BRINGING OUTSIDERS IN

TRANSATLANTIC PERSPECTIVES ON IMMIGRANT POLITICAL INCORPORATION

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CHAPTER ELEVEN

Immigrants’ Incorporation in the United States after 9/11

Two Steps Forward, One Step Back

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The last decade has been momentous for immigrants to the United States and for the course of their integration into U.S. society. If we look for a smooth trajectory, we will be sorely disappointed. Instead, immigrants’ path to integration has been characterized by forward progress interrupted by setbacks and new obstacles. The bitter debate over immigration legislation that has roiled the U.S. Congress since 2005 might seem evidence of another sharp detour in this path.

At a deeper socioeconomic level, however, the powerful U.S. assimilatory machine has continued to churn out millions of new citizens and legal permanent residents (LPRs) who identify with the nation, embrace its ideals, and participate in its social, civic, and political life pretty much as actively as did their predecessors—despite the unprecedented conditions surrounding their migration and settlement here. The United States has also attracted an estimated 12 million undocumented migrants as of 2008, whose status raises difficult political and policy questions. If we wish to understand these developments, we must attend both to the eye-catching, headline-grabbing events and to the more opaque, profound, and powerful continuities.


The history of U.S. immigration policy is long, complex, and pervaded by paradox (Zolberg 2006). This chapter focuses on the tumultuous period beginning in 1994 with the passage of Proposition 187 in California, a frontal assault on access to social benefits by millions of undocumented aliens in our largest state. The battle over Proposition 187 erupted only four years after the Immigration Act of 1990 had seemed to strike a stable, sustainable policy equilibrium (Schuck 1998). In 1995, a House of Representatives committee held hearings on proposals to reduce legal immigration levels, to withdraw birthright citizenship from the native-born children of illegal aliens, and to strengthen enforcement against undocumented, out-of-status, and criminal aliens.

A year later, Congress enacted two laws—the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)—that imposed tough new restrictions on non-citizens convicted of crimes in the United States or of immigration law violations. These acts were the most radical reform of immigration law in decades—or perhaps ever (Schuck 1998, 143). A third statute—the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, or “welfare reform”)—made many LPRs, not to mention undocumented aliens, ineligible for certain federally subsidized public benefits, including cash assistance and many in-kind transfers. The number of states, already a majority, with English-only rules for government business and communications continued to grow.

Just because most Americans support the removal of criminal and undocumented aliens does not mean that they are hostile to immigration (Schuck 1998, chap. 5). The goal of these removals, after all, is to prevent the blatant violation of our laws, a goal shared not only by virtually all citizens but also by the vast majority of LPRs who benefit from law enforcement and who, more than Americans generally, are disadvantaged by competition and negative stereotyping resulting from illegal migration. LPRs are likely more ambivalent about the 1996 welfare reform law because many disabled and elderly LPRs received Supplemental Security Income (SSI), checks under the pre-1996 rules, and many immigrant families include members who are LPRs, undocumented or otherwise removable, and U.S. citizens.

In any event, the political pendulum soon began to swing back toward easing legal restrictions on immigrants. In 1997, the U.S. Commission on Immigration Reform submitted numerous policy recommendations to Congress designed to promote Americanization, defined as integrating immigrants while respecting their cultures of origin, increasing family-based immigration in the short-term by focusing on nuclear family reunification, and returning to the level of family admissions that prevailed in the 1980s (U.S. Commission on Immigration Reform 1997). Congress also restored many of the SSI and related benefits to those who had been eligible before 1996 and to the newly disabled and President Bill Clinton vowed to restore food stamps for immigrant families with children, which Congress eventually did. California, New York, New Jersey, and other high-immigration states filled some of the remaining gaps with their own funds. (This refuted predictions that immigrants were so politically friendless that the states would engage in a headlong “race to the bottom” to cut benefits to induce them to return home or move to other jurisdictions.)

Congress enacted amnesties for an estimated 155,000 Nicaraguans and Cubans, many Haitians, and 240,000 Guatemalan and Salvadorans who were in the United States illegally in 1997 and 1998. In December 2000, Congress enabled about 400,000 illegal aliens, who had been ruled ineligible for earlier amnesties, to obtain green cards. The new George W. Bush administration twice mobilized Republicans in Congress to extend the application deadline. In March 2001, the administration gave temporary legal status to 150,000 undocumented Salvadorans. Bush then began a campaign for another large amnesty for Mexican agricultural workers. Congress expanded the number of temporary H-1B visas available to technical workers, many of whom would later adjust to LPR status. Finally, between 1999 and 2001, LPR admissions increased from 646,568 to 1,064,318, the highest level since 1914, not including
the Immigration Reform and Control Act of 1986 (IRCA) amnesties (U.S. Department of Homeland Security 2005, table 1). Almost half of these LPR “admissions” were of people already in the United States, many illegally.

This expansive policy was convulsed by the destruction of the World Trade Center on September 11, 2001, an event that transformed—and in some ways, deformed—that policy. Stephen Legomsky has described the immediate impact:

In immigration as in other areas of public life, everything changed. Proposed immigration liberalizations were suddenly off the table. Taking their place were the USA PATRIOT Act of 2001, the Homeland Security Act of 2002 (transferring almost all functions of the former INS [Immigration and Naturalization Service] to multiple agencies in the new Department of Homeland Security, controversial new Justice Department regulations intensifying the investigation, apprehension, and detention of non-citizens, the President’s Order subjecting various categories of non-citizens to criminal trials before military tribunals without the usual constitutional constraints, and the REAL ID Act of 2005. (2005, vi)

The administrative processing of nonimmigrant and LPR visas, as well as naturalizations, slowed considerably. But by 2005, legal immigration returned to record levels, 1.12 million LPRs and 604,000 naturalizations; in 2006, the numbers increased further to 1.26 million and 702,000, respectively. (Both numbers declined in 2007, to 1.052 million LPRs and 660,000 naturalizations, with a huge increase in the backlog of pending naturalization petitions, to 1.13 million.) A similarly sharp decline in student visas after 2001 was reversed after intense protests by university leaders and scientific researchers dependent on the flow of talented foreigners to their institutions. By some measures, enforcement increased. Formal deportations (now called “removals”) are at record levels (319,000 in 2007). The immigration enforcement agency manages one of the largest detention operations in the federal government (exceeding 25,000 beds, with thousands more authorized). The agency has engaged in high-profile enforcement actions against street gangs with undocumented members, some workforces, and at least one large employer, although the number of employer sanctions imposed overall is negligible. President Bush’s administration budgeted a huge expansion in border and interior enforcement and in detention capacity in 2008 and future years, assigning thousands of National Guard troops to assist with border enforcement.

At the same time, the policies of Congress and the Bush administration for the monitoring, identification, apprehension, detention, interrogation, prosecution, and removal of immigrants suspected of links to terrorism have been subjected to growing and sometimes bipartisan criticism for their ineffectiveness, doubtful legality, and threat to the civil liberties of immigrants and citizens alike. The courts, including the U.S. Supreme Court, have rebuked and rejected certain aspects of some of these policies (Hamdi v. Rumsfeld, 542 U.S. 507 [2004]; Rasul v. Bush, 542 U.S. 466 [2004]; Hamdan v. Rumsfeld, 126 S.Ct. 2749 [2006]; and Boumediene v. Bush, 128 S.Ct. 2229 [2008]). Other challenges are still being reviewed by the courts.

This chapter is not the place for a policy-by-policy assessment of the so-called war on terrorism, nor are scholars yet in a good position to conduct such assessments. The sad truth, inherent in the nature of this unprecedented campaign, is that the publicly available information about how this war on terrorism is being waged and with what consequences remains radically incomplete. To be sure, the abstract values at stake in the conflict between conducting the war effectively and protecting the civil liberties of citizens and noncitizens seem clear enough. But we lack the crucial information needed to know the actual terms of this trade-off so that we can then assess its legal, moral, and political acceptability.

The courts, properly mindful of their limited constitutional role and expertise in national security matters, have entered this debate—but only at the edges and mostly to preserve their own jurisdiction and to insist on observing minimal standards of due process. The Justice Department and the Pentagon have already conducted a number of internal investigations that have identified some highly disturbing patterns of both recklessness and lawlessness under both domestic and international legal standards (U.S. Department of Justice 2003).

Other widely criticized practices targeting particular immigrant groups, such as profiling, may in principle be more justifiable if conducted with appropriate safeguards against invidious discrimination and unnecessary invasions of privacy (Schuck 2006, 140; Viscusi and Zeckhauser 2003). Most of the USA PATRIOT Act was reauthorized in March 2006.

The antiterrorism measures being adopted in almost all European countries, particularly in the wake of the murder of the Dutch activist Theo Van Gogh and the July 7, 2005, bombings in London, appear to be moving almost entirely in the direction of tougher controls on immigrants and citizens alike. In June 2008, for example, the British Parliament approved legislation extending the period of time during which suspected terrorists can be held without a judicial hearing.

Still, we can easily be misled by the asserted crisis surrounding immigration policy and enforcement in the post-9/11 period (examples include Cole 2003; University of California at Davis Law Review 2005). In fact, this period is just as remarkable for what has not happened as for what has happened. Just as Sherlock Holmes gained a pivotal clue from the dog that didn’t bark, we can advance our understanding of immigrant incorporation in the United States by attending to its deeper, more structural, and often unremarked regularities that the changes wrought after 9/11 have interrupted but not essentially altered. My analysis of these systemic patterns proceeds in five sections: (1) public attitudes toward immigration, immigrants, and the diversity that they bring to U.S. life; (2) the role that affirmative action and other public benefits play in the incorporation of immigrants; (3) the role of federalism in this incorporation; (4) emergent notions of citizenship; and (5) the nature and extent of immigrant assimilation.

Public Attitudes toward Immigration, Immigrants, and Diversity

Americans hold four different kinds of restrictionist views (Schuck 1998, 4–11): xenophobia (an undifferentiated fear of foreigners or strangers as such), nativism (a more discriminating belief in the moral or racial superiority of the indigenous stock), principled restrictionism (the belief that current levels of immigration are too high), and nativism (the belief that current levels of immigration are too low).
inevitably threaten particular policy goals or values advocated by the restrictionist),
and pragmatic restrictionism (the belief that such policy and value conflicts are
contingent, not inevitable). Most Americans are probably pragmatic restrictionists—
they favor lower levels of immigration (almost regardless of what the current levels
are, which the public misestimates), but they remain open to argument and evidence
about what those levels should be and about the actual effects of immigration. Like
the public attitudes toward race-oriented policy issues that Sniderman and Piazza
(1995) found notably responsive to counterarguments, public views on immigration
levels are, within limits, fluid.

According to survey data (with the usual caveats about sensitivity to the wording
of questions and other factors), Americans like immigrants more than they like im-
migration, favor past immigration more than recent immigration, prefer legal immi-
grants to illegal ones, prefer refugees to other immigrants, support immigrants’ access
to educational and health benefits but not to welfare or Social Security, and feel that
immigrants’ distinctive cultures have contributed positively to U.S. life and that diversity
continues to strengthen U.S. society today. At the same time, they overwhelmingly
resist any conception of multiculturalism that discourages or impedes immigrants from
swiftly learning and using the English language.

Americans treasure their immigrant roots yet believe that current immigration
levels are too high—and, the data indicate, they always have. New immigrant groups
have always raised anxiety about immigration, a tendency that a 1982 Gallup poll
places in a revealing historical light. When asked about its views on the contribu-
tions of particular immigrant groups, the public gave the highest scores to precisely those
groups that had been widely reviled in the nineteenth and early twentieth centuries;
the lower-scoring groups were the newer arrivals (at that time, Cubans and Haitians).
Rita Simon has captured this ambivalence in an arresting metaphor: “We view im-
migrants with rose-colored glasses turned backwards” (2003, 44). Recent poll results
support this finding (Bowman 2006).

The optimist might infer that seventy-five years hence, the public will view to-
day’s newcomers—who by then will be old, established groups—with the same
suicidism and admiration now generally reserved for Italians, Jews, Slovaks, and other
well-assimilated groups. The pessimist, of course, will reject this “postdictive
prediction,” insisting that things really have changed for the worse. (Some immigration
scholars find support for this more pessimistic view.) Recent national polls (Connolly
2006) find high levels of opposition to illegal aliens, an unsurprising view that has
propelled almost universal demands for more effective enforcement.

Public attitudes toward demographic, ethno-racial, religious, gender, and other
differences have nevertheless become far more liberal since the 1960s. This liberalization
is strikingly evident in the election of multiracial Senator Barack Obama for the
presidency and in the evolving views of openly gay relationships and lifestyles by a society
that harshly repressed them and to an extent still does (Schuck 2003, 4). Immigration
law has shifted from the exclusion of a category interpreted to include homosexuals
upheld by the Supreme Court in Boutilier v. INS, 387 U.S. 118 [1967]) to its elimin-

nation by Congress as grounds for exclusion in the Immigration Act of 1990 (Legomsky
2005, 259–60; Eskridge 1990). This liberalization helped to produce the landmark
965 immigration reform that, in turn, utterly transformed the face and culture of
the United States. Canadian immigration policy experienced a comparable—by some
measures, an even greater—liberalization during this period.

In sharp contrast, however, even the most liberal European states, such as Den-
mark, are experiencing enormous difficulties absorbing a far lesser degree of diversity.
As Michael Minkenberg (chap. 10) and Gianni D’Amato (chap. 5 in this volume)
show, right-wing parties with harsh anti-immigrant ideologies have gained strength
in almost all of them. The December 2005 riots that convulsed France and the Europe-wide
violence two months later in response to the publication of a Denmark
newspaper of cartoons offensive to many Muslims, may well be harbingers of bitter
conflicts to come. Unfortunately, for a variety of reasons, these states seem compara-
tively ill-equipped to manage such conflicts (Foner and Alba 2008).

In sum, Americans tell survey researchers that they favor legal immigration and
cultural diversity in principle but want less of it in practice. Research also indicates
that racial and ethnic diversity reduces social capital within and between communi-
ties (Putnam 2007; Schuck 2007b). Americans harbor deep concerns about the impact
of immigration and diversity on specific aspects of U.S. life—since 9/11, on the
risk of terrorism in particular—and also worry about how quickly and completely
the newer immigrant groups can be assimilated. These same anxieties troubled ear-
er generations as well (King 2000; Tichenor 2002; Zolberg 2006). But anti-Muslim
incidents—conducted by President Bush sought to forestall by affirming solidarity
with law-abiding Muslims in the United States and elsewhere in his first public ad-

Address after the terrorist attacks—seem to have declined substantially since the spate
of local harassment immediately after 9/11. The tension between Muslims and non-
Muslims in the United States is far lower than in France or the Netherlands, where the
Muslim population is proportionately larger, more socially isolated, and more
sympathetic to Islamic radicalism (Roy 2004; Pew Research Center 2007).

The survey data prompt an intriguing question: If Americans are ambivalent about
immigration and desire even less legal immigration, how can we explain the nota-
ably liberal immigration policies of the last decade (Tichenor 2002)? (On a similar
situation in Europe, see Lahav 2004a.) The IRCA, much-heralded as an example of
a “get tough” policy, turned out on balance to be expansionist, legalizing almost
3 million out-of-status workers, while its employer sanctions have never been strongly
enforced. The expansionist Immigration Act of 1990 has persisted through two eco-
nomic recessions and even after 9/11. Large amnesty were also enacted during the
late 1990s, Congress and the major immigrant-receiving states restored most of the
benefits withdrawn from LPRs under the 1996 welfare reform law, and restrictionist
measures have focused almost entirely on criminal and undocumented aliens rather
than on the vastly larger number who are in legal status. In May 2006, the Senate re-
jected the strong enforcement bill passed by the House of Representatives in Decem-
ber 2005—which would not have restricted legal immigration—in favor of large new
amnesty and guestworker programs and an expanded quota for employment-based
permanent visas. As the failed effort at comprehensive reform in spring 2007 suggests,
yang bill that emerges from Congress is likely to increase immigration even as it also
contains tougher enforcement provisions.

Three factors go a long way toward explaining this strong tendency to expand
immigration even in the face of public opposition to it: the distinctive political
economy of immigration policy; immigration federalism; and the remarkably successful assimilation of many immigrants, particularly the Asian groups whose numbers have increased rapidly since the late 1960s. (For a more extensive explanation, see Schuck 2007a).

The political economy of almost any important public issue consists of interests that are starkly opposed to one another, often from more than two directions. In the last few decades, rapid technological change, increased foreign trade and global competition, the decline of private-sector labor unions, a better-educated and more diverse population, a differentiation of product and service markets, a proliferation of nonprofit organizations, and many other factors have increased and diversified the number of interests affected by most public policies, immigration included. Political rhetoric aside, the classic struggles of capital versus labor, rural versus urban, importers versus exporters, agriculture versus industry, producers versus consumers, military versus civilian, national versus local, and ethno-racial majority versus minorities have largely gone the way of carbon paper. These traditional dualisms fail to capture the actual dynamics of today's far more complex political pluralism.

What is so unusual and significant about immigration politics is the extent to which its many vectors converge to press for more expansionist policies. The manifest failure of the leading restrictionist lobby (the Federation for American Immigration Reform, FAIR) to mobilize the latent unorganized public opposition to immigration expansion illustrates this point. Primary support for FAIR comes from population-control interests along with some environmental and labor groups. The small but resolute restrictionist caucus in the House, led by Tom Tancredo of Colorado (he claimed 101 members, almost all Republican from strongly Republican districts), served mainly to increase the already significant pressure on the Bush administration to increase enforcement. The restrictionists' long-standing efforts to eliminate birthright citizenship for the native-born children of undocumented aliens has little public support.

Although this political disconnect has in the past produced a more expansionist policy than the public says it wants, this may not continue. Whenever the underlying social values or facts change but a policy itself does not, the widening disjunction ripens political opportunity for the opponents of the policy. This is what drives much fundamental policy change. In the immigration context, this dynamic may take the form of a harsh political backlash by voters frustrated by what they see as a recalcitrant, unresponsive political establishment, an impulsive reaction that may be extreme and misguided rather than merely striking a new, more desirable equilibrium. Some examples of crude policies resulting from a backlash against a political disconnect that had grown too wide include Proposition 187, IIRIRA, the Arizona Proposition 200 of November 2004, and the REAL ID Act of 2005. The enforcement-only bill adopted by the House in December 2005 was a similar overreaction; it would have made felons of anyone, including clergy, who assist such immigrants.

Despite the failure of comprehensive reform in 2007, surveys show many in the public have reached a balanced and realistic view about the prospects for effective immigration enforcement. In October 2005, a new poll of eight hundred registered “likely” Republican voters indicated that 72 percent favored an earned legalization proposal combined with tougher border security and employer sanctions. An even higher share (84 percent) agreed that it is not possible to deport all illegal aliens (Manhattan Institute for Policy Research 2005). (Of course, this proposition is so obviously true that we might have expected 100 percent agreement!)

Affirmative Action and Other Public Benefits for Immigrants

The issue of immigrants' eligibility for affirmative action and many other public benefits has long been controversial in the United States, particularly during the last decade, when strong political, legal, and ideological challenges have been mounted, some successfully, against even citizens' access to such benefits (see Schuck 2003, chap. 5, 2006). Nonetheless, the continuing availability of many public benefits—even to undocumented aliens—suggests that immigrants today are treated less as a "discrete and insular minority" than at perhaps any time in our history.

Opposition to affirmative action, defined as quotas or preferences, runs deep. The vast majority of Americans, including more than one-third of blacks and more than 70 percent of Hispanics, oppose racial preferences in hiring and promotion, with the level of this opposition having grown somewhat over time. Rightly or wrongly, opponents view preferences as inconsistent with the ideals of equal opportunity and merit that almost all strongly endorse. Opponents of affirmative action are strengthened by the little-known fact that four out of five immigrants—by definition, individuals without a history of victimization in the United States—become automatically eligible for affirmative action benefits the moment they arrive (Graham 2002, 192). Immigrants' eligibility for affirmative action may help to explain, for example, why almost 20 percent of the black faculty at the University of Michigan were immigrants, as were more than half of the "Asian-Pacific Islander" (a census category) faculty. Professors Henry Louis Gates and Lani Guinier have lamented the fact that a high percentage of black students at Harvard are from immigrant or biracial families (in Rimer and Arenson 2004).

Immigrants' eligibility for and use of affirmative action benefits may fuel resentment from many Americans who might otherwise sympathize with their cause, particularly low-income blacks with whom many immigrants compete for jobs and other resources. When U.S. blacks claim a preferential entitlement for themselves as a group, it spotlights their underlying claims about uniqueness, desert, opportunity, and performance. Earlier immigrant groups, now largely and comfortably assimilated, who may feel disadvantaged by the preferences, may also feel that their own feelings of uniqueness, desert, opportunity, and performance are not getting due respect or may resent the fact that they managed to assimilate without the benefit of costly bilingual programs put into place for later immigrants. Some of the bitter intergroup clashes in urban areas surely reflect feelings of moral superiority and animus inspired by intergroup comparisons.

Immigrants' eligibility for other public benefits has a long history that cannot easily be disentangled from the complex histories of the welfare state and of constitutional federalism. Suffice it to say that states and localities often barred even LPRs from claiming such benefits, particularly in the years before the Great Society, when programs, dollars, and beneficiaries were far more limited. Courts generally upheld these restrictions if the government could show that they would promote "a special
of that law. New York City forbids its public hospitals and other agencies to inquire about or disclose the immigration status of those with whom they come into contact. Other states and localities, in contrast, have cracked down. In general, however, recent political developments demonstrate that immigrants, both legal and undocumented, enjoy considerable public support (Schuck 2007c).

The Role of Federalism in Structuring Immigrant Incorporation

The role of the states in defining the rights of noncitizens in the United States has a complex history (Schuck 1998, 194–97). The question is how fair treatment of noncitizens can be assured when the national government bears the primary responsibility for regulating them but the states, which may have stronger fiscal and political incentives to discriminate against them, define and carry out many relevant public services, such as education.

The Supreme Court has held that Congress remains free as a matter of policy to delegate some of its plenary power over immigration policy to the states by authorizing, or perhaps even requiring, them to act in ways that would be impermissible had Congress remained silent. In recent years, Congress has prescribed only a very limited affirmative role for the states in immigration policy—primarily, to provide federally mandated social services for refugees. Indeed, the REAL ID Act of 2005 requires the states to tailor their regulation of drivers' licenses to federal immigration enforcement priorities. The tight restriction of 1996 welfare reform on the power of the states to provide federally subsidized social services to nonqualified aliens is the clearest example of federal preemption of a field, public benefits, in which states have traditionally played a central policymaking role.

Nothing in the nature of immigration policy requires that it be an exclusively national responsibility. Although immigration control is a national function in all countries, subnational units in the federal systems of Canada, Germany, and Switzerland exercise important policymaking functions with respect to immigration. If Congress were to assign the states a more affirmative role in immigration policy and the courts sustained it, how would this alter the nature and process of immigrant incorporation? The vast majority of immigrants tend to live in a handful of state and metropolitan areas, and the distribution of those who are undocumented is even more skewed. However, the economic and other benefits of immigration to the nation as a whole may be, the costs imposed by immigrants’ use of schools, hospitals, prisons, and other public services are highly concentrated in these high-impact states and localities.

For these communities, the cost of providing these services to immigrants is as salient as any policy area with which they deal. A recent U.S. Government Accounting Office (GAO) study documented this fiscal mismatch in the incarceration of criminal aliens (U.S. Government Accounting Office [GAO] 2005a). Under the Justice Department’s State Criminal Alien Assistance Program (SCAAP), the federal government is supposed to reimburse state and local governments for a portion of their costs of incarcerating some, but not all, criminal aliens who are illegally in the country. The number of incarcerated immigrants has increased significantly in recent years, although immigrants have much lower, and declining, incarceration rates compared with nonimmigrants.
with comparable native-born Americans (Butcher 2006). Despite this, federal SCAAP reimbursements declined by approximately half between 2001 and 2004, representing only 25 percent or less of the estimated incarceration costs. California estimated that it spent $662 million in fiscal year 2006 alone to jail unauthorized aliens but received only $107 million in SCAAP funds.

Recent moves to increase the role of state and local criminal justice officials in enforcing federal immigration laws raise the question of immigration federalism in a specific and controversial context. The 1996 law authorized the federal government to negotiate agreements with states and localities that would, in effect, deputize their law enforcement officers to assist in the apprehension and detention of aliens who violate the immigration laws. This prospect is attractive to federal officials. After all, state and local police often apprehend criminal and undocumented aliens, albeit for nonimmigration offenses, and immigration officials must rely on local law enforcement agencies for criminal records and other data, access to local detention facilities, temporary custody arrangements, and other cooperation (Schuck and Williams 2000). In summer 2005, an unofficial Minuteman project had volunteer civilians patrolling areas of the border between Arizona and Mexico, and it claimed that it had 15,000 volunteers ready to patrol the entire Mexican-U.S. border. Responding to this pressure, Arizona and New Mexico declared an immigration emergency at their borders and demanded that the federal government provide special assistance. Governor Arnold Schwarzenegger of California, who praised the Minuteman campaign, has resisted political pressure to do likewise. In May 2006, President Bush began sending National Guard troops to help patrol the southern border. When all of this dust clears, one suspects that the federal government will feel compelled to delegate somewhat more enforcement authority and funds to the states. There are good reasons why it should do so (Schuck 2007c).

Emergent Conceptions of Citizenship

The admissions system is not simply a gateway to the United States; it is also a gateway to becoming an American. Once immigrants enter as LPRs, they will in all likelihood be eligible to naturalize. In effect, the demographic diversity of the citizenry resembles that of the admitted immigrants, at least over time, although different immigrant groups naturalize at very different rates. Mexicans and Canadians, for example, are less likely to naturalize and take longer to do so, than many Asian groups, reflecting greater geographic proximity and more enduring ties to their homelands. Also, members of some groups are more likely to have entered the United States without documents and subsequently gained legal status, which lengthens their time to naturalization as well. Regardless of the parents’ legal status, a child born on U.S. soil becomes a U.S. citizen at the moment of birth under the rule of jus soli (law of the soil), which dates back to sixteenth-century English common law (Schuck and Smith 1985). This rule, of which the U.S. version is probably the most liberal in the world, may increase the incentive of undocumented aliens to enter illegally. (A May 2004 U.S. Census Bureau report estimated that the 14 million U.S. residents living in households with an undocumented head or spouse included 3.1 million U.S.-born children.)

U.S. naturalization requirements, although roughly comparable to those of Canada, are easier to satisfy than those of Europe and much easier than those of Japan. Although this has been true since 1790, important and shameful exceptions to this openness have existed for long periods of time (Zolberg 2006; Smith 1997): ideological restrictions during much of the period; exclusion of U.S. blacks until 1870; exclusion of the Chinese and races indigenous to the Western Hemisphere until the 1940s; exclusion of all other nonwhites (other than those of African descent) until 1952; and provisions that automatically renationalized U.S. women who married any alien (from 1907 to 1922) or an alien ineligible (usually for racial reasons) for naturalization (until 1931).

Today, the English language and literacy tests are notoriously easy to pass—the statute mandates a “simple” literacy test and exempts many disabled individuals and older immigrants who are illiterate in English from having to take it (McCaffrey 2005). The U.S. history and government test requires only rote responses. Indeed, making these requirements a bit more rigorous might actually strengthen the political support for immigration, just as the 1996 welfare reform statute limiting immigrants’ access to welfare benefits may have had the unanticipated effect of undermining a traditional argument for restricting immigration—welfare utilization by immigrants.

Although the immigration statute disqualifies from naturalization those individuals deemed subversive or “not attached to the principles of the Constitution,” this bar has been considerably narrowed by statute and judicial interpretation since the 1960s. The risk of denationalization due to the commission of “expatriating acts” has been practically eliminated. Although the “good moral character” requirement is now interpreted quite generously with respect to noncriminals, it does flatly bar “aggravated felons,” a category that Congress introduced into the law in the 1980s and has steadily expanded. Finally, in Kungys v. United States, 485 U.S., 759 (1988), the Supreme Court narrowly interpreted the legal authority for rescinding the citizenship of those who procured their naturalization through fraud or misrepresentation.

This inclusive naturalization regime has produced impressive numerical results. More than 1 million people naturalized in 1996, the highest number ever, and naturalizations have remained quite high since then, despite a post-9/11 slowdown in processing that produced large backlogs in some regions. As noted earlier, 660,000 immigrants naturalized in 2007. Especially striking is the source-country diversity of those naturalizing. About 36 percent were from Asia, 36 percent from North America (including Canada and Mexico), and only 13 percent from all of Europe (U.S. Department of Homeland Security 2008).

Dual nationality—the consequence of international marriages, legal changes in other countries, and a softening of traditional opposition by the United States and other governments—is a growing component of U.S. citizenship law (Spiro 2008). Nearly 90 percent of legal immigrants to the United States today come from states that allow dual citizenship. Indeed, our largest source country, Mexico, now actually promotes it for the U.S.-born children of its nationals, and some other Latin American states either now do so or soon will.

Immigrant Assimilation

The term assimilation is controversial. Alan Wolfe, sociologist, notes that assimilation “is a form of symbolic violence. Like the actual violence of war, assimilation is
enclaves in which their members can enjoy parochial comforts with a minimum of normative conflict and cultural stress.

Every modern state has its own way of obsessing about its own political identity and destiny. And many of these states have much to worry about (Schuck 2000). Still, among the relatively few with a secure and unchallenged national unity, the U.S. preoccupation is among the most insistent. Whereas the unity of most other states is based on sturdy, indeed primordial, commonalities such as language, religion, and ethnicity, the unity of the United States is founded on a potentially more fragile allegiance to universal civic ideals accessible, in principle, to all of humanity. These ideals—individualism, democracy, the rule of law, pragmatism, the spirit of compromise, respect for differences, equality of opportunity, social mobility, love of freedom, capitalism, and openness to newcomers—constitute a civic nationalism or ideology suitable to what Ben Wattenberg calls "the first universal nation."  

In practice, of course, these cultural ideals are imperfectly realized. Even as stated, they are highly abstract and can mean many things to different people. Indeed, their openness to interpretation is part of their enduring strength. But they can also be rhetorically hijacked and politically compromised, leaving their defenders without a fixed authoritative standard to which they can appeal. This robust national culture may be less unique and autonomous than it was in the past, perhaps weakening its ability to serve as the core of a U.S. political identity that boasts exceptionalism (or at least distinctiveness) (Schuck and Wilson 2008). Today, many other states cherish these same values, although balancing them in different, sometimes more egalitarian ways (Alesina and Gleaser 2004) and implementing them through different institutions.

This national culture faces greater challenges to its unity today than at any time since the Civil War. Many immigrants live in enclaves that are so large and self-sustaining that it attenuates their economic, linguistic, and cultural integration with the larger community, at least in the short run. Reduced transportation and communication costs enable many immigrant families to maintain strong transnational ties. With the greater acceptance of dual citizenship, naturalized immigrants can retain (or regain) their old nationalities. And now, as in the past, immigrants without democratic traditions in their home countries—Haiti and Pakistan, for example—may find U.S. political values hard to comprehend and practice.

The absence of conventional war, a military draft, external threats, a strong communal ethos, robust public rituals, or other solidarity-enhancing experiences may make being American seem less central to citizens' self-definition than in the past. Although 9/11 temporarily heightened this political solidarity, it may be atrophying under the polarizing pressures of subsequent events and partisanship. Citizenship demands little of Americans, and remarkably, there have been few calls after 9/11 to make naturalization requirements more demanding. In short, the mere fact of citizenship may contribute less to forging a U.S. identity. Finally, globalization is exerting new pressures on our national culture. Our borders are more porous than ever and remittances to developing countries dwarf U.S. foreign aid. For some analysts, these developments prefigure an inevitable retreat of national sovereignty and the loss of cultural distinctiveness. But even those who find such predictions overblown must acknowledge a diminution in both the autonomy of national cultures and in the freedom of action of states in pursuing them.
By any definition, however, immigrants are rapidly integrating into U.S. life, although at group-specific rates (Vigdor 2008). Immigrants have a far higher rate of employment than in European economies. Market pressures magnify immigrants’ intense desire to learn English. Most studies (summarized in Schuck 2003, 110) find that the immigrant generation acquires fluency at roughly the same rate as earlier waves did, that the “one-and-a-half generation” (who arrived as children) and second generation (the U.S.-born children of immigrants) learn it at school and strongly refer to their parents’ native language, that 98 percent of the second generation peak it proficiently by the end of high school, and that the third generation is largely non-linguistic in English and likes it that way. This optimistic picture is marred by the estimated 3 million or more U.S.-born students with limited English proficiency (LEP) despite—perhaps because of—bilingual education programs. Indeed, 10 percent of LEP students are third-generation Americans, and the 1990 census found that almost 8 million households, 8.3 percent of the U.S. total, were “linguistically isolated,” meaning that no person fourteen years-old or older spoke English well.

The rates of interethnic marriage are high, particularly among Asian women and Hispanics, and the residential integration of those groups into white-majority urban and suburban communities is growing rapidly (Schuck 2003, 208). Other important concepts of integration are the allure and ethnic diversity of a powerful mass media and popular culture (including minority-dominated sports teams) and the receptiveness of U.S. religious communities to newcomers, who are reinvigorating and often transforming them (Schuck 2003, 337–46).

Some sociologists of immigration (Portes and Rumbaut 2001) worry about downward or segmented assimilation, when young immigrants and young children of immigrants adopt dysfunctional norms and conduct all too common in the United States that may impede their future mobility and integration. Desiring healthy assimilation by their children, immigrants try to use the cultures of origin to inoculate them against these dangerous aspects of U.S. life, providing a cultural shelter and breathing space in which their youngsters can flourish. Some groups are more successful at this daunting task than others (Portes and Zhou 1993). Among at least some immigrant groups, these authors argue, the best academic achievers assimilate more slowly to U.S. culture, whereas the delinquent youngsters are quicker to abandon their ethnic heritage.

A particularly worrisome challenge to the assimilation project is the amount of criminal activity engaged in by immigrants, both documented and undocumented. AO (2005a, 2005b) reports suggest the magnitude of the problem. The number of aliens incarcerated in federal facilities increased from approximately 42,000 in 2001 to approximately 49,000 in 2004. The percentage of all federal prisoners who are aliens is approximately 27 percent, accounting for approximately $1.2 billion in federal costs in 2004. These statistics do not include the large number of aliens in state prisons and local jails. In a study of more than 55,000 illegal aliens in federal prisons, GAO found that the average alien had approximately eight arrests (for thirteen offenses); 26 percent had eleven or more arrests. Approximately 45 percent of the offenses committed by this population were for drug or immigration crimes, but 2 percent were for violent crimes such as murder, robbery, assault, and sex-related crimes, and 15 percent were for property-related crimes.

These statistics reflect the high levels of immigration in recent years: they do not mean that immigrants are more prone to crime. In fact, precisely the opposite is true (Rumbaut et al. 2006). Incarceration rates for foreign-born men ages eighteen to thirty-nine are much lower than for native-born men (in 2000, 0.7 percent vs. 3.5 percent); moreover, this difference has increased substantially since 1990. Indeed, if we exclude island-born Puerto Ricans, who have far higher crime rates but are citizens, the foreign-born rate is even lower and the difference correspondingly greater. The incarceration rates of the U.S.-born children of immigrants, however, are higher than those of their parents or of non-Hispanic white citizens, and their incarceration rates generally increase with the length of time in the country.

Some immigration scholars, such as John Mollenkopf and Raphael Sonenshein (chap. 6), Reule Rogers (chap. 7), and Sandro Cattacin (chap. 16 in this volume), emphasize the extent to which immigrant assimilation depends partly on the political structures and styles that prevail in particular communities. Peter Skerry’s (1993) rich comparison of Mexican-American incorporation in San Antonio and Los Angeles argues that the ways in which politicians tried to shape immigrants’ political identities had an impact on their assimilation. The different leadership styles, party systems, interest-group coalitions, community organizations, media tactics, and mobilization strategies in those cities influenced the political techniques and self-understandings of politicians, voters, and civil society institutions. Overall, one recent analysis of Mexican economic assimilation concludes that “The progress of second-generation Mexican men and women exemplifies assimilation but only if one defines it in absolute terms. Relative to...whites, there remains a very substantial gap” (Waldinger and Reichl 2006). Other groups exhibit equally intricate and multifaceted patterns (Jones-Correa 1998; Waters 1999).

**Multiculturalism**

Multiculturalism, a perennial casus belli in the culture wars, also affects the nature and process of immigrant assimilation in an ethnically diverse society. Its salience has increased as immigrants’ transplanted cultures have grown more diverse and as group demands for recognition and protection have become legally and politically more strident. K. Anthony Appiah, referring to the educational context, explains why:

> [Multiculturalism] is now used...to cover an extraordinary range of educational practices from the anodyne insistence that American students should be taught something of the history of all the world’s continents to the kooky suggestion that they should learn that the Africans who built the pyramids did so by telekinesis. But because the word has become a term of ritual abuse for some conservatives and a banner for many on the left, there is not much hope of agreement on its core meaning. (1997, 30)

Today, multiculturalism is perhaps best understood as a set of ideas whose common theme is respect and toleration for cultural differences—globally, nationally, locally, and individually. Its common claim is that a nation should accommodate (to some extent) most (if not all) of the distinctive values and practices of culturally
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diverse groups in its midst. Multicultural policies are of many kinds; they may facilitate the integration of group members into the national culture, recognize their cultural identity as a vital end in itself, or even help groups wall off their cultures from the mainstream.

Such policies can instantiate a wide range of values—liberal, communitarian, or even conservative—depending on how they are defined, and they may be pursued through a wide range of methods. Will Kymlicka's (2001, 163) illustrative list includes affirmative action, reserved seats in public institutions, revised public school curricula, religious accommodation in secular settings, revised dress codes, programs to encourage tolerance, antiharassment codes, diversity training for officials, efforts to reduce ethnic stereotyping, public funding of ethnic festivals and programs, multilingual social services, and bilingual education.

The seminal analysis of contemporary multiculturalism in the United States is historian David Hollinger's Postethnic America (2005), an avowedly Americentric essay on cultural diversity. His vision of U.S. cultural identity resembles the robust "new nationalism" advanced in Michael Lind's book, The New American Nation (1995). Both reject a fixed, state-regulated, state-fostered structure of ethno-racial identity in favor of a more fluid, individualistic, voluntary, and privatistic set of affiliations. They are committed to what Alan Wolfe describes as a "soft multiculturalism [that] is the friend of civic nationalism, not its enemy" (2001, 33). My own view takes this position farther by rejecting the claim made by many multiculturalists that the government should facilitate immigrants' cultural diversity. It is perfectly natural for immigrants to want to maintain their cultures and that may be fully compatible with the level of assimilation that Americans have a right to expect of them. Such cultural maintenance, however, is not an appropriate public goal; it should be a private matter for immigrant families to pursue (if they wish) at home or in their ethnic communities, not in the public schools (Schuck 2003, 121-23).

Immigrant cultures, indeed any cultures, are difficult for outsiders to comprehend. The problem is not that the state must be rigorously neutral in cultural matters. In reality, that is neither possible nor desirable. The state is necessarily in the business of maintaining the dominant culture—here, an English-speaking one—and it properly insists that newcomers wishing to become citizens must demonstrate some English language ability, a basic knowledge of U.S. political institutions, and a commitment to certain civic principles. These tools are necessary, although not sufficient, for successful assimilation. Today's immigrants, desperately eager to learn English, understand no less than their (now-)admired predecessors. Government has a vital interest, often neglected in practice (especially with adult immigrants), in helping them to do so.

The United States, which consigns cultural maintenance to civil society, permits children to wear or display private religious symbols in public schools, whereas France, which also emphatically protects the free exercise of religion, rigidly proscribes this conduct in the name of secularism and the protection of Muslim girls from harassment by Islamists in their communities (Weil 2004; Foner and Alba 2008). One possible explanation is that the United States is less insecure than France about the durability of its national identity when faced with such challenges. This explanation might seem paradoxical in light of the far greater, more strident secularism (laïcité) of