CCIS

The Center for Comparative Immigration Studies
University of California, San Diego

When Institutional Boundaries Meet New Political Ideas: Courts, Congress and U.S. Immigration Policy Reform

By Valerie F. Hunt
Visiting Fellow, Center for Comparative Immigration Studies

Working Paper 38
May 2001

When Institutional Boundaries Meet New Political Ideas: Courts, Congress and U.S. Immigration Policy Reform

Valerie F. Hunt[1]
University of Washington
Center for Comparative Immigration Studies

INTRODUCTION

Since the late 19th century, the United States Supreme Court has adhered to the institutional doctrine of plenary power, which confers sole jurisdictional authority to Congress over matters of immigration and naturalization. With its decision in *Fong Yue Ting v. United States (1889)* the Supreme Court took the position that Article I, Section 8; Clause 4 of the United States Constitution confers sole power to Congress to address matters of immigration and naturalization. A myriad of court cases throughout the 19th and 20th centuries further substantiated this doctrine (to be discussed in later sections), giving plenary power almost unshakable precedent power. While legal scholars may note the Court's abdication of judicial review of congressional policymaking on matters of alien entry and exit as "unusual deference" (Legomsky 2000:1615), most have noted the long-term stability in this institutional arrangement between the Court and Congress.

However, scholars in other social science traditions take an opposing view of the institutional role of the judiciary in immigration policymaking. Scholars in migration point to the role of an independent judiciary in the changing dynamics of post World War Two immigration policy in liberal nation-states (Guiraudon 1998a, 2000; Joppke 1998b; Massey 1999). These analysts argue that the presence of an autonomous court is one of the major reasons why liberal states like the United States

take on "unwanted migration" (Cornelius, Martin and Hollifield 1994; Joppke 1998b) often in the face of domestic public resistance to expansionist immigration policy. This move toward more expansive immigration policies occurred during periods when the US and other industrialized countries were experiencing circumstances often associated with public anti-immigrant sentiments: high unemployment rates, inflationary periods (Kessler 1999; 2000), xenophobic/nativist rumblings against foreign workers (Tichenor 1994) and perceived concentration of foreign-born to native population (Fetzer 2000). In the US case, several scholars argue that political climate engendered by the Civil Rights movement and the Court's willingness to extend its jurisdictional authority to remedying longstanding federal and state violations of the rights of Blacks in matters of voting, access to housing and public education spilled over to governmental attentiveness (both Court and Congress) to remedying constraints on the rights of immigrants (Joppke 1999; Schuck 1998; Spiro 1994). Their arguments and evidence run counter to the deferential court model in U.S. immigration policymaking.

Although there is growing theoretical discourse that an independent judiciary matters in immigration policymaking, limited empirical research exists demonstrating how courts matter. What is missing from the literature is a systematic investigation of *how* the domestic judiciary of a democratic political system actually negotiates the immigration policy process, a process (and political arena) that is usually dominated by the executive or legislative branches of government. Judicial ascendancy does not happen within an institutional vacuum. In most liberal states, immigration policy is primarily under the jurisdictional authority of the executive, as in the case for parliamentary Britain, or under the legislative branch, as in the case for the United States. Given that there is already a dominant decision-making institution within the U.S. immigration policy domain, how does one account for the judiciary's capacity

[1] Comments and suggestions are welcome. Please do not cite without author's permission.

and impetus to enter the immigration policymaking arena? Moreover, how does one account for the Court's ability to shift the decision-making location of policy reform around immigrant rights into its own jurisdiction?

How different domestic governing institutions interact to shape U.S. immigration policy is an under-examined area in political science. To this end, this study turns to the institutional agenda-setting approach for investigating how the courts can and do get involved in the immigration policy process. This study addresses the question "do shifts in the relationship between federal governing institutions influence policy change in U.S. immigration policy during the post World War II era?"

Recent research by institutional agenda-setting scholars in political science have demonstrated empirically that significant changes in policy are, in part, a function of the changing boundaries between the national governing institutions about decision-making authority over old and newly emergent issues (Flemming, Bohte and Wood 1997, Flemming, Wood and Bohte 1999; Jones, Baumgartner and Talbert 1993; Jones and Strahan 1985; Kingdon 1984). Institutional jurisdictions are defined as the organizational locations within which binding decisions are made (King 1997). I argue that a change in the relationship between the judiciary and the legislature regarding jurisdictional authority over immigrant rights increased the likelihood for changes in U.S. immigration policy. Overlapping jurisdictional authority of the Court and Congress set the stage for opportunities for changes in the structure of the immigration policy process and in the composition of policy outcomes. This jurisdictional overlap resulted from new issues involving the *rights* of immigrants in regards to naturalization and citizenship emerging in the U.S. national political arena. The emergence of these new issues shifted the Court's attention from evaluating all issues of entry and exit of migrants as a matter of national sovereignty (and thus governed by plenary power deference to Congress) to redefining some particular

issues of entry and exit as a matter of remedying violations of immigrant rights as protected under the equal protection clauses of the 5th and 14th Amendments of the U.S. Constitution (see Appendix I).

AN INTER-INSTITUTIONAL APPROACH TO UNDERSTANDING POLICY CHANGE

The United States Separated System of Government and Policy Change

In order to understand the emerging importance of the Court-Congress relation in U.S. immigration policy in the post WWII era, we need to take into consideration the system of separated powers. The separated system of government creates a network of different connections between the executive, judicial and legislative governing institutions. These connections or inter-institutional arrangements reflect either shared or discrete decision-making authority held by the respective governing bodies. This institutional principle renders a political arena where political actors can utilize multiple points of institutional access into the governmental decision-making process. Therefore, despite the fact that one institution usually dominates decision-making in a particular policy arena, this jurisdictional dominance is often contested by internal as well as external societal and institutional forces.

Governing institutions do not operate in isolation of each other. The separated system of government establishes institutional arrangements between the judicial, executive and legislative branches regarding shared and discrete decision-making authority, called jurisdictional authority. Some classes of discrete jurisdictional authority are considered inviolate (e.g. congressional power of the purse). In some circumstances two institutions negotiate their shared decision-making authority (witness the various battles in the appointment process between the Senate Judiciary Committee and the Executive) while in other circumstances, one institution contests or challenges another's jurisdictional authority (for

example, the congressional challenge via the War Powers Act of 1973 of presidential authority to deploy military troops).

While different institutions may have jurisdictional authority over particular issues (for the reasons discussed above), this authority is by no means permanent. Issues change over time. At times the change is gradual and at other times the change is abrupt and disruptive. In either instance, shifts in issue definitions can result in shifts in the locus of decision-making (Baumgartner and Jones 1993).

These examples show that jurisdictional authority is conferred not only by particular enumerated or implied powers derived from the Constitution but also because other institutions acknowledge the right of an institution to make certain kinds of decisions, thereby conferring legitimacy on the institution's dominance. For example, Congress delegated the jurisdictional authority over refugee issues to the president. Refugee policy was made in an ad hoc fashion until 1980 with the passage of the Refugee Act. In other words, jurisdictional authority is a relational dynamic between two or more institutions, resting on legal-formal structures and the acquiescence of other institutions.

Punctuated Equilibrium Theory

My argument relies upon the institutional agenda-setting theory developed by Frank Baumgartner and Bryan Jones (1993) that accounts the dual dynamic of stability and change in policy subsystems. While other domestic perspectives of immigration policy highlight societal/interest group dynamics (client politics) (Freeman 1995), economic/labor market factors (Kessler 1999), or geopolitical forces (Money 1997) while downplaying or ignoring the role of domestic governing institutions, the Baumgartner and Jones punctuated equilibrium theory integrates societal and governing institutional forces as causal factors that influence both the policy process and policy outcomes.

According to the punctuated equilibrium thesis, policy subsystems exhibit long periods of stability that are interrupted by shorter periods of dramatic change that alter the kinds and number of political actors, and the content and nature of policy outputs. The punctuated equilibrium thesis contends that a policy subsystem is subject to both internal (endogenous) as well as external (exogenous) forces that can result in dramatic changes in the structural configuration of policy subsystems and their policy outputs. Exogenous conditions such as downturns in the U.S. economy or dramatic increases in the global refugee population due to wars and civil disturbances can shift the attention of policy actors to the importance of a particular problem (or to the importance of a particular dimension of the problem). Governing institutions and the interactions between governing institutions are endogenous factors effecting policy outcomes.

A stable policy subsystem is characterized by presence of a) a powerful image of the policy its meaning and the legitimate solutions alternatives and b) set of political and institutional actors that limit the access of new actors and political ideas into the policy domain. The emergence of new issues, either through the activities of policy entrepreneurs or through events that "burst on the scene," can gain agenda access resulting in dramatic new policy outcomes in the policy subsystem. For example, in 1994, a majority of California's voters passed into law Proposition 187 (also known as Save Our State). The initiative's constitutionally challenging provision of withholding non-emergency medical services and public education to undocumented migrants and its provocative provisions of calling for all California public employees to "turn in" undocumented migrants caught the attention of several states as well as the national decision agenda. Although the initiative was immediately tied up in California state courts, the new dimension of immigrants as public burden and drain on social services caught the attention of other political actors. In 1996, Congress passed the following two major amendments to

the Immigration and Nationality Act: the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIA) and the Personal Responsibility and Work Opportunity Act. Both acts essentially reintroduced restrictions on aliens' access to public social services. In short, these reforms demonstrate how a shift in attentiveness from one dimension of evaluation can lead to a shift in the policy decision-making venue, resulting in significant policy change.

Institutional arrangements reflect the jurisdictional authority of each governing branch. Nonetheless, jurisdictional authority of a given institution is valid insofar as other institutions do not challenge its legitimacy and/or attempt to take on some of the decision-making authority.

Two things are important about the interaction of issues and institutional decision-making venues--where an issue is being addressed and how an issue is understood (its problem definition). The way an issue is defined also influences what institutional venue can legitimately claim decision-making authority. As legislative scholar David King comments "jurisdictions are about property rights over issues (King 1997:11). For example, Senator James Eastland (D-MS), chair of the Senate Judiciary Committee for well over 20 years (1956-1978), would often not hold immigration subcommittee hearings in order to shut down any reform efforts (Joppke 1998a; Tichenor 1994).

The way that real world problems (e.g. earthquakes, devaluation of the Mexican peso) are understood influences the policy process, both in terms of the perceived severity of the problem, causal agent and the appropriate solution alternatives (Stone 1989). The more serious a problem is perceived, the more likely it will receive more resources and attention from relevant authoritative decision-makers. The less serious a policy is perceived, the less likely it is to gain agenda access, let alone attract institutional and political resources. For example, the U.S. sentencing guidelines for crack and powder cocaine offenders diverge dramatically. Crack cocaine use is widely defined in the public

and policy discourses as a severe problem having societal ramifications while powder cocaine use has been defined in as individualistic recreational use; thus the policy justification of differing sentences to fit the severity and scope of public repercussions of the problem.

Therefore, changes in issue definitions can lead to changes in the policy subsystem. New ways of understanding a policy problem increase the likelihood for shifts in inter-institutional arrangements between the dominant and the alternative institutions, resulting in a venue shift on a particular set of issues. New ideas usher in new political actors that had previously been shut out of the policy domain. A new issue definition increases the likelihood for challenges on the jurisdictional authority of the dominant decision-making venue by opening up the question of what venue is the legitimate place for making decision about this new issue. Venue shifts increase the likelihood of policy change.

Thus, changes in issue definitions have a profound effect on jurisdictional boundaries and policy outcomes. Changes in issue definition can reveal overlaps in decision-making authority. Jurisdictional overlaps create opportunities for new institutional venues to become active in the policymaking process where they had once been outsiders.

PROPOSITIONS AND EXPECTATIONS

I use the following propositions to guide my investigation of the interplay of issues and governing institutions within the immigration policy process.

As different understandings of immigration emerge in the political arena, a previously inattentive institution becomes interested in the new issue and makes competing claims. If an issue, such as rights of unauthorized migrants, is considered by court actors to be within their legitimate realm of authority,

the courts will shift their attentiveness from plenary power as a dimension of evaluation of newly emergent issues and to the equal protection doctrine.

I expect the Supreme Court not to directly challenge congressional jurisdictional authority in immigration by dismantling the plenary power doctrine or declaring it invalid. The institutional traditions and norms of precedent and stare decisis are too embedded in Court institutional practices for the Court to abandon the doctrine. However, what I do expect is when the Court does become attentive to the new dimension of immigrant rights, it will use the equal protection doctrine to justify its shift in jurisdictional authority over these issues.

When other institutions challenge the jurisdictional authority of the dominant institution within a policy domain, change is more likely in the policy decision-making process as a whole and on policy outcomes in particular. Jurisdictional challenges open the policy domain to new political actors and to new political ideas. This new openness increases the likelihood of policy change.

DATA SOURCES

I use several data sources. First, I use longitudinal data on U.S. congressional hearings activity and public laws from 1947 to 1993, which I draw from the Agendas Project Database. The Agendas Project Database is a series of comprehensive datasets of US congressional hearings, public laws, *Congressional Quarterly Almanac* stories, and selected stories from the *New York Times Index* spanning over 45 years of policymaking in the United States. The data used for this study are drawn from the first three datasets by utilizing a combination of keyword searches and the topic-coding scheme developed by the Agendas Project researchers. Second, I conducted a close reading of the major

Supreme Court cases related to plenary power, immigration and immigrant rights. These cases were drawn from USSC+ (a comprehensive database of all United States Supreme Court decisions); findlaw.com (a research source for attorneys and legal scholars); and from Lexis-Nexis online research database. I also conducted a close reading of the six federal statutes that have been commonly identified in the migration literature as the most critical sources of policy change in immigration for the time frame of this study: the 1952 McCarran-Walter Act, the 1965 Hart-Celler Act, the 1976 Immigration Act, the 1980 Refugee Act, the 1986 Immigration Reform and Control Act, and the 1990 Immigration Act. I also used secondary research on U.S. immigration reform drawn from the migration control literature.

DISCUSSION

The following is a description and discussion of my preliminary analysis.

Evolution of the Interplay of Issues and Institutions in US Immigration Policy

Immigration during the early 20th century was defined in essentially negative terms of a menacing flow of "undesirable aliens" that, if left unchecked, would transform the American national identity. (Fuchs 1990; Hutchinson 1981; Reimers 1998).

The preferred policy solution was to focus on exclusion by national origin. The resultant policy was the 1924 National Origins Quota Act, which restricted eligibility for entry to a percentage of the number of foreign-born counted in the 1910 U.S. Census by national origin. The primary goal of the 1924 Act was to curtail the entry of Asian migrants, particularly those from China and Japan, and migrants from southern and eastern Europe.

Despite the official congressional attentiveness to immigration as an issue of maintaining national identity, there was an equally potent image and policy reality of immigration as an issue of maintaining cheap and available source of labor. This issue dimension of evaluation of immigration was subordinate to the policy image of national sovereignty and border control. As to be expected under the punctuated equilibrium model, competing issues are kept off the decision agenda of the predominant venue in order to maintain control of the policy process.

(Table 1 about here)

However, different issue definitions of immigration began to emerge on the national agenda (Table 1). I draw these definitions from reading the preambles as well as the text of the identified legislation, and analysis of secondary research conducted on the political and legislative history of immigration policy (Fuchs 1980; Hutchinson 198; Reimers 1998). First, there was the negative definition of immigrants and immigration as a threat to American national identity, national sovereignty and democratic values. There was great concern that migrants would bring subversive communist and socialist ideas into the state (Hutchinson 1981: 292-294; Reimers 1998). Refugee issues that had essentially been of low issue salience during the immediate post WWI period, merged with Cold War ideology and gained prominence. Refugee issues became defined with U.S. foreign policy goals of promoting liberal democracy abroad. Within the wake of Cold War ideology, decisions about refugees and political asylees became a foreign policy tool deployed to support U.S. allies and to discredit communist regimes. For example, the Cuban Refugee Assistance Act was largely a response to the takeover of Cuba by communist leader Fidel Castro where the United States had supported the conservative rightist regime before Castro.

(Figure 1 about here)

Most of the major changes in immigration policy occurred via statutory law passed by Congress. Figure 1 displays the major policy changes in the Immigration and Nationality Act from 1947 to 1993. I use public statutes weighted by the amount of news coverage each statute received in the *Congressional Quarterly Almanac* (*CQ*). Weighted statutes are used in this study as an indicator of the relative importance (i.e. issue salience) of passed legislation during a congressional period. The *Congressional Quarterly* devotes more news coverage to controversial or important legislation than it does to less salient issues. Statutes that receive more news coverage in *CQ* are more likely to be the object of redefinition efforts. The 1965 Hart-Celler Act dismantled the race-based quota system established by the 1924 Act. It further codified the principle of family reunification, which had been introduced in the 1952 act, by making the principle the centerpiece of the policy rationale. The 1980 Refugee Act removed the refugee quotas provisions out of the seven-tiered legal migration preference system and codified the ad hoc policies that had been generated by the president since the late 1940s. The 1986 Immigration Reform and Control Act, while it was supposed to control illegal migration, it was expansionist in nature, providing amnesty for approximately three million undocumented aliens. The 1990 Immigration Act revamped the preference system, increasing the upper limits of migration for family and employment categories.

The Supreme Court Use of Different Institutional Doctrines as Dimensions of Evaluation about Immigrant Rights

Epstein and Knight (1998) provide a convincing argument about the strategic decision-making of Court justices. Courts engage in two forms of judicial review: constitutional review where the Court scrutinizes whether a federal or state law or procedure is in violation of the U.S. Constitution, and b) statutory review, where the Court reviews the legitimacy of a federal statute. I integrate the Epstein and Knight argument with the Baumgartner and Jones thesis of shifts in issue dimensions can raise the attentiveness of previously inattentive political actors. In this case, the inattentive actor is the Court. Court justices use different doctrines as dimensions of evaluation help them determine whether to engage in constitutional review or statutory review.

Courts have been loath to engage in statutory review of immigration policy generated by Congress. On the other hand, issues involving questions of constitutionality, ambiguity of state versus federal role and questions of individual rights, the courts deem these issues to fall within their decision-making authority, regardless of other governing branches' jurisdictional claims. The Supreme Court case *Plyler v. Doe* is a prime example of the Court becoming attentive to an issue dimension that framed the case as a question of constitutional scrutiny and thereby under Court jurisdictional authority. At issue in *Plyer v. Doe* was a Texas law that prohibited the provision of public education to the children of undocumented migrants. The Court took the case on the merits of resolving the question of whether states could create policy that superceded constitutional authority, in this case the equal protection of individuals.

(Tables 2 and 3 about here)

I provide the following preliminary findings from the analysis of the Supreme Court decisions displayed in Tables 2 and 3. The tables show that for most of the 20th century the Court adhered to plenary power doctrine when addressing immigrant and immigration court cases. In each of the cases, the political actors attempted to shift to a rights-based frame of reference. Beginning with *Ekiu (1892),* each of these cases challenged immigration statutory provisions on the basis of a violation of either

substantive or procedural due process. In *Ekiu*, immigration official excluded a female Chinese alien on the judgement that she was likely to become a public charge. She attempted to have the Court countermand the immigration administrative procedure on the grounds that because the decision was made without her having a trial that the agent violated her right to due process. The Court rejected her argument and affirmed congressional plenary power on the grounds that the power to exclude any persons from its territory is within the sovereign right of a nation-state. All most of the subsequent cases after *Ekiu*, the Court rejected rights-based claims. Indeed, in several of the decisions, the Court extended plenary power to cover more comprehensive aspects of exclusion and deportation.

When we compare the data from Figure 1 on the policy changes in immigration public law, we see that most of the major changes in immigration occurred in Congress. Where was the Court during this period of the development of new issues in U.S. immigration policy? The Court adhered to the plenary power doctrine and refrained from making decisions that countermanded to jurisdictional authority of the legislature. Noted immigration legal studies scholar Stephen Legomsky reports that during the period between 1905 and 1950, several cases challenging on the basis of violation of due process and equal protection came before the Courts. Most were dismissed immediately (Legomsky 1987:199). The Court adhered to the policy image of immigration and naturalization as about national sovereignty over entry, exit and conditions of stay (deportation and naturalization) and did not intrude upon congressional policymaking activities.

It was only in very recent cases in the 1980s that the Court cautiously began to shift its dimension of evaluation to evaluating the newly emergent issues within a rights-based frame that allowed for interpreting them as part of Court jurisdiction. The Court made two decisions that departed from plenary power doctrine. The first, *INS v. Chadha (1982)*, is the only case where the Court directly

challenged a statutory law. In *Chadha*, the Court struck down a provision of the Immigration Act as unconstitutional. At question was whether the House of Representatives, as part of its plenary exercise, could vote to reject an alien's petition for suspension of deportation. The Courts ruled that because only the House voted to reject the suspension and did not bring the vote to the full Congress, that this constituted a "legislative veto," and as such, was unconstitutional. However, in *Chadha*, the Court engaged in a constitutional review of a separation of powers question as much as it addressed equal protection rights. In *Plyler v. Doe (1983)*, the Court again addressed the constitutionality of states making laws in areas that were federal jurisdiction. However, at the same time, the Court used the dimension of evaluation of equal protection of "innocent children" who could not be held accountable for the (il) legality of their parents' residency status.

CONCLUSION

The Cautious Emergence of the Court in Immigration Policy Arena: When Human and Civil Rights Met Immigrant Rights

The preliminary findings provide a cautious picture of Court shifts of its dimension of evaluation in how it addresses immigration. The shift in the locus of decision-making from Congress to the Court is by no means a done deal. Congress still dominates the policy-making process. However, by examining the institutional relationship between Congress and the Court, allows us to better understand how Congress is able to maintain that dominance in a policy area that is contentious and fraught with competing claims about what is the proper way to understand and address immigration.

The U.S. Court, under Chief Justice Earl Warren (1953-1969), became a significant institutional decision-making location involving rights-based issues. Key court decisions such as *Brown v. Board of Education, Griswold v. Connecticut* and *Map v. Ohio* ushered in expansive interpretation of rights to groups that had previously been disenfranchised (i.e. dismantling of the separate but equal doctrine that supported racial segregation, expansion of the notion of privacy, and protection of due process rights for criminal defendants). The current Court, with its emphasis on conservative judicial activism, is not amenable to extending this institutional legacy. Yet, at the same time, with recent decisions such *Miller v. Albright (1998*) where the Court justices were very divided in their decision to uphold congressional authority to confer citizenship when there are attendant questions of gender discrimination, shows that the Court is attentive to equal protection doctrine as a dimension of evaluation in immigration policy matters.

The stage is set for the Congress and the Court to claim jurisdiction over elements of the same issues in immigration policy. The question becomes to what extent will the Supreme Court pay attention to the new issue dimensions of immigrant rights and consider immigrant rights as legitimately within Court jurisdictional authority.

References

Baumgartner, Frank R. and Bryan D. Jones. 1993. *Agendas and Instability in American Politics*. Chicago: University of California Press.

Cornelius, Wayne A., Philip L. Martin and James F. Hollifield. Editors. 1994. *Controlling Immigration: A Global Perspective.* Stanford: Stanford University Press.

Cox, Gary and Matthew McCubbins. 1993. *Legislative Leviathan: Party Government in the House*. Berkeley: University of Chicago Press.

Coutin, Susan Bibler. 1998. "From Refugees to Immigrants: The Legalization Strategies of Salvadoran Immigrants and Activists." *International Migration Review*. Winter; 32(4):901-925.

Davidson, Roger and Walter Oleszek. 1976. "Adaptation and Consolidation: Structural Innovation in the U.S. House of Representatives." *Legislative Studies Quarterly* 1:37-65.

DeLaet, Debra L. 2000. *U.S. Immigration Policy in An Age of Rights.* Westport: Praeger.

Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make.* Washington, DC: Congressional Quarterly Press.

Fetzer, Joel S. 2000. *Public Attitudes toward Immigration in the United States, France and Germany*. Cambridge: Cambridge University Press.

Fitzgerald, Keith. 1996. *The Face of the Nation*. Stanford: Stanford University Press.

Flemming, Roy B., John Bohte and B. Dan Wood. 1997. "One Voice Among Many: The Supreme Court's Influence on Attentiveness to Issues in the United States, 1947-92." *American Journal of Political Science* 41(4):1224-50.

Flemming, Roy B., B. Dan Wood and John Bohte. 1999. "Attention to Issues in A System of Separated Powers: The Macrodynamics of American Policy Agendas." *The Journal of Politics* 61(1):76-108.

Freeman, Gary. 1995. "Modes of Immigration Politics in Liberal Democratic States." *International Migration Review*. 29(4):881-902.

Fuchs, Lawrence H. 1990. *The American Kaleidoscope: Race Ethnicity, and the Civic Culture*. Hanover: University Press of New England.

Guiraudon, Virginie. 2000. "European Courts and Foreigners' Rights: A Comparative Study of Norms Diffusion." *International Migration Review* 34:1088-125.

Haines, David W.1996. *Refugees in America in the 1990s: A Reference Handbook.* Westport: Greenwood Press.

Hutchinson, Edward P. 1981. *Legislative History of American Immigration Policy 1798-1965*. Philadelphia: University of Pennsylvania Press.

Jones, Charles O. and Randall Strahan. 1985. "The Effect of Energy Politics on Congressional and Executive Organization in the 1970s." *Legislative Studies Quarterly* 10:151-79.

Jones, Bryan D., Frank Baumgartner and Jeffrey Talbert. 1993. "The Destruction of Issue Monopolies in Congress." *American Political Science Review* 87:657-671.

Joppke, Christian. 1998a. *Challenge to the Nation-State: Immigration in Western Europe and the United States*. Oxford: Oxford University Press.

_____. 1998b. "Why Liberal States Accept Unwanted Immigration." *World Politics* 50:235-65.

_____.1999. *Immigration and the Nation-State: The United States, Germany and Great Britain.* Oxford: Oxford University Press.

King, David C. 1997. *Turf Wars: How Congressional Committees Claim Jurisdiction.* Chicago: University of Chicago Press.

Kingdon, John W. 1984. *Agendas, Alternatives, and Public Policies*. Boston: Little, Brown.

Krehbiel. Keith. 1991. *Information and Legislative Organization*. Ann Arbor: University of Michigan Press.

Legomsky, Stephen H. 1987. *Immigration and the Judiciary: Law and Politics in Britain and America*. Oxford: Clarendon Press.

_____. 1995. "Ten More Years of Plenary Power: Immigration, Congress and the Courts." *Hastings Constitutional Law Quarterly* 22: 925-xx.

_____. 2000. "Fear and Loathing in Congress and the Courts: Immigration and Judicial Review." *Texas Law Review* (78) 7:1615-1632.

Massey, Douglas S. 1999. "International Migration at the Dawn of the Twenty-First Century: The Role of the State." *Population and Development Review* 25:303-22.

Money, Jeannette. 1997. "No Vacancy: The Political Geography of Immigration Control in Advanced Industrial Countries." *International Organization.* 57:685-720.

Policy Agendas Project Database. Source: http://depts.washington.edu/ampol/citation.shtml.

Reimers, David M. 1998. *Unwelcome Strangers: American Identity and the Turn against Immigration.* New York: Columbia University Press.

Schuck, Peter H. 1998. *Citizens, Strangers and In-betweens: Essays on Immigration and Citizenship*. Boulder: Westview Press.

Spiro, Peter J. 1994. “The States and Immigration in an Era of Demi-Sovereignties.” *Virginia Journal of International Law* (35):121. Lexis-Nexis Academic Universe download: http://web.lexis-nexis.com/universe/document downloaded March 8, 2001, 11:55am. 51 pages.

Stone, Deborah. 1989. "Causal Stories and the Formation of Policy Agendas." *Political Science Quarterly*. 104:281-300.

Tichenor, Daniel J. 1994. “The Politics of Immigration Reform in the United States, 1981-1990.” *Polity* 26(3):333-362.

APPENDIX I
RELEVANT SECTIONS OF 5TH AND 14TH AMENDMENTS, U.S. CONSTITUTION

5TH Amendment	14th Amendment
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.	Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Figure 1: U.S. Immigration Public Statutes (Weighted) 80th-103rd Congress (1947-1994)

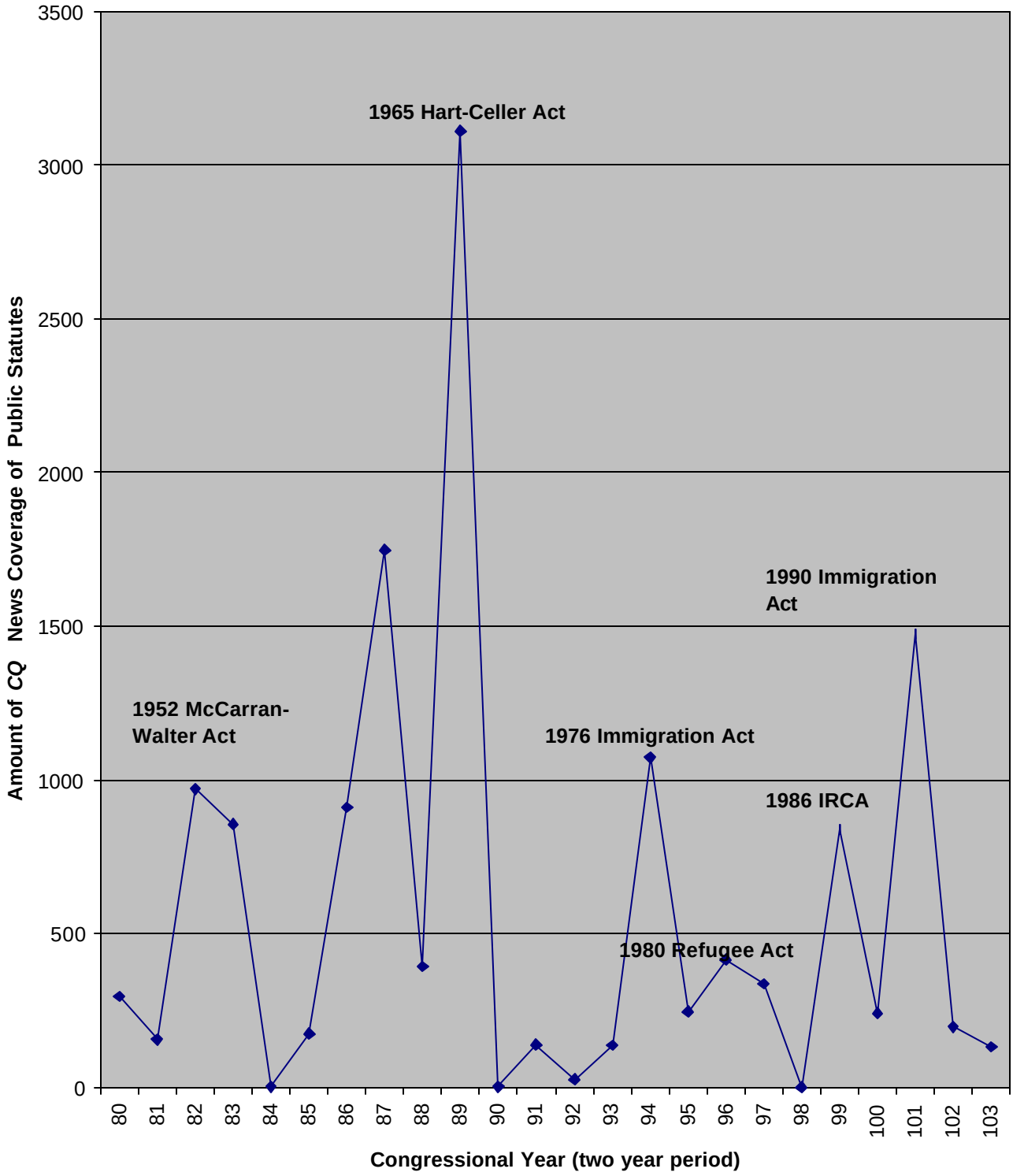

Table 1: Relationship between Policy Image and Institutional Venue of Decision-making

Supreme Court Decision	Conditions of the Decision
1889 "Chinese Exclusion Case" Chae Chan Ping v. U.S. 130 US 581 (1889)	**Court attempting to establish uniformity in federal exclusion power as granted by the U.S. Constitution**
1892 Ekiu v. U.S. 142 U.S. 651 (1892)	**Involved question of whether the Courts could rule on the constitutionality of Congressional exclusion of aliens Officially established the doctrine of plenary power, that the power to exclude entry was constitutive of sovereignty of a nation-state.**
1893 Fong Yue Ting v. United States 149 U.S. 698 (1893)	**Involved question of due process in regards to deportation of aliens. Court ruled that plenary power allows for Congressional statutes re: deportation as a matter of national sovereignty**
1950 U.S. ex rel. Knauff v. Shaugnessy 338 US 537 (1950)	**Involved issues of due process in regards to exclusion without trial on the basis of confidential information submitted to immigration agency. Court ruled that admission of aliens is a privilege and not a right, a privilege accorded through national sovereignty activities of National government i.e. Congress.**
1977 Fiallo v. Bell 430 U.S. 787 (1977)	**Involved the question of exclusion of alien admission of 1) out of wedlock children of U.S. citizen fathers and 2) fathers of out of wedlock U.S. citizen children. Question of discrimination on basis of gender and legitimacy as a violation of due process. Court ruled that: "Congress may enact a discriminatory rule regarding immigration or naturalization so long as it has a "facially legitimate and bona fide reason" for doing so. *Id.*at 794 (quoting *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972))."[1]**
1988 INS v. Panglinan	**[Case] held that a court could not naturalize aliens who had not timely filed naturalization petitions.... The Supreme Court held that "the power to make someone a citizen of the United States has not been conferred upon the federal courts, like mandamus or injunction, as one of their generally applicable equitable powers." *Id.* at 883-84.**[1]

Table 1A: U.S. Legal Immigration Policy

Policy Image	Legitimated Policy Tools to Redress Policy Problem	Institutional Decision-making Venue (Jurisdiction Authority)
• "national sovereignty issue" • "problem of control of borders" • "immigrants are a challenge to national identity and American way of life" • Principle of highly skilled as beneficial to U.S. industry and growth	• family reunification preference system (1965 INA) Guestworker programs (H-1B visa programs for highly skilled labor needs; Examples: Bracero Program (1946-64), Seasonal Agricultural Workers (SAW) of 1986 IRCA Act	• Senate and House Judiciary Committees • Senate and House Immigration subcommittees • Executive Agencies: INS; Bureau of Immigration Affairs (BIA)

TABLE 1B: U.S. Illegal Immigration Policy

Policy Image	Legitimated Policy Tools to Redress Policy Problem	Institutional Decision-making Venue (Jurisdiction Authority)
• "national sovereignty issue" • "problem of control • "immigrants are a challenge to national identity and American way of life"	• border control operations; deportations • Amnesty provisions to legalize nondocumented aliens (part of 1986 IRCA Act)	• Senate and House Judiciary Committees • Immigration subcommittees of both chambers • Executive Agencies: INS, Border Patrol

Table 1C: U.S. Refugee Policy

Policy Image	Legitimated Policy Tools to Redress Policy Problem	Institutional Decision-making Authority (Jurisdiction)
• "hapless victims of civil and political strife" • "distinction between political and economic oppression" • "refugees share American values of freedom and democracy " • "deserving of protection"	• Redistributive- federal funds to states to assist in resettlement and incorporation (example 1980 Refugee Act) • Foreign policy	• President (with approval of Congress) • Executive Agencies: Attorney General, Office of Refugee Resettlement (Department of Health and Human Services), Bureau of Refugee Programs (State Department)

TABLE 2
U.S. Supreme Court Cases Affirming Plenary Power Doctrine

[1]**Text quoted from the actual Court decisions, when noted.**

Supreme Court Decision	Conditions of the Decision
1889 "Chinese Exclusion Case" Chae Chan Ping v. U.S. 130 US 581 (1889)	**Court attempting to establish uniformity in federal exclusion power as granted by the U.S. Constitution**
1892 Ekiu v. U.S. 142 U.S. 651 (1892)	**Involved question of whether the Courts could rule on the constitutionality of Congressional exclusion of aliens Officially established the doctrine of plenary power, that the power to exclude entry was constitutive of sovereignty of a nation-state.**
1893 Fong Yue Ting v. United States 149 U.S. 698 (1893)	**Involved question of due process in regards to deportation of aliens. Court ruled that plenary power allows for Congressional statutes re: deportation as a matter of national sovereignty**
1950 U.S. ex rel. Knauff v. Shaugnessy 338 US 537 (1950)	**Involved issues of due process in regards to exclusion without trial on the basis of confidential information submitted to immigration agency. Court ruled that admission of aliens is a privilege and not a right, a privilege accorded through national sovereignty activities of National government i.e. Congress.**
1977 Fiallo v. Bell 430 U.S. 787 (1977)	**Involved the question of exclusion of alien admission of 1) out of wedlock children of U.S. citizen fathers and 2) fathers of out of wedlock U.S. citizen children. Question of discrimination on basis of gender and legitimacy as a violation of due process. Court ruled that: "Congress may enact a discriminatory rule regarding immigration or naturalization so long as it has a "facially legitimate and bona fide reason" for doing so. *Id.*at 794 (quoting *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972))."[1]**
1988 INS v. Panglinan	**[Case] held that a court could not naturalize aliens who had not timely filed naturalization petitions.... The Supreme Court held that "the power to make someone a citizen of the United States has not been conferred upon the federal courts, like mandamus or injunction, as one of their generally applicable equitable powers." *Id.* at 883-84.**[1]

TABLE 3
U.S. Supreme Court Cases that use other Dimensions of Evaluation to Evaluate Immigration and Naturalization Cases: Constitutional Review, Equal Protection Doctrine

Supreme Court Decision	Conditions of the Decision[1]
1982 Plyler v. Doe **457 US 202 (1982)**	**Question of violation of alien rights under equal protection.** Court struck down Texas state law that prohibited children of undocumented aliens from attending public schools. Court ruled that states could not pass laws that created classifications of groups do not meet legitimate state interest. **Courts began evaluating alien status as similar to race and ethnicity as suspect classification.**
1983 INS v. Chadha **103 S. Ct. 2764 (1983)**	**Court struck down a congressional statute in the Immigration and Nationality Act.** Court ruled that legislative veto of a single chamber is unconstitutional. That the legislative veto is only permissible by the whole Congress or congressional override of presidential vetoes. Court used constitutional scrutiny of the case instead of the dimension of evaluation of plenary power. Plenary power was unchallenged. What was at question for the Court was the constitutional question of whether the Congress (the House) had used "permissible means of implementing plenary power."
1998 Miller v. Albright **523 US 420 (1998)**	**Court affirmed that special exceptions for citizenship conferral to out-of-wedlock children born abroad to mothers of U.S citizenship but not to children of fathers of U.S. citizenship was not a violation of the petitioner's due process under the Fifth Amendment.**