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Punishment in Federal-Local Immigration Enforcement
Partnerships**

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“These Illegals”: Personhood, Profit, and the Political Economy of Punishment in Federal–Local Immigration Enforcement Partnerships

Daniel L. Stageman

Introduction: Unauthorized Immigrants and the Rhetoric of Criminalization

Contemporary criminological research on immigration can arguably be characterized by its single-minded focus on dispelling the popular misconceptions that immigration causes crime, and that immigrants are prone to criminality (e.g., Graif & Sampson, 2009; Sampson, 2008; Sampson, Morenoff, & Earls, 1999; Wadsworth, 2010). A brief review of the literature in this area reveals sufficient depth and breadth of study by researchers of significant reputation—from Robert Sampson (2008, 2009) to Ramiro Martinez (Chap. 8)—that the academic debate in this area has largely moved past any question of a connection between immigration and crime, to determining how robust a protective factor a concentrated immigrant population provides against crime (Velez & Lyons, 2012), refining theories of how this protective factor operates (Hagan, Levi, & Dinovitzer, 2008), and determining its variance along spatial, ethnic and cultural lines (Chap. 8).

In contrast to this scholarly consensus, popular and political rhetoric on immigrant criminality appears in recent years to have, if anything, doubled down on the very false equivalency that these scholars sought to settle. Witness the assertions by national political figures, in publicly televised debates, such as Arizona Governor Jan Brewer’s that “the majority [of unauthorized border crossers] are coming here and they’re bringing drugs...they’re extorting people and they’re terrorizing the

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families,” or one-time Republican presidential primary frontrunner Herman Cain’s promise to “build an electrified fence on the border with Mexico [and] use military troops ‘with real guns and real bullets’ to stop intruders” (Gabriel & Wyatt, 2011; Sanchez, 2010). In this rhetoric, popularly held ideas on the inherent criminality of “illegal immigrants” are extended to encompass multiple dimensions of such severe and intentional harm (extortion, drug smuggling, terrorism) as to justify preemptive summary execution.

Such rhetoric is a far cry from the settled academic consensus; nor does it bear easy dismissal as the narrow opinion of nativist extremists (on the contrary, these are the publicly expressed opinions of elected officials and nationally prominent politicians), or mere lip-service to a nativist base; in many states and localities, legislative activism and official policy has followed this rhetoric, most notably in the form of Arizona’s notorious SB1070 (Chap. 2) and copycat legislation in Alabama, Georgia, Indiana, South Carolina, and Utah (Castillo, 2011; Gray, 2011; Guterbock et al., 2009; Pearce, 2011). While the federal legislative process on immigration may appear stalled, the Obama administration’s recent high-profile amnesty for “dreamers” belies a flurry of restrictionist immigration activity on the part of the executive branch, from steadily rising annual numbers of forcible deportations, to the nearly universal rollout of the Secure Communities program (Kuck Immigration Partners, 2010).

Why this apparent disconnect between scholarly consensus and popular rhetoric, between empirical research and official policy? I argue that the criminalization of immigrants can be understood best as a function of the economic context in which both immigration, and the punishment that follows logically as a societal response to criminalization, take place. Large-scale immigration to the continental USA—particularly that which took place over the Southern land border from the 1990s through the middle 2000s—was driven primarily by America’s growing need for low- and semi-skilled labor in the service economy during this period, as well as the income differentials in this sector between source countries in Central and South America and the US labor market (Massey, 2009). The same period saw the advent of “hyperincarceration”¹ (Wacquant, 2009, 2010a) in the USA, with both rates of incarceration, and the raw population of the nation’s penal archipelago, rising to unprecedented levels year upon year. In Rusche and Kirchheimer’s (1939) theory of the political economy of punishment, we find a framework that not only provides insight into these trends as separate phenomena, but also allows us to understand them as intertwined products of the same market dynamics—dynamics that, in the context of the 2007 “Great Recession” and the nativist movement that followed in its wake, appear to bring immigration enforcement and penal infrastructure into a functional economic relationship unprecedented in the history of either.

¹Wacquant coined the term as a refinement of the more commonly used “mass incarceration,” in order to indicate that “the expansion and intensification of the activities of the police, courts, and prison over the past quarter century ... have been *finely targeted*, first by class, second by that disguised brand of ethnicity called race, and third by place” (Wacquant, 2010a, p. 78).

The Political Economy of Punishment: The Social Origins and Market Functions of Legal Sanctions

Originally posed by Georg Rusche in his 1933 article “Arbeitsmarkt und Strafvollzug [Labor Market and Penal Sanction]” (Rusche & Dinwiddie, 1978), and later elaborated upon by his co-author Otto Kirchheimer in *Punishment and Social Structure* (Rusche & Kirchheimer, 1939) the political economy of punishment is a theory noteworthy for its simplicity. The theory holds that “[e]very system of production tends to discover punishments which correspond to its productive relationships” (Rusche & Kirchheimer, 1939, p. 5). While the language of “production” and “productive relationships” is indeed Marxian in its orientation, the implications of this statement are as much practical as they are critical: the shape of any given society’s penal infrastructure, at a particular moment in time, is more a factor of its economic arrangements than its jurisprudence. Punishment, and the social apparatus for carrying it out, are shaped by market forces and the social context within which those forces operate, not by abstract legal principles or the theoretical concerns of criminologists (much to our frequent chagrin).

In laying out the evidence for their theory, Rusche and Kirchheimer present a historical overview of the changing shape of punishment, mapped against the shifting social and economic relationships of the Reformation, the Enlightenment, and the Industrial Revolution. In the ensuing years, theorists such as Dario Melossi (1981), Nicola Lacey (2008) and others, have used Rusche and Kirchheimer’s basic template to explain the evolution of punishment through the industrial expansion of the twentieth century, the rise of automation, the decline of manufacturing, globalization, and the contemporary dominance of the service economy (Cavadino & Dignan, 2006; De Giorgi, 2006; Lacey, 2008; Melossi & Pavarini, 1981). These scholars’ respective interpretations of the relationship between contemporary macro-economic trends and American mass (or hyper-) incarceration varies, but there appears to be general agreement on a few essential points: (1) the disproportionate racial impact of American imprisonment policies—particularly those implemented as part of the “War on Drugs”—represent the political establishment’s efforts to limit and otherwise regulate the participation of historical minorities (particularly African Americans) in US economic life; (2) the isolation of the imprisoned from the American labor market makes it “crucially important to grasp the way in which the removal of prisoners from the roll of the unemployed [positively] distorts the perception of the USA’s economic importance” (Lacey, 2008, p. 134); and (3) “The employment created by the prison system—building construction and maintenance, the provision of security technology, and the supervision of prisoners—now constitutes a sizeable portion of the US economy” (Lacey, 2008, p. 135). Although it should be noted that Hispanics (arguably the archetypal millennial immigrant to the USA) are also disproportionately represented in the American prison system, the immigrant detention and deportation system fills a parallel and supplemental role in limiting and regulating Hispanic (and other) immigrants’ participation in US economic life—a role that has expanded exponentially on a trajectory that mirrors the explosive growth of mass incarceration.

The current study seeks to expand on these fundamental concepts of contemporary political economy of punishment, and further, subjects them to a series of empirical tests. While it is a given that the broad generalities of theory elide much of the specific contextual variation in the historical dynamics that they attempt to explain and describe, theory testing requires that these variations be operationalized; therefore, I examine the specific economic contexts in which state and local governments adopt the restrictionist immigration policies and practices that lead to detention and deportation—and give the states and localities in question both direct and indirect economic stakes in the detention and deportation processes. Looking at all 50 US States, I draw data from multiple sources to analyze and specify three coherent and mutually distinct state-level factors (*market scale*, *punitive economy*, and *market pressure*); I then test the correlation of these factors with a fourth factor measuring the scale of locally controlled immigration enforcement. Results show a significant and strong linear correlation between market scale and local enforcement, and significant weak-to-moderate correlations between punitive economy, market pressure and local enforcement. These results suggest that locally driven immigration enforcement may be influenced by the profit potential inherent in immigrant detention, transportation and deportation operations. I conclude by arguing that this influence obscures the public interest missions of local law enforcement agencies, and calls into question the public interest purpose of federal–local immigration enforcement partnerships.

Punishment for Profit: Immigrant Detention as Extractive Market Venture

In 2009, approximately 380,000 individuals were detained for some period of time in the custody of the US Immigration and Customs Enforcement (Schriro, 2009). With lengths of stay averaging 30 days, the average daily population of immigrant detainees was 32,000 over the course of the year. These numbers give some indication of both the long and short-term historical dynamics at work in unauthorized immigrant detention: first, the total number of detainees represents an approximate increase of 100,000 (36 %) over (prerecession) 2007 levels, and second, the average daily population of 32,000 represents an increase of nearly 427 % over the system's *total capacity* (in terms of bed space) as recently as 1995. The latter rate of growth parallels the exponential growth of America's correctional infrastructure over a similar period. The parallels between the two systems are not limited to growth rates, but extend to conditions of confinement as well: "the facilities that ICE uses to detain aliens were built, and operate, as jails and prisons to confine pretrial and sentenced felons" (Schriro, 2009, p. 2).

Within the theoretical framework of the punitive economy of punishment, there is a clear logic to parallel conditions of confinement for criminal felons and unauthorized (and thus criminal) immigrants; however, a number of unique factors also appear to be at work in the steady long-term and explosive short-term patterns of

growth in the immigrant detention infrastructure. Over the course of 2009, immigrant detainees could be found in over 300 separate facilities nationwide. However,

Approximately 50 % of the detained population [was] held in 21 facilities. These include[d] seven Service Processing Centers (SPC) owned by ICE and *operated by the private sector*; seven dedicated Contract Detention Facilities (CDF) *owned and operated by the private sector*; and seven *dedicated county jail facilities, with which ICE maintains intergovernmental agency service agreements* (IGSA) (Schriro, 2009, p. 10; italics mine).

The prevalence of private sector and local government interests in the immigrant detention system indicates that economic context plays a role in setting conditions of detention for unauthorized immigrants; I argue that economic context is also essential to understanding state and local immigration enforcement policies. The *immigrant detention market* is relatively small in dollar terms: ICE’s Office of Detention and Removal Operations had a total operating budget of \$2.6 billion in 2009, as opposed to a conservative \$4.4 billion “back-of-a-napkin” estimate for the unauthorized immigrant contribution to the value of US housing stock,² or \$70 billion for the total annual operating budget of America’s county, state, and federal prisons combined (Schriro, 2009, p. 6; Wacquant, 2010b, p. 608). However, it is a market nonetheless, with multiple private interests and local governments applying market principles to their competition for contracts. The immigrant detention market presents market actors with two extremely attractive conditions: the first is an average per diem fee for detainees more than twice that paid for prisoner-clients from traditional criminal justice sources; the second is that the source of these fees is federal dollars, as opposed to the state and local tax-levy monies that generally pay for criminal justice system prisoners.

Though these conditions have different meanings for the private and government interests entering the market, clear evidence of this market logic in effect can be

²The Pew Hispanic Center estimates that unauthorized immigrants made up 17.1 % of the total construction workforce in 2008 (Passel & Cohn, 2009). Average prevailing wages for laborers in the American construction industry were \$680 per week, versus \$480 per week for foreign-born Hispanics, representing a savings of about 30 % on wages alone for those who employ them (Kochar, 2008). Several factors make the estimate of a 30 % savings an extremely conservative one: (1) unauthorized laborers may earn even less on average than foreign-born Hispanic workers as a whole; (2) employers of unauthorized immigrants have an increased potential for savings on various forms of insurance and through wage theft (Brownell, 2005; Carroll, 2010; Wishnie, 2007); and (3) the presence of unauthorized workers has a clear tendency to depress wages for authorized workers industry-wide. Although it is unlikely that the 17.1 % of construction laborers estimated to be unauthorized are spread evenly throughout the industry, it is no great leap to argue that their presence represents a 5 % savings on labor costs for the American construction industry as a whole. In 2008 (already well into the steep beginnings of the recession), the industry spent \$296 billion to create \$351 billion in real estate value, in private residential construction alone (US Census Bureau, 2010). Using a construction-industry rule-of-thumb that labor costs represent 25 % of total building costs, total labor costs for the private residential construction industry in 2008 were something in the area of \$74 billion; thus, we can make a conservative estimate of \$3.7 billion for the total labor savings represented by the employment of unauthorized construction workers, and \$4.4 billion for the value, in reduced wages alone, that these workers added to the US private residential real estate stock in 2008.

found in the 2009 Annual Report of the single largest private corporation active in both the traditional corrections and immigrant detention markets, the Corrections Corporation of America (CCA). Prepared for the company's shareholders, and to fulfill statutory corporate governance requirements, annual reports by their nature must deal explicitly with issues of profit and loss, risk, market activity, and market conditions. Among the illuminating statements and figures the corporation presents in this document is a "[r]evenue per compensated man-day" figure of \$58.33—up 94 cents from 2008's \$57.39 average and representing an operating margin of \$17.84, or 30.6 % (Corrections Corporation of America, 2010, p. 32). This figure represents the average revenue across all of CCA's areas of business, including contracts for state and federal prisoners, as well as US Marshals Service and ICE detainees. Thus, \$58.33 is an artificially high estimate of the average per diem revenue potential for housing traditional prisoners. Even so, it is less than half the average of \$122 per day that ICE pays for detained immigrants (Detention Watch Network, n.d.). Even if we make the generous assumption that immigrant detainees are twice as expensive to house as traditional prisoners, they still represent a "clientele" with the potential to more than double CCA's operating margin per compensated person-day, making the detention market an attractive one indeed.

The attractiveness of this market is enhanced, particularly in the context of the recent recession, by the fact that the Federal government, rather than state or local governments, pays the per diem fees for immigrant detainees. In its required market risk assessment, the CCA admits that "the budgetary constraints our state customers are experiencing will present challenges in obtaining per diem increases and additional inmate populations in the short-term" (Corrections Corporation of America, 2010, p. 11). This concern is reflected in the decline of CCA's average compensated occupancy over the recession years, which moved from 98.2 % in 2007, to 95.5 % in 2008 and 90.7 % in 2009 (Corrections Corporation of America, 2010, p. 15). Unconstrained by the balanced budget requirements in effect in the overwhelming majority of American states, the Federal government represents a vastly more reliable revenue source for private contractors, another factor making immigrant detainees a more attractive client base than traditional prisoners. For the county jails that also house a significant proportion of immigrant detainees, the situation is similar. Faced with the task of paying off capital expenditures on jails built or expanded during years of rising incarceration, many counties and municipalities have found themselves trapped between falling crime rates and state-level policy initiatives to reduce incarceration; they may also have experienced significantly reduced income during the recession from property taxes and other sources. Sheriffs and other county officials, from Jefferson County, Virginia, to Essex County, New Jersey, have discussed these issues publicly; in the latter case, Essex County officials competed with private corporations in an open bidding process to build and operate a large-scale immigrant detention facility—a bid that the county ultimately won (Culli, 2009; Semple, 2011a). It is clear that such detention contracts represent a steady and reliable revenue stream of Federal dollars to many local governments that need them—Federal dollars, moreover, that may serve additional political and

ideological functions in conservative-leaning locales. In this context, immigrant detainees are not simply an income source; they are a tangible prop upon which state and local politicians can establish both “tough on crime” and “anti-illegal immigration” bona fides (Varsanyi, 2008).

At the state and local levels, however, both the economic and political benefits of immigrant detention are limited, to the extent that immigration enforcement actions and decisions about detainee movement are the purview of the Federal bureaucracy. Federal control places limits on the market activity of private interests as well, limiting facility expansion to the federally determined level of enforcement, and limiting the ability of private interests to target local markets directly. In other words, it is not enough to simply expand detention operations in areas where there are populations of unauthorized immigrants necessary to sustain them; private interests must also leverage the popular political will to fill them. In a state such as Arizona, which fulfills both of these criteria, it is simply sound business practice for private interests to support the devolution of Federal control over immigration enforcement to the state and local governments. In a particularly illustrative example of the many forms this support might take, an October 2010 report by NPR’s Laura Sullivan details the Corrections Corporation of America’s involvement in the drafting and passage of Arizona’s now infamous SB1070.³ CCA officials sit on the board of the American Legislative Exchange Council, where the idea for the bill was first mooted by Arizona state Senator Russell Pearce, and where it was written, by committee, into a model bill. This “model legislation became, almost word for word, Arizona’s immigration law,” (Sullivan, 2010) after the CCA sent a new lobbyist to the Arizona capitol, and made campaign donations (along with other private prison companies) to 30 of the bills 36 co-sponsors.

As an attempt to place more control over immigration enforcement into the hands of state and local governments, Arizona’s SB1070 represents an extreme; as much an exercise in public ideological positioning as a practical policy effort (albeit one that a number of other state legislatures have recently emulated). Two other Federally sanctioned programs⁴ emerged in the 1990s and 2000s to enable states, counties and municipalities to quietly take a significant measure of control over immigration enforcement, without the public scrutiny and uncertainty that might accompany legislative processes. The first and older of these programs is the 287(g) program,⁵ named for the section of the 1996 Immigration and Nationality Act in which it was introduced. With the signing of a memorandum of agreement, the 287(g) program authorizes “state, county, and local law enforcement agencies (LEAs) to enforce

³For an expanded discussion of the origins and legacies of Arizona’s State Bill 1070, see Chap. 2.

⁴While additional programs, particularly ICE’s Criminal Alien Program (CAP), also result in the entry of numerous immigrants into the detention system, I limit my analysis to the Secure Communities and 287(g) programs because they entail significant and clearly defined local control over specific aspects of the enforcement process. For a detailed discussion of the CAP program, please see Chap. 1.

⁵Again, see Chap. 1 for a detailed history of the 287(g) program.

federal immigration law...[expanding] the federal government's enforcement capacities while enabling LEAs to respond directly to popular concerns regarding illegal immigration" (Rodriguez, Chishti, Capps, & St. John, 2010, p. 1). With \$54.1 million in funding in 2009, the 287(g) program provides direct fiscal benefits to participating local law enforcement agencies in the forms of grants and salaries, as well as effectively deputizing local police to perform the investigative and arrest functions of ICE agents. According to a 2009 US Government Accountability Office report, however, "some participating agencies are using their 287(g) authority to process for removal aliens who have committed minor crimes, such as carrying an open container of alcohol" (United States Government Accountability Office, 2009, p. 4). Traffic offenses and other violations that do not rise to the level of criminal misdemeanors are also sources of 287(g) arrests,⁶ which accounted for 12 % (44,692) of admissions into the immigrant detention system in 2009. Of this total, 65 %, or 29,159 individual detainees, were classified by ICE as "non-criminal" (Schriro, 2009, p. 13).

The second program is the Secure Communities⁷ program, launched in 2008. This program, slated for nationwide implementation by 2013 and funded at \$200 million annually, is squarely focused on state and local corrections rather than law enforcement agencies. The program enables "participating jails [to] submit arrestees' fingerprints not only to criminal databases, but to immigration databases as well; allowing ICE access to information on individuals held in jails" (Waslin, 2010, p. 3). Despite the program's relative youth, it is clear that much of the recent increase in annual deportation figures can be attributed to its expanding coverage of state and local correctional agencies nationwide; it is equally clear that a significant proportion of Secure Communities detainees are non-criminal as well, and an even larger proportion have been convicted only of low-level misdemeanors.⁸ In any case, Secure Communities provides correctional administrators with a means to potentially recoup the cost of detaining criminal (and non-criminal) immigrants: once identified as unauthorized (or otherwise subject to removal), detained immigrants may continue to be held in the same facilities while ICE initiates deportation proceedings. The only essential difference in the condition thereof confinement is that it is now paid for by the Federal government, transforming the prisoner from a fiscal liability into a source of profit.

Through detention, and the state and locally controlled immigration enforcement activities that lead to it, unauthorized immigrants (and other immigrants caught up in the system, regardless of their status) become the object of economic activity that is effectively *extractive* in nature. In contrast to exploitative economic activity,⁹ which profits from unauthorized immigrants' labor and the conditions of

⁶See Chaps. 1, 2, and 3 for detailed discussions of detention and removal patterns under the 287(g) and Secure Communities programs.

⁷See Chap. 3 for a comprehensive history and accounting of the Secure Communities initiative.

⁸Pedroza provides exact figures in his contribution to this volume.

⁹For a detailed discussion of the labor market exploitation of unauthorized immigrants, see Chap. 13.

uncertainty and vulnerability that keep unauthorized immigrant labor costs significantly lower than those for native workers, extractive activity approaches immigrants as analogous to a natural resource: immigrants need only be present in order for the various interests involved in detention operations to profit.

While it is clear that the profit potential in extractive activity such as detention is dwarfed by the exploitative part of the field—that is to say, it makes better economic sense, under most conditions, to employ unauthorized immigrant laborers at sub-standard wages than it does to lock them up—the prevalence of extractive detention is contextually determined and operates in a complex relationship with exploitation and *exclusion* (the systematic denial of economically implicated forms of social membership, and the resultant maintenance of unauthorized immigrants as perpetual outsiders). Certainly, in keeping with the major theoretical propositions of the political economy of punishment, extractive detention serves a disciplinary function, discouraging unauthorized immigrants from appealing to officials in cases where exploitation edges into abuse; it also injects an element of fear into social service contacts, from schooling to health care, that encourages self-exclusion. Most importantly, however, for the purposes of the current analysis, extractive detention introduces a flexibility that allows the field as a whole to respond to changing social and economic conditions. It is extractive in nature primarily because it allows actors in the field to extract profit from social and economic shifts that might otherwise be considered roundly negative: in the current case, the twin social problems of the economic downturn, and overexpansion at all levels of the criminal justice infrastructure.

The recent economic recession has had a number of effects that might be expected to shift the balance between exploitative and extractive market activity: first, the concentration of the downturn in the housing market led to a slowdown in construction and large-scale layoffs in the industry. It is reasonable to expect that such layoffs affected unauthorized immigrants to a degree proportional to their representation in the industry. While it is beyond the scope of this chapter to determine whether and to what degree unemployed unauthorized immigrants represent an economic and social burden to their communities of residence, they clearly present significantly reduced opportunities for economic exploitation. States and localities with immigration enforcement powers and a vested interest in (and established infrastructure for) immigrant detention can manipulate enforcement in an effort to extract value from this surplus (i.e., unproductive and underexploited) unauthorized immigrant population. This is not to say that the value thus extracted could match the potential value of labor exploitation; however, it stands to reason that some value is better than none; therefore, apprehending and processing unauthorized immigrants through the detention and deportation infrastructure can be interpreted as an opportunity to “recoup costs”—an opportunity missed in the event that unauthorized immigrants voluntarily return to their countries of origin (or “self-deport”).

Second, sustained high unemployment amongst the citizen population is likely to increase the anxiety and resentment directed at unauthorized immigrants themselves, in that it throws off the balance between the benefits (in terms of lower costs

for a variety of goods and services) and detriments (in terms of labor competition and wage depression) that a given community's unauthorized immigrants represent. Visible, stringent local enforcement leading to detention and deportation is a policy tool that allows state and local politicians to present themselves as proactively addressing their constituents' anxiety and resentment toward unauthorized immigrants, in contrast to an (in the nativist narrative) unresponsive and reticent federal government. This policy tool carries the added benefit of being business-friendly, in that it is focused squarely on the unauthorized immigrants themselves, provides businesses an additional means to manage and discipline unauthorized immigrant workers, and gives the appearance of addressing constituents' economic concerns without raising labor costs or corporate taxes.

Finally, local immigration enforcement leading to detention provides a means to meliorate the many potential effects of the economic contraction on local criminal justice infrastructure. A reduction in the current scale of criminal justice incarceration carries enormous economic implications for most American states and many localities. Though the states that have undertaken, or are considering, such reductions—through means of a variety of policy shifts including early releases, changes in drug laws, and a renewed focus on community corrections—do so with an eye firmly on the ballooning share of deeply reduced state budgets taken up by corrections, the consequences will range from prison closures and reduced arrest rates, to layoffs of correctional and police officers. For communities that have come to depend on carceral infrastructure in the face of dramatic declines in manufacturing and other productive industries, these consequences are likely to be economically devastating. The unions that represent correctional and police officers—and the public who supports them—will resist any reduction in ways that will be both politically and economically costly, even if ultimately futile. While local immigration enforcement and detention are unlikely to ever serve as a full replacement for reduced arrests and reduced incarceration, again, they are clearly preferable if a total write-off is the only alternative.

Data and Methodology: An Empirical Test of the Political Economy of Punishment in Federal–Local Immigration Enforcement Partnerships

An empirical test of the political economy of punishment presents some unique challenges. Chief among these is the fragmentary nature of the policy decisions any such empirical test needs to incorporate, and the diffusion of the economic and political calculations that underlie them. The key question I attempt to address in this analysis is: *how, and to what extent, do macro-economic factors influence the scale of state and locally controlled immigration enforcement leading to detention?* Anecdotal evidence strongly suggests that profit motives exert a significant influence on state and local immigration enforcement and detention decision making:

county officials, such as those in Essex County, New Jersey, who have entered a competitive bid to transform their local jail into a model immigrant detention center, have publicly addressed the economic motivations behind detention policy decisions (Semple, 2011b, *Plan to Upgrade New Jersey Jail Into Model for Immigrant Detention Centers*). In contrast, disentangling and specifying the economic motivations behind a county deputy's decision to arrest an apparently unauthorized immigrant for loitering, and subsequently turn that arrestee over to the custody of ICE, cannot be presented as a linear process. Such a decision might be officially mandated by departmental rules; it might be an unwritten mandate of departmental culture; it might be motivated on a personal level by the deputy's ideology, his general or specific sense of economic anxiety, his sense of duty, boredom or simply habit.

The political economy of punishment, however, is not intended to explain the micro-level decision-making of polities, politicians, and police, but to provide a framework—a “field”—in which certain decisions regarding immigration enforcement and detention make economic sense. Any given arrest of a (suspected) unauthorized immigrant may be motivated by duty, by racism, by habit, or by some combination of all three; to the extent that the arrest leads to direct economic benefits for a particular corporation or polity, and secondary economic benefits for stockholders, employees, or citizens, it indicates the theory in operation. Testing the theory must therefore be a two-step process: first, to determine whether the political economy of punishment operates through the mechanisms that I have specified above, and second, to determine whether it operates as predicted in the extractive detention of unauthorized (and other) immigrants. The present test takes US states as its unit of analysis, and examines cross-sectional correlations of 2009 data. It must be acknowledged that both the cross-sectional nature of this analysis, and its reliance on state-level data, place serious limitations on the validity of any causal inference that might be drawn from them. The clear possibility that wider variation might exist at the county or municipal level within states than between them, is lost with a state-by-state comparison. Cross-sectional analysis, of course, can only detect correlation rather than causation; in addition, it gives no sense of temporal order or change over time. Nevertheless, a cross-sectional analysis of state-level data is appropriate in the current context, for a number of reasons:

1. The current analysis represents the first empirical test of the political economy of othering in immigrant detention. As such, a broad overview of the phenomenon will support the subsequent development of more sophisticated analyses.
2. The theory is presented in this paper within the context of ongoing, contemporary social forces and policy decisions—the Secure Communities program, for example, incorporated as a dependent variable below, was introduced in 2008; the “Great Recession,” treated herein at length, officially began in December of 2007 (National Bureau of Economic Research, 2008), and was only recently declared to have ended. Many data that would give some indication of change-over-time in these and related variables are simply not yet available.
3. Many of the policy decisions under examination herein take place at the state level (e.g., correctional policy, budgetary policy, criminal codes, etc.). State-level

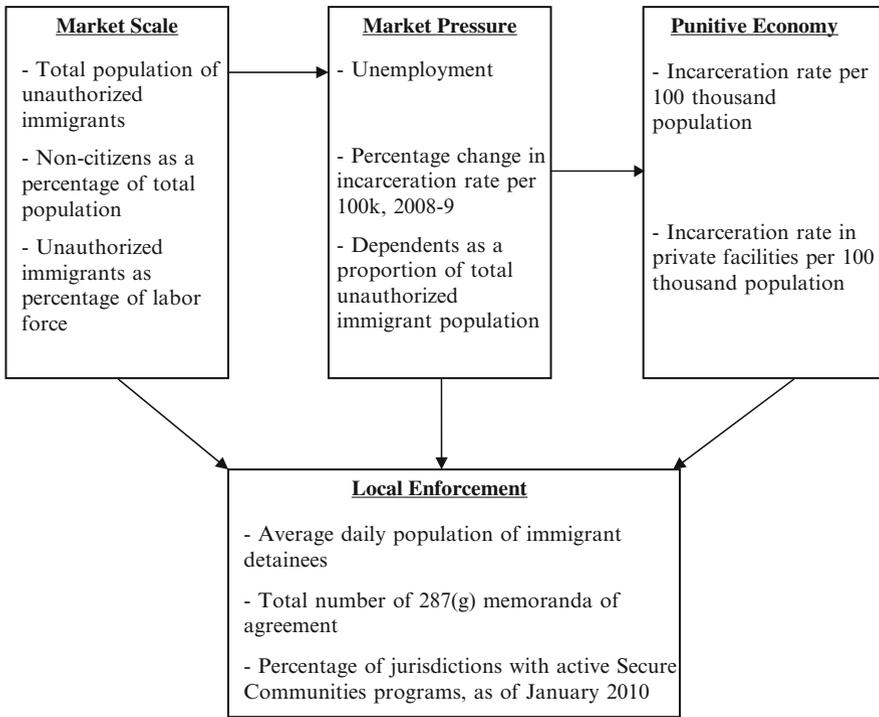


Fig. 1 Contextual model for state-level correlates of extractive detention, 2009

policy making creates the framework within which local policy decisions must be made, making local-level policy decisions (in the current analysis, the decision to enter into a 287(g) agreement or the speed with which to implement the Secure Communities program) arguably the more reactive of the two, and thus reflective of statewide conditions.

Given these considerations, a cross-sectional analysis of state-level data should provide a useful overview of the operational field of the political economy of punishment as it applies to extractive detention in the USA. Within the field, I expect to see three factors affect the scale of extractive detention:

Factor 1: Market Scale

As the name implies, extractive market activity treats unauthorized immigrants as analogous to natural resources: it requires only that they be present and accessible as the passive object of the extractive forces involved. As such, no extraction can

take place where the natural resource is (1) unavailable; (2) in such limited supply or so inaccessible as to render extraction unprofitable; or (3) directly or indirectly involved in other economic activity that is more profitable than the extractive process planned. Mining corporations do not mine coal where there is no coal, where they cannot turn a profit on it, or where it sits beneath prime residential real estate; similarly, immigrant detention cannot operate as an extractive process where few or no unauthorized immigrants are present, where they are difficult to locate and to draw into extractive processes (i.e., to arrest and detain), or where they are more profitably subjected to the exploitative activity of the labor market. Accordingly, I have selected three variables to stand as proxies for the state-level scale of the potential available immigrant market extractive detention: the state's *total population of unauthorized immigrants*, the *percentage of the state's population made up of non-citizens*, and the *percentage of the state's labor force made up of unauthorized immigrants*.

The state's total population of unauthorized immigrants straightforwardly represents the total potential extractive profit—its total reserves, to extend the natural resource metaphor. Texas, for example, has an estimated population of 1.65 million unauthorized immigrants; Alaska has less than 10,000 (Passel & Cohn, 2011). Given an average of \$122 per day in fees and an average stay in detention of 30 days, Texas' unauthorized immigrant population represents a potential extractive value of \$6 billion, versus less than \$37 million for Alaska; viewed in this light, it is only logical that Texas should host significantly more extractive activity than Alaska. The latter two proxy variables—the percentage of the state's population made up of non-citizens and the percentage of the state's labor force made up of unauthorized immigrants—are intended to represent accessibility and exploitative involvement, respectively. The accessibility of unauthorized immigrants is linked closely to visibility: the higher the visibility of unauthorized immigrants, the more likely they are to come into day-to-day contact with law enforcement officers and the citizen population alike. I use the non-citizen percentage of the population rather than the unauthorized percentage, because the markers that law enforcement officials and the citizen population likely use to identify unauthorized immigrants—racial characteristics, language use, cultural displays—do not distinguish between authorized and unauthorized immigrants. Lastly, the percentage of unauthorized immigrants in the state's labor force represents a sort of saturation point for unauthorized immigrants' labor participation: as I have outlined above, exploitative market activity is likely to be significantly more profitable than extractive activity. As unauthorized immigrant participation in the labor market rises, however, native workers' awareness of the competition they represent is likely to rise with it. Though tolerance levels for unauthorized immigrants' labor force participation may vary from state to state, I proceed on the assumption that the acceptability of detention as a disciplinary tool and a salve to the anxieties of native workers rises proportionally with unauthorized immigrants' labor force participation.

Factor 2: Punitive Economy

This factor attempts to capture the scale of the state's established correctional infrastructure into which immigrant detainees are drawn—in effect, the capital already present in the state to be invested in extractive detention. However, because correctional incarceration is a market-involved activity (as opposed to an expressly profit-driven, free-market activity) there is a need for variables that reflect the breadth and depth of incarceration's involvement in the state's economy. Accordingly, I have chosen to use the state's *incarceration rate per 100,000 population*, to provide an indirect measure of per-capita economic involvement with the criminal justice economy statewide. For local government officials, this may stand in for the impact of criminal justice investment and employment on their local economy and tax base; for individual voters, it is intended to represent the likelihood and the likely extent of their direct and indirect benefit from criminal justice employment and other aspects of the criminal justice economy. Finally, in order to represent the effects of direct market decision-making and political influence from private corrections corporations, I include the *incarceration rate in privately operated facilities per 100,000 population* statewide. The higher the per-capita private incarceration rate, the broader the economic impact (and the stronger the political influence) of decisions taken by private corrections corporations is likely to be.

Factor 3: Market Pressure

Whereas the market scale for extractive othering represents the long-term economic viability of extractive detention activity in the state, market pressure represents the short-term push–pull factors that should be expected to (1) push unauthorized immigrants out of the labor market and the more profitable exploitative area of the field; and (2) pull these immigrants (as detainees) into the existing criminal justice infrastructure. Short-term fluctuations in the labor market—represented here by the proxy variable of the state's *official unemployment rate*—can generally be expected to affect unauthorized workers proportionally. Secondly, they may also lead to heightened short-term anxiety on the part of the state's native workers, affecting voting patterns and political support for local enforcement and detention accordingly. Conversely, short-term fluctuations in the activity of the state's criminal justice infrastructure—represented by *the year-on-year percentage change in the state's incarceration rate per 100,000*—should be expected to relate negatively to support for local enforcement and detention efforts. That is, where incarceration is dropping, state and local officials will be exploring alternative means to fill empty cells and preserve the positive primary and secondary economic impact that criminal justice institutions bring to local communities—and they may well be supported in these efforts by law enforcement and correctional officers unions, as well as other economically motivated advocacy groups. A third variable—*the proportion of the*

state’s unauthorized immigrant population not participating in the labor force—serves a dual role within this factor, first complementing the “pull” factor of unemployment, and second, representing the proportion of unauthorized dependents (and other individuals not participating in the labor force) who can be drawn into extractive market activity without any net effect on potential exploitative activity.

Factor 4: (Dependent) Local Enforcement and Detention

Given the theoretical construction of independent proxy variables into broader underlying factors, it is both conceptually and methodologically appropriate to treat the dependent variables of interest in a similar fashion. Detention itself—represented by *the state’s average daily population of detainees*—is, within the theoretical framework of the political economy of punishment, the benefit-producing end of any local enforcement initiative; however, given that its distribution remains subject to federal enforcement decision-making and activity, it is by itself an imperfect measure of state-level local enforcement scale. It is supplemented here through the inclusion of *the state’s raw number of active 287(g) memoranda of understanding*, and *the proportion of the state’s criminal justice jurisdictions actively participating in the Secure Communities Program*.

Factor analysis presents the most appropriate statistical technique to test for the presence of, and relationships amongst, these factors within the current 50-state data set. Theoretically and conceptually, it is uniquely suited to revealing the underlying contextual patterns and associations that should set the field for extractive detention; methodologically, it serves to standardize a set of variables that are, in their raw forms, expressed in disparate and difficult to reconcile terms (from raw populations and proportions to rates and averages). Additionally, oblique (oblimin) factor analysis reveals the correlations between these underlying factors. This in effect holds the other factors constant—an essential feature where the variables of interest have highly skewed distributions and a high prevalence of zeros that render traditional OLS regression unfeasible (Table 1).

Findings, Part 1: Factor Analysis

Table 2 presents the relevant statistics for the factor analysis of variables expected to predict the scale of extractive detention. In general, the analysis provides strong support for the presence of the factors outlined above, and the distribution of variables within each factor supports the theoretical specifications of the political economy of punishment. The model explains 71 % of the total variance amongst the eight variables included, and with complete data from all 50 US states, the analysis fits well within the widely accepted tolerance of 5–20 cases per variable. In addition,

Table 1 Descriptive statistics for variables of interest, 50 US states, 2009

Variable	Mean	SD	Min.	Max.
Market scale				
Total population of unauthorized immigrants (in thousands)	228	434	10	2,550
Non-citizens as a proportion of total population	0.048	0.032	0.007	0.146
Unauthorized immigrants as a proportion of total labor force	0.038	0.024	0.005	0.100
Market pressure				
Proportion of labor force unemployed	0.085	0.020	0.043	0.133
Proportional year-on-year change in prison population	0.001	0.030	-0.092	0.054
Proportion of unauthorized population not participating in labor force	0.246	0.122	0.000	0.430
Punitive economy				
Incarceration rate per 100 thousand population	409	147	151	866
Incarceration rate in private facilities per 100 thousand population	40.3	58.5	0	194
Local enforcement and detention				
Average daily population of detained immigrants	673	1,421	0	8,809
Total number of 287(g) memoranda of understanding	1.32	2.24	0	9
Proportion of jurisdiction with active Secure Communities programs	0.032	0.083	0.000	0.470

Table 2 Factor loadings for variables implicated in extractive othering

Code	Variable	Loading		
		Factor 1: market scale	Factor 2: punitive economy	Factor 3: market pressure
undocpop	Total population of unauthorized immigrants	0.844		
noncitperc	Non-citizens as a proportion of total population	0.955		
undoclabpc	Unauthorized immigrants as a proportion of total labor force	0.943		
unemp	Proportion of labor force unemployed			0.780
incchg	Proportional year-on-year change in prison population			-0.726
undocdeppc	Proportion of unauth. pop. not participating in labor force			0.680
incperk	Incarceration rate per 100,000 population		0.847	
privtperk	Incarceration rate in private facilities per 100,000 population		0.732	
Eigenvalue		2.865	1.571	1.279
% of variance		35.811	19.638	15.991
(% of total variance explained)		71.440		
<i>Component correlation matrix</i>				
	Factor 1: market scale	1.000	0.064	0.167
	Factor 2: punitive economy	0.064	1.000	-0.035
	Factor 3: market pressure	0.167	-0.035	1.000

Table 3 Factor loadings for dependent variables: local enforcement and detention

Code	Variable	Loading
		Factor 1: local enforcement and detention
detadp	Average daily population of detained immigrants	0.907
gmoaccount	Count of 287(g) memoranda of understanding	0.778
activscperc	Proportion of jurisdictions with Secure Communities programs	0.755
Eigenvalue		1.999
% of variance		66.617

the factors are largely distinct, with the highest correlation (0.167) arising between the market scale and market pressure factors, and a minuscule negative correlation (−0.035) between the market pressure and punitive economy factors.

This implies that the normal scores for each state on the three factors are generally uncorrelated, and can thus be used to further analyze their correlation with the dependent variable of interest (local enforcement and detention), with confidence that each factor represents the distinct aspect of the theory specified. As for the individual variables included in the model, the smallest absolute loading is 0.680, indicating that the factor (market pressure) explains 68 % of total variance in the variable, in this case the proportion of the state’s unauthorized immigrant population not participating in the labor force.

Table 3 presents the factor loadings for the dependent variable of interest, local enforcement and detention. While the amount of variance in the three constituent variables explained by the factor—66.6 %—is less than the 71 % explained by the factors in the first model, it is clear that this larger variance is driven by the degree to which local enforcement initiatives (loading at 0.778 and 0.755, respectively) are out of step with detention itself (loading at 0.907). This variance can likely be explained by two distinct circumstances: first, the degree to which entry into a 287(g) agreement may be ideologically driven, economically speculative, or driven by the promise of enforcement-side economic rewards. Law enforcement officials in counties and municipalities with very low populations of unauthorized immigrants might enter into 287(g) for the free trainings and in-kind subsidies that such agreements carry, without the agreement leading to a notable increase in the state or local population of detained immigrants. Secondly, the relative youth of the Secure Communities Program—and the fact that many jurisdictions did not enter the program until late in 2009—means that the program itself would be unlikely to be significantly related to an increase in the population of detained immigrants until 2010 or later. Given these issues, the 66.6 % association of detention and local enforcement variables implies that the factor is a viable dependent variable for further analysis.

Findings, Part 2: Crosstabular Correlations

As discussed above, the non-normal distributions and the prevalence of null values in both the independent and dependent variables included in the model make measuring association through standard OLS regression unfeasible. As an alternative, each factor has been divided into pentile ranks, the mean values for individual variables of which are shown in Table 4. The categorical ranks of each independent factor are then crosstabulated separately with the rank-ordered local enforcement factor, and tested with (1) Fisher’s exact test to measure significance; and (2) Cramer’s V and (3) Kendall’s tau-b as measures of association. Fisher’s exact test is used rather than a standard chi-square, because the observed-expected values in a great many cells are less than 5; as such, an exact test can be interpreted with much greater confidence than an asymptotic estimate. Cramer’s V provides a measure of the raw (nominal) association of the two variables examined (in other words, the

Table 4 Extractive economic othering: mean variable values by factor score pentile

Variable	Factor score pentile				
	1 (lowest)	2	3	4	5 (highest)
Market scale					
Total population of unauthorized immigrants (in thousands)	23.5	85.5	67.5 ^a	162	801.5
Non-citizens as a proportion of total population	0.0168	0.0246	0.0389	0.0631	0.0971
Unauthorized immigrants as a proportion of total labor force	0.0105	0.0224	0.0327	0.0481	0.0748
Market pressure					
Proportion of labor force unemployed	0.0692	0.0718	0.0813	0.0954	0.1048
Proportional year-on-year change in prison population	0.025	0.0123	0.0137 ^a	-0.0117	-0.0325
Proportion of unauthorized population not participating in labor force	0.0446	0.2653	0.3187	0.2739 ^a	0.3274
Punitive economy					
Incarceration rate per 100 thousand population	226.3	353.4	434.8	448.8	580.5
Incarceration rate in private facilities per 100 thousand population	1.67	7.21	13.82	65.82	112.8
Local enforcement and detention					
Average daily population of detained immigrants	14	135	354	516	2,348
Total number of 287(g) memoranda of understanding	0 ^b	0.1	0.7	1.5	4.3
Proportion of jurisdiction with active Secure Communities programs	0.0 ^b	0.001	0.002	0.018	0.138

^aDenotes a deviation from ordinal scale on the mean value of this variable by pentile rank, due to variance in this factor not explained by the model presented

^bValues of this variable for all cases in pentile one are 0

Table 5 Crosstabular correlations of ranked extractive economic othering factors with ranked local enforcement factor

Independent factor variable	Fisher’s exact test		Cramer’s V		Kendall’s tau-b	
	Statistic	Significance	Value	Significance	Value	Significance
Market scale	33.841	0.000	0.469	0.000	0.558	0.000 ^a
Punitive economy	23.147	0.051	0.354	0.075	0.217	0.071 ^a
Market pressure	41.008	0.000	0.520	0.000	0.220	0.056 ^a

^aApproximate significance (exact significance could not be computed with available memory)

strength of the relationship regardless of direction), and Kendall’s tau-b measures the directional association of the ranked factors (the degree to which one factor rises and falls with the other).

Table 5 reveals clear support for the political economy of punishment in locally controlled immigration enforcement leading to detention; specifically, the tests appear to indicate that macro-economic factors influence the scale of these operations at the state level, lending support to the extractive interpretation outlined above. Significant relationships are found between each of the three macro-economic factors and the local enforcement and detention factor. Additionally, the Kendall’s tau-b statistics show a strong linear relationship between market scale and local enforcement, and weak-to-moderate linear relationships (significant at the 0.1 level) between local enforcement rank and the other two ranked factors (Table 6).

The strength and significance of these correlations shows that the relative scale of each factor as constructed has some relationship with the relative scale of locally controlled immigration enforcement in a given US state. The limitations of the statistical instruments do not allow for a comprehensive exploration of how the independent factors act upon local control in tandem; nor can they test the interactions between factors, or their relative weight in influencing local enforcement policy. They do, however, present a clear argument for the consideration of economic context—specifically, the potential for direct extractive profit in place of labor-market exploitation, and the evolving economic role of the criminal justice system—when predicting and analyzing state and local level immigration enforcement decisions.

Discussion: Policy Innovation, Harm, and the Public Good

The above analysis establishes a clear empirical relationship between state-level local enforcement and detention activity, and the pursuit of direct economic benefit through this activity by corporate and local government actors. In doing so, it raises the fundamental question of whether, and to what extent, economic decision-making has a justifiable role in immigration policy. Numerous justifications have been cited for the increasingly aggressive detention and deportation policies of recent years, as well as for the increasing pace at which enforcement functions are being rescaled to the state and local level; the official justification for the federally mandated 287(g)

Table 6 Variable values for median cases by local enforcement and detention factor score pentile

Variable	Factor score pentile rank (local enforcement and detention)									
	1 (lowest)	2	3	4	5 (highest)	CA	VA	CO	AL	4
State (abbrev.)	WV	SD	KY	IA	MO	MN	AL	CO	VA	CA
Market scale (factor score rank)	1	1	2	2	1	3	3	4	4	5
Total population of unauthorized immigrants (in thousands)	10	10	80	75	55	85	120	180	210	2,550
Non-citizens as a proportion of total population	0.007	0.016	0.020	0.025	0.020	0.038	0.022	0.065	0.056	0.146
Unauthorized immigrants as a proportion of total labor force	0.005	0.015	0.026	0.032	0.013	0.021	0.042	0.046	0.039	0.097
Market pressure (factor score rank)	1	1	5	4	5	3	1	4	1	4
Proportion of labor force unemployed	0.077	0.050	0.107	0.104	0.096	0.081	0.078	0.083	0.069	0.113
Proportional year-on-year change in prison population	0.051	0.028	-0.003	0.017	-0.056	0.008	0.054	-0.021	0.049	-0.014
Proportion of unauthorized population not participating in labor force	0.00	0.00	0.31	0.27	0.27	0.29	0.21	0.33	0.24	0.27
Punitive economy (factor score rank)	2	3	4	2	3	1	5	4	4	3
Incarceration rate per 100 thousand population	341	425	484	281	516	191	637	464	487	460
Incarceration rate in private facilities per 100 thousand population	0	1.97	51.3	0	0	7.67	0	107	20	7.18
Local enforcement and detention										
Average daily population of detained immigrants	7	11	75	165	180	248	530	663	619	3449
Total number of 287(g) memoranda of understanding	0	0	0	0	1	1	2	2	9	1
Proportion of jurisdiction with active Secure Communities programs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.14

and Secure Communities programs is to allow local law enforcement and correctional agencies to be more responsive to the “problem” of unauthorized immigration at the local level, and to act as a “force multiplier” in pursuit of a solution. Such a justification frames detention and deportation as an intrinsic public good, that can be made responsive to local needs. To the extent that such rescaling facilitates the concentration of economic benefits within a more or less narrowly circumscribed community within the locality in question, this justification is perhaps defensible—provided the explicit acknowledgement that such a defense requires a straightforwardly exclusionary redefinition of the “public,” nakedly privileging the economic concerns of that locality’s political and social establishment over the quality of life (and freedom) of those others who may live in the community, but are not *of* it, those outsiders upon whose labor a significant proportion of the community’s wealth may be built.¹⁰

A more broadly defined and inclusive notion of the public good, when considering the protective functions of the state, requires the contrasting notion of a specific *harm* against which the public must be protected. The notion that unauthorized immigration represents such a harm is a debatable one; whatever one’s stance in this debate, however, it is clear that the movement of labor across borders is treated very differently from the parallel movement of capital, with which it is in fact inextricably intertwined (Massey, 2009; Stageman, 2011). It is important to acknowledge that the ramping up of deportation to record-breaking levels year upon year has now become a phenomenon untethered to the reality of these cross-border movements; with only an estimated 300,000 immigrants crossing the nation’s southern land border without authorization, deportations in 2009 outstripped unauthorized entries by as much as 100,000 (Passel & Cohn, 2010). This difference has only grown in the years since.

If such a trajectory continues, the typical character of deportations will change markedly in the coming years, as the pool of newly arrived unauthorized immigrants shrinks, and the average deportee becomes a progressively longer-term resident. The potential collateral effects of tearing such individuals from their partners, children, extended families, and social networks has been explored in heartrending detail by other contributors to this volume,¹¹ indicating the clear social cost of detention and deportation operations—a cost that can only rise as the years pass. These are costs for which the market consistently fails to account. As scholars, however, we are uniquely positioned to quantify these costs, to describe them, and to contrast them with a market logic concerned chiefly with innovating in the pursuit of profits, no matter how narrowly held or bereft of social benefit.

¹⁰For an in-depth discussion of the quality-of-life effects of this legally imposed outsider status on immigrant communities, Hagan & Phillips, (2008).

¹¹Specifically, Fenix Arias (Chap. 6) details the social costs for family members left behind, while Yolanda Martin’s (Chap. 5) focuses on the steep costs for deportees themselves.

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