

7 CDZJICL 141

(Cite as: 7 Cardozo J. Int'l & Comp. L. 141)

<KeyCite Citations>

Cardozo Journal of International and Comparative Law  
Spring 1999

### Note

## **\*141 "I CANNOT EAT AIR!": AN ECONOMIC ANALYSIS OF INTERNATIONAL IMMIGRATION LAW FOR THE 21st CENTURY**

Harry Valetk

Copyright © 1999 Yeshiva University; Harry Valetk

### I. Introduction

"I don't know what to do," said the woman whose large-rimmed glasses concealed her teary eyes. [FN1] "I have no relatives. I have no way to live." [FN2] "I cannot eat air. I cannot stay in the street. The only thing I can do is commit suicide." [FN3] These were the desperate cries of an elderly Chinese immigrant as she clung to the arm of Acting Social Security Administration Commissioner John Callahan, during his visit to a senior citizen center in Flushing, New York. [FN4] The woman identified herself only as "Mrs. Lee," apprehensive of her first name being published because of her illegal immigrant status. [FN5] The eighty-seven-year-old woman dreaded losing her only source of income since 1974: her Supplemental Security Income checks. [FN6]

Mrs. Lee arrived in the United States in 1941 as a visitor from Canton, China, and she married a Vietnamese representative in 1944; she gave birth to her only child in 1945. [FN7] A year later, her husband was ordered to return to Vietnam and died as a result of civil unrest. [FN8] Thereafter, Mrs. Lee cared for her son, who suffered from a congenital disease, until his death in 1969, and then cared for her sick brother until his death in 1981. [FN9] Attorneys estimated \*142 that Mrs. Lee's chances of gaining legal status were slim [FN10] because she had been a public burden for so many years.

Mrs. Lee's story, however, has a happy ending. As a result of the public attention Mrs. Lee's statements received, federal officials assured her the next day that they would bring her case before President Clinton, in an effort to "highlight in human terms the potential impact of this new [legislation] on elderly disabled immigrants." [FN11] Followed by five months of negotiations and a full-scale assault of public outcry, Henriette Chung (who previously only identified herself by her married name, "Mrs. Lee") gleefully announced that she had received her residency in September 1997, after fifty- six years on American soil. [FN12]

Henriette Chung's story comes in the wake of a historically frightening, unforgiving and mean-spirited congressional attack on the elderly, the poor and, above all, the foreign. Ms. Chung fell victim to Congress' enactment of a major piece of legislation that amended, repealed and overhauled immigration reform by specifically excluding non-citizens from receiving basic governmental benefits. Unlike most immigrants in similar situations, Ms. Chung was fortunate to have found a medium through which to voice her cry for help. As for the millions of immigrants without a voice who are the unsuspecting targets of this congressional assault, this Note is an effort to highlight the consequences that are sure to result from Congress' act.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), [FN13] regardless of whether it is further amended to fit our volatile political climate, aggressively attacks undocumented immigration [FN14] on several fronts. In doing so, however, \*143 some of its measures impinge upon important procedural rights and raise serious policy and constitutional concerns. The statute is an extremely complex piece of legislation containing many provisions affecting all types of immigrants, even though it is purportedly directed against undocumented and criminal aliens. The IIRIRA completely revises numerous sections of the Immigration and Nationality Act ("INA"), [FN15] creates new programs, and changes legal standards that had been in place for decades. Moreover, the IIRIRA revises a number of current grounds of visa ineligibility under the INA and adds new grounds of visa ineligibility. This Note examines the economic and social impact of the IIRIRA by looking at its impact on immigration from Mexico to the United States. This Note then explores alternatives to the policies embodied in the IIRIRA by exploring the immigration policies of Venezuela, Canada, and the European Community. Both profiles and critiques explore several provisions of the IIRIRA and its underlying motivations. This Note aspires to point out the socio-economic ramifications this statute and its underlying policies will have on the global community.

## II. The Historical Roots of Contemporary Immigration Policy

The current wave of restrictionist attitudes towards immigration has deep-seeded roots in American history. [FN16] Although commentators frequently refer to the United States as "a nation of immigrants," there have been persistent attempts by former immigrants to keep out newcomers ever since the founding of the colonies. [FN17] Moreover, throughout our nation's history, anti-immigrant movements have ridden the crest of prejudice, often claiming that incoming immigrants were responsible for increases in disease, \*144 pauperism, crime and vice. Restrictive immigration policies were first introduced in the decades following 1870, when negative beliefs about immigrants acquired influence. [FN18] An article written in 1920 by Kenneth Roberts in the Saturday Evening Post exemplifies the stereotypical anti-immigrant mood, stating that "if the United States is a melting pot, something is wrong with the heating system, for an inconveniently large portion of the new immigration floats around in unsightly indigestible lumps." [FN19] Since then, public sentiment towards immigration has shifted from the more tolerant attitudes of the 1950s and 1960s, embodied in the 1965 amendments to the Immigration and Naturalization Act of 1952, which eliminated a system of allocating immigrant visas on the basis of country of origin, and substituted a system largely dependent on principles of family reunification, to the neorestrictionist sentiments of the 1970s and early 1980s.

At the beginning of the 1980s, critics of American immigration policy placed it squarely on the national political agenda. [FN20] These critics denounced a set of policies that were the culmination of 100 years of national policymaking, legislative actions consisting of false starts, symbolic gestures, dramatic legislative landmarks, incremental adjustments and halting reforms. [FN21] The result was a complex web of loosely related laws, regulations and procedures. [FN22] They embraced some people who wanted to enter the country and rejected others while failing to either reject or embrace still other classes of immigrants. [FN23] Despite the complexity of these laws, critics advocating reform agreed about the key features of the policy and why they needed changing. [FN24]

Today, many Americans blame immigrants for problems remarkably similar to those once attributed to previous newcomers. Immigrants, as a politically weak group, are convenient and tangible targets for blame. [FN25] During the early 1990s, attacks were leveled \*145 at immigrants for displacing American citizens in the job market, committing crimes, and excessively and undeservedly consuming public benefits. [FN26] The political process responded to this public outcry. At the state level, for example, California voters gave Proposition 187 overwhelming support; [FN27] Proposition 187 is an extreme measure, which, if it withstands formidable legal challenges, denies undocumented immigrants the few public benefits and services for which they are eligible. [FN28] Supporters of the initiative declared it would be "the first giant stride in ultimately ending the 'Illegal Alien' invasion." [FN29] Although this ballot measure focused on undocumented immigration, Congress soon followed by considering proposals that would greatly limit legal immigration [FN30] and severely restrict the public benefits available to legal immigrants in this country.

#### A. Universal Attitudes Toward Immigrants

Nevertheless, the apparent ongoing question facing policymakers continues to be the underlying causes of hostility towards immigrants. Using macrodata for the United States, researchers demonstrate that the intensity of feelings toward immigrants is closely linked to economic conditions and suggest that racial prejudice is stimulated in economic recessions. In addition, some have concluded that opposition to immigration rises and falls with the unemployment rate, whereas measures of ethnic intolerance exhibit a secular decline that is relatively insulated from economic conditions. [FN31] This suggests that the American public might prefer lower levels of immigration if they believed that immigrants took jobs away from native workers, that immigrants were more likely \*146 than natives to require public assistance, or that most recent U.S. migrants were in the country illegally. [FN32]

Moreover, immigration attitudes differ by national origin group, citizenship status, and region of the country. Recent studies from the Latino National Political Survey show that more than seventy percent of each of the Latino groups residing in the United States, particularly Mexicans and Puerto Ricans, agreed with the notion that there are too many immigrants coming to the United States. Oddly, non-citizens were more inclined to support the notion than citizens. [FN33]

Anxieties over immigrants' cultural impacts may also help to account for the rise in

neorestrictionism. [FN34] In a 1986 survey, one-third of respondents cited negative cultural or personal traits of immigrants as "the biggest problem" associated with immigration, and three out of five noted negative characteristics about Latin-American immigrants, while nearly half possessed negative views of Asian-American immigrants. [FN35] Among the specific problems mentioned were crime, drugs, disease, unwillingness to assimilate or learn English, lack of education, ideological tensions, too many immigrants, and immigrants spoiling neighborhoods. [FN36]

Many of these accusations are ill-founded and unfair. For instance, a national survey commissioned by the Center for Equal Opportunity of Hispanic Parents (hereinafter "CEO") during August 1996 sought to discover what Hispanics most wanted their children to learn in school. [FN37] A random sample of 600 Hispanic parents were selected to participate in a telephone survey, and according to this survey, Hispanic parents overwhelmingly want teachers to teach their children English as quickly as possible. [FN38] They want teachers to teach all academic subjects in English. Furthermore, the parents think that learning to read, write and speak English is the single most important goal of education. [FN39] Therefore, in response to an immigrant's alleged "unwillingness to assimilate," \*147 the CEO invites policy makers to study these survey results carefully.

In analyzing the negative reaction to today's immigrants, it is important to distinguish between two distinct forces at work: nativism and racism. Nativism, as defined by John Higham is the "intense opposition to an internal minority on the grounds of its foreign, i.e. 'un-American,' connections." [FN40] Historically, nativism has been directed at most waves of immigrants, white and non-white alike. Although the influx of many large immigrant groups has been followed by nativist reactions, immigrants of color have been singled out for special disfavor. [FN41] For the most part, the presence of non-white immigrants at any moment in this nation's history has heightened the intensity of anti-immigrant sentiment. [FN42] For instance, although German and Irish immigrants in the nineteenth century experienced hostility, the anti-immigrant sentiment directed at them did not compare to the racially driven animus directed at Chinese immigrants during the same period. [FN43]

### III. The IIRIRA

Congress enacted the IIRIRA in an effort to:

[i]mprove deterrence of illegal immigration to the United States by increasing border patrol and investigative personnel, by increasing penalties for alien smuggling and for document fraud, by reforming exclusion and deportation law and procedures, by improving the verification system for eligibility for employment, and through other measures, to reform the legal immigration system and facilitate legal entries into the United States. [FN44]

With respect to national welfare and immigration policy, Congress stated that:

\*148 [s]elf-sufficiency has been a basic principle of U.S. immigration law since this country's earliest immigration statutes. It continues to be the immigration policy of the United States that (a) aliens within the nation's borders not depend on public resources to meet their needs, but

rather rely on their own capabilities and the resources of their families, their sponsors [FN45] and private organizations, and (b) the availability of public benefits not constitute an incentive for immigration to the United States. [FN46]

This statute constitutes Congress' failed attempt to enforce the ostensibly fundamental immigration policy of the United States. The fallacy of this aim, however, lies in the means Congress employed to achieve its purported objective.

The law is divided into six titles. Titles I and II deal strictly with enforcement issues, and include enhanced border controls and increased penalties for alien smuggling and document fraud. [FN47] Title III deals with the inspection, apprehension, detention and removal [FN48] of aliens. [FN49] Title IV modifies the employer sanctions \*149 \*150 process and establishes employment eligibility verification pilot programs. [FN50] Title V contains restrictions on the use of public benefits by aliens [FN51] and amends some provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter the "Welfare Act"). [FN52] Title VI reforms the asylum system and contains various miscellaneous provisions, including provisions relating to the diversity visa lottery, [FN53]\*151 consular processing and new requirements for state- issued identity documents. [FN54]

#### A. Fences, Fences and More Fences

In recent years, the United States has been obsessed with building more fences, guarding its borders and isolating itself from the rest of the global community. Not surprisingly, the overwhelming congressional effort to deter illegal crossings [FN55] is manifest in section 101 of the IIRIRA, which confers startling reinforcement to border control agencies and increases the number of border patrol agents by 1,000 in each of the next five years. [FN56] In addition, section 101 allows the Attorney General to increase the number of support personnel for the border patrol by 300 each year during the same period of time. The new law mandates that the additional border patrol agents be deployed in sectors along the border between the United States and Mexico in proportion to the numbers of illegal crossings at such sectors, and areas identified with high illegal entry "in order to provide a uniform and visible deterrent to illegal entry on a continuing basis." [FN57]

In addition to the increasing personnel, the IIRIRA requires the construction of new barriers along the border between the United States and Mexico and authorizes the purchase of new border enforcement equipment. [FN58] Section 102 of the new law mandates that the Attorney General install additional barriers to deter illegal crossings, especially in areas where there are high numbers of illegal entries. [FN59] The IIRIRA demands the construction of fencing and road improvements in the fourteen-mile border area near San Diego, starting at the Pacific Ocean and extending eastward. [FN60] In particular, the law requires the construction of second and third fences, in addition to the existing reinforced fence, and adds roads \*152 between the fences. [FN61] For this purpose, the IIRIRA authorizes \$12 million. [FN62]

To aid the deployment of its provisions, the IIRIRA also authorizes the Attorney General to contract for, or otherwise acquire, any interest in land, including temporary use rights, along the

border where necessary to guard against border violations. [FN63] The Attorney General may purchase any interest in land if the owner of the land proposes a reasonable price. If the Attorney General and the landowner are unable to negotiate a reasonable price, then the Attorney General has the power to commence condemnation proceedings. [FN64]

## B. Restrictions on Public Benefits

The heated atmosphere of immigration politics in the 1990s supports the notion that undocumented immigrants receiving benefits are twice as unpopular. Undocumented immigrants are often blamed for sapping public benefits and bankrupting state and local governments. The IIRIRA contains several added provisions prescribing further restrictions on benefits for immigrants and more stringent eligibility requirements for public assistance and benefits. [FN65] The general public's lack of sympathy, and frequent antipathy, for welfare recipients overwhelmed any legislative resistance; stereotypes, like that of the lazy welfare mother of color, greatly influenced the public debate. [FN66] Consequently, immigration advocates have expressed much concern about the inability of non-citizens to sustain a fight against the incremental limitations placed on benefit eligibility. [FN67]

**\*153** Section 553 of the IIRIRA gives the states and their political subdivisions authority to limit assistance to aliens and to distinguish among classes of aliens in providing general public assistance. [FN68] There are several dynamics at play in the new federal restraint on public benefits for aliens, not only because of the categories of disqualified aliens but also because of mechanisms that will eventually bar benefits for even eligible aliens. What most fail to realize, however, is that welfare benefits and other similar social programs are not likely to influence immigration levels. [FN69]

Examine, for example, the Welfare Act. [FN70] At face value, this statute is a colossal assault on almost all legal immigrants, barring them from receiving benefits from two significant federal programs: Food Stamps, the major food and assistance program for the indigent, and Supplemental Security Income ("SSI"), the cash assistance program for low-income persons who are aged, blind, or disabled. [FN71] States also have discretion to bar legal residents from three federal programs administered at the state level: non-emergency Medicaid, Title XX social services block grants, [FN72] and the new Temporary Assistance for Needy Families program, which replaced the Aid to Families with Dependent Children (hereinafter "AFDC") program. [FN73] To understand what is at stake, one should consider that, currently, under section 240(b) of the INA, which outlines the statutory eligibility requirements for cancellation of removal, "good moral character" is expressly defined to exclude anyone "who has given false testimony for the purpose of obtaining any benefits." [FN74]

Peter Schey, an attorney, Executive Director and President of the Center for Human Rights and Constitutional Law in Los Angeles, who has successfully argued immigrant class action suits before the U.S. Supreme Court, fears that "these proposals and enactments **\*154** would strip away many of the already threadbare protections these people have." [FN75]

### 1. Animosity Comes at a Price

This all-consuming hostility is most evident in California's infamous Proposition 187. Proposition 187 threatened to cost California more than it would save, indicating that fiscal concerns were not the primary motivation for the passage of restrictive public assistance legislation. [FN76] California's nonpartisan Legislative Analyst projected \$1.2 billion in annual savings from the costs of benefits and services provided for undocumented persons and \$200 million for other benefits and services. [FN77] The potential costs, however, dwarfed those savings. The Legislative Analyst estimated that annual costs of verifying citizenship and immigration status would be "in the tens of millions of dollars," with start-up costs potentially exceeding \$100 million. [FN78] More importantly, the Legislative Analyst estimated that if Proposition 187 was implemented, California stood to lose as much as \$15 billion a year in federal funds. [FN79]

Rather than deterring migration, as U.S. officials had expected, the program encouraged migration from the interior of Mexico to the border, which in turn led to increased migration to the United States. [FN80] The likely reason for this is that the border serves as a valuable source of economic opportunity. Moreover, in Mexico, decisions to migrate are based not only on perceived opportunities in the United States, but also on social, economic and political factors at home.

**\*155** The fact that the potential savings promised by Proposition 187 were dwarfed by its potential costs suggests that factors other than mere fiscal concerns were at present in gaining political support for the measure. [FN81] In spite of the Legislative Analyst's cost/benefit analysis in the pamphlet distributed to registered voters, [FN82] and the efforts of opponents of Proposition 187 to highlight the potential fiscal disasters, [FN83] the rational argument never touched the hearts and minds of the electorate. Consequently, fiscal rationality obviously was not the primary reason for the voters' endorsement of Proposition 187; rather, the issue became a general referendum about the propriety of immigration and how to hinder it.

Interestingly, the debate over immigration policy illustrates a central complexity surrounding the immigration debate in a nation that increasingly welcomes the internationalization of its economy, but not necessarily of its population. [FN84] Several troubling questions are raised, including: What is the economic impact of immigration? Can the United States maintain the rights and civil liberties of immigrants, yet seek out and control the undocumented alien influx? What about the increased problems of morale and corruption within the Immigration and Naturalization Service ("INS")?

### C. Economic Impact of Immigration

The most controversial issue, by far, has been the economic impact of immigration, particularly the impact of illegal immigrants. Virtually all experts agree that illegal immigration is a boom for employers and consumers alike. [FN85] Lower labor costs enable businesses to be more competitive, earn higher profits, and pass along some of those benefits to the consumer in the form of lower prices. There seems to be agreement that illegal immigrants compete for many jobs involving unskilled labor, hurting some while benefiting others. The debate, however, is

over how many are hurt and how badly; not how much others benefit.

**\*156** At worst, immigrants pose the greatest threat for the American job holders at the bottom of the socioeconomic ladder because low-skill and low-wage native workers have occupational characteristics similar to those of today's new immigrants. [FN86] Insofar as demeaning, high risk, low-paying jobs are concerned, such as those offered by the meat-packing industry, undocumented immigrants are in high demand and face little competition from their native counterparts. [FN87] Jobs in meat-packing plants are extremely dangerous and pay meager wages (about seven to ten dollars an hour) with no hope of ever having access to union benefits, health insurance, or other risk management programs. [FN88] According to Mark Grey, an anthropologist at the University of Northern Iowa who has studied the meat-packing industry at length, big meat-packing companies "keep wages low by hiring illegal workers who have little legal recourse if they are injured or fired." [FN89] Meanwhile, companies like Iowa Beef Processors, Incorporated, (hereinafter "IBP"), located in Storm Lake, Iowa, earned a \$257 million profit on sales of \$12 billion in 1995, of which its chairperson, Robert Peterson, received a \$5.2 million bonus on top of his existing \$1 million annual salary. [FN90]

A 1982 Reagan Administration initiative called "Operation Jobs" established rather conclusively that the majority of the aliens who cross the southern border do not take jobs that Americans seek. [FN91] For two weeks, beginning on April 26, 1982, the INS raided workplaces in Fort Worth, Houston, San Francisco, Detroit, Newark, New York, Chicago and Denver in an effort to round up illegal immigrants. [FN92] Many considered this to be one of the most extensive deportation efforts undertaken by the United States government. [FN93] Within five days, the INS had over 6,000 individuals in custody. To their surprise, however, local businesses across the nation felt the economic "pinch" immediately, reporting a thirty to **\*157** eighty percent sales drop. [FN94] Newspaper reports revealed that the few Americans who replaced immigrant workers quit within days because of brutal labor conditions. [FN95] The result of this massive effort, according to the media, was that the deportees were once again at work two weeks after the raids. [FN96] According to the INS, most undocumented immigrants arrive on commercial carriers and simply overstay their visas or enter from Canada. [FN97] Nevertheless, the IIRIRA disproportionately reinforces the southern border, providing a \$46 million budget increase for San Diego/Tijuana border control. [FN98] Having said that, one must seriously consider the proposition that immigrants are of economic value, rather than economically burdensome, to the socioeconomic structure of the United States.

## 1. NAFTA & Free Trade in Mexico

The North American Free Trade Agreement [FN99] ("NAFTA") introduces another element to this equation. Although NAFTA does not explicitly address illegal immigration, U.S. INS Commissioner Doris M. Meissner testified at congressional hearings that, while NAFTA would probably increase illegal immigration from Mexico in the short term, in the long term, it would result in the reduction of illegal immigration. [FN100] The awkward and often overlooked predicament facing U.S. policymakers when they enacted NAFTA was that the promotion of borderless economies based on free market principles in many ways contradicts and undermined efforts to keep borders closed to the clandestine movements of migrant labor. [FN101] The

result is a nation that has, on the one hand, liberalized its border to economic trade, and on the other hand, sought to fortify it in an effort to deter a perceived invasion of "undesirables." [FN102] Jonathan Winer, the U.S. Deputy Assistant Secretary \*158 of State for Law Enforcement and Crime, has advocated such increased regulation: "Every country must develop tough new policies aimed at restoring its borders so that they are again meaningful protection against criminals, drugs, weapons, and illegal immigration." [FN103] Consequently, as all forms of cross-border exchange have become more extensive and intensive in recent years, so too have U.S. efforts to weed out the illegal from the legal. [FN104]

These efforts have been in part thwarted under NAFTA. A report written by an intelligence officer at the U.S. Embassy in Mexico City claims that cocaine traffickers have established factories, warehouses, and trucking companies as fronts in Mexico in anticipation of a boom of cross-border commerce under NAFTA. [FN105] Assistant U.S. Attorney Glenn MacTaggart stated that, "[i]f NAFTA provides opportunity for legitimate businesses, then it may clearly provide opportunities for illegitimate businessmen." [FN106] NAFTA's express terms require the United States to grant Mexican and Canadian citizens who are business persons temporary entry into the United States as long as they qualify for entry under applicable laws relating to public health, safety and national security. [FN107] NAFTA broadly defines temporary residence as entry into the territory of a party by a businessperson of another party without intent to establish permanent residence. [FN108] A businessperson is specifically defined as "a citizen or a [p]arty who is engaged in [the] trade in goods, the provision of services, or the conduct of investment activities." [FN109] Although such businesspersons seeking entry into the United States under NAFTA still must establish their admissibility under the immigration laws of the United States, there is clearly a vulnerability for entry.

The drug trade provides an example of this vulnerability. Despite the fact that they made impressive strides, purchasing influence in the Mexican government, drug traffickers increasingly seek \*159 U.S. officials who may be for sale. The most common occurrences of corruption are at the border, where federal agents are handsomely rewarded for "looking the other way." [FN110] In 1995, El Paso Customs Inspector Jose deJesus Ramos was apprehended for conspiracy to bring 2,200 pounds of cocaine into the United States. [FN111] Ramos was to contact his Mexican connection using a beeper, and reveal his assigned lane and the time he would be present. [FN112] At a mutually agreed upon hour, Ramos would wave all of the vehicles through the border for fifteen minutes; for his few minutes of non-work, Ramos expected to collect \$1 million. [FN113]

This desire to find creative ways of entry onto United States soil is not a recent development. The mass labor migration from Mexico has a long established pattern, arising from a variety of push-and-pull factors dating to the late nineteenth century. [FN114] More recently, however, the opening of the Mexican economy and growing U.S.-Mexican economic integration has reinforced the pattern of labor migration. [FN115] U.S. officials have long maintained that increased economic linkages between the United States and Mexico help curb migration; but these linkages have often had the opposite effect. [FN116] The U.S. border industrialization program that began in the 1960s led to a proliferation of export assembly plants in Mexico. [FN117] Moreover, in 1996, 45 million people crossed from Mexico into the United States over

El Paso's three bridges, [FN118] and consequently foreign trade was the largest source of employment in El Paso, accounting for one-fourth of all jobs in the region. [FN119] As a result, many illegal immigrants who enter the United States from Mexico are unintended imports from this duty-free export-processing zone. [FN120]

#### **\*160** D. The Mexican Perspective

Sensitivity to the Mexican perspective on immigration requires the use of the proper vocabulary. It is simply inaccurate to describe immigrating Mexican nationals as "illegal" aliens when they are in the territory of the United States simply because they lack immigration documents. [FN121] Under Mexican law, and contrary to U.S. law, any Mexican citizen or national may leave Mexico without a valid Mexican passport or any other documentation. [FN122] Specifically, Article 11 of the Mexican Constitution provides that "any man has the right to enter into the Republic [of Mexico], exit said Republic ... without a passport ... or any similar requirements." [FN123] Instead, this suggests that Mexican nationals should be characterized as "migratory workers" (trabajadores migratorios) or "undocumented aliens" (extranjeros indocumentados). [FN124] Some experts believe that semantic disputes prevent both Mexico and the United States from addressing the current problem. [FN125]

The Mexican government opines that the physical presence of Mexican nationals in the United States, and their activities therein, is a truly binational question demanding action between the United States and Mexico. [FN126] Mexico argues that the presence and activities of Mexican migratory workers in the United States is the result of an interplay of "push and pull factors" that affect both countries equally. [FN127] Hence, although poverty and unemployment may be present in various parts of Mexico, driving Mexicans to abandon their native country in search for a better way of life in the United States (push factors), some argue that the United States needs cheap and permanent labor, and that this need is greater during certain times of the year and in specific areas of the economy, particularly in the agricultural and services areas (pull factors). [FN128] The persistent and insatiable American demand for cheap, and often unprotected, labor serves as the most powerful magnet attracting \*161 Mexican migratory workers; thus when the United States demand for labor becomes strikingly urgent or acute (i.e., when crops are in danger of spoiling), the international border conveniently opens, or at least becomes quite porous. [FN129] For this reason, therefore, NAFTA was not a departure from the past, but instead reinforced and institutionalized well-established cross-border economic ties. [FN130]

The very culture of the Mexican border towns also encourages immigration to the United States, and the border region in particular is expected to experience significant economic expansion in coming years. If previous experience is any indication, this should encourage more migration from Mexico's interior to the border, which in turn will serve as a springboard into the United States. [FN131] Migrants from the interior of Mexico gather at the border, waiting for the opportunity to cross the border illegally; some cross for fun, while others, like "commuters," cross legally every day to shop and to work. [FN132] Historically, border communities have had much experience with importing and exporting goods, both legal and illegal: in the 1920s, they dealt in untaxed cigarettes; in the Prohibition era, they dealt in alcohol; since World War II, they

have dealt in illegal immigrants; and from the 1960s, narcotics is the commodity of choice. [FN133]

The negotiations over NAFTA deliberately did not address concerns over labor migration; however, in the campaign to sell the trade agreement domestically, U.S. officials argued that NAFTA would promote U.S. immigration- control objectives. [FN134] U.S. Attorney General Janet Reno even warned that, if NAFTA did not become law, "effective immigration control [would] become impossible." [FN135]

### 1. The United States-Mexican Border Communities

The border export processing industry has experienced particularly rapid growth in recent years. For example, the number of factories along the California-Mexico border (called "maquiladoras") \*162 has quadrupled in the last decade. [FN136] The end result, according to migration specialist Saskia Sassen, is that "the maquila program has consolidated a transnational border economy, within which trade, investment and people move rather freely." [FN137]

The formation of the U.S.-Mexican border created an international migration flow out of an incipient labor market organized by well established, if dispersed, trails of commerce and pockets of construction, mining and agricultural production; moreover, the history of migration flowing north into the United States is as old as the border itself. [FN138] For decades, a regional economy developed out of the government's virtual disregard for the movement of workers across the border. [FN139] This provided employment opportunities for Mexicans, particularly with the U.S. railroads as they extended into Mexico and throughout the Southwest, but in the early developmental stages of this regional labor market, the presence of the international boundary made Mexican migrant workers particularly valuable to U.S. employers. [FN140] Agricultural employers in the Southwest recognized that it was advantageous to employ Mexican labor over other labor in the region because, in the absence of work, Mexicans would simply return to Mexico, not local communities where their idleness would have created delicate, unwanted social problems.

The cities of Ciudad Juarez and El Paso, Texas constitute the largest border community in the world, but hardly anyone seems to admit that the Mexican side even exists. [FN141] Mexico, a nation that has never hosted a jury trial, that has been dominated by one party for most of this century, and that is carpeted with corruption and poverty and pockmarked with billionaires, is now perceived as an emerging democracy marching toward First World standing. The city of Juarez elegantly depicts the fabled New World Order in which capital moves easily and labor is trapped by borders. [FN142]

The 350 foreign-owned factories in Mexico constitute the highest concentration of employment in all of Mexico, employing \*163 150,000 workers. [FN143] The United States and Mexico created the twin plant system of maquiladoras in 1965 so that Americans could exploit cheap Mexican labor and avoid high Mexican tariffs. [FN144] Although the products that come from the factories are counted as exports, and thus not figured into Gross Domestic Product ("GDP"), economists estimate that only two percent of material inputs used by maquila production comes

from Mexican suppliers; rather, parts are exported to Mexico from the United States and other countries, and then the Mexicans assemble them and ship them back. [FN145] This process is the result of a global economy fueled by free trade, which many consider to have caused millions of people to move to the border, endure subhuman living conditions, and struggle to survive in a hostile and often volatile political environment.

To make matters worse, many of the maquila workers have no other alternatives. In Mexico, workers who lose their jobs have no safety net and receive essentially no benefits beyond severance pay. [FN146] Independent, worker-controlled unions barely exist, and those who try to organize one are fired or murdered. [FN147]

#### E. Cheap Labor Exploitation

In the United States, business has always depended on cheap foreign labor, and many analysts argue that the United States could not have become a wealthy industrialized power in the early nineteenth century without both slave labor and immigrant workers. The railroads, for example, were largely built by Chinese immigrants brought in by U.S. development barons for this very purpose. Today, large-scale agricultural production still depends on Mexican workers for its profits, and that is why the borders remain porous and why legislators have been slow to act. Indeed, it is no surprise to find politicians clinging to voters' concerns and expectations that our borders must be protected. [FN148] Today, however, savvy politicians running for office are cautious in attempting \*164 to halt the flow of poor migrants into the United States because they realize that they "owe their seats to the patronage of right-wing manufacturing and agribusiness interests desirous of nothing so much as low minimum wage and unfettered access to cheap, nonunion labor from the Third World." [FN149] Consequently, immigrant advocacy groups argue that an open border is already the de facto law of the land, because legislators know that illegal immigration is only marginally an issue of law enforcement and fundamentally a labor-market event. [FN150] In this era of downsizing and falling wages, the border rhetoric plays well in politics.

Of the 220 meat-packing plants in Iowa and Nebraska, INS District Director Jerry Heinauer estimates that twenty-five percent employ illegal immigrants. [FN151] Based on employment figures, Heinauer's estimate means there are at least 12,000 illegal aliens at work in meat-packing plants in those two states alone. Since 1992, INS has raided fifteen meat-packing plants in Iowa and Nebraska, resulting in more than 1,000 arrests. [FN152] Consequently, companies like IBP have cooperated with INS in exchange for the opportunity to hire replacement workers prior to INS raids to remove illegal workers; however, critics argue this practice blames worker and does little to address the companies' roles in the recruitment and hiring of illegal workers. [FN153]

The evidence demonstrates that immigration policy in the United States is at odds with the values crystallized by the immigration mythology. [FN154] By so doing, immigration policy does not impugn the immigrants' motives; instead, the evidence shows that the public authority that regulates immigration defies the liberal and democratic beliefs celebrated by the immigration myth. [FN155] Class-conflict theorists support the view that immigration policy is an instrument of labor exploitation and international domination, and the agricultural regions where

cheap labor is allowed to enter our country illegally prove this. [FN156] Once here, these laborers work cheaply and consume few of the social or political benefits of citizens. \*165 Inefficient industries exploit these workers, and natives have a harder time finding jobs as a result; at the same time, however, a few highly skilled workers are allowed to enter the country to ease the exchange of knowledge and to externalize the costs of labor reproduction. [FN157] Disadvantaged Americans find the road to upward mobility blocked, public welfare suffers from budget constraints, and the labor movement faces an obstacle to organization. All along the public is encouraged to venerate a tradition of political democracy and economic liberalism in which all those seeking a better way were given their fair shot. [FN158] Some experts argue that class-conflict theory has exposed a sham, since immigration policy is not only illiberal, but also undemocratic. [FN159] Power rests with a narrow class faction. If policy analysts are correct, power interests define policy, resulting in high costs for the nation. [FN160]

The question then becomes: what is power in this sense? Power, some argue, is social because of the groups' ability to organize so they can bargain and decide who governs. [FN161] The resources that empower are diverse, and include wealth and persuasiveness; resources, however, are distributed unequally. Accordingly, policy theorists see a hidden class bias by which the interests of capital, and sometimes organized labor, dominate policy formation, and the result is the exploitation of large sectors of labor. [FN162] Under this theory, immigration policy is unjust because it reflects the interests of the most powerful groups in society. [FN163]

Critics make another moral charge: immigration policy's lack of a labor market component, combined with the large flow of illegal immigrants, reinforces the U.S. ethnically divided class system. [FN164] According to this view, the neglect that has allowed a black market for unskilled labor to flourish is not an accident. [FN165] Critics \*166 cite data collected by the U.S. Department of Justice to show that of those Europeans with specific occupations, comparably high percentages were professionals, executives and craftspeople, whereas Latin Americans were more likely to be service workers or laborers. Additionally, some analysts claim that this policy exploits the poorer neighbors of the United States. [FN166]

## F. Migration from Central America

Conditions of life for an average Central American reveal that their life consists of constant unpleasant economic struggles for survival. Only a privileged few do very well, while promising that others will do better in the years ahead. The harsh reality is that for the past several centuries, most Central Americans have led deprived lives. [FN167] Central America is poor: the per capita GDP of the wealthiest of the five countries, Costa Rica, was \$1,971 in 1986, whereas the per capita GDP of the poorest, Honduras, was \$780. [FN168] The regional financial crisis seriously diminished hopes for a more affluent future. Indeed, for many Central Americans the 1980s was a decade of negative economic growth, pushing people who lived near the edge of human existence closer to the precipice. [FN169]

Since these are per capita figures, some of the economy's negative growth can be attributed to Central America's rapidly expanding population. Slightly more than 5 million people lived in the five countries of Central America in 1930; by 1980, there were well over 20 million. [FN170]

Assuming an annual population growth rate of three percent, a rate that has characterized the region since the 1950s, there will be over 36 million Central Americans by the turn of the century and over 47 million by the year 2010. [FN171] While there are reasons to believe that the population growth will not continue at this high rate, there is considerable doubt that the local economies will be able to absorb the workers that will be born in \*167 the years to come. [FN172] These economic factors have created a crisis in Central America for the poorest inhabitants of the region, and in many cases that crisis is life-threatening. [FN173]

Added to this economic deterioration is the political turmoil that has captured global headlines for a decade. In Nicaragua, the civil war to overthrow the Somoza regime was uncommonly brutal, resulting in the death of some 35,000 citizens, more than one percent of Nicaragua's population. [FN174] Between 80,000 and 100,000 Nicaraguans were wounded, and about 40,000 children lost one or both of their parents. [FN175] Put together, the death toll from the nine-year contra war approached 50,000. [FN176]

The death toll from the decade-long civil war in El Salvador is equally staggering; the official figure in early 1991 was 73,000, more than one percent of the nation's population. [FN177] Yet, despite the number of casualties, we know that it has profoundly affected the lives of those Salvadorans who survived. A study by the U.S. Bureau of the Census concluded that:

[t]he civil war has sent 9 percent of the Salvadoran population into exile as either refugees or economic migrants. Considering also the 450,000 internally displaced Salvadorans, an estimated 18 percent of El Salvador's population were uprooted in 1984. An equal proportion of the population of the United States would amount to some 43 million people. [FN178]

Throughout the region, extreme political tensions were superimposed upon high population growth rates and severe economic crises. The reaction of many Central Americans was, and remains, to migrate.

#### IV. Foreign Immigration Policies

##### A. Venezuela & Immigration Policy

Not all countries south of our borders, however, have shared the same fate. Since its very first immigration law in 1831, Venezuela \*168 has sought to use immigration policy as a conscious, planned tool for domestic economic development. The purpose of Venezuelan immigration policies has been to populate the interior valleys, fill labor shortages that cannot be filled economically through educational means, and expand opportunities for native Venezuelans. [FN179]

The rise in oil prices between 1974 and 1981, and other social transformations, caused hundreds of thousands of Colombians and Southern Europeans to rush to Venezuela seeking better economic opportunities. [FN180] Venezuelan officials envisioned a strategy of development that required specialized skills, but because domestic labor quantities were absent, they used immigration policy to fill the void. [FN181] Their efforts, however, were never fully effective in

regulating the waves of illegal immigration, particularly during the oil boom of the 1970s.

Ironically, Venezuela's most serious problem today is not how to attract immigration, but how to deal with the large numbers of legal and illegal immigrants in the country who now compete with Venezuelans in an era of economic contraction. [FN182] To an observant few, this experience serves as a useful case study of immigration policies in Third World nations that pursue developmental goals, but are bombarded by the familiar problem of many developed nations: undocumented immigration.

## B. Immigrant Job Skills for the Next Millennium

What lessons are available for immigrants seeking to emigrate from their native soil in exchange for one with a booming economy? Does Venezuela's immigration rush serve as guidance? To remain self-sufficient and continue to contribute in a competitive economy, immigrants must explore new avenues of opportunity. In a recent study on international immigration labor policy, economists investigated the optimal legal immigration of skilled workers who are accompanied by unskilled dependents. [FN183] The result of this investigation was contrary to the widespread belief that immigration \*169 of skilled workers hurts local skilled workers. The investigation found that an optimal immigration policy threatens the interests of unskilled local workers. [FN184]

Harvard University Economist George J. Borjas argues that, under current immigration policy, despite our economy's desperate need for highly skilled workers, the United States is a magnet for immigrants with even lower skills than native workers. [FN185] In stressing their concerns, economists supporting this view argue that the future demand for labor lies primarily in the service industries located largely in metropolitan areas, and in occupations that focus on cognitive abilities rather than physical strength and stamina. [FN186] As the twentieth century comes to a close, industrial and occupational patterns in the United States barely resemble those prevailing at the beginning of the century. New forces are restructuring labor demands, and this results in unprecedented changes in employment demands. The labor supply is growing rapidly while simultaneously undergoing unparalleled compositional barriers, and the escalation in new technologies and economic competitiveness has led to diminishing demands for unskilled labor. [FN187] William Brock, Secretary of Labor during the Reagan Administration, warns that "the days of disguising functional illiteracy with a high paying assembly line job that simply requires a manual skill are soon to be over. The world of work is changing right under our feet." [FN188]

Perhaps of even greater significance are the changes in the actual composition of the labor force in the United States. In the next century, the number of women and minorities entering the labor force will be greater than that of non-Hispanic white men; however, women and minorities seldom enjoy the opportunity to obtain an education or otherwise prepare for those occupations that will be in demand in the future. [FN189] The disproportionate number of unskilled job-seekers will impose unprecedented pressures to accommodate so many new unqualified laborers. [FN190] \*170 Therefore, in the absence of congressional enactment of effective immigration policy that influences both the size and characteristics of the labor force, economists fear that because of the changing needs of the labor market, the influx of immigrants will bring

our economy to a sudden halt. [FN191]

### 1. Canada's Approach to Immigration Law

In contrast, Canada operates a system better suited to meet their domestic need for foreigners. Canada's system has much to teach about immigration laws and policies. Enjoying the world's longest undefended border, Canada has a system of laws, standards, and quotas set, not by Parliament, but by the Minister through regulations. [FN192] By depoliticizing immigration policies, Canada has been able to respond quickly to sudden changes in the market for migrants and to extend a broader welcome to value-increasing immigrants.

Indeed, much insight into Canada's immigration policy goals can be found in its Immigration Act, where it is stated that Canadian immigration law is designed and administered:

[t]o support the attainment of demographic goals as may be established by the Government of Canada ...; to enrich and strengthen the cultural and social fabric of Canada, taking into account the federal and bilingual character of Canada; to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad; to encourage and facilitate adoption of persons who have been granted admission as permanent residents to Canadian society by promoting cooperation between the Government of Canada ...; to facilitate the entry of visitors into Canada for the purpose of fostering trade and commerce, tourism, cultural and scientific activities and international understanding; to ensure that any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate ...; to fulfill Canada's international legal obligation with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted. [FN193]

To this end, Canada employs a "point" system in which a skilled worker must score 70 points on a scale of a possible 107. In \*171 this scale, an applicant receives a maximum of 62 points for education skills, experience, and occupational demand, 35 points for demographic factors, such as age and language, and 10 points for "personal suitability." [FN194] Approximately one-sixth of Canadian family entrants are barred from Canada unless they achieve a score of 65 or higher on the points system. [FN195] The point system reduces subjectivity and delays while increasing predictability in the immigration process. [FN196]

On the education portion of the exam, awarded scores can range from a 16 for postgraduate degrees to a 0 for applicants who have not yet finished high school, and vocational training scores can reach up to 18, if 10 years of preparation is a prerequisite for the job. [FN197] Conversely, unskilled jobs receive a maximum of 2 points. [FN198] Depending on the strength of occupational demand, up to 10 points can be awarded, mostly for high-skilled jobs, and 10 additional points for applicants already working in areas of Canada with a shortage of their skills. [FN199] Among other factors, the Canadian point system also evaluates age, linguistic abilities and personal suitability. For the age portion of the exam, all applicants under 44 years of age receive a full 10 points; 2 points are automatically deducted for every year over 44, up to the age of 49, and applicants over 49 do not receive any points. [FN200] Fluency in both English and

French merits the full 15 point language points, and 10 personal suitability points are awarded based on the visa officer's subjective estimate of an applicant's adaptability, motivation, initiative and resourcefulness. [FN201]

Another factor Canadian immigration authorities consider is wealth and an applicant's willingness to invest their wealth back into Canada. Authority for this is expressly found in Canada's Immigration Act, which prescribes "[a] class of persons who may be granted landing on the basis of their ... accumulated net worth and \*172 intention to make investments in Canada." [FN202] This affords the Canadian government an extraordinary opportunity to benefit from immigrant visitation by attracting thousands of talented individuals and raising over 500 million dollars in fresh capital for small Canadian companies. [FN203] A good of example of this provision at work is the number of Hong Kong residents that fled to Canada in fear of how Beijing would run the colony. In Quebec an immigrant invests \$350,000 into a capital pool managed by a government approved securities brokerage firm, and in return, the province issues a "certificate of selection for Quebec." [FN204] After thoroughly reviewing the immigrant's criminal and medical history, the government grants him a visa that can lead to permanent citizenship after three years. [FN205]

Another precautionary measure is security deposits. The Immigration Act provides that a "senior officer may require any visitor ... arriving in Canada to deposit ... with the Deputy Minister of such reasonable sum of money ... he deems necessary as a guarantee that the visitor ... will comply with terms ... imposed under this Act." [FN206] This uses economic incentives to ensure that immigrants comply with the terms by which the government grants them entry.

Even though the United States offers a more generous welfare system, Canada attracts higher quality immigrants than the United States. [FN207] In fact, the average Canadian immigrant has completed a year more of schooling than the average American immigrant. [FN208] In 1990, 26% of adult U.S. legal immigrants had not attended high school, while the figure for Canada was 15.5%. [FN209] Among its more recent arrivals, 31% of Canadian and 24% of U.S. immigrants have university degrees. [FN210] Furthermore, Canadian immigrants appear to have fewer language difficulties upon arrival than U.S. immigrants. \*173 According to the 1991 Canadian census, only 10% of entrants reported an inability to conduct a conversation in either English or French. [FN211] Although comparative data for the United States does not exist, an Urban Institute study suggests that immigrants to the United States have greater language difficulties upon arrival. [FN212] Distinctions in educational attainments and language skills are reliable signs of immigrant quality. [FN213]

In the United States, only 25% of all legal immigrants have clerical, professional, or managerial jobs, compared to 30% for natives of the United States. In comparison, 36% of Canadian immigrants have such jobs, compared to 32% for Canadian natives. [FN214] Additionally, a greater share of Canadian immigrants are self-employed than are Canadian natives. [FN215] In relation to natives, U.S. immigrants also appear to rely more heavily on welfare than Canadian immigrants. According to the 1990 census, the foreign-born constitute only 8% of the population of the United States, but they consume 12.8% of all welfare payments. [FN216] In contrast, Canadian immigrants rely less on welfare than their native counterparts. [FN217]

The reasons for these results may involve factors too complex for discussion here, but they are, nonetheless, worthwhile of observation. An example of one of these possible factors is the important difference between Canada and the United States regarding immigration policy. On the whole, Canadian immigration concerns focusing primarily on legal immigration, since illegal immigration to Canada is negligible. [FN218] In the United States, however, immigration concerns focus largely on illegal immigration. [FN219]

## \*174 2. The European Experience

This analysis would be incomplete without a discussion of the the European Community's ("EC") approach to immigration policies. [FN220] The Single European Act ("SEA") [FN221] modified the Treaty Establishing the European Economic Community (hereinafter "EEC Treaty") [FN222] and called for the creation of an internal market with no barriers to the free movement of persons within the states of the EC. Previously known as the "European Communities," this entity officially changed its designation to the "European Community" in 1992. [FN223] The intention was to symbolize the movement from merely an economic union to a more integrated political union. [FN224] In the course of defining itself as an entity, however, the European Union ("EU") has failed to achieve consensus on the management of issues of migration, because nations are unwilling to surrender their sovereign prerogative to act unilaterally on migration matters. This failure has become one of the most serious obstacles to building a deeper sense of community, [FN225] and as a result, from its inception critics expected the EC's efforts to create a market clear of substantial barriers to the free movement of persons.

Freedom of movement, however, has always been a basic aim of the EC, and is expressly stated in both the EEC Treaty and the SEA. [FN226] The bulk of the dilemmas facing the EC stem from the two overwhelming concerns influencing the EC regarding immigration: it desires immigration because some European states are experiencing \*175 very low population growth, but, at the same time it discourages immigration because it cannot accommodate the vast number of people seeking refuge within its borders. [FN227] Notwithstanding these concerns, immigration was expected to continue because Western European economies depend on cheap labor, especially for labor intensive industries such as textiles and tourism. [FN228] In particular, small companies require such labor to compete with larger ones whose manufacturing centers are in areas where labor is less costly. [FN229] These overwhelming needs have helped bring over 11 million immigrants to the EC; [FN230] a motivating factor remarkably similar to our own in the United States. The children of aliens in the EC represent another exploding population source. [FN231] In 1992, there were 7 million immigrant children in Europe, and their numbers were growing by 400,000 a year, an increase the International Labor Organization has termed "a demographic time bomb." [FN232]

At the heart of the matter are the sweeping proposals in article 8(a) of the SEA. [FN233] Article 8(a) of the SEA states that the "[c]ommunity shall adopt measures with the aim of progressively establishing the internal market ... [which] shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this treaty." [FN234] Due in part to disputes over the

interpretation of article 8(a), by the time the SEA was signed, all references to freedom of movement for non-Community nationals had been deleted. [FN235] Hence, although the SEA did not serve to create a common immigration policy in the EU, its implications \*176 and priority of objectives did serve to generate sufficient cause for subsequent attempts to bring immigration policy matters into a community perspective. [FN236] If nothing else, the European effort to abolish immigration borders serves to prove that we should define the terms "global community" and "free trade" to include the free movement of persons, and not just goods.

## V. Conclusion

Put together, immigrant-bashing and "cracking down" on migrant workers and their children does not address the root causes of illegal immigration to the United States. The main reasons for the migration phenomenon witnessed around the world today are flights for safety, job searches and travel to reunite with families. However, lawmakers have never gathered to develop a broad-based plan to remedy the foreign social and economic ills that motivate immigrants to leave their own countries. In effect, lawmakers have never addressed oppressive regimes; instead, they often support them, even when their citizens are immigrating in huge numbers. One need only consider recent U.S. policies towards countries such as Iran, Haiti, the Philippines and El Salvador to see that this is so. Perhaps the senior Republican on the Senate Foreign Relations Subcommittee on Western Hemisphere Affairs best summarized this situation when he stated:

The American people had better come alive and realize that what happens in Central America, what happens in El Salvador is not long ago and far away, because if Central America falls, we are going to be flooded with refugees, 10, 15, 20 million of them coming across our borders, people who cannot speak English, who have no jobs, who have nothing. [FN237]

That conditions abroad affect demographics in the United States and consequently shape the United States generally has been strongly recognized. In "A Nation of Immigrants," President John F. Kennedy quoted Oscar Handlin as saying, "Once I thought to write a history of the immigrants in America. Then I discovered \*177 that the immigrants were American history." [FN238] Kennedy cleverly noted that, of the fifty-six men who signed the Declaration of Independence, eighteen were of non-English stock and eight were first-generation immigrants. "Every ethnic minority," he wrote, "in seeking its own freedom, helped to strengthen the fabric of liberty in American life." [FN239] The continuous immigration of the nineteenth and early twentieth centuries was "central to the whole American faith." [FN240]

In 1961, Kennedy eloquently asserted that:

[f]rom the earliest days of our history, this land has been a refuge for the oppressed, and it is proper that we now, as descendants of refugees and immigrants, continue our long humanitarian tradition of helping those who are forced to flee to maintain their lives as individual, self-sufficient human beings in freedom, self-respect, dignity and health. [FN241]

These are hostile times for immigrants. As the children of immigrants, Americans should

realize that immigrants have helped, and will continue to help, America develop. If Americans embrace our immigrant history and highlight the accomplishments of our modern immigrant community, confidence in America can be revitalized despite immigrant tales of horror, destitution and oppression. Immigrants bring new cultures with them and offer new ideas, new energy, and new perspectives. In sum, American immigration policies should cease all efforts to trample on the fundamental rights of newcomers and, instead, gather the courage to embrace the citizens of the world.

Immigration provided the human reserves. More than that, it infused the nation with a commitment for far horizons and new frontiers, and thereby kept the pioneer spirit of American life, the spirit of equality and of hope, always alive and strong. \*178 "We are the heirs of all time," wrote Herman Melville, "and with all nations we divide our inheritance." [FN242]

[FN1]. Mae M. Cheng, A Suicide Vow/ Immigrant's Threat If Her Aid is Cut Off, *Newsday*, Apr. 17, 1997, at A3.

[FN2]. *Id.*

[FN3]. *Id.*

[FN4]. *Id.*

[FN5]. *Id.*

[FN6]. *Id.* Mrs. Lee's threat was made credible by reports of three suicides attributed to the probable loss of federal benefits that took place during the time Mrs. Lee made her statement. One incident in particular occurred in Brooklyn, where an elderly Chinese immigrant overdosed on pills for fear of losing Medicaid and "ashamed of the prospect of becoming a burden to his family." Mae M. Cheng, *Suicide Fears and Welfare Cuts*, *Newsday*, Apr. 24, 1997, at A31.

[FN7]. Cheng, *supra* note 1.

[FN8]. *Id.*

[FN9]. *Id.*

[FN10]. *Id.*

[FN11]. Mae M. Cheng, Clinton to Hear Immigrant's Case, *Newsday*, Apr. 18, 1997, at A29.

[FN12]. Mae M. Cheng, Green Light/ Desperate Immigrant Now Legal, *Newsday*, Sept. 23, 1997, at A6.

[FN13]. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) [hereinafter "IIRIRA" ].

[FN14]. In 1992, there were an estimated 4.8 million illegal aliens whose presence in the United States is a federal crime under 8 U.S.C. § 1325 (1994) (criminalizing entry or attempted entry into the United States by any alien who (1) does so at any time or place other than as designated by immigration officers; (2) eludes examination or inspection by immigration officers; (3) conceals or renders false or misleading information; or (4) uses marriage or commercial enterprise to purposefully evade immigration laws). This figure varies, however, between 3.5 million and 8 million depending on the study consulted. Marc Lacey, *Immigration Costs Defy Analysis*, L.A. Times, Aug. 14, 1995, at B1. Roughly 250,000 to 300,000 illegal immigrants enter the United States each year. Daniel James, *Illegal Immigrants Drain U.S. Social Services*, in *Illegal Immigration* 80, 86 (Bruno Leone et al. eds., 1994). Bear in mind, that all of these figures are extremely speculative because, as the General Accounting Office points out, "[P]ersons residing in this country illegally have an incentive to keep their status hidden from government officials." U.S. Gen. Accounting Office, *Illegal Aliens: National Net Cost Estimates Vary Widely* 19-20 (1995).

[FN15]. 8 U.S.C. §§ 1101-1255 (1994).

[FN16]. See Thomas J. Espenshade and Katherine Hempstead, *Contemporary American Attitudes Toward U.S. Immigration*, 30 *Int'l Migration Rev.* 535 (1996).

[FN17]. In "The Crux of the Immigration Question," an article that appeared in the *North American Review* in 1914, Piatt Andrew commented, "Immigrants who came earlier and their descendants have always tried to keep this country for those who were already here and for their kin folk." *Id.* at 537.

[FN18]. Espenshade and Hempstead, *supra* note 16, at 537.

[FN19]. *Id.* at 538.

[FN20]. Keith Fitzgerald, *The Face of the Nation: Immigration, the State, and the National Identity* 13 (1996).

[FN21]. *Id.* at 22.

[FN22]. *Id.*

[FN23]. *Id.*

[FN24]. *Id.*

[FN25]. See Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law Enforcement*, 1993 *BYU L. Rev.* (analyzing emergence of "new" nativism in the United States in the 1990s).

[FN26]. See, e.g., Federation for American Immigration Reform, *Immigration 2000: The Century of the New American Sweatshop* (1992).

[FN27]. Cal. Prop. 187 (1994) [hereinafter "Proposition 187" ].

[FN28]. After passage of the initiative, a U.S. district court enjoined implementation of most of its provisions. See *League of United Latin American Citizens v. Wilson*, 908 F. Supp 755, 787-91 (C.D. Cal. 1995).

[FN29]. See Dick Mountjoy et al., *Argument in Favor of Proposition 187, California Ballot Pamphlet: General Election Nov. 8, 1994*, at 54 [hereinafter "California Ballot Pamphlet" ].

[FN30]. See, e.g., H.R. 2202, 104th Cong., 1st Sess. (1995) ("Omnibus Immigration Reform Bill"). The titles of some of the bills give a flavor of the current immigration debate. See, e.g., H.R. 3862, 103d Cong., 2d Sess. (1994) ( "Immigration Moratorium Act of 1994"); H.R. 3320, 103d Cong., 1st Sess. (1993) ("Immigration Stabilization Act of 1993").

[FN31]. Espenshade and Hempstead, *supra* note 16, at 539.

[FN32]. *Id.*

[FN33]. *Id.* at 548.

[FN34]. *Id.* at 540.

[FN35]. *Id.*

[FN36]. *Id.*

[FN37]. Linda Chavez, *Hispanic Parents Want English Education*, *Wall St. J.*, Sept. 5, 1996, at A15.

[FN38]. *Id.*

[FN39]. *Id.*

[FN40]. John Higham, *Strangers in the Land* 4 (2d ed., 1988).

[FN41]. See generally Ian F. Haney-Lopez, *White By Law: The Legal Construction of Race* (1996) (analyzing court decisions interpreting requirement that non-citizens be "white" to naturalize).

[FN42]. This theme is explored in Kevin R. Johnson, *The New Nativism: Something Old, Something New Something Borrowed, Something Blue*, in *Immigrants Out! The New Nativism and the Anti-Immigrant Impulse in the United States* (Juan F. Perea ed., 1996).

[FN43]. See Higham, *supra* note 40, at 25 ("No variety of anti-European sentiment has ever approached the violent extremes to which anti-Chinese agitation went in the 1870s and 1880s.").

[FN44]. H.R. Rep. No. 104-469[II] (1996) [hereinafter "House Report" ].

[FN45]. Under the IIRIRA, affidavits of immigrant sponsors--admitted under family reunification visas--are legally enforceable against the sponsor by the sponsored alien, the federal government, any state agency, or any other entity that provides means-tested public benefits to the immigrant. IIRIRA, *supra* note 13, at § 551. This affidavit must continue to be enforceable against the sponsor until the alien has become a citizen or until the alien has been credited for forty "qualifying quarters" of work. *Id.* To qualify as a sponsor, individuals must be at least 18 years of age, be domiciled in the United States, and be able to support both the sponsor and the immigrant's families at an annual income level equal to at least 125% of the federal poverty guidelines for all family-based petitioners. *Id.* In general, the sponsor who signs the affidavit of support must also be the person petitioning for admission of his relative. If the petitioner does not meet the 125% minimum income requirement, then the petitioner may find another individual who does meet the income requirements and is willing to accept joint and severable liability with the petitioner. Sponsors who fail to comply with their contractual obligations under this provision are subject to a civil penalty of up to \$5,000, following notice and the opportunity to be heard by a court of law. *Id.* However, state officials have expressed great skepticism at this new approach and say developing systems or procedures for enforcing the affidavit requirement could prove to be prohibitively expensive. Dick Kirschten, *Crossing the Line*, Nat'l J., Aug. 3, 1996, at 1624.

[FN46]. House Report, *supra* note 44, at 284. Furthermore, the House Report adds that "despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from federal, state and local governments at increasing rates. Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system. It is compelling government interest to remove incentive for illegal immigration provided by the availability of public benefits." *Id.*

[FN47]. IIRIRA, *supra* note 13, tit. I, II; see also 73 Interpreter Releases 1317 (1996).

[FN48]. Specifically, the IIRIRA, Pub. L. No. 104-208, § 304(a)(3), 1996 U.S.C.C.A.N. (110 Stat. 3009) 1570, 1644-48 (to be codified at 8 U.S.C. § 1229(b)) provides in part:

(a) CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS.--The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien --

(1) has been an alien lawfully admitted for permanent residence for not less than 5 years,  
(2) has resided in the United States continuously for 7 years after having been admitted in any status, and

(3) has not been convicted of an aggravated felony.

(b) CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS FOR CERTAIN

## NONPERMANENT RESIDENTS.

(1) In general.--The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien --

(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;

(B) has been a person of good moral character during such period;

(C) has not been convicted of an offense under section 212(a)(2), 237(a)(2), or 237(a)(3); and

(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(2) SPECIAL RULE FOR BATTERED SPOUSE OR CHILD--The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien demonstrates that --

(A) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent);

(B) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application;

(C) the alien has been a person of good moral character during such period;

(D) the alien is not admissible under paragraph (2) or (3) of section 212(a), is not deportable under paragraph (1)(G) or (2) through (4) of section 237(a), and has not been convicted of an aggravated felony; and

(E) the removal would result in extreme hardship to the alien, the alien's child, or (in the case of an alien who is a child) to the alien's parent.

In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within sole discretion of the Attorney General.

(3) ADJUSTMENT OF STATUS--The Attorney General may adjust to the status of an alien lawfully admitted for permanent residence any alien who the Attorney General determines meets the requirements of paragraph (1) or (2). The number of adjustments under this paragraph shall not exceed 4,000 for any fiscal year. The Attorney General shall record the alien's lawful admission for permanent residence as of the date the Attorney General's cancellation of removal under paragraph (1) or (2) or determination under this paragraph.

In addition, cancellation of deportation relief under section 240A(b)(1) is not available for an alien convicted of an offense under section 212(a)(2), 8 U.S.C. § 1182(a)(2) (1994), section 237(a)(2) (to be codified at 8 U.S.C. § 1227(a)(2)) (criminal offenses involving moral turpitude; crimes with sentences of one year or longer; aggravated felonies; crimes relating to controlled substances; firearm offenses; and crimes involving domestic violence), or section 237(a)(3) (to be codified at 8 U.S.C. § 1227(a)(3)) (failing to register and falsification of documents). *Id.* at 1644-45 (to be codified at 8 U.S.C. § 1229b(b)(1)(C)). Under section 240A(b)(1), relief is unavailable if the alien is inadmissible under section 212(a)(2), 8 U.S.C. § 1182(a)(2) (1994) (criminal and related grounds) or section 212(a)(3), 8 U.S.C. § 1182(a)(3) (security and related grounds); deportable under section 237(a)(1)(G) (to be codified at 8 U.S.C. § 1227(a)(1)(G)) (marriage fraud) or section 237(a)(2) through (4) (to be codified at 8 U.S.C. § 1227(a)(2) through

(4)) (criminal offenses involving moral turpitude; crimes with sentences of one year or longer; aggravated felonies; crimes relating to controlled substances; firearm offenses; crimes involving domestic violence; failing to register and falsification of documents; and security and related grounds); or has been convicted of an aggravated felony (as defined by 8 U.S.C. § 1101(a)(43) (1994)). *Id.* at 1645 (to be codified at 8 U.S.C. § 1229b(b)(2)(D)). In 1994, Congress substantially expanded the list of actions defining what constitutes an "aggravated felony." See Immigration and Naturalization Technical Corrections Act of 1994, Pub. L. No. 103-416, § 222(a), 108 Stat. 4305.

[FN49]. IIRIRA, *supra* note 13, tit. III.

[FN50]. *Id.* tit. IV.

[FN51]. *Id.* tit. V.

[FN52]. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193 (1996) [hereinafter "Welfare Act" ]. This Act was signed into law on August 22, 1996, as a comprehensive welfare bill that essentially ended this country's 61-year commitment to provide basic assistance to the nation's most vulnerable and needy individuals. Among the most radical and controversial provisions were those that severely limited legal aliens' access not only to traditional welfare programs but also to practically every federal program, including those that bear no resemblance to "welfare," such as professional and commercial licenses and the earned income tax credit. Also, the law gave states new authority to discriminate against legal aliens in determining eligibility for state and local programs.

[FN53]. Concerns for immigrants applying for a green card through the federal lottery program have risen since immigrants so doing may end up facing deportation and be barred from reentering the United States for up to 10 years under the IIRIRA. The trend of affording illegal immigrants the opportunity to obtain legal residency is not, however, unique to the United States. A comparison of legalization programs in six countries conducted by the Urban Institute--the United States, Canada, Australia, France, Argentina, and Venezuela--revealed that two trends were simultaneously present upon enactment of immigrant legalization legislation. See Susan Gonzales Baker, *The Cautious Welcome: The Legalization Programs of the Immigration Reform and Control Act (1990)*. The first trend involved economic factors, in which each country implementing such a program was undergoing economic slowdown and rising unemployment had generated public concern about the labor market rate absorption of foreigners. *Id.* The second trend involved political factors such as backlogged visa petitions or increasing undocumented immigration which led governments to conclude that the international migration processes had outstripped the administrative capacity of the nation's immigration agency to cope with the flow of migrants. *Id.* In all cases, legalization was seen as one way to "clean the slate" as governments revamped their immigration systems; this was generally accompanied by significantly more restrictive admission and enhanced enforcement policies. *Id.*

[FN54]. IIRIRA, *supra* note 13, tit. VI.

[FN55]. See House Report, *supra* note 44.

[FN56]. IIRIRA, *supra* note 13, § 101.

[FN57]. *Id.* See also 142 Cong. Rec. H10892 (daily ed. Sept. 24, 1996).

[FN58]. See generally IIRIRA, *supra* note 13, § 102.

[FN59]. *Id.*

[FN60]. *Id.*

[FN61]. *Id.*

[FN62]. *Id.*

[FN63]. *Id.*

[FN64]. *Id.*

[FN65]. See IIRIRA, *supra* note 13, tit. V, subtit. A. Due in part to public disapproval of the law, Congress restored some basic disability and health benefits to certain legal immigrants who were initially made ineligible by law. 74 Interpreter Releases 851 (1997).

[FN66]. See Joel F. Handler, Constructing the Political Spectacle: The Interpretation of Entitlements, Legalization and Obligations in Social Welfare History, 56 *Brook. L. Rev.* 899, 935-36 (1990) (noting that historically race, ethnicity and class have been interwoven with social welfare policy); Lucie E. White, No Exit: Rethinking Welfare Dependency From a Different Ground, 81 *Geo. L.J.* 1961, 1966 (1993) (noting that, despite the fact that many white women receive welfare, welfare often is employed as a code word for race).

[FN67]. An ideal example of this phenomenon is California's Proposition 187. See generally Proposition 187, *supra* note 27.

[FN68]. IIRIRA, *supra* note 13, § 553.

[FN69]. Patrick J. McDonnell, Immigrants Not Lured By Aid, Study Says, *L.A. Times*, Jan. 29, 1997, at A3.

[FN70]. See generally Welfare Act, *supra* note 52.

[FN71]. *Id.* § 402(a)(1), (3).

[FN72]. Title XX provides block grants for states to use in several areas, including care for children and disabled persons and domestic violence programs.

[FN73]. Welfare Act, *supra* note 52, § 402(b)(1).

[FN74]. 8 U.S.C. § 1101(f)(6) (1994).

[FN75]. Mercedes Lynn De Uriarte, Baiting Immigrants: Heartbreak for Latinos, *The Progressive*, Sept. 1996, at 18.

[FN76]. See Kevin R. Johnson, Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender and Class, 42 *UCLA L. Rev.* 1509 (1995).

[FN77]. California Ballot Pamphlet, *supra* note 29, at 52.

[FN78]. See *id.*

[FN79]. See *id.* at 52-53. The potential loss in federal funds is based on the interaction of several federal laws and regulations that govern federally funded programs operated by the states. See, e.g., the Family Educational and Privacy Act generally prohibits schools that receive federal funds from disclosing, absent parental consent, confidential information contained in student records. 20 U.S.C. § 1232(g)(1), (b)(2) (1994). Compliance with this act is a condition precedent for the receipt of about \$2.3 annually in federal education funds earmarked for public elementary and secondary schools and \$1.1 billion for public colleges and universities.

[FN80]. *Id.*

[FN81]. Johnson, *supra* note 25.

[FN82]. See California Ballot Pamphlet, *supra* note 29, at 52.

[FN83]. See, e.g., 187: It's a Risky Proposition; Hazards of Immigration Measure Dwarf Potential Benefits, *L.A. Times (Valley Ed.)*, Oct. 16, 1994, at B18.

[FN84]. See, e.g., William Waitzman, A World Without Borders Works for Trade, Not People, *Barron's*, Oct. 21, 1996, at 13.

[FN85]. See Michael C. Lemay, *The Gatekeepers: Comparative Immigration Policy* (Michael C. Lemay ed., 1989).

[FN86]. Espenshade and Hempstead, *supra* note 16.

[FN87]. Dana Hawkins, The Most Dangerous Jobs, *U.S. News & World Rep.*, Sept. 23, 1996, at 40. Meatpacking has the highest injury rate of all industries in the United States with 36% of employees seriously injured each year and frequently suffering from repetitive-motion injuries, serious cuts and back injuries. *Id.*

[FN88]. Stephen J. Hedges & Dana Hawkins, *The New Jungle*, U.S. News & World Rep., Sept. 23, 1996, at 34.

[FN89]. *Id.* at 37.

[FN90]. *Id.* at 36.

[FN91]. De Uriarte, *supra* note 75, at 20.

[FN92]. *Id.*

[FN93]. *Id.*

[FN94]. *Id.*

[FN95]. *Id.*

[FN96]. *Id.*

[FN97]. *Id.*

[FN98]. See generally IIRIRA, *supra* note 13, §§ 101-103.

[FN99]. North American Free Trade Agreement, Dec. 17, 1992, United States- Canada-Mexico. See also North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, 107 Stat. 2057 (1993) [hereinafter NAFTA].

[FN100]. 70 Interpreter Releases 1546, 1547 (1993).

[FN101]. Peter Andreas, *U.S.-Mexico: Open Markets, Closed Border*, Foreign Pol'y, Summer 1996, at 51.

[FN102]. *Id.* at 53.

[FN103]. *Id.*

[FN104]. *Id.*

[FN105]. *Id.* at 57.

[FN106]. *Id.* More specifically, roughly 1.6 million Mexicans reside illegally in the United States. However, of the 1 to 3 million Mexicans that enter the United States illegally each year, only about 100,000 are believed to remain permanently. This is due to the fact that most arrive for temporary employment opportunities and subsequently return to Mexico. *Id.* at 59.

[FN107]. NAFTA, *supra* note 99, art. 1603, P 1.

[FN108]. *Id.* art. 1608.

[FN109]. *Id.*

[FN110]. Dan McGraw, *The American Connection, Nice Work: \$1 Million to Look the Other Way*, U.S. News & World Rep., Feb. 24, 1997, at 40.

[FN111]. *Id.* at 41.

[FN112]. *Id.*

[FN113]. *Id.*

[FN114]. *Andreas*, *supra* note 101, at 59.

[FN115]. *Id.*

[FN116]. *Id.*

[FN117]. *Id.*

[FN118]. *See McGraw*, *supra* note 110, at 42.

[FN119]. *Id.*

[FN120]. *Andreas*, *supra* note 101.

[FN121]. Jorge A. Vargas, *Consular Protection to Illegal Migratory Workers and Mexican Undocumented Minors: Two Sensitive Issues Addressed By the Thirteenth Annual Meeting of the United States-Mexico Binational Commission*, 6 *J. Transnat'l L. & Pol'y* 143, 157 (1996).

[FN122]. *Id.* n.66.

[FN123]. *Mex. Const.* art. 11 (emphasis added).

[FN124]. *Vargas*, *supra* note 121, at 157.

[FN125]. *Id.*

[FN126]. *Id.*

[FN127]. *Id.*

[FN128]. Id.

[FN129]. Id. at 158.

[FN130]. Andreas, *supra* note 101.

[FN131]. Id.

[FN132]. Monica L. Heppel et. al., Mexican Immigration to the United States After NAFTA, 20 Fletcher F. World. Aff. 51, 55 (1996).

[FN133]. See McGraw, *supra* note 110, at 42.

[FN134]. Andreas, *supra* note 101, at 60.

[FN135]. Id.

[FN136]. Id.

[FN137]. Id.

[FN138]. See Robert L. Bach, The Latin Immigration, in Immigration and U.S. Foreign Policy 121 (Robert W. Tucker et al. eds., 1990).

[FN139]. Id. at 125.

[FN140]. Id.

[FN141]. Charles Bowden, While You Were Sleeping, Harper's, Dec. 1996, at 44.

[FN142]. Id. at 48

[FN143]. Id.

[FN144]. Id.

[FN145]. Id.

[FN146]. Id. at 49.

[FN147]. Id.

[FN148]. See Senate Immigration Subcommittee Hears Testimony on Legislative Proposals, 72 Interpreter Releases 584 (1995). See also House Passes Sweeping Welfare Reform Measure, Senate Gears Up for Action, 72 Interpreter Releases 584 (1995).

[FN149]. See Wade Graham, *Masters of the Game: How the U.S. Protects Traffic in Cheap Mexican Labor*, *Harper's*, July 1996, at 35.

[FN150]. *Id.* at 36.

[FN151]. *Id.* at 38.

[FN152]. *Id.*

[FN153]. *Id.*

[FN154]. Fitzgerald, *supra* note 20, at 229.

[FN155]. *Id.*

[FN156]. *Id.*

[FN157]. *Id.*

[FN158]. *Id.*

[FN159]. *Id.*

[FN160]. *Id.*

[FN161]. *Id.* at 36.

[FN162]. *Id.*

[FN163]. *Id.* at 37.

[FN164]. *Id.* at 32.

[FN165]. It can be argued in response that controlling immigration across the border with Mexico is impractical. The lack of a serious effort to do so, the existence of the "Texas proviso," which made hiring illegal immigrants legal until the Immigration Reform and Control Act of 1986 ("IRCA"), and the exceptions exempting farm workers from complete restriction under IRCA all suggest that the unsanctioned labor market is a *de facto* policy and has been all along. See Fitzgerald, *supra* note 20.

[FN166]. Alejandro Portes and Robert L. Bach, *Latin Journey: Cuban and Mexican Immigrants in the United States* (1985).

[FN167]. Lars Schoultz, *Central America and the Politicization of U.S. Immigration Policy*, in

Western Hemisphere Immigration and United States Foreign Policy 157 (Christopher Mitchell ed., 1992).

[FN168]. *Id.* at 161. Compare, for example, that the per capita GDP of the United States, which was \$16,710 in 1986.

[FN169]. *Id.*

[FN170]. *Id.*

[FN171]. *Id.* at 162.

[FN172]. *Id.*

[FN173]. *Id.*

[FN174]. *Id.*

[FN175]. *Id.*

[FN176]. *Id.*

[FN177]. *Id.* Note that the fact that the data is rounded-off to the nearest thousand indicates just how little is known about the actual consequences of the conflict.

[FN178]. Linda S. Peterson, *Central American Refugee Flows: 1978 to 1984*, mimeographed (Washington, D.C.: U.S. Bureau of the Census, March 1985), at 20.

[FN179]. Daniel Hellinger, *Venezuelan Immigration Policy and Politics*, in *The Gatekeepers, Comparative Immigration Policy*, *supra* note 84, at 155.

[FN180]. *Id.*

[FN181]. See generally *id.*

[FN182]. *Id.*

[FN183]. K.L. Shea and A.E. Woodfield, *Optimal Immigration, Education and Growth in the Long-Run*, 40 *J. of Int'l Econ.* 496 (1996).

[FN184]. *Id.*

[FN185]. John Pearson, *Give Me Your Highly Skilled, Yearning to Succeed*, *Bus. Wk.*, Aug. 19, 1996, at 41.

[FN186]. See Vernon M. Briggs, Jr., and Stephen Moore, *Still An Open Door?, U.S. Immigration Policy and the American Economy* (1995).

[FN187]. See *id.*

[FN188]. *Id.* at 5.

[FN189]. *Id.*

[FN190]. See *id.*

[FN191]. See generally *id.* at 42.

[FN192]. Immigration Act, R.S.C. 1970, c. I-2, §§ 6-7 (Can.). See also Immigration Act, R.S.C. 1985, c. I-2, § 114(1) (Can.).

[FN193]. Immigration Act, R.S.C. 1985, c. I-2, § 3(a)-(g) (Can.) (emphasis added).

[FN194]. This point system is prescribed by Immigration Act, R.S.C. 1985, c. I-2, §§ 9-11.1, sch. 1 (Can.).

[FN195]. F.H. Buckley, *The Political Economy of Immigration Policies*, 16 *Int'l Rev. of Law & Econ.* 81, 94 (1996).

[FN196]. *Id.*

[FN197]. *Id.*

[FN198]. *Id.*

[FN199]. *Id.*

[FN200]. *Id.* at 95.

[FN201]. *Id.*

[FN202]. Immigration Act, R.S.C. 1985, c. I-2, § 114(1)(a.4) (Can.) (emphasis added).

[FN203]. Joel Millman, *Visas For Sale*, *Forbes*, Apr. 29, 1991, at 107.

[FN204]. *Id.*

[FN205]. *Id.*

[FN206]. Immigration Act, R.S.C. 1985, c. I-2, § 18 (Can.) (emphasis added).

[FN207]. See George J. Borgas, Immigration Policy, National Origin and Immigrant Skills: A Comparison of Canada and the United States, in *Small Differences That Matter: Labor Markets and Income Maintenance in Canada and the United States* 21 (D. Card and R.B. Freeman eds., 1993).

[FN208]. *Id.*

[FN209]. Arnold DeSilva, *Earnings of Immigrants: A Comparative Analysis* (1992).

[FN210]. *Id.* at 8.

[FN211]. Jane Badets and Yina W. Chui, *Canada's Changing Immigrant Population* 28 (1994).

[FN212]. Approximately one-quarter of all immigrants reported that they spoke English "not well" or "not at all." See Michael Fix and Jeffrey S. Passel, *Immigration and Migration: Setting the Record Straight* 38 (1994).

[FN213]. For a study of factors associated with higher immigrant earnings, see Barry R. Chiswick, *Speaking, Reading and Earnings Among Low-Skilled Immigrants*, *J. of Lab. Econ.* 9 (1991).

[FN214]. See Badets and Chui, *supra* note 211, at 56; see also Economic Council of Canada, *Economic and Social Impacts of Immigration* 89 (1991) [[hereinafter Economic Council Report].

[FN215]. *Id.* at 17.

[FN216]. Fix and Passel, *supra* note 212, at 65.

[FN217]. Economic Council Report, *supra* note 214, at 87.

[FN218]. See Craig Turner, *Canada Moves to Limit Immigration*, *L.A. Times*, Nov. 5, 1994, at A5.

[FN219]. *Id.*

[FN220]. The term "European Community" refers collectively to the three original communities: the European Coal and Steel Community ("ECSC"), the European Economic Community ("EEC") and the European Atomic Energy Community (hereinafter "Eurotom"). Together, these three formed the pillars of what we know as the "European Union," and are collectively referred to as the "European Community." See generally Demetrios G. Papademetriou, *Coming Together or Pulling Apart? The European Union's Struggle With Immigration And Asylum* 3 (1996).

[FN221]. Single European Act, 1987 O.J. (L 169) art. 13. (Article 13 of the SEA has been incorporated as article 8(a) in the 1987 amended version of the EEC Treaty, *infra.*) ("SEA").

[FN222]. Treaty Establishing the European Economic Community, Mar. 25, 1957, reprinted in Treaty Establishing the European Economic Community and Connected Documents (1957) [hereinafter EEC Treaty].

[FN223]. The following states belong to the European Community: Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom. SEA, supra note 221, art. 13.

[FN224]. Papademetriou, supra note 220, at 3.

[FN225]. Id. at 2.

[FN226]. EEC Treaty, supra note 222, arts. 3(c), 8(a); SEA, supra note 221, art. 13, at 7.

[FN227]. Ricou Heaton, The European Community After 1992: The Freedom of Movement of People and Its Limitations, 25 Vand. J. Transnat'l L. 643, 670 (1992).

[FN228]. Id. at 671.

[FN229]. Id. To add to the pressure, EU leaders have addressed the EU's persistent unemployment crisis, amid a deep policy split over whether to require EU-mandated job-creation targets or leave the problem to national and local governments. The current unemployment rate in the EU's 15 member states is at an average of 11%, and is rising in many countries. Brian Coleman, EU Summit on Jobs Crisis Begins Amid Policy Rift, Wall St. J., Nov. 21, 1997, at A19.

[FN230]. Heaton, supra note 227, at 672. This total is comprised of approximately 8 million foreign residents and approximately 3 million illegal immigrants.

[FN231]. Id.

[FN232]. Id.

[FN233]. SEA, supra note 221.

[FN234]. EEC Treaty, supra note 222, art. 8(a) (emphasis added); see also Papademetriou, supra note 220, at 23-24.

[FN235]. Id. at 24.

[FN236]. Id.

[FN237]. U.S. Congress, Senate Committee on Foreign Relations, U.S. Policy Toward Nicaragua and Central America, 98th Cong., 1st Sess., 1983, at 30. For a similar comment a year earlier, see

U.S. Congress, Senate Committee on Foreign Relations, Subcommittee on Western Hemisphere Affairs, Human Rights in Nicaragua, 97th Cong., 2d Sess., 1982, at 84.

[FN238]. Freda Hawkins, *Canada and Immigration: Public Policy and Public Concern* 34 (1988) (citing John F. Kennedy, *A Nation of Immigrants* 64-65 (rev. ed. 1964)).

[FN239]. *Id.*

[FN240]. *Id.*

[FN241]. *Public Papers of the President of the United States: John F. Kennedy*, 1961, at 528 (Washington, D.C.: Government Printing Office, 1962).

[FN242]. Hawkins, *supra* note 238 (citing John F. Kennedy, *A Nation of Immigrants* 68 (rev. ed. 1964)).