

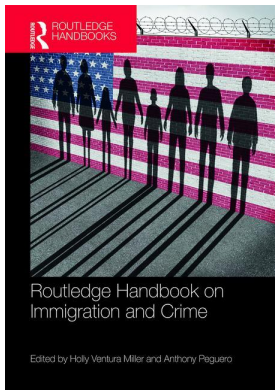
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TWO DECADES OF CONSTRUCTING IMMIGRANTS AS CRIMINALS

*Cecilia Menjívar, Andrea Gómez Cervantes and
Daniel Alvord*

The United States has a long history of constructing newer arrivals to its shores in negative ways, usually as threats to a perceived national identity and unity, as potential burdens to the nation's coffers, or as criminals and therefore as dangerous to communities. Indeed, such sentiment has been at the core of nation building itself. The first laws dealing with citizenship (passed in 1790 and 1798) and defining who would belong (and why) were designed to admit only deserving and desirable individuals—"free whites"—who could show "good moral character" and thus could be members of the new polity and society and not pose a danger to the young nation. The Alien and Sedition Acts of 1798, which expanded the residency requirement for citizenship, provided for the deportation of "dangerous aliens." And Benjamin Franklin, famously outspoken about his distrust of German immigrants, strongly influenced attitudes and laws about immigrants and those perceived as foreigners (and with suspicion). From the country's inception, therefore, in various forms and incarnations, there has been a fear of the foreigner, or "xenophobia," and a sense of threat associated with newcomers. These attitudes often have guided policy and shaped public attitudes toward the newest arrivals.

Over time, the immigrant groups have changed and the specific expressions of fear and a sense of threat have varied but the fundamental sentiment about immigrant newcomers has remained. Irish immigrants were stereotyped as bringing vice and crime and to be backward and impoverished. Italians were constructed as prone to violence and crime or as Mafiosi. And even though Chinese immigrants were initially welcome, as their numbers went up they were increasingly met with hostility, especially by miners on the West Coast. Asian immigrants were depicted as foreigners through images of "coolies" and "gooks" (Lee, 1999). What these constructions have in common is that they fed hostility toward these immigrants, led to the formation of nativist organizations, and created demands to limit immigration, which resulted in legislation that restricted these various flows.

At the outset we note that not all constructions of immigrants are negative, as there have been immigrant groups who have been constructed positively and sometimes the same immigrant group's social construction has changed with time. For instance, Haines and Rosenblum (2009) observe that asylum seekers are portrayed positively, and Patler and Gonzales (2015) note that immigration and immigrants receive positive media coverage when there are student-initiated campaigns against enforcement and deportation. What these positive portrayals have in common, however, is that they underscore ideals of deservingness, meaning that those immigrants who are unable to meet the

narrow criteria for deservingness will end up excluded and likely portrayed in a negative light (Menjívar & Lakhani, 2016; Patler & Gonzales, 2015).

In this chapter, we deal with the latest manifestation of hostile attitudes toward immigrants, as these are more common than positive portrayals. In locating our examination within this brief historical account, however, we do not imply that contemporary trends in the criminalization of immigrants, specifically Latino immigrants, are simply one more instance in this long history, and that today's immigrants will follow the path of those groups who as recent arrivals were excluded but later became constructed in more positive ways. With this brief historical reminder of how immigrants have been treated, we only seek to situate our examination broadly so as not to lose sight of how such attitudes and constructions—because they are constructions—have been part of nation building but also how they have changed over time. At the same time, and perhaps more importantly, we also seek to highlight what is new today about the construction of immigrants as criminals and how these constructions can imprint the lives of immigrants and their descendants, with immediate and long-term consequences.

There are at least two fundamental differences between how immigrants of the past and those today have been constructed as criminals. First, the legal regime that immigrants face today is qualitatively and quantitatively different from that which immigrants faced in the past. The plethora of federal (and state) laws that criminalize immigrants today reach far and wide into the lives of the immigrants, their past histories, and their future prospects. As such, there is no historical parallel or precedent in legislative efforts to curb the immigration of some groups. Certain laws that sought to lessen or stop the immigration of groups based on race, such as the Chinese Exclusion Act of 1892 and then the Gentlemen's Agreement Act of 1906, excluded these groups and had profound consequences for them. However, today we have a panoply of laws (not just one directed at one group at a time) that create a multi-layered system composed of federal, state, and local-level laws (Menjívar, 2014) that exclude not overtly on the basis of race but on the presumed criminal behavior that certain immigrants bring. At the same time, these laws have converted a wide range of behaviors into criminal offenses. Furthermore, laws that criminalize immigrants are intricately related to broader processes in the criminalization of vulnerable populations and to the generalized punitive turn in the criminal justice system. Aided by a formidable network of technologies of state control, interconnected databases designed to combat crime, sophisticated surveillance techniques, and seemingly endless resources allocated to combat crime and the threat of terrorism, laws today that permit the construction of immigrants as criminals represent a major departure from the exclusion through law of immigrants in the past.

Second, technology has not only transformed how the state exerts control over its population and its strategies to criminalize immigrants but technology also has impacted how images of immigrants as criminals are disseminated and consumed by the public. The media broadcast instantaneously and regularly images of immigrants committing crimes, usually reporting on one case, often using alarmist language. However, more often than actual crimes, the media signal newcomer immigrants as *potentially* committing crimes and thus as a danger that can be contained if immigration laws were stricter or if they were applied more forcefully. This is how the laws that criminalize immigrants today work hand in hand with media images that construct immigrants as dangerous (Menjívar, 2016), a confluence facilitated by impressive technological advances that did not exist in previous historical moments of heightened anti-immigrant sentiment.

In this chapter, we focus on these twin aspects of the construction of immigrants as criminals today. First, we present a set of laws, starting with the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (H.R. 3610; Pub. L. 104-208; 110 Stat. 3009-546, 104th Congress, September 30th, 1996), a complex piece of legislation signed into law by President Clinton, which formally expands the criminalization of immigrants in multiple ways. And second, we examine the media portrayals that solidify these images of criminal immigrants.¹ These two processes, in

tandem, exert a powerful effect on how immigrants, particularly Latinos, are constructed as criminals, what constructions the public consumes, and the basis for their attitudes and views toward immigrants (Menjívar, 2016). As Estrada, Ebert, and Lore (2016) observe, the consequences of what legislators do about immigration depend on how the media disseminate such legislative actions to the public. This examination ultimately shows that, as W. I. Thomas observed, if situations are defined as real, they have real consequences. Constructions of immigrants as criminals have real consequences for them, their families, and communities.

Social Constructionist Theory

To aid us in our examination, we turn to the theoretical approach of social constructionism, first introduced by Berger and Luckmann (1966), who argued that the creation of knowledge is rooted in social interactions between people through common language and shared meanings in particular social contexts. Thus, it is through mechanisms of social encounters between people that understandings of the world are developed, and not through individualized, isolated ideas. And according to Berger and Luckmann (1966), interactions between people are moderated through language, that is, language helps individuals attach common meanings to other people, events, places, or social situations. Thus, language—arising from interactions among two or more people—is the motor of social interaction and creation of knowledge. The historical context, and therefore political, economic, social, and cultural environments are important for the creation of knowledge. As Berger and Luckmann (1966) argue, reality is only viewed as such in a given social context; thus, it is subject to change according to historical time and context. As a result, in order to maintain the given reality, forms of legitimation and justification are created. Again, language serves as a vehicle to maintain legitimation and the creation of logic to maintain the social reality. These points help us capture the legal and media constructions of immigrants particularly well.

Laws, media discourses, and public opinion all serve as sources of legitimation and justification for the social construction of knowledge, and the language that is used is particularly important in framing our perceptions of reality. We argue that social institutions of law, government, the media, and public perceptions act in conjunction and interplay to shape the social construction of immigrants as criminals. These institutions rely on language that associates crime, criminality, terrorism, danger, and threat to describe immigrants, especially Latinos (Kil, 2006). As a result, these immigrants are treated as criminals, yet in recursive fashion, their treatment is justified and legitimated by the dominant discourse as law naturalizes such treatment (see Menjívar & Abrego, 2012). Below we explore the mechanisms behind the social constructions that sustain criminalization of immigrants through law, media, and public opinion institutions.

Criminalizing Immigrants through Law

While criminal law aims to address harm and violence in society, immigration law regulates who comes into the country and how many immigrants are allowed and for how long, both laws regulate relationships between the state and individuals and create insiders and outsiders in society (Ngai, 2004; Stumpf, 2006). Informed by the precepts of neoliberalism, anti-foreigner hysteria, and a troubled economy, in the past two decades, immigration and criminal law have converged into what some scholars call “cimmigration” (Inda & Dowling, 2013; Stumpf, 2006). The term “cimmigration” itself has been useful in calling attention to this confluence. However, as Melossi (2015) observes, the use of this term can naturalize this confluence and as such serves to unquestioningly associate immigrants with criminals. And it is this convergence of criminal and immigration law that has contributed to the creation of the “criminal alien,” affirming the association of immigrants to crime. We should note also that even though the turning of individuals into criminals may be more evident for

immigration, this does not take place only among immigrants; it is part of a broader move to criminalize the behavior of vulnerable populations. Through the criminal-immigration law convergence, enforcement processes and prosecution proceedings have aligned (Stumpf, 2006), with direct effects on immigrants and non-immigrants alike, shaping group positions and dispositions, social relations, and individuals' everyday lives.

Two major immigration laws changed the relationship between immigrant and criminal laws: The Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the IIRIRA, both signed in 1996. It should be noted that these laws were already in place *before* the increase in the number of undocumented immigrants in the United States.² Indeed, according to Massey, Durand, and Malone (2002), it was the turn to militarized border enforcement that created the conditions for the increase in the number of undocumented immigrants in the country, as they could no longer engage in circular migration. Thus, undocumented immigrants stayed put rather than risk a more dangerous and costly re-entry. This increase in the undocumented numbers in the country also led to a dispersal of this population to new destination points, so that they started to settle in regions of the country that had not seen much immigration before. Furthermore, the laws that cemented the criminalization of immigrants were in place before the attacks of 9/11 (Menjívar & Kanstroom, 2014). Thus, associations between images of crime and terror with immigrants (and especially surrounding the border) were well underway *before* any of the events that have been constructed as triggering such laws occurred. Noteworthy, the criminalization of immigrants started in earnest with the expansion of the prison system and the punitive turn to managing the lives of vulnerable individuals more generally.

Beginning with the Immigration Reform and Control Act of 1986, every immigration legislation passed has increased the range of crimes that can trigger a deportation, connecting immigration (civil) offenses to “aggravated felonies” (criminal offenses) (Menjívar & Kanstroom, 2014). The 1988 Anti-Drug Abuse Act created the category of “aggravated felony” as a new ground for deportation. This was initially limited to serious crimes such as murder or drug and weapon trafficking. Today, “aggravated felony” for immigrants includes over 20 categories of offenses, many of which are not considered felonies for citizens (Provine, 2015) and can range from serious offenses including rape and murder to driving under the influence and shoplifting (Kennedy, 2007). Noteworthy, the expansion of the crimes for which immigrants can be deported applies to lawful permanent residents (“green card” holders) and it is retroactive. Thus, even when “green card” holders committed a crime for which they were sentenced to a year or longer in prison in their youth and already served a sentence, by reclassifying those crimes as deportable offenses, the law has turned lawful permanent residents deportable today. Indeed, AEDPA made mandatory the deportation of lawful permanent residents convicted of an aggravated felony.

In 2009, the U.S. Supreme Court ruled that the use of false documents constituted “aggravated identity theft” that carries a mandatory two-year prison sentence if the person *knowingly* uses another person's identification. This federal statute has been used to charge with “aggravated identity theft” the immigrant workers who borrow someone else's documents to work, as in the case of the (mostly) Guatemalan workers in Postville, Iowa (Camayd-Freixas, 2009). Thus, the civil violation of using someone else's social security to work has been elevated to a felonious crime with grave consequences for undocumented immigrants charged with this violation (Menjívar & Enchautegui, 2015).³ A felony is not only a deportable offense but will bar deported individuals from re-entering the country legally for up to ten years.

One of the most effective ways to make criminals out of immigrants is the category of “unlawful re-entry.”⁴ If an immigrant is deported and re-enters the country, this re-entry is categorized as a federal crime and counts as a criminal offense—a felony. Whereas unlawful entry is categorized as a misdemeanor, re-entering the country (after a deportation) is now categorized as a felony. This switch has resulted in a dramatic increase in the alleged criminal offenses committed by immigrants, especially when individuals engaging in circular migration were used to re-entering the country.

Indeed, such “unlawful re-entries” comprise a significant proportion of the crimes that immigrants supposedly commit. A recent analysis (Light, Lopez, & Gonzalez-Barrera, 2014) shows that between 1992 and 2012, unlawful re-entry convictions accounted for 48% of the growth in the total number of offenders sentenced in federal courts, increasing 28 times during this time period. But not all immigrant groups living in illegality experience this enforcement practice in the same way, as Latinos are overwhelmingly represented in this category. For instance, whereas in 1992, Latinos comprised 23% of offenders charged with unlawful re-entry, in 2012, they made up 48% of these offenses.

Furthermore, changes contained in IIRIRA have significantly increased the likelihood that immigrants will come into contact with law enforcement, as these changes have expanded the policing of immigrants in the interior of the country (Kanstroom, 2007). These include multiple initiatives under the broad umbrella of Immigration and Customs Enforcement’s (ICE’s) Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) (Menjívar & Kanstroom, 2014). A well-known one was Section 287(g) of IIRIRA 1996, which gave local law agencies the power to enforce immigration law (Hochschild, Weaver, & Burch, 2012; Menjívar & Kanstroom, 2014). Even though legislation was in place and efforts were under way since 1996, most local participation began after 9/11; thus, the funding of such operations increased from \$5 million in 2002 to \$68 million in 2006 (Menjívar & Kanstroom, 2014, pp. 18–19). Programs made possible by 287(g) were replaced by the Secure Communities program in 2008, mandatory in every state (not voluntary, like 287(g)), a more comprehensive strategy to linking local and federal law enforcement agencies through shared databases to help immigration agencies surveil and detain immigrants (Menjívar & Kanstroom, 2014), strategies accomplished through “ICE detainers.”⁵ As explained in the Secure Communities Memorandum of Agreement, the document that individual local criminal justice agencies sign in accordance to implement immigration enforcement in their communities, ICE is supposed to aim to deport immigrants convicted of serious crimes (ICE, n.d.). However, data show that the majority of immigrants detained or deported are convicted of relatively minor acts, such as traffic or immigration (civil) offenses (Transactional Records Access Clearinghouse, 2014).

In June of 2015, the Secure Communities Program was replaced by the Priority Enforcement Program (PEP), which broadened the actions that link civil offenses to criminal ones (Department of Homeland Security, 2015). For instance, in this new program, involvement in gangs became equated to terrorist acts or national espionage and is therefore now classified as priority 1 to deport. Priority 2 includes traffic offenses, immigration status inconsistencies, misdemeanors, unlawful re-entry, and over-staying of a visa, and priority 3 covers those who have received a removal order (Johnson, 2014). Furthermore, PEP encourages the apprehension, detention, and removal of “aliens unlawfully in the United States who are not identified as priorities herein” (Johnson, 2014). Immigration law, through the creation of multiple programs that emphasize enforcement therefore legitimizes discourses of the “criminal alien,” making undocumented immigrants’ presence in practice (not formally) “illegal.” Executive Orders signed in 2017 have moved to criminalize immigrants’ presence.

Operations that have broadened control and constructed immigrants as criminals (and therefore couched in the language of protection from terrorism and safety for communities) were already underway in the 1990s, paralleling trends of increased incarceration and punitive approaches to crime. However, in the realm of immigration, through the comingling of immigration, crime, and terror, the attacks of 9/11 led to an expansion of such strategies of control. The creation of the Department of Homeland Security (DHS) in 2002 reframed immigration issues, including Border Patrol and immigration enforcement, as matters of national security. Thus, anything related to immigration became a matter of control, surveillance, and protection, both at the border and in the interior of the country, a move that has further contributed to cement the image of immigrants as “criminal aliens.” In the aftermath of 9/11, immigration enforcement’s budgets and agencies grew exponentially. The budget of the DHS (2002) increased from \$19.5 billion in 2002 (“Securing the Homeland Strengthening the Nation,” 2002) to \$41.1 billion in 2006 (Department of Homeland Security, 2006),

\$56.3 billion by 2011 (Department of Homeland Security, 2011), to a grand total of \$64.9 billion in 2016 (Department of Homeland Security, 2016). Such an increase in resources has led to unprecedented growth in enforcement. Thus, since the establishment of DHS, the number of individuals in detention has grown dramatically. For instance, in 1996, there were only 7,500 detention beds reserved by law for immigrants in detention; starting in the 2010s, this number is now set at 34,040 (DHS, 2016; Gruberg, 2015). As a result, the number of people in detention and deportation proceedings grew to 315,943 in 2015 (DHS, 2016).

The social construction of the “criminal alien” today is not only legitimated and reproduced by law, but also contributes to the expansion of powerful bureaucracies dedicated to sustain this construction, where immigrants—particularly undocumented immigrants—become profitable. The personnel involved in these stages—in the apprehension, detention, and even the movement of immigrants from one detention center to another (the moving of detainees is a central feature of this regime) has expanded significantly. The increase of budgets in government agencies such as the DHS, Border Patrol, or ICE (ICE, n.d.) creates a vicious circle that generates more apprehensions even if it is incongruent with the actual number of immigrant entries to the United States or the supposed crime they commit. At a time when immigration from Mexico is at a “net zero” for instance, we see the continued expansion of the budgets and of the bureaucracy designed to “stem the flow.”

The punitive immigration laws that equate immigration to criminal acts not only legitimate the criminalization of immigrants by labeling immigrants “criminal aliens” or “illegal aliens” but also reinforce practices that treat immigrants as criminals.

Constructing the Criminal Alien through Media

The media further sustain the narrative of immigrants as a national security threat and as a danger to communities. Historically, immigrant groups have been depicted as threats not only to national security but also to an idealized, homogeneous, national identity (Ngai, 2004). The term *illegal alien* was first used in the early 1920s to refer to undocumented Mexican immigrants (Ngai, 2004). However, changes in immigrants’ demographic composition in conjunction with immigration laws described earlier have increasingly contributed to the criminalization of immigrants through racialized and gendered discourses. Today, Latinos, Middle Easterners, and Muslims are the targets of such constructions. With advances in technology, these constructions are transmitted instantaneously and frequently, far and wide, and in multiple media forms.

Although studies have shown that immigrants are less likely to engage in criminal activity or be imprisoned than the native-born (Ewig, Martínez, & Rumbaut, 2015), popular TV shows and movies exploit the image of the criminal immigrant. For example, in his analysis of the popular show “Breaking Bad,” Ruiz (2015) describes depictions of Latinos as villains or drug-lords through characters of the macho stereotype, portraying Latinos as a threat not only to the Anglo-white main characters, but also to their communities. The *illegal* label directly ties immigration and immigrants with crime. This perception is legitimized and justified through immigration law and its enforcement by criminal justice agencies in local communities.

Strengthening the discourse of immigrants as criminals, the border is often depicted as a war zone. TV shows and even video games, such as “Border Wars,” represent the border as a place of danger and war against those entering the U.S. Patrol agents dressed in military uniform and equipment are shown as defending American values. Militarized images of helicopters, guns, soldiers, drones, and high-speed chases reinforce the need to secure the border (Jones, 2014). In sharp contrast to what actually happens, but instead responding to these constructed images, the U.S. government has funneled historically unprecedented resources to secure the border in a manner that resembles a war zone (Dunn, 1996). In the past 24 years, the Border Patrol’s budget grew from \$262,647 in 1990 to \$3,634,855 in 2014 (U.S. Customs and Border Protection, 2016), with most of this funding allocated

to hiring agents and fencing the border (Jones, 2014). Border Patrol hiring advertisements further promote the threat narrative. In a hiring ad posted on their website, men and women in military guns and clothes explain their role as “defenders” of the nation and American freedom from “outsiders” who arrive every day, and “do us harm” (“Are You Built for the Border?” Anon, 2015).

Negative portrayals of immigrants include depictions of them as polluting the imagined homogenized society (Cisneros, 2008), or as bringing infectious diseases (Esses & Lawson, 2013), or as coming to “spread” their cultures, languages, customs, and identities, potentially endangering American identity and culture. Latino immigrants’ movement across the (southern) border is depicted using metaphors of dangerous waters—for example, floods, tides, or rough seas—(Chavez, 2013; Santa Ana, 2002), implying that migration is difficult to control, has the randomness of an attack, can potentially change at any given moment without reason (thus, ignoring the sociopolitical and historical contexts that lead to migration in the first place), and is ultimately dangerous to society. Such images and narratives are ever present in television newscasts, periodicals, blogs, radio reports, TV shows, and movies, as well as social media.

Scholars have noted that immigrants are often portrayed in media images as disorganized groups, simulating animals that can be hunted or herded, particularly in images of the border or even of immigration proceedings (Santa Ana, 2002). Yet, anti-immigrant mobilizations are given a face, describing individuals voicing their anti-immigrant stances, thus being depicted as “ordinary” Americans trying to fix a “problem” that the government is unable or unwilling to address (Cisneros, 2008). Similarly, examining popular culture depictions of Arabs in the United States, Shaheen (2003) looked at over 900 Hollywood movies and found that Arabs were depicted as the major enemies of Western civilization, brutal, heartless, religious fanatics, abusers of women, and obsessed with money. Furthermore, Middle Eastern, Arab, and Muslim identities were blurred to depict a common image of the threatening Arab man. These images were further emphasized after the events of 9/11, as the government profiled and targeted Middle Eastern men as terrorist threats (Shiekh, 2011).

Media depictions create distance between an imagined “us” perceived as homogeneous and “them,” separate from immigrants who are shown as the outsiders (Chavez, 2013). In this way, media images solidify stereotypes of immigrants as outsiders, which then serve to legitimate and justify immigrants’ criminalization, thus fundamentally contributing to the social construction of immigrant criminality.

The criminalization of immigrants through law and sustained through media depictions has shaped the public’s perceptions of immigrants—the same public that then demand from their legislators to “do something” about the crime and threat that immigrants supposedly bring.

Public views on Immigrant Criminality

Public opinion is not only influenced by laws, politicians, and media; it also serves an important role as a legitimizing mechanism in the criminalization of immigrants (see also Estrada et al., 2016). There are several factors that go into the formation of attitudes and opinions related to immigration, such as demographic characteristics, psychological characteristics and emotions, and political economic factors (for a review, see Ceobanu & Escandell, 2010; Chandler & Tsai, 2001; Fussell, 2014; Hainmueller & Hopkins, 2014). Research has found that media coverage does influence public attitudes with regard to immigrants and immigration (Boomgaarden & Vliegthart, 2009; De Zuniga, Correa, & Valenzuela, 2012; Dunaway, Goidel, Kirzinger, & Wilkinson, 2011). Specifically, the perception of Latinos as criminals, shaped by media coverage, is strongly correlated with support for more punitive immigration enforcement (Welch, Payne, Chiricos, & Gertz, 2011). And the language of immigration as a “crisis” or chaos gives green light to legislators to implement restrictive immigration policies (Gilbert, 2013; Mountz & Hiemstra, 2013). This is how immigration laws, media constructions, and public perceptions intertwine.

In general, the U.S. public has variable attitudes related to immigrants and immigration (Espenshade & Calhoun, 1993; Fussell, 2014; Harwood, 1986). Historically, nativist tendencies to restrict the number or type of immigrants have prevailed in public opinion. For instance, Fussell notes that in 1956, 76% of respondents wanted immigration levels decreased or to stay at their current levels (Fussell, 2014, p. 481). This exclusionary nativism, however, has tempered over time to the point where a growing proportion of Americans now think immigrants are good for the country (Fussell, 2014, p. 481). In other words, public opinion about immigrants is ambivalent concerning immigrants currently in the United States as well as the “non-crime and non-job impacts” of immigrants (Muste, 2013, p. 413). Thus, there are few who express the view that immigrants are overall bad for the country. Public opinion now trends toward viewing the contribution of immigrants as either neutral or positive. And while the public continues to think that the United States is not doing enough to stop unauthorized border crossings, most polled respondents (approximately 60%) even indicate support for creating a pathway to citizenship for undocumented immigrants currently in the country (Muste, 2013, p. 408).

Where opinion remains restrictive, however, is when it comes to immigrants’ impact on crime and jobs (Muste, 2013, pp. 413–414). A fairly consistent majority view immigrants and increased immigration as growing labor force competition and potentially taking jobs away from native workers. Similarly, there is persistence to the view that immigrants increase levels of crime. However, attitudes differ over time and by the different immigrant group. For instance, in 1996, the General Social Survey asked respondents if they thought immigrants increased crime; 32% agreed or strongly agreed that immigrants did increase crime, 28% said they neither increased nor decreased crime, and 37% either disagreed or strongly disagreed with the statement. A 2001 Gallup⁶ poll found 50% of respondents thought immigrants were worsening U.S. crime trends, only 7% said immigrants made it better, and 38% said immigrants had no effect on the crime situation. The same poll in 2002 found similar trends. The same general pattern held in Gallup polls in 2004 (47% worse, 6% said better, and 43% no effect) and in 2007 (4% said better, 58% said worse and 34% no effect). In 2008, the Pew Hispanic Center asked respondents if they thought immigrants increase, reduce, or have no effect on crime in their neighborhoods; 22% said immigrants increase, 7% said reduce, and 63% said have no effect (see Figure 14.1). A 2015 Pew poll asked about the relationship between immigrants and crime for the United States in general and for the respondents’ local community. For the United States as a whole, 7% thought immigrants made things better, 41% saw no effect, and 50% said it made things worse. In communities where people live, however, 36% said they make things worse, 8% said they make things better, and 53% said they were having no effect on crime.

The trends summarized above show that public opinion is not created in a vacuum. For instance, Dunaway, Branton, and Abrajano (2010) find that newspapers in border states gave more attention to immigration issues and, as a result, residents in those states were more likely to identify immigration as a major problem compared to people living in non-border states. O’Neil and Tienda (2010) also find support for the media’s influence in shaping immigration opinions. Similarly, in a European context, Boomgaarden and Vliegenthart (2009) show that the frequency of immigration news stories as well as the tone of the stories influence the public’s attitudes toward immigration. Thus, it is not a stretch to think that media representations and elite political discourse contribute to the propensity among the U.S. public to link immigrants with crime.

While public opinion may form as a result of media or elite discourse, it has been shown to have consequential policy implications. For instance, in Burstein’s (2003) review of the literature on public opinion, he contends that, “public opinion influences policy most of time, often strongly” (Burstein, 2003, p. 29). And this is not dissociated from the effects of media either. Boomgaarden and Vliegenthart (2007), for example, find that the more news media reported on immigration, the more likely it is that people voted for anti-immigrant parties in Europe (see also Welch et al., 2011). And Branton, Dillingham, Dunaway, and Miller (2007) find that spatial proximity to the border

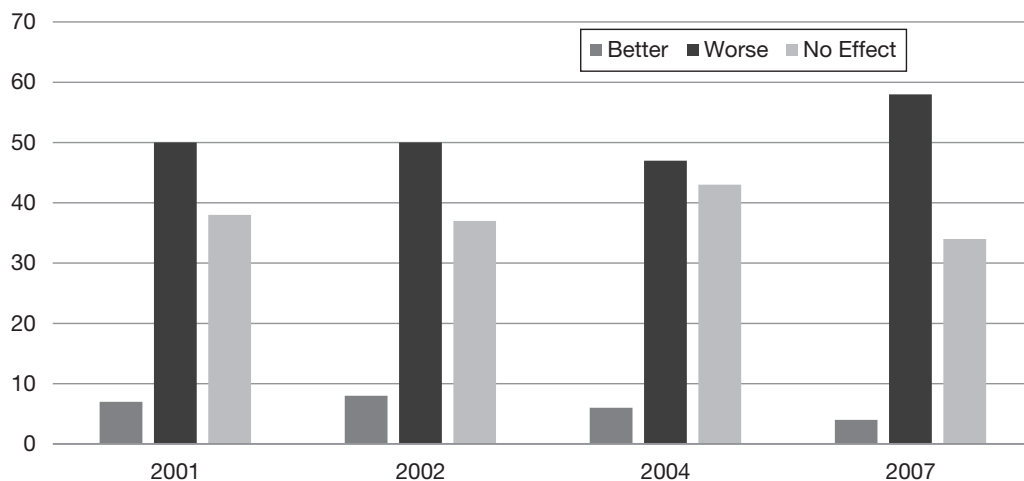


Figure 14.1 Gallup Poll On Immigrants Impact on Crime

Source: Roper Center iPoll.

plays an important part in voting for restrictionist immigration policies. Perhaps people living in border states become more sensitized to media portrayals of immigrants as criminals and as a danger to their communities, as negative images are broadcast regularly in border states such as Arizona (Branton & Dunaway, 2009).

Finally, while media may influence public opinion, which can then play a role in the passage of policy, those policies can then influence public opinion for generations. Abrajano and Lundgren (2015) traced the immigration attitudes of cohorts who experienced four different major U.S. immigration policies between 1965 and 2010. They find that these landmark policy events shape people’s attitudes and opinions and do so over a significant time period (Abrajano and Lundgren, 2015). These effects can therefore linger for a long time.

Discussion and Conclusion

As noted at the outset of this chapter, immigrants have been constructed as dangerous to communities, as criminals, and as threats to the very core of the nation since the nation’s infancy. By its very nature, the construction of immigrants as criminals evolves over time and is not static; it can change and encompass new groups of immigrants (or their descendants). With time, some immigrant groups are reconfigured in a positive light, mostly by highlighting their deservingness. Today, legislative actions, supported by media dissemination and technological advances, contribute to construct immigrants as criminals in ways different from the past. Our examination focused on these processes, especially since the passage of IIRIRA and AEDPA in 1996, the laws that overhauled immigration law and laid the groundwork for the massive enforcement—at the border and in the interior—that is a signature of the immigration regime today. Although we included an aspect of how the public reacts based on the images they consume, we did not include the actions of many anti-immigrant groups dedicated to disseminating seemingly scientific information that portrays immigrants and immigration in an alarmist, threatening light. When reported in the media, this “research” acquires legitimacy and authority and further shapes the views of a public already primed for perceiving the dangers that immigrants can bring.

A key aspect in the criminalization of immigrants through enforcement is that the same behaviors that in the past were not considered criminal—for example, re-entering the country after a deportation or using fake documents to work—have been elevated to felonious offenses today, some of these even for permanent legal residents. Laws enacted in 1996 turned the same act, like shoplifting or a speeding ticket, into deportable crimes—whether undocumented or a green card holder—with vastly different consequences for those involved. Indeed, the system of laws has created a tautology: the consequences of criminalizing immigrants through law—for example, more detentions, “aggravated felonies,” “unlawful re-entries,” and so on—are often brought up in public discussions as evidence of the need for the expansion of such punitive laws.

Significantly, constructed social categories, even when unfounded or created in the context of political agendas, have real consequences for those who have been classified into them. The media dissemination of negative images of immigrants shapes the minds of the public, who, in turn, inform policy makers’ actions. In this chapter, we highlighted legislation, media constructions, and the public’s views as central components that mold images of immigrants as criminals so as to highlight the constructedness of this process.

Notes

- 1 The turn to criminalize immigrants started earlier than 1996 (see, for instance, Inda & Dowling, 2013). However, we focus on the IIRIRA of 1996 because of this law’s multi-pronged approach and sophisticated strategy to ensure a formidably punitive treatment of immigrants today.
- 2 For a list of what these laws contain, see Menjívar and Kanstroom (2014).
- 3 Even though the U.S. Supreme Court ruled that using someone else’s documents to procure employment does not constitute identity theft, some law enforcement agencies have continued to go after immigrant workers in the name of “identity theft investigations” (e.g., the Maricopa County Sheriff’s Office).
- 4 There are many examples of laws and legal interpretations that contribute to criminalize immigrants. For instance, Arizona’s anti-trafficking law of 2005 was reinterpreted to be applied to undocumented immigrants who “smuggled themselves,” thus elevating border crossing to a felonious crime.
- 5 A detainee is a request that a local law enforcement agency “hold” an individual for an additional 48 hours after their release date so that ICE can determine if this person should be placed in deportation procedures.
- 6 The question was worded as: For each of the following areas, please say whether immigrants to the United States are making the situation in the country better or worse, or not having much effect. How about . . . the crime situation?

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