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FROM ARIZONA'S S.B. 1070 TO GEORGIA'S H.B. 87 AND ALABAMA'S H.B. 56: EXACERBATING THE OTHER AND GENERATING NEW DISCOURSES AND PRACTICES OF SEGREGATION†

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INTRODUCTION

“Segregation is the adultery of an illicit intercourse between injustice and immorality.”

—Dr. Martin Luther King Jr.¹

In 2006, Laine Lawless, one of the founding members of the Minuteman movement, encouraged the leadership of the Neo-Nazi National Socialist Movement (NSM)² to launch a campaign of violence against “illegal aliens” (i.e., Hispanics) to “get rid of them.”³

† This Article is based on many of my ideas from a prior article. *See* William Arrocha, *Arizona's Senate Bill 1070: Exacerbating the Other and Generating Discourses and Practices of Discrimination and Hate*, 9 J. HATE STUD. 65 (2010). Although the author is very sensitive to the historical dimensions and significance of the concept of segregation in United States history, this Article refers to segregation as a new form of racial separation caused by laws promoted by state legislation that aims to exclude from public spaces those who are considered “illegal aliens” under federal law.

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1. ROBERT ANDREWS, *THE CONCISE COLUMBIA DICTIONARY OF QUOTATIONS: RACE* 247 (1992).

2. *See* NAT'L SOCIALIST MOVEMENT, <http://www.nsm88.org/> (last visited Feb. 22, 2012).

3. E-mail from Laine Lawless to Mark Martin (aka “Frank Furter”) (Apr. 3, 2006, 14:41 PDT), *available at* <http://www.splcenter.org/sites/default/files/downloads/resource/laine-lawless-email-042006.pdf>; *see also* Susy Buchanan & David Holthouse, *Going Lawless: Border Guardians Leader Calls for Violence*, S. POVERTY LAW CTR. (2006), <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2006/summer/going-lawless>.

Lawless urged the “warriors for the race,” as she calls the members of the NSM, to “[m]ake every illegal alien feel the heat of being a fugitive and a person without proper status.”⁴ Among the eleven tactics she proposed, Lawless urged these “warriors” to

[s]teal the money from any illegal walking into a bank or check cashing place. . . . Sabotage the things that they like: entertainment, food, beer, overpopulation, wife-beating, drunk driving, treating American women with disrespect, etc. Put them in their place. Create an anonymous propaganda campaign warning that any further illegal immigrants coming here will be shot, maimed, or seriously messed-up upon crossing the border. . . . Discourage Spanish-speaking school children from going to public schools. Be creative.⁵

These derogatory remarks reflect a dominant, or hegemonic, discourse,⁶ in which Hispanics in general, and Mexicans in particular, are perceived as intruders. The mainstream media has characterized Hispanics as “illegal aliens,” “invaders,” or, as television anchor Lou Dobbs referred to them, “an army of invaders.”⁷ History has shown

4. E-mail from Laine Lawless to Mark Martin, *supra* note 3.

5. *Id.*

6. This Article refers to the “dominant discourse” in terms of Antonio Gramsci’s work on hegemony. Antonio Gramsci, *General Introduction to FURTHER SELECTIONS FROM THE PRISON NOTEBOOKS*, at xiv, xv (Derek Boothman ed. & trans., 1995) [hereinafter *FURTHER SELECTIONS FROM THE PRISON NOTEBOOKS*]. Gramsci conceptualizes this exercise of power beyond the traditional notion of the state as the singular institution that rules through force. See ANTONIO GRAMSCI, *SELECTIONS FROM THE PRISON NOTEBOOKS* 258 (Quintin Hoare & Geoffrey Nowell Smith eds. & trans., 1992) [hereinafter *SELECTIONS FROM THE PRISON NOTEBOOKS*]. Gramsci contends that the state does not rule through force alone, but cultivates consent through “a multitude of other so-called private initiatives and activities [that function] to the same end—initiatives and activities which form the apparatus of the political and cultural hegemony of the ruling classes.” *Id.* Hegemony, therefore, is a process by which “educative pressure [is] applied to single individuals so as to obtain their consent and their collaboration, turning necessity and coercion into ‘freedom.’” *Id.* at 242. To summarize, when referring to hegemony, Gramsci understands it as the exercise of moral, political, and intellectual leadership in a society by dominant social groups or classes. *Id.* at 5 n.1.

7. *Lou Dobbs Tonight: Broken Borders* (CNN television broadcast Mar. 31, 2006); *About FAIR, FED’N FOR AM. IMMIGR. REFORM*, <http://www.fairus.org/site/PageNavigator/about.html> (last visited Jan. 20, 2012).

that invaders can be killed in defense of the nation. Although there is no clear consensus on the morality of killing in self-defense or even in the defense of a nation, states have often granted citizens and state agents the legal and moral capability to kill those subjects who are considered to be violating their sovereignty, through custom and written law.⁸ Thus, by characterizing immigrants (with or without legal residence) as “aliens,” many sectors of civil society and its dominant institutions automatically define immigrants as being the “Other”—one whose life is generally perceived as less valuable. Taking away the Other’s life is justified not only as an act of self-defense, but also as the last resort to protect what is understood through the dominant or hegemonic discourse to be the essential values and racial/cultural traits that make up “true” citizens of the nation.

Alabama, Arizona, Georgia, and states that are following in their footsteps have made legal the practice of racial profiling. Accordingly, racial profiling is one of the key tools used to regulate immigration and differentiate people who are presumed to be residing in the state without legal documents—namely, Hispanics. Through the institutionalization of so-called racial/cultural differentiation, these states are encouraging xenophobia and empowering groups with a strong anti-immigrant sentiment to become directly involved in enhancing such discourse.

History has shown that when the state and civil society exclude the Other and criminalize his or her presence, hate and practices of segregation can develop, particularly among members of society who consider the Other a threat to their existence.⁹ The consequences of such dynamics can result in an increase in racism and segregation, an intensification of state repression and social violence, and a deeply divided society caused by a loss of unity and historical direction.¹⁰

One of the critical consequences of tearing down the social and economic relationship between those who can legally reside in the

8. MICHAEL WALZER, *JUST AND UNJUST WARS* 51, 203 (1977); see Judith Jarvis Thomson, *Self-Defense*, 20 *PHIL. & PUB. AFF.* 283, 283-84, (1991), available at <http://philosophyfaculty.ucsd.edu/faculty/rarneson/judiththomsonessay1991.pdf>.

9. PHILIP PERLMUTTER, *LEGACY OF HATE: A SHORT HISTORY OF ETHNIC, RELIGIOUS, AND RACIAL PREJUDICE IN AMERICA* 87, 237 (1999).

10. See generally PHILIP PERLMUTTER, *DIVIDED WE FALL: A HISTORY OF ETHNIC, RELIGIOUS, AND RACIAL PREJUDICE IN AMERICA* (1992).

state and those who cannot—or those who are perceived as not being allowed to legally reside in the state due to their race/ethnicity/culture—is that the prospect of inclusion and mutual respect among races can be seriously jeopardized. Furthermore, the most dangerous consequence of what seems to be a national trend¹¹ of xenophobic laws is that the institutions, discourse, and practice of segregation will inevitably create an environment in which fear of the Other may cause people to push for new forms of racial segregation.

This Article will show how the present “historic bloc” in control of state institutions at the federal and state levels is reproducing a political economy that generates a continued demand for the Other, in the form of cheap, docile labor and inmates in a growing corporate correctional system.¹² In the United States, the Hispanic population has traditionally received lower wages than any other minority.¹³ Nevertheless, a large number of non-Hispanics from the working and middle classes are now seeing their jobs and wages declining at the same time as they see the American Dream evaporating.¹⁴ In the

11. More than twenty states are discussing bills similar to Arizona’s S.B. 1070, Georgia’s H.B. 87, and Alabama’s H.B. 56. John Miller, *Many Legislators Aim to Copy Arizona Immigration Law*, CNSNEWS (June 25, 2010), <http://cnsnews.com/node/68505>.

12. FURTHER SELECTIONS FROM THE PRISON NOTEBOOKS, *supra* note 6. According to Gramsci, the historical bloc is an alternative interpretation of the relationship between the elements of the social structure; a dialectical one, stressing “the dialectical unity of base and superstructure.” *Id.* at 424. Gramsci clarifies this when he states, “[t]he material forces are the content and ideologies are the form, though this distinction between form and content has purely indicative value, since the material forces would be inconceivable historically without form and the ideologies would be individual fancies without the material forces.” *Id.* at 200. Hence, the conjectural alliances between social structure composed of the economic base and the ideological superstructure are what Gramsci refers as the *historical bloc*. The two levels remain basically the same, except that Gramsci calls the levels of the superstructure *political society*, corresponding to the state, and *civil society*, “the ensemble of organisms commonly called private, i.e., the sum of social activities and institutions which are not directly part of the government, the judiciary or the repressive bodies (police, armed forces).” *Id.* at 420.

13. Anthony P. Carnevale & Rose J. Stephen, *Low-Earners: Who are They? Do they Have a Way Out?*, in *LOW-WAGE WORKERS IN THE NEW ECONOMY* 45, 52 (Richard Kazis & Marc S. Miller eds., 2001).

14. WALLACE C. PETERSON, *SILENT DEPRESSION: TWENTY-FIVE YEARS OF WAGE SQUEEZE AND MIDDLE CLASS DECLINE* 17-28, 49-67 (1995).

meantime, those in control of capital have thrived from the increasingly unequal political economy. Yet the survival of those in control depends, at least in the short term, on their creation of a scapegoat needed by all those who still want to believe in the American Dream. However, history has shown that the ultimate consequences of instilling hate and racially segregating communities can be socially, politically, and economically unsustainable.

I. THE MAKING OF THE MEXICAN/HISPANIC/ILLEGAL ALIEN/OTHER

Perhaps the most compelling definition of the Other, for the purposes of understanding its construction as applied to Hispanic immigrants is “other” as “disturbingly or threateningly different: alien, exotic.”¹⁵ This definition is at the core of the legal, political, and social differentiations between what the dominant discourse considers a “true American” versus an “alien,” the latter regardless of his or her legal status. Such an “other” has now been transformed into an “invader.” The Other as invader has dismantled the traditional political and social construct of the immigrant, and redirected the legal debate to equate immigration with a threat to national security and state sovereignty.

From the time the United States was formed and consolidated as a federal republic, there has been constant tension between the federal government and the states on the following key question: Can the core principles of American exceptionalism¹⁶ be sustained if the large flow of immigrants is identified as a threat to such principles? This question, particularly when seen through the legal construct of the Other, has been prevalent since the passing of The Alien and Sedition Acts of 1798,¹⁷ which remains intact as the Alien Enemy Act.¹⁸ The

15. *Other Definition*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/other> (last visited Feb. 20, 2012).

16. SEYMOUR MARTIN LIPSET, *AMERICAN EXCEPTIONALISM: A DOUBLE-EDGED SWORD* 19-20 (1997). Lipset presents the core values of American exceptionalism: “Liberty, egalitarianism, individualism, populism, and Laissez-faire” all framed within a strong “protestant-inspired moralism.” *Id.* at 20.

17. The Alien and Sedition Acts of 1798 was legislation meant as a political and legal instrument to exclude those individuals who, due to their ideological positions, represented the counter-hegemonic discourse of the historic bloc of the time.

Alien and Sedition Acts were the first documents to define a non-United States citizen as an “alien,” instead of an “immigrant.” In the context of American exceptionalism, an alien is not just a foreigner owing allegiance to another government, but a subject who, due to his or her cultural or physical characteristics, can represent a potential threat to American exceptionalism.

Ostensibly, the issue could be resolved by an individual pledging allegiance to the United States and its core values. However, history has presented the following conundrum to the dominant classes and political elites: Should the United States Constitution and its First, Tenth, and Fourteenth Amendments give the same rights to the Other as it does United States citizens? Can the political economy that supports the idea of American exceptionalism and the American Dream permit the same level of social mobility to the Other? If the Other is included in society as a true American, can capital

[T]he acts were passed by a closely divided Congress, with the nearly unanimous support of Federalist men and senators, despite the solid opposition of supporters of Jefferson. As such, the Federalists in Congress can reasonably be viewed as the authors of the acts. Some leading proponents of the need for alien and sedition laws were Representatives Harrison Gray Otis of Massachusetts, Robert Goodloe Harper of South Carolina, and John Allen of Connecticut. Allen specifically favored a bill to suppress Jeffersonian newspapers and was one of the earliest advocates of a bill targeting aliens who were not citizens of a foreign power. Harper described Republicans as pro-French traitors, and Otis accused Republicans of sedition.

MILESTONE DOCUMENTS IN AFRICAN AMERICAN HISTORY: EXPLORING THE PRIMARY SOURCES THAT SHAPED AMERICA: ALIEN AND SEDITION ACTS, 1798, at 359-60 (Paul Finkelman et al. eds., 2008). Some Federalists were even inclined not to give the right to vote to naturalized Americans, for they were considered the Other that could threaten the newly independent state that was being erected as “exceptional.” *Id.* at 359.

18. Alien Enemies Act, 50 U.S.C. §§ 21-24 (2012). One of the key sections of the Alien Enemy Act present in the dominant anti-immigrant discourse is section 21: Restraint, regulation, and removal. This section gives the Executive the power to detain and remove any foreigner, fourteen years and older, from a state that is considered as directly or indirectly threatening the territory of the United States. *Id.* Today, the spirit of this section is very much present in the attitudes of state governments and members of civil society who believe they are being “invaded” by an Other that threatens their core values as well as their individual and collective security.

accumulate at the same rate as it would if the Other were not fully included?

Many racial and ethnic groups do not relate in sociological terms to the dominant White-Anglo-Saxon-Protestant culture, and thus have suffered from social and economic exclusion. Hispanics in general, and Mexicans in particular, have suffered most often.¹⁹ Mexicans have long been perceived as a threat to American exceptionalism,²⁰ and practically all major changes in United States immigration laws and policies at the federal and state levels have created excessively restrictive conditions for Mexicans to legally migrate to the United States.²¹ These restrictive conditions are particularly severe for Mexicans migrating from depressed rural areas, because rural oligarchies and political elites in Mexico have also marginalized the *mestizo*²² and indigenous communities as an inferior Other.²³ As a

19. See Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A "Magic Mirror" into the Heart of Darkness*, 73 IND. L.J. 1111 (1998) (tracing the historical relationship between subordination of domestic minorities and noncitizen minorities).

20. Mexicans have been perceived as a threat to American exceptionalism since the United States' expansion based on the theory of Manifest Destiny, which concluded in territorial terms with the 1846-1848 war with Mexico and the Treaty of Guadalupe-Hidalgo. For a historical account with primary sources see LUIS GERARDO MORALES MORENO ET AL., *ECHOES OF THE MEXICAN-AMERICAN WAR* (2005). For a contemporary view of Mexican immigrants, see SAMUEL P. HUNTINGTON, *WHO ARE WE? THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY* 221-57 (2005) and REGINALD HORSMAN, *RACE AND MANIFEST DESTINY: THE ORIGINS OF AMERICAN RACIAL ANGLO-SAXONISM* 230-31 (1981). See also JUSTIN AKERS CHACÓN & MIKE DAVIS, *NO ONE IS ILLEGAL: FIGHTING RACISM AND STATE VIOLENCE ON THE US-MEXICO BORDER* 99-108, 191-95 (2006).

21. Nicholas De Genova, *The Legal Production of Mexican/Migrant "Illegality"*, 2 LATINO STUD. 160, 160-65 (2004).

22. Persons of mixed European and indigenous ancestry. *Indigenous Farmworkers*, NAT'L CTR. FOR FARMWORKER HEALTH, INC., (2011) http://www.ncfh.org/docs/fs-Indigenous_farmworkers.pdf (describing indigenous farmworkers and why they migrate to the United States).

23. See ALVARO BELLO ET AL., *LOS PUEBLOS INDÍGENAS Y AFRODESCENDIENTES ANTE EL NUEVO MILENIO*, U.N. Doc. LC/L.2518-P, U.N. Sales No. S.06.II.G.45 (2006) (providing a contemporary study of the indigenous as the Other). See SAMUEL RAMOS, *EL PERFIL DEL HOMBRE Y LA CULTURA EN MÉXICO* (1994) for a classic study on the *mestizo* as an Other from within and vis-a-vis the dominant classes directly related to the criollos or other European.

result, in both the United States and in Mexico, the *mestizo* and indigenous peoples are valued only as cheap labor.²⁴

Presumably, in times of economic hardship, most Americans would not mind taking jobs in labor markets dominated by the Other. However, there are no federal or state programs promoting and supporting jobs in the industries where such Others work. Moreover, the *vox populi* has deeply integrated into Americans the notion that the Other should be pitied and feared, even as the Other washes dishes in their favorite restaurants, landscapes their gardens, takes care of their children, makes their beds in hotels, washes their cars, builds their fences and houses, works in the most unsanitary meatpacking facilities across the country, and of course, picks their fruits and vegetables.

The Other as a cheap labor force has become one of the most important factors of production for sectors of the economy that *could not* maintain a high rate of capital accumulation if they followed the law. The inferior wages and working conditions of the Other, compared to those regulated by the state, can only be maintained by ensuring the “illegality” and “otherness” of such labor force. As De Genova states:

Mexico has provided U.S. capitalism with the only ‘foreign’ migrant labor reserve so sufficiently flexible that it can neither be fully replaced nor completely excluded under any circumstances. However, the U.S. nation-state has historically deployed a variety of different tactics to systematically create and sustain ‘illegality,’ and furthermore, has refined those tactics in ways that have ever more thoroughly constrained the social predicaments of undocumented Mexican migrants.²⁵

In the United States, many Americans view Hispanic immigrants as the Other, an Other who is unwilling to integrate into American society and embrace the values and principles of American exceptionalism, which are rooted in an Anglo-Saxon-Protestant *weltanschauung*.²⁶ And through the fetishism of the law,²⁷ the Other is

24. See *Indigenous Farmworkers*, *supra* note 22; Rutilio Martinez & Cris de la Torre, *Mexico’s Resilient Cast System: Managerial Implications for Foreign Firms*, 2 INT’L BUS. & ECON. RES. J. 97 (2003).

25. De Genova, *supra* note 21, at 165.

26. *Weltanschauung* is a concept borrowed from the German language that means a comprehensive world view which encompasses, through historical

perversely a necessary evil to maintain the present social relations of production. The American workforce, which employs “illegal aliens” as cheap labor, is a system of exploitation similar to that of the American system of indentured servitude, but without the stigma of slavery.²⁸ The discourse of the Other as a threat to American exceptionalism can be found in reductionist theses about why the Mexican/Hispanic/illegal alien has to be understood as a potential “disturbingly or threateningly different” Other.

As Samuel Huntington states regarding such “threat”:

No other immigrant group in American history has asserted or has been able to assert a historical claim to American territory. Mexicans and Mexican-Americans can and do make that claim. Almost all of Texas, New Mexico, Arizona, California, Nevada, and Utah [were] part of Mexico until Mexico lost them as a result of the Texan War of Independence in 1835-1836 and the Mexican-American War of 1846-1848. Mexico is the only country that the United States has invaded, occupied its capital, placing the Marines in the ‘halls of Montezuma,’ and then annexed half its territory.²⁹

Others have voiced similar views. Mexican-Americans, in turn, argue that the Southwest was taken from them by military aggression in the

consciousness, a common philosophy of life that is shared by individuals. In this case, *weltanschauung* refers to the historical core values and principles that underpin American exceptionalism as a world view that emphasizes the idea that the White-Anglo-Saxon-Protestant expressions of social, political, and economic order that helped form the United States are unique. For a comprehensive explanation of the concept of *weltanschauung*, see DAVID K. NAUGLE, *WORLDVIEW: THE HISTORY OF A CONCEPT* (2002). For a discussion of the myth of this worldview as exceptional, see GODFREY HODGSON, *THE MYTH OF AMERICAN EXCEPTIONALISM* (2010).

27. “Fetishism of the law” is the idea that the law is an autonomous and self-sufficient reality with its own internal dynamics from which all social interactions derive. The Other in this case is seen as a product of law, of which legal and social nature is unquestionable. See Isaac D. Balbus, *Commodity Form and Legal Form: An Essay on the “Relative Autonomy of the Law,”* 11 L. & SOC’Y REV. 571 (1977); HUGH COLLINS, *MARXISM AND LAW* 96-199 (2001).

28. See KENNETH MORGAN, *SLAVERY AND SERVITUDE IN COLONIAL NORTH AMERICA: A SHORT HISTORY* (2001) (providing an excellent historical account of indentured servitude in North America).

29. HUNTINGTON, *supra* note 20, at 229.

1840s, and that the time for *la reconquista* has arrived. Demographically, socially, and culturally that is well under way.³⁰

For those who see immigrant groups as a threat, integration and assimilation will always be problematic, if not impossible, though not necessarily a danger, if a certain lifestyle is to be maintained.³¹ The federal and state governments will continue to balance the desire to deport “illegal aliens” with the need to exploit the fear and distrust many Americans have towards the Other, resulting in new laws and policies that become more repressive and push the boundaries of the most fundamental human rights enacted in the Constitution and the Bill of Rights. This balancing act has never been an easy one, particularly since the 1965 Immigration and Nationality Act abolished the National Origins Formula and established a quota system with an annual limitation of 290,000 visas for immigrants, including 170,000 from Eastern Hemisphere countries and 120,000 from Western Hemisphere countries.³² Moreover, with the demise of the Bracero Program³³ in 1964 (described by Justin Akers Chacón as a “Twentieth Century Caste System”),³⁴ and the inability of the Mexican economy to satisfy its demand for labor, and the increase in demand for cheap labor in the United States, there has been a constant and substantial increase in “illegal aliens” migrating to the United States.³⁵

The “illegal aliens” of the twentieth century became the deportable “illegal invaders” of the twenty-first century. Moreover, the “illegal invaders” have become the subject of one of the tensest

30. *Id.* at 246.

31. Here, “lifestyle” means the dominant social structures as well as political, cultural, and educational institutions that shape the dominant identities and behaviors of those who consider themselves part of the White-Anglo-Saxon-Protestant ideal type.

32. Immigration and Nationality Act, Pub. L. No. 89-236 §§ 201(a)(i)-(ii), 202(a), 79 Stat. 911 (1965).

33. *The Bracero Program*, THE FARMWORKERS’ WEBSITE, <http://www.farmworkers.org/bracerop.html> (last visited Mar. 18, 2012).

34. CHACÓN & DAVIS, *supra* note 20, at 139.

35. See Kitty Calavita, *Mexican Immigration to the USA: The Contradictions of Border Control*, in THE CAMBRIDGE SURVEY OF WORLD MIGRATION 236 (Robert Cohen ed., 1995); Demetrios G. Papademetriou, *The Shifting Expectations of Free Trade and Migration*, in NAFTA’S PROMISE AND REALITY: LESSONS FROM MEXICO FOR THE HEMISPHERE 39, 45-47 (2004), available at <http://carnegieendowment.org/files/nafta1.pdf>.

legal and political debates between the federal and state governments: the debate regarding which level of government is in charge of defending the borders of the Union while preserving the sovereignty of its states. Meanwhile, the political economy, rooted in the notion of American exceptionalism, is failing to deliver the “American Dream” to those who have embraced the American Dream as a quasi-religious act.³⁶

II. INCREASING THE RESTRICTIONS FOR MEXICAN LEGAL MIGRATION WHILE TARGETING THE OTHER: FROM CALIFORNIA’S PROPOSITION 187 TO ARIZONA’S S.B. 1070

States have long been involved at many levels in managing certain aspects of migration policies.³⁷ In 1994, California voters approved the Save Our States ballot initiative, Proposition 187.³⁸ The Proposition prohibited “illegal aliens” from using social services such as public education and health care in California, and was based on a discourse of self-defense in which the “illegal aliens” were considered a threat to the survival of the state and to American exceptionalism.³⁹ Proposition 187 was explicitly designed to deter “illegal aliens” from entering the country as a first step in ending the “illegal alien invasion.”⁴⁰

36. See JIM CULLEN, *THE AMERICAN DREAM: A SHORT HISTORY OF AN IDEA THAT SHAPED A NATION* 11-34 (2003) (discussing the religious dimension of the American Dream, particular its Puritan core).

37. See generally Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 COLUM. L. REV. 1833 (1993) (providing a historical account of how states were involved with immigration issues); MICHAEL JOHN GARCIA & KATE M. MANUEL, CONG. RESEARCH SERV., R41423, *AUTHORITY OF STATE AND LOCAL POLICE TO ENFORCE FEDERAL IMMIGRATION LAW* (2010) (providing a contemporary debate of how local authorities play a role in enforcing federal immigration law).

38. Prop. 187, 1994 Cal. Legis. Serv. § 1 (West) (nullified by injunction).

39. See Johnson, *supra* note 19, at 1144-47; see also Karen E. Rosenblum, *Rights at Risk: California’s Proposition 187*, in *ILLEGAL IMMIGRATION IN AMERICA: A REFERENCE HANDBOOK* 367 (David W. Haines & Karen E. Rosenblum eds., 1999).

40. Jorge A. Bustamante, *Propositions 187 and Operation Gatekeeper: Cases for the Sociology of International Migrations and Human Rights*, 1 MIGRACIONES INTERNACIONALES 7 (2001).

The controversial proposition was immediately challenged, and a federal judge issued a permanent injunction against it.⁴¹ Then-Governor Pete Wilson appealed,⁴² arguing that the Tenth Amendment⁴³ gave the state of California and its people the right to defend the state against illegal aliens/invasers.⁴⁴ Wilson argued that “the massive and unlawful migration of foreign nationals . . . constitute[d] an invasion of the state of California against which the United States [was] obligated to protect California.”⁴⁵ The suit cited Article IV, section 4, of the United States Constitution, which states: “The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion.”⁴⁶

Although Wilson’s successor, Gray Davis, ultimately agreed to drop Wilson’s appeal, effectively killing Proposition 187,⁴⁷ the proposition received strong support from fifty-nine percent of California voters.⁴⁸ Furthermore, the discourse it created in characterizing undocumented workers as “invaders” became the new way to relate to the Mexican migrant.⁴⁹ It is the characterization of undocumented workers as “invaders” that has triggered the far right

41. *League of United Latin Am. Citizens v. Wilson*, 997 F. Supp. 1244 (C.D. Cal. 1997).

42. Daniel M. Weintraub, *Wilson Sues U.S. over Immigrants’ ‘Invasion,’* L.A. TIMES (Sept. 23, 1994), http://articles.latimes.com/1994-09-23/news/mn-42037_1_illegal-immigrants.

43. The Tenth Amendment provides that powers not granted to the federal government nor prohibited to the states are reserved to the states or the people. U.S. CONST. amend. X.

44. *California v. United States*, 104 F.3d 1086 (9th Cir. 1997). See ANDREW WROE, *THE REPUBLICAN PARTY AND IMMIGRATION POLITICS: FROM PROPOSITION 187 TO GEORGE W. BUSH* (2008), for an excellent account of the politics behind Proposition 187.

45. Weintraub, *supra* note 42.

46. *Id.*; U.S. CONST. art. IV, § 4.

47. Patrick J. McDonnell, *Davis Won’t Appeal Prop. 187 Ruling, Ending Court Battles*, L.A. TIMES (July 29, 1999), <http://articles.latimes.com/1999/jul/29/news/mn-60700>.

48. *Prop. 187 Approved in California*, MIGRATION NEWS (Dec. 1994), http://migration.ucdavis.edu/mn/more.php?id=492_0_2_0.

49. Kathleen Arnold, *Enemy Invaders! Mexican Immigrants and U.S. Wars Against Them*, 6 BORDERLANDS ELECTRONIC J. (2007), http://www.borderlands.net.au/vol6no3_2007/arnold_invaders.htm.

from most of the Southwest to construct a discourse of segregation and hate. After September 11, 2001, this discourse of segregation and hate was shored up by the country's obsession with absolute security, as immigration matters were absorbed into the new Department of Homeland Security.⁵⁰ Migration in general, particularly "illegal" immigration, became part of the national security discourse and policies of both the federal and state governments. This shift in dealing with illegal immigration, in a climate of fear and economic uncertainty, revived the debates and policies of exclusion at both the federal and state levels.

The federal response to Proposition 187, Operation Gatekeeper, was an initiative of President Clinton that, according to the Immigration and Naturalization Service, was intended "to restore integrity and safety to the nation's busiest border."⁵¹ Operation Gatekeeper was launched on October 1, 1994, almost a year after the North American Free Trade Agreement (NAFTA) was enacted as the most important comprehensive agreement to stop "illegal immigration."⁵² Operation Gatekeeper focused on closing the five westernmost miles of the Southern border, extending from the Pacific Ocean to the San Ysidro checkpoint. United States migration routes immediately shifted eastward, and the use of professional smugglers increased.⁵³ In May 1995, the Border Patrol initiated Operation Disruption to target smugglers, known as coyotes or *polleros*, and established new checkpoints on interior highways.⁵⁴ These measures

50. The Department of Homeland Security was created by the Homeland Security Act of 2002, which establishes the Bureau of Citizenship and Immigration Services and abolishes the Immigration and Naturalization Service. Homeland Security Act of 2002, 6 U.S.C. § 101(e)-(f) (2012). In 2003, the United States Customs Service and the Immigration and Naturalization Service merged to create the United States Immigration and Customs Enforcement (ICE). *ICE Overview*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, <http://www.ice.gov/about/overview/> (last visited Feb. 13, 2012).

51. JOSEPH NEVINS, *OPERATION GATEKEEPER: THE RISE OF THE "ILLEGAL ALIEN" AND THE MAKING OF THE U.S.-MEXICO BOUNDARY* 4 (2002).

52. See Gerald Ford, President of the United States, Remarks at Signing of NAFTA Side Agreements (Sept. 14, 1993) (transcript available at <http://www.historycentral.com/Documents/Clinton/SigningNAFTA.html>).

53. NEVINS, *supra* note 51, at 125.

54. *Id.*

resulted in a substantial increase in the flow of undocumented migration through Arizona.⁵⁵

Arizona has one of the fastest-growing undocumented immigrant populations in the country, increasing from approximately 115,000 in 1996 to 560,000 by 2008.⁵⁶ Such a staggering increase in mostly Mexican undocumented immigrants, within a context of an increase in anti-immigrant sentiment among a large number of Arizona's residents, added to a struggling economy and economic anxiety during the late 2000s. As a result, conservative politicians and anti-immigrant pundits promoted strong anti-immigration laws packaged as public safety bills. And if there is a state where sheriffs and former sheriffs have been involved in crafting, implementing, and operationalizing the discourse and practice of discrimination, Arizona is at the forefront.

Two years before he personally promoted S.B. 1070, then-State Representative and former Arizona state Senator Russell Pearce, the former Deputy Sheriff of the Maricopa County, declared:

I believe in the rule of law, always have. I've always believed in the rule of law. We're a nation of laws. . . . I will not back off till we resolve this problem of this illegal invasion. Invaders, that's what they are. They're invaders on the American sovereignty and it can't be tolerated.⁵⁷

55. See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-06-770, *ILLEGAL IMMIGRATION BORDER-CROSSING DEATHS HAVE DOUBLED SINCE 1995; BORDER PATROL'S EFFORTS TO PREVENT DEATHS HAVE NOT BEEN FULLY EVALUATED*, (2006), available at <http://www.gao.gov/new.items/d06770.pdf>, for a detailed study; see also KARL ESCHBACH ET AL., *Deaths During Undocumented Migration: Trends and Policy Implications in the Era of Homeland Security*, in 26 *IN DEFENSE OF THE ALIEN* 37-52 (2003).

56. See *Illegal Alien Resident Population*, DEP'T OF HOMELAND SEC., <http://www.dhs.gov/xlibrary/assets/statistics/illegal.pdf> (last visited May 2, 2012); Michael Hoefer et al., *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2008*, DEP'T OF HOMELAND SEC., OFFICE OF IMMIGRATION STATISTICS, (Feb. 2009) http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2008.pdf.

57. Steve Inskeep, *The Man behind Arizona's Toughest Immigrant Laws*, NAT'L PUB. RADIO (Mar. 12, 2008), <http://www.npr.org/templates/transcript/transcript.php?storyId=88125098> (statement of Ariz. Senator Russell Pearce).

Pearce personifies a combination of American nativism and xenophobia.⁵⁸ Taken at face value, Pearce represents a naive view of American exceptionalism which sees the Other as “disturbingly or threateningly” alien to be feared and expelled at all costs. However, as naive as he may seem, Pearce has been one of the most powerful contemporary politicians in Arizona, and the foremost zealous promoter of the most controversial anti-immigrant laws implemented in the state. He has also shown that, regardless of the Supremacy Clause, states can enact many laws that affect immigration policies.

Despite Pearce’s power in Arizona, many people, including key members of the state Republican Party and Pearce’s church, considered Pearce’s views towards immigration in general, and his virulent rhetoric towards the Hispanic population in particular, extreme.⁵⁹ In a 2011 recall election, Republican charter school executive Jerry Lewis defeated Pearce.⁶⁰ Lewis is a conservative Republican, not a moderate,⁶¹ and a member of the former Senator’s staff. During his campaign, Lewis remarked that Arizona is viewed “as a very unfriendly business state” because of Pearce’s approach, adding, “[w]e are seen as something akin to maybe 1964 Alabama.”⁶²

Beyond the initial strong support Pearce’s initiatives received from the majority of voters, as well as state legislators, the state governor, and many media outlets, it is fundamental to understand the deeper and far-reaching links between what seem like local initiatives, yet are concerted efforts from a well-organized historic bloc. In this historic bloc, the dominant classes have extended their power to all levels of government, key economic sectors, and the most powerful corporate media. Yet for most voters, S.B. 1070 was just an act to

58. As an example, Pearce once pledged to reform the Fourteenth Amendment so as not to grant automatic citizenship to children born on United States soil. Additionally, he sought to make English the official language of the United States. Russell Pearce, *What I Stand for*, MESA18 (June 29, 2010), http://web.archive.org/web/20100629033204/http://www.mesa18.com/candidates/russell_pearce.htm (accessed by searching for website link in the Internet Archive index).

59. Rachel Weiner, *Arizona Recall: Why Russell Pearce Lost*, WASH. POST (Nov. 9, 2011), http://www.washingtonpost.com/blogs/the-fix/post/arizona-recall-why-russell-pearce-lost/2011/11/09/gIQALj6a5M_blog.html.

60. *Id.*

61. *Id.*

62. *Id.*

protect them from the Other who, according to the dominant discourse, has represented the main threat regarding public safety and the economic downturn—an Other who apparently has to be hated and segregated for his or her perceived disdain for the American Dream and his/her longing to retake his or her historical land.

The day S.B. 1070 was signed into law, little was known about the backstage process behind the bill. At face value, the bill was an example of American democracy at its best: Most state and national polls reflected a strong support for the bill by potential adult voters. It passed the Arizona House of Representatives by a 35-21 party-line vote, and the revised measure then passed the State Senate by a 17-11 vote that also closely followed party lines.⁶³ Behind the scenes, however, S.B. 1070 was a reflection of many Arizona citizens' fear and distrust of the Other. The bill was prompted by the killing of an Arizona rancher, Robert Krentz. Krentz and his dog were found dead on Krentz' ranch, located nineteen miles from the border with Mexico. Although the killer was never identified, in the imagination of many Arizona residents, Krentz was one of the first victims of the "illegal invaders" from Mexico.⁶⁴ In reality, Krentz was an unfortunate scapegoat for a piece of legislation reflecting a deeper and more disturbing national sentiment against the Mexican/illegal alien/Other.

S.B. 1070 was the brainchild of then-Senator Russell Pearce, a man operating from a deep nativist and anti-immigrant sentiment. But, the bill was primarily crafted by a pragmatic and well-educated individual with no direct ties to Arizona, who nonetheless was very committed to making immigration laws extremely restrictive: Kris Kobach.⁶⁵ Mr. Kobach, the current secretary of state of Kansas, is an

63. See Ronald J. Hansen, *Poll: Politics, Age Sway Opinions on Immigration Law Arizonans Support or Oppose SB 1070 Along Clear Demographic Lines*, ARIZ. REPUBLIC (July 25, 2010) www.azcentral.com/news/articles/2010/07/25/20100725-immigration-poll-demographic.html#ixzz11O10tRv5 (results of key national and state polls); *Bill Status for SB 1070 –House and Senate*, MARICOPA CNTY. REPUBLICAN COMM. (Apr. 25, 2010), <http://www.maricopagop.org/2010/04/25/2603/> (summary of votes across party lines).

64. Nathan Thornburgh, *Border Crackdowns and the Battle for Arizona*, TIME MAGAZINE (June, 14, 2010), <http://www.time.com/time/magazine/article/0,9171,1993872,00.html>.

65. *The Man: A Biography of Kris Kobach*, S. POVERTY LAW CTR. (Jan. 2011), <http://www.splcenter.org/get-informed/publications/when-mr-kobach-comes-to-town/the-man-a-biography-of-kris-kobach>.

Ivy League-educated attorney and law professor.⁶⁶ Mr. Kobach could be the poster boy for the nostalgic image of the American Anglo-Saxon-Protestant who staunchly believes in American exceptionalism. In 2008, the Southern Poverty Law Center (SPLC) classified Mr. Kobach as one of the most influential nativists promoting racial discrimination through discourses and practices of hate.⁶⁷ But how is Mr. Kobach linked to the dominant class that promotes a hegemonic discourse against “illegal aliens”? Mr. Kobach, who has focused on working with local and state governments, is of counsel for the Immigration Reform Law Institute (IRLI),⁶⁸ “the legal arm of the Federation for American Immigration Reform (FAIR), recently listed as a nativist hate group by the [SPLC].”⁶⁹

Although FAIR represents itself as a non-partisan nonprofit organization whose main mission is merely “to examine immigration trends and effects,” it is anything but non-partisan.⁷⁰ FAIR was founded by Dr. John Tanton,⁷¹ one of the major architects of the United States contemporary nativist movement who, according to the SPLC, was already warning of a destructive “Latin onslaught” heading to the United States twenty years ago.⁷² Moreover, in crafting S.B. 1070,⁷³ Mr. Kobach was a key adviser to Pearce, who has been an active member of the American Legislative Exchange Council (ALEC),⁷⁴ an extremely conservative nonprofit membership

66. *Id.*

67. *The Nativists: Profiles of 20 Anti-Immigrant Leaders*, S. POVERTY LAW CTR. (2008), <http://www.splc.org/get-informed/intelligence-report/browse-all-issues/2008/spring/the-nativists?page=0,11>.

68. *Id.*; *Attorneys and Staff*, IMMIGRATION REFORM LAW INST., <http://www.irli.org/about/attorneys> (last visited March 18, 2012).

69. *Id.*

70. *About FAIR*, *supra* note 7.

71. Heidi Beirich, *The Teflon Nativists*, S. POVERTY LAW CTR. (2007), <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2007/winter/the-teflon-nativists>.

72. *Id.*

73. *States Turn to Kobach for Illegal Immigration Laws*, MYFOXPHOENIX.COM (Dec. 9, 2010), <http://www.myfoxphoenix.com/dpp/news/immigration/kobach-illegal-immigration-laws-12092010>.

74. *ALEC in Arizona: The Voice of Corporate Special Interests in the Halls of Arizona's Legislature*, PEOPLE FOR THE AM. WAY FOUND. (2011), <http://www.commoncause.org/atf/cf/%7Bfb3c17e2-cdd1-4df6-92be-bd4429893665%7D/ALEC-IN-ARIZONA.PDF>.

association of state legislators and private sector policy advocates.⁷⁵ Among many of its activities, ALEC assists its members in developing model legislation for state legislatures and serves as a powerful networking apparatus for fellow legislators to share and anchor their ideological perspectives and policy goals.⁷⁶ ALEC is perhaps the most powerful institution that conservative state legislators at both levels of government have used to attempt to accelerate the process of granting more powers to local and state governments. These powers are generally related to maintaining what they consider to be the fundamental principles of American exceptionalism. S.B. 1070 was primarily drafted by FAIR and ALEC, and not by Pearce's office.⁷⁷

In the wake of the passage of S.B. 1070, for instance, FAIR advanced a copy of its new report on the alarming cost of illegal immigration in Arizona to FOX News.⁷⁸ According to FOX's report, "Arizona's illegal immigrant population is costing the state's taxpayers even more than once thought—a whopping \$2.7 billion in 2009, according to researchers at the public-interest group that helped write the state's new immigration law."⁷⁹

But how would Kobach reach the more "liberal" sector of the dominant political elites? *The New York Times* published an op-ed by Kobach in which he questioned the criticism of S.B. 1070 with reflections on why state government can, and needs to, be involved in

75. Laura Sullivan, *Prison Economics Help Drive Ariz. Immigration Law*, NAT'L PUB. RADIO (Oct. 28, 2010), <http://www.npr.org/2010/10/28/130833741/prison-economics-help-drive-ariz-immigration-law>.

76. *About: History*, AMERICAN LEGISLATIVE EXCHANGE COUNCIL (ALEC), <http://www.alec.org/about-alec/history/> (last visited Feb. 17, 2012).

77. Sullivan, *supra* note 75; see also Laura Sullivan, *Shaping Shape Laws with Little Scrutiny*, NAT'L PUB. RADIO (Oct. 29, 2010), <http://www.npr.org/2010/10/29/130891396/shaping-state-laws-with-little-scrutiny>. See *If Washington Won't, Arizona Will: State Passes Tough, Sensible Illegal Immigration Laws to Protect Arizonans*, FED. FOR AM. IMMIGRATION REFORM (Apr. 14, 2010), http://www.fairus.org/site/News2?page=NewsArticle&id=22725&security=1601&news_iv_ctrl=1741, for a discussion of FAIR's participation in drafting S.B. 1070 through its legal affiliate, the Immigration Reform Law Institute (IRLI).

78. Ed Barnes, *Cost of Illegal Immigration Rising Rapidly in Arizona, Study Finds*, FOXNEWS.COM (May 17, 2010), <http://www.foxnews.com/us/2010/05/17/immigration-costs-rising-rapidly-new-study-says/#ixzz1Bcixq7Ur>.

79. *Id.*

immigration issues.⁸⁰ Kobach attacked two organizations that not only are considered progressive, but also have defended Latino immigrants in general and Mexican immigrants in particular.⁸¹ “Predictably, groups that favor relaxed enforcement of immigration laws, including the American Civil Liberties Union and the Mexican American Legal Defense and Education Fund, insist the law is unconstitutional.”⁸²

Kobach then went on to explain what he understood as the constitutionality of the bill and the “urgent” need for Arizona to implement it:

While it is true that Washington holds primary authority in immigration, the Supreme Court since 1976 has recognized that states may enact laws to discourage illegal immigration without being pre-empted by federal law. As long as Congress hasn’t expressly forbidden the state law in question, the statute doesn’t conflict with federal law and Congress has not displaced all state laws from the field, it is permitted. That’s why Arizona’s 2007 law making it illegal to knowingly employ unauthorized aliens was sustained by the United States Court of Appeals for the Ninth Circuit.

In sum, the Arizona law hardly creates a police state. It takes a measured, reasonable step to give Arizona police officers another tool when they come into contact with illegal aliens during their normal law enforcement duties.

And it’s very necessary: Arizona is the ground zero of illegal immigration. Phoenix is the hub of human smuggling and the kidnapping capital of America, with more than 240 incidents reported in 2008. It’s no surprise that Arizona’s police associations favored the bill, along with 70 percent of Arizonans.⁸³

It is no coincidence that Kobach singled out the American Civil Liberties Union and the Mexican American Legal Defense and Education Fund. These organizations have been in a direct political and legal confrontation with the anti-immigration groups linked to the complex web of xenophobic, nativist, and openly racist organizations

80. Kris W. Kobach, Op-Ed., *Why Arizona Drew a Line*, N.Y. TIMES (Apr. 28, 2010), <http://www.nytimes.com/2010/04/29/opinion/29kobach.html>.

81. *Id.*

82. *Id.*

83. *Id.*

of which FAIR is one of the largest and most powerful.⁸⁴ This extremely controversial piece of legislation was supported and promoted by these anti-immigration national organizations because of their memberships' profound disdain toward Mexican undocumented immigration and what it represents for their idea of America, not because of their concern regarding the so-called "economic burden" of immigration. It should be no surprise that many anti-"illegal immigrant" activists, members of the media, and local and federal governments have directly used and benefit indirectly every day from the cheap labor of such "disturbingly and threateningly" Others. These activists and organizations have been linked to white supremacist groups which have exacerbated fear of the Other and worked to manufacture a hegemonic discourse of hate and racial segregation toward the Mexican/Hispanic/illegal alien/Other.⁸⁵

Not all legal and political actions taken toward undocumented workers are intended to target the Other and "produce" more illegality. However, the overall benefits that these actions have on capital accumulation are undeniable for an economic system that can no longer sustain stability without some system of segregation. To prove the perversion of this notion, it is important to bring into the analysis an additional key party involved in the drafting and implementation of S.B. 1070: The American private prison system, particularly the Corrections Corporation of America (CCA). CCA has been the most powerful actor behind S.B. 1070, and bills like it, including H.B. 87, and H.B. 56. The relationship between CCA and punitive anti-immigration bills sheds light on Gramsci's contention that the dominant classes and their hegemonic expressions of power are more significant in determining the power relationships and social structures of a political system than the state itself.⁸⁶

84. See *Anti-Immigration Groups*, S. POVERTY LAW CTR. (2001), <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2001/spring/blood-on-the-border/anti-immigration->; Solana Larsen, *The Anti-Immigration Movement: From Shovels to Suits*, N. AM. CONGRESS ON LATIN AM. (May 9, 2007), <https://nacla.org/node/1471>.

85. Larsen, *supra* note 84; *Confronting the New Faces of Hate: Hate Crimes in America*, LEADERSHIP CONFERENCE ON CIVIL RIGHTS EDUC. FUND (2009), http://www.protectcivilrights.org/pdf/reports/hatecrimes/lccref_hate_crimes_report.pdf.

86. SELECTIONS FROM THE PRISON NOTEBOOKS, *supra* note 6, at 238.

In what was perhaps a surprise to those who believe in the transparency of American democracy, Laura Sullivan, National Public Radio's police and prisons correspondent, broadcast on the national airwaves what had also been investigated by other journalists: The most important goal for S.B. 1070, ingenuously called "The Support Our Law Enforcement and Safe Neighborhoods Act," was to increase CCA's profits.⁸⁷ As disturbing as this may seem, it makes perfect economic and legal sense if one is to believe that the American system is one in which the rule of law is diligently applied and that free markets are at the base of its economic system. If undocumented workers are considered "illegal," "criminals," and "invaders," and the law needs to be enforced, then the "criminals" need to be locked up, so the rule of law goes.

With the media constantly pounding on the threat that "illegal aliens/invaders" pose to American rights and freedoms, and the government, at both the state and federal levels, continually refers to the national security threat posed by the Southern border, why would any American citizen who is not Hispanic or Mexican be concerned about the fact that he or she is giving extra-constitutional powers to the local police? This lack of concern by most Americans has been patent in the minds of those who drafted S.B. 1070, and to the CCA. Regardless of the constitutional challenges that S.B. 1070 has faced,⁸⁸ the bill has secured enough legal and political support to ensure continuation of CCA's present contracts, plus many more contracts in Arizona and all other states. And, through legislative members in ALEC, states around the nation are modeling new anti-"illegal

87. Sullivan, *supra* note 75; see also Beau Hodai, *Corporate Con Game: How the Private Prison Industry Helped Shape Arizona's Anti-Immigrant Law*, IN THESE TIMES (June 21, 2010), http://www.inthesetimes.com/article/6084/corporate_con_game/.

88. One of the first constitutional challenges was by Martin H. Escobar, a Tucson police officer, who filed suit in April 2010. See Brian J. Pedersen, *Tucson Cop First to Sue to Block AZ Immigration Law*, ARIZ. DAILY STAR (Apr. 29, 2010), http://azstarnet.com/news/local/tucson-cop-first-to-sue-to-block-az-immigration-law/article_e8a094d4-53ab-11df-92c8-001cc4c002e0.html#ixzz1lZLc3oop; see also *Arizona SB 1070, Legal Challenges and Economic Realities*, AM. IMMIGRATION COUNCIL, LEGAL ACTION CTR., <http://www.legalactioncenter.org/clearinghouse/litigation-issue-pages/arizona-sb-1070%E2%80%8E-legal-challenges-and-economic-realities> (last visited Mar. 18, 2012) (providing an excellent review of the constitutional challenges to S.B. 1070).

immigrant” bills resembling S.B. 1070. For CCA, the largest private correctional corporation traded on the New York Stock Exchange, more inmates are necessary to keep profits high.⁸⁹ As CCA reported to the United States Securities and Exchange Commission:

*A decrease in occupancy levels could cause a decrease in revenues and profitability. . . . We are dependent upon the governmental agencies with which we have contracts to provide inmates for our managed facilities. We cannot control occupancy levels at our managed facilities. Under a per diem rate structure, a decrease in our occupancy rates could cause a decrease in revenues and profitability. When combined with relatively fixed costs for operating each facility, regardless of the occupancy level, a decrease in occupancy levels could have a material adverse effect on our profitability.*⁹⁰

Additionally, CCA is the main correctional corporation that works with the United States Immigration and Customs Enforcement (ICE). Thus, the more S.B. 1070-type bills are implemented nationwide, the better off the value of CCA’s stock. As S.B. 1070 has proven, ICE can shore up its data on detentions, thereby increasing their legitimacy vis-à-vis the American citizens who believe that there is a measurable threat to their security. Additionally, local police can appear as sensitive to the American population living under fear of being attacked by an “illegal alien/invader,” and CCA can keep its shareholders satisfied. Thus, the “production of Mexican/migrant illegality”⁹¹ takes a dreadful twist as the political economy of the American private prison system capitalizes on a hegemonic discourse, and finds an unmatched support in the present historic bloc.⁹² How? The present historic bloc has put forward a dominant discourse that encourages both state and local governments to put forward more

89. *About CCA*, CORR. CORP. OF AM., <http://www.cca.com/about/> (last visited Feb. 22, 2012).

90. Corr. Corp. of Am., Annual Report (Form 10-K) (Feb. 25, 2011).

91. De Genova, *supra* note 21, at 178.

92. See William Andrew Todd, *Convict Lease System*, NEW GA. ENCYCLOPEDIA, <http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2635> (last visited Jan. 20, 2012); see also Matthew Zito, *Prison Privatization: Past and Present*, INT’L FOUND. FOR PROT. OFFICERS (Dec. 8, 2003), http://www.ifpo.org/articlebank/prison_privatization.html.

restrictive measures to detain and deport illegal aliens. The government then works with the private penitentiary system to create more space for those “illegal aliens” who are detained and in the process of being deported. This has benefitted the private prison system by increasing the supply of detainees.

So how did CCA try to meet its demand through the S.B. 1070? According to Laura Sullivan’s in-depth report, the power structure of the Arizona government has been heavily influenced by the private prisons system.⁹³ Governor Brewer’s top advisers, her spokesman and her campaign manager, are former lobbyists for the private prison companies.⁹⁴ Additionally, thirty-five Arizona legislators who voted en masse for S.B. 1070 belong to ALEC, while Pearce is an executive member of ALEC’s Public Safety and Elections Task Force, and CCA is an executive member of the task force.⁹⁵ In a revealing interview between Sullivan and the city manager of Benson, Arizona, a small town sixty miles from the Mexican border, it is appalling how forthcoming CCA executives are with regard to their longing to increase profits through the incarceration of undocumented immigrants.⁹⁶ In the interview, the city manager mentions receiving an offer for “a prison for women and children who are illegal immigrants.”⁹⁷ He also mentions that they “talk [about] how positive this was going to be for the community,” and “the amount of money that [they] would realize from each prisoner on a daily rate.”⁹⁸ The city manager later asked, “how would they possibly keep a prison full for years—decades even—with illegal immigrants?”⁹⁹ The answer was blunt: “They talked like they didn’t have any doubt they could fill it.”¹⁰⁰

93. Sullivan, *supra* note 75.

94. *Id.* “Brewer has her own connections to private prison companies. State lobbying records show two of her top advisers—her spokesman Paul Senseman and her campaign manager Chuck Coughlin—are former lobbyists for private prison companies.” *Id.*

95. Hodai, *supra* note 87; Sullivan, *supra* note 75.

96. Sullivan, *supra* note 75.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

When Governor Brewer signed S.B. 1070 on April 23, 2010, she stated that her decision was based on the following arguments:

Border-related violence and crime due to illegal immigration are critically important issues to the people of our state, to my Administration and to me, as your Governor and as a citizen. . . . We cannot delay while the destruction happening south of our international border creeps its way north. We in Arizona have been more than patient waiting for Washington to act. But decades of federal inaction and misguided policy have created a dangerous and unacceptable situation. Yesterday, I announced the steps I was taking to enhance security along our border. Today—with my unwavering signature on this legislation—Arizona strengthens its security WITHIN our borders.¹⁰¹

Even though Governor Brewer tried to dissipate any criticisms regarding the racial profiling that this bill could clearly produce when she stated that she would “NOT tolerate racial discrimination or racial profiling in Arizona,”¹⁰² she was in effect signing an act that would indirectly boost CCA profits in Arizona. Moreover, Governor Brewer empowered those who believed their security was seriously at risk due to the “illegal aliens/invasers” crossing through the southern border. As Pearce stated in an interview with Sullivan: “Enough is enough People need to focus on the cost of not enforcing our laws and securing our border. It is the Trojan horse destroying our country and a republic cannot survive as a lawless nation.”¹⁰³

It is patent that Governor Brewer’s statement about S.B. 1070,¹⁰⁴ as well as the former Senator’s statement on the nature of the southern border and his description of undocumented immigrants as a “Trojan horse,”¹⁰⁵ is one that returns to this Article’s first thesis regarding the exacerbation of the Other so as to ignite a deep fear about their individual and collective security in the imaginations of those people who still believe in the American Dream. The Mexican/illegal

101. Press Release, Jan Brewer, Ariz. State Governor, Statement on S.B. 1070 (Apr. 23, 2010), *available at* http://azgovernor.gov/dms/upload/PR_042310_StatementByGovernorOnSB1070.pdf.

102. *Id.*

103. Sullivan, *supra* note 75.

104. Press Release, Jan Brewer, *supra* note 101.

105. Sullivan, *supra* note 75.

alien/Other re-conquering his or her land starts being perceived as a real threat—one that, if it cannot be dealt with by the federal or state governments, will have to be dealt with by “the people.” It is precisely the idea of the powers that can be delegated to the people, expressed in the Tenth Amendment,¹⁰⁶ that has elevated local sheriffs and other anti-immigrant organizations to take into their hands what they consider to be a “war” against the “illegal alien/invasers.”

III. FROM ARIZONA’S S.B. 1070 TO GEORGIA’S H.B. 87: ENSURING LOCAL POWER TO EXCLUDE AND PUNISH THE OTHER

In 2001, Georgia enacted its version of S.B. 1070, known as “Show Me Your Papers,” or H.B. 87. In Dr. Martin Luther King’s home state, Georgia Governor Nathan Deal signed H.B. 87 stating, “while I believe immigration is an issue that can ideally be identified and addressed—and should be addressed—at the federal level, this legislation I believe is a responsible step forward in the absence of federal action.”¹⁰⁷ Governor Deal considered that moment as a “rather historic moment.”¹⁰⁸ Regarding potential backlashes as those that occurred after the signing of S.B. 1070, Governor Deal said:

I believe that most people understand that a state that is doing what is within its power to do to protect its citizens and its taxpayers should not be at any point punished. . . . The costs of illegal immigration, in my opinion, far outweigh any of the dangers that may be threatened by boycotts.¹⁰⁹

For Governor Deal, and those who backed Georgia’s state immigration law, the motivation in passing H.B. 87 was related to the perception of the Other as a clear and imminent threat to the safety of the citizens of Georgia and the United States. Governor Deal’s statement reflects the importance the government and society as a whole gives to those who pay taxes. The Other, however, might also pay taxes, as the 2007 United States Congressional Budget Office

106. U.S. CONST. amend. X.

107. Associated Press, *Georgia Governor Signs Immigration Bill into Law*, USATODAY (May 13, 2011), http://www.usatoday.com/news/nation/2011-05-13-georgia-immigration-law_n.htm.

108. *Id.*

109. *Id.*

study demonstrates,¹¹⁰ but the government does not consider the Other a group of individuals with the legal capacity to do so. Governor Deal's remark was meant to differentiate the rights derived from the contract between the state and its citizens that originates from citizens paying income taxes, and not those that result from consumption of goods and services. According to Governor Deal and people who share his beliefs, while the Other might consume goods and services, the Other cannot engage in a relationship of equality because he does not pay income tax. As Guild states: "[t]he relationship between the state and the citizen in liberal democracies is based on a principle of reciprocity. The state accepts the individual as citizen on the basis of social and political settlement about belonging."¹¹¹

Such social and political settlement about belonging can only be established if the state puts forward the proper legal terms to permit an individual to "belong" to a particular society. One of the most powerful "settlements" for such reciprocity has been for the individual to accept that his or her rights, vis-à-vis the monopoly of power of the state to include or exclude others from belonging to it, can only be obtained by contributing to such power through taxation. In that sense, liberal democracies are by nature very exclusive because they discount those individuals who, by law or policy, cannot contribute to obtaining such reciprocity and hence protection from the state and its monopoly of violence.

Under Georgia's H.B. 87, all public and private companies, the latter with a minimum of ten employees, are mandated to apply the federal work authorization program, E-Verify.¹¹² The program's purposes are to ensure all the companies' employees have proper documentation, and to regulate companies' abilities to maintain or receive business licenses or permits.¹¹³ Although this is just a measure to comply with a federal law, if it is fully applied, it will have three unintended consequences. The first is economic in that there will

110. U.S. CONG. BUDGET OFFICE, A SERIES ON IMMIGRATION: THE IMPACT OF UNAUTHORIZED IMMIGRANTS ON THE BUDGETS OF STATE AND LOCAL GOVERNMENTS 2 (2007), available at <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/87xx/doc8711/12-6-immigration.pdf>.

111. ELPSETH GUILD, SECURITY AND MIGRATION IN THE 21ST CENTURY 44-45 (2009).

112. H.B. 87, 150th Gen. Assemb., Reg. Sess. § 2 (Ga. 2011).

113. *Id.*

inevitably be large losses due to the difficulties of replacing undocumented workers with those with proper working permits. According to a study carried out three years prior to the bill, if all undocumented immigrants were removed from Georgia, the state would lose \$21.3 billion in economic activity, \$9.5 billion in gross state product, and approximately 132,460 jobs.¹¹⁴ The second impact may be that entire communities may leave the state. The third impact may be seen on employees whose employers are not required to comply¹¹⁵ with E-Verify. Those employees will continue to work, albeit in extreme fear as docile and cheap labor, and they will be inevitably segregated from the rest of society.

One of H.B. 87's most punitive measures is that it punishes undocumented workers who use fraudulent Social Security numbers or other fraudulent documents to obtain work or pay taxes.¹¹⁶ The bill will punish such individuals with a fine not to exceed \$100,000 and up to ten years imprisonment for the first violation, or with a fine not to exceed \$250,000 and up to fifteen years of imprisonment for any subsequent violations.¹¹⁷ With such harsh penalties, undocumented labor in the state of Georgia has been criminalized at the same level of any aggravated felony. If undocumented workers are arrested and imprisoned under H.B. 87, they will end up as one more "asset" for one of the six CCA facilities in Georgia.¹¹⁸

And where is the discursive crux of Georgia's H.B. 87? The clearest response is once again to be found in the myth of American exceptionalism. As Georgia State Senator John Albers stated while urging his colleagues to pass H.B. 87, "Our Nation and our State is [sic] exceptional and the only way it stays exceptional is to enforce our laws."¹¹⁹

114. PERRYMAN GROUP, AN ESSENTIAL RESOURCE: AN ANALYSIS OF THE ECONOMIC IMPACT OF UNDOCUMENTED WORKERS ON BUSINESS ACTIVITY IN THE US WITH ESTIMATED EFFECTS BY STATE AND BY INDUSTRY 69 (2008), available at http://americansforimmigrationreform.com/files/Impact_of_the_Undocumented_Workforce.pdf#page=69.

115. H.B. 87, 150th Gen. Assemb., Reg. Sess. § 12(a) (Ga. 2011).

116. *See id.* § 4(a).

117. *Id.* § 5(a).

118. CCA Facility Locations: GA, CORR. CORP. OF AM., <http://www.cca.com/facilities/?state=GA> (last visited Jan. 20, 2012).

119. Albersforsenate, *Senator John Albers - Illegal Immigration Speech (HB 87)*, YOUTUBE (Apr. 21, 2011), www.youtube.com/watch?v=MP6NMQUOUr0.

In Georgia, as in Arizona, local police, sheriffs, and their posses will have more power to keep the state “exceptional.” Hispanics in general, and Mexicans in particular, will have to leave Georgia, or else be segregated from a society desperate to regain its racial ideal type in the name of applying the rule of law. Without immigrant laborers, Georgia’s business owners will have to learn to either be more corrupt and jeopardize their “exceptionalism” by facing the penalties of employing undocumented workers. Alternatively, Georgia’s business owners will have to learn to live with smaller profit margins, or close their businesses and themselves become the new reserve of cheap and docile labor. In the meantime, Dr. King’s hometown will once again see a new kind of segregation where the spatial separation is achieved through colorblind laws which disempower those who, due to their legal status as undocumented workers, cannot reaffirm the power of their race. Instead, undocumented workers remain perceived as inferior, and in many cases, as being part of a subhuman Other.

IV. WELCOME TO ALABAMA: THE STATE OF THE KU KLUX KLAN, GEORGE WALLACE, AND H.B. 56

Today I have stood, where once Jefferson Davis stood, and took an oath to my people. It is very appropriate then that from this Cradle of the Confederacy, this very Heart of the Great Anglo-Saxon Southland, that today we sound the drum for freedom as have our generations of forebears before us done, time and time again through history. Let us rise to the call of freedom-loving blood that is in us and send our answer to the tyranny that clanks its chains upon the South. In the name of the greatest people that have ever trod this earth, I draw the line in the dust and toss the gauntlet before the feet of tyranny . . . and I say . . . segregation today . . . segregation tomorrow . . . segregation forever.¹²⁰

Today, many Americans would hope that Alabama Governor George C. Wallace’s vision of a segregated Alabama was long forgotten as part of a dark period in the historical annals of Alabama and the United States. Similarly, many Americans would wish that the

120. Governor George C. Wallace, Inaugural Address at the Alabama State Capital (Jan. 14, 1963), *available at* http://www.archives.state.al.us/govs_list/inauguralspeech.html.

Ku Klux Klan (KKK) was part of an even darker history that was buried in the civil rights struggles of the 1960s and 1970s.

Alas, Wallace's spirit haunts Alabama and the KKK has not given up its struggle to clean up the state's "Great Anglo-Saxon," "freedom-loving blood."¹²¹ The Southern Poverty Law Center estimates that today the KKK has between 5,000 and 8,000 members¹²² split into more than 40 different factions.¹²³ Alabama alone has six different chapters,¹²⁴ as well as several chapters of Neo-Confederate groups such as the League of the South,¹²⁵ and other white nationalist groups such as the Council of Conservative Citizens and the Occidental Dissent.¹²⁶ And to top its long list of nativist, xenophobic, and segregationist groups, Alabama also has two very active Neo-Nazi organizations: Aryan Nations 88 and the Nights of the Nordic Order.¹²⁷

Although the number of members from these chapters seems marginal, if not irrelevant, compared to the registered members of the Republican and Democratic parties, and their presence in public protests seems like a small group of extremists to be laughed at, their power resides in the attention they get from the media. Additionally, these groups' metanarrative wields symbolic power on the nativist and xenophobic discourses of the anti-immigrant movement, particularly in states like Alabama. It takes one member of the legislative body or any other high profile state figure to create a ripple effect among the

121. *See id.*

122. *Ku Klux Klan—Extremism in America*, ANTI-DEFAMATION LEAGUE, http://www.adl.org/learn/ext_us/kkk/default.asp?LEARN_Cat=Extremism&LEARN_SubCat=Extremism_in_America&xpicked=4&item=kkk (last visited Jan. 20, 2012); *Ku Klux Klan*, S. POVERTY LAW CTR., <http://www.splcenter.org/get-informed/intelligence-files/ideology/ku-klux-klan> (last visited Mar. 24, 2012).

123. *Active Ku Klux Klan Groups*, S. POVERTY LAW CTR., http://www.splcenter.org/get-informed/intelligence-files/ideology/ku-klux-klan/active_hate_groups (last visited Jan. 21, 2012).

124. *Id.*

125. *Active Neo-Confederate Hate Groups*, S. POVERTY LAW CTR., http://www.splcenter.org/get-informed/intelligence-files/ideology/neo-confederate/active_hate_groups (last visited Mar. 18, 2012).

126. *White Nationalist*, S. POVERTY LAW CTR., <http://www.splcenter.org/get-informed/intelligence-files/ideology/white-nationalist> (last visited Feb. 22, 2012).

127. *Active Neo-Nazi Groups*, S. POVERTY LAW CTR., http://www.splcenter.org/get-informed/intelligence-files/ideology/neo-nazi/active_hate_groups (last visited Jan. 21, 2012).

population, which is trapped by the discourse of fear manufactured by organizations like ALEC, FAIR, or the mainstream media regarding the costs and threats that undocumented migrants represent, particularly the Hispanic/Mexican migrants.

As an example of the above, in an interview with a local Alabama TV station, Alabama Republican Representative Mo Brooks, who is known for his staunch anti-immigrant position, stated: “I wanted to ensure people that I have an intensity on this subject that we have to address the illegal alien issue.”¹²⁸ The Fifth District representative went on to say, regarding undocumented immigrants, “They have no right to be here. They are clogging up our emergency rooms, and making our education system more expensive. If you go to the Madison County Jail, there are far too many illegal aliens there because they have victimized Americans,”¹²⁹ and finally, “As your congressman on the House floor, I will do anything short of shooting them. Anything that is lawful, it needs to be done because illegal aliens need to quit taking jobs from American citizens.”¹³⁰ In the same news show, Venton Blandin, the reporter covering the story of the newly signed H.B. 56, also mentioned how a Madison County Commissioner suggested that “more salsa needs to be served at the jail for all of those people arrested on the new immigration law.”¹³¹ These comments come from a dominant discourse that targets the Hispanic population in general and, in particular, the undocumented “illegal alien/criminal alien” Mexican. This discourse manufactures consent for measures that, although not openly segregationist, are intended to create an environment where the only alternatives for the Hispanic population¹³² are to leave the state or live segregated from the rest of the state’s population. This choice is evident in Arizona, Georgia, and

128. Venton Blandin, *Congressman Mo Brooks Makes Strong Comments on Illegal Immigration Law*, WHNT NEWS (June 29, 2011), <http://web.archive.org/web/20110719160637/http://www.whnt.com/news/whnt-congressman-mo-brooks-makes-strong-comments-on-illegal-immigration-law-20110628,0,1001498.story> (accessed by searching for website link in the Internet Archive index).

129. *Id.*

130. *Id.*

131. *Id.*

132. Alabama’s Hispanic population constitutes 3.9 percent of its total population. *Alabama Quick Facts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/01000.html> (last revised Dec. 23, 2011).

other states that have enacted similar laws, leaving the Hispanic population segregated from the “exceptional” state and, in the words of Governor Wallace, the “Heart of the Great Anglo-Saxon Southland.”¹³³

What makes Alabama’s H.B. 56 stand out from other state immigration bills is the fact that it is the first to openly exclude children of undocumented migrant families from public schools and colleges. It demonstrates with extreme vehemence the end goal of expelling every undocumented migrant, with a particular emphasis towards Hispanics. The bill also instills a deep fear in the Hispanic community that, even if legally residing in the state, they will inevitably be segregated from the rest of the non-Hispanic population. Moreover, the bill sends a clear message regarding which children are most valuable to the state and the community. A review of key parts of this exclusionary policy is fundamental to understand how this dominant discourse correlates irregular migration as a threat to national and state security, as well as public safety.

Because the costs incurred by school districts for the public elementary and secondary education of children who are aliens not lawfully present in the United States can adversely affect the availability of public education resources to students who are United States citizens or are aliens lawfully present in the United States, the State of Alabama determines that there is a compelling need for the State Board of Education to accurately measure and assess the population of students who are aliens not lawfully present in the United States, in order to forecast and plan for any impact that the presence such population may have on publicly funded education in this state. The State of Alabama further finds that certain practices currently allowed in this state impede and obstruct the enforcement of federal immigration law, *undermine the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Alabama.*¹³⁴

With regard to the application of such measures, section 28 states the following:

133. Wallace, *supra* note 120.

134. H.B. 56, 56th Leg., Reg. Sess. § 2 (Ala. 2011) (emphasis added).

(a)(1) Every public elementary and secondary school in this state, at the time of enrollment in kindergarten or any grade in such school, shall determine whether the student enrolling in public school was born outside the jurisdiction of the United States or is the child of an alien not lawfully present in the United States . . . (2) The public school, when making the determination required by subdivision (1), shall rely upon presentation of the student's original birth certificate, or a certified copy thereof. . . . (5) If no such documentation or declaration is presented, the school official shall presume for the purposes of reporting under this section that the student is an alien unlawfully present in the United States.¹³⁵

Although the Eleventh Circuit Court of Appeals has temporarily blocked this section, the rest of the bill has been upheld.¹³⁶ Therefore, among other controversial provisions, the following will apply: The provision that requires police stops and detentions of people suspected of being in the country illegally, the most critical provision opposed by United States Attorney General Eric Holder, which was blocked in Arizona; full application of E-Verify; all sections that nullify contracts knowingly entered into with undocumented migrants; and the section making it a felony for an undocumented migrant to apply for a license plate, driver license, or business license.¹³⁷ As Alabama's immigration bill goes into effect, twenty-two other states are writing their own versions with the support of the same historic bloc that first wrote Arizona S.B. 1070: ALEC, CCA, FAIR, and, of course, Kansas Secretary of State Kris Kobach.¹³⁸

On June 9, 2011, the governor of Alabama, Dr. Robert J. Bentley, signed H.B. 56,¹³⁹ while declaring "We have a real problem with

135. *Id.* § 28.

136. *United States v. Alabama*, 443 F. App'x 411, 420 (11th Cir. 2011); see also Brian Lawson, *Federal Appeals Court Blocks 2 More Sections of Immigration Law, Leaves Rest Intact*, HUNTSVILLE TIMES (Oct. 14, 2011), http://blog.al.com/breaking/2011/10/appeals_court_blocks_two_more.html.

137. *United States v. Alabama*, 443 F. App'x at 419.

138. John Hill, *Judge Upholds Most of Alabama's Tough Immigration Law (Victory on H.B. 56)*, STANDWITHARIZONA (Sept. 28, 2011), <http://standwitharizona.com/blog/2011/09/28/judge-upholds-most-of-alabamas-tough-immigration-law-victory-on-h-b-56/>.

139. H.B. 56, 2011 Leg., Reg. Sess. (Ala. 2011).

illegal immigration in this country,”¹⁴⁰ and adding, “I campaigned for the toughest immigration laws and I’m proud of the Legislature for working tirelessly to create the strongest immigration bill in the country.”¹⁴¹ Governor Bentley indeed signed into law the toughest immigration law in the country;¹⁴² he also signed a law that has put forward the conditions for creating an “adultery of an illicit intercourse between injustice and immorality.”¹⁴³ As time passes, such “adultery” is showing signs of decay: The agricultural sector is collapsing, families are being destroyed,¹⁴⁴ and the danger of segregation is looming faster than was expected by the opponents of these bills.

V. FINAL REMARKS

There is no doubt that Arizona’s S.B. 1070, Georgia’s H.B. 87, Alabama’s H.B. 56, and all other similar state immigration laws that have passed or are being discussed are an amazing victory for a historic bloc that is determined to reach the unreachable dream of a White-Anglo-Saxon-Protestant country under an also unreachable state of “absolute security.”

Laine Lawless’ inflammatory remarks in her email to the National Socialist Movement were undoubtedly a discourse of hate and racial segregation. Lawless’ words, and the policies and laws that reflect their spirit, are the result of deep fear, anger, and frustration from individuals, social classes, and communities that have seen the American Dream vanishing day by day. The American Dream has in effect put blindfolds on those individuals who identify themselves with the dominant discourse. The dominant discourse is manufactured by a historic bloc that controls the state apparatuses of a capitalist

140. Peggy Gargis, *Alabama Sets Nation’s Toughest Immigration Law*, REUTERS (June 9, 2011), <http://www.reuters.com/article/2011/06/09/us-immigration-alabama-idUSTRE7584C920110609>.

141. *Id.*

142. Bob Johnson, *Alabama Immigration Law Signed by Governor Robert Bentley*, HUFFINGTON POST (June 10, 2011), http://www.huffingtonpost.com/2011/06/09/alabama-immigration-law-s_n_873868.html.

143. ANDREWS, *supra* note 1.

144. *One Hundred Reasons Why Alabama’s Immigration Law Is a Disaster*, CTR. FOR AM. PROGRESS (Nov. 21, 2011), http://www.americanprogress.org/issues/2011/11/alabama_100.html.

system where a very small minority reaps the majority of its material benefits—a historic bloc that excludes the majority of the population and cannot see the deep social inequalities and contradictions that its discourse has caused. The scapegoat, sadly for now, is the Hispanic/Mexican community that is supporting the snippets of what was to be the American Dream.