

**The Politics of Punishment and Protection: Deploying Penal Power in American
Immigration Control, 1990-2017**

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DISSERTATION

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SUMMARY

This dissertation examines one of the significant patterns of transformation in the configuration of American immigration control over the last two decades: divergent legal regimes of immigrant governance in various state and local jurisdictions, especially the emergence of a crimmigration system in some states. Drawing on comparative historical methodology, it documents and compares divergent processes of constructing immigration control in two select states—the development of crimmigration and governing through crime in Arizona, and the growth of immigrant protection and governing through support in Illinois.

Based on extensive historical, qualitative data and secondary sources, this study reveals that broad socio-economic changes and subsequent political struggles and contestations converged and reconfigured how state actors understood and responded to the “problem” of immigration and thus constructed divergent legal regimes of immigration control. To explain different legal and policy outcomes, I develop an explanatory framework that emphasizes socio-political processes and institutional logics. Specifically, three interrelated processes play a critical role in shaping their divergent approaches to immigrant governance: the cultural orientation, the structural relation, and the institutional dynamics. They interact with each other in complex, multi-directional ways in which political choices and administrative decisions are conditioned and shaped. This study also highlights the significance of collations formed among local organizations and their ties with state actors in influencing how state legal regimes of immigration control take shape.

In addition, this study suggests that Arizona’s deployment of penal power in immigration control and the resulting formation of crimmigration have operated to restructure citizenship through “hostile solidarity.” The criminalization of immigrants in Arizona is a penal expression

SUMMARY (continued)

of the emergent culture of control and the rising anti-immigrant populism when the state defines the immigration issue as a “law and order” problem and chooses punitive measures to respond immigration and other socio-economic insecurities.

By analyzing the specific contextual factors driving the variegated trajectories of constructing immigration control fields, and their use (or non-use) of penal power as a response, this study helps understand the hybrid, dynamic and contingent nature of immigration control in contemporary American society. Theory, research and policy implications are drawn from the findings of the study.

1. INTRODUCTION

The past several decades have witnessed significant social transformations in the United States including, notably, the emergence of “the culture of control” (Garland, 2001), globalization, and transnational migration into the country. In 2014, the immigrant population (legal and undocumented) in the United States had reached 42.4 million, which is an unprecedented, high record in American history (U.S. Census Bureau, 2015). Indeed, the recent wave of immigrants (mostly from Latin American and Asian countries) into the United States has elicited a new round of debates on immigrant governance in the political domain. The contentions over the immigration issue and its policy solutions have recently escalated and achieved national prominence. Since the 2016 Presidential election, Donald Trump and his administration has sought various means to connect immigrants to criminality, and has decidedly called for a restrictive and punitive approach to controlling immigration¹.

Despite recent attention drawn to the issue of immigration and its control, changes in laws and policies in response to the recent wave of immigrants to the U.S. emerged nearly two decades ago. American immigration governance has been remarkably reconfigured as a result of long-term political contestations and institutional changes since the 1990s. One of the most significant changes in American immigration control regime was the devolution of select immigration power from the federal government to state and local governments (Varsanyi, 2008). Therefore, state and local governments have become increasingly implicated in taking the ownership of the immigration “problem”—realms of authority which were traditionally the

¹ It is noted, in the presidential announcement speech, Donald Trump (2015) publicly condemned “When Mexico sends its people, they’re not sending their best...They’re sending people that have lots of problems, and they’re bringing those problems with us...They’re bringing drugs. They’re bringing crime. They’re rapists...It’s coming from more than Mexico. It’s coming from all over south and Latin America, and it’s coming probably—probably—from the Middle East...And it’s got to stop and it’s got to stop fast.”

prerogative of the federal government. In response to the federal government's deadlock in comprehensive immigration reform during the mid-2000s, a proliferation of state and local governments were proactively engaged in immigration policy making that enabled "a multilayered jurisdictional patchwork" of immigration control (Furusest and Smith, 2010; Newton and Adams, 2009; Provine, Varsanyi, Lewis, and Decker, 2016). Policy shifts, legislative enactments, and new control technologies have burgeoned in the field of immigrant governance, which consequently introduced a new immigration legal order in the United States. However, state and local governments are divided by the ways they respond to undocumented immigrants and immigration.

On one hand, some jurisdictions (i.e. Washington state and Illinois) have delivered protective and integrative services to immigrants, including allowing undocumented immigrants to get driver's licenses, obtain work permits, and enjoy tuition benefits in public colleges and universities (including financial aid), as well as providing undocumented immigrants protections from deportation (Marrow, 2012). This set of immigration control policies and programs have facilitated a pro-immigration legal regime that emphasizes the protection of undocumented immigrants from aggressive federal immigration enforcement and the integration of immigrants into local communities.

Conversely, over recent years many jurisdictions across the United States have embarked on an ever more punitive and exclusive approach to governing immigration (Aas and Bosworth, 2013; Bacon, 2008). This includes a heightened level of border patrol and monitoring, an increased involvement of the criminal justice system in immigration enforcement, a fast proliferation of detention and deportation for undocumented immigrants and other immigrant offenders, as well as recent federal executive orders limiting refugee resettlement, and barring

travel from certain Muslim-majority countries (Menjívar, Gómez Cervantes, and Alvord, 2018). Importantly, between 1998 and 2010, the criminalization of immigration became more pronounced and aggressive to prosecute immigration offenses in U.S. federal courts and sentence violators of immigration law to prisons. As a result, these tactics led to a growth of the number of immigrant offenders in federal criminal courts, and immigration offenses accounted for 56 percentage of the increase in federal prison admissions (Mallik-Kane, Parthasarathy, and Adams, 2012). Further, the tendency to criminalize immigration has spawned a crimmigration complex, which enmeshes immigration enforcement and criminal justice systems (Stumpf, 2006). Its establishment and operation embody a deployment of state penal power² on immigrant governance, and an infusion of crime control logics into the immigration policy domain.

The shifts in the contour of contemporary immigrant governance landscape raise explanatory questions, especially regarding the diverse (often contrasting) forms, processes, and orientations of immigration control that state and local jurisdictions have adopted and practiced accordingly. How did the current structure of immigrant governance in the United States come into being? Why did state and local jurisdictions diverge in their approaches to immigration control? How do we understand the dramatic, expansive mobilization and exercise of penal power in contemporary American immigration control?

To answer those questions, this dissertation examines the social, political, and institutional mechanisms and processes driving divergent approaches to immigration control in different American states, focusing on immigration policy development and field-level construction in context. Specifically, I engaged in a comparative historical analysis of American

² According to Barker (2017), penal power in immigrant governance refers to “[the state] relies on coercive tools such as expulsion, eviction, criminalization, and penalization to respond to mass mobility, which is perceived to be a social threat rather than a political expression rights” (p. 441). For a more detailed and in-depth development of this concept, please see Barker (2017).

immigration control in select jurisdictions from the 1990s through the present, seeking to explain why responses and policy solutions to the “problem” of immigration vary across states. Building on theoretical insights from the social constructionist perspective on social problems as well as the concept of the penal field, I traced the construction processes through which state jurisdictions developed their approaches to immigration control as they did, focusing on why some have (or have not) harnessed penal power in response to undocumented immigrants and “governed immigration through crime” (Dowling and Inda, 2013). In addition, through an in-depth, nuanced documentation of how divergent fields of immigration control have been constructed and changed, I aimed to understand the changing nature of penal power in a changing American society.

Drawing on historical, qualitative data and secondary sources regarding two select states’ immigration policy developments, my analysis demonstrates that broad socio-economic changes associated with immigration and subsequent political dynamics shape how states understand and respond to the immigration “problem.” To understand different trajectories and outcomes of immigration control in various states, I, building on historical institutionalism and field theory, developed an explanatory framework that emphasizes socio-political processes and institutional logics. Specifically, I contend that three interrelated processes explain Arizona’s rise of crimmigration and Illinois’ construction of a pro-immigrant regime: cultural orientations, structural relations, and institutional dynamics. These processes interact with each other in complex, multi-directional ways, thus rendering the field of immigration control hybrid, dynamic and contingent. They shape how political choices and administrative decisions were made and different immigrant governance regimes are constructed.

Over the last few decades, the influx of undocumented immigrants and border crossers into Arizona has evoked a frenetic anti-immigrant movement that is manifested in both public perceptions of “immigrant criminality” and extensive border vigilante activities (Doty, 2009). The cultural orientation associated with “immigrant criminality,” alongside enormous local and national anti-immigrant organizations and coalitions that flourished in Arizona have operated as potent social forces for pushing a crimmigration agenda. Those social forces, and the increasingly conservative state institutions, have conditioned legislative leaders’ choices and decisions to adopt a punitive approach to immigration control thus prompting the use of penal power and generating a crimmigration apparatus in the state. Arizona’s rise of crimmigration is a product of the interplay between the long-term penal populism against “criminal aliens” and the coalition between anti-immigrant organizations and political leaders that drives the state to govern through crime. I argue that the deployment of penal power in Arizona’s immigration control operates to restructure citizenship through “hostile solidarity” (Carvalho and Chamberlen, 2018). The notion of “hostile solidarity” rightfully points to the deepening social cleavages and divisions between citizens and immigrants that have created space for penal power to be exercised as a form of social control. Therefore, “hostile solidarity” is a political and penal expression of the emerging culture of control and the rising anti-immigrant populism in a context where the state responds to pressures of immigration and other socio-economic restructuring.

My in-depth case studies of Illinois’ immigration control show that the state of Illinois has cultivated longstanding traditions of receiving transnational immigrants and developed community infrastructures for accommodating them. Against this backdrop, Illinois’ cultural orientation toward immigration control has been largely welcoming and supportive (Jenks and Bouvier, 1996). Sporadic anti-immigrant activism, including its social and political effects on the

field of Illinois' immigration control, has been much less potent compared with that generated by pro-immigrant groups. The "community revitalization" (Lee and Martinez, 2009) and economically beneficial effects of immigration on Illinois have been understood and framed by social elites and community leaders. The local co-ethnic enclaves and immigrant communities that existed across the state, plus influential immigrant rights activist groups have worked together to create a welcoming environment for immigrants and helped them gain support (Velez, 2009). Through their long-term collaborations, those community members and pro-immigrant activists have created solid networks among themselves and galvanized their relationships with local law enforcement and grassroots organizations, thus amassing social and political capital in the field of immigration control. Together, with cumulative capital in the field, the set of various pro-immigrant groups have been aligned to overcome anti-immigrant obstacles and increasingly framed the issue of undocumented immigrants as those in need of service and protection rather than those as threatening "others" who should be treated with punishment and exclusion. With a pro-immigrant state institutional climate, those social forces have crystalized and produced a legal regime of immigrant protection, hence mitigating the use of penal power in the state's approach to immigrant governance.

1.1 **Significance of the Dissertation**

The contributions of this study to socio-legal scholarship on immigrant governance and crimmigration are three-fold. First, to my knowledge, this is the first study that simultaneously analyzes and compares two different approaches to immigrant governance in state-level jurisdictions in one study³. With the predominant focus on the criminalization of immigration in extant literature, this study aims to present a more complete picture of immigration control in the United States and investigate why the recent national punitive turn in immigration does *not* spell convergence (Lacey, 2011). In doing so, this study illuminates how social and political processes operate to fuel divergent changes in state and local immigration controls, explains why they take various forms and characters as they do, and highlights variations in the deployment of penal power in state immigration policy development. This study supports a better understanding of the complex and dynamic nature of immigration control in contemporary American society.

Second, the explanatory framework extracted from this study may be useful and instructive for understanding the dynamics and constructive processes of immigration control fields in jurisdictions beyond Arizona and Illinois. By framing the development of immigration control fields as a socially constructed process, this study finds that cultural orientations, structural relations, and institutional dynamics jointly shape and condition how immigration may be perceived as problematic and determine what strategies may be chosen by actors in differential jurisdictions. This refines current explanatory models of immigration policy outcomes by incorporating and specifying cultural, structural, and institutional contexts and

³ This dissertation is intended not as an exhaustive analysis of American immigration control encompassing every dimension of immigration governance and every level of jurisdictions, but a preliminary attempt to trace and explain why states significantly diverge in their responses to the immigration “problem” and approaches to immigration control. This study is the first to employ comparative historical methodology to study American immigration control in different states.

processes into a more comprehensive and coherent framework that may then be utilized to assess other case studies or comparative analyses.

Finally, this study advances understanding of the nature of penal power utilized in addressing the immigration “problem” by revealing its social and political underpinnings and state-and-society interactive processes. The dramatic development of crimmigration has garnered considerable scholarly attention. Prior explanations about the rise of crimmigration have focused on states’ reactions and choices associated with immigration control, especially the role of state institutions structure in shaping their policy responses. They have paid less attention to the social context in which the state has taken actions and made decisions. With a particular focus on the interpretation of penal power from the changing *state-and-society* relationship, this study argues that the deployment of penal power is historically contingent and socially constructed: it is the outcome of the interplay of historical institutional arrangements and political choices collectively made by various social actors. The criminalization of immigration has been rooted in a context of expanding social cleavages and divisions that pressure states to take strategies to maintain social order and exercise social control through penal governance. The state’s recourse to penal power was the outcome of political struggles by which the anti-immigrant force exceeds the pro-immigrant on in the field. “Hostile solidarity” speaks to the interactive process through which the state of certain institutional arrangements has chosen to deploy penal power in face of an increasingly divisive and unequal society.

1.2 **Layout of Chapters**

This dissertation proceeds as follows. Chapter 2 reviews literature on transformations in American immigration control over the last two decades, with a particular focus on the development of crimmigration in the United States. It provides the historical background against which contemporary America's criminalization of immigration was set up and my research question was posed, and then points out several limitations in the current literature on American immigrant governance.

Chapter 3 outlines the theoretical frameworks—the social constructionist perspective *and* the penal field (Page, 2012)—that are used to instruct my research design and help understand social constructive processes and field-level developments in state and local immigrant governance.

Chapter 4 discusses research methodology in the present study. Specifically, it explains why this study chooses comparative historical methodology as the preferred approach to understanding changing patterns of immigrant governance and the establishment of crimmigration in the United States. Further, it discusses how two critical cases were selected, why the time period was chosen, and how data analysis was conducted.

Following the section of methodology, Chapters 5 and 6 present significant findings that were drawn from two critical case studies. In particular, Chapter 5 provides accounts of Arizona's rise of crimmigration and governing through crime, and Chapter 6 analyzes how Illinois' legal regime of immigrant protection has developed, and how the state governs immigration through support.

Chapter 7 concludes by explaining two states' different approaches to immigrant governance based on the explanatory framework this study develops, as well as discussing theory

and research implications for future research on immigration governance and punishment in particular and social change and social control in general.

2. LITERATURE REVIEW

2.1 A Brief History of the Present

Immigration has been the object of political struggles throughout American history (Coutin, 2003). The emergence of a contemporary U.S. immigration policy regime will be made more intelligible if attention is paid to the historical development on which it depends. Of course, writing a full history of American immigration law and policy is beyond the scope of this project.⁴ In this section, I provide a brief genealogical account for American immigration control dynamics, focusing on several critical periods and moments of transition over immigration policy regimes' development that condition the contemporary immigration control landscape. A long-term, historical overview of the U.S. immigration control regime suggests that the regime is in a changing, volatile condition between a (limited) expansionist and restrictionist approach. A control regime aimed at immigration is contingent on social, economic, and political forces in context, including America's international relations (Tichenor, 2002, pp. 16-45). Throughout U.S. history, racial hierarchy has been embedded in the debate on immigration control.

The early, comprehensive immigration legislation by the federal government can be traced back to the Gilded Age (from the 1870s to about 1900) when U.S. society was undergoing rapid expansion due to industrialization and urbanization; however, the immigration control policies of this period (especially the 1880s and 1890s) culminated in lax regulation of European immigration and sweeping exclusion of Chinese immigration (Ngai, 2004). Because of higher American wages than those in Europe (especially for skilled workers) as well as the labor scarcity in the U.S., a large influx of European immigrants was allowed to enter for economic opportunities. Political leaders sought to establish easy naturalization for European immigrants.

⁴ For a comprehensive study of the history of U.S. immigration law and policy, see Martin (2010), Ngai (2004), and Tichenor (2002).

The Democratic Party was aligned with immigrant voters by taking a stand against nativist policy goals. Despite the occasional tendency of the Republican Party to appeal to anti-immigrant nationalism, Republican leaders attended to pro-immigration voters and considered stimulating national economic development through immigrant labor. Overall, national regulations of European immigrant flows were relatively permissive during the Gilded Age.

Nonetheless, the politics of Chinese exclusion over the same period of time took on a different landscape. In the late 19th century, large numbers of Chinese migrant laborers were imported to the United States—particularly in the West Coast states during the California Gold Rush. The Qing Dynasty of China was also in decline during this period. With the rapid growth of American industry, early Chinese migrated to the U.S. for a more stable life and worked as gold miners and later builders on the First Transcontinental Railroad project. With the growth of Chinese immigrants in the population of West Coast states, anti-Chinese sentiments or *Sinophobia* began to emerge and prevail in those regions (Saxton, 1975). Anti-Chinese activists of the Pacific Coast recognized that they could gain widespread support for their anti-Chinese proposals in Washington, D.C. during a time of intense partisan competition for Western votes (Saxton, 1975). In the meantime, a broad coalition of politicians and social groups came together to construct Chinese immigrants as “Yellow Peril” and “racially inferior and thus fundamentally unassimilable.” This extensive, anti-Chinese movement finally propelled the enactment of *the Chinese Exclusion Act of 1882*, which made Chinese labor immigrants inadmissible, and later *the Chinese Exclusion Act of 1888* that barred any Chinese immigrant from entering the U.S. (Aarim-Heriot, 2003).

The patterns of immigration control policy that emerged at the end of the nineteenth century were highly racialized and politically charged. As a result, the issue of immigration

control continued to be a subject of political debates and struggles in the early twentieth century (Tichenor, 2002, pp. 114-149). During the Progressive Era (from the 1890s to the 1920s), the national origins of most European immigrants to the U.S. had shifted from northern and western to southern and eastern European countries. Opponents of immigration and new anti-immigrant activists called for restrictions on this “new” European immigration. However, their anti-immigrant movement encountered resistance from a coalition of progressive activists, including liberal social reformers promoting cultural pluralism and business groups (i.e. the National Association of Manufacturers), who hoped to benefit from cheap immigrant labor. Despite the increasing influence of these progressive immigration reformers and groups, their effect appeared limited, mainly because anti-immigrant camps gained special influence over the expert findings of federal immigration commissions (Tichenor, 2002, p. 12). Those findings lent scientific legitimacy to the eugenicist narrative about the racial inferiority of southern and eastern Europeans, and connected the influx of those immigrants to the social upheaval of that time. This narrative had widespread resonance, which made anti-immigrant groups successful in channeling nationalist anxieties into policy innovations, and fusing immigration control with racial hierarchy. Consequently, a series of quota systems were introduced and passed, beginning with the *Immigration Act of 1917*, which barred virtually all Asians from entering the United States. Next, the *Emergency Quota Act* (1921), the *National Origins Act* (1924), and the *Immigration Act* (1929) were signed into law. In little over a decade, an increasingly racialized legal regime of immigration control was forged (Ngai, 2014).

The years spanning the New Deal and World War II (the 1930s and 1940s) witnessed a new wave of legislation on the immigration issue that took a limited expansionist approach (Tichenor, 2002, pp. 176). Two important and notable pieces of legislation took place during this

period. One is the *Chinese Exclusion Repeal Act of 1943* (also known as the Magnuson Act). Although this law repealed Chinese exclusion in favor of meager quotas, which permitted some Chinese immigrants residing in the country to become naturalized citizens, ethnic Chinese were still banned against the ownership of business and property. This law was the first legislation since 1870 that relaxed racial and ethnic barriers for immigrants seeking to live in the United States. It prepared a path to the completely non-racial and non-national immigration legislation and policies of the late 1960s.

The second piece of legislation was the establishment of the *Bracero Program* (1942-1964). This was a bilateral agreement between Mexico and the United States that allowed millions of Mexicans to work in the United States as guest workers, largely based on agricultural labor contracts. This program was established due largely to the involvement of the U.S. in the Second World War, and its resulting massive labor shortage in economy. The Bracero Program brought a large influx of Mexican immigrants into the country. From 1948 to 1964, an average of 200,000 manual laborers, or *braceros*, were imported to the U.S. per year (Bracero History Archive, 2018). Controversies emerged over the renewal of the program and created obstacles between the two countries. The program lasted almost two decades until its termination in 1964. According to Calavita's (2010) research on the program's demise, the agreement collapsed because of the persistent structural tension between popular perceptions of Mexican immigration, the needs for farmworkers and agricultural labor, and the dynamics inside the state's administrative structures.

With the rise of the Civil Rights Movement from the 1950s to the 1970s, immigrant rights movements also made progress. During this period of time, the *Hart-Celler Act* was passed in 1965, which dismantled the system of national origins quotas and initiated a seven-category

preference system with an emphasis on job skills and family reunification. Due to the establishment of the *Cuban Refugee Act* (1960) and *Indochinese Refugee Act* (1977), the U.S. opened its borders to people in need of refuge and resettlement. Since the 1970s, U.S. society has continued receiving new waves of immigrants from around the world, mainly Latino and Asian immigrants.

Subsequently, the once expansive immigration policy has been increasingly replaced by a more restrictive policy orientation. Beginning in the 1980s (and continuing into the present), a trend toward criminalization of immigration policy took hold in the United States. The general public and an emergent anti-immigrant movement were uneasy about unprecedented Third World immigration, large-scale undocumented immigration, and crises of mass asylum seeking. The number of immigration offenses that are now criminalized and which have deportation consequences has expanded (Dowling and Inda, 2013). In 1986, the *Immigration Reform and Control Act* (IRCA) was passed and prohibits undocumented immigration. It was originally created with the goal of giving amnesty to, and providing a path to residency for, undocumented immigrants. It also increased the budgets of the Border Patrol – which was intended to make border crossings more difficult and expensive (Massey, Durand, and Malone, 2002). Also, for the first time, the IRCA created penalties for employers, who knowingly hired undocumented immigrants.

Since the 1990s, the criminalization of immigration has been elevated to a new level (Menjívar, Gómez Cervantes, and Alvord, 2018). The fusion of criminal justice and immigration enforcement systems began to emerge in law. Legislative infrastructures were constructed, and which authorized the arrest, detention, and deportation of suspect immigrants. The year 1996 saw an influx of legislation aimed at the criminalization of immigration. The passage of the

Antiterrorism and Effective Death Penalty Act; the *Illegal Immigration Reform and Immigrant Responsibility Act*; the *Personal Responsibility and Work Opportunity Reconciliation Act*, and the Section 287(g) Program agreements (which grants local police officers authority to carry out enforcement of federal immigration law) all emerged in 1996. This was a turning point in immigration policy history because it was the first time local law enforcement would be utilized in the domain of immigration enforcement. Following the events of 9/11, and the ensuing concerns over domestic security, a specialized agency—the division of Immigration and Customs Enforcement (ICE) within the Department of Homeland Security (DHS)—was founded in 2002, and became responsible for enforcing immigration policies.

Established in 2008, the *Secure Communities Program* fueled the expansion of immigration enforcement from the federal government to the local jurisdictions by establishing partnerships among federal, state, and local law enforcement agencies and providing them with access to the DHS’s immigration database to cross-check fingerprints when an arrest is made. ICE has claimed this program aims primarily to identify, apprehend, and deport immigrants who pose serious threats to public safety. Despite varying participation levels of local law enforcement agencies, the *Secure Communities Program* has promoted the emergence of “a multilayered jurisdictional patchwork” of immigration enforcement (Varsanyi, Lewis, Provine, and Decker, 2012). It is against the background of those legislative changes that my examination of how states reacted to the immigration “problem” sets forth.

2.2 **The Recent Criminalization of Immigration in the United States**

Influxes of transnational migrants to the U.S. and other Western countries in recent decades have triggered public debates over the immigration issue, especially the relationship

between immigration and crime, with political rhetoric and public perceptions connecting new immigrants with criminality (Ewing, Martínez, and Rumbaut, 2015). These perceptions have also entered U.S. government affairs, which tend to join criminality and immigration in law and practices.

First, the creeping merger of criminal and immigration law — two systems of exclusion and inclusion creating insiders and outsiders, and which “distinguish between guilty versus innocent admitted versus excluded, legal versus illegal” (Stumpf, 2006, p. 380). The approach in immigration law has been represented from merely barring the entry of foreigners with criminal convictions to current practices of defining many immigration violations as criminal offenses and applying the penalty of deportation. The recent concern with terrorism has added rationalizations for regulations and exclusion or removal, leading to various restrictions on permits to enter the U.S.

The second domain is evident in everyday criminal justice practices: the growing engagement of criminal justice in immigration enforcement, which ranges from enhanced border monitoring, increased policing of immigrants at the state and local level, through workplace audits, the penalty effect of immigrant status in sentencing outcomes (Light, 2014), denial of rights and benefits for new immigrants, and detention to deportation (Nevins, 2010).

Despite pervading rhetoric that links immigration to crime, research has demonstrated that immigration has not increased, and in some cases has decreased, crime. There has been a consensus among researchers that “open doors don’t invite criminals” (Sampson, 2006), immigrants are less likely than natives to commit crime, and communities with large concentrations of immigrants are “some of the safest places to live” (Feldmeyer, 2009). Notwithstanding evidence to the contrary, the misconception of “immigrant criminality” has

been widely embraced, as evidenced in recent arguments made in the 2016 election campaign, with social energies and public resources being mobilized to address the perceived threat (Alba, Rumbaut, and Marotz, 2005). The growing anti-immigration sentiments, fears, and protests, and the drawing of boundaries for the nation, have solidified the “reality” of immigrants as “symbolic assailants⁵” (Skolnick, 1966). Immigrants are currently perceived as threats to the social order, employment options, and political organization, warranting a strict immigration control regime (Provine and Doty, 2011). The attendant “governance of immigration through crime” (Dowling and Inda, 2013: 1-36), or emergence of the “crimmigration patchwork,” is currently practiced in cities and towns across the United States (Varsanyi, Lewis, Provine, and Decker, 2012).

The crimmigration regime has had adverse repercussions on immigrants and their families and communities, as well as unintended consequences and dilemmas for law enforcement and other criminal justice practices, which include undermining public safety (Armenta, 2012; Kirk, Papachristos, Fagan, and Tyler, 2012). At the same time, the nationwide resistance to the crimmigration apparatus by immigrants and their rallied supporters (Bloemraad and Voss, 2011) has demonstrated that these symbolic boundaries are not clear-cut or immutable,

⁵ Skolnick (1966) coined the term “symbolic assailant” to describe how police develop perceptual shorthand to denote the dangerous “other” for whom police constantly watch for as they conduct their work. The police learn to identify certain persons, appearances, or circumstances as threats regardless of whether they pose risk at a specific instance. This perceptual shorthand symbolizes potential threat through a constellation of behaviors, appearances, or circumstances that the police have come to recognize as a prelude to crime or violence. Jiang and Erez (2018) suggest that immigrants have become symbolic assailants as U.S. authorities and the public have come to perceive immigrants as the others who, despite evidence to the contrary, are likely to pose a burden on U.S. economy, engage in law violations, create unfair competition for American workers, and cause unfavorable changes in the social structure of the country. This symbolic function in the politics of restrictive and punitive immigration control can also be affirmed in an earlier work of Calavita (1996) that analyzed how the Proposition 187 of California was passed in 1994.

but rather fluid, contested and often racially coded, placing unauthorized immigrants—semi-legal, quasi-legal or “illegal” citizens (Armenta, 2017)—in a state of “protracted vulnerability” (Abrego and Lakhani, 2015; De Genova, 2002, p. 429).

The existing body of literature explaining the development of crimmigration is categorized largely into two strands of research: one draws on qualitative research to explicate its emergence, manifestation, and operation in different levels of the government and various sites, and constitutes the major body of explanatory literature; whereas, the other is focused on identifying and testing various social, economic, and political factors that are potentially linked to crimmigration.

2.2.1 **Narratives of the Emergence of Crimmigration**

The development and diffusion of “immigrant criminality” perceptions and discourses are produced in precarious economic conditions, risks to racial and ethnic hierarchy, cultural and national identity, and the post-9/11 anxieties about national security (Burns and Gimpel, 2000). Exploiting rising anti-immigrant sentiments, political rhetoric, media communication, and public discourses and metaphors combined to construct the “reality” of “immigrant illegality and criminality” (Sohoni and Sohoni, 2014). Despite evidence to the contrary, immigrants are believed to be criminogenic and the source of a host of social problems—from bringing with them inferior cultural values and lifestyles, taking away jobs from native, unskilled workers, causing social disorder, exacerbating poverty, draining resources and burdening fiscal costs, in addition to presenting a national security threat (Sohoni and Sohoni, 2014). Consequently, punitive control is called for as a legitimated means to tackle the immigration “problem.”

Negative views of newcomers and fears about their socioeconomic and cultural impacts have long accompanied the arrival of immigrants to the United States, albeit the content or central themes of nativism varied across periods of time (Alvarez and Butterfield, 2000). Driven by the undoing of barriers to the movement of capital, goods and people in the name of more free exchange and communication in the wake of globalization, the massive immigration flow of the 1990s has particularly transformed popular perceptions of, and ensuing reactions to, immigrants (Abascal, 2015). The waves of new immigrants were followed with escalating levels of anti-immigration sentiments within the United States (Semyonov, Raijman, and Gorodzeisky, 2006). In accordance with *minority threat thesis* that posits that majority group members perceive increases in the size of minority populations as threatening and take actions to reduce this perceived threat (Blalock, 1967), the rapid rise of anti-immigration sentiments and hostile attitudes, especially toward undocumented individuals, has led to extensive adaptation of economic neoliberalism in late modernity, and rising public concern about economic destabilization and social insecurity (Espenshade and Hempstead, 1996). Further, individuals who were working in low-skilled and low-paid occupations were more likely to fear the loss of their jobs and immigrants' competition for social and economic resources more generally, thus holding a higher level of anti-immigrant prejudice (Quillian, 1995).

As a contextual variable, the shift in racial and ethnic group makeup of the U.S., particularly the expansion of the immigrant share of the population, has been consistently verified as another major factor causing negative attitudes toward immigrants and its effect is further reinforced by the emphasis on political rhetoric (Short and Magana, 2002). The recent waves of Mexican immigrants to the U.S., most of who migrate to improve their economic situation, have made Hispanics the largest ethnic minority group, and heightened anxiety about

national cultural identity. The political rhetoric of “Latino threat” (Huntington, 2004), and the perception that Mexican immigrants are menacing and crime-prone, tend to be particularly pronounced in areas where the share of minority immigrants abruptly grows (Higgins, Gabbidon, and Martin, 2010). Research has confirmed the relationship between the perceived Latino criminal threat and the support for punitive control measures against Latino (undocumented) immigrants in the United States (Stewart, Martinez, Baumer, and Gertz, 2015; Wang, 2012). These attitudes prevail more often among white males compared to white females and non-white racial and ethnic groups, and for low socioeconomic white males the support for exclusion and punitive measures is even larger (Costelloe, Chiricos, and Gertz, 2009).

Widespread anti-immigration sentiments, discourses, and views of immigrants as “terrorists” or “threats” to the social order and national identity, have gradually invoked “moral panic” and debates over how to address the “problem” (Erjavec, 2003). Facilitated by political propagation and media communication, anxiety about and fear of immigration were translated into perceptions of immigrants as a *criminal* threat, especially in states with large immigrant presence, and urban areas with large immigrant concentration (Chiricos, Welch, and Gertz, 2004). Demands for punitive control over immigration to resolve the problem followed (Calavita, 1994), and were expressed in both civil society and governmental actions.

In the sector of civil society, reactions sometimes took the form of vigilantism. Defensive activities were particularly common in border states or areas that have witnessed a heavy influx of immigrants. Disenchanted citizens have turned to self-help or private justice, using “crime as social control” (Black, 1983) to protest and prevent immigrant entry and presence. The elevated hostility toward immigrants has been associated with a significant increase in hate crimes targeting Hispanics (Stacey, Carbone-López, and Rosenfeld, 2011).

Concurrently, with perception of the state's powerlessness to secure its borders, and mistrust of the legal system to accommodate citizens' grievances about the seemingly "invasion" of Mexicans into U.S. territory, border control measures have become tougher and increasingly militarized. They included forming minutemen border-control group, establishing vigilante groups comprised of residents of areas close to the U.S.-Mexico border, and building a fence demarcating the border to prevent Mexicans' entry into the U.S. (Kil and Menjivar, 2006).

Responding to the rising public immigrant-related fear and anxiety and support for punitive immigration control (Stupi, Chiricos, and Gertz, 2016), governments of multiple levels have enacted a series of punitive and restrictive immigration laws and policies, creating a complex crimmigration network (Jung, 2015). Punitive immigration control measures are particularly expanded and intensified at the federal level of government. Since the 1990s, legislative infrastructures were vastly built up and expanded to arrest, detain, and deport suspect immigrants, especially the passage of the *Anti-terrorism and Effective Death Penalty Act* the *Illegal Immigration Reform and Immigrant Responsibility Act* (1996), the *Personal Responsibility, Work Opportunity Reconciliation Act* (1996), and *Section 287 (g) Agreements* that grant local police officers authority to carry out enforcement of federal immigration law. Following the events of 9/11, and the ensuing concerns over domestic security, a specialized agency—the division of Immigration and Customs Enforcement (ICE) within the Department of Homeland Security (DHS)—was founded and became responsible for enforcing immigration policies.

Established in 2008, the Secure Communities program fueled the expansion of immigration enforcement from the federal government to local jurisdictions by establishing partnership among federal, state and local law enforcement agencies and providing them with

access to the DHS's immigration database to crosscheck fingerprints when an arrest is made. ICE claims this program aims primarily to identify, apprehend and deport immigrants who pose serious threats to public safety. Despite varying participation by local law enforcement agencies, the Secure Communities program has promoted the emergence of "a multilayered jurisdictional patchwork" of immigration enforcement (Varsanyi, Lewis, Provine, and Decker, 2012).

Moreover, at the state and local levels, people who were discontented with federal immigration policies called for local legislation of "get-tough" immigration control (Gilbert, 2009; Hopkins, 2010). Notably, in 2010 Arizona passed the S.B. 1070 anti-immigrant law, stipulating that the police may engage in checking the arrestee's immigration status if the police officer has "reasonable cause" to believe the arrestee entered U.S. without authorization. Other states, including Texas, Georgia and Alabama, have enacted similar laws of enhanced enforcement, control, and surveillance of undocumented immigrants.

In analyzing the development of *Illegal Immigration Relief Act* of the city of Hazleton, Pennsylvania in 2006, Longazel (2016) described Latino "degradation ceremonies" through which local policymakers mobilized entrenched racial anxieties and socially constructed linkages between immigrant minorities and criminality into action, passing legislation that endorses police discretion to check immigrant status of suspects believed to be Hispanic and detain those identified as undocumented. Those initiatives also represent a historic shift in the legal authority of making and enforcing immigration law from originally the exclusive federal government to currently the state and local governments.

In sum, the considerable bulk of crimmigration narratives are suggestive of how immigrants are recently demonized, perceived as a *criminal* threat to the country. By defining immigrants as criminogenic, the crime control strategies emphasized by the criminal justice

system are seen as legitimate and justifiable, thereby stimulating the build-up of a crimmigration apparatus across the United States (Stumpf, 2006). This set of processes has resulted in a fortification of, and an increasingly militarized border with, Mexico, extensive partnerships with local police, and enhanced interior enforcement (Provine, Varsanyi, Lewis, and Decker, 2016). It has also transformed minor immigration law violations into criminal behavior as it mobilized criminal justice agents to enforce immigration control, with immigrants becoming subject to deportation for many inconsequential infractions. The efforts to control immigration represent a punitive turn in immigration policies that criminalize undocumented immigrants and employ crime control strategies in response (Gunkel and González Wahl, 2012). With its profound racially coded impact, the upswing of crimmigration has also been scholarly interpreted as a racialized project (Provine and Doty, 2011; Valdez, 2016).

2.2.2 Statistical Analysis of the Rise of Crimmigration

Although a vast body of scholarship provides rich and nuanced narratives on the dynamics of crimmigration, recent research tends to employ quantitative analytic strategies to explain its production, which builds on those narratives and tests a range of contextual factors that are posited to affect variations across jurisdictions' adoption of punitive policies against undocumented immigrants. Those factors include the size and growth of immigrant and Hispanic local populations, economic conditions, crime rates, religious affiliations, and conservative or liberal political ideology in the government and among citizens (Walker and Leitner, 2011). Findings, however, vary considerably according to different units of analysis, datasets, methodologies used, and the dependent variable selection. For instance, with a focus on the state-level legislation, Chavez and Provine (2009) found that economic conditions, crime rates, and

demographic changes have little impact on the passage of punitive legislation aimed at undocumented immigrants; instead, *conservative citizen ideology* appears to drive restrictive, punitive state-level immigration legislation. Their findings suggested that *ideological framing* is the key factor in determining state legislative responses to immigrants. Nevertheless, in examining what factors influence the municipal police's engagement in punitive immigration control policy and practice, Kent and Carmichael (2017) argued that cities with a sizable Hispanic population *and* higher economic inequality are more likely to adopt crimmigration policies and practices, suggesting that social and economic stratification and disparity around immigrants and citizens—minority threat—play a more important role in punitive responses to undocumented immigrants.

In addition, focusing on the federal governmental process, Wong (2016) recently employed a longitudinal data of Congressional immigration-related legislation for addressing the determinants of immigration policymaking in the United States. He found that partisan politics, demographic change, and American identity are the main determinants shaping whether the legislation will be a pro- or an anti-immigration orientation. More specifically, the politics of immigration on the federal level is entrenched in the partisan divide among legislators on the issue of immigration with Republicans' exclusive and Democrats' inclusive immigration policy orientations. It is also affected by political implications of the demographic change due to immigration for the American electorate and views about what it means to be an American in a time of racial and ethnic and cultural diversity.

Despite the inconsistency in those findings, it seems evident that the immigration issue has become a concern to multiple levels of government across the United States. They have different perceptions of, attitudes towards, and policy responses to, immigration and

undocumented immigrants, which are facilitated by the dynamics in power structure and political culture, as well as shaped by social and economic conditions.

2.3 **The Limits of Existing Scholarship on Crimmigration**

While the existing studies offer insightful accounts for the growth and function of crimmigration, they are limited in several ways. In developing my own approach to the study of American immigrant governance over the past two decades, I include these arguments and limitations as a starting point for theoretical reflexivity and research design. Below I briefly discuss these limitations in existing scholarship on crimmigration and then elaborate on how my theoretical framework and methodology would address them.

First, although much literature has documented contemporary crimmigration's "unanticipated and multilayered" adverse consequences on immigrants, their families, communities, and law enforcement (Kubrin, Zatz, and Martinez, 2012), its causal story has garnered relatively less attention and the whole picture of its rise and expansion still remains elusive. Specifically, despite the recognized "patchwork structure" (Varsanyi, Lewis, Provine, and Decker, 2012) or "variegated landscape" (Walker and Leitner, 2011), it has not adequately addressed (with respect to *why* and *how*) the multilevel network of diverse approaches to addressing immigration has been established over the last two decades. Punitive and exclusive measures against immigrants have historically emerged (e.g., the Congress enactment of the *1882 Chinese Exclusion Act*, Calavita, 2006), but the contemporary governance structure of immigration, particularly the construction of the crimmigration apparatus across the country, has been unprecedented. I argue the growth of the crimmigration machinery is not the product of a single plan, one decision or deliberation, or a one-time effort; instead, multiple dynamic

processes, dispersed across different points in time and place, gave rise to the differentiated conglomeration of policies, institutions, and practices addressing the immigration issue. Hence, accounts of immigration policy outcomes that are derived from one time-point or one jurisdiction may not capture the multilevel, dynamic and changing characteristics of the crimmigration system.

In addition, previous research fails to distinguish *orienting causes* from *subsequent functioning* (Garland, 2017). The function of crimmigration as a racial project (Provine and Doty, 2011) or as a mechanism of governing American neoliberalism and nativism (Varsanyi, 2011) does not necessarily mean that its development is purposefully designed with those themes and aims in mind. The meanings and effects of the crimmigration apparatus should vary among different people, across locations and over time. Therefore, a more sophisticated anatomy and diagnosis of the crimmigration apparatus, and a more complicated inquiry into changing social, political, economic, and cultural contexts, and mechanisms and processes driving it up, are needed.

Second, current explanatory accounts tend to focus more closely but separately on cultural, demographic, economic, and political theses, or what I call “macro-social analyses,” such as globalization and neoliberalism, xenophobia and anti-immigrant sentiments, minority threat, sovereignty crisis and the state role (governmentality), and citizenship (Aas, 2014; Aas and Bosworth, 2013; Golash-Boza, 2015a; Valdez, 2016). Those accounts become vague when it comes to how those factors interact, and through what processes and mechanisms, produce crimmigration. Moreover, more attention has been paid to socio-cultural and economic factors than political ones. I argue that the rise of crimmigration is, above all, the product of political actions and decisions. The socio-cultural and economic changes may be viewed as background

factors, but the proximate causes should lie in the political processes and dynamics leading to crimmigration.⁶ More explanatory efforts should be made to specify the causal process linking those socio-cultural, economic, political variables to crimmigration, about when and where those linkages emerge, and about the institutional conditions under which they come into being. For instance, there is a large bulk of literature on the growth and prevalence of anti-immigrant sentiments and public perceptions of immigrant criminality. Nevertheless, the popular sensibilities about immigrants do not necessarily turn into punitive immigration policies and practices until they are engaged through political processes, taken into consideration by the government and prioritized by the lawmaking agenda, and finally translated into policy outcomes in a punitive and exclusive direction. That is, our understanding of the political transmission of the structural context and pressures associated with immigration into the penal outcome is fairly inadequate. Thus, the lack of a comprehensive, dynamic, sociopolitical analysis of crimmigration is a remarkable shortcoming in the extant literature.

Third, despite the overarching pattern of criminalizing immigration as a national landscape, it has been identified that many states diverge from this national trend. Some states (e.g. Illinois and Washington) have even adopted pro-immigration policies by providing assistance and services for facilitating immigrant social integration, and some cities became “sanctuary cities” (e.g. San Francisco, Austin). The variation across states/localities is significant, and attention should be paid to the reasons and the ways that American states use the criminal justice system differently in response to (undocumented) immigrants. The state divergence and

⁶ The United States had similar structural problems four decades ago (though not to the same degree), but it did not have the currently expansive, punitive immigration control system that is particularly characterized by the emergence of a complex crimmigration apparatus and state and local activism and engagement of immigration control. For the important role of politics in shaping American penal order, also see Schoenfeld (2011).

local specificity in immigration control, and the blend of protection and punishment practices and perspectives, is inadequately captured and understood.

Fourth, the extent to which the changing level of crime and violence has a bearing on crimmigration construction is ambiguous. The main argument about their relationship derived from the extant literature seems that crimmigration has been *disconnected* from crime prevention and control, and instead is the product of a symbolic political project through which politicians exploit public stereotypes about Latinos and undocumented immigrants for seeking the office position; penal solutions were selected for symbolical rather than instrumental purposes. I argue, however, the negligence of a serious examination of the relationship may be problematic because the deployment of the criminal justice system in immigration control may develop in a complex or indirect relationship with the level of crime and violence. There was a substantial drop in the crime rate since the 1990s and fewer Americans identified crime as the serious problem over the past two decades (Zimring, 2007). As the salience of crime and violence is waning, while simultaneously public concern about immigration becomes increasingly urgent,⁷ the pressing “immigration issue” may become a proxy for the “crime problem” justifying the expanded use of the criminal justice system (Dagan and Teles, 2014). *Some* relationship must exist between crimmigration and levels of crime and violence, albeit it is quite *indirect, mediated, or dynamic*. Thus, it is important to examine and identify how the crime problem is related to the emergence and expansion of crimmigration. Altogether, only by observing and regarding the societal response to immigration as a whole, and attending to the problem environment, can we identify

⁷ Cornelius (2005) argued there is an ambivalence in U.S. public opinion concerning immigration. The average American may express unfavorable attitudes towards immigrants (at least from Mexico and other “undesirable” source countries) due to cultural and tax concerns, but the labor market realities (appetite for immigrant labor) and economic functions of immigration may produce some stakeholders’ pro-immigrant attitudes.

and discover strategies, justifications, and cultures that shape the field with its distinctive structure, organization and functioning.

The present study addresses these limitations by framing the changes in American immigration control as a result of long-term, multi-directional social construction processes and focusing on how the “problem” of immigration is responded and the fields of immigrant governance are built up in state and local jurisdictions. If we want to fully understand the current configuration of American immigration control and its reliance on penal power, we need to hold a long-term perspective and examine causal processes over time that have engendered different approaches to immigration control. Meanwhile, to understand the complexity in American immigration control, we should not merely focus on one particular piece of immigrant legislation or one aspect of immigration control (e.g., the legislative activity or immigration enforcement practices). Instead, we need to examine the social response to immigration as a whole, that is, the field of immigration control. In what follows, I discuss theoretical insights on which I rely to inform my research. Then I elaborate on how I designed my research to overcome these limitations. My goal is not to identify and prove one causal factor of crimmigration over another, nor to develop a new grand theory for explaining American immigration control over the past decades. Rather, this study reveals the diversity and dynamics in American immigration control by providing a more contextually specific account of the development of different approaches to immigrant governance in various state and local jurisdictions. It pays special attention to how “the immigration problem” has (or has not) been linked to “the crime problem” and the criminal justice system has (or has not) been authorized to perform immigration enforcement.

3. THEORETICAL BACKGROUND: CONSTRUCTING FIELDS OF IMMIGRATION CONTROL

The primary aim of the dissertation is to examine variations in immigration control across states and localities in the United States over the past two decades by focusing on their immigration policy development and the construction process. In particular, this study seeks to document and explain how the “problem” of immigration has received differential governmental responses, and how the approaches to immigrant governance have taken different forms and structures in different contexts. Here my focal analytical point is to develop a process-based explanation for emergent approaches to immigration control in state jurisdictions. In particular, I investigate, in a time when a growing number of state and local governments are engaged in immigrant governance processes, how the different fields of immigration control are constructed, as well as highlight how changes in social, political and institutional conditions influence the decision-making and choice of politicians and legislators associated with immigration control.

In doing so, I ground my research in two sociological theories—the social constructionist perspective on social problems and field theory (specifically the concept of the penal field). First, the social constructionist perspective suggests how immigration has been turned into this or that kind of problem requiring this or that kind of response. It pays attention to the social processes through which actors understand the immigration issue and deploy corresponding strategies and tools as response. Second, I draw on field theory as an analytical framework through which the immigration control is conceived as a social field with the participation of various social actors and their ongoing struggles for influence and dominance over policy matters. This theory focuses on the character, structure and dynamics of immigration control as an assemblage of laws, institutions, practices, discourses, and images in the jurisdiction. Since my research focuses on

tracing and comparing different approaches to immigrant governance, the two theories help understand varying structures and dynamic processes of “controlling” immigration in different contexts. In particular, the social constructionist perspective helps illuminate how social construction processes of immigration control unfold and how the fields of immigration control come to be institutionalized. Field theory also aids examination of immigration control as a whole complex, which is what I compare in different jurisdictions. Below I briefly introduce the social constructionist perspective on social problems and then elaborate field theory and the concept of the penal field in particular - especially attending to the role of the state as a critical actor in shaping the field. Overall, I consider the rise of crimmigration in the era of globalization and transnational mobility as a process of sociolegal construction in the penal field that is directed and governed by the state in America’s changing social, economic, cultural and political contexts.

3.1 **Social Constructionist Perspective on Immigration Control**

The social constructionist perspective on social problems is rooted in the interactionist perspective, or symbolic interactionism, in sociological theory as a particular approach to understanding social reality (Berger and Luckmann, 1991). In conceptualizing social life as constituted by interactive processes instead of objective conditions, the interactionist perspective rests on the premise that people are engaged in meaning-creation activities, acting towards objects on the basis of meanings that those objects have for them. Meanings emerge from interactive processes in which people have with each other, and are embedded in actors’ interpretative processes (Blumer, 1969, p. 2). Importantly, people are viewed as not absolutely passive “carriers” who merely react to outward forces or factors (e.g., social structure, cultural

prescriptions, social roles, social norms, institutional pressure), but are active “constructors” who possess agency to define and constitute what confronts them (Blumer, 1969, p. 83). In addition, it is arguably acknowledged that social context in which interactions unfold may shape the ways in which actors understand and act. The context may not determine but, instead, facilitate or constrain actors’ interpretive processes in certain directions. In context, social actors detect and assess what is to be considered and then make decisions and take actions on the basis of that evaluation (Blumer, 1969, p. 85). The analytical focus of the interactionist perspective is, therefore, on understanding how social life is made meaningful by social actors and constituted by their interpretative processes in context.

Influenced by the interactionist perspective and sociologist Herbert Blumer’s (1971) conception of “social problems as collective behavior,” Spector and Kitsuse (1977) developed the social constructionist perspective as a strategy for *sociologically* analyzing social problems. In challenging the predominant positivist approach that is focused on etiological explanations of social problems, they proposed to study social problems including deviance by examining the social processes by which behaviors or conditions are construed as problematic, and prospective solutions or remedies are produced, implemented, assessed, changed and reversed. They drew analytical attention to people’s “claims-making and responding” activities through which social problems are constructed (Spector and Kitsuse, 1977, p.74). Meanwhile, labeling theory was developed in the sociology of crime and deviance, pointing to the importance of societal reactions in constructing deviance in society (Becker, 1963). It posits that criminality is not an objective condition that is pre-determined by some factors or caused by certain rules of law “out there” but a subjective reality that people react and attach crime-related meanings to certain conditions or groups. Therefore, known as the societal response approach to crime, both the

social constructionist perspective and labeling theory place their explanatory focus on how certain groups or behaviors are perceived as problems of order, labeled as deviant or criminal, and treated as outsiders or those who deserve criminal punishment and penal sanctions (Becker, 1963).

Assumed as a product of social construction, immigration control can thus be appreciated by a discernment and comprehension of people's definitional processes associated with the "problem" of immigration control. The social constructionist perspective on immigration control shifts the analytical focus away from the immigration itself toward understanding the perceptions of immigration and the logic of resulting organizational responses. Immigration as a social problem is what people perceive and define as being problematic. Accordingly, the study of immigration control entails process-based, action-centered accounts. And we should approach the dynamic, multifaceted nature of immigration control by examining social processes through which actors interact to produce collective meanings associated immigration and construct certain kinds of immigration control via claims-making activities.

Constructing immigration control is a subjectively cognizant and evaluative process through which some people come to sense, see, feel and know that their situations are problematic due to immigration and that some changes are in demand, albeit experiences associated immigration can be putative or practical. The "problem" image of immigrants may be championed by a group of people. People's experiences of certain conditions are crucial to set the status of immigration in context. People may have consciously realized that their interests and values are endangered or damaged by immigration, or they are suffering some undesirable experiences associated with immigration. Hence, some people may make assertions about the influx of immigrants as undesirable and worthy of particular types of public consideration;

bringing to the surface some problematic dimensions of immigration to be questioned, debated and highlighted.

The construction process of immigration control usually involves extensive, intensive and, sometimes, conflict-laden interpretive procedures through which certain characteristics about immigration and immigrants are selected, discussed, assessed and justified. The resulting miscellaneous claims for immigration control, in terms of both content and styles, can be viewed as preliminary societal reactions to these discussed, disputed, and debated conditions associated with immigration, paving the way for the emergence of “condition-categories” (Ibarra and Kitsuse, 1993). Claims-makers may be divergent and stand in diverse camps with different interests and intentions, firmly maintaining their own standpoints, arguments and motifs, and turning certain conditions into certain problematic categories in their claims (Ibarra and Kitsuse, 1993). Those claims-makers may mobilize various discursive tools and rhetorical forms that play a role in shaping the direction and content of the construction process. Notably, as a key part of the claims-making process, classification (or categorization) is a crucial step in the construction process, which is usually manifested in claims-makers’ discourses and actions that exhibit the implications of their understanding of the causes and consequences of immigration (Best, 2003). The activities of categorizing or defining immigration as “criminal” or beneficial usually initiate the next process of asking and justifying what control mechanisms to be taken or implemented.

Efforts by one mere segment of society are hardly adequate in constructing immigration control. Constructing immigration control entails a *collective* accomplishment by a variety of social actors who are implicated in social problems designation and thus have impacts on the construction processes. Potential participants could be immigrants (including both documented and undocumented), their families and their community members, groups and organizations,

mass media, politicians and policymakers, justice practitioners, medical and therapeutic professionals, and people in academic and other institutional agencies (Best, 2003). It is their collective efforts and joint input to define the immigration “problem.” Together, participants seek to affect one another. They formulate and implement policies in a joint effort to construct immigration control.

In addition, constructing immigration control does not operate in a social vacuum, so it is necessary to figure out the context in which the construction process is embedded.⁸ Various social actors, individually and collectively, make self-presentations in the performance of producing immigration control (Goffman, 1959). The context to which those entities are exposed may have a mediating impact on the way they act and interact in the course of establishing the immigration control apparatus. Meanwhile, the context in which social actors are located possibly shapes actors’ identity formation, group relations, and their access to and mobilization of information and resources for their claim-making activities (Goffman, 1959). Ibarra and Kitsuse (1993) argue that the scrutiny of settings under which claims-making activities unfold aids in understanding how the formal organizations of various settings arrange the processes through which people formulate and articulate their claims and receive responses from others, how certain forms of rhetorical forms and discourses become advantageous and favorable due to the requirements or conventions of numerous places, and what characteristics of participants in various settings are and how such characteristics affect their interactions with one another. The common settings in which claims-making activities occur include the media setting, the community, legal-political arenas, as well as academia where most scientists who can offer

⁸ There is a debate about strict and contextual constructionism in the sociology of deviance and social problems. For the debate, see Ibarra (2008). Here I adopt contextual constructionism to analyze immigration control.

expertise on certain issues (Ibarra and Kitsuse, 1993). As such, analyzing the social construction of immigration control should not disregard the broad social context that may potentially influence how various participants construct different approaches to immigration control, especially the vernacularization through which actors adapt their claims and practices to local conditions (Levitt and Merry, 2009). The context may impact discourses they employ to establish and justify claims, the ways in which they communicate their claims, and how they perceive others' responses in the dynamic process.

Taken together, the social constructionist perspective suggests that immigration control is not a given condition but an outcome of social construction processes through which participants understand and react toward the influx of immigrants to the location via claims-making activities. The perspective therefore entails a process-based, action-centered, and claims-focused analysis of how immigration control is constructed in the jurisdiction. While the constructionist perspective is useful to understand the formation and transformation of immigration control in context, it may not help *compare* why different jurisdictions develop divergent approaches to immigration control. When comparing immigration control, we need to clarify *what* to compare. Here I rely on field theory to conceptualize the way society reacts to immigration as a social field, and seek to compare different fields of immigration control.

3.2 **Bourdieu's Field Theory and Its Development**

Sociologist Pierre Bourdieu developed the concept of the field to understand social interactions and practices in various social worlds, including the law (Bourdieu, 1986). With a focus on the shape and relational characteristics rather than the substance and content of a social universe, he proposed that social researchers pay attention to the structure and process of a field,

a social domain that is configured by multiple actors, their positions and relations, and their dynamic interactions and activities. The field is understood both as an internal production process and as a general frame for demarcating and categorizing the social world (Martin, 2003). The practices of those actors are the product of both internal and external influences. Actors make conscious decisions, act habitually and based on their positions in the field. Despite the recognition of actors' agency, their decision-making processes are subject to, or influenced by, the field structure as well as their own dispositions. In addition, the underlying principle organizing or altering those actors' activities is their competition and struggle for the dominant position in the field, wresting over their rivals and striving to preserve the field's form, membership, orienting theme, and hierarchy of their own interests. Consequently, Bourdieu (1988) drew a metaphor between a social field and a battlefield, a place where competitors grapple to change the capital distribution in order to improve their position in the field.

Two important notions were underscored in Bourdieu's field theory—habitus and capital. As a result of socialization and ongoing interactions, habitus is the internalized "mental and cognitive structures" through which actors perceive, understand, appreciate, and evaluate the social world and produce their practices. The multitude of habitus will impose various schemas on actors for them to make sense of social world. The habitus shapes actors from within by affecting their dispositions. Meanwhile, since the field is conceptualized as an arena filled with struggles and contentions, how do field players wrestle against each other and seek for the dominance? The positions of various agents in the field are determined by the amount and the relative weight of the capital (including economic, cultural, social, and symbolic capital) they possess, access and utilize (Bourdieu and Farage, 1994). Players with more accessible capital play a more influential role in configuring the field; therefore, the characteristics of their habitus

and the amount of their capital largely shape of field players' orientations, actions, and locations in the social field (Bourdieu, 1990).

In addition to the competing nature of forces internal to the field, Bourdieu discussed how the influences outside of the field shape ongoing activities in the field, specifying the processes through which macro-level, social structural factors such as economic changes, political transformations, cultural sensibilities and demographic shifts play their roles in affecting the field's dynamics within. Conceptualizing the field as a prism refracting external trends and movements, he argued "...external influences are always retranslated into the internal logic of fields...[and] [e]xternal sources are always mediated through the structure and dynamic of fields" (Swartz, 2012, p. 128). In other words, macro-level, social structural forces do not change the field automatically or directly; rather, they are filtered and channeled by the internal organization and orientations of actors in the field for particular directions, thereby molding the field. It is the process of mediation occurring in the field that produces variable outcomes in different places facing similar pressures and influences.

Building on the essence of Bourdieu's field theory, sociologists Neil Fligstein and Doug McAdam (2012) developed a more integrative theory of fields by explicating how the stability and change operate in the field dynamics. They posit that the dynamics of institutional life in modern society can be conceptualized as *strategic action fields* that are made up of players including incumbents, challengers, and governance units (Fligstein and McAdam, 2011). Those players possess and use social skills or capital to advance their own interests and seek for dominance in the field by undertaking strategic actions and engaging in episodes of contention (Fligstein, 2001).

Further, they consider strategic action fields as a kind of meso-level order and argue those fields are embedded in complex webs of other fields or broader field environments. The broader context in which those fields are situated can be *proximate* fields that are contiguous to fields of our focal concern and *distant* fields that are background and relatively stable environmental factors. In terms of field dynamics, they argue that the field change is produced by exogenous shocks or pressures and the resulting contention is a highly contingent outcome of an ongoing process of interaction involving at least one incumbent and one challenger. Through a complex process of contention and claim-making activities by players, the field begins to appear as a refurbished *institutional settlement* regarding field rules, norms, and definitions. Although the opposition to the relatively “consensus” continues, there is an emergent or re-organized field through strategic actions by involved players as a response to external pressures or influences. In sum, Fligstein and McAdam (2012) proposed a framework of strategic action fields, seeking to help understand the essential structure and nature of the strategic collection action and specify the social processes at work in the dynamics of field emergence, stability and change. Their conceptual development of field theory not only presents a more comprehensive “outlook” of the field, but also provides further insights into the mechanism and process of field dynamics.

To summarize, the general field theory discussed above describes and explains how a meso-level social order or an institutional domain is constructed, shaped, and transformed by considering both social structure and actors’ agency in a dynamic process. It focuses on interactive (often contesting) processes through which multiple players with different positions undertake strategic actions and strive to play a dominant role. Moreover, despite a certain degree of autonomous position, the field’s dynamics and changes are influenced by, or embedded in, a

larger context that provides both opportunities and challenges to the field's development. Through making decisions, actors in the field translate outside forces into actual field outcomes. Accordingly, as a theoretical tool for analyzing institutional order, field theory encompasses both multilevel logic and dynamic perspective (Liu and Emirbayer, 2016).

3.3 **The Penal Field**

Field theory has been applied to various subfields of sociology such as political sociology, economic sociology, organizations, and social movements, in which a concern with stability and change in field-level dynamics is their central work. Nonetheless, researchers of criminology have recently begun to draw on field theory to understand how organized crime or street crime involving a group of offenders—the “street field”—operate in a real-life world (Shammas and Sandberg, 2016). Within the study of punishment, researchers have developed the concept of the “penal field” to describe and understand recent transformations in penality over those years, especially the emergence of new punitiveness and the growth of mass imprisonment (Garland, 2013; Page, 2012). The concept is particularly useful because it not only reveals changes in penal policies, practices, rhetoric, and long-term patterns (e.g., mass incarceration), but also suggests shifts in the organizing principle (e.g., the new penology, Feeley and Simon, 1992), the dynamics of penal power and authority (e.g., the trend of privatization in security provision), the structure and composition of the penal field, and the connection between the penal field and others fields (e.g., the culture of control, Garland, 2001). This analytical tool is capable of connecting macro to micro phenomena and social structure to action, specifying the intervening mechanism that translates large-scale social forces into actual legal and penal outcomes (Page, 2012). The penal field refers to an institutional domain and has utility for explaining how a society produces its

penal order and imposes criminal punishment on offenders, including the network of laws, cultural norms, processes, discourses, symbols, representations and institutions that constitute the penal area. David Garland (1990) specified the nature and structure of the penal field:

Punishment taken here to be the legal process whereby violators of the criminal law are condemned and sanctioned in accordance with specified legal categories and procedures. This process is itself complex and differentiated, being composed of the interlinked processes of law-making, conviction, sentencing, and the administration of penalties. It involves discursive frameworks of authority and condemnation, ritual procedures of imposing punishment, a repertoire of penal sanctions, institutions and agencies for the enforcement of sanctions and a rhetoric of symbols, figures, and images by means of which the penal process is represented to its various audiences. (Garland, 1990, p. 17)

More specifically, in *The Culture of Control*, Garland (2001) described and explained remarkable transformations of the penal field in the United States and the United Kingdom during the past four decades, paying attention to both the internal changes and the external social and cultural forces shaping the structure and dynamics of the field. He identified several major, significant changes in the penal field, including the decline of the rehabilitative ideal, the revival of punitive sanctions and expressive justice, changes in public perceptions of criminal sanctions, the growing influence of the victim in policy-making, the increasing level of public anxieties and insecurities, the salient politicization of crime and punishment, the commercialization of crime control, the expansive use of prison, and the shift in criminological reasoning.

He further argues that those changes in the penal field are not merely the response to high crime rates but are embedded in late modern trends. Those trends take on two interrelated transformative forces. The first is about the social, economic, and cultural changes that were experienced by a large number of Western industrialized democratic countries after World War II, including globalization, the rise of neoliberalism, transnational migration, changes in social ecology and urban neighborhoods, shifts in family and household life, and the increasing

popularity of electronic mass media. The second set of transformative forces lie in the political field wherein neoconservative political culture has emerged and the “law and order” rhetoric has been embraced and promoted. Furthermore, the two sets of social, economic, cultural and political forces certainly have impacts on the action of key penal players in the field (penal policy-makers and criminal justice leaders, police officers, prosecutors, judges, correctional officers), but they come into effects through “the gradual reshaping of the rules of thought and action within the field” (Garland, 2001, p. 75), which are translated into the penal outcomes by absorbing new elements, altering balances and relational structures, and transforming the penal field’s relation to a broader environment. In sum, Garland (2001) has used the concept of the penal field to understand the reconfiguration of criminal punishment and its shift from penal modernism (also known as penal-welfarism) to the increasingly punitive crime control in late modern societies.

In addition to broad social and cultural transformations of the late modern U.S. society, researchers identified other important macro-level forces shaping the penal field dynamics, especially the phenomenal explosion of prison populations and the advent of mass incarceration—the so-called “punitive turn.” For example, Wacquant (2009) argued that neoliberal economic policies came to dominate U.S. politics, thereby resulting in the retrenchment of the welfare state and the upsurge of *hyperincarceration* (Wacquant, 2010) in the United States; the U.S. penal explosion is the product of shifting mode of political economy from the Keynesian-Fordist social compact to the neoliberal governance. In *Governing through Crime*, Simon (2007) focused on the political culture dimension of the penal field and suggested that “tough-on-crime” mindset and orientation have emerged as the primary political technology to govern by politicians who appeal to public sentiments and seek for votes (also see Beckett and

Sasson, 2003). Also, this style of thinking and practices of governance have been diffused to other non-governmental areas such as education, workplaces, housing, and family. Alexander (2010) emphasized the impact of American racial relations on the penal field and argued that mass incarceration of people of color, and the devastating consequences it has had on their lives are a new face of an enduring hierarchical system of white supremacy in the United States.

Despite the national trend of the American penal field, there is also a large body of literature examining the penal field from a micro-level, or “on-the-ground” penal activities taking place in certain states or locales. This line of scholarship tends to emphasize the variation of the penal field across jurisdictions within the United States and presents more nuanced narratives about the penal development of particular places. Those studies pay attention to the influence of local culture and politics in producing their special penal characteristics. For instance, Page (2011) used the concept of the penal field to understand the ascendance of the California Correctional Peace Officers Association as an *interest group* to push tough-on-crime politics and maintain the explosive and overcrowded California prison system. He described how powerful and effective the vigorous interest group’s lobbying efforts and movements have been in driving California’s penal development and creating the “toughest beat” in the United States (Page, 2011). Likewise, Campbell (2011) documented how the shift occurred in Texas penal field with the emergence of “law and order” politics, revealing the joint political maneuvering by an insurgent Republican governor and law enforcement officials, who are aligned to exploit the public concern with rising crime rate and succeed in promoting the tough crime policy agenda and investing more in strengthening the police force. In addition, in examining the punitive turn of Arizona from “the reformatory project to the warehousing solution,” Lynch (2009) directed her attention to the *regional* effect in American penal change—the rise of the “New Right” in the

Sunbelt Southwest. She argued that Arizona's punitive turn was triggered partly by partisan politics and largely by unprecedented budget crises facing the state.

While those interpretations of contemporary American penal landscape may focus on different dimensions and various levels of the penal field, and pay special attention to the American exceptionally high rates of imprisonment, they have provided considerable insights into how an American penal field has developed and expanded over the last forty years. The vast body of literature on the "American great penal leap" (Wacquant, 2005) suggests that the new punitiveness and the dramatic increase in prison population was the outcome of levels of legislative decision making at both the federal and state levels to imprison more offenders, lengthen their sentences, reduce the use of parole, and widen the carceral net to include more types of penal subjects (Wacquant, 2005, pp. 3-26). The concept of the penal field provides a useful platform for connecting the macro-structural forces with micro-interactive processes, which together shape changes in the American penal field (Campbell and Schoenfeld, 2013). Despite its wide use in explaining mass incarceration in the United States, the analytical tool of the penal field suggests that punishment is a multi-dimensional social construct that is distributed in multiple sites, contingent on various time periods, subjected to a complex set of social forces and processes, and which are also "volatile and contradictory" (Campbell, Vogel, and Williams, 2015; Garland, 1990; O'malley, 1999). Next, based on the discussion above, I distill and summarize three analytical principles from extant literature and theories on punishment that guide my use of the concept of the penal field in explaining the punitive turn in immigration control - a smaller niche in the whole penal field.

3.3.1 **Analytical Principles**

First, we need to view punitive immigration control, or the construction of crimmigration, in a context of the problem environment in which the penal measures are preferred and selected as problem-solving responses rather than an isolated policy option. If immigration and undocumented immigrants become a social order problem, it is necessary to answer why punitive and exclusive measures (i.e., criminalization, detention, deportation, and the recent controversial enactment of a Muslim travel ban) stand as cardinal points on the continuum of social control. In other words, societal reactions to immigration do not necessarily take penal form, and it is vital to consider why and how other non-penal reactions and potentials are obscured and what are the underlying and competing forces and processes giving rise to punitive control, and at the same time, obstructing the non-punitive, supportive and integrative measures. In a large correspondence with Goodman, Page, and Phelps's (2015) "agonistic perspective," this principle highlights *struggle* as a central mechanism that breeds the multifaceted, hybridized (and often contesting and contradictory) nature of the penal field and sparks penal dynamics and development.

Mindful of the politics in the process, I explicate the complex pathways in which there exist competing definitions of, and arguments for, the solution to the immigration issue. These pathways include different interests, sensibilities, rhetoric and claims-making, which appear to frame the issue, and possess the capacity and resources to present and determine how the solution are differentiated and stratified among players involved in the field. Over the course of those competing activities in the field, the penal (and exclusive) control of immigrants emerged, subordinating other voices about immigration, triumphing over supportive and integrative trajectories to immigration and pushing punitive measures to the fore. Accordingly, situating the analysis in a broader problem context and focusing on the contestation illuminates who are the less powerful groups and what are the policies that have lost out in the competitive political realm.

Second, it is important to distinguish the proximate processes from the distant forces in analyzing their roles in shaping the penal field. This principle takes the multilayered structure of a social field into account. The proximate processes lie in the decisions and interactions of penal agents (legislatures, police, prosecutorial offices, courts, and corrections), who are chiefly tasked with penal policy-making and implementation. Those frontline penal institutions and agents who directly encounter the population to be addressed should be viewed as “prime builders” of the penal architecture (Garland, 2013, p. 484).

Nevertheless, those processes are embedded within broader structural contexts, or impacted by distant forces, such as economic, cultural, and political transformations. Adopting that line of reasoning, I identify both penal changes in policies and practices associated with immigration governance and their broader contextual influences in shaping the field of immigration control in a punitive direction. Specifically, I should recognize what are the legal

processes in the penalization of immigration control, such as legislative changes made in various levels of governments, and the changing patterns of implementation practices of immigration enforcement and police officers. But this is only half story. Those changes in the penal field of immigration control are nested in a wider societal environment and shaped by neighboring fields that underlie it. Thus, I document the distant or background causal forces that manufacture the issue of immigration to become penal fodder, one that demands state punitive control. A complete story of the emerging penalty in immigration control entails an identification of both proximate and background causations and their development and dialectic relationships.

Third, various dynamic processes of the penal field emergence, development, and change lie, in essence, in actors' decisions, actions, and their struggles. The present penal control of immigration is the outcome of political choices and administrative decisions. It is the patterned actions of these actors that determine the trajectories of the penal control over immigration, even though this is a friction-laden process (Goodman, Page, and Phelps, 2015). Who they are, how they make decisions and take actions, what rhetoric arsenals and techniques they use, what claims they are making, and what situational and contextual influences bear on their decision-making processes, should be the central concern of the analysis of penal dynamics. I argue that, in the penal field and the smaller field of crimmigration, the State⁹ and its institutions are the key actors whose decisions and actions have a powerful influence on the dynamics of the field. In prior punishment literature, it often tends to overlook, or at least does not explicitly specify, the crucial role of the State in the penal field. Indeed, mass incarceration and crimmigration are directed and governed by the State which deploys the penal power to address problem populations arising from social and economic pressures. Despite a shift toward the private sector, control of the penal power falls largely in the arm of the State, the actor which usually possesses the most resources. Hence, in analyzing the penal field of immigration control, I pay special attention to the position and actions of the state; in other words, I view the State as a situated actor who is implicated in various social relations and social forces (e.g., the internal state agencies, political parties, well-organized interest groups, the media, civil society, public opinion, social class, race and ethnicity, and gender).

⁹ Here, the State follows Max Weber's definition (1946, p. 78). It refers to "a human community that (successfully) claims the *monopoly of the legitimate use of physical force within a given territory*" and a sociopolitical organization being "composed of *institutions*, the *policies* they carry out, the *conditions and rules* which support and justify them, and the *social relations* in which they are embedded."

3.3.2 **The State as a Situated Actor**

As noted earlier, the State is a significant actor in the penal field (Gottschalk, 2013). The particular field of crimmigration and penal actions of the State are my focal concern, so it is necessary to provide a more detailed account of the State as a social actor and how that way of conceptualizing it helps improve understanding of how the crimmigration apparatus develops.

Drawing on sociologist Bob Jessop's (2007) *strategic-relational approach* (SRA) to the state, I conceptualize the state as an actor whose actions are shaped by social influences and social relations and vary across time. How the state behaves is subject to contextual forces, albeit the state has its own institutional structure, power, capacity, interests, and dispositions that have formed and developed over a long period of time. Despite its relative autonomy as a result of path dependence, the state is not an entity with an essential, permanent, and fixed property such as "a neutral coordinator of different social interests, an autonomous corporate actor with its own bureaucratic goals and interests, or the *executive committee of the bourgeoisie*" (Jessop, 2007, pp. 78-80).

Instead, the state is greatly influenced by various social forces and dynamics over the course of its interactions with other social actors, and is situated in a changing balance of forces, exercising both material and symbolic power (Bourdieu, 1989). As Jessop (2007) claimed, applying SRA to the state can "take account not only of the state's historical and institutional specificity as a distinctive accomplishment of social development but also of its role as an important element within the overall structure and dynamic of social formations." As a consequence, the state has varied characteristics, apparatuses and boundaries according to its temporal developments and spatial locations. This is illustrated by the unforeseen revival and expansion of the penal state in the United States, and the more recent rise of a more punitive

state in Norway, after decades of the penal-welfarism regime of crime control (Garland, 2001; Shammass, 2016). As discussed earlier, with its unprecedented scale and intensity, this significant shift in the penal field and the growth of the penal state is connected with the new structuring of social fabric in the late modern era (Garland, 2001; Wacquant, 2009).

Further, as an institutionally and discursively mediated condensation (a reflection and refraction) (Jessop, 2015), the state strategically exercises its various forms of power in responding to social and economic pressures, seeking to influence the forms, purposes and content of the polity, politics, and policy. It is important to recognize the social bases of state power in which the state is faced with various competing forces, pressures, voices and votes and then best, or at least legitimately, present itself to the public (Goffman, 1959). The state's external social, cultural, and economic environments provides a variable mix of opportunities and constraints for the state to make decisions and take actions. Specifically, the state has both positive power (for example, capacity-building and the welfare dimension) and negative power (incapacitation, confinement and penal control to name a few), but the balance between them varies, which is contingent on situations faced by the state.

For the analytical goal, I examine the extent to which the state relies on negative modes of power such as policing and surveillance, imprisonment, segregation, detention, or deportation to address problem populations (i.e., criminals and undocumented immigrants) (Beckett and Murakawa, 2012), how the state's penal system operates in terms of its relationships with other agencies and social institutions, and the extent to which the state fails to resort to positive, welfarist means such as restorative justice, immigrant protections and services, or sanctuary cities (Beckett and Western, 2001). Thus, following the state theory discussed above, I focus on how political processes the state employs translate various socioeconomic pressures associated with immigration into a particular system of immigrant control.

In sum, building on the social constructionist perspective on social problems and field theory, this study conceptualizes immigration control as a social field where various actors and groups participate and collectively construct reality using their definitional behaviors and claims-making activities in response to immigration. I focus on the field-level development and construction process to explain why different jurisdictions adopted discrepant modes of, and constructed divergent fields of, immigration control in the wake of transnational mobility.

4. METHODOLOGY

This dissertation seeks to document the transformations of immigration control occurring at states and localities as socially constructed processes and explain their resulting divergent modes of governing immigration. The comparative historical methodology is well suited for this research task. In doing so, I conduct in-depth case studies about the fields of immigration control in a sample of two states during the key periods when states and localities have been implicated in immigration control. In this section, I first explain why I have chosen the comparative historical methodology as a preferable research approach for answering my research question, and then I describe how two significant states—Arizona and Illinois—were selected to represent differential, contrasting modes of immigration control across the United States. Finally, I present a data collection scheme and possible analytical strategy.

4.1 Why Comparative Historical Methodology?

The use of comparative historical methods appropriately serves to fill several gaps in the extant body of scholarship on American crimmigration, as well as appears promising for examining my research question. First, in order to fully explain states' changes in immigration control and why some states and localities rely on the criminal justice system to govern immigrants, we need to examine how causal processes over time operate in different contexts. Previous quantitative (large-N) research has offered important knowledge on the significant determinants of the passage of punitive state immigration policy (Monogan, 2013). Scholars have identified a wide range of social, economic, and political forces that have led to the production of punitive immigration policy and crimmigration. Those factors influencing the passage of state immigration policy include: state ideology and state partisan politics (Chavez

and Provine, 2009; Perlmutter, 1996; Zingher, 2014), state demographics (i.e., the presence of undocumented populations in the state) and unionization levels (Marquez and Schraufnagel, 2013; Ybarra et al., 2016), state economic conditions (Boushey and Luedtke, 2011; Ybarra et al., 2016), state economy on “disposable immigrant labor” (Golash-Boza, 2015), immigrants as symbolic assailants (Jiang and Erez, 2018), and the impact of special interests and state legislative professionalism (Nicholson-Crotty and Nicholson-Crotty, 2011).

Overall, those findings provide broad, generic explanations for the state-level variation in immigration control practices. Despite insights into the cross-state variation in immigration policy, there is still a need to capture more nuanced, complex processes by examining responses to the immigration “problem,” including how state and local governments have decided to treat undocumented immigrants. In other words, researchers need to further account for why and how those forces operate in various jurisdictions to produce distinct modes of state-level immigration control. Therefore, special attention must be focused on the local context that may mediate, resist, or modify the generic forces above. In addition, with an emphasis on the in-depth and extensive study of critical cases, comparative historical analysis may help identify previously un-theorized causal factors and mechanisms of changes in American immigration control.

Next, studies have focused largely on state *punitive* immigration policy and thus downplay the significance of beneficial and protective immigration policies in the analysis. As noted in the literature review, there has been an important gap in current literature that explains the rise of crimmigration without adequately incorporating the counterfactual case—protective policies and practices for undocumented immigrants and immigration. After reviewing the extant scholarship on migration and penal order, sociologist Vanessa Barker (2012) also points out the same limitation by claiming “despite many insights and gains made by the current literature on

increased criminalization and penalization, more work is needed to *tease out and explain sources of variation in this dynamic process*. Most of the current research has tended to focus, so far, on the general trend rather than probe divergence and variance” (p. 118). Accordingly, challenging the “dystopias” in current immigration control accounts (Zedner, 2002), I argue researchers should also consider the positive cases, or “the path *not* taken” as well as other approaches adopted in response to mass mobility and undocumented immigrants. In doing so, the “immigration problem” can be placed within a broader spectrum of governance and control that confronts challenges and conflicts over membership, belonging, and social and economic order posed by globalization and mass mobility. By combining and comparing cases of both punitive and protective immigration controls, research in this method can illuminate how the social and political construction of the immigration issue unfolds and bifurcates as well as how penal power is (or is not) utilized as a response.

Additionally, there has been a growing number of state and local immigration control case studies. Nonetheless, those separate narratives of changes in immigration control policies and practices are not sufficient to provide meaningful accounts for the bifurcation structure, or the dualization, of immigration governance, i.e. the development and coexistence of punitive and protective strategies, which have built up in the United States. In other words, it remains a puzzle as to why penal power has been differentially deployed and exercised in different jurisdictions. Exploring the question of use and nonuse of the criminal justice system in immigration control across the country can also throw light on how American penal system operates in society.¹⁰

¹⁰ Under the American federalism structure of crime control and criminal justice, the deployment of penal power also falls within the authority of state and local governments (Garland, 2010). Because of the *fractured* nature of American penal state, states enact and enforce the vast majority of criminal law - and regional differences in criminal justice and punishment are substantial (Barker, 2009; Rubin and Phelps, 2017). As such, the study of when and where to use

To overcome shortcomings in the current scholarship and advance the knowledge of American immigration control and punishment, it is imperative to conduct an in-depth analysis of diverse configurations of state and local immigration control, make a systematic comparison among them, and identify significant processes and mechanisms underlying divergent approaches to immigration control and the use of penal power as a result. Comparative historical analysis is particularly useful for this purpose. With the focus on “big questions,” this methodology is committed to “offering historically grounded explanations of large-scale and substantively important social and political outcomes and conducting systematic and contextualized comparisons of similar or contrasting cases” (Mahoney and Rueschemeyer, 2003, p. 4). Simply put, comparative historical analysis is characterized by three important emphases—“a concern with causal analysis, the exploration of temporal processes, and the use of systematic and contextualized comparison typically limited to a small number of cases” (Mahoney and Rueschemeyer, 2003, p. 14). Research, which employs a comparative historical analysis often focuses on the study of a small number of cases, and has examined a wide range of topics, including processes of state formation and state restructuring in various regions, levels of economic development and industrial policy in different countries, and the emergence of democratic and authoritarian national regimes around the world (Mahoney and Rueschemeyer, 2003).

In this study, I conceive the different fields of state immigration control as important large-scale social and political outcomes that require explanation. By following the small-*n* approach, I closely examine the development and change of immigration control in two states, and investigate the long-term causal dynamics that have given rise to different patterns of

the criminal justice system in response to immigrants may further improve understanding about the nature and function of criminal justice and punishment in the United States.

immigrant governance. The smaller sample allows me to study the cases in richer detail and understand intricate causal processes in a much more refined way. It should be noted that the small number of cases limits the ability to generalize findings. Yet, the small number of cases analyzed comparatively and historically provides ample empirical details - a move that can strengthen and refine contemporary understanding of immigration control, criminal justice, and punishment in the United States. All in all, the utilization of comparative historical methodology to examine divergent strategies of state and local immigration control and statuses of penal mobilization in the process will not only become a methodological innovation but also, more importantly, add fresh insights to the current scholarship on the criminalization of migration.

4.2 **Why the Chosen Time Period?**

I make systematic comparisons of changes in states' immigration control from the 1990s through the present (1990-2017), which is a period of time that saw the restructuring of the way American society responds to immigration, including the emergence of crimmigration, plus American immigration control took on a new form of increasing localization. I established this time frame because it included the devolution of immigration law from the federal government to local agencies, which occurred largely after 1996 when Congress passed the *Illegal Immigration and Immigrant Reform Act* (IIRIRA). Since then, there has been a state and local immigration policy boom; and, notably, from 2005 to 2012 (see Figure 1), a considerable amount of restrictive and punitive state immigration laws has been enacted. Meanwhile, during that same period, the deportation numbers have been significantly on the rise (see Figure 2). This two-plus decade time period allows me to investigate the long-term dynamics that have produced the current landscape of localized but divergent immigration control in the United States, and

explains why society witnessed bifurcated state and local trajectories of immigration control in the beginning of 21st century. Moreover, it is during the time span that several significant events, which have important implications for American immigration control, have occurred - including the events of September 11, 2001, the Great Recession of 2008, and the results of the 2016 presidential election (Hauptman, 2013).

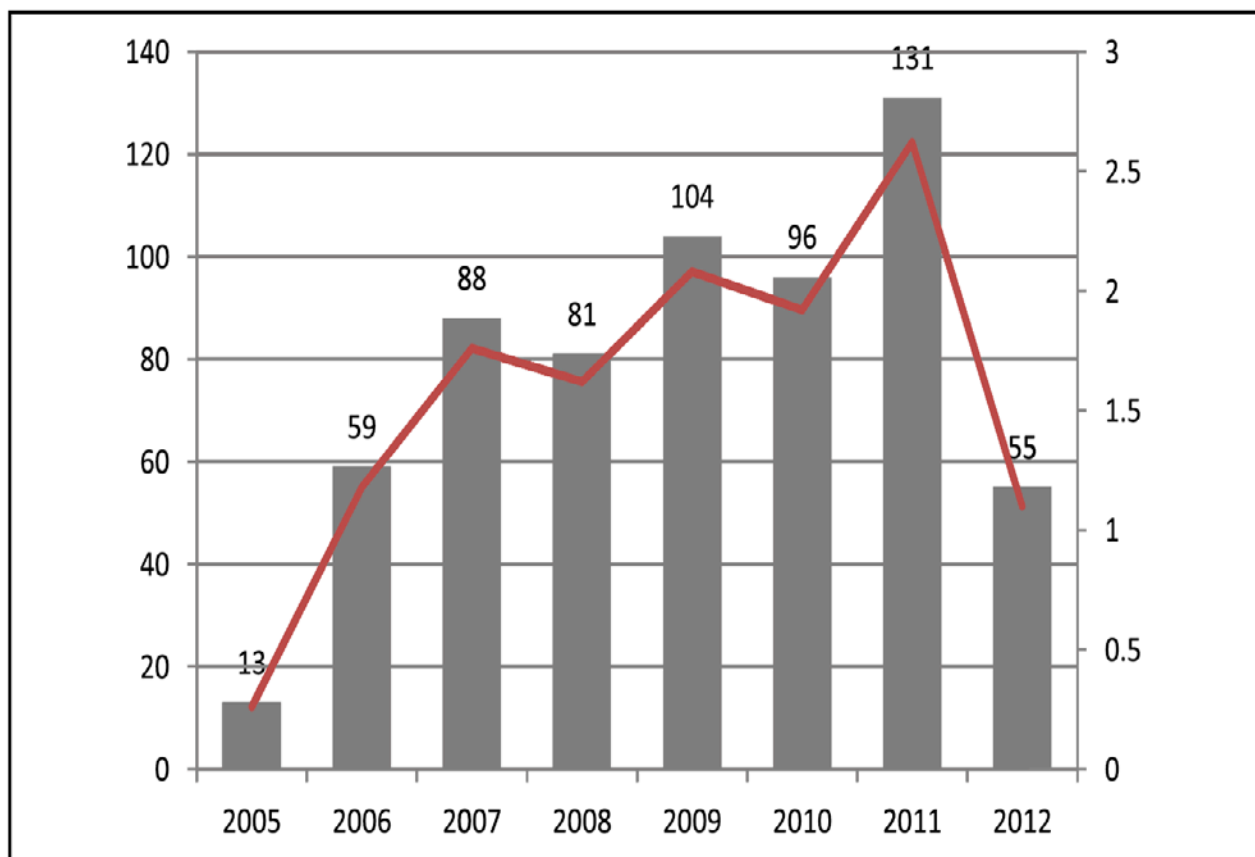


Figure 1. Total and mean state restrictive/punitive policies by year

Note: Data are from the National Conference of State Legislatures (NCSL), a center for sharing news and developments in state policy making. Because NCSL began tracking immigration-related state laws and resolutions in 2005, and has collected comprehensive legislative information until 2012 and made it available, my graph displays state anti-immigration legislative activities over the period.

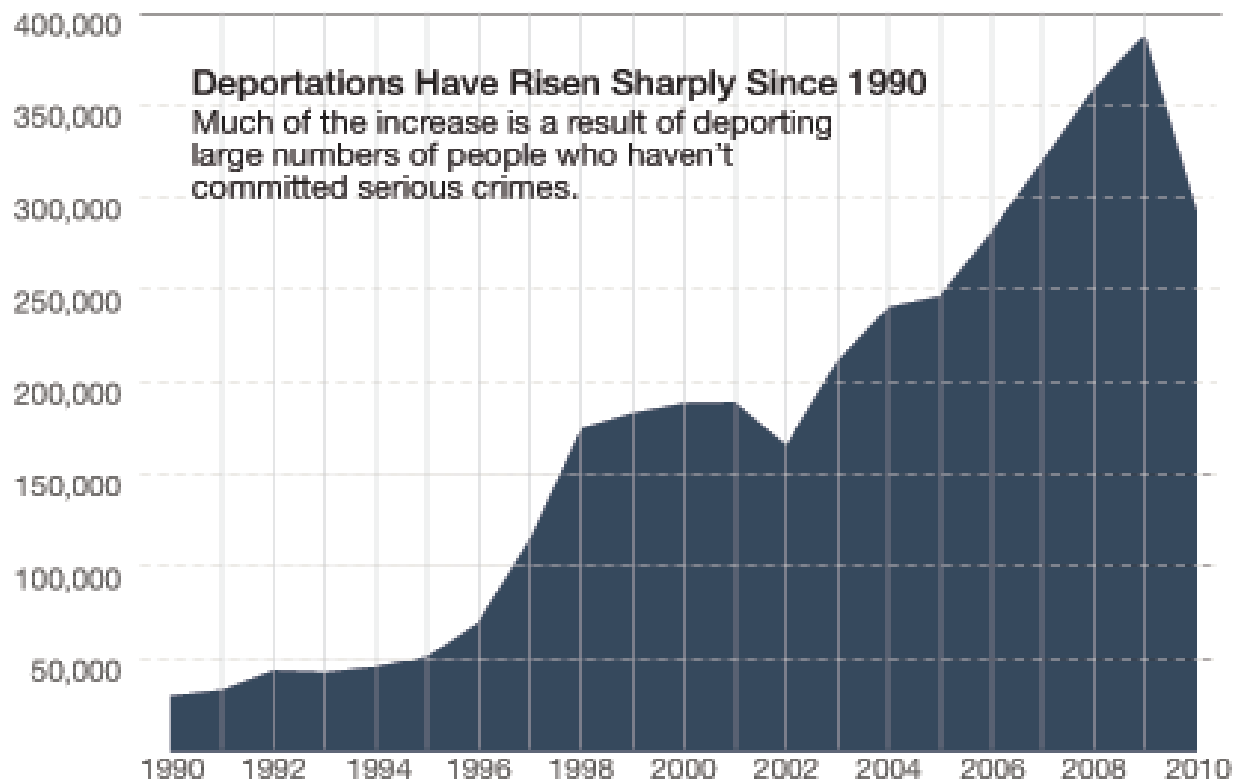


Figure 2. The deportation number in the United States from 1990 to 2010

4.3 Case Selection

I select two states—Arizona and Illinois—as critical case studies. These states represent two broader patterns in contemporary immigration control and politics at state and local levels: restrictionist/punitive/anti-immigration (Arizona) and protectionist/beneficial/pro-immigration (Illinois) (for a brief category of state approaches to immigration control see Table I). Over the last three decades, Arizona and Illinois have received a large influx of immigrants from various countries around the world, and immigrants have accounts for a growing share of these two states' populations. Until 2015, immigrants comprised 13.4 percent of Arizona's population and 14.2 percent of Illinois' population. As a result, more than one in eight Arizona residents is an

immigrant and one in seven Illinois residents is an immigrant (American Immigration Council, 2017). Despite their recent experiences of receiving immigrants, Arizona and Illinois have adopted divergent pathways for governing immigration through which undocumented immigrants are criminalized and penalized in Arizona, while being protected and granted beneficial services in Illinois.

Table I
TYPOLOGY OF STATE APPROACHES TO IMMIGRATION CONTROL, 2005-2017

	Anti-Immigration States	Pro-Immigration States	Neutral States
Definition	The states have omnibus anti-immigration bills, or laws, ordinances, regulations, policies, and practices that either prevents undocumented immigrants from gaining employment and receiving public benefits or makes it mandatory for law enforcement to investigate individuals suspected of being illegal immigrants.	The states have laws, ordinances, regulations, resolutions, policies, or other practices that either provide beneficial services and protections or obstruct immigration enforcement and shield criminals from ICE — either by refusing to, or prohibiting agencies from, complying with ICE detainers, imposing unreasonable conditions on detainer acceptance, denying ICE access to interview incarcerated aliens, or otherwise impeding communication or information exchanges between their personnel and federal immigration officers.	The states do not explicitly enact any state anti-immigration nor state pro-immigration laws and policies, albeit there are some counties and cities in those states that have declared sanctuary jurisdictions.
State	Alabama, Arkansas, Arizona , Colorado, Florida, Georgia, Hawaii, Iowa, Idaho, Indiana, Louisiana, Michigan, Missouri, Mississippi, North Carolina, Nebraska, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia	California, Illinois , New Mexico, New York, Oregon, Vermont	Alaska, Connecticut, Delaware, Kansas, Kentucky, Massachusetts, Maryland, Maine, Minnesota, Montana, North Dakota, New Hampshire, New Jersey, Nevada, Rhode Island, South Dakota, Washington, Wisconsin, Wyoming

4.3.1 **Arizona: The Punitive Control and Crimmigration**

Arizona has been arguably considered the most punitive state against immigrants. It blatantly criminalizes and penalizes undocumented immigrants and vigorously restricts immigration (Sinema, 2012). From 2005 to 2012, Arizona passed the greatest number of anti-immigrant bills (see Table 2). Immigrants in Arizona have experienced heightened punitive enforcement activities and widespread fear of being arrested and deported over the last two decades. The exceptional punitiveness against immigrants is characterized by the enactment of the severe anti-immigration law SB1070 in 2010, marking the establishment of a crimmigration apparatus designed to identify, prosecute, and deport undocumented immigrants. SB1070 includes a “show me your papers” provision requiring local police officers to check the immigration status of people stopped, detained, or arrested. The law also prohibits undocumented immigrants from receiving any public benefits at the state or local level, bars undocumented immigrant students from attending public institutions of higher education, and requires public elementary and secondary school officials to ascertain whether students are undocumented. Meanwhile, from 2005 to 2012, Arizona has passed a host of bills that mandate employers to conduct workplace audits and businesses to utilize the E-Verify system to determine new employees’ citizenship status and employment eligibility (see Table II).

Table II
ANTI-IMMIGRANT LEGISLATIONS BY STATE, 2005-2012

State	Total	Omnibus	Employment	Mandatory Enforcement
Alaska	0	0	0	0
Alabama	2	1	0	1
Arkansas	1	0	1	0
Arizona	6	1	4	1
California	0	0	0	0
Colorado	4	0	3	1
Connecticut	0	0	0	0
Delaware	0	0	0	0
Florida	1	0	1	0
Georgia	5	2	0	3
Hawaii	2	0	2	0
Iowa	1	0	1	0
Idaho	1	0	1	0
Illinois	0	0	0	0
Indiana	1	1	0	0
Kansas	0	0	0	0
Kentucky	0	0	0	0
Louisiana	3	0	3	0
Massachusetts	0	0	0	0
Maryland	0	0	0	0
Maine	0	0	0	0
Michigan	1	0	1	0
Minnesota	0	0	0	0
Missouri	2	2	0	0
Mississippi	1	0	1	0
Montana	0	0	0	0
North Carolina	2	0	1	1
North Dakota	0	0	0	0
Nebraska	2	1	1	0
New Hampshire	0	0	0	0
New Jersey	0	0	0	0
New Mexico	0	0	0	0
Nevada	0	0	0	0
New York	0	0	0	0
Ohio	1	0	0	1
Oklahoma	1	1	0	0
Oregon	0	0	0	0
Pennsylvania	1	0	1	0
Rhode Island	0	0	0	0
South Carolina	2	2	0	0
South Dakota	0	0	0	0
Tennessee	5	0	4	1

Texas	1	0	1	0
Utah	5	2	3	0
Virginia	6	0	5	1
Vermont	0	0	0	0
Washington	0	0	0	0
Wisconsin	0	0	0	0
West Virginia	2	0	2	0
Wyoming	0	0	0	0

Note: Data are from the National Conference of State Legislatures (NCSL) (also see State Legislature Websites, 2018). According to current state immigration legislation patterns, state-level efforts to step up immigration enforcement have been two-pronged, with one prong focused on the enactment of the omnibus immigration law that contains multiple provisions that apply to affect multiple aspects of immigration policy (i.e. Arizona SB 1070) and the other focus on deploying the criminal justice system or preventing illegal immigrants from gaining employment.

In practice, several border cities (e.g., Tucson, Mesa) have experienced escalating immigration enforcement. A growing number of U.S. Border Patrol agents have been deployed to arrest and detain people suspected of crossing the U.S.-Mexico border and staying in the country without documentation (Macías-Rojas, 2016). U.S. Immigration and Customs Enforcement (ICE) has also expanded a series of raids targeting undocumented immigrants and removed an increasing number of immigrants from Arizona. According to data from ICE, more than 5,000 undocumented immigrants were removed from Arizona in the first three months of 2016 (Immigration and Customs Enforcement, 2016).

In addition to ongoing and aggressive governmental legislation and enforcement practices punitively targeting immigrants, there was a surge of vigilante activities taking place at the Mexican border among Arizonans in the early 2000s, whose aim was to exclude border crossers and undocumented immigrants, thus prohibiting immigration into Arizona territory (Doty, 2016). For example, in October of 2004, the border vigilante movement gained prevalent traction in Arizona when two individuals, Jim Gilchist and Chris Simcox formed “the Minuteman Project.” The publicity of the Minuteman Project has encouraged and convened thousands of people to travel to the Arizona desert and guard the border. The border vigilantes operated on their professed obligation to preserve the sovereignty of the United States. As a result, they believed they had the right and duty to protect the territorial boundary from foreign threats. The individuals determined to be outside this selected group of Americans (non-citizens and in some cases citizens of Latino decent) were classified as an enemy to America’s sovereignty. With favorable media coverage, a few anti-immigrant activists effectively changed the discourse on unauthorized immigration in Arizona (Murphy, 2012).

In sum, over the last two decades Arizona has adopted a significantly punitive approach to immigration control that has manifested in both legislation and enforcement practices and anti-immigrant movements from the public. This set of policies and practices illustrate the rise of state coercion directly against immigrants, who have been perceived as “others” or “criminals.” The two-decade legal change has established a crimmigration regime in Arizona by involving the state and local level criminal justice systems for enforcing immigration law. Arizona’s controversial SB 1070 typically represents the latest of many steps in the criminalization and penalization of immigrants. The law is broad in its attack on undocumented immigrants and grants substantial power and discretion to the state and local level for enforcing immigration laws. Although there are other states that enacted similar immigration policies (for example, Alabama’s HB 56 and Georgia’s HB 87), the intensity and extent of punitiveness in Arizona immigration control has been particularly significant, and thus generates fierce debates across the U.S. (Murphy, 2012). The drastic development of Arizona’s anti-immigration control policies and practices suggests that penal power has been intensively used to address the sociopolitical issue of unauthorized immigrants, and has vastly leached into migration control policies of other states.

4.3.2 **Illinois: The Protective Control and Integrative Services**

In contrast to Arizona’s punitive and restrictive approach to immigration, the state of Illinois has taken a different pathway and enacted legislation that increases immigrants’ access to welfare benefits and protects undocumented immigrants from investigation by law enforcement. As a conventional immigration destination, with a large immigrant population, Illinois has taken a welcoming stance towards newcomers and helps them integrate into local communities.

Over the past two decades, when U.S. society witnessed a surge of anti-immigrant anxieties nationwide and a punitive turn in immigration control, Illinois has not passed any bills restricting immigration or criminalizing undocumented immigrants (see Table 2). Instead, the Illinois State Senate has approved bills that would prevent state law enforcement agencies from aiding federal immigration enforcement actions without a warrant, thus stopping the diffusion of crimmigration into the state of Illinois (National Conference of State Legislatures, 2017).

More recently, President Donald Trump pushed his “get tough on immigration” movement by signing an executive order titled “Enhancing Public Safety in the Interior of the United States,” which claims to strip federal funds from sanctuary cities and counties. In response, Illinois has passed a bill that would protect immigrants, who are in the country without authorization, from being detained solely because of their immigration status. Another bill would automatically register many Illinoisans to vote. Known as the TRUST Act (SB 31), the law prohibits state and local police in Illinois from arresting or detaining a person solely because of their immigration status, or based on a federal immigration detainer. Thus, the law creates a bright line between local police and federal immigration agents, and sends a message to Illinois’ immigrant residents that seeking police assistance will not result in their deportation. In addition, the law includes provisions that assist immigrant crime victims seeking legal protection.

For the most part, as one of the nation's most immigrant-friendly states, Illinois has adopted a protective approach to immigration control and worked on providing beneficial services for immigrants, including those without legal documentation. In addition to governmental protection, which shields immigrants from the brunt of the federal crimmigration, NGOs, such as the Illinois Coalition for Immigrant and Refugee Rights (thereafter ICIRR), have enthusiastically promoted the rights of immigrants and refugees to full and equal participation in

the civic, cultural, social, and political life of local communities and cities. The particular pathway that Illinois has adopted for governing immigrants shows that Illinois has refrained from deploying penal power and emphasized inclusionary logic for immigration control, which serves as an excellent case of a state opting for non-use of penal power in immigration control.

Taken together, how do we make sense of differential strategies of immigration control used by these two select states that take immigration law into their own hands (Varsanyi, 2010)? Why are some jurisdictions more likely to resort to using the criminal justice system and penal sanctioning in response to undocumented immigrants, while others extend protective services? I argue that only through a close examination of state and local immigration legislative processes and contexts can there be a more complete understanding of the contemporary configuration of immigration control, including the nature of the American penal system in an era of transnational migration. This project seeks to answer those questions and advance knowledge on immigrant governance and crimmigration using comparative historical methodology. By comparing different trajectories of immigration control in different jurisdictions, this study provides analytical accounts to explain why and how penal power has been deployed or depressed in response to immigrants in state and local levels. It focuses on how social, political, and institutional dynamics render some jurisdictions more susceptible to the activation of either penal or protective power in immigration control (Schoenfeld, 2016).

4.4 **Data and Method**

This present study employs multiple forms of data and analytical strategies to explore the configuration of immigration control in contemporary United States.¹¹ It aims to identify, analyze, and integrate key events, institutions, practices, patterns, and social conditions that gave rise to various approaches to immigration control in state and local jurisdictions. To do so, this research makes the case that both legal *and* policy change are central to the analysis, and simultaneously contextualize the changes (Lynch, 2011). As such, this project uses a wide range of archival materials and secondary resources that inform various processes and contexts of state and local immigration control dynamics, including state immigration legislative and policy initiatives; letters to public and political leaders; state constitutions; legislative bill files; governors' files and papers; state agency reports and memos; legislative committee reports; press releases and newspaper clippings; statistical information including public opinion surveys and demographics, and state and local histories. The secondary data mainly include histories of immigration policies in those two states and current literature and other narratives on immigration control in both those states and the federal government. Taken together, the data suggest the substance, trajectory and outcome of immigration policymaking.

Specifically, data for the Arizona case study were collected by reference to the digitized *Arizona State Library, Archives and Public Records*. This digital law resource contains ample information on the history of Arizona immigration legislation and the adjacent policies (i.e. crime control, law enforcement, and welfare). These sources were supplemented by secondary accounts of Arizona's political and legal history, newspaper articles, U.S.-Mexico border activities and immigration enforcement data. In addition, I relied on accounts of Arizona's

¹¹ For more details, see Appendix Data and Analysis that includes data collection methods for two cases and my analytical strategy.

political, cultural, and social history because it is my contention that the history of Arizona immigration control cannot be understood without reference to the larger social, cultural, political and economic context of the state.

Regarding the Illinois case study, I collected the data by largely following similar procedures. In addition, I supplemented the database by incorporating Chicago immigration policy development data from the project, “The Interplay between Public and Private Actors in Shaping Local Immigration Policy,” which is housed in the Department of Sociology at the University of Illinois at Chicago. That project explored the reasons why communities adopted supportive, neutral or restrictive immigration-related policies. Built on extensive fieldwork and in-depth interviews with various players in the field including activists and organization leaders, the data from the Chicago study provide ample and comprehensive information about the relationships between locally elected officials, public and private institutions, and immigrant residents.

In light of this analytical strategy, I employed the logic of inductive comparison. Through closely reading cases about the state control of immigrants and its policy developments, I will conduct both within-case and between-case comparisons, seeking to uncover the underlying, more abstract mechanisms giving rise to different patterns of state and local immigration control and their interactions with the national trend.

This study began with accounts of changes and developments in immigration control in Arizona and Illinois from the late twentieth and early twenty-first centuries, which trace the links between the details of immigration control problems, policies and practices and the wider structures of social life. Throughout, I used process-tracing methods to identify the key moments, policy choices and players that converged over time to create the contemporary immigration

control field in those states. In particular, I described how the immigration issue has become problematic; how the “problem” was framed; what policy solution was proposed and enacted, and more importantly, how those processes were shaped by broader social, economic, political and institutional dynamics in those jurisdictions.

Next, I juxtaposed two case histories and compare their pathways and approaches to immigration control, seeking to develop explanatory accounts for why they presented different forms of immigration control and how penal power is or is not deployed as a consequence. Answering the call of noted immigration scholar Alejandro Portes (1997), who argued, there is a glaring absence of “systematic theoretical analysis of both the external pressures impinging on the state and the internal dynamics of the legislative and administrative bodies (and other governing institutions) dealing with immigration” (p. 817), I employed theoretical frameworks developed in the field of punishment and society, especially those designed to explain penal change and the rise of mass incarceration in the United States. This study placed special emphasis on interactions between political institutions, ideological traditions, regional cultures, and organized social interests. It also emphasized the role of interactions among federal, state, and local governments in shaping immigration control, which have garnered relatively scant attention in prevailing society-centered theories of the immigration policy process. As such, my focus is on comparing political mechanisms through which the immigration “problem” was (or not) constructed and translated into a crime and threat problem that justifies the deployment of penal power and the enactment of restrictive policies (Garland, 2013).

In all, building on the analytical framework of constructing the penal field, and employing comparative historical methodology, the present study aims to shed light on sub-

national variations and local dynamics in immigration governance¹² in the United States over the last two decades. This study is premised on the conception that immigration control is an outcome of social construction, which is understood as an institutionalized field of contests over the rules of social life associated with immigration and the changing racial and ethnic order (Goodman, Page, and Phelps, 2015). In particular, it seeks to analyze and explain why two select states—Arizona and Illinois—have adopted divergent approaches to immigration control in the wake of the national punitive climate, which are restrictive/punitive/anti-immigration and protective/beneficial/pro-immigration respectively. It further interrogates the distinctive statuses of the deployment of penal power in response to immigrants in the two jurisdictions—penal expansion and penal moderation (Loader, 2010).

¹² The transformative processes occurring in immigration control include changes in the objective and principle of immigrant governance; the scope and content of immigration policies; the performance of immigration enforcement; criminal justice and welfare organizations and officials; public attitudes towards undocumented immigrants and immigration; the civilian participation in immigration control, and the extent and intensity of detention and deportation.

5. ARIZONA'S ANTI-IMMIGRANT MOVEMENT: PENAL POPULISM AND GOVERNING THROUGH CRIME

“They’re not immigrants. They’re illegal aliens!”

This was the loud outcry, which was widely diffused in the media and the public, around the Arizona State Capital when Arizona Governor Jan Brewer signed SB 1070, the *Support Our Law Enforcement and Safe Neighborhoods Act*, into law on April 23, 2010. Considered the hallmark of criminalizing immigration, passage of SB 1070 heralded the establishment of crimmigration regime in Arizona, a state that has been engaged in a two-decade, anti-immigrant movement. Arizona has seen the drastic ascent of penal logics in immigration enforcement. Why did this happen? Why did Arizona usher in a “tough-on-immigrants” movement that finally bred a crimmigration regime?

Some may point to the rise of crime and violence in Arizona’s society, or to a backlash against civil rights (Golash-Boza, 2015b). Some may argue for the impact of the federal *Criminal Alien Program* on Arizona’s law enforcement and the expediency of solving prison overcrowding crisis (Macias-Rojas, 2016). These arguments make sense in part, but not in totality. The missing pieces are the important long-term dynamic processes and structural contexts that have given rise to this legal regime of immigration control. To explain its emergence and development, we need to understand a series of political struggles and policy choices that have led to the production of a crimmigration system within the state’s particular political and cultural conditions (Sinema, 2012).

I argue that the emergence of Arizona’s crimmigration regime results from long-standing interactions of penal populism against immigrants that are compounded by “penal nationalism” as well as the increasing dominance of social conservative power in the Arizona government.

The deployment of penal power for tackling the immigration “problem” in Arizona is an outcome of extensive and intensive political struggles by which politicians, anti-immigration organizations, and widespread penal populists have collaborated to pursue an anti-immigrant and national/border security project. Their constant and persistent efforts, tactics, strategies and movements have made their way into the construction of Arizona’s crimmigration regime. The success of Arizona’s anti-immigrant movement does not necessarily suggest the absence of strivings for immigrant protection and inclusion by countervailing forces. Rather, it was the failure of the political left in Arizona’s immigrant politics, which has institutional and cultural causes. Furthermore, I argue that fights for immigrant legality in Arizona has confronted serious ingrained institutional and cultural barriers that continue to make Arizona’s crimmigration possible, legitimized, and sustainable. In other words, Arizona’s particular cultural and political environment renders the state more prone to pursue the criminalization of immigration in the face of social pressures due to transnational neoliberalism and mobility.

This section seeks to document the rise of Arizona’s anti-immigrant movement and the development of Arizona’s crimmigration regime by focusing on the social, economic, political, and cultural forces at play, and by examining the various players and their roles in the construction process. I begin by setting forth the broad socioeconomic and historical contexts in which penal populism against immigrants has developed and intensified, and wherein the governance of immigrant “criminality” has taken place. I then trace the incremental build-up and evolution of Arizona’s crimmigration and show key actors and critical events in the process of the construction of immigrants as a crime and security problem that entails a mobilization of exercising coercive power. This construction process did not take on a linear, straight trajectory; rather, it was influenced by various conflicts, struggles, coalitions, and realignments in a highly

contentious political context. Importantly, I highlight the role that anti-immigrant associational networks had played in making Arizona the harshest site for punishing and excluding undocumented immigrants in the country.

5.1 **Penal Populism: Anti-immigrant Movements in the Civil Sector**

5.1.1 **Structural Roots of Punitive Ideation**

The rise of Arizona's fear of immigrants and penal populism over the last two decades is laid at the feet of socioeconomic and demographic transformations, which have resulted from the rise of neoliberalism in economy combined with the changing demographics in Arizona. Those structural changes generated a sense of economic insecurity and provoked racialized fear of crime and victimization, thus heightening xenophobic and anti-immigrant sentiments (Wang, 2012). They have also evoked a new round of political and legal dynamics that was fraught with heated debates and acute struggles concerning immigrant exclusion or inclusion. Fostered within the enduring penal culture and the restructuring power relations in Arizona, those punitive attitudes escalated to strong demands for public safety and loud calls for tough immigrant control measures. This newly forged punitiveness in Arizona's immigration control has been the product of the interplay of social, political and ideological forces that originated from the post-civil rights era and took effects in the wake of neoliberalizing the U.S.-Mexico border. Indeed, the politicization, securitization and criminalization of immigration in Arizona over the last two decades cannot be adequately understood without reference to the state's changing social, economic and political conditions in which they developed and continue to operate. The emergent socio-economic structure of Arizona was an important facilitative condition that made political and legal choices to crimmigration more likely.

The post-war period has witnessed drastic changes in Arizona's economy and society. From 1950 to 2010, an influx of high-tech manufacturing firms and companies from aerospace and electronics industries (such as Motorola, Hughes Aircraft) to Arizona has boosted its economic growth. During this period, and due to the general pro-business and pro-growth ambience of the state and the city, manufacturing had become a major, fast-growing industry in Arizona, which concentrated primarily in and around the Tucson and Phoenix metropolitan areas. In the meantime, Arizona has also experienced a rapid population boom with a sevenfold increase and 75% of the state population residing in the areas of Tucson and Phoenix (American Immigration Council, 2017). Notably, with years of phenomenal expansion, Phoenix has become one of the fast-growing cities in America. The state's population growth stimulated the service economy. Financial, health and retail trade sectors, plus hotel and restaurant service expanded to serve one of the fast-growing states in the country.

Arizona's growth pattern created disparities between Phoenix and border towns where the population is predominantly Latino and poor. The Mexican economic crisis in the early 1980s combined with peso devaluations to further weaken the retail industry that depended on shoppers from northern Mexico, who crossed the border on foot to shop in border towns, spending over \$300 million annually (Shermer, 2015).

In 1994, during the wake of global neoliberalism, President Clinton promised the implementation of the North American Free Trade Agreement (NAFTA) would allegedly boost employment in Mexico and stimulate more, better-paying jobs south of the U. S. border; however, NAFTA did not offer relief (Miller, 2010). Instead, it worsened the poverty in Mexico. The free trade agreement unleashed an unprecedented exodus of Mexicans into the United States. There has been an average of 500,000 Mexicans entering the U.S. each year since 1994. Many of

them were funneled into Arizona's dangerous desert, which claims an average of 200 migrants' lives each year. Arizona became the U.S.-Mexico border's immigration hot spot (Miller, 2010).

Arizona-Sonora border towns' history as a transportation and trade route made them particularly suitable for the drug industry. Even after the government stepped up interdiction efforts at the border, smugglers continued to transport shipments by hiring local residents to transport smaller shipments through and between ports of entry with backpacks and on foot. By the late 1990s, Arizona had become a major staging ground for unauthorized border crossings and human smuggling. As the federal government escalated its immigration control, organized human smuggling networks proliferated, generating significant employment and revenue in these economically marginalized areas.

Rapid growth and economic change in Arizona have transformed the demographic structure in Arizona. Demographic shifts have produced particular tensions for Arizona, especially in Arizona-Sonora borderlands. The state's rapid population growth contributed to the state's greater influence in national politics through more representation in the House and votes in the Electoral College. Arizona's Latino population doubled between 1990s and 2010 and is expected to become a majority-minority state over the next two decades (American Immigration Council, 2017). Latinos now account for over 20% of the state's electorate, with over 60% of Latino voters supporting Democratic candidates, which has important political ramifications for a Republican state like Arizona (Macias-Rojas, 2016, p. 31).

Although Arizona has experienced remarkable economic and social changes over the past half century, especially against the backdrop of the increasing flow of Mexicans to the U.S. due to neoliberal policies, immediate "problems" associated the rapid social change have emerged. The transient nature of the population, and the increasing salience of irregular border crossings,

has contributed to the concern about security as well as exacerbated the sense of crisis among the public. For example, in the legislative conference debating the passage of HB2577, representatives from Mesa, Arizona expressed their grievances against the influx of immigrants to the state, claiming:

We are facing a mass invasion of historic proportions by a Hispanic migrant army, members of who were corrupting our unifying national language while actively disrespecting our culture, society and country. This is a great threat posed by immigration from Mexico. (Arizona State Library, Achieves & Public Records, HB 2577, 2006)

5.1.2 **From Hysteria to Action: Armed for Protecting “Our Country”**

The vast and frequent border crossings that have taken place in border towns over the past decades have led to tremendous tensions between immigrants and Arizonans. In the late 1990s, conservatives in Arizona responded privately to what they described as failed border policy by “taking matters into their own hands” (Doty, 2009). The concern about border security and well-being is particularly present among border ranchers who often ride the mountain ridges, for example, and stumble into cartel “drug mules” carrying marijuana-stuffed backpacks. They feel they are “living in a world without a war” while witnessing, firsthand, the constant and irregular traversing of the U.S.-Mexico border, thus claiming “a swarm of uncontrolled refugees is fleeing a Marxist structured government in what amounts to an invasion of the U.S.” (Moser, 2003). Smuggling and violent activities at the borderland have further intensified negative attitudes towards border-crossers and immigrants, and a decade of outrage has been leveled at border security. Anti-immigrant sentiments prevail and promote a demand for increased border security and control.

Declining faith in, and growing distrust of, the governmental capacity to “control” undocumented immigrants and provide border security have been conducive to the formation of

anti-immigrant citizen militias such as Ranch Rescue, the American Border Patrol, and Arizona Cattlemen's Association. To repel the supposed "invasion," anti-immigrant citizens (and extremists) established a committee of vigilantes that prowl the borderlands, catching immigrants and sending them back to Mexico. The hysteria to engage in self-organized, anti-immigrant activities was reflected in Chris Simcox's (a leading anti-immigrant activist and co-founder of the now defunct Minuteman Project) call for fellow Arizonans to join together to protect the country "in a time of war." He claimed: "The beauty of vigilantism is simple: We actually have more freedom to tackle the problem than the government and law enforcement agencies that are bogged down in the quagmire of laws and restrictions."

Importantly, the Minuteman Project was one of the most prominent and influential organizations that participated in armed opposition against immigrant border crossing and entry to the territory. It worked with Christian Right groups who were dedicated to preserving cultural values and the identity of the nation (Doty, 2009, pp. 56-58). Led by Jim Gilchrist and Chris Simcox, the project served as a "citizens' Neighborhood Watch on our border" with missions to protect the country from (what they determined was) a foreign enemy intrusion. The rise of the Minuteman Project was largely a discontented and extremist response to the perceived failure of government officials to effectively protect the border, and included Obama's immigration policies such as amnesty and the guest worker program. They were organized to patrol mostly in southern Arizona and borderlands to deter "suspect" immigrants from crossing the border. Meanwhile, they created a political action committee, lobbying for representatives supporting proactive immigration law enforcement and border security projection. Consequently, their extensive, organized anti-immigrant activities attracted media attention to "illegal" immigration and raised public consciousness about the "immigrant threat."

5.1.3 **Profiting from Arizona's Crimmigration: Economic Incentives in the Punitive Project**

When immigration becomes a “criminal” problem that entails punishment and control, the immigration governance opens up a “punishment market” in which local immigration enforcement and private prison companies operate (Stageman, 2017). Since the late 1990s, the Immigration and Naturalization Service (located in the Department of Homeland Security) has thrown the financially troubled private prison industry a bone and offered it prison contracts to detain and incarcerate undocumented immigrants. Due to the federal program’s funding incentive and increasingly locally controlled immigration enforcement, the prison industrial complex extended its reach into the domain of immigration control, benefiting from the increased punishment and surveillance of immigrants. As Fernandes (2007, pp. 172-173) argues, “DHS was conceived and created in a way that made it possible for private industry to become the driving force behind much of its operation. DHS was born with a massive budget, and those who were present at its creation undoubtedly saw the huge revenue potential for big business.”

Border town citizens also benefit economically from the prison industry complex, which supplies much needed job opportunities and creates financial stability. Though still dependent on tourism and retail from cross-border shoppers, border towns increasingly depend on government-sector employment, including the Arizona Department of Corrections, the Department of Homeland Security, the Department of Justice, city and county offices, and local school districts. They are a major supplier of local jobs. Thus, given the increased stake in the privatization of immigrant detention and deportation, the support for a crimmigration project by companies and employed citizens may not likely diminish.

The confluence of widespread anti-immigrant sentiments, discourses and activities from the public, and detention-based economic incentives, has set the popular stage for punitive immigration legislation. Through their intensive efforts to project immigrant “criminality” on the public, a crimmigration response may seem the rational response; however, the anti-immigrant regime would not have been consolidated until the governmental system mobilized to enact and implement anti-immigrant policies and laws. In what follows, I examine how the government, at both local and federal levels, responded to the civilian anti-immigrant movement in Arizona, and veered to the direction of punitive immigrant legislation. This movement highlights the importance of coalition and alignment between organizations and politicians for molding the punitive immigrant governance in Arizona.

5.2 **A Crimmigration Regime in the Making**

Responding to the rising public, immigrant-related security concern, and support for restrictive immigration control after 9/11, governments on multiple levels have enacted a series of punitive immigration laws and policies, creating a multilayered crimmigration complex (Varsanyi, Lewis, Provine, and Decker, 2012). Notably, the interplay of federal and state politics jointly contributed to the rise of Arizona’s crimmigration regime. This is because of the important influence of Arizona politics on the national political landscape in the post-civil rights era.

In the early 1960s to the 1980s, due to cross-border trade with Mexico and ties between Arizona and Sonoran economic elites, Arizona politicians such as Republicans from Barry Goldwater to John McCain have supported immigration reform. Politicians maintained business relationships with Sonoran elites because of American dependence on cheap Mexican labor for

Arizona's booming service economy. They also relied on Mexican American voters to put Republicans into office and to help undermine unions that had historically discriminated against Mexican workers (Shermer, 2015). As such, they were more likely to push to open borders than to close them. Arizona became the birthplace for one of the most important post-civil rights movements for immigrant rights: the Sanctuary Movement.

It was not until the 1990s that Arizona supported punitive approaches to immigration control, when Border Patrol launched "Operation Safeguard" on the Arizona-Sonora border (Macias-Rojas, 2016, p. 35). Safeguard is best known as a border control operation deploying more than one hundred Border Control agents to Southern Arizona with the primary aim to support criminal alien removal efforts. Before Safeguard, the INS had already invested considerable resources for border control in Arizona and what it terms "criminal alien removal" (Macias-Rojas, 2016, p. 35).

These new criminal enforcement priorities rooted in the *Criminal Alien Program* made their way back to Arizona as a way to manage unauthorized border crossings in the 1990s (Miller, 2010). Some Arizona politicians have embraced enforcement priorities, and prosecutorial approaches to managing migration more broadly, as a strategy to stem immigration's impact on the state's changing economy, demographics, and constituents. The congressional response to political mobilization on immigration in Arizona was largely punitive. This included harsher sentencing for human smuggling, incentives for police/INS collaborations, stricter detention policies, and criminal prosecution for immigration offenses. Arizona politicians have also passed their own signature state laws that went beyond standard xenophobic anti-immigrant ordinances to policies requiring state and local law enforcement to impose federal immigration law.

5.2.1 **The Thrust of Moral Entrepreneurship in Government**

The Arizona crimmigration regime's development cannot be fully captured without attention to the prominent efforts of anti-immigrant legislation architect State Senator Russell Pearce who was elected to the Arizona House of Representatives in November 2000. Pearce's "moral entrepreneurship" grew from the introduction of two proposals in 2003 to a career-long commitment to promulgate undocumented immigration-related measures in the Arizona Legislature. Although his first two proposed bills (HB 2243 and HB 2246) had not been passed in 2003, they paved the way for future anti-immigrant legislation and ballot initiatives. Since then, his dedication to the issue of undocumented immigration has gained widespread appeal and support in the state, and proved to be an important precondition for the construction of crimmigration.

As a so called moral entrepreneur striving for the penal control over immigration, Pearce first claimed the need to shift ownership of immigration control from the federal government to the state. He took advantage of moral panic over border crossers and immigrants, especially some local citizens' discontent with governmental failures to institute comprehensive immigration reform. When the immigration control issue came to surface on policy agenda in the state legislature, he sought to frame immigrants as socially and economically "threatening" as well as "criminal" (rather than simply as immigrant workers who deserve protection), and instigated an immigration-crime nexus. In 2008, at a legislation conference debating the ballot initiative of HB 2779, Pearce argued the "lure is jobs and illegal employers; violent crime follows illegal alien crowd." He continued: "illegals who smuggle themselves across the border and take a job that lawfully belongs to an American; immigrant gang members rarely make a living as gangsters, they took away jobs of work construction, auto repair, farming, landscaping,

and lots of skilled jobs. They bring drugs, home invasions, and false documents” (Arizona State Library, Achieves & Public Records, 2008).

In addition, the question about American identity was also resonated in Pearce’s insistence on enacting stringent laws punishing unauthorized immigrants in the state. The rationale of crimmigration for a nationalistic purpose was underscored in his speech during the legislative debates on the SB 1070 proposal: “I’m worried about the future of *America* [emphasis by Pearce]. We must stay vigilant.”

Furthermore, in the midst of anti-immigrant populism, Pearce insisted on defining the immigration “problem” as a law and order issue, and thus called for the deployment of penal power for solving the so called “problem.” This is illustrated in an interview he gave after the passage of SB 1070:

To enforce the law. I know it's a novel idea, that to enforce the law might be the right thing to do. You can't continue to ignore the damage to America. As you become a lawless and Godless nation, it destroys the very Republic that our founders put into place. And the cost of this illegal-alien invasion, in terms of crime, social cost, taxpayer costs—you think somebody would think that that's a significant issue. They're illegal. Illegal is not a race, it's a crime. (Pearce, 2010.)

For Pearce, protecting “our country” from immigrant intrusion and criminality is the priority in immigration enforcement, a goal favorable to Arizonans’ interests and concerns. He justified the necessity of using penal power for enforcing immigration law because undocumented immigrants posed a criminal threat:

When do we worry about the American jobs that are lost and taken by *illegal aliens*? When do we worry about the cost of billions of dollars to the taxpayer? When do we worry about the crime? And there is a definite correlation between *violent crime* and *illegal-alien activity*. When S.B. 1070 was passed, there were several polls done, and 73 percent of Americans supported it. The majority of Americans consistently support enforcement—not amnesty, not open borders. They demand a *secure border*. And yet we don't get it, do we? (Pearce, 2010, emphasis added.)

Attracting nationwide attention, Pearce's role as anti-immigrant legislation architect was furthered with the help of anti-immigrant organizations. Despite the wide appeal of Pearce's anti-immigrant proposals in Arizona, his goal might not have been realized without the construction of policy networks between organizations and politicians. I suggest that it was the long-standing coalition and collaboration of associations and policymakers that made anti-immigrant legislative efforts come true and crystalized a crimmigration apparatus in Arizona.

5.2.2 **The Help of National Anti-immigration Organizations**

During the process of crafting crimmigration in Arizona's government, national anti-immigration organizations such as the American Legislative Exchange Council (ALEC) and Federation for American Immigration Reform (FAIR) have played an important role in moving the crimmigration agenda forward. With their goals "to improve border security, to stop undocumented immigration, and to promote immigration levels consistent with the national interest," they have committed themselves to years of planning and careful execution that led to the passage of SB 1070 (Sinema, 2012).

In 2003, Representative Pearce introduced House Bill 2246 that required Arizona citizens to show proof of citizenship when registering to vote. In the end, this bill was not passed on a roll call vote in the House Judiciary Committee because two Republicans joined Democrats in opposition. This failure did not discourage Pearce's further attempt to pass anti-immigrant laws. As a specialized organization that worked to advance anti-immigrant measures at both the state and federal governments, FAIR then came to work with Pearce and helped prepare for the next general ballot by bringing in funding and human resources.

The first success of their collaboration was the approval of an initiative commonly referred to as Prop 200—Arizona Taxpayer and Citizen Protection Act—in 2004. The Prop 200 further widened the influence of FAIR in Arizona and FAIR had been able to aggregate otherwise dispersed anti-immigrant forces into a consolidated network for crimmigration since then.

From 2004 through to 2008, a period of time of growing public pressure to “do something” about immigrants and border security, FAIR and ALEC worked with various politicians (mostly Representative Pearce) to pass a series of laws and policies that restricted immigrants’ rights and access to state service and benefits, including HCR 2036, Prop 103, Prop 300, HB 2279, HCR 2044, and HB 2745. This set of laws particularly required employers in Arizona to check employees’ immigrant status and made their obligations to report suspect undocumented immigrants in workplace, thereby toughening immigration control through a partnership with the civil sector. Together, with the assistance of national organizations, these anti-immigrant legislative movements set the foundations for, and constituted, an emerging crimmigration regime.

5.2.3 **The Peak of Arizona’s Anti-immigrant Movement: SB 1070**

In April 2010, Governor Jan Brewer signed SB 1070 into law. It passed the Arizona House, 35-21, and the state Senate, 17-11. As an omnibus of Arizona anti-immigration measures, this law was widely viewed as toughest law addressing undocumented immigration. Importantly, this legislation authorizes local police to ask for papers and allows officers to arrest a person without a warrant if the officer believes the person has committed an offense that makes them deportable. It also criminalizes the failure to carry registration papers, and makes it illegal for

people to solicit work if they are in the country without documentation. As such, this legislation not only prompted a crimmigration regime, but also reinforces immigrant “criminality” in a manner of “degradation ceremonies,” blending together a decade of fears of Mexican drug cartels, border security, competition for jobs, and the state's rapidly expanding Latino population into one piece of law.

Taken together, over the last two decades an enduring populist, anti-immigrant movement has been on the rise in Arizona, which aims to define immigration as criminogenic and conflate notions of “undocumented immigrants” and criminality. Through efforts by well-organized, anti-immigrant groups and their coalitions with conservative politicians, who exploited public sentiments against undocumented immigrants, SB 1070 was finally passed. This piece of legislation materialized the criminalization of immigration in Arizona and marked the build-up of a crimmigration regime by which the criminal justice system had been successfully mobilized in immigration control. Its formation thus brought about the militarization of the U.S.-Mexico border as well as the authorization of local law enforcement to apprehend, detain, and deport unlawfully present individuals. Moreover, the construction of Arizona’s crimmigration was also embedded in power relations and political struggles. The dedication of an iconic politician, Senator Russell Pearce, to an anti-immigration project; the constant assistance of national anti-immigrant organizations; the support of the federal government to implement tough immigration law, plus longtime anti-immigrant populism in the civil society converged to construct undocumented immigrants as a “law and order” issue, which justified a crimmigration regime.

5.3 **Confronting the Criminalization of Immigration: Legal Mobilization**

Despite the salience and “success” of anti-immigrant forces that operated in Arizona, the criminalization-of-immigration-movement did encounter opposition from a chorus of people who strived for immigrant justice. Overcoming criminalization and stigmatization of immigrants, and improvising socio-legal conditions of protection and integration, have become the major goals of Arizona’s pro-immigrant movement. Immigrants’ rights advocates regularly relied on litigation and court-based strategies for changing perceived “illegitimate” laws and practices of crimmigration. Contestations over “immigrant criminality,” and pro-immigrant activists’ efforts to combat punitive measures aimed at immigrants, created a new legal battlefield in which the crimmigration system was challenged.

The oppositional activities against the anti-immigrant force started in the early 2000s. The pro-immigrant movement came to be organized when the Puente Human Rights Movement (thereafter Puente) was formed in Phoenix, Arizona in 2007. As a grassroots migrant justice organization, Puente members wants immigrants to feel empowered and have a sense of security, to stand up for themselves to protect and defend their families and communities, and to gain social acceptance and respect from the government. Hence, they engaged in campaigns for immigrant rights and inclusion and worked primarily on fighting against aggressive federal immigration enforcement through the use of local police officers that was authorized by 287 (g). Accepting and pursuing the 287 (g), in 2007 and 2008, Arizona legislators enacted the Legal Arizona Workers Act (LAWA), which imposed serious criminal penalties on individuals who use false identifying information “with the intent to obtain or continue employment.” Since 2008, to enforce LAWA, local law enforcement officers conducted dramatic workplace raids across the state.

More recently, as a response through legal mobilization, Puente, on behalf of immigrant workers and their families filed a lawsuit as a collective litigation—*Puente Arizona v. Arpaio* (2016) — that challenges the constitutionality of Arizona’s worksite raids targeting undocumented immigrants by local law enforcement officers. By citing the consequences of this enforcement practice on immigrant workers and their communities, particularly claiming that LAW A was passed with a discriminatory intent and caused racial profiling, Puente framed the enactment and implementation of LAW A as an illegitimate practice that “separated hundreds of workers from their families, suppressed workers’ rights, eroded the social fabric of immigrant communities and instilled great fear” (Puente, 2014). Although the case was filed in 2014 and is still being processed by the court, Puente’s legal mobilization through the case has already created awareness and alliance among immigrant workers and their families. With collaborations with immigrant workers and families, Puente’s determination to counter the crimmigration force and change immigrants’ legal predicament was particularly enhanced. By demonstrating their commitment to immigrant inclusion by legal strategy, Puente-led pro-immigrant movement has gained increased confidence and support. As the organizing director of Puente and a lead plaintiff in the case, Francisca Porchas claimed:

We vow to keep fighting Sheriff Arpaio and County Attorney Bill Montgomery and will not rest until they stop targeting our community. The laws on which the raids were based left many immigrants with felony convictions merely for working to provide for their families. The laws are cruel, unjust, and degrading. We knew that it would be a long court battle, but after years of raids, the hundreds of immigrants arrested, we also know the importance of continuing the fight. In the meantime, we will also continue to open our doors to those in the community affected by the raids. (Puente, 2014)

In addition, the legal mobilization against crimmigration was escalated when the iconic crimmigration law, SB1070, was challenged and then sued by the U.S. Department of Justice, which claimed in *Arizona v. United States* (2012) the law was unconstitutional before it came to

take effect. As a result, on June 25, 2012, the Supreme Court issued the ruling that struck down some provisions about Arizona's intent to deter unlawfully present aliens from staying in the state because those provisions interfered with the federal government's role in immigration enforcement, including requiring all immigrants to obtain or carry immigration registration papers, making it a state criminal offense for an undocumented immigrant to search or hold a job, and allowing police to arrest suspected undocumented immigrants without warrants. Nevertheless, the key provision about crimmigration was still upheld that required state and local law enforcement to facilitate the detection of undocumented aliens in their daily enforcement activities. The critical legal underpinning crimmigration in Arizona thus remains unaltered.

5.4 Arizona Case Summary

In tracking the emergence and dynamics of Arizona's legal regime of punitive immigration control, I argue that the rise of Arizona's approach to "governing immigration through crime" was deeply embedded in penal populism (compound by nationalism and racism) arising from socio-economic transformations of the state (Armenta, 2017). Due to the federal immigration enforcement program in the California part of U.S.-Mexico borderland, the route of Mexican immigrants into the U.S. was re-directed to the Arizona side, which has subsequently brought about massive border crossing activities. As a remarkable punitive immigration control mechanism, crimmigration was a direct result of extensive political mobilization by a variety of anti-immigrant citizens, NGOs, politicians and policymakers who were associated in a powerful network through concerted efforts. It was also generated by the failure of the political left to appropriately address the frustration and outrage felt by ordinary Arizonans due to fast immigration-causing social change in the state. Thus, I argue, the power structures and its relationship to civil society, which favored conservative immigrant governance through punitive and exclusive measures, mostly explains the rise of Arizona's crimmigration.

Rooted in entrenched southern penal cultures (Lynch, 2010), which are highly punitive and usually racialized, the penal populism against immigrants have been ignited as a result of Arizona's profound socioeconomic transformations that produced tensions among Arizona's citizens and immigrants. This antagonism is further amplified by the lost public confidence in government's capacity to address the immigrant "emergency," resulting in waves of border vigilant activities. Their diffusion is also embodied in long-term coalitions among anti-immigrant activists who were able to muster strength to push towards a movement of criminalizing immigration. They were aligned together to engage in constructing immigrants as "criminal" by

mobilizing institutional resources, constructing cultural schemes and symbols, and advancing anti-immigrant policy agenda in the legislative process.

Despite the punitive orientation, anti-immigrant sentiments and movements would not have been materialized until players mobilized the legislative system that finally passed the tough immigration control bills. The anti-immigrant force moved forward and succeeded in enabling a crimmigration regime when politicians, legislative leaders and policymakers were responsive to anti-immigrant political demands and maneuver to pass, and allot resources to implement, those restrictive and punitive laws (e.g., LAW A).

The rise of Arizona's crimmigration regime was further aided and built by a remarkable anti-immigrant legislation architect, State Senator Russell Pearce, who took advantages of penal populism against immigrants and managed to advance the passage of various anti-immigrant laws. This movement reached its apex when SB 1070 was passed in 2010. Considered the most punitive immigrant law in American history, this law finally instituted the legal underpinning of Arizona's crimmigration apparatus. Its passage sparked widespread criticism, protest and resistance among the public, including the pro-immigrant movement organized and directed by Puente. While an ensuing legal combat against Arizona's crimmigration have led to the intervention of the Supreme Court, the ruling did not change the punitive and exclusive way Arizona governs immigration, and it still upholds the major provisions regarding Arizona's law enforcement's authority to check the suspect's immigration status.

In addition, I argue that cultural and political environment conditioned the state's decision to adopt a punitive and exclusionary approach to immigration governance. Arizona's political culture has long been a mix of southern traditionalistic values passed on from the territory's early settlers, and a frontier perspective that emphasizes individualism, self-sufficiency, self-reliance, and self-governance (Berman, 1998). This cultural blend helps account for the state's extensive and intensive vigilante activities against immigrants and the drastic rise of crimmigration. Traditionalist culture fostered racial and ethnic hierarchies and promoted the state's second-class treatment of minorities. Meanwhile, the self-reliant individualism and libertarian ideology entrenched distrust of, and disbelief in, the government's capacity to solve problems. This combined with a strong resistance to governmental "meddling" in citizens' life produced little support for government's provision to help those in need of assistance (Berman, 1998).

Today, front-line agents' enforcement actions in Arizona converge with political pressures from above and below. From above, Congress and high-ranking officials in federal agencies impose mandates and allocate resources that prioritize undocumented immigrants and border crossers as high security risks (in official term, "criminal aliens"). Those federal mandates and agency directives, alongside the U.S. Border Patrol's ties to other players in the field, as well as the border political economies come to configure this new enforcement arena. From below, multiple political pressures from the civil society also shape enforcement action. There is a strand of pressure from a dynamic local immigrant- and border-rights movement in Southern Arizona to respect rights and to do something about migrant deaths, vigilantism, Border Patrol misconduct, and deportations in the Tucson Sector. Meanwhile, pressure on the Border Patrol also stems from Mexican officials and business leaders who do not want to disrupt cross-border

ecommerce and economic prosperity on which Arizona's service economy relies (Shermer, 2015). Altogether, this interplay of punishment and rights animates Arizona's contemporary immigration governance.

6. ILLINOIS' IMMIGRANT PROTECTION REGIME: LEGAL PROGRESSIVENESS AND GOVERNING THROUGH SUPPORT

“The state [Illinois] is showing that, despite what is happening on a federal level, undocumented immigrants can continue to live their lives.” - Ed Wojcicki¹³

Over the past two decades, Illinois has enacted a set of laws and policies that safeguard undocumented immigrants from aggressive federal immigrant enforcement, and afford services, which integrate them into local communities. For example, in 2011, Mayor Rahm Emanuel said he wanted “to make Chicago the most immigrant-friendly city in the world,” subsequently, his administration created the *Office of New Americans* that is specially charged with implementing the immigrant integration policy. In 2012, the city of Chicago released its *New Americans Plan*, proposing twenty-seven economic developments, education, public safety and civic engagement initiatives to ease the integration of new American residents to Chicago. These sets of laws and policies have facilitated a protective immigration governance regime in Illinois, which operates against the contemporary, frenetic, anti-immigrant climate across the country. In addition, in civil society, local organizations and institutions (e.g., schools, churches, community organizations, and social clubs) have been actively engaged in immigrant services and integration, thus shielding immigrant communities from federal pressure to crack down on undocumented immigrants.

How can the proliferation of laws and policies protecting and integrating immigrants be understood? Why was protective power – and not penal power - exercised as a response to immigrants as we have witnessed in other jurisdictions? What social and political conditions

¹³ Ed Wojcicki is the Executive Director of the Illinois Association of Chiefs of Police, (Interview, August 24, 2017)

have contributed to the rise of protective immigration governance in Illinois? Those questions have remained under-explored because much current literature on immigration control has been preoccupied with the punitive turn in immigration enforcement and the growth and expansion of crimmigration.

Drawing on historical analysis and qualitative data on immigration policy development in Illinois, this section attempts to explain how the current immigrant protection regime was constructed, and discuss social and political conditions of its development. It pays attention to multiple, diverse processes, dispersed in various local communities that converged to mobilize the state legislation in a pro-immigrant direction, and further produce a pro-immigrant legal regime that emphasizes immigrant rights and integration in the state. In the following section, I begin by discussing social conditions in which Illinois was able to set up a pro-immigrant orientation. I highlight the roles that the local community infrastructure, which serves to integrate newcomers, and the high level of social trust, play in creating a receptive environment for immigrants. This pro-immigrant orientation was further buttressed by an influential organization, ICIRR, which has long been devoted to promoting immigrant rights and inclusion. I then discuss state institutional dynamics through which legislative leaders developed immigrant protection laws and policies, a critical step of constructing a pro-immigrant regime. The rise of an immigrant protection regime was produced from the outcome of legal progressiveness for immigrant inclusion, which was pursued by both community members and political leaders in the state.

6.1 **Setting a Pro-immigrant Orientation: The Social Foundation**

6.1.1 **The Local Community Infrastructure Integrating Immigrants**

Illinois has been receiving immigrants since the early 1800s. During the nineteenth century, the state brought in large numbers of European immigrants (mostly from Germany and Ireland) to its farmlands and cities; and the twentieth century drew new waves of immigrants from Latin American countries and Africa. In particular, as the largest city in Illinois, Chicago had become one of the traditional immigrant gateway cities in the country, due to urbanization and industrialization in the middle of the nineteenth century. Mexican immigration into Illinois was significant during the twentieth century. Mexican, and other Hispanic immigrants, concentrated in the Chicago area. By the 1990s, many Chicago neighborhoods, such as Bridgeport and Pilsen, became important Hispanic enclaves that were predominantly Spanish-speaking and were increasingly affecting the constitution of the city council and the U.S. Congress through the elections of Hispanic representatives to the government. Now Illinois immigrants come from all around the world. According to the American Immigration Council (2017) about 38.2 percent of immigrants are from Mexico, 8.1percent from India, 7 percent from Poland, 5 percent from the Philippines, and 4.3 percent are from China.

The influx of immigrants to Illinois over the last two decades has, in effect, substantiated the community revitalization thesis. Due to existing ethnic enclaves that operate as an important mechanism of the integration of immigrants, substantial evidence suggests that Illinois benefits a great deal from immigration. This positive, crime-reduction effect of recent immigration was particularly significant in Chicago, a large city that was severely plagued by violence and crime, but which received a large wave of immigrants during last twenty years.

In contrary to the proposition of the social disorganization that immigration contributes to population instability and racial and ethnic heterogeneity, thus attenuating local social ties and diminishing informal social control, the immigration revitalization perspective holds that the recent immigration to the state may rejuvenate the declining neighborhoods and areas, increase the community stability, and thus strengthen the social control. As Lee and Martinez (2002) argue:

Contemporary immigration may encourage new forms of social organization that mediate potentially crime-producing effects of the deleterious social and economic conditions found in urban neighborhoods. These new forms social organization may include ethnically situated informal mechanisms of social control and enclave economies that provide stable jobs to co-ethnics, (p. 376).

This suggests the power of place in which immigrants are settled (Feldmeyer, 2009). Recent immigrants to Illinois are more likely to settle in co-ethnic enclaves (e.g., Chinatown) that can provide them effective kinship ties and social networks with residents of shared cultural backgrounds, job opportunities, and institutional infrastructure, such as employment service, housing, and medical assistance. These networks and institutions can serve as resources and social capital that immigrants can mobilize for their smooth assimilation (Feldmeyer and Steffensmeier, 2009). Although those minority ethnic enclaves are usually located in areas of poverty and other disadvantages, they can help protect immigrants as well as other community residents against crime and violence by providing opportunities to establish social networks for newcomers, strengthening social ties and social capital, and bolstering informal social control. Far from being a destabilizing, disorganizing, and crime-generating force, immigration in Illinois played a crucial role in revitalizing places that have undergone neighborhood decline and community decay in past decades, including reducing crime (Sampson, 2008). This reinvigoration effect is attributable largely to the strong social ties and neighborhood institutional infrastructure and increased job prospects associated with ethnic enclave economies.

6.1.2 **The Conflicting but Generally Welcoming Attitudes and Sentiments**

The landscape of public opinions is often volatile and politically charged. The conflicting perceptions of, and attitudes towards, immigrants among the public were evident in Illinois. Their debates and contestations were heavily surrounded by the social and economic impact of immigrants on society. Despite some emerging hostile sentiments against immigrants, they had rarely come to form a cultural and political clout in Illinois compared with the pro-immigrant force because of their lack of social ties and organizing obstacles. The pattern of public

sentiments and attitudes toward immigrants over the last two decades has been fraught with conflicting ideologies but generally taken up forms of welcoming and trust.

There is a segment of the Illinois population, who cannot be swayed to consider the humanness of immigrants because of the hold that certain ideologies have on their perceptions. There are also politicians who masterfully use ideological keywords to maintain their grip on these peoples' minds as a means to generate and sustain power and control over them. To the anti-immigrant group in Illinois, being undocumented is criminal, thus undocumented people are “criminal others.” They reduce immigrants to “illegals” because just being present without documentation is “detrimental” to the state. This point of view was highlighted in an Illinois conservative platform in which anti-immigrant activists made their claims of the high cost of having immigrants in the state and “us vs. them” form of rhetoric:

Live in a place like Cook County long enough, and you tend to forget how high our cost of living is – at least, the cost of living for those not supported on the shoulders of *others*.

Yes, if we want to be honest in estimating the direct costs to the public of all these illegals in Illinois, the direct costs to our school system, the public welfare system, the police burden, etc., \$9 billion per year is a better number.

The *illegal aliens* aren't the total cause of our high taxes, high crime, and low employment; there are homegrown causes as well. But imagine if all our criminals were the homegrown ones, and we didn't import more. Imagine if the only people competing with our kids for their first jobs were people here legally. Imagine if potential employers, looking for a new place to start or expand their businesses, could see Chicagoland as a safe, low-tax big city, where the positives outweighed the negatives, as in fact they once did?

Our lives would be very different indeed.

And remember, always remember... this isn't about immigrants in general [this author's grandfather emigrated from Italy, and other great grandparents arrived from Ireland and Austria]... it's about illegal aliens, people without permission to be here, people whose effect on the community is completely different from that of the legal immigrant community, people who in fact do the most damage, both short-term and long-term, to the legal immigrants with whom they blend in so well. (Di Leo, Illinois Review, 2017)

In addition to their attribution of immigrants to the declining quality of life and economy in Illinois, they also tried to attack “soft” or “protective” immigration policies, further claiming:

Chicago, Cook County, and Evanston are all Sanctuary Cities... meaning that their governments have made the conscious decision to invite these illegal aliens into their communities, saddling their constituents with these burdens....While compassion is laudable, would the average voter in these jurisdictions be so eager to support the choice if he or she was aware that it cost us nine billion dollars a year? Or if he or she realized that the income tax increase, the beverage tax creation, their skyrocketing property taxes, and their overcrowded schools were caused by this illegal decision by their elected officials? (Di Leo, Illinois Review, 2017)

Nevertheless, despite some anti-immigrant sentiments and salient political discourses within Illinois, the impact of immigration on Illinoisan society has largely been perceived and understood as economically and socially positive. The support for welcoming, integrating and protecting immigrants has been far more widespread than anti-immigrant sentiments and actions in Illinois. And the welcoming attitudes toward immigrants were especially expressed among social elites who have understood and experienced economic benefits of immigration in Illinois.

In a proposal letter for immigration reform to the Illinois Congress in 2013, Hon. Jim Edgar, former governor of the state of Illinois, and other top CEOs stood up for welcoming immigrants and claimed:

Every sector of our economy– including technology, hospitality, manufacturing, agriculture, education, healthcare, engineering, energy, finance, and real estate – has been speaking in one voice to call for modernized immigration solutions that empower Illinois' economic competitiveness.

Each of us believes in entrepreneurship, hard work and community values. Our immigrant communities embody all of these qualities. An analysis of entrepreneurial activities between 1996 and 2008 showed that immigrants are nearly twice as likely to start new businesses as U.S.-born citizens. According to the Partnership for a New American Economy, one in every 10 workers in this country privately employed is employed by an immigrant-owned business. (Illinois Business Immigration Coalition, 2013)

They also believed immigrants should be treated equally and framed immigrants as those who deserve legal protection, and argues:

The need for common sense immigration reform is not only a question of economic necessity; it is a question of American values of creating opportunity for oneself and others through hard work, no matter one's country of origin. (Illinois Business Immigration Coalition, 2013)

Dina Smeltz, Senior Fellow for Public Opinion and Foreign Policy at Chicago Council on Global Affairs, also suggests:

The extreme anti-immigrant rhetoric coming from some of the GOP primary candidates — and the subsequent media coverage — might lead many to believe that the American electorate shares these views. But that would be wrong. Several public opinion polls, including the Chicago Council Survey, consistently show that a majority of the American public supports immigration reform and a path to citizenship.

This point is illustrated in statements made by a local community leader, who is also an immigrant business owner. As a local resident, the leader has witnessed how the massive influx of immigrants into several neighborhoods has greatly changed the economic condition in the state. She said: “If Mexican people and other immigrants continue to move around here, it will continue to get better.” The Mexican immigrant storeowner felt welcomed in the community, saying:

“You know what? As a Mexican um, person, I don't feel discriminated in any way - um, I don't feel like uh, I been left behind because of my ethnicity. I feel, I feel like that I belong. You know, we feel that, like we belong.” (Interview, May 19, 2010)

In addition, data on public opinion about immigration in Illinois suggest the majority of citizens in Illinois express their accepting attitudes towards immigrants including those undocumented. In a 2014 survey on American values, when asked how undocumented immigrants should be treated, 62 percent of Illinois adult respondents said that immigrants who are currently residing in the U.S. without documentation should be allowed to become citizens, provided that they meet certain requirements. An additional 18 percent answered that they should be allowed to become permanent residents but not citizens (Public Religion Research Institute, 2014).

6.1.3 **The Potency of the Illinois Coalition for Immigration and Refugee Rights**

As the state's largest immigrant rights advocacy group, the ICIRR has had a considerable impact on shaping the contemporary legal regime of protective immigration control in Illinois. This organization has long engaged in fostering a political community across ethnic groups to build power and influence local policy-making process. It has a clear goal—"ICIRR is dedicated to promoting the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society"—and realizes this goal through working with various organizations of different sectors and ethnicities (e.g., Chicago Religious Leadership Network on Latin America, Chinese Mutual Aid Association, Communities United, Community Health Partnership of Illinois, Council of Islamic Organizations of Greater Chicago, Indo-American Center) as their long-standing partners in the state to help immigrants. To build effective coalitions, their partnerships also extend beyond immigrant communities and extend to non-immigrant institutions and communities. As such, sitting at the center of the pro-immigrant policy network in the state, the ICIRR has encouraged collective action and forged social ties,

which connect communities across the state, and has helped undocumented immigrants obtain legalization of their immigration status.

Through strategic coalitions, the organization played a critical role in consolidating diverse immigrant groups across different ethnic and cultural backgrounds and of various country origins into a centripetal force shaping immigration policy. This is particularly illustrated through the words of the organization's leadership, which has worked on building coalitions for immigrant power and their political participation:

ICIRR's vision seeks to convert what could be negatives about our state's [Illinois] immigrant population into positives. Diverse communities that could fragment as they pursue their own interests exclusively are instead producing strong coalitions around shared goals. Dispersed immigrants might not be numerous enough in many areas to elect their own representatives, but they could provide crucial margins of victory in swing districts. The inability of the majority of immigrants to vote, rather than disempowering them, instead has motivated them to mobilize in other ways and to pursue opportunities for citizenship (Tsao, 2008).

Beyond constructing wide networks in the civil sector, ICIRR has built strong ties with elected officials on the state and federal levels, including U.S. Representatives Luis Gutierrez and Jan Schakowsky, Governor Blagojevich and U.S. Senator Durbin. Indeed, those ties helped bridge the gap between immigrant groups and the government, and contributed to a broad level of support for the ethos of protective immigration governance.

To summarize, over the last two decades a large influx of immigrants from around the world to Illinois has transformed the state's economic and social landscape. To a large extent, with its historical pro-immigrant traditions and established community infrastructure that integrates immigrants, the state was prone to set up a pro-immigrant orientation in the midst of contemporary extreme anti-immigrant media coverage and political discourses. This orientation would not be possible if there was a lack of emergent, widespread pro-immigrant sentiments and

welcoming attitudes towards immigration. Various organizations took the initiative to provide a safe haven to undocumented immigrants and help them integrate into local communities, such as the Wellington Avenue Church. Notably, the ICCIR has played a crucial part in converting otherwise dispersed immigrant groups and communities in the state into a powerful coalition, gaining support of social elites and helping impact immigration policy-making at state and federal levels. Importantly, however, the creation of this orientation was not imposed with much resistance from below and demand for other alternatives. It further animated the state institutions to enact laws of immigrant protection, thus making Illinois into a welcoming state for those populations.

6.2 **Crafting Laws of Immigrant Protection: Legal Progressiveness**

6.2.1 **Pro-immigrant Institutional Dynamics**

Since the 2000s, the federal government enacted various restrictive immigration laws, encouraging local law enforcement agencies to assist with, investigate, and pursue suspected immigration-related offenses, or check immigration status. The state and local officials have taken steps to incorporate and protect immigrants and their communities by enacting and implementing laws, thus forming a legal regime of protection. The fast-growing legislative activities over the last decade are suggestive of the state's legal progressiveness in immigrant protection.

In the early 2000s, then-Illinois Governor Pat Quinn signed New Americans Executive Order with the goal of creating a more welcoming environment for immigrants in the nation. This project was meant to craft a comprehensive state strategy to integrate immigrants fully into the mainstream of the economic and civil life in the state. It took a two-phase process to facilitate

the integration of immigrants into the state. The first phase was to help immigrants acquire social and cultural capital by providing linguistic and human services, job training and employment, housing, as well as access to education and health care. The second phase was aimed at immigrants' public safety by enhancing police-immigrant relations. This order forbids federal detainment and deportation solely based on administrative warrants. As such, the New Americans Initiative operated as the basic legal framework of immigrant protection and integration in the state.

Since then, Illinois began providing in-state tuition for undocumented students attending state public colleges and universities. In 2011, the state went further, creating a private fund to accept donations for scholarships for undocumented Illinois students. In September 2011 the Cook County Board passed an ordinance to release undocumented immigrant suspects from jails, who were detained at the federal immigration authority's request. Moreover, in 2012, the governor signed a law permitting undocumented immigrants to obtain temporary visitor driver's licenses. The law requires immigrants to take driver's tests and obtain liability insurance. Moreover, in September of 2010, Chicago passed the "Welcoming City" ordinance that prevents local police from arresting and detaining immigrants based on their suspect status - and prevents cooperation with federal agencies in punitive and exclusive immigration enforcement.

A decade of progressive, legislative movement for immigrant protection and integration has resulted in a solid legal framework, which serves to welcome immigrants and meet immigrants' needs. In so doing, this framework challenges the restrictive and punitive federal approach to immigration, and shows the state's resolution to govern immigration using hospitable treatment and respect for immigrants regardless of documentation.

6.2.2 **The Icon of Illinois Immigrant Protection—TRUST Act**

Recently, in the face of stepped-up federal efforts to arrest and deport undocumented immigrants and the rising “tough on immigrants” movement, Illinois responded in an oppositional posture and produced strong, state-level protections against immigrant detention and deportation when Governor Bruce Rauner signed the Illinois TRUST Act (SB 131) into law on August 28, 2017. Considered the nation’s most immigrant-friendly law, it is a comprehensive piece of welcoming, pro-immigrant, and inclusive legislation intended to safeguard the most vulnerable members of the state’s communities, further consolidating the legal regime of immigrant protection in the state.

The passage of this law firmly expressed Illinois’ determination to shield immigrants from contemporary anti-immigrant governmental measures and suppress the use of penal power in its immigration governance, making Illinois an immigration-friendly state. Governor Rauner (2017) communicated this point in the following statement:

Illinois has been welcoming of immigrants for a long time, and this bill will continue that tradition ... [i]t also makes clear that stopping violent crime will be law enforcement’s mission rather than working on federal prerogatives that a federal court has found illegal.

The law enforcement leaders in the state also believe that aggressive immigration enforcement may strain the police-community relation and weakened their capability of protecting the community. Just as Ed Wojcicki, the Executive Director of the Illinois Association of Chiefs of Police, suggested in 2017:

We want anybody to feel free to call the police, and we would like to get the word out that this bill should make anyone living in Illinois feel comfortable about calling the police and getting the service they need. (Interview, August 24, 2017)

The primary goal of this law is to offer protection and help achieve immigrants' well-being in the state. As a community leader as well as a survivor of domestic violence, Francis Velez (2017) emphasized how the TRUST Act could provide critical safeguards to immigrant community members and survivors such as herself. She said:

The Trust Act will give me and my community peace of mind that we can go about our lives without fearing that an interaction with police will lead to a deportation.... The current political climate has led to fewer immigrant survivors coming forward for help, which can be the difference between life and death. Undocumented survivors no longer have to fear that calling the police will result in deportation. (Interview, August 28, 2017)

As the federal government escalates its punitive power and expands its penal net to address the immigration issue by enlisting local law enforcement across the country, TRUST Act created a protective force dismantling the work of police from the punitive federal immigration enforcement, thus moderating its deployment of the state's penal power in Illinois.

6.3 **Illinois Case Summary**

In the wake of fear, resentment and hostility, which is frequently infused with divisive political rhetoric and directed against immigrants, Illinois has demonstrated and maintained a positive public perception and social acceptance of immigrants as well as constructed a legal regime of immigrant protection. Based on historical analysis and empirical qualitative data, my findings reveal the development of immigrant protective measures in the state emerged primarily as a result of extensive and intensive activism for immigrant integration that occurred in hundreds of local communities. Success was achieved through legal mobilization and coalition building with politicians and legislative leaders. Those organized coalitions and networks played a critical role in accumulating pro-immigrant capital and overcoming anti-immigrant pressures in the state. By confronting political pressures from federal anti-immigrant mandates, those community members and pro-immigrant activists have created solid networks among themselves and galvanized their relationships with local law enforcement and grassroots groups and organizations. Together, these diverse groups have increasingly framed the issue of undocumented immigrants as individuals in need of service and protection rather than as threatening “others,” who should be treated with punishment and exclusion.

Furthermore, their political mobilization would not have been successful if the state institutional environment was not favorable to immigration. The Illinois legislature’s Democratic leadership, rallied behind its minority constituent base, and responded by developing pro-immigrant policies spanning various sectors of society. In addition, it should be noted that established local community infrastructures, especially those existing co-ethnic enclaves, serve an important role for integrating immigrants into destination cities by buffering tensions between newcomers and locals (Lee, 2013). These types of communities promote strong social networks,

offer social support, increase greater social trust, and generate highly productive relationships within local organizations and institutions. Taken together, I argue that protective immigration-related policies and their supportive social environment - widely dispersed in local communities - have converged and contributed to the establishment of a contemporary, pro-immigrant regime in Illinois.

7. DISCUSSION AND CONCLUSION

Nowadays, the immigration issue sits at the center of debates in both the political domain and the public sphere with different proposed solutions and reforms across the political spectrum. Some debates have been embroiled in national populism manifested in contemporary, extreme, anti-immigrant political discourses (Naples and Mendez, 2014). The increasing salience of, and the contention over, the immigration issue has been seen in the capitol buildings of various levels of governments in the United States. With diffuse media coverage, immigration has been tremendously politicized since the U.S. experienced the events of 9/11. The country has also witnessed escalating fractions between immigrants and local residents in borderlands (Naples and Mendez, 2014). The politics of immigration have resulted in the gridlock of comprehensive federal immigration reform. There is increased pressure due to the recent federal government's aggressive crackdown on undocumented immigrants that include elevated efforts to toughen border enforcement. In response, various state and local governments across the country stepped into the policy domain of immigration and took initiative to address the so-called immigration "problem." This is an emergent pattern of what I define as "varieties of immigration politics and governance"¹⁴ in the United States, and is notably something in need of explanation.

Against the backdrop of increasingly localized immigration governance in the United States, this study takes a closer look at how state and local governments acted in response to federal immigration-related pressures. Adopting a comparative historical methodology, this research analyzes how two divergent *fields* of immigration governance (Page, 2012)—the crimmigration in Arizona and the pro-immigrant regime in Illinois—have developed and

¹⁴ I developed this concept by drawing on scholarship of comparative welfare states and recently developing comparative sociology of punishment and criminal justice that emphasizes multiple approaches to social problems and modes of social policy (also see Campbell, 2018).

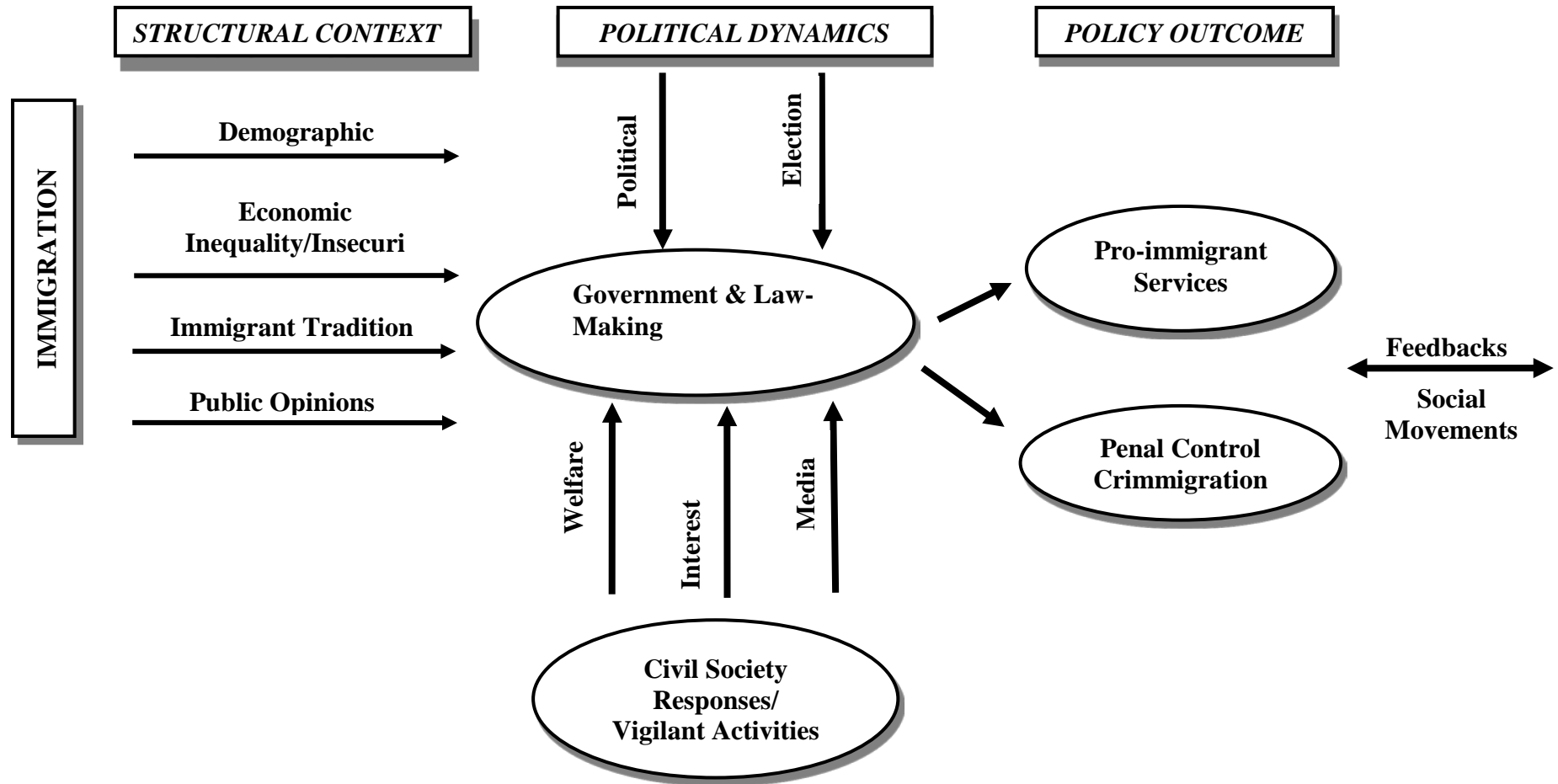
operated, focusing on their social, cultural and political conditions in which they were embedded and shaped.

Below, and drawing on findings from my case studies of Arizona and Illinois, I first attempt to develop a socio-political explanatory framework for understanding each states' divergent approaches to addressing the "problem" of undocumented immigrants and subsequently constructing their immigration governance regimes. It highlights how coalitions in two states mobilized divergent repertoires of immigration control mechanisms by animating state institutions, and channeling those policy agendas into those institutions. I then discuss the social function and meaning of the use of penal power in immigration enforcement and the establishment of crimmigration. Finally, I discuss more generally the implications for theory and research on immigration control and punishment as well as immigration policy reform.

7.1 **Explaining the Divergence: Toward a Political Sociology of Immigration Control**

Inspired by literature on the sociology of punishment, the sociology of law, political sociology, comparative social policy and social theory, I developed an analytical framework that aims to explain why different jurisdictions adopted different modes of immigration governance in the wake of transnational mobility (see Figure 3), and illustrate it by using findings from the two case studies of Arizona and Illinois. This explanatory framework builds on the concept of "state as situated social actor" discussed earlier, which proceeds on the assumption that state immigration control choices are shaped by their habitus, organizational interests and structural conditions. As such, it aids in understanding why the two fields have come to take their current shapes.

Figure 3. A heuristic, dynamic model for the sociopolitical process of immigration Control



Following the logic of historical institutionalism, which concentrates on an over-time empirical analysis of institutional origin, evolution, development and change (Mahoney and Thelen, 2009), I argue that three main concepts constituting my analytical framework help explain the variegated ways in which state and local governments respond to immigration and construct their immigration governance regimes: cultural orientations, structural relations, and institutional dynamics. I elaborate each of them with reference to particular findings in the previous section.

7.1.1 **The Cultural Orientation**

Cultural orientations refer to attitudes, perceptions, sentiments, and preferences directed towards a social issue. They construct the main imaginary landscape exhibiting features of the social issue. Here I draw on Swidler's (1986) conception of culture that is understood as "a toolkit of symbols, stories, rituals, and worldviews, which people may use in varying configurations to solve different kinds of problems," (p. 273). According to Swidler, this toolkit shapes the public perceptions and interpretations of "problematic" conditions, their preferences over strategies of tackling the problem, and the plan of their actions to be taken. As such, culture affects the definitional orientation of social problems by constructing parameters of public imagination, ideology and knowledge regarding the issue and framing it into a certain category. This cultural orientation directs meaning-making and legitimacy associated with the issue, and relevant interests and actions that will be invested in constructing the issue a certain way. It renders a strategy or response more appropriate and acceptable in a given situation. Just as Swidler suggests, "the culturally formed ideology provides a highly articulated, self-conscious belief and ritual system, aspiring to offer a unified answer to problems of social action," (p. 279).

Over the past few decades of social transformation, Arizona and Illinois have seen different, emergent cultural orientations towards the issue of undocumented immigrants and immigration. Notably, those emergent cultural ideologies do not necessarily equate the majoritarian preference showed in the polls, but manifest themselves in symbols, languages, thoughts and actions in context, thus setting the tone for conversations and discussions. In the Arizona case, I show how widespread anti-immigrant sentiments and ideologies have emerged as a response to social and political change in the state, and how those assumptions and ideologies about immigrant “criminality” are rooted in historical traditionalist values and political culture. According to Mona Lynch’s (2010) arguments for the punitive turn in crime control in Arizona, the state’s “heightened distinction between outsiders and Arizonans, especially at moments of conflicts and a relatively stable commitment to a philosophy of less eligibility” (p. 18) operate as critical social and cultural factors in driving Arizona’s “tough on crime” movement. With respect to the immigration issue, I find that Arizona’s emergent anti-immigrant cultural orientation, especially its component of “immigrant criminality,” has similar roots. It is mostly revealed in discourses surrounding immigration’s effects on Arizona society, such as “[there is an] invasion of our country”; “they’re sending people that have lots of problems”; “[they’re] bringing drugs”, or “they’re bringing crime.” This discursive type of rhetoric constitutes the collective mentalities associated with newcomers (largely from Mexico), and dominates Arizona’s field of immigration control.

Moreover, the longstanding distrust of, and disbelief in, governmental capacity to address the public’s concerns propelled citizens to take the issue of immigration into their own hands and launch waves of anti-immigrant movements. These ideas and ideologies were articulated in their rhetoric (both in the local media and civil anti-immigrant movements) about border crossers and

immigrants. In addition, they were further manifested in the drastic rise of border vigilante groups, whose intensive and extensive anti-immigrant activities played a critical role in shaping the trajectory of state action in managing immigration.

In the Illinois case, the cultural orientation took the opposite path in that the large influx of immigrants into local communities has not been widely interpreted as something “threatening” and “dangerous”; rather, discourses like “immigrants contribute to our community” pervade in the state. To a large extent this pro-immigrant cultural orientation operates to suppress a punitive approach to immigration control by cultivating a normative pro-immigrant framework. As my interview data reveal, most local community leaders as well as elected public officials perceived immigrants in Illinois as positive and beneficial, took a welcoming posture to newcomers, and expressed a willingness to help them integrate into local communities. In the civil sector, my data also suggests there is a level of social trust between local residents and immigrants in Illinois. Local residents understood and acknowledged the positive impact of immigration to Illinois and immigrants felt themselves “at their own home.” Indeed, this orientation and the acceptability of immigrants in Illinois were shaped by its historical immigrant protections and its capacity to accommodate dense, local, co-ethnic enclaves to receive immigrants.

7.1.2 **The Structural Relation**

Structural relations refer to the organizations and networks that have been established to make efforts to set up certain policy agendas and achieve certain political goals, such as the formation of interest groups and the policy networks between organizations and elites. This process is important because it serves as a critical linkage between the public and the governmental machine by shuffling power relations of different groups, restructuring policy

networks, and channeling groups' policy agendas into the state institutions.¹⁵ Although cultural orientations set the tone for constructing certain social issues, it must successfully affect practical policy making by creating an organizational form and moving the goal forward. Coalitions help accumulate political capital and prevail in the field. In addition, cultural orientations may take multiple forms and vary across different groups and organizations due to their differing resources, risks, networks and communication. As a result of re-fashioning power relations in society, structural relations work to select and spotlight certain characteristics of the social issue and place more interests in planning and executing the policy. It is the relative organizational strength of pro-immigration versus anti-immigration that matters in framing immigrants as those deemed as threatening and "criminal" or those in need of protection and services.

In both case studies above, I find the network of state-level coalitions with ties to organizations and policy leaders has played a critical role in defining the immigration issue and shaping the policy outcome. Structural or organizational strengths affect how cultural orientations associated with anti-immigration or pro-immigration come to dominate or prevail in the field. In particular, Arizona's anti-immigrant movement was well organized, especially the undeniable role of border vigilante groups across the state, for driving a crimmigration agenda and their increasing political influence in the state. The establishment of Arizona's crimmigration regime would have been impossible without the assistance of national anti-immigrant organizations such as FAIR and ALEC. Through extensive and intensive efforts and dedication, anti-immigrant networks have formed an effective organizational base that helped advance a crimmigration agenda. In contrast, the pro-immigrant forces were weak and ineffective in Arizona's structural relations, failing to consolidate an organized coalition among

¹⁵ For the political mediation theory, see Amenta, Carruthers, and Zylan (1992).

the public and elites to help advance their immigration policy goals. Today, Arizona's pro-immigrant movement is just beginning to emerge as a backlash against the punitive immigration regime. For example, the *Welcoming America Project* aims to address community concerns about immigration, and help immigrants integrate peacefully and rapidly into their new communities. Despite its rapid growth, this project still cannot challenge the structural relations and organizational strengths in Arizona that favors anti-immigrant strategies. Its failure is largely because the project has not established and mobilized local ties among citizens, who advocate for immigration policy change. The state's lack of a pro-immigration policy also impedes this organization's progress; thus, its political influence has remained small.

In the Illinois case, I find the structural relations that facilitate pro-immigration takes two organizational forms. The first is the set of local communities widely distributed in the state that serve as local sites of pro-immigrant activism allocating resources for immigrant integration. The hundreds of local institutions and organizations have expressed their pro-immigrant postures and taken real actions for providing immigrant services, and buffer the conflict between local residents and immigrants. The second is the prominent NGO (ICIRR) and its long-term impact on the establishment of a pro-immigrant policy network traversing across different social and economic groups and between citizens and elites. With a clear goal of promoting immigrant rights and inclusion, this organization operated as a centripetal force by assembling otherwise fragmented and dispersed groups, and weaving an extensive pro-immigrant net in the state with tireless political and legal mobilizations. As such, the two interconnected organizational forms set up a structural relation within the state that believes immigrant protection is imperative.

7.1.3 **The Institutional Dynamics**

Political institutions play a crucial role in crystalizing immigration governance regimes. A governance regime could not be established without the approval gleaned from the political processes of the state and passing relevant laws and policies as well as investing resources in the execution of them. To attain their goals, individuals and organizations must become political players and engage in political processes in the field. Institutional dynamics structure possibilities and incentives as well as barriers and costs. They operate as constraining or enabling forces through which claims and policy goals can or cannot be achieved. In this regard, cultural orientations and structural relations are contingent on, and their impacts in the field of immigration governance may be mediated through, institutional forces and frameworks. Institutions affect the *visibility* of the social issue, the *political feasibility* to achieve a given setting, and the *legitimacy* of a governance regime (Svallfors, 2007, p. 10). As such, political institutions function to establish, magnify, or mitigate forces and links of cultural orientations and structural relations (Svallfors, 2006). The institutional landscape conditions politicians' choices and legislative preferences, which lead to the construction of a kind of immigration governance regime. The institutional dynamics may be viewed as a proximate process of shaping the field and producing the regime of immigration governance.

In the Arizona case, state institutional configuration has been transformed over the last few decades due to its internal dynamics and its relationship with the federal government; plus, the institutional dynamics were conducive to the dominance of social conservatism in state institutions. In particular, before 2003, Arizona state institutions were situated in an ambivalent climate for immigration control. However, since 2004, Representative Pearce introduced anti-immigrant proposals, and those bills were passed with assistance of national organizations. This

then boosted Pearce's political influence in the state Legislature. When he was elected President of the Arizona Senate, Pearce continued to affect the anti-immigrant legislative process in state institutions. His influence on institutional dynamics was particular when he assisted federal immigration laws in the state. The federal immigration enforcement program—*The 287(g) Program*—created political incentives for the state politician to seek policy innovations. With the growing influence of the conservative leadership in Arizona state institutions, SB 1070 came to be passed, facilitating the construction of Arizona's crimmigration.

Notably, state-level institutional dynamics were also affected by the federal government institutional action. In *Arizona v. United States* (2012), the Supreme Court struck down some key provisions of SB 1070, including requiring all immigrants to obtain or carry immigration registration papers, making it a state criminal offense for an undocumented immigrant to seek work or hold a job, and allowing police to arrest suspected undocumented immigrants without warrants. Despite changes in the legislation, this decision still upholds Arizona law enforcement's authority to enforce immigration and thus sustains the crimmigration regime.

In the case of Illinois, over the last two decades, the state institutional environment has been generally immigrant-friendly. Although from the 1970s to the early of 2000s Republicans have predominantly governed the state institutions, they did not pursue an anti-immigrant policy agenda. It is largely because promoting anti-immigrant measures may not be advantageous for those politicians in a state with a long tradition of welcoming and accepting immigrants. Since 2003, when Democrats began to govern the state, politicians were willing to work with immigrant services and rights organizations to construct a pro-immigration regime. Their attention to the immigration issue, combined with their ideological orientation, set the stage for institutionalizing a legal regime of immigrant protection. With the help of state institutions, the

New Americans Program was established to provide integrative immigrant services in various dimensions, including job training and citizenship application. The state institutional dynamics continued to produce a pro-immigrant legal regime when the TRUST Act was passed in 2017 as a resistance to the federal government's aggressive immigrant enforcement that prioritized a punitive and exclusive approach.

Finally, and importantly, I suggest it is imperative to point out that the three components are not independent of each other, but mutually influenced and conditioned; therefore, it is better to view them as a complex of interrelated dimensions and processes of field dynamics.

Neither contemporary Arizona's crimmigration nor Illinois' immigrant protection can be understood as the product of only widespread anti-immigrant ideology, or structural tensions between locals and immigrants (as well as majority-minority conflicts), or political leaders' exploitation of public sentiments to advance their political gain in electoral competition. Rather, their divergent immigration governance regimes were produced by a series of long-term constructions, contentions, and political and administrative choices – and, of course, those choices were embedded in state and local historical, social and political contexts. In doing so, this perspective offers insights into how contemporary immigrant governance regimes come to exist in their present form and why they adopt different modes of immigration control.

Today, American immigration governance takes on a hybrid field in which both penal and welfare practices, rationalities, and logics are embedded. Indeed, there is a constellation of penal and welfare elements across the field of American immigration governance. This broad characterization of immigration control (i.e. punitive or protective immigration enforcement) may be too broad and general, thus obscuring multilayered nuances and subtleties and failing to consider the still contentious processes that continue to make the field subject to change (Coutin,

2005). My explanatory framework provides a roadmap for understanding the complex politics of immigration control across the United States, but studies of more localized policy making process may illuminate how state and local governments intervene in the immigration issue. In addition, according to the emergent configuration of American immigration governance and the ongoing tensions between the federal government and state and local governments concerning the issue of immigration, I argue there will be an uncertain future for immigration governance development because the underlying social and economic structures continue to change, and political destabilization is still under way.

7.2 **The Deployment of Penal Power: Restructuring Citizenship through “Hostile Solidarity”**

As discussed earlier, a comparative historical analysis of two different immigrant governance regimes may shed light on the changing nature of penal power and the criminal justice system in the wake of globalization and transnational migration. This has been discussed in-depth in extant scholarship of multiple disciplines on crimmigration and border criminology. I appreciate their arguments about, and insights into, the transformation of penal power; however, I argue that most of them are centered on state-focused explanations, and usually take a functionalist approach. Here, I argue for a society-centered perspective by emphasizing the social meaning and function of crimmigration in the United States.

Drawing on what I have found from this study, especially from the Arizona case study and its contrast with the Illinois situation, I argue the deployment of penal power in immigration governance is a process of restructuring citizenship in the form of “hostile solidarity” (Carvalho and Chamberlen, 2018) in a period of social transformations. Hostile solidarity surrounding

citizenship is forged in a way that mobilizes a state's penal power as a means to acquire cultural and material capital in the field. I first elaborate on the concept of "hostile solidarity" and then illustrate how this concept serves as a useful tool to understand the establishment of a crimmigration regime.

7.2.1 **Hostile Solidarity out of Crimmigration**

The relationship between the penal system and social solidarity has long been recognized in social science literature, especially in the writings of Émile Durkheim, a founding figure in sociology. According to Durkheim, the penal system serves a function beyond the supposed purpose of crime prevention and control. It operates as a system for expressing social relationships, sentiments, norms, and values; subsequently, criminal justice must be understood as a moral and social institution. As such, the function of a modern criminal justice system in society is not purely "penal" but social in that it works, according to Garland (2012) as "the ritualized re-affirmation of collective values and the reinforcement of group solidarity," (p. 23). The use and function of punishment may embody a form of social organization and social relations between those who mobilize the penal system and those on which the punishment is imposed. Group identity and coherence is enhanced through the use of punishment against members outside the in-group. Penal power in modern society has been largely monopolized by the state and the government administers the criminal justice system; therefore, the deployment of penal power must undergo a socio-political process to reveal the outline of the state-society relationship.

Following the Durkheimian perspective on punishment and society, Carvalho and Chamberlen (2018) develop the concept of "hostile solidarity" for making sense of punishment

in contemporary Western societies. They seek to explore why society is motivated to punish and argue that punishment pleases, and the pleasure of punishment is directly related to the specific kind of solidarity produced by punishment, namely, *hostile solidarity*. The expression of hostile solidarity through punishment is a process of constellating emotional release and self-identity (group norms, values and well-being), (p. 226). In particular, punishment brings pleasure to the group which is able to mobilize the penal system to address members' anxiety and insecurity in situations of change and uncertainty. The moment of criminalization is a critical ritual for expressing group identity and solidarity production because it "advances a specific image of social order in which individuals are represented as members of community bounded by their vulnerability against crime, and reinforces priorities by generating a sense of identification through estrangement and pitting the criminal as a threat against the social order promoted by punishment" (p. 223). Simply put, punishment produces and reinforces group solidarity through *hostility*. A group's identity, sense of belonging, security, and internal coherence are affirmed and strengthened in the process of using the penal system against perceived dangerous "others." In addition, as a form of state power that stresses exclusion and stigmatization, the deployment of penal power realigns the state and the dominant group, thus marginalizing the group who lacks membership in the state, in other words: citizenship.

The differential status of penal power in immigration governance of Arizona and Illinois suggests different kinds of solidarity underpin the mobilization of the penal system. More specifically, hostile solidarity has compelled the use of punishment as a response to immigration in Arizona, while cross-group solidarity has mitigated Illinois against the use of penal power as a response. Through a long-term, extensive and intensive anti-immigrant movement, Arizona's crimmigration regime was generated by a strong hostile solidarity of Arizonans against

immigrants who were considered “criminal aliens.” The symbolic function of crimmigration is also revealed in that immigrants who lack citizenship, a basic relationship between the state and its residents, pose a threat to Arizonans’ internal solidarity. As such, the state’s penal power should be mobilized to demarcate the boundary between outsiders (immigrants) and Arizonans and uphold the citizenship of Arizonans against immigrants. As a newly established form of punishment, crimmigration in Arizona was shaped by the collective hostility against immigrants by Arizonans, who pursue emotional release and a sense of belonging and security in the state. In so doing, crimmigration operates to restructure the citizenship by punishment and exclusion.

The non-use of penal power in Illinois’ immigration control could be understood as an outcome of forging and promoting a collective solidarity between immigrants and Illinoisans through the *protective* power of the state. The Illinois immigration governance regime, which emphasizes immigrant protection and rights, operates to bridge social distance, and constructs integrative mechanisms, between newcomers and locals. Thus, the legal regime of immigrant protection in Illinois restructures their relationship by conferring state membership to immigrants.

7.3 **Implications**

Drawing on a comparative historical analysis of immigration control development in two states, this study has illuminated how the selected states reacted to social, economic and political pressures associated with immigration, and how they subsequently constructed their immigration governance regimes. Not only does the study contribute to the scholarship on crimmigration by including a pro-immigrant case for comparison, but it also has important theoretical and research implications for understanding social change, social order, and social control of which the issue of immigration control constitutes a significant part.

First, this study extracts and builds a framework that focuses on the socio-political process of constructing the immigration governance field. It can help explain and guide future research on jurisdiction variations in immigration control and crimmigration. It emphasizes three interrelated processes of regime building: the cultural orientation, the structural relation, and institutional dynamics. As a social transformative force, immigration poses a governance question with which the government must engage. How the government is involved in the management of immigration, and what strategies and tools the government may deploy, require further examination. The chosen mode of immigration control will be produced as a result of various complex and contentious processes. As such, more comparative research is needed to investigate how local jurisdictions are animated and engaged in the task of immigration governance beyond the current two cases in the study. The findings of this study have suggested that comparative scholarship is useful for elucidating the state's reasons for exercising certain forms of power and adopting certain control mechanisms. This stream of research is particularly needed in the study of places that have received large influxes of immigrants over the last two decades, but which have been under-researched in the literature, like Florida for example. Future researchers may rely on the explanatory framework developed in the present study to analyze immigration governance of other states and local jurisdictions.

Second, placing politics at the center of researching immigration control and crimmigration is key to unraveling the state-and-society relationship in the process, especially the impact of organizational forces and processes in shaping the direction of immigration control. Although I focused on the politics at play in constructing different immigration governance regimes in two states, I did not fully address the more theoretical issue of the state-and-society relationship. As such, I encourage future researchers to consider this relationship in their

research.¹⁶ Researchers should pay attention to, and seek to identify and specify, the interactive and dynamic relationships between states and societies that fashion contours of migration control and punishment imposed on immigrants. When examining patterns, trends, and changes of migration control and punishment, researchers tend to focus on state-centered explanations by examining specific institutions, agencies, policies, and practices that are involved in crime control, social protection and social governance. I contend, however, that immigration and crimmigration can be conceptualized as modes of control and governance in which the state and society are jointly involved. As such, what is a more fundamental issue underpinning this set of actions and dynamics is the changing relationship between the state, society, and the restructuring of citizenship. My discussion of penal power in immigration governance in Arizona serves as a preliminary step to disentangle this relationship. Future researchers may continue this endeavor by focusing on dynamic socio-political processes and structural state-society relations that gird the immigration governance regime in the jurisdiction of interest.

Moreover, perhaps more importantly, a new framework that incorporates the role of the market may be necessary. The state, market, and society triad—including their positions and relationships to each other— may contribute to theoretical understanding of migration control and punishment. The preliminary framework of this has been revealed in sociologist Kitty Calavita's (2010) study on the developmental trajectory of the Bracero Program. She finds the collapse of this program resulted from the way in which the state institutions reconciled the controversial relationship between the demand for agricultural labor (the [labor] market logic) and the public perception of immigration (the society logic). Despite its application to a specific

¹⁶ For example, sociologist Vanessa Barker pays particular attention to the changing state-and-society relationship in her case study of the use of penal power in Swedish border policy, see Barker (2017) and (2018).

program in a specific jurisdiction, future researchers may need to attend to the triad relationship in their studies of immigration governance. As Garland (2017) suggests, “a more fundamental form of governing the poor—and everyone else—operates at the level of political economy and political decisions that shape labor markets, property laws, tax codes, redistributive policies, and collective rights of workers and corporations,” (p. 94). Although policies and practices of migration control and punishment are constitutive of various political and legal decisions and administrative choices, the larger processes that shape them are embedded in broader arrangements structuring the state, the market, and society.

This study also has implications for U.S. immigration policy reform in various state and local jurisdictions, especially rising waves of social movements for immigrant rights and inclusion across the country. First, lessons from the study on Arizona’s rise of crimmigration and Illinois’ construction of immigrant protection regime suggest that the field of immigration control is subject to multiple complex and multi-directional contentions and struggles by various players in the field with different levels of capital. As such, the field is not fixed or static but varied and dynamic, and contingent on the configurations of various social and political forces and contexts. For those who have lost dominance in the current field, there is still hope for them if they keep up the fight in the battlefield of immigrant inclusion or exclusion.

Second, cultural orientations, structural relations, and institutional dynamics within a jurisdiction shape the field of immigration governance. As a result, efforts to change immigration policy should touch on those three processes. As a product of long-term social organization, the cultural orientation is perhaps the most difficult to alter because it has been deeply embedded in the jurisdiction’s history, group relations, and region in the United States. According to findings of my Arizona case study, to reform the crimmigration regime, there may first be a need to

dismantle the perceptual link between immigrants and “criminality” that motivated the anti-immigrant movement. In explaining why policy makers make immigrants the target for local law enforcement, Rumbaut and Ewing (2007) argued that “the misperception that foreign-born, especially illegal, immigrants are responsible for higher rates of crime is deeply rooted in American public opinion and is sustained by media anecdote and popular myth,” (p. 3).

In addition, it takes extensive and intensive time and efforts to modify the structural relations for immigrant inclusion. As my Illinois case study shows, it may entail a solid organizational foundation and a coalition of communities and political leaders that have long been engaged in immigrant protection and integration. These groups have to accumulate sufficient capital to compete against anti-immigrant forces. Finally, to achieve real immigration policy reform there may require a state institutional environment, which provides opportunities and becomes advantageous for passing pro-immigration policy.

Given that immigration continues to be a contentious topic of past and present political debates and election campaigns, and that any agreement on pathways to citizenship for unauthorized immigrants is not likely to be reached in the near future, more attention must be directed to the dynamics of immigration governance in various contexts through comparative analysis. More research is also needed to identify and explain the form and function of penal power deployed and exercised in border and immigration control (Bosworth, Franko, and Pickering, 2018). This vein of research is more important in the contemporary era when politicians and conservative pundits vigorously pursue a punitive and exclusive strategy to address the immigration issue. The present study hopes to trigger more comparative historical analysis of this topic and stimulate more conversations concerning immigrant justice in the wake of globalization and transnational mobility.

APPENDIX DATA AND METHOD

This study investigates immigration policy development and the construction process of the immigration control field in two select states. In doing so, the research design for this investigation encompasses two interrelated components: historical documentation and comparative analysis. The historical documentation part uses two cases studies—the rise of Arizona’s crimmigration and the growth of Illinois’ pro-immigrant regime—to generate analytical accounts of how Arizona and Illinois have adopted their approaches to immigration control through their claims-making activities and definitional processes. I am most concerned with actors’ decision-making and choices and the wider social context in which their interactions operate. The second component conducts systematic, empirical comparison and focuses on explaining why the two states have developed divergent fields of immigration control by inducting a theoretically-driven, explanatory framework.

The two in-depth case studies include the perspectives and arguments of a wide range of key actors who participated in the construction of immigration control field, including community members, immigrant family members, NGOs, special interest groups, immigration-related activists, democratic representatives, politicians, and legislative leaders. I examine their decision-making, claims, tactics, and actions and analyze the impacts on the social construction on immigration control. To accomplish this I draw on a variety of primary data sources, including legislation conference reports, court decisions, media reports, interviews with relevant actors, and materials from NGOs’ offices. Those data sources are combined with secondary data that provide information about two states’ immigration control, immigration policy histories, as well as social, political and cultural accounts. All of these sources facilitate understanding of the

structural conditions that affect the claims-making activities and constructive processes of immigration control in the two states.

Arizona Case Study Data

I created a historical record of immigration policies that have been made in Arizona over the last two decades using archival materials. I accessed those archival legislative materials from the National Conference of State Legislatures, Arizona State Library, Archives & Public Records and the website of Arizona State Legislature (<https://www.azleg.gov/>), in which current and historical annotated codes, official statutes, regulations and bills as well as session laws, Attorney General's Opinions, court cases and treatises are being stored. An overview of immigration policy developments in Arizona suggests that the legislative activities of Arizona as responses to the immigration “problem” began in 2003. Hence, my legislative archival data set started from 2003 to the present. I was able to obtain most of those materials in their digital forms (e.g., PDF files or images). This enabled me to refer to those original documents back and forth in the course of my data analysis. The data set for analyzing the Arizona case mainly includes the following archival sources:

- Correspondence files, conference memos, the Governor’s office interaction with state departments and boards, federal files, subject files (focus on the subject of immigration control), and the records from the Four Corners Regional Commission from Governor Janet Napolitano (2003-2009), Governor Jan Brewer (2009-2015), and Governor Doug Ducey (2015-present).
- Newspapers from 1990 to 2017 included in the Arizona Historical Digital Newspaper (<http://azmemory.azlibrary.gov/cdm/newspapers>).

- Archived videos, meeting minutes, policy analysis reports, research briefs, and journals from Arizona Senate and House Committees on education, health and welfare, and public safety appropriations (2003-2017).
- State Bills, Acts, Statutes, Session Laws, and Legislative Session Journals associated with immigrants and immigration control, as well as criminal justice (2003-2017).
- *Arizona v. United States*, 567 U.S. 387 (2012) hearing transcripts, correspondence, the opinion of the U.S. Supreme Court, and news reports.

Illinois Case Study Data

The data set used for analyzing Illinois' immigration policy development is comprised of archival data related to immigrants and interview data on key actors in the field of Illinois immigration control. The legislative archival data about Illinois immigration policy was accessed and collected from the National Conference of State Legislatures, Illinois State Archives (<http://www.cyberdriveillinois.com/departments/archives/home.html>), and Illinois General Assembly (<http://ilga.gov/>). Because the legislative response to immigration in Illinois started in 2000, my archival data collection for Illinois immigration policy development initiated from 2000 through the present. The archival data component includes the following documents:

- Legislative reports, Bills & Resolutions, Illinois Compiled Statutes, Public Acts, and Illinois Constitution (2000-2017).
- Correspondence, meeting minutes, newspaper clippings (including Chicago Sun-Times, Chicago Tribune), policy reports on immigration control, and press releases from the administration of Governor George Ryan (1999-2003), Governor Rod Blagojevich (2003-2009), Governor Pat Quinn (2009-2015), and Governor Bruce Rauner (2015-present).

- Archived videos, meeting minutes, hearing transcripts, research briefs, and journals from Illinois Senate and House Committees on education, health and welfare appropriations, and criminal law (2000-2017).
- Legislative documents from Illinois Immigrants Commission (2000-2017).

I supplemented the database for the Illinois case study by incorporating Chicago immigration policy development data from the research project: “The Interplay between Public and Private Actors in Shaping Local Immigration Policy,” which is housed in the Department of Sociology at the University of Illinois at Chicago. That project explored the reasons why communities adopted supportive, neutral or restrictive immigration-related policies. Built on extensive, in-depth interviews with various players in the field including activists and organization leaders, the interview data from the Chicago study provide ample and comprehensive information about the relationships between locally elected officials, public and private institutions, and immigrant residents.

In addition, through a recommendation, I accessed an important immigrant rights activist organization—Illinois Coalition for Immigrant and Refugee Rights—and visited this organization office in Chicago. During the visit, I got to know the history of this organization, how it worked on immigration issues, its relationships with service providers, immigrant community organizations, as well as the government. Meanwhile, I was allowed to conduct a semi-structured interview with Mr. Fred Tsao, who is the senior policy counsel at this organization. This interview lasted almost one and half hours. It was recorded, transcribed, and was included as part of the database for the Illinois case study.

Analysis

Information collected from the archival, interview and secondary data was integrated and then categorized into two files named “Arizona Case” and “Illinois Case.” I employed the datasets to systematically examine how the fields of immigration control were socially constructed in the select two states. There are several questions that guided my data analysis: What are the main characteristics of the immigration control in the state, or how should we characterize the state’s approach to immigration control? Who are key players in the field? What claims and decisions did they make regarding immigration control? What alternatives did they propose and discuss? What factors are implicated in their considerations? What are opportunities and challenges for them to make those claims and decisions? And what are the wide political, economic, social, and cultural contexts in which their claims-making activities unfold and the field is constructed?

Those datasets were analyzed through the following analytical strategy. I first identified key actors in the field and categorized actors in the field of immigration control into two sectors: 1) civil society, and 2) government. I then searched for their claims or other discursive contents and analyzed how actors in the two sectors interacted to construct or change the field in the state. Data were coded based on whether the information was “decisional” or “contextual” in terms of immigration control construction. It was decisional when the data informed how actors or groups made choices through their claims, arguments, and definitional activities. It was contextual when the data provided information about where the actors interacted and how it shaped their decisions. For example, when the interview data informed how community leaders thought about immigrants, or the legislative hearing transcripts revealed how policymakers debated on the immigration debate through their accounts, the codes would be “decisional.” When the data

spoke to the political ideology, economic conditions, cultural traditions, and social relations in the state, they were coded as “contextual.” Additionally, I sought to connect how “contextual” information was related to actors’ decision-making processes. As such, those codes enabled me to identify key actors and their roles in shaping the field development. They also allowed me to look for critical events in which certain immigration policies and laws were passed.

Importantly, due to the complex, multidirectional character of the social construction of immigration control, I drew attention to the contestations over the “problem” of immigration and its control and their impacts on legal mobilization and lawmaking processes - identifying both the success and the failure dimensions of the claims-making activities and the construction outcomes. To do this I categorized my “decisional” codes into claims and counter-claims, and my “contextual” into facilitation and hindrance. The coding scheme unquestioningly helped me identify patterns and changes in the social construction of immigration control field and understand the contentious process of constructing the field.

After going through the lawmaking processes driving the two different fields of immigration control in two states, I came to the second phase of coding and analysis, paying attention to how, and in what contexts, the fields were constructed. I wrote analytical research memos to connect the separate codes, to generate and organize important themes, to refine the theoretical framework and concepts, and to integrate my codes and data more coherently and cohesively.

Notably, in this study, I have chosen to analyze the field-level development of immigration control in two states and understand how various actors in the field socially construct the field through definitional processes. As such, my accounts would be more analytical rather than narrative. I would not provide chronological descriptions of, nor pay

attention to, concrete details about immigration control in two states. Rather, I focus on broad organizing principles and significant social and political processes that structured two states' ways of thinking and acting in immigration control.

After tracing two states' field-level development of immigration control, I conducted a comparative analysis on the two fields' trajectories and substances, seeking to identify important incentives and mechanisms producing, and considerations underpinning, the different forms of immigration control in the context. The comparative component focused on explaining the divergence in approaches to immigrant governance we have witnessed in various state and local jurisdictions. Here I sought to answer the questions: What are the main causal processes that have led to different approaches to immigration control in the jurisdiction? What role did politics play in shaping the structure and process of the field, especially the impact of changing state-and-society relationship? And how did the deployment of penal power in American immigration control illuminate the changing nature of penalty in the United States? Building on previous scholarship from the sociology of punishment, sociology of law, political sociology, and social theory, I induced an explanatory framework by identifying key causal factors and processes driving different immigration control. In aiming to offer more comprehensive, integrated insights, this framework emphasizes the interplay of the structural context and the actor's agency for institutionalizing immigration control fields.

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- Puente Arizona v. Arpaio*, 821 F. 3d 1098 (9th Cir., 2016)

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EDUCATION

2011 LL.B. (with Distinction), School of Law, Beijing Forestry University, China

2015 M.A., Criminology, Law, and Justice, The University of Illinois at Chicago, U.S.

2018 Ph.D., Criminology, Law, and Justice, The University of Illinois at Chicago, U.S.

RESEARCH & TEACHING INTERESTS

Law and Society/Sociology of Law; Criminal Law and Criminal Procedure; Comparative Criminal Justice; The Sociology of Punishment; Criminological Theory

PUBLICATIONS

Peer-Reviewed Journal Articles

2018 **Jiang, Jize**, and Kuang, Kai. "Hukou Status and Sentencing in the Wake of Internal Migration: The Penalty Effect of Being Rural-to-Urban Migrants in China." *Law & Policy*, 40(2), 196-215. <https://onlinelibrary.wiley.com/doi/full/10.1111/lapo.12101>

2018 **Jiang, Jize**, and Erez, Edna. "Immigrants as Symbolic Assailants: Crimmigration and its Discontents." *International Criminal Justice Review*, 28(1), 5-24. <https://doi.org/10.1177/1057567717721299>

2016 **Jiang, Jize**. "Bringing Parental Subjectivity Back in: Examining the Impact of Parents' Family Experiences on Delinquency." *Criminology, Criminal Justice, Law & Society*, 17(3), 35-56. <https://ccjls.scholasticahq.com/article/1170-bringing-parental-subjectivity-back-in-examining-the-impact-of-parents-family-experiences-on-delinquency>

Book Reviews

2018 **Jiang, Jize**. Review, "Nordic Nationalism and Penal Order: Walling the Welfare State," by Vanessa Barker, 2018, Routledge. *Theoretical Criminology*, OnlineFirst (May 7, 2018). <https://doi.org/10.1177/1362480618770303>

Also published at *Border Criminologies* of the University of Oxford:

<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/01/book-review>

2018 **Jiang, Jize**. Review, "Breaking the Pendulum: The Long Struggle over Criminal Justice," by Philip Goodman, Joshua Page, and Michelle Phelps, 2017, Oxford University Press. *Social & Legal Studies*. (in press)

2017 **Jiang, Jize**. Review, "From Deportation to Prison: The Politics of Immigration Enforcement in Post-Civil Rights America," by Patrisia Macías-Rojas, 2016, New York University Press. *Punishment & Society*. OnlineFirst (March 15, 2017). <https://doi.org/10.1177/1462474517699727>

HONORS, AWARDS, & FELLOWSHIPS

- 2017 President's Research in Diversity Travel Award, University of Illinois (\$ 800)
- 2017-2018 Publishing Award, Department of Criminology, Law, and Justice, UIC
- 2017 Graduate student workshop, Law and Society Association
- 2016 The Chicago Consular Corps Scholarship for International Students, UIC (\$ 1,000)
- 2015 Preliminary examination passed with Distinction
- 2014-2015 Travel Award, Graduate College of Liberal Arts and Sciences, UIC (\$ 500)
- 2011 Certificate for Graduation with Excellence by the Beijing Commission of Education
- 2010 Third-Class Award in the National English Speaking Contest for College Students
- 2009 Third-Class Award in the "CCTV Cup" National English Speaking Contest
- 2009 The National Scholarship for Academic Excellence of China (\$ 1,600)
- 2008-2010 Fellowship for Academic Excellence, Beijing Forestry University (\$ 800)
- 2008 Outstanding Volunteer for the 2008 Summer Olympics in Beijing, China
- 2008 The National Encouragement Scholarship of China (\$ 1,200)

PROFESSIONAL SERVICE

Manuscript Reviewer for

Asian Journal of Criminology; Crime, Law and Social Change; Criminology, Criminal Justice, Law & Society; Criminal Justice Review; Criminal Justice Policy Review; International Criminal Justice Review; Journal of Research in Crime and Delinquency; Law & Policy; Punishment & Society; Social Problems; Social & Legal Studies

PROFESSIONAL MEMBERSHIPS

American Society of Criminology

- The Division of Corrections & Sentencing
- The Division of Developmental and Life Course Criminology
- The Division of People of Color & Crime

Law and Society Association

- Punishment & Society collaborative research network
- Citizenship & Immigration collaborative research network
- Lay Participation in Legal Systems collaborative research network

American Sociological Association

- Crime, Law, and Deviance section
- Sociology of Law section

Society for the Study of Social Problems

- Crime and Juvenile Delinquency Division
- Law and Society Division