Citizenship Regimes and Exclusion: Historical Analysis of Legislation on Illegalized Migration in the US

Regímenes de ciudadanía y exclusión: análisis histórico de la legislación sobre migración ilegalizada en los Estados Unidos

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Abstract: Citizenship regimes are institutionalized systems of formal and informal norms that define access to membership, as well as associated rights and duties. This paper studies illegalized migration as one of the major tests to assess whether citizenship regimes are fair institutions, based on a historical analysis of legislation meant to reduce illegalized migration in the United States between 1995 and 2022. We build our empirical research starting from a simple observation: despite the great number of bills introduced to reduce illegalized migration to the US, most of such initiatives fail to become law. In fact, 93.5% of all immigration initiatives did not even pass the chamber of Congress in which they were originally presented. Such a high rate of failure shows that these proposals are motivated by

electoral aspirations, rather than coming from a genuine wish to help migrants or grant them citizenship. Furthermore, there is also an economic interest that justifies the maintenance of low-cost disposable immigrant labor, with no right to citizenship. Our analysis is an example of how state regulation processes seem to work to formalize, rather than alleviate or eradicate, the precarious legal statuses of illegalized migrants. We conclude that a globalized phenomenon such as citizenship requires going beyond merely institutional and formal conceptions. We need to rethink the institutional notion of citizenship, as a merely status held under the authority of a state and consider it from a cosmopolitan perspective and a multilateral basis. But as long as citizenship remains under the responsibility of states, illegalized migrants will continue to experience precarious citizenship.
Keywords: Citizenship Regimes, Illegalized Migration, Precarious Citizenship, Immigration, Membership.

Resumen: Los regímenes de ciudadanía son sistemas institucionalizados de normas formales e informales que definen el acceso a la membresía, así como a los derechos y deberes asociados. Este artículo estudia la migración ilegal/no autorizada como una de las principales pruebas para evaluar si los regímenes de ciudadanía son instituciones justas, con base en un análisis histórico de la legislación destinada a reducir la migración no autorizada en los Estados Unidos entre 1995 y 2022. Construimos nuestra investigación empírica a partir de una simple observación: a pesar de la gran cantidad de proyectos de ley presentados para reducir la migración ilegal a los Estados Unidos, la mayoría de dichas iniciativas no llega a convertirse en ley. De hecho, el 93.5% de todas las iniciativas de inmigración ni siquiera pasaron por la Cámara del Congreso en la que se presentaron originalmente. Una tasa de fracaso tan alta muestra que estas propuestas están motivadas por aspiraciones electorales, más que por un deseo genuino de ayudar a los migrantes u otorgarles la ciudadanía. Además, también existe un interés económico que justifica el mantenimiento de la mano de obra inmigrante desechable de bajo costo, sin derecho a la ciudadanía. Nuestro análisis es un ejemplo de cómo los procesos de regulación estatal parecen funcionar para formalizar, en lugar de aliviar o erradicar las precarias condiciones legales de los inmigrantes ilegalizados. Concluimos que un fenómeno globalizado como la ciudadanía requiere ir más allá de las concepciones meramente institucionales y formales. Necesitamos repensar la noción institucional de ciudadanía como simplemente un estatus bajo la autoridad de un Estado, y considerarla desde una perspectiva cosmopolita y una base multilateral. Pero mientras la ciudadanía permanezca bajo la responsabilidad de los Estados, los inmigrantes ilegalizados seguirán experimentando una ciudadanía precaria.
Palabras clave: Regímenes de ciudadanía, migración ilegalizada, ciudadanía precaria, inmigración, membresía.

I. Introduction

The concept of "citizenship" is an essentially contested one. Walter Bryce Gallie defines essentially contested concepts as those whose proper use "inevitably involves endless disputes about their proper uses on the part of their user" (Bryce, 1955-1956, p. 169). In this sense, there is no theoretical problem with the fact that there are many ways to define citizenship. It is, as Gallie points out, part of its nature that the definition of this concept is in constant dispute. What is important to note are the political, cultural, spatial, temporal, and social notions that are assumed when we define citizenship as either membership, status, practice, or even performance.

Citizenship is considered as a national institution that mediates rights between political subjects and the polity, to which these subjects belong, that may have international ramifications depending on the legal frameworks by which states may be bound (Guillaume, 2014; Brubaker, 1992; Soysal, 1994; Isin & Nyers, 2014). Although authors such as Engin Isin and Peter Nyers (2014) use the notion of "polity" to move away from the idea that the state is the only source of authority to recognize and legislate citizenship rights, in most countries it continues to be the state that, through legislation, grants citizenship membership and with it the implied rights. "This understanding of citizenship… puts emphasis, if not solely concentrates, on this formal picture of citizenship's institutional dimension, whether domestic or international" (Guillaume, 2014, p. 150).

In modern societies the relationship between the citizen and the state is defined by three types of rights and three types of obligations. Rights can be civil, political, and social; while some obligations are conscription, taxation, and participation. "Civil rights include the right to free speech, to conscience, and to dignity; political rights include franchise and standing for office; and social rights include unemployment insurance, universal health care, and welfare" (Isin & Nyers, 2014, p. 2). In this way, citizenship becomes the institution from which political, civil, and social rights are enacted and enjoyed by political subjects.

Membership is an essential component of citizenship. To be a citizen is to be a member of a certain political community. The rights associated with such membership plus the participation in the political, social, and economic processes of the community are some of the ways that have been used in modern democracies to establish the condition of civic equality. Civic equality

> …consists of membership of a political community where all citizens can determine the terms of social cooperation on an equal basis. This status not only secures equal rights to the enjoyment of the collective goods provided by the political association but also involves equal duties to promote and sustain them —including the good of democratic citizenship itself. (Bellamy, 2008, p. 17)

The rights provided by citizenship have historically been tied to the state. Since the late 20th century, states have monopolized the authority to grant citizenship membership through citizenship regimes (Lori, 2017, p. 748; Isin & Turner, 2002, p. 6).

Citizenship regimes are "institutionalized systems of formal and informal norms that define access to membership, as well as rights and duties associated with membership, within a polity" (Vink, 2017, p. 222). Citizenship regimes refer to the specific institutional regimes domestically or internationally delineating and regulating the formal rights and obligations of citizens. They are informed by underlying state-centric views of citizenship that put emphasis on the institutional dimension. Two authors who have influenced the debate on the institutional dimension of citizenship are Rogers Brubaker and Yasemin Soysal. Rogers Brubaker emphasizes the essential, necessary, and inherent sovereign capacity that states possess to define citizen membership (Brubaker, 1992, p. 31). In this sense, citizenship is a legal mechanism by which states define the boundaries that distinguish citizens from non-citizens. Yasemin Soysal shows how citizenship has become an international institution. She emphasizes that the institutionalized rules and definitions of the global system provide models and constraints to the policies of states regarding access to citizenship (Soysal, 1994, p. 6). For example, deportation is an international government practice of citizenship. "In the face of patterns of international migration, deportation serves to sustain the image of a world divided into «national» populations and territories, domiciled in terms of state membership" (Walters, 2002, p. 282).

Citizenship regimes use immigration policies to define access to membership. Matteo Gianni distinguishes between issues of admission or "immigration policies", and issues of inclusion and integration of immigrants or "immigrant policies". The main aim of immigration policies

> …is to regulate immigration flows and, indirectly, the composition of society, of the nation and of the polity. In this perspective, through the recognition of access, the state defines the criteria allowing immigrants to enter into the territory, defines the reasons for and the actual modalities of their stay, and determines the criteria and the procedures that will allow immigrants to become citizens. (Gianni, 2021, p. 26)

Authors such as Michael Walzer (1983) and David Miller (2016) argue that states have the right to limit access to citizenship to protect the interests of their members such as shared values, identity, security, etc.

Since citizenship regimes affect fundamental human interests such as rights, freedoms, and protections, they inevitably present moral dilemmas. Human movement across borders is certainly one of the major tests to evaluate the justice of citizenship regimes.

> …consideration of the long-term patterns of exploitation, North-South inequalities, conflict, and so forth, that lead to the increasing migration flows further challenges traditional conceptions of citizenship, putting these to a strenuous test, and in the process pushes the conceptual boundaries of what has hitherto been understood as a "citizen". (Giugni & Grasso, 2021, p. 1)

Modern citizenship has systematically created groups of strangers and outsiders. As we have mentioned, to be a citizen is to belong to a certain political community. This membership is granted by states through citizenship regimes. In this way, the state becomes the source of authority to recognize and legislate the rights of citizenship. It makes citizens part of a selected/elite group, who enjoy privileges (rights granted by citizenship) denied to non-members. In this paper, we will focus on illegalized migrants in the US, as a way to showcase citizenship and membership exclusion.

Although citizenship implies more than legal status, formal legal citizenship remains important for accessing citizenship rights. Our analysis is an example of how citizenship regimes proceed to regulate and delineate citizenship rights through immigration policies on illegalized immigration. Our paper is structured in two parts. First, we offer a discussion of citizenship regimes and goes on to showcase the rejection of initiatives to grant citizenship to illegalized migrants in the US. Second, we proceed to a historical analysis of legislation meant to reduce unauthorized/illegalized migration in the US. Our analysis included legislative initiatives on unauthorized migration presented in the US Congress between 1995 and 2022, followed by a discussion of approved initiatives and success stories. We build our empirical research starting from a simple observation: despite a very intense production of legislative proposals to reduce unauthorized immigration in the US, most of such initiatives fail to become law or, even worse, when they are approved it is due to their restrictive character. In fact, the legislative failure is so evident that 93.5% of all immigration initiatives did not even pass the chamber in which they were originally presented.

II. Citizenship Regimes and Illegalized Migration

One of the main challenges of this research was the decision about the correct concept to describe our target group, previously referred to in the academic literature as irregular/unauthorized/undocumented, illegal migrants (Düvell, 2016, p. 484; Castles, 2010, p. 52) or illegalized immigrants (Faulk, 2010; Bauder, 2014).

Many destination countries use the term "illegal" in their laws, as it is considered that these migrants have either crossed the border illegally or overstayed their visa (Orrenius & Zavodny, 2016, p. 1). The term "illegal migration" implies legal contradictions to the human right to life and free movement. For Mae Ngai the term suggests a degradation of the human personality and is particularly associated with racism towards Mexicans and other migrants of Hispanic origin (Ngai, 2014, p. XIX). Other renowned scholars have tried to save the term "illegal" (Papademetriou, O'Neil & Jachimowicz, 2004) to signal the responsibility of the state to give those persons a legal status: if they are illegal, the country of destination should make them legal.

The second option —that of irregular migration, adopted by the IOM (2006)— also has problems in terms of the regulatory framework and the vague juridical application, particularly in the case of asylum seekers. In the US case, asylum has two figures, the affirmative asylum application and the defensive application. Generally, any foreigner present in the US or having arrived at a Port of Entry (POE) can seek asylum regardless of their immigration status and must apply within one year of their arrival. The affirmative way is requested through a United States Citizenship and Immigration Service (USCIS) asylum officer, while the defensive way is done in response to removal proceedings before an immigration judge from the Department of Justice Executive Office for Immigration Review (EOIR) (DHS, 2019). In other words, a migrant who enters the United States irregularly is no longer irregular upon formally requesting asylum.

Thirdly, "undocumented/unauthorized migrants" "can be defined as persons who reside in a country in which they have no legal permission to be present" (Swerts, 2014, p. 295). This notion, considered by many as a less pejorative term, is basically criticized because an unauthorized migrant may have documents, whether valid or not, in the country of destination (Orrenius & Zavodny, 2016, p. 70 and 71). Frank Bean and Lindsay Lowell (2007) opt for the use of "unauthorized migration" as a less biased term to refer to illegal migration. For the specific case of the US, Bean and Lowell have pointed to the variations in its use in various legislative periods. For example, before the Immigration Reform and Control

Act (IRCA) of 1986, it was legal in the United States to hire unauthorized migrants. However, between the IRCA of 1986 and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, the US federal government did not have the necessary provisions to make it "illegal" to hire unauthorized migrants (Bean & Lowell, 2007, p. 71).

All of the previously described concepts have limitations in terms of their power to explain the phenomenon and have been criticized for their ethical implications and bias. In our analysis, we add the concept of illegalized migration (Faulk, 2010; Bauder, 2014) as a more encompassing term that tries to do justice to the migrants without putting the burden on their process of obtaining a legal status. However, we also accept the term "unauthorized" immigration for its methodological virtues, since a large part of the legislation is intended to restrict migratory flows of persons that, despite the redundancy, are not authorized to enter or remain within the territory.

III. Historical Analysis of Legislation on Illegalized Migration in the US, 1995-2022

There has been broad media coverage promoting the idea that the restrictions imposed by Donald Trump on certain types of immigration, especially illegalized migration, were new. However, we find that the increase in legislative activity to restrict rather than regularize unauthorized migration has been growing since 1995, with very few pathways to citizenship for almost 12 million migrants. In other words, legislating in this way is part of a long-term migration policy process.

This historical evidence reinforces the affirmation that the configuration of US immigration policy and its restrictive profile are not per se a product of Donald Trump's ascension to the presidency, and that very likely the same kind of policy would have been implemented if Trump's presidential opponent, Democrat Hilary Clinton, or any other presidential candidate, had been elected in 2016. In part, this affirmation is reinforced by the analysis of Barack Obama's presidential period. During his campaign, Obama emphasized the need for comprehensive immigration reform, in addition to having a discourse in favor of immigration; however, there was a significant increase in the number of deportations during his term in office. The initiative for DACA (Deferred Action for Childhood Arrivals) was introduced through executive order, rather than as a law approved through by the Congress and it only defers deportation for two

years. However, the Dream Act[1] that would provide a path to citizenship for this same population, has been constantly rejected. In what followed, Joe Biden was pictured as the "migration president", but finally reintroduced the Migrant Protection Protocols (MPP), also known as "Remain in Mexico" to prevent Central American migrant caravans from crossing the US's southern border. In a similar manner as Paik (2020), we found that undocumented migration is a by-product of the law that both precedes and extends beyond the Donald Trump Administration.

In addition to restrictive and racialized executive orders, Congress' activity in the 20th century has only been permissive towards highly skilled migrants and nationals from certain countries with whom the US has free trade agreements, such as Canada. Mexico, however, has not benefitted in the same way from being part of NAFTA, which was renegotiated in 2020 as the USMCA.

Our paper understands the US immigration system as a long-term mechanism that responds to the electoral process and therefore, to electoral bias. A large segment of public opinion in the US would like to see something done to deal with the issue of illegalized migration. However, migration is not the first object of concern in their everyday lives. Many people prefer those immigrants who they believe don't pose problems of integration, preferably white, skilled, and coming from traditional families, but unaccompanied by other family members; in other words, temporary migration is preferred over permanent settlement.

In the United States, as in other democratic regimes, decision makers are subjected to continuous elections in which they seek to have the greatest possible support from the electorate. In this sense, this paper provides elements for understanding legislative activity related to migratory issues not only in the United States, but also in many other liberal democracies. In the US case, the reelection of legislators further accentuates their need to build a solid base of voters that will allow their presence in the Congress to continue.

This electoral need has been confronted with at least two paradoxical outcomes. In the first place, more restrictive measures have eliminated temporary migration, giving incentives for migrants to stay rather than return to their countries of origin, for fear they may not be able to return to work in the US. In the second place, the US economy and businesses need skilled as well as semi-skilled and low-skilled workers. In other words, intendants, agricultural workers and waiters are needed as much

[1] The Dream Act (also known as the Bill S. 1291) was first proposed by Senators Dick Durbin (D-Illinois) and Orrin Hatch (R-Utah) in April 2001. Since then, the proposal has been constantly reintroduced and rejected in at least one of the chambers.

as IT engineers; therefore, they should have similar rather than different paths to citizenship.

IV. Statistical Analysis of Immigration Laws in the US

This paper started with an in-depth search at the virtual archives of United States Library of Congress, which hosts archives of legislative activity from 1973 to the present. This page has a thematic filter search engine that allowed us to select the files to be further analyzed. Our analysis began with a general revision of laws produced in the period 1995-2022 through a combination of filters and the word "immigration". All legislative initiatives must follow a 5 stages process, as summarized in figure 1.

Figure 1. The Five-stages process for initiatives presented to the US Congress

Source: Authors' elaboration.

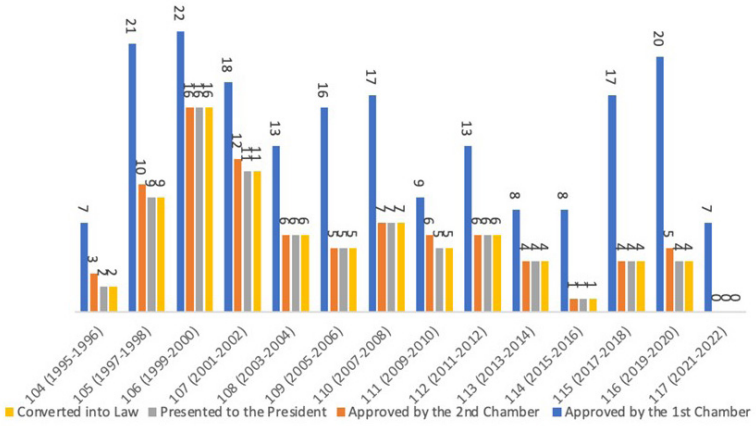
The first step is when a bill is presented in either of the two chambers, the House of Representatives or the Senate. The initiative must be approved in its chamber of origin and, subsequently, in the other chamber (second and third stages, respectively). Once the bill has been approved by both chambers of Congress it is turned over to the president, who can approve or veto it (fourth step). If approved, the initiative becomes law (fifth and last stage). It is only in very few cases that immigration bills approved by both chambers have been rejected, or vetoed, by the president. This tells us that the bills approved in both chambers of Congress have already gone through a very extensive job of lobbying and political negotiation, and it is most likely that a broad consensus has been reached on the content of their provisions. On the contrary, most of the initiatives presented show that they have an underlying or non-explicit purpose, which is not so much to reform the immigration law system, but rather to simply place the issue on the domestic political agenda.

Considering this five-steps process, the bills presented in both chambers of Congress displayed with the Congress page's search engine re-

sulted in a total of 3,343 initiatives that sought to reformulate, correct or amend the immigration policy of the United States in the period 1995-2022. Figure 1 shows that the production of legislative proposals on migration matters has been increasing over the last 28 years.

These results confirm a broader process of intensification of immigration policy that precedes and extends beyond the mandate of President Donald Trump. The number of initiatives presented clearly shows cycles related to the federal elections in the US, both presidential and intermediate congressional elections. The cycles consist of an increase in legislative activity on migratory matters the year prior to the federal elections, linked to an intensification of the debate on migration and citizenship. This finding reinforces the claim that electoral gains are related to legislative output in the US Congress.

Figure 2. Number of immigration initiatives and their process to become law in the US



Source: Authors' elaboration based on analysis from the US Congress, 1995-2022.

When analyzing these bills by the party that presented them, we observe a slight difference in favor of the Republican Party, which presented 52.4% (1,751 initiatives) of the total initiatives, while 47.3% (1,579 initiatives) were presented by the Democratic Party, 0.3% (9 initiatives) by independent Congress members, and 0.1% (2 initiatives) by members of the Libertarian Party. The difference, despite being minimal, is more notable when it is broken down by congressional periods, in addition to showing certain historical changes. Since 2013, the Republican Party has presented more initiatives on this issue, and in the 114th Congress (2015-2016) it was

more than double the number of such initiatives presented by the Democratic Party. It is worth mentioning that both the Republican and Democratic Parties publicly express different positions on the issue of migration, especially on unauthorized migration. The Democratic Party tends to position itself in favor of greater mechanisms to support documented immigration. In contrast, the Republican Party favors restricting these mechanisms as well as combating unauthorized immigration. In fact, in the 114th and 115th Congresses, the Republican Party had control of both chambers and since then is the one that has most promoted the legislative agenda on immigration matters. In the last two Congresses, 116 and 117, despite having divided control of the congressional chambers (the Senate was controlled by the Republicans, but the House of Representatives was controlled by the Democrats) the Republican Party is still the one that presented most initiatives on migration. Nevertheless, before Donald Trump assumed the presidency there was increasing legislative activity, from both political parties, aimed at controlling unauthorized immigration and such efforts have continued since then.

In general, the US electorate considers that restrictive measures are the best way to combat illegalized immigration. It is due to these attitudes and opinions of the American electorate regarding illegalized immigration that members of Congress in the United States have chosen to legislate at least in appearance, although in reality the immigration issue is being taken into consideration in the same way that it is reflected in opinion polls: even though immigration is one of the issues of concern for public opinion in the US, it is not as important as the economy or national security (Rosentiel, 2007; Keeter, 2009; Pew Research Center, 2009; Gallup, 2019).

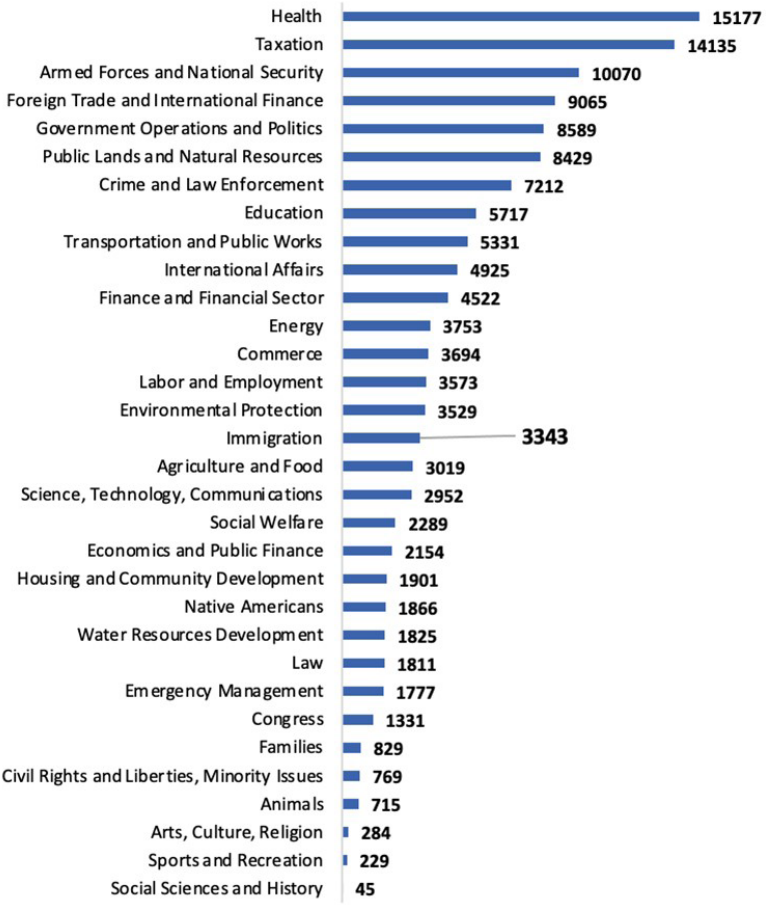
According to a survey conducted in 2009, by the Pew Research Center, the main priority for Americans were the state of the economy, followed by employment and factors such as terrorism, social security, education, energy and the "Medicare" program, among others. Immigration did not seem to be a very important issue even among the population of Hispanic origin, even when most unauthorized immigrants are of Hispanic origin.

For instance, employment, one of the top concerns for the American population, could be reinterpreted as many voters fear that immigrants could take away jobs from native Americans. Regarding the health system, social security and education, among others, coverage for illegalized immigrants is an issue that worries an important sector of US citizens, because they are financed by taxes.

More recent opinion polls show that immigration was ranked as the 10th issue dealt with by the President and Congress, after economic is-

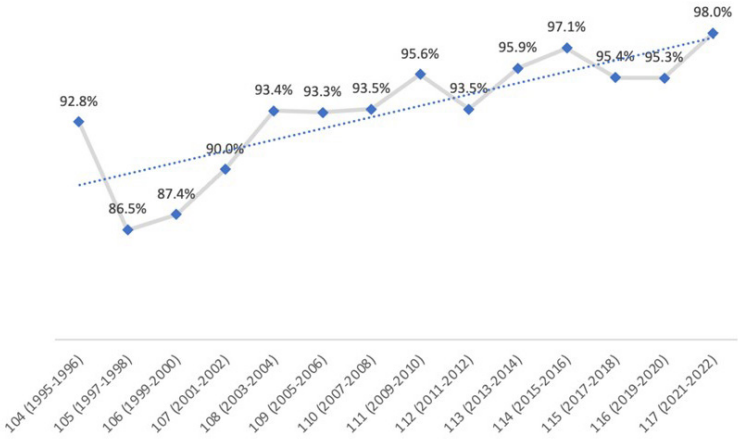
sues and terrorism (Pew Research Center, 2022). As a matter of fact, immigration is still not one of the first topics of initiatives presented to the Congress, and it lags far behind health, taxation, and national security issues (figure 3).

Figure 3. Total of legislation initiatives presented to the Congress in the period 1995-2022, by topic



Source: Authors' elaboration based on analysis from the US Congress, 1995-2022.

Figure 4. Percentage of immigration initiatives rejected in the Chamber of origin, 1995-2022



Source: Authors' elaboration based on analysis from the US Congress, 1995-2022.

In general, legislation initiatives on any topic have a low percentage of approval in Congress (figure 4). According to the analysis of the initiatives presented between 1995-2022, the migration issue ranked 16th of all the public policy issues that Congress uses to classify legislative activities. Although legislative intensity depends on many variables (type of issue, group interests, windows of opportunity, agendas, among many others), it does give us an idea of how important an issue can be on the political agenda of any country. Migration seems to be a relegated problem compared to other issues on the political agenda. However, a different look at the public opinion polls allows for a deeper interpretation of migration concern, as many of respondents worry about economic or employment issues, that are in fact very much connected to migration.

Migration bills are also more rejected than other initiatives. Although bills on any subject have a low percentage of approval in Congress, immigration initiatives have a lower percentage of success than other subjects such as economics and public finances (7.4%), trade (4.4%), social sciences and history (4.4%), armed forces and national security (3.7%), and finance and financial sector (3.3%).

V. The Approved Initiatives: Some Success Stories

Another important aspect to consider is the content of legislative initiatives meant to control immigration in the US. For many years, the need for a Comprehensive Immigration Reform that would regularize illegalized immigrants has been widely discussed in the political and legislative debate; however, most of the initiatives approved restrict illegalized immigration. Most of the initiatives approved and signed into law do not modify the US immigration system as a whole, and very few address the regularization of illegalized immigrants (or as some laws define it, "illegal migration").

The immigration initiatives approved in the United States Congress generally present at least one of the following characteristics: 1) they are directly connected to other relevant issues on the political agenda, such as the ones linked to terrorism; 2) they are lobbied for as an issue of national interest; 3) most of them are restrictive, rather than permissive with respect to illegalized immigration.

For instance, the Immigration Reform and Control Act (IRCA) of 1986 set the pathways to legalize most undocumented immigrants who had arrived in the country prior to January 1, 1982, but also made it illegal for employers to hire unauthorized aliens. Chain migration was a byproduct of this law, since many of those who had recently achieved legal status in the US were soon followed by friends and relatives, who had not been authorized to enter or to remain in the country. In this way, IRCA did not necessarily succeed in reducing unauthorized immigration. In the 90s, unauthorized migration continued to be a hot potato, a political background that allowed for the adoption of IIRIRA, meant to be a radical reform to control unauthorized immigration, rather than offer pathways to citizenship and work permits.

The IIRIRA initiative was presented on June 11, 1996, under the nomenclature "H. R. 3610 Omnibus Consolidated Appropriations Act, 1997" in the House of Representatives by Republican Party legislator Charles William Young, then representative of the 10th district of the state of Florida. It is worth mentioning that this legislator was a federal representative for 4 decades until his death in 2013, having served 1971-2013. He had previously been a member of the Florida Senate for 10 years, from 1960-1970. He was the longest-serving Republican legislator at the time of his death (Schudel, 2013; US Congress, 2018), having shown great leadership during his tenure in Congress. This reform tightened the enforcement of immigration law, increased penalties for immigration-related crimes, provided expedited means for removal of inadmissible noncitizens of the United States, prevented the re-entry of illegalized migrants for long periods

of time, and imposed requirements for relatives of migrants who wished to enter the United States. The IIRIRA also had the US government track the entry and exit of foreign visitors (Hipsman & Meissner, 2019).

The 1996 IIRIRA also focused on deterrence, approving funds to build two fences in San Diego and enacting tougher penalties for smugglers and undocumented immigrants. While the trend to crack down on illegalized immigrants did not start with the IIRIRA itself, it did reinforce the punitive aspects of US Immigration Law already in place, which was seen as necessary at the time. The IIRIRA erected much of the legal and operational infrastructure that underlies deportation and removal plans in place to the present time. In essence, it was a relevant political issue that benefitted from political consensus based on the argument of "necessity" to protect the political, economic and security interests of the US.

The H. R. Initiative 4821 (1998), that extended visa processing for security reasons, was yet another success in terms of approval by Congress and the US President alike. The HR initiative 4821 was filed on October 13, 1998, by Republican Congressman Lamar Smith of the 21st district of the state of Texas. Like the H. R. 3610, this initiative was proposed by a congressman with consolidated political leadership and a notable political career. Lamar Smith was a member of the Texas State Congress from 1981-1982, and served as a federal legislator for 32 years, from the 100th to the 115th Congress (from January 3, 1987, to January 3, 2019) (US Congress, 2018b). Smith was known for having a position against abortion and a conservative legislative agenda, in which the immigration issue was always present (Smith, 2018). The initiative was a response to the terrorist attacks that occurred in Africa on August 7, 1998, at the US Embassies in Tanzania and Kenya, in which members of the Al-Qaeda terrorist organization were involved. As an immediate action, the Diversity Visa Program (Lottery Visa) was suspended in the countries where the attacks occurred. Afterwards, the H. R. 4821 established new conditions of issuance for diversity visa applicants.

This controverted initiative went through a rapid legislative process because it responded to the terrorist attack that killed 224 people in Tanzania and Kenya (CNN Editorial Research, 2018) and would be part of a series of attacks that preceded those of September 11, 2001. Also, because it addressed a very specific need for regulating visas after the suspension of activities at the affected embassies. In this sense, H. R. 4821 deals with a relevant and urgent security issue, which explains its fast track approval.

The same year, Republican Lamar Smith also proposed an automated entry-exit control system of migration for management, administrative and legal purposes (The H. R. 4658 initiative of 1998). This initiative took

a very short time to become law, as it basically corrected an administrative aspect of the IIRIRA enacted two years before. The need to have more automated checks on the entry and exit of foreigners to combat and reduce illegalized migration was a political issue that was established with the IIRIRA of 1996 and prevails to this day. This automated control system for the entry and exit of foreigners would allow for a record of departures from US territory for each foreigner, which would be combined with the records of arrivals of foreigners and thus allow the Attorney General to identify "legally" admitted non-immigrants who remain in the United States after the expiration of their authorized period of stay. This system had been mentioned in the IIRIRA, but the H. R. 4658 was approved fast-track in 15 days, in order to speed up its implementation.

At the beginning of the 21st century, the US adopted the H. R. Initiative 4489 (2000), to improve data management regarding immigration and naturalization. This initiative was also introduced by Republican Lamar Smith and was signed into law in just under a month. This law replaced the requirement to collect information from each foreigner who entered or left the country, with a new one that would involve an integrated entry and exit data system; second, it stated that no additional authority was permitted to collect such information, besides the Department of Justice and third, it extended the implementation deadlines. One of the most striking elements of this initiative is that it expressed the need that the Attorney General, together with the Secretaries of State, Commerce and Finance, "consult with the affected foreign governments to improve border management" (US Congress, 2000). This border externalization reflects the climate prior to the September 11 attacks, when the migration issue was not yet so closely related to terrorism.

VI. Discussion

This research revealed a clearly restrictive trend to control illegalized migration, that spans at least 28 years (from 1995 to 2022), and it is most likely to continue. In fact, and in relation to more recent events that exceed the timeline established in the objectives of this research, we can say that the process of migratory restriction against illegalized flows continues, and it has been increasingly reinforced. Events such as the suspension of the DACA program in the United States, the expedited removal processes for illegalized migrants, the Safe Third Country agreements between the United States and Central American countries, and the reintroduction of the Migrant Protection Protocols with Mexico are clear ex-

amples of the restrictive nature of US immigration policy, in which selective citizenship prevails, signaling the precarious status of many labor migrants and asylum seekers.

Most of the initiatives to offer legal pathways to residence and citizenship for illegalized migrants were rejected after 1995. The high tendency of failure rates confirms that these bills have an electoral purpose, rather than coming from a genuine wish to help migrants or grant them citizenship. For congressmen/women, it is important to take a position on the immigration issue for the sake of public opinion and show to that they are attempting to legislate in favor of reducing illegalized immigration, since this position generates electoral dividends, regardless of whether these initiatives become law or not. The legislative failure is so evident that 93.5% of all immigration initiatives did not even pass the chamber of origin in which they were presented. Even the initiatives that do pass the chamber of origin are not guaranteed a positive vote in the second chamber. The percentage of rejection has not changed much in the last three decades, although it does show a slight increase that corresponds to the higher legislative intensity on immigration matters.

This way of legislating on illegalized migration is also replicated at a local level. In this regard, Rodrigo Villaseñor and Luis Acevedo (2009), have found that there is intense legislative activity to control immigration at a local/state level in the US, just before elections; but only very few (16%) of the initiatives are approved, as these authors show. Rodrigo Villaseñor and Luis Acevedo (2009) explain the high number of rejected initiatives based on what they consider as an "ineptitude" of the state legislatures in migratory matters. Unlike Rodrigo Villaseñor and Luis Acevedo (2009), we believe that rejecting the initiatives on immigration is a rather deliberate exercise of electoral nature. As shown in the statistical analysis, we found considerable effort invested into the legislative production to control this type of immigration. The United States Congress is one of the largest legislative institutions in the world, so it can hardly be said there is a lack of information to implement these laws. In fact, urgent initiatives of a restrictive nature —such as the one linked to terrorism— pass quite quickly through both chambers and are soon approved by the executive.

Apart from the electoral explanation, there are also economic interests that justify the maintenance of low-cost disposable immigrant labor, with no right to citizenship. We rather agree with other scholars such as Jorge Bustamante (2007), who explains this legislative intensity as an electoral strategy, further complicated by economic recessions and contraction of employment. In this context, illegalized immigration is problematized

for the electoral public, to gain notoriety among the anti-immigrant electorate. In the same vein, Eduardo Torre-Cantalapiedra (2015) finds that congress members and politicians benefit from the so-called "temporary illusion" and "confuse" public opinion due to "informative asymmetry", but they have no real interest solving illegalized migration or providing paths to citizenship to a large part of this population.

Indeed, most of the initiatives presented show that they have an underlying or non-explicit purpose that is not so much to reform the immigration law system, but to position this issue on the national political scene. In fact, many of the initiatives that were successfully turned into law address very specific issues or are intended for certain sectors of the immigrant population. As opposed to the much-expected immigration reform to regularize irregular migrants, many of the approved initiatives reinforce the immigration laws that restrict illegalized immigration. It should be noted however, that restricting is a form of regulating.

The current national composition of illegalized migration in the United States goes beyond a nationality group and was partly a byproduct of the laws in 1970, which privileged skilled over unskilled migration (Douglas Massey, 1995). Despite constant lobbying and efforts to reduce the rights of illegalized migrants, that included proposals of amnesty, there is a clear and defined tendency to restrict the rights of illegalized migrants under the slogan of reducing and even eliminating this type of immigration.

It was the economic rather than the political aspect that reduced illegalized migration, as proven during the 2008 financial crisis (Krogstad, Passel & Cohn, 2017). However, after the economic recovery, the US continued demanding cheap labor from abroad. Furthermore, during the last pandemic crisis (2020-2022), some illegalized workers were categorized as "essential"; their labor was needed in the food and health industries. However, most of them continue to be illegalized and live in a long-term situation of vulnerability.

The importance of having electoral support means that decision makers do not always seek adequate solutions to immigration, but rather electorally profitable solutions; in many cases, these are intermediate solutions, simulations or deceptions meant to satisfy voters. This situation can be explained by looking at the role of the state in immigration policies, in a global neoliberal context. In the case of the United States, as in other main countries of destination for international migration, deportation regimes have been successful, as has regulation concerning freedom of movement. As Nathalie Peutz and Nicholas De Genova (2010) state, it is no coincidence that in many countries in the world, as in the United States, deportations have become a widely generalized phenomenon. This also

explains the legislative activity of countries with deportation regimes, such as the United States, which focuses on legislative actions to restrict freedom of movement of non-citizens and constantly modify and update the prerogatives of those who are citizens.

We conclude that the major restrictive trend in immigration policy is not correlated to a transition from one administration to the next nor to a change of the party in power. Rather, it is part of the US immigration system to restrict migration and allow citizenship in exchange for skills (Shachar, 2011) and based on racial criteria (Paik, 2020). This can be seen as a global trend in globalized migration policies, where the slowdown in the world economy has also contributed to maintaining a low-cost immigrant labor force. These interpretations of legislative activity are in tune with the hypothesis of Doris Meissner *et al*. (2013) about the functioning of the US immigration system as a "machinery", specialized in enforcing the Immigration Law in the United States (law enforcement), rather than based on a true will to allow migrant workers to attain citizenship.

VII. Conclusions: Precarious Citizenship

Citizenship can be a hopeful thing when seen as the institution through which civil, political, and social rights are enacted and enjoyed. But, at the same time, it can generate some pessimism when we see how these rights are distributed. The "pessimism about citizenship is often framed in relation to the increasingly restrictive barriers that are being placed on international mobility and on attaining citizenship itself" (Isin & Nyers, 2014, p. 2). This pessimism is generated by the inability of the state to go beyond some fundamental exclusions that it maintains based on an individual's birthplace, race, gender, abilities, capacities, etc. "Citizenship in this view is not just a name for membership, but a title or a rank that separates, excludes, and hierarchizes" (Isin & Nyers, 2014, p. 2). Citizenship, understood as a dynamic institution that mediates rights between political subjects and states, defends the inclusion, membership, and permanence of certain individuals at the expense of others who are excluded by being considered non-members and who are consequently marginalized from the rights that this institution grants. In part, this is due to the historical connection between citizenship and the state. This "historical connection has always been made from the perspective of not the excluded (strangers, outsiders, aliens) but the included (citizens)" (Isin & Turner, 2002, p. 5). Citizenship regimes are a locus of exclusion as long as they are based on the sovereign power of the state to make distinctions between citizens and non-citizens.

Since the civil, political, and social rights of individuals have historically been tied to the state, it is often thought that the rights of illegalized migrants and other excluded groups (native and aboriginal groups, stateless groups, and refugees) will be guaranteed as basic human rights. Unlike the rights of citizens that states must guarantee for all of their legal members, human rights are presumed to be universal rights. Nevertheless, in "the absence of a global state with legitimate juridical powers around the world that can over-ride state legislation, it is difficult to see how human rights legislation can have authority over the legal rights of citizens of legitimate states" (Isin & Turner, 2002, p. 7). Citizenship rights are distinct and justiciable, while human rights are vague, and not enforceable nor justiciable. Citizenship provides the right to have rights because "membership of the citizen body gives access to the… «institutional» rights offered by a given political community" (Bellamy, 2008, p. 87); and "the exercise of political citizenship offers a means for claiming rights and shaping the ways they are conceived and implemented" (Bellamy, 2008, p. 87). By being denied access to citizenship, illegalized migrants are deprived of the right to have rights.

As states have monopolized the authority to recognize and legislate citizenship, they have created contingents of marginalized people who lack access to citizenship rights. Consequently, illegalized migrants experience what Noora Lori calls "precarious citizenship" (Lori, 2017). She uses this term to "refer to the structured uncertainty of being unable to secure permanent access to citizenship rights" (Lori, 2017, p. 745). Citizen membership is critical because precarious citizenship goes hand in hand with the erosion of social protections and labor rights. One of the most common routes to precarious citizenship is illegalized migration. Illegalized migrants inhabit a precarious position because they are unable to invoke any state's protection. Instead of being formally incorporated, illegalized migrants persist with precarious citizenship status. Our analysis is an example of how state regulation processes work to formalize, rather than alleviate or eradicate, the precarious legal statuses of these groups. The high tendency of failure of the initiatives to offer legal pathways to residence and citizenship for illegalized migrants shows "a strategic government response to avoid resolving dilemmas about citizenship (especially questions about the incorporation of minorities, refugees, or labor) by postponing those decisions, perhaps indefinitely" (Lori, 2017, p. 762). This is the primary injustice of the precarious citizenship experience, that the state which should grant them citizenship will, for some reasons, not do so. If citizenship regimes produce precarious citizenship, they do not meet the moral standards of justice.

A globalized phenomenon such as citizenship requires going beyond merely institutional and formal conceptions. We need to rethink the institutional notion of citizenship as merely a status held under the authority of a state. The reality of international migration has prompted increasing recognition of citizenship as a transnational matter. "The nation-state and the national level of citizenship may no longer be adequate units of analysis in the contemporary world, in which globalization, particularly the creation of a global capitalist economy, is such a powerful long-term dynamic" (Roche, 2002, p. 73). Citizenship not only has to do with the institutions that define and protect national borders. "Studies have demonstrated how illegalized immigrants can achieve various forms of social and civic integration despite being formally excluded. Irregular migrants are often integrated at the local level —in schools, churches, community groups, art collectives, and political associations" (Lori, 2017, p. 756). It should not be forgotten that they make an important economic contribution in the destination countries. But as long as they remain legally excluded by citizenship regimes, illegalized migrants will continue to experience precarious citizenship.

The main underlying objective of citizenship regimes is to maintain a massive, low-cost immigrant labor force. A true change would not only lead to minor adjustments on illegalized migration, but to a total adaptation and reengineering of the US economic structure, that would truly recognize the human rights of millions of migrants. This historical denial of migrants' contributions and labor has been promoted through misinformation and campaigns by ultra-conservative groups, who mainly claim that illegalized migrants do not have potential for integration and assimilation.

This situation is part of a broader international context of inequality, in which the economies of developing countries that feed illegalized migratory flows to the United States are unable to offer decent living standards for their fellow citizens. Unfortunately, these flows will continue if citizenship, nationality and migration continue to remain under the responsibility of states, rather than be negotiated on a multilateral and cosmopolitan basis.

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