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## **Abstract**

U.S. immigration policy and policymaking has been the purview of the federal government. However, recently, there has been increasing local activism in immigration-related policymaking by the sub-federal units of government. Coined as 'immigration federalism,' such sub-federal activism is changing the direction in which American immigration policymaking is headed, as individual states attempt to share the regulatory power that has been intuitively known to have been exclusively vested in the federal government. In this dynamic, this research examines several factors related to the triggering mechanism of sub-federal activism in immigration policymaking in the United States. In doing so, it employs a mixed methodological approach, triangulating the findings of a multivariable regression analysis that tests the degree of influence of social, economic, demographic, political, and safety factors on igniting sub-federal activism throughout all 50 states across the US, with an in-depth case study of the State of Arizona.

This research is divided into five chapters. First chapter lays out the foundational framework of the research, including literature review and research design to foster better understanding of specified terminologies and concepts exhibited throughout the research. Findings from the statistical analysis is also introduced in this chapter. Chapter 2 discusses the constitutionality and legality of immigration federalism in greater detail and explains the logic behind the state governments' legitimization of their activism. Further, in Chapter 3, this research triangulates the findings from the statistical analysis with an in-depth analysis of State of Arizona, and its infamous state-based immigration policy, AZ SB 1070, which was introduced in 2010 by the Arizona State Legislature. This analysis suggests that there is low correlation of the statistical findings with the process and backgrounds in which individual states enacts their own immigration policies, hence it is difficult to generalize the motives behind every sub-federal activism on immigration policymaking. Thus, this research traces possible paths in which an anti-immigrant/immigrant sentiment had proliferated throughout the State of Arizona via examining public opinion and local politician who is a key supporter of the state's

anti-immigration policy. Chapter 4 extends the research analysis by dissecting the legal battle of two local immigration laws, California Proposition 187 (1992), and Arizona SB 1070 (2010), and finds that there are remarkable similarities in ways in which the federal government handles states' challenges to the exclusive and preemptive authority to regulate immigration. The final chapter reviews the findings of the research and offers fresh interpretation of immigration federalism phenomenon by introducing the concept of 'shepherded federalism.' Further, it makes the case that many immigrants in the U.S. today are scrutinized by the inter-governmental competition over policymaking authority, and ultimately become the *homo sacer* of the time.

Keywords : Immigration, Federalism, Intergovernmental Relations, Politics of  
Immigration, Immigration Policy, Local Immigration Law

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# Chapter 1

## Designing Research on Immigration Federalism

### I. Introduction

The controversy surrounding the national reform for immigration policy is a reoccurring theme in the United States. The imperative perpetuity of discussing the issue on immigration seems to prove that it has become an increasingly salient issue in the political arena of the United States. Though American politics largely agree on the fact that the current *status quo* of immigration policy has too many holes and flaws, or that it is inadequate to address the existing problems concerning immigration, no significant changes or reform has been made to the nation-wide immigration policy since the 1990 provisions to the Immigration and Naturalization Act (INA). The creation of USCIS, and the infamous Patriot Act, has had an indisputable degree of impact on immigrants and the process of immigration; however, the federal government has yet to act to make further provisions and amendments to the standing immigration laws. The reluctance of the US federal government in making moves on immigration policy reform is not a new phenomenon.<sup>1)</sup> Historically, since the federal government claimed its exclusive rights over dealing with all immigration and naturalization matters, the federal government has shown a great deal of reluctance in rescinding the precedents. Nonetheless, recently, there have been palpable attempts to counter the federal exclusivity over immigration policymaking at the sub-federal level. That is, some state and local governments have chosen to take the matter of immigration in to their own hands.

The recent fiasco concerning Arizona's egregious Senate Bill 1070, or the "Support Our Law Enforcement & Safe Neighborhoods Act<sup>2)</sup>," a state bill that attempted to implement policies to usurp power to regulate illegal immigration from the federal government, which eventually led to a number of other state movements to enact similar

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<sup>1)</sup> Richard Lacayo, Ann Blackman, Margot Hornblower, and Joseph Szczesny, "Down on the Downtrodden," *Time*, Dec. 13, 1994, <http://content.time.com/time/magazine/article/0,9171,982006,00.html>.

<sup>2)</sup> *Senate Bill 1070*, State of Arizona Senate 49th Legislature. (2010).



laws. In 2010, when Arizona's Governor Jan Brewer signed SB 1070, the American mass media fired up its engine to cover the toughest state immigration law passed in the 226 years of history of the US. While the case of Arizona was not the first time that a state had singlehandedly enacted anti-immigration legislation, it was the first time ever for a state to enact a legislation that made it a crime for anyone to be present on American soil without proper documentation supporting his or her legal status in the US (Yi 2012: 163). Immediately following the signing of SB 1070, the federal judiciary stepped in to block the enforcement of the law on the grounds that it is unconstitutional for states to interlope in federal jurisprudences, laws, and regulations on immigration, naturalization, and foreign affairs. Despite the federal government's effort to prevent similar laws from proliferating in other states, an overwhelming number of states continued to express displeasure with the decades of lacking a federal partner on immigration enforcement as a federal matter; *videlicet*, the perception that the federal government cannot or will not control immigration has spread widely among states, ultimately leading to some state legislatures furiously enacting immigration-related policies with stricter measures.

The proliferation of sub-federal legislation of immigration-related policies did not stop in Arizona, but spread to other areas like: Alabama, Colorado, Utah, Georgia, South Carolina, Missouri, Florida, and Oklahoma. The National Council of State Legislatures (NCSL) reports that between 2005 and 2014, nearly 10,000 state laws proposed were immigration-related, though not all of them were restrictive.<sup>3)</sup> The conventional understanding of sub-federal actions towards immigration control is that there is an "intuitive and seemingly commonsense proposition that demographic changes have been driving" states' immigration policy (Gulasekaram and Ramakrishnan 2012). This conventional understanding is reflected in the Supreme Court Justices' opinions in *Arizona et al. v. United States* (2012), where the justices seem to agree on the factual assumption about illegal immigration and the public policy challenges caused by such acts. Both the majority and dissenting opinions in this case professedly agreed that despite the existence of federal immigration policies, the role of states is not diminished in immigration

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<sup>3)</sup> For accurate figures on the number of states' immigration-related policies, see yearly reports on state laws related to immigration and immigration from the National Conference of State Legislature at <http://www.ncsl.org/research/immigration.aspx>.

policymaking. Justice Antonin Scalia wrote that:

As a sovereign, Arizona has the inherent power to exclude persons from its territory, subject to only those limitations expressed in the Constitution or constitutionally imposed by Congress [... and the] federal power over illegal immigration [cannot] be deemed exclusive [...] Arizona bears the brunt of the country's illegal immigration problem. Its citizens feel themselves under siege by large numbers of illegal immigrants who invade their property, strain their social services, and even place their lives in jeopardy. Federal officials have been unable to remedy the problem, and indeed have recently shown that they are unwilling to do so.<sup>4)</sup>

Justice Scalia, in defense of Arizona made the case that the state's own immigration policies in accordance to the federal regulation on immigration, is not unconstitutional, rather it is a symbol of a state's bold actions to protect its sovereignty. Furthermore, the federal government must not forget that as a sovereign, states have the inherent power to exclude any persons from its territory, and that state immigration policies are more effective partners of the obviously ineffective federal immigration policies. Justice Scalia is not alone in believing that sub-federal immigration policymaking can be justified by, and is directly linked to, demographic changes. Many politicians, bureaucrats, scholars, and media outlets fueled the spread of such a popular conviction.<sup>5)</sup>

In the growing tendency of the enactment of sub-federal immigration policies, the demographic change is not the only factor that serves as its justification. Instinctively, demographic change consequentially led to a spread of the attractive belief that the change in demography has negatively affected the state's economic, safety, and political atmosphere. The problem is that generally, this popular belief tends to victimize

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<sup>4)</sup> *Arizona v. United States*, 132 S. Ct. 2492, 2522 (2012) (Scalia, dissenting).

<sup>5)</sup> *See, e.g.*, Alex Kotlowitz, "Our Town," *New York Times* (New York), Aug. 5, 2007, [http://www.nytimes.com/2007/08/05/magazine/05Immigration-t.html?\\_r=0](http://www.nytimes.com/2007/08/05/magazine/05Immigration-t.html?_r=0); Ismael Estrada and Keith Oppenheim, "Oklahoma Targets Illegal Immigrants with Tough New Law," *CNN*, Nov. 5, 2007, <http://edition.cnn.com/2007/US/11/02/oklahoma.immigration/>; Julia Preston, "Lawyer Leads an Immigration Fight," *New York Times* (New York), Jul. 20, 2009, <http://www.nytimes.com/2009/07/21/us/21lawyer.html?pagewanted=all>.

demographic changes as a harm to society, which ultimately leads to the creation of restrictive immigration policies at the sub-federal level. For instance, proponents of this belief, like the White House, argue that the changing demography (which may or may not include the migration of illegal immigrants) has negative consequences for the economy, safety, and politics on all community levels, whether it may be cities, municipalities, counties, states or country.<sup>6)</sup>

However, justifying sub-federal immigration policymaking on demographic changes has reckoned too heavily on intuition. Scholars and policy experts alike seldom provide factual justification that supports their claims on demographic changes and its consequential effects on the society's stability. This research tests the validity of this popular belief. More specifically, this research asks: *under what conditions do state governments challenge the federal exclusivity on immigration policymaking?* In doing so, this research hopes to achieve the following primary goals:

First, and most importantly, this research is an effort to identify when, what, and under what conditions states are driven to challenge the federal government in a broader perspective of federalism, which can be a test on the efficiency of American federalism in general. That is, by examining the sub-federal versus the federal challenge on implementing immigration policy, this research diagnoses whether the American style of federalism truly guarantees the protection of minority rights. Federalism is often hailed as one of the most desirable forms of governance to ensure the protection of minority rights (Filippov, et al., 2004). That is because the multilevel governance that federalism promotes as a governing system of equilibrium between "shared-rule" and "self-rule," is founded on the idea of majority, yet simultaneously enforces a democratic idea of minority rights.<sup>7)</sup> In the US, its style of governance is often equated with the

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<sup>6)</sup> See, e.g., "Immigration and the Economy," *The White House*, Jul, 2012, <http://www.whitehouse.gov/issues/immigration/economy>; Jon Feere, "The Myth of the "Otherwise Law-Abiding" Illegal Alien," *Center for Immigration Studies*, Oct. 2013, <http://cis.org/myth-law-abiding-illegal-alien>; Rich Morin, "Crime Rises Among Second-Generation Immigrants as They Assimilate," *Pew Research Center*, Oct. 15, 2013, <http://www.pewresearch.org/fact-tank/2013/10/15/crime-rises-among-second-generation-immigrants-as-they-assimilate/>

richness of the development of liberal democracy. In that sense, Implications of this research potentially provide a pathway to approach a variety of questions related to the protection of minority rights in a liberal democracy. For instance, one can ask the question of whether the states' interests in regulating its demography are protected or not. Further, this research provides key clues as to whether immigrants' rights to pursue their wellbeing and happiness are guaranteed in the United States constitutionally.<sup>8)</sup>

Second, this research ultimately contributes to the existing scholarship on US immigration policy in numerous ways. For instance, the findings of this research can serve as excellent forecasting metrics on the outlook of future immigration policy in the US. By examining the immigration policymaking process in the US, this research offers a degree of foresight towards which the direction of American immigration policy legislation is headed. The importance of this research lies in the hope that it will identify and examine the conditions that incubates many levels of government decisions to pursue a certain path of legislating immigration.

## **II. Literature Review & Pilot Study**

Needless to mention, immigration policy making at the state level is nothing new, however, the study of it certainly is quite new. There is scarce published literature discussing state challenges to federal exclusivity on immigration. Even the works that contribute to such discourse are mere highlights of either the 2010 Arizona SB 1070<sup>9)</sup>

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<sup>7)</sup> Okyeon Yi, *Comparative Federalism in Pursuit of Integration and Decentralization* (Seoul: Oreum Publishing House, 2008), 18.

<sup>8)</sup> These questions are significant in a sense that often times, because of the link between the primary research question and its implications on the institutionalized protection of minorities. In accordance with the US Constitution, naturalized nationals are not considered full citizens – that is, naturalized citizens are inherently different from full-fledged citizens in a sense that their citizenship status can be revoked for whatever reasons, whereas that of a person born on American soil or within the American jurisdictional territory cannot.

<sup>9)</sup> State of Arizona Senate 49th Legislature. (2010).

case or the 1994 California Proposition 187<sup>10)</sup> case studies. Discussion of the role of states and localities in immigration-related policymaking is most active in legal scholarship. Legal scholarship spends a great deal of time on the constitutionality of these state legislations, yet they do not little to provide detailed explanation on why such legislations occur in the first place. Moreover, these studies neglect to examine possible triggering mechanisms for state challenges, and only vaguely state that sub-federal challenges occur either as the number of illegal immigrants or the Hispanic population increases. Nonetheless, in the name of “immigration federalism,” there has been a steady interest in the politics of immigration since the 90s, led by a legal scholar, Peter J. Spiro. Immigration federalism is an idea that immigration policymaking can be efficiently divided between the state and federal governments within American federalism.

Legal scholarship on the topic of immigration federalism tends to be divided in to two camps: one that argues for, and the other arguing against, the constitutionality and practicality of immigration federalism. Proponents of immigration federalism include the early pioneers, who argued in favor of state-level immigration policymaking under the system of “steam valve federalism (Spiro, 1997).” Under this model of federalism, allowing the complete and full devolution of immigration policymaking is ultimately an act that satisfies voter preferences that differ from state-to-state, and a way to ultimately benefit aliens as a group, thereby an ideal model of federalism that is not only efficient, but also democratic in its process. In addition, the pro-immigration federalism camp argues that state regulations, such as the Arizona’s SB 1070 were products of the mirror-image theory<sup>11)</sup>, which is ultimately inconsistent with the federal government’s immigration jurisprudences, laws, and policies (Chin, 2011). Scholars who side within this view agree that states can enact and enforce state regulation of immigrants, not immigration control. However, as this study demonstrates, there are no clear boundaries separating immigration control laws with immigrant regulation laws, thereby blurring much of the

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<sup>10)</sup> For full text of Proposition 187, see: Joshua Fox, “Challenging Proposition 187’s Constitutionality: League of United Latin American Citizens v. Wilson,” *University of New Mexico Law Review* 27 (1997): 268.

<sup>11)</sup> The ‘mirror image theory’ is a technical legal concept that champions the idea that states can draft, pass, and enact immigration laws based on federal standards. This theory proposes the idea that sub-federal polities, especially the states, can help execute federal policies by enacting and enforcing state laws that “mirrors” federal statutes and standards. Mirror image theory will be discussed in greater extent in Chapter 2.

arguments on the clear separation of the two types of laws. The major shortcoming of the scholarly works championing the idea of States' immigration laws to be unconstitutional is that such arguments would only suffice if, and only if, the measures link criminality with immigration laws.<sup>12)</sup>

Proponents of 'immigration federalism' argue not only that the increased state and local involvement in immigration enhances the robustness of cooperative federalism in the US, but also that the federal government cannot preempt the shared power of immigration.<sup>13)</sup> More specifically, they argue that despite the federal exclusivity in immigration policymaking, the federal government must acknowledge that the states are a "de facto multi-sovereign regime," and that there is a "structural need for federal, state, and local participation in immigration regulation [and immigration integration;]" ultimately concluding that allowing sub-federal governments to legislate independent immigration policies will not necessarily be hostile to immigrants (Huntington, 2008: 823).

The opposing camp sees immigration federalism through a more gloomy and negative lens. For instance, they express concerns over the negative consequences of the full devolution of the immigration regime and the potential for uncontrollable proliferation of sub-federal activism in immigration policymaking. The opposing camp contends that the devolution of federal enforcement authority over immigration, or simply immigration federalism, will inevitably lead to immigrants suffering discrimination by the local governments. Essentially, what the opposing camp believes is that in the model of immigration federalism, immigrants will be treated as second class citizens who will have to bear the burden of living under institutional discrimination separating them from receiving benefits by the equal-protection clause of the 14<sup>th</sup> Amendment because their national origin is different.<sup>14)</sup> It is interesting to note that legal scholars in the opposing

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<sup>12)</sup> Scholars arguing the unconstitutionality of state regulation on immigration base their arguments on the SCOTUS decision dating back to the Judiciary Act of 1789, a precedent determining that federal crimes may be tried only in federal courts.

<sup>13)</sup> See, Clare Huntington, "The Constitutional Dimension of Immigration Federalism," *Vanderbilt Law Review* 61 (2008): 787-853; Peter Schuck, "Taking Immigration Federalism Seriously," *Yale Law Faculty Scholarship Series* 1675 (2007): 57-92; Kevin Tessier, "Immigration Crisis in Federalism: A Comparison of the United States and Canada," *Indiana Journal of Global Legal Studies* 3:1 (1995).

<sup>14)</sup> See, e.g., Huyen Pham, "The Inherent Flaws in the Inherent Authority Position: Why Inviting Local Enforcement of Immigration Laws Violates the Constitution," *Florida State University Law Review* 31 (2004);

camp are consisted of scholars with non-Anglo last names, perhaps leading to an implication that immigrant-legal scholars tend to oppose the idea of sub-federal control of immigration.

The overwhelming interest in the issue from the legal scholarship was not without a political and social science partner. Although the interest and literature on the issue developed much slower, social scientists have approached the matter in much more systematic ways than the legal scholars and far from discussing only in terms of constitutionality and practicality of immigration federalism. Earlier contribution developed as response to California's passage of Proposition 187 in 1994, tracing the historical evolution of state's role in immigration. Although the earlier works tended to highlight mainly the situation in the 1880s, in a time before the arrival of plenary power, they contributed to the literature dynamics arguing that immigration policymaking is not necessarily the exclusivity enjoyed only by the federal government (Skerry 1995). In doing so, social scientists who contributed to the literature earlier seemingly sympathized with the state governments, expressing that federal inaction to actively tackle the matter of immigration is essentially an act of burden shifting; reluctance of the federal government to address the matter on immigration places economic, social, and political burdens on sub-federal units of governments.

Since then, social scientists have contributed to the understanding of immigration federalism generally in three ways. First, major scholarship tended to take on the issue in a similar vein as the earlier works by documenting the "how" aspect of immigration federalism. That is, literature addressing the methods in which sub-federal governments have involved themselves in the making and enforcing of immigration policies. Some efforts were made approaching the matter in a twofold manner, stating both the *de facto*, and *de jure* ways in which immigration federalism had functioned.<sup>15)</sup> More specifically,

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Muffazer Chisti, "The Role of States in U.S. Immigration Policy," *New York University Annual Survey of American Law*, 58 (2002); Linda Bosniak, "Immigrants, Preemption, and Equality," *Virginia Journal of International Law* 35 (1994); Hiroshi Motomura, "Federalism, International Human Rights, and Immigration Exceptionalism," *University of Colorado Law Review* 70 (1999); Hiroshi Motomura, "Immigration and Alienage, Federalism and Proposition 187," *Virginia Journal of International Law* 35 (1994); Michael Olivas, "Preempting Preemption: Foreign Affairs, State Rights, and Alienage Classifications," *Virginia Journal of International Law* 35 (1994); Michael Olivas, "Immigration-Related State and Local Ordinances: Preemption, Prejudice, and the Proper Role for Enforcement," *University of Chicago Legal Forum*, (2007).

<sup>15)</sup> See, e.g., William McDonald, "Crime and Illegal Immigration: Emerging Local, State, and Federal

some argued that the federal exclusivity is a mere “myth,” and that the states have played and will continue to play a crucial and innovative role in immigration policymaking (Filindra and Tichenor, 2008). This line of argument is in conjunction with former US Supreme Court Justice, Louis Brandeis’ famous idea of states as “laboratories of democracy,<sup>16)</sup>” especially because state-specific immigration policies can function as an effective “trial-and-error” mechanism, not only for themselves, but also for national immigration policies, that state legislation on immigration is essentially a message that the state governments is sending to Washington D.C., as an attempt to encourage the federal government to act (Newton and Adams, 2009). Some research focused more on examining how local actors play a more effective role on immigration enforcement. In doing so, this research offered three specific ways in which sub-federal units can become a better liaison for the task of what the federal government claims it to be theirs. First is the federal government’s allowance of regional differentiation on immigration enforcement; Second is the decentralization of federal immigration enforcement, such as Immigration and Customs Enforcement, in a way that provides regional quarters and offices to develop some sort of arrangements with local governments; Third is providing state governments with liberal capacity to enact and enforce their own immigration legislation (Wells, 2004).

As the years have progressed, more statistical methods were applied in analyzing the matter. For instance, Andrew Thangasamy conducted a comparative study on the variation of state policies for undocumented immigrants in four states, New Mexico, Colorado, Washington, and Kansas between the years of 1998 to 2005. His findings suggested that, in contrast to conventional wisdom, the demographic factor, and state leadership partisanship are not really important in shaping a state’s policy towards undocumented immigrants (Thangasamy, 2010: 33). Rather, Thangasamy suggests that the organization of state bureaucracy is what really affects the variation in states’ immigration policies. In contrast to Thangasamy’s findings, Karthick Ramakrishnan and

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Partnership,” *National Institute of Justice Journal*, Jun (1997); Miriam Wells, “The Grassroots Reconfiguration of U.S. Immigration Policy,” *International Migration Review* 38 (2004).

<sup>16)</sup> Justice Brandeis first popularized the term, “States as Laboratories of Democracies.” To understand how the concepts have been applied in the scholastic discourse on federalism, and state policymaking, *see*, James Gardner, “The ‘States-as-Laboratories’ Metaphor in State Constitutional Law,” *Valparaiso University Law Review* 30 (1996): 475-491.



Tom Wong's study on local governments' ordinances affecting undocumented immigrants suggested that partisanship in local politics "matters greatly in accounting for the rise in ordinance activity related to the incorporation of undocumented immigrants."<sup>17)</sup> Ramakrishnan and Wong's study showed great interest in attempts to find and address the fundamental causes of why states are looking to gain the power to regulate immigration on their own. With the overwhelming amount of data<sup>18)</sup>, Ramakrishnan tested a total of 13 factors that may have had triggered state governments to challenge the federal exclusivity over immigration policymaking.

As methods of analysis have evolved to show more quantitative characteristics, scholars like Jorge Chavez and Doris Marie Provine utilized the method of regression analysis to test a number of factors that could have effected the triggering the local governments to enact their own versions of immigration policies. Chavez and Provine's results echoed that of Ramakrishnan and Wong, ultimately showing that the conservative citizen ideology is the primary factor in explaining the expansion of restrictive sub-federal immigration policies. Furthermore, Chavez and Provine also showed that the change in demographic backgrounds, especially the growth of the Hispanic population, affect the states to enact tough restrictive immigration policies.<sup>19)</sup> Interestingly, despite employing similar data and testing the same factors, scholars have not come to a coherent conclusion as to which factor is significant in triggering or affecting states to enact anti-immigration laws. Scholars like Hopkins argued against the findings of Ramakrishnan and Wong, seeing partisanship as an insignificant factor, but rather the percentage of immigrants in a city as profoundly significant.<sup>20)</sup>

The latest contribution to the scholarship mixes a batch of legal scholarship with social science. By combining legal analysis with empirical data, and statistical methods of analysis, Monica Varsanyi, Paul Lewis, Doris Provine, and Scott Decker are digging further

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<sup>17)</sup> Karthick Ramakrishnan, , and Tom Wong. "Partisanship, Non Spanish: Explaining Municipal Ordinances Affecting Undocumented Immigrants." In *Taking Local Control: Immigration Policy Activism in U.S. Cities and States*, edited by Monica W. Varsanyi, (Stanford: Stanford University Press, 2010), 73-93.

<sup>18)</sup> The authors claimed to have acquired over 25,000 local government data combined from multiple sources.

<sup>19)</sup> Jorge Chavez, and Doris Marie Provine, "Race and the Response of State Legislatures to Unauthorized Immigrants," *Annals of the American Academy of Political and Social Sciences* 623 (2009).

<sup>20)</sup> Daniel Hopkins, "Politicized Places: Explaining Where and When Immigrants Provoke Local Opposition," *American Political Science Review* 104 (2010).

in to the stages of devolution of immigration policymaking to the local level beyond just federal-state level.<sup>21)</sup> This approach ultimately steps down the ladder of units under analysis to the municipal and city levels where the lives of immigrants can be better examined and observed than at the state-macro level. Newly contributed works highlight the need to expand the existing “insights in to an emerging phenomenon with implications, not just for the evolution of American federalism, but for the constitution of community in American society[,]” essentially arguing that immigration federalism is not a simple federal-state issue, but rather, it is an issue that affects all levels of community, especially in the US (Varsanyi et al. 2012: 143).

In an effort to verify the claims made in the studies that incorporated quantitative analysis in seeking the trigger mechanism for the sub-federal activism on immigration policymaking, this research piloted a regression analysis. Alongside the conventional economic, demographic, political factors and variables used in previous studies, the pilot test included few new variables, which had not been tested, such as safety factors and more party politics variables. The results of the pilot multivariable regression analysis that tested the degree of influence of 7 factors on all 50 states across the US on the matter of omnibus immigration policies showed to confirm the claims made in the existing literature; the matter of sub-federal immigration reform is largely a battle of the parties, and the economic atmosphere of the time significantly influences states to challenge the federal exclusivity. The detailed illustration of how this pilot was conducted is addressed in Appendix B, nonetheless, the table below illustrates the results of the pilot multivariable regression analysis.

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<sup>21)</sup> Monica Varsanyi, et al., “A Multilayered Jurisdictional Patchwork: Immigration Federalism in the United States,” *University of Denver Law & Policy* 34 (2012).

**Table 1.1 Measures of State's Likelihood to Enact Omnibus Immigration Bill**

	(a) Coefficients	(b) Odds Ratio
% of Democrats in State Lower House (HDem)	-0.074** [0.032]	0.929** [0.030]
Governor's Party Affiliation (STGov)	-1.118 [0.912]	0.327 [0.298]
State Legislature & Governor Republican Alliance (RepAlliance)	0.020 [0.869]	1.020 [0.887]
State Crime Rates (Crime)	-0.000 [0.000]	1.000 [0.000]
State GDP per Capita (GDP)	-0.000 [0.000]	1.000 [0.000]
State Unemployment Rate (Unemp)	0.311** [0.125]	1.365** [0.170]
% of Non-White Population (NWP)	0.041* [0.026]	1.041* [0.027]

*Notes:* Both (a) and (b) models are logistic regressions. Standard error are in brackets.

\*Significant at 10 percent

\*\*Significant at 5 percent

\*\*\*Significant at 1 percent

A broad consensus is seemingly building by the results of the statistical models that sub-federal immigration activism is largely borne out of partisan divide and competition. However, there are several shortcomings of research that employ statistical analysis as a method to test the significance of variables and factors, such as that of Thangasamy's, and Ramakrishnan and Wong's research. First, many of these statistical analyses overlook the years 1994 and 2010. For instance, Thangasamy's research only looked at the years between 1998 and 2003, and Ramakrishnan and Wong's research focused on the years between 2000 and 2007. As mentioned in the introduction, the Arizona case and the 1994 California cases are not included in either of these bodies of research, and these two cases epitomize the state v. federal tension. While these two cases cannot singlehandedly test the significance of many factors, such as demographic, economic, and political factors, they certainly mark a sudden leap, which may severely affect the outcome of statistical analyses. Secondly, many statistical analyses have claimed to test factors and independent variables that may not be directly linked to the dependent variable. The lost link between independent variables and the dependent variable can severely damage the validity of research, and could potentially lead to misinterpretation of

its phenomenon. For instance, while Thangasamy's independent variables, in-state tuition access, issuance of driver's license, and parental care availability for undocumented immigrant women, are important, these policies are not direct regulatory measures concerning immigrants, which is not in the scope of what this research aims to analyze: the politics of regulation of immigration, legals and illegals alike. Furthermore, and although important, the scope of Ramakrishnan and Wong's research is on municipal level ordinances, which cannot explain why and how state level legislation on immigration regulations occur.

More importantly, the multivariable regression model employed in the pilot test of this research came short of proving the results beyond reasonable doubts of hasty generalization. In other words, while the statistical findings give key clues as to possible factors in influencing individual states of local immigration regulation activism, they seldom show the high rate of applicability on all cases concerning the matter across the US. The scarce cases of sub-federal immigration enforcement activities are outlier cases that make generalization difficult for all such instances. That is, each locality is equipped with or is under specific situations requiring a case-by-case qualitative analysis, which can ultimately contribute to the findings and implications of the quantitative models – ultimately the goal in which this research aims to do.

Clearly, scholarship in immigration federalism is evolving. The latest contributions to the literature are remarkably similar in nature with this very research, and even aims to answer the same question that this research is addressing. There are three major contributions that this research can make to the evolving scholarship. First, this research data can be used as a reference point for the current position and status of how far the scholarship on immigration federalism has evolved. Second, this research can serve as a useful tool in verifying previous studies and their results. By conducting this research with analogous fields of data from previous literature, this research can serve as a handy verification to former studies with verifiable methods that can be repeated. Lastly, this research can shed light on which factors have been overlooked and explore other new, yet significant, independent variables in order to find the root cause of why some sub-federal units of governments challenge the federal exclusivity on immigration policymaking. In all,

as a part of the burgeoning academic corpus on immigration federalism, this research is a pivotal work in progress – a necessary step in diagnosing how well American democracy and federalism has evolved in the control and treatment of immigrants in the US.

### **III. Research Design**

This research exhibits a single case-study research model that provides an in-depth exploration seeking clues to the central research question: under what conditions do states challenge the federal exclusivity on immigration policymaking? In doing so, the state of Arizona was selected as the key subject of in-depth analysis not only because of its abundant variables that may satisfy the ultimate goals of this research, but also because of its paramount importance in setting a national atmosphere concerning issues of local immigration regulation.

This study is roughly divided in to three parts. In Chapter 2, equivalent of Part I, this research describes and tests the validity of claims set forth by scholars on the topic of constitutionality and practicality of immigration federalism. In doing so, this research traces the legal and institutional conditions in which subnational governments challenge the federal exclusivity on immigration policymaking. Analyzing the constitutional and legal logic of subnational challenges provides useful insight in to exploring the atmosphere in which certain states invited themselves to the table in discuss immigration regulation.

In Part II, or Chapter 3, an in-depth exploration of Arizona and the infamous SB1070 is conducted where a range of factors are tested in search of triggering mechanism that can explain why the states have taken the matter of immigration to their own hands. The simplest, and the most common, explanation for the sub-federal governments' consideration of passage of anti-immigrant, or omnibus, immigration laws tend to focus primarily on demographic changes associated with consequential socio-political economic changes. However, while demographic changes and the situation of the labor market outcomes may be necessary factors, they are unlikely to be sufficient ones. Furthermore, past research on sub-federal governments' immigration-related

policies indicate that the political ideology and partisan leanings of governing institutions and the electorate play an important role (Ramakrishnan and Wong, 2010). This research will test the validity of the previous claims, as well as the applicability of the results from the pilot test by analyzing the following four different factors<sup>22)</sup>:

### 1. Economic Factor

Throughout US history, immigration policymaking had an economic underpinning with the importation of labor. Furthermore, economic hardship and deprivation are often the official reasons why states have enacted restrictive immigration policies in the past.<sup>23)</sup> In this research, the economic factor will be represented using unemployment, and GDP per capita statistics from all 50 states between 1991 and 2011. This research hypothesizes that, should there be a significant link between economic statistics and the subnational challenges, then states perceive immigrant population as the root of the stagnating economy, and have thereby implemented restrictive immigration policies in lieu of other solutions to fix the lingering state economies. In detail, this research hypothesizes a possible causal link between harsh economic conditions of a state with the enactment of sub-federal immigration laws that ultimately go to challenge the federal exclusivity. The hypotheses will be tested by comparing the unemployment rates and the change in the GDP per capita of Arizona from the proposed years. Economic data was collected mainly from the recorded data of the US Bureau of Labor<sup>24)</sup>, and the US Censi 1990, 2000, and 2010.

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<sup>22)</sup> Note that initially, the statistics for the four factors were collected for all 50 states across the United States for the pilot test. Portion for the state of Arizona was specifically extracted from the pool of data for the in-depth analysis.

<sup>23)</sup> Section 1 of California's Proposition 187 reads that "The People of California find and declare as follows: that they have suffered and are suffering economic hardship caused by the presence of illegal aliens in this state. That they have suffered and are suffering personal injury and damage caused by the criminal conduct of illegal aliens in this state. That they have a right to the protection of their government from any person or persons entering this country unlawfully..." The text of Arizona's SB 1070 makes similar remarks, how that bill is intended to deter the illegal entry and presence of aliens and economic activity by persons unlawfully present in the US.

<sup>24)</sup> "Labor Force Statistics Including the National Unemployment Rate," *Bureau of Labor Statistics*, accessed Sept. 10, 2014, <http://www.bls.gov/data/#unemployment>; "Gross Domestic Products by State," *Bureau of Labor Statistics*, accessed Sept. 10, 2014, <http://www.bls.gov/>.

## 2. Demographic Factor

Closely linked with the economic factor, demography of the states must be analyzed in detail. Not only because of its familiarity with the economic factor, but also because it is often championed as the most common factor in explaining states' resistance to federal exclusivity over immigration policymaking. For the demographic factor, this research examined the trend of Arizona's number of non-white persons provided in the 1990, 2000, and 2010 US Census data<sup>25)</sup>. The US Census' official method in categorizing different races and ethnicities is as follows: Native Americans, Asians, Hispanics, Blacks, and Whites. There are different ways to calculate Hispanics (in white Hispanics and non-white Hispanics), but this research saw that all races and ethnicities that are not white as non-white population. This research combined the numbers of all non-white population and calculated how much that number accounted for in proportion to the total population of a state per year in order to obtain the observable data.

Although the state's challenging legislation, or the omnibus immigration bill tends to exclusively deal with regulating illegal immigrants, it is accurate to see the overall number of non-white persons because ethnic minorities are generally conceived of as foreigners, not as Americans. The executive decision to track non-white populations were made partly because the published data on the number of illegal immigrants are unreliable<sup>26)</sup>. Furthermore, because despite America's championing image as the world's most pluralistic, multiethnic country, previous studies have found that public attitude towards ethnic minorities tend to perceive them as foreigners.<sup>27)</sup> The hypothesis on the demographic factor tests whether there is a specific threshold that could have led to a subsequent subnational challenges to the federal exclusivity on immigration policymaking.

## 3. Partisanship Factor

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<sup>25)</sup> Data from the *United States Census 1990, 2000, 2010* (United States Census Bureau), accessed Aug. 8, 2014, <http://www.census.gov/>.

<sup>26)</sup> Statistics and data on illegal immigrants are mere assumptions and predictions. Sources that claim to publish accurate data lack validity, simply because illegal immigrants are "off-the-radar," meaning that they are undocumented. No matter which methodology a scholar employs in tracking the undocumented, it is almost impossible to get accurate data on the undocumented.

<sup>27)</sup> Christian Joppke, *Immigration and the Nation State* (Oxford: Oxford University Press, 1999).

Conventional wisdom holds that the Republican Party is not hospitable to immigrants. This was especially the case considering that both Arizona and California had Republican Governors at the time when the two states challenged the federal government. The Republican political ideology favors smaller federal government, and Republican politicians are notorious for challenging the downsizing of the federal government. This research collected data of the states' legislature party composition from NCSL<sup>28)</sup> and state governors' party affiliations from 1991 to 2011. For the Arizona in-depth analysis, data specific to Arizona was extracted from a pool of data that contains information for all 50 states. This research hypothesizes that the more Republican legislators that are present than Democratic legislators, the more likely that a state will challenge the federal exclusivity on immigration policymaking. Conversely, the more Democrat legislators that are present than Republican legislators, the less likely that a state will challenge the federal exclusivity on immigration policymaking.

Nonetheless, the state legislature is not the sole partisan representation of a certain state. It is important to consider other factors that have heretofore been marginal in explanations of state challenges to the federal exclusivity related to immigration regulation, including state legislature partisanship. In many ways, the proportion of Republicans in a region can be seen as a proxy for political ideology, meaning that they are more likely to take conservative positions on the matter of immigration (especially those concerning undocumented immigrants). Hence, in the process of testing the importance of state partisanship, this research will also analyze the relative merit of other political factors that may arguably be related to states' restrictive immigration policymaking:

- *Governors' party-line politics and reelection*
- *Split State government between state legislature and governor partisanship*

The above two factors are measures of the potential electoral strength for governors' reelection and party allegiance, meaning that governors who promote restrictive immigration policies may do so solely to show their allegiance to the respective party's political ideology on immigration for the purpose of getting reelected. These factors will

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<sup>28)</sup> "State Partisan Composition," *National Conference of State Legislatures*, accessed Aug. 18, 2014, <http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx>.



be tested in the same manner as mentioned for hypothesis 3-1.

#### 4. Security Factor

This research hopes to identify the causal relation to the problem with a new set of factors, state criminal rates collected from the FBI Uniform Crime Reports, prepared by the National Archives of Criminal Justice Data<sup>29)</sup>. Overall crime rates of each state from 1991 to 2011 were collected independently of each states by each year using the data from the source mentioned above. Should there be a significant relation between the statistics of minorities, crime rate, and the subnational challenges, this research could imply that states that exceed a certain rate of crime, implemented restrictive measures on immigration as possible solution to the rise of crime rates, therefore inferring that American people perceive immigrants or minorities as sources of criminal activities. This research hypothesizes that the higher a crime rate in a multiethnic population, the more likely that a state will enact omnibus immigrant policies as solutions to counter the surge of crime rate.

Generally, the FBI categorizes crimes in two ways, violent crime, and property crime. Under these two categories, there are subcategories that consist of specific crimes that contribute to the overall numbers and rates of violent crimes. Types of crime that are counted as violent crimes are: murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault. Types of crime that are counted as property crimes are: burglary, larceny theft, and motor vehicle theft. In this research, rates of violent crime and property crime will be combined to provide the overall crime rate of the state.

Along with the testing of the factors, this research explains the implications from the examined data on the tested factors and how they fit in with the current theories and discourse of immigration federalism. In detail, the search of causal explanation presents a challenge to the generally conceived notions and popular explanations of the existing literature arguing that they require further exploration, and generally a deeper rethinking of the models and assumptions used by scholars of immigration federalism. This is

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<sup>29)</sup> The U.S. Federal Bureau of Investigation, "Uniform Crime Reporting Statistics," *U.S. Department of Justice*, accessed: Sept. 29, 2014, <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>

especially the case for the scholars who have contributed to the literature with quantitative analysis by employing statistical methods in testing the root cause of state challenges. Many works that use similar variables, yet arrive at contradicting conclusions in tackling research questions remarkably resemble each other and can most definitely use this research as a reference point in the rethinking of ideas.

Finally, proceedings of Part III, or Chapter 4 and 5 compares across the texts of the two omnibus immigration bills, Arizona's 2010 SB 1070, and California's 1994 Proposition 187, as an attempt to find common ground to where the quantitative results fit in terms of the actual omnibus immigration laws themselves. In doing so, court rulings of the two cases are examined in detail; depending on which level of federal court the laws were tried under, respective court rulings are examined with annotated explanations. Largely, this section of the research is an attempt to understand state omnibus immigration policies from the federal government's perspective, away from the conventional state-centered perspective. Lastly, this research discusses the issue of "shepherded federalism," highlighting the uncomfortable relationship between the federal and state governments – the blurry position of states between 'sovereign' and 'servant' – in terms of immigration policymaking. Lastly, this research concludes by suggesting a better proliferation of sub-federal immigration policymaking under the guidance of, and greater partnership with, the federal government.

In Appendix B, this research provides statistical analysis that tested the influence of abovementioned factors of economic, social, and political conditions on the passage of sub-federal immigration policies. The statistical analysis not only tests the validity of the previous researches that employed statistical models to understand the current phenomenon of sub-federal activism on immigration policymaking. This statistical analysis in Appendix B is an attempt to see whether a triggering mechanism can be discovered through a quantitative method in the study of sub-federal immigration policymaking. More specifically, here, the research utilizes the statistical analysis tool, STATA, to test the statistical significance of seven independent variables on their relations to the dependent variable throughout. In employing the statistical model, this research originally sought to utilize the method of discrete-time events history analysis. Event

history analysis is a technique that allows researchers to study the social processes that lead to the occurrence of an event. Here, event refers to a change from one state to another and is measured as a categorical/discrete dependent variable. This method originated from the bio-medical domain, but this statistical technique had been employed by many other academic disciplines.<sup>30)</sup> More simply put, an event history is a “record of when events occurred to a sample of individuals [... and it is said to be the most] ideal for studying the causes of events (Allison, 1982: 62).” However, upon realizing that discrete-time event history analysis is a more suitable method in seeking the influence of a series of variables on a dependent variable in a given time frame, the decision was made to manipulate the intended method to control time. By controlling time, this research sought to test the dataset containing information of all 50 states across the United States between 1991-2011, and which factors have the most influence in forming favorable conditions to challenge the federal exclusivity on immigration policymaking.

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<sup>30)</sup> Since the 1980s, this method has been favored by the sociology discipline. There are different terminologies for this method: Event History Analysis, Survival Analysis, Duration Analysis, Failure Time Analysis, and Hazard Analysis. In mathematical terms, this analysis is used when the social process is concerned with change in  $y(t)$ . For example, “transitions across labor market status, from unemployed to employment,” “transition out of marriage to divorce/separation,” “transition from poverty to financial security,” “recidivism, what factors predict further criminality?,” etc.

## **Chapter 2**

### **Constitutionality and Legality of Immigration Federalism**

This research examines the governance conflicts of the US states versus the federal government through the lens of immigration policymaking. Traditionally, and conventionally, immigration policymaking since 1843, have been exclusive rights vested in the power of the federal government. Since the surge of immigrant migrant workers in the US, some states have been challenging the federal government's exclusivity by enacting their own state-specific immigration policies that sought to either directly or indirectly regulate immigration. Chapter 2 examines the legal basis in which the state governments contribute to the foundation of challenging the federal exclusivity to immigration regulation – that is, this chapter focuses on examining the constitutionality of state immigration regulations, such as the Arizona SB 1070, and the California Proposition 187. It is absolutely critical to understand the logic behind state governments' actions in order to diagnose exactly how and why the challenges to the federal exclusivity have unfolded in the past.

On July 6<sup>th</sup>, 2010, the US Department of Justice filed a lawsuit against the state of Arizona in the US District Court for the District of Arizona concerning the matter of Arizona SB 1070. The Justice Department requested that the law be declared invalid, or illegal, since it interferes with the immigration regulations rights exclusively vested in the federal government. In doing so, the Justice Department cited the notion of federal preemption and argued that “[the] Constitution and the federal immigration laws do not permit the development of a patchwork of state and local immigration policies throughout the country,” and that “[the] immigration framework set forth by Congress and administered by federal agencies reflects a careful and considered balance of national law enforcement, foreign relations, and humanitarian concerns – concerns that belongs to the nation as a whole, not a single state.”<sup>31)</sup> Preemption cases are unique in a sense that it

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<sup>31)</sup> See, e.g., “Feds Sue to Block Ariz. Immigration Law,” *CBS News*, Jul. 6, 2010, <http://www.cbsnews.com/news/feds-sue-to-block-ariz-immigration-law/>; the CNN Wire Staff, “Feds Sue to

sets precedents on where and how the federal government can intervene and limit the state governments' lawmaking powers and range. Often times, preemption cases raise questions whether, in the absence of any congressional statement on the issue at stake, the state governments possess the authority to undertake particular conduct concerning the matter at hand, provided that they do so in a way that mirrors the terms of the federal law as stated in the 10<sup>th</sup> Amendment of the US Constitution. In other words, the lack of congressional statement or precedents on issues justifies the state governments to enact policies and regulations that "mirror" the designs of the federal law. Hence, such theory of state authority to enact policies is sometimes referred to as the "mirror image theory" of cooperative state enforcement, and has formed the basic foundation of the Arizona State Legislature's decision to design and enact SB 1070.

The first section of Chapter 2 begins by examining how states like Arizona and California utilized the mirror image theory as their basis of challenging the federal exclusivity over immigration regulation. In doing so, this chapter reviews the discussion concerning the testing of the constitutionality of the application of mirror image theory from the perspective of the current US Constitution. It is important to evaluate the applicability of the theory on immigration regulation in order to meticulously diagnose the constitutionality of states' actions of enacting local immigration policies. The later part of Chapter 2 compares the constitutionality of American immigration federalism to that of Canada, showing a distinct contrast between the immigration regimes of two countries; this way, the understanding of the American case can be better understood.

## **I. Mirror Image Theory and Its Implications for State Legislations**

The American federal government enjoys plenary authority under Article I of the US Constitution, otherwise known as the separation of powers section of the Constitution.

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Overturn Arizona Immigration Law," *CNN*, Jul. 7, 2010, <http://edition.cnn.com/2010/POLITICS/07/06/arizona.immigration.lawsuit/index.html?hpt=T2>.

The separation of powers between the different levels of government designates which regulatory or governance power or privileges belong to whom. Nonetheless, often times, concurrent and residual powers, which are not necessarily explicitly mentioned in the Constitution, are either shared by or left to individual states to decide upon to manner with which they are dealt. The understanding of locating where the residual and concurrent powers are in different levels of government is crucial in grasping the logic behind state governments' challenges to the federal exclusivity over immigration regulation.

When state governments attempt to legally usurp regulatory powers in the name of residual or concurrent<sup>32)</sup> power sharing, which tends to resemble the authority vested in the federal government, such as labor regulation, immigration regulation, or foreign relations, they must do so in a way that it escapes federal preemption challenges. While the lack of explicit constitutional delegation of powers related to immigration under a specific level of government may make it seem like a residual power, immigration is largely considered as a concurrent power in the United States.<sup>33)</sup> Immigration as a whole falls under the general scope of international relations; naturalization and citizenship matters of immigration concerns affairs with a foreign nation, thereby that portion of immigration regulation is sanctioned as an exclusive federal right, whereas the immigration in to and between states is regarded as states' privilege. Such concurrent legislative authority has been regarded largely as an efficient way of handling a matter, especially because concurrency enables the "federal government to either ignore or postpone the exercise of potential authority in a particular field until it becomes a matter of federal importance (Watts 2008: 88)."

According to Kris Kobach, the man credited to having authored Arizona SB 1070, and current Kansas Secretary of State, the application of the mirror image theory is necessary for states in enacting regulation, specifically in the case of immigration. To do

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<sup>32)</sup> While residual authorities are retained by the sub-federal governments, normally where concurrent jurisdiction is specified, the constitution has specified that in cases of conflict between federal law and sub-federal law, the federal law prevails. See Ernest Young, "Dual Federalism, Concurrent Jurisdiction, and the Foreign Affairs Exception," *The Georgetown Law Review* 69 (2001): 139-188.; J. A. C. Grant, "The Scope and Nature of Concurrent Power," *Columbia Law Review* 34 (1934): 995-1040.

<sup>33)</sup> See Table 195 in, Ronald Watts, *Comparing Federal Systems* 3<sup>rd</sup> Ed. (Institute of Intergovernmental Relations, 2008).

so, however, states must satisfy the following three conditions: “(1) the statute must not attempt to create any new categories of aliens not recognized by federal law; (2) the statute must use terms consistent with federal law; and (3) the statute must not attempt to authorize state or local officials to independently determine an alien’s immigration status, without verification by the federal government.”<sup>34)</sup>

In 1889, through the case of *Chae Chan Ping v. United States*, the power to control and regulate immigration ascended to the status of an exclusive federal right.<sup>35)</sup> This was the case that granted the plenary power, or full authority to the federal legislative and executive branches to regulate immigration. The logic behind the rulings of this case was that the federal government is responsible for the treatment of a foreigner, regardless of which state he or she may reside. Therefore, since 1889, the American Court has been recognizing “that state immigration laws presented the impermissible possibility of co-opting national authority to establish foreign relations because such state laws could impact ongoing national relations with foreign countries (Hu, 2012: 561).” Under the Supremacy Clause, the federal government holds superiority over foreign relations, and the Court’s decision to interpret immigration regulation as a subset of foreign relations – though it may not be explicitly mandated in written language – has set a legal foundation as to why the federal government sees state immigration laws to be acts of illegal usurpation, or an act of encroachment.

In terms of immigration regulation, the 1889 case clearly seemed to have set the nation-wide standard that states cannot commandeer or challenge the supremacy of the federal government to conduct foreign relations. However, the question still remains as to why states like Arizona and California knowingly challenged the federal government in the 1990s, and again in the 2010s. It is worth noting that some scholars see the recent surge of local immigration regulatory laws is indeed a direct challenge to the federal exclusivity over immigration regulation by reverse-commandeering. Reverse-commandeering began to appear after *New York vs. United States* (1992), which legitimized the principle of

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<sup>34)</sup> Carissa Hessick, “Mirror Image Theory in State Immigration Regulation,” *Supreme Court of the United States Blog*, Jul. 13, 2011, <http://www.scotusblog.com/2011/07/mirror-image-theory-in-state-immigration-regulation/>.

<sup>35)</sup> *Chae Chan Ping v. United States*, 130 U.S. 581, 609 (1889).

anti-commandeering in efforts to conserve dual sovereignty in American federalism. In modern days, especially in the last 20 years, the principle of anti-commandeering has been reversed in the case of immigration since state and local governments have deliberately attempted to “break the exclusive power of the federal government to dictate immigration policy (Hu, 2012).” Clearly, the sub-federal governments have utilized the mirror image theory in doing so.

The doctrine of anti-commandeering is rather simple; it basically states that the federal government cannot force state or local governments to act against their will. Roots, or the blueprint for resisting federal hegemonic power can be found in one of the most sacred documents in the history of federalism, the *Federalist Papers*. In *Federalist* 46, James Madison outlines several strategies that states can adopt, should there come a time when “an unwarrantable measure” or “even a warrantable measure” of the federal government directs the national spirit to overpower the federal government.<sup>36)</sup> Madison’s masterful description of the justice of “refusal to cooperate with officers of the Union” can be best interpreted as the first American example and the philosophy of anti-commandeering. Anti-commandeering doctrine does not explicitly lead to unnecessary use of it to diminish the role of the federal government, yet it certainly serves as a powerful tool that sub-federal governments can employ to halt any federal acts that are anti-constitutional or counter-constitutional and foresee the unequal empowerment of the federal government. Ultimately, what seemed to be the justifying doctrine that should serve as the main vehicle to protect and conserve the dual sovereignty between the federal government and the state governments had a critical loophole in its logic that allowed the sub-federal governments to challenge the federal government in quasi-enumerated concurrent powers cases, like immigration regulation through the application of the mirror image theory, thereby “reversing” the act of commandeering from what had traditionally been a federal-to-states direction to a now states-to-federal direction (Hu, 2013).

What must be examined further is whether the sub-nationals’ application of mirror image theory on their immigration regulation is constitutional in nature in the

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<sup>36)</sup> Alexander Hamilton et al., “Federalist 46,” in *The Federalist Papers*, ed. Alexander Hamilton (1982).



current American legal system that sees the importance of federal preemption. In testing the constitutionality of state and/or local immigration laws, the question ultimately boils down to the very basic and core nature of: under which law does immigration belong? As mentioned before, and as the federal government argues, the US federal government has maintained its hegemony over the issue of immigration by arguing that immigration is a foreign policy matter, under which the Constitution provides its basis for federal jurisdiction. The federal government widely accepts its dominance as constitutionally mandated, believing that the Constitution instills authority over immigration law solely to the federal government.<sup>37)</sup> So-called structural preemption view of immigration authority, this has been the conventional argument set forth by the federal government, stating that the Constitution withdraws entirely the immigration authority from the states and grants it to the federal government. This portion of the paper challenges such view, and argues that only a certain aspect of immigration law and policy – specifically, the acceptance and removal of non-citizens – are federal powers, and the rest are, despite no constitutional mandate, already practiced and situated under State jurisdiction.

The argument over federal hegemony of immigration regulation stems from the belief that immigration is part of foreign policy because its business entails entrance and treatment of non-citizens who are foreign nationals. At this juncture, it is critical to ask the question of whether the US Constitution requires federal exclusivity. To spoil the question before jumping in to the discussion, the Constitutional basis of the federal exclusivity is unclear. The reason being, currently and contemporaneously, the federal government has been preempting any and all roles for the sub-federal state and local government concerning some major concurrent powers, such as immigration, on three bases:

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<sup>37)</sup> See, e.g., Motomura, (1999): 1364 (endorsing federal exclusivity); Hiroshi Motomura, "Whose Immigration Law?: Citizens, Aliens and the Constitution," *Columbia Law Review* 97 (1997): 1567, 1596-1601 (reviewing Gerald Neuman's *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law*, (1996)) (arguing that immigration authority should rest exclusively at the federal level); Huyen Pham, "The Constitutional Right Not to Cooperate? Local Sovereignty and the Federal Immigration Power," *University of Cincinnati* 74 (2006): 1381 (arguing that immigration authority is exclusively federal); Michael J. Wishnie, "Laboratories of Bigotry? Devolution of the Immigration Power, Equal Protection, and Federalism," *New York University Law Review* 76 (2001): 493, 515-18; Cristina Rodriguez, "The Significance of the Local in Immigration Regulation," *Michigan Law Review* 106 (2008): 567, 571-72, 609-17 (challenging federal exclusivity because, as a functional matter, all levels of government operate as an integrated system to manage immigration, particularly assimilation); Schuck, (2007): (arguing against federal exclusivity, also as a functional matter, at least with respect to three areas of immigration policy – employment-based admissions, criminal justice, and employer sanctions – and noting that states, even immigrant receiving states with large populations of unauthorized migrants, can be more generous than the federal government).

structural (text of the Constitution), dormant, and statutory. Matters of immigration fall under the structural preemption, but for the sake of explaining why, the three bases of federal preemption must be briefly introduced.

In the first preemption, structural preemption, the Constitution allocates authority over a specific subject to the federal government, thereby granting federal hegemony over the domain, which prevents sub-federal governments acquiring any role in the issue. This type of preemption tends to have a clear textual basis, such as the federal exclusivity over bankruptcy<sup>38)</sup>, patent<sup>39)</sup>, and copyright<sup>40)</sup>. Or, this type of preemption can fuel itself from the existing structure and relationship formed by the Constitution. The following is the text from the Article 8, Section 8, which is the list of the enumerated powers that set forth the authoritative capacity of Congress (in this case, the federal government). The enumerated powers are used by the federal government to justify its exclusivity in specific issues, and whatever power not listed on this list are either concurrent or residual powers. Residual powers, as protected by the Tenth Amendment of the *Bill of Rights*, are “reserved to the States respectively, or to the people.”

Overtly, the federal government sees immigration as an enumerated power clearly stated to be under the federal jurisdiction provided by Article 1, Section 8, Clauses 3-4 of the US Constitution.<sup>41)</sup> The traditional understanding that foreign affairs are a federal matter was strengthened through a series of notorious supreme court cases that set this precedent, such as: *Zschernig v. Miller*, *United States v. Pink*, and *United States v. Belmont*. The final rulings of the mentioned cases are listed below in respective order:

“[State law can be struck down not because it violates the Supremacy Clause or the prohibitions on the state conduct in Article 1, Section 10, but rather because the laws may be] an intrusion by the state in to the field of

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<sup>38)</sup> U.S. Constitution. Art. I. § 8, cl. 4 (“To establish... uniform Laws on the subject of Bankruptcies throughout the United States....”).

<sup>39)</sup> U.S. Constitution. Art. I. § 8, cl. 8 (“To promote the Progress of Science and useful Arts, by securing, for limited Times to... Investors the exclusive Right to their... Discoveries....”).

<sup>40)</sup> U.S. Constitution. Art. I. § 8, cl. 8 (“To promote the Progress of Science... by securing for limited Times to Authors... the exclusive Right to their... Writing....”).

<sup>41)</sup> Clause 3-4 states, “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States[.]”

foreign affairs which the Constitution entrusts to President and the Congress.”<sup>42)</sup>

“Power over external affairs is not shared by the States; it is vested in the national government exclusively.”<sup>43)</sup>

“In respect of our foreign relations generally, state lines disappear. As to such purpose the state... does not exist.”<sup>44)</sup>

The logic here is that jurisdiction over foreign affairs lies exclusively in the hands of the federal government, and since immigration is a matter concerning foreigners, it seems right to leave the federal exclusivity untouched. As implied in midst of exploring the structural preemption, the conventional wisdom of the federal government is that immigration is a matter that can be structurally preempted. However, despite this traditional understanding, there are movements and opinions that undermine the *status quo*. The dissenting opinions come not only from liberally-minded people, but also from the American judiciary itself – dissenting views, which are at the core of “immigration federalism” will be discussed later in this section.

In the second preemption, dormant preemption, the Constitution prohibits sub-federal regulation on specific issues, even in the absence of federal policy. However, there are exceptions to this. Permitting of some regulation is allowed if and only if the sub-federal regulation on a specific issue is compatible with that of the federal government. This is where the mirror image theory comes in handy for state governments. When the federal government allows a sub-federal government to regulate in regards to these specific issues, the federal government’s guidance and authority is at the very foundation of the sub-federal government’s regulation. Therefore, state regulation on specific issues, if granted by the federal government, is allowed from time to time, and issue to issue. The most obvious example of constitutional law that embodies dormant preemption in the most simplistic manner is the Commerce Clause (Article 1, Section 8, clause 3), which prohibits states from interfering with interstate commerce. As shown in *American Trucking Association v. Michigan Public Service Commission*, the US Constitution

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<sup>42)</sup> See, *Zschernig v. Miller*, 389 U.S. 429, 432 (1968).

<sup>43)</sup> See, *United States v. Pink*, 315 U.S. 203, 233 (1942).

<sup>44)</sup> See, *United States v. Belmont*, 301 U.S. 324, 331 (1937).

prohibits a state “from jeopardizing the welfare of the Nation as a whole by placing burdens on the flow of commerce across its borders that commerce wholly within those borders would not bear.”<sup>45)</sup> Logically speaking, however, the special Congressional or Presidential grant of sub-federal authority over a specific issue goes against constitutional design. In relation to immigration, immigration does not fall under the dormant preemption simply because there is no need and no way to justify that it puts the entire nation in jeopardy through interstate commerce.

In the third preemption, statutory preemption, the Constitution allows<sup>46)</sup> the division of responsibilities and authority over a subject between the federal government and the sub-federal government. However, under this preemption, the federal government has the upper hand in the sense that it can preempt, through federal statute, a sub-federal role. This act of preemption is protected and enshrined in the Constitution through the Supremacy Clause (Article 4, clause 2). Unlike dormant preemption, the federal government’s argument that it has the right to preempt a sub-federal government’s attempt to regulate immigration matters is better understood under statutory preemption because the *status quo* is that the sub-federal government’s act of admission and removal of non-citizens is preempted statutorily. So out of the three bases of federal government justifications of preemption, the first preemption (structural preemption: the argument that the texts of the Constitution allows preemption) seems to be the only one that requires extensive review. Then question to answer here is, “does the structural preemption basis really provide justification of federal exclusivity over immigration? To jump to the conclusion once again, the answer is “no.” There are three reasons in support of this conclusion: 1) the text of the Constitution; 2) the institutional structure created by the Constitution; and 3) the precedents set by previous practices and rulings.

The text of the Constitution, as written above, does not guarantee federal exclusivity. In fact, the Constitution does not discuss the matter of immigration at all; rather, naturalization is the closest topic to immigration as the Constitution gets.<sup>47)</sup> Also,

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<sup>45)</sup> See, *American Trucking Association v. Michigan Public Service Commission*, 545 U.S. 429, 433 (2005).

<sup>46)</sup> It is argued that the textual silence of the Constitution’s lack of statement on immigration is an evidence that goes to show that the matter on immigration regulation is not granted exclusively at the hands of the federal government. See, *Huntington*, (2008).

<sup>47)</sup> U.S. Constitution. Art. I. § 8, cl. 4 (authorizing Congress “to establish a uniform Rule of Naturalization...

as listed in Article 1, Section 10, the Constitution forbids certain sub-federal governmental activities; however, this does not include regulation of immigration. That is, the federal government's authority to conduct immigration is not in the texts of the Constitution. It is possible that this textual omission is the masterful brainchild of the Framers who had the intent to share the authority among different levels of government, which allows for the interpretation that the omission is better understood as a political remedy surrounding the complication of slavery at the time (Zoldberg, 2009). Specifying and dividing the jurisdiction of immigration among different levels of government may have been much more complicated and sophisticated at the framing of the Constitution when slavery was still an important and *hot* issue.

Next, the Constitution created an institutional structure that promotes a uniform country despite having created a federal system. One of those structures is the federal government's institutional exclusivity over the entire naturalization process. Despite the link between naturalization and immigration, however, many non-citizens do not necessarily decide to take up American citizenship. The naturalization process is a complicated one that only allows permanent residents to be eligible; and to become a permanent resident can be even tougher than to become a full-fledged citizen. In this case, sub-federal governments are the ones who maintain an interest in selecting which non-citizens may be welcomed and which may not.<sup>48)</sup> On that note, it has been argued that immigration laws and policies reflect what some scholars have called "self-definition."<sup>49)</sup> Self-definition refers to a view of immigration in such a way that is closely linked to the public understanding of who they are (in this case, the Americans) and of whom the nation is composed. While the federal government argues that this process of self-definition is a national process because it concerns the national identity, *videlicet* having existing American citizens determine and select the next generation of Americans, the Constitution does not uphold the federal government's argument. Especially in the case of the US, given that citizens form multiple allegiances and identities

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throughout the United States").

<sup>48)</sup> Peter Spiro, "The States and Immigration in an Era of Demi-Sovereignities," *Virginia Journal of International Law* 35 (1994): 121-78.

<sup>49)</sup> See, Motomura, (1999): 1591; Zoldberg, (2009).

depending on in which state they reside or feel at home.

Furthermore, the federal government's justification over its exclusivity of immigration regulation by arguing that if the jurisdiction over immigration is shared with sub-federal governments, then the national interest will be jeopardized and compromised is unsubstantiated. It is likely that sub-federal governments will decide, under the auspice of federal guidance, on who they can admit or remove, or intend to integrate without compromising or jeopardizing the national government. All this goes to show that the institutional structure of the Constitution does not guarantee nor grant exclusivity to the federal government.

Last but not least, precedents from previous rulings and practices show that the federal exclusivity is not guaranteed and protected by the federal government regarding immigration. Before 1875, the individual states in the US actively participated in regulating immigration in numerous ways. Gerald L. Neuman, a law scholar, summarizes the history of immigration law prior to 1875 as the following:

Immigration law prior to 1875 was a complex hybrid of state and federal policy. Federal decision-makers validated certain local policies. Congress gave explicit approval to state quarantine laws and state laws excluding black aliens; Supreme Court Justices assigned some categories of immigration regulation to state police power in language that indicated approval rather than indifference; and the Executive urged foreign governments to respect policies whose only statutory embodiment was in state law. The failure to enact uniform immigration policies at the national level resulted from a combination of forces – not just pro-immigration sentiment, but also a desire to keep migration policy within state authority. When slavery ceased to divide the nation, national immigration regulation became possible (Neuman, 1993).

Although the immigration laws back in the 19<sup>th</sup> century did not resemble much of modern immigration laws and policies, it was clear that immigration culture at the time had an

enormous impact on shaping the immigration law of the time. The federal government's exclusivity became apparent when the states transferred their inherent right to the federal government along with the free movement of the former slaves. Shortly after the abolition of slaves, came the Chinese, and others from around the globe. The unrestricted entrance to the US at a time when there was no tight border security, immigration to the US was easier than ever. The influx of immigrants, and the inability of the state governments was what caused the states to give up on their rights over immigration regulation jurisdiction in the first place. As mentioned above, the ruling of the 1884 *Chae Chan Ping v. United States* set the precedent that states have no right to exert regulation of immigration. The US government's official response to when it assumed the direct control of immigration regulation was as a result of the *Immigration Act of 1891*.<sup>50)</sup> The years between the Supreme Court decision and the proclamation of federal immigration control shows that while the US government had vague ideas of the necessity for uniform rules concerning immigration, the institutionalization of immigration regulation did not happen from the founding of the union.

True, the states ceded what was once their right to the federal government. However, what is clear here is that the American historical practice, in regards to immigration, most definitely undermines the claims of federal exclusivity with its basis on structural preemption. Immigration federalism is more adequate than ever in this critical juncture in American history, because now the Americans have strong border security systems and an institutional structure of regulating the entrance and removal of aliens. Further, immigration to the US is restricted unlike then, which eventually led to the states ceding their powers to the federal government.

Essentially, the above discussion on the constitutionality of federal exclusivity reveals that that exclusivity is neither protected nor justified by the Constitution. Rather, immigration federalism seems to be a validated principle in terms of the implications of the Constitution. The mirror image theory not only enables states to enact regulatory laws regarding what is originally the federal government's enumerated power, but also gives

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<sup>50)</sup> "The Origins of the Federal Immigration Services," *U.S. Citizenship and Immigration Services*, accessed Oct. 28, 2014, <http://www.uscis.gov/history-and-genealogy/our-history/agency-history/origins-federal-immigration-services>.

states a chance to challenge the federal exclusivity over enumerated powers that are unclearly mandated in the Constitution, especially immigration. In lieu of a conclusion for this section, it is necessary to re-illustrate the need to analyze immigration laws and policies at a multidimensional angle. Within arguments introduced in the literature review section of this paper, it is worth distinguishing immigration law and policy in to two types. First is the immigration law and policy, which is concerned with admission, administration of federal immigration benefits, and enforcement, including removal. Second is immigrant law and policy, which is concerned with how immigrants are treated once they are admitted or, in the case of the undocumented, otherwise enter the US. This is a common distinction of immigration policy that reflects the general public's understanding on immigration in the US. Likely, it is possible to see immigration laws and policies in a threefold nature: 1) immigration rights; 2) immigration enforcement; and 3) immigration benefits. Here, immigrant rights are a type of civil law that is governed at the international level because it parallels human rights. Examples of immigration rights would include procedural rights afforded to defendants in criminal prosecutions, and the right to use the law to protect against misdeeds by others. Just like these, there are some aspects of immigration laws and policies that must be dealt by the federal government. Simultaneously, there are some which can be left in the hands of the sub-federal governments to handle on their own, thereby supporting the argument for immigration federalism.

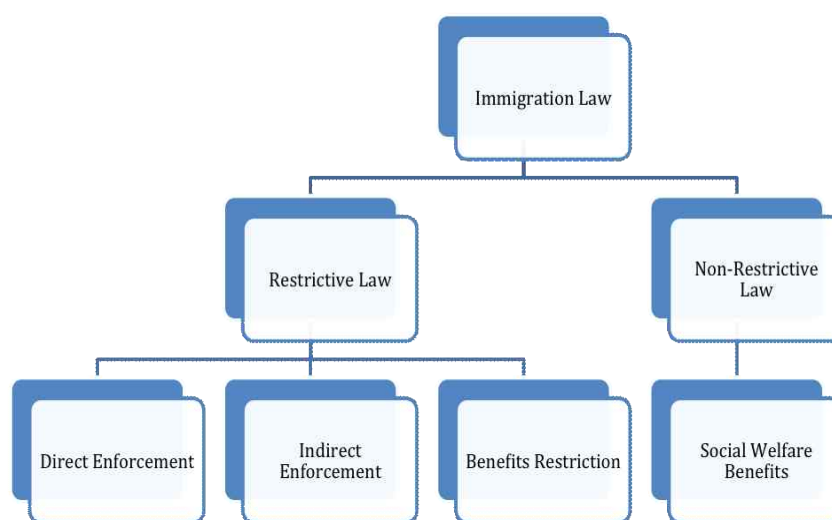
## **II. Types of Immigration Law**

As seen above, academia has yet to agree on how to classify or categorize immigration law. Legal scholars approach the typology of immigration laws and policies in a threefold manner, whereas, policymakers are much more broad in differentiating between the types of immigration laws. This paper ultimately takes the side that regulation of immigration is broadly divided in to two dimensions. That is, there are two major dimensions to immigration policymaking: one dimension is immigration control;



the other is immigration integration. The reason why both dimensions are considered as immigration regulation is because both control and integration either directly or indirectly control the flow of immigration. For some scholars, the popular practice on the typology of immigration laws<sup>51)</sup> is in order to divide immigration law in to two types: 1) restrictive; and 2) non-restrictive, as shown in diagram 2.1.

**Diagram 2.1 Popular Understanding of Typology of Immigration Laws and Policies**



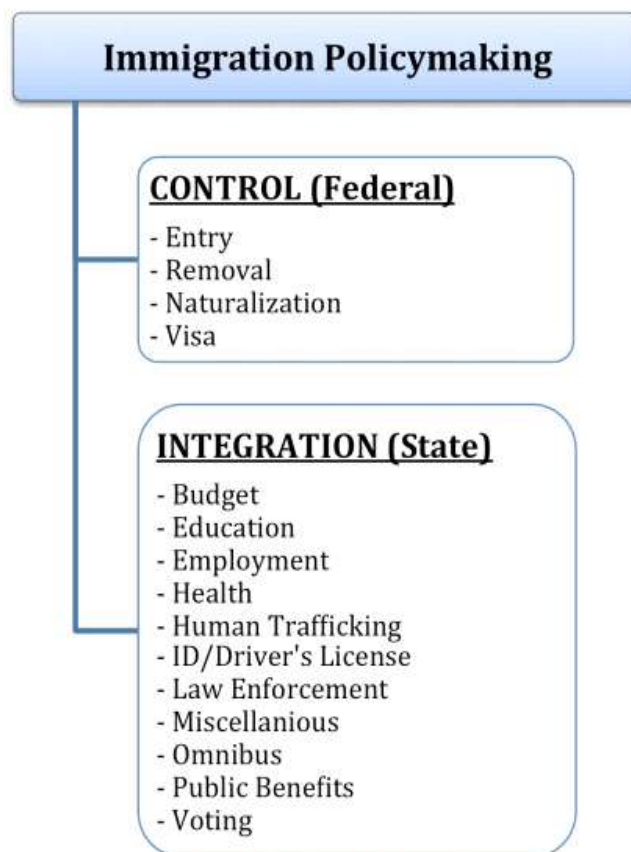
Despite the differences in the methods of categorizing immigration law, a binary understanding of immigration laws is quite inevitable, one as control and the other as integration. Since 2005, the National Conference of State Legislatures (NCSL)<sup>52)</sup> has been collecting data from each state, writing reports on state laws related to immigration and immigrants. NCSL classifies the laws related to immigration and immigrants in a total of eleven different ways. The classification ranges from budget to voting – the full list can be found under “integration” section of diagram 2.2.

<sup>51)</sup> See, Rodriguez, (2007): 591-596.

<sup>52)</sup> NCSL is a bipartisan non-governmental organization established in 1975, which has been serving the members and staffs of state legislatures of the US. Its primary objective is to providing each and every state legislatures with the proper and effective tools to “improve the quality and effectiveness of state legislature; to promote policy innovation and communication among state legislatures; and to ensure state legislatures a strong, cohesive voice in the federal system.” All state legislatures and their staff are automatically enrolled as members of NCSL. NCSL tackles many issues through task forces, which are created for a specific reason and for a specific period of time. One of the most popular and controversial task force is the one on immigration, called “Immigration and the States.” See, <http://www.ncsl.org/aboutus.aspx>.

Combining the typology of immigration laws and policies of NCSL, and the circulating discourse of the issue from the existing literature, the following diagram was produced. Diagram 2.2, titled “Typology of Immigration Laws and Policies” shows a comprehensive immigration typology, which this research employs. In terms of understanding immigration laws and policies, it is extremely helpful to acquire an analytical understanding of how the laws are divided.

**Diagram 2.2 Typology of Immigration Laws and Policies**



As the diagram shows, the categories from NCSL were adopted and categorized under the “immigration integration” section. Whereas the direct enforcement of immigration, such as business concerning the entry, removal, naturalization, and visa were put under the control section. Largely, immigration laws and policies under the control category are exclusively vested in the hands of the federal government because to control immigration

is to directly regulate it. As explained in the previous sections of this chapter, immigration control is indeed an exclusive right of the federal government, though the interpretation of to what degree of regulation it controls is debatable.

On the other hand, when it comes to immigration integration, the sub-federal levels of governments have the power to draft and enforce such laws. That is because laws on state budget, education, employment, health, IDs, law enforcements, benefits, etc., – essentially laws and rules that affect the lives of immigrants – are under state jurisdiction. In a very practical sense, the states are responsible for crafting such laws and policies. In addition, with “mirror-image theory,” states can imitate its own laws that may not directly be intended for issues of immigrants or immigration to include portions and provisions to target immigrants indirectly. Hence, in a very real sense, a state law, say an education law, could affect the regulation of immigration. Therefore, while state policymaking is limited to immigration integration policies, – to be exact, laws that can effect integration of immigrants – these state policies can be designed in a way that can produce either a welcoming or hostile environment for immigrants moving to or residing within a state; especially if that immigrant is an undocumented alien. Ultimately, states both knowingly, in some cases, and unknowingly drafting laws that aim to indirectly control the flows of immigrants. That is, individual integration laws may affect immigration regulation so long as it affects integration of immigrants by creating an atmosphere that is either favorable or hostile to immigrants.

The sub-category that deserves the most attention in this research is the “omnibus category.” This research adopts the partial definition of “omnibus state immigration legislation” as “enforcement bills containing [two or more provisions that,] such as requiring law enforcement to verify immigration status during a lawful stop, making it a state crime for failure to carry a federal immigration registration document, and creating penalties for transporting or harboring illegal immigrants.”<sup>53)</sup> Implications from the definition hint that the omnibus immigration legislations are essentially laws, like California Proposition 187 in 1994, and Arizona SB 1070 in 2010, which encompass a wide range of integration laws. Ultimately, states’ omnibus immigration policies and laws can

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<sup>53)</sup> “Immigration Policy Project,” *National Conference of State Legislatures*,” accessed Oct. 13, 2014, <http://www.ncsl.org/research/immigration/omnibus-immigration-legislation.aspx>.

be understood as challenges to the federal exclusivity on immigration policymaking because the US federal government perceives them to be so as mandated in the Constitution; the fact that all omnibus immigration bills introduced or enacted by numerous state governments proves this point. Should the federal government not have perceived the omnibus bills as a direct challenge, there would have been no reason for to challenge each omnibus bill before the Supreme Court. This qualification is important as this research essentially defines the “state challenges on the federal exclusivity” as the introduction and enactment of omnibus immigration policies.

### **III. Immigration Federalism in Canada**

Immigration federalism is not unique to the United States. One nation-state that has been practicing immigration federalism more efficiently and more vigorously is Canada. In spite of the relative efficiency of their immigration system, compared to that of the US, achieved through the devolution of authority to regulate and control immigration, Canada is suffering from a lack of unity among the provinces. Quebec has long been a thorn in the Canadian side, maintaining an extremely stubborn political stance against the Canadian national government in the name of conserving its distinct French culture. Often times, scholars criticize Canada’s lack of constitutional unity, arguing that, “[for] the Canadian state, the politics of federalism are the politics of survival.”<sup>54)</sup>

Canada used the British North America Act of 1867 (BNA) as its constitution until its official patriation from the Great Britain in 1982. At the time of the patriation, the title of BNA changed to the *Constitutional Act of 1982*. The newly named constitution also added more provisions that attempted to set forth governing principles that would reflect modern political principles and practices that were absent during the 19<sup>th</sup> century. Nevertheless, since the founding of BNA, the original document contained two sections – sections 91 and 95 – that established the distribution of power regarding immigration between the national government and the provinces. Section 95 of BNA stated:

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<sup>54)</sup> Edwin Black, *Divided Loyalties: Canadian Concept of Federalism* (McGill-Queen’s University Press, 1975).

In each province, the legislature may make laws in relation to agriculture in the province, and to immigration in to the provinces; and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to agriculture in all or any of the provinces, and to immigration in to all or any of the Provinces; and any law of the legislature of a province relative to agriculture or to immigration shall have effect in and for the province as long and as and only as it is not repugnant to any act of the Parliament of Canada.<sup>55)</sup>

Such concurrent jurisdiction for immigration laws was at the pinnacle of Canada's politics of federalism. The other section regarding immigration in the BNA is Section 91, which provides that, similarly to the American case, the national government has the exclusive jurisdiction over naturalization and aliens.<sup>56)</sup>

While the Canadian constitution provides the national government with veto power over provincial immigration laws that may be "repugnant" to any national law, the provinces were allowed to retain significant powers to exert incredible influence over immigration. The concurrent jurisdiction was an official proclamation that provinces are the burden-bearers of immigrant integration, a divided power that the national government legally acknowledged. Despite having set concurrent jurisdiction over immigration, the lack of detail and specificity of the Constitution's sections regarding immigration gave ample room for potential intergovernmental conflicts. To counterbalance that potential, the Immigration Act of 1976 was enacted, providing an institutional framework for intergovernmental cooperation. This act specifically provided provinces with the authority to consult the national government on immigration laws, and allowed provinces to enter in to bilateral agreements with the national government relating to immigration policies and programs.<sup>57)</sup>

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<sup>55)</sup> *The British North American Act*, Section 95, 1867.

<sup>56)</sup> *Ibid*, Section 91.

<sup>57)</sup> See, Section 109 of *Immigration Act of 1976*, which states: (1) The Minister shall consult with the provinces respecting the measures to be undertaken to facilitate the adaptation of permanent residents to Canadian society and the pattern of immigrant settlement in Canada in relation to regional demographic requirements.

In 1978, the first state to enter in to a bilateral agreement with the national government was Quebec. Quebec and the Canadian national government signed what is known as the Cullen-Couture Accord, or Quebec-Canada Agreement of 1978. This agreement provided Quebec with “unprecedented control” over immigration in to Quebec, making all and any potential immigrants to Quebec to be reviewed by the immigration board of Quebec. In order to be admitted to Quebec, an immigrant must not only satisfy the national points system, but also satisfy the strict conditions that Quebec sets forth, especially that concerning the maintenance of French culture heritage through language (Grey, 1984: 5). However, this agreement, despite delegating Quebec so much power, did not receive a constitutional status, meaning that the laws, as stated in Section 95 of BNA, can be unilaterally changed at the discretion of the national government. Nonetheless, no other provinces have entered in to similar agreements, finding no need to acquire immigration control. Therefore, Quebec remains as the only Canadian Province to have its own immigration system, even to this day.

Understanding the difference between Canadian and American immigration federalism requires an adequate understanding of the intergovernmental relations between the Canadian national government and Quebec. This is so not only for the reason that Quebec provides such a unique case of devolution of immigration regime, but also because the unique differences between the two immigration policies are extremely easy to identify, thereby making the comparison process much easier. The primary reason why the intergovernmental conflict between Quebec and the Canadian national government is the cornerstone of the constitutional crisis in Canada is because Quebec wishes to extend its autonomy beyond the field of immigration. Quebec sees its autonomy on immigration policy as a means to achieve the goal of preserving its culture and sovereignty, which is extremely important to them, as the Quebecois believe, their interests are not represented efficiently at the national political process (Tessier, 1995: 226).

The conflict between Quebec and the national government is deeply rooted in the fact that the Canadian constitution lacks the unanimous support of the provinces. The

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(2) The Minister, with the approval of the Governor in Council, may enter in to an agreement with any provinces or group of provinces for the purpose of facilitating the formulation, coordination and implementation of immigration policies and programs.

failure to win unanimous support for the 1982 constitution was really when the national government and the provincial government's (mainly Quebec) conflict became more noticeable. The Canadian national government tried to ensure the continued viability of the union through the Meech Lake Accord in 1987, but it failed. The Meech Lake Accord was a series of negotiations that sought to create an accord with Quebec, which would guarantee Quebec enough autonomy and independence within the Canadian union so that it would agree to ratify the new Constitution. The accord was supposed to be an amendment to the Constitution, requiring unanimous consent among all ten Canadian provinces, and the details of the accord transferred significant governing powers to Quebec, which included the recognition of Quebec as distinct and unique, but foundational part of Canadian society, power to fill national congressional vacancies, guaranteed spots on the Supreme Court, and the allowance of Quebec to opt out of federal programs should Quebec disagrees with that program.<sup>58)</sup> Most importantly, the compromise would have guaranteed Quebec's autonomous immigration control as long as it entered in to plausible agreements with the national government – this logic would extend to other provinces as well. However, the Meech Lake Accord, seemingly guaranteed Quebec its autonomy fell short of winning support from other provincial governments.<sup>59)</sup>

Meanwhile, in 1991, Quebec entered in to a bilateral immigration agreement with the national government, which became law and replaced the immigration agreement from 1976 that lacked constitutional status. The new bilateral agreement transferred exclusive rights and responsibilities to select immigrants who are already within the Canadian union in to Quebec, and most importantly, guaranteed the national government's funding for taking on the additional immigration responsibilities.<sup>60)</sup> This bilateral agreement set a precedent for other provinces – especially portions pertaining to national funding – thus, this law was not challenged by the others. Another round of the constitution talks concluded, which was known as the Charlottetown Accord. Despite the difference in the names, the new compromise mirrored the essential terms of the Meech

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<sup>58)</sup> See, Peter W. Hogg, *Meech Lake Constitutional Accord Annotated* (Carswell, 1988), 23.

<sup>59)</sup> Specifically, New Brunswick, Newfoundland, and Manitoba refused to ratify the Accord, ultimately leading to the passing of the ratification deadline by June 1990.

<sup>60)</sup> Because it entailed winning federal funding, institutional autonomy, other provinces determined that they too, could take similar advantages.

Lake Accord. Additionally, it became so comprehensive that it ultimately lead to a failure to win unanimous support. The fact that Canadian national constitution has yet to generate unanimous support has gained much negative publicity and criticism as Canada's constitutional crisis.

What is essential to understand in terms of Canada's failure to win unanimous support and agreement to ratify the new constitution is the fact that on the forefront of the struggle has been Quebec. Quebec's desire for autonomy has driven it to become a sore spot as it continues to challenge Canadian unity by requesting an overly strenuous transfer of powers back to individual provinces. As shown in the Quebec's immigration case, the paradox of Canadian Constitution is that on one hand, it allows devolution; but on the other, it wishes to foster unity ultimately leading to the "constitutional crisis." The rivalry between Quebec and the national government can be seen as a fight between national-unity versus provincial autonomy. Despite the conflict, however, the Canadian experience with immigration federalism has shown to be a success story, especially considering the matter from the efficiency of immigration regulation. The conflict did not surround the issues of efficiency of immigration regulation and control, Rather, the foundational purpose of the conflict was the threat of provinces' desire for autonomy contradicting on the national unity. The efficiency of the immigration process, thus, can be highlighted.

#### **IV. Concluding Remarks for Chapter 2**

Chapter 2 addressed the constitutionality and the legality of state immigration federalism. As discussed above, immigration federalism is indeed constitutional, and the federal government recognizes it as thus. However, the federal government chooses to recognize the need for immigration federalism only when the state statutes mirror that of the federal government. If the state government exceeds the scope of the law set by the federal government in their own laws, the federal government takes legal actions in nullifying the challenging state's laws. That is, the mirror image theory allows state



governments to successfully enact local laws that reiterate the power of the federal government, but local laws, because they are mere mirror image of the federal laws, cannot include regulatory power, both direct and indirect regulations.

Furthermore, by comparing immigration federalism in the US and in Canada, this chapter addressed that while there is no prototype of immigration federalism, it is tentatively possible for a nation to implement a system of immigration that is devolved, yet systematic. Clearly, the challenge that immigration federalism faces is the clash between the delegation of powers between the federal and sub-federal governments. Essentially, by examining the constitutionality and the legality of immigration federalism, this chapter showed that the generally loose interpretive constitutional atmosphere is one of the conditions that allows states to introduce and enact omnibus immigration laws. The next chapter will address other conditions that may have triggered the enactment of sub-federal immigration policymaking, analyzing social, economic, and political data collected from the State of Arizona.

## Chapter 3

### Arizona In-Depth Analysis

The State of Arizona serves as a great example of a sub-federal challenge to the federal exclusivity on immigration policymaking. In April 2010, Arizona enacted the infamous SB 1070 and since then, the Supreme Court had found the law partially unconstitutional. In search of the causal mechanisms in which such laws are introduced and proliferated, many existing literatures and researches employed statistical models. The results suggested that the issue was largely a partisanship issue beyond other conventional variables. However, the shortcoming of the statistical models<sup>61)</sup> is that they largely neglect to test the qualities of other factors that failed to show statistically significance in the quantitative models. Despite these previous findings from the regression analysis, there is a lingering thought of the possibility that other factors must have influenced the states in other significant ways that were not shown in the qualitative analyses. In order to triangulate the results of the statistical findings, this research sought to cross-reference them with points of implication by examining the matter in depth. Hence, the purpose of this chapter is to diagnose whether extrapolations made in the existing literature that focus heavily on only the political aspects of sub-federal activism are truly appropriate and equally applicable to all 50 states across the US. In doing so, this research selected Arizona because it is the most controversial case of state omnibus immigration bills that came about in 2010. Arizona is truly a unique case of observation and testing not only because Arizona SB 1070 was one of its kind to have gained such strong media coverage, but also because it is the first state law to have parts of it be struck down by the Supreme Court. Moreover, since the enactment of SB 1070, other states enacted copycat laws and the proliferation of sub-federal immigration policy heightened.

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<sup>61)</sup> To review the statistical analysis, see, Ramakrishnan and Wong (2010); Jorge Chavez, and Doris Marie Provine, "Race and the Response of State Legislatures to Unauthorized Immigrants," *Annals of the American Academy of Political and Social Sciences* 623 (2009); Daniel Hopkins, "Politicized Places: Explaining Where and When Immigrants Provoke Local Opposition," *American Political Science Review* 104 (2010); Monica Varsanyi, et al., "A Multilayered Jurisdictional Patchwork: Immigration Federalism in the United States," *University of Denver Law & Policy* 34 (2012); Andrew Thangasamy, *State Policies for Undocumented Immigrants: Policy-making and Outcomes in the US, 1998-2005* (LFS Scholarly Publishing LLC, 2010).

This chapter primarily serves the function of elaborating alternative explanations of the qualitative characteristics of the political theater behind the sub-federal activities on immigration regulation. In doing so, Arizona's SB 1070 provide useful perspectives in seeking clues as to which factors may be of importance beyond the obvious political factors exemplified in the existing literature. Further, this chapter probes for other factors that may have exerted significant influence on Arizona passing SB 1070, which were not included in previous studies which employed the regression model as the main method in hypothesizing why sub-federal immigration activism arises. Importantly, acknowledging that the politics of immigration is largely a political issue, this chapter not only reviews the suitability of the conventional economic, political, safety factors and variables on the state of Arizona, but also attempt to make supplementary causal inference of the issue via observation of non-conventional political factors, such as the ethnicity of Arizonian legislators and the spread of anti-immigration sentiment across the states via local politicians and the local public using survey data.

## **I. Arizona SB 1070 and the Economic Factor**

Scholars and policy analysts both have built a broad consensus over the past decade or so that generally, immigration is good for the American economy. While the claims on the degree of positive outcome or impact of immigration on the American economy vary in the scale from miniscule to significant, immigration "unambiguously improves employment, productivity, and income."<sup>62</sup> The general consensus did not seem to change for times of recession as the Arizona's SB 1070 case would show.

As in every proposed laws in the US, the text of Arizona SB 1070 began with a section covering the intent of the bill. As read,

The legislature finds that there is a compelling interest in the cooperative enforcement of federal immigration laws throughout all of Arizona. The

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<sup>62</sup>) "The Impact of Immigrants in Recession and Economic Expansion."

legislature declares that the intent of this act is to make attrition through enforcement the public policy of all state and local government agencies in Arizona. The provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.<sup>63)</sup>

The seemingly official intent or the reason why Arizona state government enacted SB 1070, as declared, is to deter the existence of undocumented aliens in the state of Arizona who, supposedly, consequentially bring economic hardship to the community. This research challenges such notion that undocumented aliens brought economic hardship to the state of Arizona, which thereby nullifies the official intent of the bill as an unwarranted argument of the supporters of the bill. In doing so, this research offers two pieces of economic indicators as evidences, first, the state unemployment rate and GDP per capita between 1990-2014.

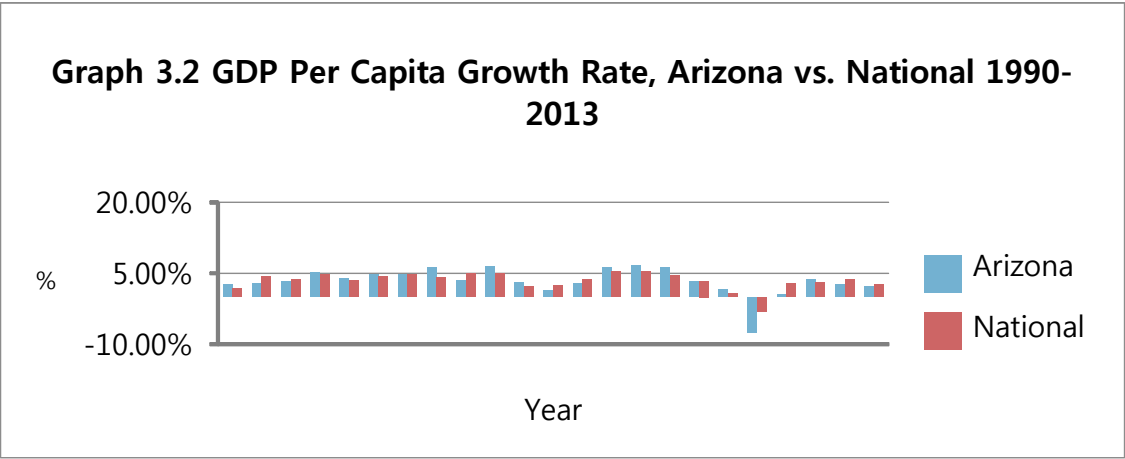
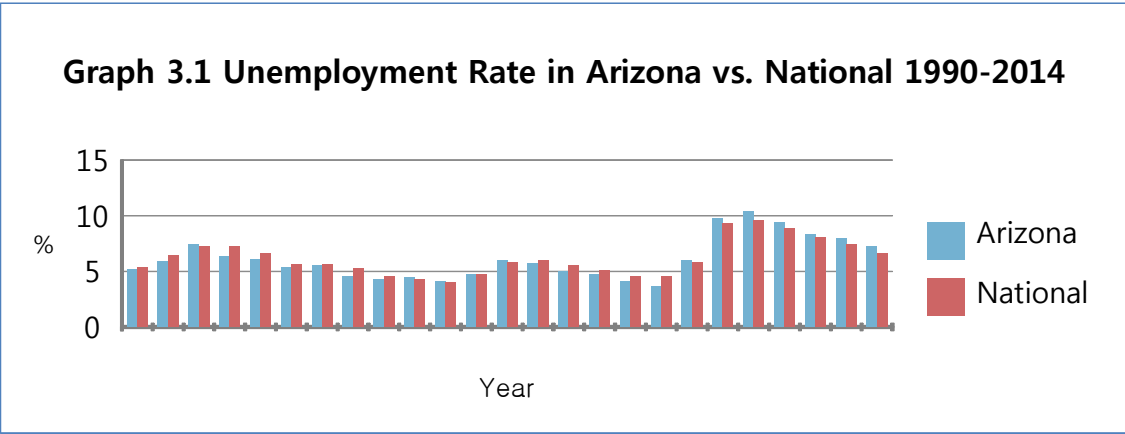
Arizonians' intuition hold that their state has had long been experiencing surges of foreigners, mainly by the Mexican immigrants. Considering that Arizona shares the longest border with Mexico than any other Southern Border States, it is likely that Mexican immigrants, both legally and illegally would make Arizona their first stop in the US. In fact, according to the US Census data, the total non-white population of Arizona accounted for nearly 45% of its total population in 2011. In detail, the non-white persons in Arizona in 2011 were 2.8 million persons out of 6.5 million total populations. Of the 2.8 million, more than 2 million people were of Hispanic Origin; people of Hispanic origin alone accounted for nearly 31% of the entire Arizona population. While it is difficult to differentiate what portion of the Hispanic population, or of the entire population of Arizona are illegal immigrants, what seems to be clear is that the ethnic makeup of Arizona had no seemingly significant influence on the economic conditions of the state.

Following graphs are indicators showing the trend of Arizona's economy between 1990 and 2013. Both graphs, Graph 3.1<sup>64)</sup> showing the unemployment rate, and Graph 3.2

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<sup>63)</sup> State of Arizona Senate 49th Legislature. (2010).

showing the GDP per capita, show the state trends in comparison to the national trend. As shown, the economic condition of Arizona from 1990 to 2013 has had a similar trend of changes as the national trend. Obviously, because the national trend is a cumulative average of all 50 states across the US, the corners and the edges of it are much smoother than that of the Arizona's. Nonetheless, the general trend of concavity remain familiar to each other.



Concerning the unemployment rate in Arizona, while there had been years when the national unemployment rate<sup>65)</sup> was higher than that of Arizona, and vice-versa,

<sup>64)</sup> "Per Capita Personal Income by State," *The Bureau of Business & Economic Research at the University of New Mexico*, accessed Sept. 23, 2014, <http://bber.unm.edu/econ/us-pci.htm>; "Local Area Unemployment Statistics (LAUS) Data," *Arizona Office of Employment and Population Statistics, in cooperation with the US Department of Labor, the Bureau of Labor*, accessed Aug. 13, 2014, <http://azstats.gov/laus-series-query-tool/>.

<sup>65)</sup> See, "GDP per Capita (current US\$)," *The World Bank*, accessed Sept. 23, 2014, [http://data.worldbank.org/indicator/NY.GDP.PCAP.CD?order=wbapi\\_data\\_value\\_2009%20wbapi\\_data\\_value](http://data.worldbank.org/indicator/NY.GDP.PCAP.CD?order=wbapi_data_value_2009%20wbapi_data_value)

Arizona did not take any significant actions in regards to its own immigration policy. Arizona's inaction during the years in which it experienced more severe economic hardship in terms of the state unemployment rate or GDP per capita shows that there is no significant causal link between the economic factor and its challenge of federal exclusivity on immigration policymaking.

Specifically, Arizona experienced dynamic changes in its economy. Since 2003, the unemployment rate in Arizona had been shrinking steadily after a 1.3% rise between 2002 and 2003. In 2003, the rate was 6%. However, between 2007 and in 2008, the rate rose by 2.3%, which was a rise that Arizona had not experienced in the last 13 years. Such trend shows more severity for the GDP per capita indicator. As shown in Graph 3.2, Arizonians' GDP per capita began to decline sharply since 2006, and the rate experienced an all-time-low between 2008 and 2009.

What could have led to Arizona's sharp economic downfall? The introductory section of SB 1070 argues that illegal immigrants had significant impact on the negative downturn of the economy. However, such argument is unwarranted as the years in which Arizona or the entire US experienced severe economic negativity was when the subprime mortgage crisis<sup>66)</sup> brought extreme hardship all throughout the nation since the Great Depression.<sup>67)</sup> In the logic set forth by the authors of SB 1070 and the proponents, the subprime mortgage crisis must have been the determining factor that led to an eventual "rebellion" of Arizona concerning immigration policy.

This research does not deny that all of the economic indicators showed an all-time-low during which the Arizona legislature enacted SB 1070 to curb illegal immigration. However, to conclude that the harsh economic conditions were the conclusive factor has its shortcomings for two main reasons:

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%20wbapi\_data\_value-first&sort=asc; "United States: Gross Domestic Product, Current Prices (U.S. Dollars)," *The International Monetary Fund*, accessed Sept. 24, 2014, <http://www.imf.org/external/pubs/ft/weo/2012/01/weodata/weorept.aspx?pr.x=56&pr.y=10&sy=2009&ey=2012&scsm=1&ssd=1&sort=country&ds=.&br=1&c=111&s=NGDPD%2CNGDPDPC%2CPPPGDP%2CPPPPC%2CLP&grp=0&a=>.

66) "US Business Cycle Expansions and Contractions," *The National Bureau of Economic Research*, accessed Aug., 2, 2014, <http://www.nber.org/cycles.html>.

67) The 2008 subprime mortgage crisis was a nationwide banking crisis that coincidentally happened while the US was hit hard with recession, which lasted from December 2007 through June 2009.

- 1) Arizona was not the only state that experienced the highest unemployment and lowest GDP per capita around the time of subprime mortgage crisis and the couple recovering years following after;
- 2) The economic indicators for the national level experienced a similar negative shock during the suspected years.

In order for the argument or assumption that the negative economic conditions will significantly affect state governments to challenge the federal exclusivity by enacting an omnibus immigration policy can only stand valid if it passes the true experiment.<sup>68)</sup> That is, as the principle of the true experiment outlines, other states must have shown similar tendencies of challenging the federal exclusivity. However, not only was Arizona unique in a sense that it was one of the only states that did so, but also, the immigration matter was not handled at the federal level neither. Hence, the Arizona fails the true experiment. This research subsequently concluded that there is little necessity to seek the economic threshold because poor economy shows less importance as a significant determinant or the causal variable of research interest – in other words, the economic trends showed no significance.

In lieu of conclusion for this section, this research throw a very fundamental question of “does the rapid decline of economic conditions of a certain state inflict its government to challenge the federal exclusivity over immigration policymaking because they fear that immigrants, especially the undocumented ones threaten the general economy of the state?” Clearly, as shown through the numbers the answer to the question is “no.” There is no clear link between the state challenge and the shortage of Arizonians’ GDP per capita with the state’s act of challenging the federal government. For the state of Arizona, it was neither the heightening of unemployment rate nor the declining GDP per capita that triggered the movement to challenge the federal exclusivity over immigration policymaking. What is true is that the lack of significance for the economic factor puts greater importance of the issue on the political factor and why the official intent of SB 1070 from the authors of the bill was that the illegal immigrants were harming the state’s

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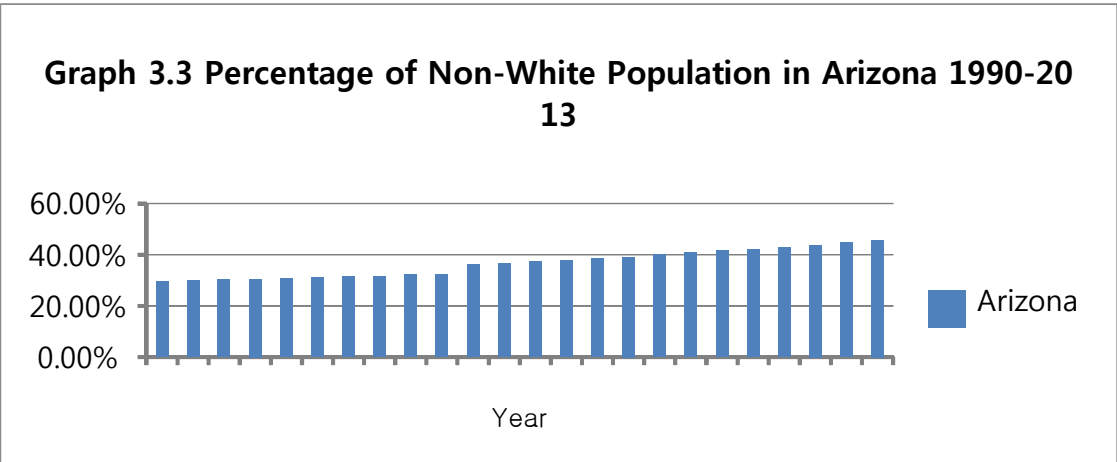
<sup>68)</sup> As stated in, Colin Robinson, *Real World Research* 3<sup>rd</sup> Ed. (John Wiley & Sons, 2011), 104-109.

economy to a degree to find the need for the government to interfere in curving undocumented aliens to either reside or move to Arizona.

Economics alone cannot be the only standard of criterion to guide immigration policies – this applies both at the state and the federal level. However, if the goal is to curve illegal migration of immigrants both within and across borders, governments must first consider that immigrants generally produce net positive outcomes more so than negative economic outcome, hereby nullifying the official arguments set forth by the Arizona state legislature in SB 1070.

**II. Demographic Markup of Arizona**

Arizona has long been dealing with the overwhelming surge of foreigners, mainly the immigrants from across its southern border to Mexico. Graph 3.3 shows a trend in which the percentage of non-white population in Arizona has changed since 1990. As the graph illustrates, the total non-white population in Arizona has steadily risen, and in 2011 alone, it accounted for nearly 45% of the total population of Arizona.



In 2013, the number finally exceeded the 45% mark, and the forecast of the Arizonian population looks like it will reach a point in which the population will soon, no



longer be a white majority. Such rise in the non-white population largely accounts for the immense number of migration flow into the state. According to the Census data collected from 1990, 2000, and in 2010, the net migration into Arizona was 278,205, 656,183, and 875,927 persons respectively. Although the data does not explicitly mention what the ethno-national makeup of the statistics on net migration to Arizona, it is rather clear that Arizona is a migrant-receiving state.

According to the identical census data, the total non-white population in Arizona has, on average, increased at 0.7% annually, with a noticeable spark in the rate of change between 1990 and 2000. Similarly, the rate at which the non-white population in Arizona is growing is approximately 4.59% per annum. The years to look at closely especially are the years before 2010. In 2010, the year in which the state enacted the infamous SB 1070, Arizona did not experience a significant rise in its total number of non-white population. In fact, the trends in the change of non-white population in Arizona seem to not have been affected by the economic downturn in 2008. Arizona experienced a normal, and natural growth of non-white population, which goes to show that the demographic change in the states offers no explanatory power to why Arizona challenged the federal exclusivity over immigration policymaking in 2010.

This research sought to find any causal links between the ratio of non-white population of a state and the enactment of sub-federal restrictive omnibus immigration policies. In the case of Arizona, a state which more than 45% of its total population accounted for non-white persons, no such link was found. Neither the data for year 2010 nor the data prior to 2010 showed any degree of significance for the case of Arizona - significance of demographic change, in this case can either be the by-year net change in the percentage of non-white population, or the percentage of total non-white population. In 2010, Arizona remained at the 42% mark of total non-white population, and there is no evidence that support the claim of whether the 40% mark is the threshold for states to challenge the federal exclusivity. To jump to conclusion, the only year in which Arizona experienced significant change in its demography according to data is between 1999 and 2000, when the state experienced a nearly 4% rise in its total non-white population.

Should there be any significance or validity to the claim that the ethnic markup of a

state is a causal link to which Arizona enacted SB 1070, it is logical to infer that the legislature would have made the point clear. While to some, it may be conceivable to assume or infer that the hidden motive of the bill was to either retard the rate of growth for the state's non-white population, such statement is unwarrantedly argumentative.

### **III. Crime Rates in Arizona**

*The Handbook of Crime Correlates* points out a peculiar relationship between crime rates and immigration that while the studies outside the US, found higher crime rates among immigrants than among non-immigrants, in the US, such relations are reversed (Ellis and Beaver, 2009). Interestingly, it was found that argument on the relations between immigrants and crime rates are not coherent among scholars. Organizations, such as the Center for Immigration Studies argued in a 2009 report that “[new] government data indicate that immigrants have high rates of criminality, while older academic research found low rates.”<sup>69)</sup>

Two major reasons account for such incoherent analysis on crime rates and immigration. First, the overall picture of immigrants and crime rates are largely confused due to a lack of quality data and contrary information. In the case of the US, official crime reports are regularly published by the Federal Bureau of Investigation (FBI)<sup>70)</sup> – this data published by the FBI is the most comprehensive analysis of violent crime and property crime in the nation. In this report, estimations of crime rates are also published, and while it is true that this comprehensive reports is a great tool in observing the change of crime rates in the nation or by states, because it does not combine Census statistics in its methodology, published data on the direct link between immigrants and crime rates is unclear. That is, studies on immigrants and crime, which all tend to rely heavily on official FBI data, because the FBI data does not explicitly perform its analysis by race, ethnicity, or

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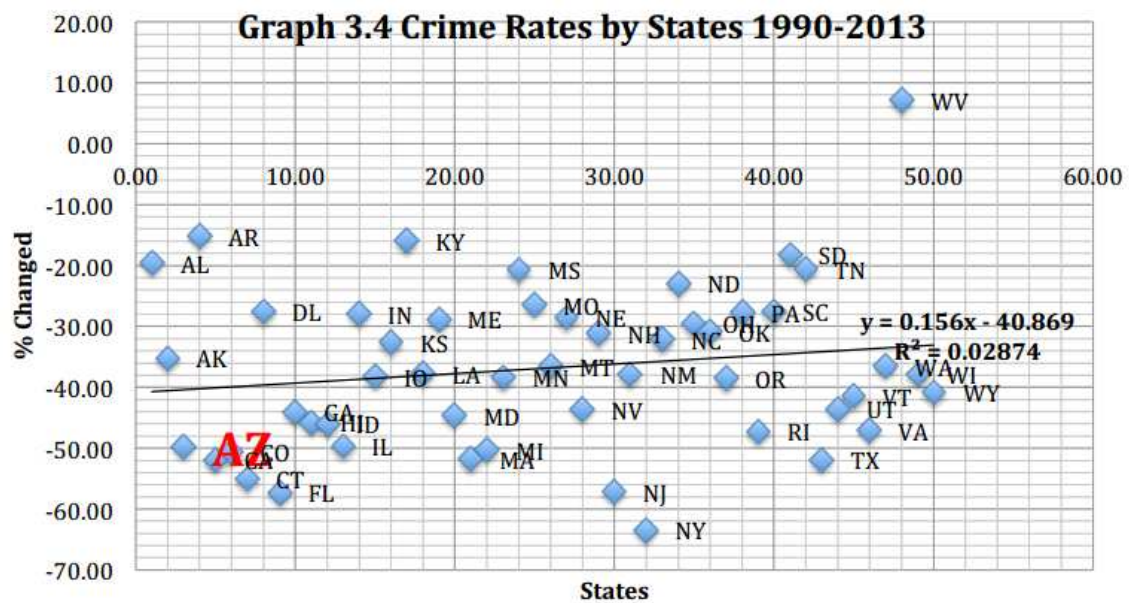
<sup>69)</sup> Steven a. Camarota, and Jessica Vaughan, “Immigration and Crime: Assessing a Conflicted Issue,” *Center for Immigration Studies Reports* (2009).

<sup>70)</sup> The Federal Bureau of Investigation, The Department of Justice, *Uniform Crime Reports Prepared by the National Archive of Criminal Justice Data* (2013).

specific immigrant population, any and all arguments on the relations between immigrants and crime rates are mere inferences and implications. The FBI statistics being the sole official government data with the highest validity among the published crime rates statistics is the biggest challenge in conducting accurate studies on the link between immigration and crime.

This research acknowledges such incoherence in crime statistics in the US, and it also sees the high possibility that in the case of the US, the country of origin may be more important than immigrant status itself. Nonetheless, by collecting crime statistics of all 50 states, this research has found some interesting links between the state immigration enforcement and crime statistics. Though the statistics employed in this research are comprehensive macro-crime rates of individual states, which are not designated to specific race, ethnicity, or country of origin, the FBI data were enabled sorting of states in to those that cut down crime rates by more than half and the nots. Furthermore, by calculating the national average of reduction of crime rates, states could be sorted in to those that cut crime rates more than the national average and those that did not.

The following scatter plot shows, in percentages, how much each state (in abbreviation) has reduced their respective crime rates over the 13 years. It was found that the only state to have experienced an increase in crime rates was West Virginia. Another notable state with exceptionally high point of reduction in crime rates was the State of New York with approximately 63.4%. The trend line, with an equation with  $R^2$  point of 0.02874 shows trending linearity among all fifty states on their crime rates. Combining all the statistics together, this research has found that on average, all fifty states experienced approximately 36.89% reduction of crime rates between 1990 and 2013.



Out of the fifty states, twenty-seven states reduced crime more than the national average; those states are as follows:

Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Jersey, New Mexico, New York, Oregon, Rhode Island, Texas, Utah, Vermont, Virginia, Wisconsin, and Wyoming.

The following nine states were able to cut crime by more than half. States that came in just short of the 50% mark were marked in bold with the respective percentages:

**Arizona (49.70%)**, California, Colorado, Connecticut, Florida, **Illinois (49.56%)**, Massachusetts, Michigan, New Jersey, New York, and Texas.

Cutting crime rates down by nearly 50%, the common misconception that immigrants increase local crime rates is disproven here. Though there may be a possibility that the people actually committing the reported crimes, and even those behind bars may be

immigrants, or descendants of immigrants, what is clear is that the overall crime rates, violent and property combined have decreased significantly since the 1990s. In relation to the demographic data, what this suggests is that there is no positive correlation between the increase of non-white population in Arizona with the decrease in state crime rates; rather, that relationship is reciprocal of each other. This claim is supported by existing literature and research on the relationship between crime rates and immigrants. According to the numerous researches from the Immigration Policy Center, a key organ of the American Immigration Council, studies from both independent researchers, and government commissions alike, have found that “immigrants are less likely to commit crimes or be behind bars than the native-born.”<sup>71)</sup> Such a claim has been proven through extensive research over the past 100 years.

In the United States, where the policing power is exclusively vested in the hands of local governments, states bear both labor, and economic burden to keep society in order. It can be inferred that States like Arizona that have actively and successfully reduced crime rates by nearly 50% in the last 20-25 years, are more prone to express their desires to continue to cut crime rates. When the sub-federal government’s priority is to cut crime rates, the free flow of immigrants who are perceived as crime carriers, or agents of crime, may seem to be an extra labor and financial burden. Such perception is reflected in Governor Jan Brewer’s official statement<sup>72)</sup> from April 2010, on SB 1070:

I’ve decided to sign Senate Bill 1070 in to law because, though many people disagree, I firmly believe it represents what’s best for Arizona. Border-related violence and crime due to illegal immigration are critically important issues to the people of our state, to my Administration and to me, as your Governor and as a citizen.

-Jan Brewer, April 23, 2010

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<sup>71)</sup> “Immigrants and Crime: Are They Connected? A Century of Research Finds that Crime Rates for Immigrants are Lower than for the Native-Born,” *Immigration Policy Center at the American Immigration Council*, accessed Aug. 18, 2014, <http://www.immigrationpolicy.org/just-facts/immigrants-and-crime-are-they-connected-century-research-finds-crime-rates-immigrants-are>.

<sup>72)</sup> “Statement by Governor on SB1070,” *The Official Website of Arizona State Governor Janice K. Brewer*, accessed Aug 13, 2014, [http://azgovernor.gov/dms/upload/PR\\_042310\\_StatementByGovernorOnSB1070.pdf](http://azgovernor.gov/dms/upload/PR_042310_StatementByGovernorOnSB1070.pdf).

Her statement seems to transcend the generic logic her affiliated political party, the Republican Party, to the degree in which that reflects the needs of the people of Arizona. Whether her statement is true or false, the fact of the matter is that the Arizona state government perceives immigrants' undocumented residency as a criminal conduct, and that immigrants are extremely closely related to border-related violence and crime. This ultimately leads to an implication that it is not the macro trend of crime rates that affect state governments to pursue a challenging position against the federal government's exclusive right to enact immigration-related policies, rather it is state-specific-crime (like border-related crime) that are imminently linked with the lives of citizens of specific states that essentially influence states' decision.

While this may sound very promising and logical, it is absolutely necessary to never forget that not all border states like Arizona had pursued the same degree of hostility towards the federal government over the matter of immigration. For instance, as shown in Table 3.1, there are 17 states across the US that share an international border. 4 of them (Arizona, California, New Mexico, and Texas) share border with Mexico, like the state of Arizona. Only 4 out of all 17 Border States enacted an omnibus immigration bill in the history of their existence, and 2 of them, Arizona and California were the states that shared border with Mexico. Clearly, in raw numbers, among border states, those states that share border with Mexico tended to have a higher chance of enacting an omnibus immigration law.<sup>73)</sup>

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<sup>73)</sup> The raw ratio of the border states that enacted omnibus immigration since 1991 categorized by borders with Mexico and Canada are: 4:2, and 11:2 respectively. Put in a different perspective, 50% of the border states bordering Mexico passed an omnibus immigration law, whereas only about 18.2% of the border states bordering California passed an omnibus immigration law. However, it is difficult to jump to the conclusion that the passage of omnibus immigration depend largely on which border a state is bordering for a few reasons: firstly, as mentioned in the main text, border states are not the only states to pass an omnibus immigration bills. Secondly, it is difficult to conclude that those the states that border Canada suffer from immigrants from Canada. Then, can this observation lead to a conclusion that the surge of Mexicans or Hispanic immigrants drive and trigger states to take such radical stance on immigration? As the findings of this study showed, the racial and ethnic composition of one's state cannot significantly explain why states have taken an anti-immigrant stance politically.

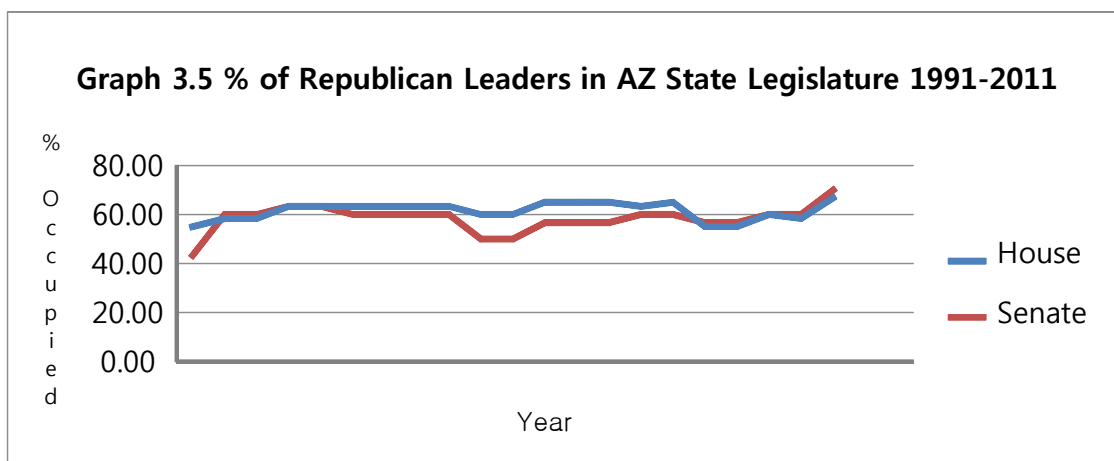
**Table 3.1 Border States and Omnibus Immigration Bill Passage**

<b><u>State</u></b>	<b><u>Border</u></b>	<b><u>Omnibus Bill</u></b>
Alaska	Canada	Yes
Idaho	Canada	No
Maine	Canada	No
Michigan	Canada	No
Minnesota	Canada	No
Montana	Canada	Yes
New Hampshire	Canada	No
New York	Canada	No
North Dakota	Canada	No
Ohio	Canada	No
Pennsylvania	Canada	No
Vermont	Canada	No
Washington	Canada	No
Arizona	Mexico	Yes
California	Mexico	Yes
New Mexico	Mexico	No
Texas	Mexico	No

Nonetheless, simultaneously, it should not be forgotten that the mere fact of sharing a border is not a sufficient condition for states to enact omnibus immigration policies. In between 1991, and 2011, there were 11 states that enacted an omnibus bill, and 7 out of them were non-border states. This implies that at least at the face value, while the intent of Arizona in passing its omnibus bill, SB 1070 was to reduce and prevent border-related crimes, but other states had intents that are fundamentally different than that of Arizona. Possibly, and highly likely, state intents were only framed with crime rates, but the truth has to do with their uneasiness with undocumented aliens. But again, because the numbers on illegal immigrants are unknown and highly unreliable, it is difficult to jump directly to the conclusion that the presence or the rise in number of immigrants is what triggered the states to enact omnibus bills as an act of challenge against the federal exclusivity on immigration policymaking.

## IV. Party Politics and Immigration in Arizona

Since the early 90s, the Arizona state legislature has been a playground for the Republican Party. On average, between 1991-2011, the Republican Party enjoyed 61.43% of the seats in the state house, and 58.25% of the seats in the state senate. As Graph 3.5 below shows, Arizona was on its course to experience an all time high in the last 20 years of Republican leadership in 2011 in both houses of its state legislature.



At a glance, the percentage of legislative seats taken by Republican representatives seems to reinforce the statistical findings from the existing literatures, which argue that partisanship of a state legislature is the most important factor in issues surrounding states' immigration policymaking. Furthermore, the list of things associated with the passage of SB 1070 in 2010 also seems to validate the findings as supplementary explanations. For instance, Russell Pearce,<sup>74)</sup> the official author and sponsor of SB 1070 was one of the most prominent Republican Party member in Arizona; Arizona's Republican governor, Jan Brewer was an avid supporter of SB 1070; Kris Kobach, the brains behind SB 1070; and the current Secretary of State of Kansas is a former chairman of the Kansas Republican Party. Topics on illegal immigration, and politicizing of the

<sup>74)</sup> Russell Pearce recently resigned as vice chairman of the state's Republican Party over controversial and extremely cringing comments he made about birth control. See Dylan Stabelford, "Vice Chairman of Arizona Republican Party Resigns over Birth Control Comments," *Yahoo News*, Sept. 16, 2014, <http://news.yahoo.com/russell-pearce-birth-control-senator-resigns-152716895.html>.



matter continue to be a winning political issue for the Republican Party.<sup>75)</sup>

It is quite inevitable to connect anti-immigration sentiment with the Republican Party ideology in the U.S. A partial explanation to this can be inferred from the tendency of Republicans to take a negative stance on the topic of immigration. For instance, a *New York Times*/CBS News poll from 2010 found that nearly 43% of Americans said that illegal immigrants in the US should be able to stay in the country and given chances and paths to apply for citizenship.<sup>76)</sup> A subsequent polling in 2012 and in 2014 has found that the support for pathway to citizenship has grown to 68% and to 81% respectively.<sup>77)</sup> However, despite the clear support, Republican Senate candidates show more likelihood to put their opposition to providing illegal immigrants chances to achieve the American Dream. Periodically, the American Congress would review and vote on the “amnesty” bill. Such anti-immigrant sentiment was shown in the senatorial election campaigns in 2010, 2012, and 2014. In the 2010, 14 GOP senators, nominees, and challengers opposed the immigration reform bill. This number was 10 in 2012, and 30 in 2014.<sup>78)</sup>

Multiple sources of polling data confirm the claim on Republican’s anti-immigrant sentiments on a general level. Simultaneously, however, it seems that some Republicans in other states have already understood the political cost of attacking or marginalizing immigrants. For instance, the anti-immigrant sentiment has cost some Republicans the alienation of immigrant voters and transferring the votes to the Democratic Party. This

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<sup>75)</sup> Dan Zeiger, “GOP Gained Huge Benefit from SB 1070, but Could Face Backlash,” *East Valley Tribune*, Apr. 22, 2011,

[http://eastvalleytribune.com/arizona/immigration/article\\_993bb99a-6ad5-11e0-9c79-001cc4c03286.html](http://eastvalleytribune.com/arizona/immigration/article_993bb99a-6ad5-11e0-9c79-001cc4c03286.html).

<sup>76)</sup> “New York Times/CBS News Poll: Immigration Overhaul,” *The New York Times*, accessed November 27, 2014, <http://documents.nytimes.com/new-york-times-cbs-news-poll-immigration-overhaul?ref=us>.

<sup>77)</sup> “CNN/ORC Poll,” *Turner Broadcasting System, INC.*, accessed Nov 28, 2014, <http://i2.cdn.turner.com/cnn/2014/images/02/06/rel3g.pdf>.

<sup>78)</sup> In 2010: nominee Joe Miller (AL), challenger J.D. Hayworth (AR), Senator John Boozman (AK), candidate Jane Norton (CO), nominee Linda McMahon (CT), candidates Marlin Stutzman and Jon Hostettler (IN), Senator Rand Paul and candidate Trey Grayson (KT), Senator Scott Brown (MA), candidates Sue Lowden and Danny Tarkanian (NV), Senator Pat Toomey (PN), nominee Dino Rossi (WA); in 2012: nominee Richard Mourdock (IN), nominee Scott Brown (MA), candidates John Brunner and Sarah Steelman (MO), Senator Deb Fischer and candidate Jon Bruning (NE), Senator Dean Heller (NV), nominee Rick Berg (ND), Senator Ted Cruz (TX), candidate Mark Neumann (WI); in 2014: candidates Mead Treadwell and Joe Miller (AK), candidate Tom Cotton (AR), candidates Paul Broun, Phil Gingrey, Karen Handel and Jack Kingston (GA), candidates Sam Clovis and Matt Whitaker (IO), Senator Mitch McConnell and challenger Matt Bevin (KS), candidates Paul Hollis and Rob Maness (LO), Senator Thad Cochran and challenger Chris McDaniel (MS), candidate Shane Osborn (NE), candidate Bob Smith (NH), candidates Greg Brannon, Mark Harris, and Thom Tillis (NC), candidates Randy Brogdon, James Lankford and TW Shannon (OK), challengers Lee Bright, Richard Cash, and Nancy Mace (SC), candidates Stacey Nelson and Larry Rhoden (SD), challenger Joe Carr (TN), challenger Steve Stockman (TX).

seemed especially the case for California. The infamous Proposition 187, which was championed by then Republican Governor, Pete Wilson in his re-elected bid, but it eventually resulted in a tough backlash, and political mobilization among multiethnic immigrant groups in California.

However, party affiliation alone falls short of providing clear answers as to whether the sheer existence of the Republican Party ideology, or the prominence of number of legislators who share that ideology is what triggers and supports the enactment of restrictive omnibus immigration laws. To complicate the matter, this statement seems especially the case when considering the racial/ethnic distribution of the legislators who casted votes on SB 1070. Based on the racial/ethnic distribution of the Arizona state legislature, this research sought to test a conjecture that SB 1070 was largely a discriminatory draconian law to antagonize the immigrant community based on race/ethnicity. Table 3.2 shows the racial/ethnic distribution of Arizona legislature in 2010.

**Table 3.2 Ethnic/Racial Distribution of Arizona Legislator By Party, 2010**

	<b>Party (members)</b>	<b>Caucasian (%)</b>	<b>Hispanic (%)</b>	<b>African American (%)</b>	<b>Asian American (%)</b>	<b>Native American (%)</b>
<b>Upper House</b>	Republican (36)	100%	0%	0%	0%	0%
	Democrat (24)	33%	50%	8%	0%	8%
<b>Lower House</b>	Republican (18)	97%	3%	0%	0%	0%
	Democrat (12)	64%	28%	4%	0%	4%
<b>Voters</b>	% Registered	60.5%	43.9%	63.1%	64.2%	-
	% Voted	45.4%	29.3	39.4%	50.2%	-

**\*Source:** Combined registered voters data from the *US Census*, and table from: Mark Jones, and Benjamin Chou. "Immigration Policy and Partisan Politics in State Legislatures: 2010-2012." In *Undecided Nation*, edited by Tony Payan and Erika de la Garza, (Springer Press, 2014), 90-120.

Clearly, the intra-party ethnic/racial distribution for Democrats and Republicans vary quite dramatically regardless of being in the same state. As the data suggests, Arizona Republicans in both houses, are mostly Caucasians, whereas democrats are mostly non-white peoples. Such intraparty divide contributes to the understanding of how

immigration bills are passed at the state level. Jones and Chou showed that there “exist significant and substantive differences in Democratic legislator support for the omnibus legislation depending on the ethnic/racial and the urban/rural status of an individual legislator (Jones and Chou, 2014).” Their findings suggested that Anglo legislators were most likely to vote in favor of the bills. What Jones and Chou revealed was that despite the partisanship, largely it is racial/ethnic profile, along with minor economic status of legislators that affect the support and ultimately, passage of the bills. In doing so, Jones and Chou revealed that the “small number of Hispanic Republican legislators were significantly less likely than their Anglo colleagues to support” restrictive immigration policies, which goes to show that mere party-alignment does not necessarily trigger support for omnibus immigration bills.

Conventionally, local politics, especially elections have been partly an ideological battle, partly a partisan contest. Nonetheless, recent studies have showed that race is a dominant factor in the local electoral arena (Haznal and Trounstone, 2013). When it comes to racial divisions in American politics, there is little doubt that race had played a critical role. At the national level, the binary divide of white and the nonwhites have endured and sharpened, with either groups favoring different policies (Kinder and Sanders, 1994, 1999), parties (Carmines and Stimson 1989), and different candidates (Edsall and Edsall, 1994). For example, there are evidences that support the claim of significant racial solidarity among Latino and Asian American voters, whenever there is a co-ethnic candidate on the ballot (Collet, 2005). The racial divides tended to heighten at the time of economic stress (Branton and Jones, 2005), which may lead to an increased intolerance or negative perceptions on ethnic minorities in the national, and local political arena (Haznal and Trounstone, 2013). While much of the existing evidences had focused on racial divides of voters, racial division of voters in local politics may provide a suitable explanation to the race politics of elected officials, especially when considering that racial polarization in American has led ethnic minorities to favor one party over the other, as well as ethnic candidate over the non-ethnic candidate.

Partial reason for why in Arizona, white-favored voting turnouts are inevitable not only because the sheer number of whites versus non-whites in Arizona, but also because

the relative lack of voter registration and turnouts of racial minorities in Arizona. The ethnicity of individual legislators may play a critical role in determining the source of support on restrictive immigration bill or not. Likely, the demographic makeup of a district that a single legislator represents may also play a similarly significant role in determining whether he or she will support the bill or not. Essentially, what this implies is that looking for favorable or ad-hoc conditions for the triggering or the proliferation of sub-federal immigration reform is something much more complicated than just partisanship alone. While partisanship composition and status of state legislature may play a crucial rule, the matter may be more sophisticated and philosophical at the level of the individual identities of state leaders and their constituents.

## **vi. Anti-Immigration Sentiment in Arizona**

Though it is true that the Arizona state legislatures tends to be overwhelmingly white for both Republicans and Democrats alike, to argue that the legislators' ethnicity has direct linkage to the drafting and enforcement of an anti-immigration law in the state would equate racist politics. Such unwarranted opinion and an argument cannot be proven beyond doubts or suspicion. Nonetheless, regardless of what the ethnicity of the state legislators may have been, the ostensible impression behind the enactment of SB 1070 is that the public sentiment had grown in Arizona to support a local enforcement of immigration law. Conditionally labeling such sentiment as an anti-immigration sentiment, this section attempts to see how such anti-immigrant sentiment had proliferated in Arizona. In doing so, this research introduces the popularity and approval ratings of a six-time elected local politician, Sheriff Joe Arpaio of Maricopa County in Arizona, and the public survey data on the matter of immigration.

Key proponents of SB 1070 included Governor Jan Brewer, Senator Russell Pearce (R-AZ) – the primary sponsor of SB1070 – Kris Kobach, former lawyer and current Secretary of State of Kansas, and Sheriff Joe Arpaio, the sheriff of Maricopa County, Arizona. Maricopa County, located in the south-central part of Arizona, is the largest

electoral district in Arizona with the state capitol city, Phoenix. With nearly 4 million populations<sup>79)</sup>, Maricopa is the largest and the most heavily populated county in Arizona, and fourth most populous county in the US throughout. About 42.4% of the Maricopa County's population in 2013 was non-white persons, which is around the same percentage of non-white population of the entire Arizona state. By population alone, Maricopa County dominates Arizona's politics – Arizona has nine congressional districts, in which eight of them include some portion of the county with five of the districts located centrally within the county.

**Map 3.1 Map of Arizona by Counties**



According to the latest US Bureau of Justice Statistics' 2008 *Census of State and*

<sup>79)</sup> According to the Census data, in 2010, the reported population of Maricopa County, Arizona was 3,817,117 out of 6,392,017 total persons in Arizona.

*Local Law Enforcement Agencies*, Arizona had 141 law enforcement agencies employing 714,591 sworn police officers, which is about 224 for each 100,000 residents.<sup>80)</sup> Among them, Maricopa County Sheriff's Office (MCSO) is the largest sheriff's office in Arizona that act as the primary law enforcement for both incorporated and unincorporated areas of the county. Since 1992, MCSO is headed by a six-time elected sheriff, Joe Arpaio.<sup>81)</sup> As one of the most fierce and outspoken advocate, and enforcer of local immigration laws, it is worthwhile to observe how the Arizonian public's sentiment on immigration changed over the years through examining Arpaio's popularity and approval ratings. In addition, often self-publicized as "America's toughest sheriff," Arpaio is a good candidate for observation in seeing the change on Arizona public's anti-immigration sentiment, not only because of his publicity and the county that he represents, but also because of the MCSO's extreme activities pertaining to immigration enforcement.

2005 seems to have been a significant first year, since it was when Arizona experienced a spike of anti-immigration sentiment. For instance, it was when a new Maricopa County Attorney, Andrew Thomas, was elected - Thomas was supposedly the first local politician to run on the campaign slogan of "stop illegal immigration." Until 2005, Arizona politicians had a consensus to concede to the idea that immigration issues were largely a federal concern and that it was beyond the jurisdiction of a local law enforcement powers.<sup>82)</sup> This pre-2005 understanding is apparent in Arpaio's opinions as well - during a 2005 interview regarding an illegal-immigrant incident<sup>83)</sup>, Arpaio

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<sup>80)</sup> "Data Collection: Census of State and Local Law Enforcement Agencies," *Bureau of Justice Statistics*, Stahttp://www.bjs.gov/index.cfm?ty=dcdetail&iid=249, (accessed Dec. 23, 2014).

<sup>81)</sup> In 1992, Arpaio successfully campaigned for the MCSO, and voters reelected him again in 1996, 2000, 2004, 2008, and in 2012. Prior to being elected as the Maricopa County Sheriff for the first time in 1992, Arpaio served as a DEA officer for 25 years. Arpaio is clearly a controversial figure, accused, investigated, and charged of abuse of power, misuse of funds, failure to investigate criminal activities, improper clearance of cases, violation of election laws, unlawful/unconstitutional enforcement of immigration laws, etc. Specifically, Arpaio was found guilty of racial profiling in federal courts, and the MCSO-operated jails have been ruled unconstitutional in the past. The US Department of Justice concluded that Arpaio's crackdown on illegal immigration was the worst pattern of racial discrimination and profiling in the history of the United States, and subsequently filed multiple suits against him for unlawful discriminatory police conduct.

<sup>82)</sup> Ej Montini, "Arpaio: Racist or Opportunist?," *AZ Central*, Jul. 24, 2012, <http://archive.azcentral.com/members/Blog/EJMontini/167250>.

<sup>83)</sup> In 2005, an Army reservist named Patrick Haab held a group of immigrants at gunpoint in Arizona desert located in Maricopa County. Arpaio was called to the scene and had Haab arrested. However, the County Attorney, Andrew Thomas who ran on the slogan to stop illegal immigration, decided not to prosecute Haab. Thomas's decision drew public support, creating a sort of a backlash against Arpaio. Since then, Arpaio has transformed into a hardliner immigration law enforcer. See, JJ Hensley, "Sheriff Joe Arpaio: 20 Years of Controversies and Successes," *AZ Central*, Dec. 18, 2011,

publically stated that “[being] illegal is not a serious crime” and showed no aggression towards regulating illegal immigrants himself. Nonetheless, ever since that incident which seemed to threaten his public support and opinion, Arpaio, in collaboration with the newly elected County Attorney, began focusing on illegal immigration enforcement.

The main duties of immigration enforcement that the MCSO executed were targeting human smugglers for undocumented alien trafficking, unwarranted worksite raids on illegal immigrants, and stop-and-pullover immigration arrests. It is not an overstatement that one of the primary functions of MCSO must have been immigration sweeps<sup>84</sup>); since the beginning of Arpaio’s raid on immigrants, the number of arrests made in Maricopa County increased significantly than the previous years when he had not so fiercely done so. No arrest data is so specific in a manner in which it shows how many immigration-related arrests were made in a specific locality. Further, it is difficult to spot immigration-related arrests from public data because they are not included in the traditional criminal activities statistics. Nevertheless, as mentioned in detail in the footnote, because immigration related arrests make up for part of the “others” category, the general change in the “others” arrest can potentially provide valuable inferences on how many immigration-related arrest could have been made.

Table 3.3 lays out the “other” arrest data in relation to 100,000 people in Maricopa County. As shown in the table, not only the net number of arrests made for “other” crimes have increased after 2005, but they were at the height between 2007 and 2009 – the years in which Arpaio and MCSO were mostly active in immigration sweeps.

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<http://archive.azcentral.com/news/election/azelections/articles/20111218joe-arpaio-controversies-success.html>.

<sup>84</sup>) Technically, it is “illegal” to live in the US without a proper legal status, hence making the residency of illegal aliens a criminal conduct. Nonetheless, residency crime or status crime is not included in the overall crime statistics. This was the case for the *Arizona Department of Public Safety Annual Crime Report*. This annual report, though it does not specify which category of crime immigration crime is classified under, it does have the “all other” arrests made category by county. It is logical to infer that immigration raids made arrests and that even if immigration crime cannot be charged under traditional criminal activity, arrest statistics must have included the immigration arrests as well. See “Crime in Arizona Reports,” *Arizona Department of Public Safety*, [http://www.azdps.gov/About/Reports/Crime\\_In\\_Arizona/](http://www.azdps.gov/About/Reports/Crime_In_Arizona/).

**Table 3.3 Maricopa County “Other” Crimes**

Year	# of "Other" Crime	Population (in million)	Approximate Crime per 100k Residents
2002	37323	3.299	1131.343
2003	39192	3.391	1155.765
2004	42223	3.503	1205.338
2005	39206	3.647	1075.021
2006	43224	3.776	1144.703
2007	46556	3.873	1202.066
2008	50228	3.958	1269.025
2009	51158	4.023	1271.638
2010	45482	3.823	1189.694
2011	41291	3.869	1067.227
2012	40287	3.941	1022.253
2013	45953	4.009	1146.246

Because his immigration enforcement practices had been regularly conducted mainly targeting the Latino neighborhoods, Arpaio has been accused, investigated, and charged on racial discrimination and profiling against immigrants continuously since 2007.<sup>85)</sup> The most controversial of them all was when the Justice Department sued Arpaio in civil rights probe after the MCSO refused to cooperate with the federal agency in providing information regarding immigration sweeps and arrests they have made in the past.<sup>86)</sup> Furthermore, just recently, on January 6, 2015, a federal judge has issued a court order barring MCSO and Arpaio from conducting workplace immigration raids on constitutional grounds.<sup>87)</sup>

Despite having to spread negative images and creating an unfriendly atmosphere for himself over the issue on immigration, Arpaio remained as the MCSO sheriff with overwhelmingly high approval and popularity ratings among the voters between 2001

<sup>85)</sup> A 2007 newspaper piece on Joe Arpaio revealed that Arpaio was not only the most-sued sheriff in America, but also that lawsuits against him have cost over \$41 million dollars. Most of these lawsuits have been filed against Arpaio on charges of racial profiling and unconstitutional searches and seizures of immigrants during the “raids.” See, <http://www.phoenixnewtimes.com/arpaio/>

<sup>86)</sup> Amanda Lee Myers and Paul Davenport, “Arizona Sheriff Joe Arpaio Sued By Justice Department In Civil Rights Probe,” *Associated Press*, May 25, 2011, [http://www.huffingtonpost.com/2010/09/02/sheriff-joe-arpaio-sued-b\\_n\\_703563.html](http://www.huffingtonpost.com/2010/09/02/sheriff-joe-arpaio-sued-b_n_703563.html).

<sup>87)</sup> David Schwartz, “Federal Judge Blocks Sheriff Joe Arpaio From Conducting Workplace Immigration Raids,” *Reuters*, Jan. 6, 2015, [http://www.huffingtonpost.com/2015/01/06/joe-arpaio-immigrant-raids\\_n\\_6424782.html](http://www.huffingtonpost.com/2015/01/06/joe-arpaio-immigrant-raids_n_6424782.html).



and 2011.<sup>88)</sup> In fact, multiple survey data<sup>89)</sup> shows that Arpaio's approval and popularity rating since 2001 showed to have been in its prime during which Arpaio's operations against illegal immigrants began as addressed the following table.

**Table 3.4 Joe Arpaio Ratings, 2001-2011**

	01	02	03	04	05	06	07	08	09	10	11	12
<b>App Rating</b>	-	-	59% (19%)	-	-	64% (16%)	64% (22%)	54% (34%)	-	39% (34%)	41% (33%)	37% (42%)
<b>Pop Rating</b>	26%	29%	-	51%	-	-	-	52%	-	-	-	-

*\*Note: Approval Ratings (Disapproval Ratings)*

Arpaio, on average, stayed in the above 50% range for his job approval ratings throughout the 10 years in which the ratings were collected. His popularity ratings showed similar patterns, though it had a slower climbing rate in the early 2000s. All of the recorded popularity ratings of Arpaio were survey results of voters who placed him as the most favorable candidate to vote for either a hypothetical governor race for Arizona or the Republican Party primary race. Voters not only found Arpaio more favorable than the other inner-party competitors, but also, they were more likely to vote for Arpaio among all candidates in the race, regardless of party allegiance. Clearly, Arpaio was a favorable and popular person to the majority of the voters in Arizona.

Joe Arpaio experienced a parallel growth of both approval and disapproval rating since he began the illegal immigration raids. First, his approval ratings have been higher than 50% until 2010. This suggests that in the years preceding 2010, 50% or more percentage of voters approved of Arpaio's job performance, which would include his notorious anti-immigration activities. When one equates the approval ratings as the voters' approval of Arpaio's anti-immigration activities, it is reasonable to argue that, at least during the period between 2005-2009, the Arizonian public understood local

<sup>88)</sup> In this research, "approval ratings" refer to the job performance points that the voters rated the candidate on. Generally, approval ratings were collected from the surveys that contained questions that asked the surveyors to rate the subjects' job performances on a 5-level-scale from very poor to excellent/good. Popularity ratings were collected from the surveys that contained questions that asked the surveyors' support for a hypothetical governor's race, such as, "if so-and-so was running for governor/party primary, who would you vote for?" Arpaio's popularity ratings show the percentage of voters' who is likely to vote for Arpaio in a potential election for a public office.

<sup>89)</sup> BRC produces nationally respected and recognized *Rocky Mountain Poll* and *Consumer Confidence Index*, etc., which tracks public opinion data in Arizona. See, "Rocky Mountain Poll Reports," *Behavior Research Center*, [http://www.brc-research.com/rocky\\_mountain.htm](http://www.brc-research.com/rocky_mountain.htm), (accessed: Dec. 21, 2014).

illegal-immigrant raids - despite its unconstitutional character – as a legitimate act of law enforcement.

Paradoxically, however, the public opinion that disapproves of Arpaio grew extremely fast since 2005 as well, showing a parallel growth in conjunction to his approval ratings. The sheer fact that his disapproval rating began to spike since 2005 suggests that voters were unhappy of Arpaio's job performance. Again, one of the most prominent activity of Arpaio since 2005 was the immigration raids. Ultimately, the shifts in Arpaio's approval ratings clearly show that the public had grown discontent with Arpaio's performance; while the MCSO's or Arpaio's main duty had not been illegal immigration raids, the arrest statistics and the disapproval ratings both go to show interactive growth, henceforth strengthening the argument that public discontent borne out of Arpaio's immigration raids.

Surveys conducted between 2005 and 2009 seem to support the claim, that the public sentiment on illegal immigration had been growing in a bipolar manner. Between 2006 and 2007, when Arizona voters were surveyed on the question, "people who enter the US illegally to seek work are no better than common criminals," 27% of the people agreed both years, and 64% and 69% disagreed respectively. The slight drop in the "disagree" percentage could potentially lead to a logical suspicion that some Arizona voters who used to not equate illegal aliens as common criminals or less are now reconsidering their thoughts. While this survey data may not necessarily be a definite or ultimate conclusion that an anti-immigration sentiment has spread among Arizonian voters, it infers that something has invoked negative doubts in the voters' perception of immigrants. Further, in 2005, 33% of Arizona's public answered that they favor a law under which any business found to employ illegal aliens would lose its license to do business in Arizona and be forced to close. An additional 2007 survey which asked the voters whether they favor or oppose requiring local police to enforce immigration laws by requiring officers to verify the nationality of anyone they stop in course of their regular law enforcement duty, surprising 58% of the voters agreed with 32% disagreeing to local immigration enforcement.

Clearly, the public's opinion on illegal immigration is divided on the issue of local

law enforcement and general negative perception on them; that is, the majority of the public seems to support local law enforcement of immigration laws which would penalize illegal immigration, while not necessarily perceiving illegal immigrants as potential threats or negative influence over them. Table 3.8 outlines such divisive character of Arizonian public opinion on illegal immigrants.

**Table 3.5 Arizona Public Opinion on Illegal Immigration**

	<b>Paths to Citizenship/Legal Status</b>	<b>Local Immigration Enforcement</b>
<b>Year</b>	<b>Agree (Disagree)</b>	<b>Agree (Disagree)</b>
<b>2006</b>	73% (25%)	16% (76%)
<b>2007</b>	76% (16%)	58% (32%)
<b>2010</b>	-	52% (39%)
<b>2013</b>	74% (14%)	-

90)91)92)93)

These data on Arpaio's ratings in relation to the public survey data show a bipolar attitude of Arizonian public on illegal immigration. The overwhelming support for an outspoken anti-immigrant public law enforcement official who commit inhumane and unconstitutional raids on illegal immigrants coincide with the public's support for local enforcement of tough immigration law. Ironically, the public shows a degree of sympathy towards illegal immigrants when over 70% of them would agree that illegal immigrants deserve a path to legal status to stay in America. This research present these data as tool

<sup>90)</sup> Surveyors were asked to either favor or oppose creating an opportunity for illegal immigrants to stay in the US and apply for citizenship.

<sup>91)</sup> Surveyors were asked to either favor or oppose the governor signing the SB 1070 law.

<sup>92)</sup> Surveyors were asked to rate on the statements of, "immigration law should find a way for immigrant workers to come and go without breaking US laws," and "in general, do you favor or do you oppose requiring local police in addition to their regular duties, to enforce immigration laws by requiring officers to verify the nationality of anyone they stop in the course of their regular law enforcement duties?"

<sup>93)</sup> Surveyors were asked to rate on the statements of, "immigration law should find a way for immigrant workers to come and go without breaking US laws," and "it is the responsibility of the federal government to secure our borders, not the various states. State funds should be used for such things as education, transportation and job development."

in diagnosing the multifaceted characteristics of Arizona's anti-immigration sentiment, and infer reasonable and valid ways on how such sentiment could have spread.

It is difficult to determine which factor had initiated an anti-immigration sentiment in Arizona, but it is easy to spot when and how such sentiment had proliferated in Arizona. The existence of a local politician in the center of the buildup for anti-immigration sentiment goes to show that sub-federal challenge on federal exclusivity on immigration regulation is a product of unpredictable, sporadic political theater borne out of local politics, not necessarily from national politics in Washington DC.

## **vi. Concluding Remarks for Chapter 3**

As the case study of Arizona showed, the hypotheses concerning state economy, demography, and safety were tested null. This research demonstrated that the political factor is a complicated matter that goes beyond existing literatures' simple discussion of which party tends to support immigration or not. Further, it showed that issues surrounding immigration is not only a state-wide matter, but also a very local matter as well. Just as public opinion on a particular politician may form, sentiment regarding immigration may form with either negative or positive nuance, ultimately spreading to diverse corners of the society.

In terms of economy, while it is undeniable that Arizona is an exceptional state that challenged the federal exclusivity when the unemployment was at its peak, and when the GDP per capita experienced negative growth, it is difficult to determine that the economic factor significantly triggered the sub-federal enactment of the omnibus immigration law. In this chapter, this research demonstrated that Arizona fails the true experiment under the assumption that it is only logical to comprehend that states would enact sub-federal immigration policies to regulate both authorized and unauthorized immigrants, should they believe that that regulation is more cost effective in operating the state economy. Such cost-benefit analysis of local immigration policies and their impacts on the state economy requires a twofold analysis. First, it requires a plausible answer to

the question: “do immigrants hurt or benefit the state economy?” Second question to address is: “does the removal of immigrants bring more economic benefit to the state?” In a sense, since the removal of immigrants is only applicable for the unauthorized, this question is ultimately asking whether the removal or detention of illegal immigrants is cost effective for the state economy.

There is really only one answer to this. Immigrants are economical agents – although they may not necessarily directly increase or decrease state economic activity all the time, in the case of the United States, immigrants or the institution of immigration do not hurt the economy. As long as the inflow of immigrants is regulated (which is done at the federal level), immigrants, authorized and/or unauthorized will contribute to supply and demand in the market economy. This overly generalized statement is backed by an ample number of researches on immigration and labor. For instance, according to a study on immigrants on fiscal and economic impacts in the State of Arizona, the “total state tax revenue attributed to immigrant workers was an estimated \$2.4 billion (about \$860 million for naturalized citizens plus about \$1.5 billion for non-citizens).” Even when considered that a large sum of the state revenue generated by immigrants went towards education, health care, and law enforcements, “immigrants in Arizona generated [...] a net fiscal contribution of \$940 million toward services such as public safety, libraries, road maintenance, and other areas.”<sup>94)</sup>

Arizona is not the only state to have benefitted economically from immigrations. The above claim is true for other states besides Arizona as well. According to a study on immigrants’ economic contribution to the state of California, the “immigrants are among California’s most productive entrepreneurs, and have created jobs for tens of thousands of Californians [...] and] over the next 30 years, the children and grandchildren of immigrants will play an increasingly critical role in the state’s economy.”<sup>95)</sup> The same goes for the state of Washington as well; not only do immigrant laborers represent 14.3% of

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<sup>94)</sup> Judith Gans, “Immigrants in Arizona: Fiscal and economic Impacts,” *Udall Center for Studies in Public Policy at the University of Arizona* (2008), <http://udallcenter.arizona.edu/immigration/publications/impactofimmigrants08.pdf>. P. 10.

<sup>95)</sup> “Looking Forward: Immigration Contributions to the Gold State – A Compilation of Recent Research Findings on Immigrants in California,” *California Immigrant Policy Center* (2008): <http://www.caimmigrant.org/>.

Washington's civilian workforce, and constitute a large significant portion of the growth in Washington's labor force, but also, "Washington's economic growth has always been fueled by the contributions of immigrant workers, more than many other states across the country."<sup>96</sup> These researches show that immigrants are not only a significant portion of Arizona's total consumer market, but also an undeniable agents for expanding the economy by participating in a variety of markets and state expenses.

Furthermore, the state demography and its relation to the states' action of challenging federal exclusivity ultimately showed that there is no significant correlation between the two variables. State demography played non-significant role in triggering states to enact state-specific omnibus immigration policies, and no significant correlations were found for Arizona in 2010. In terms of general demographic changes in Arizona, the economic downfall had little or no impact on the trajectory of rise of non-white population in Arizona. This goes to show that the demographic movement and makeup is either unaffected or insignificantly affected by the economy. Same conclusion can be derived for the safety factor. By examining the state crime rates, this research found that while states that did enact an omnibus immigration bill tended to be Border States, there is no significant correlation between general crime rates and the passage of omnibus laws. Moreover, states had different reasons to cite crime as a legitimating tool in passing their omnibus immigration laws.

This in-depth analysis demonstrated that while it is true that the racial mix up of the American population will rise naturally, the data, both at the surface level and in deeper level, suggests that the demographic change is natural, and has no direct correlations to explaining why and when the states challenge the federal exclusivity. Samuel Huntington in 2004 "warned" and criticized the US for ignoring the challenge set forth by Mexicans and other Latinos. The challenge he referred to was the "persistent inflow of Hispanic immigrants [threatening] to divide the US in to two peoples, two cultures, and two languages. Unlike past immigrant groups, Mexicans and other Latinos have not assimilated in to mainstream US culture, forming instead their own political and

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<sup>96</sup> Pramila Jayapal, and Sarah Curry, "Building Washington's Future: Immigrant Workers' Contribution to Our State's Economy," *One America With Justice for All* (2009): <http://oneamericanews.files.wordpress.com/2009/03/oneamerica-report-april-09-low.pdf>. P.10.

linguistic enclaves – from LA to Miami – and rejecting the Anglo-Protestant values that built the American dream.”<sup>97)</sup> It is worthwhile that this chapter has demonstrated that such extremely racist and quite ridiculous norms and perspectives on the growing trend in the non-white population in the US as something negative, and un-American has been proven wrong, at least policy-wise. That is, if what Huntington was warning about was right, then US culture must be built on an Anglo-Protestant value set, and the states or its federal partner should have actively enacted laws to regulate immigrants, especially those who do not come from Anglo-Protestant backgrounds. They have not.

Some previous findings shared the implications of this research on the ethnic makeup of state demography, criticizing the conventional interpretation of scholars of immigration that “Americans’ ethnic and racial surroundings influence their attitudes and political behaviors (Hopkins, 2010).” In testing the effects of demographic change and politicization of immigration, Hopkins cleverly hypothesized that the sudden change in demography and national rhetoric is what is causing the anti-immigration fever in localities. The findings of Hopkins’ research have suggested, “such contextual effects are far less ubiquitous. Those who live near larger proportions of immigrants do not consistently exhibit more negative attitudes. Instead, at least as far as immigrants are concerned, people respond to the demographics of their communities only under specific circumstances. When faced with a sudden, destabilizing change in local demographics, and when salient national rhetoric, such as party platform, campaigns political ads, and public opinion politicizes that demographic change, people’s views turn anti-immigrant (Hopkins, 2010).”

Hopkins’ suggestion partially supports the claims made in this chapter on the proliferation of anti-immigration sentiment: when faced with a sudden political campaign ads, public opinion tends to politicize the matter, which in turn turns people’s view as anti-immigrant, or at least accepting of harshly criticizing illegal immigrants. In the case of Arizona, this chapter demonstrated that a single popular politician with power of law enforcement might influence the construction of public sentiment on immigration, though such sentiment lack tenacity, and the opposing opinion builds just as quickly.

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<sup>97)</sup> Samuel Huntington, “The Hispanic Challenge,” *Foreign Policy* 141 (2004): 30-45.

By examining the State of Arizona in depth, this research has found that there is no significant linkage between poor economy, poor economic growth, demographic makeup, or raw crime rates with why and when the state government enacts anti-immigration measures. Additionally, this chapter showed the likelihood of politicization of sub-federal immigration enforcement activities as result of local politics. The implication this finding has on the American model of federalism is quite important, especially in the discourse of American federalism in terms of sub-federal activities fostering local activism to stretch the definition of concurrent authority. First, strictly in economic sense, state governments should find no need to coerce sharing of such regulatory power, simply because it benefits the state economy by saving unnecessary expenses in battling for self-rule; second, local activism to stretch murky regulatory power may be initiated at the local level, not imposed by the higher government level.

What this chapter fell short of is asking the question of whether states view enacting state-specific immigration laws as a direct challenge to the American federalism system, or a challenge to the federal government. It is unclear as to what the motives behind the states were. Under the premise that the act of enacting state-specific immigration policy is a challenge to the federal government, it is quite possible to infer that the states perceive the federal government as a nemesis, at least in terms of the regulation of immigration. But simultaneously, it could also suggest a simple showing of a sign of frustration of localities and that they are attracting federal attention to fix local problems by politicizing the matter first at the local level. Furthermore, this research had not taken in to consideration that the regional distribution of the ethnic minorities throughout the states may have a significant effect in showing states' tolerance to ethnic minorities – something that a future, continuous, or follow-up study of this research should embrace.



## **Chapter 4**

### **Dissecting Omnibus Immigration Bills**

This chapter is an effort to extend the search of factors that could have triggered the activities of the sub-federal governments in the enactment of state-based omnibus immigration policies. As the previous chapters have shown, it is extremely difficult to find the factors that are extrapolatable as the championing factors that trigger sub-federal resistance to federal exclusivity. However, the previous chapters have approached the matter primarily from the perspectives of the states. While understanding sub-federal omnibus immigration reform bills as state-based activities is logical, in continuation for exploring the triggering factor, this chapter focuses on the understanding of sub-federal activities from the federal government's perspective. In doing so, two omnibus immigration bills, Arizona's SB 1070, and California's Proposition 187 are dissected, as well as the Supreme Court's response to each. Through this analysis, it is possible to trace the points of contention between the two levels of government, and also to seek out the states' hidden intent behind enacting omnibus immigration laws. This chapter is divided in to two sections. Firstly, in conjunction with the previous chapter on Arizona, the texts of Arizona SB 1070 is examined in greater detail. Secondly, California's Proposition 187 will be examined. Proposition 187 is an excellent subject for analysis not only because it was the first omnibus immigration bill of its kind in the history of the US, but also because the process of the uncomfortable competition between California and the federal government has many important implications as towards which direction the sub-federal immigration policymaking will head.

#### **I. Dissecting Arizona SB 1070 "Support Our Law Enforcement and Safe Neighborhood Act"**

This research applies the dynamic of the pertinence of mirror image theory as discussed in Chapter 2. The application of the mirror image theory allows local governments to enforce copycat state laws in accordance with federal law. On April 30<sup>th</sup>, 2010, Jan Brewer, Governor of Arizona, then posed an important question that their Arizona SB 1070 “mirrors federal law[, so] why is it bad for Arizona to mirror federal law?”<sup>98)</sup> Which federal law did AZ SB 1070 mirror exactly? What is commonly known as the “federal law” is the U.S. Code (hereafter USC), and it is a “consolidation and codification by subject matter of the general and permanent laws of the United States. It is prepared by the Office of the Law Revision Counsel of the United States House of Representatives.”<sup>99)</sup> USC is subordinate to the US Constitution, and it preempts state and local laws. Title 8 of the USC, titled “Aliens and Nationality” is the sole standing US federal immigration law, containing 15 chapters.

Arizona’s infamous statute contained provisions that would have criminalized certain conduct which is already a federal violation under the federal immigration law. For example, immigrants are required to carry their alien registration documents or other records that prove their legal status in the US under 8 USC sec. 1304 and sec. 1306.<sup>100)</sup> In this sense, Governor Brewer’s argument that the federal law does not preempt SB 1070 is a valid statement, however, other parts of the state law do not exist at the federal level. After careful examination of the original text of Arizona’s SB 1070, it was found that sections like 5A, which makes illegal a driver to halt and “attempt to hire or to hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic”<sup>101)</sup>, does not exist in the USC. Anyone who has witnessed or hired day laborers at the parking lot of a local hardware store would understand that this section is targeted to criminalize the persons hiring these day laborers, and the day

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<sup>98)</sup> Elise Foley, “Jan Brewer: Obama is ‘Race-Baiting,’ Pandering to Latinos” *the Huffington Post*, Aug. 28, 2012, [http://www.huffingtonpost.com/2012/08/28/jan-brewer-obama\\_n\\_1836203.html](http://www.huffingtonpost.com/2012/08/28/jan-brewer-obama_n_1836203.html).

<sup>99)</sup> Aliens and Nationality, US Code § 1304. <http://uscode.house.gov/> (accessed Aug. 15, 2014).

<sup>100)</sup> US Code § 1304 (e) Reads, “Personal possession of registration or receipt card; penalties Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100 or be imprisoned not more than thirty days, or both.” *See*, 8 US Code Section 1304.

<sup>101)</sup> State of Arizona Senate 49th Legislature. (2010).

laborers themselves.

When Governor Brewer signed SB 1070 in to law on April 23<sup>th</sup>, 2010, the law was scheduled to take effect on July 29<sup>th</sup>, 2010. However, on July 6<sup>th</sup>, the US Department of Justice (DOJ) filed a lawsuit against the state of Arizona, in the US District Court for the District of Arizona, requesting the law be declared invalid.<sup>102)</sup> The DOJ strongly argued in favor of the notion of federal preemption, and stated that the “Constitution and the federal immigration laws do not permit the development of a patchwork of state and local immigration policies throughout the country... [and] the immigration framework set forth by Congress and administered by federal agencies reflects a careful and considered balance of national law enforcement, foreign relations, and humanitarian concerns – concerns that belong to the nation as a whole, not a single state.”<sup>103)</sup> Upon examining the statements made by the DOJ in detail, it is clear that the federal government recognized the state immigration law to be a sort of a “patchwork” to the existing federal statutes. The implications of the DOJ statements on SB 1070 as a type of a patchwork could indicate that even the federal government does not see the standing federal immigration regulation to be complete.

Initial hearing for the *US v. Arizona* took place on July 15<sup>th</sup>, and 22<sup>nd</sup>, 2010. On July 28<sup>th</sup>, one day before the law took effect, Judge Susan Bolton of the US District Court issued a ruling in partial favor of the DOJ, granting a preliminary injunction that put a halt on most controversial and key parts of SB 1070 from going in to effect.<sup>104)</sup> With the key parts missing, SB 1070 was no more than a mere copycat of the USC – this ultimately reinforced the Arizona government to appeal the case in November of 2010 to the US Court of Appeals for the Ninth Circuit in San Francisco.<sup>105)</sup>

The legal battle between the federal government and the State of Arizona ultimately ended in the Supreme Court. It is worth noting that the Circuit Court decision

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<sup>102)</sup> Jerry Markon, and Michael D. Shear, “Justice Department Sues Arizona Over Immigration Law,” *The Washington Post*, Jul. 7, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/06/AR2010070601928.html>.

<sup>103)</sup> Randal C. Archibold, “Judge Blocks Arizona’s Immigration Law,” *The New York Times*, Jul. 28, 2010, [http://www.nytimes.com/2010/07/29/us/29arizona.html?\\_r=0](http://www.nytimes.com/2010/07/29/us/29arizona.html?_r=0).

<sup>104)</sup> Bob Egelko, “Court Signals Backing for Arizona Immigration Law,” *San Francisco Gate*, Nov. 2, 2010, <http://www.sfgate.com/nation/article/Court-signals-backing-for-Arizona-immigration-law-3168035.php>.

<sup>105)</sup> “USA v. State of Arizona, No. 10-16645,” *United States Courts for the Ninth Circuit*, accessed Sept. 8, 2014, [http://www.ca9.uscourts.gov/content/view.php?pk\\_id=0000000470](http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000470).

and that of the Supreme Court differ in some aspects. Before moving on any further, it is essential to recognize that SB 1070 was not blocked entirely; only some provisions were blocked by the Court, once again reaffirming the very fact that the federal government recognizes the application of mirror image theory on certain state laws even if that means the sharing of powers vested directly to the federal government. The decisions made at the different levels of courts are outlined in Table 4.1

**Table 4.1 Decisions by Ninth Circuit Court of Appeals<sup>106)</sup> and the Supreme Court<sup>107)</sup>**

<b>Grounds</b>	<b>Ninth Circuit Court of Appeals</b>	<b>Supreme Court Decision</b>
<b>Violation of the Supremacy Clause</b>	3	3
<b>Preemption under Federal Law</b>	2B, 5C, 6	5C, 6

The Circuit Court’s ruling blocked total of four provisions from SB 1070, consisting two full sections and two sub-sections, all of which are not explicitly mentioned in USC. Notice that the decisions of the two courts are very similar. In detail, Section 3, which its contents were primarily concerned with the criminalization of noncitizens’ failure to apply for or carry a form of alien registration papers, was struck down by both courts on the grounds that the federal law makes a single sovereign responsible for maintaining a comprehensive and unified system to keep track of aliens within the national border. The logic was that if this section was to be valid, then every state could potentially give itself independent and autonomous authority to prosecute federal registration violations, which would ultimately diminish the federal government’s control over the enforcement of immigration.

Other overlapping sections struck down by the two levels of courts were sections 5C, and 6. Section 5C was concerning the imprisonment of unauthorized aliens from soliciting, applying for, or performing labor in the United States. Both courts ruled that

<sup>106)</sup> Arizona v. United States, (2012).

<sup>107)</sup> *Ibid.*

although this section attempts to achieve one of the same goals as the federal law – the deterrence of unlawful employment – it involves severe conflict in the methods of enforcement. Essentially, the federal judiciaries understood the sub-federal laws that interfere with the federal labor laws, regardless of having the same fundamental ideas and goals, were mere obstacles to the regulatory system that the Congress chose.

Furthermore, Section 6, which concerns the authorization of warrantless arrests of noncitizens where there is probably cause to believe that that person(s) has committed a public offense, which the consequence of the offense is removal from the US, both levels of courts ruled that this was preempted under the federal statute. Specifically, courts understood Section 6 as an attempt to provide state policing agents greater authority to arrest aliens on the basis of possible removability than Congress has given to trained federal immigration officers. This would be problematic in the federal regulatory system of enforcing immigration laws because under the proposed state law, police officers who believe a person is subject of removal of some public offense would have the authority to conduct an arrest on that basis regardless of whether a federal warrant had been issued, which would ultimately undermine the federal authority. Section 6 was especially threatening to the federal regulatory system for it could practically allow state police agencies to exercise immigration regulatory authority without any sort of input from the federal government. More importantly, the two levels of court saw that because there would be no uniform method from state-to-state, the regulation in practice could result in unnecessary harassment or discrimination of some aliens.

Despite the similarities, there were differences between the two decisions, implying that although the courts tend to have a similar interpretation of SB 1070, the details or the process from which the two levels of courts derived their conclusion are different. Major difference between the decision made by the Ninth Circuit Court and the Supreme Court led to the latter's decision to reverse the Circuit Court's decision to block section 2B. Section 2B required law enforcement officers to attempt to check the immigration status of anyone they lawfully stopped, if they have reasonable suspicion the person might be an illegal immigrant.

The reason for reversing the Circuit Court’s decision on 2B was that upon careful review, “without the benefit of a definitive interpretation from the state courts, it would be inappropriate to assume section 2B will be construed in a way that creates a conflict with federal law”<sup>108)</sup> – at least at the time when the ruling was made in 2012. The major clash between the Supreme Court and the Arizona State government over Section 3 was whether that section could survive federal preemption or not. The State of Arizona argued that it could indeed survive federal preemption because the provision has the same aim as federal law and adopts its substantive standards. Whereas, the Supreme Court argued that that argument not only ignores the basic premise of field preemption – that States may not enter, in any respect, an area of Federal Government has reserved for itself – but also is unpersuasive on its own terms.

Unlike section 3, section 5C was an attempt to enforce state criminal prohibition where no federal partner exists. The provision seeks to make it a state misdemeanor for “an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor” in Arizona. The Supreme Court interpreted that it is not unconstitutional for the State of Arizona to enact state criminal prohibition without a federal counterpart; instead, they found Section 5C to be unconstitutional and preempted under federal law because section 5C “would upset the balance struck by the Immigration Reform and Control Act of 1986 (IRCA).”<sup>109)</sup> Before no comprehensive federal statute on regulating employment of unauthorized aliens existed, it was up to the state governments to handle the authority to pass its own laws on the issue; however, since the comprehensive federal statute was constructed, it is no longer up to the state governments to make decisions on that issue.

While it is important to recognize that the two courts had a different interpretation on which part of SB 1070 was unconstitutional, it is more important to recognize that the general spirit of the Courts’ decisions were almost identical. Furthermore, it is critical to address that despite the battle over the legality of SB 1070 after it passed in to law, that the Supreme Court struck down only portions of the law on

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<sup>108)</sup> *Ibid.*

<sup>109)</sup> *Ibid.*

constitutional grounds; thereby upholding the decisions made by the lower court. Again, it is interesting to observe that without the parts struck down by the Supreme Court, SB 1070 indeed mirrors the federal statute on immigration regulation, maintaining its status as a mere reiteration of federal statutes.

Since the Supreme Court's decision on Arizona, the US government has not make any further substantive moves on tackling immigration issues. In 2013, there had been some moves by the bipartisan group of eight senators<sup>110)</sup> to tackle the immigration matter at the federal level. This group announced the principles for comprehensive immigration reform, particularly focusing on provisions<sup>111)</sup> that provide pathways for many illegal immigrants to work towards achieving their citizenship. This plan, was eventually worked up and introduced as a formal bill, known as the "Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (S.744)". The bill was introduced in to the US Senate of the 113<sup>th</sup> US Congress on April 16<sup>th</sup>, 2013. On June 27<sup>th</sup>, the Senate passed the bill in a "historic" 68-to-32 vote<sup>112)</sup>, and it was sent to the US House of Representatives, where the bill has not been brought to the House floor for any type of debate or vote. The consequence of stalling the bill in the House has ultimately led to the stalling of further federal act on immigration policymaking at the federal level.

Nevertheless, on November 20<sup>th</sup>, 2014, in a televised address from the White House, President Obama announced a program of "deferred action," which would allow roughly 4 million unauthorized aliens to legally stay and work in the United States.<sup>113)</sup>

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<sup>110)</sup> The "Gang of Eight" is a colloquial term in reference to the bipartisan group of eight senators who wrote the 2013 comprehensive immigration reform bill. This group has been instrumental in bringing the immigration matter to the legislative table in the Spring of 2013. The group is composed of four Democrats (Michael Bennet, D-CO; Richard Durbin, D-IL; Jeff Flake, R-AZ; Bob Menendez, D-NJ), and four Republicans (Linsey Graham, R-SC; Marco Rubio, R-FL; Chuck Shumer, D-NY; John McCain, R-AZ).

<sup>111)</sup> 1) Provide a citizenship path for undocumented immigrants already in the US contingent on certain border security and visa tracking improvements. The plan provides for permanent residence for undocumented immigrants only after legal immigrants waiting for a current priority date receive their greencard and a different citizenship path for agricultural workers through an agricultural worker program; 2) Business immigration system reforms, focusing on reducing current visa backlogs and fast tracking permanent residents for US university immigrant graduates with advanced degrees in science, technology, engineering or mathematics also known as the STEM files; 3) An expanded and improved employment verification system for all employers to confirm employee work authorization; 4) Improved work visa options for low-skill workers including an agricultural worker program. See "Bill Text Versions, 113<sup>th</sup> Congress (2013-2014) S. 744." *The Library of Congress*, [http://thomas.loc.gov/cgi-bin/query/z?c113:S.744:.](http://thomas.loc.gov/cgi-bin/query/z?c113:S.744:)

<sup>112)</sup> Melissa V. LaVenia, "Update: U.S. Senate Votes to Approve Gang of Eight's U.S. Immigration Reform Bill and Key Canadian Provisions," *The National Law Review*, Jun. 18, 2013, <http://www.natlawreview.com/article/update-us-senate-votes-to-approve-gang-eight-s-us-immigration-refo-rm-bill-and-key-ca>.

This was the first of its kind since former President George H.W. Bush's executive order in 1990. President Obama's executive order has not yet taken effect, as of November 2014, nor does this program take the form of an omnibus immigration law. However, given that the nature of presidential executive orders has the full force of law, it can be regarded as the first successful federal action on national immigration reform. Yet, because it lacks formality as a Congressional Act, or the omnibus characteristics, it can be criticized as mere piecemeal to the existing immigration law, which would not change or refine the *status quo*. Patchwork to national immigration like the most recent executive order includes the "Deferred Action for Childhood Arrivals (DACA)"<sup>113</sup>, which came after the failed attempt to pass the "Development, Relief, and Education for Alien Minors (DREAM Act)".

Possibly, President Obama is utilizing patchwork as strategy to bring change to the *status quo*. What is clear is that the federal government is acting to make changes to the existing immigration regime since the Supreme Court's ruling on Arizona's SB 1070. Arizona SB 1070, being one of the first sub-federal omnibus immigration reform bill, thus, can be interpreted as a meaningful message from the state governments to the federal government to take up the responsibility as the courier of exclusivity on immigration policymaking powers in order to put that power to use.

## **II. California Proposition 187 "Save Our State Initiative"**

California Proposition 187 was a California's 1994 citizens' ballot initiative that attempted to establish a state-run program to screen immigration status of peoples to prohibit undocumented aliens from using public benefits, such as health care, public

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<sup>113</sup> See, David Nakamura, Robert Costa, and David Fahrenthold, "Obama Announces Immigration Overhaul Shielding 4 Million From Deportation," *The Washington Post*, Nov. 20, 2014, [http://www.washingtonpost.com/politics/obama-immigration-plan-will-shield-37-million-from-deportation/2014/11/20/3345d672-70dd-11e4-893f-86bd390a3340\\_story.html](http://www.washingtonpost.com/politics/obama-immigration-plan-will-shield-37-million-from-deportation/2014/11/20/3345d672-70dd-11e4-893f-86bd390a3340_story.html); "Remarks by the President in Address to the Nation on Immigration," *The White House*, November 20, 2014, <http://www.whitehouse.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration>.

<sup>114</sup> "Consideration of Deferred Action for Childhood Arrivals (DACA), *U.S. Citizenship and Immigration Services*, accessed Nov. 17, 2014, <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca#filingprocess>.



education, and social security. Californians passed the proposed 10-sections-long legislation in November 1994. Shortly after, however, the federal government challenged the law and found it to be unconstitutional. Generally, both Arizona SB 1070 and California Proposition 187 are considered restrictive omnibus immigration laws, but, they are different according to the popular typology of immigration laws. While the Arizona SB 1070 would be classified as direct enforcement under restrictive law, California Proposition 187 would cross-over to the categories of indirect enforcement and benefits restriction under the restrictive law. Nonetheless, SB 1070 and Proposition 187 are similar in nature that despite having officially targeted illegal immigrants, the two laws are essentially aimed at the general public, especially those who appear to resemble an immigrant. Needless to say, it is important to address the targets of the two proposed laws, not only because of the possible different impacts of the laws, but also because of the methods and attitudes in which the two states attempted to control immigration. More importantly, however, this research recognizes that both laws are state-based immigration laws, which sought to infringe on federal exclusivity over immigration regulation.

To continue the discussion of how mirror image theory was applied to the Californian case, it is necessary to analyze the texts of Proposition 187. Unlike Arizona's SB 1070, California Proposition 187 did not entirely mirror the federal statutes listed in 8 USC. As mentioned above, the difference between SB 1070 and Proposition 187 is that Proposition 187 was less of a direct immigration enforcement law, rather it was a benefits restriction law. This is mainly the reason why Proposition 187 was not detected by the federal government before Californian voters passed it in November of 1994. However, almost immediately it was voted in, immigrant-rights advocacy groups such as the League of United Latin American Citizens<sup>115)</sup> took action challenging the constitutionality of the state law. For those challenging the constitutionality of the law, it was the only method of effectively halting it. Ultimately, after one day of passage, five suits were filed in US District Court regarding the constitutionality of Proposition 187; "the plaintiffs [sought] to bar the Governor and other state officials and entities from implementing and enforcing the

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<sup>115)</sup> See, *League of United Latin American Citizens*, accessed Nov. 17, 2014, <http://lulac.org/>.

provisions of Proposition 187.”<sup>116)</sup>

The challenge quickly escalated to higher courts, and the Courts made their decision to bar Proposition 187 from being implemented. Unlike Arizona SB 1070, the actual decision by the federal court was made nearly three years after the initial barring of Proposition 187.<sup>117)</sup> This was because in 1996, President Clinton signed two federal laws, the *Personal Responsibility and Work Opportunity Reconciliation Act* (PRWORA)<sup>118)</sup>, and *Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA)*<sup>119)</sup>. Both of these laws supplemented the federal immigration regulation. In 1997, the US District Court issued decisions, ruled that sections 1, and 4 through 9 of California’s Proposition 187 are subject to federal preemption mainly by the newly implemented PRWORA, and IIRAIRA.<sup>120)</sup> Upon the federal court’s ruling the State of California, led by Governor Gray Davis attempted to initiate a request for mediation to resolve the appeal of the ruling. The appeals ended unsuccessfully, and the federal court’s ruling on Proposition 187 remained.<sup>121)</sup>

Most of the sections, Sections 1, and 4 through 9, of Proposition 187 were ruled unconstitutional by the US District Court. Table 4.2 outlines the sections by court decisions.

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<sup>116)</sup> “CA’s Anti-Immigrant Proposition 187 is Voided, Ending State’s Five-Year Battle with ACLU, Rights Groups,” *American Civil Liberties Union*, accessed Oct. 24, 2014, <https://www.aclu.org/immigrants-rights/cas-anti-immigrant-proposition-187-voided-ending-states-five-year-battle-aclu-righ>.

<sup>117)</sup> Jeff Lustig and Dick Walker, “No Way Out: Immigrants and the New California,” *Campus Coalition for Human Rights and Social Justice at the University of California, Berkeley*, accessed Nov. 13, 2014, [http://oldweb.geog.berkeley.edu/PeopleHistory/faculty/R\\_Walker/Walker\\_1.html](http://oldweb.geog.berkeley.edu/PeopleHistory/faculty/R_Walker/Walker_1.html).

<sup>118)</sup> *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, U.S. H.R. 3734, 104<sup>th</sup> Congress, <http://www.gpo.gov/fdsys/pkg/BILLS-104hr3734enr/pdf/BILLS-104hr3734enr.pdf> (accessed Oct. 23, 2014).

<sup>119)</sup> *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, U.S. 110 Stat. 3009, 104<sup>th</sup> Congress, <http://www.uscis.gov/iframe/ilink/docView/PUBLAW/HTML/PUBLAW/0-0-0-10948.html> (accessed Oct. 23, 2014).

<sup>120)</sup> “California: Proposition 187 Unconstitutional,” *Migration Dialogue at the University of California*, Davis 4-12 (1997), [http://migration.ucdavis.edu/mn/more.php?id=1391\\_0\\_2\\_0](http://migration.ucdavis.edu/mn/more.php?id=1391_0_2_0).

<sup>121)</sup> Patrick McDonnell, “Prop. 187 Found Unconstitutional by Federal Judge,” *Los Angeles Times* (Los Angeles), Nov. 15, 1997, <http://articles.latimes.com/1997/nov/15/news/mn-54053>.

**Table 4.2 US District Court Decision on CA Proposition 187**

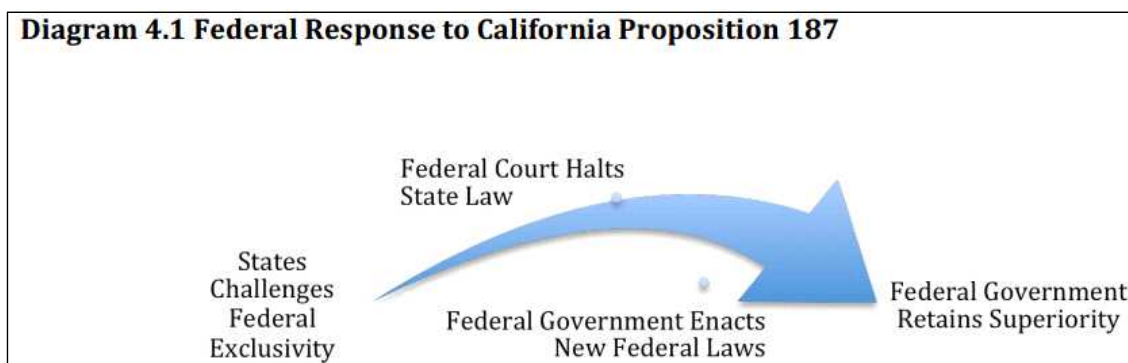
Exempted	Unconstitutional
2, 3, 10	1, 4, 5, 6, 7, 8, 9

The sections ruled unconstitutional were under the grounds that they were preempted by federal laws or in conflict with a federal law. It was interesting to see that Section 1, which was mere declaration of the proposition, was found unconstitutional for the reason that it stated that California have a “right to the protection of their government from any person or persons entering this country unlawfully.” Obviously, the court saw the declaration of Proposition 187 to be stepping over the boundaries of state rights because it wanted to enforce state-based immigrant regulation, which would challenge the enumerated rights listed in the Constitution.

Sections 4 and 9 were attempts to engage in cooperation between the federal immigration agency at the time, the Immigration and Naturalizations Services (INS), and the state law enforcement officers and the attorney general. The court argued against these sections because these sections required local law enforcement agencies to act as federal agents in verifying the citizenship status of anyone who is either arrested or suspected of being in the US illegally, which are enforcement measures and power vested in the hands of the federal government. Sections 5 through 8 were sections concerning the exclusion of rights for illegal aliens for all forms of public services and welfare. The court rules that these sections were preempted under federal law, mainly PRWORA, signed by President Clinton into law in 1996. The court’s logic was that the 1996 enacted law had already denied federal benefits to aliens who are not qualified; therefore, the action of the state denying federal benefits would interfere with the jurisdiction of the federal government.

What was unique about Proposition 187 was the method in which the federal government put a halt to the passage of the law, and signed two immigration laws after the passage of Proposition 187. While it’s true that the federal government has been

preparing to sign PRWORA and IIRAIRA prior to the passage of Proposition 187, the utilization of those two laws as legal grounds to rule Proposition 187 as unconstitutional offers a variety of interpretation as to what kind of attitude the federal government had in tackling state challenges to federal exclusivity (at least in the immigration regulation case). In the case of Proposition 187, it can be interpreted that the federal government found legal grounds to tackle state challenges. Such a tactic of overcoming the state challenge shows that the federal government is capable of constructing new legal grounds when and if it is challenged by the state governments. The federal government's tactical response to Proposition 187 over the four years of controversy is shown in order in Diagram 4.1.



The federal government successfully proved that Proposition 187 is preempted by federal statute when it enacted the PRWORA; PRWORA allowed Congress to clearly show that it is the federal jurisdiction to deny public benefits to all but a narrowly defined class of immigrants, not state laws, thereby successfully ruling that sections 1, and 4 through 9, which concerns public benefits of immigrants are preempted by the federal government.

Besides the method employed by the federal government in tackling California's challenge, another unique aspect that Proposition 187 offers to analysis is the federal government's application of the "De Canas Test". The De Canas test originated from the 1976 Supreme Court decision in *De Canas v. Bica*. In this immigration-related case, The Supreme Court "emphatically declared that federal immigration laws did not prohibit the states from enforcing the policies embodied by those federal immigration laws. The Court

reviewed the text and history of the federal Immigration and Nationality Act, and found no indication that ‘Congress intended to preclude even harmonious state regulation touching on aliens in general, or the employment of illegal aliens in particular.’ According to the Court, states may enforce laws consistent with federal immigration laws, so long as the state does not “impose additional burdens not contemplated by Congress.”<sup>122)</sup> In short, the De Canas Test is a test to determine whether a state law is preempted under the federal statute or not.

There are three stages of this test: 1) burden test – “the Court must determine whether a state statute is a “regulation of immigration”; 2) purpose test – “even if the state statute is not an impermissible regulation of immigration, it may still be preempted if there is a showing that it was the clear and manifest purpose of Congress to effect a complete ouster of state power, including state power to promulgate laws not in conflict with federal laws with respect to the subject matter which the statute attempts to regulate”; and 3) obstacle test – “a state law is preempted if it stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress.”<sup>123)</sup> Essentially, the De Canas test provided the federal courts with another standards in ruling against sub-federal immigration policies.

### **III. Implications and Concluding Remarks**

Firstly, by analyzing the two cases, Arizona’s SB 1070, and California’s Proposition 187, this chapter made the observation that the federal government has been recognizing the application of mirror image theory on states’ immigration or immigrant related policymaking. Both Proposition 187 and SB 1070 were either voted in or signed in to law, marking the success of state governments challenging the federal exclusivity over immigration regulation. Some may criticize this interpretation and standard of “success”

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<sup>122)</sup> Adam White, “Obama v. Arizona: The Administration Will Have a Tough Time Making its Case Against Arizona’s Immigration Law,” *The Weekly Standard*, Ju. 9, 2010, <http://www.weeklystandard.com/blogs/obama-administration-files-lawsuit-against-arizona-over-immigration-law>.

<sup>123)</sup> *League of United Latin American Citizens v. Wilson*, 997 F.Supp. 1244 (1977) (Pfaelzer dissenting): 4-5.

of the two laws because controversial sections of neither took actual effects – Sections 1, and 4 through 9 of California Proposition 187 was barred before taking effects, and sections 3, 5C and 6 of Arizona SB 1070 were taken out of the law, thereby essentially nullifying the proposed state enforcement power over immigration. Nonetheless, this research takes the position such that the sheer fact that the Californian voters passed the proposition, and that the Arizonian state governor signed the state bill in to law indicate the success of state resistance to the federal government's power to control immigration.

The implications of the federal government's actions upon the passage or enactment of state omnibus bills can be understood in the form of a message. From the federal government's perspective shown from the rulings of the Supreme Court, the two cases of the omnibus immigration bills were understood as direct challenges to the federal authority which is guaranteed protection under the constitution. However, this is the interpretation of the judicial branch of the federal government. As shown in Proposition 187 case, the US federal government, upon the ruling from the judicial department, enacted federal statutes, strengthening the national immigration measure. While it is not right to make the same judgment on whether the proliferation of sub-federal immigration measures after the enactment of Arizona's SB 1070, what the two cases have in common is the sheer fact that the federal government made the move to address the issue of immigration reform. The Californian case certainly showed that the federal government not only has the power to draft new laws to overturn previous or state laws, but also the power to suppress the sub-federal omnibus immigration reform bills from proliferating by acting to address the matter on immigration.

The main implication made in this chapter by dissecting the laws is that the politics behind immigration reform, especially in terms of the states versus the federal government dynamic, is largely theatrical. That is, states enact individual immigration laws, especially the omnibus laws, which challenge multiple layers of immigration-related issues, to deliver the message to the federal government to act upon addressing the issue at the national level. Take a look at the Californian, and the recent Arizonian cases. The federal government understood the significance of the need to reform the *status quo*, and has or is enacting federal laws (though in different forms). After the Californian case and

the passage of PRA, no state challenges happened until Arizona. Whether the on-going efforts by the Obama Administration will put a successful halt to the state governments' activism to challenge the federal exclusivity is unknown; however, the number of enactments of state omnibus immigration bills has decreased significantly since 2012.

## **Chapter 5**

### **Fresh Perspectives on Immigration Federalism: In Lieu of Conclusion**

The central question of this research was, “under what conditions do states challenge federal exclusivity on immigration policymaking?” This research employed an in-depth analysis of the State of Arizona to see the applicability and appropriateness of the conventional factors named as triggering mechanism for sub-federal challenges to the federal exclusivity on immigration policymaking. Factors ranging from political to safety factors were tested in this research. As the in-depth analysis showed, no factors exhibited significant explanatory power to be able to be generalized. As the qualitative analysis of Arizona revealed popular idea that partisanship factor is the triggering factor was even inapplicable to cases like Arizona, which shows that the generalization of triggering mechanisms and factors behind sub-federal governments’ enactment of omnibus immigration bills are ill-suited. The findings of this research ultimately showed that it is of paramount importance to consider different triggering factors for state resistance to federal exclusivity on immigration policy making can differ on a case-by-case basis.

Nevertheless, in attempt to search for any possible or plausible variables that can be offered as an alternative that could have affected the states’ challenge against the federal government, the only explanation that I was able to derive was that perhaps, each state acts as a sovereign in determining its decision to enact their own omnibus immigration bills. The fact that some states enact omnibus immigration laws as a simple restrictive measure is evidence that states desire to act as sovereigns in handling the matter of immigration, similarly done with police powers. In Chapter 2, this research laid firm a foundation to the constitutionality, and practicality of states as independent immigration sovereigns, ultimately coming to the conclusion that they are capable of doing so within the boundaries of the current legal codes and political culture. Furthermore, it demonstrated that states enact their own omnibus laws for various



reasons, which are not always uniform or clearly known, meaning that factors that trigger each state are different from each other on a case-by-case basis. For the case of Arizona, it was primarily the combination of federal inaction, and the growing worries and false perception that the border-related crime is increasingly threatening the American values and norms believed and practiced by Arizonians.

Clearly, the conclusion section of this research is a sort of a confession in a sense that it did not straightforwardly identify the exact factors that created favorable conditions for states to enact omnibus immigration laws. However, flipping that interpretation, this research did indeed identify, amidst the discourse generated so far, that the federal versus state competition over the matter of immigration governance is like a ticking time bomb that can go off anywhere, any time, in any form. In such dynamics, in lieu of conclusion, this research proposes a new semantic approach for an alternative interpretation. The failure to identify or generalize the triggering mechanism is actually a successful finding that the degree of influences of variables differs from case-by-case; meaningful implications of this are largely twofold:

- 1) General implications on immigration to the US, inter-state immigration, and immigrants;
- 2) American style of federalism in immigration governance.

## **I. Immigrants and Immigration as Scapegoats**

Concerning the first point, the United States was found by immigrants, and for immigrants. At least, that is the national branded image of the US. However, despite having such a generous image of being the land of the opportunity for one and all, since the 1990s, atmosphere of immigration culture regarding immigration to the US, and especially that regarding inter-state immigration is very obfuscated. The term, “broken immigration system” certainly suits the current *status quo* on immigration practices and reform activism. Part of the reason why it is so difficult to fix the broken immigration system is

because there is no ideological consensus on immigration among all 50 states. That is, at least at the policy level, some states have developed an anti-immigration sentiment, whereas some are either friendly or neutral to the matter.

It is difficult to generalize and group the state depending on the premise that they have an anti-immigration sentiment. This is especially the case considering the findings of this very research. However, the difficulty of identifying where and how such anti-immigration fervor can be generated or be created conversely suggests that it can happen anywhere, anytime, and in any form. The uncertainty in other words would mean that immigrants tend to be easy targets of scapegoats for whatever socially unfavorable conditions. In the case of Arizona, this was the border-related crime, and undocumented living of immigrants. Regardless of what the reasons are, whenever a sub-federal political entity detects some unfavorable conditions, they, in the name of American values, generate a tendency to shift rightward on the matter of immigration, ultimately forming a nativist, anti-immigration atmosphere. In some instances, like the 15 states that passed the restrictive immigration bill between 1991-2011, these sentiments can potentially lead to the creation of anti-immigration bills, and omnibus immigration bills.

I call this phenomenon a scapegoat tactic of state governments. Conventionally, scapegoating is a tactic often employed to stigmatize an entire group of individuals according to the unethical or immoral conduct of a small number of individuals belonging to that group. Scapegoating most commonly relates to 'guilt by association' and stereotyping. One's undesirable thoughts and/or feelings can be unconsciously projected onto another who is targeted as a scapegoat as a remedy for a specific problem. The logic of scapegoating extends further to projections by groups. In the case of group projection, the targeted individual, or group, becomes the scapegoat that takes blame or heat for the groups problem.

The scapegoat theory of inter-group conflict provides an explanation for the correlation between times of relative social despair and increases in prejudice and violence toward out-groups.<sup>124)</sup> For example, a famous 1940s study of anti-black violence in the southern US between 1882 and 1930 show strong correlation between poor local

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<sup>124)</sup> Edwin Poppe, "Effects of Changes in GDP and Perceived Group Characteristics on National and Ethnic Stereotypes in Central and Eastern Europe," *Journal of Applied Social Psychology*, 31 (2001): 1689-1708.

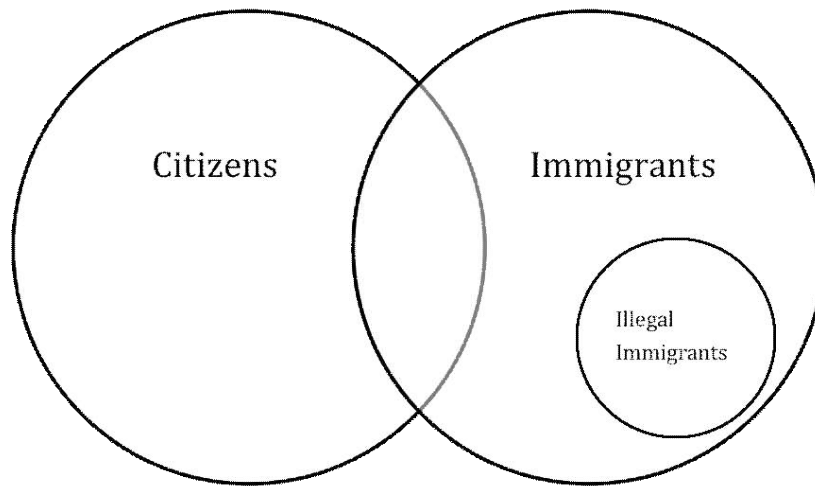
economic conditions (measured in the price of cotton) and outbreaks of violence against blacks (measured in number of lynchings).<sup>125)</sup> Ultimately, the scapegoat theory states that unfavorable social conditions can induce an in-group people to take out their frustration by attacking an out-group, when the in-group members settle on a specific target to blame for their problems. Moreover, scapegoating phenomenon is more likely to appear when a specific group experiences prolonged difficult, or negative experiences.

The linkage between the scapegoat theory and the sub-federal immigration reform activism may be more correlated than what it appears on the face value. This seems extremely plausible especially when seeing the issues concerning immigration as a competition for citizenship, thereby dividing the society in to citizens and non-citizens. Such black and white perceptions, when applied, would position citizens as the in-group, and immigrants as the out-group. In-groups tend to target the easiest and the weakest target, especially those that they do not have to worry about potential repercussions. In the matter of sub-federal immigration legislation, states primarily target illegal immigrants, the most vulnerable and weakest targets. Targeting illegal immigrants make perfect sense not only because their lack of citizenship strips them of any political rights, but also because their “illegal” status blocks them from taking legal or political action to resist or retaliate. The problem is, the targeting of illegal immigrants is essentially the act of targeting the entire group of immigrants, as the boundary of specifying the target is blurred. The following Venn Diagram illustrates the status of illegal immigrants under the general category of immigrants.

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<sup>125)</sup> Carl Iver Hovland and Robert Sears, “Minor Studies of Aggression: VI. Correlation of Lynchings with Economic Indices,” *The Journal of Psychology: Interdisciplinary and Applied* 9 (1940).

**Diagram 5.1 Citizens and Immigrants**



The generalization of illegal immigrants as immigrants extends or blurs the boundary of target to the entire immigrant group. This is precisely why when in practice, the sub-federal omnibus immigration laws, originally targeting illegal immigrants, target legal immigrants and those who resemble immigrants as well.

In a nutshell, illegal immigrants are really the *homo sacer*<sup>126)</sup> of our time and society. They are situated outside the law and politics, in the area of “in-distinction between the external and the internal realm of juridical and political order, the threshold where inside and outside do not exclude each other but rather blur in to one another.”<sup>127)</sup> Illegal immigrants or the immigrant community as a whole become victims of states’ political violence<sup>128)</sup>. States may use violence against illegal immigrants by enacting

<sup>126)</sup> Latin for “the sacred man” or the “accursed man” is often used to define a person expunged from society and deprived of all rights and all functions, political and religious. From the perspective of man, and religion, *homo sacer* exhibits no political or religious value, therefore, he/she may be killed without the killer being regarded as a murdered, and also may not be used as religious sacrifice because there is no value in it. In legal terms, *homo sacer* is simply defined as someone who can be killed without the killer being regarded as a murderer. The idea of *homo sacer* was developed by Giorgio Agamben, an Italian philosopher best known for his work investigating the concept of the exception. Nowadays, the idea of *homo sacer* is often times associated with anthropological scholarship concerning refugees. See Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, Translated by Daniel Heller-Roazen, (Stanford: Stanford University Press, 1998).

<sup>127)</sup> Laissez Passer, “The Immigrants as Homo Sacer, and the Courts’ In tolerable Contempt for Liberty,” *#972 Magazine*, Dec. 6, 2012, <http://972mag.com/the-immigrant-as-homo-sacer-and-the-courts-in-tolerable-contempt-for-liberty/61597/>.

<sup>128)</sup> Here, I equate political violence and the act of killing to draw a paralleling picture that immigrants are *homo sacers*.

restrictive policies because they will be exempt from being regarded as a murderer. In other words, states are able to project political and institutional violence on illegal immigrants because the sheer fact that being “illegal” equates to having broken the law; illegal immigrants are criminals, therefore, they deserve punishment, which the degree and hardship of that punishment has no limits. The combination of this logic and whatever social stress that the in-group is facing, would make perfect justification for states’ act of violence.

Truth be told, the idea of immigrants used as scapegoats had been a popular idea in Europe. The relative ease of international mobility throughout many European nations, mainly those in the west is a hotly contested political issue – as long as people keep migrating from one place to another, politicians will continue to be short of breath, talking about the immigration “crisis,” and the broken immigration system. Anti-immigration sentiment has grown increasingly in Western Europe, hinting that the European forefront of liberal democracy is no longer framed under the auspice of humanism. For instance, recently, the British government, largely in support of austerity, has developed an increasingly harsh anti-immigrant sentiment. Britons are not afraid to show anti-immigrant rhetoric in their political speeches, scapegoating immigrants as under-deserving “scroungers,”<sup>129)</sup> attempting to strip existing immigrants’ (including the EU citizens) rights to access public services, including welfare, housing, and health care. British politicians, led by the right-wingers, even discuss the idea of implementing temporary halt on migrants being able to claim benefits, and accepting further immigrants. France, Switzerland, and other Western European nations that have the image of protectors and proliferators of Western Democracy in name of equality and humanism, are shifting to the right on immigration matters, ultimately using the growing number of immigrant populations at home as root causes of economic deprivation, rising crime rates, and unnatural mix of cultures. The political atmosphere surrounding the issue of immigration seems to be in a profound abyss everywhere, as the rightward shift continues along with the growing nativist, anti-immigrant sentiments.

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<sup>129)</sup> “What Have the Immigrants Ever Done for Us?” *The Economist*, Nov. 8, 2014.  
<http://www.economist.com/news/britain/21631076-rather-lot-according-new-piece-research-what-have-immigrants-ever-done-us>.

## II. “Shepherded Federalism”

“Immigration policy is a lagging indicator of general trends towards devolved governance. That it has not proved immune to the shift, however, demonstrates the depth of the new federalism.”<sup>130)</sup> The recent rise of sub-federal governments’ enactment of immigration-related bills, demonstrates that at least some states desire devolved governance over immigration than the *status quo*. Given the comprehensive nature of the omnibus immigration bills, some states’ decision to enact an omnibus immigration bill stretches this thought to the degree that perceives states as actors that want the employment of their own separate institutions of immigration. From the federalist perspective, such states’ behavioral change is a shift from being satisfied as “servants” to wanting to become “sovereigns.” The “servants” and “sovereigns” is a popular federalist idea used to describe the “two distinct visions of federal-state relations.”<sup>131)</sup> The idea is that “sovereigns” are autonomous policymaking actor, while “servants” are more or less, cooperative partners of the federal government, implementing and executing the programs set forth by the federal upper hand. Obviously, states that enact independent immigration laws, especially omnibus-kind are not federal servants. However, they are not complete sovereigns either. Given that despite sub-federal omnibus immigration laws exhibit comprehensive materials covering immigration issues, such as enforcement, benefits, and rights, the physical entry and/or removal of immigrants is a federal exclusivity. Placing themselves somewhere in the range between servant and sovereigns depending on the issue, it is a fact that states, under the state of federalism, have important roles to play when it comes to enactment and enforcement of certain types of laws and regulation. In this sense, it is very true that they can serve as laboratories for innovation.<sup>132)</sup>

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<sup>130)</sup> Peter Spiro, “Federalism and Immigration: Models and Trends,” *International Social Science Journal* 53 (2001): 67-73.

<sup>131)</sup> Jessica Bulman-Pozen, and Heather Gerken, “Uncooperative Federalism,” *Yale Law Journal*, 118 (2008).

<sup>132)</sup> See, Huntington, (2008); Matthew Parlow, “A Localist’s Case for Decentralizing Immigration Policy,” *Denver University Law Review* 1061 (2007).

In regards to immigration reform, however, states are not very effective laboratories for innovation because sub-federal immigration laws and policies do not satisfy the conditions of effective experimentation. In order for states to become truly effective laboratories, they must internalize costs of the experimentations, and simultaneously, replicate results. However, states that enact immigration laws independently fail to internalize the cost or negative externalities. That is, sub-federal immigration laws produce both positive and negative externalities. However, negative externalities (mainly burden shifting of the influx of immigrants to another state) are not internalized by the law-enacting state. Furthermore, sub-federal immigration laws and policies do not yield replicable results. All 50 states are situated with unique political, economic, and social conditions. The disparity or the uniqueness of each state is difficult to judge as a favorable condition for any duplication of results. For instance a quasi-experiment of sub-federal immigration regulation was tested immediately after Arizona passed SB 1070 in 2010, when Alabama and Georgia, and a few other states passed copycat laws the following year. In a sense, they all produced the same results because they were all challenged by the federal judiciary, and eventually struck down, nonetheless, an omnibus law that stemmed from Arizona produced negative externality of having to go through fierce battle against immigrant advocacy groups, also exporting its anti-immigration bill to other states.

While I contend that immigration is indeed an issue that needs more experimentation of different innovative models to better foster efficiency, equality, and opportunities, it is of paramount importance to understand the *status quo* of relationship between the federal government and states. The recent relationship between the two levels of government demonstrates a type of federalist relationship, which I call a "shepherded federalism." As the name suggests, the recent relationship between the federal government and states concerning immigration policymaking resembles the relationship between a shepherd and his flock, where the federal government is the shepherd, and the states are the sheep. The shepherd and his flock maintain a symbiotic form of relationship, where they are almost inseparable from each other, just like the relationship between the American 50 states and the federal government. In this

symbiotic relationship, what stands out is not the hierarchical, and vertical order, rather, the mutually exclusive and interactive relationship. The logic is that while the relationship between the shepherd and his herd may not be completely horizontal, nor it is completely hierarchical either. As with other theories of federalism, shepherded federalism is largely describing the allocation of authority and power between the two levels of government.

Shepherded federalism largely borrows much of its ideas and design from “forced federalism<sup>133)</sup>,” a theory developed by Keith Cunningham-Parmeter. In the system of forced federalism, “the states are neither servants nor sovereigns, but instead immigration intermeddlers. In contrast to dual federalism, which involves reserved powers, and cooperative federalism, which involved delegated powers, forced federalism involves demanded powers. [Ultimately, this theory sees that] states now insist on having a seat at the table on immigration enforcement decisions, even though the federal government has not invited them.”<sup>134)</sup> The idea of forced federalism is evidently timely, especially when considering the federal inaction on immigration reform. Shepherded federalism is largely in agreement with key ideas of forced federalism that the powers in the possession of states are murky and uncertain unlike the clear lines of authority that other models of federalism demarcate. Under the system of forced federalism, states’ power and authorities constantly expands, and contracts – though the author suggests that the changing scope and source of states powers is what situates states under the system of forced federalism in between sovereigns and servants, but the fact that states autonomously select their position shows states’ tendency to act as sovereigns, choosing their positions strategically and optimally.

What significantly differentiates forced federalism from shepherded federalism is the very fact that shepherded federalism does not see that states have unwarrantedly “forced” themselves to have a “seat at the table on immigration enforcement decisions,” without having the federal government’s invitation. That is, the state governments do not force the unclear line of authority that states now possess. While it is true that the federal government has not actively invited states to take part in immigration enforcement

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<sup>133)</sup> Keith Cunningham-Parmeter, “Forced Federalism: States as Laboratories of Immigration Reform,” *Hastings Law Journal* 62 (2011).

<sup>134)</sup> *Ibid*, 1688.



decision-making process, federal inaction on a crucial issue should be understood under the logic of silence as acceptance. Furthermore, forced federalism model cannot explain the gradual lessening of numbers of proposals and passages of sub-federal immigration laws especially after the *United State vs. Arizona* ruling in 2012. Shepherd federalism sees federal judiciary acts, like the *United States vs. Arizona* as a shepherd's calling for his herd, ultimately arguing that it is not that states choose to force themselves a share in the immigration policymaking pie; rather, that states are coherently answering the federal government's call. When a good shepherd calls for his herd, all sheep respond obediently to that call. Surely, the response time of each individual states will vary from one another, nonetheless, the fact that all will answer the calling of the federal government does not change.

### III. Concluding Remarks

This last chapter of the research, in lieu of a formal conclusion, presents a fresh look at the sub-federal challenge to federal government exclusivity on immigration policymaking. By introducing a new way of approaching and understanding the phenomenon, one explains the relative lack of explanatory power that the statistical findings and the in-depth analysis of Arizona did not acquire. Certainly, issues surrounding immigration, and the different policies on the matter as presented at different levels of government will continue to be a great challenge on many fronts. The 2014 Midterm Elections results have shown that the Republican Party is on a hopeful rise for 2016, opposite the diminishing influence and image for its Democrat counterpart.<sup>135)</sup> The outlook of the development of immigration issues in the US is unclear, although President Barack Obama in his final years in the White House is "looking forward" to executive action on immigration.<sup>136)</sup> Still, as the findings of this research illustrates, how, when and

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<sup>135)</sup> Beth Reinhard, "GOP's 2016 Hopes on Rise," *The Wall Street Journal*, Nov. 5, 2014, <http://online.wsj.com/articles/midterm-elections-2014-parties-look-for-2016-clues-in-tuesdays-midterm-elections-1415127383>.

<sup>136)</sup> Jorge Ramos, "White House Says Obama is 'Looking Forward' to Executive Action on Immigration," *The Wall Street Journal*, Nov.11, 2014.

for what reason states may push for more sub-federal authority to regulate immigration is unknown, though it is likely that states will eventually answer the federal government's shepherd's call.

The American immigration culture and legal corpus continue to evolve as long as people migrate. It may take the form of a sub-federal, a shared, or the federal government may continue to enjoy its exclusive purview. Immigration is a serious and constantly evolving matter in shaping the political and social values of the United States.

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## **Appendix A: The Constitution of the United States**

1. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;
2. To borrow on the credit of the United States;
3. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;
4. To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;
5. To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;
6. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;
7. To establish Post Offices and Post Roads;
8. To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;
9. To constitute Tribunals inferior to the supreme Court;
10. To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;
11. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
12. To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;
13. To provide and maintain a Navy;
14. To make Rules for the Government and Regulation of the land and naval Forces;



15. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
16. To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;
17. To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; And
18. To make all Laws which shall be necessary and proper for carrying in to Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

## **Appendix B: Findings from Statistical Analysis**

### **I. Introduction and Multivariable Regression Analysis Model**

The main texts of the research discussed the constitutional, and legal conditions under which states challenged the federal exclusivity on immigration policymaking. This appendix chapter is an effort to verify the degree of influences of conventional factors popularly cited as the triggering factor for sub-federal immigration policymaking. In doing so, I turn the attention to seeking clues as to which factors triggered the states to pursue such an opposing stance to the federal government by using computational statistical model. In order to seek systematic answers about the conditions under which states enact omnibus immigration policies, which are then challenged by the Supreme Court, this research ran a multivariable regression analysis that shows the correlation of each factor with the dependent variable. This section of the research presents the logistic model used in the analysis, and more importantly, the implications of the statistical findings. Preliminary details of variables were introduced in the research design section earlier, however, it is important to see them in terms of coding-terms to better understand the material in this section of the paper.

In the dataset that contains information of all 50 states across the United States, as Table B.1 shows, between 1991 and 2011, 15 omnibus immigration legislations had been enacted in 11 states, including one proposition in California. All 15 omnibus bills were either challenged by the Supreme Court then struck down as unconstitutional, or had much of their most conflicting or controversial provisions removed, nullifying the restrictive components of the law. It is rather clear from these numbers that the instances of state omnibus immigration policies go well beyond the well-known cases of Arizona SB 1070 and California Proposition 187. However, it is also important to note that many of these states that enacted such restrictive and comprehensive immigration laws did so again almost immediately after the first year in which they enacted omnibus bills.<sup>137)</sup> This

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<sup>137)</sup> For instance, Georgia enacted its first omnibus bill in 2009, and did so again in 2011, and in 2013; Alaska first did in 2011, and again in 2012; Montana did first in 2008, and again in 2009; South Carolina did first in

shows that the states' moves to enact omnibus immigration measures were not evenly distributed across all fifty states.

**Table B.1 Passage of Omnibus Immigration Policies at the State Level, 1991-2011**

Bill	Freq.	Percent	Cum.
No Omnibus	1,035	98.57	98.57
Omnibus Pass	15	1.43	100.00
Total	1,050	100.00	

Prior to describing the data, it is important to highlight some key points here. First is the number of observation. The observation number is 1,050, because this research saw each state by year as an independent unit. For instance, Washington in year 2009, 2010, and 2011 would make three units of observation, each year being one. So, since this research compares across 50 states between 1991 and 2011 (21 years), the maximum number of observation would be  $50 \times 21 = 1,050$ . The very fact that the number of observation is 1050 instances would also indicate that this research controlled time, as mentioned earlier in the research design section. By eliminating the time, this research sought to quantitatively examine the direct and pure correlation between the independent variables and the dependent variable.

Again, the primary goal of this research is identify the conditions under which states enact an omnibus immigration policy, not restrictive immigration measures. While it is definitely true that restrictive immigration ordinances are among the many laws struck down by the federal government, they are not always challenged by the federal government; whereas states' omnibus immigration policies are challenged by the states at all cases. All 15 cases of omnibus immigration policies between 1991 and 2011 were later challenged by the Supreme Court.

Next, Table B.2 shows the variables used in the multivariable regression analysis model in terms of how they were coded. Understanding the coding of the variables will

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2008, again in 2011; Utah did first in 2008, again in 2011. The 2013 Georgia case and the 2012 Alaska cases were not included in the dataset of this research because it was out of the test date range selected.

deepen the understanding and thus the interpretation of the results of the statistical analysis.

**Table B.2 Variables in Coding Terms**

<b><i>Bill (D.V.)</i></b>	Omnibus Bill Passage (0-No, 1-Yes)
<b><i>HDem (I.V.)</i></b>	State Lower House % of Democrat Representatives
<b><i>STGov (I.V.)</i></b>	State Governor Party Affiliation (0-Rep, 1-Dem)
<b><i>RepAlliance (I.V.)</i></b>	State Legislature & Governor Republican Alliance (0-Yes, 1-No)
<b><i>Crime (I.V.)</i></b>	State Crime Rates of previous year
<b><i>GDP (I.V.)</i></b>	State GDP per capita of previous year (In US \$, chained in 2009 value)
<b><i>Unemp (I.V.)</i></b>	State Unemployment Rate from the previous year
<b><i>NWP (I.V.)</i></b>	Percentage of Non-White Population out of Total State Population
<b><u>*KEY:</u></b> 1) Grey Shade: Political Factor 2) Blue Shade: Safety Factor 3) Red Shade: Economic Factor 4) Green Shade: Demographic Factor	

To be more specific, *Bill* is the dependent variable, and it was coded as “1” if a state experienced a passage of an omnibus immigration bill in a given year, and “0” if it had not. There were three political variables that were tested. First, *HDem* measures the percentage of Democrat representatives in a state’s lower house. Second, *STGov* indicates to which political party a state’s governor belongs. Thirdly, *RepAlliance* is an indicator of Republican Party alliance or leadership between the state legislature and governor. *RepAlliance* was indicated for those states that had a unified government of Republican leadership in both the state legislature and the governorship. While *HDem* was given an ordinal value of Democrat leadership in percentage<sup>138</sup>), for *STGov*, Democrats were coded as “1,” Republicans were given the value of “0,” and Independent or third party was coded as “2,” though no governors from all 50 states between 1991 and 2011 aligned themselves as independent.

Next, the operational unit for the safety variable is indicated as *Crime*, which is the crime rate. This was a numerical, continuous variable. As mentioned in the research design section in Chapter 1, the overall crime rates were calculated by adding the values of violent crime rates, with property crime rates of each year by each state. *GDP*, and *Unemp*

<sup>138</sup>) The Nebraska State Legislature, the only unicameral/non-partisan legislative body throughout all 50 states, was given value of 50% in the measurement of *HDem* variable.

were the economic variables, and as in the case of safety variable, economic variables were numerical, and continuous. Values for safety, and economic variables were that of the previous year. For instance, the value of *Crime*, *GDP*, and *Unemp* for Washington State in 2000 was actually that from 1999. This decision was made because the operational units of safety variable, and the economic variables, which are crime rates, GDP per capita, and unemployment rates, are indicators that cannot be felt simultaneously by the people. The realization, or the feelings of change in crime rates, personal income or unemployment rates do not appear instantaneously. *NWP* was the demographic factor, which was obtained by calculating the percentage of non-white population in a state by each year between 1991 and 2011. It is essential to note that the unit for this variable is in percentages.

In this multivariable regression analysis, I used the *logit* function in STATA tools<sup>139</sup>). In a nutshell, the mathematical equation employed in the function calculates for the probability of *Bill* at value “1,” or the probability of a state passing an omnibus immigration bill by computing the sum of influences of *HDem*, *STGov*, *RepAlliance*, *Crime*, *GDP*, *Unemp*, and *NWP* in all 50 states across the United States between 1991 and 2011 on the dependent variable. The results of the regression model are as follows. :

## II. Key Findings and Interpretation

In the process of running the multivariable regression analysis, I paid extra careful attention to the potential problems and issues of multicollinearity. Multicollinearity is commonly referred to as “a statistical phenomenon in which two or more predictor variables in a multiple regression model are highly correlated, meaning that one can be linearly predicted from the others with a non-trivial degree of accuracy.<sup>140</sup>” This was especially the case for the three highly correlated variables representing the political

<sup>139</sup>) James Stock, and Mark Watson, *Introduction to Econometrics*, 2<sup>nd</sup> ed., (Boston: Pearson Addison Wesley, 2007).

<sup>140</sup>) Donald Farrar, and Robert Glauber, “Multicollinearity in Regression Analysis: The Problem Revisited,” *The Review of Economics and Statistics* 49 (1967).

factor, which were: *HDem*, *STGov*, and *RepAlliance*. Fortunately, in this research, I did not have to run alternative model specifications, and produce fair and non-erratic data by putting every variable in the same regression model. Having only 7 independent variables, there was no need to provide an abridged version of the statistical findings. Without any further adieu, the following tables contain the statistical findings of the regression analysis.

**Table B.3 Measures of State's Likelihood to Enact Omnibus Immigration Bill**

	(a) Coefficients	(b) Odds Ratio
% of Democrats in State Lower House (HDem)	-0.074** [0.032]	0.929** [0.030]
Governor's Party Affiliation (STGov)	-1.118 [0.912]	0.327 [0.298]
State Legislature & Governor Republican Alliance (RepAlliance)	0.020 [0.869]	1.020 [0.887]
State Crime Rates (Crime)	-0.000 [0.000]	1.000 [0.000]
State GDP per Capita (GDP)	-0.000 [0.000]	1.000 [0.000]
State Unemployment Rate (Unemp)	0.311** [0.125]	1.365** [0.170]
% of Non-White Population (NWP)	0.041* [0.026]	1.041* [0.027]

Notes: Both (a) and (b) models are logistic regressions. Standard error are in brackets.

\*Significant at 10 percent

\*\*Significant at 5 percent

\*\*\*Significant at 1 percent

Table B.3 shows the results of the multivariable regression analysis, which tested the degree of influence of 7 factors on all 50 states across the United States on the matter of enactment of omnibus immigration policies. The important values are shown under the Coefficient row, in log-odds unit. In order to interpret the log-odds units, further calculation of estimating the predicted probabilities of an instance when a state in a specific year had passed an omnibus immigration policy.

The values under the Odds Ratio row are showing essentially the same results, with the coefficients switched to odds ratios. Odds ratio is calculated simply by exponentiating the value of coefficient as the power of *e*. For instance, the odds ratio for *STGov* would be  $\exp(-1.117936) = 0.326954$ . For most of the independent variables, it is much easier to understand the outcomes in terms of odds ratios than coefficients, because

odds ratios represents the odds of *Bill*=1 when each independent variables increases by 1 unit. The golden rule of interpreting odds ratio is that if the odds ratio is less than 1, then the odds of *Bill*=1 decreases, and *vice versa* for when the odds ratio is larger than 1.

Statistical significance is determined when the *p-value* is less than the alpha value of 0.05. Therefore, if the value of the two-tail p-values, or  $P>|Z|$  is less than 0.05 for certain independent variable, then that variable has a significant influence on the dependent variable. Statistical significance at the 0.05 level can also determined by observing the “95% confidence interval.” This interval basically states that the model is 95% confident that the calculated odds ratio is in the range of the output. The rule of thumb is that for results showing *coefficients*, an individual independent variable has a significant influence on the dependent variable if the interval does not contain “0”. For results showing *odds ratios*, a variable has a significant influence on the dependent variable if the interval does not contain “1”.

***Political Factor: State Legislature Party Composition, Governor Partisanship, and Republican Alliance.*** The first hypothesis concerning the effects of political factors on the matter was that, states with more Republican presence in the State Legislature are more likely to enact omnibus immigration policies. The findings suggest that states that have Democrat-controlled legislature are less likely to enact omnibus bill than the states that are Republican-controlled. In detail, take a look at the odds ratio for *HDem*, at 0.928976, and since the value is less than 1, the above interpretation can be derived. In other words, for every 1% increase in Democrat leadership in state legislature, the odds of that state enacting an omnibus immigration bill decreases. This value does not mean that the Democrat-controlled states are approximately 0.93 times less likely to enact an omnibus immigration policy than the Republican-controlled states. Rather, since the rise of Democrat leadership would conversely mean the decrease of Republican leadership, this result must be interpreted as: the odds of the Democrat-controlled states enacting an omnibus immigration law are less than the odds of the Republican-controlled states doing so. The exact value of how much less the odds are is unknown because odds ratio below 1.00 is not directly interpretable.

Independent Variable *HDem* is statistically significant at the 5% level, given the *p-value* of less than 0.05. This goes to show that the party composition of state legislature significantly influences states in making decisions to enact omnibus immigration bills. This finding is in line with many of the findings and results from the existing literature on immigration federalism, that partisanship is what significantly affects proposals or passage of restrictive immigration measures. Nevertheless, state legislature partisanship composition is not the only political variable that was tested. The second political factor hypothesis is that, states with a Republican governors are more likely to enact omnibus immigration than the states with a Democrat governor. As shown in Table B.3, the odds ratio of variable *STGov* was 0.326954, significantly less than 1. This can be interpreted as, the odds of state with a Democrat governor passing an omnibus immigration bill is less than that of a state with a Republican governor. Then, what about the case in which the state had a Republican Party alliance between its legislature and governor? The results are the same. That is, even for states that had a Republican Party alliance between the legislature and governor, the odds of passing an omnibus immigration bill is not significantly higher than the states with either Democrat alliance or no alliance.

Nonetheless, only one of the three variables under the political factor showed statistical significance at the 5% level. What this means is that state legislature partisanship composition is the most important political variable in terms of influencing states' decision making in enacting sub-federal immigration bills. Simultaneously, the sheer fact that other political variables, especially the governorship partisanship, failed to show statistical significance could imply that not all political factors (or partisanship) had little or no direct influence on triggering states to enact omnibus immigration bills in the 1991-2011 period. Party politics, even at the state level seemed to have mattered greatly in the discussion of immigration. However, as this statistical analysis suggests, there is low correlation between state legislature's Republican Party association and the passage of immigration bills in sub-federal governments. This finding partially affirms the common belief employed by many in existing literature on the issue that partisanship is what drives sub-federal challenges to the federal exclusivity on immigration. But the political factor deserves another look, a more qualitative look, given the unique cases of Arizona's



2010 SB 1070, in which the state governor, Republican Jan Brewer, fiercely fought against the federal government arguing for the standing of her brainchild. The generalization of the political factor should not be taken lightly simply because the statistical findings suggest that the tested independent variables were not shown to have statistically significant influences on the dependent variable.

***Demographic Factor: Percentage of Non-White Population.*** The hypothesis concerning the demographic change between 1991-2011 served a dual purpose. First, it was a test that reassessed the validity of a common belief that sub-federal governments enact restrictive ordinances in response to the rapid and uncontrollable rise of new immigrant, especially that of Latino, populations. Second, this research not only saw the influence of the increase of Hispanic people, but rather, the increase of ethnic Americans in general. Thus, it tested whether the sub-federal governments' enactment of omnibus immigration bills are products of the government's perception of colored people as potential threats. This statistical analysis achieved both goals. As shown in Table 3.4, the odds ratio associated with the influence of the percentage of non-white populations in a state is approximately 1.041417. This odds ratio is larger than 1.0, which means that the odds of a state passing an omnibus immigration bill increases by approximately 4.1% if the percentage of the non-white population of the state increases by 1%. A shocking suggestion, yet, results on the demographic change showed no significant influence toward the states' decision to enact omnibus immigration bills.

The statistical finding showed that ethnicity or the color of the populations' skin bears no relationship to the passage of omnibus immigration bills like Arizona SB 1070. The implications of this finding are twofold. First, purely from the statistical perspective, omnibus immigration bills are not products of color-shaming or racism. That is, even the 15 cases that passed such bills, their intentions were not driven by a perception of threat. In other words, they did not enact such laws on the basis that they were threatened by the growing portion of immigrants in the population. This reinforces the findings from other studies of sub-federal immigration ordinances, which could potentially mean that the immigrant electoral power may be less important or unimportant in forecasting

sub-federal government policies toward immigrants since the 1990s.<sup>141)</sup>

***Safety Factor: Crime Rates in States, from 1991 to 2011.*** The safety factor was a variable that was not tested before in the existing literature, so testing this factor did not serve the purpose of reassessing a previously claimed hypotheses or finding. As Table 3.4 shows, there is no support for the contention that the rising crime rate triggers a state government to enact omnibus immigration bill. The odds ratio for crime rates variable was 0.99992, which means that the odds of a state passing an omnibus immigration bill decreases even amidst increases in crime rates in that state. Recall that the actual value of crime rates inputted in to the test was the value originating from the previous year. Linking the statistical findings and the values together, the implications of the results of crime factor parallels that of the demographic factor. This would suggest that the state governments do not blame immigrants for the increase in local crime rates, and therefore do not see a need to control crime by controlling the migration of immigrants.

This finding, should it be statistically significant, goes to disprove the common arguments set forth by anti-immigration supporters, who ferociously attempt to blame immigrants as source of growing local crime rates. Again, however, this statistical finding showed no significant bearing on the passage of sub-federal omnibus immigration measures, thereby nullifying the hypothesis.

***Economic Factor: Economic Burdens and Interests.*** Recall that the hypothesis tested for the economic factors were:

- 1-1) The higher the unemployment rate, the more likely for states are to challenge the federal exclusivity on immigration policymaking.
- 1-2) The lower the change in GDP per capita, the more likely states are to challenge the federal exclusivity on immigration policymaking.

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<sup>141)</sup> Karthick Ramakrishnan, and Paul Lewis, *Immigrants and Local Governance: The View from City Hall*, (San Francisco: Public Policy Institute of California, 2005).

As the results of the statistical analysis show, there is only partial support in the contention that economic deprivation and stress triggers states to enact omnibus immigration bills. The odds ratio for the GDP per capita factor was 0.9999894, which goes to show that the odds of a state enacting an omnibus bill decreases as the states' GDP per capita increases by a value of \$1 (chained in 2009 value). While sounding very promising, however, the output of the analysis model for the *p-value* was larger than 0.05, meaning that these odds are not statistically significant at the 0.05 level.

While the change in states' GDP per capita failed to show any statistically significant influence on states' challenging the federal exclusivity on immigration policymaking. The states' change in their unemployment rates showed to have high correlation. First, the *p-value* for the unemployment rates variable was 0.008, significantly lower than 0.05, which suggests that in the testing model, this variable is the one variable of two, out of 7 variables tested, in this research to have shown statistical significance. The odds ratio output for the unemployment rates variable was 1.365436. This means that for every unit increase in the unemployment rate by 1, states are approximately 40% more likely to enact an omnibus immigration bill at the state level.

The implication of this is that states do indeed see a need to control immigration as a potential solution to the rising unemployment rates. Furthermore, since the character of the omnibus immigration bills are designed in such a way that it creates a hostile environment for immigrants and thereby deters both undocumented and legal aliens alike from migrating to that state or staying in that state, it can be argued that states enact such omnibus laws in order to prevent the theft of jobs by immigrants held by citizens.<sup>142)</sup> Unlike the political factor, the finding that the unemployment rate significantly influences states in deciding to enact omnibus immigration bills, do not echo the findings of the existing literature.

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<sup>142)</sup> True, that many immigrants are citizens as well, however, it is important to reiterate that all 15 omnibus immigration bills enacted between 1991 and 2011 received extreme opposition and negative responses from immigrant/immigration advocate groups for immigrant-citizens and immigrant-non-citizens alike.

### III. At Risk States and Chapter Summary

With the analysis model, and the output, it is also possible to calculate the probability of *Bill* = 1, or the probability of a state passing an omnibus immigration bill for all 1050 instances. The top 6 states that surpassed the 20% risk of passing an omnibus bill are shown below.

Table B.4      Top 6 At Risk States and Corresponding Years	
States & Year	Probability of <i>Bill</i> = 1
Florida - 2011	38.98%
Arizona - 2011	30.48%
Texas - 2011	25.51%
Florida - 2010	24.09%
Idaho - 2011	22.94%
Georgia - 2011	21.55%

It is interesting to note that Arizona, and Georgia actually enacted omnibus laws in 2010, and in 2011 respectively. This shocking observation leads to the conclusion that these two states enacted omnibus bills while having only a 30.48%, and 21.55% chance of doing so. What made these states so special? Why did they enact omnibus bills, while other states, even those states with higher probabilities of enacting them did not? The next chapter seeks clues to this question by observing Arizona in year 2010 in depth.

In this appendix chapter, I have demonstrated not only the details of the multivariable regression model employed in the research, but also the results and key implications of the statistical findings. From the results, it was observed that only *HDem*, and *Unemp* variables had significantly influenced the dependent variable, *Bill*, whereas the other 5 variables did not. Contrary to popular belief, general political factors illustrated by a governors' partisanship, and the Republican Party alliance, showed to have no statistically significant influence on the states' enactment of omnibus immigration bills. A similar conclusion was derived for both demographic and safety factors as well.

As discussed earlier, the existing and the growing literature continues to argue that partisanship has the strongest and most consistent effect on a sub-federal governments' proposal or passage of immigration measures. Why? It is partially because the existing literature set their dependent variable of the research as proposal and/or passage of restrictive ordinances. But this partial answer still does not fully resolve the question of why the federal government only strikes down omnibus immigration laws, and not individual restrictive immigration laws. It is important to tackle this manner from a different angle. An angle, which weaves in the story of the federal versus state competition in the context of federalism; in other words, a clash of governing ideas, between loaning hierarchical authority and sharing horizontal authority.

## Appendix C: Logistic Function Equation

In a nutshell, the following mathematical equation employed in the function calculates for the probability of *Bill*, the dependent variable at value “1,” or the probability of a state passing an omnibus immigration bill by computing the sum of influences of *HDem*, *STGov*, *RepAlliance*, *Crime*, *GDP*, *Unemp*, and *NWP* on all 50 states across the United States between 1991 and 2011 on the dependent variable. The results of the regression model are as follows.

$$\begin{aligned}
 & \Pr \left( \text{Bill} = 1 \mid \sum_{n=1}^{1050} STLeg_n, STGov_n, RepAlliance_n, Crime_n, GDP_n, Unemp_n, NWP_n \right) \\
 &= \sum_{n=1}^{1050} f(\beta + \beta_n STLeg_n + \beta_n STGov_n + \beta_n RepAlliance_n + \beta_n Crime_n \\
 &\quad + \beta_n GDP_n + \beta_n Unemp_n + \beta_n NWP_n) \\
 &= \\
 & \Pr(\text{Bill} = 1 \mid STLeg_n, STGov_n, Crime_n, GDP_n, Unemp_n, NWP_n) \\
 &= \frac{1}{1 + e^{-(\beta + \beta_n STLeg_n + \beta_n RepAlliance_n + \beta_n STGov_n + \beta_n Crime_n + \beta_n GDP_n + \beta_n Unemp_n + \beta_n NWP_n)}} \\
 &= \\
 & \Pr(\text{Bill} = 1 \mid STLeg_n, STGov_n, Crime_n, GDP_n, Unemp_n, NWP_n) \\
 &= \frac{1}{1 + (e^{(\beta + \beta_n STLeg_n + \beta_n RepAlliance_n + \beta_n STGov_n + \beta_n Crime_n + \beta_n GDP_n + \beta_n Unemp_n + \beta_n NWP_n)})}
 \end{aligned}$$

## Appendix D: Binary Table of State Omnibus Immigration

### Law Passages 1990-2013

	1	1	1	1	1	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2
	9	9	9	9	9	9	9	9	9	9	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	9	9	9	9	9	9	9	9	9	9	0	0	0	0	0	0	0	0	0	0	0	1	1	1
	0	1	2	3	4	5	6	7	8	9	0	1	2	3	4	5	6	7	8	9	0	1	2	3
A L	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0
A K	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
A R	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
A Z	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
C A	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
C O	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
C T	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D E	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
F L	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0
G A	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	1
H I	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
I	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

<b>D</b>																								
<b>I</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>L</b>																								
<b>I</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
<b>N</b>																								
<b>I</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>A</b>																								
<b>K</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>S</b>																								
<b>K</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Y</b>																								
<b>L</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>A</b>																								
<b>M</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>E</b>																								
<b>M</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>D</b>																								
<b>M</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>A</b>																								
<b>M</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>I</b>																								
<b>M</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>N</b>																								
<b>M</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>S</b>																								
<b>M</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0
<b>O</b>																								
<b>M</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
<b>T</b>																								
<b>N</b>	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
<b>E</b>																								



N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
V																						0	0	0
N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
H																						0	0	0
N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
J																						0	0	0
N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
M																						0	0	0
N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Y																						0	0	0
N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
C																						0	0	0
N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D																						0	0	0
O	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
H																						0	0	0
O	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
K																						0	0	0
O	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
R																						0	0	0
P	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
A																						0	0	0
R	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
I																						0	0	0
S	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0
C																						0	0	0
S	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D																						0	0	0
T	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
N																						0	0	0
T	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0



## Appendix E: Full Logistical Regression Analysis Results

### Logistical Regression Analysis Results in *Log Odds Coefficients*: Probabilities of States Passing Omnibus Immigration Policies, 7 Factors

Logistic regression		Number of obs =		1050		
		LR chi2(7) =		29.51		
		Prob > chi2 =		0.0001		
Log likelihood = -63.866597		Pseudo R2 =		0.1877		
Bill	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]	
HDem	-.0736724	.0321042	-2.29	0.022	-.1365954	-.0107494
STGov	-1.117936	.9120695	-1.23	0.220	-2.905559	.6696875
RepAlliance	.0195786	.8693787	0.02	0.982	-1.684372	1.72353
Crime	-.00008	.0002776	-0.29	0.773	-.0006242	.0004641
GDP	-.0000106	.000036	-0.29	0.769	-.0000811	.00006
Unemp	.3114741	.1248393	2.50	0.013	.0667936	.5561546
NWP	.0405825	.0262218	1.55	0.122	-.0108114	.0919763
_cons	-2.644915	2.722222	-0.97	0.331	-7.980373	2.690542

### Logistical Regression Analysis Results in *Odds Ratios*: Probabilities of States Passing Omnibus Immigration Policies, 7 Factors

Logistic regression		Number of obs =		1050		
		LR chi2(7) =		29.51		
		Prob > chi2 =		0.0001		
Log likelihood = -63.866597		Pseudo R2 =		0.1877		
Bill	Odds Ratio	Std. Err.	z	P> z	[95% Conf. Interval]	
HDem	.928976	.029824	-2.29	0.022	.8723231	.9893082
STGov	.326954	.2982048	-1.23	0.220	.0547182	1.953627
RepAlliance	1.019771	.8865676	0.02	0.982	.1855608	5.604274
Crime	.99992	.0002776	-0.29	0.773	.999376	1.000464
GDP	.9999894	.000036	-0.29	0.769	.9999189	1.00006
Unemp	1.365436	.1704601	2.50	0.013	1.069075	1.743953
NWP	1.041417	.0273079	1.55	0.122	.9892468	1.096339
_cons	.0710114	.1933087	-0.97	0.331	.0003421	14.73967

## 국문초록

미국정치에서 이민 이슈는 다양한 행위자들 간의 역학이 또렷하게 보이는 이슈 중 하나이다. 이민 정치는 겉으로는 찬반논란이 지속되는 단순한 문제로 보이나 실상은 다양한 집단들과 행위자들이 이해관계 또는 갈등관계를 갖고 있어 다차원적이고 복잡한 양상을 보이고 있다. 특히 최근 이민 문제를 둘러싸고 연방정부와 주정부의 갈등이 심화되었는데, 연방정부의 지속된 이민법 개혁의 실패를 빌미로 주 정부가 이민자에 관한 입법 활동을 공세적으로 펼치고 있다. 그의 대표적인 예로, 2010년 4월 애리조나(Arizona) 주정부가 제정한 “The Support Our Law Enforcement and Safe Neighborhoods Act (Arizona SB 1070)”를 들 수 있는데, 본 연구는 이러한 주 정부의 입법 활동의 이유를 단순히 연방정부의 부진으로 해석하는 것에 의문을 갖고 양 행위자 간 대립의 인과 관계를 정치·사회·경제 전반적으로 살펴보고자 한다.

이를 위해 본 연구는 미국의 연방-주 정부 관계를 이민 문제를 통해 검토하며, 이민 문제를 해결할 적절한 책임자가 주 정부라고 주장하는 주 정부 입법 활동과 연방법원을 통한 연방정부의 법적 대응의 과정을 애리조나 주에 초점을 맞춰 헌법, 제도 및 정치 과정 측면에서 심층적으로 분석한다. 또한 연방-주 정부 간 공유한 권한인 이민 문제를 기존의 연구에서 충분히 검토하지 않은 부분까지 보완하고 주 이하 정부가 이민 문제에 관여하는 인과관계를 검증 가능한 변수로 정형화하는 작업을 부분적으로 제공한다. 결과적으로 이민 문제가 연방주의를 통치원칙으로 수용한 미국을 심층적으로 이해하기 위하여 기존의 정치·경제·사회적 시각을 넘어선 발상의 전환을 필요로 한다는 의미를 도출한다. 더 나아가 미국 내에서 이민 이슈가 행위자 간

충돌, 화합 등 역동적인 역학을 내재하고 있다는 실례를 제공하며 이민 정치를 통한 연방-주 정부 간 질서관계조정에 의미 있는 함의를 던진다.

주요어 : 이민, 연방주의, 정부 간 관계, 이민정치, 이민정책, 주 이민법  
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