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Immigration Control Policy: Law and Implementation

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As of the mid-20th century, the United States was no longer a “nation of immigrants” except in collective memory, as the proportion of foreign-born people had fallen to approximately 5 percent. This reflected a deliberate political choice enacted in the 1920s through legislation that drastically reduced annual “main gate” immigration from Europe and established national-origins quotas designed to restore the country’s pre-Civil War ethnic profile. The principal targets were eastern and southern Europeans, whose assimilation was considered problematic, as well as Asians, deemed unacceptable. The policy was implemented through “remote control” of the country’s sea borders by requiring immigrants to obtain visas from American consulates before embarking. This created a distinction between visitors and immigrants, utilizing shipping lines to enforce the regulations.

Because immigration policy involves distinct economic and identity considerations, its political dynamics straddle the conventional left-right divide and foster unusual coalitions. The restrictionist regime was imposed by a broad alliance of cultural conservatives, consisting mainly of Republicans and southern Democrats, who concurrently imposed Prohibition, promoted an assertively patriotic public culture, and reinforced racial segregation and social discrimination; it was also supported by organized labor. The opposition included the targeted immigrant groups, concentrated in urban constituencies, as well as industrialists and agricultural entrepreneurs concerned with maintaining an ample labor supply.

While the industrialists adjusted to the elimination of their traditional European workers by encouraging the internal migration of African Americans from the Deep South, agriculture managed to retain an open back door by preventing the imposition of restrictions on people from the Western Hemisphere, despite objections from the cultural conservatives that Mexicans posed an even greater threat to national identity than southern and eastern Europeans did. This was legitimized on

foreign policy grounds as well. Although immigration from Mexico was potentially limited by the literacy requirement enacted in 1917, in effect movement remained largely unregulated, except for ad hoc deportations in periods of economic downturn, and led to settlement throughout the Southwest and in the Great Lakes region. During World War II the U.S. and Mexico established the *bracero* program, a government-operated temporary worker program, which reinforced ongoing flows and enhanced the dependence of both economies on their continuation. After a brief interruption at the end of the conflict, the program was revived and expanded. Black immigration from the English-speaking Caribbean also grew during this period, as the immigrants had access to the very large British quota by virtue of their British nationality.

Despite the political clout that southern and eastern Europeans achieved within the New Deal coalition and their incorporation into mainstream American society during World War II and its aftermath, discriminatory quotas were reenacted in 1952, albeit with a shift from outright prohibition of Asians to severe restriction of them. However, the ascent of the U.S. to international hegemony prompted the opening of a side entrance for the intake of refugees. Although largely governed by foreign policy considerations, this also allowed the admission of groups restricted by the quota system, notably Jewish Holocaust survivors and Italians and Greeks thought to be vulnerable to mobilization by communist parties, thereby somewhat reducing pressures for reform.

Nevertheless, by the early 1960s many Americans regarded the national-origins system as on a par with deliberate segregation, contrary to the spirit of the Constitution, and few were prepared to defend it explicitly. But in keeping with the rules of the Washington political game, the reformers—notably Senator John F. Kennedy, who made it a key issue in his campaign for the presidency—could be made to pay for achieving their objective. Determined to limit the settlement of Mexicans and West Indian blacks, conservatives imposed an unprecedented numerical limit on immigration from the Western Hemisphere. The ease with which the reformers paid up reflected their ambivalence about the back door. Under pressure from organized labor, the Democratic administration terminated the *bracero* program in 1964, but since Mexican labor was by then vital to U.S. agro-industry, it was evident that the flow was likely to continue in an unregulated mode.

The compromise was reflected in the Immigration Act of 1965, scheduled to go into effect on July 1, 1968. Celebrated in a solemn signing ceremony at the foot of the Statue of Liberty on October 3, 1965, it was hailed as on a par with the previous year's Civil Rights Act. This law established an annual limit of 170,000 entries for the Eastern Hemisphere, with a maximum of 20,000 from any one country; however, it provided for the unlimited admission of children, parents, and spouses of American citizens, thereby allowing for considerable immigration beyond the ceiling. An overwhelming 74 percent of per-country entries was allocated to family re-

union, including 24 percent for siblings of citizens. Another 20 percent was distributed on the basis of personal qualifications considered of value to the U.S. (10 percent for professionals, scientists, and artists; another 10 percent for skilled and unskilled workers in short supply), and the remaining 6 percent was set aside for refugees, initially defined as people fleeing from communism or the Middle East, as well as victims of natural calamity. The law imposed a ceiling of 120,000 on immigrants from the Western Hemisphere starting in 1968, unless decided otherwise in the interim; however, there was no schedule of preferences to allocate Western Hemisphere entries if the ceiling came into effect, as it was expected to do.

The law effectively expressed the policymakers' determination to maintain immigration as the marginal feature it had been reduced to. Given the limited number of living relatives of Americans of European origin, its authors did not anticipate a significant increase in annual admissions once the backlog of applications was disposed of. It therefore came as a surprise that legal admissions soon increased by half, from 3.3 million in the 1960s to 4.5 million in the following decade, and that the foreign-born population, which included undocumented entrants, increased by half as well, from 9.7 million in 1960 to 14.1 million in 1980. Although as a proportion of the country's total population the foreign-born remained at less than half the record level of 1890 to 1910, immigration gained considerable importance from a demographic perspective: its contribution to population growth doubled, from about 10 percent in the postwar decades to slightly over 20 percent in the 1970s. Moreover, its visibility was compounded by a dramatic shift in its composition. European immigration began to decline as the family backlog was taken care of and most European countries turned into receivers, while arrivals from the rest of the world climbed from an average of 42.6 percent of the annual total in the final years of the old system to 58.8 percent from 1965 to 1969, stabilizing at approximately 75 percent in the mid-1970s. The admissions allocated to labor procurement provided unprecedented opportunities for Asians in particular, and these newcomers created new family networks. A similar process operated within the Western Hemisphere component as well, further stimulating the growth of Mexican and Caribbean immigration. Moreover, the inclusion of brothers and sisters as well as adult children and their spouses within the family reunion system produced a "chain" effect, as the in-laws initiated the formation of new networks of blood relatives.

As a consequence, the U.S. once again turned into a nation of immigrants, but now one that uniquely mirrored humanity as a whole. As the leading source of both legal and unauthorized immigration, Mexico became a central concern. The basic factor was a demographic explosion, which boosted that country's population from 26.3 million in 1950 to 69.7 million in 1980. When the Mexican government's neoliberal policies in the 1970s removed the traditional protection of guaranteed purchase of corn above the market price, displaced farmers sought opportunities by moving northward, within Mexico and across the border. Although these develop-

ments prompted the U.S. to impose a 20,000-per-country limit on the Western Hemisphere in 1976, the deterrent was once again largely nullified by unauthorized immigration.

The refugee situation was becoming unmanageable as well, as cold war foreign policy considerations and constituency pressures prompted Congress to broaden the definition of "refugee" and admit much larger numbers than the 10,200 a year provided for under the 1965 law. The limit was formally raised to 17,400 when the Western Hemisphere was included. Initiated mostly under presidential "parole" authority, which gave the executive considerable leeway, the major new sources included Cuba, in the wake of the Castro revolution; the Soviet Union, which allowed Jews to leave as a condition for détente and access to U.S. trade; Indochina, in the wake of the Vietnam War; Haiti; and, later, Central America. These flows too led to the formation of family networks that fostered an expanding demand for immigration visas, independent of the conditions that prompted the initial refugee movement. Efforts to control the refugee side entrance arose as Congress sought to restrict presidential foreign policy autonomy in the wake of Vietnam. Human rights organizations entered the fray as well, in order to bring American refugee and asylum policy in harmony with international norms.

These developments stimulated an expanding debate over the desirability and consequences of immigration, recalling the confrontations of an earlier era, with social scientists and public intellectuals once again playing a prominent role in the production of ideologies justifying alternative policies. This was reflected in the emergence of such neorestrictionist groups as the Federation for American Immigration Reform (FAIR) and its offshoot, the Center for Immigration Studies (CIS). Such groups charged that immigration negatively altered the nation's cultural identity, as indicated by the emergence of Spanish as a lingua franca; that the emphasis on family reunion imposed an intolerable burden on the welfare system and social services; and that the growth of undocumented settlement constituted a major source of crime. Added to these traditional themes were new considerations regarding population pressure on the environment. On the other side, employers formed informal alliances with civil libertarians and organizations representing the new immigrant groups to keep the door wide open. As globalization fostered the relocation of labor-intensive industries (notably garment manufacturing), U.S. enterprises became increasingly dependent on cheap immigrant labor, legal or undocumented, for their survival; unions too were dependent on the survival of these enterprises, prompting some to do a 180-degree turn toward immigrant defense. This was reflected in the creation of the National Immigration Forum (NIF) by the garment workers' union UNITE in 1981, and was subsequently extended to organized labor as a whole. Thanks to the size of the Hispanic population and its concentration in key states, Hispanics quickly achieved critical weight in the political process and generated a precocious "immigrant feedback" that played a major role in forestalling a replication of the 1920s outcome.

In light of these developments, in 1979 Congress established the Special Commission on Immigration and Refugee Policy (SCIRP) to make recommendations for modifying the law. Meanwhile, in the wake of the Indochina refugee crisis, Senator Edward Kennedy moved refugee policy to the top of the Judiciary Committee's agenda. Under the unusual partnership of Kennedy and Strom Thurmond, a measure establishing a separate policy for refugees and bringing it into accord with international norms gained unanimous approval in the Senate and comfortably cleared the House as well. An annual numerical guideline of 50,000 was set, with presidential authority to admit a higher number if the need arose, but parole authority was to be used for individual cases only, as originally intended. At the time some 8 million people met the international definition of "refugee," most of them in first-asylum countries awaiting resettlement, so admissions had to be selective; accordingly, the law gave preference to people "of special humanitarian concern to the United States." In keeping with international law, it also established a process whereby any alien physically present in the U.S. could file an asylum claim on grounds of meeting the refugee definition. The law placed no limit on the number of asylum grants per year, but the drafters seemed to assume that no more than 5,000 applicants would succeed, because they imposed that ceiling on the number who could become lawful permanent residents (after at least a year as asylees). In fact refugee policy continued to be applied largely on an ad hoc basis: admissions rapidly escalated to over 100,000, and asylum emerged as an especially problematic feature, with a huge backlog and a tug-of-war between immigrants attempting to use asylum to gain admission and U.S. authorities increasingly regarding asylum claims as inherently suspect.

As a solution to the problem of illegal immigration, SCIRP voted unanimously to recommend the legalization of a substantial portion of undocumented aliens, popularly referred to as "amnesty," with eventual access to citizenship, in keeping with the aspirations of Mexican American leaders and the liberal camp; but it astutely combined this with a major innovation designed to appeal to partisans of law and order, the imposition of sanctions on employers of illegal aliens. Such sanctions, long advocated by organized labor, would require employers to check on the immigrant status of their employees and were viewed by many as a dangerous extension of federal regulation. The inclusion of revisions of the H-2 program to provide additional temporary workers in agriculture enhanced the possibility of horse-trading among the various interests concerned. SCIRP also proposed to reorganize the Immigration and Naturalization Service (INS), notorious for its ineffectiveness and vulnerability to corruption.

By the time SCIRP issued its recommendations in February 1981, Ronald Reagan was president. The incoming administration was divided on immigration issues, as were Republicans more generally. On one side were those who adhered to the view set forth by free-market economists connected with the Council of Economic Advisers and the American Enterprise Institute, that immigration was of net

economic benefit to the U.S. but could be made even more valuable by shifting priorities from family reunion to the acquisition of human capital. As the former governor of California, Reagan was close to fruit and vegetable growers who relied heavily on an ongoing supply of undocumented immigrant workers. On the other side were the cultural traditionalists, who perceived immigration mainly as a threat to America's identity. Among them was Senator Alan K. Simpson of Wyoming, whose outlook was shaped by the neo-Malthusian demographer Leon Bouvier, close to the new restrictionist lobby FAIR. When the Republicans gained control of the Senate for the first time in a generation, Simpson, who had pressed unsuccessfully within SCIRP for an overall ceiling on immigration, became chair of the Immigration Subcommittee and a key player until his retirement in 1996.

Negotiations over the package deal resulted in the Immigration Reform and Control Act of 1986 (IRCA). The final votes again reflected unusual alignments, with the minority made up of liberal Democrats, who warned of discrimination, and conservative Republicans, who objected to the generous treatment of illegal aliens and to the prospect of future guest workers. Amnesty involved two categories of persons. The first was aliens present in the U.S. before 1982, most of whom had been admitted under one of the ongoing temporary programs and had subsequently overstayed; they had to apply within an 18-month period starting 6 months after the bill became law and upon approval would hold the transitional status of "lawful temporary resident." After a year they would be eligible to apply for permanent residence upon demonstration of "minimal understanding of ordinary English" and a basic knowledge of U.S. history and government—requirements usually imposed on applicants for naturalization. The second category, designated "special agricultural workers" (SAWs), covered aliens who entered legally or illegally and worked in agriculture for at least 90 days in 1985–1986; they too would become eligible for permanent residence after a two-year period as "temporary residents." Both programs were designed to be self-funded by way of application fees. To prevent a sudden swell in the welfare rolls, IRCA denied most applicants access to federal needs-based assistance for five years; however, because this increased the burden on states and localities, it also established a grant system to reimburse them for certain expenses incurred on behalf of eligible legalized aliens during the transition period. Curiously, the law set aside 10,000 immigrant visas for countries disadvantaged by the 1965 law; hailed by its supporters as "affirmative action" on behalf of Europeans, it largely reflected the efforts of Irish organizations to open a door for Irish nationals who had no immediate family members in the U.S. and who failed to qualify on the basis of skills. These came to be known as "diversity visas."

IRCA's most evident achievement was the legalization of nearly 3 million people, mostly of Mexican origin. The big surprise was that there were twice as many applications under the SAWs program as estimated, prompting suspicions that many of the claims were fraudulent. Overall, an estimated 91 percent of the pre-1982 illegal

population was legalized, with residents of California well in the lead (59.2 percent of the total). Legalization vastly expanded the Latino community's potential political power and gave it an unprecedented voice in the determination of immigration policy.

However, as a design for closing the back door, IRCA was worse than inadequate, because the elements that made its enactment possible were structurally contradictory. Employer sanctions failed because they went against the interests of all employers. The new regulations entailed a wholesale transformation of business practices, requiring the country's 7 million employers to file for three years forms attesting that they had checked the work eligibility and identification documents of every employee; matters were complicated by the many variants of the alien registration card as well as the wide availability of fraudulent documents, notably Social Security cards. Enforcement entailed a monumental and unprecedented joint undertaking by the Department of Labor and the Department of Justice, which lacked organizational capacity and adequate funding to do so. By 1991 a commissioned report noted that "growth in the enforcement budget has halted due to government-wide stringency" and that Congress was likely to abandon employer sanctions altogether. There was considerable debate over the deterrent effect of sanctions as well, and a comprehensive review concluded that IRCA probably brought about a reduction in illegal Mexican immigration during the three years immediately following enactment but that after 1989 the illegal flow was again on the rise.

While implementation of IRCA got under way, Congress tackled the remainder of the SCIRP agenda. The commission had proposed to reduce chain migration by reducing numbers in the married-brothers-and-sisters preference or limiting the preference to unmarried siblings. Yet despite rising concern over immigration in the country, further stimulated by the onset of a severe economic downturn, the alliance of concerned ethnics and free-market advocates managed to block attempts to limit or even reduce immigration. Senators Kennedy and Simpson introduced a proposal imposing an overall cap on annual immigration, excluding refugees. Immediate relatives of citizens remained unlimited, but the number admitted in a given year would be deducted from the family allocation the following year, so that as the mass of immediate relatives grew, the number available for other family-reunion preference visas would substantially shrink. The cap would thus eventually take on a restrictive function, which would affect the siblings of recent immigrants most severely. The proposal also sought to limit chaining by restricting the fifth preference to unmarried brothers and sisters. It substantially increased independent admissions, to be allocated on the basis of a system inspired by Canadian policy, providing "points" for education, skills, age, working experience, and English-language proficiency. Individuals could also qualify for admission by investing \$1 million and creating at least 10 jobs, a provision promptly decried as a fat-cat measure.

After two years of maneuvering, the measure was signed into law by President

George H. W. Bush in November 1990. As Senator Simpson put it, Congress had built a ceiling with a hole in it. The law established an overall cap on annual immigration of 675,000, including immediate relatives of citizens but excluding refugees, beginning in fiscal year 1995, and slightly increased the per-country ceiling to 25,520. Although it retained the provision to deduct the number actually admitted in a given year from the following year's allocation to relatives, it also insured a minimum of 226,000 admissions for the latter, so that if more than 254,000 immediate relatives of citizens were admitted in a given year, the cap would have to be lifted above 675,000 the following year. Visas for siblings were reduced, and employment-based immigration was more than doubled, from 54,000 to 140,000, constituting 21 percent of the total. The law also institutionalized the category "diversity immigrants" from underrepresented countries and enlarged it to 55,000; Ireland was guaranteed 40 percent during the transition period, a demonstration of residual Irish clout within the Democratic party.

Meanwhile, anti-immigration sentiment continued to climb. Even as the law neared enactment, a Roper poll reported that 75 percent of the public thought legal immigration should not be increased and nearly half that it should be reduced; furthermore, a majority believed that legal as well as illegal immigrants displaced American workers, burdened the social welfare system, and threatened American culture. Over the next few years, support for outright reduction climbed to 54 percent, then 61; it reached 66 in 1995, while those who thought policies should be revised rose to 80 percent, with a majority disapproving of President Bill Clinton's handling of the matter. Blatantly neorestrictionist literature gained considerable public attention, and even some economists went on record on behalf of limitation. The cultural struggle was acutely manifest in efforts to eliminate bilingual education and generally protect the public sphere against encroachments by the Spanish language, with dire predictions that if immigration continued at the present rate, "non-Hispanic whites" would fall to below half the population by 2050.

Yet although concern remained largely focused on the flow from Mexico, the U.S. pursued policies that in effect encouraged northward movement, notably the North American Free Trade Agreement (NAFTA), passed in 1992, which required Mexico to relinquish protectionist agricultural policies that enabled subsistence farmers to remain on their land and stimulated the expansion of transborder economic linkages, particularly truck traffic, which facilitated undocumented entry. Asylum policy also turned into a battleground; although the procedures instituted by the Reagan administration initially appeared to be an effective deterrent, a series of court rulings to the effect that Central American claimants had been rejected in a summary fashion imposed additional procedural guarantees and abruptly reversed the trend, so that applications as well as the backlog approximately tripled between 1991 and 1995.

Although immigration policy did not rank high among the incoming Clinton

administration's concerns, the subject was abruptly propelled into the headlines in January 1993 when the nominee for attorney general was found to have employed an undocumented Peruvian as a babysitter. In the same month a Pakistani gunman launched an attack on CIA headquarters, and in February a bomb exploded in the basement garage of the World Trade Center, a crime for which six Middle Eastern men were later convicted. On June 6 immigration burst out as a made-for-TV event when the freighter *Golden Venture* ran aground off New York City, with a cargo of over 300 undocumented Chinese, and a similar incident made primetime on the West Coast shortly afterward when the freighter *Pai Chang* dumped its human cargo near the Golden Gate Bridge and then led the Coast Guard on an eight-hour chase in San Francisco Bay.

Under public pressure to adopt a tough stance but obligated to his political allies, who included many of the "new" ethnics, President Clinton adopted a middle course. He appointed as commissioner of the INS an unusually experienced professional, Doris M. Meissner, who had served as a senior manager within the agency in the early 1980s and subsequently conducted research at the Carnegie Endowment. He also established the Commission on Immigration Reform (USCIR), called for by the 1990 law, appointing former Texas representative Barbara Jordan as its chair. Overall, the commission's makeup afforded the prospect of control-minded initiatives. In mid-1993, Operation Hold the Line, the first of a series of Border Patrol efforts to reduce surreptitious crossing within densely populated urban districts along the U.S.-Mexican border, was launched in El Paso, Texas. Asylum regulations were toughened around the same time.

Immigration emerged as an especially hot issue in California, a vital state in Clinton's electoral victory. Seeking to make a political comeback in the wake of the collapse of the defense industry and the Los Angeles riots, Governor Pete Wilson, who throughout his two terms in the Senate had relentlessly advocated an expanded guest worker program, seized upon illegal immigration as the scapegoat for the state's financial difficulties. In early 1994 his allies launched Proposition 187, cleverly dubbed "Save Our State," which would deny social services, nonemergency health care, and primary education to illegal immigrants—the latter in violation of the Supreme Court's 1982 ruling in *Plyler v. Doe*. The proposition carried by 59 percent, with a high of 63 percent among white voters and a low of 23 percent among Hispanics, and Wilson was easily reelected. As a political experiment, Prop 187 revealed the strategic value of reinforcing the boundaries of social citizenship. By the same token, it revealed to those targeted the value of political citizenship, prompting more Hispanics to vote than in any previous state election and a nationwide rush to naturalize.

Policy prospects changed abruptly with the 1994 Republican conquest of Congress, for the first time since 1954. Although immigration did not figure prominently in the Republicans' program, in the face of public pressure for reduction the

party was expected to move in that direction. The Jordan Commission's report of spring 1995 provided support for this, by recommending the elimination of the family-based admission categories that contributed to chain migration. Nevertheless, the strange-bedfellows syndrome came into play with a vengeance: with the prospect of a significant reduction of immigration, the concerned economic interests entered into an explicit alliance with immigrant advocates and the now Hispanic-oriented AFL-CIO. Welcoming an unusual opportunity to cooperate, the (Protestant) Christian Coalition and the Catholic Bishops Conference joined in.

By mid-1996 a tradeoff between the Democratic president and the Republican Congress neared completion, providing for a reduction of immigrant access to the social welfare system in exchange for maintenance of the family-reunion provisions. A turning point in both social and immigration policy, Title IV of the Personal Responsibility, Work Opportunity, and Medicaid Restructuring Act significantly narrowed the boundaries of social citizenship. To begin with, it confirmed the ineligibility of illegal and nonimmigrant aliens for most welfare benefits; as for legal immigrants, it imposed greater responsibility on the people who sponsored them by making affidavits of support legally enforceable either by the immigrants or by any government agency providing means-tested social services, and allowed states to deny the immigrants access to certain types of assistance, notably Medicaid and Temporary Assistance for Needy Families.

Later that year Congress also passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Signed by President Clinton on September 30, it focused largely on enforcement, doubling the number of border agents, constructing physical barriers in heavily trafficked areas, stiffening civil and criminal penalties for illegal entry and for assisting it, buttressing state and local authority to enforce immigration laws, and creating an "integrated entry and exit data system." The law also imposed limitations on the ability of aliens to challenge INS decisions and deportation rulings in federal court, paralleling those of the same year's Antiterrorism and Effective Death Penalty Act. In addition IIRIRA provided for "expedited removal" of persons arriving with false papers or no documents at all. However, as a result of a hard-fought compromise, if the person claimed asylum, the case would be referred to a trained asylum officer, who would interview the individual to determine whether the claim was plausible and so should receive a full hearing before an immigration judge.

While Proposition 187 helped Pete Wilson secure reelection, it jeopardized the Republican party's future in California, and this was compounded by the policies subsequently enacted by the Republican Congress. The 1998 state and midterm congressional elections were the California Republicans' Waterloo, and the Democratic surge was largely attributable to mobilization of the Mexican American electorate. These realities quickly affected policymaking, leading to the curtailment of Proposition 187, the abandonment of further restrictionist efforts by the Republi-

can leadership in Congress, and eventually the identification of George W. Bush as a promising presidential candidate on the basis of his relative success with Mexican Americans as governor of Texas.

With the Clinton impeachment overshadowing all other activity throughout most of 1998 and the economy escalating to unprecedented heights, immigration disappeared from the headlines and the mood shifted away from restriction. A 1999 Gallup Poll reported that only 44 percent favored reduced immigration, the lowest level since 1977. Immigration largely receded from the congressional agenda, except for attacks on the INS, whose survival became another bone of contention between the Clinton administration and its opponents, as did persistent efforts to enlarge the guest worker program and proposals to provide additional legalization.

While the crystallization of anti-immigration sentiment in response to what restrictionists perceive as a tidal wave of immigration originating beyond the established European-based boundaries of American identity echoed developments in the early decades of the 20th century, the restrictionists' limited success also draws attention to some important differences between the two time periods. One is the structure of the political party system. Whereas the restrictions of the 1920s were enacted by a coalition of conservative Republicans and southern Democrats, leaving the business-minded to find substitute workers, today's business-minded Republicans no longer have access to ample reserves of cheap labor. The contemporary political configuration also affords recent immigrants a greater measure of political power by virtue of their strategic location in swing states. As a consequence of their demographic profile (relative youth and higher fertility), new immigrants and their offspring accounted for half the total growth in the U.S. population between 1990 and 2000 and thereby carried considerable weight in the reapportionment process. While Hispanics tend to vote Democratic, they do so much less than African Americans, and their conservatism on family issues, notably abortion, makes them promising prospects for Republican cultivation.

A final difference arises from the configuration of immigration itself. In the early 20th century the U.S. was in effect an island, whose makeup could be determined by way of remote control; once decided upon, both Asian exclusion and European restriction were easily implemented by ordinary administrative procedures. But today, while remote control still works with regard to most of the world, it is not practicable with respect to the neighboring south. To overcome this handicap, the U.S. would have to venture well beyond immigration policy and undertake a fundamental transformation of the system. In keeping with these facts, George W. Bush repressed anti-Hispanic agitation within his party's ranks at the outset of his campaign and made a point of delivering an occasional speech in Spanish following his election. At the same time he undertook to restructure the uneasy relationship between the U.S. and Mexico by negotiating a guest worker program that includes some possibility of access to permanent residence as well as legalization.

Although border control took on renewed significance in the wake of 9/11, the terrorist attacks revealed that the most severe threat to U.S. security has little to do with immigration but arises from international travel, which poses a staggering challenge, because border inspectors would have to make over 1 billion correct decisions every year to keep terrorists and their weapons out of the country. Leaving aside daily commuters from Canada and Mexico, documented foreign entrants number some 60 million, about half of whom are covered by the Visa Waiver Program, which in 2001 exempted nationals of 29 countries. That year the U.S. issued 7 million visas, of which only some 800,000 were awarded to immigrants, with another 600,000 going to students and the remainder to tourists and business visitors. Approximately 1 of every 500,000 visas awarded in the two-year period preceding 9/11 went to a hijacker or a suspected associate. The task remains staggering even when scrutiny is narrowed down to presumed "dangerous" people: for example, some 120,000 visas were issued to Saudi nationals, of which 15, or 1 per 8,000, went to future hijackers, and the leading detained suspect was a Morocco-born individual who acquired French nationality and hence was admitted without a visa. While control of entries by air is carried out by remote control, investigations in the wake of 9/11 revealed that consular officials have very limited information and that much of the investigative task is delegated to unreliable travel agencies.

While many countries supplement border controls with internal scrutiny of aliens, in this respect the U.S. has been at the extreme liberal end of the continuum. Although concern with terrorism occasioned by the Iranian hostage crisis of 1979 prompted the INS to require educational institutions to report the movements of foreign students, by 1988 forms were piled so high that the agency asked the institutions to stop sending them in. Following the first attack on the World Trade Center, IIRIRA mandated the creation of an "integrated entry and exit data system," but the Clinton administration and Congress caved in to pressure from the education and business lobbies to postpone its development, and the Bush administration followed suit. Moreover, tighter border control was handicapped by protracted turf wars between the State and Justice Departments.

The most significant legislative measure explicitly designed to offset the vulnerability exposed by 9/11 is the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, an unwieldy title designed to produce the bombastic acronym USA PATRIOT. Although it was broadly supported by both parties, an early version permitting indefinite detention evoked the treatment meted out to Japanese Americans in World War II, and liberals insisted on both tighter limits on the new detention power and the inclusion of a "sunset clause" providing for the law's expiration in 2005 unless explicitly renewed. Among other things, the act imposed a two-year deadline for the implementation of the integrated entry and exit data system. The events also triggered

a spate of proposals to make the U.S. more secure by subjecting foreign residents to systematic verification; but given the magnitude of the task (involving 11 percent of the population), despite repeated reassurances by public officials, this was carried out on the basis of ethnic profiling, targeting groups considered dangerous, namely "Arabs" and "Muslims," or, more diffusely, "Middle Easterners," including many South Asians. The early post-9/11 roundups led to the incarceration of numerous Middle Easterners for violations of immigration regulations, mostly by way of overstaying, and a spate of deportations. However, none of those rounded up was charged as a terrorist. It is noteworthy that the 1996 statutes emerged as the Justice Department's preferred control devices. Under a bill passed in November 2002, the INS was dissolved effective March 2003 and its responsibilities were assumed by the newly created Department of Homeland Security.

It is remarkable that despite continuing pressure by dedicated restrictionists, who argue that security considerations require a reduced intake, the U.S. refrained from tightening its immigration policy. In 2002 illegal immigration quickly reached its previous level, and it rose further in 2003, following the elimination of tariffs on Mexican agricultural imports from the U.S. In 2003 the Census Bureau released new figures indicating that the growth of the Hispanic population "continues at a dizzying rate," increasing by nearly 10 percent in the first two years of the new century. After a prolonged hiatus, motivated in part by Mexican opposition to U.S. intervention in Iraq, negotiations on the guest worker program resumed in 2003, and in January 2004, President Bush proposed a sweeping two-part program that would enable undocumented immigrants to apply for temporary worker status, while other plans spoke of "earned legalization." Despite further postponements, movement along these lines continued throughout 2005, suggesting that settlement of the most recent immigration crisis would include the institutionalization of a special relationship with Mexico.

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Citizenship and Nationality Policy

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Not since the McCarthy era in the early 1950s, when many Americans aggressively questioned the loyalty of their fellow citizens and when relatively few immigrants were admitted and thus became eligible to become citizens, has the public debate about citizenship been so energetic and morally charged. In Congress, at the bar of public opinion, and even in the courts, citizenship in both its normative and positive dimensions is being closely reexamined. One aspect of the tragedy of September 11, 2001, that has been little remarked upon is the renewed prominence it has given to the status of citizenship.

The significance of citizenship depends on the meanings that attach to it in three analytically distinct domains where its values are conflicting and contested. The first is international law and politics. Here the nation defines the scope of its sovereignty by classifying all individuals as either insiders or outsiders. By insiders, I mean those whom the polity brings into its constitutional community by granting them legal rights within and against it. The American constitutional community includes citizens, noncitizen nationals, legal permanent resident immigrants (LPRs), legal nonresident (temporary) visitors, and in some cases undocumented persons. Outsiders are everybody else in the world. The second domain is national politics, where public law classifies the body of insiders into different categories, defining what the polity owes to each and what they in turn owe to the polity. The third domain is federalism, in which the polity is structurally divided into multiple, overlapping sovereignties. I am primarily concerned with the second of these domains, national politics, and especially with the distinctive character of national citizenship status as it is framed by public law and policy.

First, clarification of the terms "citizen" and "national" is in order. All citizens of the United States are also U.S. nationals, but the reverse is not always true; some nationals are not citizens. Citizens enjoy all of the privileges and responsibilities of full