

Deportation by Design:
How Political Entrepreneurs Engineered Crime-Based Deportation in the United States

Abstract

Starting in the 1980s, the United States federal government considerably expanded criminal grounds for the removal of non-citizens, laying the foundation for today's deportation regime. The reasons for, and the timing of, the entrenchment of crime-based deportation remain unclear, however, considering the country's long history of using criminality to exclude, detain, and deport immigrants. I contend that crime-based deportation, as a core institution of modern immigration enforcement, can be traced back to an understudied section of the Immigration Reform and Control Act (IRCA) of 1986 and two key reforms in 1988 and 1990. I use a "reactive sequences" approach to examine the macroscopic forces that converged to produce a contingent event—the insertion of Section 701 into IRCA—and two subsequent episodes that transformed the scale and arrangement of crime-based deportation through today. To bolster my argument, I uncover discursive evidence in the Congressional Record across three instances of reform in 1986, 1988, and 1990. A bipartisan coalition of political entrepreneurs consolidated modest policy innovations into the foundation of crime-based deportation, presenting these changes as a logical extension of the ongoing institutional crackdown on drugs and crime. Substantively, these findings contribute to historical research on how deportation laws have changed through the policymaking process. Theoretically, I apply the reactive sequences approach to a novel case study, clarifying how human agency contributes to certain processes of institutional transformation.

Keywords—Crime-based deportation; crimmigration; political entrepreneurs; reactive sequences

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1 Introduction

Why did the United States federal government expand criminal grounds for the deportation of immigrants, and why did it do so in the 1980s? There is a long history of using criminal records to exclude, detain, and deport immigrants, extending back to the first restrictive U.S. immigration laws (Collins 2013, 2154–58; Das 2018). Throughout the nineteenth and twentieth centuries, however, the federal government did not actively exercise its power to deport immigrants based on criminal activity, or other grounds (Kaufman 2019; Ngai 2014). When federal authorities did conduct deportations, the main targets were often moral deviants and political radicals (Goodman 2020). The goal was to remove those immigrants who presented the greatest threat to American values (Simon-Kerr 2012, 1046). Deportable offenses such as ‘crimes of moral turpitude,’ a catch-all category that included offenses ranging from theft to fraud to sexual deviance, were used to separate ‘desirable’ from ‘undesirable’ immigrants and enforce racial hierarchy (Simon-Kerr 2012). Yet these early criminal grounds for deportation were often applied on relatively small-scale, case-specific basis.

For much of U.S. history, immigration law enforcement was mostly separate from criminal policing—until the 1980s. During this period, a unique merger of criminal and immigration law developed, referred to as “crimmigration” (Stumpf 2006; García Hernández 2013). The priorities of immigration enforcement changed dramatically, and the principal target of deportation became immigrants suspected of engaging in wide range of criminal activity, so-called ‘criminal aliens’ (Inda 2013; Warner 2005). First among this group were those immigrants involved in drug crimes and violent crime. Beginning with Section 701 of the Immigration Reform and Control Act (IRCA) of 1986, Congress made deporting non-citizens convicted of certain crimes an enforcement priority for the first time and classified a wide range of post-entry criminal activities as deportable offenses.

To date, this provision has gone largely understudied. And yet, Section 701 of IRCA served as the basis for the transformation of the U.S. immigration enforcement regime.

The legacy of this legal change has been the ongoing construction of an expansive crime-based deportation system that relies on criminal behavior, rather than morality per se, as legitimate grounds for removal. After 1986, longstanding deportable offenses such as the above-mentioned ‘crimes involving moral turpitude’ were expanded considerably (Legomsky 2007; Miller 2003). New categories such as the ‘aggravated felony’ were also created. While murder, drug trafficking, and firearms trafficking were the first offenses classified as aggravated felonies, the category now includes 28 deportable offenses and any offense carrying a one-year minimum prison sentence (Goodman 2020; Inda 2013). These rules have had an immense impact on deportation rates. From 1892 to 1984, a total of 56,669 people were deported due to involvement in criminal activity (García Hernández 2017, 23). In fiscal year (FY) 2019 alone, prior to the COVID-19 pandemic, Immigration and Customs Enforcement removed 173,799 people with a criminal conviction or pending criminal charges (U.S. Immigration and Customs Enforcement 2019).

The crimmigration literature holds that one of the key features of the merger of criminal and immigration law is the targeting of ‘criminal aliens’ for detention and deportation. Compared to earlier periods, the federal government began to exercise its deportation powers not on a case-by-case basis but on a group basis to expel immigrants who were considered dangerous according to dominant racial and class hierarchies. Limited attention has been paid, however, to the timing of the turn to a crime-based deportation system in the 1980s. This question is crucial to explaining why the U.S. federal government continues to use post-entry criminal conduct as the most common ground for deportation almost 40 years after IRCA. In this study, I adopt a historical institutionalist perspective, a mode of explanation stressing the importance of sequencing and temporal structure

(Hall 2016; Mahoney, Mohamedali, and Nguyen 2016), to chart the macro-level forces that produced particular institutions and political outcomes in the story of the United States' embrace of crimmigration.

Using a “reactive sequences” approach (Mahoney 2000), I examine the sequence of events from 1986 to 1990 that started the process of institutional transformation leading to the modern U.S. crime-based deportation system. I argue that during this era specific cultural, demographic, and political-economic forces converged to generate a contingent moment during which key actors united behind a small-scale institutional reform that set the stage for crime-based deportation. The insertion of Section 701 into IRCA was a watershed moment in the backlash to the “unintended consequences” of the Immigration and Nationality Act of 1965 (Massey and Pren 2012), a product of the Civil Rights Era and the focus on formal racial equality. The reactive sequence that followed was defined by a transformative process of backlash whereby actors in Congress persuaded new stakeholders to interpret circumstances at the time in a way that spawned common interests. From 1986 to 1990, the growing coalition merged the issues of crime, drugs, and immigration in the congressional arena, achieving larger-scale institutional changes that produced enduring effects on U.S. immigration enforcement through today.

I expand on the reactive sequences approach by identifying the micro-foundations of the model. I integrate the established concept of “political entrepreneurs” (Dahl 1961; Sheingate 2003) to understand those actors who are central to the contingent beginnings of these sequences. In my sequence of interest, entrepreneurs responded to the particular conditions of the mid- to late-1980s, deliberately weaving narratives of crime, drugs, and immigration in direct opposition to the more liberal immigration regime established in 1965. Once united behind crime-based deportation as an ostensibly race-neutral means of removing undesirables, they assembled a fast-growing bipartisan

coalition that attracted new members, moved the debate toward internal immigration enforcement, and realized clear successes. Through this iterative process, members of Congress, many from the state of Florida, left an indelible mark on the path of institutional development. In support of my arguments, I survey the Congressional Record and supply discursive evidence in order to trace the development of crime-based deportation as a political institution, evolving from a small-scale reform in 1986 into more ambitious changes in 1988 and 1990.

2 Crimmigration and Crime-Based Deportation

Crimmigration law has two central components: (1) the transformation of civil immigration offenses, such as unauthorized entry, into criminal offenses (Chacón 2012; Stumpf 2014); and (2) the incorporation of the civil, administrative practices of immigration law into the criminal justice system (Legomsky 2007; Miller 2003). Scholars stress the importance of the merger of criminal and immigration law as a central part of modern U.S. immigration enforcement (García Hernández 2013; Stumpf 2006; 2013; 2014). These two types of law were, historically speaking, discrete and largely unrelated, but since the 1980s, the line that once divided them has grown indistinct (García Hernández 2013; Legomsky 2007; Stumpf 2006). These transformations have been examined, in large part, using criminological (Bosworth and Guild 2008; Aas and Bosworth 2013; Menjívar, Gómez Cervantes, and Alvord 2018) and legal (García Hernández 2013; Legomsky 2007; Stumpf 2006; 2013) frameworks. I contribute to the literature by employing an institutionalist framework to explain the advent of one primary dimension of crimmigration law.

The set of institutions I investigate here includes U.S. federal laws that establish post-entry criminal records as a mechanism for targeting immigrants for deportation. They are called “crime-based deportation” laws. This term has been used to refer to the expansion of both criminal grounds for removal and immigration status-based crimes (Das 2018). I employ it more narrowly. In this

paper, “crime-based deportation” laws refer to those sections of federal law that provide for the removal of non-citizens based on criminal activity that occurred within the U.S. (i.e., post-entry). The vast majority of the legal grounds upon which a non-citizen can be deported are based on post-entry criminal activity.¹

Thus, I define crime-based deportation as a *formal* institution, meaning “generally written standards for conduct produced according to specified procedures by authorities legally invested with the power to do so” (Brinks 2003, 4). Crime-based deportation is part of the second pillar of crimmigration law, the integration of immigration law into the criminal justice system. Since 1893, the Supreme Court of the United States has held that deportation is a “civil” penalty, meaning it is not a punishment per se, but rather an administrative mechanism to return immigrants to their countries of origin.² Yet since the 1980s, the consequences of criminal cases involving non-citizens increasingly include deportation, even as immigrants facing removal are not entitled to the same constitutional protections afforded to defendants in criminal proceedings.

An emergent body of research explains why major changes to U.S. immigration enforcement developed in the 1980s, and not earlier. García Hernández (2013, 1457) argues that crimmigration law materialized as a result of “a shift in the perception of criminal law’s proper place in society combined with a reinvigorated fear of noncitizens.” Criminal activity served as a facially neutral means of sorting desirable from undesirable, often racialized, immigrants. Concerns about so-called ‘criminal aliens’ appeared as a direct response to the long-term incarceration of Cuban, Haitian, and Central American migrants during the 1980s (Lloyd and Mountz 2018, 117–43). Racial animus directed at people of color thus endured into the post-civil rights era after the formal

¹ See 8 U.S. Code § 1227(a)(2) for the full list of deportable criminal offenses.

² In *Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893), the U.S. Supreme Court ruled for the first time that “the order of deportation is not a punishment for crime.”

end of race-based immigration policy, providing fertile ground for the growth of crime-based deportation.

Further cultural and structural forces played a significant role in shaping crimmigration law during this era. Tosh (2019) points to ideological changes in public views of the state, economic insecurity worsened by neoliberal austerity, and cultural anxieties from demographic shifts to non-European immigration as the structural causes of a specific legal provision—the aggravated felony. An “aggravated felony” is any offense that Congress classifies as such for the sake of immigration law; it need not be “aggravated” nor a “felony” to qualify. This category is central to the crime-based deportation system, providing grounds for the removal of tens of thousands of immigrants every year. Together, these macro-level forces and new legal provisions such as the aggravated felony fueled a moral panic about immigrant criminality that was distinct from the earlier waves of anti-immigrant sentiment throughout U.S. history.

The contextual determinants of crime-based deportation also interacted with more proximate causes. Demographic changes, epitomized by mass migrations, lead to the emergence of the figure of the ‘criminal alien’ (Cházaro 2016; Stephens 2021). This image was increasingly invoked by public officials to build support for punitive federal policy responses tackling issues such as prison unrest and over-crowding of state prisons (Loyd and Mountz 2018, 1229–131; Shull 2022, 189–93).

I study how these structural and more proximate causes interacted to lay the groundwork for crime-based deportation. In doing so, I underline the timing and sequencing of the events that took place in Congress from 1986 to 1990. My study is the first to address the crimmigration literature utilizing a historical institutionalist framework. I analyze the underexplored cultural, demographic, and political-economic sequences that converged to trigger the growth of crime-based deportation

laws during this period. I contribute to the literature by stressing how the sequencing of events, and human agency in particular, shaped key outcomes. By examining congressional debates, I provide new evidence of how political entrepreneurs diffused the issue of immigrant criminality into the national political agenda.

3 Methodology

The analysis I present below is informed by accounts of policy regime change that adopt a historical institutionalist perspective (Daugbjerg 2009; Howlett 2009; Mawhinney 2013; Thelen 2003). One of the central concerns of historical institutionalism is the incorporation of temporality into the study of politics, exploring how events in a sequence are connected (Pierson 2004; Thelen 2004). I examine the macroscopic forces that converged to produce a conjuncture, or moment of contingency, leading to the turn to a crime-based deportation system in the U.S. I also consider why this change occurred during the 1980s, stressing the role of agency. Historical institutionalism thus offers an appropriate mode of explanation given the tendency to ask case-oriented questions about historical events (Mahoney and Goerts 2006).

I view the beginnings of crime-based deportation as a *reactive sequence*, a particular source of path dependence. Reactive sequences are defined as “chains of temporally ordered and causally connected events” where “each event in the sequence is both a reaction to antecedent events and a cause of subsequent events” (Mahoney 2000, 509, 526). They are also characterized by backlash processes that “*transform* and perhaps *reverse* early events” (Mahoney 2000, 526, emphasis in original; Mahoney, Mohamedali, and Nguyen 2016). Reactive sequences are distinguished from *self-reinforcing* sequences, a form of path dependence whereby increasing returns reproduce early events (Arthur 1994; Hall 2016; Pierson 2000; 2004; Rixen and Viola 2015). Both approaches urge scholars to consider how events in a reform sequence are linked, and how some pathways of

institutional development are foreclosed (Mahoney 2000; Pierson 2004). Some scholars argue, however, that self-reinforcing approaches have less explanatory power when used to study major policy change over time (Daugbjerg 2009; Kay 2005; Mawhinney 2013).

The “reactive sequences” approach provides a more capacious framework for explaining complex chains of events, including those that led to the rise of crime-based deportation. This method “leaves more room for policy evolution within the path than the notion of self-reinforcing sequencing because it also allows counter-reactions” (Daugbjerg 2009, 398). The intersection of two or more once separate sequences produces a contingent early event, known as a conjuncture, followed by a causal reactive chain defined by backlash dynamics—institutional transformations and reversals (Mahoney 2000). According to Alter and Kürn (2020, 566), backlash politics merge “a retrograde objective, extraordinary claims, demands and tactics, and a threshold of influencing public discourse so that the movement’s objectives and/or tactics become normalized features of politics.” These are essential features of the reactive sequence behind the institutional development of crime-based deportation from 1986 to 1990. As I discuss below, this chain of reactions to the cultural, political-economic, and demographic circumstances of the mid- to late-1980s produced a transformation of crime-based deportation, in terms of scale and arrangement. These changes also symbolized a reversal in institutional direction when compared to the more liberal immigration regime initially established by the Immigration and Nationality Act of 1965.

Path dependent frameworks, however, may downplay the role of individual agency when explaining institutional outcomes (Pierson 2004; Thelen 2003). Reactive sequences, in particular, do not have clear micro-foundations. Specifying the role of human actors is particularly important when policy elements are situated in a ‘nested’ relationship where the micro-level—policymaker behavior—is inseparable from the macro-level—institutions (Hall 1993). Political institutions

themselves are the product of coalitions (Hall 2016; Thelen 2003). When constructing a coalition, actors reinterpret their interests and unite behind some institutional project, which they jointly pursue (Hall 2016; Offe and Wiesenthal 1980). Some actors lead coalition building and shape the path of early institutional changes, while others play supporting roles (Korpi 2006). Interest re-interpretation thus depends on the ability of actors to react to changing circumstances and influence other possible stakeholders.

I leverage the longstanding concept of political entrepreneurs (Dahl 1961; Kingdon 1984; Sheingate 2003) to establish the micro-foundations of the reactive sequences framework. Political entrepreneurs respond to a conjuncture of sequences, and, after establishing common interests, the coalition pushes institutional reforms to address their concerns. The power to enact desired policy changes, especially early on, stems from the ability to emphasize institutional complementarities (Hall and Soskice 2001). That is, the benefits they receive from institutions governing some policy domain depend on institutions managing other areas of policy. Of course, not all entrepreneurs are successful. Though, when they are, entrepreneurs capitalize on institutional complementarities to activate latent dimensions of conflict and frame reforms as the logical extension of another policy program (Sheingate 2003). In reactive sequences, these actors “etch” their political imagination into long-term processes of institutional development (Hall 2016, 15) in a succession of episodes where they invite coalitional stakeholders from connected policy domains. Through this process, political entrepreneurs transformed the institution of crime-based deportation from a last-minute add-on to IRCA into the basis of contemporary U.S. immigration enforcement.

To provide evidence of how the process unfolded, I conduct a discourse analysis of policy debates among members of the U.S. Congress from 1986 to 1990—a period marked by intense deliberations on issues such as drugs, crime, and immigration. I delve into debates surrounding

major pieces of legislation, including the Immigration Reform and Control Act of 1986, the Anti-Drug Abuse Act of 1988, and the Immigration Act of 1990. This analysis involved an extensive analysis of the Congressional Record from this period. I systematically examined the congressional debates from the House of the Representatives and Senate, identifying references or discussions related to the deportation of non-citizens involved in criminal activity. To ensure a comprehensive search, I employed a diverse array of search terms including, but not limited to: alien, criminal alien, deportability, deportation, illegal alien, removal, and summary deportation. I present and dissect a selection of statements from key political entrepreneurs. This approach provides a view of the discursive landscape within Congress at the time, revealing how U.S. representatives and senators framed the issue of crime-based deportation and negotiated policy responses.

Congress is thus my primary institutional arena of interest. I acknowledge that the actors mentioned below often went to great lengths to disseminate their ideas on the immigration-crime nexus—through media institutions, for example. These efforts, however, fall outside the scope of my study. I trace the formation of a new coalition within the chambers of Congress and the evolution of the reactive sequence behind crime-based deportation. I unpack how new ideas and discourses gained traction among a powerful alliance that achieved tangible policy outcomes. Below I consider the sequences to which these actors responded when pursuing reforms bolstering crime-based deportation.

4.1 A Conjuncture of Sequences

The insertion of Section 701 into the Immigration Reform and Control Act (IRCA) of 1986 is the conjunctural event that triggered my reactive sequence of interest, the turn toward crime-based deportation. In general, IRCA is known for creating criminal sanctions designed to prevent employers from hiring undocumented workers, greatly increasing funding for the Immigration and

Naturalization Service (INS)³, and providing some 2.7 million undocumented immigrants a path toward legal status. The law included another provision, however, that has gone understudied—Section 701. This provision required that “in the case of an alien who is convicted of an offense which makes the alien subject to deportation, the Attorney General shall begin any deportation proceeding *as expeditiously as possible* after the date of the conviction” [emphasis added].⁴ Congress thus made deporting immigrants convicted of certain crimes an explicit enforcement priority for the first time in the history of U.S. immigration policy. This event initiated the reactive sequence along which the U.S. crime-based deportation system then developed.

To explain what made this moment distinct, it is important to understand IRCA in historical perspective. Federal law has long used criminal activity as grounds for exclusion and deportation. In 1875, Congress made inadmissible “prostitutes” and immigrants convicted of felonies; in 1891, Congress made inadmissible immigrants convicted of ‘crimes involving moral turpitude’ (CIMTs); in 1917, Congress turned CIMTs into grounds for deportation; and in 1922, Congress made narcotics offenses grounds for deportation for the first time (Das 2018; Schuck 2012). The definition of a deportable offense was cast in explicitly moral terms for much of U.S. history (often to preserve existing social hierarchies), and the scope of these offenses was limited compared to today. There is even some evidence that Congress intended for case-specific legal analysis when assessing deportability, as was the case in 1917 when CIMTs were made grounds for removal (Simon-Kerr 2012).

However, at none of these points did the federal government turn to a deportation system that prioritized so-called ‘criminal aliens,’ a term born out of the 1980s referring to “non-citizens

³ The INS was the precursor to Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP), which today comprise the Department of Homeland Security (DHS).

⁴ Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, Sec. 701, 100 Stat. 3445 (1986).

who have committed ‘crimes’ and are thus seen as representing a particular danger to the body politic” (Inda 2013, 293; see also Stephens 2021). Only during the 1980s did Congress start to define deportable offenses in more concrete (and less vaguely moral) terms as well as expand the scope of deportable offenses to include crimes that reflected social anxieties at the time. To explain why this contingent event, the addition of Section 701 to IRCA, resulted in path dependence leading to today’s crime-based deportation system, I analyze three sequences—cultural, political-economic, and demographic—that converged to produce institutional change in 1986.

First, there is the “cultural” sequence that is implicit in the crimmigration literature. Racial animus has contributed to the association between crime and immigration in U.S. federal policy as far back as the Page Act of 1875—the first federal law to restrict immigration, banning the entry of prostitutes so as to target Chinese women (Collins 2013, 2154–58; Das 2018; Abrams 2005, 648). By the 1980s, racist prejudices among the public had changed in certain ways, but they had not subsided. A new “symbolic” racism emerged among the white majority in the U.S. (Sniderman and Tetlock 1986; Sniderman et al. 1991). In contrast with “old-fashioned” racism, the new racism manifested in a subtler way, based on the belief that people of color, particularly Black people, violated traditional U.S. values such as individualism and self-reliance (Tesler 2013). Racial prejudices thus continued to play a fundamental role in national politics in the post-civil rights era, though often expressed in colorblind terms (Bonilla-Silva 2013).

These cultural forces extended into the realm of immigration. As García Hernández (2013, 1515) observes, “the cultural and legislative successes of the civil rights era made it culturally, politically, and legally unacceptable or impermissible to repeat the overt racism that dominated law and law enforcement for much of the nation’s history.” Despite the enactment of new laws, such as the Immigration and Nationality Act of 1965, that marked the end of the era of race-based

immigration policy, legislative successes fell short of dispelling the prevailing notion that people of color, including immigrants, were undesirable and threatening. In fact, anti-immigrant attitudes surged during the economic recession of the early 1980s, immediately preceding the passage of IRCA, as the country faced high inflation and unemployment rates. In 1984 and 1985, a sizeable majority of Americans (61-62%, depending on the poll) believed that immigrants took away jobs from U.S. workers (Lapinski et al. 1997). By 1986, nearly half of the U.S. public (49%) believed that immigration should be decreased (Lapinski et al. 1997).

Public sentiment toward immigrants was inseparable from popular beliefs about race. The perception of an immigration crisis during the 1980s was driven, in large part, by “recurrent spectacles of mass migrations” by Cubans, Haitians, and Central Americans (Shull 2021, 6). The 1980 Mariel Boatlift, in particular, was a catalytic event that amplified narratives of immigration crisis and provided the basis for the punitive turn in immigration enforcement pursued by the Reagan administration (Loyd and Mountz 2018; Shull 2021; 2022). Over the course of six months, nearly 125,000 Cubans arrived in Miami after departing from the port of Mariel in a mass exodus sanctioned by Cuban President Fidel Castro. These migrants, alongside another 15,000 Haitians, were portrayed in the media as drug dealers, criminals, and economic migrants seeking to abuse U.S. social welfare systems (García Hernández 2013, 1504). From the Mariel Boatlift emerged the archetypal figure of the “criminal alien” in the public sphere (Stephens 2021). These high-profile episodes were part of a “distinctly racialized effort” by public officials linking urban decay to crime, drugs, and immigrants (Loyd and Mountz 2018, 129; Miller 2003; Simon 1998). The cultural sequence at the time thus demonstrated the continued influence of racial hierarchy, yet couched in the colorblind language of crime control.

Closely related to the cultural sequence is the “demographic” sequence leading up to the passage of IRCA. In addition to mass migrations, the overall numbers and profiles of immigrants arriving to the U.S. changed drastically during the 1980s. The Immigration and Nationality Act (INA) of 1965 replaced national-origins quotas with a preference system based on family reunification and employment skills, leading to a substantial rise in legal immigration. The U.S. went from admitting 380,000 immigrants per year in the 1960s to around 950,000 a year during the 1980s (Lapinski et al. 1997). This “new regime” of immigration brought mostly non-Europeans from Latin America and Asia, which aroused cultural anxieties after four decades of limited immigration (Massey 1995). The INA also imposed an annual cap of 120,000 entries from the Western Hemisphere, which had the unintended consequence of greater unauthorized migration from Latin America (Massey and Pren 2012). Net unauthorized migration increased from zero before the INA to approximately 300,000 per year by the close of the 1980s (García Hernández 2013). The number of border apprehensions also peaked at 1.7 million in 1986, having grown rapidly since 1977 (Massey and Pren 2012, 6).

These cultural and demographic sequences must be considered in relation to the “political-economic” sequence leading up to the passage of IRCA. During the 1970s, there was an evident change in the public’s view of the role of the state, moving away from the welfare model of the postwar era toward a neoliberal model that emphasized individualism and free-market economics (Inda 2013; Tosh 2019). As the public came to reject the idea that the state should address social problems through rehabilitation, the U.S. experienced a punitive turn in the federal government’s approach to crime (Garland 2001). While crime rates had been rising since the 1960s, attitudes toward the image of the ‘criminal’ changed more than criminality per se (Wacquant 2008). This

ideological turn to neoliberal social policy culminated in the election of President Ronald Reagan in 1980 and his reelection four years later.

The Reagan administration gradually terminated government-funded social programs and offender rehabilitation as crime prevention tools, turning instead toward a social control approach (Miller 2005). This retributive framework shifted the blame for crime from structural problems to individual offenders (Mauer 1999). There was also a marked centralization of criminal justice policy by the U.S. federal government (Brickey 1994). Reagan's "new federalism" thus was Janus-faced; he endorsed proposals that returned some administrative control to state and local governments while supporting federal consolidation of political power in several policy areas, particularly criminal justice (Zimmerman 1991).

Conservative politicians in Congress from the Democratic and Republican parties voted for notoriously harsh crime control measures and drug policies despite negligible evidence that these measures would reduce drug consumption, drug trafficking, and violent crime (Bertram et al. 1996; Tonry 1994). In only a few years, the "tough-on-crime" paradigm became hegemonic in U.S. crime control, bringing increased enforcement, record levels of incarceration, and severe sentencing measures (Lusane and Desmond 1991). Greater policing fell on the backs of poor Black and Latinx communities, leading to disproportionate rates of imprisonment (Alexander 2010). As state and local prisons faced overcrowding issues, some public officials such as Florida Governor Bob Graham (D) and New York Senator Alfonse D'Amato (R), discussed below, even began to target non-citizens for deportation as early as the beginning of the 1980s (D'Amato 1983; Loyd and Mountz 2018, 129–31).

In tandem with ideological changes during the 1980s, significant economic transformations occurred. Peck and Tickell (2002, 388) describe the decade as the era of "roll-back neoliberalism,"

as “state power was mobilized behind marketization and deregulation projects, aimed particularly at the central institutions of the Keynesian-welfarist settlement.” President Reagan and his allies in Congress dismantled government social programs and pushed relentlessly for the deregulation of financial markets as well as wage labor.

Neoliberal economic policies have contributed to the growing precarity of life in the U.S. since the 1980s with regard to employment instability, economic inequality, and job atomization (Garland 2001; Wacquant 2010). Garland (2001) argues that it is precisely the economic anxieties and insecurities generated by neoliberal economic policies that fueled punitive sentiment. During the 1980s, the General Social Survey asked the following question: “In general, do you think the courts in [the criminal justice system] deal too harshly or not harshly enough with criminals?” The percentage of respondents that believed courts were “not harsh enough” peaked in 1982 at 87% (up from 65.5% in 1972), fluctuating between 80-85% for the remainder of the decade (Cullen, Fisher, and Applegate 2000).

These changes also impacted the federal government’s economic approach to immigration. Historically, there has been a close link between market forces and restrictive immigration laws in liberal democracies such as the U.S. (Hollifield, Martin, and Orrenius 2014). Immigrants have been treated as a source of labor, bought and sold according to market demands until they are no longer politically desirable or economically valuable (Hollifield 1992). The rise of neoliberalism in the 1980s hardly changed the general calculus of the federal government, but new considerations factored into the cost-benefit analysis. As welfare policies unraveled, “migrant workers expanded the pool of people who were underserved by the market” (Gil-Vasquez 2020, 574). Hence, criminal behavior became a proxy for measuring immigrants’ contributions to market output.

In sum, I identify three primary streams—cultural, demographic, and political-economic—that intersected in 1986. This conjuncture allowed for the insertion of a provision into IRCA that required the Attorney General to deport as expeditiously as possible those non-citizens convicted of certain criminal offenses. The cultural sequence reveals the persistence of racial animus toward Black and brown people, including immigrants, in the U.S. As blatant racism became intolerable after the civil rights era, however, colorblind racial prejudice found an outlet in the facially neutral rhetoric of crime control. The demographic sequence underlines the visibility of rising authorized and unauthorized immigration during the 1980s, making immigrants, especially those labeled criminal, a vulnerable target for the wave of punitive sentiment and policymaking that followed.

In the political sequence, public acceptance of the dominant welfare state model gave way to a belief in individualism and free-market orthodoxy. This change in public sentiment brought new leaders to power, such as President Reagan and his allies, whose commitment to neoliberal ideology brought major policy changes, especially in the criminal justice system. Retributive crime and drug measures resulted in clear racial and ethnic disparities. These social policies coincided with economic transformations (e.g., deregulation and social spending cuts) that exacerbated material insecurity and inequality. These issues were then blamed on an undeserving ‘other’ instead of structural deficiencies and the faults of elite leadership.

4.2 1986: Section 701 and the Passage of IRCA

The IRCA provision that required the Attorney General to deport non-citizens convicted of removable offenses (e.g., drug trafficking) “as expeditiously as possible” was quintessentially contingent. It was not included in the original version, or any previous versions, of the House of Representatives version of the 1986 immigration reform bill (H.R.3810). Rather, the provision was added on the final day of debate when the House passed the bill. On October 9, 1986, Kenneth

Hood “Buddy” MacKay, Jr. (D-FL) presented Amendment 1293 (H.Amdt.1293) to H.R.3810 titled “Federal Responsibility for Deportable and Excludable Aliens Convicted of Crimes.” The Amendment had three sections: (1) expeditious deportation of convicted aliens; (2) transfer of certain deportable aliens from state and local penal facilities to federal penal facilities; and (3) identification of facilities to incarcerate deportable or excludable aliens.

Congressman MacKay’s comments when introducing H.Amdt.1293 show that he was thinking about the issue of immigrant criminality in relation to the drug-related crime control efforts of the federal government. He stated:

Let me tell you what is happening in California; 63 percent of the narcotics arrests in southern California are illegal aliens. These people are going into a system [the state and local penal system] that is already overfilled, they are being released; they are committing further crimes and we have got a revolving door effect there; we have got that same effect in New York; in a very exaggerated fashion we have got it in Florida; in Texas, and every place where the drug problem and the immigration problem coincide.⁵

His language regarding where “the drug problem and the immigration problem coincide” is revealing; it is a clear recognition of the complementarity of these issues in the mind of a key policymaker. He also makes a connection between the experience of his home state of Florida and the convergence of these issues in other states across the U.S. This discourse reflects characteristics of the political and demographic sequences identified above, mainly the turn toward social control measures (in lieu of rehabilitation) and the growing concern of unauthorized immigration. Mackay shifts the blame for drugs and crime from structural problems to a particular group of offenders—“illegal aliens.” He also mentions the apparent burden that immigrants place on jails and prisons

⁵ 132 Cong. Rec. H30,069 (Oct. 9, 1986) (statement of Rep. MacKay).

at the state and local level. This discourse conforms to other instances where local conflicts over the incarceration of non-citizens shaped narratives translated to Congress and then federal policy (Loyd and Mountz 2018, 128; Shull 2022, 212–16). His proposed solution is to transfer deportable immigrants to federal facilities, supporting federal preemption of criminal justice policy.

Mackay proceeds to argue that his amendments to H.R.3810 are necessary to force the INS to change its institutional priorities and address the issue of immigrant criminality.⁶ H.Amdt.1293 was well-received by MacKay’s colleagues, especially other members of the Florida delegation. Representatives Dante Fascell (D-FL), Lawrence Smith (D-FL) and Bill McCollum (R-FL) all rose to laud the Amendment for tackling the issue of immigrant criminality.⁷ At the end of debate, the full version of H.Amdt.1293 was passed by a voice vote. However, the latter two provisions did not survive the resolution of differences between the House and Senate versions of IRCA. The “expeditious deportation” provision became Section 701 of IRCA, which was signed into law on November 6, 1986.

The fact that H.Amdt.1293 was advocated by a bipartisan group of Florida legislators has gone largely unnoticed. It is important to examine how these actors developed a new set of interests that united them behind a common institutional project. In the mid-1980s, drug consumption and trafficking were the focus of the public and the media, especially due to the growing use of crack cocaine (Reinarman and Levine 1997). Public fixation was fueled by sensationalist media with stories, graphics, and statistics that inflated the gravity of drug issues (Beckett and Sasson 2004). Public sentiment toward immigration also took a negative turn, as there was “a growing sense of

⁶ Ibid.

⁷ 132 Cong. Rec. H30,069-30,070 (Oct. 9, 1986).

crisis that the USA had ‘lost control of its borders’ and that U.S. immigration policy was dangerously adrift” (Miller 2003, 8).

Feelings of crisis were particularly acute in states such as Florida, due in part to high-profile events such as the aforementioned Mariel Boatlift. The visible presence of many Afro-Cubans, working-class people, and single, young men, in particular, cast these migrants as undesirable in more ways than one (Shull 2014). Years after the actual boatlift, the “Long Mariel Crisis” endured, informing “policy-making, administrative planning, and political decision-making” (Loyd and Mountz 2018, 56). This phenomenon underlines the role of public officials such as those from the Florida congressional delegation who intertwined the issues of crime, drugs, and immigration in response to local events at home and then transported them to Congress. The image of the ‘criminal alien’ became a politically advantageous “shifting signifier” with “no specific legal definition,” used to label undesirables as targets for deportation (Tuck, Damsa, and Kullman 2022, 563).

House Representatives from the Florida delegation responded to changes in shared state-level circumstances, which drove the process of interest re-interpretation that is central to the kind of coalition formation behind institutional innovation (Hall, 2016). Once united behind a certain institutional approach—the crime-based deportation model embodied by H.Amdt.1293—these legislators assumed the role of *political entrepreneur* (Dahl 1961; Sheingate 2003). First, these actors identify and frame issues “in a way that engages a new or latent dimension of conflict,” which is precisely what MacKay and his Florida colleagues did by linking drug-related and immigration issues (Sheingate 2003, 188; Baumgartner and Jones 2009). Second, political entrepreneurs are innovators that invest resources in new policies (Sheingate 2003) such as H.Amdt.1293, which was the first immigration provision of its kind to restructure INS enforcement

priorities toward crime-based deportation. Third, entrepreneurs consolidate policy innovations into enduring institutional change (Sheingate 2003), which I discuss at length below.

In historical institutionalist terms, these actors responded to the conditions of a specific conjuncture to construct a new coalition, which sought to shape institutional development in their policy domain of interest. Some of the first members of this coalition included Florida representatives Buddy MacKay, Dante Fascell, Lawrence Smith and Bill McCollum; their desire to build their influence was evident early on. It is the first two features of political entrepreneurship that members of the Florida delegation embodied in the early stages of institutional development with Section 701 of IRCA. Representative Dante Fascell (D-FL) stated:

The MacKay amendment complements our efforts on the drug bill and gives the Federal Government some of the tools it needs to have a positive effect on both the immigration and drug problems. This amendment requires Federal cooperation in incarcerating Mariels and other illegal aliens who have been convicted of drug crimes and requires that these individuals be deported in an expedited manner.⁸

By focusing on “Mariels [a derogatory nickname for Cubans on the Mariel boatlift] and other illegal aliens who have been convicted of drug crimes,” he activates a complementary dimension of the tough-on-crime crusade and makes a small-scale innovation with disproportionate effects by “joining problems, policies, and politics” (Kingdon 1984, 182). In other words, Fascell and his colleagues responded to the conjuncture discussed above, which was felt acutely in their home state. As political entrepreneurs, they sold an interpretive lens to other members of Congress to appreciate the national relevance of “immigrant criminality” and its institutional solution. It is via this process that the issue diffused into the agendas of U.S. politicians in other jurisdictions beyond

⁸ 132 Cong. Rec. H30,070 (Oct. 9, 1986) (statement of Rep. Fascell).

the conjunctural nucleus, as members of Congress joined forces to support crime-based deportation measures.

[Figure 1 about here]

Figure 1: Timeline of Crime-Based Deportation Laws (1986-1996)

4.3 Post-1986: Larger-Scale Reforms

Beginning in 1986 with Section 701 of IRCA, the institution of crime-based deportation followed a reactive sequence. I examine the sequence of events through the end of the decade examining how episodes of persistent backlash ignited the process of institutional transformation. After IRCA, immigrant criminality received sustained consideration in Congress due to a nascent coalition of political entrepreneurs who continued to make the connection to drug-related issues. Through steadfast discursive efforts during an era of heightened legislative activity, the objectives of the coalition became a normalized feature of congressional politics, an integral component of the backlash processes that define reactive sequences (Alter and Zürn 2020). In 1987, two reports from the General Accounting Office (GAO)⁹ expressed mounting concern about immigrant criminality, one requested by Senator Alfonse D’Amato (R-NY) and the other by Representative Romano Mazzoli (D-NY) (U.S. Government Accountability Office 1987b; 1987a). Both reports stressed that immigrant involvement in crime was a reportedly large-scale and worsening problem, though the data was limited and the analysis questionable.

For example, the report sent to Congressman Mazzoli relies on arrests data from only five cities (Chicago, Denver, Houston, Los Angeles, and Miami) gathered by the Federal Bureau of Investigations in FY 1985. The statistics indicate that in these cities the percentage of arrests

⁹ The General Accounting Office was later renamed the Government Accountability Office in 2004.

involving non-citizens (when the offender's country of birth was even identified) ranged from 7% (Denver) to 38% (Miami) (U.S. Government Accountability Office 1987b). The report does not include any data about convictions, nor is there any information related to how these communities were policed. Regardless of the data limitations, political entrepreneurs used what they could as firepower to generate a sense of crisis and push their narrative. Concrete proposals to address immigrant criminality began to materialize, this time in the Senate.

Interestingly, some of the first efforts following IRCA came from another member of Congress from Florida, Senator Lawton Chiles (D-FL). In April 1987, he introduced a series of five bills to the Senate (S.972-976) focused on "Illegal Alien Felons."¹⁰ These measures included the mandatory detention of immigrants convicted of "aggravated felonies," harsher criminal penalties for immigrants who re-entered the U.S. after deportation, criminal penalties for failing to appear at immigration court, criminal penalties for assisting undocumented immigrants enter the U.S., and the creation of an information-sharing system between the INS and local law enforcement to identify deportable immigrants. When introducing these proposals, Senator Chiles declared:

In Florida, and other regions of the country this banding together of two of the Nation's most difficult domestic problems has created an even more difficult and dangerous problem-expansive drug syndicates established and managed by illegal aliens...Their presence in the United States is so widespread and lucrative that they are attracting other aliens into the United States to join in the illegal enterprises.¹¹

The idea that certain immigrants are the cause of social ills such as crime and violence is a common thread in U.S. history (Kanstroom 2000; Ngai 2014). But looking closely, the conjunctural features

¹⁰ 133 Cong. Rec. S8,771 (Apr. 9, 1987).

¹¹ Ibid (statement of Sen. Chiles).

of the 1980s are clear. Senator Chiles connects his concern about immigrant criminality to drug-related issues, selling this compound problem as one of national relevance to other legislators. He goes so far as to assert that immigrant involvement in drug trafficking is *encouraging* unauthorized immigration for the purpose of engaging in unlawful activity. Such “extraordinary claims” speak to the main concern of most immigration policymakers during the 1980s, reducing unauthorized border crossings (Schuck and Williams 1999), yet they challenge the dominant script by recasting immigration politics around the figure of the so-called ‘criminal alien’ (Alter and Zürn 2020, 567). Chiles then proceeds to single out “illegal Colombians,” “Nigerians,” and “illegal Haitians” as the supposed leaders of widespread drug operations. These images of the stereotypical ‘criminal alien’ reify a narrative of otherness that conforms to the history of anti-Black racism in the U.S.

Six months later in October 1987, Representative Lawrence Smith (D-FL) introduced five bills in the House nearly identical to those of Senator Chiles, emphasizing “Cracking Down on Criminal Aliens.”¹² When presenting these proposals, Representative Smith stated:

I believe that we are faced with a problem that needs immediate congressional action the problem of criminal aliens. All too often, these aliens—whether here legally or illegally—who are arrested for various felonious crimes, evade deportation, dodge trials, and continue with their recidivist activities...Although the majority of these crimes are drug-related, alien criminals have been connected with money laundering, racketeering, weapons sales, prostitution rings, and a host of other heinous crimes.¹³

Like Senator Chiles and his Florida colleague Buddy MacKay one year prior, Representative Smith presents immigrant criminality as inextricably linked to the War on Drugs. He invokes an image of the criminal alien “folk devil,” or the personified symbol of drug-related, violent crime

¹² 133 Cong. Rec. H28,840 (Oct. 22, 1987).

¹³ Ibid (statement of Rep. Smith).

(Tosh 2019). The neoliberal logic of punishment and retribution is also evident in his appeal to deploy the state’s deportation powers as a sanction for a litany of “heinous crimes.” The color of his comments is further revealed by his recounting of a story about a criminal organization in New York involved in drug and firearms trafficking and run by undocumented Jamaican immigrants.¹⁴ In these ways, the “retrograde politics” of his comments (Alter and Zürn 2020, 566), which are representative of the broader coalition, become clear—they seek a return to prior social condition where not only ‘law and order’ prevails, but undesirable non-citizens can be easily removed.

These efforts by Florida legislators are best understood as an emergent coalition of political entrepreneurs highlighting an issue in terms that stimulate interest re-interpretation among other policymakers. In presenting their proposals, Chiles and Smith frame their nearly identical bills in a way that is institutionally *complementary* to the War on Drugs. It is this strategy that continued to achieve success. In 1988, the House and Senate passed an omnibus spending bill that would become the Anti-Drug Abuse Act (ADAA) of 1988, a legislative milestone in the War on Drugs. Whereas the MacKay Amendment to IRCA had been contingent, both the House and Senate versions of ADAA contained an entire subtitle for “Provisions Relating to the Deportation of Aliens Who Commit Aggravated Felonies.” Most importantly, ADAA added the “aggravated felony” as a new ground for crime-based deportation, which included murder, drug trafficking crimes, and illicit weapons trafficking. The Attorney General was obligated to detain and deport immigrants convicted of aggravated felonies as expeditiously as possible and to establish a pilot program in four cities that would enable cooperation between the INS and local law enforcement.

With these institutional measures and continued attention from legislators, the issue of immigrant criminality was not only kept on the agenda, but magnified. Senator D’Amato (R-NY),

¹⁴ Ibid.

who had been an early advocate of targeting incarcerated non-citizens for deportation (D’Amato 1983; Loyd and Mountz 2018, 129–31), joined forces with partners like Senator Chiles to vouch for the ADAA “aggravated felony” provisions. In October 1988, Senator D’Amato stated:

Today, a conviction for even the most heinous crime is anything but conclusive evidence of deportability. Instead, a long list of defenses and complicated procedures—and the absence of time limitations to prevent these cases from dragging on for years—make it almost impossible to deport noncitizen drug dealers and violent criminals.¹⁵

D’Amato frames restrictive immigration measures in a way that is accessible to other legislators, as a necessary response to drug crime—an urgent, interrelated crisis. His comments about the endless timeline of deportation proceedings also reflect the position of his coalition—that is, when fighting crime, the adjudicatory values of due process and judicial review are deeply inadequate for a federal government marred by immigrant involvement in drug-related and violent crime. It is also notable that D’Amato was from New York, another state where the conjuncture of structural forces apparent to Florida legislators was highly visible, and therefore easily interpretable.

The ADAA passed overwhelmingly in the House and the Senate including all provisions of Subtitle J. Shortly thereafter, the restructuring of the institutional landscape, a key goal of the new coalition and its entrepreneurs, began to unfold. In 1988, INS established two programs to comply with Section 701 of IRCA (the “MacKay Amendment”) as well as Subtitle J of ADAA—the Institutional Removal Program (IRP) and the Alien Criminal Apprehension Program (ACAP). Interestingly, the origins of the IRP can be traced back to a 1980 program used to deport Cuban asylum seekers incarcerated in the city of Atlanta; IRCA and ADAA then “transformed this early experimentation,” institutionalizing the IRP in federal prisons and detention facilities (Eagly and

¹⁵ 134 Cong. Rec. S27,445 (Oct. 3, 1988) (statement of Sen. D’Amato).

Shafer 2020, 799). In only two years, the seemingly small-scale changes in IRCA and the ADAA led “very quickly to a changing of priorities in the INS,” exactly as Buddy MacKay predicted.¹⁶

These programs worked directly with state corrections facilities and law enforcement to identify deportable immigrants convicted of crimes during incarceration and assisted the Executive Office for Immigration Review (EOIR) initiate deportation proceedings against these individuals in immigration court (Rosenblum and Kandel 2012). Early efforts focused on aggravated felons, as defined by the ADAA. As political entrepreneurs changed the ideological terms of debate on immigrant criminality, their small-scale reforms had large-scale institutional consequences.

The last episode in the development of crime-based deportation in the 1980s occurred at the turn of the decade with the Immigration Act of 1990. As during the prelude to the ADAA in 1987, another GAO report, requested by the House Subcommittee on Immigration, Refugees, and International Law, was published in late 1989, finding that immigration court proceedings often lasted five years or more (U.S. Government Accountability Office 1989) Though, in contrast to 1987, the Congressional Record reveals that in 1989 and 1990, debates and proposals related to crime-based deportation *exploded*. In 1989, House Representatives Gary Ackerman (D-NY) and Bruce Morrison (D-CT), new coalition members, highlighted the problem of ‘criminal aliens’ and their links to drug crimes, per the same playbook as their counterparts from Florida.¹⁷ In November 1989, the Senate Subcommittee on Immigration, Refugees and International Law held an oversight hearing on the topic of criminal aliens.¹⁸ These actions map almost effortlessly onto Kingdon’s (1984) description of “policy entrepreneurs.” They were “rehearsing their act for when they get

¹⁶ Supra note 6.

¹⁷ 135 Cong. Rec. H17,142 (Aug. 1, 1989); 135 Cong. Rec. H25,844-25,845 (Oct. 25, 1989).

¹⁸ 135 Cong. Rec. D 717 (daily ed. Nov. 1, 1989).

their moment on the agenda—polishing arguments, conducting studies, building or losing personal credibility and networks” (Greer 2016, 420).

In 1990, several stakeholders, both old and new, offered proposals. In May, Senator Bob Dole (R-KS) introduced the National Drug Control Strategy Implementation Act (S.2652), which contained a provision providing for summary deportation of criminal aliens.¹⁹ The same month Senator Phil Gramm (R-TX) introduced an amendment to a crime bill that proposed summary deportation of criminal aliens.²⁰ In the House’s June 1990 crime bill (H.R.5055), Representatives Lamar Smith (R-TX) and Clyde Holloway (R-LA) advocated for provisions accelerating the deportation of criminal aliens.²¹ A month later, Representative Smith then introduced a separate bill (H.R.5284), co-sponsored by a bipartisan group of 18 other House members, that focused on expediting the removal of criminal aliens.²² In August 1990, a bill with nearly the identical purpose titled the “Criminal Alien Deportation and Exclusion Act” (S.2957) was introduced by Senators D’Amato (R-NY) and Dole (R-KS) and later co-sponsored by Senator Gramm (R-TX).²³ A *third* bill with the same purpose (S.3055) was presented by Senator Alan Simpson (R-WY) in September 1990.²⁴

Finally, a package of amendments that brought together several provisions from these prior legislative efforts was accepted in the final days of resolving the differences between the House and Senate version of the Immigration Act of 1990. Most importantly, these measures included expanding the definition of “aggravated felony” to include offenses such as money laundering and “any crime of violence,” shortening the timeline for judicial review of deportation orders from 60

¹⁹ 136 Cong. Rec. S11,177 (May 18, 1990).

²⁰ 136 Cong. Rec. S12,337 (May 24, 1990).

²¹ 136 Cong. Rec. H14,949; 14,993 (June 20, 1990).

²² 136 Cong. Rec. H17,588 (July 16, 1990).

²³ 136 Cong. Rec. S21,844 (Aug. 2, 1990).

²⁴ 136 Cong. Rec. S24,597 (Sept. 14, 1990).

to 30 days, and eliminating provisions for judicial recommendations against deportation (see *Immigration Act of 1990*). Senator Bob Graham (D-FL), who introduced the amendments, stated:

It is the Federal Government's responsibility to protect our borders. If the Government fails to prevent dangerous aliens from crossing our borders, it then becomes the responsibility of the Federal Government to help the States cope with the crimes and the costs of prosecuting criminal aliens. Finally, the Federal Government must make sure that dangerous aliens are not on the streets, not allowed to commit new crimes, and not caught in a lengthy deportation process.²⁵

Whereas in the mid-1980s most of Congress was focused on securing the southern border, Senator Graham, and the rising coalition around him, achieved a new consensus. Senator Graham's long-term commitment to the cause is particularly noteworthy; in 1981, as governor of Florida, he sued the Reagan administration to take custody of Cubans and Haitians in overcrowded Dade County jails (Loyd and Mountz 2018, 129). In the Senate, his cohort included familiar faces—Alfonse D'Amato (R-NY), Bob Dole (R-KS), Phil Gramm (R-TX), and Alan Simpson (R-WY). Senator Graham, like his colleagues, connected the issue of unauthorized immigration to the question of internal immigration enforcement. He contended that the federal government should focus inward on a particular group—'criminal aliens'—if it was impossible to control the border. Hence, the coalition against 'criminal aliens' saw deportation as a tool of social control in line with the broader goal of policing of migrant illegality (Inda 2013; Kanstroom 2000). The borders of immigration enforcement shifted inward, setting the stage for subsequent institutional developments. Following Senator Graham's statements, his proposed amendments received no vocal resistance from his colleagues, and they were approved, in full, by a rollcall vote of 89-8.

²⁵ 136 Congressional Record S35,621 (Oct. 26, 1990) (statement of Sen. Graham).

In sum, a rising, bipartisan coalition of political entrepreneurs focused on immigrant criminality during the mid- to late-1980s initiated a process of institutional evolution through reactive sequencing. The elements of *transformation* through “tightly linked reactions” are clear (Mahoney 2000, 527). From 1986 to 1988 to 1990, the institution of crime-based deportation grew from a directive that the Attorney General expeditiously deport immigrants with criminal convictions to a range of restrictions on immigrants’ procedural rights as well as a malleable legal category, the “aggravated felony,” that radically altered the face of U.S. immigration enforcement.

During these episodes, political entrepreneurs repeatedly responded to the conjuncture of sequences in the mid- to late- 1980s that drew them to the issue of immigrant criminality, proposing accessible institutional reforms. In other words, these actors used their agency to stress particular institutional complementarities that anchored their proposals to issues of broader concern at the time (Hall and Soskice 2001). The statements of some key entrepreneurs indicate that they saw their institutional solutions as equally beneficial for fighting the War on Drugs and unauthorized immigration, resulting in a reactive sequence.

5 Conclusion

In this article, I set out to answer a two-part question: why did the U.S. federal government expand criminal grounds for the deportation of immigrants, and why did it do so in the 1980s? I argue that the roots of crime-based deportation, as a formal political institution, can be traced back to the Immigration Reform and Control Act of 1986 and two following episodes of reform in 1988 and 1990. I offer an important look at the period prior to the passage of a pair of laws in 1996—the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA)—that later consolidated the crackdown on ‘criminal aliens’ (Chacón 2013; Coleman 2007).

Methodologically, I embrace an often-overlooked approach—Mahoney’s (2000) “reactive sequences.” I consider three sequences—cultural, demographic, and political-economic—that converged in 1986 to produce a contingent event (i.e., conjuncture)—the incorporation of the MacKay Amendment (Section 701) into IRCA. I complement the macro-level components of this approach by identifying clear micro-foundations, which are missing from the original reactive sequences framework. Transformational institutional change is made possible by human actors embodying backlash processes. Understanding institutions as the product of social coalitions (Hall 2016), policymakers pursue small-scale reforms from below that, in reactive sequences, transform the institution, in terms of arrangement and scale, across a tightly linked sequence. I see these actors as *political entrepreneurs* (Dahl 1961; Kingdon 1984; Sheingate 2003) who respond to a conjuncture and unite behind a set of institutional reforms. These entrepreneurs, such as the politicians who pushed for crime-based deportation measures in the 1980s, stimulate a process of interest re-interpretation among other possible stakeholders who strengthen the standing of their coalition.

Through an analysis of the Congressional Record from 1986 to 1990, I uncover evidence for my theory. At the time of the conjuncture, the impetus for a crime-based deportation originated among legislators from Florida such as Representative Buddy MacKay. MacKay and his partners responded to changing conditions in the cultural, demographic, and political-economic sequences of the mid-1980s with a focus on the issue of immigrant criminality. As political entrepreneurs, they engaged a new dimension of conflict by linking their issue of interest to the broader concern with crime and drug-related issues. They also successfully pushed for small-scale institutional change with the incorporation of Section 701 into IRCA.

From there, these actors used this win as the basis for later efforts to build their coalition. In two subsequent episodes, one in 1988 and the other in 1990, these political entrepreneurs consolidated policy innovations into enduring change by stressing institutional complementarities that served their agenda and incorporated new stakeholders into the coalition. These early actors changed the terms of debate for decades to come and started building the modern U.S. crime-based deportation system. In her comparison of immigration policy debates from the mid-1980s and the mid-1990s, Newton (2008) observes the entrenchment of “The Criminal Alien Narrative,” which legislators employed to paint immigrants as unlawful and undeserving.

By analyzing internal reform dynamics within the U.S. immigration enforcement regime, this article contributes to a more sophisticated understanding of the way that criminal grounds for deportation have evolved since the 1980s. More generally, the analysis of the sequence of crime-based deportation measures highlights that it is useful to analyze policy reforms and, relatedly, institutional evolution as a sequence of events that develops across a series of connected episodes. Most importantly, this paper should serve as a call to focus on the timing and location of the onset and entrenchment of crime-based deportation, and crimmigration law more broadly, in the U.S. and abroad.

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