

Introduction: Deportation and the State

The connection between the state and its population has been particularly complex, if for no other reason . . . than the modern state in its rules and laws has demanded so much from people. . . . Of course, coercion and the threat of coercion, by most definitions, lie at the center of the meaning of the state and its demands for compliance by its population. . . . But it is simply impossible for a state to achieve tractability by relying exclusively on its judges and jailers. No matter how vaunted the bureaucracy . . . state leaders could easily find their institutions quickly overwhelmed by the enormity of the task of enforcement, even with vast bureaucracies.

(Migdal, 2001, p. 251)

The final decades of the twentieth century have been marked by the progressive expansion of the socially coercive state in the advanced industrialized world. Beginning in the 1980s and extending into the new millennium, liberal democracies faced public demands for hard-edged social regulation in areas such as migration control, criminal justice, and homeland security. In response, elected legislatures enacted far-reaching measures of social control across a range of policy fields and funded the rapid growth of coercive bureaucracies.

To illustrate this point, from 1991 to 2001 the budgets of both the German Federal Border Police¹ and the Canadian immigration service² more

¹ Federal Border Police, “2002 Annual Report” (*Bundesgrenzschutz Jahresbericht*), Section III.2.1, http://www.bmi.bund.de/nn_121564/Internet/Content/Broschueren/2003/Bundesgrenzschutz-Jahresbericht__2002__Id__90870__de.html (accessed December 14, 2005, site now discontinued).

² Statistics Canada, “CANSIM Table 385-0002: Federal, Provincial and Territorial General Government Revenue and Expenditures,” http://cansim2.statcan.ca/cgi-win/cnsmcgi.exe?Lang=E&RootDir=CII/&ResultTemplate=CII/CII__&Array_Pick=1&ArrayId=3850002

than doubled, whereas the U.S. Immigration and Naturalization Service's budget nearly quadrupled.³ Even more dramatically, immigration spending in Britain in the same period underwent a more than sixfold increase.⁴ Significantly, these law enforcement initiatives have not been limited to the regulation of migration. In the area of drug control, the budget of the U.S. Drug Enforcement Administration⁵ more than tripled between 1985 and 2002. In the field of criminal justice more generally, U.S. government spending on the federal prison system more than quadrupled between 1985 and 2002.⁶ Similarly, in Canada, the corrections and rehabilitation services budget doubled from 1989 to 2002.⁷

In North America, governments simultaneously enacted sweeping administrative reforms. The creation of the Department of Homeland Security in March 2003 constituted the most comprehensive case of American bureaucratic reorganization for well over half a century. Just months later, the Canadian government followed suit by announcing the amalgamation of existing agencies into the Department of Public Safety and Emergency Preparedness, including the creation of a new Canada Border Services Agency.

What is striking about these instances of bureaucratic expansion is not only the speed with which these developments have unfolded, nor the emergence of similar patterns across national contexts, but also the timing of public service growth. Across the advanced industrialized world, the growth of coercive administrations has taken place during a period marked by government downsizing. As one scholar remarked, "the growth of law enforcement is the most prominent exception to the general retreat of the state" (Andreas, 2000, pp. 25–6). This trend, although evident across advanced democracies, has been most pronounced in the United States. Whereas from 1985 to 2002 the size of the federal civilian government

³ U.S. Department of Justice, "Immigration and Naturalization Service Budget 1975–2003," www.usdoj.gov/jmd/budgetsummary/btd/1975_2002/2002/pdf/page104-108.pdf

⁴ Her Majesty's Treasury, "Public Expenditure Statistical Supplements and Public Expenditure Statistical Analyses." Available from 1999/2000 at http://www.hm-treasury.gov.uk/economic_data_and_tools/finance_spending_statistics/pes_publications/pespub_index.cfm. (accessed December 2005, page now discontinued). Previous PESAs and PESSs available on microfiche.

⁵ U.S. Department of Justice, "Drug Enforcement Administration Budget 1975–2003," www.usdoj.gov/jmd/budgetsummary/btd/1975_2002/2002/pdf/page100-103.pdf

⁶ U.S. Department of Justice, "Federal Prison System Budget 1975–2003," www.usdoj.gov/jmd/budgetsummary/btd/1975_2002/2002/pdf/page109-112.pdf

⁷ Statistics Canada, "CANSIM Table 385-0002: Federal, Provincial and Territorial General Government Revenue and Expenditures," http://cansim2.statcan.ca/cgi-win/cnsmcgi.exe?Lang=E&RootDir=CII/&ResultTemplate=CII/CII___&Array_Pick=1&ArrayId=3850002

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workforce contracted by more than 10 percent,⁸ positions in the federal Drug Enforcement Administration⁹ increased by over 50 percent, and, most staggeringly, employment in both the federal prison system¹⁰ and the immigration service¹¹ more than tripled. Thus, at the same time as many public agencies have been forced to come to terms with sharp cuts to their operating budgets, bureaucracies such as the U.S. Immigration and Naturalization Service have struggled to manage the rapid inflow of new personnel (Andreas, 1998–99).

While there is unequivocal evidence that the social regulatory state has gained in strength over the past decades, political observers have been profoundly skeptical regarding its capacity to exercise its powers of coercion efficaciously. This pessimism is striking when we consider that Max Weber famously singled out the legitimate exercise of violence as the *sine qua non* of the modern state. Yet, empirically, it appears that the capacity of the state to exercise its coercive powers successfully is far from evident. In the field of migration, for instance, scholars have cast serious doubt on policy-makers' claims that expansive border control policies have been successful at curbing illegal immigration (Cornelius, Martin, & Hollifield, 1994; Andreas, 2000), just as criminal justice scholars have argued that the severity of criminal justice policies hold little relation to levels of crime (Roberts, Stalans, Indermaur et al., 2003; Tonry, 2004). Similarly, few would argue that the drug wars have succeeded in curbing the illicit trafficking of narcotic substances, or that the recently launched "war on terror" has plausibly reduced the terrorist threat.

This book is a study of the politics of coercive social regulation in Germany and the United States. I define coercive social regulation as policies that regulate individual (rather than firm) behavior in highly intrusive ways and, in the process, impose severe personal costs on the regulated. Very often such policies also rely on the routine use of physical force for their enforcement. This study examines one of the most basic, and most heavy-handed tools at the disposal of the state: the deportation of non-citizens.

⁸ U.S. Census Bureau, "2002 Census of Governments, Volume 3, Public Employment," Table 2, p. 2, www.census.gov/prod/2004pubs/gco23x2.pdf

⁹ U.S. Department of Justice website, "Drug Enforcement Administration Authorized Positions 1975–2003," www.usdoj.gov/jmd/budgetsummary/btd/1975_2002/2002/pdf/page100-103.pdf

¹⁰ U.S. Department of Justice, "Federal Prison System Authorized Positions 1975 Thru 2003," www.usdoj.gov/jmd/budgetsummary/btd/1975_2002/2002/pdf/page109-112.pdf

¹¹ U.S. Department of Justice, "Immigration and Naturalization Service Authorized Positions 1975–2003," www.usdoj.gov/jmd/budgetsummary/btd/1975_2002/2002/pdf/page104-108.pdf, last accessed 14 December 2005.

Deportation is an expression of the basic policing powers of the state: its agents employ this tool to enforce laws that regulate entry across and residence within its borders, and to exclude individuals who may pose a threat to the public order. And yet, the use of deportation as a measure of coercive social regulation is an intensely political and problematic undertaking. Deportation turns out to be an ideal site for exposing the intensity of the conflict that can arise when the exercise of basic public functions runs up against the most fundamental interests of the individual. In consequence, deportation – and, I argue, coercive social regulation more generally – constitutes a type of public policy that, although at the heart of statehood, places extraordinarily high demands on the liberal state.

Germany and the United States are intriguing cases for the study of deportation because they are among the chief deporting states in the advanced industrialized world. In 2000, the U.S. Immigration and Naturalization Service deported close to 86,000 immigrants,¹² whereas German authorities conducted over 35,000 removals (Bundesministerium des Innern, 2003).¹³ Remarkably, in both instances, these data reflect a tripling of deportations over less than a decade. Further, in both contexts, the upsurge in deportations occurred during a period of highly politicized immigration politics that culminated in far-reaching policy reform. Despite these commonalities, however, the success of legislative reform initiatives and the implementation of statutory measures have varied considerably between the two countries. As we will see, some legislative and implementation efforts have proven more successful than others. The following examples illustrate the kind of legislative and implementation outcomes that this book seeks to explain.

In the early and mid-1990s, the German parliament and the U.S. Congress undertook sweeping immigration reforms in response to popular perceptions that each state had lost control over its borders. In the United States, most prominently in Southern California, calls for reform targeted the presence of millions of undocumented immigrants, whereas in Germany public fears focused on the arrival of ever-increasing numbers of asylum seekers. When the German Bundestag embarked upon immigration reform there was fierce partisan disagreement over whether the effective control of asylum migration would in fact require the amendment of what many considered to be an excessively liberal constitutional asylum clause. In the

¹² This number does not include close to 90,000 “expedited removals” from ports of entry (U.S. Immigration and Naturalization Service, 2003a).

¹³ Additional data provided to author by the Federal Ministry of the Interior, Berlin.

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end, in 1993 the Bundestag undertook the momentous step of constitutional reform. By contrast, when Congress initiated immigration reform in 1995, Republicans and Democrats concurred that illegal immigration was fundamentally driven by the unquenchable demand of certain economic sectors for cheap labor. The parties agreed that the most effective strategy of immigration control would be to draw up regulatory measures that prevented unauthorized access to the labor market and, in cases of violation, would sanction employers and deport undocumented workers. And yet, when the resulting legislation was passed in 1996, it no longer reflected the goal of curbing illegal immigration by means of worksite enforcement. Instead, Congress targeted its most far-reaching control measures at immigrants convicted of crimes – many of whom held legal residence status – and at immigrants seeking admission at ports of entry. What can account for these divergent outcomes – in Germany, legislation that responded to the substantive concerns of the public; in the United States, a diversion of congressional reform efforts from the public’s demand for more effective controls on illegal immigrants to a crackdown on criminal aliens instead?

A similar pattern of cross-national divergence becomes evident when we examine the implementation of deportation laws in the two countries. Just as members of the Bundestag responded to popular calls for immigration reform by regulating the group at the center of political debate – asylum seekers – German bureaucrats have persistently pursued the repatriation of these individuals. Conversely, despite congressional pressure to “crack down” on undocumented immigrants, the Immigration and Naturalization Service has largely neglected the deportation of illegal migrants living within the United States, instead concentrating enforcement efforts on offenders within the United States and migrants at the border.

These examples illustrate the basic questions this book seeks to explain. When faced with the legislation and implementation of a range of coercive policies, state actors in diverse political contexts arrive at different choices regarding whom to target for regulation. What can account for divergent outcomes between national states, and, in some cases, even across jurisdictions within a single country? Importantly, by exploring these questions we gain insight into the scope and the limits of the socially coercive capacity of the liberal democratic state. As the empirical analyses in chapters to come will illustrate, not all migrant groups pose the same degree of challenge to the state’s exercise of control. By paying close attention to how legislators and bureaucrats deal with the regulation of groups whose deportation poses particularly high obstacles, we can gauge the coercive strength of a given state.

What factors, then, help us understand why some states are able to exercise their powers of control where others fail? To answer this question we need to specify the basic dynamics that drive the politics of coercive social regulation – forces that distinguish social regulation from other types of public policy, and that present distinct challenges to the state. Before identifying these forces, let us examine why existing works, although providing us with important insights that will be drawn on in the course of this analysis, cannot by themselves answer the questions prompting this study. I will consider two bodies of scholarship whose investigatory lenses closely correspond to the focus of this book: the state-centric works in comparative political science and the immigration literature.

BRINGING SOCIAL REGULATION INTO THE STUDY OF THE STATE

Given its empirical significance, it is surprising to find that the vast literature on state capacity has virtually ignored the study of coercive social regulation. Instead, scholars have focused their analyses on the state's more "benign" interventions, mostly studying capacities in areas of taxation and expenditure and in the sphere of economic regulation. To name but a few examples, the authors of the seminal study of the field *Bringing the State Back In* (Evans, Rueschemeyer, & Skocpol, 1985) confine their case studies of domestic state interventions to the tasks of economic development and social redistribution. Similarly, Theda Skocpol's (1982) study of industrial and agricultural programs in the United States, Hugh Heclo's (1974) comparative analysis of social policy developments in Britain and Sweden, and Daniel Carpenter's (2001) study of the U.S. Postal Service and the Departments of Agriculture and the Interior all hold in common a focus on state capacity in the policy fields of (re)distribution and economic regulation, as does Kent Weaver and Bert Rockman's wide-ranging cross-national study of state capacity (1993). This policy bias, I argue, limits the explanatory leverage of this literature when studying socially coercive state interventions such as deportation. As we will explore in the chapters to come, the politics of coercive social regulation follows a distinct logic that differs from both the regulation of firms and (re)distribution. I will briefly discuss two basic strands within this literature that differ both from each other and from the present study in their basic conception of state capacity.

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In an attempt to “bring the state back in,¹⁴” scholars have conceptualized the state as a distinct, autonomous entity whose preferences and actions are not reducible to societal forces. Eric Nordlinger (1981) defines autonomy as the insulation of the state from the demands of the public and argues that state autonomy is strongest in situations “in which public officials translate their preferences into authoritative actions when state-society preferences are divergent” (1981, p. 118). In a similar vein, Krasner (1978), in his study of U.S. foreign investment policy, attributes strong state capacity to the insulation of the presidency and the Department of State from societal pressures. Underlying this understanding of capacity is, to borrow from Mitchell, an “intellectual vision that sees the state autonomously formulating goals that it then attempts to implement against resistance from international and domestic actors” (1991, p. 10). According to these scholars, we should observe high levels of capacity in cases where state actors operate autonomously from societal forces.

A second strand of the state-centric literature conceives of the relationship between state and society as one of interdependence. In his comparative study of economic development in newly industrializing countries, Peter Evans argues that state autonomy by itself is an insufficient condition for economic development. Instead, state capacity is a function of the “embedded autonomy” of the state – the confluence of the state’s “internal coherence” and its “external connectedness” (1995, p. 176). It is only when states are both autonomous and socially embedded, Evans argues, that they will successfully pursue economic development. Similarly, Carpenter (2001), in his remarkable historical study of American bureaucratic development, considers the ability of agency entrepreneurs to establish coalitional networks with societal actors to be a necessary condition for bureaucratic autonomy. “Autonomy,” he contends, “does not really consist in the ability of bureaus to take clandestine, undetected actions against the wishes of elected authorities. It exists most powerfully when bureaus have acquired lasting esteem and durable links to social, political, and economic organizations, links that rival or surpass those of politicians” (2001, p. 354). Accordingly, we would expect to observe high levels of bureaucratic capacity in contexts in which administrative agencies have established strong ties with societal constituencies.

The present study both builds upon and departs from these basic assumptions. Although this analysis shares with the literature a central concern with

¹⁴ This movement was a reaction to earlier pluralist research, which emphasized societal forces in the study of politics.

the relationship between the state and society, I argue that in the fields of coercive social regulation, the basic conditions underlying state capacity in liberal democracies will vary across stages of the policy process. At the legislative stage, socially coercive capacity hinges upon strong institutional connections between the state and the public. The diffuse benefits and concentrated costs so typical of regulatory policy (Wilson, 1980) create stronger incentives to mobilize for those who stand to lose from regulation – the regulated – than for its potential beneficiaries – the general public. Accordingly, in order to overcome the opposition of the regulated, legislators have to rely on institutionalized channels of public interest articulation that can compensate for the political risks of imposing costs on organized interests.

Once policies of coercive social regulation reach the stage of implementation, however, civil servants face strong incentives to heed the interests of regulated individuals and their advocates as coercive bureaucracies cannot rely upon the support of proregulatory constituencies. This dynamic clearly departs from Carpenter's analysis that identifies the ability of bureaucracies to enter into coalitions with social and economic groups as a crucial condition for capacity-building (2001). Carpenter argues that networks between bureaucratic agencies and societal actors provide bureaucrats with the necessary autonomy from politicians to build institutional capacity. Significantly, this argument hinges on the assumption that bureaucracies have clienteles who are suitable coalition partners. Yet, although this assumption accurately describes the social context in which agencies delivering distributive and redistributive benefits operate, it does not hold for the bureaucracies that operate in fields of coercive social regulation. In this particular policy sphere, groups which oppose regulation are well-organized whereas those who stand to benefit – the potential supporters of coercive agencies – are not. It follows that, because coercive agencies do not have strong constituencies that can provide bureaucrats with much needed political backing, they are vulnerable to the obstructionist interventions of regulated groups.

The dynamics of socially coercive regulation not only differ from those observed in fields of (re)distribution, they also diverge in important ways from the politics of economic regulation. As Raymond Tatalovich and Byron Daynes contend, socially regulatory policies distinguish themselves by the centrality of "moral and normative debates about the place of the individual in the community" (1988, p. 2). The normative nature of political discussion has important implications for the politics of coercive social regulation. Not only is this policy cluster marked by more intense political conflict than the field of economic regulation, but policy losers, when confronted with enforcement, face strong incentives to contest regulation in the

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public sphere, rather than, as is common in the relationship between bureaucrats and firms, behind closed doors. Before we pursue these arguments further, let us first turn to a second body of scholarship of relevance to the study of socially coercive capacity: the immigration literature.

BRINGING THE STATE INTO THE STUDY OF
MIGRATION CONTROL

Though never applied to the case of deportation, the problem of state capacity has been at the core of a growing literature studying one of the most prominent areas of coercive social regulation: migration control. Without reviewing this vast body of scholarship in its entirety, I will identify two broad tendencies within these works. First, many immigration scholars have focused their analyses on the global challenges of migration control, paying scant attention to concrete state responses. Second, among those studies that do examine specific institutions, few incorporate immigration agencies and the stage of implementation into their analysis. In consequence, the migration literature suffers from a set of related explanatory weaknesses. First, by arguing that liberal states are intrinsically incapable of controlling their borders, analyses in this mold generally presume a universal incapacity for immigration control. Because many of these scholars focus their analyses on the global challenges of migration control, they fail to consider the responses of individual countries. As a result, they ignore cross-national variation in state capacity. Second, I shall argue that the literature's focus on the legislative arena has resulted in scholarly neglect of the constraints on policy implementation. Legislation, however, is only the beginning of the story of state capacity. On matters of immigration control, the gap between the law and its implementation is colossal. By concluding their analysis with the completion of the legislative process, these studies tell us little about crucial constraints on state capacity at the stage of implementation.

Possibly the most distinctive trait of the immigration literature is a profound skepticism about the capacity of democratic states to exert migration control. These critiques extend across otherwise contrasting modes of explanation. Arguing that liberal democratic states are intrinsically incapable of immigration control, these analyses generally fail to account for cross-national variation in control capacity. Rather they distinguish among the various constraints on states' capacity in this field. Globalization scholars, for instance, have argued that, because the root causes of international migration are principally external to the state, any attempt by governments

to regulate it will remain largely ineffectual. Whereas economic arguments (Sassen, 1988; Cornelius, 1998) point to the structural demand for cheap migrant labor as an intractable constraint on the state, legal analyses (Soysal, 1994; Jacobson, 1996) contend that the rise of an international human rights regime has tied the hands of governments intent on the pursuit of migration control. In contrast to globalization approaches, the proponents of the “liberal state thesis” have located constraints largely in the domestic realm. Equally skeptical of the state’s capacity in this field, these scholars have argued that the emergence of a “rights-based liberalism” – manifest in a proimmigrant bias in judicial rulings and interest group politics – has obstructed the ability of governments to set and enforce tough migration control policies (Hollifield, 1992; Cornelius, Martin, & Hollifield, 1994; Joppke, 1998; Gibney & Hansen, 2003).

Although these studies have gone a long way to deepen our understanding of the constraints on states’ capacity to regulate immigration, they all suffer from what could be described as the “denominator problem.” Because these studies set an unrealistically high threshold for effective migration control (Brubaker, 1994), state capacity (or, rather, the lack thereof) is viewed as a constant across the advanced industrialized world.

Not all migration scholars focus their analyses on universal constraints on the state. However, even scholars who have investigated specific institutional responses to immigration have largely ignored the role of the bureaucracy and the politics of implementation in shaping state capacity. For instance, Jeannette Money (1999) examines the electoral conditions under which public preferences for immigration control will translate into legislative reform. Equally focused on the legislative arena, Gary Freeman’s interest-based approach (1995, 2002) places the influence of organized interests – agricultural and business lobbies, and ethnic advocacy groups – at the center of the politics of immigration. Whereas Money and Freeman focus on the relationship between elected officials, the electorate, and interest groups, Christian Joppke (1998) studies the role of the courts in shaping states’ capacity for regulating immigration. Significantly, Joppke identifies cross-national variation in the power of judicial constraints: these have been considerable in the case of Germany, where migration control is exercised in a context marked by strong constitutional human rights protections and the institution of judicial review. Britain, in contrast, with its long tradition of parliamentary sovereignty and the absence of judicial review, has been much more successful in controlling immigration. These studies have provided us with a nuanced understanding of the political and judicial constraints facing legislators as they design policies of immigration control, and this book