

How the State Criminalizes Immigrants and to What Effect: A Multi-Disciplinary Account

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Abstract

The recent salience of immigration as an issue has led to more restrictive policies towards immigrants in many settings. This special issue brings together scholars from multiple disciplines, and presents a collection of articles that investigates the nature of immigration enforcement, examines the actors and institutions involved, and uncovers some of the consequences for immigrants and communities. This introductory article takes stock of the main findings, and makes a case for future work to (i) include multiple sites and units of analysis, (ii) consider the perspectives of on-the-ground enforcement agents, and (iii) integrate the study of immigration enforcement to other sub-fields within and across disciplines.

Introduction

The number of people worldwide living outside of their birth country has steadily risen over the last two decades, totaling 244 million – or 3.3 percent of the global population – in 2015 (IOM 2017). While migrants are often motivated by the prospect of a better life for themselves or their children and families, their arrival is often unwelcomed by citizens within host countries. Whether fueled by xenophobia and racism, or perceptions of demographic pressure, economic inequality, and the specter of terrorism, resistance appears to be the first response to immigration in many countries. This has led many host countries to curtail the inflow of immigrants, to restrict the arrival of migrants deemed culturally, racially or economically undesirable, or to deprive existing migrants of access to labor markets and public programs. For their part, migrants—documented and undocumented—face increasingly-stiffer criminal penalties if determined to be in violation of a complex web of changing immigration laws. The criminalization of immigration is thus both on the rise and widespread, affecting migrants, families, communities, and nations at all points in the migration process and at virtually all reaches of the globe.

Yet despite this trend toward criminalization, relatively little is known about the mechanisms to police national borders (and other ports of entry) or the structure of interior enforcement efforts. This special issue presents a series of articles from a multidisciplinary set of scholars exploring how the state criminalizes immigrants, and to what effect. This volume is the culmination of a conference in November 2017 on the Cornell University campus, focused on *Criminalizing Immigrants: Border Controls, Enforcement, and Resistance*.¹ The authors featured in this volume provide a multi-sited approach to researching immigration enforcement – both theoretically and empirically – at the border *and* within the interior. These studies examine the national and local institutions that detain, process, and ultimately deport noncitizens determined to be in violation of immigration law.

The authors in this special issue consider the nature and scope of enforcement, examine the actors and institutions implicated in these processes, and texturize the impacts of enforcement on immigrants and the communities in which they live.

Enforcement Extensions and Entanglements

One key question tackled by the authors is how to define the very nature of immigration enforcement. Where does it happen and how? These powers are afforded exclusively to the federal government in the United States. The federal government has in turn deputized numerous subnational institutions and actors in its efforts to surveil the 11 million undocumented individuals living in the country, as well as the thousands of attempted border crossers each year, and millions of other temporary and documented noncitizens at risk of failing out of status (Gulasekaram and Ramakrishnan 2015). Vega reflects, in this volume, on years of unique ethnographic access to the US Border Patrol, the primary border policing agency. She offers a methodological lesson for studying how federal agents carry out their mandate to police the Southern border. While much of the sensationalized news cycle tends to focus on the increasingly militarized border, other articles in the volume make abundantly clear that the apparatus of immigration enforcement has also devolved into interior regions, far from the border, and increasingly enlisting the help of local governments and private actors (Lahav 1998).

Enforcement starts with the vast federal structures that vet and screen individuals for “deportability.” This infrastructure – to track, apprehend, and deport – is a relatively recent phenomenon in the United States’ history. The power to deport was not legally defined or appropriated resources until US Border Patrol was created to patrol the border in the early part of the 20th century (Ngai 2004; Hernandez 2010). Decades later, shifts in immigration law during the mid-nineties and early-aughts further invested in border militarization – especially after 9/11 (Nevins 2002; Andreas and Biersteker 2003). This has culminated in an immigration enforcement apparatus that includes not only the Border Patrol, but also Immigration and Customs Enforcement (ICE). Using administrative data from ICE, in this special issue, Moinester estimates that 1,964,756 removals were carried out between 2003 and 2015. Overall removal numbers are certainly even higher, as the immigration enforcement apparatus also includes units dedicated to targeted enforcement activities such as the Criminal Alien Program (Macias-Rojas 2016).

This volume also describes the aftermath of policy changes that applied tools from criminal law and justice to immigration law and enforcement. This complicated apparatus reflects not only the entanglements of criminal and immigration law (what Stumpf (2006) calls “crimmigration”), but also the neoliberal cycle that drives contemporary mass deportation (Golash-Boza 2015). For example, the spike in removals under the Obama presidency purportedly proceeded in a rational, orderly, prioritized, and systematic way. Yet, critical analyses of the characteristics of those deported and otherwise removed reveal that the majority did not match the priority criteria. Most did not have criminal records, and amongst those who did, most were either guilty only of immigration violations or non-violent offenses (Abrego et al. 2017). While this priority system was replaced with a veritable free-for-all under the Trump administration, in fact the discretion of agents on the ground changed little between the two administrations, as evidenced by Abrego et al. (2017) and Coleman and Kocher (this special issue).

In this volume, the authors provide insights into the antecedents and consequences of ‘crimmigration’ in the United States, leading to restrictions of noncitizens’ rights. They also reveal the importance of understanding both the magnitude and mechanisms of immigration enforcement, particularly since immigrants are processed by individual agents who make their own decisions about where to concentrate their time and resources. Increasingly, as Coleman and Kocher documented, these are not only federal agents, but local law enforcement officers (and contractors) who cooperate with federal agencies through formal partnerships such as the 287(g) and Secure Communities. These officers are incentivized to refer potential deportees to ICE; they do so through a series of heuristics that criminalize immigrants and put them at an uneven risk of deportation. While critics of contemporary immigration policy and practice often accuse these officers of “racial profiling,” Coleman and Kocher argue that this is an elusive phenomenon to study that misplaces our analytical efforts, and instead urge critical scholars to focus on the problem of “racially discrepant policing”. The authors point to officers’ mandate to document a criminal and/or civil infraction prior to a traffic stop, which essentially makes it difficult to attribute the stop to race as a motivating factor. Rather than accept this seemingly “color blind” approach to understanding immigration enforcement, the articles in this volume suggest that structural racism is part and parcel of the process of criminalizing immigrants (see also Armenta 2016).

Beyond the screening that happens at the border, on the side of the road, in jails, and elsewhere (e.g., the workplace (Griffith 2011)), immigrants spend unnecessarily long waits in the immigration detention system until an immigration official hears their case. To this end, Asad provides a rich ethnographic account of judicial decision making in the immigration court system. Nationwide, immigration courts have increasingly become bogged down; case backlogs reached nearly two years in FY 2018 (Transactional Records Access Clearinghouse 2018). Asad’s insights confirm the important role of judges as street-level bureaucrats, or front-line agents, who craft narratives of deservingness when deciding whether to report a noncitizen from the country – or whether to exercise discretion in an apparent attempt to circumvent the removal process. Ryo and Peacock shift the analytic lens to detention, an increasingly obligatory part of the deportation process, especially for those immigrants deemed “criminal aliens.” Although federal facilities are the primary focus of critics, particularly those that are privately contracted and unevenly regulated, many immigrants are housed in local jails. Ryo and Peacock show how reliance on local jails can exacerbate overcrowding and due process log jams, with community contexts in which immigrants are detained likely determining who benefits from access to legal counsel and a robust social network, and who does not.

Multiplicity and Discretion of Enforcement Agents

In examining the mechanisms of enforcement, the articles in this issue focus on key agents at different levels – from the state (Amuedo-Dorantes and Pozo; Vega; Cook-Martin) and institutions (Coleman and Kocher; Iskander; Moinester; Ryo and Peacock) to frontline agents (Armenta and Rosales; Asad; Vega). Several articles shift the focus to institutions within the state – the United States in this case – that play a role in the enforcement of immigration law, such as detention centers (Ryo and Peacock), police department (Coleman and Kocher), and the Department of Homeland Security (Amuedo-Dorantes and Pozo; Vega).

Research increasingly focuses on collaboration between federal immigration authorities and local police (Abrego et al. 2017). Coleman and Kocher, in this volume, demonstrate a pernicious component of this collaboration in police officers' use of driving offenses as pretext to inquire about legal status. (As Moinester shows, this is no small matter; the share of noncitizens removed from the U.S. interior either with a driving-related conviction or no criminal conviction at all has increased in the recent decade, due in large part to intensified coordination between law enforcement agencies.) Coleman and Kocher's data from fieldwork in North Carolina bears out that police use checkpoints – where drivers are inspected for possible traffic violations – at a higher rate in areas with a higher immigrant concentration. This analysis by itself does not offer definitive proof of 'racial profiling'. However, treating such proof as the empirical 'gold standard', Coleman and Kocher argue, ends up rationalizing racially discrepant police work. Researchers, the authors conclude, need to move away from racial profiling, and instead focus on racial discrepancy as an object of study in itself (see also Epp, Maynard-Moody, and Haider-Markel 2014).

Institutional directives and practices can guide how on-the-ground agents interact with immigrants, as several of the articles in this volume demonstrate. These agents of the state – judges presiding over removal decisions (Asad), federal immigration officials apprehending undocumented migrants (Vega), local police officers cooperating with federal immigration authorities (Armenta and Rosales; Coleman and Kocher) – are constrained by the law, but also show flexibility in interpreting and implementing the law. While some institutions are permeable, research also finds that immigration law enforcement practices can lack transparency and public accountability (Martínez, Cantor, and Ewing 2014). Vega, in this volume, discusses a previously unaccounted for implication of this lack of transparency: an occupational culture among agents that might create resistance to legal reform efforts on the ground.

Recent research has studied how local law enforcement officials use discretion when implementing the law (Motomura 2010; Armenta 2012; Menjivar et al. 2018). Armenta and Rosales, and Coleman and Kocher, contribute to this literature by studying police officers, while Vega considers federal immigration agents who perform control functions in border cities and remote highways, as well as routinely in the courts, and detention facilities and jails for immigrants in federal custody. Vega envisions a broader, and more cultural, approach to connect mandates of institutions to actions of frontline agents. In particular, she argues that the occupational culture of immigration enforcement predisposes officers to prioritize social control and security – and constrains potential for reforms that prioritize humanitarian aspects of immigration work. Similarly, police officers can use their discretion in routine traffic enforcement to investigate drivers for legal status, as Coleman and Kocher demonstrate in their article in this volume. As a result, the authors argue, police power is 'legislative' – that is, it does not merely enact the law as assumed in the criminology literature, but it involves 'street-level experimentation' that the law tries to reign in, after the fact.

Asad, in this volume, similarly conceptualizes immigration judges (who decide the fate of detained immigrants) as 'street-level bureaucrats' that interpret the law with some discretion (Lipsky 1980 (2010)). As Asad observes in Dallas Immigration Court, the judges follow different approaches to justify their decisions during removal proceedings. In the 'scripted approach', judges turn to established narratives around the limited rights of noncitizens, while in the 'extemporaneous approach' judges deliberate more fully on the individual cases that they deem as more 'deserving'

of temporary relief from removal proceedings, and thus reveal their personal attitudes and biases. These findings highlight both the constraining nature of the law, and the key role played by judges in using discretion to creatively interpret the law in certain cases.

Existing work focuses primarily on a binary distinction between migrants with and without documentation in the United States. Many of the papers in this collection argue for a more nuanced differentiation that considers not just immigrants' legal status, but also their prior experiences with law or immigration enforcement (Armenta and Rosales), their access to community support systems (Ryo and Peacock), in understanding attitudes towards, as well as outcomes of, enforcement. These works then shift the focus to identifying the heterogeneity in immigrants' experiences, and considering the importance of contextual factors as well as immigrants' own characteristics (such as legal status).

Cook-Martin examines the importance of liminality in the case of temporary migration regimes (TMRs) – systems of policy that rely on temporary visas to manage immigration – that are not just historically ubiquitous but also have been on the rise relative to permanent immigration in many countries in recent years. These regimes, Cook-Martin argues, not only allow states to reconcile the interests of different groups, but also to clearly delineate prospects of membership (or lack thereof). The regimes, then, offer crucial tools for nation-state making, a project for which immigration enforcement remains inextricable. To this point, Iskander views detention in general as 'carceral control' that is selectively applied to particular racial and ethnic groups. As such, Iskander argue the practice separates the 'unskilled' migrants from the 'skilled' and rationalizes the role of immigration enforcement as labor market governance. Through carceral control practices, like detention, Iskander shows us how migrants are reduced to their bodies, and consequently, cut off from their social ties, and often, stripped from their political rights to seek redress . She also convinces us that this bodying practice is selectively applied to 'unskilled' workers (who are often described as 'arms', 'backs', and 'hands'), and not to the 'skilled' (who are often disembodied as 'brains' and whose movement is aptly referred to as 'brain drain' or 'brain gain.')

The Consequential Impacts of Extensive and Discretionary Enforcement

The extension of enforcement into the interior, the entanglement of immigration enforcement with the criminal justice system and other government agencies, and the combined complexity of agents enacting enforcement with a certain amount of discretion means that immigration enforcement can seem both omnipresent and arbitrary. This generates impacts that are felt far beyond the vulnerable immigrants, themselves. Accordingly, a large and growing body of research has developed to assess the impacts of enforcement policies, policing, detention, and deportation on individuals, families, and communities. Collectively, this scholarship has demonstrated that intensified enforcement undermines the health and well-being of migrants and their families (Asad and Clair 2018; Torche and Sirois 2018; Vargas, Sanchez, and Juárez 2017; Wang and Kaushal 2018) leads to job loss and heightened poverty for impacted workers (Amuedo-Dorantes and Bansak 2012; Orrenius and Zavodny 2015; Potochnick, Chen, and Perreira 2017), dampens uptake of eligible public assistance programs and reduces public school enrollment (Alsan and Yang 2018; Dee and Murphy 2018; Vargas and Pirog 2016), and spurs geographic migration and resettlement (Watson 2013; Kostandini, Mykerezi, and Escalante 2013). Importantly, the observed impacts extend well

beyond the migrants directly targeted by the enforcement apparatus, to undermine family cohesion (Amuedo- Dorantes and Arenas- Arroyo 2018), dampen local economic productivity (Bohn, Lofstrom, and Raphael 2015; Kostandini, Mykerezi, and Escalante 2013; Pham and Van 2010; Ifft and Jodlowski 2016), and weakens housing markets (Rugh and Hall 2016).

Despite the impressive nature of extant research, critical questions remain about the impacts of enforcement, detention, and deportation, and the mechanisms that connect criminalization efforts with outcomes. The articles in this volume contribute to this emergent scholarship in various new and innovative ways, by deepening our understanding of the wide-reaching impacts of intensified enforcement and mass deportation.

Amuedo-Dorantes and Pozo, in this volume, explore how enforcement policies may have important spillover effects on non-targeted populations. More specifically, they assess how state mandates requiring employer participation in the E-Verify system influence perceptions of discrimination among Hispanic workers who hold work authorization; a group that is liable to disparate treatment on the basis of their ethnicity and nativity. Consistent with this argument, these authors' estimates reveal that Hispanic citizens in states with the most-stringent universal E-Verify mandates perceive greater discrimination in the workplace; yet, those in states with weaker mandates perceive less discriminatory behavior. These findings not only point to important social-psychological mechanisms informing the links between enforcement and well-being, but also emphasize that these policies have wide-reaching impacts on family members, co-workers, and communities.

Along these lines, Ryo and Peacock's contribution to this volume draws attention to the symbiotic relationship between institutions of enforcements and local communities. As Ryo and Peacock demonstrate, community contexts play an important role in shaping detention outcomes, noting in particular, that proximity to legal representation has influences the length of detained migrants' incarceration. As noted by the authors, this work begs questions about how the availability of other local resources and advocacy organizations influence the nature of detention. But it also highlights the importance of understanding the "social ecology" of immigrant detention and criminalization, including questions about how organizational and institutional decision-making is shaped by the immigration enforcement complex, how communities are affected by exposure to enforcement, and how residents' attitudes and behaviors toward immigrants are influenced by community engagement with enforcement.

Many of these broader community-level effects are shaped by the extent to which enforcement systems erode trust in community institutions. Immigrants draw on their prior experiences with law enforcement in their origin countries (which typically predispose them to higher relative respect for law enforcement in the United States) (Menjivar and Bejarano 2004). Immigrants also come to recognize their social status in their new destination through their prior experiences with law enforcement in their new destination, as Armenta and Rosales show in this volume. Positive experiences may make immigrants feel respected and instill a sense of belonging, while negative experiences (or even stories about such experiences) can create a sense of exclusion, and push them to avoid future interactions (even when in need) (Menjivar and Bejarano 2004). As shown in the article by Armenta and Rosales, pervasive fears of deportation, combined with their precarious social position, contribute to legal cynicism among unauthorized Latinos, even in

sanctuary cities of Los Angeles and Philadelphia. The chilling effects produced by these attitudes reduce undocumented immigrants' engagement with police even in times of needs, who instead rely on local and informal networks of social control for protection and safety. Yet, immigrant communities do not hold uniformly negative views of police and often view U.S. policing institutions as being more trustworthy and professional than those in their home countries.

These broader impacts of enforcement extend not only beyond directly-impacted migrants, but also may have enduring impacts on family and community dynamics. As the article by Golash-Boza argues, deportations produce "collateral consequences," which cause harm to children, partners, and other family members in ways that undercuts short and long-term well-being. Drawing parallels to the mass incarceration system, Golash-Boza emphasizes that at every stage of the deportation process – apprehension, detention, removal and beyond – families and household members experienced shocks to financial security, major changes in living arrangements, and trauma associated with the loss of a family member. These impacts are particularly sharp for children and youth, who may be forced into adulthood at early ages and assume financial and emotional responsibility without parental support.

Future directions for theoretical and empirical work

Immigration is once again at the front and center of the political discourse in many countries. This attention makes it all the more necessary for researchers to scrutinize immigration enforcement and its implications in different settings. Recent research in this realm has focused on the ways criminal law and justice has become entwined with immigration law and enforcement. This phenomenon (or 'crimmigration' as Stumpf (2006) refers to it) has generally made it easier to criminalize undocumented migrants, and, more broadly, to restrict noncitizens' rights in the United States.

In this general context, the articles in this collection investigate the various policies, such as temporary migrant regimes (Cook-Martin), detentions (Ryo and Peacock), deportations (Golash-Boza, Moinester), and employer verification systems (Amuedo-Dorantes and Pozo); enforcement agents such as police officers (Armenta and Rosales, Coleman and Kocher) and judges (Asad); and mechanisms linking policies to agents, such as occupational cultures (Vega) or carceral control practices (Iskander) that are aimed at managing the immigrant stock and flow in the United States and, in some cases (e.g., Cook-Martin, Iskander), across the globe.

From an empirical standpoint, the articles here broaden the scope of what we understand as immigration enforcement and illustrate its diverse and often dire implications for immigrants and their family members. From a theoretical perspective, the articles propose several key interventions to immigration research, and point to clear directions for future work.

First, studies in this volume illustrate the importance of studying immigration enforcement at multiple sites (local, national, and global), as well as with multiple units of analysis (institutions, actors, scripts). Focusing on any one site, or any one unit of analysis, necessarily gives only a partial picture. Studies to date, including some of the articles in our issue, for example, show the role of the local law enforcement in the United States, and its cooperation with the federal

government, in the identification and removal of undocumented immigrants (Coleman and Kocher, Moinester). But, as Vega points out (and Cook-Martin demonstrates for the case of temporary migration regimes), trends in immigration enforcement can also follow a global diffusion process. The increasingly common framing of immigration as a crime and security issue, for instance, is not unique to the United States, but part of a trend sprawling many countries (Mountz 2011; Nethery 2012; Woude, Leun, and Nijland 2014). Therefore, we encourage future work to focus on national and local policies as a potential expression of global processes. This focus, we believe, will not just disrupt the ‘methodological nationalism’ that is prevalent in existing work (Wimmer and Schiller 2002) but also allow for the application of a comparative-historical framework, and for the identification of mechanisms that might be alike across countries.

Similarly, regardless of the site one selects (local, national, or global), it is important to consider the on-the-ground agents who implement immigration enforcement policies. Many of the studies in this volume focus on these agents, conceptualizing the police (e.g., Coleman and Kocher), federal enforcement agents (Vega), and judges (Asad) as ‘street-level bureaucrats’; that is, frontline agents who interact with individuals subject to the law while exercising discretion when enforcing that law (Lipsky 1980 (2010)). This framing allows for situating these actors in particular sites (local, national, global) and contexts (institutional, cultural) while recognizing their discretionary authority, and scrutinizing potential biases and motivations that guide the use of that authority. The framing also creates an opportunity to investigate the particular linkages between sites, contexts, and individual actions that give rise to aggregate trends in immigration enforcement.

Second, the authors in this volume – coming from different disciplines (economics, geography and sociology) but participating in a discussion that crosses disciplinary boundaries – make a strong case for further bridging of immigration research to different areas of study. Coleman and Kocher, for example, call for integrating the tools of geography, and its particular focus on the spatial organization of state power, to the study of law enforcement, and immigration enforcement, in particular. This integration, the authors argue, helps uncover spatial sources of inequality in law enforcement, and complements the research currently undertaken by sociologists and criminologists. Golash-Boza, similarly, identifies new intersections between immigration research and criminology through her astute comparison of the recent mass deportation regime to the long-run mass incarceration regime in the United States. Golash-Boza shows us the ‘collateral’ consequences of deportations on the family members of deported individuals – drawing an illuminating parallel to the experiences of the family members of incarcerated people in the United States. A family member’s deportation or incarceration both bring stress and trauma (especially if family members witness the arrest), force a distance between loved ones, and impose material hardships. The harms inflicted by the mass deportation regime of the recent years on immigrants and their families, Golash-Boza argues, resemble those inflicted by the mass incarceration regime on incarcerated individuals and their families (Asad and Clair 2018; Comfort 2007; Western 2018; Wildeman 2009). Finally, Vega offers another bridge between immigration field and criminology by viewing immigration officers as social control agents, and thus, opening the door to a comparison to other analogous actors in the criminal justice system (such as the police or prison guards).

Based on the work presented here, we call for more cross-disciplinary research that links the currently disparate approaches and questions in the fields of immigration, geography, and criminology. Inspired by Vega's article, we also see a great promise in connecting scholarship on immigration enforcement to work in organizational and cultural sociology. There is already excellent research on the important role institutions play in structuring immigrant outcomes. But, this research could be enriched by considering the mechanisms through which institutions shape the identities, perceptions, and actions of the actors within them. The taken-for-granted norms in particular organizations, and resulting occupational cultures, for example, could explain the often-observed discrepancy between policies on the books and their implementation on the ground.

Third, while a burgeoning body of work – including articles in this volume – contribute to a broad discussion on the variety of ways that immigration enforcement impacts individuals, families, and communities, we continue to know little about the enduring nature of observed effects. What is clear is that intensified enforcement, deportations, and related policies have immediate and substantial impacts on the well-being of immigrants and their communities; yet it is uncertain whether these dynamics of criminalization will exert durable influences on long-term processes on demographic change, future migration flows, the speed of social mobility, or inequality. As documented by Golash-Boza, the collateral impacts of deportation spread widely across impacted families, which has the potential to deepen disadvantage and further concentrate poverty.

The long-term consequences of immigrant criminalization not only have the potential to aggravate the well-being of those directly affected, but also to disrupt broad-scale patterns of social and economic change. To the extent that these efforts undercut labor supplies, economic productivity, or investments in human capital, then predictions about Latinos fueling economic success through cohort replacement may be diminished (Alba 2009; Myers 2007). Similar dynamics are likely to shape racial/ethnic contact and boundary making processes that has potential to derail progress toward racial incorporation.

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ENDNOTES

¹ <https://inequality.cornell.edu/csi-2017-immigration-conference/>