

Pro- and Anti-Immigrant Policies in the States
(A working chapter in
The Politics of U.S. State Immigration Policy: Public Opinion and Representation)

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Brief Overview of Book Project

Although the federal government is responsible for setting formal immigration policy, U.S. states are becoming more involved with legislating the immigration process. Increasingly, states play a critical role in servicing the needs or limiting the rights of the immigrant population; states do everything from offering prenatal care services to the undocumented to criminalizing the transport of undocumented day laborers.

Because states play this primary role, there is a real concern of a policy backlash against immigrants. There is a potential for an anti-immigrant policy agenda when states have the formal authority to legislate immigration policy and when there is negative sentiment toward migrants in the voting population. Due to electoral considerations, legislatures under certain conditions respond to public opinion.

The concern of a backlash against immigrants stems from the fact that public sentiment toward immigrants and immigration is often negative.¹ Half or more of all Americans believe that immigrants are a “burden” or feel that immigrants “take jobs.”² And when we look at opinion by state, there are some states with very anti-immigrant sentiment.

The increasing state activity on immigration amplifies the concern of a possible backlash. Between 2005 and 2013, states have increased their involvement in legislating immigration and have passed more than 2,200 bills. Groups such as the American Legislative Exchange Council (ALEC) and the Federation for American Immigration Reform (FAIR) write sample legislation and assist legislatures with crafting immigrant policy. The involvement of these

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

² See Pew (2013) and Abrajano and Hajnal (forthcoming). At the national level, about 52 percent of Americans believe that immigrants pose a burden (PEW 2006) and a majority would like to build a wall across the entire US-Mexican Border (CNN 2008). Also see Hainmueller and Hiscox (2010); Hainmueller and Hopkins (2012) for an overview of general US sentiment on immigration.

extra-governmental partisan groups, coupled with Arizona's 2010 restrictionist³ policy and Alabama's similar policy in 2011, raises the possibility that other states may pass copycat legislation.⁴

The high-profile bills passed in the south and southwest, and the general increase in the quantity of anti-immigration bills passed throughout the country fail to tell the entire story. Some states allow undocumented students to pay in-state tuition at public universities, while other states partner with U.S. Immigration and Customs Enforcement (ICE) to actively enforce federal immigration laws. What drives some states to pass anti-immigrant legislation, while other states abstain from legislation is still unclear, and we are largely unsure if this negative wave will continue. This leads to the central question of the book: *What drives state immigration policy?*

³ Restrictionist and anti-immigrant policy are used interchangeably. Arizona (SB1070) and Alabama (HB56) See (NCSL) "State Omnibus Immigration Legislation and Legal Challenges" for more on state omnibus bills and court challenges of restrictionist policies.

⁴ See for example Wallace, S. J. (2014). Papers Please: State-Level Anti-Immigrant Legislation in the Wake of Arizona's SB 1070. *Political Science Quarterly*. See also American Civil Liberties Union, "State Anti-Immigrant Laws". <https://www.aclu.org/immigrants-rights/state-anti-immigrant-laws>. Accessed March 2015.

Chapter B

Pro- and Anti-Immigrant Policies in the States

There is evidence that state ideology has a strong effect on state policy (Erikson, Wright and McIver 1993, 2006) and evidence that issue specific opinion can have a meaningful effect on a wide range of state policy issues ranging from the environment to capital punishment.⁵ In the previous chapter I present my theory on immigrant policy passage. My theory of why public opinion influences immigrant policy has three main components. First, because immigration is symbolic and salient, residents care about policy outcomes. Second, since immigration is simple, residents are likely to notice the actions of legislatures and should be able to tell if the legislature is enacting their preferred policy. Finally, because there is variation in opinion on immigration, in areas where the public is on one side of the debate, ignoring public sentiment on this salient issue can prove electorally consequential for legislators.

In this chapter I outline the pro- and anti-immigrant policies that are the focus of this book. First, I describe immigrant policies. Second, I emphasize that immigrant policy passage is both a Republican and Democratic state phenomenon. Third, I outline the immigration narrative in the states. Finally, I conclude with a discussion of some important bill characteristic that must be considered as I analyze immigrant policy.

⁵ See Johnson and Brace (2005), Hill et al (1995) on issue-specific public opinion and environmental policy. See Norrander (2000), Mooney and Lee (2000) on issue-specific public opinion and capital punishment. For an overview of the effects of public opinion on policy, see Burnstein (2003), Brace et al. (2002), Hill and Hinton-Anderson (1995), and Erikson, Wright, and McIver (1993, 2006).

1. Immigrant Policy

My research demonstrates that since 2005 there has been an increase in state activity on immigrant legislation. I should make it clear exactly what type of bills states pass. To do this I use data from the National Conference of State Legislatures (NCSL) from 2005 to 2013.⁶ The NCSL is a bipartisan organization that provides state legislatures with technical assistance and offers legislation databases on policies ranging from the environment to immigration. The NCSL uses State Net (a LexisNexis company) legislative tracking services to identify bills passed related to immigration in the states. Relevant bills are identified via State Net using key words such as immigration, immigrant, undocumented, etc. While the exact search terms for the NCSL are not publically available, the exact search terms for a similar immigration policy project at the Migration Policy Institute (MPI) resemble the terms used by the NCSL. I do not use the MPI data, however, because the organization focuses on international migration policy.⁷

The immigration narrative in the states is largely pro- or anti-immigrant, a point I address later in the chapter. The National Conference of State Legislatures categorizes legislation into policy areas such as education, employment and health, but does not code bills as pro- or anti-immigrant. Based on the legislative summary, I code legislation as pro-immigrant or anti-immigrant. Examples of pro-immigrant bills are those that expand access to public benefits/services, assist immigrants with incorporation into society, or help facilitate commerce. An example of a policy that helps facilitate commerce is one that accepts consular identification

⁶ Future drafts will include data from the Progressive States Network from 1997-2004.

⁷ A similar example of search terms comes from the Migration Policy Institute (MPI). The MPI search terms: "After conferring with research specialists at LexisNexis, the exact search terms devised were: alien OR immigra! OR "nonimmigra!" OR citizenship OR noncitizen OR "non-citizen" OR "not a citizen" OR undocumented OR "lawful presence" OR "legal! presen!" OR "legal permanent residen!" OR "lawful permanent resident" OR migrant OR "basic pilot program" OR "employment eligibility" OR "unauthorized worker" OR "human trafficking" AND NOT ("responsible citizenship" OR "good citizenship" OR "citizenship training" OR unborn OR alienate OR alienation OR "alien insur!" OR "alien company" OR "alien reinsur!")" (Migration Policy Institute 2007: 29).

cards from a foreign government as official identification. Examples of anti-immigrant bills are those that reduce access to public benefits/services, English only laws, and those promoting more stringent requirements to obtain state-issued identification such as a driver's license. While the legislative tracking service searches the entire text of the bill for key words, I code bills based on the legislative synopsis provided by the NCSL. Occasionally the synopsis does not make it clear how a bill affects immigrants. I code these as "unsure" and exclude them from the analysis. Two research assistants coded a subset of policies as a robustness check and the intercoder reliability is 0.85. (A comprehensive set of coding rules can be found in the appendix.)

Two important policy distinctions should be noted. First, there is a clear difference between immigrant policy (as identified by legislative key words) and policy relevant to immigrants. The legislative tracking service will only identify bills that have the key terms. On the other hand, it will miss policy that immigrants care about but do not contain such terms. For example, recent immigrants who plan to start their own business or desire to work in a particular industry may care about legislation regulating agriculture or small businesses. Such regulations apply to *all* individuals, not just immigrants. These policies will be missed. Second, there is a clear difference between bills explicitly and implicitly about immigration. The former will be identified by the legislative tracking services, while bills implicitly about immigration, such as crime bills and sentencing laws that do not contain key words will be missed. Since the United States immigration narrative encompasses many policy areas including health, criminal justice, and education future work should better conceptualize bills that are only implicitly about immigration.⁸

⁸ See Chavez (2008) for an overview of the immigrant and Latino Threat narrative. Abrajano and Hajnal (forthcoming) explore how immigration effects state spending on health, education, criminal justice policy. They also look at the effects of immigration on state tax policy.

2. Immigrant Policy In Republican and Democratic States

In 2012, South Carolina passed HB 4813 which established a twenty-four hour hotline for individuals to report immigration violations. With this twenty-four hour hotline, the Department of Labor, Licensing, and Regulation is able to collect information on alleged violations of federal immigration laws. In South Carolina, employers are required to use the federal E-Verify system to determine if new hires are eligible to work in the U.S. The hotline increased pressure on employers be vigilant in their hiring practices, and made it considerably more difficult for undocumented laborers to work in the state.

In the same year, the same South Carolina legislature passed HB 3757, a pro-immigrant bill that aimed to reduce human trafficking. The bill made it a crime for individuals to destroy or withhold identification documents, including immigration papers, in an attempt to control a victim. It is puzzling that in the same legislative session, the republican legislature passed *both* an anti-immigrant hotline bill and a pro-immigrant human trafficking bill. One expanded the rights of immigrants while another clearly restricted immigrants' rights.

This pattern of passing both pro- and anti-immigrant policies is neither unique to South Carolina nor even to Republican states. The partisan theory of immigrant policy passage implies that the more Republican constituents in a state, the more anti-immigrant policy one should see. For example, there is evidence that the size of the republican population predicts restrictive state (Ramakrishnan and Gulasekaram N.D.) and municipal immigrant policies (Ramakrishnan and Wong 2010; Ramakrishnan forthcoming). Similarly, the partisan composition of the legislature should influence policy. This view focuses on the fact that Republicans generally oppose immigration (Wong forthcoming). The more Republicans in a state legislature, the more restrictionist policy should pass. Republican legislators are elected and feel they have a mandate

to pass conservative, Republican policy. While this logic seems intuitive, support for this theory is mixed. Recent studies find only limited support for the idea that republican controlled legislatures pass more anti-immigrant policies (Nicholson-Crotty and Nicholson-Crotty 2011; Boushey and Leudtke 2011; Newman et al 2012). This limited empirical finding is supported by recent state activity.

The state of Washington, known for its tendency to vote for Democratic presidents and for the 2012 legalization of marijuana, passes both pro- and anti-immigrant policies. In 2011 the Democratic legislature passed S5023, a bill to provide translation services to immigrants when filling out government forms. This bill also protects immigrants against deceptive and inadequate legal advice and services provided by non-lawyers. This immigration policy comports with traditional partisan theories⁹ that suggest liberal Democratic states pass liberal pro-immigrant policies, but Washington also passes anti-immigrant policies.

The traditional partisan theories I outline in the preceding paragraphs suggest that conservative Republican states are more likely to pass conservative anti-immigrant policies than other states, but in the same year, the unified Democratic government passed a bill regarding state unemployment benefits that requires employers to verify an individual's eligibility to work in the U.S. before he/she receives any unemployment benefits (H1091). The same legislature that passed a bill to help immigrants navigate the government bureaucracy passed a bill that requires employers to investigate worker eligibility status. These two Washington examples appear to contradict each other.

South Carolina and Washington engage in a pattern of policy passage that is remarkably common. Most states pass both pro- and anti-immigrant policies. While the media focuses largely on anti-immigrant activity, my research demonstrates that about half of the policy passed

⁹ See Ramakrishnan (N.D.) work for an overview of partisan theories of immigrant policy passage.

in the states is pro-immigrant. Anti-immigrant policies like Arizona's SB 1070 anti-immigrant mega bill in 2010 are often the focus of media attention, but it is important to understand what leads to the other half of policies—pro-immigrant policies.

One way to understand immigrant policy dynamics is to construct composite measures of immigrant policy.¹⁰ These policy scores combine both pro- and anti-immigrant legislation into an aggregate measure of legislative activity. According to the proponents of this approach, the chief benefit is that one can assess the overall “immigrant openness” of a state. At the very least, it is a parsimonious, if crude, way to capture how welcoming a state is to immigrants. However, this approach disguises important policy nuances and one cannot fully understand the pro- and anti-immigrant policy process when one combines all policies together.

3. The Immigration Narrative

An additional reason to analyze policy separately is the nature of the broad narrative surrounding immigrant policy in states. There are important differences within policy type. Pro-immigrant policies that regulate public universities are distinct from pro-immigrant policies that provide English class to migrant workers. In spite of these important policy differences, the dominant narrative in the states is either pro- or anti-immigrant.

3.1 How State Politicians Discuss Immigration Policy

A larger immigration narrative often overshadows the details of a particular bill. In 2014, the Massachusetts legislature considered a bill that would allow undocumented immigrants to obtain driver's licenses. The political opposition evoked a law and order narrative and was against

¹⁰ See for example, Monogan (2013), Marquez and Schraufnagel (2013), Nicholson-Crotty and Nicholson-Crotty (2011)

assisting the undocumented. The Boston Globe cited politicians' concerns that the bill "...would reward immigrants who broke the law."¹¹ Massachusetts State Senator Richard Moore (D) was quoted as saying he doubted the law would make the roads safer. "It's no guarantee that someone who has already ignored the law regarding citizenship, regarding living here legally, that there's any guarantee that they'll follow the rest of their traffic laws."¹² This dialogue evokes the broad criminality of immigration and suggests that any bill that assists immigrants legitimizes the presence of individuals in the United States illegally. Opponents of this bill in Massachusetts, and opponents of immigrant bills across the states quickly step back from the specifics of legislation and express larger concerns about immigration, law and order, and the rule of law.

In contrast with the law and order narrative evoked by the opposition, proponents of pro-immigrant legislation evoke a need to integrate individuals that live in the community. Rather than focus on the advantages of driver's licenses for the undocumented, politicians in favor of the Massachusetts bill spoke broadly about the need for policies that expand immigrant rights. Donald Berwick, a Democrat running for governor of Massachusetts said "We need to embrace and help these people who live among us."¹³ While the bill ultimately failed, the narrative that surrounded this legislation demonstrates how immigration bills are discussed in the states. Although the Boston NPR story, "Why Immigrant-Friendly Legislation Has Stalled in Mass," addressed the policy specifics of the legislation, the clear focus of the piece was on the larger challenges of passing pro-immigrant policy.¹⁴ Immigration is a contentious and salient topic in Massachusetts. Because this topic is so salient, the discussion of specific legislation frequently turns to a broader discussion of immigration.

¹¹ Maria Sacchetti. "Lawmakers reject driver's licenses for illegal immigrants." *The Boston Globe*. June 24, 2014.

¹² WBUR. "Why Immigrant-Friendly Legislation Has Stalled in Mass." April 9, 2014.

¹³ Maria Sacchetti. "Lawmakers reject driver's licenses for illegal immigrants." *The Boston Globe*. June 24, 2014.

¹⁴ WBUR. "Why Immigrant-Friendly Legislation Has Stalled in Mass." April 9, 2014.

3.2 Policy Nuances Exist, Political Dialogue Remains Broad

While the political discussion is often broad, there are meaningful bills characteristics that should not be ignored. All immigrant bills are not created equal. A pro-immigrant policy that gives undocumented individuals the opportunity to drive legally with a license is not the same as a policy that allows undocumented students to pay in-state tuition fees rather than the much higher out of state fees. An anti-immigrant policy that makes it a criminal offense to transport or conceal an undocumented individual is not the same as a policy that eliminates the acceptance of border crossing cards by the Mexican government as acceptable forms of identification when purchasing alcohol. Politicians, however do not make nuanced distinctions in their rhetoric about the specific type of immigrant policy.

In 2011, Alabama passed HB56, a strict anti-immigrant law that allowed officers to inquire about the legal status of individuals during traffic stops. After the passage of this legislation, Republican Governor Robert Bentley said, “We have a real problem with illegal immigration in this country. I campaigned for the toughest immigration laws and I'm proud of the Legislature for working tirelessly to create the strongest immigration bill in the country.”¹⁵ Rather than focus on the specific legislative changes, the Governor focused on the problem of illegal immigration. Whether a specific policy expands or restricts immigrant rights, politicians harken back to their overall stance on immigration.

¹⁵ Richard Fausset. “Alabama enacts anti-illegal-immigration law described as nation's strictest” June 10, 2011. Los Angeles Times. <http://articles.latimes.com/2011/jun/10/nation/la-na-alabama-immigration-20110610>

4. From Narrative To Analysis

By separately analyzing policies that expand or restrict immigrant rights and services, my framework better captures the real-world, policy dynamics that are represented in the narrative politicians construct. The better match allows me to more effectively assess what underlying factors lead to immigrant policies.

Some studies group all immigrant legislation together (Monogan 2013). A different approach is to perform detailed analysis on legislation with a very specific policy focus. For example, Newman et. al (2012) examine E-Verify policies that require employers to confirm employee eligibility to work in the U.S. Liu et al. (2014) examine a different specific policy area when they examine English only laws at the state level. This approach offers an in-depth look at the factors that lead to one specific subcategory of legislation and can identify nuanced policy differences within subcategories; however, the focus on the details of each policy area means they necessarily miss the broader immigrant dialogue forest for the trees of policy details. That is to say, focusing on particular policy domains provides details but lacks scope. This method misses the larger pro- and anti-immigrant policy dichotomy politicians emphasize.

4.1 What Determines Pro-Immigrant Policy

While my analytical approach mirrors the immigration narrative in the states, there are reasons to remain cautious as I move forward with the analysis of these policies. The factors that lead to pro-immigrant policies may be distinct from what determines anti-immigrant policies; in particular, I argue that anti-immigrant legislation is driven in large part by negative public sentiment. Surveys consistently show that Americans are generally concerned about the levels of

immigration and especially when immigration is salient, urge politicians to take action.¹⁶ It is plausible, however, that pro-immigrant policy is not as important to the general public as is anti-immigrant policy. Perhaps residents only care about legislation that specifically targets and restricts the rights of immigrants; however, the public does not care as much about pro-immigrant policy. Because of this lack of public attention, legislatures may be less responsive to public sentiment when considering policies that expand the rights of immigrants. Thus, it is worth testing the impact of public opinion. I explore pro-immigrant policies separately because the factors that lead to pro- and anti-immigrant policies may be unique.

Another state characteristic that may influence the passage of pro- and anti-immigrant policy differently is demographics. It is not clear if we should expect demographics to influence pro-immigrant policy in a similar manner to anti-immigrant policy. I theorize in the previous chapter that the Latino population elicits feelings of racial threat, which motivates states to pass anti-immigrant policy. Thus we might expect a similar effect when states consider pro-immigrant policy. Responding to racial threat, perhaps a large Hispanic population will motivate legislatures to pass fewer pro-immigrant policies.

However, racial threat may play less of a role because of the largely inconsequential nature of pro-immigrant policy. My analysis demonstrates that over one-third of policy is entirely inconsequential, without any concrete implications. In 2012 Louisiana passed a bill that recognizes the March as Irish-American Heritage Month (S 353) and Georgia passed a bill that “...recognizes and commends the Latin American Association on its the mission to further the integration of Latino immigrants into the American society as workers, family members, students, and leaders” (HR 2167). These policies are able to satisfy the immigrant constituency without angering the largely anti-immigrant native population. Thus, in the realm of pro-

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

immigrant policies, I expect states with large Hispanic populations to pass *more* immigrant friendly legislation. States pass this legislation in an attempt to appease the Hispanic population without upsetting native residents.¹⁷ The native population cares less about pro-immigrant policy because it is largely inconsequential and does not strain state resources. Also, most policy does not specifically target immigrants, and the native population cares more about those policies that clearly target and restrict immigrant rights. Conventional racial threat theory, however, views Hispanics as a threat to American culture and American way of life¹⁸ and in response to the immigrant threat, the racial threat theory would predict that states with large Hispanic populations would not pass pro-immigrant policies.

My theory, however, is that immigrants can have a meaningful positive influence on policy. As growing Hispanic populations become electorally relevant, especially because a large portion of pro-immigrant policy is inconsequential, the number of pro-immigrant policies passed should increase.

4.2 The Continued Influence of the Hispanic Population

Before concluding the chapter, it is important to think through alternative reasons why the Hispanic population may continue to play a positive role in the passage of pro-immigrant policies. Because of electoral concerns, legislatures pass pro-immigrant policies to help satisfy the Hispanic constituency. This logic is strongest for policies that are strictly inconsequential, but legislatures will continue to pass pro-immigrant policies with clear institutional and fiscal

¹⁷ One cannot assume that all Hispanics desire policies that expand the rights of immigrants. For example, *You Don't Speak for Me!* is a Hispanic group of Americans against amnesty (FAIR 2006); nevertheless a broad state policy agenda that restricts immigrant rights is not a wise strategy in a demographically diverse state.

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

outcomes in states with large Hispanic populations because these policies provide hidden benefits to key constituencies without alerting natives.

First, while many anti-immigrant bills directly target immigrants, pro-immigrant policies most often provide “hidden positives,” by including the immigrant population into larger bills. While restrictionist policies often directly target immigrants in an attempt to appease native residents, policies that benefit immigrants tend to do so in a less overt way. For example, in 2011, New York passed A3304 that established “...a health-related legal services program, free of charge, for income eligible patients and their families whose legal matters are created by, aggravated by, or have an impact on the patient's health. Legal services will be provided on a volunteer basis regarding a range of matters, *including immigration*” (emphasis added). This piece of legislation and many other pro-immigrant policies include immigrants to the bill language almost as an afterthought. Another example is Illinois House bill H 5053 passed in 2010 that established “...a program in the Department of Public Health to ensure access to psychiatric health care services for all citizens of Illinois, with particular attention given to underserved populations and designated shortage areas, *including migrant health centers*” (H 5053) (emphasis added). This method of covert assistance satisfies Hispanic and immigrant populations without angering natives.

Second, pro-immigrant policies address topics that Hispanics and immigrants care about but native residents may be less focused on. In 2012, about one-third of pro-immigrant policies, excluding resolutions, dealt with public benefits, health, and human trafficking. While public benefits and health legislation might directly affect low-income natives, they are certainly serious concerns for recent immigrants. If states focus on policies that are important to

immigrants but do not raise many concerns among natives, this can be an effective strategy to appease the Hispanic constituency.

5. Discussion

In this chapter I outline my approach to the analysis of state immigrant policy. I use data from the National Conference of State Legislatures to demonstrate that immigrant policy is found in both Republican and Democratic states. The immigration narrative present in liberal and conservative states is broad. Politicians opposed to expanding immigrant rights and services evoke a law and order framework. Those in favor of assisting immigrants insist that it is the responsibility of the state to help those individuals that are already a part of their communities. While I argue that pro- and anti-immigrant policies should be analyzed separately, one should not think of pro-immigrant policy as simply the opposite of anti-immigrant policy. One should not assume that the theoretical expectations about the passage of pro-immigrant policy are simple the inverse of the expectations about the passage of anti-immigrant policy.

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