

IMMIGRATION
AND THE
POLITICS OF
AMERICAN
SOVEREIGNTY,
1890–1990

Cheryl Shanks

MICHIGAN



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CHAPTER 1

Introduction

Controlling access to citizenship helps states stay sovereign in the face of globalization. The transnational processes that governments support can also threaten governments' power and their integrity. For example, economic interdependence allows extensive and rapid growth, upon which governments depend, yet it also subjects states to decisions made far away. One way that countries have chosen to adapt is to extend regulatory control over immigration and naturalization. In the United States, these are linked: legal immigrants may apply to become naturalized citizens. In most other advanced industrial states as well, full political membership has become harder to achieve, even as states have ceded control over the labor market, tourism and business travel, and goods, entertainment, services, and information.¹ The United States has done so while easing visa restrictions for tourists and business travelers.

Over the past century, the number of immigrants the United States will accept each year has steadily declined as a percentage of the U.S. population. When the numerical ceiling has gone up, it has done so by pulling previously unrestricted groups into the controlled category. By 1990 all immigrants were subject to a quota. Extending control over citizenship provides a counterbalance to the decontrolled economic realm. Sovereignty involves unique authority over a territory and what is on it, its population and its natural resources. As goods, lands, and resources are swept into the international market, governments have to define clearly who their citizens are lest they lose both of sovereignty's defining characteristics.

Scholars and commentators on international politics often present sovereignty as a settled institution, a long-ago established fortress that globalization's battering might or might not breach.² The state, a passive rock, faces environmental assaults that threaten to erode it. Yet the state has taken steps to protect itself from outside forces, choosing when to cede, when to adapt, when to resist. Given the power of transnational trade and communications, and the desire of hundreds of millions of people to emigrate, inaction over the last century would have meant sovereignty's end. Not only have governments pursued the various components

of globalization, but they have also pursued ways to enhance sovereignty. Governments have worked to maintain one type of boundary, that between citizen and noncitizen, while energetically undermining others. Sovereignty is a policy choice, constructed in the most ordinary sense. Destruction and creation take work, but so do maintenance and adaptation. Most observers of international politics take stability for granted and try to explain change. This study does the opposite, taking change for granted and trying to explain continuity in the face of powerful transnational forces. Demonstrating that to preserve or enhance sovereignty is a policy choice, and that immigration control is a core aspect of this choice, involves three separate arguments. One is purely theoretical or logical, the other two empirical as well.

First Argument

Since sovereignty involves supreme authority over an exclusive territory and population, a state has to know over what domain its authority extends, where it begins and others end. Boundaries are not sufficient to create sovereignty, but they are necessary.³ International relations theories customarily date this form of social organization from the Treaty of Westphalia in 1648.⁴ Before the Thirty Years War, which the treaty ended, who had supreme authority depended on the issue. Feudalism involved a web of obligations within overlapping hierarchies. The treaty codified a revolutionary change in this arrangement by granting to a single sovereign authority over all issues. The political domain was defined by territory rather than issue. The sovereign could impose taxes, conscript anyone within the territory, dictate religion, and decide economic practices within set geographical boundaries. Modern sovereignty in this way rests on boundaries that define what is inside and what is outside. Both territory and population need to be known, and in theory, all territory belongs to one country, but only to one country. Alsace can be French or German but not both; Kashmir can be Indian or Pakistani but not both. The same is true of people. Dual citizenship is tolerated as long as its obligations are trivial and partial. For example, no state will tolerate a citizen fighting for an enemy.

International law and the highest domestic courts cement these practices as rights. Only the state can determine which people are its citizens. It does not even have to accept all of those born on its territory. When human and civil rights come into conflict with sovereign rights, sovereign rights win. For this reason, the Universal Declaration of Human Rights declares that "everyone has the right to leave any country, including his

own, and return to his country” and “everyone has the right to a nationality”; finally, “everyone has the right to seek and to enjoy in other countries asylum from persecution.”⁵ But sovereigns do not have the corresponding obligation to admit those exercising their right to leave. People have a right to leave but not a right to enter. Within a country, civil rights follow this pattern. Those in the United States illegally, for example, or those legal immigrants who violate a law, can be jailed indefinitely without a hearing. Advocacy groups repeatedly decry this “violation of their civil rights,” yet noncitizens have no civil rights, as the U.S. Supreme Court has repeatedly ruled. In February 1999, it restated this stance with regard to the First Amendment when it ruled that “people [in the United States] unlawfully cannot shield themselves from deportation by claiming the government is trying to banish them simply because of their controversial political views.”⁶ The Court has not deviated from this position since it first stated it, after the Civil War. Law at all levels supports the theory of sovereignty’s absolute nature.

Practice raises problems for theory. Territory and population are profoundly different aspects of sovereignty, in each of three respects. In practice, people move. Territory does not move. Boundaries might shift, even dramatically, but wherever they are, they signify the same thing. Parts of a territory cannot break off and start floating around, mixing with other territorial bits in a giant mosaic. This is, though, precisely what does happen with nationalities. Second, territory does not move itself; it has no agency. Individuals do have agency. If individuals rather than the state could decide who affiliated where, the state would no longer be sovereign. States cannot always control a person’s physical location but a state can control a person’s political location, his or her political identity. A stowaway does not have to be given rights. It is in this way that control over naturalization is a *sine qua non* of sovereignty. Finally, people move as packages, taking with them their language, experience, skills, and politics. When territory transfers hands, the land itself does not need to be assimilated.

Policies toward territory and population have also been sharply different. Territory has grown less important to state security over time.⁷ Territory matters largely in that it serves as a marker for citizenship. These are legal and symbolic values, having to do with the customs of sovereignty, rather than power. Territory is less relevant to the most powerful countries’ abilities to achieve their goals. In the past, the larger a territory, the better. Moscow’s distance from Paris was the most important defense Russia had against Napoleon. The Atlantic and Pacific Oceans have similarly protected the United States, and its size helped to make it economically self-sufficient. Technological changes have reduced territory’s value in attaining these goals. Markets transcend boundaries, are in fact

strongest when they do. Natural resources and agriculture are relatively less important in generating wealth than are manufacturing and services, which do not depend on land size. Japan, with no energy resources and little arable land, is a great power. Intercontinental missiles and airplanes have severed the link between size and safety. Indeed, the larger a country is, the bigger a target it is. Territory matters, but the amount a state controls does not determine its wealth or power.

Population has meanwhile grown in importance. To mercantile states, more people meant more wealth.⁸ As welfare states developed, additional people meant additional costs, so their contribution had to be greater than the resources they could claim. In addition, people now evaluate their elected representatives in terms of the country's per capita economic performance.⁹ Limiting the number of "capita" is easier than controlling the pace of economic growth. These technological, economic and political changes combined to make governments focus on their populations rather than on their territories.

Second Argument

Sovereigns control access to citizenship and in this way help maintain their sovereignty. That consequence might, however, not be the motivation for this practice. Governments might do this for other reasons; sovereignty could be an unintentional side effect. That governments deliberately control immigration in order to secure sovereignty is a second argument, an empirical one. Sovereignty does motivate governments—here, the United States—to extend regulatory control over immigration.

Demonstrating this involves presenting evidence relevant to this contention and exploring the evidence in support of the most apparent alternative explanations. Most research on immigration policy views it as a domestic policy with domestic sources of change. In this view, it is a response either to unemployment and welfare cycles, or to lobbying by ethnic interest groups, or to parties' desires to distinguish themselves from each other, or to changes in public opinion.¹⁰ Changes in federal immigration ceilings or preferences would, in this view, emerge in response to a rise in unemployment, a burst of ethnic lobbying, a change in the majority party, and/or a rash of popular xenophobia. All of these are plausible hypotheses and might account for legislative movement on immigration control.

Many policymakers, however, cite the preservation of sovereignty as the motivation for their position. When legislators, the press, and the public argue about policy, they give reasons to support their proposals. When

they want a policy because of its consequences for sovereignty, they say that. Because boundaries divide the inside world from that outside, their strength and location become a charged issue when international involvement threatens to blur the lines separating what is in from what is out. The major changes in American immigration policy have come during strong economic times, after a major change in the international system: the Chinese Exclusion Acts of 1882 were followed by the Quota Acts of 1921/24 (a response to World War I), McCarran-Walter of 1952 (a response to World War II and the cold war), Hart-Celler of 1965 (a response to decolonization during the cold war), and finally the Immigration Reform and Control Act (IRCA) of 1986, which was paired with the revised Immigration and Nationality Act of 1990 and focused on foreign economic competition rather than military competition. In fact, the only time that immigration policy becomes a real issue at the national level, and Congress changes federal policy, is when there has been a major change in the international system. Domestic processes affect enforcement rather than overall policy.

Any immigration policy has to answer two questions: how many people, and which ones. The first concerns numbers; the second, who will be excluded or preferred in making up those numbers. Restricting and extending regulatory control over the amount of immigration is an exercise of sovereignty, an enforcement of difference. Deciding which people can enter expresses in what way the country is different. Preferences and exclusions show how the country contrasts itself with those outside it. Reasons must be given for preferences and exclusions as well as for numbers. Evidence, then, comprises the reasons given by contestants in these policy debates, for and against controlling immigration. Combined with the evidence regarding the importance of unemployment and other influences that legislators face, reasons provide a clear picture of the dynamics driving policy change on this issue.

Third Argument

A third argument concerns the policy process itself. To have a chance of successfully becoming law, a proposal must be supported by arguments that conform to the particular demands of public interest debates.¹¹ These arguments explain which values are at stake. They can become central to the debate, focusing attention on proposals that serve certain values rather than others. In this way, debate has the ability to transform policy outcomes. In a policy debate, contestants who do not attend to reasons cannot win. For example, say that two groups disagree about zoning policy regarding home offices. One side argues in terms of traffic increasing in

residential neighborhoods. If the other side can show this to be false—say, by demonstrating that commuting drops, canceling the increase in commercial traffic—it can win. In fact, it can then use the opposition's reason, traffic, to push through even broader changes in the law than it first thought possible or even wanted. The resulting policy will not be in the middle, nor will it be what one side initially advocated, as bargaining models would suggest. Instead, the result is a more extreme version of what one side wanted, a consequence of its ability to use its opponent's reasons for its own purposes. Argumentation has a logic that can produce settlements wholly unanticipated by either side.

National debates over American immigration policy follow this odd logic. What results is in fact never in the middle, but something off the charts. What provides a pattern to the policy processes is the set of arguments that tend to come up in discussions of immigration: the meaning of citizenship, consent, and national character, the importance of ethnic or ideological homogeneity, the message to allies. These all involve the country's relation to the outside world.¹² Each raises questions of identity and obligation, so the debates over immigration tend to involve the philosophical questions of duty to self and others, and what this says about the nature of self and others. Taken together, these arguments portray American debates over immigration as occasions when Americans renegotiate what sovereignty means to them.

The United States

The United States is at the center of this study, for methodological and practical reasons. Since the central questions involve change or continuity over time, evidence had to be gathered that covered as long a time as possible. Therefore, the study could focus on one country only. The United States should be the hardest case. American history and culture celebrate the immigrant. The Declaration of Independence complains about British colonial immigration policy. Stories of immigration are woven into national myth as well as history. American children learn of the Pilgrims, of Ellis Island and the Statue of Liberty; so powerful are these images that many educated adults are unaware that return migration to Europe at times exceeded immigration. Compared with others, the United States has always been an ethnically diverse society, with powerful norms in favor of pluralism, even when the reality has lagged behind the norm. In addition, compared with other industrial countries, the United States is underdeveloped as a welfare state. The average federal expenditure per capita on social services is thirteenth among the advanced industrial states,¹³ and a

huge piece of this, social security, Medicare, and veterans' benefits, is devoted to the age group, or class, least likely to immigrate.¹⁴ Further, American hegemony has meant that the country sets the terms of its interaction with the outside and need not interpret investments or immigrants as invaders, as other countries would be quick to do.¹⁵ Finally, the United States accepts more immigrants annually than the next several countries put together. American myths, values, economic capacity, power, and policy history combine to create a presumption against protective immigration policies.

American immigration policy has great practical significance as well, for those abroad as well as for American citizens. The number of immigrants annually admitted to the United States is at present equivalent to the population of entire countries. If the United States barred nonimmigrant visitors except from Sweden, Finland, and Norway, every citizen of all three countries could travel to the United States in the same year without disrupting the pattern. The sheer volume of this movement means that for millions of individuals, American immigration policy is of great importance.

Contributions of This Study

Analyzing immigration policy over the past century provides insight into a number of central theoretical questions. First, it shows how change in the international context can translate into change in a country's sense of self, how the "us" changes in response to changes in "them."¹⁶ Studies of foreign policy have long explored how one country's behavior will affect another country's behavior. Action-reaction models are aptly titled; they focus on what states do in response to each other's actions. Some research has elaborated this model, exploring whether domestic institutions and cultures can shape a foreign policy response and whether a country's foreign policy displays a unique personality.¹⁷ Immigration policy, unlike military or trade policy, tells us about a country's identity as well as its interests. For this reason, it becomes possible to show how international action—changes in the distribution of power and nature of conflict—shapes what a state thinks it is as well as what it does.

Second, by following a policy that links identity and behavior, the study sheds light on theories that portray identity as well as behavior as a variable. Constructivist sociology and political science argue that policy and identity cannot be separated as easily as much international relations scholarship assumes.¹⁸ What people or institutions do affects what they are. Much constructivist work concerns itself with central philosophical

and theoretical issues, such as how this insight alters our notion of international structures. Applied work is sparse. This study describes how construction works at a practical level in one case. Because of experience, identity changes. This translates into policy governing admission and exclusion, and then into enforcement. Construction is, in this way, observable behavior.

Third, viewing sovereignty as a policy choice makes it easier to address the otherwise vast question of “whether the state system.” Because sovereignty is a huge variable, observers have linked it to variables of comparable size, such as nationalism, the commons, multinational corporations, or international institutions. How these ought to be measured is unclear, what counts as change in one is unclear, and the scale overwhelms the consideration of human agency and choice. This leaves the impression that vast historical forces operate on their own, without human input. People do matter, as agents and not just objects of history. By linking sovereignty to legislative choice through immigration policy, this analysis shows one way to make sovereignty’s future approachable.

Fourth, this study shows how participants in one of the most powerful democratic decision-making institutions in the world—the U.S. Congress—negotiated the relation between interests and values in determining the national interest. Often, foreign policy, like human agency, is portrayed as a compulsive search for material wealth and power. When values enter the discussion, they are dismissed as a cover for the real goals, which are allegedly material. That might be true for some issues, but for immigration policy, values trump interests every time. In fact, certain defeat awaits an immigration proposal that is framed in terms of money.

Finally, these debates provide a rare window on what political membership means to Americans. In a world where states get citizens or subjects at birth, immigration policy provides the only place where it is acceptable to discriminate. Alternative policies that might achieve the same demographic result horrify publics and have high costs. Pervasive acceptance of *jus soli* and *jus sanguinis*—citizenship by place of birth or descent—means that countries get citizens at birth. People decry increasing the population’s size through compulsory fertility, as did Romania, or limiting it through government-enforced sterilization, as did India. Reducing it through discriminatory application of public health measures and selecting characteristics through eugenics shock the modern conscience on three grounds: their discriminatory nature, their reliance on ideas of biological superiority, and their suggestion of betrayal by one’s government. A prospective immigrant, on the other hand, is not “one of us,” and people do not consider selective immigration an ethical parallel to selective fertility or mortality policies. Immigration policy is the only place where a

country can state baldly and illiberally whom it wants, whom it does not, and why. International law, domestic governments, and most people grant states authority to control immigration as a core right.

Organization

Policies, rather than the actual number of immigrants, are to be explained because policies establish boundaries and create political communities. The policies also articulate the value that a country places on the borders dividing its citizens from people elsewhere. In this way, statements about who may enter a political community describe how a society identifies the most important differences between itself and others. The number of immigrants actually arriving depends on millions of decisions made elsewhere, under a variety of conditions, and on the funding and politics of border patrols. Actual flows matter as a stimulus to later policy change. Policy toward immigrants—persons admitted for permanent residence and, eventually, citizenship—is the focus. The spotlight stays on potential citizens.

The study starts by discussing the role that argumentation plays in shaping policy choice and describes the requirements that “the public interest” places on those advocating a position. Then, chapter 3 presents the arguments that legislators and others made for and against immigration restriction. Next, chapters 4 through 7 describe the ensuing sequence of debates over exactly how many and whom to exclude. These chapters are organized to provide evidence for and against the theses that sovereignty is a choice, that immigration policy is externally responsive, and that public interest requirements shape outcomes.

Following these are two chapters considering alternative explanations. Chapter 8 evaluates the contention that material and domestic interests drive change; it analyzes the partisan content of congressional votes, variations in public opinion, and changes in the unemployment rate as correlates of immigration restriction. Chapter 9 evaluates the contention that broad analyses that ignore arguments do as well, or nearly as well, in explaining change in immigration policy as does the structure-argument-structure model developed here. Finally, chapter 10 discusses the implications this study has for understanding structural change generally and for understanding policies regulating the mobility of people specifically.

CHAPTER 2

Arguments about Immigrants

One sort of political negotiation best explains the direction of change in American immigration policy. Political negotiation can take several different forms. One involves the question of who gets what. Two or more sides can bargain over policy as a vendor and a buyer might haggle over a price until they reach a settlement somewhere between their starting points or, if each wants something different, they might agree to trade votes. This happens when the issue is how to distribute a measurable good: money, votes, personnel, the number of military bases. Power decides these issues. Many political problems correspond to this model of individuals with competing interests bargaining under scarcity, at least at one stage in a lengthier process. At other times, political negotiation involves the question of which values ought to guide policy. Disagreement can focus on whether a problem exists at all, or on which principle should be applied to solve it. A policy package—a goal plus a principle plus a solution—has a logical glue that makes compromise difficult and, when it occurs, forces it to follow a different path than that which describes straight bargaining. At the heart of such policy packages are arguments, which connect problems and solutions with reasons. Success depends on persuasion rather than on material resources. Argumentation can produce policies that are fundamentally different from, and unpredictable from the standpoint of, simple material interests.

In two circumstances, ignoring arguments is justified. Sometimes a choice does not exist, and to believe that one does is, in fact, to be deluded. For arguments to matter, choice has to be possible. If, for example, a country were to be annihilated unless it acted in a certain way, its “choice” to comply is forced and, because it was necessary, not a real choice. In circumstances of necessity, arguments are, paradoxically, irrelevant if actors are rational. This justification underlies structural theories of international relations as well as endgame analyses. In the long run, structural theorists contend, the broad forces that drive historical processes—movements of languages, religions and ideologies, technology, wealth, populations, knowledge—effectively eliminate choice. Structural transformations reconfigure the incentives that actors face, making the rational choice

obvious, obvious at any rate over time to most people. Moreover, the momentum of broad changes is such that no one decision, or even series of decisions, will have much of an impact.

Ignoring arguments makes sense as well when consensus, rather than necessity, has made discussion superfluous. This can be the case in studies of implementation or of instrumental rationality.¹ If a group (or person) agrees on goals and on how to achieve them, the issue left is whether experience proved those expectations right. The systematic gaps between what a person or organization ought to do and what is actually done can then be described in terms of bureaucratic routine, or incomplete information, or misperception, or stupidity. In both types of case, arguments are irrelevant because goals—preferences—are clear, and what counts as a good reason for doing something is also clear. Much, however, lies between the extremes of necessity and instrumentality.² Politics often, maybe usually, involves competition to define social goals, and necessity is more often a rhetorical device than a reality.

How argumentation works in democratic politics has not been systematically investigated. One reason is that many policies do result from horse-trading, and powerful analytical techniques such as game theory can explain quite a variety of political outcomes. It has therefore been easy to neglect classes of problems that lie outside this set. Additionally, a long tradition of thought, from Machiavellians to Marxists, insists that material interest (presumably known and measurable) drives political struggle; by corollary, reasons contestants express are nothing more than a smoke screen (though whom they could fool, if everyone operated this way, is never made clear). Arguments are, in this view, post hoc rationalizations for an outcome effected by power, for power. Often this view is attacked on normative grounds as cynical, a charge that has not been particularly productive. Here, the view is criticized on empirical grounds. Many political problems do not correspond to the material interest model. The dynamics of argumentation provide a better explanation for the process and its result. American immigration politics have consistently been of this type.

In an argument, a position is backed by a reason. Importantly, the reason refers to something other than simply the person offering it. For example, a missile is considered better when it is more accurate. Accuracy is a value the arguer holds, but it is also a value that the arguer thinks is independent of his own preferences. It is a shared value, social as well as personal, and hence more than a preference. In a completely material bargaining situation, what persuades are not reasons but resources: I want this missile. Whether you acquiesce depends on whether you want it independently, whether I can force you to agree to it, or whether I have enough wealth to buy your consent. In any case, the position is backed by power.