Fall 1998

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Welfare Reform and Immigration: Attempting to Find a Domestic Answer to a Global Question

KOSTAS A. POULAKIDAS

INTRODUCTION

Globalization and interdependence have become common terms among legislators and policymakers.¹ The growing global interrelationship of economies, politics, technology, communications, and societal values are daily confrontations for local policymakers.² The nature of these shifts are beyond the control of any single individual, locality, or nation.³ As a result, nationalism and ethnocentrism have given rise to protectionist policies designed to maintain control over domestic concerns that are now being influenced by the effects of globalization.⁴ These disproportionate protectionist policies are adopted domestically by countries minimally threatened by globalization.⁵ In the United States, these actions are partially attributed to both the pursuit of sovereign

¹ J.D. Candidate, 1999, Indiana University School of Law—Bloomington; M.A. International Affairs, 1996, The American University School of International Service; B.S., 1992, Ball State University. The author would like to thank John A. Scanlan, Professor of Law, for his invaluable insights during the development of this paper. The author would like to dedicate this article to the memory of his grandparents, Rev. Kostas and Zafiroula Poulakidas and George and Angeliki Samaras, and express his sincere gratitude for their hindsight and courage.
³ See id. at 41.
⁴ See KEOHANE & NYE, supra note 1, at 41.
interests and an American self-perception of global dominance. When a problem arises that affects domestic constituencies, "there is immediate emphasis on unilateral action" without considering the consequences or potential multilateral solutions. Continuing a protectionist approach fails to recognize the opportunities available for international influence through domestic policymaking. Incrementally, hegemonic control is "being replaced by the need for shared management of the global economy."

This approach, rather than a global policymaking approach, is evident in the recent legislation affecting U.S. welfare and immigration policy. The misunderstood perception that immigration is rooted in the underdevelopment of nonindustrialized countries, rather than a natural consequence of social and economic forces in countries with advanced economies, is reflected in the detrimental approach of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act). Not only are U.S. immigrants affected, but U.S. economic interests and the ability of the United States to assert its leadership in an increasingly global environment are also influenced through such domestic policymaking. U.S. immigration policy must be maintained through proactive international economic policies rather than protectionist domestic welfare policies. Today, exercising international influence begins with domestic initiatives and issue internalization among a country's citizens.

This Note will examine the recent attempt to limit immigration to the United States through the Welfare Reform Act. Part I explores the economic dynamics between the United States and Mexico that have affected immigration this

7. Keohane & Nye, supra note 1, at 236.
8. Id. at 221.
9. AMERICA'S GLOBAL INTERESTS: A NEW AGENDA, supra note 5, at 3.
10. For an extensive review of global issues relating to migration and national sovereignty, see generally Jost Delbrück, Global Migration—Immigration—Multiethnicity: Challenges to the Concept of the Nation-State, 2 IND. J. GLOBAL LEGAL STUD. 45 (1994).
13. See Massey, supra note 11, at 32.
14. Internalization is defined as "the process of changing how people think about themselves in relation to the rest of the world." Professor Harold Hongju Koh, Address at the Harris International Lecture Series, Indiana University—Bloomington (Jan. 21, 1998).
century. This relationship illustrates how economics and globalization have had an impact on immigration irrespective of domestic legislation. Part II examines provisions of the Welfare Reform Act specific to immigrants and the Act’s impact on the availability of public benefits to immigrants. Part III discusses the shift in immigration policy from a principle of inclusiveness toward exclusiveness through the Welfare Reform Act. The consequences of this shift are particularly significant when viewed within the context of a globalized society. Part IV evaluates the opportunity presented by the Welfare Reform Act for state governments to affect immigration policy, a role traditionally controlled at the federal level, by taking a global approach to local policymaking. This Note argues that federal and local governments must apply a global approach to immigration policy that accounts for domestic concerns while avoiding detrimental impacts on immigrants, the U.S. economy, and its social fabric. New solutions to domestic problems must be found beyond national borders in a global environment.15

I. MEXICO AND THE UNITED STATES: A HISTORICAL RELATIONSHIP OF SUPPLY AND DEMAND

Globalization is primarily an economic process.16 National markets are being integrated into regional or worldwide markets that inherently link the financial welfare of domestic companies, and subsequently national economies, to global economic variables.17 The globalization of markets is accelerating to the point that movements in goods, services, financial capital, exchange rates, interest rates, stock prices, and intellectual property among countries are intimately interconnected.18 The interrelationship of economies results in the transfer of national economic strategies to the global level. Every factor of production, including capital, technology, raw materials, and information, can be duplicated anywhere around the world—except the one factor that is unique to a nation, its work force.19 As economic globalization continues, “a nation’s

16. Alex Y. Seita, Globalization and the Convergence of Values, 20 CORNELL INT’L L.J. 429, 429 (1997). “While driven primarily by economic factors, the process of globalization—in which international issues become as important as national, state, and local matters—has significant political and other noneconomic content. Democracy and human rights are, for example, as much a part of globalization as are free market principles.” Id.
17. Id. at 443.
18. Id. at 429; Soros, supra note 15, at 20.
19. Robert B. Reich, Who is Us?, in INTERNATIONAL POLITICS: ENDURING CONCEPTS AND
most important competitive asset becomes the skills and cumulative learning of its work force."

The international division of labor has provided developed nations with a tremendous comparative advantage that has been supplemented by immigration. Historically, advanced economies have attracted immigrants with various skills to contribute to the native work force, and have become dependent on foreign labor. For example, within the United States, immigrants played a vital role in the early stages of the development of the U.S. economy by helping to create a railroad infrastructure and by supplying labor to farmers. Today, advanced economies continue to require an unskilled labor force to perform nonmechanized tasks, as well as highly skilled workers who bring needed technological skills to a nation’s work force. Eighty-three percent of new immigrants to the United States come from Latin America and Asia. Globalization will continue to create a demand for immigrants to fill shortfalls in the native work force in order for countries to stay competitive within a global economy. The economic explanation for immigration is not new; rather, immigration continues to be part of a historical supply and demand process that is now within a globalized economic environment.

A. Going North for Opportunity

The problems associated with immigration cannot be found exclusively at the source of immigration flows. Mexican immigration to the United States has
its roots on both sides of the border, motivated primarily by economic influences and family relationships.\textsuperscript{27}

International migration movements are rooted in the structural character of economic disparities between and among [nations]. Solutions must be sought in policies which address the place of the migration process in the global political economy. Migration must be examined in the overall development process while also devising and expanding initiatives intended to protect the human and labor market rights of migrants.\textsuperscript{28}

Migrants and their employers, not governments or policymakers, are “determin[ing] the magnitude and destination of migration flows in most parts of the world.”\textsuperscript{29} The United States, with its high-wage economy, is the world’s leading country of immigration.\textsuperscript{30} On the other extreme, its low-wage economy neighbor, Mexico, is the world’s major country of emigration,\textsuperscript{31} with “virtually all Mexican emigrants head[ing] for the United States.”\textsuperscript{32} Mexican immigrants currently represent eighteen percent of the legal immigrants admitted to the United States.\textsuperscript{33} Approximately five million Mexican nationals are employed


\textsuperscript{29} David Gregory, \textit{Remarks to the World Peace Foundation Conference on Temporary Labor Migration in Europe: Lessons for the American Policy Debate, Belmont, Maryland, June 12-14, 1980 in CORNELIUS, supra note 22, at 1}.

\textsuperscript{30} See \textit{CORNELIUS supra note 22, at 1}; Latapi & Martin, \textit{supra note 27}.

\textsuperscript{31} See \textit{CORNELIUS, supra note 22, at 1}; Latapi & Martin, \textit{supra note 27}. Other regions of emigration include: a) virtually all Mediterranean countries which send labor first to Western European countries then to oil-rich Arab countries; b) South-East Asian countries who are attracted to the markets of the Middle East, Malaysia, Singapore, Australia and North America; and c) Latin America and English-speaking Caribbean countries whose workers migrate to the United States, Canada, Venezuela, Argentina and Brazil. Demetrius G. Papademetriou & Philip L. Martin, \textit{Labor Migration and Development: Research and Policy Issues, in THE UNSETTLED RELATIONSHIP: LABOR MIGRATION AND ECONOMIC DEVELOPMENT} 3, 3 (Demetrios G. Papademetriou & Philip L. Martin eds., 1991).

\textsuperscript{32} Martin, \textit{supra note 27}.

\textsuperscript{33} Headden, \textit{supra note 22, at 84}.
in the United States yearly, equating to three and one-half percent of the 140 million workers in the U.S. labor force. This indicates that as economies continue to integrate in the global marketplace, effective solutions to unwanted immigration cannot be limited to immigration sources, but must recognize all contributing economic and social factors.

Historically, the immigration relationship between the United States and Mexico has encouraged "a go north for opportunity" understanding between the two countries that fosters a dependence on cheap labor by U.S. businesses and employment of Mexican immigrants. Between 1870 and 1920, immigrants accounted for almost fifteen percent of the population in the United States—almost twice the current percentage. By the turn of the twentieth century, Mexican immigrants were recruited to supply the emerging U.S. economy and its industries, farms, railroads, and mines with low-wage labor. Within the Southwest, business decisions assumed the constant availability of immigrant labor.

During World War I, the U.S. Congress extended exemptions in immigration law, resulting in the arrival of approximately 51,000 Mexican immigrants between May 1917 and June 1920. The law was part of a labor recruitment effort, primarily for railroad and seasonal work, that exempted Western Hemisphere immigrants from literacy tests and entrance taxes. These immigrants were expected to return to their native countries, although many did

34. Latapi & Martin, supra note 27.
35. See id.
37. Latapi & Martin, supra note 27.
38. Id.
39. Id. at n.4.
40. Id. In 1918, President Herbert Hoover, arguing for removing restrictions on Mexican immigration, stated, "[W]e need every bit of this labor that we can get and . . . we will need it for years to come." Id. His assertion, however, may have been more influenced by U.S. farmers' desire to ensure low wages rather than a need to supply labor. That same year, the Mexican Consul in Arizona stated that many Mexicans and Mexican-Americans were unemployed and that "there is an abundance of labor here [in the United States] and what is lacking is a good wage and above all good treatment." Id. (quoting GEORGE C. KISER & MARTHA WOODY KISER, MEXICAN WORKERS IN THE UNITED STATES, 14-15 (1979)).
not.\textsuperscript{41} In 1921 and 1924, Congress restricted immigration from war-torn Europe, but not from Mexico.\textsuperscript{42} During this period, the deportation of Mexicans practically stopped, ensuring low-wage labor to U.S. farms and businesses.\textsuperscript{43}

Even after tough economic times, U.S. immigration policy remained part of the developing economic relationship between the two countries. From 1942 to 1964, the U.S. government established programs and informal procedures that brought high numbers of Mexican immigrants to California and Southwestern farms during harvest season.\textsuperscript{44} An estimated 4.6 million workers were admitted during this period.\textsuperscript{45} Labor unions opposed these programs, claiming that the purpose of immigration was to drive down wages for farmers, rather than to compensate for labor shortages.\textsuperscript{46} Meanwhile, Mexican residents working temporarily in the United States, and their families still residing in Mexico, became dependent on income earned in the United States.\textsuperscript{47} Employment in the United States became viewed by immigrants as one of the few options available for "achiev[ing] some long-term economic mobility for themselves or their children."\textsuperscript{48}

In 1942, the U.S. government created the Bracero program that allowed farmers to import Mexican workers during the harvest season.\textsuperscript{49} Under this program, tens of thousands of immigrants were brought into the United States.\textsuperscript{50} The complaints of U.S. labor unions, coupled with the Mexican government's concern over labor conditions, brought an end to the Bracero program in 1947.\textsuperscript{51}

\begin{itemize}
\item \textsuperscript{41} Latapi & Martin, supra note 27.
\item \textsuperscript{42} Id.
\item \textsuperscript{43} See Corneliu, supra note 22, at 2.
\item \textsuperscript{44} Latapi & Martin, supra note 27.
\item \textsuperscript{45} Id.
\item \textsuperscript{46} Id. Despite labor unions concerns regarding the effects of immigration on wages, recent research indicates that immigrants tend to join labor unions as readily as natives and have no difficulty integrating into the labor force. Roger G. Kramer, Developments in International Migration to the United States: The United States Report for the Continuous Reporting System on Migration (SOPEMI) of the Organization for Economic Cooperation and Development (OECD) (visited Jan. 28, 1998) <http://migration.ucdavis.edu/mm2l/Roger.html>. Labor unions will have to find ways to include immigrants into their numbers if they are to maintain the strength of the labor movement in a global economy. "The traditional tools unions use in disputes with employers are increasingly ineffectual...." Labor Touts 'Strategic Coordinated Campaigns', LAB. REL. INK, Feb. 1998, at 5 (quoting Ronald Blackwell, Director of the AFL-CIO's Department of Corporate Affairs). "[W]hat we have started to learn ... was that it took a much more comprehensive campaign to win in a global economy." Id. (quoting Kate Bronfenbrenner, Director of Labor Education Research at the New York State School of Industrial and Labor Relations at Cornell University).
\item \textsuperscript{47} Corneliu, supra note 22, at 3.
\item \textsuperscript{48} Id.
\item \textsuperscript{49} Latapi & Martin, supra note 27.
\item \textsuperscript{50} Corneliu, supra note 22, at 4.
\item \textsuperscript{51} See Latapi & Martin, supra note 27.
\end{itemize}
However, illegal immigration continued; in fact, after an illegal Mexican found work, the worker was usually granted a work permit.\textsuperscript{52} The result of the Bracero program moved U.S. farm workers into nonfarm labor markets.\textsuperscript{53} Between 1949 and 1958, an estimated 278,385 Mexican immigrants were admitted to the United States; an additional 454,577 were admitted between 1959 and 1966.\textsuperscript{54}

In the 1970s, agricultural mechanization reduced the need for hand-laborers.\textsuperscript{55} However, industries such as construction, personal services, and technology equipment manufacturing rapidly replaced U.S. dependency on Mexican labor.\textsuperscript{56} An estimated 669,573 Mexican immigrants were admitted by 1979.\textsuperscript{57} By the late 1980s, the expansion of economic globalization and the abundant availability of low-wage labor abroad allowed U.S. companies, particularly those in the textile and garment industry, to move manufacturing operations elsewhere, reducing the need for most low-wage workers in the United States.\textsuperscript{58} By 1988, an additional 625,690 Mexicans were admitted to the United States.\textsuperscript{59}

The number of Mexican immigrants in the U.S. labor market continues to depend on the demand for Mexican labor by U.S. employers.\textsuperscript{60} Approximately twelve and one-half percent of Mexico’s labor force relies on the U.S. labor market for most of their earnings,\textsuperscript{61} continuing a historic relationship fostered more by the globalization of two economies than legislative attempts to control immigration.\textsuperscript{62}

\begin{footnotes}
\item[52] Id. This came to be known as “drying out the wetbacks” in U.S. government publications. Id.
\item[53] Id.
\item[55] CORNELIUS, supra note 22, at 6.
\item[56] Id.
\item[58] See CORNELIUS, supra note 22, at 6; Latapi & Martin, supra note 27.
\item[59] 1986 U.S. DEP’T OF JUST., STAT. Y.B. OF THE IMMIGR. AND NATURALIZATION SERVICE 7 tbl.3; 1996 U.S. DEP’T OF JUST., STAT. Y.B. OF THE IMMIGR. AND NATURALIZATION SERVICE 33 tbl.3. The United States began a naturalization program from 1989 to 1994 that resulted in the “legalization” of 2.8 million illegal or undocumented aliens. VAILET, supra note 26, at 2 fig.2. Admission through preference immigration remained stable during this period. Id. at 2.
\item[60] CORNELIUS, supra note 22, at 5.
\item[61] Latapi & Martin, supra note 27, at 1.
\end{footnotes}
B. Policymaking and the Economics of Immigration

The globalization of economies and demand for cross-border labor has limited the ability of policymakers to curtail immigration. Studies conclude that, regardless of U.S. immigration reforms, there will be a similar level of immigration between Mexico and the United States between 1995 and 2010.\(^{63}\) This demand for foreign labor is partially attributable to declining birth rates in the United States, rising educational levels of native-born residents, increases in the upward mobility of segments of the native-born population that have previously filled the demand for unskilled labor, the unwillingness of the native-born population to relocate, and stigmatization of certain types of unskilled employment.\(^{64}\) While only select segments of the U.S. economy depend on foreign labor, "[t]he selectivity of the United States demand is a direct reflection of certain structural features of the political economy that cannot be easily manipulated through government action."\(^{65}\)

The economic growth of the United States, coupled with the ability of the Mexican economy to remain stable, continues to serve as an indicator of immigration flows to the United States—more so than immigration limitations created by Congress.\(^{66}\) For instance, in 1982, the Mexican peso was devalued eighty percent against the dollar, causing U.S. wages to increase from twice that of Mexican wages in 1981 to six times that of Mexican wages by the end of 1983.\(^{67}\) This resulted in more Mexicans, mostly women, entering the Mexican work force in an effort to offset household income losses from their husband's income.\(^{68}\) Furthermore, while the devaluation made Mexico an attractive location for U.S. manufacturers to resettle their operations, it did little to improve the standard of living for Mexicans.\(^{69}\) Wage scales in the United States

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63. Martin, supra note 27, at 2. It is estimated that the strengthening of the Mexican economy will result in a reduction in labor related immigration by the year 2000, significantly slowing by 2010. Latapi & Martin, supra note 27, at 1-4.

64. CORNELIUS, supra note 22, at 6, 8.

65. Id. at 9.

66. The turmoil of the Mexican economy and the devaluation of the peso in the 1980s and 1990s "naturally" caused Mexicans to "look to the U.S. as a safety valve." Martin, supra note 27.

67. Latapi & Martin, supra note 27, at 5.

68. Id.; In 1980, a reported 817,479 Mexicans were deported for being in or attempting to cross into the United States illegally; by 1983, that number had risen to 1,172,306. 1980 U.S. DEP'T OF JUST., STAT. Y.B. OF THE IMMIGR. AND NATURALIZATION SERVICE, 117 tbl.53; 1983 U.S. DEP'T OF JUST., STAT. Y.B. OF THE IMMIGR. AND NATURALIZATION SERVICE, 183.

69. Latapi & Martin, supra note 27. An estimated 400,000 new jobs were created in the maquiladoras region of Mexico. Id. However, these jobs were considered "dead-end . . . jobs" forcing Mexican workers to choose between these jobs or risk finding work in cities with high unemployment. Id.
became increasingly sensitive to wage scales in other countries; international competitive pressures imposed constraints on wage increases in the United States, regardless of government efforts to curtail the supply of foreign labor. Rather, government restrictions "only accelerate[d] the flight of domestic companies abroad," detrimentally affecting both immigrant and native-born laborers.

In 1986, Mexico joined the General Agreement on Tariffs and Trade (GATT) and subsequently lowered tariffs, removed import license requirements on foreign products, reduced limitations on capital mobility, eliminated restrictions on foreign business ownership, and downsized government. Then in 1988, the newly elected president, Carlos Salinas, began efforts to privatize and open Mexico's markets to the international economy. During this time, new labor force entrants became self-employed or found jobs in the growing Mexican personal services industry. While the number of those seeking legal admission to the United States remained constant, illegal immigration dropped considerably. By 1989, the number of Mexicans deported for illegal entry significantly returned to its pre-1982 peso devaluation level.

In 1992, government economic reforms took effect and the Mexican employment rate grew faster than the labor force, unemployment fell, real earnings rose, and emigration from Mexico into the United States declined. However, the road to economic stability was derailed by the 1994 devaluation of the Mexican peso, causing a fifty percent devaluation against the U.S. dollar. Employment rates once again began to drop for the first time since 1983. After this devaluation, the number of Mexicans seeking illegal entry into the United States substantially increased while the number of Mexicans legally admitted declined. Altogether, between 1980 and 1995, three million Mexicans immigrated to the United States. This migration represented twenty

70. CORNELIUS, supra note 22, at 7-8.
71. Id. at 8.
72. Massey, supra note 11, at 25.
73. Latapi & Martin, supra note 27, at 5.
74. Id. Between January 1988 and November 1994, the manufacturing employment index fell from eighty-six to seventy-three. Id.
76. Id.
77. Latapi & Martin, supra note 27, at 6; 1996 U.S. DEP’T OF JUST., supra note 59, at 33 tbl.3.
78. Latapi & Martin, supra note 27, at 6.
79. Id. Most affected were young people, whose unemployment rate rose to 20 percent. Id.
81. Latapi & Martin, supra note 27, at n.1.
percent of Mexico’s net population growth and twenty-five percent of total U.S.
immigration.  

After January 1, 1994, the North American Free Trade Agreement (NAFTA) brought together 380 million people in the United States, Mexico, and Canada, with an estimated combined gross domestic product (GDP) totaling $7 trillion. NAFTA was seen as a means to prevent labor migration from Mexico and to begin “to export goods not people.” The U.S. International Trade Commission estimated that Mexico would see an increase in foreign investment, an increase in real wages from 0.7 to 16.2 percent, and a 0.1 to 11.4 percent increase in real GDP because of NAFTA. Additionally, NAFTA was expected to create a seven percent increase in Mexican jobs, reducing the number of legal and illegal Mexican immigrants, as well as the one to two million seasonal workers. The consolidation of markets under NAFTA “would create a direct U.S. financial and political interest in Mexico’s free market reforms.”

However, President Salinas, prior to leaving office, overvalued the peso by printing money to buoy the economy prior to the August 1994 Mexican elections. Imports became cheap and foreign investment savings were used to buy U.S. and foreign goods without investing in job creation initiatives. By the end of the election, Mexico had a $30 billion trade deficit and the Mexican Central Bank reserves were empty, causing another peso devaluation. Once again, the wage gap between the United States and Mexico increased, unemployment in Mexico increased, and pessimism towards the economic circumstances in Mexico promoted illegal and legal immigration to the United States. Now, “the stage was set for U.S. legislation in 1996 that [would] attempt[] to reduce illegal Mexico-U.S. migration and reduce the access of

82. Martin, supra note 27.
83. Id. Over 50 economic models were developed projecting the global economic effects of NAFTA on the United States, Mexico and Canada. A majority of these models concluded that the relationship between the United States and Mexico would see the greatest effect due to dissimilarities between their economies. Id. For a comprehensive overview of Mexico’s volatile economic situation and policies that lead to the signing of NAFTA, see ALEXANDER MONTO, THE ROOTS OF MEXICAN LABOR MIGRATION (1994).
84. Massey, supra note 11, at 22 (quoting former Mexican President Carlos Salinas de Gortari).
85. Martin, supra note 27.
86. Id. at 2. However, the most optimistic projections estimate that only 60,000 new jobs are created in Mexico each year due to NAFTA. Id.
87. Massey, supra note 11, at 25.
88. Martin, supra note 27.
89. Id.
90. Id.; 1996 U.S. DEP’T OF JUST., supra note 59, at 174 tbl.59.
II. THE IMPACT OF THE WELFARE REFORM ACT ON IMMIGRANTS

The Welfare Reform Act was considered the successful incorporation of the most important goals of the 104th Congress: reforming the welfare system, and restructuring Medicaid and health care. The debate over the long-term success of this legislation has yet to be determined; however, within the 800 pages of the Act, a few sections will significantly impact the daily lives of new immigrants and their potential contribution to the United States.

While granting states the flexibility to respond to local concerns and saving taxpayers money at all levels of government, the Welfare Reform Act was intended to: restore values of work, family, personal responsibility, and self-sufficiency; end the cycle of dependency on welfare; save families through work; discourage illegitimacy; and benefit children. For government, the Act helped to balance the federal budget and gave states more authority over immigration. For Congress, the Act ended welfare as a perceived immigration magnet and reduced the cost of health care on state and federal budgets by shifting politically difficult decisionmaking to the states.

After considerable debate, the Omnibus Consolidated Appropriations Act of 1997 (Balanced Budget Act), restored some public benefits, including Supplemental Security Income (SSI) and Medicaid benefits to elderly and disabled immigrants. Immigrants in the United States on the date of enactment

91. Martin, supra note 27.
were also protected should they become disabled in the future. However, the impact of welfare reform reaches beyond determining the distribution of public benefits—it redefines the fundamental values associated with immigrants and the federal government’s ability to determine a uniform immigration policy. The Welfare Reform Act questions Congress’ willingness to find solutions to issues with global dimensions.

A. Congressional Authority: Providing the Power to Discriminate

The Welfare Reform Act expressly grants states the authority to deny any noncitizen, regardless of their arrival date in the United States, means-tested public benefits including: derivative Medicaid benefits, Temporary Assistance for Needy Families (TANF) block grant funds, Title XX Social Services Block Grant Program funding, and their own state and local benefits. This Congressional authority overrides the U.S. Supreme Court decisions in Plyler v. Doe and Graham v. Richardson. Plyler and Graham denied states the power to discriminate against noncitizens’ receipt of certain public benefits. The Equal Protection Clause of the Fourteenth Amendment establishes that no “State [shall] deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.” The Supreme Court emphasized that equal protection “is not confined to the protection of

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97. President Clinton stated that the Balanced Budget Act’s amendment of the Welfare Reform Act was to off-set the “dramatic restriction of access to benefits that legal immigrants will face under the welfare reform bill.” Statement by President William J. Clinton upon Signing H.R. 3610, 32 WEEKLY COMP. PRES. DOC. 1935 (Oct. 7, 1997) (emphasis added). The Clinton Administration’s willingness to limit the restrictions on legal immigrants to public benefits was revisited in President Clinton’s State of the Union Address to the 105th Congress. See President William J. Clinton, President Bill Clinton’s State of the Union Address (visited Feb. 25, 1998) <http://allpolitics.com/1998/01/27/sotu/transcripts/clinton/>.

98. Fix & Tumlin, supra note 93.


100. 8 U.S.C. § 1612(b). See also Fix & Tumlin, supra note 93. The Welfare Reform Act authorizes states “to determine the eligibility for any State public benefits of an alien who is a qualified alien, . . . a non-immigrant under the Immigration and Nationality Act, or an alien who is paroled into the United States under section 212(d)(5) of such Act for less than one year.” 8 U.S.C. § 1622(a).


102. 403 U.S. 365 (1971) (holding that states may not deny legal permanent residents state-funded assistance that is provided to equally needy citizens without authorization from Congress).

However, the legislative history of the Welfare Reform Act indicates that Congress viewed the narrow 5-4 Supreme Court ruling in *Plyler v. Doe* as an indication that some state benefits may be denied to illegal aliens once states are given this authority by Congress. Section 411 of the Welfare Reform Act provides this authority, thereby negating the impact of *Plyler v. Doe*. The legislative history of this section explains that:

Illegal aliens are ineligible for all State and local public benefits, with limited exceptions for emergency medical services, emergency disaster relief, immunizations and testing and treatment of communicable diseases, and programs necessary for the protection of life or safety. States may, however, pass laws after the date of enactment that specify that illegal aliens may be eligible for certain State or local benefits that otherwise would be denied under this section.

The federal government will reimburse states for certain emergency services provided to illegal aliens. This potentially allows states that opt to bar immigrants legislatively from public benefits to incur no financial costs due to immigration. This may weaken any incentive for states to maintain tight border controls or implement policies deterring illegal immigration. Federal reimbursement of emergency services to states means that the taxpayer in Indiana will help pay the cost of immigration in Arizona and California.

Furthermore, the Welfare Reform Act sidesteps *Graham v. Richardson* by authorizing states to determine whether qualified aliens may receive state or local public benefits. This authorization is in line with *Mathews v. Diaz*,

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106. Id. The Welfare Reform Act states: *STATE AUTHORITY TO PROVIDE FOR ELIGIBILITY OF ILLEGAL ALIENS FOR STATE AND LOCAL PUBLIC BENEFITS—A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through the enactment of a State law after the date of the enactment of this Act which affirmatively provided for such eligibility.*
where the Supreme Court held that Congress has the authority, unlike the states, to condition aliens’ eligibility for participation in the Federal Medicare Program on their admission to and residence in the United States.\textsuperscript{109} Hence, a state that elects to deny locally funded benefits to legal immigrants, while granting the same benefits to citizens, can only do so if federal authority is granted to the states. Through the Welfare Reform Act, Congress expressed its “intent that States that choose to follow Federal deeming restrictions are acting pursuant to congressional authorization and as part of a comprehensive national immigration policy.”\textsuperscript{110} The Welfare Reform Act signifies “the first time that [sic] in modern history that the [sic] Congress has explicitly authorized the states to discriminate against legal immigrants in the administration of their public benefit programs.”\textsuperscript{111}

\textbf{B. Restricting Access to Federal Means-Tested Public Benefit Programs}

The Welfare Reform Act and the Balanced Budget Act make a number of changes in the eligibility and distribution of welfare to immigrants.\textsuperscript{112} Immigrants arriving after the enactment date of the Welfare Reform Act, August 22, 1996, are barred from SSI, food stamps, and all means-tested federal public benefits for the first five years of their residency in the United States.\textsuperscript{113} States wanting to provide these benefits must do so with their own

\begin{itemize}
  \item Fix & Tumlin, \textit{supra} note 93.
  \item 8 U.S.C. § 1613. Congress defines the “means-tested public benefits program” as “a program of public benefits of the Federal, State, or local government in which eligibility for or the amount of, benefits or both are determined on the basis of income, resources, or financial need.” H.R. REP. NO. 104-651, at 1450 (1996), \textit{reprinted in} 1996 U.S.C.C.A.N. 2509 The Welfare Reform Act reads as follows:
  \begin{enumerate}
    \item the term “Federal public benefit” means —
      \begin{enumerate}
        \item any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriate funds of the United States; and
        \item any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.
      \end{enumerate}
    \item such term shall not apply —
      \begin{enumerate}
        \item to any contract, professional license, or commercial license for a non-immigrant
  \end{enumerate}
\end{enumerate}
funds. The restrictions on noncitizens access to federal means-tested public benefits are expected to account for $23 billion in federal savings, representing half of the total savings expected from federal welfare reform.

However, this savings has a price. Barring all noncitizens from food stamps will have a severe impact on immigrants and their families. An estimated seventy-seven percent of noncitizens lost eligibility for food stamps. Moreover, of those noncitizens receiving food stamps, children account for seventeen percent, another seventeen percent are sixty or older, and seven

whose visa for entry is related to such employment in the United States;
(B) or with respect to benefits for an alien who as a work authorized non-immigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State.
8 U.S.C. § 1611(c). Federal public benefits that are not affected are short-term assistance, including: medical assistance for emergency medical services; short-term, non-cash, in-kind emergency disaster relief, public health assistance for immunizations and communicable disease testing; short-term care that is necessary for the protection of life or safety as determined by the Attorney General; certain housing or community development benefits for non-citizens who qualified before the Act’s enactment; licenses and benefits directly related to work for which a non-immigrant has been authorized; and Social Security benefits protected by treaty or statute. 8 U.S.C. § 1611(b).
114. Id. at § 1621.
115. A "noncitizen" is defined as a permanent resident alien, refugee, asylee, an alien paroled into the United States for a period of at least one year, or an alien whose deportation has been withheld. H.R. REP. No. 104-651, at 1442 (1996), reprinted in 1996 U.S.C.C.A.N. 2501. The Welfare Reform Act reads:
(b) QUALIFIED ALIEN: For purpose of this title, the term "qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is:
(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act,
(2) an alien who is granted asylum under section 208 of such Act,
(3) a refugee who is admitted to the United States under section 207 of the Act,
(4) an alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year,
(5) an alien whose deportation is being withheld under section 243(h) of such Act, or
(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980.
8 U.S.C. § 1641. The Balanced Budget Act added a seventh classification: an alien or an alien’s child who has "been battered or subjected to extreme cruelty in the United States" by a spouse, parent, or family member living with the victim. Omnibus Consolidated Appropriations Act of 1997 § 501, 8 U.S.C. § 1641(c). There must be a substantial connection between such battery or cruelty and the need for the benefits to be provided for an alien to receive public benefits. Id.
116. Fix & Tumlin, supra note 93 (citing 1996 Congressional Budget Office estimates).
118. Fix & Tumlin, supra note 93.
percent work full time.\textsuperscript{119}

In addition to the restrictions placed directly on the noncitizen immigrant, the support an immigrant can expect to receive from his or her sponsor is limited. Under the Welfare Reform Act, sponsorship contractually binds the sponsor\textsuperscript{120} to provide financial support for the sponsored immigrant and gives federal, state, and local governments the right to sue the sponsor for reimbursement of public benefits used by the sponsored immigrant.\textsuperscript{121} Sponsors must have an income of 125 percent of the poverty line; this income is deemed part of the sponsored immigrant's income.\textsuperscript{122} This requirement will have an impact on legalized immigrants’ ability to petition for their relatives to enter the United States since, for the most part, legalized immigrants are comparatively low-skilled and low-paid.\textsuperscript{123} This favors wealthy sponsors and immigrants and shifts the cost of providing a “safety net” for noncitizens from government to sponsors and their families.\textsuperscript{124} In effect, including a sponsor's income in the immigrant's eligibility income disqualifies a sponsored immigrant from public

\textsuperscript{119} Id.

\textsuperscript{121} The legislative history defines the binding authority and ramifications sponsorship has on the sponsor:

\textit{Explanation of provision.} The proposal provided that when affidavits of support are required, they must comply with the following:

1. Affidavits of support must be executed as contracts that are legally enforceable against sponsors by Federal, State, and local agencies with respect to any means-tested benefits \ldots paid to sponsored aliens before they become citizens.
2. Affidavits of support must be enforceable against the sponsor by the sponsored aliens.
3. Reimbursement shall be requested for all Federal, State or local need-based programs with \{some enumerated exceptions\}.
4. To qualify to execute an affidavit of support, an individual must meet the revised definition of sponsor \ldots
5. Government entities that provide benefits may seek reimbursement up to 10 years after a sponsored alien last receives benefits.
6. Sponsorship extends until the alien becomes a citizen.


\textsuperscript{122} 8 U.S.C. § 1183a. It is estimated that this requirement could "significantly alter the number and composition of legal immigration flows from Mexico, Latin America and the Caribbean." Fix & Tumlin, supra note 93.

\textsuperscript{123} VAILET, supra note 26, at 6.

benefits until citizenship is attained.  

While immigrants are slightly more likely to experience unemployment than natives, studies indicate that the education level and language skills of new arrivals are the predominate factors contributing to this likelihood. Even with a language handicap, the probability of an immigrant needing welfare is roughly equivalent to that of a native worker. Between 1985 and 1990, 42.2 percent of immigrants entering the United States did not speak English well or at all, compared with 29.7 percent of the immigrants who entered five years earlier. Language skills significantly contribute to the economic sufficiency of immigrants. This relationship indicates that more time spent in the United States improves language skills, thereby reducing the likelihood of unemployment and welfare dependency. It also indicates that immigrants are most likely to need welfare benefits within the first five years of their residency in the United States. Furthermore, the number of immigrants on welfare, roughly equivalent to the native level, indicates that access to welfare benefits is not a primary factor for immigrating to the United States.

However, the Welfare Reform Act effectively cuts off the possibility of receiving public benefits during this critical initial five year period by requiring that access to federal means-tested public benefits be dependent upon attaining citizenship. Citizenship through naturalization requires passing both a

127. See Kramer, supra note 46. This parity between immigrant and native workers is particularly noteworthy in light of the fact that forty percent of working-age immigrants in 1990 had not completed high school—twice the rate of natives. See id.  
128. Id.  
129. STEWART, supra note 25, at 177. Immigrant children are more likely to be retained in grades and placed in low academic tracks on the basis of insufficient English language skills. Regardless of their degree of English proficiency, language-minority students tend to perform not as well at all grade levels than do students from homes where English is the predominate language. These students are also more likely to be enrolled in vocational courses than in courses on the academic track.  
130. Kramer, supra note 46. Regarding the motivation of immigrants to learn, a Project Literacy U.S. volunteer coordinator observed that immigrants "have a reason to want to improve themselves. . . . [T]heir degree of English proficiency, language-minority students tend to perform not as well at all grade levels than do students from homes where English is the predominate language. These students are also more likely to be enrolled in vocational courses than in courses on the academic track." STEWART, supra note 25, at 184.  
131. Kramer, supra note 46.  
132. Id.; see also Massey, supra note 11, at 26.  
133. "Title IV of the Welfare Act provides that, with certain exceptions, only U.S. citizens, U.S. nationals and 'qualified aliens' are eligible for federal, state and local public benefits."
literacy and English language test. The Act maintains that after the federal five year bar on public benefits, noncitizens who do not meet citizenship requirements, or who opt not to become naturalized, can only become eligible for public benefits after working ten years without receiving any benefits. In short, the Welfare Reform Act harms immigrants who are most in need of welfare benefits by allowing access only after they have worked for ten years. This access to welfare is illusory since most immigrants have achieved economic self-sufficiency after ten years and subsequently will not have the same need for welfare benefits.

The Welfare Reform Act and the Balanced Budget Act redefine a number of relationships involving welfare and immigration policy: a greater distinction is made between citizens and noncitizens; Congress shifts the safety net burden from government to sponsors and their families; states attain greater authority to distribute public benefits and the financial burden of providing these benefits; and immigration policy decisionmaking is transferred from the federal to the state level. Additionally, politically divisive decisions regarding immigration are shifted to state legislatures; thus, states with a high number of voting immigrants may be forced to bear the financial and social costs of providing benefits which potentially increase taxes and localize racial and ethnic division. In essence, while the Welfare Reform Act acquiesces to states that advocate for less federal control over the costs of providing public benefits to immigrants, it fundamentally shifts responsibility for immigration policy to states and localities, thereby redefining the purpose of immigration and ignoring its causes.

III. REDEFINING FUNDAMENTAL PRINCIPLES OF IMMIGRATION IN THE FACE OF GLOBALIZATION

In the past, immigrants to the United States assumed that with a bit of hard work, determination, and perseverance, they could have a better life. The federal government provided opportunities for education and employment, while also providing a safety net in case the road to the American dream became
rocky. The federal government acted as a catalyst for social and economic integration. Prior to the Welfare Reform Act, immigrants did not contemplate that the governmentally provided safety net would be pulled out from under them.

Historically, the United States has valued the contribution of its legal immigrants by providing them with the same access to welfare as its native citizens. Since the end of World War II, the governments of highly industrialized countries in Europe and North America have played a role “in maintaining economic stability, striving to ensure equality of opportunity, and providing a social safety net.” The only significant differences between immigrants and citizens in the United States were: the ability to vote; gain access to certain governmental jobs; and participate in government. However, the Welfare Reform Act limits the availability of means-tested public benefit programs by redefining the relationship between immigrants and the government. Simply put, the Act draws a “bright line between legal immigrants and citizens,” similar to the distinctions made between illegal and legal immigrants. The inclusive safety net once furnished by government is now only extended to those with “membership in the society.”

Through the Welfare Reform Act, states will gain the power to shape the meaning of citizenship and determine what rights are conferred on new immigrants. This delegates a traditionally federal power to the states. Now, the rights and privileges associated with citizenship are dependent upon an immigrant’s state of residency, not a common national identity. This, coupled with the fact that most noncitizens are members of racial or ethnic minorities,

138. Fix and Tumlin define immigration policy as “government rules and investments that are designed to promote the social and economic integration of newcomers.” Id.
139. Soros, supra note 15, at 22.
140. Fix & Tumlin, supra note 93.
141. Id.
142. Id. It appears that decisionmaking affecting U.S. immigration policy may reflect the influences of interest-based politics and federalism in distinguishing the rights of who is to be admitted into the country. See Scanlan, supra note 6, at 139. Congress’ rationale for this limiting definition is to make “illegal aliens, short-term parolees, PRUCOL [permanently residing under color of law] aliens, and non-immigrants ineligible for public benefits [to] reduce the incentive for aliens to illegally enter and remain in the [United States].” H.R. REP. NO. 104-651, at 1451 (1996), reprinted in 1996 U.S.C.C.A.N. 2510. Although the purpose is to limit illegal entry into the United States, its impact also affects those who are lawfully residing in the United States. Id. at 1441 (1996), reprinted in 1996 U.S.C.C.A.N. 2500.
144. Fix & Tumlin, supra note 93.
145. Id.
will cause citizenship to symbolize societal status rather than national unity. The Welfare Reform Act opposes a historical presumption that "once people are invited onto our territory, they are able to make claims on us, claims for a decent minimum of hospitality and for a decent minimum of justice."\textsuperscript{146}

Congress' promulgation of laws that exclude people, and consequently the skills they bring to the U.S. economy and society, is counter to the realities of globalization. Although the development of a global society has yet to reach the point of the current global economy, globalization will increase the demands on governments to provide social insurance to those brought within their borders and to enunciate the values they promote.\textsuperscript{147} These values will be shaped by the leadership of industrialized nations and the global perspective they incorporate into their policymaking and management of domestic problems that are rooted in globalization.\textsuperscript{148}

\textbf{A. Replacing Inclusive Values with Exclusive Laws}

The rationale of the Welfare Reform Act is "to make clear that the reduction of welfare for aliens supports our national traditions and values regarding work, opportunity, and self-reliance for those who immigrate to the [United States]."\textsuperscript{149} Within the Act, Congress redefines the principles underlying welfare and immigration policy:

- (1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.
- (2) It continues to be the immigration policy of the United States that--
  - (A) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and
  - (B) the availability of public benefits not constitute an

\textsuperscript{147} Soros, \textit{supra} note 15, at 245.
\textsuperscript{148} Seita, \textit{supra} note 16, at 471.
The principles behind modern U.S. immigration policy have shifted from values that ensure economic security and membership in society to values rewarding those who have already achieved a satisfactory level of prosperity. Through this shift, Congress has established a foundation for restricting public benefits to immigrants, thereby avoiding the allocation of federal resources necessary to provide noncitizen immigrants some level of economic security. Ironically, a noncitizen must display self-sufficiency for the federal government to ensure the financial security of that noncitizen. Legitimate financial need is no longer the criteria for receiving government support.

The legislative history of the Welfare Reform Act goes as far as to state that since the 1880s, "it has been a fundamental tenet of American immigration policy that aliens should not receive public welfare benefits." However, this assertion counters the historical inclusion of immigrants to welfare benefits, as well as the safety net premise that created welfare. The United States has a long history of promoting the social and economic integration of immigrants into society, regardless of their status. This reflects the belief that welfare serves as a viable mechanism to this end. In the face of these values and principles, Congress' assertion appears to be little more than a misrepresentation of the values associated with immigrants and U.S. immigration policy.

Additionally, Congress provides a set of factors that should be considered when determining whether an alien can be excluded on public charge grounds. These factors include: age, health, family status, assets, resources and financial status, education, and skills. The emphasis Congress places on these factors

151. Fix & Tumlin, supra note 93 (stating that "welfare reform represents a new policy of what might be termed immigrant exceptionalism: one that deepens the differences between how citizens and non-citizens are treated, and that redefines non-citizens' membership in society."). Id.
152. See id.
153. Id.
155. Fix & Zimmerman, supra note 143, at 60.
156. See Fix & Tumlin, supra note 93.
157. Fix & Zimmerman, supra note 143, at 60.
158. Fix & Tumlin, supra note 93.
159. The Balanced Budget Act amendments enumerate specific factors to be taken into account when determining the likelihood that an applicant will become a public charge:

(A) IN GENERAL – Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of
suggests that a greater value is placed on wealthy, educated, and skilled immigrants. While such additions to society should be welcomed, these factors restrict those without financial or family status who may bring other assets to the globalizing U.S. economy and society. Responsible and motivated individuals, determined to make a better life for themselves and their families, who may need a safety net, are excluded. The 104th Congress seems to have forgotten the values engraved on Lady Liberty.160

B. The Illusory Promise of the 104th Congress

Congress provides a “social contract” justification for restricting welfare: “Aliens are allowed to enter the [United States] and join our economy; in return, the nation asks that immigrants obey our laws, pay taxes if they earn sufficient income, and avoid welfare until they become citizens.”161 This seems paradoxical. Although immigrants meet the legal requirements established by Congress to reside and work in the United States, they are not afforded any protection or support while contributing to the U.S. economy.162 The relationship between immigrants and the federal government is illusory since the federal government retains the benefits that immigrants bring to this country, without ensuring some level of economic security in return.163

Along the same lines, the Welfare Reform Act requires qualified aliens to wait five years before they can be eligible for federal means-tested benefits.164

application for admission or adjustment of status, is likely at any time to become a public charge is excludable.

(B) FACTORS TO BE TAKEN INTO ACCOUNT – (i) In determining whether an alien is excludable [from being considered a public charge], the consular officer or the Attorney General shall at a minimum consider the alien’s –

(I) age;
(II) health;
(III) family status;
(IV) assets, resources, and financial status; and
(V) education and skills.


Give me your tired, your poor, Your huddled masses, yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, the tempest-tost to me, I lift my lamp beside the golden door!

163. See Fix & Tumlin, supra note 93.
Congress assumes that this will “send a clear signal that immigrants are expected to uphold pledges that have been required under U.S. immigration law for generations that they will not become dependent on public welfare benefits prior to obtaining citizenship.”165 This signal preaches to the choir. Statistical trends indicate that immigrants turn to welfare only slightly more often than native citizens.166 Of these immigrants, children and the elderly receive a significant amount of total benefits, while only a small percentage of working-age immigrants use welfare.167

These trends disparage the theory that public benefits are the predominant reason aliens come to the United States. Studies indicate that most immigrants who seek admission into the United States do so because of educational opportunities, better wages, and greater political freedoms.168 It is estimated that 4.7 percent of all legal immigrants—compared to 4.2 percent of natives—receive government benefits such as Aid to Families with Dependent Children (AFDC) or SSI.169 This motivation, coupled with the Immigration and Naturalization Service’s screening process excluding immigrants who may become public charges, provides assurances that immigrants have no more desire or likelihood of becoming dependent on welfare than native citizens.170

The Welfare Reform Act changes the “uniform national rules set by the Congress and courts regarding non-citizens’ eligibility for public benefits,” replacing them with a policy that “deepens the differences between how citizens and non-citizens are treated, and that redefines non-citizens’ membership in society.”171 Equal protection no longer means that “policymaking is based on the assumption that, while on American soil, [legal immigrants] matter as much as citizens.”172 The federal government’s ability to act as a catalyst for opportunity and empowerment is diminished.

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166. See supra text accompanying notes 126-131.
167. See Fix & Tumlin, supra note 93.
168. For a comprehensive review of the impact of immigration on education in the United States, see LORRAINE M. McDO NELL & PAUL T. HILL, NEWCOMER S IN AMERICAN SCHOOLS: MEETING THE EDUCATIONAL NEEDS OF IMMIGRANT YOUTH (1993); see also STEWART, supra note 25.
171. Fix & Tumlin, supra note 93.
172. Mills, supra note 146, at 446.
Globalization will continue to increase the demand for international cooperation through domestic policymaking. Joint cooperation in managing migration should be an adjunct to bilateral or multilateral initiatives promoting freer trade. While there is uncertainty as to how foreign and domestic policies might be coordinated, discussions of such initiatives should not be avoided "because of uncertain outcomes on development, or because of reservations about the international community's ability and interest in promoting economic equality among nations." Rather, sound global policymaking serves as a starting foundation for domestic economic and social initiatives.

In terms of decisionmaking, emigration countries are generally the major beneficiaries of freer trade and investment. The consolidation of global economies suggests that countries of immigration have leverage to influence emigration countries and, thereby, limit their level of emigration.

As trade relations expand, a continent-wide infrastructure of transportation and communication will facilitate circulation between . . . countries and an expanding network of interpersonal ties created through trade, tourism, education, and migration itself will lower the costs and risks of international movement—to put a U.S. job within easy reach of a growing fraction of the Mexican population. U.S. [legislative] attempts to suppress the resulting migratory flows will not succeed; indeed, they will make matters worse, and in the end the United States will have the worst of all possible worlds: continued immigration accompanied by stagnant wages, declining labor standards, and a growing population of impoverished, unhealthy, and poorly educated Mexican

174. Martin, supra note 27.
175. Papademetriou & Martin, supra note 31, at 218.
176. Id.; see also Soros, supra note 15.
177. Latapi & Martin, supra note 27.
178. Papademetriou & Martin, supra note 31, at 211. A commission created by the Immigration Reform and Control Act of 1986 to examine the conditions in Mexico and other countries whose potential labor force migrates to the United States, concluded after three years of study that expanding trade between the United States and those countries is the "single most important long-term remedy" for immigration pressures. Id.
While "the catalyst for much of today's unauthorized Mexican migration for U.S. employment lies in the [United States]. . . solutions are to be found in both countries." Finding these solutions depends on the "recognition [that] interdependence implies mutual responsibilities" in a global community. Countries must evaluate whether their own economic policies are likely to promote unwanted immigration, and substitute sound multilateral trade and economic policies for immigration restrictions. The ability to manage migration depends on the controlling economic factors that determine whether a domestic wage in another nation is enough to fulfill consumer needs. To disregard these mutual responsibilities calls attention to the industrialized nations' promotion of global inequalities while potentially depriving them of the opportunity to continue to influence the global community economically, politically, and ideologically. Economic insecurity leads households to seek new ways of insuring against and overcoming the risks that result from failed economic policies; subsequently, migration becomes a means to an end. In the context of the United States and Mexico, U.S. immigration and economic policies must be proactive in fostering economic security within Mexico.

Rather than trying to suppress a migratory flow that is a natural outgrowth of market forces and social processes that we otherwise encourage, a more realistic strategy would be to accept the flow as a reality and work to channel it in directions that are beneficial to the United States, Mexico, and the North American economy. Rather than trying fruitlessly to raise the cost and lower the benefits of international movement in the mistaken belief that migrants are only seeking higher net incomes, we should work to help Mexico overcome the various failures in capital, credit, and insurance markets that motivate so many moves to the United States.

179. Massey, supra note 11, at 23.
180. Latapi & Martin, supra note 27; see also Papademetriou & Martin, supra note 31, at 211, 217.
182. See Martin, supra note 27.
183. Massey, supra note 11, at 27.
184. Papademetriou, supra note 28, at 213, 220.
185. Massey, supra note 11, at 24.
186. Id. at 32.
However, freer global trade takes time to increase economic and job growth, often appearing as a "one step backward, two steps forward" approach to immigration policy. The process of development, ironically, creates market insecurities that induce international migration. Economic shifts force market participants—governments, businesses, consumers and workers—to redefine their participatory role and evaluate their willingness to change with the economic times. This creates difficulties for legislators making sound policy in an environment where voters demand immediate results. The answer to this global dilemma lies in heightening awareness of the sensitive interrelationship and interdependence of globalization. As the economic effects of globalization reach cities and towns, global economic policies, rather than restrictive domestic policies, will become more viable solutions.

A. Making Tough Decisions: Looking to State and Local Governments for Global Solutions

The Welfare Reform Act passes many of the unsolved immigration problems of the federal government down to local governments and continues to formulate an immigration policy "with total disregard for the forces that are responsible for . . . immigration to the United States." These problems will be exacerbated as global economic externalities influence legislatures' agendas, particularly in states where immigration is a significant concern for voters. The expansion of national and global markets will affect state businesses and their demand for labor; subsequently, local policies established to promote business will need to reflect global demands. States and localities will be forced to deal with the regional and global complexities of immigration within their new relationship to state welfare programs, budget constraints, and tax policies. State governments will need to: understand and communicate the interrelationship of their local interests to national, international, and global

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187. Martin, supra note 27; see Soros, supra note 15, at 22.
188. See Massey, supra note 11, at 24.
189. See Papademetriou, supra note 28, at 219.
190. See id.; see also Latapi & Martin, supra note 27.
192. See Scanlan, supra note 6, at 102; see also Fix & Tumlin, supra note 93 (providing a concise summary of the arguments in favor of and against the devolution of immigration policy to states and localities).
194. Fix & Tumlin, supra note 93.
issues; create immigration policies that reflect these issues; and ensure cooperation between other states, and for some, neighboring Mexico. Global policies will fall short unless decisionmakers can convey the interrelationship of local interest with global realities.

Arguments regarding the feasibility and wisdom of decentralizing the distribution of public benefits to immigrants will continue. However, this debate will not be settled at a national level any time soon, and until then, it will be for state and local governments to find their own answers. Local experimentation affecting welfare and immigrants may find solutions applicable at the federal level. States now forced to deal with an unwanted national problem with global roots are in a position to provide national legislators with insights into how to substitute global decisionmaking for political decisionmaking.

A global approach to domestic policymaking is nothing new. Economic and trade policies have been used by many developed nations, including Japan, a number of European nations, and the European Community as a whole, to reduce emigration from less developed neighboring nations. Japan, for instance, has pursued a bringing “capital to people” strategy to alleviate both domestic labor concerns over immigration and emigration from less developed countries, such as neighboring China.

Advocates of a more global approach to policymaking will seize this opportunity to provide innovative solutions to immigration. State and local governments will need to tailor benefits and services more efficiently to the needs of local populations. States with low levels of immigration may be willing to absorb the cost of public welfare to noncitizens or may deem denial essentially illegal for federal or state constitutional reasons. A global

195. See id.
196. See Scanlan, supra note 6, at 107.
197. Fix & Tumlin, supra note 93.
198. See id; see also KEOHANE & NYE, supra note 1, at 229 (“If leadership is thought of as the provision of the public good of responsibility, rather than exploitation of followers or the private good of prestige, it remains a positive idea. . . . Leadership is necessary in the absence of delegated authority.”) (quoting Charles Kindleberger).
199. HOLLIFIELD, supra note 193, at 25.
200. Id. Decisionmakers in the Southwest United States should examine these approaches as they confront similar immigration issues.
201. Fix & Tumlin, supra note 93.
202. Id. (“In January 1997, Pennsylvania’s Attorney General issued an opinion declaring that denying legal immigrants state cash and medical assistance would be unconstitutional under the 1971 Supreme Court case, Graham v. Richardson.” Id.; See Graham v. Richardson, 403 U.S. 365 (1971).
approach to policymaking will undoubtedly include a greater sensitivity to populations with diverse English language capacities, educational backgrounds, family structures, employment and social networks, cultures, and value systems.\textsuperscript{203}

Through their legislators, states rich with voting immigrants will be required to provide innovative solutions. Nationalistic rhetoric by local, state, and federal politicians concerning immigration has resulted in exclusionary legislation, such as the Chinese Exclusion Act, the National Origins Quota System, and now the Welfare Reform Act of 1996.\textsuperscript{204} However, U.S. immigration policy must reflect the continual changes of globalization and the international labor market, as well as its commitment to social justice.\textsuperscript{205} In pursuing their objectives, state legislators must choose between educating the general public on the need for these policies or pit native voters against pro-immigrant voters.\textsuperscript{206} The latter choice will become obsolete for political candidates as the federal government continues to maintain high immigration levels and more immigrants become naturalized.\textsuperscript{207} The writing is on the wall, the question is whether the response of policymakers will be reactive or proactive.

\section*{B. Shaping Policy: Global Influence at the Local Level}

The economic forces influencing immigration and domestic policies will not be halted as national and local economies are integrated into the global economy. The movement of labor across borders is an important facet of the global and local marketplace that is primarily caused and driven by economic factors.\textsuperscript{208} The localization of welfare gives states the ability to shape immigration policy.\textsuperscript{209} States, not the federal government, now have the authority—and the opportunity—either to discourage or encourage immigration

\textsuperscript{203}. See Fix & Tumlin, \textit{supra} note 93.
\textsuperscript{204}. \textsc{Hollifield, supra} note 193, at 36.
\textsuperscript{205}. See \textit{id}.
\textsuperscript{206}. See Martin, \textit{supra} note 27.
\textsuperscript{208}. \textsc{Hollifield, supra} note 193, at 41.
\textsuperscript{209}. Fix & Tumlin, \textit{supra} note 93; see also Massey, \textit{supra} note 11, at 32-33. The proposals discussed attempt to strengthen the self-sufficiency of arriving immigrants and promote economic policies directed at stabilizing foreign economies while minimizing the likelihood of future immigration. Although these proposals are primarily directed at the federal legislature, many states may be able to incorporate this global approach to immigration policy at state and local levels.
through public benefits and the values they place on immigration. The existing migration between Mexico and the United States can be utilized by states to determine the relationship between migration and economic policy in a global environment. However, local policymaking can only be effective if the global dimensions of the problem are understood.

The economic dimension is directly related to the supply of labor in the world economy, which is highly elastic, and the demand for labor in the industrial democracies, which has been high throughout most of the postwar period. In short, the globalization of markets has engendered higher levels of international migration. The political dimension is linked to the uncoordinated attempts by states to regulate migration. But to understand the political dimension, we must compare the politics and policies of immigration in the industrial democracies. We must examine [how] states have attempted to use foreign workers to regulate national labor markets, and look at the liberal reaction against statist policies. Finally, we must study the issue of citizenship, to understand how foreign workers have been transformed in each country from expendable commodities (guestworkers) into objects of political conflict (potential citizens).

The incentives and costs of migration to the United States that Congress attempted to avoid have only been shifted to states, local governments, and sponsoring families without examining the essential global dimensions. Local policymakers must realize that immigrants will continue to migrate to countries with stronger economies and employment opportunities until their own countries' economies grow and are stabilized. For noncitizen immigrants in search of work, access to states with favorable public benefits will be a concern once within the borders of the United States, not prior to entry. States that are unable or unwilling to make critical immigration and welfare decisions will most likely pass these decisions to local units of government.

210. See Martin, supra note 27.
211. HOLLIFIELD, supra note 193, at 41.
212. See Martin, supra note 27.
213. Fix & Tumlin, supra note 93.
costs of immigration are passed down, immigration policy will continue to fragment and the need for local solutions to global problems will continue to grow. 214

CONCLUSION

The 104th Congress passed welfare legislation that shifted the responsibility for tough immigration decisions to states and local governments. In the process, it virtually eliminated the federal safety net for immigrants and their families. The Welfare Reform Act’s impact on immigrants appears to do more to punish those who are becoming responsible contributors to the economy and fabric of the United States, than to deter immigration. Policies aimed at mitigating the costs of welfare and minimizing the burdens of unwanted immigration will only be found by examining the social and economic factors that are rooted on both sides of the border, as exemplified by the historical economic relationship between Mexico and the United States. Given the current federal law, the burden of formulating and funding such policies, at least in the foreseeable future, will be borne at the state and local level.

Global realities are a signal to legislators that the burdens placed on the public welfare system by immigration are best resolved through good domestic and international economic cooperation—not by restrictions on a viable part of the international labor market. Although the power of politicians is great, it is shadowed by the potential of those who vote and subsequently influence policymaking. Criticism can be cast at our public officials; however, the inaction of a “nation of immigrants” toward these issues is more reprehensible. State and local government officials who have been thrust into this position must exercise the leadership necessary to find local solutions to global questions.

214. Id.