

# DUTCH UNCLE SAM: IMMIGRATION REFORM AND NOTIONS OF FAMILY

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## I. INTRODUCTION

Immigration reform has been the watchword of the last decade as the effort has continued to redefine our notions of who “belongs” in the United States. This effort to redefine who “belongs” started with the Immigration Reform and Control Act of 1986,<sup>1</sup> which to a large extent addressed undocumented immigration. This effort continued with the Immigration Act of 1990, which added for the first time an overall limit to the number of persons able to immigrate as family members.<sup>2</sup> This effort also surfaced in the recently enacted Illegal Immigration Reform and Immigrant Responsibility Act,<sup>3</sup> which modifies provisions on both undocumented and legal immigration. Although the United States has long been known as a country favoring immigration, where individuals and families are encouraged to begin new lives of expanded opportunity, this version of the American Dream has faded as we move toward ever-narrowing rules of alien admissions and alien access to benefits. If, as W.E.B. Du Bois stated, the problem of the twentieth century was the problem of the color line,<sup>4</sup> then the problem as we head into the twenty-first century will be the problem of the borderline.

Immigration reform, however, is not a new phenomenon. For as long as there have been immigration laws, there have been immigration reform movements. Particularly noteworthy about the changes to immigration law over the decades is the degree to which many of these laws strike at concepts of family. There is much currency in discussions of “intersections” in

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<sup>1</sup> Pub. L. No. 99-603, 100 Stat. 3359 (1986).

<sup>2</sup> Pub. L. No. 101-649, 104 Stat. 4978 (1990).

<sup>3</sup> Pub. L. No. 104-208, 110 Stat. 3009 (1996).

<sup>4</sup> W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 54 (photo. reprint 1969) (1903).

seemingly distinct areas of legal thought.<sup>5</sup> There are, for example, discussions of the intersection of gender and race, race and class, and other notable "crossings." Immigration and the family can perhaps be seen as yet another area of intersection, as we look at how the one affects and depends upon the other. While intersections are a handy figurative device for examining the interrelation between topics, I am mindful of the very literal sense of an intersection: a busy, crowded traffic area that allows crossings from one side of the street to the other. Useful places, clearly, but places where traffic is also very likely to run down people.

When it comes to immigration and the family, our always welcoming Uncle Sam has often played a dual role as the Dutch uncle. For example, one of the most debated provisions of the recent Immigration Act was the attempt to deny a free public education to undocumented children.<sup>6</sup> The recent Personal Responsibility and Work Opportunity Reconciliation Act all but eliminates access to means-tested programs for newly arrived, documented alien families.<sup>7</sup> Some have suggested changing the Fourteenth Amendment to eliminate birthright citizenship, one of the foundations of alienage jurisprudence.<sup>8</sup>

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<sup>5</sup> See, e.g., Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244-45 n. 9 (1991). Professor Crenshaw describes intersectionality as "a provisional concept linking contemporary politics with postmodern theory" which "can and should be expanded by factoring in issues such as class, sexual orientation, age, and color." *Id.* It should also be expanded, I would submit, by factoring in issues of nationality or alien status, such as are implicated in immigration law. While Professor Crenshaw does discuss the plight of immigrant women, it is not clear that she views such alien status as an independent issue for intersectionality analysis. See also Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 U.C.L.A. L. REV. 1509, 1542 (1995) (discussing the disadvantages facing immigrants who seek public benefits). Professor Johnson suggests that the multiple disadvantages of immigration status, ethnicity, gender, and class "interact synergistically," such that "independent analysis of each variable underestimates the magnitude of the problem." *Id.* Subordination based on these factors is "not simply the sum of the various components, but indeed may best be viewed as a multiple of them." *Id.*

<sup>6</sup> The Gallegly Amendment, H.R. 4134, 104th Cong. (1996). This portion of the bill was eventually stricken as objectionable; however, it should be considered on its own merits.

<sup>7</sup> Pub. L. No. 104-193, 110 Stat. 2105 (1996).

<sup>8</sup> U.S. CONST. amend. XIV. The Republican Platform of the 1996 presidential election called for the elimination of the concept of birthright citizenship. See Robert Pear, *Citizenship Proposal Faces Obstacle in the Constitution*, N.Y. TIMES, Aug. 7, 1996, at A13. The Fourteenth Amendment, though enacted to establish the citizenship of freed slaves, was eventually interpreted to ensure the citizenship of all born in this country, even the children of

What is behind this apparent movement to close ranks against family immigration? Is this a new movement on the American scene? Is it part of an effort to invest value into American citizenship by limiting the “goods” of our society to only those who have acceded to citizenship with all of its attendant duties? Is it an effort to forge a more cohesive national polity with the erection of barriers which effectively create a “them” to our “us”? Is it merely a nativist resurgence triggered by bald economic concerns?

This article explores some of these questions by looking at the evolution of immigration law through the particular prism of notions of family immigration over the history of the settlement of the United States. Arguably, the settlement and ultimate development of the American continent was helped, not hindered, by the immigration of families; immigrant families anchored those settlements, which evolved into colonies and eventually into some of our fledgling United States. Yet, since even those earliest times, Americans have demonstrated ambivalence toward the movement of families.

## II. IMMIGRATION AND THE FAMILY—HISTORICAL ANTECEDENTS

During much of the history of the United States and Colonial America, no limits or particular rules existed regarding immigration.<sup>9</sup> Entrants who reached the shores of the New World simply belonged to the countries that laid claim to the various geographical regions of the Americas. Two major themes fueled these early entrants to the Americas: the search for economic gain and the search for freedom of religion and lifestyle. The goals demonstrate opposing tensions, it having been said that one cannot serve God and Mammon.<sup>10</sup> Those searching for wealth were typically not families, and those groups that did immigrate as families were rarely motivated primarily by hopes of improved financial prospects.

The Dutch, among earliest European arrivals to the Americas, typically carried out exploration of the New World via various other European contractors.<sup>11</sup> The Dutch did not promote heavily the immigration of Dutch

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aliens. See *United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898).

<sup>9</sup> THOMAS ALEXANDER ALEINIKOFF & DAVID A. MARTIN, *IMMIGRATION PROCESS AND POLICY* 1 (2d ed. 1991).

<sup>10</sup> *Matthew* 6:24.

<sup>11</sup> See JOHN FISKE, *THE DUTCH AND QUAKER COLONIES IN AMERICA* 96-115 (1899). For example, Henry Hudson, who is credited with exploring the Hudson river region of New York State, was an Englishman contracted by the Dutch.

individuals or families, but rather were often instrumental in the settling of groups from other nations.<sup>12</sup> Despite Dutch naval and exploratory prominence, settlements comprised of persons of Dutch nationality were often limited.<sup>13</sup>

The goals of wealth-seeking and seeking to spread religion seemed intertwined in the motivations of some of the earliest entrants, to the point that it was unclear where one superseded the other. The immigration of families was typically not the practice of those seeking wealth. The Spanish came in search of the wealth of the Indies, and later in search of the wealth of the native tribes.<sup>14</sup> The additional goal of bringing God to the natives often accompanied this search for wealth.<sup>15</sup> Spanish efforts at inculcating native groups and the development of the mission system are well noted in the annals of history.<sup>16</sup> Though they may have practiced religion with a different twist

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<sup>12</sup> *Id.* Via the Dutch East India Company, a joint stock company founded in 1602 to promote the exploration of the new territories, and later, via the West India Company in 1619, the Dutch laid claim to the territories in and around what is now Manhattan island in New York. *Id.* According to Fiske, the Dutch nearly launched the journey of the Pilgrims, who landed at Plymouth Rock in New England; instead, the Dutch deemed it prudent to reject the Pilgrim petition to settle in Manhattan and to allow England to settle them in their own territories. *Id.*

<sup>13</sup> *Id.* at 49-50. In 1588, the Dutch defeated the Spanish Armada, the Spanish sailing fleet that had until then been considered an invincible naval fleet. *Id.* The defeat of the Spanish, who at that time also ruled the Portuguese, allowed the Dutch free reign over the New World colonies of both Spain and Portugal. *Id.* Still, the Dutch peopling of these colonies was limited to the New York region and to small groups in the Caribbean. *Id.*

<sup>14</sup> The voyages of Columbus were spurred by his desire to find a new route to the Indies in order to gain prominence in the lucrative spice trade. He learned that the "Indies" were actually the Americas. Subsequent Spanish explorers became aware of the great wealth of some native civilizations and took advantage of this knowledge. See E. BRADFORD BURNS, *LATIN AMERICA* 11-18 (2d ed. 1977).

<sup>15</sup> See generally JOHN TRACY ELLIS, *AMERICAN CATHOLICISM* (2d ed., rev. 1969) (discussing the role of Catholicism in colonial America).

<sup>16</sup> See generally FRAY BARTOLOMÉ DE LAS CASAS, *THE SPANISH COLONIE* (photo. reprint 1966) (1583) (concerning the conversions of natives in South America, and the work of the Franciscans, Jesuits, and other Catholic orders in creating the mission system in Texas, New Mexico, Florida, and California). The missions consisted of a series of religious enclaves whose "mission" was to spread Catholicism throughout the region of Spanish colonial holdings and to act as a civilizing influence on the natives. *Id.* A further goal was to act as rest stops for Spaniards engaged in commerce throughout the region. *Id.* Though the twenty-one missions of California are perhaps best known, there were twice that many in New Mexico. *Id.*

It is interesting to note that Bartolomé de las Casas' protestations against the enslavement of natives led to the Spanish enslavement of Africans. See William M. Wiecek, *The Origins of the Law of Slavery in British North America*, 17 *CARDOZO L. REV.* 1711, 1737 (1996).

once they reached the Americas, the Spanish did not come so much in search of a new religious tradition as to spread the old one.<sup>17</sup> Because the majority of Spaniards immigrated without women, Spaniards, more often than other Europeans, married native women and created new mestizo or mixed families.<sup>18</sup> These families ultimately formed the population bases of several Latin and South American countries. In forming the new societies, however, adventurers from the old country discarded old ways and attachments. Without links to the old country to assist in the development of these new world societies, some settlements languished in the wilderness, or failed outright.<sup>19</sup>

Early settlers in French portions of the Americas had a relatively small number of entrants seeking refuge from religious persecution; they concentrated also upon personal and national enrichment.<sup>20</sup> These treasure-seekers, like many of their Dutch and Spanish counterparts, typically came to the Americas without the burdens of family, and like early Spanish entrants, often formed alliances with local and native women.

Although a significant number of early English adventurers also sought monetary gain,<sup>21</sup> and therefore were unaccompanied by families, this grew to

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<sup>17</sup> See JOACHIM PRINZ, *THE SECRET JEWS* 55-60 (1973). One exception is the Spanish Jews, who, in 1492, the year of Columbus' voyage, were expelled from Spain and sought refuge throughout the world, including parts of North and South America. *Id.* at 53-54. Many among the Jewish converts to Christianity also sought refuge outside Spain. *Id.* at 54. Because many privileges were even denied to Jews abroad in the new world, it was deemed prudent to keep secret one's Jewish ancestry; few such individuals returned to Judaism even after leaving Spain. *Id.* There has even been speculation that Christopher Columbus himself was a secret Jew, or Marrano as they came to be called during this period. *Id.* at 56. He was said to be descended from a Spanish Jewish family that moved to Italy after converting to Christianity. *Id.* It is clear that several members of his 1492 crew were Jewish converts to Christianity. *Id.* at 57. One member, Luis de Torres, returned to Judaism once he reached Cuba, and remained there. *Id.*

<sup>18</sup> See generally ELLIS, *supra* note 15.

<sup>19</sup> *Id.*

<sup>20</sup> One exception was the French Huguenots, Protestants who sought refuge in Canada and ultimately in some parts of what was to become the United States.

<sup>21</sup> According to Alexis de Toqueville,

Virginia was the first of the English colonies, the immigrants arriving in 1607. At that time Europe was still peculiarly preoccupied with the notion that mines of gold and silver were the basis of the wealth of nations. That was a fatal notion that did more to impoverish the European nations deluded by it and cost more lives in America than were caused by war and all bad laws combined. It was therefore gold-seekers who were sent to Virginia, men without wealth or standards whose restless,

be the exception rather than the rule, as the motivations for westward movement shifted. A significant number of the early English settlers, in contrast to those of other nations, were often impelled by the desire for personal expression through religious faith.<sup>22</sup> As God and Mammon figure in one formulation, so God and family figure in another. Entrants seeking freedom of religion and lifestyle often brought with them their entire families, effectively transplanting the family tree, root and branch.<sup>23</sup> For example, the founders of the Massachusetts Bay colony, the Pilgrims, sought refuge from the oppression of the English religious establishment.<sup>24</sup> Founders of Maryland were Catholics seeking religious freedom.<sup>25</sup> A significant number of Quakers were instrumental in the development of the Pennsylvania region.<sup>26</sup> The family-centered religious practices of the Quakers, which led in part to their departure from England, helped them to develop one of the most thriving colonies in the English colonial period.<sup>27</sup> These religionists clearly ushered in a new variety of European immigration by bringing with them families and the traditions of the old countries.

The development and maintenance of the English settlements in North America, contrasted with the halting development and later failure of other New World colonies of other European nations, is perhaps due in large part to the English preference for family immigration.<sup>28</sup> For example, the early

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turbulent temper endangered the infant colony and made its progress vacillating. ALEXIS DE TOQUEVILLE, *DEMOCRACY IN AMERICA* 34 (J.P. Mayer ed. & George Lawrence trans., Anchor Books 1969).

<sup>22</sup> See generally *id.* (analyzing the development of democracy in American society).

<sup>23</sup> *Id.* at 360 ("The other colonies had been founded by unattached adventurers, whereas the immigrants to New England brought with them wonderful elements of order and morality; they came with their wives and children to the wilds.").

<sup>24</sup> *Id.*

<sup>25</sup> See Frank D. Roylance, *After 3 Centuries, a Rebirth; Dismantled Chapel in St. Mary's City to be Reconstructed*, BALTIMORE SUN, Apr. 26, 1997, at B1.

<sup>26</sup> See generally FISKE, *supra* note 11, at 96-115.

<sup>27</sup> See BARRY LEVY, *QUAKERS AND THE AMERICAN FAMILY* 86-87, 124-33 (1988). The Quaker religious tradition called for unpaid ministers and required that Quaker parents raise their children in an atmosphere of "holy conversation," the speech and demeanor of a converted person. *Id.* at 86. This meant that children must be placed "on livable land or in occupations exclusively among pious Quakers." *Id.* These strictures made life in England, with its attendant high land values and numerous nonbelievers, difficult to sustain and encouraged immigration to the American colonies. *Id.* at 124-33. These same requirements aided in the economic growth of the Quaker colonies in America. *Id.*

<sup>28</sup> STEPHAN THERNSTROM, *POVERTY AND PROGRESS: SOCIAL MOBILITY IN A NINETEENTH*

settlers of Massachusetts transplanted, as part of the social order of villages, the notion of “family government.”<sup>29</sup> Every member of the community was necessarily attached to some family.<sup>30</sup> In 1668, each town, under the order of the Commonwealth of Massachusetts, drew up a list of young persons living outside the discipline of family government.<sup>31</sup> The list included persons who did not live with parents, or who did not serve as apprentices, hired servants, or journeymen.<sup>32</sup> Such persons were presumed to be given to vice and to “dissolute practices.”<sup>33</sup> The Massachusetts Bay Company, in an effort to counter the ill effects of single immigrant men arriving without families, created artificial families, consisting of selected groups of persons over whom a family “chief” was established.<sup>34</sup> The chief was then responsible for the assigning of religious and other duties in the “family” in order to ensure the morals of the immigrants.<sup>35</sup>

With the development of the English colonies came prohibitions on immigration. The individual colonies, while perhaps family friendly, wanted to avoid the entrance of those whose presence posed a potential burden on colonial societies. Typical regulations prevented the entrance of criminals, the sick, or the poor.<sup>36</sup> Because some colonies, for example, had served as lands of exile for the convicts in Britain, there was particular concern with the

CENTURY CITY 35 (1977).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* See JOHN DEMOS, *A LITTLE COMMONWEALTH: FAMILY LIFE IN PLYMOUTH COLONY* 78 n.41 (1970). Demos details an example of a Plymouth colony law regarding single persons: Whereas great inconvenience hath arisen by single psons [sic] in this Collonie [sic] being for themselves and not betakeing [sic] themselves to live in well govmed [sic] families It is enacted by the Court that henceforth noe [sic] single pson [sic] be suffered to live of himselfe [sic] or in any Family but such as the Celectmen [sic] of the Towne shall approve of.

*Id.* (quoting WILLIAM BRIGHAM, *THE COMPACT WITH THE CHARTER AND LAWS OF THE COLONY OF NEW PLYMOUTH* 156 (Boston 1836)).

<sup>34</sup> THERNSTROM, *supra* note 28, at 35-36.

<sup>35</sup> *Id.*

<sup>36</sup> See Gerald L. Neuman, *The Lost Century of Immigration Law (1776-1875)*, 93 COLUM. L. REV. 1833 (1993); See also Lolita Buckner Inniss, *California's Proposition 187—What Does It Say? What Does It Mean?—A Constitutional and Textual Analysis*, 10 GEO. IMMIGR. L. J. 577 (1996) (examining California statute denying illegal aliens the right to receive state public benefits).

continued entry of such persons.<sup>37</sup> Despite these prohibitions, arrival in the American colonies was still an open proposition.

Later, after independence from England, the borders remained more or less open. The first nationality and citizenship law, limiting citizenship to whites only, was introduced in 1790.<sup>38</sup> No further federal immigration laws were introduced until 1875 and 1882, when legislation barring the admission of criminals, prostitutes, idiots, lunatics, and any person likely to become a public charge was introduced.<sup>39</sup> Provisions of these acts were substantially similar to much of the *state* immigration legislation which had been in force during much of the colonial and early nationhood period.<sup>40</sup> As with the early colonial laws, these federal laws were more concerned with the *proscription* of certain types of entrants than with the *prescription* of a particular type of entrant. The narrowly circumscribed categories that now typify immigration law, such as employment immigration and family-based immigration, were developed much later.<sup>41</sup>

Early notions of the sort of person who ought to be admitted into the United States gained currency in the period around 1820, when great upheavals in Europe caused a wave of immigration. William Rawle, a Pennsylvania colonial leader, spoke of some of these considerations in an address in Philadelphia in 1819. Migration, Rawle stated, could be divided into two classes: "that which was compulsory, and that which was voluntary."<sup>42</sup> The compulsory migrants, transported convicts and slaves, were "detrimental and disgraceful" to the newly formed United States.<sup>43</sup> Migrants, said Rawle, should be subject to an inquiry as to the "description of foreigners it is desirable to receive."<sup>44</sup> Rawle then went on to consider categories of entrants based upon occupation.<sup>45</sup>

Notwithstanding the absence for the most part of any defined categories of immigrants, a significant number of immigrants to the United States in the

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<sup>37</sup> *Id.*

<sup>38</sup> Act of Mar. 26, 1790, ch. 3, 1 Stat. 103.

<sup>39</sup> Act of Mar. 3, 1875, ch. 141, 18 Stat. 477; Act of Aug. 3, 1882, ch. 376, 22 Stat. 214.

<sup>40</sup> See Buckner Inniss, *supra* note 36, at 586.

<sup>41</sup> The Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952).

<sup>42</sup> William Rawle, *An Address Delivered before the Philadelphia Society for Promoting Agriculture* (Philadelphia 1819) 16, 19-28, cited in OSCAR HANDLIN, *IMMIGRATION* 6 (1959).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 7-10.



early days were economic migrants seeking a better living.<sup>46</sup> Although a substantial number of entrants to the American colonies and later the fledgling United States were religious migrants, this gave way as changes in Europe's agrarian systems, famines, and other disasters fueled outward migration. Although in some instances entire families migrated, far more often fortune seekers did so either alone or with only those family members who would be equally able to shoulder the burden of wage earning.<sup>47</sup> Some of those who sought their fortunes were single; still others left behind parents, spouses, children, and more extended family members.<sup>48</sup> As Oscar Handlin wrote, "the family had not been a thing in itself, but an integral element of the village. . . . No one could live except as a member of a family. Emigration took the family out of the village."<sup>49</sup> The larger unit of the family became an economic liability; those who were able to break off did so, often at the expense of weaker family members.<sup>50</sup>

This trend of coming to the United States as individuals seeking economic gain in the early 1800's gradually gave way to a renewed family immigration in the middle and late 1800's. Entire families began to crowd into the steerage of ships to journey to the United States. Again, the chief impetus was economic, as revolutionary changes in Europe of a magnitude never before seen caused entire families to leave home villages, never to return. Where once limited prospects had caused many to seek their fortunes in the west, a complete lack of hope later caused many to move entire families in the belief that no source of sustenance remained in the old country. Concern with the nature of immigrants became especially pronounced as the New England states and port cities began to see the arrival in the mid 1800's of a flood of the desperately poor. Numbering among these were Irish immigrants fleeing the potato famine of 1845.

The Irish who immigrated to the United States in the years following the famine were distinct from previous immigrants in that they had no carefully laid plans to reach a more desirable home, but rather were hoping to escape what lay behind.<sup>51</sup> They ran from poverty, disease, and hunger with barely

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> OSCAR HANDLIN, *THE UPROOTED* 227 (1951).

<sup>49</sup> *Id.* at 227-28.

<sup>50</sup> *Id.*

<sup>51</sup> OSCAR HANDLIN, *BOSTON'S IMMIGRANTS: A STUDY IN ACCULTURATION* 50-51 (1959).

enough money to pay for passage.<sup>52</sup> Once they arrived, they often possessed few skills that would qualify them for higher employment.<sup>53</sup> A significant number of those seeking relief in New England towns were the immigrant Irish, as some of the local economies could not immediately absorb the new arrivals and their families.<sup>54</sup>

Toward the end of the nineteenth century, Eastern European and Italian migrations contributed to the influx of downtrodden immigrants, often with entire families.<sup>55</sup> The breakup of peasant economies in Eastern Europe and the Slavic countries led to massive immigration of those persons who found themselves landless and overwhelmed with debt.<sup>56</sup> The Italians, plagued by similar problems, also had massive outward movement, particularly from southern Italy. Although it has been estimated that some eighty percent of Italian immigrants at the end of the nineteenth century were men, a substantial number of these persons were seasonal migrants who worked in the United States for eight or nine months before returning.<sup>57</sup> The greatest numbers of those Italians remaining permanently in the United States were members of family groups.

During these early years, no established policy of immigration existed on a federal level to address this movement, but a substantial number of state immigration law measures began to address some of the issues arising with the renewed immigration of families. For example, the state laws attempting to limit the entry of persons who would become "public charges" can be seen as a type of prohibition on family immigration when it is considered that single men were readily employable and therefore not likely to become "public charges." The notion of public charge included within its ambit widows with children or unaccompanied women, who might fall prey to "vice."<sup>58</sup> Prohibitions also existed on the immigration of the aged or infirm, persons who, unable to secure work, would most likely come to rely upon already present family members.<sup>59</sup> Massachusetts, for example, erected

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<sup>52</sup> *Id.*

<sup>53</sup> See THERNSTROM, *supra* note 28, at 17-20.

<sup>54</sup> *Id.* at 21, 25-26.

<sup>55</sup> HANDLIN, *supra* note 51, at 26-31.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 30.

<sup>58</sup> See Act of July 11, 1851, ch. 523, 4, 1851 N.Y. Laws 969, 971-72.

<sup>59</sup> See Act of Mar. 20, 1850, ch. 105, 1, 1850 Mass. Acts & Resolves 338, 339.

barriers to limit the newly arrived poor's ability to draw from local relief funds.<sup>60</sup>

The impetus of Asian immigration, mainly from China and Japan, led to the first federal immigration laws in the United States. The Chinese began arriving in California in large numbers as a result of the Taipeng Rebellion in China.<sup>61</sup> This coincided with California's admission to the Union in 1850, two years after the 1848 gold rush, which brought an influx of various types of persons. The Chinese in California often served as menial laborers on farms and in mines.<sup>62</sup> Because of a shortage of women, the Chinese often performed laundry and cooking work—work that women performed in eastern United States cities. Chinese immigrants also settled in some eastern locations such as Boston and New York,<sup>63</sup> but their numbers were relatively small. Eventually, this Chinese immigration came to include women and other family members of laborers.

Public sentiment against the Chinese in California rose dramatically as whites began to view these immigrants as a glut to the labor market and as pernicious newcomers whose foreign families would soon outnumber them. Earliest attempts on the local level to discourage Chinese settlement included the enactment of laws that denied them citizenship, excluded them from schools, levied special taxes upon them, and precluded them from certain occupations.<sup>64</sup> The federal government responded to the complaints of the Californians by first limiting Chinese immigration in 1875,<sup>65</sup> and later barring it entirely via the 1882 Chinese Exclusion Act.<sup>66</sup> Though the 1875 Act grew out of substantial anti-Chinese sentiment, some proponents of the Act maintained it was directed at protecting Chinese immigrants. One such supporter was President Ulysses S. Grant, who stated in his December 7, 1874 message that there was a need to curb immigration of the Chinese because of the twin evils of the "coolie" (cheap Chinese labor) trade, and the importation of Chinese women for prostitution. According to President Grant, Chinese

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<sup>60</sup> THERNSTROM, *supra* note 28, at 25.

<sup>61</sup> FRANK CHUMAN, *THE BAMBOO PEOPLE* 3 (1976).

<sup>62</sup> *Id.* at 4.

<sup>63</sup> HANDLIN, *supra* note 48, at 213. In 1880 there were 121 Chinese persons in Boston. *Id.*

<sup>64</sup> See STEPHEN H. LEGOMSKY, *IMMIGRATION LAW AND PROCEDURE* 15-16 (1991); see also CHUMAN, *supra* note 61, at 19-31.

<sup>65</sup> Act of Mar. 3, 1875, ch. 141, 18 Stat. 477 (repealed 1974).

<sup>66</sup> Act of May 6, 1882, ch. 126, 22 Stat. 58 (repealed 1943).

women immigrants were arriving on United States shores, not to complete family units or to work at honest labor, but rather for immoral purposes:

the great proportion of Chinese immigrants who come to our shores do not come voluntarily. . . . [and] [i]n a worse form does this apply to Chinese women. Hardly a perceptible percentage of them perform any honorable labor, but they are brought for shameful purposes, to the disgrace of the communities where settled and to the great demoralization of the youth of these localities. If this evil practice can be legislated against, it will be my pleasure as well as duty to enforce any regulation to secure so desirable an end.<sup>67</sup>

To the extent there was a problem of importing Chinese women for purposes of prostitution, it appears this was in large part due to laws that permitted only the wives and daughters of Chinese merchants and Chinese women born in the United States to gain entry to the United States.<sup>68</sup> The 1875 Act marked the first time that various classes of aliens were deemed excludable: convicted felons who immigrated as a condition of sentence, and women "imported for purposes of prostitution."<sup>69</sup> While objective proof regarding the status of a convicted felon may have existed, immigration examiners acting on scant proof determined the fate of women who were allegedly involved in prostitution. These laws also to a great extent paralleled state prohibitions of immigration of public charges.<sup>70</sup> What the states had seen as sound policy, the federal government also viewed as sound; precautions were taken to exclude those who might tend to put a burden on systems of relief. Along with these curtailments on the immigration of those who appeared unable to become honest wage earners also came a limit upon the importation of cheap labor.

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<sup>67</sup> S. 971, 43d Cong. (1875); H.R. 1588, 43d Cong. (1875), cited in E.P. HUTCHINSON, LEGISLATIVE HISTORY OF AMERICAN IMMIGRATION POLICY 1798-1965 65 (1981). Notwithstanding the concern for the importation of Asian women for purposes of vice, the cases that appear to have been pursued with the greatest vigor involve allegations that Asians, men and women, were involved in the prostitution of *non-Asian* women. See, e.g., *Chiuye Inouye v. Carr*, 98 F.2d 46 (9th Cir. 1938); *Iku Kono Ishihama v. Carr*, 81 F.2d 1012 (9th Cir. 1936); *Imazo Itow v. Nagle*, 24 F.2d 526 (9th Cir. 1928); *Kii Tanaka v. Weedin*, 15 F.2d 844 (9th Cir. 1926).

<sup>68</sup> LUCY E. SALYER, *LAW HARSH AS TIGERS* 44 (1995). The bar on the entry of most Chinese women as wives had quite the opposite effect intended, as it created a shortage of Chinese women that sustained the existence, and encouraged the growth, of the illicit trafficking in Chinese prostitutes. *Id.*

<sup>69</sup> Act of Mar. 3, 1875, ch. 141, 18 Stat. 477 (repealed 1974).

<sup>70</sup> See Buckner Inniss, *supra* note 36, at 587-89.

In 1885 and 1887 Congress enacted contract labor laws.<sup>71</sup> These laws sought to narrow the stream of foreigners imported under labor contracts, as it was believed that such workers depressed the labor market for American workers.<sup>72</sup>

Eventually this negative sentiment was broadened to include the Japanese. The first known Japanese permanent immigrants to the United States arrived in San Francisco harbor in 1869.<sup>73</sup> These immigrants had fled from the village of Aizu Wakamatsu as a result of political difficulties, and after their arrival in California they established a colony they named the Wakamatsu Tea and Silk Colony.<sup>74</sup> They were members of families, and were essentially self-sustaining. Japanese immigration began in earnest, however, just as Chinese immigration was closed off.

Labor agents sought new laborers in Japan to substitute for the excluded Chinese just as the Japanese government adopted a policy allowing its citizens to emigrate to work in foreign countries.<sup>75</sup> Between the years 1884 and 1900, almost 30,000 Japanese arrived in the United States.<sup>76</sup> Although many were male laborers, a substantial number of those who settled began importing wives and starting families.<sup>77</sup> The growing numbers of the Japanese, who tended to settle into family units, caused tensions to heighten.<sup>78</sup> Passions were often aroused at the notion of "picture brides"—women selected from the old county as wives based on photographs.<sup>79</sup> Equally as inflammatory were the already married wives who often followed their already resident Japanese husbands. Such was the case in *Nishimura Ekiu v. United States*.<sup>80</sup>

Ekiu Nishimura was a twenty-five year old Japanese woman who came to the United States in 1891 to join her husband, who had sent for her.<sup>81</sup> She

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<sup>71</sup> Act of Feb. 26, 1885, 23 Stat. 332; See also LEGOMSKY, *supra* note 64, at 108-09.

<sup>72</sup> LEGOMSKY, *supra* note 64, at 109.

<sup>73</sup> CHUMAN, *supra* note 61, at 3.

<sup>74</sup> *Id.* at 2.

<sup>75</sup> *Id.* at 9-10.

<sup>76</sup> *Id.* at 11.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> A fuller discussion of the importation of women into the United States for marriage is seen in Note, *Mail Order Brides: Gilded Prostitution and the Legal Response*, 28 U. MICH. J. L. REFORM 197, 200 (1994).

<sup>80</sup> 142 U.S. 651 (1892).

<sup>81</sup> *Id.* at 652.

had been married for two years, and her husband had resided in the United States for the year prior to her arrival.<sup>82</sup> She was detained at the port as someone "without means of support, without relatives or friends in the United States, and a person unable to care for herself, and liable to become a public charge."<sup>83</sup> This was the conclusion despite the fact that she had \$22 in United States currency,<sup>84</sup> which was not an inconsequential sum in 1891.<sup>85</sup> Ultimately the case reached the United States Supreme Court,<sup>86</sup> which found in favor of the Immigration Service, holding that Congress had entrusted such decisions to executive officers, and that without express statutory authorization, no other tribunal could reexamine the evidence.<sup>87</sup>

Notwithstanding the limits placed on immigration by the Acts of 1875 and 1882, there remained a desire among business interests to promote immigration, particularly that of families.<sup>88</sup> Although this was in part due to labor needs, another reason was for the increased profit to be derived from trans-ocean travel.<sup>89</sup> Maritime transportation experienced major advances between the middle 1800's and the turn of the century.<sup>90</sup> Improvements in shipbuilding had increased the capacity of ships from two to three passenger decks.<sup>91</sup> This meant that ships could bring in larger loads at greater profit, and thus legislation was passed to change old passenger and steerage regulations to permit the additional persons.<sup>92</sup> Regulations were also drafted to permit ships to omit counting infants under one year of age as passengers, and to count each child from one to eight years old as only half a person.<sup>93</sup>

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 656.

<sup>84</sup> *Id.* at 652.

<sup>85</sup> CHUMAN, *supra* note 61, at 12.

<sup>86</sup> This was the first time the Court decided a case involving a Japanese person. *Id.*

<sup>87</sup> *Nishimura Ekiu v. United States*, 142 U.S. 651, 663-64 (1892).

<sup>88</sup> HUTCHINSON, *supra* note 67, at 77-78.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 78.

<sup>92</sup> *Id.*

<sup>93</sup> Act of Aug. 4, 1882, ch. 374, 22 Stat. 186. This provision allowed families to bring along young children without having those children count so heavily against permitted passenger totals, serving the profit motive of ship owners. Given the legendary horrors of steerage travel in ships, allowing more children into already inadequate spaces was not a reflection of humanitarian motives.

The opening of the twentieth century brought a heightened concern for the qualitative nature of immigration, as more families than ever before crowded to United States shores. A 1907 statute established a commission to investigate the system of immigration in the United States.<sup>94</sup> In 1908, the Japanese and United States governments entered into an agreement<sup>95</sup> that eventually led to the complete exclusion of the Japanese from permanent immigration to the United States.<sup>96</sup> In 1917, as a result of the study completed by the 1907 commission, a newly restrictive immigration policy was created.<sup>97</sup> Congress also in that year passed legislation that featured a literacy test.<sup>98</sup> The test, however, exempted certain close relatives.<sup>99</sup> There was during this period a growing concern with not just the quality of immigrants but the quantity,<sup>100</sup> which led to the proposal of a law suspending all immigration for some period. The House Committee on Immigration suggested a suspension bill to Congress in 1919, but it failed to develop further that year.<sup>101</sup>

In 1920, Congress, demonstrating a renewed interest in closing off immigration, reintroduced a suspension bill that allowed for the immigration of close relatives of resident aliens.<sup>102</sup> Although the House was highly receptive to suspending immigration, the Senate was more wary of the bill, chiefly, it seems, because such closure of the gates would mean decreased access to labor for business and industry.<sup>103</sup> A compromise was offered in the form of a percentage plan that would contain European immigration based on relative national percentages in the 1910 census.<sup>104</sup> The bar against Asian immigration remained in place with the exception of the Japanese, who were still admitted under certain limited circumstances. The House of Representatives accepted this compromise plan in place of suspension, and in

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<sup>94</sup> LEGOMSKY, *supra* note 64, at 110.

<sup>95</sup> See generally ROGER DANIELS, *ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED STATES SINCE 1850* 123-28 (1988).

<sup>96</sup> See Immigration Act of 1924, ch. 190, 43 Stat. 153 (1924) (repealed 1952).

<sup>97</sup> Immigration Act of 1917, ch. 29, 39 Stat. 874 (1917).

<sup>98</sup> *Id.* at 877.

<sup>99</sup> *Id.*

<sup>100</sup> JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATTIVISM 1860-1925* 306 (1988).

<sup>101</sup> *Id.* at 306-07.

<sup>102</sup> *Id.* at 309.

<sup>103</sup> *Id.* at 309-10.

<sup>104</sup> *Id.* at 310.

1921 the bill became law.<sup>105</sup> The 1921 law, however, included several exceptions for family members, such as those for alien children under the age of eighteen whose parents were citizens, and for the wives, parents, brothers, sisters, children under eighteen, and fiancées of citizens or of aliens applying for citizenship.<sup>106</sup>

In 1924, these quotas were made permanent with the enactment of a national origins formula which used first the 1890 census, and later the 1920 census, as a basis.<sup>107</sup> The 1924 immigration law, in addition to maintaining a form of the quota system of admission, established a visa system whereby applicants applied for admission in their home countries.<sup>108</sup> Until 1927, visas were issued based upon a figure equivalent to two percent of the foreign-born residents of each nationality in 1890.<sup>109</sup> After 1927 a total quota of 150,000 admissions would be available to aliens in proportion to "the distribution of national origins in the white population of the United States in 1920."<sup>110</sup> A salient feature of the Act was that the Japanese were now totally barred from immigrating, as were other Asians, prompting some to label the bill the Japanese Exclusion Act.<sup>111</sup> Family exemptions from these quotas were permitted only for the wives and minor children of American citizens—not, however, of aliens.<sup>112</sup> This was undoubtedly a blow to those legislators who in 1923 had unsuccessfully lobbied to maintain the quota exemption for the families of aliens and to expand the class of exempt relatives of citizens to include unmarried nieces and nephews.<sup>113</sup>

The introduction of quotas was a "turning point" in United States immigration law.<sup>114</sup> Although at first seen as a temporary measure, quotas

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<sup>105</sup> Act of May 19, 1921, ch. 8, 42 Stat. 5.

<sup>106</sup> *Id.* at 6.

<sup>107</sup> Immigration Act of 1924, ch. 190, 43 Stat. 153, 159. Drafters of the bill had argued for the use of the 1890 census as a way of selecting a greater proportion of immigrants who were from northern and western European countries. Immigration from southern and eastern Europe did not peak until after 1890. The 1920 census was purportedly more in line with the 1890 census in terms of the proportion of northern and eastern Europeans; however, its use was accepted before this was conclusively shown.

<sup>108</sup> See HIGHAM, *supra* note 100, at 319-23.

<sup>109</sup> Immigration Act of 1924, 43 Stat. at 159.

<sup>110</sup> HIGHAM, *supra* note 100, at 324.

<sup>111</sup> CHUMAN, *supra* note 61, at 101-02.

<sup>112</sup> *Id.*

<sup>113</sup> H.R. 1621, 67th Cong., 4th Sess. (1923).

<sup>114</sup> HIGHAM, *supra* note 100, at 311.



became an enduring feature of American immigration legislation. The quota ultimately slowed immigration and made it less of a factor in the growth of the American population for the coming generations.<sup>115</sup>

### III. THE MODERN PERIOD

From the late 1920's through the early 1950's, immigration reforms came essentially in a piecemeal fashion, as the nation turned inward to combat first the economic woes of the depression and later the trauma of World War II. Many of the concerns of the late 1920's and 1930's were with deportation or removal of aliens already present in the country. Among the laws passed was a bill making deportable: (1) aliens who promised to marry in order to gain entry into the United States, but who later failed to marry; and (2) aliens who entered into fraudulent marriages in order to gain entry.<sup>116</sup> After World War II, laws were passed that gave nonquota immigrant status to certain relatives of veterans,<sup>117</sup> and provided for admission of alien fiances and fiancées of veterans.<sup>118</sup> Also during this period, Chinese women were given quota exemption as the wives of American citizens.<sup>119</sup>

In 1952, the McCarran Walter Act, later designated the Immigration and Nationality Act, for the first time codified all immigration laws into a single act.<sup>120</sup> The Act retained the numerical restrictions that had been an earlier feature of immigration laws and quotas based upon national origins for those immigrants coming from outside the Western Hemisphere.<sup>121</sup> Another of the defining features of the Act was its distinction between immigrants—those coming to remain in the country permanently—and nonimmigrants—those coming to the country temporarily.<sup>122</sup> The Act also created distinct categories among the classes of immigrants: employment based immigrants and immigrants related to United States citizens or resident aliens.<sup>123</sup> This Act also for the first time removed race as a qualification for naturalization.<sup>124</sup>

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<sup>115</sup> *Id.* at 311.

<sup>116</sup> Act of May 14, 1937, ch. 182, 50 Stat. 164.

<sup>117</sup> Act of Dec. 28, 1945, ch. 591, 59 Stat. 659.

<sup>118</sup> Act of June 29, 1946, ch. 520, 60 Stat. 339.

<sup>119</sup> Act of Aug. 9, 1946, ch. 945, 60 Stat. 975.

<sup>120</sup> Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (1952).

<sup>121</sup> *Id.* at 175-76.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 178-79.

<sup>124</sup> CHUMAN, *supra* note 61, at 309.

The Immigration and Nationality Act established "preference" categories for family members and others, with first preference going to highly skilled persons, second preference to parents of citizens at least twenty-one years of age, third preference to spouses and children of lawful permanent residents, and fourth preference to brothers, sisters, sons, and daughters of citizens.<sup>125</sup> The family categories of the Immigration and Nationality Act clearly acknowledged what had long been a major impetus for the movement of persons from the "old" country to the new: family attachments.

As monumental as the 1952 Act was, it faced substantial opposition both before and after its passage. The most notable opponent was President Harry S Truman; the bill succeeded over his veto. President Truman approved of some sections of the bill, such as the codification of immigration and naturalization law, the extension of nonquota status to alien husbands of citizens and residents, and the removal of racial bars to naturalization.<sup>126</sup> Nonetheless, the bill maintained the national origins quota system, which was in itself racially discriminatory, and made the admissions of aliens more difficult and their deportations easier.<sup>127</sup> For example, there were often backlogs in various categories. Further, because of the fairly rigid admission categories, those without connections to U.S. citizens or relatives had no means of admission.

These criticisms were echoed later in a report of a presidential commission and were the continued focus of various bills over the next several years.<sup>128</sup> Finally, in 1965, after years of debate, a new immigration law eliminated the national origins formula and racial selectivity.<sup>129</sup> Family immigration received an additional boost from the expanded definition of "immediate relative" to include the spouses, children, and parents of United States citizens who are at least twenty-one years of age.<sup>130</sup> Admission to the United States became a more equitable proposition for the various peoples of the world under the 1965 Act.

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<sup>125</sup> Immigration and Nationality Act of 1952, Pub. L. No. 414, § 203, 66 Stat. 163, 179.

<sup>126</sup> *Veto of Bill To Revise the Laws Relating to Immigration, Naturalization, and Nationality*, PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES, Harry S. [sic] Truman, (June 25, 1952).

<sup>127</sup> HUTCHINSON, *supra* note 67, at 307.

<sup>128</sup> *Id.* at 314-57.

<sup>129</sup> Act of Oct. 3, 1965, Pub. L. No. 89-236, 79 Stat. 911.

<sup>130</sup> *Id.*

Arguably, it was just this inclusiveness of the 1965 Act that caused a desire for immigration reductions which has dominated the national scene over the past thirty years.<sup>131</sup> The 1965 Act caused the national admissions “pie” to be re-sliced more equitably among the nations of the world. Because earlier immigration schemes had favored Western Europeans, changes in policy necessarily meant reductions in available admissions for those nations. This reallocation become particularly pronounced as a result of what has been termed “chain” migration—the sponsoring of siblings by naturalized citizens.<sup>132</sup> In keeping with much of the “reverse” thinking of recent years, some viewed this reallocation as yet another form of “unfairness,” and thus steps were taken to permit various Western European groups more access to entry.<sup>133</sup> Amendments in 1976<sup>134</sup> and 1978<sup>135</sup> attempted to address these issues, as did later creation of the “diversity” categories.<sup>136</sup>

<sup>131</sup> See generally, e.g., PETER BRIMLOW, *ALIEN NATION* (1995) (arguing that because the 1965 amendments to the Immigration and Nationality Act did much to undermine the United States’ European population base, a slowdown or even a halt to immigration should occur, as non-European immigrants reduce the cohesiveness of the American population and erode certain “American values”). Post-1965 immigration is, says Brimlow, “Hitler’s revenge”:

There is a sense in which current immigration policy is Adolf Hitler’s posthumous revenge on America. The U.S. political elite emerged from the war passionately concerned to cleanse itself from all taints of racism or xenophobia. Eventually, it enacted the epochal Immigration Act . . . of 1965. And this, quite accidentally, triggered a renewed mass immigration, so huge and systematically different from anything that had gone before as to transform—and ultimately, perhaps, destroy—the one unquestioned victor of World War II: the American nation, as it had evolved by the middle of the twentieth century.

*Id.* at xv.

<sup>132</sup> See, e.g., *Family Sponsored Immigration*, 4 *GEO. IMMIGR. L. J.* 201, 206, 211, 212 (1990) (Panelists debate the effects of chain migration.).

<sup>133</sup> Just as the implementation of civil rights programs, which offered women and racial minorities opportunities in the workplace, have been described as detrimental “reverse” discrimination against those previously favored, so has the broadened immigration scheme been seen as harmful to many of those who previously benefitted disproportionately. See Patricia I. Folan Sebben, Note, *U.S. Immigration Law, Irish Immigration and Diversity: Cead Mile Failte (A Thousand Times Welcome)?*, 6 *GEO. IMMIGR. L.J.* 745, 762-63 (1992).

<sup>134</sup> Act of Oct. 20, 1976, Pub. L. No. 94-571, 90 Stat. 2703.

<sup>135</sup> Act of Oct. 5, 1978, Pub. L. No. 95-412, 92 Stat. 907.

<sup>136</sup> See Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 314, 100 Stat. 3359, 3439. The NP-5 Program authorized the admission of five thousand non-preference immigrants in fiscal years 1987 and 1988. This category was created for the residents of countries “adversely affected” by the 1965 changes. Ireland, Canada, and the United Kingdom were the greatest beneficiaries. The program was extended through 1989 and 1990, and

The next major reforms to immigration law were made in 1986 with the advent of the Immigration Reform and Control Act (IRCA).<sup>137</sup> IRCA sought to address the problem of undocumented workers by addressing both the employers and the employees.<sup>138</sup> In order to regularize the status of thousands who had been in the United States for a number of years working without proper authorization, the Act offered an amnesty that eventually allowed such persons to obtain lawful permanent residency.<sup>139</sup> Undocumented aliens who had lived continuously in the United States since before January 1, 1982 were eligible for temporary resident status, which eventually could be adjusted to permanent resident status.<sup>140</sup> Agricultural workers who had worked for at least ninety "man-days" between May 1, 1985 and May 1, 1986 could also seek temporary residence status as "special agricultural workers."<sup>141</sup> Various aliens from Haiti and Cuba were also eligible for amnesty.<sup>142</sup>

IRCA also imposed both civil and criminal sanctions upon employers who knowingly hired undocumented persons, and required employers to take affirmative steps to assure that workers were employment authorized.<sup>143</sup> Another significant feature of IRCA concerning families was that it accorded equal status to the father of an illegitimate child who had a parent-child relationship with the child.<sup>144</sup> Previously, the offspring of a biological father could not qualify as a "child" for immigration purposes unless the child had been legitimated under the law of either the child's or the parent's residence or domicile.<sup>145</sup>

Despite being popularly known as the amnesty law, IRCA was both a boon and a bane for undocumented workers and their families. While a substantial number of workers were able to regularize their status, often the families of those workers found themselves without access to such benefits,

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eventually became a permanent feature of immigration.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 3360-80.

<sup>139</sup> *Id.* at 3417-22.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 3417.

<sup>142</sup> *Id.* at 3404-05.

<sup>143</sup> *Id.* at 3360-63.

<sup>144</sup> *Id.* at 3439.

<sup>145</sup> 8 U.S.C. § 1101(b)(1)(D) (1996).

as IRCA offered no "derivative" status—individual family members had to establish their own claims to amnesty.<sup>146</sup>

Another significant change in immigration law in 1986 was the Immigration Marriage Fraud Amendments (IMFA).<sup>147</sup> The IMFA addressed what had been a continuing problem in immigration law since the development of federal immigration law—fraudulent marriage claims for the purpose of gaining immigration benefits.<sup>148</sup> Such claims became more prevalent with the development of the preference categories and exemptions from those categories, for in many instances individuals claiming to be the spouses of permanent residents or citizens would gain admission where they would otherwise be ineligible.

Before the IMFA, spouses of permanent residents or citizens could gain lawful permanent residence based on the marriage, regardless of the length of the marriage. The IMFA provided that persons married for less than two years at the time such status is granted could receive a conditional permanent resident status which would last for two years.<sup>149</sup> Ninety days before the conclusion of the two-year period, aliens were required to petition jointly for permanent status.<sup>150</sup> Generally, as a condition of receiving permanent status, aliens had to show that the marriage still existed.<sup>151</sup>

While the IMFA did much to address the problem of marriage fraud, it created new stumbling blocks for spouses. Some unsophisticated or uninformed aliens probably believed that the conditional residency was sufficient to assure permanent residency, and therefore failed to follow through with the required application at the conclusion of the conditional period. Spouses, particularly women, often found themselves involved in abusive marriages or in marriages that failed to last.<sup>152</sup> In many instances,

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<sup>146</sup> 8 U.S.C. § 1255(a)(2) and (3) (1996).

<sup>147</sup> Pub. L. 99-639, 100 Stat. 3537 (1986).

<sup>148</sup> See, e.g., *Nishimura Ekiu v. United States*, 142 U.S. 651, 663-64 (1892). Note how the legitimacy of the alien's marriage is doubted by the harbor master who receives her initially: "Passport states that she comes to San Francisco in company with her husband, which is not a fact. She states that she has been married for two years, and that her husband has been in the United States one year, but she does not know his address. She has \$22, and is to stop at some hotel until her husband calls for her." *Id.*

<sup>149</sup> 100 Stat. 3537.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 3539-40.

<sup>152</sup> Christine S.Y. Chun, Comment, *The Mail-Order Bride Industry: The Perpetuation of*

women withstood bad marriages in order to obtain permanent residency.<sup>153</sup> Often, the status of children was also pendent. Additionally, provisions that made it more difficult to sponsor an alien spouse if the sponsoring spouse had received permanent residency meant that many individuals could, with legitimate excuse, avoid or delay entering into marriage with other aliens or avoid making application for the alien spouse.<sup>154</sup>

Some of these difficulties were addressed through provisions in the law that allowed petitions to be filed after the required period for good cause, which allowed abused or battered spouses to petition on their own permanent residency and later divorced spouses to establish that the marriage had at one point been viable.<sup>155</sup> Even these provisions, however, failed to address the problem of spouses who tolerated circumstances of marital stress and coercion that may not have risen to the standards established to permit waiver of the joint petition provisions.<sup>156</sup>

Extensive reforms were put into place in immigration law by the Immigration Act of 1990.<sup>157</sup> The Act ushered in a new family-based preference system consisting of four categories.<sup>158</sup> Like the preference system that preceded the 1990 act, the sons and daughters of citizens were assigned first preference.<sup>159</sup> Second preference, however, was divided into two sections. The first was for the spouses and children (under age twenty-one) of permanent residents; the second subsection was assigned to the unmarried adult sons and daughters of permanent residents.<sup>160</sup> The third preference category was reserved for the married sons and daughters of United States citizens, and the fourth category for the brothers and sisters of adult United States citizens.<sup>161</sup> Immigration levels were increased substantially, and in the family-based admissions category, benefits were expanded for certain

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*Transitional Economic Inequalities and Stereotypes*, 17 U. PA. J. INT'L ECON. L. 1155, 1195-96 (1996).

<sup>153</sup> *Id.*

<sup>154</sup> Maria Isabel Medina, *The Criminalization of Immigration Law: Employer Sanctions and Marriage Fraud*, 5 GEO. MASON L. REV. 669, 731 n.18 (1997).

<sup>155</sup> *Id.* (citing 8 U.S.C. §§ 1154(a)(iii), 1186a(c)(4)).

<sup>156</sup> Michelle J. Anderson, Note, *A License to Abuse: The Impact of Conditional Status on Female Immigrants*, 102 YALE L.J. 1401, 1416-22 (1993).

<sup>157</sup> Pub. L. No. 101-649, 104 Stat. 4978 (1990).

<sup>158</sup> *Id.* at 4986-87.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

relatives of permanent resident aliens. The term “immediate relative” was expanded to include some of the widows and widowers of deceased citizens and the children of such persons.<sup>162</sup> Significantly, the 1990 act also included some relief for the spouses and children of aliens who had been granted immigration status under the Immigration Reform and Control Act and other earlier programs.<sup>163</sup>

The most recent changes in immigration law were brought about by the ever-present desire to “improve” upon immigration schemes. The subtext for these changes has very often been the desire to somehow narrow the immigrant stream. Though intended as a way of reducing crime, the Antiterrorism and Effective Death Penalty Act of 1996 also made it more difficult for aliens to remain in the country, despite claims of solid family ties.<sup>164</sup> The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 reduced alien access to federal means-tested programs.<sup>165</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 drastically changed the landscape of immigration law by, among other things, narrowing the scope of due process available to aliens present without documentation.<sup>166</sup> Proposed changes to immigration law threaten to make undocumented alien children ineligible for free public education, and to alter the Fourteenth Amendment to eliminate the concept of birthright citizenship.<sup>167</sup>

#### IV. CONCLUSION

These changes serve ultimately to erode the structure of the alien family. As this paper demonstrates, however, hostility to immigration, and particularly family immigration, is not new. Despite the many demonstrated

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<sup>162</sup> *Id.* at 4981.

<sup>163</sup> *Id.*

<sup>164</sup> Pub. L. No. 104-132, 110 Stat. 1214 (1996).

<sup>165</sup> Pub. L. No. 104-193, 110 Stat. 2105 (1996).

<sup>166</sup> Pub. L. No. 114-208, 110 Stat. 3009, 3009-546 (1996).

<sup>167</sup> The Fourteenth Amendment of the United States Constitution has been clearly interpreted to grant citizenship to all who are born in the United States. *See United States v. Wong Kim Ark*, 169 U.S. 649, 688 (1898). This includes the children of undocumented aliens. Clearly, the children of undocumented children have long faced certain disabilities such as the likelihood of being forced to exit the country when undocumented parents are deported. *See generally* Bill Piatt, *Born as Second Class Citizens in the U.S.A.: Children of Undocumented Parents*, 63 NOTRE DAME L. REV. 35 (1988). Denial of birthright citizenship, however, would go far in limiting alien access to the American dream.

salutary benefits of a family immigration policy in this nation's history and in its developmental pre-history, we continue to wax hot and cold as to whether families should be able to freely and easily enter and remain in the country.