

**Are American Immigrant Processing Institutions Surviving or Thriving? Large-Scale
Immigration as a Shock to Institutional Robustness**

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Abstract

Since 2014, a dramatic increase in the number of US-Mexico border apprehensions has created increasing strain on what I refer to as immigrant processing institutions (IPI). These institutions are responsible for assuring that immigrants are detained on the border and then eventually placed before immigration courts within the United States to verify their status. By looking at this institutional structure through an Ostromian lens, I hope to better address some of the ways that the institution has fallen short of robustness by failing to meet intended citizen objectives. The Ostromian institutional framework helps to avoid the pitfalls of analysis faced by scholars attempting to investigate highly bureaucratized institutional frameworks and is especially important in cases where human rights are at risk. I argue that the strain of increasing numbers of immigrants from Guatemala, Honduras, and El Salvador in recent years has only served to highlight the pre-existing institutional pitfalls that have prevented the IPI from being classified as renegotiation-proof. This has been showcased in the creation and persistence of volunteer-based collective action organizations which have attempted to fill institutional gaps encourage change. Finally, I propose a more federally decentralized approach to IPIs in order to better meet the needs of border communities as well as the immigrants being processed.

In 2014, there was a dramatic uptick in the number of unaccompanied minors (68,451) originating from Mexico, Guatemala, El Salvador, and Honduras apprehended at the Southern United States border. Called the “American Immigration Crisis,” this increase in the number of unaccompanied minor apprehensions was nearly 180 percent of the previous year’s numbers. The increasing strain on the United States-Mexico border was not only made up of unaccompanied minors but families as well— 68,445 family unitsⁱ were apprehended in 2014 (U.S. Border Patrol 2016). This increase was attributed to a number of factors, including: (1) high rates of gang-related crime in their countries of origin, (2) a booming smuggler economy, and (3) a growing awareness of H.R. 7311, a 2008 law that grants substantial protection from removal for unaccompanied children from countries that do not share a border with the United States (Greenblatt 2014). Numbers have not improved since 2014. In 2016, 59,692 unaccompanied minors and 77,674 family units were apprehended at the Southern United States border (U.S. Border Patrol 2016).

In this chapter, I will argue that the institutions created (1) for detaining apprehended persons on the border and (2) for placing detained persons before immigration courts have been challenged in historically unparalleled ways. I will refer to these institutions, collectively, as an “immigration processing institution” or IPI for consistency throughout the rest of the chapter. I argue that the institutional framework currently in place has been found to be insufficient, but due to the nature of citizen responsibility, the institutions in place are currently being bolstered by external enterprise at great personal cost. This ad-hoc solution is unsustainable without institutional revision to integrate these new enterprises and to ensure some basis of quality control and accountability to citizens. From this case, we can learn a great deal about the value of the polycentric vision put forward by the Ostroms, and the role that multifaceted governance can play in avoiding humanitarian crises.

In section one of this work, I discuss Ostromian guidelines for institutional robustness. In section two, I address the failure of the United States' current system to meet these guidelines, and how this was showcased by an exogenous shock to the institution. In section three, I describe the ways in which the institutions in place have been bolstered by the communities most affected, at high personal cost. In section four, I propose two theories as to why this has not been considered a viable alternative. Finally, I will conclude by discussing the normative implications this has for institutional survival and what best fits the Ostromian model of institutional robustness going forward.

The Ostroms on Institutional Robustness

It is important to first understand the definition of a robust institution from a political economy viewpoint in order to evaluate the ways in which the United States' IPI was ill-prepared for the "Migration Crisis." Elinor and Vincent Ostrom's work focuses heavily on the meaning of institutions, institutional creation, and institutional persistence, and is entrenched in a rich subfield of related work on institutionalism. Within this subfield, there are many possible qualifications for "robust" institutions. As with all scientific progress, consensus does not follow from the number of citations or publications, even consensus on a definition of the term "robust" institution.

In her 1986 work, E. Ostrom noted that to date there had been a large degree of ambiguity and variety in the formal definition of an institution. Lack of definitional consensus, she argued, had led to scientific stagnation—scholars were talking past each other rather than engaging in a productive dialogue. She then noted that rules persist across the definitions of "institution" put forward by several scholars, including Plott (1979), Schotter (1981), and Riker (1982). If we are considering institutional robustness from the Ostromian framework, it is therefore important to know that Elinor and Vincent Ostrom saw institutions as collections of rules. This is, of course,

not very productive by itself, and she also tried to answer epistemological questions about (a) where these rules came from and (b) the types of action that we expect rules to take.

Given that the operational definition of “institutions as rules” requires little further explanation, I will move onto a discussion of where these rules originate. E. Ostrom (2014) asserts that they come from attempts to achieve order and predictability within specific situations by: (1) creating positions, (2) stating how participants enter or leave positions, (3) stating which actions participants in these positions are required, permitted, or forbidden to take, and (4) stating which outcomes participants are required, permitted, or forbidden to influence. Given that rules come from these pre-defined desirable attributes of institutions, we should expect that robust institutions, in practice, serve to bring these results to fruition.

These rules shape behavior in such a way as to create a hierarchical network in which some actors have given positions that enable them to perform specific roles. It is not surprising, then, that she breaks these verbs into nominal categories. These rules, once created, become (1) position rules, (2) boundary rules, (3) scope rules, (4) authority rules, (5) aggregation rules, (6) information rules, or (7) payoff rules. The type of action we expect a rule to take is contingent on which type of relational rule is being developed. For example, position rules “specify a set of positions and how many participants hold each position,” and boundary rules “specify how participants are chosen to hold these positions and how participants leave these positions” (E. Ostrom 2014: 113).ⁱⁱ

Shepsle (1989) goes on to expand E. Ostrom’s work on rules, saying that in order to be *robust*, as one typically thinks of institutions, they must be devised and modified over time in accordance with collective and constitutional choice regulations. That is, they must be Pareto optimal to the decisive actors. Pareto optimality is defined as the set of conditions where none of the actors can be made better off without making at least one actor worse off. North (1990) argues

that it is the relationship between institutions and the organizations formed to exploit them that leads to Pareto improvement. However, he also adds that less optimal institutions may persist if the transaction costs of change are high enough to serve as barriers to entry for organizations hoping to deliver change.

A crucial measure of true institutional success is not just persistence, but a given institution's ability to endure within changing circumstances, such that the decisive actors do not have incentive to renegotiate the terms of the institution—a characteristic which Shepsle (1989) called renegotiation-proofness. In *Governing the Commons*, E. Ostrom (1990) gives eight design principles that she argues are related to long-term institutional renegotiation-proofness (henceforth institutional robustness). These are: (1) well-defined boundaries, (2) proportional equivalence between costs and benefits, (3) collective choice arrangements, (4) monitoring, (5) graduated sanctions, (6) conflict resolution mechanisms, (7) recognition of rights to organize, and (8) nested enterprises.ⁱⁱⁱ

Combining the Shepsle (1989), North (1990), and Ostromian (1986-2014) models of institutions, one arrives at a picture of institutions that are Pareto optimal rules for the decisive actors (voters in the United States' model) and maintain their robustness by permitting organizations to operate efficiently within them in a way that collectives do not have incentive to change the institutional framework. It is also important that actors would be able to Pareto improve the institutional framework if the institution is no longer desirable. As previously discussed, change should occur when organizations, and the voters that ultimately make up organizations, realize that they would benefit from a new set of rules. In the Ostromian framework, institutions should also have well-defined boundary rules, proportionally equivalent costs and benefits, monitoring and enforcement proportional to any potential violations at hand, a way to resolve

disputes fairly, and overlapping levels of procedure to simultaneously permit the institution to benefit from economies of scale as well as represent local interests.

If one considers this working model of institutions and the implementation of these features in the real world, it is easy to see that the role of the citizen is performing the hidden legwork behind institutional robustness. Citizens have the power to formally make and remake the rules in democratic societies, and the power to informally remake them in non-democratic ones. This comes with great responsibility: rules need to be enforced, and if the probability of agreement on the rules is small, the probability of agreement on what constitutes just enforcement of the rules is even smaller (Rawls 2001; Rousseau 2002). Without delving into the philosophical complexities of citizen consensus and how that plays out in a given institutional framework, we know that for the sake of this context citizen decision-making is taking place under the complex voting rules of the United States' government and the "town hall" model of local governance. Influencers, according to North (1990), are those that shape themselves into organized collectives. These organized collectives are expressions of preference over a given issue area that are easily observable to fellow citizens and government officials alike. Due to the large size of the United States, it would be impossible to observe every individual citizen's complete preferences, so we can only observe where the design principles and practice of institutions fall short of the characteristics described above, and the responses that groups of individuals have to these failures.

When robustness is not met and there are no visible organizational responses, V. Ostrom (1979, 14-5; 1997, 294-5) argues there is one of two possible underlying causes—each with a very different ultimate outcome. The first possible cause is that citizens are ignorant of the principles of self-governance and lack the capability to do so. The second is that citizens wait until conflict occurs to address grievances, at which point threat to the system is necessary for change to occur.

While the first is more pessimistic about citizen engagement than the second, I argue that there is little need for concerns about incapability in the case of IPIs.

The United States' Immigration Framework as a Non-Robust, Enduring Institution

Following from Shepsle's definition of renegotiation-proofness, we should expect that viable institutions would be Pareto optimal even in the presence of exogenous shocks. In fact, in describing changing water institutions, E. Ostrom (1990: 109-10) demonstrates that CPR organizers maintain Pareto optimality by endogenizing future uncertainty. We should expect the same from IPI in the United States. E. Ostrom argues that water institutions would not need to endogenize future uncertainty if assessing the amount of resources currently available was cheap. However, the reality is that operationalizing resource consumption is difficult and labor intensive. Even if there is enough manpower available to collect the data and analyze it, resource assessment prevents the institution from using its labor force for monitoring, resource provision, and maintenance (E. Ostrom 1990). Sustainable solutions are made even more difficult due to limited information about future demand. These are problems faced by all institutions with finite resources and not just water access CPRs, so it is not difficult to argue that the institutions designed to respond to migration in the United States might suffer the same shortcomings. I argue that by failing to sufficiently endogenize future uncertainty, the United States' IPI missed an opportunity to better meet Ostromian design principles under current strain.

To take a Northian (2000) view, the probable cause of the United States' immigration policy failure is a high cost of entry for organizations that would want to change the institution. In this case, it is credible that entry might be difficult because border decisions are made by the Department of Homeland Security (DHS), and as a part of the executive branch of the national government they are in possession of many resources and a monopoly of the legitimate use of

force. These constraints make it nearly impossible for third-party organizations operating inside the rules set by the DHS to influence them. As such, inefficient policies that would be renegotiated have been allowed to persist for over a decade.

The evidence that these policies would in fact have been renegotiated if left to the voters is clear in the wake of the public opinion data. While it is not always clear exactly which institutional arrangements constituents would prefer, it is clear that they are discontent with the status quo—the current institution is hardly in alignment with citizens’ preferences. An NBC News and Wall Street Journal poll (2019) found that only 18 percent of respondents felt the border was secure in 2013, and when repeated in January of 2019, this number had only increased to just over a third.^{iv} Likewise, a Gallup poll (January 2019) revealed that 75 percent of respondents felt that the border patrol was understaffed, but 83 percent of a different sample (June 2018) were strongly in favor of allowing immigrants brought to the United States illegally as children the chance to become United States citizens if they met certain requirements over a period of time. On the whole, it seems that U.S. citizens favor increased border security and a mixed approach on illegal immigrants residing within the country. Poll results indicate support for safe access to citizenship for illegal immigrants and some degree of deportation, most likely for criminals (Newport 2019).

At the same time that these non-robust institutions have been allowed to exist due to high costs of entry, border apprehensions have remained high. In fiscal year 2016 there were 553,378 Southern border apprehensions, in fiscal year 2017 there were 415,517 apprehensions, and in 2018 there were 521,090 (U.S. Border Patrol 2019). From October to June in fiscal year 2019, the United States Border Patrol has apprehended 688,375 individuals, nearly ten percent of which were unaccompanied minors (U.S. Border Patrol 2019). The resulting strain has highlighted the

inefficiencies present within the IPI. Societal pressure has increased as it has become more and more apparent that this institution is not robust, particularly in the face of large shocks such as political and economic disturbances in Latin American countries. In the wake of these crises, institutional inefficiency presents as escalated backlog in immigration courts and overflow in immigrant detention centers (Lu and Watkins 2019). Compounding the problem, so called “catch and release” policies limit the number of days that children can be held in confinement. As the average number of days until an immigration court date continue to grow, so do the number of pending families being released into the streets.

As confidence in the Department of Homeland Security’s ability to handle the flux of immigrants has dropped, so have the barriers to entry for organizations seeking change. As a result, policies in place have been called into question by both the Presidency (Presidents 43-45 in particular) and Congress (Jordan 2006; Bump 2016; Baker 2019; Rose 2019). While ordinarily this would be cause for hope of institutional adaptation, President Obama’s policy changes, in an attempt to elicit reform, just increased the burden on the institution (Rose 2019). Overcrowded detention centers are now the center of media attention due to alleged human rights abuses (Joung 2019; Paul and Miroff 2019; Sergent et al. 2019).

The current immigrant processing institutions do possess some of the Ostromian design principles: clearly defined boundaries, monitoring, and recognition of rights to organize. However, they lack proportional equivalence between costs and benefits, as well as nested enterprise. In best case scenarios, they feature collective choice arrangements, graduated sanctions, and conflict resolution mechanisms, but this is not always the case. A discussion of how I arrived at these evaluations follows.

Clearly defined boundaries are, according to E. Ostrom (1990: 90), created when those that have rights to benefit from resource units are clearly defined, as well as the presence of clear boundaries to the resource itself. There are certainly boundaries between the United States and Mexico, and though not flawlessly enforced, there is little doubt that there are clear definitions of legal versus illegal immigrants, refugees versus immigrants and a variety of other consumer distinctions. The procedural aspect of current immigrant processing is very clear—As I will discuss in the coming pages, the shortfalls lie predominantly in institutional implementation.

Monitoring is simply defined as the presence of monitors who actively audit conditions as well as the behavior of those involved in the exchange and are accountable to the people. “Accountable to the people” is the dubious aspect of this definition when applied to the United States’ immigrant processing monitors. It is very difficult for immigrants, particularly vulnerable populations like children, to hold the monitors accountable. If, however, we are talking about the citizenry of the United States, then due to the nature of democracy, it seems fair to assess that they are accountable to the people. Even if those monitoring the institution are bureaucrats, citizens may call for their resignation if they behave inappropriately.

Discussing “rights to organize” in the case of a government organization is trivial. The overarching Cabinet seat, the Department of Homeland Security, was given the right to organize in 2002, when following the terrorist attacks on 9/11, different agencies were stripped of their duties to serve in a domestic security capacity. Since then, there have been no serious challenges to DHS authority by external government authorities.

Areas of non-robustness, where the IPI currently in place falls short of Ostromian design principles, are also present. For example, the concept of proportional equivalence of costs and benefits is intended to ensure that restrictions imposed by the institution are aligned with

conditions on the ground and that they have the resources necessary to maintain the regulations being imposed. I argue that the rapid-fire media attention garnered by the IPI and the subsequent involvement of collective action organizations to meet the needs of citizens and immigrants alike as the IPI falls short of its desired goals suggest that this design principle has been found lacking for some time. It has clearly not been met since the start of the “Migration Crisis,” and will likely continue to worsen so long as there is bureaucratic deadlock, but it is possible that there was simply never a need to ensure proportional equivalence due to the nature of national level government organizations as outside of a competitive market.

This brings into context the next condition that the current IPI fails to meet: nested enterprise. Because DHS runs immigration processing from the national level, using national level immigration courts and national level enforcement officers, there is not layering of expertise nor are there differing viewpoints varying in scale and incentive structure. Nested enterprise is a mechanism that the Ostroms intended to prevent problems of detachment from local community needs and desires. Monitoring and provision of IPI has become less credible because there is no outside force beyond the federal government surveilling immigration processing in practice. It could be argued that the media has recently begun to fill this role, but like with all media, there is an underlying incentive to sell copy rather than holding the institution truly accountable.

Less clear is whether or not the institution as it currently stands is open to collective choice arrangements. While local citizens are not allowed a weighted sample in representation due to their level of exposure, the principle behind democratic institutions is that all voting members of society have a say in government. By choosing their leaders to represent them, citizens are able to raise concerns through community organization measures. Additionally, they can sanction leaders that have placed inefficient or corrupt bureaucrats within the system by threatening to revoke their

votes in the next election. When democracy is working well, one would expect that individuals affected by the rules would be able to participate in changing the rules. However, when democracy is bogged down in red tape and partisan stalemates, it becomes easier for institutions to maintain operational rules counter to the will of the people.

Graduated sanctions are nominally in place for those immigrants that violate operational rules. This is often showcased in conversations about deporting illegal immigrants. Border Patrol and politicians alike are often found highlighting cases where they have deported criminally minded immigrants in order to garner approval. ICE Spokesman Matthew Bourke revealed to *USA Today* reporters that “ninety percent of aliens arrested by ICE’s Enforcement and Removal Operation component in fiscal year 2018 had either a criminal conviction, pending criminal charge, were an ICE fugitive or illegally reentered the country after previously being removed.” However, there is room for concern about the justification of these sanctions— in 2018, only 66 percent of people arrested by ICE had been convicted of crimes in the United States (Bacon and Gomez 2019). It is clear from the opinion data given above that Americans feel threatened by some migrants and not others. As a result, criminals and those that engage in deviant behavior are often subject to increasing penalties. However, in an ideal situation, the officials deciding to impose sanctions would be accountable to those that use immigrant processing institutions. However, due to the nature of sovereignty, the Department of Homeland Security is not going to condition responses on the feedback of would-be immigrants, which is what makes border security such a perilous human rights landscape (Paul and Miroff 2019).

It is also uncertain whether or not there are appropriate conflict resolution mechanisms in place. While in principle there are courts in place to try officials or appropriators that overstep their bounds, it is neither rapid nor low-cost to pursue such legal action (Lu and Watkins 2019),

two requirements for E. Ostrom's robust design principle. Those in detention centers have little power to hold the officials accountable. For example, during her visit to one such detention center, Alexandra Ocasio-Cortez reported that a detainee told her that in the absence of a functioning sink they should just drink water from the toilet (Porter 2019). This report led to claims of falsehood and overenthusiastic partisanship— an attempt to vilify those that support immigrant detention. However, it should have raised concerns about accountability and justice—is there a way to hold current immigrants and immigrant processing institutions accountable that is easily accessible to both the monitors and those being monitored? If it was easier for immigrants in the detention facility to tell a Congresswoman from New York rather than a lawyer that their rights were being violated, the answer is that it is almost certainly inaccessible.

Collective Action Responses to Institutional Shortcomings

Frank and Shockley (2016) argue that social entrepreneurship has micro-foundations in the Ostroms' work on polycentricity and Hayek's work on the economics of knowledge. They find that local, decentralized social entrepreneurs are the most appropriate and best-positioned (efficient) actors to solve their communities' social problems. In the case of the United States' immigrant processing institutions, groups of citizens have stepped up to fill the void left by the non-robustness of the current institutional structure. As will be discussed in greater detail below, as long as these organizations continue to function without Ostromian institutional design principles to support them, this is not a sustainable or even particularly safe option.

Most of the problems resulting from failed immigrant processing institutions are geographically determined, meaning that the whole country does not share equal burden. The reality is that different communities within the United States bear different loads. For example, the pressures on North Dakota are very different than the pressures on Texas and Arizona, though all

three are border states. As a result, individuals tend to be most engaged in remedying shortcomings in regions of heavy immigration— Southern border communities. Within border communities, citizens seem to have a variety of concerns stemming from the influx of immigrants. These concerns vary from public safety to resource provision to the human rights of the immigrant populations, and any combination of quandaries in between.

As I discussed above, when citizens do not share incentive to set and enforce similar rules, particularly under the start-up costs of institutional organization, they tend to splinter— most of the groups that I will discuss in this work are not large. In terms of normatively acceptable governance, they are not all beneficial either. Unregulated paramilitaries are generally considered a detriment to state sovereignty, and in historic cases members of these types of organization have been known to commit human rights abuses and even murder (Prendergast 2018).

In Phoenix, churches have organized to take in migrants and have created an informal network. This organization formed in response to the failure of the immigration processing institution to provide food and water to recently released immigrants, awaiting immigration hearings. Some have maximized the number of days they can be detained under “catch and release” laws, others arrive to overcrowded containment facilities that choose to release them. These vulnerable populations are without temporary housing as they travel to destinations throughout the country, and often any money they traveled with has been confiscated or stolen. Previously, these immigrants had been released at Greyhound stations, often with no buses coming until the next morning. However, Greyhound has recently forbidden immigrants from staying in their stations without having purchased a ticket (Galvan 2019). The Phoenix churches have stepped in to provide temporary shelter, food, and water.

At its peak, the Phoenix network was 15 churches, but has dropped down to 10 as resources depleted. These 10-15 churches housed over 40,000 migrants within a six-month period (Leon and Samore 2019). By cooperating and working in tandem, churches can request community members outside of their congregations to provide assistance and can manage migrant overflow by sending migrants to other organizations that might still have food and beds available. Another option that organizations have used in cases of overflow is appealing to citizens to let migrants stay in their own homes (González 2019a, 2019b).

Annunciation House is another collective action organization designed to address institutional shortcomings once immigrants are released. A poverty relief organization based out of El Paso, Texas, the non-profit called for local churches to provide aid using local news outlets once it became apparent that there could be as many as 600-700 migrants being released by ICE a day from the Juarez border region. Though Annunciation House is a shelter in its own right, the number of additional immigrants beyond fire code that it has taken in require large monthly motel bills which are paid for by extensive fundraising and donations (Favela 2019). The City of El Paso had originally volunteered to open up public facilities to aid migrants, but this plan was found to be a violation of state and federal guidelines mandating that a state of emergency be declared by the Texas governor before local tax dollars could be spent on aid. It was not until the estimated number of migrants released to churches and non-profits totaled approximately 1,800 in one weekend that the municipal government reconsidered this stance and is now scheduling a meeting to find legal pathways to provide assistance to these overwhelmed voluntary organizations (Montes 2019).

Not all collective action responses pertain to newly released immigrants, however. Several collective action organizations have formed around the idea of increased border security, and as

such have formed paramilitary units throughout the country, sending them to the border to alert Border Patrol of potential illegal border crossings. While paramilitary do not have a legitimate use of force within the United States, self-defense laws and the right to bear arms provided by the United States Constitution mean that these organizations pack weaponry that ranges from pistols to semi-automatic rifles.

One such organization is Arizona Border Recon, or AZBR, is a border patrol group in Arizona, composed of former military, law enforcement, and private security contractors. Formed in 2011, the group had approximately 250 volunteers operating in the area surrounding Sasabe, Arizona in 2018. While it was formed with the intention to curtail undocumented immigration, in 2015 it changed its goal to disrupting drug smuggling and trafficking across the United States-Mexico border, as well as preventing infiltration by foreign terrorists (Steller 2012). AZBR, like other paramilitaries in the area, provide intelligence to US Customs and Border Patrol. If they spot illegal activity, they carry out citizens' arrests and alert the authorities. Their code of conduct discourages using force "unless no other alternative exists. Deadly physical force is authorized only if no other alternative exists to defend oneself, and if vacating the area would pose a greater risk of injury or death" (Sim 2016).

Another paramilitary organization was the Minutemen Civil Defense Corps (MCDC), which was founded in 2005. The organization was founded with the mission to simply observe the border and report suspected undocumented crossings to border control. However, the open nature of recruitment for this organization and lack of appropriate monitoring by leadership meant that the organization fell prey to factions which were more violent in their intentions. The group disbanded in 2010 following leadership concerns that they would be held responsible if volunteers failed to follow the Standard Operating Procedure (Wagner 2006).

While MCDC was short-lived due to quality control concerns, one of the co-founders of MCDC had organized a similar organization the same year, the Minuteman Project. This group serves as both a border watch patrol and a political action committee, appealing to government leadership to support proactive immigration law enforcement and other border security concerns (Cabrera and Glavac 2010). Members of this group believe that the existing IPI has fundamentally failed to protect American citizens from a foreign threat (Stewart, Bendall, and Morgan 2015). Within 6 months of beginning intensive recruiting, the organization had 1,250 volunteers that went to the Arizona-Mexico border in order to “do the job the government failed to do” (Gilchrist 2008; Stewart, Bendall, and Morgan 2015). Unlike MCDC, the Minuteman Project continues to thrive. In fall of 2018, the leader of the Texas Minutemen was interviewed by *The Independent* and reported that he had placed members at three points of the Texas-Mexico border, and that due to the then-impending “Migrant Caravan” he intended to be able to add up to 100 more patrolmen (Dalton 2018).

The relationship between the Department of Homeland Security, non-profit aid organizations, and paramilitary units is complex, although they are all responding to the problems of large-scale apprehensions in their own way. Even without taking into account other aid organizations operating in the area such as legal aid organizations, housing initiatives, and soup kitchens, we can see that the systems of exchange are based upon implicit agreements of behavior. The relationship between religious and aid organizations is such that the churches each function as a decision-making body, agreeing to take in a certain number of migrants, and using a finite amount of funding. McGinnis and E. Ostrom (2012)^v point out that polycentric governance, as established by Ostrom, Tiebout, and Warren (1999) bears resemblance to cross-sector collaborative network governance, which is exactly what is happening in these conditions.

However, this is not an ideal case of polycentric governance due to the extreme disparity between the amount of resources available to each group and the disproportionate amount of influence held by the government. There are still aspects of monocentric governance, a system where “governmental prerogatives for determining, enforcing, and altering legal relationships are vested in some single office or decision structure that has an ultimate monopoly over the legitimate exercise of coercive capabilities in some particular society” (V. Ostrom 1999: 55).

There is, however, growing cross-sector pressure as religious organizations issue more and more pleas through television, radio, and print media for constituents to hold their local governments accountable for providing at least buildings for shelter to aid in the largest influxes of asylum seekers (Villasana 2018; González 2019a, 2019b; Montes 2019). At the same time these organizations were garnering media attention trying to gain support both financially and in terms of manpower, Greyhound withdrew from housing migrants in its bus depots (Galvan 2019). While immigrants sleeping in the Greyhound station had never been official policy, it had become one *ex post*, as ICE officers dropped off busloads of immigrants at the doors of the Greyhound station, often without buses departing until the next morning at the earliest.

On the other end of the spectrum, paramilitary groups, which have not been officially recognized by the United States government, are under increasing scrutiny of the military and Border Patrol, organizations which paramilitary members feel have fallen short of their responsibilities (Stewart, Bendall, and Morgan 2015; Wagner 2006). Leaked military documents suggest that this concern is namely out of potential to steal equipment from military organizations such as the National Guard while Guard members are deployed (LaPorta and da Silva 2018), though the ultimate demise of MCDC suggest that there are also concerns regarding the violent tendencies of the sort of person that joins a paramilitary. The leaked military report suggests further

institutional disdain by suggesting that these are “unregulated militias” that “operate under the guise of citizen patrols supporting CBP [Customs and Border Protection] (LaPorta and da Silva 2018).” This may not be the case throughout all police and military forces, however— a reporter who went undercover as a paramilitary patrolman revealed that in his experience there was support for paramilitary patrols among local police (Bauer 2016). This flux of immigrants has forced a relationship between public, private, and third-sector organizations to solve a collective action problem—meeting the needs of border communities in the face of an increasing, vulnerable immigrant population to prevent undesirable consequences such as crime, illness, and death.

Why A Polycentric System Has Not Been Formally Adopted

To cite Aligica (2013), “It is uncontroversial that some sets of beliefs and attitudes make for good governance, some don’t. Citizenship matters. In an era of scientism, we tend to forget that many institutional pathologies of modern governance may be in fact the result of ‘the superficial way we think about citizenship in democratic societies’ (V. Ostrom 1997: 3).” The institutional pathologies we see in the IPI stem in part from the legwork these organizations are doing. The organizations described above have arisen due to dissatisfaction with the immigration processing institutions currently in place. However, as they operate right now, they form a de facto polycentric system within the IPI framework, where each node is formally independent from the others and there are multiple levels of decision making between them. The government has not, thus far, publicly responded to these organizations arising at the peripheries to meet the needs left unmet by the current, formalized institution. Leaked military briefings showed concern over the potential dangers of paramilitary organization (Dalton 2018; LaPorta and da Silva 2018), but there has not been formal government action to discourage these groups from forming.

The reasons for failing to publicly address these organizations is more than likely multifaceted. Firstly, if the Department of Homeland Security (DHS) was to claim responsibility for these institutional failures and the rise of unregulated organizations to fill what were intended to be government functions, they would have to reform current institutions. The costs of institutional change are not insignificant (E. Ostrom 1990; North 1990), and under the current de facto system the institution itself does not have to pay the costs of change in order for these roles to be fulfilled by third-party organizations.

Secondly, and more pessimistically, as an institution with many bureaucratic measures and safeguards, it is easy to deflect blame for inflexibility on other aspects of the institution (Hood 2010). For example, interviews with border patrol suggested that the politicians responsible for signing H.R. 7311 into law were to blame for early releases and lack of housing for immigrants (Gonzales 2019a). Likewise, DHS and Health and Human Services (HHS) have taken turns blaming each other for the detention of immigrant children past legal limits (Caldwell 2019). This intergovernmental deflection serves to complicate reform efforts—it is difficult to know which agencies should be improved for the institution to fulfill more of the Ostromian design principles.

As such, a permanent solution such as institutional reform or decentralization of the current institution is unlikely. The adverse incentives of formal institutional actors encourage stagnation. The best chance of reform seems to be top-down, with the head of the executive branch, the President, pressuring the Secretary of Homeland Security into absorbing the costs of reform. It would be necessary to change the incentive structure for actors within the institution in order to create lasting change. Without reform, there are normative human rights concerns to be raised by letting unmonitored non-profit and security organizations handle immigrant processing on their own terms. Additionally, the crowd-sourced funding and manpower provided by these

organizations is constantly under strain, there are no guarantees of resource renewal once given resources have been depleted—the uncertain future of these organizations mean that they are not a reliable solution to the institutional problem.

Conclusion

In this work, I have outlined the Ostromian qualifications for institutional robustness. I have argued that current United States immigrant processing institutions (IPI) fall short of this model of institutional robustness, and this failing has been made particularly apparent due to political and economic turmoil in Guatemala, El Salvador, and Honduras leading to large numbers of economic and political asylum seekers flooding the IPI. Having historically failed to properly endogenize future uncertainty, the strain placed on the institution highlights the places that the institution falls short. In response, under growing risk of human rights violations and decreased border security, collective action organizations such as religious organizations and paramilitaries have formed in order to address concerns of priority to them.

I address the ways in which this can lead to an additionally insecure future plagued by security and human rights problems for the volunteer organizations and for the vulnerable immigrant populations. I argue that the solution to this problem is government accountability and increased multilevel governance within the realm of immigrant processing. This is in line with the work of the Ostroms (E. Ostrom 1983, 2007, 2008, 2009, 2010a; V. Ostrom 2006, 2009) which generally advocates for small, direct-service producers, which are more effective and occasionally more efficient than large producers. By allowing state and local governments to have a say in the issues affecting them, there will hopefully be more accurate future planning with more fine-grained data about needs. Closer proximity would make it harder to overlook the strain placed on the institution. Likewise, such a change would make it easier for citizens to hold politicians and

bureaucrats alike accountable to their actions. This institutional revision would alleviate strain on Southern border communities, provide long-term stability in terms of funding and manpower, and help the IPI currently in place to acquire the design principles that it has struggled to meet thus far. By critically examining and addressing institutional shortcomings using the Ostromian institutional robustness framework, I highlight shortcomings to ameliorate within the United States' immigrant processing institution, bypassing institutional opacity, and hopefully creating a path forward for improving human rights within complex institutional frameworks.

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ⁱ U.S. Border Patrol defines a family unit as “the number of individuals (either a child under 18 years of age, parent, or legal guardian) apprehended with a family member by the U.S. Border Patrol” (U.S. Border Patrol 2016).

ⁱⁱ For more on the type of actions that we can expect rules to take, see E. Ostrom (2014: 113 in *Choice, Rules, and Collective Action*).

ⁱⁱⁱ In E. Ostrom (1983), she puts forward (1) economies-of-scale in production, (2) coproduction, (3) measurability, (4) size and location of the group of individuals who jointly consume the service, and (5) the degree of choice that citizens have concerning their consumption of a service as an earlier attempt at the design principles. It is easy to see how these are interrelated with the design principles from *Governing the Commons* and how they might be pertinent to a conversation about immigrant processing institutions.

^{iv} 900 interviews with a margin of error of 3.27 percent.

^v See also Aligica (2016) and Aligica and Tarko (2013).