Revisiting Sovereignty, Legitimacy and Social Control via the Moral Panic about Undocumented Hispanic Immigrants in the US

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To the memory of my grandmother, Felicia Dimilta Scavetta, who always told me to do my best and who believed that education was the key to all further opportunity.
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The sky plane caught fire over Los Gatos Canyon,
A fireball of lightning, and shook all our hills,
Who are all these friends, all scattered like dry leaves?
The radio says, ‘They are just deportees.’

– Woody Guthrie (from ‘Deportee (Plane Wreck at Los Gatos)’, 1948)
Acknowledgements

I must acknowledge several people for assisting me in my fieldwork in New Orleans. First, I thank the anonymous Hispanic immigrants and the law enforcement agent who graciously allowed me to interview them and who also assisted me in finding other subjects to interview. Without their help, this project would not have been the learning experience that it was. Second, I thank Chief Stephen Caraway, of the Kenner Police Department, who agreed to meet me at extremely short notice and answered more than what I asked. Third, I thank Dr Jimmy Huck, who provided me with invaluable contacts with members of the community. Fourth, I thank Dr Shaun Bauer and Reverend Oscar Ramos who proofread my information sheet. Fifth, I wholeheartedly thank Mr Travis Henry, who put me up in his home for the duration of my fieldwork. Without his kind offer, I would have been unable to complete all of my interviews. Finally, I thank Dr Ben Bradford, my supervisor, who suggested helpful ways to focus my work to the needs of criminology.
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Abstract

Criminological literature falls short when considering the relationships between non-citizens and the State. Authors seem to overlook the fact that the State’s sovereignty underwrites its capacity to enact legislation and affect control. By precluding non-citizens from the sovereign calculus of state authority, control, and legitimacy, criminologists overlook the role non-citizens play within the enforcement of law. Therefore, this dissertation seeks to refine the understanding of the State and its denizens in order to better link criminological and political scientific thought. Furthermore, it offers new terminology that provides additional insight through the examination of the history and structure of the moral panic regarding undocumented Hispanic immigration in the United States. Finally, it investigates how the moral panic affects undocumented immigrants and their interactions with the State’s control apparatus.

Key Words: denizenship; democratic legitimation; sovereignty; authority; legitimacy; control; moral panic; undocumented immigration; cleavage; permanence; New Orleans; United States of America.
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Introduction

Classical criminology emphasizes the importance of political constructions, such as sovereignty, authority, legitimacy, and control within the discipline’s discourse (Taylor et al., 1973). However, the political nature of the Western State has dramatically changed in the past 250 years; criminological and political analysis, in the North Atlantic context, now takes place in a context of liberal democracy that includes more political participants than ever before. Nonetheless, current criminological literature has failed to refine its conceptualization of the political realm, especially as it pertains to noncitizens and their role within the State’s domestic sovereignty. By overlooking the function of noncitizens within the sovereign calculus of State authority, control, and legitimacy, criminologists overlook the role noncitizens play within the enforcement of law. Therefore, I seek to establish a nuanced understanding of the State and its denizens, i.e. any individual within a State’s territory, in order to better link criminological and political scientific thought in the contemporary context. I then illustrate the importance of this understanding through the analysis of an empirical problem: how does the status of undocumented immigrants (UDIs) influence the capacity of the State to affect control?

To achieve my end, I first present the idea that denizens, rather than citizens, ought to form the unit of analysis when examining ideas related to sovereignty, where sovereignty represents the relationship between the State and its subjects. Second, I examine the moral panic regarding ‘illegal immigration’ (Chavez, 2008; Correia, 2010; 1

1 The fifty individual political units that form the US are ‘states’. ‘State’ refers to the overarching political entity also referred to as the nation-state.

2 The modifier illegal, often used in both popular and academic literature, denotes a negative moral judgment on an individual’s character (Chavez, 1991; Garcia, 1995). Also, it is misleading since, currently, irregular immigration status is a civil rather than a criminal offence of US federal law (Seghetti et al., 2008). I will use the more value-neutral term undocumented immigrant.
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Welch, 2002) and its implications for creating policy and enforcing law. This moral panic, rooted in a century old discourse regarding immigration, is premised upon a concern over the number of immigrants, especially Hispanic UDIs, entering the USA and the risks their presence poses to society.

I argue that the problematic status of UDIs in the US, being neither full citizens nor legally sanctioned, temporary visitors, influences how the State and UDIs interact. Specifically, the moral panic creates two unwelcomed outcomes. First, law enforcement agencies (henceforth, law enforcement) acquire a range of responsibilities and duties that they believe fall outside their remit and make policing immigrant communities difficult. In turn, because of perceived increasingly invasive law enforcement practises, UDIs avoid help-seeking behaviour and become less likely to cooperate with law enforcement. Each outcome represents a weakening of State-sponsored social control. Furthermore, policy makers and academics alike, by failing to refine their understanding of the relationship between the State and its denizens, only contribute to this weakening since their views lead to the development and enactment of ineffective policy. Particularly, I refer to policy born from the political discourse concerning UDIs, which I argue is the latest reiteration of an on-going moral panic regarding the threat of UDIs.

I view this moral panic as being politically ‘leveraged’, originating from and sustained by dynamics emanating from the political realm rather than within greater

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3 I focus on undocumented Hispanic migration, omitting all other migrants. Additionally, I exclude Cubans, since they become documented upon their arrival to the US mainland (Menjívar & Bejarano, 2004).

4 ‘Law enforcement’ collectively refers to State-sponsored agencies, including local police and sheriff departments, the Department of Homeland Security, and the Federal Bureau of Investigation, that engage in patrols or surveillance to deter and uncover criminal activity, investigate crimes, and apprehend offenders.
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society. By a **leveraged moral panic**, I suggest that the political and social élite (henceforth, the élite\(^5\)) use tenuous facts that are out-dated, inaccurate, and/or false, to stoke the latent fears of the general citizenry (Hickman & Suttorp, 2008) in order to develop political currency in times of political need. That political currency allows the élite to redefine the identities and rights of denizens within their communities. By stripping agency from both UDIs and those who defend their rights within the United States, the élite marginalize any future recourse taken by opposing factions, thus solidifying their position.

Consequently, I hypothesize, in line with concerns voiced by some law enforcement groups (Thornburgh, 2010), that the fallout from such actions could encourage individuals who are associated with or support UDIs to disregard the authority of the State, thereby leading migrant communities to question the State’s democratic legitimacy. When that occurs, the relationship between the State and a group of its individuals could deteriorate to the point where the State’s ability to affect control within its borders is jeopardized (Smith III, 2006).

I elucidate my ideas in three sections. In Part I, I investigate the contemporary relationship between the State and its denizens in order to understand the mutually constitutive process that leads to (in)effective policy development vis-à-vis law enforcement. In Part II, I first provide a brief history of undocumented immigration in the US and then show that a moral panic regarding undocumented immigration presently exists. From there, I develop the concept of a leveraged moral panic (LMP) to situate the problem in the political realm. In Part III, by reviewing the relevant literature

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\(^5\) The élite of a community are the political and social élites, including politicians and community leaders, who can affect the opinion of their constituency. Notably, there are often, but not always, competing élites who may or may not share a viewpoint. Therefore, when referring to the élite, I refer to the dominant élite of a period’s contemporary politics unless otherwise stated.
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and through the presentation of a case study centred on Greater New Orleans, I

investigate the relationship that Hispanic UDIs have with law enforcement, in light of

the current LMP regarding UDIs.
I: The Liberal Democratic State and its Denizens

Since policy informs how law enforcement engages in social control on behalf of the State, it is important to understand how the State gains its power to create and enact policies within a liberal democracy; it is not a unilateral process but rather a political, mutually constitutive one between the State and its inhabitants. Accordingly, if we are to understand how individuals and the State, through its law enforcement, relate to each other, we must understand the structure of that relationship. While the theory discussed below may be largely applicable to Western liberal democracies, my focus is the United States and the relationships that occur there. In doing so, I circumnavigate problems that arise upon the comparative analysis of different contemporary political and social systems. I assume that the US is a modern, liberal democracy that, generally, enjoys strong international and domestic sovereignty, abides by the social contract between itself and its citizens (though not necessarily all of its denizens), and adheres to the rule of law.

The State’s Denizens

Much of criminological literature focuses on the rights of citizens, people who are entitled through birth or naturalization to participate in the formal political processes of a State, because they, as the consumers of public services, are those able to demand, through the formal political process, better standards from the State (Faulkner, 2006). However, since noncitizens living, even temporarily, in a State form part of the general, national public, they invariably have a relationship with the State and the State’s control apparatus, i.e. law enforcement. By focusing only on citizens, we obfuscate the nature of the relationship between law enforcement and denizens
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(Chavez, 2008). This focus stems from the political analysis of non-liberal democratic systems of government where only citizens enjoy explicit rights and contribute to the legitimation of the State. If we are to understand the dynamics of the contemporary State, we must reconsider the language describing the relationship between the State and its denizens.

T.H. Marshall (1998) offers a starting point with his three-part typology that subdivides citizenship into political, civil, and social categories. Political citizenship, the right to ‘participate in the exercise of political power’ (Marshall, 1998:30) is the idea of citizenship, being its fundamental legal definition, that many authors within criminology use as the basic unit of analysis when discussing law, crime, delinquency, security, and social control within politics and policy (Faulkner, 2006; Gordon & Lenhardt, 2007; Mouffe, 1992; Zedner, 2010; 2012). Civil citizenship indicates a right to liberty, such as the freedom of speech or religion, or the right to own property, as protected by the law. Social citizenship encompasses a range of rights, including ‘the right to a modicum of economic welfare and security’ and the right to live ‘the life of a civilized being according to the standards prevailing in the society’ (Marshall, 1998:30).

In an ideal model, citizens possess all three types of citizenship. But, there are other types of denizens, including noncitizens and individuals convicted of a crime but not incarcerated. Though these people do not enjoy political citizenship, within liberal democratic theory, they do enjoy both a degree of civil citizenship, since at worst basic civil rights (ought to) apply, and social citizenship in its entirety, since ‘all of us live today in national societies that owe their identity to the organizational unity’ of the State (Habermas, 1998:126; Morris, 1994). Consequentially, civil and social citizenship
reflect the relationship *all free denizens*6 have with the liberal democratic State in which they reside. By calling this set of rights *denizenship*, I move beyond the idea that complete citizenship is the only meaningful set of rights within the State when considering policy (Walker, 2008).

Here, the term *denizen* reflects the idea of a *democratic citizen* as employed within the international politics literature and separates the concept of *citizen* (and by extension *citizenship*) from its legal usage at the domestic political level, which is where crime policy is constructed (Shearing, 2001; Walker, 2008). Accordingly, *denizens* are not only passive recipients of rights as protected by law, but also individuals from one of many different communities within the State. Moreover, denizens have differing conceptions of their role within the State and submit to the coercion necessary to maintain certain authoritative rules of conduct (Habermas, 1998; Mouffe, 1992; Zedner, 2012). By forsaking the term *citizen* in favour of *denizen* as the basic unit of analysis, I draw attention to all people and their varying relationships with the State in which they live, since all individuals, being, amongst other things, potential offenders or victims are important to criminological analysis.

However, not all denizens enjoy equal rights; the degree of denizenship that a given individual enjoys is a social construction negotiated within the politics of the State, informed by the policy élite who set rules and order their enforcement. Consequently, denizenship is a socio-political construction whose degree of inclusivity or exclusivity is predicated upon the élite’s construction of identities ‘on the basis of a common or imagined solidarity’ (Turner, 2001:192). Accordingly, within the US, the

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6 People convicted of crimes, though still denizens, are not free denizens. They face diminished rights by virtue of the terms of their sentence and/or release.
national élite have developed a ‘shared civil religion, [...] maintained on the basis of an unquestioned majority culture’ (Habermas, 1998:130) that defines the paradigm of the ideal denizen.

In establishing the parameters of denizenship, the élite behave as the rule makers in Howard S. Becker’s ‘moral entrepreneur’ paradigm; they are ‘interested in seeing to it that other people do what [they think] right’ (1963:148). Members of the élite may expand or contract denizenship to develop and manipulate political capital (i.e. power), which they then use to impress their views upon their constituencies. Consequently, the élite compete with each other within the political realm to (re)construct the identity of not only the citizen and citizenship but also the denizen and denizenship. Moreover, the élite influence the parameters of denizenship by restricting the rights of a specific group, effectively labelling the members of that group as ‘folk devils’ who ‘threaten’ the moral fabric of society (Cohen, 1999; 2002), thus marginalizing them from the political process.

In the US, instances of policy directed at curbing perceived threats are present throughout all levels of politics. At the national level, in the aftermath of 9/11, the Federal government authorized law enforcement to racially profile Muslims, subjecting some to indeterminate remand without trial (Akram & Karmely, 2005; De Genova, 2011). At the state level, in response to moral concerns regarding the sanctity of marriage, political and religious movements targeted the LGBT community by calling for the codification of marriage as a union between a man and a woman (e.g. North Carolina’s Amendment One). At the municipal and community levels, in response to the perceived problems that undocumented workers cause, some cities and neighbourhoods passed anti-congregating ordinances in an attempt to eliminate the
presence of day workers, who are often associated with undocumented immigration, by criminalizing the ability to gather and solicit work on street corners (Lacy & Odem, 2009).

In each example, the élite reconstruct denizenship, moving it beyond the legal realm into the political realm where they create a differentiated array of socially constructed groups of denizens (Joppke, 1998; Thangasamy, 2010). By constructing a demonized population and successfully promoting their view to their constituencies, the élite construct a graduated scale of denizenship with differential treatment of denizens (McNevin, 2011; Ong, 2000). Nationally, it might be argued that at the top end of the denizenship spectrum are groups who are the most included and empowered, such as white Anglo-Saxon Protestants (WASPs). At the bottom end are groups who are the most excluded and marginalized, such as UDIs and those individuals associated with them, including their children (irrespective of nationality). At the community or neighbourhood level, this spectrum may be inverted. Hence, given this gradation of denizenship, how denizens interact with the State varies considerably in a given community.

DOMESTIC SOVEREIGNTY: THE RELATIONSHIP BETWEEN DENIZENS AND THE STATE

Until the post-World War II era, the political nature of Western States was characterized by arbitrary punishment, a lack of due process, and the failure to define crime explicitly. Against this backdrop, the classical school of criminology postulated that denizens needed protection ‘against the corruption and excesses of existing institutions’ that caused those problems (Taylor et al., 1973:1). As Cesare Beccaria notes, the resulting formation of laws established
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the conditions, under which men, naturally independent, united themselves in society. Weary of living in a continual state of war, and of enjoying a liberty which became of little value, from the uncertainty of its duration, they sacrificed one part of it, to enjoy the rest in peace and security. The sum of all these portions of the liberty of each individual constituted the sovereignty of a nation and was deposited in the hands of the sovereign, as the lawful administrator (quoted in Taylor et al., 1973:1).

The sovereignty Beccaria refers to is what Stephen Krasner (1999; 2001) calls the State’s ‘domestic sovereignty’ and it indicates a symbiotic association underwritten by a social contract between the denizens and the government of the State in which the denizens reside; each party generally accepts the presence of the other as legitimate and worthy of respect (Agnew, 2005; Barnett, 1995; de Jouvenel, 1957; Hinsley, 1986; Jackson, 1999; Lake, 2003; Philpott, 1997; Reus-Smit, 2001; Taylor et al., 1973).

In short, domestic sovereignty (henceforth, sovereignty) is a relationship wherein the State and its denizens are mutually dependent. The State relies on taxation to underwrite its actions. Its denizens accept this taxation when they believe the social contract is ‘morally justifiable’ (Beetham, 1991:11); they expect legal guarantees, political regulations, infrastructural provisions, and economic and physical security in return (Habermas, 1998; Pogge, 1992; Slaughter, 2004). Therefore, I view the sovereign relationship between the State and its denizens as one characterized by authority, control, and legitimacy, elements underwritten by the social contract. Thus, the strength of a State’s sovereignty is dependent on the collective strength of each of these elements.

Authority

The US Constitution, the foundation of American law, outlines the responsibilities of the State and its denizens and serves as a written manifestation of the social contract. The Constitution provides parameters that limit denizens’
acceptable behaviour, effectively defining denizenship, and illuminates the
government’s authority structure. Through the Constitution, denizens aggregate their
personal autonomy under the auspices of State authority, allowing them to amplify
their individual power to achieve their common goals (de Jouvenel, 1957; Rousseau,
2002; Taylor et al., 1973). Moreover, US denizens accept the State’s authority as
prescribed by the social contract (albeit passively) with the expectation that the State
will fulfil its prescribed obligations. In turn, the State uses its authority to pass laws and
enforce them (Plouffe Jr, 1996), enabling it to fulfil its sovereign obligations.

Control

Generally, denizens defer to the State’s authority (Weber, 1947:139); however,
‘[n]o form of order, no reasonable legitimacy or legality can exist without protection
and obedience’ (Schmitt, 1976:52). Beccaria warned that sovereignty must be defended
from the ‘usurpation of each individual, who would always endeavour not only to take
away from the mass his own portion, but to encroach on that of the others´ (quoted in
Taylor et al., 1973:1). Therefore, if authority is to be meaningful, it must be effective,
meaning that the State must be able to affect control by deterring and punishing
behaviour that is deviant, problematic, worrying, threatening, troublesome, or
undesirable in some way or another (Innes, 2003; Weber, 1947). Often, such behaviour
is a violation of law, either a criminal or a civil offence. The US affects control mainly
through its domestic law enforcement bodies which the government backs with the
authority conferred unto it by its denizens (Habermas, 1998).
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Legitimacy

If there is to be a democratically credible system of State sponsored control, denizens must regard the State’s authority to be legitimate if the actions of law enforcement, the formal control mechanism of the State, are to be effective (Reiner, 2010; Tyler, 2006). Legitimacy is a multifaceted concept. Beetham describes three interlocking levels of legitimacy, whose justification is grounded on beliefs, rules, and actions (1991:17). We have already seen how denizens justify the authority of the State through their belief in the validity of the social contract and how the State uses its authority to establish rules and justify control through law enforcement. However, I wish to emphasize the act of legitimation undertaken by denizens, which is where I locate democratic legitimacy. By democratic legitimacy, I refer to the positive legitimation process through which the State gains and maintains its authority as denizens actively approve of or passively acquiesce to the authority of the State’s government, which in turn sanctions the State to affect control.

Democratic legitimacy has three tenets. Legitimation is not a procedural, dichotomous event; it is continuous, i.e. legitimacy is a state of being that is in flux. Legitimacy is neither absolute nor monolithic; i.e. in a complex society, not every denizen accords legitimacy to the State or judges the State’s actions in dichotomous terms. Finally, since the State is obliged to recognize civil and social citizenship, a majority of all denizens must legitimate it if the State is to remain democratically legitimate. Consequently, for the State to maintain authority, denizens must deem its exercise of power as either legitimate or in their self-interest (Hurd, 1999; McNevin, 2011; Thomson, 1995).
Nonetheless, even if a State enjoys a general level of legitimacy, this status does not indicate that the State’s actions are universally sanctioned by all of its denizens (Reus-Smit, 2007:158-60). Every action of the government and bodies that act on the State’s behalf can affect how denizens engage in acts of legitimation. To that end, the US, being a diverse nation, faces the additional burden of gaining legitimacy from a plurality of groups that may view the State’s actions in radically different ways. Therefore, although the US may maintain a high median level of general legitimacy, certain communities may question this legitimacy, depending on the policy or role the State is implementing. Accordingly, if a group of denizens no longer believes that it ought to obey the authority of the State (Hurd, 1999), it delegitimates the authority and control mechanisms of the State within the socio-political space it occupies.

**LAW ENFORCEMENT: SOVEREIGNTY INCARNATE**

Within the US, like most liberal democracies, law enforcement represents the ‘routine embodiment of [S]tate sovereignty, personifying public authority at street level by virtue of their possession of constabulary powers’ (Johnston, 2000:22; Sunshine & Tyler, 2003). In other words, law enforcement has the State-delegated responsibility to maintain the State’s sovereign authority through control. Therefore, law enforcement is arguably the most significant and primary point through which the State interacts with its denizens. Accordingly, the State draws upon law enforcement’s constabulary powers to secure and guarantee the daily routines of general order [... to make] the governance of territory possible. More specifically, and to varying degrees in different times and places, [law enforcement has] been required at the level of policy generation and implementation to act in coordination with, or to direct, support or ‘stand in’ for, other agencies in the supply of [S]tate-guaranteed goods and services. Taken together, this adds up to a theory of [law enforcement] as a significant constitutive element in the
production and reproduction of political order and community (Loader & Walker, 2001:15).

In turn, denizens have a minimum set of expectations and values vis-à-vis the behaviour of law enforcement personnel who are the agents charged with enforcing control on the State’s behalf (Habermas, 1998; Reus-Smit, 2001; Tyler, 2011). Effectively, in spite of any graduated hierarchy of denizenship, law enforcement, in theory, has a responsibility to uphold the rights of every denizen, since all denizens hold a degree of civil and social citizenship.

Unfortunately, such an ideal is not always evident in practice, where the ‘economically marginal elements in society’ are the subjects of most law enforcement activity (Reiner, 2010:94). Considering the role of law enforcement within Becker’s ‘moral entrepreneur’ paradigm, law enforcement bodies act as rule enforcers who ‘have two interests which condition [their] enforcement activity: first [they] must justify the existence of [their] position and, second, [they] must win the respect of those [they] deal with’ (Becker, 1963:156). The first condition indicates that law enforcement must serve the national interest. The second condition indicates that denizens’ legitimation of law enforcement ought to be of the utmost importance to a liberal democratic State.

Correspondingly, law enforcement must maintain the State’s authority through exerting control while acting in the best interests of the denizens; only by doing so can law enforcement develop a legitimate presence in the eyes of the public they serve. This task is difficult considering that States are unable to strictly monopolize violence (Garland, 1996), which leads to law enforcement being unable to strictly maintain absolute control over the national public (Manning, 2001). Law enforcement behaves like ‘street corner politicians’ who must navigate a balancing act; they must impose
coercive measures while defending themselves against the coercive measures of their constituents (Muir Jr., 1977), who place specific demands upon them. Often, these demands and expectations are unrealistic because they fail to consider that any given law enforcement body is but one entity\(^7\) that contributes to the establishment and maintenance of the social norms within society upon which control is predicated; thus, law enforcement alone cannot monopolize the control of social behaviour (Reiner, 2010).

Since law enforcement cannot appease every demand made upon it, it must work towards fulfilling the greatest common denominator of approval across all jurisdictions\(^8\). Likewise, the role of law enforcement not only requires it to provide the goods and services defined by the social contract (Loader & Walker, 2001) but also to cultivate a symbolic pre-eminence whereby the majority believe that law enforcement is ‘capable of producing real effects’ through its legitimate presence (Bourdieu, 1991:170). In short, law enforcement must develop a reputation that deters would-be rule breakers from violating; thus, law enforcement maintains control, in part, through its symbolic presence in society. Law enforcement’s effectiveness within a given community can be evaluated in terms of the denizens’ willingness to accord legitimacy and comply with it (Innes, 2003; Mastrofski et al., 1996; Tyler, 2004). Furthermore, the State and its denizens each judge law enforcement effectiveness, creating a set of simultaneous but not necessarily congruent interpretations at any one time. Plainly, developing effectiveness across each jurisdiction is not a straightforward task for law enforcement.

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\(^7\) Other entities that establish and maintain social norms include the constitutive elements of civil society, federal legislators and politicians, or national media.

\(^8\) Jurisdictions are nested within each other. In decreasing size, they are federal, state, county or parish, municipality, and community. This hierarchy also illustrates the order in which conflicting laws are deemed valid or not. Consequently, state law must cede to federal law and so on.
enforcement, given the variance of expectations and the gradation of denizenship that exists within American society.

Consequently, the effectiveness of law enforcement can be described as a political construction whereby individuals choose to legitimate and/ or comply with law enforcement depending upon whether they perceive that it fulfils (or, at least, does not infringe upon) their interests. Those interests can change over time, depending on the political community with which denizens identify themselves. For instance, a group may view their local police as being effective while simultaneously viewing the US Marshalls as being ineffective (Jackson & Bradford, 2009). Moreover, every individual denizen's opinions are important, as they are constitutive elements to the communal perception of the police, and, by extension, the State. In turn, a government can gage law enforcement efficacy by the level of general public compliance (Tyler, 2011). Law enforcement attempts to manage crime, social order, and security throughout each jurisdiction (Innes, 2003:65). However, in examining each of these elements, we see that law enforcement is at an impasse given the gradation of denizenship within wider society: while its actions may fulfil the expectations of one group of denizens those same actions may very well alienate another group. Consequently, law enforcement must balance the interests of several jurisdictions against its sovereign responsibilities to the denizens generally, a quandary that is central to the policy debate regarding undocumented immigration in the US. Nonetheless, this balancing act undertaken by law enforcement is critical to the wellbeing of the State’s sovereignty: the more people who generally legitimate the State’s actions, the stronger the sovereignty of the State.
In this chapter, I have shown that it is necessary to update our understanding of the domestic political nature of the State since policies that affect crime develop within this context. The actors who partake in the formal political debate are citizens; however, there is an equally relevant, parallel legitimation process that occurs amongst all denizens in the State. Therefore, I maintain that the parties to the social contract within the US, as a liberal democracy, are the State and all of its denizens. Accordingly, we must consider the interests, actions, and reactions of a wider array of individuals if we are to analyse how policy influences behaviours within society. Moreover, by including all denizens within the analysis of the State’s functions, we realize that threats and problems can no longer be simplified and generalized according to the political debate as it pertains only to full citizens. We must respect the interpretations, actions, and reactions of all denizens, since everyone plays a role in the legitimation of the State’s control mechanism, law enforcement. Law enforcement must act in a way that satisfies the denizens of its jurisdiction (and sometimes beyond) so that it may fulfil its sovereign responsibility of supporting the State’s authority by maintaining control. Both classical and contemporary criminology remain rooted within a socio-political discourse; therefore, an up-to-date understanding of the actors who partake in that discourse and the structure of the State and its political construction are necessary if we are to analyse contemporary empirical problems within society adequately.

However, criminological research still struggles to evaluate how policy informs the actions of the most marginalized people within society – people with irregular residential status – vis-à-vis law enforcement (Martínez Jr., 2008; Mears, 2001). Accordingly, the remainder of this dissertation attempts to elucidate the importance of
political constructions within criminological analysis vis-à-vis the case of the Hispanic UDIs in the US and the role they play within policy creation and implementation. Through this focus, I argue that, despite their marginalized denizenship, UDIs remain members of a community that must legitimate the State’s authority if the State is to maintain democratically legitimate sovereignty capable of enacting control effectively and uniformly.
II: Panicking About Immigrants

This section reviews the political progression of immigration policy since the turn of the twentieth century. It shows how the élite’s views have led to a variable construction and reception of the role of immigrants, both documented and undocumented. Moreover, it illustrates how America’s political makeup over the past 120 years has evolved, becoming more inclusive and therefore more democratic. Finally, it demonstrates that if we are to understand socio-political interactions, upon which criminological observations are often based, we must take these changes and their effects into consideration within our analyses. Specifically, I introduce the idea that the anxiety regarding undocumented immigration is a leveraged moral panic (LMP) that has been sustained throughout the past century and has created, in accordance with the democratization of political society in the US, a cleavage amongst denizens, who disagree on both the threat that UDIs pose and the proper response to it.

Hispanic Immigrants in the US: A Brief Overview

Hispanic migration to the US increased significantly during the first quarter of the twentieth century when agricultural and industrial firms brought workers from Latin America to fulfil their need for inexpensive labourers (Kaufmann, 2011). American business owners and the élite subjected immigrants to their political and business interests. On one hand, they formed official policy, such as the Bracero program (1947-1964) that recruited Mexican agriculture workers when needed. On the other hand, they passed laws, such as the Hart-Cellar Act (1965), which reformed immigration policy and regularized the status of many immigrants while simultaneously placing caps on immigrants from the Americas for the first time. Additionally, the élite authorized the
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Immigration and Naturalization Services to work outside the due process and judicial review established by the Administrative Procedures Act of 1946 in order to facilitate the arrest and deportation of unwanted immigrants (Ngai, 2003).

However, such policies failed to curb the migratory flow. Hispanic immigrants refused to legitimize the actions of the federal government (Bacon, 2008; Creagan, 1965); consequently, during the middle of the twentieth century, Hispanic migrants developed kin-based social networks that allowed them, and future migrants, to circumvent State-sanctioned migration programs that exploited them (Bach, 1978; Glick, 1999; Massey, 1987; Thangasamy, 2010). In doing so, Hispanic migrants induced social citizenship within their burgeoning communities. By 1980, the Hispanic population exceeded fourteen million on the continental US (Bean & Tienda, 1987). Eclipsing five per cent of the population, Hispanics were becoming a group of denizens with growing political force.

Nonetheless, in the 1980s and 1990s, Congress passed further legislation designed to regulate immigration and contract UDI denizenship. Despite these policies, demand for undocumented labour remained high and the rate of UDIs entering the US remained steadfast until approximately 2005. Currently, there are approximately 11.5 million UDIs in the US; approximately sixty per cent are Mexican and eleven per cent are Guatemalan or Salvadorian (Drever, 2008; Passel, 2005; Vargas, 2012). However, due to the lack of economic opportunity caused by the financial crisis, net migration from Mexico has fallen to zero, if not less, in 2012 (Passel et al., 2012). Notwithstanding this fact, undocumented immigration remains a politically salient and highly legislated issue (Hickman & Suttorp, 2008; Kobach, 2008), a recent example being the entrenchment of the anti-UDI stance, predicated on the elements that drive
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moral panic of undocumented immigration, within the official 2012 Republican Party platform (Cooper, 2012).

THE MORAL PANIC OF UNDOCUMENTED IMMIGRATION

During the 1970s, the élite triggered the first cycle of anxiety regarding Hispanic UDIs: as economic recession led to economic panic, the political élite and the dominant media providers influenced a large segment of the citizenry to believe that the booming Hispanic, primarily Mexican, migrant population was a major contributing factor to the economic crisis (Chavez, 2008:26-33). The ensuing political debate resulted in immigration reform legislation, which then gave way to a period of political calm and enforcement inaction. This formula has stayed largely consistent throughout each successive decade. However, the actors engaged in the debate, and the legitimation of the resulting policy, have expanded to include noncitizen denizens who have become more vocal within greater society.

Michael Welch (2002) argues that, on closer examination, these cycles of anxiety and legislation indicate phases of moral panic. In each instance, these cycles exhibit the characteristics of moral panics as set forth by both Cohen (1999; 2002) and Goode and Ben-Yehuda (2009): concern, volatility, hostility, disproportionality, and a degree of consensus in society that a problem exists. Notably, the moral panic of undocumented immigration parallels Cohen’s example of the moral panic regarding asylum seekers in Britain where ‘although there have been intermittent panics about specific newsworthy episodes, the overall narrative is a single, virtually uninterrupted message of hostility and rejection’ (2002:xxiii).
LEVERAGING MORAL PANIC

I suggest that we can describe this specific type of moral panic as a ‘leveraged moral panic’ whereby the élite manipulate the emotions of citizens to solidify their power and redefine the parameters of denizenship for noncitizens and their supporters, since by excluding such individuals from the democratic legitimation process, the élite are able to solidify political capital. In addition to the five characteristics that any moral panic possesses, a LMP is sustained over a significant period of time, i.e. it has a degree of permanence within society even though its intensity is variable. In effect, a LMP exists as a bubbling cauldron of hostile sentiment that splatters or boils over when the élite apply excess heat through political leveraging. A large trigger incident need not occur; the élite may simply (over)react to a specific incident or remind their political constituency of the justifications for harbouring hostile sentiments.

Essentially, the élite maintain a Gramscian ‘hegemonic’ discourse within society whereby they impose a ‘system of values, attitudes, morality, and other beliefs that passively or actively support the established order and thus the class interests that dominate it’ (Chavez, 2008:41; Gramsci, 1999:123). With a LMP, the élite-driven hegemonic discourse establishes norms and attitudes that shape and maintain the message of hostility and rejection towards the ‘folk devil’ population – in this case, UDIs. Thus, LMP itself is a tool employed by an élite to build political capital by portraying political opposition as fundamentally unconcerned with, if not a threat to, the State’s sovereign ability to enforce rules in defence of its interests. This portrayal attempts to render the views of political opposition invalid. By seeking to disenfranchise groups of denizens who are unlikely to legitimate their policies, the élite attempt to consolidate their political legitimacy; however, this legitimacy is that of
citizens only, which is inadequate within the current liberal democratic context if the
State is to have democratically legitimate sovereignty. Disenfranchising various groups
restricts the rights of the denizens who pertain to these groups, thus marginalizing their
role in the democratic legitimation process.

Nonetheless, since the democratic legitimation process is one informed by the
increasing diversity of America’s demographics, it creates many, often competing,
political narratives. This resulting cleavage between opposing social and political
groups is the final characteristic of a LMP: the élite of an influential voting bloc
construct a discourse that another voting bloc rejects. In the present UDI discourse, the
national conservative\(^9\) élite advance divisive anti-immigrant rhetoric that triggers a
political cleavage between the emerging Hispanic constituencies and their national
supporters. Moreover, by creating this cleavage, the élite attempt to entrench a
dichotomous understanding of right and wrong within the national political discourse.
By defining UDIs as a ‘wrong’ in society, the élite are able to restrict the denizenship of
UDIs and exclude any future opposition from UDI supporters from the democratic
legitimation process. By marginalizing potential opposition, the élite entrench their
policy positions. However, as we shall see in Part III, these actions, in the context of a
LMP, undercut both the State’s authority and its control mechanism, \textit{i.e.} law
enforcement.

\(^9\) The élite ought not to be viewed in strictly partisan terms. The Obama administration is deporting
undocumented immigrants at a rate that is greater than the preceding Republican administration
\cite{PolitiFact, Vargas, 2012}.
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Volatile Concern leads to Sustained Hostility

To understand the evolution of concern towards immigrants properly, it is necessary to examine the historical roots of the élite’s constructed hostility towards immigrants. As we shall see, the modern concern is based upon the discourses of centuries past. Since the US gained statehood (1787), the élite for the general American public (and most smaller constituencies within) has consisted of WASP males. That demographic has since served as the principal rule creators within society (Becker, 1963). The WASP élite established their hegemonic views throughout the governmental power structure and these views persisted into the beginning of the twentieth century. For the WASP élite, immigrants, in general, posed a threat to their sense of security, which they defined in terms of racial and cultural purity (Lacy & Odem, 2009). They accused immigrants of being responsible for many of society’s ills, including the presence of disease and increased crime (Mears, 2001; Moehling & Piehl, 2007). By effectively labelling immigrants as folk devils, the élite associated their very presence as a symptom of greater problems within society (Garland, 2008; Hier, 2008). These labels greatly restricted the denizenship enjoyed by immigrants and limited their role to be at best passive legitimators of the State, thus developing a weak, non-democratic legitimation relationship between immigrants and the State. Moreover, these negative stereotypes established attitudes of political hostility towards immigrants that appeared throughout the legislative acts of the twentieth century, further discouraging immigrants from engaging in the legitimation process.

Perhaps the first official manifestation of legislated hostility towards immigrants in the twentieth century was the enactment of the National Origin Quota Act of 1924, which sought to limit the number of Southern and Eastern Europeans, in response to
the eugenic view that too many immigrants of improper stock (i.e. Catholic) were entering the US (Lacy & Odem, 2009; Martinez Jr. & Lee, 2000; Moehling & Piehl, 2007).

In the 1930s, as the Great Depression resulted in mass unemployment, thousands of Mexican workers, accused of depleting welfare resources and unjustly taking jobs from Americans, were deported (Bacon, 2008; Mears, 2001). Their rights as denizens of a modern liberal democracy had not yet developed. Later, during the economic boom following WWII, the fears of the eugenicists of the early twentieth century faded; fulfilling the demand for cheap, reliable labour took priority; the élite once again encouraged immigrants from Mexico, Central America, and northern South America to immigrate (Bach, 1978; Chavez, 2008).

Over time, the notion of the liberal democratic State together with the social contract, and citizenship and denizenship, became more inclusive within the US. Women’s suffrage (1919), the first Catholic president (John F. Kennedy, 1961), the systematic repeal of the Jim Crow laws (1954, 1964, and 1965), and the successes of the Civil Rights movement (1954-1968) were major milestones in America’s road to inclusive citizenship and, later, more inclusive denizenship.

Nevertheless, two factors prevailed. First, the national élite remained predominately WASP males. Second, the demand for cheap labour, which Hispanic immigrants steadily supplied, remained high in times of prosperity. However, a burgeoning élite of the emerging non-WASP communities and municipalities began to introduce a plurality of political views, an increasing number of which favoured immigrants, into the national political discourse. Even so, since the national élite’s discourse has always played a critical role in defining the moral concerns regarding undocumented immigration, the élite continued to set the authoritative parameters of
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denizenship for UDIs. Consequently, the views held by the national and state élite take legal precedence and have greater impact compared to the views of the municipal or community élite. With the economic recession of the 1970s, the latent fears of immigrants expressed earlier in the century re-emerged, this time transformed by the conservative national élite. Instead of fearing all immigrants, the anti-immigrant national élite, now forced to respect a broader demographic within their constituency, focused on Hispanics, who became the standard scapegoat in times of economic struggle (Chavez, 2008).

The political élite created a negative public perception of Hispanic UDIs, labelling them as “‘illegals’ […] who take jobs from natives, depress wages, burden taxpayers, increase crime rates, and pose a threat to national unity and regional identity’ (Hickman & Suttorp, 2008; Lacy & Odem, 2009:143-44). Leo Chavez describes the employment of negatively charged terms such as illegal alien or wetback as part of the ‘Latino Threat Narrative’ which demonizes Hispanic UDIs by associating them with criminality and societal adulteration, while simultaneously refusing to recognize the characteristics within society that create demand for their labour (Chavez, 1991; 2008:25; Garcia, 1995). Moreover, using these negative terms fosters a sense of sustained hostility towards UDIs and turns them into political scapegoats (Tinessa, 2010; Welch, 2002). Throughout the twentieth century and to this day, immigration law and enforcement have paralleled the national élite’s concerns, which invariably peak during periods of high unemployment (Bach, 1978; Hier, 2008; Martinez Jr. & Lee, 2000), causing UDI denizenship to be elastic in terms of rights and freedoms enjoyed. In other words, UDI denizenship is dependent on enforcement.
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Justified as a response to concern, this scapegoating creates a pattern. First, legislation is enacted to find and punish UDIs by subjecting them to increased scrutiny and retroactive penalties (Bach, 1978; Chin et al., 2010; Douglas, 1995; Miller, 2003; Seghetti et al., 2008; Wishnie, 2004), thus restricting denizenship. Then, a period of political calm and enforcement inaction ensues, thus expanding denizenship. In sum, concern regarding Hispanic UDIs manifests itself in a volatile manner only when it is in the élite’s political interests to rekindle the latent, but sustained strand of hostility. Conversely, when UDI labour is necessary, the élite suppresses concern and hostility, thereby facilitating UDI immigration (Chavez, 2008; Lacy & Odem, 2009; Vargas, 2012).

Events in the 1980s and 90s illustrate this pattern of volatile concern underpinned by sustained hostility. In 1981, the U.S. Select Commission on Immigration and Refugee Policy released a report that stated that undocumented immigration was out of control and needed curbing. This report propagated the impression that the US did not have control over its borders (Joppke, 1998), implying a failure of security provisions, a central sovereign responsibility. In response, Congress passed the Immigration and Reform Control Act (IRCA) in 1986. IRCA regularized the status of many undocumented workers but criminalized their employment, thereby limiting irregular employment opportunities with the goal of reducing undocumented immigration (Cornelius, 1989; Hanson, 2007). The pattern manifested itself again in the 1990s. Several groups, ranging from business to nationalist groups, lobbied for tougher action against undocumented immigration, resulting in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). This act created measures leading to further securitization of the Mexican-American border, the introduction of a specific
class of crime committed by noncitizens, and the reduction of acceptable
documentation for work purposes (Coleman, 2007; Fragomen, 1997; Welch, 2002).

Nonetheless, as the economy blossomed during the late 1990s, migrant social
networks remained strong, economic opportunity abounded, and Hispanic UDIs
continued to enter and remain in the US. Though the aforementioned legislation
resulted in the legal narrowing of UDIs’ denizenship, civil and social citizenship were not
heavily curbed; enforcement remained nominal despite the increased funding for
border security (Dixon & Gelatt, 2005; Romero, 2006). In these circumstances, UDIs felt
that the US, compared to their country of origin, gave them the best possible outcome.
Consequently, UDIs ignored the unenforced statutes designed to discourage their
arrival and protracted residency. However, not only did UDIs disobey the State’s
authority, those who employed them did too. Employers saw UDIs as a necessary cog
in an economy that needed cheap, reliable labour (Welch, 2002). In this climate of
economic prosperity, the UDI threat became an afterthought; UDIs became socially and
politically silent denizens within the community.

However, in the wake of the September 11th, 2001 terrorist attacks, US
territorial security became an issue. Subsequently, with the onset of the economic
 crisis, the typical debate that focused solely on Hispanic UDIs did not occur. Instead,
the focus on immigrants widened; the élite presented all UDIs as a threat to both
America’s domestic economy and security (Kanstroom, 2004; Smith III, 2006).
Accordingly, the failure to secure the borders from the Al-Qaida attackers led to
domestic anxieties that a genuine personal, physical security threat existed. Using
these concerns, the State centralized its power over denizens, claiming to be fulfilling its
Concurrently, narcoviolence in Mexico increased and, as the State prioritized securing its borders, the news media, political pundits, and politicians broadly labelled Hispanic UDIs as the worst kind of (likely) criminals – kidnappers, drug dealers, murders, and terrorists (Geisler, 2011; Hickman & Suttorp, 2008). The élite discourse created ‘policy and practice [that] equate[d] illicit crossings with national-security risks and the ever-present threat of terrorism’ and subjected UDIs to criminal rather than administrative (i.e. civil) sanction (McNevin, 2011:56-57), a move designed to revoke UDIs’ rights as free denizens.

Once again, Congress introduced legislation addressing the immigration concerns. The proposed omnibus, anti-immigrant legislation, HR 4437, sought to criminalize UDI status nationally, causing all UDIs to become federal felons automatically, thus revoking their denizenship completely. Plus, it broadened the definition of migrant smuggling to include any assistance given to UDIs. Finally, it provided no avenue for regularization (Bacon, 2008; Hines, 2010). In response, millions of Hispanics protested throughout America in Spring, 2006 (Chavez, 2008), indicating that Hispanics would not tolerate the illegitimate narrowing of their denizenship. For the first time, the UDI community asserted its capacity to legitimate policy; the protests helped kill the legislation in the US Senate. Nonetheless, HR 4437, even in defeat, rekindled the hostile and punitive tone of the past, a tone that continues to infuse the political debate today.

Conservative politicians and pundits continue to present undocumented immigration as a threat to the country at the national, state, and community levels.
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(Thangasamy, 2010). For instance, conservative political thinkers, such as Samuel Huntington (2004) and Kris Kobach10 (2008), assert that UDIs are threats to social stability and physical security within American communities. Moreover, politicians, such as those who drafted Proposition 187 in California (1994), Arizona SB 1070 (2010), and Alabama HB 56 (2011), further label UDIs as threats to economic and physical security and authority at the state level (Bosniak, 1996; Chin et al., 2010). Municipalities in the Dallas metropolitan area passed ordinances which prohibit UDIs from renting or purchasing property (Geisler, 2011). At the federal level, the Secure Communities Program requires local police to submit the fingerprints of suspected UDIs to federal authorities (Kohli et al., 2011). In addition, the resulting debate surrounding the constitutionality of Arizona SB 1070 propelled the same discourse into the national level, highlighting a tension of sovereign rights between the United States and each individual state, whereby UDIs are labelled, albeit indirectly, as a threat to state’s rights. This behaviour reflects Becker’s (1963) moral entrepreneurship whereby politicians, as ‘rule creators’, crusade against a ‘threat’ and mandate law enforcement to act as ‘rule enforcers’, thereby changing the way law enforcement interacts with and affects control amongst the population.

The consistent pattern of rhetoric and the resulting legislation indicates that there has been a sustained level of hostility towards Hispanic UDIs. Furthermore, the proposal and promulgation of legislation such as Arizona SB 1070 and Alabama HB 56 are contemporary examples of this hostility, a characteristic unlikely to subside in the near future. Moreover, Alabama HB 56 in particular, by augmenting penalties against

10 Kobach, Secretary of State for Kansas, drafted or defended in court much of the current anti-immigrant legislation including but not limited to HB 56 and SB 1070 (Khimm, 2012).
UDIs, their children\textsuperscript{11}, and those who aid them, exemplifies the intensity of this hostility towards UDIs by attempting to narrow and eventually revoke denizenship through criminalization.

\textbf{Disproportionality leads to a Cleaved Consensus}

Today, since actions of the State are legitimated by a broad political base that includes both citizens and noncitizen denizens, it is unlikely that a national consensus can be obtained regarding the threat of UDIs, evidenced by the large-scale demonstrations against HR 4437 in 2006 (Goode & Ben-Yehuda, 2009; Lacy & Odem, 2009; McRobbie & Thornton, 1995). Now that denizenship is granted to a broad array of individuals, it cannot be easily withdrawn from those who possess it without undermining the democratic legitimacy of the State, which in turn would undermine the State’s authority, control, and ultimately its democratic sovereignty as currently premised upon liberal democratic ideals. Therefore, if democratic legitimate sovereignty is to be upheld, the views of all denizens must be considered; as time continues, more denizens are exercising their right to legitimate the State’s actions.

Thus, the current political context is one with multiple élites representing different constituencies that may or may not cooperate within the political construction of policy and enforcement. Where immigration is concerned, rival élites present two competing narratives. The hostile, Latino Threat Narrative is one of panic, alleged threats, and the restriction of denizenship (Chavez, 2008; Garcia, 1995). The counter-narrative presented by pro-immigrant élites argues that Hispanic UDIs are not a cultural threat.

\textsuperscript{11} At time of writing, a federal appeals court barred the law’s provision requiring schools to ascertain the immigration status of their pupils. Nonetheless, the law’s promulgation remains a prime example of hostility.
or sovereign threat but a contributing part of American society worthy of denizenship (Espenshade & Calhoun, 1993; Menjívar & Bejarano, 2004).

Within the hostile, Latino Threat Narrative, we can identify several points that exemplify the disproportionality required to identify a moral panic. For simplicity, let us consider a central charge (one that has remained constant for more than thirty years now) that Hispanic UDIs augment crime. Here, we must consider the effects of the legislation passed throughout the years. Legislation since IRCA has criminalized previously civil offenses that UDIs will invariably commit. For example, IRCA made it a crime for UDIs to hold a job (Bacon, 2008). Other states have made it a criminal offense to hold a false driver’s license or to drive without a driver’s license while restricting UDIs’ ability to obtain a driver’s license. Actions that criminalize UDIs’ quotidian status strip them of their civil and social citizenships, thus dispossessing them of their denizenship (Geisler, 2011).

As their rights are repressed, UDIs lose their social citizenship since they cannot engage in economic pursuits legally; therefore, UDIs necessarily violate the repressive rules, and this violation then subjects them to possible criminal sanction (Geisler, 2011). Consequently, the crime rate increases, not because of an increase in delinquent behaviour, but because of a new political construction that has changed the parameters of the law, denizenship, and the definition of crime. The increase reflects the enforcement of laws that criminalize previously non-criminal acts (Geisler, 2011; Hagan & Palloni, 1999; Kanstroom, 2004; Welch, 2003). Accordingly, while this increase does not indicate an increase in delinquent behaviour within society, this increase in reported crime rates causes the public to think otherwise (Hickman & Suttorp, 2008). It creates a false perception that UDIs are more likely to commit deviant acts, a claim
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(see, for example: Kobach, 2008) frequently countered in academic studies (Hagan & Palloni, 1999; Martinez Jr. & Lee, 2000; Mears, 2001; Menjívar & Bejarano, 2004; Tonry, 1997). In fact, cities and neighbourhoods with large concentrations of immigrants are some of the safest in the US (Sampson, 2008). In effect, the élite, by perpetuating the falsehoods within a moral panic reintroduce the abuses that classical criminologists identified as the impetuses that led to the formation of law that codified the social contract. As such, these actions are not democratically legitimate, since the social contract should tend to be more inclusive rather than exclusive; consequently, such policy ultimately undermines the sovereignty of the State.

Several city councils, police foundations, and local employers intuitively understand the counterproductive results that occur when falsehoods drive political policy (Chin et al., 2010; Thornburgh, 2010). These organizations view actions prescribed by immigration legislation, such as raiding workplaces, arresting workers for document fraud, and profiling Hispanics, as largely counterproductive or non-effective (Bacon, 2008). Moreover, such actions do ‘little for the local economy, [compromise] hard-won law enforcement gains achieved through community policing initiatives, and [threaten] to alienate large sections of the increasingly [Hispanic] voting public’ (McNevin, 2011:125; Tonry, 1997). Nonetheless, federal and state level anti-immigrant legislation bills are continuously proposed and often passed. Here we see a marked cleavage within society. Tension exists between the traditional national élite and the emerging élite of communities and municipalities, some of which include amongst its constituents a high proportion of the Hispanic community.

Presently, the anti-immigrant, conservative élite has successfully linked the substantive issues of unemployment and economic and physical security to
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undocumented immigration, creating the appearance of threats with factually incorrect material (Faist, 2006:111). Despite the presentation of false or misleading information (PolitiFact, 2012), the conservative élite has developed a sense of consensus amongst its constituency: UDIs pose a threat. Moreover, conservative politicians, pundits, think tanks, journalists, special interest groups, and vigilante groups argue that, even if the threat posed by UDIs is not severe, entering the country clandestinely is morally wrong since it violates the rules set forth by the State (Menjívar & Bejarano, 2004; Thompson, 1998; Welch, 2002). However, even those Americans sympathetic to these views are conflicted. For instance, many Americans fail to understand the difficulties involved in obtaining legal documentation (Vargas, 2012). Also, many who support zero-tolerance, anti-immigration legislation may still support those UDIs they know personally (Espenshade & Calhoun, 1993). In sum, while a large part of the American public may outwardly support legislation, thus giving the appearance of consensus within a political constituency, the consensus is not without conditions.

THE POLITICS OF LEVERAGED MORAL PANICS

In this section, I have demonstrated that the LMP regarding UDIs (henceforth, LMP(UDIs)) is a phenomenon that has its roots in the historical political developments of, at least, the last 120 years. I have shown that the LMP(UDIs) is a political construction managed within the élite political discourse, the nature of which has evolved, especially since the 1970s. The terminology used within domestic political discourse has led to the perpetuation of tenuous facts that support the drivers of the

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12 For current examples visit http://www.politifact.com/subjects/border-security/ and http://www.politifact.com/subjects/immigration/. These examples show that politicians of both major political parties routinely misrepresent their opponents’ statements made vis-à-vis undocumented immigration and related policy.
LMP(UDIs). Moreover, domestic policy, by criminalizing non-deviant behaviour, results in increased crime rates especially among victimless crimes that were previously civil infractions (Geisler, 2011).

Despite the sustained hostility constructed by one élite, it is unlikely that LMPs regarding a particular group of non-criminal denizens can attain universal consensus within society. The current liberal-democratic political configuration in the US requires respect for a greater array of legitimators, *i.e.* all denizens. Nonetheless, it is clear that politics, which are still dominated by a predominately WASP élite, shape the definitions of crime by establishing rules that are not necessarily in response to deviant behaviour. Notably, the debate on crime and its vectors vis-à-vis UDIs is prominently located within and defined by domestic politics. To investigate the consequences of this discourse, the next section, through an evaluation of the available literature and a small study in Greater New Orleans (GNO), seeks to understand how the LMP(UDIs) affects the socio-political relationship between law enforcement, as the control mechanism of the State, and UDIs.
III: Examining Undocumented Immigrants and Law Enforcement: A Brief Study in Greater New Orleans

In this final section, I identify and explore some of the effects that the LMP(UDIs) has, specifically with the relationship between UDIs and the State’s control mechanism, i.e. law enforcement. Two main criminological consequences result from the LMP(UDIs). First, LMP(UDIs) generate an overstated threat along with the expectation that law enforcement will neutralize this threat. However, when law enforcement fails to produce tangible results, a plurality of denizens comes to view law enforcement as ineffective. Second, LMP(UDIs) create a climate of hostility since they result in the promulgation of counterproductive legislation that causes non-citizen denizens to withdraw from any affirmative legitimation process. This withdrawal undermines law enforcement by reducing its capacity to be effective within specific communities.

The first consequence is evident when considering the continued rhetoric amongst conservative politicians and their supporters; many have unrealistic expectations of what law enforcement is capable of achieving (Caraway, 2012). In considering the climate of hostility towards UDIs, I hypothesize that as UDIs are subjected to circumstances which make them feel disassociated from their community, they become less likely to cooperate with and trust in law enforcement. Thus, I argue that the strength of sovereignty is no longer solely dependent on the legitimation of citizens alone; denizens, even those with marginal status such as UDIs, contribute to the strength of the State’s domestic sovereignty since they are required to legitimate the actions of law enforcement.
In order to explore these ideas, I examine claims asserted in the existing literature on UDIs in American society along with original research centred on GNO. My focus is on the second consequence concerning the climate of hostility and the political consequences of that hostility for law enforcement, and by extension, State sovereignty. In exploring the relationship between UDIs and law enforcement, I organize my analysis along the following questions: Does the uncertain status of UDIs, produced by the policy resulting from the LMP(UDIs), undermine their role as legitimators or render their role inconsequential? On what basis do UDIs legitimise law enforcement? To that end, what are the threats to legitimacy and cooperation vis-à-vis UDIs?

The rest of the chapter proceeds as follows. First, I provide background on New Orleans. Then, I present my research methods and the limitations of the project. Next, I give an overview of the respondents. Finally, I discuss the aforementioned questions and present avenues for further consideration.

SELECTING GREATER NEW ORLEANS

I selected GNO\textsuperscript{13} for this study for various reasons. Greater New Orleans, in spite of being reasonably small, with a population hovering around one million, is a cosmopolitan metropolis with many of the usual problems associated with large urban areas. Demographically, GNO is a place of cultural diversity, with significant African-American, Vietnamese, and Honduran communities (Campanella, 2006; Drever & Blue, 2009; Fussell, 2009; Lipsitz, 2006). Currently, the proportion of Hispanics in GNO is higher than at any time prior to Hurricane Katrina (August, 2005), with some areas

\textsuperscript{13} For a map of the GNO area, see Appendix C.
being approximately twenty-three per cent Hispanic (Caraway, 2012). Of the Hispanic labourers in GNO, more than half are undocumented (Fletcher et al., 2006), which is normal for new and re-emerging migration destinations (Passel, 2005), as GNO was after Katrina (Drever & Blue, 2009). Politically, GNO is located in the American Southeast where the political climate generally favours anti-immigration voices (Lacy & Odem, 2009). Within New Orleans city politics, the concern and hostility of the LMP(UDIs) have surfaced through political statements, such as Mayor Ray Nagin’s concern that the city would be ‘overrun by Mexican workers’ in the wake of Katrina (Bacon, 2008:179; Campanella, 2006; Drever & Blue, 2009; Fussell, 2009), a sentiment which is echoed in the on-going racial tensions between African Americans and Hispanics. This tension fits within GNO’s history of socio-political tensions underwritten by extreme inequality and the presence of several marginalized peoples. Accordingly, GNO presents fertile ground for the observation of different political, social, and crime-related problems vis-à-vis Hispanic undocumented immigration.

METHODS AND LIMITATIONS

The data for this case study comes from three sources. First, I reviewed the existing literature on Hispanic and Hispanic UDI police cooperation. Second, I reviewed existing studies that examined Hispanic UDIs in New Orleans, post-Katrina. Third, I conducted thirteen interviews, eleven immigrants and two law enforcement agents; then, I compared the respondents’ answers with predicted outcomes based on themes identified from the first two data sources. To be eligible for my study, immigrants had to have been or currently be UDIs. Law enforcement needed to have experience within New Orleans post-Katrina.
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Given the size of my study, I was not concerned with probability sampling and used three variations of the non-probability techniques of ‘snowball sampling’ and ‘chain-referral’ (Penrod et al., 2003; Platt et al., 2006). First, through one of my former English students, a UDI, I gained access to potential interviewees. Second, I went to a local church and recruited members of the congregation. Third, I went to two separate locations where day-workers typically congregate in search of work and solicited volunteers. I received at least two participants from each recruitment pathway. I offered to compensate each migrant interviewed with a gift voucher for a local grocery store, which was valued at the current minimum wage for two hours work.

Though Hispanic UDIs are considered a hard-to-reach population (Cornelius, 1982; Faugier & Sargeant, 1997), the above techniques readily yielded male respondents. The array of respondents corresponds roughly to the migrant age and national origin demographics presented in the post-Katrina migrant literature. However, each of these methods failed to yield female participants at an equal rate. Though I recruited female participants more actively than male participants, I was able to get only one respondent on the last day of my fieldwork. Had there been more time available, it is likely that I could have slowly gained access to more female participants. Women may be reluctant to participate for several reasons, including a cultural disinclination to share one’s story, the fact that I am an unknown male, and/ or a lack of time due to family duties. Consequently, female views are underrepresented within my sample.

To recruit members of law enforcement, I sent emails to various law enforcement agencies in GNO and went in person to different official headquarters. I also attempted to find official representatives from City Hall. In short, obtaining data
from official departments proved difficult. I received only two responses: one official response from Stephen Caraway, the Chief of Police in the town of Kenner, and one informal response from a law enforcement agent in the GNO area. My attempts to establish further contacts failed. I was continuously referred to another person or department without obtaining official responses. Sometimes I was told that immigration is a federal matter, so there is no local position. Due to the lack of responses, I was unable to establish general policy and practices given the plurality of law enforcement bodies in GNO.

Each in-depth, qualitative interview was conversational in tone, one-on-one, and conducted in person in the interviewee’s first language, lasting between seventy minutes to two hours. I had a series of topics (see: Appendix B), which I asked each respondent in the form of open-ended questions. I selected the topics based upon my research interests and themes that arose from the existing literature. I conducted the interviews with no set pattern, though I used a checklist to assure that I covered all of the desired topics. I interviewed law enforcement intermittently with the immigrants. As I progressed through the interviews, I identified emerging patterns and concerns and added related questions to later interviews if respondents did not cover those issues on their own. I asked respondents to answer as completely as possible, allowing them to emphasize what they felt important. When necessary, I asked follow-up questions to clarify or expand or guided the interview back to my objectives.

Given the sensitive nature of the information requested, I did not audio record the interviews since many of the participants were uncomfortable being recorded. Instead, I took notes. I also kept a brief field journal to record information I acquired within private conversations or in public forums. I then input the contents of my notes
and field journal into QSR NVivo 9 and coded it into subthemes related to the three principal themes of denizenship, social concerns, and law enforcement. I identified those three themes based on my analysis of the LMP(UDIs) considering the relationship between denizens and the State in Part I, the existing literature on Hispanic interaction with law enforcement and Hispanic migrants in New Orleans, and ideas that recurred frequently within the interviews.

Nonetheless, my case study is limited not only by the aforementioned problems with the sample but also because I identified the Hispanic population as the principle ‘othered’ population, as a result of my focus on the moral panic regarding Hispanic UDIs. However, New Orleans has a large African-American population that has a complicated social makeup, part of which causes many African Americans to be subject to othering. Also, my survey questions attempted to evaluate how Hispanics relate to American society; however, it became clear that multiple ‘American’ societies exist, and these may behave like constituencies and transcend publics. My research does not consider the different ways these societies have internalized or operationalized the moral panic regarding undocumented immigration.

Though my data is not generalizable, it allows me to engage with my research objectives. Moreover, several novel themes and concerns emerged on a consistent basis. In addition, the interviews gave rise to ideas and distinctions that I had not anticipated. They also underscored some problems which did not explicitly present themselves in the literature but which are important in understanding how UDIs view their roles within broader society.
Law Enforcement Personnel

The two law enforcement interviewees (henceforth, ‘the officers’) were Chief Stephen Caraway, of the Kenner Police Department, and an anonymous law enforcement agent who serves with one of the policing bodies within GNO. I also had informal interactions with law enforcement personnel. It is important to note that within GNO, there are several, domestic policing bodies with various roles. For example, in Orleans Parish, the police serve as primary responders whereas the sheriff’s department provides courtroom security and serves as secondary responders. In Jefferson Parish, both the police and the sheriff departments act as primary responders. Within Jefferson Parish, the different law enforcement bodies liaise well with one another. This is not necessarily the case within Orleans Parish.

Hispanic Immigrants

Of the eleven Hispanic immigrants (henceforth ‘the respondents’), ten were males and one was female. Consistent with what would be expected from the literature (Fussell, 2009), the respondents were predominately young (range: 18 to 50, mean: 32), unmarried, undocumented, and part of the first generation of migrants within their own families. Some literature indicates a high proportion of Mexicans in GNO responding to the post-Katrina reconstruction boom (Fletcher et al., 2006). I expected fewer Mexicans at this time since, lacking longstanding social networks in New Orleans, Mexicans would leave with the decline in construction work. Another study (Drever, 2008) predicts that the respondents would be mostly from Central American countries that have historic ties to the area, namely Honduras. Indeed, eight
respondents were Honduran. One respondent each came from Mexico, Costa Rica, and Nicaragua. However, the respondent from Nicaragua had grown up in Costa Rica. Eight of the respondents came from rural areas while the rest came from urban areas in their country of origin. All of the respondents cited economic opportunity and/or need as a primary reason for migrating. Only the female respondent had dependants in the US. About half of the other respondents had dependents back home. Most of the respondents reported sending remittances back to their families.

All respondents except one entered the US illegally, over land; the Costa Rican entered by plane with a tourist visa. The land route reported by the Hondurans was consistent. Some of the respondents hired coyotes to help them cross the Mexican-American border. One used a pollero, an individual who transports UDIs within the US, to reach New Orleans. At the time of writing, nine of the respondents were undocumented. The oldest respondent received papers through IRCA. The youngest respondent held temporary permission to remain since he had entered and been detained by immigration services as a minor. Except for the youngest respondent, most had lived in the US for at least six years at the time of interviewing. Those who were in the US longer had come to New Orleans within the year following Katrina.

Nine of the respondents reported having a stable living situation. The respondents lived in various areas in GNO, covering New Orleans, Kenner, Metairie, and the West Bank. The respondents reported living in different ethnic neighbourhoods, including predominantly black, white, and Hispanic neighbourhoods. Most respondents lived in non-Hispanic neighbourhoods. Three of the respondents had regular, contracted work. Seven worked as day labourers. One was unemployed. The oldest
respondent was homeless, and the female respondent, a victim of physical abuse, did not have stable accommodation.

**LAW ENFORCEMENT: POLICE VS. IMMIGRATION AND THE STATE’S CONTROL**

To begin, we must consider whether UDIs’ uncertain status, as a function of the LMP(UDIs), undermines their role as legitimators or renders it inconsequential. First, both the officers and most of the respondents distinctly noted that ‘the police’ are separate from ‘immigration’. In this sense, the police are considered non-federal bodies, which may include the local police, the local sheriff, or the state police. Immigration, on the other hand, consists of the federally commanded immigration authorities, which currently fall under the remit of Homeland Security and include the Border Patrol. Other federal policing organizations were not considered vis-à-vis undocumented immigration, with the exception of the Army National Guard, referred to by a few respondents as the ‘Army police’, given their post-Katrina presence in GNO.

In the GNO context, both the officers and respondents indicated that the role of the police is to serve the local community and that the police do not have any specific mandate to refer individuals who have not committed a felony to immigration. In addition, the officers identified immigration control as a federal responsibility, which does not include day-to-day domestic law enforcement. The respondents concurred and clarified that immigration, in contrast to the police, is a body that is *almost always* antithetical to their interests. Consequently, respondents clearly indicated that they would rarely cooperate with immigration. This view on immigration is consistent with the current literature, which identifies UDIs as being unwilling to interact with immigration due to overwhelmingly negative, unjust, or disproportional experiences.
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(Ammar et al., 2005; Menjívar & Bejarano, 2004; Orloff et al., 2003; Wachholz & Miedema, 2000).

This dichotomy in the role of the police and immigration is at odds with the vision of police responsibility presented within much of recent anti-UDI legislation and policies. For example, the ‘Secure Communities’ program, redefines the responsibilities of the police, forcing them to engage in control measures that scrutinize working-class Hispanic communities disproportionally (Kohli et al., 2011). Anti-immigrant legislation, which criminalizes UDIs’ status and effectively restricts their denizenship and dispossesses them of the little that they have, i.e. the ability to earn, not only alienates the Hispanic UDI community but also the Hispanic community generally, creating a disincentive to cooperate with legal authorities (Geisler, 2011; Hagan & Palloni, 1999; Kanstroom, 2004). When asked to consider legislation that would cause the police to operate more like immigration, respondents indicated that such legislation would cause them to greatly reduce or even cease to cooperate with the police.

Community involvement indicates that denizens of a community legitimate law enforcement (Smith, 2007; Sunshine & Tyler, 2003); however, legislation that obligates local police departments to behave like immigration encourages UDIs to withdraw their cooperation, regardless of their status. Consequently, UDIs view the police less favorably and reduce their community involvement, which, in turn makes law enforcement more difficult. Therefore, irrespective of the extent legislation marginalizes the status of UDIs, their legitimation of the police is necessary if the State is to maintain effective control within areas where UDIs reside. Hence, within the US, the degree of one’s denizenship is not proportional to one’s importance as a legitimator of the State’s actions. Without denizens legitimating the control actions of the police,
the State effectively faces a weakening of its sovereignty since it would fail to evoke effective control.

Moreover, we can hypothesize that the State’s effective control would be further jeopardized by the criminalization of undocumented status since such an act would revoke legal denizenship and nullify any sort of democratically legitimation arrangement between the State and UDIs. Consequently, if UDI areas no longer engage at any level with the democratic legitimation of the State, the State would face a *crisis of legitimacy* since the denizens of that area would not recognize the legitimacy of the State’s authority. Additionally, in facing a crisis of legitimacy whereby the State fails to ‘cultivate sufficient [democratic] legitimacy’, the State also faces a *crisis of control*, *i.e.* failure to maintain effective control (Reus-Smit, 2007:166-67), within areas that have substantial UDI populations. Furthermore, since the State would certainly lack the resources to apprehend and process the 11.5 million UDIs present in the US, such policy could not possibly result in the strengthening of the State’s sovereignty given the massive loss in democratic legitimacy and effective control it would invariably suffer. Therefore, given the large current UDI presence, we see that the legislating away of UDI denizenship would not immediately eliminate the need to be legitimated by the UDI population.

**Gradation of Denizenship and UDI Legitimation of Law Enforcement**

Since UDIs play a role in affecting the strength of State control, through their legitimation of the police’s actions, we must consider the basis UDIs use to legitimate the police. To understand how the respondents view their own denizenship in the US, I established a baseline by asking them about their denizenship in their country of origin.
Respondents indicated that citizenship in their country, with the exception of Costa Rica, did not afford them the sovereign protections they enjoyed within the US. When asked specifically about the police, all respondents viewed their police as illegitimate, indicating ‘the police look for those who can pay, not those who are responsible’. Accordingly, the respondents reject the capacity of their State of origin to fulfil its sovereign duties, specifically with regards to providing physical security, and exit the social contract by emigrating (Fox, 2007; Hirschman, 1974).

In the US, respondents held varying, but generally lukewarm views towards the police. These views are consistent with the literature, which predicts that Hispanics esteem the police higher than other minorities, but lower than whites (Cheurprakobkit & Bartsch, 1999; Correia, 2010; Ong & Jenks, 2004). All respondents indicated that when police initiated contact, the experience was either neutral or, more often, negative and always resulted in some sort of sanction or reprimand. Despite this characterization of police interactions, most respondents emphasized that if one avoids illegal activity, such as driving drunk, consuming drugs, or committing violent crime, one would not be overly bothered by police. Nonetheless, most respondents indicated that the police failed to curb ‘real threats’ which they identified as violent crime, i.e. assault, robbery, and murder, and located that crime in the African-American community. Therefore, all respondents indicated a level of distrust for the police in police-initiated contact. However, with respondent-initiated contact, there was an array of views towards to the police. From my interviews, a pattern emerged in which confidence in the police was directly related to the respondent’s stability within society.

I classed respondents into three categories of stability: stable, moderately stable, or unstable. In stable situations, i.e. respondents with stable living and
employment arrangements, respondents reported feeling more a part of the community in general, especially the longer their period of residency. Contrary to the literature (Drever & Blue, 2009), stable respondents indicated a desire to invest in their American community since investing in their country of origin would be fruitless. Moreover, stable respondents stated that within the US, they had ‘their own rights as the “citizens” that [they are]’, evoking an intuitive understanding not only of denizenship but also of basic inalienable rights that no one can take away irrespective of their residency status.

Nevertheless, stable respondents noted that their entry into the community is not, and can never be, complete as long as there are restrictions that prevent them from acquiring equal standing with legal residents (e.g. obtaining insurance, documentation, etc.). Furthermore, they indicated that legislation which facilitates entry into mainstream society, such as that which allows one to obtain a driver’s license or vehicle insurance legally, encourages integration. However, when anti-UDI legislation, like that resulting from the LMP(UDIs), is passed and enforced, respondents indicated that they would withdraw from society in order to minimize contact with the police and risk of capture. Moreover, they view such legislation as failing to understand UDIs as it primarily destroys families by making economic pursuit more difficult, i.e. it restricts social citizenship. This sentiment is consistent with the observations of both De Genova (2011) and Geisler (2011), who indicate that the State uses restrictions of civil and social citizenship to create graded classes of denizenship, causing UDIs to have the lowest guarantee of rights of all free denizens. Despite the difficulties to fully entering society, stable respondents were most likely to describe themselves as active members (i.e. denizens) of their community.
Stable respondents indicated that if they witnessed or were a victim of a crime, they would be likely to call the police since it would be their ‘civic duty’ to file the report, even if the police cannot resolve the situation. Moreover, they said that they did not fear calling the police to their homes since they expected the police to protect and serve the community. They felt that it was important to report crime within their community in order for the police to be more effective.

Moderately stable respondents, i.e. those with stable living arrangements but not stable employment, voiced positions similar to those stated by stable respondents. However, they viewed themselves as more detached from greater society and indicated that they would likely return to their countries of origin eventually, though many had been in the US for over five years. Consequently, they did not consider their denizenship to be as strong as stable residents did. Moreover, they saw themselves as having limited rights and being significantly lower priority than non-Hispanic American citizens. Their views on calling the police in the event of witnessing or being victim of a crime differed from stable respondents in that they stated that they would only call in severe circumstances. Half of these respondents had witnessed a severe crime, including murder, human trafficking, and assault, and indicated that they did not contact the police since they feared retaliation from the offenders.

Two notable exceptions were presented. First, if the respondent felt that he could report the crime anonymously without having to follow up, he might do so. For instance, one respondent noted that he had used Crime Stoppers to report a crime. Second, if respondents experienced a crime or witnessed a crime against a person they identified as a close friend or family member, then, only in the case of great physical harm, they would call emergency services (i.e. 911).
Nonetheless, moderately stable respondents indicated that they would not likely contact the police because doing so would unlikely result in the elimination of the threat or a suitable response to the crime witnessed. Moreover, moderately stable respondents indicated that the police did not provide adequate protection to people who cooperated. Therefore, moderately stable respondents indicated that for most crimes they would be unlikely to cooperate with police. The two who had cooperated indicated that the police support was insufficient since it did not ease their day-to-day life and, therefore, they would be unlikely to cooperate again in the future.

Unstable respondents, i.e. respondents without stable living or employment arrangements, were the most detached from society. They indicated a sense of alienation no matter where they were. Nonetheless, unstable respondents expressed a desire to remain in the US, where, despite their problems, they were better off than in their country of origin. Within the US, unstable respondents viewed their legal rights as minimal and not guaranteed, indicating that they view their denizenship as easily revocable. For instance, the homeless respondent, a recovering crack user, reported feeling like ‘an illegal’ despite possessing papers. The abuse victim, whose experience is consistent with that of abused women as described in the literature (Ammar et al., 2005; Orloff et al., 2003; Wachholz & Miedema, 2000), reported being a virtual prisoner in her place of residence during the first half of her stay in the US. Her abusive situation prevented her from participating within the community; consequently, she could not develop relationships, nor learn about her rights and sources of help available to her. Both respondents indicated that their situations caused them to be largely ignored by the police. Both respondents indicated that involving the police would not result in positive outcomes and stated that, although they had contacted the police in the past,
they would not contact the police in the future since ‘they don’t do anything helpful,’
fail to respond promptly, and fail to improve personal safety. These sentiments are
consistent with Drever & Blue’s (2009) study on UDIs in New Orleans.

In sum, my study suggests that the degree of stability of a UDI’s status informs
how the UDI feels about the police. Consequently, I would suggest that further
research is necessary to determine whether there is a correlation between the
perceived level of denizenship, status, and the legitimation of the police in domestic
situations.

BARRIERS TO LEGITIMATING LAW ENFORCEMENT

Finally, I wish to consider situations and causes that threaten how UDIs
legitimate and cooperate with the police. From my interviews with the officers, the
tendencies to cooperate described by the moderately stable and unstable respondents
seems to be what they typically see in law enforcement. The vector of this behaviour is
a fundamental mistrust of the police. Mistrust develops for several reasons, many of
which are related to the aforementioned perception that develops amongst immigrants
when they believe that they are disproportionately targeted by police and treated in an
unjust manner. In response to these allegations, the officers felt that distrust of the
police develops from the dissemination of false information within the Hispanic
community, regarding what is legal. For example, many UDIs believe that driving with
an ‘international driver’s license’ is legal. However, the document is not valid. Thus,
officers ticket violators who in turn perceive the action as illegitimate.

Moreover, though Chief Caraway felt that improper behaviour by his officers
was unlikely, the other officer noted otherwise. Faced with the pressures of fulfilling
statistical objectives, some police may act in the ways the respondents described. For example, police officers, needing to meet their quotas, will profile Hispanics dressed in working clothes driving old cars, knowing that such a stop often results in multiple charges, including driving without a valid license. In court, by pressuring defendants to plead guilty, prosecutors get their convictions and thereby pad their statistics. This concern is one that has been identified, but inadequately studied in the literature (Geisler, 2011).

If such behaviours do occur, then the statistics often cited when concern is presented within the moral panic framework are misleading. Thus, policies that encourage the profiling of Hispanics create a self-fulfilling prophecy: Hispanics commit crime, where crime is defined as any violation of law. In turn, politicians focus on this concern and then implement policies to illustrate their attempts to curb the problem. However, the policies implemented never diminish the concern; instead, the policies create a self-feeding cycle that continuously augments concern which in turn sustains hostility towards the Hispanic population.

A further concern the officers identified involved the limitations placed on their ability to affect just outcomes within a court of law, specifically because many immigrants do not understand their rights and legal procedure. The court process generally intimidates people, even if they are plaintiffs. Immigrants may be unwilling to testify for fear of unwittingly admitting to an offence. In such cases, not only is denizenship graded by the norms of society, but some UDIs auto-characterize themselves to a lower denizenship status by failing to exercise their rights properly. To that end, the officers identified non-reporting, underreporting, and failure to follow through with reports of crimes, incidents, and violations, as common. Consequently,
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this refusal to cooperate creates an environment in which the police are limited in their capacity to act in the best interests of UDIs.

CONCLUDING REMARKS

In this dissertation, I have asserted that criminological literature needs to refine its understanding of politics by focusing on both the State and its denizens. Within that context, I have argued that UDIs, irrespective of how their denizenship is legally defined, must be respected as legitimators of law enforcement, and therefore the State. Moreover, I have asserted that denizenship is not purely a legal construction; denizens auto-characterize the degree of denizenship which they enjoy based on their perceived ability to meaningfully participate in greater society. Also, I identified threats which affect UDIs’ willingness to legitimate the police and cede to police authority, specifically in police-initiated contact. Of particular concern is how UDIs are subjected to bogus charges, which then results in their unfounded portrayal as criminals, which in turn reduces the likelihood that they will continue to cooperate with police in a straightforward and transparent manner.

Given the small scale of my project and its focus on the perceptions of UDIs, further research is necessary to investigate my preliminary findings. The following projects would help address the gaps of knowledge that I have identified in this work. First, the relationship between living status and auto-characterization of denizenship needs to be investigated. This is particularly important if policy is to be written and implemented in a way that is congruent with stated policy objectives. Second, systematic research investigating the claim that law enforcement and the court system arrest and charge UDIs for crimes they did not likely commit across jurisdictions is
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necessary if we are to understand true offence rates vis-à-vis UDIs or respond to those claims. If this claim were to be proven true, it would indicate a systemic illegitimate behaviour underwritten by actors who operate on behalf of the State thus undermining the State’s legitimacy and authority. Third, since my research was limited to UDIs, most of whom were males, I also suggest that similar inquiries be made within the general Hispanic community. It is necessary to investigate how the LMP(UDIs) is located within the general Hispanic community and how the reactions of the Hispanic community change over time, if we are to understand the construction of and reaction to anti-immigrant policy. Moreover, considering the projections that indicate an escalating relative Hispanic presence in the US (Passel & Cohn, 2008), the Hispanic community can be expected to gain greater political significance. Only by continuing to update our understanding of the current political relevance of that community vis-à-vis greater American society and the legislation resulting from the LMP(UDIs) can we develop policy that fulfils stated objectives, whatever they might be, whilst simultaneously working towards maintaining democratic legitimacy.

To that point, based on my case study, I hypothesize that the long-term result of the current wave of anti-immigrant policy resulting from the LMP(UDIs) is the eventual delegitimation of the State, its authority, and control apparatus, at least within specific communities. Accordingly, as a constitutive part of any society weakens, the whole, by definition, must also weaken. If denizens view law enforcement as ineffective, law enforcement can no longer effectively act as the State’s sovereign envoy that authoritatively produces and reproduces political order and community. Consequently, a LMP is potentially destructive to the democratic legitimation of the State if the policy that results from it undermines the democratic liberal values of domestic State
sovereignty and goes unchecked by the judiciary. In the case of the LMP(UDIs), the incredible volume of legislation has created a situation that is difficult for speedy judicial review. Therefore, some policy that undermines the legitimacy of the State will take effect, which will threaten the State’s democratic legitimacy. And, if the government ceases to be democratically legitimate, we would be forced to reconsider what rules, crime, social control, and sovereignty mean to denizens.

We must remember that the lowest strata of denizens within the UDI population chose to exit their countries of origin and are unlikely to return because of the perceived comparative benefits of living in the US, even at all costs. Accordingly, the leveraged moral panic, by further restricting the avenues through which UDIs can access American society only succeeds in augmenting a class of denizens who remain at the cusp of society and are unlikely to legitimate or support the authority and control of the State. Accordingly, LMP, over time, indirectly undermines the State by propagating an endless, growing cycle of concern and hostility that results in the marginalization of a specific denizen group who refuse to accord legitimacy to the State, which in turn weakens the State’s claim to sovereign authority. Consequently, it is important to identify the policy elements that serve to exasperate the driving forces of a LMP, namely concern and hostility, in order to maintain a socio-political environment in which all denizens, even those in the lowest strata, feel obligated to legitimate the State through their interactions with the police. I propose that a failure to extinguish a leveraged moral panic, which gains a sense of permanence, ultimately creates a class in society that disengages with the social contract and rejects the State and its sovereignty. If allowed to grow, such a rejection could be a threat for Western democratic society.
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Appendix A: List of Key Immigration Legislation

- **National Origin Quota Act (Johnson-Reed Act)** – Federal, passed in 1924. The National Origin Quota Act reduced the cap of annual immigrants to be admitted to two per cent of the current American population. Its objective was to restrict Southern and Eastern Europeans by introducing the ‘national origins’ formula (Fix & Passel, 1994).

- **Public Law 78 – Extension of the Bracero Program** – Federal, passed in 1951. PL 78 focused on Mexican labourers and attempted to increase the amount of labour during World War II. It included limitations on the amount of work that could be undertaken and the number of labourers who could be hired in a given area (Creagan, 1965).

- **Immigration and Nationality Act (The Hart-Cellar Act)** – Federal, passed in 1965. The Hart-Cellar Act reformed immigration policy by abolishing the national origins formula and regularizing the status of many immigrants. However, it set immigration ceilings from the Americas for the first time (Fix & Passel, 1994).

- **Immigration and Reform Control Act (IRCA)** – Federal, passed in 1986. IRCA regularized the status of several undocumented immigrants by creating a legalization program. It also introduced employer sanctions for those who hired undocumented workers and increased border enforcement (Fix & Passel, 1994).

- **Proposition 187 (The Save Our State Initiative)** – California, passed in 1994. Proposition 187 attempted to deny undocumented immigrants the few public benefits that they could legally access. It was found unconstitutional by a Federal Court in 1997 and the law was barred from being implemented (Garcia, 1995).

- **Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)** – Federal, passed in 1996. IIRIRA increased border enforcement, enabled immigration officials to deport noncitizens without a hearing before an immigration judge, increased employer sanctions, and also limited relief avenues for long-term UDIs with family ties to the US (Fragomen, 1997).

- **Border Protection, Anti-terrorism, and Illegal Immigration Control Act of 2005 (HR 4437)** – Federal, failed in 2005. Had HR 4437 passed, it would have made federal felons of all UDIs in the United States, criminalized teachers, nurses, or priests who helped them, and built a seven-hundred-mile wall on the US-Mexico border to keep people from crossing (Bacon, 2008).

- **Support Our Law Enforcement and Safe Neighborhoods Act (Arizona SB 1070)** – Arizona, passed in 2010. Arizona SB 1070 made several previously civil violations criminal violations. It also granted the police the power to request proof of legal status. It was contested in the Supreme Court, which struck down many of its provisions. However, at the time of writing, the provision that allows police to request proof of legal status remains intact but open to further review once the law is implemented (Chin et al., 2010).

- **Hammon-Beason Alabama Taxpayer and Citizen Protection Act (Alabama HB 56)** – Alabama, passed in 2011. Alabama HB 56 was similar to Arizona SB 1070 but incorporated elements of HR 4437 in requiring schools to report the legal status of students and criminalizing the assistance of UDIs in any way. The law has been contested several times in court, though many key parts became law in 2011. At the time of writing, further rulings are pending.
Appendix B: Interview Topics

In each interview, I attempted to cover the following questions. Interviews were conducted in the respondent’s first language. Not all questions were posed as they are listed below, since often times the answers came from the discussion that resulted from prior questions. Common follow up questions were to elucidate the meanings of terms such as ‘hard’ or ‘strict’ or ‘scandal’. Other questions sought to clarify different police agencies and what the respondent perceived the role of that agency to be.

Hispanic Migrants Only

- What is your country of origin?
- Age, marital status; family composition?
- What is the reason for leaving your country of origin?
- How did you enter the United States?
- Where, and for how long, have you lived in the United States?
- Have you ever left the United States since arriving the first time? If so, how many times have you left and re-entered?
- Why did you come to the Greater New Orleans area?
- Can you describe the police in your country of origin?
- What did you know about the police before arriving to the United States?
- Can you describe the police in the different places where you have lived?
- Have you, or anyone you know, called the emergency services?
- If yes, can you tell me why you called?
- Have you ever been a victim of a crime or witnessed a crime? If yes, did you call the authorities? If you didn’t call the authorities, why not?
- Have you, or anyone you know, interacted with the police?
- If yes, can you tell me about that interaction?
- How safe do you feel in the US compared to your country of origin?
- What are your main worries regarding personal security and the police?

Law Enforcement Only

- What is your law enforcement experience?
- Do you expect UDIs to call the police in the event of an emergency?
- When UDIs do call the police, for what reasons do they typically call?
- Are UDIs encouraged to plead guilty rather than going to court?
- Does the department engage in profiling?
- To what extent does your department liaise with federal agencies or immigration?
- What are the main problems within the Hispanic community that you or your department faces?

All Respondents

- What is your knowledge of immigration legislation?
- What are your views on that legislation?
- How does that legislation affect the role of the police within the community?
- To what extent are UDIs part of American community?
Arc GIS Explorer used to generate map. Darker areas represent higher percentage Hispanic. See map for further details.