

## Hyper-incarceration as a Multidimensional Attack: Replying to Angela Harris Through *The Wire*

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Angela Harris's article in this symposium makes a valuable contribution to our understanding of hyper-incarceration. She argues, quite persuasively, that the term "gender violence" should be understood broadly to include men's individual and structural violence against other men. She then considers what we ought to do about the incredible increase in incarceration, mostly of racial minority men, over the past 40 years. She terms this "mass incarceration" and argues that it is best dealt with by a shift from "restorative justice" to "transformative justice." Whereas restorative justice emphasizes bringing together various elements of the community to repair the harm done by a crime, transformative justice goes further by emphasizing the racist and heteropatriarchal forces leading to the crime and preventing the healing of both the harm doer and communities.

It is hard to criticize Angela Harris. She is, after all, a founder of critical race theory and critical race feminism. Her article in this symposium demonstrates the depth of her insights and clarity of her expression. Nonetheless, I want to challenge Harris on one point and extend her analysis on another. First, for reasons I will explain, I believe it is crucial for scholars to start referring to so-called "mass

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incarceration” as “hyper-incarceration.”<sup>1</sup> Second, I want to extend Harris’s analysis of the multidimensionality of identities by means of a case study of how class operates during the drug war era, as depicted in the critically acclaimed HBO drama *The Wire*.

To establish those arguments, this essay proceeds as follows. Part I explains the importance of the term “hyper-incarceration.” Part II defines a multidimensional masculinities approach to the relationships between identities, culture, and law. Part III uses an analysis of *The Wire* to argue that identity theorists should pay greater attention to capitalism. Part IV concludes that addressing hyper-incarceration requires simultaneously reducing the stigma attached to racial minority men and rebuilding economic structures in the inner-city.

#### I. THE SIGNIFICANCE OF “HYPER-INCARCERATION”

I argue that Harris should refer to “mass incarceration” as “hyper-incarceration.”<sup>2</sup> The new term is needed to highlight the targeted nature of incarceration in the United States, rather than just the amount. The Reagan era’s reframing of the government as the enemy is the real reason we have seen a stupefying rise in the incarceration of certain people. The anti-state narrative removes the possibility of helping the poor and instead promotes incapacitating the poor in prison.

There is one overwhelming reason to switch from calling this phenomenon “mass incarceration” to criticizing it as “hyper-incarceration”: it is not generalized, but targeted. As Loïc Wacquant notes, “*Mass* incarceration suggests that confinement concerns large swaths of the citizenry (as with the mass media, mass culture, mass employment, etc.).”<sup>3</sup> The point is that mass incarceration implies a

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1. Loïc Wacquant, *Racial Stigma in the Making of America’s Punitive State*, in RACE, INCARCERATION, AND AMERICAN VALUES 57, 59 (2008) (arguing for use of term “hyper-incarceration” rather than “mass incarceration”); see also, e.g., George A. Martinez, *Bobbitt, the Rise of the Market State, and Race*, 18 AM. U. J. GENDER, SOCIAL POL’Y & L. 587, 593–94 (2010) (discussing “hyper-incarceration”).

2. Wacquant, *supra* note 1, at 59 (arguing for use of term “hyper-incarceration” rather than “mass incarceration”).

3. *Id.* at 59 (characterizing Glenn Loury’s use of the term “mass incarceration”).

widespread phenomenon. Mass incarceration would be either spread throughout the entire population or *deservedly* targeted on certain populations that require social control.<sup>4</sup> Such a conception of our post-1970s explosion in incarceration is false.

Instead, hyper-incarceration should be seen as a multidimensional attack on a specific group of people. Wacquant reveals that hyper-incarceration has “been finely targeted, first by class, second by that disguised brand of ethnicity called race, and third by place.”<sup>5</sup> The class targeted is, of course, the poor. The races targeted are, of course, blacks and then Latinos/as. The place targeted is the inner city. I say that of course the poor are targeted because, as numerous scholars have pointed out, our post-1980 rightward turn has often seen the rich team up with the have-somes to prevent the poor from enjoying the resources they had gained in the 1960s and 1970s.<sup>6</sup> Or, to put it another way, when in the post-Conquest era<sup>7</sup> has it not been so that the rich have plundered the poor? As Wacquant points out, the drug war is the main avenue by which the right-wing has accomplished hyper-incarceration. Only the poor go to jail for minor crimes of drug use, even though they are committed as frequently by middle- and upper-class people, such as students.<sup>8</sup> A central argument of this essay is that class is crucial in both hyper-incarceration and other aspects of the drug war.

That is not to say that Wacquant is wrong about the centrality of race to the phenomenon. I say of course blacks and Latinos/as are targeted because our country was founded (literally) on the backs of blacks<sup>9</sup> and the South invented apartheid to control them.<sup>10</sup> The

4. See generally Ian F. Haney-Lopez, *Post-Racial Racism: Racial Stratification and Mass Incarceration in the Age of Obama*, 98 CALIF. L. REV. 1023 (2010) (arguing that the disproportionate nature of policing tends to merely reinforce whites’ senses that the system is operating appropriately).

5. Wacquant, *supra* note 1, at 59 (summarizing hyper-incarceration).

6. JEFFREY REIMAN & PAUL LEIGHTON, *THE RICH GET RICHER AND THE POOR GET PRISON: IDEOLOGY, CLASS, AND CRIMINAL JUSTICE* (9th ed. 2009).

7. TZVETAN TODOROV, *THE CONQUEST OF AMERICA: THE QUESTION OF THE OTHER* (Richard Howard trans., 1984).

8. Sean Estaban McCabe et al., *Race/Ethnicity and Gender Differences in Drug Use and Abuse Among College Students*, 60 ETHNICITY IN SUBSTANCE ABUSE 75–95 (2008).

9. See, e.g., U.S. CONST. art. I, § 2, cl. 3, *amended by* U.S. CONST. amend. XIV, § 2 (acknowledging slavery through “three-fifths” clause).

continuation of anti-black racism can be seen in the overwhelming number of Southern whites who voted against the first black President in the face of both a significant recession blamed on his Republican predecessor and a relatively weak opponent.<sup>11</sup> While the history of racism against Latinos/as has been less consistent, the taking of the Southwest from Mexico was explicitly race-based<sup>12</sup> and set the stage for the racist undertones of the current immigration debate. For Wacquant, the rapid “blackening” of incarceration in the face of the “whitening” of crime<sup>13</sup> is evidence of racial targeting—on top of class targeting—in hyper-incarceration.<sup>14</sup> Not wanting to fall prey to the black-white binary paradigm of race,<sup>15</sup> I note the “browning” of incarceration in the form of the inclusion of Latinos/as in hyper-incarceration. Hyper-incarceration is indeed an intersectional, class-race phenomenon.<sup>16</sup>

Hyper-incarceration is more complex than that though, because it also involves geography. I do not say of course hyper-incarceration is targeted as to place, but it should be no surprise that the rhetoric of “welfare queens” has led to disregard for the citizens of the inner-city. According to Wacquant, “[t]he class gradient in racialized imprisonment was obtained by targeting one particular place: the remnants of the black ghetto.”<sup>17</sup> Wacquant then makes a powerful argument that links race and place with class:

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10. See generally ANTHONY W. MARX, MAKING RACE AND NATION: A COMPARISON OF THE UNITED STATES, SOUTH AFRICA, AND BRAZIL (comparing South African apartheid to predecessor Jim Crow laws in U.S. South).

11. See generally Timothy Noah, *What We Didn't Overcome. Obama Won a Majority of votes. He Didn't win a Majority of White Votes*. SLATE (Nov. 10, 2008) (noting white support for McCain) [http://www.slate.com/articles/news\\_and\\_politics/chatterbox/2008/11/what\\_we\\_didn\\_t\\_overcome.html](http://www.slate.com/articles/news_and_politics/chatterbox/2008/11/what_we_didn_t_overcome.html).

12. See generally RACE AND RACES (Juan F. Perea et al. eds., 2d ed. 2007) (describing manifest destiny narrative's racism).

13. See Wacquant, *supra* note 1, at 60–61 (citing evidence that whites committed growing percentage of major crimes beginning after World War II).

14. See *id.* (mentioning “blackening” and “whitening”).

15. Juan F. Perea, *Ethnicity and the Constitution: Beyond The Black-White Binary Constitution*, 36 WM. & MARY L. REV. 571 (1995).

16. See generally Kimberlé W. Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241 (1991) (defining the intersectionality approach).

17. Wacquant, *supra* note 1, at 61–62.

Like the Jewish ghetto in renaissance Europe, the Black Belt of the American metropolis in the Fordist age combined four elements—stigma, constraint, spatial confinement, and institutional encasement—to permit the economic exploitation and social ostracization of a population deemed congenitally inferior. . . .

Penal expansion of the mid-1970s is a political response to the collapse of the ghetto.<sup>18</sup>

Wacquant thus sees historical continuities of social control of blacks from bondage to hyper-incarceration, through stages also including Jim Crow and the post-Great Migration ghetto. This trajectory emphasizes the importance of the Nixon-Reagan shift of the dominant political ideology from treating poverty to punishing it to the development of the current stage of hyper-incarceration.<sup>19</sup> The geographical element of hyper-incarceration thus ties together its class and race elements and brings us to a deeper explanation of why it developed.

As is often the case with social phenomena, hyper-incarceration both serves an economic function and is overlaid with gender meaning. For Wacquant, hyper-incarceration “partakes of a broader restructuring of the state, tending to criminalize poverty and its consequences so as to impose insecure jobs as the normal horizon of work for the unskilled fractions of the postindustrial proletariat.”<sup>20</sup> Hyper-incarceration serves the always important role of reproducing the relations of production, such that some people will be locked into the bottom of the economy. Simultaneously, that economic incentive is responded to through a gendered means. Wacquant’s argument to that effect is simple but persuasive:

This dynamic coupling of social and penal philosophy operates through a familiar division of labor between the sexes: the public aid bureaucracy, reconverted into an administrative springboard to subpoverty employment, takes up the task of

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18. *Id.* at 63.

19. *See id.* at 65 (noting shift to prison as the dominant means of containing the ghetto population).

20. *Id.* at 67.

inculcating the duty of working for work's sake to poor women (and indirectly to their children), while the penal quartet formed by the police, the court, the prison, and the probation or parole officer shoulders the mission of taming their men.<sup>21</sup>

In other words, the combination of hyper-incarceration and workfare sees the state acting in a forceful (often read as masculine) way on the two halves of the heterosexual dyad. I find Wacquant's argument for the use of the term "hyper-incarceration" convincing, and will develop his argument about the multidimensional effects of the drug war in the remainder of this essay with an emphasis on class and gender.

## II. TOWARD A MULTIDIMENSIONAL MASCULINITIES THEORY

Harris's article in this symposium makes extensive use of the masculinities studies conception of gender violence, which Harris created in her groundbreaking essay, *Gender, Violence, Race, and Criminal Justice*.<sup>22</sup> While Harris used a hegemonic masculinities approach to masculinities in that essay, there are now several approaches to masculinities studies that we might apply.<sup>23</sup> Along with Ann C. McGinley, I have edited a forthcoming book collecting masculinities studies scholarship on law entitled *Multidimensional*

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21. *Id.* at 68.

22. Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777 (1999).

23. The term "hegemonic masculinity" has come under criticism. See Christine Beasley, *Rethinking Hegemonic Masculinity in a Globalizing World*, 11 MEN & MASCULINITIES 86 (2008); Tony Coles, *Negotiating the Field of Masculinity: The Production and Reproduction of Multiple Dominant Masculinities*, 12 MEN & MASCULINITIES 30 (2009); Demetrakis Z. Demetriou, *Connell's Concept of Hegemonic Masculinity: A Critique*, 30 THEORY & SOC'Y 337 (2001); Jeff Hearn, *From Hegemonic Masculinity to the Hegemony of Men*, 5 FEMINIST THEORY 49 (2004). This chapter refers to hegemonic masculinity, but advocates moving beyond its traditional use.

For examples of masculinities scholarship on law, see NANCY E. DOWD, *THE MAN QUESTION: MALE SUBORDINATION AND PRIVILEGE* (2010); David S. Cohen, *No Boy Left Behind?: Single-Sex Education and the Essentialist Myth of Masculinity*, 84 IND. L.J. 135 (2009); Frank Rudy Cooper, "Who's the Man?": *Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671, 672 n.7 (2009) (cataloging most relevant scholarship through 2009); Harris, *Gender, Violence, Race, and Criminal Justice*, *supra* note 22; Ann C. McGinley, *Masculinities at Work*, 83 OR. L. REV. 359 (2004).

*Masculinities and Law: Feminist and Critical Race Approaches*.<sup>24</sup> That book helps codify a variety of approaches to masculinities. This Essay summarizes the two dominant approaches and calls for an extension of prior work.

The hegemonic masculinities approach says there is a hegemonic man who is the dominant image of what constitutes the ideal form of masculinity in a given context.<sup>25</sup> Meanwhile, the “multidimensional” masculinities approach that *Multidimensional Masculinities and Law: Feminist and Critical Race Approaches* advocates notes that any masculinity, be it hegemonic or alternative, is always (1) intertwined with race and other supposedly separate categories of identity and also (2) both experienced and interpreted differently in different contexts.<sup>26</sup> This Essay argues for a “materialist multidimensional masculinities” approach, which emphasizes capitalism’s hierarchy of the rich over the poor. This part of the Essay addresses the hegemonic masculinities and multidimensional masculinities approaches. The next part of the Essay will make the case for a materialist multidimensionalities approach by means of an analysis of the class effects of the drug war.

We can begin our discussion of the hegemonic masculinities approach by defining hegemony. As Antonio Gramsci formulated the idea, it declares that “a social group will try to describe the world in a way that accounts for, but coordinates, the interests of other groups such that they will consent to a structuring of society that promotes

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24. MULTIDIMENSIONAL MASCULINITIES AND LAW: FEMINIST AND CRITICAL RACE APPROACHES (Frank Rudy Cooper & Ann C. McGinley eds., forthcoming New York Univ. Press 2012).

25. See R.W. CONNELL, MASCULINITIES (2d ed. 2005); R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC’Y 829, 832 (2005).

26. See Ann C. McGinley & Frank Rudy Cooper, *Introduction: Masculinities, Multidimensionality, and Law: Why They Need One Another*, in MULTIDIMENSIONAL MASCULINITIES AND LAW: FEMINIST AND CRITICAL RACE APPROACHES, *supra* note 24; see also Darren Lenard Hutchinson, “Gay Rights” for “Gay Whites”?: Race, Sexual Identity, and Equal Protection Discourse, 85 CORNELL L. REV. 1358, 1365–68 (2000); Athena D. Mutua, *Theorizing Progressive Black Masculinities*, in PROGRESSIVE BLACK MASCULINITIES 3, 23 (Athena D. Mutua ed., 2006); Francisco Valdes, *Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality, and Responsibility*, in *Social Justice Scholarship or Legal Scholars as Cultural Warriors*, 75 DENV. U. L. REV. 1409, 1414–16 (1998).

the dominant group's interests."<sup>27</sup> Recognizing hegemony means considering identities to be relational; identities are constituted against one another on "an unequal field of power relations within symbolic, economic, and political structures."<sup>28</sup> Social groups are each invested with different social capital—"capital of prestige and honor"—and use it to gain relative advantage in competition with other groups.<sup>29</sup> According to social theorists Ramón Grosfoguel and Chloe Georas, the "dominant groups of the symbolic, economic, and political fields are the ones with the power to make their social classifications of a society hegemonic."<sup>30</sup> In this light, it makes sense that some masculinities theorists assume there are attempts to establish a hegemonic masculinity.

The hegemonic man is an ideal of manhood that tries to set the norm by which all men will tacitly agree to be judged.<sup>31</sup> Taking the

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27. Frank Rudy Cooper, *The Un-Balanced Fourth Amendment: A Cultural Study of the Drug War, Racial Profiling and Arvizu*, 47 VILL. L. REV. 851, 859 (2002).

28. Ramón Grosfoguel & Chloe S. Georas, "Coloniality of Power" and Racial Dynamics: Notes Toward a Reinterpretation of Latino Caribbeans in New York City, 7 IDENTITIES 85, 92 (2000).

29. *Id.*

30. *Id.*

31. See generally Nancy Levit, Nancy E. Dowd & Ann C. McGinley, *Feminist Legal Theory Meets Masculinities Theory*, in MULTIDIMENSIONAL MASCULINITIES AND LAW: FEMINIST AND CRITICAL RACE APPROACHES, *supra* note 24. The idea that there is a hegemonic man or that we should refer to hegemonic masculinity has come under criticism. For instance, Christine Beasley argues we should limit the term to its political meaning—that images of masculinity are propounded as "a political mechanism producing solidarity between different masculinities in a hierarchical order." Beasley, *supra* note 23, at 94. Likewise, Jeff Hearn calls for a move from hegemonic masculinities to "the hegemony of men"—the idea that masculinity has allowed men to exercise power over women, as well as subordinated men. See Hearn, *supra* note 23, at 52. Other critics have argued that there is no one hegemonic masculinity by noting that many masculine norms exist at the same time. See Demetriou, *supra* note 23, at 340–41; Mike Donaldson, *What is Hegemonic Masculinity?*, 22 THEORY & SOC'Y 643, 644–47 (1993). These critiques do not seem to preclude the possibility that there are both attempts to establish a generally hegemonic masculinity in the United States and also attempts to establish alternatives to that masculinity, either in general or in specific contexts. In this regard, consider critical race theory's anti-essentialist insight, which says that identity groups are often defined based on a lowest common denominator theory that makes certain qualities essential to the group but treats others as mere add-ons. B.E. Myers, *Fixing the Faggot: Black Subjectivity as "Autocartography" in the Work of Lyle Ashton Harris*, in BLACK MEN ON RACE, GENDER, AND SEXUALITY: A CRITICAL READER 338, 340 (Devon W. Carbado ed., 1999); David S. Cohen, *Keeping Men "Men" and Women Down: Sex Segregation, Anti-Essentialism, and Masculinity*, 33 HARV. J.L. & GENDER 509, 512, 519 (2010); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990). To define one generally hegemonic

attempt to establish a hegemonic masculinity to be a given, leading masculinities theorist Michael Kimmel defines a central tenet of the hegemonic masculinities approach: that masculinity is fundamentally anxious.<sup>32</sup> Since the means of signaling masculine behavior are governed by cultural norms, men tend to grant others masculine esteem only when they see behaviors that they already associate with masculinity. Manhood is thus a never-ending test of whether one's behaviors measure up to the ideal form of manhood.<sup>33</sup> Kimmel identifies rules of the hegemonic form of American masculinity: (1) denigrate contrast figures, such as women, (2) accrue tokens of success, (3) hold one's emotions in check, and (4) be aggressive.<sup>34</sup> Measuring up to those rules is an impossible task, especially given that one could always accrue more tokens of success. Because we are always subject to being "unmasked" as less than manly, the need to constantly prove one's masculinity will always lead to anxiety.<sup>35</sup>

As Kimmel's rules suggest, the attempt to prove one's masculinity leads to attempts to distinguish oneself from other, less masculine, figures. The primary contrast figure is women, but in the United States, dominant men also have used racial minorities, Jews, and gay men as contrast figures.<sup>36</sup> Further, a man may feel that he appears to be at a disadvantage to other men along some axis of identity. That is, he may feel that he is in "penalty status" because he is not the idealized race, sex orientation, class, and so on.<sup>37</sup> He might then

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masculinity is necessarily to essentialize certain norms as the most important ones. But the masculinities theorist seeks only to recognize the process by which culture essentializes certain qualities as masculine without accepting the hegemonic assertion as defining the truth of masculinity. Thus, the anti-essentialist insight is not inconsistent with hegemonic masculinity's assumption that some norms of masculinity are more generally accepted than others. See Connell & Messerschmidt, *supra* note 25, at 832. As Harris says, "though one way of doing masculinity may be 'hegemonic' . . . within a friendship network or a social institution, there may be many other ways of being a man that conflict, compete, or form a relationship of interdependence with the hegemonic form." See Harris, *Gender, Violence, Race, and Criminal Justice*, *supra* note 22, at 783.

32. See Michael Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence*, in *THE GENDER OF DESIRE: ESSAYS ON MALE SEXUALITY* 25, 31–37 (2005).

33. See *id.* at 30–31.

34. See *id.*

35. See *id.*

36. See *id.* at 32–37.

37. Frank Rudy Cooper, *Masculinities, Post-Racialism, and the Gates Controversy: The False Equivalence Between Officer and Civilian*, 11 *NEV. L.J.* 1, 18–19, 22 (2010).

compensate for his low status along one axis of identity by subordinating others who are below him along other axes of identity.<sup>38</sup>

One way *Multidimensional Masculinities and Law: Feminist and Critical Race Approaches* updates hegemonic masculinities theory is by making it clear that while there is a hegemonic masculinity in general, there are also many alternative masculinities that exercise a version of hegemony in specific contexts. For instance, while professional behaviors are generally accepted as the best way to embody masculinity, some cultural contexts—such as beer and truck commercials<sup>39</sup>—laud a more working-class hyper-masculinity.<sup>40</sup> As Jewel Woods notes,

Despite the economic trend away from blue-collar jobs, many of the most powerful expressions of masculinity within contemporary American society continue to be associated with blue-collar imagery. . . .

. . . At the very same time society is becoming less reliant on male brawn, the dominant cultural images of masculinity are largely derived from the “traditional” ideas of maleness.<sup>41</sup>

Likewise, while whiteness is generally prioritized as most appropriately masculine,<sup>42</sup> black men are often envied in the cultural context (here, a specific topic within popular culture) of sexuality.<sup>43</sup> The existence of alternative masculinities in some contexts does not disprove the existence of general (though diffuse) hegemonic

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38. Frank Rudy Cooper, *Understanding “Depolicing”: Symbiosis Theory and Critical Cultural Theory*, 71 UMKC L. REV. 355, 355–56, 366–67 (2002); Nancy Ehrenreich, *Subordination and Symbiosis: Mechanisms of Mutual Support Between Subordinating Systems*, 71 UMKC L. REV. 251, 257 (2002); Karen Pyke, *Class-Based Masculinities: The Interdependence of Gender, Class, and Interpersonal Power*, 10 GENDER & SOC’Y 527, 531–32 (1996).

39. See Beasley, *supra* note 23, at 88–89.

40. See Harris, *Gender, Violence, Race, and Criminal Justice*, *supra* note 22, at 784–85.

41. Jewel Woods, *Why Guys Have a Man-Crush on Obama; Sure Women Swoon, but Modern Men Seem Weak-Kneed, Too*, CHI. SUN-TIMES, July 24, 2008, at 25.

42. See Kimmel, *supra* note 32, at 30.

43. Gail Dines, *The White Man’s Burden: Gonzo Pornography and the Construction of Black Masculinity*, 18 YALE J.L. & FEMINISM 283, 286–87 (2006); Harris, *Gender, Violence, Race, and Criminal Justice*, *supra* note 22, at 783–84.

masculine norms, just that the relationship between hegemonic and alternative masculinities is complicated. The theoretical tool that will best allow us to explore the interactions between the generally hegemonic masculinity and alternative masculinities is critical race theory's multidimensionality theory.

Multidimensional masculinities theory of law stems from intersectionality theory. Intersectionality theory says that people in whom multiple subordinated categories of identity intersect—such as black women—have unique subjective experiences of the world and face unique forms of discrimination.<sup>44</sup> *Multidimensionality theory in no way replaces intersectionality theory.* Rather, the newer term is a way of emphasizing that gender, race, class, and other aspects of identity operate simultaneously, inextricably, and in a context-dependent manner.<sup>45</sup> Gender and race are always co-constituted. For example, a heterosexual black man will have a self identity that differs from that of a gay black man, and gay and straight black men will be treated differently from one another by others.<sup>46</sup> Likewise, cultural context matters.<sup>47</sup> For example, heterosexual black men will likely think of themselves differently and be treated differently depending on whether they are in a sports bar or an art gallery.<sup>48</sup>

What is idealized in a particular cultural context may otherwise be an alternative masculinity, as when the working-class masculinities of firemen are lauded despite the general privileging of professional identities.<sup>49</sup> Accordingly, Harris quotes sociologist Karen Pyke for

44. See Cooper, *Understanding "Depolicing"*, *supra* note 38, at 365; Crenshaw, *supra* note 16, at 1244.

45. See Hutchinson, *supra* note 26, at 1364.

46. Frank Rudy Cooper, *Toward Multidimensional Masculinities Theory: The Gates Controversy*, in *MASCULINITIES AND LAW* (Martha A. Fineman & Michael Thomson eds., forthcoming 2011); Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853, 864 (2006).

47. Frank Rudy Cooper, *The "Seesaw Effect" from Racial Profiling to Depolicing: Toward a Critical Cultural Theory*, in *THE NEW CIVIL RIGHTS RESEARCH: A CONSTITUTIVE APPROACH* 139 (Benjamin Fleury-Steiner & Laura Beth Nielsen eds., 2006).

48. This is not to essentialize heterosexual or gay black masculinities, but to recognize tendencies in how people see themselves and others that do seem to exist at this particular cultural moment. See generally Cooper, *Toward Multidimensional Masculinities Theory*, *supra* note 46.

49. Ann C. McGinley, *Ricci v. DeStefano: A Masculinities Theory Analysis*, 33 HARV. J.L. & GENDER 581, 586–87 (2010).

the proposition that “white heterosexual middle- and upper-class men who occupy order-giving positions . . . produce a hegemonic masculinity that is glorified throughout the culture”<sup>50</sup> but also recognizes that a certain working-class masculinity exercises a version of hegemony in other contexts.<sup>51</sup> What is hegemonic in one context might not be so in another context. The multidimensionality theory insights—that identities are co-constituted and vary by context—will best help us explain the relationships between generally and alternatively hegemonic masculinities.

### III. CASE STUDY: *THE WIRE*'S CRITIQUE OF CAPITALISM

What is missing from current multidimensional analyses of masculinities and law is an emphasis on class. A critique of capitalism acknowledges that economic exploitation is a foundation of our society that also helps form identities. Analysis of the drug war reveals the ways capitalism both produces a criminal economy that is the Janus face of the “normal” economy and creates a criminal identity that not only is attributed to those whom capitalism exploits but also influences some individuals’ senses of self. Thus, masculinities are not only race and sex oriented, but also classed in the ways they are experienced and interpreted. Utilizing a “ClassCrit” approach,<sup>52</sup> this Essay calls for a “materialist multidimensional masculinities.” The materialist element adds emphasis on class structures and class identities to the more common multidimensionality analyses of gender and race.

#### A. *What Happens in The Wire*

So, why should we “read” *The Wire* when trying to understand drug war masculinities?<sup>53</sup> First, because it is “surely the best TV

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50. Pyke, *supra* note 38, at 531.

51. See Harris, *Gender, Violence, Race, and Criminal Justice*, *supra* note 22, at 785.

52. Athena D. Mutua, *Introducing ClassCrits: From Blindness to a Critical Legal Analysis of Economic Inequality*, 56 BUFF. L. REV. 859, 860–61 (2008).

53. A couple caveats: This Essay does not purport to conduct a sophisticated analysis of the visual style of *The Wire*, as might a standard television studies piece. Nor should the chapter be understood as suggesting the simplistic notion that because *The Wire* depicts the drug war a certain way, it directly influences its audience to accept its views. See Kathleen LeBesco, “*Gots*

show ever broadcast in America.”<sup>54</sup> *The Wire*’s lasting popularity alone means that it has influenced and continues to influence people’s perceptions of the war on drugs and masculinities. Moreover, the reason *The Wire* is so well regarded is that it is perceived to be uniquely authentic. Noted inner-city sociologists William Julius Wilson and Sudhir Venkatesh conclude that, with respect to the cultures of the police, drug dealers, and their surrounding society, *The Wire* is an accurate depiction of life in the inner-city during the drug war.<sup>55</sup> As the editors of an anthology on *The Wire* say, “[i]ts stories scream of verisimilitude.”<sup>56</sup>

In order to provide a shared base of knowledge that is manageable for the reader, the remainder of this part of the Essay briefly summarizes *The Wire*, focusing on Season One. In a nutshell, here is what happens in the first season of *The Wire*: Homicide detective Jimmy McNulty attends the murder trial of D’Angelo Barksdale, whom the jury acquits when a key witness recants.<sup>57</sup> Contending that D’Angelo’s uncle, Avon Barksdale, leads a drug organization that is responsible for numerous murders, McNulty gets Judge Daniel Phelan to pressure Deputy Commissioner Ervin Burrell and McNulty’s boss, Major William Rawls, to investigate Avon. Meanwhile, D’Angelo is demoted from running a housing project tower building to running the “pit” between buildings.<sup>58</sup> He oversees juveniles Wallace, Bodie, and Malik Carr (“Poot”). Burrell assigns Lieutenant Cedric Daniels to head a special detail investigating Avon’s crew, but it is composed of officers other departments wished to cast off. It includes Michael Santangelo from McNulty’s unit, Kima Greggs from Daniels’s unit, Thomas “Herc” Hauk and Ellis Carver from a Narcotics unit, and Roland “Prez” Pryzblweski, the son-in-law of politically connected Major Stan Valchek.

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*to Get Got*”: Social Justice and Audience Response to Mar Little, in *THE WIRE: URBAN DECAY AND AMERICAN TELEVISION* 217–32 (Tiffany Potter & C.W. Marshall eds., 2009).

54. Jacob Weisberg, *The Wire on Fire: Analyzing the Best Show on Television*, SLATE (Sept. 13, 2006), <http://www.slate.com/id/2149566/>.

55. Anmol Chaddha et al., *In Defense of The Wire*, DISSENT, Summer 2008, at 83, available at <http://www.dissentmagazine.org/article/?article=1237>.

56. TIFFANY POTTER & C.W. MARSHALL, *THE WIRE: URBAN DECAY AND AMERICAN TELEVISION* 8–9 (2009).

57. RAFAEL ALVAREZ, *THE WIRE: TRUTH BE TOLD* 64 (2009).

58. *Id.* at 66.

In the second episode, Prez, Herc, and Carver go to the projects to show its residents who is in charge, but Prez loses control and pistol whips a youth in the eye. Later in that episode, the detail leads a hasty attempt to bust D'Angelo's crew, but the police break down the wrong door and fail to acquire the main evidentiary prize: the crew's stash of drugs. Showing much greater knowledge of the Barksdale operation, a notorious local stick-up artist, Omar, steals D'Angelo's crew's stash. Later, Wallace and Poot spot Omar's boyfriend Brandon and notify Avon's right-hand man, Stringer Bell, who arranges for Brandon to be tortured, killed, and displayed in the projects.

In a major turn of events, Avon's frontman for his strip club, Orlando, is busted trying to do a drug deal. Orlando agrees to set up one of Avon's henchmen in a drug deal, with Gregg posing as his girlfriend. One of Avon's henchmen shoots Orlando dead and puts Gregg into a coma. In response to Gregg's injury, Burrell orders a major bust of Avon's crew, saying "we must show them who we are!"<sup>59</sup> The season ends with Avon and D'Angelo busted but with Stringer continuing to run the drug operation.

While season two provocatively addresses unions, drug dealing at the local level among whites, and the international connections between drug dealing and sex trafficking, season three is more important for our purposes because it returns the focus to Avon's drug cartel. With Avon in jail, Stringer runs the cartel, and does so in a very different style. As I will discuss, Stringer models himself after a legitimate businessman while Avon models himself after a traditional gangster. As a result, the two come into conflict, resulting in Stringer's death and Avon's reincarceration after a brief moment of freedom. Although season four's examination of public schools is particularly insightful and season five's criticism of the news media is also interesting, this Essay only briefly touches on those seasons.

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59. *The Wire: The Complete First Season*, Episode 11 (HBO Home Box Office 2002).

### B. *ClassCrit Theory*

To fully understand *The Wire*, we need a multidimensional approach that goes beyond gender and race. A perusal of the masculinities and law literature will confirm that virtually none of its proponents pay significant attention to capitalism. To remedy that omission, we can turn to the emerging ClassCrit movement in law. These scholars argue for a relational understanding of class.<sup>60</sup> One's class is both one's level of material wealth and social capital as well as one's sense of self and externally acknowledged prestige. The point of a class critique is to reveal that the wealthy gain their incomes and social capital through the exploitation of individuals from lower strata.<sup>61</sup> In the most basic sense, stockholders can gain their dividends only if the company pays its workers less money than their proportionate contribution to the product, yielding profits.

As critical legal scholar Athena Mutua puts it, utilizing sociologist Erik Olin Wright's work, economic power is created for some at the expense of others through the structuring of relationships, "whether out of the barrel of a gun, the constrained consent of the population, or otherwise."<sup>62</sup> That constrained consent refers directly to the concept of achieving dominance through the construction of hegemonic norms. For that reason, a ClassCrit approach might be merged with the particular hegemonic masculinities approach this Essay has adopted to form a multidimensional masculinities approach with a materialist focus.

As in the case of hegemonic and alternative masculinities, lifestyles are formed in contradistinction to other lifestyles. Here, for instance, is how philosopher Charles Taylor describes sociologist Pierre Bourdieu's signature concept of the habitus: "Through these modes of deference and presentation, the subtlest notions of social position, of the sources of prestige, and hence of what is valuable and good are encoded."<sup>63</sup> So, as Bourdieu argued, our bodily habits, such as how we hold ourselves and what we eat, reflect our class

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60. See Mutua, *supra* note 26, at 860–61.

61. See *id.* at 905.

62. *Id.* at 902.

63. Charles Taylor, *To Follow a Rule . . .*, in BOURDIEU: A CRITICAL READER 42 (Richard Shusterman ed., 1999).

position.<sup>64</sup> The connection between wealth levels and lifestyles begins with the fact that our original location in the class structure largely determines what we will do for work, such that “what you *have* determines . . . *the work you have to do*.”<sup>65</sup> In fact, in the U.S. only about “6.3% of children with parents in the bottom income quintile earn incomes in the top 20% as adults.”<sup>66</sup> So, being born into a family that has nothing greatly enhances your chances of having a job that does not significantly raise your class status. From our stratified relationships to work—i.e., some of us earn little for our work, some more, and some do not have to work at all—are born the stratified lifestyles known as “underclass,” “working-class,” “white collar,” and so on. While class is structural, “the way in which groups of people understand this structure, discuss it, and are informed by it, is a cultural phenomenon.”<sup>67</sup> The remainder of this part of the Essay thus looks at both how capitalism influences the cultural phenomenon known as the drug war and how class influences the self identity of the characters in *The Wire*.

### C. *The Economy and the Drug War*

According to *The Wire*'s co-creator, David Simon, the problems of the inner-city and drug addiction derive from the “fact that these really are the excess people in America, we—our economy doesn't need them. We don't need ten or fifteen percent of our population.”<sup>68</sup> Simon suggests that our post-manufacturing economy does not need a portion of the unskilled laborers. He links that obsolescence to the continuation of a futile drug war in the inner-city.

In a sense, the drug war itself produces drug dealing. By shrinking the supply of drugs, it drives up the price, thereby making it more appealing to try to become a supplier. Further, advertising encourages

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64. PIERRE BOURDIEU, *DISTINCTION: A SOCIAL CRITIQUE OF THE JUDGMENT OF TASTE* 106 (1984).

65. Mutua, *supra* note 26, at 903.

66. THE WEALTH INEQUALITY READER, CLASS MOBILITY 11 (Chuck Collins et al. eds., 2004).

67. Mutua, *supra* note 26, at 905.

68. Interview by Bill Moyers with David Simon (Apr. 17, 2009), available at <http://www.pbs.org/moyers/journal/10022009/transcript1.html>.

the poor to seek a life of conspicuous consumption while the lack of economic opportunities in the inner-city makes drug dealing an appealing means of attaining that goal.<sup>69</sup> Just as a middle-class suburban white individual might start a “legitimate” business in order to rise in class, “for D’Angelo, the world of drug trafficking is not some sort of refusal of the norms and ideals of society, crime as some sort of rebellion, but it is an attempt to possess the very dream that has been denied to him.”<sup>70</sup> Although “capitalism does not spread the wealth, just the idea that we could all become wealthy,” the idea that one should try to become wealthy unites the wealthy and the under-class, and everyone in between, in the pursuit of money.<sup>71</sup>

Just as capitalism links drug dealers and “legitimate” business people, capitalism creates the woes of the inner-city in general. Margaret Talbot’s *New Yorker* article on *The Wire* suggests that Simon agrees with this conclusion. Simon sees the show as “about how contemporary American society and particularly, ‘raw, unencumbered capitalism’—devalues human beings.”<sup>72</sup> Similarly, in an interview on the PBS television show *Bill Moyers’ Journal*, Simon accepts Moyers’ characterization of the contemporary U.S. as an oligarchy. Moyers defines an oligarchy as “government by the few. Or a government in which a small group exercises control for corrupt and selfish purposes.”<sup>73</sup> Simon says, “[w]e are a country of democratic ideas and impulses, but it is strained through some very oligarchical structures.”<sup>74</sup> Moreover, Simon agrees with Moyers’ characterization of Simon’s message in *The Wire* as “America’s not working for everyday people who have no power. And that’s the way the people with power have designed it to work.”<sup>75</sup> In the same interview, Simon says *The Wire* is “about the America that got left

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69. See James Braxton Peterson, *The Wire: Urban Decay and American Television*, in *THE WIRE: URBAN DECAY AND AMERICAN TELEVISION* 107, 111 (Tiffany Potter & C.W. Marshall eds. 2009).

70. Jason Read, *Stringer Bell’s Lament: Violence and Legitimacy in Contemporary Capitalism*, in *THE WIRE: URBAN DECAY AND AMERICAN TELEVISION* 128 (2009).

71. *Id.* at 124.

72. Margaret Talbot, *Stealing Life: The Crusader Behind “The Wire,”* *THE NEW YORKER*, Oct. 22, 2007, at 150.

73. Interview by Bill Moyers with David Simon, *supra* note 68.

74. *Id.*

75. *Id.*

behind.”<sup>76</sup> So, it is fair to say that *The Wire* is about the people without power and how the institutions that are supposed to serve them—schools, the police, politics—fail to do so.

#### *D. The Multidimensionality of Race and Class*

The ravaging of inner-cities by drugs, as well as the drug war and its dire consequences for the inner city, can be traced to both the post-industrial neo-liberal economy making these people obsolete and the mainstream culture’s race-based disregard for these people. According to Simon, since people in distressed communities know they are not wanted, “they understand that the only viable economic base in their neighborhoods is this multi-billion drug trade.”<sup>77</sup> Moyers thus proposes that the drug trade exists principally to pacify those without economic opportunities.<sup>78</sup> Simon agrees and links the drug trade back to race, saying, “[a]nd by the way, if it was chewing up white folk, it wouldn’t have gone on for as long as it did.”<sup>79</sup> Simon thus sees the U.S. as in a waning phase of social egalitarianism,<sup>80</sup> but permanently so as to inner-city racial minority communities. Stephen Lucasi adds the insight that globalization divides cities into “deserving” and “undeserving” areas,<sup>81</sup> such that blacks, and black men in particular, are harmed more than others.<sup>82</sup> Simon further implies, and this Essay certainly asserts, that disregard for those deemed economically unnecessary and culturally undeserving is a result of both economic reasoning and a race-based lack of empathy for the drug war’s victims.

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76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW 259 (2000).

81. Stephen Lucasi, *Networks of Affiliation: Familialism and Anticorporatism in Black and White*, in *THE WIRE: URBAN DECAY AND AMERICAN TELEVISION* 137 (2009).

82. This fits with notorious GOP strategist Lee Atwater’s admission: “You’re getting so abstract now [that] you’re talking about cutting taxes, and all these things you’re talking about are totally economic things and a byproduct of them is [that] *blacks get hurt worse than whites*. And subconsciously maybe that is part of it.” Mark R. Thompson, *When God Collides with Race and Class: Working-Class America’s Shift to Conservatism*, 68 U. PITT. L. REV. 243, 254 (2006) (emphasis added).

Kenneth B. Nunn's theory of surplus criminality reinforces the theories of Simon, Moyers, and Lucasi. Nunn says the War on Drugs could easily be called a War on Blacks. He applies Marx's idea that in capitalism there must always be a reserve pool of surplus labor (the unemployed).<sup>83</sup> As the economy expands, it draws workers from the reserve pool of surplus labor. When it retracts, it returns workers to the reserve pool of surplus labor.<sup>84</sup> Likewise, says Nunn, the U.S. has a reserve pool of surplus criminality (the socially marginalized).<sup>85</sup> When crises arise, the mainstream draws from people in the reserve pool of surplus criminality to blame as the criminal element most responsible for the problem.<sup>86</sup> When the crisis subsides, these criminals in reserve need no longer be demonized.<sup>87</sup> Because of the U.S.' history of chattel bondage and apartheid, blacks constitute the deepest pool of readily demonizable latent criminals.<sup>88</sup>

*E. The Multidimensionality of Race, Class, and Gender in The Wire*

Having shown the influence of capitalism on the drug war and capitalism's connection to the race-based nature of the drug war, we can further demonstrate the multidimensionality of race, class, and gender by returning to the scenes that began this part of the essay. Here, Jason Read's development of the distinction between the "soldier" and the "CEO" is important. Whereas Avon is a soldier who lives by traditional codes of gangsterism, Stringer is a CEO who says, "[s]ell the shit, make the profit, and later for that gangster bullshit."<sup>89</sup> Stringer is thus the economic rational actor who would order killing or refrain from killing depending on whether it is marginally economically profitable. Lucasi's essay on *The Wire* links Stringer's attitude to globalized neoliberal capitalism: "Stringer's 'nothing but cash' mantra emerges logically from the culture of monetarism—of

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83. See Kenneth B. Nunn, *Race, Crime and the Pool of Surplus Criminality: Or Why the "War on Drugs" Was a "War on Blacks,"* 6 J. OF GENDER, RACE & JUST. 381, 440 (2002).

84. *Id.* at 339.

85. *Id.* at 440.

86. *Id.*

87. *Id.*

88. *Id.* at 441.

89. Lucasi, *supra* note 81, at 141.

cash without territory or industry.”<sup>90</sup> Stringer is a pure capitalist. Lucasi cites Simon for the proposition that pure capitalism means being loyal to no one and no code except the goal of accumulating profit.<sup>91</sup> In contrast to Stringer, “for Avon, conflict and violence are not subject to calculations that measure cost against benefits, but to a tradition that establishes the rules and conditions of respect.”<sup>92</sup> So Avon would enter conflict to keep “corners” of real estate that are no longer necessary to the drug game,<sup>93</sup> but would not attack an enemy on a Sunday because of tradition.<sup>94</sup>

Note the connection between Avon’s code and hegemonic masculinity. Avon’s rules “do not serve the ends of profit or even dominance.”<sup>95</sup> Instead, violence “is constitutive of reputation.”<sup>96</sup> This is reminiscent of Cohen and Vandello’s description of “cultures of honor.”<sup>97</sup> As might a sheep herder (or a police officer), Avon feels the need to be violent to deter predators.<sup>98</sup> When Stringer proposes a truce with Omar in season one, Avon argues they cannot do that because leaving Omar’s disrespect unpunished would embolden others. The hegemony Avon seeks is being “the man” on the inner-city streets. While Avon’s behavior is not solely about masculinity,<sup>99</sup> the gangster reputation he seeks certainly is of a type associated with especially masculine men.

Stringer’s pure capitalist model is also about reputation.<sup>100</sup> Professional masculinity, while sometimes taking a back seat to working-class models in popular culture,<sup>101</sup> is the ultimately more generally prized masculinity.<sup>102</sup> With his reading glasses and more business-like clothing, Stringer cuts a more professional figure than

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90. *Id.* at 142.

91. *See id.*

92. Read, *supra* note 70, at 128.

93. *Id.* at 129.

94. *Id.* at 128.

95. *Id.*

96. *Id.*

97. Dov Cohen & Joseph A. Vandello, *Meanings of Violence*, 27 J. OF LEGAL STUDS. 501–18 (1998).

98. *See* Cooper, “Who’s the Man?”, *supra* note 23.

99. *See* Read, *supra* note 70, at 129–30.

100. *See id.* at 129–30.

101. *See* Beasley, *supra* note 23, at 90; McGinley, *supra* note 49, at 586.

102. *See* Harris, *Gender, Violence, Race, and Criminal Justice*, *supra* note 22, at 785.

most of the inner-city characters. He also attends college classes as part of his goal of taking the drug organization mainstream. His is thus a more upwardly-mobile masculinity than Avon's.

Nonetheless, Stringer is taken advantage of by corrupt state senator Clay Davis and never fully accepted in the bourgeois world. Why? Certainly his crook-to-businessman strategy has reputedly been pulled off by the Irish (think, the Kennedys) and the Italians (think, *The Godfather*). Just as the Irish and Italians eventually "became white," one might expect black criminals to be able to proceed up the scale of symbolic capital.<sup>103</sup> While the class barriers to such a transition are prodigious, *The Wire* suggests more is involved. As a black criminal, Stringer faces further obstacles. Understanding the failure of Stringer's attempt to forge an inner-city, but professional masculinity thus requires seeing gender, race, and class as co-constituted and context dependent. It requires a materialist multidimensional masculinities approach.

#### IV. CONCLUSION: HYPER-INCARCERATION AS A MULTIDIMENSIONAL ATTACK

Two fundamental insights emerge from the preceding analysis. First, we need to think about hyper-incarceration as a multidimensional attack. Second, we need to emphasize the intersection of class and gender in that phenomenon.

Deeming hyper-incarceration to be a multidimensional attack emphasizes that class, race, gender, and geography, as well as other identities, are all intertwined in it. Harris' call for a shift from restorative justice to transformative justice seems to recognize this fact.<sup>104</sup> Wacquant certainly does so by emphasizing the underappreciated element of geography.<sup>105</sup>

That recognition will not go far enough, though, if we do not acknowledge the ways that class and gender are foregrounded in hyper-incarceration. While hyper-incarceration has profound effects

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103. See DAVID ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* (rev. ed. 1999).

104. See *id.* at 785.

105. See Wacquant, *supra* note 1.

on poor women of color, it is targeted at poor men of color. There is a particular concern with the containment of black men that goes back to at least the immediate aftermath of the Civil War.<sup>106</sup> This analysis points to two potential parts of the solution to hyper-incarceration. First, we must undo the stigma attached to black men (and to Latino men, albeit in somewhat different ways),<sup>107</sup> for that is why whites are not changed by knowledge of the disproportionate incarceration of men of color.<sup>108</sup> Second, we must rebuild economic structures in the inner-city. Only when those twin impediments are removed will the Stringer Bells of the world be able to transform themselves.

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106. See generally Cooper, *Toward Multidimensional Masculinities Theory*, *supra* note 46 (describing images of “bad black man” and “good black man”).

107. See, e.g., STEVE BENDER, *GREASERS AND GRINGOS* (2003) (conducting cultural studies of depictions of Latino men).

108. See Ian F. Haney López, *Post-Racial Racism: Racial Stratification and Mass Incarceration and Mass Incarceration in the Age of Obama*, 98 CALIF. L. REV. 1023, 1064 (2010) (noting survey results showing many whites take racially disproportionate incarceration to be natural).