Policy Partners in the Neoliberal Age: Corresponding School and Prison Reforms Since 1970

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Policy Partners in the Neoliberal Age:

Corresponding School and Prison Reforms Since 1970

By Jeremy Benson

A dissertation submitted to the Graduate Faculty in Urban Education in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York

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This manuscript has been read and accepted for the Graduate Faculty in Urban Education in satisfaction of the Dissertation requirement for the degree of Doctor of Philosophy

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THE CITY UNIVERSITY OF NEW YORK
Abstract

POLICY PARTNERS IN THE NEOLIBERAL AGE:
CORRESPONDING SCHOOL AND PRISON REFORMS SINCE 1970
By
Jeremy Benson

Advisor: Professor Ira Shor

This dissertation is a comparative policy study of changes in education and incarceration of the past 40 years. Following national and global trends, New York City saw public school and carceral policies converge as the city experienced massive deindustrialization and governmental cutbacks while its political economy shifted to one driven by finance, investment, real estate, and the growth of a low-wage service sector. These changes dramatically increased economic inequality across racial lines, and spurred the intimate linkage of public education and state incarceration as institutional tools for the mass management of low-income communities of color. Following from a growing policy debate in education and criminal justice around the “school-to-prison pipeline,” this study analyzes the emergence and structure of correspondence in these two major social sectors. This multiscalar research draws on critical policy analysis and critical discourse analysis to examine federal and state policy vis-à-vis case studies of local charter school and drug court reforms. Findings include correspondence in the implementation of data-driven managerial practices and representations, the extension of private nonprofit and foundation influence on policy, and the (re)production and circulation of what Melamed (2006) terms official antiracisms- knowledge systems which deracialize inequality on the one hand, while constructing neoliberal subject positions amenable to racialized processes of disinvestment, dispossession, and discipline on the other.
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In loving memory of Jean Anyon (1941-2013), mentor, teacher, ally, and friend.

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CHAPTER 1

Doing Political Economy

“There's always more to it. This is what history consists of. It is the sum total of the things they aren't telling us.” – Don DeLillo, *Libra*

Introduction

When my good friend died of a heroin overdose seven years ago, I wanted to understand. At that time, grief and a vague desire for revenge were the feelings underlying my need for illumination. In the weeks and months that followed his death, two themes arose among the bereft to explain his passing: poor choices and bum luck. But my friend’s death was not simply the result of some doomed and chance interaction of chemical and body, nor could it be reduced to personal irresponsibility and self-destructiveness. These available explanations failed to speak adequately to what had happened, and my temporary embrace of them did not orient me toward any kind of growth or healing. The talk of ‘bad luck’ was a dead end, as luck lies beyond the reach of human meddling (though the practiced gambler might argue otherwise). The talk of ‘individual responsibility’ was similarly disempowering. It stirred up anger and blamefulness at my friend’s failure to make good choices; it left me embittered and cynical, edging towards despair. These narratives failed to illuminate the conditions of his demise; rather, they mystified and obscured them. We, his friends and family, were drawing on these readily available notions to craft a history that hid more than it revealed.

Several years before my friend’s death, as a novice English teacher in a sprawling New Jersey suburb, I found myself wanting to understand things I was seeing and experiencing in school, and, once again, the dominant narratives concealed more than
they clarified. I wanted to understand why we spent so much time on test prep, when this work so clearly constrained and diminished the interests, passions, and curiosity of my students. I wanted to understand why so much was attached to student test scores that, it seemed to me, measured so little of the complex interactions that went on in my classroom everyday, let alone the vast knowledge and experience my students brought with them to school. Why were these test scores filling my “basic skills” classes with bilingual students, immigrants, and working class White, African American, and Latino students, while my “college prep” classes were predominantly middle and upper middle class White students who drove to school in nicer cars than I could ever hope to own? Why did we use an alienating curriculum, and who decided that this was best?

The answers to my questions, of course, were the common ones that we hear all too often today: We need a neutral curriculum and objective instruments to measure student learning in order to develop best practices and improve our schools. We need to hold teachers and youth accountable. Students who score poorly on these tests do so because of some kind of behavioral, cognitive, cultural, and/or linguistic deficit. They don’t have the right skills or knowledge. Good teachers are those who use “best practices” to effectively treat or fix the deficit, teach the knowledge and skills, and thereby improve the test scores. End of story.

I came to see that I was living through a history without context- a period with no real sense of its temporality or place, no roots, no structures, no struggles, no interplay of forces. I was living in a present history that was, it seemed, suffering from what Cornel West calls “historical amnesia” (West, 1999). This dissertation emerges out of a desire to join a rich tradition of critical scholars, artists, and activists who have made it their life’s
work to disrupt “amnesia” by bringing to light and critically engaging with what West calls the “radical historical conditionedness of human existence” (ibid, p. 5). We are indeed born into conditions that are neither of our making nor our choosing. These conditions shape the way we think and act, but, because they are neither natural nor inevitable, they are not immutable, and so they are not our fate. By naming, describing, and critically analyzing the conditions of existence, we can identify spaces for resistance and transformation. The social sciences in general, and my field of urban education in particular, can be these kinds of critical interventions. In the spirit of Dewey (1938) and Freire (1970), inquiry can shed light on the conditions of existence. As critical educators and scholars, we can pay special attention to the forces and power relationships that produce material and the ideological conditions, and reflect upon the ways they shape understandings of the world and our place in it.

This dissertation is in many ways an experiment in confronting what physicist Fritjof Capra (1996) refers to as a “crisis of perception,” in which we view the “global problems which are harming the biosphere and human life” as being disconnected from each other (p. 4). In the social sciences, this disconnection means that particular problems of social life can end up isolated under the gaze of specific disciplines and their credentialed experts, resulting in a lack of interdisciplinarity and collaboration. Capra contends that, to offset the myriad destructive forces at work in the world, we need to begin by “seeing the world as an integrated whole rather than a dissociated collection of parts” (p. 6). Returning to Dewey and Freire, we must consider West’s (1999) “radical historical conditionedness of human existence” and seek out webs and nodes where we can investigate the interconnectedness and interdependence of political, economic, social,
and cultural forces across time and space. By choosing to research and analyze the conjunctures of education policy and drug policy, my goal is to work across disciplines and lenses in order to better understand how these two institutional spheres come together as they produce, and are produced by, the dynamics of racial capitalism and neoliberalism. By doing so, I hope to uncover some of what history has been hiding.

This dissertation considers how education reform, drug policy, and the neoliberal restructuring of New York City are woven together within “an integrated whole” (Capra, 1996, p. 6), come together to form a “single organizational mesh” (Wacquant, 2010, p. 199), or are constitutive of the “single reality” of capitalist creative destruction (Tabb, 1982). To do so, I am asking how the neoliberal restructuring of New York City since the mid-1970s is related to developments in education policy and drug policy in general, and how charter school and drug court reforms, as case studies, reflect this relationship. As drug policy is part of the discursive terrain of mass incarceration, and education policy that of schooling, I set out to understand how and why schools and prisons came to be imagined and presented as solutions to economic problems and crises, and the ways in which these representations are mutually reinforcing. Finally, as this dissertation will show, neoliberal restructuring has not created a more just society as its proponents claim; rather it has exacerbated inequality and produced a highly volatile economic system whose periodic crises disproportionately harm poor and working class people of color, while further empowering and enriching elite classes. As education and drug policy are bundled together with these disequalizing political economic shifts, this project asks what has been the impact of this mix of education and drug policy reforms along lines of race and class? Who benefits, who is harmed? How, and why?
Growing a Study

In May of 2012, I began my study of education and drug policy in New York City since the mid-1970s. Over the last 40 years, New York City has been a laboratory for experiments in both education reform and criminal justice, giving birth to policies and practices that have since been exported to cities around the globe. It has also been a site for experimentation with what has come to be known as neoliberal restructuring - a form of creative destruction in which the urban political economy is reworked in order to create conditions for increased profit accumulation and the restoration of elite class power (Harvey, 2007). The creative and the destructive are two sides of the same coin. The creative aspect of neoliberalization involves opening new markets and spaces for investment, yet such efforts to stimulate growth in New York City have emerged out of the destruction or repurposing of existing institutions, built space, and social/cultural practices.

Neoliberal creative destruction in New York City is intimately tied to processes of austerity, abandonment, disinvestment, and dispossession that have resulted in the even greater maldistribution of wealth, resources, control over built space, and institutional power to the city’s mostly White upper class. At the same time, the vulnerabilities, harms, and social costs associated with these processes are disproportionately visited upon working class and poor people of color. Therefore, my conjunctural analysis of New York City’s education and drug policy reforms since the mid-1970s required relating them to the racial capitalist dynamics of neoliberal creative destruction that transformed the city’s political economy over this same period of time. In the chapters that follow, I intend to show how education policy, drug policy, and the political
economy have fused into a “condensation of forces” that has given rise to the highly racialized “new social configurations” of neoliberal New York (Hall, 2011, p. 9).

I am interested in how education policy, drug policy, and the political economy in New York City are braided together, both materially and ideologically, and how this relationship is productive in terms of the unequal distribution of wealth and harm along lines of race and class. My research was inspired by a small body of radical literature on the political economy of education (Anyon, 1981, 1997, 2005, 2011; Lipman, 1998, 2006, 2011). I found similarly moving work in critical or cultural criminology (Beckett, 2000; Garland, 2001; Gilmore, 2007, 2008; Parenti, 2008; Wacquant, 2001, 2010; Young, 2007). What these two bodies of literature share, in the most general sense, is an attempt to describe the links between political and economic institutions and entities, and analyze how these historical and ongoing relationships shape the society we live in.

Political economic analysis, broadly conceived, is an effort at understanding education or criminal justice that starts its explanations by looking at economic processes and criticizes “capitalist outcomes primarily on the basis of their impacts on the welfare of relatively deprived groups” (Fainstein, in Merrifield, 1996, p. 19). Such an analysis evaluates “the outcomes of actions as they affect social groupings and judge the process that produces these results primarily in terms of its contribution to equality” (ibid, p. 22). Political economic analyses of education and criminal justice tend to critically analyze certain federal, state, and local policies and practices in order to “attack schemes that enhance capital accumulation to the detriment of ordinary residents” (ibid, p. 21). Part exposé, part social science, part polemic, these analyses foreground the structural causes
of oppression and inequality in order to “speak truth to power” by challenging and debunking popular tropes around the individualized and cultural causes of poverty.

This political economic analysis seeks to illuminate the continuity between current struggles and those of the past, as well as contribute to the developing critical frameworks we need in order to analyze policy as the City continues to change before our eyes. For instance, K-12 public schools in New York City are currently embroiled in bitter battles over public-private partnerships in education and the place of the private sector more generally in influencing educational policy and practice. Mayor DeBlasio’s recent battle and subsequent defeat in Albany by charter school proponents and Governor Cuomo has resulted in a windfall for charters. Cuomo passed legislation that requires the city to find and pay for space for new and expanding charter schools. If the city can’t provide space of its own, i.e. through co-locating charters within public school buildings that it already owns, it will have to pay the charters’ rent itself. Only after the city has spent more than $40 million on rent will the state begin to contribute (Hernández, 2014).

The future of public schools is uncertain. According to Julie Cavanagh of the Movement of Rank and File Educators (MORE) caucus within the UFT, once the city’s charter school student population grows from its current 6 percent to 10 percent in the coming years, the city may well find itself in the midst of a financial crisis, as the amount of public money funneled into charters will prevent the city from being able to fund its traditional public schools (2014). A political economic analysis of this situation would seek to understand such policy’s place within the logic and historical dynamics of capitalism. How do Cuomo’s protections for charter schools relate to the economic organization of New York, and U.S. society more generally? How are these mandates
related to neoliberal projects of capital accumulation of the past and present? How might this move advance the interests of the elite classes over those of the working class and poor? How are charter school co-locations and the policies that mandate and implement them complicit in the creation and maintenance of inequality? Who benefits? Who harmed?

These same questions could be asked about recent developments in crime control, such as the decrease in “stop and frisks” and the resurgence of “broken windows” policing under Mayor DeBlasio and Police Commissioner Bratton— a tactical realignment that has resulted in a 300 percent increase in the arrests of panhandlers and peddlers in New York City’s subways (Goldstein & Goodman, 2014). How do political and economic power converge around recent austerity measures by Cuomo to close (and try to sell) 7 state prisons, while at the same time increasing the use of solitary confinement and boosting funds for ‘alternatives to incarceration’? Is the culture of policing and mass incarceration changing? How do we think about these realignments within the context of the Great Recession?

In Radical Possibilities, Jean Anyon (2005) used political economy to look at how the government allocates resources in society through various laws and policies, the impact this has on education and the limits it places on education reform. Educational opportunity, she argued, is structured within a broad policy landscape:

Macroeconomic policies like those regulating the minimum wage, job availability, tax rates, federal transportation, and affordable housing create conditions in cities that no existing educational policy or urban school reform can transcend. Thus...low achieving urban schools are not primarily a consequence of
failed education policy, or urban family dynamics, as mainstream analysts and public policies typically imply. Failing schools in cities are, rather, a logical consequence of the U.S. macroeconomy- and the federal and regional policies and practices that support it (p. 2).

Jean Anyon’s *Radical Possibilities* and Pauline Lipman’s (2011) *The New Political Economy of Urban Education: Neoliberalism, Race, and the Right to the City* were each important influences on my work. These authors showed how education policy and practice are enmeshed in complex political economic forces and transformations, and explored how, because of this connection, education reform is linked to other policy arenas like housing and transportation. Both authors provide sweepingly radical visions of education, situating it within a web of forces and social issues. Also influential were Ruth Wilson Gilmore’s (2007) political economy of California’s prison-building boom, *The Golden Gulag*, and Loïc Wacquant’s (2001, 2010) writing on the relationship between the dismantling of welfare and the rolling out of mass incarceration in the U.S. Gilmore and Wacquant’s political economic analyses of prisons, like those of Anyon and Lipman on education, uncover the material and ideological machinery behind mass incarceration, situate it historically and geographically, and relate it to transformations in other facets of society, like agriculture, migration, the military, and welfare. This dissertation seeks to expand on the important work of these scholars by extending the political economy of education to look specifically at the conjuncture of education reform, drug policy, and the neoliberal restructuring of New York City.
"Doing Political Economy": Bricolage

In November of 2013, I was invited to give a talk at the CUNY Graduate Center for a group of new urban education students, where I discussed my dissertation and fielded some questions about my work and ideas. When someone asked me what my method was for “doing political economy,” the best I could come up with at the time was to reply, half-jokingly, that I was a “hodgepodgist,” or one who engages a hodgepodge of methods as a tool for inquiry. According to the Oxford American Dictionary, a hodgepodge is “a confused mixture.”

On the one hand, I think I misrepresented myself to those students. I was not so much confused in my approach to method as I was varied. On the other hand, hodgepodge is an appropriate term, but more because of its etymological origins in the archaic British word hotchpotch, which refers to a kind of stew made with mix of sheep meat and an assortment of vegetables. That is, like the cook behind the hotchpotch, I was engaged in what Dewey (1938) might call “purposeful activity” in my inquiry into the political economic conditions of New York City, and I was deliberately using a mix of what was readily available to me to make it as rich as possible.

Bricolage is perhaps a more adequate academic term to describe the way I approach “doing political economy.” Kincheloe (2001) traces this term to Claude Levi-Strauss (1966) and the French word bricoleur which “describes a handyman or handywoman who makes use of the tools available to complete a task” (Kincheloe, 2001, p. 680). Rogers (2012) defines bricolage as a “critical, multi-perspectival, multi-theoretical and multi-methodological approach to inquiry” (p. 1). Bricolage for me meant engaging in an interdisciplinary project grounded in the belief that there was no single
approach or method that was best suited to the kind of inquiry I wanted to do. Following Kincheloe (2001), bricolage means using “multiple methods of inquiry but with diverse theoretical and philosophical notions of the various elements encountered in the research act” (p. 682). It supports interdisciplinarity, eclecticism, and flexibility in research.

“Doing political economy” through bricolage meant a) seeking out an eclectic mix of data from a wide variety of sources; b) using a blend of critical policy analysis and critical discourse analysis to draw out, describe, and analyze the ways policy and political economy converge; c) synthesizing my own analysis with multiple theoretical perspectives to unpack the conjuncture of education policy, drug policy, and the political economy.

As a novice bricoleur, I drew on a mix of critical policy analysis and critical discourse analysis to situate education policy, drug policy, and political economy at the intersection of the structural and the discursive, at multiple scales. Critical policy analysis is not a “technocratic form of policy analysis,” measuring the inputs and outputs, and evaluating the efficiency of certain reforms and instruments (Orsini & Smith, 2006, p. 3). Rather, it examines policy as an expression of historically situated political and economic power, as well as an instrument for protecting and/or enhancing that power (ibid). It looks at how power operates through policy, across geographic scales, as a means of advancing and protecting economic and racial hierarchies. Such analysis is also ‘dialectical’ insofar as it sees outcomes as an unpredictable and even negotiated result of conflicting as well as contradictory agents and conditions. Critical policy analysis was, for me, a way of locating education and drug policy within the formation of what David Harvey (2005, 2007) and Loïc Wacquant (2010) call the neoliberal state- that cluster of
institutional apparatuses used by elites to restore their class power, open new areas for profitable investment, and unleash new forms of discipline and control. Speaking broadly, critical policy analysis involves considering how the “organization of the economy” shapes the form and intent of policy (Graefe, in Orsini & Smith, p. 20). Because policy is constructed, articulated, and enacted in multiple spaces and temporalities, bricolage provided the flexibility I needed in order to locate and explore different junctures where policy converges with political economy.

In addition, at certain points in the dissertation, I look at particular instances where points of convergence can be found in discourse that embodies “particular ways of representing the world” (Fairclough, 2003, p. 26). At times, these lie within the text of the policy itself, for as Lipman (2011) points out, “policy is an expression of values arising out of specific interests and relations of power” (p. 15). At other points in this dissertation, policy converges with political economy within the dominant discourses of elites themselves and/or texts produced and circulated by public and private organizations and the mass media. These speeches, websites, publications, reports, articles, etc. embody and advance the interests of elites by representing the world in certain ways. They articulate powerful visions of what is good (and bad), possible (and impossible), and what exists (and does not exist) (Therborn, 1980); such powerful or dominant representations and initiatives encounter material conditions and oppositional agents whose alternative intentions and resistant subjectivities interfere with hegemonic designs. I unpack these visions, identifying and analyzing important points of conjuncture.

Coupling critical policy analysis with critical discourse analysis allowed me to situate policy at the intersection of the material and the ideological forces at work within
the political economy. For example, connecting census data on child poverty levels in New York City, analyses of flexible accumulation and transnational capitalism (e.g. Harvey, 1989), and the racially-coded ideological content of *A Nation at Risk* required what Lincoln (in Kincheloe, 2001) describes as “interdisciplinary border-crossing.” The researcher “looks for not yet imagined tools, fashioning them with not yet imagined connection” and searches “for the nodes, the nexuses, the linkages, the interconnections” (p. 694). Importantly, this approach allowed me to situate policy at the intersection of race and political economy, and consider policy as a site where systemic racism and hegemonic racial representation converge with the structural dynamics of capitalism.

Bricolage, then, involved putting my own imagination into radical dialogue with Marxism, cultural studies, critical geography, racial analysis, Foucault, Gramsci, Freire, and other critical theorists. I needed to construct an interdisciplinary and flexible conceptual architecture that I could use to interpret and make connections among of a variety of data sources- policy texts, newspaper and magazine articles, speeches, reports, studies, policy briefs, funding schemes, census data, websites, network analysis, mission statements, organizational protocols, as well as a wide variety of secondary sources. Drawing on diverse theories highlighted different aspects of, or relationships among, the data.

**Structure of the Dissertation and Chapter Overview**

The dissertation is essentially organized into three main parts. Part I includes chapters 2 and 3, and is focused on drug policy. Part II consists of chapters 4 and 5, and examines education policy and reform. Part III concludes the dissertation and includes
only chapter 6, a largely theoretical analysis that examines some specific conceptual areas of conjuncture.

Part I begins with Chapter 2, a historical political economic analysis of drug policy and mass incarceration in New York State. It provides background information on the Rockefeller Drug Laws, and situates them within the context of the attacks on the welfare state and the backlash against the palpable threats to white supremacy and capitalist class power unleashed by the turmoil of the 1960s and early 70s. The chapter goes on to trace the emergence and growth of the carceral state, focusing on New York’s prison building and filling projects of the 1980s and 90s, and concludes by making connections between the carceral state and the neoliberal restructuring of New York City.

Chapter 3 zooms in to examine New York City’s drug court reforms as a case study to examine how the carceral state was able to adapt and expand, in spite of the political, racial, and economic crises in which it was implicated. Drug courts are usually cast by their critics and proponents alike as a *response* to mass incarceration and the drug war. In contrast, this analysis looks at how drug courts proliferated as *part and parcel* of the fine-tuning of the drug war and its regime of mass incarceration. It concludes with a critical analysis of recent drug court reforms to the Rockefeller Drug Laws, looking at how they reproduce race, class, and gender inequality within the criminal justice system.

Chapter 4 marks the shift to Part II of the dissertation, as I examine federal education policy starting with the Elementary and Secondary Education Act (ESEA) of 1965. The chapter looks at how and why education policy and reform were imagined and presented as solutions to poverty, in spite of evidence that growing poverty rates were being caused by profound changes in the global economy. It critically analyzes the so-
called literacy crisis of the late 1970s and the *A Nation at Risk* report, and the roles their racial representations played in establishing a new discursive terrain for education reform, as well as the emerging neoliberalization of the city.

Chapter 5 zooms in once again to look at education reform in New York City by situating school decentralization within the context of the fiscal crisis of the mid-1970s and the “structural adjustments” visited upon the city in its aftermath. The chapter explores how the charter school movement in New York emerged out of this restructuring, and provides a Marxian analysis of school choice in New York City and the marketization of education more broadly by federal policies like No Child Left Behind and Race to the Top.

Chapter 6 is Part III of the dissertation, and it identifies and theorizes on three main strands of conjuncture. First, I analyze what I call “managerial simplifications” in education and criminal justice—technocratic ways of seeing and representing that mask and obscure issues of race and class. Second, I draw on the work of INCITE! (2007) on the Nonprofit Industrial Complex (NPIC) to consider how drug courts and charters, through their permeation by the private nonprofit sector, are “reformist reforms” that, contrary to their progressive claims, actually protect status quo power relations and advance private interests. Finally, the chapter concludes with an analysis of what Melamed (2006) refers to as the “official anti-racism” of the neoliberal state as manifest in drug court and charter school reforms. I look at how such discourses merge hegemonic racial representations with market ideologies to orient neoliberal subjects away from collectivity and radical critique, and towards taking individual responsibility for the risks and harms created by the dynamics of racial capitalism.
This dissertation is, at heart, an attempt to spark a multi-perspectival dialogue about inequality and power by inviting readers to explore and reconsider boundaries. I situate myself historically in the aftermath of Occupy Wall Street. At protests, and at the Zuccotti Park encampment, I’d see picket signs, t-shirts, pamphlets, and activists from grassroots radical education organizations as well as prison abolitionists and “Stop stop and friskers.” Each of these issues is important in its own right and warrants, or necessitates, its respective experts, organizers, and constituents. But to rebuild the broad-based social movement that Occupy was perhaps so close to being, we need to work harder to identify, to critically analyze, and to articulate links among the forces and energies at work from both above and below. In that spirit, this conceptual dissertation is an attempt to unpack, connect, and rethink some aspects of the vast and complex conditions that mark the contours of life in the neoliberal city.
CHAPTER 2
The Growth of the Carceral State in New York

The Rockefeller Drug Laws

This chapter provides an overview and political economic analysis of the Rockefeller Drug Laws and New York’s prison building and filling boom. It situates these developments at the juncture several forces: of the dismantling of the welfare state, attacks on the gains of the civil rights movement, the emergence of the drug war and the growing carceral state, and the neoliberal restructuring of New York City. The Rockefeller Drug Laws were a set of narcotics control statutes put into law in New York State in 1973 that established markedly punitive sentencing guidelines and mandates for drug offenders. This chapter argues that the laws were not simply a response to rising crime or drug addiction rates, but rather part of a discursive and structural process of criminalization as policing and incarceration emerged as responses to cultural and racialized political economic transformations and upheavals. The chapter will trace how the drug laws, adrenalized by the federal war on drugs, produced a prison building and filling boom in which a fiscally strained city and state struggled to develop the infrastructure needed to police, remove and contain “dangerous” surplus populations of poor people of color living in disinvested urban neighborhoods. It will explore how the growing carceral state, "the totality of this spatially concentrated, more punitive, surveillance- and punishment-oriented system of governance" (Weaver, 2010, p. 2), accompanied neoliberal restructuring, as New York City was transformed to accommodate the changing dynamics of racial capitalism.
Criminalization, race, and the attack on welfare

Crime control in the 1970s was an important part of the larger interlocking projects of reasserting racial hierarchies and the dismantling of the welfare state. In the 1950s, developments in agricultural production and the unemployment that followed spurred a mass migration of poor, uneducated African Americans from rural and southern areas to the segregated Northeast seeking work in manufacturing, ports, and other industries. Similar agricultural and economic transformations brought large numbers of Puerto Ricans to New York around the same time, also seeking industrial work. New York, however, did not have as much to offer as other industrial cities did post-WWII, for industries had already begun to flee the city due to high costs of production. Thus migrant workers arriving in New York in the 1950s arrived to a city already in a state of gradual industrial decline (Weil, 2004). This drastic change in New York’s demographics, coupled with growing economic insecurity as the city was increasingly deindustrialized, meant not only an industrial exodus but also an exodus of revenue as upper and middle class ‘white flight’ to the suburbs gained momentum (Moody, 2007). At the same time, African Americans and Puerto Ricans in New York faced institutionalized discrimination as they sought jobs, education, and housing. Though the New Deal and the creation of the U.S. welfare state in the aftermath of World War II had brought about increased economic security for working class and middle class whites, it “reinforced racial segregation through social welfare programs, labor policy, and housing policy” (Quadagno, 1996, pg. v). Thus poor people of color living in New York City in the 1950s and much of the 1960s were cut out from the benefits of the welfare state and found themselves increasingly segregated into highly concentrated impoverished
neighborhoods, excluded from much unionized work and other decent industrial labor, denied educational opportunity, and with unequal access to the social welfare programs enacted by the state to create a floor beneath poverty.

In the mid to late 1960s, civil rights groups shifted their focus to the economic problems faced by African Americans, linking socioeconomic inequality and racism as the sources of poverty and social problems and advocating for an expansion of Johnson’s Great Society programs (Beckett, 2000). The urban uprisings and civil rights movements of the 1960s, coupled with a Cold War-inspired need to appear equitable, created a mounting pressure on politicians to merge the social, economic, and political benefits of the welfare state with the democratic ideals of racial justice. Johnson’s War on Poverty rearticulated the economic goals of the welfare state in racial justice terms as it sought to create opportunities for impoverished minority groups. The War on Poverty funneled federal resources into creating a social infrastructure amenable to equal opportunity. It helped develop community action programs, and brought African Americans into local politics as it created job-training programs to bring them into unions. Affirmative action and fair housing legislation emerged as mechanisms for upward mobility and desegregation. Working class solidarity and mobilization for economic justice, however, were weakened and eventually undermined by racial divisions (Quadagno, 1996).

These social programs threatened white privilege, and reductions in government intervention gradually emerged as an organizing principle that united the various interests threatened by the impending shakeup of the racial and economic status quo. The War on Poverty of the late 1960s brought about important political victories for minority groups, including the growth of a black middle class, increased representation in congress, and
more black and Latino mayors (Marable, 2007, pgs. 2-3). Furthermore, the surge in welfare benefits, job training, and affordable housing produced increasing stability for the city’s minority poor. The swelling welfare rolls, and the increasing number of African Americans on those rolls, however, produced a backlash from fiscal and social conservatives who sought to cut government spending on services and push back against civil rights gains. Furthermore, opposition to social and racial justice was pervasive among middle class and working class whites who, in an increasingly economically precarious city, felt threatened by the potential integration of African Americans and Latinos into the social, economic, and political mainstream.

Racial fears mixed with economic concerns as unions, homeowners, and an increasingly economically unstable and poor white working class resisted integration, affirmative action, and fair housing laws. As the struggle for racial justice became increasingly embedded within social policy, both white supremacy and white privilege were reconstructed in relation to social welfare programs. That is, if one supported the social programs, one supported racial integration and equality- and its corollary: if one opposed government regulation for fiscal or political reasons, one had to also oppose the social programs that promoted racial justice. As such, the “positive liberties” the welfare state extended to African Americans (welfare, job training, affirmative action, and fair housing) were viewed by the white middle and working class as infringements on their “negative liberties” (discrimination in unions, excluding people of color from local politics, maintaining segregated neighborhoods). Republicans capitalized on these racial conflicts and “forged racial hostility with conservative economic policy into a New Right coalition” (Quadagno, 1996, pg. 195). The rising New Right of the 1970s embarked on
the ideological task of reframing working class economic and social insecurity as well as racial concerns in free market terms by marrying fiscal conservatism to notions of white supremacy and white privilege (Quadagno, 1996; Beckett, 2000). Establishing powerful links among crime/criminality, the social and cultural deficits of the poor, and the entitlements of the welfare system emerged as an integral discursive and material undertaking that would be essential to the neoliberal restructuring of New York.

The marriage of anti-welfare/neoliberal politics to the rolling back of the social, economic, and political gains made by minority groups during the War on Poverty necessitated the delegitimization of the very claims to entitlement that underpinned civil rights. For neoliberal hegemony to work, its proponents needed a way to dislodge the discourse of racial and economic justice from the state, manage it in the streets, and neutralize or discredit it in public consciousness. It also needed to drive a wedge between poor and working class whites and people of color. The neoliberal project at this point in time was a grand one: in order to dismantle the welfare state and reassert the class power of economic elites, elites and their political allies needed to build a vast political base of working class whites by casting their economic instability and racial concerns onto the welfare state. To do so required the targeting, by the state, of African Americans and Latinos. Criminalization and mass incarceration worked to: a) discredit the claims of minority groups by casting them as criminals and parasites enabled by the welfare state; b) manage and contain the surplus population and increasing insecurity produced by neoliberal economics; c) undermine solidarities among poor minorities by destabilizing their communities; d) contribute to the amelioration of periodic crises by absorbing surplus capital and land; e) resolve issues of “surplus state capacity” (Gilmore, 2007) by
providing a site for the legitimate exercise of state power. The Rockefeller Drug Laws of 1973 were not the beginning of this process, as conservatives used crime to criticize welfare as early as 1964 (Beckett, 2000). The laws were, however, the crystallization of this discursive strategy in terms of legal infrastructure.

The 1970s in New York were characterized by the growth of urban unemployed and low wage workers, primarily people of color, living out their lives in poor material conditions (Marable, 2007, pp. 2-3). Alongside this growth in inequality and the discrediting and gradual dismantling of the welfare state came a “punitive turn” in state policy and criminal justice practice (Garland, 2001). State sponsored treatment, though often coercive and backed with the muscle of the criminal justice system, came to be viewed as “soft on crime,” enabling deviance, costly, inefficient, and generally ineffective. A more punitive approach to crime control became politically desirable, and by casting criminality onto race, it produced the conditions necessary to both roll back welfare and reassert racial hierarchies. Criminalization provided the ideological mantle that made the structural shifts towards mass incarceration possible, as drug use and low-level dealing were increasingly criminalized behaviors, and this criminality was inscribed upon African Americans and Latinos through the racially coded ‘law and order’ rhetoric of politicians and the mainstream media, as well as the direct targeting by the police of the inner city neighborhoods where people of color lived. The Rockefeller Drug Laws signified a drastic sea change in the state’s approach to dealing with deviance. The laws simultaneously constructed poor people of color as criminal subjects and provided the legal infrastructure to police, convict, and incarcerate them. In what follows, I will attempt to describe how the Rockefeller Drug Laws not only contributed to the
production of the institutional framework of mass incarceration in New York State, but also the ways in which these laws produced the criminalized human subjects who came to fill the prisons.

**Constructing the new punitive terrain**

In 1973, Governor Nelson T. Rockefeller advanced a profound paradigm shift in New York State’s approach to managing drug use and drug dealing. Framing drug treatment programs as a failure, Rockefeller advocated a shift to a more punitive approach to deterrence:

- I, therefore, will ask for legislation making the penalty for all illegal trafficking in hard drugs a life sentence in prison. To close all avenues for escaping the full force of this sentence, the law would forbid acceptance of a plea to a lesser charge, forbid probation, forbid parole and forbid suspension of sentence

(Rockefeller, 1973; as reprinted in Kohler-Hausmann, 2010).

The therapeutic, treatment-oriented approach, however, was never race or class neutral. Furthermore, the transition from therapeutic to punitive was not immediate, total, or evenly distributed. Julilly Kohler-Hausmann (2010) captures the race and class dynamic of this relationship well, pointing out that in the 1970s:

- these strategies coexisted almost symbiotically as the growing medicalization of addiction and mental illness for the middle and upper classes has been conjoined with persistent criminalization of the same problems for the working classes, and especially poor people of color. Rehabilitative intent in policy is theoretically democratizing, committed to reabsorbing marginalized citizens into the polity (on elite's terms) (pg. 73).
That is, therapeutic models of intervention fostered social reproduction and control by distributing the criminalization of drug use along lines of race and class. When these rationales for intervening upon marginalized populations lost their legitimacy alongside the sweeping decline of the welfare state, "policy makers changed the definition of success for state intervention" (ibid, p. 74). During the period of neoliberal ascendency, the shift from the therapeutic to the punitive, as embodied by the Rockefeller Drug Laws, became central to maintaining the racial status quo, reasserting the class power of elites, and legitimizing politicians as the welfare state fell into disrepute in the 1980s and on.

As the welfare state was systematically dismantled and delegitimized, punitiveness emerged as a form of conservative political currency. The Rockefeller Drug Laws were not Governor Rockefeller’s first foray into the politics of punishment; motivated by a desire to appear more conservative in anticipation of a possible run against Ronald Reagan in the 1976 Republican primary election, the punitive turn of 1973 was intimated by Rockefeller’s violent suppression of the Attica uprising in 1971 (Gangi, p. 49 in Marable, 2007). The Rockefeller Drug Laws of 1973, though not unique in the context of national drug policy of the 80s and 90s, were in many ways the model for social control within the drug war as it unfolded and escalated nationally: harsh, fixed prison sentences for drug users, low level dealers, and especially for repeat offenders. They took as their target the most vulnerable of the state’s population: black and brown minority groups living in conditions of highly concentrated, precarious, and potentially explosive urban poverty. The Rockefeller Drug Laws based punishment on the amount of drugs the offender was caught carrying; kingpins, however, do not tend to carry drugs on their person. As such, the laws’ targets were drug users and low-level dealers. Because
impoverished users and dealers tend to use and deal in public areas, they were easy targets for surveillance and intensified street policing, and their lack of resources made them easier for prosecutors to convict than white middle class drug users and dealers. The ready availability of a surplus population vulnerable to policing, conviction, and imprisonment provided officials with incentives to expand their police forces and reap the political benefits of mass arrests and convictions (ibid, p. 50).

In the 1970s, debates raged about the state's capacity to address social problems and "liberalism's therapeutic government interventions" were not only discredited as ineffective (Kohler-Hausmann, p. 71) but also delegitimized as a form of state action altogether by being framed as inefficient and overly permissive. There was a vacuum in terms of the role of the state in managing everyday life, and the state faced a legitimacy crisis. The Rockefeller Drug Laws helped to fill that vacuum by reconceptualizing and redirecting surplus state capacity (Gilmore, 2007) in a way that was coherent with the rolling back of social welfare policies. First, the theory of the “culture of poverty” emerged in political and popular rhetoric as a way to explain away the socioeconomic roots of inequality and shift the blame onto the behaviors and values of the poor themselves. Drug use and low level drug dealing were framed as bad lifestyle choices that were encouraged by the permissiveness of the welfare state. Second, emphasizing the pathologies of the poor signified their immorality and unworthiness as recipients of public aid (Beckett, 2000). Third, this conceptualization of poor people of color as pathological, dangerous, and unworthy legitimized the slashing of social welfare policies while simultaneously necessitating some form of proactive intervention by the state upon the pathology itself. The Rockefeller Drug Laws articulated this new vision of
government via a cohesive set of laws and policies that mobilized state power to target poor African American drug users and dealers.

As part of the conservative backlash against the gains made by minority groups during the 1960s, criminalization rationalized race and class inequities and allowed for state power to mobilize in novel ways to dominate (for exploitation) and manage (control, remove, contain) poor people of color. The Rockefeller Drug Laws, then, are an example of how “crime policy is actually designed to maintain dominance and cultural hegemony over those categorized as the ‘dangerous’ classes” (Jordan-Zacherys, p. 102 in Marable, 2007). Crime control, in this lens, is an important part of an array of “efforts to protect and advance powerful interests that maintain the racial status quo” (ibid, p. 103). For the Rockefeller Drug Laws to do so required that officials produce not only the legal, political, and economic infrastructure needed to expand policing and incarceration, but also the discursive conditions necessary to frame African American and Latino drug users and low level dealers as the root causes of social problems. By drawing on and expanding the “culture of poverty” theory, the drug laws shifted the subject position of drug users and dealers such that they were no longer part of the public, and they could be constructed as deviant or dangerous “others” who needed to be surveilled, policed, removed, and contained. The casting of this position onto African American and Latino subjects occurred through the concrete practice of targeting impoverished urban spaces. The criminalization of these New Yorkers delegitimized civil rights demands and naturalized their status as poor, marginal, policed individuals. The Rockefeller Drug Laws, by targeting street level drug crime in poor urban areas, “helped naturalize highly political assumptions as social fact” (Kohler-Hausmann, p. 74), and thus produced not
only legal infrastructure but also a knowledge base which pushed back against the civil rights gains of the 1960s, facilitated the dismantling of the welfare state, and helped pave the way for the encroaching neoliberal counterrevolution which would take New York by storm in the late 1970s and 1980s.

The Rockefeller Drug Laws, like the neoliberal ascent, were not inevitable. They were produced by a constellation of structural and discursive forces that crystallized into a new form of political hegemony. Politicians used the Rockefeller Drug Laws as a political spectacle (Smith, 2004) to mobilize support and “reshape the political terrain” in the interests of powerful elites (Kohler-Hausmann, p. 73). That is, the laws enabled a cohesion of interests among profit-seeking economic elites, the political officials who represent their interests, and an activist white middle and working class who felt threatened by increased economic instability and the civil rights claims being made by minority groups. The laws were used to advance the varied interests of the groups now united under the “hegemonic umbrella” (Apple, 1996) of criminalizing and incarcerating.

If working class whites felt they had been abandoned to deal with problems in the city as elites and industrial jobs fled, they were encouraged to see the welfare state itself, rather than the maneuvers and failures of capital, as responsible. At the same time, if the Right could frame the welfare state as generally indulgent and overly permissive, it could also blame it for encouraging criminality. By invoking a drug crisis centered on poor people of color, who were also the recipients of welfare expenditures, the Rockefeller Drug Laws linked welfare to deviance and thus provided “pretext for radical actions offered by policy makers to correct the alleged conditions” (Smith, 2004, p. 14). The Rockefeller Drug Laws contributed to the dismantling of the welfare state in so far as they were
"performative and creative; they were instrumental in producing the 'common sense' and worldviews they purported to reflect" (Kohler-Hausmann, pg. 73). They provided a discursive and material foundation for neoliberal hegemony and mass incarceration to emerge as correctives to the failures of the welfare state and the deviance it produced and enabled.

In New York State, this took shape as expansion, for "as opposed to shrinking government, punishing programs were actually state building enterprises" (ibid, p. 73), similar to how education, welfare, military, and regulatory institutions expanded the state in the period after World War II. The neoliberal state which the drug laws were helping to build was very different, however, from the Keynesian or “welfare warfare” (Gilmore, 2007) state of the post-WWII era. Through mobilizing race and class antagonisms in the casting of criminality upon poor people of color, by creating “political dividends” for “tough on crime” officials, and by reconstructing the parameters of state intervention and expenditure, the Rockefeller Drug Laws made possible what Gilmore (1994) refers to as a “double displacement.” First, the Rockefeller Drug Laws reinforced the notion of an “enemy within” who could be blamed not only for their own problems, but for economic crises and social instability in general, thus displacing economic precariousness and social disorder from the political economy and onto the behaviors and values of poor people of color. Second, the Rockefeller Drug Laws allowed for the displacement of public dollars “from social investment” to social control (Gilmore, 2007, p. 17), facilitating the transfer of wealth from the public sector to private development as the state froze welfare services and grew its carceral archipelago (Foucault, 1977). That is, the drug laws provided the legal and institutional infrastructure, as well as the necessary
criminalizing discourses, to legitimize the funneling of public money to shift from welfare-oriented projects to economic development projects and tax abatements. This displacement of public dollars benefited elites at the expense of New York’s poor, for whom it created increasing instability that would not be managed by welfare state apparatuses, but rather by its expanding carceral state apparatuses.

**The New York Prison Building Boom of the 1980s and 1990s**

*The emerging carceral state*

Loïc Wacquant (2001) argues that mass incarceration has grown in relationship to the dismantling of the welfare state and the rolling back of the redistributive functions of the state. Complementing this is Manning Marable’s (2007) assertion that along with the dismantling of welfare supports, expanded militarism, and the breaking of labor, there emerged a need for a “fresh approach” in confronting minority groups’ claims on the state. This section will explore how that “fresh approach” took for its shape the war on drugs, and how the drug war expanded and reinforced the carceral state. What then is the carceral state, how did it develop, and what does it produce? As public goods and services are increasingly privatized or eliminated altogether, what is the carceral state’s role in the management and exploitation of dispossessed minority groups? How does it advance the interests of capital?

Weiman and Weiss (2009) describe mass incarceration, the hallmark of the carceral state, as a way of framing: a) the vast scale and reach of the criminal justice system, as an estimated 7.1 million people or 3.6% of the U.S. population are under correctional supervision today; and b) the disproportionate targeting by the criminal
justice system of urban minority communities (pg. 75). What Wacquant refers to as the carceral state, they call the regime of mass incarceration: “the complex of punitive criminal justice policies that have diffused across all levels of the criminal justice system and all levels of government” (pg. 76). What this suggests, then, is that the carceral state permeates, or at the very least, implicates, all of the institutional appendages of the state and, following Wacquant, the carceral state itself is composed, in part, of political and economic institutions, ideologies, and practices not typically considered part of the criminal justice system. It also suggests that as neoliberalism, as opposed to the welfare state, comes to characterize more and more aspects of state activity, this transformation itself is facilitated by the regime of mass incarceration. Most importantly, it raises the questions of how and why the carceral state takes for its target poor people of color in urban neighborhoods, and what the implications of this targeting are for the unequal distribution of wealth and harm.

Bernard Harcourt (2012) provides a rich genealogy of what he calls “neoliberal penalty,” a discourse which legitimizes state funding of the regime of mass incarceration while delegitimizing other forms of public expenditure and state regulation (e.g. environmental regulation, or certain regulations around prices, markets, and wages). As legitimate and desirable state activity within the neoliberal rubric, mass incarceration as a mode of both economic development and social control emerged not only to restore racial hierarchies, but also as a solution to “the disinvestment by the federal government and the experience of job loss for working-class New Yorkers” (Morrell, 2012, pg. 46). The New York experience, though unique in terms of New York City’s role in the global economy and the forms of uneven development that have shaped the state’s regions (Sassen, 2001),
follows national trends, as it was subjected to the same economic crises and waves of restructuring that hit the rest of the country in the 70s, 80s, and 90s (Weiman and Weiss, 2009, pg. 76; Moody, 2007).

The carceral state emerged gradually alongside shifts in the U.S. political economy as welfare spending was curbed and spending on militarization, policing, and incarceration surged. The reallocation of public money via the war on drugs allowed for increased funding of local police precincts and the funneling of public funds towards prison building and maintenance. The resulting increase in arrests and imprisonment gave the carceral state its raison d'être. The U.S. incarceration rate remained steady from 1925 through the early 1970s. During that time, there were approximately 107 prisoners per 100,000 people. The number of prisoners, however, doubled in the 1980s, and then doubled again in the early 1990s to a total of 500 prisoners per 100,000 people. By 2000, .5% of the total U.S. population was imprisoned (Weiman and Weiss, 2009). Though the Rockefeller Drug Laws were adopted in 1973, the drug war and mass incarceration did not gain steam until the early 1980s. The reason for this is that incarceration rates depended on decisions made by powerful actors at the local level, such as mayors, police commissioners, district attorneys, and judges. These individuals were empowered to implement and enforce state and federal sentencing policies (ibid). The time lag between the adoption of the Rockefeller Drug Laws in 1973 and the surge in arrests and imprisonment that occurred in the 1980s and 90s was a result of political economic shifts engendered, in part, by the war on drugs, not changes in the Rockefeller Drug Laws themselves. That is, though strict and punitive federal and state drug laws were in place in New York and elsewhere in the 1970s, their implementation and enforcement were not
guaranteed at the local level and did not become status quo until the 1980s when a constellation of macro level political and economic forces coalesced around expanding policing and incarceration at the micro, local level.

As Michelle Alexander (2012) points out, it was not until Reagan took office and fully mobilized the war on drugs that there emerged the substantial political and economic incentives needed to drive the implementation and enforcement of the Rockefeller Drug Laws at the state and local levels. Reagan rose to power in the aftermath of the Watergate scandal that scandalized the Right and the withdrawal from Vietnam which humiliated the political status quo while activists celebrated the end of the war. Lingering labor and social movement militancy vexed corporate elites and challenged white supremacy. ‘Law and order’ rhetoric emerged as a racially coded reframing of social control and became a central theme of the conservative counter-insurgency led by Reagan (ibid), along with the revitalization of the economy via attacks on unions and cuts to social programs. The Reagan administration pumped billions of federal money into fighting the drug war at the local urban level, and the resulting deployment of the Rockefeller Drug Laws in the 1980s and 1990s fed tens of thousands of people of color into the growing carceral state.

One important way the drug war contributed to the growth of the carceral state was providing the ideological and material base needed for the institutionalization of determinant sentencing for drug related offenses. Determinant sentencing (the implementation of standardized sentencing guidelines as opposed to the discretion of judges) was initially designed to curb race and class biases of judges, and had some flexibility built in. However, the conservative political environment of the 1980s, coupled
with the new material incentives driving policing, convictions, and sentencing, produced a shift towards a “rigid and mechanical sentencing regime” (what is referred to as the ‘front end’ of imprisonment) and stricter conditions and terms for release and parole (the ‘back end’), both of which contributed to the growth in incarceration rates for drug users and dealers and thus the expansion of the carceral state (Weiman and Weiss, 2009, pg. 77). That is, political incentives, the availability of funding, and the increased criminalization of drug related behaviors, made it easier for poor people of color to get into prison and harder for them to get out. With more people entering prison and less people leaving, the stage was set for mass incarceration and prison overcrowding, leading to the building of more jails and prisons. These twin pillars supported the growth of the carceral state in terms of producing the increasing need for built space and the capital to pay for it, an expanded nexus of crime control apparatuses, and a deeper interpermeation of political, economic, and criminal justice institutions.

Furthermore, as Ruth Gilmore (2007) argues, prison building and the expansion of the carceral state in the U.S. were mutually productive. The growth of the carceral state produced the need for more prisons; at the same time, prison building itself and the mix of private and state capital it required gave rise to a host of policies and practices which would fill those prisons. For example, federal policy helped to marry the economics of prison construction to increasingly punitive practices of fixed sentencing for drug users and dealers via the 1994 Federal Crime Act, which provided conditional funding for prison construction based on prisoners serving 85% of their term (a practice known as ‘truth in sentencing laws’). As a result, between 1994 and 1996, the number of states adopting truth and sentencing laws increased by 60%, from 5 to 31 states (Weiman
and Weiss, 2009). As with current education policies like Race to the Top, tougher standards and punitive accountability meant increased federal aid, which, in this case, could be used by states like New York to finance prison construction. The federal government also helped to enact what Gilmore refers to as the “prison filling project,” as city governments across the country received federal aid to buy increasingly sophisticated surveillance technology and hire additional police to be deployed in the streets for purposes of aggressive, ‘proactive’ policing of drug users and dealers (e.g. stop and frisk and ‘broken windows’ policing) and targeting specific neighborhoods (e.g. ‘hot spots’ like Crown Heights in Brooklyn).

Intensified policing of drug users and dealers in urban areas brought about a surge in arrests across the nation, feeding hundreds of thousands of people into the grim machinery of the carceral state. Once arrested, political pressure, racial discrimination, and the lack of legal recourse available to poor people of color coalesced to bring about higher rates of conviction and incarceration for longer terms. Funding also manifested in better surveillance and direct evidence from police officers, which, when combined with harsh minimum sentences, could be used as leverage by prosecutors to get plea agreements where they might not otherwise—a practice which contributed to increased rates of imprisonment and longer stints in prison or jail (Weiman and Weiss, pg. 79). As will be explored in greater detail in the subsequent chapter on reform of the Rockefeller Drug Laws, this practice is similar to a central tenet of drug court strategy whereby judges use the availability of harsh sentences as leverage to extract guilty pleas from clients and coerce, or to use their language, “motivate,” compliance with the mandated treatment regimen and other court-ordered lifestyle changes.
In conclusion, the drug war, as exemplified in New York by the Rockefeller Drug Laws, was a massive and multifaceted policy apparatus central to feeding poor people of color into the machinery of the carceral state, altering everyday life in urban neighborhoods and radically disrupting the social environment that had given rise to the Civil Rights and Black Power movements. Between 1982 and 1999, the number of people committed to state and federal prison for drug related offenses increased by 985% (Gilmore, 2007, pg. 18). During this same time period, most crime rates decreased except drug related crime, which jumped up by 80%, even though rates of drug use and dealing remained steady. Furthermore, white, black, and Latino drug users and dealers use and deal at similar rates, yet black and Latino users and dealers are disproportionately stopped, arrested, incarcerated, and often face longer sentences than whites convicted of the same crime (Raphael and Stoll, 2009; Alexander, 2012). While rates of drug use have remained fairly stable, rates of incarceration increased drastically across the nation, and New York was certainly no exception. The ‘heroin epidemic’ faded in the 1980s and crack use diminished after 1990, but incarceration rates continued to grow throughout the 1980s and 90s (Raphael and Stoll, 2009). In New York State, the prisoner population in 1971 was 12,500, by 1999 it was 71,000. In 1979, African Americans were 39% of new prisoners; in 1990 they were 53% (Marable, 2007). The drug war, to quote Manning Marable, is a “race conscious war” on people of color (pg. 4). It expanded the carceral state by producing the bodies needed to fill prisons, legitimizing the demand for prison expansion, and developing a vast and pervasive regime of mass incarceration which colonized more and more arenas of government and everyday life. Returning to Wacquant (2010), the drug war and the expanding carceral state helped to further
dismantle welfare by criminalizing those who depended on it the most and by reinforcing the transition from an emphasis on therapeutic “caring” state apparatuses to punitive neoliberal ones. Thus, the shift to the carceral state transformed the economy of inner city life. As will be explored in the following sections, the growing carceral state also produced new relationships between financial capital and state and city governments and institutions. To understand the emergence of the carceral state in New York at this historical moment given the evidence about lower crime rates and the stability of drug use, to understand why it took the shape it did, and why the human beings whom it took as its targets were disproportionately poor people of color facing drug related charges, it is necessary to look deeply into New York’s prison building boom to understand how prisons were used to address economic and social problems whose roots lay in the political economy, not in the poor choices and deviance of drug users and dealers.

**Political economic conditions upstate**

New York State’s prison population exploded between 1980 and 2000, tripling from 21,929 to 70,112 incarcerated men and women (Morrell, 2012). Most prisoners are poor people of color from New York City, contained in facilities in predominately white communities upstate. New York State had 32 prisons up until 1982, and another 38 were built between 1982 and 2000, almost entirely in these largely white, rural areas upstate. Poverty in these nonmetropolitan rural areas is higher than “metro area” (i.e. suburban) rates and only slightly lower than that of central cities (The Sentencing Project, 2003). Thus, prisons were imagined to solve various social, political, and economic problems in both rural and urban areas. The late 20th century brought on devastating poverty in rural areas as agriculture, manufacturing, tourism, timber, and mining declined. At the same
time, as the drug war escalated, New York State’s prison population increased by 8.1% annually from 1985 through 1995. Politicians upstate and down saw the fattening of the carceral state as an economic development tool: the growing prison population in New York State, beginning in the late 1970s and reaching full stride in 1980s and 1990s, created demand for the built space with which to contain and manage this surplus “dangerous” population, and prison hosting emerged as a possible “catalyst for economic growth.” Thirty-five jobs, the story went, would be created for every 100 inmates housed (ibid, pg. 1).

Prison building was a “state project of urban governance and economic development” and, during the 1980s, prison construction in upstate areas resulted from a direct infusion of state capital that was explicitly framed by both Hugh Carey and Mario Cuomo’s administrations as an economic development program (Morrell, 2012, pg. 43). Mass incarceration in New York reconfigured the geography of race relations, as people of color from urban areas were forcibly relocated to prisons in White rural towns with White prison guards, staff, and political constituencies. Competing economic and racial ideologies among working class and poor Whites upstate challenged officials promising the economic benefits of prison hosting. At its early stage during the late 1970s and early 1980s, site selection was highly controversial. Many people upstate didn’t want prisons in their neighborhoods. There was strong resistance from communities designated as sites; however their representatives, seeking the political dividends economic development would bring, typically requested consideration from the legislature regardless (Jacobs, 1983). In spite of prison’s unpopularity with the public in the 1970s, there were strong political incentives for officials to support prison expansion. Republicans who supported
expansion typically represented impoverished counties upstate. Prison hosting as economic development would allow them to make claims of progress in a time of widespread fiscal crisis. These republicans held important positions related to prison expansion: in the New York State Assembly, upstate republicans presided over the Codes Committee, which makes crucial decisions about prison expansion, as they have jurisdiction over civil and criminal justice issues. Republican control over the Ways and Means committee was also important- it has jurisdiction over almost all appropriations. Furthermore, in the New York State senate, two important committees related to prison expansion are the Finance Committee and the Crime and Corrections Committee. All of the committee chairmen were Republicans, and supported prison expansion. Most legislators gave full support to the general expansion program and to bond issuing in particular as a finance scheme. Lastly, the commissioner of the powerful New York State Department of Correctional Services (NYSDOCS) and his staff toured the state making pro-bond speeches and launched a massive PR campaign touting the benefits of prison hosting (ibid). Therefore, in spite of resistance from upstate communities, political officials, while dominating the official policy instruments of expansion, simultaneously mobilized en masse to ‘sell’ prison hosting as the means to economic recovery.

New York was not unique in its targeting of rural areas for prison development. Nationwide, since 1980, approximately 350 rural areas have sited prisons. From 1980 to 1991, 213 adult facilities were opened in rural areas. Between 1992 and 2002, another 83 prisons opened in rural areas, constituting 60% of new prison construction during that period. New York State is one of the leaders in rural prison construction, as all 38 of its prisons that opened since 1982 are upstate, in rural counties (The Sentencing Project,
The state closed a prison in the New York City area in 1984; after that, all prison siting happened upstate in rural areas (ibid). Land there was cheaper, and the powerful real estate industry in New York City wanted vacant land there for high-profit commercial development. As the prison building boom gained steam in the mid-1980s and 1990s, local officials upstate lobbied vociferously to have their districts sited for prison hosting while real estate elites vied for city land and subsidies for private development projects. The legislature, weighing costs and potential political dividends, would decide where to build them.

In the early 1980s, prison building was full of promise, however false it would later turn out to be, and this rhetoric of promise was accompanied by the mobilization of political power. For instance, the NYDOCS estimated that the construction of the Upstate Correctional Facility in Malone, NY would bring in $56 million in wages. It eventually opened in 1999 with 367 jobs and another 55 expected to be created in the community, bringing in an annual payroll of $13 million. NYSDOCS also pledged to spend $11 million upgrading water and sewer systems in the city (The Sentencing Project, 2003). Eventually, the rhetoric for expansion as economic development won over, and rural towns themselves came to compete and offer incentives to the state to develop there, such as free space, building infrastructure, and housing. Meanwhile, officials lobbied and wielded their influence to advantage their districts, which resulted in an uneven distribution of prison sites. There was a concentration of prisons in three Republican Senator's districts (4 in 10 of New York prisons). Senior State Senator Ronald Stafford- a key player in prison development upstate- gained over 12 prisons in his district of 6 counties along Canadian border (The Sentencing Project, 2003). What the politicians and
prison towns did not know at the time, however, is that prison hosting would not in fact pay off in jobs or higher wages for the host community and that the costs of prison building, filling, and maintenance would be borne by the working class and poor for years to come.

How prison building was funded

Prior to the prison building boom upstate of the 1980s and 1990s, the state managed increased incarceration rates for some time by adding beds to existing prisons and renovating facilities like mental institutions into prisons (Jacobs, 1983). This reached its peak in 1978 when, facing a looming prison overcrowding crisis and increased pressure from the New York State Department of Correctional Services (NYSDOCS) to improve the work conditions of corrections officers, New York State sought to purchase Rikers Island from New York City. The city resisted (desperately in need of jail space itself) and the deal collapsed in 1980. As a result, the state sought out acquisitions and new construction elsewhere (ibid).

In the late 1970s and early 80s, construction of a new prison cell in New York State cost approximately $70,000- no small sum for a state still recovering from the fiscal crisis of the mid-70s. Thus, prison building was extremely expensive and the state needed additional money beyond its own revenues to fund the construction and maintenance of prisons. The first proposal to issue bonds to finance prison construction surfaced in the New York State legislature in 1978, but was not passed until 1981 when they approved a $500 million bond issue by overwhelming majority in both the Senate and Assembly. The cost of construction would be spread over many years, minimizing the need for immediate cuts to other public programs- an aspect of such debt financing that appealed
to local officials struggling to balance local demands for public support with diminished revenues. Citizens groups, however, rallied against the proposal, and it was ultimately defeated by referendum vote in November. The bond was more successful in New York City, where it received 60% (ibid).

The state faced a crisis in 1981 when 12,445 new people were admitted to prison due to more punitive ‘front end’ policies (criminalization, policing, adjudication processes), and releases declined due to stricter ‘back end’ policies regarding parole and probation, creating a net increase of 3,983 bodies—triple that of the previous year. To make matters worse, neither existing revenue nor the massive influx of private capital needed to construct new prisons were available. As a temporary fix, two abandoned air force bases, a closed college, and several mental health facilities were targeted for conversion into prisons. Because these transformations would only cost $24 million, the legislature approved the allocation and the move did not require vote by referendum, as the state would not be incurring a substantial long-term debt (ibid).

In 1981, Governor Hugh Carey (governor of New York from 1975-1982) and the state legislature increased state investment in criminal justice capacity at state and local levels, tapping into money made available by cuts to various social programs, including CUNY and SUNY. He allocated more funding for prison construction, as well as more money for state prosecutors and local law enforcement (Weimann and Weiss, 2009). What emerges here is a picture of more or less simultaneous increased investment in prison building and renovation, the funding and expansion of policing apparatuses, and shifts in the social meaning of deviant behavior as drug use and dealing were increasingly criminalized. For instance, while Governor Carey increased state funding for prison
construction projects by cutting social welfare expenditures, he also rolled out a new state and local police initiative focused on targeting drug trafficking in cities, particularly in public spaces. He even developed a special police unit targeting low-level users. There followed an increased allocation of funds and resources towards misdemeanor offenses, which previously had been punishable by fines, or at most probation (ibid). This increased emphasis on policing and punishing drug misdemeanors in impoverished urban neighborhoods translated to the increased criminalization of poor people of color and the proliferation of criminalization’s requisite racist ideologies. A clearer image emerges of how political economic projects walk hand in hand with racial projects of control, as the increasingly carceral New York State not only sanctions but contributes, by way of an interlocking nexus of economic and crime control policies, to impoverishment, community disinvestment, segregation, criminalization, unequal education, and disenfranchisement— in short, the unequal distribution of harm along lines of race and class.

Accommodating the new populations brought into the system required built space, and Governor Carey’s reallocation of public funds did not provide sufficient capital to create the new physical infrastructure required to support the emerging carceral state. Thus most prison expansion, prior to 1983, continued to involve the conversion of existing state facilities (Jacobs, 1983). To transform this surplus infrastructure, the NYSDOCS relied on existing state revenues for prison expansion, but, due to limited funds and the temporary unpopularity of prison expansion, they had to find creative ways to move money around in order to make the project feasible. The NYSDOCS needed legislative approval to acquire a site for a prison; however they could move funds around
without approval, from one account that was full into another that might be empty. For example, in 1978 the state legislature appropriated $1.9 million for capital improvements to permit NYSDOCS to expand prison capacity by 3000 beds. NYSDOCS used this money to purchase new sites like mental hospitals, and renovate them into penal facilities. When the money ran out, they were able to transfer capital appropriations designed for other purposes to refill this fund, and continue expansion without needing further legislative approval (ibid). In this way, the NYSDOCS was able to grow prisons by reallocating funds, and thus bypass legislative approval and the tumultuous politics of prison expansion.

As mentioned earlier, in the spring of 1981, the Security Through the Development of Correctional Facilities Bond Act of 1981 was introduced in the New York State Senate. It proposed to sell bonds for construction of 3 new prisons to house 1500 inmates upstate, in Wallkill, Woodburne, and Coxsackie, as well as allocating additional money for state troopers and juvenile correction facility expansion. It was narrowly defeated in a referendum vote that November (The Sentencing Project, 2003; Morrell, 2012). After the defeat of the bond, the New York State legislature agreed to fund the construction of three maximum-security prisons out of its own general revenue-revenue accrued by way of cuts to other social expenditures. Once that money ran out, they funded a large-scale acquisitions program, as acquiring and renovating existing infrastructure was far cheaper than building new prisons and circumvented the racial politics of prison siting (Jacobs, 1983). This kind of maneuvering, however, would not last long- both the state and the city were on the verge of a prison overcrowding crisis.
Prisons in New York State are generally used for people sentenced to a term longer than one year. Prisons are state run; jails are county or city run. The prison crowding crisis that New York State faced in the late 1970s and early 1980s meant the state had to figure out how to: a) ensure safe, tightly controlled prisons, which becomes difficult with too many prisoners; and b) provide enough beds for those sentenced to prison terms. The state then can either send less people to prison, sentence offenders to shorter terms, and/or expand prison capacity. The outcome depends on power struggles over how the crisis is constructed, and who or what is blamed as the crises’ author. There emerges a struggle between the state and city, as the state blames the city for the prisoners it produces and whom the state must act as custodian for, and the city blames the state for not taking on its share of prisoners. There also emerges a conflict between the state and the counties, as the state seeks to use county jails to house its prisoners because of overcrowding (Jacobs, 1983). Thus, the prison building boom is in part a product of intergovernmental political-economic conflicts, and expansion becomes an increasingly viable and desirable solution to social, political, and economic problems.

For example, in 1975 a conflict emerged between New York State and New York City. Inmates at Rikers Island, a city jail, sued the city saying it was unconstitutionally overcrowded. The city had to reduce the prison population and drew the state into the lawsuit, blaming it for not taking custody of felons who would normally be the state’s responsibility. New York State, however, wouldn't take them because state prisons were already too crowded. Finally, the federal court ordered the state to take those inmates for whom it had actual beds, leaving the surplus to languish in crowded and dangerous conditions at Rikers (ibid). The pressure for prison expansion at the state level thus rises
in part out of the complex relationship among fiscally and spatially strained city
governments. One can see how New York City, emerging from the fiscal crisis of the mid
1970s, would seek to alleviate public expenditures by freeing up prison space in Rikers,
shifting responsibility for inmates onto the state. One can also imagine how such a fiscal
strain could incentivize harsher sentencing in the city’s courts, as sentencing more people
to longer terms would force the state to take custody of a greater share of the city’s
prisoners. These ongoing intergovernmental conflicts gave way to short-term, surplus
infrastructure acquisition and renovation-oriented solutions as New York State, housing
more and more prisoners and with limited funds and space to do so, sought out a cheap
fix to the problem of prison overcrowding. These tactics, however, would not be able to
sustain the swelling prison population for long. The inchoate carceral state needed a way
for built space to keep pace with the influx of human bodies, and to do so would require a
rethinking of prison funding schemes.

There were 29 new prisons built under the leadership of Mario Cuomo (governor
of New York State 1983-1994) (Schlosser, 1998; Morrell, 2012). During the prison
building boom of the mid 1980s and 1990s, the New York State Urban Development
Corporation (UDC) was the main vehicle for capital investment in the state. The UDC,
though framed as a vehicle for the renewal of disinvested, deteriorating urban space, was
generally used as a gentrification apparatus to fund the development of urban space for
middle class, upper class, and business elites’ use and interests, e.g. the “revitalization” of
Times Square and Bryant Park, as well as the “renewal” of neighborhoods like the Lower
East Side and Park Slope in Brooklyn (Smith, 1996; the Sentencing Project, 2003). The
Cuomo administration, desperate for novel ways to deal with prison overcrowding,
managed to transform it into an instrument for financing economic development in rural areas upstate via prison construction.

Following the defeat of the bond Act in 1981, Cuomo exploited a loophole in the UDC structure which allowed him to use it as a tool for selling municipal bonds without popular approval via referendum. In the 1970s, legitimate use of UDC was broadly defined; however in the early 1980s Vincent Tese took over as director and set a new agenda for NYS: the UDC was to be a vehicle for advancing the interests of businesses elites via facilitating tax abatements and relaxed labor regulations as a solution to fiscal crisis. In a classic example of Harcourt’s (2011) concept of neoliberal penalty, Tese and Cuomo emphasized the use of the deregulated private sector to improve the economy, yet, at the same time, one of the main functions of the UDC in early 80s was the debt-financed public funding of prison construction (Morrell, 2012). In 1983, the legislature approved the initiative to fund prison expansion by selling UDC bonds and the prison building boom was born (The Sentencing Project, 2003).

The economic bubbles and bursts of the 1990s did little to slow prison expansion and in fact were part and parcel of the expanding carceral state. Economic changes that produced fewer and fewer entry level jobs, at the same time that neoliberal rollbacks of the welfare state were taking place, ushered forth a staggering increase of urban poverty and incarceration. Financed by increased borrowing, from 1988 to 1998, New York State’s prison expenses surged, while social expenditures for the state and city’s working

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1 The New York State constitution had required referendum vote to approve the state taking on large scale, long-term debt, which resulted in the defeat of the Security Through the Development of Correctional Facilities Bond Act of 1981. Cuomo’s use of the UDC to sell bonds for prison construction allowed him to bypass the political resistance of white voters upstate.
class and poor suffered devastating cuts. For instance, while public university operating budgets decreased by 29%, funding for prisons increased by 76%. NYSDOCS saw a $761 million increase during that time while funding for SUNY and CUNY declined by $615 million. In 1988, New York State spent more than twice as much on universities than prisons, and by 1998 it was spending $275 million more on prisons than on SUNY and CUNY. This increase in prison spending, however, reflects only existing corrections operating costs- it does not count an additional $300 million of the 1998 state budget approved for developing 3,100 new prison spaces that year (Center on Juvenile and Criminal Justice, 1998). The trend of cutting public educational expenditures while expanding prison funding started with Cuomo, before Pataki took office in 1995, however it accelerated greatly during Pataki’s term. For instance, in 1995, as Pataki was taking office, New York State ranked 45th of all states in terms of per capita state appropriations for higher education, even though it has the 4th highest per capita income in the nation. However, during Pataki’s years as governor, New York State saw spending on prisons exceed that of higher education for the first time in its history (ibid).

During Pataki’s term as governor, New York State saw a decrease in violent offenders from 35 percent to 27 percent. 62.5 percent of people sent to prison in New York in 1997 were convicted of nonviolent offenses, mostly drug related. There were 22,670 drug offenders in New York State prison system- one third of the entire prison population (Center on Juvenile and Criminal Justice, 1998). The fiscal incentives for cuts in social expenditures were powerful, as it cost the state over $680 million/year to keep these non-violent offenders in prison. As such, Pataki raised SUNY tuition by $750 per year. With tuition rising above the rate of inflation, the following year SUNY enrollment
dropped by 10,000 students. Today, there are more African American (34,809) and Latino (22,421) prisoners than there are students at SUNY (27,925 and 17,845 respectively). Furthermore, the state shifted more of the costs of running CUNY to New York City and its students. The state’s share of the CUNY budget dropped from 76.7 percent to 49 percent, while the share of CUNY budget covered by tuition and other fees increased from 18 percent to 47 percent. From 1988 to 1998, tuition at CUNY had nearly doubled (ibid).

In conclusion, the fact that disinvestment in public higher education coincided with massive increases in investment in prison building and maintenance is but one example of the interconnectedness of the growing carceral state and the neoliberal restructuring of New York that occurred in the 1980s and 1990s. I explore this interconnectedness in more detail in the following chapters. This period also saw extensive cuts to healthcare, welfare supports, public housing, fire departments, and public k-12 education. Unemployment, low wage work, and homelessness increased. As New York City was increasingly transformed into a financial economy, inequality grew to new proportions. Why did social problems and their solutions come to take the shape they did? Why did the city and state seek to expand prisons rather than address the root problems of criminalization and poverty that were landing so many people behind bars in the first place? Why was poverty managed by policing and incarceration rather than increased investment in urban and rural communities? If offenders were primarily underemployed and unemployed poor people of color, why didn’t the state and city seek to create jobs with livable wages for this surplus population, rather than pursuing strategies of criminalization and incarceration? The following section seeks to explore
these questions by looking at the political economy of New York City in the aftermath of the 1975 fiscal crisis to tease out how expanding mass incarceration in New York State was part and parcel of its neoliberal restructuring.

**Crime Control and Restructuring in New York City**

In his influential study of gentrification in New York City and abroad, Neil Smith (1996) describes how “frontier discourse” made gentrification possible by drawing on the criminalization of inner city drug use to construct a mythically wild urban landscape that could be legitimately “conquered” by investors and developers. Just as criminalization naturalized urban poverty and the dismantling of welfare supports, it also produced the ideological conditions that made the dispossession and displacement of poor people of color possible. Furthermore, policing and incarceration were used to manage and contain displaced populations while elites sucked massive profits out of newly renovated properties. Gentrification is just one example of how neoliberal practices of dispossession, privatization, austerity, and social control transformed everyday life in New York City beginning in the mid-1970s. This shift to neoliberalism was neither sudden nor inevitable- rather, it was an ongoing process of what Mollenkopf and Castells (1997) describe as “restructuring.” As changes in global capitalism pushed post-industrial New York City further away from manufacturing, the city’s political economy became increasingly characterized by economic competition with other “global cities” (Sassen, 2001), global flows of capital, knowledge, and labor (Appadurai, 1996), technological innovation, especially in telecommunications, real estate speculation and development, and, perhaps most importantly, the incredible power of FIRE (finance, investment, and real estate) to reshape the politics, built environment, and everyday life of the city.
(Mollenkopf and Castells, 1997; Sassen, 2001; Moody, 2007). The restructuring of New York City transformed urban (and consequently rural) space and place and involved new prescriptions as to whose space and place it was, and what kinds of activities and behaviors would be promoted, tolerated, or punished. These political economic changes and their spatial iterations had profound effects on the unequal distribution of wealth and harm, by and large along lines of race, as disproportionate numbers of African Americans and Latinos were excluded from the occupations that emerged in the post-industrial economy, wages fell, and public resources and services were slashed. Furthermore, restructuring was part of a wider reassertion of class power, as elite interests colonized political processes and came to dominate the thrust of social policies in multiple arenas (Harvey, 2005). What then was to become of the swelling numbers of the dispossessed, the unemployed, the homeless? How would neoliberalism’s discontents be neutralized or managed? How would the city balance the instability and periodic crises caused by profit extraction with capital’s need for a modicum of social stability and control? This section traces the neoliberal restructuring of New York City back to the fiscal crisis of 1975, and explores the roles of criminalization and mass incarceration in the political economic transformations that facilitated the reassertion of elite class power. This will set the stage for the analysis of drug courts in the next chapter, as I consider how neoliberal solutions to problems caused by neoliberal restructuring are dreamt up and deployed.

The role of the state under neoliberalism is to “create and preserve an institutional framework” that protects the free market and property rights, and that opens up new markets where previously there were none (Harvey, 2005, pg. 7). The framework required to do this work is vast and ranges from financial institutions, arrangements, and
laws to infrastructure like schools, roads, bridges, and police. Neoliberalization involves what Harvey (2005, 2007) refers to as “creative destruction,” as old institutional frameworks, powers, and social relations are destroyed or remade and new ones are developed. The New York City fiscal crisis of the mid-1970s engendered a massive project of creative destruction, setting the stage for a wide scale restructuring of the city according to a new political economic agenda, and, as such, a massive overhaul in the way the city was run.

New York City has always been an important part of the overall political economy; it’s embedded in it, regionally, nationally, globally. In capitalism, the structure and functioning of cities are “rooted in the production, reproduction, circulation, and overall organization of the capital accumulation process” (Child Hill in Tabb, 1984, pg. 214). These processes give the city its overall shape in terms of built environment and geographic patterns, and the relationships of capital accumulation mix with racial dynamics and conflicts to create an urban landscape where wealth and harm are distributed by and large along lines of race. New York City’s vitality in the 1960s and 1970s rested on its location and role in the geographic circulation of surplus capital and labor, as well as its ability to balance the needs of capital for profit and social control with the demands of organized labor and the civil rights movement for a more equitable distribution of wealth. To maintain its vitality, a certain kind of city emerged- a welfare state characterized by certain kinds of relationships, policies, and infrastructure that would, ideally, facilitate profit-making while working towards racial and economic justice.
Similar to Harvey’s description of the role of the neoliberal state, welfare-era New York provided a production site for capital accumulation by elites as labor was reproduced, commodities circulated and were consumed (creating profit while reproducing labor), and government provided the infrastructure and social controls needed to maintain and manage these relationships. Included in the physical and social infrastructure, however, were a host of regulations, protections, resources, and public services that sought to incorporate minority groups into the city’s economic and political life and draw on the city coffers to meet the basic needs of its poorest and most marginalized individuals and families. As such, the city government did not lend itself completely to capital accumulation, tempered as it was by the powerful unrest, activism, and unionism of the 1960s, nor could it lend itself wholly to economic and racial justice, dependent as it was on the private sector for revenue, political support, and employment. Because the tendency for capital is to foist as many costs as possible onto the state and to keep as much profit as it can, a contradiction emerges within urbanization as expenditures outpace revenues. That is, the fiscal crisis emerged in part because of increased demand for social expense outlays (e.g. social services to the poor) which do not directly or indirectly generate increased profits for capital, while at the same time the city lacked the revenue needed for social capital outlays that would help increase profits, such as tax abatements and subsidies (ibid).

As Tabb (1984) points out, the New York City fiscal crisis was not caused by swelling welfare rolls and money-hungry municipal unions; rather it was produced by the movement of capital and jobs out of the city, as well as the effort by elites to transform New York into “the world corporate capital” (p. 241). Increases in imports grew in the
1960s and this worked against New York-based firms. Many clothing shops in Manhattan closed, as did factories and breweries in Brooklyn, and even the Brooklyn Navy Yard shut down in 1966. Furthermore, the role of the port diminished, as there was greater and cheaper space for warehouses and port-based industries in Newark, New Jersey. As a result, tens of thousands of dockworkers and warehouse employees lost their jobs in the 1970s. To add insult to injury, the decline in port and other industries led to a fall in employment for both rail and highway transportation jobs, and warehouse work in general (Weil, 2004). Summarizing Tabb’s (1984) analysis, the crisis took shape as follows: First, though their power grew exponentially after the crisis, bankers were already in control of the city’s political economy. They encouraged debt throughout the 1960s because it was profitable. The money the city borrowed, however, did not go to welfare or unions, but rather was funneled into the corporate transformation of New York into a global city in terms of financialization, central business district (CBD) development, and infrastructural development like telecommunications, highways, and public transportation hubs which facilitated capital accumulation. Second, as deregulated industries moved to areas with lower rents and cheaper and more docile labor, unemployment surged. The city lost 542,000 jobs between 1969 and 1976, which, coupled with the flight of the white upper and middle classes to the suburbs, caused a drastic loss in revenues. Third, federal aid to the city dwindled as funding moved into developing the Sunbelt and the suburbs, encouraging industries and people of means to move there. Revenues dried up just as the need for services was exploding. The city was borrowing to cover its operating expenses and to pay interest on existing loans. As New York spiraled into insolvency, the banks cut it off as the risk of further loans outweighed
their potential profit and, as Harvey (2005) puts it, “in 1975, a powerful cabal of investment bankers… refused to roll over the debt and pushed the city into technical bankruptcy” (pg. 45).

By blaming the fiscal crisis on welfare recipients and municipal unions, banks and business elites were able to accomplish multiple goals. First, they were able to shift the blame for the crisis onto its victims, exonerating themselves and externalizing the social and economic costs. Second, this framing of the crisis allowed elites to push the city and state to enact austerity measures which would funnel even more money away from the public and into the private sector, whether it be for paying off interest or for subsidizing private development. Third, the austerity measures and mass unemployment disciplined labor and, as racial justice was married to the welfare state, austerity in the name of reducing welfare costs further aggravated the racial tensions that undermined working class solidarities. Finally, following Harvey (2005), the city’s overwhelming debt provided further political leverage for the banks as “the bail-out that followed entailed the construction of new institutions that took over management of the city budget…This amounted to a coup by the financial institutions against the democratically elected government of New York City” as “wealth was distributed to the upper classes in the midst of a fiscal crisis” and the class power of elites was restored (pgs. 45-46).

Criminalization of low level drug users and dealers was part of a constellation of strategies undertaken by the city and state as it created the conditions needed to restore class power of elites and maintain private capital accumulation. As neoliberal restructuring increased unemployment, low wage precarious work, and poverty in general, there was the threat of a restive surplus population to deal with. As Child Hill (in
Tabb, 1984) notes, “Expansion in central-city government has been, among other things, a safety valve. It has been a sponge absorbing part of the relative surplus population fostered by the dynamics of monopoly capital accumulation” (pg. 225). One form taken by the surplus population absorption made possible by criminalization was a surge in the police force. Between 1981 and 1988, Mayor Koch expanded the NYPD by 19% using state and federal assistance, and a tax base funded by economic recovery and fiscal reforms (Weimann and Weiss, 2009). The hiring of 12,000 new officers provided a number of working class whites, but also an increasing number of African Americans, Latinos, and Chinese, with stable, full time employment (White, 2011). This absorption also took for its form the “prison-filling project” described by Gilmore (2007). That is, imprisonment physically removed the surplus population from the city and contained them in prisons upstate. Thus, in the aftermath of the New York City fiscal crisis, the “sponge” that once was municipal employment in the welfare state was transformed into the sponge of policing and mass incarceration.

Second, the criminalization of poor people of color provided an important ideological buttress for the neoliberal transformations of urban space of the 1980s and 90s, which were essential to the reassertion of elite class power. The criminalization of African Americans and Latinos was an important building block constructing the discourse of urban decline- a discourse which “functions ideologically to shape our attention, provide reasons for how we should react in response, and convey a comprehensible, compelling, and reassuring story of the fate of the twentieth-century city in the United States” (Beauregard, 1993, pg. xi). As Neil Smith points out, this discourse was the dominant way of representing urban space and life in the 1980s and 1990s, and
provided the discursive foundation for the “renewal” promised by gentrification. Smith defines gentrification as “the process… by which poor and working-class neighborhoods in the inner city are refurbished via an influx of private capital and middle-class homebuyers and renters- neighborhoods that had previously experienced disinvestment and a middle-class exodus” (Smith, 1996, pg. 32). The reassertion of elite class power, as it manifested vis-à-vis investment in and control over built space as described by Smith, required a discursive foundation that would a) entitle elites to the space; b) delegitimize or crowd out the claims of those who were already living in soon to be gentrified areas; c) obfuscate the political economic sources of the disinvestment that devalued property and made gentrification possible (ibid); and d) legitimize the shift in municipal spending away from welfare supports for the poor and towards subsidizing real estate renewal and development projects.

The movement of the unregulated private sector into low-wage areas, the flight of upper and middle class whites to the suburbs, and the re-orienting of municipal finance priorities left in their wake a host of social problems and a dwindling tax base with which to deal with them (Tabb, 1982, 1984). The construction of the African American and Latino drug user and dealer, rather than the political economy, as the cause of these urban social problems positioned them as central players in the pervasive discourse of “urban decay” (Smith, 1996) that legitimized urban renewal and other real estate development projects. In other words, drug users were figured as “the problem” at the heart of urban decay, not disinvestment. In the 1980s, as federal drug war money poured into the NYPD and New York State re-tooled its borrowing capacity to construct new prisons, mass incarceration emerged as an imagined “geographic solution” (Gilmore, 2007) to this
problem. The targeting by police of drug users and low level dealers and their removal from urban spaces obfuscated and displaced the political economic roots of deteriorating urban spaces while simultaneously bolstering the “frontier discourse” which legitimized the conquest of this urban “wilderness” by elites, entitling them to the potential profits that lay waiting to be extracted (Smith, 1996, pg. xiv).

Furthermore, criminalization facilitated the dispossession of poor people of color of public housing and of tax money as public funds were increasingly used to help finance private development. In 1979, 38.5% of subsidized housing recipients were African American. In 1982, Reagan terminated most federal funding for new construction of subsidized housing and raised the price of existing housing by 5% (Quadagno, 1996). As federal aid for public housing fell, the city increasingly turned to privatization schemes to convert public housing into profit generating real estate. The city owned 60% of the housing stock in Harlem, for example, which Mayor Koch targeted for redevelopment as reductions in federal aid led to increased private sector investment and public private partnerships (Smith, 1996). In addition, federal urban development funds fell from $19.8 billion in 1980 to $8.7 billion in 1990. In 1980, one out of every five dollars the city spent came from the federal government; by 1990 it was one out of every ten. As a result, central business district (CBD) development was funded by a mix of public money (tax breaks and subsidies) and private dollars directed at projects initiated by developers, bankers, finance, and corporations (Moody, 2007). New York City’s poor faced massive cuts to public housing at the same time that more and more public money was being funneled into subsidizing the CBD development that, alongside gentrification, would confer the dominance of elites over built space in the city throughout the 1980s.
and 1990s and into the new millennium. At the same time, the expansion and empowerment of the NYPD resulted in the emergence of new policing tactics like “broken windows,” stop and frisk, and hot spots (White, 2011) which brought more and more poor people of color into the criminal justice system, packing the courts and filling prison beds. These developments in policing, coupled with the criminalization and incarceration of African Americans made possible by the legal infrastructure of the Rockefeller Drug Laws and the physical infrastructure of the prison building projects upstate, produced a discursive and structural nexus which enacted the “revanchism” described by Smith (1996), allowing the punishment of the poor for the problems created by their poverty to be construed as “just deserts” and producing the physical means of harassing and containing them (pg. 213).

Following Smith (1996), criminalization provided an “enemy within,” whose existence could be drawn upon to create an urban mythology that justified the dominance of elites over built space in particular, and the city’s political and economic agenda in general. Furthermore, the acceleration of spatial dispossession in the city, accompanied by intensified CBD development, required the increased impoverishment and exclusion of the dispossessed. The varied institutions, practices, and discourses that make up the regime of mass incarceration provided novel ways to manage surplus populations, neutralize discontentment and resistance, and legitimate dispossession. The regime of mass incarceration enacted a multifaceted victim-blaming complex that constructed its subjects with one hand while pursuing and punishing them with the other. It eroded white working class and middle class empathy for poor people of color by treating them as what it said they were in a profoundly dehumanizing conferment of criminality,
aggravating white supremacy as it broke up working class solidarity. The regime of mass incarceration reconstructed criminality in a way that was ideologically useful to elites as they reclaimed their entitlement and privilege by mobilizing an alternative vision of the state based on increased social control (Beckett, 2000) and embodying a neoliberal hegemony that economically polarized the city and distributed wealth up the social ladder and harm straight down it to the city’s most vulnerable populations.
CHAPTER 3

Refining the Carceral State: Drug Court Reform and the Expanding Drug War

This chapter examines the emergence of New York City’s drug court reforms as a case study to examine how the carceral state was able to adapt to the political, racial, and economic crises that accompanied mass incarceration of the drug war. It begins with an overview of drug courts and the “drug court paradigm,” and situates them within the legal and discursive architecture of the expanding carceral state. Drug court reform is usually framed by its critics and proponents alike as a response to the mass incarceration brought on by the drug war. In contrast, this analysis looks at how drug court proliferation has been part and parcel of the drug war as the machinery of the carceral state was realigned and fine-tuned. It concludes with a critical analysis of recent drug court reforms to the Rockefeller Drug Laws, examining how they reproduce race, class, and gender inequality within the criminal justice system.

Beginning in the late 1970s, federal, state, and private sector political economic pressures coupled with a renewed and reinvigorated discourse around the punitive, incapacitating functions of prison as a way of managing criminalized poor minorities. This resulted in a massive prison-building project and a prison-filling project characterized by mass arrests and incarceration for low-level drug related offenses (Garland, 2001, Gilmore, 2007). A tactic corollary to these projects was the emergence and expansion of ‘tough on crime’ rhetoric bolstered by zero-tolerance, minimum sentencing guidelines for offenders (Alexander, 2010). The war on drugs ushered in a period of crime control reform that repudiated rehabilitative ideals and approaches to
managing the deviance of the poor at the same time that neoliberal politics “hardened” social divisions and reinforced stratification (Garland, 2001, p. 101). Drug courts emerged in the mid-1990s within an increasingly neoliberalized state, rife with inequality and marked by an expanding drug war, a growing crisis of prison overcrowding, and alarm at the fiscal burdens of mass incarceration.

Though merely punitive incarceration was the primary strategy of the drug war, rehabilitation did not disappear altogether; rather it entered into an era that sociologists Jonathan Simon and Malcolm Feeley (1992) termed the new penology. In this phase, managerial and actuarial discourses and practices dominated, characterized by the efficiency-oriented categorizing and punishing of deviants according to their perceived level of risk. The goal of rehabilitating the individual was transformed into the goal of identifying and managing unruly groups. Under the new penology, rehabilitation, alongside incarceration, served to expand the scope and reach of the criminal justice system, allowing for an increasing number of people to be controlled, normalized, and punished in a more efficient way. Though drug courts do indeed expand the regime of mass incarceration, they do not fit neatly within the conceptual apparatus of the new penology because they embody a pair of important contradictions. First, they manage group categories constructed by risk assessment while at the same time seeking to treat and transform individuals. Second, they draw on a notion of rehabilitation that is simultaneously punitive and therapeutic. As Rebecca Tiger (2013) put it in her ethnography of drug court proponents, “We are in a moment of dual and contradictory approaches to punishment” (p. 56). These contradictions have not undermined the drug court movement; rather they have allowed drug courts to gain the bipartisan political and
economic support needed to proliferate in the harsh neoliberal terrain of the last few decades.

James L. Nolan (2001) problematically frames drug courts as a “social movement,” even though it was spearheaded by privileged, insider judges who were frustrated with prevalent models of adjudicating drug addicts. The drug court reform movement, Nolan argues, gained steam as activist judges pushed for a new model that would mitigate flooded courtrooms, overcrowded prisons, and reverse the disempowerment of judges that resulted from drug policies like New York’s Rockefeller Drug Laws and their mandatory sentencing for drug offenses. According to the New York State Unified Court System (2013), New York State “leads the nation in the expansion and implementation of drug courts into daily court operations” with 148 drug courts in operation statewide. Since New York’s first drug courts arrived in Rochester and Brooklyn in the mid-1990s through March 2013, an estimated 77,209 offenders have participated in New York State drug courts, and 33,477 have graduated (Feinblatt et al., 2000; nycourts.gov).

This chapter will draw on a mix of critical theory and political economy to look beyond Nolan’s (2001) emphasis on the efforts of activist judges to focus instead on how social forces and transformations converge within the representation of drug courts. I will analyze how such reform is imagined and presented as a solution to social problems caused by poverty and criminalization. What is the relationship between drug courts and the racialized political economy of neoliberal New York? How do they fit? Eschewing Nolan’s notion of drug courts as a “social movement,” I will instead focus on the relationship between drug courts and the expansion of the drug war that took place in the
1990s. I will explore the role of drug courts in supplementing and refining the carceral state, and the ways in which they contribute to the unequal distribution of harm along lines of race, class, and gender.

**The Drug Court Paradigm**

The first drug court opened in Dade County, in Miami, Florida, in 1989. Drug courts are now in every state, and there are over 2,100 in operation (Drug Policy Alliance, 2011). Spearheaded in part by then Florida State Attorney Janet Reno, drug courts spread as powerful judges and other proponents organized, tapped into federal funding, and embarked on massive PR campaigns and “blitzes.” Drug court proponents see the courts as revolutionizing the criminal justice system, addressing the social problem of drug abuse while providing an alternative to the failures of mass incarceration. Drug courts sought to address, in novel ways, the failure of traditional approaches in addressing the “underlying problem,” as New York State Chief Judge Judith Kaye puts it:

Not surprisingly, in many of today’s cases, the traditional approach yields unsatisfying results. The addict arrested for drug dealing is adjudicated, does time, then goes right back to dealing on the street… Every legal right of the litigants is protected, all the procedures followed, yet we aren’t making a dent in the underlying problem. Not good for the parties involved. Not good for the community. Not good for the court (Chief Judge Judith Kaye, Second Annual State of the Judiciary Address, February 8, 1999, as quoted in Feinblatt et al., 2000).
Drug courts appeared to be a sensible alternative to the unpopular aspects of mass incarceration: incarceration was not necessarily getting people off of drugs, nor did its ever-loomong threat work to prevent drug use; mandatory sentencing laws were bloating prisons and straining the economy; and mass incarceration was damaging poor minority communities (O’Hear, 2009). Imprisonment, drug court proponents claim, has merely increased the prison population without stemming the number of drug-related crimes and drug law violations. The drug court model, in comparison, is a self-proclaimed progressive, even radical departure from the punitive status quo of the criminal justice system (Tiger, 2013). Drug courts are essentially “designed to ameliorate the impact of drug sentencing policy on individual drug users” by providing a “safety valve for the cycle of incarceration-release-recidivism that filled prisons with low-level drug users” (Miller, 2009, pg.101). By steering some drug users away from incarceration, and using *therapeutic jurisprudence* instead of traditional criminal justice approaches to addiction, drug courts claim great success at reducing recidivism (repeat offenses) and thereby easing prison overcrowding and mitigating the fiscal burdens of mass incarceration. The Center for Court Innovation, a prominent criminal justice reform organization and vociferous advocate of drug courts, provides a typical framing of how these justifications are mobilized to advance drug court proliferation:

An emerging body of evidence credits them with keeping offenders in treatment, substantially reducing drug use and rates of re-arrest during the period of program participation, and generating large savings in avoided jail and prison costs. Though less conclusive, there is also strong evidence to suggest that drug courts reduce long-term recidivism for participants (Feinblatt et al., 2000, pg. 283).
Therapeutic jurisprudence

Therapeutic jurisprudence involves the use of legal actions (rewards, the threat of imprisonment) to elicit a cognitive, emotional, and behavioral re-orientation from the participant, ultimately resulting in abstinence and a crime-free lifestyle (Nolan, 2001). Therapeutic jurisprudence lies at the heart of drug court practice and is grounded in a hybrid version of the medical and criminal models of viewing addiction, where addiction is seen as a disease, and crime as its symptom. According to drug court advocates and judges Peggy Hora and William Schma (1998), the “traditional criminal justice paradigm” views addiction as “a willful choice made by an offender capable of choosing between right and wrong.” The drug court paradigm, by contrast, views addiction as a “biopsychosocial disease” whereby biological, psychological, and social factors interact in the construction of the addicted person (ibid, pg.13). Therapeutic jurisprudence is based on “the extent to which substantive rules, legal procedures, and the roles of lawyers and judges produce therapeutic or antitherapeutic consequences for individuals involved in the legal process” (ibid, pg. 442). In this model, instead of going to prison as per the traditional paradigm, defendants report regularly to a drug court that oversees the treatment of their disease and monitors them for any suspected criminal activity. The court acts as a therapeutic state agent: the disease of addiction will be cured by a treatment team headed by an all-powerful judge who combines rewards and punishments to incentivize the drug user to complete court-mandated treatment. Completion of the mandated treatment regime results in “graduation” from drug court. Failure to comply can result in a variety of sanctions, including extensive prison time.
Drug courts generally adhere to a shared core of principles, practices, styles, and structures (Nolan, 2001). Drug courts merge medical, therapeutic, and punitive models of constructing and handling the social problem of addiction, which results in increased criminal justice oversight of defendants. That is, where traditional criminal justice is by and large limited to the punitive domain, drug courts expand the reach of the criminal justice system into more areas of a person’s life, surveilling and managing medical and therapeutic aspects of life that are not typically targeted by the policing functions of criminal justice agencies, such as attitudes and language, educational achievements, employment, and even one’s style of dress (Brooklyn Treatment Court Policies). This expansion is predicated on the notion that the disease of addiction causes crime, and as such the coercive power of the court needs to be used to treat the disease (Tiger, 2013). The main idea, as echoed by the Center for Court Innovation (2000), is that “coercion works” (pg. 283). Because drug addiction is viewed as a chronic disease that obstructs self-control of behavior (Drug Policy Alliance, 2011), and addiction is all encompassing, “treating the disease” means that the court must address “broad swaths” of defendants’ lives. Furthermore, because relapse is seen as a natural part of recovery within this model, there is a need for sustained intervention (usually at least a year) (Tiger, 2013, pg. 4). The result, then, is a protracted and deep intervention by the drug courts into the everyday lives of defendants, such that intervening in “the offender’s anti-social lifestyle” becomes “the drug court’s core feature” (Miller, 2009, pg. 115). The drug court process, from referral to graduation, is structured around the organizing principle of therapeutic jurisprudence, and a defendant’s eligibility, as well as success or failure, hinges upon his amenability to the workings of this particular approach.
The therapeutic jurisprudence approach is centered on a judge who heads a treatment team (including psychologists, social workers, and lawyers) whose function is to intervene in the pathology of the disease of drug dependence. Typically, in exchange for a guilty plea, defendants found eligible will enter a drug court program as an alternative to a prison sentence. The drug court participant will be mandated to treatment (e.g. 12 steps, cognitive behavioral therapy, therapeutic community) that will be overseen by the judge and the treatment team. Under therapeutic jurisprudence, the judge’s job is not to determine guilt or innocence, but rather to heal the “perceived pathology” of drug addiction (Drug Policy Alliance, 2011, pg. 5) as it manifests in multiple spheres of a client’s life—education, work, family relationships, housing, and general attitudes. The goal of therapeutic jurisprudence is to “induce self-control and personal responsibility” through accountability and the motivating power of the judge (Miller, 2009, pg. 116). Within this framework, the judge’s power to heal stems from her position to mandate treatment and punish noncompliance with sanctions, and therefore, central to therapeutic jurisprudence is the understanding that fear of imprisonment motivates addicts to stay in treatment longer, as a Q&A handbook from the Misdemeanor Brooklyn Treatment Court Brooklyn reminds participants:

**Remember**- You will need to do the hard work to change your lifestyle, but we will help you any way we can.

**And…Keep in Mind**- If you continue to lead the lifestyle that led to your arrest, you put your sobriety and freedom at risk. You are likely to wind up in jail.

Incarceration then is a tool the court can use to support the addict’s recovery ("Brooklyn Treatment Court,” n.d.).
Crime is not simply some act to be punished, but rather is an opportunity to coerce addicts into treatment and push them towards recovery. By wedding treatment and coercion in this way, crime is construed as a chance for the court to have an impact on the addict’s future (Tiger, 2013). As will be explored in greater detail later in this chapter, the ongoing criminalization of drug use, then, provides the discursive and structural supports that make drug courts possible.

**Eligibility, structure, and sanctions**

Drug courts deal mostly with adult offenders, but there are some juvenile courts and family courts (ibid). Drug court participants are typically arrested for both drug related crimes and drug law violations (Drug Policy Alliance, 2011; Tiger, 2013), e.g. a property violation or possession of an illicit drug. Most participants are there for low-level drug law violations (such as petty possession). The majority of arrestees must plead guilty to the charges against them as a prerequisite for drug court eligibility (Drug Policy Alliance, 2011). Drug courts typically allow only nonviolent offenders and follow eligibility protocols that dictate how many prior nonviolent offenses arrestees can have and still be eligible (Nolan, 2001). As a general rule, courts admit only those amendable to treatment instead of prison, or, in other words, those found to be most likely to succeed within the drug court model. Though many defendants are rejected for capacity reasons, the prosecutor has the most power in determining who gets referred to drug court (Drug Policy Alliance, 2011). The Drug Policy Alliance (2011) has critiqued drug courts for “cherry picking,” choosing only those clients most likely to succeed (a small fraction of the people arrested for drug related offenses). Thus, drug courts focus on individuals who use drugs but have little to no history of serious offenses. Many are in for marijuana drug
law violations. Drug courts also tend to exclude people with prior treatment history and those with a mental illness.

Once eligibility has been determined, there are two models for entering a drug court: pre-plea and post-plea. Pre-plea (also known as deferred prosecution) is when defendants enter mandated treatment before pleading guilty. Upon completion of treatment, the original charges are dismissed. Failure to complete treatment results in full prosecution for the original offense. Post-plea, the more common drug court protocol, is when defendants plead guilty before entering treatment:

Eligible defendants are offered the opportunity to plead guilty to either a felony or a misdemeanor… with the promise that the sentence will be deferred to allow them to participate in treatment. Those defendants who comply with the court-mandated treatment will have their guilty pleas vacated and the charges against them dismissed. Those defendants who fail to comply with the Court mandate will receive a sentence of incarceration. At the time of the plea, the Judge and the defendant sign a contract affirming this agreement (http://www.nycourts.gov/courts/2jd/brooklyntreatment/).

Upon completion of the mandated treatment, the original sentence will be waived, or their record might be expunged. Failures to comply, however, result in increasingly severe sanctions that can add up to a substantial amount of time in jail while under the supervision of the drug court. For instance, in the Brooklyn Treatment Court, a client’s first sanction can get them 1-7 days in jail, the second sanction 1-14 days, third sanction 8-14 days, fourth sanction 15-28 days, and with the fifth violation, “participation ends” and “jail sentence [is] imposed” (ibid). Thus, prior to even being kicked out and serving
the full sentence for the original offense, a drug court client can spend up to 63 days in jail. In addition, failure to complete treatment and expulsion from the drug court program often leads to a long prison sentence because, under the post-plea model, they have pleaded guilty to the original offense, as opposed to the shorter sentence the person might have received if they had had the chance to plead guilty to a lesser crime (Nolan, 2001; Drug Policy Alliance, 2011; Tiger, 2013). The majority of drug courts require participants to enter post-plea because the fear of the longer sentence can be leaned on as a powerful incentive to complete treatment (Tiger, 2013).

James Nolan (2001) argues that the drug court model represents a fundamental transformation of traditional adjudication process. First, the relationship between defendant and judge involves direct communication and engagement, encouragement, and asking personal questions. Second, the role of attorneys is significantly altered from that of the traditional court. The relationship between the defense attorney and the prosecutor is not adversarial, and neither plays a large role in the overall process. Sometimes they do not even show up for drug court sessions, and when they do, they don’t participate much. The judge leads and drives court process by controlling the treatment team, which consists of the judge, prosecutor, defense attorney, probation officer, and treatment personnel. The Drug Policy Alliance (2011), taking a more critical perspective of this shift, points out that, under such a model, the defense lawyer is no longer an advocate for defendant, but rather is a part of the team trying to get him to comply with the judge’s mandates. Drug courts, in this sense, enact a neoliberal erosion of state protections, as the traditional due process rights of offenders are stripped away
and replaced by a top-down model of individual accountability wherein the defendant
_defends_ his or herself by making good decisions in the marketplace of lifestyle choices.

Under this model, the judge has a great deal of control over the entire process, starting with his or her capacity to mandate treatment. Clients participate in various treatment modalities including Alcoholics Anonymous, Narcotics Anonymous, therapeutic communities, individual and group counseling, methadone maintenance, and even acupuncture. Where the treatment team sends them depends in part on resources available to the court, the level of community support, and personnel. The addict’s progress in treatment is monitored by medical doctors as well as the court system (probation and parole officers, the judge, other court staff). Oversight includes periodic urinalysis testing, reports from treatment facilities, and attending regular weekly meetings reporting back to the judge (Nolan, 2001). The judge ultimately makes all decisions about both treatment and punishment (Drug Policy Alliance, 2011). Success at following the judge’s mandates yields rewards, like moving up a level closer to graduation and various awards (applause, prizes, t-shirts, key chains, stickers, candy). Failure can result in incarceration, but also other sanctions like community service, sitting in the jury box for a few days, increased participation in treatment (Nolan, 2001). Drug courts do not value other measures of progress besides abstinence, such as decreased usage, holding a job, or maintaining relationships. The emphasis on abstinence, coupled with the naturalness of relapse, means that drug court participants are highly vulnerable to the consolidated power of the judge to administer sanctions, and thus, drug court participants often wind up spending as much if not more time in jail than if they had taken the traditional route of adjudication (O’Hear, 2009; Miller, 2009; Drug Policy Alliance, 2011; Tiger, 2013).
The Emergence and Proliferation of Drug Courts

While federal and state drug policies throughout the 20th century became increasingly focused on criminalization and incarceration, there emerged, alongside these developments, a transformation of the rehabilitative paradigm of viewing and handling addiction that rendered it more consistent with these overarching goals. In the decades leading up to the drug war of the 1980s, coercive treatment regimes developed as adjuncts to incarceration. Federal and state policies of the 1960s and 1970s helped lay the groundwork for the emergence of drug courts in the 1990s. The section that follows will sketch out two significant policy developments in the second half of the 20th century that helped set the stage for New York’s drug courts by establishing powerful connections between the institutional spheres of criminal justice and private sector drug treatment. I will explore some of the political economic forces of the 1990s and 2000s that lent further impetus to the development and proliferation of drug courts, with particular emphasis on how drug courts were in fact part of the expansion and intensification of the drug war that occurred in the mid-1990s, rather than a response to it. This section will conclude with a critical look at drug courts in New York City vis-à-vis the city’s racialized political economy, the policing practices of the NYPD, and the recent reforms to the Rockefeller Drug Laws that funnel an increasing number of offenders into drug courts. I will look at how drug courts distribute harm down the social ladder along lines of race and gender.
The Narcotic Addict Rehabilitation Act (1966) and TASC

Efforts to coerce addicts into treatment came to the fore in 1966 with the Narcotic Addict Rehabilitation Act (NARA), the first federal legislation that merged therapeutic notions centered on the disease model with the punitive capacity of state power (Musto, 1999). NARA established long lasting links between criminal justice and treatment facilities, particularly therapeutic communities, as evidenced by the fact that drug courts currently refer some defendants to therapeutic communities like Daytop Village in New York. This move to link punishment and treatment grew out of California’s Civil Addict Program of 1961, which permitted the state commit offenders to extended stays at inpatient drug treatment facilities (Tiger, 2013), and the Supreme Court’s decision in Robinson v. California in 1962, which deemed narcotics addiction an illness, and not a crime in and of itself (The Yale Law Journal, 1967). The state or condition of being an addict was decriminalized and reframed as a disease; however, it was framed as a disease whose symptoms were crimes (e.g. drug possession, dealing, theft), and therefore it needed to be managed by the policing powers of the state. NARA, following on the heels of these developments, vowed to use the coercive power of the law to divert the flow of diseased addicts from increasingly crowded prisons into residential treatment facilities known as therapeutic communities where they could be better controlled and cured:

It is the policy of the Congress that certain persons charged with or convicted of violating Federal criminal laws, who are determined to be addicted to narcotic drugs, and likely to be rehabilitated through treatment, should, in lieu of prosecution or sentencing, be civilly committed for confinement and treatment designed to effect their restoration to health, and return to society as useful
members…in order that society may be protected more effectively from crime and delinquency which result from narcotic addiction (NARA, Subchapter 1: General Provisions, 1966).

NARA instituted a realignment in the management of addiction that linked privatized treatment and publicly administered punishment by sentencing addicts to long term stints in *therapeutic communities*. Therapeutic communities are mostly private inpatient facilities where convicted addicts are mandated to stay and participate in treatment. The groundwork for this realignment was laid discursively by the rise of the disease model and its increasing colonization of the penal sphere beginning in the early 20th century, as Progressive Era reformers developed a typology of drug users, medicalizing addiction for the middle and upper classes and criminalizing it for the poor (Acker, 2002; Tiger, 2013). The treatment paradigm gained steam in federal government during the 1960s as increased drug use by the middle and upper classes created a demand for a less stigmatized framing of addiction. The government responded by expanding funding for treatment (Acker, 2002). In this way, important structural transformations occurred: federal money was made available for the development of private sector treatment facilities as congress “authorized appropriations for grants to States and political subdivisions thereof and to private organizations and institutions for development of narcotic addict rehabilitation and treatment programs” (NARA, Subchapter 3: Rehabilitation and Post-hospitalization Care Programs and Assistance to States and Localities, 1966).

The availability of federal funds made possible by NARA “helped establish a system of drug treatment programs that was virtually nonexistent before this time”
Medicalization and criminalization intertwined as complimentary models of constructing addiction in a way that encouraged public-private partnerships between the state and private sector treatment facilities. Addiction was framed as a medical problem necessitating both criminal justice and treatment-oriented solutions, both of which were consistent with existing federal policy centered on criminalization (Acker, 2002). Furthermore, connecting the rehabilitative implications of the disease model with the muscle of criminal justice held political appeal as it merged “tough on crime” rhetoric with modern, scientific discourses around treatment that appealed to middle class sensibilities and politicians on both the left and right. NARA linked criminal justice and therapeutic practices in a way that gave rise to a new treatment modality- one that employed the threat (and, when needed, the practice) of prolonged incarceration, yet couched this coercive element within the friendlier discourse of ‘treatment’ and ‘care,’ thus setting the stage both discursively and structurally for the drug court movement which would follow decades later.

A second development that laid the groundwork for the drug court model was the establishment of the non-profit organization Treatment Alternatives to Street Crime (TASC) in 1976. To this day, TASC provides services that help courts take convicted offenders out of prisons and place them in private treatment programs not run by the criminal justice system. In New York City, TASC oversees five treatment sites and 22 treatment programs (http://www.oasas.ny.gov/cj/alternatives/TASC.cfm). In addition to overseeing these sites and programs, TASC provides services connecting various actors within the criminal justice system with treatment service providers, coordinating treatment and services for offenders under the supervision of the criminal justice system.
A primary difference in the TASC model compared to the drug court model is that offenders return to court upon completion of treatment, but have no contact with the judge while in treatment (Nolan, 2001), whereas the drug court model is hinged upon regular interaction with and oversight by the judge.

TASC helped to lay the groundwork for drug courts by carrying forward the hybrid therapeutic-punitive model of handling addiction, but it also was indicative of the increasing shift from government to governance (Lipman, 2011) as public-private partnerships in the management of drug related offenses proliferated in the late 1970s and 1980s. TASC exemplified the increasingly central role played by the non-profit agency in coordinating criminal justice and treatment related activities. The development of TASC extended the realignment of the state initiated by NARA, as private non-profit organizations began to take leading roles in mediating the relationship between criminal justice and drug treatment agencies. In the decades that spanned the 1970s to the 1990s, a new coalition of intersecting institutional spheres was developing to help manage the influx of addicts into the criminal justice system. As the welfare state waned and the carceral state expanded, mass imprisonment was increasingly supplemented by a developing nexus of discourses and institutions that linked criminal justice, medicine, and the private sector in novel ways. The development of this nexus, alongside the Rockefeller Drug Laws and New York’s prison building and filling project, was how the regime of mass incarceration helped to manage the social costs and risks engendered by New York’s shifting political economic terrain in ways that were consistent with neoliberal ideology. This institutional nexus was part of the neoliberal restructuring of New York City, as elites and the state increasingly relied on the tax-exempt nonprofit
industrial complex to divert public money into the private sector, to “fund the intellectual projects that…develop a comprehensive framework for presenting its issues to the public,” manage dissent by defanging revolutionary movements like Drop the Rock and incorporating them into the capitalist state apparatus, and “expand punishment, and proliferate market economies under the veil of partnership between the public and private sectors” (INCITE! 2007, p. 9). In what follows, the development of drug courts in New York City will be examined as part of a constellation of neoliberal approaches to crime control that emerged in the 1990s.

**New York’s Drug Courts and the Expanding Drug War**

In the 1980s, as the Rockefeller Drug Laws were mobilized by the influx of federal and state money to local jurisdictions by the war on drugs, crime became the dominant lens through which the mass media and politicians ranging from Ronald Reagan to Ed Koch represented the poor of the city. Criminalization functioned as a rhetorical technique (Garland, 2001) that reframed blame for urban poverty, explaining away the systemic production of surplus populations of African Americans and Latinos in New York. In doing so, it legitimized the expansion of prisons, as well as the mix of public and private sector carceral state apparatuses needed to manage and punish these groups. This section will explore the political economy of drug courts in New York City. What kinds of broader transformations made them possible? How did the neoliberal restructuring of New York provide further impetus for the growth of drug courts? The expansion of the carceral state was, as Wacquant (2001) points out, central to the dismantling of welfare and the neoliberalization of politics, urban space, and everyday
life. How were drug courts, contrary to their progressive claims, actually part of the expansion of the carceral state that accompanied the neoliberal hegemony of the 1990s?

In 2000, the Fordham Law Journal published an article by John Feinblatt, Greg Berman, and Aubrey Fox, called “Institutionalizing Innovation: The New York Drug Court Story.” Berman is the Director of the Center for Court Innovation, and Fox is its Director of Strategic planning. The Center for Court Innovation has been instrumental in the spread of drug courts in New York, and co-founded the city’s first drug court in Brooklyn in the mid-1990s. Feinblatt was the founding director of the center, and has served under Mayor Bloomberg from 2002 to 2013 as the Chief Advisor to the Mayor for Policy and Strategic Planning and Criminal Justice Coordinator (nyc.gov). Like the majority of studies and literature about drug courts, this one was produced by its powerful proponents. “The New York Drug Court Story” (2000) provides a narrative about a city drowning in a “rising tide of drug arrests” and “a particularly vivid example of a court system grappling with the consequences of drugs and crime” (pg. 277). The problem, as the authors see it, is neither criminalization itself nor the role of racism and the political economy in shaping the distribution of the harms that result from criminalization and drug addiction. Rather, the problem is “New York’s surge in caseload volume” which prevents drug users from receiving “meaningful treatment” (pg. 281). This “surge” increases recidivism, re-arrest, and imprisonment- the exorbitant costs of which place untenable financial burdens on the city and state. Drug courts in New York, the story goes, “have demonstrated that they are capable of achieving significant results…Drug courts have succeeded in reducing drug use and recidivism among
offenders” and “the retention rates for defendants in mandated treatment are about double the rates for those who pursue treatment voluntarily” (pg. 279).

By framing the problem as “the crushing increase in drug-related cases in New York Courts over the past generation” (pg. 279), the authors ensure that drug courts, which promise to relieve this congestion of the court dockets, are indeed the solution. This “technocratic rationalization” operates by “measuring outputs as indicators of performance” (Simon & Feeley, 1992, pg. 456). That is, an institution is evaluated in terms of its own outputs, rather than its impact on broader social issues. This results in a fundamental “decoupling” of “performance evaluation from external social objectives” which “tends to insulate institutions from the messy, hard-to-control demands of the social world” (ibid). As a result, the roles of race and class-based inequality are under-addressed, if not silenced altogether. In New York City, however, the “messy” social world argues otherwise. Racial and economic inequality in the city are strongly correlated with the distribution of harms associated with drug use: between 1991 and 1995, a study of 2000 deaths from drugs showed that it is more likely in areas of high unemployment and low income. These factors are the strongest predictors after gender (Stevens, 2011, pg. 29). Felony drug indictments and incarceration occur with the greatest frequency in the poorest parts of the city (New York State Division of Criminal Justice Services Report #1, 2010); in New York State, two thirds of all male prisoners come from seven communities in New York City (Sokoloff, in Marable, 2007). Furthermore, commitments for drug offenses in New York City are overwhelmingly African American, at 49.1%, and Hispanic, at 46% (New York State Division of Criminal Justice Services Report #2, 2010). By reframing “the problem” as the criminalization of poor people of color and the
disequalizing tendencies of capitalism (Bowles, 1972), how then do we rethink the emergence of drug courts in New York City?

As federal drug war money greased the wheels of the Rockefeller Drug Laws, New York’s prisoner population exploded, increasing from 12,500 prisoners in 1973, to 22,000 in 1980, to over 70,000 in 2000. Drug commitments to state prison made up a substantial number of these new prisoners, increasing from 834 in 1973 to 11,225 in 1992. In 1996, the number peaked at 23,511 drug offenders in state prison; by 1999 the number dropped to 22,266- still approximately 27 times the number of incarcerated people in 1973 (Division of Criminal Justice Services Office of Justice Research and Performance, 2012). These numbers do not include the tens of thousands of individuals residing in federal prisons, municipal jails, or otherwise under the supervision of the criminal justice system. The statistics for arrest are similarly grim: in 1980, there were 27,000 drug arrests in New York; in 1999, there were 145,000 drug arrests. Furthermore, many individuals arrested for crimes that are not explicitly drug-related are often drug users and addicts- eight out of every ten defendants arrested in New York City in 1998 tested positive for drugs at the time of their arrest (Feinblatt et al., 2000, pg. 281).

The average cost of incarcerating an inmate is $62,595 per year. Alternatives to incarceration, like drug courts, report costs ranging from $1,400 to $13,000 per offender (Weissman, 2009). When New York City’s first drug court, the Brooklyn Treatment Court, opened in the mid-1990s, it was framed as a solution to the skyrocketing costs of incarceration and the fact that as arrests increased 430% from 1980 to 1999, there was only a 15% increase in the number of judges (ibid). Drug courts therefore emerged to supplement mass incarceration in New York, not replace it. Drug courts could help the
regime of mass incarceration function more efficiently by mobilizing categories of
different types of deviants who necessitated varied forms of management and
punishment. Drug courts promised to “enhance the system of control” (Tiger, 2013, pg. 42). They offered a network of institutions, public-private partnerships, and nonprofit private sector support that could “expand the boundaries of dominant criminal justice practice by defining drug use simultaneously as a criminal, medical, and behavioral problem amenable to court-monitored therapeutic interventions and traditional criminal justice sanctions” (ibid, p. 57). As the neoliberal restructuring of New York City progressed, it required, as Harvey (2005) points out, a certain kind of institutional framework, of which the myriad institutions of the regime of mass incarceration were an integral part. Drug courts expanded the scope, reach, and capacity of that regime while advancing race and class blind neoliberal ideologies around efficiency and the individual management of risk. As the neoliberal state of the 1990s shifted further away from welfare and regulation and was increasingly reconfigured as a policing apparatus, drug courts were part and parcel of neoliberal strategies whereby the state, as it shrunk on the one hand, was able to expand on the other.

**The Violent Crime Control and Law Enforcement Act of 1994**

One way federal policy under President Clinton further reconfigured the neoliberal state was by funding drug courts and linking them to the drug war’s goals of increased policing and incarceration, as well as neoliberal privatization schemes. Drug courts in New York emerged then not as an alternative to mass incarceration, but as a control apparatus that extended and supplemented it. In the mid 1990s, The Omnibus Crime Control and Safe Streets Act of 1968 was amended as the Violent Crime Control
and Law Enforcement Act of 1994, which, in Title V, “authorized the attorney general to make federal dollars available to states, local governments, and court systems to establish drug courts” (Tiger, 2013, pg. 21). The Act, written by then Senator Joe Biden, was passed with the goal to “allow grants to increase police presence, to expand and improve cooperative efforts between law enforcement agencies and members of the community to address crime and disorder problems, and otherwise enhance public safety” (“Violent Crime Control and Law Enforcement Act of 1994 (1994H.R. 3355),” n.d.). This “bipartisan product of six years of hard work” was the largest crime bill in U.S. history, and indicated a significant ratcheting up of the drug war, as it provided funds for 100,000 additional police officers, $2.6 billion in additional funding for the FBI, DEA, and INS, and $9.7 billion in funding for prisons (“NCJRS Abstract - National Criminal Justice Reference Service,” n.d.).

have shown that drug courts actually “increase the number of people arrested for drug
crimes, instead of decreasing in the long term the number of people processed in the
criminal justice system” (Sentencing Project, 2009, pg. 19). As Lynch (2012) points out,
drug courts provide a means of managing and intervening upon drug users and low level
dealers that braces up and encourages the increased policing and surveillance of
impoverished public urban spaces. As with the drug war writ large, the net-widening
effects of drug courts enable white privilege and disproportionately target African
Americans. As police increasingly focus on these “hot spots,” they enact “law
enforcement policies and practices that systematically result in higher arrest risks for
black drug offenders than white, for instance the tendency to focus on open-air drug
markets and crack” (O’Hear, 2009, pg. 471).

Federal funding of drug courts promised to be an inexpensive and efficient way of
handling the mass arrests that would result from the billions of dollars that this policy
channeled into local policing and surveillance. At the same time as providing funds to
expand drug courts, the policy earmarked billions in federal money to “substantially
increase the number of law enforcement officers interacting directly with members of the
community (‘cops on the beat’),” as well as to “encourage the development of new
technologies to assist State, Indian tribal government, and local law enforcement agencies
in reorienting the emphasis of their activities from reacting to crime to preventing crime”
(ibid). Crime prevention, for the NYPD of the mid-1990s, meant the increased targeting
of open-air spaces in “hot spot” neighborhoods using surveillance technology and
proactive policing techniques like “stop and frisk” (White, 2011). The federal
government provided economic incentives and accountability mechanisms to
operationalize and monitor these local policing efforts. The Act set aside $1.3 billion in 1995, $1.85 billion in 1996, and $1.95 billion in 1997 for local police departments. To renew a grant, police departments had to “demonstrate significant progress in achieving the objectives of the initial application,” that is, provide quantitative data indicative of increased arrests and convictions. In New York City, this took shape as COMPSTAT, an organizational change that decentralized responsibility for producing arrests, shifting it from Headquarters to precinct commanders, thereby assessing the impact of policing at the precinct level and holding individual precincts and officers accountable. The data gathered by the COMPSTAT approach was used for “geographic mapping to identify problem places and to target police resources to those specific places, known as ‘hot spots policing’” (White, 2011, pg. 19). Furthermore, states and localities were encouraged to “use assets received through the Assets Forfeiture equitable sharing program to provide the non-Federal share of the cost of programs, projects, and activities funded under this part” (“Violent Crime Control and Law Enforcement Act of 1994 (1994H.R. 3355),” n.d.). That is, police departments were encouraged to use funds gained by the asset forfeiture of convicts to supplement federal money, providing further economic impetus for precinct commanders to produce more arrests and convictions. As police targeted impoverished neighborhoods, arresting thousands of low level drug dealers and users, drug courts braced up this intensified policing by helping to manage the influx of addicts who otherwise might not have been brought into the system and who might be amenable to a more efficient form of discipline.

Second, the Act helped expand the carceral state by setting aside funds “to individual States and to States organized as multi-State compacts to construct, develop,
expand, modify, operate, or improve correctional facilities, including boot camp facilities and other alternative correctional facilities that can free conventional prison space for the confinement of violent offenders, to ensure that prison cell space is available for the confinement of violent offenders and to implement truth in sentencing laws for sentencing violent offenders” (ibid). The Act authorized $175 million in 1995, $750 million in 1996, $1 billion in 1997, $1.9 billion in 1998, $2 billion in 1999 and $2.1 billion in 2000. To receive funds, the Act mandated that states had to implement Truth in Sentencing laws that ensured “persons convicted of violent crimes serve not less than 85 percent of the sentence imposed” (ibid). This requirement made explicit the goals of increasing convictions that resulted in prison time, lengthening prison sentences, and ensuring that people convicted would serve the majority of their sentence. Thus, states could gain funds to build and expand prisons contingent on their ability to fill them and to keep people in them for longer periods of time. Between 1979 and 1984, the NYPD hired 12,000 new officers. This expansion continued into the 1990s and was accompanied by a shift to “broken windows policing” which targeted low level street crime and disorder. Between 1993 and 1996, arrests increased by 23%, including a 40% increase in misdemeanor arrests and a 97% increase in drug arrests (White, 2011). The expansion of the NYPD in the 1990s, and the tactical shifts instituted by Mayor Giuliani and Police Commissioner Bratton, produced more arrests and convictions than the state prisons and city jails had beds. Drug courts supported the prison building and filling projects by mobilizing a typology of drug offenders that tracked them into appropriate levels of surveillance and containment. This tracking or sorting of offenders helped New York State meet the stringent demands of federal policy and get the funding it needed to
continue the prison-building and filling enterprise that began in the early 1980s. Prisons could be built and filled, policing of impoverished urban neighborhoods could continue to intensify, and overcrowding could be mitigated by the mobilization of medico-scientific theories of addiction to construct categories of drug users and low level dealers who could be controlled by the criminal justice system outside the prison, but in the shadow of its walls.

Drug courts were the purportedly “progressive” or “enlightened” (Tiger, 2013) buttress that helped brace up a massive policy initiative to intensify the drug war and advance the interests of the prison industrial complex in the 1990s (Schlosser, 1998). In addition to its overall expansion of the drug war, the Violent Crime Control and Law Enforcement Act of 1994 was quintessentially neoliberal in that it set aside funds to facilitate privatization, commercial development, and public-private partnerships on the one hand, while narrowing rights and benefits for prisoners on the other. For instance, it mandated the creation of a Task Force on Prison Construction Standardization and Techniques that would be “composed of Federal, State, and local officials expert in prison construction, and of at least an equal number of engineers, architects, and construction experts from the private sector with expertise in prison design and construction, including the use of cost-cutting construction standardization techniques and cost-cutting new building materials and technologies” (“Violent Crime Control and Law Enforcement Act of 1994 (1994H.R. 3355),” n.d.). Prison building, whenever possible, was to involve the productive “use of surplus Federal property,” evidence that Gilmore’s (2007) argument that prison-building as a way of absorbing surplus land and state capacity does not apply solely to California, but rather is indicative of a national
initiative with varied local manifestations. At the same time that it linked prison building to private interests, the Act placed *no upper limit* on the prison-filling project, injected billions of dollars into local police departments, and created substantial legal obstacles to prisoners’ rights, declaring, “A Federal court shall not place a ceiling on the inmate population of any Federal, State, or local detention facility as an equitable remedial measure for conditions that violate the eighth amendment unless crowding is inflicting cruel and unusual punishment on particular identified prisoners” (“Violent Crime Control and Law Enforcement Act of 1994 (1994H.R. 3355),” n.d.). The kind of social and economic capital “particular identified prisoners” would need in order to build cases around cruel and unusual punishment are not available to most inmates. Furthermore, it trimmed costs by prohibiting the awarding of Pell Grants to prisoners, substantially reducing their educational opportunities while incarcerated. A bleak and dangerous picture is painted here: one in which private interests are tied to prison building and filling while the state increases policing and makes it harder for people to get out of jail, advocate for their rights, or get educated while locked up.

Finally, the Act set aside over $100 million per year, from 1996 through 2000 to facilitate the use of the private sector to expand control when possible, utilizing funds “to contract with private, nonprofit entities or community-based organizations,” especially “to fund intensively comprehensive crime prevention programs in chronic high intensive crime areas” like those in impoverished, disinvested urban centers. The public-private partnerships that characterize drug courts exemplify the increasing privatization of control via the expansion of the nonprofit industrial complex (INCITE! 2007) and how “practices of welfare, treatment, and punishment have been reassembled” (Lynch, 2012,
pg. 186) along neoliberal lines. The complicity of drug courts in privatization runs deeper, however. Drug courts, by mitigating the harshness of the punitive with the enlightenment of the medico-scientific (Tiger, 2013), helped provide the neoliberal underpinnings of 1990s crime control with a veneer of benevolence, as public money was increasingly funneled out of public welfare supports and into the private sector to “treat” not only certain classes of deviant individuals, but “urban decline” itself (Smith, 1996). The Act provided grant money to “increase private investment in distressed local communities and to build and expand the capacity of local institutions to better serve the economic needs of local residents through the provision of financial and technical assistance to community development corporations” (“Violent Crime Control and Law Enforcement Act of 1994 (1994H.R. 3355),” n.d.). Community Development Corporations in New York City, such as the Harlem Development Corporation, the Community Development Corporation of Long Island, and the Empire State Development Corporation have long played pivotal roles in advancing gentrification, privatization, and using public money to subsidize private sector real estate development (Smith, 1996; Moody, 2007). The Act goes on to encourage community development corporations to partner with private investors to supplement the seed money provided by the grant. Though profits generated by the grant itself had to be reinvested in the community, there was no regulation of the large sums that came from philanthropic organizations and private sector investors. As Smith (1996) and Moody (2007) have shown, private investors are far more likely to inject capital into a development project if the state is there to assist and encourage that investment, lowering the risk, subsidizing the initial outlay of capital, providing needed infrastructure, and increasing the overall
profitability of the venture. Crime control policies like this one indicate that the federal government was complicit in gentrification projects not only through the revanchist policing described by Smith (1996), but also by linking crime and poverty in such a way as to promote publicly subsidized private economic development as the solution.

It is not merely coincidence that federal funding for the development of drug courts was part of this constellation of drug war initiatives. The Brooklyn Treatment Court, opened in 1996 by a partnership between New York State and the nonprofit Center for Court Innovation, was part and parcel of the neoliberal approach to crime control, as embodied and enacted by The Violent Crime Control and Law Enforcement Act of 1994. This approach was multifaceted: states and municipalities would be provided with substantial amounts of federal money to develop drug courts at the same time as they were funded to a) increase their police force; b) increase surveillance of neighborhoods; c) incentivize arrests, convictions, and lengthy sentences; d) develop actuarial systems of managing risk and standardized, outcomes-based accountability measures for police departments, courts, and other institutions; d) partner with the private sector to design and build prisons; e) subsidize private real estate and business development via community development corporations.

The expansion of the drug war in the 1990s distributed harms down the social ladder, along lines of race and class. As the previous chapter explained, the Rockefeller Drug Laws, and the drug war in general, were instrumental to the eroding of the welfare state and advancing the conservative pushback against the claims and gains made by minority groups during the Civil Rights Movement and the War on Poverty. Drug court development in New York City supplemented this project, and the sanitized version of its
history, as told by its proponents, ignores this context in favor of a race and class blind narrative of a “movement” that provided a solution to the problem of crowded courtrooms packed with deviant drug users. In what follows, I will analyze the further institutionalization of drug courts that occurred as a result of the Rockefeller Drug Law reforms of 2009. I will synthesize demographic data from recent studies of drug courts with more general data on the demographic impact of the drug war in order to sketch out in greater detail how the emergence of drug courts was part of the expansion of mass incarceration in New York State, and the impact of these developments along lines of race, class, and gender in New York City.

**Drug Court Reforms and Inequality**

As the drug war escalated in the 1990s and early 2000’s, incarceration became even more expensive, and its social and economic costs became more apparent to the general public. In New York, grassroots opposition to the Rockefeller Drug Laws began to mount. In 2000, the Correctional Association incorporated a mix of reform advocates, community members and groups, grassroots coalitions, and nonprofit organizations to develop a forum for working towards reforming drug policy in New York. Their stated goal the repeal of the Rockefeller Drug Laws (http://www.correctionalassociation.org/cp/coalition). The Drop the Rock Coalition grew out of these efforts and, over time, was able to create sufficient political pressure to generate some reforms to the laws. The first round of reforms was passed in 2004 and 2005, reducing some mandatory sentences and easing the requirements for parole (ibid).

In 2009, the Drop the Rock Coalition pushed then Governor Paterson to amend the controversial Rockefeller Drug laws by signing in Criminal Procedure Law Article
216: Judicial Diversion Program for Certain Felony Offenders. This reform removed mandatory sentences for some drug felonies, restoring judicial discretion for many first and second time offenses. It also, to the boon of the drug courts, allowed for some convicted drug felons to be eligible for alternatives to incarceration (ibid). This reform prompted the New York State Unified Court System (UCS), funded by a federal stimulus package, to mobilize a large-scale research and expansion project. They sought to examine drug court outcomes in order to assess the potential impact of implementing drug courts as a statewide judicial apparatus to channel newly eligible offenders into court supervised treatment. Their “2009 Annual Report” provides a recent snapshot of New York State and New York City drug court participant demographics, summarized below:

**Drug of Choice:** In keeping with national data on drug use, marijuana was the most popular drug of choice among drug court participants. 32% of drug court participants reported marijuana as their drug of choice, whereas only 16% reported heroin, 12% reported crack, and 9% reported cocaine. In New York City, 40% preferred marijuana, 20% heroin, 16% crack, and 12% cocaine. Outside of New York City, marijuana use tied with alcohol at 20%, followed by heroin, crack, and cocaine.

**Top Arrest Charge (most serious charge) for participants:** Statewide, felony drug charges came in at 34%, followed by felony non-drug (24%), misdemeanor drug (23%), and misdemeanor non-drug (18%). In New York City, felony drug charges overwhelmed at 61%, followed by misdemeanor drug (21%), felony non-drug (10%), and misdemeanor non-drug (8%). Outside New York City, felony non-drug was the most common top arrest charge at 30%, followed by misdemeanor drug (24%), misdemeanor non-drug...
(23%), and felony drug (22%). Across the board, probation violations for drug use came in at 1%.

**Race/Ethnicity:** Drug court participants, statewide, were 51% Caucasian, 29% Black/African American, and 15% Latino/Hispanic. In New York City, they were 44% Black/African American, 32% Latino/Hispanic, and 18% Caucasian. Outside New York City, participants were 69% Caucasian, 20% Black/African American, and 6% Latino/Hispanic.

**Gender:** Drug court participants were overwhelmingly male, at approximately 78-80% across the board.

Drug court participants in New York City are mostly Black/African American and Latino male marijuana smokers who face a felony or misdemeanor drug charge. Complimenting this data is a recent multi-site study (2011) by the Urban Institute’s Justice Policy Center, RTI International, and the Center for Court Innovation, which surveyed drug court participants around the country 18 months after completion. They found that the average annual income for drug court graduates, including earnings from employment, family and friends, and public assistance, averaged only $17,172. Only 61 percent of graduates were employed, and 11 percent were in school. Thus, many of those entering and leaving drug courts are living at or below the poverty line. Furthermore, Lynch (2012) notes that drug courts are less effective with women, which explains the gender demographic, as drug courts only admit those who are amenable to its particular brand of discipline. The interventions mandated by drug courts are particularly difficult for women to meet, as “women are less likely than men to have the social and structural supports needed to succeed” (ibid, pg. 185). Although drug court proponents claim to
promote “healthy families…with fewer ‘crack babies’” (Feinblatt et al, 2000, pg. 286), Lynch points out that “mothers, in particular, are impeded by inadequate childcare resources and other competing parenting demands and the majority of treatment programs do not serve pregnant women” (pg. 185).

The Urban Institute’s study (2010) claims that drug courts save money by reducing recidivism, re-arrest, and re-incarceration on the one hand, while on the other hand provides evidence that drug court treatment has a “modest effect (mostly non-significant)” (my emphasis) on socioeconomic status and no impact on homelessness for participants. It claims to be effective in reducing or eliminating drug use and criminal behavior, but has no impact on mental health and a mixed impact on family ties. The representation of social class and poverty here is telling. It is a concrete example of Simon and Feeley’s (1992) notion of the “decoupling” of institutions from larger social goals as they focus on measuring outputs in terms of recidivism, efficiency, and savings while at the same time functioning to reproduce inequality. This race, class, and gender-blind technocratic rationality underpins the drug court reforms in particular, and neoliberalism in general. It binds drug court ideology and practice to the rise of the anti-welfarist, racialized carceral state that has accompanied the neoliberal hegemony of the last thirty years. This rationality and the punitive practices that accompany it situate drug courts as an institutional apparatus within and supporting the expansion of the drug war in the 1990s rather than merely “a direct response” to its “rapid escalation” (Drug Policy Alliance, 2011, pg. 5).
In April of 2009, the Drop the Rock coalition, along with increasing number of empirically driven academic critiques, influential organizations like the Association of the Bar of New York, as well as state bodies like The New York State Commission for Sentencing Reform, pressured Governor Paterson and the legislature into instituting further reforms to the Rockefeller Drug Laws (Mancuso, 2010). These reforms eliminated some mandatory sentences, reduced others, and, via CPL Article 216, expanded judicial discretion to use drug courts and established a law allowing offenders and/or prosecutors to request a judicial hearing to see if the offender is eligible for drug court. In 2011, The New York State Division of Criminal Justice Services (DCJS) published a study of the results of this reform, titled “Felony Drug Court Activity Among Offenders Eligible Under 2009 Drug Law Changes 2008-2010” (henceforth referred to as DCJS, 2011). What follows is a summary and analysis of some of the demographic data on those screened and admitted to drug courts as a result of Article 216. That is, these are individuals convicted of specific felonies who were eligible for drug court because of this particular reform to the Rockefeller Drug Laws, as opposed to the general population of New York’s drug court participants who would have been eligible regardless.

In New York City, drug court eligibility screenings under Article 216 increased 5 percent from 2008-2010 and admissions to drug courts doubled. Screenings and admissions increased despite a 21 percent decrease in the number of felony drug arrests in New York City between 2008-2010. In the entire state, 41 percent of those screened were admitted into drug court programs. CPL Article 216 allows defendants and/or prosecutors to request a judicial hearing to see if the defendant is eligible for participation
in a substance abuse treatment program. Between 2009 and 2010, in 67 percent (268) of these hearings, the defendant was found eligible for drug court. An overwhelming number (81 percent) of individuals admitted to drug courts, however, were convicted felons who were not facing a mandatory prison sentence (DCJS, 2010). The implications here are twofold: First, this means that the majority of offenders facing mandatory sentences under the Rockefeller Drug Laws are still being served those sentences, and that most of those found eligible for diversion are lower-level offenders. Compared to drug using and dealing whites, African Americans have a higher arrest rate, conviction rate, and face harsher penalties when sentenced (Marable, 2007; O’Hear, 2009; Alexander, 2012). As a result, African Americans arrested for drug charges are more likely to face multiple charges and have criminal histories. Under a drug law that takes into account the “role in the offense, drug type, drug quantity, and criminal history” (O’Hear, 2009, pg. 469) racial bias in policing and at all levels of criminal justice mean that African Americans are more likely to face mandatory sentences and be ineligible for drug court. If 81 percent of those admitted to drug courts under these reforms are not facing a mandatory sentence, such a reform works to the advantage of whites and maintains the uneven distribution of harm along lines of race.

Second, as the Sentencing Project’s (2009) meta-study indicates, it remains unclear whether “drug court participants would have ended up in the criminal justice system if not for the drug court.” The increased number of felons entering drug courts could be a result of the “net-widening effects of the drug court” (pg. 19) whereby an increasing number of those brought into the criminal justice system are people who would not have otherwise been there if not for the supplementary impact of the drug
courts. There was a decline of 21 percent (from 28,764 in 2008 to 22,784 in 2010) in felony drug arrests in NYC, yet, under Article 216, screenings for participation in drug court increased 5 percent from 3,703 in 2008 to 3,896 in 2010. Drug court admissions more than doubled between 2008 and 2010, from 470 to 1,022. 90 percent of these individuals were indicted on drug offenses. Research indicates that the presence of drug courts, coupled with the existence of a legal framework for facilitating the diversion of addicts into them, “increases the number of drug offenders arrested in a given jurisdiction” (Lynch, 2012, pg. 185). Although felony drug arrests have decreased in New York City, the majority of those ending up in drug courts are low-level offenders who would not have faced a mandatory sentence anyway. Therefore, it is likely that an increasing number of those arrested who are ending up in drug courts would not have been arrested in the first place if not for the positive correlation between the presence of drug courts in a jurisdiction and proactive policing tactics like “stop and frisk” and “hot spots”. One cannot assume that the decrease in felony arrests and lower incarceration rates in New York City are due to drug courts; rather, it is just as likely that these rates would be even lower if drug courts were not there to provide additional support for policing. Furthermore, a recent survey of 2,000 retired police officers indicated that it is common practice among the NYPD to downgrade crimes to less serious offenses in order to make the crime statistics in a given precinct look better (New York Times, June 28th, 2012). As a result, New York City has seen a spike in misdemeanor drug offenses, up from 59,671 in 2004 to 80,462 in 2011 (nyc.gov).

When comparing the demographic data on drug court participants in general and those eligible as a result of Article 216, a striking racial disproportionality between black
and white offenders emerges. In 2010, Article 216 participants in New York City were 39.6 percent white and 11.5 percent black, whereas the general population of drug court participants were 44 percent Black/African American and 18 percent Caucasian. Thus, among Article 216-eligible offenders, there is a 21.6 percent increase in white participants and a decrease of 32.5 percent in Black/African American participants (DCJS, 2010). Based on this data, one can conclude that African American offenders are a) less likely to be eligible for diversion because of additional charges or criminal histories; b) are less likely to be eligible because they face more serious felony charges; and c) are more likely to receive the mandatory minimum sentence. Conversely, whites are more likely to a) lack a criminal history, and thereby be eligible for drug court participation; b) face less serious felony offenses which increases the likelihood of eligibility; and c) are less likely to receive mandatory minimum sentences. This distribution of access to diversion and exposure to the harms of felony charges and prison time indicates that drug courts, contrary to being progressive institutions “revolutionizing” criminal justice, are in fact reproducing and expanding the systematized racism of a criminal justice system that targets African Americans, in which they are more likely to be arrested, charged with more serious crimes than their white counterparts, more likely to do time in general, and harsher sentences when they do.

**The Unequal Distribution of Harm**

Drug court reforms to the Rockefeller Drug Laws maintain racial bias in the prison system by disproportionately diverting white felons out of prisons and into drug courts and keeping black felons in prison. At the same time, drug courts encourage net-widening (The Sentencing Project, 2009; Lynch 2012; O’Hear 2009, Drug Policy...
Net-widening results when the presence of a drug court increases the number of drug arrests in a jurisdiction, bringing people under the supervision of the criminal justice system who might not otherwise be there, as the police “are more likely to arrest in low-level cases where they otherwise would not have bothered, on the assumption that drug courts will provide positive intervention” (Lynch, 2012, pg. 185). This takes shape as an increased, proactive (e.g. “stop and frisk”) targeting by the NYPD of spaces already identified as high-crime (“hot spots”), which contributes to the racial disproportionality in arrests, convictions, and sentencing. Structural inequality shapes the way individuals navigate drug policy (Acker, 2002), as some of those living in poverty participate in open-air drug markets, which increases their vulnerability to policing. “Hot spots” are constructed based on surveillance of this activity and inform law enforcement resource allocation, as police focus their efforts on arresting people in impoverished neighborhoods that “lack the kinds of spatial and social barriers to outsiders (even police) that often characterize wealthier areas” (Lynch, 2012, pg. 192).

This results in disproportionate arrests and incarceration of African Americans and Latinos, material and discursive practices that “systematically form the objects of which they speak” (Ball, 1994, pg. 21, cited in Lipman, 2011, pg. 11), reinforcing the inscription of criminality onto poor people of color as stereotypes are produced and circulated to the wider society. These stereotypes in turn are mobilized by the media and political elites to justify policing practices, incarceration, and to delegitimize the welfare state and claims for racial justice. In a context where drug courts are a “softer” form of punishment, diverting convicted felons away from the harms associated with a felony record and imprisonment and into court supervised treatment instead, they privilege
Whites. To the extent that drug courts function as net-widening adjuncts to the carceral state, they, like prisons, are managing disproportionate numbers of African Americans. Furthermore, they facilitate racial profiling by providing a supplementary form of social control to the prison system. Drug court reforms are part of a realignment of the carceral state which makes it possible for the police to continue bringing disproportionate numbers of poor people of color under the supervision of the criminal justice system.

Drug courts’ embrace of medico-punitive and “bloated courtroom” ideologies around drug use and dealing do not explain the social distribution of the harms associated with these behaviors. If they did, these harms would be evenly distributed throughout the city rather than concentrated among poor people of color (Stevens, 2011). Instead, drug courts reproduce and aggravate the unequal distribution of harms along lines of race, class, and gender. Further evidence is found in the fact that New York City drug court participants are overwhelmingly male, at 78-80 percent (New York State Unified Court System Annual Report, 2009). This fact exacerbates the structural inequalities faced by poor women of color, and does little to stem their disproportionate representation in prison. In 1997, African American women were eight times more likely to go to prison than white women, even though they were vastly outnumbered by white women who sold and used drugs. Most of these new female convicts were in prison due to the mandatory sentences of the Rockefeller Drug Laws. Between 1986 and 1996, the number of women incarcerated for drug charges rose 888 percent (Marable, 2007). In New York State in 1995, 91% of all women sentenced for drug offenses were black and Latina (even though they make up only 32% of population). Two out of three black women (65 percent) sentenced to prison were convicted of drug charges, as were four out of five Latinas (82
percent). In 1997, 59 percent of women in New York State prisons were serving drug convictions, 77 percent of Latinas, and 34 percent of white women (Sokoloff, in Marable, 2007). The mass incarceration of women of color has a major impact on families, with a disproportionate number of African American children ending up in foster care or juvenile corrections (Marable, 2007). Sokoloff (in Marable, 2007) points out that this is largely an issue of caring for children while their mothers are in jail, as only 28 percent of fathers take care of children of imprisoned mothers- this work is mostly done by grandmothers and other female relatives. 10 percent of kids end up in foster care or agencies when the mother is incarcerated (ibid).

Furthermore, poor women of color who are felons face incredible challenges reintegrating into the community upon release, as the stigma of their felon status are compounded by their low socio-economic status. Because Black and Latina women are disproportionately represented in welfare system, they suffer harms due to their ineligibility for welfare assistance that results from a felony conviction. For instance, women convicted of drug felonies are not allowed food stamps and cash assistance, they are denied government funding for higher education, and are not allowed to live in public housing. Furthermore, in New York State, these women are excluded from work as home health aides, nursing attendants, and nursery school assistants- jobs that are primarily held by working class women of color. Finally, women felons often find themselves ineligible for services that provide addiction treatment, mental health and other healthcare, and other resources because these organizations are prohibited from serving drug offenders due to the terms of their funding (Sokoloff, in Marable, 2007). These problems are not targeted by race, class, and gender blind drug court reforms. The
structural inequalities faced by women of color are left untouched as drug courts “cherry pick” male offenders who appear more likely to be successful within the therapeutic jurisprudence model.

Because of the criminalization of poor people of color, structural inequality determines the distribution of harms associated with drug use and dealing. In New York State, as with elsewhere, the ‘disease’ of drug use is evenly distributed among the rich and poor, and across lines of race. Poor people of color, however, suffer worse consequences in terms of the likelihood of incarceration (Stevens, 2011). The Drug Policy Alliance (2011) points out that “by 2003, African Americans were arrested for drug law violations at a rate 238 percent higher than whites and African Americans and Latinos comprised two-thirds of people incarcerated for drug law violations” (pg. 8).

Structural inequality and racism are left unaddressed by the drug court reforms, and, in fact, drug courts “may actually exacerbate existing racial disparities in the criminal justice system” (ibid). This takes shape not only in terms of net widening and the courts’ role in the general expansion of the carceral state, but also in terms of the impact of drug courts on poor people of color who participate in drug court programs themselves. Research has shown that African Americans are 30 percent more likely to be kicked out of drug court, and are more likely to spend a greater amount of time in jail both as participants and upon being removed from the program (ibid). In “Rethinking Drug Courts: Restorative Justice as a Response to Racial Injustice,” legal scholar Michael O’Hear (2009) examines the “curious link between drug courts and racial justice concerns” (pg. 464), concluding that drug courts actually exacerbate racial disparities precisely because they don’t address criminalization and structural inequality and its
impact on African Americans and the impoverished communities where poor people of color live. Nor do they address white privilege in drug courts, as “white drug offenders are more likely to benefit from this ‘pathway out’ than black drug offenders” (pg. 477). The high failure rate of African American participants is correlated with “a variety of socioeconomic disadvantages, and blacks are overrepresented among those who face the important barriers to successful treatment” (pg. 480).

Finally, for those who do enter drug courts, whether as felons via the Rockefeller Drug Law reforms or for misdemeanor offenses, structural inequalities related to healthcare have a profound impact on one’s ability to “graduate.” Much mandated treatment is not covered by the defendant’s health insurance. While public spending on treatment has increased 7.5 percent annually, private insurance company spending has decreased 24 percent between 1987 and 2003 (Drug Policy Alliance, 2011). The Drug Policy Alliance (2011) cites federal government data revealing that “37 percent of people who want but do not receive treatment simply cannot afford it” (SAMSA, 2008). Therefore, many people who want treatment for addiction, but who are doing so outside the supervision of the criminal justice system, may face difficulties in obtaining care due to lack of health insurance, lack of money, and the overwhelming use of treatment by the courts. In addition, once admitted to drug courts, there is no guarantee that one’s health insurance will cover the costs of court-mandated treatment. Those defendants who lack health insurance coverage for the kind of treatment that might work best for them are mandated by the courts to complete an inappropriate treatment regimen that might increase the likelihood of recidivism, re-arrest, and jail time. This mismatch increases the likelihood of incarceration. This is a social class issue whereby poverty and lack of
resources create situations in drug courts that produce an uneven distribution of harm. Those with wealth and resources are able to procure treatment in a variety of settings ranging from 12 steps to “rehab resorts,” while those without have fewer and fewer options outside the criminal justice system. Furthermore, within the criminal justice system, health insurance shapes the distribution of access to the most appropriate forms of treatment that will increase an individual’s likelihood of graduating from drug court. Poverty increases a drug court participant’s chances of incarceration because they are less likely to have the kind of health insurance that will get them treatment they need in order to successfully meet the mandates of the drug court.

**Drug Courts and Neoliberal Urbanism**

Neoliberalism is a way of using state capacity to increase opportunities for the private accumulation of capital and to manage the various crises inherent to capitalism (Lipman, 2011). Lipman provides a useful description of neoliberalism as “an ensemble of economic and social policies, forms of governance, and discourses and ideologies that promote individual self-interest, unrestricted flows of capital, deep reductions in the cost of labor, and sharp retrenchment of the public sphere” (pg. 6). Neoliberal urbanism describes the ways these changes have restructured New York City politically, socially, and spatially. The social and spatial inequalities that characterize New York City are produced by neoliberalism, as “cities of this type require concentrations of high-paid professionals and managers and legions of low-paid service workers” (ibid, pg. 4) as well as a massive surplus population of poor under- and unemployed individuals and families. This inequality and the insecurity that comes with it are indeed problematic for the state and for capital, but the role of the neoliberal state is not to promote equity; rather it is to
“produce stability and growth in the general political economy” (Gilmore, 2007, pg. 16). That is, the role of the state is not to reduce inequality, but rather to manage the instability it produces. But the state’s efforts at control are constantly challenged by the tendency of neoliberal urbanism, with its hallmarks of disinvestment and dispossession, to create even more poverty and disorder. Social control is also challenged by the shifting tendencies of capital as it seeks spatial and temporal fixes to slowing rates of profit (Harvey, 2005). There’s a contradiction at work here: as the state opens of new spaces for accumulation of capital on the one hand, it produces more inequality and exacerbates existing social problems on the other, which it in turn must manage and control without recourse to the welfare state apparatuses that are continuously being “rolled back,” privatized, or eliminated altogether as capital moves around. How can the state resolve this contradiction?

The drug war was one way the state “rolled out” its capacity for punishment as a means of absorbing this dangerous surplus population into the criminal justice system and opening up new spaces for the productive investment of surplus capital (Gilmore, 2007). The use of the criminal justice system to absorb surplus populations and capital happened, in part, through New York’s prison-building project described in the previous chapter of this dissertation. But it also took shape as federal and state policies intensified the drug war in the 1990s. This escalation of the drug war facilitated gentrification and corporate real estate development by funding police departments in a way that incentivized the targeting of open-air drug markets in impoverished urban spaces. It developed public-private partnerships to expand and enhance the management of this increasingly policed surplus population. Furthermore, it funded “urban renewal” projects
that created massive profits for the private sector by representing spatial dispossession as a development strategy to reduce crime. Neoliberal urbanism in New York City, and the criminalization of poor people of color that made it feasible, produced the conditions that made drug courts possible. Drug courts in New York City emerged as part of this escalation of the drug war as a means of supplementing and enhancing control, extending the realignment of the public-private spheres, and buttressing the race and class blind ideology that underpins neoliberal social and economic policies. In the chapter that follows, I will synthesize the work of critical geography, political economy of education, and critical theory to analyze similar developments in education policy and reform. Important education reforms accompanied the growth of the carceral state in New York City, as public schools too became both targets of and a means of restructuring the city along neoliberal lines in the aftermath of the fiscal crisis of the mid-1970s.
CHAPTER 4

Policing the Crisis in Education

Important education policies and reforms accompanied the growth of the carceral state in New York, as public schools, like prisons, became enhanced management strategies enmeshed in restructuring the city along new racial capitalist lines in the aftermath of the social and economic upheavals of the 1960s and 1970s. The title of this chapter comes from Stuart Hall et al.’s (1978) book *Policing the crisis: Mugging, the state and law and order* in which the authors analyze how public anxieties, fueled by an “organic crisis” in the British economic base and cultural superstructure, were displaced onto immigrants of color through the social construction of the “mugger.” Black immigrants, an exploited and marginalized surplus population left behind by Britain’s changing political economy, were pathologized as “enemies within.” By framing this group as the cause of its social and economic problems, the British state was able to contain crises that were in fact structural in nature, without having to alter the distribution of wealth and power in society.

This chapter provides a critical analysis of federal education policy developments in the U.S. and some of the powerful discourses that shaped and accompanied them, in order to explore how education-like criminalization-emerged as an “imagined policy solution” (Anyon, 2011) that pinned structural crises on the supposed deficits of poor people of color. As neoliberal social and economic policy disciplined labor and contained opposition to status quo power relations, austerity and low-wage jobs exacerbated situations of concentrated poverty among poor people of color in urban neighborhoods. Deficit ideologies and the educational policies that embodied them rationalized the
disequalizing effects of neoliberal restructuring of the political economy. Critiquing education as an apparatus of the racialized neoliberal state is central to understanding educational inequality, the uneven distribution of wealth and harm in New York more generally, and the relationship of education policy to the development of “a new kind of urbanism in the United States” (Smith, N., pg. 117, in Merrifield and Swyngedouw, 1997; Lipman, 2011). In this chapter, I will use a theoretical framework that synthesizes critical geography (Smith, 1996; Harvey, 2005, 2007, 2012; Gilmore, 2007; Merrifield and Swyngedouw, 1997; Brenner and Theodore, 2002), political economy of education (Anyon, 2005; Fabricant and Fine, 2012; Hursch, 2003; Lipman, 2011), critical pedagogy/critical theory (Apple, 1993, 1996, 2004, 2006; Bowles and Gintis, 1976; Giroux, 2011; Shor, 1986, 1992), and racial analysis (Leonardo, 2007, 2009) to critically analyze developments in education policy and reform beginning with the relationship between the Elementary and Secondary Education Act (ESEA) and the attack on welfare in the mid-1970s. This will be followed by political economic analyses of the “literacy crisis” of the mid- to late-1970s and the subsequent publication of A Nation at Risk in the early 1980s. I will show how, by “policing the crisis” in education, these developments not only protected elite class power and White privilege, but also paved the way for the further neoliberalization of education via the standards, testing, and accountability reforms of Goals 2000, Improving America’s Schools Act, No Child Left Behind (NCLB), and Race to the Top (RttT).

Moving from the national level in this chapter to the local level in the one that follows, these two chapters will situate the neoliberal restructuring of New York City schools within the broader structural and discursive dynamics of racial capitalism. I will
ask “Why these policies, here, in these forms and at these times?” and look to the political economy for explanations. It will be argued that education policy, like the drug war and drug court reforms, emerged as- and continues to be- an important terrain for “the economic, cultural, and symbolic transformations” associated with processes of neoliberal urbanization, “beginning between the upheavals of the late 1960s and the economic crises of the early 1970s” (Smith, N., 1997, p. 117), and into the present. That is, education policy in New York City continues to be part of a constellation of broad policy shifts and discourses that have characterized the interlocking attacks on the welfare state and racial justice, and the concomitant emergence and advancement of neoliberal projects of capital accumulation, the restoration and maintenance of elite class power, and racial control.

**Towards a Critical Perspective of Federal Education Policy**

Federal education policy since the mid-1970s continues to be a strategic terrain for the restoration and maintenance of elite class power and racial hierarchies. It has become a policy arena that reshapes governance and finance, smudging the borders between the public and private sectors such that the wealth it creates is funneled upwards. Education, as critical scholars have noted, is essential to both the reproduction of class structures and the ideological management of inequality (Bowles, 1972, Apple, 1996; Anyon, 1981; Shor, 1992). Education policy also deploys curricular and pedagogical mechanisms for socialization (Shor, 1992), as it teaches us who, what, and how we should be as we navigate precarious material landscapes and complex “imagined worlds” (Appadurai, 1996). In this sense, federal education policy is both material and symbolic in its impact. It is also an end and a means of neoliberalization: It is an end in that the
outcomes of the policy instruments of, say, No Child Left Behind (e.g. increased technological investment, testing regimes, punitive accountability mechanisms, and charter school proliferation) have facilitated the creation of an under-regulated private sector in education, creating massive profits for what Diane Ravitch (2011) aptly refers to as “the billionaire boys club.” At the same time, education policy is a means- a strategy or technique- through which the wealth and influence of elites operates to reshape the spatial, discursive, and political-economic dimensions of urban life more generally. Federal education policy does not only reshape schooling and alter educational outcomes. It plays a crucial role in the ongoing production of urban space and the values, orientations, and habits of those who live in it. Education policy works on, and is worked back upon by, the built environment and its social meaning, and thus education policy, like drug policy, must be critically analyzed when considering the dynamics of capital accumulation, urban disinvestment and dispossession, and the uneven distribution of wealth and harm along lines of race and class.

How then does federal education policy education since the mid-1970s fit within the interlocking racial and economic logics of neoliberal urbanization? First, education policy continues to “contribute to and embody the capitalist dynamic, regardless of the programmes of even well-meaning policy-makers” (Fainstein, p. 22, in Merrifield and Swyngedouw, 1997). That is, education policy helps produce conditions that reproduce and strengthen racial and social class hierarchies. It does this through a variety of strategies, including banking pedagogy that socializes students for the workforce (or unemployment) (Freire, 1970; Shor, 1992), instituting a hidden curriculum and epistemological orientation that reproduces social class (Anyon, 1980), tracking (Oakes,
2005), instituting a mono-cultural, Eurocentric, and alienating curriculum (Leonardo, 2014; Shor, 1992), and through racialized disciplinary practices that feed poor youth of color into the carceral state (Ferguson, 2001; Nolan, 2011). Federal education policies link the state and capital in unique ways, and in situations of economic crisis, education policy, like drug policy, becomes a crucial site- in both material and ideological ways- in the “clash between the accumulation and legitimation needs of capital” (ibid, p. 22). In other words, capitalism as the extraction and hoarding of surplus value (profit) has accumulation needs- it requires certain social conditions, e.g. a low wage work force and an unemployed surplus population that helps suppress wages and increase profits. At the same time, the inequality and suffering such a system creates can be a threat to capitalism, particularly if those suffering under it come to see their conditions as rooted in racism and capitalism. Capitalism therefore has legitimation needs, or ideological conditions that rationalize and justify human suffering, obfuscating its structural causes.

Thus, education policies can open new markets and absorb surplus capital and infrastructure, while providing an outlet for surplus state capacity (Gilmore, 2007) by “regulating” the poor and flexibilizing labor through a variety of disciplinary techniques (Piven, 1993; Harvey, 1989a). Furthermore, education policies and even schools themselves have taken on new roles in the “creative destruction” of urban space itself, as education continues to be intimately linked to processes of disinvestment and accumulation by dispossession (Smith, 1996; Harvey, 2003; Fine and Ruglis, 2009). For instance, schools are both an instrument for the devaluation of urban neighborhoods and part of the infrastructure of gentrification as those neighborhoods are “renewed.” Federal
education policy since the 1970s, then, has emerged as an important way that the neoliberal state advances and protects processes of capital accumulation.

Second, like the war on drugs, federal education policies reflect and embody the interrelatedness of race and class in society. That is, education is a state apparatus where racial ideology converges with economics. Through policy discourses, allocations, and mandates, the ideological and the material combine (Leonardo, 2009) to produce certain conditions and structures, and to represent them in ways that reinforce existing race and class hierarchies. Therefore, a critical policy analysis must situate federal education policy within the larger political, economic, and social dynamics that are continually reshaping the relationship between capitalism and racism. Schools reflect and perpetuate race and class inequality, as they are built from a rhetoric of capitalist logic and racial ideology which structures society so as to inextricably link schooling to broader inequities in the distribution of goods, services, wealth (Anyon, 2005), and harm. This chapter will situate federal education policy historically and theoretically within the gradual ascendance of neoliberal hegemony vis-à-vis the dismantling of the welfare state, the restoration of elite class power (Harvey, 2005), and the emergence of new forms of racial control (Alexander, 2012; Leonardo, 2014).

Third, federal education policy is not a thing but rather a discursive agency for shaping reality. As Ball (1993) notes, policies, like all discourses, “exercise power through the production of ‘truth’ and ‘knowledge.’” Similarly, education policy, like all discourse, is ideological, addressing and interpellating (Althusser, 1971) those both inside and outside of the school walls, similar to Foucault’s (1977) analysis of the symbolic power of the prison. Critical policy analysis must therefore combine with critical
discourse analysis to identify and analyze the ideologies that dominate the policy discourse. Education policy works as a constellation of variegated symbolic expressions that embody modes of domination. Policies are tools for shaping human consciousness by structuring time, physical space, and action in order to discipline people into certain ways of thinking, doing, and being, constraining what Dewey (1938) calls our “purposeful activity.” Couching policy discourse in a rhetoric of equal opportunity, efficiency, human capital, and global competitiveness, policymakers at the same time construct a discourse that engages neoliberal subjects and orients them towards new forms of precarious labor, prolonged unemployment, individualism, consumption, and cultural politics.

Like drug policies, federal education policies are top-down strategies for the ideological management of low-wage workers and surplus, marginalized populations. Furthermore, education policies act as “policy substitutes for economic reform reforms like the creation of good jobs for low and middle income workers, including the requirement that employers pay decent wages, provide healthcare, and pensions” (Anyon, 2011, p.67). That is, educational policy is lodged within a larger discourse that represents mass education as a solution to poverty. It is situated within an array of social policies that assert themselves as anti-poverty measures yet fail to include reforms that would actually produce a sustained decline in urban poverty (ibid). Instead, it operates discursively to engender “new racial subjects, as it creates and distinguishes between newly privileged and stigmatized collectivities... representing those neoliberalism disposposses to be handicapped by their own ‘monoculturalism’ or other historico-cultural deficiencies” (Melamed, 2006, p. 1). Like criminalization, federal education policy works as a discursive force whereby debilitating structural failures are mapped
onto racial subjects whose poverty is produced not by capitalism or racism, but by their
own deficiencies and deviance.

Thus, official discourse represents mass education as an equalizing force in
society, providing opportunities to students who either succeed or fail as a product of
their own character, values, family background, culture, language, etc. In the section that
follows, I will trace how federal education policy since the mid-1970s has “policed”
social and economic problems by displacing them from their structural roots in the
dynamics of racial capitalism and linking them instead to the purported failures and
deficits of schools, teachers, students, families, and entire groups- whom it then targets
with new treatments and controls. I will explore how and why federal education policy
manipulates schooling’s material and symbolic content in the interest of elite class power
and racial control. As the welfare state was attacked and dismantled in the 1970s and on,
educational policies and discourses changed the meaning and purposes of schools, and
modified the ways in which the school a) operates as a site to protect, produce, and
reproduce race and class hierarchies (Anyon, 1981; Leonardo, 2014), b) funnels public
money into private hands (Fabricant and Fine, 2012; Lipman, 2011), and c) deploys its
symbolic content in order to discipline individuals and groups (Foucault, 1977; Harvey,
1989a; Ball, 1994) to changing conditions in the racialized political economy.

**ESEA, Title I, and the Attack on Welfare**

Federal education policy in the 1970s was marked by two important
contradictions. First, the expansion of the federal government’s role in shaping education
policy and funding schools occurred at a time when the welfare state was being widely
discredited and dismantled in a variety of social arenas. It became increasingly difficult to
rationalize federal funding and policy-making within a welfarist, equity-oriented rhetoric, yet grassroots pressure, unrest, and the political gains attached to being “good for education” meant the state could not extricate itself from educational policymaking and funding altogether. In fact, federal funding for public education increased drastically as welfare was attacked, but federal policy could no longer lean on equity, redistribution, and racial justice as rationalizations for increased federal activism in education.

Second, powerful rhetorical links were established between educational opportunity and economic growth for individuals and communities on the one hand, while deindustrialization, financialization, austerity, and “targeted abandonment” (Harvey, 1989b, p. 303), and mass incarceration exacerbated urban poverty on the other. Human capital theory established powerful rhetorical connections between the state, public education, and economic growth, yet widespread global, national, and municipal economic crises meant that opportunities were in fact diminished, unemployment and poverty were rampant, wages and benefits were suppressed as labor was disciplined, and poor communities of color faced increasingly deteriorating infrastructure and intensified policing. These structural dynamics challenged the legitimacy of human capital theory and meritocracy, and thereby threatened the capacity of education to serve as what Bowles (1972) refers to as the “ideological defense of capitalism.”

Following the Brown v. Board of Education decision in 1954, education policy and reform were more fully integrated into national politics, as the federal government declared segregated schools unconstitutional, and embarked on a controversial, contested, and never completed effort to integrate schools. Ten years later, in 1965, federal education policy linked racial justice to economic opportunity within what Melamed
(2006) refers to as the “liberal race paradigm,” in which the state “recognizes racial inequality as a problem, and it secures a liberal symbolic framework for race reform centered in abstract equality, market individualism, and inclusive civic nationalism” (p.2). The Elementary and Secondary Education Act (ESEA) drew on a “liberal race paradigm” grounded in notions of equity and opportunity to rationalize increased federal activism in, and funding for, public education. Education became an integral part of Lyndon B. Johnson’s War on Poverty, whereby the incorporation of poor African Americans and Latinos into the labor market was seen as hinging on equal access to educational resources. Equal access was hindered by the accumulated historical effects of racial segregation and the linking of school funding to property wealth in a district. ESEA emphasized compensatory funding for schools as a way to target poverty, providing additional resources for disadvantaged students and monitoring states to ensure educational equity (McGuinn, 2006). In doing so, ESEA “did not aim to alter the operation of the labor market or to protect the least advantaged from its inequities and uncertainties, but rather to develop their human capital so that they could participate in it” (Kantor and Lowe, 2006, p. 8). Ensuring equitable investment in human capital emerged as an imagined federal policy solution to poverty.

Because education was seen as crucial to labor market participation and social mobility within the welfarist human capital framework of the War on Poverty, ESEA emphasized redistribution and focused on the role of equitable inputs into education as being the key to mitigating urban poverty. Title I, which received $1.06 billion of the original $1.3 billion appropriated for ESEA, increased per-pupil expenditures for low-income families, funneling additional funds into teaching staff, facilities, technology,
curriculum, and instruction (McGuinn, 2006, p. 29). As levers for “redirecting (and increasing) the monies that flowed into local agencies,” ESEA, and Title I in particular, were part and parcel of the kind of expansive, interventionist, and redistributive state associated with welfarism under the War on Poverty (Piven, 1993, p. 282). School districts would identify “educationally deprived” kids, determine their needs, and design programs to meet them. The district would then submit an application to the state Department of Education for approval. Once the state approved, it would monitor districts and submit fiscal reports and evaluations of local projects to the United States Office of Education. The federal role was limited to approving applications submitted by states for participation in the program and making sure they received the additional money. Beyond that, there were no federal mandates, prescriptions, or accountability mechanisms (Murphy, J. in Odden, A. 1991). The expansion of Title I was a welfarist strategy that exemplified the notion of “government as a transforming agency that could solve such long-standing problems as discrimination and poverty;” for as long as the needs of capital were met and profits were growing, “it seemed both possible and desirable to take part of the growth dividend and redistribute it to those who had been left out of the affluent society” via jobs programs, public works, welfare supports, and educational investment (Tabb, 1982, p. 12).

With the coming of the dramatic economic crises of the early and mid-1970s, there was an increased tendency by social movements, civil rights groups, and other grassroots activists to bypass resistant and sluggish local and state governments and put pressure directly on the federal government to expand welfare (Piven, 1993). Increased disorder and grassroots political pressure resulted in greater welfare supports for
individuals and families as the government sought to quell unrest among surplus populations. As the Title I program expanded in the early 1970s due to more effective grassroots activism, districts began experimenting with new strategies such as in-classroom aides, afterschool programs, and smaller class sizes. Many schools saw an influx of new personnel—special education teachers, reading specialists, and teacher aides, and many students labeled as “disadvantaged” were pulled out of traditional programs and placed in programs where they received special instruction in reading and math (Peterson, Rabbe, and Wong, in Odden, 1991).

Activism and unrest also resulted in an increased linking of Title I to the welfare state more generally, as organizations like the National Welfare Rights Organization fought to increase Title I expenditures not only for traditional educational inputs, but also for food, clothing, health, and other supports for impoverished youth and families (Murphy in Odden, 1991). As a result of increases in funding for ESEA and Title I, total educational revenues skyrocketed from $14.7 billion in 1960, to $40.3 billion in 1970, to $96.9 billion in 1980. Expenditures per pupil grew (in 2000-01) dollars from $3,482 in 69-70, to $4,710 in 79-80. During the same period, the federal government’s share of educational expenditures rose from 8 percent to 9.8 percent, the state’s share increased from 39.9 percent to 46.8 percent, and the local share hovered at around 44 percent (Odden and Picus, 2000). Like other welfare programs of the late 1960s, ESEA and Title I did not seek out a radical transformation of racial capitalist structures, but rather emerged as an institutionalized investment in human capital that was part of a constellation of “governmental programs designed to moderate widespread political unrest among the black poor” (Piven, 1993, p. 337).
The expansion of Title I in the 1970s, and its embeddedness within the “liberal race paradigm” (Melamed, 2006) of the growing welfare state of the 60s, enveloped the state in a contradiction in terms of its relationship to capitalism. The expanding federal role in shaping and funding education policy in the mid-1970s was rationalized by welfarist rhetoric at a time when the welfare state and its supporting ideologies were falling into disrepute, and the relationship between the state and capital were transforming alongside national and global changes in the political economy. Though the embedded liberalism of the welfare state brought on substantial, albeit uneven, economic growth in the U.S. in the 50s and 60s, the 1970s signaled a “serious crisis of capital accumulation” accompanied by rampant unemployment and inflation (Harvey, 2005, p. 12). Urban crises of the 1970s were part of a “global restructuring process” as corporations escaped “the control of spatially based governing structures” in order to “maximize profits without regard for the social cost or the social needs” (Tabb, 1982, p. 6). Inflation, caused by the globalization of the dollar as banks and corporations increasingly turned to investment in less-regulated European and decolonized “Third World” markets to increase profits (as opposed to expanded industrial production at home) could not be managed by Keynesian monetary policies. The weakening of the dollar, coupled with “continuing wage pressure from US workers,” slowed the rate of profit for industry, which increasingly relocated abroad or to the sunbelt, shifted to financial speculation to reinvigorate profit flows (Panitch and Gindin, 2012, pg. 152), or, when possible, shifted the burden of slowing profits onto workers in the form of attacks on wages and benefits.
Labor militancy was robust: in 1970 alone, there were nation-wide strikes by 133,000 General Electric workers, 152,000 federal postal workers, 110,000 truckers, 355,000 General Motors workers, and 360,000 railroad workers, as well as smaller scale, local strikes by “construction workers, teachers, coalminers, rubber workers, longshoremen…and taxi drivers” (ibid, p. 141). Rank and file workers in the public and private sectors resisted the efforts of business to counter declines in profit by attacking wages, benefits, and pensions, while at the same time deindustrialization brought on waves of mass un- and underemployment. The disorder engendered by deteriorating economic conditions in the early 1970s was seen by elites as being enabled by the welfare state, as employers “understood that by shielding working people from some of the hazards of the market, relief reduces the power of employers over workers” and thereby “undermines labor discipline” (Piven, 1993, p. 345). In other words, if unemployment isn’t miserable enough, surplus populations will be less likely to accept low wage jobs, and the employed will risk unemployment to fight for higher wages and benefits. The reinvigoration of profit required the disciplining of labor, and dismantling the welfare state emerged as a strategy to revitalize profits by increasing the precariousness of work in order to diminish resistance and flexibilize labor (Harvey, 1989a).

Between 1973 and 1975, the welfare state had “proven inconsistent with the requirements of capital accumulation” (Harvey, 2005, p. 13). As the U.S. entered a deep recession, labor militancy and social unrest posed a “clear political threat to economic elites and ruling classes” who “had to move decisively if they were to protect themselves from political and economic annihilation” (ibid, p.15). The state itself was threatened
alongside capital, as it faced growing social unrest, declining revenues, vast debts and a legitimacy crisis from the Vietnam War, and frightening social-democratic developments abroad as a new left socialist-inspired political economic strategies emerged and gained traction in Europe and South America (ibid). The Ford and Carter administrations, seeking to restore confidence in the dollar and attract investment, opted to restore profitability at the expense of welfare supports, wages, benefits, and unemployment, and as such “the postwar pragmatic care once unevenly bestowed on labor was transferred, with an icing of solicitude, to capital. The state focused on capital’s needs- particularly on how to minimize impediments, and maximize opportunities, for capital recruitment and retention” (Gilmore, 2007, p. 53). As industries closed and relocated to low-wage areas, federal monetary and housing policy, deregulation, and bailouts made financialization all the more profitable, and more businesses turned to speculation rather than production to shore up profits. State intervention shifted gears as the role of government was increasingly to “remove restrictions on trade and corporate investment, reduce corporate taxes and eliminate regulation of industry, limit the power of unions, turn public services and infrastructure over to the market, and withdraw from provision of social welfare” (Lipman, 2008, p. 8). Unions shrank, wage increases slowed behind the rate of inflation, businesses made vast cuts to their permanent workforce and leaned more heavily on part-time, contingent low wage labor, benefits were slashed, income maintenance programs were eliminated, and wages in general declined for the working class and poor (Piven, 1993). As a result, urban poverty increased 22 percent between 1970 and 1980, and the number of those living in extreme poverty areas- geographic areas with a poverty rate at 40% or greater- or in shelters increased by 161 percent (Anyon, 1997).
Political economic shifts contradicted the equity-oriented human capital rhetoric underlying ESEA and Title I. Deindustrialization, financialization, and the accompanying attacks on welfare and labor had a drastic impact on wages, unemployment, and poverty-social costs and harms that were disproportionately borne by poor people of color. Though African Americans made educational gains in the 1960s and 70s, and some modest economic gains, the majority remained locked in “concentrated poverty in America’s inner cities” and faced “prolonged unemployment, underemployment, and detachment from the labor market” (Anyon, 2005, p. 40). The wage gap between Whites and African Americans grew in spite of educational gains during the 1970s, and though there was a decreasing gap in test scores between African Americans and Whites, people of color continued to occupy a “deteriorated position…in the labor market” (ibid, p. 41). For instance, 32 percent of African American men in 1969 were working at or below poverty level wages, 26 percent of Latinos, and 12 percent of Whites. By 1979, the number of working poor African Americans climbed to 37 percent, Latinos to 31 percent, and Whites to 16 percent, and by 1989, 42 percent of African Americans, 38 percent of Latinos, and 20 percent of Whites were working at or below poverty level wages. In situations of equal education, African Americans and Latinos were also disproportionately represented among the working poor (Corcoran and Chaudry, 1997). Where poor Whites experienced moderate social mobility, African Americans experienced higher rates of intergenerational poverty, as 17 percent of Whites born in poverty between 1942 and 1972 remained there as adults, whereas 42 percent of African Americans born during the same period remained in poverty (Wagmiller and Adelman, 2009).
The social programs of the welfare state had “altered the terms of struggle between capital and labor” (Piven, 1993, p. 358), and the dismantling of those programs was crucial to the restoration of elite class power, as labor was disciplined and public monies were increasingly redirected towards public-private partnerships, tax incentives, corporate and financial infrastructure development, and subsidies for private real estate. ESEA and Title I not only survived the attack on the welfare state—the programs were expanded and federal funding increased. How is it that during a period of such damaging rollback of supports and supplements for the working class and poor, funding for ESEA jumped from $40.3 billion in 1970 to $96.9 billion in 1980? Similarly, expenditures per pupil grew (in 2000-01) dollars from $3,482 in 1969 to 1970, to $4,710 in 1979 to 1980 (Odden and Picus, 2000). If the goals of dismantling of welfare state were restoring White privilege by rolling back the “positive liberties” gained by African Americans during the War on Poverty, as Quadagno (1996) argues, as well as the disciplining of labor, the restoration of elite class power, and a vast redistribution of income upwards, as Piven and Cloward (1993) and Harvey (2005) contend, how did a federal education policy that was premised on the notion that an equitable redistribution of opportunity would increase income for poor people of color not only survive, but thrive and expand?

**Colorblindness, incipient neoliberalism, and the conservative restoration**

ESEA did little to increase educational opportunity and economic mobility due to “insufficient funding levels and the way the available funds were allocated” as Title I funds “provided relatively limited resources to schools attended by large numbers of poor children” (Kantor and Lowe, 2006, p. 479). ESEA’s premises, promises, and failures were part of the ideological landscape that facilitated the dismantling of welfare and the
emergence of the neoliberal and neoconservative counterrevolutions in education and elsewhere. Federal education policy during this period helped reframe White working class economic and social insecurity as well as racial concerns in free market terms by marrying fiscal conservatism to notions of white supremacy and white privilege (Quadagno, 1996). As welfare was framed as the cause of the economic troubles of the 1970s, so to were its chief recipients in urban areas: impoverished African Americans and Latinos. The compensatory programs of ESEA contributed to this framing by blaming poverty on the social and cultural problems of people of color - their educational deficits. These deficits, if left untreated, prevented the poor from competing in the labor market, which in turn made them dependent on welfare supports for survival. That is, ESEA and Title I reinforced the notion that the culture of poor people of color inhibited their mobility and locked them into poverty, producing the rampant welfare dependency that supposedly caused the economic recessions and urban fiscal crises that destabilized the White middle and working classes. White working class anxiety gave way to resentment, and diminished their support for the welfare state (ibid).

The discourse linking racial and economic justice was increasingly dislodged from federal education policy, as New Right and centrist Democrats competed to build a vast political base of working class and southern Whites by casting their economic instability and racial concerns not only onto the criminality of the poor (Alexander, 2012), but their educational deficits as well. ESEA linked notions of equity and human capital to a pervasive culture of poverty among the poor, discrediting the economic and racial justice claims of poor people of color by constructing them as a problem population whose cultural deficits, deviance, and values inhibited their ability to compete in the
labor force and made them dependent on welfare. This educational discourse reinforced criminalization, as both blamed the poor for their own poverty and linked their racial inferiority to the bloated welfare rolls that were supposedly at the root of the urban economic crisis. Poverty remained rooted in the culture of the poor, rather than the state-supported racial capitalist conditions that emerged out of the political economic restructuring of the 1970s.

Indeed, ESEA was always premised on the deficit-oriented position that schools needed to assimilate African Americans and Latinos into White middle class culture in order to make them competitive, but up until the mid-1970s, it did so as part of the redistributive rhetoric of a welfare state seeking to mitigate social unrest through full employment, wage protections, an expanding public sector, and direct intervention in the economy and corporate behavior. However, following Quadagno (1996), as the struggle for racial justice became increasingly embedded within welfarist social and economic policies, and economic insecurity increased for poor and working class Whites, both white supremacy and white privilege were reconstructed in relation to those programs. The “positive liberties” the welfare state extended to African Americans were viewed by the White middle and working classes as infringements on the “negative liberties” that secured their privilege and security, such as de facto segregation and discrimination. ESEA and Title I did not disrupt White flight or suburbanization- it accompanied them. Nor did it “disturb power relationships between the races” the way forced desegregation and busing “threatened white exclusivity” (Kantor and Lowe, p. 481). Rather, they functioned as federal policy substitutes for desegregation, replacing the politically dicey
agenda of integration with a human capital-oriented emphasis on increased educational funding as the antidote to a toxic and disabling culture of poverty.

Federal education policy absorbed these racial conflicts, as it “forged racial hostility with conservative economic policy” (Quadagno, 1996, p. 195) by linking the culture of poverty thesis and educational opportunity with the costs of welfare supports for poor people of color. Furthermore, the purpose of education policy was reconstructed along incipient neoliberal lines through the production and wide circulation of influential critiques of Title I which framed it as a certain kind of failure, producing the ideological conditions for the emergence of imagined educational policy solutions for poverty that were amenable to political economic transformations of the late 20th century and concomitant shifts in racial control. As such, though ESEA continued to embrace investment in human capital as a way of treating the pathologies of the poor, it shifted its emphasis from an equity-oriented discourse around the distribution of educational resources to a surveillance-oriented discourse around measuring and monitoring student performance and other educational outputs.

A 1974 study of Title I by The Rand Corporation shows how the shift to a surveillance and accountability discourse was prefaced by a critique of Title I as being a failure due to its inability to generate useful data because the schools and districts themselves had no incentive to produce it: "The central cause is that LEAs [Local Educational Agencies, i.e. districts and schools] had no incentive to collect or report output data, and federal officials lacked the political muscle to enforce evaluation guidelines or to require cooperation with other federal evaluation efforts" (The Rand Corporation, 1974, p. vi). Title I was not ineffective as a force for social mobility because
of the dynamics of the political economy, nor was it hindered by racial inequality. Rather, the Rand study states, "the experience of Title I suggests that the local perception of federal initiatives and commitments as inherently unstable, combined with a basic defensiveness about achievement measures" is what undermined "federal attempts to secure objective, reliable program data" (ibid, p. vii).

As a result, the study asserts, “The mandated evaluation scheme has led to local evaluation that is typically seen as little more than an annual ritualistic defense of program activities" (ibid). Better evaluation, according to the study, required not only additional funds, but an "appeal to dominant constraints and incentives," calls for "efficiency and rational planning," and "a three-step process that involved, first, control of program information systems; second, increased federal involvement in program planning; and, consequently more control for USOE…over state and local implementation of federal programs" (p. 93). The failure of Title I to create upward mobility for the poor was reduced to "the slippage between federal intent and local practice" due to a lack of "effective muscle at the top"(p. 109). By the mid-1970s, the Rand study concludes, "the Title I experience has shown how resistant the educational policy system is to assessment of achievements and accomplishments" and "the structure and control of the nation's education system hampers all reporting, and it may preclude the accountability and impact reports reformers wanted" (p.110-111).

This critique resonated with shifts at the policymaking level, as the federal government, in a set of reforms in 1974, established the National Center for Education Statistics (NCES) (Education Amendments of 1974, Public Law 93-380). NCES was created to "collect, collate, and from time to time, report full and complete statistics on
the conditions of education in the United States" and to "conduct and publish reports on specialized analyses of such statistics" (ibid, p. 556). In addition to institutionalizing the discursive shift towards gathering data around achievement, the creation of the NCES also established new links between the public and private sector: "The Assistant Secretary is authorized to make grants to, and contracts with public and private institutions, agencies, organizations, and individuals" (p. 558). By 1974, public-private partnerships were already big business: the law creating the NCES set aside $20,000,000 in grants made available for FY75, $25,000,000 for FY76, $30,000,000 for FY77 (ibid), thus setting the stage for the massive privatizations and public-private partnerships to come in the era of No Child Left Behind.

ESEA and Title I thereby reinforced the displacement of racial and economic inequality from their structural roots and paved the way for the neoliberal education reforms of the 1980s and 90s by shifting from a compensatory treatment-oriented approach to the purported deficits of African American students to a more managerial formulation of the “problems of race and political economy in terms of educational achievement” (Kantor and Lowe, 2006, p. 477), and the failure of school districts to measure and report that achievement. Reforms to ESEA in the mid- to late-1970s, which sought to remedy the data-gathering gap, such as the creation of the NCES, established important links between the public and private sphere, setting aside millions in grant money to outsource data gathering, analysis, and publication of findings to private providers. Furthermore, as Title I, in response to grassroots activism, expanded to include women and students with disabilities, wide swaths of educational activities were made available to the private sector. For instance, the 1974 reform to Title I which
established an "Advisory Council on Women's Educational Programs," authorized the commissioner to “make grants to, and enter into contracts with, public agencies and private nonprofit organizations and with individuals for activities… at all levels of education, including preschool, elementary and secondary education, higher education, and adult education" including "the development, evaluation, and dissemination… of curricula, textbooks, and other educational materials," as well as pre-service and in-service training, and vocational and career education programs. Once again, millions were made available to private sector educational organizations, as this law allocated $30,000,000 per year for FY75, FY76, and FY77. In addition, the Commissioner was authorized to hand out small grants in the amount of $15,000 each for "innovative approaches" to educating women, to "private nonprofit agencies and to individuals" (Education Amendments of 1974, Public Law 93-380, p.554-555).

The late 1970s found an inchoate neoliberal discourse also emerging in studies and critiques of ESEA and Title I that advocated the deregulation of federal education policy, while tying funding to increased autonomy, flexibility, and entrepreneurialism at the local level. A 1978 study undertaken by the Rand Corporation for the U.S. Office of Education paved the way for the neoliberal restructuring of public education in the 1980s and 90s. Falling in line with the general attack on welfare, this study of Title I programs argued against the importance of equitable funding and resources: "The choice of educational methods and the resources available (e.g. the amount of funding per student) determined the project's outcomes and continuation only a small and limited extent. Inputs to school districts, whether money, new methods, or federal guidelines, mattered less than other local factors" (p. 34). Instead, the report integrated the rhetoric of
achievement into free market ideology by linking achievement to federal deregulation and innovation at the local level. That is, achievement, rather than equity, should be the goal, and the federal government should not interfere with the entrepreneurial “innovative” capacities for improving achievement that exist at the local level. Though the report’s findings mention that the fed can have an impact on schooling when local education agencies' projects are federally funded, and that funding is tied to "federal guidelines that encouraged specific educational practices" (p. vi), the report generally challenges the notion that "the federal government should develop new technologies, provide incentives for their adoption, and introduce these technologies into school districts that were targeted, and thus accountable" (p. ix). Rather, they argue for increased autonomy and flexibility for schools, and a stronger role for state departments of education in determining curriculum, pedagogy, and school organization. The goal of the federal government should be to provide “seed money” for innovation, and tie this money to quantitative evidence of student achievement brought about by the entrepreneurial capacities of the local educational agencies (The Rand Corporation "Federal Programs Supporting Educational Change, Vol. VIII: Implementing and Sustaining Innovations" by Paul Berman and Milbrey Wallin McLaughlin, May 1978).

**Literacy Crisis and the Enemy Within**

The gradual neoliberalization of education policy was helped along by a “manufactured” literacy crisis in the late 1970s and early 80s (Berliner, 1995; Shor, 1986). In 1975, the New York Times reported on its front page that scores on the SAT had fallen steadily for over a decade. The College Board appointed a commission to find out why scores were falling, and pointed the finger at the increased number of minority
students who were taking the test, but whose scores, due to their lower literacy and verbal skills, were lower than White students or “traditional test takers” (Ravitch, 2011, p. 24; Shor, 1986). That same year, *Newsweek* published a cover story entitled “Why Johnny Can’t Write” which argued for a renewed emphasis on basic skills and Standard English (Shor, 1986). The article is alarmist, warning parents that “the chances are less than ever that” their children “will be able to write English at the minimal college level when they get there” and that “their skills in writing English may not even qualify them for secretarial or clerical work” (*Newsweek*, December 8, 1975). “The statistics on literacy grow more appalling each year,” and in order to “stop the rot,” the article advocates an increased “focus on sentence and paragraph construction,” “traditional drills,” and an emphasis by teachers that “not all writing is equally admirable” (ibid). The article concludes:

“The point is that there have to be some fixed rules, however tedious, if the codes of human communication are to remain decipherable. If the written language is placed at the mercy of every new colloquialism and if every fresh dialect demands and gets equal sway, then we will soon find ourselves back in Babel. In America today, as in the never-never world Alice discovered on her trip through the looking-glass, there are too many people intent on being masters of their language and too few willing to be its servants” (ibid).

Speakers of non-Standard English, and the teachers and schools that “failed” them, were labeled as a threat to American social values and economic stability. Like Hall et al.’s (1978) muggers, literacy among poor youth of color “had become a central symbol for the many tensions and problems besetting American social and political life in
general…because of its ability to connote a whole complex of social themes in which the ‘crisis of American society’ was reflected” (p. 19). The remedy for this nexus of political, economic, and racial crises was a “core curriculum” that could transmit “an official value system disguised as universal knowledge” and thereby “restore the hierarchy of power threatened by egalitarian social movements” (Shor, 1986, p. 23). That is, as political economic instability was exported to schools via the construction of a literacy crisis among poor youth of color, educational discourses around achievement, excellence, standards, and accountability were drawn on as policymakers and elites imagined new educational policy solutions to poverty.

The literacy crisis incited a “moral panic” whereby themes of race, class, and education “condensed” into a discourse around literacy which served “as the articulator” or “ideological conductor” of fears and anxieties around the larger economic and racial crises that were threatening and destabilizing the status quo (Hall et al., 1978, p. viii). It braced up the attacks on welfare and the emerging neoliberal discourses linking political economic problems to issues of excellence, achievement, and accountability in education. The literacy crisis “took its own kind of stranglehold on the public and official imagination” (ibid, p.5), blaming the over-permissiveness of the welfare state and the progressive education movements of the 1960s for both the educational and economic problems of the 1970s (Shor, 1986) and “providing a spearhead for a white backlash against blacks and the poverty programmes (which seemed to be giving blacks an unfair advantage)” (Hall et al., 1978, p. 20). By constructing an “enemy within,” the literacy crisis created the ideological conditions for a “conservative restoration” in education policy that sought to reestablish race and class hierarchies, enhancing education’s
capacity to serve as an “ideological defense of an irrational political economic system”
by ushering in a policy regime that emphasized basic skills, standards, and traditional
values (Shor, 1986, p. 97).

As Harvey (1989a) notes, “ideological and political hegemony in any society
depends on an ability to control the material context of personal and social experience”
(p. 227). “Considerable power,” he continues, “goes to those who command the
techniques of representation” (p. 233). As such, the literacy crisis deployed a critique of
public education that represented educational and economic issues in ways that were
coherent with the needs of emerging forms of flexible capital accumulation. It did this
chiefly by: a) articulating racially coded representations of the relationship between
education and social class; b) framing the curricular and pedagogical content of
progressive education as at odds with economic growth; and c) representing poor youth
of color themselves as deficient and an “enemy within” whose ways of being threatened
the very social fabric and economic stability of the nation. The conservative restoration
emerged as a set of discourses and policies intended to “fix” these problem populations
via a reform agenda that would transform the purposes of education, advance a core of
“official knowledge” (given these new purposes), and alter school governance in order to
reinforce traditional authority structures and give elite groups more control over the
content and purposes of schooling (Apple, 2000).

In conclusion, ESEA was linked to the welfare state in complex and contradictory
ways. It emerged as part of Johnson’s War on Poverty, and was premised on a rhetoric
that linked educational equity, in the form of increased resources, with economic mobility
for poor people of color. It increased the expectations many poor and working class
people held for education, yet provided little in the way of economic growth and undermined desegregation efforts. When the economic crisis of the mid-1970s brought on declining profits for capital, threatening elite class power, and social movements and racial upheavals threatened white supremacy, the welfare state fell under attack as racial antagonisms were exploited to drive a wedge between working class/poor Whites and African Americans, undermining labor militancy and rolling back civil rights gains.

Yet as unemployment soared, with an estimated 38 million jobs lost in the 1970s (Weis, 1988, p. 186), and urban poverty worsened, the federal government increasingly withdrew from social provision. The revamping of capital accumulation processes “characterized by the emergence of new sectors of production, new ways of providing financial services, new markets, and above all, greatly intensified rates of commercial, technological, and organizational innovation” demanded “more flexible work regimes and labor contracts” as employers shifted to an increased dependence on part-time, contingent, and temporary labor (Harvey, 1989a, p. 147). ESEA not only survived, but expanded, because it articulated a “reassertion of the preference to offer protection to citizens against the uncertainties of the market by reformulating the problems of poverty, inequality, and income insecurity in terms of economic growth and educational achievement [emphasis added]” (Kantor and Lowe, in Carter and Welner, 2013, p. 33). Federal education policy remained a prominent social policy ostensibly aimed at generating upward mobility for poor people of color at the same time that the political economy was restructured in a way that “permitted substantial redistributions of income to be achieved, which have advantaged, for the most part, the already privileged” (Harvey, 1989a, p. 171).
The moral panic of the literacy crisis reinforced culture of poverty theories, and helped create a discursive terrain for the conservative restoration in education to emerge as a solution that linked “the desire for stable values” with “a much more competitive individualism” and “ideologies of entrepreneurialism, paternalism, and privatism” (ibid, p. 171, 192). ESEA’s shift to an emphasis on standards, achievement, excellence, and assessment not only further obfuscated the structural causes of poverty, but also instigated shifts in pedagogy and curriculum that altered “the conditions of consciousness formation and political action” (ibid, p. 192; see also Freire, 1970; and Shor, 1992). The gradual transformation of the educational discursive terrain which accompanied the shift towards flexible accumulation culminated in *A Nation at Risk* (1983), as the cultural deficits of poor people of color were elevated from being an *impediment* to a racial, ethnic, or linguistic group’s ability to compete in the labor market, to the level of a *threat* to American competitiveness, security, and global hegemony. Through the publication of *A Nation at Risk*, and the education policies that followed in the 1990s and 2000s, the culture of poverty thesis grew into a discursive tool that called for policy instruments that transformed education into a crucial institution for crafting the neoliberal state (Leonardo, 2007; Wacquant, 2010).

*A Nation at Risk and the Rise of Neoliberal Federal Education Policy*

Education discourse in the 1980s increasingly concerned “the distribution and use of money for the purpose of providing educational services and producing student achievement” (Odden and Picus, 2000, p. 1). There was a shift away from equity as an organizing principle of policy, and the state avoided redistributive, egalitarian educational discourses that framed educational inequality in relation to the diminished property tax
bases of historically disinvested neighborhoods and districts. Instead, the state embraced a discourse that situated poverty within a logic linking social mobility to the amount of federal funds spent on education, the use of those funds, and levels of student achievement. Policymakers, elites, and politicians wanted to know how the level and use of dollars affected achievement (Odden and Picus, 2000) and restructure schooling accordingly, but in a way that divorced the causes of educational inequality from the wider social context of deindustrialization, the transition to a service economy, increasing economic instability and polarization, and the localized impact of U.S. global economic hegemony (Lipman, 1998; Sassen, 2001).

The publication of A Nation at Risk in 1983 helped resolve some of the contradictions that existed between the emerging regimes of capital mobility and flexible accumulation on the hand, and the fallacious human capital and meritocratic underpinnings of ESEA and Title I on the other. The “devaluation of labor power” via flexibilization (Harvey, 1989, pg. 192) and the shift towards a low-wage service economy (Sassen, 2001) increased inequality, while the dismantling of welfare meant that the state had to manage the resultant instability without recourse to the placating, albeit insufficient, redistributive mechanisms of the welfare state. A Nation at Risk reconstructed the relationship between the state and equality. Instead of drawing on redistributive discourses around economic and racial justice to link the state and equality, it construed the state as an agent of egalitarianism by asserting a state education apparatus that guarantees fairness via choice and competition in the free market (Apple, 2000; Harvey, 2005).
But as Stuart Hall (2011) cautions us, “Ideology is always contradictory…” Ideology works best by suturing together contradictory lines of argument and emotional investments” (p. 18). The ideological task of *A Nation at Risk*, and the federal education policies that followed in its wake, was to mobilize educational discourse in a way that would reconcile increased poverty, inequality, and insecurity with the often-contradictory promises and values of both neoconservatism and neoliberalism. Using Hall’s vocabulary, *A Nation at Risk* had to “suture” the educational solutions to racism and poverty to the same racial capitalist forces that produced them. By deploying powerful discourses around excellence and risk, *A Nation at Risk* situated structural poverty and inequality within the larger discourses of individual failure and cultural deficiency that appealed to neoconservative values around individual responsibility and cultural unity, while simultaneously constructing a neoliberal educational discursive terrain where the incentives and sanctions of the free market could present themselves as viable solutions to social problems (Apple, 2000; Harvey, 2005). The threat to children’s futures lay not within an increasingly volatile and racially hostile political economy, but rather within an education system that failed to institute the right corrective measures.

Macro-level economic and social policies that facilitated the transition to deindustrialization, financialization, and the growth of the low-wage service sector brought with them waves of disinvestment, dispossession, and dislocations for poor people of color. These dynamics are reflected in shifts in the uneven distribution of wealth and harm along lines of race and class, leading up to, and following, the publication of *A Nation at Risk*. There were multiple global economic crises in the 1980s, and *A Nation at Risk* appeared on the heels of a deep recession in the U.S. in 1982, in
which the country saw a 50 percent jump in bankruptcies, a devastating decline in agricultural exports, and an increase in interest rates. Unemployment moved from 7 percent in 1980 to 8 percent in 1981, then to 10.8 percent and peaking at 16.3 percent in 1982. Interest-rate increases instigated by the Federal Reserve, intended to break inflation, resulted in a fall in home sales. The rise in unemployment, interest rates, and declining property values coincided with dismal approval ratings for Reagan, which reached an all-time low of 35% in early 1983 (New York Times, 01/21/09; Pew Research Center, 2010).

The poverty threshold for a family of four in 1983 was $10,178 (U.S. Census Bureau, n.d.). In 1978, 15.8% of the U.S. population lived at or below 125 percent of the poverty level; by 1983, that number had grown to 20.3 percent (U.S. Census Bureau, n.d.). Furthermore, the percentage of people living in extreme poverty, below 50 percent of the poverty line, in 1978 was 3.6; by 1983, it had almost doubled, reaching 5.9 percent (U.S. Census Bureau, n.d.). A Census Bureau study (1984) looking at changes in poverty levels between 1981 and 1982 reveals the profound growth in poverty, especially among poor families of color living in the urban core, in the years leading up to the publication of A Nation at Risk. Between 1981 and 1982, in the third consecutive year of increasing poverty rates, the number of people in poverty rose from 31.8 million to 34.4 million, jumping 2.6 million or 8.1 percent. This was the highest level the nation had seen since 1966. Of the people living below the poverty level in 1982, 23.5 million were white, 9.7 million were African American, and 4.3 million were Latino. Differences in the increases in the poverty rate ran along lines of race and gender: between 1981 and 1982, poverty rates increased from 11 to 12 percent for whites, from 26.5 to 29.9 percent for Latinos,
and from 34.2 to 35.6 percent for African Americans—indicating not only higher rates of poverty among families of color, but statistically significant disproportionate increases for African Americans and Latinos during this period. Women also faced higher increases in poverty rates, rising from 26.6 to 27.7 percent, as compared to 18.1 to 18.8 percent for men (a 1.1 percent increase for women and a .7 percent increase for men). There was also an increase in poverty rates for single parent female-headed families, which hit 3.4 million poor families in 1982, increasing from a 34.6 percent poverty rate in 1981 to a 36.3 percent rate in 1982. Children were hard hit by the economic restructuring of the late 1970s and early 80s: Between 1981 and 1982, the number of children living in poverty increased from 12.3 million to 13.5 million—the rate rising from 19.8 percent to 21.7 percent. Out of all age groups, children under 15 faced the largest increase in poverty rates during this period (ibid).

This racialized growth in poverty was spatially articulated, disproportionately affecting families of color living in urban core neighborhoods. Of all people living below poverty line in 1982, 61.8 percent lived in metropolitan areas, 36.9 percent of them in central cities and 24.9 percent outside the central city in suburban areas, nearby small cities, and towns. Of all poor whites in 1982, 28.7 percent lived in central city areas, as compared to 56.1 percent of blacks. Furthermore, only 7.7 percent of poor whites lived in high poverty areas, compared to 32.3 percent of blacks. Central city neighborhoods of metropolitan areas faced greater increases in poverty than areas outside the central city. In central city areas, there was an increase from 11.2 million people living under the poverty level in 1981 to 12.7 million people in 1982, whereas poverty in outside central city areas increased from 8.1 to 8.6 million. Central city areas faced a 19.9 percent
unemployment rate, compared to only 9.3 percent for areas outside the central city. 10.4 percent of white people living in metropolitan areas were below the poverty level in 1982, compared to 33.5 percent of African Americans. Likewise, 14.5 percent of white people living in center city areas were poor, compared to 36.9 percent of African Americans. Even in predominantly white suburban areas outside the central city, 25 percent of African Americans were poor, as opposed to only 8.1 percent of whites (ibid).

The staggering growth in poverty among people of color in the early 1980s, and its spatial expression in core urban areas, was exacerbated by severe cuts to public housing. In 1979, 38.5% of subsidized housing recipients were African American. In 1982, Reagan terminated most federal funding for new construction of subsidized housing and raised the price of existing housing by 5% (Quadagno, 1996). In addition, federal urban development funds fell from $19.8 billion in 1980 to $8.7 billion in 1990. In 1980, one out of every five dollars cities spent came from the federal government; by 1990 it was one out of every ten. As a result, central business district (CBD) development was funded by a mix of public money (tax breaks and subsidies) and private dollars directed at projects initiated by developers, bankers, finance, and corporations (Moody, 2007). Public money also subsidized the suburbanization of production, resulting in the movement of high tech jobs and manufacturing into suburban areas unreachable by the public transportation methods poor urban laborers relied upon (Lipman, 2008; Anyon, 2005). Technological shifts that accompanied flexible accumulation placed higher educational demands on workers as high-paying, entry level manufacturing jobs evaporated, leaving unskilled, undereducated surplus populations facing either low-wage service industry work, part-time highly contingent labor, or unemployment. As a result,
the distribution of wealth became increasingly polarized in the 1980s. For instance, between 1983-89, the top 20 percent of the U.S. population gained just under 99% of the growth in the marketable wealth. The bottom 80% gained only a little over 1%, and suffered most of the loss in income (Lipman, 1998).

The political economic transformations of the late 1970s and early 1980s created a vast surplus population of unemployed and impoverished people of color. Where once the welfare state “[solved] accumulation problems- at least in the medium run- by assuming some of the costs of ‘reproducing’ labor power” and “[solved] legitimation problems by providing public jobs or income transfers for people who are made superfluous by the advance of capitalism” (Piven and Cloward, 1993, p. 414), A Nation at Risk framed education as the cause of economic problems, and articulated an education policy solution for dealing with surplus populations, drawing on and advancing a neoliberal discourse that, as Harvey (2005) points out, was gaining credence nationwide as the “only alternative” to the welfare state. Following Apple (2000) and Harvey (2005), the restoration of elite class power that emerged out of the restructuring of the 1970s and early 80s meant that economic crises, such as mass unemployment and poverty, must be resolved in ways that are amenable to elite interests. Elite control over government and its institutions results in a class dynamic in which the imagined resolution to unemployment and poverty doesn’t necessarily have to entail the creation of jobs, higher wages, or alleviating the harms associated with poverty. Instead, the report claims that “to keep and improve on the slim competitive edge we still retain in world markets, we must dedicate ourselves to the reform of our educational system for the benefit of all--old and young alike, affluent and poor, majority and minority. Learning is the indispensable
investment required for success in the ‘information age’ we are entering” (Gardner, 1983).

The restoration of elite class power that emerged out of the crises of the 1970s (Harvey, 2005) meant resolving economic crises would entail the realigning of social institutions like schools- a neoliberal restructuring that required new ways of framing educational problems as the cause of poverty and unemployment. Whereas Diane Ravitch (2011) contends that A Nation at Risk was “a response to the radical school reforms of the 1960s and early 1970s” (p. 23), its significance in this analysis derives from the ways it elaborated a new discursive terrain through which elites could “export” crises from their own practices and policies and map them onto schools. That is, to solve the problems of poverty, schools, teachers, curricula, and students needed to be more tightly controlled, and education in general had to be more finely tuned to the changing needs of increasingly globalized corporations, finance, and industry (Apple, 2000). As such, the report reminds us:

History is not kind to idlers… The world is indeed one global village. We live among determined, well-educated, and strongly motivated competitors. We compete with them for international standing and markets, not only with products but also with the ideas of our laboratories and neighborhood workshops.

America's position in the world may once have been reasonably secure with only a few exceptionally well-trained men and women. It is no longer.

The report’s introduction goes on to frame the political economic transformations wrought by globalization as “a redistribution of trained capability throughout the globe” such that “knowledge, learning, information, and skilled intelligence are the new raw
materials of international commerce” (Gardner, 1983). That is, U.S. businesses could be more competitive if high school graduates had stronger cognitive skills and facility with technology (Anyon, 2011). But as Steven J. Ball (1993) notes, “discourses are about what can be said, and thought, but also- about who can speak, when, where, and with what authority.” A Nation at Risk was prepared by the National Commission on Excellence in Education- an elite group appointed by Terrell Bell, Secretary of Education under Reagan, and chaired by David P. Gardner, a former army intelligence officer and then president-elect of the University of California (Shor, 1986). The commission featured a mix of politicians, college presidents and professors, educators, and representatives from the business world like William O. Baker, then president of Bell Laboratories, a division of the AT&T Corporation. Corporate ideals were also represented by the presence of Charles A. Foster, Jr., former president of the Foundation for Teaching Economics, a private nonprofit organization whose mission is to "introduce young individuals…to an economic way of thinking about national and international issues," based on the proposition that "people choose, and individual choices are the source of social outcomes" (http://www.fte.org/). Another advocate of neoconservative and free market ideology was committee member Annette Y. Kirk of Kirk Associates- now the Russell Kirk Center for Cultural Renewal- a private nonprofit organization whose mission is "conveying to America's rising generations an understanding of the process by which a healthy culture is transmitted from age to age" and promoting "an appreciation of the 'permanent things' that maintain and nurture our civil social order." In the 1990s, Kirk went on to serve as a board member of the Midland Charter Initiative in Michigan, and the Education Freedom Fund (http://www.kirkcenter.org/index.php/about-us). Committee
member Robert V. Haderlein was the former president of the National School Boards
Association, an organization whose "Vision for Public Education" echoes this connection
between culture, stability, and the economy. It states that education is the key to
achieving "a standard living that is the American Dream" and that public education must
"continue to be the backbone of our nation's unity" and "common culture," thereby
providing "the foundation for social and merit based mobility that is so essential for a
vibrant democracy and leading world economy" (National School Boards Association,
n.d., p. 1).

Albert H. Quie, was the one governor on the committee. As governor of
Minnesota, he addressed the state's budget crisis through cuts to social services, along
with a tax-indexing plan which protected wealthy Minnesotans from being pushed into a
higher tax bracket due to inflation- a move which cost the state $800 million in revenues,
casting the state into an even deeper deficit and calling for even greater austerity
(Minnesota Post, 05/12/09). Yet budget crises, the impact of inflation on the working
class, regressive tax structures, and cuts to important social services for the poor do not
feature in the discourse advanced by the report. Instead, according to A Nation at Risk,
economic problems emerge from the fact that “more and more young people emerge
from high school ready neither for college nor for work. This predicament becomes more
acute as the knowledge base continues its rapid expansion, the number of traditional jobs
shrinks, and new jobs demand greater sophistication and preparation” (Gardner, 1983).
But as Anyon (1997) points out, unequal funding, due to the spatially uneven distribution
of property wealth, results in patterns of unequal spending on schools by district. The
restructuring of the national economy in the late 1970s and early 80s resulted in a severe
decline in low-skill employment in manufacturing and an increase in “highly productive, highly skilled, and capital intensive positions” of a “postindustrial, information-dependent, high value-added manufacturing and service based economy” where there were very few high-wage jobs and a growth in low-wage work (p.130).

The report invoked a crisis around the “quality” of education by linking economic growth to educational deficits indicated by declining SAT scores between 1963-1980. Further evidence of a crisis was provided by reference to lower scores on other standardized tests and international assessments, illiteracy, the expansion of remedial classes on college campuses, and the rising costs of remedial programs plaguing the military and business (Ravitch, 2011; Berliner, 1995). The “erosion of the content of the curriculum” was seen as a chief culprit. The authors cited a growth in the “general track” from 12% in 1964 to 42% in 1979, which, when combined with student curricular choice, led to “a situation in which only small proportions of high school students completed standard, intermediate, an advanced courses” (Ravitch, 2011, p. 26). The report also claimed that academic standards had fallen: teachers were giving less homework, schools enacted easy graduation requirements, colleges lowered their entry requirements, and schools were offering less courses in math and science compared to those in Japan (ibid). As a result, the authors, in the report’s famous opening paragraph, assert that:

Our Nation is at risk. Our once unchallenged preeminence in commerce, industry, science, and technological innovation is being overtaken by competitors throughout the world. This report is concerned with only one of the many causes and dimensions of the problem, but it is the one that undergirds American prosperity, security, and civility. We report to the American people that while we
can take justifiable pride in what our schools and colleges have historically accomplished and contributed to the United States and the well-being of its people, the educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people (Gardner, 1983).

Part of the political economic context for the publication of A Nation at Risk was a national recession in the early 1980s. This period was marked by a growth in inequality as financialization, deindustrialization, flexible accumulation, and the disappearance of social supports funneled wealth up the social ladder and exacerbated urban poverty. At the same time, the late 1970s and early 1980s witnessed “the geographical mobility of manufacturing capital that the increasingly hyper-mobile financial capital could feed upon” (Harvey, 2003, p. 64).

The expansion of transnational capitalism took shape not just in the form of outsourcing by U.S. based multinational corporations, but though the integration of global financial markets. These global financial markets, because of deregulation and increased speculative activity, became more and more volatile. Furthermore, periodic slows in the rate of profit at home were accompanied by increased competition from highly productive countries like Japan and Germany, whose products helped sustain the U.S.’s high levels of consumption (Ginden & Panitch, 2012). Elites were able to restore their class power at home, gaining considerable control over government, social and economic policy, and public institutions. But the transnational capitalism and internationalization of finance that sustained economic elites in the 1970s and early 1980s
brought with them new levels of competition and volatility that threatened to undermine the massive influx of capital into U.S. firms and corporations.

The linking of “educational excellence” to American security in *A Nation at Risk* demonstrates how “it became clear that manufacturing in the United States was now but one complex among many operating in a highly competitive global environment, and that the only way it could survive was by achieving superiority…in productivity and in product design and development” (Harvey, 2003, p. 65). *A Nation at Risk* called for the development of a *repressive* educational apparatus which, as a “core organ of the state” (Wacquant, 2010), would function as a “terminal outlet” (Foucault, 1978) for state power as it stifled the dissent and unrest generated by globalized racial capitalism through projects of pedagogical and curricular pacification and incorporation into the dominant culture (Freire, 1970; Apple, 1979; Anyon, 1981; Shor, 1992). Furthermore, *A Nation at Risk* asserted a *productive* role for public education, articulating its “expressive function and ramifying material effects… which are to generate controlling images and public categories, to stoke collective emotions, and accentuate salient social boundaries” (Wacquant, 2010, p. 215). The racially-coded invocation of a crisis in math, science, and literacy stigmatized poor people of color and framed them as an enemy within, a dull and dangerous caste, high water surging forth in a “tide of mediocrity” that was washing away U.S. competitiveness. This anxiety-provoking narrative pinned insecurity to a problem population, and called for a profound intervention by the state in the form of a mandated treatment regimen of standards and tests. This regimen would boost cognitive and technical skills, establish “excellence in education,” and thereby secure U.S. economic productivity, competitiveness, and hegemony. But it would take time before
the standards and testing regime could really establish itself, and the full blown implementation of the regime would not emerge as the dominant educational policy paradigm until Bill Clinton’s Goals 2000 and Improving America’s Schools Act in the 1990s.

Reagan’s free market fundamentalism materialized in brazen attempts to demolish the Federal Department of Education and devolve federal funding to individual consumers via a comprehensive voucher system, but this agenda was met with strong political resistance from Democrats and teachers unions, and his efforts were ultimately defeated. But in addition to securing the place of standards and testing in public schooling, education policy in the 1990s also realigned and reinvigorated elite efforts to corporatize education, as it forced open markets and capital markets in heretofore minimally profitable arenas. Furthermore, education policy and practice under Clinton was retooled into a means by which elites sought to “increase their power in the larger social arena” (Apple, 2000, p.10) by redefining the public sphere such that it was more amenable to private sector management techniques. As is well documented elsewhere, the neoliberal agenda in education hit full stride with the passing of the No Child Left Behind Act (NCLB) in 2001 (Ayon, 2011; Apple, 2004, 2006; Giroux; 2011; Hursh and Martina, 2003; Hursh, 2007; Lipman, 2005, 2008, 2011), and continues unabated in Obama’s Race to the Top (RtT) initiative and American Recovery and Reinvestment Act of 2009.

Globalization in the 1980s caused a decline in profits from production, so more U.S. corporations turned to financialization to supplement transnational, flexible accumulation processes and reinvigorate profit flows- a process that intensified in the
1990s. This required a further disciplining of the labor force, deregulation, austerity, and the opening of new markets and capital markets at home and abroad- hallmarks of the neoliberal project (Harvey, 2003). Education reform in the 1990s and 2000s was part and parcel of this project, as the standards, testing, and accountability regime created a multi-billion dollar global education-industrial complex (Ball, 2012; Picciano and Spring, 2013). At the same time that capital accumulation processes in New York City necessitated disinvestment in and “targeted abandonment”(Harvey, 1989b) of educational and other infrastructure in certain neighborhoods, policies like NCLB were incorporating urban education in New York deeper into the “new financial architecture” (Harvey, 2003, p. 73) of neoliberal urbanism. The next chapter will situate the development of charter schools in New York within the dynamics of austerity, disinvestment, and dispossession that accompanied the city’s economic restructuring in the aftermath of the mid-1970s fiscal crisis. Furthermore, the shift to financialization brought with it increased inequality (Sassen, 2001; Lipman, 2011) and volatility- and thus more social and economic crises, while the dismantling of the welfare state signaled a shift in modes of state intervention from crisis prevention to crisis containment (Panitch and Gindin, 2013). The next chapter will trace how education reform in New York City- particularly the proliferation of charter schools- materialized, alongside mass incarceration, as part of the creative destruction that characterizes processes of urbanization within the neoliberal state (Harvey, 2007). Whereas other scholars (Fabricant & Fine, 2012; Lipman, 2011; Pedroni, 2007) frame the charter school phenomenon as a corporate cooptation of what was originally a grassroots response to the failures of the public school system, this analysis will extend those arguments by analyzing continuity in the roll out of charter schools.
Charters, it will be argued, are also part and parcel of disinvestment, not just a response to it. As such, education reform in New York City will be analyzed as a highly localized form of “structural adjustment” akin to the global manipulations of the IMF and World Bank.

Furthermore, the symbolic power of charter school proliferation in New York emerges out of the contradiction between the promises of human capital theory and the inherently disequalizing effects of neoliberalism. Flexible accumulation, financialization, and globalized capitalism create material and discursive conditions that challenge the capacity of schooling to serve as the “ideological defense of capitalism” (Bowles, 1972) and threaten the “common sense” of racial capitalist social relations and hierarchies. Public schools face a legitimacy crisis, and charters articulate a reworking of the ideological functions of schooling as an explanation of urban poverty.
CHAPTER 5

“Delivering on the Dream”: A Political Economy of New York City Charter Schools

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 5 through May 11, 2013, as National Charter Schools Week. I commend our Nation's charter schools, teachers, and administrators, and I call on States and communities to support charter schools and the students they serve.

-Presidential Proclamation, National Charter Schools Week, 2013

This chapter will situate the development and proliferation of charter schools in New York City within shifts in the global political economy that brought about waves of “targeted abandonment” (Harvey, 1989b), dispossession, and new forms of social control as deindustrializing New York transitioned into a “global city” driven by finance, investment, and real estate (Sassen, 2001). Drawing on a mix of primary and secondary sources, the analysis that follows will explore the historical interplay of material and ideological conditions in New York in order to analyze charter school reforms along several braided strands. First, the response by elites and the state to New York City’s fiscal crisis in the 1970s was akin to the current practices of global financial institutions like the IMF and World Bank as they “bail out” fiscally stressed developing nations in order to discipline labor, slash public expenditures, cut taxes on elites and business, and open up new and deregulated markets. Charters emerged, in part, out of a highly localized form of “structural adjustment” visited upon New York City in the form of
municipal austerity. Second, charter reforms are discursively, materially, and spatially located at the intersection of education and urbanization, especially processes of disinvestment, gentrification, and central business district (CBD) development. A critical analysis of charter school reform in New York must therefore account for the place of charters within these spatial dynamics and the impact of this relationship along lines of race and class.

Third, Charter schools are vehicles for the corporatization of public education. They are linked to processes of privatization and the absorption of surplus capital. They channel public sector funds into the private sector, rendering public schools important sources of surplus capital flows under corporate control. Charters expand private sector control over schooling and incorporate teachers, parents, and students into the logic of capital in new ways by commodifying educational services. As a crucial part of the larger testing and common core regime, charters help open new opportunities for profit making in the public sector. By providing ‘alternative’ schools in historically disinvested neighborhoods, with extremely limited space for youth, the resulting competition among parents has created a small but vocal constituency of corporate allies in the impoverished urban core. In addition, charters have become an important wedge in capital’s war against organized labor, as teachers’ unions face unprecedented attacks from across the political spectrum. Finally, charter reforms indicate a reworking of the ideological functions of schooling, particularly the notion of equal educational opportunity as a meritocratic mechanism for the development of human capital. The “common sense” of charter schools, and the market model in education more generally, is linked to the historic inability of disinvested public schools and neighborhoods to provide upward mobility for
many poor people of color (Lipman, 2011) - a contradiction which diminished the capacity of schooling to serve as the “ideological defense of capitalism” (Bowles, 1972). School choice discourse revitalizes the construction of consent by merging culture of poverty theories with the commodification of education in a way that positions parents to perform unpaid labor in order to make “good choices” in an ostensibly equitable education marketplace. Charters use free market ideology to revamp cultural explanations of African American and Latino poverty, further obscuring inequality’s structural roots in racial capitalism and legitimizing social and economic policies that exacerbate race and class inequality.

To tease out these interlocking material and ideological strands, the chapter will begin by situating school choice historically. First, it will examine the federal policy context for the charter school movement by analyzing the development of school choice within reforms to ESEA in the 1990s. Next, the chapter will zoom in to look at the development of charter schools in New York City as an outgrowth of the political economic shifts that structured school decentralization in New York in the 1970s, 80s, and 90s, and as well as the era of No Child Left Behind and mayoral control in the 2000s. Finally, the chapter will conclude with a Marxian analysis of charter schools. By drawing on Marx’s theory of the coercive law of competition (1867), I will analyze the underlying assumptions behind marketizing education, as well as the impact of competition on the distribution of wealth and harm in New York City.

**Federal Education Policy and the War on (the Culture of) Poverty**

The previous chapter situated federal educational policy and discourse within the context of the complex racial and political economic dynamics of the 1970s and 1980s. It
examined how ESEA and Title I survived the dismantling of the welfare state, and how they were, both materially and ideologically, implicated in the shift to neoliberalism. The chapter examined how the literacy crisis and the *A Nation at Risk* report helped establish a new discursive terrain for educational policy, whose subtext, I argued, linked it to the restoration of elite class power and the revamping of racial hierarchies that were challenged by the upheavals of the 1960s and early 70s. This section will pick up where the previous chapter left off, but with a particular focus on the renewed place of school choice, particularly in the form of charter schools, in the federal educational policies of the 90s and 2000s. Reagan’s efforts to dismantle the federal Department of Education and devolve federal involvement in education to the issuance of vouchers were ultimately defeated. Vouchers became educational policy in cities like Milwaukee and Cleveland, and were experimented with briefly in New York City under Giuliani’s mayoralty. Though vouchers never took off the way Milton Friedman or Ronald Reagan might have liked, the underlying market ideology survived and was, with great success, rearticulated through the charter school movement.

In the 1990s and 2000s, school choice was reinvented in a way that gripped the social imagination of federal policymakers. Charter schools, as public-private partnerships, held broad appeal across the political spectrum as a way to use market practices to improve education. At the same time, neoliberalism had moved in from the fringes and was reorienting social and economic policy in a variety of arenas. Once “the only alternative” to the welfare state, neoliberalism was becoming established, ideologically, as the new common sense, and, materially, as an actually existing regime of power capable of restructuring urban areas along lines amenable to the changing needs
of racial capitalism (Harvey, 2003, 2005; Brenner, 2002). Furthermore, neoliberalization, as a form of capitalist creative destruction (Harvey, 2007), was creating its own crises as well, to which education reform, like policing and mass incarceration, was imagined as a solution.

There was a substantial growth in market discourse in education during the 1980s and 90s as corporate elites, economists, and neoliberal think tanks increasingly shaped educational rhetoric. The nascent demand to educate students for the kind of labor force needed by a rapidly changing and unstable global economy soon became the standard call. Schooling became a critical site for preparation for the “knowledge economy,” with its emphasis on technological knowledge and skills as crucial to participation in the globalized workforce. This rearticulation of the purposes of education hit full stride in 1983 with the publication of *A Nation at Risk*, which was followed by other influential reports, underwritten by corporations, proclaiming links between education and the global economy. For instance, *Action for excellence: A comprehensive plan to improve our nation’s schools* was published in 1983 and focused in large part on creating a stronger role for business in setting the goals and purposes for education for the U.S. Its author, The Task Force on Education for Economic Growth, was funded by 15 corporations and foundations, including Aetna Life & Casualty Insurance Foundation, At&T, Control Data, Dow Chemical, Xerox, Texas Instruments, RCA, Ford Motor Company, and IBM. In 1986, *A Nation Prepared: Teachers for the 21st Century- a report published by the Task Force on Teaching as a Profession- further reinforced this market*

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2 The use of the term “knowledge economy” in published books increased 110 percent between 1973 and 2008 (Michel, J. et al., 2010).
rhetoric as it called for an increased emphasis on education for participation in the labor market and workplace productivity (Spring, 1998).

In 1989, when George H.W. Bush took office, he convened a national summit of governors to come up with a set of educational goals that would address these needs. The resulting proposal, *America 2000*, would inform education policy under presidents Clinton, Bush Jr., and Obama. The goals included the following: By the year 2000, American students would rank first in the world in math and science; the U.S. would have at least 90% graduation rate; all children would master difficult subject matter; all adults would be literate and ready to compete in the global economy; every school would be free of drugs, alcohol, and violence (Ravitch, 2011). In his 1991 “Address to the Nation on the National Education Strategy,” Bush explicitly linked these educational goals to the needs of the free market:

> Education has always meant opportunity. Today, education determines not just which students will succeed but also which nations will thrive in a world united in pursuit of freedom in enterprise. Think about the changes transforming our world: the collapse of communism and the cold war, the advent and acceleration of the Information Age. Down through history, we've defined resources as soil and stones, land and the riches buried beneath. No more. Our greatest national resource lies within ourselves: our intelligence, ingenuity, the capacity of the human mind.

In this speech, Bush is framing “the capacity of the human mind” as a commodity to be extracted from schooling, the way coal is dug out of the earth, and exchanged in the free market for vast “riches.” In order to push privatization, Bush caulks his claims about the
returns on educational investment with a class and color-blind appeal to an equality that does not exist, representing the economic promise of education in an exaggerated light. Priming the pump for school choice, he goes on to link educational innovation to opportunity, and, in the spirit of the time, invokes the racially-coded threat of urban crime and drug use:

If we want America to remain a leader, a force for good in the world, we must lead the way in educational innovation. And if we want to combat crime and drug abuse, if we want to create hope and opportunity in the bleak corners of this country where there is now nothing but defeat and despair, we must dispel the darkness with the enlightenment that a sound and well-rounded education provides...Think about every problem, every challenge we face. The solution to each starts with education.

Bush was establishing crucial links in education discourse that would permeate and shape the reforms and practices mandated by Goals 2000, No Child Left Behind, and Race to the Top. He was also helping to construct an imagined urban landscape of “bleak corners” of “defeat and despair” plagued by a “darkness” which only an “enlightened” education could “dispel.” Education reform, dressed in an exaggerated promise of the American Dream for all, was a discursive tool for constructing a race and class-blind frame for thinking about and treating social and economic problems that were in fact race and class-bound: Between 1983 and 1989, the top 20 percent of the U.S. population captured approximately 99 percent of the growth in wealth, while the bottom 80 percent gained just over 1 percent, and suffering the overwhelming majority of income declines during this same period. The poverty rate for African American children under three
years of age was 52 percent in 1990, and for Latino children it was 42 percent, whereas
the poverty rate for White children under three was 15 percent (Lipman, 1998). Yet in
1991, school choice and the institutionalization of competition in education were
reemerging at the national level as an education reform strategy imagined as a solution to
problems created by the political economy:

We can encourage educational excellence by encouraging parental choice. The
concept of choice draws its fundamental strength from the principle at the very
heart of the democratic idea. Every adult American has the right to vote, the right
to decide where to work, where to live. It's time parents were free to choose the
schools that their children attend. This approach will create the competitive
climate that stimulates excellence in our private and parochial schools as well
(Bush, G.H.W.).

Rather than being produced by individualized notions of “hope” and “despair,” the
livelihoods of poor people of color in the 1980s and 1990s were being “reshaped by
profound macro-economic and social changes caused by the transition to
postindustrialism and the decline of U.S. economic hegemony” (Lipman, 1998, p. 8).
Though the achievement gap had decreased by 50 percent between 1970 and the mid-
1980s, it increased between 1990 and 1994. By 1996, “African Americans had the lowest
composite ACT and SAT scores of any nationality group” (ibid, p. 8). The linking of
increased investment in education to increased wealth was misleading at best. For
instance, education was not solving the problem of disproportionate unemployment
among African Americans. By 1994, only 40 percent of African American high school
graduates not in college were employed, compared to 72 percent of whites (ibid).
Following Anyon (2005), the “main determinant of whether one is poor or not is whether or not one has a decently paying job” (p. 21). But in 1982, Reagan dismantled the Comprehensive Employment and Training Administration (CETA), a job creation program, and replaced it with the Job Partnership Act, a job-training program. In spite of evidence suggesting a dearth of jobs, the federal government embraced a policymaking orientation grounded in the notion that there were ample jobs available, but people were just not educated well enough to work them (ibid). The federal government has maintained this position ever since, and it underlies not only its economic and social welfare policies, but its education policies as well. As a result, the innovations promised by school choice and competition were increasingly envisioned as educational solutions to economic problems, and this developing social imaginary (Appadurai, 1996) found a home in the educational platforms and policies of the Clinton and Bush Jr. administrations. If urban public schools could not solve the problems of the culture of poverty and thereby provide upward mobility for poor people of color, then the market could.

Official poverty levels in the early 1990s were staggering. In 1993, approximately 39.2 million people in the U.S. were officially poor. Two-thirds of this group lived in urban areas, and most of them were African American and Latino. Even in 1998, at the apex of the “boom” of the Clinton years, 13 percent of U.S. households were living at or below the official federal poverty level. With the federal minimum wage set at $5.15/hour in 1998, full-time workers were earning $10,712 per year- a number which left them well below the official poverty line (Anyon, 2005). Wages did go up between 1996 and 1999. For instance, the poorest 10 percent of working Americans saw an
increase from $5.49/hour in 1996 to $6.05 in 1999. The next highest 10 percent saw their wages increase from $6.80/hour to $7.35/hour over the same period of time. These increases, however, have not been enough to equal the amount low wage workers were earning in 1973, nor are they enough to allow workers to live above the poverty line (Ehrenreich, 2011). In fact, income growth during the “boom” of the 1990s, as well as subsequent periods of growth leading up to the Great Recession, by and large went to elites. Overall, between 1979 and 2007, the top 1 percent collected 53.9 percent of the total increase in income during that period. As the average income of the top 1 percent increased by 200.5 percent, that of the bottom 99 percent grew by a mere 18.9 percent (Economic Policy Institute, 2014).

In spite of these structural factors, school choice and education reform, like prisons and drug courts, persisted as imagined policy solutions to poverty. Studies show that educational attainment in the 1990s and 2000s only explains approximately one-third of income levels, and therefore education can neither be relied upon to explain urban poverty, nor as a strategy to remedy it. Racial, gender, and age discrimination in hiring practices and in pay undermine educational attainment. Furthermore, limited access to unionization, heavy reliance on part-time contingent labor, and lack of regulations weaken the potential of education to lead to increased wages. By 1996, one out of six college graduates earned less than the average salary of high school graduates (Anyon, 2005). In 1999, 70 percent of welfare recipients were high school graduates, compared to 42 percent in 1979. Between 1973 and 2003, the real wages for high school graduates fell by 11.3 percent, and the wages of college graduates rose by a mere 5.7 percent. By 1990, approximately 11 percent of college graduates with bachelor’s degrees made minimum
wage, and almost 20 percent of college graduates have not been able to find “college-level work” (ibid, p. 36). In spite of the fact that “no evidence exists for the belief that deteriorating education- whether measured as fewer years of school, falling achievement levels, or demographics of the workforce- are the cause of the falling wages of U.S. workers” (ibid, p. 38), federal education policy maintains that education is the key to success in the global economy. Economic problems are framed, at the individual level, as the result of poor choices and cultural deficits, and at a quasi-structural level, as systemic educational failures. The innovations spurred by school choice, then, are presented as crucial weapons in the war against the culture of poverty. Market mechanisms are coercive treatments for the culture of poverty. By vanquishing what Bush Sr. refers to as the “darkness” that haunts poor people of color, school choice will reinvigorate the lagging production of human capital.

Education policy under the Clinton and Bush Jr. administrations was very much about “integrating” education into a “wider set of ideological commitments.” Education became linked to the expansion of the free market, reduction of government responsibility for the economic and social welfare of citizens, reinforcement of competition, not only among schools, but in the labor market more broadly, creation of a workforce with low expectations in terms of economic security, and popularization of racially coded social Darwinist thinking about educational achievement and success (Apple, 1996, p. 28). These ideologies congealed within a discourse and set of policies that defined education as job training for the global economy, at the same time that mass incarceration became the sponge for absorbing and removing the global city’s surplus populations and discontents. For instance, Clinton, like Reagan, advocated government
support of training rather than job-creation for the unemployed. For both presidents, education-as-training was a solution to a perceived surplus of unfilled jobs, in spite of the fact that there was actually a deficit of medium and high wage jobs and that “at any given time there are far more unemployed people than there are job openings” (Anyon, 2005, pg. 21). Clinton proposed a $1500 per year tuition tax credit, a $10,000 income tax deduction for college tuition for working families, and a $2600 instructional grant to under- or unemployed workers to receive job training (Spring, 1998). At the same time, he ended “welfare as we know it,” eliminating supports for poor and working class families, and intensified the war on drugs. As Quadagno (1996) points out, the White middle class saw welfare as a transfer of wealth from their race and class to undeserving poor people of color. Under Clinton, welfare, like education, was ostensibly transformed into preparation for the workforce through the development of “workfare”- a policy that required welfare recipients to take on dead-end, menial labor that provided them with little in the way of marketable skills or social capital.

Signed into law in 1994, Clinton’s Goals 2000: Educate America Act was in some ways a precursor to Race to the Top. It gave states an additional $1.3 billion in federal money, but linked this money to mandates as a means of expanding federal, top-down control over education at the local level. States were paid to write their own academic standards and pick their own tests, but would be held accountable for achievement (Ravitch, 2011). Clinton’s 1994 reauthorization of ESEA- the Improving America’s Schools Act (IASA)- introduced several changes to Title I allocation. Before these reforms, the federal government would allocate funds to states based on the number of low-income children in each county, and each state’s per-pupil expenditures (Odden and
Picus, 2000). One major change was that Title I funds used to be distributed to states, which would then redistribute them to districts based on the overall poverty level in individual counties. As of 1994, allocation would be based on the number children in each individual district who qualify for free and reduced price lunch. Schools with a rate of 75 percent or higher were required to be served Title I funds, and leftover funds could be distributed to schools with lower poverty rates. Struggling public school districts, however, were encouraged to disinvest in their highest poverty schools by a loophole through which funds could be redistributed to more schools in the district (ibid). The costs of programs in the poorest schools could be driven down by using cheap services from private sector providers, old textbooks, and through general infrastructural neglect, thereby freeing up Title I allocations and allowing impoverished districts to stretch their funding to their better off schools.

The structure of Title I allocations incentivized disinvestment in the poorest schools. Furthermore, “in most states, school districts that educate the largest number of poor and minority students have fewer state and local dollars to spend per student than districts with the least number of poor and minority students” (Anyon, 2005, pg. 63). In New York, low-poverty districts have approximately $2,152 more to spend per student than high poverty districts, as “low urban property tax receipts and insufficient additional school financing” impoverish schools in the urban core (ibid). At the same time that macroeconomic policies were engaging in “targeted abandonment” (Harvey, 1989b) of the urban core, IASA and NCLB were engaging in targeted investment in school choice as means to improve impoverished schools. The material conditions produced by federal abandonment of the urban core, as manifested in its deteriorating schools and other
infrastructure, were drawn on as ideological justifications for further disinvestment, restructuring, and dispossession via market-driven, corporate education reforms like testing, accountability, and school choice.

Education reform was funneling much-needed public funds out of impoverished neighborhoods and pumping them into private sector providers. IASA doubled federal funding for charter schools to $100 million. IASA also paved the way for the more sweeping corporate reforms of NCLB by mandating that: 1) States develop standards; 2) Schools use assessments aligned with those standards; and 3) Schools be held accountable to produce Annual Yearly Progress (AYP) based on student performance on these standardized tests. $2 billion was earmarked for the startup and implementation of these reforms. IASA also, to the boon of the school choice movement and other private sector providers, deregulated the use of federal funds in order to promote local flexibility and school improvement (Democrats for Education Reform, 2010). In his 1997 proclamation “America Goes Back to School,” Clinton argued that “every school and every State should adopt rigorous national standards” with “national tests” 3rd, 4th, and 8th grade on the one hand while we “expand school choice and accountability in public education” on the other. Clinton called on a partnership of public and private sector entities, including the military, to help “America’s young people grow into responsible and productive citizens” (Clinton, 1997).

IASA institutionalized the rhetoric linking choice to learning by formalizing it into a set of goals related to charter school proliferation. The Act asserted a positive causal relationship between charter school proliferation and improved student performance on standardized tests:
Enhancement of parent and student choices among public schools can assist in promoting comprehensive educational reform and give more students the opportunity to learn to challenging State content standards and challenging State student performance standards, if sufficiently diverse and high-quality choices, and genuine opportunities to take advantage of such choices, are available to all students (IASA, 1994).

Innovation and entrepreneurialism are once again pronounced as the chief means of improving student learning and performance, and as such require a modicum of deregulation and freedom from state intervention:

Charter schools are a mechanism for testing a variety of educational approaches and should, therefore, be exempted from restrictive rules and regulations (ibid).

The state makes its alignment with charter school proliferation clear. The way to improve student achievement is first to encourage educational innovation and entrepreneurialism through deregulation, and second to scale upwards and outwards in such a way that the coercive law of competition provokes public schools to follow suit or else lose their market share of students. Thus the purpose of the act was, it claims, “to increase national understanding of the charter schools model by…providing financial assistance for the design and initial implementation of charter schools” (ibid). To that end, no more than 10 percent of funding would be set aside for “development and dissemination of model State charter school laws and model contracts or other means of authorizing and monitoring the performance of charter schools” and the “collection and dissemination of information on successful charter schools” (ibid). Under IASA, charter school development, promotion, and proliferation go hand in hand:
For the purpose of carrying out this part, there are authorized to be appropriated $15,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years (ibid).

In sum, federal education policy in the 1990s laid important material and ideological groundwork for the school choice movement. Though No Child Left Behind would intensify federal intervention and the corporate reform of education, the continuity between NCLB and earlier iterations of ESEA is often overlooked, particularly regarding the roll out of neoliberal school reforms around standards, testing, accountability, and choice. Charter schools, like drug courts, emerged in the mid-1990s as part of the massive roll out of neoliberal federal polices fostering creative destruction and accumulation by dispossession, and the destroyed and the dispossessed called for new forms of social control. Charter schools and drug courts were both piloted by small groups of activists. In the case of drug courts, these activists were insider judges in positions of significant power seeking to refine and enhance the criminalization of low-level drug users and sellers. In the case of school choice, its early experimental phase in the 1970s and 80s was spearheaded by parents and educators trying to navigate precarious landscapes of postindustrial urban devastation, as Pedroni (2007) and Lipman (2011) have shown. In the 1990s, however, the charter school experiment was “swept up…by a movement organized to promote an ambitious alternative to public schools” (Fabricant & Fine, 2012, pg.19). Free market intellectuals and politicians, prominent think tanks, hedge fund investors, and all manner of corporate elites soon threw their weight behind the movement, as these groups congealed around school choice as an educational agenda for solving the social and economic problems of the global city. An
important effect of this cohesion in New York City was the restructuring of education, and urban space and activity more generally, in such a way as to advance the political and economic interests of elites at the expense of the dispossessed.

**A Political Economy of New York City Charter Schools**

Pauline Lipman (2011) argues that charter school proliferation is rooted in “the unfulfilled aims of civil rights strategies” and is “dialectically related to this country’s historical disinvestment in communities of color” (p. 125). In the analysis that follows, I want to elaborate on and extend Lipman’s own analysis of charters in Chicago by situating the emergence and proliferation of charter schools in New York City within changes in the racial capitalist dynamics of the city’s political economy. School choice and marketization, the discourses and policy reforms behind the rapid expansion of charter schools, were bound up in the gradual transformation of New York City through large scale projects of neoliberal urbanization (Brenner & Theodore, 2002; Hackworth, 2007), and the mix of abandonment, disinvestment, dispossession, and racialized social control that such a transformation required. That is, the *rapid* increase in the number of charter schools that occurred under NCLB and the Bloomberg administration was made possible by its continuity with the *gradual* transformation of New York into a neoliberal city.

The emergence of the neoliberal city has been accompanied by a growth in inequality. A recent report by the Economic Policy Institute (2014) shows that, nationwide, the wealthiest 1 percent earned 53.9 percent of the total increase in income between 1979 and 2007. Their average income grew by 200.5 percent over this same period, while the average income of the bottom 99 percent grew by a mere 19.9 percent.
Income inequality was particularly pronounced in New York State, where the top 1 percent captured 67.6 percent of all income growth between 1979 and 2007. The top 1 percent captured 11.5 percent of income in 1979 and 32.6 percent in 2007. This trend is a reversal of the decline in the share of income held by the top 1 percent between 1928 and 1979, when, in New York, the top 1 percent’s share of income decreased by 17.9 percent. In 2011, New York, along with Connecticut, had the largest gap between the average incomes of the top 1 percent and those of the bottom 99 percent, with the 1 percent taking home average incomes approximately 40 times those of the bottom 99 percent (ibid).

In *Capital* (1867), Karl Marx explains how the capitalist system, because of its reliance on exploitation, produces institutions and practices that create and maintain the kind of inequality described above. That is, the above statistics from the Economic Policy Institute reflect a phenomenon – inequality – that is actively *produced* by the political economy, or the relationships between the state and capitalism. This process takes different shapes at different times and in different places, and operates through a variety of institutions. The glittery story of the neoliberalization of New York City is also the grim story of the production of inequality. As such, it is also the story of those institutions that both reflect and exacerbate inequality: the city’s schools, jails, housing, hospitals, sanitation, and transit, as well as the city’s complex financial architecture.

Neoliberalization is a story about how a changing political economy transformed urban life and space in a way that relied heavily on disinvesting, abandoning, policing, and restructuring certain neighborhoods and the institutions people in those neighborhoods relied upon for their survival. As Ruthie Gilmore (2008) notes, “forgotten places are not outside history…rather, they are places that have experienced the abandonment
characteristic of contemporary capitalist and neoliberal state reorganization…Forgotten places…are both symptomatic of and intimately shaped by crisis” (pg. 31). The development and proliferation of New York City charter schools have their roots in the highly local iterations of macro-level processes of abandonment, forgetting, crisis, and reorganization.

In the aftermath of the community control experiments of the late 1960s, New York City returned to a decentralized school system. Community control had indicated a shift in power relations as local poor and working class African American and Latino constituencies gained jurisdiction over school districts in Brooklyn and Manhattan. After overwhelming resistance from teachers, principals, politicians, and the teachers union, however, these experimental districts were dismantled. In 1969, the state legislature passed a school decentralization law which broke the city up into 32 community school districts, each with an elected board and decentralized administration and policymaking bodies (Lewis, 2013).

The decentralization of the city’s schools mirrored a larger trend at this time towards localizing authority, in the name of bestowing autonomy and choice upon municipalities, which, in contradiction, were quite constrained as to the choices they could actually make. Decentralization, for a municipality like New York City, was “the result of an institutionally regulated (and policed) disciplining of localities” (Hackworth, 2007, pg. 17). As increasingly globalized finance capital took further control of the city in the aftermath of the fiscal crisis of the mid-1970s, localized choice and autonomy were less about “the degree of separation from the wider economic sphere” but “rather about the degree of control over the social construction of place” (ibid, pg. 19).
Decentralization of New York City’s school system, like the decentralized governance of municipalities, was not about freedom from control, but rather, about using choice and autonomy as a means for realigning and enhancing control.

For New York, this shift in control manifested in an increased susceptibility to bond rating agencies and creditworthiness was elevated to be the primary goal driving the city’s social and economic policies (Hackworth, 2007; Moody, 2007; Tabb & Sawers, 1984; Tabb, 1982). Deindustrialization, White flight, and economic abandonment by the federal government in the 1970s meant that municipal functions ranging from housing and sanitation to transit, education, and criminal justice, had to be financed by borrowing money. To do so required a strong bond rating, and a strong bond rating meant prioritizing the needs of investors in order to make the city an attractive place for investment. This project took many shapes, ranging from the beautification and renewal of “blighted” areas to the heavy-handed policing of squeegee-men and turnstile hoppers. As the city’s municipal functions were increasingly incorporated into the logic of capital through, e.g., forcing workers to invest their pensions in municipal bonds, the profit-driven activities of real estate developers, mega-project developers, investors, and bankers transformed the city’s built environment. Furthermore, global capital flows shaped the allocation and flow of local capital as New York’s service industry developed to meet the needs of international finance (Moody, 2007). Unions, along with social programs like welfare and public housing, were seen as straining the city’s budget, bad for credit, and threatened the economic and political interests of this new elite power bloc (ibid). Labor would have to be disciplined.
Disinvestment in the urban core emerged as a strategy for making funds available for investment in central business district development, office space development, gentrification projects, mega-project developments, as well as subsidizing low property assessments and tax abatements for real estate developers. Austerity emerged alongside disinvestment. As the city’s tax cuts diminished its revenues, it fired thousands of municipal workers and slashed much needed services to its most impoverished neighborhoods. Poor African Americans and Latinos suffered disproportionately at the hands of the city’s tripartite disinvestment-reinvestment-austerity strategy.

Decentralization of the school system was taking place at the same time that infrastructure in the urban core where poor people of color lived was deteriorating— not just the housing stock, roads, and transit, but also the neighborhood schools. As a result, public schools serving African American and Latino students in the 1970s and 1980s tended to have “transient and ineffective teachers and administrators, overcrowded and deteriorating facilities, and fewer resources than schools in working class white communities (Lewis, 2013, pg. 16).

School decentralization in New York City was battered by the austerity measures of the mid to late 1970s. The new elite power bloc of bankers and real estate tycoons was institutionalized by the creation of the Municipal Assistance Corporation (MAC) and the Emergency Financial Control Board (EFCB) which represented their interests and injected their influence into city governance. In the spirit of the structural adjustments demanded by the World Bank and the IMF, MAC and EFCB demanded austerity as a precondition for restoring the creditworthiness of the city, and public schools were no exception to the cuts this entailed. After a six-day strike by the United Federation of
Teachers in 1975, the union acquiesced and, though some teachers’ jobs were saved, New York City schools intensified teachers’ workload by cutting prep periods, and reduced instructional time by 90 minutes per week. Student services were cut as, between 1975 and 1983, the EFCB slashed the city’s budget by 22 percent. 15,000 teachers were laid off during this period. Elementary schools lost 21 percent of their staff, and middle schools and high schools lost 16 percent (Tabb, 1982). As a result, class size and student-to-teacher ratios exploded while school buildings, and entire neighborhoods, deteriorated. Austerity disproportionately affected African American and Puerto Rican educators when, in 1975, 15,000 teachers and paraprofessionals were laid off. The number of African American and Latino teachers decreased from 11 percent to 3 percent, even though two-thirds of the city’s students were African American or Latino. These trends in education were mirrored in the racialized impact of austerity on municipal workers more generally. Between 1974 and 1976, New York City lost half its Latino workers, two-fifths of African American workers, and one-third of its female workers—many of whom were parents of youth in the city’s decentralized school system. Though African Americans and Latinos made up only 31 percent of the city’s municipal workforce, they were dealt 44 percent of the cuts (Tabb, 1982).

Following Gilmore (2008), “abandoned places are also planned concentrations or sinks—of hazardous materials and destructive practices that are in turn sources of group-differentiated vulnerabilities to premature death (which, whether state-sanctioned or extralegal, is how racism works, regardless of the intent of the harms’ producers, who produce along the way racialization and therefore race)” (pg. 36). Thus abandonment, disinvestment, and dislocation are not just about exodus, social costs, dismantlings and
disappearances— they are also productive. They produce the ideological and material conditions and practices that shape unequal schooling and structure the racialized nature not only of criminalization or public health, but also of educational experiences and trajectories.

Throughout the 1970s, as living conditions worsened for poor people of color living in the urban core, decentralization of education claimed to be an organizational strategy that could improve educational outcomes by focusing on the relationship between the governance of individual schools and the delivery of educational services. These outcomes were, however, structurally determined. For instance, state educational expenditures and Title I funds did not increase in proportion to the growth of concentrated poverty in the city (Brown, 2007). When school choice emerged, it surfaced at the intersection of macro- and local-level economic transformations that were bringing about profound dislocations and mass unemployment, at the same time that austerity and a growing emphasis on investment in gentrification and central business district development were shifting allocation priorities. All of this resulted in a marked disinvestment in urban education. At the same time that disinvestment, austerity, and mass incarceration devastated neighborhoods in the urban core, decentralization institutionalized autonomy as a way of holding neighborhood schools more accountable for producing improved educational outcomes. This mix of racialized political economic and educational policy developments was setting the stage for the testing-accountability-charter school reforms to come in the subsequent decades.

Educational crises of the 1980s occurred in conjunction with deepening economic crises, the drug war, and the restructuring of state and local political economies. When
President Carter signed the New York City Loan Act of 1978, reestablishing the fed’s line of credit to the city, Mayor Koch responded with promises of more austerity in the form of cuts to services and wages (Tabb, 1982). The 1980s witnessed massive cuts to social welfare and urban infrastructure accompanied by increased government spending on militarization and mass incarceration. At the same time, more and more public money was being siphoned off into the private sector. For instance, in 1980, $.20 of every dollar in city tax revenue was going to debt servicing. In 1982 New York City lost hundreds of millions in federal aid due to Reagan’s budget cuts (ibid). There were high levels of unemployment and inflation, as the manufacturing base declined and New York City’s economy was restructured around technological and electronic production, as well as finance, investment, and real estate (FIRE) and their attendant service sectors (Sassen, 2001). Job creation was reconfigured as “offering investment subsidies;” while construction was “stimulated by interest-rate subsidies and property tax abatements” (Tabb, 1982, 14). The city’s economy was being restructured, and the instability this produced reverberated throughout its streets, schools, and prisons.

As Tabb (1982) puts it, crises “are about restructuring, a process of uneven development in which decay and growth are part of a single reality” (pg. 10). In New York City, unemployment, dislocation, and disinvestment were accompanied by the growth of FIRE and the service sector, as well as increased investment in urban renewal and gentrification. But schools, like prisons, are also part of the “single reality” of “decay and growth.” As reported in the New York Times, in the early 1980s, Mayor Koch closed 40 schools in impoverished areas of Hunts Point and the South Bronx. Schools became part of Koch’s "planned shrinkage" approach to balancing the budget, “shrinking' its
investment in such facilities as school buildings and in projects to rehabilitate
deteriorated areas"(Smothers, 1980). Between FY1980 and FY1981, there were 7,907
municipal layoffs, 5,098 of which were from the Board of Education. In FY1982, there
were another 3,921 layoffs, 2,091 of which were from the Board of Education (ibid).
Thus, during the shift to FIRE and a service economy, decentralized school districts were
being hollowed out at the same time as they were attacked for being an inefficient suck
on the city budget and not improving student performances. The city’s public schools
came to be known as “drop out factories” due to their 41.9 percent annual dropout rate
(compared to the average national rate of 25 percent). Yet because of the “structural
adjustment” visited upon the city by MAC and the EFCB, the city’s schools were
underfunded by the both the city and the state. New York City schools were enrolling 34
percent of the state’s students, yet receiving 30 percent of state education funds allocated
for education. Furthermore, the schools were overcrowded, and had unusually high
concentrations of poor students with high needs, low academic skills, and who were in
need of an array of costly additional resources (Fine, 1991). In 1985, 20 percent of New
York City children lived at or below the poverty line, and these students attended schools
with ever-increasing class sizes. Between 1973 and 1983, student-teacher ratios increased
by 27 percent, and class size grew by 16.6 percent (ibid).

As poverty worsened and conditions in many urban schools deteriorated, class
struggle and the “politics of redistribution” (Tabb, 1982, pg. 14) as means of improving
neighborhood schools were being supplanted by the gradual institutionalization of choice
through the budding small schools movement. Though small schools are public schools,
they were built primarily in impoverished neighborhoods to serve as alternatives to the
city’s large “dropout factories.” The first wave of small schools came in the 1960s, developing alternative high schools that used nontraditional methods to work with students who weren’t served well by traditional high schools (Stiefel, Berne, Iatarola, & Fruchter, 2000). In the 1970s, Districts 4 and 13 were viewed as models that successfully used school choice around small schools to improve performance among primarily African American and Latino students. The models differed- District 4 was based on a model of choice that catered to student interests, using student-centered curriculum to spur competition, while District 13 embraced more of a market model that used the dissemination of test scores as a means to shame teachers and principals into competing to improve student performance. Both districts linked small schools with choice as an attempt to attract middle class families by offering accelerated and progressive educational opportunities not available in other schools. Furthermore, both districts co-located these small alternative schools within larger traditional schools (Lewis, 2013; Ravitch, 2011), setting the stage for the surge of colocations to come in the 2000s.

Decentralization created space for innovation in individual schools, and small schools sought to create alternative experiences for poor students of color. Small schools in the early 1990s "were designed and constructed with a rich sense of justice and democracy" and "led by educators who insisted that children of poverty deserve the same education as children of elites" (Fine, pg. ix, in Hantzopoulos & Tyner, 2012). Early small schools like CPE1 and Central Park East Secondary School sought to improve urban education through "sustained relationships among educators, youth, and parents/community" and maintaining participatory and democratic spaces wherein authentic student inquiry was the goal of teaching, learning, and assessment. Such
schools were committed to equity, educational justice, and social justice (ibid). The small schools movement developed out of the notion that there needed to "exist a large number of individual small schools" that "could…serve as models to other schools and demonstration to the public that it is possible to reimagine education" (Hantzopoulos & Tyner, 2012, pg. xxvii). The small schools movement did not institutionalize the redistribution of wealth and resources among schools and neighborhoods, but rather sought to provide students in disinvested neighborhoods with choices as to where they went to school.

The small schools movement took off in the early 1990s as breaking up large schools and increasing choice was embraced by the Dinkins administration as an ideal way to improve the city’s school system and lower its dropout rates. Dinkins, who pledged to be “the toughest mayor on crime this city has ever seen” also told the city’s parents to embrace “a new ethic of individual accountability and responsibility for your children and your family” (1990). On January 14th, 1993, the New York Times reported that “The New York City Board of Education voted last night to give parents across the city the right to choose any city public school for their children -- space permitting -- creating one of the largest school-choice programs in the country” (Barbanel, 1993). The article went on to frame this development as part and parcel of the expansion of choice and competition:

Supporters of the change, which builds on grass-roots choice plans adopted by some school districts, especially in Manhattan, and a broad national movement to promote choice in schools, hope that the competition will give principals and teachers the impetus to improve schools that are losing students (ibid).
Parents were given the option to transfer their kids to any other school in the city. The inter-city transfer option meant that if there was space in the desired school and transportation could be arranged, students could leave a failing neighborhood school and enroll elsewhere. Few students, however, were able to take advantage of the option because there was little space in these popular schools, and it was difficult to get permission to transfer (Hamman & Schenck, 2002).

In an effort to expand student choice, Chancellor Joseph Fernandez supported New Visions and the Coalition Campus project to develop 40 new small schools, mostly high schools where the emphasis would be on small size and scale, individualized support, theme-based instruction and curriculum, and more student supports. New Visions opened another 15 schools in the mid-1990s. While the New Vision schools were additions to existing school system, the Coalition Campus was trying to close large schools and replace them with small schools. The NYC Annenberg Challenge project started developing more small schools. By 1999 they had 140 small schools serving 50,000 students (Stiefel et al., 2000).

Under Giuliani’s mayoralty, choice was dislodged from the social justice-oriented goals of the small schools reformers and mapped instead onto the logic of the free market. In 1997, there was a brief experiment with vouchers, which were given to 1,300 kids from low-income families to use to attend private schools. The voucher experiment, which cost approximately $6 million, was funded by private foundation money, corporations, and Wall Street firms. The vouchers provided $1,400 per year for families to send their children to parochial schools whose tuitions cost closer to $2,500 per year- a
difference which privileged students from families with more money and resources. The New York Times reported:

Students who received vouchers came from families that were somewhat more affluent than the families of rejected students; the families of accepted students were also somewhat less likely to receive food stamps, welfare or Medicaid, and the mothers had slightly more education (Hartocollis, 1997).

Giuliani was faced by fierce resistance by school chancellor Rudy Crew, who eventually resigned over the voucher dispute, and the plan was ultimately defeated by teacher and community resistance, as well as opposition from the City Council. Poor test results sealed the fate of Giuliani’s voucher experiment, and it was ultimately dismantled (ibid).

The 1990s did, however, see a sudden and rapid proliferation of small schools in impoverished urban areas. The movement "gained mainstream political support" as neoliberal education reforms "rose in tandem with the small schools movement" (Hantzopoulos & Tyner, 2012, pg. xxx). The growing standards, testing and accountability regime fixed on small schools as a cost-effective way to advance the growing corporate reform movement. Small schools, when linked with standards, high stakes testing, and accountability, were imagined to be both a more efficient and effective treatment for the culture of poverty. Large schools, in contrast, were seen as being inefficient, expensive, and producing inferior outputs (i.e. test scores and dropout rates). There was, however, no evidence that small schools cost less per pupil than large schools. In fact, studies found that the budgets per graduate of small and large high schools were similar, and that small schools were not any more cost effective than large schools, nor were they producing better test scores (Stiefel et al., 2000). City budgets, as Stiefel et al.
(2000) note, “are driven by policy decisions about how to allocate funding to schools…but the real question for policymakers involves the trade-offs between budgets and outputs” (pg. 37). Small schools, then, needed to be reworked in order to have a greater impact on efficiency and outputs.

Lacking evidence that students at small schools performed better on standardized tests, and facing mounting pressure to lower dropout rates, raise standards, and increase the cost-effectiveness of schools, national and local policymakers in the 1990s increasingly turned their attention to intensifying market mechanisms to improve educational outputs and increase efficiency (Hamman & Schenck, 2002). As a result, there was an attempt in New York City to "move small schools to scale" while focusing solely on the "numeric essence of small" (Fine, pg. x, in Hantzopoulos & Tyner, 2012). This scaling up resulted in "a strategy that produced competing, overcrowded and underresourced small schools fighting with each other within the same building" as small schools, increasingly incorporated into the marketization of education, became "a technology of dispossession" (ibid). The bottom-up, community-based, and social justice-oriented small schools movement became integrated with a top-down corporatized vision of school choice that reframed the goals of small schools within the competitive logics of capital.

Small schools could improve disinvested neighborhoods more efficiently if they could inject more competition into the school system. As a result, parental involvement in most small schools³ was redefined as consumer participation in the educational

marketplace, whereby parents could hold schools accountable by moving their children, lowering the market share of both large and small competing schools. By 2002, the small schools movement had been taken up by corporate reformers as a vehicle for advancing market-driven solutions to educational issues. Scaling up was crucial to putting the coercive law of competition into motion. Thus, backed by a new billionaire Mayor with control over the school system, and millions in philanthrocapital, The New Century Schools Initiative (NCSI) opened up hundreds of new small schools to unleash the coercive law of competition upon the city's struggling school system.

The corporate cooptation of the small schools movement occurred around the same time that charter school proliferation became official education policy in New York. New York State created its first charter law in 1998 under Governor Pataki. The statewide cap in 1998 was 100 charter schools, and there were only two authorizers: Charter Schools Institute of the State University of New York (SUNY), and the New York Board of Regents. The state reached the cap of 100 in 2006, with charter schools, the majority of which were in New York City, serving 22,000 students. In 2007, under pressure from Mayor Bloomberg and corporate lobbyists, Governor Spitzer raised the cap to 200, and 50 of the new 100 charter schools would serve New York City (Stulberg, 2010; Ravitch, 2011).

No Child Left Behind, mayoral control, and the neoliberal encroachment

Because elite class power can “both feed off and nurture specific state apparatuses” (Harvey, 2005, p. 35), those apparatuses (e.g. schools, courts, hospitals)

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4 Initially, charters opening with more than 250 students were required to have unionized teachers.
come to embody the interests of dominant groups. Pauline Lipman (2005) explains how No Child Left Behind (NCLB) is “part of a neoliberal global economic and social agenda to maximize profits by promoting the primacy of the market, reducing the cost of labor, and privatizing all spheres of economic and social life” (p. 101). NCLB’s rigid standards and punitive accountability measures have resulted in school takeovers by for-profit Education Management Organizations (EMOs) and private nonprofit Charter Management Organizations (CMOs). NCLB has increased private sector involvement in education not only through linking funding streams to philanthrocapital, but also by privatizing teacher education and professional development, standards development, curriculum development, and testing. NCLB has created a multi-billion dollar industry for the burgeoning textbook and technology corporations that feed off the standards-testing-accountability nexus. In one of his final speeches as president, George W. Bush nicely summed up the underlying assumptions and free market ideologies of NCLB:

Measuring gives parents something to compare other schools with. You oftentimes hear, oh, gosh, I wish parents were more involved. Well, one way to get parental involvement is to post results. Nothing will get a parent's attention more than if he or she sees that the school her child goes to isn't performing as well as the school around the corner.

Measurement is essential to success. When schools fall short of standards year after year, something has to happen. In other words, there has to be a consequence in order for there to be effective reforms. And one such thing that can happen is parents can enroll their children in another school. It's -- to me, measurement is
the gateway to true reform, and measurement is the best way to ensure parental involvement.

Where small schools sought to involve parents in shaping curriculum, pedagogy, and the school culture, NCLB frames parents as consumers, equitably positioned to make rational decisions in the educational marketplace based on schools’ test scores. Bush goes on to frame the marketization of education as a vehicle for parent empowerment:

By the way, school choice was only open to rich people up until No Child Left Behind. It's hard for a lot of parents to be able to afford to go to any other kind of school but their neighborhood school. Now, under this system, if your public school is failing, you'll have the option of transferring to another public school or charter school. And it's -- I view that as liberation. I view that as empowerment.

In a piece for the *New York Review of Books* (2012), Diane Ravitch argued that, contrary to Bush’s claims, NCLB actually empowers capital:

The corporate reformers believe that entrepreneurship will unleash a new era of innovation and creativity, but it seems mostly to have unleashed canny entrepreneurs who seek higher test scores by any means possible (such as excluding students with disabilities or students learning English as a second language) or who seek maximum profit.

Bloomberg’s education reforms are a prime example of using business models and free market ideology to design and implement educational policy. These reforms are both symptomatic of and a driving force behind the larger globalized neoliberal project. Their most pronounced manifestations are local, but the sweep of their influence, and the discourses in which they participate, are global.
Bloomberg’s reforms emerged within an educational context shaped largely by NCLB and are perhaps among the policy’s most thoroughly deployed transformations. As with other neoliberal mutations, these reforms required a highly authoritarian governing body and organizational structure (Harvey, 2003, 2005; Klein, 2008). Elected in 2001, Bloomberg immediately centralized control over the city’s Department of Education. The mayor and his appointed chancellor Joel Klein developed the mayorally appointed and controlled Public Education Panel to replace the New York City Board of Education, further cementing centralized control by dismantling community structures and channels for actualizing dissent. Through concentrating governance and management in a panel of mayoral appointees rather than community run Boards of Education, Bloomberg worked to disempower parents and teachers in a process of consolidation of control that would expand and evolve throughout his terms as mayor. Furthermore, a massive influx of capital from foundations like The Gates Foundation, The Walton Family, The Broad Foundation, as well as hedge fund managers like Anchorage Capital Partners, Greenlight Capital, and Pershing Square Capital Management (Gabriel & Medina, 2010), have extended elite class power more deeply into education, as billionaires from the private sector found themselves with increasing influence over educational policy under Bloomberg’s administration.

As a result of a mix of federal mandates from NCLB and considerable new inflows of private capital, there was an unprecedented growth in the number of charter schools, as competition and privatization became cornerstones of the Bloomberg administration’s reform agenda. As a result of pressure from Bloomberg as well as the millions spent by hedge fund managers on lobbying the state legislature, then Governor
Paterson raised the state cap on charters to 460, with a cap of 214 in New York City. As a result, New York received $700 million in Race to the Top money, $170 million for school districts and charter schools, and another $150 million for private vendors who provide the products and services needed to maintain the state’s standards, testing, accountability regime (The University of the State of New York, The State Education Department, 2012). In 2010, there were 100 charter schools in New York City. Today, out of 208 charter schools in New York State, 183 of them are in New York City and serve 47,000 students. They enroll approximately 4 percent of the city’s students, but in the neighborhoods where they are located in concentration, charters enroll approximately 25 percent of the students. With the cap raised to 460, school choice advocates expect student enrollment in charter schools to explode in the years to come (nyccharterschools.org). To Bloomberg’s consternation as well as that of the hedge fund managers, the 2010 bill mandated that all new charters be run by private nonprofit organizations (Charter Management Organizations or CMOs), though a handful of for-profit Education Management Organizations (EMOs) remain. Co-location policy remained untouched, however, and remains a key strategy in making charters competitive with public schools. Under Bloomberg’s mayoralty, two-thirds of New York City’s charter schools were allowed to co-locate with public schools at no cost in rent (Gabriel & Medina, 2010).

**Marx’s coercive law of competition, Race to the Top, and the school choice paradigm**

Charter school reforms are premised on the idea that injecting competition and “choice” into public education will produce better schools and teachers, and will leave students better prepared to participate in the global economy. To put it briefly, the school
choice paradigm is a mechanism for market expansion in education. It argues that education policy should create a landscape within which schools have to compete with one another for students and the funds that come with them. These pressures will incentivize innovation and entrepreneurship in education, but in order for charters to exert sufficient pressures on public schools, charters must be scaled up in order to become a palpable threat to the survival of public schools. The resulting improvements in school organization, curriculum, pedagogy, and other practices, policymakers argue, will provide the U.S. with a more productive labor force and help the nation re-establish its dominance in the global economy. In May of 2013, when President Barak Obama officially declared National Charter School Week, he made explicit the connection between charters, globalization, and the labor force, proclaiming:

America's success in the 21st century depends on what we do today to reignite the true engine of our economic growth ... We need to equip all our students with the education and skills that put them on the path to good jobs and a bright future -- no matter where they live or what school they attend. Charter schools play an important role in meeting that obligation.

Entrepreneurialism and innovation require a certain form of state regulation that supports private ownership or provision of services - a central tenet of neoliberal economics (Harvey, 2005; Harcourt, 2012). Following Harvey (2005), the role of the state under neoliberalism then is to create an institutional framework that supports and facilitates competition and marketization in order to improve education. Obama’s support of charters reflects this role of government as he goes on to proclaim his and the nation’s support of charters as “learning laboratories” where increased “flexibility” spurs
excellence “in communities with few high-quality educational options,” thus “widening the circle of opportunity for students who need it most” (2013).

The kind of framework described by Harvey (2005) is institutionalized in education under Race to the Top— a cluster of education reforms that were part of a larger economic stimulus package signed by Obama in February of 2009. Race to the Top money involves a $4.35 billion increase in federal funding for education, which if distributed evenly across the country, would amount to an $80 million increase in revenue for each state (Spring, 2012; Fabricant & Fine, 2012). The policy asserts criteria that states must meet in order to receive grants for education, including adopting standards like the Common Core and standardized, internationally benchmarked assessments—two developments which have induced a spasm of competition among private sector providers of testing and test preparation materials. Also included in Race to the Top is the requirement that states lift caps on charter school proliferation. As a result, in 2010, New York State raised its cap on charters from 200 to 460, embraced the nationally benchmarked standards of the Common Core, revamped its testing regime, and strengthened the links of test score data to teacher evaluation. To meet the policy’s requirements regarding data gathering, the state unleashed a plan to gather student data and store it in a cloud-based data storehouse operated by a privately owned nonprofit organization (Maxwell, 2014).

The logic linking competition to innovation underlies federal education policies like Race to the Top, which uses federal funding to promote charter school proliferation. Innovation, under NCLB and RttT, however, has so far amounted to little more than increased testing and developing “best practices” for test preparation, while mobilizing
anti-labor punitive accountability mechanisms. Hollow as it may be, “innovation” is invoked again and again in school choice discourse. Arne Duncan, during a keynote speech delivered at the National Alliance for Public Charter Schools, argued that the benefits of high-performing charters cannot reach the majority of students who most need them unless effective innovations from charters are widely deployed both in traditional public schools and throughout the charter sector (2013).

Following Duncan, “delivering on the dream” of charters rests on the following assumptions: a) Innovation in education is the key to creating economic growth and upward mobility for students; b) Developing innovative practices requires the “flexibility,” “cost-efficiency,” and “the data-driven instruction and enhanced accountability of the best charters”; and c) Charter schools must “take innovation to scale” in such a way that their mass proliferation exerts an overwhelming pressure on public schools to model themselves after their competitors (ibid). Drawing on Harvey’s (2005) analysis of neoliberalism, the role of the state then is to create the institutional framework that will “deliver the dream.”

Karl Marx’s (1867) concept of the coercive law of competition is useful in thinking through the logic of the school choice paradigm. In the choice paradigm, traditional public schooling is seen as coercive, as the government, with its monopoly over schools, mandates and enforces regulations and bureaucratic obstructions which inhibit the development of the kinds of educational innovations needed to create equal opportunity, upward mobility, and global economic dominance for the U.S. In contrast, charter schools provide greater freedom: flexibility for innovation by teachers and school
leaders, and “free” choice for parent-consumers in the educational marketplace. But, following Marx’s coercive law of competition, inserting market practices into education coerces all schools into taking certain measures in order to stay competitive, and thus to survive. Like the factories of Marx’s time, schools are forced to increase productivity and cut costs in order not to lose their market share of students and to remain competitive. These imperatives were among the key accumulation strategies of capitalism in the 19th century and remain so today. Increased productivity and cost-cutting drive outsourcing, wage suppression, mechanization, as well as attacks on unions, healthcare benefits, and pensions. What happens when increased productivity and cost-efficiency become strategies for providing education services? What becomes of education when it is transformed from a public good to a “consumer-driven commodity” (Lubienski, 2006, p. 3)? What kinds of strategies will schools use in order to improve their market position, and what impact will these strategies have on educational opportunity and quality for poor youth of color?

The choice paradigm, as articulated by Obama and Duncan, assumes first and foremost that the flexibility afforded to charters will result in innovations that will improve teacher and student performance, as measured by standardized test scores. Second, the paradigm assumes that innovations in the educational private sector are limited to groundbreaking organizational, technological, pedagogical, and curricular developments, and that these are the aspects of market competition that will influence the public schools. Furthermore, Obama and Duncan, along with other elite charter advocates like Bill Gates, Eli Broad, and Michael Bloomberg, contend that such developments will translate into increased wealth for students, communities, and U.S. society. Finally, as
Marx’s analysis points out, there is an underlying assumption at work in the choice paradigm that the coercive laws of competition will improve the efficiency and effectiveness of the public school system writ large. Competition, then, is part of a systemic restructuring of public education.

These imagined solutions to educational inequality are problematic for multiple reasons. First, a recent study by Christopher and Sarah Lubienski of the University of Illinois compared nationwide scores of charter and public school students on the math exam of the National Assessment of Educational Progress (NAEP). They found that charters were performing below their public school counterparts, and, when they controlled for class, race, and location, charter school students were often performing at a level months behind their peers in public schools (Crawford, 2013). A similar study by the Center for Research on Education Outcomes (CREDO) found that only 17% of charter schools were performing better than public schools, while 37% were performing significantly worse, and 46% displayed no significant difference (CREDO, 2009, cited in Lipman, 2011). There is little evidence to support the notion that the autonomy and flexibility afforded charters actually lead to innovations that improve student test scores.

Second, data suggests that competition actually exerts a downward pressure on educational quality in both public and charter schools (Ravitch, 2011; Lipman, 2005, 2011). Competitive pressure within a context of high stakes standardized testing and punitive accountability can result in a narrowing of curriculum and a pedagogy of ‘teaching to the test.’ This creates a “dual curriculum”- basic skills and test prep for poor and working class students of color, and a rich and varied curriculum for their middle and...
upper class white peers (Lipman, 2005)- a race and class dynamic similar to the unequal effects of drug policies and drug courts.

Furthermore, as schools compete for students, instead of experimenting with new methods, both charters and public schools tend to lean on traditional and outdated methods and curriculum, just as the drug court leans on the prison. For charters, this is in part a marketing strategy of adopting “a culture that parents feel is tried and true, and what they experienced when they were at school” (Crawford, 2013). For public schools, as well as many charters, punitive accountability mechanisms like teacher evaluations, firings, and school closings, incentivize many teachers and school leaders to achieve higher test scores via drills and rote learning instead of individualized, culturally relevant, and critical pedagogy. Curriculum narrows as schools make cuts to the arts, science, music, and the humanities in order to reallocate limited resources to test preparation and basic skills. The threat of school closure in New York City is palpable, as it is directly linked to scores on standardized tests. For example, a 2013 study by the Independent Budget Office showed that, of the 26 New York City public schools slated to close in 2013, all 17 elementary schools exhibited ELA and Math test scores below the 40% mark. All 8 high schools on the closure list had a larger share of incoming 9th graders with scores below 62% on the 8th grade ELA test and below 67% on the 8th grade Math test (New York City Independent Budget Office, 2013).

Competition creates a profound pressure to improve test scores, leading to a consequential narrowing of curriculum, a tilted focus on basic skills, and an unhealthy bias towards teaching to the test. Such are some strategies embraced by many teachers and school leaders in their efforts to survive in the education marketplace (Lipman, 2011;
Ravitch, 2011). A report from the Center on Education Policy (2007) showed that, nationwide, the majority of school districts were increasing time for reading and math in elementary schools, while reducing time for other subjects by approximately one-third. 62 percent of districts across the nation reported increased time spent on ELA and Math in elementary school; 20 percent of districts increased time in middle school. For districts that reported increases, the average increase in English was 46 percent and 37 percent in math. As a result, 44 percent of districts reported cutting time from one or more other subjects including science, social studies, art, music, and physical education. Others reported cuts to lunch and recess as well. Overall, the report found an average reduction of 31 percent in the amount of instructional time allotted to these subjects since 2001-02. 84 percent of districts reported that they have altered their reading curriculum to emphasize content on standardized tests, 79 percent similarly altered their middle school English curriculum, and 76 percent did the same in their high schools. 81 percent of districts changed their math curriculum at the elementary and middle school levels to match tested content, and 78 percent made similar changes to their high school math curriculum (Center on Education Policy, 2007).

Furthermore, the idea that the pedagogical and curricular advancements developed in charters will, under the coercive laws of competition, be reflected in public schools as they struggle to maintain their competitive edge is a dangerous assumption that overlooks a host of productivity-enhancing and cost-cutting strategies that are detrimental to teachers, students, and families. Marx’s analysis of the impact of competition in industry showed how competition forces factories to intensify labor, to lower costs by attacking wages and benefits, to mechanize as much as possible, to seek
out cheaper raw materials, and to produce as efficiently as possible— all of which lead to increased exploitation of, and worse living conditions for, the working class and poor (1867). The law of coercive competition, applied to education, points to the problematic ways charters remain competitive. First, teachers tend to be non-unionized, lower paid, working longer hours than those in public schools, and often assigned tasks that, in public schools, are the domain of other school employees (Lipman, 2011). Furthermore, the race to cut costs has forced both charters and public schools to increasingly rely on “low-cost-short-term” or “transitory educators” like those produced by Teach for America (Fabricant & Fine, 2012, p. 20). As a result of these factors, charters exhibit a high turnover rate of teachers which exacerbates instability for students and schools. When a charter or public school closes, hundreds of students’ educations are disrupted (Lipman, 2011; Fabricant & Fine, 2012), and they and their families are forced to perform unpaid intellectual, physical, and emotional labor as they seek out schooling elsewhere.

Another impact of the coercive law of competition on charters is increased spending on marketing and public relations (Lipman, 2011). These are funds that could otherwise be spent on educational resources. Just recently, Eva Moskowitz and the Hedge fund-backed Families for Excellent Schools spent close to $5 million on a massive PR campaign to attack, and defeat, Mayor DeBlasio’s attempt to deny three charter schools rent-free space in public school buildings (Hernández & Craig, 2014). From 2010-2011, New York City's Success Academy Charter Schools Inc., run by former City Councilwoman Eva Moskowitz, spent $883,119 on flyers, bus stop ads, internet ads, and "an army of paid recruiters who go door-to-door soliciting student applications" (Gonzalez, 2012). Another $1.3 million was spent on networking and outreach, including
$243,150 paid to the PR firm SKD Knickerbocker and $129,000 to a consulting firm founded by David Axelrod, President Obama's chief strategist. An additional $912,000 was spent by Success Academy's first seven schools on more student recruitment via advertising and branding firms. The total spent on marketing and PR for 2010-2011 was $3.4 million (ibid). Between 2007 and 2009 alone, Harlem Success spent $1.3 million on marketing. $1 million of that money was spent on student recruitment efforts including posters, brochures, internet and radio ads, and door to door solicitations (Gonzalez, 2010). In 2008, private sector educational entrepreneurs in New York City joined with the neoliberal think tank Democrats for Education Reform (DER) to unleash a mass wave of publicity campaigns designed to scandalize public schools in poor neighborhoods and promote charter schools as the only solution. In Harlem alone, DER embarked on a 3-month long campaign distributing fliers that reinforced this message. As a result, 5,000 people showed up for a Success Charter Network lottery, where 3,000 students applied for 600 seats (Fabricant & Fine, 2012). Similar to Marx’s industrial reserve army, the coercive laws of competition in education pit working class and poor families against one another as they compete for extremely limited spaces in well-advertised charter schools. This competition and the instability it creates puts pressure on the city and state to help corporate reformers like Moskowitz and her team of hedge fund millionaires to open more schools (Gonzalez, 2010). Meanwhile, marketing and PR campaigns funnel more public money into private firms, while provoking and exploiting the unpaid labor families undertake as they seek out a quality education that is no longer guaranteed to them by the state.
Furthermore, because charters receive less funding from the state, and urban public schools must contend with the low property values that form their tax base, both seek out additional revenue streams from corporate philanthropy. The implications of this are twofold: First, competition is intensified as schools compete not only for students but also for philanthro-capital and the support of business leaders. Charters, as the market-modeled darlings of the corporate community, receive additional millions in subsidies from corporate and hedge fund philanthropic organizations. Though charters receive 120% less per child than traditional public schools, a vast and seemingly endless inflow of foundation money has given them a significant competitive edge. Gates Foundation alone has given charters at least $137 million within the last few years. Gates, Walton, and Broad family philanthropies combined have given at least $600 million to charter schools and organizations. As a result of private financing, The Harlem Children Zone’s per-capita investment is three times that of New York City traditional schools’ per student spending (Fabricant & Fine, 2012). The reliance of charters and public schools on philanthrocapital further blurs the borders between the public and private spheres, and increases corporate control over schooling, as billionaires like Bill Gates and Eli Broad become increasingly involved in education policymaking and governance. The choice paradigm has therefore been part and parcel of the restoration of elite class power (Harvey, 2005), as a new corporate power bloc gains increasing influence over the formation of social and economic policy.

The coercive law of competition also has important spatial implications, especially in New York City, where charter school co-location has emerged as a cost-saving strategy for charter entrepreneurs. Co-location was a major educational agenda
under former mayor Michael Bloomberg, though today it faces some challenges under current mayor Bill DeBlasio. Under Bloomberg, the city used its vast resources and command over built space to help charter schools remain competitive by providing them with rent-free space in buildings that were also occupied by public schools. A recent study published by the New York City Independent Budget Office (2011) compared the funding of traditional public schools with charter schools:

<table>
<thead>
<tr>
<th>Public Funding Per General Education Student</th>
<th>2008-2009</th>
<th>2009-2010</th>
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</thead>
<tbody>
<tr>
<td>Traditional Public Schools</td>
<td>$15,672</td>
<td>$16,011</td>
</tr>
<tr>
<td>Funding of Charters in DOE Buildings</td>
<td>$16,373</td>
<td>$16,660</td>
</tr>
<tr>
<td>Difference from Traditional Public Schools</td>
<td>$701</td>
<td>$649</td>
</tr>
<tr>
<td>Funding of Charters in Private Space</td>
<td>$13,661</td>
<td>$13,653</td>
</tr>
<tr>
<td>Difference from Tradition Public Schools</td>
<td>($2,011)</td>
<td>($2,358)</td>
</tr>
</tbody>
</table>

Almost two-thirds of charter schools in New York City are in public school buildings, and the space and services these schools receive for free amounts to a total average savings of $2,712 per student:

Facilities         $877
Utilities          $272
Safety             $217
Debt Service       $1,346

$2,712
With approximately 35,478 students attending co-located charter schools in FY2012, this amounts to a public subsidy of more than $96 million for 2012 alone. This funneling of public money and public space into the private sector means that one effect of the coercive law of competition on public schools is, in fact, the draining of potential revenue for the city’s public schools and other services (Hamson, 2011; IBO, 2011). This in turn undermines their ability to compete, for an additional $96 million could help public schools provide smaller class sizes, attract more experienced teachers, and develop the kinds of innovative pedagogy and curricula that the choice paradigm claims to encourage.

Finally, the coercive law of competition, and the cost-cutting, productivity- and efficiency-oriented strategies it induces, has resulted in a disproportionately low enrollment of Emergent Bilingual students (EBs)\(^5\) and Students with Disabilities in charter schools. The Civil Rights Project (2010) report *Choice without Equity: Charter School Segregation and the Need for Civil Rights Standards* points out that one-fifth of children in the U.S. come from homes where the parents don’t speak English, a tenth are classified as English language learners (ELLs), and civil rights law requires that charter schools provide educational services to these students. Data gathered by the study, however, suggests that there is a disproportionately low enrollment of ELLs. Charter schools also serve a disproportionately low number of students with disabilities than public schools. They do this by using “counseling mechanisms during the charter admissions process to deter students who participate in Special Education programs” (p.

\(^{5}\) The term Emergent Bilingual (EB) will be used, when possible, instead of English Language Learner (ELL), as the former emphasizes students’ bilingual development, and views students’ linguistic repertoire as a resource, rather than a deficit.
16). Similar tactics are taken with Emergent Bilingual students, as parents are often informally counseled “that the school is not a good fit, or the school does not provide the necessary services” (Lipman, 2011, p 140). Thus charter schools embrace exclusionary strategies to improve their market position (Lubienski, Gulosino, & Weitzel, 2009).

Furthermore, the political economic dynamics of the choice paradigm have important implications for the race and class disparities displayed by charter school enrollments, for "the rapid growth of charter schools has been expanding a sector that is even more segregated than the public schools" (Frankenberg, Siegel-Hawley, & Wang, 2010, p. 5). Because they are located in urban areas, charter schools "enroll a disproportionate share of black students and expose them to the highest level of segregation" such that "almost a third end up in apartheid schools with zero to one percent white classmates" (ibid). Segregation in schools in general has been increasing for the last twenty years, but students in charter schools are more likely attend segregated schools. Drawing on national data, this study from the Civil Rights Project shows that "seventy percent of black charter school students attend intensely segregated minority charter schools," which amounts to "twice as many as the share of intensely segregated black students in traditional public schools" (ibid, p. 8). Forty-three percent of black charter school students are enrolled at highly segregated schools- approximately three times the number of black students in public schools. Fifty percent of Latinos attending charter schools are enrolled in highly segregated schools (ibid).

In New York City, "racial segregation may be even more tightly linked to poverty concentration in charter schools" (Frankenberg, Siegel-Hawley, & Wang, 2010, p.78). In the New York metropolitan area, charter school enrollment is 26 percent Latino, 66
percent Black, and 5 percent white. Public schools enroll 27 percent Latino, 20 percent Black, and 42 percent white. 85 percent of charter students attend intensely segregated minority schools, compared to 32 percent of white charter students. Charter schools operate at the intersection of race and poverty, for at least 90 percent Black and Latino charter school students were also from low-income, poverty level households. Poverty is concentrated in charter schools, as Black and Latino charter school students attend schools where 60% or more of the students come from households existing at or below the poverty level (ibid). One impact is that, as students leave public schools, the flow of money that follows them to charters drains overcrowded public schools in high poverty neighborhoods of much needed funds. Because the market for charter schools in New York City is primarily located in impoverished neighborhoods in the urban core, this intersection of poverty and segregation means that urban public schools serving primary African American and Latino students are being drained of crucial revenue at the same time that their highest performing students are transferring to charter schools. With school closings intensifying already overcrowded classrooms, these conditions make it extremely difficult for public schools garner the kinds of standardized test scores they need in order to avoid being turned around or closed altogether.

A second impact is that as African American and Latino parents navigate the constraints of urban poverty and educational disinvestment in New York City (Pedroni, 2007; Lipman, 2011), their embrace of charter schools, and the desire to get their child enrolled in one, creates a small but vocal constituency in the urban core who will rally in support of charter school expansion and corporate reform of education. Third, the intersection of poverty, race, and the coercive law of competition in education means
that, as New York City charters cut costs in order to enhance their market position, the negative educational impact of those cuts is disproportionately borne by poor youth of color attending highly segregated charter schools. This is a form of “targeted abandonment” (Harvey, 1989b) as African American and Latino youth and their parents, abandoned by the state to fend for themselves in the educational marketplace, bear the brunt of the harms associated with the coercive law of competition as available educational infrastructure is hollowed out, if not dismantled altogether.

Obama and Duncan avoid the language of competition when they praise charter schools, and couch their support in a pro-school choice rhetoric centered on claims around equal opportunity in education and preparation for the labor market. The discourse around options, innovation, educational excellence, and human capital omits discussion of the impact of inequality on the dynamics of the education marketplace, and ignores the harms that emerge from the material and ideological conditions of a policy landscape marked by competition. Like the drug court paradigm, the choice paradigm, in spite of its claims, is race and class-blind and as such promotes practices that reproduce social and economic inequality. Crucial discussions of racial discrimination, segregation, and the uneven distribution of wealth and harm along lines of race and class are crowded out by a dominant discourse that emphasizes the “dreams” rather than the “gritty materialities” (Apple, 2004) of school choice.
CHAPTER 6
Towards a Conjunctural Analysis

My argument so far has been that drug policy and education policy since the mid-1970s have been part of a larger interlocking neoliberal state project to reassert official authority challenged by the movements of the 1960s and early 70s. This project involved:

1) reconfiguring the political, economic, and cultural terrain in order to reestablish the class power of economic elites; 2) reasserting racial hierarchies threatened by social movements, urban uprisings, and crises in white supremacy (Melamed, 2006); and 3) dismantling the welfare state, while creating new state apparatuses and realigning existing ones in order to meet the needs of increasingly financialized global capital. This dissertation has shown how these changes have exacerbated inequality, resulting in an intensified downward distribution of harm along lines of race and class over the last 40 years, while wealth and resources have been funneled up the social ladder, away from the city’s neediest populations. The dissertation examined the ways in which the Rockefeller Drug Laws of 1973, New York’s prison building/filling project, and drug court reforms emerged out of, and responded to, the racial capitalist conditions of a city in the midst of cultural and political economic upheavals. It treated education policy and discourse similarly, analyzing how federal and local policies like ESEA and decentralization were shaped by the dynamics of racial capitalism, and how education reforms, including charter schools, worked materially and ideologically as state strategies for facilitating the penetration of education by market forces, while reframing the instability caused by waves of disinvestment and dispossession in the urban core as the product of cultural and racial deficits. Like the legal architecture attached to criminalization, education policies
and reforms contribute to the uneven distribution of wealth and harm along lines of race and class.

It’s axiomatic within Marxist theory that capitalism creates crisis at the same time that it requires a modicum of stability in order to maintain profit flows. Developments in education and drug policy have sought to manage the multiple crises that emerge alongside the neoliberalization of New York City. They produce and deploy representations of racial subjects (Melamed, 2006) that facilitate a profound delinking of inequality from the political economy by criminalizing and stigmatizing poor people of color. Criminalization and education worked together to naturalize the unequal outcomes of racial capitalism by discursively militating against a critical historical consciousness of inequality and its embeddedness in shifting relationships between the state, race, and capitalism. Reforms in drug and education policy also maintain inequality by producing the legal and material infrastructure needed to manage potentially “dangerous” surplus populations (Gilmore, 2007). In doing so, these state apparatuses mitigate the instability caused by cuts in social expenditures, the “hyperextraction of surplus value from racialized bodies” (Melamed, p. 1), rising unemployment and poverty, and the continued upward distribution of wealth and resources.

Neoliberal reforms, as solutions to social problems, are predicated on the notion that the market, if left to its own devices, can improve the well being of all people. Yet neoliberalism has not created more social equality or social justice; neoliberalism, or policy in the defense of the already-privileged, has generated profound instability threatening not only its legitimacy as a political economic project, but also the security of those who have benefited from this particular historical phase in racial capitalism. Under
neoliberalism, “freedom” is recast as freedom from public regulation through the singular elevation of market-regulation; “liberty” is the liberty of the autonomous individual impeded by no obstacles or restraints based in social ideals of diversity, inclusion, redistribution, multiculturalism, or compensatory recognition of historical injustices.

However, this neoliberal age of the past several decades has decisively improved only the lot of the already-privileged. With specific regard to the domain of this dissertation, neoliberal reforms, like charter schools and drug courts, have undermined the public sector and degraded mass experience among large sectors of the population. They are examples reformist reforms, as Gilmore (in Berger, 2014) refers to them, which serve as realignments that maintain the status quo, as opposed to non-reformist reforms which set their sites on structural change. This dissertation has argued that charter schools and drug courts, as examples of reformist reforms, “recreate” and “preserve” white privilege and class inequalities (Leonardo, 2007), allowing the creative destruction of neoliberal urbanization to continue unabated.

This final chapter of the dissertation sets out to identify and theorize on some important areas of conjuncture for drug policy and education policy, and reforms in both arenas. It is a way of asking “Why this constellation of reforms? Why here, in this place, and now?” Tabb (1982) speaks of economic restructuring as a “single reality” of creation and destruction, and this chapter attempts to map how education and drug policy reforms emerge within that “single reality” as products of, and responses to, crises of racial capitalism. Ruth Gilmore (2007) defines crisis as a rupture whereby social reproduction ceases to be able to occur within existing frameworks and conditions. Following Hall et al. (1978) and Clarke (2010), a crisis is also a point at which different tensions,
antagonisms, and contradictions come together. As these chapters have shown, the neoliberalization of New York City was a response to a web of political, economic, and racial crises that beset the welfare state. Neoliberalization has also created its own waves of interlocking crises: the economic and racial, as well as a crisis of the state and of political legitimacy. And looking more closely, these have been articulated in crises of prison overcrowding and funding, and an ongoing legitimacy crisis for the state’s policing apparatus. They have been articulated through multiple education crises, real and manufactured, material and symbolic.

Developments in education and criminal justice express the “complex links” that make up these multiple crises, and reflect how the state uses shifting strategies to manage them, balancing consent and coercion (Hall et al., 1978; Clark, 2010). In what follows, I will identify and theorize on what I see as some key areas of conjuncture in how education and drug policy reforms have been imagined and deployed by the state as solutions to the crises entangled within the dynamics of urban poverty. First, I will analyze the development of managerial simplifications in public education and criminal justice as a case study to explore how mutually reinforcing shifts within these two “core organs” (Wacquant, 2010, p. 200) of the state enhance its capacity to manage the contradictions of racial capitalism. To do so, I will begin by relating James C. Scott’s (1998) concepts of simplification, legibility, and coherence to the logics of neoliberal statecraft. Next, I will use Scott’s conceptual tools to illuminate how the market-based and actuarial ideologies of “the new managerialism” (Garland, 2001) extend across and through the institutional spheres of both education and criminal justice, producing “gritty
materialities” (Apple, 2004) and discourses that assert the capacity, or power, of the neoliberal state.

Second, I will analyze the relationship between drug courts, charter schools, and what has come to be known as the Nonprofit Industrial Complex (NPIC). This term emerges from *The revolution will not be funded: Beyond the nonprofit industrial complex*, the seminal work on the NPIC edited by INCITE! Women of Color Against Violence, in 2007. According to INCITE! member and author Andrea Smith, the NPIC manages and controls dissent by incorporating it into the state apparatus, functioning as a ‘shadow state’ constituted by a network of institutions that do much of what government agencies are supposed to do with tax money in the areas of education and social services. The NPIC functions as an alibi that allows government to make war, expand punishment, and proliferate market economies under the veil of partnership between the public and private sectors (p. 9).

Drug courts, like charter schools, are sites where the public and the private intersect and blur in both structural and ideological relationships. These relationships “link political and financial technologies of state and owning class control with surveillance over public political ideology, including and especially emergent progressive and leftist social movements” (Rodriguez, in ibid, p. 8). Drug court and charter school reforms will be examined not as the sites of transformative social action they claim to be, but rather as examples of reformist reform that uphold the status quo by extending the NPIC.

Finally, the chapter will conclude with an analysis that interweaves the theories of Michel Foucault and Jodi Melamed (2006) to consider the how education and drug policy come together within the official anti-racism of the state, and the relationship between the
racial subjects such discourse engenders and the production of neoliberal subjectivity. By prescribing limits as to what is good, possible, and real in the world (Therborn, 1980), official anti-racism orients us towards certain activities and away from others. For neoliberal subjects, this means thinking and acting in ways that are amenable to the dynamics of this particular historical phase in racial capitalism. This entails becoming self-surveilling and self-responsibilized “entrepreneurs of ourselves” (Foucault, 2010), capable of managing, on our own, the risks that threaten our well-being, as well as minimizing the risks we may pose to U.S. society. Neoliberal discourse around markets and individualism is therefore linked to an official anti-racism that addresses the unequal distribution of risk and harm along lines of race, attributing it, however, to racial and cultural deficits rather than structural and ideological forces.

**Building Neoliberal State Capacity**

In her political economy of California’s massive prison-building project, Ruthie Gilmore (ibid) conceptualizes state power not as a “thing,” but in terms of the state’s *capacity* to organize the material and symbolic relationships that make up production. As a result, she argues, the state itself is a fluid, dynamic institution constantly adjusting in order to maximize its capacity. Just as state power is not a “thing,” the state itself is not monolithic- rather it is composed of a similarly dynamic ensemble of subinstitutions (e.g. education, criminal justice, public health, transportation) that, though varied in their purposes and forms, “get direction from the prevailing platforms and priorities of the current government” (ibid, p. 28; see also Wacquant, 2010; and Bourdieu, 1994). The priority of the neoliberal state is developing an institutional framework that disembeds capital from social and political constraints, intervenes to open new markets while it
protects and deregulates extant ones, and maintains a modicum of stability to ensure that unrest does not disrupt or slow accumulation (Harvey, 2005). To do so is no small task, and the conditions under which this occurs are unstable. As such, the state must continually optimize and enhance its capacity to “get a handle on its subjects and their environment” (Scott, 1998, p.7).

To that end, the neoliberal state is a racial capitalist state, attempting to structure the changing relationships between race and capitalism. The racism of the neoliberal state lies in the orientation of its institutions towards “the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death” (Gilmore, 2007, p. 28). That is, the neoliberal state’s capacity for maintaining race and class hierarchies that map “the organization of labor markets and the socio-spatial control of wealth” (ibid, p. 26) depends on certain “institutional pressures and effects” that produce “the conditions, directly or indirectly, that serve to foreshorten life directly but also foreshorten life’s opportunities” (Goldberg, 2009, p. 26). And so it is that neoliberal states, insofar as they are “driven by utopian plans” of the free market and “an authoritarian disregard for the values, desires, and objections of their subjects, are indeed a mortal threat to human well-being” (Scott, 1998, p.7), and, in the U.S., threatening in particular to the well-being of poor people of color.

Neoliberalism has not created the “crisis-free world order” its advocates promised once market deregulation was in place. Rather, increased deregulation and monopolization, along with the “hyper-mobility of financial capital” have “aggravated uneven development and volatility” (Gilden & Panitch, 2012, p. 17). The neoliberal state faces a political predicament- for as its economic and social policies increase instability,
mass stagnation in living standards and outbursts of chaos, its capacity to “regulate the poor” has diminished with the waning of the welfare state (Piven and Cloward, 1993; Wacquant, 2010). This section looks at similar developments in education and crime control in order to analyze the enhancement of neoliberal state capacity. It is designed to rethink the ways that social problems are constructed and their solutions imagined, and how such processes relate to state power. The changing relationship between the state and capitalism in the U.S. under neoliberalism demands new ways of seeing and thinking about how state power is deployed to contain the instability and crises produced by macroeconomic policies. This section considers how the spheres of public education and crime control brace up the neoliberal state as it seeks to “produce stability and growth in the general political economy, especially if equity is no longer on the agenda” (Gilmore, 2007, p.22).

**Simplification and legibility**

In *Seeing like a State*, James C. Scott (1998) begins with an analogy between statecraft and agriculture, noting that agriculture is:

a radical reorganization and simplification of flora to suit man’s goals. Whatever their other purposes, the designs of scientific forestry and agriculture and the layouts of plantations, collective farms, ujamaa villages, and strategic hamlets all seemed calculated to make the terrain, its products, and its workforce more legible- and hence manipulable- from above and from the center. (p. 2)

The state takes complex social practices and creates “a standard grid” whereby these practices can be “centrally recorded and monitored” (ibid, p.2). He goes on to analyze a number of historic state strategies, ranging from the creation of permanent last names to
the design of urban spaces, in order to sketch out the ways in which simplification and legibility function as techniques by which the state enhances its capacity to control populations and serve the economic interests it represents. For example, returning to forestry, the range of possible uses for, and meanings of, a tree, are “replaced by an abstract tree representing a volume of lumber or firewood” that embodies a surplus value waiting to be extracted. As a result, “the forest as habitat disappears and is replaced by the forest as an economic resource to be managed efficiently and profitably” (ibid, p. 13).

Simplification, then, is the social construction of a “selective reality” through a “narrowing of vision” that “brings into focus certain limited aspects of an otherwise far more complex and unwieldy reality,” making “the phenomenon at the center of the field of vision more legible and hence more susceptible to careful measurement and calculation” (ibid, p.11). Legibility, according to Scott, means the state can read and construct meaning around the categories, typifications, descriptions, and aggregations produced by the varied processes of simplification, and, because of this knowledge, can design, enhance, and evaluate its targeted interventions into social life. A simplified and legible representation, whether through, say, cartography, architecture, the media, or an education policy like Race to the Top, is an ideological tool for remaking reality and justifying certain kinds of symbolic and material interventions into that reality. Such processes allow economic elites to augment and protect their wealth and class power. As Scott puts it, “the legibility of a society provides the capacity for large-scale social engineering” whereby capitalist entrepreneurs use “state action to realize their plans” (p. 4).
Under the neoliberal state, simplification and legibility take shape as social engineering projects that facilitate privatization, deregulation, and flexible accumulation. Neoliberal policy re-engineers the social contract with all non-owning classes, regardless of race or gender. However, in impoverished urban neighborhoods in cities like New York, these projects work as technologies of racial control, legitimizing the wealth and status of White elites on the one hand, while dealing with surplus, marginalized, and dissident populations of color created by neoliberal policies on the other. They project visions of order and disorder: according to Scott, simplification processes narrowly define problems, often in distorted ways. Extending his theory to neoliberalism, I argue that, by making issues legible within the logic of the neoliberal state, simplifications allow for neoliberal policies to emerge as imagined solutions. For example, simplifying the geopolitical, economic, cultural, and environmental complexities of U.S. oil consumption to a cost-benefit analysis makes the issue legible within a dominant neoliberal logic that emphasizes efficiency and deregulation (see, e.g., Los Angeles Times, December 13th, 2013). Such representations are discursive supports for state-sponsored projects of accumulation by dispossession (Harvey, 2003), such as the “terrestrial skinning” (Klein, 2011) of the Alberta Tar Sands in Canada and the construction of the Keystone XL pipeline in the U.S. Along similar lines, in Business Week, the arrest of environmental activists protesting the pipeline was simplified to a conflict between local law enforcement and “self-appointed eco-anarchists” (Texas Land Commissioner Jerry Patterson, as quoted in Business Week, December 20th, 2012). Such a representation is similarly legible within neoliberal logic: it legitimizes state suppression of unrest by invoking the cultural trope of law and order. At the same time, it
depoliticizes the tensions that exist between environmentalists and impoverished rural Texans whose surplus labor and land are byproducts of state-subsidized corporatization and mechanization of agricultural production and ranching.

**Coherence, governmentality, and the neoliberal imagination**

Thus, according to Scott, simplification and legibility are ways of thinking about how forms of knowledge are related to the exercise of state power. A third conceptual tool, that of coherence, is needed to show how mutual intelligibility among these narrow representations is integral to the perceived legitimacy of the neoliberal state. Coherent simplifications brace each other up as they inform larger decisions over what ‘counts’ as data, provide similar ideological justifications for unjust material outcomes of policies, and combine to crowd out alternative or dissident perspectives. What this chapter goes on to argue is that, underpinning the seemingly autonomous institutional spheres of education and criminal justice, is a common political rationality— a system of knowledge that “constitutes the intellectual processing of the reality which political technologies can then tackle” (Lemke, 2001, p. 1). That is, because education and criminal justice are core apparatuses that, along with other subinstitutions, constitute the neoliberal state, their policy instruments create varied yet coherent simplifications that define problems in ways that are mutually reinforcing and amenable to neoliberal solutions. In doing so, they work in conjunction to advance the racial and economic projects of the neoliberal state.

Coherence among its subinstitutions allows the neoliberal state to assert itself as a cohesive leviathan drawing on a stable political rationality to govern its subjects. Michel Foucault’s concept of governmentality demonstrates how coherence reinforces and extends the neoliberal state’s capacity. Governmentality entails a) the delineation of
conceptual frameworks that are used to construct a problem and provide strategies for interventions and solutions; and b) mechanisms and processes for the control or management of individuals, groups, and populations (Lemke, 2001). Governmentality is the top-down, hierarchical exercise of power and knowledge: the construction of knowledge about people as the means by which a small body of elite authorities can “govern in light of that knowledge” (Rose, O’Malley, and Valverde, 2006, p. 87).

Governmentality increases neoliberal state capacity by further integrating an oligarchic state institution with its various subinstitutions through the construction, circulation, and enforcement of knowledge. The state can more effectively manage the instability caused by neoliberal social and economic policies when its ensemble of subinstitutions enacts “shared modes of problem formation…formulated within shared rationalities or styles of thinking” (ibid, p. 88).

Coherence, then, is the quality that allows these rationalities and ways of thinking to be shared, and therefore what makes governmentality, as a technique of state power, possible. Governmentality would not enhance state capacity if the knowledges being used to govern were disjointed, garbled, or contradictory. For a subinstitution like the public education system to deploy simplified knowledge in the interest of neoliberal social engineering and control, that knowledge must be comprehensible, organized, and schematic enough to be consistent with the dominant neoliberal logic of the state as constructed by its other core subinstitutions. Consider, for instance, the school to prison pipeline. Simplifications that represent students who “drop out” of high school as failures, lazy, or otherwise deficient are coherent with simplifications of “juvenile delinquency” that represent criminalized youth as deviant. Both are supported by an
ideology of individualism that pins responsibility onto the young person by reducing his or her situation to the outcome of free and rational choice in an open marketplace of possibilities. Furthermore, each representation crowds out alternative discourses around the structural impediments of racism and social class. Taken together, these simplifications around schooling and crime congeal into a conceptual framework that imagines state intervention in the form of “police in the hallways” (Nolan, 2011) as a response to a social problem with complex structural roots. The resulting school to prison pipeline puts into motion a “vision of social control” (Cohen, 1985) that is coherent within a neoliberal logic that upholds surveillance and incarceration as imagined solutions to educational problems produced by macro-level structures and ideologies around race, class, and gender (Ferguson, 2001).

Managerial simplification and state capacity

In what follows, I will examine accountability regimes within U.S. criminal justice and education systems as a case study to illuminate how coherent policy developments around schooling and policing work to enhance neoliberal state capacity. To do so, I will use Scott’s concept of simplification to rethink the shift, across policy arenas, to what sociologist David Garland (2001) refers to as the new managerialism. Summarizing Garland, in this mode of simplification, market ideologies and actuarial discourses and practices dominate, characterized by the construction and deployment of efficiency-oriented categorizations, mandates, rewards, and sanctions. Private sector practices are injected into public policy instruments. Policies mandate certain practices designed to assess and intervene in a perceived level of risk in a population, group, or social space, and schools and police departments, evaluated in terms of the cost-
effectiveness with which they enact these mandates, are rewarded or punished according to the outputs they produce.

These policies hold appeal across the political spectrum, braced up as they are by technocratic “claims to be economically rational alternatives to previous arrangements” of the welfare state (ibid, p.189). In both criminal justice and education, the new managerialism has meant that simplified representations of complex issues take on great significance, top-down strategies shape orientations and behavior at the micro, local-level, and rewards and sanctions become the primary techniques of control.

In criminal justice, the goal of rehabilitating the individual was transformed into the goal of identifying and managing unruly surplus populations. In the U.S., this took shape within the context of a “war on drugs” which took for its target African Americans and Latinos living in impoverished urban areas. As part of the expansion of the war on drugs, new and more refined mechanisms for policing and disciplining developed that expanded the scope and reach of the criminal justice system, allowing for an increasing number of poor people of color to be policed “in ways that use least resources to achieve maximum effect” (ibid, p. 189). In education, schooling has similarly been saturated by market ideologies around cost-effectiveness, the centralization of power, the fetishization of efficiency and coercive competition as engines for educational equality, and an auditing culture fixated on outputs. The No Child Left Behind Act, Race to the Top, and most recently the Partnership for Assessment of Readiness for College and Careers (PARCC) exemplify education’s penetration by the market, as they mandate standards, high stakes testing, and punitive accountability measures as policy instruments that
promise to simplify and manage the messy world of unequal education in efficient and legible ways.

As managerial simplification permeated both education and criminal justice, it made them legible and coherent, for “economic modes of reasoning were available, transferable, and appeared to work, or at least satisfy funding authorities who increasingly demand that the activities they financed be monitored and assessed in this way” (ibid, p.190). Coherence emerges as federal education and criminal justice policies mandate “a ragbag of techniques, models, analogies, and recipes for action that are loosely bound up together by their appeal to economic rationality” (ibid). This shared and mutually reinforcing “appeal to economic rationality” expands state capacity because it constructs a terrain for legitimate state intervention. Efficiency and accountability emerge as sensible ways of solving complex social problems. The ideological functions of managerial simplifications become concrete: once operationalized via education and criminal justice policies and instruments, these coherent ways of reasoning, seeing, and doing make possible the kinds material developments that advance the racial and economic projects of the neoliberal state (Harcourt, 2011).

**The drug war and the science of filling cages**

Since the late 1970s, poor people of color living in disinvested urban areas have faced massive cuts to public housing and other welfare supports while more and more public money has been funneled into subsidizing the commercial and corporate development that, alongside gentrification, confers the dominance of elites over built space in many cities (Harvey, 2005; Moody, 2007; Smith, 1996). At the same time, the federal war on drugs earmarked billions in federal money to “substantially increase the
number of law enforcement officers interacting directly with members of the community (‘cops on the beat’),” as well as to “encourage the development of new technologies to assist State, Indian tribal government, and local law enforcement agencies in reorienting the emphasis of their activities from reacting to crime to preventing crime” (Violent Crime Control and Law Enforcement Act of 1994). Crime prevention meant the increased targeting of open-air spaces in “hot spot” neighborhoods using surveillance technology and proactive policing techniques like “stop and frisk” (White, 2011). The federal government provided economic incentives and accountability mechanisms to operationalize and monitor these local policing efforts. For instance, The Violent Crime Control and Law Enforcement Act of 1994 set aside $1.3 billion in 1995, $1.85 billion in 1996, and $1.95 billion in 1997 for local police departments. However, to renew a grant, police departments had to “demonstrate significant progress in achieving the objectives of the initial application,” that is, provide quantitative data indicative of increased arrests and convictions.

In New York City, this accountability process took shape as COMPSTAT, (now common in many cities in the U.S. and Europe). COMPSTAT, introduced by NYPD police commissioner William Bratton in 1994, was a mechanism for gathering data on crime and arrests within individual precincts. This data was used to produce weekly statistical reports that would be analyzed at regular headquarters meetings during which precinct commanders would be interrogated on their results (Parenti, 2008). COMPSTAT was part of an organizational change that decentralized responsibility for producing arrests, shifting it from Headquarters to precinct commanders, thereby assessing the impact of policing at the precinct level and holding individual precincts and officers...
accountable for producing arrests. In addition to holding precincts accountable, the data gathered by the COMPSTAT approach was used for “geographic mapping to identify problem places and to target police resources to those specific places” (White, 2011, p. 19). This process came to be known as ‘hot spot’ policing. This mode of managerial simplification was multifaceted: states and municipalities are provided with substantial amounts of federal money to a) increase their police force; b) increase surveillance of particular neighborhoods; c) incentivize arrests, convictions, and lengthy sentences; d) develop actuarial systems of managing risk and standardized, outcomes-based accountability measures for police departments, courts, and other institutions; and e) partner with the private sector to fund, design, and build prisons as well as net-widening ‘alternatives to incarceration’ like drug courts.

The drug war’s managerial emphasis on incentives and accountability increased proactive targeting by the police (e.g. broken windows policing and stop and frisk) of spaces already identified as high-crime (hot spots). These practices contribute to the racial disproportionality in arrests, convictions, and sentencing. COMPSTAT reports and the punitive accountability mechanisms attached to them drew on a similar theory of motivation as comparable developments in education. Competition and accountability would increase pressure on police officers to produce arrests, which would eventually decrease the overall crime rate and improve the quality of life in the city. But because structural inequality shapes the way individuals navigate drug policies like the Rockefeller Drug Laws, (Acker, 2002), many drug users and sellers who live in poverty are positioned to participate in open-air drug markets, which increases their vulnerability to this intensified policing. Hot spots are identified based on surveillance of this activity,
and inform law enforcement resource allocation. As a result, police focus their efforts on arresting people in impoverished neighborhoods that “lack the kinds of spatial and social barriers to outsiders (even police) that often characterize wealthier areas” (Lynch, 2012, p. 192).

These policies and practices culminate in the disproportionate arrest and incarceration of poor and low-income African Americans and Latinos living in historically disinvested urban neighborhoods. A report by the Drug Policy Alliance (2011) points out that “by 2003, African Americans were arrested for drug law violations at a rate 238 percent higher than whites… even though they use and sell drugs at rates comparable to whites” (p.8). Today, approximately two-thirds of prisoners serving time for drug offenses are African American and Latino (The Sentencing Project, 2014). But the simplification process cuts out discourses around the racial, political economic, and historical forces that have produced the conditions that make the mass incarceration of poor people of color possible. Simplification also militates against critical historical consciousness; it narrows the complexities of drugs, poverty, and race to a cluster of managerial issues centered on cost-effectiveness, measurable outputs, and accountability.

New York City’s drug courts are similarly reductive and selective in their representation of the relationship between addiction, crime, and mass incarceration. By steering some drug users away from incarceration, and using therapeutic jurisprudence instead of traditional criminal justice approaches to addiction, drug courts claim great success at reducing recidivism. Drug courts claim to be efficient and cost-effective, and thereby ease prison overcrowding and mitigate the fiscal burdens of mass incarceration. The political, economic, and racial dynamics that structure “group-differentiated
vulnerability” (Gilmore, 2007, p. 28) are simplified into a construction of incarceration as resulting from a chronic disease that obstructs self-control of behavior. The complex structural and discursive terrain that shapes drug use, dealing, and the carceral state more generally is simplified into a medico-behavioral representation of deviance. This profoundly race and class-blind simplification gives way to unevenly distributed forms of punitive accountability, such as disciplining practices ranging from public shaming to increased surveillance to prolonged periods of incarceration.

The discursive and structural nexus linking drug policy, policing, and poverty is essential to the expansion of neoliberal state capacity (Gilmore, 2007; Harcourt, 2011; Wacquant, 2010). First, the drug war harnesses and operationalizes managerial discourses and techniques that simplify poverty and drug use into a “language for doing and representing” (Garland, 2001, p.190). In doing so, COMPSTAT draws on a pseudo-scientific discourse around data and statistics to justify highly racialized state interventions like criminalization, intensified policing, and mass incarceration. Second, the drug war operationalizes these simplifications as strategies and techniques for “the management of urban marginality” (Wacquant, 2010, p. 197). The state’s capacity is extended and refined through the economic and quantitative rationalization of practices like broken windows policing and stop and frisk that surveil, harass, discipline, and even physically remove and encage disproportionate numbers of poor people of color. Braced up by managerial simplifications and the policies they engender, the neoliberal state asserts itself as a carceral state, one that uses surveillance and punishment to manage the social insecurity and marginalization caused by neoliberal social and economic policies. In the process, it militates against urban uprisings by the poor like those that so
threatened elites during the crises and upheavals of the 1960s and early 1970s (Parenti, 2008).

Finally, the neoliberal state’s capacity is enhanced through the “official racism” of a criminal classification system whereby “activities and profiles associated with a devalued racially identified population” come to be “treated more harshly than otherwise comparable activities or profiles of those not so devalued” (Goldberg, 2002, p. 244). Thus as the neoliberal state stops offering social and economic protections to manage the urban socioeconomic insecurity it creates— a precariousness disproportionately experienced by people of color— it reinvents and reasserts itself as a legitimate and indispensable institution by engaging the official racism of “the prison and its institutional tentacles” to “invisibilize problem populations” (Wacquant, 2010, p. 199).

**Testing, accountability, and invisibilization in education reform**

Similar to Scott’s (1998) agricultural analogy, the new managerialism in education mandates a testing and accountability regime “calculated to make the terrain, its products, and its workforce more legible— and hence manipulable— from above and from the center” (p. 2). The corporatist, managerial reforms of the No Child Left Behind Act, and now Race to the Top, deploy policy instruments that simplify educational inequality by bringing test scores to “the center of the field of vision,” making teaching and learning “more legible and hence more susceptible to careful measurement and calculation” (ibid, p. 11). In doing so, the state reduces the complex sociocultural, cognitive, and affective practices that characterize learning to “a standard grid” by which student growth, codified now as test scores and embedded in simplified, technocratic discourse of achievement, can be “centrally recorded and monitored” (ibid, p. 2).
Following Wacquant (2010), managerial simplification in NCLB and RTTT, as in COMPSTAT, is not merely a “technical implement” or “appendage” for improving schools or society. Rather, it reworks education policy in such a way as to operationalize schooling as “a core organ of the state whose selective and aggressive deployment in the lower regions of social space” (p. 200) asserts the state’s capacity. Federal education policy deploys managerial simplifications that are “instrumental in imposing categories, upholding material and symbolic divisions, and molding relations and behaviors through the selective penetration of social and physical space” (ibid, p. 200-211). That is, the new managerialism in public education, as exemplified by the simplifying technologies of the Common Core, scripted curricula, high-stakes testing, and punitive accountability, work in and through schools as forms of governance, ideology, and disciplinary mechanisms that, alongside shifts in criminal justice, continue to be crucial to the production of the neoliberal city. Furthermore, federal education policy is “part of a neoliberal global economic and social agenda to maximize profits by promoting the primacy of the market, reducing the cost of labor, and privatizing all spheres of economic and social life” (Lipman, 2005, p. 101). Managerial simplification in education, perhaps best exemplified by the rigid standards and punitive accountability measures of NCLB and RTTT, has resulted in school takeovers by for-profit Education Management Organizations (EMOs), school closings, and the proliferation of charter schools. These are examples of legislation and practices that favor individual responsibility, upward distribution of wealth and resources, increased privatization, and austerity measures regarding social services and expenditures.
Managerial simplification in RTTT and NCLB is instituted and enforced through a mix of federal, state, and local governance structures that link funding and control to student achievement on standardized tests. However, the destruction of any “collective structures that could serve as an obstacle to the logic of the pure market” is central to the neoliberal project (Bourdieu, 1998, p.2). Thus, as with other neoliberal mutations, managerial reforms in education required an authoritarian governing body and organizational structure (Harvey, 2003, 2005; Klein, 2008). This is one way of thinking about New York City’s former mayor Michael Bloomberg immediately centralizing control over the city’s Department of Education. When the mayor and chancellor Joel Klein developed the Panel for Educational Policy to replace New York City’s Board of Education, they further cemented authoritarian control by dismantling community structures and channels for actualizing dissent and democratic participation in governance. By concentrating governance and management in a panel of mayoral appointees rather than community run Boards of Education, Bloomberg worked to disempower teachers, parents, students, and community members in a process of consolidation of control that would expand and evolve throughout his terms as mayor (O’Day, Bitter, and Gomez, 2011; see Lipman, 2011 for an analysis of mayoral control in Chicago). New York’s new mayor, Bill DeBlasio, took office in January of 2014 on a progressive platform that challenged several of Bloomberg’s education policies, particularly his stance on charter school co-location. But in spite of his progressive claims and his much publicized recent battle with New York’s more strident neoliberal Governor Cuomo over collecting rent from co-located charter schools, DeBlasio has embraced mayoral control of schools, by and large continuing the city’s tradition of blocking
democratic participation in educational policymaking. Furthermore, the interlocking agendas of dispossession and privatization continue, as the new mayor recently approved 39 out of 49 new charter schools for the city. DeBlasio also allowed 14 charter schools, permitted to co-locate under Bloomberg’s reign, to move forward and take over valuable space belonging to public schools, in spite of the protests of students, parents, and community organizations. In total, the progressive mayor denied public space to only three charter schools Bloomberg had approved for co-location (Hill, 2014).

Centralized, authoritarian local control over education in New York City, coupled with increased federal and state interventions into education policy and practice throughout the 1980s, 90s, and 2000s, simplified the messy world of education through the top-down implementation of Common Core standards and scripted curricula linked to a high stakes testing regime monitored by school progress reports and quality reviews. Like COMPSTSAT, managerial education policies mandate data-driven systems of performance review and elaborate programs for meting out punishments and rewards if schools do not make “Annual Yearly Progress” according to the narrow, simplified vision of raised test scores. In New York City, value-added teacher evaluation models go so far as to draw on student attendance and past test scores to predict how well he or she can be expected to perform on future standardized tests. Once this mark is calculated, teachers are held accountable for whether their students reach this projected score. If the average number of students score below the projected score, the teacher is labeled ineffective. If they score at or above the projected score, the teacher can be labeled effective or highly effective (Value-Added Research Center, 2010).
Within New York’s testing and accountability regime, managerial simplification is coherent with its iteration in criminal justice and functions similarly. It is a technique by which the neoliberal state enhances its capacity by constructing a “selective reality” out of quasi-scientific educational data that obfuscates the racial and political economic forces that produce educational inequality and shape student performances (Anyon, 1997, 2005; Leonardo, 2007; Lipman, 2005, 2011). Just as drug policy obscures and supports the structural and ideological roots of poverty by criminalizing and incarcerating the “black subproletariat trapped in the imploding ghetto” (Wacquant, 2010, p.198), No Child Left Behind and Race to the Top operate in conjuncture with criminalization as neoliberal “policy substitutes” for real economic reform (Anyon, 2011). By mandating elaborate processes of simplification that explain away the dynamics of racial capitalism, delinking inequality from its structural and ideological roots, standardized testing and value-added teacher evaluations represent these dynamics in a way that can be grafted onto individual schools, teachers, youth, and families. Managerial simplification rearticulates macroeconomic problems as educational failures.

Furthermore, the new managerialism in education reinforces neoliberal state capacity by stifling academic freedom and creating powerful obstacles for a critical education that would empower students to confront and challenge the structural inequalities, social costs, and harms produced by racial capitalism (Shor, 1992). Neoliberal capacity, codified pedagogically as “teaching to the test,” has created what Pauline Lipman (2005) refers to as dual education- an unequal education that reflects and embodies the “dual cities” described by Mollenkopf and Castells (1992): critical thinking, arts, music, and humanities for wealthier students; basic skills in literacy and math for
poorer students. Echoing Jean Anyon’s (1981) findings in her study on *Social Class and School Knowledge*, this polarized curricular and pedagogical distribution reproduces and exacerbates race and class inequalities caused by neoliberal social and economic policies, while simultaneously reinforcing the neoliberal state’s capacity to diminish resistance by limiting or constraining “opportunities to contest structural inequalities” (Duncan-Andrade and Morrell, 2008, p. 10). Teaching to the test, scripted lessons, and a traditional curriculum can inhibit the creation of “conditions for suffering communities to hold structural and material inequities up to the light of inquiry.” This inquiry is “the recognition of the conditions of inequality and the desire to overturn those conditions for oneself and for all suffering communities” and is “the starting point and motivator for the urban educator and for the urban student” (ibid, p.10). Simplification in education militates against critical historical consciousness and resistance by narrowing the complexities of urban education to a cluster of managerial issues centered on efficiency, standardization, and measurable outputs.

Thus, the overall effect of reform like Race to the Top, according to Obama’s former education adviser Linda Darling-Hammond, is to “increasingly destabilize schools and neighborhoods, making them even less desirable places to work and live and stimulating the flight of teachers and families who have options.” They fail to “stem the rapid slide of families into poverty, homelessness and food insecurity; address the inequitable distribution of state and local funds to schools; to improve teaching and learning conditions in underfunded, high poverty schools; or to recruit and train expert teachers who will stay in these schools and stop the revolving door of untrained novices who leave children farther behind” (Darling-Hammond, 2012, p. 11). As state and city-
led projects of neoliberal urbanization disinvest in the public sphere in order to advance plans for urban renewal, gentrification, and central business district development, education and criminal justice provide mutually reinforcing strategies for social control of the disinvested, dispossessed, and dislocated.

**Unpacking hegemony**

Like Foucault’s notion of governmentality, Antonio Gramsci’s theory of hegemony also hinges on the neoliberal state’s need for coherence among constitutive subinstitutions like education and criminal justice. Coherence is what allows these subinstitutions to congeal, however contingently, into the institution of the neoliberal state. As the neoliberal state works to “integrate state decision-making into the dynamics of capital accumulation and the networks of power that are in the process of restoration” (Harvey, 2005, p. 76), it must constantly reconfigure its subinstitutions and practices. Testing and accountability reforms mandated by NCLB and corporate reformers like Michael Bloomberg, like shifts in policing brought on by COMPSTAT and alternatives to incarceration like drug courts, are reformist reforms that protect uneven power relationships. They are reconfigurations and realignments that brace up neoliberal hegemony through the production and enactment of simplifications that enhance the state’s capacity to maintain the already-existing race and class hierarchies that map “the organization of labor markets and the sociospatial control of wealth” (Gilmore, 2007, p. 26-28).

Following Gramsci, neoliberal hegemony, an entanglement of ideological and material forces mixing consent and coercion, allows for elite dominance over the state and its subinstitutions in order to further integrate these institutions within the logic of
capitalism. In Gramsci’s framework for thinking about power, ideologies are descriptions of the world that help secure and stabilize hegemony— that precarious dominance exerted by elites over non-elites as they balance force and consent (Crehan, 2002, p. 200). Ideologies are narratives that claim progress, naturalness, and inevitability, and crowd out political economic and racial analyses of hegemony. Embedded in a variety of cultural forms, ideologies describe the world in a way that makes power relations invisible, construing neoliberal hegemony not as an economic or racial project bound up in exploitation, dispossession, and repression, but simply as “the way the world works.”

The neoliberal state falls into crisis because it is riddled with contradictions (see, e.g., Harvey, 2005, p. 79-81). Hegemony, therefore, is never fixed or guaranteed, and securing accumulation, while maintaining legitimacy and social control, requires state apparatuses to move back and forth between varying degrees and forms of coercion and consent. Sustaining the racial capitalist conditions for accumulation requires the neoliberal state to constantly find new or modified ways to construct consent and unleash the violence of its coercive powers upon particular racial groups. What this section argues is that the adaptability of the neoliberal state depends on the ongoing production of an evolving set of coherent simplifications that, through a multi-institutional nexus of policy controls, reinforce race and class hierarchies and produce the material and ideological conditions required to maintain accumulation.

In the current Great Recession, unemployment hovers between 17 and 13 percent (Krugman, 2014) while gaps in wealth between white families and Latino and African American families continue to increase (Lowrey, 2013). In a context of such pronounced inequality, the neoliberal state would not be able to maintain its appearance
legitimacy if its education system produced and privileged radical, collectivist, social welfare-oriented representations, while its criminal justice system privileged depoliticizing simplifications around deviance, individual responsibility, and just deserts. Such incoherence would destabilize the socially constructed “common sense” around free markets, competitiveness, and individual responsibility that undergirds neoliberalism and its crises. A hypothetical contradiction like this could potentially undermine consent to hegemony by opening up space for alternative and dissident discourses. The resulting fragmentation would diminish the state’s capacity to advance the interests of racial capitalism because the “institutional framework” and “culture of entrepreneurialism” required to forge consent to neoliberalism (Harvey, 2005) would be misaligned.

Therefore, neoliberal hegemony requires coherence in the ways that public education and crime control continually tweak the balance between consent and coercion, as they adapt to the ongoing crises and contradictions inherent to the dynamics of racial capitalism. At the same time, and for this very reason, the construction and preservation of coherence is an unfinished and fragile enterprise, laden with “radical possibilities” for social justice-oriented transformations (Anyon, 2005). As such, teachers, students, scholars, and activists must work to unpack neoliberal hegemony in such a way as to make visible, historicize, and denaturalize the clusters of simplifications that misrepresent our worlds. We must destabilize them through interdisciplinary and collaborative critique and action, generating alternative discourses with our minds and our bodies. And we must consider, in the broadest sense, how the collective struggle for racial and economic justice means taking on the interlocking state projects of miseducation and incarceration. Prison abolition, decriminalization, and struggles for educational equity must themselves
be interlocking, bottom-up projects of resistance, with a coherence of their own. To form
a broad-based social movement, these struggles must not be grounded in dismal sets of
narrow simplifications that atomize and divide them, but rather in a nuanced and
sweeping vision of economic and racial justice that highlights their conjuncture and
continuity.

**Charter Schools, Drug Courts, and the Nonprofit Industrial Complex**

At the same time that standards and accountability were gaining steam, and the
war on drugs was being ramped up in the 1980s and 90s, there was a mass proliferation
of tax-exempt nonprofit social justice organizations registered with the IRS for 501(c)(3)
status. The city saw a range of organizations emerge to take up various services; for
example, The Doe Fund began in the early 1980s to provide services to the city’s
homeless, while Manhattan Youth Baseball was established in 1990 to provide athletic
and other educational opportunities for poor youth. The rapid growth of this nonprofit
sector emerged from the dismantling of the welfare state and the political economic shift
to neoliberalism. This transformation exacerbated inequality, particularly in urban areas.
The creative destruction of neoliberal urbanization “produced and reproduced a
regressive redistribution of real income that benefited the rich at the expense of the
poor… creating in the context of urban geographies and the interrelations of social
processes and spatial form a fertile terrain for the cumulative aggravation of
injustices” (Soja, E., 1997, p. 181). As welfare state apparatuses were destroyed or
transformed, and federal, state, and local governments engaged in the “targeted
abandonment” (Harvey, 2006) of the urban core, provision of social welfare and control
was shifted to private sector providers, many of which were nonprofit organizations
(Piven & Cloward, 1993). Under such arrangements, philanthrocapital flows into a burgeoning private sector via tax-deductible grants from private foundations. Between 1953 and 1978, the number of nonprofits expanded from 50,000 to approximately 300,000. By 1998, there were 734,000 nonprofits in the U.S. By 2007, that number had grown to 837,027 nonprofit organizations in dealings with foundations carrying over $500 billion in worth and injecting approximately $33.6 billion each year into the private nonprofit sector (INCITE! 2007). According to the IRS, a 501(c)(3) organization must be organized and operated exclusively for exempt purposes… and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates...The organization must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization’s net earnings may inure to the benefit of any private shareholder or individual (irs.gov).

The borders that mark the contours of private and public interests are unstable and blurry at best. For instance, donations made by corporations, hedge funds, and other foundations to nonprofits are tax deductible- that is, they lower the donor’s taxable income and thus their tax bill (ibid). As a result, less elite money is funneled into the public coffers because it is sheltered in foundations. Furthermore, foundations make money for capitalists, as they invest their foundation assets and watch them grow. Foundations only have to payout 5 percent of their assets each year, but this 5 percent can go to administrative costs, rents, salaries, future projects, and fees paid out to trustees. Between
1972 and 1996, "the 200 largest foundations yielded an average return of 7.62 percent annually on their investment returns while paying out an average of 4.97 percent" (Ahn, in INCITE! 2007, p. 67). Because the money that flows through nonprofits is outside public control, these organizations are not accountable to communities, neighborhood groups, or local political representatives. At the same time, private sector nonprofits, like their for-profit cousins, are similarly caught up in the coercive law of competition, and are therefore vulnerable to the compulsions of outsourcing, expansion, cost-cutting, wage suppression, anti-unionism, efficiency optimization, mechanization, and other strategies to help them secure their market share of clients, grants, and foundation support and make efficient use of limited funds. Thus, they are coerced by market dynamics and their dependency on corporate philanthropy and grants from the neoliberal state into privileging and advancing certain private interests.

Nonprofits blur the border between public and private interests by institutionalizing links between the public sphere and the private for-profit sector. For instance, for-profit companies that provide construction, infrastructural development and maintenance, management, clerical services, technology, IT support, and other materials become stakeholders in the advancement of the nonprofit sector, as it provides them with ample profit-making opportunities. For instance, for-profit big pharma and surveillance technology companies contribute substantial funding for nonprofit drug court advocacy organizations. Particularly relevant to New York City’s nonprofit charter school sector is the involvement of for-profit real estate interests who buy cheap buildings in disinvested neighborhoods and operate as landlords leasing these spaces at bloated rates to charter school tenants (Fabricant & Fine, 2011). Lastly, though their IRS status prevents
nonprofits from lobbying and contributing to political campaigns, there are no limits placed on their advocacy work. In 2008, 73 percent of nonprofit organizations were working on a range of advocacy activities (Silverman & Patterson, 2011) designed to shape and inform public opinion and policy agendas. In this way, nonprofits are a vehicle by which elites, through their economic and social capital, are able to influence policymaking at multiple sites and scales in order to advance their class interests.

In The revolution will not be funded: Beyond the nonprofit industrial complex (INCITE! 2007), Dylan Rodriguez defines the nonprofit industrial complex (NPIC) as: a set of symbiotic relationships that link political and financial technologies of state and owning class control with surveillance over public political ideology, including and especially emergent progressive and leftist social movements (8). The fuzzy borders of “private interest” as defined by the IRS refer solely to the economic activities of nonprofits. As discussed in the above section, nonprofits do in fact create profits for a variety of private sector stakeholders. What Rodriguez is emphasizing, however, is how developing the NPIC is mutually beneficial to the state and capital because nonprofits engage in the ideological management of dissident grassroots organizations and movements. Andrea Miller (INCITE! 2007) elaborates that the NPIC “manages and controls dissent by incorporating it into the state apparatus” while proliferating “market economies under the veil of partnership between the public and private sectors” (ibid, p. 9). The NPIC, then, is a lens for thinking about how the public and private sectors have been realigned in such a way as to refine and expand social control on the one hand while siphoning off public money into the private sector on the
other. This critique, of course, stands in stark contrast to dominant discourse around the nonprofit sector, as put forth by NYC Nonprofit Assistance:

New York City has a large nonprofit sector unmatched by any other city in size and scope of services. The nonprofit sector employs more than half a million New Yorkers, serves as a critical economic engine in many New York City neighborhoods, and provides crucial social services and enriching cultural programming to residents and visitors. The sector also comprises environmental groups and world-class educational and health care organizations that help to shape and sustain the city (nyc.gov).

As the city withdrew from social provision, and budgetary constraints undermined the expansion of its regime of mass incarceration, the nonprofit sector stepped in to both care for and control the city’s poor. Because a “strong nonprofit sector… helps to keep New York City strong” (ibid), the city provides a number of supports to advance the NPIC. There are 35,000 nonprofits in New York City, 2,500 of which are "doing business with the city" (ibid). The city seeks to help the NPIC grow through programs aimed at "reducing costs," "improving contracting procedures," and "strengthening nonprofits" (ibid). To that end, and in the spirit of public-private partnership that undergirds the NPIC, the city partnered with the nonprofit private sector to create the Strengthening Nonprofits Task Force (SNTF). The SNTF has developed and implemented a range of supports including GreaterNY, a "public-private initiative that has led to deeper civic engagement by business leaders and enhanced nonprofit capability" as well as Group Purchasing. "an opportunity for New York City funded nonprofits to access discounts on a wide range of goods and services" (nyc.gov). Further financial assistance is provided to
nonprofits through The Mayor's Office of Contract Services and the Fund for the City of New York (a nonprofit headed by an elite board of directors)- a public-private partnership that provides interest free cash loans to help grow the city’s nonprofit organizations.

Drug courts and charter schools are examples of what Ruth Gilmore (in Berger, 2014) refers to as reformist reform: policy realignments that “tweak Armageddon” and uphold the status quo. Radical movements, instead, seek nonreformist reform- “deliberate change that does not create more obstacles in the larger struggle” (p. viii). Drug courts and charter schools are bound up in the “single reality” (Tabb, 1982) of neoliberal reformist reform and are mutually reinforcing in their embrace of, and by, the ideologies and structures of the NPIC. This section of the chapter will examine some of the ways that drug courts and charters, as reformist reforms, draw on and extend the NPIC, thereby reinforcing elite class power and maintaining racial hierarchies. INCITE! (2007) provides a useful framework for analyzing the NPIC by considering the ways that capital and the state rely on the NPIC to:

- monitor and control social justice movements;
- divert public monies into private hands through foundations;
- manage and control dissent in order to make the world safe for capitalism;
- redirect activist energies into career-based modes of organizing instead of mass-based organizing capable of actually transforming society;
- allow corporations to mask their exploitive and colonial work practices through 'philanthropic' work;
encourage social movements to model themselves after capitalist structures rather than to challenge them (p. 3).

These functions of the NPIC will be used as strands for teasing out the ways that the material and ideological links among charter schools, drug courts, nonprofits, and foundations reinforce race and class inequalities by impeding, redirecting, and co-opting radical campaigns for racial and economic justice. At the same time, these strands will help identify how drug courts and charters expand the NPIC itself as an industrial complex. For instance, the New York Times reported that, in 2012, U.S. nonprofits had absorbed over $300 billion in foundation money and are growing at a faster rate than business or government sectors (Buffett, 2013). Drug courts and charter schools then, are mutually reinforcing state apparatuses for which a crucial point of conjuncture is their advancement of neoliberal reformist reform by expanding the nonprofit industrial complex.

**Education and “creative capitalism”**

As Lipman (2011), Fabricant & Fine (2012), and Hantzopoulos & Tyner (2012) have shown, school choice as we know it today is linked to the early efforts of educators, parents, and community members living and working in disinvested urban areas who were seeking to create safe and progressive alternatives to the large deteriorating high schools of the urban core. The small schools movement was, initially, a grassroots social movement that sought to transform the urban educational landscape. They were, as Michele Fine (in Hantzopoulos & Tyner, 2012) puts it, "designed and constructed with a rich sense of justice and democracy; a place where educators, parents, community and youth would come together to build knowledge, capacity and community power" (p. ix).
This coalition "insisted that children of poverty deserve the same education as children of elites" (ibid). Bloomberg, with millions in backing from the Gates Foundations, scaled up the small schools movement in the early 2000s into a "technology of dispossession," co-opting the small schools movement such that it "became the chrysalis for hatching charters, the sac for drip fed privatization into the public school system" (p. x). The “activist energies” (INCITE! p.3) behind the small schools movement were largely directed away from capacity building at the school and community level, and redirected into navigating the reconfigured landscape created by the injection of competition into educational policy and practice.

Between 2000 and 2008, the Gates Foundation alone donated $2 billion to advance school choice by breaking up large high schools and proliferating alternative small schools (Ravitch, 2011). Gates was not seeking to alter capitalist relations of production that produce poverty and disinvestment; nor was he looking to use his wealth to build capacity at the grassroots level in poor neighborhoods. Rather, he was cementing elite control over education by calling for a “creative capitalism” with a “twin mission: making profits and also improving lives for those who don't fully benefit from market forces” (Gates, B. quoted in Guth, 2008). Gates frames capitalism as the cure for poverty:

If we can spend the early decades of the 21st century finding approaches that meet the needs of the poor in ways that generate profits for business, we will have found a sustainable way to reduce poverty in the world (ibid).

Undergirding the nonprofit industrial complex is the institutionalization of the notion that philanthrocapital can "stretch the reach of market forces" (ibid) in order to reverse the effects of poverty in areas ranging from education to public health to crime control.
According to Gates, by “reaching out to various industries -- going to cellphone companies, banks and more pharma companies -- and talking about how...they can do these things”(ibid), elite capacity and free market ideology can congeal into a top-down, profit-maximizing force that can solve the very problems it creates. Rather than increasing wages, benefits, creating well-paying jobs, or paying higher taxes, Gates and his corporate allies at the World Economic Forum advance a form of “good corporate citizenship” in the form of public-private partnerships through which state institutions partner “with companies to apply the resources and competencies of business for the benefit of all” (World Economic Forum Annual report, 2006, p. 27). Public-private partnerships redirect social justice movements for economic and racial justice towards technical solutions for educational issues caused by poverty:

Through a sustainable and collaborative approach, new technologies, especially in information and communication technology (ICT), have modernized educational systems, skills development and quality learning (ibid, p. 28).

The gap between the rich and the poor is not due to structural exploitation and racism, but rather is caused by “a divide between those who have access to the benefits of technology and those who do not” (ibid, p. 29). At the same time as redirecting activism and managing the discourse around poverty, nonprofits pump public money into private hands through increasing investment in technology, as equity is reframed as modernization through marketization.

Gates’ vision of “creative capitalism” is one in which the nonprofit sector, by absorbing foundation money, operationalizes corporate visions of education reform which claim that school choice can help poor youth of color transcend the changes in the
global economy that have produced unemployment, disinvestment, dislocation, and dispossession in the urban core. In a 2006 interview for the World Economic Forum, Thomas Friedman, columnist for the *New York Times*, and Bill Gates discussed the statement by Intel CEO Craig Barrett that “his company could thrive without ever hiring another American.” Gates asserted that, rather than concern themselves with the movement of jobs overseas, “Americans should be more concerned with education.” Through his foundation money, Gates puts wheels on this vision by investing billions in nonprofit school choice advocacy organizations and nonprofit charter schools, based on the assumption that students can overcome structural obstacles by being “given incentives to excel” in learning environments where there is “a different type of personal management system…and the technology they use tends to be more advanced.”

Nonprofit charter schools and their advocacy organizations emerge as vehicles for extending elite control over education policy and practice. The philanthropic work of the Gates Foundation, among others, “manages and controls dissent” to the disequalizing effects of globalization “by incorporating it into the state apparatus” as education reform is presented as the solution to social and economic problems. At the same time, Gates money is used to create organizations that draw dissatisfaction and opposition into the logic of capital by proliferating “market economies under the veil of partnership between the public and private sectors” (INCITE! 2007, p. 9). That is, unequal education is rooted in racialized processes of disinvestment, abandonment, and control inherent to processes of capital accumulation. The NPIC in education, via Gates and other philanthrocapitalists like Eli Broad and the Waltons, redirects indignation and the desire for change away from *non-reformist reform* of the racial capitalist system and channels it instead into *reformist*
reform like charter schools. The nonprofit charters are attractive to parents navigating a deteriorating urban educational landscape who want more for their children, and teachers oppressed by rigid standards, testing, and accountability regimes and abysmal working conditions. By taking in these parents and educators, the NPIC redirects their energies into reformist reform which not only fails to confront the logic and machinery of racial capitalism, but extends its material and ideological tentacles more deeply into education policy and practice.

In New York City, the charter school movement has advanced the NPIC very much along the lines of Gates’ vision of “creative capitalism.” Since the 2010 legislation enacted under Governor Pataki’s administration, new charter schools in New York State can no longer be run by for-profit Charter Management Organizations (CMOs). The existing 9 percent of New York City charter schools run by for-profit companies were allowed to remain so. The vast majority of charters either operate independently as nonprofits or are run by external nonprofit management networks or Educational Management Organizations (EMOs). The three largest EMOs in New York City are Achievement First, Success Charter Network, and Uncommon Schools. A recent study by the National Education Policy Center (2011) found that some particularly well-endowed New York City charter schools receive additional injections of philanthrocapital that amount to more than $10,000 more per pupil than the allocations available to public schools. New York City’s Fair Student Funding formula was designed to target funding to particular students in need, rather than focusing on neighborhood differences. Charter schools, however, are not included in this formula, and therefore rely heavily on philanthrocapital to remain competitive. The major contributors to CMOs in New York
City are “creative capitalists” like the New Schools Venture Fund, the Bill and Melinda Gates Foundations, and the Walton Family Foundation. Because of corporate philanthropy, the average charter school receives an additional $1,656 per pupil (Baker & Ferris, 2011). In 2008, Achievement First CMO received $1.3 million from the New Schools Venture Fund, who also provided $650,000 to Excellence of Bedford Stuyvesant, Kings Collegiate, and Williamsburg Collegiate charter schools. Kipp received $5.2 million from The Walton Family Foundation on top of $2 million from Gates. Walton pumped $510,000 into the Harlem Success Academy, and New Schools Venture Fund provided $250,000 in seed money for the development of three new Success charter schools (ibid).

The charter school movement has expanded the NPIC, allowing nonprofits to provide new opportunities for elite money to reshape struggles for educational equality into reform movements that are geared to the needs of racial capitalism. At the time of this writing, the NPIC’s role in co-opting civil rights discourse, incorporating discontents, and expanding the marketization of education has reached a fevered pitch. The New York Times reports, “pro-charter advocacy groups, including Families for Excellent Schools, StudentsFirstNY, and the New York City Charter School Center” have rallied their resources from their corporate and hedge fund donors and political allies like Governor Andrew Cuomo to launch a successful campaign against New York City Mayor Bill DeBlasio’s efforts to charge well-funded charter schools rent for locating within city-owned buildings (Hernández & Craig, 2014). The charter school NPIC facilitates the infiltration of public policy by business interests, as elites enhance their capacity by holding powerful positions within nonprofit organizations:
A lot was riding on the debate for Mr. Cuomo. A number of his largest financial backers, some of the biggest names on Wall Street, also happened to be staunch supporters of charter schools. According to campaign finance records, Mr. Cuomo’s re-election campaign has received hundreds of thousands of dollars from charter school supporters, including William A. Ackman, Carl C. Icahn, Bruce Kovner and Daniel Nir.

Kenneth G. Langone, a founder of Home Depot who sits on a prominent charter school board, gave $50,000 to Mr. Cuomo’s campaign last year. He said that when the governor asked him to lead a group of Republicans supporting his re-election, he agreed because of Mr. Cuomo’s support for charter schools.

“Every time I am with the governor, I talk to him about charter schools,” Mr. Langone said in an interview. “He gets it” (ibid).

Austerity under Cuomo has entailed further shrinking of the state in terms of provision of services at the same time that his administration has engaged in “targeted abandonment”(Harvey, 2006) and policing of the urban core. Fueled by foundation money, the private nonprofit sector has taken on a good deal of social provision and social controls that this mix of abandonment and control demands. But elites sit on the boards of nonprofit organizations as well as the foundations that fund them. By virtue of their wealth and social capital, elites like Bill Gates and Eli Broad are able to undermine democratic processes and advance new visions and forms of service and social control, aligning them with neoliberal values around efficiency, cost-effectiveness, competition, privatization, deregulation, and individual responsibilization.
Defending the carceral state

Drug courts have similarly expanded the role of the Nonprofit Industrial Complex within the neoliberal state, creating important links between criminal justice, nonprofit advocacy groups, and corporate and elite donors. Through their links to the NPIC, drug courts opened new spaces for market economies within criminal justice and crime control, primarily for big pharma and surveillance technology companies. Because of their dependency on state and corporate funding, drug courts advance the NPIC’s core principals of efficiency and accountability over public service-oriented visions of systemic change. Furthermore, they have incorporated and denatured the hard-fought battles of radical grassroots movements like Drop the Rock into reformist reforms around ‘alternatives to incarceration.’ As the earlier chapter on drug courts showed, these reforms, rather than abolishing prisons and the policing apparatuses that fill them, actually realign, refine, and even expand the carceral activities of the state and the racialized social controls that accompany neoliberal hegemony.

Foundations maintain the status quo by undermining the structural transformations needed for racial and economic justice. The NPIC is not engaged in overt repression, but rather "manages and controls dissent by incorporating it into the state apparatus"(INCITE! p. 8) and/or by constraining organizations through the strings attached to the private foundation money they so desperately need. Philanthropists fund nonprofits as a way to "sublimate revolutionary movements into reformist ones" such that these organizations are prevented from working towards systemic, radical change by their dependency on state and private funding and the limitations imposed by "funding rubrics and structural prohibitions" (Gilmore, in ibid, p. 47). The original goal of the grassroots
collective Drop the Rock was to repeal the Rockefeller Drug Laws, but annulment has transformed into reform:

Its primary focus being repeal of the Rockefeller Drug Laws—the State’s notoriously harsh mandatory minimum sentencing statutes that apply to people convicted of drug crimes—the group became the Drop the Rock Coalition. In 2009, after years of advocacy on the part of the Coalition and its allies, the State enacted significant reforms that represent a true people’s victory and marked the beginning of the end of these statutes (Correctional Association of New York, n.d.).

Drop the Rock, originally a grassroots movement, was incorporated into the Correctional Association of New York (the CA), a private nonprofit “force for progressive change in the criminal justice system” (ibid). The CA is funded in part by the Starry Night Fund through the Tides Foundation. The Tides Foundation seeks to

break down the walls between entrepreneurs and their efforts to bring positive change to their communities. We are all about new ideas, innovation, and providing the tools to make these great ideas a reality (“Tides Foundation,” n.d.)

To that end, Tides has partnered with well-known philanthrocapitalists like the Ford Foundation, the Gates Foundation, the W.K. Kellogg Foundation, as well as the Social Venture Network, whose “Theory of Change” epitomizes Gates' vision of "creative capitalism":

SVN works to create a just, humane and sustainable world by:
• Supporting and promoting innovative entrepreneurs and business leaders who contribute to the well-being of their employees, customers, investors, communities and the environment

• Fostering strong connections and collaborations among business leaders and entrepreneurs that lead to groundbreaking solutions to social, economic and environmental problems

• Contributing to an ecosystem that enhances and supports these solutions and promotes a just sustainable economy (“Social Venture Network,” n.d.).

Another core donor to the CA is the Jacob and Valeria Langeloth Foundation. The Langeloth Foundation, focused on "Correctional Healthcare" and "Chronic Violence and Community Health", prioritizes "Programs focusing on fostering collaboration between agencies, advancing policy reform and systems change, leadership development, and coordinating public and private funding streams"(https://www.langeloth.org/). This foundation was chaired by John Langeloth Loeb Sr. -- according to the New York Times, "a leading member of the investment community who was long the head of the Wall Street firm of Loeb, Rhoades & Company, a predecessor of Shearson Lehman/American Express (Pace, 1996). Langeloth was married Francis Lehman, daughter of Arthur Lehman of the infamous Lehman Brothers investment banking company (Gelder, 1996). It's trustees also included Henry A. Loeb, an investment banker, and John Loeb, Jr., son of John Sr. and Francis Lehman, who was also a Wall Street investment counselor (“Ambassador John L. Loeb, Jr.,” n.d.).

The repeal of the Rockefeller Drug Laws would have been a radical, systemic transformation that decriminalized drug offenses, emptied and closed prisons. In the late
2000s, Drop the Rock celebrated a hard fought battle to *reform* the drug laws, and a significant change that came out of this work was the increased use of and funding for drug courts. To the extent that prison abolition and decriminalization are anti-capitalist social movements, the links between the CA and the Wall Street foundations that fund it help explain the turn to drug court reforms of the Rockefeller Drug Laws. Drug courts are reformist reforms that neither confront nor challenge race and class inequalities, or the structures that produce them. Drug courts, as shown in chapter 3, articulate a race-and-class-blind, efficiency-oriented therapeutic solution to mass incarceration and its social and economic costs. This “solution” is very much aligned with neoliberal ideas around cost-benefit analysis, and functions to expand and refine the rolling out of the carceral state to manage and contain the surplus populations created by racial capitalism.

New York City drug courts are further implicated in the Nonprofit Industrial Complex through their support by The Center for Court Innovation (CCI), a public private partnership between the New York State Unified Court System and the private nonprofit Fund for the City of New York (Center for Court Innovation, 2011). Like the foundations behind the CA, the Fund for the City of New York (FCNY), established by the Ford Foundation in 1968, is run by elites from the corporate and investment world, as well as prominent lawyers, judges, and academics. The chair of FCNY, Vaughn C. Williams, is from Counsel, Skadden, Arps, Slate, Meager & Flom., a prominent corporate law firm whose clients include some of the world’s largest commercial banks, investment banks, insurance companies, finance companies, investment and merchant banking firms, private investment funds and other institutional lenders and investors, as well as
LBO sponsors, private equity funds, hedge funds, strategic buyers, borrowers and issuers of securities (Skadden.com, n.d.).

Another important drug court advocacy organization, National Association of Drug Court Professionals (NADCP), is a nonprofit with even deeper connections to the corporate world. The NADCP is a non-profit founded in 1994 by a group of drug court judges who "tirelessly championed a new justice model that works significantly better than business as usual". It claims to have "forever changed the face of the justice system" (nadcp.org) through the development of 2,734 drug courts across the country. It also runs the nonprofit National Drug Court Institute (NDCI), "the preeminent source for comprehensive training and cutting-edge technical assistance to the entire Drug Court field" (ibid). There is nothing decriminalizing or abolitionist in the NADCP's rhetoric or goals, as their focus is not on the complex interconnections between poverty, race, and incarceration. Rather, their focus is on the delivery of justice:

With its heart and grit, NADCP has greatly influenced not only every Drug Court and problem-solving court in the nation, but sparked and advanced enduring principles that have forever changed how justice is delivered in the courtroom to those who need help (National Association of Drug Court Professionals, n.d.).

Though the board of directors of this nonprofit consists almost entirely of insider judges and lawyers, it also includes retired General Barry R. McCaffrey, president of BR McCaffrey Association, a for-profit consulting agency with strong ties to both the military and corporate sector, which provides strategic planning support to client CEOs, Board Chairmen, and senior corporate leadership. We will help build linkages between government and
private sector clients; design public relations, media, advertising and legislative strategies; and provide client specific analysis of U.S. and international political and economic issues (BR McCaffrey Associates LLC, n.d.).

The presence of the president of such a firm on the board of trustees of this nonprofit is indicative of the deep penetration of the drug court reform movement by those with substantial stakes in racial capitalism. The drug court NPIC provides an avenue for elites to use their wealth and influence to advance race- and class-blind reform to social problems that neither threatens existing hierarchies nor the logic of racial capitalism itself.

But the drug court NPIC, like that of charter schools, also creates and promotes new markets within the public sector. Domingo Herriaz, director of Government & Enterprise Funding for Motorola Solutions, Inc., also sits on the NADCP board of directors. Motorola Solutions, Inc. is a for-profit corporation that provides technology and services to a wide range of government and private sector organizations:

Motorola Solutions serves both enterprise and government customers with core markets in public safety government agencies and commercial enterprises. Our leadership in these areas includes public safety communications from infrastructure to applications and devices such as radios as well as task-specific mobile computing devices for enterprises (Motorola Solutions, n.d.).

The connection to Motorola illuminates a new layer of involvement with the NPIC. Not only do the nation’s largest drug court advocacy and development organizations represent the interests of corporations and finance through their board membership and foundation connections, but the presence of Motorola Solutions provides a direct link to the market
for technologies used by modernizing police forces, such as vehicle modems police use to
gather data, as well as the LEX 700 Mission Critical Handheld, which “delivers street
ready data” to officers:

Criminals are getting more sophisticated and more dangerous. Disaster can strike
at any time. To respond effectively, public safety personnel need tools that they
can count on for up-to-the-minute information and let everyone have the same
operational view – whether they are on opposite sides of a building or on the other
side of town (ibid).

Motorola Solutions also provides state and local police departments with surveillance
tools based on RFID technology (Radio-Frequency Identification), which allow officers
to identify and track drug court clients. The traditional use of the term industrial complex,
e.g. the Military Industrial Complex or the Prison Industrial complex, points to
connections between government and big business that “determine the course of
economic development and political decision-making for the country” (Gilmore, in
INCITE! 2007, p. 42). That is, the term embodies the potential influence of private sector
stakeholders on the form, content, and intent of domestic and foreign policy. The NPIC,
through its advocacy work around drug courts and charter schools, advances reformist
reforms that not only redirect radical movements, but also create new markets. Industries
whose pecuniary interest lies in the expansion of these new markets will in turn use their
wealth and influence to finance and champion the nonprofits that are advocating the
reform. Thus, the profit to be garnered from policing and surveillance technology makes
Motorola a stakeholder and active participant in drug court proliferation and the growth
of the carceral state.
Motorola is not alone in its vested interest in the expansion of drug courts and the carceral state. As with almost all nonprofits, the NADCP is financed by the philanthropy of a host of corporate donors. Big pharma remains a strong supporter of drug courts because their embrace of the medicalization of drug use expands the market for drugs designed to “cure” addiction. Alkermes, one of the largest donors, is a pharmaceutical company that ranks its development of drugs for treating opioid and alcohol dependence among the “five key commercial products that are the drivers to propel our company’s growth” (alkermes.com). Corporate sponsors Siemens, ThermoFisher Scientific, Advanced Computer Technologies (ACT), Immunalysis, Forensic Fluids, Integrated Management Solutions (iMS), DTPM, Call2Test, and eLab Solutions develop and sell diagnostic drug testing technology and laboratory equipment relied on by drug courts as they monitor their clients’ progress. CRC Health, another donor, is a private for-profit healthcare provider specializing in substance abuse treatment programs amenable to the therapeutic jurisprudence of the drug court paradigm. Finally, R.A.D.A.R. System, Total Court Systems, BI Incorporated and Scram Systems sell surveillance equipment. For instance, BI offers a tamper-proof ankle bracelet with a built in GPS for monitoring the movement of drug court clients who might be restricted from traveling to certain parts of the city or on house arrest (bi.com).

**Conjuncture within the Nonprofit Industrial Complex**

Tabb (1982) speaks of economic restructuring as a “single reality” of creation and destruction, and the Nonprofit Industrial Complex that has sprung up around charter schools and drug courts is both produced by, and seeking to mitigate, crises engendered by neoliberal creative destruction. If, as Hall et al. (1978) and Clarke (2010) argue, a
crisis is a point at which different tensions, antagonisms, and contradictions come together, the NPIC too embodies this conjuncture. The NPIC was a response to multiple crises that accompanied the dismantling of welfare state and the rise of the neoliberal state, and drug courts and charter schools are two key sites, within the larger state apparatuses of education and crime control, where this industrial complex is perhaps most clearly pronounced.

The shift to neoliberalism has brought with it, first and foremost, a number of economic crises. The NPIC emerged out of the austerity that was visited upon New York City, and the devastating cuts the city and state made to social welfare. Nonprofits stepped in to manage the social instability caused by round after round of austerity, disinvestment, and dispossession. They provided much needed social services to vulnerable populations of poor people of color living in the deteriorating urban core. In doing so, they militated against the potential racial crisis created by civil rights movements and urban upheavals, and helped maintain the modicum of social stability that racial capitalism needs to function. The growth of nonprofits in New York City also absorbed and professionalized grassroots radical organizations and movements like the Small Schools Movement and Drop the Rock, incorporating them into the architecture of the state and the logic of racial capitalism. Activists became salaried professionals, and the scope of change that organizations were able to work towards was constrained by limits imposed by government grant requirements and the power of foundation donors. Furthermore, the state and elites are able to use the NPIC to mitigate their own crisis of political legitimacy by co-opting the civil rights rhetoric of these and other movements and using it to frame reformist reforms that actually maintain status quo power relations.
A more traditional industrial complex built up around this sector as elite foundations pumped billions into nonprofits to expand their control over the form and content of social policy as well as to open new markets and spaces for profit extraction. The opening of new markets, as David Harvey (2003) points out, is a key strategy in dealing with crises of overaccumulation in which capital lies dormant with limited opportunity for profitable investment. The NPIC, as exemplified by charter school and drug court reform, embodies the “complex links" that make up these multiple crises, and reflects how the state and capital realign themselves in shifting strategies to manage crisis (Hall et al., 1978; Clark, 2010). The NPIC is a key area of conjuncture in how education and drug policy reforms have been imagined and deployed by the state and powerful elite actors as solutions to the bundle of crises entangled within the dynamics of racial capitalism.

Towards a Conclusion: Official Antiracism and the Neoliberal Subject

This dissertation has focused on neoliberalism as a historically specific political project for restructuring society in order to establish new conditions for profit accumulation. It has examined the discursive deployment of neoliberalism in education and criminal justice as a set of market discourses braced by racial ideologies around the culture of poverty and criminalization; it has also analyzed how the conjuncture of capitalism and racism shapes the content, form, and intent of education policy, drug policy and reform. In this final section, I wish to conclude this critical policy analysis with a consideration of the relationship between education, drug policy, and the official anti-racism of the state.

Official antiracism, according to Melamed (2006), is a way of thinking about the race paradigm taken up by the state- that is, how the state frames racial inequality, and
the kinds of the solutions it puts forth. Official anti-racism is bound up with neoliberal discourse around individualism, free markets, and non-interventionist government—a discourse that has become “hegemonic,” having “persuasive effects on ways of thought to the point where it has become incorporated into the common-sense way many of us interpret, live in, and understand the world” (Harvey, 2005, p. 3). By prescribing limits as to what is good, possible, and real in the world (Therborn, 1980), official antiracist discourses merge with neoliberal ones, and orient us towards certain conceptions and forms of racial and economic justice and away from others. If, as Harvey (2005) reminds us, the role of the state is to provide an institutional framework that supports and protects neoliberal projects of capital accumulation, then the official antiracism of that framework must encourage a way of thinking about racial inequality that somehow supports and protects disinvestment in the urban core and the extensive dispossession and policing of poor people of color. Melamed (2006) uses the term neoliberal multiculturalism to describe the management of neoliberalism’s racial contradictions. Neoliberal multiculturalism

sutures official anti-racism to state policy in a manner that hinders the calling into question of global capitalism, it produces new privileged and stigmatized forms of humanity, and it deploys a normative cultural model of race (which now sometimes displaces conventional racial reference altogether) as a discourse to justify inequality for some as fair or natural (p. 14).

For Foucault, structures themselves cease to contain power but rather provide connected stations or sites for dominant logic to gain power by circulating through all corners of everyday life. Thus, traditional public schools, charter schools, prisons, and drug courts
circulate the hegemonic declaration of race-neutral policies while giving these ideals local concrete applications, thus forming human subjects at any site as “both objects and instruments” of the “exercise” of power (Foucault, 1977, p. 70). That is, this discourse both acts upon people and constitutes them as agents of the values promoted to them, so as to orient thought and action to support this particular historical phase of racial capitalism.

Drug and education policies, as well as drug court and charter school reforms, have carved out “new categories of privilege and stigma” that work upon individuals and groups as “racial procedures” (Melamed, 2006, p. 2) that shape understanding in order to rationalize the racial organization of the political economy (Leonardo, 2009). The Rockefeller Drug Laws and the ensuing drug war criminalized people of color at the same time that they restored white supremacy to the offensive after its defensive setbacks during the liberation-oriented Civil Rights and Black Power events of earlier decades. The official antiracism of the state was articulated within racially coded “law and order” rhetoric that simultaneously positioned people of color as the targets and the beneficiaries of this initiative because it claimed to make neighborhoods safer for poor people of color by eliminating the scourge of drugs, crime, and gangs. But, in addition to laying the foundations for mass incarceration, such a criminalization project discredited the demands of the civil rights movement for economic and racial justice, and turned many middle-class and working-class Whites against the welfare state and the war on poverty by blaming urban crises on impoverished African-Americans. Criminalization objectified urban poor people of color as threats to themselves and their neighborhoods (among other things), and thus positioned them as the legitimate targets for the intensified policing and
mass incarceration that would come as the drug war exploded in the 1980s and 90s. Criminalization recentered whiteness as the decent backbone of society, in contrast to the deviance of the urban (read Black) drug dealer, “welfare queen,” and predator responsible for derangement and harm in society. Furthermore, to the boon of elites, in order to “preserve their subjective advantage,” White laborers chose whiteness over the long-term class interests that a multiracial campaign for economic justice represented (Leonardo, 2009, p. 50). Cross-racial collaboration, perhaps capital’s oldest foe, from Bacon’s multi-racial rebellion in 1676 to the abolitionism of the 19th century to the Civil Rights Movement of the 1960s, was undermined by the wedge of racism.

At the same time, the Elementary and Secondary Education Act (ESEA) and its various reauthorizations lent a similar materiality to hegemonic racial representations. Through education policies ranging from ESEA of 1965 to NCLB in 2002 and Race to the Top in 2009, urban poverty was continually re-imagined and treated as a symptom of a widespread culture of poverty among African Americans and Latinos. Poor youth of color were represented as underachievers at the low-end of the so-called “achievement gap”; their deficiencies were the first designated cause of their educational failures and inability to rise out of poverty. In a later phase, the dominant narrative would expand to finger teachers with low expectations and parents with poor family supervision as the culpable deficits targeted by policy. The practices that emerged from these discourses have had material consequences for poor youth of color in New York City, who face a narrowed curriculum of basic skills, high teacher attrition rates, rote test prep, high rates of suspension, zero-tolerance policing in schools, and disproportionately high dropout rates. Test scores and graduation rates are reconstructed into a discourse around the
“achievement gap,” the narrowing of which emerges as a form of official anti-racism that crowds out discussion of the impact of structural racism and macroeconomic policy on schooling. Again and again, through criminal justice and education, neoliberal subjects are oriented away from critiques of racial capitalism, and towards explanations of inequality that emphasize individual and cultural (read racial) deficits.

Similarly, reformist reforms like drug courts and charter schools are the building blocks of a vast discursive terrain set against structural critique and collectivism. They encourage the individual responsibilization of risk, and are engaged in the production of neoliberal subjects: self-surveilling, self-managing “entrepreneurs of ourselves” (Foucault, 2010). Drug courts offer a solution to problems of drugs, crime, and the costs of mass incarceration by governing an increasing number of people through a mix of coercion and what Nikolas Rose (2007) terms “ethopolitics” or “attempts to shape the conduct of human beings by acting upon their sentiments, beliefs, and values- in short, by acting on ethics” (p. 27). Mass incarceration is expensive, and its costs and racial disparities have gained much attention lately in the mainstream media and from politicians like Andrew Cuomo who feel its political and economic strain. Drug courts, as fiscally appealing adjuncts to the carceral state, combine the threat of incarceration with therapeutic jurisprudence in order to enforce the need for clients to take on “reflexive practices which maximize self-improvement” (Mackenzie, 2008, p. 515). Official anti-racism is articulated as coerced self-help, as self-reliant individuals, under the guidance of a benevolent but tough-loving judge, improve their lot through pure grit and determination. Incarceration is depoliticized, deracialized, dehistoricized. There are neither ideological nor material dimensions to one’s vulnerability to arrest and
incarceration; rather, arrest, incarceration, and/or graduation from drug court are outcomes determined by the extent to which individuals take responsibility for the risks they themselves have created by virtue of their deviance. As with charter schools, individual choice is the palliative by which structurally configured risk is attenuated.

Both drug courts and charter schools articulate an official antiracism grounded in the expansion of choice. Charter proponents like Arne Duncan and others have gone so far as to claim school choice as the “civil rights issue of our time.” It remains to be seen whether drug courts, given the increasing unpopularity of the drug war and the unprecedented success of Michelle Alexander’s (2010) best-selling critique of racialized mass incarceration, will make similar claims around being the antidote to the “New Jim Crow.” Regardless, both reform movements couch their coercion in an oddly race-blind rhetoric of choice-as-antiracism. Drug courts lean on a mix of therapy and prisons to coerce individuals into taking responsibility for the risks associated with choosing in the marketplace of behaviors. Charters similarly lean on the muscle of the state, as high stakes testing, punitive accountability mechanisms, and school closures coerce families into the educational marketplace where they must take responsibility for finding a quality education for their children. Within this paradigm of official antiracism, economic and racial justice vis-à-vis education are reframed as the injection of choice and competition into the public school system. As the state increasingly divests itself of responsibility for providing quality education to youth of color in poor neighborhoods, official anti-racism takes shape as school choice. Within such an official anti-racism, however, parents of color must take responsibility for protecting their children from the risks associated with bad schools by choosing good ones. School choice is antiracism repackaged into a form
of “benign neglect” that braces up abandonment by incorporating families further into the atomizing logic of neoliberalism.

Furthermore, the persistent rhetoric linking human capital development to global competitiveness means that parents and youth are responsible not only for protecting themselves from the risks associated with a sub-par education, but also must take responsibility for the risk their potential loss of human capital poses to the global military and economic dominance of the U.S. In 2012, *U.S. Education Reform and National Policy*, a report authored by a task force chaired by former New York City school chancellor Joel Klein and former Secretary of State Condoleezza Rice, linked school choice with national security, stating that "Educational failure puts the United States’ future economic prosperity, global position, and physical safety at risk." Pinpointing the low test scores and high dropout rates of African American and Latino students, the report notes that

> Human capital will determine power in the current century, and the failure to produce that capital will undermine America's security… Large, undereducated swaths of the population damage the ability of the United States to physically defend itself, protect its secure information, conduct diplomacy, and grow its economy.

The risk posed by “undereducated swaths” of African American and Latino youth can be diminished by the expansion of charter schools, for “enhanced choice and competition… will fuel the innovation necessary to transform results.” Here again we see what Melamed (2006) refers to as the “suturing” of “official anti-racism to state policy in such a manner that hinders the calling into question of global capitalism” (p. 14). School choice is a
form of official anti-racism that shifts onto the very shoulders of the dispossessed individual responsibility for the risks engendered by their own dispossession.

To become dominant, or “strong”, Bourdieu suggests that neoliberal theory must appear “desocialized and dehistoricized at its roots” and must ensure for itself “the means of making itself true and empirically verifiable.” It therefore becomes “an immense political project” that “aims to create the conditions under which the ‘theory’ can be realized and can function” (Bourdieu, 1998, p. 2). The official anti-racism of drug courts and charter schools suggests that this is also a racial project. These reforms rationalize the risks and harms spawned by racial capitalism by reframing them as issues of individual responsibility occurring in an open marketplace of choices. They mobilize an official anti-racism to deracialize (Melamed, 2006) conditions that are in reality produced by the interplay of capitalism and racism.

Certain understandings of race are constructed through criminalizing, stigmatizing, and deficit-oriented discourses, and these understandings are both produced by and reflected in the form and intent of education and drug policies, and their attendant reforms. Education and drug policy share a deep embeddedness within the ongoing reconstruction of privilege and stigmatization that keep the larger neoliberal project churning along. They join together as interconnected material and ideological projects that brace up this historically specific phase in racial capitalism known as neoliberalism.

**Conclusion**

This dissertation has argued that the institutional spheres of education and criminal justice are not as separate as they may seem. Indeed they by and large fall under different academic gazes, and involve different sets of professionals and other actors
thinking about, working in, and otherwise navigating the limits and possibilities of different public and private sector landscapes. I’ve tried to show how education policy and drug policy are related within the “big picture” of the racial capitalist dynamics of neoliberal urbanization in New York City. Education and drug policies have been treated as core constitutive elements within the broader neoliberal project of creative destruction. They are part and parcel of the neoliberal project to enhance the class power of elites and reinforce racial hierarchies. They have worked in tandem to transform the welfare state into a neoliberal institutional framework better suited to accommodate new forms of capital accumulation and provide the social control such accumulation requires.

Following Foucault, Steven J. Ball (1993) reminds us that we need to attend to “the way in which policy ensembles, collections of related policies, exercise power through a production of ‘truth’ and ‘knowledge’, as discourses” (p. 7). Citing Foucault (1977, p. 49), Ball reminds us that discourses are “practices that systematically form the objects of which they speak.” Thus drug and education policies, as a policy ensemble, use discourse to establish regimes of truth “about what can be said, and thought, but also about who can speak, when, where and with what authority” (p. 7). Education and drug policy, and their respective reformist reforms, discursively construct what Freire (1970) refers to as “limit situations” that shape how humans “come to define the world and their situation and possibilities in it in a particular way” (Therborn, 1980, p. 10). They orient us towards certain ways of thinking about ourselves, the world, and our place in that world. Extending Foucault’s (1977) argument about the disciplinary power of prisons beyond the prison walls, this dissertation contends that neoliberal education and drug policies discipline large numbers of people by working within, but also across and
outside of, the generally perceived limits of their institutional spheres and gazes.

What then is to be done? In one of her last personal communications to me, Jean Anyon wrote “I think that part of the political economy of NYC is the need for a work force that is disciplined to blame itself for its joblessness” and poverty (September 2, 2013). This dissertation has focused on how drug laws, prison building and filling projects, education policies, the standards-testing-accountability regime, and reformist reforms like drug courts and charter schools, have served together, both materially and ideologically, to manage surplus populations and mitigate crises within a particular historical period of racial capitalism. An important function of this ensemble of cages and classrooms has indeed been to individualize blame- that is, to depoliticize, dehistoricize, and deracialize joblessness and poverty. Returning to Freire’s (1970) concept of limit situations, I’d like to posit that as critical educators we must begin to look at the carceral and the educational as limit situations that are bound up together, intertwined- and that their strength as oppressive forces in society emerges from their braided nature, the same way that the strength of a rope does. Jean Anyon was always quick to point out that contradictions are opportunities for resistance and social movement building, and the educational-carceral nexus described here is no more immune to contradictions than it is natural and immutable. Contradictions, once uncovered, can become sites for deep critical inquiry, and, eventually, through a praxis of reflection and action, can mobilize into projects for economic and racial justice. But first, to draw out the contradictions, there must be dialogue- that crucial democratic and loving practice Freire called “naming the world.” It is my hope that this dissertation will stimulate dialogue, perhaps among those who have never spoken, so that new, different braids can form, because strength
from below grows in the same way.

“The domination implicit in dialogue is that of the world by the dialoguers; it is conquest of the world for the liberation of humankind.”

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