Inclusive Language for Exclusive Policies: Restrictive Migration Governance in Chile, 2018

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Contemporary liberal democracies have employed exclusive or restrictive language, such as promising stricter border control, to ease domestic concerns about increased immigration, while simultaneously maintaining inclusive outcomes by accepting immigrants to support labor markets or to concur with global norms. Dynamic changes in migration flows disrupt this exclusive–inclusive balance known as the policy gap. Aligned with the South American shift since 2016 to more restrictive migration measures, in 2018, Chile’s new administration proposed legislation to replace the migration law, started a regularization process, and issued two executive decrees to change nationality-specific visa procedures. We analyze the language, timing, and implementation of the decrees as units of analysis, juxtaposing their apparent versus actual purposes. Since Chile positions restrictive measures as protective of immigrants, this case of migration governance inverses the policy gap debate; now, inclusive language disguises exclusive outcomes.

Las democracias liberales contemporáneas han empleado un lenguaje excluyente o restrictivo, como la promesa de un control fronterizo más estricto para calmar las preocupaciones nacionales por el aumento de la inmigración, al tiempo que mantienen resultados incluyentes al aceptar inmigrantes para apoyar los mercados laborales o estar de acuerdo con las normas globales. Los cambios dinámicos en los flujos migratorios perturban este equilibrio excluyente e incluyente conocido como ‘la brecha en la política migratoria’. En línea con el cambio de América del Sur hacia medidas migratorias más restrictivas desde 2016, en 2018, el nuevo gobierno de Chile propuso una legislación para reemplazar la ley de migración, inició un proceso de regularización y emitió dos decretos ejecutivos para cambiar los procedimientos de visa de acuerdo a la nacionalidad. Analizamos aquí el lenguaje, el tiempo y la implementación de los decretos como unidades de análisis, yuxtaponiendo sus propósitos aparentes versus los reales. Dado que Chile posiciona las medidas restrictivas como protectoras de los inmigrantes, este caso de gobernanza migratoria invierte el debate sobre la brecha política; ahora, el lenguaje incluyente oculta políticas excluyentes.

当代自由民主国家已运用排外性或限制性语言，例如承诺实行更严格的边境管控，以减轻国内对移民增加产生的顾虑，同时通过支持劳动力市场或遵循国际准则的方式接收移民，从而保持包容性结果。移民流动产生的动态变化会打乱这一排外-包容平衡，称之为政策差距。
自2016年南美转向更严格的移民措施后, 与此相符的是, 2018年智利新政府提出法律代替移民法, 开启了合法化进程, 并颁布两条行政法令以改变针对国籍的签证手续。我们将法令的语言、时间、和执行作为不同分析部分, 将其表面目的与实际目的进行并列分析。鉴于智利将限制性措施称为移民保护, 这一移民治理案例将政策差距辩论进行颠倒; 现在, 包容性语言掩饰了排外结果。

Key words: restrictive migration governance, migration management, policy gap debate, executive decree, exclusive immigration policy, South America

“(…) the figure of ‘crisis’ has shaped or been mobilized by the techniques and practices of border and migration management…migration itself has been defined in terms of a crisis that needs to be managed…” Casas-Cortes et al. (2015, p. 59)

Introduction

Using exclusive language while maintaining inclusive migration policy comprised the policy gap debate in the 1990s literature (see Arrighi, 2014; Freeman, 1995; Hollifield, Martin & Orrenius, 2014 [1994]; Joppke, 1998). Liberal democracies promised restrictive policy, such as stricter border control, to ease voter concerns about increasing immigration, but policy outcomes remained overall expansionist. The difference between what was said and what was done is the policy gap. While economic globalization has increased mobility to distribute between labor markets, it does not explain expansionist outcomes; similarly, while global norms within the international human-rights regime have spread, they have not lowered states’ ability to control immigration, although capacity varies among countries (Freeman, 1994; Joppke, 1998).

Migration governance is a two-step organizational process in which actors first conceptualize how economic, political, social, demographic, and environmental conditions affect the social system, then seek to “steer, manage or coordinate these effects” (Geddes et al., 2019, p. 9). Governance considers real and perceived migration effects and uses various strategies to manage them. Thus, governance incorporates migration management, which are the actions or measures that states take. As the epigraph highlights, contemporary governments commonly face a perception of migration crisis, interpretable as a threat to national security and sovereignty. How administrations choose to handle these perceptions becomes evident by examining the language, content, and implementation of migration policies.

As early as 2000, South American migration policies started to conform to a global regime of migration control, targeting especially irregular migration, by developing policies of control “with a human face” (Domenech, 2013). A regional shift to more restrictive migration management became more apparent in 2016, starting with Argentina’s changed political discourse on migration during Mauricio Macri’s administration (Acosta, 2018, p. 23; Brumat, Acosta & Vera-Espinoza, 2018; Geddes et al., 2019). State actors in Argentina, Brazil, and Chile, for example, started to blame immigrants for a variety of social problems, forming a link between migration and security, to justify restrictive migration governance (Brumat et al., 2018).
Yet Chile’s actions in 2018 show a peculiarity, since its migration governance strategy disguises restrictive measures as protective of immigrants. The clearest example is the repeated “safe, orderly and regular migration” in written documents and political discourse. The phrase stems from the International Organization for Migration (IOM) and is prominent in migration governance around the world, such as in the Global Compact for Safe, Orderly and Regular Migration. While it relates to protecting and including individuals, Chile—which did not sign the Compact—contrarily employs it while discussing more restrictive human mobility (Acosta et al., 2018). In effect, it inverts the migration policy gap debate; instead of using exclusive language for inclusive policy, this case shows inclusive language to disguise exclusive migration policy.

Balancing using executive versus legislative power, the newly elected right-wing administration of Sebastián Piñera made various changes to Chile’s migration governance strategy in its first months, in 2018 (DEM, 2018). The first change was a longer route to propose legislation to replace the 1975 Migration Law (Decree N.1094, 1975), which dates from Augusto Pinochet’s dictatorship. The second was a faster route of issuing two executive decrees to change Haitian and Venezuelan visa procedures—two of the newest and fastest-growing nationalities within immigration flows to Chile—along with a regularization process. Using the faster route guaranteed action but reflects the ‘unbalanced’ part of the checks and balances in Latin American systems that tilts in favor of the executive (Acosta et al., 2019; Gargarella, 2013, p. 33).

Focusing on the two executive decrees as units of analysis, we examine their language, timing, and implementation within the domestic and regional migration context. We find gaps between the decrees’ apparent versus actual purposes. Apparent purposes are the decrees’ wording, which conveys inclusive policies protective of migrants; it is a façade because the policies are restrictive. Thus, actual purposes are more exclusive policies, as compared to the former status quo. Policies of control “with a human face” use inclusive ideas rooted in human rights but achieve the same result as openly restrictive migration policies (Domenech, 2013); similarly, the decrees’ contrasting differences represent what we call paradoxical purposes.

In the following section, we contextualize the case by elaborating on Chile’s traditional versus emergent immigrant waves, particularly Haitians and Venezuelans. We also describe the important role of the executive–legislative power balance in migration governance strategies. In a system with high executive power, the privilege of fast-track decree making can result in ad-hoc measures and repetitions of past policy mistakes. We explain the paradoxical purposes of Chile’s 2018 migration management measures, highlighting the inclusive language for exclusive policy.

Immigration and Executive Power in Chile

Globalization has affected migration governance but in a different way than the literature had predicted; global norms have not converted states into international human-rights regimes, nor have they destroyed states’ authority over migration policy making, as Soysal (1994) foresaw (Joppke, 1998). Rather, states continue to be capable of controlling migration and to maintain legitimacy and sovereignty, since they are the primary grantors of rights and membership in
the territory (Escobar, 2007; Freeman, 1994). States mandate who is allowed in (and out), under what conditions, and what individuals can do inside borders. As such, states affect individual-level decision making throughout the migratory trajectory, both before and after the border crossing, through imposing additional legal barriers, such as pre- and post-migration bureaucracy (Finn, 2019).

Deciding to include restrictive migration measures can lead to unintended consequences. For example, undocumented immigration may increase (by clandestine entry or visa overstayers not exiting), reflecting an inefficient answer to irregular migration and an apparent loss of control over ‘unwanted’ migrants entering or living in a territory (Domenech, 2013; Hollifield et al., 2014 [1994]; Mármore, 2010, p. 73). Nonetheless, in response to increased human mobility in the globalized world, states continue to attempt to regulate it and its effects through migration management. Our case of Chile’s 2018 migration governance strategy follows suit; facing quick changes in immigrant inflows and characteristics, the state reacted by attempting to regulate it and its perceived effects.

Chile as a Migration State

Chile is now a main immigrant-receiving country (see Figure 1), in contrast to its history of being an emigrant-sending country. While Chile hit a peak of 4.2% foreign-born residents within the total population in 1907 (INE, 1907), the country has historically been a net sending country, meaning it had more emigrants abroad than in-country immigrants. Many residents emigrated to seek better economic opportunities or to escape from political crises related to Salvador Allende’s government (1971–1973) or the civil-military regime of Augusto Pinochet (1973–1989) (Rodríguez, 1982; Soffia Contrucci, Cano Christiny, & Martínez Pizarro, 2009).

For more than three decades (1970–2002), immigration originated from five main countries—Argentina, Bolivia, Ecuador, Peru, and Spain (see Table 1), three of which share geographic borders with Chile. The percentage of foreign-born residents in the total population was less than 1% in the 1990s, then tripled by 2015, and doubled again between 2015 and 2018. The result was approximately 6.7% of immigrants within the total population in 2018, including possible
Table 1. Chile, Foreign-Born Population from Top Five Origin Countries, select years 1970–2017

| Origin country | 1970  | 1982  | 1992  | 2002  | 2017  |
|----------------|-------|-------|-------|-------|-------|
|                | #     | %     | #     | %     | #     | %     | #     | %     | #     | %     |
| Argentina      | 13,674| 15.1  | 19,733| 23.4  | 34,415| 30.0  | 50,448| 25.8  | 69,837| 8.9   |
| Bolivia        | 7,666 | 8.5   | 6,298 | 7.5   | 7,729 | 6.7   | 11,649| 6.0   | 77,683| 9.9   |
| Ecuador        | 1,018 | 1.1   | 1,215 | 1.4   | 2,267 | 2.0   | 9,762 | 5.0   | 29,033| 3.7   |
| Peru           | 3,930 | 4.3   | 4,308 | 5.1   | 7,649 | 6.7   | 39,084| 20.0  | 198,525| 25.3 |
| Spain          | 16,628| 18.4  | 12,290| 14.6  | 9,849 | 8.6   | 9,531 | 4.9   | —     | —     |
| **Total**      | —     | —     | —     | —     | 114,597| 54%  | 197,929| 61.7% | 784,685| 47.8% |

Sources: Cano et al. (2009); INE (2017).
undocumented migrants (INE-DEM, 2018). During this time, Chile not only shifted from being an origin to a destination country but also saw various immigration groups gradually emerge; some differ from previous groups in terms of origin country, ethnicity, and language. Chile has become a new popular destination country for Haitian and Venezuelan citizens.

The 2017 national census revealed that Colombia and Venezuela have displaced Ecuador and Spain as top origin countries (see Table 2). Combining the traditional flow of Peruvians with the new Colombian and Venezuelan flows, these three groups represented 50.7% of all foreign-born residents in 2017 and 52.6% in 2018. Haitians are also an emerging diaspora choosing Chile as a destination country, despite its lengthy geographic distance and distinct language. Despite being a new immigrant group over the last decade, in 2018, Haitians already represented 14.3% of the foreign-born in Chile, surpassing by more than double the established traditional stock of 6.0% Argentines.

Over the last decade, immigrants from Colombia, Haiti, and Venezuela have internationally relocated for various reasons, and more often they are choosing Chile as a destination country. Our two groups of interest for the present analysis are Haitians and Venezuelans. From at least 2005 to 2014, the Department of Foreign Affairs and Migration in Chile categorized Haitians under ‘other countries’ when calculating the foreign-born population, meaning that the proportion of Haitians over the total number of immigrants in Chile throughout this period was insignificant, irrelevant for policymaking. Similarly, Table 2 shows a dramatic change in migration from Venezuela; from 2005 to 2015, Venezuelans comprised approximately 2% of the total foreign born in Chile, while in 2018 they far outnumbered all other immigrant groups.

First, Haitians are selecting Chile and Brazil, rather than geographically closer countries, as main settlement destinations. Audebert (2017) sustains that Brazil and Chile are very attractive for Haitians due to the strong demand for work, particularly for low-cost labor in construction and manufacturing, the agro-food industry, and other low-skill services. Additionally, Haiti has forged close bilateral cooperative relations in recent years with both Brazil and Chile through humanitarian settings. These countries, as well as Uruguay, led active roles during disaster situations such as Hurricane Jeanne in 2004 and the 2010 earthquake, and during the United Nations Mission for the Stabilization of Haiti (Audebert, 2017; Feldmann & Montes, 2010; Fernandes & Faria, 2017).

Second, Venezuelans have been fleeing the political and economic crisis under Nicolás Maduro’s administration (UNHCR, 2018b). In mid-2018, Chile was the second-largest receiving country of Venezuelans in Latin America, after Colombia (IOM-UN, 2018). Less than a year later at the beginning of 2019, Chile ranked third, with 288,233 Venezuelans (UNHCR-OIM, 2019). From 2017 to 2018, the incremental rate of Venezuelans moving to Chile was more than 200% and continues to grow. Practitioners and academics recognize the outflows as one of the largest refugee crises in world history (Brumat, 2019; Freier, 2018; Freier & Parent, 2018; UNHCR, 2018a, 2018b).

**Executive Decrees**

Since the 1990s, Chile has experienced three distinct migration policy stages, as Thayer (2019) outlines—the ‘default’ policy period (1992–2002), the ‘ad-hoc’
Table 2. Chile, Foreign-Born Population by Origin Country, select years 2005–2018

| Origin Country      | 2005  | 2010  | 2014  | 2017  | 2018  | Incremental rate (2005–2018) |
|---------------------|-------|-------|-------|-------|-------|-------------------------------|
|                     | #     | %     | #     | %     | #     | %                             |
| Argentina           | 53,660 | 25.2 | 60,737 | 19.9 | 66,991 | 16.3 | 69,837 | 9.0 | 74,713 | 6.0 | 21,053 | 39.2 |
| Bolivia             | 12,563 | 5.9  | 19,534 | 6.4  | 36,167 | 8.8  | 77,684 | 10.0 | 107,346 | 8.6 | 94,783 | 754.5 |
| Brazil              | 8,092  | 3.8  | 9,767  | 3.2  | 12,330 | 3.0  | 14,227 | 1.8  | 18,185 | 1.5  | 10,093 | 124.7 |
| China               | 2,342  | 1.1  | 4,883  | 1.6  | 7,809  | 1.9  | 9,213  | 1.2  | 13,528 | 1.1  | 11,186 | 477.6 |
| Colombia            | 5,110  | 2.4  | 10,988 | 3.6  | 25,070 | 6.1  | 111,425 | 14.3 | 146,582 | 11.7 | 141,472 | 2,768.3 |
| Cuba                | —     | —    | —     | —    | —     | —    | 6,718  | 0.9  | 15,837 | 1.3  | 9,119 | 135.7* |
| Dominican Republic  | —     | —    | —     | —    | —     | —    | 11,929 | 1.5  | 17,959 | 1.4  | 6,030 | 50.5* |
| Ecuador             | 10,860 | 5.1  | 15,261 | 5    | 19,316 | 4.7  | 29,033 | 3.7  | 36,944 | 3.0  | 26,084 | 240.2 |
| Haiti               | —     | —    | —     | —    | —     | —    | 65,914 | 8.5  | 179,338 | 14.3 | 113,424 | 172.1* |
| Peru                | 43,865 | 20.6 | 92,784 | 30.4 | 130,283 | 31.7 | 198,525 | 25.5 | 223,923 | 17.9 | 180,058 | 410.5 |
| Spain               | 10,008 | 4.7  | 11,293 | 3.7  | 14,385 | 3.5  | 16,675 | 2.1  | 21,147 | 1.7  | 11,139 | 111.3 |
| United States       | 9,582  | 4.5  | 10,988 | 3.6  | 12,741 | 3.1  | 12,323 | 1.6  | 16,337 | 1.3  | 6,755 | 70.5 |
| Venezuela           | 4,685  | 2.2  | 5,799  | 1.9  | 7,809  | 1.9  | 87,885 | 11.3 | 288,233 | 23  | 283,548 | 6,052.8 |
| No declared country | —     | —    | —     | —    | —     | —    | 3,482  | 0.4  | 3,704  | 0.3  | 3,704 | 106.4* |
| Other countries     | 52,169 | 24.5 | 63,179 | 20.7 | 78,499 | 19.1 | 64,993 | 8.3  | 87,449 | 7.0  | 35,280 | 67.6 |
| **Total**           | 212,935 | 100  | 305,212 | 100   | 410,988 | 100  | 779,863 | 100 | 1,251,225 | 100 | 1,038,290 | 60.4 |

Sources: DEM (2016); INE (2017); INE–DEM (2018).

Notes: (*) From 2005 to 2014, Chile’s Department of Foreign Affairs and Migration classified individuals from Cuba, Dominican Republic, and Haiti under ‘other countries.’ Accordingly, we measure the incremental rate for these origin countries by calculating the difference between 2017 and 2018. Haiti and Venezuela are in bold, since they are the focus of the present analysis.
policy period (2002–2017), and the ‘clean up the house’ policy period (2018–
present). President Piñera said that the 2018 migration law proposal is meant to
“ordenar la casa,” which means to “clean up the house” (Navarrete & Vedoya,
2019). It is impossible to ignore the overlap of the Spanish verb “ordenar” with
the other widely used phrase of orderly (ordenada) migration. This article fits into
the most recent ‘clean up the house’ policy period, which relates to using execu-
tive power to directly do the ‘cleaning’.

In presidential systems, particularly in Latin America, governments can use
executive decrees as a tool of pressure and defense toward the legislature and its
seat distribution (Carey & Shugart, 1998; Palanza, 2019). According to Cox and
Morgenstern (2002), when the executive has a minimum winning coalition in the
legislature, he or she tends to pass initiatives through it to promote new laws
or amend existing ones. Contrarily, when the legislature represents a credible
threat for the executive, the latter must opt for a conciliatory attitude, keeping
constituents in mind if he or she desires reelection. To govern and promote an
agenda, the executive uses decree authority. Since executive decrees can be put
into action quickly, they are a mechanism of modifying or amending laws in
Chile without necessarily having to obtain legislative approval (Constitution of
Chile, 1980, Art. 71; Siavelis, 2001). Although decrees are within a democratic
framework since they are constitutional, using decree authority can also give
the impression that the executive is strategically avoiding veto players, such as
the legislature or constitutional court, who would want to modify or reject the
initiative. Moreover, using inclusive language throughout the decrees also gives
the impression of expansionist policy.

Executive decrees are not the only successful tool that Chilean governments
use to change laws or regulations. Since the 1990s, the president’s party has
governed without an absolute majority (50% + 1) in the legislature (including
the lower and upper chambers)—except during President Bachelet’s first and
second terms (2006–2010, 2014–2018). Therefore, changing legislature within
the rigid “iron cage” remaining from the democratic transition has not been an
easy path, although some governments from the center-left coalition Concertación
were able to make substantive changes from 1990 to 2006 (Fuentes, 2016; Siavelis,
2001; Toro Maureira, 2007). Success in these cases came from executive–legis-
lative negotiations and presidential control over the urgency level. Both tech-
niques can help promote initiatives that the executive or another state legislative
branch proposes.

Through the urgencies resource, the president can drastically change the leg-
islative agenda but not necessarily gain legislative approval. The executive can
modify the agenda by opting for the label of ‘urgency’ (simple urgencia), ‘import-
ant urgency’ (suma urgencia), or for ‘immediate discussion’ (discusión inmediata).
This means that within 30, 10, or 3 days, respectively, Congress must resolve,
debate, or vote (or a combination of these actions) on the law or amendment
that the executive or other state branch has proposed (Constitution of Chile,
1980, Art. 71; Siavelis, 2001). Under this framework, we consider why President
Piñera resorted to combining the decree authority with an executive–legisla-
tive initiative requiring the legislature’s approval, especially given the ability to
accelerate the congressional process. Piñera proposed regulating migration with
a top-down approach to change the current Migration Law from 1975; although
it has modifications, the law’s main structure remains intact. The previous administration of Michelle Bachelet attempted to change it and failed, as Piñera had also done in 2013 during his first administration (see Thayer, 2019). Since 2013, attempts at executive–legislative bargaining have also failed to modify the Migration Law’s status quo (Jarufe Bader, 2019).

To understand the possible scenarios that the administration faced in 2018, we propose a decision game (Figure 2), relating to compliance and executive–legislative bargaining, in which the executive faced at least four scenarios. (1) If Piñera had not applied decrees or used executive–legislative initiatives, the probability is higher that voters would have lowered their approval of Piñera’s administration, with no effect on the legislature; (2) if Piñera had used only decree authority, his voters could have increased or maintained their approval of him, but it would have damaged future cooperation between the executive and legislature because the ruling coalition did not have a legislative majority (in Congress or the Senate), meaning the deputies and senators would have had to compromise their initiatives to gain the opposition’s approval; (3) if Piñera had used only an executive–legislative initiative, the legislature would have had the final decision-making power, and could have approved, modified, or rejected the migration proposal. Rejection had occurred in the past. Regardless of the attempt, legislature rejection would have meant decreased voter approval of the president, and perhaps of the Minister of the Interior, but the legislature would have gained leverage over the executive, increasing the chances of future bargaining; (4) if Piñera had applied both decree authority and a legislative

Figure 2. Executive–Legislative Bargaining Spatial Model, Chile’s Migration Governance, 2018

Source: Authors’ elaboration.

Notes: Sq = status quo; B = represents a zero-sum game, in which one side of the players wins everything; and C = represents a win–win subset in which cooperation between the two players is possible.
initiative, voters could have maintained, or even increased support for the president and his cabinet. At the same time, going through the legislature would have increased cooperation between the two branches.

Considering the four scenarios, the last is a win–win negotiation in terms of compliance and executive–legislative cooperation. It was this path that Piñera took, since the administration put forth a new Migration Law proposal to Congress and at the same time implemented two migration-related executive decrees, along with a regularization process. The decrees took immediate effect in April 2018; regularization was intended to occur from July 2018 to July 2019, but was extended and ended in late October 2019; the legislative project is still in progress, as of March 2020.

Choosing to use executive, rather than legislative, power for direct migration management is worrisome since executive-led migration measures throughout the region lie on the legal borderline, with little or no parliamentary intervention (Brumat et al., 2018). Some of these measures also leave ample space for discretion. For example, in the regularization process outline, Chile reserves the right for the Subsecretary of the Interior to determine whether a migrant’s documents meet the requirements (DEM, 2018, p. 6). There is discrepancy between the required documents for registration and determining if the applicant has committed immoral acts or is a known instigator or activist of violent doctrines, for which the government uses discretion to offer or revoke visas.

Paradoxical Purposes

In 2018, the executive decisions in Chile were a response to changing immigration inflows and undocumented migration. This response took the form of a more restrictive migration governance strategy, which disguises targeted exclusionary policies as a migrant-protection approach. The most inclusive approach would declare individuals’ right to migrate, whereas the Chilean government has made a distinction between the right to migrate and migrants’ rights, as the Subsecretary of the Interior reiterated while the administration introduced the decrees and regularization process. While South America has shown gaps between rhetoric and policy, and between policy and practice (Acosta & Freier, 2015), we find different policy gaps in 2018.

In this section, we highlight the differences in what the migration policy’s purpose appears to accomplish versus what the purpose actually is. The apparent purpose is the wording of the migration-management measure, which creates the façade of inclusiveness and protection of migrants. Under closer scrutiny of the policies’ content and implementation, the actual purpose of exclusiveness emerges. Since the actual purposes of the decrees clash with the stated intentions, we report paradoxical purposes in Chile’s 2018 migration governance. The actual purposes reflect the South American shift toward more restrictiveness.

Regularization

In full-fledged migration management mode, Chile implemented an “extraordinary regularization,” changed the visa procedure for Haitians, and introduced a special Venezuelan visa. Starting with the first, large-scale regularization processes occurred in Chile in 1998, granting approximately 44,000 visas, and then again in 2007, granting some 47,000 visas (Thayer, 2019); therefore, the 2018
regularization is not “extraordinary” but rather fits a pattern of regularizing irregular migrants in Chile approximately every 10 years. The process in 2018 comprises two phases—registration then regularization (DEM, 2019). The primary step in between was obtaining a criminal record report from the origin country; those able to prove they had not committed a crime in the origin country could receive a temporary visa valid for one year, whereas those failing to do so would be deported (DEM, 2018, p. 6). In the first month of regularization, 64% of Dominican residents in Chile (some 6,200 individuals) registered (Thayer, 2019). This high percentage of irregularity within one nationality group is part of the lagged effect that the 2012 Dominican visa creation had on irregular migration in Chile. Throughout the first period from April to July 2018, 155,000 individuals registered, but after a year of implementation, only approximately 30% of those estimated to be in an irregular situation have managed to obtain a visa (DEM, 2019; Navarrete & Vedoya, 2019).

Unlike the decrees that target nationalities, the regularization process was intended for all ‘irregular’ migrants, meaning those who never had documents (who entered clandestinely), have expired documents (such as visa overstayers), or lack adequate documents. The apparent purpose was to regularize immigrants, meaning granting legal status to those lacking or with expired documents. The measure was part of the migration governance strategy since it demonstrates that the government is attempting to manage irregular migration’s perceived effects on the country. In other words, regularization aims to resolve the lingering effects of previous restrictive policy since it backtracks to rectify scenarios in which migrants failed to comply with burdensome pre- or post-migration bureaucracy steps (Finn, 2019).

The language and outcome of this migratory policy differ. The apparent purpose is to combat irregular migration and suppress illicit transborder activities such as human trafficking and clandestine entry—in short, “to achieve safe, orderly and regular migration” (DEM, 2018, p. 5). Chile claims its right as a state to do so; in exchange, it claims to mitigate risks associated with human mobility and guarantees migrants’ fundamental rights. The language is about protecting migrants, legalizing irregular migrants’ statuses, and bringing them out of a potentially precarious situation. Contrarily, the first phase of the process was registering migrants—meaning collecting data on individuals, including children, with expired or no documents—to conduct and gather background checks and deport those who fail to meet requirements. Deportation can safely count as exclusionary, so the regularization process is a brief example of how Chile’s 2018 migration governance strategy used inclusive language with exclusive policies.

Haitians: From State Cooperation to Retrenchment

The visa procedure for Haitians entering Chile was introduced on April 9, 2018 (Decree N.776).

- **Apparent:** “safe, orderly and regular migration” to protect potential Haitian migrants as well as Haitian residents in Chile
- **Actual:** targeting just one nationality, despite an uptick in other immigration inflows
Chile recognizes a legitimate state right to control the entry and residence within its territory, as well as a self-assigned role to “guarantee migrants’ fundamental rights” (DEM, 2018, p. 1). After controlling human mobility into and within the state, the government says that it will not only protect the rights of those residing in Chile but also help migrants integrate (DEM, 2018, p. 1). This assistance is intended for ‘regular’ (documented) Constitution-obliging migrants; in parallel, there is a ‘heavy-handed’ (mano dura) approach against human traffickers and against irregular and clandestine entry (DEM, 2018, p. 2). Conversely, in the same document the Department of Foreign Affairs and Migration says that it will not criminalize irregular residency since irregular migration, in itself, does not constitute a crime (“la migración irregular no es, por sí misma, constitutiva de delito”) (DEM, 2018, p. 3).

As part of the response to controlling entry and exit, Chile created two new procedures. First, Chile introduced a tourist visa (Visado Consular de Turismo Simple) specifically for Haitians. Requirements to obtain it include copies of bank statements showing at least U.S.$60 per day during the stay in Chile, a valid hotel reservation or an invitation letter (notarized in the Chilean Consulate in Port-au-Prince, Haiti), and a legalized criminal background check issued in Haiti (Ministry of Foreign Relations, 2020). Second, Chile established a voluntary return program, available to both documented and undocumented Haitian migrants residing in Chile. As of April 2019, the Chilean government reported that 1,262 Haitians had returned to Haiti via this program (Ministry of the Interior & Public Security, 2019). It again employs globally accepted wording, calling it the ‘Humanitarian Plan of Orderly Return’ (Plan Humanitario de Retorno Ordenado), when we are unsure if it is humanitarian or to what extent it is voluntary. The IOM (2019) backs this program, stating that assisted voluntary return provides a “more humane and efficient alternative to forced return” (meaning as compared to deportation) and is an “indispensable element of a global perspective of migration governance.”

There are ordered points within the Decree (N.776), starting with the first point of “orderly, safe, and regular migration” being a national interest. It then highlights a large increase of Haitians entering Chile as tourists, but who stay and become irregular migrants. Yet entering as a tourist and later requesting a different visa while already in Chile follows the current migration law and its regulation (Decree N.1094, 1975; Decree N.597, 1984). In other words, prior to the present migration reform proposal, tourist entry had been the standard legal procedure to obtain another visa. This point leads to the third, which says that remaining in Chile once a tourist visa expires makes the migrant ‘irregular,’ putting migrants and their families at risk of human trafficking and other dangers related to being irregular. Here, there is a large jump from a visa overstayer to a risk of being trafficked once residing in Chile. This lack of logical succession between points aids in moving toward the decree’s exclusionary purpose. Given these circumstances, as the Decree proposes, migration management is needed to protect migrants who already reside in the country. Protection is the inclusive language disguising the actual purpose of lowering the number of this particular nationality entering Chile as a destination country.

In addition to this tourist visa, Chile also issued another visa for Haitians, a Humanitarian Visa for Family Reunification (Visado Humanitario de Reunificación...
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Familiar), 10,000 of which are available annually (DEM, 2018, p. 5). Comparatively, more than 100,000 Haitians arrived in Chile between 2017 and 2018 (see Table 2). This visa states that it is intended for family reunification, yet its duration is 12 months, renewable only once (DEM, 2018, p. 5). It is unclear what will occur after these two years. This period is very short for separated spouses or for minors separated from their parents residing in Chile; in other words, it seems unfit for the two target groups, being ‘humanitarian’ only in name. It also has a restrictive outcome, given the number limit on visas. We interpret that its actual purpose is to encourage Haitians residing in Chile without their families to return to the origin country rather than bring their family to Chile.

Since migration governance conceptualizes the effects of new social changes and then tries to manage these effects (Geddes et al., 2019), in this case, Chile has reacted to upticks in diverse migratory flows through more exclusionary practices targeting only certain nationalities. This strategy mirrors a past policy mistake; Chile had issued a similar visa in 2012, targeting just those from the Dominican Republic, which failed. Instead of reducing immigration, there was evidence that the visa deregulated migration, generating human trafficking, irregular entry, and formal labor market exclusion (Acosta et al., 2018; Rojas Pedemonte & Dittborn, 2016; Thayer, 2019).

The approach is hidden behind a veil meant to protect migrants and their families. Chile presents these decisions in parallel to “safe, orderly and regular migration.” Despite this repeated phrase encapsulating an international norm, Chile is using it to support exclusionary rather than inclusionary migration policy (Acosta et al., 2018). To respond to changes in the global arena, “governments have devised a number of ways to circumvent normative constraints” (Guiraudon & Lahav, 2000, p. 164). In this case, Chile is using a globally accepted phrase to circumvent criticism on restrictive policy. In other words, we again find inclusive language used to achieve exclusive outcomes.

These actions ripple through distinct levels of cooperation; the national-level policy reflects global-level rhetoric, affecting state-to-state relations with Haiti. Chile previously sent post-disaster specialized seismic knowledge to Haiti, demonstrating the building of expansionist state ties between the two countries. The international assistance opened a new geographic route for individuals to migrate to Chile, but when immigration inflows increased, Chile chose an approach to lower the number of immigrants from one particular country, resulting in Decree N.776. This relation portrays a shift from state-to-state migration cooperation to retrenchment.

Venezuelans: Reciprocal Democratic Gesture or Choosing Desirable Migrants?

A new visa for Venezuelans migrating to Chile was introduced on April 9, 2018, and took effect on April 16, 2018 (DEM, 2018, p. 5; Oficio Circular N.96, 2018).

• Apparent: it is democratic to accept migration caused by an undemocratic country

• Actual: pre-migration bureaucracy reduces the number of individuals moving to Chile
Havoc in the Venezuelan economy, including hyperinflation and a shortage of basic goods and services, resulted in the emigration of approximately 3.4 million people from 2015 to 2018, many to survive, avoid starvation, or obtain medicine (Acosta, Blouin & Freier, 2019; Freier & Parent, 2018; UNHCR, 2018a). Although Venezuelans had mainly been economic migrants, many meet refugee status, following the 1984 Cartagena Declaration’s definition; accordingly, asylum-seeker applications rose from less than 4,000 in 2014 to some 342,000 in 2018 (UNHCR, 2018b). The migration outflows from Venezuela comprise one of the largest displacement crises worldwide, with Colombia as the leading destination country for Venezuelan displaced persons and asylum seekers (approximately 1.17 million), followed by Chile (288,000), and Ecuador (262,000) (UNHCR, 2018a, p. 25). Yet South American states choose not to recognize an overall refugee status for Venezuelans, with the recent exception of Brazil (Acosta et al., 2019; Brumat, 2019; Freier, 2018). Considering the Cartagena Declaration, Brazil implemented a fast-track legal route in December 2019 based on prima facie recognition, for Venezuelans as a group to gain refugee status (Acosta & Madrid, 2020).

Instead, some states such as Chile, Colombia, Paraguay, and Peru have implemented ad-hoc policies and imposed visas for Venezuelans, as have most recently Bolivia and Ecuador (Acosta & Madrid, 2020); thus “reactions to the resulting migration crisis can best be described as ad-hoc measures” (Freier & Parent, 2018). Peru offers a Temporary Stay Permit but is backlogged in processing applications; Colombia has a Special Stay Permit for Venezuelans, although the country retrenched, issuing Border Mobility Cards (Freier & Parent, 2018). Ecuador implemented a visa requirement for Venezuelans, which is unlawful since it goes against its own 2017 Human Mobility Law (Brumat et al., 2018). As of August 2019, Ecuador is offering two new types of visas, a temporary humanitarian visa for Venezuelans already residing in Ecuador (who are free of criminal infractions) and another for Venezuelans wishing to emigrate (Decree N.826, 2019). Chile is not an exception in offering its own ad-hoc measure, issuing a Visa of Democratic Responsibility (Visa de Responsabilidad Democrática) (Oficio Circular N.96, 2018).

These types of reactions and adjustments clash with (albeit weakened) regional aims. Restrictiveness contradicts the overall South American stance on the right to migrate and a human-rights approach to migration, as exemplified in the Mercosur Residence Agreement that supports free mobility throughout the region and the signed (non-binding) agreements at the annual South American Conference on Migration (e.g., Acosta & Finn, 2019; Brumat et al., 2018; Finn et al., 2019). Some neighbor countries, such as Argentina and Uruguay, have chosen to extend the Mercosur Residence Agreement to Venezuelans, as has Brazil, reflected in its new two-year temporary residency visa for Venezuelans (Acosta & Madrid, 2020).

When the Chilean government created the visa, individuals could apply for it only at the Chilean consulate in Puerto Ordaz or Caracas, Venezuela. As of June 24, 2019, Venezuelans are able to apply at any Chilean consulate in any country, but the application requires a criminal background check issued from a Venezuelan ministry, along with a passport issued in 2013 or later, a photo, and U.S.$30. If individuals apply from a third country, they must also submit a criminal background check from that country.6 By the end of 2018, approximately
94,000 Venezuelans had applied for this visa, but only 20% had received their visa, and 55% were still processing; the remaining 25% applied without having the required document of a criminal background check, so the Chilean government rejected these applications of 22,000 individuals (Navarrete & Vedoya, 2019).

On the same day the government announced the new visa, the Subsecretary of Foreign Affairs issued a memo to all Chilean consulates abroad, stating that the democratic crisis in Venezuela has resulted in a “mass exodus.” It states that the reason this visa was introduced is that “Exoduses of this kind tend to provoke vulnerabilities regarding fundamental [human] rights, increase human trafficking, and [increase] illegal migrant trafficking.” This statement implies a migrant-state relation since the visa is intended to protect Venezuelans. While outlining the migration reform, the Department of Foreign Affairs and Migration writes that the reason is the “democratic crisis” occurring in Venezuela (DEM, 2018, p. 5). This statement contrarily implies state-to-state relations, since the visa juxtaposes Chile as democratic, opposed to Venezuela as in a democratic crisis. Moreover, the DEM explicitly parallels the similarity between the past and present since many Chileans had previously “sought refuge” in Venezuela, referring to Chilean emigration in the 1970s during economic and political crises.

Called a visa of ‘democratic responsibility,’ the wording is a regional sign to the Venezuelan government that Chile is democratic, whereas Venezuela is not. In the international realm, it signals that Chile is actively responding to increasing outflows from the country. Yet this phrase stirs a different question—is it democratically responsible to create a visa process, where one had previously been absent, for individuals within the region who are fleeing a failing state? This normative question asks countries to decide if they are responding to flows of economic migrants or refugees. The migration measures, whether normatively appropriate or not, use inclusive language in exclusive policies.

State requirements for potential immigrants to obtain certain documents or take administrative steps to gain admission to the territory comprise pre-migration bureaucracy (Finn, 2019). Sovereign states have control over individuals’ entry to and exit from the territory, as well as the rights they enjoy while visiting or residing in the country. When states implement additional pre- or post-migration bureaucracy requirements, it becomes more difficult to gain access to enter or ‘legally’ reside in the territory (Finn, 2019). These requirements could (1) disincentivize potential migrants from choosing it as a destination country, or (2) be too difficult or time consuming to obtain, in turn increasing undocumented migrants.

If requirements are too cumbersome, fewer individuals may move to the territory, and the state would effectively shrink the size of the immigration inflow, achieving the desired restrictive outcome. Contrarily, in the second scenario, additional migration bureaucracy can result in a higher number of undocumented immigrants since potential migrants may enter clandestinely and residents overstay their visa, in turn becoming undocumented. It is a possible unintended consequence of restrictiveness. The public-policy irony is that regularization is an attempt to rectify the prior decision of requiring additional pre- or post-migration bureaucracy. In other words, after a restrictive policy increases the number of undocumented immigrants, regularizing them can overcome this policy failure but requires the state to use more post-migration bureaucracy.
Based on the process of Venezuelans obtaining the visa, we interpret the decree as part of Chile’s migration governance strategy, using inclusive language in restrictive policy. The visa appears to lend a helping hand in accepting immigrants; by name, it is ‘democratic,’ trying to lead by example at both the regional and broader international levels. A more democratic step would be to extend Mercosur Residence Agreement or recognize refugee status. We interpret that the actual purpose of increasing pre-migration bureaucracy (requiring a visa and a criminal background check issued by the undemocratic country from which the individual is trying to emigrate) is an attempt to reduce the number of Venezuelans choosing Chile as a destination country.

The Haitian- and Venezuelan-specific visas demonstrate changed state-to-state relations. In the first, we find state cooperation to retrenchment, moving from Chilean seismic assistance in the aftermath of the earthquake in Haiti—followed by a large increase in Haitian migration to Chile—to a retrenchment-style targeted visa to reduce Haitian immigration. In the second, the “democratic responsibility” visa seeks to assist Venezuelans leaving in mass numbers due to the state’s democratic crisis, even highlighting the fact that Venezuelans had done the same decades before for Chileans during economic and political crises. Yet we interpret both visas as pre-migration bureaucracy that the administration uses as signals in an attempt to deter potential immigrants from entering the territory.

**Conclusion**

Chile’s 2018 executive-driven migration governance strategy stands out for its inclusive language disguising exclusive migration policy, which reverses the policy gap debate from the 1990s. Whereas exclusive discourse previously paralleled inclusive migration policy, now inclusionary language is employed to support exclusionary policy. Carefully chosen and repetitive terms such as “democratic responsibility” in the Venezuelan visa are a calculated part of this strategy. While the terminology appears to offer refuge, visa implementation creates a pre-migration bureaucratic step attempting to deter potential migrants. At the state level, the fluidness between inclusivity and exclusivity fluctuates between cooperation via more open policies during good times and more restrictive policies against ‘undesirable’ or ‘unwanted’ immigrants during bad times.

More exclusive migration policy has future repercussions, particularly for irregular migration and then regularization. The 2018 “extraordinary regularization” was not extraordinary, since it follows Chile’s large-scale 1998 and 2007 regularizations, making it more of a once-a-decade event. The process shows those at home and abroad that Chile is taking action to solve a perceived problem of irregular immigration, to which (ironically) its own pre- and post-migration bureaucracy, such as the previous Dominican visa, had contributed. In discourse and in writing, the government repeats the commonly accepted phrase of “safe, orderly and regular migration” to disguise the strategy as one protecting migrants, meshing well with regional stances and accords. Yet Chile decided not to sign the Global Compact for Safe, Orderly and Regular Migration in 2018. The government repeatedly refers to more-restrictive migration measures and aims for the low-hanging fruit of irregular immigration, positioning the regularization process as an effort to “clean up the house.”
Although these migration governance strategies fit within the regional shift to more restrictiveness since 2016, they clash with a previous recognition that restrictive migration policies can produce ineffective results, including increasing the number of undocumented migrants. Restrictiveness also contrasts with previous South American support for more open borders, human mobility rights, and regional integration. Neighbors such as Argentina, Brazil, and Uruguay have incorporated the Mercosur Resident Agreement into managing Venezuelan migration, and Brazil has also used the Cartagena Declaration for recognizing Venezuelans as refugees. We encourage future research to evaluate issue saliency in executive–legislative relations and the varying effects of ad-hoc and retrenchment policies that could have long-term effects at the national, international, and regional levels.

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Notes

1Quoting the Subsecretary of the Interior, Rodrigo Ubilla, “No confundamos la migración como un derecho, al derecho de los migrantes, porque eso es distinto, eso está reconocido en nuestra propuesta legislativa” [Let us not confuse migration as a right with migrants’ right[s] because that [the latter] is different and that is recognized in our proposed legislature] (Catena & Labra, 2018, authors’ translation).

2Also facing possible deportation were (a) violent extremists, (b) those trafficking drugs, weapons, contraband, and persons, (c) those lacking morals and good behavior, (d) those who had committed a crime in Chile, (e) previously deported persons from Chile or any other country, (f) irregular migrants who fail to register during the regularization process, and (g) those who used falsified or someone else’s documents (DEM, 2018, p. 6, authors’ translation). Additionally, by country of origin, Haitians and Venezuelans represented less than 1% each of deported individuals from 2005 to 2015, since it was before the larger migration waves began from these countries.

3DEM (2019) reports that of the approximate 155,000 applicants (of an estimated 300,000 persons in an irregular situation), the government has authorized 131,500 temporary visas, which 85,000 individuals have so far received; 28,000 applicants have not re-contacted DEM to receive the visa; 9,000 have made appointments to get the visa; 5,000 are still awaiting their criminal background check from the origin country of either Haiti or the Dominican Republic; and 4,000 have left the country (Navarrete & Vedoya, 2019).

4Persons in the first category of irregular entry had 30 days to register and apply for a temporary visa. Persons who had 90 days to register include those who had overstayed a tourist or residency visa, persons working in Chile without legal permission, and applicants whose visa was still being processed (DEM, 2018, pp. 5–6).
5El original text reads, “… el legítimo derecho del Estado de normar la forma en que los extranjeros ingresan y permanecen en el país, con el debido respeto y garantía de sus derechos fundamentales y la mitigación de los riesgos asociados con el movimiento de personas, para así reducir la migración irregual y reprimir las actividades transfronterizas ilícitas. Es decir, para lograr una migración ordenada, segura y regular” (DEM, 2018, p. 5).

6El Venezolano criminal background check must be issued within the last 90 days, and the other background check, when required, 60 days (Ministry of Foreign Relations, 2019).

7El original text reads, “(…) en consideración a la crisis democrática por la que actualmente atraviesa la República Bolivariana de Venezuela, se ha producido un éxodo masivo de nacionales de ese país… Los éxodos de esta naturaleza, tienden a provocar vulneraciones de derechos fundamentales, aumento de la trata de personas y tráfico ilícito de migrantes, razón por la cual, se ha adoptado la decisión de otorgar (…) un Visado Responsabilidad Democrática” (Oficio Circular N.96, 2018, emphasis added).

8El original text reads, “Venezuela: En razón de la crisis democrática por la que actualmente atraviesa Venezuela, y que afecta gravemente a los nacionales de un país que acogió a muchos chilenos que buscaban refugio en sus fronteras, se crea una Visa de Responsabilidad Democrática (…) solicitada ante la autoridad consular chilena en Venezuela” (DEM, 2018, p. 5).

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