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Immigrants across the U.S. Federal Laboratory: Explaining State-Level Innovation in Immigration Policy

Graeme Boushey¹, ² and Adam Luedtke³

Abstract

The passage of a restrictive immigration law in Arizona in 2010 rekindled an old debate in the United States on immigration policy and the role of federalism. Despite periodic constitutional controversies, scholars of federalism and U.S. state politics have not adequately explained variation in state-level policy making on immigration. The authors explore pressures leading to state immigration policy innovation and adoption in the United States. The article evaluates factors leading to the introduction and adoption of two types of policies: those dictating the cultural and economic incorporation of immigrants and those attempting to control their flow and settlement. Factors such as fiscal federalism, ethnic contact, and ethnic threat generate incentives for states to pass such laws. The authors compiled a comprehensive data set of state immigration laws from the past decade to explain how factors commonly associated with national immigration policy development—economic conditions, rates of immigration, demographics, party control, and political institutions—influence state-level immigration policy activity.

Keywords

immigration, immigrants, federalism, ethnic politics

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In 1875 the state of California had its own commissioner of immigration. A California law empowered the commissioner

[t]o satisfy himself whether or not any passenger who shall arrive in the state by vessels from any foreign port or place (who is not a citizen of the United States) is lunatic, idiotic, deaf, dumb, blind, crippled, or infirm, and is not accompanied by relatives who are able and willing to support him, or is likely to become a public charge, or has been a pauper in any other country, or is from sickness or disease (existing either at the time of sailing from the port of departure or at the time of his arrival in the state) a public charge, or likely soon to become so, or is a convicted criminal, or a lewd or debauched woman. (Chy Lung v. Freeman 1875)

The state law further allowed California to collect inspection fees and to require bonds paid by those sponsoring or transporting immigrants suspected of violating one or more of the above conditions.

The U.S. Supreme Court struck down this law, arguing in their ruling that “the passage of laws which concern the admission of citizens . . . of foreign nations to our shores belongs to Congress, and not to the states. It has the power to regulate commerce with foreign nations . . . if it be otherwise, a single state can at her pleasure embroil us in disastrous quarrels with other nations” (Chy Lung v. Freeman 1875).

For more than a century after this ruling, U.S. state governments were content to let the federal government regulate immigration. However, in recent years there has been an explosion of state-level immigration policies, as states across the country have focused considerable attention on policies shaping the integration and control of immigrant populations (Newton and Adams 2009). Most recently, the state of Arizona passed a law requiring immigrants to carry their immigration documents at all times and requiring police to question those suspected of being in the United States illegally. The law triggered a firestorm of debate and protest, with the Obama administration questioning the constitutionality of the law. Now, 136 years after Chy Lung v. Freeman, the issue of federal and state prerogatives in immigration policy has not been settled. Supporters of the Arizona law contend that the statute empowers state authorities to enforce existing federal law, while opponents question the constitutionality of a state law that asserts powers in an area traditionally dictated and enforced at federal level.

The recent surge in state attention to immigration policy is interesting not only because it marks a departure from traditional deference to federal immigration policy but also because of the tremendous variation that has emerged as states have experimented with immigration reforms. This variation, we argue, holds important lessons for the study of both immigration politics and federalism.

Over the past 10 years, states across the country have moved to facilitate the transition of both legal and illegal immigrants into mainstream society by reforming access to driver’s licenses, health care, education, and workforce protections. For example, in 2001 both California and Texas passed legislation now known as the “Dream Act,” allowing undocumented immigrant students to pay in-state resident university tuition
fees. Similar measures were later approved in numerous states. State driver’s licensing of undocumented aliens has been enacted by the legislatures of many states, although some states have since repealed this legislation.1

State interest in such policies to integrate immigrants is far from universal. Within the same time period, a second subset of states has implemented restrictive immigration policies designed to control the movement and settlement of undocumented immigrants. In addition to Arizona, other states have passed legislation denying undocumented students access to higher education, requiring state law enforcement to check immigration status and enforce federal immigration laws, or denying state employment or access to social services.

The recent attention of U.S. state governments to immigration control and integration presents an interesting question for understanding federal–state dynamics. Since the 1870s, the federal government has asserted jurisdiction over immigration control policy by regulating access through a visa system and border security. States have likewise assumed some discretion over immigrant integration policy in that state governments have largely been free to develop social and cultural polices to facilitate the integration of new immigrant populations (National Conference of State Legislatures [NCSL] 2006). Current state activity in immigration control policy represents a departure from this status quo. In apparent contradiction to federal supremacy over immigration control, many state governments are actively experimenting with immigration control policies, even though the constitutionality of such legislation is far from clear.

Our analysis assesses factors associated with recent state-level activity in immigration policy development, specifically exploring the parallel yet seemingly incongruous trends toward independent integration and control policies that dominate modern state innovation in immigration reform. Building on a model of immigration policy decentralization advanced by Boushey and Luedtke (2006), we argue that differences in state responses to immigration policy can be explained by comparing differences in state immigration population dynamics, commonly described in the ethnic politics literature as the “threat” (McLaren 2001; 2002) and “contact” (Allport 1954) hypotheses. States accustomed to contact with nonnative populations pass legislation to integrate new populations into the state’s economic and social system. States that experience large and sudden expansions of immigration, especially when starting from a low base, are more likely to respond to immigration as a threat and will therefore enact more restrictive policies. In addition to this central argument, our study also evaluates several competing hypotheses for explaining state-level immigration policy innovation. We assess how state legislative professionalism, partisan control, political ideology, welfare spending, and macroeconomic and labor market dynamics shape state-level immigration policy innovation.

Background
In the first 100 years of the U.S. republic, the federal government allowed relatively free and unrestricted immigration. Laws conferring rights of residence were largely enacted at the state level (M. L. Smith 1998). Border and port states from Massachusetts
to Texas passed laws regulating the flow of “undesirable” immigrants. These laws specifically targeted those immigrants who would presumably threaten or burden society—the poor, sick, criminals, slaves, and ethnically distinct populations (Neuman 1993). State legislatures adopted entry taxes or bonds to discourage the indigent from settling (Neuman 1993).

Not surprisingly, state-level legislation in immigration control resulted in much policy variation across states and caused friction between state and federal governments. Through the 19th century the U.S. Supreme Court resolved many of these disputes by clarifying the jurisdiction of federal and state governments over immigration. Although the Constitution did not explicitly confer immigration authority to the president or Congress, in 1875 the Court legitimized federal control of immigration policy, ruling that power over immigration control ultimately rested with congressional control over foreign trade and naturalization (M. L. Smith 1998).

This trend endured until the George W. Bush presidency placed immigration “reform” high on the agenda. The initial impetus for reform centered on Bush’s relative popularity among the Latino electorate and his good relations with Mexican president Vicente Fox, who encouraged a “comprehensive” immigration reform as soon as possible. This would combine tougher border controls with a conditional legalization of the approximately 10 million undocumented immigrants residing on American soil.

The window of opportunity for broad immigration reform was slammed shut by the September 11 terrorist attacks. Immigration reform was recast as a matter of national security, leading to the failure of the McCain-Kennedy immigration bill, which had been seen as a moderate legislative compromise. Instead, no significant immigration bills emerged from Congress, although in 2005 Congress did pass the REAL ID act, which tightened immigration enforcement and imposed federal restrictions on state actions providing driver’s licenses to undocumented immigrants.

In this context of perceived federal failure to address growing public concern with immigration, states have initiated a new wave of state-level immigration policy reforms. In the past six years, state legislatures have dramatically increased their attention to immigration, passing a wide range of bills dealing with all aspects of immigration—from those characterized as liberal (granting driver’s licenses to undocumented immigrants) to conservative (forcing police forces to check immigration status). According to the NCSL’s task force on immigration, states have “tackled immigration issues in a variety of policy arenas at an unprecedented rate” (NCSL 2007). State attention to immigration has jumped from 300 bill introductions and 45 enactments in 2005 to over 1,400 pieces of legislation introduced and 208 enacted in 2010 (NCSL 2005; 2010).

**Theory and Variables**

To understand why state governments engaged in unprecedented levels of immigration policy-making activity in the past decade, we highlight the importance of reconciling the literature on immigration politics and federalism. Each body of theory offers an incomplete picture of the incentives for state immigration policy making. Literature on
federalism explores the tension between two types of benefits in a federal system: States gain from the federally enforced free flow of labor and goods across state borders, while delegating border control to the federal government, but states also seek political autonomy to tailor policy to individual, state-level needs. Although research has addressed this dynamic in various policy areas (McKay 2001; Oates 1999; Radin and Boase 2000; Rodden and Rose-Ackerman 1997; Weingast 1995), scholars have only recently directed their attention to the issue of U.S. state-level immigration (Krane 2007; Newton and Adams 2009). Immigration is a particularly important issue because immigration policy strongly affects both the economy and the ethnic and cultural makeup of a state. Since immigration policy distributes labor throughout a federation, it inevitably shapes the demographics and labor market of a state. Thus, immigration policy emerges as a source of institutional conflict between the federal and state governments.

To test broader theories of state politics and immigration politics in the U.S. context, we start with a comprehensive theory that Boushey and Luedtke (2006) advanced to explain immigration policy decentralization in federal systems. Our aim is to explain the incentives that U.S. states have to pass immigration laws, which differ radically depending on a distinction between two types of immigration policy: (1) policies to control the inflow of new immigrants and (2) policies to integrate already-resident immigrants (Hammar 1985; 1990; Messina 2002; Money 1999; Tichenor 2002). Immigration control policies deal with keeping out unwanted immigrants, as in the examples of border patrols, law enforcement, and visa restrictions. Immigrant integration policy, on the other hand, dictates the transition and settlement of resident immigrants, such as work and housing conditions, welfare provisions, and educational opportunities. When analyzing the political calculations of state-level politicians, the distinction between these two types of immigration policy—control and integration—becomes crucial because these two policies offer very different political and economic costs and benefits to politicians at both state and federal levels.

According to the logic of this theory, in states that have more experience with immigration, state-level political actors will face strong incentives to seize control over integration policy because of the unique needs of state jurisdictions in terms of economic specialization and sociocultural preferences. In federal systems, state governments will actively pursue immigrant integration policy to recruit and train labor for a state’s specific hiring needs and to implement acculturation policies to incorporate new residents into the state’s social and political institutions. By doing so, states reap increased political and economic benefits from immigration at relatively low cost. State officials have knowledge of “both local preferences and cost conditions that a central agency is unlikely to have” (Oates 1999, 1123). Also, even if the federal government were able to match immigrants to localities “there are typically political pressures . . . that limit the capacity of central governments to provide higher levels of public services in some jurisdictions than in others” (Oates 1999, 1123).

Although state governments hold strong incentives to determine immigration integration policies, state-level politicians have had relatively few incentives to seek
authority over immigration control policy, especially given that immigration controls have traditionally been provided at the federal level. This logic extends from two reasons: the free-flowing labor market in the United States (minimal state restrictions on border crossing) and concerns over national security.

Perhaps the most important incentive state governments have to defer immigration control policy to the national government extends from the considerable cost of maintaining immigration control policy regimes. Scholars of fiscal federalism assess the costs and benefits of making policy at federal or state level (Oates 1999; Tiebout 1956; Weingast 1995). In a large market like the United States, the faster workers can move in response to labor surpluses or shortages, the more efficient the economy will be. If we conceive of border controls as a transaction cost, then state-level immigration control could be prohibitively expensive since visa checks, waiting periods, administrative fees, border controls, customs agents, and immigration lawyers all cost money (Simon 1989). Furthermore, state-level immigration controls could result in the well-known “race to the bottom” problem, where each state attempts to outdo the other in terms of restrictions, which could simply push immigrants into the next state. If there is a common, federal immigration control policy, taxpayers bear the cost of only one entry attempt, thus providing a comparable level of control far more efficiently.

The second argument for why states would normally avoid immigration control is that immigration, unlike other political issues, is heavily connected to questions of security. Riker (1964, 5) posits that federalism allows states to “make use of the technological advantages in the size of treasuries and armies and thus to compete successfully with their neighbors.” One of these technological implications is patrolling a border with armies, police, airplanes, boats, or detection equipment. Again, the control of immigration through these and other technologies is more efficiently handled by a national government, which can coordinate border controls on behalf of the 50 states.

Given these high costs and lack of incentives for state-level immigration control, state politicians should be spurred to pass immigration control legislation only if public threat perceptions, coupled with perceived federal inactivity or incompetence, propel immigration control onto the state political agenda (Freeman 2002; Krane 2007). Here, Boushey and Luedtke’s (2006) model of devolved immigrant integration and centralized immigration control policy must be supplemented with a theory of state preferences that can reconcile the consistent trend toward decentralized integration policies with the more recent pressures that select state legislatures have to pass restrictive control legislation.

To understand why state governments have diverged in immigration policy development in recent years, we employ theories from the ethnic conflict literature: threat and contact. Following the general theory of immigration policy outlined above, we argue that select states engage in immigration control policy specifically because they feel an acute threat from recent trends in immigration and because they perceive a lack of activity at the federal level. The pronounced differences in U.S. state-level activity in immigration policy may be largely determined by how acutely U.S. states perceive
immigrants as a threat or by how strong the pressure is for U.S. states to integrate immigrants into the local social and political institutions.

One of the most established theories of ethnic politics is Allport’s (1954) “contact” theory. Simply put, the contact theory argues that increased and longer-term exposure to “foreign” populations reduces threat perception and facilitates peaceful coexistence. Although the empirical evidence is mixed (in some studies, contact has been shown to actually increase hostility), research has confirmed that the contact theory’s dynamics operate in at least some cases (Jolly and Digiusto 2009). From this, we can infer that U.S. states with longer-standing immigrant populations might feel less pressure to pass control legislation and might have more leeway to pass (often liberal) integration legislation.

Since U.S. states vary radically on their exposure to large, concentrated immigrant populations—with many states only recently experiencing their first significant immigration waves in decades (if not centuries)—this laboratory provides a fascinating opportunity to test the contact theory. If long-term contact with immigrants shapes state policy-making activity, then states with longer-term exposure to immigrant groups may well behave differently than states with sudden changes in their foreign-born population. California and New Mexico, states with long-standing traditions of immigration, are more familiar with the challenges of new immigrant integration than states like Iowa or Georgia that have only recently seen a modern wave of immigration.

States whose modern immigrant populations are overwhelmingly made up of recent arrivals allow us to evaluate a very different dynamic than the one described by the contact theory. In these states, a large subset of voters may react to immigration as a political or cultural “threat” made more serious by linguistic differences, cultural homogeneity among the host population, and the heightened security climate in the post-September 11 environment. States with more recent immigrant populations are more likely to view immigration as a threat (McLaren 2001; 2002), especially if the federal government fails to pass any significant immigration reforms.

As McLaren (2001; 2002) points out, threat is not necessarily “objective,” such as economic or resource based in nature. The threat posed by immigrants may be symbolic and may represent fear about the loss of certain values or a way of life. Research has shown that attitudes on race issues in the United States are motivated by symbols or general values rather than self-interest (Bobo 1983; Kinder and Sears 1981; Kluegel and Smith 1983; Sears et al. 1980; Sears, Hensler, and Speer 1979; Sears and Kinder 1971). Furthermore, studies have shown that xenophobia toward minorities in developed countries is strongly related to cultural threat and maintenance of cultural unity and distinctiveness, rather than individual or collective economic threat (Espenshade and Calhoun 1993; Fetzer 2000; Gibson 2002; Ivarsflaten 2005; Lahav 2004; Sniderman, Hagendoorn, and Prior 2004).

Recent studies of state-level variations in immigration policy preferences have provided mixed and contradictory support for both the threat and contact hypotheses. In a recent review of state policy activism during the Bush presidency, Krane (2007, 465)
argued that state activity in immigration policy has operated as “a means of signaling Washington that state officials and many of their constituents are growing increasingly frustrated with the national government’s ability to craft a new direction in immigration policy.” Interestingly, Krane notes that state policy making in immigration reflects general debate over national immigration policy in Washington, with some state policies reflecting the view that immigration is a costly drain on state resources, while other states view immigration as a “variable sum game, where noncitizens bring labor and skills to the economy as well as offer the nation new opportunities and perspectives” (Krane 2007, 466).

More exhaustive treatments of the immigrant threat and contact hypotheses have emerged in comparative research on state and national public opinion. In a recent review of the contact and threat hypotheses in public opinion research, Fernandez and Neiman (2010) conducted an extensive survey of the literature and found mixed support for the contact and threat hypotheses, both in their review of research and in their own study of public opinion. This study provides additional insight into the threat and contact hypotheses by providing a theoretical test of when state policy outputs—in the form of immigration policy—will be shaped by perceptions of threat.

To measure how changes in immigration flows shape state activity on immigration control and integration policy, we include two measures of state immigrant population dynamics. To evaluate how the size of a state’s resident immigrant population shapes immigration policy preferences, we collected the American Community Survey’s 2007 measure on the size of the foreign-born population as a percentage of the total population living in each state (U.S. Census Bureau 2007). To operationalize how the emerging threat of increasing recent migration shapes state policy preferences, we also include the American Community Survey’s 2007 measure of the change in foreign-born population by state from 2000 through 2007. Here, we expect that larger recent increases in a state’s foreign-born population will be positively and directly related to the number of immigration control policies passed in the state. These two measures of immigration dynamics go to the heart of the distinction between the immigration threat and immigrant contact hypotheses. States that are threatened by a changing demographic will be most active in trying to stem the flow of immigration through immigration control policy. States that have already experienced a large flow of immigration will work to integrate that population.

Of course, in addition to changes in state immigrant population, theory and research have suggested a number of other political, economic, and demographic factors that shape immigration policy. In the wake of perceived political polarization around immigration policy, this article estimates the impact of political partisanship on state immigration policy development since the conventional wisdom suggests that conservative states pass control legislation. Conversely, Money (1999) argues that liberal parties have an incentive to pass aggressive integration policies since ethnic minorities tend to vote left. And in the post-9/11 political climate in the United States, we might
expect states under Democratic control to more strongly resist public pressures toward state-level immigration controls.

This article evaluates two distinct measures of partisanship and ideology on state immigration policy development. To control for the impact of party politics, we include a measure of state party control from 2005 through 2007. This variable was constructed by summing Klarner’s (2007) measure of state legislative and executive party control from 2005 through 2007. This measure captures the degree of Republican or Democratic control of the state legislature and executive office over the three-year period, with higher values indicating greater Democratic Party control of all branches of government. To assess the independent effect of state political ideology, we include an additional measure of state policy liberalism to account for how variation in state political ideology shapes immigration policy attention. State policy liberalism is operationalized using a 2006 index developed by Sorens, Muedini, and Ruger (2008). Following a traditional conception of progressivism and conservatism, we expect more liberal states will be active in the integration of immigrants, while less liberal states will focus on the control of immigrant populations.

While partisanship and ideology have been increasingly linked to state immigration policy preferences in the popular press, political scientists have observed that immigration policy preferences are often shaped by the perceived or real strain that immigration places on state social welfare regimes. Much recent work has focused on the welfare state and its relevance for public opinion toward immigration. Specifically, the relatively less generous U.S. welfare state has been posited as a reason for (relative) American openness to immigration (Alesina, Glaeser, and Sacerdote 2001; M. P. Smith and Tarallo 1995; Soroka, Stolle, and Johnston 2008). But state-level differences in social welfare spending again provide a fascinating federal laboratory in which to study this link by specifically allowing researchers to evaluate whether state welfare programs affect legislators’ involvement on any dimension of immigration policy. To test for how state levels of social welfare spending shape state attention to immigration policy, we include a measure of state per capita welfare spending taken from the 2006 U.S. Census of Governments. We expect that states with higher per capita social welfare spending will be systematically more attentive to all forms of immigration policy, as these states will work to integrate new immigrants into the workforce while limiting new claims for state social welfare assistance.

To understand how a state’s capacity to engage in and produce complex immigration policy analysis shapes state-level immigration policy making, we include a measure of state legislative professionalism. The argument here is that states face incentives to involve themselves in integration policy, as argued above. These incentives include the tailoring of immigrant flows to state economic needs as well as helping immigrants adapt to state institutions and identity. Control policy, on the other hand, will tempt state legislators only under conditions of cultural threat, coupled with perceived federal inactivity or incompetence. But we argue that more professional legislatures (as opposed to part-time legislatures where politicians rotate quickly and keep “day jobs”) will be able
to resist cultural threat pressures and guide state immigration policy toward the more “rational” integration policies.

Students of state politics observe considerable variation in the professionalism of state legislatures (Hamm and Moncrief 2004; J. D. King 2000; Mooney 1995; Squire 1992). While many hold lengthy annual legislative sessions, others have short legislative sessions or meet biennially. The most professionalized states provide representatives with a full-time salary and a well-paid legislative support staff. States with citizen legislatures provide only a small stipend to part-time representatives and provide little in the way of research or administrative support (Hamm and Moncrief 2004; J. D. King 2000; Mooney 1995; Squire 1992).

The concept of legislative professionalism is operationalized through an index developed by J. D. King (2000), who tracks changes in the professionalism of U.S. state legislatures from 1964 through 1994. Building on Squire’s (1992) conceptualization of state legislative professionalism, the King index compares the professionalism of U.S. state legislatures—measured by levels of financial compensation, days in session, and expenditures for services and operations per legislature—against identical measures of professionalism in the U.S. Congress (J. D. King 2000; Squire 1992). State legislatures closely approximating the levels of professionalism in the U.S. Congress have index scores approaching 1 (indicating perfect representation of congressional professionalism), while citizen legislatures have scores approaching 0. If professionalism facilitates development of effective public policies, we should expect a strong positive correlation between legislative professionalism and more immigrant integration legislation, since it is this latter category of legislation that offers the most tangible rewards to states (Boushey and Luedtke 2006).

We also include a number of control variables to explore how variation in the state economic and demographic environment shapes immigration policy attention. We add a measure of per capita GDP (U.S. Census Bureau 2008) to control for how the wealth of a state shapes legislative responses to immigration. We include a measure of agriculture as a percentage of a state’s GDP to assess how the influence of an industry dependent on migrant labor shapes immigration policy activity. To control for how organized labor shapes state attention to immigration policy, we include a measure of union density provided by the U.S. Department of Labor’s Bureau of Labor Statistics (2006). Finally, following the well-documented connection between education and economic and social policy innovation (Florida 2003; Walker 1969), we include a simple measure for the percentage of a state’s population that is college educated.6

The above can be distilled into specific hypotheses to explain state-level activity on two categories of immigration laws: control and integration.

**Hypothesis 1:** A large influx of new immigrants will trigger cultural threat perceptions, leading to state-level immigration control legislation (McLaren 2001; 2002).

**Hypothesis 2:** A large population of already-resident immigrants will trigger attempts to impose specialized economic needs and cultural preferences,
leading to state-level immigrant integration legislation (Givens and Luedtke 2005). On the other hand, longstanding contact with immigrants will reduce pressures to pass control legislation (Allport 1954).

**Hypothesis 3:** Left-wing parties see already-resident immigrants as potential voters but gain little political benefit from liberalizing immigration control (Money 1999). Thus, a more liberal state government will enact fewer immigration control laws.

**Hypothesis 4:** Given the inefficiencies of state-level immigration control in a federal system, more professionalized legislatures will avoid this issue, focusing instead on the political gains to be made from passing integration legislation. Thus, more professionalized legislatures will enact more immigrant integration laws but will not necessarily enact more immigration control laws (Boushey and Luedtke 2006).

**Hypothesis 5:** Given that unintegrated immigrants are seen to threaten the welfare state, states with more generous social welfare programs will pass more immigration legislation in both control and integration categories (Soroka, Stolle, and Johnston 2008).

**Explaining Immigration Policy Dynamics**

The dependent variables in our analysis are counts of state immigration laws. To develop a measure of state attention to immigration control and integration policy, we collected information from the Progressive States Network (PSN) report “The Anti-Immigrant Movement That Failed,” which provides information on trends in state immigration policy from 1997 through 2008 (PSN 2008). The PSN report provides both a raw count of state lawmaking activity as well as a description of those immigration bills PSN researchers classified as “integrative” and “punitive.” Since the integrative–punitive dichotomy is focused on whether a law is pro- or anti-immigration, it does not match our distinction between immigration policy types, which focuses on whether a law deals with immigrant movement or treatment of already-resident immigrants. In the words of Tichenor (2002), control policies deal with “admissions” (more or less), while integration policies deal with “rights” (more or less).

Thus, we recoded the PSN data to capture immigration control and immigrant integration policies. Using the summary descriptions of each piece of legislation, we recoded the PSN data according to the principal objective of immigrant integration or control. We classified all state legislation directed toward regulating the enforcement of immigration laws, limiting access to state services, and requiring state checks of citizenship as immigration control policies. Enactments extending social welfare benefits, facilitating the language or job training of immigrants, or protecting immigrant rights in the workforce or legal system were identified as immigrant integration policies.

Our recoding specifically focused on distinguishing between policies that are intended to control the flow and mobility of immigrants to and within the state and those that are intended to facilitate the integration of immigrants into the workforce or
This reclassification of policies identified a substantially different set of integrative policies from those identified in the PSN data set. For example, while PSN researchers identified legislation criminalizing the trafficking of humans as an integrative policy, we reclassify this as a control policy, as it specifically addresses state policy regulating the inflow of illegal immigration. Likewise, where the PSN researchers classify state resolutions instructing local government officials to verify residency or enforce federal immigration policy as “punitive,” we view such policies as oriented toward the control of immigration.

In theory, control policies could be “liberal” (i.e., admitting more immigrants), while integration policies could be “restrictive” (i.e., reducing immigrant rights and benefits). Though the PSN data set does not contain any state laws that reduce immigration controls, it does contain state laws that reduce immigrant rights and benefits. Out of the 157 “punitive” laws in the data set, 13 deal with reducing rights and benefits to resident immigrants. However, in a federal system where states have little control over actual admission decisions and border control, we argue that such state laws (reducing rights and benefits) serve as de facto control laws because their primary aim is to pressure immigrants to leave, and more importantly to deter the entrance of new immigrants, by sending signals of “toughness” vis-à-vis other states. Thus, we classified these 13 laws as control laws.

Table 1 provides a summary of the number of immigration enactments collected for each dependent variable in this study.

Results and Discussion

The results from negative binomial regressions estimating the number of immigrant integration and control policies passed are reported in Table 2, which provides a comparison of correlates leading to state activity in immigration control and integration policy. The negative binomial model was selected for modeling the number of immigration bill enactments collected for this study, as it is specifically intended to model event count processes but relaxes the mean variance assumption underlying Poisson regression analysis. To facilitate interpretation of the relationship between independent and dependent variables, we follow recent standards for presenting findings from nonlinear regression models. We first simulate model parameters for the impact of key variables of interest on the dependent variable. For each significant explanatory variable, we then estimate the average expected increase or decrease in immigration policies when moving from the minimum to the maximum value of the key independent variable. This procedure allows us to more clearly estimate the effects of the explanatory variable, as it provides an estimate (and 95% confidence intervals) of the predicted values of the dependent variable when holding all other variables at their mean or modal values. For each of the immigration population dynamics variables in the model, we also provide graphical plots of the predicted values and 95% confidence interval, holding all other...
**Table 1. Measures of U.S. State Immigration Policy Activity, 1997–2008**

<table>
<thead>
<tr>
<th>State</th>
<th>Number of integration policies enacted (PSN)</th>
<th>Number of control policies enacted (PSN)</th>
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<tbody>
<tr>
<td>Alabama</td>
<td>0</td>
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<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Missouri</td>
<td>2</td>
<td>11</td>
</tr>
<tr>
<td>Montana</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Nevada</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>New Jersey</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>New Mexico</td>
<td>4</td>
<td>3</td>
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<tr>
<td>New York</td>
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<td>2</td>
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<tr>
<td>North Carolina</td>
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<td>4</td>
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<tr>
<td>North Dakota</td>
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<td>0</td>
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<tr>
<td>Ohio</td>
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<td>0</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Oregon</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>0</td>
<td>4</td>
</tr>
</tbody>
</table>

(continued)
coefficients in the model constant. This procedure provides a simple visual representation to evaluate the significance, direction, impact, and uncertainty at different values of each explanatory variable.\textsuperscript{11}

\textbf{Findings: Immigrant Integration and Control Policies}

Table 2 presents coefficient values for each independent variable on the number of state integration policies from 1997 through 2008. The side-by-side comparison of these models allows us to assess the forces driving policy development in each of these two distinct immigration policy domains. The correlates of immigrant integration and control policy suggest that variation in immigration dynamics leads states to adopt remarkably different approaches to immigration policy.

The first column of Table 2 confirms the preliminary research hypothesis regarding immigrant contact and the development of immigrant integration policy. There is a strong and significant relationship between the number of immigrant integration bills passed in a state and the size of a state’s existing foreign-born population. States with large foreign-born populations appear to spend significant time developing policies to accommodate and integrate their foreign-born residents. These states are more likely to have passed a greater number of policies facilitating the cultural and economic settlement of their immigrant populations through education, social service assistance, and economic and workplace protections.\textsuperscript{12}

Figure 1 plots the expected number of immigrant integration enactments as the size of the foreign-born population increases, holding all other coefficient values in the model constant.\textsuperscript{13} This graph shows that an increase in the size of a state’s foreign-born population translates into a modest increase in immigrant integration policies. States

\begin{center}
\begin{tabular}{lcc}
\hline
State & Number of integration policies enacted (PSN) & Number of control policies enacted (PSN) \\
\hline
South Carolina & 4 & 18 \\
South Dakota & 0 & 0 \\
Tennessee & 2 & 12 \\
Texas & 4 & 3 \\
Utah & 3 & 8 \\
Vermont & 1 & 0 \\
Virginia & 6 & 10 \\
Washington & 6 & 2 \\
West Virginia & 0 & 2 \\
Wisconsin & 1 & 0 \\
Wyoming & 0 & 2 \\
\hline
\end{tabular}
\end{center}

Note: Data from the Progressive States Network (PSN).
Table 2. Explaining U.S. State Immigration Integration and Immigration Control Policy

<table>
<thead>
<tr>
<th>Independent variable</th>
<th>Number of integration bills enacted</th>
<th>Number of control bills enacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>% foreign-born population</td>
<td>7.383*</td>
<td>1.485</td>
</tr>
<tr>
<td></td>
<td>(3.203)</td>
<td>(2.705)</td>
</tr>
<tr>
<td>% change foreign-born population</td>
<td>2.210#</td>
<td>3.142***</td>
</tr>
<tr>
<td></td>
<td>(1.194)</td>
<td>(0.722)</td>
</tr>
<tr>
<td>Per capita welfare spending</td>
<td>-0.000473</td>
<td>-0.000153</td>
</tr>
<tr>
<td></td>
<td>(0.000475)</td>
<td>(0.000426)</td>
</tr>
<tr>
<td>Policy liberalism</td>
<td>-0.145*</td>
<td>-0.103#</td>
</tr>
<tr>
<td></td>
<td>(0.0665)</td>
<td>(0.0529)</td>
</tr>
<tr>
<td>Legislative professionalism</td>
<td>2.843**</td>
<td>1.663#</td>
</tr>
<tr>
<td></td>
<td>(0.849)</td>
<td>(0.975)</td>
</tr>
<tr>
<td>State party control</td>
<td>0.0608</td>
<td>-0.00265</td>
</tr>
<tr>
<td></td>
<td>(0.0529)</td>
<td>(0.0334)</td>
</tr>
<tr>
<td>Per capita GDP</td>
<td>-6.36e-05**</td>
<td>-5.27e-05**</td>
</tr>
<tr>
<td></td>
<td>(2.23e-05)</td>
<td>(1.57e-05)</td>
</tr>
<tr>
<td>% GSP from agriculture</td>
<td>-0.0618</td>
<td>-0.161</td>
</tr>
<tr>
<td></td>
<td>(0.0947)</td>
<td>(0.115)</td>
</tr>
<tr>
<td>% labor force unionized</td>
<td>0.0528*</td>
<td>-0.0107</td>
</tr>
<tr>
<td></td>
<td>(0.0208)</td>
<td>(0.0216)</td>
</tr>
<tr>
<td>% population with BA</td>
<td>0.168**</td>
<td>0.0962**</td>
</tr>
<tr>
<td></td>
<td>(0.0296)</td>
<td>(0.0297)</td>
</tr>
<tr>
<td>Constant</td>
<td>-3.652*</td>
<td>-0.201</td>
</tr>
<tr>
<td></td>
<td>(1.445)</td>
<td>(1.157)</td>
</tr>
<tr>
<td></td>
<td>.06258</td>
<td>.04800</td>
</tr>
<tr>
<td></td>
<td>(.1138)</td>
<td>(.07650)</td>
</tr>
<tr>
<td>N</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Wald statistic, $\chi^2$</td>
<td>88.81</td>
<td>77.20</td>
</tr>
<tr>
<td>Log pseudolikelihood</td>
<td>-79.966</td>
<td>-102.437</td>
</tr>
</tbody>
</table>

Note: Coefficients reported with robust standard errors in parentheses.

#p < .10. *p < .05. **p < .01. ***p < .005

with low foreign-born populations are expected to pass few (if any) policies integrating immigrants into the state, while states with the largest foreign-born populations have been most active in integrating new immigrants. As Figure 1 demonstrates, the states with the largest foreign-born populations on average are expected to implement approximately six more integrative policies than their counterparts with relatively small immigrant populations, all else equal.

A second trend to emerge from the analysis is that state activity in immigrant integration policy is strongly and significantly related to the level of state legislative professionalism. As mentioned at the outset of this research, we anticipated that legislative
professionalism would be correlated with a greater number of integration enactments, as policy makers working in professional legislatures spend more time in legislative sessions evaluating and ultimately voting on bills. Table 2 supports this hypothesis, demonstrating that the expected number of immigrant integration enactments increases as the professionalism of the state legislature increases. Indeed, the simulated effect of moving from the least to most professional state legislature has a pronounced impact on the number of enactments, as moving from the lowest to highest score on the professionalism index suggests an average increase of approximately six integrative policies, holding all other factors constant.

A comparison of the influence of legislative professionalism on state policy making in immigrant integration and control policy suggests a second underlying dynamic may be at work. Although professional state legislatures are strongly and positively associated with a high number of immigrant integration policies, the model confirmed no such relationship between legislative professionalism and immigration control policy. This finding suggests that a second attribute related to the relative expertise of professional state legislatures—either the enhanced ability to evaluate the costs and benefits of integrative versus control policies or their reluctance to develop policies that will contradict federal legislation—shapes their preferences for a certain form of immigration policy development.
The second column in Table 2 shows that the predictors of immigration control policy are distinct from those of immigrant integration policy. First and foremost, we find strong support for our immigration threat hypothesis—a rapidly growing immigrant population compels states to attempt to limit immigration through state-level control policies. The model bears this finding out in two regards. As expected, the magnitude of a change in a state’s immigrant population is positively and strongly correlated with the number of bills enacted to control the flow and settlement of immigrants. Furthermore, no relationship could be established between the size of a state’s existing foreign-born population and activity in immigration control policies. States have apparently enacted immigration control only as a response to large and recent waves of immigration.

Figure 2 plots the expected number of immigration control policies against changes in the state’s foreign-born population from 2000 to 2007. States with the largest increases in foreign-born population are expected to be by far more active in immigration control policy. Moving from a state with a recent 20% growth in its foreign-born population to a state that has seen a 60% growth in the foreign-born population leads to an expected threefold increase in control policies, holding all other factors equal.14

Finally, the comparison of the integration and control models reveals only modest support for the claim that conservative states will favor immigration control laws. There
is a negative correlation between state policy liberalism and the number of integration and control policies passed. However, this relationship is statistically significant only for the integrative policy model.

**Conclusion**

In light of the Arizona debate, explaining recent state policy activism on immigration presents an interesting puzzle for theorists of immigration politics and reveals much about how democracies respond to diversity in federal systems. We argue that state politicians face strong incentives to pass immigrant integration policies to tailor immigrant integration to the state’s particular economic and sociocultural preferences. On the other hand, state politicians do not normally gain benefits from intruding on federal jurisdiction over immigration control, except during periods of federal inactivity or perceived federal incompetence coupled with cultural threat arising from new immigrant populations. From this broad theory, we develop hypotheses about what explains state policy activism on both the integration and control dimensions. Specifically, we argue that larger existing immigrant populations will lead to more integration laws, while inflows of recent immigrant populations will lead to more control laws. We also argue that more professional legislatures will pass more integration laws, while more conservative legislatures will pass more control laws. Finally, we argue that more welfare spending will correlate with more laws in both categories.

We find support for all but the last of these hypotheses. Surprisingly, welfare spending does not seem to have an effect on state immigration policy activism. Our findings hold strong implications for scholars of federalism, state politics, and immigration politics. Regarding federalism, our findings demonstrate that the long-established trend toward federal control of immigration and local integration of immigrants can break down under conditions of cultural threat coupled with federal inactivity or perceived incompetence. On the other hand, following the contact hypothesis, states with longer-established immigrant populations are less prone to attempt to seize control over this policy area. As evidenced by widespread support for Arizona’s move, the recent discontinuity in U.S. federal–state immigration policy dynamics will likely persist as long as state governments feel pressure to respond to the political, social, and economic pressures associated with increasing immigration. That said, the federal government could offset some state policy-making activity, not simply by imposing new immigration control policies but also by clarifying and expanding the role of state and local governments in the recruitment, settlement, and integration of immigrants. In recent decades Canada has devolved some immigration recruitment and integration authority to the provincial governments by allowing provinces to identify and solicit immigrants who match local cultural, linguistic, or economic preferences while retaining the authority to control the flow of immigration as a federal responsibility. The United States could likewise consider empowering state governments to develop local immigration programs designed to give states the authority to solicit and integrate immigrant groups that meet specific labor needs.\(^{15}\)
Regarding state politics, our finding linking professionalism of a legislature and state-level immigration policy activity has potential implications for other policy areas. Even when controlling for the education, wealth, and liberalism of state governments, professional legislatures are better able to understand the benefits to be reaped from passing particular integration policies and to identify the inefficiency of involving state authorities in immigration control. The different ways that professional legislatures and citizen legislatures have approached immigration policy may extend differences in state capacity to engage in complex policy evaluation and design. Future research in immigration policy—and more broadly on cultural and identity politics—should carefully consider how variations in the professionalism and design of state political institutions lead to substantively important differences in policy design and implementation.

In terms of policy implications, our findings demonstrate that federal lawmakers must break the congressional deadlock and regain the initiative in immigration control if they hope to avoid constitutional confusion and redundancy. While the drive toward state-level control policies may recede as more states become accustomed to large immigrant populations, in the short term state governments are likely to continue experimenting with novel approaches to immigration control. Immigrant rights organizations might thus be best served by focusing on federal lobbying, in the context of cultural threat politics dominating U.S. states that are newer immigrant destinations.

Finally, future studies can build on this cross-sectional work by analyzing the dynamics of state policy activism over time, looking more narrowly at how changes in state immigration population dynamics (in terms of both growth and overall size) shape state attention to immigration policy, or more comprehensively accounting for the effect of policy experimentation and diffusion under periods of relative federal inactivity. Such an approach may well expand on our findings, evaluating whether the factors that affect state policy “leaders” have the same effects on late-adopting states and in discovering whether longer contact with immigrant populations (especially if federal reform is forthcoming) reduces pressures for state-level immigration control policies.16

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Notes


2. A review of colonial and early U.S. state immigration policy reveals a variant of the race to the bottom. State government immigration prohibitions were largely directed at the poor, indigent, and infirm as well as racial minorities. In short, state governments used resources attempting to restrict the mobility of the same pool of “bad” migrants across state borders.

3. These measures of foreign-born populations and the percentage change in foreign-born population can be downloaded from the Migration Policy Institute’s Data Hub. To access the data, navigate to http://www.migrationinformation.org/datahub/acscensus.cfm.

4. Klarner’s (2007) measure of party control provides a binary variable indicating Republican or Democratic control of the lower and upper houses of the state legislatures as well as the governor’s office. In the summed measure, a score of 0 indicates Republican control, while a score of 9 indicates complete Democratic control of the legislative and executive branches for the three-year period.

5. Sorens, Muedini, and Ruger (2008) construct a measure of policy liberalism by conducting a principal components analysis of 170 state and local policy innovations. Higher values indicate more liberal state policy regimes, while lower values indicate more conservative policy regimes. To our knowledge, this is the most recent measure of state policy liberalism and is strongly correlated with prior measures of state policy liberalism. To access their data, navigate to the project homepage at http://www.statepolicyindex.com/.

6. The analysis initially included a dummy variable to account for all border states (AK, AZ, CA, ID, ME, MI, MN, MT, NH, NM, NY, ND, OH, PA, TX, VT, WA) and Mexican border states alone (AZ, CA, NM, TX). In the initial analysis, neither variable was a statistically significant predictor of state immigration policy-making activity. Furthermore, inclusion of these variables contributed little to the overall performance of the model. These measures were dropped from the analysis.

7. State laws criminalizing human trafficking are counted as control policies because they are efforts by state governments to prohibit illegal immigration—a policy area generally determined by the federal government. Here, the coding scheme addresses the primary directive of the policy. Human trafficking laws are counted as control even if the policy provides additional relief for victims of trafficking in the form of counseling services or medical assistance.

8. It is important to note that the Progressive States Network data leave aside a large number of state-level immigration policies that address neither immigrant integration nor control, such as symbolic floor resolutions to celebrate immigrant heritage, directives to create commissions to study immigration issues, and policies modifying existing immigration statutes. For a more expansive collection of state attention to immigration policy, see the National Conference of State Legislatures brief “State Laws Related to Immigration,” available for download at http://www.ncsl.org/default.aspx?tabid=19897.

9. Because the dependent variables are geographically distributed, there is potential for spatial autocorrelation in the model. To identify whether spatial autocorrelation introduced
any inefficiency in the analysis, we reproduced the full model using ordinary least squares (OLS) regression and assessed the model residuals for spatial autocorrelation with the Moran’s I statistic. The Moran’s I test indicated no statistically significant incidence of spatial autocorrelation for either the immigrant integration or control models. Although the OLS model provides a method for assessing model residuals for spatial autocorrelation, we present the negative binomial model in this analysis, as it provides a better fit for the immigration policy data.

10. Analysis identified overdispersion of the count data in each of the dependent variables of interest. We selected the negative binomial rather than a Poisson regression model to estimate the count data.

11. For a detailed overview of this technique, see G. King, Tomz, and Wittenberg (2000). For a recent summary and application of this procedure, see Dowling and Lem (2009).

12. Of course, it is possible that there is an interaction between the size of a state’s existing foreign-born population and the growth of a state’s foreign-born population. Following the logic of Allport’s contact hypothesis, states that are already accustomed to large foreign populations and see a recent upsurge in immigrants should behave differently than a state with a small existing foreign-born population that has seen a large upsurge in immigrants. To test this, we added an interaction term to each regression model. Not only were the interaction terms not statistically significant at different values of the moderator variable, but the predicted change in state immigration policy making across the values of the interaction term (size × growth) showed virtually no impact of the interaction on the number of immigration policies enacted. Evaluation of the overall fit of the base and expanded models showed little improvement with the interaction term, and the additional variable was subsequently dropped from the analysis in the interest of parsimony.

13. Values for the percentage change in foreign-born population, per capita welfare spending, policy liberalism, legislative professionalism, per capita GDP, percentage GDP from agriculture, percentage labor force unionized, and percentage population with BA were held at their mean. State party control was held at its median value.

14. Values for the percentage foreign-born population, per capita welfare spending, policy liberalism, legislative professionalism, per capita GDP, percentage GSP from agriculture, percentage labor force unionized, and percentage population with BA were held at their mean. State party control was held at its median value.

15. For an expanded discussion of comparative federal and state immigration policy in federations, see Boushey and Luedtke (2006).

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