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Local Immigration Enforcement Entrepreneurship in the Punishment Marketplace

Daniel L. Stageman

The Graduate Center, City University of New York

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Local immigration enforcement entrepreneurship in the punishment marketplace

by

Daniel L. Stageman

A dissertation submitted to the Graduate faculty in Criminal Justice in partial fulfillment of the requirement for the degree of Doctor of Philosophy

The City University of New York

2017

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The manuscript has been read and accepted for the
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ABSTRACT

Local immigration enforcement entrepreneurship in the punishment marketplace

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The contemporary neoliberal economic order plays a significant role in American social organization and policy-making. Most importantly, neoliberal ideology drives the creation and imposition of markets in public goods and services and the valorization of free market ideology in cultural life. The neoliberal ‘project of inequality’ is in turn delimited and upheld by an authoritarian system of punishment built around mass incarceration, surveillance, and an unprecedented level of social control directed at the lowest strata of American society – a group that includes both the urban underclass, and unauthorized immigrants.

This study lays out the theory of the *punishment marketplace*: a conceptualization of the circuits of American punishment as they both *enable* the neoliberal project of inequality, and *are themselves subject* to neoliberal market colonization. The theory attempts to account for the neoliberal rescaling of power and authority from an increasingly weak federal government upward to global, and downward to local, centers of political power. Focusing on the latter, *the punishment marketplace* defines local government criminal justice policy activism as *punishment entrepreneurship*: the entry of local political-economic elites into market competition for *capitalized benefits* – an accumulative approach to direct fiscal gain, political hegemony, security, and other forms of *capitalized power* through systems of punishment directed at members of the underclass.

The devolution of federal authority in immigration control has opened up *local immigration enforcement entrepreneurship* as a manifestation of *punishment entrepreneurship*, with unauthorized and other deportable immigrants as its object. The potential benefits available to local political-economic elites through *enforcement entrepreneurship* are distinct, as

unauthorized and other deportable immigrants form a social stratum and play an economic role distinct from that of the urban underclass. Like the *punishment marketplace*, however, *punitive immigration control* reinforces America's racially-structured social relations by obscuring the diminishing returns to working class whites of the neoliberal globalization project.

This study lays out an empirical test of *punitive immigration control* theory in the form of a 50-state analysis. Using annual data from the years 2008-2012, factor analysis is utilized to produce measures of market scale, punitiveness, and economic anxiety; the association of these factors with a composite measure of enforcement entrepreneurship is then tested, using both ranked bivariate measures and standard OLS regression, in both annual cross-sectional and multi-year longitudinal models.

The results of this analysis are broadly supportive of the *punishment marketplace/punishment entrepreneurship* theory operating within the context of American immigration control, and suggest that the pursuit of *immigration enforcement entrepreneurship* is dependent on native-born perceptions of the scale of unauthorized immigrant participation in labor markets and civic life. All three of the independent factors show consistent statistically significant associations with enforcement entrepreneurship across distinct models. This range of results yields the conclusions that (1) the punishment marketplace is a viable interpretation of local approaches to immigration control in a neoliberal, weak federalist context; (2) the mechanisms involved encompass broad and overlapping socio-cultural and political economic practices, policies, and attitudes; (3) certain of these mechanisms remain largely consistent over time and are slow to change, while others may be subject to extreme changes from one annual measure to the next; and (4) the punishment marketplace operates at a level relative to the weakness of the federal government, and has the potential to be drastically reduced, or even eliminated, through strong federal action.

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I. Introduction

The immediate motive to productive activity in a market society is (not always but) typically some mixture of greed and fear [...] and that includes greed on behalf of, and fear for the safety of, one's family. Even when one's concerns are thus wider than those of one's mere self, the market posture is greedy and fearful in that one's opposite-number marketeers are predominantly seen as possible sources of enrichment, and as threats to one's success. These are horrible ways of seeing other people, however much we have become habituated and inured to them, as a result of centuries of capitalist civilization.

G.A. Cohen, *Why Not Socialism?* (2009, pp. 39-41)

A nation of immigrants

I grew up in the heart of the immigrant Midwest, in Holland, Michigan – a town that announced its immigrant pride in its very name. The school mascot was The Dutch, and the biggest local festival was Tulip Time, which featured a parade of grade-schoolers marching through the streets in wooden shoes. To be of Dutch ancestry in Holland meant being a part of the elite, a claim to superiority unattainable by other means like wealth, professional status, or even membership in the dominant Christian Reformed Church. “If you ain’t Dutch, you ain’t much,” went the schoolyard chant, and it was clear that many folks of all ages believed it.

The second largest ethnic group in Holland, as far back as the 1980s, was Mexican, a population drawn to the area earlier in the century by western Michigan’s fertile soil and expansive agriculture. The brief season of labor-intensive farm work ensured that the need for fruit pickers and packers during the summer months consistently exceeded the local supply – or, at least, local interest in the low wages farmers felt necessary to maintain their profitability. It had for this reason been a prime destination for Mexican migrant workers as far back as the 1940s and 1950s. This longstanding dynamic ensured that, over the years, a proportion of these Mexican migrant laborers made the decision to settle in the region permanently, pursuing opportunities in year-round agriculture, service industries, and the region’s rapidly expanding manufacturing economy.

My Mexican friends growing up were, for the most part, generations into this process, migrant labor relegated to the stories of their grandparents. They were American kids, their Mexican identity expressed in the Spanish I sometimes heard them sheepishly speak with their parents, the *pan dulce* at breakfast after sleepovers, the Mexican Spanish curses they taught their Anglo friends. Many were keen to define themselves in contrast to more recent arrivals, the denizens of ESL classes, segregated from mainstream social circles by culture and scorn. No such efforts could ever render them Dutch, however; there would always be immigrants, and *immigrants* – a term that could mean hardscrabble virtue and a rejection of old-world corruption, or undesirability and racial inferiority, depending on the speaker's tone and context: the Dutch immigrants of the history books and downtown plaques, vs. the Mexican *immigrants*, the gang-bangers and weed dealers of the local paper's crime blotter.

It has been nearly 20 years since I last lived in Holland, and in the interim, I have lived in a series of immigrant-dominated neighborhoods in some of the world's great cities: Rogers Park and the Ukrainian Village in Chicago; Shepherd's Bush, Brixton, Dulwich and Battersea in London; Jackson Heights and Astoria in Queens; and Washington Heights in Northern Manhattan. Each of these neighborhoods has afforded me the opportunity to immerse myself in cultural and social world's far different from the one I grew up in. I experienced these communities of Greeks, Dominicans, South Asians, West Indians, Eastern Europeans, Central and South Americans, as for the most part secure but not insular, equally invested in a strong ethnic identity and an idea of the nation in which they had chosen to settle.

To me, and perhaps to themselves, these were virtuous, hard-working immigrants of the American ideal, actively building a multicultural future, bringing cultures into dialogue and reaching toward a global future in which national borders would be increasingly insignificant. Outside of these great cities, however, in small towns like Holland across the American Midwest,

South, and West, the idea of the *immigrant* developed increasingly negative connotations. The duality that I grew up with, the understanding and evaluation of immigrants in racial terms, solidified into a line dividing national discourse. One side – rural, white, working class, religious, conservative – viewed immigrants as the root cause of a host of social and economic problems, from crime to job losses to government budget crises; the other – urban, diverse, educated, humanist, liberal – viewed immigrants as a solution, to slowing population growth, labor shortages, and economic stagnation.

In 2016, this line is more firmly entrenched than ever. It has driven ten-plus years of successes and failures in government policy-making at the federal, state, and local levels. It is an established reality with which not only politicians and policy-makers, but also business leaders and entrepreneurs, must regularly contend. And it has taken hold in a political economic context that is vastly different from the America of the 1980s and '90s in which I grew up. Holland, like other small towns across the country, has lost much of its manufacturing base, and its agriculture is increasingly automated. Its population is aging. Public investment has fallen sharply, its schools and infrastructure are crumbling, and a negligible percentage of its labor force is represented by unions. Gone are the days when seasonal Mexican agricultural workers could settle in the area, join the manufacturing workforce, and assimilate culturally and socially. Gone, indeed, are the patterns of migrant labor that drove this settlement pattern in the first place, shut down by an increasingly closed US border with Mexico.

It is this context, and my personal experience of it, that necessitated this work. Our national discourse on immigration has not evolved in the direction that my experiences as a child and a young adult led me to expect. Even in the stifling, Calvinist conservatism of the Holland of my youth, I saw a future in which racial and ethnic diversity would become a given, where cultural curiosity trumped xenophobia and isolationism, where economic growth and population

expansion were matched by increasing public investment. I grew up, in other words, expecting things to gradually get better, in all the ways that matter for collective quality of life.

So why haven't things gotten better in all of the ways that I expected? Why have the nation's views on immigration become so polarized? I believe that the answers to these questions are largely economic, a function of the increasing inequality that has become the hallmark of America's transition to a globalized, service economy. This inequality is supported, in part, by a cultural shift to a neoliberal ideology that fetishizes 'the market' as not only the solution to all social problems, but the key to reestablishing the historical ideal of a prosperous, meritocratic arrangement of American society, organized around the nuclear family and adhering to a white, Protestant, mid-20th century moral framework.

Both the political economic arrangements of contemporary globalized America, and the cultural revanchism that has helped sustain them, have contributed to an increasingly instrumental approach to immigration and immigrants – especially those from Mexico and Central America who crossed the United States' southern land border without authorization. That this description applies to the vast majority of undocumented Americans – some 11-12 million individuals, at the time of writing – has ensured that this instrumental view is broadly applied in cultural discourse and policy-making alike. Nowhere is the latter more starkly displayed than in the American immigration control system, and the processes of apprehension, detention, and deportation that it encompasses.

In the American detention and deportation apparatus, the creeping ubiquity of mass incarceration – and the punitive strain of culture that makes it inevitable – exerts its inescapable influence on the nation's treatment of immigrants. Through detention and deportation, the racialized project of American criminal justice – directed at African Americans,

rooted in slavery, and perpetuating the racial hierarchy that has been the country's most persistent, and most shameful, legacy – is repurposed to target undocumented Mexican and Central American immigrants. Deportation is one of the enforcement mechanisms that serves to reinforce America's racially structured social relations: a structure that obscures the diminishing returns to working class whites of the neoliberal globalization project. It is a system rooted in the punitive enforcement of free market ideology that in turn generates entrepreneurial market opportunities for the individual and corporate holders of capital – the political-economic elite – who promote this ideology. Its inconsistent application is a product of the increasing localization of enforcement policy in the face of an increasingly weak American federalism. This weakness, in turn, allows local governments to play out free market ideology to its inevitable end, as they compete for the maximum political economic benefits that this instrumental approach to immigrants allows.

My goal in this work is to (1) produce an etiology of the contemporary US approach to immigration control; (2) devise a coherent critical theory, rooted in a Marxist perspective, to explain how locally controlled punitive detention and deportation benefit overlapping capital interests and local political-economic elites; and (3) test the operation of this theory in the context of recent American immigration control. I will conclude this introduction with a brief overview of the contemporary US immigration control system and its relationship to the criminal justice system, followed by a narrative outline of the chapters to come.

Punishing immigrants

Contemporary detention and deportation of immigrants to the United States is best understood within the context of the American approach to punishment. In its practical application and theoretical basis, its social, cultural, and political dimensions, 21st century US immigration

control has become an essentially punitive project. While detention and deportation¹ are not classified under US law as proceedings of the criminal justice system, they are nonetheless typically presented to the public as punitive in nature: the just punishment for the violation of immigration laws, or the commission of crimes by immigrants living as ‘guests’ within the national borders of the United States.

Given the economic character of immigration, a punitive approach to immigrants appears curious, if not downright counterintuitive, from a social scientific standpoint. The vast majority of immigrants – whether documented or undocumented – are motivated to move from one nation-state to another because of economic concerns, and the implications for the nations receiving them are largely economic as well. Compelling evidence suggests that immigration, issues of documentation and authorization aside, provides greater economic benefits (on aggregate) for the receiving nation than for the individual immigrant (Kerwin, 2013; Newland, 2013; Newland & Plaza, 2013). While nativism, racism, and xenophobia are no doubt behind much punitive immigration policy, these cultural phenomena do not exist in a vacuum. If immigration itself is an economic phenomenon, then it makes sense to examine the punishment of immigrants through an economic lens. Detention, ‘processing’², and deportation are all economically implicated activities. As economic policy, these punitive activities may at first glance appear self-defeating; upon closer examination however, an economic rationale – working in conjunction with popular nativist sentiment, rather than in its place – begins to emerge.

¹ United States Immigration and Customs Enforcement refers to deportations as “removals”, a term that I generally choose to avoid throughout this work as dehumanizing.

² ‘Processing’ refers to the various peripheral activities that are associated with the detention and deportation of immigrants: courtroom proceedings, administrative classification, and transportation (between and among detention facilities, as well as, ultimately, one-way to the country of origin), along with the practical support services necessary for contemporary detention (health care, food & linen services, education & other activities, etc.).

TABLE 1. FORCIBLE DEPORTATIONS FROM US, 2007-2012

	2007	2008	2009	2010	2011	2012
Total in thousands (% change from previous year)	320 (**)	360 (+13%)	393 (+9%)	392 (0%)	397 (+1%)	410 (+3%)
Total change in thousands (% change), 2007 to 2012	+90 (+28%)					

The scope and scale of the contemporary American deportation regime by themselves give a broad sense of the system's economic implications. The 21st century has seen record numbers of annual deportations set and subsequently broken year after year; assuming that the individual deportation (preceded as it is, in the vast majority of cases, by some period of detention) is the base unit of interest, it stands to reason that the economy of detention and deportation is expanding at a similar rate. Table 1 (below) illustrates the growth of the US deportation system from 2007 to 2012.

The key components of the American immigration control system are detention and deportation – forced confinement followed by forced movement. As such, they represent a level of coercion, through the exercise of state power, as great as any individual can expect to experience short of direct physical harm or death. Is this level of force and compulsion justified by a clear and present danger, as the administrative body charged with immigration control suggests?³ What accounts for the application of so much coercion to the lives of so many?

Project outline

I begin this work with a brief history of forced movement in broadly human, and specifically American, contexts. Having established this larger history, I follow with a more detailed history

³ "ICE's [Immigration and Customs Enforcement] mission is to protect America from the cross-border crime and illegal immigration that threaten national security and public safety" (US Immigration and Customs Enforcement, 2016)

of the American immigration control system, from its roots in the Chinese Exclusion Act of 1882, through its evolution into a 21st century instrument of mass forced movement, and the parallel evolution (and subsequent devolution) of federal plenary power over immigration policy. I further examine how the development of the contemporary system is inextricably intertwined with that of mass incarceration, before moving into their common scholarly foundations. In order to establish the economic context within which these systems of mass punishment make sense, I begin with the literature on neoliberalism and neoliberal penology. I tie this literature into a range of critical and Marxist perspectives on the disciplinary functions of criminal justice processes and penalties, concluding with a deep dive into Rusche and Kirchheimer's influential theory, *the political economy of punishment*, and the attempts of subsequent scholars to refine it. Finally, I conclude my context chapter with an examination of the empirical scholarship on the labor force disciplinary effects of criminal justice system punishments, and the increasing localization of immigration control efforts in the US.

With these contextual bases firmly established, I turn my attention to theory, first by proposing that four key features of the contemporary, globalized economy have uniquely disrupted the components of the Marxist dialectic as originally defined. I offer a new theoretical approach, rooted in the political economy of punishment, that accounts for the new dynamics characteristic of our post-Fordist, neoliberal paradigm: the *punishment marketplace*. I further develop the concept – of market ideologies and market logics colonizing the very disciplinary projects that define the borders of the neoliberal approach to free market exchange – to define the pursuit of benefit by the various actors in the *punishment marketplace* as *punishment entrepreneurship*. I conclude this section by detailing the specific features of *punitive immigration control* – the *punishment marketplace* as it is applied outside the boundaries of the traditional criminal justice system, within the civil system of immigration enforcement.

After laying out this theory, I present my own broad empirical test in the form of a 50-state analysis of local *immigration enforcement entrepreneurship*. Using annual data from the years 2008-2012, I utilize factor analysis to produce measures of market scale, punitiveness, and economic anxiety; I then test the association of these factors with a composite measure of enforcement entrepreneurship, using both ranked bivariate measures and standard OLS regression, in both static year-by-year and longitudinal models.

The results of this analysis are broadly supportive of the punishment marketplace/punishment entrepreneurship theory, specifically its operation within the context of American immigration control. All three of the independent factors show consistent statistically significant associations with enforcement entrepreneurship across the static models, with the market scale and punitiveness showing the strongest associations on multivariate regressions and economic anxiety showing consistent associations on bivariate crosstabular correlations. Longitudinal associations, while less consistent and more complicated to interpret, show that change-over-time dynamics are theoretically compatible with those seen in the static analyses. In light of this range of results, I conclude that (1) the punishment marketplace is a viable interpretation of local approaches to immigration control in a neoliberal, weak federalist context; (2) the mechanisms involved encompass broad and overlapping socio-cultural and political economic practices, policies, and attitudes; (3) certain of these mechanisms remain largely consistent over time and are slow to change, while others may be subject to extreme changes from one annual measure to the next; and (4) the punishment marketplace operates at a level relative to the weakness of the federal government, and has the potential to be drastically reduced, or even eliminated, through strong federal action.

I end the paper with a discussion of future directions for research, as well as the policy implications of the work. Future research on the punishment marketplace in immigration

control might examine individual US states as case studies, analyzing quantitatively or qualitatively the factors that motivate a given county's level of participation in enforcement entrepreneurship. I identify two specific states – Georgia and New Jersey – that I believe make effective case studies and outline the distinct dynamics at work in both states that support this belief. A second fruitful avenue for future research lies in better specifying the punishment marketplace/punishment entrepreneurship theory for traditional criminal justice system penology and testing its premise in the context of contemporary American mass incarceration. Finally, testing the consistency of the theory across patterns of immigration control and incarceration internationally, in other globalized states where neoliberal ideologies hold sway, could result in further refinements of its tenets.

The policy implications of this work are in many ways obvious and argue for a significant perspective shift in how policy-makers and advocates define and measure public benefit. Punitive immigration control, coercive confinement, and forced movement exert a disastrous influence over the individual lives at which they are directed. These negative effects are by no means limited to the individuals who experience them directly but extend outwards to families, communities, and countries. The neoliberal project is a project of inequality; one that turns utilitarian calculations on their head by actively seeking to concentrate public goods in the hands of the fewest private actors practicable. It must be countered with new outcomes, goals, and measures that eschew monetary profit as the sole culturally appropriate determinant of value. In the short term, however, its corrosive effects can be counteracted by the exertions of a strong federal government taking action to reject the idea that the free market holds the key to individual and collective well-being across policy domains.

III. Historical and Scholarly Context

A note on banishment – precursors and roots through the late 18th c.

How did the United States come to have a detention and deportation system so closely tied to its economic system – and so responsive to the needs and influence of capital interests? A full survey of the system's history begins with the nation's colonial origins, though it is rooted in far older traditions of punishment. "[T]he history of banishment as punishment can be traced back at least to Roman times," (Bleichmar, 1999, p. 117) or even further, to the Hammurabi Code of 2285BC (Snider, 1998). The sanction historically relied for its deterrent value on the then stark contrast between the safety of settled areas, and the dangerous wilderness into which the banished individual was often thrust. Banishment, moreover, implied a rupture between the banished and his home community; the punishment forced its object into the role of the other, the unwelcome stranger.

The ubiquity of banishment in world history speaks to its utility and effectiveness as a punishment: Mosaic and Persian law, the ancient Indian Laws of Manu and the Chinese T'ang Code, Classical Greek and Medieval European law all featured banishment prominently as a first line punishment for a wide variety of crimes (Snider, 1998). Like death or dismemberment – both punishments also heavily favored in early legal codes – banishment represented a decision of community-wide significance for small-population, close-knit early historical settlements. The loss of a single individual's labor power or expertise was of no small consequence, and legal authorities would commonly mitigate this impact through the seizure and redistribution of the banished individual's real property (Ritter, 2015, pp. 137-8).

With the explosion in population that accompanied rising colonial ambitions in Enlightenment Europe, criminal punishments of the terminal variety lost much of their earlier economic significance. Changing legal codes reflect the reality that human life became more cheaply held

in this era. The British “Parliament during the seventeenth century engaged in a massive expansion of the definition of a felony, [designating] some three hundred crimes [...] as felonies. The death penalty was the prescribed sentence for all felonies, and judges had no discretion to adjust the sentence of convicted felons” (Bleichmar, 1999, p. 121). Clearly, the Crown authorities of this era looked upon London’s criminal class as a ‘surplus population’ – a view complicated by the fact that the city’s poor frequently had to resort to criminal activity, recently defined as felonious, simply to avoid starvation.

Even in what was then the most populous city in the world, influential reformers began in the 18th century to criticize the apparent cruelty and wastefulness of this callous approach to criminal-sanction-as-population-control (Handler, 2005). In response to these criticisms, banishment – which by then had fallen out of favor – was resurrected as *transportation*, an evolution that improved upon the original in two key economic respects. First, transportation conserved and redirected surplus labor from London and other populous urban centers of 18th century Great Britain (where it represented the nuisance of street crime and the danger of social unrest) to the North American colonies (where it was sorely needed in extractive industries and the burgeoning agricultural sector). Second, it created opportunities for direct entrepreneurial profit, in which “private merchants derived their profit solely from the proceeds of the sale of convicts as indentured servants” (Bleichmar, 1999, p. 123).

A history of American forced movement

Crown courts effected the transportation of approximately 50,000 convicts to the American Colonies from the passage of the 1718 Transportation Act through the 1776 Declaration of Independence, a total that represented “perhaps a quarter of British immigrants to colonial America during the eighteenth century” (Ekirch, 1985, p. 188). To the extent that it can be equated to transportation, deportation is clearly a process as inextricably linked to the history of

the United States as immigration itself. While arguably not a nation of exiles or deportees to the same extent as Australia, colonial America undoubtedly derived significant economic benefit from the large influx of transported criminals introduced directly into its 18th century labor pool. The entrepreneurial approach to transportation enhanced this benefit: since “merchants would cherry-pick the convicts they would transport based on the price such felons could be sold for in colonial auctions[,]” a disproportionate number of the convicts transported were “[l]arge, strong and healthy men” (Bleichmar, 1999, p. 123). This early approach established the features of deportation’s dual economic and punitive role. It was applied in the name of punishment but responsive to labor market conditions. It was flexible in its creation of entrepreneurial opportunity and its service of multiple complementary functions. It targeted surplus populations and sacrificed the individual rights of its objects to the benefit of government and mercantile interests (the overlapping population of capital holders and the political-economic elite, in other words) alike.

Another precursor to contemporary deportation from the colonial and early independence era was the tradition of 'warning out', a local process closer in some respects to the original notion of banishment than transportation. Local officials ‘warned out’ an individual or household – typically comprised of the destitute, transient laborers, racial, ethnic, or religious minorities, or other surplus populations – by informing them that they were not welcome to settle in a given community. The process could be formal or informal, and might be followed by a forcible removal past the community’s accepted boundaries. Daniel Kanstroom, in his seminal

Deportation Nation, observes:

Again, the rough similarities to modern immigration laws are apparent. Rhode Island law even provided that formal legal settlement status could be granted to transients after one year of residence. ... [L]ocal officials sometimes circumvented this possible grant of status by issuing yearly citations to keep transients "under warning" without necessarily ordering them out of town. The major purpose of this practice was apparently to prevent long-term residents from achieving the full rights of inhabitants.

(Kanstroom, 2007, p. 36)

This form of proto-deportation introduces another clear economic function into the model: limiting the ability of surplus populations or transient laborers to accumulate political and social capital. Also a function of transportation, it ostensibly benefitted social stability and public safety as well. As David Rothman notes in *The Discovery of the Asylum*, his great history of the development of the prison, the practice was used as one of many "legal prerogatives to exclude the harmless poor, who might someday need support, and suspicious characters, who could disturb safety and security." (Rothman, 2009 [1971], p. 46) Clearly, the practice was as useful in mitigating the threat posed by the 'rabble classes' as it was in limiting the citizenship rights of productive laborers. These functions continue to be linked, both symbolically and practically, in contemporary deportation policy and practice.

From the post-colonial era through the latter half of the 19th Century, the nation's labor needs were generally so great that authorities focused significant effort on devising systematic means to fill them. No national program of detention and deportation existed. While the federal government enacted numerous forced movements of individuals and even entire classes of people during this era, the largest-scale project of this nature – the forced relocation of the Native American 'Five Civilized Tribes' following the Indian Removal Act of 1830, colloquially known as the Trail of Tears – responded to economic concerns about land rather than labor. The Five Civilized Tribes, consisting of the Cherokee, Chickasaw, Choctaw, Muscogee, and Seminole, occupied large swathes of autonomous territory across Mississippi, Alabama, North Carolina, Georgia and Florida – some 25 million acres coveted by their white neighbors and the state governments that represented their interests. The Indian Removal Act was thus a classic land grab, demanded by those with the most to gain and facilitated by an Act of Congress.

Despite this important distinction, Indian Removal resembled the contemporary deportation system in a number of key respects, the first being scale: in total, the US government by 1837

had removed some 46,000 Native Americans from their homes in the Southeast to Oklahoma Territory, organizing and administrating the process in a brutally effective manner. In proportion to the nation's total population, this is comparable to about half of the 2.1 million contemporary deportations over a similar time period (2008-2014) – a not inconsiderable administrative feat in an era predating telecommunications, computing, and internal combustion. Aside from scale and brutalist efficiency, Indian Removal predicted an additional feature of the contemporary deportation regime by being an exclusively administrative procedure:

Though the removal proceeded according to an Act passed by Congress and treaties negotiated with each Indian tribe, no court had the opportunity to interpret either legal text during the removal. *Judicial review was nonexistent*. The control of the removal was left, therefore, in the hands of the administrators themselves, and to a lesser extent, the political branches.

(Davis, 2008, pp. 50, ital. add.)

Thus, as with contemporary deportation, the involvement of the judicial branch in decision-making on Indian Removal was effectively non-existent – a reality that had serious consequences for its objects. Davis adds without irony that “Congress’s frugality” led it to “focus more on accounting procedures and cost-cutting ideas than on the safety and health of the emigrating Indians” (Davis, 2008, p. 51). Some 10,000 Native Americans died over the course of the relocation effort before reaching their destinations. Lastly, like transportation before it, Indian Removal generated millions of dollars worth of entrepreneurial opportunities for everyday merchants and unscrupulous profiteers alike. Many of these dollars came directly from the federal government in the form of contracts with transport companies (Foreman, 1972).

The final precursor to contemporary deportation predating the development of the nation's formal immigration control system is both the most challenging and the most essential to understanding its relationship with the criminal justice system. The Fugitive Slave Act – to say nothing of the system of slavery in and of itself – provides powerful evidence of a longstanding American tradition of forced movement in support of dominant cultural property rights and an

ample supply of low-cost labor. In its origins and early mechanics, chattel slavery in the American colonies followed a pattern not dissimilar to that of transportation, described above. Despite not generally experiencing their confinement and forced movement as a judicial sanction for the commission of a specific crime, slaves, like transported criminals, were selected for their apparent value as physical laborers in the same sort of entrepreneurial process, by the same sort of mercantile interests. Indeed, many of the very same ships, captains, and shipping companies (the precursors to contemporary corporations) that transported British criminals to the American colonies were directly involved in the slave trade as well (Vaver, 2009). What's more, the experience of colonial forced labor for British convicts and African slaves was initially similar. In the words of Orlando Patterson,

there were few marked differences in the conception of black and white servitude, the terms "slave" and "servant" being used synonymously. [...] Gradually there emerged, however, something new in the conception of the black servant: the view that he did not belong to the same community of Christian, civilized Europeans. The focus of this "we-they" distinction was at first religious, later racial. [...] [R]eally a fusion of race, religion, and nationality in a generalized conception of "us" – white, English, free – and "them" – black, heathen, slave.

(Patterson, 1985, p. 5)

This cultural and social process is described in critical theory as 'othering', a dehumanization that makes possible cultural phenomena from punishment to forced labor, from land grabs to genocide. It is no coincidence that two of the most common paths to slavery in the ancient world were through capture in war, or – as with banishment – in lieu of death as punishment for a crime. On the moral and psychological processes underlying othering, the great critical criminologist Jock Young writes: "[t]he simplest notion of what constitutes a demon, a folk devil, an enemy for any particular culture is that it is what they are not, [...] the embodiment of all they stand against, a violation of their highest principles [...] the black and white of moral photography" (Young, 2007, p. 141).

In other words, the racial othering that made slavery possible relied on the same cultural and psychological processes that underpin contemporary criminal justice system punishment and

the labor exploitation of undocumented immigrants. While, ostensibly, only one of these systems relied on racist ideology to separate the exploiter from the exploited (or the punisher from the punished), whether the 'other' is defined in moral, legal, national, or linguistic terms, the result is the same. The dehumanization of othering justifies a more or less purely instrumental approach to the labor of its object:

[I]t makes solid cultural sense to require a certain distance from those who serve us: with distance, we don't have to think of them or treat them as guests when they come into our homes, or accord them the rights that guests traditionally receive in the vast majority of cultures worldwide; we needn't concern ourselves with their knowledge of the intimate details of our personal lives, or with the judgments they might pass on those details. We can generate the required distance in any number of ways, from polite disinterest to active hatred, but all of these distancing strategies involve othering—limiting the subjecthood, personhood, or humanity of the servant—and all of them carry the concomitant economic benefit that we need not consider too deeply the humanity of these servants when it comes to the remuneration necessary to provide for their human needs. We certainly needn't look to our own human needs as a rule of thumb—if the servant is less than human, after all, any such basis of comparison would be patently absurd.

(Stageman, 2011)

This cutting off of empathy, of comparative humanity, of the possibility of community membership or social subjecthood allows both the dominant individual and the dominant social group to approach the other in starkly economic terms. Benefit, in these terms, becomes a one-sided measure of the value any given action or decision vis-à-vis the other has for the dominant individual. Under these terms, forced labor is the work of beasts or machines, forced movement is the transportation of goods, buying or selling is speculation in a profitable market. The human dimensions of these decisions, their implications for individual lives, are rendered insignificant and irrelevant for the individual or group making them.

In addition to these broad parallels between the ideologies that justified slavery and the contemporary forced movement of American immigrants, the Fugitive Slave Act of 1850 presaged a number of the conflicts and mechanics that define the deportation regime, particularly in relation to ground-level enforcement. The Act empowered local and state officials, along with the nascent law enforcement agencies that they operated, to “execute warrants for the capture of fugitive slaves” (McKanders, 2012, p. 933). Not content to trust the

discretion of these officials, whose views on slavery varied considerably from state to state, the Act simultaneously put in place a federal bureaucracy of commissioners with the power to enforce fugitive slave laws directly or deputize others to do so at their discretion. Unsurprisingly, this system was rife with corruption and abuse, as it incentivized unscrupulous state and local officials, along with entrepreneurial private actors (bounty hunters or ‘slave hunters’), to undertake enforcement efforts in pursuit of rewards offered privately by slave owners or public bounties offered by the Southern states. It also represented a profound failure of the American approach to federalism⁴, as numerous states challenged it in the courts or resisted enforcement through official and informal means alike. Like contemporary deportation, the forced movement of fugitive slaves could begin through an encounter with local law enforcement, was carried out through a judicial review process that accorded minimal rights to the subject, shattered mixed-status families, and instilled tremendous fear in targeted communities. While the Act ended with the North’s Civil War era ‘contraband’ policy (Goodheart, 2011), and slavery itself ended with the passage of the 14th Amendment, the nation’s subsequent need for labor only increased. The end of slavery as America’s primary system of forced labor did not end the use of coercion by government on behalf of capital interests in their pursuit of profit, nor the reliance on othering to justify it.

The legal and cultural origins of contemporary deportation

The operation of othering served to justify forced labor and forced movement in the American cultural context from the colonial period through the late 19th century, as the examples of slavery, transportation, and Indian Removal clearly demonstrate. These precursors, however, are each distinct from the contemporary deportation system in important ways: transportation and the Transatlantic slave trade both represented forced movement of labor *to* the United States, as opposed to expulsions of present workers *from* within the nation’s borders. Indian

⁴ This same failure of American federalism could justifiably be cited as one of the root causes of the Civil War that followed.

Removal was just such an expulsion, but for the purpose of a land grab rather than labor regulation. The basis for the expulsion of resident (if unauthorized) laborers lies in the 1882 legislation commonly cited as the point of origin for the contemporary model of immigration control: the Chinese Exclusion Act. The Act established the 'plenary power doctrine' that solidified federal control over America's national immigration policy. It also laid the groundwork for the ensuing years of racially restrictive immigration laws and "judicial decisions establishing a racial hierarchy among noncitizens of color" (Trucio-Haynes, 1997, p. 393) all the way through the mid-20th century.

While the Chinese Exclusion Act placed strict limitations on Chinese immigration, it did not involve a program of organized mass deportations; rather, it was designed to disrupt and destroy an established pattern of international labor migration. Importantly, the Act accomplished this objective by appealing to a culturally situated set of xenophobic beliefs about race, ethnicity, and national origin – a set of beliefs that drew from earlier dehumanizing discourse about Native and African Americans to establish legal limitations on Chinese subjecthood that could stand up under the constitutional scrutiny of the recently passed 14th Amendment. The Act arguably fed into this dehumanizing discourse as much as relied upon it for passage, in the sort of feedback loop that commonly accompanies the passage of discriminatory laws throughout US history. As a result, regardless of the Act lacking provisions for an official program of mass deportation, "[v]iolent anti-Chinese riots resulted in the murder and expulsion of the Chinese from many communities" (Kanstroom, 2007, p. 111), particularly in California and other parts of the American West.

The pattern set by the Chinese Exclusion Act – the assignment of a legal status denying citizenship and undercutting basic community membership, standing as an official expression of an underlying cultural, racist, and nationalist xenophobia, which it then further fuels – appears

in anti-immigration legislation throughout the 20th century. The Scott (1888) and Geary (1892) Acts “prohibited the [re]entry of all Chinese laborers [...] who had left the US temporarily with valid return certificates” (Trucio-Haynes, 1997, p. 393), required Chinese laborers to register with immigration officials, and extended the Exclusion Act by 10 years. The 1917 Act extended exclusion to all Asians, and limited Eastern and Southern European immigration as well – a project expanded with the Immigration Act of 1924, which included the National Origins Act that established strict quotas and additional outright bans for nationalities outside the Western Hemisphere whose prevailing ethnic makeup could not be broadly characterized as ‘Anglo-Saxon.’ This profusion of acts in the brief time period between the close of the First World War and the run-up to the Second is a reflection of the prevailing influence of ‘scientific racism’ and eugenics in the US before Hitler’s depredations in Europe discredited them.

One result of this 40-year paroxysm of anti-immigrant sentiment and legislation (a period encompassing, perhaps not incidentally, the Gilded Age, the last historical period in which American income and wealth inequality approached the levels we experience today) was an increasingly diminished labor pool. This labor shortage was most acutely felt in the West – the locus of much of the anti-immigrant sentiment toward Asians. This dynamic arguably led Western capital interests in agriculture and other low-wage industries to look toward the porous, informally-regulated US-Mexican border for a solution. Thus began a pattern of invitation, migration, and expulsion that persists through the present day. It is no coincidence that the targets of the first program of organized mass deportations from US soil – undocumented Mexican migrant laborers – constitute the same national, ethnic, and class group that makes up the overwhelming majority of the contemporary deportee population. The first wave of such deportations arose “[i]n the 1930s [when] xenophobic urges were fueled by the popular belief that undocumented Mexican workers were responsible for severe unemployment in high paying jobs” (Trucio-Haynes, 1997, p. 397). This notion, however

unlikely, is reasonably attributable to the economic anxieties that accompanied the Great Depression. This interpretation is supported by the fact that “a large number of deportations during the Depression were based on the ‘likely to become a public charge’ provision of law” (Kanstroom, 2007, p. 161), rooted in the colonial tradition of ‘warning out’ described above.

The core dynamic of ‘warning out’ – the denial of the social membership traditionally earned by living and (perhaps especially) working in a community – became a key feature of the American approach to deportation with the next program of mass expulsions: the trenchantly titled ‘Operation Wetback’ begun by the Eisenhower administration in 1954. That the project’s official moniker, assigned by the federal government, telegraphed its racist origins was perhaps a product of the times; in any case, it was a misnomer. Rather than targeting ‘wetbacks’ – a term understood then (as now) to connote the undocumented and unauthorized passage of Mexican immigrants across the southern US border where it follows the course of the Rio Grande river – ‘Operation Wetback’ in fact targeted primarily Mexicans who had entered the US legally as invited guest workers. The Bracero Program was introduced in 1942 as a solution to the labor supply problems that accompanied US mobilization for World War II. At the height of the enormous wartime industrial effort, the Program saw invited Mexican contract laborers working southwestern ranches and cotton plantations alongside “captive labor [such as] prisoners of war... convicts [and] Japanese-Americans, impounded in concentration camps” (Calavita, 1992, pp. 56-57) – an image that communicates a great deal about the working conditions the Braceros experienced.

The Bracero Program ran until 1964, and “facilitated the legal entry into the United States of some 4.5 million Mexican workers” (Kanstroom, 2007, p. 219). The introduction of ‘Operation Wetback’ in 1954 was originally justified on the basis “that communist spies could cross the

border with the 'wetback' traffic"⁵ (Astor, 2009, p. 15). Given this 'Red Scare' premise, it is unsurprising that 'Operation Wetback' deportations consistently targeted communities and workplaces where Braceros were actively undertaking labor organizing efforts, or were in contact with American union organizers. To credit 'Wetback' with this apparent level of precision, however, belies the mass (though not necessarily indiscriminate) approach to expulsions that characterized it. Kanstroom rightly observes "[t]he remarkably symmetrical relationship between labor recruitment and the deportation system [,]" in that, by the Bracero program's conclusion in 1964, "the number of braceros, nearly 5 million, was almost exactly the same as the number of deportees" (Kanstroom, 2007, p. 224).

The intertwined federal policies underpinning the Bracero Program and Operation Wetback were conceived and implemented during a time period when the Plenary Power Doctrine was firmly established by some 70 years of ensuing case law, during which the US Supreme Court repeatedly affirmed immigration policy – including immigration control and enforcement – as the exclusive domain of the federal government. Yet both programs, in practice, addressed highly localized (rather than broadly national) concerns. The Bracero Program addressed the Southwestern US need for low-wage labor during a period of acute shortage; Operation Wetback ensured that the Mexican laborers who filled this need never achieved the social membership that, under the terms of the 'Social Contract' (Rousseau, 2010 [1762]), should have been their just reward:

Living in a community [...] makes people members. As adult immigrants settle into their new home, they become involved in a network of relationships that multiply and deepen over time. They acquire interests and identities that are tied up with other members of the society. Their choices and life chances [...] become shaped by the state's laws and policies. The longer they live there, the stronger their claims to social membership become. At some point, a threshold is passed. They have been there long enough that they simply are members of the community with a strong moral claim to have that membership officially recognized by the state by its granting of citizenship [...]

(Carens, 2013, p. 50)

⁵ The parallel between this seemingly paranoid idea and contemporary notions that the same border is a transit point for terrorists motivated by Islamic fundamentalism seems obvious.

The Braceros were never afforded the opportunity to enter the kind of membership transaction that Carens describes, because ‘Operation Wetback’ consistently disrupted their integration into the social networks of their new home. In other words, they could not ‘pass the threshold’ necessary for a moral claim to citizenship because the state’s coercive program of forced movement interrupted the process. This federally sanctioned approach “had the [...] subtle and pernicious effect of legitimizing a particularly instrumentalist view of Mexican immigrant workers [who] would now be presumed to be, at best, temporary and, at worst, illegal” (Kanstroom, 2007, p. 219) – a presumption that has arguably persisted through the present day in many parts of the country. The twin dynamics of the Bracero Program and ‘Operation Wetback’ introduced into American political economic discourse both the concept of illegality (i.e. the ‘illegal immigrant’), and the revolving door of Mexican immigrant labor, of which deportation is an essential element – the axis, if you will, upon which the door spins. The fundamentally bulimic nature of this endeavor would become a theme of American social, political, and economic life throughout the latter half of the 20th century and into the 21st, in criminal justice as well as immigration (Brotherton & Naegler, 2014; Young, 1999). We will return to the theme of social bulimia below.

While ultimately justified in a historical review focused on forced movement through government coercion, this litany of abuses could leave the reader with the impression that rank racial hostility, and the coerced expulsions that accompanied it, make up the sum total of America’s immigration history. This is, of course, not the case. Contemporary multicultural America owes much of its diverse character to the countercurrent of inclusion that shadowed many (if not all) of the historical events and dynamics described above. Despite its ultimate passage, the Indian Removal Act was fiercely debated in congress, with a sizable minority of legislators decrying its inhumanity and calling for the peaceful assimilation of the ‘Civilized Tribes’ into the nascent American identity. The Fugitive Slave Act – and slavery itself – met

deep resistance among abolitionists, free African American northerners, and others, many of whom bled and died in the effort to fight it. And the Civil Rights Movement of the 1960s paid significant dividends for immigrants, present and future, just as it did for minority citizens. A prime example of the muscular, activist approach to federal policy-making that typified the years of the Kennedy and Johnson administrations, the Hart-Celler Immigration and Nationality Act of 1965 brought about profound changes to the restrictive, Eurocentric immigration policy of the earlier 20th century. In particular, the Act granted immigration priority to the relatives of US citizens and permanent residents. As a result, "patterns of immigration changed dramatically [due to] the abolition of quotas based on national origin [which] opened the way for increased immigration from the third world" (Ngai, 2004, p. 265).

It is arguable that the 1965 Act is in large part responsible for the contemporary ethnic makeup of the United States, as well as the trajectory that will see the country become a majority-minority society by the 2050 census. It is equally arguable that the act laid the early groundwork for a shift in the enforcement approach of the then Immigration and Naturalization Services (INS). Established in 1933, it was the INS that engineered and executed 'Operation Wetback', achieving a peak level of 1.1 million deportations in the first year of the program (1954). This is a deceptive number from a contemporary perspective, as the vast majority of these expulsions (all but around 30 thousand, according to the 2013 *Yearbook of Immigration Statistics*) were 'returns': informal apprehension on the US side of the border, followed by informal transportation to the near Mexican side of the border. The contemporary processes associated with deportation – identity checks, formal arrest, detention, and an administrative court hearing, followed by legal consequences and official transportation to (relatively) deep within the country of origin – were largely established with the 1965 Act. While these processes continued to represent only a tiny proportion of the total expulsions from US soil for the next 30-plus years, the expanded, 'worldwide' immigration patterns that arose after the 1965 Act

effectively necessitated their development. They also provided the INS with the procedural tools necessary to respond to local problems and pressures, making the practice of immigration control a considerably more locally-driven undertaking than the purview of the plenary power doctrine might suggest.

The other characteristic element of the contemporary American immigration control system – detention – owes its origins to the 1980 surge of Haitian refugees ('boat people') into Florida, fleeing both the depredations of the Duvalier regime and the extreme poverty that the majority of Haitians faced under their reign. Following as it did the Mariel crisis earlier that same year, which "unfolded over a 6-month period during which 125,000 Cubans arrived by boat in Florida" (Mountz & Loyd, 2014, p. 392), the arrival of 15,000 Haitian asylum-seekers placed a significant strain on the INS' bureaucratic capacity. In order to deal with this massive backlog, and on the assumption that only a small percentage of the refugees would receive asylum status (particularly since the Duvalier regime received US government support), both Cuban and Haitian arrivals were "confined at Krome, an abandoned Nike missile base some 23 mi from Miami" (Mountz & Loyd, 2014, p. 393), in makeshift facilities that offered horrendous living conditions – though conditions for the Cubans, kept in separate facilities, were significantly better than those experienced by the Haitians. Human rights concerns about these conditions eventually led the INS to transfer many of the Haitian refugees to federal prisons, an option that turned out to be significantly more economical over the long term. As more Haitians arrived, and the INS' asylum processing backlog grew, the Reagan administration made the decision to enforce mandatory detention for all asylum seekers, in the hope of deterring further mass migrations.

Even at this nascent stage of immigrant detention's existence, local entrepreneurship played a significant role in the system's development:

Fierce lobbying led by the mayor of an economically depressed, central Louisiana town resulted in the construction of the INS's first new facility, jointly run with the Bureau of Prisons. The new facility in Oakdale more than doubled the INS's capacity nationwide, and residents agreed to accommodate an additional short-term population of 10,000 people in case of an immigration emergency. Local parish jails in the state also pursued contracts for federal detainees. Local agencies provided additional capacity near a federal facility carrying out immigration hearings and processing removals. This institutional landscape would be repeated in jurisdictions across the country.

(Mountz & Loyd, 2014)

Louisiana retains to this day one of the highest populations of detained immigrants in the nation, despite having a relatively low population of immigrant residents, documented or otherwise. As the initial waves of Haitian and Cuban refugees began to subside, the INS remained contractually obligated to a detention infrastructure with a sizeable capacity. Rather than leave these beds empty – a decision that would have represented an expensive contingency plan for the potential arrival of further waves of refugees – the INS sought to fill them. In order to do so, it began to integrate detention into its regular removal operations. A series of laws passed from 1986-1996 provided both the rationales and the tools to facilitate this process – and to ensure the further growth of the immigrant detention system through the turn of the millennium.

The contemporary era of US immigration control began in earnest with the passage of a pair of laws in 1986: the Simpson-Mazzoli Immigration Reform and Control Act (IRCA), and the Anti-Drug Abuse Act (ADAA). IRCA, a bipartisan piece of legislation that also included an amnesty and placed some 3.2 million previously unauthorized immigrants on a path to citizenship, introduced two key features of the contemporary deportation regime. First, it made the hiring or recruitment of unauthorized immigrants explicitly illegal; and second, it established the idea that individuals convicted of crimes should be ineligible for citizenship. The ADAA worked in synergy with this latter feature to keep a steady stream of deportees flowing into the newly established detention system, as it “significantly expanded which drug offenses could lead to a noncitizen’s deportation [and] introduce[d] the practice of detainers, which request that law enforcement officials hold an individual in criminal custody for federal immigration officials”

(Sinha, 2015, p. 14). The collective effect of these features was to both open the door to local law enforcement involvement in the process, and steadily increase the numbers of removals (deportations) and detainees. This expansion accelerated significantly with the passage of the Immigration Reform and Immigrant Responsibility Act (IIRIRA) that followed ten years later. IIRIRA laid the groundwork for the explosion of deportations that occurred after its passage in the early 21st century, as well as the concomitant growth of the detention system. It "greatly expanded the list of crimes designated as 'aggravated felonies' for which a noncitizen must be deported" (Greene & Mazon, 2012, p. 16), making a number of minor crimes, from shoplifting to marijuana possession, deportable offenses for even Lawful Permanent Residents (LPRs), and applied this provision retroactively for crimes committed prior to its 1996 passage. It also established that immigrants facing deportation could effectively be detained indefinitely. While this latter provision was ostensibly struck down by the Supreme Court in the 2001 case *Zadvydas v. Davis*, in practical terms, it remains in effect to the present day: "[o]nce an immigrant is held for at least six months, the average stay in a detention center [...] is 404 days" (Phippen, 2016).

Finally – and most importantly for the purposes of this work – IIRIRA established the 287g Program, which takes its name from the line of the Act in which it is detailed. The section "authorizes the secretary of the U.S. Department of Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions" (US Immigration and Customs Enforcement, 2006). While this clearly represents a contemporary update of the Act's original language (the Department of Homeland Security was not formed until six years after the passage of IIRIRA in 2002), the intent remains the same: to devolve immigration enforcement powers to local police. It is difficult to overstate the degree to which this goal represented a departure from previous approaches to immigration control. Under the Plenary Power Doctrine, immigration control was

established as the sole purview of the federal executive and, to a lesser extent, legislative branches, to be undertaken (as with Indian Removal) largely free from significant interference by the judiciary (Chin, 2000). The reality, explored above, was that “a significant ‘gap’ between the supposedly uniform federal law and local action” (Provine, Varsanyi, Lewis, & Decker, 2016, p. 4) existed as far back as Operation Wetback (or even before), particularly in regard to the actual practice of federal immigration enforcement. IIRIRA acknowledged this ‘gap’ in law. The 287g program allowed for a “partial devolution of... immigration policing powers... and [gave] state and local governments newfound and increasing powers to discriminate on the basis of alienage or noncitizen status” (Varsanyi, 2008, p. 878). While it is important to recognize that the 287(g) initiative was ultimately organized as a formal program of training, grantmaking, resource- and information-sharing between the federal government and local law enforcement agencies, its inclusion in federal legislation represented a symbolic movement away from the provisions of the Plenary Power Doctrine. In effect, the federal government was tacitly condoning a return to the kind of locally-driven, vigilante expulsion programs directed against Chinese communities across the West in the wake of the Chinese Exclusion Act – as long as they occurred under the auspices of local government authority.

Deportation, detention, and mass incarceration

The history of forced movement in the American context through the end of the 20th century reveals a number of trends that link its disparate appearances over nearly 400 years:

- 1) It is rooted in the cultural dynamic of *othering*, a psychological process through which the individuals and social groups forcing movement dehumanize or otherwise curtail empathy for the individuals or social groups who are its object. This cultural dynamic is largely consistent, though it can be achieved through a variety of means: criminalization, the creation of racial, national, and linguistic categories, the assignment of novel legal statuses, etc.

- 2) It serves to interrupt the normal workings of the social contract, by which an individual living and laboring in a particular community earns membership in that community – along with the benefits of membership, implied or explicit. Forced movement – or often simply the *threat* of forced movement – prevents the individuals or social groups at whom it is directed from accumulating the social capital, achieving the political influence, or obtaining the legal status and economic benefits that are traditionally the ‘just rewards’ of community membership.
- 3) It enables economic interests – in particular, ‘capital’ or ‘the holders of capital’ who are in a position to take advantage of low-skilled labor at low (or no) negotiated wages, but also entrepreneurs of various stripe – to take a more or less instrumentalist approach when dealing with the individuals and social groups who are its object. In other words, it allows capitalists to treat its objects as something other than human subjects: machines or beasts for work, goods for transport, commodities in which to invest, etc.
- 4) It is commonly *punitive*, rooted in ancient traditions of the banishment and enslavement of enemies or criminals, and takes on punitive dimensions even where it is not obviously or explicitly so (as in the sale and forced movement of ‘difficult’ slaves, the attribution of criminal mindsets, habits, and behaviors to excluded Chinese and deported Mexicans, etc.).

While it is clear that each of these features is in some sense dependent on the others, with the passage of IIRIRA and the turn of the 21st century, the punitive character of forced movement begins to take on an outsized significance in the formal context of the US immigration control system. It is no coincidence that IIRIRA followed by two years the passage of the 1994 Violent Crime Control and Law Enforcement Act, which, among other provisions, provided funding for an additional 100,000 police officers nationwide, and nearly \$10 billion in funding for the construction of new prisons. While the Act is discussed with increasing frequency as one of the primary drivers of contemporary American mass incarceration (e.g. Beinart, 2015; Hunt, 2014),

in reality this dynamic was already well underway by the time of its passage, the incarceration rate having nearly quadrupled in the 20 years between 1974 and 1994 (Travis & Western, 2014). The 1994 Act in a sense simply served to formalize federal approval for the ramped up incarceration it had encouraged in a more scattershot and tacit fashion since President Richard Nixon's declaration of the "War on Drugs" in 1971. Most pointedly, under the provisions of the Act,

A state applying for a federal grant for prison construction was required to show that it: (A) ha[d] increased the percentage of convicted violent offenders sentenced to prison; (B) ha[d] increased the average prison time which [would] be served [...] by convicted violent offenders sentenced to prison; (C) ha[d] increased the percentage of [the] sentence which [would] be served in prison by violent offenders sentenced to prison.

(Travis & Western, 2014, p. 17)

This explicitly punitive approach to crime control at the federal level was of course mirrored by an increasingly punitive approach to immigration control, as reflected in the criminalizing provisions of the 1996 IIRIRA legislation discussed above.

Why did the phenomenon that we have come to know today as mass incarceration arise over this time period, with the twin phenomenon of mass deportation following close on its heels? Why did they receive explicit federal approval and encouragement in the two mid-1990s legislative acts discussed above? There are two answers to these questions, both equally important and interrelated. I will treat the first here in full, and touch upon the second, which I will explore more fully in the scholarly context section to follow. Authors such as Michelle Alexander (2010) have presented a convincing argument that contemporary mass incarceration has its roots in the political manipulations of Richard Nixon's 'Southern Strategy.' Crucial to his 1968 election, the strategy used the white working class backlash against the advances toward racial equity achieved by the civil rights movement to redefine crime and criminality in implicitly racial terms. Building on popular perceptions of African American criminality that dated back to the post-Civil War era (Muhammad, 2010), Nixon and his campaign team made use of 'dog whistle'

politics (Haney-Lopez, 2013), communicating racially charged messages to white working class voters about how they could expect African Americans to be treated under his administration.

The 'War on Drugs' and the advent of mass incarceration can be read as Nixon's efforts to follow through on these commitments to undercut African American racial progress, as well as attempts by politicians at state and local levels to replicate Nixon's electoral success. As the 'War on Drugs' proceeded through the Reagan years and the 'crack epidemic', politicians of both parties learned by experience that there was apparently no 'law and order' policy too harsh that it could undercut this strategy (Cohen A. , 2015). The 1994 Crime Act, and the Personal Responsibility and Work Opportunity Act (welfare reform) that followed it, have been interpreted by some commenters as President Clinton's attempts to shore up his reelection prospects by getting in on the act:

Clinton did not stop there. Determined to prove how "tough" he could be on "them," Clinton also made it easier for federally assisted public housing projects to exclude anyone with a criminal history – an extraordinarily harsh step in the midst of a drug war aimed at racial and ethnic minorities.

(Alexander, 2010, p. 57)

IIRIRA, in this context, could be interpreted as an effort by Clinton (and others in the federal government) to account for the United States' growing and increasingly visible Hispanic population in the pandering racial calculus of 'law and order' politics. While this interpretation is certainly valid, it fails to account for the other dynamic, mentioned above, that became in the 1990s an important driver of mass incarceration as well: globalization. Because globalization is a key component of neoliberalism, I will discuss it in greater detail in the next section, as part of the scholarly context for this work. As a historical phenomenon, however, globalization led to profound changes in the American economy in general, and the nation's labor market in particular. Much of the impetus for 'the great migration' of African Americans from the former states of the Confederacy to the urban centers of the North was provided by the US transition to an industrial economy (Lemann, 1991). Similarly, the civil rights movement was in part fueled

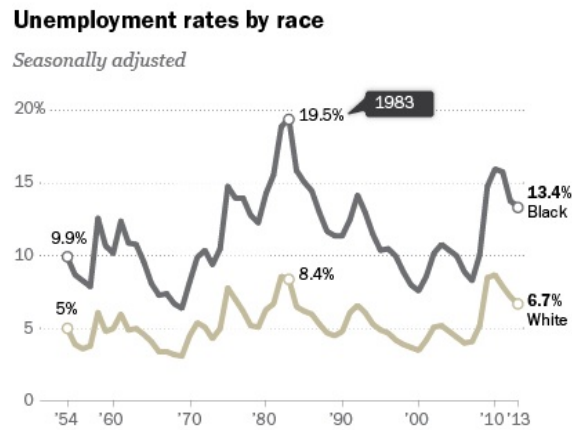
by the newfound economic mobility of African Americans moving, through well-paid, union employment in manufacturing, into the middle class⁶ (Rosenfeld & Kleykamp, 2012; Wright, 2013). Finally, these same dynamics were in large part responsible for the agricultural labor shortages that brought Mexican immigrants into the United States. Globalization and mass incarceration changed each of these dynamics drastically. The transition from a manufacturing to a service economy combined with mass incarceration to pull the bottom out from under decades of rising African American prosperity⁷ (Borjas, Grogger, & Hanson, 2006). Manufacturing jobs evaporated overnight as factories shut down or moved abroad, and African Americans were largely shut out of the middle class service jobs that replaced them, due in part to institutional racism, but also structural factors: the criminalization that drove mass incarceration led to employment-disqualifying criminal records; sharply reduced investment in public services led to poor quality education (Holder, 2016; Pager, 2003). At the same time, African Americans did not begin moving in large numbers into new low-wage, low-skilled service employment, or the agricultural sector that they had largely abandoned *en masse* in the first half of the 20th century⁸. Instead, labor shortages in these sectors brought an influx of Mexican and Central American unauthorized immigrant workers, and a persistent high level of unemployment became the norm for the largely African American former 'reserve army of labor' (Fairlie & Sundstrom, 1999; Wright, 2013).

⁶ See also figure 3, p.39.

⁷ See figures 1-3, p.39.

⁸ See figures 1 and 2, p.39.

Figure 1. Total unemployment by race⁹



Source: Bureau of Labor Statistics

Note: "Black and other," 1954-1971; "Black or African American" thereafter. 2013 average is January-July.

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Figure 2. Male joblessness by race¹⁰

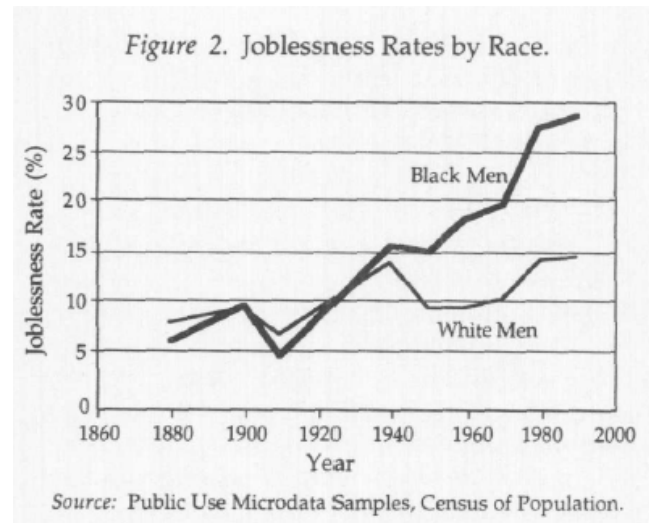
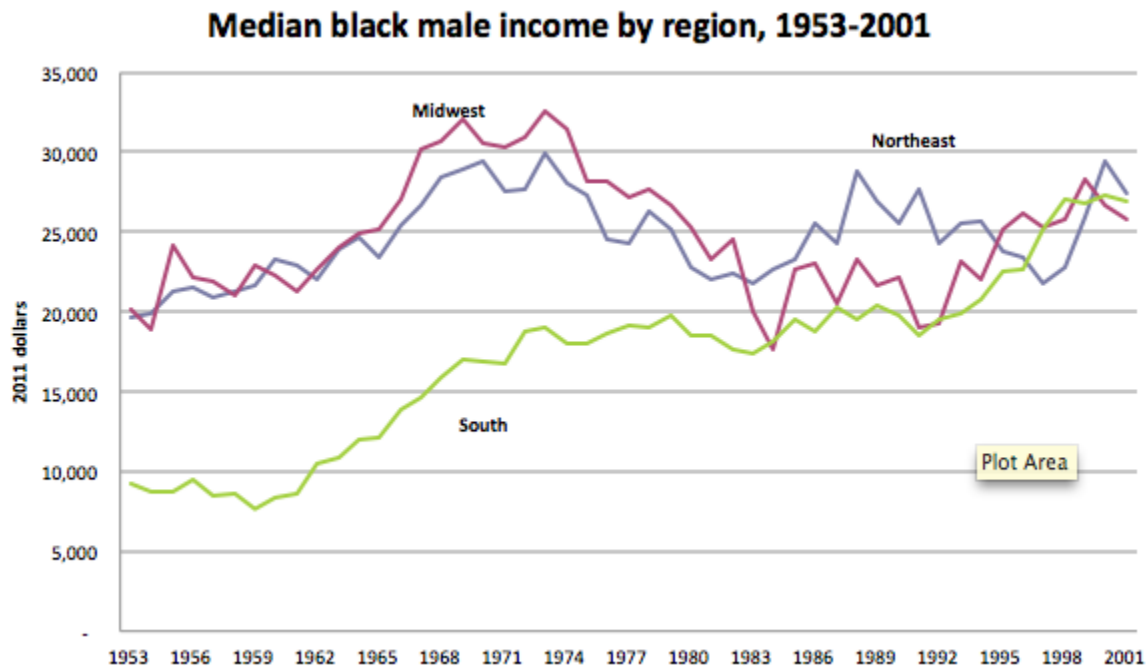


Figure 3. Median black male income by region¹¹



⁹ Source: Desilver, 2013.

¹⁰ Source: Fairlie & Sundstrom, 1999, p. 256. Note that fluctuations in overall Black unemployment are not reflected in joblessness statistics for Black men, which rise steadily from the post-war period through the turn of the century.

¹¹ Source: Stucki, 2013. Note that incomes in the Midwest and Northeast peak in 1974.

The control of these two populations – a sizeable unemployed, criminalized, primarily African American underclass on the one hand, and an undocumented, marginalized population of low-wage Mexican immigrants hiding in plain sight on the other – becomes a key component of the newly globalized neoliberal project of the 1990s, a phenomenon that I will discuss in more detail below. The mechanisms of control developed within the criminal justice system, by way of the ‘law and order’ policies and the ‘War on Drugs’ begun by Nixon and advanced by the administrations that followed, provided both a theoretical blueprint and a massive new infrastructure for a parallel system directed at undocumented immigrants. Thus detention, as a process parallel to criminal justice system incarceration, was incorporated into the historical system of forced movement that was deportation, and the processes of the immigration control system began to incorporate other aspects of criminal justice infrastructure: a dedicated enforcement division undertaking an investigative casework approach to apprehensions, collaboration with local law enforcement, and administrative judicial hearings, to name a few.

Figure 4. Agricultural employment by authorization status¹²

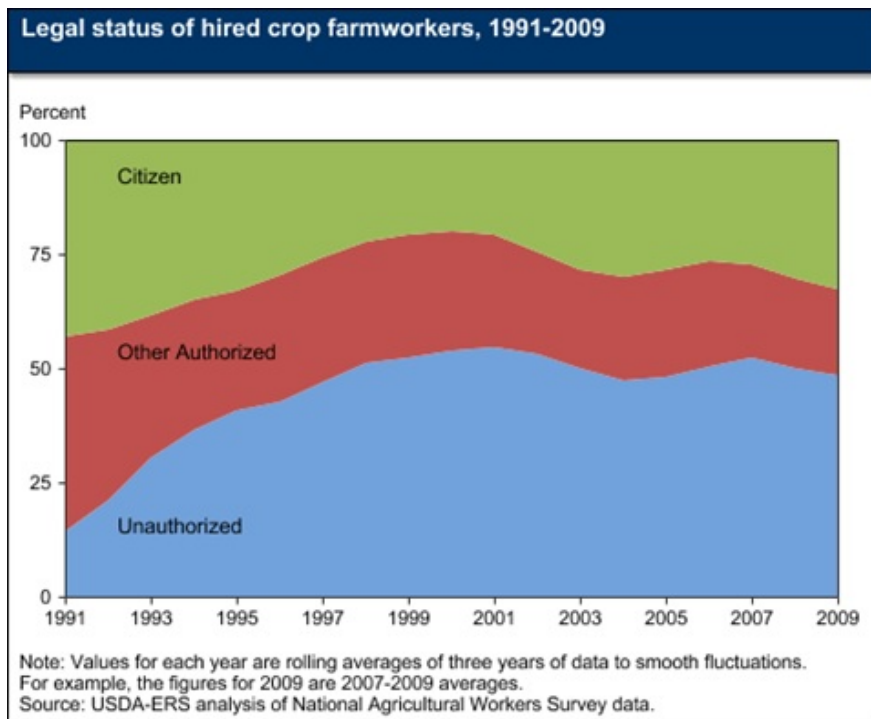
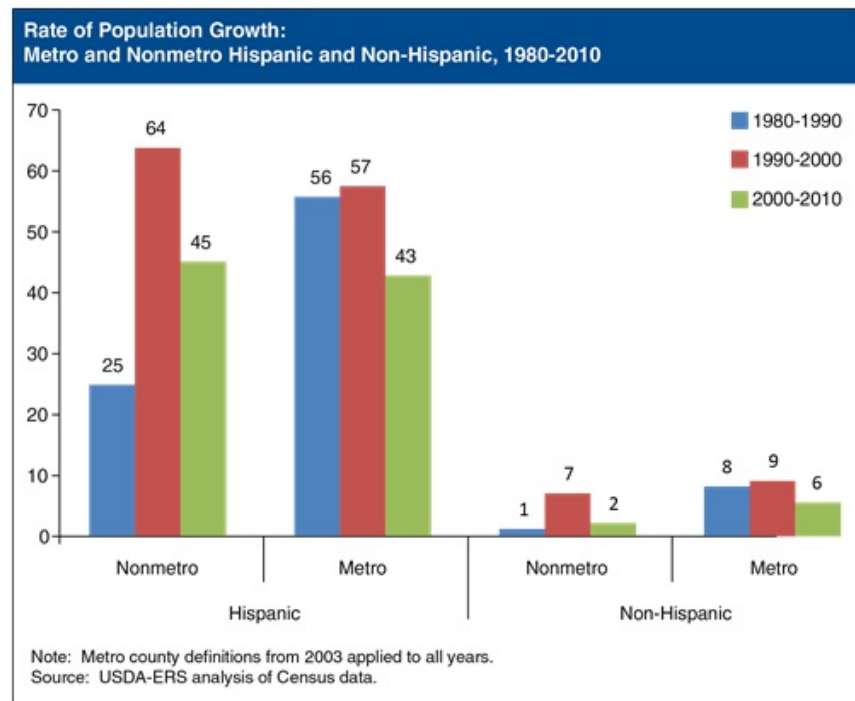


Figure 5. Metro/nonmetro population growth by Hispanic identity¹³

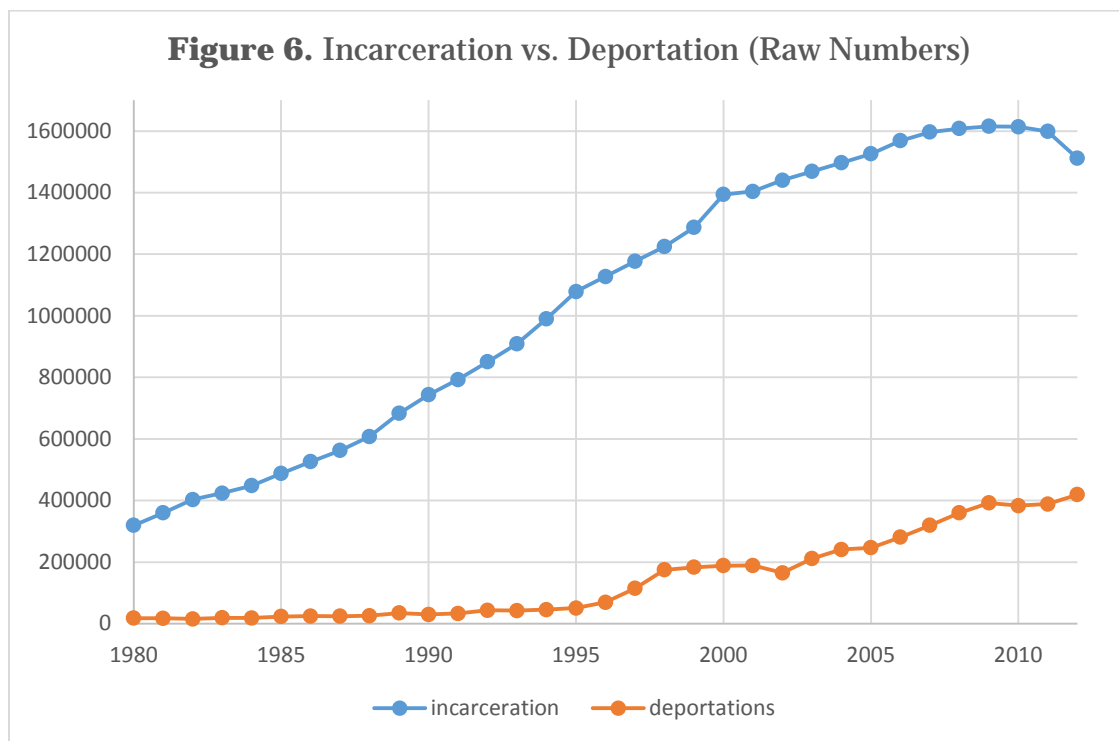


¹² Source: United States Department of Agriculture, 2016.

¹³ Source: United States Department of Agriculture, 2013.

The conceptual framework that made possible this marriage of criminal justice system infrastructure to American immigration control is simple, but no less effective for its simplicity. The positioning of Hispanic Americans – whether authorized immigrants or native born, Central or South American – in the American racial hierarchy is inextricably linked to the concept of (il)legality, as described above by Daniel Kanstroom. Kanstroom argues that this concept owes its origins, in part, to the dynamics surrounding the Bracero Program and Operation Wetback over 50 years ago. The rationale for this position rests largely upon ideas of (il)legitimacy as opposed to racial inferiority: who has the right to a legitimate American identity, with the sociopolitical and economic power and position that identity implies? African Americans, according to the strictures of traditional racial (or, more accurately, white supremacist) hierarchy, do not qualify for this right due to their racial inferiority; Hispanics – while arguably also considered racially inferior – lack this right due to their national origin. While immigrant criminality has long been a part of the cultural and political rhetoric surrounding immigrant illegality, it is not the lynchpin of their positioning on the racial hierarchy, as it is for African Americans (Muhammad, 2010); illegality is instead a state of being for the (Hispanic) immigrant, out of which immigrant *criminality* grows: as Kanstroom puts it, “the border control feature of immigration law [was internalized] into the very being of Mexican workers” (Kanstroom, 2007, p. 219) beginning with the Bracero Program in 1942. The distinction between this notion of immigrant illegality, and the notion of black criminality upon which mass incarceration is built, gives rise to the distinct detention and deportation system that forms the primary apparatus of official punishment for the low-wage immigrant labor force. In the words of the British historian Douglas Hay, “[a] ruling class organizes its power in the state. The sanction of the state is force, but it is force that is legitimized, however imperfectly, and therefore the state deals also in ideologies” (Hay, 2011 [1975], p. 62). A distinct concept in law – the concept of the illegal immigrant – requires a distinct legal process to address it. It was the unique legal status of illegality – Kanstroom’s ‘internalized border’ – that allowed a system

historically primarily concerned with ‘catch-and-release’ activity near the US border with Mexico to evolve into a nationwide engine of mass forced movement. The subsequent grafting of that system to the expanding criminal justice infrastructure of mass incarceration allowed the engine to run at an alarming rate just a few short years into its existence. As Provine and her co-authors observe, “[b]eing found in the country without authorization is not currently a crime, but it is increasingly regarded as such because of the merging of law-enforcement responsibilities with immigration enforcement. Policies beget attitudes” (Provine, Varsanyi, Lewis, & Decker, 2016, p. 5), leading to a cultural feedback loop parallel to that which accompanied the passage of discriminatory anti-Chinese legislation in the late 19th and early 20th centuries.¹⁴



¹⁴ See page 25 above.



US Immigration Control in the 21st century

The agency charged with carrying out the nation’s immigration control policy, the Immigration and Naturalization Service (INS), was reconsolidated as Immigration and Customs Enforcement (ICE) under the Department of Homeland Security (DHS) in 2003, in the wake of the terrorist attacks of September 11th, 2001. The apparent failures of immigration control in contributing to the worst terrorist attacks in US history “solidified the rhetorical and operational association between immigration and criminal law, although the legislative changes merging the two systems had already largely occurred” (Sinha, 2015, p. 17). On the state level, restricting the issuance of driver licenses to undocumented immigrants became commonplace, a trend supported on the federal level by the 2004 passage of the Intelligence Reform Act, which “contained detailed and comprehensive federal standards on state-issued driver’s licenses and IDs to improve security and reduce fraud, based on the recommendations of [...] the 9/11 commission” (Waslin, 2013, p. 10), and the passage of the REAL ID Act the following year. Many

of these acts, and the hundreds of other restrictive state laws and local ordinances passed over the course of the early 2000s, are aptly described by Sinha as “anti-immigration law[s] veiled as an antiterrorism measure[s]—a tactic that became virtually ubiquitous in the post-9/11 era” (Sinha, 2015, p. 14). Whatever their intent, these laws had the effect of further circumscribing the community participation of undocumented immigrants, as well as proliferating the kinds of interactions with local law enforcement that could lead to eventual deportation.

By the time the changeover from INS to ICE took place, an average of 180,000 deportations was occurring annually, roughly twice the number that took place seven years earlier at the time of IIRIRA’s passage (Hagan & Phillips, 2008, p. 88). To facilitate the skyrocketing deportation numbers, the immigrant detention system was detaining (read, incarcerating) an average of 18,000 immigrants on any given day (Hagan, Eschbach, & Rodriguez, 2008). This entirely new class of prisoners – detained but neither convicted nor awaiting trial on criminal charges, with ostensibly distinct conditions of confinement and a need to be held in facilities separate from those in which regular criminal justice system prisoners were housed – presented a tremendous opportunity for private prison companies, who were at the turn of the century attempting to rebound from a sharp downturn in their contracts with state correctional agencies (Kirby, Libal, Madison, Morris, & Charles, 2013; Urbina, 2014). This opportunity grew as the number of detainees continued to spiral upward exponentially¹⁵ (Detention Watch Network, n.d.; National Immigration Forum, 2013; Pringle, 2013). This ever-growing population of immigrant detainees was housed in a system that, in nearly every material respect, was modeled on criminal justice system incarceration (and actually utilized, in many cases, the exact same penal infrastructure), and in facilities a majority of which were owned and/or operated by private sector capital interests (Schriro, 2009).

¹⁵ See figures 6 and 7 (p. 43 and 44).

Accompanying this exponential rise in the volume of deportations beginning around the turn of the century was the gradual devolution of immigration enforcement authority from ICE and the federal government to local law enforcement, beginning with section 287(g) of IIRIRA, discussed above. Though 287(g) signaled the federal government's willingness to soften the plenary power doctrine and involve local criminal justice agencies in immigration enforcement as early as 1996, the program's first 'memorandum of agreement', with the state of Florida, wasn't signed until six years later in 2002 (Capps, Rosenblum, Rodriguez, & Chishti, 2011). The proliferation of additional state and local law enforcement agency agreements that followed took place within the context of a more general drive to assert state and local control over immigration policy, and many of the states and localities that entered into 287(g) MOAs passed restrictive laws or ordinances aimed at immigrants around the same time period (Varsanyi, 2010; Varsanyi, Lewis, Provine, & Decker, 2012). Many of these communities, such as (to take one of the starkest examples) Maricopa County in Arizona, shared common features: a significant and growing community of undocumented Mexican immigrants; a politically polarized populace with a conservative voting majority; a high degree of economic anxiety (often related to the loss of local manufacturing jobs, but later tied to the 2008 recession as well); and a sheriff, mayor, or other key officials with a tendency to engage in explicitly nativist discourse. Maricopa County's Sheriff Joe Arpaio is perhaps the platonic ideal of the last feature, described by Justice Strategies founder Judith Greene as "the poster child of a national anti-immigrant crusade" (Greene J. A., 2013, p. 25). Arpaio received copious media attention for both his nativist rhetoric and his 287(g)-enabled crackdowns on Maricopa's unauthorized immigrants, sweeping up hundreds in periodic raids of day-laborer pickup sites and detaining in the County's 'tent city' jail complex – itself under contract with ICE as an immigrant detention center. In the wake of Arizona's pioneering 2010 anti-immigrant legislation, SB1070, the Department of Justice sued the Maricopa County Sheriff's Department, and Arpaio himself, for relying heavily on racial profiling in its approach to immigration enforcement, and ICE subsequently rescinded

the County's 287(g) agreement (while leaving the County Jail's detention contract in place). Even under the federal consent decree that resulted from the DOJ suit, Arpaio continued to engage unilaterally in profiling-based immigration enforcement: he was recently (on May 13th, 2016) found in contempt of court for violating it (Cassidy, 2016).

Table 2. Immigration-related state laws¹⁶

SUBJECTS OF IMMIGRATION-RELATED LAWS ENACTED BY YEAR JANUARY-DECEMBER						
Subject	2010	2011	2012	2013	2014	2015
Budgets	49	19	38	25	37	50
Education	17	20	13	21	15	31
Employment	27	27	14	21	22	20
Health	17	23	12	15	14	26
Human Trafficking	8	5	9	12	11	7
ID/Drivers Licensing	26	27	14	36	26	22
Law Enforcement	37	39	26	25	27	24
Miscellaneous	20	12	10	14	3	17
Omnibus	2	6	1	1	0	0
Public Benefits	9	15	16	12	13	13
Voting	6	4	3	3	3	6
Resolutions	138	109	111	253	117	274
Total (Excluding Resolutions)	218	197	156	185	171	216
Total (Including Resolutions)	356	306	267	438	288	490

¹⁶ Source: NCSL, 2016.

As the example of Maricopa County amply demonstrates, counties are a particularly important locus in the devolution of federal plenary authority over immigration control – and immigration enforcement in particular – owing largely to the fact that “[i]n nearly every US county [...] the sheriff is an elected position [that leads to dual] functions as an elected public official – a politician – but also as the administrator of a key agency in county government” (Provine, Varsanyi, Lewis, & Decker, 2016, p. 76). These overlapping roles – politician and bureaucratic executive – have profound implications for what Jenness and Grattet call “[t]he ‘law-in-between’ the law-on-the-books and the law-in-action in the realm of criminal law” (Jenness & Grattet, 2005, p. 339). An elected chief law enforcement official has both the power – and the incentive – to operate as what former Supreme Court Justice Stephen Breyer calls a “little legislature” (Breyer, 1982, p. 346), effectively writing criminal law through enforcement to appease the local voting bloc(s) that elected him. Arguably no official at the federal or state level has a more immediate ability to criminalize the immigrants in a given jurisdiction than a sheriff does through direct enforcement. Given the national political climate and the electoral incentives involved, it is little surprise that Provine and her co-authors found that “[o]n average, [local] police are considerably more likely to crack down on suspected unauthorized immigrants in localities where the public leans conservative” (Provine, Varsanyi, Lewis, & Decker, 2016, p. 92).

As 287(g) memoranda of agreement comprise one of the three constituent variables of the dependent local enforcement entrepreneurship factor in my empirical analysis, I will discuss the program in greater detail in the description of my model that follows. For the moment I will leave it as one of the more important of a number of factors that (1) drove the continued exponential growth of the immigrant detention and deportation system through the years of President Obama’s first term in office; and (2) further devolved immigration enforcement policy into the hands of local and state actors. Deportations peaked in 2013 – the first year of President Obama’s second term in office – at over 435 thousand, and have declined since as the Obama

administration pivots in its stance on immigration control. Obama's heavy-handed approach to immigration control – his administration exceeded in its first five years the two million deportations undertaken in the entirety of the Bush administration – has been justified as a political calculation, intended to preempt Republican accusations that his administration was 'soft on illegal immigration' in negotiations over comprehensive immigration reform.

The administration would use the same logic to justify its embrace of the Bush administration-initiated Secure Communities (SComm) program – the second local enforcement variable in the analysis that follows. Described by ICE itself as “a simple and common sense way to carry out [the agency's enforcement] priorities” (US Immigration and Customs Enforcement, 2014), Secure Communities is in several important respects a more significant devolution of immigration enforcement policy to local criminal justice authorities than even the 287(g) program. In terms of the raw number of deportations to which each of the respective local enforcement programs have led, Secure Communities significantly exceeds the impact of the 287(g) program¹⁷. The mechanism by which Secure Communities operated (the program was discontinued in 2014) was indeed deceptively simple, although the 'common sense' component of ICE's description remains debatable. The FBI's National Crime Information Center (NCIC) has since the 1990s allowed local law enforcement agencies to submit the fingerprints of all arrestees to be checked against a national database, thereby ensuring that the arresting agency is fully informed regarding issues like open warrants in other jurisdictions etc. The innovation that Secure Communities introduced into this process was to allow for an arrestee's fingerprints to be submitted to the Department of Homeland security through the same system. The arrestee's immigration records were then made available to the arresting agency and ICE alike. Any

¹⁷ From its first year of recorded statistics in 2009, through its 2014 shutdown, SComm led to 375,031 “removals and returns” (U.S. Immigration and Customs Enforcement, 2014, p. 2). While comparable publicly available 287(g) data is incomplete, the program appears to have led to approximately 200,000 removals and returns over the longer period from 2006-2012, when the 287(g) program was scaled back significantly (U.S. Immigration and Customs Enforcement, 2010; U.S. Immigration and Customs Enforcement, 2014).

violations, whether criminal or not – visa overstay, prior unauthorized entry, exclusions, etc. – would result in ICE issuing a detainer¹⁸ to the arresting agency, and eventually taking the arrestee into custody to initiate deportation proceedings.

As a “force multiplier” (Committee on Homeland Security, 2005, p. 29), SComm represented a new and unique chapter in the devolution of federal plenary power over immigration enforcement to the level of local government. In contrast to the 287(g) program, SComm did not represent a formal, negotiated agreement between ICE and a local law enforcement agency for the latter to take on the responsibilities associated with federal immigration control. Rather, its activation in any given jurisdiction (prior to its 2012 nationwide imposition, which will be discussed in more detail below) was ostensibly based on an opaque and unilateral decision within the federal agency. Crucially, however, its early success would be measured by the number of apprehensions (and eventual deportations) to which it led (Kohli, Markowitz, & Chavez, 2011) – an internal incentive structure that may account for Cox and Miles’ finding that “early activation in the program correlate[d] strongly with whether a county ha[d] a large Hispanic population” (Cox & Miles, 2013, p. 89). Large populations of potential deportees could not alone ensure the kinds of numbers that ICE was looking for, however, since the mechanism that SComm relied upon for achieving these numbers was more or less entirely dependent on the patterns of enforcement put in place by local police. Thus, the best jurisdictions for early SComm activation were those that viewed the program as “a resource that [could] to some extent be managed by local decision makers in the service of their own goals” (Provine, Varsanyi, Lewis, & Decker, 2016, p. 9) vis-à-vis the jurisdictions unauthorized (and otherwise deportable) immigrants.

¹⁸ “An immigration detainer is an official request from Immigration and Customs Enforcement (ICE) to another law enforcement agency (LEA)—such as a state or local jail—that the LEA notify ICE prior to releasing an individual from local custody so that ICE can arrange to take over custody” (American Immigration Council, 2010). In practical terms, detainers represent a request from ICE that the arresting LEA detain the individual for up to an additional 48 hours to allow ICE time to take custody. ICE lacks any official power or authority to enforce these requests, so the hold is at the arresting LEA’s discretion. As I will discuss in more detail below, a growing number of LEAs are now disregarding ICE detainers entirely due to Fourth Amendment concerns (ACLU, 2016).

The potential for this system to give rise to abuses on the part of local law enforcement agencies – from racial profiling, to selective enforcement, to pretextual arrests – is perhaps its most ‘common sense’ feature, alongside the potential to place individuals with neither criminal records nor formal charges from the arresting agency on a path to deportation. Indeed, the records of the program’s effects bear this out: some two thirds of individuals deported through the program were either never charged, or charged with low-level crimes, from traffic violations to marijuana possession (Pedroza J. , 2013). It is for this reason, and because SComm proved highly resistant to reform efforts aimed at better targeting serious criminals, that the Obama administration abandoned the program as soon as it seemed politically feasible to do so. Since July 2015, SComm has been replaced by the Priority Enforcement Program (PEP), under which “ICE will seek the transfer of a removable individual when that individual has been convicted of an offense listed under the DHS civil immigration enforcement priorities, has intentionally participated in an organized criminal gang to further the illegal activity of the gang, or poses a danger to national security” (US Immigration and Customs Enforcement, 2015).¹⁹ Whether this will represent a significant improvement is yet to be determined; it is clear in any case that ICE has considerable discretion to interpret the listed priorities, and ICE’s history with discretion is far from promising²⁰ (Morton, 2011; Ong Hing, 2013). In any case, a growing movement of localities refusing to honor ICE detainers under any circumstances on 4th Amendment grounds means that the immigration stances of local law enforcement agencies will continue to play an important role in how enforcement under the program is carried out.

¹⁹ It is worth noting that PEP has apparently failed to significantly alter the patterns of enforcement typical of its predecessor. See recent journalism by Feltz (2016) and Thompson & Flagg (2016) for details.

²⁰ The 2011 *Morton Memo* directed ICE’s staff prosecutors to prioritize the pursuit of deportation proceedings against unauthorized immigrants and lawful permanent residents (LPRs) convicted of serious crimes. Conversely, it instructed prosecutors to ‘exercise discretion’ (i.e. deprioritize) in the pursuit of deportation proceedings against several classes of individuals, from “veterans and members of the U.S. armed forces” to “individuals present in the United States since childhood.” It failed to have the intended effect on ICE’s subsequent enforcement patterns.

The state of contemporary American immigration control highlights both tension and collusion between federal control and local initiative, as well as between progressive and regressive currents in the wider American culture. The Tea Party wave of the 2010 midterm elections – a backlash to the election of the nation’s first African American president whose adherents championed a ‘states’ rights’ platform that would have been familiar to early 20th century segregationists – eliminated the possibility for comprehensive immigration reform. Pandering to a nativist base, and in many cases expressing clear nativist ideologies of their own, newly elected Tea Party congressmen denounced as apostasy anything less than total deportation of the country’s 11.2 million undocumented residents, tantamount to abandoning the country to the ‘illegals’ or declaring one’s allegiance to Aztlán²¹. Obama’s response, though belated (and in part stymied), has been in some regards a model for the application of federal, executive power to evidence-based policy-making. The 2012 Deferred Action for Childhood Arrivals (DACA) initiative materially improved the lives of hundreds of thousands of young people, allowing them to work and study without fear of deportation. The follow-up 2015 Deferred Action for Parents of Americans (DAPA), while recently struck down (or at least delayed, given the 4-4 ruling) by the US Supreme Court, nonetheless holds the potential to improve the lives of millions more. The contrast to the policy patchwork that results from local control, wherein an accident of geography holds the potential to severely curtail the life chances of an entire category of individuals, could not be more stark. Why, then, have state and local governments been allowed to continue driving much of the conversation around immigration control – not least through court challenges to DAPA? Why does the 287(g) program, despite a much-touted 2012 overhaul, continue to allow local governments to exercise enforcement powers reserved for 140 years by the federal government? I will explore the answers to these questions in the section that follows,

²¹ The name given in a popular nativist conspiracy theory to the territory in the American West and Southwest (encompassing part or all of the current US states of California, Arizona, New Mexico, Texas and Colorado) ceded by Mexico in the 1848 Treaty of Guadalupe Hidalgo at the end of the Mexican-American War. The theory holds that a range of Hispanic-American advocacy groups – from the Mexican American Legal Defense and Educational Fund to the National Council of La Raza – represent a fifth column effort to enact an ethnic *Reconquista*, through unauthorized Mexican immigration to the region, that will eventually see Aztlán (re-)annexed to Mexico. For a typical example, see <http://www.illegalaliens.us/aztlan.htm>.

beginning with the underlying cause of the increasing weakness of American federalism: neoliberalism.

Scholarly context – Neoliberalism: Markets everywhere you look

The phrase “marketplace of ideas” was originally used as a way of defending free speech. Just as traders and customers are free to buy and sell wares in the market, so freedom of speech ensures that people are free to exchange ideas, test them out, and see which ones rise to the top. Just as good consumer products succeed and bad ones fail, so in the marketplace of ideas the truth will win out, and error and dishonesty will disappear.

There is certainly some truth in the thought that competition between ideas is necessary for the advancement of our understanding. But the belief that the best ideas will always succeed is rather like the faith that unregulated financial markets will always produce the best economic outcomes. As the IMF chief Christine Lagarde put this standard wisdom laconically in Davos: “The market sorts things out, eventually.” Maybe so. But while we wait, very bad things might happen.

(Poole, 2016)

David Harvey, in *A Brief History of Neoliberalism*, describes the titular concept as “in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade”

(Harvey, 2007, p. 2). So far, so good. These aspects of the theory have become commonplace in the American world view, a matter of consensus so broad that it is rare to see them questioned in contemporary political discourse, or anywhere other than the scholarly literature, university classrooms, or leftist journalism. The next key feature of the theory is a matter of considerably more contention, to the extent that any given politician’s relative agreement with the idea should allow the casual observer to identify her party affiliation: “The [sole] role of the state is to create and preserve an institutional framework appropriate to such practices” (Harvey, 2007, p. 2). The idea of a limited government, the chief purpose of which is to protect the conditions that allow free markets to flourish and private property rights to remain secure, is a classic tenet of contemporary conservative ideology. It is also one of the key underpinnings of Republican governing philosophy, one that has held sway over a great deal of federal policy-making for over 30 years, since the presidency of Ronald Wilson Reagan.

Harvey adds one final tenet to his description of Neoliberal ideology, the most important for the purposes of this examination of the contemporary US immigration control system:

“Furthermore, 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, p. 2). Harvey’s list here, of potential fields into which Neoliberalism dictates markets should be introduced by government fiat, is surely intended to be exemplary rather than exhaustive. Thus I would take the liberty of adding immigration control, had the federal government not already done so. Criminal justice system punishment, writ large, is another domain in which state action has created multiple overlapping and complementary markets, from bail bonds to private/for-profit prisons.

Neoliberal ideology sets the cultural, political, and policy framework that makes the contemporary US detention and deportation system possible, if not inevitable. It positions the accumulative goal of industrial capitalism as the highest of human ideals and acculturates policy-makers into the conviction that the provision of any public good or service can, and should, be turned into an engine for profit and private gain. British journalist and political theorist George Monbiot explains:

The words used by neoliberalism often conceal more than they elucidate. “The market” sounds like a natural system that might bear upon us equally, like gravity or atmospheric pressure. But it is fraught with power relations. What “the market wants” tends to mean what corporations and their bosses want. “Investment”, as [social theorist and political economist Andrew] Sayer notes, means two quite different things. One is the funding of productive and socially useful activities, the other is the purchase of existing assets to milk them for rent, interest, dividends and capital gains. Using the same word for different activities “camouflages the sources of wealth”, leading us to confuse wealth extraction with wealth creation.

(Monbiot, 2016)

Sayer and Monbiot’s point about language use and the obscuring nature of neoliberal terms like “investment” provides one of the key theoretical underpinnings of this analysis. Beginning from the intentionally naïve premise that the large-scale forced movement of American immigrants, via the federal detention and deportation apparatus, is intended as an intrinsic public good, I

use the term ‘benefit’ to explore the nature of this public service. Who is intended to benefit from the provision of federal immigration control, and how are they intended to benefit? The question is more than simply rhetorical, but intended to frame the reality of American immigration control against its ideals. I assume the latter to be defined by the terms of Bentham’s principle of utility: “An 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], p. 7). I argue that the neoliberal approach defines benefit not by the principles of utility, but by its tendency to further the pursuit of profit and the accumulation of capital by overlapping corporate interests and political-economic elites.

I further argue that the conflation of these two distinct definitions of benefit – or rather, the deliberate obscuring of the second definition within the conceptual framework of good governance provided by the first – is a cultural phenomenon. As such, it has colonized the world view and belief systems not simply of political theorists, elected officials, or ‘captains of industry,’ but a significant proportion of the general population as well. This acculturation allows the pursuit of accumulative benefit, disguised as utilitarian public goods, to be undertaken in a vast array of policy-making and administrative contexts, from the federal to the hyper-local and every level between.

Neoliberalism as a project of inequality and coequal of conservatism

One of the primary conceits of the ‘free market’ ideology at the heart of neoliberalism is that the wealth generated by market competition is broadly distributed – not *re*-distributed, as redistribution is a hallmark of Keynesian progressive tax policy, but permeating every level of society through the ‘trickle-down’ effect ostensibly associated with supply-side economics. This is a simplified version of the political economist Francis Fukuyama’s thesis in the seminal 1992

essay *The End of History and The Last Man*, where Fukuyama 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], p. xiii), in both developed and ‘Third World’ countries. Through access to global markets, Fukuyama 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” (Fukuyama, 2006 [1992], p. 77): urbanization, increasing mobility, and the breakdown of traditional or ‘tribal’ social structures.

Some 25 years later, Fukuyama’s predictions take on the perverse quality of a fortune teller’s ‘monkey’s paw’ twist: urbanization has manifested as ghettoization on the one hand, gentrification on the other; increased mobility the desperate perambulations of poverty, unemployment, and homelessness; and tribalism has reconstituted and retrenched, stronger than ever. What accounts for these supposed reversals? The easy response is to simply point out that the outcomes Fukuyama posited were little more than the window-dressing necessary to ‘sell’ neoliberal policy to voters and public intellectuals. While certainly true, this is only a partial explanation. A more complete explanation recognizes 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*. In effect, neoliberal politics use the massive accumulation of wealth, knowledges and possibilities that brings humanity to the brink of ending ‘material poverty’ to produce and reproduce a *new poverty*, a new precarity, a new insecurity. Inequality and precarity are not problems for neoliberal politics, for much the same reasons as disciplinary societies could accommodate a particular level of illegality: both play on such ‘problems’ as conditions for their own form of government.

(Lazzarato, 2009, p. 128; ital. add.)

In other words, the competitive dynamic of the ‘free market’ requires losers as well as winners to justify its existence, in the same way that the criminal justice system requires crime and criminals. More than simply a symbolic or ideological concept, this arrangement of ‘winners’

and ‘losers’ is a practical effect of neoliberalism’s accumulative purpose. To facilitate continually increasing capital accumulation by corporate interests and their vested political-economic elites, neoliberal policy in fact needs to engineer a concomitant *decrease* in the wealth and political power of capital’s Marxian opposite number, labor. Economics may not be a zero-sum game, and this exchange is not the ‘equal and opposite’ gain and loss implied by a closed system; at the same time, wealth is not ‘created’. Wealth is given and taken in systemic exchange.

Neoliberalism, then, is indeed a project of inequality – but a project facilitated by culture and social relations as much as politics and policy-making. In its contemporary American iteration, neoliberalism finds its cultural expression in the seemingly paradoxical ideological construct of *movement conservatism*. Contemporary ideological conservatism, in the American context, stands for more than simply the revanchist return to traditional mores and social arrangements that the term implies in past eras and other nations. American movement conservatism, while certainly encompassing these ideas, 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*, as promulgated through law and through social and economic policy – [...] the state itself must construct and construe itself in market terms, as well as develop policies and promulgate a political culture that figures citizens exhaustively as rational economic actors in every sphere of life.

(Brown, 2006, p. 694)

Brown further contends that this political culture is expressed as movement conservatism, a cultural, political, and social ideology that 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, p. 694), thus 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: neither the state, nor the individual as taxpayer and constituent of the state, should 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 American conservatism has, time and again, shown itself to favor an authoritarian state²² – most recently in the ascendance of Donald Trump to the nomination as the Republican Party’s 2016 presidential candidate. This authoritarianism is another seeming paradox that, as we will explore in detail later in this chapter, is consistent with the sociologist and legal scholar Bernard Harcourt’s notion of *neoliberal penalty*. In brief, neoliberal conservatism holds that any violation of the rules of exchange that define the free market – i.e. through criminality, for instance – should be punished swiftly and severely by a socially authoritarian, economically *laissez-faire* state. 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. Thus nativism, which is often discussed as a site of ideological resistance to a globalist neoliberalism that encourages immigration, is in fact an expression of its perverse cultural logic. As we will explore in the next section, globalist neoliberalism does indeed encourage 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.

²² Is the neoliberal project ultimately a fascist project? To the extent that the neoliberal project of increasing inequality requires a disciplinary structure that is consistently increasing in scale – and an increasingly authoritarian state to manage and implement it – it certainly has the potential to be.

Neoliberalism and contemporary patterns of immigration

In addition to setting the broad economic, cultural, and political conditions necessary for the general operation of the theory I propose in this analysis, neoliberalism has also played a specific role in developing contemporary patterns of immigration to the US. The history of the North American Free Trade Agreement (NAFTA) of 1994 is a clear example of neoliberal ideology enacted as international trade policy, in the service of a globalized economy that could facilitate the free movement of capital across international borders. The project of 'globalization' itself was, in "[i]ts peculiar character, [...] neoliberal: the attempt to give free rein to private investments in the market, while keeping the bearers of labor power – workers – rooted in their national states" (Otero, 2011, p. 387). In practical terms, this meant the end of protective tariffs for staple crops in Mexico, a policy change that contributed to the collapse of much of Mexico's agricultural economy over the early 2000's, and plunged millions of Mexican farmers and their families into food insecurity (Nevins, 2007).

These specific drivers of immigration from Mexico to the United States simply accelerated a more general movement, from the developing nations of the global south to the established economies of the global north, driven primarily by demographics. Aging populations and relatively low birth rates in wealthy countries simultaneously produce a large number of low-wage jobs along with a shrinking native-born labor pool available to fill them (Castles, de Haas, & Miller, 2013; Massey, Durand, & Malone, 2003). While not a neoliberal dynamic *per se*, this mass migration takes on a neoliberal character due to the treatment of labor migrants in the destination countries that receive them. Because neoliberal ideology by its very nature 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 government authorization. As a result, their experiences become typical of what Saskia Sassen

describes as “*expulsions* – from life projects and livelihoods, from membership, from the social contract at the center of liberal democracy” (Sassen, 2014, pp. 29, ital. orig.). Expelled from their home countries by the globalized pursuit of profit within a neoliberal agenda, they are similarly ‘expelled’ from meaningful social membership in their destination country, where their low-wage, menial work earns them only the contempt of their citizen neighbors. These immigrants are trapped in the limbo of unauthorized, undocumented status, their presence (as with the *Braceros* discussed above) instrumental, defined only by their labor, and to be dispensed with through deportation the moment it becomes unnecessary.

Political scientist and legal scholar Robert Koulish is a proponent of Juliet Stumpf’s term ‘crimmigration’, intended to address the increasing overlap between criminal and immigration law. A particular defining feature of crimmigration is the common function of both the criminal justice and immigration control systems in determining social membership: “Both systems act as gatekeepers of membership in our society, determining whether an individual should be included or excluded from our society” (Stumpf, 2006, pp. 396-7). Koulish has this to say on the role of neoliberalism in establishing this practical and conceptual overlap:

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. Its omnipresence is due in part to the overregulation of people it categorizes as a risk, in part due to surveillance, which the State facilitates and which private firms manage and control. Another irony is that although 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.

(Koulish, 2010, p. 56)

The first of Koulish’s ironies is in keeping with the concept of neoliberal authoritarianism, introduced above, and to be explored more fully in the next section. His second irony is more problematic, conflating as it does immigrant labor participation with social inclusion. In fact, the genius of contemporary American neoliberalism is its ability to separate and oppose these dynamics, in a process the critical criminologist Jock Young termed ‘social bulimia’ – a process we will explore in more detail below. It is the combination of the culturally-situated nativism of

American conservatives and the punitive policy agenda of the authoritarian state they support that makes this economic inclusion/social exclusion dichotomy possible.

Neoliberal punishment: the evolution of instrumentalist penalty

The robust literature tying neoliberal ideologies with contemporary approaches to criminal justice system punishment provides important context for America's current punitive approach to immigration control. The public intellectual and critical penologist Bernard Harcourt goes so far as to assert that "[t]he 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, 2010, pp. 7, ital. orig.). In tying the contemporary neoliberal conception of the market to enlightenment ideas about 'natural' social order, 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 R. , 1985, p. 1195). This policing of the borders of market exchange is by no means unique to contemporary neoliberal social arrangements: it arises starkly in colonial arrangements such as transportation, for instance, wherein the punishment for transgressing market rules through petty criminality was to be forcibly assigned the role of commodity and indentured laborer.²³ Its contemporary manifestation is perhaps unique in the way that this positioning furthers the argument, put forward by Monbiot and Sayers above, about the obscuring nature of the neoliberal approach to language: the contemporary penal regime of mass incarceration – in which more Americans find themselves under penal sanction than ever before – is presented as necessary to facilitate the 'freedom' of exchange typified by the 'free market.' The literal denial of individual freedom to

²³ See pages 18-19 above for details on the British colonial practice of transportation.

record numbers of Americans thus becomes its opposite, a necessary and appropriate government intervention to defend the symbolic freedom of the neoliberal market.

Harcourt himself recognizes the apparent paradox implied by this dynamic, and takes aim at those (specifically, fellow penologist David Garland) who argue that the neoliberal logic of market efficiencies 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 (as if accounting principles were ever neutral!).

(Harcourt, 2011a)

Harcourt's argument, essentially, is that despite neoliberalism's ideological adherence to the idea of market (i.e., fiscal or economic) efficiency, its real-world application is dependent upon both its historical development, and the realities of the political economic context in which it is applied. Returning to Harvey's definition above, mass incarceration is simply essential to the provision of an institutional framework appropriate to the practice of neoliberal, free market economics in as many policy spheres as possible. As such, it is appropriate to government's role under the ideology, regardless of the fact that it restricts individual freedom by its very design. Individual freedom, under neoliberal ideology, does not include the freedom to circumvent the logic of market exchange through criminal activity.

Harcourt further takes pains to emphasize that, 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, p. 237), citing in particular the examples of private/for-profit prisons and prison labor as evidence for this claim. As discussed above²⁴, many of the

²⁴ See page 45 for details.

same corporations active in the private/for-profit prison industry expanded heavily into immigrant detention in the early 21st century, achieving much of their contemporary profit in the immigrant detention market, and extending the practical reach of the crimmigration concept into every imaginable aspect of the systems' parallel conditions of confinement. But is immigration control, like mass incarceration, both subject to the free market logic of neoliberal ideology and an artifact of its historical roots and contemporary political economic context? Is it also an artifact of punishment, one that restricts freedom in order to define the edges of free market exchange? If so, what sort of violations of free market exchange is immigrant detention and deportation intended to punish? Do the parallels described by crimmigration extend to the acts and activities to which the overlapping systems of criminal justice punishment and immigration enforcement are ostensibly (or actually) intended to respond? I explore potential answers to these questions in the sections that follow, through both the existing scholarship surrounding Rusche and Kirchheimer's theory, the *political economy of punishment*, and through the development of my own theory of the *punishment marketplace* in the chapter that follows.

The political economy of punishment

If we accept the premise that contemporary American immigration control is an essentially punitive project, then Rusche and Kirchheimer's 1939 theoretical framework, the political economy of punishment, provides an ideal starting point for conceptualizing its structural purpose. The theory's quintessentially Marxist premise, that "Every system of production tends to discover punishments which correspond to its productive relationships" (Rusche & Kirchheimer, 2003 [1939], p. 5), is parsimonious, flexible, and potentially timeless, in large part explaining its sustained fascination for scholars well into the 21st century. The pair sought to retain the same kind of simplicity in devising an empirical test of the theory, proposing what has become known as 'Rusche and Kirchheimer's Hypothesis' – "the idea that there should be a

direct positive relationship between changing imprisonment rates and changing unemployment rates" (Melossi, 2003, p. xxiii). While tested fairly extensively (and often successfully, e.g. Chiricos & Delone, 1992) in the intervening years since its original formulation, it has also proved controversial to such a degree that many commenters all but ignore the theory's original proposition, choosing instead to focus their criticism on the more problematic hypothesis (e.g. (Cavadino, Dignan, & Mair, 2013; Garland, 1991).

My own interest lies more in the specifications of the theory than in arguing the merits of a nearly hundred-year-old hypothesis, proposed in an era pre-dating statistical computing, mass incarceration, and neoliberalism, as well as the emergence of several other key features (which will be discussed in more detail in the theory section to follow) of the post-industrial, post-Fordist, contemporary globalized economy. I will thus focus primarily in this section on the many ways in which the political economy of punishment has been interpreted and refined by subsequent theorists, and secondarily on examining empirical tests of the Rusche and Kirchheimer Hypothesis and addressing some of the criticisms leveled at the work. I will also argue the theory's continued relevance in the contemporary neoliberal context, and explore its potential for explaining the dynamics of contemporary immigration control.

The history of Georg Rusche's 'partnership' with Otto Kirchheimer is sufficiently tangled to warrant a brief explanation here. Both members of the Frankfurt Institute, and both of Jewish backgrounds, Rusche and Kirchheimer fled Germany along with the Institute after Adolf Hitler's rise to power in 1934 (Melossi, 2003). After the Institute's relocation to New York, and Rusche's production of an English language manuscript of *Punishment and Social Structure* (the work in which the political economy of punishment, along with their hypothesis, was originally proposed), the influential American criminologists Thorsten Sellin and Edwin Sutherland suggested that the work would be an excellent candidate for one of the Institute's first English

language publications, following minor revisions. For mysterious reasons, Rusche was subsequently unavailable to take on these revisions, so Kirchheimer – who could not yet write in English – took on the task, first translating the text back into German, then re-translating his newly revised version back into English with the help of the historian M.I. Finley. The entire process, rather than taking the few short weeks that Sellin and Sutherland originally suggested, took a total of two years to complete. As a result – and it should be noted that, on top of the practical complications of the final manuscript's production, the two men were not overly fond of each other – subsequent commenters have had significant difficulty identifying which author was responsible for which parts of the work.

This dynamic might help to explain the seeming disconnect between the conceptual elegance of Rusche's(?) theory, and the 'brute force' simplicity of Kirchheimer's(?) hypothesis; it may also explain why *Punishment and Social Structure* was "little read or referred to when first published in 1939" (Garland, 1990, p. 105). In any case, the text has since become one of the foundational works in critical penology, discussed at length in such subsequent influential works as Michel Foucault's *Discipline and Punish* (1977), Loïc Wacquant's *Punishing the Poor* (2009), and in particular receiving an extensive reexamination in Melossi and Pavarini's *The Prison and the Factory* (1981). Since Wacquant and Garland's treatments of the theory and its founding text are primarily critical, I will examine them at length in the last part of this section. Foucault takes a much more generous view of *Punishment and Social Structure*, asserting that it "provides a number of essential reference points" (Foucault, 1977, p. 24) that he interprets in a fashion quite consonant with Bernard Harcourt's notions of neoliberal penalty discussed above. Focusing on the theory's proposition that a given society's approach to punishment is dependent on its 'productive relationships', Foucault acknowledges that "the industrial system requires a free market in labour [, thus the prior] role of forced labour in the mechanisms of punishment diminishes accordingly and 'corrective' detention takes its place" (Foucault, 1977, p. 25). Indeed,

Foucault's overall thesis in *Discipline and Punish* takes this proposition as its essential starting point:

[Contemporary] systems of punishment are to be situated in a certain 'political economy' of the body: even if they do not make use of violent or bloody punishment, even when they use 'lenient' methods involving confinement or correction, it is always the body that is at issue – the body and its forces, their utility and their docility, their distribution and their submission. It is certainly legitimate to write a history of punishment against the background of moral ideas and legal structures. But can one write such a history against the background of a history of bodies, when such systems of punishment claim to have only the secret souls of criminals as their objective?

(Foucault, 1977, p. 25)

Foucault's focus on the criminal body as the object of any given system of punishment involves a reinterpretation of punishment's focus on labor, rooted in the reality that the body's

"constitution as labour power is possible only if it is caught up in a system of subjection"

(Foucault, 1977, p. 26). In Foucault's reading, the disciplined body is a productive body; the most effective systems of discipline, however, are those that are imprinted on the mind, and thus carried with the object whether she is physically restrained or not. The imprint of 'illegal' status is just such a system, carrying with it as it does the constant threat of deportation in consequence for the slightest deviation from mechanical, instrumental, productive labor. The contemporary undocumented American immigrant bears her illegality through the physical displays of race, ethnicity, and culture, a complementary system of external and internal markings that subjects her every action to the discipline of the neoliberal 'invisible hand of the market.' In practical terms this means that both she and any given individual with whom she may be interacting understand that, should she deviate from her role as productive laborer in order to assert an alternative identity (such as community member, parent, resident, or generally any identity as a rights-bearing human subject), she risks being punished by deportation.

It is difficult to conceptualize a more ideal system of punishment in support of the contemporary neoliberal project of inequality and the concentration of wealth – the 'productive relationship' at the heart of 'free market' ideology. Dario Melossi's interpretation of Rusche and Kirchheimer's

core theoretical proposition, while less centered on the physical body of the punished individual than Foucault's, agrees that early modern incarceration (in the form of the workhouse, as opposed to the contemporary prison) constituted "disciplinary training for capitalist production" (Melossi & Pavarini, 1981, p. 21). Melossi is, of course, discussing the industrial era, a time when 'capitalist production' meant the Fordist model of value-added manufacturing. While I will discuss in greater detail in the theory section that follows the ways in which the contemporary neoliberal definition of 'capitalist production' differs, suffice it to say here that in the American context it requires different disciplines for different populations. I will consider later in this section how contemporary American mass incarceration might serve to discipline the largely African American population that it targets for 'capitalist accumulation' (a slight change to acknowledge that contemporary concentration of capital is no longer broadly productive in the industrial sense). For the low-wage labor force of unauthorized Mexican and Central American immigrants who are the primary focus of this work, 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 further follows Melossi, who incorporates the ideas of the Russian legal scholar E.B. Pashukanis in his interpretation of the political economy of punishment. Pashukanis held a more expansive view of criminal justice system punishment than Rusche and Kirchheimer, contending 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, p. 131). Such categories are essential to the organization of productive relationships. As Ruth Wilson Gilmore illustrates in *Golden Gulag*, her seminal work on California's neoliberal prison-building boom:

As simultaneously US colonizers in what had formerly been part of Mexico and controllers of a new state in the US Union, the dominant 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[.]

(Gilmore, 2007, p. 32)

Illegality, as a successor and replacement for such racial, ethnic, and national categories (the original salience of which for political economic organization has faded over time), is commonly conceived as a legal status (as implicit in the very name); in fact, it is a cultural one. Created by the socially bulimic pattern of invitation and expulsion established with the pairing of the Bracero Program and Operation Wetback, “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, pp. 305-6, ital. orig.). One might go so far as to say that the cultural category implied by ‘illegal immigrant/alien’ is one of legal non-personhood – a category reproduced in the dominant culture, and reinterpreted as a mental category in the psychology of the undocumented immigrants who are its object, through the ideological apparatus of punitive immigration control.

Empirical support: Testing the Rusche and Kirchheimer hypothesis

Despite concerns about its simplistic formulation and seeming disconnect from the larger theoretical framework in which it is presented, Rusche and Kirchheimer’s hypothesis was widely tested prior to the advent of mass incarceration. In their 1992 meta-analysis, Chiricos and Delone (1992) enumerated 44 empirical studies that, on the whole, supported the idea that “independent of the effects of crime, labor surplus is consistently and significantly [positively] related to prison population, and in prison admissions when time-series and individual level data are used” (Chiricos & Delone, 1992, p. 421). It is important to note, however, that Chiricos and Delone’s meta-analysis, in addition to predating the steepest advent of US mass incarceration, also compiles studies completed before the full impact of the contemporary neoliberal project – what Peck and Tickell call ‘roll-out’ neoliberalism, characterized by

“aggressive reregulation, disciplining, and containment of those marginalized or dispossessed by the neoliberalization of the 1980s” (Peck & Tickell, 2002, p. 389) – could reasonably be detected in an empirical analysis.

Despite its treatment of an era in which the punitive and economic paradigms of contemporary America were nascent at best, Chiricos and Delone's meta-analysis provides vital support for basic empirical value of Rusche and Kirchheimer's original theory – particularly its strong assertion that “labor surplus has a direct effect on punishment *independent* of its indirect effect on crime” (Chiricos & Delone, 1992, pp. 429, ital. orig.). Many of the earlier tests of the Rusche and Kirchheimer hypothesis that Chiricos and Delone have gathered focus somewhat simplistically on the role of incarceration in managing the ‘reserve army of labor.’ Ivan Jankovic, in his 1977 test, suggests that, “[g]iven the persistence and the magnitude of the surplus population in advanced capitalist countries, imprisonment may serve to contain a fraction of it and to manipulate its size” (Jankovic, 1977, p. 20). Chiricos and Delone, while agreeing that the direct, physical management of ‘surplus population’ size is a factor, place importance on the symbolic valence of incarceration as well, considering “[t]he control of surplus populations [...] a *means* to preclude questions about the legitimacy of a system of productive relations that continually makes human workers redundant” (Chiricos & Delone, 1992, pp. 424, ital. orig.). Their reasoning in this appears to parallel the contemporaneous ‘new penology’ of Feeley and Simon, which asserts that the criminal justice system punishments of that era (and our own, in contrast to the ‘old penology’ of rehabilitation) were “about identifying and *managing* unruly groups” (Feeley & Simon, 1992, pp. 455, italics mine) – those groups, in other words, cited by Harcourt as unable or unwilling to abide by the rules of exchange that define the ‘free market’ – with a particular emphasis on the mitigation of risk.

This idea of *management* of unruly, unemployable, or surplus populations becomes arguably the most important theme of the literature on the political economy of punishment in the years following Chiricos and Delone's meta-analysis, with subsequent studies taking on the racial component of this project (D'Alessio & Stolzenberg, 2002; Jacobs & Helms, 1996), its influence on prisoner education and therapeutic programs (Kramer, Rajah, & Sung, 2013), its extension to criminal justice labeling and surveillance projects outside of prison settings (Kohler-Hausmann, 2013), as well as its application to immigrant laborers (De Giorgi, 2010). All of these studies are noteworthy for their continuing emphasis on the direct threat that members of this 'surplus population' pose, either to the capitalist system that generates excessive unemployment and the contemporary neoliberal project that exacerbates inequality, or the capital interests and political-economic elites that benefit from both dynamics. Interestingly, however, they generally do not take the next logical step, suggested by Harcourt above, to consider the ways in which criminal justice system management is itself open to economic manipulations, and the ways in which its regulation of behaviors and assignment of status values open punishment up to the logic of accumulative profit. Many of these scholars do take on an examination of labor's waning importance in the project of criminal justice system management – particularly the value-added, productive labor associated with Fordist industrialism. D'Alessio and Stolzenberg, writing just past the turn of the 21st century, acknowledge that "[a]s capitalism evolves, technological innovations and the pursuit of greater profits render certain forms of labor obsolete" (D'Alessio & Stolzenberg, 2002, p. 179), without specifying how, in the absence of now obsolete value-producing labor, these greater profits are to be achieved. They also attempt to define a "rabble class"²⁵ with "two distinctive characteristics:

²⁵ A term originally coined by the celebrated 'convict criminologist' John Irwin in his book *The Jail: Managing the Underclass in American Society* (2013 [1985]). D'Alessio and Stolzenberg follow Irwin's original definition for the term, which was intended to capture a strata of society that was largely unemployed and regularly engaged in low-level status offenses, but rarely in significant kinds of criminal behavior. It should be noted, however, that in 1985, this group regularly cycled in and out of short-term stints in urban jails; by 2002, mass incarceration was fueled in part by members of this same class cycling through much longer terms in state and federal prisons – for the same kinds of offenses.

First, they are detached from the mainstream of society. The rabble class includes deviant and outcast groups of society such as junkies, petty hustlers, derelicts, and others who are not usually involved in serious forms of criminal behavior. Second, they are perceived as disorderly since they might endanger the current political order. ... The offensiveness of these groups, rather than their criminal behavior, is the crucial factor in determining their jail confinement.

(D'Alessio & Stolzenberg, 2002, p. 183)

The unspecified threat posed by these groups to the political or social order is a feature of scholarly discourse on the political economy of punishment. What may be more important than any literal or physical threat to the neoliberal project is the refusal, or inability, of the 'rabble classes' to abide by the terms of free market exchange. They must be punished, or 'managed' because they have not internalized the neoliberal ideology that insists they sell their low-skilled labor at market rates – indeed, D'Alessio and Stolzenberg's description of "junkies, petty hustlers, [and] derelicts" implies a population that has 'opted out' (or been forced out) of the neoliberal free market entirely.

And yet, it is difficult to reconcile this 'opting out', or internalized resistance to free market ideology, with the language of 'danger', 'threat', and 'risk' that many of these scholars apply. Does this language perhaps refer to the revolutionary politics of equity and racial advancement that characterized the civil rights era, and posit the contemporary program of criminal justice system management as a continuation of the Nixonian project of 'law and order' politics, the 'dog whistle' project of racial suppression and retrenchment? Is it a reference to street violence or social disorder – perhaps race riots, like those that roiled cities across the US in the mid-20th century? The 21st century America of neoliberalism and mass incarceration has experienced very few such events, with the possible exceptions of the recent civil unrest in Ferguson, Missouri, and the ensuing 'black lives matter' protests around the country in response to the deaths of African Americans at the hands of police officers. None of these events are comparable, in terms of economic destruction or loss of life, to the disturbances of earlier eras: the \$26 million in

damages and zero deaths²⁶ in Ferguson are dwarfed by the \$4 billion and 55 deaths of the 1992 LA riots, the \$46 million and 43 deaths of the 1967 Detroit riots, or the \$40 million and 34 deaths of LA's earlier Watts riots of 1965. Nor can the contemporary 'rabble class' be thought to threaten the political or social order with *labor* organizing, as they are defined by un- and under-employment. The critical sociologist Saskia Sassen contends that the potential for a revolutionary threat to the contemporary neoliberal order 'protected' by mass incarceration and other systems of punishment (such as deportation) is mitigated by a number of factors:

Historically, the oppressed have often risen against their masters. But today the oppressed have mostly been expelled and survive at a great distance from their oppressors. Further, the "oppressor" is increasingly a complex system that combines persons, networks, and machines with no obvious center. And yet there are sites where it all comes together, where power becomes concrete and can be engaged, and where the oppressed are part of the social infrastructure *for* power.

(Sassen, 2014, pp. 10-11, ital. orig.)

Sassen's reading provides a valuable rejoinder to criticisms of the political economy of punishment, many of which portray the mechanisms by which the theory is thought to operate as unrealistically conspiratorial.

Grappling with how, exactly, to classify the threat posed to capital interests or the neoliberal project by the 'rabble classes' is a common feature in recent literature on punishment as population management. Kramer and his co-authors characterize them as "an amorphous surplus population that a post-Fordist economy tends to perceive as threatening rather than as a resource" (Kramer, Rajah, & Sung, 2013, p. 537), but again do not specify the nature of the threat posed, while Jacobs and Helms, writing in 1996, suggest that "the criminal justice system primarily exists to control the elements of an economic or racial underclass who threaten existing arrangements with predatory behaviors" (Jacobs & Helms, 1996, p. 324). This allusion to violent and property crimes ("predatory behaviors") arguably operationalizes Harcourt's notion of refusal to abide by the principles of free market exchange, as well as defining a more

²⁶ With the notable exception of Michael Brown, whose tragic death at the hands of Darren Wilson was the inciting incident that set in motion the events (including, most importantly, the criminal justice system's failure to hold Wilson in any way responsible for killing Brown) leading up to the eventual riot.

realistic threat than the vague fears of political or social unrest cited by others. But how high would the rates of such crimes need to be in order to genuinely threaten the existing neoliberal social order, or its characteristic economic hierarchy – or, indeed, the individuals who occupy its top echelons? Crime rates have consistently been plummeting in the 20 years since Jacobs and Helms wrote these words²⁷. The authors are perhaps more closely approaching a convincing point when they speculate that "[i]t seems plausible that an expanded *racial* or economic underclass with little to lose could destabilize the social order that benefits the affluent so much" (Jacobs & Helms, 1996, pp. 324, italics mine). This is presumably intended less in reference to a material threat, and more in respect to the existential fear that a large population of one or more racially and culturally distinct minorities might threaten the political and economic hegemony of the overwhelmingly white population of entrepreneurs and professionals who control or participate in (through one means or another, be it stock or property ownership, direct ownership of businesses, vestiture in pensions, etc.) the accumulation of capital. It is important to acknowledge that the neoliberal project of inequality, while often discussed in the abstract, is in fact a racialized project. The opaque nature of terms like 'capital interests' obscures (in the manner identified by Monbiot) the fact that the wealth these capital interests are working to accumulate largely accrues to white individuals and households. The racial wealth gap, as of 2013, provides a stark illustration of this reality, with the median net worth of white households (\$142,000) amounting to over ten times the wealth held by black or Hispanic households (Kochhar & Fry, 2014).

Political, social, and economic threats to the hegemony of a racial or ethnic majority group fit clearly into the framework of 'minority threat theory' (Blalock, 1960; Liska, 1992; Stephan & Stephan, 2000), a perspective essential to the context for contemporary patterns of punishment. As originally conceived by Blalock in 1960, the theory proposes (in what many readers may find

²⁷ For an in-depth and highly contextualized comparison between crime rates and incarceration rates in late modern US history, see (Travis & Western, 2014), in particular, the graph on page 27.

to be disturbingly clinical terms) that “[u]nless minority resources can be reduced to approximately zero under some such system as slavery [...] the need for a high degree of mobilization of resources in order to maintain dominance becomes extremely great as [the minority population] become[s] numerous” (Blalock, 1960, p. 56). In other words, systems and structures of control can mitigate the tendency of a reduction in numerical advantage to threaten the majority group’s hegemony – particularly where, as in the ‘dog whistle’ racialism of criminal justice system punishment, the systems and structures can plausibly be presented as universalist ‘public goods’ rather than overt projects of racial dominance.

There is a common thread that appears to run through all of these discussions of the threat posed by an economically disenfranchised underclass, and the systems of punishment or control put in place to mitigate that threat. Each of them appears more concerned with the perception or fear of threat among the dominant culture – the groups and individuals who benefit from the system being threatened, however the author defines it – than with the actual potential for the underclass to disrupt, diminish, or destroy the system in question. Thus in this interpretation, mass incarceration (in the case of the African American underclass) and deportation (in the case of the largely Mexican and Central American undocumented immigrant underclass) serve a primarily psychological purpose. They provide reassurance for the US population of aging white conservatives, whose voting patterns are largely responsible for enabling the neoliberal project of inequality to proceed. Whether the individual members of this declining white majority benefit directly from neoliberalism (as a small proportion of them may) or are ultimately harmed by it (as the vast majority are), they can take continual comfort in the idea that racial ‘others’ are being punished for their apparent inability or unwillingness to internalize free market ideology, or succeed as individual ‘free market entrepreneurs.’ This ‘other’ may consist of stereotypical African Americans clinging to the last remnants of the Keynesian welfare state and subverting free market exchange through criminality, or equally stereotypical Mexican

immigrants failing to respect the neoliberal dichotomy that allows free movement of capital but restricts that of labor. In either case, they are the clear targets of the respective punitive structures deployed against them. If individuals outside of the target groups should happen to be caught up in these systems of punishment and control – incarcerated whites, deported Europeans – they are simply collateral damage, a necessary sacrifice to maintaining the dog whistle façade obscuring the project of racial dominance.

Punishment and the 'capitalization of power'

It should be noted at this point that the literature under examination represents a significant departure from Rusche and Kirchheimer's original conception of criminal justice system punishment as a tool for regulating and disciplining the low-wage labor force. This represents in part the need for more contemporary scholars to grapple with the transition from the economic paradigm of Keynesian full employment, to the post-industrial, Friedmanian paradigm of sustained 'natural' unemployment. How can a system of punishment serve the function of 'labor force discipline' if it is now directed at a persistently unemployed underclass? The system must serve other functions in this new context, and the mitigation of threat – whether actual or perceived – described above may well be one of them. Gilmore characterizes the overlapping systems of punitive incarceration and immigration control (as they exist in California, a context sufficiently archetypal in this context to stand in for the nation as a whole) as a systemic response to a crisis of surplus: "implicit in capital's imperative to accumulate is an equal necessity to disaccumulate. Systemic failure to disaccumulate constitutes crisis" (Gilmore, 2007, p. 55). The 'surplus' is in this case the surplus population of disengaged and discarded laborers – a population that California's political-economic elite have reason to fear, given the state's history:

For voters, the crisis centers on how to ensure that the surplus population, who rebelled in 1965 and 1992 [in Los Angeles], is contained, if not deported. In tightening labor markets through deportation of reserve labor force cadres to prison or abroad, fear-driven voter-made laws may seem contradictory for

capitalism; but the contradiction may only be an illusion when employers are able to exploit actual and implied undocumented workers' political powerlessness.

(Gilmore, 2007, p. 77)

Building on the argument, advanced above, that contemporary neoliberalism serves a 'project of inequality,' Bichler and Nitzan echo Gilmore in contending that rising inequality itself (in Gilmore's terms, the systemic failure to disaccumulate surplus capital) constitutes the crisis that makes necessary the increasingly punitive management of the American underclass. In order to better conceptualize the threat that the underclass could pose to the neoliberal project of inequality, they advocate that scholars "discard the politics/economics duality and instead think of capital as power and capitalism as a mode of power" (Bichler & Nitzan, 2014, p. 252). They continue by extending this line of thinking to the central duality of Rusche and Kirchheimer's original hypothesis: "From the viewpoint of capital as power, penalty and unemployment are not distinct aspects of politics and economics, respectively. Instead, they are different forms of capitalized resistance and sabotage"²⁸ (Bichler & Nitzan, 2014, p. 269). If capital is an expression of power, then the refusal to abide by the rules of the market becomes a symbolic act of resistance (even if the intent behind it is simple and concrete self-preservation) that must be punished through the exercise of the neoliberal state's coercive power.

Capitalized power, within a contemporary social order organized according to market logics, has an unprecedented range of coercive tools available to discipline rebellious subjects. Kohler-Hausmann (2013) points out that "[d]espite the unprecedented surge in incarceration, the noncarceral penal operations – covering probation, parole, alternative programs, misdemeanor sentences such as conditional discharge, fines, community service, and of course nonconviction – continue to constitute the largest component of criminal justice system operations" (Kohler-Hausmann, 2013, p. 358). In Kohler-Hausmann's view, it is the operation of this vast

²⁸ I interpret Bichler and Nitzan to be using 'penalty' here as a synonym for 'criminality', and 'capitalized' as a term meaning, 'within the capitalist system.' Their comment thus engages with Rusche and Kirchheimer's hypothesis by asking the reader to consider that criminality and unemployment, as individual life choices, are acts of resistance and sabotage against the capitalist system.

misdemeanor justice apparatus – what Diana Gordon identified as “coercive control by observation” (Gordon, 1990, p. 7) as early as 1990 – that most strongly restricts the opportunities and controls the behaviors of the millions of people at the bottom of America's economic opportunity and class structure. The labels and legal statuses to which individuals in this sub-incarceration penal structure are subjected both confine them to the lowest echelons of the service economy and imbue future law enforcement encounters with a high level of risk – a dynamic familiar, not coincidentally, to the millions of American immigrants who go about their daily lives and work dealing with the stigma of an ‘illegal’ status²⁹.

Immigrant detention and deportation as punitive paradigm

Rusche and Kirchheimer's hypothesis has not yet been tested for its applicability to immigrant detention and deportation, and I argue that an attempt to closely replicate their original hypothesis in this context would likely be fruitless. Immigrant detention and deportation did not arise as a distinct punitive structure (modeled, as it currently is, both theoretically and practically, on criminal justice system incarceration) until the 1980s, making its development concurrent with the economic and punitive trends that have upended the basic duality of the hypothesis. Recent theorists have, however, worked to situate punitive immigration controls within the broad conceptual framework of the political economy of punishment (e.g. (De Giorgi, 2010; Leerkes, Leach, & Bachmeier, 2012; Trujillo-Pagan, 2014), although there is little consensus among these scholars on where to place the focus of any prospective empirical test of the theory's operation. De Giorgi's position, akin to that outlined by Kohler-Hausmann, above, in reference to the regular criminal justice system, is that the socio-cultural stigma and legal (non-)status experienced by undocumented immigrants are the appropriate focus. “[B]orders become themselves as mobile and flexible as the unauthorized crossers they are supposed to

²⁹ It is particularly interesting to consider deportable lawful permanent residents in this context, given that they may be both “highly policed” and familiar (albeit perhaps secondhand) with the psychological stress and fear associated with ‘illegal’ status – a classic “double bind” situation.

keep out, and project their power-effects inside the boundaries of the nation-state, where they shape the insecure legal status of immigrants and help define their subordinate position in the flexible economy" (De Giorgi, 2010, pp. 151-2). Leerkes, Leach, and Bachmeier extend De Giorgi's thesis to the internal borders of US states, arguing that "[P]iecemeal internal controls implemented by local and state governments and agencies may result in the geographic redistribution of the unauthorised population rather than deterring unauthorised entry into the United States" (Leerkes, Leach, & Bachmeier, 2012, p. 113); while Rocha and his co-authors show that restrictive state immigration policies in fact seem to drive away documented immigrants, rather than their intended undocumented targets (Rocha, Hawes, Fryar, & Wrinkle, 2014).

This latter dynamic brings into focus one of the key differences between traditional criminal justice system punishment and punitive immigration control: in the contemporary neoliberal context, the former is directed against a population that is persistently underemployed, while the latter is directed at the immigrant workers who have replaced them in low-skilled, low-wage labor sectors such as agriculture. There are three major concepts that define the ways in which capital stands to benefit from the systematic, criminal justice-style punishment of immigrants, that I attempt to synthesize in the theory of the punishment marketplace: (1) as in the original hypothesis of the political economy of punishment, the detention and deportation system serves a function analogous to the parallel system of criminal justice punishment, instilling fear in the immigrant labor force along with a willingness to accept low wages and substandard working conditions; (2) opening up investment opportunities for capital interests in the largely privatized detention and deportation industry; and (3) minimizing immigrant interaction with government and utilization of tax-supported public services. Of the first, De Giorgi writes that "[T]he function of less eligibility is not only to deter the most disadvantaged classes from resorting to crime (or public assistance), but also – and most importantly – to force the poor

[and immigrants] to 'prefer' any available condition of legal work rather than incur in the sanctions attached to criminal behavior and to the refusal of work" (De Giorgi, 2010, p. 149).

This formulation, of course, returns the discussion to the concept of 'less eligibility' that was central to Rusche's original thesis – the notion that "[i]f penal sanctions are supposed to deter these strata from crime in an effective manner, they must appear even worse than the strata's present living conditions" (Rusche & Dinwiddie, 1978 [1933], p. 3). The concept of less eligibility is, if anything, even simpler when applied to immigrants, unauthorized or otherwise: if the ultimate sanction of the immigration control system is deportation, the principle is fulfilled almost by default, if we accept the logic that immigration, at least in part, is motivated by stark differentials between economic opportunity structures and quality of life in the destination country versus the country of origin (see for example, (Massey D. , 2009). What's more, if deportation is the near certain end result, then conditions of detention are largely irrelevant – and thus subject to nearly any utilitarian, market-based, or profit-seeking calculations the capital interests providing it wish to apply. This disengagement of the conditions of detention from the principle of less eligibility leads to a potential for profit that dwarfs criminal justice system parallels, not only for private/for-profit prison providers and contract operators, but also for an array of secondary service providers and subcontractors.

Immigration policies and their enforcement involve not only expanding programs and state agencies like the Department of Homeland Security (DHS), but also ha[ve] complementary effects on businesses that support detention and deportation, including, for instance, surveillance technology companies like Boeing's SBI-net. Enforcement increasingly involves privatizing critical state functions, including detention and deportation, to private prison companies like Corrections Corporation of America (CCA), the largest private prison company in the country, and private detention companies like the GEO Group. Private detention facility contracts also promote complementary business growth for feeder industries like food and health providers, airline carriers, etc."

(Trujillo-Pagan, 2014, p. 33)

Indeed, private prison providers like the Corrections Corporation of America increasingly rely on the profits associated with immigrant detention to shore up their bottom line in the face of steeply declining occupancy rates in their state and federal contracts for regular criminal justice

system incarceration. With the daily cost of detaining an individual immigrant clocking in at a hefty average of \$159 (National Immigration Forum, 2013) – more than three times the average contracted amount for state prisoners – the strategy has proved to be a highly successful one, allowing CCA to maintain or increase its operating margin in the face of falling occupancy rates³⁰ (Corrections Corporation of America, 2009; 2010; 2013).

TABLE 3. TOTAL INCARCERATION PER 100K ADULTS VS. CORRECTIONS CORPORATION OF AMERICA OCCUPANCY & OPERATING MARGINS, 2007-2012

	2007	2008	2009	2010	2011	2012
Total incarceration per 100k adults (% change from prev year)	1,000 (**)	1,000 (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%)

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

This situation is enabled – and further complicated – by what Walsh refers to as "the emergence of 'plural' or 'third-sector' policing strategies involving partnerships whose agents and formal status transgress the public-private and state-society divide[.]... [T]he institutional coordinates of policing extend beyond the sovereign state [to include] concurrent changes in the surveillance and regulation of non-citizens" (Walsh, 2014, p. 238). While Walsh's work focuses (per the preceding quote) on policing strategies – and is thus particularly relevant for the federal-local immigration partnerships such as the 287(g) Program (United States Government Accountability Office (GAO), 2009; Rodriguez, Chishti, Capps, & St. John, 2010; Capps, Rosenblum, Rodriguez, & Chishti, 2011) and the Secure Communities Program (Pedroza J. ,

³⁰ See table 2 above.

2013; Waslin, 2011), as well as state-level enforcement initiatives such as Arizona SB 1070 (Greene J. A., 2013; Pearce, 2010) and its imitators in Alabama, Georgia, Indiana, and South Carolina – its core concept of "transgress[ing] the public-private and state-society divide" can be broadly applied to every level of the immigrant detention and deportation apparatus, from enforcement to return, from local to federal. Transgressions of this nature were already well-established in the context of mass incarceration. Beginning in the 1990s, "new prison construction program[s ...] constituted an excellent long-term opportunity for capital investment" (Gilmore, 2007, p. 99), providing "variably assessed returns on [that] investment" not only in direct financial gains, but also "in legitimacy, in safety, in securing [...] voters or local economies, or [political] contributions" (Gilmore, 2007, p. 122). With such a precedent to draw upon – and so many potential benefits to be pursued – it is little wonder that the litany of examples of parallel transgressions in punitive immigration control seems endless. A partial list could include the fact that Arizona's SB1070 and its imitators were based heavily on model legislation written by representatives of private prison companies and associated industries at a meeting of the American Legislative Exchange Council (ALEC) (Sullivan, 2010); the federal 'detention bed mandate', inserted into the 2009 DHS annual spending bill by then-Senator Robert Byrd, making it a legal imperative that ICE maintain an average daily population of 34,000 deportable immigrants in its private-sector dominated detention system (Selway & Newkirk, 2013); and the efforts of county correctional systems such as Essex County, New Jersey (Semple, 2011a) to outbid private sector providers for federal immigrant detention contracts. The degree to which market logic pervades every aspect of the contemporary US immigrant detention and deportation system makes it, in many respects, significantly more open to neoliberal colonization by free market ideology than the parallel structures of criminal justice system punishment.

One of the most striking examples of the phenomenon Walsh identifies as “the decentralization, diffusion, and pluralization of enforcement” (Walsh, 2014, p. 241) involves the increasing localization of immigration control since the 1996 passage of IIRIRA. This rescaling has occurred in the context of the broader devolution of authority (as an aspect of the “rollout neoliberalism” of the 1980s and 1990s) from an increasingly weak US federal government to states and localities. Gilmore points to “declines of 12.5 percent (state) to 60 percent (local in revenues derived from federal aid)” (Gilmore, 2007, p. 81) in California during this period as evidence of a general deligitimation of the Keynesian state. In Varsanyi’s 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” (Varsanyi, 2011, p. 297), allowing smaller containers such as state, county and municipal governments to take on policy activism (or ‘policy entrepreneurship,’ to use the language of the market) in spheres previously the sole purview of a strong federal government. Varsanyi goes on to examine the role of nativism in driving local government policy activism in immigration control, presenting this activism as a regressive contestation of globalized neoliberalism, specifically its tendency to encourage cross-border labor migration. This interpretation presents nativism as a reaction *against* neoliberalism, rather than a manifestation of neoliberal conservatism’s authoritarian application of the ‘rules of the market’ to individual behavior and personal responsibility. Gilmore reads this reaction as a manifestation of the need for newly empowered state and local governments to balance the needs of local capital interests against a more narrow voting public than that represented by the broader federal government: “Insofar 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” (Gilmore, 2007, p. 78). In this interpretation nativist immigration policy activism, rather than contesting the neoliberal project – which is, at its core, an economic project focused on the interests of capital, and thus (as

discussed above) on suppressing the interests of labor – transforms the passage of restrictive local ordinances into a fundamentally *bulimic* process. Rather than focusing on unauthorized immigrants as laborers (the role in which they benefit capital, both locally and at larger scales), many of these restrictive local ordinances focus on circumscribing immigrants' rights as community members.³¹ Thus individual and cultural expressions of nativism, which may indeed arise from the efforts of working class whites in particular (the losers of neoliberal globalization) to contest the *effects* of the neoliberal project as they perceive them, in the process of being translated into government action are subverted into a form that ultimately supports neoliberalism's economic goals.

Capital and conspiracy: Criticisms of the political economy of punishment

One of the chief criticisms of the political economy of punishment as originally formulated by Rusche and Kirchheimer is that it “fails to explain the mechanisms linking an economic imperative with a penal practice” (Cavadino, Dignan, & Mair, 2013, p. 69) – in other words, it fails to fulfill the positivist imperative of parsimony in its lack of a clear, easily definable cause and effect relationship between the requirements of capital and forms of punishment.

Cavadigno and Dignan express a fairly typical – if contemptuously dismissive – version of this criticism, suggesting that the theory required a “capitalist class [...] engaged in a conspiracy which was simultaneously crudely self-interested, brilliantly well-hidden and (remarkably) informed by economic analyses of a kind which had never been published at the time” (ibid). This is, of course, a laughably simplistic notion of the way in which influence operates, policy decisions are made, and systems are built. The argument is included here not to simply to serve as a straw man – however well it may suit that purpose – but to acknowledge the widespread

³¹ See table 3 above for a breakdown by category of state immigration laws passed from 2010-15. Of 1143, some 131 (11%) related to employment, as opposed to 78 (7%) on public benefits, 178 (16%) on law enforcement, and 151 (13%) on ID/driver's licenses. While no particularly meaningful 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 – it does not give the impression of a wave of restrictive legislative activism targeting employers.

skepticism in mainstream criminology and penology regarding the mechanics of political economy. Even Gilmore, in the process of laying out with exacting specificity the machinations of California's political economic elite that led to the state's late 20th century boom in prison-building and incarceration, takes pains to stress that this system "was constructed deliberately – *but not conspiratorially* – of surpluses that were not put back to work in other ways" (Gilmore, 2007, p. 88). The renowned penologist David Garland, as mentioned above, articulates a skeptical position that allows considerably more room for argument than Cavadigno and Dignan's cavalier dismissal: "If it is to be argued that economic imperatives are conveyed into the penal realm, then the mechanisms of this indirect influence must be clearly described, otherwise correlations can be seen as mere coincidence" (Garland, 1991, p. 132). Garland, however, also discusses parallel Marxist perspectives such as those of Pashukanis and Hay (both cited above), who "stress the role of punishment in political and ideological class struggles and in the maintenance of state-power or ruling-class hegemony" (Garland, 1991, p. 128). If we accept Bichler and Nitzan's premise on the 'capitalization of power,' these parallel perspectives are easily synthesized: political-economic elites dominate policy-making at every level (Gilens & Page, 2014), so that hegemonic political interests and economic advantage are often accrued through policy-making to overlapping groups – or even the same individuals. The actual dynamics by which political-economic elites approach this policy entrepreneurship is presented in elegant detail by Gilmore in *Golden Gulag's* case study of California; it is also explored in greater detail (in the context of punitive immigration control) in the case studies laid out on pages 183-199 below. Admittedly the mechanics are incremental and complementary, and local, federal, and state policy entrepreneurship cannot be easily disentangled.

The overarching question remains, however: why do radical political economists like Gilmore, and critical criminologists like Garland, take such pains to portray the well-documented collusions of political economic elites – taking place, if not outright in secret, at least well

outside of the voting public's notice – that led “deliberately” to mass incarceration as something *other* than a conspiracy, when it is almost by definition exactly that? It is possible that hesitance to use the word is driven by the dismissals of mainstream or positivist scholars like that of Cavadigno and Dignan, or the desire to disassociate the reasoned criticisms of academics on the left from the more fanciful realm of “conspiracy theories” that arose on the right during the Clinton administration and have flourished since.³² While this goal is understandable, I argue that it unnecessarily obscures the direct connection between the self-interested machinations of political-economic elites (taking place largely or wholly outside of the public eye) and the material harm done to the individuals and groups who have been the object of the turn to instrumental punitiveness through criminalization, mass incarceration, and crimmigration enforcement. Reclaiming ‘conspiracy’ as a term and concept applied to these deliberate, well-documented collusions has the potential to draw a sharp line between public goods and public harms attributable to the last 30-40 years of neoliberal policy-making.

Converse to the positivist criticism that economic interests lack a clear mechanism of influence on penal policy, critical scholars have asserted that the mechanics of punishment cannot readily be subjected to market logic and the pursuit of private profit. This criticism, as laid out by Loïc Wacquant, hinges on the idea that private financial investment in prisons and other forms of punishment (community corrections, associated services, etc.) “remain[s] negligible in terms of economic weight and thus nonexistent as a vehicle for profit on a national scale” (Wacquant, 2010b, p. 608). But – aside from the obvious fact that questions of scale have rarely prevented the application of capitalist principles in any given market – questions of *political economy* are not so easily reduced to the actual dollar values of private investment in the system under examination. As Wacquant himself admits, “[o]wing to [the US Government’s] weak bureaucratic capacities, there is virtually no major function of government – education, welfare,

³² For an archetypal example of the kind of false equivalence (between rightist conspiracy theories and radical critical analysis) that Gilmore and Garland may be attempting to guard against, see Pipes, 1999.

health care, housing, transportation, infrastructure, etc. – that does not entail extensive recourse to private entities” (Wacquant, 2010b, pp. 609-10). Wacquant, however, goes on to argue that corrections represent “the one signal exception to this ‘mixed economy’ of government services”, despite recognizing that the private/for-profit prison industry “owed their survival to magnanimous new contracts to house immigrant convicts under supervision of the INS” (Wacquant, 2010b, p. 610).

Wacquant’s criticism echoes that which Garland levies against Harcourt’s ‘neoliberal penalty’: namely that such a bloated bureaucracy cannot possibly reflect the workings of a logic that prizes ‘market efficiency’ in the pursuit of private profit. Thus, this genre of criticism rests on the contention that contemporary modes of punishment are suited, in neither form nor scale, to the economic logic of neoliberal ‘free market’ ideology. Consideration of immigrant detention and deportation as a system of punishment would seem to falsify this argument on its face, as Wacquant himself admits. Questions of scale aside (though it must be pointed out that no sector has ever been dismissed by capitalists as ‘too small’ to apply the market logic of accumulative profit), Garland, Wacquant, and other critical scholars unconvinced by political economy prefer to describe punishment as a ‘bureaucratic field.’ A term coined by Bourdieu, punishment in this interpretation is a representation and exercise of state power (Bourdieu, 1994) – an interpretation that fails to acknowledge the degree to which the increasingly weak and fragmented neoliberal state is vulnerable to the influence and manipulation of capital interests. This observation is doubly true of immigrant detention and deportation. Within the logic of capitalized power, direct financial gain is simply one of a number of broader economic benefits available to capital through modes of punishment. Entrepreneurial participation, in what I will define in the next section as ‘the punishment marketplace’, is emblematic of capital’s 21st century approach of maximizing political-economic yield from all aspects of a given process, and through all of the varied means available to it under contemporary regimes of neoliberal

deregulation and marketization. Unlike government, capital interests are not constrained by a separation of powers or distinct scales of operation; rather, free to operate on local, national, and state levels, with a hand in the political process and a vast array of tools to manipulate cultural products and popular opinion, capital interests can coordinate and strategize operations to a degree that the 21st century state can only dream of. Contemporary capital is, in short, free to treat any 'bureaucratic field' as a market, operating within it on the basis of market theory and market rules, and the field of immigrant detention and deportation is no exception.

II. Theory

The political economy of contemporary punishment

The theoretical basis of the political economy of punishment (per Dario Melossi's interpretation) is the claim "that punishment should be understood on grounds of the historically changing nature of economic relationships, and especially of the relationships that constitute the labor market." (Melossi, 2003, p. xi) It is a sound basic premise and one that I will preserve here, while dispensing with the 'Rusche and Kirchheimer hypothesis' of a direct relationship between unemployment and imprisonment rates. As I detailed above, while compelling as a thought experiment – and by some measures empirically valid throughout much of the 20th century – it becomes more problematic than productive in examining the post-industrial 21st century context of punishment. The basic importance of labor market relationships to understanding punishment in any era, on the other hand, can hardly be overstated – all the more so when examining the punitive approach to immigration. The same can be said for the "changing nature of economic relationships" represented in particular by the contemporary forces of globalization, corporatization, and technological advancement. Leaving aside many critics' exaggerated focus on the 'hypothesis,' it is arguable that Rusche and Kirchheimer themselves call for an approach that accounts for evolving economic relationships and examines a breadth of punitive practices. In *Punishment and Social Structure*, they stress the importance of

"investigat[ing] the origin and fate of penal systems, the use or avoidance of specific punishments, and the intensity of penal practices as they are determined by social forces, above all by economic and then fiscal forces" (Rusche & Kirchheimer, 2003 [1939], p. 5).

This is exactly what I intend to do. In developing the theories of the *punishment marketplace* and *punishment entrepreneurship*, I will first delineate four characteristic features of contemporary economic relations that set the 21st century neoliberal order apart from the 20th century Fordist industrialism that preceded it. Each of these features, to a greater or lesser extent, must be taken into account in any attempt to formulate a late-modern theory of instrumental punishment. They are:

- 1) The accelerating transformations, due primarily to technological advances, of the nature of *labor* on the one hand, and *capital investment* on the other;
- 2) The growing separation, due to technological and cultural shifts such as the ready availability of credit and the fetishization of leisure and luxury, of worker's *laborer* and *consumer* roles in contemporary economic relationships, and the increasing relative importance of *consumer behavior* for the considerations of capital interests;
- 3) The *clientization* (and accompanying *commodification*) of workers in the approach of capital interests to profit-making, as an aspect of the transition from an industrial to a service-based economy;
- 4) The *marketization* by capital interests of every sphere 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*.

Four characteristic features of late modern neoliberal capitalism

A general justification for the relevance of each of these individual features to contemporary modes of punishment is a necessary precursor to breaking each of them down in detail. 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, p. xi) to improve their situation – i.e., to achieve some advantage in their interactions with capital³³ 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 order to “combat crime among the underprivileged social strata,” Rusche and Kirchheimer argue that “the penalties must be of such a nature that the latter will fear a further decline in their mode of existence” (Rusche & Kirchheimer, 2003 [1939], p. 6).

While capital-labor relations followed the industrial model originally articulated by Marx (Marx, 1909), describing (and testing) the operation of this effect was a relatively straightforward proposition. In the globalized, information-age service economy, however, the value of punishment as a form of labor force discipline becomes significantly less obvious. How do we expect this disciplinary effect to operate in a paradigm where there is no obvious ‘legitimate’ labor force role for individuals in the lowest strata? Where the importance of a given individual’s consumer habits (whether supported by easy access to credit, or financed through participation

³³ It should be noted here that, in discussing the ‘competitive’ nature of the Marxist capital-labor dialectic, the two constituent groups may have different goals: i.e. ‘labor’ might represent individual workers seeking advantage in pursuit of a ‘life project’ (expansively defined), while capital represents corporate interests with a more purely profit-driven/accumulative goal. While it’s important to recognize that the latter, even in Sassen’s construction of the ‘formless oppressor’, incorporates individual members of the political-economic elite with ‘life projects’ of their own, the contemporary structure of neoliberal capitalism obscures the latter behind a collective (‘capital’), while the former’s ability to take a collective approach (i.e. through unionization) is actively suppressed.

in the underground economy) exceeds that of his legitimate labor value? These may not have been entirely irrelevant in the industrial era of Rusche & Kirchheimer's writing, but it is safe to assume that calculations of profit were then primarily dependent on receiving the most possible labor for the least possible compensation. Punishment clearly continues to hold a great deal of political-economic value for capital interests – indeed, it is applied with significantly more zeal in this era of mass incarceration than it was in the first half of the 20th century – but the value of late modern punishment does not lie simply in its ability to deter violations of the 'natural law' governing free market exchange. While labor market discipline is no doubt still an important feature in the political economy of contemporary punishment, there are a number of other features and functions to which the post-industrial economy has given rise. Those functions are in large part defined by the four changes in contemporary economic relations outlined above, which are detailed below.

1. Abstraction: The contemporary abstraction of both of the constituent elements of the original Marxist dialectic is fairly straightforward: the majority of American labor no longer involves physical processes intended to add value to raw materials in order to transform them into salable consumer commodities, nor is the majority of capital investment bound up in these processes, and the majority of profit is not derived from the sale of value-added material commodities.³⁴ In particular, the lowest strata of workers – those with whom the processes of American punishment are, for the most part, directly concerned – are largely shut out from what remains of the US manufacturing economy.³⁵ Instead, they provide the kind of low-level, low-

³⁴ According to Bureau of Economic Analysis figures released 13 November 2014, private services-producing industries and information-communications-technology-producing industries accounted for just over \$12 trillion in value added to the US GDP in 2013, as compared to \$3.3 trillion for private goods-producing industries. These basic proportions, with services accounting for 3-4 times the overall US domestic economic activity as manufacturing/agriculture/mining and other material goods production, has remained largely consistent since 2005. (Bureau of Economic Analysis, 2014)

³⁵ According to Bureau of Labor Statistics data from May 2013, of the 20 occupations with the lowest median wage, 18 were service industry occupations – from “Combined Food Preparation and Serving Workers, Including Fast Food” to “Parking Lot Attendants.” The only non-service industry occupations on the list, “Farmworkers and Laborers, Crop,

wage services necessary for the day-to-day perambulations of middle-class, urban and suburban professionals: food service and preparation, janitorial and maintenance services, transportation, communication, shipping, and – perhaps most interesting, for purposes of the present discussion – security services.³⁶

The abstraction of capital investment is a vastly more complex issue, in terms of its mechanics and its effects on the purpose of punishment alike. Saskia Sassen describes abstraction as follows:

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.

(Sassen, 2014, p. 9)

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. In some sense, abstraction can be measured by the number of steps of remove that separate contemporary financial products from the physical "means of production" so central to Marx's basic theory.

The pace of abstraction – as with globalization, the movement to a service economy, and other hallmarks of the 21st century neoliberal project – has been staggering. As recently as 1977, Marxist social theorists held fast to the opinion that "labor is the only source of newly created value and, hence, of profit" (Jankovic, 1977, p. 20). While this may continue to be an immutable tenet of Marxist social theory, real-world, neoliberal capitalism has neglected to abide by it. The

Nursery, and Greenhouse" and "Graders and Sorters, Agricultural Products", were agricultural rather than manufacturing industry occupations. (Bureau of Labor Statistics (BLS), 2014)

³⁶ I omit such employment fields as construction and agriculture from this litany intentionally, in order to draw a distinction between the traditional forms of physical labor that draw a significant proportion of their labor pool from among first generation immigrants (and would remain largely recognizable to an industrial era commenter), and contemporary forms of low-skilled labor emblematic of a service-based economy.

mortgage-backed securities at the heart of the 2007 financial meltdown are an obvious example of the degree to which late-modern capital investment processes have become abstracted from the original concept, and they also illustrate an essential reality of the changing function of punishment in the contemporary US: the value of mortgage-backed securities was built largely on specific behaviors that the finance and real-estate industries enabled, and encouraged, in the lowest strata of American workers. The scheme worked on the premise that American workers – regardless of their means, or the stability of their employment – could be induced to give up their accustomed role as renters and become homeowners. Thus they were saddled with massive amounts of mortgage 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 downright fraudulent.³⁷

This scheme, and others like it, give a sense of the growing disconnect between capital's approach to manipulating *consumer behavior* among the working and 'rabble' classes, and their approach to these same groups as *laborers* (or potential laborers). I will explore this phenomenon in more detail below; suffice it to say here that the abstractions of capital and labor alike have given rise to a situation in which productive labor is only one potential engine of profit among many for capital interests. 'Work' itself is only one behavior among many that can be assigned a value, and manipulated in the pursuit of profit. Punishment, in this paradigm, may not serve its primary deterrent function in disciplining those individual low-strata workers who deviate from productive labor or actively engage in collective class struggle, but rather may serve a multiplicity of functions. Punishment holds the potential to condition behaviors across a range of life domains, along with warehousing those members of the underclass perceived as

³⁷ It is a telling feature of the contemporary approach to punishment that so few of the financiers and corporate executives responsible for this specific fraud were ever prosecuted, as opposed 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, 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 excellent 2014 book, *The Divide: American Injustice in the Age of the Wealth Gap* (Taibbi, 2014).

least able to conform to the most desirable, or 'valuable', modes of behavior. For some of the more extreme examples of this phenomenon, such as drug users or the mentally ill, incarceration provides a means to extract value out of individuals whose consumer dollars might otherwise be spent entirely outside of the traditional economy.³⁸

The latter point is supported by followers of Rusche and Kirchheimer such as Ivan Jankovich, who speculates that "[g]iven the persistence and the magnitude of the surplus population in advanced capitalist countries, imprisonment may serve to contain a fraction of it and manipulate its size" (Jankovic, 1977, p. 20). However, Jankovich and other Marxist social theorists tend to overlook the potential for incarceration to manage and influence the 'secondary' economic behaviors of the so-called "reserve army of labor" (Jankovic, 1977, p. 20). These behaviors (outlined below) may be as or more important in a late modern economic system than their labor value.

2. Consumerism: While the purchasing power of the working classes has long been an object of Marxist analysis, it has traditionally been examined in direct relation to the exchange value of the productive labor that makes it possible. Late modern developments appear to have in many respects unmoored the former from the latter, via the rise of easy credit and a number of other factors. In the contemporary American service economy, where a majority of durable and luxury goods are produced overseas, manipulating the consumer behavior of US workers at

³⁸ We might here revisit Rusche and Kirchheimer, via Jankovic (1977, p.18), who describes "solitary confinement, a typical feature of the nineteenth century prison, as an irrational punitive response", and one that Rusche and Kirchheimer take as "evidence of 'a mentality which, as a result of surplus population, abandons the attempt to find a rational policy of rehabilitation and conceals this fact with a moral ideology (i.e. penitence)'". Many recent public criticisms of solitary confinement [e.g. (Gawande, 2009)] have focused on its use as a method of controlling mentally ill inmates, who by some estimates represent some 30% of US correctional populations; a prisoner in solitary confinement, however, still earns the private prison company that holds him in custody per-bed, per-day fees; still earns the food service company that provides his meals a daily fee; and most certainly still earns the healthcare company contracted to provide for his basic health needs a retainer for regular check-ins by the prison nurse. In this sense, he represents a source of profit for a range of capital interests that, were he homeless or in some other sense 'off the grid', would not be able to rely on the regular state-funded contractual payments that result from his being held in custody.

all class strata has become a strategic imperative for capital interests. Arguably, when a nation effectively ceases to produce material goods, purchasing power trumps productivity as the most important characteristic of its citizens to the multinational corporations active within its economy. Punishment, particularly in the form of imprisonment, may play a secondary role in manipulating consumer behavior among the lowest strata – an imperative that is otherwise achieved at all class levels through advertising and other forms of social and cultural conditioning. Imprisonment of those working class individuals involved in property crime or violent crime allows capital interests to control the behavior of those individuals unwilling or unable to ‘play by the rules’ set for consumption. In the case of individuals with habits of consumption involving ‘black market’ products (e.g. illicit drugs) punishment serves as a social control that shifts these individuals’ consumer spending from the underground to the legitimate economy (as the incarcerated remain consumers, albeit under conditions that are exponentially easier for capital interests to control).³⁹

Additionally, to the extent that the unemployed (or unemployable) among the lowest strata of workers might find recourse to sell their labor value in underground economies such as the drug trade or sex work, imprisonment and other forms of punishment serve the purpose of regulating and ‘taxing’ these underground economic sectors that the political-economic elite have long since accepted cannot be eliminated.⁴⁰ By removing and controlling the violent, the unskilled,

³⁹ As De Giorgi points out, “[The] task [of identifying and separating the new *dangerous classes* from the *laborious classes*] is becoming increasingly problematic. In the post-industrial metropolis, the growing precarisation of work, the flexibilisation of employment and the constant overlapping between the ‘legal’ economy and the many hidden, informal and illegal economies is producing a gradual fusion of work and non-work, mixing the laboring and the dangerous classes together and making any rigid distinction between the two almost impossible” (De Giorgi, 2006, p. xi).

This overlapping has clear implications for capital interests as well, in that even the lowest strata of society present potential economic opportunity as consumers. Whether the sought-after earnings come from intermittent legal employment, the underground economy, or government benefits, capital interests operate on the imperative of funneling as much of this income as possible back into the ‘legitimate’ economy in which they participate directly.

⁴⁰ This assumes that the contemporary globalist political-economic elite would prefer to see such underground economies eliminated, which is far from a given. The Italian journalist Roberto Saviano – best known for his exposé on the Neapolitan Mafia, *Gomorrah* (2007), the success of which resulted in his being placed under indefinite 24-

and the indiscreet through law enforcement activity and subsequent imprisonment, political-economic elites ensure that these underground economies continue to thrive, while reducing associated behaviors that might impinge upon the conduct of legitimate economic activity. As an added benefit, individual consumers of these illicit products among the political-economic elite can continue to enjoy them, with a reduced fear of being caught up in the violence and other risks commonly associated with these industries and a higher confidence in product quality and customer experience⁴¹ (Martinez-Vazquez & Seaman, 1997; Ralph, 2010; Shleifer, 2004; Western, Kleykamp, & Rosenfeld, 2004; Venkatesh & Levitt, 2000).

3. Clientization: A term originally coined by the anthropologist Clifford Geertz in his attempt to describe the relationships that rationalized information exchange in the chaotic bazaars of mid-20th century Morocco (Geertz, 1978). One of the defining features of the transition to a service economy, clientization was later adopted by the human services field to describe the process by which individuals become passive in their regular interactions with ‘total institutions’ (Goffman, 2007 [1961]). I use the term expansively, in part to describe the basic relationship between buyer and seller that defines the contemporary service economy – “the tendency” as Geertz describes it “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, p. 30). This tendency is described by Geertz as essentially consumer-driven, whereas I would argue that in the contemporary context, contractual

hour *Carabinieri* guard due to credible death threats from his subjects – argues in *Zero Zero Zero* (2015) that much of the liquidity in the post-recession international banking system consists of narcodollars. Recent events like the \$1.9 billion fine paid by HSBC to the US federal government to settle charges the bank laundered money for drug cartels from Mexico and elsewhere in Latin America lend credence to this view (Smythe, 2013). The lack of criminal charges, and the paltry amount of the fine compared to the sums involved (\$670 *billion* in wire transfers, and \$9.4 billion in currency purchases), also raise questions about government complicity (Rolling Stone, 2012).

⁴¹ Per the above definition for “capital interests”, corporate decision-making processes are structured not only to benefit the profit-making capabilities of corporations themselves, but also the economic and social well-being of the owner classes. Self-report surveys (such as the National Survey on Drug Use and Health [NSDUH] and National Survey of Sexual Health and Behavior [NSSHB]) indicate that Americans consume illicit products and services at similar rates regardless of social class or ethnicity; it is therefore consistent to suggest that the owner classes have an interest in making the purchase and consumption of these products and services safer and more “customer friendly” (Substance Abuse and Mental Health Services Administration (SAMHSA), 2014, p. 26)

provisions (for private services like telephone networks, cable television, or internet-based entertainment services, to name a few), monopolies and other factors tend to empower the provider over the consumer in these exchanges.⁴² I also use the term, however, to 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 between these two parallel but functionally distinct definitions for the term are a wide variety of other exchanges that empower providers over ‘clients’, and are often supported with third-party (i.e. government) funds: the provision of medical services to Medicare or Medicaid recipients, the provision of ‘workfare’ training to those receiving public benefits, the provision of housing to ‘section 8’ recipients, etc.

In such 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 characteristics of the client – anything 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. While labor costs and traditional labor negotiations still play a role in these sectors – which, after all, do need to hire workers – they are often an incidental or secondary cost consideration next to the characteristics of individual clients upon which contracted pricing structures depend. The relationships that give rise to 3rd party/government contracts for various kinds of client services are again dependent upon the phenomenon of *marketization* described below and predominate in such marketized government sectors as benefits distribution, background checks and drug testing,

⁴² Real-world examples abound, but the online retailer Amazon.com provides a particularly archetypal one. Even where it is not the direct supplier for the purchase of consumer goods and services, it is likely to be the conduit, since its near-monopoly and brand saturation practically forces other suppliers to make use of its sales platform (Hernandez, 2014; Vara, 2015).

and healthcare (particularly Medicaid and Medicare, but recently services associated with the Affordable Care Act as well).

Late modern incarceration is, of course, another example of such a market, with prisoners in the client role and private prisons providing the service – often with secondary services such as health care, food services, communications services⁴³, etc. provided by yet another corporation. Community correctional services such as probation and parole, the monitoring of house arrest, and ‘reentry’ services are secondary markets within this category. Punishment, in contemporary America, serves the purpose of forcing those individuals with a limited value as laborers – and perhaps an inability to abide by the tenets of more voluntary provider-client relationships – into the position of prisoner-clients (or probationers/parolees, clients of drug courts or other specialized courts, clients of ‘alternative to incarceration’ services, etc.). The value of these clients, in the form of basic human or citizenship rights, is paid out by the state to capital interests⁴⁴ (Cabral, Lazzarini, & Furquim de Azevedo, 2013; Dolovich, 2005; Price & Schweser, 2010; Shelden & Brown, 2000; Smith & Hattery, 2007; Thompkins, 2010; Trujillo-Pagan, 2014). Joseph Carens, in his 2013 *Ethics of Immigration*, hints at how the human rights of immigrants are opened up to this sort of manipulation:

The claim that something is a human right says nothing about how that right or obligation is to be enforced. In fact, in the world today where human rights have come to play an important role, most human rights claims are enforced by states against themselves. That is, states themselves are expected to (and often do) limit their own actions and policies in accordance with the human rights norms that they recognize and respect. The very idea of constitutional democracy is built upon the notion of self-limiting government, that is, that states have the capacity to restrict the exercise of their power in accordance with their norms and values. And that is the framework within which [we must pursue] the discussion of immigration and citizenship[.]

(Carens, 2013, pp. 7-8)

⁴³ Phone calls and related contemporary communications services, such as emails and money transfers, provide a particularly stark example of this phenomenon, almost universally costing exponentially more for imprisoned individuals than for those in the outside world – and providing outsized profits for the capital interests involved in their provision. For a detailed journalistic account of these practices, see (Clifford & Silver-Greenberg, 2014).

⁴⁴ The client fees that form the economic basis of the prison sector and the immigrant detention sector – contractually mandated per-bed, per-day fees negotiated with local and state governments, and federal agencies – are set on the logic that there is a minimum cost associated with providing for the prisoner/detainee-client’s basic human and civil rights. The more expansive these rights, the higher the fees – a dynamic that explains, at least in part, the significantly higher profitability of the immigrant detention sector.

Carens' argument, while compelling, intends to set out the normative case for respecting immigrants' human rights rather than to make any observation about how they are actually treated within a neoliberal framework. In this case, human rights are indeed a widely accepted set of moral values, but are more often applied to the standards by which a given policy is carried out than any oversight of the policy as a whole. Thus, in immigrant detention, human rights claims obligate the government to provide a level of care to detainees in keeping with international standards for civil detention, but these claims (as interpreted by the state) neither call into question the policy of detention itself, nor provide an adequate mechanism for enforcement. As a result, the private/for-profit prison companies that contract with the government to provide detention services can manipulate human rights as a status value to increase profits. Human rights claims allow them to charge per-detainee, per-day fees predicated upon providing a level of service in keeping with those claims. Since there is no enforcement mechanism sufficient to ensure the contracted level of service is indeed maintained, corporations are able to convert these higher fees directly into profits.

4. *Marketization*: Finally, marketization provides the 'glue', as it were, that allows American capital interests to pull the seemingly diffuse and disparate relationships of late modern capitalism into a coherent and cohesive profit-making strategy. Political funding – deregulated with the advent of *Citizens United* and its successor cases – provides an unprecedented level of access to the legislative process (particularly through the direct model legislation and corporate-political forums organized by groups such as the American Legislative Exchange Council, or ALEC), allowing capital interests direct influence over all aspects of punishment, from the sorts of crimes to be targeted to the length of sentences, from the siting and construction of new prisons to the way that service contracts for those facilities are

allocated.⁴⁵ Prisoners' social relationships provide additional entrepreneurial opportunities, through the transportation of family members from their urban homes to the rural prisons where their loved ones are incarcerated, through the gifts and basic supplies family members purchase for prisoners and ship to them via specially vetted and approved vendors, through the exclusive monopoly contracts extended to phone service providers. Cultural products – from hip-hop music to clothing lines – play on the symbolic importance that prison holds for communities where incarceration has become a rite of passage. And legal statuses provide the justifications that keep the whole apparatus operating – from the 'felon' marker that (through collateral restrictions on employment, housing, education, etc.) virtually guarantees the US prison system a revolving population of return 'clients' (Travis, 2005), to the basic human and civil rights statuses that force states, localities, and the federal government to maintain minimum levels of spending on basic services – 'outsourced' to vendors who then undercut their quality in order to take the maximum possible profit from their provision.

The punishment marketplace

The *punishment marketplace* is a theory intended to explain the dynamics of contemporary American 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. I intend the name in part to distinguish it from its foundations in Rusche and Krichheimer's political economy of punishment, and in part to highlight the transactional mechanisms through which it functions. Federal policy inertia, and the concomitant weakening of federal authority, empower political-economic elites at the state and local levels to approach policy activism and innovation as *entrepreneurship*: a corporatized project of *benefit accumulation* intended to further the

⁴⁵ The work of Gilens and Page (2014) has demonstrated that capital interests exert greater influence over policy than popular opinion or other kinds of interest groups. While there is an argument to be made that this has long been the case, Gilens and Page's analysis suggests that the degree to which this influence has expanded in the late modern context of American neoliberalism is unique. Whether the same is true of the degree to which capital interests have exerted this influence to further the privatization of public goods is not a matter that Gilens and Page address.

concentration of fiscal profit, sociopolitical hegemony, security, and cultural dominance in private hands. American punishment (as typified by incarceration) may no longer function primarily as a tool for disciplining low-paid workers and deterring behaviors likely to reduce the value of their labor. Rather, this is one of its many possible functions in service of an American political-economic elite, limited only by their entrepreneurial acumen in the potential benefits to be achieved through punitive policy innovation. Private profit is indeed one of the key benefits available through entrepreneurial participation in the punishment marketplace, and provides the logic by which the marketplace operates (Clifford & Silver-Greenberg, 2014; Shelden & Brown, 2000; Trujillo-Pagan, 2014).

The punishment marketplace is the political economy of punishment through the lens of Harcourt's neoliberal penalty, an acknowledgement that punishment has changed and evolved in tandem with 'productive relationships.' It is, in effect, neoliberalism turned back upon itself, with market economics colonizing the very authoritarian structures and systems of punishment 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. Capitalized power enables the accumulative project of inequality that typifies neoliberalism, making the accumulation of capital and the pursuit of profit, into more than simply a fiscal pursuit, but a *political-economic* one. The market-*place* is where actors – in this case, local governments – compete for accumulative 'profit.' Punishment is only one of a wide variety of fields in which this competition takes place. The competition of localities for increasingly rare industrial sitings, or corporate headquarters, or municipal stadiums linked to professional sports teams⁴⁶, are all easily recognized examples. It may seem counterintuitive to

⁴⁶ There are a multitude of current and historical examples of this phenomenon, which stand out as particularly egregious cases of political-economic elites conspiring to concentrate public benefit in private hands. The recent deal for a new Detroit Red Wings stadium is archetypal in its staggering corruption: against the backdrop of Detroit's municipal bankruptcy – the largest in American history – the city "announced the public would cover nearly 60 percent of the cost for the team's new \$450 million, 18,000-seat arena" (Bradley, 2014). The deal was announced

characterize the kinds of competitions we see in corporate or stadium sitings as accumulative economic competitions involving local governments, given that these competitions generally feature local governments undercutting each other with tax breaks and subsidies that generally result in *negative* fiscal consequences for their budgets. We need to recognize, however, that government is a *locus* of political economic power, not an interest group in and of itself. Local governments, in the contemporary oligarchic political arrangements of neoliberal America, are themselves tools of power for local political-economic hegemonies (Gilens & Page, 2014). Local governments commonly involve political-economic elites in cooperative efforts to exercise political-economic power. Literal conspiracies do occur as part of these arrangements, despite Cavadigno and Dignan's skepticism, but conspiracies of power don't need to be literal. Sassen's 'impersonal machine' operates whether or not conspiratorial decisions are being undertaken by groups of men in proverbial smoke-filled rooms. Thus, the policies and practices of local governments, regardless of the specific field of play, serve to further concentrate political-economic power in the hands of the hegemonic local elite. Punishment allows a particular level of *flexibility* in this pursuit of power – flexibility being the characteristic feature of contemporary neoliberal *policy entrepreneurship* – thus allowing accumulative activity through economic, political, social, and cultural levers alike. In the punishment marketplace, schemes like the municipal fees and fines targeting the African American majority in Ferguson, Missouri (Berman & Lowery, 2015; USDOJ Civil Rights Division, 2015) exist alongside more traditional entrepreneurial ventures like private prison sitings (Corrections Corporation of America, 2013), providing local political-economic elites with a wide variety of tools to further their accumulation of capitalized benefit.

around the same time the city announced it would default on \$1.7 billion in pension liabilities, resulting in a 4.5% pension cut for all city employees – except, of course, police and firemen (Christoff, 2015).

Punitive immigration control in the punishment marketplace

The distinct legal status, cultural category, and economic position occupied by unauthorized immigrants render them equally distinct as objects of the punishment marketplace. The civil system of immigration control through detention and deportation mirrors the traditional criminal justice system, operating on parallel organizational principles and within an overlapping and interconnected infrastructure. As a marketplace, however, its distinctions arise from function rather than form, and the potential accumulative benefits associated with its targeted population of economically 'productive', low-wage laborers (as opposed to an economically 'unproductive' urban underclass). I have discussed above the political-symbolic importance of the distinct racial dynamics involved in the parallel systems, and outline below the characteristics that make unauthorized immigrants an economically unique population in the context of late modern, neoliberal capitalism:

1. *Abstraction* is a comparatively minimal force in the labor patterns of a significant majority of 'deportable' immigrants⁴⁷, who labor in sectors defined primarily by physically productive outcomes. Their labor patterns, in other words, fit the mold of more traditional/industrial Marxian concepts regarding material production. Labor concentration in sectors such as construction, agriculture, and low-skilled manufacturing leads to geographic patterns of distribution that are highly distinct from those of the urban underclass: rural rather than urban, homogeneous rather than diverse, in more frequent day-to-day contact with majority

⁴⁷ It is important to note here that, while a sizeable majority of the immigrants fitting into what I have described as the "deportable" category are undocumented (a category again made up of a majority of individuals of Mexican or Central American nationalities, whose original entry into the US occurred via an illegal crossing of the country's southern land border), a small proportion (ranging, in the 21st century, from 3 to 9% depending on the estimate) are lawful permanent residents (LPRs) for whom a criminal conviction has qualified them for deportation. While these LPRs are in some respects distinct from their undocumented peers (they tend to remain in detention significantly longer, for instance, are more likely to ultimately be granted relief from deportation, and marginally less restricted to low wage service industries in terms of their economic participation), they are certainly no less a potential source of profit in the punishment marketplace. In addition to being subject to the same market forces as their undocumented peers and family members, the social, cultural, and functional ties between LPRs and undocumented immigrants provide further justification for treating the two as subsets of a single essential group of "deportable immigrants" under the theory of the punishment marketplace (Chavez, Englebrecht, Lopez, Viramontez Aguiano, & Reyes, 2013; Human Rights Watch, 2009; Leerkes, Leach, & Bachmeier, 2012; TRAC Immigration, 2013)

populations rather than segregated and ghettoized.⁴⁸ Labor value, in any case, may be a significantly more important consideration for entrepreneurial entry into the *punitive immigration control marketplace* than with the parallel traditional punishment marketplace.

2. 'Deportable' immigrants represent a *consumer* group functionally distinct from the urban underclass. Empirical research has consistently shown that first generation immigrants have lower rates of criminal participation than their native-born counterparts (Sampson, 2008; Peri, 2009). Thus, rather than comprising "that segment of the surplus labor population which is most threatening to established interests" (D'Alessio & Stolzenberg, 2002, p. 178) through criminal behavior and spending in the underground economy, they instead participate in a parallel economy defined by remittances and Hispanic-owned businesses. They are largely ineligible for easy credit, have comparatively high rates of savings, and (as non-native English speakers) are less subject to advertising. For these reasons, coercion represents a direct means for political-economic elites (particularly *local* political-economic elites) to recoup the benefits of immigrant consumer spending that would otherwise remain out of reach.

3. A great many systems of *clientization* directed at the urban underclass – from those related to the criminal justice system, like community corrections and probation, to government benefits like Medicaid – cannot be applied to unauthorized immigrants. The civil system of detention and deportation is arguably more flexible and open to manipulation than the American criminal justice system. From standards of evidence (immigrants facing deportation hearings are not 'innocent until proven guilty', and their guilt need not be proved 'beyond a reasonable doubt' in order for them to ultimately be deported) to the right to representation (immigrants have no right to legal counsel – there is no equivalent to the public defender in immigration

⁴⁸ Consider, for example, a rural community in which the two largest employers are local agriculture, and a local prison. Members of the majority white population might encounter members of the (largely African American) urban underclass only as prisoners if they are employed at the prison; by contrast, they might encounter members of the (largely undocumented Mexican) agricultural workforce in a wide variety of everyday contexts.

proceedings), it is arguably significantly easier to detain and deport immigrants than it is to obtain a criminal justice system conviction leading to incarceration.

4. The *marketization* of immigrant detention and deportation apparatus occurs at a much higher rate than in the regular criminal justice system, with a majority of the 35,000 or so beds in the immigrant detention system owned and operated by private capital interests, versus some 10% of beds in the regular criminal justice system (Carson, 2014; Schriro, 2009).

Thus, in many respects, the immigrant detention and deportation system could provide the opportunity for a much clearer and simpler test of Rusche's hypothesis (or rather, a modified version) than the contemporary criminal justice system, concerned as it is with (1) a workforce (immigrants) operating largely in more traditional 'industrial'-style labor sectors; (2) a workforce *required* for these labor sectors and, unlike the majority of their native-born peers of a similar status, willing to work in these sectors; and (3) a system offering more flexibility and certainty than the parallel criminal justice system, with an already established prevalence of private corporate actors/capital interests (as opposed to government owned and operated facilities).

IV. Model and Methodology

The use of mathematical models may seem overly pretentious and indeed injects a note of pseudo-precision unless proper caution is exercised. A multiplicative formula [...] presupposes that each of the variables concerned can be measured[.] Actually, only N can possibly be measured with such a high degree of accuracy. The validity of the equation can therefore not be tested directly. As a mathematical or theoretical model it can be used, however, to derive certain conclusions which may be at least subject to indirect verification.

(Blalock, 1960, p. 55)

An empirical test of punishment marketplace theory

The purpose of the analysis that follows is to test the validity of the *punishment marketplace* and *enforcement entrepreneurship* theories that I have outlined above, in the specific context of

contemporary punitive American immigration control. I should stress this latter clause, as the theory laid out above is very much bound to the time and place of the post-Fordist, neoliberal United States. Just as the Rusche & Kirchheimer hypothesis was rooted in the productive relationships typical of industrial capitalism (and subsequently defeated by the transition to a neoliberal, post-Fordist, service economy and mass incarceration in the US), the *punishment marketplace* and *enforcement entrepreneurship* are fundamentally neoliberal concepts. I therefore expect them to operate consistently only where the neoliberal project of inequality is dominant. In places and eras where that project is strongly contested, or where alternative political-economic paradigms become preeminent, I expect its operation to be disrupted or even dismantled. I will discuss the latter possibility in more detail below when discussing policy implications.

The analysis follows the structure laid down by the original Rusche & Kirchheimer hypothesis only in its use of economic indices as independent variables and measures of punishment as its dependent variables. It diverges from this basis in a number of significant ways: (1) by acknowledging that labor force discipline or manipulation is only one of several areas of potential benefit associated with the punishment marketplace; (2) by adding cultural and practical measures of punitiveness to represent the relative development of a state's punishment marketplace; (3) by examining immigration control as the dependent form of punishment; and (4) by situating enforcement entrepreneurship at the local level and examining how the activity of local government entrepreneurs aggregates to the state level.

Accounting for this broad range of factors adds a layer of complexity to the analysis, but nevertheless preserves parsimony in the face of dynamics that are difficult to operationalize. I will engage with these issues more extensively when discussing the study's limitations in the conclusion that follows, and recognize that they may be a focus for criticisms of this work. The

argument herein hinges, however, on a distinction of purpose and rationale. The larger goal of this project is the elucidation of a macro-level, structural framework for a nationwide system of punishment to which millions of Americans⁴⁹ are (often arbitrarily) subject. Ultimately, the questions asked are questions about *why* so many Americans are facing punishment within this framework, as opposed to *what* the structural elements of the system are, or *how* it operates. While I do explore the latter questions here, they are not the *raisons d'être* for this study. The scholar interested in the *what* or the *how* has a great luxury of specificity; she can take a narrow, clearly defined structural element within the system that interests her, operationalize a clear mechanism for how this element does what it does, and test that operation with data that pertains only to the structural element of interest. A scholar interested in *why* the contemporary American system of immigration control operates as it does will not have these luxuries, and to pivot this analysis to a more discrete element of the system and its neoliberal structure (as it is theorized above) would be to betray the project as a whole. Complexities of operationalization within this system are a function of the multiplicity of local-level circuits of influence and decision-making processes involved – what Saskia Sassen (as quoted above) refers to as “a complex system that combines persons, networks, and machines with no obvious center” (Sassen, 2014, p. 10). Contributing to this system are cultural, social, and political dynamics, individual bias, discriminatory policy and practice, etc. I will provide, following the analysis, case study examples of how the dynamics of interest were operationalized in two states – New Jersey and Georgia – during the five-year data window under examination. However, the reality of an entrepreneurial set of processes, taking place in a system progressively colonized by neoliberal free market ideology, is that there are multiple combinations of ways to arrive at the same point. That point, ultimately, is deportation – the banishment of a human being from his home and community of residence. The analysis that follows helps us to understand the

⁴⁹ I utilize the term “Americans” throughout this work to refer to immigrants regardless of their legal status or citizenship status. This is based on Carens’ (2013) contention that membership is defined by social ties, and is intended to challenge specifically the widely held idea that undocumented individuals should be denied any claim to American identity.

structures of benefit and accumulation underlying the cumulative decisions that put many thousands of human beings through this brutal process. This understanding will help future scholars – and my own future scholarship – devise more discrete analyses to test the constituent elements of the structure proposed. Without the understanding provided here, however, those follow-up analyses would lack the broad contextual perspective that gives them meaning.

These tests are intended to provide an empirical indication of the degree to which the supposed public good of immigration control has become saturated with the logic of profit, and its decision-making processes colonized by benefit-seeking political-economic elites and overlapping profit-seeking capital interests. Profit and the accumulation of capital are not themselves public goods; in fact, they are intrinsically and by definition private, concentrating as they do resources and the benefits concomitant to them in the possession of individuals and private actors. The pursuit of profit and the involvement of capital actors are antithetical to the provision of public goods, and their involvement therein constitutes one of the gravest threats that contemporary democracy faces. This analysis is valuable to the extent that it provides empirical evidence showing that decision-making processes in immigration control are driven by market logic and the pursuit of private benefit rather than the public good – and raises questions about whether and how the US detention and deportation system benefits the public as currently structured.

Hypotheses

This analysis will provide a framework for future hypothesis testing regarding the functional nature of punishment in late modern, neoliberal capitalism – what I have theorized above as the *punishment marketplace* – and the *enforcement entrepreneurship* specific to local government actors in the field of immigration control. What follows is the first hypothesis testing related to these theories. It might seem equally fitting to test the premise of the original Rusche and

Kirchheimer hypothesis, which posits that the scale of incarceration in any given society varies directly and positively with unemployment, simply adapted to the context of the contemporary American immigration control system. Such an adaptation might proceed with a hypothesis along the lines of “the scale of immigrant detention and deportation varies directly with immigrant unemployment.” However, because the manipulation and disciplining of the labor force is one of many potential benefits available through entrepreneurial participation in the *punishment marketplace*, it is necessary to take an approach that accounts for this broader potential array of ‘profits.’ By including this expanded array of potential areas of benefit – of market accumulations of capitalized power – the analyses that follow will answer the following research question:

How, and to what extent, do macro-economic factors conditioning benefit affect the scale of local immigration enforcement⁵⁰ entrepreneurship in a given state?

Specifically, I use factor analysis to construct theoretically consistent multivariate factors representing *market scale*, *punitiveness*, *economic anxiety*, and *local enforcement*. The first three, which stand as the independent variables in the test, represent, respectively, the *scale* of the deportable immigrant population available in a given US state in a given year; the *economic significance* of the state’s punitive culture and pre-existing penal infrastructure; and the *economic anxiety* driving nativist calls to suppress immigrant labor force competition and exclude immigrants and their dependents from public benefits. The final, dependent factor, will represent the saturation of the state with *local immigration enforcement entrepreneurship*, or the mechanisms available to local governments to control or influence immigration enforcement, and derive economic benefit from immigrant detention.

⁵⁰ See footnote (5) above. The enforcement mechanisms that allow capital interests to benefit directly from the detention and deportation industry – effectively by allowing them to influence the flow of immigrants into the system – are most effective, flexible, and responsive at the state and local levels. See (Sullivan, 2010) for example.

Given the above factors, I hypothesize the following directional correlations:

Hypothesis 1: As market scale increases, local enforcement entrepreneurship will increase.

The most intuitive of the hypotheses I propose simply posits that the size of the deportable immigrant population (the ‘market’) in any given state predicts the level of participation by local governments in immigration control – the scale of *enforcement entrepreneurship*.

Hypothesis 2: The more punitive the state, the greater the scale of local enforcement entrepreneurship.

A prediction that the size of the state’s ‘punishment marketplace’, as defined by the raw scale and for-profit involvement in criminal justice system incarceration, as well as punitive political culture, will vary with the participation of the state’s constituent localities in immigration enforcement entrepreneurship.

Hypothesis 3: As economic anxiety increases, local enforcement entrepreneurship will increase.

This prediction is intended to account for generalized anxiety about the state’s economy, as well as specific anxiety about immigrants supposed participation in public benefits. Rising unemployment and rising populations of non-laboring undocumented immigrants will result in concomitant pressures to push deportable immigrants out of the labor market and state benefit systems into detention infrastructure.

Population and sample

This test of the *punitive immigration control marketplace* takes the 50 US states as its units of analysis, and examines the correlations between the three independent macroeconomic factors, constructed from publicly available annual economic and social indices, and a dependent factor

measuring the scale of locally-controlled immigration enforcement leading to detention. This structure owes a great deal to a previous pilot analysis conducted in 2013, using data for calendar year 2009 (Stageman, 2013). This pilot analysis established the validity of a very preliminary version of the current model, which has been heavily revised to reflect refinements of the punishment marketplace theory that it is intended to test. For the purposes of this study, the refined model tests correlations in data drawn from the years 2008 through 2012, for a total of five individual years of comparative static analysis. In addition, I present three longitudinal measures of the change-over-time in the same period –from 2008 to 2010, 2010 to 2012, and 2008 to 2012.

Testing the theory with a 50-state analysis follows the precedent set by Rusche and Kirchheimer and subsequent testers of their hypothesis, modified to account for the global-local rescaling of government authority typical of contemporary neoliberalism. Thus, rather than using individual nation-states as units of analysis, U.S. states are examined as the ‘containers’ of the marketplaces in which political-economic elites pursue accumulative political-economic strategies through local government policy entrepreneurship – in this case, in the field of punitive immigration control. It is appropriate in the contemporary neoliberal context to dispense with the conceit that the United States represents a consistent society or policy environment⁵¹, and instead posit the 50 US states as unique geographic units with meaningfully differential political, cultural, and social environments. Correlations between comparative rankings of the 50 US states on the three independent macroeconomic factors and the dependent factor of local immigration enforcement entrepreneurship illustrate the pervasive, colonizing influence of market logic and ideology.

⁵¹ While much has been made of the ‘Red State/Blue State’ model of political and cultural variance among US states, variance between the states making up these supposedly monolithic cultural constructs is often the more striking, particularly when considering immigration and punishment. The vastly divergent immigration experiences of Blue States such as California and Vermont, or Red States such as Texas and Idaho, are arguably as or more significant to those states’ respective policy frameworks than their liberal or conservative political establishments and philosophies of governance.

It is important to acknowledge here that county-level data has become something of a “gold standard” in the works of many of the leading researchers on contemporary US immigration policy – particularly those interested, as I am, in the devolution of immigration enforcement mechanisms from the federal to state and local governments (Pedroza J. , 2013; Ramakrishnan & Wong, 2010; Varsanyi, Lewis, Provine, & Decker, 2012). This strategy recognizes several essential realities of the devolution of US immigration enforcement: that many of the enforcement policy mechanisms in question are adopted and operated by local governing bodies such as counties and municipalities; that variation in a host of relevant factors – from cultural attitudes towards immigrants, to permissive or restrictive local ordinances – is likely to be as large or larger between localities within a state as between aggregate state level measures; that states are themselves to some extent arbitrary as containers of the localities that are the active policy entrepreneurs in the field. While recognizing the importance of county and other local-level variation in the factors tested here at the state level, there is clear justification for adopting a state-level approach. As the first test of its kind, this 50-state analysis offers a broad perspective for future researchers (including myself) to take as a basis for further testing of the punishment marketplace theory, particularly in the form of local- or county-level case studies informed by its findings. Indeed, the first steps toward two case studies of this nature, through brief qualitative examinations of the dynamics active in specific localities of Georgia and New Jersey, follow this analysis. Case studies such as these give a better understanding of the wide variety of ways in which enforcement entrepreneurship can be operationalized. It is the nature of factor analysis to provide analytical breadth, in that it utilizes aggregate means to bring to light latent commonalities (or underlying factors) in the covariation of multiple discrete variables (Fabrigar, Wegener, MacCallum, & Strahan, 1999; Russell, 2002; Suhr, 2009). Markets are themselves aggregate fields given shape and form by the dynamic interaction of individual actors within them. This analysis provides an overview of the punitive immigration-

control marketplaces state-by-state. Doing so makes it possible for future research to focus on the enforcement entrepreneurship of the local governments competing within them.

Data Sources

In selecting data sources for this study, I followed the precedent already established in my pilot study of 2009 data (Stageman, 2013), and used primarily publicly available, open source data from federal agencies and established, well-respected research institutes to source the variables used in the analysis. The exact sources for each variable used are delineated below:

- 1) State's total population of unauthorized immigrants: Annual estimates from the Pew Hispanic Center, for 2008 (Passel & Cohn, 2009), 2009 and 2012 (Passel, Cohn, & Rohal, 2014) and 2010 (Passel & Cohn, 2011).⁵²
- 2) Non-citizens as proportion of state's total population: Annual estimates based on the US Census Bureau's *American Community Survey Briefs on Nativity Status and Citizenship in the United States*. For 2008, (U.S. Census Bureau, 2016a); for 2009, (U.S. Census Bureau, 2016b); for 2010, (U.S. Census Bureau, 2016c); for 2011 (U.S. Census Bureau, 2016d); for 2012 (U.S. Census Bureau, 2016e)
- 3) Unauthorized immigrants as a proportion of state's total labor force: Annual estimates from the Pew Hispanic Center. For 2008 (Passel & Cohn, 2009); for 2009 and 2012 (Passel, Cohn, & Rohal, 2014); for 2010 (Passel & Cohn, 2011). 2011 estimates unavailable; imputed as average of 2008,'9,'10, & '12. While Pew reports include both numerical and proportional totals, proportional totals used in analysis were reached via

⁵² 2011 estimates unavailable; imputed as average of four available years. This crude method of imputation does not present a significant problem since (1) there are four other annual cross-sectional analyses; and (2) imputed 2011 data has no impact on any of the three longitudinal analyses.

dividing numerical totals by state's total civilian labor force, as reported in annual employment data from the Bureau of Labor Statistics - 2008 (U.S. Bureau of Labor Statistics, 2016a), 2009 (U.S. Bureau of Labor Statistics, 2016b), 2010 (U.S. Bureau of Labor Statistics, 2016c), 2011 (U.S. Bureau of Labor Statistics, 2016d), 2012 (U.S. Bureau of Labor Statistics, 2016e).

- 4) State incarceration rate per one hundred thousand residents: Annual estimates from Bureau of Justice Statistics *Prisoners* bulletins for given year. For 2008 (Sabol, West, & Cooper, 2009); for 2009 and 2010 (Guerino, Harrison, & Sabol, 2011); for 2011 (Carson & Sabol, 2012); for 2012 (Carson & Golinelli, 2013 [Rev. 2014]).
- 5) Number of prisoners held in for-profit facilities located in the state: Annual estimates from Bureau of Justice Statistics *Prisoners* bulletins for given year. For 2008 (Sabol, West, & Cooper, 2009); for 2009 and 2010 (Guerino, Harrison, & Sabol, 2011); for 2011 (Carson & Sabol, 2012); for 2012 (Carson & Golinelli, 2013 [Rev. 2014]).
- 6) Proportion of state's total legislative seats occupied by Republicans: Annual counts from the National Conference of State Legislatures (NCSL). For 2008 (NCSL, 2016); for 2009 (NCSL, 2009); for 2010 (NCSL, 2010); for 2011 (NCSL, 2011); for 2012 (NCSL, 2012). Party affiliation of representatives in Nebraska's non-partisan unicameral not reported by NCSL; since the measure is intended in part as a cultural proxy for residents' adherence to punitive ideology, I sourced party affiliation of Nebraska unicameral representatives from the *Nebraska Blue Book* for the appropriate legislative session. For 2008 and 2009, (Nebraska State Legislature, 2009); for 2010 and 2011 (Nebraska State Legislature, 2011); for 2012 (Nebraska State Legislature, 2013).

- 7) Proportion of state's total labor force unemployed: Annual estimates reported by the US Bureau of Labor Statistics. For 2008 (U.S. Bureau of Labor Statistics, 2016a), 2009 (U.S. Bureau of Labor Statistics, 2016b), 2010 (U.S. Bureau of Labor Statistics, 2016c), 2011 (U.S. Bureau of Labor Statistics, 2016d), and 2012 (U.S. Bureau of Labor Statistics, 2016e).
- 8) Proportion of state's total unauthorized immigrant population not participating in labor force: Using annual estimates of state total unauthorized immigrant population and state population of immigrants participating in the laborer force from the Pew Hispanic Center, subtracted the latter from the former and divided result by state total unauthorized immigrant population. Negative results adjusted upwards to zero. For 2008 (Passel & Cohn, 2009), 2009 and 2012 (Passel, Cohn, & Rohal, 2014) and 2010 (Passel & Cohn, 2011). 2011 estimates unavailable; used imputed average of 2008,'9,'10, & '12.
- 9) Average daily population of immigrant detainees within state: Manual summation of facility-by-facility ADPs provided by US Immigration and Customs Enforcement in response to FOIA requests 10-1241 and 15-90926. The first, covering fiscal years 2007-9, was made publicly available on the ICE website's FOIA Library (<https://www.ice.gov/foia/library>); the second was provided to me directly by ICE in October of 2015, in response to a FOIA request I submitted in August 2015. Thus for 2008 and 2009, (U.S. Immigration and Customs Enforcement, 2010); for 2010-12, (U.S. Immigration and Customs Enforcement, 2015)
- 10) Total number of 287(g) memoranda of agreement active with law enforcement agencies within the state: Manual summation of data from a wide variety of cross-referenced sources. Significant conflicts exist in year-by-year reports of state-level totals, depending

on the source. Much of this conflict results from two issues: (1) ICE is inconsistent in its approach to publishing and specifying whether published MOAs represent the original agreement signed with a particular local agency, or a renewal; (2) ICE generally does not publish notices in cases where MOAs have been rescinded by one party or the other. These issues result in further confusion among secondary sources. I thus made every effort to cross-reference and triangulate sources to achieve accurate year-by-year counts. Sources include: Apsan, 2010; Berestein Rojas, 2012; Bloom, 2009; Capps, Rosenblum, Rodriguez, & Chishti, 2011; Committee on Homeland Security, 2009; Hing, 2009; Lacayo, 2010; Office of Inspector General, 2010; Rodriguez, Chishti, Capps, & St. John, 2010; Vaughan & Edwards Jr., 2009, along with various versions of U.S. Immigration and Customs Enforcement, 2016 checked periodically over the time period covered in the analysis using the *Wayback Machine* website.

- 11) Proportion of law enforcement jurisdictions within the state activated under the Secure Communities Program: In response to an unidentified FOIA request, ICE published via its online FOIA library a comprehensive data set relating to the Secure Communities Program, including activation dates for every law enforcement jurisdiction in the United States (as well as monthly apprehension data for each of these jurisdictions with conviction category – of tremendous value for future research on the program). While the original document was published in pdf form, I used conversion software to produce an excel database, from which I manually calculated annual proportions for each of the 50 US states. For all years, U.S. Immigration and Customs Enforcement, 2014.

Variables & key concepts

Per the discussion above, I have opted to use factor analysis to essentially construct composite variables, which will then be ranked and the association of which will be measured with

univariate crosstabular correlations and multivariate OLS regressions. The rationales for these factors, and the variables that make them up, are outlined below.

Independent factor 1: Market scale

Logically, the size of the punitive immigration control marketplace in any given state must have some relationship to the number of deportable immigrants present there. The effect of clientization within the punishment marketplace can also be understood as a kind of commodification, wherein deportable immigrants are analogous to natural resources and detention to the extractive industry that processes them. To the extent that deportable immigrants are present, visible, and accessible they can be moved into the detention and deportation system through locally-controlled enforcement activity, and thus onto the balance sheet of a cooperating for-profit detention provider as clients. To place the metaphor in a free market framework, resource extraction can't be profitably undertaken 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 estate⁵³; similarly, immigrant detention cannot operate as an extractive process where few or no deportable immigrants are present, where they are difficult to locate and to draw into the clientization processes (i.e., to arrest and detain), or where they are more profitably subjected to exploitation within the labor market.

While localities in states like Arkansas and Oklahoma can (as described above) make entrepreneurial entries into the enforcement marketplace in the absence of a significant

⁵³ Of course, while the recent fracking boom does much to draw the comparison into question, it is perhaps worth considering the viability of an extended metaphor tying this practice to some of the more economically self-destructive restrictive state immigration laws and local ordinances.

unauthorized immigrant community as that enforcement's object, even the political-symbolic benefit of their entry will be limited relative to the real – and the perceived – scale of the immigrant community against which that enforcement is directed. Nativism in Arkansas or Oklahoma might be driven by a local perception that a flood of undocumented Mexican immigrants is pouring into the nation writ large. This generalized nativism might well drive support for nativist candidates for national election but is less likely to drive support for the election of a nativist local sheriff. If there is no visible local community of immigrants (undocumented and/or otherwise) to serve as a specific target for their otherwise generalized fears, unauthorized immigration will naturally have less political salience as a local issue. So, both the perceived and actual size of the undocumented immigrant population in any given state provide the basic scale of the state's immigration enforcement market, setting the underlying conditions from which enforcement participation derives its various benefits.

Accordingly, the following three variables make up the *market scale* factor: 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*.

Total population of undocumented immigrants living within the state: The state's total population of unauthorized immigrants straightforwardly represents the total potential extractive profit—its total reserves (excepting deportable LPRs), to extend the natural resource metaphor. Texas, for example, has an estimated 2012 population of 1.65 million unauthorized immigrants; Alaska had less than 10,000 (Passel & Cohn, 2011). Given an average of \$159 per day in fees and an average stay in detention of 30 days, Texas' unauthorized immigrant population represents a potential extractive value of \$7.6 billion for the for-profit detention

industry, versus approximately \$47 million for Alaska. Given these differences, it is only logical that Texas should host significantly more detention activity than Alaska.

While important in determining the potential scale of a state's detention infrastructure, the total population of undocumented immigrants within the state is of course not the only potential population from which to draw detainees. It is not uncommon for immigrant detainees to be transported some distance from their state of residence to await eventual deportation far from their families, friends, and lawyers (for those who can afford them, in any case). Indeed, there are high-quality journalistic investigations of communities and private sector partners undertaking speculative facility-building or expansion and subsequently lobbying the federal government to help them make good on the investment with immigrant detainees transported from distant locales (Rappleye & Riordan Seville, 2012). While this is certainly a valid local entrée into the immigration enforcement market, the value being pursued is almost exclusively direct and indirect (i.e. job creation, etc.) economic benefit. This is substantially different than the examples of Maricopa and Pinal counties in Arizona, which entered into the detention market in tandem with other kinds of entrepreneurial local enforcement (i.e. 287g, SComm), amplifying the benefit of these activities across multiple categories: political-symbolic, labor market discipline, social exclusion, as well as direct and indirect economic benefit. The potential benefit for Maricopa and Pinal is in large part relative to their (and, in turn, Arizona's) sizable undocumented immigrant populations. The converse is likely true of the lesser value of local enforcement entrepreneurship in states with low undocumented populations such as Oklahoma or Arkansas.

Non-citizen proportion of state's total population: I include this broader calculation of the state's total non-citizen (authorized or otherwise) population for two primary reasons: first, because potential detainees, while primarily drawn from the unauthorized immigrant

population, can also include any non-citizen – from exchange student to lawful permanent resident (LPR) – who has accumulated a criminal record (no matter how minor the offense). Indeed, while this population over the period of examination represents under 10% of total deportees, it is a population that ICE has pursued quite vigorously in recent years, given that they fall within the agency's publicly stated priority target groups.

The second reason for including this variable is to account for the *perception*, as mentioned above, of a state's (unauthorized) immigrant population, in addition to that actual population – in other words, the accessibility of deportable immigrant populations within the state. 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 state's native born citizenry alike. I use the non-citizen percentage of the population in addition to 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. While these measures do tend to vary together, they remain distinct; in addition, I use a proportional measure here to further highlight the essential importance of perception to the political symbolic value of enforcement entrepreneurship. A highly populous state might have a large absolute number of unauthorized immigrants among its population, allowing for profitable detention entrepreneurship to occur there; if, however, the state's immigrant population is *proportionally* small, they will be less of a noticeable presence in daily life, and therefore less of a direct affront to that state's nativist voters. Since such voters will likely not differentiate between authorized and unauthorized immigrants in their emotional/psychological reaction to encountering them (whether directly or indirectly), I use proportion of non-citizens as a whole rather than proportion of undocumented immigrants to measure awareness and visibility of immigrant communities in each state.

Unauthorized immigrant proportion of state's total labor force: To introduce further specificity into the model, I also include a measure of the proportion of the given state's labor force made up of undocumented immigrant workers. As unauthorized immigrant participation in the labor market rises, native workers' awareness of the competition they represent may well rise with it. Though tolerance levels for unauthorized immigrants' labor force participation may vary from state to state, I proceed on the assumption (based in minority threat theory) that the acceptability of detention as a disciplinary tool and a salve to the anxieties of native workers (a significant aspect of enforcement entrepreneurship's political-symbolic benefit) rises proportionally with unauthorized immigrants' labor force participation. 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, labor force manipulation and discipline is an important function of punitive immigration control. Labor exploitation of immigrants on the whole likely presents more benefits to local political-economic elites, including significantly more potential for financial profit, than any specifically economic enforcement activity directed at immigrants. While there is some potential covariance between this measure and the distinct measures of economic anxiety also included in the model, its intent here is not to capture nativist economic anxiety as directed at immigrant workers, but to capture the potential labor force disciplinary value of entrepreneurial entry into the punitive immigration control market by local government actors in any given state. That this benefit requires the *presence* of unauthorized laborers in a jurisdiction to potentially derive value from immigration enforcement entrepreneurship is a given; that it is a proportional benefit may be open to argument. However, I contend that the calculus surrounding the decision by local government actors to enter into the immigration enforcement marketplace is one that is at least partly based on a rational determination of expected return on investment; while I am not suggesting that law enforcement administrators or local political leaders consider federal

enforcement agreements in terms of their expected disciplinary effect on the local immigrant labor market, I do contend that a consideration of its effects on unauthorized immigrant workers is a likely aspect of the given decision-making process. The loss of employment opportunities to immigrants is more often cited than supposed immigrant criminality as the primary concern of nativist voters related to unauthorized immigration (Silva, 2015). Its likelihood as a consideration in entrepreneurial enforcement decisions can be expected to follow similar lines.

I expect these three measures to co-vary significantly, while representing distinct and mutually reinforcing basic considerations in the local decision-making process surrounding immigration enforcement entrepreneurship.

Independent factor 2: Punitiveness

Because punitive immigration control is both theoretically and practically embedded within the structures of regular criminal justice system punishment, the scale of a given state's *punishment marketplace* should correlate with the scale of punitive immigration control. This factor accounts for the state's established correctional infrastructure, which can be repurposed for more fiscally profitable immigrant detention – in effect, the capital already present in the state to be invested in 'extractive' detention. It also reflects general punitiveness within the state's cultural context, which conditions the corollary benefits of punishment entrepreneurship (primarily political-symbolic) for local governments within the state. The nature of these benefits has been discussed at length above, as parallel to and overlapping with the potential benefits of immigration enforcement entrepreneurship. It is distinct, however, in that it generally targets the distinct population (i.e. primarily low income African American residents) against whom criminal justice system punishment is directed. While these potential values will, of course, vary enormously from state to state, depending in large part on the racial makeup of

each state's population, I expect that they are sufficiently interrelated to the values of immigration enforcement entrepreneurship that they will co-vary significantly with it. In concrete terms, this covariance arises with the various mixed-use facilities in which immigrants facing deportation are often held, alongside sentenced federal prisoners, federal arrestees awaiting trial or transportation, and even state and local pre-trial detainees.

State incarceration rate (in state and federal facilities) per 100 thousand population: Arguably the most basic measure of correctional system development available, incarceration rate is also the dependent variable in Rusche and Kirchheimer's univariate measure of punitive labor force manipulation and discipline in the political economy of punishment. For the purposes of a marketplace model, it also likely provides a solid, basic measure of the economic importance of criminal justice system punishment in any given state, the breadth and depth of incarceration's involvement in the state's economy. Because speculative facility-building may in fact not include consideration of the population eventually to be detained, but rather be approached by local government actors and their private sector partners as a purely entrepreneurial economic consideration, it also provides a broad measure of detention market opportunity at the state level. Speculative facility-building is likely to be considered a 'safe' entrepreneurial venture in proportion to the hosting state's overall punitiveness, considering the state as the likely first-line target for providing a speculatively built facility its necessary 'clients.'⁵⁴

It is important to stress that, while regular criminal justice system incarceration is a market-involved activity (i.e., open to participation by for-profit corporations seeking to accumulate capital), its economic significance is not limited to the participation of for-profit actors. The

⁵⁴ This assumption is borne out by private prison industry documents such as the Corrections Corporation of America's 2012 Annual Report, which states (as one of the company's competitive strengths) "the severe budget challenges many of our [state correctional system] customers currently face... put further pressure on our customers' ability to construct new prison beds of their own, which we believe could result in further reliance on the private sector for providing the capacity we believe our customers will need in the long term" (Corrections Corporation of America, 2013, pp. 17-18).

state incarceration rate should also provide an indirect measure of capital investment in, and 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. This measure of the economic involvement of punishment is not distinct from a cultural measure of punitiveness, but rather intertwined with it, as a culturally punitive population is also more likely to look positively on speculative prison-building, expansively on prison-siting, and receptively at potential employment within the corrections field.

Number of state and federal prisoners held in private prison facilities in the state: The raw number of private prisoners in a given state is the best readily available measure of the extent to which a state's existing punishment infrastructure is incorporated into a punishment marketplace operating under capitalist economic principles. More broadly, it provides a better measure of the potential direct political influence of private, for-profit prison corporations on government legislative or administrative decision-making processes at the state and local levels. As with any corporate interest, private prison corporations invest in lobbying efforts in a given state in proportion to the importance of business in that state to their overall portfolio (Berestein, 2008; Mason, 2012; Ortega, 2011). Corporations such as the Correctional Corporation of America (CCA), the GEO Group, and the Management and Training Corporation (MTC) invest strategically in lobbying efforts to protect and expand their existing business ventures. It is true that the number of private prisoners in a given state will not provide a measure of forward-thinking lobbying investment, or local government joint venture proposals, in states where the market is underdeveloped but conditions seem ripe for expansion. However, it is safe to assume that these corporations invest in their government interface efforts

proportionally to their existing business in a given state, and that the next variable included provides them with a useful measure of the potential for expansion in a given state's current policy environment. Finally, a sizeable and well-developed for-profit corrections sector indicates the saturation of the state's power structures and cultures with neoliberal, free-market ideology, and should therefore correlate with similar free market approaches in other (especially parallel) sectors.

Proportion of the state's legislative seats held by Republicans: The current 'right on crime' movement, along with criminal justice reform efforts underway in Republican-governed states such as Texas and Georgia, might appear to complicate the traditional association of Republican lawmakers with the 'law and order' orientation that accelerated mass incarceration to its current levels. The relative youth of these efforts, however, means that they fall definitively outside of the period (2008-12) under examination in the current analysis. While it is true that the aggregate national incarceration rate dropped for the first time in 20+ years through the latter half of this period in response to budgetary constraints related to the 'great recession,' the fact remains that the covariance of Republican control with high rates of incarceration and high numbers of private prisoners remains consistent throughout the years (and the two national elections) under review. While again a broad measure of punitiveness and market ideology (and the interaction between the two) among the state's political elite, this variable should also provide a measure of median cultural values at the aggregate state level. Republican Party membership and conservative political leanings have long been strong predictors of nativist sentiment, fear of crime, and white working class economic anxiety. These cultural contexts provide a firm and ideologically consistent basis for entrepreneurial entry into the immigration enforcement market; as a measure, I expect Republican control to serve as a strong predictor of the likelihood that any given local government official within the state will hold the conservative cultural values and neoliberal ideological positions upon which I posit most entries into the

immigration enforcement market will be based. Additionally, even where local officials may not sincerely hold these beliefs, Republican control may influence entrepreneurial decisions to enter the immigration enforcement market based on political or economic expediency.

I expect the factor score measuring punitive entrepreneurship to be a significant predictor of local participation in the immigration enforcement market at the state level, independent of market scale.

Independent Factor 3: Economic Anxiety

The last independent factor under consideration is a simpler concept than its title implies.

Assuming, as this model does, that economic anxiety, particularly on the part of working class whites, is a significant inspiration to general and specific expressions of nativism, how do I measure this economically-inspired nativist ideology? I create a factor from the following variables:

State's mean annual unemployment rate: A basic measure of working class economic anxiety, and the independent variable of interest in traditional analyses under the political economy of punishment. Job loss represents the single most significant economic fear for most working class Americans, as everything from continued credit to retirement prospects to food and housing security depends on it, in the post-Keynesian absence of a viable and comprehensive social safety net. Immigration enforcement entrepreneurship may appear to be an attractive option in high-unemployment communities for a wide variety of reasons: nativist reaction to high unemployment rates by working class whites invests enforcement entrepreneurship with a high symbolic political value; social exclusion and labor market discipline may extend value to actual or perceived efforts to limit unauthorized immigrant competition for employment and social benefits alike; the prospect of employment and related community-level economic stimulus related to the construction and operation of detention facilities may appear to hold the

potential to mitigate economic problems related to manufacturing job losses. Thus unemployment (which can reasonably be expected to affect unauthorized workers proportionally), along with both the specific and generalized anxieties it produces, positively influence the decision-making processes behind immigration enforcement entrepreneurship, at the community-cultural and local government policy levels alike. To the extent that detention and deportation serve the labor force disciplinary function traditionally attributed to criminal justice system punishment (De Giorgi, 2010; Jankovic, 1977), it is within this factor that it is likely to exert an observable effect.⁵⁵

Proportion of the state's total population of unauthorized immigrants not directly participating in the labor force: I include this variable in an effort to capture a more specifically nativist direction for economic anxiety than would be possible with unemployment alone. In addition, this variable speaks directly to the social exclusion aspect of enforcement entrepreneurship, in which nativist sentiment focuses on immigrant dependents rather than immigrant workers. Intended as a measure of the proportion of a given state's unauthorized immigrant population that is not working, this population should include dependent children and spouses, unemployed and disabled immigrants – the part of the unauthorized population most likely to rely on social benefits to fulfill their basic needs. These unauthorized dependents (and other individuals not participating in the labor force) can be drawn into extractive market activity — can, in effect, be treated as clients, providing the dual benefits of direct profits and the disciplinary effect of incarceration on the remaining labor force — without any direct effect on potential exploitative activity (i.e. a reduction of the productive labor force available for low-

⁵⁵ While the mechanism of action here is distinct from that suggested by Rusche and Kirchheimer (with rising unemployment increasing the tendency for native workers to elect anti-immigrant politicians, rather than rising unemployment leading the government to increasing reliance on criminal justice system punishment) the primary effect is the same: maintaining conditions that allow for the greater exploitation of labor.

wage employment)⁵⁶. Social benefits here include basic services such as public education, public safety (particularly salient for the law enforcement agencies most involved with local immigration enforcement entrepreneurship), and emergency room care, as well as the more stereotypical ‘welfare benefits’ such as cash support and food stamps, public housing, Medicaid, etc. While the former category includes benefits that unauthorized immigrant children and other dependents likely *do* participate in, and the latter consists largely of benefits they are merely *perceived* to take advantage of in nativist discourse, there is little distinction in terms of producing economic anxiety channeled into nativist sentiment. However, unauthorized immigrant children and the American-born offspring of unauthorized parents, by virtue of being largely Hispanic and thus (in many cases) visibly ethnically distinct from their white, native-born classmates, increase the public visibility of the unauthorized population in any given community, leading to the specific nativist discourse that condemns unauthorized immigrants for ‘stealing’ benefits to which – owing to their ‘illegal’ status – they are not entitled. While difficult to measure (as, essentially, an estimate derived from the difference between two separate estimates), it provides an important representation of the social exclusion element of punitive nativist discourse – and thus should vary with the instrumental approach to immigration enforcement entrepreneurship that allows it to be directly exercised by local governments against the unauthorized immigrant members of their constituent communities. These individuals may also represent some proportion of the deportable immigrant labor force whose refusal or failure to engage in productive labor necessitates the application of the punitive “discipline” discussed above – or those who can be disciplined, as an example to the productive deportable immigrant labor force, without a significant effect on overall labor force productivity.

⁵⁶ I acknowledge here that the decision-making process I intend this variable to proxy is a diffuse one, involving numerous actors, policies, and practices. I believe it to be consistent, however, with the nativist belief system that underpins much of the necessary decision-making implicit in this theory at the level of voter behavior, state and local policy, and law enforcement practitioner decision-making regarding targeting and arrest.

The factor incorporating these two variables should provide a measure of the extent to which economically-situated nativist anxiety influences local government decisions to enter the immigration enforcement marketplace.

As a whole, my intention is to map the contours of a system, ostensibly under complete federal jurisdiction and control, that is in fact significantly conditioned by state-level factors relating to market considerations: the potential value (both in terms of direct financial gain and profit, and less tangible but no less real values such as political symbolic, labor force disciplinary, and social exclusionary) inherent in the market's objects (deportable immigrants); existing 'business infrastructure' in the form of public and private correctional systems (and the bureaucracies that sustain them); and dynamic economic factors that contribute to the cultural conditions that open the market to profitable investment. In doing so, it is not necessarily my intention to add to the established narrative of federal weakness or powerlessness in the face of the neoliberal project. On the contrary, it should be clear that rational, intentional federal action by the executive branch (in particular), but also the legislative and judicial branches, could fundamentally withdraw the conditions that allow local immigration enforcement markets to exist. It is only with the complicity of federal policy that these market conditions continue to persist, and that local government and private sector actors are allowed the level of influence and control over the lives of a given state's undocumented residents, and other deportable immigrants, that my data indicate. Indeed, even throughout the course of the period under analysis – arguably the period during which the federal deportation system and nationwide immigrant detention archipelago reached its peak operations – there appear to be clear points where federal actions limited the freedom of local government and private sector actors to pursue value in the immigration enforcement market. Indeed, it is equally clear that both pro- and anti-immigrant policy activism among state governments held the potential to further limit – or expand – freedom of action in the immigration enforcement market for local governments.

As actions on both of these levels are essentially exogenous to the model under examination in the analysis that follows, I can only speculate as to where I see evidence of their influence. The fact remains, however, that federal complicity is a necessary (though not sufficient) condition for the model to operate at all; while I am not assessing the ease or difficulty with which this complicity might be withdrawn, if it was, I would expect the model proposed here to become irrelevant. Contrary to the more radical or libertarian free market economic theories preferred by contemporary conservative politicians, government action does not hamper the 'natural' economic dynamics represented by market systems, but rather sets the conditions that allow those markets to exist. The immigration enforcement market is a prime example of this concept: should the federal government withdraw the conditions that allow this market to exist, a new organizing principle would need to be found around which to order the American immigration enforcement apparatus. Whether that principle would represent an improvement is equally dependent upon federal decision-making; however, in the author's opinion, it is difficult to envisage a system worse than the current one.⁵⁷

Dependent Factor: Local Enforcement Entrepreneurship

The entry by local governments, generally in cooperation with for-profit partners, into the immigration enforcement market in pursuit of benefit in any given state is the variable of interest in the current analysis, along with a broad sense of the scale of investment behind that entry. While a difficult concept to capture precisely, I approach it here with a 3-variable factor constructed of (1) the state's average daily population (ADP) of detained immigrants; (2) the total number of 287g memoranda of agreement active in the state for the entire given year; and (3) the proportion of jurisdictions (counties) in the state with activated Secure Communities agreements. Given the theoretical construction of independent proxy variables into broader

⁵⁷ Although a President Trump would almost certainly devise one.

underlying factors, it is both conceptually and methodologically appropriate to treat the dependent variables of interest in a similar fashion.

Average daily population (ADP) of detained immigrants: Detention itself is, within the theoretical framework of the punishment marketplace, the fiscal 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. As outlined above, this variable is calculated from data provided directly by ICE through a Freedom of Information Act (FOIA) request. In response to two separate requests, ICE provided facility-by-facility breakdowns of average daily population for the entire population of facilities in which immigrants are detained. Only facilities with an average daily population of at least one were counted in each state's tally. While this could conceivably lead to a small proportion of the population not being counted, facilities with an ADP of less than one are less likely to represent enforcement actions motivated by economic decision-making on the part of the facility's administration or local government in any case; given that the average cost of bed-day cost of detaining an immigrant during the period under consideration was approximately \$150, these zero-ADP facilities would have hosted less than \$27,000-worth immigrant-detention-related economic activity. It bears mention that this variable is most likely to capture direct economic value in any case, as the symbolic visibility of individual immigrant detainees in any given community is likely to be minimal (although the visibility and potential political-symbolic benefit of a *detention center* could be significant).

Total number of 287g memoranda of agreement active for full year: A clear example of federal intentionality and complicity in the decentralization and neoliberal marketization of immigration control discussed above, a 287(g) agreement effectively deputizes local law enforcement personnel to subsume the enforcement functions of the federal government. While

an entrepreneurial county sheriff might conceivably pair an active 287(g) agreement with an Intergovernmental Service Agreement (IGSA) to house detained immigrants in a county jail under his control for a profitable per-bed, per-day fee (as indeed has been the case in Maricopa and Pinal counties in Arizona, among others around the nation), thereby completing the circuit that links politically beneficial on-the-ground enforcement with the fiscally profitable back-end activity of detention, a 287(g) agreement is commonly most valuable for the former.

Demonstrating to nativist voters that a sheriff or other municipal and county government officials are taking a proactive approach to the scourge of ‘illegal immigration’ in the community of their authority, it carries the added value of tacit federal acknowledgement of abrogation of its immigration enforcement duties – a popular nativist trope that conservative state and local politicians are quick to turn to their electoral advantage. Thus, in a state such as Arkansas or Oklahoma, while a 287(g) agreement might indeed have an effect tangible to the small immigrant populations in the communities where they are enacted, the benefit being pursued by the local authority entering into the agreement is primarily that of political theater, rather than the potential for direct financial/economic gain.

Proportion of jurisdictions in the state with activated Secure Communities agreements:

Arguably the trickiest of the dependent variables within the model, the Secure Communities program began in 2008, with an incremental rollout nationwide over the next several years, until the federal government instituted total coverage nationwide in 2012. As federal decree is exogenous to the model (as it effectively counters the argument that local actors set the geographic scope and scale of the detention market), Secure Communities is highly significant to the model from 2008 through 2010, remaining relevant in 2011, but rendered unusable by federal decree in 2012. Further complicating the examination of SComm is the fact that the program was discontinued in 2014 by the Obama administration, in the face of mounting criticism that the program as implemented did not match with ICE’s stated priority on deporting

criminal immigrants, and replaced by the Priority Enforcement Program (PEP) in July 2015 (US Immigration and Customs Enforcement, 2015).

SComm was described by official ICE materials in 2014 as “a simple and common sense way to carry out ICE’s priorities... us[ing] an already-existing federal information-sharing partnership between ICE and the Federal Bureau of Investigation... [L]ocal jurisdictions... share the fingerprints of individuals who are arrested or booked into custody with the FBI to see if they have a criminal record. Under Secure Communities, the FBI automatically sends the fingerprints to DHS to check against its immigration databases” (US Immigration and Customs Enforcement, 2014). Simple enough, indeed, in its technical requirements; potentially adding a tremendous layer of complexity for law enforcement agencies in their everyday interactions with the immigrant communities they serve. Fears about breakdowns in community relations and an enormous disincentive to crime reporting by immigrant crime victims at risk of deportation led the governors of three states – New York, Illinois, and Massachusetts – to withdraw their states from the program entirely in 2011 (Semple, 2011b). This withdrawal was subsequently rebuffed by the federal government, which stated that by 2012, all jurisdictions across the country would be ‘activated’ with Secure Communities – that is, any fingerprint data shared with the FBI would be checked against immigration databases regardless of the preferences of the arresting agency.

Like the 287(g) program, Secure Communities, in its early days, likely held some symbolic political value for those jurisdictions courting nativist voters, or those voters whose economic anxiety during the Great Recession was embodied by immigrants real or imagined. While Cox and Miles found in their analysis of the program’s rollout that “the data provide little support for the claim that the agency’s use of discretion was driven more by local politics than federal policy”, they also found that “early activation in the program correlates with whether a county has a large Hispanic population” (Cox & Miles, 2013, p. 89). Cox and Miles, however,

conceptualized “local politics” as partisanship, including in their analysis a measure of each county’s percentage vote for the Republican presidential candidate in 2004, as well as a count of local anti-immigrant legislation. While neither of these variables showed a statistically significant association with the early introduction of SComm, the presence of a local 287(g) agreement presented the strongest correlation of any of the variables included in Cox and Miles’ analysis. This suggests that the early rollout of SComm was prioritized in jurisdictions where local law enforcement could be counted upon to ‘play ball’ in terms of targeting local Hispanic populations for increased intensity of enforcement⁵⁸, an idea supported by the fact that Cox and Miles found ICE “prioritize[d] activation in part based on a model designed to predict the number of noncitizens who [would] be arrested by local law enforcement” (Cox & Miles, 2013, p. 105). Examined in light of Pedroza’s finding that “Hispanic concentration moderates punitive deportation discretion in conservative locations” (Pedroza J. M., 2016, p. 16), Cox and Miles’ analysis appears to support the idea that early SComm activation likely indicates an instrumental approach to immigration enforcement on the part of local law enforcement. As such, it provides a strong rationale for including the pattern of Secure Communities’ 2008-2011 rollout as part of the dependent factor for the current analysis.

In terms of actual enforcement, SComm was distinguished from the 287(g) program by the low setup costs involved with its implementation, making it an economically attractive alternative in a time of austerity, and carrying with it (for those local agencies involved in IGSAs to hold immigrant detainees) the potential for direct fiscal gain. Most insidiously, it arguably served a greater labor market disciplinary purpose (per the original conceptualization of the political economy of punishment) through its inextricable relationship with everyday law enforcement in the jurisdictions where it was activated. In an active SComm jurisdiction, literally *any* interaction with law enforcement personnel resulting in arrest could end in deportation for the

⁵⁸ See discussion on page 50 (above) and in the case studies of Georgia and New Jersey (pages 183-199, below).

unauthorized immigrant arrestee; it is easy to see how the program could be problematic in jurisdictions where, for instance, policy dictates arresting both individuals involved in a domestic disturbance or affray. It is equally easy to see the instrumental disciplinary value of such a state of affairs for a local, low-wage immigrant labor force: under such a regime, immigrant laborers have every motivation to remain essentially invisible, hesitant to assert themselves in the face of exploitation or victimization, and largely withdrawn from public life altogether. There is a strain of nativist thinking that prizes just such a dynamic as the platonic ideal of low-wage labor: a servant class seen but not heard, taking care of the essential details of everyday life for members of the dominant culture, economically instrumental, but themselves culturally invisible and socially non-existent.⁵⁹ Indeed, Pedroza finds that higher residential segregation of Hispanics in a given jurisdiction predicts a *reduction* of punitive deportation outcomes under Secure Communities, once it passes a threshold that I would argue represents the point at which Hispanic visibility is reduced to a level that no longer ‘activates’ anti-immigrant sentiment on the part of neighboring nativist white voters (Pedroza J. M., 2016). In this way, SComm held the potential to serve a multilayered purpose for a single community in which it was activated⁶⁰. It offered direct fiscal gain for those participating in county or municipal jail IGSAs with ICE. It produced symbolic capital among nativist voters for both ‘handling the immigrant problem’ and (ironically) ‘doing what the federal government couldn’t’ at the local level. It fostered the social exclusion of unauthorized immigrants by investing any interaction with government service agencies with an untenable level of risk. And it served the purpose of labor-force discipline, by reducing (or even eliminating) the likelihood that any issues of labor exploitation or victimization would be brought to the attention of law enforcement by low-wage unauthorized immigrant worker victims. Thus, despite its problematic distribution throughout the 5-year data period under examination, and its elevated sensitivity to

⁵⁹ See page 23 (above) for a more in-depth examination of the psychology behind this view.

⁶⁰ Per Pedroza: “at least some of the local places which were motivated to enact 287g programs decided to suspend them because they realized they could achieve the same goals (claim to crack down on immigration) by focusing on SComm [e.g. Greenberg, 2012]” (Pedroza J. , Personal Communication, 2016).

exogenous forces (i.e. federal government decree), its tremendous potential value to local county and municipal government enforcement entrepreneurs merits its inclusion in the model until its nationwide imposition in 2012.

Taken together, these three variables provide a multilayered and complex picture of enforcement entrepreneurship by local government actors in tandem with their for-profit, private sector partners, as they pursue the benefit in the local enforcement and detention market that decentralization coupled with elevated investment at the federal level makes possible. It should be stressed here that cultural and socio-political variation by state and within states dictates that active local participation in enforcement has vastly different symbolic political values from one jurisdiction to another; as demonstrated by the governors of New York, Illinois, and Massachusetts in 2011, those on the progressive, pro-immigrant side of the political spectrum attach a negative value to the form of enforcement participation represented by the Secure Communities program. Even in these jurisdictions, however, the economic calculus attached to enforcement participation may outweigh its negative symbolic political value: the democratic leaders of Essex County, New Jersey⁶¹ entered and won a competitive bid to build one of the largest dedicated immigrant detention facilities in the northeast. This project stood to add \$50 million in federal detention dollars annually to the county budget. As such, the Essex County Commissioners likely found the potential political fallout of the project a small price to pay for such a fiscal windfall (not to mention the secondary economic benefits arguably associated with the project, for construction to correctional workers and service providers) (Megerian, 2011; Semple, 2011a).

⁶¹ See pages 196-99 below for details.

Instrument: Factor analysis

Factor analysis presents the most appropriate statistical technique to test for the presence of, and relationships amongst, these factors within the 5-year, 50-state data set. Theoretically and conceptually, it is uniquely suited to revealing the web of decisions, attitudes, policies and practices that connect local immigration enforcement entrepreneurship to the political-economic benefits available in the field. 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 would otherwise render traditional OLS regression unfeasible.

Quantifying the field: A bivariate and multivariate analysis of local immigration enforcement entrepreneurship

To what extent does the pursuit of instrumental benefit drive the scale of local participation in immigration enforcement? The hypotheses above posit that local participation in immigration enforcement will rise with each of the three benefit-influencing factors outlined: market scale, punishment entrepreneurship, and economic anxiety. First, however, the assumptions that undergird the factors must themselves be tested: that the chosen variables will co-vary, separately and distinctly, in a manner consistent with the underlying factors as described. Doing so requires two sets of factor analyses for each year of data: one encompassing the independent variables as an overall model for the market context of punitive immigration control and another encompassing the dependent variables as consistent with the concept of local immigration enforcement entrepreneurship.

Once the factors for each analysis are measured and confirmed, two further steps test the correlation between the independent (contextual) factors and local enforcement entrepreneurship within each of the 50 US states. First, the states are divided into pentile ranks (1=lowest, 5=highest) for each tested factor based on the value of the state's z-score for the factor in question. Bivariate crosstabular correlations between each independent factor rank and the dependent/local enforcement entrepreneurship factor rank are then measured. The resulting tables display three contingency test statistics: Fisher's exact, Cramer's V, and Kendall's tau-b, the first two of which measure overall correlation (Fisher's most conservatively), and the third directional correlation between the factor ranks.

Finally a multivariate OLS regression is run using the three independent factor z-scores as independent variables, and the local enforcement entrepreneurship factor z-score as the dependent variable. These multiple tests are used to analyze this relationship, rather than OLS regression alone, for a variety of reasons: first, the limitations involved with any analysis using the 50 US states as the unit of analysis are well documented. Aside from the simple issue arising from the limited power of an $n=50$ analysis, the US states are distinct along a wide range of measures, from geography to population, voting patterns, culture, and history. Owing to these distinctions, none of the selected variables are normally distributed, and there is a high prevalence of zeros among many of them. However, rather than treating these distinctions as a statistical problem to be solved through data permutations, the elimination of outliers, etc., it is necessary to include them as real and vital differences between US states, with significant importance and relevance to the lives of their residents. Thus, while doing everything possible, within the bounds of the theoretical model of punitive immigration control, to ensure meaningful statistical measures of association between my concepts of interest, ultimately it is through the overlapping utilization of multiple measures that we can most accurately describe the conceptual model that applies to these relationships. This analysis does not test a

relationship between discrete and precisely defined concepts; rather, in the spirit of critical analysis, it attempts to describe the interaction of large scale, structural social forces and systems. The value in attempting to analyze these interactions quantitatively lies in providing a framework and direction for the kinds of case studies, ethnographies, and analyses of discrete relationships within the model that have been referenced frequently throughout this work.

Descriptive Analyses

The five years under examination cover a period spanning the final year of George W. Bush's presidential administration (2008), through the year of Barack Obama's reelection in 2012. Crucially, the period covers the entire rollout of the *Secure Communities* program, from its pilot introduction to ten jurisdictions in 2008, through its first year of mandated nationwide coverage in 2012.

--2008--

The final year of George W. Bush's presidential administration, 2008 also holds the dubious honor of being the first full year of the "Great Recession," a nationwide economic event with enormous consequences for immigration enforcement. It was during this recessionary period that net immigration from Mexico fell below zero for the first time in the 21st century – a factor that contributed to ICE's policy decision to focus on formal removals as a deportation strategy over the traditional border catch-and-release tactics that predominated for the previous 50 years. 2008 was also the first year that the Secure Communities program was piloted in 10 'volunteer' jurisdictions nationwide.

As explained above, the variation among the 50 US States on many of these key variables is extreme, with four of the eleven showing a standard deviation significantly greater than the mean.

TABLE 4a. DESCRIPTIVE STATISTICS FOR VARIABLES OF INTEREST, 50 U.S. STATES, 2008

Variable	Mean	SD	Min.	Max.
Market scale:				
State's total population of unauthorized immigrants (in thousands).....	239	454	8	2700
Non-citizens as a proportion of total state population.....	.048	.034	.007	.149
Unauthorized immigrants as a proportion of total state labor force.....	.038	.028	.005	.122
Punitiveness:				
State incarceration rate per one hundred thousand population.....	412	148	133	858
Number of prisoners held in private facilities.....	1871	3381	0	19851
Proportion of total legislative seats occupied by Republicans.....	.461	.146	.120	.752
Economic Anxiety:				
Proportion of labor force unemployed.....	.053	.012	.029	.083
Proportion of unauthorized population not participating in labor force.....	.263	.136	.000	.500
Local enforcement entrepreneurship				
Average daily population of detained immigrants.....	631	1341	0	8393
Total number of 287(g) memoranda of understanding.....	1.28	2.06	0	4
Proportion of jurisdictions with active Secure Communities Programs.....	.005	.015	.000	.071

--2009--

The first year of the Obama administration, 2009 saw the “Great Recession” deepen, and economic indicators for the year clearly show its influence. Negative net immigration from Mexico also continued, while detainee populations rose, and the 287g and Secure Communities programs expanded significantly.

TABLE 4b. DESCRIPTIVE STATISTICS FOR VARIABLES OF INTEREST, 50 U.S. STATES, 2009

Variable	Mean	SD	Min.	Max.
Market scale:				
State’s total population of unauthorized immigrants (in thousands).....	226	429	5	2500
Non-citizens as a proportion of total state population.....	.048	.033	.007	.146
Unauthorized immigrants as a proportion of total state labor force.....	.042	.029	.007	.133
Punitiveness:				
State incarceration rate per one hundred thousand population.....	409	147	151	866
Number of prisoners held in private facilities.....	1908	3414	0	19207
Proportion of total legislative seats occupied by Republicans.....	.446	.155	.088	.762
Economic Anxiety:				
Proportion of labor force unemployed.....	.085	.020	.042	.133
Proportion of unauthorized population not participating in labor force.....	.242	.122	.000	.400
Local enforcement entrepreneurship				
Average daily population of detained immigrants.....	673	1421	0	8809
Total number of 287(g) memoranda of understanding.....	1.42	2.25	0	9
Proportion of jurisdiction with active Secure Communities Programs.....	.030	.080	.000	.467

--2010--

The year of the “Tea Party Wave” midterm election, 2010 was also ostensibly the nation’s first year out of the “Great Recession.” However, as the increase on 2009 in mean unemployment clearly indicates, this recovery was not far-reaching, without much effect on the labor market, and was in fact disputed by a number of experts. The slight uptick in the nation’s undocumented population indicates the end of two years of negative net immigration from Mexico. There was a slight reduction in detainee populations and the 287g program, while the Secure Communities rollout accelerated significantly. The first of the state anti-immigration bills, Arizona’s SB1070, passed in 2010.

TABLE 4c. DESCRIPTIVE STATISTICS FOR VARIABLES OF INTEREST, 50 U.S. STATES, 2010

Variable	Mean	SD	Min.	Max.
Market scale:				
State’s total population of unauthorized immigrants (in thousands).....	228	434	9	2550
Non-citizens as a proportion of total state population.....	.050	.033	.007	.150
Unauthorized immigrants as a proportion of total state labor force.....	.038	.024	.005	.100
Punitiveness:				
State incarceration rate per one hundred thousand population.....	405	146	146	865
Number of prisoners held in private facilities.....	1887	3398	0	19155
Proportion of total legislative seats occupied by Republicans.....	.451	.156	.088	.762
Economic Anxiety:				
Proportion of labor force unemployed.....				
Proportion of unauthorized population not participating in labor force.....	.088	.020	.038	.144
Local enforcement entrepreneurship				
Average daily population of detained immigrants.....	616	1271	0	7797
Total number of 287(g) memoranda of understanding.....	1.46	2.28	0	9
Proportion of jurisdiction with active Secure Communities Programs.....	.257	.356	.000	1.00

--2011--

The first year of the “Tea Party” Congress, a political trend accompanied by the 8% jump in Republican representation in state legislatures. This political sea-change is one of two important dynamics at play in 2011 data, the other being the introduction of a federal mandate to provide nationwide coverage under the Secure Communities program. This mandate is exogenous to the local enforcement entrepreneurship model, as are the decisions by the governors of New York, Massachusetts, and Illinois to drop out of the Secure Communities programs. Other states lagging in Secure Communities coverage in 2011 (such as Alabama) appear to be in this position due to bureaucratic incompetence as opposed to ideological opposition – especially given that Alabama became the first state to follow Arizona in the passage of a state-wide anti-immigrant bill (HB56) in 2011, followed by Georgia, Indiana, South Carolina, and Utah the same year.

TABLE 4d. DESCRIPTIVE STATISTICS FOR VARIABLES OF INTEREST, 50 U.S. STATES, 2011

Variable	Mean	SD	Min.	Max.
Market scale:				
State's total population of unauthorized immigrants (in thousands).....	232	437	7	2558
Non-citizens as a proportion of total state population.....	.049	.032	.007	.148
Unauthorized immigrants as a proportion of total state labor force.....	.044	.027	.010	.130
Punitiveness:				
State incarceration rate per one hundred thousand population.....	401	147	147	865
Number of prisoners held in private facilities.....	1908	3414	0	19207
Proportion of total legislative seats occupied by Republicans.....	.533	.171	.118	.844
Economic Anxiety:				
Proportion of labor force unemployed.....	.082	.019	.036	.131
Proportion of unauthorized population not participating in labor force.....	.246	.113	.000	.401
Local enforcement entrepreneurship				
Average daily population of detained immigrants.....	665	1311	0	7736
Total number of 287(g) memoranda of understanding.....	1.46	2.28	0	9
Proportion of jurisdiction with active Secure Communities Programs.....	.556	.465	.000	1.00

--2012--

The year of Barack Obama's reelection, 2012 also marks the first year that nationwide coverage of the Secure Communities program was federally mandated – tellingly, even in the states (NY, MA, IL) where governors announced a total withdrawal from participation in 2011. As a result of this (non-)distribution that is fully determined by a decision exogenous to the enforcement entrepreneurship model, SComm participation is not included in the local enforcement factor for 2012.

TABLE 4e. DESCRIPTIVE STATISTICS FOR VARIABLES OF INTEREST, 50 U.S. STATES, 2012

Variable	Mean	SD	Min.	Max.
Market scale:				
State's total population of unauthorized immigrants (in thousands).....	224	428	5	2450
Non-citizens as a proportion of total state population.....	.049	.032	.007	.145
Unauthorized immigrants as a proportion of total state labor force.....	.036	.025	.002	.102
Punitiveness:				
State incarceration rate per one hundred thousand population.....	397	148	145	870
Number of prisoners held in private facilities.....	1935	3486	0	18617
Proportion of total legislative seats occupied by Republicans.....	.536	.169	.118	.844
Economic Anxiety:				
Proportion of labor force unemployed.....	.074	.017	.032	.110
Proportion of unauthorized population not participating in labor force.....	.237	.121	.000	.400
Local enforcement entrepreneurship				
Average daily population of detained immigrants.....	684	1426	0	8637
Total number of 287(g) memoranda of understanding.....	1.46	2.28	0	9
Proportion of jurisdiction with active Secure Communities Programs*.....	.911	.279	.000	1.00

*Removed from factor due to federally mandated national coverage of SComm in 2012

--2008-10 (change-over-time)--

Mean changes over time from 2008 to 2010 show the impact of the 'Great Recession', particularly in the 3.5% rise in mean unemployment and the 11k drop in mean undocumented populations. State-level budgetary austerity driven by this event also led to a mean drop of 7 per 100k in state prison populations – although this apparent trend masks a great deal of variation between the states, ranging from a 64 per 100k drop in Mississippi to a 44 per 100k rise in Arizona. Interestingly, this drop in overall prison populations was accompanied by a mean rise in the number of prisoners held in private, for-profit facilities – although again, a modest rise compared to the vast range in this trend: a standard deviation of plus or minus 629, from almost two thousand prisoners transferred out of private hands over the period in Arizona, to almost three thousand moved into for-profit facilities in Florida. Ten of the eleven variables of interest, in fact, feature standard deviations far in excess of the mean change, with the only strongly unidirectional change being the increase of unemployment. While Secure Communities coverage also increases over the period, its increase is inconsistent, with 16 states showing no increase in coverage under the program for the period. A total of 40 states show increases in SComm coverage of less than 50%.

TABLE 4f. DESCRIPTIVE STATISTICS FOR VARIABLES OF INTEREST, 50 U.S. STATES, 2008-10

Variable	Mean	SD	Min.	Max.
Market scale:				
State's total population of unauthorized immigrants (in thousands).....	-11.4	+/-69.8	-300	+200
Non-citizens as a proportion of total state population.....	+.0015	+/-0.0027	-.007	+.006
Unauthorized immigrants as a proportion of total state labor force.....	-.0002	+/-0.0086	-.024	+.016
Punitiveness:				
State incarceration rate per one hundred thousand population.....	-7.00	+/-25.79	-64	+44
Number of prisoners held in private facilities.....	+16.56	+/-629	-1953	+2770
Proportion of total legislative seats occupied by Republicans.....	-.011	+/-0.032	-.113	+.032
Economic Anxiety:				
Proportion of labor force unemployed.....	+.035	+/-0.013	+.006	+.083
Proportion of unauthorized population not participating in labor force.....	-.019	+/-0.080	-.170	+.310
Local enforcement entrepreneurship				
Average daily population of detained immigrants.....	-14.94	+/-144	-596	+457
Total number of 287(g) memoranda of understanding.....	+.18	+/-0.69	-2	+2
Proportion of jurisdiction with active Secure Communities Programs.....	+.253	+/-0.353	.000	+1.00

--2010-12 (change-over-time)--

While many of the more extreme changes due to the Great Recession slowed (if not reversed) during the two years between 2010 and 2012, the ‘Tea Party Wave’ 2010 midterm election introduced other extreme changes that are commonly attributed to the Recession’s aftereffect. The most notable of these is the nearly 9% mean increase in Republican representation in state legislatures (a figure that includes both state houses and state senates). The relative reduction of unauthorized populations was reduced to a mean of about 4k in losses per state, with a much more limited range between 100k in losses (Arizona and California) and 125k in gains (New York) – as opposed to 300k in losses and 200k in gains for 2008-10. The period concludes in 2012 with the federal mandate for nationwide Secure Communities coverage, and no 287(g) memoranda of understanding were signed or rescinded over the entire period. Change in detainee ADPs (up by 70 on average) takes on an outsized importance in the dependent variable.

TABLE 4g. DESCRIPTIVE STATISTICS FOR VARIABLES OF INTEREST, 50 U.S. STATES, 2010-12

Variable	Mean	SD	Min.	Max.
Market scale:				
State’s total population of unauthorized immigrants (in thousands).....	-3.98	+/-37.2	-100	+125
Non-citizens as a proportion of total state population.....	-.0003	+/-0.0019	-.008	+.002
Unauthorized immigrants as a proportion of total state labor force.....	-.0018	+/-0.0077	-.022	+.018
Punitiveness:				
State incarceration rate per one hundred thousand population.....	-8.04	+/-22.89	-87	+32
Number of prisoners held in private facilities.....	+48.18	+/-670	-1562	+2667
Proportion of total legislative seats occupied by Republicans.....	+.086	+/-0.067	-.082	+.302
Economic Anxiety:				
Proportion of labor force unemployed.....	-.015	+/-0.008	-.034	+.002
Proportion of unauthorized population not participating in labor force.....	-.007	+/-0.096	-.333	+.333
Local enforcement entrepreneurship				
Average daily population of detained immigrants.....	+67.7	+/-207	-165	+841
Total number of 287(g) memoranda of understanding.....	0	+/-0	0	0
Proportion of jurisdiction with active Secure Communities Programs.....	+.654	+/-0.414	-.260	+1.00

--2008-12 (change-over-time)--

Changes over the entire five-year period under examination, while to an extent softening the extremes in some of the variables of interest, are perhaps most important for combining the dynamics of the ‘Great Recession’ and ‘Tea Party Wave’ within the same longitudinal data set. Equally important, the data below reflect the changes from the final year of the Bush 43 presidency, to the final year of Obama’s first term. The mean drop in state incarceration rates becomes more pronounced (at fifteen per hundred thousand) while the increase in prisoners under private/for-profit custody is also striking. Both dynamics make sense under the neoliberal logic of privatization and budgetary austerity in states increasingly dominated by Republican policy-makers and a ‘Tea Party’ public culture prone to fetishizing ‘free market’ ideology in all aspects of civic life.

TABLE 4h. DESCRIPTIVE STATISTICS FOR VARIABLES OF INTEREST, 50 U.S. STATES, 2008-12

Variable	Mean	SD	Min.	Max.
Market scale:				
State’s total population of unauthorized immigrants (in thousands).....	-15.4	+/-64.2	-250	+200
Non-citizens as a proportion of total state population.....	+0.0012	+/-0.0037	-.013	+0.008
Unauthorized immigrants as a proportion of total state labor force.....	-.0021	+/-0.0096	-.038	+0.015
Punitiveness:				
State incarceration rate per one hundred thousand population.....	-15.04	+/-35.43	-120	+48
Number of prisoners held in private facilities.....	+64.74	+/-971	-2584	+3202
Proportion of total legislative seats occupied by Republicans.....	+0.075	+/-0.079	-.129	+0.342
Economic Anxiety:				
Proportion of labor force unemployed.....	+0.021	+/-0.010	.000	+0.049
Proportion of unauthorized population not participating in labor force.....	-.025	+/-0.104	-.333	+0.333
Local enforcement entrepreneurship				
Average daily population of detained immigrants.....	+52.8	+/-226	-330	+853
Total number of 287(g) memoranda of understanding.....	+18	+/-69	-2.00	+2.00
Proportion of jurisdiction with active Secure Communities Programs.....	+0.906	+/-0.283	-.070	+1.00

Cross-sectional descriptives – summary

As discussed above, many of these variables are highly skewed throughout the five-year period under analysis, with four of the eleven – unauthorized population, private/for-profit prisoner population, average daily detainee population, and number of 287(g) MOAs – featuring standard deviations well in excess of the mean. The severity of this skew is the product of a number of dynamics, both geographic and political. The states on the US-Mexico border – California, Arizona, New Mexico and Texas – of course host significantly larger populations of unauthorized immigrants, as the ‘first stop’ in the typical unauthorized border crossing, and as former territories of Mexico (prior to the territorial concessions of the 1846-8 Mexican-American War) with well-established communities of Mexican ancestry. All the same, I choose not to include a dummy variable for border states for a number of reasons. First, the border dynamic is not consistent with any of the three underlying factors as I have conceptualized them. Second, the punishment marketplace theory is concerned with (in the context of punitive immigration control) the nationwide program of *removals* (deportations) rather than the *returns* (what I have referred to above as ‘border catch-and-release’) that dominate the US Border Patrol’s (as opposed to its sister agency ICE) approach to enforcement. Third, while proximity to the border may arguably condition some of the potential benefits available to local governments through enforcement entrepreneurship, I follow a number of recent scholars who have argued that the border, as a political-symbolic construct, has moved beyond its geographic boundaries to become a salient presence in immigration discourse nationwide.

Of the other skewed variables, private/for-profit prison population is potentially the most conceptually challenging to the theoretical consistency of the model, given its close association with the dominance of neoliberal ideology in state politics. While the for-profit corrections industry dates to the ‘rollback neoliberalism’ of the Reagan years, even at its peak no more than 10% of the nation’s prisoners were held in for-profit facilities. Prison privatization has long

stood as an apparently extreme example of Harvey's neoliberal market imperative, with many state governments appearing loath to turn their prisoners over to 'the invisible hand of the market'. Upon closer examination, however, the privatization and subjection to the logic of profit of key aspects of corrections has become much more insidious and commonplace than the 10% figure would seem to indicate. Even in state-owned and operated facilities, services like communications, food, and (especially) health care are commonly subcontracted to for-profit providers. Market logic is to some extent implicit in the context of contemporary corrections; large private prison populations may simply represent the open presence of a sizeable and politically established for-profit correctional industry, likely supported by a highly developed neoliberal ideology in the state's political culture and popular culture alike. Nevertheless, it is consistent with the punishment marketplace theory to posit a converse current in states with political cultures and popular cultures that are actively resistant to the marketization of public goods. I would expect this resistance to be reflected in the construction of the *punishment entrepreneurship* factor, as represented by states with low or no populations of for-profit prisoners, low overall incarceration rates, and lower proportions of Republican representation in their legislatures.

Longitudinal descriptives – summary

Changes over time in the variables of interest reflect the clear fact that the five-year period of the analysis covers a number of historic social, political and economic upheavals with nationwide effects. Examined side-by-side with the cross-sectional annual averages, however, it becomes clear that five years is scant time to allow for major shifts in established historical and regional patterns. The ten most punitive states in 2008, for example, as judged purely by incarceration rates, encompass the band of states across the US south from South Carolina to Arizona (skipping over New Mexico). In 2012, nine of the same ten states remain on the list, despite incarceration rates dropping by up to 120 per 100k over the same time period. Other shifts, such

as the significant increase in unemployment rates over the period, are spread relatively evenly among states nationwide, with no one region taking the brunt of this effect. The increase in Republican control of state legislatures follows a similar nationwide pattern, with a notable shift in some Rust Belt states (Wisconsin, Indiana, Minnesota, Michigan) toward long-term Republican hegemony.

Fluctuations in immigration enforcement over the period, by contrast, appear on the surface to feature an inexorable nationwide rise, with the Secure Communities program essentially going from non-existence in 2008 to total coverage by 2012, and detention increasing steadily alongside the Obama administration's ramped up approach to deportation. This appearance is deceptive, however, in that it obscures both the resistance in key states (New York, Massachusetts, Illinois) to punitive enforcement, and its apparent wholehearted embrace in states (New Jersey, Georgia, South Carolina, Wisconsin) that would be hard-pressed to demonstrate statistically the ways in which this increased enforcement responds to a particular social problem. It is with these dynamics that I expect to see evidence for the punishment marketplace, both in states' adoption of a neoliberal, instrumentalist approach to immigration control, and the converse in other states' resistance to the same. Cross-sectional analyses should provide empirical evidence of the states where these contrasting approaches represent a long-standing dynamic rooted in political-economic and popular culture alike. By contrast, I hope that longitudinal analyses will demonstrate the handful of states where this approach is adopted by a political-economic elite as a matter of opportunism, or in response to broader currents of sociocultural and economic change. I expect these dynamics, while equally meaningful, to remain conceptually distinct, dealing as they do with longstanding, consistent qualities (in cross-sectional analyses) versus short-term, conditional trends (for longitudinal analyses).

Factor Analyses - Independent

The tables that follow display the “factor load” for each of the separate analyses undertaken.

Factor load is a measure of the covariation among the variables comprising the factor.

Specifically, it indicates the proportion of the variance in the model as a whole that is explained by the factors constructed. In the case of the eight independent variables I have selected for the model, over 72% of the variance in the model for 2008 data is explained by the underlying factors I have identified – a generally acceptable level for an n of 50. 2008’s factor load of 72.4% is the lowest of the 5 years, with the high being 2012’s 79.1% and other years ranging between. Also fairly consistent is the range of covariance between the market scale and economic anxiety factors, from a low of 22.6% in 2009 to a high of 29.5% in 2010. The most likely explanation for this dynamic is that the relatively higher immigrant populations in some states are also better established, and thus include higher proportions of dependents (as opposed to unaccompanied male laborers). This covariance is small but not necessarily insignificant to the model.

--2008--

2008 factors load largely as predicted, with market scale unsurprisingly the most structurally and theoretically consistent of the three. The lowest loadings are undocumented dependents and legislative control, at 63% and 66% respectively – though both load at sufficient levels to be considered consistent with the factors as laid out above.

TABLE 5a. FACTOR LOADINGS FOR INDEPENDENT VARIABLES, 2008

Code	Variable	Loading		
		Factor 1: Market scale	Factor 2: Punitiveness	Factor 3: Economic Anxiety
undocpop	Total population of unauthorized immigrants	.845		
noncitperc	Non-citizens as a proportion of total population	.963		
undoclabpc	Unauthorized immigrants as a proportion of total labor force	.916		
incperk	Incarceration rate per 100 thousand population		.790	
privprisnum	prisoners held in private facilities		.703	
legiscont	Proportion of total legislative seats held by Republicans		.661	
unemp	Proportion of labor force unemployed			.869
undocdeppc	Proportion of unauth. pop. not participating in labor force			.630
eigenvalue		3.155	1.523	1.119
% of variance		39.516	18.528	14.356
(% of total variance explained)			72.400	
Component Correlation Matrix				
	Factor 1: Market scale	1.000	.113	.237
	Factor 2: Punitiveness	.113	1.000	.015
	Factor 3: Econ Anxiety	.237	.015	1.000

--2009--

2009 factors appear overall to be slightly stronger than 2008's, also featuring the lowest level of covariance (22.6%) between market scale and economic anxiety of the five years under examination. Lowest loads in 2009 are incarceration rate (66%) and private prison population (70%), a dynamic that may reflect the slight increase in Democratic dominance of state legislatures that accompanied the 2008 election of Barack Obama. States that were historically more punitive elected more Democratic legislators, while the less punitive policymaking that these legislators may have pursued did not occur immediately after their election.

TABLE 5b. FACTOR LOADINGS FOR INDEPENDENT VARIABLES, 2009

Code	Variable	Loading		
		Factor 1: Market scale	Factor 2: Punitiveness	Factor 3: Economic Anxiety
undocpop	Total population of unauthorized immigrants	.865		
noncitperc	Non-citizens as a proportion of total population	.959		
undoclabpc	Unauthorized immigrants as a proportion of total labor force	.927		
incperk	Incarceration rate per 100 thousand population		.659	
privprisnum	prisoners held in private facilities		.699	
legiscont	Proportion of total legislative seats held by Republicans		.768	
unemp	Proportion of labor force unemployed			.792
undocdeppc	Proportion of unauth. pop. not participating in labor force			.810
eigenvalue		3.270	1.686	1.166
% of variance (% of total variance explained)		40.877	20.832	15.089
			76.798	
Component Correlation Matrix				
	Factor 1: Market scale	1.000	.040	.226
	Factor 2: Punitiveness	.040	1.000	.090
	Factor 3: Econ Anxiety	.226	.090	1.000

--2010--

Independent factor loadings for 2010 are largely consistent with the previous two years, with each factor structurally and theoretically consistent. Covariance between market scale and economic anxiety peaks in 2010 at nearly 30%, which is cause for some concern but does not put into question the model as a whole.

TABLE 5c. FACTOR LOADINGS FOR INDEPENDENT VARIABLES, 2010

Code	Variable	Loading		
		Factor 1: Market Scale	Factor 2: Punitiveness	Factor 3: Economic Anxiety
undocpop	Total population of unauthorized immigrants	.883		
noncitperc	Non-citizens as a proportion of total population	.936		
undoclabpc	Unauthorized immigrants as a proportion of total labor force	.896		
incperk	Incarceration rate per 100 thousand population		.719	
privprisnum	prisoners held in private facilities		.691	
legiscont	Proportion of total legislative seats held by Republicans		.763	
unemp	Proportion of labor force unemployed			.833
undocdeppc	Proportion of unauth. pop. not participating in labor force			.694
eigenvalue		3.371	1.648	1.002
% of variance (% of total variance explained)		42.192	20.129 75.119	12.798
Component Correlation Matrix				
Factor 1: Market scale		1.000	.045	.295
Factor 2: Punitiveness		.045	1.000	.057
Factor 3: Econ Anxiety		.295	.057	1.000

--2011--

Following the 2010 “Tea Party Wave” mid-term election, the sharp departure from the nationwide sociopolitical dynamics that accompanied the election of Barack Obama and his first two years in office drives similarly stark changes in the model for 2011. The most significant difference appears to be economic, with the economic anxiety factor now featuring *negative* loadings on each of its constituent variables. This implies that economic anxiety is lower where market scale and punitiveness are higher, rather than vice versa for the prior three years of data. This could be the result of (1) immigrant laborers moving into states where economic recovery is taking place following the ‘Great Recession’, and/or (2) more established immigrant families with dependents leaving or making efforts to lower their public profile⁶² in states where Tea Party activism (and the displays of nativism frequently associated with it) is particularly visible.

⁶² Commenters such as Gordon have noted that unauthorized immigrants often “have a powerful incentive to remain invisible” (Gordon, 2015) that drives behaviors such as underreporting of victimization to police. Anecdotal evidence also indicates that unauthorized immigrants will take steps such as keeping their children home from school in the wake of high-profile raids and similar incidents. The logic by which the *economic anxiety* factor includes proportion of unauthorized dependents as one of its constituent variables posits that dependents are a particular source of anxiety and nativist reaction for citizen populations due to their real or perceived *dependence* on tax-supported social services. It therefore stands to reason that hostile currents in local political and cultural life might motivate unauthorized immigrants to reduce this perception, whether through withdrawing from public life, sending dependents to live in more welcoming locales, etc.

TABLE 5d. FACTOR LOADINGS FOR INDEPENDENT VARIABLES, 2011

Code	Variable	Loading		
		Factor 1: Market scale	Factor 2: Punitiveness	Factor 3: Economic Anxiety
undocpop	Total population of unauthorized immigrants	.872		
noncitperc	Non-citizens as a proportion of total population	.956		
undoclabpc	Unauthorized immigrants as a proportion of total labor force	.917		
incperk	Incarceration rate per 100 thousand population		.589	
privprisnum	prisoners held in private facilities		.690	
legiscont	Proportion of total legislative seats held by Republicans		.780	
unemp	Proportion of labor force unemployed			(.789)
undocdeppc	Proportion of unauth. pop. not participating in labor force			(.758)
eigenvalue		3.401	1.668	1.088
% of variance (% of total variance explained)		42.511	20.846 76.959	13.602
Component Correlation Matrix				
	Factor 1: Market scale	1.000	(.039)	(.280)
	Factor 2: Punitiveness	(.039)	1.000	(.073)
	Factor 3: Econ Anxiety	(.280)	(.073)	1.000

--2012--

Economic anxiety variables continue to show negative loadings in 2012 implying that the dynamic described above for 2011 data continued into the following year. In addition, incarceration rate drops to a loading of 56% – relatively consistent with 2011’s 59% – indicating that even less punitive states were subject to the increasing Republican dominance of state legislatures that characterized the ‘Tea Party Wave.’ That this loading dropped rather than rose after a year of increased Republican legislative control points to the evolving consensus on incarceration, as a drain on state budgets in the austerity environment many states faced post-recession.

TABLE 5e. FACTOR LOADINGS FOR INDEPENDENT VARIABLES, 2012

Code	Variable	Loading		
		Factor 1: Market Scale	Factor 2: Punitiveness	Factor 3: Economic Anxiety
undocpop	Total population of unauthorized immigrants	.875		
noncitperc	Non-citizens as a proportion of total population	.950		
undoclabpc	Unauthorized immigrants as a proportion of total labor force	.917		
incperk	Incarceration rate per 100 thousand population		.559	
privprisnum	prisoners held in private facilities		.650	
legiscont	Proportion of total legislative seats held by Republicans		.824	
unemp	Proportion of labor force unemployed			(.679)
undocdeppc	Proportion of unauth. pop. not participating in labor force			(.834)
eigenvalue		3.365	1.853	1.107
% of variance (% of total variance explained)		42.060	23.161 79.056	13.835
Component Correlation Matrix				
	Factor 1: Market scale	1.000	(.081)	(.249)
	Factor 2: Punitiveness	(.081)	1.000	(.084)
	Factor 3: Econ Anxiety	(.249)	(.084)	1.000

The above factor analyses show a pattern of theoretical coherence and structural consistence, but also raise a number of interesting questions about the interdependence of the factors as constructed, and the latent effects of dynamics exogenous to the model under analysis. The consistent 20-30% covariance between market scale and economic anxiety demonstrates the reality that immigrants are themselves subject to many of the same kinds of economic concerns that might be thought to lead the native-born to nativism, though it is of course unlikely to have the same effect. Equally, the political shifts throughout the five-year period highlight the fact

that neoliberalism is not necessarily a political project – nor an uncontested one, at either end of the (perhaps overly simplistic) right-left political spectrum. While, as discussed above, neoliberalism is deeply intertwined with conservatism, the two ideologies are not one and the same, nor do they necessarily serve the same interests. Indeed, the internal paradoxes of neoliberalism itself are also on display, in the apparent conflict between budgetary austerity and neoliberal penalty. Ultimately, however, we will see that these conflicts are insufficient to disrupt the overall hegemony of the punishment marketplace in the states where it has definitively taken hold.

Factor Analyses - Dependent

As discussed above, I have used three variables to construct the dependent ‘enforcement entrepreneurship’ factor, in part because doing so is structurally consistent with using factors as the independent variables in the analysis. Constructing a factor for the dependent variable is not simply a sort of analytical shorthand, however, but is also theoretically consistent with the accumulative approach to political-economic benefit that punishment entrepreneurship makes possible. The three variables used – average daily detainee population, 287(g) MOAs, and Secure Communities activation – all represent enforcement activities in which the kinds of local decision making that characterizes enforcement entrepreneurship can potentially play a role.

--2008--

The percentage of variance explained by the local enforcement entrepreneurship factor for 2008 – the final year of the George W. Bush administration, and the first full year of the Great Recession – is significantly lower than the 72% explained by the independent variables for the same year. This is due in part to the extremely limited pilot rollout of the Secure Communities program, which was introduced in 2008 to a mere 10 jurisdictions nationwide. At 60%, however, the factor explains sufficient variance in the three constituent variables to justify their treatment as a single, underlying theoretical construct.

TABLE 6a. FACTOR LOADINGS FOR DEPENDENT VARIABLES: LOCAL ENFORCEMENT ENTREPRENEURSHIP, 2008

Code	Variable	Loading
Factor 1: Local Enforcement Entrepreneurship		
detadp	Average daily population of detained immigrants	.732
gmoacount	Count of 287(g) memoranda of understanding	.804
activscperc	Proportion of jurisdictions with Secure Communities Programs	.798
eigenvalue		1.686
% of variance		60.566

--2009--

The expanded rollout of the Secure Communities program in 2009 leads to a significantly more cohesive enforcement entrepreneurship factor, explaining just over two-thirds of the total variance for the year. As in all but the final two years of data, average daily population of detainees displays the lowest loading of the three constituent variables, due to the potentially less direct relationship between local decision-making and detention populations in any given state.

TABLE 6b. FACTOR LOADINGS FOR DEPENDENT VARIABLES: LOCAL ENFORCEMENT ENTREPRENEURSHIP, 2009

Code	Variable	Loading
Factor 1: Local Enforcement Entrepreneurship		
detadp	Average daily population of detained immigrants	.760
gmoaccount	Count of 287(g) memoranda of understanding	.801
activscperc	Proportion of jurisdictions with Secure Communities Programs	.892
eigenvalue		2.015
% of variance		67.150

--2010--

As the rollout of the Secure Communities program continues to gain steam, with a mean 2010 coverage of over a quarter of jurisdictions in each of the 50 US states, the enforcement entrepreneurship factor continues to show a relatively strong explanatory power, explaining 62% of variance in the constituent variables. The 5% reduction from the previous year appears to be explained in part by a sizeable year-on-year drop in deportations from 2009, which reduced mean state ADP from 673 in 2009, to 616 in 2010.

TABLE 6c. FACTOR LOADINGS FOR DEPENDENT VARIABLES: LOCAL ENFORCEMENT ENTREPRENEURSHIP, 2010

Code	Variable	Loading
Factor 1: Local Enforcement Entrepreneurship		
detadp	Average daily population of detained immigrants	.717
gmoaccount	Count of 287(g) memoranda of understanding	.809
activscperc	Proportion of jurisdictions with Secure Communities Programs	.845
eigenvalue		1.882
% of variance		62.736

--2011--

The federal government's 2011 announcement of its intentions to provide nationwide coverage of the Secure Communities program results in a nearly 10% drop in the enforcement entrepreneurship factor's explanatory power, to 54%. At this level, the explanatory value of the factor comes into question; I continue to use it both for theoretical consistency, and because each of the individual constituent variables continues to load at nearly 70%. This implies that local decision-making continues to influence the state-to-state distribution of each of the three dependent variables – including SComm, despite the increasing importance of exogenous federal mandate in the 2011 data.

TABLE 6d. FACTOR LOADINGS FOR DEPENDENT VARIABLES: LOCAL ENFORCEMENT ENTREPRENEURSHIP, 2011

Code	Variable	Loading
Factor 1: Local Enforcement Entrepreneurship		
detadp	Average daily population of detained immigrants	.697
gmoaccount	Count of 287(g) memoranda of understanding	.813
activscperc	Proportion of jurisdictions with Secure Communities Programs	.682
eigenvalue		1.611
% of variance		53.709

--2012--

By 2012, the federally mandated rollout of the Secure Communities program is complete, and the variable is no longer a theoretically viable component of the enforcement entrepreneurship factor. Continued use of the factor in the 2012 cross-sectional analysis dictates that it be removed entirely, leaving the two variables of detainee population and 287(g) MOAs to constitute the factor.

TABLE 6e. FACTOR LOADINGS FOR DEPENDENT VARIABLES: LOCAL ENFORCEMENT ENTREPRENEURSHIP, 2012

Code	Variable	Loading
Factor 1: Local Enforcement Entrepreneurship		
detadp	Average daily population of detained immigrants	.681
gmoaccount	Count of 287(g) memoranda of understanding	.681
activsepere	Proportion of jurisdictions with Secure Communities Programs	.300
eigenvalue		1.361
% of variance		68.070

Cross-Sectional Analyses – Bivariate and Multivariate by Year

In order to mitigate some of the limitations, acknowledged above, of conducting a 50-state analysis on broadly constructed theoretical factors, I have used two distinct tests for each year of data under examination. The first is a bivariate analysis of the relationship between each independent factor and the dependent enforcement entrepreneurship factor, in which each variable has been broken down into pentile ranks (1=lowest rank, 5=highest rank) according to the factor z-score. The second is a traditional multivariate OLS regression, including all three of the independent factor variables.

These tests serve a complementary role in the 50-state, US context, especially given my goal herein to provide support for the idea that individual US states serve as geographic (as well as political, cultural, and economic) *containers*, for the punitive immigration control marketplaces in which their constituent local governments compete for political-economic benefit. How distinct are these containers in terms of market conditions? The bivariate crosstabulation is useful for examining states in the regional, cultural, and political groupings that different rankings on each of the independent variables tend to capture. Highly punitive states tend to be those of the 'Old South', high market scale states are those on the US-Mexico border and those with highly developed urban centers, and economic anxiety tends to concentrate in the states of the Midwest 'Rust Belt' (although the effects of the Great Recession during its peak years disrupt this trend). Because the independent factors are derived from a single analysis involving all of the eight independent variables, each of the bivariate correlations can be considered to control somewhat for the other two factors derived (although ranking the variables into pentiles undermines this feature somewhat). The bivariate, crosstabular correlations can thus give a broad sense of whether – and how – these groupings vary with enforcement entrepreneurship.

The multivariate OLS regression, on the other hand, provides a more precise and better-controlled analysis of how well the market conditions in any given state predict the level of entrepreneurial enforcement activity in that state's punitive enforcement marketplace. To an extent, given the skewed condition of many of the variables included, the strength of these relationships will be driven by outliers and extreme cases, which have intentionally been included in each analysis. This is because these extreme cases are theoretically relevant: the cultural and political saturation of neoliberal ideology is far from evenly distributed across the 50 US states, instead being highly concentrated in particular states that have embraced 'free market' ideology wholeheartedly across numerous facets of public life. Texas, for instance, has arguably built its entire state identity on its broad dedication to market principles, euphemized

as ‘freedom’, ‘independence’, and even ‘resistance to federal tyranny’, and states like Arizona, Florida, Louisiana, Utah, and Alabama are not far behind. Conversely, other states have built public identities around a continuing progressive dedication to Keynesian ideals of social welfare that announce an active resistance to the neoliberal project – however that resistance may actually play out in public policy. California is the most notable counterpoint to Texas in this regard, but other states such as Oregon, Washington, Vermont, Hawaii, and Massachusetts may be thought to fit in this category as well. OLS regression allows the effects of these states, where policy marketplaces are likely to be highly developed or actively suppressed, to (appropriately) influence the model as a whole.

--2008--

Bivariate (Crosstabs)

Bivariate analyses of 2008 data present statistically significant correlations between two of the three independent factor rankings (market scale and economic anxiety), and ranked local enforcement entrepreneurship. Importantly, significant Kendall’s tau-b statistics for these two correlations indicates that both relationships are linear, with local enforcement entrepreneurship rankings rising and falling with market scale and nativist economic anxiety rankings, respectively.

TABLE 7a. CROSSTABULAR CORRELATIONS OF RANKED CONTEXTUAL FACTORS WITH RANKED LOCAL ENFORCEMENT ENTREPRENEURSHIP, 2008

Independent Factor Variable	Fisher's Exact Test		Cramer's V		Kendall's tau-b	
	Statistic	Significance	Value	Significance	Value	Significance
Market scale:	23.593**	.041	.381**	.023	.443***	.000
Punitiveness:	11.504	.816	.255	.750	.127	.246
Economic anxiety:	18.988	.199	.346	.090	.276**	.014

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2008--

Multivariate (OLS Regression)

While the linear regression model for 2008 is significant as a whole, it also indicates that, controlling for the other variables in the model, both market scale and punitive entrepreneurship remain significant predictors of local enforcement participation. Economic anxiety drops well out of significance when controlling for the other two variables in the model, indicating perhaps that this theoretical construct breaks down at the granular level of incremental state-to-state distinctions, even as the bivariate correlations above indicate its significance in distinguishing ranked groupings of states on this measure. State-level punitiveness, by contrast, shows the opposite dynamic, indicating that it may be driven by specific tendencies toward ideological extremity rather than the kinds of broad regional trends generally identified in the punitiveness literature.

TABLE 8a. OLS REGRESSION OF FACTOR Z-SCORES, 2008

Independent Factor Variable	R	Adj R ²	Std Error	Beta	t	Significance
Model Summary:	.634***	.363***	.798			.000
(Constant)			.113			1.000
Market scale:			.118	.541***	4.580	.000
Punitiveness:			.120	.246**	2.139	.038
Economic anxiety:			.117	.057	.486	.629

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2009--

Bivariate (Crosstabs)

2009 data shows the same statistically significant correlations present in 2008 bivariate analyses and the same directional nature. Both the directionality and the overall significance of economic anxiety are stronger than those showing in the 2008 data, perhaps reflecting the increased influence of the 'Great Recession' in economic indicators for 2009.

TABLE 7b. CROSSTABULAR CORRELATIONS OF RANKED CONTEXTUAL FACTORS WITH RANKED LOCAL ENFORCEMENT FACTOR, 2009

Independent Factor Variable	Fisher's Exact Test		Cramer's V		Kendall's tau-b	
	Statistic	Significance	Value	Significance	Value	Significance
Market scale:	33.266***	.000	.453***	.000	.509***	.000
Punitiveness:	20.739	.122	.339	.126	.039	.765
Economic Anxiety:	31.433***	.001	.453***	.000	.321***	.005

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2009--

Multivariate (OLS Regression)

The pattern of significance for the factor regression from 2008 also persists into 2009, with economic anxiety again dropping out of significance when controlling for the other independent factors, but market scale and punitiveness showing strong correlations.

TABLE 8b. OLS REGRESSION OF FACTOR Z-SCORES, 2009

Independent Factor Variable	R	Adj R ²	Std Error	Beta	t	Significance
Model Summary:	.752***	.538***	.680			.000
(Constant)			.096			1.000
Market scale:			.100	.596***	5.979***	.000
Punitiveness:			.098	.383***	3.932***	.000
Economic Anxiety:			.100	.103	1.029	.309

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2010--

Bivariate (Crosstabs)

Correlations for 2010 data remain largely consistent with the previous two years, with the exception that market scale, while remaining significant at the .001 level in the linear test, drops out of significance on the two non-linear measures of association. This may be an artifact of the Great Recession's effect on unauthorized immigrant population movements. As unauthorized populations in many states fluctuated in 2010 with the vagaries of the labor market and widespread unemployment, entrepreneurial local enforcement decisions may have lagged behind, reacting more to market conditions from the previous year or lagging perceptions of established unauthorized immigrant populations in states where they were in fact dropping.

**TABLE 7c. CROSSTABULAR CORRELATIONS OF RANKED CONTEXTUAL FACTORS
WITH RANKED LOCAL ENFORCEMENT FACTOR, 2010**

Independent Factor Variable	Fisher's Exact Test		Cramer's V		Kendall's tau-b	
	Statistic	Significance	Value	Significance	Value	Significance
Market scale:	20.739	.122	.339	.126	.411***	.000
Punitiveness:	18.542	.234	.316	.250	.000	1.000
Economic Anxiety:	24.898**	.026	.374**	.032	.238*	.054

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2010--

Multivariate (OLS Regression)

Consistent with the prior two years, the year of the “Tea Party Wave” midterm election shows state-level enforcement driven primarily by market scale, and secondarily (but still strongly) by punitiveness.

TABLE 8c. OLS REGRESSION OF FACTOR Z-SCORES, 2010

Independent Factor Variable	R	Adj R ²	Std Error	Beta	t	Significance
Model Summary:	.743***	.523***	.690			.000
(Constant)			.098			1.000
Market scale:			.103	.637***	6.166***	.000
Punitiveness:			.099	.301***	3.042***	.004
Economic Anxiety:			.103	.081	.784	.437

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2011--

Bivariate (Crosstabs)

Bivariate statistics for 2011 resemble those of 2008-9, implying that local enforcement decision-making had caught up with unauthorized population movements, which in any case were beginning to stabilize in tandem with the first reductions in unemployment to follow the 'Great Recession.'

**TABLE 7d. CROSSTABULAR CORRELATIONS OF RANKED CONTEXTUAL FACTORS
WITH RANKED LOCAL ENFORCEMENT FACTOR, 2011**

Independent Factor Variable	Fisher's Exact Test		Cramer's V		Kendall's tau-b	
	Statistic	Significance	Value	Significance	Value	Significance
Market scale:	22.571*	.063	.354*	.075	.349***	.001
Punitiveness:	14.512	.564	.283	.522	.032	.773
Economic Anxiety:	22.700*	.060	.361*	.054	.406***	.000

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2011--

Multivariate (OLS Regression)

The multivariate analysis of 2011 data is unique in the five years of cross-sectional analyses in that it shows highly statistically significant correlations for all three of the independent factors. While economic anxiety appears to be negatively correlated with local enforcement, because of its negative loading on the original factor analysis, the correlation is in fact positive. This across-the-board significance could be a reflection of the new dominance of Tea Party Republicans in state- (and presumably local-) level immigration-enforcement policy-making, playing into nativist sentiment by making enforcement policy particularly responsive to economic anxiety (thus operationalizing the nativist connection of job losses and benefit fraud with unauthorized immigrants). The 2011 passage of anti-immigrant legislation in five states in 2011 would seem to provide anecdotal support for this interpretation.

TABLE 8d. OLS REGRESSION OF FACTOR Z-SCORES, 2011

Independent Factor Variable	R	Adj R ²	Std Error	Beta	t	Significance
Model Summary:	.773***	.571***	.655			.000
(Constant)			.093			1.000
Market scale:			.098	.544***	5.569***	.000
Punitiveness:			.094	.322***	3.426***	.001
Economic Anxiety:			.098	(.318)***	(3.247)***	.002

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2012--

Bivariate (Crosstabs)

Bivariate analysis for 2012 is again generally consistent with the four years prior, despite federal mandate necessitating that Secure Communities coverage be dropped from the dependent factor.

TABLE 7e. CROSSTABULAR CORRELATIONS OF RANKED CONTEXTUAL FACTORS WITH RANKED LOCAL ENFORCEMENT FACTOR, 2012

Independent Factor Variable	Fisher's Exact Test		Cramer's V		Kendall's tau-b	
	Statistic	Significance	Value	Significance	Value	Significance
Market scale:	24.404**	.030	.387**	.017	.452***	.000
Punitiveness:	19.352	.187	.332	.161	(.054)	.647
Economic Anxiety:	19.928	.157	.339	.126	.323***	.003

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2012--

Multivariate (OLS Regression)

Multivariate statistics for 2012 appear to revert back to the pattern characteristic of the 2008-10 analyses, with economic anxiety again dropping out of significance when controlling for the other two factors.

TABLE 8e. OLS REGRESSION OF FACTOR Z-SCORES, 2012

Independent Factor Variable	R	Adj R ²	Std Error	Beta	t	Significance
Model Summary:	.798***	.613***	.622			.000
(Constant)			.088			1.000
Market scale:			.092	.709***	7.684***	.000
Punitiveness:			.090	.345***	3.844***	.000
Economic Anxiety:			.092	(.107)	(1.162)	.251

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

Longitudinal Analyses – Bivariate and Multivariate by Two- and Four-Year Periods

Longitudinal analyses for the model are somewhat more complicated, both structurally and conceptually, than their cross-sectional equivalents, responding as they do to barely perceptible shifts in some of the constituent variables, and more extreme changes in others. Structurally, the correlations below test the associations of the change in z-scores for each of the three independent factors in the model with the z-score change in local enforcement entrepreneurship. Because the measures used are z-score changes, and the z-scores are constructed from the original cross-sectional factor analyses, the changes being measured are relative to the other states in the model, rather than absolute.

Given the nature of the factor constructs, this technical detail should not present a conceptual problem in the interpretation of results. A few other differences may require conceptual adjustments, however, including temporal order. While the annual means of factors under examination in the cross-sectional analyses can be considered as relatively static data points, ‘washing out’ any lag time that might be considered to separate changes in the independent variables from ‘reactions’ in the dependent factor, dynamic change-over-time variables arguably have a different character. I have attempted to mitigate this effect by looking at two- and four-year changes, in the hopes that examining changes over a longer period of time will similarly eliminate the necessity to account for effect delays by formally lagging the dependent variable. Other potential conceptual issues arise from the factoring of constituent variables that represent ‘gradual’ changes-over-time, with others encompassing changes that will effectively be immediate. Incarceration rates, for example, will shift gradually over time as new policies are put into place in the various practices that contribute to them: fewer and shorter sentences result in releases increasing relative to admissions, improved parole and probation practices do the same, etc. Changes in the number of prisoners in for-profit facilities, by contrast, might represent the opening or closure of entire prisons, meaning that a large population of prisoners

could be moved from one category to another in the space of days or weeks. Again, however, because the underlying concepts I am attempting to capture are operationalized broadly and in numerous ways (including the examples outlined above), I continue to have confidence that these dynamics will be captured equally well in the tests below.

--2008-10 (change-over-time)--

Bivariate (Crosstabs)

Bivariate analysis for the longitudinal analyses that follow show the same crosstabular correlations between ranked groupings of states as those for the cross-sectional analyses above. Conceptually, however, the 1-through-5 ranks represent not the lowest to highest market scale, but the least *increased* (or most decreased, depending) to the most *increased*. This conceptual distinction applies to all of the ranked factor variables in each of the bivariate correlations. Thus, a state that is rank 5 (high) market scale in cross-sectional analyses could end up as rank 1 (least increased/most decreased) in the longitudinal analysis. In any case, the longitudinal bivariate analysis for 2008-10 shows only one statistically significant correlation: a *negative* correlation between increased punitiveness and increased local enforcement entrepreneurship.

TABLE 7f. CROSSTABULAR CORRELATIONS OF RANKED ECONOMIC FACTORS WITH RANKED LOCAL ENFORCEMENT FACTOR, 2008-2010

Independent Factor Variable	Fisher's Exact Test		Cramer's V		Kendall's tau-b	
	Statistic	Significance	Value	Significance	Value	Significance
Market scale:	12.550	.747	.255	.750	(.003)	.978
Punitiveness:	9.542	.935	.224	.918	(.226)**	.037
Economic anxiety:	14.747	.544	.283	.522	.166	.159

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2008-10 (change-over-time)--

Multivariate (OLS Regression)

While not in this case statistically significant, the direction of the multivariate correlation between punitiveness and local enforcement is again negative, consistent with the bivariate test above. Of the three factors tested, only increased economic anxiety shows a statistically significant correlation with increased local enforcement for 2008-10.

TABLE 8f. LINEAR REGRESSION OF FACTORS, 2008-2010

Independent Factor Variable	R	Adj R ²	Std Error	Beta	t	Significance
Model Summary:	.330	.051	.565			.147
(Constant)			.080			1.000
Market scale:			.497	.216	1.335	.189
Punitiveness:			.332	(.199)	(1.418)	.163
Economic anxiety:			.160	.292*	1.808*	.077

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2010-12 (change-over-time)--

Bivariate (Crosstabs)

None of the bivariate tests for change-over-time from 2010 to 2012 approaches significance, indicating the difficulty of accurately specifying the local enforcement entrepreneurship factor after the removal of the Secure Communities variable and the lack of movement in 287(g) MOAs.

TABLE 7g. CROSSTABULAR CORRELATIONS OF RANKED ECONOMIC FACTORS WITH RANKED LOCAL ENFORCEMENT FACTOR, 2010-2012

Independent Factor Variable	Fisher's Exact Test		Cramer's V		Kendall's tau-b	
	Statistic	Significance	Value	Significance	Value	Significance
Market scale:	11.739	.812	.245	.816	(.054)	.637
Punitiveness:	17.366	.310	.316	.220	(.016)	.875
Economic anxiety:	8.967	.955	.200	.949	.022	.855

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2010-12 (change-over-time)--

Multivariate (OLS Regression)

As with the bivariate correlations above, the multivariate test for change-over-time from 2010-12 does not indicate any statistically significant relationships.

TABLE 8g. LINEAR REGRESSION OF FACTORS, 2010-2012

Independent Factor Variable	R	Adj R ²	Std Error	Beta	t	Significance
Model Summary:	.206	(.020)	.381			.569
(Constant)			.080			1.000
Market scale:			.422	.045	.295	.769
Punitiveness:			.178	.060	.382	.704
Economic anxiety:			.124	(.217)	(1.427)	.160

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2008-12 (change-over-time)--

Bivariate (Crosstabs)

Bivariate analyses for the change over the entire period (from 2008 to 2012) indicate statistically significant relationships between increases in all three independent factors and increased local enforcement entrepreneurship, although only punitiveness shows a directional correlation. Consistent with the 2008-10 longitudinal data, the strong directional relationship between punitiveness and local enforcement is negative, indicating that short-term fluctuations in punitiveness have the opposite effect from the positive relationship shown in cross-sectional analyses.

TABLE 7h. CROSSTABULAR CORRELATIONS OF RANKED ECONOMIC FACTORS WITH RANKED LOCAL ENFORCEMENT FACTOR, 2008-2012

Independent Factor Variable	Fisher's Exact Test		Cramer's V		Kendall's tau-b	
	Statistic	Significance	Value	Significance	Value	Significance
Market scale:	26.520**	.013	.381**	.023	.097	.419
Punitiveness:	20.292	.138	.316	.253	(.324)***	.000
Economic anxiety:	22.125*	.076	.346*	.098	.022	.849

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

--2010-12 (change-over-time)--

Multivariate (OLS Regression)

Multivariate analyses for the whole period show statistically significant correlations between both market scale and punitiveness and local enforcement, with the latter again negative.

TABLE 8h. LINEAR REGRESSION OF FACTORS, 2008-2012

Independent Factor Variable	R	Adj R ²	Std Error	Beta	t	Significance
Model Summary:	.475**	.175**	.445			.008
(Constant)			.063			1.000
Market scale:			.330	.376***	2.833***	.007
Punitiveness:			.094	(.257)*	(1.955)*	.057
Economic anxiety:			.128	(.132)	(.985)	.330

* sig ≤ .10 -- ** sig ≤ .05 -- *** sig ≤ .01

V. Discussion of Results

A statistically significant and structurally consistent test of the punishment marketplace theory

These results show clear support for the punishment marketplace/punitive immigration control theory and the local enforcement entrepreneurship framework I have outlined above. The five years of data under examination produce consistent, statistically significant correlations in both the bivariate and multivariate cross-sectional analyses, along the following lines:

- (1) Market scale shows strong and statistically significant positive correlations with local enforcement entrepreneurship across both bivariate and multivariate tests and all five years of data.
- (2) Punitiveness shows consistent, moderate to strong statistically significant positive associations with enforcement entrepreneurship across all five years of multivariate tests.
- (3) Economic anxiety shows consistent, moderate to strong statistically significant positive linear associations with enforcement entrepreneurship across all five years of bivariate crosstabulations of ranked factor groupings.

The features of each of these relationships are distinct, indicating substantially different effects for each of the independent factors on competitive, locally-driven participation in immigration enforcement activity state-by-state. The effect of market scale is the most straightforward of the three. Enforcement entrepreneurship is both broadly and specifically dependent on native-born perceptions of the scale of unauthorized immigrant participation in labor markets and civic life. This perception makes possible the potential political-symbolic benefit of enforcement entrepreneurship, while the reality of present and visible deportable immigrants makes possible the direct and indirect fiscal benefits of detention. It is therefore unsurprising that the composite measure of all three dependent variables that make up the enforcement entrepreneurship factor – average daily detainee population, 287(g) participation, and Secure

Communities coverage – would vary positively with the composite measure of actual population, population visibility, and labor market saturation provided by the market scale factor. It is also unsurprising that this positive covariance fits both large, ranked groupings of states and individual states equally well.

The strong showing of punitiveness on all five cross-sectional multivariate analyses is consistent with the idea that punitive state-level political and popular cultures, accompanied by a deeply economically-involved and market-driven regular correctional system, should predict a similarly punitive and economically-motivated approach to immigration enforcement. There are a number of possible explanations for the contrast between this moderate to strong relationship in multivariate individual state analyses and the lack of covariance on bivariate ranked groupings. First, as discussed above, this relationship may be driven by extreme cases, of both adherence on the one end and resistance on the other, to neoliberal free-market ideology in the provision of public goods. Second, controlling for the other factors included in the model may prevent the effects of punitiveness on immigration enforcement from being washed out by the stronger market scale variable. Highly punitive states with small immigrant markets may not feature high levels of immigration enforcement activity overall, but their enforcement may be markedly higher relative to less punitive states with equally small immigrant markets. Such effects would be washed out by the assembling of states into larger ranked groupings.

Longitudinal associations are generally consistent with the patterns found in the cross-sectional analyses, if somewhat more complicated to interpret. Because the longitudinal analyses test the relationships between the *relative change* in the underlying factor variables from year to year, they capture short-term dynamics that are in some important respects theoretically distinct from the longer-term, established trends revealed by the static associations of annual means. The most interesting and important of the longitudinal relationships is the surprisingly

consistent *negative* association between changes in relative punitiveness and changes in local enforcement. On the surface, this appears to conflict with the equally consistent (in the multivariate analyses, at any rate) *positive* relationship between punitiveness and enforcement on the cross-sectional tests. There is a logic to this apparent reversal, however, that fits with the distinction between short-term dynamics and long-term trends described above. The private/for-profit corrections industry has, essentially, two potential clients in any given state: the state government (for contracts 'supervising' sentenced state prisoners) and the federal government (for parallel contracts covering immigrant detainees, sentenced federal prisoners, and fugitives apprehended by the US Marshall's Service). While private/for-profit prison companies also own and operate facilities for sentenced and pre-trial detainees under contracts with county and municipal governments, these relationships are not represented in the current model, as the punitiveness variable includes only state and federal prisoners. Movements into and out of these two types of contractually-defined relationships fit into the category of *immediate* changes described above, as large populations of prisoners or detainees will move into or out of newly contracted facilities within a short period of time.

In the static/cross-sectional analyses, a high level of punitiveness in a given state can be interpreted as an extensive or well-developed correctional infrastructure, usually with an established private/for-profit sector and a political culture receptive to its expansion. Because that established for-profit corrections sector is expressly oriented towards maximizing fiscal profit and the accumulation of capital, it will pursue whatever contracts are likely to produce this result. Since (as discussed above) federal immigrant detention contracts are consistently among the most profitable, it makes sense that this established infrastructure and receptive political culture would be positively associated with local enforcement. Why then, is the short-term *reduction* of this infrastructure and/or the receptiveness of state political culture associated with a short-term *increase* in local enforcement? The answer lies in the difference

between short- and long-term business strategy. In a state with an already well-established private/for-profit corrections industry, any reduction in the receptiveness of state officials – or simply in state prison populations available to occupy for-profit beds – will increase the attractiveness of federal detention contracts in that state. While the converse – increased punitiveness, whether in terms of receptive political culture, or rising prisoner populations – does not necessarily reduce the attractiveness of federal detention contracts in the state, it does increase the relative profit potential of state contracts.

Thus, simple business strategy dictates that the short- and long-term dynamics of punitiveness have apparently opposing statistically significant relationships with local enforcement entrepreneurship. But what of the local government actors at the heart of the theory, whose competitive pursuit of political-economic benefit defines the punishment (and punitive immigration enforcement) marketplace? Do these government actors also follow business strategy in their approach to market competition? While I believe that the neoliberal, free-market logic of fiscal profit and capital accumulation is indeed active in local-level policy entrepreneurship, I do not believe that local governments compete in the punishment marketplace for purely fiscal gain. The above analyses support the idea that fiscal gain, in terms of government revenues, is one of the potential benefits available in the punishment marketplace, and entrepreneurial partnerships with private/for-profit actors represent one of the ways that local governments can pursue this benefit. However, following Bichler and Nitzan's concept of capital as power, the benefit potential of policy entrepreneurship is broad-based – as are the potential beneficiaries. The sociopolitical elite of Ferguson, Missouri, for example, did not pursue an agenda of low-level criminalization of the city's majority African-American population for the purely budgetary benefit of monetary fines, fees, and penalties (USDOJ Civil Rights Division, 2015; *United States of America v. The City of Ferguson*, 2016). This punitive policy provided the city's white minority political-economic elite with a multitude

of benefits in terms of *political-economic power*: it provided regular reinforcement of their perceived cultural superiority; maintained a constant level of vulnerability in the city's majority black population to which they were not subject; it reduced socioeconomic competition from the African American majority in business, housing, education, and other sectors; it secured their political hegemony through disenfranchisement of the majority.

The above, of course, is only a partial list, derived from an anecdotal parallel that serves to illustrate the reality that direct fiscal benefit is only one of many available through participation in the punishment marketplace, and the punitive immigration enforcement marketplace by extension. Local governments have a wide variety of ways to participate in the punitive immigration enforcement marketplace and can pursue a wide variety of benefits by doing so. As I will illustrate via the brief case studies of Georgia and New Jersey that follow, local governments can, and do, partner with private/for-profit actors to make speculative entries into the immigrant detention marketplace. Both the cross-sectional and longitudinal results of the analyses above lend credence to the idea that such entries are a significant contributor to deportation rates, in individual states as well as nationwide. Speculative facility construction, while hardly risk-free, carries direct benefit for local governments as a source of revenue, as well as indirect economic benefits in terms of employment etc. Operational immigrant detention facilities also carry an enormous potential political-symbolic benefit, emboldening a white, nativist, sociopolitical elite, while demoralizing the unauthorized immigrant (and larger Latino) communities against whom they are deployed. No conspiracy is required in order for local governments to pursue these benefits as a matter of policy, but they are certainly possible, and no doubt do occur: picture, for instance, the white, nativist county commissioner, who also happens to own a construction company. His vote for a speculative facility construction contract with a private/for-profit partner benefits him in innumerable ways, from the financial to the psychological: his firm participates in the construction of the facility (whether in a manner that

is outright corrupt or sufficiently indirect to not technically violate ethics laws is immaterial); his subcontractors can continue to pay their now demoralized and vulnerable undocumented Mexican and Central American employees substandard wages, lowering his labor costs; he receives votes from his nativist, white base for his 'tough action' on immigration; he receives the psychological benefit of seeing his nativist beliefs reinforced in the facility's eventual operations, etc.

While it is absolutely possible for all of these benefits to accrue to a single, decision-making local government official via participation in punitive immigration control, this scenario is by no means necessary to characterize punitive enforcement policy as benefit-driven. While extreme cases, such as the above hypothetical example or Sheriff Joe and his ilk, certainly contribute to the statistical relationships outlined above, it is unlikely that they exert much influence on the consistent bivariate correlations between both market scale and economic anxiety and local enforcement. While ICE might, under the legalistic aegis of its mission, be able to justify focusing its enforcement efforts on those states where undocumented populations are the largest, there is no parallel justification for heightened enforcement in areas of high unemployment, or against larger populations of dependent or out-of-work unauthorized immigrants. Enforcement that is responsive to the specific labor market conditions of unauthorized immigrants begins to look quite instrumental indeed; you are no longer working to protect and enhance labor market opportunities for native-born workers, but rather to intimidate an established undocumented labor pool, and enforce the exclusion of their dependents from the benefits of social membership.

In light of this range of results, I conclude that (1) the punishment marketplace is a viable interpretation of local approaches to immigration control in a neoliberal, weak federalist context; (2) the mechanisms involved encompass broad and overlapping socio-cultural and

political economic practices, policies, and attitudes; (3) certain of these mechanisms remain largely consistent over time and are slow to change, while others may be subject to extreme changes from one annual measure to the next; and (4) the punishment marketplace operates at a level relative to the weakness of the federal government, and has the potential to be drastically reduced, or even eliminated, through strong federal action.

Operationalizing the punitive immigration control marketplace: Two brief case studies

As discussed above, the workings of the punishment marketplace and punitive immigration control present challenges to precise operationalization, encompassing as they do broad and overlapping socio-cultural and political-economic practices, policies, and attitudes. Indeed, examining the punishment entrepreneurship of local polities at the aggregate level of US states is a prime example of what Coleman and Stuesse call the “disconnect between [...] theories of power and the actually existing bodies and spaces that these theories are said to represent” (Coleman & Stuesse, 2016, p. 524). I have made liberal use thus far of both hypothetical and anecdotal examples to portray the range of mechanics through which local governments engage in immigration enforcement entrepreneurship, and how these competitive activities shape a given state’s punishment marketplace. Here, I attempt to reduce the disconnect and enhance these examples with 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 the quantitative statistics for each state, including their relative positions in each of the cross-sectional and longitudinal analyses undertaken above; as the two state’s factor rankings and z scores clearly indicate, both exhibit high levels of local enforcement during each year under examination, and increasing enforcement over the course of the five-year period. The states vary significantly, however, on the dependent factors of market scale, punitiveness, and economic anxiety, raising the question of what motivated the entry of localities in each state into competitive enforcement entrepreneurship within the punishment marketplace. I attempt to

answer this question with information from sources such as investigative journalism and advocacy group reports about how enforcement entrepreneurship in the state developed over the five-year period under examination. In synthesizing these multiple data sources for each state, I intend to provide real-world examples of how the relationships shown in the quantitative analyses above are shaped by local policy-making, lobbying, administrative decisions, and other actions undertaken in the entrepreneurial pursuit of benefit in the punitive immigration control marketplace.

TABLE 9. VARIABLE VALUES AND FACTOR RANKS FOR THE STATE OF GEORGIA, 2008-12

Variable	Factor Score Pentile Rank (Local enforcement and detention)							
	AVG 2008	AVG 2009	COT '08-'10	AVG 2010	AVG 2011	COT '10-'12	COT '08-'12	AVG 2012
Market scale (factor score rank):	5	5	5	5	5	3	4	5
Factor Z Score:	.624	.640	+.122	.746	.695	+.000	+.123	.747
Total population of unauthorized immigrants (in thousands).....	475	425	-50	425	432	-25	-75	400
Non-citizens as a proportion of total population.....	.062	.061	+.002	.064	.063	-.002	-.000	.062
Unauthorized immigrants as a proportion of total labor force.....	.063	.069	+.007	.070	.072	-.014	-.007	.056
Econ Anxiety (factor score rank):	4	4	3	5	5	5	4	5
Factor Z Score	.621	.657	+.088	.780	-.976	-.473	-.561	-1.18
Proportion of labor force unemployed.....	.064	.098	+.043	.107	.101	-.016	+.027	.091
Proportion of unauth population not participating in labor force.....	.32	.29	-.08	.24	.29	+.08	-.01	.31
Punitiveness (factor score rank):	5	5	2	5	5	2	2	5
Factor Z Score	1.17	.957	-.115	1.06	.840	-.146	-.261	.907
Incarceration rate per 100 thousand population.....	542	533	+18	560	547	-18	0	542
Number of prisoners held in private facilities.....	5146	5129	+87	5233	5615	+2667	+2285	7900
Proportion of total legislative seats held by Republicans.....	.593	.589	-.004	.589	.631	+.051	+.047	.640
Local enforcement entrepreneurship (rank):	5	5	4	5	5	5	5	5
Factor Z Score	.809	.919	+.042	.851	1.75	+.826	+.863	1.68
Average daily population of detained immigrants.....	1822	1975	+222	2044	2376	+370	+592	2414
Total number of 287(g) memoranda of understanding.....	4	5	+1	5	5	+0	+1	5
Proportion of jurisdictions with active Secure Communities MOA	.00	.02	+.06	.06	1.00	+.94	+1.00	1.00

Immigration enforcement in Georgia, 2008-2012

Both a 'new destination' state for 21st century unauthorized immigrants and one of the anchors of the conservative Southern 'Bible Belt', it is no surprise that Georgia occupies the top rank (five) for both market scale and punitiveness factors for all five years from 2008 to 2012.

Because it is also one of the largest (in terms of population) and most urbanized states of the South, with a relatively sizeable proportion of jobs in manufacturing and retail, Georgia was also hard hit by the effects of the Great Recession, and moves from rank four on the economic anxiety factor in 2008 and 2009, to rank five from 2010-12. Georgia also features a consistently high – and consistently increasing – level of local enforcement entrepreneurship, being one of only nine states to feature an annual detainee ADP in the thousands for all five years, and one of the top five states by number of 287(g) MOAs.

Punitive immigration enforcement in Georgia is best understood in the context of the state and its localities' (one of the original 13 colonies, Georgia has 159 counties) historical treatment of its African American population. A slave state of the Confederacy, Georgia kept its former slaves under Jim Crow segregation until the passage of the federal Civil Rights Act in 1965. Like most other Southern states, Georgia mitigated some of its post-Civil War labor supply problems via *convict leasing*, a system in which convicted criminals, rather than serving their sentences in prison, were instead leased out as contract labor (slave labor, for all intents and purposes, as permitted under the 14th Amendment) to the highest bidder (or the most well-connected bidder, as often as not) (Mancini, 1996). It should come as no surprise that some 95% of leased prisoners over the course of the system's 40- year history were African American, a racial makeup that persisted throughout the history of its successor – the 'chain gang' – as well (Curtin, 2000). A product of its Keynesian origins, the chain gang forced prisoners to labor at public works rather than private enterprise, and persisted in Georgia until 1955 – longer than in any other state that embraced the practice (Lichtenstein, 1996).

Contemporary Georgia has both one of the country's highest incarceration rates (542 per 100k in 2012, seventh highest in the nation) and the third highest African American population – in raw numbers and proportionally alike. Interestingly, given these statistics, although Georgia's black incarceration rate is over three times its white incarceration rate, this ratio is the second *lowest* in the nation (after Hawaii); its Hispanic incarceration rate is also well below the national average (Mauer & King, 2007). These figures do not change Georgia's place in the basic pattern of white ethnic hegemony that characterizes America's contemporary neoliberal approach to criminal justice and mass incarceration. They do, however, speak to the increasing political, social, and economic dominance of African American populations in Atlanta – where the political establishment (including criminal justice officials such as prosecutors) is overwhelmingly African American, and blacks significantly exceed national averages on economic indicators like home ownership and household income – and other major cities in the state, such as Macon, Savannah, and Athens (Kochhar, Gonzalez-Barrera, & Dockterman, 2009; Pooley, 2015).⁶³

Whatever the relative impact of these sites of resistance, Georgia's state government has, since at least the turn of the 21st century, closely followed the neoliberal economic blueprint of widespread privatization, reduced public services, and corporate subsidies, under the governorships of Republicans Sonny Purdue and – since 2011 – his successor Nathan Deal:

Governor 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. Georgia was among the first states to cut back the duration of unemployment benefits available to its residents to 18 weeks from 26. The state

⁶³ While these figures might plausibly contribute to an argument that these African American dominated polities are sites of resistance to neoliberal hegemony, we should not assume that, because of the racial dimension of the neoliberal project, African American political-economic strength is by definition deployed in the service of such resistance. The histories of cities like Detroit – long dominated politically and economically by African Americans – demonstrate the opposite, featuring both municipal corruption and the continued criminalization and impoverishment of the city's African American majority. Just because these dynamics serve in part to benefit Detroit's African American political-economic elite does not make them any less a manifestation of the neoliberal project of inequality.

has slashed \$8.3 billion from public-school funding since 2003 and passed eligibility requirements for a state financial-aid program that caused a dramatic decline in the number of students in technical colleges. (Semuels, 2015)

Just as this blueprint has required high incarceration rates to condition its low-income population to consistently high unemployment, few benefits, and low wages when employment is available, privatization has also been vigorously undertaken within Georgia's correctional system itself. Privatization in Georgia began in 1997 with a contract between the Georgia Department of Corrections (GDC) and 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 8,000 prisoners by the end of 2012, or some 14% of the state's total incarcerated population. Materials provided by the GDC also take pains to point out that the three facilities together provide employment for about 1100 *citizens* from their surrounding counties (Georgia Department of Corrections, 2015), and the CCA's *2012 Annual Report* touts its two Georgia facilities as being among its most profitable. The *Report* provides a detailed description of how it ensured this profitability:

In December 2009, CCA also entered into an Economic Development Agreement with the Douglas-Coffee County Industrial Authority ("Coffee County") in Coffee County, Georgia to implement a tax abatement plan related to CCA's bed expansion project at its Coffee Correctional Facility. The tax abatement plan provides 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)

In layman's terms, the CCA has 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 has secured the loan, and CCA pays only the interest on the bonds, meaning that Coffee County receives *no direct revenue*, in the form of taxes or rents on the facility that it *legally owns*.

While this arrangement may appear to be a staggering folly – and arguably is, by the logic of a utilitarian interpretation of the public interest – it is far from uncommon in the neoliberal ‘race to the bottom’ that characterizes contemporary state and local competition for corporate facility siting. CCA’s contract with Wheeler County, for its second GDP contract facility, is nearly identical to the one described above. The ostensible motivation for such disadvantageous agreements with for-profit corporate partners is nearly universally cited as ‘job creation’ or ‘economic development’, but the argument for reclaiming the term ‘conspiracy’ laid out above⁶⁴ seems particularly relevant in these situations. Local governments tend to represent a local political-economic elite much more closely than they do the real interests of the local populace. A \$33 million construction project – along with the \$33 million bond issue that supported it – stands to benefit that economic elite, proportionately, a great deal more than any member of the local populace who receives low-wage employment related to it.

The development of immigrant detention in Georgia has followed similar patterns to that of the private/for-profit prison industry – unsurprising, given that it involves essentially the same corporate players, whose tried and true business model relies on the same kinds of parasitic relationships with local authorities. CCA owned and operated two of the four major detention centers active in Georgia as of 2012, the 1,725-bed Stewart Detention Center in Stewart County, and the 502-bed North Georgia Detention Center (NGDC) in Hall County. 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 ADP from 2010 to 2012. Its corporate owner and manager, Detention Management, LLC, and the process that led to its contract with ICE, were the subject of a 2012 investigation by *The Nation* (Rappleye & Riordan Seville, 2012) that we will review in greater detail below. The fourth major detention facility in Georgia is the Atlanta City Detention Center (ACDC) –

⁶⁴ See page 85.

effectively the Atlanta city jail – which contracts 300 of its 1300 beds to detainees from the US Marshal Service and ICE. The ACDC is city-owned and operated, making the City of Atlanta the direct fiscal beneficiary of an ICE detention contract, bringing federal dollars as revenue into its budget.

According to ICE's internal data (U.S. Immigration and Customs Enforcement, 2010; U.S. Immigration and Customs Enforcement, 2015), the three privately owned and operated detention centers in Georgia maintained occupancy rates between 65% and 97% between 2008 and 2012, with Stewart the most successful at over 95% occupancy every year throughout the period. But where did these detainees come from? According to the ACLU's 2012 report *Prisoners of Profit*, "[t]he majority of immigrant detainees interviewed were detained after being stopped for traffic violations throughout Georgia." Detainees interviewed by the ACLU at each of the private facilities "were stopped for traffic violations or apprehended at roadblocks in Cobb, DeKalb, Gwinnett, Houston, and Whitfield counties [...] through traffic stops in Hall County [or] picked up by local police for traffic stops, arrest warrants, or calling the police to report a crime" (Cole, 2012, p. 29). The ACLU's findings echo those of Coleman and Stuesse in their analysis of traffic stops targeting immigrants in Georgia and North Carolina, 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" (Coleman & Stuesse, 2016, p. 535). While a small proportion of the detainees interviewed by the ACLU (10 of 68, or about 15%) were transported to Georgia detention centers after being apprehended in neighboring states (North and South Carolina) or at the border, the vast majority (85%) were apprehended by *local law enforcement personnel* within the state of Georgia. Many of these apprehensions were indeed made under the authority of local LEAs with 287(g) agreements; Georgia began 2008 with four 287(g) MOAs – in Cobb, Hall, and Whitfield Counties, as well as with the statewide Georgia Department of Public Safety – and added a fifth

in Gwinnett County in 2009. It is likely not a coincidence that all of these counties were named by ACLU interviewees as the locations where they were detained, nor that Hall County hosted both a 287(g) agreement and the North Georgia Detention Center.

The case of Hall County provides a clear example of the complex interplay between local law enforcement agencies and federal authorities (ICE) on the question of enforcement. In local media coverage prior to the signing of Hall County's 287(g) MOA, Sheriff Steve Cronic is portrayed, in an interesting illustration of the local political-symbolic benefit of the enforcement program, as refusing to "tiptoe around the hot-button topic of illegal immigration."

"This isn't about immigration," Cronic said of a proposed local-federal [287(g)] partnership which would give his office new enforcement powers. "It's about *illegal immigration*. Our focus would continue to be on identifying, prosecuting and deporting illegal aliens who are in our country illegally and committing crimes. [...] We've argued that [ICE] should look at the areas that have the highest concentrations (of illegal immigrants) and give us first priority." [...] Should Hall County get the agreement approved, Cronic vows to start deportation proceedings for any illegal immigrant for any violation, from DUI to driving without a license. They would not be given an opportunity to post bond.

(Gurr, 2007, p. ital. add.)

Sheriff Cronic's language use makes clear his audience, his interpretation of the law and immigrant personhood, and his views on local enforcement. His audience is his white nativist voters, notified by the dog whistle of 'illegal aliens' and his direct association of intrinsic illegality with criminality. Indeed, only the 'and' between 'in our country illegally' and 'committing crimes' indicates that he himself has any concept that being in the country without authorization is not itself a criminal offense, and he is clearly not attempting to disabuse his audience of this notion. Finally, he portrays himself as having a say in federal enforcement decisions ('We've argued...') and being in a position to himself *start deportation proceedings*, and deny bond to arrestees, regardless of whether they've even been accused of a crime ('any violation'). Whether he does have the influence and powers he claims is not simply a matter of legal interpretation. While it might be up to a local magistrate judge to decide on bond in any given case, what if that judge – most likely elected, most likely a member of the same party as the sheriff – decides, as a matter of professional courtesy or personal friendship, to simply

follow the sheriff's recommendation in every case? What if the cases of suspected 'illegal immigrants' are simply not forwarded to the court? While this might be a clear violation of the 4th Amendment, it is an easy one to get away with, especially when the subject of the violation has limited English skills, limited constitutional knowledge, or no access to a lawyer or other outside advocate. Finally what if similar relationships exist between the Sheriff and local ICE personnel? Is it possible Cronin could indeed influence ICE to 'look at areas that have the highest concentrations' – meaning focus their own enforcement resources on his jurisdiction? He certainly appears to have some latitude to do this himself once his 287(g) MOA is ratified: in later coverage, a Latino interviewee in Hall County claims "he has noticed an increased law enforcement presence in the Latino community, and said that shortly after 287(g) started, county and city police would set up road blocks, checking for driver's licenses in places where Latinos lived and congregated" (Fielding, 2008). This anecdotal observation is again supported by the empirical findings of Coleman and Stuesse, whose "analysis revealed that roadblocks were disproportionately located in higher concentration Latino neighborhoods" (Coleman & Stuesse, 2016, p. 535). Local complaints about the economic effects of this increased enforcement focus on the damage to Latino-owned businesses serving the Latino community; they do not present any counterpoint regarding the economic benefit brought to the community – specifically, its white socio-political elite – by the expansion of the North Georgia Detention Center, nor the steady stream of immigrant detainees through its doors.

If Hall County provides an illustration of the tangled federal-local decision-making process on enforcement and apprehension, then Irwin County provides a parallel illustration of an equally messy suite of decision-making processes in relation to detention itself. The Irwin County Detention Center began its existence in the early 1990s, as part of the first wave of speculative, for-profit prisons in the industry's early history. Originally holding US Marshals Service detainees, and later a boot camp for juvenile offenders, the facility was empty at the turn of the

century, until it was purchased by the small Municipal Corrections corporation in 2004. Municipal Corrections had been incorporated that same year, for the express purpose of the Irwin investment, and the facility was reopened the following year as an overflow jail for prisoners and pre-trial detainees from surrounding counties. Facility management and operations were subcontracted to yet another corporation, Michael Croft Enterprises, incorporated for the purpose by a former local deputy sheriff of the same name (Rappleye & Riordan Seville, 2012).

Together, the two corporations successfully lobbied Irwin County to make a \$55 million bond issue, in an arrangement similar to the ones between CCA and Coffee and Wheeler Counties described above, to pay for an expansion project that doubled the number of beds in the Center. Hannah Rappleye and Lisa Riordan Seville, whose excellent investigative article for *The Nation* provided the bulk of this information, do not delve into the details of the construction project itself – who benefited from contracts, the nature their relationships with County officials and the for-profit corrections corporations involved, whether they employed undocumented immigrant laborers or subcontractors – but they do reveal that the facility quickly fell into debt upon its January 2009 reopening, and Michael Croft subsequently fled both the county and his mounting debts.

That summer, a new company, Detention Management LLC, took over operations, partnering with Municipal Corrections. [Municipal Corrections principal Terry] O'Brien became a member of its management team. Executives promised to exploit their connections in Georgia and in Washington, DC, to attract ICE's business and turn the detention center around. County leaders were hopeful. As Hazel McCranie, president of the Ocilla-Irwin Chamber of Commerce, put it, "You've got to go out and get a contract with ICE. That's your salvation."

(Rappleye & Riordan Seville, 2012)

Detention Management's five principals all had long and checkered histories in both the private/for-profit and public corrections fields, but indeed had sufficient federal connections to solicit letters of support from two of Georgia's (conservative Republican) elected officials: local congressman Jack Kingston (at the time a member of the House Appropriations Committee)

and Senator Johnny Isakson. What followed was a flurry of competitive politicking that ultimately resulted in a domino effect of immigrant detainees being moved to fill the Irwin facility: first from the established detention center in the Etowah, Alabama, County Jail (which had a contract with ICE to house 360 detainees), then from New Orleans to replace some of those detainees lost in Etowah.

The impact of all of these movements appears in the quantitative analyses undertaken for this work, with the opening of Irwin accounting for half the 2008-2012 increase in Georgia's overall ADP, and the Etowah County Jail retaining its 360 detainees each year despite Alabama's overall ADP drop of nearly 300. Rappleye and Seville's investigation reveals a number of dynamics at work in the punitive detention marketplace that have significant relevance for the theory. First, as I will discuss in greater detail when considering the limitations of this project's analytical model below, the Irwin County story demonstrates that competition in the punitive detention marketplace is not bound by US states, but has the potential to be national in scope, with local governments in different states competing for the same (semi-)limited resources of immigrant detainees. I say 'semi-limited' because of this quote from ICE legislative liaison Elliot Williams who writes in an internal email that "We can move a hundred women out of Etowah, and replace them with a hundred others. [...] Not a zero-sum issue.' According to emails, ICE would simply find more 'bodies' to fill the beds" (Rappleye & Riordan Seville, 2012). This implies that ICE officials recognize the connection between detainee numbers and the scale of local enforcement, and – just as they are receptive to working with local officials to facilitate their participation in the detention marketplace – are equally receptive to manipulating the 'yield' (in terms of apprehended immigrants moved to detention) from locally controlled enforcement efforts, such as that being undertaken by Hall County Sheriff Steve Cronic. This connects to the second, and most important, dynamic revealed by the Irwin investigation: detention decision-making, like enforcement decision-making, is not in reality the exclusive

province of federal officials, as some scholars have presented it (Cox & Miles, 2013). Federal decision-making is subject to significant influence from local government actors and their private sector partners, and local governments have a great deal of leverage in the federal decision-making that determines much of the benefit (particularly in terms of direct fiscal benefit) available through participation in the punitive immigration control marketplace.

While much more could be written about Georgia's punitive immigration control marketplace, the above narratives do a great deal to flesh out the mechanics of the relationships that are plainly on display in Georgia's quantitative data. It is a 'new destination' state, with a large, active, and visible undocumented population. It hosts a large and well-connected private/for-profit correctional sector. It is a conservative state of the Old South, and has a long history of willingness to approach punishment as an instrumental, economic lever. And its economy is in significant distress, not only because of the continuing effects of the Great Recession, but also due to the dedication of its longstanding Republican government to the neoliberal project of privatization and reduced public investment. It also features a sizeable and growing punitive immigration enforcement marketplace, in which a number of local governments are enthusiastically participating as entrepreneurs, reaping both political-symbolic and direct economic benefit to a greater or lesser degree. This market did not arise in a vacuum, but rather was put in place because the conditions in the state made it possible, and potentially profitable.

TABLE 10. VARIABLE VALUES AND FACTOR RANKS FOR THE STATE OF NEW JERSEY, 2008-12

Variable	Factor Score Pentile Rank (Local enforcement and detention)							
	AVG 2008	AVG 2009	COT '08-'10	AVG 2010	AVG 2011	COT '10-'12	COT '08-'12	AVG 2012
Market scale (factor score rank):	5	5	4	5	5	3	3	5
Factor Z Score:	1.512	1.351	+.268	1.563	1.583	-.002	+.049	1.561
Total population of unauthorized immigrants (in thousands).....	550	450	0	550	526	-25	-25	525
Non-citizens as a proportion of total population.....	.099	.101	+.003	.102	.102	+.001	+.004	.103
Unauthorized immigrants as a proportion of total labor force.....	.092	.085	-.006	.086	.096	-.004	-.010	.082
Econ Anxiety (factor score rank):	2	2	4	3	2	4	4	3
Factor Z Score	-.246	-.203	+.268	.022	.077	-.078	-.346	-.100
Proportion of labor force unemployed.....	.054	.091	+.039	.093	.094	+.002	+.041	.095
Proportion of unauth population not participating in labor force.....	.23	.22	+.05	.27	.24	-.04	+.01	.24
Punitiveness (factor score rank):	2	2	3	2	1	1	2	1
Factor Z Score	-.660	-.569	+.028	-.632	-.844	-.506	-.478	-1.138
Incarceration rate per 100 thousand population.....	305	297	-21	284	270	-23	-44	261
Number of prisoners held in private facilities.....	2682	2950	+159	2841	2887	-124	+35	2717
Proportion of total legislative seats held by Republicans.....	.408	.408	+.009	.417	.408	-.034	-.025	.383
Local enforcement entrepreneurship (rank):	4	4	4	4	4	5	5	5
Factor Z Score	-.038	.086	+.230	.192	.153	+.776	+1.01	.969
Average daily population of detained immigrants.....	1147	1232	+223	1370	1629	+630	+853	2000
Total number of 287(g) memoranda of understanding.....	1	2	+2	3	3	+0	+2	3
Proportion of jurisdictions with active Secure Communities MOA	.00	.00	.00	.00	.00	+1.00	+1.00	1.00

Immigration enforcement in New Jersey, 2008-2012

The story of contemporary enforcement entrepreneurship in New Jersey is the story of Essex County – a product of many of the same kinds of ideologies and dynamics at work in Georgia's Irwin and Hall Counties, but arising out of a vastly different context. Another of the original 13 colonies, New Jersey was the last Northern state to abolish slavery and did so in such a gradual way that a handful of slaves were still held in bondage in the state by the close of the Civil War. Perhaps not coincidentally, New Jersey was also one of the few Union states to vote against ratifying the 14th and 15th Constitutional Amendments when they were first proposed. The State's population increased by nearly a factor of ten over the course of the 19th century, largely

from the influx of European immigrants drawn by its early industrialization. Many of these immigrants were Catholics from Ireland and (to a much lesser extent) Germany, a dynamic that engendered a great deal of nativism amongst 19th century New Jersey's native-born Protestants. Anti-Catholic and anti-Irish riots and lynchings, of varying severity, were a regular occurrence in New Jersey's cities during the middle years of the 19th century, and Know-Nothing candidate William Newell was elected governor in 1856 (Shaw, 1994).

In this history of European immigration and nativist reaction, New Jersey in the 19th and early 20th centuries was typical of the states of the American Northeast, with successive waves of immigrants from further south and east in Europe (Italians, Poles, Russians, and Eastern European Jews) provoking initial nativist reactions, followed by their eventual assimilation as their communities in the state entered their second and third generations. Following the restrictive quotas of the 1920s, European immigration to New Jersey slowed, and the economic role previously played by these immigrants – low-skilled, low-wage labor for the state's burgeoning industrial sector – was filled by African American migrants from the South (as part of the 'Great Migration') and Puerto Rican migrants following the extension of citizenship to residents of the island in 1917. After the 1965 Immigration Act, immigration to New Jersey became incredibly diverse, leading to its contemporary situation, wherein large 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).

Despite this diversity, nativism has remained a significant force in the politics and culture of New Jersey, ironically adopted by successive earlier immigrant groups as they became culturally assimilated, economically established, and abandoned the state's urban population centers for its suburban and rural north and west. In a 2009 Monmouth University poll – a year when, according to the data above, non-citizens made up over a tenth of the state's population, and

unauthorized immigrants close to a tenth (8.5%) of the state's workforce – over half of the respondents characterized 'illegal immigration' as a 'very serious' problem, and some 62% (including 59% of Democrats) opposed granting 'illegal immigrants' the right to hold even a 'limited' driver's license (Monmouth University/Gannett New Jersey Poll, 2009). Given the political-symbolic benefit these numbers imply, it is little wonder that three New Jersey law enforcement agencies entered into 287(g) MOAs with ICE around the same time period – the Hudson City Police Department in May of 2007, the Hudson County Department of Corrections in August of 2008, and the Monmouth County Sheriff's Office in October of 2009. The last of the three agreements was entered into by Monmouth County Sheriff Kim Guadagno – a former federal prosecutor – in fulfillment of a campaign promise made in 2007, couched in the rhetoric of fighting terrorism:

According to Guadagno, if 287(g) is employed, an "inmate's immigration status is immediately checked and potential terrorists will immediately come to the attention of federal authorities. This is a program the Monmouth County Sheriff's Office will employ when I am sheriff," she said. "Potential terrorists like the Fort Dix Six who are unlawfully in the United States will immediately be brought to the attention of federal authorities."

(Celano, 2007)

Guadagno, a Republican, was indeed elected, and whether her election was on the strength of these promises or not, she followed through on the commitment.

In addition to the political-symbolic benefit to Sheriff Guadagno, Monmouth County's 287(g) agreement appears likely to have provided direct fiscal benefit to the County's budget as well. The Monmouth County Jail's detention agreement with ICE dated back to the wave of detentions and deportations of Muslim immigrants that followed the terrorist attacks of September 11th, 2001, and in 2008 and 2009, it held ADPs of 140 and 150 immigrant detainees, respectively. In 2010 – after Guadagno's implementation of 287(g) – this number jumped by 100, and reached 280 by 2012, doubling over the course of the five-year data window for this project. Guadagno's history and connections as a federal prosecutor – like 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.

The doubling of Monmouth's immigrant detainee ADP pales in comparison to the increase achieved by rival Essex County, whose jail held just 42 detainees in 2008 – the first year of its contract with ICE – and nearly 600 just four years later. The story of Essex County's entry into the detention marketplace features a tangle of corruption and actors public, private, federal, state and local that makes Irwin County's similar tale pale in comparison. As covered extensively by the *New York Times* throughout the process, ICE in 2011 accepted the County's bid to build a 'model' new generation detention center, intended to serve as "the template for a new kind of detention center they intend[ed] to create around the country by renovating existing centers, building new ones, and closing others" (Semple, 2011a). The brainchild of the elected Essex County Executive Joseph DiVincenzo, the new center stood to house 1,250 immigrant detainees upon completion, and bring some \$50 million in revenue to the County. Soon after securing the agreement with ICE, Essex County awarded the facility's management contract to the sole bidder for the job: the for-profit Community Education Centers, a firm closely tied to both DiVincenzo and New Jersey Governor Chris Christie. After receiving significant criticism from both the press and within the Department of Homeland Security for the move, the County reversed course and opened a competitive bidding process – only to turn around three months later and award the contract to Community Education Centers' 'non-profit affiliate', Education and Health Centers of America.

As with Irwin, the overlapping interests of political elites and private corporations in Essex County frustrates attempts to define who benefits from this example of enforcement entrepreneurship, as the tangle of local, state, and federal actors obscures the locus of decision-

making that makes this benefit possible. New Jersey's punitive immigration control marketplace thrives despite its diversity, its relatively small and shrinking correctional sector, its comparatively (next to Georgia) liberal polity and healthy economy. Returning to the quantitative data above, what combination of factors seems to be driving this sizeable and growing marketplace? Certainly the sheer size of New Jersey's undocumented community, their enormous presence in the labor force, and the relative visibility of non-citizen immigrants in the State's everyday life are an important part of the context. Combining these factors with the clear anti-immigrant anxiety of native-born voters – whether driven by economic concerns or fear of terrorism – creates a context for immigration control in New Jersey that is ripe for marketization, and enterprising neoliberal political elites have not hesitated to seize this opportunity. As a case, New Jersey provides an important illustration of the reality that the neoliberal project is not an abstract, ideological crusade being undertaken by political leaders acting out their dedication to free market ideals. Instead, it is more often than not a stalking horse for the naked self-interest of a political-economic elite, who stand to benefit – whether in their own person, or at some remove provided by family, associates, or time out of office – through the marketization of public goods and public services.

Summary: The promise of case studies for defining the mechanics of the punishment marketplace

Setting the Georgia and New Jersey case studies against the quantitative analysis above makes clear that the statistically significant relationships revealed are driven in many respects by extreme states – and in turn driven by extreme counties within those states. This dynamic, however, is both logical and expected within what can reasonably be considered a 'niche' marketplace. 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 necessarily widely held, even among the presumably politically ambitious individuals most likely to be found in positions of power within local governments. The nature of entrepreneurship is innovation; would Sheriff Guadagno 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 – a background likely to be extremely rare among American sheriffs? Ultimately, local government entrepreneurship in the punitive immigration control marketplace need not be geographically widespread or evenly distributed to negatively impact the lives of thousands of immigrants, along with their families and communities. Taking an instrumental public policy approach to an entire class of people is inherently dehumanizing. Like the many other economically instrumental forms of social relations that preceded it – from felon transportation to chattel slavery, the convict lease to the Bracero Program – it reduces the individuals who are its object to a mechanical function, robbing them of their human rights and motivations in a one-sided transfer of value to an exclusive elite bent on accumulation – of money, power, political hegemony, security, luxury, and freedom. This zero-sum game of inequality and unfettered accumulation – this dynamic in which every benefit accrued to one class of people derives from an equivalent detriment to another, less powerful class of people – sets the right tone and context for the next section of this work.

VI. Conclusion

There is one more explanation, I think, of the re-orientation of our minds. The nineteenth century carried to extravagant lengths the criterion of what one can call "the financial results," as a test of the advisability of any course of action sponsored by private or by collective action. The whole conduct of life was made into a sort of parody of an accountant's nightmare. Instead of using their vastly increased material and technical resources to build a wonder city, the men of the nineteenth century built slums; and they thought it right and advisable to build slums because slums, on the test of private enterprise, "paid," whereas the wonder city would, they thought, have been an act of foolish extravagance, which would, in the imbecile idiom of the financial fashion, have "mortgaged the future"--though how the construction to-day of great and glorious works can impoverish the future, no man can see until his mind is beset by false analogies from an irrelevant accountancy. Even to-day I spend my time--half vainly, but also, I must admit, half successfully--in trying to persuade my countrymen that the nation as a whole will assuredly be richer if unemployed men and machines are used to build much needed houses than if they are supported in idleness. For the minds of this generation are still so beclouded by bogus calculations

that they distrust conclusions which should be obvious, out of a reliance on a system of financial accounting which casts doubt on whether such an operation will "pay." We have to remain poor because it does not "pay" to be rich. We have to live in hovels, not because we cannot build palaces but because we cannot "afford" them.

John Maynard Keynes, "National Self-Sufficiency" (1933, p. 761)

American immigration policy and the future of the neoliberal project

It is worth repeating here a statement from the introduction: punitive immigration control, coercive confinement, and forced movement exert a disastrous influence over the individual lives at which they are directed. Scholarly research and investigative journalism focused on the aftermath of deportation regularly uncover truly staggering levels of human misery: broken families, lost homes and savings, mental illness, addiction, violence, suicide. Without dedicating page after page to this litany of human suffering, it is essential to acknowledge that these collateral consequences (as they might be dismissed by those officially carrying out the policies) are experienced by human beings, as the result of a public policy driven by a vague mission, dressed in the rhetoric of public service. However abstract the contemporary nature of work might be, those who perform it cannot be abstracted in the same manner as capital. Labor is inextricable from the laborer, and the laborer is a human being with needs, rights, goals, relationships, and a life project all their own. What official goals or outcomes are appropriate to justify the state's exertion of overwhelming coercive force to sever these human beings from their life projects and their communities? This is the necessary starting point for a discussion of the policies that make the punitive immigration control marketplace possible. Why does the US, as a sovereign nation-state, need to control the in-migration of foreign nationals? How is it appropriate to do so? And under what circumstances – if any – is it appropriate to engage in the coercive, post-facto immigration control represented by deportation?

These are difficult, normative questions, to which could easily be dedicated words far in excess of the current work. However, there is no way to enter into a credible policy critique in the absence of some broad principles about what constitutes morally and ethically acceptable

government action in the context of immigration. In proposing the briefest possible answers, therefore, to the questions posed above, I follow Joseph Carens' excellent 2013 *Ethics of Immigration*, particularly – as I have already demonstrated in other sections of this work – on the importance of *community membership* as a guiding rule-of-thumb for discussing immigrant rights. Why do we need immigration control? It is acceptable to set both a suite of non-negotiable national ideals, and a baseline standard of living, that immigration control is necessary to protect. While there is likely to be significant disagreement on the former, and the latter is open to larger moral questions about global equity and international responsibility, I accept for the purposes of this critique that the post-enlightenment ideals of tolerance and democracy are fundamentally American and that minimum standards on basic needs like housing, education, and employment are worth protecting. Regardless of the nation's many failures on all of these ideals and standards in relation to its native-born citizens, there is a logical case to be made that immigration should be limited by the nation's capacity to assimilate new immigrants into these ideals, and provide them with these basic standards. It is worth noting that a truly enlightened immigration policy would take these issues into account; our current system largely does not, although it does pay them some minor lip service. That being said, this hypothetical enlightened immigration policy would see a federal government approach immigration by balancing the social and economic needs imposed by an aging population and falling birthrates, with its own responsibility to facilitate immigrant integration and support new arrivals in achieving an 'American' standard of living. Our current system doesn't simply fail to accomplish this balance – it actively subverts it. The reason why is simple:

The usual justification for temporary worker programs for less skilled migrants is that employers cannot find enough workers within the domestic labor market because citizens and permanent residents are unwilling to do some particular kind of work at the wages that employers are offering. In a market economy, however, the normal response to labor shortages is to allow supply and demand to adjust to one another. [...] People sometimes say that in affluent states with strong welfare provisions, citizens and residents will not take up jobs that are dirty, dangerous, demeaning, and demanding. This is misleading, however. *There are no jobs for which workers cannot be found if the pay is high enough*, even in rich states.

(Carens, 2013, pp. 123, ital. add.)

Compare Carens' normative rationale with legal scholar Eric Posner's contention that, in the US, a federal guest worker "system could solve the problem of illegal immigration only if it authorized the same low wages and bad working conditions that illegal workers currently accept," (Posner E. , 2013), and it becomes clear that both the threat of deportation and the cultural currency of illegal status appear to be more effective at maintaining these conditions than any legislative solution (conscious as it would likely need to be of contemporary human rights standards and labor regulations) could be. The United States perpetuates illegality – and the 12-million strong population defined by it – because it *is* our guest-worker program, because our distinctly American version of the neoliberal project demands it. Witness Georgia's conundrum, in the wake of the 2011 passage of its restrictive anti-immigrant legislation, HB 87, when the resulting flight of unauthorized immigrants left a severe labor shortage in the state's agricultural sector. The solution? Georgia Governor Nathan "Deal, who signed HB 87 into law in May [2011], reacted to the labor shortages by proposing putting probationers to work on the farms" (Redmon, 2011). Officials in Alabama and other states proposed similar solutions when faced with an exodus of unauthorized immigrants following the passage of anti-immigrant legislation – effectively replacing one labor force of workers dehumanized by a system of punishment, for a labor force of workers dehumanized by a different system of punishment.

One writer makes the interesting – and contradictory – observation that "Georgia's immigration law wasn't motivated solely by economic concerns, [but by] concerns about the high cost of providing public services to illegal residents: schooling, medical care, law enforcement and other publicly funded services" (Powell, 2012). That an academic and economist (Powell is on the faculty at Boston's Suffolk University) could make the error of misidentifying expressly economic concerns as something other than economic concerns provides some insight into how narrowly many in the field have defined the economic question around immigration, to a conversation solely about unfair labor market competition. Georgians' concerns about the

'public costs' of unauthorized immigration were – and are – every bit as economic as concerns about the labor market, and inextricably intertwined with them as well. Some commentators have questioned the veracity of widespread reports of farm labor shortages, particularly in those states that passed anti-immigrant legislation in the 2010s, calling those who promote the narrative “mythologists” (Carney, 2012). Whether HB 87 and other state laws like it had this unintended consequence or not, it is fair to say this: sizeable communities of unauthorized immigrants remained in all of these states, working for lower wages and in worse conditions than before these laws were passed, and more hesitant than ever to avail themselves – and their children – of the basic public services like schooling, medical care, and law enforcement mentioned above. America's informal 'guest worker' program – illegality – remains firmly in place, with a workforce consistently more instrumentalized and dehumanized than they were the year before.

The policy implications of this reality are straightforward, and place the onus on the federal government – the executive branch in particular, given its official responsibility for both setting and administering immigration policy – to mitigate the practices that exacerbate the negative effects of punitive immigration control entrepreneurship at the state and local levels. While there is an argument to be made that the Obama administration, in its second term, has already taken significant steps in this direction, major initiatives like DACA and the recently blocked DAPA leave in place the system of detention and deportation that ultimately underpins the instrumentalizing and dehumanizing effects of illegal status. Moves to reform the 287(g) program, which have cut the current number of MOAs in half from its 2012 peak and rescinded the participation of jurisdictions (such as Maricopa County) where racial profiling and other kinds of abuses are egregious, are a start in restricting the options for local enforcement entrepreneurship, as is the dismantling of the Secure Communities program in 2014. Whether its replacement Priority Enforcement Program (PEP) will fulfill its stated goals of prioritizing

deportation for immigrants convicted of serious crimes remains to be seen. It does return us to the question posed above, of when it is appropriate for the state to exercise the significant coercive force that deportation represents; most 'reasonable' commenters seem to hold a consensus position that the deportation of serious criminal immigrants is an appropriate application of state power. This logic, however, brings us full circle, back to the vagaries of the American criminal justice system: overcriminalization, the Drug War, mass incarceration, racial disparities – a poor choice, in other words, as a baseline for the operation of a parallel and conjoined system of punishment directed at immigrants. We appear to have arrived at yet another cul-de-sac.

At this point it is worth returning to Carens, and the graceful simplicity of his theory of social membership. On deportation, Carens writes:

The moral right of states to apprehend and deport irregular migrants erodes with the passage of time. As irregular migrants become more and more settled, their membership in society grows in moral importance, and the fact that they have settled without authorization becomes correspondingly less relevant. At some point a threshold is crossed, and they acquire a moral claim to have their actual social membership recognized. They should acquire a legal right of permanent residence and all the rights that go with that, including eventual access to citizenship.

(Carens, 2013, p. 130)

Immigration control, in other words, should take as its starting point an outward-facing, proactive set of moral ideals and ethical principles that set the goals of integration and minimum standards of living against the recognized societal needs that immigration is best suited to fulfill. These standards and goals must be constant touchpoints in bilateral diplomatic relations between destination and source countries (in this case the US and primarily Mexico), and should provide the guiding principles for border control and admissions policies.

Formalized immigration programs that set quotas on the basis of capacity and need, that provide wraparound government contact and care both before and after migration takes place, and regularly evaluate their own performance would clearly be the hypothetical ideal. Such programs could justify a closed border and catch-and-release, near-border enforcement –

provided the latter activity includes information and referrals for unauthorized border crossers to enter the aforementioned formal programs that offer a fair and rational opportunity to migrate.

Such programs, unfortunately, remain a fantasy in the face of a weak and reactive federal government, firmly entrenched in the neoliberal project of capital accumulation and increasing inequality. This observation is not simply knee-jerk leftist cynicism, but a summary of the findings of political scientists Martin Gilens and Benjamin Page, who concluded in their 2014 empirical study that “economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while average citizens and mass-based interest groups have little or no independent influence” (Gilens & Page, 2014, p. 564). The status quo on immigration – instrumental illegality – benefits the neoliberal project, and localized nativist reaction against one symptom of that project does not constitute a site of resistance against neoliberalism itself. On the contrary, it adds a political-symbolic benefit to local enforcement entrepreneurship, and allows the globalized neoliberal project to be recapitulated in miniature. A proliferation of localized markets, in which public services are tied to the market logic of capital accumulation and capitalized power accrues to a local political-economic elite, serves the overall project of globalized neoliberalism extraordinarily well. Such localities present ripe opportunities for the global economic elite – Sassen’s ‘oppressor’ as a complex system of relationships without a center – to enter local markets in which the actors are ideologically primed to place any kind of public resources in the service of their accumulative goals. The tangled tales of corruption, public investment, and private gain that surround any number of global-local business arrangements – from the construction of stadiums for professional sports teams, to the sitings of corporate headquarters, from privatized municipal parking services, to private prison placement – speak to the ubiquity of this trend. The

neoliberal ideology of the 'free market' has been planted in thousands of communities across the US and the globe, and the global elite moves from one field to the next, harvesting its fruit.

Before we give way to despair at the portrait of a world given over to this voracious ideology that places the accumulation of profit above all other goals, we should recognize that despite its ubiquity, it is hardly the only way to organize the world. The flipside of this proliferation of market logic to every field of human endeavor, and the capitalization of the various benefits available within them, is that it expands the very notion of capital to encompass concepts of value that are not strictly pecuniary in nature. What Bichler and Nitzan somewhat simplistically describe as a "dialectic of capitalized resistance and retaliation" (Bichler & Nitzan, 2014, p. 252) is in fact an ontological tension, wherein the capitalization of non-fiscal benefits and values opens the accumulative project of capitalism up to the alternative logics native to the fields that it has since absorbed. In other words, it has opened up the possibility of a 'market logic' in which the ultimate goal need not be the accumulation of fiscal profit, but could instead involve the accomplishment of a more humanistic range of goals, from individual and community well-being, to cultural attainment, social innovation, or technological advance. It allows for the potential that the fundamentally competitive arrangements of capitalism might be harnessed for something more noble than the concentration of luxury, the consolidation of power, and the perpetuation of hegemony. While contemporary examples such as social impact bonds remain significantly entangled with the logic of financial accumulation, they represent a step in this direction nonetheless.

Just as the logic of capitalized benefit opens up the potential for resistance in the form of 'beneficial capital', so does the devolution of federal immigration enforcement power open up the possibility of localized resistance – entrepreneurship, if you will, driven by the pursuit of the kinds of non-fiscal benefits described above. This sort of local 'anti-enforcement

entrepreneurship' has taken shape in communities around the country as pro-immigrant ordinances like 'sanctuary city' and ID policies as well as 4th Amendment-based rejection of ICE detainers. Pro-immigrant local policy innovation, state-level rejections of overreaching enforcement programs like SComm, and advocacy-group organizing in resistance to local enforcement entrepreneurship have all influenced federal policy, to a greater or lesser extent. Deportations in 2015 dropped below 200 thousand (to 190,125) for the first time since 2003, and while they are currently on pace to exceed 200 thousand again in 2016, this reduction represents a decision taken by the Obama administration, in response to the kinds of advocacy and criticism that are laid out in this work. Obama's successor as president has the power and authority to reduce this number further – or increase it precipitously. If the nation's 11 million unauthorized immigrants, their families and communities, and their fellow Americans of principle who support their human interests continue to advocate and organize locally and nationally for this outcome, there is every reason to expect it can be achieved. The neoliberal project is neither an immovable object, nor an irresistible force.

The punishment marketplace and future directions for research in punitive immigration control

It is my own clear-eyed assessment that this work serves only to scratch the surface of punishment entrepreneurship as a concept, through its operation within the field of American punitive immigration control. Its value as scholarship lies in its specification of a theoretical model that describes the market approach to instrumental punishment made possible by the dynamics of contemporary neoliberalism and the role of government policy entrepreneurship within that market. Testing the theory within the context of punitive immigration control serves to demonstrate the ubiquity and flexibility of the punishment marketplace, and the way in which distinct histories, and the distinct economic roles to which those histories give rise, lead to distinct manifestations of the context. Immigrant detention is not correctional imprisonment,

and other aspects of punitive immigration control are not aspects of the criminal justice system; they do, however, share parallel and overlapping functions, and make use of similar tools in order to instrumentalize their distinct target populations. In order to build on this work, further specification of the tools of punitive immigration control could lead to a better understanding of how local governments deploy these tools, in policy and practice, in order to derive benefit from their immigrant populations. There is a range of ways that future research could accomplish this goal:

- 1) Building a model that accounts for anti-immigrant state laws and local ordinances, and specifying the potential benefits available through these tools.
- 2) Performing state-level case studies using counties as the unit of analysis.
- 3) Gathering data on local-level outcomes such as apprehensions, arrests, or detainers, in order to incorporate granular measures of on-the-ground enforcement practice.
- 4) Further specifying (quantitatively and qualitatively) the benefits accrued to local governments and local political-economic elites through enforcement entrepreneurship, such as detention fees, reimbursements, votes, construction contracts, jobs, reduced pressure on local services, etc.

Finally, it is essential to acknowledge that entrepreneurship tends to lead to significantly more failures than successes, so a model that accounts for the likelihood of failure – measuring failed investments, enforcement expenses, inverse effects on community crime rates, and other indicators of the *cost* of enforcement entrepreneurship is important as well. Equally important is some entirely alternative measure of the benefits of immigrant community participation and integration, and the contextual factors that lead communities to actively *resist* punitive immigration enforcement. While such measures could certainly be economic, in the spirit of the above, alternative scales of individual or community well-being might be more appropriate – especially to the extent that the pro-immigrant policies under examination represent acts of resistance to the broader context of neoliberal social arrangements.

The punishment marketplace within the broader context of scholarship in political economy

I present the punishment marketplace as a theory of political economy, certainly because of its basis in the work of Rusche and Kirchheimer, but also because the field provides the broad, critical context in which both contemporary and historical instrumental approaches to punishment make sense. Mass incarceration and mass deportation alike are essential to the political-economic arrangements of contemporary American society, and operate in direct support of the neoliberal project of inequality. This work is thus multi-disciplinary in the sense that political economy is a subject that cuts across a huge number of scholarly fields and disciplines: economics, sociology, political science and geography just to name a few. Ultimately, however, this project is intended as a work of criminology and penology – describing the ways that punishment shapes and is shaped by social arrangements, political dynamics, and economic activity. Criminology as a field has long suffered – and continues to suffer – from a positivist orthodoxy that insists on the one-to-one relational mechanics of a mathematical equation: if a correlation cannot be linked to a clear cause-and-effect, action-to-reaction scenario, it is easily dismissed, as the responses of leading criminologists, outlined above, to the relationships described by political economy demonstrate. A similarly literalist criticism is frequently leveled at the conceptual value of neoliberalism, as though what I have called herein ‘the project of inequality’ can be dismissed as leftist paranoia.

The reality of both of these concepts – political economy and neoliberalism – is that they portray the systems described by Sassen as ‘without a center’. They describe real relationships in the world that derive from the self-interested behavior of political-economic elites – whether at the global, national, or local levels – and the way that these behaviors systematize the manipulation and exploitation of the larger populations around them, who are instrumentalized on the basis of such intrinsic features as race, nationality, legal status, etc. This is not a ‘conspiracy’ to be bracketed away in scare quotes, but rather the systematic conspiracy of power, as the individual

self-interested behaviors of elites in different political, economic, and professional roles ‘conspire’ to accumulate capital, power, and hegemony, and to attenuate the inequality that ever-further separates them from those populations that they manipulate. The challenge for criminology and penology is as it has always been: to see these fields as the study of power and control, and how those with more power assert and maintain control over those with less. The punishment marketplace is one way to understand how this power is exerted, in recognition of the specific kinds of benefits that specific elite actors can pursue, through specific categories of innovation in policy and practice. It recognizes that these exertions of power are entrepreneurial and competitive, that they fail as well as succeed, that they engender in-kind innovations in resistance – and, most importantly, that they come together to create a *marketplace* defined by the free market logic and ideology of contemporary neoliberalism. It is this marketplace in and of itself that creates the dynamic – of intermittent cooperation, collaboration, and competition in pursuit of parallel and overlapping goals – that too many criminologists see fit to dismiss as a paranoid conspiracy. Without an understanding of the networks and circuits that come together in the systemic wholes of mass incarceration and mass deportation, penologists and criminologists will be hard-pressed to meaningfully contribute to the ongoing efforts to solve these ‘social problems.’ Until these ‘social problems’ are recognized as political-economic problems – until policy-makers and reformers are ready to recognize who benefits from their continuance, and how – they will remain the seemingly intractable ills they represent today.

Appendix A – 50-State Maps of Factor Score Pentile Ranks

A visual representation of state-level local enforcement and contextual factors

Figure 8a. US States by local enforcement pentile rank, 2008

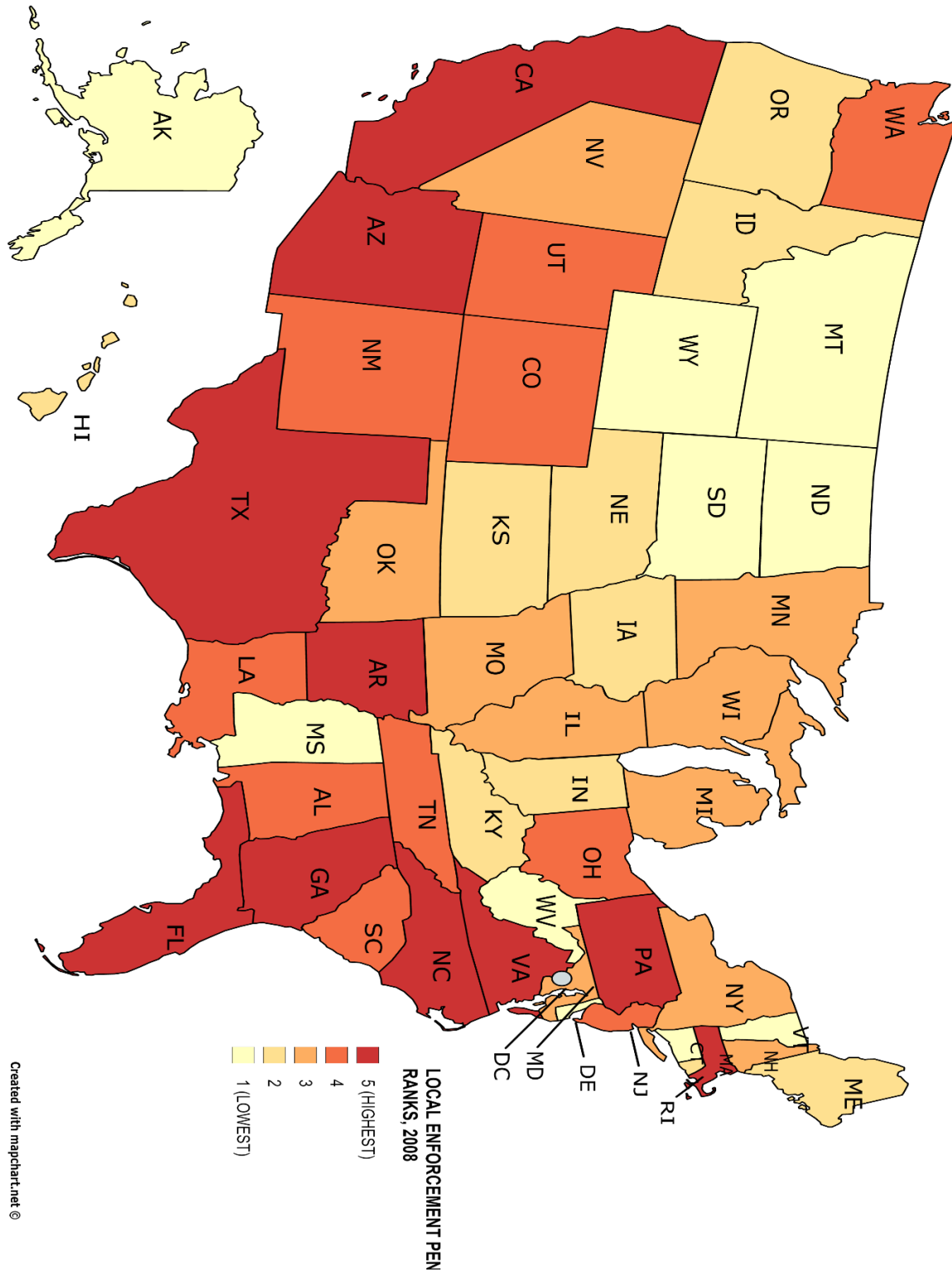


Figure 9a. US States by market scale pentile rank, 2008

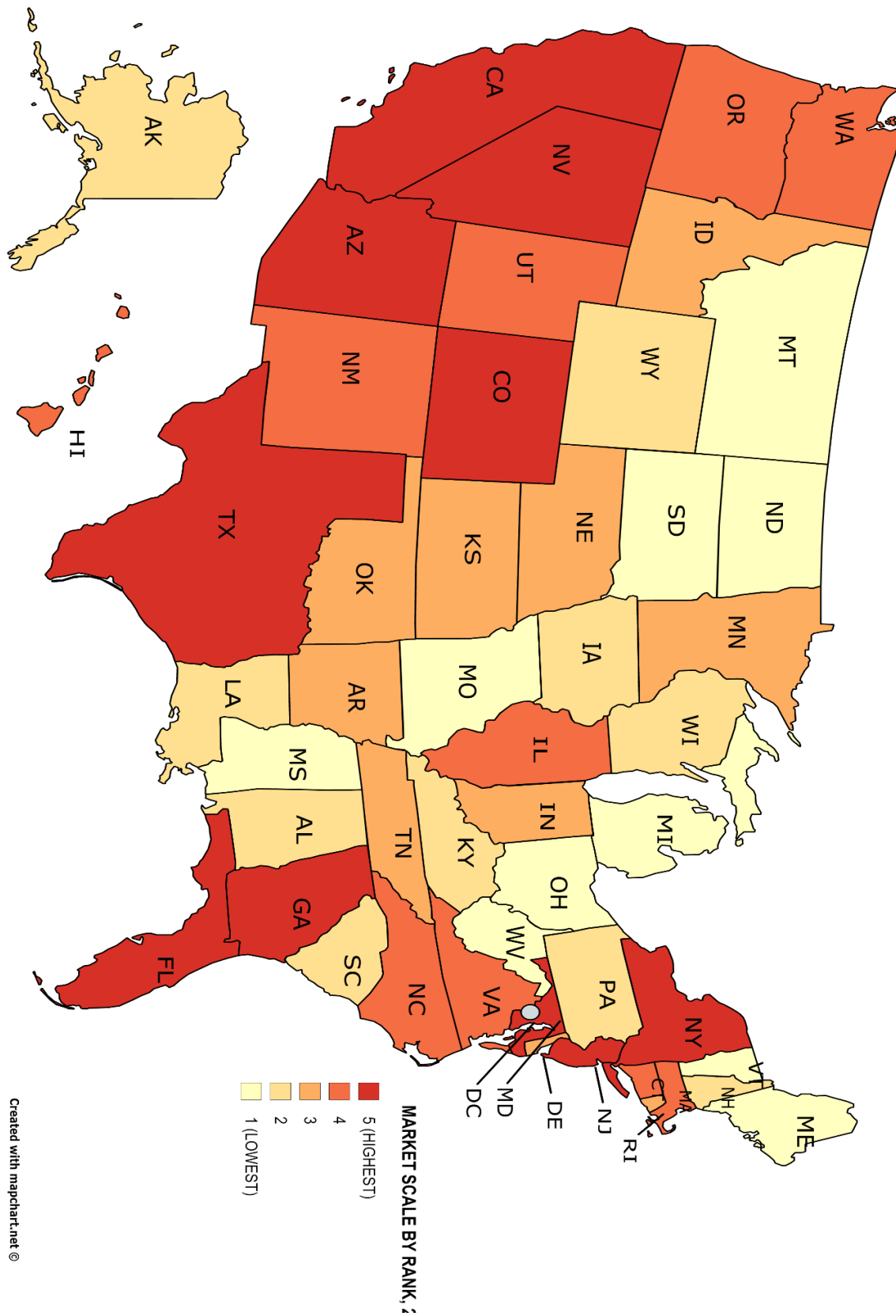


Figure 10a. US States by punitiveness pentile rank, 2008

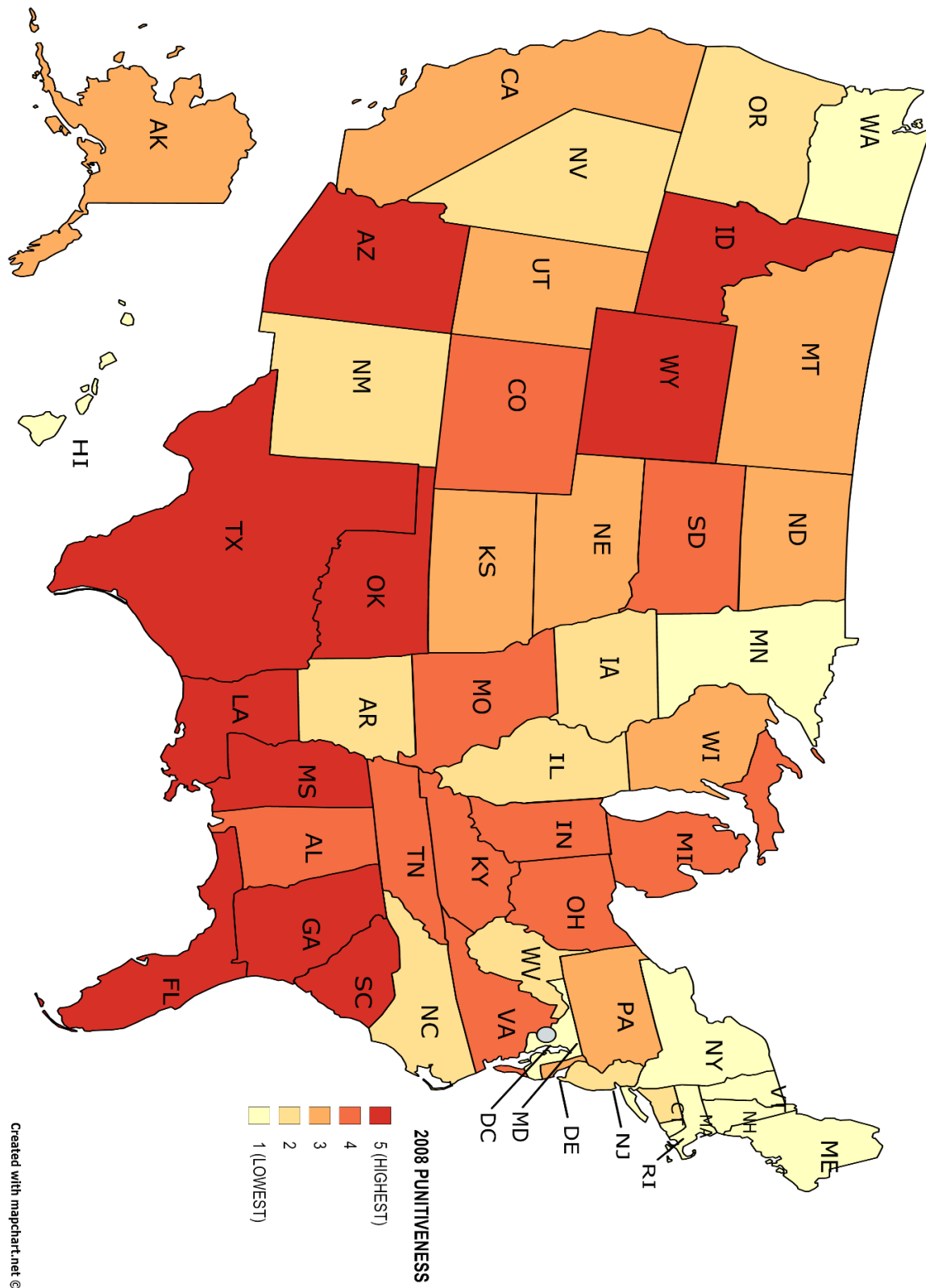
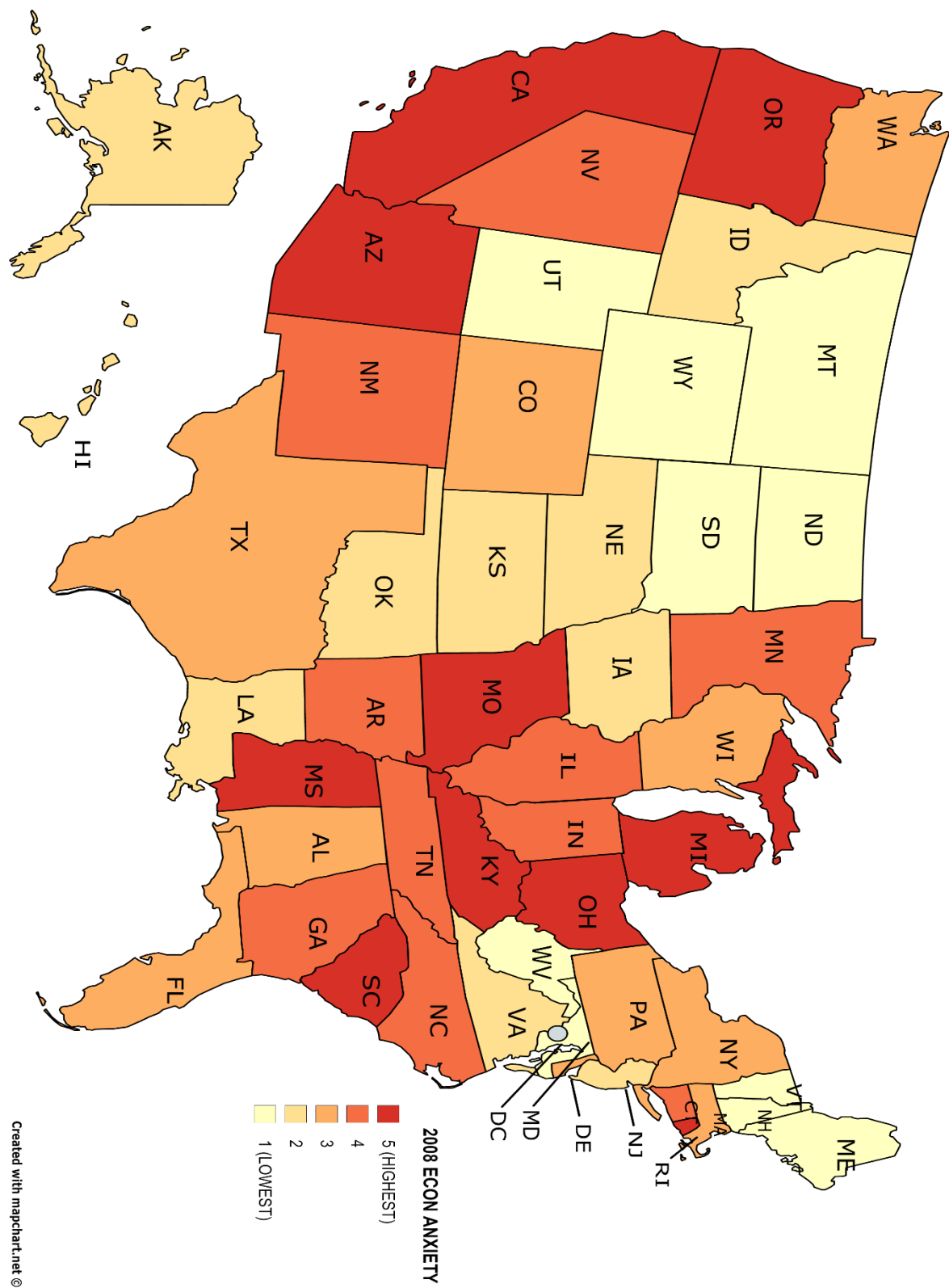


Figure 9a. US States by economic anxiety pentile rank, 2008



Created with mapchart.net ©

Figure 8b. US States by local enforcement pentile rank, 2009

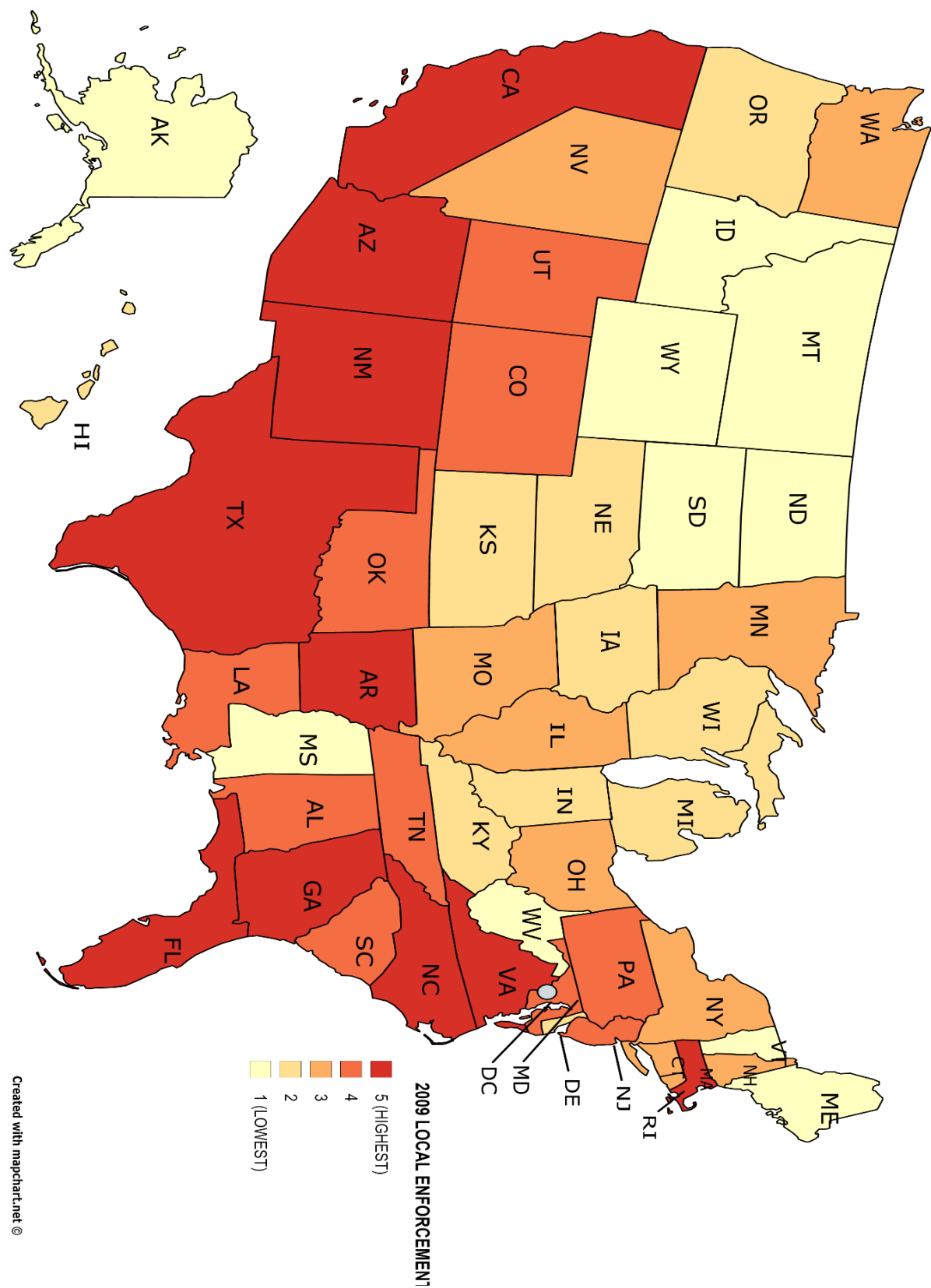


Figure 9b. US States by market scale pentile rank, 2009

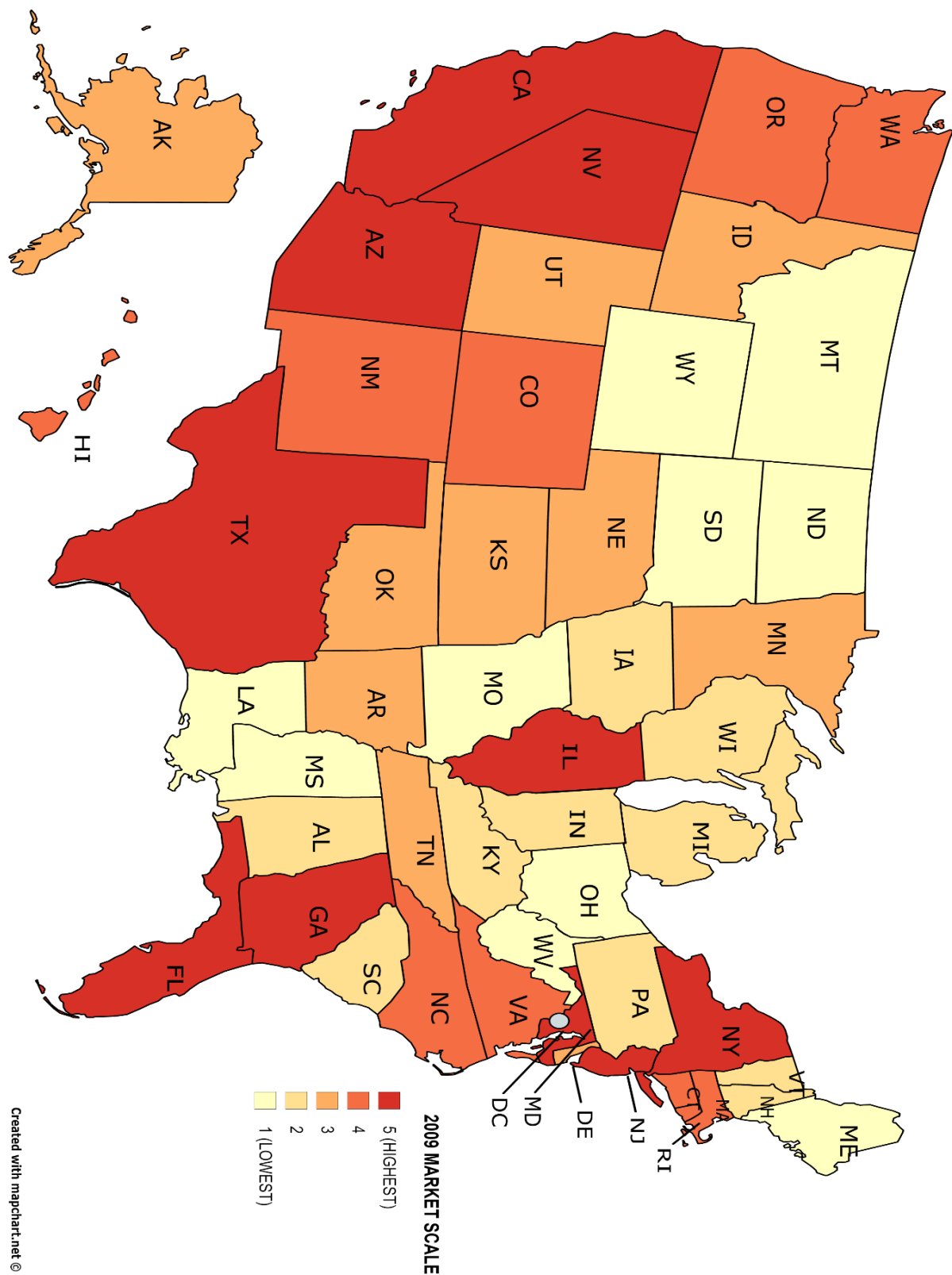


Figure 10b. US States by punitiveness pentile rank, 2009

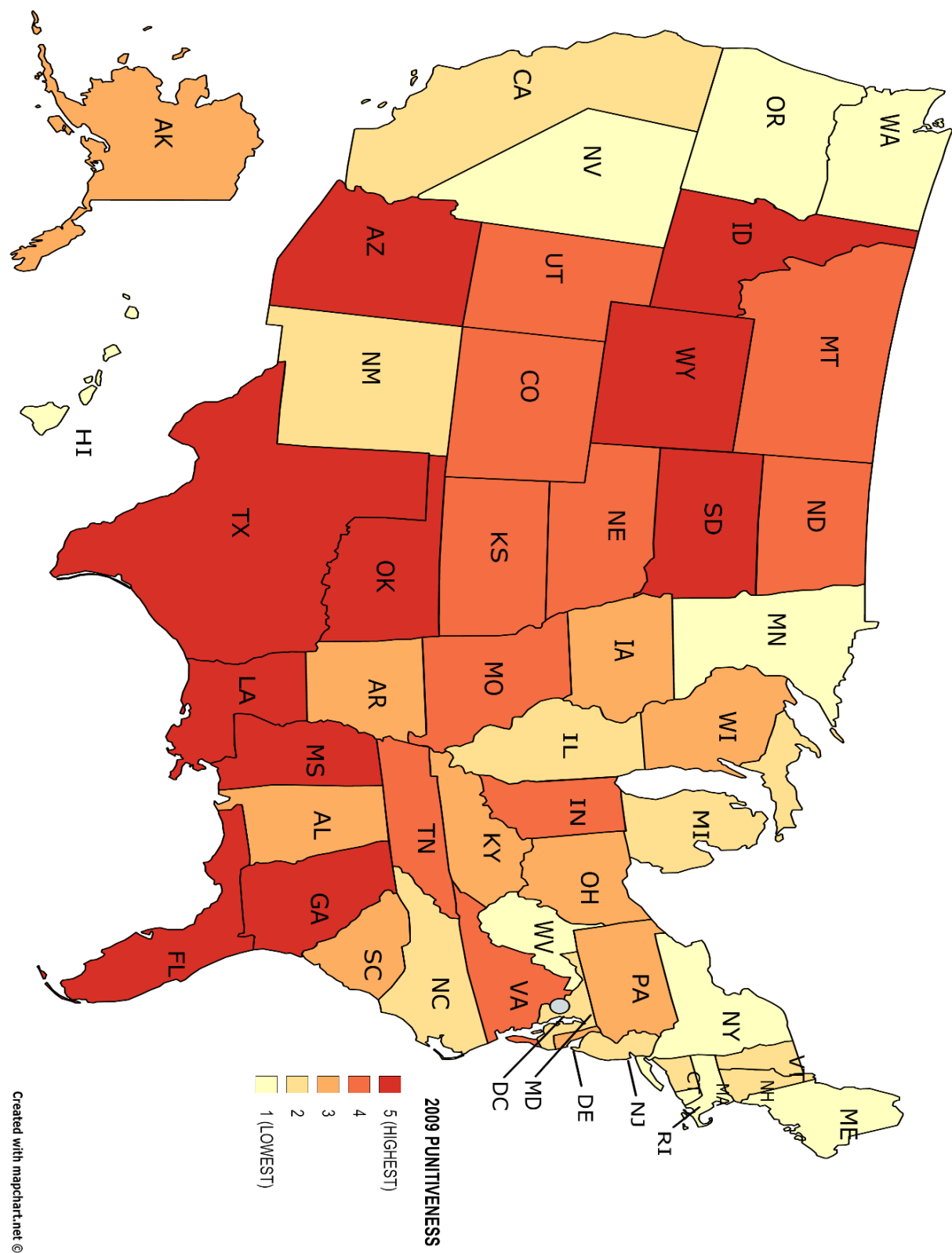


Figure 11b. US States by economic anxiety pentile rank, 2009

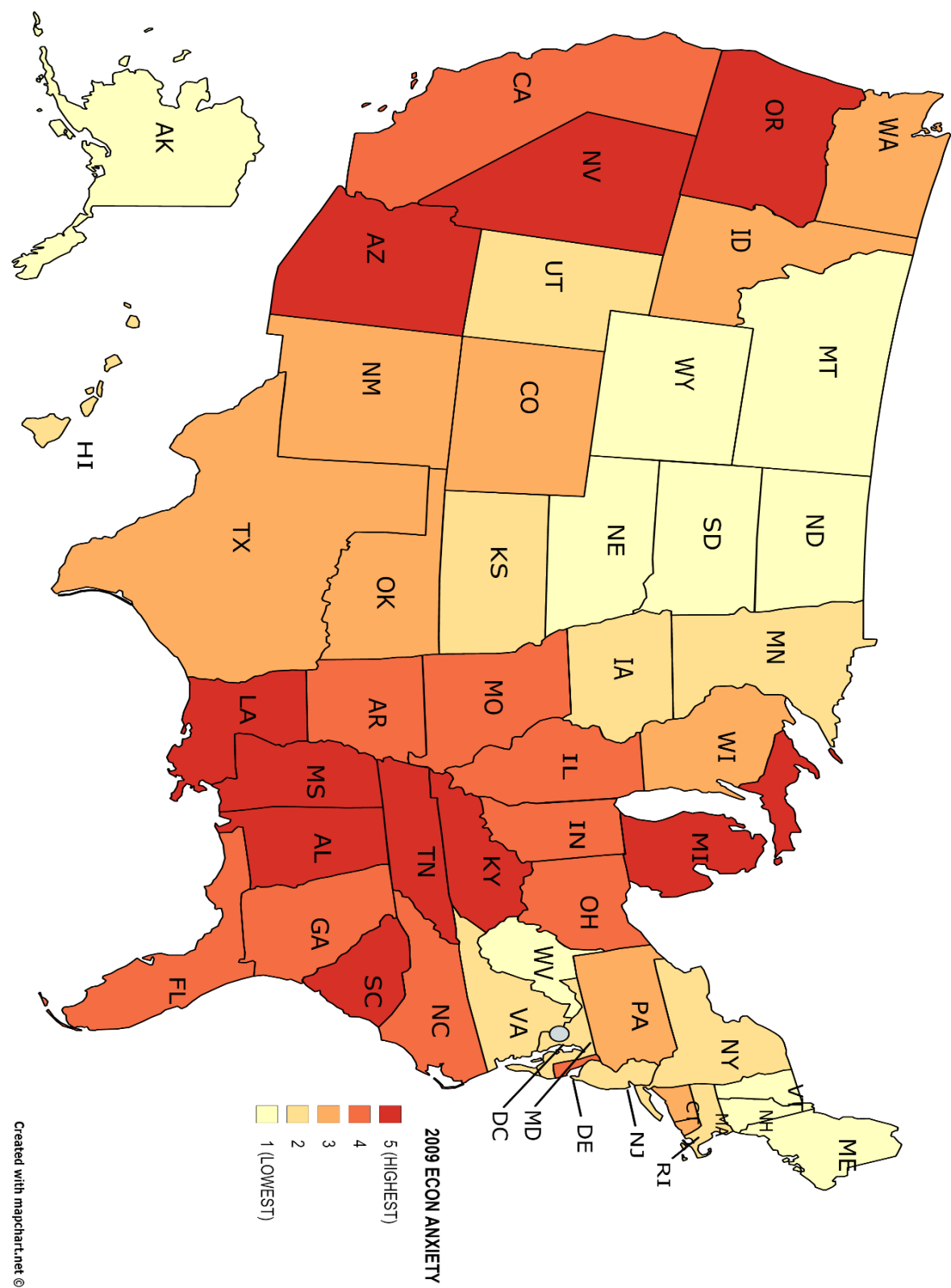
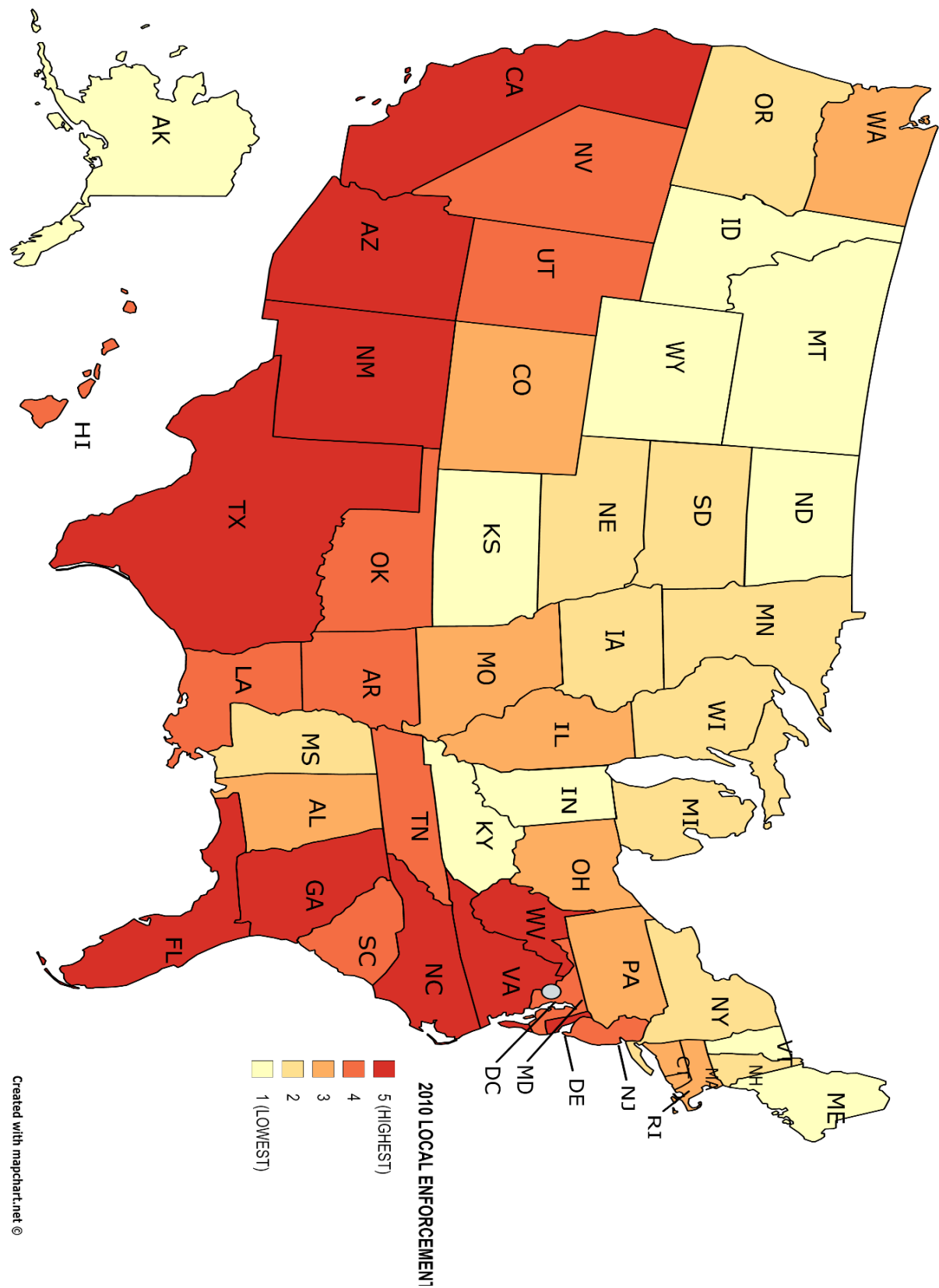


Figure 8c. US States by local enforcement pentile rank, 2010



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Figure 9c. US States by market scale pentile rank, 2010

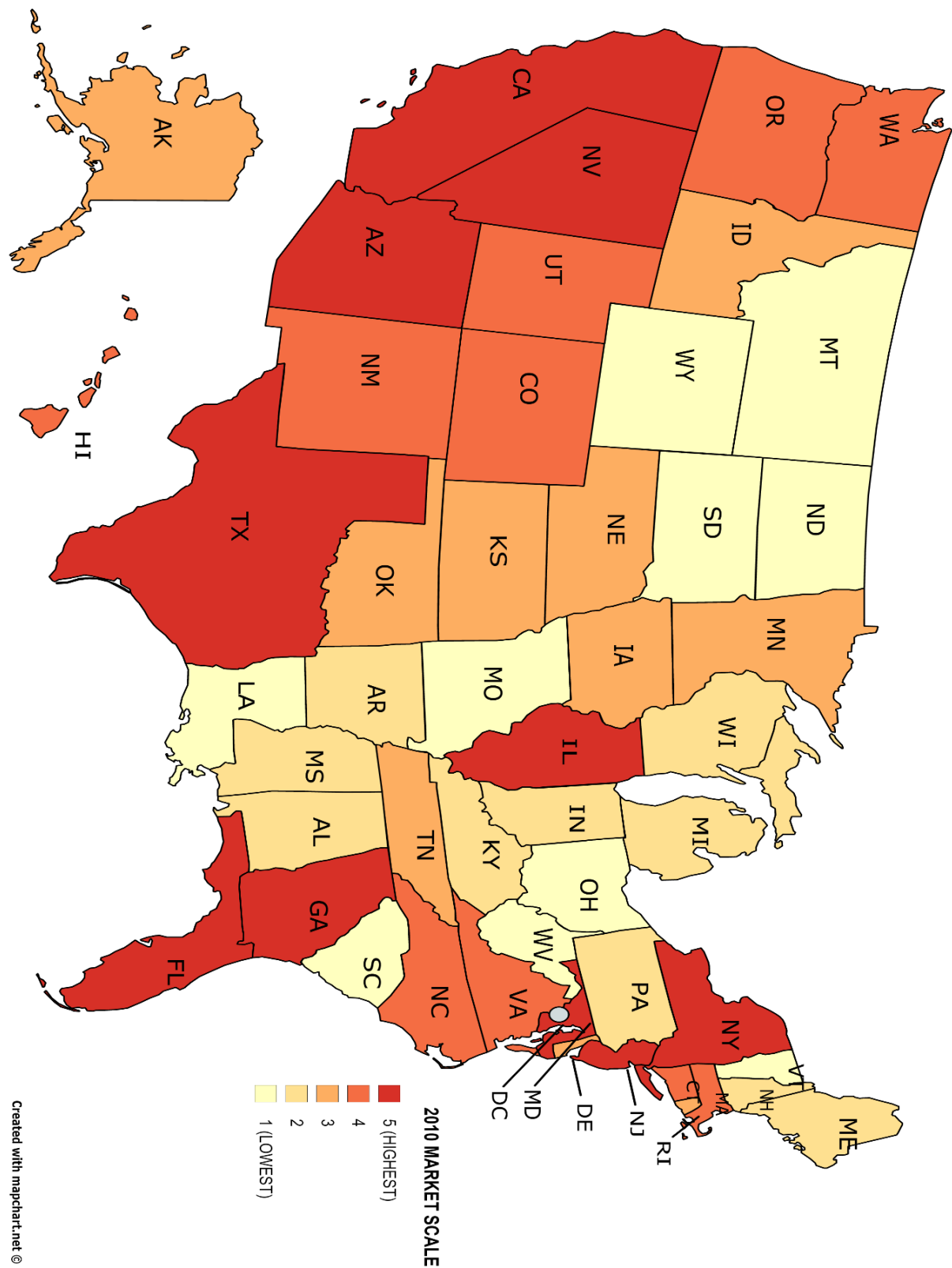
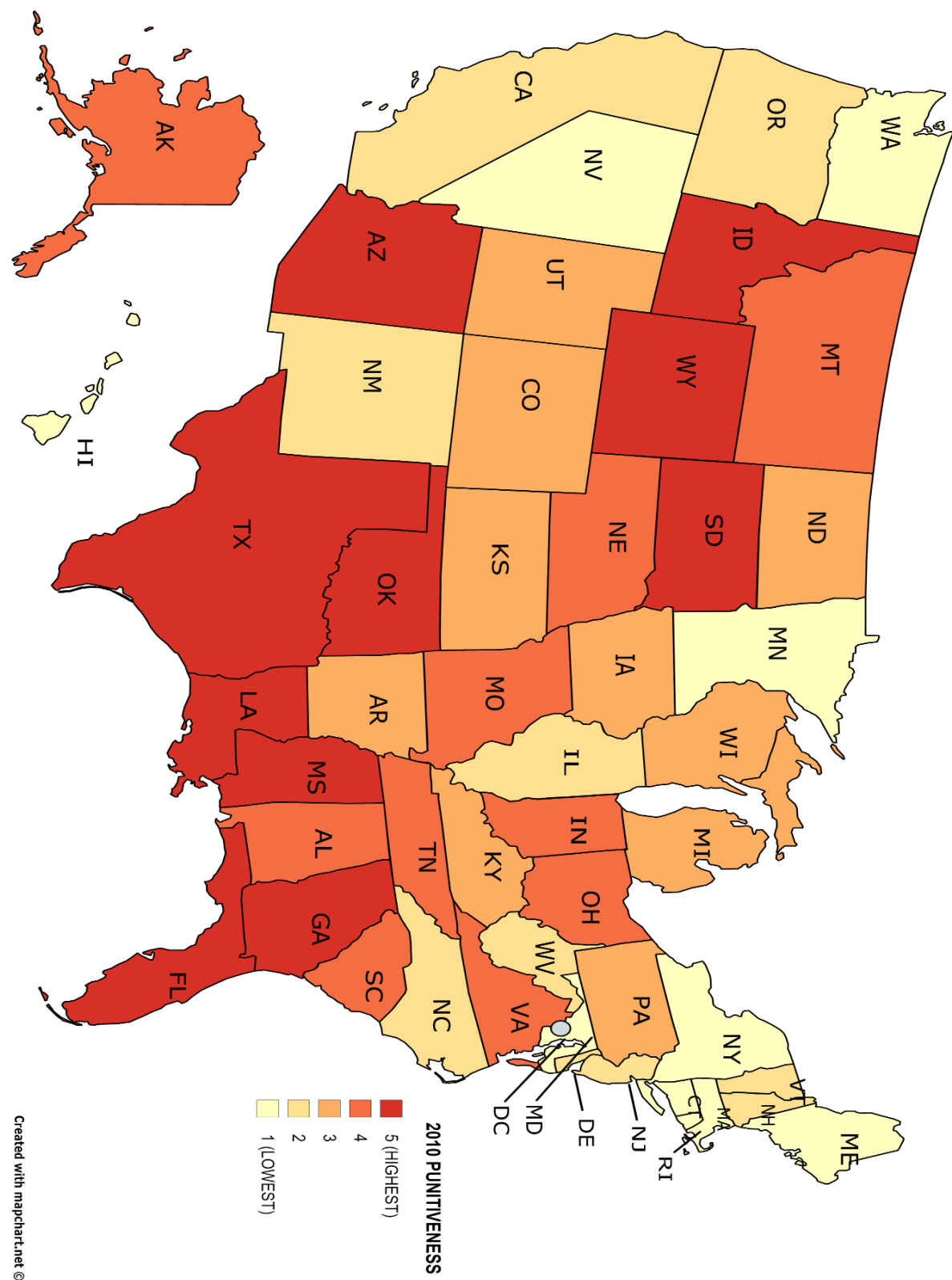


Figure 10c. US States by punitiveness pentile rank, 2010



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Figure 11c. US States by economic anxiety pentile rank, 2010

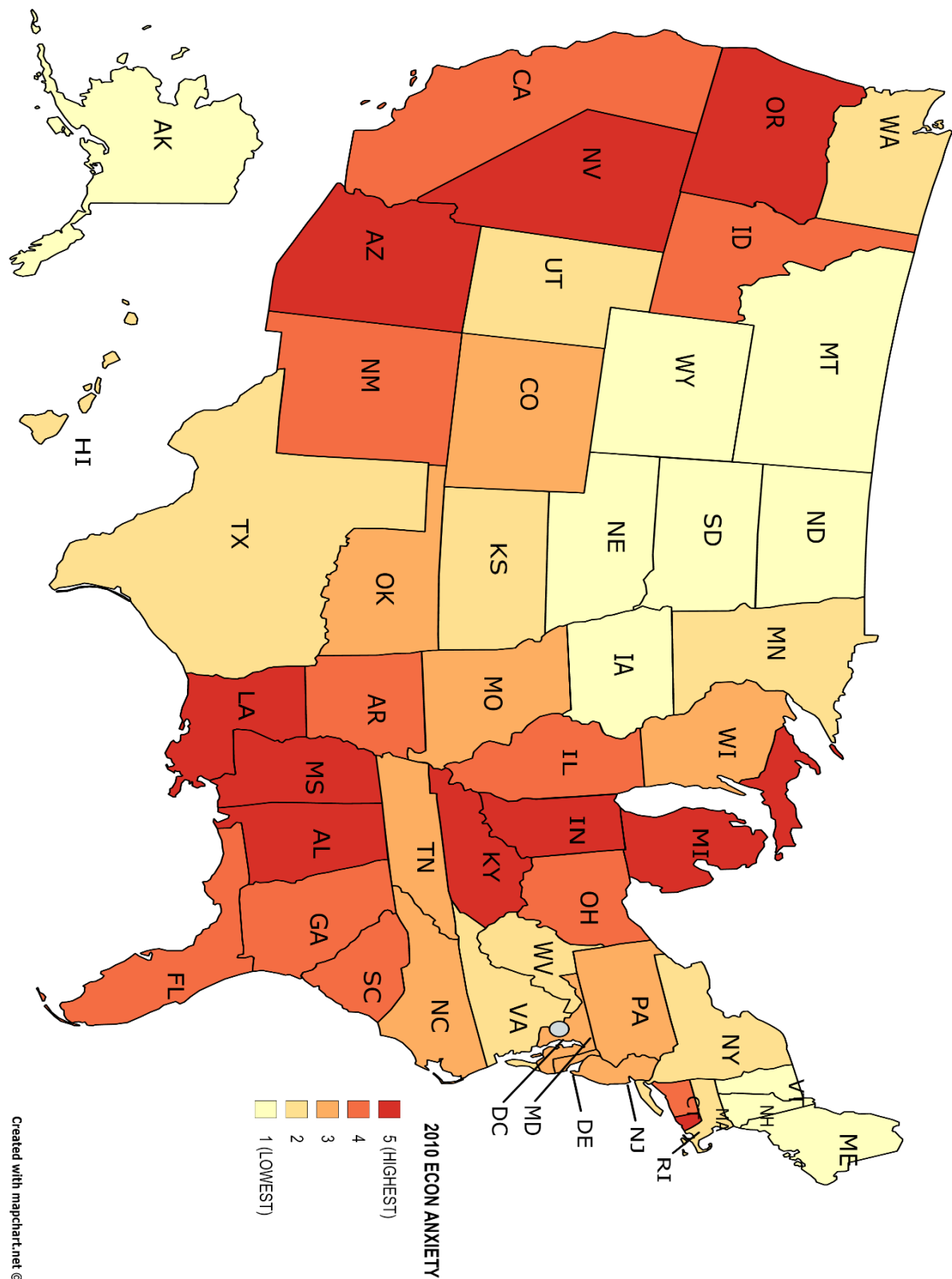
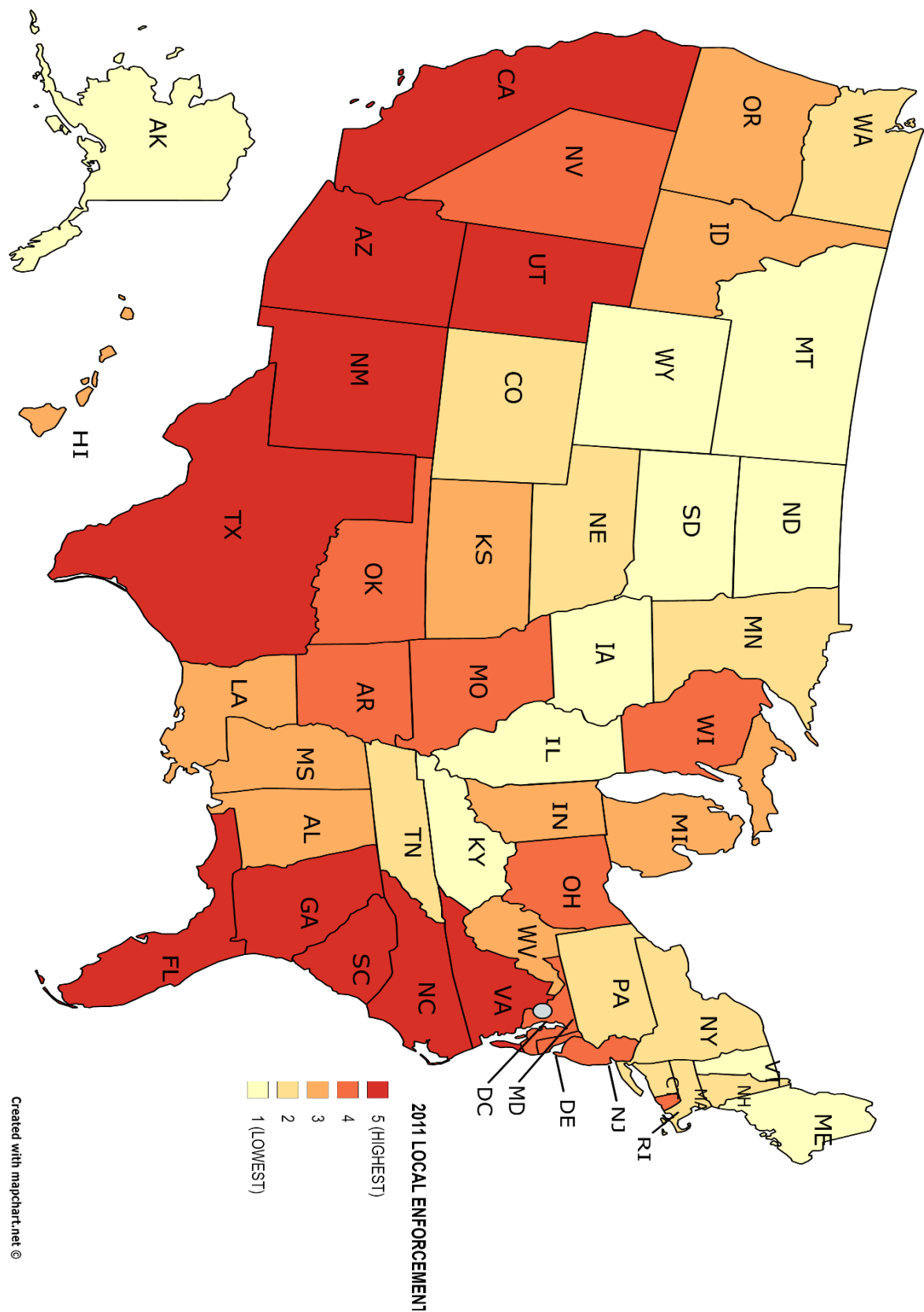
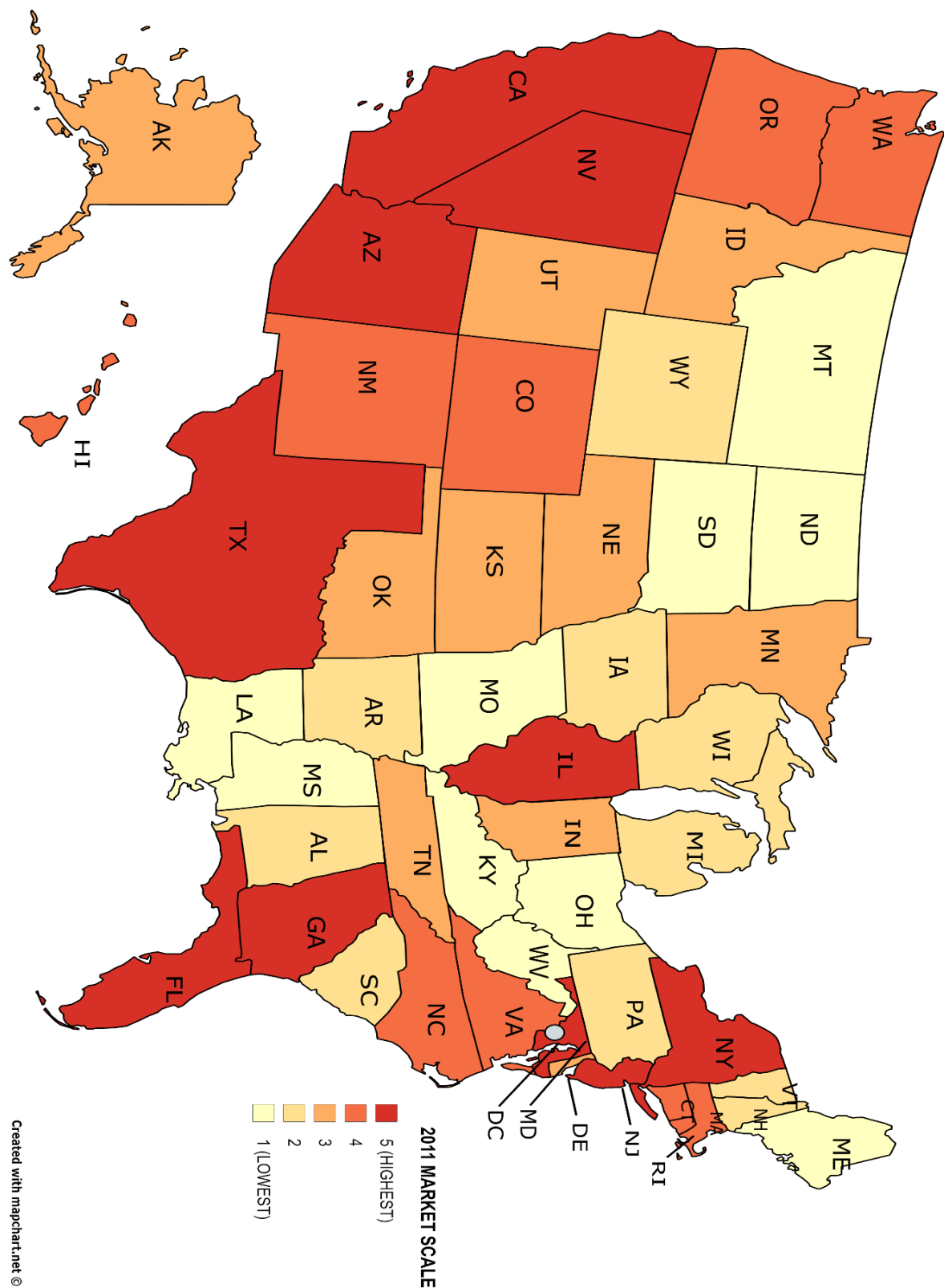


Figure 8d. US States by local enforcement pentile rank, 2011



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Figure 9d. US States by market scale pentile rank, 2011



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Figure 10d. US States by punitiveness pentile rank, 2011

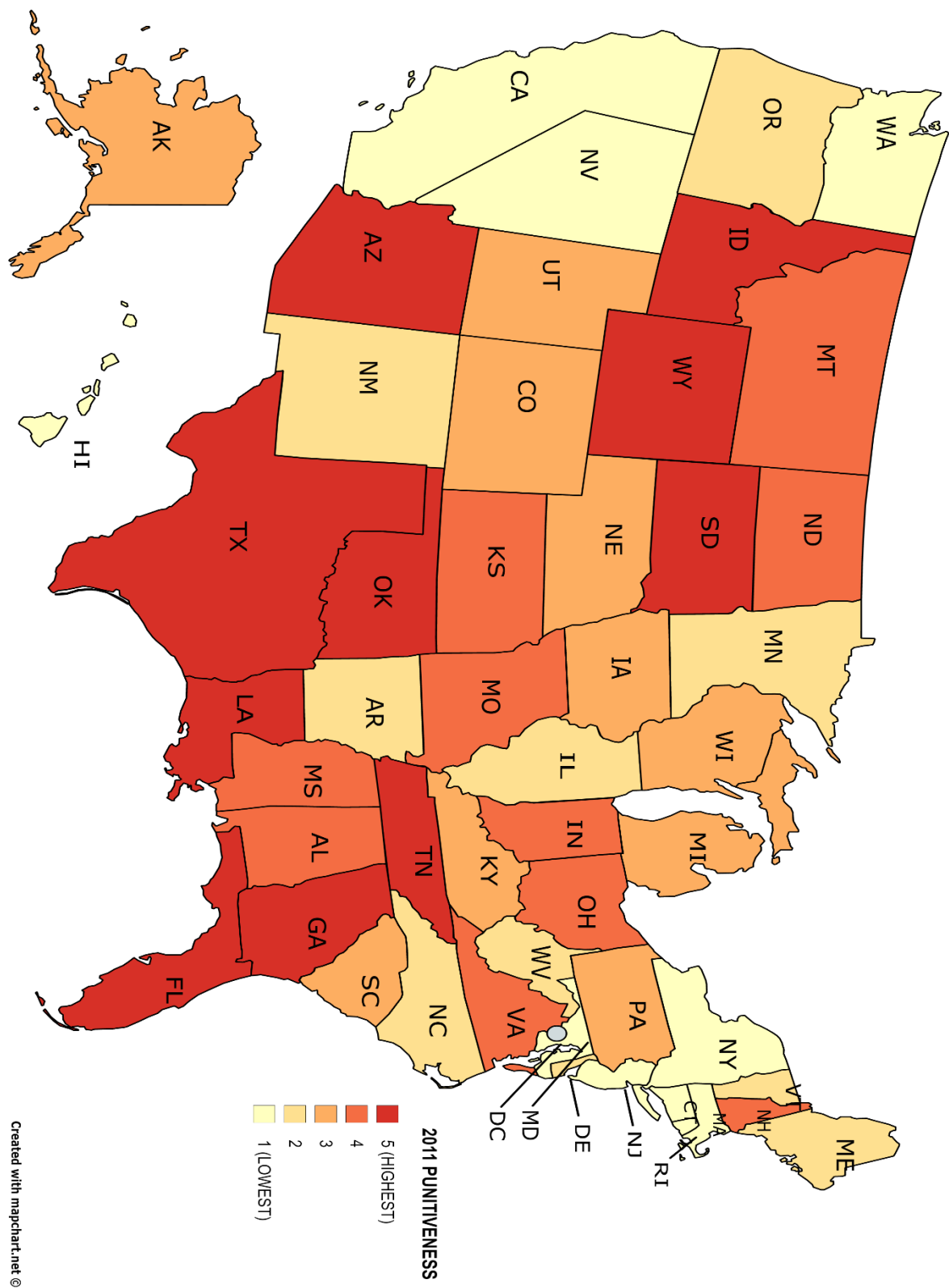
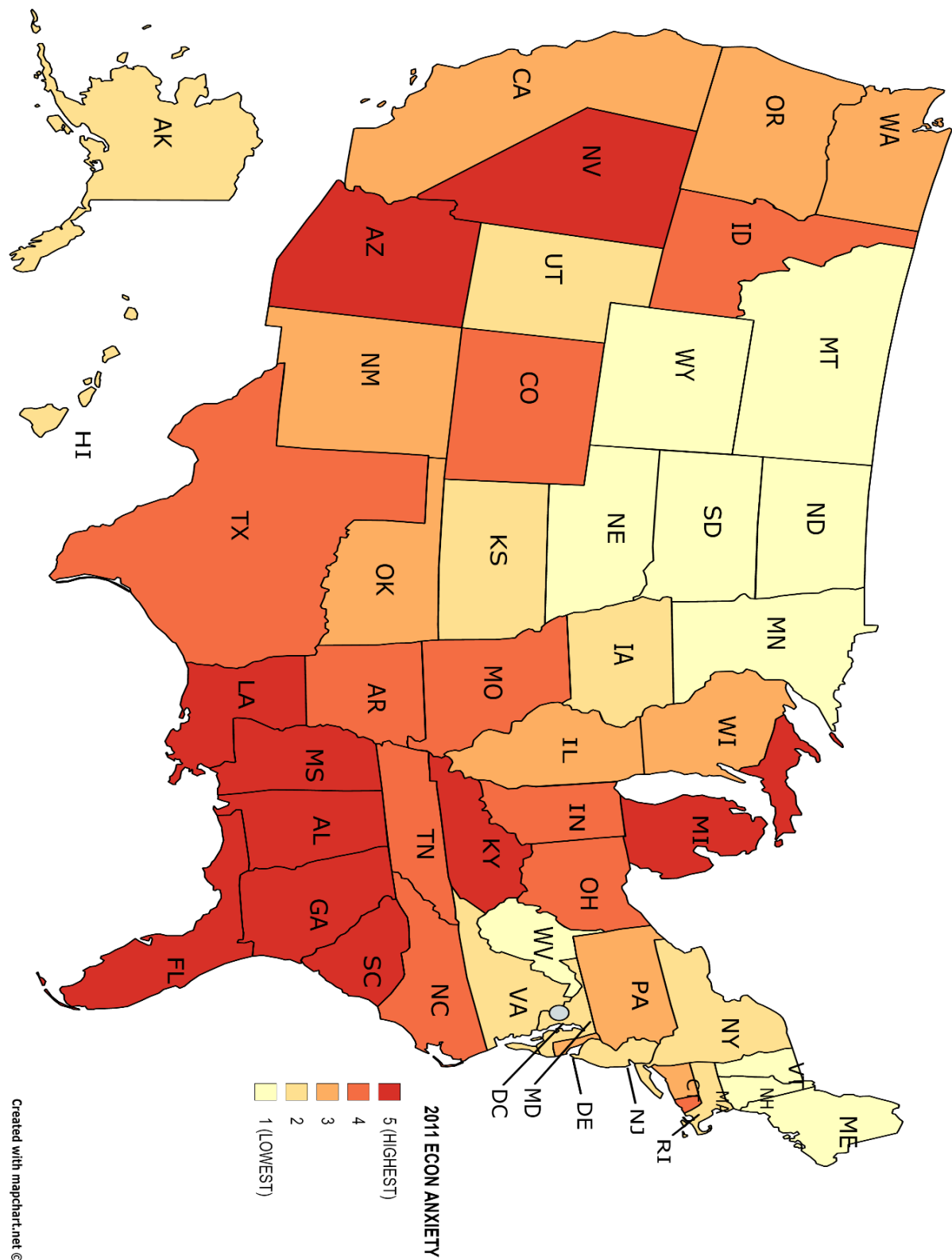
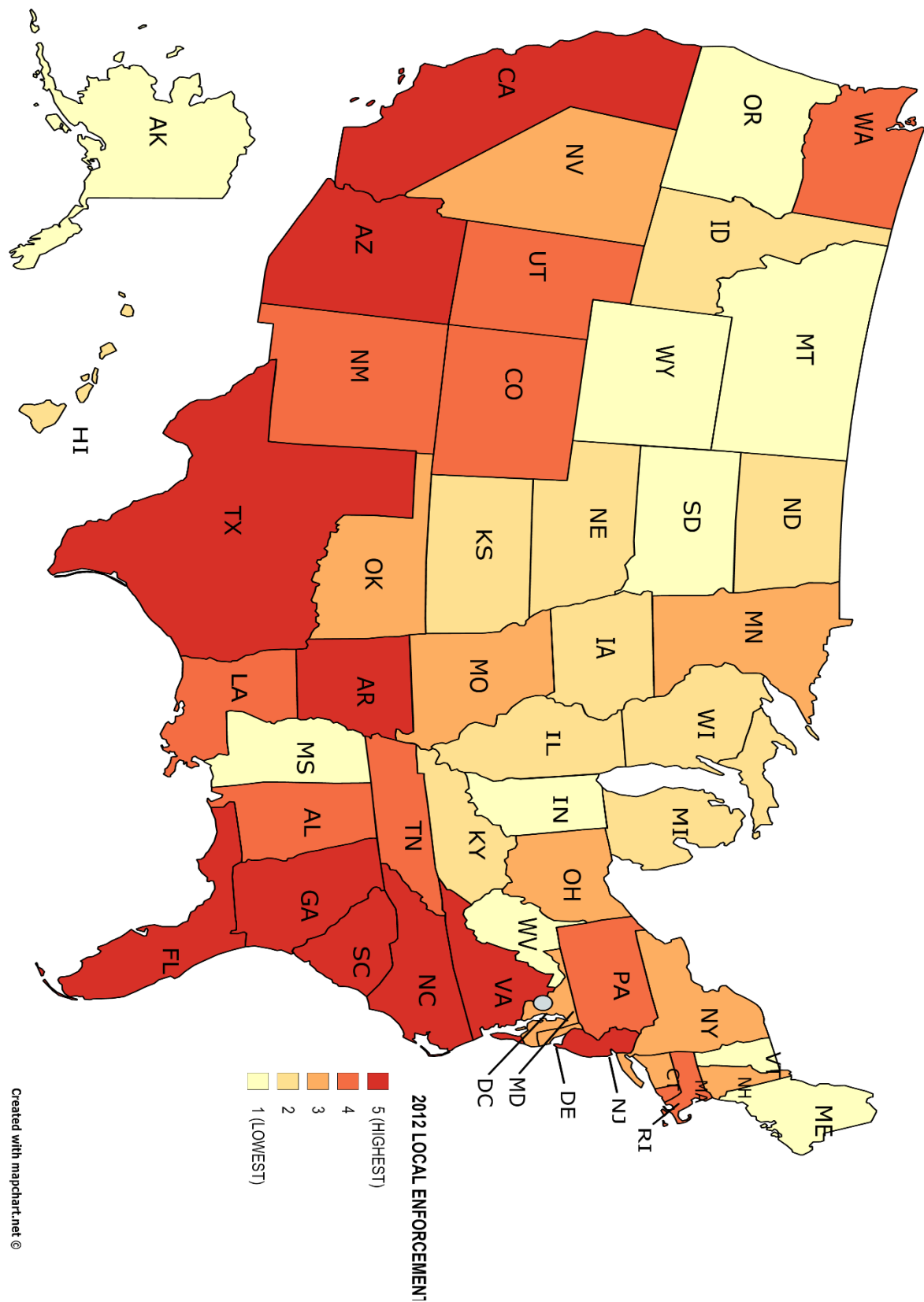


Figure 11d. US States by economic anxiety pentile rank, 2011



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Figure 8e. US States by local enforcement pentile rank, 2012



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Figure 9e. US States by market scale pentile rank, 2012

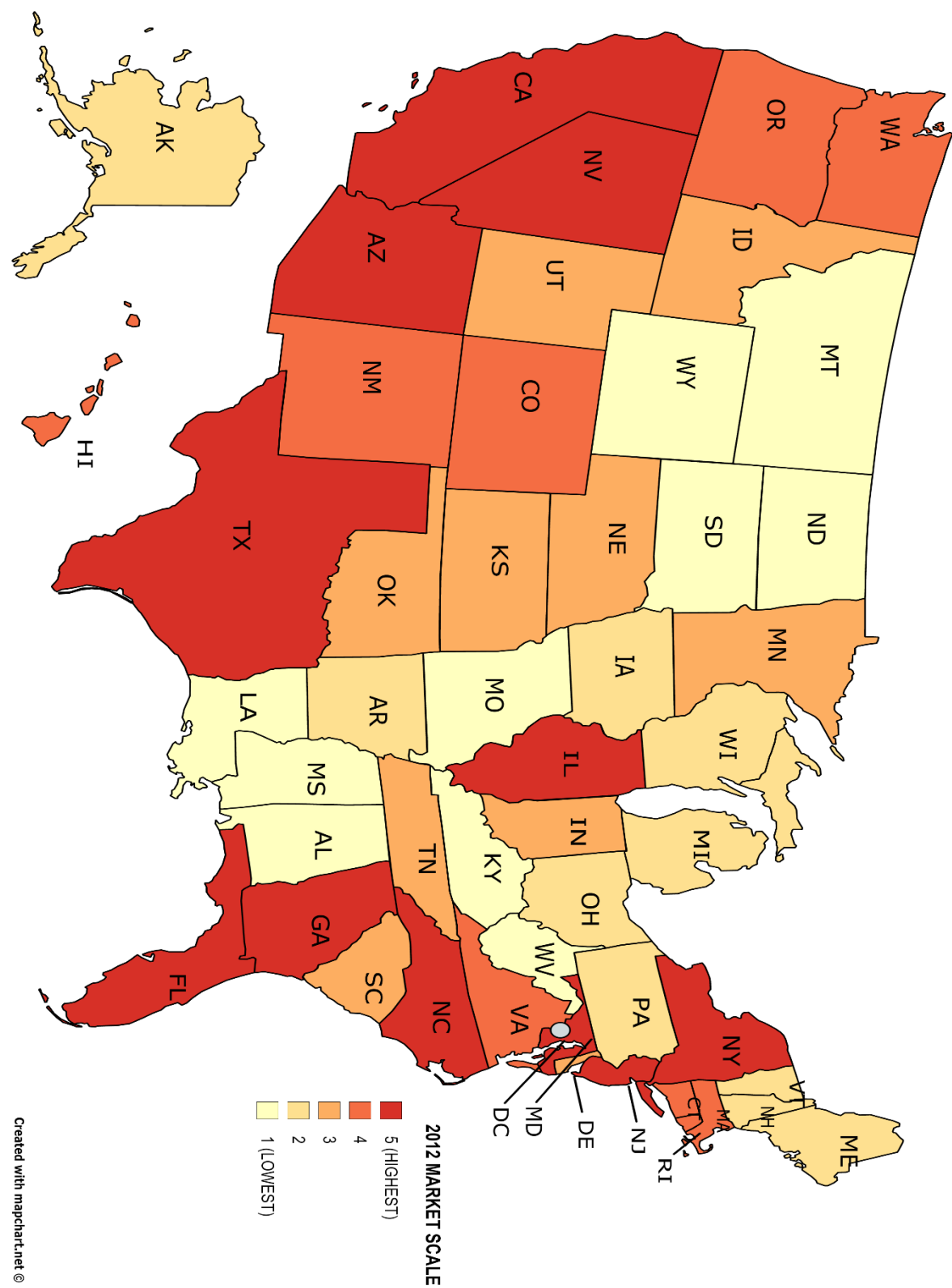
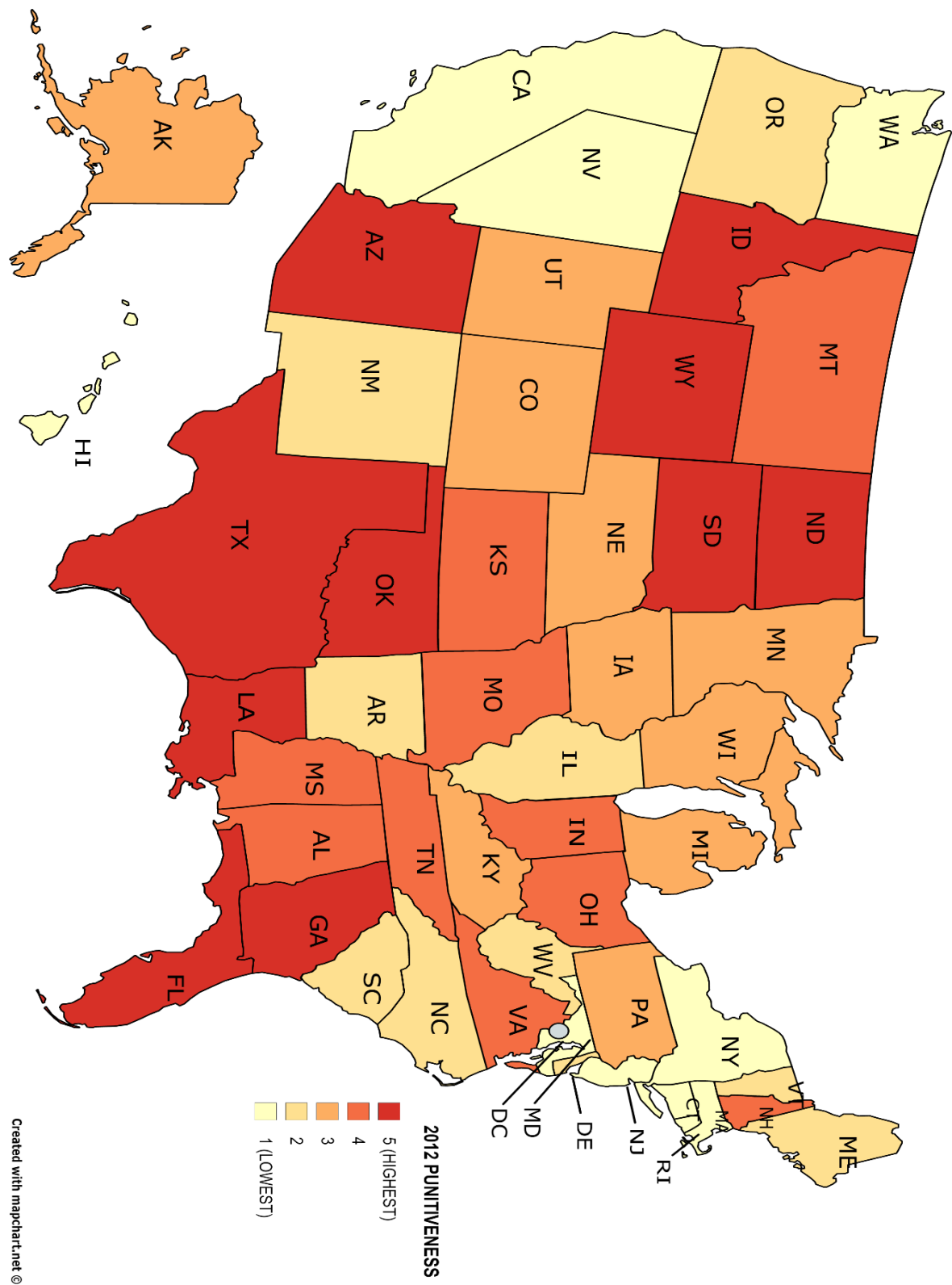


Figure 10e. US States by punitiveness pentile rank, 2012



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Figure 11e. US States by economic anxiety pentile rank, 2012

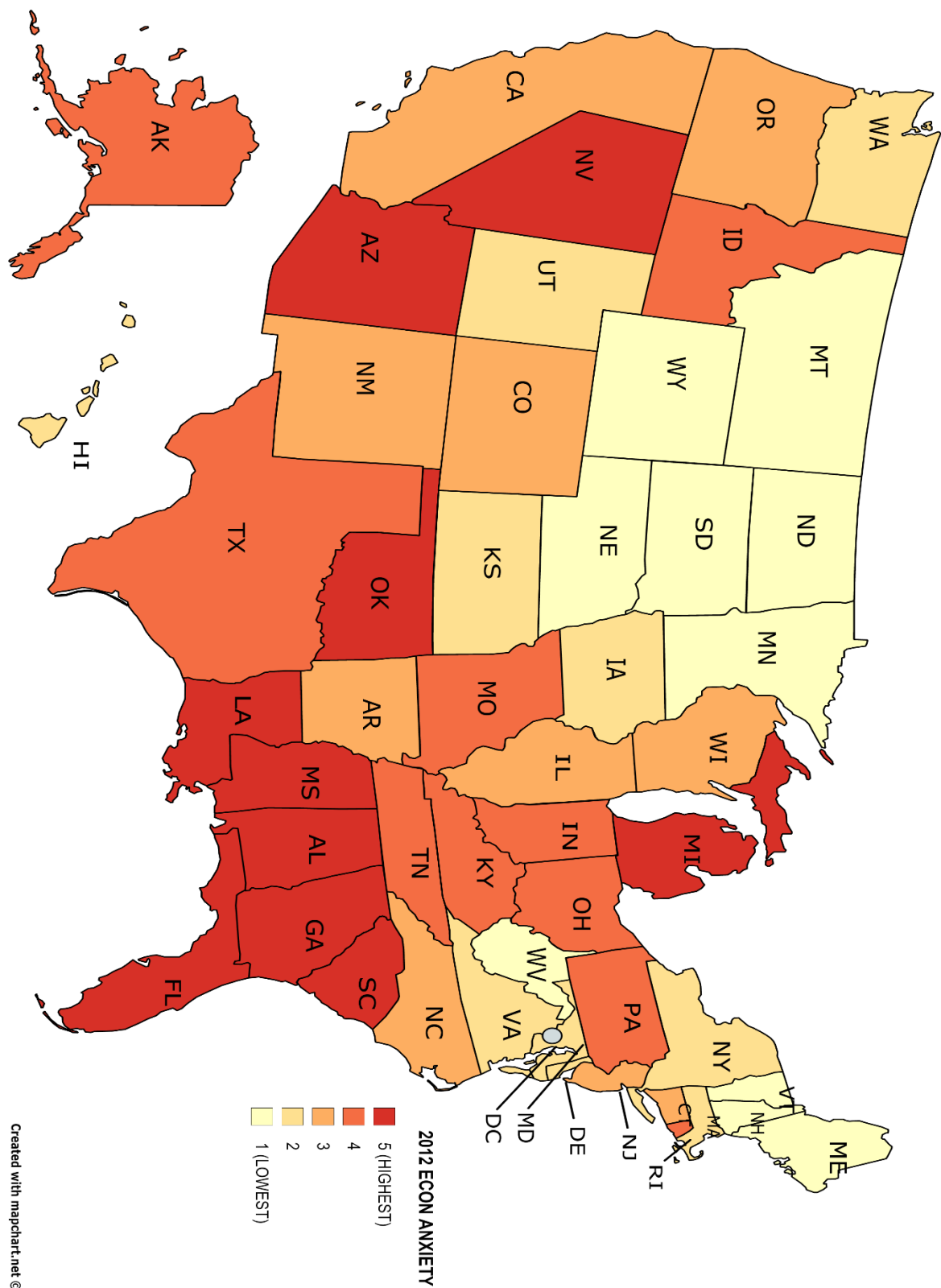


Figure 8f. US States by local enforcement change pentile rank, 2008-10

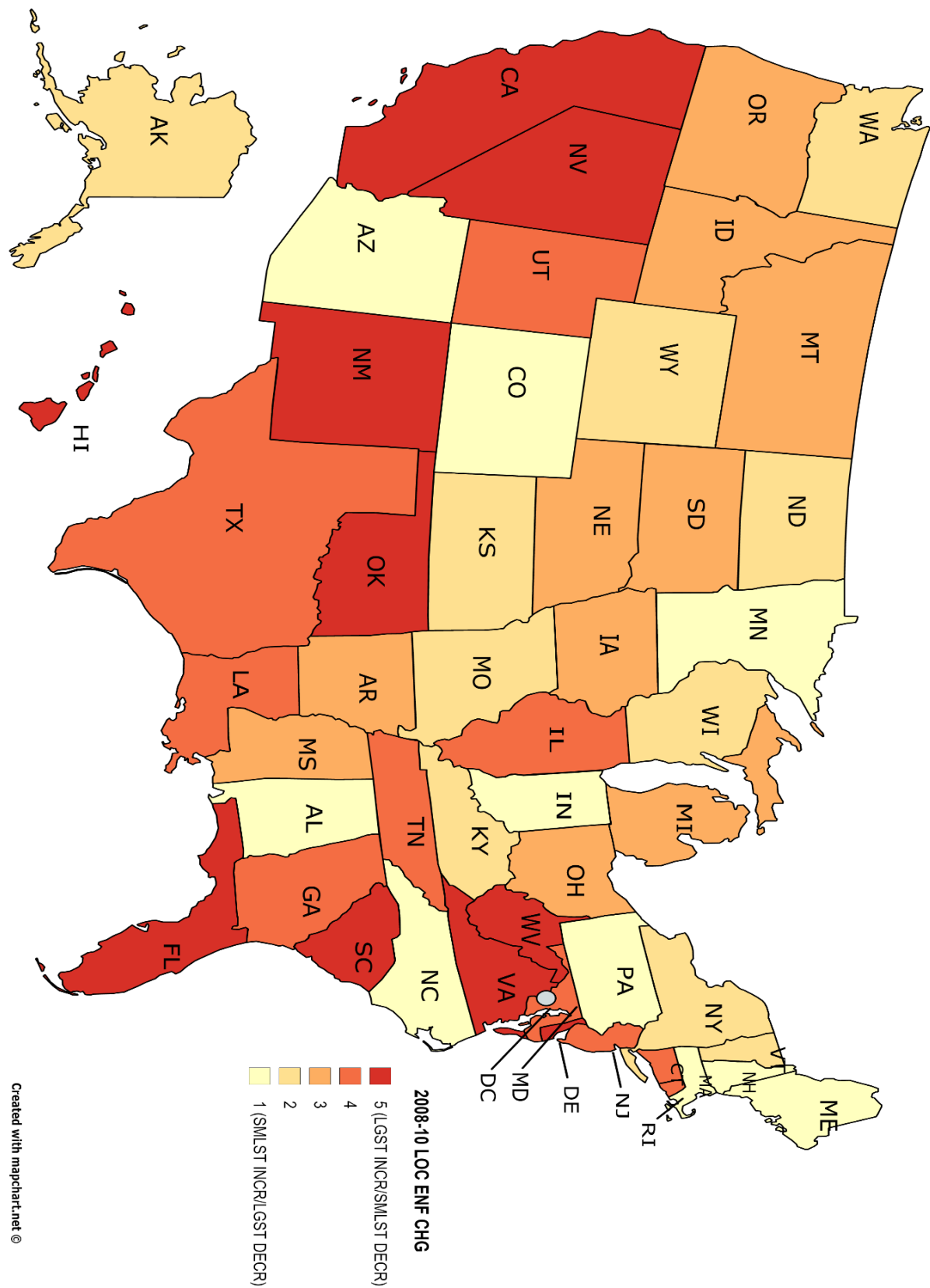


Figure 9f. US States by market scale change pentile rank, 2008-10

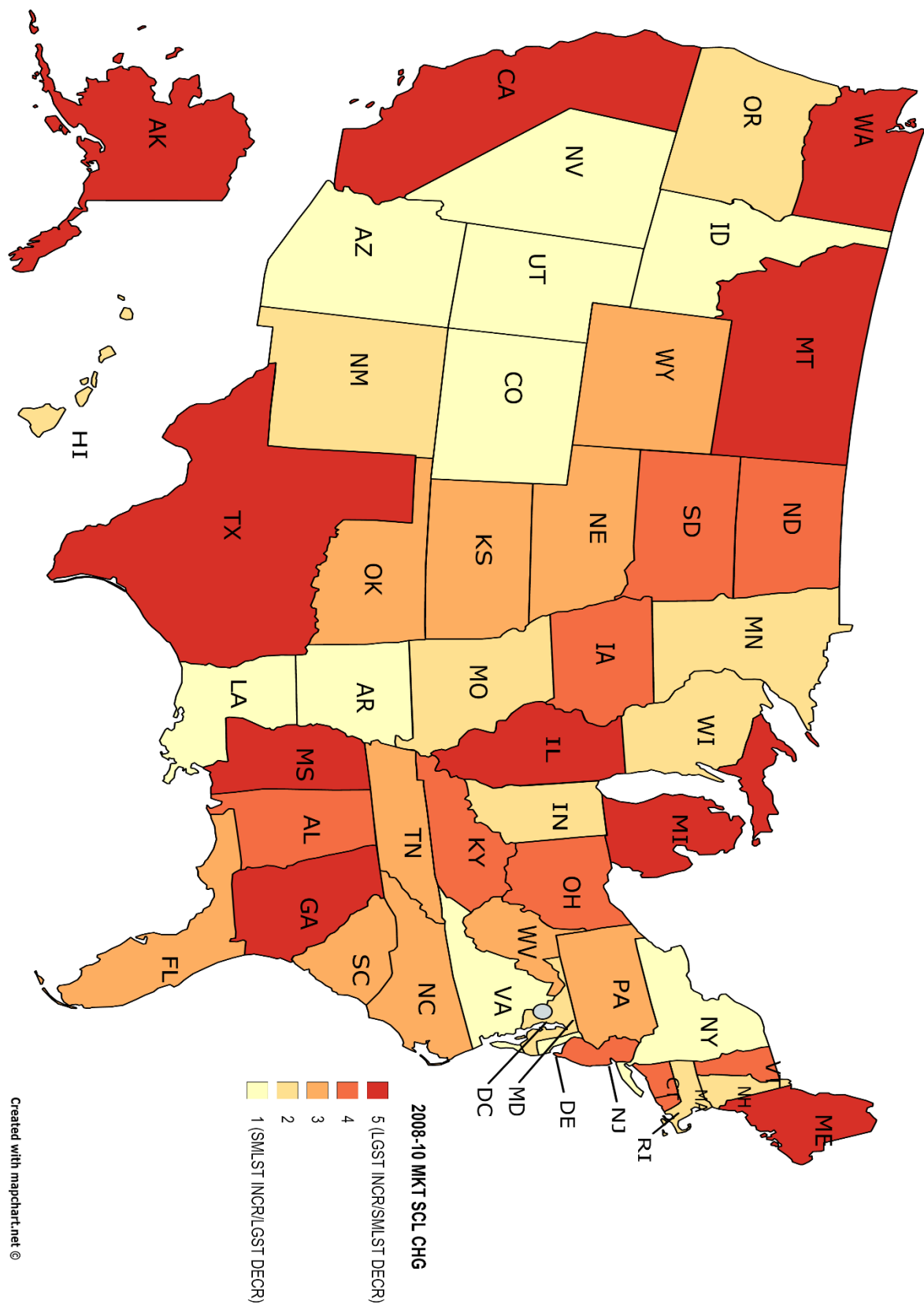


Figure 10f. US States by punitiveness change pentile rank, 2008-10

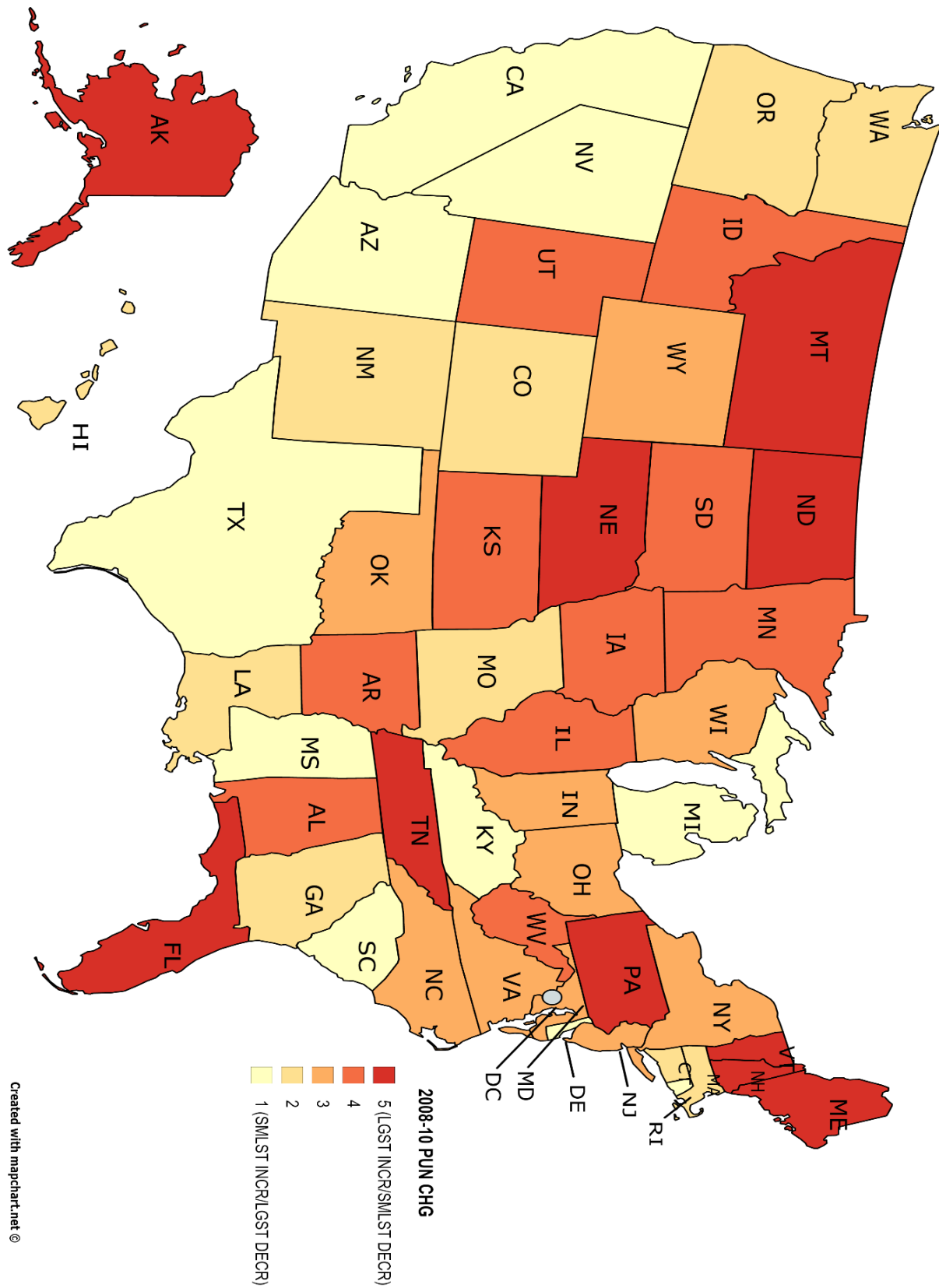
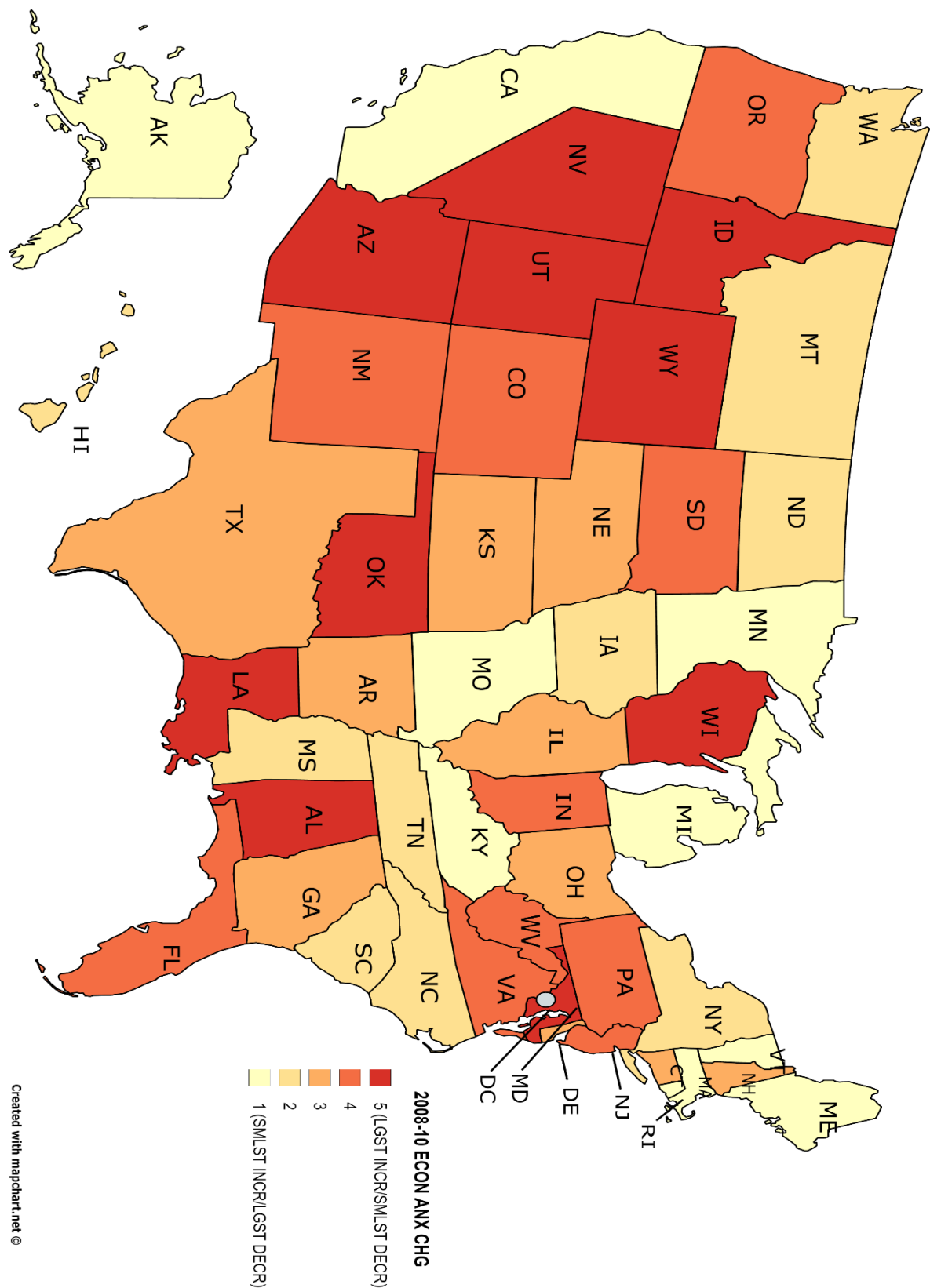
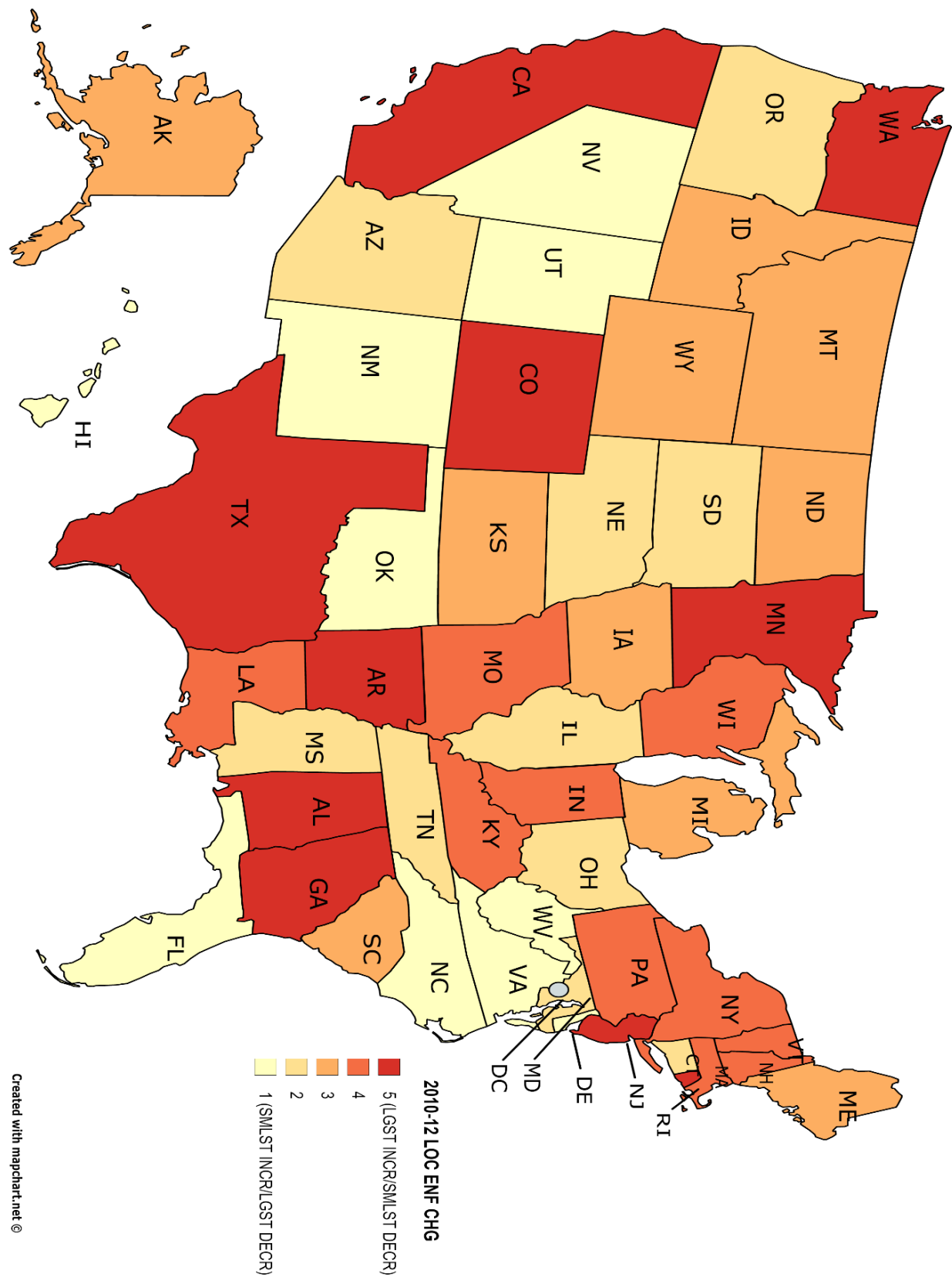


Figure 11f. US States by economic anxiety change pentile rank, 2008-10



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Figure 8g. US States by local enforcement change pentile rank, 2010-12



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Figure 9g. US States by market scale change pentile rank, 2010-12

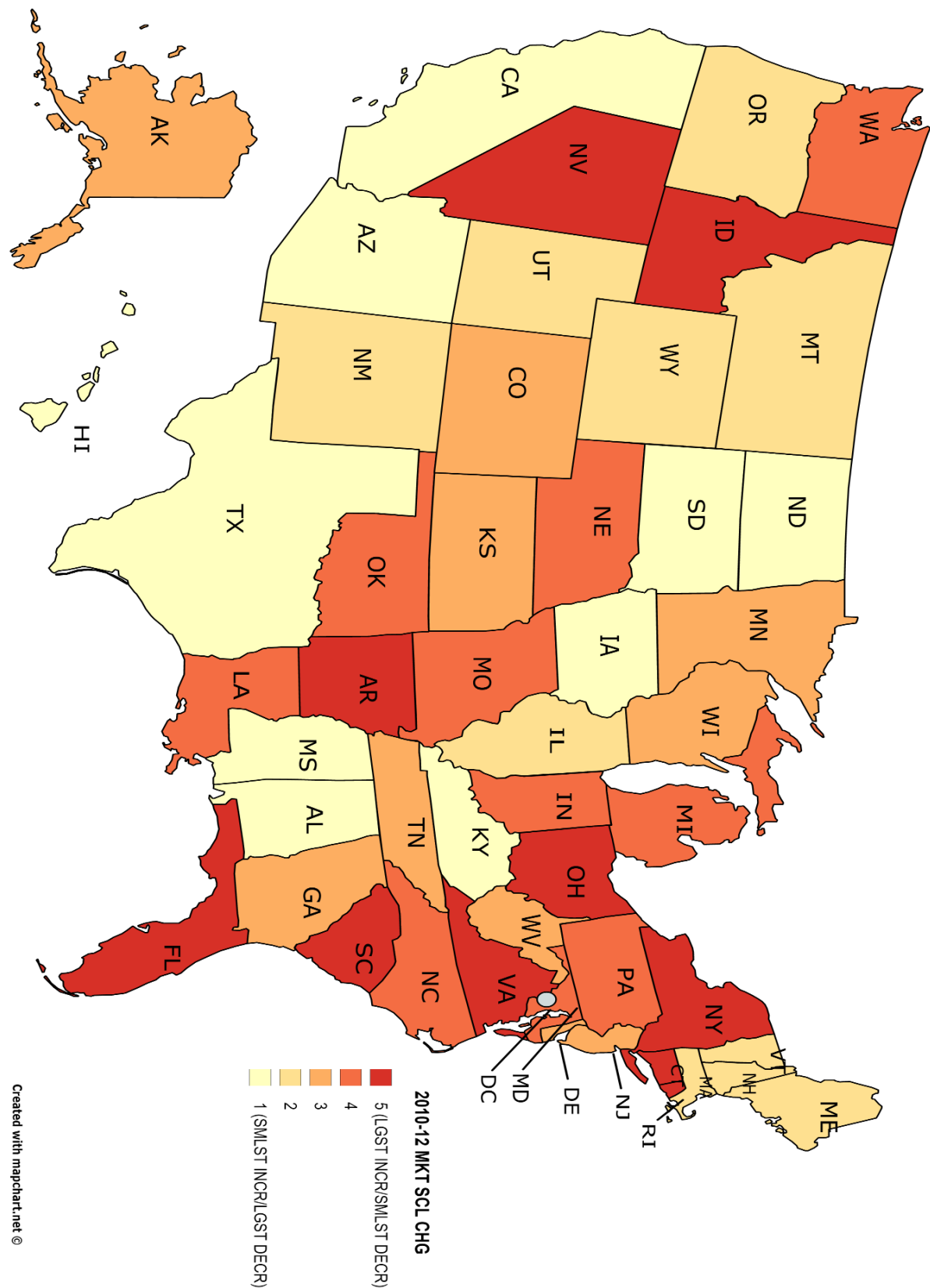


Figure 10g. US States by punitiveness change pentile rank, 2010-12

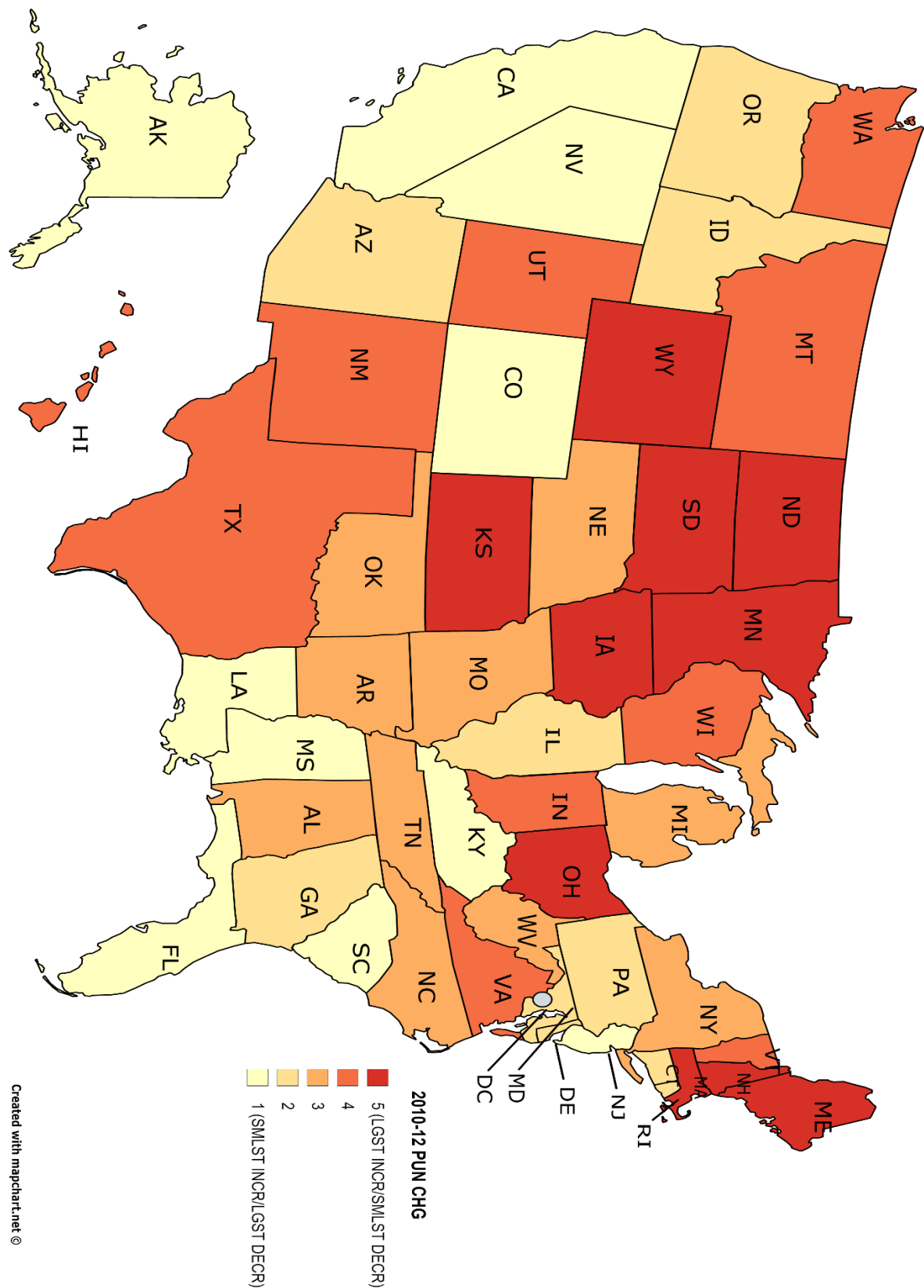


Figure 11g. US States by economic anxiety change pentile rank, 2010-12

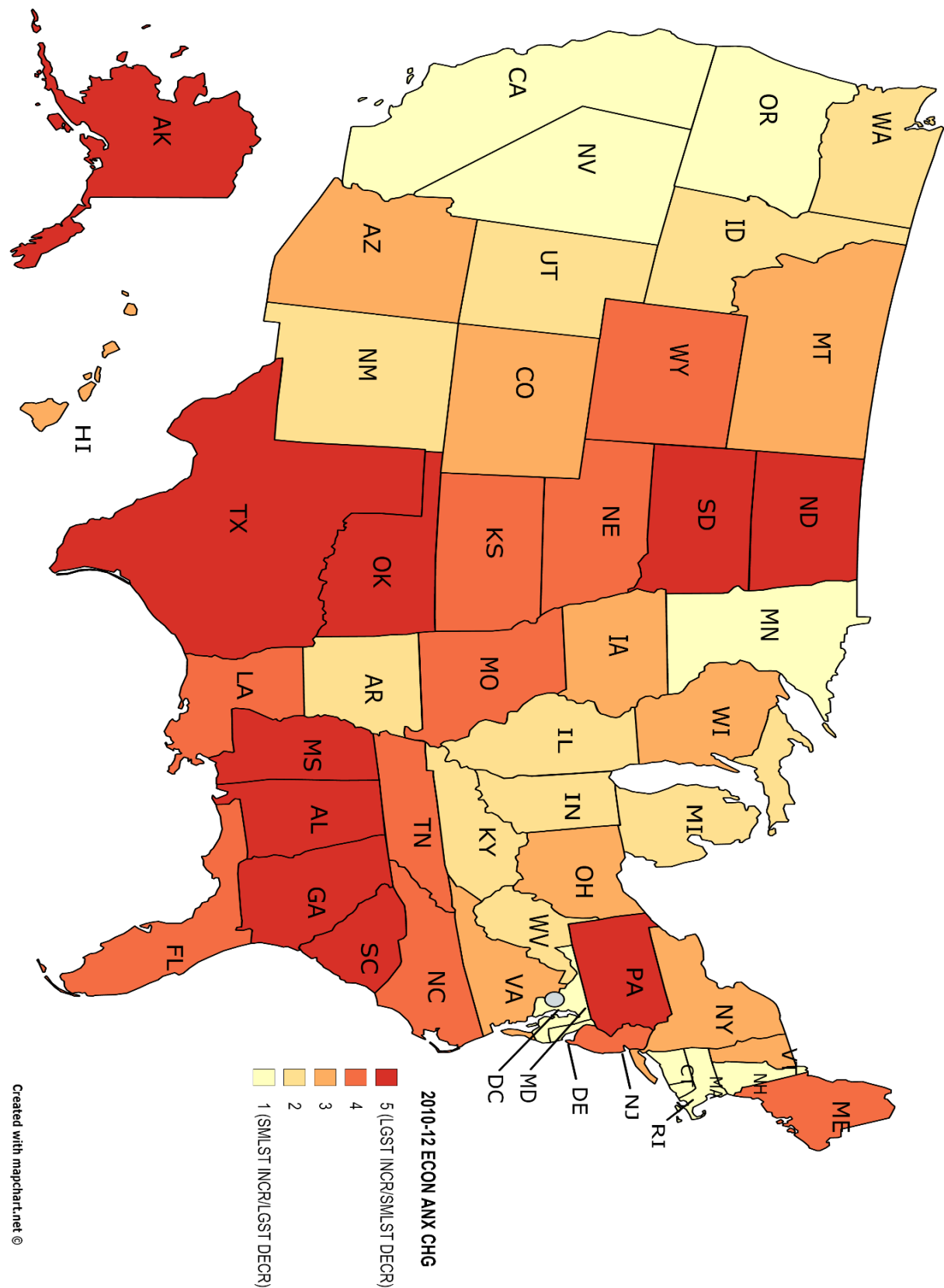
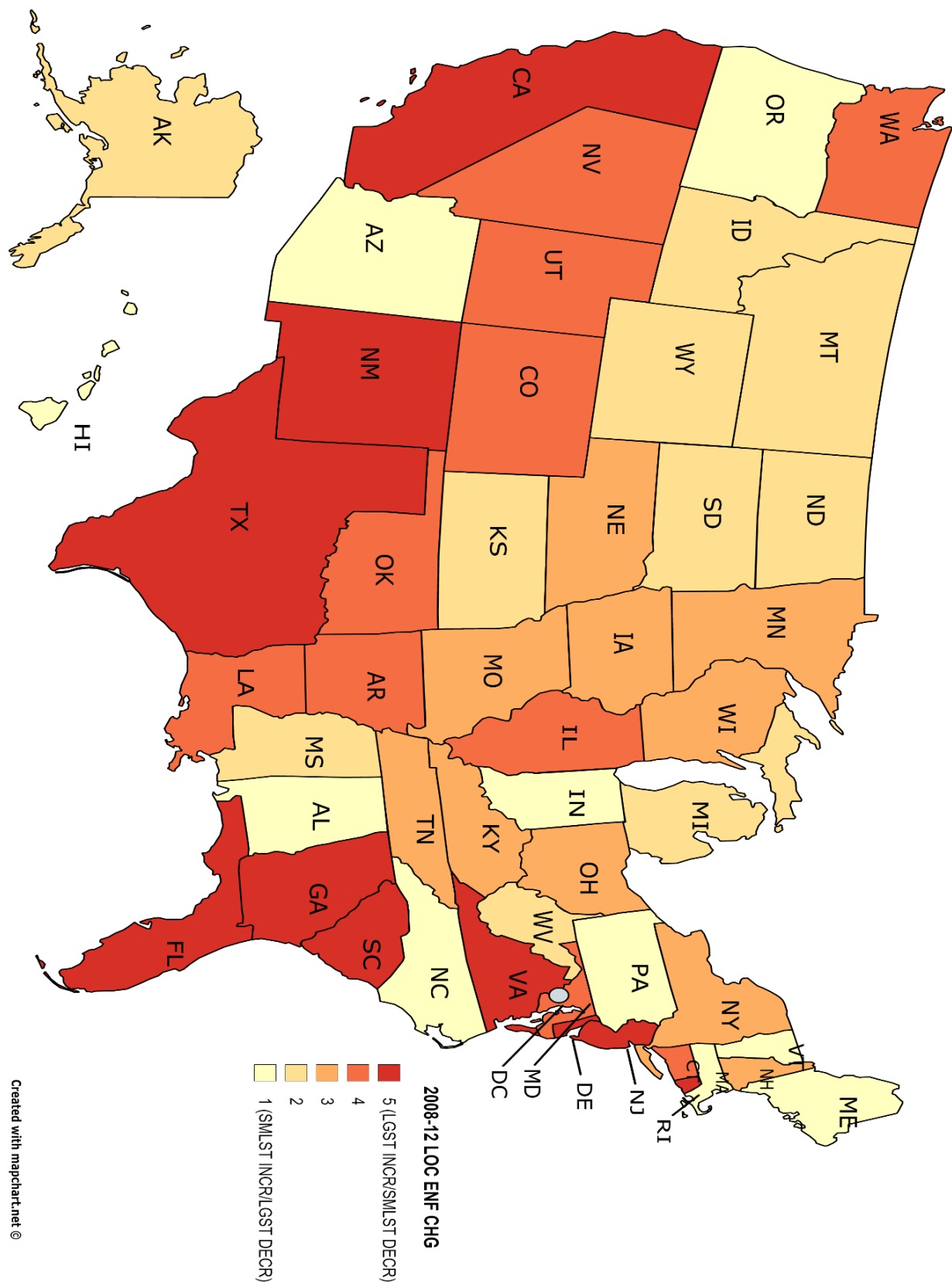


Figure 8h. US States by local enforcement change pentile rank, 2008-12



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Figure 9h. US States by market scale change pentile rank, 2008-12

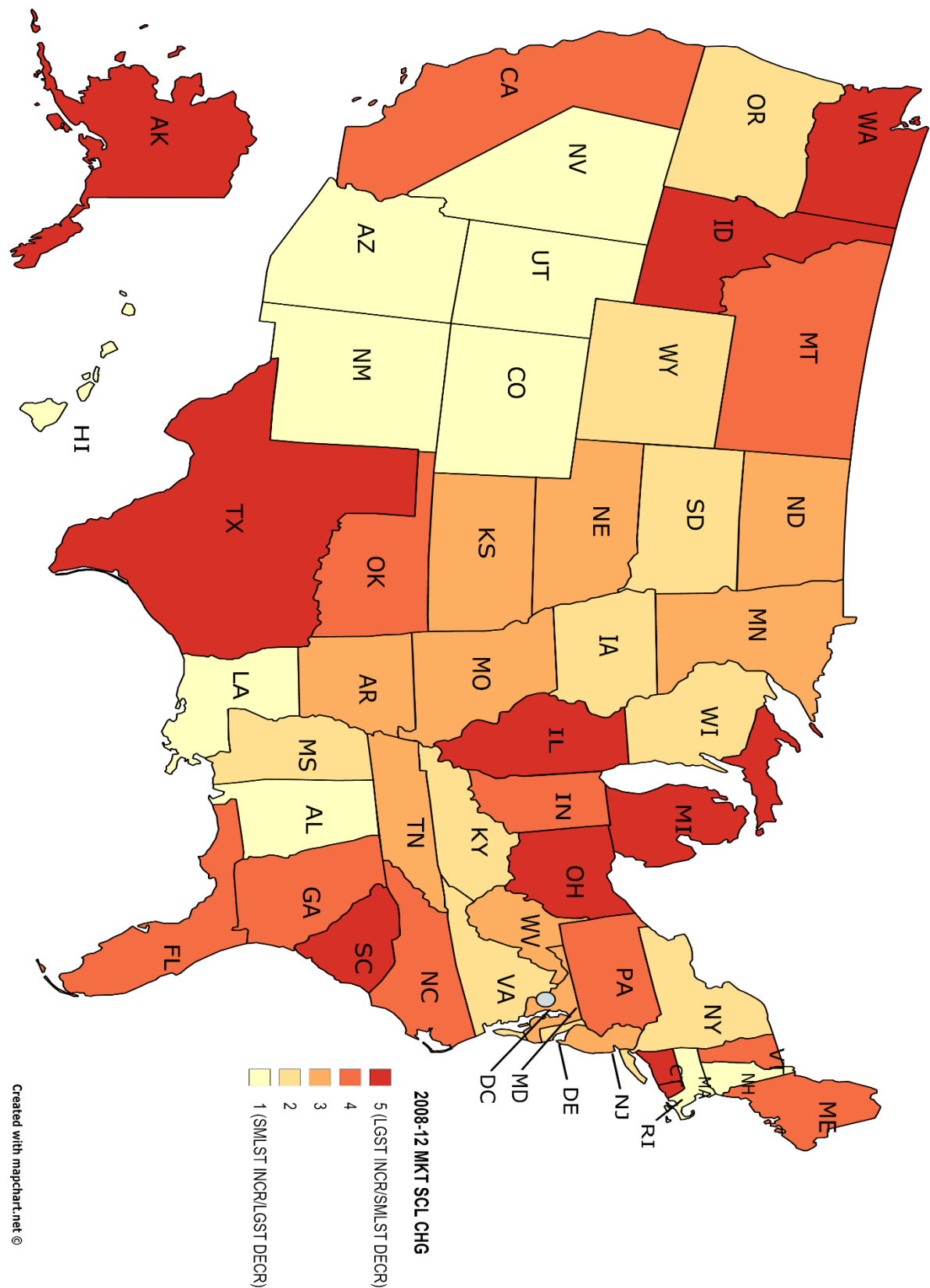


Figure 10h. US States by punitiveness change pentile rank, 2008-12

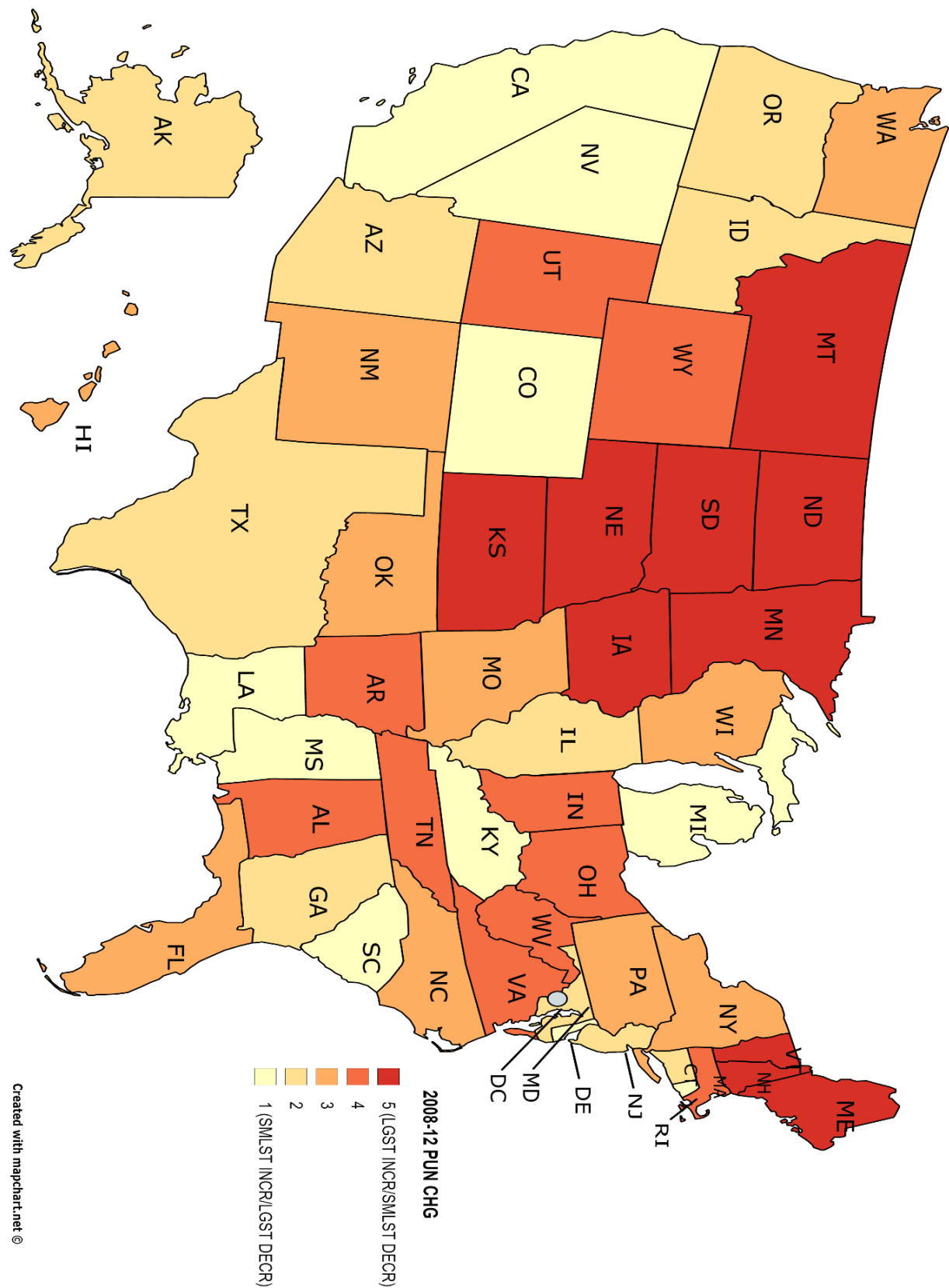
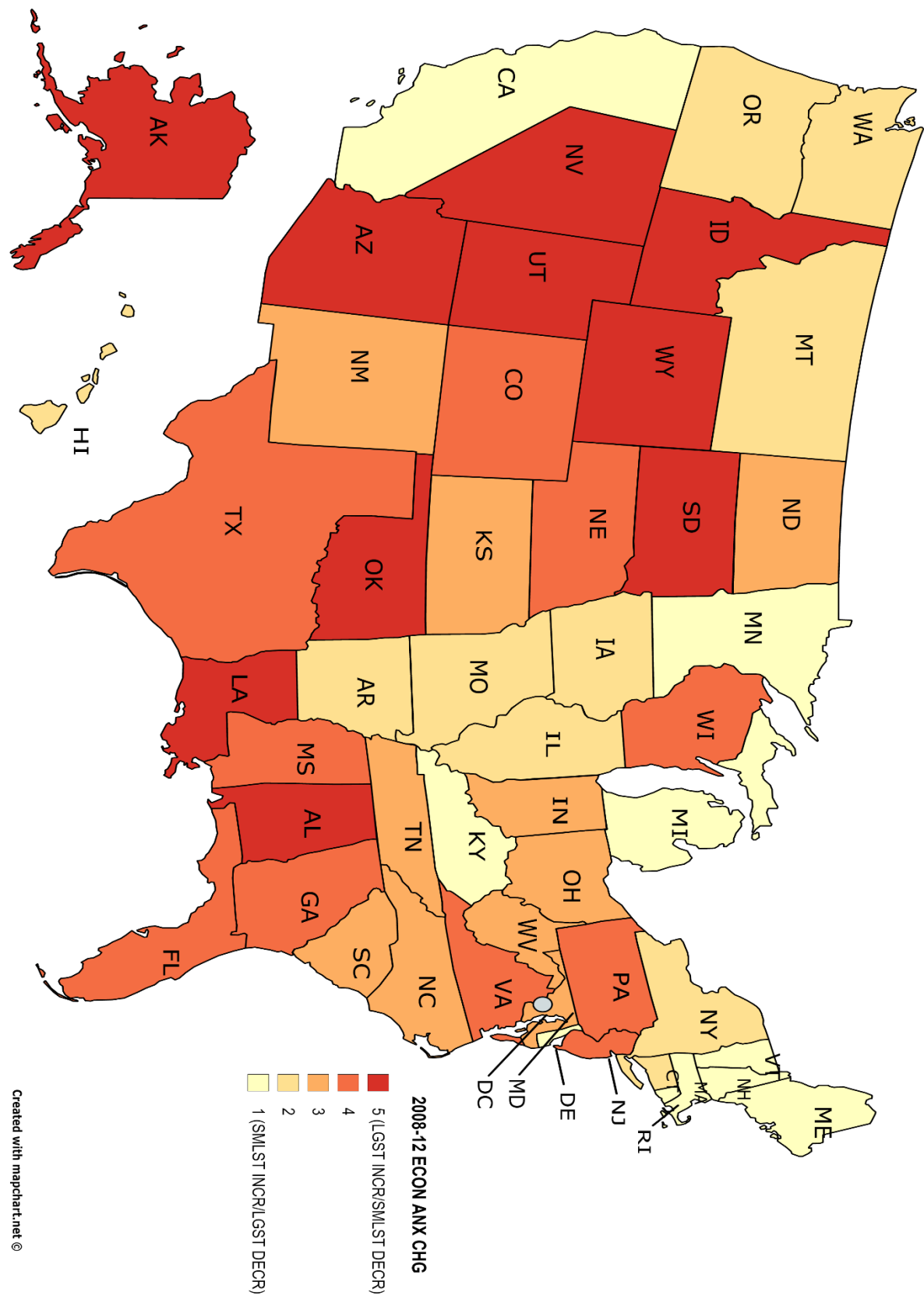


Figure 11h. US States by economic anxiety change pentile rank, 2008-12



Appendix B – Supplementary Tables and Graphs

Mean Variable Values by Factor Pentile Rank

The tables below present the mean values for the full list of variables by factor z-score pentile rank. Each year of data is presented on a separate table, along with the three longitudinal analyses. Given the strictures of factor analysis, these means for the most part rise and fall in remarkably scalar fashion. Means have been highlighted where this is not the case. While they have not been examined in detail, patterns of interest may arise on variables where ranked means consistently fall out of scale. Patterns of this nature could point toward explanations for some of the statistically significant non-linear relationships detected in bivariate crosstabular correlations above. Out-of-scale means are shown in bold on the tables below.

TABLE 11a. MEAN VARIABLE VALUES BY FACTOR PENTILE RANK, 2008

Variable	Factor Score Pentile Rank				
	1 (lowest)	2	3	4	5 (highest)
Market scale:					
Factor Z Score	-.915	-.664	-.311	.276	1.61
Total population of unauthorized immigrants (in thousands).....	32	62	71	196	837
Non-citizens as a proportion of total population.....	.017	.021	.037	.067	.098
Unauthorized immigrants as a proportion of total labor force.....	.009	.021	.030	.047	.082
Punitiveness:					
Factor Z Score	-1.29	-.599	-.006	.455	1.44
Incarceration rate per 100 thousand population.....	259	349	381	481	589
Number of prisoners held in private facilities.....	430	628	762	1785	5748
Proportion of total legislative seats held by Republicans.....	.254	.369	.521	.509	.588
Economic Anxiety:					
Factor Z Score	-1.53	-.336	.114	.557	1.20
Proportion of labor force unemployed.....	.041	.046	.052	.059	.068
Proportion of unauth population not participating in labor force.....	.07	.26	.30	.33	.36
Local enforcement entrepreneurship:					
Factor Z Score	-.571	-.551	-.477	-.118	1.72
Average daily population of detained immigrants.....	8.90	78.0	325	594	2149
Total number of 287(g) memoranda of understanding.....	0	.30	.40	1.2	4.5
Proportion of jurisdictions with active Secure Communities MOA.....	.00	.00	.00	.00	.02

TABLE 11b. MEAN VARIABLE VALUES BY FACTOR PENTILE RANK, 2009

Variable	Factor Score Pentile Rank				
	1 (lowest)	2	3	4	5 (highest)
Market scale:					
Factor Z Score.....	-.877	-.675	-.334	.313	1.57
Total population of unauthorized immigrants (in thousands).....	28	72	68	165	796
Non-citizens as a proportion of total population.....	.015	.025	.039	.065	.097
Unauthorized immigrants as a proportion of total labor force.....	.013	.021	.037	.055	.085
Punitiveness:					
Factor Z Score	-1.24	-.616	-.033	.444	1.45
Incarceration rate per 100 thousand population.....	288	354	444	374	585
Number of prisoners held in private facilities.....	177	996	815	1589	5962
Proportion of total legislative seats held by Republicans.....	.266	.365	.443	.568	.590
Economic Anxiety:					
Factor Z Score.....	-1.59	-.372	.091	.637	1.23
Proportion of labor force unemployed.....	.064	.075	.082	.098	.107
Proportion of unauth population not participating in labor force.....	.03	.26	.28	.30	.33
Local enforcement entrepreneurship:					
Factor Z Score.....	-.590	-.534	-.365	-.084	1.57
Average daily population of detained immigrants.....	14.1	135	354	655	2209
Total number of 287(g) memoranda of understanding.....	0	.10	.70	1.5	4.8
Proportion of jurisdictions with active Secure Communities MOA.....	.000	.001	.002	.013	.132

TABLE 11c. MEAN VARIABLE VALUES BY FACTOR PENTILE RANK, 2010

Variable	Factor Score Pentile Rank				
	1 (lowest)	2	3	4	5 (highest)
Market scale:					
Factor Z Score	-.860	-.640	-.319	.259	1.56
Total population of unauthorized immigrants (in thousands).....	33	84	59	162	802
Non-citizens as a proportion of total population.....	.018	.025	.041	.066	.099
Unauthorized immigrants as a proportion of total labor force.....	.012	.023	.030	.048	.075
Punitiveness:					
Factor Z Score	-1.29	-.587	.000	.458	1.42
Incarceration rate per 100 thousand population.....	280	344	378	442	581
Number of prisoners held in private facilities.....	288	869	767	1695	5818
Proportion of total legislative seats held by Republicans.....	.259	.374	.485	.544	.592
Economic Anxiety:					
Factor Z Score	-1.58	-.367	.227	.559	1.16
Proportion of labor force unemployed.....	.062	.082	.088	.101	.109
Proportion of unauth population not participating in labor force.....	.09	.24	.29	.30	.31
Local enforcement entrepreneurship:					
Factor Z Score	-.763	-.622	-.375	.069	1.69
Average daily population of detained immigrants.....	21.3	209	510	426	1914
Total number of 287(g) memoranda of understanding.....	.00	.20	.90	1.8	4.4
Proportion of jurisdictions with active Secure Communities MOA.....	.012	.049	.069	.306	.851

TABLE 11d. MEAN VARIABLE VALUES BY FACTOR PENTILE RANK, 2011

Variable	Factor Score Pentile Rank				
	1 (lowest)	2	3	4	5 (highest)
Market scale:					
Factor Z Score	-.862	-.667	-.332	.269	1.59
Total population of unauthorized immigrants (in thousands).....	36	70	75	164	816
Non-citizens as a proportion of total population.....	.016	.026	.040	.067	.098
Unauthorized immigrants as a proportion of total labor force.....	.017	.026	.037	.052	.086
Punitiveness:					
Factor Z Score	-1.29	-.600	.042	.471	1.37
Incarceration rate per 100 thousand population.....	308	337	375	430	554
Number of prisoners held in private facilities.....	628	341	926	1423	5921
Proportion of total legislative seats held by Republicans.....	.308	.441	.589	.642	.687
Economic Anxiety:					
Factor Z Score	1.58	.420	-.248	-.583	-1.17
Proportion of labor force unemployed.....	.060	.073	.086	.090	.101
Proportion of unauth population not participating in labor force.....	.075	.249	.296	.311	.301
Local enforcement entrepreneurship:					
Factor Z Score	-.988	-.641	-.126	.118	1.64
Average daily population of detained immigrants.....	98.0	500	308	325	2096
Total number of 287(g) memoranda of understanding.....	.00	.80	.10	1.5	4.9
Proportion of jurisdictions with active Secure Communities MOA.....	.03	.07	.88	.80	1.00

TABLE 11e. MEAN VARIABLE VALUES BY FACTOR PENTILE RANK, 2012

Variable	Factor Score Pentile Rank				
	1 (lowest)	2	3	4	5 (highest)
Market scale:					
Factor Z Score	-.921	-.657	-.268	.283	1.56
Total population of unauthorized immigrants (in thousands).....	27	61	81	156	794
Non-citizens as a proportion of total population.....	.017	.025	.040	.066	.097
Unauthorized immigrants as a proportion of total labor force.....	.011	.016	.035	.046	.072
Punitiveness:					
Factor Z Score	-1.33	-.575	-.029	.576	1.36
Incarceration rate per 100 thousand population.....	296	360	344	455	529
Number of prisoners held in private facilities.....	581	355	772	2269	5700
Proportion of total legislative seats held by Republicans.....	.308	.448	.571	.649	.706
Economic Anxiety:					
Factor Z Score	1.55	.471	-.283	-.545	-1.20
Proportion of labor force unemployed.....	.055	.066	.085	.078	.084
Proportion of unauth population not participating in labor force.....	.048	.226	.277	.309	.327
Local enforcement entrepreneurship:					
Factor Z Score	-.678	-.596	-.347	.085	1.71
Average daily population of detained immigrants.....	2.80	196	218	708	2294
Total number of 287(g) memoranda of understanding.....	.00	.00	.90	1.1	5.3
Proportion of jurisdictions with active Secure Communities MOA.....	1.00	.90	.90	.76	1.00

TABLE 11f. MEAN VARIABLE VALUES BY FACTOR PENTILE RANK, 2008-10

Variable	Factor Score Pentile Rank				
	1 (lowest)	2	3	4	5 (highest)
Market scale:					
Factor Z Score	-.264	-.056	+.011	+.084	+.225
Total population of unauthorized immigrants (in thousands).....	-60.0	+0.0	-23.8	+9.4	+17.2
Non-citizens as a proportion of total population.....	+.0002	+.0007	+.0031	+.0023	+.0013
Unauthorized immigrants as a proportion of total labor force.....	-.0104	+.0008	-.0009	+.0024	+.0069
Punitiveness:					
Factor Z Score	-.363	-.093	+.020	+.124	+.312
Incarceration rate per 100 thousand population.....	-33.6	-10.3	-13.5	+13.5	+8.9
Number of prisoners held in private facilities.....	-335	-105	+144	+19.5	+359
Proportion of total legislative seats held by Republicans.....	-.033	-.018	-.001	-.008	+.006
Economic Anxiety:					
Factor Z Score	-.741	-.326	-.054	+.250	+.872
Proportion of labor force unemployed.....	+.030	+.032	+.032	+.040	+.044
Proportion of unauth population not participating in labor force.....	-.057	-.053	-.033	-.015	+.065
Local enforcement entrepreneurship:					
Factor Z Score	-.625	-.181	-.090	+.124	+.773
Average daily population of detained immigrants.....	-67.1	+2.3	-4.2	-29.8	+24.1
Total number of 287(g) memoranda of understanding.....	+.00	+.00	+.00	+.60	+.30
Proportion of jurisdictions with active Secure Communities MOA.....	+.168	+.006	+.088	+.244	+.757

TABLE 11g. MEAN VARIABLE VALUES BY FACTOR PENTILE RANK, 2010-12

Variable	Factor Score Pentile Rank				
	1 (lowest)	2	3	4	5 (highest)
Market scale:					
Factor Z Score	-.193	-.064	+.002	+.053	+.201
Total population of unauthorized immigrants (in thousands).....	-36.0	-14.9	-6.0	-1.0	+38.0
Non-citizens as a proportion of total population.....	-.0006	-.0004	-.0007	+.0007	-.0007
Unauthorized immigrants as a proportion of total labor force.....	-.0101	-.0045	-.0017	+.0001	+.0070
Punitiveness:					
Factor Z Score	-.421	-.156	-.031	+.111	+.497
Incarceration rate per 100 thousand population.....	-12.9	-6.5	-4.4	-15.3	-1.1
Number of prisoners held in private facilities.....	-467	+433	-21.5	+54.5	+242
Proportion of total legislative seats held by Republicans.....	+.045	+.055	+.099	+.079	+.150
Economic Anxiety:					
Factor Z Score	+.596	+.171	+.025	-.154	-.638
Proportion of labor force unemployed.....	-.015	-.019	-.013	-.013	-.014
Proportion of unauth population not participating in labor force.....	-.087	-.022	-.013	-.008	+.095
Local enforcement entrepreneurship:					
Factor Z Score	-.582	-.036	+.085	+.149	+.385
Average daily population of detained immigrants.....	+65.6	+20.7	-2.1	-24.6	+279
Total number of 287(g) memoranda of understanding.....	+.00	+.00	+.00	+.00	+.00
Proportion of jurisdictions with active Secure Communities MOA.....	+.227	+.654	+.955	+.772	+.663

TABLE 11h. MEAN VARIABLE VALUES BY FACTOR PENTILE RANK, 2008-12

Variable	Factor Score Pentile Rank				
	1 (lowest)	2	3	4	5 (highest)
Market scale:					
Factor Z Score	-.258	-.087	+.001	+.093	+.251
Total population of unauthorized immigrants (in thousands).....	-38.7	-28.1	-3.3	-42.5	+35.5
Non-citizens as a proportion of total population.....	-.0023	+.0024	+.0038	+.0007	+.0013
Unauthorized immigrants as a proportion of total labor force.....	-.0116	-.0051	-.0003	-.0017	+.0083
Punitiveness:					
Factor Z Score	-.697	-.213	-.012	+.206	+.716
Incarceration rate per 100 thousand population.....	-46.0	-10.5	-15.8	-3.5	+0.60
Number of prisoners held in private facilities.....	-584	+237	+209	+551	-90.0
Proportion of total legislative seats held by Republicans.....	+.031	+.044	+.071	+.110	+.119
Economic Anxiety:					
Factor Z Score	+.999	+.375	+.011	-.430	-.956
Proportion of labor force unemployed.....	+.017	+.021	+.019	+.024	+.022
Proportion of unauth population not participating in labor force.....	-.109	-.061	-.030	-.012	+.085
Local enforcement entrepreneurship:					
Factor Z Score	-.548	-.080	-.020	+.086	+.562
Average daily population of detained immigrants.....	-110	-12.5	+6.7	+63.3	+316
Total number of 287(g) memoranda of understanding.....	+.00	+.00	+.00	+0.10	+0.80
Proportion of jurisdictions with active Secure Communities MOA.....	+.834	+1.00	+.900	+.900	+.898

Variable Values for Median Cases by Local Enforcement Factor Pentile Rank

The tables below present the values of all variables for the median states in each local enforcement factor rank. They provides a sense of the variation in incentives potentially driving enforcement participation decisions within each state, as well as the importance of outliers and the challenges of capturing episodic local decision-making processes in a broad national model. As discussed within-state variation cannot be accounted for; California, for instance, features the nation's highest population of unauthorized and authorized immigrants alike, as well as a highly developed correctional infrastructure that has hosted private/for-profit enterprise for some 30 years. The state's overall political liberalism, however, has limited the growth of immigration enforcement entrepreneurship within its borders, in contrast to more conservative Texas (which appears only on the longitudinal tables) or Virginia (which appears on the annual tables for 2008 and 2009). Virginia in 2008, for example, hosts outsized enforcement participation in proportion to the *size* of its market, because its market *conditions* (cultural and political conservatism, a well-developed correctional infrastructure with significant participation by private enterprise) are comparatively favorable to California's.

Interesting potential case studies include both states that appear theoretically consistent with the punitive immigration control marketplace, and those that appear anomalous. Colorado, for instance, with a quarter of its overall prison population confined in private facilities, and Virginia – a 'new destination' state, with its proliferation of 287(g) agreements. State level case studies (as demonstrated in part through the case studies of Georgia and New Jersey above) have the potential to allow for detailed specification of the full range of real-world mechanisms connecting contextual factors with local enforcement entrepreneurship.

**TABLE 12a. VARIABLE VALUES FOR MEDIAN CASES BY LOCAL ENFORCEMENT
ENTREPRENEURSHIP FACTOR SCORE PENTILE, 2008**

Variable	Factor Score Pentile Rank (Local enforcement and detention)									
	1 (lowest)	2	3	4	5 (highest)					
State (abbrev.):	AK	WV	OR	HI	NY	OK	TN	UT	CA	VA
Market scale (factor score rank):	2	1	4	4	5	3	3	4	5	4
Factor Z Score.....	-.804	-1.02	.188	.481	1.42	-.344	-.252	.263	3.48	.307
Total population of unauthorized immigrants (in thousands).....	10	10	150	35	925	55	150	110	2700	300
Non-citizens as a proportion of total population.....	.031	.007	.062	.084	.104	.033	.027	.056	.149	.056
Unauthorized immigrants as a proportion of total labor force.....	.015	.005	.054	.040	.067	.022	.036	.058	.099	.051
Punitiveness (factor score rank):	3	2	2	1	1	5	4	3	3	4
Factor Z Score.....	.081	-.852	-.052	-1.37	-1.08	1.71	.539	-.018	-.072	.419
Incarceration rate per 100 thousand population.....	357	334	370	332	317	668	434	232	471	505
Number of prisoners held in private facilities.....	1409	0	0	2050	0	5885	5149	0	3192	1546
Proportion of total legislative seats held by Republicans.....	.567	.291	.444	.145	.344	.544	.470	.731	.392	.507
Econ Anxiety (factor score rank):	2	1	5	3	3	2	4	1	5	2
Factor Z Score.....	-.262	-1.00	.731	-.021	.184	-.520	.694	-1.75	1.05	-.526
Proportion of labor force unemployed.....	.068	.044	.064	.042	.055	.037	.066	.035	.071	.040
Proportion of unauth population not participating in labor force.....	.00	.00	.33	.29	.30	.27	.27	.27	.32	.30
Local enf entrepreneurship:										
Factor Z Score	-.596	-.594	-.580	-.574	-.369	-.359	-.139	-.113	1.19	1.59
Average daily population of detained immigrants.....	4	9	56	75	758	78	95	181	3089	845
Total number of 287(g) memoranda of understanding.....	0	0	0	0	0	1	2	2	4	9
Proportion of jurisdictions with active Secure Communities MOA.....	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00

**TABLE 12b. VARIABLE VALUES FOR MEDIAN CASES BY LOCAL ENFORCEMENT
ENTREPRENEURSHIP FACTOR SCORE PENTILE, 2009**

Variable	Factor Score Pentile Rank (Local enforcement and detention)									
	1 (lowest)	2	3	4	5 (highest)					
State (abbrev.):	WV	SD	KY	IA	MO	MN	AL	CO	VA	CA
Market scale (factor score rank):	1	1	2	2	1	3	2	4	4	5
Factor Z Score.....	-.954	-.950	-.725	-.689	-.928	-.392	-.711	.448	.128	3.62
Total population of unauthorized immigrants (in thousands).....	5	5	50	45	65	90	80	210	250	2500
Non-citizens as a proportion of total population.....	.007	.016	.020	.025	.020	.038	.022	.065	.056	.146
Unauthorized immigrants as a proportion of total labor force.....	.007	.012	.019	.019	.016	.024	.029	.055	.049	.114
Punitiveness (factor score rank):	1	5	3	3	4	1	3	4	4	2
Factor Z Score.....	-1.04	.866	.030	-.258	.464	-.958	.063	.459	.530	-.480
Incarceration rate per 100 thousand population.....	341	425	484	281	516	191	637	464	487	460
Number of prisoners held in private facilities.....	0	13	2491	0	0	0	883	4957	1575	2316
Proportion of total legislative seats held by Republicans.....	.201	.629	.413	.413	.569	.338	.400	.410	.507	.358
Econ Anxiety (factor score rank):	1	1	5	2	4	2	5	3	2	4
Factor Z Score.....	-.975	-1.90	.992	-.438	.672	-.426	1.57	.209	-.371	.504
Proportion of labor force unemployed.....	.080	.050	.106	.063	.094	.078	.112	.074	.066	.113
Proportion of unauth population not participating in labor force.....	.00	.00	.30	.33	.31	.28	.31	.33	.24	.26
Local enf entrepreneurship:										
Factor Z Score	-.592	-.591	-.574	-.550	-.370	-.352	-.100	-.064	1.25	1.41
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	4
Proportion of jurisdictions with active Secure Communities MOA.....	.00	.00	.00	.00	.00	.00	.00	.00	.02	.07

**TABLE 12c. VARIABLE VALUES FOR MEDIAN CASES BY LOCAL ENFORCEMENT
ENTREPRENEURSHIP FACTOR SCORE PENTILE, 2010**

Variable	Factor Score Pentile Rank (Local enforcement and detention)									
	1 (lowest)	2	3	4	5 (highest)					
State (abbrev.):	ME	ND	MS	MI	PA	IL	NV	UT	NC	FL
Market scale (factor score rank):	2	1	2	2	2	5	5	4	4	5
Factor Z Score.....	-.740	-.800	-.662	-.711	-.612	.644	1.21	.118	.223	1.80
Total population of unauthorized immigrants (in thousands).....	10	10	43	150	160	525	190	110	325	825
Non-citizens as a proportion of total population.....	.015	.015	.015	.031	.028	.076	.117	.055	.053	.102
Unauthorized immigrants as a proportion of total labor force.....	.010	.005	.029	.020	.017	.056	.100	.054	.054	.066
Punitiveness (factor score rank):	1	3	5	3	3	2	1	3	2	5
Factor Z Score.....	-.989	.200	1.08	-.246	.196	-.663	-1.18	.114	-.527	1.87
Incarceration rate per 100 thousand population.....	146	219	685	447	401	377	463	243	369	550
Number of prisoners held in private facilities.....	0	0	5241	0	1015	0	0	0	208	11796
Proportion of total legislative seats held by Republicans.....	.376	.596	.420	.439	.502	.395	.349	.712	.424	.638
Econ Anxiety (factor score rank):	1	1	5	5	3	4	5	2	3	4
Factor Z Score.....	-1.61	-2.87	1.04	1.34	.078	.508	2.12	-.431	.401	.601
Proportion of labor force unemployed.....	.082	.038	.109	.122	.086	.102	.144	.082	.105	.111
Proportion of unauth population not participating in labor force.....	.00	.00	.19	.33	.31	.29	.26	.32	.23	.27
Local enf entrepreneurship:										
Factor Z Score	-.780	-.777	-.630	-.628	-.346	-.331	.471	.379	1.74	1.78
Average daily population of detained immigrants.....	13	22	0	317	1273	441	150	241	134	1851
Total number of 287(g) memoranda of understanding.....	0	0	0	0	0	0	1	2	8	4
Proportion of jurisdictions with active Secure Communities MOA.....	.00	.00	.12	.05	.05	.26	.47	.38	.77	1.00

**TABLE 12d. VARIABLE VALUES FOR MEDIAN CASES BY LOCAL ENFORCEMENT
ENTREPRENEURSHIP FACTOR SCORE PENTILE, 2011**

Variable	Factor Score Pentile Rank (Local enforcement and detention)									
	1 (lowest)	2	3	4	5 (highest)					
State (abbrev.):	WY	MT	CT	PA	OR	ID	MD	OK	NC	GA
Market scale (factor score rank):	2	1	4	2	4	3	5	3	4	5
Factor Z Score.....	-.757	-.884	.262	-.631	.129	-.443	.585	-.343	.269	.695
Total population of unauthorized immigrants (in thousands).....	7.84	7.25	123	157	145	38.5	264	86	354	432
Non-citizens as a proportion of total population.....	.020	.010	.071	.029	.062	.040	.074	.036	.052	.063
Unauthorized immigrants as a proportion of total labor force.....	.027	.016	.052	.018	.055	.037	.071	.037	.062	.072
Punitiveness (factor score rank):	5	4	1	3	2	5	1	5	2	5
Factor Z Score.....	1.06	.452	-1.02	.125	-.685	.993	-.983	1.75	-.483	.840
Incarceration rate per 100 thousand population.....	383	367	350	402	372	486	380	631	362	547
Number of prisoners held in private facilities.....	245	1418	855	1195	0	2332	78	6026	30	5615
Proportion of total legislative seats held by Republicans.....	.844	.640	.342	.561	.489	.810	.293	.685	.576	.631
Econ Anxiety (factor score rank):	1	1	3	3	3	4	2	3	4	5
Factor Z Score.....	1.76	1.30	-.255	-.177	-.473	-.527	.262	-.339	-.481	-.976
Proportion of labor force unemployed.....	.059	.073	.089	.078	.094	.087	.070	.062	.105	.101
Proportion of unauth population not participating in labor force.....	.00	.00	.27	.32	.30	.33	.23	.30	.27	.29
Local enf entrepreneurship:										
Factor Z Score	-1.01	-.998	-.713	-.618	-.137	-.132	.109	.135	1.67	1.75
Average daily population of detained immigrants.....	3	3	0	1182	8	22	311	161	101	2376
Total number of 287(g) memoranda of understanding.....	0	0	1	0	0	0	1	1	8	5
Proportion of jurisdictions with active Secure Communities MOA.....	.04	.05	.13	.05	1.00	1.00	.92	1.00	1.00	1.00

**TABLE 12e. VARIABLE VALUES FOR MEDIAN CASES BY LOCAL ENFORCEMENT
ENTREPRENEURSHIP FACTOR SCORE PENTILE, 2012**

Variable	Factor Score Pentile Rank (Local enforcement and detention)									
	1 (lowest)	2	3	4	5 (highest)					
State (abbrev.):	AK	MT	KY	IA	OK	MO	WA	MA	NC	GA
Market scale (factor score rank):	2	1	1	2	3	1	4	4	4	5
Factor Z Score.....	-.526	-.970	-.850	-.651	-.206	-.909	.406	.254	.261	.747
Total population of unauthorized immigrants (in thousands).....	15	5	35	40	100	65	230	150	350	400
Non-citizens as a proportion of total population.....	.033	.009	.021	.027	.037	.022	.071	.074	.052	.062
Unauthorized immigrants as a proportion of total labor force.....	.024	.004	.012	.020	.037	.014	.049	.034	.052	.056
Punitiveness (factor score rank):	3	4	3	3	5	4	1	1	2	5
Factor Z Score.....	-.038	.564	-.258	.094	1.76	.516	-1.05	-1.57	-.528	.907
Incarceration rate per 100 thousand population.....	405	358	489	282	648	518	249	199	357	542
Number of prisoners held in private facilities.....	1733	1418	812	0	6423	0	0	0	30	7900
Proportion of total legislative seats held by Republicans.....	.533	.640	.457	.560	.671	.670	.435	.180	.576	.640
Econ Anxiety (factor score rank):	4	1	4	2	5	4	2	2	4	5
Factor Z Score.....	-.484	1.36	-.681	.814	-.717	-.496	.116	.815	-.463	-1.18
Proportion of labor force unemployed.....	.074	.061	.080	.051	.051	.069	.083	.067	.092	.091
Proportion of unauth population not participating in labor force.....	.33	.00	.29	.25	.35	.31	.26	.20	.29	.31
Local enf entrepreneurship:										
Factor Z Score	-.678	-.678	-.623	-.617	-.342	-.338	-.119	-.071	1.48	1.68
Average daily population of detained immigrants.....	1	2	131	145	167	176	1318	804	62	2414
Total number of 287(g) memoranda of understanding.....	0	0	0	0	1	1	0	1	8	5
Proportion of jurisdictions with active Secure Communities MOA.....	1.00	1.00	1.00	1.00	1.00	1.00	1.00	.00	1.00	1.00

**TABLE 12f. VARIABLE VALUES FOR MEDIAN CASES BY LOCAL ENFORCEMENT
ENTREPRENEURSHIP FACTOR SCORE PENTILE, 2008-10**

Variable	Factor Score Pentile Rank (Local enforcement and detention)									
	1 (lowest)	2	3	4	5 (highest)					
State (abbrev.):	CO	NH	WI	KS	SD	OR	RI	CT	HI	FL
Market scale (factor score rank):	1	2	2	3	4	2	4	4	2	3
Factor Z Score.....	-.282	-.052	-.074	+.035	+.072	-.070	+.100	+.049	-.063	+.003
Total population of unauthorized immigrants (in thousands).....	-60	-5	+15	-5	+2	+10	0	+10	+5	-225
Non-citizens as a proportion of total population.....	-.003	+.003	+.001	+.006	+.004	.000	+.005	.000	-.007	+.004
Unauthorized immigrants as a proportion of total labor force.....	-.008	-.001	+.002	+.005	.000	-.001	+.001	+.003	+.006	-.016
Punitiveness (factor score rank):	2	5	3	4	4	2	1	2	2	5
Factor Z Score.....	-.115	+.457	-.012	+.157	+.176	-.152	-.330	-.141	-.103	+.188
Incarceration rate per 100 thousand population.....	-19	-3	-1	+8	+1	+15	-43	-39	-44	+2
Number of prisoners held in private facilities.....	-806	0	+25	0	-4	0	0	+883	-119	+2770
Proportion of total legislative seats held by Republicans.....	+.010	+.040	-.030	-.007	-.029	-.044	-.071	-.048	-.040	+.007
Econ Anxiety (factor score rank):	4	3	5	3	4	4	1	3	2	4
Factor Z Score.....	+.187	+.062	+.393	-.069	+.303	+.222	-.938	-.077	-.299	+.377
Proportion of labor force unemployed.....	+.039	+.021	+.040	+.029	+.021	+.046	+.034	+.035	+.028	+.050
Proportion of unauth population not participating in labor force.....	-.042	+.083	-.003	-.121	.000	-.021	.000	+.019	-.036	-.013
Local enf entrepreneurship:										
Factor Z Score	-.247	-.215	-.187	-.183	-.093	-.059	+.132	+.155	+.752	+.972
Average daily population of detained immigrants.....	-25	-8	+2	-28	-9	-40	-196	-15	-20	+14
Total number of 287(g) memoranda of understanding.....	0	0	0	0	0	0	+2	+1	0	0
Proportion of jurisdictions with active Secure Communities MOA.....	.00	.00	.00	+.01	+.08	+.11	.00	+.13	+.75	+1.00

**TABLE 12g. VARIABLE VALUES FOR MEDIAN CASES BY LOCAL ENFORCEMENT
ENTREPRENEURSHIP FACTOR SCORE PENTILE, 2010-12**

Variable	Factor Score Pentile Rank (Local enforcement and detention)									
	1 (lowest)	2	3	4	5 (highest)					
State (abbrev.):	NV	OK	TN	NE	ME	KS	MO	LA	CO	WA
Market scale (factor score rank):	5	4	3	4	2	3	4	4	3	4
Factor Z Score.....	+182	+092	-.017	+037	-.088	-.007	+073	+052	+010	+020
Total population of unauthorized immigrants (in thousands).....	+20	+25	-10	+10	-5	+10	+10	-10	0	0
Non-citizens as a proportion of total population.....	-.004	+001	.000	+001	.000	.000	+002	+001	-.004	.000
Unauthorized immigrants as a proportion of total labor force.....	+.002	+007	-.003	+007	-.007	+002	+001	-.002	+001	-.002
Punitiveness (factor score rank):	1	3	3	3	5	5	3	1	1	4
Factor Z Score.....	-.272	+011	-.048	-.072	+369	+307	-.033	-.481	-.374	+038
Incarceration rate per 100 thousand population.....	+8	-1	+8	+2	-1	+9	+8	+5	-57	-19
Number of prisoners held in private facilities.....	0	+404	+45	0	0	+83	0	+35	-559	0
Proportion of total legislative seats held by Republicans.....	+.064	+.087	+.113	-.082	+.151	+.104	+.101	+.111	+.070	+.068
Econ Anxiety (factor score rank):	1	5	4	4	4	4	4	4	3	2
Factor Z Score.....	+.810	-.666	-.220	-.242	-.032	-.204	-.075	-.187	+.036	+.066
Proportion of labor force unemployed.....	-.034	-.021	-.016	-.008	-.005	-.018	-.026	-.007	-.006	-.019
Proportion of unauth population not participating in labor force.....	+.023	+.083	-.014	-.061	.000	+.026	+.035	-.112	-.056	+.087
Local enf entrepreneurship:										
Factor Z Score	-.342	-.276	-.018	-.005	+.103	+.103	+.151	+.162	+.309	+.332
Average daily population of detained immigrants.....	+118	+40	-6	-5	-9	+10	+4	-80	-40	+204
Total number of 287(g) memoranda of understanding.....	0	0	0	0	0	0	0	0	0	0
Proportion of jurisdictions with active Secure Communities MOA.....	+.53	+.61	+.78	+.89	+1.00	+.99	.96	+.88	+1.00	+1.00

TABLE 12h. VARIABLE VALUES FOR MEDIAN CASES BY LOCAL ENFORCEMENT ENTREPRENEURSHIP FACTOR SCORE PENTILE, 2008-12

Variable	Factor Score Pentile Rank (Local enforcement and detention)									
	1 (lowest)	2	3	4	5 (highest)					
State (abbrev.):	AL	OR	WV	MT	NH	MO	CO	AR	TX	SC
Market scale (factor score rank):	1	2	3	4	1	3	1	3	5	5
Factor Z Score.....	-.217	-.088	-.008	+.078	-.134	+.028	-.272	-.004	+.459	+.285
Total population of unauthorized immigrants (in thousands).....	-27	-30	-5	-5	-10	+20	-60	0	+200	+25
Non-citizens as a proportion of total population.....	+.004	-.001	.000	-.001	+.002	+.001	-.007	+.005	-.001	+.004
Unauthorized immigrants as a proportion of total labor force.....	-.016	-.008	-.003	-.001	-.005	+.006	-.007	+.004	+.010	+.008
Punitiveness (factor score rank):	4	2	4	5	5	3	1	4	2	1
Factor Z Score.....	+.090	-.247	+.085	+.541	+1.42	-.056	-.490	+.130	-.168	-.929
Incarceration rate per 100 thousand population.....	+31	+8	+44	-10	-2	+3	-76	-13	-67	-79
Number of prisoners held in private facilities.....	+533	0	0	+24	0	0	-1365	0	-1234	+11
Proportion of total legislative seats held by Republicans.....	+.221	+.045	+.015	+.147	+.342	+.101	+.080	+.200	+.127	+.012
Econ Anxiety (factor score rank):	5	2	3	2	1	2	4	2	4	3
Factor Z Score.....	-.939	+.354	-.095	+.439	+.990	+.492	-.151	+.320	-.454	+.031
Proportion of labor force unemployed.....	+.024	+.025	+.030	+.009	+.018	+.008	+.033	+.024	+.019	+.027
Proportion of unauth population not participating in labor force.....	+.178	-.083	.000	.000	-.250	-.136	-.097	-.083	-.059	-.023
Local enf entrepreneurship:										
Factor Z Score	-.282	-.095	-.083	-.082	-.021	-.020	+.062	+.109	+.536	+.569
Average daily population of detained immigrants.....	-272	-47	-4	-2	+13	-39	-65	-51	+244	+28
Total number of 287(g) memoranda of understanding.....	-1	0	0	0	0	0	0	0	0	+2
Proportion of jurisdictions with active Secure Communities MOA.....	+.55	+1.00	+1.00	+1.00	+1.00	+1.00	+1.00	+1.00	+.98	+1.00

Scatterplots: Bivariate Relationships between Factor Z-scores

Below are scatterplots representing the bivariate relationships between the three independent factors and local enforcement for each year of data and each longitudinal analysis. These are not visual representations of any of the tests undertaken in the main narrative, as they neither use ranked groupings, nor control for the effect of the other variables in the model as the multivariate OLS regressions do. Nevertheless, they provide a sense of the strength and direction of the relationships involved, the importance of extreme cases, and the positions of various states.

Figure 8a: Scatterplot – Local Enforcement '08 by Market Scale '08

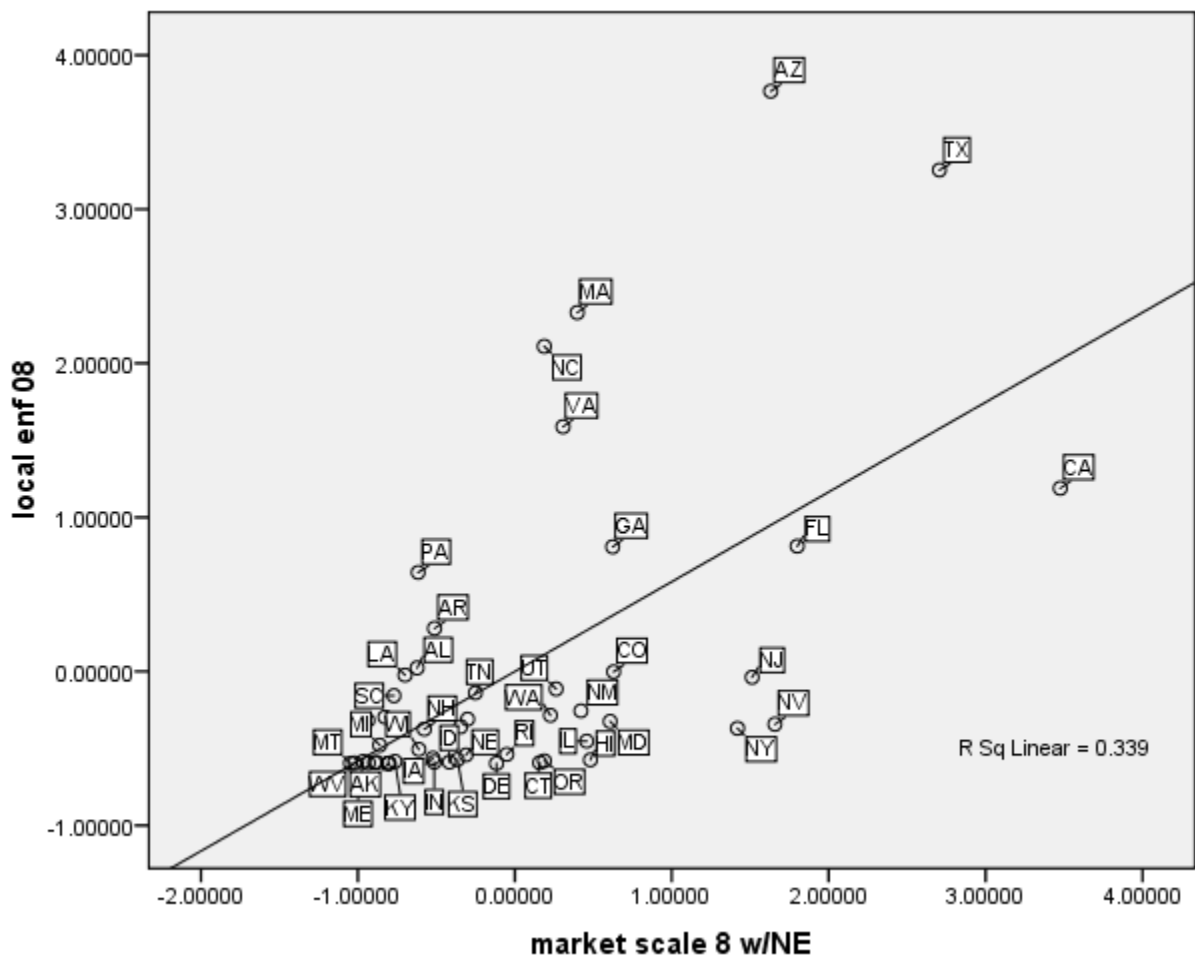


Figure 9a: Scatterplot – Local Enforcement '08 by Punitiveness '08

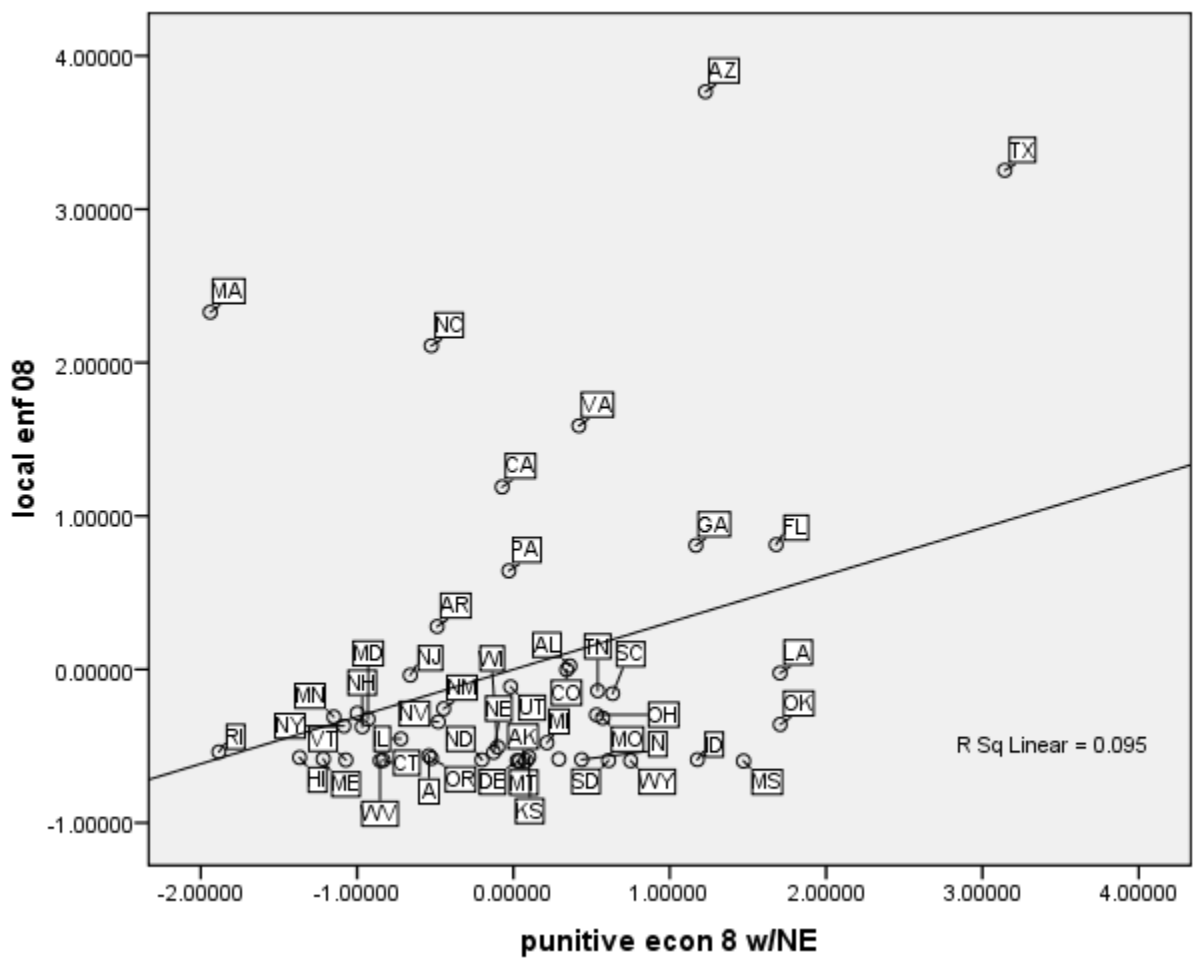


Figure 10a: Scatterplot – Local Enforcement '08 by Economic Anxiety '08

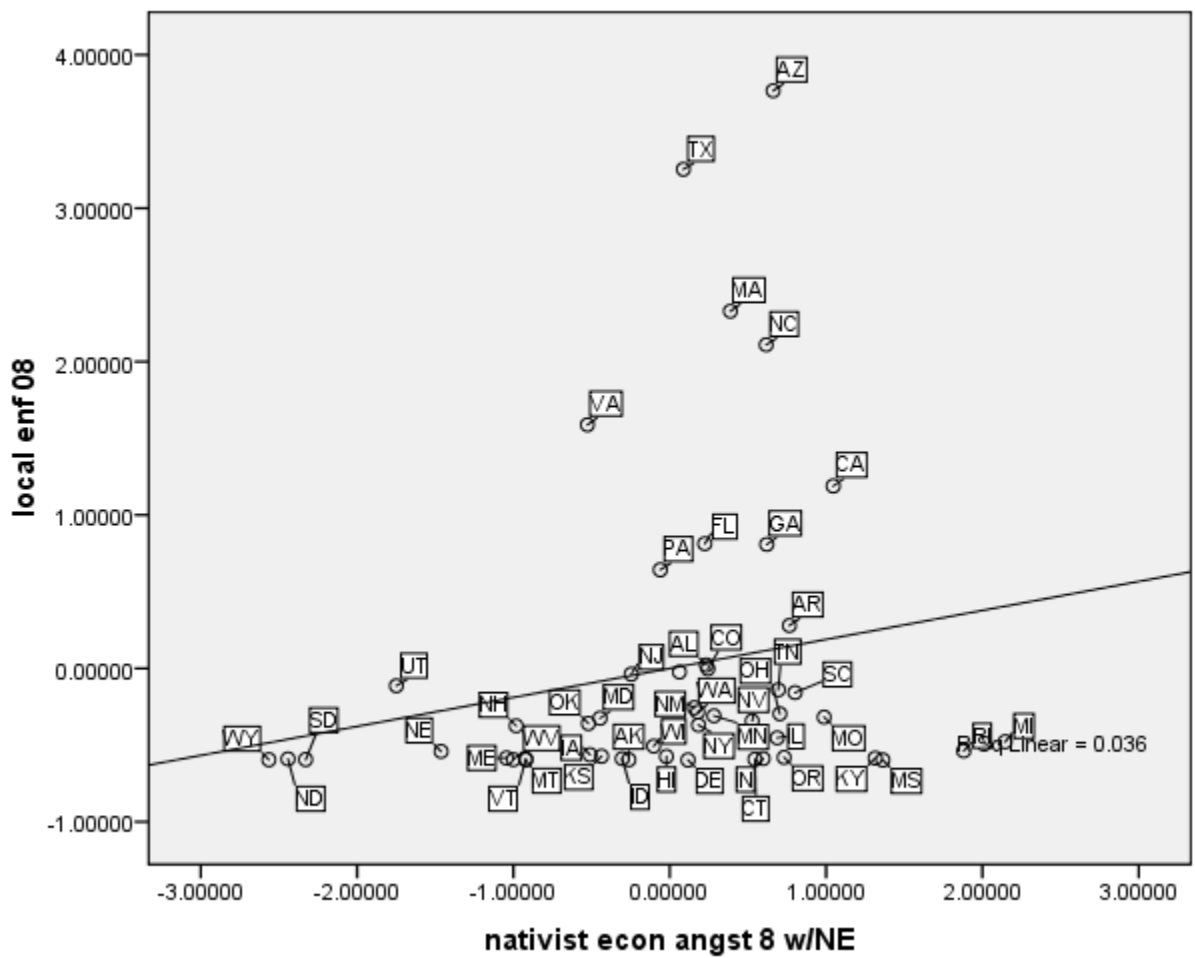


Figure 8b: Scatterplot – Local Enforcement '09 by Market Scale '09

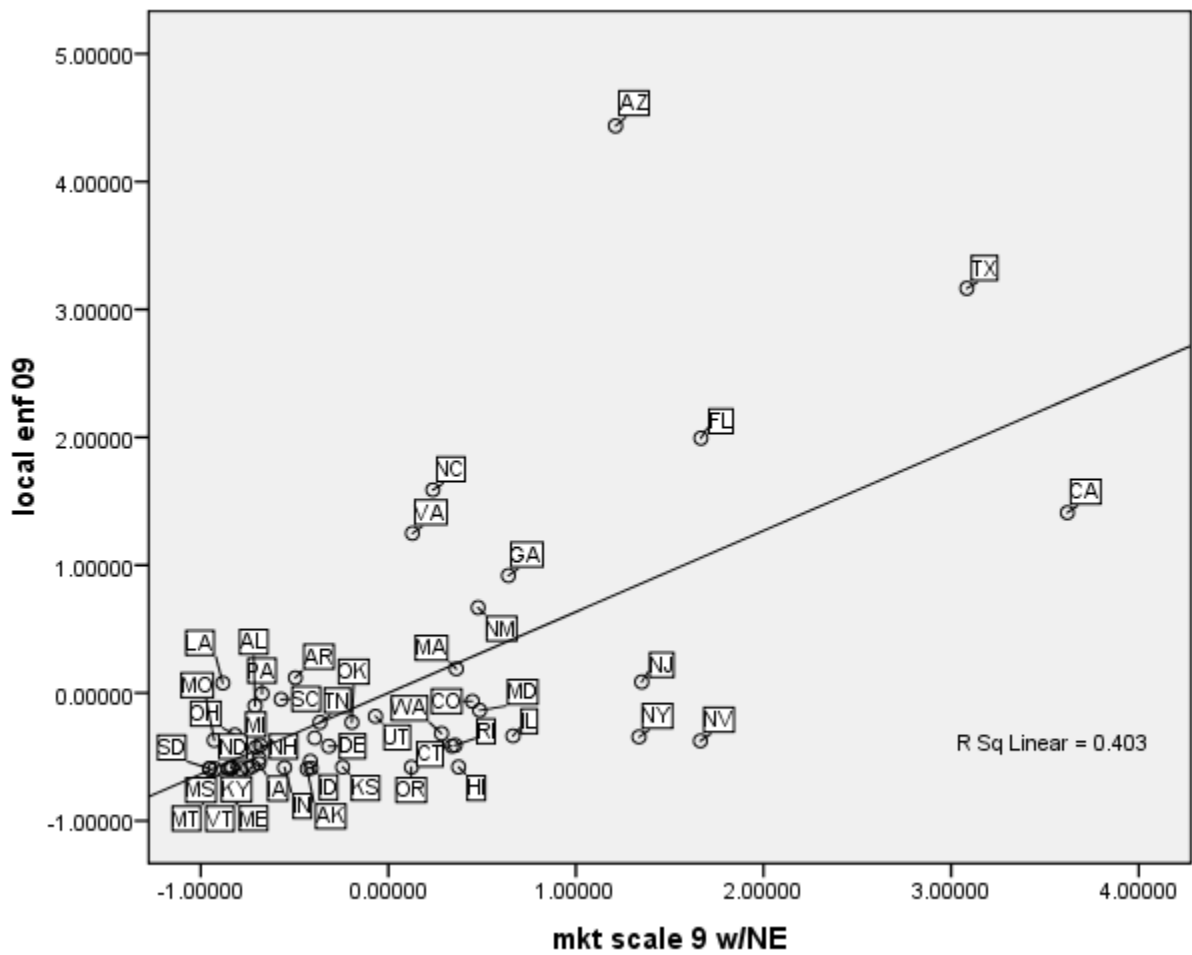


Figure 9b: Scatterplot – Local Enforcement '09 by Punitiveness '09

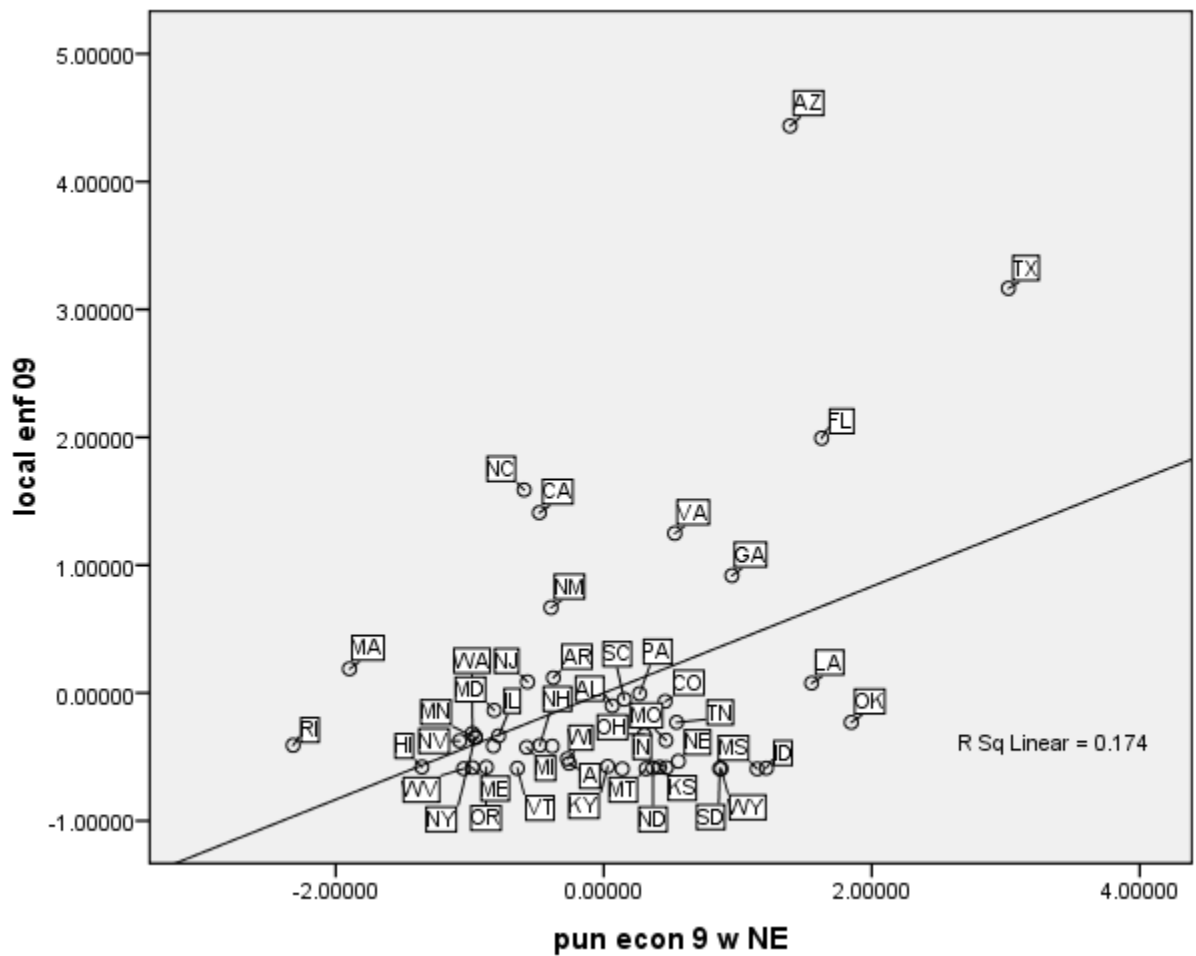


Figure 10b: Scatterplot – Local Enforcement '09 by Economic Anxiety '09

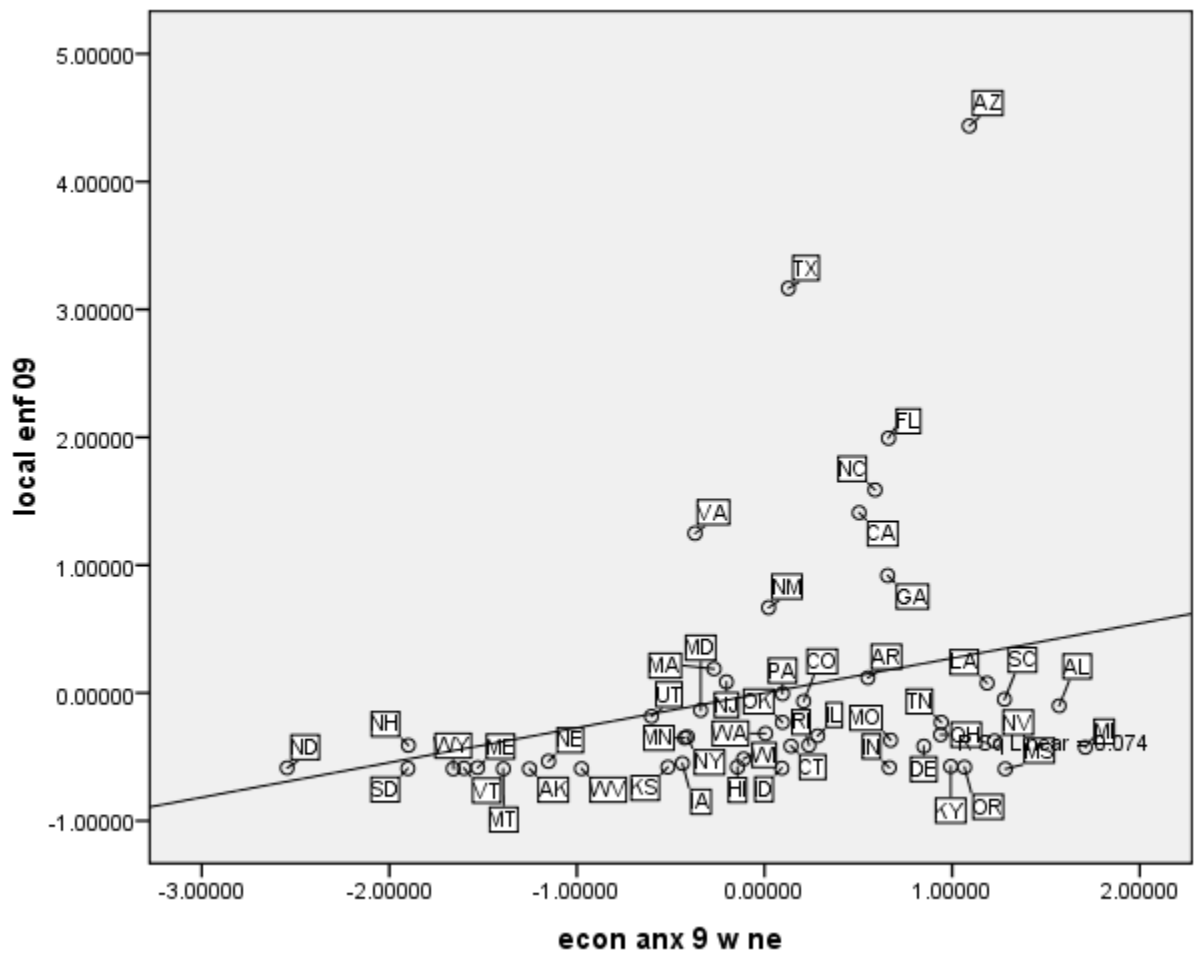


Figure 8c: Scatterplot – Local Enforcement '10 by Market Scale '10

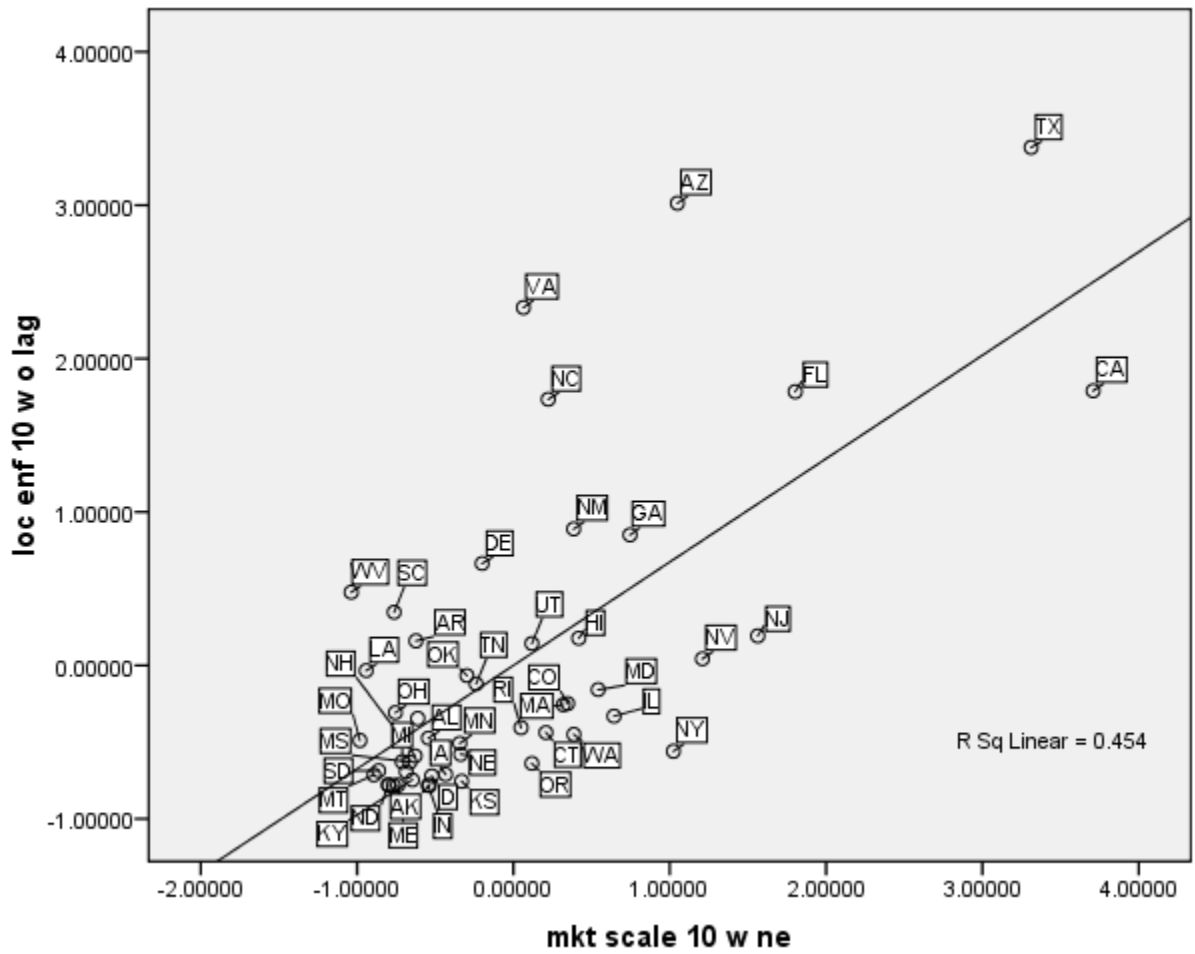


Figure 9c: Scatterplot – Local Enforcement '10 by Punitiveness '10

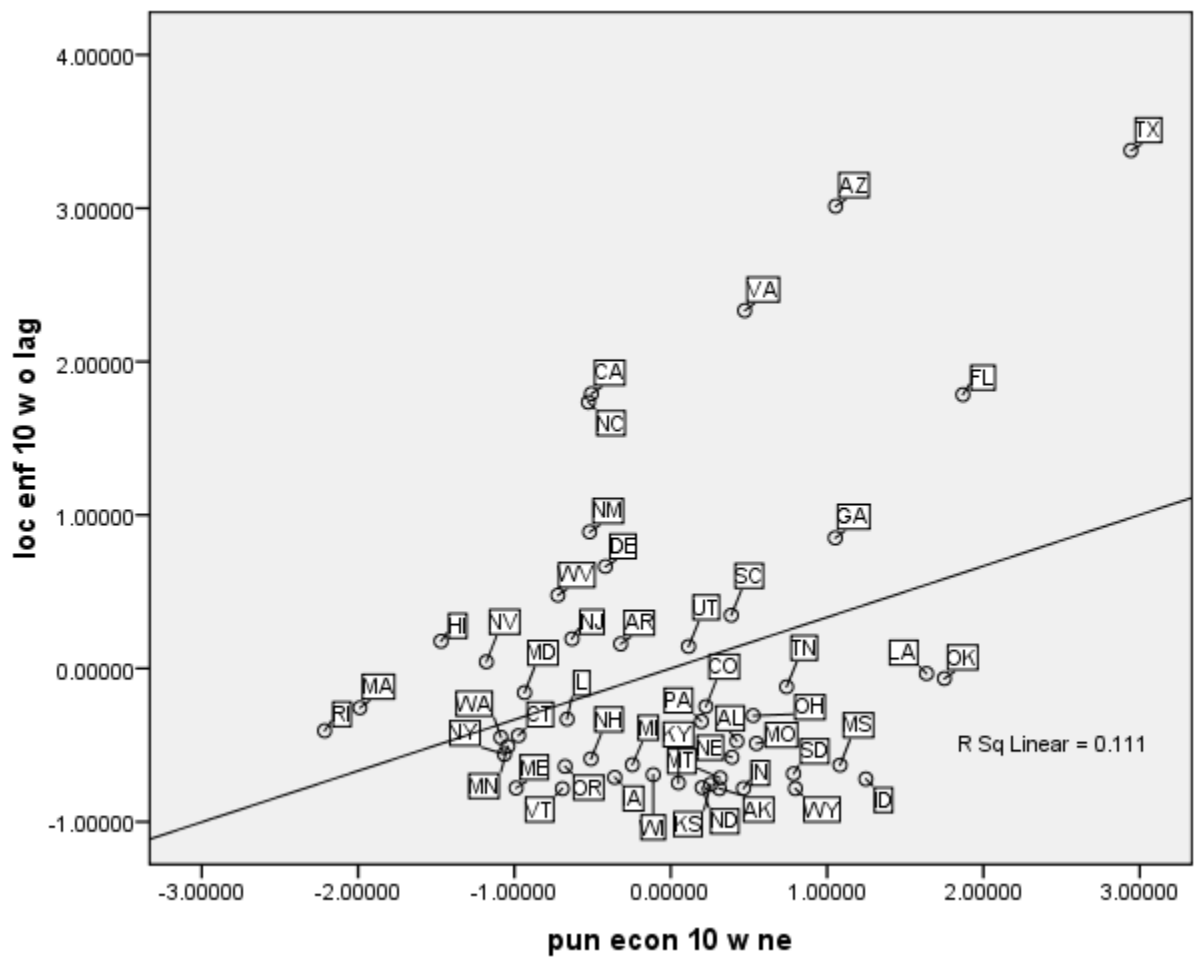


Figure 10c: Scatterplot – Local Enforcement '10 by Economic Anxiety '10

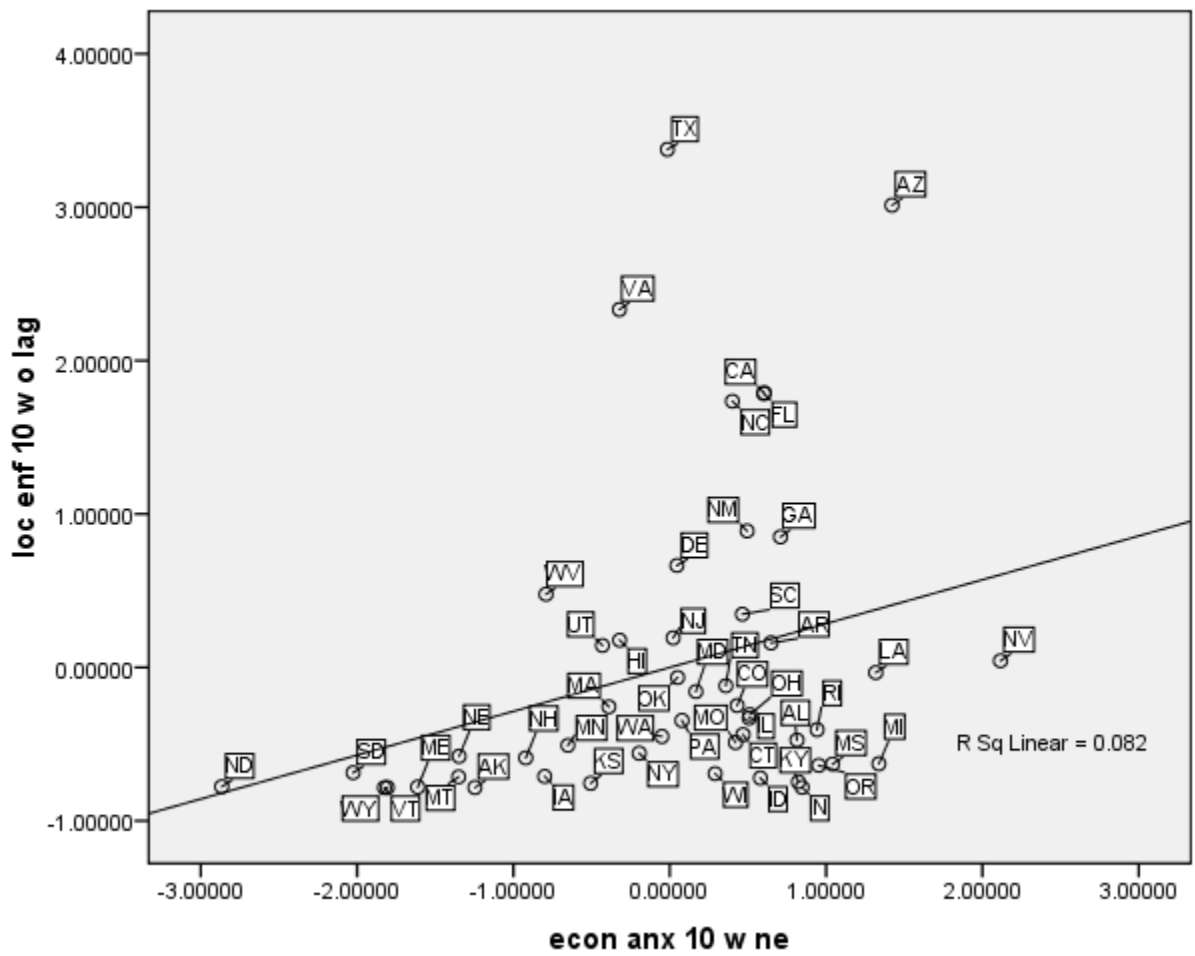


Figure 8d: Scatterplot – Local Enforcement '11 by Market Scale '11

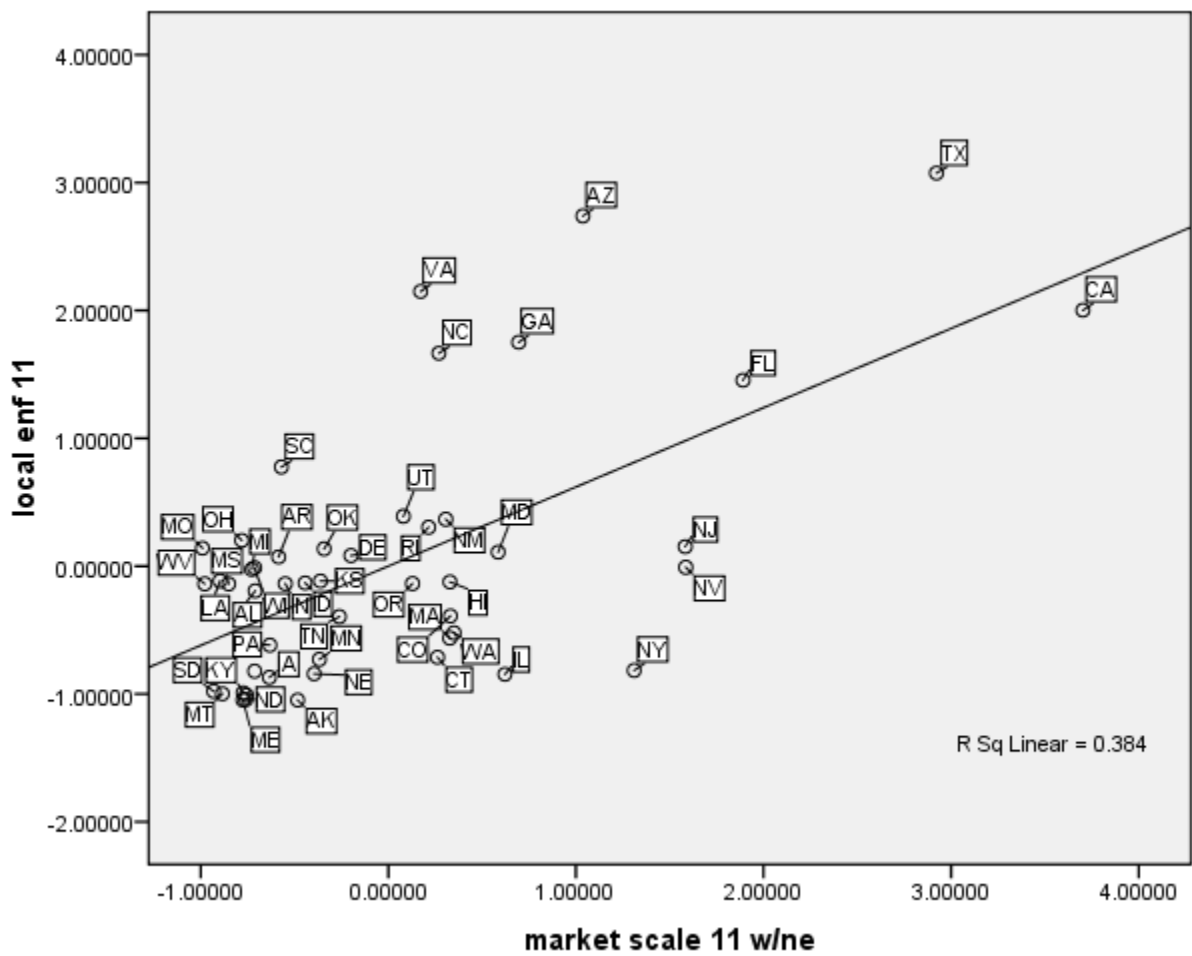


Figure 9d: Scatterplot – Local Enforcement '11 by Punitiveness '11

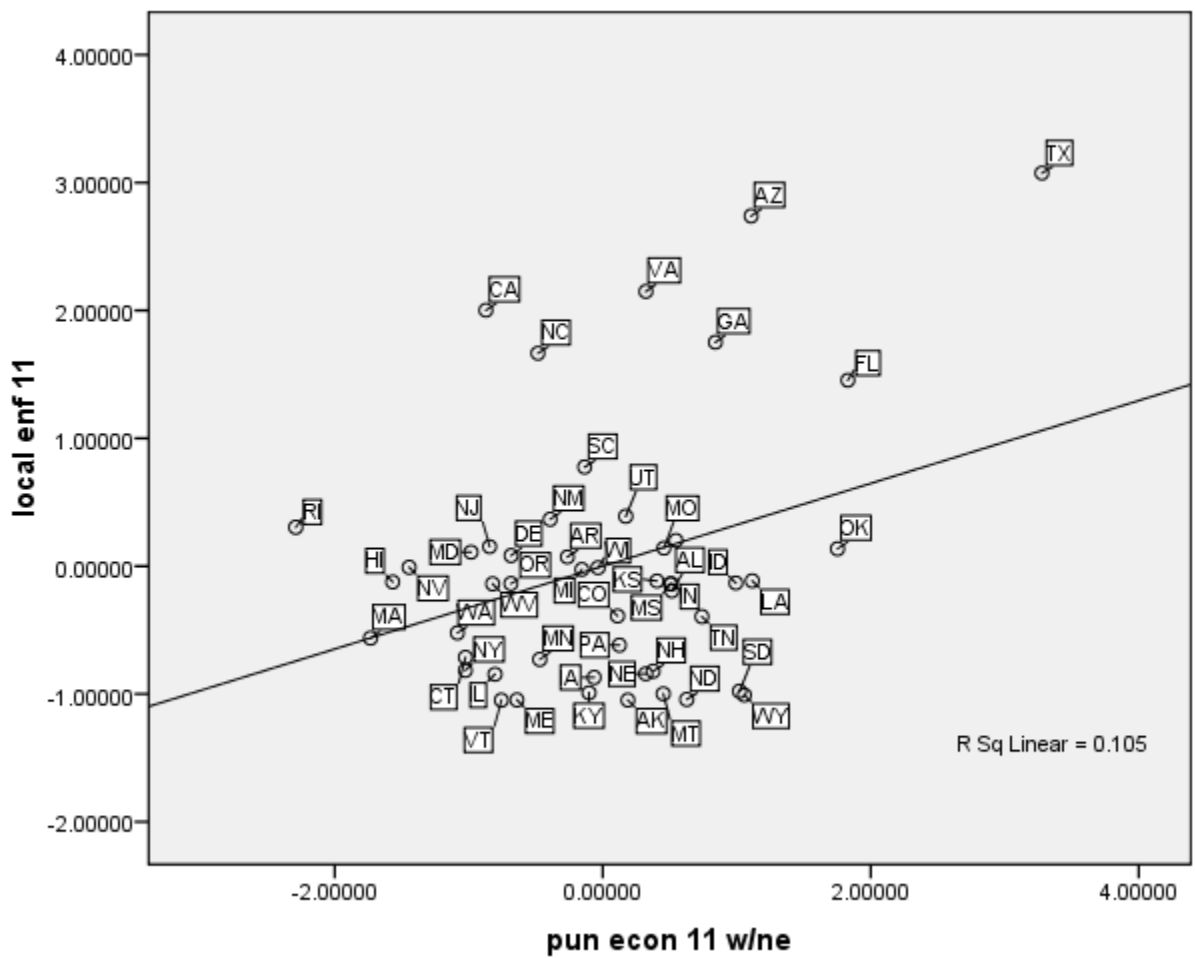


Figure 10d: Scatterplot – Local Enforcement '11 by Economic Anxiety '11

*Reversed due to negative factor loading: high factor z-score = low economic anxiety & v.v.

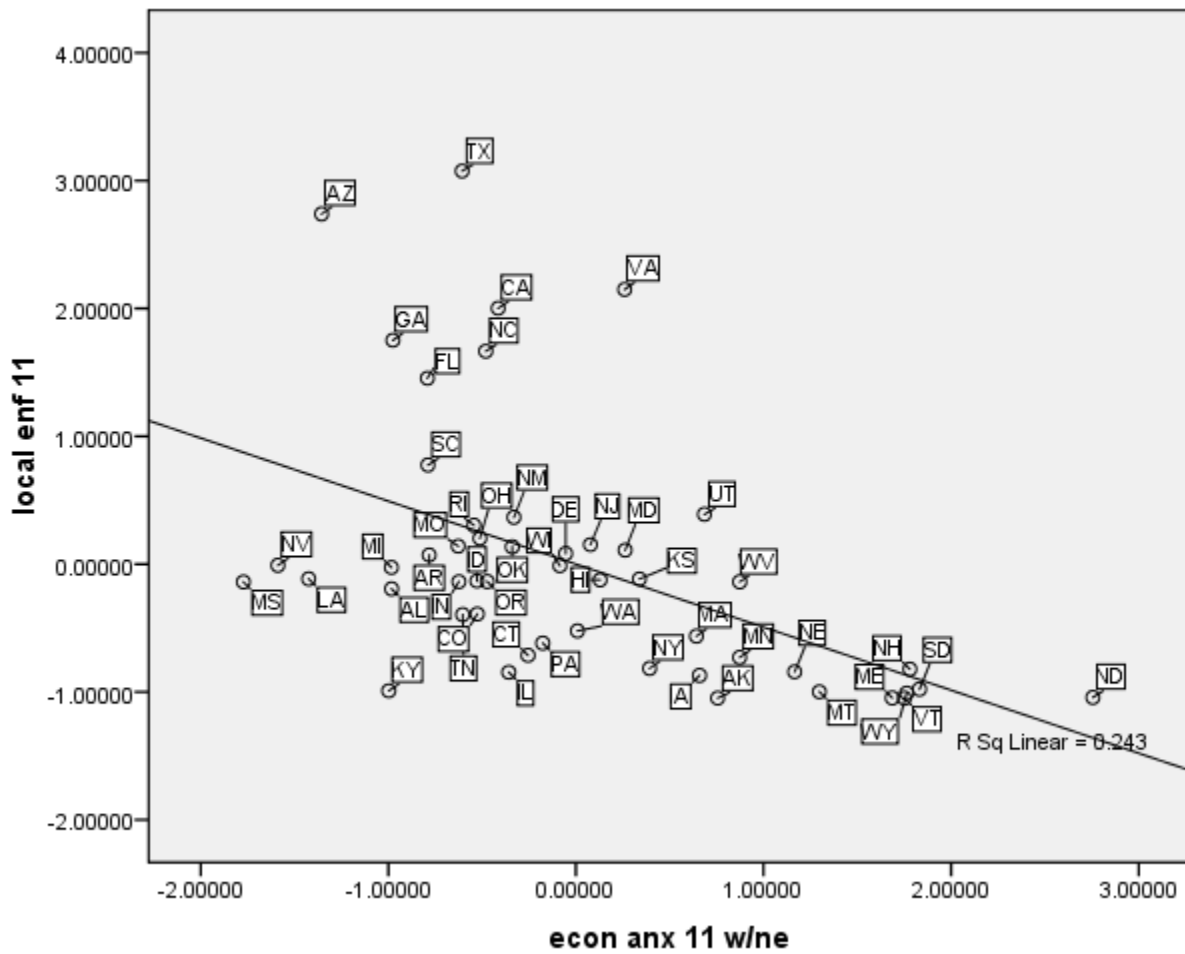


Figure 8e: Scatterplot – Local Enforcement '12 by Market Scale '12

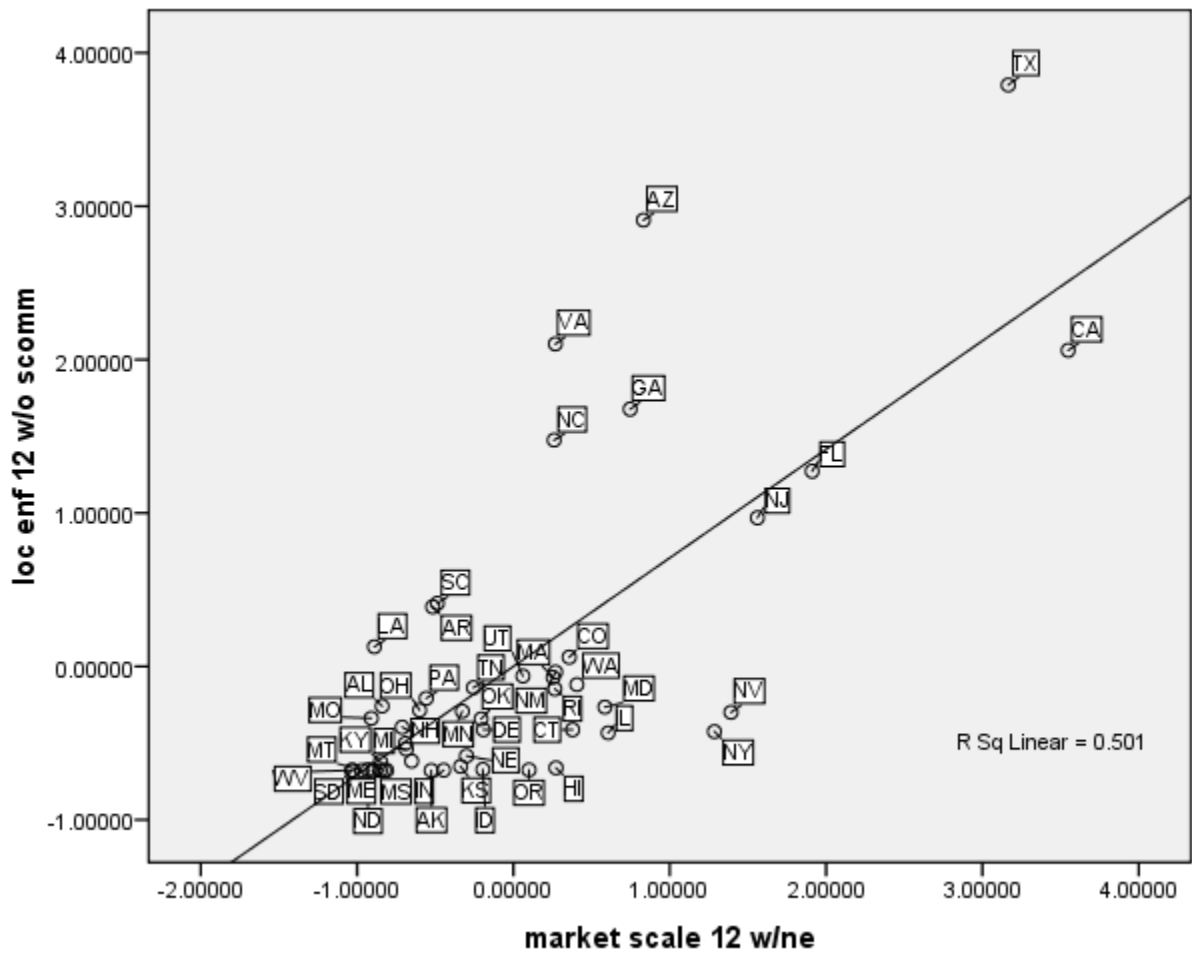


Figure 9e: Scatterplot – Local Enforcement '12 by Punitiveness '12

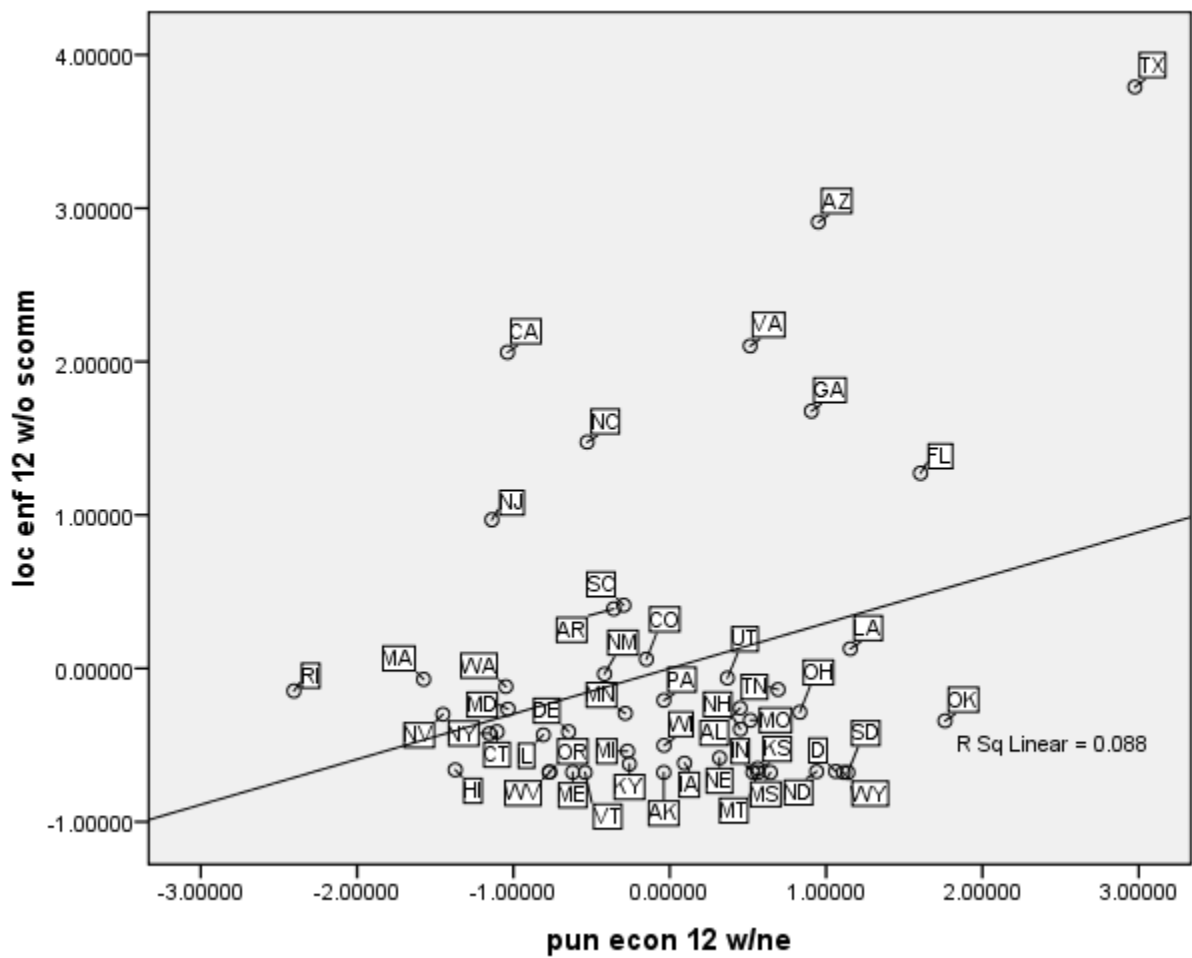


Figure 10e: Scatterplot – Local Enforcement '12 by Economic Anxiety '12

*Reversed due to negative factor loading: high factor z-score = low economic anxiety & v.v.

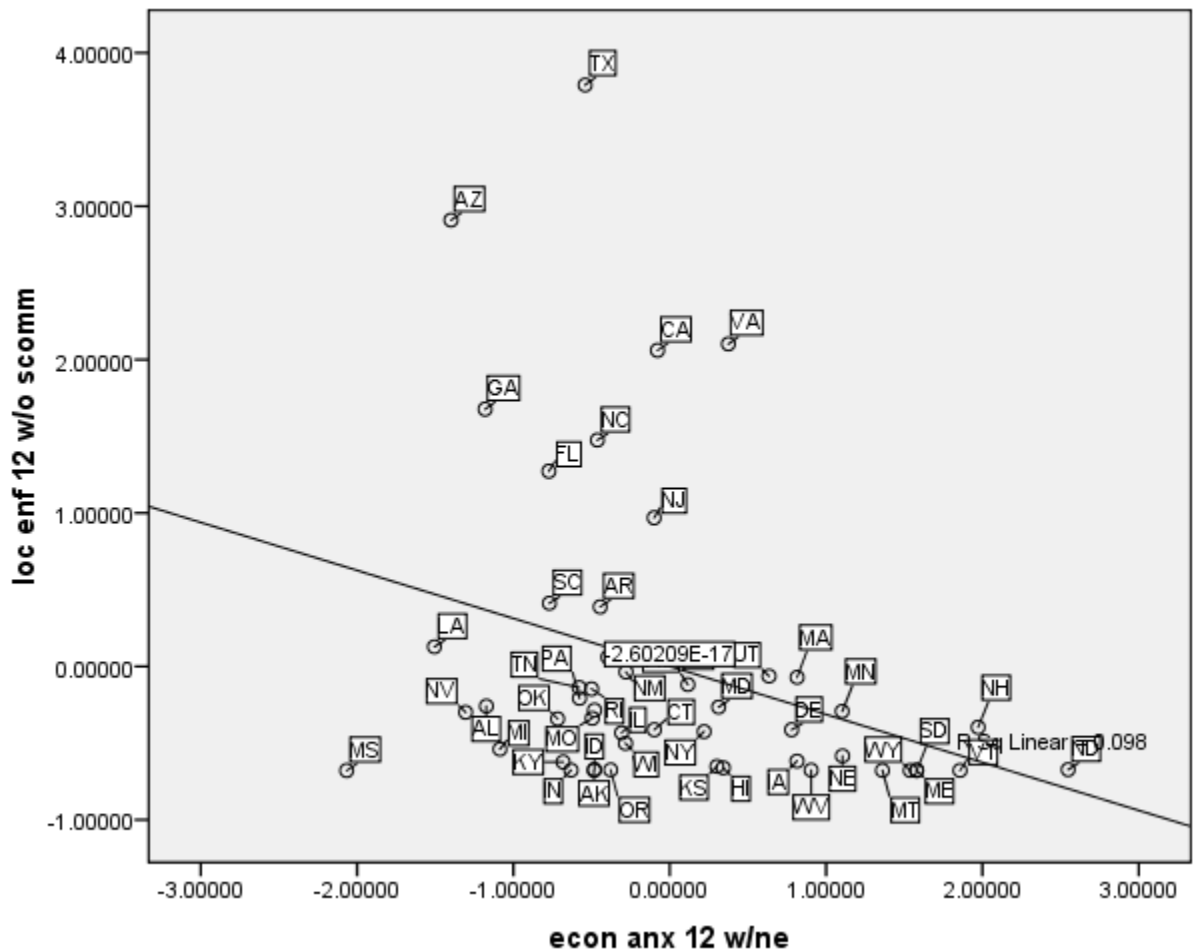


Figure 8f: Scatterplot – Local Enforcement Change '08-'10 by Market Scale Change '08-'10

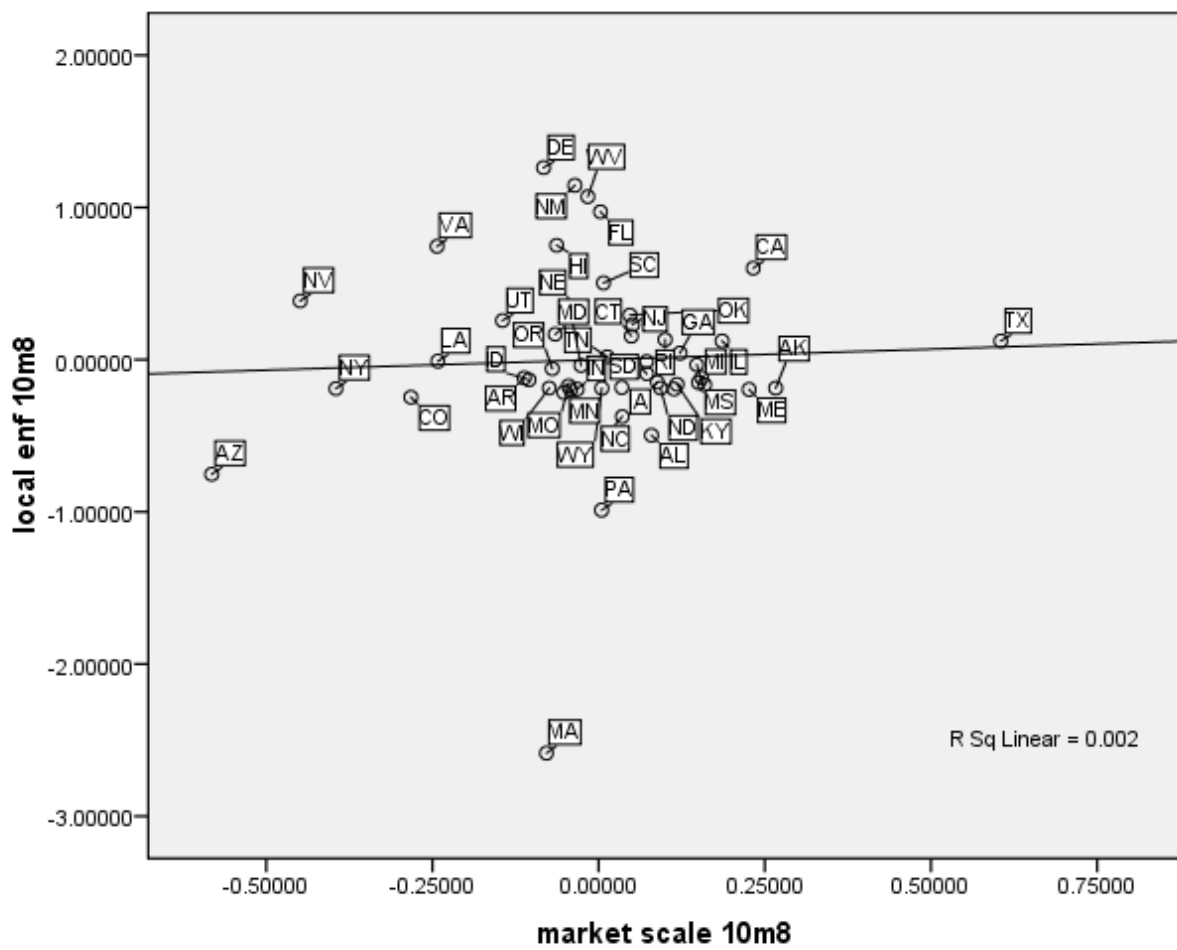


Figure 9f: Scatterplot – Local Enforcement Change '08-'10 by Punitiveness Change '08-'10

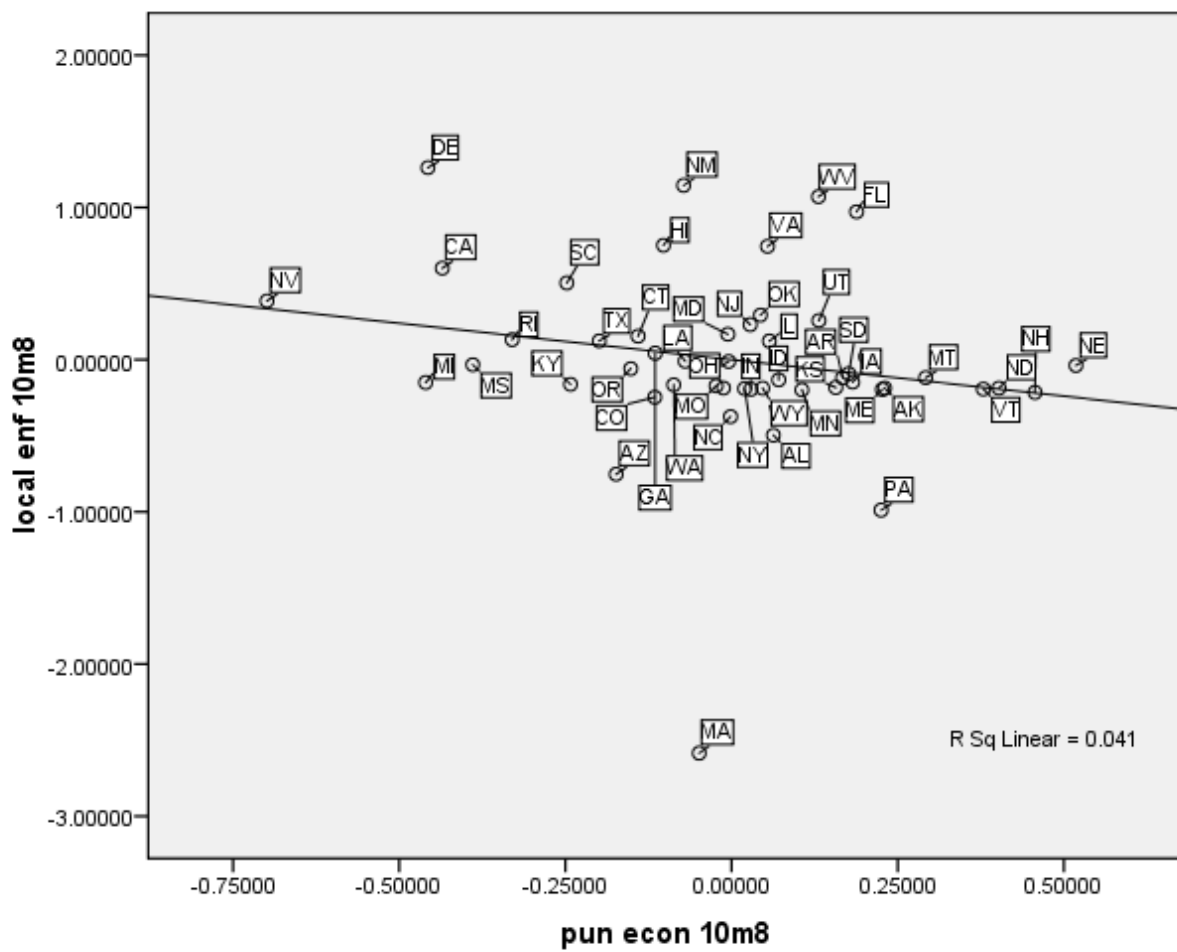


Figure 10f: Scatterplot – Local Enforcement Change '08-'10 by Economic Anxiety Change '08-

'10

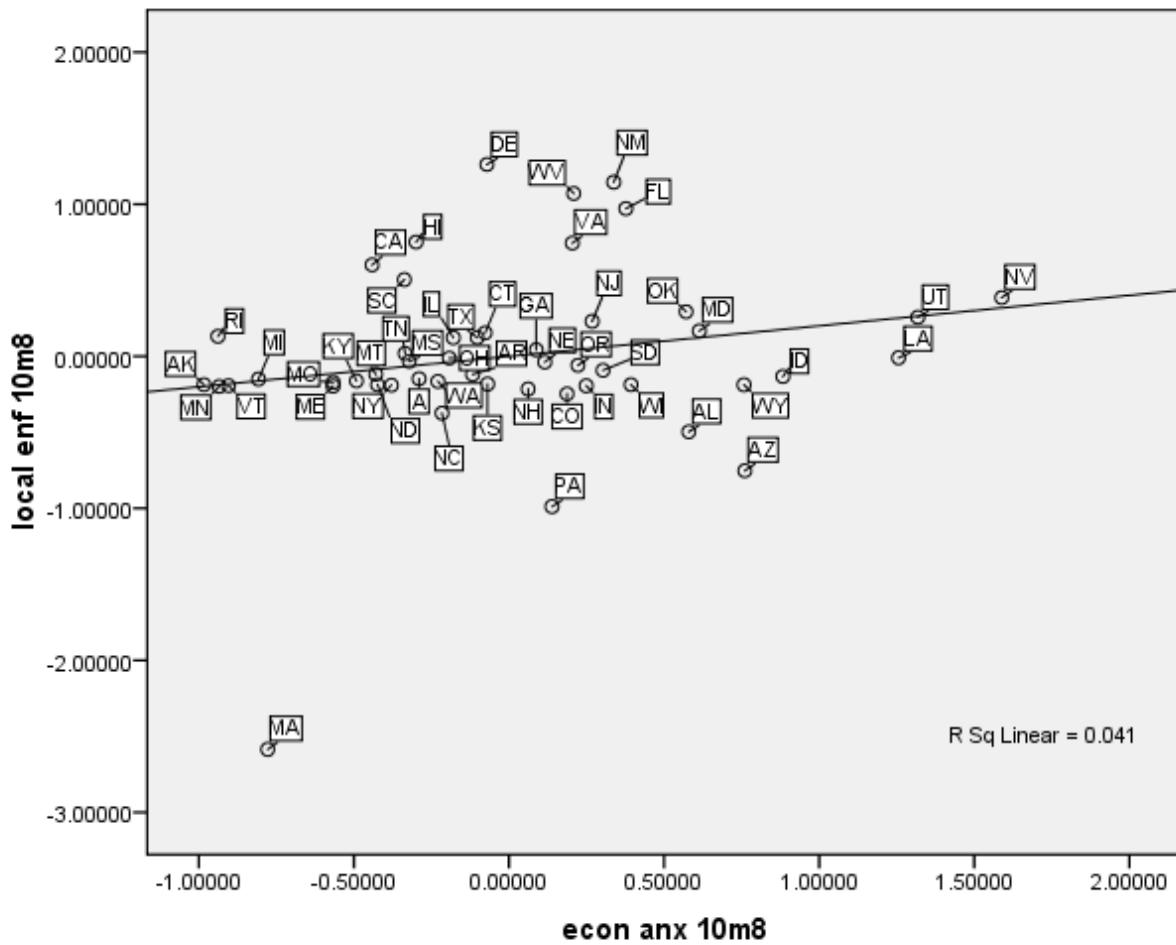


Figure 8g: Scatterplot – Local Enforcement Change '10-'12 by Market Scale Change '10-'12

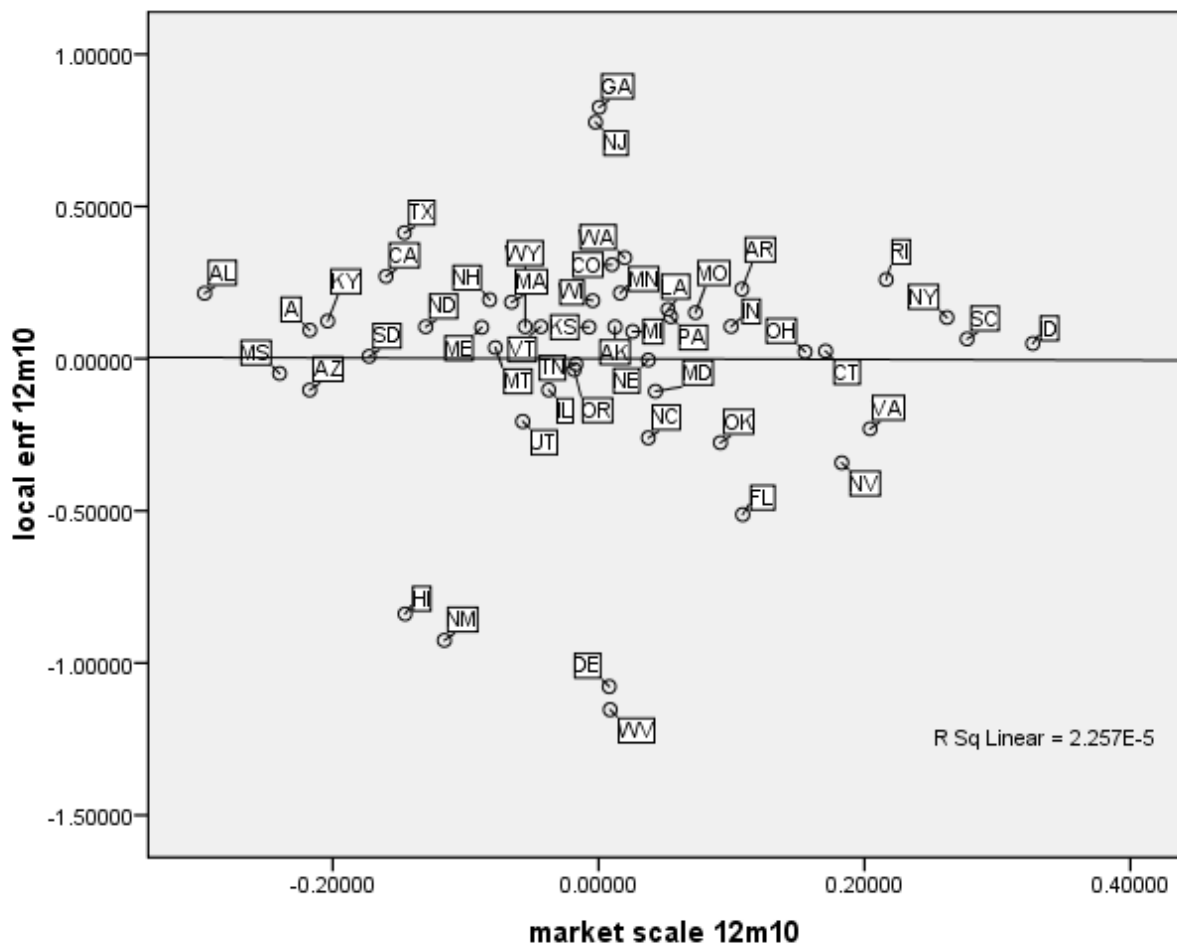


Figure 9g: Scatterplot – Local Enforcement Change '10-'12 by Punitiveness Change '10-'12

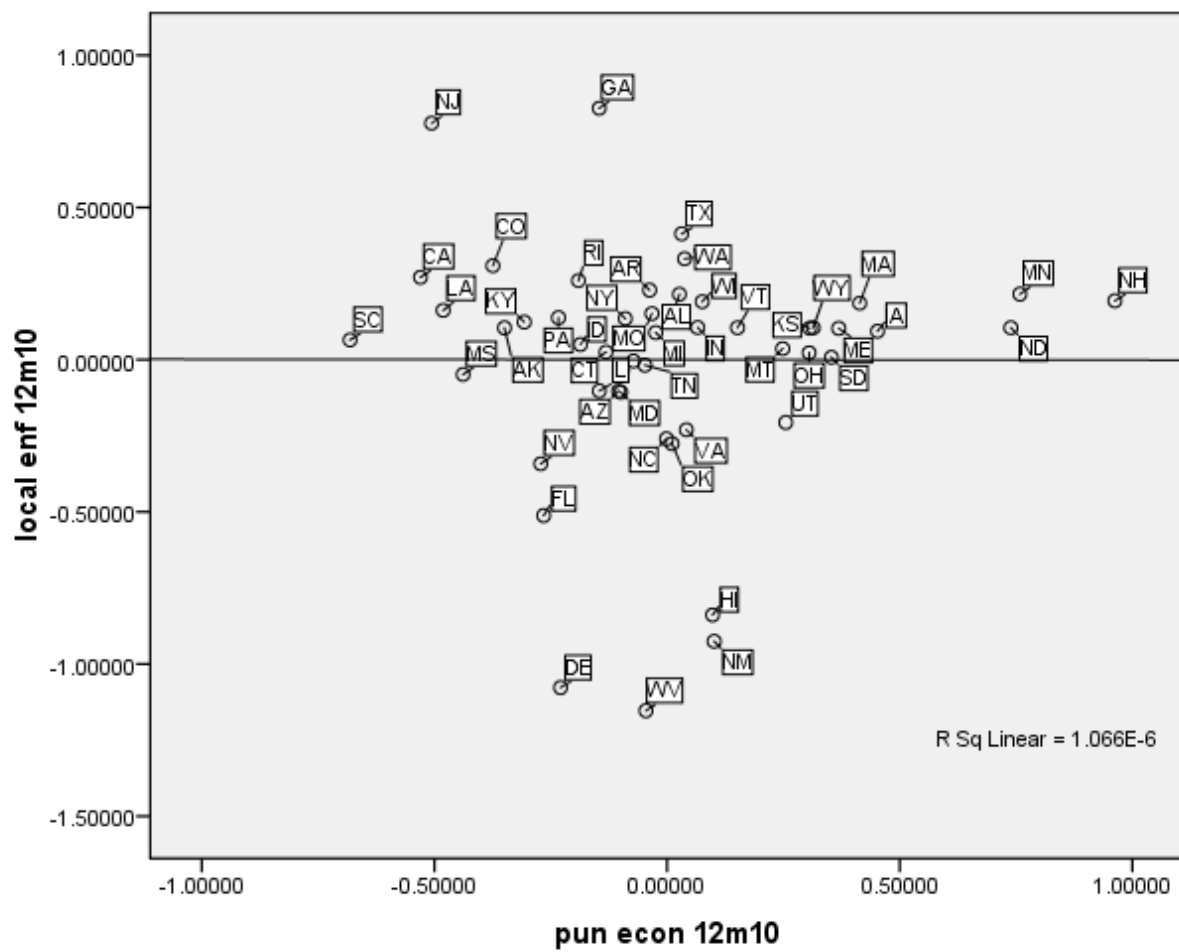


Figure 10g: Scatterplot – Local Enforcement Change '10-'12 by Economic Anxiety Change '10-'12

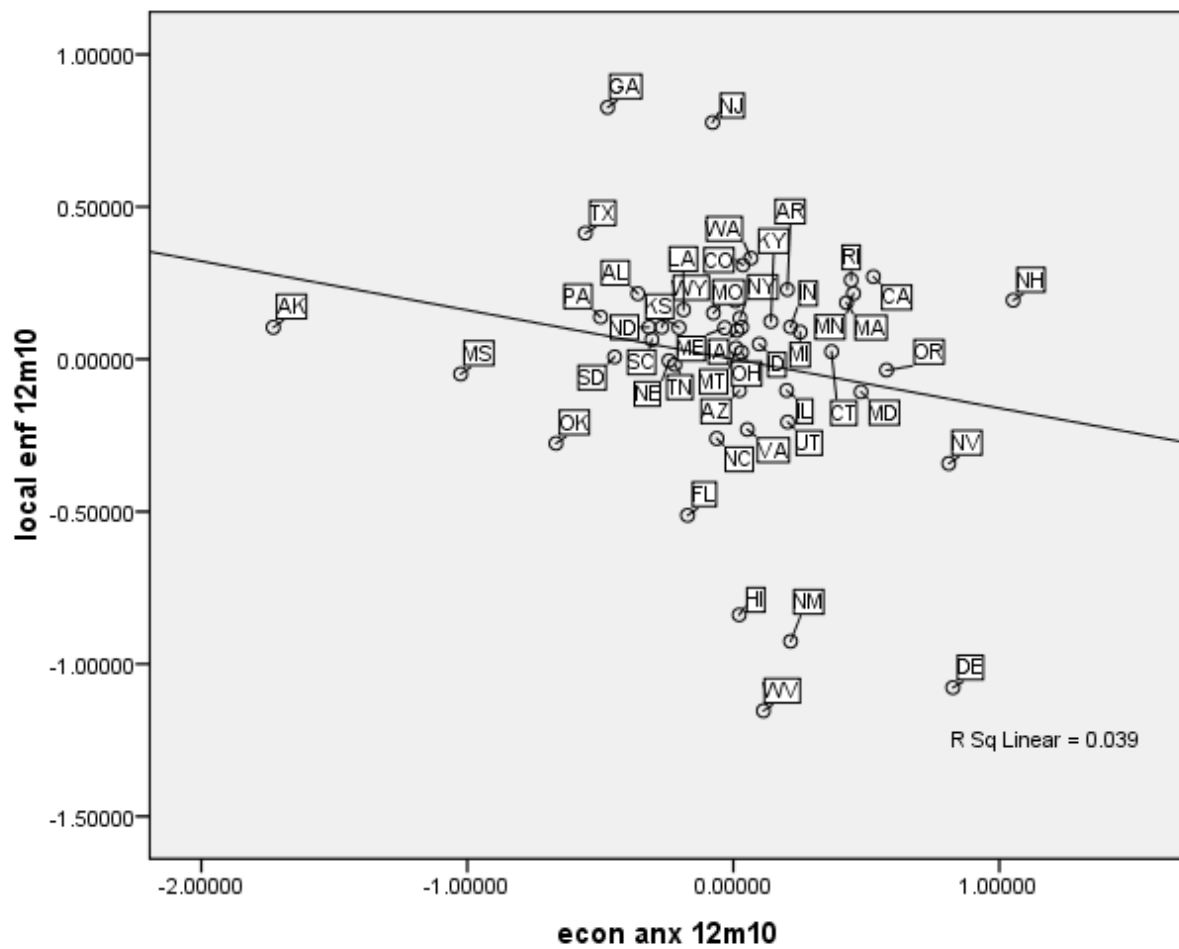


Figure 8h: Scatterplot – Local Enforcement Change '08-'12 by Market Scale Change '08-'12

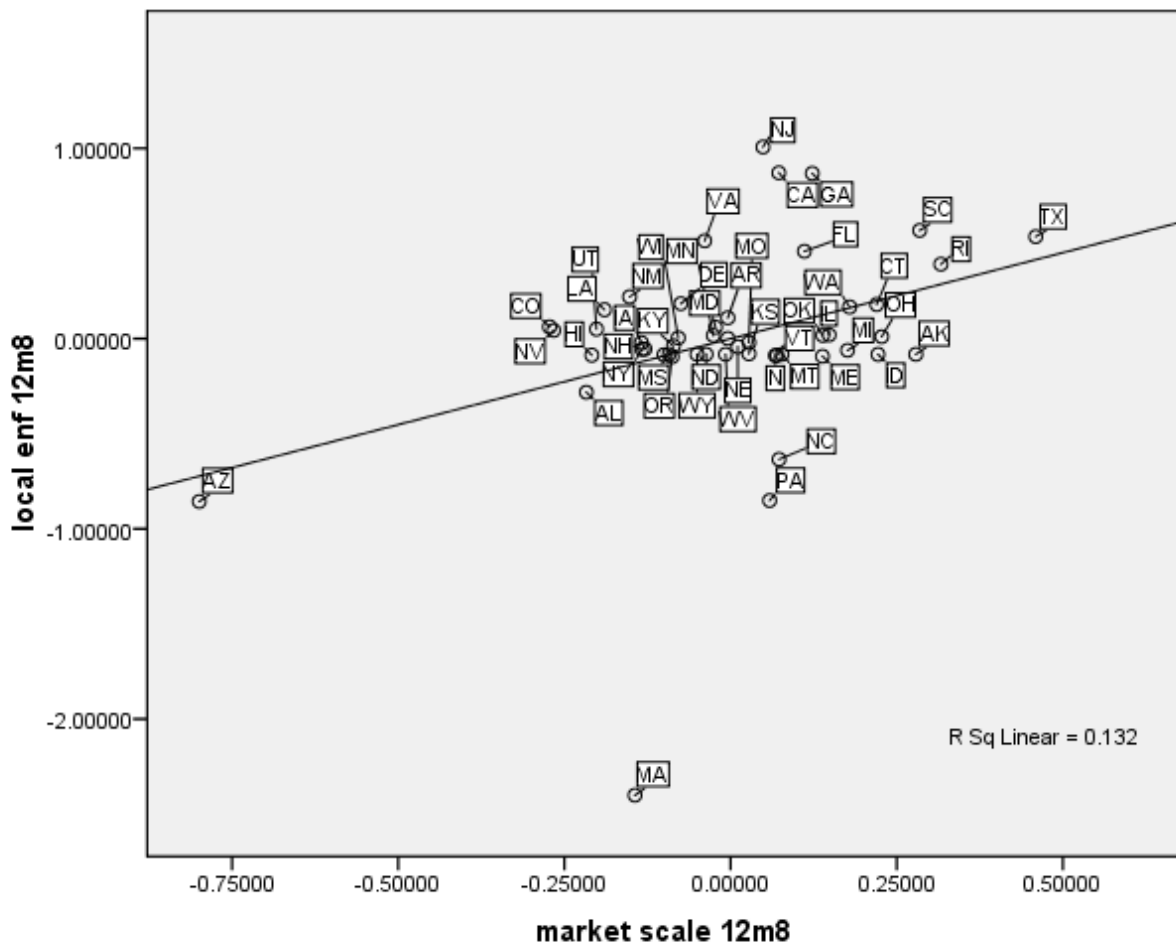


Figure 9h: Scatterplot – Local Enforcement Change '08-'12 by Punitiveness Change '08-'12

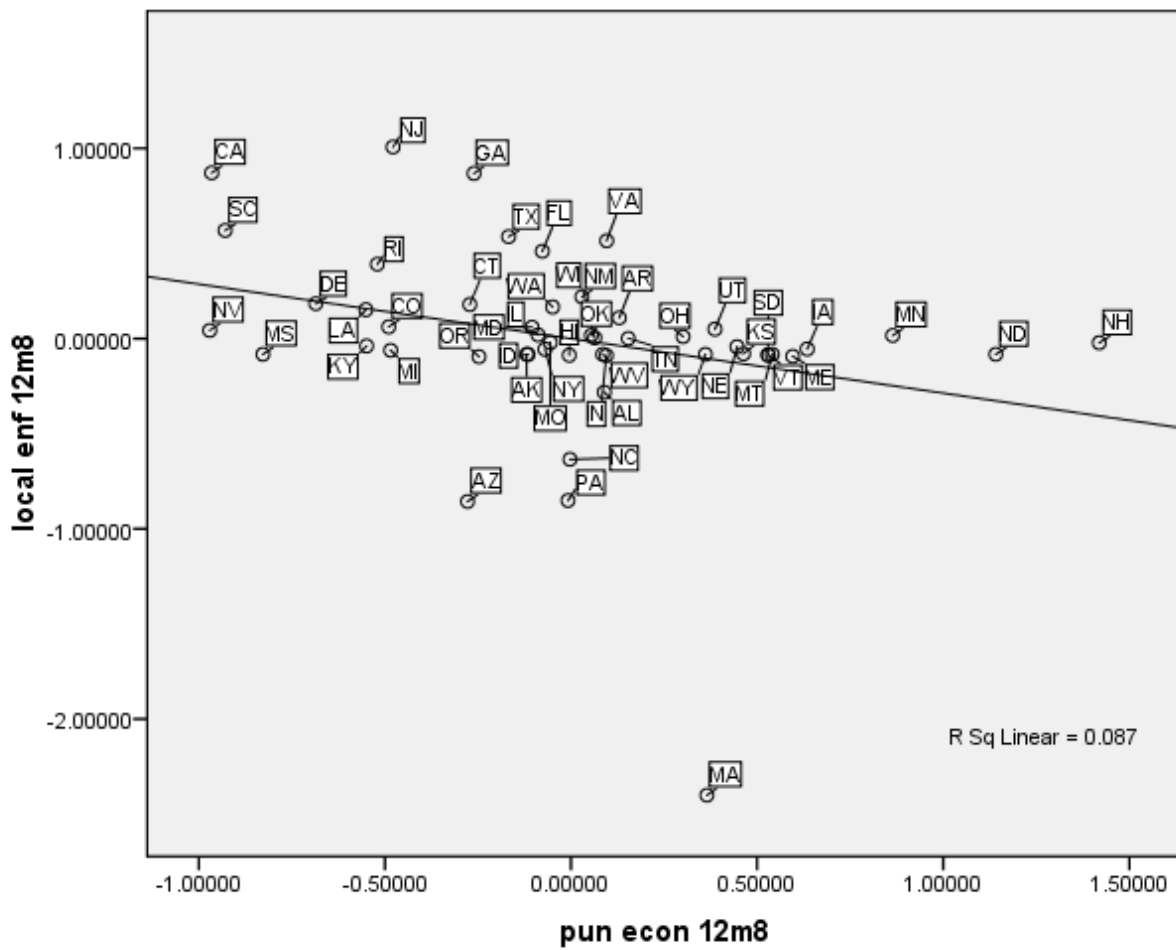
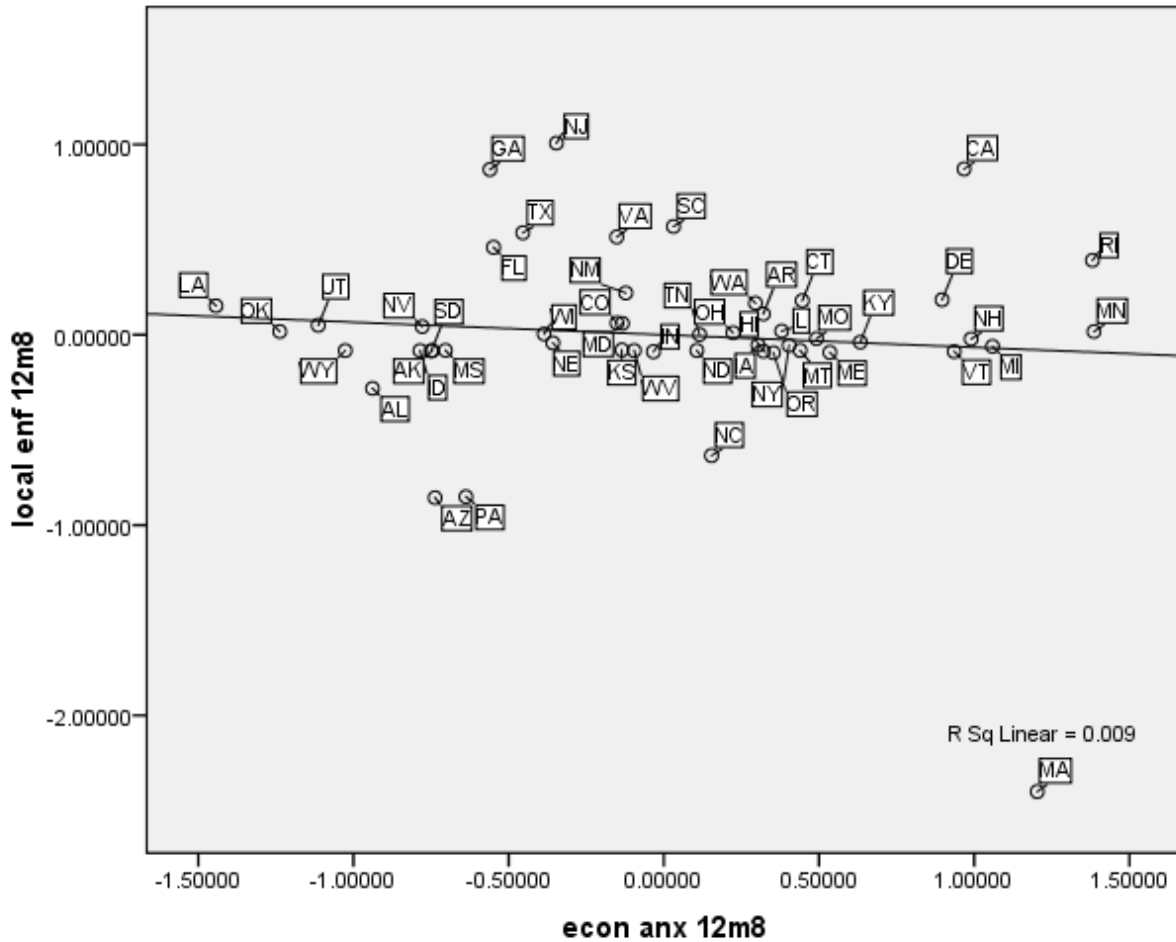


Figure 10h: Scatterplot – Local Enforcement Change '08-'12 by Economic Anxiety Change '08-'12

'12



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