Book Review

Alien Rumination

Alien Nation: Common Sense About America's Immigration Disaster. By Peter Brimelow.* *New York: Random House*, 1995. Pp. xix, 327. $24.00.

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It's a damn good thing for Peter Brimelow and his son, Alexander James Frank Brimelow, that Alexander was born in this country in 1991. Peter, a recently naturalized Briton, obviously loves the boy and wants him to live in the United States with Peter and his Canadian wife. But if Alexander had been born elsewhere, he would not be an American citizen, and if his dad had his way with our immigration policy, perhaps *none* of the Brimelows, dad included, could have entered as immigrants. The Brimelows are fortunate that the law did not and does not reflect Peter's radically anti-immigration prescriptions. And so, I shall argue, are the rest of us.

Part of the allure of this high-spirited,[1] chatty, often personal,[2] but otherwise uncharming book is that the author acknowledges such ironies. Indeed, he skillfully exploits them to construct a case for radical reform of immigration policy that verges on total elimination of immigration to the United States. Thus, he ruefully tells us that he feels "slightly, well, guilty that [Alexander's] fellow Americans had so little choice" in conferring a citizenship that Alexander, like many children of illegal aliens and temporary visitors, acquired through the fortuity of birth on American soil.[3] He shrugs off the

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1. Jack Miles aptly refers to it as "bottled brio." Jack Miles, *The Coming Immigration Debate*, ATLANTIC MONTHLY, Apr. 1995, at 130, 131 (reviewing PETER BRIMELOW, ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER (1995) [hereinafter ALIEN NATION]).

2. Too personal, in some respects—a point noted by Jack Miles in his largely admiring review. *See id.* at 140.

3. ALIEN NATION, *supra* note 1, at 4. On birthright citizenship, see *Hearing Before the Subcomm. on Immigration and Claims and the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 104th

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prospect (now happily hypothetical in his own case) that when Congress adopts his proposal to cut off legal immigration entirely, even the nuclear family of an American citizen could not immigrate to the United States. Had that been the law when he came, he says in his amiable, no-big-deal style, "I would probably be writing a book on Canadian immigration policy right now."[4]

Although it is tempting to dismiss this book as another ideological tract, one to which only the already-converted will attend, that would be a mistake.[5] The book must be taken seriously, first, because it is already influencing the public debate on immigration.[6] *Alien Nation* has grand ambitions. It not only raises fundamental questions about immigration's effect on the past, present, and future of American society (which is common enough in this era of apocalyptic politics) but also proposes to *answer* them (which is more unusual). Brimelow wishes to jettison the basic structure of our immigration policy established by the Immigration and Nationality Act Amendments of 1965.[7] The 1965 law abolished the national origins quotas, which had been in effect since 1921,[8] replacing them with a system that allocated hemisphere-specific limits among seven preference categories (based on skills, family relationships, and refugee status) and in which all countries of origin in the

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Cong., 1st Sess. (Dec. 13, 1995) (statement of Peter H. Schuck, Professor, Yale Law School) [hereinafter Schuck Testimony]; Letter from Peter H. Schuck, Professor, Yale Law School, & Rogers Smith, Professor, Yale University, to House Subcomm. on Immigration and Claims and House Subcomm. on the Constitution of the House Comm. on the Judiciary (Feb. 14, 1996) (supplementing Dec. 1995 testimony) (on file with author) [hereinafter Supplemental Letter].

4. ALIEN NATION, *supra* note 1, at 263.

5. For example, in his review of the book, Aristide Zolberg expresses surprise and dismay as to "[w]hy this journalistic broadside has received such respectful treatment." Aristide Zolberg, Book Review, 21 POPULATION & DEV. REV. 659, 659 (1995). A number of other readers have been similarly dismissive.

6. The media and Congress have already given it much prominence, and it is bound to receive more attention as we approach two seismic political events: congressional action on immigration reform legislation and the 1996 election campaign. For a sampling of Brimelow's appearances on national television programs, see *Booknotes* (C-SPAN television broadcast, June 11, 1995), *cited in Reuters Daybook*, June 11, 1995, *available in* LEXIS, News Library, Curnws File; *Charlie Rose* (PBS television broadcast, Apr. 20, 1995), *transcript reprinted in* LEXIS, News Library, Curnws File (transcript no. 1360); *Crossfire* (CNN television broadcast, July 4, 1995), *available in* LEXIS, News Library, Curnws File (transcript no. 1398); *Firing Line: Resolved: All Immigration Should Be Drastically Reduced* (PBS television broadcast, June 16, 1995), *discussed in* Walter Goodman, *Television Review: An Immigration Debate's Real Issue*, N.Y. TIMES, June 15, 1995, at C20; *MacNeil/Lehrer NewsHour: Alien Nation* (PBS television broadcast, Aug. 16, 1995), *available in* LEXIS, News Library, Curnws File; *The McLaughlin Group* (television broadcast, Aug. 1995), *discussed in* Susan Douglas, *Snide Celebrations: Network TV Political Talk Shows and Women's Rights*, PROGRESSIVE, Oct. 1995, at 17, 17. Brimelow has also testified before Congress. *See Immigration Issues: Hearing Before the Subcomm. on Immigration and Claims of the House Judiciary Comm.*, 104th Cong., 1st Sess. (May 17, 1995).

7. *See* ALIEN NATION, *supra* note 1, at 258. The 1965 amendments, Act of Oct. 3, 1965, Pub. L. No. 89-236, 79 Stat. 911 (codified as amended in scattered sections of 8 U.S.C.), modified the landmark Immigration and Nationality Act of 1952, ch. 477, 66 Stat. 163 (codified as amended at 8 U.S.C. §§ 1101–1523 (1988 & Supp. 1994)).

8. *See* Immigration Act of 1921, ch. 8, 42 Stat. 5. Congress adopted the national origins quotas in provisional form in 1921, *id.* § 2, 42 Stat. at 5–6, and codified them as a permanent system in 1924, Immigration Act of 1924, ch. 190, § 11, 43 Stat. 153, 159–60.

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eastern hemisphere were subject to the same 20,000-immigrant limit.[9] The immigration reform laws enacted in 1978, 1986, and 1990 preserved the essential structure (while altering the details) of this system.[10]

Brimelow proposes to end this system in favor of "a drastic cutback of legal immigration."[11] This proposal is perhaps the only instance of understatement in a book suffused with hyperbole. Calling his plan a drastic cutback is rather like calling Jack the Ripper unfriendly. Brimelow would stop all immigration immediately (but temporarily) and seems to propose a permanent termination of all family-based, refugee, and asylee immigration.[12] Presumably, he would permit only skills-based immigration, but he does not indicate how many of these immigrants he would admit. Of all the reform proposals advanced during this season of discontent, Brimelow's are surely among the most radical.[13]

Another reason to take *Alien Nation* seriously is its assertion that race[14] ought to matter in immigration policy. In the superheated environment in which racial issues are debated (and often evaded) today, they continue to be perhaps the most divisive and incendiary in American society. In the immigration policy context, they are explosive. Until the 1950s, racism pervaded and polluted American public law. Until only thirty years ago, it defined the very structure of our immigration law. Even today, the major receiving nations, all democracies, have embedded ethnocultural favoritism in

9. Act of Oct. 3, 1965, §§ 1–3, 8, Pub. L. No. 89-236, 79 Stat. at 911–14, 916–17.

10. *See* Immigration Act of 1978, Pub. L. No. 95-412, 92 Stat. 907; Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359; Immigration Act of 1990, Pub. L. No. 101-649, 1990 U.S.C.C.A.N. (104 Stat.) 4978.

11. ALIEN NATION, *supra* note 1, at 262.

12. *Id.* at 262–63. I say "seems" because he is not altogether clear about how far he is prepared to go in restricting immigration. Brimelow proposes severe cutbacks in each category that would still preserve the category in some form, but he also says that, in the end, complete elimination is the preferred policy. *Id.* Either Brimelow has not considered the possibility that some of these changes—especially a refusal to allow genuine asylees to enter the United States—would violate human rights conventions to which the United States is a signatory, or he does not care if they do.

13. Brimelow, however, is not as radical as Michael Lind, who, to protect the earnings of native-born Americans, advocates zero net immigration. *See* MICHAEL LIND, THE NEXT AMERICAN NATION: THE NEW NATIONALISM AND THE FOURTH AMERICAN REVOLUTION 321–22 (1995). I should add that Lind's book is both provocative and excellent, although its brief discussion of immigration policy is among its weakest sections.

14. Brimelow's discussion does not distinguish clearly between race, which connotes a close phenotypic affinity among people, and ethnicity, which connotes a cultural affinity, albeit one in which skin color might play an important cohesive role. He uses the terms more or less interchangeably. He assumes that there are well-defined races in the United States today, that they are accurately represented by Census data, and that they bear race-specific cultural values and behavioral propensities of a kind that would or should be relevant to immigration policy. These beliefs are as dangerous as they are false. For a critique of these assumptions, see *id.* at 118–27.

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their immigration and citizenship policies.[15] In Europe, even more virulent forms of racism and xenophobia increasingly taint immigration politics.[16]

Racism in the United States has declined dramatically in recent decades, despite frequent denials of this fact.[17] I believe—although the point is certainly arguable[18] and much turns on difficult definitions—that racism as such no longer plays a crucial role in immigration law; certainly it plays a less significant role than it did before 1965. Even so, immigration fundamentally shapes a number of racially charged policy questions, such as the future level

15. Both the ethnocultural conception of nationhood and the contrasting political conception are traced in ROGERS BRUBAKER, CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY (1992).

16. *See generally* CONTROLLING IMMIGRATION: A GLOBAL PERSPECTIVE (Wayne A. Cornelius et al. eds., 1994) [hereinafter CONTROLLING IMMIGRATION] (comparing immigration policy and politics of immigration of Western democracies).

17. For recent reviews and analyses of the evidence, see WILLIAM G. MAYER, THE CHANGING AMERICAN MIND: HOW AND WHY AMERICAN PUBLIC OPINION CHANGED BETWEEN 1960 AND 1988, at 22–28 (1992); BENJAMIN I. PAGE & ROBERT Y. SHAPIRO, THE RATIONAL PUBLIC: FIFTY YEARS OF TRENDS IN AMERICA'S POLICY PREFERENCES 68–81 (1992); BYRON M. ROTH, PRESCRIPTION FOR FAILURE: RACE RELATIONS IN THE AGE OF SOCIAL SCIENCE 45–72 (1994). *See generally* Abigail Thernstrom & Stephan Thernstrom, *The Promise of Racial Equality*, *in* THE NEW PROMISE OF AMERICAN LIFE 88, 88–101 (Lamar Alexander & Chester E. Finn, Jr. eds., 1995) (discussing indicia of racism and measures of political and economic progress of African-Americans). Particularly interesting is the increase during the 1980s in the proportion of whites and blacks who said that they had a "fairly close friend" of the other race. In 1989, two-thirds of whites reported having a fairly close black friend, up from 50% in 1981. Similarly, 69% of blacks said that they had a fairly close white friend in 1981; by 1989, this number had increased to 80%. *Id.* at 95; *see also* D'Vera Cohn & Ellen Nakashima, *Crossing Racial Lines*, WASH. POST, Dec. 13, 1995, at A1 (discussing newspaper poll that indicates that more than three-quarters of Washington area 12- to 17-year-olds say they have close friend of another race). On the other hand, a recent study finds that at least one aspect of traditional prejudice—the stereotype of blacks as lazy—is still widespread and contributes to whites' opposition to welfare. Martin Gilens, *Racial Attributes and Opposition to Welfare*, 57 J. POL. 994 (1995).

18. The most arguable exceptions, such as the contrast between the immigrant-friendly Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966) (codified as amended at 8 U.S.C. §§ 1101(b)(5), 1255 (1988)), and the often harsh treatment of Haitians, are over-determined; they can also be explained on geopolitical and ideological grounds. For opposition to the Cuban emigrées' advantages under the Cuban Adjustment Act, see *The Stick Congress Gave Castro*, N.Y. TIMES, Aug. 15, 1991, at A22 (editorial). Haitians have experienced a more hostile reception. *See* Anthony DePalma, *For Haitians, Voyage to a Land of Inequality*, N.Y. TIMES, July 16, 1991, at A1. This differential was much noted—and decried—during the Haitian refugee crisis that followed the Haitian military's overthrow of the government of President Jean-Bertrande Aristide in 1991. *See, e.g.*, Bob Herbert, *In America: Fasting for Haiti*, N.Y. TIMES, May 4, 1994, at A23.

Some observers also attribute much of the support for Proposition 187 in California to racism. *See, e.g.*, Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 629, 650–61 (1995); Gerald L. Neuman, *Aliens as Outlaws: Government Services, Proposition 187, and the Structure of Equal Protection Doctrine*, 42 UCLA L. REV. 1425, 1451–52 & n.125 (1995). There is room, however, for genuine disagreement about the significance of the Latino support for the measure. *Compare* Peter H. Schuck, *The Message of 187*, AM. PROSPECT, Spring 1995, at 85, 89–90 (viewing support of significant minority of Latinos for Proposition 187 as evidence of nonracist nature of support for measure) *with* Johnson, *supra*, at 650–61 (viewing fact that majority of Latinos opposed it as evidence of racism). A federal district court in California has partially enjoined the enforcement of Proposition 187 on constitutional grounds. *See* League of United Latin Am. Citizens v. Wilson, 908 F. Supp. 755 (C.D. Cal. 1995).

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and composition of the population, affirmative action, multicultural education, and legislative districting.[19]

Indeed, when commentators discuss how immigration affects labor markets, public budgets, urban development, political strategy, population growth, and the environment, they frequently refer to statistical data that break down the empirical effects of immigration, such as welfare utilization or fertility rates, by race. The public does not need experts to inform it that the proportion of nonwhites in the population is growing; the "browning" of America is obvious to anyone who walks down the street, rides a subway, or visits a classroom in almost any large city.

Nevertheless, the immigration debate has carefully elided discussion of the normative questions raised by these current and future demographic shifts: Are these changes good or bad for American society? Should they be slowed, accelerated, or left undisturbed? Which kinds of arguments support these evaluations? Our delicate discursive etiquette in matters of race consigns such questions largely to outspoken nativists such as Patrick Buchanan and to those who wish to pursue eugenic goals through immigration restriction.[20]

In more polite, punctilious company, these issues are left to evasive innuendo—or utter silence. Yet if the immigration debate is to have intellectual integrity and contribute to sound policy, this void must be filled. We must somehow learn to discuss racial questions candidly and fearlessly, but also with respect, sensitivity, and humility. This need is especially compelling in the immigration policy debate. After all, three decades after the national origins quotas were repealed, we still select most immigrants according to their national origins. We do so explicitly in our refugee, "diversity," and nation-specific (e.g., Cuban) programs, and implicitly in our family-based and legalization programs.[21] And individuals' national origins, of course, are highly correlated with race.[22]

Brimelow wishes to advance this debate but doubts that he will receive a fair hearing. He expects to be labeled a racist, which he archly defines as "*anyone who is winning an argument with a liberal.*"[23] His prediction, if not

19. *See infra* text accompanying notes 76–93 (racial composition); 180–97 (bilingualism and multiculturalism); 198–207 (affirmative action); 208–12 (legislative districting).

20. For a recent review of these eugenic arguments, see Dorothy Nelkin & Mark Michaels, Biological Categories and Border Controls: The Revival of Eugenics in Anti-Immigration Rhetoric (Sept. 12, 1995) (unpublished manuscript, on file with author).

21. The national origins of family-based admissions follow those of the petitioning U.S. citizens or legal resident aliens. For example, the beneficiaries of the massive legalization program, many of whom may now petition on behalf of their family members, were disproportionately from Mexico and other Central American nations. *See* FRANK D. BEAN ET AL., OPENING AND CLOSING THE DOORS: EVALUATING IMMIGRATION REFORM AND CONTROL fig. 5.1 at 69, fig. 5.2 at 71 (1989).

22. Usually, but not always. Almost half of the immigrants from Africa are white. Telephone Interview with Professor Frank D. Bean, Population Research Center, University of Texas at Austin (Nov. 22, 1995).

23. ALIEN NATION, *supra* note 1, at 10–11. He immediately adds, "Or, too often, a libertarian. And, on the immigration issue, even some confused conservatives." *Id.* at 11.

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his definition, is surely correct. Race is very much on his mind.[24] But is he a racist? Since Brimelow himself raises the question of his own racism and draws the reader's attention to it, a reviewer is tempted to seek an answer. The issue of his motivation, however, is an unwelcome diversion from the merits of Brimelow's claims, and I relegate it to a long footnote.[25]

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24. Thus, he is both impressed and obviously dismayed by the fact that "when you enter the INS waiting rooms you find yourself in an underworld that is not just teeming but is also almost entirely colored." *Id.* at 28. He never says why this disturbs him. Similarly, he insists that "[i]t is simply common sense that Americans have a legitimate interest in their country's racial balance." *Id.* at 264. Frankly, I do not understand why that is so, why race per se should matter.

Unfortunately, his racial awareness does not distinguish him from most Americans today; we seem obsessed with the subject. The difference may be that Brimelow does not simply believe that race *does* matter. *See, e.g.*, CORNEL WEST, RACE MATTERS (1993); *see also* Peter H. Schuck, *Cornell West's* Race Matters*: A Dissent*, RECONSTRUCTION, 1994 No. 3, at 84 (book review) (praising West's open discussion of controversial race issues but criticizing specifics of West's analysis). He also believes that it *should* matter—a lot.

25. After making his quip about liberals, Brimelow offers a serious definition. Racism, he writes, is "committing and stubbornly persisting in error about people, regardless of evidence." ALIEN NATION, *supra* note 1, at 11. He calls this "the only rational definition" of racism. *Id.* Having noted the question of his own racism and then defined the term, he immediately dismisses the charge on the ground that he is open to evidence. This auto-acquittal, however, is not entirely satisfying. For one thing, his definition of racism as nothing more than an obdurately erroneous methodology of inference is peculiar and evasive. It fails to distinguish racism from many other more morally acceptable, but still regrettable, forms of cognitive error. It also ignores the substantive content of racist views, which of course is their chief point of interest. In common understanding and parlance, racism is a belief in the inherent superiority of one's race, almost invariably accompanied by feelings of animus or contempt toward members of other races. This definition would distinguish racism from what Dinesh D'Souza calls "rational discrimination"—discrimination based not on hostility but on the need to act without full information, which would be costly to acquire, and thus on the basis of generalizations (or stereotypes) that are certain to be wrong in many, perhaps even most, individual cases. *See* DINESH D'SOUZA, THE END OF RACISM: PRINCIPLES FOR A MULTIRACIAL SOCIETY (1995).

In this common-sense understanding of racism, it is hard to say whether *Alien Nation* is a racist book. Brimelow's genial discussion reveals an acute sense of racial pride and difference but little outright animus or contempt; his breezy, loose-jointed writing style, which makes no pretense of analytical rigor, leaves it maddeningly unclear precisely what he is claiming. Key concepts such as race and cultural assimilation remain ill- or undefined. His conclusions about group superiority refer to a group's culture, national origin, ethnicity, or class rather than to its race or genetic endowment as such. For example, he notes that street crime is related to "present-orientation," which he says varies among different ethnic groups, and that "[i]nevitably, therefore, certain ethnic cultures are more crime prone than others." ALIEN NATION, *supra* note 1, at 184. He then refers to the disproportionate arrest rates among blacks. *Id.* Nowhere, however, does he claim that blacks or other disfavored groups are genetically inferior. *See id.* Specifically, he disavows any intention to rely on the claims about racial differences in IQ emphasized in RICHARD J. HERRNSTEIN & CHARLES MURRAY, THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE (1994), although he is careful not to disavow the claims themselves. *See* ALIEN NATION, *supra* note 1, at 56 n.*.

On the other hand, the book's central, frequently reiterated claims—that the post-1965 immigrants are diluting the predominantly white "Anglo-Saxon" Protestant stock that made America great and that this gravely threatens American society—certainly resemble claims of racial (or at least national origin) superiority, despite Brimelow's disclaimers. And he seems rather eager to define blacks out of the original American nation (much as Chief Justice Taney infamously and tragically did in the *Dred Scott* decision, *see* Scott v. Sandford, 60 U.S. (19 How.) 393 (1857)) to support his point that America was essentially white and European until the despised 1965 law was implemented. *See* ALIEN NATION, *supra* note 1, at 66–67. For that matter, Brimelow also ignores the presence of substantial numbers of persons of Mexican descent in the Southwest following the U.S. annexation of the region. Nor does Brimelow's lily-white vision of pre-1965 America square with the influx of Chinese and Japanese into California and the West after the Civil War. An interesting contrast is presented by the scrupulously and emphatically *nonracist* discussion of many of these same points by Michael Lind. *See* LIND, *supra* note 13, at 259–98.

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In the end, the more interesting, significant, and policy-relevant issue is not the attitudes that underlie Brimelow's claims but the validity of those claims. If Brimelow's argument that the 1965 Immigration Act has been a national calamity were correct, we would be extraordinarily myopic and perverse to ignore or deny that fact—even if his argument were infected by racism. For reasons that I shall explain in the remainder of this Review, I believe that his claim is false—or at least premature. But while *Alien Nation* is a bad book, it is also a valuable one—all the more so because it is so seductively easy to read. On the way to its erroneous conclusions, it makes many important points that are easily overlooked or have been driven underground in current immigration debates. It forces us to think more clearly about how and why his arguments are wrong. And it reminds us to resist the patriotic smugness and national self-delusion that come so easily to Americans and to be vigilant to assure that Brimelow's dire prophecies are not fulfilled.

The book's argument can be reduced to five distinct but related empirical claims whose significance can only be understood in the light of certain normative assumptions about the nature and purposes of American society. The first is a claim about *demography*; it asserts that immigration to the United States has reached unprecedented levels that are problematic in part because of the racial composition of the post-1965 flow. The second is a claim about *carrying capacity*; it holds that these high immigration levels are stretching American society's environmental resources (broadly defined) beyond the breaking point. The third is a claim about *economic impacts*; it contends that the post-1965 immigrants fail to pull their weight in the labor market and drain off scarce fiscal resources. The fourth is a claim about *cultural assimilation*; it states that the post-1965 immigrants are not embracing American values as completely or as swiftly as their predecessors did. The fifth is a claim about *politics*; it maintains that the post-1965 immigrants are altering the terms of political discourse in ways that weaken the American polity and call into question its viability as a nation-state. I shall discuss each of these claims in turn.

I. DEMOGRAPHY

Brimelow emphasizes that total immigration to the United States, legal and illegal, is "at historic highs."[26] As Brimelow recognizes, the significance and truth of this assertion turn on several issues.[27] Should immigration be measured in absolute terms or relative to something else, such as the total or foreign-born population? Is it more meaningful to measure immigration on an annual basis or over longer periods of time? How many illegal aliens are being

26. ALIEN NATION, *supra* note 1, at 29.
27. *See id.* at 29–49.

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counted? Should immigration be measured net of permanent departures by aliens and U.S. citizens, and if so, how many departures are there? Except for legal admissions, which require the Immigration and Naturalization Service (INS) to issue visas, none of these indices is based on hard, reliable data; all can be, and often are, contested.

In absolute terms, legal immigration in 1995, the most recent year for which statistics are available, was 720,000.[28] This represents a decline of ten percent from the 1994 figure of 804,000, which in turn represented a decline of eleven percent from the 1993 total of 904,000.[29] The 1993–1995 decline represents the largest two-year drop in legal immigration since the Depression.[30] This decline, moreover, was a broad one, occurring in five major categories: employment-based admissions, dependents of aliens previously legalized under the amnesty provisions of the Immigration Reform and Control Act of 1986 (IRCA), family-based admissions, asylees adjusting to permanent status, and certain special programs (Amerasian children, Indochinese and Soviet parolees, and registered nurses).[31] The 1995 total was the lowest total since 1988, when 643,000 were admitted.[32]

These figures might seem to refute Brimelow's "historic highs" claim, blurring his apocalyptic vision of America being deluged by immigrants. Before reaching that conclusion, however, we must examine the data more closely and from different angles. Admissions figures tend to fluctuate from one year to another, confounding efforts to discern significant trends on the basis of short-term changes. For example, the admissions total in 1991 was approximately 1.8 million;[33] it then declined over the next four years to 720,000 in 1995[34] (when the INS had expected the total to increase again[35]). These fluctuations often reflect temporary special factors, including the evolution of particular short-term programs. The most important example is the legalization program under IRCA. This one-time spike in the admissions totals produced dramatic increases in the admissions totals beginning in 1989 but leveling off in 1992. IRCA legalizations, however, have had little effect on the

28. Eric Schmitt, *Immigration Bill Advances in the Senate*, N.Y. TIMES, Mar. 29, 1996, at A16.

29. *See* IMMIGRATION & NATURALIZATION SERV., U.S. DEP'T OF JUSTICE, 1994 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE tbl. 1, tbl. B at 20 (1996) [hereinafter 1994 INS STATISTICAL YEARBOOK].

30. *See* Schmitt, *supra* note 28, at A16.

31. IMMIGRATION & NATURALIZATION SERV., U.S. DEP'T OF JUSTICE, IMMIGRATION TO THE UNITED STATES IN FISCAL YEAR 1994, at 1–2, tbl. 2 (1995) [hereinafter 1994 IMMIGRATION REPORT].

32. 1994 INS STATISTICAL YEARBOOK, *supra* note 29, tbl.1.

33. *Id.*

34. The figures for these years include IRCA legalizations, of which there were only 6000 in 1994. *Id.* tbl. 4.

35. Telephone Interview with Michael Hoefer, Chief of Demographic Analysis, Immigration and Naturalization Service (Sept. 20, 1995) [hereinafter Telephone Interview with Hoefer]. The 1994 decline also reflected the termination of certain special programs and other factors. *Id.* For what it's worth, the INS expects legal immigration to increase in 1996. Telephone Interview with Michael Hoefer, Chief of Demographic Analysis, Immigration and Naturalization Service (Apr. 2, 1996).

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figures since 1993,[36] and, for political reasons, such a legalization is unlikely to be repeated in the foreseeable future.

Brimelow, then, is right to focus on longer-term trends. He is also correct to include illegal aliens in the total. Data on the number of illegal aliens are controversial and inexact, although expert estimates have narrowed considerably in recent years.[37] Estimates are based largely on extrapolations from the number of aliens apprehended at the Mexican border and from census surveys. Both methods are problematic.[38] Moreover, the gross category of illegal aliens must be broken down into subgroups for more precise, meaningful policy analysis. For example, different policies are needed to deal with the two, roughly equal, categories of illegal aliens: those who enter the United States illegally ("entrants without inspection" (EWIs)) and those who enter legally on temporary visas but then become illegal when they violate the terms of their visas ("overstays"). As another example, illegal aliens differ in how long they remain in the United States. Many illegals are temporary "sojourners," the duration of whose stays in the United States depends on seasonal, family, and economic factors, or are "commuters" who cross the border frequently. A growing share of the illegal flow from Mexico, however, now consists of "settlers"—mostly women and children planning to live with their families in the United States more or less permanently.[39] Because settlers' prolonged, illegal residence in the United States affects American society in more complex and significant ways than does the residence of sojourners, they pose the greatest challenges to politicians and policymakers.

In discussing illegal aliens, Brimelow is somewhat sloppy with the data, such as they are. Noting both the 1.3 million illegals apprehended by the Border Patrol in 1993[40] and estimates that it catches about one-third of those attempting to cross, he suggests that "a remarkable *2 to 3 million* illegal

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36. 1994 INS STATISTICAL YEARBOOK, *supra* note 29, at 19. The legalization program is also contributing to the enormous growth in naturalization petitions that began in 1995, as the program's beneficiaries are now completing the five-year residency period required for naturalization. *See* Seth Mydans, *The Latest Big Boom: Citizenship*, N.Y. TIMES, Aug. 11, 1995, at A12. In contrast, the program for dependent family members of legalized aliens added about 34,000 in 1994, down from 55,000 in 1993. 1994 IMMIGRATION REPORT, *supra* note 31, tbl. 2. The program will continue to contribute significantly to the totals for years to come due to the enormous "overhang" of such dependents waiting for visas.

37. *See* Jeffrey S. Passel, *Commentary: Illegal Migration to the United States—The Demographic Context*, *in* CONTROLLING IMMIGRATION, *supra* note 16, at 113, 114–15. Unless otherwise indicated, the discussion of illegal aliens is based on Frank D. Bean et al., *Introduction* to UNDOCUMENTED MIGRATION TO THE UNITED STATES: IRCA AND THE EXPERIENCE OF THE 1980S 1, 1–10 (Frank D. Bean et al. eds., 1990); Thomas J. Espenshade, *Unauthorized Immigration to the United States*, 21 ANN. REV. SOC. 195 (1995); and Telephone Interview with Hoefer, *supra* note 35. The other essays in the Bean volume are quite useful empirical studies of illegal immigration.

38. *See* Passel, *supra* note 37, at 114–15.

39. *See* Wayne A. Cornelius, *From Sojourners to Settlers: The Changing Profile of Mexican Immigration to the United States*, *in* U.S.-MEXICO RELATIONS: LABOR MARKET INTERDEPENDENCE 155, 155–95 (Jorge A. Bustamante et al. eds., 1992).

40. The number declined to 1.09 million in 1994. IMMIGRATION & NATURALIZATION SERV., U.S. DEP'T OF JUSTICE, INS FACT BOOK: SUMMARY OF RECENT IMMMIGRATION DATA tbl. 14 (1995).

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immigrants may have succeeded in entering the country in 1993."[41] But this suggestion ignores two well-known phenomena: multiple apprehensions of the same individuals who make repeated attempts until they cross successfully and sojourners who travel back and forth across the border repeatedly but are sometimes apprehended. Both of these common situations inflate the number of illegals. More important, he cites a "cautious" INS estimate that "300,000 to 500,000" net illegals remain each year.[42] His source for this estimate, however, is an unnamed INS spokesman, and the estimate is higher than the published estimates—300,000 is the figure most commonly used by researchers in the field, including INS researchers[43]—that he could have readily cited.

A similar slippage occurs when he discusses *emigration* by U.S. citizens and permanent residents, which of course bears on the total of *net* immigration. The best estimates are that 1.6 million emigrated during the decade of the 1980s, an outflow that has been steadily increasing since the 1940s and equaled the number emigrating during the 1920s.[44] Emigration seems to be accelerating during the 1990s.[45] He seeks to minimize this factor by stating that the post-1965 immigrants are less likely to emigrate than their pre-1920 predecessors, a trend that he attributes to the growth of the welfare state.[46] He may be correct, but the data do not establish his claim. First, the emigration data do not distinguish between noncitizen emigrants who were once immigrants and emigrants who were U.S. citizens (some of whom were never immigrants). Second, the decline in emigration began in the 1930s (if measured in absolute terms) and in the 1940s (if measured as a proportion of immigration).[47] It thus began long before the late 1960s, when Brimelow's two *bêtes noires*—the post-1965 immigration and the major growth in the welfare state—occurred. This chronology casts some doubt on his welfare-state explanation for declining emigration rates.

In a sense, however, these are mere details; they do not contradict Brimelow's position that the current level of net legal immigration is, by historical standards, quite high in absolute terms. The 1994 net legal

41. ALIEN NATION, *supra* note 1, at 33.

42. *Id.* at 27, 33–34.

43. Robert Warren, Estimates of the Undocumented Immigrant Population Residing in the United States, by Country of Origin and State of Residence: October 1992, at 13 (Apr. 1995) (unpublished paper presented at Population Association of America conference, San Francisco, on file with author); Telephone Interview with Hoefer, *supra* note 35. A restrictionist group argues for a figure of 400,000 on the basis of a recent Census Bureau report. *See* JOHN L. MARTIN, HOW MANY ILLEGAL IMMIGRANTS? 1 (Center for Immigration Studies Backgrounder No. 4-95, 1995).

44. Telephone Interview with Hoefer, *supra* note 35.

45. Ashley Dunn, *Skilled Asians Leaving U.S. for High-Tech Jobs at Home*, N.Y. TIMES, Feb. 21, 1995, at A1, B5 (reporting that Census Bureau estimates 195,000 foreign-born Americans emigrate each year, highest since World War I).

46. *See* ALIEN NATION, *supra* note 1, at 39.

47. *See* STATISTICS DIV., IMMIGRATION & NATURALIZATION SERV., U.S. DEP'T OF JUSTICE, IMMIGRATION FACT SHEET 4 (1994) [hereinafter IMMIGRATION FACT SHEET] ("Emigration"); Telephone Interview with Hoefer, *supra* note 35.

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immigration of just over 600,000 (804,000 immigrants minus 195,000 emigrants) is almost three times higher than the annual figures during the 1950s (for Brimelow, the last halcyon period before the Fall), when net legal immigration averaged just over 209,000.[48] It is also almost twice the level recommended by the politically astute, blue-ribbon Select Commission on Immigration and Refugee Policy only fifteen years ago.[49] Even the figure of 600,000 immigrants understates recent growth, of course, because it fails to include *illegal* immigrants, of whom there presumably were relatively few prior to the mid-1960s and almost none in the early decades of the century.[50] Adding 300,000 *resident* illegal aliens to the immigrant population each year[51] produces a grand total of at least 900,000 new resident immigrants each year, net of emigration. This number is high indeed, at least in absolute terms.

If we consider current immigration in *relative*, rather than absolute, terms—that is, new admissions or total foreign-born as a percentage of the total U.S. population—Brimelow's claim that immigration is at historically high levels must be qualified somewhat, as he acknowledges.[52] But even when viewed in these relative terms, the recent inflows have been substantial. Although the legal immigrants who entered in recent years constituted only 3.1% of the total U.S. population during the 1980s (the comparable shares for the first three decades of this century were 10.4%, 5.7%, and 3.5% respectively),[53] the steady accumulation of immigrants over time has produced a growing cohort of foreign-born in the United States. In 1994, over 22 million people, 8.7% of the total U.S. population, were foreign-born.[54] Although the

48. This figure is obtained by subtracting the INS emigration data from the 1950s, *see* IMMIGRATION FACT SHEET, *supra* note 47, from INS immigration data from that decade, *see* 1994 INS STATISTICAL YEARBOOK, *supra* note 29, tbl. 1.

49. *See* SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY OF THE SENATE COMM. ON JUDICIARY & SUBCOMMS. ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW OF HOUSE COMM. ON THE JUDICIARY, FINAL REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, 97th Cong., 1st Sess. 30 (1981) (statement of Rev. Theodore Hesburgh) (recommending cap on legal immigration of 350,000).

50. The impetus for the large increase in illegal migration to the United States is usually attributed to the termination of the Bracero program in 1964. On the Bracero program, see generally KITTY CALAVITA, INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE I.N.S. (1992). There presumably were some illegal aliens early in the century—those who evaded the nonnumerical restrictions imposed by federal law since 1875 and by state law since much earlier. *See generally* Gerald L. Neuman, *The Lost Century of American Immigration Law (1776–1875)*, 93 COLUM. L. REV. 1833 (1993) (explaining pre-1875 immigration laws). As to the latter category, however, see Schuck Testimony, *supra* note 3, at 2 n.2.

51. This illegal immigration accounts for at least one-third of all population growth due to immigration. Espenshade, *supra* note 37, at 200–01.

52. ALIEN NATION, *supra* note 1, at 35–38, 43–45.

53. For this figure, see the graph entitled "Rate of immigration by decade, 1820–1990" in John J. Miller & Stephen Moore, *The Index of Leading Immigration Indicators*, *in* STRANGERS AT OUR GATE: IMMIGRATION IN THE 1990S, at 100, 103 (John J. Miller ed., 1994) (citing BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1992 tbl. 5 (1992)). These figures are clearly based only on legal immigration.

54. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, MARCH 1994 CURRENT POPULATION SURVEY, *cited in* MARTIN, *supra* note 43, at 1.

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percentage of the foreign-born remains far below the 13.2% share it comprised in 1920, it is the highest percentage since then, and the foreign-born share has almost doubled since 1970, when it was 4.8%.[55] The fact that one out of every eleven persons in the United States is a first-generation immigrant gives immigration a much higher political and media profile today than it possessed only a quarter-century ago, when fewer than one in twenty were foreign-born.

Brimelow, however, does not simply ground his demand for drastic restriction on the size of the post-1965 cohort. He also claims that this newer immigration is fundamentally different from that which preceded it in two other respects: its continuity and its racial composition.

Continuity. One of the book's principal themes is that America has not always been a country that admitted immigrants. The traditional notion that there has been a steady stream of immigrants to the United States is one of those hoary, politically useful (to some) myths. The truth is that immigration to the United States has always come in waves—that is, until Congress unleashed the *tsunami* of 1965.[56] Beginning in the colonial period, immigration exhibited recurrent cycles of growth and decline. The many peaks and valleys were sensitive to conditions in Europe and job opportunities in the United States. When jobs were plentiful, immigrants came, many only as sojourners; when jobs were scarce, many of the earlier immigrants returned to the old country, and few new immigrants arrived. This punctuated pattern of immigration—occasional spurts followed by short-term "pauses" or longer "lulls"[57]—resulted mostly from the convulsions of war and the business cycle.[58] This pattern was also socially benign. Like the period between meals, the pauses and lulls facilitated digestion, a process that would have been far more dangerous and uncomfortable had the newcomers entered America's maw in large and constant gulps. Americans could more readily accept immigrants, who in turn had the time, space, and incentive to assimilate swiftly into American society.

Like almost every other good thing in Brimelow's account, however, this Edenic paradise of leisurely assimilation ended abruptly in (you guessed it!) 1965. Far from being wave-like, the post-1965 immigration has waxed but

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55. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1994 tbl. 54 (1994) [hereinafter 1994 U.S. STATISTICAL ABSTRACT]. This percentage approximates the foreign-born share of 8.6% in Germany in 1994. Rainer Münz & Rolf Ulrich, *Changing Patterns of Migration: The Case of Germany, 1945–1994*, *in* OPENING THE DOOR: U.S. AND GERMAN POLICIES ON THE ABSORPTION AND INTEGRATION OF IMMIGRANTS (Peter H. Schuck et al. eds., forthcoming 1996) [hereinafter OPENING THE DOOR] (Münz & Ulrich manuscript at 34, on file with author). The foreign-born share in Canada is much higher. *See* CONTROLLING IMMIGRATION, *supra* note 16, tbl. A.9 at 420 (15.4% share in 1986).

56. Brimelow's account of immigration waves appears primarily in ALIEN NATION, *supra* note 1, at 29–33.

57. 1994 INS STATISTICAL YEARBOOK, *supra* note 29, tbl. 1 at 25.

58. *See infra* text accompanying notes 62–64.

never waned; even now it shows no sign of receding.[59] The flow has been both continuous and continually rising (short-term fluctuations aside). In particular, the business cycle has had little effect on this immigration flow.[60] Brimelow has a ready explanation for this new development: In addition to jobs, the welfare magnet both attracts immigrants and keeps them here.[61] If Brimelow is correct about this—if immigrants' motives have changed and the business cycle no longer disciplines immigration flows—the implications for both immigration and welfare policy would be far-reaching. But is it true?

Brimelow seeks to persuade us with strong assertions and vivid charts that draw our attention to the contrasting peaks and valleys before 1965 and the continuous ramping upward thereafter.[62] The unwary reader, however, should be forewarned: There is less to this evidence than meets the eye.[63] First, the major declines in immigration occurred during periods of either world war (1915–20, 1940–45) or deep economic depression (after 1873 and 1893, and during the 1930s).[64] Because we have managed since 1965 to avoid both of these evils—a point to which I shall return in the Conclusion—Brimelow cannot show that the historical responsiveness of immigration to the business cycle no longer operates. Only a new world war or depression can test his claim.

Second, the pre-1965 trough may not have been as deep as the numbers suggest. No numerical restrictions on immigration from the western hemisphere even existed before 1965, and thus any number of Mexicans could enter the United States legally by paying a fee, passing a Spanish literacy test, and obtaining a labor certification. Presumably, many did not bother to do so and instead entered illegally, which could not have been too difficult at a time when the Border Patrol was much smaller and less effective than it is today. Even if many did not enter the United States illegally, they were not counted in the totals contained in the official statistics. It is, therefore, a delicious irony, unremarked by Brimelow, that the same 1965 Act that he so thoroughly deplores also imposed a numerical restriction very much to his liking.

Third, the charts do not really tell us much about whether the causes of immigration fluctuations changed over time. We know that other things did not

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59. ALIEN NATION, *supra* note 1, at 38. Unless, of course, Congress enacts pending legislation to restrict legal immigration. *See infra* note 170 and accompanying text.

60. *Id.* at 33. Nathan Glazer makes the same claim. *See* Nathan Glazer, *Immigration and the American Future*, PUB. INTEREST, Winter 1995, at 45, 53 ("The rise and fall of the business cycle and employment still plays some role in immigration, but it is a surprisingly small one.").

61. ALIEN NATION, *supra* note 1, at 33, 39, 42.

62. *See, e.g.*, *id.* chart 1 at 30–31, chart 2 at 32. Brimelow calls chart 2 "a ramp . . . or a springboard." *Id.* at 33 (ellipsis in original).

63. I mean this literally, as well as figuratively. The charts are scaled in a way that can easily mislead the reader. The scale makes the troughs seem deeper than they were in absolute terms, and the scale exaggerates the significance of the inevitable short-term fluctuations. Brimelow's *trompe l'oeil* is particularly egregious in chart 1, *see id.* at 30–31, chart 3, *see id.* at 34, and chart 5, *see id.* at 42, although this problem plagues many of his diagrams.

64. *See* 1994 INS STATISTICAL YEARBOOK, *supra* note 29, tbl. 1.

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remain equal; for example, the legal rules governing immigration were in flux. Shortly after numerical limits on immigration were established in the mid-1920s,[65] the Great Depression drove immigration levels down, and World War II kept them low. Thus, the numerical caps could not really have begun to bite until the late 1940s, more than twenty years after their inception, at which point a different, more complex mix of factors (including massive refugee resettlements) were shaping immigration flows.

Finally, Brimelow's claim that the welfare state explains immigration's relentless rise during the post-1965 period is hard to square with the fact that this ramping up began in the 1950s, long before the Great Society expansion of the welfare state commenced.

Nevertheless, Brimelow might be correct that the business cycle no longer regulates immigration flows as it once did,[66] and that a legally mandated pause in immigration would enable the United States to better integrate the large post-1965 cohort. Such a new pause might facilitate the successful assimilation of this cohort, much as the pre-1920s cohort benefited from the earlier lull. A new pause might also ease immigration-related social anxieties resulting from the constant addition of newcomers.[67] Group mobility theory, the historical pattern of assimilation, and common sense lend some plausibility to this notion. It is intriguing that immigrants themselves—by a large majority—believe that immigration should either be kept at present levels or reduced, and support for this position increases with their time in the United States.[68] Whether immigrants possess some special insight into how large-scale, continuing immigration retards the assimilation of recent immigrants, or simply wish for selfish reasons to pull up the ladder now that they have climbed aboard, is unclear.

The attractiveness of a pause, however, depends in part on how the pause is defined and on its duration. Brimelow's approach is to permit either no immigration or only skills-based admissions (the reader can't be sure).[69] Others, however, will see no magic, and much mischief, in terminating *all* family-based and humanitarian admissions. For those categories, a more

65. As noted above, nonnumerical restrictions had constrained immigration even before Congress began to regulate immigration in 1875. *See supra* note 50.

66. For some supporting evidence, which the authors view as "preliminary," see James F. Hollifield & Gary Zuk, The Political Economy of Immigration: Electoral, Labor, and Business Cycle Effects on Legal Immigration in the United States 11–16 (Sept. 1995) (unpublished paper presented at migration workshop sponsored by Institute for Migration and Ethnic Studies, University of Amsterdam, on file with author).

67. *See* ALIEN NATION, *supra* note 1, at 211–16. For example, he points to historical patterns of increased intermarriage of Chinese immigrants and whites in the South after immigration had been interrupted for a long period of time. *Id.* at 270.

68. *The Immigrant Experience*, AM. ENTERPRISE, Nov.–Dec. 1995, at 102, 103 (relating May-June 1995 survey in which 66% of immigrants here for decade or less expressed this view). The comparable figure for non-immigrant Americans, according to a different survey in June 1995, was 89%. *Id.*

69. *See supra* notes 12–13 and accompanying text. *Compare* ALIEN NATION, *supra* note 1, at 261 (proposing that only immigrants with skills be admitted) *with id.* at 261–62 (proposing moratorium on immigration, or a lull at minimum).

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modest reduction in immigration, one that is temporary and whose overall effects can then be gauged, would almost certainly reconcile the competing considerations better than complete cessation.

Brimelow's effort to shift the burden of proof to defenders of immigration by appealing to social risk aversion also relies on a simplistic all-or-nothing approach. On the final page of his book, in a section entitled "What If?," Brimelow argues that immigration's uncertain effects argue for terminating or radically restricting it. If immigration advocates turn out to be wrong, he suggests, we will be left with many disastrous and perhaps irreversible consequences, whereas if the restrictionists are wrong, the worst that will happen is that the United States must deal with a labor shortage.[70] Risk aversion is a perfectly legitimate policy criterion, and if one shared Brimelow's views of immigration's effects, one might well accept this effort to shift the burden of proof. If instead one believes, as I do, that legal immigration is on the whole desirable, the more relevant policy criterion—one that should be particularly congenial to a conservative like Brimelow—becomes "if it ain't broke, don't fix it"—or, more precisely, "if it's just partly broke, just fix that part."

Racial Composition. To Brimelow, the most disturbing aspect of the Fall is the changing racial complexion of the United States. Before 1965, he notes, immigrants came overwhelmingly from the traditional source countries of northern and western Europe. In those glory days, "not all immigrants were alien to American eyes," and "native-born Americans were receiving continuous ethnic reinforcement."[71] But since the abandonment of the national origins quotas in 1965, the vast majority of newcomers have been Hispanic and Asian,[72] with a significant new black inflow from Africa and the non-

70. *Id.* at 275.

71. *Id.* at 59. This historical vision of a white brotherhood into which earlier waves of white immigrants from southern and eastern Europe were readily inducted is, of course, a wholly misleading and pernicious account of the undisguised hostility that greeted so many of those who happened to be swarthier, poorer, and religiously different than the Americans of that time and who Brimelow, without recognizing the irony, now includes in the desirable "white" category. *See generally* NATHAN GLAZER & DANIEL PATRICK MOYNIHAN, BEYOND THE MELTING POT: THE NEGROES, PUERTO RICANS, JEWS, ITALIANS, AND IRISH OF NEW YORK CITY 137–216 (2d ed. 1970); JOHN HIGHAM, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860–1925 (Rutgers Univ. Press, 2d ed. 1988) (1955). In contrast to Brimelow, some strident conservatives forthrightly acknowledge this history of discrimination. *See, e.g.*, THOMAS SOWELL, ETHNIC AMERICA: A HISTORY (1981).

72. Immigration analysts commonly speak of "Hispanics" and "Asians." It is exceedingly important, however, to recognize the enormous ethnic, linguistic, religious, national origin, and other diversities within these broad groupings, and even within narrower classifications such as South Asians. Indeed, these diversities are so great as to render such labels virtually meaningless for most purposes, and often misleading. The Census Bureau and other researchers have adopted these rubrics and use them to organize important immigration data. Political actors have also found them quite serviceable. *See* YEN LE ESPIRITU, ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES 112–33 (1992); PETER SKERRY, MEXICAN-AMERICANS: THE AMBIVALENT MINORITY 25–26 (1993); Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 67–72 (1995). Not surprisingly, the law has fallen into line. In this essay, I reluctantly accede to these most arbitrary and distorting, but largely inescapable, conventional rubrics.

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Spanish Caribbean. In what he calls the Pincer Chart,[73] he shows (while acknowledging the uncertainties of long-term demographic projections) that whites, who were 81% of the population in 1790 and 75.7% in 1990, will decline to a bare majority (52.7%) in 2050.[74] Well before then, moreover, Hispanics will replace blacks as the largest single minority group. Brimelow then has the immigration liberal pose the key question: "*So what? Why do you care so much about race?*"[75] This is the essential question, and Brimelow provides several answers. In particular, he points to the reinforcement and distortion of affirmative action effected by immigration and to immigration's threat to social cohesion. Because these issues impinge most significantly on cultural assimilation and political power, however, I defer discussion of them to Parts IV and V.

II. CARRYING CAPACITY

Continued immigration, Brimelow despairs, will be a demographic and environmental disaster for the United States.[76] Nevertheless, although his warnings are certainly worth attending to, his predictions are highly arbitrary and unrealistic; he aims more to shock than to persuade. Interestingly, his predictions bear a striking resemblance to certain modes of argument—use of simplistic extrapolations from present to future, disregard for the complexity and subtlety of social adaptations, and presentation of stark doomsday scenarios—that conservatives properly mock when environmentalists and other social reformers advance them.

The centerpiece of Brimelow's analysis is a chart that he calls "The Wedge,"[77] which relies on projections developed by Leon Bouvier, a respected demographer and leading immigration restrictionist.[78] Had we terminated all immigration in 1970, Brimelow's "Wedge" purports to show, the U.S. population in 2050 would have been 244 million (i.e., less than the current total). But continuing immigration at present levels, he predicts, will

73. The pincer image refers to two arms—one consisting of Hispanics, the other consisting of blacks and Asians—bearing down upon the white population and gradually squeezing it into a minority position.

74. ALIEN NATION, *supra* note 1, chart 12 at 63. Oddly, he counts Hispanics (21.1% in 2050) as nonwhites in the Pincer Chart, yet only four pages later he notes that almost half of all Hispanics in the 1990 census counted themselves as whites, *id.* at 67, and he subsequently points out, quite rightly, the larger absurdity of a "Hispanic" category, *id.* at 218. Although he does not say so, the "Asian" rubric is even more absurd, as it aggregates into one meaningless category groups that do not even share a common language, as do Hispanics.

75. *Id.* at 66.

76. The demographic parade of horribles that results from immigration is a recurrent theme of Brimelow's book. For his discussion of the environmental consequences in particular, see *id.* at 187–90.

77. *See id.* chart 8 at 47.

78. For an example of Bouvier's empirical work, see LEON F. BOUVIER & LINDSEY GRANT, HOW MANY AMERICANS? POPULATION, IMMIGRATION AND THE ENVIRONMENT (1994). Other restrictionist writings draw heavily on this work. *See, e.g.*, ROY BECK, RE-CHARTING AMERICA'S FUTURE: RESPONSES TO ARGUMENTS AGAINST STABILIZING U.S. POPULATION AND LIMITING IMMIGRATION (1994) (citing six Bouvier sources throughout book).

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produce a total in 2050 of 383 million, of which 36% will be post-1970 immigrants and their descendants. The "Wedge" consists of the additional 139 million Americans who will have descended from post-1970 immigrants,[79] unneeded and unwanted bodies that will place an unprecedented strain on the natural and human environments. He also predicts that more immigrants, especially those from the Third World whom the post-1965 rules have brought here, will bring new (and in some cases, old) diseases, high rates of fertility and crime, and low rates of education and skill. They will crowd out the rest of us, swamping our classrooms, extending our slums, polluting our air, and destroying our amenities and communities.[80] These dire consequences, he says, are already occurring.

Straight-line extrapolations from the present could indeed yield 383 million people in fifty-five more years. This is a lot of people, and the prospect of somehow squeezing all of them into our schools, beaches, parking spaces, and housing stock is not a pleasant one. Doing so would surely strain our natural and social environments. But straight-line extrapolations in such matters seldom prove to be correct. For all the scientific gloss of hard numbers, demography is as much art as science. Long-term demographic projections, like economic ones, are necessary and often valuable. Nevertheless, they necessarily assume that human choices are more fixed than they actually are and that the future will therefore be much like the recent past and present (except, of course, for such changes as the demographer can envision and accurately predict). Wise demographers know and say that this assumption is false, but they usually have little choice but to proceed as if it were true.

Demographic projections such as those cited by Brimelow emphasize the population-increasing effects of those immigrant groups whose fertility rates are higher than the fertility rates of natives. These higher rates reflect the greater proportion of immigrants, relative to the general population, who are in their childbearing years, cultural factors, and other causes. When high-fertility groups' share of the immigration stream and of the total U.S. population increases, the projected future population of the United States increases accordingly. This "shifting shares" phenomenon—the larger proportion in the population of high-fertility groups such as Filipinos, southeast Asians, and some Hispanics—drives much of the prediction of future U.S. population growth.[81]

This argument, however, resembles earlier "race suicide" theories that immigration historians and demographers have convincingly debunked by showing that immigrant fertility rates generally converge with those of the

79. *See* ALIEN NATION, *supra* note 1, at 47.

80. *Id.* at 151–55, 186–90.

81. *See, e.g.*, BOUVIER & GRANT, *supra* note 78, at 73; LEON BOUVIER, IMMIGRATION AND RISING U.S. FERTILITY: A PROSPECT OF UNENDING POPULATION GROWTH 2–11 (Center for Immigration Studies Backgrounder No. 1-91, 1991).

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native population.[82] The important question, therefore, is how quickly this occurs. It appears that when women from high-fertility countries migrate to the United States, they both reduce and delay their childbearing to the point at which their fertility rates approach the overall U.S. norm. Indeed, compared to demographically similar native women, their rates sometimes are lower.[83] Admittedly, immigrants do accelerate U.S. population growth; since 1980, net immigration has accounted for about 37% of population growth.[84] But the extent and speed of their contribution to that growth in the future are difficult to predict and easy to exaggerate.

Much of Brimelow's concern about carrying capacity seems to relate to the dangers of overcrowding.[85] Even thirty years after the dreaded deluge began, however, the United States remains a country with a relatively low population density.[86] This concern does not simply reflect the vast uninhabited (and perhaps uninhabitable[87]) spaces in the American West. Even America's largest and densest cities are thinly populated relative to other cities in the world, including the most famously attractive ones.[88] Indeed, the population density of New York City is about half what it was in 1910; other major cities are also less densely populated.[89] We have a long way to go before we reach density levels that other Western democracies find perfectly acceptable, even desirable. Our standards of acceptable density may be different from those in Europe, but our standards are not immutable, as the historical urbanization, suburbanization, and "edge city" cycles in the United States attest.

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82. *See* Tamara K. Hareven & John Modell, *Family Patterns*, *in* HARVARD ENCYCLOPEDIA OF AMERICAN ETHNIC GROUPS 345, 348–49 (Stephan Thernstrom et al. eds., 1980) [hereinafter HARVARD ENCYCLOPEDIA].

83. *See, e.g.*, Francine D. Blau, *The Fertility of Immigrant Women: Evidence from High-Fertility Source Countries*, *in* IMMIGRATION AND THE WORK FORCE 93, 126 (George J. Borjas & Richard B. Freeman eds., 1992) [hereinafter IMMIGRATION AND THE WORK FORCE]. A recent study claims that the experience of immigrant women in struggling against discrimination significantly reduced their fertility in the United States. *See* Thomas J. Espenshade & Wenzhen Ye, *Differential Fertility Within an Ethnic Minority: The Effect of "Trying Harder" Among Chinese-American Women*, 41 SOC. PROBS. 97 (1994).

84. Espenshade, *supra* note 37, at 201; Passel, *supra* note 37, at 116. An additional 20% of U.S. population growth resulted from births to immigrants.

85. ALIEN NATION, *supra* note 1, at 188–89.

86. In 1994, the United States had 74 people per square mile, compared to 623 in the United Kingdom and 275 in France, which are hardly countries that one thinks of as crowded. 1994 U.S. STATISTICAL ABSTRACT, *supra* note 55, tbl. 1351.

87. I say "perhaps" because throughout American history, land previously thought to be uninhabitable was successfully developed for residential and other uses. Sections of Washington, D.C., and many other American cities were reclaimed from swampland, and cities such as Los Angeles, Salt Lake City, and Las Vegas were built in the most forbidding desert conditions.

88. In 1992, the population per square mile in New York City, the most densely populated in the United States, was 11,482; the corresponding densities for London and Paris were 10,490 and 19,883, respectively. The figure for Hong Kong, the most densely populated—and one of the richest—in the world, was 250,524. 1994 U.S. STATISTICAL ABSTRACT, *supra* note 55, tbl. 1355.

89. Chicago was slightly more densely populated in 1990 than in 1920, but less so than in 1930. I am grateful to Professor Thomas Muller for supplying me with these data, which are based on his research comparing figures from the first few decades of this century as reported in the 1930 U.S. census with population data for 1992.

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Demographic extrapolations from the present to the future are further confounded by the dynamics of markets, politics, and other powerful social processes that respond to developments that impose widespread social costs. These processes do not sit idly by while change unfolds but instead shape and constrain change, thereby altering its future trajectory. Demographic models cannot readily incorporate this fact, which is nicely captured in "Stein's Law" (stated by economist Herbert Stein): If a trend can't go on like this indefinitely, it won't.[90] Population growth, for example, bids up the prices of housing, education, and other goods; people therefore tend to have fewer children,[91] other things being equal.[92] If increased job competition pushes immigrants' unemployment high enough for long enough, they will tend not to migrate here. If competition for natural resources and other environmental goods becomes more intense, those goods will become more costly, which both rations their use and attracts additional supply; these behavioral responses in turn tend to reduce the price. If policymakers perceive that population growth harms the environment, the economy, and other areas of public concern, they will propose policy changes accordingly.

I am not suggesting that we can blithely count on these responses to eliminate any adverse effects of population growth—far from it. How well society reacts to these developments depends on the quality of information flows, the nature of politics, the efficiency of markets, and other factors. Even if optimal outcomes are unlikely under these conditions, however, Brimelow's dire predictions should be taken with more than a grain of salt. If our politics and markets are supple and responsive enough to react swiftly and intelligently to population pressures and other strains on carrying capacity, the future need not unduly arouse our fears. Indeed, since 1965, our social institutions have performed reasonably well in this regard, refuting the Chicken Littles of environmental pessimism.[93]

III. ECONOMIC IMPACTS

Brimelow acknowledges the rich contributions that the pre-1965 immigrants have made to the American economy.[94] He insists, however, that the post-1965 cohort is altogether different. Relying heavily and uncritically on the work of labor economist George Borjas, he argues that "the effect of the 1965 reform has been *to uncouple legal immigration from the needs of the*

90. *See, e.g.*, Herbert Stein, *Health Care Basics*, SAN DIEGO UNION-TRIB., May 29, 1994, at G1.

91. This has been the pattern in other countries such as Japan, where housing is scarce.

92. This *ceteris paribus* condition, of course, applies to all such predictive statements.

93. *See infra* notes 243–44 and accompanying text.

94. *See* ALIEN NATION, *supra* note 1, at 216 ("[T]he American experience with immigration has been a triumphant success.").

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U.S. economy."[95] This claim is actually a composite of four separate claims. The first is that labor market skills play a small and shrinking role in admissions policy. Second, the post-1965 cohort is less skilled than earlier cohorts. Third and related, the post-1965 cohort drains the economy more than earlier cohorts because its members, especially illegal aliens, are more likely to demand public assistance and displace native workers. Fourth, this displacement imposes particularly heavy burdens on current and potential African-American workers.

The first claim is correct. A major theme of the debate surrounding the Immigration Act of 1990 was the need to increase the level and relative share of skills-based admissions.[96] In the end, however, the Act only slightly increased the share of these admissions. In 1994, only 15% of admissions were skills-based; moreover, roughly half of these consisted of skilled immigrants' accompanying family members, who may themselves lack skills needed in the United States. Family ties accounted for 62% of the admissions.[97] Because the 1990 Act substantially increased both the total number of immigrants and the numbers authorized for each immigrant category, the absolute number of skills-based immigrants did grow, thus obscuring how minimally the share of skills-based admissions had increased. Family unity, it appears, continues to trump all other immigration policy values.[98] Pending legislation would increase the relative weight of labor market skills, a reform whose advantages are widely appreciated.[99]

The second claim—that the "quality" of immigrants to the United States has declined since the 1965 reforms—is harder to assess. Good data on immigrant labor markets are hard to come by, and analyses are very sensitive to methodology. More to the point, labor economists disagree about the nature and validity of the data, methodology, and conclusions used by Borjas and other immigration analysts. There are several areas of dispute. One concerns the extent to which the "immigrant" category should be disaggregated. Different subcategories of immigrants—family-based admittees, skills-based admittees, refugees/asylees, age groups, source region or country groups, legals versus illegals—in a given cohort exhibit quite different characteristics. Lumping some or all of these subcategories together can significantly affect the outcome of the analysis. Reliance on census data, which employ rather

95. *Id.* at 141.

96. *See* Peter H. Schuck, *The Politics of Rapid Legal Change: Immigration Policy in the 1980s*, 6 STUD. AM. POL. DEV. 37, 86–89 (1992).

97. Telephone Interview with Hoefer, *supra* note 35.

98. Schuck, *supra* note 96, at 88.

99. *E.g.*, S. 1394, 104th Cong., 1st Sess. (1995), which passed the Senate Subcommittee on Immigration on Nov. 29, 1995. *See* 72 INTERPRETER RELEASES 1605 (Dec. 4, 1995). Senator Simpson's effort to reduce employment-based admissions has failed. *See* Eric Schmitt, *Author of Immigration Measure in Senate Drops Most Provisions on Foreign Workers*, N.Y. TIMES, Mar. 8, 1996, at A20.

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crude, self-reported ethnic categories and almost certainly understate income, is also controversial.

Several generalizations growing out of labor market research do support some of Brimelow's concerns. Many post-1965 immigrants are highly educated, indeed, far more so than the native population. Many others are more skilled in *absolute* terms than the immigrants who preceded them, but because the native population's skills have increased even more in absolute terms and because lower skilled groups comprise a larger share of the total immigration flow, the "quality" gap has widened in *relative* terms.[100] Most of the immigrants who entered illegally—those who qualified for the amnesty under IRCA and those who have entered illegally since then—are low-skilled Mexicans. The education level of Mexican-origin immigrants, even among those who are naturalized U.S. citizens, is very low; overall, it averages about seven and a half years of schooling.[101] Other relatively low-skilled immigrant groups are Asian refugees and the elderly.[102] On the other hand, the recent arrivals also include better educated individuals—predominantly nonrefugees from Asia, Africa, and the Middle East—who should help to reduce the gap in the future.[103] This effect, however, will be gradual because their numbers remain relatively low. Again, pending legislation is likely to increase the skill levels of future immigrant cohorts.

Brimelow's third claim is that post-1965 immigrants inflict a net loss on the economy, taking into account the combined effects of their use of public services, their displacement of native workers, their tax payments, and their contribution to productivity. This claim is also difficult to assess precisely, as the existing studies seldom employ comparable definitions, measures, data sets,

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100. *See* George J. Borjas, *National Origin and the Skills of Immigrants in the Postwar Period*, *in* IMMIGRATION AND THE WORK FORCE, *supra* note 83, at 17.

101. Frank D. Bean et al., *Educational and Sociodemographic Incorporation Among Hispanic Immigrants to the United States*, *in* IMMIGRATION AND ETHNICITY: THE INTEGRATION OF AMERICA'S NEWEST ARRIVALS 73, tbls. 3.1, 3.2 at 81–82 (Barry Edmonston & Jeffrey S. Passel eds., 1994) [hereinafter IMMIGRATION AND ETHNICITY]. Although this figure is based on census data from 1986 and 1988, the same data indicate that the education level of the Mexican-origin groups declined substantially from that of earlier cohorts of Mexican-origin immigrants, thereby "lend[ing] support to the contention that at least some immigrant groups are less skilled than either other immigrant groups or earlier entrants for the same group." *Id.* at 86. These data suggest that "immigration no longer selects for relatively better educated Mexicans." *Id.* at 93. Another disturbing finding is that the educational attainment of third-generation Hispanics, a group dominated by Mexican-Americans, was actually lower than that of their parents, suggesting that the hard-won progress of the second generation does not necessarily continue in the third. *Id.* at 94; *cf. infra* notes 150–56 and accompanying text (noting need to distinguish among first, second, and third generations of immigrants in evaluating linguistic assimilation).

102. For a comparative study of the skill levels of Asian immigrant national groups that uses years of education as a proxy for skill, see Sharon M. Lee & Barry Edmonston, *The Socioeconomic Status and Integration of Asian Immigrants*, *in* IMMIGRATION AND ETHNICITY, *supra* note 101, at 101, 112–14 & tbl. 4.3 at 113.

103. Alejandro Portes, Divergent Destinies: Immigration, Poverty, and the Second Generation 7 (Sept. 1995) (unpublished paper prepared for German-American Project on Immigration and Refugees, on file with author).

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and methodologies.[104] For example, the outcomes of labor market impact analyses depend on whether the studies assume that particular labor markets (usually metropolitan areas) are closed systems, or whether they instead consider the significant possibility (given the high degree of internal labor mobility in the U.S. economy) that immigrant concentrations in one area induce some native workers to leave that area and discourage other natives who might otherwise migrate there from doing so.

Another controversial question of great political interest concerns immigrants' use of public services and benefits. Immigrant households are somewhat more likely to use welfare (AFDC and SSI) than native ones. Although this differential is small (7.5% of natives, 8.7% of immigrants), it increased during the 1980s as immigrant utilization rates grew and native rates declined. And in a very recent survey, immigrants *self-report* much higher utilization rates.[105] A number of earlier studies had found that if one controls for socioeconomic variables, immigrants were less likely than otherwise demographically similar natives to receive AFDC and SSI.[106] A very recent study using 1990 data indicates that this pattern of lower immigrant welfare utilization continues to be true for AFDC but not for SSI.[107] Immigrants now receive SSI at higher rates than demographically similar natives, a development that has generated strong public and congressional reaction.[108] Like the growing relative quality gap discussed earlier, the higher immigrant utilization of SSI is mostly due to the very large Mexican cohort and to the Asian *refugee* cohort, whose utilization rates more than doubled during the 1980s.[109]

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104. For a discussion of this problem as it appears in the leading studies, see GEORGES VERNEZ & KEVIN F. MCCARTHY, THE COSTS OF IMMIGRATION TO TAXPAYERS: ANALYTICAL AND POLICY ISSUES (RAND Center for Research on Immigration Policy, MR-705-FF/IF, 1996).

105. Eighteen percent of those in the United States for a decade or less have received food stamps, Medicaid, AFDC, and similar aid; 22% of those in United States for 11–20 years have received such aid; and 17% of those in United States for 21 years or more have benefited from such programs. *See The Immigrant Experience*, *supra* note 68, at 103.

106. Of course, even if this pattern of lower incidence of welfare utilization by immigrants were true, it would simply raise anew the question of immigrant "quality." *See* discussion *supra* notes 100–03 and accompanying text.

107. *See* Michael Fix & Jeffrey S. Passel, *Who's on the Dole? It's Not Illegal Immigrants*, L.A. TIMES, Aug. 3, 1994, at B7 (summarizing results of study based on 1990 census data).

108. *See, e.g.*, *Welfare Revision: Hearing Before Human Resources Subcomm. of House Ways and Means Comm.*, 104th Cong., 1st Sess. (Jan. 27, 1995) (statement of Jane L. Ross, Director, Income Security Issues, General Accounting Office) (detailing dramatic growth in immigrants' claims), *available in* LEXIS, News Library, Curnws File; Ashley Dunn, *For Elderly Immigrants, a Retirement Plan in U.S.*, N.Y. TIMES, Apr. 16, 1995, at 1 (same). Pending legislation in both houses of Congress would restrict immigrants' SSI eligibility. *See* S. 269, 104th Cong., 1st Sess. § 203 (1995); H.R. 4, 104th Cong., 1st Sess. § 202 (1995).

109. Frank D. Bean et al., Country-of-Origin, Type of Public Assistance and Patterns of Welfare Recipiency Among U.S. Immigrants and Natives 17–18 & tbl. 4 at 30 (unpublished paper of Population Research Center, University of Texas-Austin, on file with author). The authors note that the absolute increase in Mexican SSI use reflected the great increase in the number of Mexican immigrants during the decade rather than any increased propensity of the average Mexican immigrant to use it. *Id.* at 13–14. Indeed, the rate of SSI use among Mexican immigrants actually declined over the decade. Nevertheless, the sheer growth in the Mexican cohort, coupled with its higher-than-immigrant-average utilization rate, drove the overall immigrant rate higher. *Id.* On the other hand, the number of Asian refugees has already

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A number of studies have attempted to determine whether immigrants on balance benefit or burden the U.S. economy. Brimelow, citing a highly disputed analysis by Donald Huddle[110] and a puzzling "back-of-the-envelope" estimate by Borjas, obviously thinks that the burdens predominate.[111] Urban Institute researchers Jeffrey Passel and Rebecca Clark recently reviewed the estimates made by Huddle and by state and local governments seeking reimbursement of immigration-related costs from the federal government.[112] Passel and Clark severely criticize these estimates for systematically understating tax collections from immigrants; overstating service costs for immigrants; failing to take account of the economic value generated by immigrant entrepreneurs and immigrant consumer spending; overstating job displacement impacts; overstating the size of the immigrant population, especially illegals; and ignoring the fact that natives also use more in services than they pay in taxes.[113] In particular, they find that Huddle underestimates the taxes paid by immigrants by $50 billion![114] Correcting this error alone, Passel and Clark argue, would defeat the claim that immigrants cost more than they contribute. Indeed, they estimate that the post-1970 immigrants—legal, amnestied, and undocumented—generate a surplus of $27.4 billion a year, not including nontax economic benefits.[115]

The large gap between these estimates reflects some quite technical methodological judgments by researchers. It would be foolish to allow immigration policy to turn on such judgments, especially since neither Huddle's cost estimate nor Passel and Clark's benefit estimate would count for much in a $7 trillion economy. Even so, there is no denying the *political* significance of these numbers: Public attitudes toward immigration are less favorable to the extent that immigrants are perceived to impose even small burdens on the economy and on taxpayers. Recent congressional actions

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declined and may be even lower in the future. *See* 1994 INS STATISTICAL YEARBOOK, *supra* note 29, at 75 (supplying statistics for Vietnamese and Laotian refugees, two of largest Asian refugee groups).

110. Donald Huddle, The Costs of Immigration (July 1993) (unpublished paper prepared for the Carrying Capacity Network, on file with author). For a sampling of the controversy surrounding Huddle's analysis, see JANE L. ROSS, ILLEGAL ALIENS—NATIONAL NET COST ESTIMATES VARY WIDELY, GAO/HEHS-95-133 (July 25, 1995), *available in* LEXIS, News Library, Curnws File.

111. *See* ALIEN NATION, *supra* note 1, at 151–53.

112. Jeffrey S. Passel & Rebecca L. Clark, How Much Do Immigrants Really Cost? A Reappraisal of Huddle's "The Cost of Immigrants" (Feb. 1994) (unpublished research report, on file with author).

113. *See id.*

114. *Id.* at 3.

115. *Id.* at 2. In turn, the Center for Immigration Studies, which has worked closely with Huddle, has responded to Passel and Clark with new estimates, focusing on immigrants' future claims against Social Security, that find a net burden of $29.1 billion. CENTER FOR IMMIGRATION STUDIES, THE COSTS OF IMMIGRATION: ASSESSING A CONFLICTED ISSUE 1, 19 (Center for Immigration Studies Backgrounder No. 2-94, 1994). The Center and other restrictionists have often pointed in recent years to the faltering economy in California, where a large percentage of the post-1965 immigrants have settled, as evidence of their negative economic effects. It remains to be seen how the strong resurgence of California's economy, *see* James Sterngold, *Recovery in California Wears a New Costume*, N.Y. TIMES, Jan. 2, 1996, at C10, will affect these restrictionist arguments.

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confirm a strong consensus that immigrants (or their sponsors) should at least pay for themselves.[116]

The fourth claim—that post-1965 immigrants may displace many African-American workers[117]—might seem almost self-evidently true. After all, low-skilled immigrants and low-skilled blacks would appear to compete for a shrinking number of low-skill jobs. The terms of this competition, moreover, often favor even non-English speaking immigrants, especially illegals. Immigrants are accustomed to, and may accept, lower wages, and many employers perceive them to be more reliable, hard-working, and docile than native black workers.[118]

Much depends on the extent to which immigrant labor is a substitute for or a complement to native labor. If immigrant labor is a substitute, immigrants would increase unemployment among blacks (who unlike unsuccessful immigrants have no other home to which to return) and would, other things being equal, drive down wage levels for those blacks who are hired. Such effects would be consistent with studies indicating that real wages have declined for low-skill workers during much of the post-1965 period, and especially with studies concluding that recent immigration has contributed to the widening earnings gap between high-skill and low-skill workers.[119] But to the extent that immigrant labor instead complements native labor, immigrant labor would increase job opportunities for natives, including blacks. This increase might occur if immigrants fill labor niches that native workers are abandoning or if immigrants develop new entrepreneurial enclaves. There is evidence that both of these possibilities often occur.[120] Indeed, during the 1980s, immigrant groups seem to have competed more with each other than they did with native workers.[121]

Empirical studies have consistently failed to establish significant immigration-induced harm to native black workers.[122] Nevertheless, various

116. Congress is insisting that sponsors of family-based immigrants be legally responsible in the event that the immigrants become destitute. *See* S. 269, 104th Cong., 1st Sess. § 204 (1995); H.R. 4, 104th Cong., 1st Sess. § 503 (1995).

117. ALIEN NATION, *supra* note 1, at 174–75.

118. *See, e.g.*, Joleen Kirschenman & Kathryn M. Neckerman, *'We'd Love to Hire Them, But. . .': The Meaning of Race for Employers*, *in* THE URBAN UNDERCLASS 203, 204 (Christopher Jencks & Paul E. Peterson eds., 1991). For a vivid illustration of this point, see MARY C. WATERS, BLACK LIKE WHO? (forthcoming 1996) (finding West Indians preferred to African-Americans as employees).

119. *See* George J. Borjas, *The Economic Benefits from Immigration*, 9 J. ECON. PERSP. 3, 10 (1995) (citing other studies).

120. *See* THOMAS MULLER, IMMIGRANTS AND THE AMERICAN CITY 166–85 (1993).

121. *See* Elaine Sorensen & Frank D. Bean, *The Immigration Reform and Control Act and the Wages of Mexican Origin Workers: Evidence from Current Population Surveys*, 75 SOC. SCI. Q. 1, 16 (1994).

122. After claiming that the post-1965 immigration has contributed to the economic woes of black workers, ALIEN NATION, *supra* note 1, at 173–75, Brimelow exhibits some caution, saying that it is "at least a possibility," *id.* at 175. His discussion is entirely one-sided on this point. Reviewing the studies in 1989, Robert Reischauer concluded that "careful and sophisticated analyses by a number of social scientists provide little evidence that immigrants have had any significant negative impacts on the employment situation of black Americans." Robert D. Reischauer, *Immigration and the Underclass*, 501 ANNALS AM. ACAD. POL. & SOC. SCI. 120, 120 (1989) (abstract). A recent study by the U.S. Bureau of Labor Statistics,

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methodological limitations of those studies, as well as subsequent changes in economic and immigration factors, mean that such effects cannot be ruled out.[123] The harmful effects, if any, appear to be much too small to justify a radical change in immigration policy on this ground alone.

IV. CULTURAL ASSIMILATION

Brimelow suggests that the post-1965 immigrants bear, and presumably transmit to their children, different and less attractive values than did the earlier waves of immigrants.[124] Although he is not clear precisely which values he has in mind, he presumably prefers those that most other people admire—honesty, industry, family stability, morality, education, optimism about the future, and respect for law and legitimate authority.[125] And although he is a bit vague about the indicia of the decline in immigrants' moral values, he does mention three areas of particular concern: crime, limited English proficiency (particularly among Hispanics), and high illegitimacy rates (particularly among Mexican-Americans).[126] Each of these three areas is certainly worth worrying about. Immigrant crime may be even worse than he suggests, and his concern about illegitimacy rates, at least among some immigrant groups, is warranted. On the other hand, his conclusions about limited English proficiency are exaggerated, and he fails to discuss the risk of second-generation attraction to underclass culture, which in the long run may be the most serious cultural problem of all. I discuss each of these areas in turn.

A. *Crime*

The incidence of immigrant crime is significant, if only because the number of immigrants is large. Most immigrant crime is drug-related.[127]

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however, finds that recent high levels of immmigration are depressing the wages of low-skilled workers. *See Immigrants Contribute to Rising Gap Between Rich and Poor*, FAIR IMMIGRATION REPORT, Feb. 1996, at 6 (citing DAVID JAEGER, SKILL DIFFERENTIALS AND THE EFFECT OF IMMIGRANTS ON THE WAGES OF NATIVES (Bureau of Labor Statistics, U.S. Department of Labor Working Paper No. 273, 1995)). The study does not appear to have examined the effects of immigration specifically on low- and unskilled African-American workers.

123. These possibilities are discussed in Frank D. Bean et al., *Labor Market Dynamics and the Effects of Immigration on African Americans*, *in* BLACKS, IMMIGRATION AND RACE RELATIONS (Gerald Jaynes ed., forthcoming 1996) (manuscript at 5–18, on file with author), which concludes that immigration into tight labor markets might reduce black unemployment, while immigration into loose ones might increase it.

124. *See* ALIEN NATION, *supra* note 1, at 178–90, 211–18.

125. *See, e.g.*, WATERS, *supra* note 118 (finding these values to be preferred by immigrants' employers and co-workers).

126. *Id.* at 88–89, 145 (English proficiency); *id.* at 181 (illegitimacy); *id.* at 182–86 (crime).

127. An estimated 75% of the aliens in federal prisons, compared to 56% of the U.S. citizens there, are incarcerated for drug-related charges. *Criminal Aliens: Hearing Before the Subcomm. on International Law, Immigration and Refugees of the House Comm. on the Judiciary*, 103d Cong., 2d Sess. 165 (1994)

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Although the number of criminal aliens under law enforcement supervision in the United States is impossible to establish precisely, it has increased approximately ten-fold since 1980, imposing substantial costs of arrest, detention, and deportation. A 1993 congressional study estimated that 450,000 deportable criminal aliens were either incarcerated, on parole, or on probation in federal, state, and local jurisdictions.[128] A more conservative compilation of various federal and state estimates suggests that at least 270,000 deportable aliens are under criminal justice supervision.[129] Newly convicted aliens, of course, constantly replenish and enlarge this population. Illegals account for over half of the deportable aliens in state prisons.[130] Quite apart from other law enforcement costs, the costs of incarcerating alien criminals are high. The operating cost alone of a prisoner-year in federal prisons was estimated in early 1994 to be about $19,000.[131] If this cost were applied to the 100,000 deportable criminal aliens imprisoned in federal, state, and local facilities,[132] it would mean nearly $2 billion in annual incarceration costs.

Although the systematic data on point are somewhat dated, legal immigrants do not appear to commit any more crime than demographically similar Americans; they may even commit less, and that crime may be less serious.[133] Nor does today's immigrant crime appear to be worse than in earlier eras. The immigrants who flooded American cities around the turn of the century (the ancestors of many of today's Americans) were also excoriated as congenitally vicious and unusually crime-prone, not only by the public opinion of the day but also by the Dillingham Commission, which Congress established to report on the need for immigration restrictions.[134] The evidence

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[hereinafter *1994 Criminal Aliens Hearing*] (testimony of Kathleen Hawk, Director, U.S. Bureau of Prisons).

128. *Criminal Aliens in the United States: Hearings Before the Permanent Subcomm. on Investigations of the Senate Comm. on Government Affairs*, 103d Cong., 1st Sess. 12 (1993) [hereinafter *1993 Criminal Aliens Hearing*].

129. *See* John Williams, The Criminal Alien Problem 1 n.2 (Oct. 20, 1995) (memorandum on file with author).

130. A recent statistical study of foreign-born state inmates found that approximately 45% were illegal aliens. *See* REBECCA L. CLARK ET AL., FISCAL IMPACTS OF UNDOCUMENTED ALIENS: SELECTED ESTIMATES FOR SEVEN STATES tbls. 3.2, 3.4 (1994). The INS estimates that 20% of foreign-born state inmates are not deportable at all. *Removal of Criminal and Illegal Aliens: Hearings before the Subcomm. on Immigration and Claims of the House Judiciary Comm.*, 104th Cong., 1st Sess. (Mar. 23, 1995) (testimony of T. Alexander Aleinikoff, General Counsel, Immigration and Naturalization Service), *available in* LEXIS, News Library, Curnws File [hereinafter Aleinikoff Testimony]. This figure suggests that the remaining 35% of foreign-born inmates are deportable aliens who are not in illegal status.

131. *See 1994 Criminal Aliens Hearing*, *supra* note 127, at 133 (statement of Rep. Richard H. Lehman).

132. Aleinikoff Testimony, *supra* note 130.

133. The data, such as they are, appear in JULIAN L. SIMON, THE ECONOMIC CONSEQUENCES OF IMMIGRATION 102–03 (1989).

134. On the Dillingham Commission, see MALDWYN ALLEN JONES, AMERICAN IMMIGRATION 152–57 (2d ed. 1992).

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suggests that those claims were false then, and similar claims appear to be false now.[135]

These historical and demographic points, however, are largely irrelevant to the contemporary political debate, which is concerned with the here and now. Media reports about criminal activity by Asian street gangs,[136] Latin American drug lords,[137] Islamic terrorists,[138] and Russian mafiosi[139] are profoundly disturbing to the American public and surely fuel restrictionist sentiment. In its concern about immigrant crime, as in other respects, the public often fails to differentiate between legal and illegal aliens.

Two abysmal policy lapses of the federal government have aggravated this political response. First, the government has failed to police the border and the interior effectively against illegal aliens, some of whom commit crimes after entry. Second, the government has failed to expel those legal and illegal immigrants who have been convicted of deportable offenses in the United States and who are already in governmental custody. The INS succeeded in deporting 31,000 criminal aliens in 1995,[140] approximately five times as many as it deported in 1989,[141] but this still amounts to just over 10% of the deportable aliens under criminal justice supervision. The federal government is now addressing both of these problems. The Border Patrol has been rapidly expanded[142] and is implementing some new enforcement techniques.[143] The INS, spurred by state and congressional pressures, is finally taking active steps to expedite the removal of criminal aliens; through a combination of new funds

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135. *See* SIMON, *supra* note 133, at 102–03.

136. *See, e.g.*, John Kifner, *Immigrant Waves From Asia Brings an Underworld Ashore*, N.Y. TIMES, Jan. 6, 1991, at 1 (reporting on Asian gangs in New York).

137. *See, e.g.*, Clifford Krauss, *Drug Arrests in Colombia Lead to Killings in Queens*, N.Y. TIMES, Nov. 25, 1995, at 1.

138. *See, e.g.*, Joseph P. Fried, *Sheik and 9 Followers Guilty of a Conspiracy of Terrorism*, N.Y. TIMES, Oct. 2, 1995, at A1.

139. *See, e.g.*, Selwyn Raab, *Influx of Russian Gangsters Troubles F.B.I. in Brooklyn*, N.Y. TIMES, Aug. 23, 1994, at A1.

140. *See* Steven A. Holmes, *Large Increase in Deportations Occurred in '95*, N.Y. TIMES, Dec. 28, 1995, at A1.

141. *See 1993 Criminal Aliens Hearing*, *supra* note 128, at 77.

142. The Border Patrol now includes 5000 officers, and Congress has instructed the INS to add 1000 more on the Mexican border. MIGRATION NEWS (Jan. 1996) (migrant news PLM <migrant@primal.ucdavis.edu>).

143. For example, in the El Paso, Texas, sector of the U.S.-Mexico border, the INS in September 1993 implemented "Operation Hold-the-Line," in which Border Patrol officers were stationed every hundred yards or so along the border. *See* Joel Brinkley, *A Rare Success at the Border Brought Scant Official Praise*, N.Y. TIMES, Sept. 14, 1994, at A1. The deployment reduced apprehensions of illegals from 700 to around 200 per day. Wayne A. Cornelius et al., *Introduction: The Ambivalent Quest for Immigrant Controls*, *in* CONTROLLING IMMIGRATION, *supra* note 16, at 3, 35. A 1994 study of "Operation Hold-the-Line," however, determined that the program had not deterred long-distance immigration, diverting such immigration instead to other crossing points along the border. James Bornemeier, *El Paso Plan Deters Illegal Immigrants*, L.A. TIMES, July 27, 1994, at A3, A15 (discussing report prepared by Frank Bean and others for U.S. Commission on Immigration Reform).

The INS has also staged simulations at the southern border of an immigration deluge provoked by an internal crisis in Mexico. Sam Dillon, *U.S. Tests Border Plan in Event of Mexico Crisis*, N.Y. TIMES, Dec. 8, 1995, at B16.

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and special efforts, the agency hopes to deport 58,000 criminal aliens in 1996.[144] Increased efforts by the Border Patrol, however, have been unsuccessful in the past.[145] The effectiveness of the new campaign, therefore, remains to be seen. Most recently, the Clinton administration proposed to bar companies that violate the immigration laws from receiving federal contracts.[146]

B. *English Language*

On the question of immigrants' acquisition of English-language proficiency, however, Brimelow stands on weaker ground. To be sure, he is correct that English proficiency is a precondition to full participation in the economic, political, and cultural aspects of American society. A recent four-country empirical study confirms the conventional wisdom: Dominant-language fluency is highly correlated with labor market returns, especially in the United States.[147] Dominant-language fluency is also important, even if not essential, to immigrants' full participation in the political process, which, despite some legal requirements for minority-language voting materials, is still conducted largely in English.

Brimelow refers to census data indicating that 47% of the U.S. foreign-born population does not speak English "very well" or "at all" and that 71% of foreign-born Mexicans report not speaking it "very well."[148] English fluency is probably the most important step to, and index of, full integration and participation in American society. It would indeed be a disturbing danger signal, and an augury of further linguistic fragmentation, if newcomers were not learning English at an acceptable rate. In any event, the American public is manifestly unwilling to accept this risk.[149]

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144. Aleinikoff Testimony, *supra* note 130; *see also* Holmes, *supra* note 140, at D18 (detailing INS's increased efforts).

145. *See* Espenshade, *supra* note 37, at 211–12 (citing data and reasons for failure of enforcement efforts). Espenshade points out that once an illegal immigrant has taken up residence in the interior, "the annual probability of being apprehended is roughly 1–2%." *Id.* at 212. Immigration control efforts in Europe have also been generally ineffective. *See generally* CONTROLLING IMMIGRATION, *supra* note 16, at 143–97.

146. *See* Robert Pear, *Clinton to Ban Contracts to Companies that Hire Illegal Aliens*, N.Y. TIMES, Jan. 23, 1996, at A12.

147. Barry R. Chiswick & Paul W. Miller, *The Endogeneity Between Language and Earnings: International Analyses*, 12 J. LABOR ECON. 246, 278–79 (1995).

148. ALIEN NATION, *supra* note 1, at 88–89.

149. Twenty-two states have already adopted "official English" laws. Joyce Price, *English-Only Advocates Sense Momentum; See Passing Chance for Proposed Bills*, WASH. TIMES, Sept. 7, 1995, at A2 (listing 22 states). Senator Robert Dole has proposed such a rule at the federal level, *id.*, and other presidential contenders will not be far behind. Indeed, President Clinton signed such a law for Arkansas when he was governor of that state. *Campaign English from Senator Dole*, N.Y. TIMES, Sept. 10, 1995, § 4, at 16. While Dole originally pledged, if elected, to seek to eliminate federal support for bilingual education, *see id.*, he subsequently toned down his rhetoric to permitting bilingual education programs "'that ensure that people learn English in a timely fashion,'" Margot Hornblower, *Putting Tongues in Cheek: Should Bilingual Education Be Silenced?*, TIME, Oct. 9, 1995, at 40, 42. Congress recently held

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Brimelow's figures, however, actually tell us little about the prospects for the linguistic assimilation of post-1965 immigrants, much less about how the new immigrants' progress compares to that of their predecessors. The reason is that those figures fail to distinguish between the first and second generations. Yet Americans hold the first generation to a much lower assimilation standard than that to which they hold succeeding ones.[150]

Brimelow overlooks the historical reality that first-generation immigrants have *always* been slow to acquire good English proficiency. This phenomenon is especially common if they arrived as adults, arrived recently, think that they are likely to return, are refugees rather than economic or family migrants, had little earlier exposure to English, had little schooling, or live in a minority-language enclave.[151] The post-1965 immigrants exhibit some of these variables more than earlier ones did, while exhibiting other variables less. Even as to first-generation immigrants, however, English use appears to be quite high.[152]

It is the English fluency of the *second* generation—those born in the United States or brought here as small children by foreign-born parents—that is critical to immigrants' integration and to society's cultural coherence. A recent analysis by Portes and Schauffler summarizes the historical pattern:

> In the past, almost every first generation's loyalty to their ancestral language has given way to an overwhelming preference for English among their children. . . .
>
> . . . .
>
> . . . [I]n no other country have foreign languages been extinguished with such speed. In the past, the typical pattern has been for the first generation to learn enough English to survive economically; the second generation continued to speak the parental tongue at home, but English in school, at work and in public life; by

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hearings on English as the common language of the United States. *House Holds Hearing on English as the Common Language*, 72 INTERPRETER RELEASES 1542 (1995).

150. Alejandro Portes puts the point this way:

> [F]irst-generation immigrants are not regarded generally as poor, no matter what their objective situation is, because they are seen as somehow different from domestic minorities. The same is not true of their children who as U.S. citizens and full participants in American society, are unlikely to use a foreign country as a point of reference or as a place to return to. Instead, they will be evaluated and will evaluate themselves by the standards of their new country.

Portes, *supra* note 103, at 15.

151. Chiswick & Miller, *supra* note 147, at 278–79. In another paper based on Australian data, Chiswick and Miller show that "ethnic network" variables—particularly the existence of an ethnic press, proximity of relatives, and spouse's origin language—are more important than the mere fact of living in a minority-language enclave in explaining dominant-language fluency. Barry R. Chiswick & Paul W. Miller, Ethnic Networks and Language Proficiency Among Immigrants (1995) (unpublished manuscript, on file with author).

152. In a 1995 survey, 81% of immigrants living in the United States for more than 20 years report using "English at home most often"; for those in their first decade, the figure is 49%. *See The Immigrant Experience*, *supra* note 68, at 103.

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> the third generation, the home language shifted to English, which effectively became the mother tongue for subsequent generations.
>
> This pattern has held true for all immigrant groups in the past with the exception of some isolated minorities.[153]

Powerful evidence of the second generation's continued progress in mastering English appears in Portes and Schauffler's recent empirical study of English-language proficiency among eighth- and ninth-grade second-generation students from many Caribbean, Latino, and Asian nationality groups in the Miami area, which has a larger proportion of foreign-born residents than any other American city. According to their data, gathered in 1992, fully 99% of the students reported that they spoke, understood, read, and wrote English "very well" or "well"; only 1% knew little or no English.[154] Time in the United States and ethnic-enclave residency were the most important independent variables; parental education and occupational and class status were unimportant. Moreover, the children's preference for daily communication in English over their parental language was overwhelming—even among recent arrivals, and especially among those living in communities in which the parental language was dominant.[155] The evidence on post-1965 immigrants' English fluency, then, belies Brimelow's animadversions, at least as far as the crucial second generation is concerned.[156]

C. *Illegitimacy*

In contrast, his concern about the high illegitimacy rates among some immigrant groups is amply warranted. He approvingly cites Michael Lind to

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153. Alejandro Portes & Richard Schauffler, *Language and the Second Generation: Bilingualism Yesterday and Today*, 28 INT'L MIGRATION REV. 640, 641, 643 (1994) (citing sources).

154. *Id.* at 647. The authors state that "self-reports of language ability, unlike other individual characteristics, are both reliable and valid." *Id.* at 646 (citing sources).

155. *Id.* at 647, 652. Indeed, the authors note that because fluent bilingualism is increasingly an economic asset, the loss of parental-language fluency may pose a greater risk for today's second generation than the nonproblem of inadequate English. *Id.* at 659. This preference for English was even stronger among Cuban children, who were educated in bilingual schools at the core of an ethnic enclave. *Id.* at 652.

Brimelow does cite (incorrectly, *see* ALIEN NATION, *supra* note 1, at 306 n.4) a study of second-generation schoolchildren in the San Diego and Miami areas that found that Mexican-American children, including those who claimed to be proficient in English, nevertheless retained and preferred to speak the parental language (Spanish) to a much greater degree than children from other nationality groups did. *See* Rubén G. Rumbaut, *The Crucible Within: Ethnic Identity, Self-Esteem, and Segmented Assimilation Among Children of Immigrants*, 28 INT'L MIGRATION REV. 748, tbl. 3 at 768 (1994).

156. Despite the much higher Spanish preference rate of the Mexican-American children in the Rumbaut study, they are not really an exception. Their English fluency was only slightly lower than some foreign-language groups and was higher than several others, especially some Asian groups. Rumbaut, *supra* note 155, tbl. 3 at 768. Spanish-language speakers, especially Mexicans, tend to have higher parental-language retention rates, especially if they live near the border, interact with frequent border crossers, live in a community constantly being replenished by first-generation Spanish-speaking immigrants, or adopt an adversarial stance toward Anglo society. By the third generation, however, virtually everyone is monolingual. *See* ALEJANDRO PORTES & RUBÉN G. RUMBAUT, IMMIGRANT AMERICA: A PORTRAIT 183 (1990).

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the effect that "Hispanic 'family values' are another immigration enthusiast's myth—Mexican-American out-of-wedlock births, for example, are more than twice the white rate, at 28.9 percent."[157] Other evidence suggests that Mexican, Latin American, and Caribbean immigrant nonmarital fertility rates are much higher than those for immigrants from Asia and Europe.[158]

If such rates accurately indicate the incidence of children growing up in single-parent families, the rates would herald bleak life prospects for those children and hence for the quality of American life more generally. To those who would extenuate high alien illegitimacy on the ground that illegitimacy among black Americans is far higher and illegitimacy among white Americans is rising precipitously, Brimelow offers a compelling rejoinder: "*[W]hat's the point of immigrants who are no better than we are?*"[159]

Immigrants' cultural impact on American society, however, is a function both of the values that they bring with them to the United States and of those that they *acquire* here as they rub shoulders with Americans. Although Brimelow focuses entirely on the former, the latter are probably more important in the long run. Some evidence on what happens to immigrants' behavior and values as they rub shoulders with Americans is profoundly disturbing. Illegitimacy rates for some immigrant groups—for example, Caribbean immigrants, who tend to live closest to inner-city native minority populations with high illegitimacy rates—seem to *increase* the longer they are in the United States.[160] According to a recent study by demographer Frank Bean,[161] divorce rates, a subject that Brimelow fails to mention, reinforce this pattern. The study indicates that Hispanics, most of whom are Mexicans, exhibit lower divorce rates in their countries of origin than demographically similar U.S. natives do. Divorce rates rise, however, among the second generation here, and by the third generation, divorce rates are equal to those of U.S. natives.[162]

Recent research on second-generation immigrants suggests that these examples may simply illustrate a more general dynamic of cultural transfer. In

157. ALIEN NATION, *supra* note 1, at 181.

158. Charles Hirschman, *Problems and Prospects of Studying Immigrant Adaptation from the 1990 Population Census: From Generational Comparisons to the Process of "Becoming American,"* 28 INT'L MIGRATION REV. 690, 708–10 (1994). The rates among Asian refugees, however, are much higher than for other Asians. *Id.* at 710.

159. ALIEN NATION, *supra* note 1, at 184.

160. Hirschman, *supra* note 158, at 711.

161. *See* Frank D. Bean et al., Socioeconomic and Cultural Incorporation and Marital Disruption Among Mexican Americans (Sept. 1995) (unpublished paper, on file with author).

162. *Id.* at 26–27. Frank Bean and his colleagues attribute the rise in divorce rates in the second and third generations to the special uncertainties and vulnerabilities surrounding the immigration experience in the United States that keep families together in the first generation. *Id.* at 25–26. Even in the third generation, the Hispanic divorce rate does not exceed that of U.S. natives, whereas the black divorce rate is higher than the U.S. average. Nevertheless, this dynamic could have worrisome implications for Mexican-American progress in the United States. As the authors put it, "The greater marital stability of lower socioeconomic status immigrants, when included in average rates of marital disruption, leads to what some might term a falsely rosy picture." *Id.* at 26.

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this pattern, first- and second-generation immigrants, particularly second-generation children, are inducted into American subcultures that transmit some of that subculture's social pathologies to the newcomers. In this way, dysfunctional behavior that is relatively rare in the country of origin may, with exposure to that subculture, become more common among immigrant children to mimic the American norm.

Some sociologists of immigration, notably Alejandro Portes, describe this as a downward or "segmented" assimilation process.[163] Most new immigrants locate in areas that bring their children disproportionately into close contact with native minorities. Many of these natives, who may be the children and grandchildren of immigrants unable to escape from the inner city, suffer from prejudice, disadvantage, joblessness, and a variety of social pathologies that foster a cluster of self-defeating attitudes and behaviors, including negative views of education that contrast sharply with the optimism and socially adaptive strategies that immigrants usually bring with them and seek to transmit to their children. These natives, enraged and defeated by their blocked mobility, can powerfully influence—and contaminate—the values of the new immigrants' children, especially in the shared school environment. Portes starkly depicts the problem:

> The confrontation with the culture of the inner-city places second generation youth in a forced-choice dilemma: to remain loyal to their parents' outlook and mobility aspirations means to face social ostracism and attacks in schools; to become "American" means often to adopt the cultural outlook of the underclass and thus abandon any upward mobility expectations based on individual achievement.[164]

In this context, Portes says, the best option for today's first generation may be to join dense immigrant communities where their children (the second generation) can "capitaliz[e] on the moral and material resources that only these communities can make available."[165] There the children may gain the breathing space and support they need to develop the skills that can move them securely into the American mainstream.[166] But if they fail to develop these skills, the children may succumb to the adversarial culture that surrounds, and insidiously penetrates, the immigrant enclave and may turn for solace to a

163. *See* Alejandro Portes & Min Zhou, *The New Second Generation: Segmented Assimilation and Its Variants*, 530 ANNALS AM. ACAD. POL. & SOC. SCI. 74, 74 (1993).

164. Portes, *supra* note 103, at 17 (citations omitted).

165. *Id.* at 23.

166. Portes and Zhou have found empirical evidence for this form of self-consciously delayed assimilation among the Cuban and Punjabi Sikh enclaves in South Florida and California, respectively, contrasting the experiences of these groups to the less protected, downwardly assimilating Haitians in Miami, and Mexicans and Mexican-Americans in central California. *See* Portes & Zhou, *supra* note 163, at 87–91.

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negatively reconstituted ethnic culture that widens the differences between the second generation and their native counterparts.[167]

For our sake and the sake of the new immigrants, we must pray that they can enable their children to resist these seductions. If the new immigrants succeed in doing so, their children—like most (though not all) second generations have in the past—will in all likelihood enter the mainstream of American society, and Brimelow will have no cause for complaint. If the children fail, however, their future—and ours—may be even bleaker than Brimelow imagines. Although he does not discuss this possibility or the second-generation problem more generally, his argument clearly implies that the risk of failure is one that America can and should avoid either by eliminating immigration altogether or by limiting it to groups that are already so successful when they arrive that their children are relatively invulnerable to the blandishments of underclass culture.

V. POLITICS

Brimelow believes that the post-1965 immigration is already sapping the strength of the American political system. Some of his fears—for example, irredentist movements by Mexican immigrants to reunite the Southwest with Mexico and Mexican revanchism seeking to manipulate the continuing allegiance of Mexican-Americans[168]—are fatuous and even insulting in their depiction of the latter as pawns whose disloyalty Mexico City could successfully exploit. He warns that neither major party can count on being helped electorally by immigration and that continuing our current pro-immigration policies may spark a voter revolt that could strengthen an already budding third-party movement.[169] The Democrats and Republicans, of course, well understand this: Both the Clinton administration and the Republican majority in Congress are supporting reforms that, while different in some respects, would significantly restrict and restructure legal immigration.[170]

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167. *See* Bean et al., *supra* note 101, at 76–77. The Mexican-American experience in educational attainment, furthermore, suggests that continued progress beyond the second generation is by no means assured. *See supra* note 101 and accompanying text.

168. *See* ALIEN NATION, *supra* note 1, at 193–95. For another discussion of this possibility, see LEON BOUVIER, WHAT IF . . . ? IMMIGRATION DECISIONS: WHAT COULD HAVE BEEN, WHAT COULD BE 15 (1994).

169. *See* ALIEN NATION, *supra* note 1, at 195–201. As precedent, Brimelow points to the brief rise of the Know-Nothings' American party in the 1850s. He emphasizes that the Know-Nothings, while rabidly anti-Catholic, did not in fact seek to restrict immigration and placed a higher priority on abolition. *Id.* at 12–13, 200.

170. *See* Steven A. Holmes, *House Panel Keeps Intact Bill to Restrict Immigration*, N.Y. TIMES, Oct. 12, 1995, at A20 (discussing Republican bill to restrict legal immigration); Robert Pear, *Clinton Embraces a Proposal to Cut Immigration by a Third*, N.Y. TIMES, June 8, 1995, at B10 (reporting President Clinton's endorsement of proposal by Commission on Immigration Reform to reduce legal immigration by one-third).

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The political specter that haunts him most darkly, however, is balkanization.[171] The fragmentation of nation-states, both real or imagined,[172] into ethnic shards—a process observed in Lebanon, the former Soviet Union and Yugoslavia, many African states, and perhaps even Canada—has become a leitmotif of the post-Cold War world. This unraveling of political authority, often accompanied by massive human rights violations, brutal warfare, economic immiseration, and suppression of political and religious dissent, is an exceedingly dangerous development.

Could it happen here? Brimelow and many other Americans think so, and they believe that post-1965 immigration has increased the odds. Brimelow cites programs or cultural attitudes that create incentives for groups to exaggerate their differences, and he denounces the "New Class," which, he claims, wants to devolve the nation-state into ethnic tribes or to transcend the nation-state in the name of universal human rights.[173]

He mentions five specific policies that are effecting "the deconstruction of the American nation as it existed in 1965."[174] The first, of course, is the policy of immigration itself.[175] But how could the mere fact of immigration, even racially heterogeneous immigration, threaten national unity? After all, most of those who have *chosen* America presumably identify at least as strongly with its ideals and institutions as those who just happened to be born here. Especially in the first generation, many might continue to identify strongly with their country or culture of origin, but that was also true of the Germans, the Irish, the Jews, and even Brimelow's own group, the English.[176] Brimelow does not show that the new immigrants are somehow less patriotic than earlier ones or than native-born Americans are today. (Recall that he himself is a recent immigrant swiftly transformed into a flag-waving American). Indeed, new evidence suggests the contrary.[177]

He mentions four other balkanizing policies: bilingualism, multiculturalism, affirmative action, and a "systematic attack on the value of citizenship."[178] Unfortunately, he fails to provide any clear definitions, useful distinctions, or

171. *See* ALIEN NATION, *supra* note 1, at 123–33.

172. The term "imagined" is taken, of course, from Benedict Anderson's coinage. *See* BENEDICT ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM (2d ed. 1991).

173. *See* ALIEN NATION, *supra* note 1, at 230–32. Brimelow defines the "New Class" (a term he explicitly borrows from Irving Kristol, *see* IRVING KRISTOL, TWO CHEERS FOR CAPITALISM 26–31 (1978)) as "the professionals who run and benefit from the state . . . and its power to tax." *Id.* at 230. For an avowedly liberal critique of the balkanizing tendencies of contemporary society that rejects this distinction between the "new class" and other powerful class interests, see LIND, *supra* note 13, at 327.

174. ALIEN NATION, *supra* note 1, at 219.

175. *Id.*

176. Indeed, the fact that many of the new immigrants are refugees fleeing cruel regimes in harsh societies, which Brimelow insists was not true in the good old days, *id.* at 246, suggests that the newcomers' loyalties are, if anything, less conflicted than those of their predecessors.

177. *See The Immigrant Experience*, *supra* note 68, at 101 (relating 1995 survey data from June 1995 that indicate that immigrants' belief in American values is as great or greater than that of natives).

178. ALIEN NATION, *supra* note 1, at 219.

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other analysis for the genuinely thoughtful, open-minded reader. Nevertheless, I believe that he is right to worry that these policies are weakening our coherence as a polity.[179] In seeking to use these policies to discredit immigration, however, Brimelow poses a seductive but perniciously false choice. Immigration may have encouraged the adoption of such policies, but it does not require them; we can reject them and still have immigration. If they are misguided policies, as in some respects they are, we can and should reform or repeal them without holding immigration hostage. We must instead evaluate immigration on its own merits. Brimelow might resist such a separation, of course, arguing that immigration by groups other than white "Anglo-Saxons" assures that the United States will maintain such policies, even if they prove to be perverse. I have more confidence, however, in the responsiveness and corrigibility of the American policymaking process. Recent reactions against the more extreme versions of these misguided policies are already taking hold, and I believe that my confidence will ultimately prove justified.

Bilingualism. I noted earlier that the crucial second generation of new immigrants seems to be acquiring both competence in and a preference for English, much as their predecessors did.[180] Still, it would be most imprudent to ignore the danger signals raised by evidence suggesting that government-sponsored bilingual education programs have subordinated pedagogical goals, such as improving student performance in school by facilitating rapid English fluency, to the ideological purpose of strengthening the child's identification with her presumed ethnic culture.[181] In my view, ethnic cultural retention is a perfectly appropriate goal when pursued privately by parents and without public aid or interference, but it has no place in the governmental agenda of a society as pluralistic and liberal as ours. Most disturbing of all are recurring indications that this deformation of bilingual education may actually retard the English fluency, the educational progress, and hence the assimilation prospects of already disadvantaged immigrant children.[182] My present point, however,

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179. Brimelow fails to mention another policy—racially defined and gerrymandered legislative districting—that I believe is perhaps even more dangerous because it reinforces racialist thinking and creates perverse incentives for political behavior, and because it is especially difficult to dislodge once it is in place. *See infra* notes 208–12 and accompanying text.

180. *See supra* notes 153–56 and accompanying text.

181. For instances of this ideological subordination, see, for example, Stephanie Gutmann, *The Bilingual Ghetto: Why New York's Schools Won't Teach Immigrants English*, CITY J., Winter 1992, at 29; Abigail M. Thernstrom, *E Pluribus Plura—Congress and Bilingual Education*, PUB. INTEREST, Summer 1980, at 3. I say "presumed" because of claims that assignment to bilingual classes sometimes reflects nothing more than the school's ascription of ethnicity to the child based on her surname. For an example of this practice, see Gutmann, *supra*, at 29.

182. *See* Toby L. Bovitz, *Bilingual Education in New York No Longer Serves Students*, N.Y. TIMES, Mar. 23, 1995, at A24 (letter to editor from bilingual psychologist in school system); Sam Dillon, *Report Faults Bilingual Education in New York*, N.Y. TIMES, Oct. 20, 1994, at A1; Gutmann, *supra* note 181, at 29; Jacques Steinberg, *Lawsuit Is Filed Accusing State of Overuse of Bilingual Classes*, N.Y. TIMES, Sept. 19, 1995, at B6 (reporting suit by parents' group). *But see* Maria Newman, *Schools are Likely to Stop Automatic English Testing*, N.Y. TIMES, Feb. 27, 1996, at B3 (describing plan to terminate automatic testing of children with Spanish surnames for possible placement in bilingual programs).

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is that we can and should reform bilingual education without abandoning immigration.[183]

Multiculturalism. Multiculturalism can take many forms, with vastly different social consequences. A limited multicultural policy affirms the social value of diverse cultural traditions and practices, protects individuals' and groups' freedom to engage in them, and incorporates diversity values into public school curricula, holidays, and national symbols. A more ambitious multiculturalism goes beyond recognition and respect of such traditions to define, preserve, and reinforce group differences through law.

The limited forms of multiculturalism are essential in a pluralistic democracy in which ethnic pride can be personally enriching, group strengthening, and socially integrative.[184] These forms should not weaken newcomers' ability or desire to achieve minimal levels of social assimilation, or exacerbate inter-group conflict.[185] Limited multiculturalism need not degenerate into the intolerance, humorlessness, hypersensitivity, and bogus essentialism that insists that group membership, rather than individual character and personality, is our most defining and precious attribute.[186]

In criticizing more expansive policies of multiculturalism that deploy the law to entrench and even construct group differences, Brimelow parrots an already palpable and increasingly effective public impatience with their excesses.[187] This impatience is salutary so long as it does not in turn breed its own parochialism and intolerance.[188] In a vibrant democracy like ours, policies such as multiculturalism tend to engender their own repudiation and ultimate reversal precisely because enthusiasts push them beyond any sensible limits.

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183. Legislation pending in Congress would greatly restrict or even eliminate bilingual education. *See, e.g.*, H.R. 1005, 104th Cong., 1st Sess. § 3(a) (1995) (repealing former Bilingual Education Act, 20 U.S.C. §§ 3281–3341 (1994)); *see also* Hornblower, *supra* note 149, at 42 (detailing congressional and administration positions on bilingual education). To the extent that these changes would eliminate even genuinely transitional, short-term bilingual education entirely, they may go too far.

184. Canada, for example, has made multiculturalism a constitutionally-protected value. CAN. CONST. (Constitution Act, 1982), Pt. I (Canadian Charter of Rights and Freedoms), § 27 ("This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canada."). The U.S. Supreme Court has also protected the right of religious and ethnic minorities to preserve their cultural practices. *E.g.*, Pierce v. Society of Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510 (1925) (invalidating Oregon law requiring children between ages of eight and 16 to attend public school); Meyer v. Nebraska, 262 U.S. 390 (1923) (striking down Nebraska statute prohibiting teaching of languages other than English and instruction in languages other than English).

185. Glazer, *supra* note 60, at 46–47.

186. For a spirited attack on this "ideal of authenticity" and on the contrived character of many multiculturalists' symbols, see LIND, *supra* note 13, at 122–27.

187. For alarming and sometimes tragi-comical examples by insightful observers, see RICHARD BERNSTEIN, DICTATORSHIP OF VIRTUE: MULTICULTURALISM AND THE BATTLE FOR AMERICA'S FUTURE (1994); LYNNE V. CHENEY, TELLING THE TRUTH: WHY OUR CULTURE AND OUR COUNTRY HAVE STOPPED MAKING SENSE—AND WHAT WE CAN DO ABOUT IT (1995).

188. *See, e.g.*, MARY LEFKOWITZ, NOT OUT OF AFRICA: HOW AFROCENTRISM BECAME AN EXCUSE TO TEACH MYTH AS HISTORY (1996).

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Quite apart from the growing political opposition to perverse versions of multiculturalism, some purely demographic considerations make rigid racial division of the kind that Brimelow predicts most unlikely. First, the racial data that Brimelow cites rely on self-ascriptions that are themselves remarkably changeable over time and on highly arbitrary racial categories that grow less and less meaningful over time.[189] This phenomenon is particularly true of nonblack groups. Most Hispanics, the largest ethnic minority grouping, identify themselves as white.[190] Furthermore, racial and ethnic boundaries blur as people of different groups marry. Exogamy, already high between some groups in the United States, has been increasing for all. Black-white marriage rates (the smallest exogamy category) more than quintupled between 1968 and 1988, rising from only 1.6% of all marriages involving an African-American to 8.9%. Exogamy between blacks and other groups and between whites and other groups has also been increasing.[191] Exogamy between American-born Asian women and non-Asian men is strikingly high, reaching 41.7% in 1990.[192]

The conventional demographic projections that Brimelow uses do not account for these remarkable (and in my view, highly desirable) trends, which seem likely to continue or even accelerate in the future.[193] Such analyses assume that "exogamy is nonexistent by assuming single ancestry offspring, usually taking the father's racial status as the marker."[194] A recent analysis that does seek to take exogamy (but not the other sources of shifting racial identities) into account shows that doing so can make an enormous difference in racial composition projections.[195] The study simulated future racial composition by factoring differential exogamy rates into the analysis and projecting the effect of those rates over multiple generations. If all mixed

189. *See, e.g.*, LIND, *supra* note 13, at 118–37; MARY C. WATERS, ETHNIC OPTIONS: CHOOSING IDENTITIES IN AMERICA 16–51 (1990); Christopher A. Ford, *Administering Identity: The Determination of "Race" in Race-Conscious Law*, 82 CAL. L. REV. 1231, 1239–40 (1994).

190. The percentage of white-identifying Hispanics depends in part on the structure of the survey instrument and the methodology of the questioner. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, SERIES P23–182, EXPLORING ALTERNATIVE RACE-ETHNIC COMPARISON GROUPS IN CURRENT POPULATION SURVEYS 2–3 (1992). For an historical survey of the changing racial and ethnic questions in the census, including the mutability of Hispanic self-identification, see Stephan Thernstrom, *American Ethnic Statistics*, *in* IMMIGRANTS IN TWO DEMOCRACIES: FRENCH AND AMERICAN EXPERIENCE 80, 100 n.5 (Donald L. Horowitz & Gérard Noiriel eds., 1992) (reporting that 21.1% of people who identified with Spanish-origin group in 1971 gave different origin just one year later; 12% of all those who self-identified as Hispanic had abandoned it).

191. For these exogamy data, see Frank D. Bean et al., The Changing Demography of U.S. Immigration Flows: Patterns, Projections, and Contexts 13 (July 1995) (unpublished paper presented at Conference on German-American Migration and Refugee Policies, on file with author).

192. *See id.* tbl. 4.

193. In a curious, brief discussion of interracial marriage, he acknowledges that it would tend to dissipate the Pincers' pressure and then adds the following "*BUT*" (italics and capitalization in original): "while more Hispanics are intermarrying, the proportion of all Hispanic marriages has fallen, swamped by the sheer growth of the Hispanic population." ALIEN NATION, *supra* note 1, at 274. The meaning and relevance of this observation escape me.

194. Bean et al., *supra* note 191, at 14.

195. *See* Barry Edmonston et al., Ethnicity, Ancestry, and Exogamy in U.S. Population Projections (Apr. 1994) (unpublished paper presented before Population Association of America, on file with author).

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ancestry persons were classified as single ancestry and self-identified as white, the number of non-Hispanic whites could be 31 million people (nearly 15%) larger than under the conventional census projection by the year 2040.[196]

My point is not that whites therefore have less to fear from demographic change. Rather, the very *meaning* of the traditional racial categories that structure such fears is rapidly becoming obsolete. Social attitudes and choices are evidently catching up to this demographic reality. Static, rigid, self-perpetuating policies of affirmative action and multiculturalism, premised on these obsolete meanings and categories, are already proving to be reactionary, not liberating.

To return to the larger point: Militant, mindless multiculturalism can be a destructive ideology that one should oppose on a variety of empirical and normative grounds. Immigration, even the post-1965 immigration, does not require such folly. Policies calculated to foster, or at least not impede, immigrants' assimilation to the dominant American culture without suppressing their ethnic ties continue to be the best antidote to balkanizing pressures.[197]

Affirmative Action. Brimelow complains that, as the demographic pincers close, affirmative action will place Alexander, his white son, at even more of a disadvantage than the poor lad labors under today. But like multiculturalism, race-based affirmative action—at least in its strongest, nonprocessual forms—is a policy with a doubtful political future. The Clinton administration, for example, has not fought very hard for it.[198] But if affirmative action is plainly on the defensive in Congress, the courts, and public opinion, it also enjoys the political advantage of any long-standing, institutionalized program.[199]

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196. *See* Bean et al., *supra* note 191, at 14–15 (summarizing findings in Edmonston et al., *supra* note 195, at 28). The actual number would depend on how such individuals self-identify in reporting to the census. This in turn may depend on how the Census Bureau resolves the issue of whether a mixed ancestry category should be established. On the Census Bureau's approach to this question, see Lawrence Wright, *One Drop of Blood*, NEW YORKER, July 25, 1994, at 46.

197. For two discussions of this question, see FORD FOUND., CHANGING RELATIONS: NEWCOMERS AND ESTABLISHED RESIDENTS IN U.S. COMMUNITIES (1993); OPENING THE DOOR, *supra* note 55. The first of these would change the focus from immigrants' *assimilation* to their *accommodation*, defined as "a process by which all sides in a multifaceted situation, including established residents and groups at different stages of settlement, find ways of adjusting to and supporting one another." FORD FOUND., *supra*, at 4. To the extent that this change is an exhortation to receiving communities to welcome immigrants, it is benign, but to the extent that it is meant to shift the initiative for, and the principal burdens of, assimilation from immigrants to the established community, it is probably misguided and will engender resistance.

198. *See, e.g.*, Paul M. Barrett, *Pentagon Move to Hurt Minority Builders*, WALL ST. J., Oct. 25, 1995, at B2 (reporting that Defense Department, Small Business Administration, and other agencies are curtailing affirmative action programs); Steven A. Holmes, *White House to Suspend a Program for Minorities*, N.Y. TIMES, Mar. 8, 1996, at A1 (ordering three-year suspension of minority and female set-aside programs for contracts).

199. The struggle to limit affirmative action will be extended and will proceed differently in different policy domains. *See, e.g.*, B. Drummond Ayres Jr., *Efforts to End Job Preferences Are Faltering*, N.Y. TIMES, Nov. 20, 1995, at A1. My criticisms of affirmative action do not refer to policies that require employers, universities, and other entities to engage in more broad-ranging recruitment processes, which I strongly support. These policies are not seriously in question. Rather, I am concerned with policies that either require, or as a practical matter demand, quotas or preferences based on race.

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Brimelow neither defines affirmative action nor engages in a detailed analysis of it, but he is clear that the post-1965 immigration renders it even more problematic than it would otherwise be. I emphatically agree.[200] Until the recent assault on affirmative action in Congress and the Supreme Court, the policy steadily expanded from the protection of blacks in the employment setting to the protection of new groups in new contexts. The new groups include immigrants who happen to possess the protected demographic characteristics, such as race, even though they did not personally suffer the historical discrimination that prompted affirmative action's solicitude for American blacks or descend from those who did. In my view, this policy is impossible to justify, even if one is not the father of a white child, and especially if one is the father of a black one.

This Review is not the place to analyze the merits and demerits of affirmative action in particular domains or in general.[201] Only affirmative action's connections to the post-1965 immigration concern me here. Affirmative action has benefited the post-1965 immigrants in at least two senses. First, affirmative action programs now confer protected status on the millions of immigrants who happen to be members of currently favored groups. Second, the rhetoric of affirmative action was used to legitimate and augment the power of ethnic interest group politics, spawning a program of so-called "diversity" admissions—wholly unwarranted, in my view[202]—that adds

200. *See* Peter H. Schuck, *The New Immigration and the Old Civil Rights*, AM. PROSPECT, Fall 1993, at 102, 108–11.

201. No one can gauge precisely the overall social effects of race-based affirmative action on its supposed beneficiaries. There are, however, reasons to believe that the net effects are either inconsequential or negative. For example, Thomas Sowell, who has written extensively on affirmative action both in the United States and abroad, has compared the pre- and postaffirmative action periods and found that black employment gains were actually greater during the earlier period. THOMAS SOWELL, PREFERENTIAL POLICIES: AN INTERNATIONAL PERSPECTIVE 113, 115 (1990). In a recent study comparing protected minorities' employment patterns in private firms that adopted either "identity-conscious" (making race relevant) or "identity-blind" (merit-based) personnel decisions, the authors (both strong affirmative action proponents) found that by most measures, improvement in the groups' employment status was not affected by identity-conscious interventions. Alison M. Konrad & Frank Linnehan, *Formalized HRM Structures: Coordinating Equal Employment Opportunity Or Concealing Organizational Practices?*, 38 ACAD. MGMT. J. 787 (1995).

On the negative side, members of protected groups whose genuine, hard-won achievements on the job and in universities are unfairly depreciated because of the supposed favoritism ascribed to affirmative action have suffered much personal indignity, reputational harm, and psychic injury as a result. The social damage to relations between the races has been incalculably great, in my view. According to a recent study, white opposition to affirmative action now encompasses the liberal core of the Democratic party; it is just as strong among those most committed to racial equality as among those least committed to such values. *See* Martin Gilens et al., Affirmative Action and the Politics of Realignment 3–4 (Apr. 1995) (unpublished conference paper prepared for annual meeting of Midwest Political Science Association, on file with author). One fervently hopes that this damage is not irreversible.

202. The beneficiaries of this program, after all, come from countries that were unfairly *favored* by the pre-1965 immigration policy. For a general critique of diversity programs, including this one, see Stephen H. Legomsky, *Immigration, Equality and Diversity*, 31 COLUM. J. TRANSNAT'L L. 319, 330–35 (1993).

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55,000 visas each year for immigrants from countries whose nationals supposedly have been disadvantaged by the 1965 law.[203]

In contrast, the racially diverse post-1965 immigration has been decidedly *bad* for affirmative action. I predict that recent immigration, far from serving as a firm buttress for future affirmative action policies as Brimelow believes, will eventually contribute to their demise. Immigration has undermined race-based affirmative action programs by revealing and then magnifying the moral, political, and empirical weaknesses of some of their underpinnings.[204] First, immigration enlarges the beneficiary pool to include immigrants who, unlike American blacks, cannot claim that they themselves have suffered historically-rooted discrimination here, but who nevertheless are entitled by affirmative action programs to compete with Americans for program benefits. This phenomenon not only dilutes the programs' benefits (such as they are) but also undermines their moral integrity.

Second, the group-based nature of the claims that affirmative action programs endorse inevitably invites attention to the fact that some immigrant groups, including some that arrived after 1965, endured harsh discrimination based on religion, language, class, and race, yet have managed to achieve greater economic and social progress than have many American blacks.[205] This record of achievement is bound to weaken the claim of many traditional civil rights activists that policies such as affirmative action are essential to individual and group progress. Third, immigration renders transparent the illogic, even absurdity, of the racial classifications and methodologies on which the integrity of such programs ultimately rests.[206] Finally, as Brimelow points out, the growth of "new minorities, each with their own grievances and attitudes—quite possibly including a lack of guilt about, and even hostility toward, blacks"—casts an ominous shadow over the long-term political

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203. Many of these countries, of course, were *advantaged* by the *pre*-1965 law. In fact, the chief beneficiaries of this program, as was intended at the time of enactment, are the Irish, for whom 41% of the diversity visas were reserved during 1992–94. *See* Schuck, *supra* note 96, at 71–72.

204. *See* Schuck, *supra* note 200, at 108–11 (noting invidious group comparisons invited by race-based affirmative action, and favoring class-based remedies instead); *see also* Richard D. Kahlenberg, *Equal Opportunity Critics*, NEW REPUBLIC, July 17 & 24, 1995, at 20 (noting that some opponents of race-based affirmative action are beginning to embrace class-based preferences). Class-based affirmative action also has its critics, *see, e.g.*, Michael Kinsley, *The Spoils of Victimhood*, NEW YORKER, Mar. 27, 1995, at 62, 65–66, and would be difficult to implement, *see, e.g.*, Sarah Kershaw, *California's Universities Confront New Diversity Rules*, N.Y. TIMES, Jan. 22, 1996, at A10 (discussing problems in applying class-based criteria).

205. *See* NATHAN GLAZER, AFFIRMATIVE DISCRIMINATION: ETHNIC INEQUALITY AND PUBLIC POLICY 168–205 (1975); Nathan Glazer, *Immigrants and Education*, *in* CLAMOR AT THE GATES: THE NEW AMERICAN IMMIGRATION 213 (Nathan Glazer ed., 1985) [hereinafter CLAMOR AT THE GATES]; Ivan Light, *Immigrant Entrepreneurs in America: Koreans in Los Angeles*, *in* CLAMOR AT THE GATES, *supra*, at 161; Peter I. Rose, *Asian Americans: From Pariahs to Paragons*, *in* CLAMOR AT THE GATES, *supra*, at 181; Schuck, *supra* note 200, at 107. For a microscopic view of these invidious comparisons as they operate in the workplace, see generally WATERS, *supra* note 118.

206. *See, e.g.*, Ford, *supra* note 189, at 1234 ("However analytically 'soft' a particular classification may be, making it a centerpiece of government resource-allocation will require that it be 'hardened' dramatically."); Wright, *supra* note 196, at 46.

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prospects of affirmative action and its capacity to promote interracial reconciliation.[207]

Brimelow unaccountably ignores another realm, voting rights, in which immigration erodes the coherence of affirmative action. Under the Voting Rights Act of 1965,[208] the U.S. Department of Justice, with the acquiescence of Congress and the federal courts, has frequently insisted that legislative district boundaries be drawn to maximize the number of seats safely controlled by representatives of racial minorities. Many legal scholars and political scientists question the wisdom, legality, and representational efficacy of this practice,[209] and some political commentators blame it for many of the devastating Democratic losses in the 1994 congressional elections.[210] The Supreme Court recently subjected the Justice Department's policy to heightened constitutional scrutiny.[211]

The post-1965 immigration renders affirmative action districting of this kind even more problematic. By multiplying the number of residentially concentrated ethnic groups that can assert claims to a limited number of safe legislative seats, immigration has intensified intergroup conflict and made negotiated solutions to these inevitably bitter disputes much more difficult. While Asian-origin voters are unlikely in the near future to achieve the numbers and concentrations needed to qualify for this form of relief, Hispanic-Americans, whose numbers are increasing more rapidly than the black population, have already crossed that threshold in a number of jurisdictions and will soon do so in others.[212]

The flaw in Brimelow's logic should now be clear. Whatever one's evaluation of the merits of race-based affirmative action programs and

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207. ALIEN NATION, *supra* note 1, at 65 (emphasis omitted). This possibility seems especially great among Asian-Americans, who tend to be more conservative politically than African-Americans.

208. 42 U.S.C. §§ 1971–1973p (1988 & Supp. 1993).

209. *See, e.g.*, LANI GUINIER, THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY 41–70 (1994); CAROL M. SWAIN, BLACK FACES, BLACK INTERESTS: THE REPRESENTATION OF AFRICAN AMERICANS IN CONGRESS, at vii–ix, 193–225 (1993); ABIGAIL THERNSTROM, WHOSE VOTES COUNT?: AFFIRMATIVE ACTION AND MINORITY VOTING RIGHTS (1987); James F. Blumstein, *Racial Gerrymandering and Vote Dilution:* Shaw v. Reno *in Doctrinal Context*, 26 RUTGERS L.J. 517 (1995); Schuck, *supra* note 200, at 105–11; Peter H. Schuck, *What Went Wrong with the Voting Rights Act*, WASH. MONTHLY, Nov. 1987, at 51. Other scholars have enthusiastically endorsed it. *See, e.g.*, BERNARD GROFMAN ET AL., MINORITY REPRESENTATION AND THE QUEST FOR VOTING EQUALITY 131–37 (1992); Luis R. Fraga, *Latino Political Incorporation and the Voting Rights Act, in* CONTROVERSIES IN MINORITY VOTING: THE VOTING RIGHTS ACT IN PERSPECTIVE 278 (Bernard Grofman & Chandler Davidson eds., 1992) [hereinafter CONTROVERSIES IN MINORITY VOTING]; Pamela S. Karlan, *The Rights to Vote: Some Pessimism About Formalism*, 71 TEX. L. REV. 1705, 1737–40 (1993); Allan J. Lichtman, *Redistricting, in Black and White*, N.Y. TIMES, Dec. 7, 1994, at A23.

210. *See, e.g.*, Juan Williams, *Blacked Out in the Newt Congress: The Black Caucus Regroups as Jesse Mulls a Third Party Bid*, WASH. POST, Nov. 20, 1994, at C1.

211. The leading cases are Shaw v. Reno, 113 S. Ct. 2816 (1993), and Miller v. Johnson, 115 S. Ct. 2475 (1995).

212. *See* Hugh Davis Graham, *Voting Rights and the American Regulatory State, in* CONTROVERSIES IN MINORITY VOTING, *supra* note 209, at 177, 195–96. On growing Asian-American political activism, see Steven A. Holmes, *Anti-Immigrant Mood Moves Asians to Organize*, N.Y. TIMES, Jan. 3, 1996, at A1.

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whatever the bearing of immigration on those programs, they can and should be considered separately from the issue of immigration policy. We can choose to have immigration without choosing the kind of affirmative action that discredits immigration by association.

Citizenship. Part of "the deconstruction of the American nation" that Brimelow laments results from a "[s]ystematic attack on the value of citizenship, by making it easier for aliens to vote, receive government subsidies, etc."[213] The content of "etc." appears in his call, *inter alia*, for fundamental changes in our approach to citizenship. They include a new Americanization campaign modeled on the programs of the first two decades of this century, an English-language requirement for new immigrants and stricter enforcement of the existing English requirement for naturalized citizens, constitutional amendments eliminating birthright citizenship for the native-born children of illegal aliens and prescribing English as our official language, and possibly the lengthening of the residency period for naturalization to as long as the fourteen years required under the Alien and Sedition Act of 1798 and repealed in 1801.[214]

Brimelow presents these ideas in a manner that treats them more as rallying points and political slogans than as serious, thoughtful proposals for change. He shows no interest in analyzing the evidence bearing on them, the substantial objections that might be made to them, or the features that might be necessary to make them politically palatable or practically implementable. He simply presents items on his laundry list.

Brimelow's *ipse dixits* will therefore be of little value to policymakers. Nevertheless, some of the items on his list do deserve serious consideration; indeed, some are already receiving it. An example is the issue of birthright citizenship for illegal alien children, which is now under active discussion in Congress.[215] Political scientist Rogers Smith and I coauthored a book analyzing this very question. We argued that the Citizenship Clause of the Fourteenth Amendment,[216] properly interpreted, permits Congress to regulate or even eliminate birthright citizenship for such children if it wishes.[217] We noted that whether Congress *should* prospectively eliminate birthright citizenship, and, if so, *how* to go about it, entail genuinely difficult normative, empirical, and policy questions.[218] We expressed a particular concern (shared

213. ALIEN NATION, *supra* note 1, at 219 (emphasis omitted). The key, he writes, is "[a]voiding the Romans' mistake of diluting their citizenship into insignificance." *Id.* at 267.

214. *Id.* at 264–67.

215. *See* Schuck Testimony, *supra* note 3; Supplemental Letter, *supra* note 3; *see also* Neil A. Lewis, *Bill Seeks to End Automatic Citizenship for All Born in the U.S.*, N.Y. TIMES, Dec. 14, 1995, at A26.

216. U.S. CONST. amend. XIV, § 1.

217. PETER H. SCHUCK & ROGERS M. SMITH, CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY 5, 72–89 (1985); *see also* Peter H. Schuck, *Membership in the Liberal Polity: The Devaluation of American Citizenship*, 3 GEO. IMMIGR. L.J. 1 (arguing that birthright citizenship and minimal incentives for aliens to naturalize have lowered value of U.S. citizenship).

218. SCHUCK & SMITH, *supra* note 217, at 90–115.

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by our critics[219]) that such a policy change risks creating a destitute, highly vulnerable, more or less permanent caste of pariah children who, due to ineffective INS border and interior enforcement, might remain in that condition for the rest of their lives in the United States.[220] We proposed strategies to avert this grim possibility, including an amnesty for many then-illegal aliens.[221] Nevertheless, this concern remains deeply troubling, especially today when the number of illegal alien residents in the United States may exceed four million and a new amnesty is politically inconceivable. The ever-insouciant Brimelow, however, appears not to have even considered the extremely difficult problems that this situation creates.

His proposal for an "official English" amendment is an even more telling example of his aversion to analysis. Because a similar policy has already been adopted in twenty-two states,[222] some evidence about how it actually works already exists. Brimelow fails to cite this evidence, which indicates that the policy has had no practical effect—except, perhaps, to convince many Hispanic-Americans, who already have overwhelming incentives to acquire English fluency, that they are unwelcome in their new country.[223]

A new "Americanization" program—if designed to foster immigrants' social and linguistic integration without the paternalism, cultural intolerance, and outright racism that tainted many of the early twentieth century campaigns[224]—might well be desirable. At a minimum, such an effort should significantly augment the woefully inadequate public resources now available for teaching English to adult immigrants.[225] The government should also

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219. The most probing criticisms—although not persuasive in our view—are found in GERALD L. NEUMAN, STRANGERS TO THE CONSTITUTION: IMMIGRANTS, BORDERS AND FUNDAMENTAL LAW (forthcoming 1996) (manuscript at 473–535, on file with author); David A. Martin, *Membership and Consent: Abstract or Organic?*, 11 YALE J. INT'L L. 278 (1985). *But see* Peter H. Schuck & Rogers M. Smith, *Membership and Consent: Actual or Mythic? A Reply to David A. Martin*, 11 YALE J. INT'L L. 545 (1986).

220. *See* SCHUCK & SMITH, *supra* note 217, at 97–100, 136–37.

221. *Id.* at 99, 135. Our book was published well before Congress enacted such an amnesty in the 1986 IRCA legislation. We recommended such a measure in the book.

222. *See* discussion *supra* note 149 and accompanying text; *see also Montana Law on English*, N.Y. TIMES, Apr. 3, 1995, at B8 (describing law that makes English official language of state government). *But see Court Strikes Language Law*, N.Y. TIMES, Dec. 9, 1994, at A18 (relating decision of Ninth Circuit that invalidated on First Amendment grounds amendment to Arizona Constitution requiring state employees to speak only English on job).

223. *See* Jack Citrin, *Language Politics and American Identity*, PUB. INTEREST, Spring 1990, at 96, 108 ("The instrumental consequences of state and local 'official English' legislation are virtually nil, and in the absence of a genuine threat to the status of English, the formal subordination of other languages is mainly divisive.").

224. For a description of the Americanization movements of the first two decades of the twentieth century, see Philip Gleason, *American Identity and Americanization*, *in* HARVARD ENCYCLOPEDIA, *supra* note 82, at 31, 39–41, 57–58 (entry and bibliographic sources).

225. Such classes are chronically over-subscribed, and the waiting lists are long. David Leanhardt, *Immigrants' Hopes Converge on English Class: Eager to Break Language Barrier, Would-Be Students Overwhelm Programs for Adults*, WASH. POST, July 25, 1994, at B1; Deborah Sontag, *English as a Precious Language: Immigrants Hungry for Literacy Find That Classes Are Few*, N.Y. TIMES, Aug. 29, 1993, at 29.

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abandon its traditional passivity with respect to naturalization and instead emphasize its benefits to immigrants.[226] Again, however, Brimelow does not trouble to explore seriously the programmatic content of an Americanization policy.[227]

In truth, his discussion of citizenship is really a diversionary tactic. His real agenda is something he portentously calls "the National Question."[228] He wishes to affirm his belief in a distinctive American nation-state in contrast to the one-worlders who, out of misguided guilt or bland cosmopolitanism, would dismantle our borders and throw open our doors to all comers—the more the merrier, the poorer the better.

This target, of course, is a straw man. There are indeed a smattering of academics, ethnic advocates, immigration lawyers, and militant multiculturalists who, if judged by their rhetoric, seem to fit this description.[229] But, as Brimelow surely knows, they are outliers—no more representative of immigration enthusiasts than Brimelow is of restrictionists. (I know of no restrictionist in Congress, for example, who proposes to go to zero immigration, as Brimelow seems to do.[230]) Americans vigorously disagree about precisely what Americanism consists of. They always have;[231] presumably they always will. Our core political identity is more elusive than that of, say, Japan, Germany, or Sweden—nation-states whose ethnic

226. The current INS administration is already instituting such a change, with some success. Its timing could hardly be better. For reasons having little to do with the INS's new effort and much to do with the threat to legal immigrants' public benefits posed by pending legislation and an imminent change in Mexico's own citizenship law, *see* Sam Dillon, *Mexico Woos U.S. Mexicans, Proposing Dual Nationality*, N.Y. TIMES, Dec. 10, 1995, § 1, at 16 (discussing proposed Mexican constitutional amendment that would permit Mexicans living in United States to retain Mexican nationality upon becoming U.S. citizens), a stunning increase in the number of naturalization petitions is now occurring. *See, e.g.*, Louis Freedberg, *Citizenship Wave Surprises INS: Applications Pour in as Immigrants Act to Protect Benefits*, S.F. CHRON., Apr. 13, 1995, at A1, A23 (detailing increase in naturalization petitions in INS's San Francisco district and in United States). The total for 1995 will probably exceed one million.

One presumes that Brimelow opposes this development, since he thinks that naturalization should be a far more protracted process and therefore applauds the Know-Nothings' battle cry: "Nationalize, then naturalize." ALIEN NATION, *supra* note 1, at 12–13, 265. I believe that the current five-year minimum period, which is already longer than those in a number of immigrant nations, has served us well. In any event, most naturalizing immigrants take longer than five years. *See* 1994 INS STATISTICAL YEARBOOK, *supra* note 29, tbl. K at 128.

227. For a recent, thoughtful exploration of some normative issues concerning citizenship, see the papers on that subject in Symposium, *Immigration Law and the New Century: The Developing Regime*, 35 VA. J. INT'L L. 1 (1994).

228. *See* ALIEN NATION, *supra* note 1, at 232, 264–67.

229. For scholars advocating open borders, or at least a strong presumption in favor of them, see, for example, BRUCE A. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE 89–95 (1980); Joseph H. Carens, *Aliens and Citizens: The Case for Open Borders*, 49 REV. POL. 251 (1987); R. George Wright, *Federal Immigration Law and the Case for Open Entry*, 27 LOY. L.A. L. REV. 1265 (1994).

230. Even the group Negative Population Growth, which is radical enough to want to reduce the U.S. population to 125–150 million (about half its present size), proposes legal immigration of up to 100,000 per year. *See* advertisement in NEW REPUBLIC, Oct. 23, 1995, after 37. *But see* LIND, *supra* note 13, at 206–07 (discussing proposals for increased immigration).

231. *See* Gleason, *supra* note 224, at 39–41.

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solidarities have powerfully shaped their self-understandings.[232] But while Americans struggle over the contemporary meaning of Americanism,[233] only a handful would deny that the United States is a distinctive polity that must protect its national sovereignty, nourish its culture, choose among its potential immigrants, and thus turn many away from its shores.

CONCLUSION

Brimelow claims that American society has fallen into crisis since the new immigrants arrived and that they are responsible for its decline. I have sought to demonstrate that most of his factual claims are either wrong or fail to justify his radical policy prescriptions. For those whom I have not yet convinced, I wish to use this concluding section to test his overarching claim—that the post-1965 immigration flow has been an unequivocal plague on American society. I propose to do so by offering a (necessarily incomplete) answer to the following question: How does the state of American society today compare to its state in 1965, when the new immigrants began coming and when the Fall (according to Brimelow) therefore began? Briefly stated, my answer is that we are in most important respects a far better society than we were before these immigrants arrived. Their contribution to this progress is striking in the growth of the economy, the expansion of civil rights and social tolerance, and the revitalization of many urban neighborhoods. Moreover, these immigrants bear little blame for the great exception to this progress: the increase in the social pathology afflicting some inner-city subcultures.[234] Just as Brimelow cannot prove that the post-1965 immigrants *caused* certain social conditions in America to be worse than they would otherwise have been, it would be impossible for me to show how much of our post-1965 progress they *caused.* The evidence strongly suggests, however, that the post-1965 immigrants contributed to it.

Brimelow's answer to the question, of course, is very different. To him, the America of 1965 was an Edenic paradise compared to today[235]—relatively crime-free, economically prosperous, normatively coherent, politically stable, linguistically unified, demographically stable, and ecologically sustainable. Most important, it was overwhelmingly white. By 1995, the newcomers had changed all that, bringing us a society marked by drugs, violent crime, economic decline, debased family life, a babel of

232. For an interesting effort by one immigrant to define Americanism, see TED MORGAN, ON BECOMING AMERICAN (1978).

233. For one such effort that strongly eschews "Anglo-centric" conceptions of the American nation (such as Brimelow's), see LIND, *supra* note 13, at 352–88.

234. I say "little," not none. Aliens' drug-related crime, *see supra* notes 127–46 and accompanying text, is the principal exception.

235. He tells us that he and his brother "gave it an A+." ALIEN NATION, *supra* note 1, at 221.

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languages, clashing value systems, racial conflict, political divisions, a population bomb, a crowded, degraded environment—and swarthy complexions. No wonder Brimelow anguishes about America's present and about his son Alexander's future![236]

Brimelow's depressing, hand-wringing account of today's America, although common enough among conservatives and liberals alike, is profoundly distorted. It is true that the new immigration coincided with some extremely negative developments in American life. The most important of these is the erosion of family structure, which has blighted the lives of an immense number of children born out-of-wedlock and raised in single- or no-parent households[237] by caretakers who depend on public assistance and who are often only children themselves. Most of what is most pernicious about American society today—its high levels of street crime, drug use, racial fears, domestic violence, welfare dependency, public health menaces such as AIDS, educational failure, and high unemployment among low-skill youth—derives from this fundamental pathology of family structure. There is no gainsaying its deeply corrosive effects on American life.

It is also true, however, that little of this pathology can be attributed to the new immigrants. To be sure, many of them commit drug-related crimes; some sub-groups, mainly Asian refugees, have relatively high welfare rates; and some others, notably Mexican-Americans, have high illegitimacy rates. These behaviors are indeed troubling, as is the fact that they seem to increase the more that the new immigrants interact with Americans.[238] Still, these grim patterns must be kept in perspective: Relatively few of the new immigrants commit crimes, and the vast majority of these are drug-related; we are not *supposed* to select refugees for their skills; and the groups with high illegitimacy rates are comprised disproportionately of illegal aliens, many of whom can be excluded in the future by better border control policies.

What about the other side of the ledger, which Brimelow assiduously ignores? If the post-1965 immigrants have contributed to some of America's failures, have they not also contributed to some of our post-1965 successes? If so, do not these successes contradict Brimelow's alarums about the state of the American polity?

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236. He says that "we still give it an A+" but then adds "what's left of it." *Id.* By this qualification he presumably means the part that the new immigrants have not yet destroyed.

237. A March 1995 Census Bureau report indicates that 30.8% of families with children were headed by a single parent in 1994; the corresponding rate was 13% in 1970. Of the 11.5 million such families, the vast majority—9.9 million—were headed by women. *2-Parent Families Increasing in U.S.*, N.Y. TIMES, Oct. 17, 1995, at A17.

238. *See supra* notes 160–67 and accompanying text. Other American (mis)behaviors also seem to rub off on immigrants. For example, the prostate cancer rate among Japanese men increases markedly when they immigrate to the United States, apparently because of their change to a high-fat diet here. The prostate cancer rate per 100,000 increased from eight for men in Japan to 30 for first-generation Japanese immigrants in Los Angeles and to 34 for second-generation immigrants; among white men in Los Angeles it is 66. Jane Brody, *Low-Fat Diet in Mice Slows Prostate Cancer*, N.Y. TIMES, Oct. 18, 1995, at C13.

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The truth is that the last three decades have witnessed some remarkable advances in American life. While causality in such matters is extremely complex and elusive, the new immigrants can claim some credit for many of these advances. Most plausibly, they have contributed to our continued if slow economic growth,[239] the dramatic rise in the public's tolerance for minorities (including dark-skinned aliens) and its support for racial integration and equality,[240] the renaissance in many previously declining urban neighborhoods,[241] and the diversification and enrichment of many aspects of American culture. Beyond these advances, however, are social improvements that bespeak a robust polity, one that contradicts Brimelow's vision of political dissolution and decline attributable to the new immigrants.[242] I shall mention only three areas of improvement: the environment, politics, and the quality of life.

Environment. Brimelow blames the new immigrants for the deterioration of the American environment.[243] In fact, however, the quality of the American environment today is vastly superior to its state in 1965, before these immigrants arrived. Whether the concern is air pollution (indoor or outdoor), water quality, deforestation, pesticides and other chemical risks, radiation hazards, food quality, land preservation, historic preservation, wetlands, farmland, energy efficiency, toxic waste, depletion of raw materials, lead paint, acid rain, or many other conditions, the levels of risk and environmental degradation today are lower, often much lower, than they were in 1965.[244] These improvements rank as one of the greatest triumphs of private mobilization and public policy in our history. Insofar as immigrants contributed to the economic growth that made these policies fiscally and hence politically sustainable, they helped to improve the environment. At the very least, they did not prevent such gains from being realized.

Politics. In 1965, blacks and other disadvantaged minorities played at best a marginal role in the American political system. For almost a century, they had been routinely denied the vote guaranteed to them by the Fifteenth Amendment, and there were relatively few racial minority officeholders. There were also few female officeholders, although women had received the

239. The per capita gross national product increased almost 60% in constant dollars between 1965 and 1993; per capita disposable income increased almost 75% during the same period. 1994 U.S. STATISTICAL ABSTRACT, *supra* note 55, tbl. 691.

240. *See* sources cited *supra* note 17.

241. *See, e.g.*, MULLER, *supra* note 120, at 151–60; LOUIS WINNICK, NEW PEOPLE IN OLD NEIGHBORHOODS: THE ROLE OF NEW IMMIGRANTS IN REJUVENATING NEW YORK'S COMMUNITIES (1990).

242. Brimelow's narrative of decline is commonplace today. It is also told by some who would probably agree with him on little else. *See, e.g.*, CHARLES A. REICH, OPPOSING THE SYSTEM (1995).

243. ALIEN NATION, *supra* note 1, at 187–90.

244. For a detailed discussion of these changes, see generally GREGG EASTERBROOK, A MOMENT ON THE EARTH: THE COMING AGE OF ENVIRONMENTAL OPTIMISM (1995); AARON WILDAVSKY, BUT IS IT TRUE? A CITIZEN'S GUIDE TO ENVIRONMENTAL HEALTH AND SAFETY ISSUES (1995); THE TRUE STATE OF THE PLANET: TEN OF THE WORLD'S PREMIER ENVIRONMENTAL RESEARCHERS IN A MAJOR CHALLENGE TO THE ENVIRONMENTAL MOVEMENT (Ronald Bailey ed., 1995).

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franchise almost a half-century earlier. Three decades later, blacks, Asians, Hispanics, women, the disabled, elderly, gays and lesbians, and other minorities are full participants in the political system at all levels of government. Their organizations have led largely successful struggles to enact a plethora of laws—the Voting Rights Act of 1965,[245] the Age Discrimination in Employment Act of 1967,[246] the Age Discrimination Act of 1975,[247] the Education of the Handicapped Act of 1975,[248] the Americans with Disabilities Act of 1990,[249] the Civil Rights Act of 1991,[250] and many others—designed to prevent discrimination and otherwise advance their group interests.

As a result of these developments, the American political system today is far more participatory and responsive to minority interests than it was in 1965.[251] If the level of party discipline in both major parties in Congress is any measure of coherence, American politics today is also more coherent and less fragmented than it has been for decades.[252] This partisanship reflects and reinforces a growing ideological polarization between the parties that tends to sharpen policy issues, widen voters' choices, and increase accountability. The bellicosity of partisan politics today is part of the price that we pay for these virtues, and it is well worth it.

Taken together, these changes have transformed the American state into a more robust democracy than ever before. They have helped to shape a polity that is far more just and responsive to far more people than it was before the new immigrants came.

Quality of Life. I have already noted the enormous economic growth that has occurred since 1965, growth that translates into higher disposable income and living standards for virtually all Americans.[253] It is important to emphasize that even the millions still mired in poverty—a group that, according to the best, consumption-based estimates, is less than half the percentage of the population that it was in 1961—enjoy an improved standard of living.[254] With the enactment and extraordinary expansion of the Food

245. 42 U.S.C. §§ 1971–1973p (1988 & Supp. 1993).

246. 29 U.S.C. §§ 621–634 (1988 & Supp. 1993).

247. 42 U.S.C. §§ 6101–6107 (1988).

248. 20 U.S.C. §§ 1400–1485 (1994).

249. 42 U.S.C. §§ 12101–12213 (Supp. 1993).

250. Civil Rights Act of 1991, Pub. L. 102–166, 105 Stat. 107 (codified at scattered sections of 42 U.S.C.).

251. Indeed, one can argue that it is *too* responsive to special interests of all kinds and insufficiently deliberative.

252. *See* Adam Clymer, *With Political Discipline, It Works Like Parliament*, N.Y. TIMES, Aug. 6, 1995, § 4, at 6 (analyzing high level of party discipline among congressional Republicans and resulting improvement in discipline among congressional Democrats).

253. *See supra* note 239.

254. *See* Daniel T. Slesnick, *Gaining Ground: Poverty in the Postwar United States*, 101 J. POL. ECON. 1, tbl. 3 at 16 (1993). As the share of the poor has diminished, moreover, the ranks of the wealthy have swelled. According to one estimate, the number of families with earnings of over $100,000 in constant dollars has increased from slightly more than 1 million in 1967 to 5.6 million in 1993. David Frum,

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Stamp program, hunger as traditionally understood has been essentially eliminated from American life.[255] The proportion of housing units that are substandard declined from 16% in 1960 and 8.4% in 1970 to practically zero today.[256] Life expectancy for those born in 1992 was nearly five years longer than for those born in 1970.[257] Both the quantity and quality of medical care have improved enormously since 1965, and the rapid growth of the Medicare and Medicaid programs has enabled low-income people to share in those gains. Infant mortality rates dropped steadily during the post-1965 period; they fell by more than half between 1970 and 1991.[258] The percentage of Americans who completed four or more years of college nearly tripled between 1960 and 1993.[259] The rising quality of many public goods, such as recreational facilities, highways, low-cost entertainment, and (as noted above) the environment, also increased the value of Americans' consumption, albeit in ways not captured by the national income accounts.[260] Finally, the risk of a large-scale war claiming American lives and treasure—a tragic reality in 1965—has diminished almost to the vanishing point today.

These gains in the quality of life since 1965 are remarkable by any standard. All things considered, they may even exceed the gains during the pre-1973 period, when the American economy, as conventionally measured, was expanding at a faster rate. Even when set against the alarming increase in family dissolution and its dire consequences, these gains remain impressive. This dissolution, moreover, principally affects those Americans condemned to live in or in close proximity to the underclass, a group that still constitutes a

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Welcome, Nouveaux Riches, N.Y. TIMES, Aug. 14, 1995, at A15. For a recent account of the improved living conditions of the rural South Carolina poor between the 1960s and today, see Dana Milbank, *Up from Hunger: War on Poverty Won Some Battles as Return to Poor Region Shows*, WALL ST. J., Oct. 30, 1995, at A1.

255. For an account of this development, see R. SHEP MELNICK, BETWEEN THE LINES: INTERPRETING WELFARE RIGHTS 183–232 (1994). The quality of life for the most destitute Americans, including the homeless and panhandlers, has improved dramatically as well. *See* Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 YALE L.J. 1165, 1190–91, 1203–04 (1996).

256. John C. Weicher, *Private Production: Has the Rising Tide Lifted All Boats?*, *in* HOUSING AMERICA'S POOR 45, 46 (Peter D. Salins ed., 1987). The data also indicate that blacks have shared in these improvements:

> The percentage of black households lacking complete plumbing plunged . . . and the percentage living with more than one person per room dropped from 28.3% in 1960 to 9.1% in 1980. . . . The available data indicate that these auspicious trends have continued since 1980. The residential situation of the institutionalized poor has also improved as prisons, mental hospitals, and similar accommodations have become much more livable.

Robert C. Ellickson, *The Untenable Case for an Unconditional Right to Shelter*, 15 HARV. J.L. & PUB. POL. 17, 27 (1992) (footnotes omitted).

257. 1994 U.S. STATISTICAL ABSTRACT, *supra* note 55, tbl. 114.

258. *Id.* tbl. 120. The decline was almost as rapid for blacks and other nonwhites. *Id.*

259. Steven A. Holmes, *A Generally Healthy America Emerges in a Census Report*, N.Y. TIMES, Oct. 13, 1994, at B13.

260. The inadequacy of many of the dominant measures of public and private wealth, income, and consumption is an old complaint. *See, e.g.*, Peter Passell, *Economic Scene*, N.Y. TIMES, Oct. 12, 1995, at D2 (reviewing previous and current criticisms of national income accounting).

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relatively small share (approximately one to two percent) of the population. The small size of the share, while no consolation to those who comprise it or must reside near its members, nevertheless puts even this great failure into a somewhat broader, more hopeful perspective.

The quality-of-life gains since 1965 for the vast majority of Americans, then, have been enormous, perhaps unparalleled. It is impossible to know, of course, whether those gains would have been even larger or more widespread had we admitted fewer or different immigrants during this period.[261] What we do know is that the post-1965 immigrants, whom Brimelow condemns as afflictions and parasites, did join American society, and that we are now a more just, diverse, and prosperous society today than we were then. We can also be certain that many of the values that immigrants, the new as well as the old, brought with them will be essential to our continued vigor and progress. Today and tomorrow, even more than yesterday, America desperately needs what so many immigrants possess—optimism and energy, orientation to the future, faith in education as the ladder upward, hunger for their own and their children's success, and devotion to a dynamic, hopeful vision of America that has lost focus for many native-born citizens.

We must reform immigration policy to meet our changing needs. In particular, policy should assure that a larger share of the immigration flow consists of individuals who are most likely to succeed in the American economy of the twenty-first century. But it will take much, much more than this book to convince me that we should eliminate or radically reduce that flow. Immigration, including the post-1965 wave, has served America well. If properly regulated, there is every reason to expect that it will continue to do so.

261. The difficulty of this question is not eased much by *A Tale of Ten Cities: Immigration's Effect on the Family Environment in American Cities*, a report coauthored by demographer Leon Bouvier and Scipio Garling and published by the Federation for American Immigration Reform in November 1995. FEDERATION FOR AMERICAN IMMIGRATION REFORM, A TALE OF TEN CITIES: IMMIGRATION'S EFFECT ON THE FAMILY ENVIRONMENT IN AMERICAN CITIES (1995). This report compares the quality of life in five pairs of matched cities, each pair of which includes a high- and a low-immigration city. The report finds in the low-immigration cities a much better quality of life, as measured by nine categories of variables: education, income, occupation, home life, housing, cultural adaptation, crime, community, and health. Comparisons of this kind, however, usually suffer from methodological weaknesses that make causal inferences highly problematic, especially the inability to control for the many variables that make the paired cities different for nonimmigration reasons. For a critique of the methodology of this report, see John E. Berthoud, FAIR's "A Tale of Ten Cities": A Fair Analysis? (Nov. 1995) (unpublished report by Vice-President of Alexis de Tocqueville Institution, on file with author). In addition to this serious problem, *A Tale of Ten Cities* selected high-immigration cities with large concentrations of *illegal* aliens, which inevitably distort the data. It also ignored the fact that, while most immigration-related costs are borne locally, most immigration-generated benefits (e.g., increased tax revenues and economic efficiency) are realized at higher levels.

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