IMMIGRATION AND THE BORDER
The Institute for Latino Studies, in keeping with the distinctive mission, values, and traditions of the University of Notre Dame, promotes understanding and appreciation of the social, cultural, and religious life of U.S. Latinos through advancing research, expanding knowledge, and strengthening community.
IMMIGRATION AND THE BORDER

Politics and Policy in the New Latino Century

Edited by

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Borders matter in our world more—and less—than ever before. With international migration at unprecedented levels, immigrants (with or without legal status) are increasingly visible and consequential in both host and sending nations. They are putting down roots, finding jobs, starting families, creating local and transnational networks, remitting money, and engaging in civic life. In doing so, they are deepening globalization, a process as old as human history (Steger 2003) but one that may be the defining characteristic of the twenty-first century. Technology enables individuals to travel vast distances while maintaining close and continuing contact with family, friends, and even political institutions in sending nations (Brettell and Hollifield 2008). In many host countries, immigrants receive social welfare benefits and even political rights. Such changes intertwine the cultures, economies, and politics of nations across the world. Little wonder scholars are asking if such dynamics weaken the traditional role of the nation state and require new ways of understanding the concept of citizenship (Soysal 1994; Sassen 1998), although others note that state power remains robust (Freeman 1988; Hansen 2008; Hagan, Leal, and Rodriguez 2012).
While the increasingly global economy is impatient with barriers to the movement of goods and commodities, the free movement of people has proven more problematic. Immigrants bring fiscal costs as well as economic benefits, and rapid population changes in the United States and Europe engender debates about national identity. In the United States, the nature of immigration has changed quantitatively and qualitatively over the last five decades, adding to a demographic revolution. The Immigration and Nationality Act of 1965 not only eliminated national-origin quotas and restrictions but also created new provisions for family reunification. This led to greater numbers of immigrants as well as more diverse flows. Over one million people currently naturalize each year, and many millions of others receive temporary visas. In addition, large numbers of other migrants have crossed the border clandestinely, overstayed their visas, or otherwise added to an unauthorized population of about ten million people. Despite occasional nativist outbreaks and growing concern about irregular migration, the U.S. immigration system is unchanged in its fundamentals since 1965 (Leal 2010).

Nevertheless, the Westphalian nation-state system is unlikely to disappear, and recent policy developments point out the importance of nations and citizenship. While borders increasingly fail to contain the people, commercial interests, or ideas of any country (Herzog 1990; Zúñiga 1998; Fox 1999; DeLaet 2000), they are an undeniable feature of political life. Contemporary immigration enforcement is characterized by both border control and interior enforcement (Kanstroom 2007). For instance, recent federal budgets have seen a considerable expansion of resources and personnel dedicated to the U.S. Border Patrol. However, in a departure from recent past practices, the United States now deports about four hundred thousand individuals annually, almost ten times more than the yearly average before the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (U.S. Department of Homeland Security 2010). Immigrants are eligible for a declining number of social services, and even legal residents are subject to deportation if they commit—or are discovered to have committed—any of a growing list of crimes. Some states and localities—a small but well-publicized minority—have enacted laws aimed at discouraging or deporting unauthorized immigrants (such as
Arizona’s SB 1070) or cooperate in the federal-local 287(g) and Secure Communities programs.

While the Immigration Reform and Control Act of 1986, as well as European amnesties, suggest the possibility of eventual regularization, the prospects for a new amnesty program are unclear. Recent efforts to develop compromise immigration legislation have failed (Leal 2009a), including the Dream Act. For unauthorized immigrants, life in the United States has become more difficult over time, which reflects the theory of “self deportation.” Endorsed by Republican presidential candidate Mitt Romney (Preston 2012), the goal is to shrink the number of such immigrants but without more draconian interior enforcement measures.

Analyists often refer to a “thickening” of the U.S. border, which has implications not only for immigrants but also for the economy and relations with Mexico and Canada. The stricter identification requirements for crossing the border affect both citizens and non-citizens. Today, because of the 2006 Secure Fence Act, a new border wall is expanding across parts of the U.S.-Mexico frontier. In a post–September 11 world, with renewed concerns about security and terrorism, the integration of North America heralded by NAFTA in 1993 has encountered serious roadblocks, and the implications for the U.S. future are not well understood.

In addition, the last fifty years have seen dramatic demographic changes in the United States, particularly the growing size and diversity of the Latino population. The resulting political, economic, and cultural changes are not welcome developments for many. Mounting restrictionist sentiment in Congress, state legislatures, and local governments reflects at best a concern about border security and the “rule of law”—and at worst a nativist reaction that indicts all Latinos.

It is not surprising that few contemporary domestic policy issues capture the popular imagination like immigration. It involves issues central to America’s character and self-conception, touching on history, religion, culture, and economics. Many Americans find themselves caught between conflicting principles, facts, and frames. Opinion polls are often contradictory and depend on variations in question wording; while some indicate skepticism about migration and migrants, others
suggest openness to more generous reform options (Schildkraut 2012). Americans may also be less sympathetic to immigrants as a category than they are to individual immigrants. One question on the 2006 national exit poll gave voters a choice between legalization and deportation of unauthorized immigrants; 56 percent chose the former and 38 percent the latter.

This unique environment calls out for reasoned—perhaps even scholarly—debate, but this is unfortunately rare. The immigration debate often appears to exist in a parallel universe where policymakers ignore research, pundits present opinions as facts, politicians endorse obvious falsehoods, and the media boil complexities down to sound bites. How can the reality of immigration, immigrants, and border politics be discussed in a PowerPoint world?

While no book can comprehensively cover such a broad and multi-disciplinary subject (although, see Brettell and Hollifield 2008), this volume offers a timely analysis of key issues important to current national debates. These chapters include discussions of civic engagement, state and local reactions to immigration, transnationalism, immigrant access to social services, and political lives on the border. As a whole, it points out how borders continue to matter as well as how individuals nevertheless live with, and around, them.

A BRIEF HISTORICAL OVERVIEW

Public debates about migration and border issues too often lack an historical understanding of immigration patterns, laws, rules, and key events. We therefore provide a brief—and inevitably non-comprehensive—overview of immigration history in hopes of better contextualizing the discussion of Latinos and immigration.

To understand the political, social, and economic development of the United States requires an understanding of immigration and immigrants. Given its centrality, contentious debates about immigration are unsurprisingly found throughout American history. Contradictory ideas about who should become an American are seen at the very beginning of the Republic. For instance, President George Washington de-
clared an open-door immigration policy for both the “Respectable Stranger” and the “oppressed and persecuted of all Nations And Religions” in a 1793 speech to the Irish Volunteers, but he also signed the 1794 Naturalization Act that restricted citizenship to “free white persons.”

As immigration populations diversified throughout the nineteenth century, new racial and ethnic concerns would come to play a role in immigration policymaking. Not only were migrants arriving from non-traditional sending locales in southern and eastern Europe, but the U.S. border itself expanded in southern and westward directions. Territory was added via the Louisiana Purchase from France (1803); the acquisition of Florida from Spain through the Treaty of Adams-Onís (1819); the admission of Texas as the 28th state (1845); the addition of much of the present American southwest after the Mexican-American War and the Treaty of Guadalupe Hidalgo (1848); the addition of land to Arizona and New Mexico through the Gadsden Purchase from Mexico (1853); the purchase of Alaska from Russia (1867); and territory acquired through the Spanish-American War (1898) including Puerto Rico, Guam, and the Philippines.

After a century of Manifest Destiny, the nation grew to the shape we now recognize today—stretching from the Atlantic through the Caribbean to the Gulf of Mexico and then from the Pacific Ocean to the Bering Sea. With each addition, new, diverse populations were absorbed into America, although some new residents enjoyed full citizenship rights while others did not (and still do not, although for complex reasons); see the Supreme Court’s Insular Cases and the debate over whether “the Constitution follows the flag.” (Sparrow 2006). This expansion of people and land was not without controversy. For instance, the question of how much territory to annex after the Mexican-American War was interwoven with discussions—often negative—about the wisdom of incorporating Mexican citizens into the United States. The border reflected in the Treaty of Guadalupe Hidalgo reflected a compromise between maximizing land but minimizing people (Gutiérrez 1995).

The federal government became more involved in immigration policy with the 1875 Immigration Act, which excluded felons and prostitutes and prohibited the transportation of non-consenting Asian labor.
(DeLaet 2000; Tichenor 2002). Subsequent immigration laws contained racial dimensions: the Chinese Exclusion Acts (1882) largely closed migration from China, and the so-called Gentlemen’s Agreements (1907) ended most immigration from Japan. Later laws were aimed at reducing the growing number of migrants from southern and eastern Europe. The 1917 Immigration Act not only banned migration from Asia but also required literacy (in any language). Most importantly, the National Quota Law of 1921 and the Johnson-Reed Immigration Act of 1924 fixed migrant levels to a small percentage of foreign-born persons of each nationality residing in the United States in 1910 and 1890, respectively. Because the nation was primarily composed of northern European migrants in these earlier time periods, the effect of the law was to restrict eastern and southern European migration without directly saying so.

During this time period, some immigrants were expelled from the United States, and others returned to Europe or moved to Canada due to public hostility and the violence of nativist and vigilante groups (DeLaet 2000). Some state and local lawmakers, frustrated by federal immigration efforts, enacted their own policies (see Zolberg 2006 for a discussion of the “Passenger Acts”). These are broadly reminiscent of contemporary tactics, but sub-federal actions in this policy arena have faced considerable skepticism from the Supreme Court. Furthermore, Congress created the Border Patrol in 1924, and 1929 is commonly seen as the inauguration of the contemporary “illegal alien” (see below).

However, the immigration laws of the early twentieth century largely excluded restrictions on Mexican and Latin American migration, both through legal exemption or administration rule making. For instance, the National Quota Law of 1921 exempted “aliens who had resided continuously for at least one year immediately preceding their application in one of the independent countries of the Western Hemisphere” (this exemption was subsequently changed to five years in 1922). A Western Hemisphere exemption was also part of the 1924 law. The Immigration and Nationality Act of 1952 accorded non-quota status to natives of Western Hemisphere countries, including their families. It also included the “Texas Proviso,” which specifically exempted the employment of unauthorized migration from “harboring” provisions (Calavita 1992). In addition, the Border Patrol was not primarily
tasked to prevent Mexican or Latin American migration but rather those who were trying to circumvent the aforementioned national-racial restrictions.

These policy decisions largely reflected agricultural and business interests in the southwest. The arguments used at the time would be familiar today—jobs that needed workers, and the importance of economic growth. Other arguments were based on stereotypes and racist beliefs (for example, it was said that Mexicans were particularly suited for hard labor in hot climates). The Dillingham Commission (formally the United States Immigration Commission) essentially concluded in its 1911 report that Mexicans were desirable as laborers but not as settlers (Gutiérrez 1995). Vélez-Ibáñez (1996, 7) saw this use of labor as imposing a “commodity identity” on Mexicans; although these communities resisted this identity, it had considerable repercussions for Mexican and Mexican-American cultures.

Until 1917 the U.S.-Mexico border was virtually unregulated. This reflects the fact that the 1848 border divided an area with long-established travel patterns and community life. After 1917, Mexican migrants needed birth certificates, marriage certificates, certificates of good conduct and good health, proof they would not become a public burden, ten dollars for a visa, and eight dollars for an entry tax (Portes and Bach 1985). The first recruited immigrants from Mexico were contract laborers who entered the country temporarily for purposes of work during World War I but were required to return to Mexico once their contracts were over in 1921. This policy was a compromise representing an effort on the part of the U.S. Congress to mediate between anti-immigrant, anti-Mexican sentiment and the need for cheap labor (Calavita 1992; Lorey 1999).

In addition to some permanent settlement, a large number of Mexicans commuted across the border to work in the United States, and others entered temporarily to work seasonally in labor-intensive industries—agriculture, railroads, mining, stockyards, and related employment sectors. Labor circulation never ceased to be the dominant mode of entry, even when the number of legal immigrants from Mexico was the highest; it steadily rose since the early 1900s and greatly accelerated after the first temporary admission program ended in 1921 (Calavita 1992; Gutiérrez 1995; Lorey 1999).
By 1926, the number of legal immigrants from Mexico had steadily increased due to the heavy recruitment of Mexican workers, the construction of railroad lines connecting the interior of Mexico with the United States, and refugee movements caused by the Mexican Revolution (Portes and Bach 1985; Calavita 1992; Gutiérrez 1995; Lorrey 1999). With this combination of factors, immigration from Mexico outpaced that from all other countries. The U.S. Consular Service was generous in issuing visas until the late 1920s, when public sentiment became concerned that the migrant population was growing too rapidly. The State Department exercised its discretionary authority to bar Mexicans from entering the United States at the onset of the Great Depression.

The 1929 Acts of March 2nd and March 4th for the first time criminalized border crossing without documentation, amending existing immigration law to allow for deportation, fines, and imprisonment for individuals with no record of legal admission to the United States (Portes and Bach 1985; Lorey 1999; Massey, Durand and Malone 2002; USCIS nda). Because the policing and enforcement actions required to uphold this policy were contrary to southwestern agricultural and railroad needs for Mexican labor, such enforcement was usually a low priority. In fact, both Mexico and the United States tolerated, and in some cases actively recruited, unauthorized Mexican workers for decades (Portes and Bach 1985; Andreas 2000).

The tension between politics and economics is visible in the mix of immigration laws of the twentieth century. Some programs increased immigration. The need for labor during World War II led to the 1943 Emergency Farm Labor Program—more commonly known as the Bracero program—which provided temporary agricultural workers from Mexico with workplace and wage guarantees. The 1943 Naturalization Act formally repealed the Chinese Exclusion Acts, although quotas from Asia remained low. The 1946 War Brides Act facilitated the entry of veterans’ foreign-born spouses and children (USCIS ndb). Cold War politics extended a safe haven for refugees from certain Communist nations through the 1953 Refugee Relief Act, which allowed refugees to enter at numbers higher than their quota allowed (Salehyan and Rosenblum 2004). The Cuban Adjustment Act (1966) provided sub-
stantial financial and legal benefits for those fleeing Castro’s Communist government.

On the other hand, the Cold War and McCarthyism gave rise to the 1950 Internal Security Act, allowing for the deportation and exclusion of alien “political subversives.” The Immigration and Nationality (McCarran-Walter) Act of 1952 legislated the exclusion and deportation of aliens from thirty-three categories. However, while it largely preserved the national-origin quota system, it also ended the “Asiatic Barred Zone,” created a relatively small number of visas for nonwhite immigrants, and abolished racial requirements for citizenship (USCIS ndb; DeLaet 2000; Tichenor 2002).

The key event in contemporary migration history is the 1965 Hart-Celler Act, which abolished the existing quota system (Tichenor 2002; USCIS ndb). The reality of an immigration policy based on race and national-origin was out of touch with American values, and this was also a public relations problem during the Cold War (DeLaet 2000). The new legislation set in place the migration framework still largely in place today, with admissions primarily for family reunification and those with particular skills and professions. It also set a yearly limit of 120,000 individuals from the Western Hemisphere. Public statements at the time suggested that few believed—or wanted to state publicly—that this law constituted a major change to immigration policy or demography. At the signing ceremony, President Lyndon Johnson said “This bill that we will sign today is not a revolutionary bill. It does not affect the lives of millions. It will not reshape the structure of our daily lives” (Tichenor 2002, 218). However, the law would transform America.

As legal immigration became larger and more diverse, a parallel dynamic was the growing number of unauthorized immigrants. By the 1980s, the subject was on the political agenda. The 1986 Immigration Reform and Control Act (IRCA) was designed as a grand compromise between those who favored legalization and enforcement (Massey et al. 2002). On the one hand, IRCA created a process for the regularization of unauthorized immigrants who had continually lived in the United States since January 1, 1982. On the other hand, it enhanced enforcement at the U.S. border and instituted “employer sanctions” for those who knowingly hired the unauthorized.
Ultimately, IRCA led to the legalization of about 2.7 million unauthorized immigrants (U.S. Immigration and Naturalization Service 1992; Baker 2010)—many more than the anticipated one million. However, very little workplace enforcement transpired, and as employers were not held responsible for ascertaining the validity of identification documents, unauthorized immigrants continued to find a warm embrace in many economic sectors.

U.S. policy toward irregular migration would primarily involve augmenting border security and reducing immigrant eligibility for government services. Apart from an occasional (and well publicized) workplace raid, there was little interior enforcement for several decades. However, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), as explained below, would dramatically change this status quo.

GLOBALIZATION AND MIGRATION CONTROL

Scholars have long studied the push and pull of economic forces that bring labor and goods across borders, as well as the networks that sustain this constant movement (Portes and Bach 1985; Andreas 2000; Brettell 2008; Ramos 2002). The spectrum of the basic typologies of migrants—seasonal, temporary, recurrent, continuous, permanent, and conflict-related—illustrates the complexity of the relationship between the sending and receiving nations, as well as the social and cultural institutions that facilitate and reflect population movement (Brettell 2008). While the political relationship between Mexico and the United States is historically contentious, this belies their degree of social and economic integration. Controversies involving immigration, narcotics, and crime could pose challenges to this relationship (Brakman and Erie 2001).

Recent years have seen a number of steps that diminish the barrier posed by the U.S.-Mexico border to the regional economy. While IRCA and subsequent legislation were primarily designed to regulate immigration, economic forces—among them, the 1994 North American Free Trade Agreement (NAFTA)—worked to facilitate and encourage
cross-border trade. This attempt to deregulate trade without deregulating labor has not stemmed immigration flows, despite some political promises to the contrary. In fact, greater regional integration may have increased migration.

As globalization increasingly calls into question traditional borders, and as migration transforms societies and cultures, some interpret U.S. immigration policies as seeking to reaffirm national authority (Albert and Brock 1998; Saint-Germain 1998) or reassuring the public (Albert and Brock 1998; Andreas 2000; Hollifield 2008; Bailey 2001). These official efforts to control what some call a “global migration crisis” (Weiner 1995) have both real and symbolic elements. Whether any specific policy proposal is genuine or disingenuous is impossible to ascertain, although advocates likely have varying and even mixed motivations.

Until recent years, most enforcement activity involved “disincentive strategies” (Cárdenas 2006) designed to encourage immigrants to remain in or return to their nation of origin. The logic behind this strategy was that the longer immigrants stayed in the United States, the higher the costs to society through increased use of government services. These kinds of societal costs would be minimized in inverse relation to the length of time that migrant workers remained in the United States. Government strategies therefore sought to bar, limit, or discourage unauthorized—and some legal—immigrants from utilizing public services. For instance, the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) enacted restrictions or prohibitions on access to federal public benefits by unauthorized immigrants and even some legal permanent residents (DeLaet 2000; Cohen 2007). These disincentive strategies have since extended beyond the federal level. A relatively small number of locales have enacted ordinances aimed at unauthorized immigrants, such as preventing landlords from renting to unauthorized immigrants. Some states have passed ballot initiatives directed at immigrants or public policies tied to Latinos more broadly, such as bilingual education. More recently, a growing number of states and cities have considered proactive efforts to enforce immigration laws and discourage unauthorized immigrants. For example, the 287(g) and Secure Communities programs are cooperative ventures between federal immigration officials and local law enforcement agencies.
In addition, some states have considered laws designed to deny social services or citizenship to children born in the United States to unauthorized immigrant parents (as either a direct challenge to, or a circumvention of, the Fourteenth Amendment). However, the number of such laws is relatively small, and a study by the Woodrow Wilson Center found that recent state and local immigrant-related laws are just as likely to expand immigrant rights as to restrict them. Whether this recent spate of immigration lawmaking across the federal system represents the start of an important new development—or a short-lived trend that fails to pass constitutional muster—is unclear.

Such efforts often reflect views that are quick to blame unauthorized migration on the individual migrant instead of considering the role of larger economic contexts. For example, certain labor markets in the United States have typically included a sector of temporary, unauthorized workers as a permanent component; the mutual dependency between these businesses and Mexican labor has evolved over time and will be slow to change (Vélez-Ibáñez 1996; Andreas 2000). Lacking avenues for legal entry into the United States that were available for European workers to meet the needs of a previous turn-of-the-century economy, the majority of immigrant workers from Mexico have had few options other than to enter temporarily and usually illegally (Portes and Rumbaut 2006). While some immigration-skeptics argue that prospective immigrants should “get in line,” there are essentially no lines available to the vast majority of unskilled and semi-skilled workers needed by sectors of the economy that depend on low-wage labor. Holding immigrants responsible for responding to conditions they did not create may not be the best way to understand or address migration dynamics that are increasingly global in dimension. Many have noted the difficulty of stopping immigrants “when the invisible hand of Adam Smith is waving them across the border” (Leal 2010).

Lastly, the public (not to mention politicians) is often unaware that immigration reform can involve unintended consequences. For instance, the increased border enforcement of the last few decades may have in fact encouraged unauthorized migrants to settle permanently (Massey et al. 2002). As crossing the U.S.-Mexico border became increasingly difficult and dangerous, many responded by bringing their families north.