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12. Building Through Exclusion: Anti-Immigrant Politics in the United States¹ (9,974 words)

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In January 2004, President Bush called for comprehensive immigration reform in launching his reelection campaign. Immigration became a high profile issue in U.S. national politics in late 2005, received unprecedented attention in spring 2006, and is likely to remain significant through the 2008 Presidential election. Usually, this pattern happens during major economic downturns, but not during this period. Nor was there a major immigration scandal, albeit some arguments that several of the 9/11 perpetrators had overstayed their visas.

No one predicted, however, that the House of Representatives would adopt Rep. James Sensenbrenner's (R-WI) H.R. 4437 in December 2005, a bill which deemed unauthorized immigrants felons subject to immediate deportation. Equally surprisingly, no one predicted the mass demonstrations against the bill in March and May 2006, during which upwards of two million people took to the streets in major cities throughout the country. Finally, in the wake of the shift of control of Congress from the Republicans to the Democrats in November 2006, few predicted that immigration reform would reemerge in 2007 through a small bi-partisan group in the House and the Senate seeking to craft a compromise including border enforcement, new legal status for the undocumented, and a shift in selection criteria from family connections to skills.

Immigration politics has always made strange bedfellows in the U.S. (Zolberg 2006). Few issues so consistently defy the logic of a liberal-conservative continuum or even simple partisan differences (Wong 2006). Recent debates have put major employers on the same side as immigrants' rights advocates, low wage workers together with cultural conservatives, and a majority of Congressional Democrats with a minority of Republicans. These debates have featured both a labor market component -- employers' desire for low wage or high skilled immigrant workers -- and an ethnic identity component -- immigrants' rights organizations' and native-born minority groups' claim that the civil rights agenda has not yet been fulfilled.

Polls of American adults consistently reveal that 51% to 65% support a path to citizenship for unauthorized workers currently living in the U.S., if they meet a criminal background check, pay a fine and back taxes, and learn English (National Immigration Forum 2007; PollingReport.com 2008). Yet, strong and vocal subsets of the electorate opposed to reform often seem to have an unusually significant impact in structuring the public discourse regarding immigration policy.

This essay explores how the recent anti-immigrant impulse in U.S. politics reflects a propensity to attempt to strengthen national identity and gain partisan advantage by excluding some from the body politic. I refer to this pattern as the *identity-community tradeoff*. It also outlines the main threads of the current immigration debates with special reference to the undocumented, illuminating the ways in which advocates on both sides talk past one another. This non-engagement explains why members of Congress and the White House provided the key to identifying what common ground might make immigration reform possible; but, it also explains why these public officials have not yet been able to build legislative coalitions to enact comprehensive immigration reform. I outline the major components of immigration legislation considered in 2005-2007 to further examine this failure.

The chapter concludes by considering the inevitable risks that arise when the nation writes off part of the population in positioning itself on the identity-community tradeoff. As the U.S. pursues its interests in an increasingly globalized world, choices about who belongs to the

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nation and who does not will have dramatic consequences for the nation's democracy and moral position in the world.

Citizenship, National Identity, and the Evolution of Community

Rogers Smith (1997) argues that the American polity has gradually, at times painfully, assigned full citizenship rights to new segments of the population because it was simultaneously denying these rights to other groups. Expansions of citizenship have never included all who might want it. The notion that inclusion involves exclusion helps us begin to understand anti-immigrant politics in the United States today.

Smith suggests that three fundamental civic myths have animated the expansion of who is fully part of the American nation. The first, individual liberalism,² holds that not only do individuals have certain inalienable rights and liberties, but that government can only legitimately limit these rights under very unusual circumstances. The second, civic republicanism,³ holds that American citizens share a linked fate⁴ that may require individuals to sacrifice for the common good at critical moments of nation-building.

The final civic ideology is ascriptive inegalitarianism,⁵ which argues that the most durable understanding of who is American depends on a clear sense of who is not. For example, the removal of property ownership as a condition for suffrage did not lead to the inclusion of women or even free Blacks. Enfranchisement for former slaves during Reconstruction did not include Black women. Extension of the vote to women in 1920 occurred precisely when the former states of the Old Confederacy were actively denying the franchise to African Americans.

Political leaders today arguably gauge the balance of these civic myths in order to gain office and change the group bases of national identity (1997:31-33). Stated differently, we can view the current immigration debate as an exercise in using the explicit exclusion of some to build winning coalitions of voters who believe that individual rights and linked fate belong only to current citizens. What makes the identity-community tradeoff an effective mechanism through which to structure immigration politics is the evolution of the "illegal alien" in American law in the first quarter of the twentieth century (Ngai, 2003).

Dimensions of Contemporary Anti-Immigrant Politics

A range of interests and concerns motivate arguments for stricter immigration policy. Some are normative, others driven by perceived tangible costs, and, others, rarely discussed, may involve racial prejudice. Here, we review seven such arguments: 1) the law-breaking nature of unauthorized status, 2) terrorism and security threats, 3) criminality among the unauthorized, 4) the cost of social services, 5) labor market competition with the native born, 6) dilution of American culture, and 7) racial prejudice. While each is distinctive, I argue that all of these arguments are driven by a heightened sense of the need to maintain traditional notions of national identity and, at this point in time, to largely exclude non-citizens from full participation in American society.

The most widely accepted argument is that many immigrants have violated or ignored U.S. laws in gaining entry. Although this category has been part of national law at least since the Alien and Sedition Acts of 1798-1801, few unauthorized non-citizens were deported during the nineteenth century. In 1891, however, legislation created a one year limitation to allow a person to be deported because of becoming a public charge; this was extended to five years in 1917 (Ngai 2004: 58-61). The Immigration Act of 1924 allowed deportation at any time. And, Congress established the Border Patrol at this time (Ngai: 60). A 1927 Immigration Report on the smuggling of unauthorized persons in the U.S. observed "[w]hatever else may be said of [the bootlegged alien]: whether he be diseased or not, whether he holds views inimical to our institutions, *he at best is a law violator from the outset*" (As quoted in Ngai 2004: 62). The Federation for American Immigration Reform states that "illegal immigration is a crime....Each year the Border Patrol makes more than a million apprehensions of aliens who flagrantly violate

² Smith uses the term "liberal" (p. 6).

³ Smith refers to this as "democratic republican[ism]" (p. 6).

⁴ The concept of "linked fate" comes from the work of Michael Dawson (1994). Although Dawson develops the term to refer to African Americans, it can also be applied to America's general sense of peoplehood.

⁵ Smith uses the term "inegalitarian ascriptive elements" (p. 6).

our nation's laws by unlawfully crossing U.S. borders. Such entry is a misdemeanor, but, if repeated, becomes punishable as a felony" (FAIR 2005). The American Patrol (2007) makes similar arguments, and respondents to polls and op eds often contain similar views (Petaluma Argus-Courier 2006; de Silva 2007).

America's unprotected borders have also become a prominent argument for stricter immigration policy since 9/11. One critic noted, "The terrorists are foreigners, most or all of whom should not have been allowed to live in our country. As [former] FBI Director Robert Mueller admitted, at least some of the hijackers were 'out of status,' i.e., they had no proper immigration documents. It should be repeated over and over again: The terrorism threat is from illegal aliens who are allowed to live in our midst—and this is a failure of our immigration laws and our immigration officials" (Report 2001). Similar arguments circulate in a variety of venues (Perrazzo 2002; Camarota 2001). An organization known as "We Need A Fence" (2007) refers to those who threaten the U.S. as OTM's, "other than Mexicans," and indicate that "[w]ithin the last year, over 450 OTM's have been apprehended illegally entering the U.S. from...Afghanistan, Angola, Jordan, Qatar, Pakistan, and Yemen."

Immigration opponents also allege that immigrants perpetrate crime. The journal of the Manhattan Institute recently carried an article entitled "The Illegal-Alien Crime Wave: Why can't our immigration authorities deport the hordes of illegal felons in our cities?" (MacDonald 2004). Seper of *The Washington Times* writes: "About 80,000 illegal criminal aliens, including convicted murderers, rapists, drug dealers and child molesters who served prison time and were released, are loose on the streets of America, hiding from federal immigration authorities" (2004). An organization named Immigration's Human Cost (2007) lists the stories of twenty alleged victims of crimes perpetrated by unauthorized immigrants on its web site.

Undocumented immigrants are also criticized for the costs of the social services they use. Few would argue that we should not provide children of the unauthorized with educational services or emergency health services; federal law in fact mandates them. Nonetheless, state and local officials rightly argue that they have to pick up the costs of services to people who might not be present if the federal government better enforced its immigration laws.

Cosman argues that serving unauthorized immigrants has bankrupted at least eighty-four hospitals in California (2005: 6). Congressman Gary Miller's (R-CA) web site includes a section entitled "How Much Do Illegal Aliens Cost U.S. Taxpayers?" (Miller 2005). The site ImmigrationCounters.com provides a running tally of the number of real time "illegal immigrants in country," and of the estimated cost of "social services for illegal immigrants since 1996," "illegals in K-12 since 1996," and "incarcerations since 2001" (2007).

That immigrants, especially unauthorized immigrants, lower wages and take jobs away from American workers, is one of the most contentious claims by advocates for more restrictive policies. Among the early respected economists to make this claim was George J. Borjas in *Heaven's Door: Immigration Policy and the American Economy* (1999). The titles of two recent articles reflect its persistence: "Bush Administration Pushes for Illegal Alien Amnesty Again! Devastating Effects for American Workers, Taxpayers and Citizens" (Carrying Capacity Network 2005) and "Dropping Out: Immigrant Entry and Native Exit from the Labor Market, 2000-2005" (Camarota 2006).

Competition between lesser skilled African American workers and undocumented workers is often mentioned. Some have begun to argue that competition also exists at higher skill and education levels with other types of immigrant workers. Bullock writes in the *Baltimore Times*, "As the Black community debates whether Hispanic immigrant workers create competition for jobs with low-income African-Americans, the president of the Coalition of Black Trade Unionists says too little attention is being paid to educated immigrants taking high-tech jobs away from middle- and upper-class African-Americans" (2006).

The capacity of immigrants to culturally integrate into American society appears in current anti-immigration politics. Tom Tancredo (R-CO) recently stated (McMahon 2006) in response to the question "What is your greatest concern as to the impact of illegal immigration?"

I believe that we are becoming balkanized. I believe this is not a fault of immigration, it is exacerbated by it. The radical multiculturalism we have witnessed over the past forty years in America, I call it a cult of multiculturalism.

It has, I think, been successful in destroying the ties that hold us together as Americans... We're losing sight of who we are.

This same type of view comprises a substantial part of Samuel Huntington's recent book *Who Are We? The Challenges to America's National Identity* (2004). In a chapter entitled "Mexican Immigration and Hispanization" he argues that current Mexican immigration is different from immigration from other countries, and especially from immigration during earlier periods of American history (222-230). Huntington cites high Spanish language use, low levels of formal education, lower status occupation and resulting incomes, low rates of naturalization and out-group intermarriage, and low "identification with American values" as evidence of a low desire and resulting slow assimilation by Mexican immigrants into American society (230-243). Huntington thus critiques the possibility that Hispanics might develop their own version of the American dream (2004: 256).

A final dimension of arguments in favor of a more restrictionist policy involves "race" (Center for American Progress 2007). An intelligence report of the Southern Poverty Law Center (2001a; 2001b) identified a series of comments made by a range of anti-immigration organizations from which one can see how race-related concerns are paramount. The Council of Conservative Citizens states "[T]he meaning of this massive increase in non-white and non-Western populations groups within U.S. borders is that the United States is not only ceasing to be a majority white nation but also is ceasing to be a nation that is culturally part of Western Civilization." The National Alliance states that "America becomes darker—racially darker—every year, and that is the direct result of our government's immigration policy... We White people, we descendants of the European immigrants who built America, will be a minority in our own country... [M]alicious aliens [European Jews] came into our land and... spread spiritual poison among our people, so that our spirits became corrupted and our minds became confused." The National Association for the Advancement of White People writes that "Unless stopped now, massive illegal immigration from the Third World will surely make America more like the Third World than the nation of our forefathers... Forced integration and unrestrained immigration destroy schools, neighborhoods, cities and ultimately nations." The National Organization for European American Rights comments that "the very underpinnings of America are being gnawed away by hordes of aliens who are transforming America into a land where we, the descendants of the men and women who founded America, will walk as strangers... Unless we act now... we will be helpless to halt the accelerating dispossession of our folk." An organization known as Voices of Citizens Together states "The Mexican culture is based on deceit. Chicanos and Mexicanos lie as a means of survival. Fabricating false IDs is just another extension of that culture... [which] condones everything from the most lowly misdemeanor to murder in the highest levels of government." Finally, the report quotes the White Aryan Resistance as stating "[even] beyond immigration, legal or illegal, the very numbers of non-Whites already here, and their high birth rate, are enough to plunge North America into a banana republic status within two decades or less... [After America is split up into racial mini-states, if] an area like Florida wanted to accept the dregs of the Caribbean, let them, with the understanding that the second this mud flood oozed into the sovereign state of Georgia, it would be 'lock and load' time."

Each of the above arguments characterizes unauthorized immigrants as outsiders to the American nation state and, in fact, threats to American identity, workers, and culture. The proponents of these arguments have a very clear vision of where they would like to see the balance in the identity-community tradeoff.

The Counter-Image: Pro immigrant Advocacy

Ironically, the dynamic of building national identity through group exclusion also helps explain arguments in favor of greater rights for immigrants, often including the unauthorized. These advocates say that even immigrants without legal papers contribute to American society, and so should be part of the American community. Their presence stems from the underlying needs of the American economy, promotes the living standards of the vast majority of Americans, and reflects the inevitability of labor migration in a global world. As workers, they should have a right to fair wages, fair working conditions, social services, and a bureaucratic route to becoming legal permanent residents, and, over time, even naturalized citizens. If they challenge aspects of American cultural practices, the U.S. can benefit, according to this view, by accommodating difference and building a more inclusive community.

Pro-immigration arguments have six dimensions: 1) the America tradition as an immigrant nation, 2) immigrants' desire to contribute to and integrate into American society, 3) human rights, 4) civil rights, 5) Latinos' importance to current and future party politics, and 6) transnational labor migration and economic growth as driven by global capitalism. Examples allow us to appreciate the language used to characterize immigrants and immigration in these arguments, and to see the identity-community tradeoff reflected in these views.

The argument that the U.S. is a land of immigrants is so commonly accepted as part of American heritage, however inappropriate this characterization may be in specific historical eras, that one can argue that it is part of the American creed (Schlesinger 1991; Zolberg 2006). Interestingly, among the most powerful statements of this aspect of the American polity was made by President Bush (Bush 2004) when he challenged the nation to reform current immigration law. He stated,

As a nation that values immigration, and depends on immigration, we should have immigration laws that work and make us proud. Yet today we do not. Instead, we see many employers turning to the illegal labor market. We see millions of hard-working men and women condemned to fear and insecurity in a massive, undocumented economy. Illegal entry across our borders makes more difficult the urgent task of securing the homeland. The system is not working. Our nation needs an immigration system that serves the American economy, and reflects the American Dream.

The Reverend Jesse L. Jackson, Sr., recently characterized it this way: "Now is the time to put an end to the vicious cycle of pain and blame, to fulfill the promise of the Statue of Liberty and the fundamental notion that all people have 'an inalienable right' to life, liberty and the pursuit of happiness" (Jackson 2006a). In critique of Huntington (2006) the Mexican American Legal Defense and Educational Fund (MALDEF) and the League of United Latin American Citizens (LULAC) wrote "The United States is a nation of immigrants from around the world. In the U.S., individual accomplishment is valued" (MALDEF 2004).

A related line of argument is that immigrants, even the unauthorized, value making contributions to American society and even desire to be meaningfully integrated within American society. Again, President Bush's comments (Bush 2004) clearly capture this position. He stated, As a Texan, I have known many immigrant families, mainly from Mexico, and I have seen what they add to our country. They bring to America the values of faith in God, love of family, hard work and self reliance—the values that made us a great nation to begin with. We've all seen those values in action, through the service and sacrifice of more than 35,000 foreign-born men and women currently on active duty in the United States military.

The Pew Center reports that "...Hispanics in general, and Hispanic immigrants in particular, are more inclined than blacks or whites to take an upbeat view about one of the most enduring tenets of the American dream – the idea that each generation will do better in life than the one that preceded it" (Pew Hispanic Center 2006).

As further evidence of the desire of immigrants to integrate into American society, recent reports have noted the long waiting lists all across the country for adults who want to learn English. A survey conducted by the National Association of Latino Elected and Appointed Officials (NALEO) in 2006 "found that in twelve states, 60 percent of the free English programs had waiting lists, ranging from a few months in Colorado and Nevada to as long as two years in New Mexico and Massachusetts, where the statewide list has about 16,000 names" (Santos 2007). Data from the recent Latino National Survey (LNS), the largest state-stratified survey of all Latinos in the U.S. found that in 2005-06, Latino adult respondents in each of the first, second, third, and fourth generations ranked the importance of learning English very strongly by overwhelming majorities of just over 90% (Fraga et al. 2006).

Yet a third line of argument made in support of immigrants is that even if current American law does identify the unauthorized as illegal, it is important to understand that these persons still have basic human rights. President Bush (Bush 2004) also made this argument. He stated,

Their [that is, immigrants'] search for a better life is one of the most basic desires of human beings. Many undocumented workers have walked mile after

mile, through the heat of the day and the cold of the night. Some have risked their lives in dangerous desert border crossings, or entrusted their lives to the brutal rings of heartless human smugglers. Workers who seek only to earn a living end up in the shadows of American life – fearful, often abused and exploited. When they are victimized by crime, they are afraid to call the police, or seek recourse in the legal system. They are cut off from their families far away, fearing if they leave our country to visit relatives back home, they might never be able to return to their jobs....This situation I described is wrong. It is not the American way.

Among the most forceful advocates of the need for the U.S. to recognize the human rights of unauthorized immigrants have been the nation's churches and their religious leaders. The Roman Catholic Church was among the first to openly make this argument, starting with Cardinal Archbishop Roger Mahony of Los Angeles, who was later joined by public statements from *Red de Pastores Latinos del Sur de California* (Network of Latino Pastors and Leaders of Southern California) that represents 1,200 Latino protestant churches, and the National Christian Leadership Conference, a group representing Latino evangelicals (Mangaliman 2006).

A report by the Southern Poverty Law Center entitled "Close to Slavery: Guestworker Programs in the United States" (2007) refers to the operation of the current H-2 visa guestworker program that allowed an estimated 121,000 workers to come to the U.S. legally in 2005. The reported harsh, and at times, inhumane treatment of these workers supports those who claim that the current system of U.S. immigration law violates fundamental human rights. "Bound to a single employer and without access to legal resources, guestworkers are: routinely cheated out of wages; forced to mortgage their futures to obtain low-wage, temporary jobs; held virtually captive by employers or labor brokers who seize their documents; forced to live in squalid conditions; and denied medical benefits for on-the-job injuries. House Ways and Means Chairman Charles Rangel recently put it this way: 'This guestworker program's the closest thing I've ever seen to slavery'" (2007: 2).

Another argument made in support of immigrants, especially unauthorized immigrants, is that despite their legal status, they still have civil rights in the U.S. that cannot be violated. The long held practice of immigration agents to conduct unannounced raids on workplaces is often noted as a violation of workers' civil rights, not so much because of the raid itself as because of the subsequent treatment of the workers and its consequences for their families. A recent example of this concern was expressed in a joint press release by the Mexican American Legal Defense and Educational Fund (MALDEF), the League of United Latin American Citizens (LULAC), the National Council of La Raza (NCLR), and the National Association of Latino Elected and Appointed Officials (NALEO). In response to immigration raids conducted in December 2006 at a number of Swift and Company plants, they stated (MALDEF 2006):

Various news reports and accounts from members of the community have claimed that racial profiling was used to single out workers for questioning; furthermore, we have reports that lawful permanent residents were detained. Furthermore, we understand that authorities prevented family members, clergy, and legal representatives from communicating with those detained, including in situations which could affect the health and safety of their family members. We are especially concerned for the children of those detained.

The American Civil Liberties Union (ACLU) has recently renewed its commitment to protect the civil rights of immigrants through its Immigrants' Rights Project (IRP) (ACLU 2004). Some speculate that the larger issues associated with unauthorized immigrants provide a foundation for a new civil rights movement in the U.S. (Mangaliman and Rodriguez 2006; Kyriakou 2006; Goldberg 2006; Williams 2006; Democracy Now 2006).

Yet another argument made against more restrictive immigration policies directly refers to the costs that could be imposed on the political party that champions anti-immigration measures. This argument is driven by an understanding of the growth in the Latino population in the U.S. and the way that this growth can translate into a type of ethnic politics that will punish the party and its leaders who want to punish unauthorized Latino immigrants. The basis for this argument is an interpretation of what happened in California after 1994 when incumbent Governor Pete Wilson embraced Proposition 187, an initiative that restricted access to social services, health

care, and education for undocumented immigrants. Although Gov. Wilson effectively used Prop. 187 to enhance his reelection, it is generally understood that it pushed many Latinos in California to vote and identify as Democratic. The metaphor used to characterize this potential is the sleeping giant. The protests that occurred in March of 2006 against what became known as the Sensenbrenner Bill are understood as the catalysts to this new sense of political empowerment by Latinos (Oppenheimer 2006; Aizenman 2006; Blanco et al. 2006; Nation 2006; NCLR 2006; Geis 2006).

The final set of arguments made in support of immigrants is based upon an understanding of the inevitability of labor migration in an increasingly globalized economy. The argument has at least two distinct tracks. One is focused on understanding that among the primary causes of legal and unauthorized immigration to the United States is the increasing growth and privatization of developing economies around the world, and especially in Latin America. The inability of workers to find sufficient employment in their home countries is largely undisputed. However, a more nuanced understanding of this reality is that job growth does not keep pace with job demand in developing countries precisely because job loss occurs in traditional areas of employment as industries become more efficient and competitive in the global marketplace. In *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (2002), sociologist Douglas Massey and colleagues state that "...no nation has yet undergone economic development without a massive displacement of people from traditional livelihoods...in the vast majority of cases a large fraction of these people have ended up migrating abroad" (144). Massey and colleagues provide considerable evidence of how this pattern has directly affected the waves and magnitude of immigration from Mexico to the U.S. since the 1970s.

It is also argued that undocumented consumers have become major markets for some businesses in the U.S. (*Business Week* 2005). In testimony before the Senate Judiciary Committee in 2006, Benjamin Johnson, Director of the Immigration Policy Center of the American Immigration Law Foundation stated that "[t]he economic benefits of immigration extend beyond increasing the available labor supply. As immigrant workers spend and invest their earnings, new jobs are created, demand for labor increases, and wage levels rise—offsetting any decline in wages that might have resulted from the introduction of more workers in the labor force" (Johnson 2006). Citing figures from the Selig Center for Economic Growth at the University of Georgia he notes that Latino purchasing power was estimated at \$736B in 2005 and was expected to increase to \$1.1T by 2010. Asian purchasing power was estimated at \$397B in 2005 and expected to increase to \$579B in 2010. Moreover, he quoted from the 2005 *Economic Report of the President* that "more than half of undocumented immigrants are believed to be working 'on the books,' so they contribute to the tax rolls but are ineligible for almost all Federal public assistance programs and most major Federal-state programs" (Ibid.), contributing an estimated \$463B to the Social Security Trust Fund as of 2002 that they themselves can never access due to their unauthorized status. The National Immigration Law Center has made similar arguments (Fremstad 2006).

Proponents and opponents of immigration restriction have very different visions of what the balance should be in the identity-community tradeoff. Anti-immigration proponents focus on how immigration, especially unauthorized immigration, threatens traditional notions of American identity and America's well-being more broadly. Their opponents argue that immigrants, including the unauthorized, are already part of the U.S. and need to be legalized. This raises the question as to whether meaningful reconciliation in the two views is possible. What we see in the following discussion of bills that Congress considered in 2006 and 2007 is how these distinct views were formalized in specific legislation.

The Intended and Unintended Politics of Recent Immigration Reform

In response to President Bush's call for immigration reform in January 2004, the first major bill that came out of the House of Representatives was HR 4437, the "Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005," sponsored by Rep. James Sensenbrenner (R-WI), then Chairman of the House Judiciary Committee, and thirty-five co-sponsors. It was introduced on December 6, 2005, and was approved December 16, 2005, by a vote of 239 to 182. Its emphasis was on enhancing border security. It authorized the building of a 700 mile, double-layer fence across the 2,000 mile border between Mexico and the United

States. It also required the mandatory detention of all non-Mexican unauthorized immigrants arrested in the U.S. It set mandatory sentences for those convicted of smuggling unauthorized immigrants and for re-entering the U.S. without proper documents after a deportation. Moreover, the legislation made it a felony to be in the U.S. without proper documents, or to assist, encourage, direct, or encourage someone to attempt to enter or remain in the U.S. without proper authorization. It made conviction of drunk driving a deportable offense as well. H.R. 4437 also established very clear guidelines that employers had to follow to verify the immigration status of workers and specified fines for employers who violated them. Prison sentences were mandated for employers who were found to be repeat violators. Absent from H.R. 4437 were any proposals to either legalize unauthorized immigrants currently in the U.S. or establish a temporary guest worker program.

S. 2611, the "Comprehensive Immigration Reform Act of 2006," was broader in scope and in many ways more consistent with President Bush's call for immigration reform. Senators John McCain (R-AZ) and Edward Kennedy (D-MA) had been pursuing immigration reform for quite some time. This new bill, finally introduced by then Chairman of the Senate Judiciary Committee Arlen Specter (R-PA), had six co-sponsors, five Republicans including Sam Brownback (R-KS), Lindsay Graham (R-SC), Chuck Hegel (R-NE), John McCain (R-AZ), Mel Martinez (R-FL), and one Democrat, Ted Kennedy (D-MA). S. 2611 was introduced on April 7, 2006, and was passed by the Senate on May 25, 2006, by a vote of 62-36 with important amendments proposed by Senators Martinez and Hegel.

Like H.R. 4437, this bill addressed border enforcement. It authorized the building of 370 miles of triple-layer fencing on the U.S.-Mexico border, and an additional 1,000 Border Patrol agents that year and another 14,000 by 2011. There were 11,300 agents working for the Border Patrol in 2006. Similar to the House bill, it required employers and subcontractors to electronically verify any new employees. Interestingly, it declared English the nation's official language.

What was most different from H.R. 4437 was that this bill allowed the legalization of unauthorized immigrants who had been in the U.S. for at least five years, not been a public charge, paid \$3,250 in fines and fees, paid any back taxes, and committed to learn English. Such people would become eligible for status as legal permanent residents in six years. After five additional years and further review, they could apply to become citizens. Unauthorized immigrants in the U.S. for more than two, but less than five years had to return to a "point of entry" and file a formal application to return. If approved, such persons would receive legal authority to work in the U.S. and later become eligible to apply for permanent legal residency. Those who had been in the U.S. for less than two years were required to leave the country. This bill also created a "special" guest-worker program for approximately 1.5 million immigrant farm workers, who could, in time, earn legal permanent residency. It approved 200,000 new temporary guest-worker visas per year. Finally, it doubled the number of H1-B skilled worker visas from 65,000 to 115,000.

Normally, when the House and Senate have two distinct versions of a bill, the leadership of each appoints members to a conference committee. It was expected in this circumstance as well. However, Rep. Dennis Hastert (R-IL), former Speaker of the House of Representatives, chose not to allow the House to participate in such a committee. Rather, he decided that it would be best for the House to conduct a set of national hearings throughout the country to sense the nation's pulse on this legislation. Rep. Sensenbrenner, a critical negotiator, said that "The president is not where the American people are at. The Senate is not where the American people are at. Amnesty is wrong because it rewards someone for illegal behavior. And I reject the spin that the senators have been putting on their proposal. It is amnesty" (Swarns 2006a). Not to be out done, Sen. Arlen Specter (R-PA), former chairman of the Senate Judiciary Committee, decided to hold his own set of hearings as well.

From July 5 to September 1, 2006, different subcommittees of the House held hearings in 22 different cities around the country. An additional eleven hearings were held in Washington DC. These hearings were alleged to be one-sided from the very beginning. Among their formal titles were: "Border Vulnerabilities and International Terrorism," "Should We Embrace the Senate's Grant of Amnesty to Millions of Illegal Aliens and Repeat Mistakes of the Immigration Reform and Control Act of 1986?" "Expanding the Border Fence: Its Impact on the Flow of Drugs

and Aliens,” “Is the Federal Government Doing All It Can to Stem the Tide of Illegal Immigration?” “Examining Views on English as the Official Language” (American Friends Service Committee 2006).

Sen. Specter was much more modest in his hearings. That same summer of 2006, he held three, in Philadelphia, Miami, and Washington, DC. Their titles were: “Comprehensive Immigration Reform: Examining the Need for a Guest Worker Program,” “Contributions of Immigrants to the US Armed Forces,” and “Examining the Need for Comprehensive Immigration Reform, Part II” (American Friends Service Committee 2006).

Sensenbrenner and his supporters were soon criticized for trying to use immigration as a wedge issue in the upcoming 2006 election (Navarette 2006). Rep. Jim Kolbe (R-AZ) was quoted as saying “They [the hearings] are deliberately planned. A lot of Republicans are listening to a very shrill part of their base who are very loud about this issue, and they believe that this translates into votes in the base” (Swarns 2006b). A spokesman for the House Judiciary Committee said that over sixty Representatives asked for hearings in their districts.

Although a compromise between H.R. 4437 and S. 2611 was never reached, H.R. 6061, Congress passed the Secure Fence Act of 2006 September by overwhelming majorities in both chambers. The bill has five major sections. The first part requires the Secretary of Homeland Security to increase the use of personnel and technology such as unmanned aerial vehicles, ground-based sensors, satellites, radar, and cameras to secure the borders. The second recommends establishing more checkpoints, all weather access roads, and vehicle barriers. The third part of the bill is the most noteworthy. It requires the Secretary of Homeland Security to construct 700 miles of doubly reinforced fencing as of May 2008, and to implement a comprehensive surveillance system by May 2007. The fourth section requires the Secretary to conduct a study of the feasibility of reinforcing surveillance and security in the country’s border with Canada. The final section requires the Secretary to evaluate the personnel and training needs of U.S. Customs and Border Protection within 30 days of the law’s enactment, and to submit a report related to this assessment within 60 days. President Bush signed the bill into law on October 26, 2007.

The use of immigration as a wedge issue did not work for the Republicans in the 2006 elections. New Democratic majorities gained control of both the House and Senate. Not surprisingly, the Comprehensive Immigration Reform Act of 2007, S.1348, , also known as the Secure Borders, Economic Opportunity and Immigration Reform Act of 2007, was soon introduced in the Senate. After months of hearings and debates, however, the bill was not enacted. On March 22, 2007, Representatives [Jeff Flake](#) (R-AZ) and [Luis Gutierrez](#) (D-IL), introduced a comprehensive bill entitled the Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act of 2007 (H.R.1645), which aimed to legalize undocumented immigrants and create a more expansive guest-worker program with a path to citizenship. To qualify to become legal, immigrants would have to pay a \$2,000 fine and back taxes, and pass background and security checks. If after six years immigrants had learned English and American civics, avoided criminal convictions, and the head of the household had left and reentered the U.S. legally, they could become legal permanent residents, and then citizens (Gaouette and Watanabe 2007). It would also increase penalties for crimes committed by immigrants and institute a biometric system for employers to verify legal status of workers (Swarns 2007).

Under H.R. 1645, undocumented immigrants would be to pay in-state college tuition and, over time, make these students eligible for citizenship. The guest worker provisions would allow up to 400,000 low-skilled workers into the country annually. Their temporary visas were for three years with an option to renew for another three and an ability to petition for permanent residence after five.

On March 28, 2007, the White House pushed three new guestworker programs. The first would grant legal status to certain undocumented immigrants with “Z” visas, which would be renewable and require a fee of \$2,000 every three years. Those granted a Z visa would be allowed to apply for green cards after a period of time. The two other programs would use “Y” visas to admit foreign workers and eventually allow them to apply for green cards. One was aimed at low-skilled workers. The administration proposed to set the cap on Y visas based on the needs of the market. Each year, the proposals would double the number of green cards issued, while also restructuring the criteria for awarding cards. The programs would also

eliminate the visa lottery. The proposals also called for mandatory verification for new workers, without specifying a system for that verification. Each proposal also included substantial fines for employers and proposed giving the Department of Homeland Security authority to cross check records of the Social Security Administration.

Another piece of legislation, S. 1083, the Securing Knowledge Innovation and Leadership Act, or SKIL Bill, proposed to increase legal immigration of scientific, technology, engineering, and mathematics (STEM) workers into the United States by increasing the quotas on the H-1B visa, eliminating green card caps for certain advanced degree holders, and streamlining the processing of employment-based green cards. Senator [John Cornyn](#) (R-TX), introduced the bill on April 10, 2007. Representative [John Shadegg](#) (R-AZ), introduced a similar bill in the House, H.R. 1930, on April 17, 2007. Neither made it out of their Judiciary Committees.

What is clear in the politics of each piece of legislation is that neither Democratic nor Republican leaders in Congress or the White House could put together sufficiently stable coalitions across chambers to support comprehensive immigration reform. There was neither the will nor the skill to attain a new equilibrium in the identity-community tradeoff.

New Risks to the Identity-Community Tradeoff

The above discussion can be understood as further evidence of the identity-community tradeoff that continues to characterize so much of anti-immigrant politics in the U.S. Despite Congress' failure to reach a meaningful compromise, history suggests that the American polity will, ultimately, again expand to include more of its people than it did previously.

However, there are a number of new risks to this traditional evolution of the identity-community tradeoff. Interestingly, these are challenges to both those who argue that American identity is currently under siege and those who are confident that the brightest future for America is an ever expanding community that embraces immigrants, including most of the unauthorized. The risks come from both domestic and transnational developments. In fact, a new term, "intermestic," is sometimes used to refer to the way that the simple distinctions between international and domestic interests may no longer apply.

No one anticipated that on March 25, 2006, at least 500,000 persons, and by some estimates 1,000,000, would march in downtown Los Angeles. The LA protest was in large part organized by Jesse Díaz, a doctoral candidate in sociology at UC Riverside and Javier Rodríguez, a journalist. Among the reasons for the success of the original LA march was that a coalition of church, immigrant rights organizations, and labor unions, combined with a call by several well known Spanish radio show hosts, to have a major demonstration (Watanabe and Becerra 2006). When these numbers were surpassed on May 1, 2006, by an estimated 3,000,000 to 5,000,000 marchers in over 60 cities in 44 different states (Bada, Fox, Zazueta, and Garcia 2006), it became apparent that an unprecedented mechanism of civil protest would characterize immigration politics in the U.S. The general understanding was that the unauthorized and their supporters were not likely to protest publicly out of concern for their safety and thus were not easily mobilized. These assumptions were proven wrong (Cano 2006; Wang and Winn 2006).

A second risk facing any new equilibrium in the identity-community tradeoff is related to the growing influence of Latinos as voters in the U.S. Despite having many non-citizens within their adult population and their being registered to vote at rates noticeably lower than either whites or African Americans, Latinos can be pivotal contributors to the winning margins of victory when there are certain kinds of splits other segments of the electorate. This has occurred in a number of states, especially in California to the advantage of the Democratic Party and in Florida to the advantage of the Republican Party (Fraga and Ramírez 2003; 2003-04).

Some Republicans, such as Senator Chuck Hagel (R-NE), worry that gaining repute as the anti-immigrant party will alienate Latino voters, citing what has happened to the Republican Party in California since Proposition 187 (Fraga and Ramírez 2003). By one estimate, Latinos only gave 29% of their votes to Republican congressional candidates in 2006, down from the 31% President Bush received in 2000 and the estimated 40% he received in 2004. Lionel Sosa, a close advisor to the President Bush and Karl Rove on the development of their Latino strategy said in reaction to the risk the Republican Party took in appearing as anti-immigrant, "We as a party got the spanking we needed" (Lovato 2007).

A third risk in the politics of the identity-community tradeoff is related to the way that state and local governments seem to have taken immigration into their own hands. In the summer 2006 many states and cities passed their own laws and ordinances to restrict further unauthorized immigration. A report of the National Council of State Legislatures in the summer 2006 indicates that through early July, thirty states had enacted 57 laws directly related to unauthorized immigrants. Among the laws enacted were those that (Jones 2006):

- Prohibited the awarding of state contracts to businesses that knowingly hired unauthorized workers (Colorado),
- Fined employers with state contracts who do not fire workers who are known not to have appropriate documents (Louisiana),
- Required public employers, government contractors and subcontractors to verify the work status of all new employees through a federal program (Georgia),
- Authorized the training of 70 state troopers to arrest unauthorized immigrants (Alabama),
- Prohibited unauthorized immigrants from receiving state services such as adult education, child care, in-state tuition, and punitive damages in civil lawsuits (Arizona),
- Prohibited the use of unauthorized immigrants on state projects (Pennsylvania),
- Prohibited businesses from deducting the costs of salaries and benefits for unauthorized workers from their taxable revenue (Texas),
- Sent troops to the Mexican border (Arizona, Arkansas, California, Connecticut, Delaware, Kentucky, Minnesota, Montana, New Jersey, New Mexico, New York, North Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin).

A number of cities have passed similar ordinances. Hazelton, PA, which has experienced a sizeable increase in Latino immigrants over a short period of time, enacted an "Illegal Immigration Relief Act," which denied licenses to businesses that employ illegal immigrants, fined landlords \$1,000 for each illegal immigrant discovered renting their properties, and required city documents to be in English only (Scolforo 2006). The Dallas suburb of Farmers Branch on November 15, 2006, passed ordinances that fined landlords who rented to unauthorized immigrants \$500 per tenant per day, gave police authority to seek certification to act as agents of the Department of Homeland Security, and declared English the city's official language (Blumenthal 2006). In Escondido, CA, the city council gave landlords ten days to evict unauthorized immigrants, and made landlords subject to "fines up to \$1,000 a day, six months in jail, [and] suspension of their business license" (Moscoso 2006). Each of these actions can be understood as direct responses to the perceived unwillingness and inability of the national government to do its job. State and local action now act on the basis of how they do or do not see their interests served in any new equilibrium to the identity-community tradeoff.

There are also risks grounded in the transnational nature of the identity-community tradeoff. Clearly, consensus has been attained on enhancing border security. Massey (2006), however, helps us to understand a counterintuitive consequence of previous efforts to further secure the border that are likely to be replicated. Tougher enforcement reduces the return migration of unauthorized immigrants because it is harder for them to return to the U.S. The result is more unauthorized in the U.S., leading to even greater calls for enforcement, leading to more undocumented having even greater incentives to remain in the U.S. The U.S. is thus "locked into a perverse cycle" regarding immigration policy (Ibid.).

Remittances are generally understood to benefit receiving families, communities and countries. It is estimated that in 2003, Mexico received \$13.3B from workers in the U.S., the largest remittances of any country. According to Roberto Coronado, economic analyst of the Federal Reserve Bank of Dallas, El Paso Branch, this amount is about 140 percent of foreign direct investment in Mexico and about 71 percent of oil exports (Coronado 2007). Interestingly, the Mexican state of Zacatecas initiated a program in 1993 that matched dollars invested in infrastructure program; as of 2002, approximately \$40M had been invested in 788 projects in a number of its municipalities Zacatecas (Ibid.). It is hard to argue that remittances are beneficial to Mexico.

What would be the impact on Mexico and Central America if remittances fell because of increased deportation of unauthorized workers? It seems likely that hardship and demands for government support for lower income families and communities would increase. If Mexico were

unable to meet these demands, political instability could result, only raising incentives to move to the U.S.

The Future of Anti-Immigrant Politics in the U.S.

The position one takes in the identity-community tradeoff is fundamentally driven by how much confidence one has in the integrative capacity of the current American nation state. Arguments about illegality, security, cultural dilution, cost, labor competition, and racism are, at their core, reflections of low confidence in the capacity of the American nation state. Huntington's (2004) entire analysis derives from his fear that the American creed is under such threat that the country is forced to reify its past as an Anglo, Protestant, English-dominant society.

This is in contrast to the characterization of the American creed offered by Schlesinger (1991) where, in defense against what he characterizes as multicultural critics, he argues that central to America's capacity to accommodate difference is its valuing of self-critique. It is this self-critique that is the key to understanding how much the U.S. can accommodate the multiculturalism, internationalism, and immigration that have always been part of its history (Fraga and Segura 2006). Unger and West refer to this confidence in the U.S.'s capacity to accommodate and integrate new populations as the "religion of possibility" in American society. Immigrants, perhaps especially the unauthorized, judge that coming to the U.S. is worth the risks that they incur, likely based in large part on hopes and dreams of what is possible in the U.S. Although these dreams may never be fulfilled fully, and can at times be shattered, they are grounded in an understanding of the unlimited possibilities of accommodation and integration in the American state.

The recent politics of immigration reform in the U.S. will again require that the nation make a difficult judgment regarding the identity-community tradeoff. It does seem to be the case that the consistent majorities in favor of comprehensive reform, if properly mobilized and led, should be able to overcome the passionate voices of those on both sides of the immigration debate. At this writing it is unclear as to whether either the Republican nominee Sen. John McCain (R-AZ) or the Democratic nominee Sen. Barack Obama (D-IL) will be that leader should one of them be elected President of the United States. Whatever the future holds, without a doubt, the contours of the future of America will be significantly determined by what this new balance in the identity-community tradeoff will be.

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