RECENT PUBLICATIONS


In The New Jim Crow: Mass Incarceration in the Age of Colorblindness, Michelle Alexander argues that the current American criminal justice system—from first-time traffic stops to post-incarceration felony laws—is a system of legalized racial control, analogous in many ways to southern Jim Crow laws. She aims to show that if mass incarceration is the body, then the War on Drugs is the muscle along a skeleton of deeply embedded American racism. While Alexander seeks to educate, she also calls for a social movement. Far beyond legal reform and an end to the drug war, Alexander argues that authentic change requires a fundamental shift in the “flawed public consensus” that drug crime is a black and brown problem.1 She demands that the country’s most prominent civil rights advocacy organizations abandon “lawyer-driven, trickle-down strategies for racial justice,”2 reconnect with the communities they once served, and care “the way they would have cared if the criminals were understood to be white.”3

Alexander defines mass incarceration as a “racial caste system,” following the same pattern as Jim Crow and slavery and expanding in response to civil rights achievements.4 Just as anti-Populist policies developed in response to the successes of Civil War Reconstruction, this modern system of racial control, Alexander argues, grew as a backlash to the Civil Rights Movement in the 1960s by capitalizing on the fear and vulnerability of poor whites. Alexander explains how a few limited Nixon administration policies became the capital letter “War on Drugs” when President Reagan expanded those policies with massive funding. By the

2. Id. at 255.
3. Id. at 234.
4. Id. at 16.
time the Clinton administration came along with “get tough” drug-law enforcement policies, “a backlash against blacks was clearly in force . . . .”

After establishing a current crisis of numbers—“nearly 7.3 million people [in 2009] under correctional control”—Alexander uses jolting racial statistics and disturbing anecdotes to guide readers down the gauntlet of racial discrimination in the criminal justice system. Facing disproportionately high numbers of traffic stops and arrests, black men must navigate inadequate legal representation, intense pressure to plea bargain, higher rates of imprisonment, longer sentences, and nearly unbeatable odds of re-incarceration due to parole standards that make violation almost impossible to avoid. At the same time, Alexander reminds readers “that whites comprise the vast majority of drug users and dealers—and may well be more likely than other racial groups to commit drug crimes . . . .”

Alexander then walks the reader through the minefield of felon disenfranchisement laws that can make re-offense the only option when facing homelessness and unemployment. In particular, being “forced to ‘check the box’ indicating a felony conviction on employment applications . . . and denied licenses for a wide range of professions . . . lock[s] [drug felons] out of the mainstream society and economy—permanently.” AFL-CIO President Richard Trumka described mass incarceration as a major labor issue while advocating for California’s Proposition 47, which makes most nonviolent drug crimes a misdemeanor rather than a felony. Trumka noted that “entire communities crumble when able-bodied men and women come home and aren’t allowed to work.” Trumka’s statements reflect part of Alexander’s argument that the felon label is detrimental to communities as well as the workforce.

As a professor of law at Ohio State University and former director of the Racial Justice Project at the ACLU of Northern California, Alexander calls on the nation’s civil rights organizations to rise to her challenge and shift the public consensus. She poses important questions and encourages “reflect[ion] on whether traditional approaches to racial justice advocacy are adequate to the task at hand.” She offers “not a plan, but . . .

5. Id. at 48.
6. Id. at 101.
7. Id. at 99.
8. Id. at 92.
11. Alexander, supra note 1, at 99.
12. Id. at 229.
conversation starters... meant to be the beginning of a conversation, not an end.”

Alexander recognizes that organizations are made of humans and they, too, are susceptible to pervasive racial stereotypes. She identifies how the “professionalization” of civil rights lawyers during the 1960s, and the subsequent disconnection from the communities they once served, has disrupted their ability to recognize and respond to the new caste system. Civil rights organizations, Alexander argues, must now trade in or supplement their “[w]idespread preoccupation with litigation” for the harder work—advocacy on behalf of criminals.

She does not suggest that litigation and policy work be abandoned, however: “To the contrary, reform work is the work of movement building, provided that it is done consciously as movement-building work.” Alexander cites relatively recent Supreme Court cases to support her claim that litigation will struggle for efficacy until “a new, egalitarian racial consensus reflecting a compassionate rather than punitive impulse toward poor people of color” emerges. In the meantime, she fears, “[w]e run the risk of winning isolated battles but losing the larger war.”

While Alexander does not hold back from criticizing our legal system, she also responds to common counterarguments—namely that because the U.S. has a black president it cannot possibly also have a racialized caste system, and that “the analogy [to Jim Crow laws] has too little to say about black attitudes toward crime and punishment, masking the nature and extent of black support for punitive crime policy.” Alexander dedicates a
section to discussing the limits of the analogy and distinguishing Jim Crow and mass incarceration. She also repeatedly notes what is not in the book, acknowledging that mass incarceration impacts women and people of color outside of the African-American community in profound and different ways.22

Critics of *The New Jim Crow* find Alexander’s preemptive responses inadequate. James Forman, a Clinical Professor of Law at Yale, argues that Alexander’s analogy oversimplifies both the origins and effects of mass incarceration, and her failure to incorporate impacts of mass incarceration upon other racial groups weakens her argument.23 He and other critics dispute Alexander’s focus on the role of the War on Drugs in mass incarceration and argue that her “overemphasis” on drug-law enforcement diverts important discussion of violent crime, particularly in low-income, black communities.24 Forman writes that “the Jim Crow analogy leads to a distorted view of mass incarceration, and therefore hampers our ability to challenge it effectively . . . .”25

Widespread adoption of the disturbing analogy, however, is not Alexander’s primary objective. While the title raises alarm and hooks an audience, Alexander is clear that “[w]hat this book is intended to do—the only thing it is intended to do—is to stimulate a much-needed conversation about the role of the criminal justice system in creating and perpetuating racial hierarchy in the United States.”26 And it has worked—since the book’s publication in 2010, Alexander has been on the speaking circuit almost nonstop and has appeared extensively on radio and television programs, including giving mainstream, high-profile interviews with personalities like Stephen Colbert and Bill Maher.27

Some critics tie Alexander’s speaking engagements into their attack, using the book’s commercial success as evidence of Alexander’s lack of

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22. Alexander, supra note 1, at 16.
23. Forman, supra note 21, at 23.
25. Forman, supra note 21, at 25.
radical analysis. 28 Greg Thomas, Associate Professor of English at Tufts University, attacks Alexander for “citing everything but traditions of Black political and even academic radicalism” and noting particularly a lack of discussion of the Black Power Movement of the 1960s and 1970s, political prisoners, and capitalism. 29 Political sociologist Joseph Osel joins Thomas in this particular critique: “The New Jim Crow espouses a counterrevolutionary, self-serving position insofar as it omits all truly revolutionary stances from its discourse.” 30

And, he may be right. Alexander’s argument, lacking what her critics call “more insightful, radical, and fearless ideas,” has been embraced by many mainstream liberals—and it has fueled national conversations on mass incarceration specifically because of its approachability. Osel admits that “progressive liberals, . . . as well as the vast majority of progressive academics, will likely find The New Jim Crow stimulating, maybe cathartic and probably worth recommending,” which is precisely what Alexander set out to do.

Lisa Chaiet, J.D. 2016 (U.C. Berkeley)

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29. Id.
THE PRODUCTION OF DIFFERENCE: RACE AND THE MANAGEMENT
OF LABOR IN U.S. HISTORY. David R. Roediger and Elizabeth D.

In The Production of Difference, David Roediger and Elizabeth Esch
argue that America’s history of “race management” is one source of the
persistent racial inequities of the American economy. Roediger and Esch
borrow the title of their book from literary historian Lisa Lowe’s Immigrant
Acts in which she posits that American business maximized profits and
defeated working-class solidarity through “the social productions of
‘difference,’ . . . marked by race, nation, geographical origins, and gender.”
Roediger and Esch trace the development of what they call “race
management” from the proliferation of southern plantation management
journals in 1830 through the aftermath of the 1926 Johnson-Reed Act’s
immigration restrictions.

In Roediger and Esch’s account, “race management” was an internally
inconsistent doctrine and set of strategies that white managers used to
control their workforces by creating racial distinctions between groups.
As the authors note, “neither ‘race’ nor ‘management’ refers . . . to something
stable and easily defined.” Managers made wildly inconsistent assertions
about the relative productivity and reliability of various racial groups and
the best methods to extract labor from them. In some cases, managers
claimed that nonwhite workers would achieve the greatest output when
paternalistically “developed.” One plantation management article from
1860, for instance, advocated that masters should improve their slaves’
“moral sensibilities” so that slaves would obey not out of fear but because
they “love[d]” their master and thought it “wrong to disobey.” Others
claimed that violence—usually in the form of beatings and lashes—would
yield superior results, and some recommended putting racial groups into
direct competition.

1. DAVID R. ROEDIGER & ELIZABETH D. ESCH, THE PRODUCTION OF DIFFERENCE: RACE AND
2. Id. at 8.
3. Id. at 9.
4. Id.
5. Id. at 42.
6. Id.
7. Id. at 41.
8. Id. at 70.
Yet while the substance of the claims varied, they always served the dual purposes of trumpeting the specific managerial skill of the white person making the claim and validating for other white managers and the general white public the proposition that white people were rightfully in charge of people of color (what Roediger and Esch call “whiteness as management”). In this sense, race management can be seen as an intricate system of rationalizations supporting an exploitative, white supremacist labor system.

But the race management Roediger and Esch describe was not simply a bad faith justification for the status quo; it was also a system supervisors actively sought to implement, using purported racial distinctions to drive staffing decisions. Its popularity was not limited to southern plantations but also extended to management consultants in northern factories, authors of industrial trade journals, and even those devising the work policies at large infrastructure projects like the Panama Canal.

The Production of Difference argues that the very concept of personnel management in the United States originated on the southern plantation, and the book begins its examination of race management there. An extensive network of trade journals on plantation management developed between the 1830s and 1860s. The journals originally applied the term “management” broadly to the stewardship of land and animals. Writers gradually adopted the term to apply to the oversight of slave labor as one of the many responsibilities of white landowners. As with later forms of race management, the journals’ prescriptions varied, but they generally fell into one of two categories: a “whip-happy regimen designed to force immediate compliance,” or a “paternalist mode” that “sought to use shame and the threat of sale to enforce discipline.”

The journals and other contemporary sources also compared the merits of free versus slave labor, but they preferred to cast the discussion in racial terms, often comparing ratios of productivity of “Irish” and “negroes.” Perhaps unsurprisingly, the assertions often contradicted each other. Landscape architect Frederick Olmsted recorded in one of his travel diaries that two planters “separated by a few miles, . . . [concluded] both that ‘negroes’ out-produced the Irish by a factor of two, and underproduced them by a ratio of two-thirds.” Planters made claims of racial knowledge in trade journals and elsewhere to flaunt their managerial wherewithal to

9. Id. at 43.
10. Id. at 22-23.
11. Id. at 26-28.
12. Id. at 41.
13. Id. at 33-37.
14. Id. at 33.
each other and the white public, while also using racial comparisons to conceal the brutality of the slave system.

The logic of race management applied across industries. Iron foundries in the South described their decisions to use one race of workers over another in terms of the preferred group’s relative efficiency or amenability to hard “driving.” But the iron works also frequently used slaves and free black workers as “strike insurance” to reduce the power of white workers to demand better pay or improved working conditions.15 Likewise, planters would impute characteristics to racial groups to justify staffing choices, describing how overseers could drive “the negro” in contrast to how white men “wouldn’t stand it”16 or complaining that “whites ‘cannot endure heat and labour so well as the negro.’”17 In each of these cases managers made claims purporting to describe immutable racial characteristics but did so at the expense of a far simpler explanation: that under the system of slavery, white workers had the option to leave abusive circumstances and black workers did not. The choice to frame this system in terms of racial characteristics—instead of as the product of the violence of slavery—allowed the discourse of race management to appeal to supervisors beyond the South and helped it to survive after the Civil War.

After establishing the contours of race management by examining its use in the antebellum South, The Production of Difference turns to its application in America’s expansion in the late nineteenth and early twentieth centuries. Roediger and Esch direct their attention to the mining and railroad construction industries. Companies undertaking these projects employed many of the same techniques as southern plantations, putting racial groups into competition (in some cases, literally racing them against each other), comparing their relative productivity, and frequently searching for the “best” group to use as a labor force.18

The Central Pacific Railroad, one of the two companies that built the transcontinental line, exemplified these techniques. By the end of the 1860s, the Central Pacific almost exclusively employed Chinese workers.19 Its founder Charles Crocker testified before a congressional hearing on Chinese immigration that the railroad’s preference for Chinese labor was “because of its greater reliability and steadiness, and [Chinese workers’] aptitude and capacity for hard work.”20 As with other examples of race management, Central Pacific’s reasoning was inconsistent. At the same hearing, Crocker argued that the railroad preferred using Chinese labor for

15. Id. at 36.
16. Id. at 50.
17. Id. at 37.
18. Id. at 70.
19. Id. at 71.
20. Id. at 74.
its most dangerous tasks because this allowed white workers to be “in an elevated grade of labor, receiving wages far above.”21 At another point in the hearing Crocker claimed he would have preferred to employ white workers, but that there had simply not been enough of them willing to complete the work.22 Contrary to Crocker’s conflicting accounts, the Central Pacific began relying almost exclusively on Chinese workers in 1865 to break a strike by Irish workers, and the railroad soon realized that it could treat Chinese workers worse and pay them about half as much as it could the Irish workers.23

Chinese workers were often skilled at railroad construction not because of innate racial characteristics but because many had previously worked as miners.24 The railroad companies were able to subject Chinese workers to worse working conditions and pay them less because they had few other options, having been forced out of mining and other work “by legislation, violence, and discrimination.”25 As in the plantation economy, railroad managers boasted their executive genius by explaining their decisions in terms of the purported racial characteristics of different groups when their real motive had been to find a workforce with fewer legal protections that they could exploit more easily.26

The final section of The Production of Difference looks at race management’s integration into the “scientific management” movement of the early twentieth century, typified by Henry Ford’s assembly lines and Frederick Taylor’s time and motion studies.27 Although these management techniques theoretically sought to reduce production to a series of movements with workers like interchangeable cogs in a machine, race management persisted.28 Taylor used racially coded anecdotes to describe his management theories and Henry Ford attempted to “racially develop” his immigrant workforce.29 Across industries, despite their ostensible commitment to scientific precision, management delegated daily operations to foremen who put groups of immigrants and workers of color into competition and routinely made staffing decisions based on the purported relative productivity of the groups.30

21. Id. at 75.
22. Id. at 75.
23. Id. at 76-77.
24. Id. at 78.
25. Id.
26. Id. at 79.
27. Id. at 139-140.
28. Id. at 139-40.
29. Id. at 146-49.
30. Id. at 155-62.
While supervisors had, until the First World War, directed race management techniques at white immigrant groups as well as people of color, Roediger and Esch argue that this dynamic shifted in the 1920s. The war significantly reduced the flow of new immigrant groups into the country, and management responded by attempting to retain workers rather than pitting groups against each other. In the face of growing labor militancy among recent immigrant groups, including the Great Steel Strike of 1919 and 1920, management supported more selective federal immigration policies, ultimately resulting in the 1924 Johnson-Reed Act.

At the same time that management stopped using race management to divide white immigrant groups, however, they continued to make racial claims to justify their treatment of black workers who had moved to manufacturing centers during the Great Migration. In contrast to white workers, managers during this period claimed that black workers were more loyal and less prone to labor militancy. Companies continued to use black workers as “strike insurance” and to give to them the “work white men [wouldn’t] do.”

At the same time, employers encouraged workers from Mexico to immigrate so that they could be used as a lower-wage alternative to black and white labor in agriculture and industry. Supervisors often claimed that Mexican workers were loyal, hard-working, and even less susceptible to poisons used in the workplace. The claims of racial knowledge managers made in the 1920s and 1930s were as variable in substance as ever, and they served the same purposes they always had. White supervisors used them to exhibit managerial prowess to each other and the general white population and to conceal the political exploitation that made black and Latino workers more vulnerable to economic exploitation.

Although Roediger and Esch warn against drawing too direct a connection between the history they describe and the present, they suggest that supervisors continue to use race management in certain sectors of the economy including agribusiness and the service industry, reserving lower-paid and more physically-demanding work for black and Latino workers. Looking at the American economy, it is difficult not to see the legacy of race management in the considerably higher rates of unemployment for
black and Latino Americans compared to white Americans, and in the fact that the median household income for white families is about fifty percent higher than that for black and Latino households. It is also apparent in the occupational segregation of sectors like the restaurant industry where black and Latino employees are severely underrepresented in the best paying positions despite constituting nearly half of the workforce. Matched-pair audits show that white applicants for server positions in fine-dining restaurants are more likely to be hired than equally qualified black or Latino applicants. Although the preference for white workers in more-skilled, higher-paid positions may be the result of implicit racial bias today rather than explicit managerial strategy, the discourses of race management could be one source of those biases. The racial disparities in the American economy did not come into being overnight, and The Production of Difference provides a starting point for understanding their origins.

*Charles Sinks, J.D. 2017 (U.C. Berkeley)*

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43. Id. at 15-17.

44. See id. at 18.

Matt Taibbi’s *The Divide: American Injustice in the Age of the Wealth Gap* depicts the grossly divergent treatment of poor versus wealthy individuals in the American criminal justice system. Taibbi skillfully weaves together biographical vignettes, powerful statistics, and detailed descriptions of the criminal justice system. With these implements, he illustrates two very different realities: one in which aggressively pushing ethical and legal boundaries is rewarded, socially, financially, and by the government; and the other, in which standing in front of one’s own home or owning frilly panties can be cause for arrest or a basis for legal action.

Unlike the concepts he grapples with, Taibbi’s prose is straightforward. His pop-culture analogies, such as referring to a bank’s master computer as “HAL” from the movie *2001: A Space Odyssey*, make the scenarios clear and relatable. Furthermore, Taibbi places individual experiences with the criminal justice system within a larger political and social context in order to highlight the disparities. A personal account of being arrested for “obstructing pedestrian traffic” becomes more profound when contrasted with massive financial fraud schemes that have been permitted to operate without a single criminal charge.

The book’s strength comes from these various elements woven together. Personal narratives bring color and emotion to the complex legal and financial systems. In turn, Taibbi’s incorporation of detailed procedural descriptions and statistics on prison population, poverty, and crime lend credibility to the anecdotal experiences. As a cohesive whole, the book delivers a powerful message that the United States’ criminal justice system operates very differently on the two sides of the wealth gap.

At the macro level, this book assesses how the United States’ legal system handles crime, fraud in particular. But, as the author effectively argues, “you have to see the difference [in how we treat the rich and poor] up close, at a day-to-day level, to really grasp the breadth of the gap.”

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2. Andrew Brown was arrested in Brooklyn, New York, for obstructing pedestrian traffic because he “was standing in front of [his] own house” after coming home from work. Id. at 111.
3. Id. at 329.
accomplish this, Taibbi focuses in on the experiences of individuals on both sides of the divide.

Taibbi outlines several specific instances of corporate fraud, including the 2011 Hong Kong and Shanghai Banking Corporation (HSBC) investigation and the 2011 Lehman-Barclays bankruptcy case, noting that while there was a plethora of criminal activity, charges were never filed, and not a single individual was held accountable. In 2011, HSBC admitted to “laundering billions of dollars for drug cartels in Mexico and Columbia, washing money for terrorist-connected organizations in the Middle East, allowing rogue states under formal sanctions by the U.S. government to move money freely by the tens of billions through its American subsidiary, letting Russian mobsters wash money on a grand scale . . . and helping tax cheats . . . hide hundreds of millions of dollars” in its accounts. Not one criminal charge was pursued. The settlement that the Department of Justice negotiated was a $1.9 billion fine, partially deferred bonus payments to top HSBC executives, and an apology.

The government’s practice of not prosecuting high-profile financial crimes originated in a 1999 memo written by Eric Holder, a former U.S. attorney and then-White House official, that introduced the concept of “collateral consequences.” The original memo sensibly suggested exercising prosecutorial discretion in order to protect the jobs of innocent employees, unless the company was thoroughly corrupt. However, Eric Holder, then the U.S. Attorney General, and Lanny Breuer, the head of the Criminal Division of the Department of Justice, expanded the doctrine of collateral consequences to justify prosecutorial discretion because of the “butterfly effect” on financial markets, rather than the direct effect on company employees. Collateral consequences shifted from protecting people to protecting profits.

The ruling in the Lehman-Barclays case was “the civil litigation version of Collateral Consequences.” After accumulating $700 billion in debt, the Lehman Brothers investment bank prepared for bankruptcy, borrowing $45 billion from the Federal Reserve to “keep its doors open” in the meantime. Lehman Brothers then purged the company’s remaining assets in a “dark pool merger” with the British bank, Barclays, executed “literally in the middle of the night” that paid executives exorbitant bonuses.

4. *Id.* at 59.
5. *Id.* at 61-62.
6. *Id.* at 13.
7. *Id.* at 68-69. During a PBS Frontline episode in January 2013, Larry Breuer expanded the concept of collateral consequences to include the “ripple effect” of criminal prosecution on the “whole economy.” Eric Holder endorsed this interpretation when he addressed the U.S. Senate in March 2013.
8. *Id.* at 191; see *In re: Lehman Brothers Holdings, Inc.*, No. 12-2322 (2d Cir. 2014).
9. *Id.* at 165.
and moved billions of dollars into “the coffers of Barclays and out of the reach of Lehman’s creditors.”10 Ultimately, all of Lehman’s 76,000 creditors were denied relief, draining worker pensions and forcing municipality cutbacks, among other casualties.11

The government’s actions and rationale for criminal prosecution of Wall Street crimes stands in stark contrast to its criminal prosecution of street crimes. The collateral consequences of the crimes committed by HSBC and Lehman Brothers were drastic and far-reaching. Yet the poorest people in this country, at risk of perpetrating frauds with limited, if any, collateral consequences, are the most aggressively policed.

For example, “Project 100%” is a program in San Diego, California, designed to prevent welfare fraud by enforcing one-hundred-percent compliance with public assistance programs.12 Joni Halpern, a lawyer who defends welfare recipients under that program, described the experience of her first client, a Vietnamese refugee who had come to America after losing her child and being raped. While searching the woman’s home, a requirement of the compliance program, the investigator fixated on a pair of panties that he thought were “too sexy for a woman living alone,” and he accused her of “having a man in the house,” cause for revoking her benefits and pursing criminal charges of fraud.13

Referring to the way in which the justice system correlates wealth with civil liberties, Taibbi states that “this is a cultural kind of bias,” where “if you receive a certain kind of public assistance, you forfeit” your constitutional rights.14 He argues that Americans have a deep “hatred of the weak and poor, and a corresponding groveling terror before the rich and successful.”15 This feature of our collective psyche has metastasized into social, political, and legal bureaucracies, and the American concept of citizenship is changing to reflect it. Traditionally, citizenship conferred rights and imposed responsibilities. But as Taibbi demonstrates, the criminal justice system has divided our society between the haves and the have-nots. Bankers at HSBC and Lehman Brothers are “above citizenship” and receive legal protections without the legal responsibilities. On the other side of the divide are undocumented immigrants, ghetto denizens, and welfare recipients, living with “virtually no rights at all.”16

10. Id. at 143–44.
11. Id. at 193. The City of Long Beach, countless pension funds, and at least one foreign orphanage lost their savings as a direct result of the fraudulent borrowing at Lehman Brothers and its sale to Barclays.
12. Id. at 317. In 2011 as part of Project 100%, the county of San Diego completed 26,000 home searches.
13. Id.
14. Id. at 319.
15. Id. at xx.
16. Id. at 208.
The merits of capitalism on Wall Street and the social utility of welfare can be debated; regardless, the inconsistencies in U.S. fraud prosecution are glaring. For example, in 2013 a twenty-nine-year-old immigrant mother of three was convicted of welfare fraud for receiving taxpayer-funded assistance while working under another name for $12.56 an hour. Taibbi concedes, “nobody is saying people like this aren’t guilty, or that there shouldn’t be a punishment” for this type of fraud. His point is that, “if her crime gets punished,” which it did, “someone else committing the same crime has to receive the same punishment.”

Taibbi provides context for these specific examples by identifying larger social and political forces that have contributed to the current state of the U.S. justice system. Between 1991 and 2010, violent crime plunged more than 44%, yet in that same time period, prison population increased more than 100%. The discrepancies in these statistics and in U.S. fraud prosecution make one wonder: why are similar crimes prosecuted differently?

To address that question, Taibbi cites the “radical deregulation of the financial services industry” and massive welfare reform under President Clinton. As a result, criminal prosecution on Wall Street ceased, whereas “welfare fraud was prosecuted like never before.” With street crime decreasing and corporate crime untouchable, law enforcement budgets shrank. Out of financial necessity police departments targeted the poor, treating welfare recipients and immigrants like walking cash machines. Eventually, the political momentum in both parties traveled in the same direction, namely to merge social welfare and law enforcement systems, giving law enforcement a constant source of income while leaving the large-scale, complex fraud unfettered.

*The Divide* effectively illustrates that the American legal system does not “treat people the same way everywhere” and does not “have the same playbook for rich people.” Taibbi does an excellent job of including diverse individual experiences that touch on issues of immigration, single-family households, race, and gender. The issue of disparate treatment based on socio-economic status is clearly connected to many central issues of this era, as evidenced by the Occupy Movement, the prominence of immigration policy in politics, and the public response to the homicides of Trayvon Martin and Michael Brown.

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17. *Id.* at 403.
18. *Id.* at xv.
19. *Id.* at 349.
20. *Id.* at 351.
21. *Id.* at 202.
22. *Id.* at 329.
Yet Taibbi does not condemn the system. In fact, he states that “the system” can be legitimized by “just trying to do the right thing.” The real focus of his critique is the people within the system: Taibbi calls the commissioner for the Securities and Exchange Commission a coward for avoiding the regulation of large, powerful banks, and he heralds the efforts of prosecutors in Texas, who spurred Congress to change a law allowing market manipulation. He states that “public outrage sometimes can change the calculus,” and lauds the ruling by a federal judge against New York’s stop-and-frisk policies. By focusing on individual participation within the justice system, Taibbi tasks each of us with bridging the wealth gap, and he suggests the solution may be found at the source: our own deeply buried assumptions about wealth and poverty in America.

Maggie Tides, J.D. 2016 (U.C. Berkeley)

23. Id. at 411-12.
24. Id.