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Kevin R. Johnson

*University of California, Davis*

Bill Ong Hing

*University of California, Davis*

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# NATIONAL IDENTITY IN A MULTICULTURAL NATION: THE CHALLENGE OF IMMIGRATION LAW AND IMMIGRANTS

*Kevin R. Johnson\* and Bill Ong Hing\*\**

WHO ARE WE? THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY. By *Samuel P. Huntington*. New York: Simon & Schuster. 2004. Pp. xvii, 428. \$39.95

Samuel Huntington's provocative new book *Who Are We?: The Challenges to National Identity* is rich with insights about the negative impacts of globalization and the burgeoning estrangement of people and businesses in the United States from a truly American identity. The daunting question posed by the title of the book is well worth asking. After commencing the new millennium with wars in Afghanistan and Iraq, U.S. military torture of Iraqi prisoners, indefinite detentions of U.S. citizens declared by the President to be "enemy combatants," and a massive domestic "war on terror" that has punished and frightened Arab, Muslim, and other immigrant communities, many Americans have asked themselves the very same question.

Professor Huntington's fear is that the increasingly multicultural United States could disintegrate into the type of ethnic strife that destroyed the former Yugoslavia during the 1990s, or, in less dramatic fashion, divided Quebec for much of the twentieth century. Forming a cohesive national identity with a heterogeneous population is a formidable task but, as Professor Huntington recognizes, critically important to the future of the United States.<sup>1</sup>

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\* Associate Dean for Academic Affairs, School of Law and Mabie/Apallas Professor of Public Interest Law and Chicana/o Studies, University of California at Davis. A.B. 1980, University of California, Berkeley; J.D. 1983, Harvard. — Ed. Jack Ayer's insightful comments helped spur my thinking on the issues raised in this review. We appreciate the comments of Jack Ayer and Hiroshi Motomura, who commented on a draft of this paper. We thank Dean Rex Perschbacher for his generous support of our research. David Yun provided much-appreciated editorial assistance.

\*\* Professor of Law and Asian American Studies, Director for Asian American Studies Program, University of California, Davis. A.B. 1971, University of California, Berkeley; J.D. 1974, University of San Francisco. — Ed.

1. The public shares his concerns with the cultural impacts of immigration on the nation. See NPR/Kaiser/Kennedy School Poll, Immigration: Summary of Findings (Oct. 2004)

Professor Huntington identifies and analyzes a perceived loss of national identity in the United States over the tail end of the twentieth century, during roughly the same period that the civil rights revolution forever changed the nation. In that analysis, *Who Are We?* takes a controversial stance about U.S. immigration law and policy, which has proven to be a formidable challenge to policymakers and frequently touches a nerve with the public. Professor Huntington sounds a familiar — if not tired — alarm that immigration and immigrant law and policy are out of control and must be reformed.

In asking the nation to reconsider its immigration policies, Professor Huntington again asks a question well worth asking. Immigration frequently has provoked controversy in the United States and, even when not at the forefront, lurks ominously in the background of the discussion of many policy issues, from public benefits to affirmative action to driver's license eligibility for undocumented immigrants. Time and again, immigration has proven to be a volatile political issue in the United States. Although the nation often claims to be “a nation of immigrants” open to the “huddled masses,”<sup>2</sup> sporadic outbursts of anti-immigrant sentiment mar its history,<sup>3</sup> dating as far back as the Alien and Sedition Acts of the 1790s.<sup>4</sup>

In *Who Are We?*, Professor Huntington expresses fear about the impacts of immigrants — specifically Mexican immigrants — on the United States, its culture, and, most fundamentally, the “American” way of life. He sees immigration and immigrants as transforming a white-Anglo-Saxon cultural nation and fears what he sees on the horizon for the United States, which he suggests is something apocryphal, raising the specter of the fall of Rome (pp. 11-12). In expressing such fears, Professor Huntington ties immigration to critical aspects of national identity and sees the identity of the United

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(reporting poll results showing that public has less negative views toward immigration than it did immediately after September 11 but remains concerned with impacts of immigration on U.S. culture), available at <http://www.npr.org/templates/story/story.php?storyId=4062605> (last visited Feb. 23, 2005).

2. For a historical review of the oscillating nature of U.S. immigration law and policy, see ROGER DANIELS, *GUARDING THE GOLDEN DOOR: AMERICAN IMMIGRATION AND IMMIGRANTS SINCE 1882* (2004); BILL ONG HING, *DEFINING AMERICA THROUGH IMMIGRATION POLICY* (2004) [hereinafter HING, *DEFINING AMERICA*].

3. See JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860-1925* (3d ed. 1992); LUCY E. SALYER, *LAW HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW* (1995); RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* (rev. ed. 1998).

4. See generally JOHN C. MILLER, *CRISIS IN FREEDOM: THE ALIEN AND SEDITION ACTS* (1951) (analyzing impacts of Alien and Sedition Acts); JAMES MORTON SMITH, *FREEDOM'S FETTERS: THE ALIEN AND SEDITION LAWS AND AMERICAN CIVIL LIBERTIES* (1956) (same).

States changing slowly but surely as new and different — culturally and otherwise — immigrants are coming in large numbers to the United States.

We agree wholeheartedly with Professor Huntington that national identity is central to the discussion of immigration and immigrants. In turn, the race and culture of immigrants affect the national identity. Unfortunately, such aspects of immigration law are frequently overlooked in academic studies of the subject.<sup>5</sup>

Immigration, as it has done throughout U.S. history, is changing the face of the nation. Moreover, immigration law impacts domestic minority communities and civil rights in the United States.<sup>6</sup> Indeed, Professor Huntington's prescription of assimilation and the end of any racial and ethnic consciousness is a more general critique of identity politics and, at its core, a challenge to multiculturalism. He leaves little doubt that he deeply disagrees with the claim of Nathan Glazer that "we are all multiculturalists now."<sup>7</sup>

Immigration has contributed to the multicultural nature of the United States and has transformed the nation and its civil rights agenda.<sup>8</sup> The nation cannot ignore the impacts of immigration on national identity, race, and civil rights if it wants to avoid potential unrest from those opposing the transformations taking place — the vigilante groups in Arizona using violence to enforce the immigration laws, immediately come to mind<sup>9</sup> — and immigrants who may resist efforts at forced assimilation, deportation, and other actions that adversely impact immigrant communities. To ignore the changes risks a domestic explosion like that which the nation has never seen.

The integration of immigrants into the political, social, and economic fabric of the United States undisputedly is an important public policy issue that fully warrants the careful attention of academics and policymakers. Law and policy should strive to foster integration of immigrants into U.S. society, for example, by seeking to eliminate the immigrant caste structure in the labor market.

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5. See generally George A. Martínez, *Race and Immigration Law: A Paradigm Shift?*, 2000 U. ILL. L. REV. 517 (introducing a series of essays analyzing the analysis of race in immigration law scholarship).

6. See BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY 1850-1990* (1993) [hereinafter HING, *MAKING AND REMAKING ASIAN AMERICA*].

7. NATHAN GLAZER, *WE ARE ALL MULTICULTURALISTS NOW* (1997).

8. See Kevin R. Johnson, *The End of "Civil Rights" as We Know It?: Immigration and Civil Rights in the New Millennium*, 49 UCLA L. REV. 1481 (2002).

9. See, e.g., Nick Madigan, *Police Investigate Killings of Illegal Immigrants in Desert*, N.Y. TIMES, Oct. 23, 2002, at A5; see also *infra* text accompanying notes 63-65 (discussing the potential for a nativist backlash against immigrants).

Unfortunately, law has often done the opposite,<sup>10</sup> with distinctions between different groups of immigrants thwarting, if not facilitating, their assimilation into American social life.

We strongly disagree, however, with Professor Huntington's normative evaluation of the impacts of immigration and what changes in immigration law and policy are necessary. One glaring weakness of *Who Are We?* is that it fails to weigh the positive impacts of immigration and immigrants. Consequently, it resembles a cost-benefit analysis that focuses exclusively on costs.

Importantly, immigration is a function of economic, social, and political pressures that are not wholly within any one nation's sovereign control. Closed borders simply are not a policy option in the United States today. Nor, in light of the modern civil rights consciousness, are blanket prohibitions on the immigration of certain races or national origins generally viable. Indeed, the various national origin, religious, and other profiling measures utilized by the federal government in the "war on terror" — with national security perhaps the most compelling justification for such measures — have provoked controversy.<sup>11</sup>

One can acknowledge the changes brought by immigration, proclaim the need for the assimilation of immigrants, and, at the same time, offer more constructive approaches than the alarm and pessimism of *Who Are We?*<sup>12</sup> Professor Huntington's book is surprisingly slim on policy recommendations.<sup>13</sup> Rather, it is more of a

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10. See, e.g., *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 140 (2002) (holding that undocumented immigrants cannot recover backpay for employer's violation of federal labor law). For criticism of *Hoffman Plastic*, see Christopher David Ruiz Cameron, *Borderline Decisions: Hoffman Plastic Compounds, the New Bracero Program, and the Supreme Court's Role in Making Federal Labor Policy*, 51 UCLA L. REV. 1 (2003); Robert I. Corrales, *Did Hoffman Plastic Compounds, Inc., Produce Disposable Workers?*, 14 LA RAZA L.J. 103 (2003).

11. See Samuel R. Gross & Debra Livingston, *Racial Profiling Under Attack*, 102 COLUM. L. REV. 1413 (2002); see also *infra* text accompanying notes 37-39 (discussing criticism of the U.S. government's "war on terror").

12. See, e.g., RICHARD ALBA & VICTOR NEE, *REMAKING THE AMERICAN MAINSTREAM: ASSIMILATION AND CONTEMPORARY IMMIGRATION* (2003); LINDA CHAVEZ, *OUT OF THE BARRIO: TOWARD A NEW POLITICS OF HISPANIC ASSIMILATION* (1991); PETER D. SALINS, *ASSIMILATION, AMERICAN STYLE* (1997); REINVENTING THE MELTING POT: THE NEW IMMIGRANTS AND WHAT IT MEANS TO BE AMERICAN (Tamar Jacoby ed., 2004).

13. Without discussing the details, Professor Huntington endorses in principle the reform proposals outlined in a series of reports issued by the U.S. Commission on Immigration Reform in the 1990s (pp. 200, 201, 243). The final report addressed policies designed to integrate immigrants into U.S. society, including a voluntary "Americanization" program that focused on promoting education and facilitating naturalization. See U.S. COMM'N ON IMMIGRATION REFORM, *BECOMING AN AMERICAN: IMMIGRATION AND IMMIGRANT POLICY* 25-58 (1997). The Commission emphasized that "[e]thnic and religious diversity based on personal freedom is compatible with national unity," *id.* at 25, a point that Professor Huntington ignores. For analysis of the Commission's reports, see Carlos Ortiz

general critique of the immigration status quo with a sweeping endorsement of reducing immigration and policies fostering immigrant assimilation, with little in the way of specific recommendations about how this might be accomplished in the modern United States.

One aspect of Professor Huntington's analysis has provoked anger and strident charges of racism. He unequivocally proclaims that immigration from Mexico is a specific — and most dangerous — threat to the national identity and unity (pp. 221-56). In Professor Huntington's estimation, Mexican immigrants refuse to assimilate into the mainstream of U.S. society and live and act in separatist — “un-American” — ways.

Even though some observers have labeled Professor Huntington's arguments as racist,<sup>14</sup> *Who Are We?* should not be disregarded as a racist tract. Professor Huntington grounds his concerns with the changes caused by Mexican immigrants to the nation's culture, with a particular emphasis on language (Spanish rather than English) and religion (Catholic rather than Protestant). Although we fear and suspect that language, national origin, and religion in certain circumstances serve as convenient proxies for race, we take Professor Huntington at his word that race is not the core basis of his concern with Mexican immigrants. Unfortunately, the same cannot be said for all those who seek to reduce immigration from Mexico and some anti-immigrant activists who may invoke his arguments to attempts to justify restrictionist immigration laws and policies.

This review focuses on two fundamental flaws in Professor Huntington's analysis of immigration in the modern United States. First, contrary to the claim that a separatist Mexican nation is emerging in this country, *all* immigrants in fact do assimilate to a certain degree into U.S. social life.<sup>15</sup> The available empirical evidence

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Miranda, *United States Commission on Immigration Reform: The Interim and Final Reports*, 38 SANTA CLARA L. REV. 645 (1998).

14. See Walter Ellis, *Welcome to the United States of Latin America*, TIMES HIGHER EDUC. SUPPLEMENT, June 18, 2004, at 16.

15. See ALBA & NEE, *supra* note 12, at 215-70 (summarizing evidence of assimilation of immigrants and their descendants in United States); T. Alexander Aleinikoff & Rubén G. Rumbaut, *Terms of Belonging: Are Models of Membership Self-Fulfilling Prophecies?*, 13 GEO. IMMIGR. L.J. 1, 10 (1998) (“A review of the social science research literature on immigration reveals that assimilation — whether considered intergenerationally or among the most recent waves of immigrants — appears to be progressing roughly as it always has. *This is particularly the case with respect to linguistic assimilation, which is frequently seen as the most important marker of acculturation.*” (emphasis added) (footnote omitted)); see also BILL ONG HING, *TO BE AN AMERICAN: CULTURAL PLURALISM AND THE RHETORIC OF ASSIMILATION* 152-55 (1997) [hereinafter HING, *TO BE AN AMERICAN*] (discussing the evidence of the cultural assimilation of immigrants).

On assimilation of Mexican immigrants and Mexican Americans, see KEVIN R. JOHNSON, *HOW DID YOU GET TO BE MEXICAN?: A WHITE/BROWN MAN'S SEARCH FOR*

shows that, in the aggregate, immigrants from all nations, including Mexico, overwhelmingly participate in the labor market, learn English, exhibit high labor participation rates, are firmly committed to family, and participate in community life in ways comparable to other Americans.<sup>16</sup> This is not surprising given that most immigrants come to the United States because they embrace American political values and economic freedoms.<sup>17</sup>

None of this should be taken as suggesting that stresses and tensions do not result from immigration and the presence of newcomers in the community. Immigrants do not assimilate instantly, and the integration process is not without individual and social stresses.<sup>18</sup> Nevertheless, immigrant assimilation generally has prevailed over the long haul.

Consequently, we do not entertain the same fears about immigration and immigrants that Professor Huntington holds. We therefore unequivocally reject any suggestion that efforts must be made to curtail Mexican immigration, and find unnecessary mandatory assimilation programs to destroy Mexican culture, cabin Catholicism, and require the embrace of Protestant values. We recognize that change brought by immigration — as well as cultural change generally<sup>19</sup> — is normal and something that simply cannot be halted in its tracks, for example, by severely reducing immigration or mandating “being American,” whatever that might be.

In certain respects, Professor Huntington suffers from a myopia, seeing only the aspects of history and the evidence that support his case. One aspect of U.S. history that he does not fully acknowledge is that assimilation of immigrants has persistently been viewed as a problem with the immigrants of any particular period. Early in this nation’s history, for example, the claim was that German and Irish immigrants — later replaced by Chinese, Japanese, southern and eastern European, and later Mexican immigrants — were racially

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IDENTITY (1999); David G. Gutiérrez, *Globalization, Labor Migration, and the Demographic Revolution: Ethnic Mexicans in the Late Twentieth Century*, in THE COLUMBIA HISTORY OF LATINOS IN THE UNITED STATES SINCE 1960, at 43 (David G. Gutiérrez ed., 2004); Kevin R. Johnson, “Melting Pot” or “Ring of Fire”?: *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1259 (1997) [hereinafter Johnson, “Melting Pot”]; see also DAVID G. GUTIÉRREZ, WALLS AND MIRRORS: MEXICAN AMERICANS, MEXICAN IMMIGRANTS, AND THE POLITICS OF ETHNICITY (1995) (analyzing commonalities and differences among Mexican immigrants and Mexican Americans).

16. See *supra* note 15 (citing authorities).

17. See *infra* text accompanying notes 43-83.

18. See *infra* text accompanying notes 43-83.

19. For an analysis of the process of cultural change, see Madhavi Sunder, *Cultural Dissent*, 54 STAN. L. REV. 495 (2001).

inferior and refused to assimilate into mainstream U.S. society.<sup>20</sup> These claims were buttressed by the assertion that the current cohort of immigrants differed from the last group. Despite those claims, the assimilation process has in most respects been successful, and most observers see the past efforts to limit the immigration of “unassimilable” persons as unfortunate mistakes that mar, not elevate, the nation’s proud history.

We contend that today’s immigrants in many respects are not all that different from those of past generations. Indeed, given the influence of U.S. culture throughout the world through technology, immigrants in the twenty-first century may be more ready to assimilate than past immigrants in our history. Ease of travel and the technology of the information age make it more likely that individuals will immigrate with a better understanding of the United States and share bonds with a number of nations.<sup>21</sup> Nonetheless, the fact that many immigrants to the United States are people of color — and much more racially diverse than past immigrant cohorts — complicates matters considerably and makes assimilation more difficult than for most groups of white immigrants.

Second, even if one were to conclude that today’s immigrants from Latin America were not assimilating, the answer in our estimation would be to fashion law and policy that truly fosters their integration into U.S. society. Between the lines, Professor Huntington, in contrast, suggests the need for a dramatic reduction in the level of immigration because the nation faces, in his view, an unprecedented period of “persistent high levels of immigration” (p. 196). At the same time, however, he admits that the nation historically has adapted to comparable immigration levels (pp. 199-204).

*Who Are We?* no doubt will be invoked to justify severe reductions of the current levels of immigration. Such calls are premised on the fundamental idea that it is permissible, desirable, and necessary to restrict immigration into the United States. Powerful social, political, and economic forces, however, bring immigrants to the United States, a land of remarkable economic, social, and political opportunity. These forces have proven time and again to be difficult to thwart by immigration enforcement policies, especially policies that are consistent with American conceptions of individual rights. Indeed, even though the United States greatly fortified its border with Mexico over the 1990s, and, after the events of September 11, 2001, further increased border fortifications and monitoring, we have seen an

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20. See *infra* text accompanying notes 84-136.

21. See Anupam Chander, *Diaspora Bonds*, 76 N.Y.U. L. REV. 1005 (2001).

increase in the undocumented immigrant population in the United States to at least seven million.<sup>22</sup>

Part I of this essay scrutinizes Professor Huntington's main claims about immigration and immigrants in *Who Are We?* Part II compares his analysis and prescriptions with past nativist concerns with immigration and pressures placed on immigrants from Asia and Mexico to assimilate into the mainstream. Part III focuses on the aspect of Professor Huntington's book with which we agree — that immigration touches on important issues of national identity and race — but analyzes the dangers of its approach and offers policy recommendations that address some of Professor Huntington's concerns.

### I. PROFESSOR HUNTINGTON'S ANSWER TO "WHO ARE WE?"

Professor Huntington endeavors to answer the all-important question of who we are as a nation at the beginning of the twenty-first century. This is especially appropriate given the monumental changes that have taken place in the United States over the last fifty years. The end of state-sanctioned racial segregation, the struggle for civil rights, and the growth and acceptance of a more multicultural, multiracial nation require reflection about what the nation has become and the national identity embraced by modern Americans.

Professor Huntington answers the question by concluding that the nation has become divided, more varied culturally, linguistically, and religiously. He does not just describe the picture but contends that the changes represent an ominous movement toward national disunity, if not disintegration.

The fear of the impacts of immigrants on U.S. society is nothing new.<sup>23</sup> Past restrictionist works have focused on particular national origin groups of immigrants as the particular "problem" of the day. What is controversial given modern civil rights sensibilities is Professor Huntington's hint that national cohesion would improve if we did not have so many Mexican immigrants in the United States.<sup>24</sup>

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22. This is the federal government's estimate as of 2000. See U.S. DEPT OF HOMELAND SECURITY, 2002 YEARBOOK OF IMMIGRATION STATISTICS 214 (Table Q) (2003). The difficulties of border enforcement are outlined in Kevin R. Johnson, *Open Borders?*, 51 UCLA L. REV. 193, 245-52 (2003) [hereinafter Johnson, *Open Borders?*]; see also RUTH ELLEN WASEM, UNAUTHORIZED ALIENS IN THE UNITED STATES: ESTIMATES SINCE 1986, at CRS-4 (Congressional Research Service, 2004) (reporting estimates of 9.3 million undocumented immigrants in United States in 2002); Jerry Seper, *Rounding Up All Illegals 'Not Realistic,'* WASH. TIMES, Sept. 10, 2004, at 1 (quoting high level Department of Homeland Security official to the effect that removal of all undocumented immigrants from United States was "not realistic").

23. See *infra* text accompanying notes 25-42.

24. See *infra* text accompanying notes 43-83.

Ultimately, this is not simply an immigration issue but one of the treatment — and thus the civil rights of — all persons of Mexican ancestry in the country.

### A. *Old Answers to New Questions*

Professor Huntington is far from the first to sound the immigration alarm. His book is one of a recent spate of books calling for immigration reform. Beginning in the early 1990s, calls have regularly been made to dramatically reduce immigration. Anti-immigrant positions grab the headlines and sell well in the book stores. Best sellers in this genre include Victor Davis Hanson, *Mexifornia: A State of Becoming* (2003),<sup>25</sup> Patrick J. Buchanan, *Death of the West: How Dying Populations and Immigrant Invasions Imperil Our Country and Civilization* (2002),<sup>26</sup> Michelle Malkin, *Invasion: How America Still Welcomes Terrorists, Criminals, and Other Foreign Menaces to Our Shores* (2002),<sup>27</sup> and Peter Brimelow, *Alien Nation: Common Sense About America's Immigration Disaster* (1995).<sup>28</sup> The titles alone suggest the depth and seriousness of the concern with immigration and immigrants.

Harvard's ivory tower, often thought of as a liberal bastion, has produced a number of calls for immigration reform. Professor Huntington's colleague Arthur Schlesinger — with whom he no doubt agrees on many issues — in *The Disuniting of America: Reflections on a Multicultural Society* (1992)<sup>29</sup> contends that multiculturalism is literally tearing the nation apart. Similarly, Professor George Borjas alleges that too many low-skilled immigrants are coming to the United States and that the immigration laws should be amended to increase

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25. VICTOR DAVIS HANSON, *MEXIFORNIA: A STATE OF BECOMING* (2003).

26. PATRICK J. BUCHANAN, *THE DEATH OF THE WEST: HOW DYING POPULATIONS AND IMMIGRANT INVASIONS IMPERIL OUR COUNTRY AND CIVILIZATION* (2002).

27. MICHELLE MALKIN, *INVASION: HOW AMERICA STILL WELCOMES TERRORISTS, CRIMINALS, AND OTHER FOREIGN MENACES TO OUR SHORES* (2002) [hereinafter MALKIN, *INVASION*]; see also MICHELLE MALKIN, *IN DEFENSE OF INTERNMENT: THE CASE FOR RACIAL PROFILING IN WORLD WAR II AND THE WAR ON TERROR* (2004).

28. PETER BRIMELOW, *ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER* (1995). Similar sensationalistic accounts are common in the popular press. See, e.g., Donald L. Barlett & James B. Steele, *Who Left the Door Open?*, TIME, Sept. 20, 2004, at 51.

29. ARTHUR M. SCHLESINGER JR., *THE DISUNITING OF AMERICA: REFLECTIONS ON A MULTICULTURAL SOCIETY* (1992); see J. Harvie Wilkinson III, *The Law of Civil Rights and the Dangers of Separatism in Multicultural America*, 47 STAN. L. REV. 993 (1995) (making similar arguments).

the number of skilled immigrants and decrease the number of those who are unskilled.<sup>30</sup>

Restrictionist positions are not limited to commentators of any particular political persuasion. At least until relatively recently in his career, Professor Huntington had been viewed as something of a liberal. Some progressives have embraced restrictionist positions. For example, Todd Gitlin, *The Twilight of Common Dreams: Why America Is Wracked by Culture Wars* (1995),<sup>31</sup> Michael Lind, *The Next American Nation: The New Nationalism and the Fourth American Revolution* (1995),<sup>32</sup> and Roy Beck, *The Case Against Immigration: The Moral, Economic, Social, and Environmental Reasons for Reducing U.S. Immigration Back to Traditional Levels* (1996),<sup>33</sup> contend that domestic racial minorities, and working people generally, in the United States would benefit from drastic reductions in immigration.

Alarmist books about the harms of immigration have a long, if not illustrious, history.<sup>34</sup> Arguments made in books such as these have helped to justify drastic policy measures, such as the discriminatory national origins quota system enacted by Congress in 1924 that favored immigrants from northern Europe over all others.<sup>35</sup>

Although the arguments are not entirely new, Professor Huntington's book has attracted considerable attention. This is in no small part a result of the fact that his bestseller *The Clash of Civilizations and the Remaking of the World*<sup>36</sup> has been read as

30. See GEORGE J. BORJAS, *FRIENDS OR STRANGERS: THE IMPACT OF IMMIGRANTS ON THE U.S. ECONOMY* (1990); GEORGE J. BORJAS, *HEAVEN'S DOOR: IMMIGRATION POLICY AND THE AMERICAN ECONOMY* (1999).

31. TODD GITLIN, *THE TWILIGHT OF COMMON DREAMS: WHY AMERICA IS WRACKED BY CULTURE WARS* 161-65 (1995).

32. MICHAEL LIND, *THE NEXT AMERICAN NATION: THE NEW NATIONALISM AND THE FOURTH AMERICAN REVOLUTION* 129-37 (1995).

33. ROY BECK, *THE CASE AGAINST IMMIGRATION: THE MORAL, ECONOMIC, SOCIAL, AND ENVIRONMENTAL REASONS FOR REDUCING U.S. IMMIGRATION BACK TO TRADITIONAL LEVELS* (1996).

34. See, e.g., MADISON GRANT, *THE PASSING OF THE GREAT RACE OR THE RACIAL BASIS OF EUROPEAN HISTORY* (1916); LOTHROP STODDARD, *THE RISING TIDE OF COLOR AGAINST WHITE WORLD-SUPREMACY* (1920).

35. See Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A "Magic Mirror" into the Heart of Darkness*, 73 IND. L.J. 1111, 1131-33 (1998) [hereinafter Johnson, *Race, the Immigration Laws, and Domestic Race Relations*]; See generally MATTHEW FRYE JACOBSON, *WHITENESS OF A DIFFERENT COLOR: EUROPEAN IMMIGRANTS AND THE ALCHEMY OF RACE* (1998) (analyzing nativism directed at southern and eastern European immigrants that led to Congressional passage of national origins quota system).

36. SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF THE WORLD* (1996). For critical commentary on this book, including its racial and religious

predicting the clash between Islam and the West that erupted in the terrorist acts of September 11, 2001.

Professor Huntington contends that timing makes his call for immigration restrictions different from those of the past. Over the 1990s, concerns had been expressed over the changes that had swept the nation due to immigration and the emergence of a truly multicultural nation.<sup>37</sup> Fears over immigration escalated dramatically after September 11, with the terrorist acts being the handiwork of a group of noncitizens. Immigration law, which is known for the vast powers delegated to the Executive Branch and Congress, became a centerpiece of the nation's domestic war on terror.<sup>38</sup> This, to a certain extent, is understandable in light of the fact that noncitizens were responsible for the horrible violence of that day. Many influential observers, however, believe that the federal government went overboard in its response, sacrificing the civil rights of Arab and Muslim noncitizens with minimal gains to national security.<sup>39</sup>

Much of the controversy generated by *Who Are We?* results from its treatment of immigrants from Mexico. Professor Huntington views Mexican immigrants as a dire threat to the security of the United States because they threaten the national identity.<sup>40</sup> The ideas expressed about Mexican immigrants were the subject of an adapted version of one chapter of the book published in *Foreign Policy*, which

implications, see, for example, "THE CLASH OF CIVILIZATIONS?" ASIAN RESPONSES (Salim Rashid ed., 1997).

37. See Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CAL. L. REV. 863 (1993); see, e.g., Doriane Lambelet Coleman, *The Seattle Compromise: Multicultural Sensitivity and Americanization*, 47 DUKE L.J. 717 (1998) (analyzing efforts to reconcile principles of multiculturalism and assimilation in case of controversial cultural practice known as female genital mutilation).

38. See Karen Engle, *Constructing Good Aliens and Good Citizens: Legitimizing the War on Terror(ism)*, 75 U. COLO. L. REV. 59 (2004) (analyzing the "war on terrorism" within the history of immigration law and policy); Donald Kerwin, *Counterterrorism and Immigrant Rights Two Years Later*, 80 INTERPRETER RELEASES 1401, 1401 (2003) ("Immigration policy rapidly became the most visible domestic tool in the war on terror.").

39. See, e.g., U.S. OFFICE OF THE INSPECTOR GENERAL, THE SEPTEMBER 11 DETAINEES: A REVIEW OF THE TREATMENT OF ALIENS HELD ON IMMIGRATION CHARGES IN CONNECTION WITH THE INVESTIGATION OF THE SEPTEMBER 11 ATTACKS (2003); U.S. OFFICE OF THE INSPECTOR GENERAL, REPORT TO CONGRESS ON IMPLEMENTATION OF SECTION 1001 OF THE USA PATRIOT ACT (2003); MUZZAFER A. CHISHTI, ET. AL., MIGRATION POL'Y INST., AMERICA'S CHALLENGE: DOMESTIC SECURITY, CIVIL LIBERTIES, AND NATIONAL UNITY AFTER SEPTEMBER 11 (2003); Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295, 351-55 (2002); David Cole, *Enemy Aliens*, 54 STAN. L. REV. 953 (2002); Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002).

40. See *infra* text accompanying notes 66-83.

argues that Mexican immigration is a serious political, economic, and cultural threat to the United States.<sup>41</sup> This article provoked a firestorm of controversy, including the charge that the article would never have been published in *Foreign Policy* but for that Professor Huntington was one of the journal's founders.<sup>42</sup>

### B. *Assimilation, Multiculturalism, and National Identity*

At the beginning of the book, Professor Huntington declares himself to be a "Patriot" as well as a scholar (p. xvi). Recognizing the potential for bias, he writes that "I attempt to engage in as detached and thorough an analysis of the evidence as I can, while warning the reader that my selection and presentation of the evidence may well be influenced by my patriotic desire to find meaning and virtue in America's past and its possible future." (p. xvii). As we shall see, Professor Huntington's warning is well-taken, for the picture that he paints, and his review of the evidence, is far from complete.

In evaluating the future, Professor Huntington appears firmly wedded to the past and the unified national identity that he believes once existed in the United States. As the title of the book suggests, Professor Huntington frets over the splintered national identity and longs for the cohesive nation that dominated before the monumental civil rights changes of the twentieth century. The post-September 11 reaction of the people of the United States, and the wave of patriotism that swept the country, fail to calm Professor Huntington.

*Who Are We?* begins with a discussion analyzing the "crisis of national identity" and uses as an example a 1998 Gold Cup soccer game between the United States and Mexico in Los Angeles in which fans, predominantly of Mexican ancestry, booed the American team (p. 5). Professor Huntington fails to explore the complexities of the event, such as the fact that animosity toward the United States may have been fueled by the shabby treatment of Mexican immigrants by

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41. Samuel P. Huntington, *The Hispanic Challenge*, FOREIGN POLICY, Mar./Apr. 2004, at 30. A few years ago, Professor Huntington made similar arguments in a background paper for the Center for Immigration Studies, a group devoted to reducing immigration levels, and equated Mexican immigrants to an invading army. See Samuel P. Huntington, *Reconsidering Immigration: Is Mexico a Special Case?* 5 (Center for Immigration Studies Background, Nov. 2000), available at <http://www.cis.org/articles/index.html> (last visited Jan. 30, 2005). That paper states that

*[i]f over one million Mexican soldiers crossed the border Americans would treat it as a major threat to their national security and react accordingly. The invasion of over one million Mexican civilians . . . would be a comparable threat to American societal security, and Americans should react against it with comparable vigor. . . . Mexican immigration is a unique, disturbing, and looming challenge to our cultural integrity, our national identity, and potentially to our future as a country.*

*Id.* (emphasis added).

42. See *Letters*, FOREIGN POLICY, May/June 2004, at 4.

the federal government or may represent an effort to protest against the anti-Mexican sentiment that swept California in the 1990s.<sup>43</sup> The focus on the soccer game foreshadows Professor Huntington's concentrated analysis of the problems of Mexican immigration and immigrants to follow.<sup>44</sup>

Using this and other examples, Professor Huntington explores the components of identity (pp. 21-33) and the specific elements of U.S. national identity (pp. 37-58). He expresses general concern about the transnational identities of persons and corporations. (p. 7). Although fascinating, the allegiance of multinational corporations is touched on only briefly by Professor Huntington. As a whole, *Who Are We?* focuses more on people — immigrants and racial minorities in particular — and minimally on multinational corporations.<sup>45</sup>

To Professor Huntington, the ties that bind the American people are “Anglo Protestant culture” (pp. 59-80), the “American creed” (the commitment to a set of political values),<sup>46</sup> and the Christian religion.<sup>47</sup> Assimilation to these core American values is vitally important. He adds but another metaphor to illustrate the need for immigrant assimilation: “[I]mmigration adds celery, croutons, spices, parsley, and other ingredients that enrich and diversify the taste, but which are absorbed into what remains fundamentally tomato soup” (p. 129).

In analyzing national identity, Professor Huntington discusses assimilation of immigrants extensively (pp. 178-219). He asserts that the United States must reduce immigration to promote assimilation as in the past (pp. 195-96). Dual citizenship, which Professor Huntington believes has discouraged the formation of an American identity among recent immigrants, should be disfavored.<sup>48</sup> A core claim of *Who Are We?* is that Latina/os fail to assimilate and fail to adopt an American identity.<sup>49</sup>

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43. For a sophisticated analysis of the division in the Latina/o community in a major boxing match in Los Angeles between Mexican-American and Mexican fighters in which the U.S. fans fervently supported the foreign boxer, see Yxta Maya Murray, *The Latino-American Crisis of Citizenship*, 31 U.C. DAVIS L. REV. 503, 559-73 (1998).

44. See *infra* text accompanying notes 66-83.

45. For a detailed analysis of the issue of the allegiance of multinational corporations, see Lelia Mooney Sirotinsky, *On Corporate Citizenship* (2004) (unpublished manuscript on file with author).

46. Pp. 66-69. Professor Huntington credits the “American Creed” moniker to GUNNAR MYRDAL, *THE AMERICAN DILEMMA* (1944).

47. Pp. 81-106. Peter Brimelow also has forcefully made the cultural argument for immigration restrictions, see BRIMELOW, *supra* note 28, at 178-90. For criticism, see Peter H. Schuck, *Alien Ruminations*, 105 YALE L.J. 1963, 1987-95 (1996) (book review).

48. Pp. 204-13. See Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 EMORY L.J. 1411 (1997).

49. See *infra* text accompanying notes 66-83.

In places, Professor Huntington curiously emphasizes the positive impacts of wars, which helped integrate immigrants into society and encourage the development of a strong national identity (pp. 197-98). He revels in a war — and indirectly reveals how Spanish has influenced popular culture in the United States — that is rarely discussed because many consider it a national embarrassment: “[t]he Spanish-American War was a nationalist *fiesta*, extending American presence in East Asia, and adding significantly to the budding colonial empire.”<sup>50</sup> Professor Huntington also seems to praise use of the immigration laws to limit racial diversity, such as the national origins quota system enacted in 1924 (almost universally criticized by serious students of immigration legal history)<sup>51</sup> and views them as a positive aspect of U.S. history (pp. 57-58).

One of the conundrums facing proponents of immigrant assimilation is how to deal with the millions of undocumented immigrants who live in the United States.<sup>52</sup> Undocumented immigrants live and work in this society but are denied basic rights of membership, thus living in a sort of legal never-never land.<sup>53</sup> The question whether, and if so how, to integrate undocumented immigrants into U.S. society confounds policymakers. In 1986, an amnesty program offered legal-resident status to millions of undocumented immigrants.<sup>54</sup> Proposals have been on the table for years since then to again regularize the status of undocumented immigrants.<sup>55</sup>

Professor Huntington rails against undocumented immigration: “Illegal immigration is . . . a threat to America’s societal security. The

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50. P. 123 (emphasis added). See, e.g., Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & L. 1, 21-32 (2000); Ediberto Roman & Theron Simmons, *Membership Denied: Subordination and Subjugation Under United States Expansionism*, 39 SAN DIEGO L. REV. 437, 448-63 (2002); Sylvia R. Lazos Vargas, *History, Legal Scholarship, and LatCrit Theory: The Case of Racial Transformations Circa the Spanish American War, 1896-1900*, 78 DENV. U. L. REV. 921 (2001).

51. See *supra* text accompanying note 35.

52. P. 225. See *supra* text accompanying note 22.

53. See Linda S. Bosniak, *Exclusion and Membership: The Dual Identity of the Undocumented Worker Under United States Law*, 1988 WIS. L. REV. 955.

54. Pp. 218, 225. See Immigration Reform and Control Act, Pub. L. No. 99-603 §§ 201-04, 100 Stat. 3359, 3394-3411 (1986) (codified at 8 U.S.C. § 1255a (2004)); see also STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY 607-10 (3d ed. 2002) (discussing amnesty program).

55. See Harold Meyerson, *Bush’s Retreat on Immigration Reform*, WASH. POST, July 21, 2004, at A19. The issue arose in the 2004 presidential campaign. See Mark Z. Barabak & Michael Finnegan, *Kerry and Bush Wrap Up Debates with New Issues, Familiar Topics*, L.A. TIMES, Oct. 14, 2004, at A1 (reporting on discussion of immigration in Presidential debate between President Bush and Senator John Kerry on the issues of illegal immigration, guest workers, and amnesty).

economic and political forces generating this threat are immense and unrelenting. Nothing comparable has occurred previously in the American experience” (pp. 225-26). In a serious omission, however, he fails to offer much in the way of policy reform. If one cannot close the borders, the question is how to promote assimilation of, and the formation of a cohesive national identity among, millions of undocumented immigrants. The Supreme Court has vacillated on this point, at times affording rights to the undocumented, and thus treating them as community members, while at other times denying them legal protections.<sup>56</sup>

Importantly, *Who Are We?* views assimilation as a positive, without much attention paid to the human costs of the past assimilation campaigns. Professor Huntington approaches the process in an antiseptic fashion, with little, if any, sensitivity to the feelings of, or empathy for, the people affected by the process.<sup>57</sup> By so doing, the book discusses Americanizing the immigrant through rose-colored glasses (pp. 131-37). This is another serious omission but consistent with Professor Huntington’s general view that the ends of protecting national identity justifies the means, whatever the individual costs.

As all of this suggests, Professor Huntington unquestionably is an ardent assimilationist. To Professor Huntington, however, assimilation has been replaced in the United States by multiculturalism, and it is multiculturalism that he fervently believes is destroying the nation he loves: “[t]he deconstructionists promoted programs to enhance the status and influence of subnational racial, ethnic, and cultural groups” (p. 142).

As this critique reveals, Professor Huntington’s analysis of immigration is about much more than immigrants; it touches on civil rights of all racial minorities. Affirmative action, to Professor Huntington, is one of the costs of multiculturalism (pp. 148-57). The loss of English is another.<sup>58</sup> Because multiculturalism challenges the nation’s core Anglo-Saxon-protestant culture, it is a danger to the very existence of the United States (pp 171-77).

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56. *Compare Plyler v. Doe*, 457 U.S. 202 (1982) (invalidating Texas law prohibiting undocumented children from attending public schools) *with Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002) (holding that undocumented immigrants cannot recover backpay for employer’s violation of federal labor law).

57. For analysis of the human costs, see Johnson, “*Melting Pot*”, *supra* note 15, at 1269-70.

58. Pp. 158-170. Efforts to coerce English language use, such as those suggested by Professor Huntington, have a long history in the United States. See Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269 (1992).

Professor Huntington's analysis demonstrates the serious tensions between assimilation and multiculturalism. As Professor George Martinez has observed, "[a]ssimilationism can be thought of as the mirror image of multiculturalism."<sup>59</sup> Endorsing assimilation in its classic form, Professor Huntington would require adoption of the dominant culture (and he makes it clear that he considers "American" culture to be superior to all others), rejection of race or ethnic consciousness, and repudiation of the equal value of cultures. Assimilation is an obligation imposed on all immigrants, with the expectation that they assimilate as white immigrants did in the past; Professor Huntington fails to acknowledge that this is not as easily realized by people of color, who account for more than eighty percent of the immigrants to the United States today.<sup>60</sup>

Consequently, Professor Huntington's concern about national identity is not limited to immigration. At bottom, Professor Huntington is worried about the assimilation of all people of color — citizens and noncitizens alike — into the mainstream. His concerns with affirmative action, multiculturalism, and language belie a more limited concern with immigration.

The nation had a more coherent national identity in a time when minorities were subordinated in an era of Jim Crow and other unforgiving assimilationist measures. Professor Huntington seems to long for those days, while paying little attention to the harsh subordination of minority communities that created the foundation for that unity.

The law of numbers strongly militates against Professor Huntington's call for a return to the days of old. The end of racially restrictive immigration and nationality laws have contributed to growing diversity and larger communities to support people of color. Modern civil-rights sensibilities condemn the restrictionist and coercive assimilationist measures of the past. These developments require new approaches to address the important changes and tensions that arise.

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59. George A. Martinez, *Latinos, Assimilation and the Law: A Philosophical Perspective*, 20 CHICANO-LATINO L. REV. 1, 6 (1999).

60. See Sylvia R. Lazos Vargas, *Deconstructing Homogeneous Americanism: The White Ethnic Immigrant Narrative and Its Exclusionary Effect*, 72 TUL. L. REV. 1493 (1998). For a philosophical analysis of the relationship between assimilation and multiculturalism, and the negative impacts of mandated assimilation on Latina/os, see Martinez, *supra* note 59; see also Enid Trucios-Haynes, *The Legacy of Racially Restrictive Immigration Laws and Policies and the Construction of the American National Identity*, 76 OR. L. REV. 369 (1997) (analyzing similar issues).

### 1. Race and Immigration

One of the curious aspects of *Who Are We?* is that Professor Huntington acknowledges the atrocities committed against African Americans, Latinos, Asians, and other groups throughout U.S. history (p. 49), but, in remembering the halcyon days when the nation embraced a cohesive national identity, he assumes away the existence of the groups who were denied basic membership into U.S. society. He also fails to mention the complex relationship between the cohesive national identity and the subordination of racial minorities.

For example, in looking at the founding of the nation, Professor Huntington writes that “[e]xcluding blacks, America was a highly homogeneous society in terms of race, national origin, and religion” (p. 44). The failure to acknowledge the truth is startling. African Americans were enslaved, segregated, and terrorized, making them virtually invisible. Other groups existed and were similarly suppressed. Latina/os, many whom joined this society in 1848 with the U.S. conquest of the Southwest, were rendered invisible by assimilation pressures, segregated in public schools and accommodations, and were nowhere to be found in American social life until the 1960s.<sup>61</sup> For over a century, Asian Americans were kept in check by restrictive immigration laws, anti-Asian domestic laws, and, at times, violence.<sup>62</sup> Professor Huntington fails to address the fact that the subordination of racial minorities may well have facilitated a cohesive national identity.

It is much easier to ensure a unified national identity when a society is not multiracial and multicultural. As the world sadly watched, the former Yugoslavia exploded in unspeakable bloodshed after its failure to address and manage cleavages caused by ethnic and religious difference. Professor Huntington does not address the difficult question of how a national identity can be successfully forged in a multicultural nation like the United States, in which civil rights and equality are fundamental values. Rather, he seems to advocate a return to an idyllic racially and culturally homogeneous nation.

Although offering little direction about what steps to take, Professor Huntington invokes the specter of racial violence, in hopes of prodding the nation to act and states that “Americans [feel] passionate about race and ethnicity” (p. 53). In his restrictionist book *Alien Nation*, Peter Brimelow contended that immigration undermines the nation’s “need for homogeneity”<sup>63</sup> and that “the American nation

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61. See Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U. L. REV. 965 (1995).

62. See *infra* text accompanying notes 92-121.

63. BRIMELOW, *supra* note 28, at 232.

has always had a specific ethnic core. And that core has been white.”<sup>64</sup> More subtle in approach, Professor Huntington requires the reader to connect the dots. He mentions that anti-immigrant, anti-minority movements are a possible response to the changing racial demographics of the nation: “[w]hite nativist movements are likely to include people with differing priorities concerning racial balance, ‘white’ culture, immigration, racial preferences, language, and other issues” (p. 312). The possible reaction of whites is not just directed at immigrants, however: “If blacks and Hispanics organize and lobby for special government-sponsored privileges, why not whites? If the National Association for the Advancement of Colored People and La Raza are legitimate organizations, why not a national organization to promote white interests?” (p. 314).

The growth of nativist movements has been well-documented.<sup>65</sup> However, this negative reaction to immigrants is in no way the fault of immigrants. Should they be punished for that reaction? One could answer in the affirmative, contending that it is essential to the security of the nation. Such an argument, however, would need considerably more justification than that offered by Professor Huntington.

One finishes *Who Are We?* wondering what to take away. It seems that Professor Huntington is contending that the heterogeneity of the United States is an issue that we should address to ensure that the nation does not end up like the former Yugoslavia. He, however, offers few answers to how one might address such diversity in a nation that has undergone a civil rights revolution and seems unwilling to discard its fundamental commitment to freedom and equality.

## 2. *Immigration from Mexico*

Chapter Nine of *Who are We?*, titled “Mexican Immigration and Hispanization” (pp. 221-56), begins with the conclusion that “[i]n the late twentieth century, developments occurred that, if continued, could change America into a culturally bifurcated Anglo-Hispanic society with two national languages” (p. 221). Professor Huntington expresses fear over the possible “reconquista” (reconquest) of the Southwest and the territory ceded by Mexico to the United States at the end of the U.S./Mexican War in 1848.<sup>66</sup> To reinforce those fears, he

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64. *Id.* at 10.

65. Pp. 309-316. See, e.g., CAROL M. SWAIN, *THE NEW WHITE NATIONALISM IN AMERICA: ITS CHALLENGE TO INTEGRATION* (2002).

66. P. 221. For critical analysis of the treaty that ended that war, see *THE LEGACY OF THE MEXICAN & SPANISH AMERICAN WARS: LEGAL, LITERARY, AND HISTORICAL PERSPECTIVES* (Gary D. Keller & Cordelia Candelaria eds., 2000); Symposium, *Understanding the Treaty of Guadalupe Hidalgo on Its 150th Anniversary*, 5 SW. J. L. TRADE AM. 1 (1998).

relies on the work of a professor whose uncited work apparently suggests that the Southwest may join with northern Mexico to form a new nation by 2080.<sup>67</sup>

This separatist vision is little more than a red herring. Virtually no one truly believes that a separate nation will emerge from the Southwest, although Chicana/o Studies activists may talk of the mythical Aztlán as part of the re-emergence of Chicana/os. More realistically, Professor Huntington's true fear is the development of a strong Latina/o identity in certain regions of the country, such as Miami (pp. 244-51). In so doing, he does not recognize the emerging literature on segmented assimilation, that is, the slow assimilation facilitated by initial settlement of immigrants in supportive immigrant communities.<sup>68</sup> Nor does Professor Huntington recognize that divisions among Latina/os, including but not limited to conflict between immigrants from Mexico and established Mexican Americans in the United States,<sup>69</sup> make an alliance to "reconquer" the Southwest highly unlikely.

Professor Huntington views Mexican immigration as particularly dangerous because of the proximity of Mexico to the United States, the number of immigrants — legal and undocumented — from Mexico in this country, the regional concentration of Mexican immigrants in the Southwest, the persistence of high levels of immigration from Mexico, and the historical claim of persons from Mexico to U.S. territory.<sup>70</sup> He presents some data supporting this proposition, but little of the existing data to the contrary.<sup>71</sup> His one-sided depiction of

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67. P. 246. See also BUCHANAN, *supra* note 26, at 123-46 (making a similar argument in a chapter entitled "La Reconquista"). Professor Huntington attributes the prediction to Professor Charles Truxillo of the University of New Mexico (p. 50), but the endnotes do not cite to any of Professor Truxillo's scholarship. For a rebuttal to the claim that the United States will soon become a bilingual Spanish/English nation, see ALBA & NEE, *supra* note 12, at 225-29.

68. See Alejandro Portes & Min Zhou, *The New Second Generation: Segmented Assimilation and Its Variants*, 64 ANNALS AM. ACAD. POL. & SOC. SCI. 74 (1993); Rubén G. Rumbaut, *The Crucible Within: Ethnic Identity, Self-Esteem, and Segmented Assimilation Among Children of Immigrants*, 28 INT'L MIGRATION REV. 748 (1994); see also Marcelo M. Suarez-Orozco, *Everything You Ever Wanted to Know About Assimilation But Were Afraid to Ask*, 129 DAEDALUS 1 (2000) (offering a sophisticated view of immigrant assimilation, including observation that immigrants of color face impediments to assimilation in the United States). See generally ALEJANDRO PORTES & RUBÉN RUMBAUT, LEGACIES: THE STUDY OF THE IMMIGRANT SECOND GENERATION (2001) (analyzing assimilation of second generation immigrants).

69. See GUTIÉRREZ, *supra* note 15; Kevin R. Johnson, *Immigration and Latino Identity*, 19 CHICANO-LATINO L. REV. 197, 201-06 (1998).

70. Pp. 221-30. Like Peter Brimelow, see BRIMELOW, *supra* note 28, at 75, 215, 270, Professor Huntington does not express similar fears with immigration from Asia (pp. 187-88).

71. See *supra* note 15 (citing authorities).

the evidence suggests that Mexican assimilation lags in English-language acquisition, educational attainment, occupation and income, and naturalization (pp. 230-43).

Debatable on many levels, Professor Huntington's "failure to assimilate" claim fails to appreciate the complexities of the measurement of assimilation.<sup>72</sup> Consider one example: in making the case that Mexican immigrants fail to assimilate, Professor Huntington cites dated statistical data about the low naturalization rates of Mexican immigrants (pp. 238-39). He does not squarely address the increase in naturalization rates among Mexican immigrants in the 1990s; they naturalized because they felt under attack as anti-immigrant laws were enacted and undocumented immigration and immigrants became a heated and divisive political issue.<sup>73</sup> There is much that Professor Huntington could discuss on this score. A careful academic analysis might consider, for example, whether the uptick in naturalization rates is in fact a sign of increasing Mexican immigrant integration in American social life.<sup>74</sup>

In a part of the book not focusing on Mexican immigrants, Professor Huntington notes increasing naturalization rates; he reasonably asks whether it is advisable for immigrants to naturalize to avoid removal from the country, ensure access to benefits, and to be able to vote (pp. 218-19). Some observers might contend that the spike in naturalization rates in the 1990s was naturalization out of fear rather than out of true allegiance to the United States. This is an important issue well worth thorough analysis, but one about which Professor Huntington fails to fully investigate.

Ultimately, Professor Huntington suggests that the problems of immigration would miraculously end with the dramatic reduction of immigration from Mexico (p. 243). With such reductions, debates over undocumented immigration, bilingual education, and assimilation presumably would simmer down. The implicit assumption is that this "silver bullet" is a realistic possibility when, from all appearances, migration appears to be a fact of life in the modern world and migration from Mexico to the United States has deep and enduring roots in both nations.<sup>75</sup>

72. See *supra* text accompanying notes 12-18.

73. See Kevin R. Johnson, *Latina/os and the Political Process: The Need for Critical Inquiry*, 81 OR. L. REV. 917, 930-31 (2002) [hereinafter Johnson, *Latina/os and the Political Process*].

74. For analysis of the growing Latina/o naturalization rate, see Louis DeSipio, *The Pressures of Perpetual Promise: Latinos and Politics, 1960-2003*, in *THE COLUMBIA HISTORY OF LATINOS IN THE UNITED STATES SINCE 1960*, at 421, 433-37 (DAVID G. GUTIÉRREZ ed., 2004).

75. See *supra* text accompanying note 22.

To complicate matters, Professor Huntington acknowledges that the Mexican government has interests in its emigrants remaining in the United States and in opening up immigration to this country (pp. 281-82). Why this is a “problem” is not clear. Perhaps the claim is that the United States may feel pressured to act in a way contrary to national interests.

This, of course, raises the global question: is immigration bad for the United States? Professor Huntington answers in the affirmative by focusing on its allegedly negative impact on the formation of a national identity but, among other things, he wholly ignores the economic arguments for freer immigration.<sup>76</sup> Many observers credit immigrant labor for contributing positively to the economic boom of the 1990s.<sup>77</sup> Immigrant labor also appears necessary for future economic growth.<sup>78</sup> This again is an issue that warrants further consideration and analysis.<sup>79</sup>

In our estimation, Professor Huntington seriously overstates the costs of Mexican immigration to the United States and wholly ignores its benefits. In addition, the alarmist tone of *Who Are We?* — although relatively tame compared to some of the contemporary restrictionist literature<sup>80</sup> — is not likely to contribute to the dialogue necessary to address the important issue of immigration between Mexico and the United States. This impact is demonstrated by the polarizing impacts of the chapter on Mexican immigrants published in *Foreign Policy*.<sup>81</sup>

Nor does Professor Huntington address the human costs of immigration enforcement measures on Mexican immigrants. Mexican

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76. See, e.g., JULIAN L. SIMON, *THE ECONOMIC CONSEQUENCES OF IMMIGRATION* (2d ed. 1999); Howard F. Chang, *Liberalized Immigration as Free Trade: Economic Welfare and the Optimal Immigration Policy*, 145 U. PA. L. REV. 1147 (1997); Alan O. Sykes, *The Welfare Economics of Immigration Law: A Theoretical Survey With an Analysis of U.S. Policy*, in JUSTICE IN IMMIGRATION 158 (Warren F. Schwartz ed., 1995). For economic arguments for certain immigration restrictions, see *supra* note 30 (citing authorities).

77. See Elise Brozovich, *Prospects for Democratic Change: Non-Citizen Suffrage in America*, 23 HAMLINE J. PUB. L. & POL'Y 403 (2002); James H. Johnson, Jr., *U.S. Immigration Reform, Homeland Security, and Global Economic Competitiveness in the Aftermath of the September 11, 2001 Terrorist Attacks*, 27 N.C. J. INT'L L. & COM. REG. 419, 436-38 (2002).

78. Chairman of the Federal Reserve Board Allen Greenspan has observed that greater immigration might help maintain the size of the labor force, thereby reducing inflationary pressures. See U.S. Senate Special Committee on Aging, *The Aging Global Population*, Testimony of Allen Greenspan (Feb. 27, 2003), available at <http://federalreserve.gov/boarddocs/testimony/2003/20030227/default.htm>.

79. For a summary of the economic arguments for freer migration, see Johnson, *Open Borders?*, *supra* note 22, at 233-43.

80. See, e.g., BRIMELOW, *supra* note 28; BUCHANAN, *supra* note 26; HANSON, *supra* note 25; MALKIN, *INVASION*, *supra* note 27.

81. See *supra* text accompanying notes 41-42.

immigrants have been subject to extreme immigration policies for decades. The federal government made a concerted effort to regulate the flow of immigrants well before September 11. Border operations have resulted in thousands of immigrants dying as they attempted to journey to the United States across deserts and mountains.<sup>82</sup> The ongoing tragedy is difficult to fathom, with the personal accounts of the death and despair nothing less than heart-wrenching.<sup>83</sup>

## II. NATIVISM REDUX

The United States has a lengthy, and at times shameful, nativist history.<sup>84</sup> Restrictionist measures such as the Chinese exclusion laws, national origins quota system, and sporadic deportation campaigns are monuments to times when anti-immigrant sentiment dominated the political process.<sup>85</sup> Few modern defenders attempt to justify these aspects of U.S. immigration history, which are difficult to square with the nation's stated commitment to equality under law.

Besides policies designed to limit immigration from certain nations, the United States has attempted to coerce immigrants and people of color to assimilate into the mainstream and adopt "American" ways. Such measures were much easier to enforce in a time when domestic minorities were subordinated, powerless, and segregation was the norm. The rise of a civil rights consciousness changed everything. Today, forced assimilation of immigrants would be much more difficult to require given the nation's civil rights sensibilities. Consequently, Professor Huntington's suggestion that the nation should revisit past measures designed to ensure the cohesive national identity of the past would be extremely difficult to recreate in modern times.

Professor Huntington does not attempt to calm possible concern with his suggested proposals by addressing the excesses of the past, such as the "crusade for Americanization" in the World War I period<sup>86</sup> or the now-reviled national origins quota system, which was designed to dramatically reduce southern and eastern European immigration to

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82. See, e.g., Wayne A. Cornelius, *Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy*, 27 POPULATION & DEV. REV. 661 (2001); Karl Eschbach et al., *Death at the Border*, 33 INTERNATIONAL MIGRATION REV. 430 (1999); Bill Ong Hing, *The Dark Side of Operation Gatekeeper*, 7 U.C. DAVIS J. INT'L L. & POL'Y 121 (2001).

83. See, e.g., KEN ELLINGWOOD, *HARD LINE: LIFE AND DEATH ON THE U.S.-MEXICO BORDER* (2004); LUIS ALBERTO URREA, *THE DEVIL'S HIGHWAY: A TRUE STORY* (2004).

84. See *supra* note 3 (citing authorities).

85. See *supra* text accompanying notes 34-35.

86. HIGHAM, *supra* note 3, at 234-63 (analyzing this period of enforced conformity).

the United States.<sup>87</sup> Professor Huntington also fails to consider the human and civil rights costs of less dramatic restrictionist and assimilationist measures. He apparently is of the view that it is “patriotic” to protect the nation, the principle at the core of *Who Are We?*, rather than worry over the people — including their civil rights and feelings of belonging — affected by U.S. immigration law and policy.

Part of this nation’s identity has always rested on the respect for fundamental individual rights. That commitment has been placed in question throughout U.S. history by the nation’s immigration policies. Most recently, the harshness of the anti-terrorism policies after September 11 dramatically impacted immigrants; Muslims and Arab communities were under siege and suffered hate violence.<sup>88</sup>

Other immigrant groups also suffered from the anti-immigrant ripple effects of the “war on terror,” with deportation of Mexican immigrants increasing after immigration reforms in 1996 and escalating after September 11.<sup>89</sup> Nor is this something that only emerged after that fateful day. The long term detention of immigrants has gone on for many years, with little attention paid to its impact on immigrants and immigrant communities or the flagrant violation of basic constitutional rights.<sup>90</sup> “Criminal aliens” — with the vast majority from Mexico and Central America — have been detained and deported in record numbers since enactment of 1996 immigration reforms, which the U.S. government interpreted and enforced with great vigor and little regard for immigrants’ rights.<sup>91</sup>

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87. See *id.* at 300-30; *supra* text accompanying notes 34-35.

88. See *supra* text accompanying notes 37-39; Bill Ong Hing, *Vigilante Racism: The De-Americanization of Immigrant America*, 7 MICH. J. RACE & L. 441 (2002); Thomas W. Joo, *Presumed Disloyal: Executive Power, Judicial Deference, and the Construction of Race Before and After September 11*, 34 COLUM. HUM. RTS. L. REV. 1 (2002).

89. See, e.g., Steven W. Bender, *Sight, Sound, and Stereotype: The War on Terrorism and Its Consequences for Latinas/os*, 81 OR. L. REV. 1153 (2002); Kevin R. Johnson, *September 11 and Mexican Immigrants: Collateral Damage Comes Home*, 52 DEPAUL L. REV. 849 (2003) [Johnson, *September 11 and Mexican Immigrants*]; see also Michael A. Olivas, *The War on Terrorism Touches the Ivory Tower — Colleges and Universities After September 11: An Introduction*, 30 J.C. & U.L. 233 (2004) (analyzing impacts of new reporting requirements on foreign students and scholars).

90. For a chilling account of the use and abuse of detention of noncitizens, see MARK DOW, *AMERICAN GULAG: INSIDE U.S. IMMIGRATION PRISONS* (2004).

91. See, e.g., Daniel Kanstroom, *Deportation, Social Control, and Punishment: Some Thoughts About Why Hard Laws Make Bad Cases*, 113 HARV. L. REV. 1890 (2000); Teresa A. Miller, *Citizenship & Severity: Recent Immigration Reform and the New Penology*, 17 GEO. IMMIGR. L.J. 611 (2003); Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms*, 113 HARV. L. REV. 1936 (2000).

Two painful episodes in U.S. history exemplify the strong negative reactions to racially different immigrants. Together, the two chapters demonstrate the dangers of exclusion and coerced assimilation. Such lessons are not reflected in *Who Are We?*

A. *The Exclusion of “Unassimilable” and “Un-American” Asian Immigrants*

Examining the development of exclusion laws directed first at Chinese and later at all Asian immigrants reveals a sordid tale of racism and xenophobia that demonstrates the extremes to which the nation has gone to keep out groups that are perceived as not true Americans because they fail to conform to the prevailing image of the national identity, and cannot assimilate into that image.<sup>92</sup> For example, much of the resentment toward the Chinese in the 1800s was sustained by a need to preserve “racial purity” and “Western civilization.”<sup>93</sup> And, in denying naturalization rights to an immigrant from India, the Supreme Court noted:

The children of English, French, German, Italian, Scandinavian, and other Europe parentage, quickly merge into the mass of our population and lose the distinctive hallmarks of their European origin. On the other hand, it cannot be doubted that the children born in this country of Hindu parents would retain indefinitely the clear evidence of their ancestry. It is very far from our thought to suggest the slightest question of racial superiority or inferiority. *What we suggest is merely racial difference, and it is of such character and extent that the great body of our people instinctively recognize it and reject the thought of assimilation.*<sup>94</sup>

At least initially, the United States welcomed immigrants from China.<sup>95</sup> The simultaneous opening of both China and the American West, along with the discovery of gold in California in 1848, led to a growing demand for Chinese labor. Chinese were actively recruited to fill needs in railroad construction, laundries, and domestic service.<sup>96</sup> With the expulsion of many Latina/os due to a discriminatory foreign miners tax, the Chinese stood out as the largest non-Anglo group in California, and in the West the full weight of prejudice fell upon them.<sup>97</sup> Eventually the Chinese fell victim to physical violence

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92. See generally HING, TO BE AN AMERICAN, *supra* note 15 (contending that conceptions of national identity must change with an increasingly multicultural United States).

93. ROGER DANIELS, THE POLITICS OF PREJUDICE: THE ANTI-JAPANESE MOVEMENT IN CALIFORNIA AND THE STRUGGLE FOR JAPANESE EXCLUSION 19 (1962).

94. United States v. Thind, 261 U.S. 204, 215 (1923) (emphasis added).

95. See HING, MAKING AND REMAKING ASIAN AMERICA, *supra* note 6, at 20.

96. See *id.*

97. See MARY ROBERTS COOLIDGE, CHINESE IMMIGRATION 25 (1969).

and the enactment of local ordinances that made their lives extremely difficult.<sup>98</sup>

Histories of federal exclusion policies directed at Asians generally begin with the Chinese Exclusion Act of 1882, to the neglect of earlier federal laws (as well as the effect of local efforts) that discouraged immigration. In 1870, Congress refused to allow Chinese immigrants to naturalize even though citizenship was extended to African Americans.<sup>99</sup> Reacting to law enforcement claims that Chinese women were being imported for prostitution, Congress in 1875 passed legislation prohibiting their importation for immoral purposes.<sup>100</sup> The federal government denied admission to a group of Chinese women on the ground that they were “lewd,” an action overturned by the Supreme Court.<sup>101</sup> But the zealous enforcement of the statute, known as the Page Law, effectively barred Chinese women from the country and further worsened an already imbalanced gender ratio in the Chinese immigrant community.<sup>102</sup>

The clamor directed against the Chinese continued, and Congress in 1882 enacted the Chinese Exclusion Act.<sup>103</sup> The law excluded laborers for ten years, and effectively shut the door on Chinese immigration.<sup>104</sup> It further crippled the development of the Chinese-American community because Chinese women were defined as laborers barred from admission to the United States; Chinese laborers who had already immigrated therefore had no way to bring wives and families left behind.<sup>105</sup> The Supreme Court upheld the law, emphasizing that if Congress “considers the presence of foreigners of a different race in this country, *who will not assimilate with us*, to be dangerous to its peace and security . . . , [Congress’s] determination is conclusive upon the judiciary.”<sup>106</sup>

Like the initial wave of Chinese immigrants, Japanese laborers were at first warmly received by employers, who were needed to perform the strenuous labor on Hawaiian sugar plantations.<sup>107</sup> So

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98. See HING, MAKING AND REMAKING ASIAN AMERICA, *supra* note 6, at 21-23.

99. *See id.* at 23.

100. *See id.*; Act of March 3, 1875, ch. 141, 18 Stat. 477 (1875).

101. *See* COOLIDGE, *supra* note 97, at 418; *Chy Lung v. Freeman*, 92 U.S. 275 (1875).

102. *See* HING, MAKING AND REMAKING ASIAN AMERICA, *supra* note 6, at 23

103. Act of May 6, 1882, ch. 126, 22 Stat. 58 (1882); *see* SALYER, *supra* note 3.

104. *See* HING, MAKING AND REMAKING ASIAN AMERICA, *supra* note 6, at 23-24.

105. *See id.* at 24.

106. *Chae Chin Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581, 606 (1889) (emphasis added).

107. *See* HING, MAKING AND REMAKING ASIAN AMERICA, *supra* note 6, at 27.

many came that the Japanese became the largest group on the islands. Few immigrated to the mainland, so there was little political pressure to exclude them.<sup>108</sup> In 1869, the new immigrants were described as “gentlemen of refinement and culture . . . [who] have brought their wives, children, and . . . new industries among us.”<sup>109</sup> By 1894, Japan and the United States reaffirmed their commitment to open travel, each promising the other’s citizens liberty to enter, travel, and reside in the receiving country.<sup>110</sup>

By the turn of the century, however, unfavorable sentiment toward the Japanese laborers had grown.<sup>111</sup> Japan’s emergence as a major world power meant that the United States could not restrict Japanese immigration in the heavy-handed fashion in which it had curtailed Chinese immigration. To minimize potential disharmony between the two nations while retaining the initiative to control immigration, President Roosevelt negotiated an agreement with Japan.<sup>112</sup> Under the so-called Gentlemen’s Agreement reached in 1907 and 1908, the Japanese government refrained from issuing travel documents to laborers destined for the United States. In exchange for this limitation, Japanese wives and children could be reunited with their husbands and fathers in the United States, and the San Francisco school board would be pressured into rescinding a segregation order.<sup>113</sup>

In addition to economic considerations,<sup>114</sup> exclusion in part was justified by the alleged failure of Japanese immigrants to assimilate; like the Chinese, the Japanese came to be regarded as “undesirable Asiatics.”<sup>115</sup> Indeed, in later justifying the internment during World War II, the Supreme Court noted that “solidarity” among Japanese immigrants has “in large measure prevented their assimilation as an integral part of the white population.”<sup>116</sup>

Eventually, restrictive immigration policies were enacted against every Asian immigrant group. Asian Indians, who began entering in the early twentieth century, managed to agitate the Asiatic Exclusion

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108. *See id.*

109. *See* PETER IRONS, *JUSTICE AT WAR* 9 (1983).

110. *See* ROY HIDEMICHI AKAGI, *JAPAN’S FOREIGN RELATIONS, 1524-1936*, at 435 (1936).

111. *See* HING, *MAKING AND REMAKING ASIAN AMERICA*, *supra* note 6, at 27-28.

112. *See* AKAGI, *supra* note 110, at 434-35.

113. *See* RAYMOND A. ESTHUS, *THEODORE ROOSEVELT AND JAPAN* 163-66 (1966); CHARLES WOLLENBERG, *ALL DELIBERATE SPEED: SEGREGATION AND EXCLUSION IN CALIFORNIA’S SCHOOLS, 1955-1975*, at 66-67 (1976).

114. *See* HING, *DEFINING AMERICA*, *supra* note 2, at 53-60.

115. JESSE FREDERICK STEINER, *THE JAPANESE INVASION: A STUDY IN THE PSYCHOLOGY OF INTER-RACIAL CONTACTS* 57 (1917).

116. *Hirabayashi v. United States*, 320 U.S. 81, 96 (1943) (footnote omitted).

League. Congress responded to this continued anti-Asian clamor by passing the Act of February 5, 1917, creating an "Asiatic barred zone," extending the Chinese exclusion laws to all other Asians.<sup>117</sup> By 1946, the United States restricted immigration from the Philippines.<sup>118</sup> The U.S. immigration and nationality laws barred Asians from naturalization until 1952.<sup>119</sup> The Asian exclusion laws remained in full force through the end of World War II, and were not fully repealed by Congress until 1965.<sup>120</sup>

The history of Asian exclusion demonstrates the dangers of clinging to a homogeneous national identity, based on the alleged failure to assimilate.<sup>121</sup> Although acknowledging this history (p. 56), Professor Huntington fails to account for the dangers that it suggests exist if the nation embraces a narrow conception of national identity.

#### B. *The Exclusion of "Unassimilable" and "Un-American" Mexican Immigrants*

As was the case with for Asian immigrants, immigrants from Mexico also faced a series of restrictionist immigration measures designed to limit their presence in the United States as well as suffering from assimilationist demands placed on them. Although his precise prescriptions are not clear, Professor Huntington's assertions imply the need to return to those failed policies or their equivalents.

In the twentieth century, concern with immigration from Mexico ebbed and flowed. Immigration from Mexico during and after the Mexican revolution sparked concerns, culminating in the creation of the Border Patrol.<sup>122</sup> In combination with increased border enforcement, aggressive efforts were made to assimilate immigrants,

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117. See HING, *DEFINING AMERICA*, *supra* note 2, at 31-32.

118. See *id.* at 35.

119. See, e.g., *United States v. Thind*, 261 U.S. 204 (1923); *Ozawa v. United States*, 260 U.S. 178 (1922). See generally IAN HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996) (analyzing the whiteness requirement for naturalization).

120. See HING, *DEFINING AMERICA*, *supra* note 2, at 36-41.

121. See STEINER, *supra* note 115 and accompanying text. For example, in describing the circumstances that led to the Chinese exclusion law, the Supreme Court reasoned: "[The Chinese] remained strangers in the land, residing apart by themselves, and adhering to the customs and usages of their own country. It seemed impossible for them to assimilate with our people or to make any change in their habits or modes of living." *The Chinese Exclusion Case*, 130 U.S. 581, 595 (1889).

122. See ALFREDO MIRANDÉ, *GRINGO JUSTICE* 107-45 (1987).

with assimilation campaigns directed at persons of Mexican ancestry in the 1920s.<sup>123</sup>

The campaigns, however, were not effective at integrating Mexican immigrants into U.S. society. The Great Depression saw an upswing in concern with Mexico and Mexican immigrants sapping limited public jobs and benefits. With the assistance of the federal government, local officials deported close to one million persons of Mexican ancestry, over one-half of whom were U.S. citizens.<sup>124</sup>

Racial tensions followed during World War II, with persons of Mexican ancestry, including many immigrants (as well as African Americans), taking jobs in urban areas to assist in the war effort; the “Zoot Suit” riots on the streets of Los Angeles were in fact race riots between Anglo servicemen and Mexican Americans (along with African Americans), which were triggered by the adoption by young men of color of a cultural stance in opposition to the Anglo norm.<sup>125</sup> The Bracero Program, beginning in World War II and lasting until the 1960s, allowed for Mexican guest workers to be exploited in U.S. agriculture.<sup>126</sup> In 1954, the federal government implemented “Operation Wetback,” which resulted in the removal of tens of thousands of persons of Mexican ancestry from the United States.<sup>127</sup>

Public concern with undocumented immigration again escalated in the 1970s and 1980s, only to reach a fever pitch in the 1990s.<sup>128</sup>

123. See GEORGE J. SÁNCHEZ, *BECOMING MEXICAN AMERICAN* 87-107 (1993); Hing, *supra* note 37, at 920-23; George F. Sanchez, “Go After the Women”: Americanization and the Mexican Immigrant Woman, 1915-1929, in *UNEQUAL SISTERS: A MULTICULTURAL READER IN U.S. WOMEN’S HISTORY* 250 (Ellen C. DuBois & Vicki L. Ruiz eds., 1990).

124. See generally FRANCISCO E. BALDERRAMA & RAYMOND RODRÍGUEZ, *DECADE OF BETRAYAL: MEXICAN REPATRIATION IN THE 1930S* (1995) (analyzing history of “repatriation” campaign); CAMILLE GUERIN-GONZALES, *MEXICAN WORKERS AND AMERICAN DREAMS: IMMIGRATION, REPATRIATION, AND CALIFORNIA FARM LABOR, 1900-1939* (1994) (same); ABRAHAM HOFFMAN, *UNWANTED MEXICAN AMERICANS IN THE GREAT DEPRESSION: REPATRIATION PRESSURES, 1929-1939* (1974) (same).

125. See generally EDWARD J. ESCOBAR, *RACE, POLICE, AND THE MAKING OF A POLITICAL IDENTITY: MEXICAN AMERICANS AND THE LOS ANGELES POLICE DEPARTMENT, 1900-1945*, at 84-90 (1999) (documenting history of riots); MAURICIO MAZÓN, *THE ZOOT-SUIT RIOTS: THE PSYCHOLOGY OF SYMBOLIC ANNIHILATION* (1984) (same); EDUARDO OBREGÓN PAGÁN, *MURDER AT THE SLEEPY LAGOON: ZOOT SUITS, RACE, & RIOT IN WARTIME L.A.* (2003) (same).

126. See KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION AND THE I.N.S.* (1992); ERNEST GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY* (1964).

127. See generally JUAN RAMON GARCÍA, *OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954* (1980) (analyzing federal government’s deportation campaign directed at immigrants from Mexico).

128. See generally Kevin R. Johnson, *The New Nativism: Something Old, Something New, Something Borrowed, Something Blue*, in *IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES* 165, 171-73 (Juan F. Perea

Immigration from Mexico and the perceived refusal of Mexican immigrants to assimilate often triggered a negative public reaction to immigration.<sup>129</sup> In the early 1990s, Mexican immigrants were attacked for sapping public benefits, taking jobs, committing crime, speaking Spanish, living in separate communities, and similar alleged misconduct.<sup>130</sup> Against a backdrop of racial antipathy, voters overwhelmingly passed California's infamous Proposition 187, which was designed to reduce and control immigration from Mexico by, among other things, denying undocumented children access to a public school education and making undocumented immigrants ineligible for public benefits.<sup>131</sup>

Past assimilation efforts failed to fully incorporate persons of Mexican ancestry into the United States. Still, the policies pursued to compel assimilation of persons of Mexican ancestry — U.S. citizens as well as immigrants — were much easier to develop and implement in a time when the sense of racial and cultural identity of minority groups was more diluted than today. The emergence of a positive Chicana/o identity in the 1960s<sup>132</sup> makes the adoption of stringent assimilationist measures likely to meet stiff resistance in modern times. Governmental policies seeking to mandate assimilation were easier in a time when racial and ethnic pride was nonexistent.<sup>133</sup>

Indeed, the assimilationist policies of the past had a sort of boomerang effect. Coerced assimilation helped forge a Latina/o identity in the United States. Language regulation, for example, is an issue of Latina/o concern even though most Latina/os in the United States speak English; the language wars represent a venue for

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ed., 1997) (analyzing treatment of Mexican immigrants by U.S. Supreme Court during this period).

129. *See supra* note 123 (citing authorities).

130. *See* Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1509, 1519-41 (1995).

131. *See* Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 629 (1995); Ruben J. Garcia, Comment, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, 17 CHICANO-LATINO L. REV. 118 (1995).

132. *See generally* IGNACIO M. GARCÍA, *CHICANISMO: THE FORGING OF A MILITANT ETHOS AMONG MEXICAN AMERICANS* (1997) (analyzing the emergence of the Chicana/o movement).

133. *See generally* RODOLFO F. ACUÑA, *ANYTHING BUT MEXICAN: CHICANOS IN CONTEMPORARY LOS ANGELES* (1996) (analyzing critically efforts by Mexican Americans to embrace Spanish as opposed to Mexican identity in greater Los Angeles in the twentieth century).

Latina/os to fight for status with Anglos in the United States.<sup>134</sup> The debate over immigration has many of the same qualities.<sup>135</sup> As this suggests, assimilation strategies that are not voluntary may promote the factionalism that Professor Huntington hopes to remedy.<sup>136</sup>

### C. Conclusion

In the past, efforts to compel assimilation of Asians and Mexicans proved effective at keeping those communities invisible and promoting the white national identity embraced by Professor Huntington. The policies, however, did not assimilate these groups into mainstream U.S. society.

Moreover, the strong policies of coerced assimilation and national conformity occurred at a time when there was little respect for the rights of racial minorities and indeed when these groups were considered by white-Anglo society as racially, culturally, and otherwise inferior. Times have changed. Put differently, restrictionist Madison Grant could write about immigration in 1916 and race in a way that Samuel Huntington could not in 2004. Now that the civil rights genie is out of the bottle, it is not nearly as easy to embrace racially exclusionary immigration policies, stifle cultural dissent, and force conformity with the white-Anglo-Saxon-Protestant norm.

### III. WHAT WE CAN LEARN FROM THE RECURRING NATIVIST OUTBURSTS, OR WHAT THE PUBLIC DEBATE OVER IMMIGRATION IS REALLY ABOUT

Professor Huntington is entirely correct in identifying immigration, national identity, race, and civil rights as interrelated. Although this insight may seem obvious, much discussion of immigration law and policy proceeds without much consideration of the racial impacts of the law and its enforcement. For example, although it is Mexican immigrants who are primarily affected by the heightened enforcement measures implemented along the United States' southern border with Mexico, the racially disparate impacts of border enforcement are rarely discussed.<sup>137</sup> Asian immigrants also have been, and are being,

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134. See Rachel F. Moran, *Bilingual Education as a Status Conflict*, 75 CAL. L. REV. 321 (1987).

135. See Aleinikoff & Rumbaut, *supra* note 15, at 14-21.

136. See *infra* text accompanying notes 189-191.

137. See *supra* text accompanying notes 82-83.

adversely affected by the immigration laws,<sup>138</sup> but this is often ignored because the modern immigration laws are facially neutral.

As Professor Huntington understands, immigration has implications for national identity. However, we disagree with his narrow conception of American national identity. We also disagree with his suggested policy reforms, in large part because we do not see the problem as he does and because we believe that the drastic reductions in immigration are simply not feasible in the modern United States. This part of this essay analyzes the civil rights implications of Professor Huntington's view of national identity and further suggests policy options that might accomplish some of his stated goals.

#### A. *The Dangers of a Narrow National Identity*

Professor Huntington is a man in search of a concept that fits his vision of a *true* American. The foreword of *Who Are We?* outlines three central arguments:

- 1) The "salience of their national identity for Americans has varied throughout history . . . . So long as Americans see their nation endangered, they are likely to have a high sense of identity with it. If their perception of threat fades, their identities could again take precedence over national identity" (p. xv).
- 2) The "American Creed," as initially formulated by Thomas Jefferson . . . is widely viewed as the crucial defining element of American identity. . . [and] the product of the distinct Anglo-Protestant culture of the founding settlers of America in the seventeenth and eighteenth centuries[.] Key elements of that culture include: the English language; Christianity; religious commitment; English concepts of the rule of law, the responsibility of rulers, and the rights of individuals; and dissenting Protestant values of individualism, the work ethic, and the belief that humans have the ability and the duty to try to create a heaven on earth (pp. xv-xvi).
- 3) Anglo-Protestant culture has been central to American identities for three centuries . . . . In the late twentieth

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138. See HING, MAKING AND REMAKING ASIAN AMERICA, *supra* note 6; Jan C. Ting, "Other Than a Chinaman": How U.S. Immigration Law Resulted From and Still Reflects a Policy of Excluding and Restricting Asian Immigration, 4 TEMP. POL. & CIV. RTS. L. REV. 301 (1995).

century, however, the salience and substance of this culture were challenged by a new wave of immigrants from Latin America and Asia, the popularity in intellectual and political circles of the doctrines of multiculturalism and diversity, the spread of Spanish as the second American language and the Hispanization trends in American society, the assertion of group identities based on race, ethnicity, and gender, the impact of diasporas and their homeland governments, and the growing commitment of elites to cosmopolitan and transnational identities (p. xvi).

At bottom, Professor Huntington fears the challenge to his Anglo-Protestant, English-language vision of American identity. He is not satisfied with an American Creed that is based on principles of "liberty, equality, democracy, civil rights, nondiscrimination, rule of law," which he considers to be merely "markers of how to organize a society" (p. 338).

Some proponents of the American Creed argue that its political principles are applicable to people everywhere. If this is the case, however, they cannot be the only basis for distinguishing Americans from other peoples. Democracy in various forms has spread to many more countries. Russians, Chinese, Indians, and Indonesians who subscribe to the Creed share something with Americans, but they do not thereby become Americans so long as they stay in their homeland, remain committed to that country and its culture, and identify primarily with their fellow citizens. To Professor Huntington, they become Americans only if they also migrate to America, participate in U.S. social life, learn English, U.S. history, and customs, absorb the nation's Anglo-Protestant culture, and identify primarily with the United States (pp. 338-39).

Professor Huntington prefers the national identity that prevailed in days of immigration when northern Europeans dominated and immigrants assimilated into American culture.<sup>139</sup> The fundamental flaws of his Euro-immigrationist and cultural assimilationist positions are apparent. The first is the flawed premise that America has a strictly white, Christian, European heritage. The second is the misguided claim that immigrants of color fail to acculturate.

Professor Huntington disdains multiculturalism as an attack on European civilization and as representing anti-Western ideology (pp. 171-73). Multiculturalism in fact challenges the premise that America is a white, English-speaking, Western-Christian nation. Not only did Native American tribes long pre-date the arrival of white Christians, but the early European settlers spoke Spanish, German, Dutch,

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139. See *supra* text accompanying notes 43-60.

French, and Polish in addition to English.<sup>140</sup> Before the Chinese exclusion laws,<sup>141</sup> about 300,000 Chinese had entered the country.<sup>142</sup> Filipinos established a community in Louisiana as early as 1565.<sup>143</sup> Spanish-Portuguese Jews settled in the New World in the mid-1600s.<sup>144</sup> Mexicans have long migrated to the United States, in no small part due to the fact the much of the Southwest was once part of Mexico.<sup>145</sup> More than 9.5 million Africans were brought to the western hemisphere as slaves.<sup>146</sup> In the first decade of the twentieth century, about 2 million Italians, 1.6 million Russians, and 800,000 Hungarians immigrated.<sup>147</sup> In short, the heritage of the United States does not derive solely from people who are white, English-speaking, Christian, and European. Nonwhite peoples have a long history in America. The genocide of Native Americans, brutal enslavement of African Americans, and exploitation and oppression of Asian and Latina/o Americans, are harsh reminders of the nation's racial past.

Without assigning a racist intent to Professor Huntington,<sup>148</sup> his critique of immigration focuses primarily on assimilation and his complaints that immigrants fail to absorb American culture.<sup>149</sup> Study after study, however, demonstrate that the vast majority of immigrants take on cultural traits of the host community.<sup>150</sup> Immigrants entering the United States today learn English at the same rate as immigrant

140. See Diego Castellanos, *A Polyglot Nation, in LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 13 (James Crawford ed., 1992). For analysis of the emergence of Anglo American cultural dominance out of this rich ethnic diversity, as well as its demise, see ERIC P. KAUFMANN, *THE RISE AND FALL OF ANGLO-AMERICA* (2004).

141. See *supra* text accompanying notes 92-121.

142. See HING, *MAKING AND REMAKING ASIAN AMERICA*, *supra* note 6, at 48 tbl.3.

143. See *id.* at 51.

144. See Castellanos, *supra* note 140, at 15.

145. See MIRANDÉ, *supra* note 122, at 100-16; Gerald P. López, *Undocumented Mexican Migration: In Search of a Just Immigration Law and Policy*, 28 UCLA L. REV. 615, 641-72 (1981).

146. See JOHN HOPE FRANKLIN, *FROM SLAVERY TO FREEDOM: A HISTORY OF NEGRO AMERICANS* 59 (8th ed. 2000).

147. See U.S. DEPT. OF JUSTICE, 1990 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 49 tbl.2 (1991).

148. See *supra* text accompanying note 14.

149. See *supra* text accompanying notes 23-83.

150. See *supra* notes 12, 15 (citing authorities); MARGARET S. BOONE, *CAPITAL CUBANS: REFUGEE ADAPTATION IN WASHINGTON D.C.* 1 (1989); PAUL J. STRAND & WOODROW JONES, JR., *INDOCHINESE REFUGEES IN AMERICA: PROBLEMS OF ADAPTATION AND ASSIMILATION* 131 (1985); Won Moo Hurh & Kwang Chung Kim, *Adhesive Sociocultural Adaptation of Korean Immigrants in the U.S.: An Alternative Strategy of Minority Adaptation*, 18 INT'L MIGRATION REV. 188, 205 (1984).

groups before them.<sup>151</sup> First generation immigrants tend to learn English and pass it on to their children, who become bilingual, with later generations losing fluency in the mother tongue.<sup>152</sup> By the third generation, the original language is often lost.<sup>153</sup> Professor Huntington's charge that Mexican immigrants do not want to learn English (pp. 221, 232, 253) is contradicted by the fact that Mexican immigrants swell the waiting lists at adult English language programs and English-as-a-Second-Language centers.<sup>154</sup>

Professor Huntington accuses the Latina/o community, in particular, of refusing to learn English. (pp. 232, 253).<sup>155</sup> Yet Spanish-speaking immigrants who have been in the country for fifteen years regularly speak English.<sup>156</sup> They usually read English fluently within ten years.<sup>157</sup> About ninety-three percent of all Mexican immigrants agree that residents of the United States should learn English.<sup>158</sup>

Although complete acculturation of all immigrants is impossible, immigrants of all ages become acculturated to some extent. Even before coming to the United States, immigrants have been exposed to American culture due to its pervasiveness in the global media.<sup>159</sup> Upon arriving in the United States, most immigrants work, learn English, and often strive to acquire U.S. customs. Many young Asian and Latina/o immigrants aggressively strive to be "American." They are eager to learn English, to get a job, to work hard; in short, they pursue the classic American dream.<sup>160</sup> Their aspirations are similar to the ones that motivated Jewish, Irish, and Southern- and Eastern-European immigrants in earlier years. Due to school attendance, interaction with peers, and exposure to the media, the children of immigrants, even

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151. See Frank Sharry, *Why Immigrants Are Good for America*, ORLANDO SENTINEL, Sept. 22, 1991, at G1.

152. See *id.*; Lawrence Kutner, *Parent & Child*, N.Y. TIMES, Nov. 19, 1992, at C12.

153. See Sharry, *supra* note 151.

154. See Pat Kossan, *Rural Pupils Ace Aims*, ARIZONA REPUBLIC, Sept. 9, 2002, at 1A; LaKisha Ladson, *Church Bridging Language Gap: Our Redeemer Lutheran Classes Help Meet Community Need*, DALLAS MORNING NEWS, May 26, 2004, at 2P; Nancy Mitchell, *New School to Aid Immigrants*, ROCKY MOUNTAIN NEWS, Apr. 17, 2004, at 21A; Raul Yzaguirre, *Harsh Words Match Deeds*, BALTIMORE SUN, May 14, 2004, at 17A.

155. See *supra* text accompanying notes 66-83.

156. See Sharry, *supra* note 151; *supra* text accompanying notes and notes 12-15 (citing authorities).

157. See Linda Chavez, *Tequila Sunrise: The Slow But Steady Progress of Hispanic Immigrants*, POL'Y REV., Spring 1989, at 65. See generally CHAVEZ, *supra* note 12 (analyzing Hispanic assimilation).

158. See Roberto Suro, *Hispanic Pragmatism Seen In Survey*, N.Y. TIMES, Dec. 15, 1992, at A20.

159. See *supra* text accompanying note 21.

160. See, e.g., *Latinos as They See Themselves*, PLAIN DEALER, Dec. 17, 1992, at 10B.

those who are foreign-born, generally become acculturated; these children speak English, and their customs, habits, and values are nearly indistinguishable from those of their peers.

Professor Huntington fails to acknowledge that a multicultural United States provides many benefits in an increasingly interdependent global economy. Developments the world over — from Europe to Latin America to Africa, Asia, and the Middle East — affect the U.S. economy. The Dow Jones, interest rates, production, and the value of the dollar all reacted to democracy movements in Asia and Eastern Europe, the war on terrorism and Iraq, and economic problems in Brazil and Mexico. Europe is only one of many regions that are vital to the U.S. economy.

Because Asia and the industrializing nations of Latin America are new centers of economic power, bicultural and multicultural U.S. residents will prove invaluable as American companies develop business in these regions. Many businesses, advertising agencies, and law firms already have recognized the benefits of taking a multicultural approach. Some have established branches abroad, most have invested in culture and language training for employees, and even more have hired bicultural employees. In the age of jet travel, the Internet, email, and fax machines, multicultural businesses are engaged in daily transactions in Tokyo, Singapore, Hong Kong, Manila, Beijing, Mexico City, Brasilia, and Caracas as well as London, Paris, and Frankfurt.

A diverse work force is an advantage domestically as well. As the racial demographics of the country evolve, shrewd business managers make changes and innovations in response to the needs of the changing population. In short, responding to demographic changes can help increase profits. However, producing commercials with slogans like “se habla español” and advertising in the Asian Yellow Pages in order to attract new business must be coupled with the cultivation of a staff that can readily develop a rapport with the new customers. Thus, more and more employers are coming to view diversity as a way to expand business as well as a public relations boon.

The success of an AT&T service called Language Line, which allows companies in the United States to communicate with their non-English speaking customers and business contacts, illustrates the benefits of a diverse work force.<sup>161</sup> Through a staff of interpreters on conference calls, Language Line allows businesses such as Whirlpool, Lands End, Pepsi, and Gerber to communicate with customers who do not speak English.<sup>162</sup> As the director of communications for the service

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161. See Jim Cole, *Breaking the Language Barrier*, S.F. EXAMINER, Apr. 18, 1993, at E1.

162. See *id.*

explains, “[b]usiness is beginning to appreciate there are over 30 million people in this country who prefer to use a language other than English . . . . The U.S. business community is becoming increasingly attuned to the fact that not every customer speaks English.”<sup>163</sup>

Moreover, a diverse work place is also a more innovative work place. For example, Burger King has implemented diversity and multicultural training seminars for its employees while increasing the percentage of people of color in its work force.<sup>164</sup> There is “a growing sentiment that diverse employee teams tend to outperform homogeneous teams of any composition . . . . [H]omogeneous groups may reach consensus more quickly, but often they are not as successful in generating new ideas or solving problems, because their collective perspective is narrower.”<sup>165</sup>

Cultural pluralists correctly argue that, as in the past, the country continues to benefit from new immigrants who, like their predecessors, have the drive and willingness to make a better life for themselves and their families. As a class, immigrants arguably represent the most determined people from their sending nations. Many have survived treacherous journeys and overcome severe obstacles. All have had to demonstrate the courage and fortitude needed to uproot themselves, and often their families, and wind their way through immigration mazes and the difficulties of relocation. As a nation, we stand to learn and to benefit from the hard work ethic of the immigrants.

More generally, immigrants represent a potential resource for adding to, rather than diluting, American culture. Although the United States continues to be an innovative leader in many business, political, scientific, and social fronts, it is not the sole source of innovation. We should be open to new ideas from people of different cultures who may offer better ways of approaching business operations, protection of the environment, stress, interpersonal relations, and education.

The ultimate benefit from interaction with those of different cultures does not necessarily flow from learning about new innovations, however. Rather, by learning about other cultures through social interaction with people of other cultures, we begin to learn more about other people. We better understand their customs, attitudes, and values, as well as share information about our own cultures. In that process, we begin to develop tolerance and respect for other cultures and backgrounds.

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163. *Id.* (quoting Director of Communications, AT&T Language Line).

164. See Lena Williams, *Companies Capitalizing on Worker Diversity*, N.Y. TIMES, Dec. 15, 1992, at A1.

165. *Id.* (quoting Managing Director, Diversity Consultants, Inc.).

Professor Huntington's complaints suggest that we need new ways of looking at what it means to be an American. Clearly, the concept of "becoming an American" signifies different things to different people. Recognition of these differences helps develop a respect for other cultures and sets the groundwork for a workable multiracial society. This groundwork can help us counter the human tendency to divide and distinguish in binary terms of superiority and inferiority, a tendency we must overcome in order to meet the prerequisite of respect for diverse views in a new vision of pluralism. Concepts of what it means to be an American must include the diversity of new generations of Americans — foreign-born, native-born, white, and of color — and be cognizant of the tension that accompanies diversity. Catch phrases, like melting pot, salad bowl, or tomato soup,<sup>166</sup> are not particularly useful descriptions of the complex U.S. society.

Proponents of assimilation ignore the demographic realities of the nation. According to the 2000 Census, about thirty percent of the nation was comprised of people of color: 12.7 percent African American; 12.6 percent Latina/o; 3.8 percent Asian American; and 0.8 percent Native American.<sup>167</sup> According to one estimate, by the year 2050, African Americans, Asian Americans, and Latina/os will constitute forty-seven percent of the population.<sup>168</sup> Left to market forces, immigrants are indeed Americanized, picking up habits, cultural traits, values, interests, and languages of the dominant group. However, American culture is constantly changing, and the definition of an American is constantly redefined. As immigrants become more "American," their native cultural traits also influence existing social norms. Thus, just as the process of Americanization has evolved from one of Anglo-conformity to Euro-conformity, it is evolving into a multicultural-conformity that requires us to look at our society and culture with a broader perspective.

The continued definition of American in Eurocentric terms is fraught with danger. Expressions of Euro-Americanization help racists confirm their views of racial superiority over people of color. White supremacists feed on this sentiment and manipulate advocacy for conformity to their benefit by finding new recruits initially attracted to the more benign notion of strengthening the nation through unity. Resentment of immigrants is engendered, scapegoating of people of

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166. See *supra* text accompanying notes 46-47.

167. See U.S. Census Bureau, Projected Population of the United States, by Race and Hispanic Origin: 2000 to 2050 (2004), available at <http://www.census.gov/ipc/www/usinterimproj/natprojtab01a.pdf> (last visited Sept. 3, 2004).

168. See *id.*

color becomes easier, racial and ethnic epithets remain commonplace, and hate violence ensues.<sup>169</sup>

Assimilation is a fluid and evolving process rather than a static one. Furthermore, immigrants' presence also influences the ongoing evolution of American culture. As a result, the definition of what an American is must be expanded and it must embrace differences rather than attack them. In sum, Professor Huntington's stingy definition of national identity fails to comport with the realities of life in the modern U.S. society. Demographic changes have already occurred and cannot realistically be reversed. The question is how we address the conception of national identity in light of those changes.

### B. *The Civil Rights Implications of Exclusionary Immigration Measures*

As we have seen, Professor Huntington expresses little worry about the civil rights implications of his assimilationist prescriptions.<sup>170</sup> Put differently, he appears willing to sacrifice the civil rights of minorities in the name of national cohesion. This trade off is a familiar one to racial minorities in the United States,<sup>171</sup> who have been subject to discrimination throughout U.S. history.<sup>172</sup> Immigrants often have been subject to antipathy and blamed for economic, political, and social problems, with their rights sacrificed for the "common" good.<sup>173</sup> National unity often has been achieved but at the cost of equal rights to racial minorities.

Immigration law generally has served to maintain racial "balance" as well as to regulate the entry of groups of noncitizens deemed to be undesirable. Race has been expressly part of the immigration laws for much of U.S. history, with the Chinese exclusion laws, national origins quota system, and the racial prerequisite of whiteness for

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169. See *supra* text accompanying notes 37-39 (describing harsh treatment of Arabs and Muslims after September 11).

170. See *supra* text accompanying notes 23-83.

171. Cf. Michael A. Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 ST. LOUIS U. L.J. 425 (1990) (describing historical episodes in which whites took actions that benefited themselves at the expense of racial minorities).

172. See generally TIMOTHY DAVIS ET AL., A READER ON RACE, CIVIL RIGHTS, AND AMERICAN LAW: A MULTIRACIAL APPROACH (2001) (analyzing legal history of racial discrimination in United States); KENNETH L. KARST, BELONGING TO AMERICA (1989) (analyzing history of various groups' efforts to become fully integrated in U.S. society); JUAN F. PEREA ET AL., RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA (2000) (to same effect).

173. See *supra* text accompanying notes 84-136 (citing authorities).

naturalization in place from 1790 until 1952.<sup>174</sup> National identity was a primary justification for those measures, with the nation attempting to preserve its white-Anglo-Saxon-Protestant roots.<sup>175</sup>

The triumph of the civil rights movement, and its embrace of the antidiscrimination principle, led to the removal of expressly race-based exclusion grounds from the immigration laws. For that reason, the year 1965 is a watershed in immigration history, with the elimination of the discriminatory national origins quota system.

Since 1965, without racial exclusions, many more immigrants from Asia have come to the United States.<sup>176</sup> This “mass migration” has worried those like Professor Huntington concerned about maintaining the American way of life — often couched in terms of national identity — as well as by those concerned about immigration’s impact on labor markets and the wage scale.<sup>177</sup>

Consequently, *Who Are We?* can be viewed as one of a number restrictionist responses to the changes brought by the 1965 immigration reforms. However, the civil rights revolution has shaped Professor Huntington’s arguments supporting restrictionist and assimilationist measures, rendering his position significantly different from those of many past restrictionists. He expressly denies reliance on *race* and focuses on the *culture* of today’s immigrants.<sup>178</sup> This is a distinctive improvement over the approach of the pre-1960s restrictionists,<sup>179</sup> which represents progress of sorts in the public discourse over immigration.

Part of the solution suggested by Professor Huntington is to keep out of the country the immigrants that he believes to be responsible for causing national disunity. Of course, when it comes to his broad policy prescriptions, we are asked to assume that immigration restrictions and greater border enforcement can stop the flow of immigrants to the United States. There is little evidence that such is the case, however. This country has a long tradition of failing to accomplish such goals through policies designed to exclude Mexicans

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174. See Johnson, *Race, the Immigration Laws, and Domestic Race Relations*, *supra* note 35, at 1120-31. See generally LOPEZ, *supra* note 119 (analyzing the requirement that an immigrant be white to naturalize).

175. See Johnson, *Race, the Immigration Laws, and Domestic Race Relations*, *supra* note 35, at 1119-31.

176. See Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. REV. 273 (1996).

177. See, e.g., VERNON M. BRIGGS, JR., *MASS IMMIGRATION AND THE NATIONAL INTEREST* (3d ed. 2003).

178. See *supra* text accompanying note 14.

179. See *supra* note 34 (citing examples).

from the United States.<sup>180</sup> The public charge exclusion ground in the U.S. immigration laws was invoked to bar entry to many Mexican immigrants in a time when racial exclusions did not apply to immigrants from Mexico.<sup>181</sup> More recently, the federal government has massively ramped up the border enforcement along the southern border with Mexico beginning in the 1990s.<sup>182</sup> The ineffective nature of U.S. border enforcement — even after the tragedy of September 11, 2001 — suggests that social, economic, and political pressures have much more impact on the immigration flow than enforcement.<sup>183</sup> Besides being ineffective, such measures also have deleterious civil rights consequences.<sup>184</sup>

Moreover, exclusionary measures have collateral consequences. To reduce social tensions, efforts have been made over the course of U.S. history to exclude Chinese, Japanese, and Mexican immigrants, as well as those from other nations.<sup>185</sup> Because of fears of their negative impacts on the nation, the poor, criminals, political dissidents, women, gays and lesbians and other groups of people have been denied access to the United States.<sup>186</sup> Such exclusions stigmatize and harm domestic groups who share the same characteristics as the persons excluded.<sup>187</sup> Consequently, even though Professor Huntington's approach may be based on culture, it will have distinct impacts on disfavored racial minority groups.

In defense of the United States's past cohesive national identity, Professor Huntington thus takes us down a historical road that we do not recall fondly — the history of exclusion under the immigration laws of racial and political minorities, the poor, gays and lesbians, women, criminals, and other undesirables.

It is no surprise that Professor Huntington does not dwell on African Americans in U.S. history or the impacts of strict immigration and assimilation policies on persons of Asian and Mexican ancestry in the United States.<sup>188</sup> Human costs simply are not as important to Professor Huntington as maintaining national unity and the United

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180. See *supra* text accompanying notes 122-136.

181. See Johnson, *Race, the Immigration Laws, and Domestic Race Relations*, *supra* note 35, at 1519-28.

182. See *supra* text accompanying notes 82-83.

183. See Johnson, *Open Borders?*, *supra* note 22, at 251-52.

184. See *supra* text accompanying notes 84-136.

185. See Johnson, *Race, the Immigration Laws, and Domestic Race Relations*, *supra* note 35, at 1119-47.

186. See generally KEVIN R. JOHNSON, *THE "HUDDLED MASSES" MYTH: IMMIGRATION AND CIVIL RIGHTS* (2004) (analyzing this history).

187. See *id.* at 46-49.

188. See *supra* text accompanying notes 84-136.

States as we know it. Rather, he implies a return to the failed policies of the past. Professor Huntington offers no other real alternatives.

However, given the nation's embrace of a civil rights consciousness and multiculturalism, a return to the racially restrictive immigration laws of the past would create nothing less than a national uproar. As Professor Hiroshi Motomura stated in reviewing Peter Brimelow's book *Alien Nation*,

[T]o use immigration policy to make America more white . . . will splinter America like nothing else. If we admit or exclude immigrants on the basis of race, we are more likely to tolerate racial distinctions in the transition to citizenship and to tolerate the divided society that will result. While Brimelow rails against multiculturalism, his proposals foster a different kind of multiculturalism — white separatism.<sup>189</sup>

In a post-civil-rights-era world, it is far from certain that we can return to the 1950s and maintain the American identity that Professor Huntington cherishes. Racial minorities are no longer willing to be ignored, have their cultures denigrated, and accept mandatory assimilation. With respect to the national origin group that he labels as a particular problem,<sup>190</sup> Professor Huntington does not discuss realistic reforms that might address the issue of Mexican migration. Rather, he leaves open the broad possibilities of immigration restrictions directed at Mexican immigrants. The chapter focusing on the problem of Mexican migration suggests that the “problem” requires harsh measures.<sup>191</sup>

Like Professor Huntington, we agree on the need for policy reforms in the realm of immigration law and its enforcement.<sup>192</sup> However, the economic and social pressure on immigration seems extremely difficult to halt instantly. In the long run, a migration agreement of some sort between the United States and Mexico is one possible reform measure. A broad-based solution to immigration between the United States and Mexico seems in order — or at least worth discussing, analyzing, and criticizing. Such a proposal was on the table for discussion between the governments of the two nations immediately before September 11 but evaporated on that day as the nation focused all its energies on border security, rather than

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189. Hiroshi Motomura, *Whose Alien Nation?: Two Models of Constitutional Immigration Law*, 94 MICH. L. REV. 1927, 1951 (1996) (book review) (footnote omitted).

190. See *supra* text accompanying notes 66-83.

191. See *supra* text accompanying notes 66-83.

192. See, e.g., Bill Ong Hing, *Answering Challenges of the New Immigrant-Driven Diversity: Considering Immigration Strategies*, 40 BRANDEIS L.J. 861 (2002) (outlining such strategies); Erin Kragh, *Forging a Common Culture: Integrating California's Illegal Immigrant Population*, 24 B.C. THIRD WORLD L.J. 373 (2004) (book review) (offering integration strategies as an alternative to heightened border enforcement).

immigration liberalization.<sup>193</sup> Economic development of Mexico is another way to decrease migration pressures; this, of course, is a slow process that could take generations.<sup>194</sup>

Long-term reform measures do not negate possible short-term policy reforms. If it were concluded that closing the borders to Mexican immigrants was not possible or that the nation decided not to act aggressively in that realm,<sup>195</sup> assimilation and integration strategies would seem to be what Professor Huntington advocates. Some policies that would be consistent with modern civil rights sensibilities probably would be relatively uncontroversial. For example, increasing access to English as a Second Language (ESL) classes would hardly seem debatable. ESL classes are greatly oversubscribed.<sup>196</sup> A true commitment to English militates in favor of devoting greater resources to ESL courses.

Policies that encourage naturalization are another way of promoting immigrant assimilation. Citizenship allows full political participation and full membership in U.S. social life. To avoid naturalization by fear,<sup>197</sup> steps could be made to encourage naturalization and allegiance to the United States, which President Clinton's administration attempted to do only to be severely criticized by Republicans contending that partisan political ends fueled the naturalization program.<sup>198</sup> Professor Huntington, however, in criticizing dual citizenship and nationality seems to want to make naturalization more, not less, difficult.<sup>199</sup> This is contrary to a growing body of scholarship, much of it hoping to promote immigrant assimilation.<sup>200</sup>

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193. See Johnson, *September 11 and Mexican Immigrants*, *supra* note 89, at 866-67. It has been suggested that immigration among the three nations that are parties to the North American Free Trade Agreement, like that which exists in the European Union, would be a viable way of addressing migration pressures. See, e.g., T. Alexander Aleinikoff, *Legal Immigration Reform: Toward Rationality and Equity*, in BLUEPRINTS FOR AN IDEAL LEGAL IMMIGRATION POLICY 5 (Richard D. Lamm & Alan Simpson eds., 2001).

194. See COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT, UNAUTHORIZED MIGRATION: AN ECONOMIC DEVELOPMENT RESPONSE (1990).

195. See *supra* note 22 (citing authority on difficulties of immigration enforcement).

196. See *supra* text accompanying notes 148-158.

197. See *supra* text accompanying notes 72-74.

198. See Johnson, *Latina/os and the Political Process*, *supra* note 73, at 930-31.

199. See *supra* text accompanying notes 48-49.

200. See Gerald L. Neuman, *Justifying U.S. Naturalization Policies*, 35 VA. J. INT'L L. 237 (1994); Peter J. Spiro, *Questioning Barriers to Naturalization*, 13 GEO. IMMIGR. L.J. 479 (1999).

Protecting workers in the workplace also would seem to be a way of ensuring their economic assimilation.<sup>201</sup> Exploitation of immigrants is a serious problem in the United States and immigrant labor markets often exist separate and apart from the labor market for citizens.<sup>202</sup> This is particularly the case for undocumented workers, the most exploited of all immigrants.<sup>203</sup>

## CONCLUSION

The fascinating question raised by Professor Huntington is how to maintain a cohesive national identity in a time when we recognize and respect differences among peoples. As a nation, we must acknowledge that a multiracial, multicultural nation may necessitate a more diffuse national identity than that which existed in past generations. In considering what it means to be an American, we must recognize the dangers of the cultural assimilationist strategies like those advocated by Professor Huntington. Although immigrants do gradually influence our culture, market forces cause them to acculturate in rather conventional ways. Importantly, immigrants contribute greatly to society and have much to teach us.

Professor Huntington's points should not, however, simply be brushed aside as irrelevant. We cannot deny the challenges that multiculturalism presents. Yet, to advance we must be committed to, not paralyzed by, the task before us. In order to deal with the tension of a multicultural nation, we must understand its sources and remain alert. Ignoring the pressure breeds complacency and bitterness. Understanding and addressing the tension and pressure allows U.S. society to move forward.

In the end, Professor Huntington's proposals, which call for severe immigration restrictions, do little to address the tensions caused by an increasingly multiracial America. Professor Huntington represents many Americans who are unwilling to strive to develop a multicultural

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201. See *supra* text accompanying note 10 and note 10 (discussing lack of protection afforded undocumented immigrants under recent Supreme Court decision).

202. See Ruben J. García, *Across the Borders: Immigrant Status and Identity in Law and LatCrit Theory*, 55 FLA. L. REV. 511 (2003); Johnson, *Open Borders?*, *supra* note 22, at 226-30.

203. See, e.g., JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS* (2005); Ruben J. García, *Ghost Workers in an Interconnected World: Going Beyond the Dichotomies of Domestic Immigration and Labor Laws*, 36 U. MICH. J.L. REFORM. 737 (2003); Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407 (1995); Lori A. Nessel, *Undocumented Immigrants in the Workplace: The Fallacy of Labor Protection and the Need for Reform*, 36 HARV. C.R.-C.L. L. REV. 345 (2001).

society, clinging to a Euro-conformist definition of an American, and offering simple solutions.

We recognize that even a multicultural society must share a core of values in order to provide a means to live together as a society. Without a commitment to a common core, balkanization into assorted factions is likely and eliminating interethnic violence and tension will prove more difficult. This core, however, need not be more than a common nucleus. A common core of values encompasses the essence of good citizenship. It includes respect for the laws, for the democratic political and economic system, and for equal opportunity. But this common nucleus is only part of a modern vision of being an American. The requirement of inclusion and respect for diversity is reciprocal and applies to all persons in the United States.

Ethnic conflict, divided neighborhoods, economic competitiveness, and notions of separatism emanating from racial and economic subordination are not situations limited to far off lands like Bosnia-Herzegovina, the former Soviet Union, and Somalia. But Professor Huntington's response to those challenges is not constructive. The right response involves the willingness of all of us to acknowledge our responsibility to initiate change and take on the difficult task of how to make a successful multicultural nation.