Liberalism and the Limits of Inclusion: Racialized Preferences in Immigration Laws of the Americas, 1850-2000[1]

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Conventional accounts of liberalism note the progressive extension of rights to a range of persons, often beginning with white, propertied men and slowly including members of the working class, other ethnic groups, and women (Marshall 1964)(Smith 1997). Prominent analysts of immigration and citizenship policy have argued that liberal political regimes are inherently incompatible with racialized legal discrimination (Freeman 1995 ; Joppke 2005 ; Shanahan 1997 ; Starr 1992 ; Weil 2001). And yet, an examination of immigration and nationality law throughout the Americas from 1850 to 2000 suggests that racial discrimination has been *more common* in liberal than illiberal countries of immigration. Indeed, authoritarian regimes in countries like Cuba and Mexico reversed their discriminatory laws and pioneered the deracialization of immigration and nationality, *a generation before* the United States and Canada (Corbitt 1971 ; González Navarro 1994). To probe this seeming paradox we examine the empirical relationship between political liberalism and racially exclusive citizenship and immigration laws in the Americas since the 1850s. By liberalism, we mean a principle of political organization that emphasizes equality and the rights of the individual. Exclusionary laws refer to legal norms that control what kinds of people may enter and belong to particular nation-states.

We hypothesize that liberal states have had more racialized policies precisely because of their liberalism. This comes as no surprise to scholars who have noted the mutual constitution of liberalism and legal categorical exclusions

(Fitzpatrick 1992, 2001), but few have explored this process over the long-run at a hemispheric level with a combination of methodological approaches that question a Whiggish historiography of liberalism and specify the mechanisms through which policy changes occur. In liberal regimes, policy formation is more open to a plurality of concerns—including workers advocating the protection of domestic labor markets from despised foreign competition and/or nativists clamoring for the enclosure of a treasured identity. Some forms of liberal ideology can also encourage racial discrimination by insisting that only certain kinds of people have the right qualities to participate in democratic decision-making (Horton 2005). In authoritarian regimes, policymaking is dominated by elites, who often perceive greater economic and demographic benefits from immigration than the general public (see Foreman-Peck 1992). Further, political elites are able to more easily adopt universalistic criteria for immigration and nationality that they perceive to be the trappings of a progressive modernity even when the exemplars of "advanced" nationhood do not live up to these ideals.

In addition to calling into question the maxim that liberalism is one of the few effective external constraints on migration and nationality law, this study also qualifies the influential argument that the United States has been a major promoter of universal human rights, especially in Latin America (Huntington 1993 ; Lowenthal 1991 ; Smith 1995). The U.S. may well have been a leading proponent of liberal democratic systems of governance, but the quintessential "nation of immigrants" has been a laggard in the international move toward admission based on universal racial equality. This essay's spotlighting of the Cuba case demonstrates this point.

In addition to the theoretical significance of these insights, their enduring policy salience makes it especially urgent to explain the racial, ethnic, and national origin selection of potential migrants and members in historical and comparative perspective. While most scholars argue that the international human rights regime has made such categorical exclusions unthinkable in contemporary liberal states (e.g. Freeman 1995; Joppke 2005), in practice, fears about Mexicans in the United States and Muslims in Europe continue to shape the politics of immigration. Prominent politicians in many liberal-democratic countries are substituting a rhetoric of politically-discredited biological racism with appeals to safeguard the nation from culturally "unassimilable" strangers (Stolcke 1995). A genealogy of liberal legal exclusions reminds observers that there is nothing natural about this ideology and that its repertoire contains the possibility of new idioms of exclusion.

WHAT EXPLAINS THE LAW?

Studies focusing on the national level have advanced several economic and cultural explanations of racial discrimination in immigration and nationality law. Tichenor (2002) and Calavita (2005) see immigration law as the outcome of struggles between shifting coalitions of capital, organized labor, and ethnic interest groups. Employers often prefer the immigration of foreigners and racial outsiders because they are willing to work for lower wages in worse conditions than natives would tolerate. For the same reasons, native organized labor has generally opposed immigration, particularly that of Asians, Southern Europeans, and Latin Americans. While Higham (1994) emphasizes that native workers'

racism has been intertwined with fears that competition with foreigners will drive down wages, labor economist Foreman-Peck (1992) argues that once labor market conditions are taken into account, racism has been irrelevant for determining immigration law in the United States and South Africa. In contrast to this economistic view, Brubaker (1992) and Smith (1997) make strongly culturalist arguments emphasizing that struggles over law are shaped by institutionalized, national ideologies of immigration, like the notion that the United States is “a nation of immigrants.” All of these domestic perspectives fail to consider how national lawmaking is embedded in broader global processes and a world system of states that react to each other’s examples (Aleinikoff and Chetail 2003).

An alternative set of perspectives locates the source of legal changes outside a given state. For example, the U.S. exclusion of Chinese in 1882 was part of a broader racist movement that made banning Chinese the norm among major countries of immigration by the 1920s (Zolberg 1997). Since World War II, discrimination against particular racial or national-origin groups has become internationally illegitimate (Joppke 2005). In the strongest version of the diffusionist argument, national laws are becoming irrelevant as the inexorable spread of liberalism gives rights to all people regardless of their national citizenship and limits the range of legitimate policy options for maintaining the borders of the nation-state (Soysal 1994).

By contrast, our study takes a systemic approach that puts internal factors (e.g. shifting coalitions among interest groups) in the context of broader global factors and of a country’s embeddedness in an interactional world system of

states. This analytic perspective allows us to identify the circumstances under which particular factors become operative as well as specific causal mechanisms. The value of this approach becomes clearer when we address the important limitations of other approaches with respect to case selection.

CASE SELECTION

Case selection is a pervasive problem with most existing research that aims to explain the influence of liberal ideology on immigration laws. When researchers sample on the dependent variable by only studying liberal democracies (in Europe, North America, and Oceania), it is difficult to determine the relationship between liberalism and the deracialization of immigration laws. The influence of liberalism on the law can best be explained through a legal comparison with *illiberal* countries of immigration.

The broader study that informs this essay develops a systemic understanding of immigration and nationality laws throughout the 22 major nation-states in the Americas over the last 150 years.[2] It examines domestic explanations of laws as well as the international interactions of laws. The inclusion of both liberal and non-liberal states in the analysis avoids the circularity of arguments based exclusively on studies of liberal democracies and sets up the interesting sociological puzzle of why authoritarian regimes removed negative racial discrimination from their immigration laws around World War II, a generation before the United States did the same in 1965. By examining periods

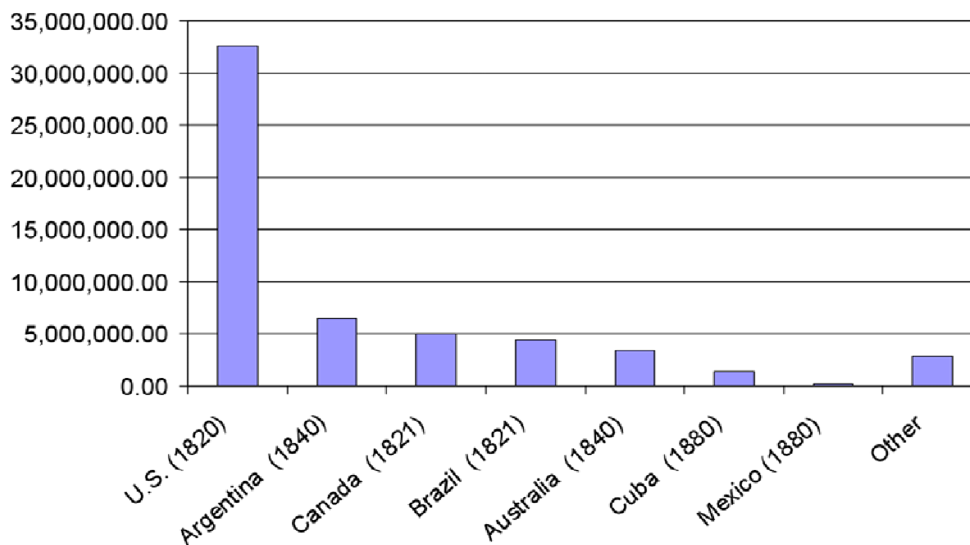
[2] Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay, and Venezuela.

of racialization *and* deracialization, the study avoids the teleological view of history implicit in the literature on the global diffusion of liberalism and racial equality.

From 1820 to 1932, the Americas were the destination of around 55 million Europeans (see Figure 1), representing around 92 percent of all European overseas migrants, and 2.5 million Asians. The Americas have been the destination of roughly a quarter of all international migrants since 1960. The United States is the most important of these cases because it has dominated international migration flows and its laws have often been models for other countries, though on a per capita basis, immigration has often been much higher in other countries. While immigration to Latin America has fallen since the early 1930s, spurts of large-scale and racially diverse migrations have continued to Argentina and Brazil (Cook Martín 2005).

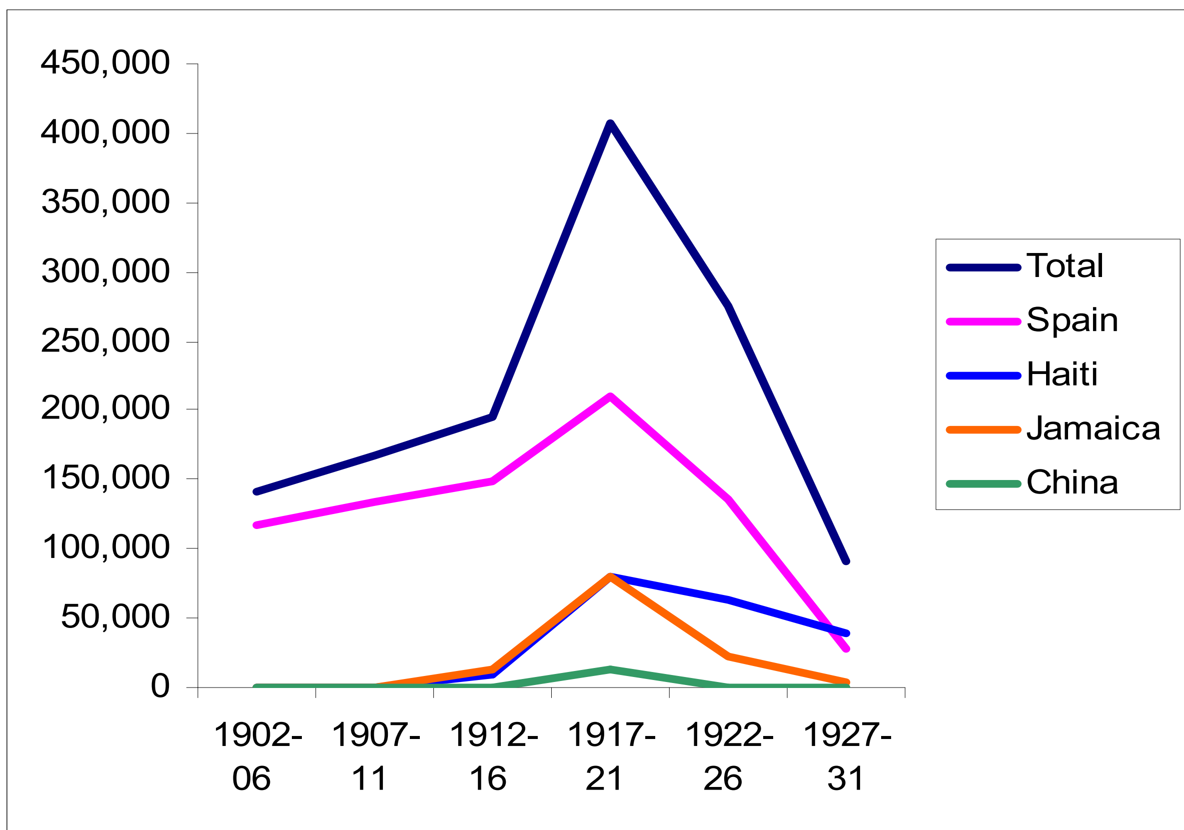
Figure 1.

Main Destinations of European Overseas Migrants, c. 1820-1932
(Source: Moya 1998:46)



Immigration slowed to a trickle during the world-wide depression of the 1930s, Cuba was the fifth most important destination country in the hemisphere during the great transatlantic migration of the turn of the twentieth century, and Havana had the largest Chinatown in Latin America (see Figure 2) (Cook Martín 2005). Before abolition in 1873, 125,000 had entered pre-independence Cuba (Bejarano 1993). These data are relevant to the discussion below about Cuba's adoption of U.S. style exclusions and 1943 derogation of Chinese exclusions.

Figure 2. Immigration to Cuba from Selected Countries, 1902-1931



Source: Cuban immigration data on file with authors

Another advantage of this case selection and a systemic approach is that they enable the identification of different causal mechanisms in the spread of common immigration and citizenship laws. To the extent that foreign examples are causal factors, what are the diverse pathways of diffusion, and how do the differential power relations among the countries in our sample condition the modeling of laws? These are fundamental questions for students of law and society (Halliday and Osinsky 2006), globalization (Meyer et al. 1997), and transnationalism (Sassen 1996). Studying a large set of related countries helps uncover the extent to which foreign legal models shape national laws relative to domestic factors like labor market conditions, institutionalized ideologies of immigration, and interest group politics.

METHODS

We employ both quantitative and qualitative research strategies to explain the racialization and deracialization of immigration and citizenship laws. We have collected laws and regulations governing these laws from 1850 to 2000 in the 22 countries in the hemisphere that have been independent at least since 1945. We exclude the 14 micro-states of the Caribbean Basin that gained independence since 1945, because they have not held sovereignty for most of our study's period. The documents have been used to construct a database measuring the extent to which race, ethnicity, and national origin were criteria for selection or eligibility in every country in every year since 1850, or the first year a country set its own laws.

Discrimination can be *negative* (e.g. a ban on Chinese in the U.S.) or *positive* (e.g. a preference for Spaniards in Cuba). Conceptually, the distinction between negative and positive discrimination is not absolute, because where two groups are competing for admission, a positive preference for one group implies indirect discrimination against another, but the distinction remains empirically and theoretically relevant. Negative discrimination has disappeared in liberal states, while positive discrimination remains common (Joppke 2005). Further, immigration and nationality laws are sometimes intertwined. For example, from 1924 to 1952, the United States excluded from admission those aliens ineligible for naturalization (Ngai 2004), while other countries recruited Chinese as migrant workers to do the worst jobs precisely because they were considered lesser humans unfit for membership. Consequently, we measure discrimination in immigration and citizenship laws separately. We have created four scaled variables where the unit is the country-year. For each country-year, these variables measure levels of positive and negative discrimination in immigration law and levels of positive and negative in citizenship law.

For each country and year, we code for discrimination for or against 19 mutually exclusive and exhaustive national-origin categories, plus another category for unspecified “assimilable groups.” Assessment of discrimination for or against each category is based on whether there was an outright ban to entry, differential requirements like “head taxes” for certain groups, or subsidized passage for particular groups. What causes changes over time in these discrimination indicators?

FINDINGS

Preliminary findings of this ongoing study confirm the value of our case selection and systemic approach. The late 1930s was the heyday of discrimination against national origin groups. Figure 2 shows that during this period 19 of the 22 countries in the sample discriminated against Chinese immigrants. Figure 3 demonstrates that discriminations against African-origin or Black immigrants, while slightly less common at 13 of the 22 countries in the sample, peaked at the same time. Chinese and Blacks were the two groups against which there was the most widespread discrimination. Even in countries like Mexico with very small Chinese and Black populations, these two groups were often the foils against which the boundaries of the nation were literally drawn.

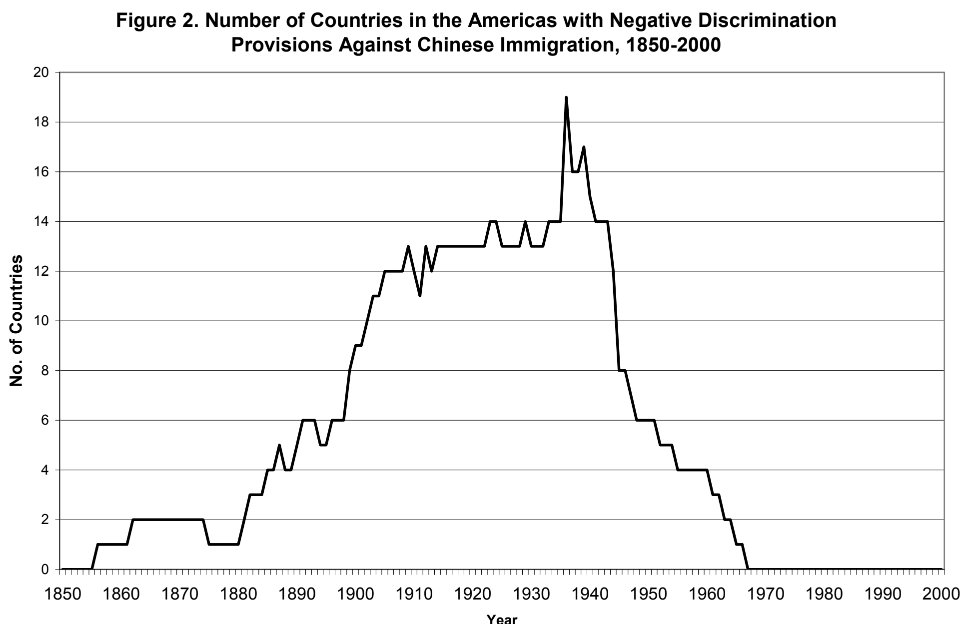
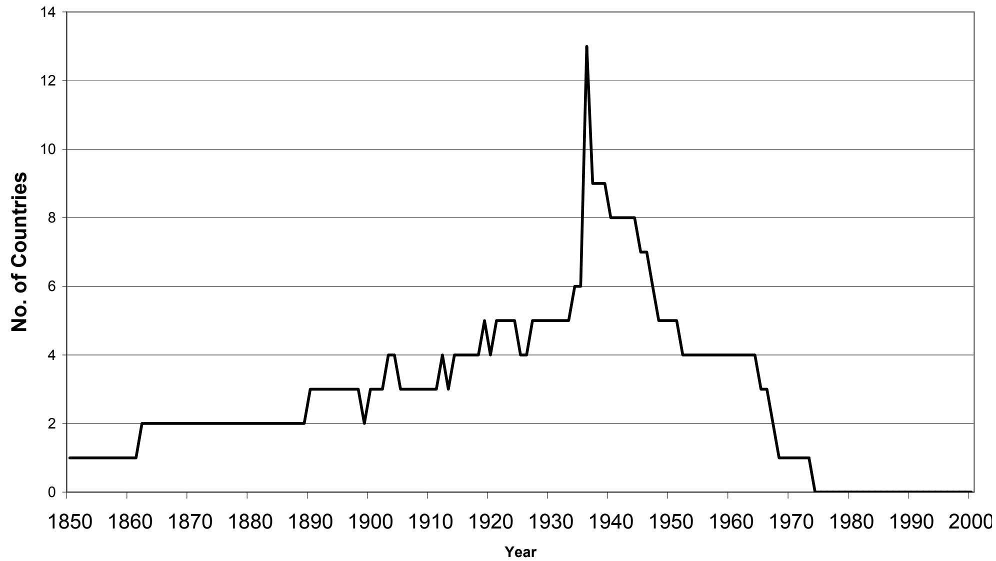


Figure 2. Number of Countries in the Americas with Negative Discrimination Provisions Against Chinese Immigration, 1850-2000

Source: RICA Database. On file with authors.

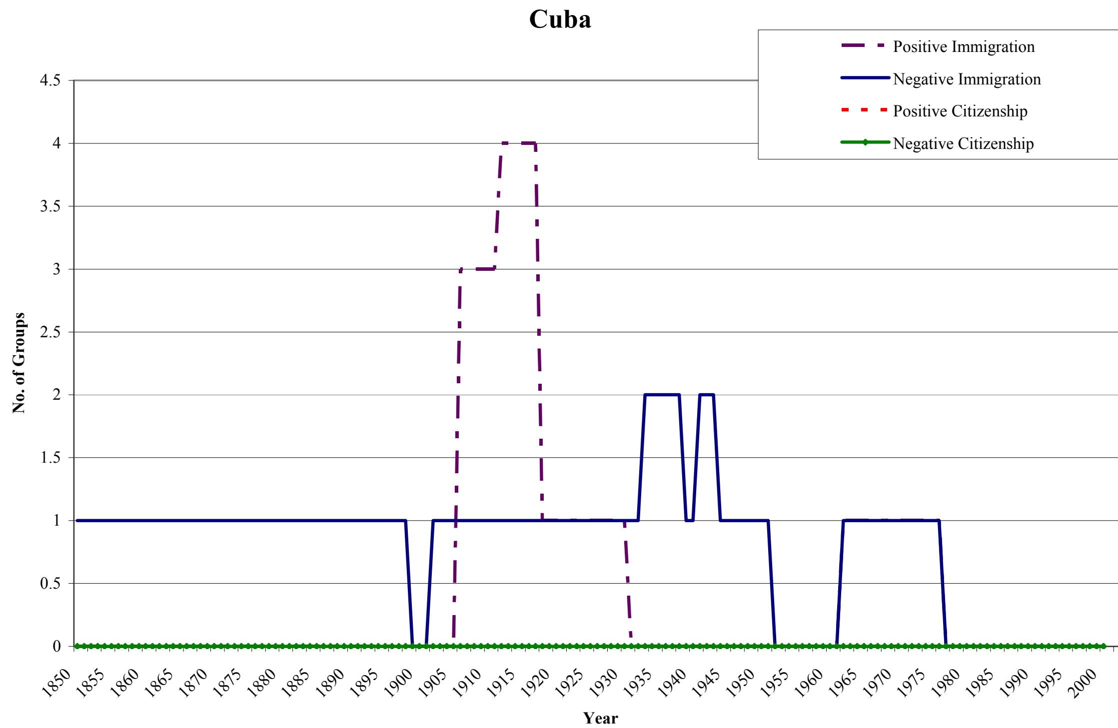
Figure 3. Number of Countries in the Americas with Negative Discrimination Provisions Against Black or African Immigration, 1850-2000



Source: RICA Database. On file with authors.

The five major countries of immigration in the Americas historically have been Argentina, Brazil, Canada, Cuba and the United States. Among the most striking findings is how late the United States and Canada were in removing their negative and positive discriminations, particularly in immigration law (1965 and 1970 respectively). The Latin American cases were much more likely to have removed their negative immigration restrictions shortly after World War II (see discussion of the Cuban case below), though Argentina is an interesting outlier in that its positive preference for European immigrants remains part of the 19th century constitution still in effect. Canada and the United States are the most consistently liberal countries in the sample by standard political measures. The disjuncture between the formal liberalism of their political systems and their enduring levels of racism, in contrast to a largely illiberal set of Latin American

countries that had deracialized their policies as long as a generation before their North American counterparts, is consistent with the hypothesis that liberal democracy is not only compatible with racist exclusions, but actually can *promote* them.



Source: RICA Database. On file with authors.

Spotlight on Cuba

We noted earlier that Cuba did away with racialized policies before its powerful neighbor to the North. Its history is informative precisely because one would expect that the character of policy trends would track closely with those of the hemispheric hegemon. Indeed its early history as an independent country reflects U.S. strong influence. After all, when Cuba gained its independence from Spain in 1898 during the Spanish-American War, the new American occupation

government declared that U.S. immigration law applied in Cuba. In Military Order 155 (May 15, 1902), Governor Leonard Wood published a compilation of immigration laws and regulations that would become the foundation of Cuba's policy in this domain. The Order outlawed the entry of Chinese labor migration as well as that of contracted workers.[3] Cuba gained nominal independence from the United States that year, though the U.S. reoccupied the island between 1906 and 1908 and continued to intervene as a quasi-colonial master during the pre-revolutionary period.

The Law of Immigration and Colonization (1906) contained a positive preference for European and Canary Island family migration and temporary laborers from Norway, Denmark, and Northern Italy under the peculiar logic that "the inhabitants of these countries more readily adapt themselves to the climate of Cuba and they more readily familiarize themselves with the work of Cuban agriculture".[4] Few Scandinavians came to work the sugar cane harvest, and the authorities turned to an alternative source of labor in the Antilles during major recruitments that begin with a 1913 shift in policy.[5] Beginning in 1928 and through the 1930s, however, thousands of Antilleans were expelled amidst a nativist backlash that was also expressed in the 1930 requirement that immigrants read and write Spanish and a 1933 law that at least fifty percent of the employees of any business must be native Cubans. In 1942, Cuba and China signed a friendship treaty that obviated any restriction on migration among these

[3] Gaceta de la Habana, 15 May 1902.
[4] March 13, 1908 letter from the Chief Inspector in the Cuban Office of the Census to the Provisional Governor of Cuba regarding the need to create an office "to encourage the immigration of laborers."
[5] Gaceta Oficial, January 14, 1913.

countries.[6] Restrictions on Chinese immigration were formally lifted in 1943 when Cuba joined the Allies in World War II. This made Cuban policy more like that of its Latin American and Caribbean neighbors than like its Northern neighbors. What explains the similarities between Cuban immigration laws and those of other countries? We identify four separate mechanisms in the Cuban case that are also found in many of 22 other cases in our larger study.

Parallel Development

One mechanism for the diffusion of law is parallel development (Hansen 1998) in which policymakers in different countries are not modeling their laws on each other, yet the laws themselves are similar and seek to attain like ends. The reason for their similarity is that political elites develop comparable laws in response to the same types of challenges. This mechanism is seen in the Caribbean, where many countries turned to indentured servitude of Chinese or Indians as a replacement for Black slaves given the end of the slave trade and the abolition of slavery throughout the hemisphere over the course of the nineteenth century. In Cuba, the beginning of the Great War and the country's role as a major supplier of sugar for the allies created a demand for labor similar to that faced by others in the hemisphere. Cuba adjusted its immigration policy and temporarily allowed the entry of Chinese workers.[7]

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[6] Ministerio del Estado, 290:4070 (January 16, 1945)
[7] Gaceta Oficial, Enero 4, 1917.

Coercion

The most direct form of coercive diffusion is the U.S. military government's imposition of U.S. immigration policy beginning in 1902. With the stroke of Wood's pen, U.S. exclusion of Chinese laborers became Cuban exclusion of Chinese laborers.[8]

Reciprocal Adjustment

Policymakers often design their policies as a rational, calculated response to the strategic environment. Given the sharp asymmetries that characterized the Cuban relationship with the United States, there was also an explicit fear of retaliation from the United States if Cuban immigration law upset perceived U.S. interests. The Cuban logic in following U.S. law is explained in a 1909 letter from the Director of the Quarantine in the Department of Immigration to the Secretary of Treasury:

> Cuba, given its situation and commercial and political relations with the United States, should ensure that its laws are, as far as it is possible, the same as U.S. laws. Civil Order #155 of 1902, imposed in Cuba by the intervening [U.S.] government, which was intended to copy the U.S. law excluding Chinese from that country, is an indication that we should not try to do anything in vain [like allow Chinese immigration to Cuba.]. Moreover, if the ports of Cuba were opened to Chinese immigration and the Chinese used the island as a way-station to land on the American coast illegally, the United States would adopt the defensive measures against Cuba that it considered appropriate.

The formal end of Chinese exclusion in 1943 provides another example of reciprocal adjustment. Although Cuba was peripheral to World War II, it formed part of the Allies along with China, Canada, the United States, and most of the

[8] See footnote 2

rest of the countries in the Americas. Japanese propagandists played up the fact that many of China's erstwhile allies had racist immigration policies excluding Chinese. To counter these charges, Allied countries at least symbolically eased their restrictions on Chinese the same year as a response to a changed geopolitical environment. Indeed, Cuba was one of the countries to do away with formal restrictions against Chinese immigrants in a 1942 Treaty and related domestic policy.

Cultural Emulation

Unlike the rational choice mechanism of reciprocal adjustment, other policymaking takes place at the cultural level of the adoption of norms developed elsewhere. In the strongest version described by John Meyer and his associates working on the "world polity," policymakers adopt laws reflecting what modern, civilized countries do. How do policymakers come to adopt these norms? The answer is clearest when they explicitly seek out foreign practices. For example, a 1930 report from the Secretariat of the Treasury synthesized the laws of ten other Latin American countries for a study of proposed reform to Cuba's immigration law. Latin America was the "epistemic community" and within it, Argentina was held up as an exemplar. In the words of the report, Argentina "marches at the head of the peoples that favor the immigrant, which has been the primary cause of their current status as a rich and prosperous nation."

A series of conferences – several held in Cuba – constituted the organizational backbone of this epistemic community. Cuba was a participant in several of the International Conferences of American States and hosted a full

meeting in 1928 and a ministers' meeting in 1940. Criteria for selecting immigrants were a topic of discussion at these meetings (International Conferences of American States 1931, 1940). Cuban policymakers were also active participants in eugenics conferences such as the *Conferencia Panamericana de Eugenesia y Homicultura de las Republicas Americanas* held in Buenos Aires in 1934. Similarly, immigration was a critical topic of debate. In both instances, participants came away with specific recommendations for policy implementation.[9]

One of the methodological difficulties faced by researchers engaged in an archaeology of policymaking is gaining access to what James Scott (1998) calls "the hidden transcripts" that go beyond posturing in public fora to reveal how decisions are made. This task is especially difficult when the goal is to understand the role of norms and cognitive schemas in policymaking, given that they are not often formally articulated. An internal Cuban government report from 1938, however, offers unusual insights into how Cuban policymakers wrestled with European cultural norms of anti-Semitism when forming their policy toward Jews fleeing Europe. In a private memorandum from the Director of Citizenship and Migration to the Secretariat of the Presidency, the author made the following observation:

> Among almost all European peoples there is a traditional antipathy towards Jews, a sentiment that we Americans [in the broad, hemispheric sense] share without apparent reason, …imitating [Europeans] … as wiser and more spiritual than we are, simply because they are older, more powerful, and richer.

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[9] We are currently in the process of linking interventions and recommendations with policy changes in participating countries.

This self-conscious discussion of the way that ideology influences policymaking suggests that the rational choice accounts by themselves are inadequate to the task of explaining the course of the law.

CONCLUSION

Cuban immigration policy was not simply reactive to foreign models and pressures. Large landowners, merchants, eugenicist groups, and worker's associations were sharply influential. A goal of this paper, however, has been to explain how the observed external influences on Cuban law were actually adopted in Cuba. The answers are not straightforward, as a set of sometimes overlapping but heuristically distinct mechanisms operated at different policy turns, ranging from parallel development, calculated reciprocal adjustment, emulation of cultural norms within a broader epistemic community, and outright coercion.

The place of putatively liberal countries like the United States in the coercive and cultural emulative aspects of immigration law were particularly important in the diffusion of racist laws directed against particular national-origin groups. In Cuba, as in almost all other countries in the hemisphere, the Chinese were the principal target of discrimination. The received wisdom in the literature is that the end of overt discrimination against national-origin, ethnic, or racial groups is caused by the spread of liberal democracy throughout the world, propelled by paragons of liberty like the United States. And yet, if liberalism is incompatible with racism, why were the United States and Canada leaders in the spread of racialized policy restrictions in the Americas during the early twentieth

century? Why did authoritarian Latin American regimes like Cuba under Fulgencio Batista remove negative racial discrimination from their immigration laws around World War II, well before liberal-democratic states like the United States and Canada did the same in the 1960s?

By taking the long view and considering a broad set of countries with both liberal and illiberal characteristics, a far different picture emerges both of the empirical facts and the causes driving them. Liberal states have been the leaders in racist policy formation, and laggards in deracialization, precisely because of their liberalism. More voices in the policymaking process have been no guarantee of universalist immigration criteria. On the contrary, internal gains in worker equity, for instance, have gone hand in hand with the exclusion of potential foreign competitors. Particularistic policies may also be informed by an ideology that maintains that full participation in a democratic polity requires having the right qualities. The institutionalization of exclusionary policies can make change difficult absent outside pressure to change or to apply notions of equality within and at the border. In contexts with a relatively narrower range of voices – like Cuba – political elites' stand to directly benefit from immigration and from universalist policies that confer a mantle of progressive modernity.

The sudden collapse of negative racial discriminations in immigration law around World War II suggests that global factors were the primary drivers of deracialization. These factors include the global reaction against Nazism and its genocidal form of racism and the anti-colonialist movement seeking sovereignty for people of mostly non-European origin. The end of the national quota system in the United States in 1965 has also been attributed to the U.S. Civil Rights

movement (Joppke 2005). Here again, the United States is an outlier, this time for the extent to which domestic minority politics played a role in driving policy. Most other countries in the Americas had already lifted their restrictions on groups that held relatively little demographic weight compared to the rest of the population, particularly in the case of Chinese immigrants. Although Joppke has argued that domestic, rather than international politics, were the primary driver of deracialization, this view cannot be applied to a wide range of cases. It is a product of a narrow case selection focusing on liberal countries like the United States and Australia, rather than a much broader set of both liberal and illiberal cases considered here. The global diffusion of antiracist ideology has made overt discriminations widely illegitimate, although political entrepreneurs like Patrick Buchanan continue to test the limits of legitimate political discourse in their calls for promoting European immigration over Mexican immigration. That anti-racist ideology is not inherently liberal, however. Although on its face, there is an elective affinity between an anti-racist ideology that views discrimination based on ascriptive factors like skin color as illegitimate, and a liberal ideology emphasizing the rights of the individual, the historical record shows that these ideologies have converged or diverged according to conjunctural circumstances. There is no inherent, enduring relationship between liberalism and anti-racism, which should give pause to those who assume that overt discriminations based on race, national origin, or ethnicity have been permanently eliminated.

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