

The New Penology Revisited: The Criminalization of Immigration as a Pacification Strategy



Alissa R. Ackerman¹, Meghan Sacks², and Rich Furman³

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Abstract

The New Penology is a set of criminal justice policies that focuses on risk management and control of certain groups of people. Scholars have noted the existence of these strategies since the early 1990s. One population for whom these strategies is most apparent is undocumented immigrants in the United States. First, this article outlines the new penology as it related to undocumented immigrants. Next, it offers an explanation of pacification strategies as they relate to policy and finally, the article provides a new theoretical explanation for current immigration policy. The authors argue that pacification strategies lead to the existence and popularity of new penological strategies.

¹ Social Work Program, University of Washington, Tacoma

² Department of Criminal Justice, Fairleigh Dickinson University

³ Social Work Program, University of Washington, Tacoma

Corresponding Author: Alissa R. Ackerman

University of Washington, Tacoma

1900 Commerce Street

Box 358425

Tacoma, Washington, 98402

Ackerma1@u.washington.edu

253.692.4373

Introduction

The prison population has increased dramatically over the last thirty years. This rapid increase has created, and has simultaneously been created by, the development of the prison industrial complex (Bacon, 2005). Paradoxically, the increasing power and influence of this often for-profit system has developed while the rates of violent crimes have decreased. In response to the need to create more “consumers,” the phenomenon of over-incarceration has expanded to include undocumented immigrants and other non-residents currently residing within U.S. borders (Furman, Ackerman, Loya, Jones & Negi, 2012; Simon, 1998). Similarly, the criminalizing of this nation’s immigrants has played a prominent role in how the immigrant “problem” has been created and handled (Furman, Negi, & Cisneros-Howard, 2008). These factors have led to the problematization of undocumented immigration. As part of this problematization, various in-power groups have created erroneous links between immigration and crime (Mittelstadt, Speaker, Meissner, & Chisti, 2011; Sekhon, 2003; Sinnar, 2003; Tumlin, 2004).

Criminalizing immigration has rapidly accelerated since September 11th (Furman, & Sanchez, 2012), which has fed and led to the need to expand the system of criminalization and detention, which first began to expand in the 1980s. Bosworth and Kaufman (2011) write that it was the creation of Miami’s Krome Avenue Detention Center and the processing and detention of the Mariel refugees from Cuba in the early 1980s that was the initial impetus for creation of immigration detention. As post September 11th collective sentiment toward undocumented immigrants has largely soured and a problematization discourse has gained traction (Innes, 2013), the Immigration and Customs Enforcement (ICE) has partnered with the private prison industry to detain immigrants. Some scholars have argued that this movement is part of a “new penology” where immigrants are determined to be a dangerous and risky segment of the population that must be controlled. For instance, Welch (2000) states that:

Whereas traditional penology stems from criminal law and criminality that has emphasized punishing and correcting individual offenders, the new penology adopts an actuarial approach in which specialists assess the risks of specific criminal subpopulations (p.74).

Applying the theory of the new penology to the criminalization of immigration has considerable strengths. It demonstrates how undocumented immigrants have become a group which is now targeted for control as a risky population. While

using the new penology lens has great explanatory power, it does not fully account for all aspects of the criminalization of immigration, as its primary focus is on the control and incarceration of immigrants, and not on the function that the criminalization of immigrant holds for political forces, its impact on the general public and subsequent behavior and “mood”. That is, “othering” and criminalizing immigrants has frequently served the instrumental aim of pacifying growing discontent within the native, non-immigrant population as a means of drawing their attention away from structural social problems. As a strategy of pacification, the criminalization of immigration serves to maintain the political status quo through scapegoating undocumented immigrants for social upheaval, insecurity, terrorism, economic downturns, and ultimately crime (Nielsen, 2009; Sanchez, Furman, & Ackerman, 2013).

The purpose of this article is to illustrate how immigrant detention is a strategy of pacification. This explanation does not conflict with new penology explanations, but instead provides a new focus for investigating the criminalization of immigration. This article will meet its aims in the following ways. First, we shall present a brief exploration of the history of immigration detention and its relationship to the prison industrial complex. Second, we shall examine the arguments of the new penology in general, and demonstrate its application to the incarceration of immigrants. Third, we explore how the criminalization of immigration can be more fully understood as a pacification strategy than by the new penology. Next, we suggest that it is the use of this aforementioned pacification strategy that fuels the new penology. Finally, we explore the consequences of these ideas as they relate to the well-being of immigrant detainees and the general public.

Immigration and the Prison Industrial Complex

There are currently around 2.3 million people incarcerated in the U.S. today. This amounts to an incarceration rate of 716 per 100,000 individuals (International Center for Prison Studies, 2012), and does not include the roughly 33,000 people detained everyday by U.S Immigration and Customs Enforcement (ICE) (National Immigration Forum, 2012). ICE, a sub agency under the Department of Homeland Security, notes that its mission is:

to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration. The agency has an annual budget of more than \$5.7 billion dollars, primarily devoted to its two principal operating components - Homeland

Security Investigations (HSI) and Enforcement and Removal Operations (ERO) (ICE, 2013).

The detention of immigrants and non-citizen residents in the United States is nothing new, nor is the use of incarceration as the primary means of punishment for citizens. Our history of incarceration and detention was the impetus for the development of the prison industrial complex (PIC), which is defined by the accelerated use of incarceration and the exponential increase of the prison population (Ackerman, Furman, Judy, & Cohen, 2013). Similarly, Schlosser (1998) explains that:

The United States has developed a prison-industrial complex—a set of bureaucratic, political, and economic interests that encourage increased spending on imprisonment, regardless of the actual need...It is a confluence of special interests that has given prison construction in the United States a seemingly unstoppable momentum...It is also a state of mind. The lure of big money is corrupting the nation's criminal-justice system, replacing notions of public service with a drive for higher profits (para. 7).

It is in this way that one can view the development of the privatization of immigration detention as an integral component of the neo-liberal movement toward the privatization of state services (Furman, 2003). Proponents contend that the private sector can more efficiently provide services than the government, leading to cost containment and the reduction of the federal budget and debt (Blacky & Bumphus, 2004). Others, congruent with the thesis of this paper, argue that the privatization of detention leads to for-profit companies seeking to maximize their profit and grow the system of incarceration (Lundahl, Kunz, Brownell, & Van Vleet, 2009). The overall incarceration rate in the United State has decreased in the last several years. According to the International Centre for Prison Studies (2012), the U.S. incarceration rate recently fell from 756 per 100,000 individuals just a few years ago to 716 per 100,000 in 2012. This is the first drop in the state prison population since the 1970s (Justice Policy Institute, 2011). Private prison companies obtain the most revenue from state prison contracts and it stands to reason that as state prison populations decrease, so too will profits. To this end, it is essential that profit streams continue to flow. Immigrant detention and the criminalization of immigration provide such a profit stream. In 2010, the CEO of The GEO Group, the second largest private prison corporation in the United States, stated that "...those people coming across the border and getting caught are going to have to be detained and that for me, at least I think, there's going to be enhanced opportunities for what we do" (Sullivan, 2010, last para.). Approximately 12% of the federal prison population is currently comprised of individuals convicted

of or awaiting trial for immigration offenses (Federal Bureau of Prisons, 2012). There are conflicting reports as to how many immigrant detainees are housed in private facilities. According to ICE, 17% of individuals detained by them are housed in contract, or private facilities in 2012 (Immigration, Customs, and Enforcement, 2012). However, an Associated Press report from the same year suggests that nearly half of immigrant detainees were held by private prison corporations (Burke & Wides-Munoz, 2012). The evidence suggests that immigrant detention has been a successful venture for the private prison industry. The partnership between government entities and the private prisons industry has set the stage for a prison industrial complex of great complexity and enormity. The undocumented immigrant is now a primary target of the prison industrial complex and the stage has been set for scholars to unpack why. The remainder of this paper seeks to examine two possibilities.

The New Penology

The New Penology is defined as the management, surveillance and control of specific groups of people (Feeley & Simon, 1992). In this regard, it is not the goal of the system to punish or rehabilitate, rather, it is about identifying and managing recalcitrant groups. The shift away from the old penology is explained by a myriad of factors. Rehabilitation was the dominant model of the criminal justice system for several decades prior to the mid-1970s (Tonry, 1996; Travis, 2005), when some notable research in the field of criminal justice concluded that rehabilitation had been ineffective (Bertrall, 2006; Martinson, 1975). In addition, evidence of sentencing disparities surfaced in the 1970s and 1980s (Ruback & Wroblewski, 2001; Tonry, 1996) and civil rights activists raised concerns that disparities in the criminal justice system were a consequence of racial and class biases (Tonry, 1996). Frustration over the failure of rehabilitation, increasing evidence of sentencing disparities and a rising crime rate lead to a public movement for harsher sentencing legislation (Travis & Lawrence, 2002). The result was a noticeable shift from rehabilitation to retribution and incapacitation (Auerhahn, 1999).

According to Feeley and Simon (1992), danger management is a part of the move from the old penology to a new penology. The failed practices of the 1960s and 1970 focused on the individual but the backlash was a shift of focus to predictions of dangerousness, utilizing methods of surveillance and control. The result of this shift is the use of statistical averages and aggregations to determine fixed sentences. Many sentencing schemes are now based on guidelines that use

offense severity and prior criminal history to decide sentencing ranges (Feeley & Simon, 1992).

Feeley and Simon (1992) describe three major transformations that accompanied the shift from old penology to new penology: the language of clinical diagnosis has been replaced by the language of probability and risk; the goal of reducing recidivism is abandoned for an increasingly efficient system of control; and the strategy of targeting individuals has been replaced by a focus on aggregate populations of offenders. The techniques used by practitioners have changed to accommodate these new objectives. More specifically, incapacitation is utilized as the most cost-effective technique for control. According to Auerhahn (1999), incapacitation is extremely compatible with risk management, as both of these objectives can be achieved by employing the other. Selective incapacitation policies focus on distinguishing between high and low-risk offenders and according to Simon and Feeley (1992), these policies are strong evidence of the shift to new penology.

Selective incapacitation policies moved to the forefront of the criminal justice system in the 1980s. These policies seek to identify and incapacitate high rate offenders at the height of their offending in order to reduce crime (Von Hirsch, 1998). The selective incapacitation rationale can be traced to a Philadelphia cohort study conducted by Wolfgang, Figlio, and Sellin (1972), in which they followed a birth cohort of boys in Philadelphia and concluded that 51.9% of all offenses were committed by just 6.3% of the entire cohort. The findings laid the foundation for the literature on the “career criminal” and brought attention to selective incapacitation but it was the study by Greenwood and Abrahamse (1982) of the RAND Corporation that launched the popularity of selective incapacitation policies. The authors administered self-report surveys to incarcerated robbers and burglars and learned that they had committed very high numbers of crimes before apprehension. Greenwood and Abrahamse (1982) argued that the identifying and incarcerating high-rate offenders for a long time would reduce the overall crime rate.

This study gave rise to selective incapacitation and led to an ongoing debate over its merits (Auerhahn, 1999, Chaiken & Chaiken, 1984; Tonry, 1996; Von Hirsch, 1984, 1998). However, while the RAND study seemed to provide strong support for selective incapacitation strategies, a closer look revealed many flaws, such as the general limitations associated with self-report surveys (Von Hirsch, 1998), the lack of detailed information described by Greenwood and Abrahamse in official records (Chaiken & Chaiken, 1984), and the potential inflation of estimates crimes committed (Von Hirsch, 1998). The problems with selective incapacitation policies

extend way beyond this study though and of particular concern is that risk assessments are not always accurate (Auerhahn, 1999). Specifically, when high-rate offenders are incorrectly labeled low-rate offenders, known as false negatives or “underpredictions”, public safety is at risk and when low-rate offenders are incorrectly labeled high-rate offenders, known as false positives or “overpredictions”, there is a risk of improper incarceration or punishment. Surprisingly high rates of false positives exceeding 50% have been found in several studies (Cohen, 1983; Kozol, Boucher, & Garofalo, 1972; Monahan, 1981). In addition to the problem with prediction, critics argue that selective incapacitation policies have resulted in drastic increases in incarceration that exacerbate sentencing disparities (Tonry, 1996; Western, 2006). Nevertheless, selective incapacitation policies are utilized in all facets of the criminal justice system and as Feeley and Simon (1992) indicate, they are representative of new penology.

Feeley and Simon (1992) argue that new penological practices can be observed in many areas of the criminal justice system. They reference the case of *United States v. Salerno* (1987), in which the Supreme Court opined that bail could be denied to criminal defendants based on potential dangerousness, thus authorizing the use of preventive detention. According to Simon and Feeley (1992), the Court’s decision reflects their interest in managing risk as opposed to dealing with an individual. Feeley and Simon (1992) also reference the widening of the “carceral net” created by the increased use of incapacitation, probation and parole to support their argument that there has been a noticeable shift to the objective of risk management. Feeley and Simon (1992) argue that the expansion of community corrections is a method for exerting long-term control over a dangerous population. Recidivism used to be treated as failure but in the current penological landscape, parole revocation means that law enforcement have successfully identified the risk and it can therefore be managed in the long-term.

Simon and Feeley (1992) offer other examples of new penological practices, including the use of boot camps and the increased reliance on electronic monitoring. They suggest that evidence of new penology can be observed in all facets of the criminal justice system but some scholars challenge whether there is anything seminal about the new penology, indicating that actuarialism and risk prediction are long-established practices in the criminal justice system (Garland, 1995; Cheliotis, 2006). While some debate the merits of new penology, other studies have found that traditional penal practices have not been replaced by new penological practices. For example, Lynch (1998) concluded that parole officers have not become “waste managers” but rather they adhere to the individualistic

approach, while Inderbitzin (2007) found that efforts at rehabilitation at a juvenile correctional facility remained intact. However, a growing body of research, including studies on parole (Simon, 1993), sex offenders (Simon, 1998; Lacombe, 2008), and the juvenile justice system (Kempf-Leonard & Peterson, 2000), have found evidence of new penological practices and document the populations that have been penetrated by new penology. The immigrant “other” has become the newest target of the new penology. This obviously includes the undocumented, but may also include refugees, asylum seekers, and even U.S. citizens that appear to meet some physical or ethnic criteria. The following section discusses the new penology in the context of the criminalization of immigration.

The New Penology, the Criminalization of Immigration and the Detention of Immigrants

In 1998, Simon warned of the re-emerging practice of locking up immigrants as a penal strategy. In this seminal piece, Simon first linked the practice of immigrant detention to the mass incarceration phenomenon the United States had been witnessing for almost twenty years. As noted, the undocumented are not the only target of the criminalization of immigration. Refugees, asylum seekers, green card holders and U.S. citizens alike have been targets of this policy. Miller (2003) contends that immigration law enforcement was once thwarted by public and political will to protect refugees and others who were seen as victims of a racially discriminatory immigration policy. Today public and political will has essentially soured. The American public, according to Miller, is now the primary victim of U.S. immigration policy. She states that:

The American Public now represents the primary victim of flawed immigration practices; a victim in need of protection from immigrants draining welfare coffers and failing to culturally assimilate into the white middle-class. Most recently, the public has been victimized by a religiously and ethnically constituted group of Muslim and Arab men. As a result, law enforcement tactics such as racial profiling and preventive detention that would have shocked the nation twenty years ago are tolerated and even condoned as a "necessary evil" for the protection of national security (Miller, 2003, pg. 615).

Ten years after the writing of her seminal work on the subject, Miller’s observations ring true. Anti-Muslim statements and misrepresentations are common. On August 1, 2013, a former Texas Republican Party Chair stated in a radio interview that immigration reform would lead to amnesty for individual from Muslim, Hindu and Buddhist cultures whom she accused of wanting sharia law in the United States.

While this is one extreme example of such sentiments, it speaks to the anti-immigrant rhetoric that belies the true state of affairs. Such sentiments stoke public fear and allow for discriminatory immigration practice and policy.

While Simon (1998) first warned of the new penology as present in immigration policy, Miller (2003) posits a broader framework and furthers Simon's argument in four important ways. She maintains that the priorities of the immigration system have shifted and can be seen by the growth of immigration law enforcement, the targeting of immigrants with criminal background for law enforcement, the increasing percentage of non-citizens being detained, and the paradoxical growth of admittance into and deportation from the United States at the same time. The four suppositions provided by Miller are supported by today's realities. She first suggested that the growth of immigration law enforcement was a testament to the new penology. Today, the U.S. Department of Homeland Security now employs approximately 21,000 border protection agents with the majority of agents stationed at the U.S.-Mexico Border (Department of Homeland Security, 2013). In fact, the number of border protection agents along the southern border now stands at over nine officers per mile of borderlands. Similarly, the number of individuals detained in U.S. Immigrant Detention facilities has increased exponentially from 6,532 in 1990 to an estimated 35,000 in 2012. Similarly, the New Penology is evident in the increased focus or targeting of immigrants with criminal backgrounds. This too can be seen in current immigration policy and practice. ICE clearly states the agency remains committed to removing those individuals who pose the greatest threat to national security (ICE, 2013). According to ICE (2013), 55% of removals from the U.S. in 2012, or 225,390 were convicted criminals. That said, over 36,000 of the criminal aliens deported had driving under the influence as their instant offense. An additional 40,000 had a felony or misdemeanor involving drugs.

The new penology corresponds with and reinforces one of the most profound changes in U.S. incarceration and most importantly in the incarceration and detention of immigrants: the privatization of prisons (Jing, 2010). This phenomenon is apparent in the accelerated growth of the private prison industry (Ackerman & Furman, 2013) and reinforces Miller's third proposition. Furman and his colleagues (2012) argue that both the new penology and the privatization of prisons and immigrant detention centers are compatible with and afford lawmakers the ability to criminalize many aspects of the lives of the undocumented. Since 2011, several states have enacted laws that have done just that (Aman & Rehrig, 2011) and other states continue to weigh in on the debate. These laws have provided the political climate to detain more people. The number of individuals detained has risen

exponentially over the last thirty years and corresponds with the rise in the overall U.S. prison population.

Miller's (2003) final assertion the presence of the New Penology in practice is the paradoxical admittance of individuals into the U.S. while simultaneously deporting masses of people. Just as the number of detainees has increased, so has the number of deportees. In 2012, the Obama administration set a new record when it deported 409,849 people (ICE, 2013). In fact, this administration set new records for the last four consecutive years. While the 2012 statistics on legal admittance to the U.S. have not been made public, 2010 and 2011 statistics indicate that 1,042,625 and 1,062,040 individuals were granted legal resident status, respectively.

While scholars like Simon (1998) and Miller (2003) were correct in their analyses of the presence of the new penology in immigration policy, it is our contention that it is actually the pacification rhetoric which fuels the practices associated with the new penology. That is, pacification has allowed for the mere existence of new penological responses in immigration policy. The next section provides some historical and current analysis of pacification strategies as they relate to immigration.

The Criminalization of Immigration as a Pacification Strategy

As we have explored, the new penology focuses on the control of the immigrant population. However, there are other aims of immigration policy, criminalization and the detention of immigrants. While the new penology focuses on the control of immigrants, political aims often focus more broadly on the voting electorate, their feelings and behaviors. During the most recent national elections, both Republicans and Democrats "used" the undocumented immigration as a vehicle through which to justify their policies and aims. Sanchez, Furman, & Ackerman (in press) explore the instrumental nature of this notion of immigration as a vehicle for controlling sentiments.

The word "use" perhaps connotes a far more casual and consciously nefarious process than we intend; indeed, immigration becomes a strategy whereby citizens are disciplined toward the performance of blaming social inequities and social problems upon undocumented immigrants. This disciplining process is embedded within the structural arrangements and agendas of various political constituents, and operates, sometimes within and sometimes beyond, the conscious intentions of those implicated in social power dynamics. That is, the manner in which undocumented immigration serves as this disciplining mechanism, or a mechanism for the pacification of various constituents, may at

times be an intentional strategy, and at other times is far more subtle, and arguably insidious.

Pacification is a powerful mechanism for social control (Byler, 2005). This pacification of citizens is an important function or “use” not only of immigration discourses, but also of policies and practice. This notion of pacification was fully developed by Neocleous (1996; 2010, 2011A & 2011B) and was applied to the politics of security. Neocleous observed that pacification contains two interrelated approaches: construction and reconstruction, politics and force. Neocleous observed three primary ways in which security achieves pacification: restoring security through political and economic force, deconstruction and reconstruction, and social reconstruction through military and/or police force. These mechanisms have been used historically to control certain populations. He cogently explores the relationship between police power, law and order, when he asserts (2011b).

Holding on to the idea of war as a form of conflict in which enemies face each other in clearly defined militarized ways, and the idea of police as dealing neatly with crime, distracts us from the fact that it is far more the case that the war power has long been a rationale for the imposition of international order and the police power has long been a wide-ranging exercise in pacification. (p. 157).

Pacification, fundamentally, implies making one passive, inert, and mollified. When a baby is given a pacifier, her emotions are mollified; she is distracted from her bodily, emotional, and cognitive experiences by an outside object. In this sense, pacification strategies based upon a discourse of security, serve to distract one from one set of sociological explanations to another. In other words, it is through the process of pacification that a populous comes to ignore their own understanding of the social world and is provided alternative social explanations that are somehow more seductive, satisfying, than their own personal experience. This is described by Sanchez, Furman and Ackerman (2013) as they observed:

The pacifier seeks to mollify or quell the baby, to give the parent some “peace.” A pacified baby is a quiet one, one that does not pay attention to its actual needs and to the operations of the world around them. The use of a pacifier in many ways encourages a blindness to, or the denial of the analysis of, the etiology of the baby’s problem or issue. This notion of pacification, as a tool for providing distraction from the real source of a problem, is a central strategy in utilizing immigration as a vehicle for pacification that we shall later explore. Similar to pacifying a crying baby, the pacification mechanisms discussed below do not address any real source of a problem, nor do they provide any solutions, other than to mollify the American public. Indeed, these mechanisms seem to

serve the interest of the dominant member of the relationship; in this case, with the child, and in the case of immigration, various dominant players reap benefits from the mechanisms of pacification.

Security, both as social and a psychosocial, personal construct is such a fundamental human need that the manipulation of it becomes an enormously effective strategy to divert people from awareness of the root causes of many problems. So central is security, that developmental psychologist Maslow positioned it as one of the most fundamental human need (1944). In his extension of Maslow's work, Gil (1992) more fully articulates the relationship between social institutions which thwart individual's sense of security, by referring to such institutions as "structurally violent." In this sense, the demonization of immigration and its subsequent immigration creates a cultural of perceived violence, where good "law" abiding citizens feel that their very lives are placed at risk by these "illegal alien." The discourse dehumanizes undocumented immigrants, making it easier afford them fewer "human rights."

It is through the extension of the security discourse to the "problem" of immigration that the criminalization of immigration becomes a powerful strategy of pacification. By positioning the immigrant as a dangerous other, citizens can shift their focus from structural causes of the countries economic crisis to problem of undocumented immigrants (Nevins, 2002). The problematizing discourse positions the undocumented immigrant, perhaps the least powerful person in society, as a near omniscient other capable of damaging the very fabric of the American way of being.

Examples of this discourse date back well over 100 years. In the 1870s, Chinese Americans nationally, but most intensively in the Pacific Northwest, were increasingly portrayed in newspapers as violent, secretive sexual predators. The national pacification strategy of blaming the Chinese for one of the greatest recessions in the history of the country, kept the largely uneducated citizens of the region from focusing on the structural problems of the national economy. So indoctrinated in the anti-Chinese discourse were many of the citizens of Tacoma, Washington, that in 1884, a group rounded up all the Chinese living in the city, and expelled marched them out of town through driving rain. What soon became known as the Tacoma Methods was alternately praised and lambasted. In the eyes of the state government, the citizens went too far, losing themselves in the xenophobic rhetoric of the time. Still, the debate of the day remained focused on the immigrant problem.

Conclusion

In this paper we have detailed both the New Penology and Pacification as strategies utilized to “deal with” the immigrant “problem” in the U.S. While scholars warned of evidence of the New Penology at play in U.S. immigration policy (Simon, 1998; Miller, 2003), few, if any have articulated the importance and use of pacification strategies. It was not until 2013 when Sanchez, Furman, and Ackerman utilized Neolceus’s (2010 & 2011a & b) framework to explain the use of pacification strategies in the criminalization of immigration. It is our assertion that one strategy is not present without the other. That is, one can see the interplay of the New Penology and pacification strategies in current U.S. immigration policy. In fact, it is often the rhetoric associated with pacifying the public that is the impetus for New Penology type strategies to become popular tools of control.

As noted, the new penology seeks to identify and manage risk. The practice of detaining and deporting immigrants who are convicted criminals illustrates the new penology in practice. One can utilize the language of the new penology to illustrate this point. For example, the detention of immigrants “overpredicts” risk and amounts to a large number of “false positives” results. This leads to the overestimation of the amount of risk and the increased number of false positives, which results in increased fear and overincarceration this segment of the population. In 2012, ICE deported approximately 76,000 people for whom their offense was drug related or a DUI. (ICE, 2013). Many of these individuals were held in immigration detention facilities while awaiting their final deportation orders.

The cost of immigrant detention is estimated at \$164 a day per detainee (National Immigration Forum, 2012). Given the number of detainees who would benefit and the potential cost savings, President Obama recently called for less restrictive alternatives to immigrant detention. In June of 2013, the U.S. Senate passed sweeping immigration reform that among other things paved the groundwork for decarceration of certain individuals currently in detention centers. However, this reform does not preclude the new penology or pacification. The ramifications of these strategies has been to the considerable detriment to immigrants, their families, and the general public.

For example, studies have found a that immigration detention may lead to significant psychosocial risks those in immigration detention and their families (Coffey, Kaplan, Sampson & Tucci, 2010). One study found numerous examples of human rights violations in the Northwest Detention Center. These included inadequate access to medical care, poor and inappropriate treatment by undertrained guards, undue pressure to sign documentation, disregard to due process, lack of mental health care, insufficient food and lack of language

appropriate resources (International Law Clinic, University of Seattle School of Law, 2008). Each of these may have significant long term effects on detainees and their families. For instance, one study found an overrepresentation and intractability of depression of detainees (Steel et al, 2006). In their review of research from around the world, Silverman & Massa (2012) found the longer that immigrants are held in detention, the more significantly their physical and mental health deteriorates. They noted examples of hopelessness, despair, and suicide by impressed and vulnerable people compelled to live within a liminal space with few rights, little hope, and much uncertainty.

The new penology not only affects immigrants and their families. The general public also experiences the consequences of these strategies. Pacification strategies are designed to mollify or pacify groups of people. It is in this pacification that the public loses sight of strategies that are known to be effective. Instead of being well-informed about the realities of immigration, policy, and reform, the public has been pacified by the new penology and remains relatively silent on the realities of detection, detention, and deportation.

References

- Ackerman, Alissa R. & Furman, Rich. (2013). The Immigration Detention Center as a "Natural" Culmination of the Criminalization of Immigration: Implications for Justice. *Contemporary Justice Review*.
- Ackerman, A.R., Furman, R., Judy, B., & Cohen, J. (2013). Profit over pragmatism: Privatizing immigration detention centers. In Ackerman, A.R. & Furman, R. (Eds.) *The Criminalization of Immigration: Contexts and Consequences*. Durham, NC: Carolina Academic Press.
- Aman, A. C., & Rehrig, G. (2011). *The domestic face of globalization: Law's role in the integration of immigrants in the United States*. Legal Studies Research Paper, #196, Indiana University School of Law. Bloomington, Indiana: University of Indiana.
- Auerhahn, K. (1999). Selective incapacitation and the problem of prediction. *Criminology*, 37, 703-734.
- Bacon, C. (2005). *The evolution of immigration detention in the UK: The involvement of private prison companies*. Refugee Studies Centre Working Paper No. 27. Department of International Development, University of Oxford: Oxford.

- Bertrall, Ross L. (2006). Reconciling the Booker conflict: A substantive Sixth Amendment in a real offense sentencing system. *Cardozo Public Law, Policy & Ethics Journal*, 4, 725-778.
- Blakely, C.R. & Bumphus, V.W. (2004). Private and public sector prisons - a comparison of selected characteristics. *Federal Probation*, 68, 27-33.
- Burke, G. & Wides-Munoz, L. (2012). *Immigrants prove big business for prison companies*. Associated Press. Obtained on August, 7, 2013 from <http://news.yahoo.com/immigrants-prove-big-business-prison-companies-084353195.html>
- Byler, C. (2005). Pacifying the Moros: American military government in the Southern Philippines, 1899-1913. *Military Review*, May/June, 41-45.
- Chaiken, M. R. & Chaiken J. M. (1984). Offender types and public policy. *Crime and Delinquency*, 30: 195-226.
- Cheliotis, L. (2006). How Iron is the Iron Cage of the New Penology? The Role of Human Agency in the Implementation of Criminal Justice Policy. *Punishment & Society*, 8: 313-40.
- Cohen, J. (1983). Incapacitation as a strategy for crime control: Possibilities and pitfalls. In Michael Tonry and Norval Morris (eds.). *Crime and Justice: An Annual Review of Research*. Vol. 2. Chicago: University of Chicago Press.
- Coffey, G. J, Kaplan, I., Sampson, R. C. & Tucci, M. M (2010). The meaning and mental health consequences of long-term for people seeking asylum. *Social Science and Medicine*, 70(12) 2070-2079.
- Customs and Border Protection (2012). *Border Patrol Staffing by Fiscal Year*. Obtained on August 13, 2013 from http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy12_stats/staffing_1993_2012.ctt/staffing_1993_2012.pdf
- Department of Homeland Security. *ICE: An overview*. Author. Taken from the world wide web on August 2, 2013, from <http://www.ice.gov/about/overview/>
- Department of Homeland Security (2013). *Border Security Overview*. Obtained on August 7. 2013 from <http://www.dhs.gov/border-security-overview>
- Furman, R. (2003). Frameworks for understanding value discrepancies and ethical dilemmas in managed mental health for social work in the United States. *International Social Work*, 46(1), 37-52.

- Furman, R., Ackerman, A., Loya, M., Jones, S., & Negi, N. (2012). The criminalization of immigration: Value conflicts for the social work profession. *Journal of Sociology and Social Welfare*, 39(1), 169-185.
- Furman, R., Negi, N. J., & Cisneros-Howard, A. L. (2008). The immigration debate: Lessons for social work. *Social Work*, 53(3), 283-285.
- Furman, R. & Sanchez, M. (2012). The impossible flaw of nativism: The need for transnational social policy. *Transnational Social Support*.2(2), 40-43.
- Garland, D. (1995). Penal modernism and postmodernism. In Blomberg T and Cohen S (eds) *Punishment and Social Control*. New York: Aldine de Gruyter, 181-209.
- Gil, D. (1992). *Unraveling social policy*. New York. Schenkman.
- Greenwood, P. W. & Abrahamse, A. (1982). *Selective Incapacitation*. Santa Monica, CA: Rand.
- Immigration and Customs Enforcement (2013). *Overview*. Obtained on August 6, 2013 from <http://www.ice.gov/about/overview/>
- Immigration and Customs Enforcement (2013). *Removal Statistics*. Obtained on August 6, 2013 from <http://www.ice.gov/removal-statistics/>
- Inderbitzin, M. (2007). Inside a maximum-security juvenile training school. *Punishment and Society*, 9(3): 235-251.
- Innes, A. J. (2013). International migration as criminal behavior: Shifting responsibility to the migrant in Mexico-US border crossings. *Global Society*, 27(2), 237-260.
- International Center for Prison Studies (2013). *World Prison Brief*. Obtained on August 1, 2013 from http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=190
- International Law Clinic, University of Seattle School of Law. (2008). *Voices from detention: A report on human rights violations at the Northwest Detention Center*. Seattle, WA: Author.
- Kempf-Leonard, K. and Peterson, E. (2000). Expanding Realms of the New Penology: The Advent of Actuarial Justice for Juveniles. *Punishment and Society*, 2: 66-97.
- Kozol, H. L., Boucher, R. J., & Garofalo, R. F. (1972). The diagnosis and treatment of dangerousness. *Crime and Delinquency*, 19, 371-392.

- Lacombe, D. (2008). Consumed with Sex: The Treatment of Sex Offenders in Risk Society. *British Journal of Criminology*, 48: 55-74.
- Lynch, M. (1998) Waste managers?: The new penology, crime fighting and parole agent identity. *Law and Society Review*, 32(4): 839-869.
- Martinson, R. (1975). What works-questions and answers about prison reform. *The Public Interest*, 35, 22-54.
- Maslow, A. H. (1943). A theory of human motivation. *Psychological Review*, 50(4), 370-396.
- Jing, Y. (2010). Prison privatization: A perspective on core governmental functions. *Crime, Law and Social Change*, 54(3-4), 263-278.
- Justice Policy Institute (2011). *Gaming the System: How the Political Strategies of Private Prison companies Promote Ineffective Policies*. Washington, DC: Justice Policy Institute.
- Lundahl, B., Kunz, C., Brownell, C., Harris, N., & Van Vleet, R. (2009). Prison privatization: A meta-analysis of cost effectiveness and quality of confinement indicators. *Research on Social Work Practice*, 19, 383-395.
- Miller, T. (2003). Citizenship and Severity: Recent Immigration Reforms and the New Penology. *Geo. Immigr. L.J.*, 17, 611-666.
- Mittelstadt, M., Speaker, B., Meissner, D., & Chisti, M. (2011). Through the prism of national security: Major immigration policy and program changes in the decade since 9/11 Washington, DC: Migration Policy Institute.
- Monahan, J. (1981). *Predicting violent behavior: An assessment of clinical techniques*. Beverly Hills, Calif.: Sage.
- National Immigration Forum (2012). *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*. Washington, DC: National Immigration Forum. Obtained on August 7, 2013 from <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>
- Nevins, J. (2002). *Operation Gatekeeper: The rise of the "Illegal Alien" and the making of the U.S. Mexico boundary*. New York: Routledge.
- Nielsen, J. (2009). Locking down our borders: How anti-immigration sentiment led to [unconstitutional legislation and](#) the erosion of fundamental principles of American government. *Journal of Law and Policy*. 18(1), 459-502.

Neocleous, M. (1996). Perpetual war, or 'war and war again': Schmitt, Foucault, fascism.

Philosophy & Social Criticism, 22(2), 47-66.

Neocleous, M. (2010) War as Peace, Peace as Pacification. *Radical Philosophy*, 159(1), 8-17.

Neocleous, M. (2011a). "A brighter and nicer life": Security as pacification. *Social & Legal Studies*, 20(2), 191-208.

Neocleous, M. (2011b). The police of civilization: The war on terror as civilising offensive.

International Political Sociology, 5(2), 144-159.

Ruback, R.B., & Wroblewski, J. (2001). The federal sentencing guidelines psychological and policy reasons for simplification. *Psychology, Public Policy, and Law*, 7, 739- 775.

Simon, J. (1993). *Poor Discipline: Parole and the Control of the Underclass 1890-1990*. Chicago: University of Chicago Press.

Simon, J. (1998). Managing the Monstrous: Sex Offenders and the New Penology. *Psychology Public Policy, and Law*, 4: 452-67.

Simon, J. (1998). Refugees in a carceral age: The rebirth of immigration prisons in the United States. *Public Culture*, 10, 577-607.

Simon, J. & Feeley, M. (1992). The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications. *Criminology*, 30, 449-474.

Sinnar, S. (2003). Patriot or unconstitutional: The mandatory detention of aliens under the US Patriot Act. *Stanford Law Review*, 55, 1419 -1454.

Steel, Z., Silove, D., Brooks, R., Momartin, S., Alzuhairi, B., & Suslik, I. (2006). Impact of immigration detention and temporary protection on the mental health of refugees. *The British Journal of Psychiatry*, 188 (1), 58-64.

Schlosser, E. (December, 1998). The Prison Industrial Complex. *Atlantic Magazine*.

Sanchez, M., Furman, R., & Ackerman, A.R. (2013). The problematization of immigration as a pacification strategy. In Ackerman, A.R. & Furman, R. (Eds.) *The Criminalization of Immigration: Contexts and Consequences*. Durham, NC: Carolina Academic Press.

Silverman, S. J., & Massa, E. (2012). Why immigration detention is unique. *Population, Space*

and Place, 18, 677-686.

Simon, J. (1998). Refugees in a Carceral Age: The Rebirth of Immigration Prisons in the

United States, *Public Culture* 3, 577-606.

Sullivan, L. (2010, October 28). *Prison Economics Help Drive Ariz. Immigration Law*. National Public Radio. Retrieved on April 14, 2012 from <http://www.npr.org/2010/10/28/130833741/prison-economics-help-drive-ariz-immigration-law>

Tonry, M. (1996) *Sentencing Matters*. New York: Oxford University Press.

Travis, J. (2005). *But They All Come Back: Facing the Challenges of Prisoner Reentry*. Washington, D.C: Urban Institute Press.

Travis, J. & Lawrence, S. (2002). *Beyond the Prison Gates: The State of Parole in America*. Washington, DC: Urban Institute.

Tumlin, K. C. (2004). Suspect first: How terrorism policy is reshaping immigration policy. *California Law Review*, 19, 1175 – 1240.

United States v. Salerno, 481 U.S. 739 (1987)

Von Hirsch, A. (1984). The ethics of selective incapacitation: Observations on the contemporary debate. *Crime and Delinquency*, 30: 175-194.

Von Hirsch, A. (1998). Selective incapacitation: Some doubts. In von Hirsch A and Ashworth A (eds) *Principled Sentencing: Readings on Theory and Policy*, 2nd edition. Oxford: Hart.

Western, B. (2006). *Punishment and Inequality in America*. New York: Russell Sage Foundation.

Wolfgang, M. E., Figlio, R. M., & Sellin, T. (1972). *Delinquency in a Birth Cohort*. Chicago: University of Chicago Press.

About the Authors

Alissa R. Ackerman, PhD, is Assistant Professor of Criminal Justice in the Social Work Program at the University of Washington, Tacoma. Alissa's main research specialization is sex offender policy and management. Her work with vulnerable groups has led to research on the lives of the undocumented and the criminalization of immigration.

Meghan Sacks, PhD, is an assistant professor and director of Criminology in the Department of Social Sciences and History at Fairleigh Dickinson University. Her research interests include bail reform, plea bargaining, sentencing policy, correctional program evaluations and sex offender legislation.

Rich Furman, MSW, PhD, is Professor of Social Work at the University of Washington, Tacoma. Rich has published over 110 scholarly articles and book chapters. Rich's main areas of research are migration and transnational migration, and men at risk and applied masculinities, with a special focus on transnational men. His practice background includes ten years experience in direct practice and administration. Rich also teaches in the Doctor of Social Work program of the School of Social Policy and Practice at the University of Pennsylvania.