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## American federalism and racial formation in contemporary immigration policy: a processual analysis of Alabama's HB56

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### ABSTRACT

Racialization scholarship identifies the state as a primary site of racial formation. Most of this research envisions the state as a uniform entity, with race-making occurring at a single level of political action. Analysing Latino racialization in immigration debates in Alabama, we argue that state-driven racialization occurs at multiple levels of governance. Although Alabama's 2011 HB56 is widely recognized as state-enforced Latino racialization, we find that the bill resulted from mutually reinforcing racialization practices and policies that played out at multiple levels of immigration governance. These findings not only present a revisionist history of HB56, they suggest that any account of states and racialization requires a nuanced and complex understanding of the state, its institutional structure, and its operations. Individual state institutions may do different work as race makers, but race-making efforts by federal, state, and local actors interact to produce both racialized subjects and racial hierarchies.

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Ample evidence establishes the modern state as a racializing force (Marx 1998; Mills 1997; Omi and Winant 1994). States initiate and alter race-making processes through racial classification schemes like censuses and through policies that racially stratify access to rights and resources (Bobo and Thompson 2010; Nobles 2000; Oliver and Shapiro 2006; Rodriguez 2000). Racial inequalities also drive modern state formation and operations (Fields 1990; Hochschild 1984; Marx 1998).

In investigating the state's race-making capacities, scholars typically view the state as a uniform entity, interrogating racial formation at a single level of governance and policy-making. Yet in places like the U.S., a federalist system grants overlapping but unique powers to local, state, and federal authorities. Because state institutions differentially engage and sustain racial divisions (Omi and Winant 1994), understanding the modern racial state and

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contemporary racism requires attention to how federalism facilitates and constrains race-making processes.

Drawing on Omi and Winant's (1994) racial formation theory and literature on the racializing effects of anti-immigrant policy on Latinos (Brown 2013a; Browne and Odem 2012; De Genova 2004; Ebert and Ovink 2014), we use immigration politics in Alabama to examine how American federalism enables racialization. In 2011, Alabama lawmakers passed an anti-immigration measure known as HB56. Observers criticized the bill as the state-targeted racialization of Latinos (Johnson 2016; Magaña 2016; Mohl 2016). Consulting media and archival data, we argue that this racialization did not arise solely from actions by state legislators. Rather, HB56 followed years of racialization practices that played out at multiple levels of governance. Local, state, and federal actors engaged in mutually reinforcing efforts that racialized Latinos, activated racial ideologies, and incentivized the law's passage.

These findings present a revisionist history of HB56. They also suggest that accounts of states and racialization require a nuanced understanding of state structures. State institutions may do different work as race makers, but race-making efforts by federal, state, and local actors interact to produce both racialized subjects and racial hierarchies.

## Racialized federalism

Alongside economic markets and interpersonal relations, few institutions play a more critical role in racialization than the modern state. Nation-states are structured and defined by those they exclude, rendering them susceptible to, and even dependent on, racialization (Miles 2003). During modern state formation, political elites and institutions racialized populations in order to resolve internal conflicts and consolidate authority (Marx 1998). In the U.S., the establishment of democratic institutions depended upon racial exclusions (Hochschild 1984). Today, the U.S. state sustains and exacerbates racial divisions and inequalities through census classification (Nobles 2000; Rodriguez 2000), judicial rulings (Haney-López 2014), public policy (Soss, Fording, and Schram 2011), and micro-level interactions that affect substantive citizenship (Nakano-Glenn 2004).

Most research on the U.S. as a racial state focuses heavily on policies and institutions at a single level of governance. As a result, it overlooks the extent to which interactions across the American federalist system might shape race-making. The American federalist system was designed in part to enable states and localities to pursue racially discriminatory and exploitative forms of labour and political control without threatening the stability of the centralized nation-state (Marx 1998). Race relations are managed through local institutions such as schools and neighbourhoods using approaches that may conflict with state or federal racial projects (Cazanave 2011; Jung

and Kwon 2013). Federalism continues to permit states and localities to pursue racially unequal policies, widening inequalities despite federal commitments to race-neutral governance (Brown 2013b; Bobo and Charles 2009).

Federalism sustains racialization, but most efforts to explain its role in race-making do not engage federalism itself. More commonly, scholars capitalize methodologically on federalism in order to assess racialization and racial inequality comparatively at either the local or state level. Research on the U.S. welfare state illustrates this trend, as scholars examine variation in local welfare policy to determine that racial factors often influence policy adoption net of other forces (Brown and Best 2017; Reese, Ramirez, and Estrada-Correa 2013). This research typically refrains from examining how racialization practices at one level of federalism may constrain or fuel race-making at another. Yet policies result from interactions across multiple levels of governance, and federalism leaves openings for racial ideologies and representations to emerge and shift as policies move between levels of American federalism. These relationships and their effects may differ across policy domains, historical time periods, or the specific targets of racialization. Put differently, while modern state institutions are inherently racialized, different state institutions produce race in different ways (Omi and Winant 1994). These relationships and their effects likely vary depending on institutional interactions across the federalist system.

To understand how local, state, and federal institutions work together to produce and amplify racial meanings, we draw insights from Omi and Winant's (1994) seminal work on racial formation. Omi and Winant define racial formation as a socially constructed process in which "racial categories are created, inhabited, transformed and destroyed" (55).<sup>1</sup> Racial formation occurs through racial projects, contested and often contradictory efforts to "connect what race *means* in a particular discursive practice and the ways in which both social structures and everyday experiences are *organized*, based upon that meaning" (emphasis original, 56). In racial projects, states conduct the structural work of racialized policy formation, institutionalizing the ideological work of racialization (1994, 83). That is, states racialize through policy-making and institution-building, but these processes are reinforced or challenged by civil society and by public ideologies and discourses that form the cultural scaffolding of the racial state.

Omi and Winant note that state institutions, while inherently racial, are racialized in different ways. However, their analysis does not engage how this variation might affect the racial formation process or how it might enable racial projects. Contemporary U.S. immigration politics provide an opportunity to examine these interactions as they relate to the racialization of Latinos. Although the federal government has long controlled immigration policy, U.S. states and cities have recently become powerful players in immigration affairs (Varsanyi 2010). Cities and states have pursued anti-

immigration ordinances and policies that target “illegal aliens,” with such efforts often following a swift rise in the polity’s Latino population. These efforts build on a long history of state-driven projects that racialize Latinos (Molina 2006; Ngai 2005). Like their predecessors, new immigration policy initiatives constitute racial projects, targeting and disproportionately affecting Latinos (Browne and Odem 2012; De Genova 2004).<sup>2</sup> Yet under contemporary immigration federalism, these racialization processes play out across multiple levels of governance.

### Racial projects and immigration in Alabama

In 2011, Alabama drew national attention to immigration federalism when state lawmakers enacted HB56. The bill curtailed the rights of undocumented immigrants, gave state law enforcement authorities unprecedented powers to identify suspected undocumented immigrants and criminalized anyone suspected of aiding them. Although states like Arizona and Georgia had recently passed get-tough immigration policies, HB56 “set a new standard” for state-level immigration enforcement, earning labels as the nation’s “harshest” and “strictest” anti-immigrant law (Fausset 2011; Sarlin 2013).

HB56’s passage followed rapid growth in Alabama’s foreign-born population. From 1990 to 2011, the foreign-born share of the state’s population increased by 273 per cent (Migration Policy Institute 2017). Between 2000 and 2011, Latino population growth in Alabama proceeded at a rate (145 per cent) faster than all but South Carolina (Gray 2011). This growth was largely driven by Latinos who settled in the greater Birmingham and coastal areas. New Latino arrivals joined a more established community of immigrants from Asia and Europe (Migration Policy Institute 2017, see Table 1).

Latino immigrants reached Alabama to find a complex and deeply entrenched black–white racial hierarchy. Built on slave labour and white supremacy, Alabama’s historical reliance on intensive agriculture perpetuated a system of racial exclusion that buttressed racial tensions and segregation long after the legal demise of slavery (Jeffries 2009). Home to both the first capital of the Confederacy and the bloody Selma to Montgomery march of the civil rights struggle, Alabama’s history of racial exclusion still permeates

**Table 1.** Region of birth for Alabama foreign-born population 1990–2015 (MPI 2017).

	2015	2000	1990
Africa	5.7	4.2	4.4
Asia	28.1	29.9	41.7
Europe	12.2	21.0	33.7
Latin America	51.8	40.5	13.1
North America	1.6	3.8	6.4
Oceania	0.6	0.6	0.7

social life. Despite some history of interracial organizing (Letwin 1998) and the recent growth of black political power (Menifield and Shaffer 2005), a broader racialized social structure sustains white dominance.

This history provides the context for immigrant racialization in Alabama today. Much like lawmakers have used public policy to erect and sustain white supremacy and to solidify divisions between blacks and whites, public officials in Alabama have responded to the growing Latino population by debating and enacting laws and ordinances, like HB56, that directly affect Latino's access to resources and public services. On the surface, measures like HB56 are race-neutral. They target "illegal aliens" and never mention Latinos explicitly. Yet these policies evidence a key feature of the racial formation process: the discursive rearticulation of racial dynamics and structures to preserve existing hierarchies. This rearticulation unfolds in varied ways across historical contexts, but since the 1960s the conservative New Right movement has sought to roll back the gains of the civil rights movement by using "code words" or "racial dog whistles." These concepts and symbols "refer indirectly to racial themes, but do not directly challenge popular democratic or egalitarian ideals" (Haney-López 2014; Omi and Winant 1994, 123).

References to immigrant illegality exemplify this rearticulation. Citizens harbour unconscious associations between the illegality and Latinos, despite the racial diversity of the undocumented population (Brown 2013a; Browne and Odem 2012; De Genova 2004). This is the case in Alabama where Latinos are disproportionately represented among the state's undocumented population, and Latinos, regardless of documentation status, faced racial targeting as officials implemented these policies (Leech 2011; Thomas 2011). Given both their cultural signification and their racialized effects, measures like HB56 constitute racial projects despite their implicit or coded nature. As racial projects do, these policies and debates offer an "interpretation, representation, or explanation of racial dynamics, and an effort to reorganize and redistribute resources along particular racial lines" (Omi and Winant 1994, 56). They provide an ideological linkage between cultural representations of race and structures of inequality and domination.

## Data and methods

We use HB56 to investigate how American federalism enables racial formation. We do not make a causal claim about the forces driving the bill's passage. Instead, we use this case to understand how racial representations and ideologies – the cultural scaffolding of race – became activated and transformed across local, state, and federal levels of governance in the years leading up to HB56. Although no single state or policy is representative of all others, the interplay of local, state, and federal forces in Alabama's immigration politics is increasingly the norm nationwide (Varsanyi 2010). Using

HB56 to trace racial formation processes across various levels of governances can reveal insights into how similar racial projects unfold and how the structure of federalism enables or constrains racial ideologies and racism.

To identify racial discourses and ideologies and trace their activation across the federalist system, we required data sources that provided details on policy proposals, institutional actors, and the debates, logics, and arguments used in the service of these policy goals. We, therefore, rely on two main data sources: newspaper coverage and archival materials from the major policy and advocacy players in Alabama immigration politics. Newspapers permit the study of cultural and political processes (Earl et al. 2004; Ortiz et al. 2005). Media data reveal how organizations, politicians, and other public figures frame their arguments about immigrants and immigration policy. Similarly, newspaper data provide a strong measure of the racialization of public legal and political discourse. Triangulating newspaper and archival data permitted the validation of findings and allowed us to identify and discount inconsistent data points (Mariampolski and Hughes 1978; Scott 1990).

To conduct the media content analysis we created a dataset of immigration-related news coverage from 2003 to 2013 from Alabama's two largest newspapers (*Birmingham News*, *Mobile Press-Register*).<sup>3</sup> This period covers Alabama's first collaborations with ICE in 2003 to the immediate post-HB56 era. To create the dataset, we used Access World News Database to search for articles containing the term "immigra\*." We retained articles that discuss immigration-related issues in the U.S., yielding a total of 5,742 articles. We first used this database to construct a history of immigration and immigration policy in Alabama. We then inductively analysed the stories for racial ideologies and representations. By ideology, we refer to the body of ideas and beliefs "through which people make rough sense of the social reality that they live and create day to day" (Fields 1990, 110). By racial representations, we refer to the cultural characterizations, whether implicit or explicit, that express these ideologies (Omi and Winant 1994). As we traced the cultural elements of this racial project, we further noted the political institutions and levels of governance involved at each historical juncture. This allowed us to trace how racial representations and ideologies were deployed in the service of anti-immigration efforts in the decade leading up to HB56 and to trace the processual triggering of these discourses and policy justifications across the federalist system as new levels of government and new political institutions entered the fray.

We supplemented this analysis with archival data. Archival analysis focused on press releases and other materials from the main pro-immigrant organization, the Alabama Coalition for Immigrant Justice, as well as the archives of the Hispanic Interests Coalition of Alabama, key advocates for immigrant integration in the state. We supplement this analysis with materials from the Birmingham library archives and the Alabama Department of Archives

and History. We used the same inductive analysis techniques as for the media analysis, checking media and archival materials against each other. Documents and news media reports of questionable origin or authenticity were checked for validity against other sources and disregarded in the absence of external validation (Mariampolski and Hughes 1978).

### **Making race in the federalist state**

The cultural foundation of HB56 was constituted by racial ideologies of Latino inferiority and racialized representations of Latino criminality and dependency. Our analyses indicate these racializing discourses emerged at the local level, facilitated by federal support, before scaling up to the state-level and cycling back down to the local level. Federalism enabled the flow of these ideologies and representations across institutions, producing a cumulative racialization of Latinos and laying the ideological and cultural groundwork for HB56.

### ***Localized immigration governance***

After 2000, Latino immigrants arrived in Alabama's small towns and suburbs to a labour market eager for workers. As Mohl (2016, 43) notes, these immigrant arrivals "pumped new life into local economies and provided an essential and dependable labor force." As these trends suggest, Alabama immigration politics in the early 2000s were largely local, and immigration governance and Latino racialization occurred largely at the city and county level.

Hoover, AL illustrates these patterns. In the early 2000s, Mexican workers would gather a local thoroughfare, Lorna Road, looking for construction, landscaping, and other jobs. Prospective employers would drive down the road and hire workers. As the Lorna Road location drew attention, local merchants and residents complained to the city about the workers, characterizing them as problematic outsiders who threatened their town's image and safety. In 2003, the city worked with Catholic Family Services to open a day labourer centre called the Multicultural Resource Centre (MRC). The MRC aimed to give day labourers an off-road location from which to seek work and offered support services for immigrants (Velasco 2003a). The MRC did not clear Lorna Road, however, and the location remained populated by Mexican workers and eager employers.

Latino day labourer visibility and the MRC sparked a backlash. Supportive efforts disintegrated, and local officials enacted administrative rules and statutes racially targeting Latinos. These efforts drew heavily from implicitly racial appeals about Latino inferiority and criminality. Portraying the workers as dangerous elements whose physical presence signalled criminality,

business owners complained the workers were scaring away customers and tenants. Native-born residents and local officials expressed fear that Hoover was becoming a magnet for Latino outsiders who threatened town safety. Residents worried “that Hoover [was becoming] a harbor for illegal immigrants” and accused the city government of “aiding illegals by being lax on enforcement and providing space for the multicultural center” (Velasco 2003b). This public discourse prompted local officials to crack down on the Lorna Road location. Police began patrolling two gas stations where as many as 200 mostly Latino workers would look for work. The gas station owners also worked with the local police department to hire off-duty police officers to send people to the centre (Velasco 2003c).

The Hoover officials played a central role in the racialization of these new Latino arrivals, both through their policing tactics and because local residents saw municipal authorities as complicit in illegal immigration. Despite the presence of other immigrant groups in Hoover, officials only applied negative characterizations of immigrants to Latinos, Mexicans specifically, and relied on code words like “illegal aliens” to justify heightened policing efforts and other local ordinances that disproportionately affected Latinos. Speaking to the racial undertones of the controversy, City Attorney, Steve Griffin, expressed his fear that the conflict over Lorna Road would turn into an open “racial war” if it continued to escalate (Velasco 2003b).

The conflict did escalate. Hoover officials increasingly racialized Latinos as criminal outsiders by adopting ordinances designed to marginalize Latinos. “Lorna Road” became a racial dog whistle during Hoover’s 2004 mayoral race. Each candidate supported loitering regulations and anti-immigration ordinances designed to banish Latinos from the location. Policy proposals included destroying nearby low-rent apartments inhabited by Latino immigrants and ramping up driver’s license checks, work-visa inspections, and apartment occupancy rules. Tony Petelos, the eventual winner, championed new housing codes to limit the number of people who could live in an apartment, a strategy targeted directly at multiple occupancy dwellings primarily inhabited by Latino workers (Goodman 2004a). Again, while these policies were race-neutral they exemplified the rearticulation of race, using code words and implicitly racial ideologies of Latino threat and inferiority in order to “mobilize a mass threatened by minority gains, but disinclined to embrace overtly racist politics” (Omi and Winant 1994, 118). Local policies also targeted domains of social life that disproportionately affected Latinos, regardless of citizenship status.

These racializing policies and discourses were not unique to Hoover. In small towns statewide, local authorities voiced concern that “legal and illegal immigrants [were] crowding into apartments … and placing heavy demands on … schools” (Sanford 2004). Multiple city councils adopted housing ordinances which, while race-neutral, disproportionately affected

the ability of Latino labourers to obtain and maintain housing within city limits (Goodman 2004b). The racial intentions and implications of the ordinances were not lost on observers. The editorial board of the *Birmingham News* declared that “the rules [were] not indefensible - but [were] clearly aimed at Hispanics” and noted that the housing ordinance issue “didn’t arise [in these municipalities] until Hispanics began moving into the ... area in large numbers.” Given the timing, the editorial board argued, “it’s hard to rule out a smidgen of prejudice in the overheated response” (“Profiling or Protecting?” 2007).

Racialized fears of Latinos also prompted heightened policing of Latino neighbourhoods. Latinos who visited the Hoover MRC reported that local police officers threatened to have their cars towed simply for being at the centre (Kent 2005a). Reports suggest that no other groups were targeted. Fuelled by racial representations of Latinos as criminal elements, municipal officials from Hoover, Pelham, Helena, and other cities also initiated joint plans to train city police officers to conduct immigration enforcement and to fund a federal immigration officer to work in their area (Goodman 2004b). Jefferson County sheriff’s deputies began using a computerized system to track “illegal immigrants” in their jurisdiction (Robinson 2005). Although in theory, the policy focused on all undocumented immigrants, Jefferson County Commissioner Larry Langford and MRC coordinator, Kristin Coombes, revealed the racialized assumptions driving the policy and its implementation. “Are you going to stop every person of Latino descent and make them show you a card when they haven’t done anything?” Langford asked. “On what basis do you stop them? Just because they are Latino?” (Wright 2005). Coombes noted that police stops occurred on the basis of physical appearance and only targeted Latinos rather than targeting non-citizens (Kent 2005a). The coded racial nature of these enforcement policies aside, they disproportionately affected Latinos and engaged the prevalent characterization of Latinos as criminal threats to these largely white towns.

Municipal authorities capitalized on the federalist system to carry out their racialized exclusion efforts. The Hoover mayor established a local Department of Homeland Security (DHS), supported by a federal grant (Taylor 2004). In 2003, under the direction of U.S. Senator Jeff Sessions, Alabama became one of the first states to enter into a 287(g) agreement to train state troopers to arrest undocumented immigrants and turn them over to ICE. By August 2004, state troopers had arrested 109 immigrants (overwhelmingly Latino) under the agreement (Jafari 2004). The reliance on the federal government may seem inconsistent with Alabama’s longstanding insistence on state rights and its opposition to federal interference. However, these inconsistencies demonstrate that Alabama cities’ immigration policy efforts were motivated by a desire to racialize a population and restrict resource distribution accordingly.

Federalism provided resources for local-level immigration actions. It also allowed local actors to challenge municipal policies that racialized and disproportionately targeted Latinos. Facing local authority structures that supported and enforced these policies, opponents looked to the federal courts for remedies. Virtually every immigration-related lawsuit filed in the state at that time lodged complaints against city or county officials in the state. In 2005, for example, a Mexican immigrant in Alabama filed suit in District Court against the Hoover city government for creating its DHS office solely to police Hispanics and to engage in racial profiling, illegal searches, and unlawful incarceration directed at Hispanics. The class action suit included at least 500 individuals and was filed against the city police and city council members (Abrams 2005; Kent 2005b). A 2007 Pelham lawsuit accused local police of conspiring to push Latinos out of the town through “unconstitutional searches, arrests and pretrial jailings” (Gray 2007). Challengers used the courts (often unsuccessfully) to claim that local institutions were the main racializing forces in the state, turning racial representations of Latinos as criminal and inferior into racial structures and practices that divested Latinos of rights and resources.

In sum, as Latino immigrants moved to Alabama, racialized immigration governance centred at the municipal level, with local institutions and actors leveraging federal support where possible. Responding to public norms and discourses that characterized Latinos as inferior and criminal elements, these local governance measures institutionalized the cultural foundations of racial inequality in municipal policies that disproportionately and negatively targeted Latinos on the basis of presumed and intractable group differences.

### ***Scaling up to the state***

Racializing discourses about Latinos first translated into institutional policies and practices at the municipal level. As these narratives spread, state-level officials began adopting the same cultural frameworks of racial inequality and marshalling them in the service of state-level initiatives. Racialized ideologies and characterizations of Latinos flowed up from the municipal level via public discourse and through political pressure from city-level actors. They not only came to dominate state immigration politics, they provided ideological backing for HB56.

The Alabama legislature did not take up immigration until well after localities developed their own racialized approaches to immigration governance. In 2006–7, Rep. Micky Hammon promoted bills to criminalize non-citizen voting and voter registration and authorize law enforcement officials to seize personal property from undocumented immigrants. He defended by the bills by appealing to racialized fears of “illegal aliens” and by implicitly

characterizing Latinos as a threat (Santa Ana 2002): “... we cannot stand idly by and watch this tidal wave of illegal aliens pour into the region ... We must put in strict measures that discourage those who come here illegally from putting down roots.”<sup>4</sup> Still, only in 2008 did Alabama initiate sustained state-level immigration policy-making (Fausset 2011; Mohl 2016). Legislators brought immigration to the fore through direct engagement of those municipalities where Latino racialization was already underway. In doing so, the state effectively guaranteed that local-level processes would be scaled up.

One way that state legislators organized this process was by implementing a statewide immigration commission and conducting six public hearings across the state to gauge public opinion on immigration. The commission aimed to the hearings to develop and submit a report to the Legislature at the start of the upcoming session. The hearings occurred in Huntsville, Hoover, Mobile, and Montgomery, effectively ensuring that the communities most engaged in racialized immigration governance would have a disproportionate say in state immigration policy. Further, by conducting hearings in overwhelmingly white communities, the state commission defined “the public” as white residents, never soliciting immigration-related feedback from non-white communities. One example of this pattern occurred in Huntsville where 300 “white and middle-aged” attendees vocalized the racial ideologies of Latino inferiority and representations of Latinos as criminals who drain public services. Attendees came “to vent – about illegal immigration, businesses hiring illegal immigrants, and spending tax money to pay for health care and social services for illegal immigrants.” Non-white voices were virtually absent. At one hearing, a Hispanic woman attempted to speak and white attendees responded so aggressively that a police officer intervened (“Eschew Emotion” 2008). Defining the “public” as white and only seeking input from localities already engaged in the racial project of immigration enforcement, state lawmakers ensured that efforts to racialize and exclude Latino immigrants quickly escalated at the state-level.

The immigration commission’s hearings provided broad ideological and political justification for the pursuit of punitive and racializing immigration laws at the state-level. When it was released, the commission’s report offered a mandate for pursuing enforcement mechanisms at the state level and set off a cascade of punitive, racializing policies that would culminate, three years later, in HB56. More than 20 immigration bills were introduced in the legislature in 2008, leading the National Conference of State Legislatures to label Alabama a “high activity” immigration policy state (Stock 2008). Like other New Right projects, these bills used the race-neutral language of “illegal immigrant” and discourses of immigrant criminality and dependency to justify policies that would disproportionately target Latinos. Among other provisions, these bills would have prohibited Alabama employers from hiring anyone who failed to produce a state-issued ID, require proof

of citizenship to receive a range of public benefits and services, and impound the vehicle if a driver failed to prove their legal citizenship. The racialized nature of these proposals was not lost in floor debates which were “punctuated by invocations of segregation and the Nazi party,” punitive bills dominated the legislative agenda (Lyman 2008).

These bills failed to pass, but state authorities found other avenues to pursue racialized immigration governance, typically working through local authorities. Alabama partnered with federal agencies and municipal institutions to address immigration issues, reifying the racialization process across all three levels of governance. New teams of federal agents formed in Birmingham to track down and detain people in the area who had ignored orders to leave. ICE officials expanded the agency’s office in Montgomery. Immigration lawyers also reported more detention and removal cases in the Birmingham area (Stock 2009). The Irondale City Council in Alabama adopted a resolution calling on police to determine the immigration status of anyone stopped in a traffic stop or during a criminal investigation (Stephens 2010). These efforts all constituted the institutionalization of racial representations of Latinos as criminal elements.

Meanwhile, in 2010, issue entrepreneurs like Kris Kobach, the anti-immigration advocate behind other state-level immigration enforcement efforts visited Albertville to discuss illegal immigration. Motivated by racial ideologies of Latino inferiority and racialized fears of Latino population growth (Berman 2017), Kobach celebrated deportation as a job-creation tool and advocated for heightened immigration enforcement across the state (Brewer 2010). His visit and his racially motivated policy orientations would later become instrumental in the formulation of HB56 (Mohl 2016).

By 2011, the racialization of Latinos was progressing across Alabama at multiple levels of governance, guiding HB56 debates. Alabama immigration-related news that year began with a controversial February statement by State Senator Scott Beason. During a talk on “illegal immigration,” he told attendees at a Cullman County Republican Party Breakfast that with Republicans newly in charge of the legislature the state should “empty the clip, and do what has to be done” to solve the “illegal alien” problem. Beason’s highly controversial comments evidenced the implicit reticulation of race that provided the ideological underpinnings of HB56 (Haney-López 2014). Activating unconscious associations between immigrant illegality and Latinos, the comment added fuel to the anti-immigrant fire without challenging cultural norms of equality and democratic ideals (Chandler 2011a; Omi and Winant 1994).

Shortly after Beason’s remarks, legislators took up debate on HB56. Translating racial ideologies into policy, HB56 would let police officers determine someone’s immigration status after stopping or arresting them in connection with another violation and if they had “reasonable suspicion” that the person

was undocumented. The bill would also make undocumented immigrants guilty of trespassing for simply being in Alabama. HB56 would also make it a crime to knowingly transport illegal immigrants, even to the doctor's office or a grocery store. HB56 would also "require that any illegal immigrant convicted of violating a state or local law be immediately transferred to the custody of federal immigration or border officials after they are released from jail or pay their fine" (White 2011). Again, while the bill's racially targeted provisions remained implicit, its implicit targeting of Latinos did not escape public notice. Samuel Masdon, a former Montgomery judge and currently a public defender, for example, called the bill "absolutely pure racism ... If all the folks here illegal were six feet tall and had blond hair and blue eyes from Sweden, you think we'd be having this problem? I think not." he said. Ultimately, the House voted 73–28 to pass the bill. The Senate version (SB256) passed later in April (Chandler 2011b). The final bill passed the Senate (25–7) and the House (67–29) in June.

The bill gave institutional backing to racialized ideologies and characterizations of Latinos that first became activated and institutionalized at the local level with federal support and then filtered up to the state level. The bill attracted immediate national attention for its race-laden provisions and goals. Immigration advocates likened the bill to Jim Crow racism and called for a new civil rights struggle in the state. Amidst these challenges and claims, authors and supporters of HB56 stood by their bill, drawing on a decade of coded racial arguments, well-honed at the local level, to make their case. One lawmaker said, "Critics say [the bill is] racist. I don't understand what part of the word 'illegal' people don't get" (Gattis 2011). His denial of racism evidences what Haney-López (2014) calls the "dark magic" of dog whistle racism. Coded racial appeals use references to "illegal immigrants" and cultural characterizations of immigrant criminality and dependency but then parrying accusations of racism by insisting that absent explicit racism, there can be no racism.

### ***Return to the local***

Following the bill's passage, localities once again became the primary sites of state-driven racialization. Charged with implementing the law with no oversight or funding, municipal governments faced the task of interpreting the race-laden bill's provisions and translating the underlying ideologies into institutional practice. The implicit language of the bill had explicit racializing consequences. Municipal governments enforced HB56 as if they had a new state mandate to target Latinos. Again, despite the racial neutrality of the bill, municipal leaders interpreted the term "illegals" to mean Latinos, appealing to widespread associations between Latinos and criminality (Chavez 2008). Many Alabama Latinos received notices from their towns that their city

water service would be cut off unless they provided proof of immigration status (Lawson 2011). Many Latino children were pulled out of school by local authorities and asked to fill out immigration questionnaires (*Birmingham News* 2011). Despite the sizable Asian and European immigrant communities across the state, these local enforcement efforts only targeted Latinos and did so regardless of immigration status.

The effects of these racializing practices were palpable. Fearful Latinos fled the state (Ferrara 2011; Philips 2011). Those who remained expressed visceral fears of immigration enforcement. The Hispanic Interest Coalition of Alabama found its offices overrun during walk-in clinic hours (Thomas 2011). The Southern Poverty Law Center's Mary Bauer recounted phone calls her organization had received to its immigration hotline from husbands too afraid to take their wives to the hospital to give birth (Leech 2011). Approximately 13.4 per cent of Hispanic students in Alabama withdrew from public schools between the start of the 2011–12 school year and February 2012. Advocates and civil rights leaders argued that HB56 created a "humanitarian crisis" among Latinos that mirrored Jim Crow racism (Thomas 2011). Echoing this argument, a 2012 report from the Southern Poverty Law Center found racialized maltreatment of immigrants to be widespread (Lawson 2012). According to the SPLC's Mary Bauer, HB56 created "climate where Latinos have experienced harassment, hardship, and discrimination, regardless of their immigration status... If the law's key sponsor can't differentiate between ethnicity and immigration status, lawmakers shouldn't be shocked when other Alabamians don't either" (Bauer 2012).

The explicitly racialized nature of HB56 enforcement in Alabama's municipalities drew federal attention. In a review of Alabama public schools, the U.S. Justice Department found that HB56

diminished access to and quality of education for many of Alabama's Hispanic children, resulted in missed school days, chilled or prevented the participation of parents in their children's education, and transformed the climates of some schools into less safe and welcoming spaces for Hispanic children.

The Justice Department also reports that local authorities and teachers were singling out Hispanic students for punishment and that Hispanic children were reporting "increased anxiety and diminished concentration in school, deteriorating grades, and increased hostility, bullying, and intimidation" (Gray 2012). Following this review, the Department of Justice established its first civil rights unit in Alabama. Assistant U.S. Attorney Tom Perez said the office would "ensure that the federal government has a continuing eye on civil rights issues in Alabama" (Reeves 2012). While the federal government once offered resources to enable immigration enforcement in Alabama, it now intervened to limit deleterious effects of that very enforcement.

## Conclusion

The Alabama case study illustrates how American federalism enables racial formation processes. In a federalist system, states consolidate racialized exclusion, not only by large-scale decisions but through iterative processes of governance. State-driven racialization occurs at multiple institutional levels, with immigration governance at any single level of federalism constraining and enabling racialization at others. As HB56 demonstrates, federalism created complex interactions between racial ideologies and modern state institutions. Although these interactions may appear contradictory at times, they ultimately worked to produce racialized subjects and exclusionary practices. By examining federalism as a multi-level process, this study suggests that state race-making practices, in addition to mobility trajectories and immigrant replenishment, play a central role in Latino racialization. These findings also suggest that a direct engagement with federalism likely permits a clearer understanding of the activation and transformation of racial meanings, racial inequalities, and the racial state beyond the Latino case.

Our findings not only shed light on the racializing capacities of federalist structures, they offer a revisionist history of HB56. When the bill passed in 2011, observers and advocates expressed their surprise at the bill's emergence and quick passage. Scholars and journalists have argued that HB56 marked a turning point in Alabama's reception of Latino immigrants, spurred by Kris Kobach and a Republican-dominated legislature (Magaña 2016; Mohl 2016). Our findings do not challenge these conclusions but rather suggest that the cultural and institutional processes of Latino racialization that motivated HB56 began much earlier and played out at multiple levels of governance. The failure of immigration activists to mobilize against HB56 likely resulted from their limited political organization pre-2011 and from the power of the New Right's rearticulated racial strategies to mobilize anti-immigrant sentiment across the state.

This study also suggests mechanisms by which federalism facilitates racialization. Previous studies note that federalism opens doors for localized racism to affect policy (Lieberman 1998; Miller 2010) but the interconnectedness of the American federalist system also means that racial ideologies and representations can flow across the system via political networks, cultural norms and discourses, and institutional policies. These connections facilitate racial formation by translating ideology into the structure and vice versa. In other words, federalism plays a central role in the state's ability to maintain the racial status quo, or what Omi and Winant (1994) call racial equilibrium. Although this paper only addresses Alabama, these processes likely work in similar fashion in other localities. The racial project of immigration enforcement has taken centre stage in states and localities nationwide, all embedded

in the federalist system. While our study outlines one constellation of mechanisms that shape racial projects in a federalist system, our single case prevents us from identifying alternate pathways and their effects on racial meanings and policy. Future work should interrogate variation in these trajectories across geographic contexts and connect racialization processes to political, economic, and demographic accounts of immigration policy-making. For example, efforts by the Trump administration to punish municipalities with sanctuary city policies, and efforts by those same cities to both assert authority to determine their own integration policies and pursue local and state protections for DACA recipients, may reveal alternate pathways to racialized policy formation. While our case suggests an important role for publics in this process, additional work is also required to specify how publics interact with federalism to shape racial formation.

Our findings further build on racial formation theory, illustrating a process noted but not elaborated upon by Omi and Winant. They note that the racial state's multiple arms have different orientations toward race, arguing that these institutions ultimately work together to preserve racial hegemony. Alabama immigration politics illustrate this consolidation in action. While local and state institutions coherently institutionalized racial ideologies and representations, the federal government's response varied. In the early 2000s, the federal government enabling racialized immigration governance, providing funding and resources to state and local officials. However, federal officials also intervened post-HB56 to mitigate racially discriminatory actions targeted at Latinos. Although these latter interventions appear to challenge the existing racial order, the federal government's involvement only in explicit forms of racial discrimination merely preserves what Omi and Winant refer to as racial equilibrium. When local officials requested federal support in *implicitly* racialized immigration policies, federal authorities cooperated. Yet when local officials enforced these policies in *explicitly* racial ways, federal authorities intervened to challenge local actions. By intervening only in cases of explicit racial discrimination, the federal government maintains an appearance of anti-racism but permits implicit racism to thrive. The ultimate consequence is to permit the continued activation and institutionalization of racial ideologies and representations and various levels of governance and to reinforce the federalist state's commitment to racial inequality.

## Notes

1. This process is distinct from xenophobia and discrimination. While racial formation may include those practices, it is not merely about exclusion, but creating categories, conferring meaning on them, and inequitably distributing resources on the basis of those categories.
2. Whether Latinos constitute a race is much debated. While we are agnostic on the labelling of Latinos, we argue that Latinos nevertheless experience racializing

processes that homogenize a diverse population, institutionalize categories in a status hierarchy, and unevenly distribute resources along those lines (Browne and Odem 2012, 322).

3. Like the Alabama population, both newspapers had conservative leanings. The Birmingham paper was influenced by Republican business interests (Feldman 2005). Both papers endorsed the Republican presidential candidate for in 2000, 2004, and 2008 (George Washington University 2017a, 2017b, 2017c).
4. Hammon was working with U.S. Sen. Jeff Sessions to strengthen the state's commitment to 287(g).

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