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David Cook-Martín and David FitzGerald

Liberalism and the Limits of Inclusion: Race and Immigration Law in the Americas, 1850–2000 The relationship between classical political liberalism and racism poses distinct puzzles for different schools of scholarship. On the one hand, conventional accounts maintain that racism has been an aberration in politically liberal regimes. In the field of international migration, prominent analysts have argued that politically liberal regimes are inherently incompatible with legal discrimination based on race. Yet an examination of immigration and nationality laws throughout the Americas from 1850 to 2000 suggests that racial discrimination has been *more* common in liberal than in illiberal countries of immigration. Indeed, authoritarian regimes in countries like Cuba, Brazil, and Mexico reversed their discriminatory laws and pioneered the de-racialization of immigration and nationality as much as a generation before the United States and Canada. These empirical findings puzzle scholars who assume (1) the progressive extension of rights from white, land-owning men to their working-class subordinates, other ethnic groups, and women, and (2) the status of the United States and Canada as exemplars of liberalism.¹

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1 Francis Fukuyama, *The End of History and the Last Man* (New York, 1992); Gary P. Freeman, “Modes of Immigration Politics in Liberal Democratic States,” *International Migration Review*, XXIX (1995), 881–902; Duvon Clough Corbitt, *A Study of the Chinese in Cuba, 1847–*

On the other hand, critical theorists of race and the law argue that liberalism and legal categorical exclusions have been mutually constitutive. This camp tends to juxtapose the praxis of liberal regimes to their rhetoric ultimately to show how the praxis comes up short. However, few scholars in this vein have explored this process over the long run by studying cases that vary in their degree of institutional liberalism. From this perspective, the puzzle is how and why politically liberal countries moved away from laws with categorical exclusions, allowing countries like the United States and Canada to undergo massive ethnic transformation.

This article engages each of these puzzles. First, it argues that liberal states have had more racially based policies precisely because of their liberalism, examining the empirical relationship between political liberalism and racially exclusive citizenship and immigration laws in the Americas since the 1850s—which includes contexts of both liberalism and illiberalism. Second, it identifies four mechanisms through which patterns of policy spread in the Americas and qualifies the influential idea that the United States has been a major promoter of universal human rights, especially in Latin America. The United States may well have been a leading proponent of liberal democratic systems of governance, but the quintessential “nation of immigrants” has been a laggard in the international trend toward admission based on universal racial equality.²

Cuba is the primary case study. As the fifth-most important destination country in the hemisphere during the great transatlantic migration of the turn of the twentieth century, Cuba attracted populations from Europe, Asia, and the Caribbean. Moreover, the Cuban case reveals with particular clarity several distinct patterns through which legal models become diffused across borders.

LIBERALISM AND EXCLUSION As defined herein, *liberalism* signifies a principle of political organization that emphasizes equality and

1947 (Wilmore, Ky., 1971); Moisés González Navarro, *Los Extranjeros En México Y Los Mexicanos En El Extranjero, 1821–1970* (Mexico City, 1994); Thomas Humphrey Marshall, *Class, Citizenship, and Social Development Essays* (Garden City, 1964).

2 Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, 1991); Abraham F. Lowenthal, *Exporting Democracy: The United States and Latin America: Themes and Issues* (Baltimore, 1991); Tony Smith, *America's Mission: The United States and the Worldwide Struggle for Democracy in the Twentieth Century* (Princeton, 1994).

the rights of the individual. Racially exclusionary laws are the norms that control which ascriptive categories of people may enter and belong to particular nation-states. Liberal states have had more racialized policies partly *because of* their liberalism. In liberal regimes, policy formation is more open to a plurality of concerns—including workers advocating the protection of domestic labor markets from despised foreign competition and/or nativists clamoring for the enclosure of a treasured identity. Some forms of liberal ideology can also encourage racial discrimination by subscribing to the Aristotelian notion that only certain kinds of people have the right qualities to participate in democratic decision making. In autocratic contexts, policymaking is dominated by elites, who often perceive greater economic and demographic benefits from immigration than the general public does. Furthermore, political elites since World War II have been more easily able to adopt universalistic criteria for immigration and nationality, which they often perceive to be the trappings of a progressive modernity, even when popular sentiment against particular ethnoracial groups remains strong.³

The enduring importance of these theoretical insights in matters of policy makes it especially urgent to explain the racial, ethnic, and national-origin selection of potential migrants and citizens in historical and comparative perspective. Although most scholars contend that the international human-rights regime has made categorical exclusions unthinkable in contemporary liberal states, in practice, fears about Mexicans in the United States and Muslims in Europe continue to shape the politics of immigration and citizenship. Prominent politicians in many liberal-democratic countries are substituting a rhetoric of politically discredited biological racism with appeals to safeguard the nation from culturally “unassimilable” strangers. A genealogy of liberal legal exclusions reminds observers that anti-racism is hardly intrinsic to liberal

3 Some laws were written in strictly racial terms, categorizing potential entrants by phenotype and/or notions of immutable biological characteristics. Other laws were written in broader ethnic terms of ascriptive categorization in which biology per se did not necessarily constitute the grounds for making a group distinction. Most laws made exclusions based on nationality, though qualitative evidence shows that nationality was often a proxy for ethnicity broadly speaking and race in particular. For the restricted purposes of this paper, we consider race, ethnicity, and nationality as a group. Carol A. Horton, *Race and the Making of American Liberalism* (New York, 2005); James Foreman-Peck, “Political Economy of International Migration, 1815–1914,” *Manchester School of Economic & Social Studies*, LX (1992), 359–376.

ideology and that any liberal repertoire may well be capable of new idioms of exclusion.⁴

WHAT EXPLAINS THE LAW? Studies focusing on the national level have advanced several economic and cultural explanations of racial discrimination in immigration and nationality law. Tichenor and Calavita see immigration law as the outcome of struggles between shifting coalitions of capital, organized labor, and ethnic interest groups. Employers often endorse the immigration of foreigners and racial outsiders who might be willing to work for lower wages in worse conditions than natives would tolerate. For the same reason, native organized labor has generally opposed immigration, particularly that of Asians, Southern Europeans, and Latin Americans. Although Higham emphasizes that native workers' racism often conjoins with fears that competition with foreigners will drive down wages, labor economist Foreman-Peck maintains that labor-market conditions make racism irrelevant for determining immigration law in the United States and South Africa. In contrast to this economistic view, Brubaker and Smith insist that struggles over law are shaped by institutionalized, national ideologies of immigration, like the notion that the United States is "a nation of immigrants." Yet, all of these domestic perspectives fail to consider how national lawmaking is embedded in broader global processes and a world system of states that react to each other's examples.⁵

An alternative viewpoint locates the source of legal change outside any given state. For example, the U.S. exclusion of Chinese in 1882 was part of a broader racist movement among major countries of immigration by the 1920s. Since World War II, discrimination against particular racial or national-origin groups has

4 Freeman, "Modes of Immigration Politics"; Christian Joppke, *Selecting by Origin: Ethnic Migration in the Liberal State* (Cambridge, Mass., 2005). On the rhetoric of cultural assimilability, see Verena Stolcke, "Talking Culture: New Boundaries, New Rhetorics of Exclusion in Europe," *Current Anthropology*, XXXVI (1995), 1–24.

5 Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton, 2002); Kitty Calavita, *Immigrants at the Margins: Law, Race, and Exclusion in Southern Europe* (New York, 2005); John Higham, *Strangers in the Land: Patterns of American Nativism, 1860–1925* (New Brunswick, N.J., 1994); Foreman-Peck, "Political Economy of International Migration"; Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge, Mass., 1992); Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, 1997); Thomas Alexander Aleinikoff and Vincent Chetail, *Migration and International Legal Norms* (The Hague, 2003).

become internationally illegitimate. In the strongest version of the diffusionist argument, national laws are becoming irrelevant as the inexorable spread of liberalism confers rights on all people regardless of their national citizenship and limits the range of legitimate policy options for maintaining the borders of a nation-state.⁶

By contrast, this study takes a systemic approach that places such internal factors as shifting coalitions among interest groups in the context of broader global ideological currents and of any particular country's embeddedness in a system of bilateral and multilateral relationships. This analytical perspective allows us to identify the specific causal mechanisms through which legal change occurs.

CASE SELECTION Case selection is a pervasive problem with most existing research that aims to explain the influence of liberal ideology on immigration laws. The Millsian method of agreement that samples on the dependent variable by studying only liberal democracies (in Europe, North America, and Oceania) makes it difficult to determine the relationship between liberalism and the de-racialization of immigration laws. The influence of liberalism on the law can best be explained through comparisons among *illiberal and liberal* countries of immigration using the greater leverage of the Millsian method of difference.⁷

The broader study that informs this essay offers a systemic understanding of immigration and nationality laws throughout the twenty-two major nation-states in the Americas during the last 150 years, examining domestic explanations of laws as well as the international interactions of laws. By including both liberal and nonliberal states in the analysis, it avoids the circularity of arguments based exclusively on studies of liberal democracies and sets up the interesting sociological puzzle of why authoritarian regimes

6 Aristide R. Zolberg, "The Great Wall against China," in Jan Lucassen and Leo Lucassen (eds.), *Migration, Migration History, and History: New Perspectives* (New York, 1997), 111–121; Joppke, *Selecting by Origin*; Yasemin N. Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago, 1994).

7 For a review of the methodological debates about Mill's methods of agreement and difference, see Jukka Savolainen, "The Rationality of Drawing Big Conclusions Based on Small Samples: In Defense of Mill's Methods Social Forces," LXXII (1994), 1217–1224. In the method of agreement, a particular outcome in two or more instances is explained by reference to shared circumstances. In the method of difference, an outcome of interest happens in one instance and not in another, though both have circumstances in common except for one, which explains the outcome.

generally removed negative racial discrimination from their immigration laws twenty years before the United States did so in 1965. By examining periods of racialization *and* de-racialization, the study avoids the teleological view of history implicit in the literature about the global diffusion of liberalism and racial equality, as well as the critical theory that fails to recognize the real historical changes that have occurred.⁸

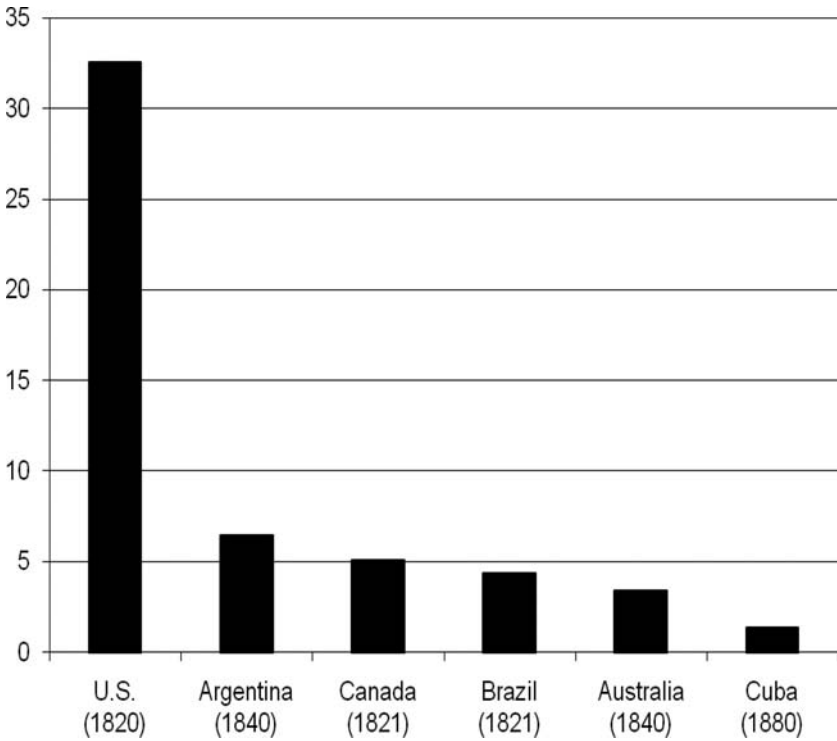
Another advantage of the broader project's case selection and systemic approach is the ability to identify different causal mechanisms in the spread of common immigration and citizenship laws. To the extent that foreign examples are causal factors, what are the diverse pathways of diffusion, and how do the differential power relations among the countries in our sample condition the modeling of laws? These are fundamental questions for students of law and society, globalization, and transnationalism. Studying a large set of related countries helps to uncover the extent to which foreign legal models shape national laws relative to domestic factors like labor-market conditions, institutionalized ideologies of immigration, and interest-group politics.⁹

From 1820 to 1932, the Americas were the destination of around 55 million Europeans (see Figure 1)—representing around 92 percent of those Europeans who migrated overseas—as well as 2.5 million Asians. The Americas have been the destination of roughly one-quarter of all international migrants since 1960. The United States is the most important of the destination countries because of its large immigration flows and its modeling of immigration laws, though on a per capita basis, immigration has often been much higher in other countries. Immigration to Latin America has fallen since the early 1930s, but spurts of large-scale and racially diverse migrations have continued to Argentina and Brazil. The case of Cuba is particularly revealing. As might be expected, Cuba's policies tracked closely with those of the hemispheric hegemon during the early twentieth century. However, Cuba re-

8 The twenty-two nation-states are Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay, and Venezuela.

9 John W. Meyer et al., "World Society and the Nation State," *American Journal of Sociology*, CIII (1997), 144–181. For issues of law and society, see Terence C. Halliday and Pavel Osinsky, "Globalization of Law," *Annual Review of Sociology*, XXXII (2006), 447–470; for transnationalism, Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (New York, 1996).

Fig. 1 The Top Six Destinations of Overseas European Migrants, 1820–1932 (in Millions)



SOURCE Constructed with data presented by José C. Moya, *Cousins and Strangers: Spanish Immigrants in Buenos Aires, 1850–1930* (Berkeley, 1998), 46.

moved its specifically racial policies twenty-two years before the United States did. The Cuban dynamic sheds light on a wide range of mechanisms that explain how legal norms become diffused, because it developed policies in close interaction with Spanish colonial policy, U.S. neocolonial policy, and broader Caribbean, Latin American, and liberal epistemic communities.¹⁰

METHODS This analysis employs both quantitative and qualitative research strategies to explain the racialization and de-racialization

¹⁰ Cook-Martín, “Making and Unmaking Nationals: 150 Years of Migration between Argentina, Italy, and Spain,” unpub. Ph.D. diss. (Univ. of California, Los Angeles, 2005).

of immigration and citizenship laws. We have collected the legislation governing immigration and citizenship from 1850 to 2000 in the twenty-two countries of the hemisphere that have been independent since at least 1945. Excluded are the fourteen microstates of the Caribbean Basin that gained independence since 1945, because they have not held sovereignty for most of the study's period. The documents have been used to construct a database measuring the extent to which race, ethnicity, and national origin were criteria for selection or eligibility for every country in every year since 1850, or the first year when a country set its own laws.

Discrimination can be *negative* (for example, the ban on Chinese in the United States) or *positive* (the preference for Spaniards in Cuba). Conceptually, the distinction between negative and positive discrimination is not absolute—where two groups compete for admission, a positive preference for one group implies indirect discrimination against another—but the distinction remains empirically and theoretically relevant. Negative discrimination has disappeared in liberal states, whereas positive discrimination remains common. Moreover, immigration and nationality laws are sometimes intertwined. From 1924 to 1952, the United States refused entry to aliens deemed ineligible for naturalization. Other countries, however, recruited Chinese migrants expressly to perform labor considered too menial for their own citizens. Consequently, discrimination in immigration and citizenship laws is determined separately herein, according to four scaled variables for which the unit is the country-year. For each country-year, these variables measure levels of positive and negative discrimination in immigration law and levels of positive and negative discrimination in citizenship law, as applied to nineteen mutually exclusive and exhaustive national-origin categories, as well as a category for unspecified “assimilable groups.”¹¹

The levels of discrimination for or against each category run the gamut from outright ban to entry, differential treatment (say, selective “head taxes”), or subsidized passage for particular groups. The “polity” variable from the Polity IV dataset is used to gauge the type and extent of regime. This indicator, which is derived by subtracting measures for autocracy from measures for institutional-

11 Joppke, *Selecting by Origin*; Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, 2004).

ized democracy in each country-year, ranges from full autocracy (-10) to full democracy ($+10$). The more liberal or democratic a country is, the more likely it is to have “institutions and procedures through which citizens can express effective preferences about alternative policies and leaders,” institutionalized constraints on executive power, and civil liberties for all of its citizens. The more autocratic a political regime is, the more likely it is to have restrictions on competitive political participation, executives chosen predominantly from elite political cadres, and political power exercised with few institutional constraints.¹²

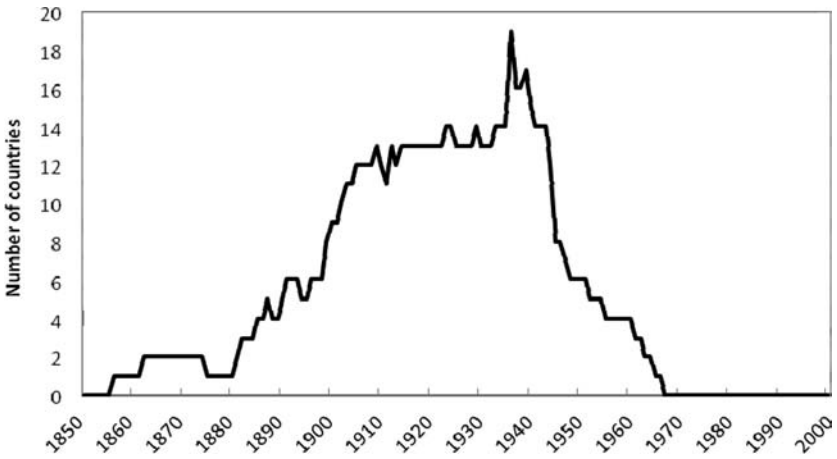
The five major countries of immigration in the Americas that serve as the qualitative case studies for the larger study are the United States, Canada, Argentina, Brazil, and Cuba; Mexico represents the negative case, a country that failed to attract mass immigration. The highlighted discussion of Cuba, based on archival research in the files of the executive branch conducted at the *Archivo Nacional* in Havana, involves analyses of law and seminal congressional debates.

THE RISE AND FALL OF RACIAL POLICY Preliminary findings of this ongoing study confirm the value of its case selection and systemic approach. The late 1930s was the heyday of discrimination against national-origin groups. Figure 2 shows that during this period at least nineteen of the twenty-two countries in the sample discriminated against Chinese immigrants. Figure 3 demonstrates that discrimination against people of African origin or Black immigrants, though slightly less common in thirteen of the twenty-two countries in the sample, peaked at the same time. Chinese, Blacks, and Gypsies appear to have been the three groups against which most of the widespread prejudice was enacted. Even in Mexico, the Chinese and Black populations, two extremely small minorities there, were often the foils against which the boundaries of the nation were drawn.

Among the most striking findings of the study is the long delay in Canada and the United States to remove negative discriminations, particularly in immigration law (1962 and 1965, respectively). Many of the Latin American countries removed their

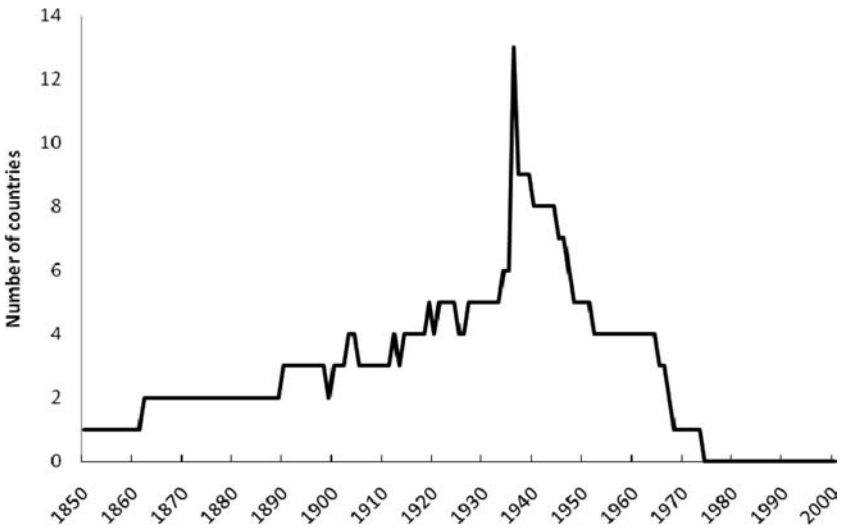
12 Monty G. Marshall and Keith Jagers, “Polity IV Project: Political Regime Characteristics and Transitions, 1800–2007,” in *Dataset Users’ Manual* (George Mason Univ., 2009).

Fig. 2 Number of Countries in the Americas with Negative Discrimination Provisions against Chinese Immigration, 1850–2000



SOURCE Preliminary coding of RICA database, on file with authors.

Fig. 3 Number of Countries in the Americas with Negative Discrimination Provisions against African or Black Immigration, 1850–2000



SOURCE Preliminary coding of RICA database, on file with authors.

negative immigration restrictions shortly after World War II (see discussion of the Cuban case below). The disjuncture between the formal, political liberalism of Canada and the United States (as measured by the Polity IV data) and their enduring levels of racism, in contrast to the de-racialization of a largely illiberal set of Latin American countries, tends to confirm the hypothesis that liberal democracy is not only compatible with racist exclusions but is actually supportive of them.

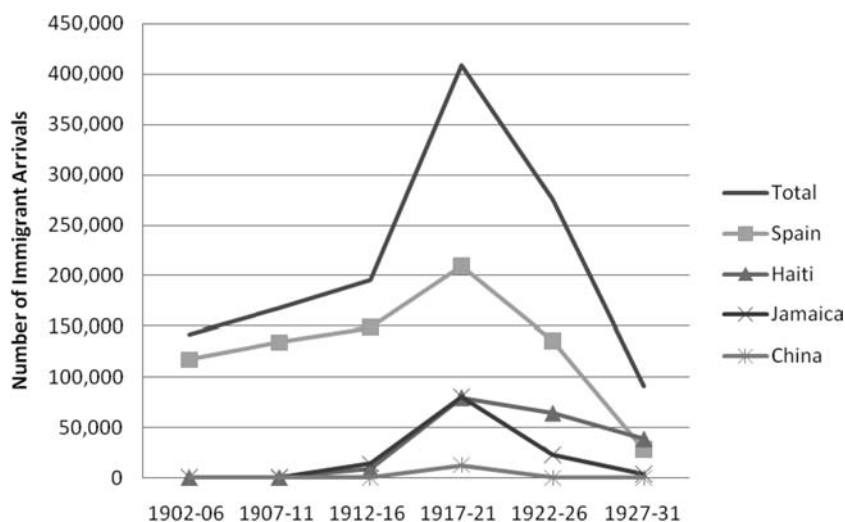
The Latin American lifting of negative immigration restrictions shortly after World War II happened just as their polity scores begin to reflect closed governance institutions and few constraints on decision makers. Cuba has polity scores of 3 from 1902 to 1917, during its early years of independence, dropping to -9 in 1955 under the regime of Fulgencio Batista, which eliminated the last negative discriminations. Far from imposing negative exclusions, Latin America's autocratic regimes permitted substantial migrations of Jews and other supposedly unwelcome Central and Eastern Europeans between the two world wars. Argentina, an interesting outlier, never instituted discriminatory policies against particular foreign groups but always showed a positive preference for European immigrants, as evident in its constitution of 1853, which is still in effect.

THE CUBAN CASE Cuba was the last of Spain's colonies in the New World. Its immigration policy remained under Spanish control until the Spanish American War of 1898. The challenge as perceived by colonial Spain and its Cuban elites was to attract enough African slave labor for the sugar plantations and other menial work and to "whiten" the population of non-slaves mainly by attracting Spanish settlers and preventing the immigration of free blacks. With the demise of the Atlantic slave trade and the rolling end of Cuban slavery from 1880 to 1886, Cuba turned to China for an alternative labor force, importing 125,000 Chinese indentured servants. Havana's Chinatown grew to be the largest in Latin America.¹³

After the Spanish-American War, the new American occupa-

13 "Instrucción Reglamentaria de las formalidades para la llegada, circulación, y salida de gentes en esta Isla," Impr. del Gobierno y Capitanía General, Havana, 1849; Margalit Bejarano, "La inmigración a Cuba y la política migratoria de los EE.UU. (1903-1933)," *Estudios Interdisciplinarios de América Latina y el Caribe*, IV (1993), 1-14.

Fig. 4 Immigration to Cuba from Selected Countries, 1902–1931



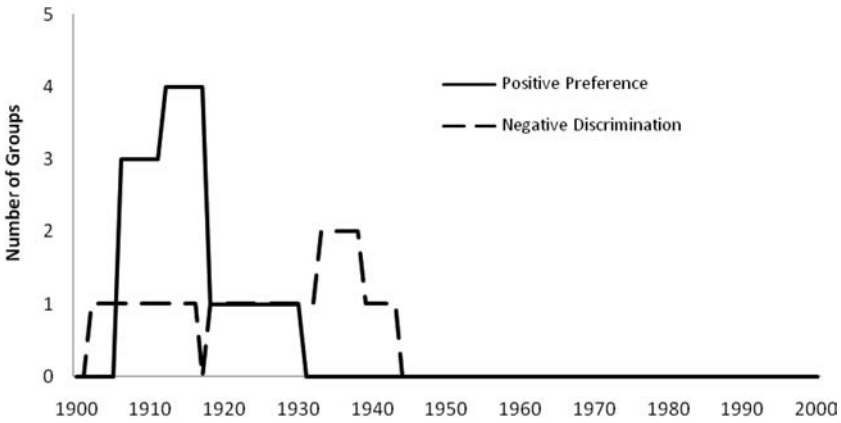
SOURCE Cuban immigration data on file with authors.

tion government applied U.S. immigration law to Cuba. In Order No. 155 (May 15, 1902), Military Governor Leonard Wood published a compilation of immigration regulations, including a ban on the entry of Chinese labor migrants and contracted workers. Cuba gained nominal independence from the United States later that year, although the United States re-occupied the island between 1906 and 1908 and continued to intervene in a quasi-colonial capacity during much of the prerevolutionary period (before 1959).¹⁴

The Law of Immigration and Colonization (1906) enacted by the Cuban congress before the United States re-occupied the island contained a positive preference for permanent migration by families from Europe and the Canary Islands, as well as for temporary laborers from Norway, Denmark, Sweden, and Northern Italy under the peculiar logic that “the inhabitants of these countries more readily adapt themselves to the climate of Cuba and they more readily familiarize themselves with the work of Cuban agriculture.” When practically no Scandinavians came to work the

14 *Colección Legislativa de la Isla de Cuba, 1899* (Havana, 1900); *Gaceta de la Habana*, Circular Order No. 13, May 15, 1902.

Fig. 5 Number of Specific Ethnic Groups Discriminated against or Preferred in Cuban Immigration Law, 1900–2000



SOURCE RICA database, on file with authors.

sugar-cane harvest, the authorities turned to other migrants who were building the Panama Canal in 1911 and heavily recruited from the other islands of the Antilles in 1913 and from China during World War I. From 1928 through the 1930s, however, thousands of Antilleans were expelled during a nativist backlash, which found further expression in the 1930 requirement that immigrants read and write Spanish and a 1933 law that at least 50 percent of all business employees be native Cubans. In 1942, Cuba and China signed a friendship treaty that ended the restrictions on Chinese migration to Cuba that had waxed and waned since 1902.¹⁵

By World War II, Cuba had removed all of its negative and positive immigration preferences. Interestingly, the revolutionary government passed a 1960 migration law (eventually abrogated in 1976) with the intent to “avoid the entrance into the national territory of foreigners that are difficult to assimilate or which constitute minority groups in our society because of their culture and

15 Secretaría de la Presidencia, 121:82, March 13, 1908, letter from the Chief Inspector in the Cuban Office of the Census to the Provisional Governor of Cuba regarding the need to create an office “to encourage the immigration of laborers,” Archivo Nacional de la República de Cuba (hereinafter ARNAC); *Gaceta Oficial*, January 14, 1913. For the treaty of 1942, see Corbitt, “Chinese Immigrants in Cuba,” *Far Eastern Survey*, XIII (1944), 132. Ministerio del Estado, 290:4070, January 16, 1945, ARNAC.

traditions.” This legislation is particularly odd, given the general trend toward ethnic universalism at this juncture. Because the revolutionary regime emphasized, in both word and deed, anti-racism and the equality of Afro-Cubans to a much larger degree than had previous Cuban governments, Cuba’s negative discrimination against “unassimilable” foreigners is difficult to interpret as an uptick in general racist sentiment. The lack of access to revolutionary archival materials recommends caution in drawing conclusions, but this law may have been indirectly targeted against “middleman minorities” at a time when fears of socialism were prompting a massive emigration of Chinese and Spanish capitalists denounced as counter-revolutionaries.¹⁶

The law also appears to be consistent with a broader movement among other Latin American countries, like Mexico, that abolished certain racist restrictions around World War II but retained either injunctions against “unassimilable” foreigners or blandishments for the “assimilable.” The notion of assimilability in this context suggests cultural rather than biological characteristics. Indeed, throughout the contemporary liberal world, the legitimacy of exclusion on grounds of “problematical” assimilation remains the subject of open public debate in a way that biologically racist policies are not.

MECHANISMS OF DIFFUSION To explain the similarities between Cuban immigration laws and those of other countries, we identify four separate mechanisms in the Cuban case that are also found in many of the twenty-one other cases in our larger study.

Parallel Development Sometimes laws appear in different locations around the world simply by parallel development. Even when authorities in different countries do not consciously model their policies on each other, their laws, as well as their intentions, can be similar; political elites develop typical responses to the same types of challenges. This phenomenon is evident in the Caribbean,

16 Wartime restriction on aliens from the Axis powers continued at least through 1950 (Decreto 2477 of August 16, 1950). Apart from the racial and ethnic logic discussed herein, this restriction was common throughout the world. Ley 698, January 22, 1960; Ley 1312, “Ley de Migración,” September 20, 1976; Alejandro De La Fuente, *A Nation for All: Race, Inequality, and Politics in Twentieth-Century Cuba* (Chapel Hill, 2001). When the demand for entry into Cuba dried up, the revolutionary government embarked on a program of extreme self-sufficiency, relying on the “voluntary” labor of urbanites to supplement sugar-cane harvesting crews rather than importing workers from abroad.

where many countries resorted to indentured servants from China or India to replace Black slaves after abolition in the nineteenth century. During World War I, Cuba's role as a major supplier of sugar for the United States and its allies created a demand for labor similar to that faced by other producers of raw materials in the hemisphere. Cuba adjusted its immigration policy and temporarily allowed the entry of Chinese workers.¹⁷

Coercion The most direct form of diffusion was the U.S. military government's forced imposition of U.S. immigration policy. With the stroke of Wood's pen, U.S. exclusion of Chinese laborers became Cuban exclusion of Chinese laborers. The United States also applied indirect coercion. Given its subservient relationship with the United States, Cuba feared that the United States would retaliate if its immigration law upset Washington. Cuba's rationale for not contravening U.S. law is clear in a 1909 letter from the Cuban Director of the Quarantine in the Department of Immigration to the Cuban Secretary of Treasury: "Cuba, given its situation and commercial and political relations with the United States, should ensure that its laws are, as far as it is possible, the same as U.S. laws. Civil Order #155 of 1902, imposed in Cuba by the intervening government, which was intended to copy the U.S. law excluding Chinese from that country, is an indication that we should not try to do anything in vain. Moreover, if the ports of Cuba were opened to Chinese immigration and the Chinese used the island as a way-station to land on the American coast illegally, the United States would adopt the defensive measures against Cuba that it considered appropriate." The direct and indirect U.S. coercion in Cuba regarding immigration reflects the changing intensity of U.S. intervention in Cuban affairs generally during the first decades of the twentieth century.¹⁸

Reciprocal Adjustment Policymakers often design their policies as a rational, calculated response to the strategic environment, as the Cubans did in their formal end of Chinese exclusion. Although Cuba was peripheral to World War II, it was one of the Allies along with China, Canada, the United States, and most of

17 Randall Hansen, "A European Citizenship or a Europe of Citizens? Third Country Nationals in the EU," *Journal of Ethnic and Migration Studies*, XXIV (1998), 751-769; *Gaceta Oficial*, January 4, 1917.

18 *Gaceta de la Habana*, May 15, 1902; Secretaría de la Presidencia, 121:83, September 1, 1909, 15, ARNAC.

the rest of the countries in the Americas. Japanese propagandists played up the fact that many of China's erstwhile allies had racist immigration policies excluding Chinese. To counter these charges, Allied countries eased their restrictions on the Chinese, at least symbolically, as a response to the changed geopolitical environment. Indeed, Cuba was one of the first countries to eradicate formal restrictions against Chinese immigrants in a bilateral treaty of November 1942. Indirect coercion played a part in this episode as well, however, since Cuba could hardly have avoided joining the Allies' policy given its geopolitical position in the U.S. sphere of influence.

Cultural Emulation Unlike the rational-choice mechanism of reciprocal adjustment, certain policies are mainly cultural in origin, based on norms established elsewhere. In one version of how a "world polity" develops, as described by Meyer and his associates, policymakers create legislation that reflects what "modern," "civilized" countries are supposed to do. Sometimes they deliberately tap foreign practices. For example, a 1930 report from Cuba's secretariat of the treasury synthesized the laws of ten other Latin American countries in a study of proposed reform to Cuba's immigration law. Within the Latin American "epistemic community," Argentina was considered an exemplar. As the report put it, Argentina "marches at the head of the peoples that favor the immigrant, which has been the primary cause of their current status as a rich and prosperous nation."¹⁹

A series of conferences constituted the organizational backbone of Latin America's epistemic community. Cuba was a participant in several of the Pan American Union conferences, and it hosted a full meeting in 1928—the Second International Conference of Emigration and Immigration—and a ministers' meeting in 1940. One of the hot topics was how to determine criteria for selecting immigrants. Cuban policymakers were also active at the Pan-American Conference on Eugenics and Homiculture of the American Republics held in Cuba (1927) and Buenos (1934), in which immigration sparked a critical debate. In many of these instances, participants came away with specific recommendations for policy implementation.²⁰

19 Secretaría de la Presidencia, 48:42, March 7, 1930, ARNAC.

20 Nancy Leys Stepan, "*The Hour of Eugenics*": *Race, Gender and Nation in Latin America* (Ithaca, 1991); *Actas de la primera conferencia panamericana de eugenesia y homicultura de*

One of the methodological difficulties faced by researchers engaged in an archaeology of policymaking is gaining access to what Scott calls “the hidden transcripts” that reveal how decisions are made behind closed doors. This task is especially difficult when the goal is to understand the norms and cognitive schemas in policymaking that are not often formally articulated. An internal government report from 1938, however, offers unusual insights into how Cuba wrestled with European cultural norms of antisemitism when forming its policy toward Jews fleeing Europe. In a private memorandum, the Director of Citizenship and Migration wrote to the Secretariat of the Presidency, “Among almost all European peoples there is a traditional antipathy towards Jews, a sentiment that we Americans [in the broad, hemispheric sense] share without apparent reason, . . . imitating [Europeans] . . . as wiser and more spiritual than we are, simply because they are older, more powerful, and richer.” This self-conscious observation about the influence of ideology on policymaking suggests that the rational-choice accounts of the realist school of international relations are inadequate to the task of fully explaining the course of the law.²¹

Cuban immigration policy was not simply a reaction to foreign models and pressures. Large landowners, merchants, eugenicist groups, and worker’s associations had their say in it. This article, however, opens the black box of “diffusion” to explicate Cuban law by attending to its external influences. A set of sometimes overlapping but heuristically distinct mechanisms operated at different policy turns, ranging from parallel development, calculated reciprocal adjustment, emulation of cultural norms within a broader epistemic community, and direct or indirect coercion.

The place of putatively liberal countries like the United States in the coercive and cultural-emulative aspects of immigration law were particularly important in the diffusion of racist laws directed against particular national-origin groups. In Cuba, as in almost all other countries in the hemisphere, the Chinese were the principal

las repúblicas americanas, December 21–23, 1927, Havana; Actas de la segunda conferencia panamericana de eugenesia y homicultura de las repúblicas americanas, November 23–25, 1934, Buenos Aires. We are in the process of linking interventions and recommendations at these conferences with policy changes in participating countries.

21 James Scott, *Seeing like a State: How Certain Schemes to Improve The Human Condition Have Failed* (New Haven, 1998); Secretaría de la Presidencia 121:79, October 26, 1938, ARNAC.

target of discrimination. The received wisdom in the literature is that the spread of liberal democracy throughout the world, propelled by such paragons of liberty as the United States, marked the end of overt discrimination against national-origin, ethnic, or racial groups. Yet, if liberalism is incompatible with racism, why were the United States and Canada leaders in the spread of racially oriented policy restrictions in the Americas during the early twentieth century? Why did authoritarian Latin American regimes like Cuba under Batista remove negative racial discrimination from their immigration laws well before the liberal democracies of the United States and Canada did?

A long view that encompasses a broad set of countries with both liberal and illiberal characteristics results in a far different picture of both the empirical facts concerning discrimination and the causes driving them. Liberal states have been the leaders in racist policy formation, and laggards in de-racialization, precisely because of their liberalism. The democratic inclusion of many voices in the policymaking process was certainly no guarantee that universalist immigration criteria would prevail. On the contrary, internal gains in worker equity, for instance, have gone hand in hand with the exclusion of potential foreign competitors. Particularistic policies may also be informed by an ideology that warrants full participation in a democratic polity only for those people with the right qualities. The institutionalization of exclusionary policies can be difficult to reverse without significant pressure from the outside. In political contexts with a relatively narrow range of voices—like Cuba’s—political elites often stand to benefit directly from immigration and from universalist policies that confer a mantle of progressive modernity.

The sudden collapse of negative racial discrimination in immigration law around World War II suggests that global factors were the primary drivers of de-racialization—particularly, the global reaction against Nazism and its genocidal form of racism and the anticolonialist movement for sovereignty among people of mostly non-European origin. The end of the national quota system in the United States in 1965, attributed to the U.S. Civil Rights movement, again shows the United States as an outlier, this time for the extent to which domestic minority politics played a role in driving policy. Most other countries in the Americas had already lifted their restrictions on groups that bore little demo-

graphical weight relative to the rest of the population, especially in the case of Chinese immigrants. Joppke's view that domestic, rather than international, politics was the primary cause of deracialization cannot be applied to a wide range of cases. It is a product of a narrow case selection focusing on liberal countries like the United States and Australia rather than the much broader set of liberal and illiberal cases considered herein.²²

The global diffusion of antiracist sentiment has made overt discrimination widely unpopular (although political entrepreneurs like Patrick Buchanan continue to test the limits of legitimate political discourse by promoting European immigration over Mexican immigration). Such antiracist ideology is not inherently liberal, however. Although on the surface, there is an elective affinity between a refusal to discriminate by such ascriptive factors as skin color and a liberal politics emphasizing individual rights, the historical record shows that these two orientations have converged or diverged according to circumstance. The fact that liberalism and anti-racism have no inherent, enduring relationship should give pause to those who assume that overt discrimination based on race, national origin, or ethnicity have been permanently eliminated.

22 Joppke, *Selecting by Origin*.