivize" neoliberal reforms with the threat of poor municipal bond ratings, pressured cities to privatize government services and to make cuts to social welfare programs.[61]

These neoliberal reforms have transformed the role of urban governments in governing cities. Under Keynesianism, city governments were essentially managerialist, with extensive power to shape urban development and control the provision of services.[62] Federal programs gave them the money and authority to redevelop huge sections of the city, control local housing programs, and be active in the provision of welfare services. In the neoliberal city, however, city governments became entrepreneurial; their governance focused on reforms that would make their city attractive to corporations, industries, and developers.[63] As a result, corporate and financial institutions, whose lending schemes and development efforts drive processes of gentrification and the

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57. *See* discussion *infra* notes 66-69 and accompanying text.

58. JASON HACKWORTH, THE NEOLIBERAL CITY: GOVERNANCE, IDEOLOGY, AND DEVELOPMENT IN AMERICAN URBANISM 24 (Cornell University Press 2006); Harvey, *supra* note 13, at 45.

59. For example, Section 8 vouchers displaced a federal commitment to public housing, the development of which was controlled by local agencies. HACKWORTH, *supra* note 58, at 51.

60. *See id*. at 25 (graph showing rising municipal debts); *see also* Harvey, *supra* note 13, at 45-48 (describing New York City's 1975 debt crisis).

61. HACKWORTH, *supra* note 58, at 17-18. For example, banks refused to extend credit to the city of Cleveland while it was in the midst of a financial crisis unless the city agreed to privatize its power supply. *Id*. at 1-2.

62. *Id*. at 38-39.

63. *See generally id*. at 17-39 (arguing that cities have had to become more entrepreneurial in part because of the loss of control of federal funding).

corporatization of central business districts, become central players in the remaking of the neoliberal city.[64] Because these wealthy institutions represent significant economic benefits for cities, they also maintain extensive influence over urban policies and governance, including policing.[65]

Urban neoliberalization also has significant consequences for the spatial development of cities, which forces the police to confront shifting communities and new patterns of crime. Neil Smith and other geographers have shown that the aligned efforts of private corporate investors and government policies unleashed processes of gentrification under neoliberalism,[66] which may have significant consequences for the policing of cities.[67] As a process, gentrification entails often-intentional displacement of poor residents, class conflict, and, at times, violence.[68] As the police function as a key player in mediating each of these conflicts, gentrification demands that policing respond to a new set of crimes and conflicts that did not exist under the status quo of the socially and racially segregated urban core of Keynesian cities. Moreover, gentrification leads to significant changes to neighborhood and community demographics, as poor people are generally displaced by new, wealthier residents.[69] Rapidly restructured communities create new, often powerful, political constituencies to which police departments and city governments must be responsive. Under gentrification, then, police are not only asked to mediate conflicts that directly flow from new class and community conflicts, but also to be accountable to reconstituted communities.

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64. *See id*. at 126-28 & 151-53 (describing corporatized gentrification and the impact of commercial development on urban downtowns).

65. HARVEY, *supra* note 13, at 47.

66. *See generally* NEIL SMITH, THE NEW URBAN FRONTIER: GENTRIFICATION AND THE REVANCHIST CITY (1996). Smith and other geographers' works have identified a variety of factors that facilitate gentrification under neoliberalism. Developers looking to profit from low-cost land were aided by neoliberal federal and state policy reforms that replaced centralized government redevelopment efforts of poor neighborhoods with market-driven, incentive-based development programs like special enterprise and empowerment zones. *See* HACKWORTH, *supra* note 58, at 128-31. At the same time, neoliberal urban government policies eliminate support for the urban poor and the homeless and begin to more aggressively remove unwanted individuals through eviction, foreclosure, and redevelopment policies. *See* SMITH, *supra* note 66, at 24, 221. Financial institutions play a particularly significant role in neoliberal gentrification. Deregulated financial institutions are able to provide capital to finance development in riskier neighborhoods while the globalization of capital flows makes it easier for developers to access capital to invest in cities. *See id*. at 75-77.

67. Social scientists do not agree on whether gentrification causes a decrease in crime, a short-term increase in crime, or whether gentrification occurs after crime in a neighborhood has already dropped. *See* Andrew V. Papachristos et al., *More Coffee, Less Crime? The Relationship between Gentrification and Neighborhood Crime Rates in Chicago, 1991-2005,* 10 CITY AND COMMUNITY 215, 216-18 (2011). My argument here is not about whether or not gentrification causes or follows a decrease in crime, but rather that gentrification produces new and different concerns for urban police departments.

68. *See id*. at 217-18 (noting that gentrification is typically characterized by the displacement of poor people and that many have argued that gentrification leads to an increase in crime, at least in the short term).

69. *Id*. at 216.

B. Neoliberal Punishment

Concurrent with the neoliberalization of America, the prison population in the United States exploded. Since 1980, the US population housed in jails or prison has more than quadrupled, from just over 500,000 in 1980 to over 2.3 million in 2008, with an additional 5 million under some form of supervised release.[70] By 2008, the United States incarcerated just over one in 100 adults,[71] a higher rate than any other country in the world,[72] and one in thirty one adults were under some form of state supervision.[73]

Like the expansion of the New York police forces in the 1990s, the exponential growth of the American prison system may seem to be anomalous in a neoliberal era in which the refrain of small government is the stuff of electoral victories. Indeed, a larger prison system with its increased government spending and therefore higher taxes seems more Keynesian than neoliberal. But recent works from several scholars argue that the rise of neoliberalism has a great deal to do with the making of the more punitive and incarceral American state. Collectively their works constitute a theoretical explanation of the massive expansion of the criminal justice system in an age of neoliberal austerity, which may begin to explain the expansion of New York's police force in the 1990s. As I will argue below, however, scholars have yet to fully consider how policing functions as an independent site of governance in the neoliberal order, a task to which I turn my attention in the next section of this Note.

The first way that neoliberalism facilitates an expansion of the criminal justice system is that the rise of neoliberal *ideology* helps justify increasingly punitive government intervention into crime and punishment. Jonathan Simon has shown that over the last forty years, crime has become the central metaphor through which government intervention and coercion is justified.[74] As the New Deal and Great Society failed and Americans rejected equality and social welfare as a fundamental aim of government, crime became the central justification for governance and state action,

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70. BUREAU OF JUSTICE STATISTICS, KEY FACTS AT A GLANCE: CORRECTIONAL POPULATIONS, http://bjs.ojp.usdoj.gov/content/glance/tables/corr2tab.cfm (last visited Jan. 18, 2011). The national rate of incarceration has seen growth at similar levels to that of the growth of the total incarerated population. From 1970 to 2000, the rate of incarceration in the United States more than quadrupled. JUSTICE POLICY INSTITUTE, THE PUNISHING DECADE: PRISON AND JAIL ESTIMATES AT THE MELLENIUM 4 (2000), http://www.justicepolicy.org/images/upload/00-05_rep_punishingdecade_ac.pdf.

71. THE PEW CENTER ON THE STATES, ONE IN 100: BEHIND BARS IN THE UNITED STATES 2008 , at 7 (2008), http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf.

72. CHRISTOPHER HARTNEY, NAT'L COUNCIL ON CRIME AND DELINQUENCY, US RATES OF INCARCERATION: A GLOBAL PERSPECTIVE 2 (2006), http://www.nccd-crc.org/nccd/pubs/2006nov_factsheet_incarceration.pdf.

73. THE PEW CTR. ON THE STATES, ONE IN 31: THE LONG ARM OF AMERICAN CORRECTIONS 2 (2009), http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf.

74. SIMON, *supra* note 10, at 3-5.

which persists and expands in an era of decreasing government intervention into social and economic problems.[75]

Bernard Harcourt argues that a discourse of neoliberal penality has facilitated the meteoric rise in rates of incarceration by naturalizing government intervention in the penal sphere while deriding government as inefficient in all other realms.[76] By conceptualizing that which comes under the realm of the market as governed by a natural and efficient order, neoliberalism attempts to exclude state regulation from the realm of the market.[77] Yet, at the same time, government intervention is justified in realms where individual and collective action are, for whatever reason, not subject to the forces of the market and therefore not naturally efficient—crime being the most egregious form of inefficient behavior.[78] As Harcourt explains, "[t]he idea of natural order . . . is precisely what gave birth to *neoliberal penality*, a discourse on economy and society in which the government is pushed out of the economic sphere, relegated to the boundary, and given free rein there—*and there alone*—to expand, intervene, and punish, often severely."[79]

Other elements of neoliberal ideology may justify an expansive and enlarged criminal justice apparatus. Scholars argue that neoliberalism creates a cultural logic that prizes individual responsibility, self-interest being the engine of free markets.[80] The neoliberal celebration of individual responsibility was most apparent in the passing of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which attempted to make welfare recipients more accountable for escaping poverty.[81] But the "cultural trope" of individual responsibility may also underwrite increasing punitive sanctions for criminal behavior, as it rejects "sociological excuses" for crime and therefore justifies harsher punishment.[82]

While neoliberal *ideology* has shifted the way we think about the governance of crime, other scholars have argued that a more expansive criminal justice system is a *structural* element of the neoliberal state. Wacquant and Gilmore argue that the American neoliberal state uses hyper-incarceration[83] as a solution to the problems of structural inequality,

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75. *Id*. at 6

76. *See generally* HARCOURT, *supra* note 10. *See also* Bernard E. Harcourt, *Neoliberal Penality: The Birth of Natural Order, the Illusion of Free Markets*, U of Chi. L. & Econ., Olin Working Paper No. 433; U of Chi., Pub. L. Working Paper No. 238. (2008), *available at* http://ssrn.com/abstract=1278067 [hereinafter *Neoliberal Penality*].

77. HARCOURT, *supra* note 10, at 38-40.

78. Judge Richard Posner has literally defined criminality as market bypassing: "I argue that what is forbidden is a class of inefficient acts." *Id*. at 136 (quoting Richard Posner, *An Economic Theory of the Criminal Law*, 85 COLUM. L. REV. 1193, 1195 (1985)).

79. HARCOURT, *Neoliberal Penality,* supra note 76, at 2.

80. WACQUANT, *supra* note 6, at 1, 307.

81. *See generally* KATZ, *supra* note 35, at 283-334 (detailing the war on welfare and various welfare reform efforts); WACQUANT, *supra* note 6, at 76-109 (analyzing welfare reform).

82. WACQUANT, *supra* note 6, at 3.

83. Here I adopt Wacquant's use of the term "hyper-incarceration" as opposed to the more commonly used "mass-incarceration"; the former term more accurately describes the

surplus labor, and political instability—problems endemic to the rise of the American neoliberal state. Wacquant focuses his analysis on the advent of "prison-fare," which replaces the New Deal and Great Society quasi-welfare state.[84] As the American state pursues neoliberal policies of deregulating the economy and defunding and restructuring welfare, joblessness and socioeconomic inequalities rapidly increase.[85] Faced with increasing populations situated outside the reaches of the disciplinary structure of the wage labor system, the neoliberal state reforms welfare into prison-fare to exert social control and regulation of poor and deviant populations and to therefore limit social instability.[86] Gilmore builds on Wacquant's argument by suggesting that the incarceral explosion functions as a *spatial* fix to structural instabilities of surplus land and labor created by neoliberal reforms over the last forty years.[87] The state, exploiting a culture of fear, expanded the prison system to solve surpluses of land, labor, and capital and to reconstruct state power in the realm of criminal justice.[88]

The above scholars thus provide a broad theoretical framework for understanding the expansion of the state's criminal justice apparatus under neoliberalism.[89] Harcourt and Simon's work suggests that the rise of neoliberalism creates new opportunities for state governance, which are particularly powerful when addressing crime. Wacquant and Gilmore provide a theory for understanding how structural changes that occur under neoliberalism demand an expansive penal apparatus for social control, without which the neoliberal order would (possibly) not survive. This body of scholarship begins to suggest the function of the police in the neoliberal state. We should expect police departments to be larger, more punitive, and their enforcement efforts focused on "surplus" poor populations. But these scholars, and indeed other scholars, haven't taken a closer look at whether police departments function *in practice* as their theories on neoliberalism and crime would suggest. While scholarship on neoliberalism and governance does not ignore police in relation to larger

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concentrated nature of incarceration rates amongst poor communities of color while the latter falsely suggests that incarceration is a broadly shared social reality. Loic Wacquant, *Class, Race & Hyperincarceration in Revanchist America*, 139 DÆDALUS 74, 77-78 (2010).

84. WACQUANT, *supra* note 6, at 16-18.

85. *See generally id*. at 41-75.

86. *Id*. at 16-18.

87. *See generally* Gilmore, *supra* note 10.

88. *Id*. at 85-86.

89. It should be noted that scholars have articulated other explanations for the punitive turn in an era of small government. Neoliberal theorist David Harvey sees increased punitive intervention by the state as inconsistent with neoliberalism, but argues that the neoliberal state deploys its incarceral arm to repress resistance to corporate interests. HARVEY, *supra* note 13, at 77. Harvey also identifies neoconservatives desire for order as another cause of the punitive turn of the neoliberal state. *Id*. at 82-86. Criminologist David Garland argues that neoconservativism and its concern with "tradition, order, hierarchy, and authority" resolve the enigma of the rise in mass incarceration in an era of smaller government. DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY 99 (2001). Both theories can be contrasted with the above-discussed scholars, who posit that the mass punishment is a structural facet of the neoliberal state and that both sides of the political spectrum (not just neocons) have broadly invested in the rise of the neoliberal incarceral state.

analyses of crime and punishment, when taken as a whole, this literature at best provides a cursory analysis of changes in police practices and ideologies of policing under neoliberalism.[90] Further, in each of the above analyses, the police are generally only discussed in relation to the neoliberal state's incarceral function. In other words, when these authors do discuss the police, they only imagine a role for the police that is part of the neoliberal incarceral dragnet; neoliberal policing, according to these conceptions, is simply the long arm of the prison state whose role is to gather individuals to be imprisoned.[91]

It is a mistake to conceptualize the police solely in relation to the state's incarceral function. While the police play an essential role in the process of incarcerating people, they also do much more. For example, the vast majority of interactions between individuals and the police do not result in arrest,[92] and often arrests do not result in incarceration beyond the period it takes for the accused to make bail.[93] Moreover, in the course of their daily jobs, police officers interact with more individuals than will ever come under the direct supervision of the penal function of the criminal justice system. Indeed, it is scarcely possible to imagine a city-dwelling American adult that does not interact with or encounter the police on a semi-regular basis. The decentralized nature of policing and its significant non-incarceral function suggests that the police may play an important, and as of yet un-theorized role as part of the neoliberal criminal justice apparatus. Scholars of neoliberalism and the criminal justice system need to take policing seriously as a unique site of governance under neoliberalism. The remainder of this Note seeks to explore the unique role of the police under neoliberalism through a case study of policing in New York City.

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90. Three notable exceptions are worth mentioning here: Stephen Herbert, *Policing the Contemporary City: Broken Windows or Shoring up Neoliberalism?*, 4 THEORETICAL CRIMINOLOGY 445 (2001) (arguing that broken windows policing accords with neoliberal ideology and governmentality); *Tony Roshan Samara, Policing Development: Urban Renewal as Neo-liberal Security Strategy*, 47 URB. STUD. 197 (2010) (arguing that neoliberal urban development in Cape Town, South Africa leads to a one-dimensional security regime that emphasizes police control and punitive repression of poor populations); Neil Smith, *Global Social Cleansing: Postliberal Revanchism and the Export of Zero Tolerance*, 28 SOC. JUST. 68, 71 (2001) (arguing that zero tolerance policing is a response to the rise of the neoliberal city and the pressures of globalization).

91. For example, Wacquant spends a chapter of *Punishing the Poor* discussing new, more punitive approaches to policing that become prevalent under neoliberalism and critiques the criminological theory behind these approaches. *See* WACQUANT, *supra* note 6, at 243-69. But Wacquant's extended discussion of policing does not theorize the police as an *independent* site of governance. Instead, he concludes that the criminologic theories that justify new approaches of policing under neoliberalism are significant because they "justify the rolling out of the penal state." *Id*. at 269.

92. For example, one study in New York City found that the NYPD detained and frisked about nine individuals for every person they arrested. *See* SPITZER, *supra* note 4, at 1. Given that police do not detain most people they interact with, it is safe to assume that the vast majority of citizen-police interactions do not lead to incarceration.

93. *See* Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 FORDHAM URB. L.J. 457, 476 (2000) (noting large number of cases that prosecutors refuse to prosecute and the high rate of dismissals of charges based on evidentiary deficiencies).

III. NEOLIBERALISM AND POLICING

A. Policing in a Neoliberal City

To explore the form policing takes under neoliberalism, this Section analyzes the governance of policing and policing strategies pursued by the New York Police Department (NYPD) during the ascendency of neoliberalism, roughly the mid-1980s through the turn of the century. New York City provides an ideal setting for a study of policing in a neoliberal era as it is in many ways the paradigmatic neoliberal city.

In the 1970s, New York began the process of neoliberal restructuring. After President Nixon cut federal aid for cities, New York City faced massive deficits and eventually went into bankruptcy.[94] With the federal government refusing to help,[95] the city was forced to turn to private financial institutions to become solvent.[96] Reliance on a bailout from financial institutions had major consequences that contributed to New York City's neoliberal restructuring. As financer of the city's budget, financial institutions wielded increasing power over city government policies, both via lobbying and by capturing new agencies that exercised oversight over city spending.[97] Particularly influential was the state law creation of the Emergency Financial Control Board (EFCB), which was given "plenary authority over the finances of New York City."[98] The EFCB and other financial control agencies created to deal with the fiscal crisis were effectively captured by the city's corporate and financial elites, whose leaders made up significant parts or majorities of the agencies' boards.[99]

Financial and corporate institutions helped push the city into an era of fiscal discipline and austerity, marked by the marketization of city institutions, the cutting of social services, and the decreasing power of municipal unions.[100] The city slashed social services again and renewed its strong-arm approach to the municipal union in response to another fiscal crisis in the early 1990s.[101] The public-private governing relationship that began in the aftermath of the financial bailout was also extended in the 1980s with the passage of the statewide Business Improvement Act, which

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94. HARVEY, *supra* note 13, at 45.

95. *Id.* at 46.

96. *See Id.* at 45.

97. *Id.* at 46-47; *see also* HACKWORTH, *supra* note 58, at 34.

98. MARTIN SHEFTER, POLITICAL CRISIS/FISCAL CRISIS: THE COLLAPSE AND REVIVAL OF NEW YORK CITY 133 (1985).

99. *See generally* MOODY, *supra* note 1, at 35-40 (tracing how financial and corporate elites captured financial control agencies during the fiscal crisis and implemented austerity policies); LICHTEN, *supra* note 2, at 127-48 (1986) (same).

100. HARVEY, *supra* note 13, at 46; s*ee also* Smith, *supra* note 90, at 71-72. Hackworth has shown how municipal bond rating agencies incentivize cities to pursue neoliberal reforms. Cities that fight against municipal unions, that have leaner social service arms, and that privatize services are rewarded with stronger municipal bond ratings that enable them to raise money more effectively. *See generally* HACKWORTH, *supra* note 58, at 17-39.

101. HACKWORTH, *supra* note 58, at 35.

allowed businesses to form quasi-governmental associations that had the power to collect special taxes and provide for basic services like security and sanitation for its corporate residents.[102] With its positive business environment, lean social service sector, and public-private governing strategies, by the mid-1990s New York City had become a model for neoliberal urban governance that other cities, domestically and internationally, would replicate.[103]

New York is also a good setting for the study of policing under neoliberalism because national and local neoliberal policies have led to changing spatial and socioeconomic conditions throughout the city.[104] The landscape of New York in the 1990s reflected changes brought about by neoliberal governance and policies. Neighborhoods throughout the city experienced rapid gentrification.[105] With the retraction of national and local social services and federal support for cities, New York City saw unprecedented levels of homelessness and neighborhoods ravaged by drugs and AIDS.[106] The material conditions faced by poorer New Yorkers throughout the 1980s and 1990s contrasted with massive accumulation of wealth by the city's elite.[107] The NYPD's policing strategies in this era had to deal with the emerging social realities resulting from neoliberal policies—including gentrification, hyper-incarceration, and drastic socioeconomic inequality—and their effect on crime and (in)security, while also contending with political pressures from shifting constituencies.

Finally, New York City is a good site for studying neoliberal policing because the NYPD underwent significant restructuring during the 1990s. Prior to the 1990s, the NYPD practiced traditional 911 policing, a much-criticized approach to policing where officers patrol from their cars and do very little proactive policing.[108] The NYPD was also plagued by recurring allegations of corruption[109] and generally thought of as ineffective in preventing and solving crime.[110] Police Commissioner William Bratton

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102. Heather Barr, *Policing Madness: People with Mental Illness and the NYPD*, *in* Zero Tolerance: Quality of Life and the New Police Brutality in New York City 50, 63 (Andrea McArdle & Tanya Erzen eds., 2001).

103. Smith, *supra* note 90, at 72.

104. This is not to suggest that other American cities have not similarly been reshaped by the rise of neoliberalism. That said, New York City is a particularly good city for the study of policing under neoliberalism for two reasons. First, due to the fallout of the debt crisis in the 1970s, New York was neoliberalized earlier and more thoroughly than many American cities. *See* Harvey, *supra* note 13, at 48 (reporting that the neoliberal restructuring of New York City pioneered "neoliberal practices both domestically . . . and internationally . . . ."). Second, New York is one of the few cities that has been studied extensively by both scholars of neoliberalism and scholars of policing, providing a broad and deep literature to draw upon in this study.

105. *See generally* Smith, *supra* note 66; Hackworth, *supra* note 58, at 123-49.

106. Harvey, *supra* note 13, at 47-48.

107. *Id*. at 46-48.

108. *See* Kelling & Coles, *supra* note 25, at 77-102 (describing and criticizing the reform model of policing).

109. *See generally* The City of New York, Comm. to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, Commission Report (1994) (reporting on corruption in the NYPD).

110. George M. Kelling and Mark H. Moore, The Evolving Strategy of Policing,

would thus come into office in 1992 with a mandate for reform, which he quickly acted upon.[111] Rapid changes to NYPD's enforcement strategies and internal governance structure created openings for the introduction of neoliberal logics and technologies into its approach to policing. Far from being an inert police department whose policing strategies reflected decades-old social and political contexts, the NYPD's rapid restructuring made the department's strategies and governance more up-to-date and more in line with emerging neoliberal governing strategies.[112]

The remainder of this section analyzes policing in New York City during the rise of neoliberal policies and practices during the 1990s. This section is organized around three major themes of neoliberal policing in this time period. First, I consider reforms to the governance of policing and security in New York City under neoliberalism. I argue that the rise of quasi-governmental organizations and new management structures within the NYPD led to policing that is more accountable to corporate and elite institutions and less accountable to marginalized communities. Second, under neoliberalism, the NYPD adopted an order-maintenance policing strategy that focused on policing people seen as disorderly, which were most often poor people of color. I contend that order-maintenance policing accorded with neoliberal ideologies around personal responsibility and resulted in the increasing deployment of the police to deal with the effects of poverty under neoliberalism. In the final part of this section, I focus on the NYPD's adoption of stop-and-frisk policing as their primary tool of order-maintenance policing. I suggest that stop-and-frisk policing functions as a form of public punishment used to regulate poor communities. Taken together, the NYPD's approach to policing under neoliberalism produces punitive policing that disproportionately targets poor communities and communities of color. This neoliberal approach to policing not only stigmatizes members of these communities, but also erodes the legitimacy of the police and thereby prevents the co-production of security.

B. Shifting Accountabilities: Policing as Neoliberal Governance

In 1995, *The New York Times* broke a story about a "goon squad" hired by the Grand Central Partnership that "threatened, bullied and attacked homeless people to force them from doorways, bank vestibules, plazas and sidewalks all over Manhattan."[113] Businesses in midtown formed the Grand Central Partnership in the late 1980s as a Business Improvement District (BID), a formal organization that can levy taxes on its members and provide

Harvard Kennedy School Executive Session on Policing and Safety: Perspectives of Policing (1988) at 8, *available at* https://www.ncjrs.gov/pdffiles1/nij/114213.pdf.

111. William Bratton with Peter Knobler, Turnaround: How America's Top Cop Reversed the Crime Epidemic 193-95 (1998).

112. *See* discussion *infra* notes 147-150, 194-203 and accompanying text.

113. Bruce Lambert, *Ex-Outreach Workers Say They Assaulted Homeless*, N.Y. Times, Apr. 14, 1995, *available at* http://www.nytimes.com/1995/04/14/nyregion/ex-outreach-workers-say-they-assaulted-homeless.html?pagewanted=all.

services ranging from shelters for the homeless to quasi-police services.[114] The Grand Central Partnership was created in part to deal with the problems associated with a large and visible homeless population in Manhattan. The Partnership prided itself on its outreach programs for the homeless, but the *Times*'s article made clear that the Partnership's "outreach" efforts were not always altruistic. The article revealed that Partnership employees were instructed to expel homeless people, with force if necessary, from the boundaries of the Partnership's jurisdiction, often as a strategy to encourage business owners in surrounding areas to join the BID.[115] In other words, an association of elite corporate institutions was using powers traditionally reserved by the state to clean up the streets. The policing role was not lost on one member of the goon squad: "I was slapping people around with my walkie-talkie . . . . That was my main weapon. I felt like a police officer."[116]

Of course it is not surprising that private institutions take on state functions in the neoliberal era. Indeed, as Hackworth and other geographers have shown, public-private partnerships are a central technology of urban neoliberal governance.[117] But the policing function played by the Grand Central Partnership and other BIDs throughout the city brings into sharp relief the problem of accountability under neoliberal governing structures. When city services and state powers are shared by private institutions, to whom are those institutions accountable?

The rise of neoliberalism altered the constituencies to which policing forces, public and private, in New York City were accountable. Increasingly, security and policing forces are accountable to the interests of corporations and elites and less to the interests of poor communities. The shifting relationships of accountability have occurred in three ways. First, the rise of quasi-governmental BIDs like the Grand Central Partnership has created police-like forces that are accountable primarily to their corporate benefactors. Second, the increasing influence of corporations and banks on urban governance in New York City generally has enabled these powerful institutions to marshal NYPD resources on their behalf. Finally, the incorporation of new internal governance structures and practices within the NYPD has decreased the police department's accountability to community-articulated policing priorities.

BIDs became an important figure for security in the neoliberal era in New York City. BIDs were authorized by state statute in the early 1980s[118] and the first New York City BID was formed in 1984.[119] By 1999, there were

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114. Barr, *supra* note 102, at 63-64.

115. Lambert, *supra* note 1.

116. *Id*. The fact that this worker associated violence towards the homeless with police officers is perhaps telling of NYPD's strategies in this era.

117. *See generally* HACKWORTH, *supra* note 58, at 61-78.

118. Barr, *supra* note 102, at 63.

119. Mark S. Davies, *Business Improvement Districts,* 52 WASH. U. J. URB. & CONTEMP. L. 187, 190 (1997).

more than forty BIDs in New York City.[120] In 2009, there were sixty four BIDs in New York City cumulatively collecting and spending nearly $100 million in revenues.[121] Under New York law, BIDs are authorized to make physical improvements to the public and private spaces within its their districts and to provide "additional services required for the enjoyment and protection of the public and the promotion and enhancement of the district . . . ."[122] Functions performed by BIDs often included "sanitation, graffiti removal, market support, and improvements, such as fixing or installing street lights, landscaping, seasonal decorations, etc."[123] Many BIDs also provided services to the homeless and conducted security patrols within the boundaries of the BID.[124] The rise of BIDs supplemented the NYPD's order-maintenance policing efforts (see discussion *infra*).[125] Security teams for BIDs worked to keep streets clean not only of serious crime like drug dealing but also free of disorderly people.[126] By many accounts, BIDs were successful in creating cleaner and more orderly neighborhoods throughout New York. For example, BIDs have been seen as instrumental to the successes for the clean up of the neighborhood around Grand Central, Bryant Park, and Times Square.[127]

The rise of BIDs reflected a move towards a public-private model of neoliberal governance, where local governments increasingly rely on the private sector for the provision of essential services.[128] Many scholars have noted the wave of private security firms providing security services traditionally allocated by the police.[129] This trend represents the policy implementation of the neoliberal logic that private firms can more efficiently provide public services than the government.[130]

The rise of BIDs' private security functions presents significant problems of accountability. Traditionally, democratically elected officials serve as a check on the use of police power. Democratic structures of accountability ensure that policing practices at least nominally reflect the values and norms of the communities the police are policing and theoretically limit the influence special interest groups have on the police at

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120. Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365, 366-67 (1999).

121. N.Y.C. SMALL BUSINESS SERVICES, BID FISCAL YEAR 2009 ANNUAL REPORT SUMMARY 9-11 (2009), http://www.nyc.gov/html/sbs/html/neighborhood/pdfs/BID_AnnualReport .pdf.

122. N.Y. GEN. MUN. LAW § 980-c (McKinney 1999).

123. Barr, *supra* note 102, at 64.

124. *Id*.; Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 YALE L.J. 1165, 1199 (1996).

125. Ellickson, *supra* note 124, at 1199.

126. *Id*.

127. Barr, *supra* note 102, at 64; *see also* KELLING & COLES, *supra* note 1, 112-14 (describing the clean up of Bryant park and the Grand Central neighborhood).

128. HARVEY, *supra* note 13, at 160-61.

129. MANFRED B. STEGER & RAVI K. ROY, NEOLIBERALISM: A VERY SHORT INTRODUCTION 12-14 (2010).

130. *Id*.

the expense of the majority of citizens.[131] But BIDs are not subject to the same oversight as traditional police departments. BIDs are a private, quasi-police force acting on the behalf of their funders, which would not necessarily present accountability problems if BIDs only policed their own members. But BIDs exercise police powers over areas much broader than just their members' buildings including quasi-public spaces like plazas in front of office buildings and in public spaces like sidewalks and parks. To the extent that many of the people being policed by BIDs have no ability to affect the BIDs' practices (lawsuits notwithstanding), BIDs' security forces represent an expansion of policing power that is only accountable to its corporate funders.[132] Put another way, BIDs are policing without representation.

Corporations and financial institutions also exercise increased power over the policing activities of the NYPD during the neoliberal era. As explained above, in the aftermath of the corporate bailout of the city of New York, corporate and financial institutions wielded significant influence over city politics and policies. This influence extended to the city's police functions. For example, in 1996, downtown BIDs urged Mayor Giuliani to crack down on street vendors, who were accused of creating sidewalk and traffic congestion, disrupting the business of brick and mortar stores, and impeding the BIDs' attempts to develop New York into the world financial capital.[133] Mayor Giuliani responded by creating a vendor review board, which severely limited the number of business licenses granted to vendors, and by directing the NYPD to crack down on street vendors.[134] Under the guise of quality-of-life enforcement, the NYPD began issuing heavy fines to street vendors, often for violating technical details of their business licenses.[135] The NYPD continued its anti-vendor campaign for several years, selectively targeting vendors in Chinatown for business license violations and attempting to evict licensed street vendors from the places they conducted their business.

The anti-vendor campaign evoked strong reaction from street vendors, who helped lead citywide protests of Giuliani's quality-of-life policing and resisted police-led evictions by taking over and occupying the markets from

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131. Democratic oversight of the police may be achieved through the executive branch, which may have the power to prosecute crimes by police officers or remove politically appointed leaders, and through the legislative branch, which can investigate police misconduct and control funding for police departments. Additionally, many cities have some form of civilian oversight of the police in the form of civilian review boards that may have the power to investigate, prosecute, and discipline officers or in the form of civilian auditors or in-house civilian investigators. *See* Stephen Clarke, *Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How it Fails*, 43 COLUM. J.L. & SOC. PROBS. 1, 11-20 (2009) (describing different models of civilian oversight of the police).

132. *C.f.* David A. Sklansky, *The Private Police*, 46 UCLA L. REV. 1165, 1191-92 (1999) (noting that "those who come into contact with private guards but do not help to pay for them may not welcome the fact that such guards are accountable exclusively to their customers").

133. Committee Against Anti-Asian Violence, *Police Brutality in the New Chinatown, in* ZERO TOLERANCE, *supra* note 101, at 221, 232 [hereinafter *Police Brutality in Chinatown*].

134. *Id.*

135. *Id.* at 232-33.

which the police were attempting to displace them.[136] But the street vendors' organized resistance was quashed by increased police harassment in the form of fines and confiscation of vendors' carts.[137] Moreover, Chinatown business elites, in the form of the Chinese Consolidated Benevolent Association, helped disrupt and co-opt the vendor protest movement by purporting to represent the vendors' interests in negotiating a truce with the city.[138]

Neil Smith has also shown how city leaders under neoliberalism deploy the police to support processes of gentrification, often at the behest of the corporate developers who stand to profit from neighborhoods cleared of homeless people, poorer residents, and the mentally ill.[139] In cases of gentrification and street vendors, business elites were able to use their influence over city leaders to marshal police resources on their behalf. The deployment of police to clear street vendors and obstacles of development, in turn, cleared the way for the further progression of neoliberal processes of gentrification and the creation of sanitized, business-friendly neighborhoods.

While elite institutions wielded increasing influence over the city's policing functions, the NYPD did not create an effective mechanism to ensure that it was responsive to the articulated policing priorities of poor communities. In the early 1990s, other cities across the country were experimenting with community policing structures in attempts to increase police accountability to all communities and improve police-community collaboration.[140] The NYPD, however, rejected community-policing models and instead turned to "smart policing" technologies to guide enforcement priorities for the NYPD. Under Police Commissioner William Bratton's leadership, the NYPD evaluated precinct performances through a computer program called Compstat that produced statistical analyses of patterns of crimes and transposed those patterns onto precinct maps throughout the cities.[141] Bratton and his top advisors would have weekly meetings where they would interrogate precinct commanders about how each commander

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136. Andrew Hsiao, *Chinatown Take Out*, VILLAGE VOICE, Feb. 16, 1999 *available at* http://www.villagevoice.com/content/printVersion/214691; *Police Brutality in Chinatown*, *supra* note 133, at 233.

137. *Police Brutality in Chinatown*, *supra* note 133, at 232-33.

138. *Id*. at 235-36.

139. SMITH, *supra* note 66, at 24, 223-25.

140. For example, Chicago adopted a system of community policing around 279 of the city's beats and made efforts to include local residents in police priority setting decisions. *See generally*, Wesley G. Skogan, *Community Policing in Chicago, in* COMMUNITY POLICING 159-73 (Geoffrey P. Alpert & Alex Piquero eds., 1998) (describing and evaluating Chicago's community policing system). San Diego adopted a problem-oriented policing approach that emphasized community-police collaboration in efforts to reduce violent crime through preventative and reactive policing measures. Jeffrey Fagan, *Policing Guns and Youth Violence*, 12 THE FUTURE OF CHILDREN 133, 139-40 (2002). The Boston Police Department refocused its youth violence prevention efforts by increasing community collaboration and working closely with community-based organizations. Anthony A. Braga, et. al, *Losing Faith? Police, Black Churches, and the Resurgence of Youth Violence in Boston*, 6 OHIO ST. J. CRIM. L. 141, 145-58 (2008).

141. BRATTON, *supra* note 111, at 233-34.

was addressing the crime patterns in their precincts.[142] The meetings were often quite tense, with precinct commanders being grilled about their performance in front of their peers.[143] Police commissioners, in turn, were expected to impose the same sort of accountability structure within their precincts, systematically evaluating the performance of their officers around the crime patterns and statistical problems identified in the Compstat meetings.[144] As Compstat became the primary tool to evaluate precinct and officer performance, it became the driving force behind setting police enforcement priorities and strategies,[145] a role which it continues to play to this day.[146]

The reorganization of the NYPD around Compstat reflects a broader trend in neoliberal governance where the public sector appropriates private sector management and organizational technologies. Neoliberal critiques of government are based on the assumption that government bureaucracies tend to be far more inefficient than private sector organizations.[147] The incorporation of private-sector organizational systems is a central strategy of the neoliberal reform of urban governance.[148] In his own words, Bratton sought to "reengineer[]" the NYPD around "private-sector business practices and principles for management."[149] Compstat, with its emphasis on number-based performance reviews and attempts to rationalize and systematize the NYPD's policing practices, represented the inculcation of a "business model and managerial philosophy" into the NYPD.[150]

On some fronts, Compstat may have improved police accountability. Compstat has widely been praised for improving accountability within the NYPD, as it is a mechanism to ensure that police officers and precinct commanders are doing their job and not wasting scarce state resources.[151] Compstat may have also improved accountability by ensuring that the

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142. *See id.* at 233-37 (describing weekly Compstat meetings).

143. *Id.*

144. *Id.* at 239.

145. *Id.*; Fagan & Davies, *supra* note 93, at 491.

146. Graham Rayman, *NYPD Commanders Critique Comp Stat And The Reviews Aren't Good*, THE VILLAGE VOICE, Oct. 18, 2010, http://blogs.villagevoice.com/runninscared/2010/10/nypd_commanders.php.

147. STEGER & ROY, *supra* note 129, at 14-16.

148. STEGER & ROY, *supra* note 129, at 12-13.

149. BRATTON, *supra* note 111, at 224; *See also* HARCOURT, *supra* note 3, at 49 ("[Bratton] implemented a business school management-theory approach that brought him a coterie of business school admirers.") (internal quotations omitted).

150. David A. Sklansky, *The Persistent Pull of Police Professionalism*, HARVARD KENNEDY SCHOOL EXECUTIVE SESSION ON POLICING AND SAFETY: NEW PERSPECTIVES IN POLICING   3 (March 2011), *available at* http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/programs/criminal-justice/ExecSessionPolicing/NPIP-ThePersistentPullofPoliceProfessionalism-03-11.pdf.

151. *See, e.g.,* BRATTON, *supra* note 111, at 232-39 (describing how Compstat created internal accountability throughout the NYPD); William F. Walsh & Gennaro F. Vito, *The Meaning of Compstat: Analysis and Response*, 20 J. OF CONTEMP. CRIM. JUS. 51, 60 (2004) (praising Bratton's Compstat as creating internal organizational accountability). *See also* James J. Willis, et. al, *Making Sense of COMPSTAT: A Theory-Based Analysis of Organizational Change in Three Police Departments*, 41 L. & SOC. REV. 147, 164 (2007) (finding that Compstat made middle-level managers more accountable in three police departments).

NYPD was responsive to where crime was actually occurring.[152] To the extent that the residents of certain neighborhoods suffer more from localized concentrations of violence, Compstat may have ensured that the people who most needed police resources received those resources. Compstat could thus be seen as improving police accountability to the security needs of the communities that need it the most, which tend to be poor, crime-ridden neighborhoods. It should be noted that this version could even see Compstat as redistributive, as the NYPD could be moving policing resources from (wealthier) neighborhoods with less crime to (poorer) areas that need policing resources the most.

Even if one accepts that Compstat may have increased accountability on some fronts, Compstat may still have decreased the NYPD's accountability to poor communities. The NYPD's turn to Compstat corresponded to a turn away from community policing.[153] The use of Compstat meant that precinct commanders were required to be accountable to numbers and statistical patterns, not to the articulated concerns of the residents of their district.[154] The NYPD's turn away from community input was not a necessary result of the adoption of Compstat or other intelligence-led policing strategies.[155] Christopher Stone and Jeremy Travis have argued for a model of "new professionalism" in policing, where police departments use Compstat while maintaining a commitment to serious community participation in setting policing priorities.[156] But the NYPD never realized the fuller potential of Compstat in coordination with

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152. Some scholars claim that Compstat helped cause the precipitous drop in crime in New York City in the 1990s. *See, e.g.,* Paul E. O'Connell, *The New York City Police Department's Compstat Program, in* MANAGING FOR RESULTS 2002 (Mark A. Abramson & John M. Kamensky eds., 2001). *But see* Steven Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors That Explain the Decline and Six That Do Not,* 18 J. ECON. PERSP. 163, 172-73 (2004) (arguing that new policing strategies adopted in the 1990s did not cause a drop in crime rates).

153. BRATTON, *supra* note 111, at 239; Fagan & Davies, *supra* note 93, at 491. *See also,* Walsh & Vito, *supra* note 151, at 65 ("[Compstat] was put into action to resolve the inability of community policing and of the nation's largest police department to address crime and to provide community security.").

154. Although precinct commanders continued to meet with community groups, they "were now accountable to the NYPD's operational hierarchy for both their successes and their failures to produce declining crime rates. As a result, precinct commanders set the crime-fighting priorities for that precinct and developed overall plans of action, based on meeting NYPD priorities, rather than the standards set in cooperation with communities." Fagan and Davies, *supra* note 93, at 472. For a more recent example of the sort of accountability Compstat demands of rank-and-file police officers, *see* Graham Rayman, *The NYPD Tapes: Inside Bed-Stuy's 81st Precinct,* THE VILLAGE VOICE, May 4, 2010 (secret tapes "reveal that precinct bosses threaten street cops if they don't make their quotas of arrests and stop-and-frisks, but also tell them not to take certain robbery reports in order to manipulate crime statistics.").

155. Walsh & Vito, *supra* note 151, at 66.

156. Christopher Stone & Jeremy Travis, *Toward a New Professionalism in Policing,* HARVARD KENNEDY SCHOOL EXECUTIVE SESSION ON POLICING AND SAFETY: NEW PERSPECTIVES IN POLICING (March 2011), http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/programs/criminal-justice/ExecSessionPolicing/NPIP-TowardsaNewProfessionalisminPolicing-03-11.pdf. The Department of Justice has also advocated for the use of intelligence-led policing alongside community policing models. *See* Sklansky, *supra* note 150, at 3.

community policing ideals. Never pursuing any meaningful structure for community voice in policing, the NYPD treated Compstat as a singular oracle that directed policing priorities.[157] Thus, Compstat can be seen as a rejection of community input into police priority setting.[158] This is an unfortunate result. Members of the community are well positioned to assist police officers and can have inside knowledge about causes of crime that may help the police.[159] Moreover, the lack of community input into local policing priorities can decrease the police's legitimacy, which ultimately may lead to more crime and insecurity as residents refuse to rely on or assist the police.[160]

Thus, policing under neoliberalism in NYC produced mixed results with regards to accountability. Public and private police have become increasingly responsive to the needs and desires of corporate and financial institutions, and presumably the other businesses and residential communities for which those institutions serve as a proxy. And to be sure, BIDs and Compstat certainly should be praised for their positive changes; cleaning up neighborhoods in the case of the former, rationalizing the use of police resources in the case of the latter. On the other hand, poor communities have found their articulated policing wants and needs unheeded.[161]

While consistent with general neoliberal trends of expanding socioeconomic inequality, the unequal distribution of the power to

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157. *See* Fagan & Davies, *supra* note 93, at 472 (noting that under Compstat, "precinct commanders set the crime-fighting priorities for that precinct and developed overall plans of action, based on meeting NYPD priorities, rather than the standards set in cooperation with communities"). David Sklansky argues that the marginalization of community input is a necessary result of the turn to intelligence-led policing. "[I]ntelligence-led policing is a 'top-down managerially driven approach to crime control, in which 'a community's concerns are not permitted to perpetually trump an objective assessment of the criminal environment.'" Sklansky, *supra* note 150, at 3 (internal citations omitted).

158. Fagan and Davies, *supra* note 93, at 472.

159. *C.f.* Tom Tyler, *Enhancing Police Legitimacy*, 593 THE ANNALS AM. ACAD. POL. & SOC. SCI. 84, 85 (2004) ("The public supports the police by helping to identify criminals and by reporting crimes.").

160. *See* Fagan & Davies, *supra* note 93, at 499-500 (discussing consequences of police losing legitimacy); *see also* discussion *infra* section III.C.2. None of this is to suggest that the policing priorities as established by Compstat necessarily contradicted the security needs and desires of the communities that were policed. However, where harsh policing tactics are seen as being imposed from the outside, as opposed to at the behest of the community, police's legitimacy is likely to suffer, which can ultimately lead to more insecurity and more crime. *C.f.* Jeffrey Fagan & Tracey L. Meares, *Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities*, 6 OHIO ST. J. CRIM. L. 173, 214 (2008) (showing that concentrated policing in communities of color may stigmatize all members, both law-abiding and non-abiding, of those communities and thereby decrease the police's legitimacy).

161. This is not to suggest that neoliberalism alone caused police departments to be unaccountable to poor communities. Indeed, it is uncontroversial to suggest that police departments across the country have been generally unsuccessful at meeting the policing needs and desires of poor communities, both before and after the rise of neoliberalsim. I merely suggest here that the implementation of neoliberal police management technologies like Compstat have institutionalized and systematized an approach to police priority setting that excludes input from many of the communities that are subject to concentrated and, as I will argue below, punitive policing.

influence the police is not a necessary result of the turn to neoliberalism. Police accountability is not a zero-sum game; increased accountability to one group does not necessitate less accountability to another group. If the NYPD could complement programs like Compstat with a concerted and systematic effort to include community members in enforcement priority setting discussions, neoliberal policing might find itself to be more rational and more responsive to the needs of many different types of communities.[162] This sort of accountability, which would likely increase police legitimacy, would be especially urgent given the type of policing strategies the NYPD has adopted (discussed *supra* sections III.C-D) in the neoliberal era. But the NYPD has failed to realize the full potential of accountability under neoliberalism, which is, as I will argue below, to the detriment of both poor residents throughout the city and the police themselves.

C. Order Maintenance Policing

In addition to the creation of new structures of accountability, street-level policing strategies in New York City radically changed in the neoliberal era. Starting in the early 1990s, New York City pursued a policy of order-maintenance policing, a new approach to policing that emphasized eliminating low-level disorder as a means to fight more serious crime. I argue here that order-maintenance policing and the Broken Windows theory it was based on should be viewed as an innovative, neoliberal approach to policing. By placing order-maintenance policing in this broader context, I hope to show that the rise of disorder policing is historically contingent on the rise of neoliberalism and, in turn, to theorize the role disorder policing plays in the neoliberal state. Order-maintenance policing relies on the neoliberal logic of individual responsibility to criminalize disorderly behaviors. Because disorder is generally a result of structural poverty, order-maintenance policing in New York City became focused on policing the poor. Order-maintenance policing and the neoliberal ideals on which it was based thus underwrote punitive responses to the effects of poverty. Given that disorder policing occurs in an era of retrenched social services, the police become one of the neoliberal state's primary responses to the problems of poverty.

1. From Broken Windows to Order Maintenance

Order-maintenance policing was based on the Broken Windows theory, an approach to policing originally advanced by James Wilson and George Kelling in an essay in *The Atlantic* in 1982.[163] Wilson and Kelling advocated

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162. See, for example, the community policing program implemented in Chicago. *See generally* Skogan, *supra* note 140.

163. George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, THE ATLANTIC, Mar. 1982, http://www.theatlantic.com/magazine/print/1982/03/broken-windows/4465/.

for a departure from the traditional model of 911 policing, in which police officers stayed in patrol cars, separated from communities they patrolled, and policed by reacting to emergency calls.[164] They argued that the 911 policing strategy had failed to address the needs of urban communities, as it did not address a fundamental cause of fear, insecurity, and serious crime: disorder.[165]

Wilson and Kelling contended that policing disorder should be a vital priority of an urban police department for two reasons. First, disorder makes urban dwellers feel insecure and fear public spaces in their neighborhoods. Second, disorder causes more serious crime. Wilson and Kelling analogized that low-level disorder is like an unrepaired broken window. A broken window that a property owner does not care to fix leads to more broken windows, as "one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing. (It has always been fun.)"[166] Like broken windows, disorder in a neighborhood invites criminality because it sends a signal to potential criminals that residents of a neighborhood do not care or cannot control what happens there. "If the neighborhood cannot keep a bothersome panhandler from annoying passersby, the thief may reason, it is even less likely to call the police to identify a potential mugger or to interfere if the mugging actually takes place."[167] Moreover, because disorder tends to make residents fear the public spaces in their own neighborhood, it causes informal community controls of behavior in public spaces to breakdown.[168] Kelling and Wilson argue that such break down of community controls leads to a neighborhood that is vulnerable to criminal invasion. Though it is not inevitable, it is more likely that here, rather than in places where people are confident they can regulate public behavior by informal controls, drugs will change hands, prostitutes will solicit, and cars will be stripped; that the drunks will be robbed by boys who do it as a lark, and the prostitutes' customers will be robbed by men who do it purposefully and perhaps violently; that muggings will occur.[169]

Thus, low-level disorder—described as drunks, panhandlers, loiterers, and prostitutes—breaks down the social controls of a community and leads to more serious crime. The solution that Wilson and Kelling suggest is that the police should get out of their cars, walk a beat, and police disorder. This order-maintenance policing approach will lead to drops in crime because the police can "reinforce the informal control mechanisms of the community itself."[170]

Since Wilson and Kelling's seminal article, scholars have articulated other theoretical justifications for Broken Windows policing. Robert

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164. *Id.*
165. *Id.*
166. *Id.*
167. *Id.*
168. *Id.*
169. *Id.*
170. *Id.*

Sampson and Jacqueline Cohen argue that the aggressive policing of disorder and other minor crime could reduce crime by increasing the chance that criminals would come into contact with the police and get arrested.[171] In this version of Broken Windows policing, crime is not just reduced because of the establishment of informal community controls, but because the police are more visible, more present, and more in contact with members of the community. Criminals are thus deterred from committing crime because they think that they are more likely to be caught. As Sampson and Cohen explain, "vigorous intervention by police on driving violations, drunkenness, and public disorder is a very visible indicator of police activity in an area. Aggressiveness in police patrol practices thus in all likelihood sends a signal to potential offenders that one's chances of getting caught are higher than they actually are."[172] Another result of aggressive policing of disorder is that the police develop more potent and expansive surveillance capabilities, which in turn may allow them to prevent and further reduce crime.[173]

David Thacher provides a third theoretical justification for Broken Windows policing. Instead of justifying Broken Windows policing as preventative of more serious crime—either through Sampson and Cohen's increased police presence function or Wilson and Kelling's informal community control mechanism—Thacher argues that Broken Windows policing is justified on a liberal theory of harm. Under this version, low-level disorder should be subject to police intervention because disorderly acts like public urination or sleeping in a subway station are harmful in and of themselves, either as cumulative with other harms or as offensive independent of other harm.[174] Recognizing that this version of Broken Windows policing could underwrite broad interventions into harmless and potentially socially productive activities, Thacher argues that police must proceed cautiously and take a context-specific approach to what constitutes an accumulatively harmful act or offensive act.[175]

Whatever its theoretical underpinnings, Broken Windows theory represented a powerful new way of thinking about policing, one that the NYPD would adopt as the central policing strategy in the early 1990s. In 1993, newly elected mayor Rudy Giuliani and his handpicked police commissioner William Bratton launched a "Quality of Life" policing initiative.[176] Giuliani had been elected after campaigning against crime and

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171. *See generally* Robert J. Sampson & Jacqueline Cohen, *Deterrent Effects of the Police on Crime: A Replication and Theoretical Extension*, 22 LAW & SOC'Y REV. 163 (1988).

172. *Id*. at 165.

173. *See* HARCOURT, *supra* note 3, at 10-11 (arguing that if order-maintenance policing has an effect on crime, "the primary engine is probably the enhanced *power of surveillance* offered by a policy of aggressive stops and frisks and misdemeanor arrests").

174. David Thacher, *Order Maintenance Reconsidered: Moving Beyond Strong Causal Reasoning*, 94 J. CRIM. L. & CRIMINOLOGY 381, 410 (2004).

175. Thacher emphasizes that the police must take "a nuanced approach to order maintenance that eschews general prohibitions and asks officers to consider context closely." *Id*. at 409.

176. HARCOURT, *supra* note 3, at 47-48; BRATTON, *supra* note 111, at 228-29.

disorder, with a special focus on "squeegee men."[177] Shortly after Giuliani appointed Bratton to be commissioner, they implemented a policing strategy called the "'quality-of-life initiative,' expressly premised on the Broken Windows theory."[178]

The Quality of Life initiative was based off of Bratton's work as the head of the New York Transit Police.[179] With the assistance of Broken Windows theory co-creator George Kelling, Bratton implemented Broken Windows policing in the New York subway system.[180] Under Bratton's direction, the transit police targeted fare jumpers, panhandlers in the subway, and cleared homeless people out of the subway system.[181] Bratton also had transit officers arrest violators like turnstile jumpers instead of issuing desk appearance tickets, a form of summons that was frequently disregarded.[182] As a result of these policies, "ejections and arrests for misdemeanors both tripled within a few months of Bratton's appointment—and, in fact, continued to escalate through at least 1994."[183] Bratton also discovered that many of those arrested for misdemeanors had warrants for more serious crimes and a significant number were carrying weapons.[184] Bratton claimed his order-maintenance strategy had "reduced felony crime and disorder in the subways, fare evasion had been halved, and . . . had increased ridership and greatly improved rider confidence."[185]

Bratton brought the same order-maintenance approach to the NYPD when Giuliani appointed him commissioner in late 1993. The Quality of Life Initiative that Bratton implemented targeted "[b]oom boxes, squeegee people, street prostitutes, public drunks, panhandlers, reckless bicyclists, illegal after-hours joints, [and graffiti]."[186] Importing his practice from the Transit Police, Bratton eliminated the use of desk appearance tickets and demanded that his officers arrest violators of quality-of-life regulations. But the Quality of Life Initiative was not simply about limiting disorder to prevent more serious crime as Broken Windows theory would have it. By increasing arrests of New Yorkers for minor violations, the NYPD found individuals with illegal guns, outstanding warrants, and parole

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177. HARCOURT, *supra* note 3, at 47; BRATTON, *supra* note 111, at 212-13. Squeegee men stood at busy intersections and cleaned windshields for a small fee as drivers waited in traffic. Mayor Guliani and other critics claimed that squeegee men provided their services without permission of drivers and aggressively solicited payment for their unwanted services. *Return of Squeegee Men*, N.Y. PRESS, July 26, 2006, http://www.nypress.com/article-14010-return-of-the-squeegee-men.html.

178. HARCOURT, *supra* note 3, at 47-48.

179. *Id*. at 48-49.

180. BRATTON, *supra* note 111, at 152.

181. *See generally id*. at 152-64.

182. *See* HARCOURT, *supra* note 3, at 48.

183. *Id*.

184. Bratton claimed that one out of every seven people arrested for fare evasion had an outstanding warrant, while one in twenty-one was carrying a weapon. *See* BRATTON, *supra* note 111, at 154.

185. *Id*. at 180.

186. *Id*. at 228.

violations.[187] The order-maintenance approach became extremely popular in New York as it correlated with falling crime rates.[188]

Despite its popularity, Broken Windows policing is not without its critics. Despite earlier studies that indicated that policing disorder reduced crime,[189] Bernard Harcourt has demonstrated that there is no empirical basis for the claim that the order-maintenance policing *caused* a drop in crime.[190] Other social scientists have discredited Broken Windows Theory's fundamental assumption that disorder is linked with crime.[191] Harcourt has also critiqued Broken Windows policing as *producing* the category of disorder (not inherently criminal) as something that needs to be policed and underwrites aggressive police action to keep disorder under control.[192] Given the costs of order-maintenance policing, which include increased arrests, more police misconduct, and the stereotyping of black communities as criminal, and the lack of empirical evidence that shows it actually reduces crime, Harcourt argues that it is not justified as a policing strategy.[193]

2. Theorizing Order Maintenance: The Punitive Bind of Neoliberal Policing

Broken Windows and order-maintenance policing entail the policing of conduct that is not inherently criminal. By recasting previously non-criminal disorderly acts as behavior that causes serious crimes, order-maintenance policing reconstructs the way police and communities think about conduct like public drinking, panhandling, and loitering around the principle of harm.[194] As a result, order-maintenance vilifies those who are disorderly as criminal, or at a minimum as the causers of serious criminality.

It is here, in its vilification of the disorderly, that we can begin to see how order-maintenance policing dovetails with neoliberal ideology around individual responsibility. Neoliberal ideology holds that individuals are

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187.   *See* HARCOURT, *supra* note 3, at 48-9.

188.   *See id.* at 3-4 (noting the popularity of order-maintenance policing); VINCENT E. HENRY, COMPSTAT MANAGEMENT IN THE NYPD: REDUCING CRIME AND IMPROVING QUALITY OF LIFE IN NEW YORK CITY 1, http://www.unafei.or.jp/english/pdf/RS_No68/ No68_11VE_Henry1.pdf ("According to New York Police Department (NYPD) figures, the total number of reported crimes for the seven major crime categories declined an unprecedented 65.99% in 2003 from the levels reported in 1993.").

189.   *See* HARCOURT, *supra* note 3, at 59-121 (reviewing studies that claim to establish that order-maintenance policing led to less crime).

190.   *See id.* (demonstrating that no previous study has reliably established a causal relationship between order-maintenance policing and drops in crime rates).

191.   Robert J. Sampson & Stephen W. Raudenbush, *Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods*, 105 AM. J. SOC. 603, 637 (1999) (finding that levels disorder do not have a direct effect on crime, with the exception of robbery, where the impact of disorder was modest).

192.   HARCOURT, *supra* note 3, at 141-50.

193.   *Id.* at 213.

194.   *Id.* at 183.

responsible for their outcomes in life. A corollary to the neoliberal cultural trope of individual responsibility is the belief that individuals should be held responsible for their lack of success (e.g. poverty, lack of education). Broken Windows theory and order-maintenance policing similarly blame individuals for their conduct. Disorderly individuals are seen as harmful and therefore subject to policing. To the extent Broken Windows policing make no pretenses of seeking to rehabilitate individuals,[195] Broken Windows theory implicitly assigns a value of individual responsibility on those individuals for their disorder. It is unsurprising, then, that Broken Windows theory and order-maintenance policing would become so popular in a neoliberal era. Because neoliberal ideology normalizes the idea of individual responsibility, the order-maintenance attack on disorderly individuals comes across as a common-sense way of dealing with disorder.

Because individuals are responsible for their disorder, Broken Windows and order-maintenance policing incorporate neoliberalism's use of punitive solutions to deal with the incidents of poverty. As an ideology of individual responsibility, neoliberalism redefines members of "poor and frequently minority communities . . . as dangerous not disadvantaged" and therefore more justifiably subject to incapacitation.[196]   Moreover, as Wacquant and Gilmore argue, neoliberalism relies on incarceration as a structural and spatial fix to the problems of surplus labor and political control of impoverished communities.[197] As the neoliberal state retracts its welfare function, it expands its criminal justice apparatus to deal with poverty. Broken Windows similarly endorses punitive solutions to poverty. As Stephen Herbert explains, "[b]roken windows reinforces an 'othering' of the criminal population that allows state actors to justify being tough on crime, and that fuels stratospheric rates of incarceration."[198] Even though many of the fundamental causes of disorder lie in structural poverty,[199] the New York-style Broken Windows policing adopts a punitive solution.[200]

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195. For example, in planning a major program to target drug users, Commissioner Bratton's staff reported that "[Bratton] doesn't care . . . if they can find treatment if they want it . . . . He wants to get them locked up. And if they get right out, he wants to get them locked up again . . . ." BRATTON, *supra* note 111, at 277.

196. Herbert, *supra* note 90, at 458.

197. *See supra* notes 83-88 and accompanying text.

198. Herbert, *supra* note 90, at 458.

199. *See* Sampson & Raudenbush, *supra* note 190, at 622-30 (finding that observed neighborhood disorder is strongly correlated with structural poverty and concentrated disadvantage); Robert J. Sampson & Stephen W. Raudenbush, *Disorder in Urban Neighborhoods – Does It Lead to Crime?*, National Institute of Justice: Research in Brief, February, 2001, at 2. ("[B]oth crime and disorder stem from structural characteristics specific to certain neighborhoods, most notably concentrated poverty and the associated absence of social resources."); SKOGAN, *supra* note 24, at 59 (finding that disorder is correlated with poverty).

200. It should be noted that at least theoretically, Broken Windows theory does not rely on punitive responses to low level disorder. Thacher has argued that there exists wide variation between the Broken Windows theory based police practices in different cities, with some cities like New Haven applying a highly nuanced and context specific approach to the policing of disorder. *See* Thacher, *supra* note 174, at 391-97. For example, the New Haven Police Departments "Order Maintenance Training Bulletin" instructs officers to "use the least forceful means possible to achieve its purposes." *Id.* at 392 (italics omitted). What I argue here is that

Under Broken Windows theory as applied in New York City, disorderly individuals are either exiled from the community they are disrupting, arrested,[201] or, at times, subjected to police violence.[202] Or as Commissioner Bratton explained about his order-maintenance strategy, "If you peed in the street, you were going to jail."[203]

Arrest statistics evidence the NYPD's punitive approach to order maintenance policing. Under its order maintenance regime, the NYPD vastly increased the number of misdemeanor arrests from 129,404 in 1993 (the year before Bratton implemented Broken Windows policing) to 215,158 in 1998.[204] Fagan and Davies point out that the increase in the number of arrests under the order maintenance regime also corresponded to a drastic increase in the rate at which prosecutors decided not to prosecute those arrested. [205] "In 1998, prosecutors dismissed 18,000 of the 345,000 misdemeanor and felony arrests, approximately twice the number dismissed in 1993 . . . [and constituting] an increase of 60% compared with 1993."[206] The simultaneous increase in arrests and non-prosecutions indicates that the police, and not the incarceral system as many neoliberal scholars would suggest,[207] play a significant and independent role in punishing under order maintenance policing. In misdemeanor arrests under order maintenance policing, "being taken into custody, handcuffed, transported, booked, often strip-searched, and jailed overnight" function as a form of *police* punishment independent of formal conviction and incarceration.[208]

Because the order-maintenance approach focused on disorder, the NYPD became increasingly focused on the policing of poverty. Several scholars have shown that disorder is in many ways a proxy for poverty.[209] In New York, order-maintenance policing brought about the policing of poor people in three primary ways. First, homeless men and women became targets of police action under order-maintenance policing as "[m]any of the offenses now being vigorously prosecuted are inevitable results of life on the streets."[210] With the implementation of quality-of-life policing, a homeless person could be arrested for any number of reasons including panhandling, having a mattress on a public street, leaving movable property in a public place, or urinating in public despite a distinct

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Broken Windows policing was applied in New York City in a particularly punitive manner. Moreover, as I argue below, Broken Windows theory has punitive potential as it invests the police, an inherently punitive institution, in solving disorder.

201. Herbert, *supra* note 90, at 451.

202. "What the police in fact do is to chase known gang members out of the project. In the words of one officer, 'We kick ass.'" Kelling and Wilson, *supra* note 163.

203. BRATTON, *supra* note 111, at 229.

204. Fagan & Davies, *supra* note 93, at 476.

205. *Id.*

206. *Id.*

207. *See* discussion *supra* Section II.C.

208. *Id. See also* discussion *infra* section III.D.3.

209. *See supra* note 199.

210. Barr, *supra* note 102, at 61.

lack of public restrooms throughout the city.[211] The NYPD also became active in removing-through-arrest the homeless from public parks.[212] By the late 1990s, Giuliani was announcing that "[s]treets do not exist in civilized societies for the purpose of people sleeping there" and the Police Commissioner, Howard Safir, reported that the NYPD would arrest homeless people who did not agree to sleep in a shelter.[213] Second, order-maintenance policing resources came to be concentrated in neighborhoods with higher levels of disorder, which tend to be poorer.[214] Finally, order maintenance policing may have become focused on poor neighborhoods through the proxy of race. Robert Sampson and Stephen Raudenbush have shown that perceptions of disorder are largely a function of the racial composition of a neighborhood, with black neighborhoods being perceived as far more disordered by outsiders, all other variables held equal.[215] As communities of color tend to be sites of concentrated poverty, racialized perceptions of disorder may indirectly lead to more policing of poor persons.

Perhaps it would be useful to take a step back and consider how the neoliberal state is deploying the police under order-maintenance policing. As discussed earlier, federal, state, and local governments retract social welfare services as a key neoliberal reform.[216] In other words, the neoliberal state, with its emphasis on individual responsibility, is not fully committed to addressing the problems of poverty through social services. Yet, the problems of poverty do not go away. Poor communities are still sites of physical disorder and violence. These impoverished communities pose several problems to the neoliberal state: they impede urban development (gentrification), they pose a security risk (whether it is imagined is beside the point), they represent a potentially destabilizing political force (from urban riots of the 1960s to L.A. riots in the 1990s), and they are a highly-visible, symbolic reminder that the promise of neoliberalism has not benefitted all Americans. But because of neoliberal logic around individual responsibility, the neoliberal state does not attempt to remedy the underlying cause of the "threat" that these communities pose to social tranquility and economic development. Instead, in an era of governance through crime,[217] the neoliberal state turns to punitive solutions to address the effects of poverty. It is here that we can begin to see why order-maintenance policing becomes an attractive approach. Employing core neoliberal ideologies, order-maintenance policing functions structurally as one of the neoliberal state's primary technologies to deal with the effects of

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211. *See* Tanya Erzen, *Turnstile Jumpers and Broken Windows: Policing Disorder in New York City*, *in* ZERO TOLERANCE, *supra* note 101, at 19, 35-45 (listing the quality-of-life offenses).

212. SMITH, *supra* note 66, at 223-25.

213. Barr, *supra* note 102, at 62.

214. Fagan & Davies, *supra* note 93, at 461-62.

215. *See generally* Robert J. Sampson & Stephen W. Raudenbush, *Seeing Disorder: Neighborhood Stigma and the Social Construction of "Broken Windows,"* 67 SOC. PSYCHOL. Q. 319 (2004).

216. *See supra* Part II.A.

217. *See supra* notes 74-75 and accompanying text.

poverty through the individuation of crime.

The use of the police to address the incidents of poverty under neoliberalism creates a punitive bind, in which police officers have almost no choice but to use punitive techniques to address disorder. The police are poorly situated to deal with the causes of poverty. Police officers have no specialized competence in addressing the underlying causes (poverty, substance abuse, mental illness, etc.) of the disorder they are policing. Instead, as a matter of NYPD policy (order-maintenance policing's arrest mandate) or institutional logic, police officers are essentially forced to apply punitive solutions to disorderly individuals; they coerce, arrest, and use force. None of these solutions, of course, address the underlying causes of disorder.[218] Even if police officers wanted to take a non-punitive approach to a disorderly person, their options are limited as the lack of social welfare services under neoliberalism give them few resources to apply anything but punitive responses to the disorderly. It is here, in this mismatched application of policing to poverty, that neoliberalism creates the punitive bind. Under neoliberalism, the police are asked to deal with the effects of poverty to which they have no choice but to apply coercive and punitive solutions.

The example of the policing of homeless people with mental illnesses illustrates this punitive bind. Like other social services in the state of New York and nationally, neoliberalism brought about a disinvestment in health care for the mentally ill, leading to a one-third drop in spending on treatment for the seriously mentally ill nationwide since the 1950s.[219] In the 1990s alone, New York State slashed $40 million from its mental health budget.[220] Community health centers for the mentally ill are vastly underfunded and overburdened. Cuts in state spending combined with deinstitutionalization have vastly increased the numbers of mentally ill on the streets of New York City. Thousands of these individuals, unable to function without proper medication, become homeless. And when these people become disorderly, the police become the primary response. As one commentator noted, the NYPD is "perhaps the largest and busiest psychiatric crisis response team in the world."[221] There are, of course, alternatives to police intervention to deal with the mentally ill, but the city's psychiatric mobile crisis teams are underfunded and overworked.[222] Once the police engage a mentally ill person, they have very few options but to arrest the individual, as hospitals are overcrowded and it is a burdensome

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218. *But see* Thacher, *supra* note 174, at 410-11 (arguing that the police are necessary to eliminating disorder as informal community sanctions are generally ineffective unless they are supported by formal sanctions).

219. Barr, *supra* note 102, at 55. While some of the decrease in mental health spending may have come from the deinstitutionalization of the mentally ill, Barr argues that deinstitutionalization became a convenient vehicle for cutting spending for the mentally ill and that it allowed the further underfunding of mental health. *Id.*

220. *Id.* at 57.

221. *Id.* at 73.

222. *Id.* at 73-74.

process to get an emotionally disturbed person admitted.[223] Instead, the police end up using punitive approaches to mentally ill people: they use force (occasionally deadly) and arrest. As a result, fifteen to twenty percent of New York's jail population have mental illness.[224] Rikers Island has become, "de facto, the state's largest in-patient psychiatric facility."[225] Neoliberalism thus brings about a re-institutionalization of the mentally ill, though not in a hospital but in a punitive setting, a process in which the police play a central role.[226] At the same time, the re-institutionalization of the mentally ill underscores one of Wacquant's central arguments, that neoliberalism does not entail smaller government but a refocusing of coercive state power on smaller, marginalized populations.[227]

Order-maintenance policing has been widely praised for cleaning up New York streets and reducing crime.[228] Although social scientists have shown that there is no empirical basis for the argument that Broken Windows theory policing reduces crime or that disorder causes serious crime,[229] the idea that the police should be broadly invested in policing disorder continues to influence urban policy making across the country.[230] While disorder may be a worthy concern for city leaders to address, my review of order-maintenance policing suggests that there are significant costs that should be considered when turning to the police to address disorder. Policing disorder leads to the widespread application of punitive solutions to problems that are rooted in poverty. Moreover, given that the policing of disorder occurs in a neoliberal era of retracted social services, disorder policing becomes one of the neoliberal state's primary solutions to poverty. This punitive approach to addressing disorder likely helps create

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223. *Id.*

224. *Id.* at 54.

225. *Id.* at 69.

226. Harcourt notes that the rates of institutionalization of the mentally ill under the Keynesian state were high, with the aggregate mental hospital, prison, and jail rate in this earlier era approximating the aggregate rate under neoliberalism. Nonetheless, he distinguishes between the Keynesian era of institutionalization and the noeliberal era of incarceration on the basis of a fundamental difference in the logic that justified state coercion. Whereas state coercion in the Keynesian era was based on rehabilitation and treatment, neoliberal state coercion is premised on "criminalization, marginalization, and carceral punishment of the criminal outcast." He argues that the neoliberal form of state coercion in the form of totalizing institutions is different in kind than Keynesian institutionalization as they involve "a certain kind of penal excess." HARCOURT, *supra* note 10, at 223-24.

227. *See supra* note 86 and accompanying text.

228. *See* Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 292-93 (1998) (noting the overwhelmingly positive treatment of order-maintenance policing by the media and scholars).

229. *See* discussion *supra* notes 190-191 and accompanying text.

230. For example, several cities have recently launched efforts to eliminate panhandling. *See, e.g.*, Dominic Holden, *The Law that Targets Strange People on the Street*, THE STRANGER, Apr. 13, 2010, http://www.thestranger.com/seattle/the-law-that-targets-strange-people-on-the-street/Content?oid=3846937 (describing the Downtown Seattle Association and the Greater Seattle Chamber of Commerce's campaign to pass anti-panhandling laws); Larry Copeland and Charisse Jones, *Atlanta Puts Heat on Panhandlers*, USA TODAY, Apr. 15, 2005, http://cuimpb.cat/politiquesurbanes/docs/Num_31_ijur_829.pdf.

and perpetuate vast disparities in who is incarcerated and hyper-concentration of incarceration in certain neighborhoods.[231] Moreover, given that the policing of disorder has been carried out with no solid structures of accountability to the communities being policed, order-maintenance policing may erode police legitimacy and thereby undermine communities' ability to exert control over public space (a task in which police-community collaboration is almost a necessity).[232]

None of this is to say that cities should not be concerned with disorder. I would imagine that a near consensus of city dwellers would prefer to live in neighborhoods without blight and free of homelessness and public alcoholism. But I would argue that the solution to homelessness lies not in arrest and exile (incarceration) but in better shelters and improved mental health care. The solution to public drinking is not punitive policing but drug abuse counselors. The problem lies in the fact that in a neoliberal era—one that emphasizes personal responsibility and in which crime has become the justification for government intervention—the police seem like the natural response to disorder and the poverty that drives it.

D. Stop-and-Frisk: The Rise of Public Punishment

If order-maintenance policing positions the police to be one of the neoliberal state's primary responses to the problems of poverty, then *how* are the police dealing with poverty? In the previous section, I suggested that using the police to address disorder under neoliberalism creates a punitive bind, in which police officers have almost no choice but to use punitive techniques to address disorder. But how do punitive policing solutions to poverty function within a larger system of neoliberal governance? And what shape do those punitive techniques take?

The NYPD's adoption of stop-and-frisks as its primary tool of policing in the early-1990s helps begin to answer these questions. Stop-and-frisk policing refers to the practice of police officers briefly detaining individuals suspected of crimes and conducting a pat-down search of their clothing for weapons.[233] Not only is stop-and-frisk policing the most prevalent policing tactic used by the NYPD, it is of increasing national relevance as cities across the country follow New York's lead and conduct hundreds of thousands of stop-and-frisks annually.[234] While a police officer's use of stop-and-frisk techniques is constitutionally justified in certain circumstances as a protection of officer and community safety, I argue that the use of stop-and-frisk policing in neoliberal New York has gone far beyond safety concerns. Instead, stop-and-frisk has two primary functions. First, using disorder as a pretext for detaining and searching people on the

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231. This argument does not suppose that policing disorder directly leads to mass incarceration but rather that consistent run-ins with the police and arrests for minor offenses can reduce policed individuals' investment in legitimate/legal behavior.

232. Fagan & Davies, *supra* note 93, at 499-500.

233. *See* discussion *infra* notes 235-238 and accompanying text.

234. STOP, QUESTION & FRISK, *supra* note 5, at 5.

street, stop-and-frisk policing has enabled an enormous extension of the NYPD's surveillance function. Increased police surveillance of individuals on the street may prove to be an effective approach to removing weapons from the streets. But the benefits of this approach must be weighed against the invasions into the liberty and dignity interests of thousands of (innocent) New Yorkers that police publicly stop and frisk every year. Moreover, these costs are not equally distributed but instead are a burden carried by black and latino New Yorkers and poor neighborhoods, communities which have less access to police accountability structures. Second, stop-and-frisk policing acts as a form of public punishment, which in turn functions as a symbolic assertion of state power. This performance of public punishment suggests that the state's criminal justice apparatus under neoliberalism, via the police, plays an integral role in regulating the daily lives of the poor beyond the formal limits of incarceration and state supervision.

1. Stop-and-Frisk Policing

In *Terry v. Ohio*, the Supreme Court ruled that it was constitutional for a police officer to stop-and-frisk an individual under certain conditions.[235] In a stop-and-frisk scenario, also known as a *Terry* stop, it is constitutional for a police officer to briefly detain a person who the officer has reasonable suspicion to believe has committed, is committing, or is about to commit a crime.[236] If a police officer has reasonable suspicion that the person she has detained is "armed and dangerous," the police officer may also conduct a pat down search of the detainee's outer layer of clothing (a "frisk") as part of the stop.[237] Although the Court's opinion in *Terry* recognized that a frisk was a significant intrusion on individuals' privacy, it ultimately found that such intrusion is outweighed by a police officer's need to secure their own immediate safety and the safety of the community.[238]

Stop-and-frisk policing has been employed by police officers since well before the *Terry* decision in 1968 and has been used as a common technique since then. However, in the 1990s, the NYPD began using *Terry* stops as a primary method of fighting disorder and as part of a claimed campaign to get guns off the street.[239] By the late 1990s, NYPD officers completed close to 175,000 documented stop-and-frisks in a fourteen-month period.[240] The

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235. 392 U.S. 1 (1968).

236. *Id.* at 27.

237. *Id.*

238. *Id.* at 24-25 ("When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.").

239. *See* STOP, QUESTION & FRISK, *supra* note 5, at 11-12 (describing NYPD's Police Strategy No. 1, 'Getting Guns off the Streets of New York,' which sought to use stop and frisk policing to get guns off the street.),

240. SPITZER, *supra* note 4, at 88.

number of stops has rapidly increased over the last ten years, with over 575,000 stops documented in 2009.[241] As not every stop-and-frisk event was documented, the actual number of *Terry* stops conducted by the NYPD is probably much higher.[242] Evidence indicates that stop-and-frisk policing is a frequent and growing police practice in other cities across the country as well.[243]

The origins of the NYPD's turn to *Terry* stops as a primary tool of policing are somewhat murky. The heads of the NYPD never issued a memo that specifically instructed officers to increase their use of *Terry* stops.[244] Nonetheless, it is clear that the NYPD intended for the stop-and-frisk approach to be a key part of its order-maintenance policing efforts and its campaign to get weapons off the streets.[245] NYPD officers deployed stop-and-frisk as a tool of quality-of-life policing, perhaps as a sub-arrest intervention into disorderly behaviors.[246] About ten percent of all *Terry* stops documented between January 1998 and March 1999 were for quality-of-life offenses.[247] The NYPD also appeared to use stop-and-frisks specifically to get weapons off the street. Over the period of the Attorney General's study, thirty four percent of documented stops were for suspected weapon possession.[248]

Although at least one study has drawn a line between the NYPD's *Terry* stops under order-maintenance policing and stops under weapons policing,[249] it is not at all clear that such a distinction existed. Instead, it is more likely that functionally the NYPD used quality-of-life offenses as pretext for more serious policing like weapons enforcement. That is, police officers used a suspect's violation of quality-of-life ordinances as legal pretext to search that person for weapons. Although this approach was not officially announced in any internal memoranda by the NYPD, it is clear that it was part of the intention behind Bratton's Quality of Life Initiative. When Commissioner Bratton oversaw the transit police, he found that one in seven people arrested for quality-of-life offenses had outstanding warrants and one in twenty-one was carrying some type of weapon.[250] Quality-of-life policing in the subway, for Bratton, was not so much about eliminating disorder as it was about using disorder as a pretext for finding more serious offenders.[251] When Bratton brought the order-maintenance approach to the NYPD, he saw it as a tool not just to end disorder but also to get weapons off the street. As one of Bratton's advisors explained, "Your open beer lets me check your ID . . . Now I can radio the precinct for

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241. Stop, Question & Frisk, *supra* note 5, at 3.
242. A recent report estimated that thirty percent of all stops are not documented. *Id.* at 4.
243. *Id.* at 5.
244. Spitzer, *supra* note 4, at 56.
245. Fagan and Davies, *supra* note 93, at 470-71.
246. Spitzer, *supra* note 4, at 58.
247. *Id.*
248. *Id.*
249. *Id.* at 58-59.
250. Bratton, *supra* note 111, at 154.
251. *Id.*

outstanding warrants or parole violations. Maybe I bump against that bulge in your belt; with probable cause (*sic*), I can frisk you."[252] Thus, instead of being distinct initiatives, order-maintenance policing and the stop-and-frisk approach were bound up in a larger effort to directly prevent more serious crime and confiscate illegal weapons.[253]

The fact that NYPD used quality-of-life policing as pretext for investigating more serious violations has important implications for the operation of Broken Windows theory and police-citizen interaction. Making order-maintenance policing largely about finding weapons and individuals with outstanding warrants took this policing approach far from its theoretical foundations in Broken Windows policing. Broken Windows theory emphasized policing disorder because social and physical disorder invited serious crime. But order-maintenance policing operating as pretext for "gun-oriented policing"[254] reimagines disorder as a pretext to (constitutionally) justify expansions of police surveillance power. As Fagan and Davies wrote, "disorder policing was used not to disrupt the developmental sequence of disorder and crime, but instead disorder offenses became opportunities to remove weapons and wanted criminals from the streets."[255]

Using disorder as a pretext for weapons policing via stop-and-frisks has proven to be an extremely inefficient approach to getting guns off of the street. Between 2003 and 2008, the NYPD has recovered some type of contraband in under 4 percent of all stops, with only 0.15 percent of all stops in 2008 leading to the recovery of a gun.[256] Indeed, stops by the NYPD have been spectacularly inefficient in recovering non-weapon contraband, with yield rates hovering around two percent over the last decade. Some studies suggest that nearly ninety percent of all New Yorkers who are stopped by the NYPD are "innocent."[257] In addition to the ineffectiveness of using disorder as pretext for weapons enforcement, it is important to consider what costs such an approach entails. Given the empirical work analyzing stop-and-frisks in New York City in the 1990s, there is good reason to think the costs were significant.[258]

2. Surveillance, Privacy, and Racial Stigma

Whatever positive impact the NYPD's approach to weapons policing may have had, it has been achieved in part through a massive expansion of

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252. *Id*. at 229.
253. *See* Fagan & Davies, *supra* note 93, at 471 (noting the "marriage of [order-maintenance policing] and 'gun-oriented policing.'").
254. *Id*.
255. *Id*. at 472.
256. Stop, Question & Frisk, *supra* note 5, at 10.
257. *See id*. at 11 (citing The New York Civil Liberties Union). The New York Civil Liberties Union refers to individuals who are neither arrested nor issued a summons during a police stop as "Innocent New Yorkers." *Id*.
258. *See infra* notes 267-279 and accompanying text.

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the NYPD's surveillance power.[259] Once the NYPD linked stop-and-frisk to policing disorder, the number of people that could be searched expanded exponentially. To find pretext of a quality-of-life violation is not particularly difficult for a police officer.[260] She has at her disposal any of the twenty-five or so quality-of-life violations referenced in the NYPD Quality of Life Enforcement Options Reference Guide,[261] not to mention vague and relatively easy to establish crimes like disorderly conduct. Once a police officer detains an individual, she doesn't need much cause to search the suspect. For example, under the Constitution, an officer can generally search an individual she reasonably believes was involved in trafficking drugs, and will be justified in a pat-down search when the suspect makes furtive movements in the area of their waistband.[262] Moreover, civil lawsuits and civilian complaints are notoriously weak incentives to get officers to improve their conduct, so constitutional and other forms of legal regulation may be poor deterrents for preventing illegal *Terry* stops.[263] In most instances, officer abuse of stop-and-frisk will go unreported. All of this is to say that when stop-and-frisk tactics become linked to disorder policing and their unlawful application is generally unrestrained by legal or political structures, police officers have wide discretion to detain and pat down huge numbers of citizens (and indeed may be required to by their supervisors).[264] This potentially massive expansion of police surveillance may enable police officers to root out more weapons from the street but it also brings with it serious costs. The rest of this Section will outline those costs, which include widespread infringement on individuals' privacy and liberty interests, racially discriminatory and stigmatizing policing, and loss of police legitimacy.

Increased surveillance leads to intrusions upon individuals' privacy rights and liberty interests. A *Terry* stop, while less invasive than an arrest, can be a serious intrusion into individuals' liberties. As the Supreme Court recognized in *Terry*, "[e]ven a limited search of the outer clothing for weapons constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience."[265] Moreover, the experience of being

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259. HARCOURT, *supra* note 3, at 213.

260. *See* Andrew Gelman, Jeffrey Fagan, & Alex Kiss, *An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias*, 102 J. AM. STAT. ASS'N 813, 815 (2007) ("[B]ecause low-level 'quality of life' and misdemeanor offenses were more likely to be committed in the open, the 'reasonable suspicion' standard is more easily satisfied in these sorts of crimes.")(citation omitted).

261. *See* Erzen, *supra* note 211, at 35-45 (listing the quality-of-life offenses).

262. SPITZER, *supra* note 4, at 38-39.

263. *See, e.g.,* Richard Emery & Ilann Margalit Maazel, *Why Civil Rights Lawsuits Do Not Deter Police Misconduct: The Conundrum of Indemnification and a Proposed Solution*, 28 FORDHAM URB. L.J. 587 (2000) (contending that indemnification limits the deterrent effect that civil rights lawsuits have on police misconduct); Clarke, *supra* note 13, at 11-19 (reviewing the weaknesses of four models of civilian oversight of the police).

264. *See* Rayman, *supra* note 154 (reporting that NYPD precinct leaders threatened line officers if they did not make a minimum number of stop-and-frisks).

265. Terry v. Ohio, 392 U.S. 1, 24-25 (1968).

subjected to a *Terry* stop can be more traumatizing for individuals who are innocent of any crime.[266] But the fact that a policing tactic leads to violations of individuals' rights may not be particularly troubling if they are merely occasional and shared across diverse communities. Indeed, every police tactic will inevitably violate some people's rights; it is only when those violations are particularly egregious, where only some communities shoulder most of their costs, or when they happen with high frequency, that we should be particularly concerned.

Research into stop-and-frisk policing, however, indicates that the NYPD's use of *Terry* stops is concentrated in certain communities and, as a result, occurs within those communities at a high frequency. A 1999 study, authored by then New York Attorney General Eliot Spitzer, of over 175,000 *Terry* stops from January 1998 to March 1999, revealed significant disparities in the targets of stop-and-frisk policing.[267] Across the city, blacks and latinos were stopped at disproportionately high rates as compared to white New Yorkers. The report found that "blacks were over six times more likely to be 'stopped' than whites in New York City, while Hispanics were over four times more likely to be 'stopped' than whites in New York City."[268] When controlling for differentials in crime rates by racial groups, the report's analysis revealed that in aggregate across all crime categories and precincts citywide, "blacks were 'stopped' 23% more often (in comparison to the crime rate) than whites. Hispanics were 'stopped' 39% more often than whites."[269] As one might expect given the disparities between stop rates and crime rates for people of color, stops of black and latino New Yorkers were less likely to result in arrests than for whites. "[P]olice 'stopped' 9.5 blacks for every 'stop' that yielded an arrest, and 8.8 Hispanics, but only 7.9 whites per one arrest. Because of the large number of cases sampled, luck or random chance cannot explain why police 'stopped' 1.6 more blacks than whites to achieve an arrest."[270]

The Attorney General's report also shows that *Terry* stops happen with much higher frequency in neighborhoods with more people of color. Spitzer's report found that nine of the ten precincts with the highest stop rates in the city were majority-minority precincts, a result which was in "stark divergence from the City as a whole, in which almost half of the

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266. *See generally* SPITZER, *supra* note 4, at 76-87) (reporting on interviews with civilians about their experiences of stop and frisk policing in New York City).

267. *See generally id.* at 88-174. The study included a statistical analysis of nearly 175,000 stop-and-frisk events from January 1998 to March 1999 documented on UF-250 forms. Officers were mandated to complete these forms each time they stopped a person by use of force, frisked or searched a person, arrested a person, or stopped a person and the suspect refused to identify himself. The forms included such information as the race of the person stopped, where the person was stopped, the suspected charge, and whether the person stopped was frisked. The statistical analysis revealed patterns of use of stop-and-frisk citywide but also disaggregated by race and precinct. The study also analyzed a sample of the reports to determine how many of stops were justified under *Terry* or other constitutional standards.

268. *Id.* at 95.

269. *Id.* at 123.

270. *Id.* at 111.

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precincts (48%) are majority-white."[271] The report found that the disproportionately high frequency of stops in districts with populations that were composed of a majority of people of color was still present when it controlled for differences in crime rates between precincts.[272] In other words, differences in crime rates between precincts do not explain disparities in stop rates between majority white and majority people of color precincts. Finally, it should be noted that racial disparities in enforcement frequency between different precincts are in part explained by differences in poverty rates by geographic area. Using the Attorney General's data, Jeffery Fagan and Garth Davies ran a multivariate analysis to isolate causes that explain racial differences in stop-rate. Fagan and Davies found that "after controlling for crime, stops within the sub-boroughs were predicted by their poverty rates. Accordingly, policing in the city's neighborhoods appears to reflect the economic status of people . . . ."[273]

Race and class disparities of the NYPD's stop-and-frisk policing represent significant costs that may not only outweigh justifications for this approach to policing but also undermine any positive impact the enforcement regime may have on crime. Racially discriminatory enforcement has the potential to stigmatize communities of color. Not only do racial stigmas produce costly psychic harm, they also have the potential to undermine police legitimacy, making the kind of police-community collaboration and informal community control envisioned by Broken Windows theory policing impossible. [274] As Fagan and Davies explain, "Broad surveillance of African Americans is stigmatizing, undermining respect for authorities and commitment to law and discouraging the everyday interactions (or collective efficacy) that expresses social control and conveys respect for other members of the group."[275] They go on to note that unfair policing "may actually increase the likelihood of reoffending, rather than reduce it."[276] These legitimacy concerns are borne out by interviews with individuals unfairly stopped-and-frisked by the police. A fifty four-year-old woman said she felt that she could no longer "trust" police officers after her *Terry* stop.[277] An educator reported that he now thinks "police officers in my community do not care about the citizens."[278] School principals assert that their students "fear" police officers.[279]

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271. *Id.* at 101.

272. *Id.* at 135.

273. Fagan & Davies, *supra* note 93, at 495.

274. Sherry Colb argues that targeted policing, that is policing that singles out individuals without a legitimate basis, constitutes a harm distinct from individuals' privacy interests and is protected under the Fourth Amendment. *See generally* Sherry F. Colb, *Innocence, Privacy, and Targeting in Fourth Amendment Jurisprudence*, 96 COLUM. L. REV. 1456, 1486-95 (1996).

275. Jeffery A. Fagan & Garth Davies, *Policing Guns: Order Maintenance and Crime Control in New York*, *in* GUNS, CRIME, AND PUNISHMENT IN AMERICA 191, 208 (Bernard E. Harcourt ed., 2003).

276. *Id.* at 209.

277. SPITZER, *supra* note 4, at 79.

278. *Id.* at 82.

279. *Id.* at 84.

These costs of aggressive stop-and-frisk policing—that is, loss of civil liberties, stigmas, and decreasing of police legitimacy—weigh heavily against the NYPD's approach to weapons enforcement. At the same time, most community members likely gain some semblance of safer streets as a result of the NYPD's heavy-handed tactics.[280] While evaluating such costs and benefits may pose a difficult task to conscientious city policy makers, those well-positioned to weigh in on the issue—the poor communities which are being policed—have generally been excluded from the police department's decision-making process. If the police are going to tackle street disorder and weapons by broadly applying heavy-handed tactics like stops and frisks without active input and buy-in from the policed communities, they do so at the expense of their own legitimacy.

Unfortunately, the police don't bear most of the costs when they lose legitimacy. Instead, the true victims of police delegitimization are the residents of poor communities who no longer feel they can turn to the police for security.[281] The NYPD's go-at-it-alone, punitive approach to policing therefore makes poor communities pay twice. On the front end, the police produce insecurity in targeted communities, whose residents fear that the police will violate their liberty, privacy, and dignity. On the back end, the residents of poor communities have more difficulty in creating security from crime because they don't feel comfortable collaborating with the police.[282] Because members of the community bear the costs of the police strategy the NYPD adopts, there must be a concerted and structured effort to meaningfully involve them in decisions over precinct enforcement priorities.

3. Stop-and-Frisk as Public Punishment

Earlier in this Note, I argue that the rise of Broken Windows policing

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280. There is no scholarly consensus on whether stop-and-frisk policing tactics reduce crime. *See* John E. Eck & Edward R. Macquire, *Have Changes in Policing Reduced Violent Crime?, in* The Crime Drop in America 207, 228 (Alfred Blumstein & Joel Wallman eds., 2000) ("Overall, the evidence is mixed on the efficacy of generic zero-tolerance strategies in driving down rates of violent crime. . . .").

281. *See* Tom R. Tyler, *Policing in Black and White: Ethnic Group Differences in Trust and Confidence in the Police,* 8 Police Q. 322, 322 (2005) (reporting that where citizens do not trust the criminal justice system, they will not use it); Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 Ohio St. J. Crim. L. 231, 234, 263 (2008) (showing that where the police are seen as legitimate people are more willing to cooperate with the police, report crimes in their neighborhoods, and more likely to work with neighborhood groups).

282. Stop-and-frisk policing may function to make neighborhoods less secure in other ways as well. Jeffery Fagan, Valarie West, and Jan Holliday have shown that high levels of incarceration within a neighborhood can actually lead to *more* crime in that neighborhood. Jeffrey Fagan et al., *Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods*, 30 Fordham Urb. L.J. 1551 (2003). To the extent that stop-and-frisk policing functions as part of a punitive policing process that ultimately increases the chances that individuals end up being incarcerated, it may also lead to more crime within a neighborhood. *See id.* at 1554 (positing that punitive policing helps create a cycle of incarceration which ultimately causes more crime).

became one of New York City's primary responses to poverty under neoliberalism. Because the police are largely unsupported by any social welfare function, I suggested that this use of police to address disorder inevitably produces punitive responses to the effects of poverty. Stop-and-frisk policing embodies this punitive turn towards dealing with poor people and poor communities by inflicting public punishments, a disciplinary technology to exert social control over poor communities. First, a *Terry* stop is a disciplining punishment, in and of itself. The public humiliation, limits on liberty (even if brief), and invasion of privacy that go along with being stopped and frisked exert disciplinary power over that individual. Second, as stop-and-frisks tend to take place in public, the interaction functions as a symbolic assertion of state power, one that reminds everyone viewing the spectacle of the coercive power of the police. Because stop-and-frisks occur at a high frequency in poor neighborhoods, these assertions of state power become part of everyday life for the members of those communities—if not through direct subjugation to the police stops, then through constantly bearing witness to such stops. These publicly performed punishments function as disciplinary power not only by condemning certain (disorderly) behaviors, but also by asserting that state power defines what is orderly in the first place. As Wacquant writes, "the penalization of urban poverty has served well as a vehicle for the *ritual reassertion of the sovereignty of the state* in the narrow, theatricalized domain of law enforcement that it has prioritized *for that very purpose . . . .*"[283]

And it is perhaps here, in these raw assertions of state power, that stop-and-frisk policing and other punitive tactics adopted by the NYPD confront their potential crisis of legitimacy. Instead of making remedial attempts to integrate poor communities into decisions about the policing in their neighborhoods, the NYPD instead uses public punishment to declare its capacity to exercise coercive power over communities. Stop-and-frisk policing therefore endows police with the power not only to define the suspicious but also to punish them publicly, fostering an antagonistic relationship between targeted communities and the state.

CONCLUSION

The rise of neoliberalism in the United States has brought about significant changes to national and local governance, the shape of American cities, and even people's conceptions of themselves and their communities. Policing strategies have navigated these changes by responding to new social realities, incorporating new technologies of internal governance, and developing new enforcement strategies. My focus in this Note has not been to evaluate the effectiveness of these new policing strategies and techniques on lowering crime or reducing insecurity. Indeed, such techniques may have contributed to the precipitous drop in New York City's crime rate in

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283. WACQUANT, *supra* note 6, at 299 (emphasis in original).

the 1990s.[284] Instead, my analysis has attempted to show that neoliberal policing technologies cannot be evaluated without a full account of the broader social, political, and economic context in which they are being implemented. At the same time, my Note suggests that studies of neoliberalism need to take seriously the idea of police as a unique site of governance. My analysis demonstrates that there is good reason to be concerned with the shifting of accountability structures, the policing of disorder, and the deployment of stop-and-frisk techniques. These new policing technologies produce punitive enforcement schemes against poor communities, which have no effective mechanism for demanding accountability from the police and are increasingly marginalized economically and politically through the rise of neoliberalism.

Throughout this Note, I have suggested that the NYPD should create healthy accountability structures that meaningfully engage poor communities in discussions about police strategies and enforcement priorities.[285] Such an approach may increase police legitimacy, foster police-resident collaboration, and enhance police efforts to reduce crime. At the same time, my analysis suggests that many of the solutions to the problems of neoliberal policing go beyond the boundaries of police policies. Indeed, reducing the police's punitive approach to poverty may require a broader social commitment to addressing poverty and its disorderly byproducts at their roots. Such solutions are always easier to produce in theory than in practice, as they require resources and therefore public support. But just because effective solutions to some of the challenges of neoliberal policing go beyond the institutional boundaries of a police department does not mean that broader social, economic, and political concerns should not be considered when making policing policy. As I have ultimately tried to suggest, if police policymakers do not take seriously the broader costs of their approach—that is, of punitive approaches to poverty and inadequate accountability structures—their efforts to produce security could undermine the police's legitimacy and therefore effectiveness. Marginalized communities, who lose their right to individual and communal security, ultimately pay the cost of such an approach.

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284. *See supra* notes 152, 189 and accompanying text. *But see supra* notes 190-191 and accompanying text.

285. *See* examples cited *supra* note 140.

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