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The punishment marketplace: Competing for capitalized power in locally controlled immigration enforcement

Theoretical Criminology

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Abstract

Neoliberal economics play a significant role in US social organization, imposing market logics on public services and driving the cultural valorization of free market ideology. The neoliberal ‘project of inequality’ is upheld by an authoritarian system of punishment built around the social control of the underclass—among them unauthorized immigrants. This work lays out the theory of the punishment marketplace: a conceptualization of how US systems of punishment both enable the neoliberal project of inequality, and are themselves subject to market colonization. The theory describes the rescaling of federal authority to local centers of political power. Criminal justice policy activism by local governments is punishment entrepreneurship: an accumulative approach to securing fiscal gain, political hegemony, security, and capitalized power. Local immigration enforcement entrepreneurship targets unauthorized and other deportable immigrants. This punitive immigration control reinforces racially structured social relations by obscuring the diminishing returns neoliberal globalization provides working class whites.

Keywords

Deportation, detention, immigration, local governance, neoliberalism, political economy, punishment

The well-documented extremes of recent US immigration enforcement give the impression of a sui generis phenomenon, born as the Trump administration has married nativist rhetoric and authoritarian politics to what is arguably the most overtly

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neoliberal policy approach in late modern history. Understanding this apparent shift requires viewing it as a continuity rather than an interruption, the logical next step in the neoliberal project defined by David Harvey as ‘in the first instance a [set] of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills’, wherein ‘[t]he [sole] role of the state is to create and preserve an institutional framework appropriate to such practices’ (Harvey, 2007: 2). An understanding of punitive practices as the exercise of state power might suggest that it is the authoritarian impulse that has recently pushed state-mandated punishments to overstep this more limited role. However, Harvey’s third and final defining tenet states that ‘if markets do not exist (in areas such as land, water, education, health care, social security, or environmental pollution) then they must be created, by state action if necessary’ (Harvey, 2007: 2). Harvey’s parenthetical list omits what Beckett and Murakawa (2012) have referred to as ‘the shadow carceral state’, a broad array of punitive structures and practices that includes civil immigration enforcement. The current administration appears to have recognized overtly the extent to which the structures of immigration control can be placed in the service of a *punishment marketplace*. The most dramatic examples of this recognition shaping policy include the speed with which the Trump administration reversed Obama-era attempts to end the federal Bureau of Prisons’ contracts with for-profit corrections corporations—and the even swifter recovery of these corporations’ share prices upon the news of Trump’s election (Lurie, 2016; Sessions, 2017).

The *punishment marketplace* is a theory intended to explain the dynamics of contemporary systems of punishment that are both integral to the operation of the neoliberal political economy and internally subject to the market logics that define it. Prior to the current administration, federal policy inertia—and the resultant weakening of federal authority—empowered political-economic elites at the state and local levels¹ to approach policy innovation as *entrepreneurship*: a project of *benefit accumulation* intended to concentrate fiscal profit, sociopolitical hegemony, security, and cultural dominance in private hands. The US *political economy of punishment* appears no longer to serve the narrow function theorized by Rusche and Kirchheimer (2003 [1939]) as a tool for disciplining low-paid workers and deterring behaviors likely to reduce the value of their labor. This is now only one of many possible functions, in service of a political-economic elite limited only by their entrepreneurial acumen in the extraction of benefit through punitive policy innovation. Fiscal profit is one such benefit, and its pursuit provides the capitalist logic by which the marketplace operates (Clifford and Silver-Greenberg, 2014; Shelden and Brown, 2000; Trujillo-Pagan, 2014).

I propose the *punishment marketplace* as a successor to Rusche and Kirchheimer’s political economy of punishment, refined through the lens of Bernard Harcourt’s neoliberal penalty: if ‘[e]very system of production tends to discover punishments which correspond to its productive relationships’ (Rusche and Kirchheimer, 2003 [1939]: 5), then late modern neoliberal systems of production require distinctly neoliberal systems of punishment. The punishment marketplace is neoliberalism turned back upon itself, with market economics colonizing the authoritarian structures and systems of power that make it possible and define its limits. As a market-*place*, it reflects the rescaling of the contemporary neoliberal project, away from the nation-

state, and the recentering of power to global and local levels. Recognizing neoliberalism as the governing framework for an accumulative project of inequality requires the further recognition that this accumulation is not simply a fiscal pursuit, but a *political-economic* one, in which elites compete for a range of capitals: economic and political, social and cultural, security and hegemony alike. Here I take Bichler and Nitzan's (2014: 252) suggestion that scholars 'discard the politics/economics duality and instead think of capital as power and capitalism as a mode of power'. Practices of punishment allow a degree of *flexibility* in the pursuit of 'capitalized power', a flexibility that is characteristic of neoliberal *policy entrepreneurship*.

In the sections that follow, I will propose an understanding of contemporary US immigration control rooted not in the extremes of the Trump era, but in the increasingly localized approaches of states, counties, and municipalities enabled by the policies of the preceding Obama and Bush administrations. While this article is concerned chiefly with the specifics of US immigration control, the theory that it proposes—of a distinctly neoliberal system of punitive immigration control in turn reinscribed with market-driven, neoliberal structures of entrepreneurial accumulation—has clear parallels and applications in the approaches of other nations, Australia and the UK arguably chief among them (see, for example, Bosworth and Guild, 2008; Welch, 2014; Welch and Schuster, 2005). To establish the unique context that has allowed the US punishment marketplace (and *immigration enforcement entrepreneurship* within it) to thrive, I discuss the neoliberal colonization of the language of public goods (or *benefits*), the intersection of neoliberalism with US neoconservatism and its authoritarian outcomes, and the expanding conceptual and practical relationships between neoliberal punitiveness through criminal justice practices and immigration control. Finally, I identify the structural and technological shifts in a global political economy that have allowed punitive immigration control to be deployed as a key mediator in the late modern capital/labor dialectic. In order to dramatize the entrepreneurial nature of locally devolved immigration enforcement, I sketch brief parallel case studies of state-level 'immigration enforcement marketplaces' in the US states of Georgia and New Jersey, respectively. These states developed distinct, locally driven enforcement entrepreneurship largely under the federal auspices of the comparatively technocratic Obama administration, to devastating effect for the targeted individuals and communities.

Advancing the neoliberal project of inequality: Language, culture, and authority

Neoliberal ideology sets the cultural, political, and policy framework that makes the contemporary US detention and deportation system possible. It positions the goal of capital accumulation as a primary, intrinsic good. As an ideology, it allows for deliberately obscuring language use and terminology. Sayer (2014: **FAQ1**) identifies the neoliberal tendency to use the term 'investment' in a manner that 'allows people to mistake wealth extraction for wealth creation':

This indifference as to whether individuals or institutions are funding genuine investment or merely vehicles for providing money for the 'investor' is a major irrationality of capitalism,

and the way we use the word ‘investment’ helps to conceal it. [...] While you might get a return on a genuine investment, you might not [...] but it could still be an investment in the first sense if it brings benefits to someone.

Sayer’s observation on the (deliberately) obscuring nature of neoliberal language use raises important questions about the framing of government-provided services as public goods (or ‘benefits’). If federal immigration control represents a public good, who is intended to benefit from its provision, and how are they intended to benefit?² In the language of utilitarianism, ‘[a]n action [of government] may be said to conform to the principle of utility when its tendency to increase the happiness of the community is greater than any tendency it has to lessen it’ (Bentham, 2010 [1823]: 7). The USA’s punitive approach to immigration control can be understood as neoliberal rent-seeking obscured by the language of public benefit. This deliberate obscuring of the definition of benefit—concealing rent-seeking within the conceptual framework of good governance—is a cultural phenomenon as much as it is political obfuscation. Immigration control is understood as a public good by a significant proportion of the US populace, making it particularly vulnerable to private rent-seeking.

One of the primary conceits of ‘free market’ ideology is that the wealth generated by market competition is widely distributed. Not *re*-distributed, as redistribution is a hallmark of Keynesian progressive tax policy, but rather permeating every level of society through the ‘trickle-down’ effect ostensibly associated with supply-side economics. This is a simplified version of Francis Fukuyama’s thesis in his seminal 1992 essay *The End of History and The Last Man*, where he claims that, due to globalization, ‘liberal principles in economics—the “free market”—have spread, and have succeeded in producing unprecedented levels of material prosperity’ (Fukuyama, 2006 [1992]: xiii), in both developed and ‘Third World’ countries. Through access to global markets, Fukuyama (2006 [1992]: 77) contends, ever-increasing specialization made possible by economies of scale leads to ‘rational organization of labor, dictat[ing] certain consistent, large-scale changes in social structure’: among them urbanization, increasing mobility, and the breakdown of traditional or ‘tribal’ social structures.

It is arguable from a late modern perspective that Fukuyama’s predictions have not aged well. Contemporary urbanization is dogged by residential segregation and gentrification; increased mobility manifests in stateless populations scattered around the globe; and tribalism has retrenched, driving pronounced rightward shifts in US and European politics. The outcomes Fukuyama predicted have been enjoyed as positive fruits of neoliberalism almost exclusively by a narrow global economic elite—an indication that, in order to create wealth, neoliberalism must simultaneously create poverty:

This kind of poverty does not relate to a lack of ‘development’ and is not the symptom of a ‘backwardness’ that economic growth would reduce. Instead it is one which is created anew by dispositifs of segmentation, division and differentiation within a society which is ‘objectively’ wealthy. Neoliberal poverty is quite different in form from that suffered by people in countries which are ‘materially poor’ since it *arises from a political will*.

(Lazzarato, 2009: 128, emphasis added)

The competitive dynamic of the ‘free market’ requires ‘losers’ as well as ‘winners’ to justify its existence. More than simply a symbolic or ideological conceit, this arrangement is a practical effect of neoliberalism’s accumulative purpose. To facilitate continually increasing capital accumulation by political-economic elites, neoliberal policy needs to engineer a concomitant *decrease* in the wealth and political power of labor. While not a zero-sum game—the ‘equal and opposite’ gain and loss implied by a closed system—wealth is not ‘created’ but given and taken in systemic exchange.

Neoliberalism, then, is a project of inequality, facilitated by cultural and social relations as much as by politics and policy-making. US neoliberalism finds its cultural expression in the seemingly incompatible ideological construct of *movement conservatism*. US conservatism stands for more than simply the revanchist return to traditional mores and social arrangements. It is most importantly the manifestation of neoliberal economic ideology in personal codes and individual world-views:

[N]eoliberalism is not confined to an expressly economic sphere, nor does it cast the market as natural and self-regulating even in the economic sphere. Part of what makes neoliberalism ‘neo’ is that it depicts free markets, free trade, and entrepreneurial rationality as *achieved and normative*, [...] a political culture that figures citizens exhaustively as rational economic actors in every sphere of life.

(Brown, 2006: 694 [\[AQ2\]](#))

This political culture casts ‘citizens as individual entrepreneurs [...] whose moral autonomy is measured by their capacity for “self-care”—their ability to provide for their own needs and service their own ambitions’ (Brown, 2006: 694), tying accumulative success in the neoliberal free market to a kind of moral superiority.

Thus, in the (neoliberal) moral calculus of conservatism, individual circumstances result from entrepreneurial successes or failures in navigating the market, rather than systemic problems or structural inequities. The conservative stance on welfare and other government benefits is a manifestation of this calculus: the state should not interfere with the market to ‘reward failure’, but rather let the dynamics of the market itself reward *virtue*, as it is designed to. This aversion to state benefits, however, is not generally an expression of a commitment to logically consistent, libertarian ideas about the appropriate limits of state power. On the contrary, contemporary US conservatism has shown itself to favor an authoritarian state—most recently in the ascendance of Donald Trump to the nation’s presidency. Trump’s apparent electoral populism—jettisoned dramatically upon taking office—has been read incorrectly by some pundits (see, for example, Jacobin, 2017; Leopold, 2017) as a repudiation of neoliberalism; in fact, it is a clear example of what Ian Bruff (2014: 121) describes as ‘authoritarian neoliberalism’, where the ‘solution [to the manifest failures of capitalism to engender broad prosperity] entails not the fundamental reform or the overturning of capitalism but the demand for “increased ethical responsibility by individuals”’. This interpretation is consistent with Bernard Harcourt’s (2010) notion of *neoliberal penalty*, in that, under the populist logic of authoritarian US neoconservatism, any violation of the rules of exchange that define the free market—that is, through criminality—should be punished swiftly and severely through state exercise of coercive

force. Since ‘illegal immigrant’ status is an expression of criminality in the tautological rationale of nativism, neoliberal conservatism holds that the state is obligated to punish unauthorized immigrants as criminals. Thus nativism, discussed by scholars such as Varsanyi (2011) as a site of ideological resistance to a globalist neoliberalism that encourages immigration, is in fact an expression of its cultural logic. Globalist neoliberalism encourages labor migration—but relies on popular nativism to further its project of inequality, by ensuring that immigrant labor is consistently disadvantaged in its interactions with capital.

Neoliberalism and contemporary patterns of immigration

In addition to setting the broad economic, cultural, and political conditions necessary for the operation of the punishment marketplace, neoliberalism has also played a specific role in developing contemporary patterns of immigration to the USA. The North American Free Trade Agreement (NAFTA) of 1994 is a clear example of neoliberal international trade policy, in the service of a globalized economy and the free movement of capital across international borders: ‘giv[ing] free rein to private investments in the market, while keeping the bearers of labor power—workers—rooted in their national states’ (Otero, 2011: 387). NAFTA ended protective tariffs for staple crops in Mexico, contributing to the collapse of Mexico’s agricultural economy and plunging millions of Mexican farmers and their families into food insecurity (Ne vins, 2007).

NAFTA’s effects contributed to a broader dynamic, driven by demographic realities, of immigration from the developing nations of the global South to the established economies of the global North. Aging populations and relatively low birth rates in wealthy countries simultaneously produce large numbers of low-wage jobs and a shrinking native-born labor pool to fill them (Castles et al., 2013; Massey et al., 2003). Because neoliberal ideology dictates diametrically opposed experiences of globalization for capital and labor, with the former empowered to cross national borders with increasing ease and the latter increasingly restricted from doing so, low-wage labor migrants commonly pursue these opportunities without official government authorization. As a result, they experience what Saskia Sassen (2014: 29, emphasis in original) describes as ‘*expulsions*—from life projects and livelihoods, from membership, from the social contract at the center of liberal democracy’. Expelled from their home countries by the globalized pursuit of profit within a neoliberal agenda, they are similarly ‘expelled’ or excluded from meaningful social membership in their destination country, where low-wage labor fails to earn them the mutual obligation implied by the social contract.

The cultural and policy dynamics that enable this exclusion have been described by Juliet Stumpf (2006: 396–397) as *crimmigration*, a description of the increasing overlap between criminal and immigration law and their respective systems and functions: ‘[b]oth systems act as gatekeepers of membership in our society, determining whether an individual should be included or excluded’. Robert Koulish (2010: 56) identifies neoliberalism as a specific driver of *crimmigration*:

A grand irony of neoliberal democracy is that the minimal state, its hallmark, gains legitimacy by becoming an almost pervasive presence in people’s lives. [...] [A]lthough market ideology

suggests the market is society's most efficient regulator, the market draws immigrants into the country and is much less effective at excluding them once they have arrived.

While Koulish appears to conflate immigrant labor participation with social inclusion, the genius of contemporary US neoliberalism is its ability to separate and oppose economic inclusion from social *exclusion*, in a process Jock Young described as 'social bulimia' (Brotherton and Naegler, 2014; Young, 1999). The combination of the culturally situated nativism of US conservatives and the punitive policy agenda of the authoritarian state they support makes this dichotomy possible. Similar to Kitty Calavita's (2005) concept of 'subordinated inclusion', Young's 'social bulimia' is functionally distinct in its reliance on the ever-present threat of physical removal through deportation and detention—existential conditions described as *deportability* and *detainability* by scholars such as De Genova (2016) and Leyro (2013, 2017).

Neoliberal punishment: The evolution of instrumentalist penalty

Neoliberal approaches to criminal justice system punishment provide the template for the USA's current punitive approach to immigration control. Bernard Harcourt (2010: 7, emphases in original) asserts that:

The key to understanding our contemporary punishment practices [...] turns on the emergence in the 18th century of the idea of *natural order* and the eventual metamorphosis of this idea, over the course of the 20th century, into the concept of *market efficiency*.

Harcourt positions criminal justice system punishment as an essential feature of post-industrial political economy, the consequential end of a legal system designed 'to prevent people from bypassing the system of voluntary, compensated exchange—the "market", explicit or implicit' (Posner, 1985: 1195). This furthers the argument put forth by Sayer (2014) about the obscuring nature of the neoliberal approach to language: the overwhelmingly restrictive penal regime of mass incarceration as necessary to facilitate the 'freedom' of market exchange. Recognizing the paradox, Harcourt (2011a) responds to the argument that the neoliberal logic of market efficiency militates against the bureaucratic bloat of contemporary mass incarceration:

[M]ass incarceration during this period of post-industrial economic depression, with real unemployment around 17.7% and nothing but a service economy left, can relatively easily be justified on a cost–benefit basis. It all depends on what value we place on intangibles like liberty, coercion, human capital, human misery, being unemployed, prison economies, the cost of crime, etc. [...] Within [the] political economy [of mass incarceration], cost–benefit analysis involves complex political decisions, not neutral costing or accounting principles.

Despite neoliberalism's ideological adherence to market (i.e. fiscal or economic) efficiency, its real-world application is dependent upon the political economic context in which it is applied. Mass incarceration is essential to the provision of an institutional framework appropriate to the practice of free market economics in as many policy spheres as possible. As such, it is appropriate to neoliberal governance, despite

restricting individual freedom by its very design. The concept of individual freedom prized under this framework excludes the freedom to circumvent market exchange through criminal activity.

Despite the fact that ‘the free market, governed by “natural order,” is insulated from punishment’, the converse is not the case. Rather, ‘[t]he punishment field [...] is wide open not only to government intervention, but to profit and economics as well’ (Harcourt, 2011b: 237); private/for-profit prisons and prison labor support this claim. Many of the same corporations active in the private/for-profit prison industry expanded heavily into immigrant detention in the early 21st century, enhancing their profitability and extending the logic of *crimmigration* into every aspect of the systems’ parallel conditions of confinement. Contemporary US immigration control, like mass incarceration, is both subject to the free market logic of neoliberal ideology and an artifact of its contemporary political economic context. It also restricts individual freedom in order to define the edges of the acceptable in free market exchange.

The political economy of punishment

From a penological perspective, the structural purpose of contemporary US immigration control can best be understood through the lens of Rusche and Kirchheimer’s *political economy of punishment*. The theory’s premise, as outlined above, received comparatively little attention until its extensive treatment in Michel Foucault’s (1977) *Discipline and Punish*. Foucault argued that: ‘[contemporary] systems of punishment are to be situated in a certain ‘political economy’ of the body: [...] its forces, their utility and their docility, their distribution and their submission’. In Foucault’s (1977: 25–26) reading, the disciplined body is a productive body, whose ‘constitution as labour power is possible only if it is caught up in a system of subjection’. The most effective systems of discipline are imprinted on the mind, internalized by their object. The imprint of ‘illegal’ status is just such a system, carrying with it the constant threat of deportation in consequence for any deviation from productive labor. The contemporary undocumented US immigrant bears her illegality through the physical displays of race, ethnicity, and culture, a complementary system of external and internal markings that subjects her actions to the invisible discipline of the ‘market.’ In practical terms this means that both she and anyone with whom she may be interacting understand that, should she attempt to assert an alternative identity (such as community member, parent, resident, or otherwise rights-bearing human subject), she risks being punished by deportation.

The internalized concept of illegality supports the contemporary neoliberal project of inequality by instrumentalizing immigrant labor. Dario Melossi’s interpretation of the political economy of punishment supports Foucault’s in arguing that early modern incarceration constituted ‘disciplinary training for capitalist production’ (Melossi and Pavarini, 1981: 21). With the industrial era ‘capitalist production’ of Fordist value-added manufacturing replaced by neoliberal rent-seeking, the contemporary US context requires different disciplines for different populations. For a low-wage labor force of unauthorized and undocumented Mexican and Central American immigrants, the ‘disciplinary training’ implied by illegality, detention, and deportation is one of instability, servility, and exclusion. Undocumented laborers are, in effect, being trained

to accept the suspension of the traditional social contract, to internalize illegality and the status of the permanent 'other' that accompanies it.

This reading incorporates the ideas of the Russian legal scholar EB Pashukanis, who contended that, in addition to 'its uses as a repressive instrument of class domination, [punishment] also operates as an ideological apparatus, helping to reproduce the mental and cultural categories on which capitalist rule depends' (Garland, 1991: 131). Such categories are essential to the organization of productive relationships. As Ruth Wilson Gilmore (2007: 32) illustrates in *Golden Gulag*, her seminal work on California's neoliberal prison-building boom:

[D]ominant Anglos organized labor and propertied classes according to Black–white, European–non-European, and Protestant–Catholic hierarchies [...]. Through legislative edicts and institutional practices, state, capital, and labor power blocs manipulated the unique characteristics of the population to designate [...] members, servants, and enemies [...]

Illegality, as a successor and supplement to racial, ethnic, and national categories, is commonly conceived as a legal status; it is most importantly a cultural one. Created by the socially bulimic pattern of invitation and expulsion established with the historical pairing of the Bracero Program and Operation Wetback (Calavita, 1992; Kanstroom, 2007), 'a person obtains [the] status [of illegal immigrant] by falling outside of the affirmatively defined categories of membership, in other words, by the *absence* of legal status' (Varsanyi, 2011: 305–306, emphasis in original). The cultural category implied by 'illegal immigrant/alien' is one of legal non-personhood, reproduced in the dominant culture, and reinterpreted as a mental category in the psychology of the undocumented immigrants who are its object, through the constant threat of punitive immigration control.

Gilmore (2007: 55) characterizes the overlapping systems of punitive incarceration and immigration control as systemic responses to a crisis of surplus, brought on by the transition from the economic paradigm of Keynesian full employment, to the post-industrial, Friedmanian paradigm of sustained 'natural' unemployment: 'implicit in capital's imperative to accumulate is an equal necessity to disaccumulate. Systemic failure to disaccumulate constitutes crisis.' The 'surplus' is in this case the population of disengaged and discarded laborers who need to be 'contained, if not deported [...] to prison or abroad', allowing employers to 'exploit actual and implied undocumented workers' political powerlessness' (Gilmore, 2007: 77). In this sense, the practice of punishment can be understood as a *political rationality of neoliberal government*, 'not "government" as an institution [...] but as the activity that consists in governing people's conduct within the framework of, and using the instruments of, a state' (Dardot and Laval, 2013 [2009]: 5).

In addition to its role facilitating labor exploitation, detention presents unique opportunities for 'rent-seeking', not only among private/for-profit prison providers, but also for a host of secondary service providers and subcontractors (Trujillo-Pagan, 2014).

Private/for-profit prison providers like the former Corrections Corporation of America³ have increasingly relied on the income associated with immigrant detention to maintain profitability in the face of declining occupancy rates in their state and federal contracts for regular criminal justice system incarceration. With the average

daily cost of detaining an individual immigrant estimated at \$159 (National Immigration Forum, 2013)—more than three times the concurrent average contracted amount for state prisoners—the strategy has been highly successful, allowing CCA to maintain or increase its operating margins in the face of falling occupancy rates (see Table 1) (Corrections Corporation of America, 2013).

Rescaling immigration control: Punishment, profit, and public–private partnerships through local policy entrepreneurship

‘[T]he decentralization, diffusion, and pluralization of enforcement’ (Walsh, 2014: 241) has manifested in immigration control as increasing localization since the 1996 passage of IIRIRA (Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (US House of Representatives, 1996)). This rescaling has occurred in the context of the broader devolution of federal authority (as an aspect of the ‘rollout neoliberalism’ of the 1980s and 1990s) to states and localities (Peck and Tickell, 2002). Gilmore (2007: 81) points to ‘declines of 12.5 percent (state) to 60 percent (local) in revenues derived from federal aid’ in California during this period as evidence of a general deligitimation of the Keynesian state. In Varsanyi’s (2011: 297) reading, ‘the transition from the [Fordist] Keynesian welfare state to the neoliberalizing state [...] has [...] decentered the nation-state as the pre-eminent sociopolitical container in the contemporary political economy’, allowing state, county, and municipal governments to take on ‘policy entrepreneurship’ in spheres previously the sole purview of a strong federal government. Gilmore (2007: 78) suggests that newly empowered state and local governments have to balance the needs of local capital interests against a more narrow voting public: ‘[i]nsofar as the capitalist state must both help capital be profitable, and keep the formal inequality of capitalism acceptable to the polity [...], it develops fiscal, institutional, and ideological means to carry out these tasks’. Thus nativist immigration policy activism through locally controlled immigration enforcement and the passage of restrictive local ordinances serves the *bulimic* process of labor inclusion/social exclusion. Rather than focusing on unauthorized immigrants as laborers (the role in which they benefit capital), many restrictive local ordinances focus on circumscribing immigrants’ rights as community members.⁴ Cultural expressions of nativism by working class white voters may be intended to contest the perceived effects of globalization, but when translated into government action are subverted into a form that ultimately supports neoliberalism’s economic goals.

The political economy of contemporary punishment

The theories of the *punishment marketplace* and *punishment entrepreneurship* take into account four characteristic features of contemporary economic relations that set the 21st-century neoliberal order apart from the 20th-century Fordist industrialism that preceded it:

- (1) the increasing *abstraction*, due primarily to technological advances, of the nature of *labor* on the one hand, and *capital investment* on the other;
- (2) the growing dislocation between *laborer* and *consumer* roles in contemporary economic relationships, and the increasing relative importance of *consumer behavior*;

- (3) the *clientization* of worker/consumers in their relationships with corporate capital, as an aspect of the transition from an industrial to a service-based economy;
- (4) the *marketization* by capital interests of diverse spheres of human interaction, from the political and social spheres to cultural and legal ones, and the increasing application of *entrepreneurial* objectives to human interactions not formerly subject to *market logic*.

Each of these individual features has some bearing on contemporary modes of punishment. The central theme of Rusche's theory is that criminal justice system punishment (specifically in the form of incarceration) functions as a deterrent—not to the commission of future crimes, but to the attempts of those individuals who form 'the lowest strata of the laboring classes' (Melossi, 2003: xi) to improve their situation—that is, to achieve some advantage in their interactions with capital⁵ through recourse to the underground economy (to circumvent the rules of free market exchange, per Harcourt), through labor organizing, or any other activity that: (1) disrupts their ready availability as a cheap and flexible labor force; or (2) represents an attempt to circumvent free market exchange.

In the globalized, technologized, neoliberal service economy, however, the value of punishment as a form of labor force discipline becomes diffuse. How should this disciplinary effect function in a paradigm lacking obvious 'legitimate' labor force roles for the lowest socioeconomic strata? Its multiple functions are in fact defined by the four changes in contemporary economic relations outlined above, of which the most important to the context of punitive immigration control is *clientization*. The others serve to make this clientization profitable: the *abstraction* of capital investment is a major contributor to the privatization that makes entrepreneurial approaches to immigration control possible, as described by Saskia Sassen (2014: 9):

What is new and characteristic of our current era is the capacity of finance to develop enormously complex instruments that allow it to securitize the broadest-ever, historically speaking, range of entities and processes[.] While traditional banking is about selling money that the bank has, finance is about selling something it does not have. To do this, finance needs to invade—that is, securitize—nonfinancial sectors to get the grist for its mill.

Abstracted capital investments, in other words, are at the root of the contemporary neoliberal economy's movement toward *marketization*. In order to sell 'financial products' that they do not concretely possess, financial institutions must actively apply market logics and principles to sectors that operated previously on the basis of other principles. Examples such as the mortgage-backed securities at the heart of the 2007 financial meltdown relied on the manipulation of *consumer* behaviors, through political, social, and cultural means. Low-income mortgage buyers were saddled with massive amounts of debt that—with no realistic expectation of ever being fully repaid—was then repackaged and sold at a value that was largely illusory, if not straightforwardly fraudulent.⁶ Punishment serves a multiplicity of functions in this context, holding the potential to condition value-generating behaviors across a range of life domains, rather than simply in the arena of labor.

Table 1. Total incarceration per 100k adults vs Corrections Corporation of America occupancy and operating margins, 2007–2012. **AQ31**

	2007	2008	2009	2010	2011	2012
Total incarceration per 100k adults (% change from previous year)	1000 (**)	1000 (0%)	980 (-2%)	960 (-2%)	940 (-2%)	920 (-2%)
CCA occupancy (% change from previous year)	98.2% (**)	95.5% (-2.7%)	90.6% (-4.9%)	90.2% (-4%)	89.9% (-3%)	88.2% (-1.7%)
CCA operating margin (% change from previous year)	34.2% (**)	35.1% (+.9%)	30.6% (-4.5%)	30.6% (+/-0%)	34.3% (+3.7%)	36.3% (+2%)

Clientization is a term originally coined by Clifford Geertz to describe the basic relationship between buyer and seller that defines the contemporary service economy—‘the tendency for repetitive purchasers of particular goods and services to establish continuing relationships with particular purveyors of them, rather than search widely through the market at each occasion of need’ (Geertz, 1978: 30). In the contemporary context, factors such as contractual provisions and monopolies tend to empower the provider over the consumer in these exchanges. The term can also characterize the parallel relationship between the institutionalized and the ‘total institutions’ that confine them (Goffman, 2007 [1961]). Here the state is the consumer, the ‘client’ its ward, and the institution provides the ‘service’ of confinement.

In clientized sectors, the ‘free market’ negotiation over the value of a good or service is mediated by a contractually defined relationship, in which value may be legally established on the basis of incidental client characteristics—from the risk classification of a prisoner, to the unauthorized or ‘illegal’ status of a detained immigrant, to the ‘pre-existing conditions’ of a patient. In many sectors that rely on this model, particularly when payment is supplied by a third party (government, in most cases), profit is dependent on the cost difference between the services contracted and the services actually provided. Labor costs in these sectors may be secondary to the characteristics of individual clients upon which contracted pricing structures depend. The relationships that give rise to third party/government contracts for various kinds of client services are dependent upon *marketization* and predominate in such marketized government sectors as benefit distribution and health care (particularly Medicaid and Medicare).

Late modern incarceration is another clientized market, with prisoners in the client role and private prisons providing the service—often with subcontractors providing secondary services such as health care, food services, and so on. Contemporary US punishment uses state coercion to force individuals with a limited value as laborers into the position of prisoner-clients (or probationer-clients, parolee-clients, etc.). Profit is dependent upon ‘selling’ the maximum public benefit (i.e. of incapacitation, rehabilitation, or removal) to the government payer while minimizing the actual provision of services. The higher costs for civil detention of immigrants are ostensibly dependent upon the additional human rights claims of unconvicted detainees; with no enforcement mechanism sufficient to ensure these claims are translated into actual services, detention providers convert these claims directly into profits (Homeland Security Advisory Council, 2016; Office of the Inspector General, US Department of Justice, 2016; Schriro, 2013).

Table 2. Variable values and factor ranks for the states of Georgia and New Jersey, 2008–2012.

Variable	AVG		AVG		AVG		AVG		AVG		COT	
	2008		2009		2010		2011		2012		2008–2012	
	GA	NJ	GA	NJ	GA	NJ	GA	NJ	GA	NJ	GA	NJ
<i>Market scale (factor rank)</i>	5	5	5	5	5	5	5	5	5	5	4	3
Total population of unauthorized immigrants (in thousands)	475	550	425	450	425	550	432	526	400	525	-75	-25
Non-citizens as a proportion of total population	.062	.099	.061	.101	.064	.102	.063	.102	.062	.103	-.000	+.004
Unauthorized immigrants as a proportion of total labor force	.063	.092	.069	.085	.070	.086	.072	.096	.056	.082	-.007	-.010
<i>Econ Anxiety (factor rank)</i>	4	2	4	2	5	3	5	2	5	3	4	4
Proportion of labor force unemployed	.064	.054	.098	.091	.107	.093	.101	.094	.091	.095	+.027	+.041
Proportion of unauth population not participating in labor force	.32	.23	.29	.22	.24	.27	.29	.24	.31	.24	-.01	+.01
<i>Punitiveness (factor rank)</i>	5	2	5	2	5	2	5	1	5	1	2	2
Incarceration rate per 100,000 population	542	305	533	297	560	284	547	270	542	261	0	-44
Number of prisoners held in private facilities	5146	2682	5129	2950	5233	2841	5615	2887	7900	2717	+2285	+35
Proportion of total legislative seats held by Republicans	.593	.408	.589	.408	.589	.417	.631	.408	.640	.383	+.047	-.025
<i>Local enforcement entrepreneurship (rank)</i>	5	4	5	4	5	4	5	4	5	5	5	5
Average daily population of detained immigrants	1822	1147	1975	1232	2044	1370	2376	1629	2414	2000	+592	+853
Total number of 287(g) memoranda of understanding	4	1	5	2	5	3	5	3	5	3	+1	+2
Proportion of jurisdictions with active Secure Communities	.00	.00	.02	.00	.06	.00	1.00	.00	1.00	1.00	+1.00	+1.00

Operationalizing the punitive immigration control marketplace: Localized immigration enforcement in Georgia and New Jersey, 2008–2012

The workings of the punishment marketplace and punitive immigration control encompass broad and overlapping sociocultural and political-economic practices, policies, and attitudes. In an attempt to rectify what Coleman and Stuesse (2016: 524) call the ‘disconnect between [...] theories of power and the actually existing bodies and spaces that these theories are said to represent’, I present two brief case studies of punitive immigration control marketplaces, in the culturally, historically, and geographically distinct states of Georgia and New Jersey. I present first a suite of quantitative statistics for each state (Table 2), drawn from a larger empirical analysis undertaken in 2017; these statistics, in brief, show the two states’ pentile rankings on local enforcement and factors of market scale, punitiveness, and economic anxiety for the years 2008–2012, along with the constituent variables from which these factors were calculated. Both states, despite their disparate histories, cultures, and geographies,

show high-volume and growing local immigration enforcement marketplaces (generally ranking 4 or 5 out of 5 on this factor in measures of both annual averages, and increase over time). Using sources from investigative journalism and advocacy group reports, I attempt to illustrate how enforcement entrepreneurship in the states developed over the five-year period under examination, and show how these enforcement marketplaces are shaped by local policy-making, lobbying, administrative decisions, and other actions undertaken in the entrepreneurial pursuit of benefit.

Both a 'new destination' state for 21st-century unauthorized immigrants and one of the anchors of the conservative Southern 'Bible Belt', Georgia's state government has closely followed the neoliberal economic blueprint of widespread privatization, reduced public services, and corporate subsidies; its current Governor, Nathan Deal, 'has emphasized time and again that he believes it is the role of government to get out of the way and let the private sector stimulate the economy' (Semuels, 2015).

This approach has required high incarceration rates to condition Georgia's low-income population to consistently high unemployment, minimal benefits, and low wages. Georgia began privatizing its correctional system in 1997, contracting with the Corrections Corporation of America (CCA) for the construction and operation of three for-profit prisons. An additional contract with the GEO Group brought a 1500-bed privately owned and operated facility online in late 2011. Together, these facilities held roughly 8000 prisoners by the end of 2012, about 14 percent of the state's total incarcerated population. CCA reports that its two Georgia facilities are among its most profitable, along with a detailed description of how it ensured this profitability:

In December 2009, CCA also entered into an Economic Development Agreement with [...] Coffee County, Georgia to implement a tax abatement plan related to CCA's bed expansion project at its Coffee Correctional Facility [...] for 100% abatement of real property taxes for five years. Under the plan, legal title of CCA's real property was transferred to Coffee County. In December 2009, Coffee County issued bonds in a maximum principal amount of \$33.0 million. The bonds were issued to CCA, so no cash exchanged hands. Coffee County then leased the real property back to CCA. The lease payments are equal to the amount of the payments on the bonds. At any time, CCA has the option to purchase the real property by paying off the bonds, plus \$100.

(Corrections Corporation of America, 2013)

CCA not only arranged to pay zero property taxes on its Coffee County facility for five full years, but also arranged to receive a \$33 million loan, in the form of a Coffee County bond issuance, to expand the facility. The County secured the loan, and CCA paid only the interest on the bonds, meaning Coffee County receives *no tax or rent revenues* for the facility that it *legally owns*.

The development of immigrant detention in Georgia has followed similar patterns and involved many of the same corporate players. CCA owned and operated two of the four major detention centers active in Georgia as of 2012; the third private/for-profit facility is the Irwin County Detention Center, which came online roughly in the middle of this study's data window (December 2010), accounting for much of the increase in Georgia's detainee population from 2010 to 2012. Its corporate owner and manager, Detention Management, LLC, and the process that led to its contract with ICE,⁷ were

the subject of a 2012 investigation by *The Nation* (Rappleye and Riordan Seville, 2012). The investigation found that its five principals all had long and checkered histories in both the private/for-profit and public corrections fields, but sufficient influence to lobby two of Georgia's influential elected officials to pressure ICE to provide detainees to fill the Irwin facility. In response, ICE officials wrote that “[w]e can move a hundred women out of Etowah [detention facility in Etowah County, Alabama], and replace them with a hundred others. [...] Not a zero-sum issue.” [...] ICE would simply find more “bodies” to fill the beds’ (Rappleye and Riordan Seville, 2012). ICE was supported in this endeavor by local Georgia officials through the 287(g) and Secure Communities⁸ immigration enforcement programs. According to the ACLU's 2012 report *Prisoners of profit*, [AQ5] ‘[t]he majority of immigrant detainees [...] were detained after being stopped for traffic violations throughout Georgia’, echoing the findings of Coleman and Stuesse (2016: 535), whose ‘data showed that a number of agencies—especially those identified by immigrant rights groups as tough on undocumented communities—were heavily involved in the use of driver’s license roadblocks’.

The political-economic benefit for elected sheriffs engaging in federal–local enforcement partnerships is also on display in New Jersey, where immigration has remained a consistent social reality for centuries. After the 1965 Immigration Act, immigration to New Jersey diversified, such that large contemporary communities of Dominicans, Cubans, Haitians, Koreans, South Americans, South Asians, Chinese, and other ethnic groups define the character of neighborhoods and towns across the state (Shaw, 1994). Nativism, however, has remained a significant force in state politics and culture: a 2009 Monmouth University poll—a year when non-citizens made up over a tenth of the state’s population, and unauthorized immigrants close to a tenth (8.5 percent) of the state’s workforce—over half of the respondents characterized ‘illegal immigration’ as a ‘very serious’ problem, and some 62 percent opposed granting ‘illegal immigrants’ the right to hold even a ‘limited’ driver’s license (Monmouth University/Gannett New Jersey Poll, 2009). Nativism arguably played a role in the election of Monmouth County Sheriff Kim Guadagno—a former federal prosecutor—who in 2009 fulfilled a campaign promise to enter the county into a 287(g) agreement with ICE.

In addition to the apparent electoral benefit to Sheriff Guadagno, Monmouth County’s 287(g) agreement provided direct fiscal benefit through the Monmouth County Jail’s detention agreement with ICE: in 2009, it held an average daily population of 150 immigrant detainees. In 2010—after Guadagno’s implementation of 287(g)—this number jumped by 100, reaching 280 by 2012. Guadagno’s history and connections as a federal prosecutor—as with the principals of Irwin County’s Detention Management—provided a competitive edge to Monmouth County’s immigration enforcement entrepreneurship, and allowed the Sheriff to stack both political benefits and direct fiscal benefits through judicious application of the enforcement tools available to her. Guadagno’s savvy use of immigration as a political lever has continued to serve her ambitions: at the time of writing she was the Republican nominee for New Jersey’s 2017 gubernatorial election. Economically, however, the doubling of Monmouth’s immigrant detainee population is exceeded by the increase achieved in nearby Essex County, whose jail held just 42 detainees in

2008—the first year of its contract with ICE—and nearly 600 four years later. Through their entrepreneurial entries into the immigration enforcement marketplace, each county achieved annual revenue increases in the tens of millions over the first four years of the Obama administration.

Punitive immigration control under the authoritarian state

These case studies show a US immigration enforcement marketplace driven by outlier states, and in turn by entrepreneurial outlier counties within them. Immigrants, undocumented or otherwise, are not evenly distributed among the nation's states and counties; nor is nativist sentiment a universally reliable driver of votes or other kinds of political support. Perhaps most importantly, the entrepreneurial acumen and accumulative motivation that appears typical of the actors described in the case studies above are not evenly distributed across individuals in positions of power within local governments, regardless of their political ambitions. The nature of entrepreneurship is innovation; Sheriff Guadagno may not have had the technical knowledge or contacts necessary to enter Monmouth County into a 287(g) agreement if not for her background as a federal prosecutor. Ultimately, local government entrepreneurship in the punitive immigration control marketplace has not needed to be geographically widespread or evenly distributed to negatively impact the lives of many thousands of immigrants, along with their families and communities.

Having opened this piece, however, with the argument that the Trump administration's immigration enforcement policies represent a continuity from those of its predecessors, it is important to acknowledge that the potential harms inherent to these policies are progressing at a rate and to a degree that few predicted. The administration's authoritarian approach represents an expanded and inviting framework for the kind of state- and local-level entrepreneurial entries into the punishment marketplace explored above. Comparing the federal response to Texas' recent SB4 anti-immigration law to that which met Arizona's similar SB1070 in 2010 will provide a useful litmus test on the federal government's potential to intensify, rather than mitigate, the social harms of punishment entrepreneurship. That SB4 specifically targets 'sanctuary cities' is particularly cogent in this respect. The assertion by state and local governments of humanistic alternatives to the neoliberal/neoconservative value system that drives discourse on public goods may represent a meaningful site of resistance to authoritarian neoliberal governance. In Bruff's (2014: 127) conception, 'the mobilization of juridical power against such [resistance] [...] alert[s] us to how inequalities of power are produced and reproduced in capitalist societies, [but] also enable[s] us to consider more fully how other worlds are possible'. Policy innovation need not be entrepreneurial, accumulative, instrumentalizing; governance frameworks can be built on values other than market competition. It may be that an experience of authoritarian rule will provide the stark reminder of these alternative values that US democracy requires to enact them.

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Notes

1. The recent work of Martin Gilens and Benjamin Page (2014) indicates that economic elites exert more real influence on US government policy than any other interest group.
2. Definitive work from Ottaviano and Peri (2012) and Peri (2016) appears to refute the argument that immigration control has positive labor market effects for native-born workers.
3. Corrections Corporation of America rebranded in October 2016 as CoreCivic, marking the ‘culmination of [a] multi-year strategy to transform into [a] diversified government solutions company’ (Davis, 2016) and arguably providing further evidence of the deliberately obscuring nature of neoliberal language use.
4. Of 1143 state immigration laws passed from 2010–2015, some 131 (11 percent) related to employment, as opposed to 78 (7 percent) on public benefits, 178 (16 percent) on law enforcement, and 151 (13 percent) on ID/driver’s licenses. While no empirical conclusions can be drawn from this breakdown—the laws are not categorized as pro- or anti-immigrant, local county or municipal ordinances are not included, there is no detail about their objectives or enforcement mechanisms—the data do not give the impression of a wave of restrictive legislative activism targeting employers (NCSL, 2016).
5. In the ‘competitive’ Marxist capital–labor dialectic, the two constituent groups have different goals: ‘labor’ represents individual workers seeking advantage in pursuit of ‘life projects’ (expansively defined), while capital represents corporate interests with more purely profit-driven/accumulative goals. While it is important to recognize that capital incorporates individual members of the political-economic elite with ‘life projects’ of their own, the contemporary structure of neoliberal capitalism obscures capital behind a corporate collective, while labor’s ability to take a collective approach (i.e. through unionization) is actively suppressed.
6. Few of the financiers responsible for this fraud were ever prosecuted, in contrast to the steady march of harsh punishments directed at the poor in an era when rates of street-level crime are at their lowest in half a century. Instead, the Justice Department pursued civil actions against a number of banks and other financial institutions at the center of the mortgage crisis, achieving fines and financial settlements that, despite setting records, generally amounted to less than the paying institution’s typical profits for a single quarter. For more on this topic, see journalist Matt Taibbi’s (2014) book, *The Divide: American Injustice in the Age of the Wealth Gap*.
7. Immigration and Customs Enforcement, the constituent agency of the US Department of Homeland Security responsible for all aspects of interior immigration control, including detention and deportation.
8. The 287(g) program, named for the section of the 1996 IIRIRA where it appears, allows local law enforcement agencies to enforce immigration law through a formal agreement with ICE. The Secure Communities program—now defunct—allowed local LEAs [AQ6] to automatically share identifying data on arrestees with ICE, which in turn could request that deportable arrestees be detained for transfer into ICE custody.

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