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BRINGING THE STATES BACK IN: INSTITUTIONAL DETERMINANTS  
OF STATE-LEVEL IMMIGRATION POLICIES

by

Paul D. Jacobs

A dissertation submitted in partial fulfillment  
of the requirements of the degree

of

DOCTOR OF PHILOSOPHY

in

Sociology

UTAH STATE UNIVERSITY  
Logan, Utah

2016

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## ABSTRACT

Bringing the States Back in: Institutional Determinants of State Level

Immigration Policies

by

Paul D. Jacobs, Doctor of Philosophy

Utah State University, 2016

Major Professor: Dr. Christy Glass

Department: Sociology

The devolution of immigration policy to the 50 states has resulted in the enactment of more than 1,500 state-level immigration since 2005. For the record 42 million immigrants living in the U.S., these laws have had tremendous consequences related to healthcare utilization and access, community relations with law enforcement, family dissolution, and the exacerbation of income inequalities. While the legislative arena has shifted to the states, our understanding of immigration policymaking remains unclear due to inconsistent and omitted predictors of immigration policy, subjective coding of immigration laws, and statistical modeling that does not take into account changes in key independent variables. Using data primarily from the Census Bureau's American Factfinder, the Current Population Survey, and the National Council of State Legislatures, and other sources this research refines the quantitative determinants of immigration policy while using time-series analysis to highlight the factors linked to laws designed to integrate or exclude immigrations in the 50 states. Once empirical analysis is

conducted, I delve into the details of state level immigration policymaking by interviewing state level bureaucrats within state health departments to determine the role that they, their data analysis, and the research play when it comes to influencing legislators and shaping immigration policy. This mixed methods approach combining statistical modeling and key informant interviews provides important findings that give a clear picture on why state institutional arrangements are crucial for understating immigration policy at the state level.

(211 pages)

## PUBLIC ABSTRACT

### Bringing the States Back in: Institutional Determinants of State Level Immigration Policies

Paul D. Jacobs

For the record 42 million immigrants residing in the U.S., the ease with which they can integrate into society is heavily determined by what state they reside in. While immigration policy formation at the state level is new due to the historical supremacy that the federal government has had on this issue, the federal stalemate at the federal level has led the states to pass more than 1,500 immigration laws since 2005. How states come to enact inclusive or exclusionary immigration policies is not well understood. Previous scholarship has examined many important predictors of these inclusive or exclusionary laws, but the results have been inconsistent and inconclusive.

I examine all 50 states by coding all immigration laws passed by state legislatures between 2005-2013 based on whether they include or exclude immigrants from an economic or social benefit. I then draw on a number of sources to incorporate previously examined predictors while also accounting for the many ways state institutional arrangements vary. Using advanced statistical modeling, results indicate that state institutions shape immigration policies in important and unexpected ways. To gain greater insight into how individuals within state institutions are able to influence policy, I then engage in interviews of key informants to determine what role the data production

and research produced by state agencies has on informing lawmakers as they contemplate legislation that impacts immigrants in their state.

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who has been there since the very beginning. You were one of the first people at Utah State who I knew I could confide in and I greatly appreciate your support for the entirety of my graduate career. Erin Hofmann, quantitative guru extraordinaire. I learned more about time-series analysis by talking to you for an hour than I was gaining in the entire weeks preceding! And Jess Lucero, I am so happy that I participated in the Refugee Needs Assessment with you. If ever you need a centerfielder for the Beer Nuts, do not hesitate to give me a call! I would also like to express gratitude to the entire Sociology Department. I have learned so much from literally every faculty member through classes, research opportunities, and informal conversations.

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## CHAPTER 1

### INTRODUCTION

In the aftermath of the Cold War, goods, information, capital, as well as *people* started to move freely across international borders. It is the freer movement of humans in this context that ignited scholarly analysis of immigration policies. Immigration policies can either restrict immigrant access to societal rights and benefits or immigration laws can be of an inclusive nature. International migration has increased during this period, yet scholars have not resolved how different types of policies emerge. While some scholars suggest immigration policies are the result of class and status groups competing electorally and within the structural framework of political economy (e.g., Janoski and Wang 2005), others speculate that the state itself is the source of important institutional arrangements that determine the kinds of immigration policies that emerge (Hollifield 2000). Advances in cross-national comparisons have illustrated the importance of institutional factors for understanding immigration policies, as centralized decision-making processes in Western Europe have elevated the importance of party differences within parliamentary systems as determinants of immigration policy (Boswell and Hough 2008; Sainsbury 2012; Schain 2008). To the contrary, the federalist governmental structure present in the U.S. has had the opposite effect, facilitating “devolution” where immigration matters are increasingly left to the 50 states (Jagers et al. 2014; Provine and Varsanyi 2012; Sainsbury 2012). Since 2005, immigration policy in the U.S. has been elusive at the federal level while 1,534 laws have been passed at the state level (Morse 2014). At this time, nascent research on state-level immigration policy has come primarily from the field of political science and remains focused on the different shares of

class and status groups present in each state. Yet cross-national comparisons have demonstrated the importance of institutional settings for understanding the formation of immigration policies, the advancement of which have in fact warranted state-level analysis in the case of the U.S.

My research question is thus: what societal and institutional factors shape inclusive and restrictive immigration policies at the state level? This question comes at a time when the immigrant population in the U.S. is at an all-time high. In absolute numbers, the 45 million immigrants residing in the U.S. are more than the immigrant populations in France, the United Kingdom, Germany, Spain, Italy, the Scandinavian countries, and Canada *combined* (U.N. 2013). While scholars have begun to present a clearer picture on the society-centered forces associated with different state-level immigration policies, to date very little research has explored the various institutional factors that have been so crucial to explaining cross-national research. This research will advance the literature in two crucial ways. First, this work will use quantitative analysis to refine the society-centered predictors commonly used to explain policy outcomes while introducing the numerous institutional considerations at the state-level in order to identify the factors associated with inclusive and exclusive immigration policies. Second, this research will use key informant interviews to explore in detail how state bureaucrats effectively transmit their research on immigration-related work to lawmakers responsible for enacting immigration policy.

I begin with an outline on the theoretical and methodological development of immigration policy research and my own novel mixed-methods approach including

statistical analysis and qualitative interviews. I conclude with the advances to the literature offered by this project.

## LITERATURE REVIEW

There is considerable debate among scholars when it comes to the determinants of immigration policy. This debate often pits scholars focusing on interest groups (e.g., Freeman 2011) arguing in favor of society-based determinants of immigration policy against institutionalist assertions (e.g., Koopmans 2010) that the meso-level structures of states affect policy-formation in certain instances (but not others). The most advanced society-centric theorists have come from the neo-Marxist camp and suggest that the power resources of class-interests, as well as certain status groups such as ethnic populations, will produce differential policies based on the size and influence of these various social groups (Janoski and Wang 2005). On the other hand, institutional scholars contend that institutional differences in state capacity, electoral rules, direct-democracy initiatives, and campaign contribution restrictions (or lack thereof) are crucial elements that shape certain kinds of immigration policies (Sainsbury 2012). While these two theories are not “are not mutually exclusive” and “both clearly influence policy,” many have often wondered if they are “incommensurate” with one another (Castles 2004:216). Scholars of immigration policy have long recognized the need to delineate and contrast immigration policy-making theories using empirical data, contrasting and debating them in hopes of refining or even synthesizing these theories (Meyers 2000). Since the end of the Cold War, scholars have taken on this task and many significant contributions have been made comparing and contrasting these theories (e.g.,



Freeman 2011; Sainsbury 2012), yet examination of state-level policies has not yet followed suit. In what follows I will outline the development of cross-national immigration policy examination where the greatest advances have been made toward resolving the friction between these theoretical camps, leading to the rise of more recent state-level analysis where only one half of the equation has been studied.

Early neo-Marxist contributions to this debate relied principally on Korpi's (1980) power resources theory where working-class efforts can overcome deeply embedded structural advantages by capitalists in order to develop policy. Immigration scholars note the desire of capital to facilitate an ever-growing "reserve army of labor," (Boswell 2007; Hollifield 2000) and empirical tests of class-based theories have shown that economic competition in the form of decreasing wages (Foreman-Peck 1992; Goldin 1994; Lowell et al. 1986; Timmer and Williamson 1998) and rising unemployment (Nicholson-Crotty and Nicholson-Crotty 2011; Meyers 2000) are associated with policies aimed at reducing immigration. Further, particularly in a post *Citizens United* context, recent advances in accounting for sector-specific donations from industries reliant on immigrant labor have indicated a link between campaign donations and favorable policy-making (Facchini, Mayda, and Mishra 2011; Newman et al. 2013; Nicholson-Crotty and Nicholson-Crotty 2011).

Neo-Marxist scholarship has sustained numerous critiques, most notably the fact that class cleavages and cross-class alliances were discernible in immigration policy-making, which often made for "strange bedfellows." (Zolberg 1999) In response, this power resources approach evolved from focusing on purely materialist determinants to include Weberian constructs of "status groups" (ethnic groups, religious groups, etc.) in

what scholars call power constellations theory (Janoski and Wang 2005). This approach has refined theories examining interest-group activity in the immigration policy realm by accounting for non-material concepts of cultural threat, ethnic organization and solidarity, citizen ideology, and human and civil rights (Chavez and Provine 2009; Freeman and Tandler 2012; Marquez and Schaufnagel 2013; Monogan 2013; Tichenor and Harris 2002; Zingher 2014).

While breaking from the purely materialist approach has advanced the power constellations framework, these improvements have served to reform what is still an essentially society-centric viewpoint. Challenging this framework altogether, the most powerful alternative has come from institutional theories (Hollifield 2000; Koopmans 2010; Perlmutter 1996; Sainsbury 2012; Triadafilopoulos and Zaslove 2006). The essential thesis is that state institutional settings or state actors are important independent variables that must be accounted for, and that state institutional arrangements are not simply the tools of societal forces subservient to the powerful resources exerting pressure from outside of the state. Questions that look only at quantification of social groups miss the important ways in which political activity is organized by the state. This approach has been applied to cross-national research (Doomernik and Jandle 2008; Koopmans 2010; Menz 2011; Morrisens and Sainsbury 2005), with most recent advances in the institutionalist framework indicating electoral systems and federal centralization are key. Specific to the U.S., majoritarian electoral systems with geographic units of representation as well as multi-tiered republican structures with federated political units (i.e. the 50 states) makes for abundant veto sites and when it comes to federal policy is seen as “prone to gridlock.” (Sainsbury 2012). Here the inclusion of institutional

arrangements does not negate non-state societal forces and their influence on immigration; instead, by accounting for institutional arrangements we now have a better sense of when and under what conditions certain kinds of immigration policies are likely to occur, or in the case of the U.S. why there has been policy inactivity and devolution to the 50 states.

While the literature on cross-national immigration policy helps us to understand why devolution is taking place in the U.S., analysis at the U.S. state level where immigration policies are most likely to occur has thus far focused primarily on the societal groups most associated with inclusive or exclusive policies while paying little attention to the institutional arrangements of the states themselves. This is in part due to the relative newness of state-level examination, as the passage of numerous state immigration policies only began in 2005 (Morse 2014). Moreover, similar to early cross-national analysis, political scientists have so far dominated the field of state-level immigration policy research and have chosen to explore primarily society-level measures.

There have been limited attempts to examine institutional settings at the state-level, most notably the importance of professional legislatures tested in more recent scholarship (Boushey and Luedtke 2011; Marquez and Schraufnagel 2013; Monogan 2013). Defined in terms legislative and staff pay as well as days in session, professional legislatures, as opposed to “part time” legislatures, are believed to think long-term and to base decisions on more rational considerations as opposed to short-term political pressures. The findings linking the presence of professional legislatures to more inclusive immigration policies (Marquez and Schraufnagel 2013; Monogan 2013) underscores the

importance of constructing and implementing similar institutional variables in order to provide a clearer understanding of the factors that shape immigration policy-making.

In addition, there are instances where institutional factors used in other state-level policy realms could be instrumental when examining immigration policy. For instance, bureaucratic capacity is associated with expert knowledge produced by career state officials and is similarly linked to long-term considerations over short-term impulses (Howard 1999). Further, many state level institutional variables operate on the basis of how much autonomy they provide lawmakers, as the presence of terms limits as well as direct democracy mechanisms in the form of referendum or initiatives (NCSL 2014a; 2014b) may induce short-term considerations stemming from the fleeting passions of the moment. Moreover, money in state politics influences immigration legislation (Nicholson-Crotty and Nicholson-Crotty 2011), yet to date we have not examined how restrictions on campaign shape immigration policy (NCSL 2014c). Further, research shows that whether a state has party primaries open to all voters or closed primaries restricting participation to registered party members only will shape the kind of candidates likely to win (McGhee et al.. 2014; Oak 2006), which in turn should relate to the type of immigration policies that follow (NCSL 2014d). Applying this theoretical approach to state-level immigration policy-making and filling these gaps will provide the most detailed account to date of the predictors of immigration policy at the state-level.

#### *State autonomy and immigration policy*

According to Theda Skocpol, autonomous or semi-autonomous bureaucrats are more insulated from political pressures and can engage in “intellectual activities of civil administration” that shape policy (1985:11). In some circumstances, state bureaucrats are

found to be even more influential in shaping policy than political parties of interest groups (1985: 11). This is due to the “administrative resources of information, analysis, and expertise” (1985:12) that bureaucrats rely on to diagnose social problems and propose effective solutions. In this sense, it is not just the institutional arrangements that play a role in shaping policy but also the actors within these state institutions who engage in the production of knowledge used to inform policy.

This field of inquiry has recently expanded to examine the ways in which state policies are informed by research produced by bureaucrats. Called “evidence-based policy” (Bogenschneider and Corbett 2010; Head 2008; 2010; Lundin and Oberg 2014; Newman and Head 2015), state bureaucrats have been increasingly interested in producing quality research that can then be used to guide policymaking. The explicit intent of this approach is to “improve the amount and type of information processed in public policy decision-making” (Howlett 2009: 157). Yet despite the recent advances in the literature on evidence-based policy, none have focused specifically on immigration during an era of policy devolution.

How the evidence produced by bureaucrats is used when making immigration law has been the topic of recent cross-national scholarship led primarily by Christina Boswell (2009a). In her work and the work of those who follow, the use of expert knowledge produced by bureaucrats can either take an instrumental or symbolic form. Instrumental forms of knowledge occur most often when there is less controversy surrounding an issue, when economic rather than cultural concerns are present, and when the objective

for policy is on outputs or interventions (Boswell 2009a). However, instrumental uses of expert knowledge are rare when crafting immigration policy.

Symbolic uses of expert opinion come in two forms, that of substantiating and legitimizing functions. While sometimes difficult to untangle, substantiating uses of knowledge involve political actors using knowledge that aids their already preconceived policy position (Boswell 2008). In this sense, research and data are used to substantiate what politicians already want to do or have done. Substantiating uses of knowledge also involve less bureaucratic autonomy as case studies indicate agencies are sometimes instructed to produce knowledge that bolsters the political case for a certain immigration policy (Boswell 2009b).

Legitimizing uses of expert knowledge are most common when some type of crisis related to immigration is present, such as that of terrorism fears or cultural concerns about assimilation and segmentation (Boswell 2009a; 2011; 2015). Because the stakes are seen as high when determining the most appropriate legislative approach, policy-makers compete to exhibit a legitimate level of competence in making decisions. While bureaucrats are thought to have relative autonomy in these contexts to produce their own research and data, lawmakers may use expert opinion selectively by cherry-picking certain aspects of their work while ignoring inconveniently contrary evidence (Boswell 2009a; 2009b; 2015; Hunter and Boswell 2015).

While these uses of expert opinion have been examined at the national level, it is highly important to apply this perspective to the 50 states given that is where the abundance of immigration policy formation is taking place. In a context where states are

seeking evidence-based policy practices, is the evidence produced by state bureaucrats used to inform policy? Or are symbolic uses of knowledge just as common at the state level as Boswell others have found it to be at the national level?

## RESEARCH DESIGN

### *Phase 1: Quantitative analysis of policy drivers*

The first phase consists of a quantitative analysis that will synthesize and strengthen the power constellation immigration predictors employed by state immigration policy scholars while introducing institutional factors at the state-level. My units of analyses will be all inclusive and exclusive immigration laws passed in all states from 2005-2013. That is, I am not drawing a sample of laws or states; I will be examining a complete universe of data.

The dependent variable will consist of all-inclusive and exclusive immigration policies. Several scholars have examined inclusive and exclusive policies separately and have found that there are societal and institutional factors operate differently depending on the inclusive or exclusionary intention of the policy outcome (Boushey and Leudtke 2012; Chavez and Provine 2009; Creek and Yoder 2012; Marquez and Schraufnagel 2013; Newman et al.. 2012; Zingher 2014). My outcome variables, inclusive and exclusive policies, are also treated as count variables to gauge where the abundance of inclusive and exclusive immigration policy is taking place. Other scholars have used interval-ratio measures of the dependent variable (e.g. Monogan 2013). However, the importance of an exclusive law is not eroded by the presence of inclusive law, and vice versa. In concrete terms, a law designed to deny non-citizens a state health benefit is not

reduced, minimized, or undone by virtue of the same state passing a law to allow undocumented immigrants the ability to attain a driver's license. As such, I will follow the operationalization of the dependent variable that other scholars have used where the total count of inclusive and exclusive immigration laws and treated separately (Boushey and Leudtke 2012; Chavez and Provine 2009; Marquez and Schraufnagel 2013; Zingher 2015). This will enable me to identify the determinants linked to policy-making for each set of policies.

A series of institutional variables will be added to a first model to determine which institutional factors are important for the passage of inclusive and exclusionary immigration policies. These include legislative professionalism (Squire 2007), which takes into account days spent working in a legislative capacity, legislator pay, as well as the size and pay of staff. Other institutional variables have been carefully chosen from cross-national analysis, data availability, or from other policy realms. These include whether lawmakers have term limits (NCSL 2014a) and if there are direct-democracy mechanisms in place including the presence of referendum or initiative (NCSL 2014b). Term limits and direct-democracy initiatives are associated with "short-term" behavior by lawmakers who as a result of these institutional settings have less autonomy and are more likely to placate anti-immigrant sentiments. I will include a binary measure of whether a state has open (to all registered voters) or closed (to registered party members only) primary elections (NCSL 2014c). Closed primaries produce more extreme candidates, as only registered party members have a say in electing party representatives for the general election. To the contrary, states that have open primaries are thought to produce more moderate candidates who will be less likely to enact restrictive immigration policy. I will



also include a dichotomous measure of state campaign limits coded as a zero if there are no limits of any kind to political donations and coded as a 1 if limits are placed on how much corporations can donate (NCSL 2014d). A variable for bureaucratic capacity (Howard 1999) will be included, measuring the monthly salary of state employees and in which higher levels of bureaucratic capacity are believed to relate to long-term policy considerations and inclusive policies.

After analyzing the relationship between institutional variables and immigration legislation, I will include previously examined society-centric predictors as control variables into the full model. These will include the important percent change in the share of resident who are foreign born. This powerful “cultural threat” variable will be operationalized using census data and taking the difference in the foreign born population at time 1 subtracted from time 2 and dividing it by the population at time 1 (Monogan 2013; Zingher 2014). In addition, state level unemployment rate (BLS 2014) will be included to determine the level of policy-making in relation to relatively worse economic conditions. Important variables related to power constellations theory will include union density, or the percent of labor force in a union (Hirsch and Macpherson 2016), and the share of each state’s immigrant citizen voter age population (CVAP) as a percentage of total citizen voter age population (Census Bureau), both predicted to produce pro immigrant policies as their shares increase. Key to power constellations theory are the industries recognized as being reliant on immigrant labor, including agriculture, construction, and hotel and accommodations (Passell and Cohn 2009). To operationalize this variable I will combine the total donations from these sectors divided by the total contributions at the state level (Institute for Money in State Politics 2014). Higher total

contributions at the state level from these sectors are expected to produce more inclusive laws. Lastly, I will include updated data on Berry et al.'s (1998) imputation of state ideology from national survey data, as well as a Party control variable (NCSL 2014e) scaled 0-2 (0 for total Democratic control, 1 for split party control, 2 for total GOP control). Conservative ideology and Republican Party control are expected to be associated with restrictive laws.

I will run negative binomial regression in time-series analysis for inclusive and exclusive immigration policy formation to assess how changes in the independent variables lead to the different policies at the state level. For both inclusive and exclusive immigration policy, I will first run analysis on the institutional variables described above to gauge how “bringing the states back in” relates to immigration policy. Then, I will include both sets of variables (institutional and society-centric) in model 2 to see what policy contexts are associated with inclusive and exclusive state laws. Once these policy domains are discernible, the second, qualitative stage of the study will begin.

*Phase 2: Qualitative analysis of expert-opinion makers*

For the qualitative stage I will focus on key informant interviews of officials in state health departments. Health departments were selected due to the ability to parse out immigration laws related to health thanks to the NCSL's categorization of immigration laws by policy domain, and because of the data collection and research conducted by these departments. Further, narrowing the focus to state health departments is superior to simply interviewing any bureaucrats in state government which would pose a serious threat to the validity of the findings.

My sampling frame is heads of state health departments for all 50 states. While I make an initial contact to the head of the agency, I follow up on their recommendations regarding the ideal person to contact who can best speak to agency research and how the empirical data produced is used in policies related to immigration. My aim is to get the perspective of someone inside the state health department who can elaborate on these issues. With key informant interviews, my goal is to reach 15-25 respondents are ideal which, because I want to discern the perspectives from as many of the 50 state health departments as possible, will enable me to obtain a response rate between 30 and 50 percent.

The questions I will pose to these key informants are designed to evaluate how much autonomy bureaucrats have in setting their own research agenda, as well as how their research is used in the policy arena. Questions about how their work is used when controversy arises, whether there are political pressures to produce certain results, and when and under what conditions their work is used selectively are designed to elicit a clearer understanding of when expert knowledge is used instrumentally or symbolically. Questions about undermining agency research and how the agency navigates situations where their findings run counter to political preferences also allow me to gauge the context in place for different uses of knowledge. Further, questions pertaining to the frequency and nature of meetings with lawmakers will highlight how information is communicated to those responsible for crafting legislation.

All interviews will be recorded and transcribed verbatim. Given the sensitivity involved when discussing controversial matters such as immigration, all interviews are confidential in accordance to Utah State University's Internal Review Board

specifications for this project. All interviewees will be given a pseudonym and I will allude to their geographic region instead of their state to ensure confidentiality.

I employ content analysis by reviewing each transcription multiple times for themes and patterns using Boswell's (2009) *The Political Uses of Expert Knowledge* as it relates to instrumental and symbolic uses of expertise when creating immigration policy. Themes related to bureaucratic autonomy, politicization of data and research counter to partisan preferences, mandates and outputs, frequency of contact with lawmakers and rules governing these interactions, and the presence and nature of crises and controversy were used as relevant coding categories. The final step is to identify which themes best address my research questions on when and under what conditions instrumental or symbolic uses of knowledge are used in the policymaking process regarding immigration laws at the state level.

## CONCLUSION

This investigation of immigration policy advances scholarship in two ways. First, by refining society-centric predictors of immigration policy while including the numerous institutional differences between states, this research will establish the conditions under which inclusive and exclusive policies emerge. Secondly, by conducting interviews with bureaucratic experts in polar opposite policy contexts, this work will highlight the important ways the production of expertise is used to inform immigration policies.

This work will also reveal the ways in which institutional settings are similar to, and different from, those found at the national level. Given the high degree of importance

the U.S. places on states' rights, the institutional arrangements that are in place are important at the state, and not just national, level. Further, the concept of state autonomy will be shown as a crucial component to the evidence-based policy movement.

Autonomous state actors operating within the states are instrumental in facilitating policies based on facts and empirical metric. By applying concepts found at the national level to state policymaking, this work will advance the literature on immigration legislation, institutionalism, and evidence-based policy analysis.

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## CHAPTER II

A NATION OF IMMIGRANTS: PREDICTORS OF INCLUSIVE IMMIGRATION  
POLICY IN THE 50 STATES

## INTRODUCTION

Everyone knows about the harsh anti-immigrant measures adopted recently by states such as Arizona and Alabama. The media focuses on anti-immigrant laws, but in fact many states have adopted legislation that helps immigrants to integrate into their communities such as that of the California Dream Act, which allows undocumented students to receive in-state tuition and aid at state colleges and universities (McGreevey and York 2011), and the recent law passed in Delaware granting undocumented immigrants the ability to obtain a state driver's license (Chase 2015). Understanding these inclusive laws is just as important because they have been linked to sizable differences in how immigrants are integrated into their communities (Ayon et al.. 2012; Bozick and Miller 2013; Dreby 2012; 2015; Flores 2010; Kirk et al.. 2012; Toomey et al. 2014; White et al.. 2014). The benefits to living in states with inclusive laws include better relations and greater trust between immigrants and local police, better healthcare outcomes, utilization, and access for immigrants, as well as greater access to labor markets to the benefit of immigrant families (Ayon et al.. 2012; Bozick and Miller 2013; Dreby 2012; 2015; Flores 2010; Kirk et al.. 2012; Toomey et al.. 2014; White et al.. 2014).

With the increase in state immigration legislation, scholarly inquiry into this subject has begun to explore the factors associated with immigration policy formation

(e.g., Chavez and Provine 2009). Despite this, there exists no consensus when it comes to the factors that lead to inclusive immigration policies. In fact, the field of immigration policy research has produced inconsistent, sometimes contradictory findings. While the most common measures used to predict immigration policy outcomes have included various constructs of immigration threat (both cultural and economic), political partisanship and control, campaign contributions from immigrant-reliant sectors, and state demographic profiles (Boushey and Leudtke 2011; Chavez and Provine 2009; Monogan 2013; Nicholson-Crotty and Nicholson-Crotty 2011), few have examined the institutional arrangements of the states themselves. Given the profound advantages for immigrants living in states with inclusive policy contexts, it is crucial that scholars find a way to identify the predictors of inclusive immigration policy at the state level to show the contextual conditions under which these policies are formed and enacted.

The institutional arrangements at the state level vary in considerable ways that are important for policy. Sociological inquiry on immigration policy has a long and rich history of examining institutional settings, though primarily at the cross-national level (Hollifield 2000). To date this theoretical approach has not been applied to examine state immigration policies. Without explicitly bringing into account the contextual factors that help to shape what policies are likely, policymakers, advocates, scholars and researchers are hampering their ability to understand the contours of the political playing field on this important issue. As the existing literature on state immigration legislation shows, immigration policies are not merely reducible to class interest or partisanship. Only by “bringing the *states* back in,” to paraphrase Theda Skocpol (1985), and adding

institutional measures hitherto unaccounted for can we discern when and under what conditions inclusive immigration policies are likeliest to emerge at the state level.

## LITERATURE REVIEW

Over the past decade the federal government has been unable to pass comprehensive immigration reform (Collinson 2014). Filling the void, for the first time in history, states have taken over the policy-making on what was once regarded as a strictly federal issue (Donato and Armenta 2011). Since 2005, the 50 states have combined to pass on average 170 immigration laws per year (Morse 2014). The impact of these policies on the lives of immigrants have been tremendous (Ayon et al. 2012; Bozick and Miller 2013; Dreby 2012;2015; Flores 2010; Kirk et al. 2012; Toomey et al. 2014; White et al. 2014). Immigrants living in states with inclusive immigration policies are more likely to go to college, less likely to drop out of high school, and more likely to follow long-term plans over short-term considerations (Bozick and Miller 2013; Flores 2010). Immigrants in states where immigration laws are welcoming are also more likely to cooperate with local police, as law enforcement is better able to build trust between themselves and the immigrant community (Kirk et al. 2012).

There is also a tremendous benefit to community and family stability in these states as immigrants can report crimes without fear that they will potentially face family dissolution from being deportable (Dreby 2012). Immigrants are also more likely to access and utilize important health services in states with inclusive laws, as this high-risk population has less fear of deportation in states where they can seek medical attention (Toomey et al. 2014; White et al. 2014). States with more inclusive immigration policies



are also conducive to granting immigrants greater access to the labor market as immigrants and in these states enjoy greater upward mobility, less inequality, better working conditions, and lower levels of poverty (Ayon et al. 2012; Fine 2006; Valenzuela 2006). Concerns over “segmented assimilation,” or differences in societal outcomes for today’s immigrants compared to immigrants from previous waves from Europe, are seen as less problematic in states with welcoming or inclusive legal contexts in place (Filindra et al. 2011).

Taken together, this research indicates nearly every facet of life from health to education and employment is inextricably connected to the importance of inclusive immigration policy at the state level. With the evidence clearly showing the importance of state level policy, scholars have begun to ask the question: what factors drive the content of state level immigration laws? To date, attempts to answer this question have concentrated on policy predictors found within society (e.g., Hero and Pruehs 2007). That is, quantitative analysis has focused on predictors such as the share of campaign contributions from immigrant-dependent industries, the growth of the Latino population, the partisan control of statehouses, etc. But these factors miss the important ways in which states’ institutional arrangements influence and shape what immigration laws are most likely to be passed.

Several cross-national studies on immigration policy have shown the importance that institutional arrangements play, such as the electoral systems that are in place or the fragmentation between branches of government (Boswell 2015; Koopmans 2010; Morrisens and Sainsbury 2005; Sainsbury 2006; 2012). While legislation in the 50 states is not perfectly analogous to policymaking at the national level, the exceptionally high

level of federalism (i.e., autonomy of sub-federal political entities) present in the U.S. is offered as an institutional explanation for the proliferation of policymaking at the state level (Sainsbury 2012). As such, applying this institutionalist approach in order to take into account the many ways institutional variations at the state level shape immigration policy is an important addition to scholarship. Secondly, legislators, activists, and other policy analysts who seek to influence immigration law have not accounted for the ways in which institutional settings can aid or hinder their approach. In order to effectively assess the patchwork nature of 50 individual state contexts, understanding and navigating the numerous institutional differences has vital consequences for the life chances of the record 42 million immigrants and their families (Christie 2014).

Much of the literature that takes institutional arrangements into account examines national level immigration policy, though scholars refer to this as “state” immigration policy. To avoid confusion, I will refer to immigration policy as being at the national or state level, the latter focusing on the 50 U.S. states. In what follows I will briefly highlight the existing literature on predictors of immigration legislation. I will then introduce the ways in which institutional arrangements play a pivotal role in explaining where and when inclusive immigration policies are enacted at the national level. I will then extend this line of inquiry to that of state policies, where an institutionalist account will advance our understanding of immigration policy at the state level.

#### *Extant research on national immigration policy*

The majority of research examining the predictors of immigration policy has focused on “society-based” drivers of policy (e.g., Freeman 1995; 2011). This work assumes that policies are the result of social groups such as ethnic groups or industries

reliant upon immigrant labor competing electorally and within the structural framework of political economy (e.g., Janoski and Wang 2005). Early neo-Marxist contributions to this theoretical approach relied principally on Korpi's (1980) power resources theory that posits that working-class efforts must overcome deeply embedded structural advantages by capitalists in order to influence policy. Immigration scholars note the desire of capital to facilitate an ever-growing "reserve army of labor," (Boswell 2007; Hollifield 2000) and empirical tests of class-based theories have shown that economic competition in the form of decreasing wages (Foreman-Peck 1992; Goldin 1994; Lowell et al. 1986; Timmer and Williamson 1998) and rising unemployment (Nicholson-Crotty and Nicholson-Crotty 2011; Meyers 2000) are associated with less welcoming policies toward immigrants.

Recent advances in accounting for sector-specific donations from industries reliant on immigrant labor have indicated a link between campaign donations and favorable policy-making on immigration (Facchini et al. 2011; Newman et al. 2013; Nicholson-Crotty and Nicholson-Crotty 2011). Neo-Marxist scholarship has sustained numerous critiques, most notably the fact that immigration policies are not reducible to class position. Indeed, class cleavages and cross-class alliances were discernible in immigration policy-making, which often made for "strange bedfellows" (Zolberg 1999). In response, this power resources approach evolved from focusing on purely materialist determinants to include Weberian "status groups" (ethnic groups, religious groups, etc.) in what scholars call "power constellations" theory (Janoski and Wang 2005). This approach has refined theories examining interest-group activity in the immigration policy realm by accounting for non-material concepts of cultural threat,

ethnic organization and solidarity, citizen ideology, and human and civil rights (Chavez and Provine 2009; Freeman and Tendler 2012; Marquez and Schaufnagel 2013; Monogan 2013; Tichenor and Harris 2002; Zingher 2014).

Several scholars have tested the impact of society-centric factors on state level immigration policy (Boushey and Leudtke 2011; Chavez and Provine 2009; Creek and Yoder 2012; Hero and Pruehs 2007; Marquez and Schraufnagel 2013; Monogan 2013; Newman et al. 2012; Zingher 2014). While accounting for status and political groups has bolstered this approach, the research has continued to produce mixed results. The concept of cultural threat provides an illustration of the unclear relationship to inclusive immigration policy. Cultural threat, measured in terms of how rapidly the immigrant or Hispanic population is growing within a state, is often associated with fewer inclusive immigration policies (Marquez and Schraufnagel 2013; Newman et al. 2012). While this has occasionally been found to be the case (Marquez and Schraufnagel 2013; Newman et al. 2012), in some contexts cultural threat has also been associated with more inclusive policies (Chavez and Provine 2009) while in other contexts there is no relationship with immigration policy at all (Boushey and Leudtke 2011; Monogan 2013).

Numerous measures of economic threat have also failed to produce a consistent pattern when it comes to predictors of inclusive immigration policy. Economic threat is measured in various ways to determine the degree to which residents feel economically threatened by the presence of immigrant workers. Most often, high educational attainment or high per capita state GDP are used as proximate measures of individuals who are not very economically threatened by immigrants, as highly educated residents or residents where states are performing well economically are thought to be less likely to

see immigrants as stealing jobs or economic benefits. While some have found lower levels of economic threat to be a driver of inclusive immigration legislation (Boushey and Leudtke 2011; Hero and Pruehs 2007; Marquez and Schraufnagel 2013; Monogan 2013), others have found mixed or no significant results at all (Newman et al. 2012; Nicholson-Crotty and Nicholson-Crotty 2011; Zingher 2014). Similarly, the unemployment rate at the state level has been offered as a sign of the local economic context, with the expectation being states with lower unemployment will be more willing to pass welcoming or inclusive immigration policies. This, too, has produced mixed results (Creek and Yoder 2012; Hero and Pruehs 2007; Newman et al. 2012; Nicholson-Crotty and Nicholson-Crotty 2011; Zingher 2014).

Other predictors have offered clues but no clear picture of the determinants of immigration policy. Ethnic electoral power, measured by the share of the immigrant or Latino electorate, has on occasion been shown to be a predictor of inclusive policy (Boushey and Leudtke 2011; Chavez and Provine 2009) but is just as frequently found to be a non-significant predictor (Hero and Pruehs 2007; Newman et al. 2012). The many ways in which state politics are examined, typically either by partisan control or ideology of the voters, have produced some of the least consistent findings. As one might expect, there are signs that Democratic party control or liberal ideology are associated with inclusive immigration policy. However, these measures are also often not statistically related to inclusive immigration policy (Boushey and Luedtke; Creek and Yoder 2012; Monogan 2013; Newman et al. 2012; Nicholson-Crotty and Nicholson-Crotty 2011; Zingher 2014).

For a few bright spots on consistency, union density, or the share of workers who belong to a labor union, has been found to be predictor of inclusive immigration policies (Boushey and Luedtke 2011; Marquez and Schraufnagel 2013; Nicholson-Crotty and Nicholson-Crotty 2011), though it has also been a predictor of passing restrictive immigration policies as well (Marquez and Schraufnagel 2013). And perhaps the most promising society-level predictor may be that of campaign donations made by immigrant-dependent industries reliant on foreign-born labor. Used only sparingly at the state level, states where campaign contributions are most prevalent are also likeliest to pass inclusive immigration legislation (Nicholson-Crotty and Nicholson-Crotty 2011).

While important, these factors do not offer us a clear understanding of when inclusive immigration legislation is likely to occur. With the concern that immigrants today will fare worse than previous waves of European immigrants and experience what scholars call downward or segmented assimilation (Hirschman 2001; Portes et al. 2005; Rumbaut 1994; Waldinger and Feliciano 2004; Zhoë 1997), state policy contexts are emerging as pivotal arenas for differential assimilative outcomes (Filindra et al. 2011). To further understand the processes behind immigration policy at the state level it is important to consider the institutional structures in place that facilitate or inhibit certain kinds of policies on immigration. To do this it is important to consider the role that institutions have had at the national level.

*Institutional Analysis: Bringing the (Nation-)State Back In*

In a spinoff of Theda Skocpol's work (1985) on social welfare calling for scholars to "bring the state back in," numerous immigration policy theorists have sought to "bring parties back in," (Perlmutter 1996), to "bring the left back in" (Triadafilopoulos and

Zaslove 2006), or simply to “bring the state back in” (Hollifield 2000). The essential thesis is that state institutional settings or state actors are important independent variables that must be accounted for, and that the state or those who control the levers of power from within the state are not simply tools of societal forces subservient to the powerful resources exerting pressure from outside of the state. Questions that look only at quantification of social groups miss the important ways in which political activity is organized by the state. Derived largely from Skocpol’s work, this theoretical approach contributes an important dimension to immigration policy-making including the activities of autonomous or semi-autonomous state actors and the existing institutional arrangements that shape and structure policy-making.

Attempts at using theories of welfare state capitalism (Esping-Andersen 1990) have looked at how the policy logic inherent to social democratic, corporatist, and liberal regimes operates in relation to immigration policy. This framework has often led to contradictory and unexpected results, leading scholars to question whether it can be applied to immigration policy analysis (Morrisens and Sainsbury 2005; Sainsbury 2006; Doomernik and Jandle 2008). Later work (Koopmans 2010) comparing multicultural policy across the three policy regimes illustrates how the absence of multicultural immigration policies stemming from liberal ideology means that immigrants are “forced by the discipline of the market to make it on their own” and “acquire the linguistic and cultural skills” (2010:29) necessary to survive. In contrast, multicultural policies emerging from more generous corporatist and social democratic regimes where levels of decommodification are higher allows immigrants to avoid the market and retain their language, thus delaying social integration.

Interestingly, the most compelling argument using the welfare state framework has come from *intra*-welfare regime migration policy differences. For example, differences in social democratic migration policies stem from the party composition in each parliamentary system. In Denmark, the anti-immigrant Danish People's Party has led to more restrictive policies than in Sweden where no right-wing party has managed success (Green-Pederson and Oldmalm 2008; Sainsbury 2012). Different immigration policies in corporatist regimes are also related to structural factors, as the Ministry of the Interior in Germany has taken over the usual corporatist structure of policy-making when it comes to immigration matters and is prone to favor restrictive policy (Boswell and Hough 2008; Sainsbury 2012). Meanwhile in France, it is state technocrats that have been responsible for both inclusive and exclusive policies, depending almost entirely on which party is in power (Sainsbury 2012; Schain 2008). In liberal regimes, immigration policies in the U.K. are typically handled by the Home Office, which operates with very "modest legislative and judicial checks" (Sainsbury 2012:174). In contrast, the U.S. lacks high levels of autonomous or semi-autonomous state actors advancing immigration policy as the political system is "prone to gridlock" due to a state structure that is "highly fragmented with abundant veto cites....aggravated by the separation of powers" (Sainsbury 2012:146, 158). Where parties and autonomous state actors have been found to influence immigration policy to a profound degree, they are heavily dependent on the institutional arrangements within each country. While these structural and institutional factors help to facilitate autonomous state action in Europe, they have had the opposite effect in the U.S. context.



Paul Pierson (1996) suggests that the rise of neo-institutionalism is itself is linked to “explaining American exceptionalism” where institutional arrangements help to explain stark contrasts in policy between the U.S. and Europe. For example, cross-national comparisons articulating the institutional differences bolstering autonomous state activity in European countries but not in the U.S. helps to explain why there has been a stalemate in federal activity in the U.S.(Sainsbury 2012). Moreover, analyses of the institutional arrangements provided by cross-national comparisons has been crucial for understanding the role of federalism and devolution in the U.S., the very reasons why immigration policy has exploded at the state level (Coleman and Kocher 2011; Jagers et al. 2014; Provine and Varsanyi 2012).

In discussing these institutional features at greater length, Skocpol (1985) states that while continental Europeans regard sovereignty as residing in central administrative units, and Britons in the parties of parliament, the U.S. regards no concrete entity as sovereign and instead views the law and the constitution as sovereign. This key differences leads to a political culture that defines power as *getting a law passed* (Skocpol 1985). The obstacles to passing a law are numerous due to a number of fairly unique traits that define U.S. polity, including: being fragmented between branches of government and with numerous veto points where political minorities can block policy; having geographic units of representation where politicians respond to geographically-specific constituencies, greatly weakening any semblance of a strong party system like those found in Europe; a “first across the goal line” majoritarian electoral system where governing hinges on attaining 51% of the vote in elections, in contrast to the more common parliamentary systems in Europe; and a federalist structure where state units

have great power and autonomy expressly enumerated in the 10<sup>th</sup> Amendment (Amenta et al. 2001; Fix and Zimmerman 1994; Pierson 1996; Sainsbury 2012; Schuck 1998; Skocpol 1985; Skrenty 2006; Watts 1998). These institutional factors present in the U.S. context are why immigration theorists, when debating the role of “strong” vs. “weak” central authority in immigration policy, predictably place the U.S. federal authority in the weakest possible category (Hollifield 2004; Massey 1999).

While insights from cross-national immigration policy scholarship help explain the devolution of policy formation in the U.S., analysis of state level policy formation to date has focused primarily on the societal groups most associated with various policy outcomes and have neglected institutional arrangements at the state level. This omission in the literature is partly due to the relatively novelty of state-level immigration policies, which only began to emerge in 2005, and partly due to the relative lack of theoretically-informed sociological research on the topic to date. To fill this gap, the current analysis will account for a variety of state-level institutional factors in order to identify the factors that lead states to adopt different types of immigration policies.

#### *State institutional predictors of immigration policy*

The institutions present at the national level that explain devolution, such as the federalist nature of the U.S. government providing great autonomy to the states, are not the institutions present at the state level that explain policy. The 50 states vary considerably when it comes to their institutional arrangements and in ways that are different from national-level institutions. While an institutionalist approach helps us to understand why there is a stalemate and inactivity regarding the U.S. federal government and immigration, accounting for the many ways that institutions shape policy at the state

level requires focusing on institutions specific to the states. In what follows, I will highlight a number of institutional arrangements at the state level that have been found to be important in explaining policies in other policy domains. Applying these insights will help to untangle the mixed record that society-centric predictors have had in explaining immigration policy.

### *Bureaucratic capacity*

Throughout the western world, there is a consistent gap when it comes to the preferred levels of immigration between the views of bureaucratic elites who are more liberal on immigration and the public at large who prefer lower immigration levels (Bale et al. 2010; Ceobanu and Escandell 2010; Citrin and Sides 2008; Cornelius and Rosenblum 2005; Freeman 1995; Joppke 1998; Joppke and Morawska 2014; Lahav and Guiraudan 2006; Morales et al. 2015; Money 1999; Fetzer 2000; Schuck 2007; Simon and Alexander 1993; Tichenor and Harris 2002; Thomassen 2012). Referred to as “expansionary bias” (Freeman 1995:884), bureaucratic state actors frequently eschew the more populist sentiments on immigration that sometimes emerge from the public while being more tolerant of large-scale regulated and unregulated immigration (Schuck 2007). Considered to have long-term policy considerations on the benefits immigrants provide to sustaining welfare state benefits in an era of low fertility, as well as recognition of the importance of integrating the foreign-born, these bureaucrats are believed to have an expertise of opinion on the impact that legislation has and are also considered to have an information advantage over legislators (Huber and McCarty 2006). As a result, bureaucratic capacity is associated with expert knowledge produced by career state officials and is linked to more long-term political considerations over short-term

pressures (Howard 1999). For this reason, high bureaucratic capacity serves as an important institutional vessel for inclusive immigration policies (Howard 2007). Simply put, states that are willing to fund the production of “expert opinion” are also more likely to follow the advice provided by experts. Thus, we can expect bureaucratic capacity to lead to more inclusive immigration laws.

### *Legislative professionalism*

Many studies have focused on the importance of professional legislatures for shaping various policy outcomes (e.g., Monogan 2013). Defined by legislative and staff pay as well as days in session, professional legislatures (as opposed to “part time” legislatures) are believed to think long-term and to base decisions on more rational considerations as opposed to short-term political pressures (Monogan 2013). As a result, states with professional legislatures are more likely to pass inclusive immigration policies as compared to states with part-time legislatures (Boushey and Luedtke 2011; Marquez and Schraufnagel 2013; Monogan 2013).

The reason for this is that professional legislators look down the road at their electorate prospects and are more likely to try and curry favor among fast-growing minority groups such as Latinos and Asians, thus increasing the likelihood that they will support immigration measures considered to be integrative or inclusive (Monogan 2013). Simply put, legislators who view politics as a profession are less likely to act in myopic ways (Monogan 2013). Also, given the full-time nature of being a professional legislator, the ability to weigh the benefits (both financial and to immigrant families) of inclusive immigration policies leads to more attempts to pass such policies (Boushey and Luedtke

2011). As such, we would expect that states that have full-time lawmakers would be more prone to pursue policies deemed inclusive to immigrants.

### *Direct-democracy*

Further, many institutional factors influence the degree of autonomy that lawmakers or state bureaucrats enjoy. For example, the direct-democracy mechanisms in the form of referenda or initiatives are likely to induce short-term considerations over longer-term planning (Besley and Case 2003) and are strongly associated with populism and anti-elite sentiments (Papadopoulos 2001). The connection between populist sentiments being facilitated through direct-democracy to enact restrictive immigration policy was a frequent research topic after California's Proposition 187 passed in 1994 restricting immigrants from numerous benefits (Alvarez and Butterfield 2000; Hajnal et al. 2002; Johnson 1995; Martin 1995; Tolbert and Hero 1996). However, little research has taken direct-democracy measures into account in the current context as states nationwide have taken over immigration legislation. Direct-democracy measures are currently found in 26 states and are no less important now than they were in 1994.

Further, analysis on the ideological impact of direct-democracy measures shows that while there are some exceptions to the rule, the overwhelming majority of direct-democracy measures are effectively used to promote more conservative policies (Cronin 1989; Feld et al. 2001; Lupia and Matsusaka 2004; Matsusaka 2005). Therefore, the absence of direct-democracy measures at the state level will deny populist impulses and will be associated with the enactment of more inclusive policies on immigration.

*Term-limits*

Term limits are often championed by those who oppose the idea of “career politicians” (Carey et al. 2006). As a result of shortening a legislator’s time horizon and the experience they gain, there is a lower level of legislative expertise in states where term-limits are present (Kousser 2005). Term limited representatives are less likely to be knowledgeable about the issues that their constituents face due to having less time on the job examining the issues and because of the lack of colleagues with lengthy tenures who can impart detailed information about a given legislative issue (Kousser 2005). Given the shorter amount of time term limited politicians have, there is also a less deliberative approach to legislation and lawmakers are prone to act on short-term interests (Kousser 2005). Studies on the impact of term limits have indicated that conservative policies on public spending and taxation (Bernhardt, Dubey, and Hughson 2004; Besley and Case 2003; Erler 2007; Mooney 2009) as well as on social issues such as the death penalty and school prayer (Carey et al. 2006) are more likely where term limits are present. Given the effect that term limits have on facilitating conservative policies, states without terms limits are expected to pass more inclusive immigration policies

*Campaign Donation Restrictions*

Considering sector-specific campaign donations influence policy outcomes (Nicholson-Crotty and Nicholson-Crotty 2011), then the ways in which states can and do restrict these contributions will alter policy outcomes (Besley and Case 2003). Research has shown that restrictions at the state level lessen the incentive of politicians to respond to wealthy contributors in two ways. First, the flow of money is decreased as special interests are inhibited from giving directly or indirectly to political candidates (Flavin

2015). Secondly, the proportion of campaign funds coming from specific industries or interests declines (Flavin 2015). Empirical tests have indicated that the policy preferences between campaign financiers and politicians is less consistent in contexts where campaign finance limits are in place, indicating less influence from moneyed interests on the voting behavior of politicians (Pastine and Pastine 2010). What is more, politicians have been known to change their previous political positions when they run counter to those of special interests in contexts where few campaign finance restrictions are in place (Pastine and Pastine 2010). Thus, the presence of campaign limits will be associated with fewer inclusive immigration policies as the influence from industries reliant on immigrant labor will be muted.

#### *Party Primary Systems*

Whether a state has party primaries open to all voters or closed primaries restricting participation to registered party members will shape the kinds of policies that emerge (Kaufmann et al. 2003). States either have a closed primary system where only voters registered to either political party may vote during a primary election, or an open primary system where any registered voter can vote in either party's primary election (Cho and Kang 2015). Open primaries are associated with fewer extreme candidates because, for instance, an open primary for a Republican candidate is open to Republicans, Democrats, third party, or unaffiliated voters (McGhee et al. 2014; Oak 2006) . Where open primaries are present, anti-immigrant legislators will be less likely to win due to crossover voters participating in the primary election. States with open primaries will thus produce more inclusive immigration policies.

A summary of the relationships between these state level institutional predictors and immigration policy is as follows:

**Hypothesis 1:** *High levels of bureaucratic capacity will be associated with more inclusive immigration policies.*

**Hypothesis 2:** *High levels of legislative professionalism will be associated with more inclusive immigration policies.*

**Hypothesis 3:** *The absence of direct democracy mechanisms will be associated with more inclusive policies.*

**Hypothesis 4:** *States without term limits will have more inclusive policies on immigration.*

**Hypothesis 5:** *The absence of campaign finance limits will be associated with more inclusive policies.*

**Hypothesis 6:** *Open primaries will be associated with more inclusive immigration policies*

Analyzing the impact of institutional factors on immigration policy outcomes will provide the most detailed account to date of the predictors of immigration policy at the state-level. This novel approach to policy analysis is outlined below.

## DATA AND METHODS

The unique, author-generated dataset includes state-specific information gathered from a number of sources. These sources include the National Council of State Legislatures (NCSL), the U.S. Census Bureau, the Bureau of Labor Statistics, as well as Squire's (2012) measure of Legislative Professionalism and Berry et al.'s (1998) updated scores on state citizen's ideology. Specifications on each variable follow below, starting



with the dependent variable on state laws and followed by the important institutional variables and the society-centric predictors used in previous studies.

### *Dependent Variable*

**Inclusive immigration laws:** The dependent variable is a count variable that includes all restrictive immigration policies at the state level passed between 2005 and 2013. The data was collected from the NCSL (Morse 2014) which makes available all laws passed on immigration since 2005 when states began to pass immigration legislation. Monogan (2013) has coded all state laws between 2005-2011 where a law qualifies as inclusive if it is determined to be inclusive if it has the intended effect of including immigrants when it comes to social benefits or privileges. I use this publicly available data for years 2005-2011 and use the criteria for inclusive laws to code immigration policies passed in 2012 and 2013. While others (including Monogan) have created a scaler variable measuring the degree to which a law is inclusive or exclusive, this approach has been widely criticized by immigration policy scholars for its lack of transparency and reliance on “judgment calls” which leads to a lack of replicability (Beine et al. 2013; Bjerre et al. 2014; Helbling et al. 2013). Following Chavez and Provine (2009), Boushey and Leudtke (2012), Marquez and Schraufnagel (2013), and Zingher (2014), I reduce the subjective nature of ratio-interval policy measures by focusing on a count of inclusive policies to account for where the preponderance of inclusive legislation is taking place.

### *Institutional Predictor Variables*

**Bureaucratic capacity:** Following Howard (1999), I use government employment and payroll data provided by the Census Bureau data to create a bureaucratic capacity

measure by taking the average monthly salaries of workers employed by the state. Howard suggests either average monthly pay or the relative number of individuals employed by the state suffices as proximate measures of bureaucratic capacity. However, Howard suggests that focusing on monthly salary is a conceptually sound measure because “higher pay means more professional and higher quality employees who are better able to have an impact on policy” (1999:435). Moreover, while not all state employees are involved in the production of research and analysis, Howard notes that the average salary for all state employees is a sound proximate measure of the importance states place on producing the key set of empirical facts used to guide policy. Salaries vary very little from year to year and as such this measure is time invariant.

State primary system: The NCSL (2014a) has data on the primary system in place at the state level. Each state has either an open primary system where party registration is unnecessary to participate, or a closed primary system where a prospective voter must belong to either the Democratic or Republican party in order to vote in the primary. This time-variant variable is a binary measure with closed primaries scored as a 0 and open primaries scored as a 1.

Legislative Professionalism: Legislative Professionalism is a scaled variable created by Squire (2007) that takes into account legislator pay and legislative days in session, as well as the size and pay of staff. Squire attains this score by using NCSL data which contains information on legislative pay, legislative days in session, and the size and pay of permanent and session-only staff. Lower scores indicate lower legislative professionalism while higher scores indicate a more professionalized legislature. There is

little change in legislative professionalism from year to year and as such this measure is time invariant.

**Term limits:** This variable is a binary measure, taken from NCSL(2014b) data. States that do not have term limits are scored as a 0 and states with term limits in place scored as a 1. The NCSL also has the year in which term limits were enacted (or repealed) allowing me to take into account the changes in state law related to the presence of term limits.

**Direct-democracy measures:** The NCSL (2014c) contains data on whether or not a state has a direct-democracy mechanism in place where citizens can vote directly on an issue. This variable is a binary measure with states that do not have direct-democracy mechanisms in place scored as a 0 and states with direct-democracy scored as a 1. The NCSL also has the year in which direct-democracy measures were enacted (or repealed) allowing me to take into account the changes in state law related to the presence of direct-democracy mechanisms.

**Campaign finance restrictions:** The NCSL (2014d) contains information on whether or not states have restrictions on the amount of money that can be donated to politicians in state races. States that have restrictions on corporate spending are believed to pass more exclusive immigration laws as the economic influences associated with curtailing exclusive immigration policies are restrained. This variable is a binary measure where restrictions on corporate spending are scored as a 1 and no limits are scored as a 0. The NCSL also has the year in which campaign restrictions were enacted (or repealed) allowing me to take into account the changes in state law related to the presence of campaign restrictions.

*Control variables: Society-centric predictors*

Many of the previously analyzed society-centric variables will be included as control variables. These include Democratic party control, measured using NCSL (2014e) data. Party control is a time-varying predictor scored 0 if there is total Republican control, 1 if there is split control between the parties, and 2 if there is total Democratic control of both houses of legislature. Citizen ideology is a time-invariant measure included by relying on updated (2013) data from Berry et al.'s (1998) citizen ideology scores which infer ideology by examining congressional preferences to produce state-level ideology results. These publicly available data are structured to where lower scores reflect more conservative state ideology while higher scores represent more liberal state ideology.

I measure the rate in which the immigrant population changes, a time-varying measure, by taking the difference in the foreign born population in a state at time 1 subtracted from time 2 and dividing this by the population at time 1. For Hispanic electoral power, a time-varying measure, I rely on Census Bureau data to determine the size of the Hispanic population in each state. I examine the Hispanic population as opposed to the "immigrant" population because Hispanics are a more coherent electoral bloc compared to simply those of foreign birth who hail from dozens of different countries. While Hispanics are not homogenous, there are Hispanic-based advocacy groups such as La Raza that purport to represent all Hispanic people regardless of specific Latino background (NCLR 2015). To assess how money from immigrant-

dependent industries influences policy, I rely on data from the Institute for Money In State Politics (2014) which has sector-specific donations, in this case from agricultural and construction industries, to state politicians for each year of this study. To operationalize this variable I calculate the share of total donations to state politicians from these industries. I also include union density, a time-invariant measure, which reflects the share of workers in each state who belong to a labor union as measured by Hirsch and MacPherson (2016). Finally I include the state unemployment rate which also provided by the BLS (2014). The time-varying unemployment rate is lagged by 1 year to determine how the economic conditions lead to immigration policy in the following year.

Tests of multicollinearity indicate some predictor variables are moderately correlated. Due to the theoretical importance of the predictor variables outlined in the literature review, an examination of the variance inflation factor (VIF) indicated that some variables exceeded the 5.0 VIF threshold where estimated coefficients increase due to correlation of predictor variables (see Table A2). Most notably, the percent of state residents with a college diploma is a common measure of testing the economic threat hypothesis, though the VIF test indicates that college education is too highly correlated with several other predictor variables for inclusion. As such, college education is omitted from the analysis. Predictor variables included in the models detailed below all fall well below the 5.0 VIF threshold.

### Analytical Approach

Because I am relying on count data, I will use a negative binomial regression to assess the factors that predict inclusive immigration policies at the state level. Model fit

tests show that the variance in my dependent variable (number of inclusive laws passed) is greater than the mean. In addition, my dependent variable indicates that 48.9 percent of all outcomes consist of a state not passing any laws during a given year.

Due to the model fit tests and the overdispersion of zeros, a negative binomial distribution takes the same shape as a Poisson distribution making a negative binomial regression the appropriate model given the structure of my data.

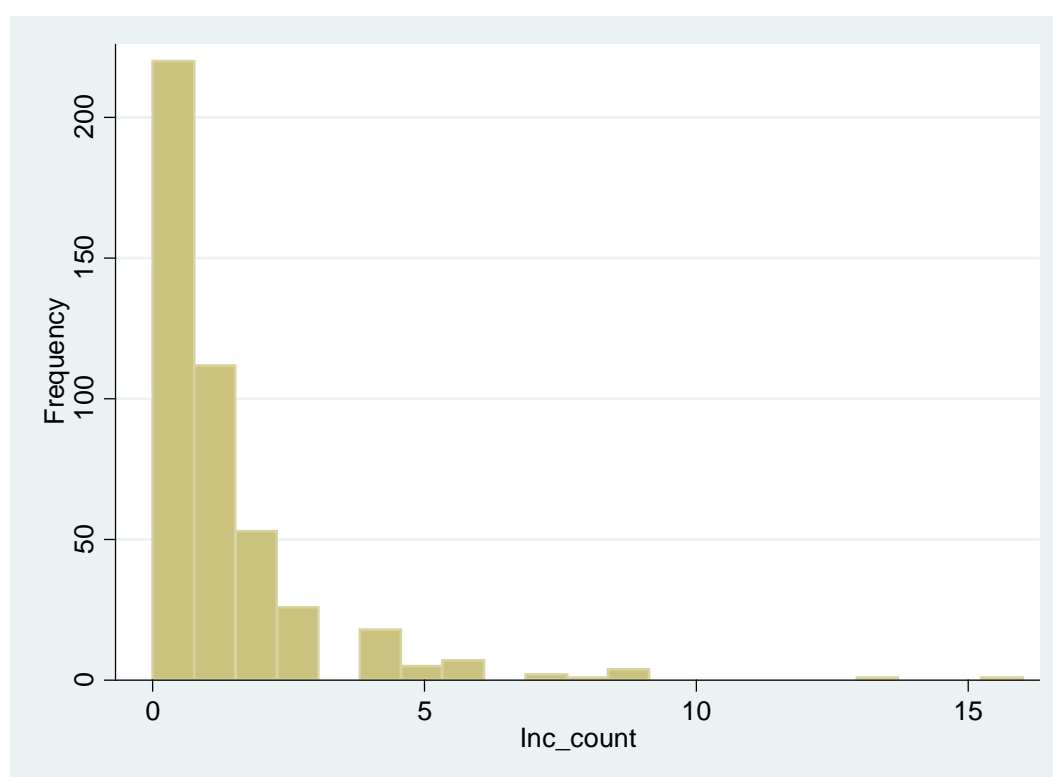


Figure1: Frequency of Passing Inclusive Immigration Laws

In order to take into account the important ways in which independent variables vary from year to year, I will run negative binomial regression in time series using Stata command `xt`. My model is structured to first run negative binomial regression on the institutional arrangements at the state level. After analyzing the impact that institutions have on inclusive immigration policymaking, I will then include the society-centric

predictors as control variables in a full model. The full model will allow me to determine how institutional variables shape inclusive immigration policy at the state level.

## RESULTS

Results indicate which states are most likely to pass inclusive immigration legislation. At the high end, California has passed an astonishing 59 inclusive immigration measures over a 9 year period, followed by Washington State and Illinois with 29 and 26 inclusive laws, respectively. At the low end are Rhode Island with just 1 inclusive law passed during this period and several states with just 2 inclusive laws enacted. Below are the 50 states shaded in accordance to the policymaking activity on inclusive immigration laws, with darker shading indicating more policies enacted on this issue between 2005 and 2013.

While easy generalizations are not readily apparent, there does appear to be a greater degree of inclusive immigration policymaking in what immigration scholars refer to as “traditional destination” states for immigrants; namely, New York, Illinois, Florida, Texas, and California (Massey and Capoferro 2008). Other states engaged more actively in passing include laws include Virginia, Colorado, Utah, and Washington State.

I next turn to negative binomial regression in time-series of the institutional variables of importance. Of the six institutional variables tested, only bureaucratic capacity suggests a statistically significant relationship for the number of inclusive immigration policies passed at the state level. Higher levels of bureaucratic capacity, measured in terms of the average salary of state employees, are associated with a higher number of inclusive immigration laws at the state level. This suggests that states that pay

for top quality bureaucratic work may be more inclined to take this work into consideration when enacting immigration policies. The other institutional variables do not appear to be related to inclusive immigration policymaking.

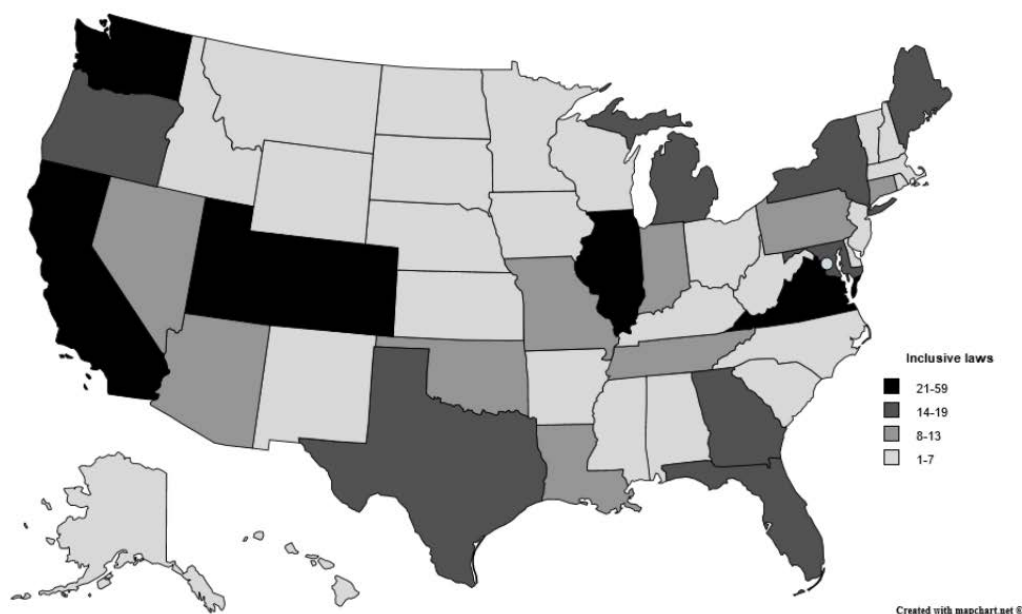


Figure 2: Inclusive Immigration Laws by State, 2005-2013

Table 1: Institutional Predictors of Inclusive Immigration Policy

Inclusive Laws	IRR	Std. Err.	P>z	95%	C.I.
Legis.Prof.	1.076114	1.142212	0.945	.134392 -	8.616745
Bur. Capacity	1.000466	.0002081	0.025*	1.000058 -	1.000874
Open Primary	.8587722	.1915141	0.495	.5546924 -	1.329547
Term Limits	.688878	.152064	0.091	.4469374 -	1.061788
Camp. Restrict.	.5757781	.1642249	0.053	.3292101 -	1.007018
Dir-Democracy	.9153113	.1914598	0.672	.6074621 -	1.379172

\*P<.05 \*\*P<.01 \*\*\*P<.001

I turn next to the full model which examines the institutional variables as well as taking into account the society-centric measures examined in previous literature. For the full model, society-centric accounts are entered as control variable.



Table 2: Institutional and Society-centric Predictors of Inclusive Immigration Policy

Inclusive laws	IRR	Std. Err.	P>z	95% C.I.	
Legis. Prof.	1.58395	1.732773	0.674	0.185594	13.51822
Bur. Capacity	1.000568	0.000273	0.037*	1.000033	1.001102
Direct Democracy	1.015917	0.222725	0.943	0.661066	1.561248
Term Limits	1.417976	0.324933	0.128	0.904927	2.221897
Campaign Restrict.	0.827659	0.079141	0.053	0.686214	0.998259
Open Primary	0.926236	0.217194	0.744	0.584955	1.466629
PartyControl	0.651632	0.071082	0.000***	0.5262	0.806964
Conservatism	1.000753	0.008671	0.931	0.9839	1.017893
Imm.Growth	0.099856	0.099111	0.020*	0.014273	0.698591
HispanicVoters	4.688846	6.526471	0.267	0.306384	71.75719
CampaignContrib	0.645962	0.741553	0.703	0.068083	6.128754
Union Density	0.948923	0.029988	0.097	0.891931	1.009557
Unemployment	1.057665	0.02619	0.024*	1.007558	1.110263
_cons	0.541378	0.569234	0.559	0.068945	4.251085

\*P<.05 \*\*P<.01 \*\*\*P<.001

The most important finding from the results on institutional predictors of inclusive immigration policy comes from bureaucratic capacity. Measured in terms of the average monthly salary of state employees, states with better paid and higher quality workers are statistically significantly related to the passage of inclusive immigration laws. While other institutional predictors failed to reach the level of statistical significance, the finding on bureaucratic capacity highlights the role that institutional settings can have on enacting pro-immigrant measures. As bureaucratic capacity increases, the likelihood of passing a greater number of inclusive immigration laws also rises as illustrated in the figure below.

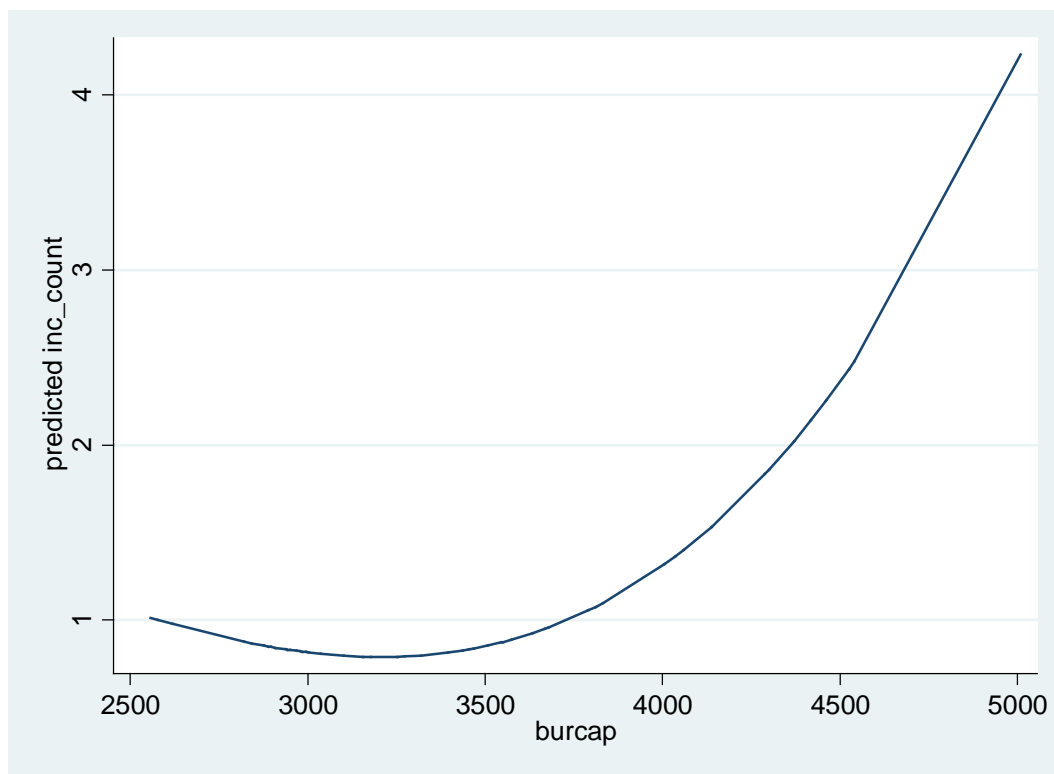


Figure 3: Expected Number of Inclusive Immigration Laws by Bureaucratic Capacity

The figure above suggests that bureaucratic capacity may be especially important for very well paid state bureaucrats. That is, there appears to be little relationship between the average monthly salaries of state employees until the \$4,000 point and above, at which point the predicted number of inclusive immigration policies increases dramatically. High bureaucratic capacity is strongly linked to passing laws designed to integrate and include immigrants in their respective states.

Legislative professionalism, the presence of term limits, the presence of direct-democracy mechanisms, and the presence of campaign donation restrictions do not appear to be influential in terms of the number of inclusive immigration policies found at the state level. When looking at our society-centric predictors, the (Democratic) party in

control of state legislatures is predictive of passing inclusive immigration policies and a rapidly growing immigrant population exerts a strong pressure mitigating against the passage of inclusive laws. Additional implications regarding the findings will follow in the discussion section.

## DISCUSSION

Institutional factors at the state level shape immigration policy in ways that have not been accounted for in previous research. Society-centric drivers of policy, most notably Democratic party control of state government, contribute to inclusive immigration policies. State bureaucratic capacity has not until now been fully tested as a predictor of state level immigration policy. State bureaucratic capacity influences immigration policy formation in a way that leads to the passage of more inclusive laws. This important finding comes at a time when the playing field on immigration policy continues to be centered in state houses. As the federal government lags in finding a solution to the undocumented immigrant situation and as governors declare their interest in blocking refugees from setting in their states, the role that the 50 states play on immigration issues in the near and medium term will be sizable.

This work also builds off of related literature on the way that state bureaucratic elites harbor more pro-immigrant positions than the citizenry at large (Citron and Sides 2008; Cornelius et al.1994; Freeman 1995; Joppke 1998; Money 1999; Fetzer 2000; Schuck 2007; Simon and Alexander 1993; Tichenor 2002). The finding on bureaucratic capacity is situated within the framework of this tendency among bureaucrats to have an “expansionary bias” (Freeman 1995:886), the phenomenon of bureaucrats having a

decidedly more inclusive view of immigrants than the electorate. While this gap between the public and bureaucratic elites is found throughout the Western world, attempts at measurement indicate that “in the United States, this disconnect is striking” (Citrin and Sides 2008:51). In states that provide greater pay with the hope of generating expert opinion worthy of informing policy, the quantity of liberalized immigration policies follow.

Analyses specific to bureaucratic capacity have just begun to ask how expert knowledge is used to inform immigration policy (e.g., Boswell 2009). What kind of political pressures do bureaucrats face when conducting research designed to inform policymakers crafting immigration legislation? When bureaucratic agencies produce research or gather data with the expressed purpose of helping lawmakers create immigration laws, is the work produced by bureaucrats used instrumentally? Or does the work get used selectively to substantiate partisan preferences or legitimize the policy goals of powerful special interest groups? These questions and many others that are linked to analysis of bureaucratic capacity and immigration are in their infancy, and the application of this approach is well-suited to examination of the immigration policies passed in the 50 states where the lion’s share of policymaking has taken place on this issue.

Indeed, there is a growing literature at the state level dedicated to the study of “evidence-based practices” (Newman and Head 2015), which is amenable to exploration of immigration policy. While not yet conducted explicitly on immigration policy, this new and exciting field of study seeks to identify the linkages between the research-informed expert opinion of state bureaucrats and “how governments can go about

incorporating information and evidence” out of the belief that “policy fully informed by research will produce better outcomes” (Newman and Head 2015:384). These recent theoretical inquiries provide us with a timely opportunity to further extend literature examining policymaking for inclusion, rather than segmentation, of newcomers in the nation of immigrants.

By identifying new and crucial predictors of immigration policy and incorporating them for statistical analysis, the novel dataset incorporating these institutional variables with updated society-centric control variables has shed light on just how important institutional arrangements at the state level are when it comes to immigration policy. Particularly in the U.S. where the relative strength of the federal government pales in comparison to other advanced industrial nations (Hollifield 2004; Massey 1999), the states have explicit authority via the 10<sup>th</sup> Amendment to engage in the vast bulk of legislation that impacts peoples’ lives. While immigration has historically been left to the federal government, the recent stalemate in congress regarding immigration reform combined with the increasingly decentralized nature whereby the federal government pushes more responsibility onto the states has created a perfect scenario for the proliferation of immigration policy.

It is only by taking into account the important institutional arrangements at the state level such as bureaucratic capacity that we are able to unearth the connection between higher paid, presumably higher quality, bureaucrats and the inclusive immigration laws. Future research will look at state level bureaucrats situated within various agencies to determine how their important work on immigration research informs policy. While a statistical association between state bureaucratic capacity and inclusive

immigration policies has been established, this study is limited on the issue of *how* connections between them are made. A qualitative assessment designed to take into consideration the nuances, challenges, strengths and limitations of bureaucratic capacity would further elucidate the ways in which more highly qualified and skilled state employees help to shape immigration policy at the state level. Given the major consequences that state legislative context has on the health, education, employment, and social stability of immigrants and their families, it is imperative that we gain a better understanding of the institutional factors that shape the laws that vulnerable immigrant populations are forced to navigate.

As noted above, quantitative associations between bureaucratic capacity and inclusive immigration policy would be aided by qualitative analysis where state bureaucrats reveal the way their work influences policymaking. Further, additional institutional variables may be missing that may better illuminate the role that institutional settings have on immigration legislation. For instance, Brubaker (1992) notes the important role that cultural idioms have on immigration policy, whereby nations comprised of relatively recent immigrant settlers in the colonial period have different views and policies toward newcomers than states largely comprised of homogenous populations. Given the massive differences in immigrant settlement between the 50 American states over time (Gibson and Jung 2006), careful construction of empirical measures designed to capture “historical institutionalism” may provide new insights into state level immigration policymaking. Future studies taking institutional settings into account will outline the benefits and determinants of including all members of society to ensure we continue to live up to our national motto of *e pluribus unum*.

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Table A1: Summary Statistics on Variables Included in the Models

Variables	mean	sd	max	min
<i>Dependent Variable</i>				
Inclusive laws	1.16	1.845044	16	0
<i>Institutional Variables</i>				
Legislative Professionalism	0.18328	0.114463	0.626	0.027
Direct Democracy	0.46	0.498952	1	0
Bureaucratic Capacity	3471.228	595.224	5007.73	2557.87
Primary system	0.22	0.414707	1	0
Term limits	0.3	0.458768	1	0
Campaign restrictions	2.48	1.02564	3	0
<i>Society-centric variables</i>				
Party Control	1.026667	0.736693	2	0
Ideology	47.42779	15.32928	86.1845	18.0695
Unemployment rate	6.311556	2.320683	2.5	14.9
Immigrant growth rate	0.0322	0.078919	0.624242	-0.23521
Hispanic voters	0.067999	0.075937	0.391784	0.008847
Union density	10.372	5.258809	23.2	2.9
Share industry donations	0.048023	0.051882	0.650586	0

Table A2: Variance Inflation Factor Diagnostic Test for Multicollinearity for Inclusive Laws

Variable	VIF	1/VIF
Bureaucratic Capacity	3.68	0.271915
Union Density	3.39	0.295417
Liberal ideology	2.22	0.450457
Legislative professionalism	1.96	0.511102
Hispanic voters	1.59	0.630458
Direct democracy	1.53	0.653501
Term limits	1.42	0.705892
Campaign restrictions	1.26	0.794133
Party control	1.26	0.795235
Open primaries	1.15	0.869704
Unemployment rate	1.06	0.942562
Campaign contributions	1.06	0.947412
Immigrant growth rate	1.03	0.97469
Mean VIF	1.74	

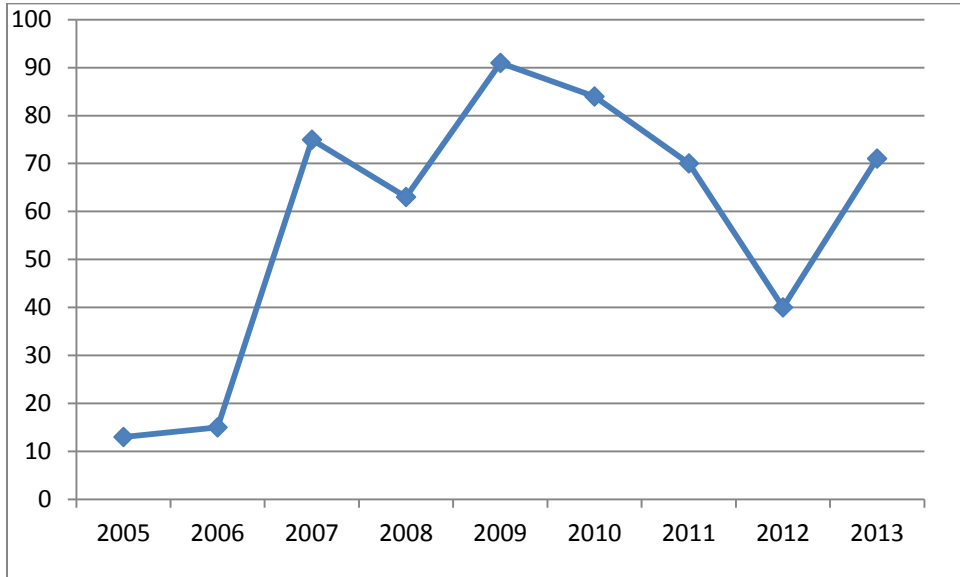


Figure A1: Number of Inclusive Laws Per Year



## CHAPTER III

KEEP OUT: IMMIGRATION POLICY DEVOLUTION AND THE DETERMINANTS  
OF LEGISLATIVE EXCLUSION

## INTRODUCTION

While immigration policy comes in many varieties, exclusionary legislation has had a profoundly negative impact on immigrants residing in states that pass such laws. Exclusionary policies are associated with detrimental educational outcomes for immigrants' children, lower levels of trust between immigrant communities and law enforcement, and lower access and utilization of health resources (Ayon et al. 2012; Bozick and Miller 2013; Dreby 2012;2015; Flores 2010; Kirk et al. 2012; Toomey et al. 2014; White et al. 2014). While the effects of exclusionary immigration policy at the state level have been detailed by scholars, the underlying determinants of when, where, and why such exclusionary policies emerge in some state contexts and not in others is not well understood.

Much of the scholarship on immigration policy has focused almost exclusively on what some have called "society-centric" approaches (e.g., Boushey and Leudtke 2011). Such approaches include the constructs such as "state economic health" or "rapidly growing immigrant population" that are quantifiable using official statistics from sources such as the Census Bureau or the Bureau of Labor Statistics. While important, these factors have led to inconsistent and inconclusive findings, highlighting the limitations of these variables in pinpointing the causal mechanisms driving exclusionary immigration

policies. As a result, our understanding of the reasons some states pass exclusionary immigration measures while others do not is incomplete.

The consequences for the record 42 million immigrants in the U.S. living in states where restrictive policies predominate are profound. At the extreme end are states like Arizona and their now infamous “show me your papers” laws, which absent a Supreme Court ruling would have allowed local police to racially profile Latinos in order to force them to prove their citizenship (Barnes 2012). While several states have either enacted or have considered enacting copycat legislation (Shahid 2010), we are currently limited in our ability to determine why these laws emerge in the locations where they have restrictive immigration laws.

Extant research on the topic of state level immigration legislation has suffered from a lack of emphasis on the institutional settings present at the state level that structure immigration policy-making. Breakthroughs on gaining a deeper understanding of the legislative processes on immigration were only possible at the cross-national level when taking into consideration the many ways in which national institutions structure the kinds of immigration laws that are most likely to pass (e.g., Sainsbury 2012). This work builds off of these efforts to incorporate the many ways in which state (i.e. Utah, New York, etc.) institutional arrangements shape the policy domain to inhibit or facilitate exclusionary immigration policies at the state level. By “bringing the states back in,” in a play on Skocpol’s (1985) groundbreaking analysis of institutions, the current study advances the body of research by adding measures hitherto unaccounted for so that a clearer picture of what influences immigration policies can be discerned.

## LITERATURE REVIEW

### *Impacts of exclusionary immigration policy*

Analysis of immigration policy at the state level is relatively new. For most of the nation's history and until very recently, immigration laws were exclusively under the domain of the federal government. State activity after the 2005 national immigration debate (and federal failure to enact immigration reform) climbed from 37 bills in 2005 to 84 bills in 2006 (Morse 2014). By 2007, the number of immigration laws passed at the state level nearly tripled to 240 laws, remaining at or above 200 laws per year until 2012 when "only" 156 laws were passed at the state level. In 2013, state activity again picked up, leading to the passage of 184 immigration laws (Morse 2014).

The impact of these laws has been considerable, especially for laws aimed at curtailing immigration or restricting immigrants' access to social benefits. For example, qualitative research focusing on restrictive immigration legislation and access to health care finds less utilization of preventative health care services by high-risk immigrant population in the state (Toomey et al. 2014; White et al. 2014). These studies find that health care utilization among immigrants diminishes out of changes in eligibility for services as well as fear of deportation for those seeking services. Restrictive policies on access to health care are also found to lead to worse health outcomes for immigrants and their families (Androff et al. 2011; Arbona et al. 2012; Steel et al. 2011).

Interviews with immigrants also suggest that state law enforcement officials permitted to enforce federal immigration laws often produce a sense of social disorganization and alienation even among legal immigrants as mistrust of the police and

fears of racial profiling impact public safety in immigrant communities (Kirk et al. 2012). Enforcement measures that are stepped up at the state-level also leads to the separation of families, severely impacting undocumented immigrants and their citizen children alike by creating family dissolution (Dreby 2012). Follow up studies looking at the impact of enforcement policies at the state level reveals that distrust toward the police is equally high among foreign-born and native-born Latinos, both of whom feel unjustly targeted and harassed (Dreby 2015).

When looking at educational attainment for immigrants, quantitative analysis of immigration laws pertaining to access to in-state college tuition reveal state-level differences in high school enrollment for immigrant children (Bozick and Miller 2013; Flores 2010), indicating short-term decisions for graduating high school may be based on long-term opportunities for affordable college enrollment that are structured by state contexts on immigration policy. On employment legislation and economic performance, interviews of immigrants in Phoenix, Arizona indicate that state's punitive employment measures restricting access to the labor market have been found to exacerbate inequalities and maintain poverty status among immigrants by making employment more difficult to attain (Ayon et al. 2012). Some have expressed concerns that "segmented assimilation," or differences in societal outcomes for today's immigrants compared to previous waves of European immigrants, is exacerbated by restrictive legal contexts in reinforcing immigrant disadvantage (Filindra et al. 2011).

While the far-reaching impact of restrictive immigration policy is clear and detrimental to immigrants residing in states that take this approach, understanding why, when, and where these exclusionary policies are likeliest to emerge is not yet well

understood. Given the severe negative consequences for foreign-born residents living in places that explicitly target their ability to work, to receive healthcare, to gain educational attainment, to trust law enforcement, and to keep families intact, it is of paramount importance that the state level policy processes related to immigration policy formation are better understood.

### *Research on State Level Immigration Policies*

To date, state immigration policy analysis has mirrored that of cross-national policy examination. Regarding the latter, the bulk of early research was dedicated to focusing on the society-centered interest groups competing with each other in order to set immigration levels most beneficial to those in their economic category (e.g., Freeman 1995; 2011). Those at the top of the economic ladder sought a “reserve army of labor” where excess workers translated into lower wages (Boswell 2007; Hollifield 2000). Juxtaposed to the capitalist class stood workers who were advocating restriction immigration policies when wages decreased (Foreman-Peck 1992; Goldin 1994; Lowell et al. 1986; Timmer and Williamson 1998) or when unemployment rose (Meyers 2000).

Over time, many class cleavages involving ethnicity, religion, and culture emerged where class status views on immigration restriction were not reducible to one’s market position (Janoski and Wang 2005). As a result, there were advances to what was still a society-centered approach that included analysis of several Weberian status groups such as religious affiliation, ethnic background, cultural concerns over immigrants, and other considerations (Feldblum 1999; Freeman and Tandler 2012; Freeman and Hill 2006; Gimpel and Edwards 1999; Hollifield 2000; Janoski and Wang 2005; Tichenor and Harris 2002; Zolberg 1999). While breaking from the materialist approach has advanced

the framework of what is still an essentially society-centric viewpoint, institutional theories challenge this framework by taking into account the structure of the state itself and the ways in which institutional arrangements facilitate or inhibit certain kinds of immigration policy formation (Boswell and Hough 2008; Hollifield 2000; Koopmans 2010; Morrissens and Sainsbury 2005; Sainsbury 2006; 2012).

When applying an institutionalist approach to policy formation, the most crucial aspect is that institutional settings or state actors are important factors that must be taken into account. According to this thesis, the state or those who are in positions within it are not just tools of societal forces subservient to the powerful resources exerting pressure from outside of the state. Instead, autonomous or semi-autonomous state actors and the existing institutional arrangements of the state shape and structure policy-making in important ways. Under certain conditions, the state has autonomy from societal interests (Skocpol 1985).

Early analysis of immigration policy using an institutionalist framework focused largely on party systems (Boswell and Hough 2008; Green-Pederson and Oldmalm 2008; Schain 2008) or welfare state regimes (Doomernik and Jandle 2008; Koopmans 2010; Morrissions and Sainsbury 2005; Sainsbury 2006; 2012). More specific to the United States, devolution of immigration policy to the 50 states has its roots in the decentralized nature of the federal government and the explicit constitutional provision (i.e., the 10<sup>th</sup> Amendment) granting states a greater level of autonomy than is present in most other advanced western democracies (Coleman and Kocher 2011; Fix and Zimmerman 1994; Jagers et al. 2014; Provine and Varsanyi 2012; Sainsbury 2012; Schuck 1998; Watts 1998;). In comparison to other wealthy countries, the relative strength of the 50 states has

led immigration policy experts to place the U.S. federal government in the weakest possible category compared to centralized governments in other Western countries (Hollifield 2004; Massey 1999). Only by taking into consideration the national governmental structures and the different institutional arrangements that are in place have we been able to understand why immigration policy has become an increasingly state matter in the U.S. context. Similarly, only by taking into account the considerable ways state structures vary can we begin to understand why some states pursue punitive and restrictive immigration measures while others do not. Regardless of the specific mechanisms underlying bureaucratic autonomy, the emphasis on instrumental uses of expertise and the effectiveness at countering misuse of agency research stands in sharp contrast with the findings derived from cross-national scholarship on immigration legislation.

Similar to the trajectory of early cross-national immigration policy analysis, the fledgling literature on state immigration policies has followed a near exclusive assessment of society-centric variables (e.g., Marquez and Schruafnagel 2013). In what follows I outline current predictor variables thought to influence restrictive immigration policies at the state level and the overall assessment of the field of immigration policy research at the state level. I then offer a number of state level institutional measures that will enable us to fill the gap in the literature and understand the contextual factors behind when and where restrictive immigration policies emerge.

### *Cultural Threat*

Cultural threat has been measured in terms of a rapidly growing Hispanic or immigrant population thought to pose a cultural “threat” to individuals residing in a

location. Several researchers have found restrictive immigration policies have been associated with high rates of growth of the foreign born (Monogan 2013; Newman et al. 2012) or Hispanic populations (Marquez and Schraufnagel's 2013). However, in Creek and Yoder's (2012) analysis of the determinants of whether or not a state allows local authorities to report suspected undocumented immigrants to the federal government via the 287(g) program, a rapidly growing Hispanic population was associated with a *lower* likelihood of adopting these federal-state agreements. States that saw their Hispanic population increasing the most were least likely to adopt 287(g) agreements. In addition, Chavez and Provine (2009) test the impact that a rapidly growing immigrant population has on restrictive policies at the state level and find no statistical relationship between them. While cultural threat is sometimes associated with restrictive immigration laws, other times it is not.

### *Economic Threat*

Related to cultural threat, economic threat measures the degree to which immigrants are seen as competitors for scarce resources. These economic indicators are measured in various ways that influence whether or not economic threat leads to restrictive immigration policies.

For example, states where the average resident has a higher educational attainment are thought to have fewer restrictive immigration policies, as "an educated workforce is less threatened by immigrants" (Marquez and Schraufnagel 2013: 352). While states populated by more highly educated citizens are often found to be less likely to enact restrictive legislation (Boushey and Leudtke 2011; Hero and Pruehs 2007), it is not entirely consistent, as Marquez and Schraufnagel (2013) find no relationship between an



educated state citizenry and restrictive immigration policy. The strangely underutilized state unemployment rate exhibits an unclear relationship with immigration policy as well, sometimes predicting restrictive immigration policies (Hero and Pruehs 2007; Zingher 2014) while showing no relationship to restrictive policy at other times (Creek and Yoder 2012; Newman et al. 2012; Nicholson-Crotty and Nicholson-Crotty 2011).

### *Ethnic Organization*

The size and political strength of the Hispanic or immigrant population have also been included in examinations of state immigration policy (e.g., Newman et al. 2012). This measure differs in important ways from “cultural threat” variables in that the sheer size and demographic strength of groups, as opposed to their growth rate, results in powerful electoral blocs (Marquez and Schraufnagel 2013). Further, “contact hypothesis” suggests that where larger, more long-term groups are more established in a state it will reduce the perceived “threat” that they pose (Boushey and Leudtke 2011). In looking at the impact of the size of the Hispanic or immigrant population, the results have been inconsistent, ranging from non-significant findings (Hero and Pruehs 2007; Newman et al. 2012) to mitigating against exclusionary immigration policies (Boushey and Leudtke 2011; Chavez and Provine 2009) and to the contrary, leading to immigration enforcement legislation (Marquez and Schraufnagel 2013).

### *Voter Ideology and Partisanship*

There is also a strong pattern in the literature to examine the relationship between voter ideology and/or partisanship and type of immigration laws that are passed. While these two predictors are similar, there are important differences between ideology, measured along the liberal-conservative continuum, and partisanship which is measured

by looking at party control (either Democratic or Republican) that necessitate treating them differently. For example, studies have suggested that the average Republican serving in state legislatures in the Northeast is more liberal than the average *Democratic* state legislator in most southern states (Shor and McCarty 2011). Because of these distinctions, most scholars have used both citizen ideology and partisan control (Creek and Yoder 2012; Hero and Pruehs 2007; Monogan 2013; Newman et al. 2012; Nicholson-Crotty and Nicholson-Crotty 2011; Zingher 2014).

When looking at partisanship measures, many have found a lack of relationship to restrictive immigration legislation (Boushey and Luedtke; Creek and Yoder 2012; Monogan 2013; Newman et al. 2012; Nicholson-Crotty and Nicholson-Crotty 2011; Zingher 2014), though others find that Democratic control of state legislatures was negatively related to restrictive immigration policies (Marquez and Schraufnagel 2013; Schildkraut 2001). Citizen ideology has been similarly inconclusive, as some studies have indicated the expected relationship between conservative ideology and restrictive immigration policies (Chavez and Provine 2009; Monogan 2013) while others have shown no connection between the ideology of citizens and the immigration policies states produce (Creek and Yoder 2012; Marquez and Schraufnagel; Newman et al. 2012; Nicholson-Crotty and Nicholson-Crotty 2011).

#### *Economic Interest-groups*

Certain industries are heavily reliant on immigrant labor. Pew Research estimates agriculture and construction are two industries where undocumented immigrants are most likely to be employed (Passel and Cohn 2013). Research on the effect of industry influence is measured in terms of the share of total donations at the state level from the

immigrant dependent industries of agriculture and construction, data that is provided by the Institute for Money in State Politics (2014). This measure has indicated a powerful link to immigration policymaking, as a less restrictive policy context emerges when the share of political contributions from agricultural and construction industries increase (Nicholson-Crotty and Nicholson-Crotty 2011). Further, industry influence can be seen in states that do *not* adopt legislation, such as the case of E-Verify enactment where the legal status of all workers is verified through a government database. In states where campaign donations from the construction industry are highest, there are significantly lower odds of adopting E-Verify (Newman et al. 2012). The power of economic interests in forming the legislative direction of the states is a consistent measure for inhibiting restrictive immigration laws, though it has been underutilized due to the relative novelty of the Institute for Money in State Politics dataset on industry-specific state level campaign finance.

While the literature presented here offers clues on the factors that shape immigration policy, it is both inconsistent and inconclusive. There are several reasons that may explain the inconclusive nature of previous findings. These studies all include different periods of analysis, different statistical models, and different operationalization attempts of the dependent variable “immigration policy.” However, the biggest gap in the literature stems from a set of important variables that have hitherto been omitted. I now turn to an examination of key state level factors that may contribute to policy outcomes at the state level.

*Institutional Analysis*

Most institutionally-focused research on immigration policy formation has been cross-national and comparative (Doomernik and Jandle 2008; Koopmans 2010; Menz 2011; Morrisons and Sainsbury 2005). This research suggests that institutional factors like the degree of federal centralization and the nature of the electoral system are critical drivers of policy formation at the national level. While very little empirical research has focused on the state level, insights from cross-national scholarship suggest that the nature of the federal political system in the U.S. can significantly shape policy formation processes. For example, majoritarian electoral systems with geographic units of representation as well as multi-tiered republican structures with federated political units (i.e, the 50 states) are most likely to create abundant veto sites that increase gridlock and hinder policy advances (Sainsbury 2012). Thus the nature of the U.S. political system may explain the current impasse with regard to federal immigration policy reform and why most policy advances have occurred at the state level (Jaggers et al. 2014; Provine and Varsanyi 2012; Sainsbury 2012).

While insights from cross-national immigration policy scholarship help explain the devolution of policy formation in the U.S., analysis of state level immigration policy formation to date has focused primarily on the societal groups most associated with various policy outcomes and have neglected institutional arrangements at the state level. This omission in the literature is partly due to the relatively novelty of state-level immigration policies, which only began to emerge in 2005, and partly due to the relative lack of theoretically-informed sociological research on the topic to date. To fill this gap, the current analysis will account for a variety of state-level institutional factors in order to

identify the factors that lead states to adopt different types of immigration policies. To do so, I incorporate the many state level institutional arrangements highlighted in literature on other policy areas that are useful and amenable to analysis of immigration policies.

*State-Level Institutional Factors*

**Hypothesis 1:** *Low levels of legislative professionalism will be associated with more restrictive policies.*

The degree to which a state's legislature is professionalized or part-time in nature is the only institutional factor sometimes used by state immigration policy scholars (e.g., Monogan 2013). Defined by legislative and staff pay as well as days in session, professional legislatures (as opposed to "part time" legislatures) are believed to think long-term and to base decisions on more rational considerations as opposed to short-term political pressures (Monogan 2013). As a result, states with professional legislatures are less likely to pass restrictive immigration policies as compared to states with part-time legislatures (Boushey and Luedtke 2011; Marquez and Schraufnagel 2013; Monogan 2013). The reason for this is that professional legislators look down the road at their electorate prospects and are more likely to try and curry favor among fast-growing minority groups such as Latinos and Asians, thus negating the likelihood that they will support immigration measures considered to be punitive or restrictive (Monogan 2013).

Simply put, legislators who view politics as a profession are less likely to act in myopic ways (Monogan 2013). Also, given the full-time nature of being a professional legislator, the ability to weigh the costs (both financial and to immigrant families) of restrictive immigration policies leads to fewer attempts to pass such policies (Boushey and Luedtke 2011). As such, we would expect that states that have amateur lawmakers would be more prone to pursue policies deemed restrictive to immigrants.

**Hypothesis 2:** *Low levels of bureaucratic capacity will be associated with more restrictive immigration policies.*

At the national level there is a consistent gap where public opinions on immigration are decidedly more restrictionist than those of bureaucratic elites (Bale et al. 2010; Citrin and Sides 2008; Cornelius et al.. 2005; Freeman 1995; Joppke 1998; Joppke and Morawska 2014; Money 1999; Schuck 2007; Simon and Alexander 1993; Thomassen 2012; Tichenor and Harris 2002). Referred to as “expansionary bias” (Freeman 1995:884), bureaucratic actors frequently eschew the more populist sentiments on immigration that sometimes emerge from the public while being more tolerant of large-scale regulated and unregulated immigration (Schuck 2007). These bureaucrats are believed to have an expertise of opinion on the impact that legislation has and are considered to have an information advantage over legislators (Huber and McCarty 2006). As a result, bureaucratic capacity is associated with expert knowledge produced by career state officials and is linked to more long-term political considerations over short-term pressures (Howard 1999). For this reason, high bureaucratic capacity serves as an important institutional barrier to more restrictive or populist immigration policies (Howard 2007). If this pattern exists at the state level, states that are willing to fund the production of “expert opinion” will also be more likely to follow the advice provided by experts. Thus, we can expect bureaucratic capacity to operate similarly to professional legislatures where lower levels of bureaucratic capacity will lead to more exclusionary immigration laws.

**Hypothesis 3:** *The presence of direct democracy mechanisms will be associated with more restrictive policies.*

Further, many institutional factors influence the degree of autonomy that lawmakers or state bureaucrats enjoy. For example, the direct-democracy mechanisms in the form of referenda or initiatives are likely to induce short-term considerations over longer-term planning (Besley and Case 2003) and are strongly associated with populism and anti-elite sentiments (Papadopoulos 2001). The connection between populist sentiments being facilitated through direct-democracy to enact restrictive immigration policy was a frequent research topic after California's Proposition 187 passed in 1994 restricting immigrants from numerous benefits (Alvarez and Butterfield 2000; Hajnal et al. 2002; Martin 1995; Tolbert and Hero 1996). However, little research has taken direct-democracy measures into account in the current context as states have taken over immigration legislation. Direct-democracy measures are currently found in 26 states and are conceivably no less important now than they were in 1994. In addition, analysis on the ideological impact of direct-democracy measures shows that while there are some exceptions to the rule, the overwhelming majority of time direct-democracy measures are effectively used to promote more conservative policies (Cronin 1989; Feld et al. 2001; Lupia and Matsusaka 2004; Matsusaka 2005). Therefore, states that have direct-democracy measures in place will be much more likely to enact restrictive policies on immigration.

**Hypothesis 4:** *States with term limits will have more restrictive policies on immigration.*

Term limits are often championed by those who oppose the idea of "career politicians" (Carey et al. 2006). As a result of shortening a legislator's time horizon and the experience they gain, there is a tremendously lower level of legislative expertise in states where term-limits are present (Kousser 2005). Term limited representatives are

less likely to be knowledgeable about the issues that their constituents face due to having less time on the job examining the issues and because of the lack of colleagues with lengthy tenures who can impart detailed information about a given legislative issue. Given the shorter amount of time term limited politicians have, there is also a less deliberative approach to legislation and lawmakers are prone to act on short-term interests (Kousser 2005). Studies on the impact of term limits have indicated that conservative policies on public spending and taxation (Bernhardt, Dubey, and Hughson 2004; Besley and Case 2003; Erler 2007; Mooney 2009) as well as on social issues such as the death penalty and school prayer (Carey et al. 2006) are more likely where term limits are present. Given the effect that term limits have on facilitating conservative policies, states with terms limits are expected to pass more exclusionary immigration policies.

**Hypothesis 5:** *The presence of campaign finance limits will be associated with more restrictive policies.*

Moreover, the ways in which states can and do restrict campaign contributions will alter policy outcomes (Besley and Case 2003). Research has shown that restrictions at the state level lessen the incentive of politicians to respond to wealthy contributors in two ways. First, the flow of money is decreased as special interests are inhibited from giving directly or indirectly to political candidates (Flavin 2015). Secondly, the proportion of campaign funds coming from specific industries or interests declines (Flavin 2015). Empirical tests have indicated that the policy preferences between campaign financiers and politicians is less consistent in contexts where campaign finance limits are in place, indicating less influence from moneyed interests on the voting



behavior of politicians (Pastine and Pastine 2010). What is more, politicians have been known to change their previous political positions when they run counter to those of special interests in contexts where few campaign finance restrictions are in place (Pastine and Pastine 2010). Thus, the presence of campaign limits will be associated with restrictive immigration policies as the influence from industries reliant on immigrant labor will be removed or limited.

**Hypothesis 6:** *Open primaries will be associated with fewer restrictive immigration*

In addition, whether a state has party primaries open to all voters or closed primaries restricting participation to registered party members will shape the kinds of policies that emerge (Kaufmann et al. 2003). States either have a closed primary system where only voters registered to either political party may vote during a primary election, or an open primary system where any registered voter can vote in either party's primary election (Cho and Kang 2015). Open primaries are associated with fewer extreme candidates because, for instance, an open primary for a Republican candidate is open to Republicans, Democrats, voters registered to third party, or unaffiliated voters (McGhee et al. 2014; Oak 2006). Where open primaries are present, anti-immigrant legislators will be less likely to win due to crossover voters participating in the primary election. States with open primaries will thus produce fewer restrictive immigration policies.

Analyzing the impact of institutional factors on immigration policy outcomes will provide the most detailed account to date of the predictors of immigration policy at the state-level. This novel approach to policy analysis is outlined below.

## DATA AND METHODS

The unique, author-generated dataset includes state-specific information gathered from a number of sources. These sources include the National Council of State Legislatures, the U.S. Census Bureau, the Bureau of Labor Statistics, as well as Squire's (2012) measure of Legislative Professionalism and Berry et al.'s (1998) updated scores on state citizen's ideology. Specifications on each variable follow below, starting with the dependent variable on state laws and followed by the important institutional variables and the society-centric predictors used in previous studies.

### *Dependent variable*

Exclusionary immigration laws: The dependent variable is a count variable that includes all restrictive immigration policies at the state level passed between 2005 and 2013. The data was collected from the NCSL (Morse 2014) which makes available all laws passed on immigration since 2005 when states began to pass immigration legislation. Monogan (2013) has coded all state laws between 2005-2011 where a law qualifies as exclusive if it is determined to have the intended effect of excluding immigrants when it comes to social benefits or privileges. I use this publicly available data for years 2005-2011 and use the criteria for exclusive laws to code immigration policies passed in 2012 and 2013. While others (including Monogan) have created a scaler variable measuring the degree to which a law is inclusive or exclusive, this approach has been widely criticized by immigration policy scholars for its lack of transparency and reliance on "judgment calls" which leads to a lack of replicability (Beine et al. 2013; Bjerre et al. 2014; Helbling et al. 2013). Following Chavez and

Provine (2009), Boushey and Leudtke (2012), Marquez and Schraufnagel (2013), and Zingher (2014), I reduce the subjective nature of ratio-interval policy measures by focusing on a count of exclusive policies to account for where the preponderance of exclusive legislation is taking place.

#### *Institutional Predictor Variables*

**Bureaucratic capacity:** Following Howard (1999), I use government employment and payroll data provided by the Census Bureau data to create a bureaucratic capacity measure by taking the average monthly salaries of workers employed by the state. Howard suggests either average monthly pay or the relative number of individuals employed by the state suffices as proximate measures of bureaucratic capacity. However, Howard suggests that focusing on monthly salary is a conceptually sound measure because “higher pay means more professional and higher quality employees who are better able to have an impact on policy” (1999:435). Moreover, while not all state employees are involved in the production of research and analysis, Howard notes that the average salary for all state employees is a sound proximate measure of the importance states place on producing the key set of empirical facts used to guide policy. Salaries vary very little from year to year and as such this measure is time invariant.

**State primary system:** The NCSL (2014a) has data on the primary system in place at the state level. Each state has either an open primary system where party registration is unnecessary to participate, or a closed primary system where a prospective voter must belong to either the Democratic or Republican party in order to vote in the primary. This time-variant variable is a binary measure with closed primaries scored as a 0 and open primaries scored as a 1.

Legislative Professionalism: Legislative Professionalism is a scaled variable created by Squire (2007) that takes into account legislator pay and legislative days in session, as well as the size and pay of staff. Squire attains this score by using NCSL data which contains information on legislative pay, legislative days in session, and the size and pay of permanent and session-only staff. Lower scores indicate lower legislative professionalism while higher scores indicate a more professionalized legislature. There is little change in legislative professionalism from year to year and as such this measure is time invariant.

Term limits: This variable is a binary measure, taken from NCSL (2014b) data. States that do not have term limits are scored as a 0 and states with term limits in place scored as a 1. The NCSL also has the year in which term limits were enacted (or repealed) allowing me to take into account the changes in state law related to the presence of term limits.

Direct-democracy measures: The NCSL (2014c) contains data on whether or not a state has a direct-democracy mechanism in place where citizens can vote directly on an issue. This variable is a binary measure with states that do not have direct-democracy mechanisms in place scored as a 0 and states with direct-democracy scored as a 1. The NCSL also has the year in which direct-democracy measures were enacted (or repealed) allowing me to take into account the changes in state law related to the presence of direct-democracy mechanisms.

Campaign finance restrictions: The NCSL (2014d) contains information on whether or not states have restrictions on the amount of money that can be donated to politicians in state races. States that have restrictions on corporate spending are believed

to pass more exclusive immigration laws as the economic influences associated with curtailing exclusive immigration policies are restrained. This variable is a binary measure where restrictions on corporate spending are scored as a 1 and no limits are scored as a 0. The NCSL also has the year in which campaign restrictions were enacted (or repealed) allowing me to take into account the changes in state law related to the presence of campaign restrictions.

#### *Society-centric Control Variables*

Party control: To measure which party is in control of the state legislature during a given year, I rely on NCSL (2014e) data which lists which party is in control for each state. To operationalize party control variable I created a scaled variable with scores between 0-2. To measure the effect of Republican control, the variable is scored 0 if there is total Democratic control, 1 if there is split control between the parties, and 2 if there is total Republican control of both houses of legislature. The composition of state government is subject to frequent change and as such this is a time-varying measure.

Citizen ideology: I include updated (2013) data on Berry et al.'s (1998) citizen ideology scores which infer ideology by examining congressional preferences to produce state-level ideology results. This measure produces an ideology score along a liberal-conservative continuum by inferring the ideological position of the electorate from the distribution of votes in congressional races and their interest-group rating scores for members of Congress, assuming that voters choose the candidate they perceive as having an ideology closest to their own. These publicly available data are structured to where lower scores reflect more liberal state ideology while higher scores represent more

conservative state ideology. Very little change exists from year to year when it comes to state ideology and as such this is a time-invariant measure.

Change in immigrant population: To measure the rate in which the immigrant population changes I use state-specific Census Bureau data and take the difference in the foreign born population at time 1 subtracted from time 2 and divide it by the population at time 1. This allows me to ascertain the rate change in foreign-born population at the state level for each year of this study and to determine whether a fast-growing immigrant population is related to policy changes.

Hispanic electoral power: I rely on Census Bureau data to determine the size of the Hispanic population in each state. I examine the Hispanic population as opposed to the “immigrant” population because Hispanics are a more coherent electoral bloc compared to simply those of foreign birth who hail from dozens of different countries. While Hispanics are not homogenous, there are Hispanic-based advocacy groups such as La Raza that purport to represent all Hispanic people regardless of specific Latino background (NCLR 2015). The Hispanic population in each state is a time-variant variable.

Campaign donations: The National Institute for Money in State Politics (2014) contains data on all campaign contributions for each state based on which economic sector the donations come from and for each year of this study. To operationalize this variable I will combine the total donations from agriculture and construction by combining these contributions and dividing them sum by the total contributions at the state level. Higher total contributions at the state level from these sectors are expected to produce fewer restrictive laws.

State unemployment rate: To gauge the local economic context, I use Bureau of Labor Statistics (2014a) data on the state unemployment rate for each state. This measure is lagged by 1 year to determine how the economic conditions lead to immigration policy in the following year. The ever-shifting economic landscape necessitates lagging this variable by 1 year in order to ensure the temporal relationship between economic conditions and policymaking on immigration.

Tests of multicollinearity indicate some predictor variables are moderately correlated. Due to the theoretical importance of the predictor variables outlined in the literature review, an examination of the variance inflation factor (VIF) indicated that some variables exceeded the 5.0 VIF threshold where estimated coefficients increase due to correlation of predictor variables. Most notably, the percent of state residents with a college diploma is a common measure of testing the economic threat hypothesis, though the VIF test indicates that college education is too highly correlated with several other predictor variables for inclusion. As such, college education is omitted from the analysis. Predictor variables included in the models detailed below all fall well below the 5.0 VIF threshold.

### *Analytical Approach*

Because I am relying on count data, I will use a negative binomial regression to assess the factors that predict exclusionary immigration policies at the state level. Model fit tests show that the variance in my dependent variable (number of exclusionary laws passed) is greater than the mean. In addition, my dependent variable indicates that 44.7 percent of all outcomes consist of a state not passing any laws during a given year.

Due to the model fit tests and the overdispersion of zeros, a negative binomial distribution takes the same shape as a Poisson distribution making a negative binomial regression the appropriate model given the structure of my data.

In order to take into account the important ways in which independent variables vary from year to year, I will run negative binomial regression in time series using Stata command xt. My model is structured to first run negative binomial regression on the institutional arrangements at the state level. After analyzing the impact that institutions have on exclusive immigration policymaking, I will then include the society-centric predictors as control variables in a full model. The full model will allow me to determine how institutional variables shape exclusive immigration policy at the state level.

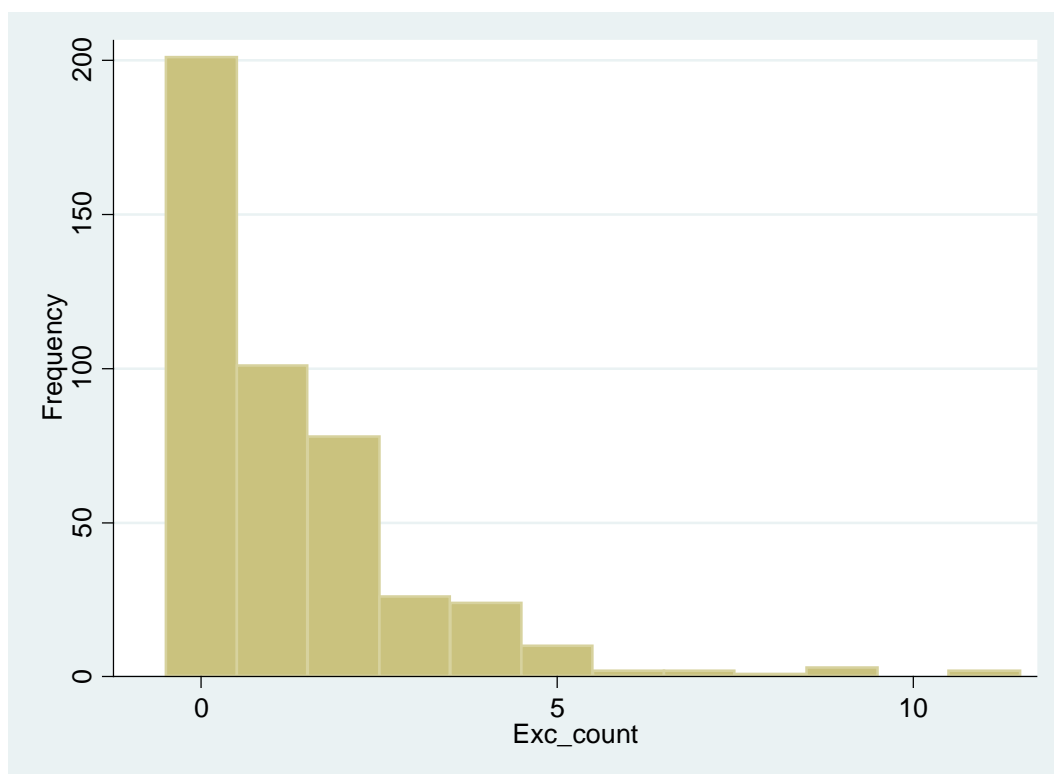


Figure1: Frequency of Passing Restrictive Immigration Laws



## RESULTS

Descriptive statistics highlight which states are most active in passing exclusionary immigration legislation. At the high end are Virginia and Arizona, passing 36 and 34 restrictive immigration laws between 2005-2013 respectively. On the other end of the distribution are Ohio, New Jersey, and Connecticut, each of which passed just 1 exclusionary immigration law during this period. Below are the 50 states shaded in accordance to the policymaking activity on exclusionary immigration laws, with darker shading indicating more policies enacted on this issue between 2005 and 2013.

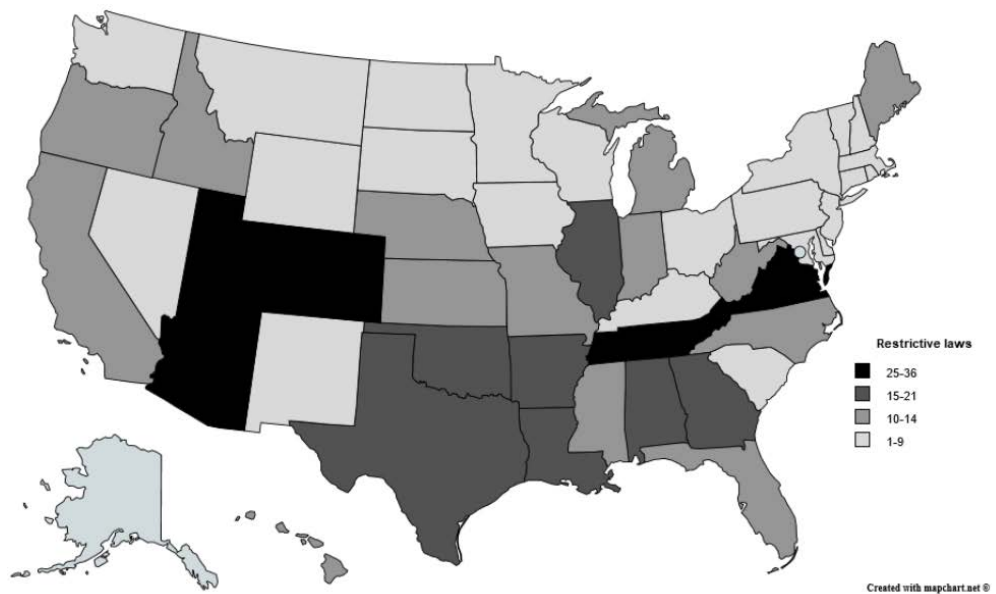


Figure 2: Restrictive Immigration Laws by State, 2005-2013

In general, geographic patterns tend to show greater restrictive immigration policymaking in the sun-belt, as most states in the northern portions of the U.S. pass relatively fewer restrictive immigration laws. The Northeast and Upper Midwest appear particularly unlikely to pass restrictive immigration laws, while many “new” immigrant

destinations throughout the Southeast are active in passing anti-immigrant laws. Portions of the Inter-mountain West also appear to be especially inclined to pass exclusionary immigration measures.

Turning next to negative binomial regression analysis in time-series, I first examine the institutional predictor variables alone to determine their impact on exclusionary legislation at the state level. These include whether there is an open state primary system, term limits on lawmakers, direct-democracy mechanisms in place, if there are restrictions on campaign donations, and levels of legislative professionalism and bureaucratic capacity. The results are presented below in Table 1.

Table 1: Institutional Predictors of Exclusive Immigration Policy

Exclusionary Laws	IRR	Std.	Std. Err.	P>z	95% CI	
Legis. Prof.	1.427806	1.471541	0.730		.1894063 -	10.76326
Bur. Capacity	.9997107	.0001958	0.140		.999327 -	1.000095
Direct Democracy	.7515609	.1434756	0.135		.5169717 -	1.092601
Term Limits	1.352866	.2801256	0.144		.9015797 -	2.030043
Open Primary	1.390847	.295536	0.121		.9170873 -	2.109347
Campaign Restrict.	.842037	.0692472	0.037*		.7166883 -	.9893092
Constant	5.721169	3.79467	0.009*		1.559229 -	20.99229

\*P<.05 \*\*P<.01 \*\*\*P<.001

None of the institutional variables are related to restrictive immigration policies except for campaign restrictions. Campaign restrictions, a variable thought to increase the number of restrictive immigration policies due to the removal of financial incentives politicians respond to, actually decreases the number of restrictive immigration policies contrary to expectations. States that have more restrictions on campaign donations pass fewer, not more, restrictive laws.

To get a better sense of the relationships between predictors of immigration policy and the number of restrictive laws passed at the state level, Table 2 includes both the institutional variables above as well as the more frequently used society-centric predictors added to the model as control variables.

A number of surprising results emerge to reveal the complex role that institutional arrangements at the state level have when it comes to the passage of restrictive immigration policies. The literature indicates having an open primary moderates the politics that emerge, leading to a hypothesis that open primaries would be associated with fewer restrictive immigration laws. Instead, an open primary system is associated with more restrictive immigration laws. States that have open primaries, where anyone regardless of partisan registration can vote in the party primary, see a greater abundance of restrictive immigration laws contrary to expectation.

Table 2: Institutional and Society-centric Predictors of Exclusionary Immigration Policy

Exclusionary laws	IRR	Std. Err	P>z	95% CI	
Legi. Prof	.8774643	.8167267	0.888	.1415623	5.438902
Bur. Capacity	.9997611	.0002067	0.248	.999356	1.000166
Direct-Democracy	.6903637	.1210906	0.035*	.4895265	.9735981
Term Limits	1.250627	.2320813	0.228	.8692979	1.799231
Open Primary	1.593094	.3185725	0.020*	1.076529	2.357528
Campaign Restrict	.856959	.0638567	0.038*	.7405124	.9917169
Party Control	.9268725	.088761	0.428	.7682553	1.118238
Ideology	1.016689	.0071662	0.019*	1.00274	1.030832
Immigrant Change	.4541922	.3552148	0.313	.0980689	2.103526
Hispanic Voters	8.713339	7.574098	0.013*	1.585897	47.8734
Campaign contrib.	.0137954	.0245678	0.016*	.0004206	.4524904
Unemployment	1.074857	.025906	0.003**	1.025263	1.126851
_cons	1.527572	1.481114	0.662	.2283954	10.21682

\*P<.05 \*\*P<.01 \*\*\*P<.001

Whether or not a state has term limits has no impact on immigration legislation. Term limited politicians were thought to think in “short-term” time horizons and to ignore the long term benefits of immigration, thus being more likely to enact restrictive laws. The results show no support for this hypothesis.

Direct-democracy mechanisms also show a statistically significant negative relationship with restrictive immigration laws. Direct-democracy, where the electorate bypasses legislators and votes directly on an issue, was theorized to be a mechanism that leads to more restrictive policies. Similar to the infamous 1994 Proposition 187 in California, populist sentiments present among the voters would be directly enacted by them to pursue punitive immigration measures. The results indicate the exact opposite effect is occurring where direct democracy is present. Where voters have a direct say in immigration, there are significantly fewer, not more, restrictive immigration laws that are passed.

With the full model taking control variables into account, whether a state has restrictions on campaign contributions continues to be a predictor for less, not more, restrictive immigration laws. It was expected that the lack of incentive for lawmakers to respond to campaign donations would lead to the pursuit of more exclusionary immigration measures. Instead, where limits on money in state politics are present, fewer restrictive immigration laws are passed.

The final two institutional variables, legislative professionalism and bureaucratic capacity, are not predictive of restrictive immigration laws. The three institutional variables that do predict greater or fewer restrictive laws---limits on campaign

contributions, having an open primary system, and having direct-democracy mechanisms in place--are all opposite to expectation.

Several control variables are also statistically significantly related to restrictive immigration laws. Where citizens are more conservative in their ideology, there are more restrictive immigration laws passed. Similar to other findings, campaign contributions from sectors reliant on immigrant labor are associated with fewer restrictive laws as employers exert pressure on lawmakers to leave their workforce intact. Meanwhile, states with higher levels of unemployment are more likely to pass restrictive immigration laws, as states react to the economic conditions they face.

## DISCUSSION

Since 2005, restrictive immigration policies have passed in all 50 states. Where these policies are abundant, they have proven detrimental to the well-being of immigrants, their families, and even native-born co-ethnics on issues that profoundly shape their capacity to live healthy lives, to work and improve their economic standing, to gain education, to trust law enforcement and to keep their families in tact (Ayon et al. 2012; Bizick and Miller 2013; Dreby 2012; 2015; Flores 2010; Kirk et al. 2012; Toomey et al. 2014; White et al. 2014). Despite the severe ramifications, knowing when and where such policies are likeliest to emerge has remained elusive.

There are clear signs that institutional settings in place at the state level exert an influential role on the passage of restrictive immigration policies, though the specific ways in which these institutional arrangements operate is not fully developed. In the case of state level immigration laws designed to restrict immigrants, having an open primary

system serves a conduit for voters to demand such policies be supported and enacted.

This may be due to a large number of extremely conservative voices who are not Republican. While it would seem counter-intuitive to suggest conservatives need an open primary to affect outcomes in a Republican race, recent surveys indicate that some of the angriest and most conservative elements are outside the Republican Party particularly in the form of the Tea Party movement (Montopoli 2012; Skocpol and Williamson 2012). For instance, while the overwhelming majority of voters who self-identify with the Tea Party are ideologically conservative, just over half (51 percent) are registered as Republicans while the other half are unaffiliated with any official party (Montopoli 2012). Remarkably a plurality of Tea Party activists holds an unfavorable view of the Republican Party while also indicating a level of anger at the Republican Party nearly as high as that which they direct toward the Democratic Party (Barry 2010; Condon 2012). Moreover, while self-described and highly conservative Tea Party voters are just as likely to be unaffiliated than to belong to the Republican party, when given the opportunity via open primaries this faction is *most* likely to vote in primary elections compared to the average Republican (Rapoport 2013). As a result, when establishment Republican candidates lost in open primaries to candidates to the right of them, it “shook the foundation of the party” (Berry et al. 2012:23).

In addition to these factors, Tea Party members are also the most likely to regard immigration as the most important political issue, the most likely to regard immigrants as a threat to American culture, and the only group desiring repeal the 14<sup>th</sup> Amendment’s birthright citizenship protections guaranteeing citizenship to all who are born in the U.S. (Goo 2015; Kohut et al. 2012; Skocpol and Williamson 2011). In their work on the Tea

Party movement, Skocpol and Williamson (2011) find immigration to be a motivating factor as many Tea Party voters lament “what is happening to my country” (2011:76) where immigrants are perceived as an unwanted harbinger of cultural change.

Interviewing Tea Party advocates waving *I want my country back* signs, the authors find widespread advocacy for “heavy handed” immigration policies where “draconian measures are en vogue” (2011:57-8). That Tea Party advocates are radically anti-immigrant is important, but the fact that half of their electoral power exists outside of the Republican Party dilutes the influence this faction can exert except in cases where primary elections do not require registration to a political party. In such contexts where state ideology is conservative and where open primaries are the institutional setting with which elections are held, this true “outsider” political face is enabled by state structures to influence primaries in either party and in ways that grant success to candidates open to the Tea Party’s most important issue: immigration restriction.

The most dramatic “real world” example of the importance that primaries have on immigration policy comes from Virginia in 2014 where Republican House Majority leader Eric Cantor lost in a stunning defeat that shocked Beltway observers nationwide. Cantor lost in an open primary to a candidate named David Brat. Cantor, who had previously backed immigration reform and most notable the “Dream Act” for undocumented immigrants brought here as children, was pounded throughout the race by Brat for “supporting amnesty” (Blake 2014). Meanwhile in a similar race, Congresswoman Renee Ellmers from neighboring North Carolina voiced support for comprehensive immigration reform as well, and called her primary opponent “ignorant” for opposing it (Blake 2014). Despite being outspent by margins similar to that of Cantor,

Ellmers held on to win in her primary which was closed to anyone who was not registered as a Republican. These races are otherwise very similar in terms of ideology, Southern culture, geography, and with a relatively pro-immigrant candidate supported by party elites facing insurgents who harbor more populist immigration views. The key difference between these two very similar states is the primary system, where only Republicans were allowed to vote in North Carolina while all registered voters, including the nearly 50 percent of Tea Parties who refuse party affiliation, could vote in Virginia's open primary. While these races depict high profile races for federal office, the likelihood is high that similar events take place in state races where the national spotlight is not shining as brightly. The question remains, do candidates like Cantor lose because extreme conservative elements disaffected with the party were able to vote for his ouster in an open primary, while the same forces were prevented from doing so by closed primaries in Ellmers' race? This question falls beyond the scope of this work, though the findings presented here necessitate further inquiry into how such institutional arrangements in conservative state contexts protect or make vulnerable politicians based on their immigration views.

Key to interpreting the findings presented here is the assumption that open primaries may attract more extreme conservatives disaffected with the Republican Party but who still interested in shaping electoral outcomes. These assumptions are speculative given the limitations of the data analyzed in this work, though more work discerning the ideological leanings of non-party voters participating in open primaries would be highly useful. More recently with nearly half of all Tea Party activists operating outside of the GOP there are signs from this work and elsewhere of more ideologically-extreme



outsiders influencing the outcomes of open primaries (Berry et al. 2012). Pinpointing with precision the ideological leanings of non-party members engaged in open primaries would further elucidate how the institutional electoral framework at the state level is used to advance restrictive immigration preferences.

Direct-democracy as an institutional vessel for more populist sentiments present in the general public to enact restrictive immigration laws has also been upended by the findings presented in this work. Contrary to a large body of research suggesting Americans harbor anti-immigrant views and express these sentiments directly when given the opportunity to do so through state referendum or initiative, evidence on immigration attitudes suggests a rapidly changing landscape on this issue. Gallup has polled Americans' views on immigration levels for more than two decades. In their data, a whopping 65 percent of Americans favored lowering immigration levels in 1995, the year after California's Proposition 187 was passed through direct-democracy in that state. A slight majority of Americans continued to support decreased levels of immigration to the U.S. a decade later in 2005, the first year of analysis in this study. By 2013, the final year of data in this study, just 34 percent of Americans favored reducing immigration levels. In an article titled "Americans more pro immigrant than in the Past," Gallup's Lydia Saad reports on the sudden change in attitudes toward immigrants "reversing anti-immigrant entrenchment" that had been discernible in previous surveys. This historic change in attitudes toward immigration levels is also accompanied by majorities of survey respondents who favor granting legal status to undocumented immigrants.

It is precisely this change in attitudes toward immigrants that leads to results contrary to expectation. The literature notes the persistent tendency among the general

public to hold less than welcoming attitudes toward immigration and how this is transmitted into restrictive immigration laws where direct-democracy mechanisms are present. The literature does not, however, anticipate changes in attitude that are apparent in more recent surveys. Indeed, if Americans have more inclusive views toward immigrants compared to the past, it stands to reason that they would vote against restrictive immigration proposals that appear on state initiatives. When given the opportunity to vote directly on a proposal to deny immigrants a benefit, citizens choose to vote in opposition to such matters more so than in the past when more restrictive attitudes were prevalent.

Understanding the role that campaign restrictions play is a less clear factor. The share of industry donations leads to less immigration restriction while at the same time states with limits on outside groups financing campaigns also leads to fewer punitive immigration laws. These seemingly contradictory findings may be explained as follows. While the direct pathway in which large sums of money influence politics is easy to interpret, restricting the amount of money in politics should not be confused with eliminating it. That is, where restrictions are in place, the *relative share* from employers reliant on immigrant labor is still quite high. Even in contexts where limits are in place, employers can still give to politicians and in doing so their contributions account for a sizable portion of the campaign funds raised to engage in electoral competition. The complex relationship between money and policy suggests that both the total amount of money that can be given to politicians and the relative share from certain industries are important. More work on how money influences immigration policy would be beneficial.

By identifying new and crucial predictors of immigration policy and incorporating them for statistical analysis, the novel dataset incorporating these institutional variables with updated society-centric control variables has shed light on just how important institutional arrangements at the state level are when it comes to immigration policy. Particularly in the U.S. where the relative strength of the federal government pales in comparison to other advanced industrial nations (Hollifield 2004; Massey 1999), the states have explicit authority via the 10<sup>th</sup> Amendment to engage in the vast bulk of legislation that impacts peoples' lives. While immigration has historically been left to the federal government, the recent stalemate in congress regarding immigration reform combined with the increasingly decentralized nature whereby the federal government pushes more responsibility onto the states has created a perfect scenario for the proliferation of immigration policy.

It is only by taking into account the important institutional arrangements at the state level such as direct-democracy and the primary system in place that we are able to detect a tremendous shift in the underlying assumptions about these institutional structures. Open primaries have historically led to moderate candidates, but in the current context they serve as a vehicle for disaffected, angry, and independent (in their party registration) conservatives to promote candidates hostile to laws designed to integrate immigrants. Further, the assumption that direct-democracy mechanisms thought to enable populist sentiments has been upended, as public attitudes change on immigration. Only by taking an institutionalist approach can we identify the very recent changes in how institutions inhibit or facilitate restrictive policies on immigration.

Several opportunities are present to build off of these findings on how institutional settings at the state level influence immigration policy. Additional studies would benefit from qualitative assessment similar to that of Skocpol and Williamson (2012) to find out how actively engaged Tea Party voters influence electoral outcomes based on the institutional settings they must operate within. Future analysis building off of the quantitative results in this work would also consider the benefits of generating interaction terms to determine if and how society-centric measures and institutional arrangements interact. Further, factor-analysis would also allow us to understand the pathways between and among predictors of immigration restriction. Regardless of the ways in which we continue to examine the role that institutions at the state level play, the inclusion of state institutional arrangements is crucial for future researchers to consider in order to whether their aim is to contribute to the scholarly literature or to shape policy in an informed manner. With no end in sight to the federal stalemate and a number of 2016 presidential candidates vying to be the toughest on illegal immigration, the ramifications of state level immigration policy will continue to play a pivotal role not just on the lives of immigrants living in the 50 states but also to determine whether we will continue to be a nation of immigrants or a nation of restriction and hostility toward newcomers.

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Table A1: Summary Statistics on Variables Included in the Models for Exclusionary Laws

Variables	mean	sd	max	min
<i>Dependent Variable</i>				
Exclusionary laws	1.253333	1.697056	11	0
<i>Institutional Variables</i>				
<i>Legislative</i>				
Professionalism	0.18328	0.114463	0.626	0.027
Direct Democracy	0.46	0.498952	1	0
Bureaucratic Capacity	3471.228	595.224	5007.73	2557.87
Primary system	0.22	0.414707	1	0
Term limits	0.3	0.458768	1	0
Campaign restrictions	2.48	1.02564	3	0
<i>Society-centric variables</i>				
Party Control	1.026667	0.736693	2	0
Ideology	47.42779	15.32928	86.1845	18.0695
Unemployment rate	6.311556	2.320683	2.5	14.9
Immigrant growth rate	0.0322	0.078919	0.624242	-0.23521
Hispanic voters	0.067999	0.075937	0.391784	0.008847
Union density	10.372	5.258809	23.2	2.9
Share industry donations	0.048023	0.051882	0.650586	0

Table A2: Variance Inflation Factor Diagnostic Test for Multicollinearity for Exclusionary Laws

Variable	VIF	1/VIF
Bureaucratic Capacity	3.68	0.271915
Union Density	3.39	0.295417
Conservative ideology	2.22	0.450457
Legislative professionalism	1.96	0.511102
Hispanic voters	1.59	0.630458
Direct democracy	1.53	0.653501
Term limits	1.42	0.705892
Campaign restrictions	1.26	0.794133
Party control	1.26	0.795235
Open primaries	1.15	0.869704
Unemployment rate	1.06	0.942562
Campaign contributions	1.06	0.947412
Immigrant growth rate	1.03	0.97469
Mean VIF	1.74	

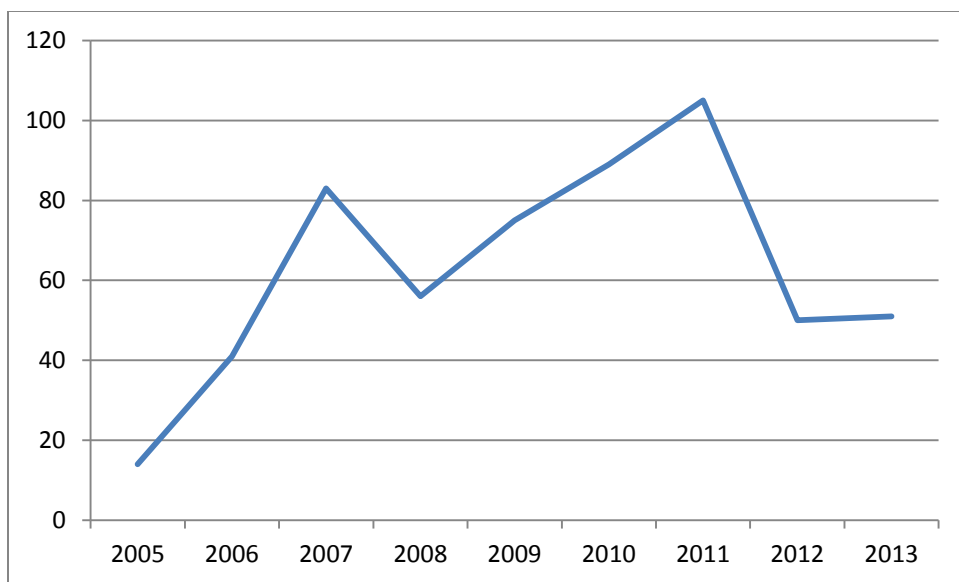


Figure 1A: Number of Exclusionary Laws Per Year

CHAPTER IV  
BUREAUCRATIC RESEARCH AND EVIDENCE-BASED POLICY ON  
IMMIGRATION AT THE STATE LEVEL

INTRODUCTION

For the first time ever, immigration policies in the United States have been passed primarily at the state, and not federal, level (Coleman and Kocher 2011; Donato and Armenta 2011; Jagers et al. 2014; Provine and Varsanyi 2012). How states decide on the type of policies to enact related to immigration is thus a new legislative consideration. At the same time, appealing to our desire for more effective and efficient government, there is a movement to incorporate “evidence-based” practices in public policy (Newman and Head 2014). While we are “far from a world in which evidence is routinely and smartly produced and integrated into decision-making,” (Maynard 2006:249) the literature on evidenced-based practices has begun to explore how much expertise is used as the basis for policy rather than relying on ideology, tradition, anecdotal accounts, or other unsupported reasoning (Bogenschnieder and Corbett 2010; Head 2008; 2010; Lundin and Oberg 2014; Newman and Head 2015).

While there has been rapid growth in examination of evidence-based practices at the state level, none have focused exclusively on matters of immigration as this issue takes center-stage at the state level where more than 1,086 laws have been passed in the 50 states between 2005-2013. Recent scholarship has revealed the connection between bureaucratic capacity at the state level and inclusive immigration policies (Author 2016). While this new finding is insightful, a strong statistically association does not show how

state bureaucrats shape or influence immigration legislation. In addition, several scholars have looked at expert opinion produced by bureaucrats and how it is used in immigration policy at the national level, however (e.g., Boswell 2009a). The insights from this literature suggest that very seldom are lawmakers inclined to use expert opinion in the ways that it was meant to be used, instead focusing on symbolic uses of knowledge to substantiate their campaign contributors' policy preferences or to legitimize their position as most suited to craft legislation (Balch 2009; Balch and Balabanova 2011; Boswell 2008; 2009a; 2009b; 2011; 2015; Entzinger and Scholten 2015; Geddes and Scholten 2015; Hunter and Boswell 2015; Scholten and Timmermans 2010; Scholten and Verbeek 2015). While using expert opinion produced by research conducted by national agencies is rarely used in a technocratic way, are state bureaucrats employed in agencies housed in the 50 state capitals as likely to see their research hijacked for symbolic purposes? Or do state legislatures make use of expert opinion in a more instrumental way? These questions remain unanswered and at a time when there is no sign that Washington, D.C. will resolve the immigration issues states have taken it upon themselves to address.

In what follows I will outline the key theoretical considerations on bureaucratic expertise, dissemination of expertise to lawmakers, and how this knowledge is used by politicians when designing immigration laws. I then describe the survey questions designed to elicit responses from state bureaucrats on the unique contextual factors and institutional settings in place at the state level to gain insight into the policy uses of research at the state level. Results are presented based on themes identified in the literature.

## LITERATURE REVIEW

### *Gap hypothesis*

Throughout all of Western society there is a gap between the public's interest in lower immigration levels and the policies that are enacted which facilitate higher immigration levels (Ceobanu and Escandell 2010; Citrin and Sides 2008; Cornelius and Rosenblum 2005; Fetzer 2000; Freeman 1995; Joppke 1998; Joppke and Morawska 2012; Money 1999; Schuck 2007; Simon and Alexander 1993; Tichenor and Harris 2002). Called the "gap hypothesis," "expansionary bias," or "liberal paradox," national bureaucrats are more pro immigrant than the general public and for the following reasons. First, Western societies are defined by a "liberal state thesis," the legal and institutional framework that inherently protects minority rights and which would require the type of mass violation of these rights deemed inconsistent with most countries' constitutional protections in order to target and expel millions of immigrants (Lahav and Guiraudon 2006). The ideology of Western countries is conducive to rights *expansion*, thus making the trampling of rights a severe risk to a nation's legitimacy (Boswell 2007; Hollifield 2000). As a result, there has been the creation of discursive norms that are egalitarian, cosmopolitan, and not readily amenable to discrimination by national origin (Brubaker 1995). The nondiscriminatory laws and principles also shape the approach bureaucrats have as their agencies tend toward closure of newcomers where the logic of inclusion stipulates that denial of rights will lead to unwanted social divisions (Castles 2004).



While policymakers must negotiate between many different competing interests when it comes to immigration policy such as those of employers or ethnic groups, bureaucrats are insulated from popular pressures that influence political behavior (Joppke and Morawska 2014). This insulation from the impulses of public opinion allow for greater autonomy among bureaucrats, an important factor as these bureaucratic officials and their agencies are responsible for producing the research and trusted set of facts that lawmakers use to make their decisions (Boswell 2009a). Studies suggest that elite bureaucrats atop many governmental agencies hold more libertarian views than the general public on issues related to protecting minority rights over the desire for mass deportation (Thomassen 2012). Moreover, bureaucratic elites are also much more supportive of free trade and the free movement of workers across national boundaries than the general public (Bale et al. 2010). Given their position within the government, these bureaucrats are most knowledgeable of the demographic and welfare state crises facing every advanced industrial country in the world as lower birthrates and the consequent fewer number of workers threatens the many programs and benefits Western nations are accustomed to having (Schuck 2007; Morales et al. 2015). Among governmental bureaucrats there is a general consensus on the benefits of immigration to the society as a whole, though it is at the expense of those at the very bottom of the economic hierarchy who bear the costs in terms of greater competition for low-wage employment (Schuck 2007; Levy et al. 2015; Morales et al. 2015).

*Bureaucratic influence on immigration policy*

For purposes of informing national policy, expert knowledge is defined as “systematically gathered information presented in research, expert or evaluation reports”

(Boswell 2009a: 25). Within national governments, bureaucratic elites are considered to have an expertise in opinion due to their institutional affiliation and qualifications as knowledge producers. Their research is also legitimized by following the methodological and substantive procedures recognized by the scientific community (Boswell 2009a).

Despite this, the impact of bureaucrats on immigration policy has been limited. This is partially due to the influences that outside groups have on lawmakers who rely on popular support to get reelected (Boswell et al. 2011). But there are also challenges associated with communicating research to lawmakers in a way that is comprehensible. Research is complex, often relying on abstract concepts, and requiring a nuanced understanding of the causal relationships between social phenomena (Caponio et al. 2015; Lundin and Oberg 2014). Lawmakers often lack the ability to quickly absorb research and are also more interested in easily conveyable messages for their constituents (Balch and Balabanova 2011; Boswell 2008; 2009a; 2009b). Moreover, research is often a lengthy process whereas lawmakers tend to want very fast results that they can use (Jennings and Hall 2012). The different uses of research and knowledge have come to be known as the “two communities” theory in which the two different sets of organizational logics and operational contexts between bureaucrats and lawmakers make communicating information a challenging prospect (Tseng and Nutley 2014; Ward et al. 2009).

How research is produced by bureaucrats and used for immigration legislation has become the source of considerable scholarship led by Christina Boswell. The main puzzle she addresses in her work is: why is there often little to suggest empirical evidence is used in immigration policy at the same time lawmakers increasingly rely on rhetoric

linked to evidence-based decisions? Boswell's work and the work of others posit two primary ways in which expert knowledge is used: for utilitarian or symbolic purposes (Boswell 2009a). Utilitarian uses of knowledge are linked to the rational mode of government where knowledge is used conceptually to frame policy issues as well as instrumentally for developing concrete policy responses. What expert opinion makers produce in their research is then used to inform policymaking in a very technocratic way.

For symbolic uses of expert knowledge, the two forms that it takes are substantiating or legitimizing. Rather than being used for input in crafting concrete policy responses, lawmakers may instead substantiate their pre-existing positions by selectively using expert knowledge to reinforce their policy decisions. In the substantiating function, policymakers use research to provide support for their policies by highlighting relevant knowledge and expertise. What is more, policymakers may legitimize their capacity to make sound decisions by grounding their approach in expert opinion produced by research. In this sense the use of knowledge extends beyond mere substantiation of policy preferences by legitimizing the actor as someone who is of sound judgement and enhancing perceptions of their capacity to make decisions on immigration. For each of these, there are specific political contexts and institutional settings in place where one form of knowledge use is more likely.

#### *Instrumental Knowledge Use*

Case studies show that research produced by bureaucrats and their agencies is used instrumentally when the focus is on the economic, and not cultural, benefits of immigration. In the UK, the Labour Party sought to increase labor migration and relied on a very influential study called the "white paper" produced by the Home Office (Balch

2009; Boswell 2009a; 2015; Hunter and Boswell 2015; Scholten and Timmermans 2010). While the Conservative Party attempted without success to reorient the debate toward social issues, even they ceded the economic benefits described by the white paper and thus the debate was largely on technocratic grounds (Balch 2009; Boswell 2009a; 2015; Hunter and Boswell 2015; Scholten and Timmermans 2010). The issue of labor migration and the focus on economic issues generated less controversy than in other contexts that will be discussed momentarily. Because it was not seen as a “hot button” issue, the debates tended to be methodological on topics such as the assumptions used to project annual migrant flows (Balch 2009; Boswell 2009a; 2015; Hunter and Boswell 2015; Scholten and Timmermans 2010). When the emotional concerns over cultural change are not present, the chance for utilitarian uses of knowledge is possible.

Output-driven narratives offer another context with which we can expect more technocratic, rationalist uses of expert knowledge in immigration policy (Boswell 2009a; 2011; Caponio et al. 2015). When the policy objective is oriented toward adjusting an outcome, such as expanding healthcare coverage to a higher percentage of foreign-born persons or projections of added value to GDP a certain number of labor immigrants will have on the economy, research gathered by state agencies is used in a linear fashion from bureaucracies to policy (Boswell 2008, 2009a, 2009b, 2011; 2015; Caponio et al. 2015; Hunter and Boswell 2015). When policymakers seek to maximize their chance of making successful interventions, obtaining accurate information aids them in their efforts.

Scholars examining immigration policy as well as other policy realms believe that instrumental uses of expertise and knowledge are rare (Blewden et al. 2010; Boswell 2009a; 2009b; 2015; Caponio et al. 2015; Entzinger and Scholten 2015; Scholten and

Verbeek 2015; Verbeek et al. 2015). Often dismissed as a technocratic utopia, there is evidence to suggest research and the knowledge it produces are used for symbolic purposes by politicians (Boswell 2009a). The two ways in which symbolic uses of knowledge are used in immigration policy have been identified as substantiating and instrumental (Boswell 2008; 2009a; 2009b; 2011; 2015).

### *Substantiating Uses of Expertise*

As noted above, substantiating uses of knowledge comes in the form of relying on expertise to justify *a priori* policy positions. In this sense the information produced by agencies is not used to inform policy but instead used in a way to justify it, oftentimes in hindsight. The clearest sign of substantiating knowledge comes in the form of politicizing the research agenda that bureaucrats must adhere to (Boswell 2009a). When elected officials with specific political motivations assign the research topics and in some cases the expected results, the goal is to use the production of this research for substantiating purposes.

Substantiating use of expert knowledge comes most frequently in immigration policy when the topic is highly controversial or politicized. For example, in 2002 the European Union (EU) sought to liberalize migration between member countries and to regulate immigration rules on refugees. Operating from a neoliberal perspective on free trade and favorable views of cross-national labor migration, the EU faced great backlash on the efforts to facilitate freer movement of workers across national boundaries (Boswell 2008; 2009a; 2011; Geddes and Scholten 2015; Scholten et al. 2015). While the desired policy goal of greater migration was clear, the EU created the European Commission to provide fact-based evidence on the benefits of liberalized immigration within and into the

EU (Boswell 2008; 2009a; Geddes and Scholten 2015; Scholten et al. 2015). Facing a backlash from some member countries, the EU put their migration policies on hold while the Commission sought to “soften up” opposition (Boswell 2009a).

The Commission’s research agenda included gathering information to support the EU’s claims regarding the relaxed regulation of migrants, while also monitoring national developments in this policy area (Boswell 2009a; Geddes and Scholten 2015; Scholten et al. 2015). The “pervasive role of policy analysis” helped to convince member countries that this action was necessary and, “of course, favoured the line of action backed by the Commission” (Boswell 2009a: 202). The consistent flow of supportive information helped to normalize the idea of cooperation between countries in an otherwise highly sensitive policy area (Boswell 2009a; 2011; Geddes and Scholten 2015). What is more, the Commission was also used to draw member countries into discussions that called into question contrary data used by individual countries that was not, in the Commission’s view, accurate or scientific (Boswell 2009a). By engaging in the production of knowledge and with an obvious ideological agenda, the evidence produced by the Commission was directly tied to substantiating the EU’s policy goals of expanding immigration and loosening restrictions.

#### *Legitimizing Uses of Knowledge*

Similar to substantiating uses of knowledge, legitimizing uses of expertise reflects a symbolic use of knowledge that is most common when there is controversy surrounding a proposed policy. Typically there is some crisis or controversy that needs to meet public expectations involved and where the competency of decision-makers is of vital importance (Boswell 2009a; 2009b; 2011). Bureaucrats responsible for producing

knowledge face a more contentious context compared to when substantiating uses of knowledge are found (Boswell 2009a). This is because during times of legitimizing uses of knowledge, bureaucrats are thought to have more autonomy to set their own agenda. Were there no autonomy present, the bureaucrats would simply engage in research supportive of lawmaker requests in order to substantiate their position (Boswell 2009a). When bureaucrats have autonomy to set their own research agenda, they may face backlash if their findings do not align with political preferences (Boswell 2009a; 2015). Thus bureaucrats often find themselves stuck between producing methodologically-sound research and appeasing those with authority over their funding (Boswell 2008).

A prominent feature of legitimizing uses of knowledge is in areas where risk is involved (Boswell 2008; 2009a; 2011; 2015). Risk in terms of immigration can take different forms but is often associated with cultural threats posed by newcomers or terrorism (Boswell 2009a; Scholten and Timmermans 2010). When a political issue is seen as having a high risk and there is an unknown outcome at stake, policymakers rely on expert knowledge to legitimize their position as competent arbiters of the best approach that should be taken (Boswell 2009a; Entzinger and Scholten 2015). At the same time, lawmakers are least likely to rely on the totality of research to inform their approach. Research is a lengthy process and contains many nuanced findings, but the slowness of rigorous science and the important nuance of contextual and conditional relationships between variables contrasts with the policymaking process during periods of perceived political crises where there are time constraints in place (Boswell 2009a; Scholten 2011; Caponio et al. 2015). As such, policymakers often cherry-pick whatever

facets of research best lends itself to the legislation they are proposing (Boswell 2009a; 2015).

Similar to immigration policies sought in the U.K., German Chancellor Gerhard Schroeder announced at a trade fair that he intended to liberalize immigration laws on the grounds that economic benefits would follow (Boswell 2009a; Entzinger and Scholten 2015). Unlike in the U.K., his opponents immediately shifted the debate to the social impacts of increased immigration (Boswell 2009a; 2015; Scholten and Verbeek 2015). By successfully introducing ethnocentric concerns into the debate, the level of controversy eclipsed that of the debate that took place in the U.K. and the stakes were elevated on the basis that incorrect assessment on the ability to integrate newcomers would lead to disastrous cultural consequences for Germany (Boswell 2009a; 2015). With the risk elevated, politicians scrambled to legitimize their positions by making use of research available to them.

Unlike cases where substantiating uses of knowledge are found, legitimizing uses of knowledge are not always in a context where technocratic governance is supported. In the case of Germany, opponents to liberalizing immigration laws regarded governmental statistics on the impact of immigration to be dubious (Boswell 2009a). Right-wing media trumpeted research from anti-immigrant organizations and attempted to expose government ineptitude by deriding the research conducted by the German Ministry of the Interior (Boswell 2009a; 2015). While politicians in favor of liberalizing immigration relied on research produced by the government to legitimize their position against media and partisan opposition, they failed to satisfy external expectations in the form of the popular concerns about the cultural impacts of increased immigration (Boswell 2009a;



2015; Scholten and Verbeek 2015). The German case also takes place in a context where previous labor migration policies were deemed to be failures, a problem not present in the U.K. where instrumentalist uses of expert knowledge led to the enactment of liberalized immigration (Boswell 2009a; Entzinger et al. 2015).

As noted by scholars of knowledge uses in immigration policy, differentiating between instrumental and symbolic (substantiating or legitimizing) uses of knowledge is much easier than distinguishing between different forms of symbolic uses of knowledge (Boswell 2008; 2009a). Often substantiating and legitimizing uses of knowledge are conflated, as the “two may be difficult to disentangle” (Boswell 2009a:73). To better illustrate these differences, the following table shows the role that bureaucratic autonomy and the role of crisis as a contextual factor have for these symbolic uses of knowledge:

Table 1: Factors Related to Symbolic Uses of Expertise

Symbolic knowledge use	Substantiating	Legitimizing
Bureaucratic autonomy	Typically no	Yes
Crisis present	No	Yes
Belief in technocratic governance	Yes	Often contested (or mixed)

Symbolic uses of expertise vary based on a number of factors including whether or not bureaucrats have autonomy. Symbolic uses of expertise take a substantiating role when bureaucrats are required or pressured into producing research for political purposes. To the contrary, when bureaucrats are free to produce their own work, the symbolic use of expertise takes on the form of legitimization as politicians cherry-pick the facts they need to bolster their authority as most qualified decision-maker. Further, while symbolic

uses of expertise tend to follow controversial matters, it is when there is a perception of crisis that legitimization is most likely. Finally, whether or not there is faith in government data or statistics is related to the type of symbolic uses of expertise, as a lack of faith in bureaucratic expertise is associated more with legitimizing functions. Substantiating functions, after all, are often at the behest of lawmakers and in circumstances where less bureaucratic autonomy is present.

While the above variations in how expert knowledge is used when creating immigration policy is reliant on studies conducted at the national level, the majority of policy in the U.S. is now taking place at the state level. The reasons for this include the greater autonomy states have compared to most other advanced industrial countries deriving from the 10<sup>th</sup> Amendment to the Constitution, as well as the neoliberal narrative of decentralization, deregulation, and cost-cutting away from the central government (Coleman and Kocher 2011; Sainsbury 2012; Varsanyi et al. 2012; Walker and Leitner 2011; Wells 2004). Regarding cost-shifting measures, policies such as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 allowed states greater flexibility to increase or decrease everything from funding for health care for immigrants to local enforcement of immigration law (Coleman and Kocher 2011). As a result and for the first time in history, immigration policy has taken a historical about face from the federal to the state governments (Coleman and Kocher 2011; Donato and Armenta 2011).

This increase in immigration legislation at the state level is also accompanied by a rise in state level focus on “evidence-based policy.” (Bogenschnieder and Corbett 2010; Head 2008; 2010; Lundin and Oberg 2014; Newman and Head 2015). Instead of focusing

on traditions, anecdotal accounts, ideological assumptions, or other forms of unsupported reasoning, evidenced-based policy aims to “improve the amount and type of information processed in public policy decision-making” (Howlett 2009:157). Despite the emphasis on evidence-based policymaking, research on how research is used when developing immigration policies at the state level is lacking. Only recently has scholarship established the link between high quality state level bureaucrats and inclusive immigration laws (Author 2016), yet many key questions remain unanswered on how specifically bureaucrats are able to effectuate integrative policy measures. Further, when and under what conditions do instrumental or symbolic uses of knowledge emerge when it comes to state level immigration laws? Is this process similar to what has been found at the cross-national level? The confluence of evidence-based policy practices being promoted at the state-level and immigration policy increasingly taking place in the 50 states provides a unique opportunity to explore these questions.

## DATA AND METHODS

To address these questions I rely on key informant interviews of high-ranking bureaucrats in state health departments. I focus on health departments for three reasons. First, it is important to focus my analysis on one type policy, as examining *all* areas where states engage in research would severely undermine my ability to make generalizations. Second, among all state bureaucracies, state health departments in every state engage in rigorous forms of research making them ideal targets for research on knowledge production and its uses in the political arena.

Requests for interviews are sent to the directors of state health departments in all 50 states. Directors of state health departments are listed by each state department and their contact information is publicly available. After making requests for an interview, I was often referred to others within the agency deemed most suited to answer questions about the agency, the research they do on immigration, and how it is used in state immigration policy. In cases where referrals were made, snowball sampling was used as directors of state health departments provided contact information for legislative liaisons, state health department data and statistics offices, state offices of minority health, and state refugee health coordinators.

In total, I interviewed 20 key informants representing 20 different state health departments from October 2015 to January 2016. Because I am seeking respondents with perspectives and insight from as many different state health departments as possible, my sampling frame is fifty (ie., 50 states) giving me a 40 percent response rate. Interviews were recorded and then transcribed verbatim. Given the high level of sensitivity involved in discussing immigration topics, all interviews were confidential and in accordance with Utah State University's Internal Review Board. For each respondent, I use pseudonyms and refer to the region where they are employed instead of the state. There were 24 non-responses and 6 refusals. Of the 6 refusals, 4 of them explained that despite the confidentiality of the interviews, the politicization of immigration in their state made it too risky to participate in the study. All 4 were located in the South where fears of retribution or job loss were cited as reasons for non-participation.

Questions are designed to elicit responses that allow me to discern when and how the agency's research is used for instrumental, substantiating, or legitimizing purposes on

immigration policy. The questionnaire is broken into four parts that seek to gain insights into who sets the research agenda, what the response from the agency is when the context on immigration is controversial, communicating research to lawmakers, and finally what the respondent's impressions are of how their work is used.

Questions on who sets the research agenda are aimed at understanding how much autonomy bureaucrats have to shape the set of facts used to guide policy. The two forms of symbolic uses of expertise, substantiating or legitimizing, are discernible based on the degree of autonomy bureaucrats have. Similarly, questions pertaining to whether or not issues related to immigration are seen as controversial in respondents' state, as controversy usually preceded symbolic uses of expertise. If the respondents indicate that the issue is seen as controversial, how the agency responds will enable me to differentiate between symbolic uses of expertise. If respondents indicate political pressure to produce certain findings or results, if and how they resist compromising their work is a sign of how autonomy they enjoy. When the issue is seen as controversial, less autonomy among bureaucrats is associated with substantiating uses of expertise while less autonomy is associated with legitimizing uses of knowledge.

Further, questions that ask respondents about their experiences communicating with lawmakers allow me to gauge how much faith lawmakers place on bureaucratic research. Because a respect for technocratic governance is more frequent when expertise is used to substantiate a politician's position, the frequency of meeting with lawmakers, the receptivity of lawmakers to research, and how they respond when results from research run counter to their political positions will indicate how much value they place on this work. Finally, questions directly inquiring about how the research is used by those

in the political arena when immigration issues are controversial ask respondents if their work is ever ignored or used selectively, a sign that substantiating uses of expertise are present. I also ask when and under what conditions bureaucrats feel they are best capable of influencing policy on immigration.

Table 2: Descriptive Information on the Respondents

Pseudonym	Experience	State Politics	Pseudonym	Experience	State Politics
Dora	5 years	Republican	Ann	2 years	Republican
Jasmine	8 years	Split	Susan	12 years	Split
Jill	9 years	Split	Robert	9 years	Republican
Katherine	10 years	Republican	Maria	9 years	Split
Gladys	4 years	Split	Helen	11 years	Split
George	2 years	Democratic	Linda	7 years	Republican
Adam	2 years	Split	Sandra	8 years	Split
Beth	8 years	Republican	Carol	2 years	Democratic
Jeff	5 years	Democratic	Ted	6 years	Split
Anthony	6 years	Split	Cynthia	7 years	Split

The majority of respondents were female (14/20) and the average length of experience at their current position is 6.4 years. In total, I talked with 7 directors of state health departments, 7 refugee health coordinators, 2 data analysts at state data and health statistics departments, 2 directors of minority health, and 2 legislative liaisons. All participants were employed in their state health departments. All non-directors of state health departments were referred to me by their state's health department director as the best suited to answer questions pertaining to departmental data collection and research on immigration and how it is used in policy.

The political context of respondents is divided between Democratic (n=3) and Republican (n=6) controlled states where a single party controls both houses of the legislature as well as the governorship, while 11 states have split control of government.

The partisan control of all states in the U.S. consists of 23 states with total Republican control, just 7 with total Democratic control, and 20 states with split partisan control.

## RESULTS

### *Instrumental uses of knowledge in the states*

Contrary to knowledge use at the national level where symbolic uses of knowledge were common and instrumental uses rare (Blewden et al. 2010; Boswell 2009a; 2009b; 2015; Caponio et al. 2015; Entzinger and Scholten 2015; Scholten and Verbeek 2015; Verbeek et al. 2015), bureaucrats at the state level indicate their work is often used in rational, technocratic ways to inform policy. As noted earlier, when policy goals are output-oriented there is a greater likelihood of instrumental uses of knowledge (Boswell 2009a; 2011; Caponio et al. 2015). Several respondents noted mandates that guide their work and how their research and data supports important interventions. As Maria says,

if they are looking at health issues and we show that providing these services is really beneficial, I think it influences policy in a positive manner. And it has been effective, providing them with the information has been effective.

Similarly, Anthony state reiterates the nature of bureaucrat research, stating “we are clear on what we are supposed to deliver for the funding we receive we have to provide data and analysis to our state government so it’s our obligation to do that.” In discussing an important research paper her agency produced, Dora notes that “there is a skill set involved with looking at, using, and understanding data. The initial paper I had talked about regarding employment outcomes, a lot of our work is structured around outcomes.” While there is a great deal of politicization around immigration policy,

bureaucrats often felt insulted from the divisiveness as “regardless of how political it becomes, I think for us we are removed from that piece because we have a mandate to follow through on” according to Carol.

Standards of non-discriminatory practices and the tendency toward bureaucratic enclosure, key determinants of creating a context conducive to instrumental uses of knowledge, were evident as well. As Anthony asserts, there are often differences between the federal and state governments on immigration matters, and when such differences arise, “states do have a say over how programs are implemented.” As far as the agencies were concerned, Maria claims the objective is to “provide work on public health protections for all residents of this state without discriminating ‘oh is this a refugee, this is a legal immigrant, this is an illegal immigrant,’ you know what I mean? So everyone is respected equally, that’s the goal.” Katherine outlines how her agency implements policies by taking a more inclusive approach when the language of the legislation is unclear:

I know that in the primary care program regarding non-citizens we had to implement legislation that made it difficult to meet the requirements as were written and there had to be back and forth with our legal personnel upstairs to be able to get some understanding about what was really intended. We have to be in civil compliance and we have to navigate things regarding discrimination issues and whether or not something was discriminatory.

“There are always pressures politically,” Jasmine state says, “but I think the good thing about the agency is that we stand as a neutral party.” Many of the political pressures are over non-controversial issues such as questioning methodology, for example the rates or assumptions undergirding projections about immigration and the costs to health programs. Representatives will “question what we say something will cost. So that is what I’d call the most consistent thing that gets contentious between us and politicians,”



Susan notes. “Why did you use this rate, why didn’t you use a higher rate as everyone knows it will cost more” Helen recalls of one particularly contentious exchange she had with a lawmaker. “I was pressured to change those numbers so that it would cost more, which I refused to do. Luckily my director stood behind me at the time as there was significant pressure.” Similar to analysis of cross-national examination, when the issues are primarily economic or methodological (as opposed to cultural) there is a greater chance of instrumental uses of expertise (Boswell 2009a; 2015; Hunter and Boswell 2015).

The context most amenable to instrumental uses of knowledge, namely output oriented work mandated by policy to study interventions, was common among respondents. Similarly, when the controversy is economic, and not cultural, utilitarian uses of knowledge are most common. Yet these contexts were by no means universal. Symbolic uses of knowledge are most frequent when controversy, especially over cultural concerns or terrorism, infiltrates political discourse (Boswell 2009a; Scholten and Timmermans 2010). While this feature was present at the state level, what is most surprising is the great degree of autonomy state bureaucratic agencies have to directly counter and dispel political attempts to misuse expert knowledge or information.

Several instances emerged where state bureaucrats report controversial measures being proposed in their state. The most common themes included Syrian refugees and the number of governors attempting to block their entrance into the state, the Paris attacks where armed terrorists with links to ISIS gunned down civilians, and the unaccompanied minors from Central America who have been showing up at the U.S.-Mexico border.

Illustrating the frustration many have had when highly emotional issues surrounding immigration occurred, according to Beth a typical bill includes language that is:

patently unconstitutional, it says we can't assist in any way issues related to resettlement of refugees unless we turn over the names and information to our statewide law enforcement agencies who will then investigate them and then decide if they are immigrants or invaders, and they actually use the word invaders

"We do have certainly a different atmosphere right now," Beth states. She also goes on to explain how the agency strategically counters these anti-immigrant efforts by targeting lawmakers who will use the data and research in ways that are most accurate.

For instance, Beth describes how the agency targets politicians for informational conferences on refugees presented in various communities where opposition is highest:

We go to targeted politicians where we look for a champion of our cause, and my advice is to always find an Anglo who has 20 or 30 years experience. We try to do it strategically and politically. And there's (sic) two reasons. One, we give data. And two, we want to be in a position that they can't say that no one informed them about the issues. They get a picture and a plaque!

The capacity to actively engage in thwarting anti-immigrant efforts by promoting expert knowledge was found throughout the country. For example, Jill describes a member of her agency being challenged in a committee hearing by a state representative from a rural part of the state who claimed there was an effort to relocate 9,000 Syrians in a medium-sized city in his district. "We were quickly able to refute that as the whole state of [STATE] doesn't receive 9,000 Syrian refugees and in fact only 2,000 Syrian refugees came into the U.S. all of last year." Maria describes a similar encounter where she was questioned by a politician who claimed refugees do not pay taxes. "We presented the facts and of course they are paying taxes, they are working and paying taxes. Clearing the inaccuracies plays a critical role."

While using their autonomy to forcefully seek out and dispel erroneous views or beliefs that often derive from “talk radio, cable news, the right-wing blogosphere,” as Ted puts it, it is important to note that these efforts to elicit or manipulate expertise were not solely coming from conservative or Republican politicians. Indeed, Anthony discusses an attempt by a politician who wanted data to support refugee policies. “He wanted to take on that task and needed data from us to prove that refugees are not a burden, and we were able to show him how quickly refugees become self-sufficient.” In this incident, the line between legitimizing and instrumental use of knowledge is blurred. The information provided by the agency happened to support the politician’s objectives, which were implemented into law. However, the data was not produced for partisan purposes and was not misused, so it takes on a more instrumental form.

Other cases more clearly illustrate the pressure bureaucrats face to produce evidence from “friendly” partisans who may share the same perspectives as the agency. “I am obviously a proponent of serving immigrants regardless of their immigration status,” said Jill. In the aftermath of the Paris attacks, Jill recalls a request from a progressive lawmaker for empirical evidence that “had a particular agenda...in *favor* of refugee resettlement, and we have to respond responsibly to those kind of requests and inquiries.” Instead of providing information for use in substantiating a certain political perspective---even ones the agency may agree with---Jill says “we must respond responsibly without really touching on the political situation.”

Most respondents felt they were free to produce their own data and research and to actively engage, albeit reluctantly sometimes, in countering misuse of their and other data. While instrumental uses of knowledge happens in circumstances we would expect

based on the literature, the surprising result coming from the interviews of members of state health departments is how effective they are in combating politicians and others over issues of expertise. Unlike at the national level, even when circumstances that are associated with symbolic uses of knowledge emerge, bureaucrats have enough autonomy not just in their research agenda but in entering the political arena to ensure accurate information is used. That said, not all bureaucrats enjoy high levels of autonomy. For those who do not, different challenges are present.

### *Restrictions on Autonomy*

While most respondents (n=14) expressed a great deal of autonomy to set their own research agenda, to dispel factually inaccurate information being used by politicians in their state, and to resist attempts to manipulate or alter their data, there were several instances (n=6) where bureaucratic autonomy was restricted to varying degrees. These bureaucrats noted the explicit restrictions on their ability to communicate with lawmakers. “I really could not talk to any legislative person without getting permission working through upper management. That’s just how it works,” said Linda. “We’re not supposed to talk to legislators,” said Ann. Indeed, the presence of formal structural mechanisms in place restricting the ability of bureaucrats to initiate contact with lawmakers or to discuss inquiries from the media was common among respondents indicating less autonomy.

Moreover, all state health departments are within the executive branch.

Bureaucrats facing restrictions frequently cited the cautious nature of research that runs counter to the governor. While I am prevented from discussing specific states due to preserving the confidentiality of respondents, measures of gubernatorial power taking

into account whether a governor has term limits, how many appointments a governor makes, how many appointments require approval from the legislature, and how many appointments require the governor's approval, reveal that among the states with restrictions on autonomy all but one are ranked in the top fifteen states where governor's enjoy the greatest authority.

These restrictions on communicating with lawmakers also extend to talking with members of the media or researchers, leading many in these states to clarify the confidentiality of participating in this study. Bureaucrats in these states note the Byzantine process of gaining permission to talk with individuals outside of the agency. George describes one particularly frustrating incident regarding reports of potential communicable diseases in schools due to the influx of unaccompanied minors from Central America:

We had a kerfuffle a couple of weeks ago where the [leading newspaper in the state] reported on the health status of these kids saying 'the department of health isn't doing anything.' Well I'm the PI (principal investigator) on a project looking at infectious diseases between the Center for Disease Control and the [state] Health Department when that got reported. And it's kind of...there are issues. I don't know if it's political or just government incompetence.

"We're not supposed to talk to lawmakers or media without getting signed off," George continued. "They want to have control over what public health is reporting."

For some, there is a specific political context in place that prevents freely engaging and specifying what bureaucratic expertise entails. For example, Adam notes:

[my state] is a state where our governor might have aspirations for future political ambition and he has a tight communication policy for us. So if I sent this to my communications person she would definitely say no. I kind of have to cover my head a lot

While there are structural and contextual factors restricting bureaucrats in their ability to shape how their work is used, it did not follow any discernible partisan or geographic pattern. Of these six states where restrictions were in place, three were in the West, two in the South, and one in the Midwest. Most had mixed partisan control of state government though one had total Democratic control and another total Republican control. In cases where symbolic uses of expertise could be discerned, it was typically in states where there were restrictions on bureaucratic autonomy.

### *Symbolic Uses of Expertise*

The structural composition of state government was extremely important in cases where restrictions on autonomy were linked to the type of research that was conducted. Noting their relative freedom to select their own research agenda, Jasmine indicated that “it behooves us to be within the guidance of the priorities of any administration.” For the respondents in states where there are tighter controls on communication, most used language similar to that of Jasmine to describe caution. These bureaucrats were free to engage in work they found to be important, but were careful to make sure their work was addressing the issues deemed important by the executive branch. In this way the information produced by these agencies was more likely to be used for substantiating purposes. While states that had few restrictions on communication saw bureaucrats actively engaged in promoting and defending their agencies’ work, states with restrictions saw their work used for substantiating purposes.

The most drastic case comes from a state where the agency practically serves as a political extension for the executive branch. “Whatever we issue is consistent with the executive’s views,” Sandra explained. “We always come out with positions that are

consistent with the executive position,” she says. Even when the data produced by the agency is important but counter to the executive, Sandra explains, “we focus on what is consistent with the governor’s priorities as opposed to maybe it’s original format or meaning.” The agency is even deployed by the executive branch to help pass legislation:

We work with the governor’s office who has laid the groundwork on identifying legislators who are supportive of certain initiatives and identifying potential issues up front and trying to work on them before something is up for a vote.

While this obvious case of producing expertise for substantiating the executive’s political ambitions is rare, it does show the importance of how institutions shape the behavior of bureaucrats responsible for creating research. While few examples of legitimizing uses of expertise were found due to the relative lack of crises facing lawmaker decisions and the overall respect for empirical evidence produced by agencies, substantiating uses of knowledge were accompanied by restrictions on the autonomy bureaucrats enjoy. These restrictions were tied to structural barriers in place which limited both the research agenda and to whom the bureaucrats could contact. Restrictions on autonomy were crucial to cases where substantiating uses of knowledge is found, though these were not the only institutional settings bureaucrats had to contend with.

#### *Navigating Variegated Institutional Arrangements*

On numerous occasions the interviewees discussed the challenges associated with the unique set of institutional arrangements present in their state. Several respondents mentioned the part-time nature of the state legislature and the difficulties present when communicating their research to lawmakers. Indeed, bureaucrats were more likely to mention the challenges associated with conveying research in states where part-time legislatures are present. “Being able to convey the relevant information in a short amount

of time and legislators never really have a whole lot of time, and in a way that is completely comprehended by the legislators is a challenge” Jasmine told me. “The high point of that interaction is during session,” she says.

The following examples show the importance of state institutional arrangements when it comes to using expert knowledge to shape policy. In some states, bureaucrats have to contend with state lawmakers who may pressure them to produce certain data for partisan purposes. In most states where bureaucrats have autonomy to dispel misuse of information, the debates take place with lawmakers elected to represent various geographic units in the capital city. Adam explains the challenges associated with disseminating bureaucratic expertise in “county administered” states:

In [state] it is a county administered state so that makes it different, so when resettling refugees in [large city] all of our agencies have to cooperate with three counties for benefits because it is county administered. So there is a county that has a ballot initiative to shut down the agency and they had a third of the signatures needed the last time I checked. They are loud and they rallied and had us temporarily shut down. It’s deafening! They feel there is an Obama conspiracy to take over, that he is resettling Muslims and we are soon to see Sharia law. I don’t even know what is over the top in our country anymore. In our state counties can put up unbelievable barriers that we do not expect or count on and we don’t have the ability or resources to visit each time this happens in order to circumvent the misinformation that is being spread.

Adam went on to tell me that he enjoys discussing topics related to immigrant with people who have different views, but that it is not feasible to do so in every county that blocks the services provided by the agency. Because of the tremendous power counties have to block statewide policies that they disagree with, state agencies have to be strategic in their decisions to counter rogue counties and oftentimes cannot do so in every instance due to budgetary constraints.



A similarly frustrating challenge associated with state institutional contexts is found where term-limits are in place. Helen told me that communicating the nuances of research is all the more difficult in a conservative state where distrust of state bureaucrats is compounded by mandated limits on the tenure of lawmakers preventing sustained relationships from taking place:

I think one of the big problems that we have more and more in this state is term limits. With term limits what has happened is that we used to have long term working relationships with legislators where they would understand not only the process but we could educate them on research and what really is valid accurate information, what is better sources, why they are the better sources, how do we do things. With terms limits we just don't have folks who are in the legislature long enough to have those kind of relationships.

Helen went on to discuss the challenges of communicating the methodologies and validity of certain approaches and data, and how this is undermined by a revolving door of new lawmakers entering and established lawmakers leaving:

We have a lot of what we call 'one-hit wonders' where they come in with one issue that they want to get through and then they are no longer interested in being a legislator. So we have tremendous turnover. And because of that we just don't have the opportunity to have two things, number one good relationships that we can educate people and they can trust us and have a working relationship with them. And two, they don't get up to speed on things so there's a ton, kind of like groundhog day way you start over every time. You know back to the basics on what economic research is about, what modeling means, what is valid and what is not.

In both the case regarding term-limits and county-administered states, institutional settings serve as barriers to effectively communicating agency research. In both circumstances, institutional settings inhibit the degree to which the work bureaucrats produce can be used to influence policy. Yet institutional settings can also facilitate the expert use of knowledge in policy. For instance, Susan explains a unique mechanism where state researchers can submit legislation on their own:

There are a number of reports that our legislators do take and turn into legislation. I don't know if they have this in other states but in [STATE] executive branch agencies can have legislation introduced, introduced by one of the committee chairman on behalf of us and so that is a way we definitely, aggressively shape policy is by seeking to introduce our own legislation.

Susan went on to discuss the process where bureaucrats craft and submit legislation which then can be selected or rejected by legislative committee chairpersons. If a piece of legislation written by state bureaucrats is picked up by a committee chairperson, it then gets examined in the full committee, amended, and sent to the floor of the entire legislature for further debate. Though no other state noted the ability to directly submit legislation, the case in this instance reveals an institutional facilitator of research in policy. Indeed, the institutional arrangements in place can either inhibit or enable the implementation of bureaucratic research used for legislative purposes.

## DISCUSSION

This work adds a considerable amount to the literature on bureaucratic capacity and autonomy. While a statistical link has been made between bureaucratic capacity and inclusive laws on immigration (Author 2016) this work is the first to detail the important methods on precisely how bureaucrats influence state immigration policy. Researchers working for the 50 states face institutional settings that are fundamentally different from those working within national governments. In stark contrast to bureaucrats at the national level, bureaucrats in state government often allude to *mandates*, *output-oriented* work targeting specific groups or metrics, and *interventions* that need to be made. Time and again, respondents indicated that they have a job to do and that they feel some degree of insulation from political concerns. These criteria, where outputs and interventions are

mandated and where insulation from politics is found, are precisely where we would expect to see instrumental uses of expert opinion. But it is also in the autonomy that state bureaucrats have to not only engage in their own work but also to strategically counter false information and to resist overt attempts to politicize their work that researchers in state government distinguish their role from those of their counterparts working in national government.

The most frequent reason for symbolic uses of expertise at the national level comes when immigration matters are viewed through a cultural lens (Boswell 2009a; 2009b; 2011). This is not uncommon in state politics. However, unlike their counterparts at the national level, bureaucrats in state government are engaged in activities that prevent misuse of their work. For example, bureaucrats and their agencies will hold public seminars that refute political misuse of data and research. By identifying when and where politicians are misconstruing information on immigration and health, state bureaucrats will gather the resources and direct their efforts to present fact-based evidence to dispel emotionally-charged cultural concerns that emerge. Bureaucrats are also free to identify key political allies who they can work with in order to ensure the data they produce is used appropriately. By doing so publicly and openly, the political figures are then “on the record” acknowledging expert opinion in ways that make it difficult to ignore.

While state bureaucrats are effective in countering misuse of their work, there are instances of symbolic uses of expertise and in contexts where it would be expected. When bureaucratic autonomy is restricted, there are instances where there is less control over how data and information produced by the agencies is used. In an extreme case, the

agency's work is used specifically to substantiate what the executive branch's policy goals are and to gloss over findings incompatible with the governor's ideology. Yet more often than not, the ability to oppose lawmakers' mishandling of facts and to take control and ownership over the data and research produced by agencies was prevalent, leading to perceptions that bureaucratic work is used in an instrumental way to guide policy.

There are several reasons for the findings on instrumental uses of expertise. First, immigration has historically been a federal issue and not one that the states have been engaged with. While cultural concerns and crises were issues bureaucrats had to navigate, these concerns were restricted by the fact that state governments only play a limited role in the international issues that cause greater impressions of crises at federal level. As a result, some of the cultural concerns bordered on ludicrous, such as the astronomical number of refugees reportedly heading to a small town, making it easier to dispel.

Secondly, the institutional settings in place are significant factors related to the autonomy state bureaucrats enjoy. Institutional settings can sometimes limit bureaucrats either directly through barring independent contact with lawmakers or indirectly through term-limits that make establishing rapport more difficult, though there are also institutional mechanisms in place that aid bureaucrats in communicating effectively on matters of empirical importance. While by no means uniform, most bureaucrats experience the freedom to contact lawmakers as well as members of the press to share and inform others of their work. Further, while they are largely immune to political pressures, they are also free to actively engage in politics when deemed important to do so. Where politicians are misusing bureaucratic research or relying on erroneous

information from other sources, the strategies to counter misinformation help to ensure legislation that is more likely to be based on evidence.

Third, the bureaucrats participating in this study all engage in data collection and research for state health departments. This is important because state health policies are largely inclusive in nature. Out of a total of 113 policies passed by the 50 states between 2005 and 2013 related to immigration and health, 75, or 66.4 percent, were designed to extend benefits to immigrants. While the relationship between bureaucratic data collection and research is unclear when it comes to immigration policy overall, when it comes to health issues it appears health departments are making strides to produce and effectively communicate their work to lawmakers.

And finally, the nature of policymaking as it pertains to health policies and immigration reflects an important limitation to this study. Is the overall inclusive nature of health policies due to the effective capacity of bureaucrats to communicate effectively on their expert levels of knowledge? There are policy domains where exclusionary legislation on immigration is more typical, such as that of immigration and law enforcement or immigration and employment. Would analyses of bureaucratic research produced in state justice or commerce departments show that it is used in ways that are similar or different from that in state health departments? Future research would replicate the strategies used in this work to examine state agencies in other domains where immigration legislation is created.

Future research will also examine the role of expert opinion from the perspective of state lawmakers themselves. Scholarship examining several measures of expert opinion use including awareness of research, deliberation, and comprehension has

indicated a gap between bureaucratic knowledge and lawmaking (Meagher et al. 2008; Mitton et al. 2007). Measured through the use of surveys administered to lawmakers, the literature on lawmaker exposure and uses of expertise will inform the next steps taken on this project (Meagher et al. 2008; Mitton et al. 2007). Creating a sampling frame convenient for online surveying methods is one possible approach, as all state lawmakers have publicly available email contact information.

The implications of this work reveal that instrumental uses of expert opinion are incorporated into the policymaking process in contexts where the institutional arrangements provide for bureaucratic autonomy. While the movement advocating “evidence-based policy” is new, at least for health policies related to immigration it is being realized. Through the collection and analysis of data, using relative autonomy to combat misinformation, and navigating institutional settings that are in place, bureaucrats in state health departments are important contributors to a less politicized, more technocratic approach to health policies pertaining to immigrants and their health in the 50 states.

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## QUESTIONNAIRE

### *Confidentiality Statement*

I take confidentiality very seriously. Neither you nor your organization would even be identified in any published or public material. This is for academic research purposes only. Do you have any questions about that?

We'd like to start with a few questions about your position and the organization itself. For the next few questions we'd like you to think about what your position entails and what the organizations goals are in relation to the social research you do for political purposes.

What is your current position? How long have you held this position?

### I. Research Initiation

- a. The next few questions relate to the research you produce on immigration. Specifically, we would like to know who determines the kinds of research topics that are examined and when research on immigration is likely to be undertaken, as well as the challenges you may face when conducting research on these topics
- b. At the federal level, congressional members often solicit research on immigration from a variety of agencies, such as the nonpartisan congressional budget office or other agencies. Do similar requests come to your or your organization from state representatives on the issue of immigration?

Can you give me an example of the most recent research you or your organization did on this topic. Who initiated this research? What type of research was requested?

- c. Generally speaking with this type of research, do you feel you have adequate time to conduct the research being requested?

Can you give me an example of a recent research project where you felt you did/didn't have adequate time to complete the project?

### II. Controversial Research

- a. Immigration is a very contentious issue at the moment and is sometimes the subject of intense political debate. When media coverage or political debate on immigration is at a high point, is the research produced by your agency ever conducted in response to the hot-button issue?

Can you give me an example of a recent research project that you had to do that was controversial?

- b. Given that issues like immigration are politically controversial, does your organization ever face any kinds of political pressures to produce certain findings or to confirm certain political positions?

If yes, can you give me a specific example of a project where you or your organization faced pressure to produce certain kinds of research or to reach certain kinds of conclusions? Can you give me an example? If this occurs, do you perceive differences in how your research is used? If so, how? Are there differences in how your work is used during policymaking when the issue is controversial? If so, how? Have there been times when the value of your agency's research has been questioned by someone in the political realm?

Can you give me an example of when this happened?

Who called the research into question?

How did you or your organization respond?

- c. Has it ever happened that this kind of scrutiny or criticism affected the type of research that you produced—for example, did you ever drop a project or change the focus of the project in the face of scrutiny?
- d. Is there any oversight on the research agenda or research produced by your agency from outside of the agency? If so, who/what?

Can you give me an example when this oversight affected the research process or product?

- e. Typically, who decides what form of research is created? How much control do you or your the agency have to set your own research agenda?

### III. Communicating Research to Lawmakers

- a. The next set of questions pertains to how research conducted by your agency is communicated to the legislature. Please reflect on the ways in which your work is expressed to policymakers.
- b. When conducting research on immigration, do you ever meet with lawmakers to discuss the results and implications of your work?

If yes, how frequently?

- c. Can you give me an example of a time when you or a rep from your organization met with lawmakers to discuss the results of a project?
- d. What are the biggest challenges associated with conveying your research to lawmakers?
- e. Have there been instances where your research has run counter to the political preferences of lawmakers?



If yes, when is this likely to occur?

If yes, how do you handle this?

- f. What degree of openness is there toward your work when evidence is contrary to a legislator's ideology?

Do you have an example?

- g. How and if the media conveys research reports can help or hinder efforts to communicate what the evidence suggests on issues like immigration. When conducting research, is there an expectation that the research will be disseminated to a wider audience?

If yes, who is that wider audience?

- h. What are the most effect means of communicating your research to that audience?

- i. Does the press note your research? If yes, do they reflect it accurately?

- IV. The next questions related to how your research is used by policymakers. For these questions, I want you to think of the research that has been produced by your agency and if, when, and under what conditions, you see evidence or confirmation of this research influencing the policies that lawmakers pass on immigration.

- a. It seems that the issue of immigration is at times the number one issue in the nation, and then at other times it is not seen as quite so important. Is there a difference in the demand for or use of your research depending on whether immigration is a hotly debated topic at the time?

If yes, how does the political climate affect how research is used by legislators?

Can you give me an example of a time when the political climate affected the relevance of your work for lawmakers?

- b. Have there been times when lawmakers use your research *selectively*? That is, do they ever use parts of your research while ignoring others?

If yes, when is this most likely to occur?

Can you give me an example when you felt as if your research were used selectively?

- c. Do you ever feel that your research is completely ignored by lawmakers?

Why do you think this is true?

- d. Do you think your research is more likely to be ignored at certain times than at other times?

Has your research ever been ignored by lawmakers even after you met with and discussed your findings with them?

Why do you think that happened?

- V. Finally, I want to inquire about the degree to which your research is reflected in the laws or policies passed in your state. For these questions, I want you to think about the ways in which your work has a direct impact on the kind of policies that emerge in your state

- a. In general, how aware do you think legislators are of your research?
- b. Do you or members of your agency make specific attempts to increase the awareness of research findings to lawmakers? If so, how do you go about this?
- c. When meeting with lawmakers, are there deliberations on the implications of your research?
- d. Do you ever feel like you have to argue on behalf of—or defend-- your research when meeting with lawmakers?
- e. In general, have you found lawmakers receptive to your defending your research findings?

Can you give me an example of when you felt you had to defend your research to lawmakers. How did the lawmaker react? Why did you feel like you had to defend your work?

- f. Do you think there are times where your work has a greater potential to influence policy than other times? If so, what determines whether or not your work has a potential to influence policy?

Can you give me an example of a time when you felt like your work had little potential to influence policy? A time when you felt like your work had a bigger potential to influence policy?

- g. Finally, in your view, what impact IF ANY has your research—or the research produced by your organization--had on immigration policy in your state?
- h. Is there anything relevant to the influence of research on public policy that we have not talked about but that you think is important?

- i. Are there other people in positions like yours in your state who might be willing to talk with me about their experiences?

## LETTER OF INTENT

Dear Interview Respondent,

Professor Christy Glass and doctoral candidate Paul Jacobs in the Department of Sociology, Social Work and Anthropology at Utah State University are conducting a research study to find out more about state agency responses to immigration legislation. You have been asked to take part because of your involvement providing health services to the immigrant community. If you agree to be in this research study, Paul Jacobs will conduct a semi-structured, audio-recorded interview with you that will last approximately one hour. This interview will ask you questions about your professional background, the primary gaps between research and evidence-based legislation, and your involvement in helping to address these issues.

There is minimal risk in participating in this research. Through this study we hope to increase our knowledge and understanding of how agency research impacts state policy on immigration. The information you provide will be used for academic research and publishing purposes. There is a small risk of loss of confidentiality but we will take steps (outlined below) to reduce this risk. Benefits to you of participating in this research may be a better understanding of the various state-level actors involved in the passage of immigration bills in your state. This understanding may assist you as you move forward in implementing your state's immigration bills. If you have questions or research-related problems, you may reach Professor Christy Glass at (435) 797-1258 or Paul Jacobs at (607) 321-9660.

Participation in research is entirely voluntary. You may refuse to participate or withdraw at any time without consequence or loss of benefits. Research records will be kept confidential, consistent with federal and state regulations. Audio recordings will be destroyed as soon as transcription is complete. Only the investigator and student researcher will have access to the data which will be kept in a locked file cabinet or on a password protected computer in a locked room. To protect your privacy, personal, identifiable information will be removed from study documents and replaced with a study identifier. Your name will be replaced with a pseudonym in transcripts and publications. Identifying information will be stored separately from data and will be kept securely. All documents that identify you will be destroyed three years after the anticipated completion of the project in 2017.

The Institutional Review Board for the protection of human participants at Utah State University has approved this research study. If you have any questions or concerns about your rights or a research-related injury and would like to contact someone other than the research team, you may contact the IRB Administrator at (435) 797-0567 or email [irb@usu.edu](mailto:irb@usu.edu) to obtain information or to offer input. You have been given two

copies of this Informed Consent. Please sign both copies and keep one copy for your files.

“I certify that the research study has been explained to the individual, by me or my research staff, and that the individual understands the nature and purpose, the possible risks and benefits associated with taking part in this research study. Any questions that have been raised have been answered.”

Sincerely,

Paul Jacobs

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## CHAPTER V

### CONCLUSION

#### INTRODUCTION

Once the sole domain of the federal government, immigration policy is now conducted primarily at the state level (Coleman and Kocher 2011; Jagers et al. 2014; Provine and Varsanyi 2012). As immigration policy has shifted from the national to the state level, it is no surprise, then, that analysis of immigration policy has also shifted to the 50 states. For much of the first decade since devolution of immigration policy began, the scholarship on immigration policy has focused on society-centric predictors of policy (Chavez and Provine 2009; Monogan 2013; Nicholson-Crotty and Nicholson-Crotty 2011). Measurement of such predictors such as partisan control of the statehouses, campaign donations from industries reliant on immigrant labor, and the immigration population's size and growth rate were common variables thought to influence immigration policy. While these determinants of immigration policy have shown a mixed record, the field of immigration policy research would need to take into account the institutional arrangements found at the state level to gain a clearer understanding of the factors that shape inclusive or exclusionary law-making on immigration.

While this approach is novel for state immigration policy, it is informed by analysis of immigration legislation at the national level. Indeed, studies have shown that taking institutions into account helps to explain why, for instance, the electoral system in place, having geographic units of representation, and the federalist nature of the national government has led to stagnation on immigration policy for the U.S. federal government

(Sainsbury 2012). While insightful, these institutional factors are features known to national governments whereas state governments have their own assortment of institutional settings to take into account. These institutional variables influencing immigration policy at the state level are available from other policy assessments as well as from quantifying important institutional variables thought to be of importance.

In what follows I will outline the important findings on the quantitative analyses conducted on predictors of exclusive and inclusive immigration policies for the 50 states between 2005 and 2013. I will then discuss the findings on qualitative research examining knowledge production within one key state institution and the challenges and successes involved in conveying expertise to lawmakers. I will then conclude with implications from the study and thoughts on the appropriate steps for future research on these important issues.

#### *Quantitative Study on Inclusive Immigration Policies*

Along with the usual bevy of society-centric predictors, I introduce several institutional measures including the presence of term limits, the presence of direct-democracy mechanisms, restrictions on campaign donations, bureaucratic capacity, legislative professionalism, and the type of primary system in place to determine which independent variables predict inclusive immigration policies. My outcome variable is the number of inclusive immigration laws passed at the state level between 2005 and 2013. Because the changes in the predictor variables are important for this study, I use negative binomial regression in time-series analysis.

Findings indicate the institutional variable with the most predictive power for inclusive policies is that of bureaucratic capacity. Bureaucratic capacity, measured in

terms of the size of monthly salary of state employees, is related to the production of expert opinion. States that are willing to pay bureaucrats higher salaries are thought to be interested in hiring and retaining high quality workers who produce the expertise lawmakers rely on to inform policy. Simply put, states willing to fund expert opinion are therefore most likely to follow it. And for immigration policy, evidence suggests lawmakers are doing just that. As bureaucratic capacity increases at the state level, states pass more inclusive immigration policies.

While related literature that shows a gap between the more restrictive views of the general public and the more pro-immigrant perspectives of bureaucrats (Bale et al. 2010; Citron and Sides 2008; Cornelius and Rosenblum 2005; Joppke and Morawska 2014; Money 1999; Schuck 2007; Simon and Alexander 1993; Tichenor and Harris 2002), this study is the first of it's kind to examine the relationship between bureaucratic capacity and inclusive immigration policies at the state level. The implications require additional work to untangle the specific linkages between knowledge produced by the state and policy on immigration. Why do states with less bureaucratic capacity pass fewer immigration laws that are inclusive? Is this a sign that lawmakers in these states do not respect research or that the quality of empirical evidence is less influential?

Analyses specific to bureaucratic capacity have just begun to ask, how is expert knowledge used to inform immigration policy (Boswell 2009)? What kind of political pressures to bureaucrats face when conducting research designed to inform policymakers crafting immigration legislation (Boswell 2009)? When bureaucratic agencies produce research or gather data with the expressed purpose of helping lawmakers create immigration laws, is the work produced by bureaucrats used instrumentally (Boswell



2009)? Or does the work get used selectively to substantiate partisan preferences or legitimize the policy goals of powerful special interest groups (Boswell 2009)? These and other questions have been examined at the national level and are applied to state level analysis in the third chapter of this work.

## INSTITUTIONAL PREDICTORS OF IMMIGRATION LAWS

Policies designed to restrict or exclude immigrants from a social or economic benefit have a sizable impact on everything from the educational attainment of immigrants and their children, the trust levels between police and immigrant communities, and health utilization and access for immigrants (Ayon et al. 2012; Bozick and Miller 2013; Dreby 2012;2015; Flores 2010; Kirk et al. 2012; Toomey et al. 2014; White et al. 2014). The purpose of this chapter is to show how institutional settings operate differently when it comes to immigration policy compared to laws that are inclusive in nature.

The scholarly work on exclusionary immigration policies is similar to that of inclusive laws. While there is research that both attempts to look at all exclusionary laws passed at the state level and inquiry into predictors of certain kinds of exclusionary laws (e.g., state adoption of E-verify to screen out undocumented workers), the key feature of examinations of restrictive immigration laws is that they also focus on society-centric predictors. To extend the literature on this issue, I use the same institutional variables employed in chapter 1 to examine the determinants of exclusionary immigration policies. That is, along with the most frequent society-centric predictors entered as control variables, I account for institutional variables at the state level which include term limits,

the presence of direct-democracy mechanisms, restrictions on campaign donations, bureaucratic capacity, legislative professionalism, and the type of primary system in place. To measure the effect that these variables have on the number of exclusionary immigration laws at the state level, I run a negative binomial regression using time-series analysis.

A number of important findings emerge to reveal the role institutional settings in place at the state level have on the passage of exclusionary immigration laws. Despite prediction that direct-democracy mechanisms such as state referendum or proposition would enable the more populist sentiments found among the citizenry to be enacted in the form of restrictive immigration policies, the opposite result has been found. States with direct-democracy mechanisms are statistically significantly less likely, not more, to pass restrictive immigration laws. This signals a key change in public attitudes on immigration matters as the public is less hostile to foreign-born newcomers.

Further, literature suggests having a primary system in place that is open to all registered voters will produce more moderate politicians who are less ideologically partisan. Where open primaries are present, more moderate politicians are expected to pass fewer restrictive immigration laws. However, once again results are opposite to expectation as open primaries are associated with a greater abundance of immigration laws. While more work is needed, the rise of the Tea Party movement suggests that many ultra conservative voters are leaving the Republican Party and registering as independents (Skocpol and Williamson 2012). As such, having an open primary does not moderate the type of voters who participate but instead may allow more extreme elements to vote.

Lastly, having restrictions in place that limit the amount of money immigrant-dependent industries can donate to politicians was thought to increase the number of restrictive immigration policies that would be enacted. Because the influence from the industries reliant on immigrant labor was curtailed, politicians would be less swayed by donors interested in protecting their foreign-born workers. Instead, the opposite is true. Where campaign restrictions are in place, more restrictive immigration laws are passed. While unclear, the results suggest rethinking the way money and politics interact in the post *Citizens United* era.

While the institutional settings in place at the state level have an impact on the number of restrictive immigration laws that are passed, the unexpected relationships suggest much more work is needed to fully address how institutional arrangements shape policy. Future work may want to consider interaction terms to analyze how society-centric and institutional variables are conditional upon each other, or to assess how state institutions moderate or shape the effect of society-centric accounts. Future work may also want to consider factor analysis to understand the pathways in which predictors operate in states that pass exclusionary immigration laws. Regardless of future endeavors on this subject, institutions continue to play an important role in the shaping of immigration legislation at the state level and must be taken into account for scholars and policy analyst interested in answering the question: what factors predict exclusionary immigration laws?

## STATE HEALTH DEPARTMENTS AND IMMIGRATION LAWS

Several scholars have noted the “gap hypothesis” where bureaucrats have a more inclusive view of immigration than members of the general public do, though this observation has been at the national level (Bale et al. 2010; Ceobanu and Escandell 2010; Citrin and Sides 2008; Joppke and Morawska 2014; Money 1999 Schuck 2007; Simon and Alexander 1993; Tichenor and Harris 2002). Other scholars examining state politics have begun to examine the “evidence-based policy” movement where empirical evidence is used to guide policymaking (Bogenschnieder and Corbett 2010; Head 2008; 2010; Lundin and Oberg 2014; Newman and Head 2015). This chapter seeks to piece these disparate literatures together by examining bureaucratic research on immigration matters at the state level and how this work informs immigration policy. In light of the findings presented in chapter 1, it is imperative to explore in greater detail how and why states that fund expert opinion are more inclined to listen to this expertise when crafting policies.

There is little doubt that examining all state level “bureaucrats” would not be easily generalizable, and as such I focus on state health departments. I first inquire to the agency heads of health departments by sending an email complete with an overview of the study and the internal review board information guaranteeing confidentiality. I then either set up a time and date for the interview, or I rely on snowball sampling when the head of the agency recommends someone else within the health department suitable for me to talk with. All interviews are recorded and transcribed verbatim. Transcripts are read multiple times and content analysis is employed to identify important themes related to the instrumental or symbolic uses of expertise.

Unlike immigration policy at the national level, instrumental uses of bureaucratic expertise are most common. Bureaucrats in state health departments cite the mandates that they have, the output-oriented nature of their work, and the interventions they seek to make when producing data and research used to guide policymaking. While the pressures from political actors (both Republican and Democratic) for symbolic uses of their research were common, bureaucrats in state government used effective strategies to resist these pressures by targeting lawmakers receptive to their work, setting up informational seminars to directly dispel misuse of data and evidence, and by using their time presenting information to the legislature at committee meetings to promote appropriate uses of the expertise they produce.

While less frequent, symbolic uses of knowledge occurred in the expected contexts. When bureaucratic autonomy was restricted, expertise was sometimes used to substantiate policies. In some cases there are institutional factors in place that restrict who bureaucrats can speak to, limiting their contact with lawmakers, the media, the public, or others. In one rare case the work of the health department is designed specifically to bolster the executive branch's policy positions. The institutional arrangements in place shaping how bureaucrats operated was a key determinant of how much autonomy expert opinion producers have to ensure their work was used in a manner they deemed proper.

The institutional settings in place at the state level also highlight the variegated landscape that bureaucrats face when producing expertise designed to inform policy. In one case, bureaucrats could submit legislation which then required a lawmaker to sponsor the law for it to be debated and potentially enacted. In another case, county-administered governance led to a problematic structure in which bureaucrats lacked the

resources to address every instance where a county might oppose programs for immigrants. Further, term-limits were mentioned as an institutional barrier preventing the rapport needed between lawmakers and bureaucrats for the former to trust and understand the work of the latter. The role that institutions play in state level immigration policy is an understudied area and closing this gap in the literature would greatly expand our understanding of policymaking and uses of empirical evidence.

## CONCLUSION

Much more work is needed to ascertain the role that institutions play when it comes to state level immigration policies. But there can now be no doubt that institutional settings in place are not simply tools for societal actors to use in order to further policy goals. The structure of states is not just an arena where different interests compete, but rather it is an independent force that shapes policies and structures the inclusive or exclusionary nature of laws related to immigration matters.

The institutional settings at the state level play a vital role in creating inclusive policies. States that provide generous salaries in order to hire and retain quality workers who then produce the official statistics and research with which to inform policies are much more likely to pass inclusive immigration policies. Bureaucratic capacity is tied to passing numerous laws aimed at helping to integrate immigrants into their new adopted homeland.

Further, whether or not citizens can vote directly on immigration proposals as well as the ability of voters from any partisan background to vote in state primaries are all structural determinants of exclusionary immigration laws. Albeit opposite to expectation,

direct-democracy mechanisms enable voters to *resist* restrictive immigration laws while open primaries may provide a venue for disaffected conservatives to influence party politics despite becoming registered as independents. Further, campaign finance restrictions are associated with restrictive immigration policies, forcing us to reevaluate the way money and politics interact.

The findings from the quantitative analyses show the differential ways in which institutional arrangements shape inclusive and exclusionary immigration policies. While four of the six institutional variables were statistically significant in predicting either inclusive or exclusionary immigration laws, none were associated with both types of laws. Further, analysis on the predictors of *all* immigration laws whether inclusive or exclusive indicates that no institutional variables are related to the passage of immigration policies (see table A1). Inclusive and exclusionary immigration law-making operates differently, though institutional settings are key when examining them.

Aside from the institutional arrangements that shape what kind of immigration policies are more likely, internal actors within the state are active participants in policymaking as well. Autonomous state bureaucrats engage in a range of activities that protects the integrity of their work and leads to instrumental uses of their expertise. By setting their own research agenda, actively opposing misuse of their work, targeting friendly politicians, state bureaucrats help to independently shape the kind of health policies that relate to immigration. While barriers exist in some states preventing autonomous activity, most bureaucrats indicated the capacity and desire to fight for proper use of their work when used to inform policy.

There are limitations to this work that future research may seek to address. Additional institutional variables may be considered. Interaction terms or path dependencies through factor analysis may reveal additional findings. Qualitative assessment from other state departments, particularly from law enforcement or employment laws related to immigration which tend to be exclusionary, may indicate entirely new insights on bureaucratic research and policymaking. No matter the future endeavor, examination of immigration policies at the state level are significant enhanced by *bringing the states back in* and accounting for institutional arrangements and autonomous state actors that help to shape inclusive and exclusionary laws on immigration.



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Table A1: Predictors of All Immigration Laws

All Imm. Laws	Coef.	Std. Err	P.Z	95% CI	
Legis. Prof	.7416113	.9377246	0.429	-1.096295	2.579518
Bur. Capacity	.000151	.0002395	0.528	-.0003184	.0006204
Direct Democracy	-.1443871	.1830559	0.430	-.5031701	.2143959
Open Primaries	.0945615	.1966692	0.631	-.2909031	.4800261
Term Limits	.3217079	.1888154	0.088	-.0483634	.6917792
Campaign Restrict.	-.1488078	.0789117	0.059	-.3034718	.0058562
Party Control	.248627	.0843482	0.003*	.0833075	.4139465
Ideology	-.005618	.0072808	0.440	-.0198881	.0086521
Campaign Contrib.	-2.452836	1.349383	0.069	-5.097578	.1919059
Imm. Change	-1.46748	.6789686	0.031	-2.798234	-.1367257
Hispanic Voters	.8216487	1.032861	0.426	-1.202722	2.846019
Union Density	-.0423811	.0265638	0.111	-.0944452	.009683
Unemployment	.0688944	.0196197	0.000***	.0304404	.1073483
_cons	.5810675	.6840655	0.396	-.7596763	1.921811

\*P<.05 \*\*P<.01 \*\*\*P<.001

## CIRRICULUM VITAE

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 Logan, UT 84322-0730  
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**EDUCATION****Doctorate**

Department of Sociology, Utah State University, May 2016 (expected)

**Master of Science**

Department of Sociology, Utah State University, 2012.

*Master's Thesis:* "The Role of Educational Attainment in Migration Probability and Destination Selection for the Metropolitan Rust Belt, 1980-2000"

**Bachelor of Arts**

Department of Sociology, Binghamton University, 2010.

**EMPLOYMENT****Research Assistant**

Utah State University, Department of Sociology, Summer 2011, Spring 2012, Summer 2012, Summer 2013, Fall 2013, Spring 2014, Summer 2014, Fall 2014, Spring 2015, Summer 2015.

**Graduate Instructor**

Utah State University, Department of Sociology, Fall 2012, Summer 2015, Fall 2015, Spring 2016.

**Teaching Assistant**

Utah State University, Department of Sociology, Fall 2010-Spring 2012

**RESEARCH AND TEACHING INTERESTS**

*Social Demography; States and Markets; Political Sociology; Research Methods; Cultural Geography; Historical Demography.*

**AWARDS and HONORS**

- 2015 Graduate Student Researcher of the Year, Department of Sociology, Utah State University
- 2014 Graduate Enhancement Award Recipient
- 2013 Graduate Student Researcher of the Year, College of Humanities and Social Sciences
- 2013 Finalist, USU'S 55<sup>th</sup> Annual Robins Awards
- Yun and Wendy Kim Demography Fellowship Award, Fall 2012; Fall 2013; Spring 2014

#### TRAVEL AWARDS

- Graduate Student Senate Travel Award, Fall 2011; Spring 2013; Spring 2014; Spring 2015.

#### RESEARCH EXPERIENCE

- 2015-present Research Assistant and Project Manager. 2015. "Gender, Professional Mobility and Leadership Attainment". Principle Investigator: Dr. Christy Glass.  
Project manager of a comparative longitudinal analysis of women's representation in law and finance, crafting an appropriate research design, creating and maintaining a detailed database, extracting demographic and other data from national directories, providing preliminary and descriptive statistical analyses, supervising undergraduate research assistants in data collection and management, writing and updating a technical codebook.
- 2014-2015 Research Assistant. "Surveys on Effective Policy Processes." Principle Investigator: Dr. Jackson-Smith, Utah State University  
Managed two large mail surveys including implementation, building and maintaining a sampling frame, drawing random samples, printing and managing the operation of mailing surveys as well as letters of intent and reminder notices, receiving surveys and coding for data entry into software packages for statistical processing and analysis, updating the tracking sheet with response codes, and contributing to technical meetings.
- 2012-2015 Research Assistant. "Predictors of Immigration Policy" Principle Investigator: Dr. Christy Glass, Utah State University  
Responsibilities included collection of quantitative factors by the academic literature important to shaping immigration policy at the state level. Engaged in data collection of these factors for a database that I continuously maintain and update. Conducted preliminary data analysis on the various predictor and the outcome variables for regression analysis.

- Interviewed advocates and interest-group representatives on policy strategies. Engaged in content-analysis of predictors of state-level immigration policy.
- 2014 Research Assistant. “Refugees in Utah: A State-wide Assessment”  
Principal Investigator: Dr. Steve Daniels, Utah State University  
Served as a data analyst, research designer, and interviewer. Activities included providing data at the state and national level on refugees in terms of nationality, citizenship attainment, educational attainment, poverty, housing, etc. Met with Utah Department of Workforce Services to collaborate on available data and strategies and present findings. Met with team to discuss data findings, to identify out-of-state service provider contacts, to design interview protocol and refugee sensitivity issues, and to provide methodological contributions in order to ensure a random sampling. Conducted interviews of refugees from numerous backgrounds throughout the state of Utah to determine if their needs are met through existing state programs.
- 2013 Research Assistant. “Immigrant Family Patterns in New Destination States”  
Principal Investigator: Dr. Erin Hoffman, Utah State University.  
Responsibilities included creating and maintaining an extensive data base on the family structure of immigrants in new destination states. Particular attention to number of female and male-headed households with or without children present, the number of married households, differences in settlement by gender, and other data.
- 2012 Research Assistant. “State-Level Immigration Policy Adoption in Utah.”  
Principal Investigator: Drs. Christy Glass and Peg Petrzela, Utah State University.  
Responsibilities included exploration and summary of the Utah Compact and Utah Solution, the groups and individuals responsible for its passage, legislators for and against, economic interests promoting the Compact. Also includes national debate on the Compact and guest worker programs, brief review of the resurgence of guest-worker programs throughout Europe, and possible grants and funding sources.
- 2011-2012 Research Assistant. “The Role of Educational Attainment in Migration Probability and Destination Selection for the Metropolitan Rust Belt, 1980-2000.”  
Principal Investigator: Dr. Christy Glass, Utah State University.  
Responsibilities included using IPUMS to examine the role of deindustrialization in the metropolitan Rust Belt and how it compels out-migration; analyzing the role of educational attainment and social capital



indicators in shaping interregional migration to the West and South. Special focus on Black migrants and “reverse migration” to the South.

- 2011 Research Assistant. “Demographics of the Mormon Culture Area in the U.S.”  
Principal Investigator: Dr. Mike Toney, Utah State University.  
Responsibilities included updating various demographic data, including percent Mormon, racial changes, alcohol consumption, per capita income, percent employed in agriculture, female labor participation, percent urban, total fertility rate, life expectancy, infant mortality, median age, and other descriptive data to be compared to data gathered at earlier times.

### Peer Reviewed Publications

Petrzelka, Peg and **Paul Jacobs**. 2016. “Why Utah?: The ‘Reddest of States’ and Inclusive Immigration Action.” *Social Sciences Journal* (forthcoming)

**Jacobs, Paul** and Christy Glass. 2015. “Culture, Context or Conflict? Analyzing Union Attitudes in Six Rural Counties in Conservative Right-to-Work States.” *Rural Sociology* 80(4): 512-536.

**Jacobs, Paul**, Elizabeth Kiester, Christy Glass and Peg Petrzelka. 2015. “Understanding the Movement to Redefine the Immigration Policy Debate in Utah.” *Journal of Sociology and Social Work* 3(1): 52-65

### Research Reports

2015. “Utah Refugee Needs Assessment: Employment and Education.” Final report presented to Utah Department of Workforce Services, Refugee Services Office.

### Invited Contributions

Jacobs, Paul. 2014. “Working With Refugees Presents Special Challenges.” *Utah Association for Infant Mental Health*. Issue 22 (Fall/Winter): 6-7.

### Manuscripts in Progress

Jacobs, Paul. 2016. “The Role of Educational Attainment in Migration Probability and Destination Choice for the Metropolitan Rust Belt, 1970-2000” in preparation for submission to *Population Research and Policy Review*.

## **PAPERS PRESENTED**

### **Invited Talks and Presentations**

“Preliminary Data Findings on Utah Refugees: Educational Emphasis.” Presented data to State Assemblywoman Ronda Menlove. March 28, 2014. Utah State University, Logan, Utah

“Preliminary Data Findings on Utah Refugees.” Presented data to the Department of Workforce Services. March 23, 2014. Salt Lake city, Utah.

### **Peer-Reviewed Conference Presentations**

“Union Attitudes in the Mormon Cultural Area.” Paper to be presented at the Pacific Sociological Association annual meeting, Long Beach, CA. April 2015.

“Understanding the Movement to Redefine the Immigration Debate in Utah.” Paper presented with Beth Keister at the Pacific Sociological Association annual meeting, Portland, OR. March 2014

“Race and Destination Choice: Factors Driving Reverse Migration.” Poster presentation at the Population Association of America (PAA) annual meeting, New Orleans, LA. April 2013

“The Who and Why of American Ancestry.” Paper presentation at the Southern Demography Association, Tallahassee, FL. October, 2011.

## **TEACHING EXPERIENCE**

### **Graduate Instructor**

Social Problems, Fall 2012; Summer 2015.

Social Inequality, Fall 2015, Spring 2016.

### **Invited Presentations**

“Race as a Social Construct: Historical and Contemporary Developments.” Social Inequality course. Fall 2014.

“Immigration and the Transition to Welfare State Policies.” Political Sociology course. Spring 2014.

“The Dynamic Demography of the Hutterites.” Contemporary Social Theory course. Fall 2013.

“Race/Ethnicity: The Changing Face of America.” Sociology of Work course. Spring 2013.

“Quantitative Analysis: Using Existing Databases.” Social Research Methods course. Fall 2012.

“Locating and Using Data for Rural Populations.” Rural Sociology course, Spring 2012.

“Population Processes.” Population and Society course, Fall 2011.

### **Teaching Assistant**

Rural Sociology, Spring 2012

Population and Society, Spring 2011; Fall 2011

Social Statistics, Fall 2010; Spring 2011

### **PROFESSIONAL MEMBERSHIPS**

2014- Pacific Sociological Association

2011- Southern Demography Association

### **Other Training**

Spring 2013: Utah State University Grant-writing Seminar

Spring 2013: Qualtrics Training: Creating Effective Online Surveys

Spring 2013: Census Workshop: *Accessing Census Bureau Data for Community Analysis and Research*

### **SERVICE**

#### PROFESSIONAL SERVICE

- 2015: Serve as an organizer and moderator for the 2015 Tanner Symposium on Immigration and Food Security.
- 2014: Serve as a peer-reviewer for an academic article submitted to the *International Journal of Sociology*.

#### COMMUNITY SERVICE

- 2012-2014: Volunteer instructor of citizenship preparation course at the English Language Center of Cache Valley.
- 2014: Volunteer at Cache Refugee and Immigration Connection (CRIC).