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**Ritualized Degradation in the Twenty-First  
Century:  
A Revisitation of Piven and Cloward's *Regulating  
the Poor***

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Avi Brisman\*

First published in 1971 with an updated edition in 1993, Frances Fox Piven and Richard A. Cloward's *Regulating the Poor: The Functions of Public Welfare*, stands as a searing indictment of the welfare system in the United States and as a chilling account of socioeconomically oriented public policy preceding and following the Great Depression of the 1930s and the Great Society programs of the 1960s.<sup>1</sup> (The 1971 book elaborates upon ideas regarding the functions of public welfare that the authors first presented in a series of articles published in *The Nation*; the 1993 edition adds two chapters to the original book that contemplate the period of the 1970s–1990s.) Today, *Regulating the Poor* serves as more of a historical account—in part because the categorical assistance program to which the authors devote significant attention, Aid to Families with Dependent Children (AFDC), was replaced in 1996 with the non-entitlement Temporary Assistance for Needy Families

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<sup>1</sup> FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (updated ed. 1993) [hereinafter PIVEN & CLOWARD, 1993 ed.].

(TANF) program<sup>2</sup>—sometimes referred to as the “Torture and Abuse of Needy Families” program by recipients because of humiliating experiences with caseworkers.<sup>3</sup> But given that the United States is currently mired in a recession and is headed towards a pivotal presidential reelection—two phenomena that affected relief giving in the past—it is worth revisiting this seminal text on the forty-first anniversary of its publication.<sup>4</sup>

I begin with a brief overview of *Regulating the Poor* and then proceed chapter-by-chapter through the book, highlighting Piven and Cloward’s key points and their relationship to the authors’ core contentions. Next, I note differences between the 1971 and 1993 editions before suggesting several ways in which *Regulating the Poor* can function as a useful text today—specifically with respect to contemporary issues of immigration and prison expansion.

The wife and husband duo of Piven, a professor of political science at City University of New York, and Cloward, a sociologist and faculty member at the Columbia University School of Social Work until his death in 2001, begin

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<sup>2</sup> Before 1996, an individual could receive welfare benefits for an indefinite period of time. With the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Congress replaced the AFDC program with TANF, which imposed a five-year lifetime limit on benefits, and instituted a requirement that welfare recipients work to receive those benefits. (Thus, unlike AFDC, TANF does not offer cash support to stay-at-home parents.) In addition, PRWORA imposed a ban on eligibility for TANF assistance and food stamps on individuals with drug felony convictions (i.e., drug use, possession, and distribution offenses). Avi Brisman, *Double Whammy: Collateral Consequences of Conviction and Imprisonment for Sustainable Communities and the Environment*, 28 WM. & MARY ENVTL. L. & POL’Y REV. 423, 443–45 (2004). See also DALTON CONLEY, BEING BLACK, LIVING IN THE RED: RACE, WEALTH, AND SOCIAL POLICY IN AMERICA (Univ. of Cal. Press 1999); DOUGLAS S. MASSEY, CATEGORICALLY UNEQUAL: THE AMERICAN STRATIFICATION SYSTEM 139–40, 171–74 (Russell Sage Found. 2007); MARK ROBERT RANK, ONE NATION, UNDERPRIVILEGED: WHY AMERICAN POVERTY AFFECTS US ALL 110–11, 135–38 (Oxford Univ. Press 2004).

<sup>3</sup> Barbara Ehrenreich, *A Homespun Safety Net*, N.Y. TIMES, July 11, 2009, <http://www.nytimes.com/2009/07/12/opinion/12ehrenreich.html>.

<sup>4</sup> Peter S. Goodman, *From Welfare Shift in ‘96, a Reminder for Clinton*, N.Y. TIMES, Apr. 11, 2008, <http://www.nytimes.com/2008/04/11/us/politics/11welfare.html>.

their classic work by clearly stating their main argument: relief programs do not reflect a historical pattern of progressive liberalization or increasing compassion; instead, they serve a larger economic, political, and social purpose to ensure control and to force the poor into the labor market.<sup>5</sup> More specifically, the authors argue that when economic convulsions and mass unemployment lead to outbreaks of social turmoil and unrest, relief policies expand and welfare rolls rise to maintain civil order. When the turbulence subsides, relief systems contract to reinforce work norms and ensure a steady supply of low-wage labor for employers. Piven and Cloward never waiver from their assertion that relief arrangements maintain social and economic inequities, and they conclude with a number of proposals for reform that are as relevant forty-one years ago (or nineteen years ago) as they are today.

Chapter 1 expands upon the thesis that relief programs serve “disorder-moderating”<sup>6</sup> and labor-regulating functions, adding a crucial element to this formulation. Whereas the contraction of the relief system in post-turbulent times expels those who are needed in the labor market, it retains “the aged, the disabled, the insane and others who are no use as workers”—leaving them on the relief rolls and treating them in such degrading and punitive ways as to instill fear in the working-able of what will transpire if they do not work and become beggars instead.<sup>7</sup> The chapter traces the genealogy of this phenomenon, from pre-capitalist times (when the poor were limited in their displays of discontent to begging, stealing, marching, burning, and/or rioting)

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<sup>5</sup> PIVEN & CLOWARD, 1993 ed., *supra* note 1, at 3. I am aware and sensitive to the fact that some might find the use of “poor” as a noun (rather than as an adjective) to be disrespectful to those individuals living in poverty. My purpose in employing the term “the poor” is to maintain fidelity to the language used by Piven and Cloward. As such, in this revisitation of *Regulating the Poor: The Functions of Public Welfare*, readers will encounter terms such as “blacks” (instead of “African Americans”), “welfare mothers” (instead of “mothers dependent upon welfare”), “the aged” or “the old” (instead of “the elderly”), and “the infirm” (instead of “disabled persons” or “differently-abled persons”) because these are the terms that appear in Piven and Cloward’s text. When discussing present circumstances, I will employ the vernacular of today (e.g., “African Americans” instead of “blacks”).

<sup>6</sup> *Id.* at 409.

<sup>7</sup> *Id.* at 3.

to complex capitalist societies, in which the electoral system, with universal franchise, channels disaffection from disorder in the streets to the voting booth—the effect of which is pressure on electoral leaders to expand relief programs at times of political crisis engendered by economic distress.<sup>8</sup>

Chapters 2 and 3 focus on the rise of mass disorder and the launching of the national relief programs during the Great Depression, as well as the consequences that relief giving had for controlling disorder. In keeping with their thesis about the function of relief, Piven and Cloward assert that the country's unprecedented volume of relief giving was not a response to widespread economic distress. In fact, a considerable amount of time elapsed and millions of people suffered unemployment and hardship before the federal government responded first with direct relief and then with work relief (in the form of Works Progress Administration [WPA] projects). Piven and Cloward assert that the rising surge of political unrest accompanying this economic catastrophe finally led the federal government to offer aid. Once relief giving expanded and the unrest rapidly subsided, aid was cut back.

If chapters 2 and 3 show how public relief arrangements are initiated or expanded to cope with serious threats to civil order posed by large and volatile masses of unemployed people, then chapters 4 and 5 exhibit how relief arrangements reinforce work norms. Turning their attention to the relatively stable years of the 1940s and 1950s, Piven and Cloward examine the AFDC program and the diverse ways in which states implemented it. The authors focus on the South, describing how Southern states instituted special provisions designed to keep blacks in the labor pool, such as “man-in-the-house” rules, which denied aid to any mother who was in any way associated with a man,<sup>9</sup> and residency laws, which typically resulted in denial of aid to

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<sup>8</sup> See generally Sheryl Gay Stolberg, *Advocates of an Immigration Overhaul Question a Border Deployment*, N.Y. TIMES, May 27, 2010, at A22.

<sup>9</sup> For an example of Washington, DC's “man-in-the-house” rule, which excluded women from receiving aid if there was an employable male in the household, see ELLIOTT LIEBOW, TALLY'S CORNER: A STUDY OF NEGRO STREETCORNER MEN 95 n.5 (updated ed. 2003).

those who had not lived in the state for at least one year, thereby cementing the relationship between the regional welfare system and the regional economy.<sup>10</sup>

Having outlined the contours of the AFDC program and the realities of relief practice in chapters 4 and 5, Piven and Cloward devote chapters 6–10 to the economic sources of disorder that erupted and spread during the 1960s and that culminated in the growth of the relief rolls, especially in the years following 1964. Chapter 6 broadly describes some of the dimensions of, and explanations for, the “welfare explosion.” Chapter 7 digs deeper, exposing the impact of agricultural modernization on the Southern poor, and again concluding that economic convulsions that thrust large numbers of individuals out of the occupational system and into near starvation do not alone account for relief giving. Only when economic disruption and displacement produce disorder and turmoil that threaten the political status quo, Piven and Cloward argue, does government respond by allowing relief rolls to expand. As such, Piven and Cloward assert, relief expansion is not a response to economic need, but to political and social unrest—which may help to explain why we are not presently seeing government welfare programs respond adequately to the current unemployment crisis.<sup>11</sup>

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<sup>10</sup> Southern states, which could no longer rely on slavery, wanted to ensure a steady mass of cheap, black labor. In order to ensure a steady labor pool, they imposed residency requirements for obtaining relief. Any poor, black family wishing to move would have to consider the repercussions—a year’s time without the possibility of aid in the new place.

<sup>11</sup> See, e.g., Julie Bosman, *Despite U.S. Offer, City Stands Firm on Food Stamps*, N.Y. TIMES, Feb. 17, 2009, <http://www.nytimes.com/2009/02/18/nyregion/18stamps.html>; Jason Deparle, *American Welfare System Failing To Grow as Economy Lags*, N.Y. TIMES, Feb. 2, 2009, <http://www.nytimes.com/2009/02/02/world/americas/02iht-02welfare.19857008.html>; Erik Eckholm, *Safety Net Is Fraying for the Very Poor*, N.Y. TIMES, July 4, 2009, <http://www.nytimes.com/2009/07/05/us/05safetynet.html>; Ehrenreich, *supra* note 3; Editorial, *Food Stamps in Hard Times*, N.Y. TIMES, Feb. 24, 2009, <http://www.nytimes.com/2009/02/25/opinion/25wed3.html>; Carl Hulse, *Bill to Extend Jobless Benefits Stalls in House*, N.Y. TIMES, June 12, 2008, <http://www.nytimes.com/2008/06/12/washington/12jobless.html>; Michael Luo, *Jobless Angry at Possibility of No Benefits*, N.Y. TIMES, Feb. 26, 2009, <http://www.nytimes.com/2009/02/27/us/27govs.html>; Editorial, *No Welfare, No Work*, N.Y. TIMES, Feb. 8, 2009, <http://www.nytimes.com/2009/02/09/opinion/09mon2.html>; cf. Julie Bosman, *Welfare Checks to Increase for First Time in 19 Years*, N.Y. TIMES, July 5, 2009,

The authors begin chapter 8 by stating that in the 1950s, large numbers of “economically obsolete rural poor”<sup>12</sup> migrated to the cities—particularly Northern cities—but that they were neither absorbed into the urban economy nor admitted to the welfare rolls. Why, then, did AFDC caseloads rise so rapidly in the 1960s, especially after 1964? And why did it take so long? Piven and Cloward attribute changing federal interest in the plight of the now-urban poor to a political crisis—the growing blocs of black voters in the North and the impact of this voting bloc on national political alignments (i.e., the North-South alliance in the national Democratic Party). Chapter 8, which reads a bit like a history of voting patterns, thus sets the stage for chapter 9, where Piven and Cloward explain how the federal government intervened in local relief arrangements in the 1960s in a novel way. According to the authors, instead of liberalizing the existing welfare system through legislative enactments and amendments, the federal government proceeded indirectly, through a series of measures that had the effect of mobilizing pressure against local relief restrictions (such as establishing welfare rights services, promoting litigation, and nourishing grass-roots organizations).<sup>13</sup>

In chapter 10, Piven and Cloward make clear that in the 1960s, national political leaders did not intend for relief rolls to rise. But the political

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<http://www.nytimes.com/2009/07/06/nyregion/06welfare.html>; Erik Eckholm, *As Jobs Vanish and Prices Rise, Food Stamp Use Nears Record*, N.Y. TIMES, Mar. 31, 2008, <http://www.nytimes.com/2008/03/31/us/31foodstamps.html>; Rachel L. Swarns, *State Programs Add Safety Net for the Poorest*, N.Y. TIMES, May 12, 2008, <http://www.nytimes.com/2008/05/12/us/12welfare.html>.

As of fall 2011, we are still experiencing economic convulsions. But instead of witnessing the expansion of social safety nets, we are experiencing massive cutbacks at the state and federal levels. While these cutbacks are occurring for a number of reasons, one could argue that (in light of Piven and Cloward’s analysis) such reductions are a reflection of a lack of political or social unrest—or, in light of the recent Occupy Wall Street demonstrations and related “Occupy” protests, a reflection of a lack of sufficient political or social unrest.

<sup>12</sup> PIVEN & CLOWARD, 1993 ed., *supra* note 1, at 222.

<sup>13</sup> See IDA SUSSER, *NORMAN STREET: POVERTY AND POLITICS IN AN URBAN NEIGHBORHOOD* 61, 77 (Oxford Univ. Press 1982) (discussing the component of Piven and Cloward’s analysis of welfare in the 1960s focused on mobilization efforts that exerted pressure against local relief restrictions).

circumstances of the 1960s made it crucial for elected officials to do *something* for blacks in order to “solidify [black] allegiance to the national Democratic Party, and in order to quiet them.”<sup>14</sup> Welfare, the authors contend, was the system that made the most sense because blacks “needed money,” and it was far easier (and cheaper) to grant relief than to make concessions and press for changes in housing, healthcare, education, and employment policies and practices.<sup>15</sup> “[A] placid poor get nothing,” Piven and Cloward lament, “but a turbulent poor sometimes get something.”<sup>16</sup>

In the epilogue to the 1971 edition, Piven and Cloward reiterate their suspicion of work-enforcing arrangements, arguing that such measures simply perpetuate and trap the poor in a pattern of expansion and contraction of relief rolls depending on the extent of economic stability and threat of civil chaos. They call for reforms in economic policy that would lead to full employment at decent wages (although they are not particularly sanguine about fundamental reforms in economic policy). Piven and Cloward then make one of their boldest assertions—that “relief explosion”<sup>17</sup> *is* true relief reform because a large number of unemployed and underemployed individuals obtain aid who might otherwise have been forced to subsist without jobs or income.<sup>18</sup>

Although the 1993 edition of *Regulating the Poor* omits the original epilogue, Piven and Cloward hold fast to the positions articulated in the 1971 edition. Chapter 11 of the newer version provides a lengthy account of the work-enforcing campaign that evolved in the aftermath of the welfare explosion of the 1960s (including welfare-to-work reforms, such as work incentive programs, workfare programs, job search programs, and education

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<sup>14</sup> PIVEN & CLOWARD, 1993 ed., *supra* note 1, at 286.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 338.

<sup>17</sup> Piven and Cloward use the terms “relief explosion” and “welfare explosion” interchangeably throughout their book. *See, e.g.*, PIVEN & CLOWARD, 1993 ed., *supra* note 1, at 124, 196, 338 (for “relief explosion”); *id.* at 183–99 (for “welfare explosion”).

<sup>18</sup> *Id.* at 342.



and training programs.)<sup>19</sup> The authors explain this restrictive turn in relief policy and practices (while outlining the failures of workfare) and show how degraded welfare mothers took on the labor-regulating role once played by the old and infirm (discussed in chapter 1), entirely consistent with the historic uses of welfare to enforce market discipline.

Finally, chapter 12 examines Piven and Cloward's theoretical perspective in comparison to the literature on welfare state development in the rich countries of the West since 1971. The short appendix to chapter 12 reviews and briefly responds to some of the published empirical studies that test the propositions contained in *Regulating the Poor*. It serves as a quick overview of some of the scholarly responses to Piven and Cloward's work, and it provides a snapshot of the sub-discipline of social welfare history in the last twenty years.

In revisiting *Regulating the Poor*, it is not necessary to rewind to the 1970s (or the 1990s) and assess the Marxian analysis and predictive potential of Piven and Cloward's work without the benefit of forty-one (or nineteen) years of history.<sup>20</sup> Rather, I wish to take this opportunity to suggest several ways in

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<sup>19</sup> Welfare-to-work programs are generally designed to assist welfare recipients in obtaining or preparing for employment. Note, however, that different types of welfare-to-work programs emphasize different goals. For example, some are set up with the chief goal of increasing participants' income with financial incentives or earnings supplements intended to encourage work. (Although these programs are often efficient mechanisms for transferring income to poor families, they tend to result in a net cost for the government.) Other programs are intended to reduce government expenditures by requiring individuals to look for jobs immediately and by assigning other activities if work is not found. (Although these programs benefit government budgets, they tend to result in small benefits or even net costs for the participants.)

<sup>20</sup> See PIVEN & CLOWARD, 1993 ed., *supra* note 1, at ch.12 app. (Vintage Books updated ed. 1993) (discussing how scholars and critics first, or later, received the original edition of the book); see, e.g., KIRSTEN GRØNBJERG, *MASS SOCIETY AND THE EXTENSION OF WELFARE: 1960–1970* (Univ. of Chi. Press 1977) (providing a sociological study of welfare in the United States, including discussion of the welfare system's growth and transformation); *SOCIAL WELFARE OR SOCIAL CONTROL?: SOME HISTORICAL REFLECTIONS ON REGULATING THE POOR* (Walter I. Trattner ed., Univ. of Tenn. Press 1983); Robert B. Albritton, *Social Amelioration Through Mass Insurgency? A Reexamination of the Piven and Cloward Thesis*, 73 AM. POL. SCI. REV. 1003 (1979) (using empirical data to refute Piven and Cloward's thesis that mass insurgency led the government to massively expand welfare rolls); Michael Betz, Book Review, 50 SOC. FORCES 543 (1972) (reviewing FRANCES FOX

which *Regulating the Poor* can function as a useful text today (aside from providing an historical account of welfare programs in the United States).

First, Piven and Cloward assert that “[w]hen a particular racial group does the most menial work for the lowest wages, the relief system cooperates by reducing the amount of aid to that group or by closing off the possibility of any aid whatsoever.”<sup>21</sup> In the 1970s, and even into the early 1990s, this meant blacks. But in the 1990s, the number of undocumented immigrants grew by 770,000 a year, thus allowing for a different racial group to become subject to such systemic exploitation.<sup>22</sup> Today, immigrants from Central and South

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PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR* (1971)) (recommending the book, while also suggesting the need for a wider examination of history in light of the “broad” nature of Piven and Cloward’s thesis); Michael Betz, *Riots and Welfare: Are They Related?*, 21 *SOC. PROBLEMS* 345 (1974) (finding larger welfare budgetary increases in cities in which riots had recently occurred, as compared with non-riot cities); Thomas Blau, Book Review, 78 *AM. J. SOC.* 444 (1972) (reviewing FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR* (1971) and suggesting that “Piven and Cloward’s idea of what welfare ought to be . . . is too simple”); Laurel Graeber, *New & Noteworthy Paperbacks*, Book Review, *N.Y. TIMES*, Dec. 26, 1993, <http://www.nytimes.com/1993/12/26/books/new-noteworthy-paperbacks-864993.html?pagewanted=2> (reviewing FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR* (1993) and discussing the importance of the authors’ analyses of the Reagan and Bush years in the new edition of the book); Alexander Hicks & Duane H. Swank, *Civil Disorder, Relief Mobilization and AFDC Caseloads: A Reexamination of the Piven and Cloward Thesis*, 27 *AM. J. POL. SCI.* 695 (1983) (using time-series analyses to conclude that Piven and Cloward’s explanation of AFDC caseload increases are “incomplete at best”); Lance Liebman, *Boss: Richard J. Daley of Chicago; Regulating the Poor*, 85 *HARV. L. REV.* 1682 (1972) (book review) (discussing the differing approaches to poverty of Mayor Daley and Pivens and Cloward); William A. Muraskin, Book Review, 4 *CONTEMP. SOC.* 607 (1975) (reviewing FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR* (1971) and suggesting that while Piven and Cloward are leading expounders of the “social control” interpretation of American society, their explanation of the causes of expanded welfare relief rolls is actually inconsistent with the social control thesis); Elaine B. Sharp & Steven Maynard-Moody, *Theories of the Local Welfare Role*, 35 *AM. J. OF POL. SCI.* 934 (1991) (examining competing explanations of variations in local governments’ welfare activity and finding that only the fiscal capacity and social disturbance explanations are empirically supported); Peter Steinfelds, Book Review, *N.Y. TIMES*, July 18, 1971, at BR1 (reviewing *REGULATING THE POOR*).

<sup>21</sup> PIVEN & CLOWARD, 1993 ed., *supra* note 1, at 133.

<sup>22</sup> David Leonhardt, *The Border and the Ballot Box*, *N.Y. TIMES*, Mar. 2, 2008, <http://www.nytimes.com/2008/03/02/weekinreview/02leonhardt.html>. However, according to Bill Keller, this has changed:

America perform the most menial work for the lowest wages.<sup>23</sup> How to address the influx of individuals across the border and how to treat immigrants once they arrive were highly contentious matters in the 2008 presidential campaigns of both parties,<sup>24</sup> and they continue to be prominent issues at city, state and federal levels.<sup>25</sup> At the state level, Arizona has led the way with its infamous

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[I]llegal immigration is falling, sharply, a result of tougher enforcement in the decade since the 9/11 attacks and an anemic American job market. Border policing is at an all-time high. Deportations are way up under Obama. The estimated population of illegal residents has fallen by about one million from its peak of 12 million in 2007.

Bill Keller, *The Good Newt*, N.Y. TIMES, Dec. 11, 2011,

<http://www.nytimes.com/2011/12/12/opinion/keller-the-good-newt.html>.

<sup>23</sup> See generally JON WITT, SOC 278 (2d ed. 2011) (“From the Mexican point of view, the United States too often regards Mexico simply as a reserve pool of cheap labor, encouraging Mexicans to cross the border when workers are needed but discouraging and cracking down on them when they are not”); Keller, *supra* note 22 (“The impact of illegal labor on native employment may be marginal, but it hits hardest at the bottom, displacing those with a high school education or less, who are already the victims of recession and diminishing wages.”).

<sup>24</sup> See, e.g., Paul Krugman, *Seeking Willie Horton*, N.Y. TIMES, Aug. 24, 2007, <http://www.nytimes.com/2007/08/24/opinion/24krugman.html>.

<sup>25</sup> See, e.g., Associated Press, *National Briefing: Plaints: Nebraska: Mixed Ruling on Immigration Crackdown*, N.Y. TIMES, Feb. 21, 2012, at A11; Nina Bernstein, *Dependent on Jail, City of Immigrants Fills Cells With Its Own*, N.Y. TIMES, Dec. 27, 2008, at A1; Jason DeParle, *The Anti-Immigration Crusader*, N.Y. TIMES, Apr. 17, 2011, <http://www.nytimes.com/2011/04/17/us/17immig.html?pagewanted=all>; Editorial, *And Unequal Justice for Some*, N.Y. TIMES, Feb. 24, 2009, <http://www.nytimes.com/2009/02/25/opinion/25wed2.html>; Editorial, *Border Fantasies*, N.Y. TIMES, Sept. 21, 2009, <http://www.nytimes.com/2009/09/22/opinion/22tue3.html>; Editorial, *Immigration and the Campaign*, N.Y. TIMES, Feb. 21, 2012, at A24; Bob Fredericks, *Bloomberg’s Immigration Rx: Send Aliens to Detroit*, THE N.Y. POST, May 2, 2011, <http://bx.businessweek.com/auto-industry/view?url=http%3A%2F%2Fwww.moreover.com%2Fclick%2Fhere.pl%3Fr4574642236%26f%3D9791>; Laura J. Hickman & Marika J. Suttrop, *Are Deportable Aliens a Unique Threat to Public Safety? Comparing the Recidivism of Deportable and Nondeportable Aliens*, 7 CRIMINOLOGY & PUB. POL’Y 59 (2008); Liz Goodwin, *Years after immigration raid, Iowa town feels poorer and less stable*, YAHOO! NEWS, Dec. 7, 2011, <http://news.yahoo.com/blogs/lookout/years-immigration-raid-iowa-town-feels-poorer-less-133035414.html>; Solomon Moore, *Focus on Immigration Crimes Is Said to Shortchange Other Cases*, N.Y. TIMES, Jan. 12, 2009, at A1; Solomon Moore, *Hispanics Are Largest Ethnic Group in Federal Prisons, Study Shows*, N.Y. TIMES, Feb. 19, 2009, at A14; Julia Preston, *A Professor Fights Illegal Immigration One Court at a Time*, N.Y. TIMES, July 21,

Support Our Law Enforcement and Safe Neighborhoods Act, which was introduced as Arizona Senate Bill 1070, subsequently modified by Arizona House Bill 2162, and signed into law by Governor Jan Brewer on April 23, 2010 (although legal challenges have so far blocked the law's most controversial provisions).<sup>26</sup> Despite the litigation over the constitutionality of

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2009, at A10; Julia Preston, *Illegal Workers Swept From Jobs in 'Silent Raids,'* N.Y. TIMES, July 9, 2010, <http://www.nytimes.com/2010/07/10/us/10enforce.html?pagewanted=all>; Julia Preston, *Immigration Vote Leaves Policy in Disarray,* N.Y. TIMES, Dec. 18, 2010, <http://www.nytimes.com/2010/12/19/us/politics/19dream.html>; Julia Preston, *A Potential Obama Ally Becomes an Outspoken Foe on Immigration,* N.Y. TIMES, May 28, 2010, <http://www.nytimes.com/2010/05/29/us/politics/29gutierrez.html?pagewanted=all>; Albor Ruiz, *President Obama Breaks Hearts with Contradiction on Immigration Issue,* NYDAILYNEWS.COM, Oct. 19, 2011, [http://articles.nydailynews.com/2011-10-19/news/30314563\\_1\\_immigration-policy-immigration-community-sexual-abuse](http://articles.nydailynews.com/2011-10-19/news/30314563_1_immigration-policy-immigration-community-sexual-abuse); Editorial, *Breaking Through the Clouds at the Debate,* N.Y. TIMES, Nov. 23, 2011, <http://www.nytimes.com/2011/11/24/opinion/breaking-through-the-clouds-at-the-debate.html>; Jeff Zeleny & Trip Gabriel, *Gingrich's Words on Immigration Become a Target,* N.Y. TIMES, Nov. 23, 2011, <http://www.nytimes.com/2011/11/24/us/politics/newt-gingrichs-words-on-immigration-become-a-target.html?pagewanted=all>. See also Gideon Sjoberg, *The Preindustrial City,* in URBAN LIFE: READINGS IN THE ANTHROPOLOGY OF THE CITY 20, 20–31 (George Gmelch & Walter P. Zenner eds., Waveland Press, 4th ed. 2002). Cf. David Schaper, *A Look At Iowa's First Majority Hispanic Town* (NPR radio broadcast, Oct. 10, 2011), <http://www.npr.org/2011/10/10/141150607/west-liberty-is-iowas-first-majority-hispanic-town> (reporting that “[a]t a time when many communities around the country struggle with an anti-immigrant and anti-Latino backlash, West Liberty [Iowa] is embracing and celebrating its cultural diversity”).

<sup>26</sup> Support Our Law Enforcement and Safe Neighborhoods Act, S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010), available at [http://www.azleg.gov/DocumentsForBill.asp?Bill\\_Number=1070&Session\\_Id=93&image.x=0&image.y=0](http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=1070&Session_Id=93&image.x=0&image.y=0). Those interested in the background to, passage of, and legal challenges to the Support Our Law Enforcement and Safe Neighborhoods Act, as well as national and international reactions thereto should consult Robbie Brown, *Parts of Immigration Law Blocked in South Carolina,* N.Y. TIMES, Dec. 22, 2011, [http://www.nytimes.com/2011/12/23/us/judge-blocks-parts-of-south-carolinas-immigration-law.html?\\_r=1](http://www.nytimes.com/2011/12/23/us/judge-blocks-parts-of-south-carolinas-immigration-law.html?_r=1); Marc Lacey, *Judge Finds Manipulation in Recall Vote in Arizona,* N.Y. TIMES, Oct. 8, 2011, <http://www.nytimes.com/2011/10/09/us/politics/judge-finds-manipulation-in-recall-vote-in-arizona.html>; Op-Ed, Larry A. Dever, *Abandoned on the Border,* N.Y. TIMES, May 12, 2011, <http://www.nytimes.com/2011/05/13/opinion/13Dever.html>; Marc Lacey, *Appeals Court Rules Against Arizona Law,* N.Y. TIMES, Apr. 11, 2011, <http://www.nytimes.com/2011/04/12/us/12arizona.html>; Editorial, *Arizona Flinches,* N.Y.

TIMES, Mar. 21, 2011, <http://www.nytimes.com/2011/03/22/opinion/22tue3.html>; Richard A. Oppel, Jr., *Arizona, Bowing to Business, Softens Stand on Immigration*, N.Y. TIMES, Mar. 18, 2011, <http://www.nytimes.com/2011/03/19/us/19immigration.html>; Associated Press, *Arizona Senate Rejects 5 Bills On Immigration*, N.Y. TIMES, Mar. 17, 2011, <http://www.nytimes.com/2011/03/18/us/18arizona.html>; Marc Lacey, *Hispanics Are Surging in Arizona*, N.Y. TIMES, Mar. 10, 2011, <http://www.nytimes.com/2011/03/11/us/11arizona.html>; Editorial, *The Anti-Arizonans*, N.Y. TIMES, Mar. 4, 2011, <http://www.nytimes.com/2011/03/05/opinion/05sat1.html>; Marc Lacey, *Arizona Lawmakers Push New Round of Immigration Restrictions*, N.Y. TIMES, Feb. 23, 2011, <http://www.nytimes.com/2011/02/24/us/24arizona.html>; Alan Gomez, *Ariz. Feels Negative 'Ripple Effect' Over Border Law*, USA TODAY, Nov. 19, 2010, at A3; Jennifer Medina, *Federal Appeals Court Weighs Arizona Law on Immigrants*, N.Y. TIMES, Nov. 1, 2010, <http://www.nytimes.com/2010/11/02/us/02immig.html>; Jeremy W. Peters, *Mormon-Owned Paper Stands with Immigrants*, N.Y. TIMES, Sept. 19, 2010, <http://www.nytimes.com/2010/09/20/business/media/20deseret.html>; Lawrence Downes, *The Hunt for American Decency in the Arizona Quicksand*, N.Y. TIMES, Aug. 3, 2010, <http://www.nytimes.com/2010/08/04/opinion/04wed4.html>; Associated Press, *National Briefing: West-Arizona: Movement, Perhaps, on Immigration Law*, N.Y. TIMES, July 31, 2010, <http://query.nytimes.com/gst/fullpage.html?res=9803E3D7153DF932A05754C0A9669D8B63&scp=1&sq=NATIONAL%20BRIEFING%20%20WEST;%20Arizona:%20Movement,%20Perhaps,%20On%20Immigration%20Law&st=cse&emc=eta1>; Randal C. Archibold, *Emotions Flare After Immigration Law Is Blocked*, N.Y. TIMES, July 29, 2010, <http://www.nytimes.com/2010/07/30/us/30arizona.html>; Tim Gaynor, *Judge Zaps 'Zona: KOs Toughest Parts of Immig Law*, N.Y. POST, July 29, 2010, [http://www.nypost.com/p/news/national/judge\\_zaps\\_zona\\_REFjUoR5CiZYeWUxUc2vCN](http://www.nypost.com/p/news/national/judge_zaps_zona_REFjUoR5CiZYeWUxUc2vCN); Randal C. Archibold, *Judge Blocks Arizona's Immigration Law*, N.Y. TIMES, July 28, 2010, <http://www.nytimes.com/2010/07/29/us/29arizona.html>; Editorial, *Showdown in Arizona*, N.Y. TIMES, July 28, 2010, <http://www.nytimes.com/2010/07/29/opinion/29thu1.html>; Jay Bookman, *Judge Blocks Key Portions of Arizona's Controversial Immigration Law*, ATLANTA JOURNAL-CONSTITUTION, July 28, 2010, <http://blogs.ajc.com/jay-bookman-blog/2010/07/28/judge-tosses-key-portions-of-arizonas-controversial-immigration-law/?cp=2>; James C. McKinley, Jr., *U.S. Lays Out Case Against Arizona Law*, N.Y. TIMES, July 22, 2010, <http://www.nytimes.com/2010/07/23/us/23arizona.html>; Randal C. Archibold, *Arizona Challenge Does Not Focus on Profiling*, N.Y. TIMES, July 7, 2010, <http://www.nytimes.com/2010/07/08/us/08immig.html>; Editorial, *The Constitution Trumps Arizona*, N.Y. TIMES, July 7, 2010, <http://www.nytimes.com/2010/07/08/opinion/08thu1.html>; Randal C. Archibold, *Arizona Law Causes Split for Border Governors*, N.Y. TIMES, July 6, 2010, <http://www.nytimes.com/2010/07/07/us/07governors.html>; Editorial, *Another Bad Idea from Arizona*, N.Y. TIMES, June 19, 2010, <http://www.nytimes.com/2010/06/20/opinion/20sun2.html>; Randal C. Archibold, *On Border Violence, Truth Pales Compared to Ideas*, N.Y. TIMES, June 19, 2010, <http://www.nytimes.com/2010/06/20/us/20crime.html>; Randal C. Archibold & Mark Landler, *Justice Dept. Will Fight Arizona on Immigration*, N.Y. TIMES, June 18, 2010,

<http://www.nytimes.com/2010/06/19/us/politics/19arizona.html>; Erik Eckholm, *A Race for Governor of Arizona, with a Lap in New York*, N.Y. TIMES, June 12, 2010, <http://www.nytimes.com/2010/06/13/us/politics/13immig.html>; Randal C. Archibold, *Foes and Supporters of New Immigration Law Gather in Arizona*, N.Y. TIMES, May 29, 2010, <http://www.nytimes.com/2010/05/30/us/30immig.html>; Associated Press, *Arizona: Justice Department Voices Concern About Immigration Law*, N.Y. TIMES, May 28, 2010, [http://www.nytimes.com/2010/05/29/us/29brfs-JUSTICEDEPAR\\_BRF.html](http://www.nytimes.com/2010/05/29/us/29brfs-JUSTICEDEPAR_BRF.html); Brian Knowlton, *Calderón Again Assails Arizona Law on Detention*, N.Y. TIMES, May 20, 2010, <http://www.nytimes.com/2010/05/21/world/americas/21calderon.html>; Editorial, *Courage in Arizona*, N.Y. TIMES, May 19, 2010, <http://www.nytimes.com/2010/05/20/opinion/20thu2.html>; Damien Cave, *A Generation Gap Over Immigration*, N.Y. TIMES, May 17, 2010, <http://www.nytimes.com/2010/05/18/us/18divide.html>; Editorial, *Los Suns*, N.Y. TIMES, May 7, 2010, <http://www.nytimes.com/2010/05/08/opinion/08sat4.html>; Randal C. Archibold & Ana Facio Contreras, *First Legal Challenges to New Arizona Law*, N.Y. TIMES, Apr. 29, 2010, <http://www.nytimes.com/2010/04/30/us/30reaction.html>; Monica Davey & Michael S. Schmidt, *Diamondbacks Face Backlash over Immigration Law*, N.Y. TIMES, Apr. 29, 2010, <http://www.nytimes.com/2010/04/30/us/politics/30cubs.html>; Editorial, *Stopping Arizona*, N.Y. TIMES, Apr. 29, 2010, <http://www.nytimes.com/2010/04/30/opinion/30fri1.html>; Gail Collins, Op-Ed., *Red, Blue and Broke*, N.Y. TIMES, Apr. 28, 2010, <http://www.nytimes.com/2010/04/29/opinion/29collins.html>; 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>; Marc Lacey, *For Migrants, New Law Is Just Another Challenge*, N.Y. TIMES, Apr. 28, 2010, <http://www.nytimes.com/2010/04/29/world/americas/29mexico.html>; Randal C. Archibold, *Growing Split in Arizona Over Immigration*, N.Y. TIMES, Apr. 25, 2010, <http://www.nytimes.com/2010/04/26/us/26immig.html>; Randal C. Archibold, *Unexpected Governor Takes an Unwavering Course*, N.Y. TIMES, Apr. 24, 2010, <http://www.nytimes.com/2010/04/25/us/25brewer.html>; Randal C. Archibold, *Arizona Enacts Stringent Law on Immigration*, N.Y. TIMES, Apr. 23, 2010, <http://www.nytimes.com/2010/04/24/us/politics/24immig.html>; Randal C. Archibold, *Arizona's Efforts to Bolster Local Immigration Authority Divides Law Enforcement*, N.Y. TIMES, Apr. 21, 2010, <http://www.nytimes.com/2010/04/22/us/22immig.html>; Randal C. Archibold & Jennifer Steinhauer, *Welcome to Arizona, Desert Outpost of Contradictions*, N.Y. TIMES, Apr. 28, 2010, <http://www.nytimes.com/2010/04/29/us/29arizona.html>; Randal C. Archibold, *Immigration Bill Reflects a Firebrand's Impact*, N.Y. TIMES, Apr. 19, 2010, <http://www.nytimes.com/2010/04/20/us/20immig.html>; Editorial, *Arizona Goes Over the Edge*, N.Y. TIMES, Apr. 17, 2010, <http://www.nytimes.com/2010/04/18/opinion/18sun3.html>; Editorial, *Wrong Paths to Immigration Reform*, N.Y. TIMES, Oct. 11, 2009, <http://www.nytimes.com/2009/10/12/opinion/12mon2.html>; Randal C. Archibold, *Immigration Hard-Liner Has His Wings Clipped*, N.Y. TIMES, Oct. 6, 2009, <http://www.nytimes.com/2009/10/07/us/07arizona.html>; Jesse McKinley & Malia Wollan, *New Border Fear: Violence by a Rogue Militia*, N.Y. TIMES, June 26, 2009,

the Support Our Law Enforcement and Safe Neighborhoods Act, states such as Alabama, Georgia, Indiana, South Carolina, Utah, and Virginia have attempted to follow Arizona's lead with their own strict anti-immigration measures.<sup>27</sup>

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<http://www.nytimes.com/2009/06/27/us/27arizona.html>; William Finnegan, *Sheriff Joe*, NEW YORKER, July 20, 2009, at 42; Paul Giblin, *National Briefing: Southwest—Arizona: Inquiry Into County Sheriff's Office*, N.Y. TIMES, Mar. 11, 2009, <http://query.nytimes.com/gst/fullpage.html?res=9504E3D71F30F932A25750C0A96F9C8B63>.

<sup>27</sup> For a discussion of Alabama's strict new immigration law, see, e.g., Associated Press, *Alabama: U.S. Appeals Immigration Ruling*, N.Y. TIMES, Oct. 7, 2011, <http://www.nytimes.com/2011/10/08/us/alabama-us-appeals-immigration-ruling.html>; Associated Press, *Alabama: Traffic-Stop Arrest Draws Attention of Governor*, N.Y. TIMES, Nov. 19, 2011, <http://query.nytimes.com/gst/fullpage.html?res=9D03EFD61631F93AA25752C1A9679D8B63>; Associated Press, *National Briefing: South: Alabama: Setback for Immigration Law*, N.Y. TIMES, Nov. 23, 2011, <http://www.nytimes.com/2011/11/24/us/alabama-setback-for-immigration-law.html>; John Bacon, *Wis. Gov. Walker Foes Work on Recall Effort: 13 Arrested at Ala. Immigration Protest*, USA TODAY, Nov. 16, 2011, at 3A; Editorial, *Standing in the Schoolhouse Door*, N.Y. TIMES, Nov. 5, 2011, <http://www.nytimes.com/2011/11/06/opinion/sunday/standing-in-the-schoolhouse-door.html>; Julia Preston, *National Briefing: South: Alabama: Judge Delays Tough Immigration Law*, N.Y. TIMES, Aug. 29, 2011, <http://www.nytimes.com/2011/08/30/us/30brfs-Alabama.html>; Campbell Robertson, *After Ruling, Hispanics Flee an Alabama Town*, N.Y. TIMES, Oct. 3, 2011, <http://www.nytimes.com/2011/10/04/us/after-ruling-hispanics-flee-an-alabama-town.html?pagewanted=all>; John Schwartz, *National Briefing: South: Alabama: Immigration Law To Stay In Place During Appeal*, N.Y. TIMES, Oct. 5, 2011, <http://www.nytimes.com/2011/10/06/us/in-alabama-immigration-law-to-stay-in-place-during-appeal.html>.

For a discussion of Alabama's immigration law—what has been referred to as “the country's cruelest, most unforgiving immigration law”—in comparison to immigration measures passed in Arizona, Georgia, Indiana, and Utah, see Editorial, *The Nation's Cruelest Immigration Law*, N.Y. TIMES, Aug. 29, 2011, A22.

For a discussion of Georgia's draconian immigration measures, see, for example, Robbie Brown, *Student's Arrest Tests Immigration Policy*, N.Y. TIMES, May 14, 2010, <http://www.nytimes.com/2010/05/15/us/15student.html>; Robbie Brown, *Georgia Gives Police Added Power to Seek Out Illegal Immigrants*, N.Y. TIMES, May 13, 2011, <http://www.nytimes.com/2011/05/14/us/14georgia.html>; Julia Preston & Robert Gebeloff, *Unlicensed Drivers Who Risk More Than a Fine*, N.Y. TIMES, Dec. 10, 2010, at A1; Kim Severson, *Parts of Georgia Immigration Law Blocked*, N.Y. TIMES, June 28, 2011, at A17.

For a discussion of Virginia's anti-immigration campaign, see Editorial, *As Arizona Went, So Goes Virginia*, N.Y. TIMES, Aug. 14, 2010, <http://www.nytimes.com/2010/08/15/opinion/15sun2.html>.

While there is some disagreement as to whether immigration issues actually affect the outcome of elections,<sup>28</sup> few would dispute the extent to which immigration has stirred emotions and prompted rallies<sup>29</sup>—even though the United States is not experiencing waves of undocumented immigrants across its borders.<sup>30</sup> Indeed, Michael Welch, a Professor in the Program in Criminal Justice at Rutgers University, New Brunswick/Piscataway, contends that we are currently experiencing a moral panic over immigration, whereby immigrants are being depicted as “intellectually inferior, morally corrupt, and prone to crime—and worse, terrorism”<sup>31</sup> and are being viewed as a threat to American societal values and interests<sup>32</sup>—despite studies that have challenged the immigration-crime relationship (i.e., that those who have immigrated to the United States, legality aside, present a unique threat to contemporary society).<sup>33</sup> Although there are significant differences between the positions of

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For a discussion of tough immigration legislation across the South, including Alabama, Georgia, and South Carolina, see Kim Severson, *Southern Lawmakers Focus on Illegal Immigrants*, N.Y. TIMES, Mar. 25, 2011, <http://www.nytimes.com/2011/03/26/us/26immig.html>.

For a discussion of South Carolina’s contentious immigration law—portions of which were blocked by a federal judge in late December 2011, as well as legal challenges to laws in Alabama, Arizona, Georgia, Indiana, and Utah, see Brown, *supra* note 26.

<sup>28</sup> Leonhardt, *supra* note 22.

<sup>29</sup> See, e.g., Avi Brisman, *The Criminalization of Peacemaking, Corporate Free Speech, and the Violence of Interpretation: New Challenges to Cause Lawyering*, 14(2) N.Y. CITY L. REV. (forthcoming 2012).

<sup>30</sup> Keller, *supra* note 22; Julia Preston, *11.2 Million Illegal Immigrants in U.S. in 2010, Report Says; No Change from ‘09*, N.Y. TIMES, Feb. 1, 2011, <http://www.nytimes.com/2011/02/02/us/02immig.html>; Sam Roberts, *Census Data Show Recession-Driven Changes*, N.Y. TIMES, Sept. 21, 2009, <http://www.nytimes.com/2009/09/22/us/22census.html>.

<sup>31</sup> Michael Welch, *Trampling Human Rights in the War on Terror: Implications to the Sociology of Denial*, 12 CRITICAL CRIMINOLOGY 1, 2 (2004).

<sup>32</sup> For a discussion of projections that racial and ethnic minorities will make up one-third of all Americans by 2015 and the dominant class’s increased fear and heightened perception of threat from these growing minorities, see K. Michelle Scott, *Looking Through a Glass Darkly: Applying the Lens of Social Cubism to the Police-Minority Group Conflict in America*, 8 ILSA J. INT’L & COMP. L. 857, 873 (2002).

<sup>33</sup> See, e.g., Jacqueline Hagan & Scott Phillips, *Border Blunders: The Unanticipated Human and Economic Costs of the U.S. Approach to Immigration Control, 1986–2007*, 7



the welfare rights movement (in the 1960s and 1970s) and the current immigrant rights movement in terms of the political power of their constituents, Piven and Cloward's book may presage welfare-race dynamics in future administrations. The authors' explanations regarding the relationship between precipitous population increases and decreasing social control may help predict the (perceived) likelihood of disorder and the potential responses.<sup>34</sup>

Second, those attracted to Piven and Cloward's conspiratorial take on the social function of welfare may sense Foucauldian themes in *Regulating the Poor*. Notions of discipline and docility poke out in the authors' historical portions of chapter 1 and again in chapter 4; ideas regarding control of the body emerge briefly in chapter 3; power, a theme throughout the book, is discussed explicitly in chapter 12. Most significantly, Piven and Cloward contend that the relief system creates a class of dependent poor. According to the authors, these individuals, who are of no productive use and remain on the welfare rolls where they are ritually degraded and punished, serve to instill fear in others of what will transpire if they do not work. A parallel scenario unfolds in *Discipline and Punish*, where Foucault contends that prisons produce

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CRIMINOLOGY & PUB. POL'Y 83 (2008); John Hagan, Ron Levi, & Ronit Dinovitzer, *The Symbolic Violence of the Crime-Immigration Nexus: Migrant Mythologies in the Americas*, 7 CRIMINOLOGY & PUB. POL'Y 95 (2008); Hickman & Suttrop, *supra* note 25; Ramiro Martínez, Jr., Editorial Introduction, *The Impact of Immigration Policy on Criminological Research*, 7 CRIMINOLOGY & PUB. POL'Y 53 (2008). For an excellent overview of research on the unfounded fear that immigrants increase crime in the US communities to which they move, see Hickman & Suttrop, *supra* note 25, at 60–62. For a comparison to the association of crime and immigration in Sweden, see Christopher Caldwell, *Islam on the Outskirts of the Welfare State*, N.Y. TIMES MAG., Feb. 5, 2006, <http://www.nytimes.com/2006/02/05/magazine/05muslims.html?pagewanted=all>.

<sup>34</sup> See generally ERICH GOODE & NACHMAN BEN-YEHUDA, MORAL PANICS: THE SOCIAL CONSTRUCTION OF DEVIANCE 31 (1994); Mark Hamm, *Hammer of the Gods Revisited: Neo-Nazi Skinheads, Domestic Terrorism, and the Rise of the New Protest Music*, in CULTURAL CRIMINOLOGY 190, 198, 202–203 (Jeff Ferrell & Clinton R. Sanders eds., 1995); Robert J. Sampson & Janet L. Lauritsen, *Racial and Ethnic Disparities in Crime and Criminal Justice in the United States*, 21 CRIME & JUST. 311, 364 (1997); Judith Wise, Comment, *Dissent and the Militant Democracy: The German Constitution and the Banning of the Free German Workers Party*, 5 U. CHI. L. SCH. ROUNDTABLE 301, 336 n.217 (1998).

delinquents who serve as signals to the law-abiding population.<sup>35</sup> But let me be perfectly clear: I am not arguing that *Regulating the Poor* is a Foucauldian text. (Aside from pre-dating Foucault, Piven and Cloward's Marxist leanings should preclude such confusion.) Rather, I am merely suggesting that Piven and Cloward's text can help illuminate some of Foucault's ideas and themes, and that students of Foucault should consider reading *Regulating the Poor* to understand some of his genealogical flavor—and, perhaps, some of his potential inspiration.

Finally, Piven and Cloward, in constructing their theory of the function of welfare and its work-enforcing role, do not consider the collateral consequences of conviction and imprisonment on ex-offenders—consequences that frequently include barriers to receiving welfare and securing employment.<sup>36</sup> In their defense, Piven and Cloward did not really need to contemplate such phenomena when they first undertook their project. While prison populations were rising in the early 1990s when the authors revised *Regulating the Poor*, prison populations were still far from today's numbers and percentages.<sup>37</sup> Today, the United States, which has less than 5 percent of

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<sup>35</sup> MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 257–92 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977). It bears mention that a number of scholars have examined the relationship between the industrial workplace and prison. Most recently, Hancock and Jewkes have noted the claims that “prisons exist as little more than human warehouses designed to remove from society a sub-class of people who are economically unproductive and instill in them work habits and discipline.” Philip Hancock & Yvonne Jewkes, *Architectures of incarceration?: The spatial pains of imprisonment*, 13(5) PUNISHMENT & SOCIETY 611, 612 (2011) (citing M. IGNATIEFF, *A JUST MEASURE OF PAIN: THE PENITENTIARY IN THE INDUSTRIAL REVOLUTION, 1750-1850* (London: Macmillan, 1978); D. MELOSSI AND M. PAVARINI, *THE PRISON AND THE FACTORY: ORIGINS OF THE PENITENTIARY SYSTEM* (London: Macmillan, 1981); G. RUSCHE AND O. KIRCHHEIMER, *PUNISHMENT AND SOCIAL STRUCTURE* (New York: Columbia University Press, 1939/1968)).

<sup>36</sup> Brisman, *supra* note 2. See also Avi Brisman, *Toward a More Elaborate Typology of Environmental Values: Liberalizing Criminal Disenfranchisement Laws and Policies*, 33 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 283, 283–457 (2007) [hereinafter *Environmental Values*].

<sup>37</sup> Prison crowding has reached crisis levels throughout the United States; California's prison system, which has been operating at double its maximum capacity (and thus in

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violation of prisoners' Eighth Amendment rights prohibiting cruel and unusual punishment), has been ordered to reduce its prison population. See *Brown v. Plata*, 131 S. Ct. 1910 (2011). See also Adam Liptak, *Justice, 5-4, Tell California to Cut Prisoner Population*, N.Y. TIMES, May 23, 2011, <http://www.nytimes.com/2011/05/24/us/24scotus.html?pagewanted=all>; Editorial, *Send California Inmates to Mexico, Says Schwarzenegger*, AFP.COM, Jan. 25, 2010, available at <http://www.google.com/hostednews/afp/article/ALeqM5ic1TQ4LxOHfqSZ7mQp1MmJ5fuH3w>;

National Briefing, *California: Governor Signs Prison Overhaul*, N.Y. TIMES, May 4, 2007, <http://query.nytimes.com/gst/fullpage.html?res=9803E3DB113EF937A35756C0A9619C8B63>; Associated Press, *National Briefing, Washington: Justices Reject California's Bid to Delay Prison Order*, N.Y. TIMES, Sept. 12, 2009, <http://query.nytimes.com/gst/fullpage.html?res=9A05E6DF163DF931A2575AC0A96F9C8B63>; Associated Press, *Prison Plans In California*, N.Y. TIMES, Sept. 19, 2009, <http://www.nytimes.com/2009/09/20/us/20california.html>; Editorial, *California's Crowded Prisons*, N.Y. TIMES, Feb. 13, 2009, <http://www.nytimes.com/2009/02/14/opinion/14sat1.html>; Editorial, *The Sorry State of the States*, N.Y. TIMES, May 29, 2009, <http://www.nytimes.com/2009/05/24/opinion/24sun1.html>; Editorial, *California Is Failing the Prison Test*, N.Y. TIMES, Aug. 26, 2009, <http://www.nytimes.com/2009/08/27/opinion/27thu2.html>; Editorial, *The Crime of Punishment*, N.Y. TIMES, Dec. 6, 2010, <http://www.nytimes.com/2010/12/06/opinion/06mon1.html?gwh=F5067D7229BFBE9C2D4EF7B4A7243A01>; Adam Liptak, *Justices Ease Deportation Rule in Minor Drug Cases*, N.Y. TIMES, June 14, 2010, <http://www.nytimes.com/2010/06/15/us/15scotus.html?gwh=0E5F42297116096C0650AC4B4B8CCC86>; Solomon Moore, *States Export Their Inmates As Prisons Fill*, N.Y. TIMES, July 31, 2007, <http://www.nytimes.com/2007/07/31/us/31prisons.html?pagewanted=all&gwh=85A8014E52363390ADC85F732639B276>; Solomon Moore, *\$8 Billion Demand in California Prison Case*, N.Y. TIMES, Aug. 13, 2008, <http://www.nytimes.com/2008/08/14/us/14prison.html?gwh=7536F0AC3027C163B3FB1EE0B4B0175D>; Solomon Moore, *California Passes Bill Addressing Prisons*, N.Y. TIMES, Sept. 12, 2009, <http://www.nytimes.com/2009/09/13/us/13prison.html?gwh=B1E8EB8DA1CA03C7B9D37A38D6BDE5E9>; Solomon Moore, *California State Assembly Approves Prison Legislation*, N.Y. TIMES, Aug. 31, 2009, <http://www.nytimes.com/2009/09/01/us/01prison.html?gwh=30308D6F8449EEEE553E5C4EF3B7ADDD>; Solomon Moore, *Federal Judges Order California Prisons to Reduce Inmate Population by a Quarter*, N.Y. TIMES, Aug. 5, 2009, at A10; Peter H. Schuck, *Do Not Go Directly to Jail*, N.Y. TIMES, Dec. 6, 2010, <http://www.nytimes.com/2010/12/07/opinion/07Schuck.html?gwh=FD4CD43A8835D9AE9DAD56A28D11E2F9E>; Jennifer Steinhauer, *California to Address Prison Overcrowding With Giant Building Program*, N.Y. TIMES, Apr. 27, 2007, <http://www.nytimes.com/2007/04/27/us/27prisons.html?gwh=979F21EDC6961C81DA9CB>

the world's population, accounts for one-quarter of its prisoners.<sup>38</sup> More than one in a hundred American adults now live behind bars and close to 2.5 million individuals are incarcerated<sup>39</sup>—the majority of whom will eventually

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22E5FB7BCD6; Jennifer Steinhauer, *Bulging, Troubled Prisons Push California Officials to Seek a New Approach*, N.Y. TIMES, Dec. 11, 2006, <http://query.nytimes.com/gst/fullpage.html?res=980CE0DA1431F932A25751C1A9609C8B63&pagewanted=all>; Malia Wollan, *Judges to Decide Whether Crowded California Prisons Are Unconstitutional*, N.Y. TIMES, Dec. 7, 2008, <http://www.nytimes.com/2008/12/08/us/08calif.html?gwh=4D67003EC00555951DF2A7E0A11BCFF9>.

For a discussion of the prison overcrowding crisis in other states and state responses to it, see, e.g., Alison Leigh Cowan & Christine Stuart, *In Connecticut Prisons, a System Long on People, Short on Space*, N.Y. TIMES, Oct. 17, 2007, <http://www.nytimes.com/2007/10/17/nyregion/17prisons.html>; Monica Davey, *Safety Is Issue As Budget Cuts Free Prisoners*, N.Y. TIMES, Mar. 4, 2010, <http://www.nytimes.com/2010/03/05/us/05parole.html>; Solomon Moore, *New Court to Address California Prison Crowding*, N.Y. TIMES, July 24, 2007, <http://www.nytimes.com/2007/07/24/us/24calif.html>; Editorial, *Out of Prison and Deep in Debt*, N.Y. TIMES, Oct. 6, 2007, <http://www.nytimes.com/2007/10/06/opinion/06sat1.html>; Editorial, *Shrinking the Prison Population*, N.Y. TIMES, May 10, 2009, <http://www.nytimes.com/2009/05/11/opinion/11mon2.html>. Those interested in issues pertaining to prison overcrowding in the late 1990s-to-mid 2000s should consult, for example, Carla I. Barrett, Note, *Does the Prison Rape Elimination Act Adequately Address the Problems Posed By Prison Overcrowding? If Not, What Will?*, 39 NEW ENG. L. REV. 391 (2005); Susanna Y. Chung, Note, *Prison Overcrowding: Standards in Determining Eighth Amendment Violations*, 68 FORDHAM L. REV. 2351 (2000); Peter J. Duitsman, Comment, *The Private Prison Experiment: A Private Sector Solution to Prison Overcrowding*, 76 N.C. L. REV. 2209 (1998). Note that according to a March 2010 report by the Pew Center on the States, state prison populations as a whole, which had grown for nearly four decades, have begun to dip for the first time since 1972. John Schwartz, *Report Finds States Holding Fewer Prisoners*, N.Y. TIMES, Mar. 17, 2010, <http://www.nytimes.com/2010/03/17/us/17prison.html>. These reductions in state prison populations, however, have stemmed in large part from states' efforts to save money by expanding parole and early release programs. See Davey, *supra*; Schwartz, *supra*.

<sup>38</sup> E.g., Editorial, *Prisons and Budgets*, N.Y. TIMES, Jan. 3, 2010, <http://www.nytimes.com/2010/01/04/opinion/04mon3.html?gwh=49929A9C34CD0100173D0195479BC8BD>; Editorial, *Sen. Webb's Call for Prison Reform*, N.Y. TIMES, Dec. 31, 2008, <http://www.nytimes.com/2009/01/01/opinion/01thu3.html?gwh=3707C94ACB6F750741651D0E267F81CB>.

<sup>39</sup> *Sen. Webb's Call for Prison Reform*, *supra* note 38; Adam Liptak, *Inmate Count in U.S. Dwarfs Other Nations*, N.Y. TIMES, Apr. 23, 2008, <http://www.nytimes.com/2008/04/23/us/23prison.html>; Adam Liptak, *U.S. Imprisons One in*

be released.<sup>40</sup> Sixty percent of the nearly 2.5 million people currently incarcerated are Latino/Hispanic or African American—a stark contrast to the percentages of Latinos/Hispanics and African Americans in the total US population today.<sup>41</sup> According to the 2000 Census, Latino/Hispanic people, including, but not limited to, Mexicans, Puerto Ricans, and Cubans, encompassed approximately 13 percent of the total US population;<sup>42</sup> African Americans constituted approximately 12 percent of the total United States population.<sup>43</sup> Overall, one in nine African American men between the ages of twenty and thirty-four are incarcerated,<sup>44</sup> and there are more African American men in prison than are enrolled in colleges and universities.<sup>45</sup>

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*100 Adults, Report Finds*, N.Y. TIMES, Feb. 29, 2008, <http://www.nytimes.com/2008/02/29/us/29prison.html>. See also FRANCIS T. CULLEN & ROBERT AGNEW, *CRIMINOLOGICAL THEORY: PAST TO PRESENT* 243, 245 (4th ed. 2011); Editorial, *Prison Nation*, N.Y. TIMES, Mar. 10, 2008, <http://www.nytimes.com/2008/03/10/opinion/10mon1.html>; Editorial, *Racial Inequality and Drug Arrests*, N.Y. TIMES, May 10, 2008, at A26; William J. Sabol & Heather Couture, *Prison Inmates at Midyear 2007*, BUREAU OF JUST. STAT. BULL. (June 2008), <http://bjs.ojp.usdoj.gov/content/pub/pdf/pim07.pdf>; William J. Sabol & Heather Couture, *Prisoners in 2006*, BUREAU OF JUST. STAT. BULL. (Dec. 2007), <http://www.bjs.gov/content/pub/pdf/p06.pdf>.

<sup>40</sup> STEVEN E. BARKAN, *CRIMINOLOGY: A SOCIOLOGICAL UNDERSTANDING* xxi (5th ed. 2012).

<sup>41</sup> *Environmental Values*, *supra* note 36.

<sup>42</sup> In 2007, Latinos/Hispanics, who made up only 13 percent of the United States adult population, accounted for one-third of federal prison inmates that year. Moore, *Hispanics Are Largest Ethnic Group in Federal Prisons, Study Shows*, *supra* note 24. By February 2009, Latinos/Hispanics represented the largest ethnic population in the federal prison system—accounting for 40 percent of those convicted of federal crimes. *Id.* Note, however, that nearly half of Latino/Hispanic offenders were convicted of immigration-related crimes. *Id.* See also Bernstein, *supra* note 24; Moore, *Focus on Immigration Crimes Is Said to Shortchange Other Cases*, *supra* note 25. The aforementioned statistic confirms findings regarding the lack of a link between immigration and crime. See Hagan & Phillips, *supra* note 33. See also Hagan, Levi & Dinovitzer, *supra* note 32; Hickman & Suttrop, *supra* note 25.

<sup>43</sup> *Environmental Values*, *supra* note 36. See also Moore, *Hispanics Are Largest Ethnic Group in Federal Prisons, Study Shows*, *supra* note 25.

<sup>44</sup> CULLEN & AGNEW, *supra* note 39, at 243; Editorial, *Racial Inequality and Drug Arrests*, *supra* note 39, at A26.

<sup>45</sup> Sam Roberts, *College Dwellers Outnumber the Imprisoned*, N.Y. TIMES, Sept. 27, 2007, <http://www.nytimes.com/2007/09/27/us/27census.html>.

Given this racially imbalanced prison population explosion<sup>46</sup> and the growing significance of collateral consequences,<sup>47</sup> one needs to ponder what effect these phenomena will have on Piven and Cloward's depiction of welfare's disorder-moderating and labor-regulating functions. Sometimes changing circumstances render a text obsolete; other times, social, political, and economic changes provide an additional lens with which to contemplate authors' propositions. The reality of current prison populations and the collateral consequences that ex-offenders face necessitate that readers of *Regulating the Poor* rethink some of Piven and Cloward's ideas regarding welfare's disorder-moderating and labor-regulating functions. Scholars such as the French sociologist, Loïc Wacquant, start us down this path of inquiry,<sup>48</sup> but more research is needed. *Regulating the Poor*, then, can help mediate both the role of welfare in society and the purpose of punishment.

In summary, *Regulating the Poor* explodes the notion that relief giving exists as a supportive institution, contending instead that it serves primarily as a means of maintaining social and political tranquility and of ensuring economic and political order. Although the demise of the AFDC program makes Piven and Cloward's work a bit dated in some respects, the notion that authorities reorganize relief arrangements to enforce work remains compelling. While still provocative in its thesis and important as a pedagogical tool, the real test of the book's staying power may have yet to come: for although we have yet to witness reforms in economic policy that would lead to full employment at decent wages—what Piven and Cloward initially called for forty-one years ago—the need is no less great and the demands (from Occupy

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<sup>46</sup> Note that from 1999 to 2005, the number of African Americans in state prisons for drug offenses actually declined. Solomon Moore, *Decline in Blacks in State Prisons for Drugs*, N.Y. TIMES, Apr. 14, 2009, <http://www.nytimes.com/2009/04/15/us/15drugs.html>. But some speculate that the decline may have resulted from so many African Americans having already been imprisoned over the last two decades. *Id.*

<sup>47</sup> See *Environmental Values*, *supra* note 36.

<sup>48</sup> See Loïc Wacquant, *Enemies of the Wholesome Part of the Nation: Postcolonial Migrants in the Prisons of Europe*, 1 SOCIOLOGIE 31 (2005); Loïc Wacquant, *Deadly Symbiosis: When Ghetto and Prison Meet and Mesh*, 3 PUNISHMENT & SOC'Y 95 (2001).

Wall Street and its related demonstrations and protests<sup>49</sup>) for change are getting louder.

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<sup>49</sup> See, e.g., Kurt Anderson, *2011 Person of the Year: The Protestor*, TIME, Dec. 14, 2011, [http://www.time.com/time/specials/packages/article/0,28804,2101745\\_2102132,00.html](http://www.time.com/time/specials/packages/article/0,28804,2101745_2102132,00.html); Rick Stengel, *2011 Person of the Year: Person of the Year Introduction*, TIME, Dec. 14, 2011, [http://www.time.com/time/specials/packages/article/0,28804,2101745\\_2102139,00.html](http://www.time.com/time/specials/packages/article/0,28804,2101745_2102139,00.html).