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Rethinking State Immigration Laws: New Actors, Processes, and Avenues for Research

A Dissertation submitted in partial satisfaction
of the requirements for the degree of

Doctor of Philosophy

in

Political Science

by

Andrea Silva

June 2016

Dissertation Committee:
Dr. S. Karthick Ramakrishnan, Chairperson
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The Dissertation of Andrea Silva is approved:

Committee Chairperson

University of California, Riverside

Acknowledgements

A dissertation is a lonely enterprise; you do the research and the writing on your own, while constantly ~~stalking~~ reaching out to others for help, support, and guidance. It is exciting, expanding a rich body of literature with your small addition. It is also profoundly humbling. Humbling to realize how much you do not know, how much work it took to learn the little you do, and how people selflessly offer what they know, to enhance and refine the little you know and have learned.

First, I would like to thank the members of my dissertation committee as well as other academics and institutions who have helped me. I would like to thank the chair of my dissertation committee, Karthick Ramakrishnan for his help and guidance with my dissertation. Thank you to Ben Bishin for helping me with the politics of political science and being a great mentor. Third, thank you Jennifer Merolla for agreeing to be on my dissertation committee and for actually reading the whole dissertation and giving comments and suggestions. Also, thanks to David Pion-Berlin, Shaun Bowler, and Aldaberto Aguirre who didn't have to, but read chapters and offered support at many stages of the dissertation process. Lastly, the UCLA Institute for Research on Labor and Employment generously funded the research for chapter two of this dissertation.

I want to acknowledge the help and support of my family while writing my dissertation. My Mom drove down to Riverside for six years to save me the two-hour drive, to and from L.A. so I could work. Thank you to my brothers who always provided encouragement and comic relief when needed. Lastly, thanks to my Dad who would tell me every morning that education was the passport to the future. Now, I say these words to myself, hoping this sacrifice and this work will save a place for me in the future.

Dedication

To my Naino,

Who met every line of this dissertation with red pen,

every doubt with reassurance,

and every success with “I told you so.”

I love you, you are my whole wide world.

ABSTRACT OF THE DISSERTATION

Rethinking State Immigration Laws: New Actors, Processes, and Avenues for Research

by

Andrea Silva

Doctor of Philosophy, Graduate Program in Political Science
University of California, Riverside, June 2016
Dr. S. Karthick Ramakrishnan, Chairperson

This dissertation takes a disaggregated look at state immigration policies using both qualitative and quantitative methods and challenges conventional wisdoms that overemphasize demographics and partisanship. What processes, actors, and institutions can give us more purchase in understanding state immigration laws? I argue state actors, institutions, and contexts explain why some states pass immigration policies. The first empirical chapter highlights the role of time and state context by using a time series model to identify variables affecting the passage of state immigration law between 1980 and 2014. The second chapter investigates the influence of institutional rules and state actors in the policy process. Undertaking fieldwork in California and Oregon, I found that institutional rules, like referendum policies, affect the passage of state immigration legislation. The final chapter looks at the role of the judiciary in state immigration legislation. Moving away from ascriptive characteristics like gender or race, I test the

correlation of personal history to judicial behavior. Specifically, I find the immigration generation of federal appellate and Supreme Court judges affects how they adjudicate state immigration policy cases.

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Introduction

"Keep, ancient lands, your storied pomp!"
cries she with silent lips.
"Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tossed to me…
- Emma Lazarus, The New Colossus*, 1883*

In 1994, a group of citizens known as California Coalition for Immigration Reform (CCIR) cosponsored the "Save Our State" Initiative. Proposition 187 instructed public services to exclude benefits to California residents who could not prove their legal presence in the United States. Proposition 187 made undocumented immigrants ineligible for public benefits, including healthcare, welfare and even the attendance of public elementary, secondary and post-secondary schools. Further, it required state and local agencies, like public schools, to report *suspected* undocumented immigrants to the state Attorney General *and* the U.S. Immigration and Naturalization Service.

Proposed by a small group of immigration restrictionists with no policy experience, Prop. 187 passed with almost 60% of the vote, an achievement unheard of in recent history in a state known for its liberal leanings. Its wake left a frenzied xenophobia that spread to other states and eventually to Washington, D.C. with the passage of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act.

Twenty years later, not much has changed with the passage of Proposition 209 in California and Proposition 200 in Arizona. Since 2010, state legislatures have enacted 1644 statutes and resolutions regarding immigration, averaging about 329 laws each year (Morse 2016). Nevertheless, the most controversial bills, the ones we remember and talk

about, are usually an outcome of the direct democracy process. This legislation is discussed at the national level and the template for future copycat laws. We see an increase in state immigration laws, but know little about how this happened. What explains the increasing role states play in state immigration legislation and what factors influence state immigration laws?

Conventional arguments state that state immigration laws are affected by demographic, economic, and partisan changes. However, these investigations are limited because they leave questions of state institution variation and the federal scrutiny that state laws are still subjected to, even if they pass. This dissertation addresses this larger puzzle by analyzing the following research questions: (1) what affects the passage of state immigration laws over time (2) What are the causal mechanisms linking state institutions and state immigration policy and (3) What other actors/institutions affect state immigration legislation? I argue that states with direct democracy mechanisms incentivized legislators to pass legislation, to pre-empt state actors who threaten to appropriate the policy agenda and to ensure reelection (Mayhew 1974; Gerber 1996, 1999; Matsusaka and McCarty 2001). Second, I argue that actors in states with direct democracy mechanisms are incentivized to bypass the legislature to enact policy without the need to moderate their preferences (Schattschneider 1960; Boehmke 2002). Third, I argue that federal judges affect these immigration laws because all state laws are subject to federal scrutiny (Levi 1979). The next section is a detailed overview of the literature on federalism, state legislatures, and direct democracy mechanisms. I also review

scholarship on the interaction of these institutions with questions of race, ethnicity, and citizenship.

Previous Literature

Immigration policy theory is usually discussed at the national level, where scholars have identified and tested the causes and conditions under which? nations will accept migration. Immigration policy theories at the sub-national level are rare as national governments are usually responsible for codifying immigration policy. The United States' unique form of federalism allows states to codify immigration policy and, with reservations, we can use theories about the diffusion of other policies between states to create testable hypotheses. This section will survey the current literature on federalism, state immigration legislation, direct democracy mechanisms, and how direct democracy has been used in the past to curb the rights and privileges of underrepresented or marginalized groups at the state level.

The Impact of Federalism

"federalism" is [best] expressed in a vaudeville routine ...
The straight line is, "How's your wife?"
and the response, is "Compared to what?"
-Antonin Scalia (1982)

In the United States, states existed first. This happenstance set a strong precedent for state autonomy throughout American history. The decision to create a federal government to overcome collective action problems of governance also produced a tenuous relationship between states and the federal government. The contentious battle

between state and federal governments for power is still fought to this day, achieving the goal of the framers: to pit ambition against ambition (Madison 1787). Federalism is when multiple governments govern one territory. Even though there is no federalism clause in the constitution, American Federalism is expressly the sharing of power between national and state governments. The two provisions that implicate this doctrine are the Supremacy Clause and the Tenth Amendment. The Supremacy Clause states," The Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land" (Constitution of the United States 1789), while the Tenth Amendment states, "Powers not delegated to the U.S. by the Constitution and prohibited by it, are reserved to the States" (Bill of Rights 1789). Together, these provisions outline American federalism: where the federal government acts, their laws, and decisions prevail. In all other respects, "power and authority reside with the States, or with the people themselves" (Waxman 2002). Included in these are Concurrent Powers, the power exercised by both the federal & state government, like the ability to grant licenses. Lastly, the tenth amendment grants states Police Powers: the sole power to make laws and regulations for the benefit of their communities regarding health, education, welfare, and morals.

Aside from this initial delineation of powers, American Federalism has undertaken its own evolution since the 18th century (Jun and Wright 1996). Its latest evolution occurred in the 1970s and expanded by Reagan in the 1980s is the result of an increasing devolution of federal power back to states (Pear 1983). The main characteristics of this "New Federalism" era are block grants, revenue sharing, and the federal government has increased inability to limit discretionary state spending. The

results of this evolution lead to the growing ability for states to innovate, or the increased dissimilarity in standards for education, healthcare, and welfare, depending on who is asked (Herbers 1987; Zimmerman 1991). After this, we began to see variation in the types and content of legislation in areas under state control: health, welfare, and licensing. It is also in these areas that states begin to make laws affecting non-citizens.

Some scholars understand this relationship as immigration federalism, "states operate under, and are obliged to respect, federal immigration policies and supervision" (Schuck 2007). However, with the continuous challenge the federal government makes on state immigration legislation, states are not participating in immigration federalism. They are not obliging or respecting federal immigration policy or supervision. They are not involved in immigration federalism, dual federalism (involving reserved powers), or cooperative federalism (involving delegated powers). State immigration policy (including those passed via direct democracy) means, "States are neither servants nor sovereigns," but intermeddlers (Cunningham-Parmeter 2011). States insist on a say in immigration policy decisions without an invitation from the federal government, what Cunningham-Parmeter identifies as "forced federalism." The fact that states live in this forced federalism with respect to immigration law means state immigration legislation follows a unique federalism relative to other policy areas. Under existing theories of dual or cooperative federalism, power is allocated entirely or concurrently.

Forced federalism is a dynamic and less defined division of authority on immigration law. The source and scope of the states' authority on immigration legislation expands and contracts as courts are continuously adjudicating the extent to which states

can participate in immigration-related policy areas (Cunningham-Parmeter 2011). This idea of forced federalism is the center of my theoretical understanding of the relationship between state and judicial institutions and actors. It is within this framework that states pass immigration legislation. However, it is important to understand the current literature on the diffusion of state laws before narrowing to the literature on state immigration policies. The next section reviews how scholars explain the passage of state legislation in general via the four mechanisms of policy diffusion.

When Do States Pass Laws?

Theorists of policy diffusion discuss policy change coming from a government's response to the will of their constituents (Kingdon 2003; Baumgartner and Jones 1993, Pierson 2000). Policy diffusion is a pattern of "successive adoptions of a policy innovation" between similar governmental scopes (i.e. cities, states, countries) (Eyestone 1977, 441). Most policy change occurs incrementally, with small modifications to a policy area over time (Berry and Berry 1999). States also seek practical and theoretical heuristics to deal with complex policy questions; one example of this proclivity is how states look at the success and failures of similar policies in other states (Walker 1969).

Recent scholars have separated the notion of policy diffusion into four mechanisms: learning from early adopters, economic competition, imitation, and coercion (Simmons et al. 2006; Shipan and Volden 2008). Learning from previous adopters occurs when states, faced with a problem, "simplify the task of finding a solution by choosing an alternative that has proven successful elsewhere" (Berry and Baybeck 2005, 505).

Learning is a horizontal mechanism of diffusion as policy is passed "by means of influence," as opposed to vertically, when diffusion occurs because of coercion (Meseguer 2005). States usually have the most success when they learn from states that share similar attributes (Rogers 2010).

The second mechanism of policy diffusion is economic competition. As states compete for business and resources, they enact policies that make them more attractive to those entities (Berry et al. 2003; Allard and Danziger 2000; Corbett 1991; Figlio et al. 2000; Brueckner 2000). Recent studies have attempted to disentangle the learning and economic competition mechanisms by arguing that economic competition affects not only policy adoption, whether or not a policy is implemented by a state, but its expansion as well, the extent to which policy is adopted by a state (Boehmke and Witmer 2004).

Policy diffusion through imitation means the mechanisms through which states enact policies is to be comparable in some respect to another state (Dolowitz and Marsh 1996, Abbott and DeViney 1992, Esping-Andersen 1990, Obinger and Wagschal 2001). Imitation is focused on the actor, with the actions towards policy adoption focusing on how the "emulatees" acted and how it can be imitated rather than on how the policy itself was conceived, adopted, and enacted (Shipan and Volden 2008). Scholars have shown that "emulatees" tend to be larger and wealthier, while emulators are relatively smaller and poorer, tending to ignore any foreseeable consequences of the imitated policies they adopt (Grupp and Richards 1975; Simmons et al. 2006). Lastly, scholars note that states may adopt policies because they are coerced, usually by the federal government in the form of grants with stipulations (Allen et al. 2004; Karch 2006). This literature is helpful

for understanding broad brushes of state change over time, but minimizes the tenuous negotiations, contestations and actors that work within each state make change. These actors and groups have increased power at the subnational level, relative to the federal level and can be catalysts for real policy change.

State Laws and Actors

A wealth of evidence has found the public is politically unsophisticated and uninterested leaving political entrepreneurs or elites to lead public policy charges (Converse 1964, Dahl 1971, Delli Carpini and Keeter1996, Lau and Redlawsk 1997). With few exceptions (Marietta and Barker 2007), scholars agree that regular voters look to politically sophisticated elites to guide their understanding of the political world (Nie et al. 1979, Campbell et al. 1964, Key 1966, Zaller 1992, Lupia and McCubbins 1998). Many scholars have identified interest groups as the dominant force in the policymaking process. The competing demands of various groups have been identified as resulting in the expansion of public programs. Interest groups have been linked to policy agenda as well as the functional activities of government. At the local level, the role and influence of interest groups have been the subject of considerable debate. Empirical analyses have demonstrated that the mobilization of interest groups within a community can decisively influence city government's policy choices. This perspective suggests that the existence of large organized interest groups supporting a policy within a community will enhance the likelihood of adoption. Interest groups have been investigated at the national level of immigration policy making but at the state and local level, the research is sparse (Freeman 1995, Haider-Markel and Meier 1996).

If states are the laboratories of innovations than entrepreneurs within those states are the (mad) scientists. Entrepreneurs carry out “new combinations” (Shumpeter 1934, 93). Political entrepreneurs can come from any segment of society and seek to enact and codify particular policies. Political Entrepreneurs can change the frame of policy debates (see Tiebout 1956, Riker 1986, Schneider 1989). Schumpeter's entrepreneur introduces change quickly within institutions followed by stability. In the institutions literature, entrepreneurs are similar to a punctuated equilibrium (Krasner 1984, Sabherwal Hirschheim, and Goles 2001, Schneider 2006). Entrepreneurs change the incremental trajectory of the political process by introducing sea change to the political process. In many states, actors that work to introduce immigration laws via direct democracy. In judicial institutions, judges act on state immigration policy in their positions as jurists, upholding, or invalidating state immigration legislation from the bench. Looking at these institutions is the step in research on immigration laws (Jones-Correa 2013).

The literature on interest groups and state immigration policy is theoretical, descriptive, and focused on California (Sanchez 1997; Johnson 2005; Wroe 2008; Bordeau 2009; Varsanyi 2011; Hackworth 2007). Most discussions of issue entrepreneurs include them in the larger context of state actions on immigration federalism (Suro 2015). However, issue entrepreneurs play a vital role in promoting their immigration policy agenda at the state level across the country (Jacobson 2005; Ramakrishnan and Gulasekaram 2013; Gulasekaram and Ramakrishnan 2015). Explaining how they do that is the main contribution of this work.

State Laws on Race, Ethnicity, and Citizenship

From the passage of state legislation in general, this section focuses on the passage of state immigration laws. Scholars have proffered states pass laws that affect non-citizens in their states when demographics or economics, or partisanship changes at the state level. Within this context of federalism, states pass "immigration laws": legislation within their constitutional mandates that address the lives of non-citizens in their jurisdiction. I put this quotes here because even though these laws are not about visas, permanent residency, or naturalization, they have a grave impact on the lives of non-citizens. Academics have attempted to address this increase in state immigration laws, applying well-known theories like the racial and economic threat hypotheses, and introducing new explanations like the partisanship hypothesis.

Immigration laws, laws that govern the requirements, enforcement, or process of immigrating to the United States is one of the powers explicitly enumerated to the federal government in the Constitution (1789, Article 1 Section 8). In spite of this, states have successfully carved a sphere of influence on immigration by making their own "immigration legislation." States can exercise power by passing laws relating to state police powers (health, education, welfare, and morality) or policy areas neither enumerated nor reserved by the federal government (e.g. licensing, employment). It is in these policy areas, where states have been delegated by, or hold concurrent power with the federal government, that states make legislation about the non-citizens (Newton and Adams 2009). Aside from how states insert themselves in policy making about non-citizens, scholars argued that states decide to pass these policies because of perceived or

real demographic or economic changes or because of legislative partisanship. The following is an in-depth discussion of these three well-known and useful explanations.

Demographics

Blalock's (1967) racial threat theory is perhaps one of the most frequently examined explanations for the creation of immigration legislation. Racial threat theory proposes that racialization occurs when Whites use their disproportionate power to implement state control over minorities. Further, increases in the population of demographic minorities embolden more severe, racialized legislation to protect the existing power and privileges of Whites (Dollar 2014, Blumer 1958, Bobo 1983). When investigating the threat hypothesis with respect to immigrants, Chavez and Provine (2005) find partial support for the racial threat hypothesis. They found states that enacted permissive immigration legislation had higher Latino and foreign-born populations (Chavez and Provine 2005). In a more nuanced investigation, Boushey and Luedtke (2011) find states with larger *existing* immigrant populations will pass permissive laws. Conversely, and similar to Hopkins (2010), Boushey and Luedtke find legislatures in states with *new* immigrant populations tend to pass restrictive legislation.

Culture and Economics

In addition to the racial threat theory, scholars investigate the application of the cultural arguments that underlie exclusionary legislation. Investigations using process tracing show that immigration to the United States has been anything but laissez-faire. Instead, it has been a conscious effort to populate the U.S. with the "right" kind of

immigrant (Ngai 2004, Zolberg 2008). Fueled by a threat to the national culture, legislators pass laws to institutionalize American culture (Huntington 2004). Sub-national immigration regulation is neither the only, nor the most effective method for promoting community cohesion and stability. National or sub-national units can create and maintain stable, culturally distinct communities without building physical or legal walls (Gulasekaram 2012).

Moving away from cultural and demographic explanations, immigration scholars have also investigated the economic situation at the state level to explain why states pass immigration legislation. Economic theories of state immigration policy suggest states will pass state immigration laws when there is a change in the economy, either a change in profitable economic sectors or an economic downturn. Immigration policy attitudes come from economic costs analyses of immigrants (Borjas 1990, 1999, Massey et al. 2003, Rothman and Espenshade 1992, Scheve and Slaughter 2001). Borjas (1990) argues that while immigrants may not have a short-term impact of taking employment from natives, their greater economic impact is their propensity with high poverty rates and participation in the welfare system. A larger impact is lower national income and tax revenue as unskilled labor contributes less to the American economic system. Legislators like Kansas Secretary of State Kris Kobach use these arguments to justify the passage of state immigration legislation that mitigate the fiscal burden caused by immigrants (2008). Conversely, when states find immigrants help prop or create some economic sector, they may pass laws that are more permissive.

Partisanship

A newer line of investigation focuses on the role government institutions on policy choices. A state-level analysis of the effect of electoral institutions and competition on policies has led to mixed results (Amenta and Carruthers 1988, Chang and Golden 2007, Dolowitz and Marsh 2006, Wibbels 2003). At the local level, this debate has also focused on the consequences of forms of government, representation systems, and executive leadership for policies and expenditures. Investigations of the institutional reformist movement that sought to insulate local government from partisan politics indicate that some institutional arrangements may influence cities' policy decisions more heavily than others (De Mello 2002). Studies suggest that insulating policymakers and administrators from mass political pressure introduce a bias for business interests. The ideological distance between the executive and the legislature may also restrict possible policy coalitions and incentivizes blocking policy, not cooperation (Clinton et al. 2011, Richardson et al. 2012). Gulasekaram and Ramakrishnan process trace immigration policy at the local, state, and national level in the United States to show the "politicized nature of immigration policy" (2012, 1483). Ramakrishnan and Wong (2010) found that with respect to immigrants, demographics are less influential than state partisanship. While controlling for demographic characteristics, counties with a majority-Republican presidential vote share were "twice as likely to propose restrictionist ordinances and one-half as likely to propose "pro-immigrant" ones" (Ramakrishnan and Wong 2010). Wong (2010) found the partisan composition of immigrant enclaves mediates the extent of demand for tighter immigration enforcement.

Finally, the last set of investigations looks at this question of state immigration legislation from the hierarchical relationship between levels of government in the federal system. From this perspective, the state will use a mixture of monitoring, coercion, and incentives to influence the behavior of local governments. Spiro (1996) argues a variation of federalism, explaining the passage of state immigration policy acts as a "steam valve," releasing the federal government from the pressure of addressing immigration policy at the national level. Spiro's theory has been investigated with respect to enforcement, specifically 287(g) and Memorandums of Understanding between federal and local enforcement entities. Creek and Yoder (2012) find evidence of "steam valve federalism" at the local level, as well as the importance of the current governor's partisanship. Specifically, Surveys show police departments approach unauthorized immigration in substantively different ways from the lack of clear policy guidance from the federal government (Decker et al. 2009). Within this variation, county sheriffs tend to "maintain closer relationships with federal Immigration and Customs Enforcement (ICE) authorities" than local police departments (Varsanyi et al. 2012).

Scholars have found evidence of racial and cultural threats as well as economic and partisan explanations for why states pass immigration legislation at the state level. Aside from state legislatures, I underscore how direct democracy mechanisms influence the passage of immigration laws. This institution has been used to pass some of the most severe immigration legislation in the country and change the cost/benefit analysis citizens make when pursuing their policy preferences. This next section explores direct democracy mechanisms in-depth, clarifying the ways citizens participate in passing

legislation. I follow this introduction with an overview of how direct democracy mechanisms have been used to curb the rights of politically marginalized or underrepresented groups. I end this section with a focused review of the literature on how direct democracy mechanisms have affected state immigration laws.

Direct Democracy

At the end of the 19th century, states incorporated direct democracy mechanisms to counter the substantial political influence of private companies (Starr 1986). Twenty-six states have a direct (the initiatives are not required to be submitted to the legislature before being placed on the ballot) or indirect (initiatives must be presented to the legislature before being placed on the ballot) initiative process to change a state constitution or statute (Bowler and Donavan 1998; Initiative & Referendum Institute 2015). An initiative "is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them" while the referendum "is the power of the electors to approve or reject statutes, in part or in whole" (California Const. art. 2, sec 8 (a)). State citizens can introduce statute or constitutional initiatives. Direct democracy states also have two types of referenda: the legislative or popular referendum. Legislative referenda are measures submitted by Legislators for voters' approval. Popular referenda are measures put on the ballot after a voter petition drive (McCann 2012). Lastly, a recall brings the decision to remove public officials to the citizens. Voters can fire public officials before the end of their term of office by putting their continued legislative tenure to a vote (McCann 2012).

Table 1: States by Type of Direct Democracy Mechanisms

	Direct Statute	Direct Constitutional	Referendum	Recall
Alaska			X	X
Arizona	X	X	X	X
Arkansas	X	X	X	
California	X	X	X	X
Colorado	X	X	X	X
Florida		X		
Georgia				X
Idaho	X		X	X
Illinois		X		X
Kansas				X
Louisiana				X
Maine			X	
Maryland			X	
Massachusetts			X	
Michigan		X	X	X
Minnesota				X
Missouri	X	X	X	
Montana	X	X	X	X
Nebraska	X	X	X	
Nevada		X	X	X
New Jersey				X
New Mexico			X	
North Dakota	X	X	X	X
Ohio		X	X	
Oklahoma	X	X	X	
Oregon	X	X	X	
Rhode Island				X
South Dakota	X	X	X	
Utah	X		X	
Washington	X		X	X
Wisconsin				X
Wyoming			X	
Totals	14	16	23	18

To introduce an initiative, referendum or recall vote in any direct democracy states electors must file preliminary proposals to a state official to review the initiative for compliance with statutory requirements. Second, all states require the circulation of the petition and a number of signatures submitted to a state election official for verification. Third, all states place proposals on a ballot if they meet these previous requirements. Aside from these three general rules, states vary in the procedural rules of the initiative

process. Each state constitution sets rules for petition circulation, the percentage of signatures required to place an initiative on the ballot, and from which previous election to take this percentage (Bowler and Donovan 1998). The differences in procedural rules between states define the political opportunity structure for state actors. These instructions facilitate or impede their ability to enact policy preferences. While direct democracy mechanisms seem benign, even boring, their impact on legislators and citizens cannot be understated. This next section explores the express and indirect effect of direct democracy mechanisms on legislative behavior and citizen behavior. Here, I survey past literature on how these institutions have been applied to controversial policy areas in an attempt to curb the rights of demographic and political minorities.

Direct democracy institutions fundamentally change the political process by redefining the rules and roles of policymaking. A far cry from the measured and incremental policy change in state legislatures, direct democracy mechanisms offer states a vehicle to address controversial issues by making massive sweeping changes by one vote. It changes legislative behavior by threatening to appropriate policy-making power away from representatives. Direct democracy mechanisms also affect constituent behavior. Residents have increased knowledge on issues relative to their peers in states without direct democracy mechanisms (Tolbert et al. 2009). Residents also use these mechanisms to bypass their legislature to make extensive and far-reaching changes to the racial/ethnic context at the state level. Lastly, the presence of these mechanisms changes the behavior of groups who are the targets of these "racial propositions" (HoSang 2010).

Direct Democracy and Behavior

Initiatives and referenda have a direct and indirect effect on legislative conduct; the presence of these mechanisms changes the basic cost/benefits calculation of law making. Perhaps most obvious, laws passed via direct democracy affect resources and actions at the disposal of legislators. Many laws passed via direct democracy regulate the choice of elected officials to make financial or procedural decisions (Tolbert 1998). These laws (i.e. governance policies) "constrain the autonomy (or discretion) of the legislature in governing" (Tolbert 1998). Examples of governance policies include: term limits (Donovan and Snipp 1994), and tax and expenditure limitations (Tolbert 1998). Indirectly, the presence of initiatives and referenda affect legislative behavior by adding a salient threat to the control of the policy agenda. If legislators alter their policy decisions to appease an interest group, "then the initiative has changed the policy outcome even though a measure never appeared on the ballot" (Lupia and Matsusaka 2005; Gerber 1996, Gerber and Hug 2001).

Aside from legislators, direct legislation changes the cost/benefits calculations for citizens. Most noticeably, citizens have access to the policymaking process. This requires citizens who wish to make a policy change using initiatives or referenda to become knowledgeable enough about the process to affect change. Generally, the presence of direct legislation creates knowledgeable constituents. Smith (2002) finds voters from states that use the initiative process regularly show "an increased capacity over the long term to correctly answer factual questions about politics." In addition, to increased political sophistication, popular initiatives may increase efficacy and participation as

citizens are voting on more specific issues as opposed to a candidate, with a set of issue positions (Schmidt 1989). One of the main critiques of direct democracy mechanisms is that they allow a tyranny of the majority at the state level (Lewis 2013). They allow the populous to enact legislation that oppresses marginalized groups. The next section elaborates on the scholarship that examines this tyranny on racial and ethnic minorities.

Direct Democracy and Race Laws

Unlike voting for representatives, direct democracy institutions allow citizens to participate in single-issue voting, opening the range of policy areas under consideration to topics legislators would normally avoid (Donovan 2012). Scholars have noted direct democracy states have introduced ideologically extreme initiatives on controversial issues like abortion and the capital punishment (Arceneaux 2002, Gerber 1999). In this same vein, state referenda and initiatives are frequently used to make policy changes regarding racial and ethnic minorities. Critical racial scholars see direct democracy mechanisms as a "barrier to racial equality" (Bell 1978) because it has been used in the (recent) past to curb the rights of underrepresented, marginalized groups and irreversibly alters a state's political landscape (Matsusaka 1995). Donovan (2012) argues direct-democracy votes are essentially single-issue campaigns. Moreover, when direct democracy campaigns address underrepresented groups, the vote tends to focus on the merits or shortcomings of the group rather than the issue (Donovan 2012, Linde 1993). "This means that voting based on stereotypes and negative affect toward a group may be far more pronounced in direct democracy than in other electoral contexts" (Donovan 2012). Additionally, when the legislative and judicial gains threaten the power of the

dominant group, laws are "targeted for repeal via referendum and initiative" (Donovan 2012; Wenzel et al. 1998; Lipset and Raub 1970).

Scholars like Lipset and Raub argue backlash was an outcome of the civil rights movement, more recent scholarship argues that backlash pre-dated the 1960s. Further, direct democracy mechanisms were the weapon of choice to institute these changes (HoSang 2010; Sugrue 1996; Self 2003). HoSang argues, "a political subjectivity rooted in white racial identity… triumphed in the political battles over" ballot initiatives (2010, 20). Further, adding to scholars who argued propositions are created by contextual racial identities (Schnieder and Ingram 1993), HoSang argues these propositions *create and modify racial identities* as "each of these ballot measures represented a set of propositions about the meaning of race and racism" in California (2010, 4). Particularly salient to this investigation, HoSang (2010) finds the campaigns on propositions relating to citizenship and ethnicity (e.g. California Propositions 187, 209, 228, 54) also spring from political whiteness.

The result of these backlash propositions is usually a unification and increase in political sophistication of the target groups. For example, scholars have shown that while whites and non-whites have similar preferences over most ballot measures, racial and ethnic minorities vote differently on ballot measures intended to disadvantage minority groups (Hajnal et al. 2002; Tolbert and Grummel 2003). Bowler et al. (2006) found racially or ethnically divisive propositions lead to long-term problems for partisans that support them. In fact, it was these "racially charged ballot propositions sponsored by the Republican Party during the 1990s" that reversed the upward trend of Latinos and whites

who identified as Republican (Bowler et al. 2006). As HoSang notes, campaigns related to citizenship are understood within the larger genre of racial propositions, but have become a salient source of research as two of the most severe immigration laws were passed via the initiative process.

Direct Democracy and Immigration Laws

The intersection between direct democracy and noncitizens rights is at the heart of this investigation. Non-citizens engender a national xenophobia present in the colonies and perpetuated by the future framers of the Constitution (Heckels 2015; Ignatiev 2009). As the topic of immigration tends to create single-issue voters (Mudde 1999), Direct democracy mechanisms facilitate the work of restrictionists, people who prefer restrictive immigration legislation, allowing them to introduce ideologically extreme laws on a single issue. There is an extensive body of knowledge testing racial threat, economic and partisan indicators on initiatives about non-citizens.

Schildkraut (2001) lends evidence to the influence of direct democracy institutions when states pass restrictive immigration legislation even though her investigation infers an indirect effect because she includes laws passed via legislatures. Schildkraut shows the interaction of percent foreign-born and if direct initiatives are allowed affect the passage of language laws (2001). States with many immigrants but do not permit direct initiatives have almost no chance of declaring English the official language while a similar state with direct initiatives has a higher chance of passing English only laws. Other investigations focus on the relationship between immigration laws and white voting behavior on initiatives. Tolbert and Hero (1996) found Proposition

187 and Official English laws were adopted in "bifurcated" racial/ethnic contexts: in counties with large nonwhite and white demographic groups. Tolbert and Hero argue this regard was similar to the racially segregated “black belt” studied by V.O. Key in 1949. Campbell et al. (2006) reveal similar findings that white vote choice on Proposition 187 was a function of racial/ethnic context, as well as partisan context. They contend the effects of racial threat are not as salient as Tolbert and Hero may argue (Campbell et al. 2006).

These investigations point to the contexts in which these laws may pass. They also highlight what institutional and demographic conditions may affect voting behavior. I add to this literature in two ways: first, I expand the time and scope of this work. Aside from English only and Proposition 187, laws pertaining to driver’s licenses and access to welfare benefits or public education have become salient. Further, after 9/11, the context and justification for immigration law has changed, requiring scholars to revisit this work. Second, I add to this literature with scholarship that overlooks the process of state immigration lawmaking. I study initiatives and referenda *before* they come to a vote and identify the mechanisms that put immigration legislation on the ballot. I also look at the immigration law making process after it leaves the state. Immigration laws passed at the state level are still subject to federal scrutiny. This is an understudied area in the body of work on immigration federalism: how the federal judiciary affects the outcome of state immigration laws. Broadly, state immigration laws are decided at different levels of federalism *and* within various branches of the federal government. This dissertation

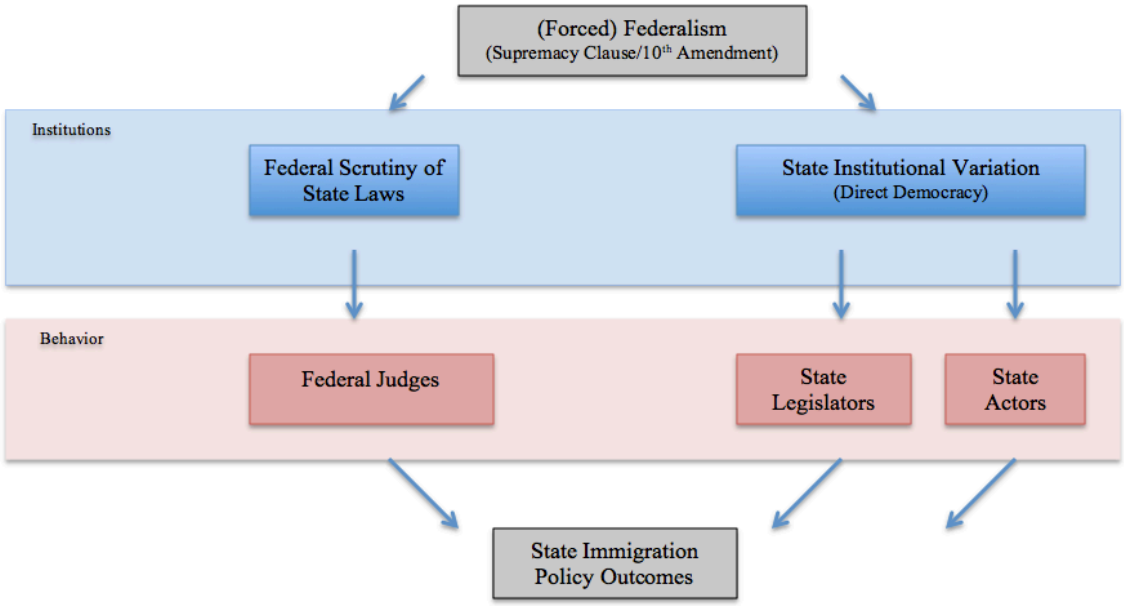
focuses on those less conventional institutions and actors that weigh on state immigration outcomes.

Theory of Forced Federalism

Institutions create incentives to which people respond and allow for the coordination of resources (Lazear 2000; Schelling 1960). The institution of federalism creates choices and strategies state actors can exploit, and permits the coordination of resources at the level of government where they would be the most useful. Pierson (1995) argues the institutional rules of the federal system have "major implications for social policymaking" (450) as federalism alters the terrain for "conflicts and introduces entirely new actors and issues" (463). Specifically, federal systems modify the policy preferences, strategies, and the power social groups have to affect policy (Pierson 1995, 462). In other words, the rules of federalism change the possibility and constraints for legislators and state issue entrepreneurs. Further, they allow the federal judiciary scrutiny over state immigration policy. According to the theory of forced federalism, states are "intermeddlers," insisting on a say about immigration policy without federal solicitation, in many cases, flagrantly challenging federal supremacy on immigration legislation (Cunningham-Parmeter 2011). Forced federalism creates an under defined and dynamic division of power, continuously advanced by states and tempered in federal courts (Cunningham-Parmeter 2011). State actors and legislators intermeddle in immigration policy by introducing their own immigration legislation. However, because state laws and

immigration laws are subject to federal scrutiny, federal courts also influence the outcome of state immigration policy.

Figure 1: Theory of Forced Federalism



Forced Federalism and States

The trend toward federal devolution at the national level reduced the capacity of national governments to control migration and enforce existing immigration law (Guiraudon and Lahav 2000). At the subnational level, federal governments led devolution, effectively decreasing their capacity to influence state policymaking (Varsanyi et al. 2011). Far from the passive recipients of federal mandates, states have taken advantage of this devolution to introduce their own policy in the vacuum left by devolution, particularly in the immigration policy sphere. Some scholars argue state immigration policy is a "lagging indicator of general trends towards devolved governance"

(Spiro 2001, 73). However, the exponential increase in the number of laws, resolutions, and policies introduced and passed in the state since 2000 and especially after 9/11 calls this opinion into question. When states intermeddle in immigration legislation, they do so from the institutional context of their state. States are varied in the way legislation can be introduced and enacted. The innovation allowed at the state is a result of federal regulations, but also of the state law-making context. One institution, in particular, direct democracy, allows citizens to participate in their own intermeddling by introducing their own immigration "innovations." This institutional configuration constrains the incentives, actions, and goals of legislators and state actors.

Forced Federalism and State Legislators

Politicians seek to maximize votes or, more generally, political support by helping gain these resources (Downs 1951, Stigler 1971, Peltzman 1967, Becker 1983). If we understand government as the institution that redistributes resources, then politicians will choose policies that increase their political gains and minimize their losses from various groups with conflicting interests (Maloney and McCormick 1982, Dougan 1984). Forced federalism constrains the actions of state legislators. First, re-election pressures limited state legislator's actions (Mayhew 1974). Legislators may pass laws to accommodate interest groups and eschew a threat to their continued participation in government (Gerber 1996, 1998). This may incentivize legislators to seek new policy areas to introduce legislation, in these cases, policy areas that are under mostly federal control. State immigration policy may be the result of state legislators occupying a policy area to increase their reelection prospects. Second, legislators are motivated to preempt the

appropriation of the state immigration agenda by state actors. Legislators are incentivized to pass legislation to anticipate the actions of state groups in passing legislation (Gerber 1996, 1999, Matsusaka and McCarty 2001). Therefore, legislators are more likely to pass state immigration laws to enact legislation that represents their constituents' preferences (Mayhew 1974). This is especially salient in states with direct democracy mechanisms, where non-legislators can avoid the legislative process altogether and take their policy suggestions directly to the public.

Forced Federalism and State Actors

As Schattschneider (1960) observed, social actors are eager to shift political decision-making to the arena most likely to favor their interests. Entrepreneurs can advance their agenda through less cumbersome or adversarial state legislatures or through the initiative process. This is the reason we have seen increased activity in immigration policy reform at the state level. Eschewing the cumbersome task of passing immigration policy at the national level, entrepreneurs can codify immigration policy either through the initiative process or through state legislatures.

In direct democracy states, interest groups have more power in the political arena (Frey 1994). State actors like Kris Kobach and the authors of 1994's California proposition 187 have had unprecedented success in enacting a complete version of their type of immigration reform at the state level much faster than on the national scale. State actors are incentivized to bypass the legislature to pursue their policy preferences to keep more control over the final product (Boehmke 2002). Interest groups work within state institutions, using direct democracy mechanisms to pass or block state immigration. The

incentives of interest groups to bypass the legislature leave legislators with the threat of losing control over a salient policy agenda. Legislators work to enact the preference of their constituents into legislation to avoid looking ineffective.

Forced Federalism and Federal Judiciary

Forced federalism creates an under defined and dynamic division of power, continuously advanced by states and tempered in federal courts (Cunningham-Parmeter 2011). It is "a division of power…in which states attempt to dictate their own immigration enforcement schemes to the federal government" (Cunningham-Parmeter 2011, 1677). The federal government responds to what it considers encroachment to federal supremacy by states using the federal judiciary. The federal government is incentivized to establish its supremacy by checking state immigration legislation. Further, it does so regularly by suing states in federal court (*see* Chamber of Commerce v. Candelaria 2010; United States v. Arizona 2012). States introduce immigration policies that the Federal Executive or state actors may challenge in the federal courts. Federal courts offer two benefits to these parties. First, petitioners can choose the federal court they feel will give them a favorable decision. Second, federal courts offer a relative definitive decision compared to state courts (Glassman 2005).

Forced Federalism and Judicial Behavior

Judges have agency within the federal judiciary to exercise political power and affect change on state immigration policy (Galligan 1991). Courts influence public policy in general by applying laws to settle disputes in the way they see fit (Mather 1995). This

judicial review allows judges to overturn policy, a significant source of judicial power (Holland 1991). Theories of judicial activism argue how willing courts are "to inject themselves publicly into the policy process and to impose judicially selected policies at the expense of other branches of government" (Wenzel, Bowler, and Lanoue 1997, 364).

This power is particularly substantial in judicial decisions regarding constitutionality, a primary concern of immigration suits. Further, these federal decisions are difficult to overturn in the United States. Only the Supreme Court can reverse Federal Appellate Court rulings, provided the case is heard. Supreme Court decisions can only be overturned by a two-thirds majority of *both* houses of Congress *and* three-quarters of states (Sullivan 2015).

Key Variables:

State Immigration Policy.

State immigration policies are policies targeted to the welfare, social and political inclusion, and protection of non-citizens in each state. In other words, state immigration laws are any laws made by states that affect non-citizens. For example, when states require applicants show proof of citizenship or when states allow victims of human trafficking access to welfare benefits, they are making state immigration policy. State immigration policy is only applicable in the state where it was codified. This is different from federal immigration policy that, once passed, is applied to all states. The 10th amendment and the police powers of states couch the scope of state Immigration policy to questions of licensing, welfare benefits, access to public education, employment

benefits, among many. Scholars measure state immigration policy as instances or occurrences, and as permissive or restrictive legislation. Restrictive immigration policy legislation restricts the political or civil freedoms of non-citizens or their access to public services or assistance. Permissive immigration policy is legislation that increases the political or civil freedoms of non-citizens or their access to public services or assistance.

State Actors

In stable societies, groups tend to form to promote their welfare. They accomplish this by attempting to redistribute power over resources to themselves through regulations favorable to themselves and exclusive to others (Olson 1982). In this investigation, I apply this understanding of state actors to immigrant rights groups and restrictionist groups. Immigrant rights or restrictionist groups are organized interests (Freeman 1995) that seek power to enact their policy preferences. Pluralist models of immigration politics have identified a group of actors that influence policy outcomes like, organized interest groups or ethnic groups (Freeman 1995, 2001), courts (Joppke 1998), street-level bureaucrats (Ellerman 2006; Hager and Baker 1993) and private actors (Guiraudon and Lahav 2000).

Lahav and Guiraudon (2006) argue, "liberal democratic states have incorporated a plethora of actors to regulate these cross-pressures and control migration through both immigration and immigrant policies." They further divide the immigration policymaking field by level and actor in an attempt to organize this confusion. They argue that, at the domestic level, policy input usually comes from public opinion, media, party politics, organized interests, and elites. They note the elaboration or diffusion of this input flows

the through: national legislatures, courts ministries, and global commissions (Lahav and Guiraudon 2000). I add that the elaboration or diffusion of this policy input also flows through direct democracy mechanisms in the United States.

State Legislators

State legislators are elected state officials in the state legislature. This group is different from state actors. They have been elected to represent a constituency via their office as legislators. This election brings power over the policy agenda as well as new cost-benefit calculations for passing or blocking state immigration legislation. State legislators must first balance the preferences of their constituents. They must consider the priorities of their electorate and whether pursuing, supporting or rejecting immigration policy is politically advantageous. Further, state legislators are unique because the principle is regularly evaluating these agents' performance. Even though this evaluation imprecise, it can still mean the end of a legislator's access to policy making. Third, legislators work within institutional constraints unique to the limitations of state actors. Legislators must work with other legislators to gain sponsorship, legitimacy, and votes. More specifically, legislators must negotiate with other lawmakers and mediate the extremism of their immigration policy to gain support. In states with other lawmaking institutions, like direct democracy mechanisms, state legislators are incentivized to negotiate and pass legislation to preempt other groups from making policy and appropriating the policy agenda.

Direct Democracy

Direct democracy mechanisms are those institutional rules citizens use to bypass the legislature to enact their own legislation. These institutions are usually preserved in the state constitution and allow citizens to create legislation and enact it with a majority vote. States have different mechanisms for direct democracy; some states require an initiative to have the support of a legislator before citizens can vote. Other states allow citizens to place a bill on the ballot with a number of valid petition signatures. These mechanisms change the scope of possibilities and strategies for state actors and state legislators. State actors do not have to negotiate with other groups to temper their policies, provided they have enough resources to launch a viable campaign. State legislators have to compete with an institution that takes the policy making power out of their control, affecting their ability to make policy, credit claim, and get reelected.

Observable Implications

- Implication 1: *if states are really intermeddling, we should see legislators in all states passing more state immigration legislation, over time. We should also see an increase in direct democracy states relative to states without direct democracy mechanisms.*

- Implication 2: *if a state has direct democracy mechanisms, then we should see state interest groups exploiting them to enact their policy preferences*

- Implication 3: *if states are really intermeddling in immigration policy, we should see the federal government involved in adjudicating these laws via the federal judiciary. We should see judicial activism on state immigration legislation.*

Methods

I apply three methods to the study of this larger puzzle of the passage of state immigration legislation. First, I use a cross-sectional time series data of all state immigration laws passed in all fifty states between 1980 and 2014. I use a generalized least squares regression that controls for times to identify salient institutions or factors that influence the passage of state immigration laws in the state legislature over time. The generalized least-squares method estimates the parameters in a linear regression model in which the errors are serially correlated. Specifically, the errors are assumed to follow a first-order autoregressive process. This process is similar to an OLS regression coupled with an estimate of rho: the fraction of the variance due to autocorrelation in the errors. Panel Heteroskedasticity means the variance of the error term within a cluster is constant, but it varies across groups. I chose this method to answer this question because it allows me to generalize about all states and to control for time, which is important to account for in the policy process (Pierson 2004). Further, the model offers a more accurate inference of the parameters because a large number of cases increase the degrees of freedom and the sample variability relative to cross-sectional data. In other words, instead of only having one set of data: one state, over thirty-four years, I can generalize about all fifty states over 34 years. Instead of having thirty-four observations, I have over 1700. I can also control for institutions that may be present in some states, but absent in others, like the extent of legislative professionalization and direct democracy mechanisms. Third, I can better control for the problems derived from missing or unobserved variables with the

information gained from the dynamics in studying each state over time, and the individuality of the states compares to other states.

The second chapter uses a most similar systems cross-case study design and a most similar systems within-case design to investigate the mechanisms through which interest groups pass or block state immigration using direct democracy mechanisms. Goldstone (1997) argues that narratives in cross-case analyses "preserve the essence of the case…and…facilitate comparison by encapsulating the case as a storyline." Case studies allow for greater emphasis on how institutional rules shape policy choices and highlight the political and institutional processes influencing the proliferation of Restrictive legislation (Tichenor 2009). Further, parsimony unnecessarily oversimplifies the mechanisms of the policy process. The within-case analysis allows me to control further for the dissimilarities between cases and increase the rigor of my investigation. I use process tracing to map a potential causal path consistent with these respective outcomes and the data gathered. I also trace the progression of events that may have led to different results in these cases (George and Bennet 2005).

The third chapter uses a weighted-least squared regression on original data to analyze the extent to which a federal judge's immigration background affects how they vote on state immigration policy contested in federal court. I used a weighted-least squared regression to control for judges who have adjudicated more than one case on state immigration policy. I regress the immigrant generation of 122 judges on the proportion of votes to expand or preserve immigrant access to some state benefit. This method helps answer the questions about judicial activism because judges are using their

positions to make decisions about state immigration legislation. Further, the relationship between these decisions and the judges' immigration background is not random.

Chapter Summaries

I introduce three new lines of investigation regarding state immigration legislation. First, I investigate the role of time and policy evolution on state immigration policy. I investigate the influence of the passage of state immigration legislation in all fifty states from 1980 to 2014. On one hand, direct democracy mechanisms give citizens a direct voice in public policy, bypassing the state legislative process. However, an institution that allows citizens to undermine legislative power may affect legislator behavior. I find that state legislatures in states with direct democracy mechanisms pass more state immigration laws, over time than states without direct democracy mechanisms. These findings suggest legislators in states with direct democracy mechanisms pass more state immigration laws in an attempt to block state interest groups from appropriating the state immigration policy agenda.

Second, I explore the relationship between state institutions and state actors. I analyze how state direct democracy institutions and the sophistication of state actors affect the success of blocking permissive immigration legislation. In the face of federal inaction on immigration reform, state governments have started addressing immigration. States are creating laws in policy areas like law enforcement, health care policy, and driver licenses. State driver licenses were particularly interesting because licenses are also de facto federal identification. State actors that work to provide driver licenses for

those who cannot prove legal presence must balance federal regulations, protections for undocumented immigrants, and the actions of Permissive and anti-immigration groups. This paper uses cross-case and in case comparisons of Oregon and California's attempts to pass driver licenses for those who cannot prove legal presence in the United States. I investigate how structural political opportunities and state actors influence the passage or failure of state immigration legislation. I find that the contraction or expansion of political opportunity structures at the state level, as well as the agency of state actors, can determine the passage or failure of state driver licenses for undocumented immigrants.

Third, I investigate state immigration policy from the perspective of a new institution and new actors: judges in the federal appellate and supreme courts and how their decisions affect immigration policy. The current literature on immigration federalism overlooks the impact of judicial behavior on state immigration law. I ask whether personal experience affects the way judges decide cases. I use the natural experiment of immigrant background to identify the effect of immigrant generation on the votes of judges. Using new data on the immigrant experience of U.S. Courts of Appeals and Supreme Court judges, I argue that being closer to the immigrant experience affects judicial behavior on state immigration laws. I find that second generation and Latino judges are more likely to rule in favor of immigrants than third or fourth generation, or non-Latino judges. These findings suggest that immigrant generation affects judicial behavior and that personal background of judges affects state immigration legislation.

Chapter 1
Direct Democracy Rules: The Affect of Direct Democracy On State Immigration Legislation

The number of states passing laws that affect noncitizens has increased exponentially over the past fifteen years. I investigate how direct democracy mechanisms (DDMs) affect legislative behavior on state immigration laws. Scholars argue this increase is a function of economic, partisan, or cultural forces. In addition to these explanations, I argue we must control for state political institutions, particularly direct democracy mechanisms, when investigating the extent to which states pass state immigration legislation

As much as these variables affect when states pass immigration laws, it is these *rules of the game*, that is, the state rules to policymaking and state policy players that influence where immigration policy is more likely to occur. This investigation finds that states with direct democracy mechanisms pass more immigration policy than states without direct democracy mechanisms. Further, this effect is present while controlling for more established explanations like economics, partisanship, and cultural threats. I investigate state immigration laws because it has become a more frequent topic of legislation at the state level. In addition, it affects a population that falls to the tyranny of the majority, immigrants. Further, citizens and groups have long used DDMs to curtail the rights and privileges of demographic and racial minorities in the United States.

I proffer that direct democracy mechanisms may affect these groups by their very presence as a state institution. After expanding on this puzzle of the influences on state immigration laws, I discuss the previous literature on why states pass immigration legislation. I offer my theory and argument that the expansion of the scope of conflict in a federal system increases the power that citizens have to influence state immigration policy. In states with direct democracy mechanisms, legislators are incentivized to pass immigration legislation to keep the policy agenda under their control. This work contributes to the larger investigation of the factors that influence the development of state immigration law. This study first addresses the previous literature on the effect of direct democracy on state legislation followed by my theory that direct democracy incentivizes legislative behavior on state immigration legislation. From my theory, I develop the observable implication that states with direct democracy mechanisms will pass more immigration legislation. I elaborate on my thirty year, fifty state dataset. I then expand on the operationalization of my control variables as well as my direct democracy variable. I use a generalized least squares model with panel corrected standard errors and find that direct democracy state pass more state immigration legislation.

Previous Literature

In thinking of the most controversial state immigration laws passed this century, we tend to overlook that they passed via direct democracy. California's Proposition 187, passed in 1994 was a product of state actors, written by members of the restrictionist group, California Coalition for Immigration Reform (Wroe 2008). Ten years later,

Arizona citizens passed the Arizona Taxpayer and Citizen Protection Act (Prop 200). A group of restrictionist state actors, the Protect Arizona Now committee, wrote and successfully passed this proposition before the Supreme Court struck down sections on voter identification (Sanders 2013). As we know, challengers to the legislators' seat, legislative committees, the media, political parties, even the state executive and judicial body share the agenda setting and law making power of legislators (Bratton 2002, Cox and McCubbins 2005). However, few scholars tell us how legislators react to this encroachment by citizens into their agenda-setting arena. The previous literature argues the increase in subnational immigration law making is a result of either change in economic or partisan indicators or a change in demographic or culture of a state. I add to this literature by arguing that institutional organization affects legislative behavior on state immigration legislation.

Economic Explanations

The economic theory suggests that states will pass state immigration laws after a noticeable change in the economy. This change can occur as either a change in once profitable economic sectors or a general economic downturn. Further, an analysis of the economic costs of immigrants is argued to inform immigration policy attitudes (Borjas 1995, 1999, Massey et al. 2003, Rothman and Espenshade 1992, Scheve and Slaughter 2001). Borjas argues that while immigrants may not have a short-term impact of taking employment from natives, their greater economic impact is their propensity with high poverty rates and participation in the welfare system. A larger effect is lower national income and tax revenue as unskilled labor contributes less to the American economic

system. Conversely, when states find immigrants help prop or create some economic sector, they may pass laws that are more permissive.

Political Explanations

The role of political system characteristics, specifically the form of government is important to many policy choices. A state-level analysis of the effect of electoral institutions and competition on policies has led to mixed results (Amenta and Carruthers 1988, Chang and Golden 2007, Dolowitz and Marsh 2006, Wibbels 2003). At the local level, this debate has also focused on the consequences of forms of government, representation systems, and executive leadership for policies and expenditures. Investigations of the institutional reformist movement that sought to insulate local government from partisan politics indicate that some institutional arrangements may influence cities' policy decisions more than others (De Mello 2002). The ideological distance between the executive and the legislature may also restrict possible policy coalitions and incentivizes blocking policy, not cooperation (Clinton et al. 2011, Richardson et al. 2012).

Cultural Explanations

Scholars have used policy process tracing to highlight the paradox of exclusion and highlight immigration to the United States has never been laissez-faire but a conscious effort to populate the U.S. with the "right" kind of immigrant (Ngai 2004, Zolberg 2008). In addition to immigrant and immigration policy used for nation building, discussions of immigration policy have moved towards discussions of national security

(Waslin 2011). Thus, official documents previously used as administrative tools (e.g. drivers licenses) have entered into the larger national security discussion and become a national security document. Studies about immigration policymakers at the sub-national levels examine the viability of the cultural arguments underlying restrictive legislation. Sub-national immigration regulation is neither the only nor the most effective method of promoting community cohesion and stability. National or sub-national units can create and maintain stable, culturally distinct communities without building physical or legal walls (Gulaskaram 2011).

Direct Democracy

Citizens in states with direct democracy mechanisms have used them to make policy on abortion and the death penalty (Arceneaux 2002, Gerber 1996). Notably, groups have used statute and constitutional initiatives to restrict the rights of underrepresented groups like the LGBT community, immigrants, and people of color (Matsusaka 1995, Gerber and Hug 2001, Hosang 2010). First, the initiative reduces legislative accountability by putting policy making in the hands of the masses. Policy successes and failures cannot be claimed by the elected leaders because they are often not entirely or not at all the cause of the outcome. When the voters cannot determine whose responsibility it is that the government is failing to work correctly, they express their frustration by giving the legislature low approval ratings and by passing more initiatives. General elections cease to be a way to keep the government accountable to the people.

Second, the initiative process reduces legislative flexibility. Because initiatives cannot be amended or repealed but by another vote of the people (unless their provisions

allow otherwise), the legislature is unable to use the power vested in it to change or repeal bad laws, or laws that conflict with other provisions of government. This shackles and binds the legislature into a rigid, virtually unchangeable framework that can only change incrementally by successive votes of the people — such votes being the cause of the shackling in the first place. Scholars have also shown that citizens in states with direct democracy mechanisms have higher political efficacy and knowledge (Bowler and Donovan 2002, Smith 2001, Tolbert et al. 2009, Nicholson 2003).

Lastly, it has been found that DDMs also affect Legislative behavior. Legislators must change their behavior if they must also contend with citizens for control over the policy agenda (Gerber 1996, Matsusaka and McCarty 2001).

Theory

The writings on federalism by Pierson and Frey root the theory of this relationship between DDMs and state immigration legislation. Pierson (1995) tells us Federalism increases the number and power of interest groups and changes the incentive structure for these groups. Fragmented governing institutions like those in a federal system must include and address the concerns of political and economic interests, and constituents (Pierson 1995, 473). The interaction of these interests with the institutional rules makes it difficult to "fully explain outcomes" because observers know little about the "preferences, identities and resources of the players" (Pierson 1995, 473). Rightfully so, it is in these shadows that state immigration legislation becomes a focus of subnational interests.

Having a federal system allows state legislators to act on immigration policy within their political domain, but also offers state constituents greater input on these laws. This power of input increases further in direct democracy states, where interest groups have more authority in the political arena (Frey 1994). Citizens who live in states with direct democracy mechanisms can bypass their legislators and introduce their legislation. Federalism offers non-elected officials more power from the creation of local spheres of interest. Within that federal system, citizens in direct democracy states have more power to shape the state policy agenda through statute initiatives. In the context, I offer my argument that legislators are incentivized to pass more legislation to have control of the policy agenda.

Argument

Lupia and Matsusaka (2004) argue direct democracy mechanisms affect policy even if never used. Just the threat of an initiative can influence legislative behavior. Legislators may pass laws to attempt to accommodate interest groups and eschew an initiative (Gerber 1996, 1998). I argue that in states with DDMs, Legislators are incentivized to pass legislation, and state actors are incentivized to bypass the legislature. First, to preempt the appropriation of the state immigration policy agenda, Legislators are incentivized to pass laws to pre-empt state groups from passing legislation (Gerber 1996, 1999, Matsusaka and McCarty 2001). The pressures of reelection also bind state legislators, making them more likely to pass state immigration legislation to enact laws that represent their constituents' preferences (Mayhew 1974). Secondly, state groups are

incentivized to bypass the legislature to pursue their policy preferences (Boehmke 2002). State interest groups are incentivized to eschew the legislature and use DDMs to keep more control over the final product. Using direct democracy mechanisms allows state groups the luxury of not having to compromise, as legislators do, to pass their propositions. The main observable implication of this theory and argument is that *if a state has direct democracy mechanisms, then we should see legislators passing more state immigration legislation.*

Data

The scope of this dataset is all state legislation referencing non-citizens from 1980 to 2014. I include all fifty states making the total number of observations 1750. To create this data set I included data from the Census, the Bureau of Labor Statistics, and the IRS. I elaborate on my dependent and independent variables and my coding scheme in this section.

Dependent Variable

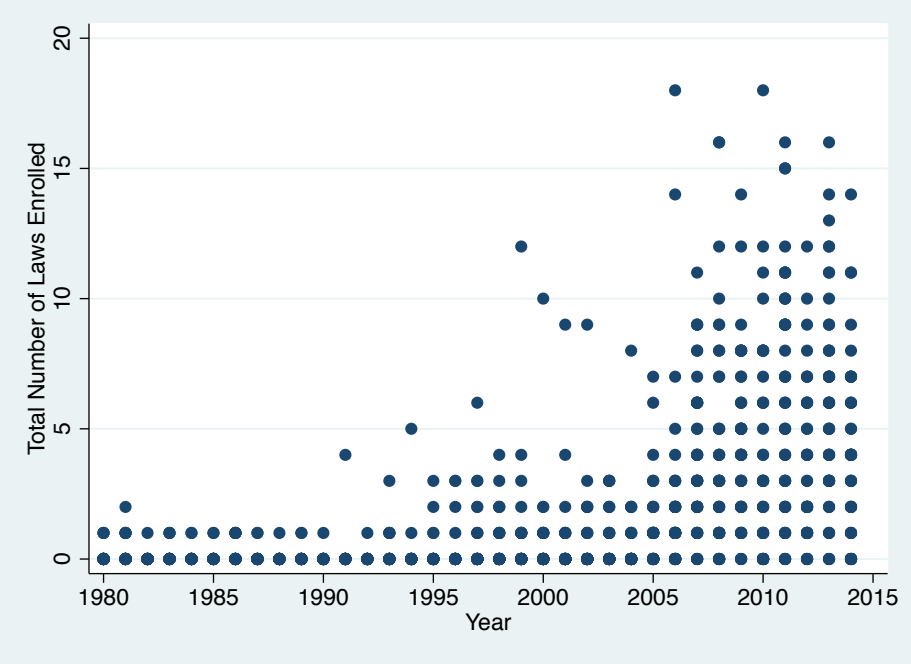
My dependent variable is the total number of state immigration legislation that reached the enrolled stage by each state legislature in one year. These state laws create or amend legislation concerning non-citizens. I include legislation that affects undocumented immigrants as well as legal permanent residents and those with non-immigrant temporary visas. Specifically, this data includes laws that have an impact on a non-citizens' ability to access welfare, employment, or health care benefits and state licenses. The law is included in the year it passed both legislative houses. Therefore, this

dataset includes legislation that was not enacted. The reasoning behind this is to focus on the action of state legislatures and not state executives. The search term for these investigations is state legislation that mentions immigration, immigrants or aliens, or their variations. I build on Monogan's (2013) National Council of State Legislature dataset by adding three years (2012-2014) to make it current and the previous 25 years (1980-2005) to make the dataset comprehensive.

Independent Variables

My variable of interest is the presence of direct democracy mechanisms or mechanisms that allow citizens to enact legislation bypassing the legislature. I operationalized this concept by identifying states that allow citizens to introduce statutory initiatives. Currently, fourteen states allow direct statute initiatives: proposals that go directly on the ballot if they meet the required number of petition signatures. I coded the presence of direct democracy mechanisms as a dichotomous variable, 1 representing states that allow direct statute initiative and 0 representing states that prohibit direct statute initiative.

Figure 2: Distribution of Total Immigration Laws by State Enrolled at the State Level 1980-2014



Control Variables

Demographics

To construct the number of black, Latino, and white citizens per state per year, I combined data from the public use microdata sample (PUMS) for population estimates and demographic components, the Current Population Survey (CPS) from 1980 to 2014, for each state.

Foreign Born

To create the percent foreign born by state over time, I combined data from two Census datasets on the number of foreign born by state. I combine the Nativity of the Population, for Regions, Divisions, and States dataset, which give the number of foreign born by state up to 1990 with the PUMS data on foreign-born per state from 1991 to 2014.

Economic

The economic variables represent economic sectors traditionally linked or affected by immigrant labor or indicators of state economic strength. Agriculture GDP, Construction GDP, and Unemployment percentages were taken from the Bureau of Labor Statistics for years 1980 to 2014.

Partisanship

I include partisanship variables as a control for political explanations of the passage of state immigration legislation. I used data from the National Conference of State Legislators to organize the Governor's political ideology, Legislative Party Control, and the Republican and Democratic Presidential Vote Share (GOP and Dem) for the previous election. Governor and legislative ideology are categorical Republican (-1), Independent (0), and Democrat (1).

Other Arguments

Aside from these control variables, I included two variables that according to my theory might also influence the passage of state immigration legislation aside from direct democracy mechanisms. The first is the extent of a Professionalized Legislature. The adoption of more immigration law could be a function of legislative professionalization. Perhaps states with more professionalized legislatures make more laws because they have the institutional support to do so. Further, Boushey and Luedtke (2011) find that increasingly professional legislatures will pass more permissive immigration legislation.

To control for this, I used the NCSL's six-point categorization scale to measure the extent of the professionalization of each state (NCSL 2015).

I also include a measure of the presence of State Civil Society using the Internal Revenue Service's Exempt Organizations Master File (Internal Revenue Service 2016). I compiled a list of all 501 (c) with immigra* in the organization names (N=310) by the state of their headquarters and their ruling year, the year the IRS granted them tax-exempt status. This variable is an admittedly conservative tool, as there are organizations that work on immigration legislation that do not have immigrant or immigration in the name, and there are groups that may have been influencing immigration legislation before receiving tax-exempt status. However, the point of this measure is to control for the presence of restrictionist and permissive immigration organizations that may seek to affect state immigration laws, either by influencing politicians or, in direct democracy states, pass immigration legislation. These groups include private and non-private foundations, churches, schools, and groups that receive substantial support from the government or the public.

Method

The statistical model that best fits this investigation is a Cross-Sectional Time Series model. Panel data allows the inclusion of as many cases as possible, and it allows scholars to generalize about all states. Second, as state immigration control is a process, it is important to control for the passage of time. The larger number of cases means I can have beta coefficients that are more accurate. I have more degrees of freedom and more

sample variability than cross-sectional data. Finally, the information on intertemporal dynamics and the individuality of the states allows for better control of the effects of missing or unobserved variables. There are two conventional ways of modeling cross sectional time series data, the first is using a Feasible Generalized Least Squares model, and the second is using a Generalized Least Squares model with Panel correct standard errors. I chose the latter because it is offers conservative standard errors relative to FGLS.[1] The disadvantage of the FGLS approach is that the standard error estimates are conditional on the estimated disturbance covariance (Beck and Katz 1995). Beck and Katz argue that because the estimate of effect size is never exactly equal to the actual effect size, which compounds the inaccuracy of the standard error of the coefficients. The "panel corrected standard errors" are a "robust" estimate in the sense of White-Huber. These inaccuracies decrease the improvements in power using FGLS with CSTS data and inflate the standard errors. Therefore, I show the results of this investigation using a Prais-Winsten generalized least squares regression with heteroskedastic panels corrected standard errors (PCSE) and correcting for a panel specific AR(1) process. Panel corrected standard errors are an alternative way to correct for heterogeneity between the panels, as well as year-specific shocks. However, it does not address serial correlation, which I also address by adding a lag of the dependent variable. To specify the model, I first used a Wooldridge test and found evidence of a higher order autoregressive process. Using a Second, using a Levin, Lin, and Chu test, I confirmed my main explanatory variable did not contain a unit root. This means the model should not include a first differenced

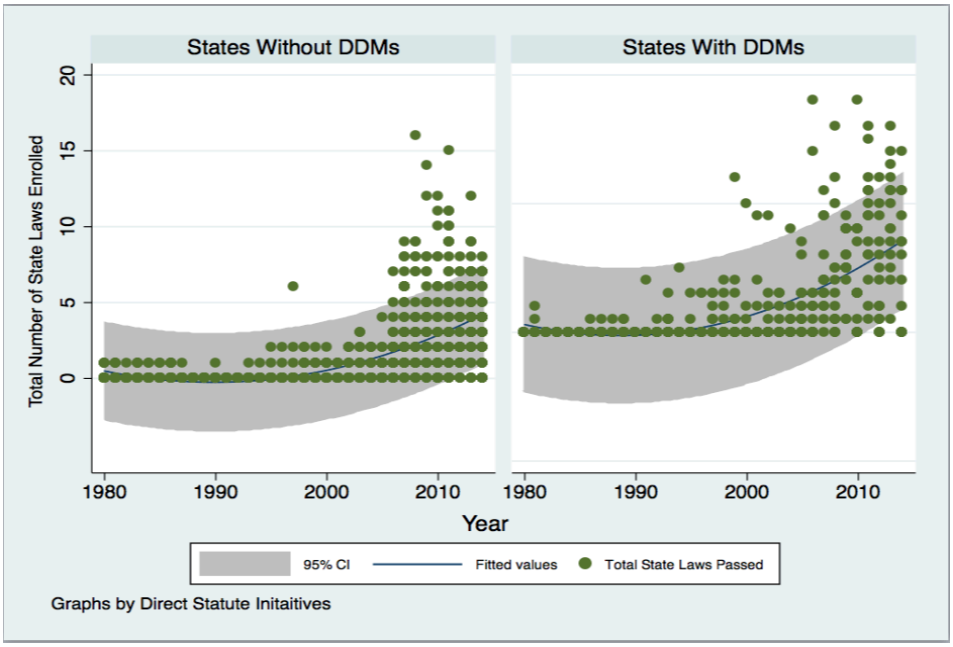
[1] FGLS model in appendix

dependent variable on the right-hand side of the equation. Third, using a likelihood-ratio test for panel data, I found statistical evidence of the presence of heteroskedasticity. To control for these specifications, I defined the model assuming the presence of a heteroskedastic error structure with no cross-sectional correlation and panel specific AR(1) autocorrelation. Therefore, I use a Prais-Winsten generalized least squares regression with heteroskedastic panels corrected standard errors and correcting for panel specific AR(1) processes (Johnson 2004). Further, I include a lag of the dependent variable to control for serial correlation over time.

Results

The figure below compares the total number of state immigration laws enrolled in states with statute initiatives and states without statute initiatives. The confidence intervals are larger in states with DDMs because there are fewer states that offer a statute initiative. However, the fitted values for DDM states start at a higher value on the scale than non-DDM states. While the introduction of control variables will temper this difference, it is still significant and in the expected direction. While figure 2 compares these DDM and non-DDM states, Table 2 shows the results of the statistical model, including controls.

Figure 3: Comparison of the Total Number of Immigration Laws Enrolled in DDM States versus non-DDM States



The implication of my theory and argument is that states with direct democracy mechanisms will pass more state immigration laws than states that do not have direct democracy mechanisms. The variable of interest is significant and in the expected direction.[2] When a state has direct democracy mechanisms, the number of state immigrant laws is expected to increase by approximately half a law. I also find evidence for the cultural threat hypothesis. Substantively for a one unit increase in the percent foreign born, the number of total state laws is expected to increase by approximately two, holding all other variables constant. I also find evidence for the economic threat hypothesis. Substantively, for a one-unit increase in the percent unemployed, the number

[2] The Wald Chi-Square statistic is 152.2 with 11 degrees of freedom. This statistic is significant at the .001 level, allow me to reject the null hypothesis that all of the regression coefficients in model are simultaneously equal to zero

of total state laws is expected to increase by approximately five, holding all other variables constant. I also find a small but statistically significant evidence for the partisanship hypothesis. The model shows that states with Democratically controlled legislatures pass 0.174 less laws than Republican controlled legislatures, holding all other variables constant at their mean. Further, a one percent increase in presidential vote share for the Republican candidate, the number of laws passed increases by 0.034, holding all other variables constant at their mean. Lastly, a one-percent increase in presidential vote share for the Democrat increases the number of laws passed by 0.0616, holding all other variables constant at their mean.

State civil society is negatively associated with the passage of state immigration legislation. The addition of one civil society group in each state decreases the number of laws passed by 0.133, holding all other variables constant at their mean. Another institutional variable, the extent of legislative professionalization, is also significant and in the expected direction. States with professionalized legislatures tend to pass more laws, as the increase in professionalization by one NCSL category, increases the number of state immigration bills passed by 0.503, holding all other variables constant at their mean.

Table 2: Generalized Least Squares Model with Heteroskedastic Panel Corrected Standard Errors

	Coefficient
Constant	-4.150***
	(0.693)
Pct Hispanic	0.891
	(0.713)
Pct Foreign Born	1.944*
	(1.173)
Pct Agriculture GDP	-3.278
	(2.374)
Pct Construction GDP	-0.193
	(4.353)
Pct Unemployment	5.457**
	(2.140)
Direct Democracy	0.456***
	(0.133)
Partisan Legislature	-0.174***
	(0.0599)
Governor PID	-0.00314
	(0.0440)
Pres. GOP Vote Share	0.0343***
	(0.006)
Pres. Dem Vote Share	0.0616***
	(0.008)
Laws Previous Year	0.0871***
	(0.0202)
Prof'd Legislature	0.503***
	(0.0274)
State Civil Society	-0.133***
	(0.0508)
Observations	1,718
R-squared	0.422
Rho (dw)	.0123718
chi2	837.0
df	13
rss	5893
mss	4308
rmse	1.860

Panel correct standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Discussion

The purpose of this investigation was to show the importance of including state institutional variables in discussions of state immigration legislation. Using panel data consisting of fifty states over 30 years, I found that states with direct democracy mechanisms consistently use them to set or change the state immigration agenda, and legislators in those states have had to contend with powerful non-governmental interests when attempting to make or change state immigration legislation. The literature on state immigration policy seems to have overlooked these institutional structures. However, in addition to economic and political explanations of why and when states pass immigration legislation, we must control for the governmental institutions already present before investigating demographic or economic reasons. It is these rules that influence the development and passage of immigration policy beyond partisanship and demographic changes. Examining the relationship between state immigration policy, legislators, and direct democracy has significant ramifications for the type of legislation created and the type of democracy we experience at the state level. If, as Gerber (1996, 1998) argues, legislators write and pass laws to assuage the threat of initiative or referendum, then state immigration legislation may be less a creation of thoughtful policy and more the reaction of legislators to the threat of action. Further, the goal of this legislation may be to appease powerful state groups. Groups that use DDMs to pass state immigration policy tend to be on the political extreme. This institutional feature pulls immigration policy to a political extreme that conflicts with the preferences of the majority and is unbeneficial to the state.

More broadly, this work calls into question the extent to which we are at the whims of the mischiefs of factions and governed by a tyranny of the minority (Madison 1787, Bishin 2009). Bishin finds a relationship between federal legislators and groups of intense citizens within institutional rules that do not allow citizens to introduce their own legislation, a much harder test than direct democracy systems. In essence, threatening to launch an initiative or referendum campaign gives small groups of citizens the attention of the legislature. The knowledge these groups have about the initiative process, as well as their intense feelings about immigration, can cause a legislator to overlook the many to placate the few.

The next step of this study is to divide this legislation into permissive or restrictive immigration legislation and test the influence of state institutions on different types of bills. State immigration laws vary markedly in the extent to which they affect the lives of noncitizens. This investigation is the next step in understanding the institutional influences on state immigration policy. In conclusion, direct democracy states pass more state immigration laws than states without direct democracy mechanisms. Future investigations of state policymaking that must take institutional set up into account when asking when or why states pass policies.

Chapter 2
Direct Democracy Rules: Why Immigrant Driver Licenses Failed in Oregon and Didn't in California

Since 2009, state legislatures have considered almost 1,600 bills or resolutions related to immigrants or immigration (National Conference of State Legislatures 2015). This phenomenon is of interest to American politics as another example of the tenuous relationship between state and federal governments. In short, states have taken a prominent role in developing state immigration policy. Given the rising role of states in immigration policy, why do some states pass permissive state immigration laws while others do not? There is a rich and growing scholarship in the study of immigration federalism. Increasingly, scholars look to state laws to study immigration policy and the role of states in legislating the privileges and rights of non-citizens. Previous scholarship has argued for a correlation between demographic and partisanship variables and state immigration legislation (Chavez and Provine 2009, Newton and Adams 2009, Ramakrishnan and Wong 2007). This work highlights the influence of time and context-specific processes that influence passage, specifically the role of institutional rules and actors in states with direct democracy.

My argument provides new insights into the relationship between these mechanisms and gives attention to previously overlooked factors. I argue two components are pivotal to explaining the expansion of immigration policy at the state

level—institutional rules and social movement actors. Legislative institutions, particularly direct democracy mechanisms, structure the political opportunities available to policy actors. Second, actors work within these structures attempting to enact their policy preferences. The interaction of issue activists and political opportunity structures explain when and why states pass immigration legislation. The role of direct democracy institutions, like referenda, defines a state's political opportunity structure. Favorable political structural opportunities must be in place for issue activists to succeed. However, as explained by the social movement literature (McAdam 1999), these rules only structure the opportunities; issue activists must recognize the opening and have the resources to exploit it. I test this argument using Oregon and California, while accounting for alternative explanations like the percentage of the Latino electorate and state partisanship. I use a cross-case comparison of driver license legislation in Oregon and California, and a within-case comparison of four immigration laws in the Oregon Legislature in one legislative session.

With this in mind, I organize this investigation as follows. First, I offer some background on the changes to state-issued driver's licenses after the 9/11 terrorist attacks, leading to an increase in federal involvement in driver's licenses and the ensuing state pushback. Second, I discuss the literature on direct democracy, political opportunity structures, issue activists/interest groups, and their effect on state immigration law. Third, I explain the utility of case studies of Oregon and California as it highlights the unique political opportunity structure in each state and the role of state issue activists on driver's license legislation. Fourth, I undertake cross-case comparisons and in-case comparisons

of immigration laws in Oregon and California over time to highlight the importance of these structures and actors in the policy process. Lastly, I draw conclusions on the role of issue activists and opportunity structures in the future study of state immigration legislation.

Some states were involved in immigration policy before 2001, but the occasions were sparse and did not focus on national security. With a concerted focus on thwarting possible terrorist attacks, state legislatures introduced and/or enacted the majority of state immigration policy after 2001 (Tumlin 2004). This is a result of the attacks on the World Trade Center in 2001—the subject of the following section.

Background on the State Driver's License Issue

State-issued licenses have been the de facto form of federal identification in the United States since their inception. Before 9/11, states autonomously decided the acceptable documents for a state-issued driver's license. These documents varied from birth certificates and social security cards, to a unique combination of secondary identifying documents. In this context of state autonomy, some states did not require proof of legal presence to issue a driver's license. It was in one of these states that the 9/11 terrorists obtained driver's licenses to carry out their attacks. After the attacks, the Department of Homeland Security and federal legislators supported the creation of a national identification card, with biometric information to replace the state driver's license and address inconsistent state policies on driver's licenses (Kravetz 2010). The national identification card came under fire from the ACLU and former legislators like

Ron Paul, who was concerned the federal government could use the biometric information to track citizens (Dick 2014, ACLU 2015a). In the face of this opposition, one policy proposal gained political momentum. The 9/11 Commission suggested states require future applicants for state drivers licenses show documentation of their legal presence. Four years after 9/11, Congress passed the REAL ID Act of 2005 to "improve the reliability and accuracy of state-issued identification documents," for the purposes of inhibiting "terrorists' ability to evade detection by using fraudulent identification" (DHS.gov 2015). In the absence of a national identification card, the hope was that requiring documents from various agencies to apply for a driver's license would increase the difficulty for terrorists and undocumented immigrants in obtaining one (Zureik 2010).

This federal standardization of required documents has created contention in the context of state issued driver's license. States usually control the standards of licensing in their state, for doctors, attorneys, and even hairdressers. Unlike these professional licenses, a state-issued *license to drive* has also become an accepted form of identification for federal use, as the federal government has no national identification card. Therefore, the driver's license is not only a state-issued authorization to operate a motor vehicle; it is also a federal identification document. This structure of state driver's licenses as federal identification effectively conflates the privilege of driving with federal mandates for identification, and makes it difficult to offer the privilege to residents who cannot prove their legality. Therefore, driver's licenses for undocumented immigrants tread between the worlds of state licensing, federal mandates for identification, and the federal national security agenda. States willing to provide this privilege to undocumented immigrants

must navigate not only the political structures of their legislature, but federal identification mandates and restrictivist groups. The following section discusses political opportunities and issue activists in detail, and uses these concepts to create a working theory for their interaction and effect on driver's license laws.

Literature Review

The social movement literature has focused on the power of citizens to affect change but literature has recently become interested in legislative outcomes (Amenta et al 2010, Giugni 1998). There is also work that analyzes the effect of social movements on the policy process (Burstein 1999, Kingdon 1995). Political opportunity structure theorists argue that changes in the political system are integral for understanding the creation and success of social movements (McAdam 1982; Tarrow 1998). These features include the availability of elite allies, meaningful access points, elite fragmentation, and repression. In these cases, the "relative openness or closure of the institutionalized political system" is that of the state legislature. The relative openness or closure is how willing a legislature is to incorporate the policy preferences of citizens (McAdam 1999). The second and third dimensions are the "presence or absence of elite allies" and the stability "of elite alignments" (McAdam 1999). These dimensions represent informal power relations working within formal institutions. Issue activists must ally political and policy elites to enact their policy preferences. Further, these alliances must remain stable over the length of the policy process; losing elite alliances can mean the closure of the opportunity structure and the inability to enact change. The last dimension is the "states

capacity or propensity for repression," that is, the extent to which the legislature is willing to repress those who work against its legislative interests (McAdam 1999). In this analysis, the passage of state immigration laws is the result of actors taking advantage of the political opportunity structure in their state. Elite alignments and alliances change over time, changing the political opportunity structures within which immigration legislation passes and fails.

This understanding of a political opportunity structure means issue activists must recognize their strategies must rise to meet structure changes. Therefore, "political opportunity structures influence the choice of protest strategies and the impact of social movements on their environment" (Kitschelt 1986). This framework explains the contextual influences mobilizing actors when the political the opportunity structure most strongly predicts a movement's success (Amenta and Caren 2004). Social movement scholars distinguish between open and closed political opportunity structures as those structures offering actors easy access to the political system and those where access is more difficult (Tilly 1978; Amenta and Caren 2004). Even with its critics (Gamson and Meyer 1999; Skrentny 2006; Luders 2010), this approach has been a well-known explanation of the success of the civil rights movement (McAdam 1982; Meyer and Minkoff 2004).

Political opportunity structures explain when institutions are open to passing immigrant legislation, but activists, specifically restrictivist groups, must exploit this opportunity to block permissive (or pass restrictive) state immigration laws. In the political opportunity structure framework, political actors are less stable than structural

components: alliances between actors can end or change (Kriesi 2004). Further, movements have less access to elites and resources, increasing the difficulty in changing policy (Piven and Cloward 1978). However, compared to the federal level, state level actors, particularly those in direct democracy states, enjoy more options and power to affect policy change. Scholars show that state interest groups are active participants in direct democracy mechanisms in the states that allow it (Gerber 1998; Alexander 2002). Citizens in states with direct democracy mechanisms have used them to make policy on abortion and the death penalty (Arceneaux 2002; Gerber 1996). Particularly, groups have used statute and constitutional initiatives to restrict the rights of underrepresented groups like the LGBT community, immigrants, and people of color (Matsusaka 1995; Gerber and Hug 2001; Bowler et al. 2006; HoSang 2010). Schildkraut (2001) lends evidence to the influence of direct democracy institutions when states pass restrictive immigration legislation. She found states without an initiative process had almost no chance of passing restrictive immigration laws while similar states with initiatives were more likely to do so. The next section discusses political opportunity structures at length, including a discussion of the specific rules for direct democracy in Oregon and California, among others. The discussion of political opportunity structures precedes a review of the literature on issue activists, and a theory about how these variables interact in the state legislative process.

Variables

Immigration Policy, Restrictive and Permissive Groups

State immigration policies are those that target the welfare, social and political inclusion, and protection of non-citizens in each state. For the purposes of this investigation, restrictionist groups are those likely to support restrictive state immigration policy: legislation that restricts the political or civil freedoms of non-citizens or their access to public services or assistance. Permissive immigration groups tend to support permissive state immigration policy: legislation that increases the political or civil freedoms of non-citizens or their access to public services or assistance.

Political Opportunity Structure

In the context of a social movement, Douglas McAdam defines a political opportunity as the confluence of four dimensions. The first dimension is the "relative openness or closure of the institutionalized political system" (McAdam 1999). In these cases, the institutionalized political system is the state legislature, and the relative openness or closure is the extent to which the legislature is willing to incorporate the policy preferences of citizens in law making. The second and third dimensions are the (in)stability "of elite alignments" and the "presence or absence of elite allies" (McAdam 1999). These dimensions speak to the informal power relations that work within formal institutions. Issue activists must ally political and policy elites to enact their policy preferences. Further, these alliances must remain stable over the length of the policy

process; losing elite alliances can mean the closure of the opportunity structure and the inability to enact change.

The last dimension that constitutes a political opportunity structure is the "states capacity or propensity for repression," that is, the extent to which the legislature is willing to repress those who work against its legislative interests (McAdam 1999). In this analysis, the passage of state immigration laws may be a result of the ability of actors to take advantage of the political opportunity structure presented to them in their state. Elite alignments and alliances change over time. This effectively changes the political opportunity structures within which immigration legislation can be passed. The change in political opportunity structure not only affects how much legislators are willing to listen to state immigrant groups, it also changes the content of state laws.

McAdam's definition of a political opportunity structure shows that as the structure changes, so too must the strategy of issue activists if they wish to enact change. Therefore, "political opportunity structures influence the choice of protest strategies and the impact of social movements on their environment" (Kitschelt 1986). On a macro level, this framework accounts for contextual influences after actors decide to mobilize, when the political context (i.e. the opportunity structure) most strongly predicts the success of a movement (Amenta and Caren 2004). Social movement scholars distinguish between open and closed political opportunity structures that allow for easy access to the political system or those in which access is more difficult (Amenta and Caren 2004). Suh (2001) incorporates Tilly's (1978) definition of a "contraction" of political opportunity as the decreased state capacity to implement policy that is responsive to the collective demands

of groups. Rucht (1996) defines an "expansion" of the political opportunity as the enhanced state capacity to implement policy responses to a movement's collective demands. Oregon experienced an open political opportunity structure, allowing restrictivist groups to influence formal legislative structures. Conversely, California experienced a closed political opportunity structure for restrictivist groups to influence formal legislative structures as AB 60 moved through the legislative process.

The next section will operationalize the political opportunity structure in Oregon and California using four indicators in each state's respective attempt to change driver's license policy to offer a license to those who cannot prove legal presence.

Four ways to operationalize an open or closed political opportunity structure in these states are the presence of direct democracy mechanisms, a Democratic majority in the state legislature, the electoral strength of restrictivist groups, and legislative rules and procedures. First, and most important in both cases, is the direct democracy process, specifically the citizen's referendum. Both Oregon and California have mechanisms for direct democracy: petitioners in both states can introduce citizen initiatives. Petitioners can also place enacted legislation on the election ballot as a citizen's referendum, as long as the legislation does not contain an urgency or emergency clause. In Oregon, petitioners can file a citizen's referendum against any legislation that does not have an emergency clause. An emergency clause immediately enacts a piece of legislation after the Governor signs it. No later than 90 days after the Legislature adjourns, chief petitioners must have written approval from the Secretary of State to circulate the text of the act among registered voters for the purposes of collecting signatures. The number of signatures

required to qualify a referendum to the ballot is four percent of the votes cast at the most recent gubernatorial election. For the 2014 election, activists had to submit 58,141 valid signatures to the Secretary of State by October 4, 2013 to place a referendum on the Oregon ballot (Oregon Secretary of State, 2015).

In California, electors have the power to approve or reject statutes or parts of statutes, with the exception of those laws with urgency statutes. Urgency statutes are legislation immediately enacted with a governor's signature. Petitioners have 90 days from the date of a bill enactment to request and receive a circulating title and summary from the state Attorney General. Within these three months, petitioners must also gather the required number of valid signatures, and file the petitions with the county elections officials (California Secretary of State 2015). Referenda, unlike initiatives, can qualify for the statewide ballot up to 31 days before an election to appear on the next general election ballot (California Secretary of State 2015). For a referendum on the California driver's license law to be on the next general ballot, petitioners needed to gather 504,760 valid signatures, or five percent of the total votes cast in the previous gubernatorial race by April 18, 2014.

Both Oregon and California's driver license laws lacked urgency or emergency clauses and were open to referendum. Aside from the political opportunity structure available to groups via direct democracy mechanisms, Democratic legislative majorities in the Oregon and California state legislatures are political opportunity structures that shape the outcome of driver's license policy. However, the institutional rule that is most important in determining an open or closed opportunity structure is whether legislation

comes with an emergency clause. Legislation with emergency or urgency statutes is immediately enacted with a governor's signature. Legislation without an emergency or urgency clause allows petitioners in a state with direct democracy mechanisms to place the legislation on a ballot for a citizen's referendum. Neither Oregon's SB 833 nor California's AB 60 included an emergency or urgency clause in the text of the bill. This left an open political opportunity structure for restrictivist groups to block driver's licenses for undocumented immigrants by introducing a referendum on the next ballot. In Oregon, restrictivist groups took advantage of this institutional rule while groups in California did not.

Political Sophistication

Political opportunity structures explain when institutions are open to passing immigrant legislation, but activists, specifically restrictivist groups, must exploit this opportunity to block permissive state immigration laws. In the political opportunity structure framework, political actors are less stable than structural components: alliances between actors can end or change (Kriesi 2004). For the purposes of this investigation, restrictivist groups are those likely to support restrictive state immigration policy, legislation that restricts the political or civil freedoms of non-citizens, and their access to public services or assistance. Further, they are more likely to work to block permissive state immigration policy. Permissive state immigration laws increase the political or civil freedoms of non-citizens or their access to public services or assistance. Permissive groups are likely to support permissive state immigration legislation and attempt to block

states from passing restrictive immigration laws. These groups work as political activists to move their policy preferences through the legislative process.

Political activists can come from any segment of society, but immigration policy activists are usually near the ends of the ideological spectrum. A political activist usually attempts to implement change through the passage of policy, so they work outside formal governmental systems to introduce, translate, and implement innovative ideas into public sector practice. Activists are vehicles of innovation that carry out "new combinations" of existing institutions and structures to increase efficiency or benefits. Activists seek "to fight, to succeed for the sake… of creating… of exercising one's energy and ingenuity" (Schumpeter 1934, 93). Schumpeter's entrepreneur introduces change quickly within institutions, followed by stability. Activists are similar to a punctuated equilibrium as they change the incremental trajectory by introducing noticeable changes to the political process (Krasner 1988; Sabherwal et al 2001; Schneider 2006).

Another important source of issue activists are interest groups that organize to achieve a common goal. These types of actors contribute to the creation of sub national immigration policy by supporting activists via resources, information, and credibility. If changing immigration policy is not the main goal of actors, it can support or be a vehicle towards the enactment of an interest groups main goal. With only a few exceptions (Marietta and Barker 2007), regular voters look to more politically sophisticated elites as guides to understanding the political world (Nie et al 1979; Campbell et al 1964; Key 1966; Zaller 1992; Lupia and McCubbins 1998). Political sophistication is the extent to which an actor understands the policy process and the political system to act within it

(Maloney et al 1994). An actor exhibiting high sophistication would have extensive knowledge about the policy process and be able to use the political system to achieve their desired outcomes. An actor exhibiting low sophistication would have little knowledge about the policy process and little ability to use the political system to achieve results.

Sophisticated political actors in the state immigration sphere would have a working knowledge about the state political system and any mechanisms of direct democracy in addition to lobbying, mobilization, and resource collection skills. Politically sophisticated actors are more than just perceptive lobbyists. They must also have a working knowledge of the political system to identify opportunities for actions. With respect to driver's licenses, political actors working outside the legislature must also understand the relationship between federal regulations and the state regulations on license identification. Especially in states with direct democracy mechanisms, actors must know when and how to access initiatives and referendums to further their policy preferences. Second, they must use their interpersonal lobbying skills to build alliances inside.

Lobbyists operating within the state political system will need professional skills and knowledge related to that specific context of state and time. Activists represent constituencies that seek a voice with policy makers and efficacy is positively correlated with success (McGrath 2006). They should be skilled listeners and observers, as well as possess high integrity and credibility to policy makers and their constituents (McGrath 2006). In addition to convincing legislators, politically sophisticated actors should also be

able to mobilize like-minded citizens to pursue their policy preferences. Since efforts to pass and block state policy usually last months to years, sophisticated political actors must sustain the commitment and mobilization of groups of people over time. Further, they incorporate citizen participation in the policy process by facilitating their ability, skill, and commitment to phone bank, canvass, rally, and petition. If we understand the mobilization of constituents as a resource of volunteers, we add human resources to the list of four resources sophisticated political actors seize and exploit for policy gain.
I use the term resource collection because, in addition to raising funds, politically sophisticated actors must be able to collect and exploit different types of resources to further their policy goals. They must be able to reach out to knowledgeable people outside their circle and apply this quickly learned knowledge to reaching their goal. They should be able to seize and exploit moral resources, like sympathy and solidarity, and social-organizational resources like their social networks and bloc recruitment.

Additionally, highly sophisticated actors can exploit cultural resources like their groups' prior activist experience and understanding of the issues (Edwards and McCarthy 2004). In many cases, these in kind resources are worth as much as or more than material resources like money and physical capital (Edwards and McCarthy 2004). Highly sophisticated actors have a working knowledge of the state political system in which they seek to make change and the ability to lobby legislators and mobilize constituents in addition to acquiring and spending material resources for their cause.

The decision to pursue or not to pursue a citizen's referendum in Oregon and California highlights the importance of actors in this policy process. Issue activists

working within political opportunities help explain why "even groups with mild grievances and few internal resources may appear in movement, while those with deep grievances and dense resources— but lacking opportunities—may not" (Tarrow 1998). We can see how a group in Oregon, with a small number of official members and little direct financing can influence important state immigrant legislation. Further, groups like those unable to prove legal presence and having "deep grievances" (e.g. having their driving privileges revoked less than ten years ago) were unable to succeed in that same state. Restrictivist groups in California, who were able to introduce and pass an anti-immigrant initiative in 1994, were unable to influence immigration legislation in California twenty-five years later. The next section theorizes the interaction between the political opportunity structures in state immigration legislation with actor sophistication to explain how they influence the passage of driver's license for undocumented immigrants.

Theory

My theory about the relationship between political opportunity structures and state actors is rooted in the work of Amenta, Carruthers, and Zylan (1992), who are skeptical of overstating the ability of movements to change policy. For example, Amenta, et al argue, "the political context mediates the impact of movement organization and action on its goals and sets the range of possible outcomes" (1992, 309). These groups succeed when political action and strong organizations work under favorable political opportunity structures. In this case, challengers were influential in shaping policy

adoption, but influence was contingent on political context (Amenta et al 2005). I theorize that sophisticated interest groups, working within open political opportunity structures are a greater influence in state immigration policy than unsophisticated groups working in a closed opportunity structure. Actors with high levels of expertise in the policy process, and the political system, in an expanded political opportunity structure, will have the highest likelihood of implementing their policy choices. These actors have the expertise to use the political system (i.e. the initiative/referendum process) and support within the formal legislative structure to carry out their goals. Actors with low political sophistication are less likely to influence the immigration policy process, but have a greater chance when the political opportunity system is open.

While these actors may be unfamiliar with navigating the political system, a political opportunity structure that is open, is advantageous for them. The open structure offers actors more choices than a closed system. Actors with high political sophistication find it more difficult to influence policy when the political opportunity structure closes. Despite their knowledge of the policy process and the political system, highly sophisticated actors can find no options available in a closed opportunity structure. Lastly, when actors have little knowledge of the policy process *and* they are working within a contracted political opportunity structure, it is highly unlikely they will influence state immigration legislation. They lack the skills to influence the policy process and have no influence in the political opportunity structure.

Table 3: Theory of Political Opportunity Structure and Actor Political Sophistication

	High Political Sophistication	**Low Political Sophistication**
Open Political Opportunity Structure	***High likelihood*** *of influencing the policy process*	*Unlikely to influence the policy process*
Closed Political Opportunity Structure	*Unlikely to influence the policy process*	***Highly unlikely*** *to influence the policy process.*

Method

In both qualitative and quantitative designs, the best way to avoid omitted variable bias, selection bias and endogeneity is to use a random sample. In this case, selecting at random would have most likely led to the selection of two states passing the different immigration laws around at different times and with different demographics, economics and partisanship etc. According to King, Keohane and Verba, "selecting observations across a range of values of the dependent variable is a legitimate "alternative to choosing observations on the explanatory variable" (1994, 141). Selecting on the dependent variable allows me to avoid the problem of no variance in the dependent variable. Therefore, to test this theory, I employ a cross-case comparison of two states similar in relevant respects, except in the type of immigration legislation they pass. I also use a within case comparison of Oregon's previous immigration legislation, investigating why those passed while citizens vetoed the driver license bill. Goldstone (1997) argues that narratives are imperative for cross-case analysis because they "preserve the essence of the case…and…facilitate comparison by encapsulating the case

as a storyline." The point of the case study in this project is to develop a theory and identify causal inferences between state actors, direct democracy mechanisms, and state immigration policy. Causal theories like the one above explain how an outcome occurs and under what conditions different explanatory variables lead to the outcome. The state immigration literature suffers from a missing link between micro level theories and state level data. This case study improves our understanding of how the variables like direct democracy and the presence of state actors influences the passage of state immigration policy (Collier and Sambanis 2005).

Case studies allow for greater emphasis on how institutional rules shape policy choices and highlight the political and institutional processes influencing the proliferation of anti-immigrant legislation (Tichenor 2009). Parsimony would unnecessarily oversimplify the mechanisms of the policy process and the narrative of the case study facilitates the explanation of the relationship between explanatory and outcome variables (Collier and Sambanis 2005). These descriptions can distinguish among competing mechanisms and shift the focus of the investigation from "the outcome to the process" especially to "discover recurring causal sequences of contentious politics" (McAdam et al 2001, 4). Case studies allow me to explain the process that leads to state immigration policy, rather than the structural characteristics of states that pass immigration legislation. Process matters if different institutions affect the passage of restrictive or permissive immigration laws. Using this method, I can show if the passage or failure of a permissive immigration law is the result of systemic or idiosyncratic variation (Collier and Sambanis 2005). I use process tracing to map a potential causal path consistent with these

respective outcomes and the data gathered. I write a narrative of two individual cases by focusing on a set of questions that allow me to compare narratives on the basis of these questions. I also trace the progression of events that may have led to different outcomes in these cases (George and Bennet 2005). The limits of this design are that I cannot generalize my work to all fifty states and the hypothesis I test is inductive. Further, as stated at the beginning of this section, it is a subpar method for hypothesis testing. Case studies also usually succumb to the problem of indeterminacy given the negative degrees of freedom of my model, with two observations and three variables. Perhaps most limiting is that it is impossible to present a complete and historically accurate picture from which to draw conclusions (Collier and Sambani 2005). However, this is first half of a larger comparative project between states with closed and open political structures. I write this chapter as a foundation of more work I plan to undertake.[3]

I build a theory from a most similar systems design, elaborating on causal paths to "reveal given outcomes as well as the conditions under which they occur" (Khan and VanWynsberghe 2008). The scope of this investigation is restrictionist and permissive groups in California and Oregon in 2013 that supported or opposed driver licensees for undocumented immigrants in each state. To test the relationship between issue activists and state immigration legislation, I undertook fieldwork in Sacramento and Salem with permissive and restrictive advocacy groups, legal foundations, and legislative staff involved the policy process. I spent two weeks in each capitol city to interview relevant actors with additional trips to Portland and Los Angeles. I triangulated these interviews

[3] See conclusion for a longer discussion of this limitation and the next steps of this chapter

with archival research. These interviews and archival research provide the data to process trace the influence of issue activists and institutional rules on the state immigration law. I used this data to undertake two investigations. The first is a cross case comparison of California and Oregon and the second is a within case comparison of Oregon. The next two sections discuss Cross Case Comparison and Within-Case Comparison in more detail.

Cross Case Comparison

I compare the cases of California and Oregon during their respective 2013 legislative sessions when both state legislatures had introduced legislation to remove the requirement to show legal presence to obtain a driver license. I use a cross-case analysis to compare the similarities and difference between of the units of analysis by using process tracing to create a narrative of each case. Cross-case comparisons highlight relationships among discrete cases, refine and develop concepts, and build theory (Eckstein 2002; Ragin 2004). I apply a most similar systems design to this cross case comparison, by identifying two cases that share many characteristics like history, economy, partisanship, and demographics. I expand on the similarities of these states further in the case selection section below. While California and Oregon are not identically similar, they the most similar, allowing me to control for alternative explanations like demographics, economic threat, and partisanship. I compare the cases of California and Oregon on the process, events, and activities between and among state actors, state legislators, and direct democracy institutions. In an attempt to add a more rigorous test to this theory building investigation, I add a within case comparison of Oregon during the 2013-2014 legislative session.

Within Case Comparison

A within case comparison can be thought of as the perfect similar systems design. All the conditions are similar if not the same overtime, allowing me to control for demographics, economic threat, partisanship, history, institutional design, etc. further, this within case comparison is undertaken in the same state over a short time. It is easier to account for alternative explanations if the scope of this investigation is one legislative session.

Case Selection

In addition to selecting on the outcome, I also selected cases on the variation of an explanatory variable, namely political sophistication. While selecting the independent variable alone is the best intentional research design (King et al 1994, 140), since the purpose of this investigation is to theory build, using a most similar systems approach fits best. I chose Oregon and California because share similar regional histories of Spanish Conquest and Progressive influence. During the scope of this investigation, both states have a similar liberal political climate, with pockets of conservatism. Both states had driver license policies moving through their respective the state legislature at the same time. This allowed me to control assume the actions of state actors and legislators was not different because of the bill content. Further, both states are immigrant destinations on the west coast. Aside from the history of Spanish migration, these two states offer low-wage and agricultural employment, making them economic destinations for undocumented immigrants.

Most importantly, I selected these cases because, in addition to the similarities previously mentioned, they have similar direct democracy institutions. Both states have access to the same type of initiative processes, and both states allow for direct constitutional and statute initiative (Bowler et al 1998). In Oregon, petitioners can file a citizen's referendum against any legislation that does not have an emergency clause. An emergency clause immediately enacts a piece of legislation after the Governor signs it. Petitioners need written approval from the Secretary of State no later than 90 days after the Legislature adjourns to circulate the text of the act among registered voters and collect signatures. The number of signatures required to qualify a referendum to the ballot is four percent of the votes cast in the most recent gubernatorial election. For the 2014 election, petitioners had to submit 58,141 valid signatures to the Secretary of State by October 4, 2013 to place a referendum on the Oregon ballot (Oregon Secretary of State, 2015a).

In California, electors have the power to approve or reject statutes or parts of statutes, with the exception of laws with urgency statutes. Urgency statutes are legislation immediately enacted with a governor's signature. Petitioners have 90 days from the date of a bill's enactment to request and receive a circulating title and summary from the Attorney General. Within these three months, petitioners must also gather the required number of valid signatures, and file the petitions with county elections officials (California Secretary of State, 2016). Referenda can qualify for the statewide ballot up to 31 days before an election to appear on the next general election ballot (California Secretary of State, 2015). To place a referendum on the California driver license law on

the next general ballot, petitioners needed to gather 504,760 valid signatures from October 2013 to 90 days after the enactment date (January 1, 2015). Both Oregon and California's driver license bills lacked urgency or emergency clauses and were open to referendum.

Both states have a historically active citizenry that have supported or opposed state immigration legislation. Further, both states lean towards a professionalized legislature; Oregon Legislators reported spending more than two-thirds of a full time job legislating, while California is completely professionalized (National Conference of State Legislatures 2014). Lastly, both states acted earlier than other states on immigration legislation (1993 and 2007, respectively) (Ingram 1993; Tanyos 2013). In spite of their similarities, their recent attempts to change driver license legislation to include undocumented persons have had dissimilar outcomes. The Oregon Legislature passed a bill on Driver Cards, overturned in a referendum led by restrictivist groups. California passed AB 60 with little action from opposition groups. California and Oregon have similar histories, politics, and economies. They also had similar immigration laws passing through the state legislature during the same legislative session. Using these cases, I show the influence of issue activists working within an open political opportunity structure on state driver license policy. After discussing these two cases, I discuss the within-case comparison of Oregon over the 2013 legislative session.

Oregon Senate Bill 833, Measure 88

Even though Oregonians for Immigration Reform had a low level of political sophistication when they started their effort, they were able to overturn the driver license bill. OFIR's ability to over the SB 833 was a result of a) an open political opportunity structure with no emergency clause written into SB 833 b) the assistance of politically sophisticated allies which increased OFIRs resources in Oregon and c) divisions between pro immigrant rights groups in Oregon.

During his gubernatorial campaign, Governor John Kitzhaber and State Democrats promised the Latino and immigrant communities a series of equitable reforms in return for support in the last election (Jones 2011). His party and administration committed to passing legislation on tuition equity, cultural competency, increased demographic information on communities of color, pre and post-natal coverage, and reinstatement of driving privileges for Oregonians who could or would not prove legal residence (Lopez 2015). In December 2007, the previous Governor signed an executive order requiring new driver license applicants show proof of legal presence. The Oregon Legislature passed this Executive Order into law in February of 2008.

Three years into Kitzhaber's term, he created a bipartisan group to reinstate driver licenses for undocumented people, including law enforcement, Labor Unions, Faith-Based and Immigrant Rights Groups, the Oregon DMV, Oregon Winegrowers, Dairy, and Restaurant Associations (Leslie 2015; Ramirez 2015; Perry 2015). The working group excluded OFIR citing their position was clear after they supported Kulongoski's 2007 Executive Order and 2008's SB 1080 (Garcia 2015).

In another set of exchanges, certain Permissive groups negotiated with Senate Republicans to change the initial eight-year Driver License to a four-year Driver Card to broaden legislative support for Senate Bill 833, alienating other immigrant rights groups who were not privy to the negotiations (Ramirez 2015; Lopez 2015; Sosa 2015; ACLU 2015b). The DMV asked for time to prepare the Department for the changes and the swift increase in applicants, so SB 833 did not include an emergency clause (Lopez 2015; Perry 2015). Omitting the emergency clause did not concern immigrant rights groups. At the time, they doubted the opposition could mount a referendum if given the opportunity (Ramirez 2015). This would have been the case if an anti-immigrant group leader from Washington State had not explained the opportunity to the President of OFIR (Kendoll 2015). SB 833 passed in April 2013 with bipartisan legislative support and the next day, Governor Kitzhaber signed the bill on the capitol building steps (Lopez 2015, Perry 2015). At the signing, OFIR circulated a press release stating they would seek a referendum on the driver license law in the next election (Kendoll 2015).

Permissive leadership ignored OFIR's referendum announcement, assuming OFIR had little funding and would be unable to gather enough signatures.
OFIR received resources and knowledge from out-of-state issue activists to collect enough signatures to introduce a referendum. First, former California Assemblyman Timothy Donnelly gave OFIR campaign advice, specifically the idea to have drive through petition signing events (Donnelly 2015; Kendoll 2015). Secondly, during the weeks leading up to the deadline, an Oregon native living in Nevada donated enough money to hire professional signature gathers (Zheng 2013b; Kendoll 2015). By the end of

October, OFIR had collected just enough valid signatures to have a referendum on SB 833 on the November ballot (Ludwick 2015; Ramirez 2015; Huang 2015). The next challenge was naming Measure 88, eventually going to the State Legislature and the Oregon Supreme Court (Kendoll 2015; Lleras Van Der Haeghen 2015; Lopez 2015).

The Attorney General considered titles submitted by OFIR and the newly formed "Yes on 88," selecting "Provides Oregon resident driver card without requiring proof of legal presence in the United States" (Zheng 2014a). This title was politically beneficial for OFIR. Permissive actors went through the legislature and courts to try to remove "legal presence" from the ballot title, with no success (Lopez 2015). On February 27, 2014, the Oregon House passed a bill to change the title, but HB 4054 died in the Senate a week later (Zheng 2014b).

Permissive groups appealed the ballot title to the Oregon Supreme Court but lost. With the referendum set, the ballot title decided, and the election a few months away, supporters of Measure 88 were somewhat certain they would lose (Lopez 2015; Huang 2015). The referendum results were disappointing for "Yes on 88," sixty percent of voters voted against driver cards undocumented people. Oregonians for Immigration Reform, a group that began with low political sophistication, leveraged a political opportunity: a missing emergency clause and organized around new knowledge and resources (increasing their political sophistication) overturned SB 833.

California Assembly Bill 60

In 1993, Democrats in the California state legislature revoked driving privileges for undocumented immigrants at the threat of worse actions against immigrants by State

Republicans (Associated Press 1993; Carmona 2015; Reyes 2015). Since 1996, State Assembly member Gil Cedillo attempted to restore driving privileges to undocumented people but Governor Schwarzenegger repealed one *and* vetoed two enrolled driver license bills during his tenure (Ingram 2002; Salladay and Delson 2005). During the 2013 legislative session, legislators and immigrant rights actors were encouraged by two signals from the Governor's office. The first was a promise Governor Jerry Brown made to Cedillo in 2012 that he would sign a driver license bill if it passed the legislature (Reyes 2015). Second, the Governor's office entertained meetings with legislators on AB 60 to rewrite amendments that would increase the likelihood of the Governor signing the bill (Elliot 2015; Blackney 2015). California restrictionist groups were largely absent from this process. They were not sophisticated enough (specifically, they were unable to collect the necessary resources) to influence legislation and the political opportunity structure was effectively closed to them (Ortellano 2012). Assemblyman Luis Alejo continued Cedillo's work by introducing AB 60 in 2013 with support from Senators Kevin De Léon (Pro Temp), and Ricardo Lara. Mainstream immigrant advocacy groups in California had received the directive from their members to support driver privileges, whether it was a card or a license and with little disagreement, at first, to its markings (Carmona 2015; Villela 2015; Coleman 2015).

High profile groups, like the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), the California Immigrant Policy Center (CIPC), and the National Immigrant Law Center (NILC) supported the renewed attempt to pass driver licenses in 2013. Legislators introduced the bill in January of 2013. AB 60 passed in the Assembly

and was read in the Senate on the same day. It would stall in the Senate from internal disagreements between pro immigrant issue activists, not from influence of restrictionist groups (Legiscan 2015).

The California anti-immigrant movement worked in 2012 to bring the California Dream Act to a state referendum, falling 60,000 signatures short of the required 504,000 signatures (Sanders 2012). When the State Assembly read AB 60 for the first time in January of 2013, California restrictivist groups were still recovering from their Dream Act defeat (Donnelly 2015). Restrictive immigration groups in California left AB 60 unopposed, engaging the legislature once by testifying against the bill in a committee hearing and sending a letter to the Governor's office (California Assembly Committee on Transportation 2013; Elliot 2015; Donnelly 2015; Rosenberg 2013).

In September of 2013, Permissive groups threatened to withdraw support if two amendments were included in the bill. One amendment required an affidavit of identification. The second amendment referenced the REAL ID markings on the license. A driver card without a legal presence requirement still needed to be REAL ID compliant, and compliance meant a mark on the license that the card was not to be used for federal identification. Advocacy groups argued the markings suggested by the amendment could increase persecution of undocumented immigrants. CIPC and CHIRLA said their stakeholders were "very concerned" with the markings and the signing of the affidavit (Coleman 2015; Villela 2015).

On September 10, 2013, Assemblyman Alejo's office announced that the discord between Permissive groups about the markings was serious enough to hold the bill until

the next legislative session (Megerian 2013; Blackney 2015). However, for immigrant advocacy groups, the decision to hold the bill until 2014 was less desirable than markings (Villela 2015; Elliot 2015). In response to the news, groups like Presente.org organized call-in campaigns targeting the Sacramento offices of Senator De León and Assemblyman Alejo to continue with the bill. To add to this pressure, after a meeting with Senator De Léon, the Governor was informed of the bill postponement and told the legislator "Send me that bill" (Elliot 2015). Senator Lara's office "jumped into high gear on the language" of the bill nearing the last days of the 2013 legislative session after this clear signal of gubernatorial support (Elliot 2015). Senators De Leon and Lara worked with the Governor's office to revise the bill's language to ensure the Governor's signature (Elliot 2015). By the next day, Alejo's office decided to continue with AB 60 and the bill passed on the last day of the legislative session, with bipartisan support (Megerian 2013). Restrictivist groups protested the passage of the bill after the fact but did little to stop its passage. Permissive groups, initially dissatisfied with the markings, still supported the passage of the license as an important step.

Analysis

Political Opportunity Structures

The political opportunity structures available to restrictivist groups were similar in Oregon and California for the driver license laws. The institutional rules allowed groups in both states to introduce initiatives. The bar was further lowered with the absence of the emergency/urgency clause, which allowed restrictionists in both states to introduce

referendums. Even though California has a larger population and therefore, requires a larger number of signatures that must be gathered to place a referendum on the ballot, it is important to highlight a few notes to mitigate the questions this raises. The first is that while these populations are different, the systems of direct democracy (the main variable in this investigation) are essentially the same. Both states allow for initiatives and referendums, both states require a similar percentage of signatures from the previous elections' gubernatorial votes within a set time. Secondly, this means the knowledge and resource requirements for restrictive and permissive groups to participate, the basis of comparison for the political sophistication variable, are also the same for each group in their respective states. Further, the basis of comparison for state actor sophistication is *other groups in each respective state.* The table below shows the variation of the political opportunity structure based on the categorical variables: open or closed. The second dimension is the political sophistication of state restrictionists *relative to state permissive groups*. As the results of this table are over determined, I add more cases using a within case comparison of Oregon.

Table 4: Variation of Political Opportunity Structure and Relative In-State Group Sophistication in California and Oregon (Overdetermined)

	Oregon	**California**
Institutional Rules	*Open*	*Open*
Relative Political Sophistication (Anti to Pro)	*High*	*Low*
Passage of Driver License Legislation	*Failed*	*Passed*

How Did Actors Matter?

This case comparison shows state actors are integral to the passage of state immigration legislation. Issue activists played different roles in Oregon, and their presence affected the outcome. These anti-immigrant activists are responsible for blocking driver licenses for undocumented people, but it was thanks to their network that they were able to increase their political sophistication enough to make a difference. The president of OFIR "didn't know what a referendum was" until it was explained to her by out of state actors (Kendoll 2015). A restrictionist group from Washington shared this knowledge about a citizen's referendum with OFIR. Even if it was true that outside groups were looking to help where the chances of success were high, it was still the responsibility of OFIR to learn about and pursue the referendum in their state. These groups were not involved the bureaucracy of filing paperwork, the actual signature gathering events or fundraising events.

Second, Oregon restrictionists were able to exploit the knowledge of California restrictionists on how to gain signatures for the referendum. Oregon restrictionists sought advice from California restrictionist groups who had experience using direct democracy mechanisms in the past, but did not have the resources to mobilize against driver licenses in their state, at the same time (Donnelly 2015). Third, in the last months of the petition drive, it seemed that OFIR would not meet the signature quota. An Oregonian living in Nevada donated tens of thousands of dollars to hire signature gatherers, helping OFIR meet the threshold in time (Kendoll 2015).

Table 5: Variation in Relative Political Opportunity Structure and Actor Sophistication for OFIR

		Driver Licenses (pre-contact)	**Driver Licenses (post-contact)**
Political Opportunity Structural	*Institutional Rules*	*Open*	*Open*
Actor Sophistication *(Anti to Pro)*	*Knowledge*	*Low*	*High*
	Resources	*Low*	*High*
Outcome	*Repeal of Legislation*	*No* (Counterfactual)	*Yes*

The Oregon "Yes on 88" group faced internal disagreements and weak coalitions with Democratic legislators during an already uphill battle. The concessions made by group leaders to gain legislative support alienated other community groups. Specifically, the political bargaining to change the driver license to a driver card upset members in the Permissive camp (Lopez 2015). Second, the unwillingness of Democratic Senators to pass HB 4054 to rename Measure 88 in the face of GOP attacks was a defeat from which Permissive groups could not recover (Lleras Van Der Haeghen 2015; Lopez 2015). In the end, the Democratic legislators attacked about SB 833 were re-elected, leading immigrant rights groups to question this legislative inaction (Lleras Van Der Haeghen 2015).

Activists also affected the passage of AB 60 in California. First, California's restrictionist movement, previously a national vanguard, was largely silent during the legislative process. These groups could not mobilize members after the defeat of a 2012 effort to introduce a referendum about California Dream Act (Donnelly 2015). Further, Permissive groups were supportive during the legislative process for AB 60, waiting for this opportunity since the 1990s. While AB 60 moved through the legislature, issue actors

increased visibility of the bill by writing press releases, holding community meetings, and keeping the public abreast of AB 60's progress. These groups also threatened to withdraw support if amendments requiring an affidavit or heavy markings were included in the law. These concerns weighed so heavily with state legislators that they almost pulled AB 60, primarily to win back the support of these Permissive groups. Lastly, when legislators decided to hold the bill, constituents, organized by state actors, inundated legislative offices with phone calls to pressure legislators to move forward with AB 60. Legislators took this call-in campaign as a directive from their constituents. The mobilization of Permissive groups during the end of the legislative session was critical for the passage of AB 60.

Within Case Comparison

It would be plausible to attribute the victory of restrictionist in Oregon and their loss in California to the difference in the number of immigrants in the electorate in California. California boasts an immigrant population almost three times the size of Oregon's (26.8% to 9.9% in 2013, respectively) (U.S. Census Bureau 2016). However, comparing only driver licenses in these two states is an incomplete picture. Further, if this were true, the unpopularity of immigrants in Oregon should have allowed restrictionists to stop the passage of three inclusive immigration laws that same year.

The Oregon undocumented immigrant driver license bill was one in a series of permissive state immigration bills allowing for a within case comparison. This within case comparison controls for alternative explanations and shows how institutional rules are integral to understanding the passage and failure of Driver License in California and

Oregon. The Oregon driver license bill was one of four immigration bills introduced in 2013. During these months, I can assume state partisanship, and the size of the Latino electorate was constant (see Ramakrishnan and Wong 2007 and Chavez and Provine 2009).

In April of 2013, Governor Kitzhaber signed a tuition equity bill for undocumented students. The bill granted in-state tuition to anyone in the United States for at least five years, had studied and graduated from an Oregon high school, and intended to apply for citizenship or permanent residency (Zheng 2013a). In May of 2013, the Oregon legislature passed a cultural competency law for health professionals. The law allowed state health professional boards to require training for cultural competency to obtain a license (The Oregonian 2013). In October of that year, the legislature passed legislation allowing undocumented pregnant women access to pre and post-natal care (Castillo 2013). These three bills passed and avoided referendums thanks to the absence of an emergency clause raising the level of political sophistication necessary to reverse this law. The institutional rules that blocked action were the inclusion of emergency clauses, immediately enacting these bills with the Governor's signature. OFIR knew bills that took immediate effect would be impossible to challenge. The repeal of these laws would require the enactment of another law, a task OFIR claims they "would have to let go" (Kendoll 2015). The absence of an emergency clause in the driver license bill gave OFIR the opportunity to introduce a referendum and continue the fight against driver licenses for undocumented immigrants.

Table 6: In-Case Comparison of Oregon State Immigration Laws Passed in 2014

	Tuition Equity	**Cultural Competency**	**Pre and Postnatal Care**	**Driver License**
Institutional Rules	Closed	Closed	Closed	Open
Relative Organizational Sophistication *(Anti to Pro)*	Low	Low	Low	High
Repeal of Legislation	Referendum Not Possible	Referendum Not Possible	Referendum Not Possible	Referendum Possible

Cultural competency, tuition equity, and Pre post natal care incur large upfront costs and are complicated to enact, which means something more salient than demographics was influencing restrictionists ability to make change. Repealing a driver license law *with an emergency clause* via the legislature was practically impossible for OFIR, but bringing a law without an emergency clause to a citizen's referendum was not. The institutional rules varied among tuition equity, pre and post-natal care, cultural competency laws and the driver license bill. The absence of the emergency clause opened the political opportunity structure even further for Oregon restrictionists enough to make their resources and knowledge sufficient to attempt a repeal of the Driver License law. Beyond the unpopularity from demographics, excluding the emergency clause changed the institutional rules, creating an opportunity Oregon restrictionists could take advantage of if they were politically sophisticated.

Conclusion

I show here that institutional rules structure political opportunities available to policy actors and significantly influence the content and passage of state immigration legislation. California and Oregon both have open political opportunity structures: both states have direct democracy mechanisms and were opened even further with the lacked an emergency clause on both driver license bills. This open political opportunity structure in both states allowed for restrictionists to mount a campaign and repeal driver licenses, if they had the political sophistication to do so. Politically sophisticated actors in Oregon were able to exploit these opportunities, while actors in California could not.

Having an open opportunity structure, like one that allows citizens to bypass legislators, increases to possibility of policy change. The presence of direct democracy mechanisms, and the rules they engender (i.e. emergency clauses) are critical in calculating the ability of groups to enact their policy preferences. This is in line with literature on social movements that understands an understanding of the political context is integral for social movement success (McAdam 1982) Further, as the presence of structures in and of themselves are not enough to make change, state actors matter. However, much like structures, the present of state actors, in and of themselves is not enough to make change either. As rules structure the opportunities, actors must be skilled enough to work within them.

Actors must have policy knowledge and resources to participate in a political arena. Policy change requires actors that (1) have the political knowledge to recognize an opening, and (2) collect the necessary resources to take advantage of a presented

opportunity. This is exemplified by the counterfactual that if OFIR had not gained the knowledge that a referendum was possible, they would not have known a referendum was possible. In addition, they would not have had the resources to put SB833 to a referendum, had they not received the in-kind donation of signature gathers.

The decision to pursue or not to pursue a citizen's referendum in Oregon and California highlights the importance of actors in this policy process. Issue activists working within political opportunities help explain why "even groups with mild grievances and few internal resources may appear in movement, while those with deep grievances and dense resources— but lacking opportunities—may not" (1998). Tarrow explains why OFIR, with a small number of official members and little direct financing could influence state immigrant legislation. Further, groups like those unable to prove legal presence with "deep grievances" (e.g. having their driving privileges revoked less than ten years ago) were unable to succeed in that same state. Tarrow's conclusion also explains why restrictivists in California, who introduced and passed an anti-immigrant initiative in 1994, could not influence immigration legislation twenty-five years later because they lacked the opportunity and the resources.

Table 7: Across Case Comparison

		California	Oregon
Institutional Rules	Presence of Direct Democracy Mechanisms	Open	Open
Relative Political Sophistication (*Anti to Pro in each state*)	Knowledge	**High**	**High**
	Resources	**Low**	**High**
Passage of Driver License Legislation		Passed	Failed

Actors must be present and have the political sophistication to exploit these institutional rules. To show this, I process traced how two similar states attempted to pass driver licenses for undocumented people, with very different results.

Table 8: Theory Table with State Immigration Cases

	High Actor Sophistication	**Low Actor Sophistication**
Open Political Opportunity	High likelihood of influencing the policy process ***(OR Licenses post contact)***	Likely to influence the policy process ***(CA Driver License)***
Closed Political Opportunity	Unlikely to influence the policy process	Highly unlikely to influence the policy process

A change in the political opportunity structure offered Oregon restrictivists the chance to overturn an Oregon bill to reinstate driver cards for undocumented residents. Neither Oregon's SB 833 nor California's AB 60 included an emergency or urgency

clause. In Oregon, restrictivist groups took advantage of this institutional rule while groups in California did not have the resources to do the same.

The change in institutional rules was the absence of an emergency clause in the driver license bill, the low number of signatures required to introduce a citizen's referendum and the conservative swing of the previous midterm elections. Additionally, actors against Oregon's driver license bill increased their political sophistication with knowledge and money from issue activists in other states. Further, supporters of the Oregon driver license bill could not build a stable coalition with other groups and sympathetic legislators. Meanwhile, restrictivists in California had no significant input on the driver license bill because they had faced a closed political opportunity structure for years. Permissive groups inside the political opportunity structure legitimately threatened the passage of AB 60 and were integral to its passage.

The next obvious step is a comparison of the interaction between political sophistication and a relatively closed political opportunity structure, namely two states without direct democracy mechanisms. I expect to find that restrictionist groups, despite the level of political sophistication, will have a very difficult time incorporating their policy preferences into state immigration legislation. Lastly, I hope this project engenders some discussion about the content of state immigration laws passed via direct democracy mechanisms. Two of the most controversial and restrictive immigration laws, California's Proposition 187 (1995) and Arizona's Proposition 200 (2004) were passed via statute initiative. A small group of citizens authored these ideologically extreme and poorly written laws, with little bill-writing knowledge, and little incentive to make concessions

(Madison 1787, Bishin 2009). Secondly, this project lends support to Dahl's (1956) argument that minorities rule the political sphere. Direct democracy mechanisms allow ideologically extreme groups to introduce legislation that preys on the fears of less knowledgeable voters.

The last important consideration is about driver license legislation itself. Many bills that propose offering driver licenses to undocumented immigrants actually benefit citizens as well. With these bills, the wording usually refers to a revocation of the requirement to show proof of legal presence in the United States. Examples of acceptable documents include a birth certificate, social security card, naturalization papers, or passport. Two telephone surveys in 2006 found between 5.7 and 7 percent of respondents who were citizens did not have ready access to citizenship documents (Brennan Center for Justice 2006; Greenstein et al 2006). Both reports also noted that low-income households and people of color were less likely to have documentary than their high income or white peers. These implications make the proof of legal presence requirements for driver licenses an issue for non-citizens and citizens alike.

Chapter 3
Generation Justice: How Judges Immigration Experience Affects Rulings On State Immigration Laws

Immigration has been a contentious feature of American politics since we were colonies. In the face of federal inaction, states have increased the scope and number of immigration laws passed in their jurisdictions. At times, these laws have conflicted with federal powers expressed in the Constitution. Further, activists use the courts to reverse or uphold state immigration laws. Irrespective of the motivation, many state immigration policies are contested in Federal courts, making this institution a significant inclusion in the study of state immigration legislation. Immigration federalism scholars are currently attempting to explain the increase in state immigration laws over the past ten years. They find xenophobia, partisanship, and state demographics influence the content and frequency of state immigration laws (Hajnal 2001; Borjas 1997; Ramakrishnan and Wong 2010). In the excitement of explaining the politics of state immigration law, we have overlooked how the behavior of other institutions: namely federal courts, influence state immigration legislation. This gap limits our understanding of subnational immigration policy for two reasons. First, we have overlooked the role of Federal courts in state immigration policy even though courts are critical gatekeepers that uphold or invalidate state immigration laws. Second, in focusing on the ascriptive characteristics of

judges, we have discounted the role of personal background, specifically a judge's experience with immigrant parents or grandparents.

So, what explains the variation in judicial behavior on state immigration policy? Drawing on judicial behavior and immigrant politicization literature, I argue the immigration experience of appellate, and Supreme Court judges affect their behavior on state immigration cases. Specifically, judges that are closer to the migration experience will be more likely to support immigrants. In contrast, judges who are removed from the immigrant experience will be less likely to support immigrants. These assumptions are similar to scholarship that finds having daughters affects the legislative and managerial decisions of political and economic elites (Washington 2008; Dahl et al. 2012; Glynn and Sen 2014). As the literature on immigrant politicization supports, immigration background explains judicial behavior in addition to the conventional markers of partisanship, race, and gender.

I begin this investigation with a discussion of the existing literature on personal attributes and judicial decision-making to build the theoretical underpinning of the study. I will discuss the data and methods and present the primary outcomes. I then address alternative explanations and conclude with the implications of this research on the current debate surrounding personal background and judicial actors and judicial decision-making.

Previous Literature

I start by explaining the role personal relationships might play in judicial politics. Scholars have not focused on the issue, probably due to the difficulty of finding data. As

a result, the judicial politics literature concentrates on explaining the influence of personal characteristics (race, gender, and partisanship) on judicial decision-making. This personal attributes model investigates how a judge's race, partisanship, and gender affect their judicial behavior (Grossman 1966; Steffensmeier and Britt 2001; Peresie 2005; Collins and Moyer 2008). I add to this literature by testing the influence of personal background. The next section will discuss scholarship that uses these ascriptive characteristics to explain judicial behavior, particularly partisanship, race, and gender followed by an overview of the literature on immigrant politicization and how it can inform our understanding of judicial decision making.

Partisanship

Scholars have written more on the effect of political ideology on judicial behavior than any other personal characteristic (e.g., Goldman 1966; Tate 1981; Bateman 1999). Judges apply legal doctrine that advances the interests of a partisan regime (Graber 2005; Whittington 2005). Lloyd (1995) found judges are less likely to vote against redistricting plans from their party than the redistricting plans of an opposing party (Lloyd 1995). Kang and Shepard (2015) established judicial voting in the party-preferred ideological direction is correlated with campaign contributions from political parties. These are only three examples from a multitude of articles that find partisanship was a significant variable in judicial behavior (e.g. McKenzie 2012; Seabrook et al. 2013). Partisanship, like gender, is a well-studied characteristic for scholars of judicial behavior.

Gender

Gender is also a powerful and well-studied indicator of judicial conduct. Research shows female judges were significantly more liberal in their decisions on employment discrimination cases and more likely to send female defendants to prison (Songer et al. 1994; Gruhl et al. 1981). Martin and Pyle (2004) found gender influences judicial behavior in divorce cases, and Collins et al. (2010) found that increasing the number of female justices in each city with a district court changed the ideology of the court. However, this ascriptive characteristic seems significant in some criminal cases, moderately in civil rights and liberties cases but not at all in labor and economic regulation cases (Collins et al. 2010). However, explaining the variation of judicial behavior using gender overlooks intersectional matters that affect behavior, like race and economic background (Collins and Moyer 2007). Conversely, using only gender and race can lead to problems of essentialism.

Race

In addition to these political and social influences, race and ethnicity affect judicial decisions. The effect of race on judicial behavior is a prominent area of study in the race literature as well as the judicial behavior literature beginning with Uhlman's (1978) work on how race affects judicial behavior. Uhlman found that while race did not account for most of the differences in individual decision-making, African-American trial judges imposed harsher sentences than white judges. Kastellec's (2013) investigation of black appellate courts Judges found African-American judges are significantly more likely than non-black Judges to support affirmative action programs. Morin (2015) finds

that African American judges are more apt to vote for Black claimants while Latino judges are less likely to vote for the petitioner in general. However, this leads to the problem of essentialism, assuming that all members of a racial or ethnic category have similar behavior based on this shared characteristic (see Omi and Winant 1994; Sen and Wasow 2016). Moving beyond these ascriptive characteristics, I test the effect of personal background on judicial behavior, I offer a review of the immigrant socialization literature in the next section followed by my theoretical argument.

Immigrant Background

Despite this scholarship, many judges cite that their immigrant background influences their character and approach to the law. At his Supreme Court confirmation hearing, Justice Samuel Alito's opening statement recalls that he is "who he is" because of his parents' immigrant experiences and these experiences inform how he understands and applies the law (United States Congress, Senate Judiciary Committee 2006). Specifically, he argues that the immigrant experiences of his father and grandfather were salient enough to shape his life. In fact, the federal confirmation hearings of Federal Judges Miguel Estrada, Katherine Polk Failla, Ruth Bader Ginsburg, and Antonin Scalia (among many) all mention their immigrant heritage as foundational to their character (Library of Congress 2003; Library of Congress 2013; Library of Congress 1993; Library of Congress 1986). The immigrant socialization literature explains this phenomenon, telling us immigrants have a unique acculturation and politicization process. Further, future generations are still influenced by this effect.

Families develop a child's ethnic, religious, party, economic, and social identifications (Shireav and Sobel 2005). More broadly, the family is the most important setting for the development of political attitudes, values, and activism. Parents are the most powerful agent in the political socialization process that indoctrinates members into the political culture (Greenstein 1976). This political socialization process becomes more complicated when we include the politicization of immigrants and their children. Wong et al. (2011) argue the experience of migration affect the political socialization of immigrants and their descendants. Immigrants and their families are less likely to be "fully-formed and well adapted political" beings, as in the case of second-generation immigrants (Wong et al. 2011). This generational division goes on to affect the levels of voter participation and political activism. Second and third generation immigrants are more likely to feel invested in the national political system while concomitantly more liable to identify themselves with their parents' country of origin (Junn 1999; Ramakrishnan and Espenshade 2001; Taylor et al. 2013). Second-generation immigrants are raised and navigate between two worlds, making them uniquely attractive for studies like these (Levitt and Water 2002; Rumbaut and Portes 2001). Second-generation children are also more likely to be a critical source of political, social and cultural information about the US within immigrant families (Wong and Tseng 2008; Orellana et al. 2001). However, Martinez (2005) finds third-generation Latinos are more likely to protest than their first and second-generation peers. If we accept that political agendas are the result of political socialization and that immigrant households have an individual politicization and socialization process, then we must conclude a judges' proximity to the

immigration experience affects the types of decisions she is making in the courtroom. The next section uses this literature to create my theoretical argument, followed by a list of theoretical implications.

Theory and Implications

If migration experience affects political socialization and acculturation, and personal backgrounds affect judicial decisions, then the immigration generation of a judge may influence the judicial decisions she makes on state immigration policy. In other words, a judge's personal immigration experience affects her politically and socially, which may increase the likelihood of supporting immigrant issues in a courtroom. If a judge's first and most influential teachers, her family, have undergone a unique process of socialization and politicization, that special process has to affect her life choices and decisions. Witnessing backlash, xenophobia, or prejudice against immigrants: a parent or grandparent might influence a judge's personal beliefs about immigrant rights. Moreover, witnessing the experience of an immigrant loved one might increase a judge's empathy with immigrants in general.

- The immigrant experience is powerful enough to shape the perspective of children. Because of this, *judges closer to the immigration experience may be more likely to vote for the immigrant position in a court case.*

- The literature tells us that second-generation immigrants are more sensitive and knowledgeable about politics and laws that refer to immigrants and immigration. Further, the experience of immigrant parent(s) may increase their support of immigration legislation. Therefore, *second generation judges should be more likely to support the immigrant position relative to their third and fourth generation counterparts.*

- Partisanship is a significant indicator of judicial behavior, and liberal judges are more likely to support the permissive immigrant legislation. Therefore*, I expect judges nominated by a liberal President will be more likely to support the immigrant position.*

- Better-qualified judges, with higher ABA ratings, are more likely to support the plenary power of the federal government. Therefore, *I expect judges with higher ABA ratings will be more likely to support the immigrant position.*

- Lastly, Latinos share a strong cultural identity, salient for immigrant youth (Cardoso 2010). In the face of discrimination and marginalization, Latinos have higher levels of social empathy (Segal et al. 2011, Trueba 1998). Therefore, *judges that identify as Latino or Hispanic will be more likely support the immigrant position.*

Data and Methods

I test these hypotheses using data from the U.S. Courts of Appeals and the Supreme Court, based on two criteria. First, Appellate courts hear, try, and dispose of more court cases than the Supreme Court. In the fiscal year 2013-2014, the twelve Appellate Courts decided 55,216 cases while the Supreme Court disposed of seventy-seven (USCourts.gov 2015; SupremeCourt.gov 2015). Decisions of the Appellate Court are final in most cases because the Supreme Court only reviews a handful of cases per year (Howard 1981; Berzon 2012). Second Appellate and Supreme Court justices exercise more judicial autonomy than district court judges. The Federal Appellate and Supreme Courts play a vital role in interpreting federal law, enforcing norms, and creating public policy. Perhaps most important for this investigation, Appellate courts have substantial decision-making discretion relative to federal district courts. Cohen

argues that Federal Appellate Judges are mostly unconcerned about the threat of reversal and that they draw on their personal expertise to inform their judgments (Cohen 2002). As Songer notes, judges cannot be "significant policy makers unless they have substantial discretion" (1991). The Appellate court system has more discretion on adjudicating legislation than the Federal District Courts and has more opportunities to hear cases than the Supreme Court. Finally, Federal Appellate Courts are usually the last to hear and offer a final disposition of many civil appeals.

Generation Data

The Biographical Directory of Federal Judges offers the most comprehensive collection on information about federal judges but does not contain information on judges' immigration history. Therefore, I collected new data on the immigrant generation of each appeal and Supreme Court judge that adjudicated a state immigration policy or law. This information was gathered from publicly available sources such as Who's Who in American Law, census and immigration records, newspaper articles, alumni newsletters, obituaries and gravestones, and marriage and birth announcements. Table 9 provides a summary of this population by generation, gender, race, which Appellate Court each judge serves on or if they sit on the Supreme Court, the party of the nominating president, and their American Bar Association Rating. I elaborate on the collection and operationalization of these variables in the methods section.

Table 9: Judges Characteristics and Attributes Frequency Tables

Variable	Levels	n
Generation	First	4
	Second	20
	Third	36
	Fourth	62
Gender	Women	25
	Men	97
Race	Black	15
	Hispanic	11
	White	94
	Asian	2
Appellate Court	Supreme Court	19
	First Circuit	5
	Second Circuit	3
	Third Circuit	4
	Fourth Circuit	6
	Fifth Circuit	17
	Sixth Circuit	9
	Seventh Circuit	3
	Eighth Circuit	5
	Ninth Circuit	32
	Tenth Circuit	8
	Eleventh Circuit	11
Nominating President's Party	Democrat	53
	Republican	69
ABA Rating	Qualified	38
	Well Qualified	76
	Exceptionally Well Qualified	8

Method

The primary explanatory variable is the immigrant generation of each Appellate or Supreme Court judge. I operationalized immigrant generation as a categorical variable and in other models as a dichotomous variable to identify any significance between immigrant generations. Furthermore, I condition on the Appellate Court adding court fixed effects to estimate any influence of being an Appellate Court judge on generation. The dependent variable, however, varies according to the number of cases heard by each

judge, which violates the assumptions of an ordinary least squares model. To account for the dissimilarities in jurisdictions, length of service, and therefore, the number of state immigration cases heard during their tenure, I use a ordinary least squares (OLS) model. I ran three models to test the relationship between all immigration generation as well as each generation to the set of control variables.

Data

To test the effect of immigrant experience on judicial behavior, I created a dataset of state immigration policy cases, collecting all cases published and unpublished from 1980 to 2014 that mentioned state and policy, law or statute and immigration, at least, four times between 1980 and 2014 in the Westlaw Next Repository. This initial search yielded approximately 4,184 cases but included criminal, divorce, and child custody cases, cases against federal legislation or agents, class action lawsuits, and appeals to Board of Immigration Appeals decisions. The second round of cuts excluded these cases, and a third excluded those outside the eleven appellate and Supreme Courts, and cases outside the contiguous United States, Alaska, and Hawaii, leaving 50 trials. I confirmed each remaining case was a challenge to state immigration laws or policy and after reading each decision, defined every judge's position as supporting or objecting to protecting or expanding immigrant rights, which I operationalized as supporting the immigrant position. This dataset contains 223 cases of judges adjudicating cases on state immigration policy as a three, five, or en banc tribunal, when all judges in a circuit

decided a case together. Of the possible 291 Appellate and Supreme Court judges that were alive and available to hear cases, 122 judges have been included.

Dependent Variable

I created this variable by reading all judicial opinions and dissents of the cases in my research scope. If the opinion or dissent supported or expanded immigrant rights, it was coded as 1 for support for the immigrant position. Some judges have adjudicated more than one case on state immigration policy. Therefore, treating each decision as a separate observation could skew the results. Essentially, I would be ignoring an oversampling of a few judges who voted on multiple state immigration cases between 1980 and 2014. To account for this, I used the proportion of cases decided that supported the immigrant position, weighted by the total number of cases each judge heard as the dependent variable.

Main Explanatory Variable

My variable of interest represents personal background, a categorical variable that represents the immigrant generation of each jurist. This variable ranges from 1-4, with larger numbers representing an increased distance from the immigrant experience. Therefore, a judge who was born abroad and immigrated to the United States would be coded as 1: a first generation immigrant judge. Moreover, a judge whose great-great grandparents immigrated to the United States would be coded as 4: a fourth generation immigrant judge. I categorized four judges as a first generation immigrant, meaning they were born abroad to at least one foreign-born parent and immigrated to the United States.

I include judges born in Puerto Rico to this category first generation immigrant category because, as Burnett and Marshall (2001) argue, Puerto Ricans are "foreign in a domestic sense." Puerto Rico was annexed by the United States and is still a primarily Spanish-speaking territory (Barretto 2001). Twenty justices had, at least, one foreign-born parent, thirty-six had, at least, one foreign-born grandparent and the families of sixty-two judges had been in the United States for more than three generations. I gathered this information from publicly available sources including Senate Judiciary Committee confirmation hearings, Who's Who in American Law, census and immigration records, newspaper articles, alumni newsletters, obituaries and gravestones, and marriage and birth announcements.

Control Variables

To test my hypotheses, I assembled data on institutional, political, behavioral and background variables of each judge. These potential influences serve as the control variables in my analysis. First, I included fixed effects for the Appellate or Supreme Court. Next, I operationalized the political influence on judicial behavior using the NOMINATE score of the appointing President to represent the political ideology of the jurist (Carroll et al. 2015). This measure ranges from -1 to 1, from most liberal to most conservative, respectively. Third, I included behavioral influences by operationalizing the gender and racial identification of each jurist. I coded Female judges as 0, and male jurists as 1. Hispanic and Black judges were also operationalized as dichotomous variables, 1 if the jurist identified with either race and zero if they did not. As the Biographical Directory of Federal Judges does not code for multiracials, judges are

members of only one racial category. Further, I include each jurist's American Bar Association rating, which is a peer review of each member's professional competence, integrity, and judicial temperament. Qualified is coded as one, two is Well-Qualified, and three is Exceptionally Well-Qualified (American Bar Association 2015).

Results

Of the one hundred twenty-two judges listed in Table 10, no cases were dropped from the analysis because of missing data. As the number of first generation judges is small (four), I combined this group with the second-generation group for this investigation, creating three different groups. I ran two models, (Table 10) and conducted a test of the equality for the coefficients. For model 1, the f-test of equality between the generation coefficients was 1.89 with 1 degree of freedom and 103 cases, a significance level of 0.1727. Therefore, in model 1, I cannot reject the null hypothesis that generation 1 and 2 and generation 3 are equal to one another. For model 2, the coefficient for the f-test between generation 1 and 2 and generation 4 was 4.97 (1, 103), with a p-value of 0.0279. In model 2, the F-test between generation 1 and 2, and generation four was 4.97 (1, 103) $p>0.05$. Here, I can reject the null that these coefficients are equal in the second model.

Table 10: Ordinary Least Squares Models with Court Fixed-Effects

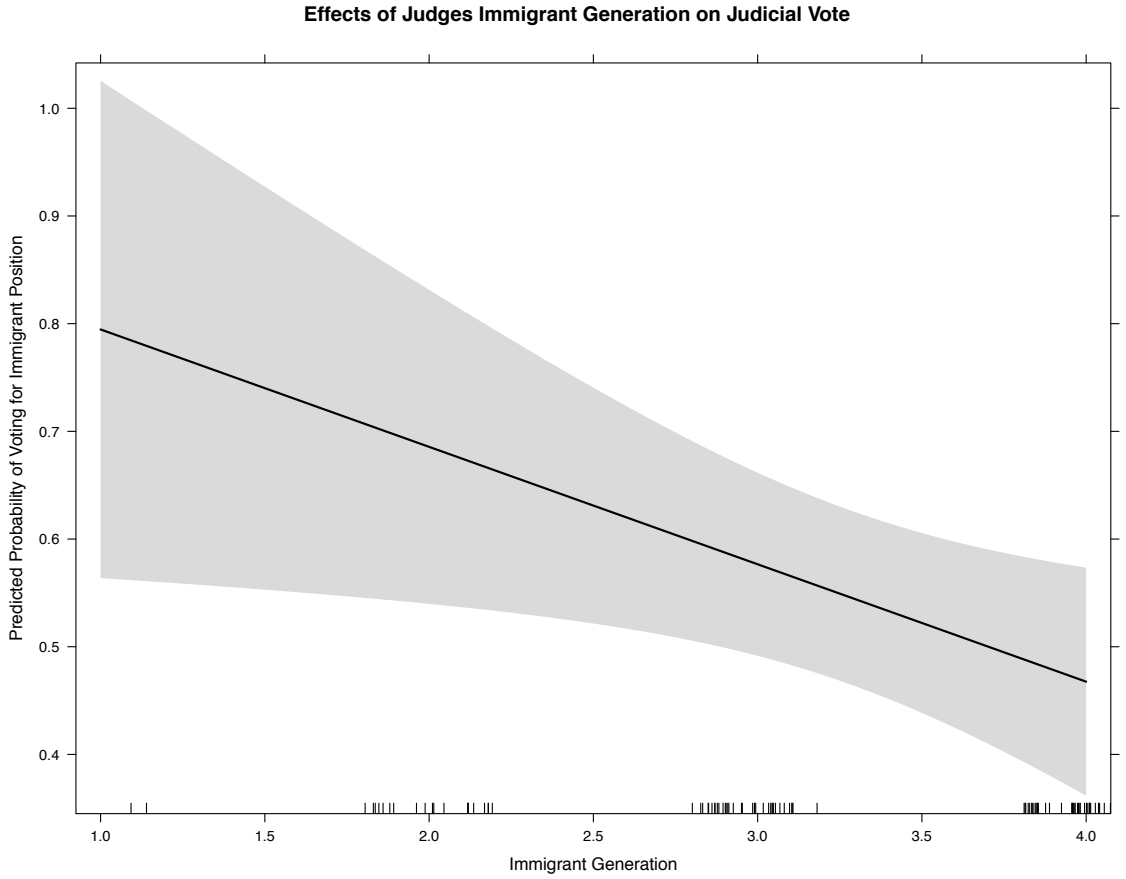
	(1)	(2)
Generation 1 and 2	0.268**	0.168
	(0.120)	(0.122)
Generation 3	0.0999	
	(0.0999)	
Generation 4		-0.0999
		(0.0999)
Gender	-0.0457	-0.0457
	(0.0984)	(0.0984)
Black	-0.0690	-0.0690
	(0.142)	(0.142)
Hispanic	0.202	0.202
	(0.143)	(0.143)
President D-Nom	-0.0740	-0.0740
	(0.0657)	(0.0657)
ABA	0.0896	0.0896
	(0.0768)	(0.0768)
First Circuit	-0.574***	-0.574***
	(0.215)	(0.215)
Second Circuit	0.556**	0.556**
	(0.264)	(0.264)
Third Circuit	0.563**	0.563**
	(0.236)	(0.236)
Fourth Circuit	0.0275	0.0275
	(0.201)	(0.201)
Fifth Circuit	-0.0844	-0.0844
	(0.154)	(0.154)
Sixth Circuit	-0.0731	-0.0731
	(0.172)	(0.172)
Seventh Circuit	0.0768	0.0768
	(0.267)	(0.267)
Eighth Circuit	-0.281	-0.281
	(0.214)	(0.214)
Ninth Circuit	-0.0734	-0.0734
	(0.128)	(0.128)
Tenth Circuit	0.0534	0.0534
	(0.184)	(0.184)
Eleventh Circuit	0.371**	0.371**
	(0.163)	(0.163)
Constant	0.347	0.447**
	(0.229)	(0.217)
Observations	122	122
R^2	0.324	0.324
Adjusted R^2	0.205	0.205
F	2.738	2.738
df	103	103

Standard errors in parentheses

My independent variable of interest, a judge's immigrant generation, is a statistically significant predictor of behavior in a two-tailed test ($p < .05$). For jurists in the Federal Appellate Court, the generation variable is significant at the 0.05 level and signed in the expected direction. This result confirms my first hypothesis that judges closer to the immigration experience may be more likely to vote for the immigrant position in a court case. In particular, model one shows that being a first or second-generation jurists have a positive correlation with supporting the immigrant position. Substantively, this means the percentage of voting for the immigrant position for first or second generation judge is 26 percentage points higher than a third generation judge. Further, using the Supreme Court as the referent category, I show here that the percent of voting for the immigrant position is fifty percentage-points less for members of the First Circuit Court of Appeals and increases by 37 percentage points for members of the Eleventh Circuit Court of Appeals.

Figure 4 shows the data after calculating the predicted probability of voting for the immigrant position by generation (left to right). There are large confidence intervals about the mean for first generation judges, as the sample for this group is small. However, there is a noticeable difference between second and fourth generation judges on the probability of voting for the immigrant position.

Figure 4: Effects of Judges Immigrant Generation on Judicial Vote



With respect to ideology, judges appointed by liberal Presidents are more likely to support the immigrant position, but this relationship has no effect on judicial decisions. This conclusion offers unreliable evidence for my third hypothesis that judges nominated by liberal Presidents will be more likely to support the immigrant position. Further, an increase in a jurists ABA rating is correlated with an increased likelihood of supporting the immigrant position. Although ABA rating is signed correctly with respect to my hypothesis that judges with higher ABA ratings will be more likely to support the immigrant position, this variable is not significant in any of the models. Gender has no effect on supporting the immigrant position. However, there are only 25 women, as

opposed to 97 men in the sample, which could have skewed this variable. There is literature that suggests that women are more likely to support a more liberal position relative to their male counterparts at the Federal Appellate level (Kastellec 2013; Peresie 2005).

The Hispanic variable is not statistically significant in either of the models. This evidence does not support my fifth hypothesis that judges who identify as Latino or Hispanic are more likely support the immigrant position. Perhaps this finding is not significant because only eleven of the 122 justices in the dataset are Latino/Hispanic. Nevertheless, this means the probability of second generation Latinos voting for the immigrant position is .962 if all the other predictors are at the mean (non-Hispanic, second generation judges had a predicted probability of .865, holding all else at the mean) (see Table 11 below).

Discussion

These findings are important as an addition to the body of knowledge on judicial decision-making as well as state immigration legislation. Further, these findings become especially important if we think about the number of first, second, and third generation judges at the federal district court level, a pool of candidates for future Appellate and Supreme Court positions. Of the 2,327 Federal District, Appellate, and Supreme Court jurists that were alive to adjudicate cases between 1980 and 2014, 71 were born outside of the United States, and 27 were born in Puerto Rico. For other scholars who also count

the migration from Puerto Rico as international, 98 judges were born abroad and may have had this powerful immigrant experience.

In fact, a study of 102 Latino lawyers in 2010 found most second-generation Latino lawyers may have a different worldview based on their parent's lives. They are more likely than their non-Latino counterparts to have a mother and a father who never graduated high school (Chavez 2011). Further, scholarship has shown that Latinos, like African-Americans, are more likely to believe that their personal fate is linked to that of their group (Dawson 1994, Garcia-Bedolla 2005). 108 Federal judges identify as Latino/Hispanic. Lastly, thirty Federal judges identify as Asian (Federal Judicial Center 2015), and recent scholarship suggests we should also apply linked fate to Asians (Haynes and Skulley 2015). These two racial/ethnic groups have large second and third generation communities living in the United States. They also have a special relationship with the migration experience as their parents and grandparents lived through it. There are only two Asian-American Justices in this dataset, making it difficult to create a meaningful comparison. However, a closer look at the predicted probabilities of this model (Table 11) that accounts for Hispanic/Latino ethnicity shows a marked difference in the likelihood of voting in favor of the immigrant position relative to non-Latinos. Hispanics are highly supportive of the immigrant position, while there are larger differences in support among various generations of non-Hispanics.

Table 11: Predicted Probabilities of Voting for Immigration Position: Hispanic and Non-Hispanic

	Hispanic	Non-Hispanic
First Generation	.984	.940
Second Generation	.962	.865
Third Generation	.911	.722
Fourth Generation	.807	.513

These predicted probabilities were calculated by setting Hispanic and Generation constant and all other variables at their mean. Being Latino/Hispanic increases the probability of supporting permissive state immigration laws and rejecting restrictive laws by almost ten percent. For every generation removed from the immigrant experience for Latino judges in the South decreases their probability of voting in favor of the immigrant position by only two percent. Outside of the South, second and third generation non-Hispanics are less likely to vote in favor of the immigrant position than fourth generation Latinos. Lastly, with states like California allowing undocumented immigrants to join the state bar, the immigrant experience will only increase its influence on state immigration policy. The inclusion of immigrant experience a factor in judicial decisions may also influence state immigration policy. Judges closer to the immigrant experience may be more likely to overturn restrictive state legislation. Immigrant generation may affect the outlook of court members and the eventual decisions of the court.

Conclusion

This investigation contributes to the political science literature on judicial behavior on how personal backgrounds and experiences can affect judicial behavior as

much as conventional indicators like political ideology or ascriptive characteristics like race or gender. This study offers more evidence to support other scholarship that argues personal relationships affect judicial voting behavior. I find that in state immigration cases at the federal appellate and Supreme Court, judges closer to the immigrant experience, particularly the children of immigrants are more likely to reach or support immigrants in their decisions. I would like to argue these results are in line with similar studies in the state or federal legislatures, but I have yet to find another investigation that explores the immigration background of legislators or decision-makers with their votes on immigration legislation.

A second natural continuation of investigation would be to interact immigrant generation and race. However, the small number of judges of color in this sample makes accurate estimates difficult.

Table 12: Tabulation of Judge Race by Generation

Generation	First	Second	Third	Fourth
Asian	1	1	0	0
Black	0	0	0	15
Hispanic	3	4	2	2
White	0	15	34	45
Total	4	20	36	62

As Table 12 shows, Asian, Black, and Hispanic judges by generation divide a small sample even further. However, to understand to what extent judges of color support the immigrant position, I calculated differences in the proportion of judges that supported the immigrant position across groups, weighted by judgments per case. I created this measure

by subtracting the mean of group members taking the immigrant position in each group. Figure five below shows the results.

Figure 5: Difference of Means in Judges Support for Immigrant Position by Race

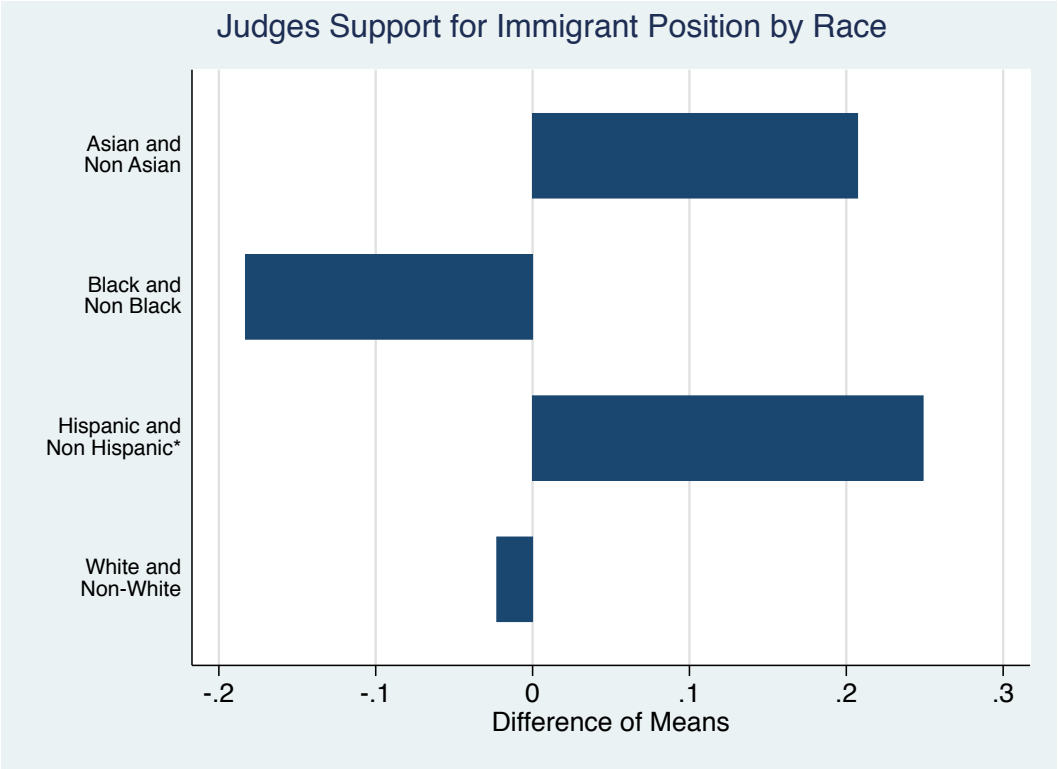


Figure 5 shows the differences of means of judges supporting the immigrant position, by race of these groups, the difference of means between Hispanics and their non-Hispanic counterparts is statistically significant at the .1 level. Meaning, Latino judges support the immigrant position at statistically significant higher rates than non-Latino judges. Another group of recent immigrants, Asian Americans, also supports the immigrant position at higher rates than non-Asian judges. Perhaps this opportunity for research will support evidence that personal experiences are as salient in judicial behavior

as partisanship and ascriptive characteristics. Even though I use immigrant background coded by immigrant generation, perhaps it would be as fruitful to study immigrant generation by the year of immigration. Second, this investigation supports Sen and Glynn's (2014) expectation that other close "connections between substantive issue and other kinds of personal relationships" affect decision-making behavior.

Conclusion

This dissertation is an attempt to expand what scholars know about state immigration legislation. More than demographics or economic, state immigration legislation passes or fails in a particular state context and controlled by unique state institutions. We must understand state immigration laws as the effect of forced federalism. Forced federalism is when states impose themselves into the immigration policy-making sphere. States are uninvited guests to the immigration policy arena, and as such, create immigration policy in the areas under their constitutional control. As a result, states are unprepared and unknowledgeable in this policy area usually under Federal control. Perhaps even more problematic, state immigration laws create an uneven tapestry that citizens, residents, and the Federal government must not only understand, but also address. States also create immigration laws within the particular institutional and contextual boundaries. State actors outside the traditional legislative process also shape and create these laws. These actors work within state institutional contexts (direct democracy, legislative partisanship, etc.) to pass or block immigration legislation. Outside the state, subnational immigration laws are subject to Federal scrutiny. Federal courts ensure state legislation is within the bounds of a state's constitutional rights and responsibilities and that it does not infringe on the rights of those who live within its boundaries. This federal check on state law makes a discussion of the Federal judiciary in upholding or invalidating state immigration laws imperative to any discussion of state immigration policy. This conclusion recounts the goals, methods, and conclusions of each

empirical chapter. Here, I discuss the limitations and future research engendered from this project. The next section will discuss chapter one, an investigation of the effects of direct democracy mechanisms on the passage of state immigration legislation over time. My goal with this chapter was to include a new institutional variable to the discussion of state immigration legislation. In chapter one, I investigated the effect of direct democracy mechanisms on the passage of state immigration legislation. I also controlled for this relationship over time to increase the number of observation as well as the precision of my results. After collecting the year and number of immigration laws passed in each state between 1980 and 2014, I regressed the presence of direct democracy mechanisms on the number of state immigration laws enrolled. After controlling for other explanations as well as time, I found that the presence of direct democracy mechanisms affects the passage of state immigration legislation.

I theorize this relationship could be a result of incentives created by the direct democracy process for legislators and citizens. First, legislators pass immigration legislation to keep control of this policy arena. Legislators must be seen as productive and serve their communities by introducing legislation that represents their constituents' preferences. Passing or even introducing state immigration laws allows legislators to seem productive on a timely policy subject. These actions increase the policy efficacy of legislators in the eyes of their constituents increasing the chances of reelection. Second, direct democracy mechanisms incentivize citizens to bypass traditional legislative process to introduce legislation. Introducing legislation directly to the public allows citizens to curtail any negotiations on their legislation, allowing them more control over

the result of their legislation. Submitting an initiative allows petitioners to eschew having to negotiate the important points of their legislation. Instead, they can have a general up or down vote on their legislation as is. I find that even when controlling for economic, partisan, and demographic variables, the presence of direct democracy mechanisms increases the number of state laws passed by 0.5. This correlation is statistically significant at the 0.05 level. The importance of this chapter is to illustrate the salience of institutional context when investigating state immigration legislation. This relationship could also explain why some states pass extremely restrictive immigration legislation.

Perhaps in states where the threat of direct democracy is real, legislators introduce restrictive immigration legislation to bypass the introduction of even more restrictive immigration laws, by even more extreme constituents. Lastly, we do see the passage of very restrictive immigration legislation being a product of direct democracy mechanisms. California Proposition 187 and Arizona Proposition 209, two of the most restrictive immigration laws passed via direct democracy in both states. The second chapter was a qualitative investigation of how state institutions and state actors interact, in reality, to affect the creation of state immigration laws.

Chapter two was a case study on the effect of state immigration entrepreneurs on state immigration legislation. Here I investigated how the interaction between state institutions and state actors can lead to state immigration policy. I undertake a comparative case study of two states with direct democracy mechanisms on the passage or failure of driver's licenses for those who cannot prove legal residence. Both states introduced and passed driver's license laws in the state legislature in 2013. I use social

movement theory to explain how immigration restrictionists were able to block driver's licenses in Oregon and were unable to stop the same law in California. I argue that in addition to the presence of direct democracy mechanisms, which I understand as an open political opportunity structure, state actors have easier access to legislative change. However, having an open political opportunity structure is only part of the equation.

In addition to having a political system that allows for the participation of residents, this alone does not ensure a state actor's ability to make change. State actors have to be sophisticated enough to recognize when they can mobilize, have the knowledge of the system to create a successful strategy and have enough resources to bring that strategy to fruition. In Oregon, immigration restrictionists were able to block SB 833 by first, learning about the direct democracy mechanisms available to them. Second, they created a strategy by learning from other restrictionists groups and were able to gather enough resources to achieve their goal of blocking driver's licenses for undocumented students. California restrictionist groups had the knowledge but were unable to gather enough resources to mount a challenge to AB 60. The contribution of this chapter is two-fold.

First, it discusses state immigration legislation using a qualitative comparative case study. A study using this approach can highlight the contextual nuances of similar states and can help us understand, in a practical sense, how states pass immigration legislation. This analysis enhances what we know by showing how state immigration legislation is shaped by the interaction of state actors and legislators working within the political opportunity structures in their state. While a better measure of political

sophistication is an important continuation of this project, the second contribution of the chapter is a nuanced explanation of how some state actors can affect change in this policy area while others cannot. I attempt to move past proxies for the ability of civil society to shape policy measures using the number of civil society groups or the amount of dollars raised. As noted in the chapter, the presence of state actors is not enough to guarantee they influence policy. These actors must be sophisticated enough to identify openings in the political opportunity structure and must have the strategy and resources to achieve change. The third chapter, though a departure from state level analysis, is important to this investigation for two reasons. First, this offers us an opportunity to state immigration laws from an approach currently overlooked by the literature. Second, it is an entrée into looking at how experiences, apart from ascriptive characteristics, affect judicial behavior.

Chapter three investigated the effect of judicial institutions on state immigration legislation. I include this chapter in the dissertation because it is an example of a natural extension of not only state immigration literature, but questions of federalism in general. If judicial oversight checks state laws, they should be included in the discussion of state immigration policy. I argue that judges closer to the immigrant experience will be more likely to vote for the immigrant position in a court case. From an original dataset, I used an ordinary least squares model to regress the control variables on the dependent variable: the ratio of votes for the immigrant position over the total number of votes possible. My main explanatory variable was the immigrant generation of the judge, or how many generations removed each judge was from the immigrant experience. I find a significant correlation between a judges' immigrant generation and their support for the

immigrant position. This relationship is beyond controls for partisanship, court fixed effects and gender. Substantively, this means that judicial behavior also shapes state immigration legislation, behavior informed by the experiences judges have with immigrants and immigration. The next section of the conclusion will synthesize and expand on the contributions of this research project.

Research Contributions

There are three main contributions of this work for scholarship on state immigration legislation and federalism in general. These contributions are the inclusion of state institutions into the discussion of immigration laws; second is to control for time. Lastly, I contribute an overview of how state immigration law is shaped by judicial behavior at the federal level. I discuss each of these contributions in turn, then, in the next section, I expand on the limitations of this project. First, this dissertation shows, qualitatively and quantitatively, that state institutions also affect the outcome of state immigration legislation. I focus here on direct democracy institutions, the presence of initiatives, referenda, or recalls. However, these are just the most used example of direct democracy mechanisms. Some states also allow for constitutional initiatives and initiatives sponsored and introduced by legislators. Further, direct democracy mechanisms are one of many types of state institutions that can affect the outcome of state immigration laws. One institution that merits more attention is the partisan makeup of the legislature, which we have anecdotally seen having an effect on state immigration laws. State institutions, like initiatives and referenda, are political opportunity structures

that directly affect the passage and content of state immigration legislation. They allow citizens to bypass the legislature or require citizens to have a legislative sponsor to introduce their initiatives. States with direct democracy mechanisms create unique incentives and opportunities within which legislators and state actors work. The presence of these institutions varies among states, making them an important control variable in qualitative or quantitative analyzes of state immigration legislation.

Secondly, this project uses qualitative and quantitative analyses to show that just as time is important to understand the policy process, it is also an important control to identify variables salient to the passage of state immigration legislation. This statement may seem an obvious conclusion and barely a contribution to this literature. However, as I show in the literature review for chapters one and two, state immigration scholars often overlook this process by adding many different years of data to increase the number of observations. Other scholars control for time by only using one year, which decreases the number of observations as well as the generalizability across over time. Scholars must also think about how to include fixed effects for states as well as time. As mentioned before, states have unique cultures and histories that we overlook in investigating state immigration legislation. While it may be expedient to include all states in a large regression, by controlling for time, we can generalize about state immigration policy over the last thirty years, further we increase the number of cases to increase the accuracy of the coefficients. By controlling for each state context, we increase the accuracy of our findings about state immigration legislation generally.

The third contribution of this project is an introduction to the influence of the federal judiciary on state immigration legislation. This chapter contributes to the state immigration/federalism literature, as well as the judicial behavior literature. I hope this chapter can begin linking works on state immigration legislation and judicial behavior. Scholars of immigration federalism are concentrated on how and why these laws pass at the state level. This opening leaves a second part of the policy process open for investigation. State courts as well as federal courts also hear challenges to these laws. Are federal judges more likely to support permissive immigration legislation after presiding over an appeal from the Board of Immigration Appeals (an administrative appellate body within the DOJ that Reviews immigration courts)? State legislatures are not the only institutions shaping the boundaries of immigration legislation. I hope this chapter encourages other work on the relationship between federal judges and state immigration policy. The next sections will focus on the limits of this study as well as my plans for this work.

Research Limitations

Among the many limits of this study, this section focuses on the three issues I believe are most vital before moving forward with this project. First, I need to add another set of comparative case studies to my second chapter. Second, I must investigate other institutions that affect state immigration laws. Third, I need to theorize the relationship between immigrant generation and judicial behavior in the third chapter in

more detail. After a discussion of three tasks that can improve this project, I suggest a plan for the next steps of this research project.

The first limitation of this project is that it does not discuss how state actors affect immigration legislation in states where there is no access to direct democracy. In other words, how do issue entrepreneurs affect legislation change in states without direct democracy mechanisms? I have been working to address this gap in my research by undertaking fieldwork in Wisconsin and Minnesota on tuition equity. In 2009, Wisconsin passed tuition equity for undocumented residents to the University of Wisconsin system and rescinded this policy two years later. Minnesota passed tuition equity for undocumented students attending state community colleges, and in 2013 expanded this tuition equity to include the University of Minnesota system and offer undocumented students some state financial aid. I have found the importance of political sophistication in these cases here in strategically lobbying legislators for assistance and mobilizing residents to call tuition equity to the attention of legislators. These actors are more involved strategic lobbying and demonstrations and less engaged in raising money. These cases to complete the two by two table that makes up my theory for chapter two. They represent two cases of state actors with varying political sophistication working in a closed political opportunity structure, which I define here as the presence or absence of direct democracy mechanisms. The addition of these two cases to my dataset has identified another political opportunity structure that is salient to the discussion of state immigration laws: partisan majorities in the legislature. I elaborate on this and other important institutions in the next paragraph.

The second limit of this project is that it only discusses one obvious state institution that affects state immigration legislation: direct democracy mechanisms. However, What other institutions affect state immigration laws? Subsequent work I have done on this project has identified one institution that I could not investigate in this dissertation: Party control of the legislature. I discuss these important institutions and follow with a second methodological limitation that I am currently working to address. The first institution that requires more attention is political parties, particularly if they held a majority in the state legislature. States that passed permissive state immigration legislation had a solid Democratic majority at the time. Further, states that blocked/rescinded permissive immigration laws had a precarious Democratic majority or a Republican majority. In speaking with legislators who introduced these permissive laws, it was made clear to me that support from the Democratic Party, or, at least, the absence of opposition, was important for passing tuition equity and driver's license laws in each state legislature. It was only when the Democratic majority was small, lost, or threatened, that these permissive laws were blocked or rescinded. Much like the two previous limits, the third chapter also requires expansion, but instead of data, the expansion is in the theory and hypotheses.

The third chapter holds an assumption that second-generation Americans as a cultural bridge between parents and peers may be more politically sophisticated than first- or third-generation Americans. But how, exactly? Second-generation Americans who are more politically sophisticated could still be strongly conservative and opposed to pro-immigration policies. In addition, there needs to be an expansion on the importance

of the ABA rating for this model. Although judicial scholars recognize ABA ratings as a key indicator of judicial behavior, it is also a measure of what I would argue, "Judicial socialization." ABA rating can represent the extent to which lawyers are "good citizens" within the Bar Association. Many of the limitations of this project are a result of attempting to cover a good deal of academic ground in one research project. The project attempts to introduce new institutions and actors to the study of federal immigration law. The first introduction of these new ideas will surely leave something to be desired as I continue to flesh out important theoretical and methodological details to improve this project. Aside from these limitations in the next section, I offer three next steps for the continuation of this project.

Next Steps

The three next steps to expand this project, aside from addressing the many limitations to this project are to change and include variables and cases to chapters one and two. The results from chapter one would be more informative with the total number of state immigration laws (the main dependent variable) divided into permissive and restrictive legislation. The results would be more telling if I could find correlations between factors that increased the number of permissive or restrictive bills over time. Second, it would be helpful to divide these laws by subject. This step is important for two reasons. First, it disaggregates between legislation that may be symbolic from those that may have an impact on residents. Secondly, this allows me to track the changes in the policy areas states participate in over time. For example, states in the 1980s focused on

labor laws, while in the next decade, states were requiring residency for driver's licenses. Disaggregating the dependent variable into these predictors allows me to make inferences on how direct democracy mechanisms affect state immigration legislation by category and valence. Third, I would like to investigate the interaction effect of DDMs and these partisanship variables. It would be interesting to test if Republican or Democrat-led legislatures pass more immigration laws in DDM or non-DDM states Lastly, in addition to controlling for the percent of foreign-born population, I will add a model that includes the change in foreign born. Perhaps this will be a more accurate measure of the threat hypothesis.

Chapter two, an investigation of the interaction between politically sophisticated state actors and state institutions must include a comparative case study of similar states on tuition equity in states without direct democracy mechanisms. I have already undertaken fieldwork in Minnesota and Wisconsin and found that when direct democracy mechanisms are absent, other institutional factors become salient. Specifically, I find the partisanship of the state legislature is important in passing and rescinding tuition equity legislation. Further, when DDMs are absent, the focus becomes less on gathering money for signature signers and advertisements and more towards lobbying efforts and community mobilization. Third, this project would also benefit from an inclusion of a Kansas case study on tuition equity. Kansas is an interesting case as its' Attorney General is a well-known restrictionist, but the state continues to allow tuition equity for qualifying undocumented students. This least likely case study seems a natural extension of this project.

Conclusion

Much of American subnational immigration politics has been about confronting a federal system that eschews addressing a population who, at the state level, are not so easily dismissed or ignored. States have their unique institutional makeup, leading to monikers like "laboratories of democracy." With respect to state immigration laws, the laboratory has exploded. It has created no end of confusing, heterogeneous legislation that can seriously harm an already vulnerable population. I theorize these laws are a result of states participating in forced federalism, imposing their presence in a policy area beyond their capacity in the face of federal inaction. I have shown that more than being just a function of demographic or economic change, state actors are creating and shaping the content of immigration legislation within the boundaries of state institutions and the extent of their political sophistication. There is a tenuous relationship between states and the federal government constantly in contradiction and transition in policy and practice. Tensions and contradictions are also present within states that consider enacting laws affecting the rights of non-citizens. Moreover, these decisions are more than a reaction to economics or demographics; they are also the result of state history, political climate, political control, and state institutions. They are also subject to the oversight of the federal judiciary, which increases the complexity of this policy area. This dissertation offers an entre into these new ways of studying state immigration legislation and spaces for fruitful academic research.

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Appendix

Table 13: Cross-Sectional Time-Series FGLS(MLE)

	B	se	t	p	ci
Constant	-2.772***	(0.474)	-5.852	4.84e-09	-3.701 - -1.844
Pct Hispanic	0.653	(0.626)	1.043	0.297	-0.574 - 1.879
Pct Foreign Born	1.743*	(0.906)	1.924	0.0543	-0.0323 - 3.519
Pct Agriculture GDP	-0.166	(1.715)	-0.0970	0.923	-3.529 - 3.196
Pct Construction GDP	3.302	(3.599)	0.917	0.359	-3.752 - 10.36
Pct Unemployment	5.672***	(1.515)	3.743	0.000182	2.702 - 8.642
Direct Democracy	0.269**	(0.109)	2.461	0.0139	0.0547 - 0.483
Partisan Legislature	-0.124***	(0.0414)	-2.997	0.00273	-0.205 - -0.0430
Governor PID	-0.0231	(0.0300)	-0.769	0.442	-0.0819 - 0.0357
Pres. GOP Vote Share	0.0190***	(0.00421)	4.506	6.61e-06	0.0107 - 0.0272
Pres. Dem Vote Share	0.0397***	(0.00533)	7.453	0	0.0293 - 0.0502
Laws Previous Year	0.501***	(0.0215)	23.25	0	0.459 - 0.543
Prof'd Legislature	-0.0872***	(0.0319)	-2.734	0.00625	-0.150 - -0.0247
Civil Society	0.115***	(0.0167)	6.895	0	0.0824 - 0.148