

Conflicting Constituencies: Why States Pass Pro-Immigrant Policies

A working chapter in
The Politics of U.S. State Immigration Policy: Public Opinion and Representation

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March 2016

Presented at the 2016 Western Political Science Association Conference

Overview of Book Project

Summary

Current U.S. Congressional politics are marked by the inability to pass immigration reform. Contrary to the idea that all immigration policy is federal, over the last decade, states have been increasingly involved in the immigration process. With the exception of the most contentious anti-immigrant legislation, the media largely ignores this state activity. In this book-length project I seek to understand what has led to the growth of state immigrant legislation.

Background

Although the federal government is responsible for setting formal immigration policy, U.S. states are becoming more involved with legislating the immigration process. Increasingly, states play a critical role in servicing the needs or limiting the rights of the immigrant population; states do everything from offering prenatal care services to the undocumented to criminalizing the transport of undocumented day laborers. Because states play this primary role, there is a real concern about policy backlash against immigrants. In this project, I argue there are two necessary conditions to generate this backlash: states' formal authority to legislate and negative sentiment toward migrants in the voting population. However, these conditions are not sufficient—on their own—to generate policy backlash. Due to electoral considerations, legislatures only respond to public opinion under certain conditions. The concern of a backlash against immigrants stems from the fact that public sentiment toward immigrants and immigration is often negative.¹ Half or more of all Americans believe that immigrants are a burden or take jobs.² Unsurprisingly, this opinion is distributed in systematic ways across states; some states have relatively positive opinions about migrants while others hold strong anti-immigrant sentiments.

The increasing state activity on immigration amplifies the concern of a possible backlash. Between 2005 and 2014, states increased their involvement in legislating immigration and passed more than 2,400 immigrant bills. Examples of anti-immigrant bills are those that reduce access to public benefits or services, English only laws, and those promoting more stringent requirements to obtain state-issued identification such as a driver's license. Groups such as the American Legislative Exchange Council (ALEC) and the Federation for American Immigration Reform (FAIR) write sample legislation and assist legislatures with crafting immigrant policy. The involvement of these extra-governmental partisan groups, coupled with Arizona's 2010 anti-immigrant³ policy and Alabama's similar policy in 2011, raises the possibility that other states may pass copycat legislation.⁴

However, high-profile bills and the general increase in the number of anti-immigration bills passed throughout the country fail to tell the entire story. During the same time period, a number of state legislatures have increased benefits available to migrants. States like Texas and

¹ Public sentiment, public opinion and public attitudes are used interchangeably.

² See Pew (2013) and Abrajano and Hajnal (2015). At the national level, about 52 percent of Americans believe that immigrants pose a burden (PEW 2006) and a majority would like to build a wall across the entire US-Mexican Border (CNN 2008). See Hainmueller and Hiscox (2010); Hainmueller et al. (2014) for an overview of general US sentiment on immigration.

³ Here I refer to Arizona SB1070 and Alabama HB56. See "State Omnibus Immigration Legislation and Legal Challenges" for more on state omnibus bills and court challenges of anti-immigrant policies (NCSL).

⁴ See for example Wallace, S. J. (2014). See also American Civil Liberties Union, "State Anti-Immigrant Laws".

New Mexico allow undocumented students to pay in-state tuition at public universities.⁵ Utah and Nevada allow undocumented immigrants to obtain driver's licenses.⁶ Generally, pro-immigrant bills expand access to public benefits or services or assist immigrants with incorporation into society.

The complex patterns of migrant legislation leads to the central question of the book: *What drives state immigrant policy?* Why do some states pass anti-immigrant legislation while other states abstain from legislation? Why do states that pass anti-immigrant legislation also pass pro-immigrant legislation? To answer this question, I combine the most comprehensive data on state level immigration policy from the National Conference of State Legislatures and the Progressive States Network. I supplement the main quantitative approach with approximately 50 interviews with policymakers. These data present a clear narrative of state immigration policy from 1997 to 2014: *state legislatures craft policy with a keen eye to their constituents, but also with an awareness that they cannot completely alienate a growing Latino and immigrant population.*

⁵ Here I refer to the 2012 Texas bill (H1403) and the 2005 New Mexico bill (S582). Also, in 2014 Florida passed a bill that allowed students to pay in-state tuition fees rather than the much higher out-of-state fees (H851).

⁶ In 2005 Utah passed legislation that allows individuals without a social security card to apply for a driving privilege card (S227). Similarly, in 2013, Nevada passed a bill that allows individuals to obtain a driver's authorization card regardless of one's legal status (S303).

Chapter C

Why States Pass Pro-Immigrant Policies

Headlines such as “Arizona Enacts Stringent Law on Immigration” and “Alabama sets nation's toughest immigration law” are emblematic of the anti-immigrant narrative in the national media.⁷

The previous chapter focused on policies that restrict immigrant rights and that flood media headlines, but to exclusively examine anti-immigrant legislation fails to tell the entire story.

About half of immigrant policies are pro-immigrant.

This chapter explains a phenomenon that is puzzling at first glance—Republican states regularly pass pro-immigrant policy. Between 2005 and 2014, states passed 714 pro-immigrant bills with clear policy implications. For example, the state of Washington passed SB5023 in 2011, which provides translation services to immigrants when filling out government forms and protects immigrants from deceptive legal advice by non-lawyers such as notaries, also known as *notario fraud*. This immigrant policy comports with traditional partisan theories⁸ that predict that liberal Democratic states, like Washington, will pass liberal pro-immigrant policies; however, this state activity is not exclusively found in Democratic states. In contrast to the anti-immigrant Republican narrative in the media, between 2005 and 2014 Republican legislatures were responsible for passing 20% of the pro-immigrant policy across the US states. Of those bills, states under *complete* Republican control—states with a Republican legislature and Republican governor—passed 13% of the pro-immigrant bills.

If, however, the theory of public opinion guides expectations, this frequent occurrence is less perplexing. On the one hand, legislatures are responsive to public opinion and pass fewer

⁷ Archibold, Randal C. “Arizona Enacts Stringent Law on Immigration.” *The New York Times*. April 23, 2010.; Gargis, Peggy. “Alabama sets nation’s toughest immigration law” *Reuters*. June 9, 2011.

⁸ See Ramakrishnan (N.D.) for an overview of partisan theories of immigrant policy passage. I will discuss the partisan theory in greater detail in the latter part of the chapter.

pro-immigrant policies in states with particularly anti-immigrant sentiment. On the other hand, states look for low cost ways to appeal to the immigrant population, and in particular, pass policies I term *hidden positives* to reach out to immigrants without upsetting anti-immigrant constituencies. The careful characterization of pro-immigrant policy and the focus on public opinion in this chapter uncover why pro-immigrant policies occur in both Democratic and Republican states.

In this chapter, I greatly expand the coding of bills that are initially made available by the National Conference of State Legislatures (NCSL). While the NCSL identifies bills that relate to migrants, simply identifying these bills is an insufficiently nuanced characterization of how the bills will affect migrants. I hand-code the corpus of bills identified by NCSL to include the valence of the bill – positive bills which expand the rights, benefits, and services available to migrants, and negative bills which restrict migrants’ rights, benefits and services. Furthermore, I characterize the magnitude of these bills according to the number of individuals impacted by the legislation and the likely extent of change as a result of the bill. Including this second dimension allows me to account for varying effects of policy.

1. Immigrant Policy

Since 2005 there has been an increase in state activity on immigrant legislation. I identify the increase in activity by developing a novel state immigrant policy database. This database contains legislation from 2005 to 2014. I build the database using resources from the National Conference of State Legislatures (NCSL). The NCSL is a bipartisan organization that provides state legislatures with technical assistance and offers legislation databases on policies ranging from the environment to immigration. The NCSL uses State Net, a legislative tracking service,

to identify state bills passed related to immigration.⁹ Relevant bills are identified via State Net using key words such as immigration, immigrant, undocumented, etc. While the exact search terms for the NCSL are not publically available, the search terms for a similar immigration policy project give one a sense of the type of key words used by the NCSL. I do not use the Migration Policy Institute (MPI) data, however, because the organization focuses on international migration policy.¹⁰

1.1. Pro- and Anti-Immigrant Policy Coding

The NCSL identifies policies that relate to immigration, but does not specify whether bills expand or contract immigrant rights. In other words, the NCSL does not indicate if bills are pro- or anti-immigrant. Based on the legislative summary, I code the 2,400 bills passed between 2005 and 2014 as pro-immigrant or anti-immigrant. Examples of pro-immigrant bills are those that expand access to public benefits/services, assist immigrants with incorporation into society, or help facilitate commerce. An example of a state policy that helps facilitate commerce is one that accepts consular identification cards from a foreign government as valid state identification. Examples of anti-immigrant bills are those that reduce access to public benefits or services, English only laws, and those promoting more stringent requirements to obtain state-issued identification such as a driver's license. While the legislative tracking service searches the entire text of the bill for key words, I code bills based on the legislative synopsis. Occasionally the synopsis does not make it clear how a bill affects immigrants. I code these as "unsure" and

⁹ State Net is itself a LexisNexis company.

¹⁰ A similar example of search terms comes from the Migration Policy Institute (MPI). The MPI search terms: "After conferring with research specialists at LexisNexis, the exact search terms devised were: alien OR immigra! OR "nonimmigra!" OR citizenship OR noncitizen OR "non-citizen" OR "not a citizen" OR undocumented OR "lawful presence" OR "legal! presen!" OR "legal permanent residen!" OR "lawful permanent resident" OR migrant OR "basic pilot program" OR "employment eligibility" OR "unauthorized worker" OR "human trafficking" AND NOT ("responsible citizenship" OR "good citizenship" OR "citizenship training" OR unborn OR alienate OR alienation OR "alien insur!" OR "alien company" OR "alien reinsur!")" (Migration Policy Institute 2007: 29).

exclude them from the analysis.¹¹ Two research assistants coded a subset of policies as a robustness check and the intercoder reliability is 0.85. A comprehensive set of coding rules can be found in the appendix.

Two important policy distinctions should be noted. First, there is a clear difference between immigrant policy, as identified by legislative key words, and policy relevant to immigrants. The legislative tracking service will only identify bills that have the immigrant key terms. It will miss policy that immigrants may care about but do not contain such terms. For example, recent immigrants who plan to start their own business or desire to work in agriculture may care about legislation regulating small businesses or agriculture. Such regulations apply to *all* individuals, not just immigrants. These policies will be missed with the key term approach. Second, there is a clear difference between bills explicitly and implicitly about immigration. The former will be identified by the legislative tracking services, while bills implicitly about immigration, such as crime bills and sentencing laws that do not contain key words will be missed. Since the United States immigration narrative encompasses many policy areas including health, criminal justice, and education, future work should better conceptualize bills that are only implicitly about immigration.¹²

It is worth noting that while immigrant policy generally focuses on non-citizens, policy does not always focus or mention undocumented immigration. For example, in 2014, of the 99 pro-immigrant bills passed, only one-third specifically focused on the undocumented population.

¹¹ Many of the bills coded as unsure are related to state tax code or employment law.

¹² See Chavez (2008) for an overview of the immigrant and Latino Threat narrative. Abrajano and Hajnal (2015) explore how immigration effects state spending on health, education, criminal justice policy. They also look at the effects of immigration on state tax policy.

1.2. Policy Magnitude

All policies are not created equal. Policy magnitude measures how many people a policy affects and how greatly it affects them. In other words, this captures the number of people the policy impacts and the severity of the policy. This policy scale ranges from 1 to 4. This measure is admittedly imprecise, but captures variation in policy because not all policy has an equal affect on immigrants. In the simplest sense, a policy of magnitude 1 affects few people in an insignificant way, and a policy of magnitude 4 affects many people in an important way. A policy of magnitude 1 is a 2014 Massachusetts bill that barred temporary hunting licenses for unauthorized immigrants and individuals in the United States on a temporary visa (H4376). For the avid unauthorized immigrant hunter or someone in the US on a visa, this would be a meaningful setback; however, this bill does not affect many individuals. A policy of magnitude 4 is a 2014 Arizona bill that made it a criminal offense to transport or conceal an unauthorized individual, and made it a criminal offense to encourage an unauthorized individual to come to or reside in Arizona. This bill targets multi-status families that have unauthorized individuals living under one roof and targets anyone who picks up unauthorized day laborers and transports them to a construction site. This bill criminalizes many individuals who simply interact with unauthorized immigrants.

The examples above are the most clear-cut examples; however the measure of magnitude is more nuanced. Other examples of magnitude 1 policies are those that affect many individuals in a minor way. Other examples of magnitude 4 policies are those that directly target a small population and are incredibly harsh.

Future drafts of this chapter will consider an alternative measure of magnitude that determines policy magnitude based on immigrant policy type. For example, all bills that offer

driver's licenses will be considered pro-immigrant with a policy magnitude of 3. This alternate measure is more precise, since it is difficult to predict how many individuals a policy will affect. This new approach will also increase intercoder reliability.

2 The Nature of Pro-Immigrant Policies

In the subsequent section I theorize in detail why public opinion and demographics have an effect on pro-immigrant policy. The punch line is that state legislatures are mindful of their core constituency when they pass policy, but also are aware that they cannot completely alienate a growing Latino and immigrant population. To the extent that legislatures have an anti-immigrant base, they are most responsive to their core constituency and pass less pro-immigrant policy; in particular, legislatures will pass less policy with concrete implications when there is an anti-immigrant base. In contrast, legislatures are responsive to the Latino population and pass more pro-immigrant policy; in particular, legislatures will pass more policy that is strictly nominal and has no concrete policy implications when there is a Latino constituency. In this section I uncover how public opinion and demographics affect the various policy types.

Pro-immigrant policy can be divided into four broad categories. First, there is the most common form of policy that has clear fiscal or institutional effect. Second, some policies are what I call *hidden positives* that assist immigrants in a covert way without alerting anti-immigrant constituencies. Third, there are policies that specifically concern the immigrant population and do not affect the average state resident. Forth, there are nominal bills that recognize a group, place or individual, but have no concrete fiscal or institutional effect. I address these four policy types in turn.

2.1. Legislation with Clear Policy Implications

The most common policy passed are those with clear fiscal or institutional effect. For example, in 2014 Florida passed a bill that allows undocumented students to pay in-state tuition fees rather than the much higher out-of-state fees.¹³ Similarly, Texas, an early adaptor of in-state tuition, passed a bill in 2001 that allows undocumented students to pay in state-tuition and receive state financial aid.¹⁴ Another example of pro-immigrant bills with concrete implications are those that offer driver's licenses to undocumented individuals. In 2005 Utah passed legislation that allows individuals without a social security card to obtain for a driving privilege card (S227). Similarly, in 2013, Nevada passed a bill that offers a driver's authorization cards regardless of an individual's legal status (S303). Generally, pro-immigrant policy with clear implications grants immigrants access to a public resource or institution, or allocates funds to a particular immigrant-serving program.

One of the core arguments in this book is that public opinion on immigration has a strong influence on the passage of immigrant policy. This type of policy with clear institutional or fiscal effect is the type of policy state residents should care most about because resources are directed to an immigrant group. Put simply, if residents are most concerned about policy that has clear fiscal or institutional effects, I expect the state legislature to be most attentive to public opinion when considering this type of policy. I will revisit the important role of public opinion in the latter part of the chapter when I explicitly present my hypotheses.

¹³ The bills targets students "...including but not limited to those undocumented for federal immigration purposes who have attended a secondary school for three years before graduating from a Florida high school, applied for higher education enrollment within two years of graduation, and submitted an official Florida high school transcript as evidence of attendance and graduation" (H851, NCSL).

¹⁴ "...the student must have resided in Texas while attending high school in Texas, graduated from a public or private high school or received a GED in Texas, resided in Texas for three years prior to graduation from high school or receipt of GED, and provide their institution of higher learning a signed affidavit indicating an intent to apply for permanent resident status as soon as able to do so" (H1403, NCSL).

2.2. Hidden Positives

Many immigrant bills directly target immigrants; however, some pro-immigrant policies provide *hidden positives*, by including benefits to the immigrant population in a covert fashion. I use this term to capture the characteristics of policies with concrete implications that do not benefit immigrants at first glance. Hidden positives are a subset of legislation with clear policy implications, but compared to policies that overtly help immigrants, these pro-immigrant bills benefit immigrants in a covert way. Hidden positives are not the norm, but are a meaningful proportion of pro-immigrant bills. For example, in 2014, 11% of pro-immigrant bills with fiscal or institutional effects were hidden positives. Similarly, in 2013, 9% of pro-immigrant bills were hidden positives.

Hidden positive policies include immigrants to the bill as an afterthought. For example, in 2014, Virginia passed a bill that "...defines 'employee' as every person, *including aliens* and minors, in the service of another under any contract of hire or apprenticeship, written or implied, *lawfully or unlawfully employed*" (emphasis added, H630). All individuals who are defined as employees are eligible to file for workers' compensation benefits. As part of a larger benefits bill, the legislature broadly defined those eligible, which includes individuals not authorized to work. This method of covert assistance satisfies Hispanic and immigrant populations, however small, without angering natives. Similarly, in 2013, Mississippi passed the Early Learning Collaborative Act of 2013. As part of a larger effort, "This law changes the 'Early Childhood Services Interagency Coordinating Council' to the 'State Early Childhood Advisory Council (SECAC)' and includes in its membership a representative from Head Start agencies in the state, which includes Indian Head Start programs and *migrant and seasonal Head Start programs*" (emphasis added). Again, legislatures are able to reach out to immigrant populations without

alerting anti-immigrant residents. The examples above capture the type of hidden positives that pass in Republican states, however these policies are not exclusively Republican.

Hidden positives are also found in Democratic states. In 2011, New York passed A3304 that established “...a health-related legal services program, free of charge, for income eligible patients and their families whose legal matters are created by, aggravated by, or have an impact on the patient's health. Legal services will be provided on a volunteer basis regarding a range of matters, *including immigration*” (emphasis added). The main focus of hidden policies is not the needs of immigrants, but legislatures are able to covertly reach out to this group that is increasingly electorally relevant. Another example is an Illinois bill that established “...a program in the Department of Public Health to ensure access to psychiatric health care services for all citizens of Illinois, with particular attention given to underserved populations and designated shortage areas, *including migrant health centers*” (emphasis added, HB5053, 2010). While I find that residents in Democratic states generally have more favorable opinions towards immigration than residents in Republican States, legislatures in Democratic states can provide meaningful assistance to immigrants without upsetting anti-immigrant constituents.

2.3. Bills Specifically Focused on Immigrant Population

The hidden positives described above appeal to immigrants in a covert way. Some pro-immigrant policies, however, appeal to immigrant overtly, but deal with topics almost exclusively germane to immigrants. These pro-immigrant policies address topics Hispanics and immigrants care about but native resident may be less focused on. For example, in 2012 among policies with concrete policy implications, about one-third of pro-immigrant policies dealt with public benefits, health, and human trafficking. While public benefits and health legislation might

directly affect low-income natives, they are certainly serious concerns for recent immigrants. Human trafficking policies are of particular concern to immigrants since these policies help protect one of the most vulnerable segments of the foreign-born population. In 2013, among pro-immigrant bills with fiscal or institutional effects, nine percent dealt with human trafficking. Again in 2014, nine percent addressed human trafficking issues.

To focus on policies that are important to immigrants but that do not raise concerns among natives, can be an effective strategy to appease the Hispanic constituency. For example, in 2012, the South Carolina legislature passed a pro-immigrant bill that aims to reduce human trafficking (HB3757), and in 2013, Pennsylvania passed a human trafficking bill that helps victims obtain special immigrant visas and access federal benefits (S75). Bills like these do not alarm the average state resident because they only affect a small sub-population. Also, these bills are framed as assisting victims and should raise less concern among residents compared to bills that provide broad benefits like driver's licenses to unauthorized individuals. Another example of a policy uniquely germane to immigrants is the 2013 bill passed by the Republican controlled legislature in Arkansas that eases restrictions on medical licensing requirements for foreign doctors (HB2033). Like human trafficking policies, these licensing policies target a very small population. A legislature can pass policy that will exclusively affect recent immigrants as an attempt to appeal to the immigrant community without upsetting other constituencies.

2.4. Nominal Bills

The final type of pro-immigrant policy are nominal. This legislation lacks clear fiscal or institutional effects. They can be considered cheap talk used to appeal to the immigrant population. In 2013, Mississippi passed a nominal bill that "...congratulates the city of

Cleveland, Mississippi, on being named as one of the 20 best small towns to visit in 2013 by Smithsonian magazine. Among other areas, the town is commended for its diverse culture stemming from a broad range of immigrant populations” (HR141). Nominal bills commemorate immigrant populations but have no policy effect. Similarly, in 2013 Georgia passed a bill that “... recognizes February 7, 2012, as ‘Catholic Day’ at the Georgia state capitol and commends the members of the Catholic faith for reaching out to all people in Georgia whether newcomers or long established, including refugees, immigrants, and those seeking asylum from oppression” (HR63). Nominal bills may be important to segments of the population, but unlike the majority of pro-immigrant policies, they lack real implications.

The pro-immigrant examples in this chapter do not serve to downplay the anti-immigrant bills that frequently pass in both Republican and Democratic legislatures, but it is important to recognize that anti-immigrant efforts are only half of the story.

3 What Determines Pro-Immigrant Policy

What leads to policies that expand immigrant rights? This section begins with theories of public opinion and demographics, and then turns to alternative explanations of policy passage.

3.1. Public Opinion

In the previous chapter I introduce my theory on immigrant policy passage. A critical component of my theory is the influence of public opinion on immigrant policy. There is evidence that state ideology has a strong effect on state policy (Erikson, Wright and McIver 1993, 2006) and evidence that issue specific opinion can have a meaningful effect on a wide

range of state policy issues ranging from the environment to capital punishment.¹⁵ There are three reasons why one would expect public opinion on immigration to influence immigrant policy. First, because immigration is symbolic and salient, residents care about policy outcomes. Residents are concerned about the effect of immigration. Second, since immigration is simple, residents will likely notice the actions of legislatures and should be able to tell if the legislature is enacting their preferred policy. For example, residents know if the legislature passes a policy that provides driver's licenses for undocumented individuals. Third, because there is variation in opinion on immigration, in states where the public is on one side of the debate, to ignore public sentiment on this salient issue can prove electorally consequential. State legislatures are aware of the potential consequences of ignoring sentiment on an issue residents care about and pass policy that is in line with public sentiment on immigration.

My approach to pro-immigrant policy mirrors the method I develop in the previous chapter to analyze anti-immigrant policy; however, there are reasons to remain cautious as I move forward. The factors that lead to pro-immigrant policies may be distinct from what determines anti-immigrant policies. In particular, I argue that anti-immigrant legislation is driven in large part by negative public sentiment. Surveys consistently show that Americans are generally concerned about the levels of immigration.¹⁶ As I demonstrate in a later chapter, especially when immigration is salient, politicians are particularly responsive to public opinion. It is plausible, however, that pro-immigrant policy is not as important to the general public as anti-immigrant policy is. Perhaps residents only care about legislation that specifically targets and restricts the rights of immigrants; however, the public may not care as much about pro-

¹⁵ See Johnson and Brace (2005), Hill et al (1995) on issue-specific public opinion and environmental policy. See Norrander (2000), Mooney and Lee (2000) on issue-specific public opinion and capital punishment. For an overview of the effects of public opinion on policy, see Burnstein (2003), Brace et al. (2002), Hill and Hinton-Anderson (1995), and Erikson, Wright, and McIver (1993, 2006).

¹⁶ See Pew (2013) and Abrajano and Hajnal (2015).

immigrant policy. Because of this, legislatures may be less responsive to public sentiment when considering policies that expand the rights of immigrants. Thus, it is worth testing the impact of public opinion.

More specifically my theory implies that legislatures should pass fewer pro-immigrant policies in states with stronger anti-immigrant sentiment. In line with earlier chapters, I maintain a focus on anti-immigrant public opinion because opinion on immigration is largely negative; to the extent that anything is said publicly about migrants, what is said is negative. One might think of states as having varying degrees of anti-immigrant opinion.

This leads to the following hypothesis about the influence of public opinion on pro-immigrant policy:

Hypothesis 1: As public opinion toward immigration becomes more negative, legislatures will pass fewer pro-immigrant policies.

The previous chapter introduced the idea that salience may affect how responsive legislatures are to opinion. Legislatures have a finite policy agenda space and public opinion can influence both what topics make it on the agenda and whether policy should change the status quo in a liberal or conservative direction. While agenda-setting is an integral component of the policy process, I focus on immigrant policy outcomes.¹⁷ This chapter tests the basic policy responsiveness logic. Subsequent chapters discuss in detail the influence of salience and tests the impact of immigrant public opinion on policy, conditional on salience. I measure salience on immigration with state newspapers, Google searches and Twitter activity.

¹⁷ See Baumgartner and Jones (1993, 2009) for an overview of the policy agenda-setting process.

3.2. Demographics

In the previous chapter I argue that demographics are influential in the passage of anti-immigrant policy. It is unclear, however, if one should expect the size of the Latino population to influence pro-immigrant policy in a similar manner. Earlier I argue that the Latino population elicits feelings of racial threat, which motivates states to pass anti-immigrant policy. Thus we might expect a similar effect when states consider pro-immigrant policy. In response to racial threat, perhaps a large Hispanic population will motivate legislatures to pass fewer pro-immigrant policies.

However, racial threat may play less of a role because of hidden positives, bills specifically focused on the immigrant population, and nominal bills. Over one-third of pro-immigrant policy lacks concrete implications. For example, in 2012 Georgia passed a bill that “...recognizes and commends the Latin American Association on its the mission to further the integration of Latino immigrants into the American society as workers, family members, students, and leaders” (HR 2167) and in 2013, Texas passed a bill that honors the life of Cesar Chavez (HR85). The native population is more concerned with policies that clearly target and restrict immigrant rights, and less concerned about nominal policies. Thus, in the realm of pro-immigrant policies, while I expect public opinion to have an influence on policy, I also expect states with large Hispanic populations to pass *more* immigrant friendly legislation. Conventional racial threat theory, however, views Hispanics as a threat to American culture and American way of life¹⁸ and in response to the immigrant threat, the racial threat theory would predict that states with large Hispanic populations would pass fewer pro-immigrant policies.

In contrast with racial threat theory, my theory is that immigrants can have a positive influence on policy. As growing Hispanic populations become electorally relevant, the number

¹⁸ See Chavez (2008) for an overview of the Latino and immigrant threat.

of pro-immigrant policies passed should increase. This leads to the following hypothesis about the size of the Hispanic population and the passage of pro-immigrant policy:

Hypothesis 2: As the Hispanic population increases in size, legislatures will pass more pro-immigrant policies.

Because of electoral concerns, legislatures pass pro-immigrant policies to help satisfy their Hispanic constituencies.¹⁹ Even in states with relatively small migrant populations, one might expect legislatures should be most willing to pass costless, nominal pro-immigrant policy because such bills do not expend state resources. Nevertheless, in states with large Hispanic populations legislatures will pass pro-immigrant policies with clear institutional and fiscal outcomes. In particular, legislatures can use hidden positives with concrete benefits to appease key immigrant constituencies.

3.3. Beyond Opinion and Demographics

Before I test the effect of opinion and demographics on policy, one should consider alternative explanations. More specifically, what other reasons might states pass pro-immigrant policy?

Beyond opinion and demographics, the literature provides two explanations for why states might pass immigrant legislation: an economic health perspective and a partisanship explanation.

3.3.1. Economic Considerations

One view is that greater economic resources allow or encourage states to be more generous to immigrants. States that are fiscally healthy may not be as concerned with the costs of immigration compared to states that are experiencing economic hardship. In support of this

¹⁹ One cannot assume that all Hispanics desire policies that expand the rights of immigrants. For example, *You Don't Speak for Me!* is a Hispanic group of Americans against amnesty (FAIR 2006); nevertheless a broad state policy agenda that restricts immigrant rights is not a wise strategy in a demographically diverse state.

view, Zimmerman and Tumlin (1999) find that states with higher per capita income are more likely to provide aid to immigrants in the form of programs that provide cash, food, and health assistance.²⁰ Similarly, others find that in better economic times, states tend to pass more public benefits and civil rights legislation (Eyestone 1977, Savage 1978, Berry 1990, Gray 1973).

A different perspective, however, is that states *are* concerned about the costs of immigration. As states spend more on social welfare, native-born residents should be more opposed to expanding access to benefits. Residents in states with generous welfare programs may be worried that immigrants take advantage of their charitable welfare system. In support of this notion, Hanson et al. (2004) find that states with a more generous welfare policy pass more anti-immigrant legislation.²¹ Similarly, evidence suggest that support for California's anti-immigrant Proposition 187 in the 1990s, that aimed to limit the use of state-funded social services by undocumented immigrants, was due to concerns over poor economic conditions (Alvarez and Butterfield 2000) and the cost of illegal immigration (Calavita 1996).²²

The evidence is mixed; some states find a positive relationship of state economics on policy, others find a negative relationship of economics on policy, and still others find that welfare spending does not affect the passage of state immigrant policy (Boushey and Leudtke 2011). I do not expect to find an impact of economics on policy because the broad discussion in America about immigration is more about race and ethnicity and less about economics (Chavez 2008).

A separate economic explanation is that industries that rely on low-skilled labor might lobby for pro-immigrant policies. In states where the agriculture, construction, or meat packing

²⁰ Interestingly, large state surpluses do not seem to matter.

²¹ This study is grounded in the economics literature. While some basic political theories are addressed, this is largely an economic study.

²² The extensive literature on California's Proposition 187 also suggests that debate about immigration is often racialized (see for example Garcia 1995).

industries are a prominent force, we might observe more pro-immigrant policy. There is some evidence that campaign contributions from industries that employ immigrants lead to more immigrant-friendly legislation (Nicholson-Crotty and Nicholson-Crotty 2011) however, others find only limited effects of contributions (Newman 2012). When I test the influence of the agriculture and construction industry on policy passage, I do not find an effect of campaign contributions and the inclusion of the variable does not increase the amount of variance explained; therefore, I omit contributions from the models (see appendix).

3.3.2. Partisanship

Distinct from economic explanations, some argue that party dynamics are primarily responsible for state immigration policy. The partisan theory implies that the more Republican constituents in a state, the more anti-immigrant policy one should see. For example, there is evidence that the size of the Republican population predicts restrictive state (Gulasekaram and Ramakrishnan 2015) and municipal immigrant policies (Ramakrishnan and Wong 2010). Similarly, the partisan composition of the legislature should influence policy. This view relies on the fact that Republicans generally oppose immigration (Wong forthcoming). The more Republicans in a state legislature, the more restrictionist policy we should see passed. Republican legislators once elected feel they have a mandate to pass conservative, Republican policy. While this logic seems intuitive, support for this theory is mixed. Studies that focus on state party control find limited support for the idea that Republican controlled legislatures pass more anti-immigrant policies (Newman et al 2012) and less pro-immigrant policies (Nicholson-Crotty and Nicholson-Crotty 2011; Boushey and Leudtke 2011). In this chapter I explore how the ideology of state residents affect policy and how legislative majorities affect the passage of

policy. In Chapter E I explore how legislative majorities affect policy responsiveness to public opinion. In other words, are legislatures dominated by one party better at passing policy that is closer to the median preference of state voters?

3.3.3. Other Considerations

Besides the core theories presented above, there are other factors that could affect policy. One theory emphasizes the involvement of activist groups and special interests. Activist groups and political entrepreneurs aid the policy process by setting the agenda and serving as spokespersons for the issue (Mintrom 1997).²³ For example, conservative media personalities such as Lou Dobbs, and conservative organizations that want to reduce immigration levels, such as the Federation for American Immigration Reform (FAIR) and Numbers USA,²⁴ can become leaders of restrictionist policy and can be instrumental in bill passage. Gulasekaram and Ramakrishnan (2015) refer to these leaders as restrictionist issues entrepreneurs. While I do not doubt that issue entrepreneurs, activist and interest groups can frame the immigration debate, these actors have their greatest influence at the national level. Their reach is far beyond the borders of their state and their greatest strength is their ability to frame the *national* debate.²⁵

Beyond in influence of extra-governmental actors, there are state institutions that could affect policy passage. For example, direct democracy is a mechanism for citizens to express

²³ Mintrom (1997) also discusses the role of federal involvement in speeding up the legislative process. Interest groups can also provide legislators with information about the effects policy will have on their district and via their lobbying efforts can exert significant influence (Wilson 1990; Wright 1996).

²⁴ See <http://www.fairus.org/> and <https://www.numbersusa.com>.

²⁵ Many issues entrepreneurs occupy the national spotlight. Even state issue entrepreneurs have a reach that stretches beyond the borders of their state (e.g. Jan Brewer or Sherriff Joe Arpaio from Arizona). Since their influence effects all states equally, I am not required to account for them in my model. Thangasamy (2010) finds that pro-immigrant and activist groups, such as the Mexican American Legal Defense and Educational Fund (MALDEF) and the American Civil Liberties Union (ACLU), have a notable role in the passage of policy toward undocumented immigrants, but he only looks at a few sub-categories of policy (prenatal care availability, in-state tuition access, and driver's licenses) and focuses exclusively on policies affecting the undocumented population.

their opinion and may make legislatures more responsive to public preferences (Gerber 1999). More specifically, one would expect states with the direct initiative to generally pass more immigrant policy because if legislatures do not act, the public will. Although the results are mixed, the influence of direct democracy will be taken into account in the empirical analysis of pro-immigrant state policy (see Lupia and Matsusaka 2004 for an overview of the effects of direct democracy).²⁶

4 Empirical Test

To test the effects of opinion and demographics on policy I use data from 2005 to 2014. Future drafts will include data from the Progressive States Network from 1997-2004.

4.1. Outcome of Interest and Coding Methods

The outcome of interest is the number and magnitude of pro-immigrant bills passed annually in a state. Because there is considerable idiosyncratic, individual-legislator posturing, I analyze only

²⁶ There is also a vast literature on the effects of professionalization on state legislatures (see for example J.D. King 2000, Kousser 2005, Mooney 1995, Squire 1992). Professional legislatures, compared to semi-professional or citizen legislatures, have longer session lengths, more staff, and legislate full time (i.e. legislators have ample salaries and are not required to keep their day jobs). More resources improve legislatures' ability to consider more bills in a given session and some argue that more professional legislatures are better able to respond to public sentiment. While I included the widely accepted Squire Index of professionalization that captures salaries of legislators, size of staff and session length, I ultimately leave it out of the final model (Squire 1992). It does not have a significant effect on policy, does not add to the fit of the model and does not increase legislative responsiveness to public opinion.

Other relevant variables to consider are a dummy variable for southern and a dummy variable Mexican border states; however, theoretically we want to account for the underlying determinants of policy. For example, Boushey and Luedtke (2011) find that the Mexican border state dummy variable becomes insignificant in their fully specified model and exclude the variable from their final analysis. I also omit the Mexican border and southern state dummies from the final model since I control for the underlying covariates that give rise to these geographic variables. (Also, the a random effects model that accounts for unobserved heterogeneity in the states captures any variation that otherwise would have been contained in a south or border state dummy variable. The main results remain robust.)

Finally, policy diffusion may impact a state's likelihood of passing immigrant legislation. States may be more likely to pass immigrant legislation once other states begin passing similar policy (See Gray 1973, Eyestone 1977, Mintrom 1997, Berry and Berry 1999). Diffusion serves an intermediate role and does not explain why states begin legislating in the first place. I instead focus on the factors that lead to initial policy adoption. Policy diffusion is an plausible mechanism, but is a separate project. See Boushey (2010) for an overview of policy diffusion in the states.

bills with concrete fiscal or institutional effects that pass both houses and are signed by the governor.²⁷ This is a reasonable restriction because I am ultimately concerned with policy outcomes rather than policy proposals. While policy proposals may provide an abstract signal to the immigrant population about how welcome they are in the state, policy outcomes affect daily lives in concrete ways.

4.2. Public Opinion Measure

Existing studies on immigration policy do not explicitly measure public sentiment. To measure issue-specific public opinion I use a range of questions and surveys including data from the Cooperative Congressional Election Study (CCES). In this chapter I focus the years of the CCES that include questions on immigration—2006, 2007, 2010 and 2012. The CCES is a useful data source because it has good questions on immigration, it covers many years, and has large states samples. Sample sizes are sufficiently large to produce accurate state level estimates of public sentiment. For example, the average number of respondents who were asked in 2010 if they supported granting legal status to the undocumented is 1,100 per state.

I am able to capture underlying sentiment toward immigrants, since each respondent is asked multiple immigrant-related questions. For example, each respondent is asked, “Do you support a path to citizenship for the undocumented?” and, “Should we increase the number of border patrols on the US-Mexican border?”²⁸ I create an alpha factor score for each respondent and generate mean state values. This index measure captures the common variance across these

²⁷ While one could explore the factors that lead to the introduction of legislation, I focus on bills that make it all the way through the legislative process. In other words, the following two scenarios are equivalent: 1) bill failure and 2) the issue of immigration never made it onto the legislative agenda. At the proposal level, there are many factors that influence the number of bills introduced in a state legislature. Legislative capacity, legislative rules, and professionalism all affect bill introduction (See Squire 1998, Kousser 2004). Empirically, there is too much idiosyncratic variation at the introduction level to distinguish between states that proposed immigrant legislation but failed, and states where immigrant issues were never addressed.

²⁸ See appendix for question wording.

questions. The scale reliability coefficients suggest that the questions index well.²⁹ The questions index well and the measure appears reliable because the questions capture the same underlying construct—opinion toward immigration. To account for slight year-over-year question differences, I demean the average state response and standardize the variance to allow for comparison across years. Intermediate years are linearly interpolated and peripheral values are extrapolated. In practice, it matters little which survey I use to gauge state public opinion or which questions I focus on. Different surveys and different questions rank the states very similarly. If instead I use a single year of opinion data to model future policy passage, the results hold. Results are robust to survey data from the National Annenberg Election Survey (NAES) and SurveyUSA.

To give one an idea of how the CCES public opinion measure ranks the states, those that are the most liberal on immigration are Vermont, New York, Massachusetts, Maryland, and California. Those that are the most conservative are Tennessee, Nebraska, Arizona, and South Dakota.³⁰ These rankings are in line with prior expectations given the general liberal and conservative leanings of these states. In other words, if we rank states based on the percent of resident who identify as conservative, the states would rank similarly (Erikson, Wright and McIver, 2007). Some may argue that attitudes on immigration are simply measuring state ideology. Immigration specific public opinion, however, differs substantially from more general liberal-conservative ideology. State ideology and public opinion on immigration only correlate at 0.3 at the state level. Moreover, I include a measure of state ideology in empirical models and issue-specific public opinion on immigration continues to have a significant effect on the passage of policy.

²⁹ The scale reliability coefficient is 0.85 in 2006, 0.87 in 2007, 0.76 in 2010, and 0.80 in 2012.

³⁰ These rankings are derived from the 2012 CCES.

4.3. Other Covariates

Public opinion is the key variable of interest, but I include a series of covariates in the empirical models that theoretically might affect state immigrant policy. First, to address the state finance perspective, the idea that concern about immigration may be related to the state's financial wellbeing, I measure the health of the state economy by looking at unemployment rates (Statistical Abstract of the United States, US Census).³¹ Second, because states may be concerned about immigrants' use of the welfare system, I control for state welfare spending per capita.³² Third, to address the influence of demographics I include the proportion of the population that is Hispanic (US Census).³³ Fourth, to address the influence of state ideology I control for the size of the state population that identifies as conservative (Erikson, Wright and McIver, 2007). Fifth, I include a biennial legislature dummy variable because one would expect states that meet every other year to pass fewer bills (Council Of State Governments 2012). Sixth, a dummy variable accounts for states that have the direct initiative (NCSL 2013), as these states may be more likely to pass policy because if the legislature does not act, the public could act unilaterally. Seventh, to test partisan theories that predict that Republican states would pass fewer pro-immigrant policies, I include a dummy variable of state Republican control. This

³¹ Other ways to measure state fiscal health are state budget surpluses and per capita income. While arguably how much it cost to provide services to immigrants matters, (and hence it is worth looking at state budget surpluses), it is more relevant to think about unemployment rates; residents may perceive competition with immigrants for jobs. Similarly, per capita income may be relevant. Perhaps more wealthy states are less concerned about the costs of immigration (Zimmerman and Tumlin 1999) and more affluent residents are less concerned about competing for jobs with recent immigrants (Huddy and Sears 1995). Future drafts will explore the effects of per capita income.

³² See Hanson, Scheve, and Slaughter (2004) who find that states with more generous welfare policy pass more anti-immigrant legislation. It is important to remember that unemployment rates and state welfare spending measure similar, but distinct concepts. Unemployment rates are a purely economic measure whereas state welfare spending is both a measure of economic wellbeing and state politics. The political process determines how well-funded welfare programs are.

³³ I currently focus on the overall size of the Hispanic population because there is reason to believe that as the (growing) Hispanic populations become electorally relevant, or sufficiently large, states will pass integrative policy. Results remain robust when instead I include the size of the foreign born population. Moving forward I will also look at the growth rate of the Hispanic and immigrant population as perhaps it is not the size of this diverse population, but rather the recent growth (see for example Boushey and Leudtke 2011; Ramakrishnan and Gulasekaram N.D; Zingher 2014).

variable takes on a value of 1 when a state has a Republican governor and when Republicans control both legislative houses. The variable is 0 otherwise. (See appendix for summary statistics.)³⁴

Before I present the multivariate analysis, I begin with a basic test to demonstrate the plausibility of the relationship between policy and opinion. The correlation between anti-immigrant sentiment and pro-immigrant legislation is -0.3. That is, the more anti-immigrant sentiment in a state, the less pro-immigrant policy we observe. This suggests that public sentiment on immigration could be driving policy passage. This chapter explores the basic relationship between public opinion and legislation. The rest of the book explores the conditions under which legislatures are more and less responsive to the public will.

For the multivariate analysis, I use Prais–Winsten regression with panel corrected standard errors (PCSE) (see Beck and Katz 1995). The Prais-Winsten regression corrects for serial correlation³⁵ and the panel corrected standard errors account for the panel nature of the data. This approach to panel data is standard in state politics literature (see for example Hinchliffe and Lee 2015; Lewis, Schneider, and Jacoby 2015).

To account for different policy magnitude, the dependent variable is an annual composite measure of the number of pro-immigrant bills in a state multiplied by the magnitude of each policy. The results hold if instead I use a simple count of pro-immigrant policies passed. In this chapter I analyze pro-immigrant legislation that has clear policy implications. In the next chapter I explore the other broad categories of pro-immigrant policy.

³⁴ I do not include a South dummy variable because such variable lumps all southern states together and does not allow for any variation within the South. The results hold with the inclusion of the South dummy; however, one should be caution with interpretation of such dummy variable in the context of the current model specification. I already have 3 dummy variables at this point: total republican control, direct initiative and biennial legislature.

³⁵ A crude way to describe the statistical correction is that the Prais–Winsten regression lags the independent variables; however, one of the advantages of the Prais–Winsten regression, as opposed to manually lagging the variables and using a different panel regression, is that one does not lose the first observation in each state.

I present the results from the Prais-Winsten regression in Table 1, and in the next section present a robustness check that accounts for past pro-immigrant policy activity.

Table 1: State Pro-Immigrant Legislation (2005-2014)
Policy with Fiscal and Institutional Effects
Role of Public Opinion and Demographics

PUBLIC OPINION (Anti-Immigrant)	-0.652* (0.299)
DEMOGRAPHICS % Hispanic Population	0.104** (0.030)
PUBLIC IDEOLOGY % Conservative	-0.042 (0.024)
ECONOMIC CONSIDERATIONS <u>Fiscal Conditions</u> Unemployment Rate	0.287 (0.162)
<u>Cost of Immigration</u> State Welfare Spending (per capita)	-0.815 (0.750)
INSTITUTIONS Republican Control (Governor & Legislature)	-0.499 (0.343)
Direct Initiative	2.088** (0.592)
Constant	2.175 (1.679)
Observations	500
R-squared	0.17

Note: Prais–Winsten regression with panel corrected standard errors in parentheses.
Dependent variable is a state-year measure of the number of pro-immigrant bills passed multiplied by the magnitude of each policy.
Unit of analysis is state-year. Biennial controls included.
** p<0.01, * p<0.05

Critically, even when I account for the basic arguments in the literature, public opinion on immigration has a significant impact on policy passage. More specifically, anti-immigrant sentiment has a negative and significant effect on the number of pro-immigrant policies passed in a state. This is a critical contribution of this project—politicians do not simply turn to ideological heuristics, but rather pay attention to issue-specific sentiment on immigration. States with more restrictive attitudes on immigration pass fewer pro-immigrant policies. For example, as we move from the 10th to 90th percentile of anti-immigrant sentiment, the simulated pro-immigrant policy score for a state with high anti-immigrant sentiment is 1.5, while states with low anti-immigrant sentiment has a pro-immigrant policy score of 3.4. This is a substantive difference as the average state policy score is 2.7. The implication is that democracy generally works—states are responsive to public opinion on pro-immigrant policy.

While there is a clear impact of opinion on policy, support for existing accounts of immigrant policy is mixed. First, the Hispanic population has a clear effect on the passage of pro-immigrant policy. This finding suggests that legislatures appeal to Hispanics and are aware of how policy affects this population.³⁶ Second, there is no support for the notion that states with more conservative residents pass fewer pro-immigrant policies. While conservative states are *less* likely to pass anti-immigrant policy as I demonstrate in Chapter B, there is no evidence that they are more likely to pass pro-immigrant policy. Third, while traditional partisan theories would predict that Republican legislatures pass fewer pro-immigrant policies, there is no support for this idea. In other words, there is no meaningful difference in the frequency in which Republican and Democratic-controlled states pass pro-immigrant policies. This does not come as a great surprise given the examples earlier of pro-immigrant policy in Republican-controlled

³⁶ The results remain robust when I substitute the size of the Hispanic population for the size of the foreign-born population (see appendix).

states. Fourth, states with the direct initiative pass more policy. This suggests that legislatures are generally more proactive in states with direct democracy because if they do not act, the public may take matters into their own hands. Fifth and finally, there is no evidence that economic considerations affect the passage of pro-immigrant policy. When measured by state welfare spending per capita, we do not see an effect of state fiscal concerns on the passage of pro-immigrant policy. Similarly, the unemployment rate has no effect on policy passage.

5 Robustness Check

As a robustness check, Table 2 includes a lagged dependent variable to account for the possibility that policy activity in the previous year may influence pro-immigrant activity in a given legislative session. Since it is not appropriate to include a lagged dependent variable in a Prais–Winsten regression, instead I use a Generalized Least Squares Regression (GLS), which is also designed to analyze panel data. Whereas panel corrected standard errors were appropriate in the Prais-Winsten regression, random effects are most appropriate for the GLS regression. One loses a year of data when lagging the variables; this is reflected in the number of observations in Table 2.

Table 2: State Pro-Immigrant Legislation (Robustness check)

Random-effects GLS regression

Role of Public Opinion and Demographics (2005-2014)

PUBLIC OPINION	
(Anti-Immigrant)	-0.486*
	(0.210)
PREVIOUS POLICY ACTIVITY	
Bills In Previous Year (lagged DV)	0.544**
	(0.045)
DEMOGRAPHICS	
% Hispanic Population	0.057**
	(0.020)
PUBLIC IDEOLOGY	
% Conservative	-0.023
	(0.026)
ECONOMIC CONSIDERATIONS	
<u>Fiscal Conditions</u>	
Unemployment Rate	0.154
	(0.081)
<u>Cost of Immigration</u>	
State Welfare Spending (Thousands per capita)	-1.257*
	(0.498)
INSTITUTIONS	
Republican Control (Governor & Legislature)	-0.471
	(0.407)
Direct Initiative	1.185**
	(0.413)
<hr/> Constant	2.466*
	(1.204)
Observations	450

Note: Unit of analysis is state-year. Biennial control included.

Independent variables lagged except party control, direct initiative and bivariate legislature.

Dependent variable is a state-year measure of the number of pro-immigrant bills passed multiplied by the magnitude of each policy

** p<0.01, * p<0.05

First, there is evidence that policy activity in one year is related to activity in the previous year. The lagged dependent variable accounts for factors that affected policy in the previous year, that still affect policy in the current year. Put simply, any unmeasured factors that are present in both years are captured by this lagged dependent variable. This should ameliorate concerns that the results are driven by unmeasured heterogeneity across years.

Second, the main results discussed earlier in Table 1 hold with the alternate model specification. Since legislatures pay attention to issue-specific sentiment on salient issues such as immigration, anti-immigrant public opinion has a negative effect on the passage of pro-immigrant policy. Also, because of their growing electoral importance, the Hispanic population continues to have a positive influence on the passage of pro-immigrant policy. Again, I do not find a meaningful difference between the policy passage rates of Republican and Democratic states. Similarly, states with more conservative residents do not pass pro-immigrant policies at lower rates than states with fewer residents who identify as conservative. Finally, there is continued support for the idea that states with the direct initiative are more likely to pass pro-immigrant policies.

Third, and finally, I find a significant effect of welfare spending on the passage of pro-immigrant policy. In the previous model (Table 1) I do not find an effect of welfare spending on pro-immigrant policy. This earlier evidence suggests that pro-immigrant policy is less about economics and more about other considerations. In this robustness check, however, we do observe an effect of welfare spending. This is puzzling because one may not expect a legislature to expand the rights of immigrants if that state offers many welfare benefits (e.g. Zimmerman and Tumlin 1999). One plausible explanation for this finding is that a lot of pro-immigrant policy *does not* have clear fiscal implications. For example, in 2012, Nebraska passed a bill to

train law enforcement officers and other public officials to identify victims of human trafficking (L1145). While many bills have clear fiscal effect, this bill does not have major budgetary consequences associated with it. Similarly, in 2012, Iowa passed a law that increased protections against receiving fraudulent legal services (S 2265). This law included additional protection for immigrants, but again, does not have clear fiscal impacts.

While I find support for the role of economics in this robustness check, in the earlier analysis (Table 1) I did not find support for the idea; one should remain cautious about the influence of economics.

6 Reverse Causality: Does Policy Influence Opinion?

Before I conclude, I will address a concern some may raise about the direction of the causal relationship between opinion and policy.

The main finding in this book is that opinion has a meaningful influence on the passage of both pro- and anti-immigrant policy. Under certain conditions, legislatures respond to public sentiment. States where residents have particularly anti-immigrant views pass the most anti-immigrant policies (Chapter B). States with particularly anti-immigrant opinion also pass the fewest pro-immigrant policies (the main finding in this chapter).

These findings are robust across years, surveys, and model specifications. Nevertheless, one may be concerned about reverse causality. In other words, rather than opinion that influences policy, perhaps it is policy that affects individual attitudes on immigration. This alternative causal relationship is not a serious concern. There is strong theory that supports my approach; namely the fact that attitudes about immigration develop early in life, prior to any

policy innovation. I also employ statistical tools to accurately assess the influence of opinion on policy. All things considered, it is most likely that opinion influences policy.

First, from a theoretical perspective, the immigration narrative is largely about race and ethnicity (Chavez 2008) and views about in-groups and out-groups (Citrin et al. 1997; Kinder 2003). Attitudes on immigration develop early in life and are causally prior to policy innovations. Similar work on public opinion demonstrates that animosity to welfare is largely a factor of racial attitudes toward African Americans (Gilens 1999). Individuals have opinions about race that develop early in life, and because the welfare narrative is largely about helping the poor, black population, many racially conservative individuals oppose welfare. From the same perspective, the immigration debate is about helping the poor, immigrant population. Individuals that have conservative views about immigration, attitudes that developed causally prior to any policy innovation, support anti-immigrant policy and oppose pro-immigrant policy.

Second, from an empirical perspective, a series of robustness checks strongly suggest that in fact it is opinion that influences policy. For example, I include a lagged measure of public opinion so that the empirical model assesses the influence of last year's public opinion on legislation in the current year. This forces opinion to be causally prior to policy, and this correction, by design, avoids the issue of reverse causality. This does not address theoretical concerns about the direction of the relationship; nevertheless, the main influence of opinion on policy holds across various model specifications. As a robustness check, since opinion is relatively stable, I use a 2005 measure of public opinion from SurveyUSA to assess the impact of opinion on future policy passage between 2006 and 2014. I force the empirical model to assess the influence of past opinion on future policy. The results hold—opinion has an important influence on policy.

Any remaining concerns will likely stem from the fact that this study uses observational data. The research design is not ideal for definitively assessing causality. The best design, although not plausible, would be to measure public opinion in all 50 states and then randomly assign immigrant policies to states. After the exogenous policy is randomly assigned, one would measure opinion to see if there was any change. This experimental method would determine if immigrant policy affects attitudes, but obviously the design is not plausible.

While the empirical corrections above are somewhat post-hoc, my theoretical approach is sound. Since attitudes about race, ethnicity, and immigration are developed early in life, there is strong theoretical grounding for the notion that public opinion affects state immigrant policy.

7 Discussion

This chapter outlines the analysis of state immigrant policy. First, pro-immigrant policy is found in both Democratic and Republican states. Second, the typology of pro-immigrant policy emphasizes that public opinion and demographics may not influence all pro-immigrant policy equally. Third, empirical evidence supports the idea that issue specific public opinion influences the passage of pro-immigrant policy—existing literature does not engage this idea, or what few studies posit the relationship do not directly test it. Fourth, contrary to the immigrant threat narrative, there is evidence that the Hispanic population can have a positive influence on the passage of pro-immigrant policy. Fifth and finally, this chapter addressed the concern some may have about the possibility of reverse causality. Some may argue that policy influences opinion; however, attitudes about ethnicity and immigration develop early in life and are causally prior to any immigrant policy.

In the next chapter, I use the policy framework developed here to test the influence of opinion and demographics on the various types of pro-immigrant policy. The chapter begins with an analysis of hidden positives, follows with an examination of policy that specifically concern immigrants, and finally, concludes with an analysis of nominal bills. In the following chapter, I elaborate on the relationship between public opinion, the salience of immigration, and policy. In other words, when does opinion matter most?

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APPENDIX

Summary Statistics	Mean	Std. Dev.
Pro-Immigrant Policy (per state-year)	1.9	3.5
Policy with Concrete Implications (per state-year)	1.3	2.1
Public Opinion (Higher values = More Anti-Immigrant)	0	1
% Conservative Residents	36	7.8
% Hispanic Population	10.4	9.8
Unemployment Rate (percent)	5.7	1.9
Welfare Spending (thousands per capita)	1.3	0.41
Republican Legislature & Governor*	0.13	n/a
Direct Initiative#	0.28	n/a
Biennial Legislature^	0.069	n/a

Note:

*ratio of state-years with republican controlled legislature & Governor

#ratio of state-years that have direct initiative

^ratio of state-years that have a biennial legislature

Codebook

The Politics of U.S. State Immigration Policy: Public Opinion and Representation

Michael Rivera

Dependent Variable Information

Data Sources Related to State Immigration Policy

After carefully reviewing the existing literature and combing the web for data sources, there are three main sources that relate to state immigration policy. First, The National Conference of State Legislatures (NCSL) is a bipartisan organization that serves to provide state legislatures with information and assistance. They are a clearinghouse of information regarding state level issue areas such as the environment, labor, health, and immigration. Comprehensive data is available from 2005-current. Second, the Migration Policy Institute (MPI) is an independent think tank that primarily focuses on international migration, but has data about state regulation of immigration in the United States for 2007. Finally, the Progressive States Network (PSN) is a public policy group that promotes democracy. PSN provides a list of immigration policy from 1997-2008.

Legislation Coding (Jan 2016)

Pro/Anti Immigrant

- 1 = Pro-immigrant
- 1 = Anti-immigrant
- 0 = Neutral
- 9 = Unsure

Examples of pro-immigrant bills are those that expand access to public benefits/services, assist immigrants with incorporation into society, or help facilitate commerce (e.g. accepting consular identification cards as official identification). Examples of anti-immigrant bills are those that reduce access to public benefits/services, English only laws, and those promoting more stringent requirements to obtain state-issued identification (e.g. driver's license). Neutral bills often rename state agencies, update technical definitions, or otherwise do not have clear policy implications.

Magnitude

Range from 1 => 4

- 1: affects few people in an insignificant way
- 4: affects many people in a significant way
- 9: unsure

All policies are not created equal. Policy magnitude measures how many people a policy affects and how greatly it affects them. In other words, this captures the number of people the policy impacts and the severity of the policy. This policy scale ranges from 1 to 4. This measure is admittedly imprecise, but captures variation in policy because not all policy has an equal effect on immigrants. In the simplest sense, a policy of magnitude 1 affects few people in an insignificant way, and a policy of magnitude 4 affects many people in an important way. A policy of magnitude 1 is a 2014 Massachusetts bill that barred temporary hunting licenses for unauthorized immigrants and individuals in the United States on a temporary visa (H4376). For the avid unauthorized immigrant hunter or someone in the US on a visa, this would be a meaningful setback; however, this bill does not affect many individuals. A policy of magnitude 4 is a 2014 Arizona bill that made it a criminal offense to transport or conceal an unauthorized individual, and made it a criminal offense to encourage an unauthorized individual to come to or reside in Arizona. This bill targets multi-status families that have unauthorized individuals living under the same roof and targets anyone who picks up unauthorized day labors and transports them to a construction site. This bill criminalizes many individuals who simply interact with unauthorized immigrants.

The examples above are the most clear-cut examples; however the measure of magnitude is more nuanced. Other examples of magnitude 1 policies are those that affect many individuals in a minor way. Other examples of magnitude 4 policies are those that directly target a small population and are incredibly harsh.

Future drafts of this chapter will consider an alternative measure of magnitude that determines policy magnitude based on immigrant policy type. For example, all bills that offer driver's licenses will be considered pro-immigrant with a policy magnitude of 3. This alternate

measure is more precise, since it is difficult to predict how many individuals a policy will affect and this new approach will increase intercoder reliability.

Hidden Immigrant Bill

1 = Yes, the bill appears to address immigration, but does so in a covert or hidden fashion

0 = No, the bill is explicit about how it addresses immigration.

For example, in 2011, New York passed A3304 that established “...a health- related legal services program, free of charge, for income eligible patients and their families whose legal matters are created by, aggravated by, or have an impact on the patient's health. Legal services will be provided on a volunteer basis regarding a range of matters, *including immigration*” (emphasis added). In this piece of pro-immigrant legislation immigrants are almost an afterthought. There are also anti-immigrant policies that address immigration in a cryptic way. In 2013, Texas passes a bill related to illegal fishing. SR71 expressed “...the commitment of the Senate to the elimination of illegal fishing.” The concern was that “Vessels involved with illegal fishing are also associated with other crimes, including drug trafficking, human trafficking, and illegal immigration.” This bill was ostensibly about fishing, but clearly had immigration undertones.

Focus on Undocumented Immigrants

1 = Yes

0 = No

9 = Unsure

Legislation is coded as having a **focus on undocumented immigrants** if:

a) The bill addresses undocumented, illegal/alien immigrants or illegal immigration; or

b) The bill has multiple target groups, but it is clear that undocumented immigrants are the main focus.

Focus on Specific Immigrant Group

0 (zero) = No focus on specific group

A = Asian Americans

L = Latinos

(Other) = Other, **indicate** which ethnic/immigrant group that is focused on.

9 = Unsure

Bills that mention **more than one immigrant group** are coded as lacking a focus on a specific group.

Additional Details on Coding Legislation

Legislation that has both **pro and anti-immigrant components** is coded as neutral; however, if there are two components to a bill, one clearly neutral and one clearly positive, then the bill is coded as positive. (Similarly, if one component is clearly neutral and one is clearly negative, the bill is coded as negative).

Legislation that establishes or funds **gang and immigration intelligence teams or taskforces** are coded as anti-immigrant. For example, a 2011 budget bill in Arizona (S1621) established "... a Gang and Immigration Intelligence Team Enforcement Mission Fund. The bill stipulates access to the fund by County sheriffs, other county officials, and law enforcement agencies." These taskforces often partner with Immigration and Customs Enforcement (ICE) to enforce immigration law.

Criminal justice legislation that treats immigrants differently than non-immigrants is coded as anti-immigrant. For example, some legislation requires sexual offenders to furnish immigration documents. While one might argue that society would want to make life as difficult as possible for those that commit violent crime, the critical consideration is whether or not a certain policy treats immigrant differently than non-immigrants. For example, a 2011 Utah bill requires convicted sex offenders to register with the state and "If that person is an immigrant then s/he must supply immigration documents" (S159).

Omnibus³⁷ bills are coded as "unsure" unless, the bill is *clearly* pro/anti-immigrant.

Legislation promoting the **REAL ID Act** in most cases is coded as anti-immigrant³⁸ but in most cases *does not* have a focus on undocumented immigrants.³⁹

Legislation that encourages state or local government to enter into a **memorandum of understanding (MOU)** with the federal government to enforce current immigration law is coded as anti-immigrant.

Legislation that focuses on immigrants whose intention is a **short-term/temporary stay** in the U.S. (e.g. temporary visas) is coded as neutral.⁴⁰

³⁷ "...bills combining three or more immigration measures into a single piece of legislation" (MPI 2007, p.22).

³⁸ Example of REAL ID related legislation that is **pro-immigrant**—California. 2007. AJR 37 "Urges the President and the United States Congress to amend the federal USA Patriot Act and federal Real ID Act, or to use existing administrative waivers under those laws, to ensure that groups that do not pose a threat to national security, such as the Hmong community, are not denied human rights, citizenship, or entry into the United States."

³⁹ Example of REAL ID Act that **focuses on illegal immigrants**—Maryland. 2007. HB 11 "Would prohibit, in order to facilitate compliance with the federal Real ID Act, the Motor Vehicle Administration from issuing a new driver's license to an individual who cannot provide certain documentation certifying that the individual is lawfully present in the United States in accordance with federal law, except under certain circumstances; and generally relating to drivers' licenses and individuals who are not lawfully present in the United States."

⁴⁰ For Example, Hawaii. 2007. HCR 307 "Urging the US government to ease restrictions on the issuance of temporary visas and extend the stay limit to allow foreign mediators and parties in need of mediation services to enter the state of Hawaii for the purpose of facilitating communication and negotiation between parties to resolve disputes."

Bills urging congress to look favorably upon **foreigners seeking asylum** do not focus on illegal immigrants—the individuals are legal refugees.⁴¹

Legislation providing for penalties for committing **document fraud** is coded as anti-immigrant.⁴²

Legislation concerning **human trafficking** is coded as having a focus on illegal immigrants.

Committees, taskforces, and studies are coded as neutral, unless they are specifically anti-immigrant or pro-immigrant.⁴³

Bills that prevent the use of **taxpayer ID number** are coded as anti-immigrant, but are not specifically focused on illegal immigrants, as other non-citizens who are in the U.S. legally use such taxpayer ID numbers.

Legislation pertaining to **child abduction prevention** is coded as anti-immigrant. When determining award of custody, courts may consider immigration status of parents (i.e. anticipated *change* in immigration status). Such legislation is not coded as having a focus on illegal immigration as a parent may be in the U.S. legally, but his/her visa may soon expire.

Requesting reimbursement or federal aid for services rendered to immigrants, or related to reimbursement of costs incurred in dealing with immigration, is coded as neutral.

Bills related to providing **false documentation for public benefits**⁴⁴ are coded as anti-immigrant; however, are not focused on illegal immigrants, unless the bill specifies and focuses on documentation related to citizenship.

Legislation providing an option for individuals to apply for **enhanced drivers license or personal identification cards to help facilitate border crossing** (US/Mexico or US/Canada) are coded as neutral.⁴⁵

⁴¹ For Example, Florida. 2007. HB 1627, HB 1625, or SR 3074.

⁴² For example, New York. 2007. AB 6494. “Creates the class D felony of citizenship document fraud in the first degree and the class E felony of citizen document fraud in the second degree to deter the manufacture, distribution, sale, or use of false documents to conceal citizenship or resident alien status.”

⁴³ For example, a bill is neutral if it creates a task force to study the effects of immigration on the state, whereas those that focus on investigating the effects of illegal immigration on the state health system, schools, crime, etc. are coded as negative. Committees, taskforces, and studies that are formed to help **prevent human trafficking** are pro-immigrant and have a focus on illegal immigrants.

⁴⁴ For example, Tennessee. 2007. SB 1652.

⁴⁵ For example, Washington. 2007. HB 1289. “Permitting the Department to issue an enhanced driver's license or identocard for the purposes of crossing the border between the state of Washington and the Canadian province of British Columbia to an applicant who provides the department with proof of US citizenship, identity, and state residency.”

Coding Resolutions

Resolutions recognizing an individual (who also is an immigrant,) are coded as lacking a focus on a specific immigrant group—such resolution simply acknowledges the individual’s ethnic heritage. A resolution is coded as having a focus on an immigrant group only if the person assists an immigrant population or is affiliated with an immigrant cause.

A resolution recognizing an individual is coded as neutral (not pro/anti immigrant) because it is simply recognizing that person on his/her birthday, special day, etc. A resolution is coded as pro/anti-immigrant only if the person had involvement with expanding or contracting immigrant rights.

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