

# Immigration and Welfare: Policy Changes Brought by the 1996 Welfare Reform Law

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BOSTON COLLEGE

IMMIGRATION AND WELFARE:  
POLICY CHANGES BROUGHT BY THE 1996 WELFARE REFORM LAW

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## Introduction

The United States of America's official seal is inscribed with the quote "*E Pluribus Unum.*" Translated from the Latin, this phrase means "From Many, One."<sup>i</sup> Modern America is in fact one nation, built from many; many cultures, religions, and citizens from many different origins comprise the American polity. America is a nation of immigrants. The first immigrants to this country were fleeing religious persecution. Others have come escaping a life of poverty or political repression. Whatever the reason, immigrants come to America in hope of a better life.

Despite America's strong immigrant tradition, the issue of membership in the American polity has been a contentious issue throughout our history. Chinese Exclusion, and the National Origins Quota System are merely two policies implemented with the express purpose of keeping foreigners out of America. Over time, anti-immigrant sentiment in America has been fueled by nativism and the desire to allow economic prosperity to benefit American citizens. While nativism has played an important role in determining American immigration policy, many modern-day arguments for a restrictive immigration policy are based on economic considerations. It is often claimed that immigrants take jobs away from citizens. Economic research has shown that modern-day immigrants tend to be lower skilled and have a lower economic performance than natives.<sup>ii</sup> As a result, the presence of a large number of immigrants does create greater job competition and lower wages for citizens in low-paying jobs.<sup>iii</sup> The desire to keep jobs available for American citizens has been a primary cause of existing restrictions on immigration.

While immigrants can have a negative affect on the American economy, history indicates that a large immigrant labor force has allowed the United States to develop into the

modern industrial nation that it is today. During times of economic development, American immigration policy was expanded in order to create the necessary labor force. For example, during the development of the American railroad, Western states and railroad companies recruited German farmers to immigrate to the American West.<sup>iv</sup> Also, the federal government's Homestead Act of 1862 guaranteed "160 acres of [western] land free to citizens and aliens who worked it for at least five years."<sup>v</sup> Another example is from the early-mid 1900s. During the two World Wars, Congress allowed Mexican farmworkers to enter the United States for the express purpose of working in the agriculture industry.<sup>vi</sup> Without these workers, the agriculture industry would not have been able to support American wartime production. Determining modern immigration policy involves finding a delicate balance between America's immigrant history and the negative affects of immigration. Economist George J. Borjas, explains this as a struggle of weighing American values against economic facts.<sup>vii</sup>

In recent years, immigration policy has grown to include more than simply laws about who can come to America and how many of them can come. It now also involves what rights are afforded to immigrants before they become full citizens, what is often referred to as *immigrant* policy. Immigration law scholar Peter H. Schuck points out that, "United States citizenship... confers few legal or economic advantages over the status of permanent resident alien."<sup>viii</sup> Thus, manipulating the difference between the rights accorded to noncitizens and the rights accorded to citizens is often used as a means to achieve the United States' immigration goals.<sup>ix</sup> The trend of using *immigrant policy* to engage in *immigration policymaking* represents a new tactic for dealing with immigrants to the United States.

This trend was brought to a new level when the United States Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996. While the primary purpose of this law was to reform the nation's welfare system, these reforms included restrictions on the extent to which legally present immigrants could receive public benefits. This law marks the first time that such restrictions were placed on legally present immigrants. Prior to this law, immigrant policy had dealt primarily with policies towards illegally present immigrants. The 1996 welfare reform law expanded immigrant policy to include legal immigrants by limiting the extent to which legal immigrants could receive welfare benefits. The law accomplished this in two ways. First, PRWORA changed federal eligibility categories to include the date an immigrant arrived in the country. Many immigrants that entered the country after PRWORA was signed into law on August 22, 1996 no longer qualify for welfare benefits. Second, of those immigrants that still qualify for welfare, PRWORA gave states greater discretion in determining whether or not immigrants would be eligible for welfare programs.<sup>x</sup>

The PRWORA legislation is significant in two ways. First, it further blurs the distinction between immigrant policy and immigration policy, making it necessary to consider whether or not such a distinction still exists. Second, the law gives state governments significant control in the area of immigrant/immigration policymaking, something which seems to be in conflict with the federal government's responsibility over immigration policy.<sup>xi</sup> The devolution of immigrant/immigration policy creates important questions regarding the status of American federalism.

This paper will examine issues surrounding the immigrant provisions of the 1996 welfare reform law. It seeks to examine whether or not a distinction between immigrant

policy and immigration policy still exists. Also, the paper will consider the extent to which the devolution of immigrant/immigration policy has changed American federalism. In order to understand the influence of PRWORA, it is first necessary to understand how the law has changed immigrant eligibility to welfare. For the purpose of this paper, I will focus on changes made to the three primary programs of assistance in the United States; cash assistance for families (Aid to Families with Dependent Children- AFDC which became Temporary Assistance for Needy Families-TANF), cash assistance for the elderly and disabled (Supplemental Security Income- SSI) and Food Stamps. In Chapter One I will establish the extent to which noncitizens were able to participate in these welfare programs prior to the 1996 law and then consider how the law changed this eligibility.

Next, in Chapter Two, I will examine the political forces which impacted the creation of PRWORA. This chapter will include a review of the forces which have influenced immigration policy throughout American history. After documenting the framework in which immigration policies are traditionally discussed, I will consider how new factors influenced the policy debate in 1996. Review of the political environment in the early 1990s, makes it clear that a primary cause of the immigrant eligibility restrictions in PRWORA was an economic downturn, something that ultimately resulted in anti-immigrant sentiment. The restriction of welfare benefits was used primarily as a means of discouraging immigration, a goal that has typically been accomplished through immigration policy. Since PRWORA clearly uses immigrant policymaking to accomplish immigration goals, it seems that the distinction between *immigration policy* and *immigrant policy* is no longer significant.

In Chapter Three I will begin to consider the extent to which PRWORA has changed federal-state relations. This chapter will first review the specific ways in which the federal

government has devolved some control of immigrant policy to the states. Next, I will document the manner in which states have responded to these increased policymaking responsibilities. Specifically, this chapter will include a case study of the manner in which four states have responded to PRWORA. The states of California, Massachusetts, Colorado and Texas have been chosen for the case study. Each state will be analyzed in light of what welfare benefits are available to immigrants and the political forces that have created each state's policies. Comparison of the responses by these states reveals that while states might have similar experiences with immigrants, political forces unique to each state caused a variety of responses to PRWORA.

Finally, in the Conclusion, I will specifically examine the extent to which PRWORA has changed the nature of American federalism. I conclude that PRWORA has distinctly changed American federalism because it gave states significant control over immigration policy, something which had previously been controlled by the federal government. In closing, I suggest that while states have gained power in significant policy areas, such as welfare and immigration, the devolution of this power to the states reaffirms that within American federalism, power is ultimately derived from the states.

## **Chapter One**

### **Welfare Eligibility: History and Changes**

In 1996 the United States Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), drastically changing the structure of the country's social welfare system. One of the fundamental changes made by PRWORA was to cause a closer scrutiny of citizenship status when determining eligibility for welfare programs. Before PRWORA, legally present aliens were eligible to receive welfare benefits on similar terms as citizens. PRWORA changed this by making welfare benefits available only to certain groups of legally present immigrants. In order to show how PRWORA changed the nature of immigrant eligibility to welfare, this chapter will examine both the legislative and judicial case histories which have shaped eligibility requirements. After showing the level of immigrant eligibility to the safety net before 1996, the chapter will examine how PRWORA changed this eligibility level.

#### **Eligibility: Legislative History**

##### **Aid to Families With Dependent Children**

The Personal Responsibility and Work Opportunity Reconciliation Act most drastically changed the Aid to Families with Dependent Children program (AFDC), which until 1996 was the primary source of cash assistance for families in the United States. The 1996 law replaced AFDC with the Temporary Assistance to Needy Families (TANF) program. AFDC had been established by the Social Security Act of 1935.<sup>xii</sup> In its original form, AFDC was a cash assistance program for children. Cash assistance for parents was added at a later time. AFDC was a joint entitlement program with responsibility shared between the federal government and the states. The federal government funded the program while states determined financial need and other eligibility issues, and determined the level

of benefits given.<sup>xiii</sup> While the federal government was ultimately responsible for making payments to the states to fund the program, the levels of these payments were determined by the varying state eligibility requirements. In this sense, “the federal government [was] hostage to state policies since state appropriations and caseloads determine[d] the amount the federal government [spent] on AFDC.”<sup>xiv</sup> Many states took advantage of this flexibility and used eligibility requirements to discriminate against minorities and impose moral standards on welfare recipients. For example, some states imposed “man in the house” rules which “terminated or reduced benefits where there was a cohabitating male resident.”<sup>xv</sup> While the federal government viewed the AFDC program as a way of providing assistance to needy people, state governments often used eligibility requirements to accomplish other goals.

Through a series of lawsuits in the 1960s and 1970s, the federal Courts attempted to exert some control over eligibility to the AFDC program. The Supreme Court overturned many of the discriminatory requirements which had been imposed by the states. The eligibility requirements overturned by the Court were those “unrelated to need,”<sup>xvi</sup> emphasizing the program’s purpose of providing aid to needy people. The Supreme Court case of *Graham v. Richardson* (1971) is a specific example of how the Court overturned state-imposed eligibility requirements related to citizenship. In this situation, the state of Arizona had imposed a fifteen-year waiting period for noncitizens to qualify for welfare benefits. This state-imposed restriction for AFDC did not survive because strict scrutiny of the Equal Protection Clause was applied. Prior to the *Graham* ruling, a similar requirement had existed in Pennsylvania.<sup>xvii</sup> While states such as Arizona and Pennsylvania attempted to use the flexibility of the AFDC program to exclude noncitizens, such provisions were overturned by the federal government during the judicial review process.

## **Supplemental Security Income**

Like AFDC, the Supplemental Security Income program (SSI) provides cash assistance to low-income people. However, SSI is targeted specifically towards low-income people with disabilities and the elderly. The purpose of the program is “to supplement the income of aged and handicapped people so they can have a minimum standard of living.”<sup>xviii</sup> The SSI program was established in 1974 through amendments to the Social Security Act and it is administered through the Social Security Administration.

Since SSI is administered at the federal level, the program has national uniformity in both eligibility requirements and benefit levels. In order to qualify for the program, a person must be over age 65, blind, physically or psychologically disabled, and meet certain income and financial asset requirements. These requirements were established in 1974 when the law was first enacted.<sup>xix</sup>

## **Food Stamps**

The Food Stamp program was established in 1964 by the Food Stamp Act, and is administered by the Office of Food and Nutritional Services at the United States Department of Agriculture. The program was designed to enable “low-income families to buy nutritious food.”<sup>xx</sup> People who participate in the Food Stamp program receive their benefits in the form of coupons or on debit cards. The benefits are then used to purchase designated food items at grocery stores.

The Food Stamp program is funded jointly by the federal government and states. The federal government pays for benefits, while the federal and state governments share administrative costs.<sup>xxi</sup> Although the program was established in 1964, legislation passed in the late 1970s significantly strengthened the program. Most importantly this legislation

established “uniform national income and asset eligibility standards.”<sup>xxii</sup> The standards established at that time remained in place until PRWORA was passed in 1996.

The eligibility standards established in the late 1970s involved several tests of need. These needs tests separately examine an applicant’s available financial resources and the applicant’s income. According to the resource test, an applicant can have up to \$2,000 in bank accounts, stocks and bonds, and property value (not counting the home), and still qualify to receive food stamp benefits.<sup>xxiii</sup> Benefits received from other welfare programs, such as TANF and SSI, are not counted against the \$2,000 resource limit.<sup>xxiv</sup> The income test for eligibility considers a household’s gross monthly income minus specified deductions. The calculated amount is the household’s net monthly income. In order to qualify for food stamp benefits, a household must fall below designated limits for both the gross monthly income and the net monthly income. These limits are adjusted annually. For the FY 2002, the gross monthly income limit for a household of four was \$1,913. The net monthly income limit was \$1,471.<sup>xxv</sup> Like SSI, eligibility requirements for the Food Stamp program are determined by the federal government and are thus uniform nationwide.

As evidenced by the legislative history of AFDC, SSI, and Food Stamps, Congress had done little before 1996 to either restrict or protect legally present noncitizens’ eligibility. As a result, noncitizens were able to access benefits on a similar level as citizens. While before PRWORA the U.S. Congress did little to either discriminate against or protect noncitizens’ ability to access welfare benefits, the same cannot be said for the judicial branch. Prior to 1996, the process of judicial review enabled the Courts to be the primary institution defining the extent to which noncitizens were able to receive welfare benefits.

### **Eligibility: Case History**

The two Constitutional directives that have influenced the Court's decisions dealing with noncitizen eligibility to welfare are the Equal Protection Clause of the 5<sup>th</sup> and 14<sup>th</sup> Amendments and the Supremacy Clause contained in Article I of the Constitution. The 1886 Supreme Court decision in *Yick Wo v. Hopkins* established the precedent that the Equal Protection Clause of the 14<sup>th</sup> Amendment applies to aliens residing in the United States. This means that, like citizens, immigrants are entitled to equal protection of the law. The Supreme Court's decision in *Graham v. Richardson* (1971) expanded the equal protection of noncitizens to apply to welfare laws. In this decision, the Court struck down Arizona's fifteen-year waiting period for aliens to qualify for welfare and Pennsylvania's bar on noncitizen participation in the state welfare program. With this decision, the Supreme Court indicated that "aliens [are] a 'suspect class' and 'a prime example of a discreet and insular minority.'"<sup>xxvi</sup> The use of the term 'suspect class' indicates that strict scrutiny was used in reviewing the state of Arizona's legislation. In equal protection cases, the Court can apply either standard or strict scrutiny. Strict scrutiny is used only when the law as deals with "fundamental rights" or a class needing special protection (a suspect class).<sup>xxvii</sup> Under strict scrutiny, legislation typically only survives "where it serves a 'compelling state interest.'"<sup>xxviii</sup> In the *Graham* case, the states of Arizona and Pennsylvania cited the interest of conserving welfare funds for citizens. The Supreme Court ruled that this was not an adequate state interest because both citizens and aliens paid taxes and thus contributed to funding for welfare programs.<sup>xxix</sup> Since these statutes did not constitute a compelling state interest, they were overturned.

The second Constitutional provision influencing judicial review of legislation dealing with noncitizens' eligibility to welfare programs is the Supremacy Clause contained in Article I of the Constitution. One of the first cases that used the Supremacy Clause to define the federal government's ability to apply citizenship status as an eligibility criterion for welfare benefits was *Mathews v. Diaz* (1976). This case dealt with a provision of the Social Security Act stipulating that noncitizens were only eligible to the Medicaid program if they had resided in the country for at least five years. As opposed to the *Graham* case, which dealt with a state law, the *Mathews* case dealt with the Social Security Act, a federal law. The Supreme Court upheld the law, ruling that it was within the power of Congress and the federal government to make distinctions between citizens and aliens. Furthermore, the ruling indicated that it was within the federal government's power to make distinctions between different immigrant classifications. The opinion, written by Justice Stevens, stated that since immigrant classification is "defined in the light of changing political and economic circumstances," it is best to allow decisions about immigrant classification to be made by either the legislative or the executive branch of the federal government.<sup>xxx</sup>

*Mathews v. Diaz* was also significant in defining the federal government's ability to use citizenship status as a criterion for welfare eligibility because it clarified the issue of scrutiny towards the Equal Protection Clause. Justice Stevens' decision refuted the idea that the precedent of strict scrutiny of the Equal Protection Clause should be applied to this case. This precedent had been established by *Graham v. Richardson*, a case that "concern[ed] the relationship between aliens and the States."<sup>xxx</sup> In contrast, *Mathews v. Diaz* dealt with the relationship "between aliens and the Federal Government."<sup>xxxii</sup> Since the Equal Protection Clause does not apply to the federal government, it is possible for the federal government to

distinguish both between aliens and citizens and among different classifications of noncitizens.

The precedent of applying the Supremacy Clause to issues dealing with immigration was strengthened by the April 1977 decision in *Fiallo v. Bell*. This ruling formally established the “federal doctrine of preemption.”<sup>xxxiii</sup> This doctrine suggests “that the federal government exclusively has plenary power over matters of immigration and naturalization.”<sup>xxxiv</sup> In combination, the rulings in both *Mathews* and *Fiallo* established as the sole power of the federal government the ability to make citizenship status an eligibility criterion for receiving welfare benefits.

The apparent shift between the rulings made in *Graham* and then in *Mathews* and *Fiallo* can be understood by considering the historical context in which the Court made these decisions. The *Graham* ruling was made in 1971, a mere two years after the resignation of Chief Justice Earl Warren, an event which represents the formal end of the judicial era known as the Warren Court. The era of the Warren Court is understood as a time period in which the Court “implemented the modern liberal agenda, enforcing norms of fair treatment and racial equality.”<sup>xxxv</sup> The ruling in *Graham* fulfills this understanding of the Court by prohibiting state restrictions which are a barrier to immigrants receiving welfare benefits. In contrast, the *Mathews* and *Fiallo* rulings came further along in the period in which Warren Burger was Chief Justice. By affirming the ability of the federal government to discriminate on the basis of alien status, the *Mathews* and *Fiallo* rulings fulfill the traditional understanding of the Burger Court as more restrictionist than the Warren Court.<sup>xxxvi</sup> While the Court’s shift between the decisions in *Graham* and then *Mathews* and *Fiallo* uphold the traditional stereotypes of the Warren Court as expanding rights and the Burger Court as more

restrictionist, a subsequent Court ruling dealing with Equal Protection and the Supremacy Clause disproves this generalization.

The rulings made in *Graham*, *Mathews*, and *Fiallo* were further clarified by the June 1977 decision in *Nyquist v. Mauclet*. This decision invalidated a New York state law which prevented noncitizens from receiving financial aid, unless they intended to apply for citizenship. The ruling in *Nyquist* upheld the precedent established in *Graham* rather than the precedent established in *Mathews* and *Fiallo*. Since the statute in question made a distinction based on alien status and had been imposed by the State of New York, rather than the federal government, it was subject to strict scrutiny of the Equal Protection Clause. The decision in *Nyquist* rejected the lesser level of scrutiny that had been applied in *Mathews* because *Mathews* had dealt with a federal law.

After applying strict scrutiny to the New York law, the Court identified two possible state interests. The first and most significant was to create an incentive for naturalization. This goal was rejected as a compelling state interest because of the Supremacy Clause rulings made in *Mathews* and *Fiallo*. Since issues of immigration and naturalization are “entrusted exclusively to the Federal Government,” encouraging naturalization cannot be a reasonable state interest.<sup>xxxvii</sup> Although the *Nyquist* ruling was made after the Supremacy Clause precedent had been established by *Mathews* and then upheld in *Fiallo*, the fact that *Nyquist* dealt with a state law caused the Court to defer to the Equal Protection precedent that had been established in *Graham*.

Examined in the historical context of the Court, *Nyquist* confuses the traditionally held understandings of the Warren and Burger Courts. Instead, this ruling supports a second understanding of the relationship between the two judicial eras. That is, that after the end of

the Warren era the “Court slowly shift[ed] from the premises of the Warren Court but never fully repudiat[ed] them.”<sup>xxxviii</sup> While decisions such as *Mathews* and *Fiallo* indicate a shift away from the inclusiveness of the Warren Court, rulings of the Burger Court maintained a level of expansion of the Equal Protection Clause. The *Nyquist* ruling maintains the Equal Protection Clause standard that had been established in *Graham*.

In conclusion, the case history dealing with citizenship status and eligibility for welfare to establishes two distinctions. First, given the Constitutional rights provided by the Equal Protection Clause of the 5<sup>th</sup> and 14<sup>th</sup> Amendments, it is not possible for states to deny benefits based on citizenship status. Since the Court has determined that noncitizens qualify as a “suspect class,” and thus need special protection from the Court, a state must show a “compelling state interest” in order to overcome the strict scrutiny that is applied to Equal Protection claims. The second precedent established by the Court has been the Federal Government’s right, under the Supremacy Clause, to deny welfare benefits based on alien status. The case history provides an indication of the extent to which it is possible for Congress to deny benefits based on citizenship status.

### **Eligibility Requirements: Citizenship**

The case history given by the Supreme Court and dealing with alien eligibility to welfare programs clearly shows that any restrictions must come from the federal government. Prior to PRWORA, the extent to which Congress exercised its power to discriminate on the basis of citizenship status was very minimal. Furthermore, the federal government imposed uniform eligibility requirements for noncitizen participation in AFDC, SSI, and the Food Stamp program.

One of the first federally imposed requirements dealt with which groups of immigrants were able to receive welfare benefits. According to Congressional legislation, all legally present immigrants, including those permanently residing under the color of law (PRUCOL),<sup>1</sup> were eligible to receive cash assistance (through either AFDC or SSI) and Food Stamps.

The second federal limitation placed on immigrants dealt with how an applicant's financial eligibility was determined. For immigrants with sponsors, the sponsor's income was "deemed" available to that immigrant for their first three years in the country.<sup>xxxix</sup> This rule affected immigrants when they applied for public benefits because the welfare office would consider the income of the sponsor available to the immigrant when calculating financial eligibility. This meant that for the first three years in the United States, immigrants were considered to have a higher income than they actually might have had. It was possible for Congress to include this provision in welfare eligibility rules because of a provision in immigration law which requires some immigrants to have a sponsor. The State Department and the Immigration and Naturalization Service (INS)<sup>2</sup> require immigrants who might become a public charge<sup>3</sup> to have a sponsor. This person must sign an affidavit of support, in which they become legally obligated to be financially responsible for the immigrant. Thus, the federal rule regarding sponsor deeming was in accordance with U.S. immigration law. Under welfare eligibility rules, these affidavits were considered "to be morally, rather than

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<sup>1</sup> PRUCOL is an immigration status referring to immigrants that are Permanently Residing Under the Color of Law. The term PRUCOL includes immigrants that can prove that the INS knows they are in the U.S. and that they are not under an order of deportation. This would include asylum applicants.

<sup>2</sup> Immigration visas are granted by both institutions

<sup>3</sup> Public charge is an immigration term referring to immigrants that are likely to become "primarily dependent on the government for subsistence" either by receiving cash welfare benefits or through long-term institutionalization.

legally, binding<sup>xxl</sup> and often the deeming rule was leniently enforced upon immigrants applying for benefits.

One small difference in deeming rules applied to the SSI program. For much of the program's history, sponsor deeming occurred for an immigrant's first three years in the country. This was the same length of time as in the AFDC and Food Stamp programs. However, as a result of significant immigrant use of SSI benefits, this length of time was extended to five years, beginning January 1, 1994.

In closing, the extent to which the federal government exercised its right, granted by the Supremacy Clause, to restrict immigrants from receiving benefits was minimal. Considering the eligibility history of AFDC, SSI, and the Food Stamp program, the restrictions imposed by PRWORA represent a drastic shift in the ability of immigrant families to receive welfare benefits in the United States.

### **Eligibility Changes Made by PRWORA**

The Personal Responsibility and Work Opportunity and Reconciliation Act (PRWORA) was signed into law on August 22, 1996. The most significant change made by this legislation was to replace the Aid to Families with Dependent Children program (AFDC) with Temporary Assistance to Needy Families (TANF). TANF contained work requirements and limits on the length of time participants could receive benefits. Also, the new TANF program was funded through block grants to the states, rather than the federal government matching state spending, as in AFDC. While PRWORA had a specific and drastic affect on the AFDC program, it represents a larger shift in the nature of benefits policy in the United States. PRWORA marks the first time that the federal government firmly acted upon its ability to exclude noncitizens from participation in public benefits programs. Until this

point, the extent to which the federal government exercised this right was minimal. With PRWORA, the federal government imposed widespread restrictions on the ability of noncitizens to receive cash assistance, disability benefits, and food stamps.

Before examining the immigrant eligibility requirements established by PRWORA, it is necessary to understand the language introduced for describing different categories of immigrants. The first level of distinction is between pre- and post-enactment immigrants. Pre-enactment immigrants, those legally present in the U.S. when the law was passed on August 22, 1996, remain eligible for more benefits than post-enactment immigrants, those that entered after this date. The next distinction is for certain groups of immigrants. These include refugees and asylees during their first several years in the country, immigrants who have 40 quarters of work history, or immigrants who have served in the U.S. military. PRWORA tends to exempt these groups from many of the eligibility restrictions. In this provision of the law, Congress is acting on one of the rights granted to the federal government in *Mathews v. Diaz* (1976). This decision granted Congress the right to consider “the character of the relationship between the alien and this country.”<sup>xli</sup> With this provision, Congress recognizes that those immigrants who have worked in the United States for a considerable amount of time or who have served the United States in the military have a greater “claim to an equal share” of the country’s wealth.<sup>xlii</sup>

The final distinction is between qualified and unqualified immigrants. Before PRWORA only undocumented immigrants fell into the unqualified category. This changed because PRWORA designates specific immigration categories as qualified, thus any immigrants not included in the qualified category automatically enter the unqualified category. Qualified immigrants included lawful permanent residents, immigrants admitted

for humanitarian reasons (refugees/asylees), battered spouses and their children (who can petition for entrance under the Violence Against Women Act), and people paroled into the United States for at least one year.<sup>xliii</sup> By default, PRUCOL immigrants, such as asylum applicants and those with temporary statuses, such as students and tourists, are unqualified immigrants.

**Chart 1.1- PRWORA Classifications of Immigrants**

<b>Classification By:</b>	<b>Tend To Be Eligible For More Benefits</b>	<b>Tend To Be Eligible For Fewer Benefits</b>
<b>Entry Date</b>	<b>Pre-Enactment Immigrants</b> <ul style="list-style-type: none"> <li>Entered the U.S. BEFORE August 22, 1996</li> </ul>	<b>Post-Enactment Immigrants</b> <ul style="list-style-type: none"> <li>Entered the U.S. AFTER August 22, 1996</li> </ul>
<b>Exemptions</b>	<b>Exempted Groups</b> <ul style="list-style-type: none"> <li>40 Quarters of work history (approximately 10 years); Credits can be transferred from a parent or spouse</li> <li>Military personnel and their families</li> <li>Refugees/Asylees</li> </ul>	<b>Non-Exempted Groups</b> <ul style="list-style-type: none"> <li>Immigrants that do not fall into any of the three Exempted categories</li> </ul>
<b>Qualified vs. Unqualified</b>	<b>Qualified</b> <ul style="list-style-type: none"> <li>Legal Permanent Residents</li> <li>Refugees/Asylees</li> <li>Parolees (enter for 1 year)</li> <li>Battered spouses and children</li> </ul>	<b>Unqualified</b> <ul style="list-style-type: none"> <li>Any immigrant not falling into the Qualified categories</li> <li>Illegal Immigrants</li> <li>Asylum applicants</li> <li>PRUCOLs</li> <li>Immigrants with temporary statuses (students and tourists)</li> </ul>

### **AFDC Becomes TANF**

Under the AFDC program, state governments had considerable freedom to determine eligibility requirements. Throughout the history of the program, judicial review established a precedent which prevented states from discriminating on the basis of citizenship status. Because PRWORA established TANF as a block grant program, states actually gained authority in determining whether or not to provide assistance to specific groups of their population.

While PRWORA established a federal law barring many categories of immigrants from receiving TANF for the first five years in the country, it also gave state governments the power to determine whether immigrants would be eligible for TANF after the five-year bar. As a result of the welfare reform changes, individual states now determine whether or not a given group of immigrants is eligible to receive cash assistance benefits.

### **SSI and Food Stamps**

Unlike the changes made to AFDC/TANF, the 1996 welfare reform law did little to change the structure or administration of either the SSI or Food Stamp programs; these programs remain funded and administered by the federal government. The changes that were made to these programs deal with eligibility requirements. Since SSI and the Food Stamp program are both administered by the federal government, PRWORA enacted identical eligibility requirements for these programs.

According to the original PRWORA legislation, post-enactment, qualified immigrants were barred from receiving either SSI or Food Stamps. Furthermore, any pre-enactment immigrants not part of the exempted groups would become ineligible for SSI and Food Stamps. Given this ineligibility, any pre-enactment, non-exempted immigrants receiving SSI or Food Stamps at the time of PRWORA would lose these benefits. In short, the PRWORA legislation meant that most legal immigrants would be ineligible for SSI or Food Stamps until they became citizens or gained 40 quarters of work history (this would take approximately 10 years), thus becoming exempted from many of the PRWORA restrictions. It was noted that within the Food Stamp program, the immigrant restrictions “mark the first time in history... that food stamp benefits will be denied to some groups who meet its income requirements.”<sup>xliv</sup> While the original PRWORA legislation imposed similar

citizenship eligibility requirements for both SSI and Food Stamps, subsequent restorations made to each program have ultimately meant the SSI and Food Stamp programs vary in their availability to immigrants.

**Chart 1.2- Changes in Immigrant Eligibility to Welfare Programs**

	<b>AFDC/TANF</b>	<b>SSI</b>	<b>Food Stamps</b>
<b>Pre-Graham</b>	<ul style="list-style-type: none"> <li>➤ States have significant freedom to determine eligibility requirements.</li> <li>➤ Some states, such as Arizona and Pennsylvania implement 15 year waiting periods for aliens to receive benefits.</li> <li>➤ The federal government also imposes some restrictions: illegal aliens ineligible and sponsor-deeming.</li> </ul>	<ul style="list-style-type: none"> <li>➤ A federally administered program; all restrictions come from the federal government: illegal aliens ineligible and sponsor-deeming.</li> </ul>	<ul style="list-style-type: none"> <li>➤ A federally administered program; all restrictions come from the federal government: illegal aliens ineligible and sponsor-deeming.</li> </ul>
<b>Post-Graham</b>	<ul style="list-style-type: none"> <li>➤ State laws discriminating on the basis of citizenship are overturned.</li> <li>➤ Federally imposed restrictions still in place.</li> </ul>	<ul style="list-style-type: none"> <li>➤ No Effect.</li> <li>➤ In January 1994 the sponsor-deeming period is extended from 3 to 5 years. This change only affects SSI.</li> </ul>	<ul style="list-style-type: none"> <li>➤ No Effect.</li> </ul>
<b>Post-1996</b>	<ul style="list-style-type: none"> <li>➤ Federal restrictions bar qualified immigrants from welfare for their first 5 years in the country.</li> <li>➤ New sponsor affidavits that are legally binding.</li> <li>➤ States have the power to determine whether or not to include immigrants in welfare programs.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Most groups of immigrants ineligible until citizenship, some groups are exempted from this bar.</li> <li>➤ Qualified groups barred for their first 5 years in the country.</li> <li>➤ New sponsor affidavits that are legally binding.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Most groups of immigrants ineligible until citizenship, some groups are exempted from this bar.</li> <li>➤ Qualified groups barred for their first 5 years in the country.</li> <li>➤ New sponsor affidavits that are legally binding.</li> </ul>

**Limited Restorations**

When President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act on August 22, 1996, it was widely known that he opposed the immigrant

eligibility provisions of the law.<sup>xliv</sup> President Clinton is said to have “beg[un] proposing changes to the law even before the ink was dry.”<sup>xlvi</sup> As a result of these efforts, eligibility to some programs has been restored to some categories of legal immigrants.

Given the impact of PRWORA on many elderly and disabled immigrants receiving SSI, restorations were first made within this program. In the Balanced Budget Act of 1997, Congress restored SSI eligibility to immigrants that had been participating in the program on August 22, 1996 and to pre-enactment immigrants that subsequently become disabled.<sup>xlvii</sup> The following year Congress restored food stamp eligibility to a similar segment of the immigrant population. Eligibility for food stamp benefits was restored to elderly and disabled immigrants who were in the country when PRWORA was passed. In addition, immigrants under age 18 who were in the country on August 22, 1996 were once again able to receive food stamps. Finally, in this round of restorations, Congress extended the time which refugees and asylees could receive food stamps from five to seven years.<sup>xlviii</sup>

These initial restorations made within the SSI and Food Stamp programs applied to relatively vulnerable segments of the immigrant population, that is, the elderly, disabled, and children. In 2002, during the reauthorization of the PRWORA reforms, widespread restorations were made to the Food Stamp program. The 2002 Farm Bill restored food stamp eligibility to qualified immigrants that have been living in the United States for five years, qualified immigrant children regardless of entry date, and qualified immigrants that are receiving SSI, regardless of entry date.

In closing, PRWORA represents a drastic shift in the nature of United States benefits policy towards immigrants. As a result of PRWORA, it became necessary to consider an applicant’s citizenship status when determining eligibility for cash assistance, disability

benefits, or food stamps. The eligibility changes dealing with citizenship made by the 1996 welfare reform law represent the first time that the federal government widely distinguished between citizens and noncitizens in the distribution of welfare benefits.

## **Chapter Two**

### **Immigration Policy: Political Forces**

In addition to drastically changing the nature of benefits policy, the immigrant eligibility provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) mark a significant shift within the immigration policy framework. The restrictions further blur the distinction between immigrant policy and immigration policy, making it necessary to consider whether or not a distinction still exists. In order to understand how the law changes immigration policy, it is necessary to review the political forces that have affected immigration policy making throughout American history. After establishing the traditional political forces within immigration policy, it is possible to analyze how these forces influenced the 1996 welfare reform process.

#### **Political Forces of the First and Second Immigration Periods**

Throughout American history, immigration policy has been influenced by the competing forces of nativism and economics. The influence of nativism has always encouraged limitations on the entry of immigrants. In contrast, economic considerations have the possibility to encourage either a liberal or restrictive immigration policy, depending on the needs of the country. In early America, economic forces made it necessary to have a liberal immigration policy. This early policy established a precedent of imposing minimal restrictions on immigration. Daniel Tichenor suggests that this precedent is an example of path dependence within American political institutions and public policy.<sup>xlix</sup> The generosity of early immigration policy created political forces that have been difficult for Nativist movements to overcome.

## **Nativism**

Nativism has existed in America since the colonial era, and nativist fears have adapted as the types of immigrants to America have changed. John Hingham identifies two phases of American immigration. The First Immigration lasted from the 1680s through the American Revolution. Immigrants of the First Immigration originated from Northern Europe, were white, Protestant, and English speaking.<sup>1</sup> Despite the similarity of the first immigrants to the early American settlers, nativism existed. Its influence is evident in several Constitutional provisions which limited certain political activities to citizens. Early nativists feared that immigrants would remain loyal to their Old World countries.<sup>li</sup> They also thought that immigrants presented a threat to the developing American democracy. It was believed that newcomers would not “cherish republican principles, individual liberty, and self-government.”<sup>lii</sup> Early American nativism originated primarily from a desire to protect the newly established American form of government.

American nativism began to focus on the ethnic and religious differences of immigrants as a result of the Second Immigration. This phase began during the 1820s and ended with the implementation of the National Origins Quota System. The Second Immigration brought immigrants speaking a variety of languages, of different ethnic groups, and of religions other than Protestant.<sup>liii</sup> During the Second Immigration nativist movements became involved in party politics by forming independent third parties and by attempting to work with mainstream political parties. Two of the more notable nativist third parties were the anti-Masons, formed in response to the influx of German and Irish Catholics during the 1830s, and the American Party, more commonly referred to as the Know-Nothing movement. In their efforts to work with mainstream parties, nativists became involved with the Whigs

and the Republicans. Nativists achieved little success in either of these ventures because of their inability to reach a consensus on issues other than immigration and in turn establish the necessary partisan and ideological coalitions. Without such coalitions, Nativist movements were focused on one issue, that of reducing immigration to the United States. The sole focus on immigration made it difficult to gain voter support and created problems when other significant issues, such as the Civil War, arose.<sup>liv</sup> The inability of early Nativists to overcome these challenges contributed to the establishment of path dependence within immigration policy.

Near the end of the Second Immigration, nativists began to achieve a limited level of success. Nativist movements embraced theories of eugenics, which applied Darwinian principles to human ethnicities and suggested that some races and ethnicities were stronger than others. With the support of these scientific principles, Nativists began to advocate an immigration policy that would favor the admission of immigrants from stronger races.<sup>lv</sup> During the early 1900s, the nativist movement was successful in establishing a literacy test to ensure that immigrants from weaker races would not be admitted. In addition to the literacy test, the nativist movement strongly supported the implementation of a national origins quota system. Their efforts were successful and the 1921 National Quota Law began a system of allotting a specified number of visas for each nationality. This system was revised with the passage of the National Origins Act of 1924, a measure which biased American immigration policy towards immigrants from Northern and Western Europe. The establishment of this system represents both the end of the Second Immigration phase and a shift in the approach of United States immigration policy.

These later Nativist efforts seem to have achieved limited success because of structural and political changes within Congress. In 1890 Congress created standing immigration committees.<sup>lvi</sup> Also, Progressive reforms made in the early 20<sup>th</sup> Century drastically reduced the traditional role of political parties.<sup>lvii</sup> These two changes helped nativist movements by creating opportunities to directly influence members of Congress. The high-point of Nativist success is the implementation of the National Origins Quota system which marks the end of the Second Immigration period.

### **Economic Factors**

Throughout the First and Second immigration periods, a competing factor influencing immigration policy was economic considerations. During the First Immigration phase, economic considerations led the colonies to encourage immigration to their territories.<sup>lviii</sup> This trend of encouraging immigration continued into the Second Immigration phase. Many Western states and territories even went so far as to use publicity campaigns in order to encourage immigration from Europe.<sup>lix</sup> During most of the First and Second Immigration phases, the economic needs of the developing nation made it possible to have a liberal immigration policy.

Considering the economic events of these time periods, it becomes clear that “labor scarcity, abundant territory, and strong yearnings for rapid economic development were all factors” influencing the level of restriction in the nation’s immigration policy.<sup>lx</sup> During the First and Second Immigration phases the United States became independent from England, established itself as a new nation, experienced westward expansion, abolished slavery (a source of inexpensive labor), and began to develop into an industrial nation. These economic

factors made it necessary to continually expand the American workforce, something facilitated by a liberal immigration policy.

The economic needs of the country were a more powerful force than nativism in establishing early immigration policy. As explained by John Hingham, "... the favorable circumstances of the new nation obscured the disparity between ideology and culture."<sup>lxi</sup> That is, because the country needed a workforce, it was easy for policymakers to overlook differences between the American polity and newcomers to the country. The liberal immigration policies of early America facilitated the arrival of large numbers of immigrants. As these immigrants became citizens they gained significant influence on the development of American immigration policy. The influence of immigrant and ethnic groups could be seen as early as the election of 1800 when voters reacted against attempts by the Federalist Party to implement restrictions on immigration. As a result of public backlash against these restrictions, the Democratic-Republicans gained power creating "a long Democratic tradition of guarding robust European immigration and alien rights, for which they received electoral support from most newcomers."<sup>lxii</sup> This relationship between the Democratic Party and ethnic minority groups has allowed the success of pro-immigration efforts and continues to be an influential force within modern American politics. In the late 1800s, the Democratic Party received strong support from well-organized Irish voting blocs in large, Eastern cities. The ability of pro-immigration forces to construct a coalition of both ethnic and economic interests has made it possible to outweigh nativist influences. This in turn has made it difficult to break the precedent of America's liberal immigration policy.

## Changing Political Institutions

An important development that changed the immigration policy process was the shift from state to federal control of immigration policy. During the colonial era, immigration and citizenship issues were determined by individual colonies. Although the Constitution shifted responsibility for some policy matters to the newly established federal government, it was silent on the issue of immigration and requirements for naturalization.<sup>lxiii</sup> The only reference to citizenship in the Constitution is citizenship requirements for seeking public office. Specific requirements for naturalization were to be established by the first Congress. This Congress established very broad requirements for naturalization and left regulation of noncitizen entry to state and local governments.<sup>lxiv</sup>

In order to fulfill their responsibility of regulating the entry of aliens, receiving states established boards of immigration. These institutions were meant to ensure the welfare of new immigrants rather than to restrict entry to the state.<sup>lxv</sup> These boards imposed minimal restrictions on who was able to enter their territory, primarily restricting the entry of unwanted inhabitants such as criminals, diseased persons, and disabled immigrants likely to become a public charge.<sup>lxvi</sup> Also, in an attempt to cover the expenses of regulation, the state boards of immigration imposed a small tax on immigrants entering the country.<sup>lxvii</sup> It was the cost of regulating immigration that ultimately shifted control to the federal government. In the 1875 decision *Henderson v Mayor of New York*, the Supreme Court ruled that the states could not tax incoming immigrants. The Court held that this action infringed upon Congress's right to regulate foreign commerce.<sup>lxviii</sup>

After losing their ability to cover the costs associated with regulating the entry of aliens, receiving states began to pressure the federal government to assume responsibility for

this task. Given the difficulty of creating a consensus between Southern, Western, and Northeastern lawmakers, it took seven years for the federal government to respond. Finally, in 1882 Congress passed a law which gave responsibility for immigration to the Department of the Treasury. In general, the 1882 law simply transferred existing state regulations into federal law. The new federal regulations restricted the entry of “any convict, lunatic, idiot, or person unable to take care of himself or herself without becoming a public charge.”<sup>lxix</sup> State immigration boards continued to regulate immigration. However they were supervised by the federal Treasury Department.

The next shift of control to the federal government came when Congress created a federal board of immigration in 1891. This action terminated the existence of state regulation boards. This law also expanded the list of restricted groups to include “persons suffering from contagious diseases and polygamists.”<sup>lxx</sup> The primary effect of shifting control from the states to the federal government was the streamlining of the immigration policymaking process. Political institutions, such as congressional committees devoted specifically to immigration policy, were created to facilitate the federal government’s new role. The increase in these institutions allowed the nativist movement to be successful in implementing restrictive immigration policies during the first half of the 20<sup>th</sup> Century.

### **Immigration Policy After the Second Immigration**

The combination of a streamlined immigration policy process, a rise in nationalism as a result of World War I, and the use of eugenic theories in nativist thinking resulted in the implementation of a quota system within United States immigration policy. The use of a quota system represents a change in the nature of U.S. immigration policy because for the first time a numerical limit existed on the number of visas that would be given annually. The

National Origins Quota System was first established in 1921, however it was quickly reformed and made more restrictive by the National Origins Act of 1924. This law limited immigration to 2% per year of each nationality already in the United States and limited the total number of visas to 186,437 per year. The 2% of each nationality was calculated from the 1890 census figures. Finally, this law included a provision which exempted family members of current citizens from being included in the quota total.<sup>lxxi</sup> The concept of family preference is something which has continued to be a part of modern immigration policy.

It is important to point out that the use of the 1890 census figures to determine the allocation of visas strongly favored immigrants from Northern and Western Europe. Immigrants from Southern and Eastern Europe faced greater difficulty in obtaining a visa and immigrants from Asia were virtually prevented from entering the United States. The creation of the National Origins Quota system to favor Northern and Western European immigrants is a direct result of the role of these ethnic groups within the United States. Irish and German ethnic groups were well established in the political process, enabling them to influence the direction of immigration policy. In contrast, immigrants from Southern and Eastern Europe had not been in the United States as long. Since members of these ethnic groups were relative newcomers, they did not have as many second and third generation descendents who were citizens and could vote. As a result of the political advantage held by Northern and Western European ethnic groups, they were able to influence the National Quota policies to favor new immigrants from their places of origin.

While institutional changes and a rise in nativism certainly facilitated the implementation of the National Origins Quota System, it seems that the economic conditions of the United States in the early 1900s also made it possible to create a more restrictive

immigration policy. At this point in America's history there was little open territory within the continental United States and the population was shifting from a rural, agricultural society to one concentrated within America's urban centers. In short, the economic conditions of the country no longer necessitated a large labor force. Daniel Tichenor reports that some reformers viewed the national origins quota system as "a necessary government response to the insecurities of modern industrial economic life."<sup>lxxii</sup> Reducing immigration to the United States was a way of both preventing America's cities from becoming overcrowded slums and preserving a standard of economic well-being for American citizens.

Furthermore, it is important to note that while the restrictive National Origins Quota System was being implemented against European immigrants, immigration from Latin America remained unrestricted. The primary reason is that Southwestern growers relied upon migrant labor for agricultural production. During the Depression, the Bracero Program was created to facilitate the employment of Mexican migrant labor.<sup>lxxiii</sup> The economic needs of American agricultural production made it possible to exclude Latin American immigrants from the restrictive efforts of nativists. While nativism has been a force within American immigration policy since the early days of the nation, the nativist movement has only been successful when the economic conditions of the country made it beneficial to have a restrictive immigration policy.

### **The Modern Era of Immigration Policy**

The National Origins Quota system was ultimately repealed by Congress in 1965. The end of this approach to immigration policy was the result of several factors. First, lawmakers recognized that America's anti-Communist foreign policy would be strengthened by an immigration policy which welcomed political refugees.<sup>lxxiv</sup> Also, the eugenic and

racial arguments used by restrictionists lost public favor because they were reminiscent of Nazi racism<sup>lxxv</sup> and had been discredited by the civil rights movement.<sup>lxxvi</sup> Finally, the economic growth experienced after World War II allowed many “second-generation immigrants to move to the mainstream of American life,” and thus have greater political influence.<sup>lxxvii</sup>

The termination of the National Origins Quota System represents another turning-point in American immigration by both “mark[ing] a decisive turnaround in national policy and help[ing to] breathe life into a new era of mass immigration.”<sup>lxxviii</sup> Immigration policy shifted from a quota system based on national origins to a seven-category preference system for allotting visas.<sup>lxxix</sup> Instead of emphasizing an immigrant’s ethnic background, the new system gave preference to family members of United States citizens, to immigrants with skills needed by the U.S. labor market, and to those immigrants the United States wished to accept for humanitarian reasons.<sup>lxxx</sup> Ending the system of accepting immigrants based on national origins eliminated the bias towards Western European immigrants that had been a part of U.S. immigration policy for nearly forty years.<sup>lxxxi</sup> This had the effect of substantially increasing the number of immigrants originating from Latin America and Asia. The increased number of immigrants from these regions in the middle of the 20<sup>th</sup> Century has had important implications on current immigration policy. Just as the second and third generations of early Irish and German immigrants grew to exert significant political influence, so to have Asian and Hispanic ethnic groups come to play an important political role.

Throughout the 1970s and 1980s debate over immigration policy centered on amending the preference system established in 1965. These changes involved adding or

eliminating categories and adjusting the number of visas allotted to each category. The family reunification categories experienced the greatest number of changes. Since 1965, the number of visas allotted has been shifted to emphasize the reunification of nuclear, rather than extended, families.<sup>lxxxii</sup>

Since the passage of the Hart-Celler Act in 1965, the two primary issues within immigration policy have been the need to develop a refugee policy and a growing concern about illegal immigration. The emergence of these two issues has also called into greater question the extent to which immigrants either contribute or place a drain on society. In terms of refugee policy, it is widely accepted that the process of “admitting refugees and granting asylum are humanitarian gestures” employed by the accepting country.<sup>lxxxiii</sup> In its original form, the seventh preference category of the Hart-Celler Act reserved approximately 10,000 visas annually for refugees escaping persecution in Communist countries,<sup>lxxxiv</sup> a provision which complemented the United States’ foreign policy during the Cold War. Since 1965, human rights advocates have worked to expand refugee and asylee policy to include those fleeing their countries of origin for a variety of political and economic reasons, not simply to escape Communism.<sup>lxxxv</sup> Opponents of a liberal refugee policy argue that these immigrants often arrive in the United States with very little material possessions, thus they place a significant strain on the resources available to society. While the debate over refugee policy has been an important issue since the passage of the Hart-Celler Act, it seems that the issue of illegal immigration has had greater implications on the immigration policymaking framework.

The concern about illegal immigration, which emerged in the 1970s and 1980s, has led to new kinds of restrictions becoming a part of immigration policy. The idea that illegal

immigration ought to be prevented is widely agreed upon; the controversy comes in determining how this should be done.<sup>lxxxvi</sup> In recent decades several different methods have been employed to control illegal entry into the United States. One of the largest efforts has been enforcement of land borders by increasing the size of the United States Border Patrol Force and erecting physical barriers such as fences in highly populated areas along the border.<sup>lxxxvii</sup> This method has had limited success for two reasons; the immense size of the US border makes it difficult to maintain these physical barriers and many illegal immigrants enter the United States on student or tourist visas which they allow to expire.

Another method in dealing with the issue of illegal immigration has been to reduce the economic appeal of the United States. In 1981, the Select Commission on Immigration and Refugee Policy determined that the availability of jobs attracted immigrants to the United States. The attraction was so strong that many immigrants were willing to enter the country illegally.<sup>lxxxviii</sup> As a result of the commission's report, the Immigration Reform and Control Act of 1986 implemented employer sanctions. These are financial penalties imposed on employers that hire undocumented workers. Policymakers have also considered various methods of employment verification. This type of system would allow employers to ensure that workers are legally eligible to work.<sup>lxxxix</sup> Making it difficult for undocumented immigrants to gain employment reduces the incentives for entering the country illegally. The implementation of employment verification requirements begins the trend of reducing the distinction between immigrant policy and immigration policy. The purpose of creating a more strict employment verification system (an example of immigrant policy) was to deter illegal immigration (an immigration policy goal). Politically speaking, the issue of illegal immigration is often used by supporters of a restrictive immigration policy to portray all

forms of immigration as detrimental to society.<sup>xc</sup> Thus, the growing concern over illegal immigration has had important implications for immigration policymaking as a whole.

More generally, the issue of illegal immigration has inverted the traditional role of economic forces in immigration policy. Historically, the desire to grow the American economy called for liberal immigration policies. The problem of illegal immigration shifted economic influences to a desire to protect the American economy.

### **Immigration: The Political Environment of the Early 1990s**

Given the force of economics within immigration policy, it is necessary to consider the extent to which the economic and political situation of the early 1990s led to the immigrant eligibility restrictions of PRWORA. One of the primary causes of the 1996 changes was a growing awareness of the societal costs of illegal immigration. While it is impossible to determine the exact size and location of the illegal immigrant population, in 1992 it was estimated that nearly 40 percent of undocumented immigrants resided in the state of California.<sup>xc<sup>i</sup></sup> Given the concentration of legal and illegal immigrants within California, the state has been a trendsetter in policies dealing with the treatment of immigrants.

### **The Case of California**

In the early 1990s, the state of California suffered from a weak economy. This caused the state's citizens to view the state's legal and illegal immigrant populations as competition for employment.<sup>xc<sup>ii</sup></sup> Frustration towards the immigrant community was further intensified when California governor Pete Wilson announced that during the 1992-1993 fiscal year the state of California had spent approximately \$4.8 billion in services to legal and illegal immigrants.<sup>xc<sup>iii</sup></sup> California residents attributed many of the state's economic problems to the state's large immigrant population, comprised of both legal and illegal aliens.

Policymakers, such as Governor Wilson, blurred the distinction between legal and illegal immigrants in order to gain political support.

In 1993, California residents were asked to name the greatest benefit the state received from foreign immigration. 43% of respondents stated that there were no benefits.<sup>xciv</sup> Similarly, 37% of Californians responded that they “favored strongly” the idea of stopping foreign immigration for a period of three years.<sup>xcv</sup> It is clear that in the early 1990s, Californians strongly resented the presence of both legal and illegal immigrants. This resentment caused Californians to push on both the local and federal level for changes in policies towards immigrants.

On the local level, Californians showed their resentment towards immigrants with the Proposition 187 ballot initiative. This proposal, otherwise known as “Save Our State,” sought to bar illegal immigrants from attending public schools and receiving health care and social services. The California Coalition for Immigration Reform led the grassroots effort to put Proposition 187 on the November 1994 ballot. Supporters of the proposal insist that it was not meant as an “anti-immigrant initiative” but rather as “an anti-illegal immigrant initiative.”<sup>xcvi</sup> Despite this claim, Proposition 187 clearly represents the growing public sentiment against immigrants in general.

Californian’s frustration with immigrants is also evidenced through actions taken by the state’s federal delegation. In 1994, several California representatives introduced legislation which was aimed at immigrants. Representative Dana Rohrabacher (R-Huntington Beach) proposed legislation which would have required public schools to “report... students who were illegal aliens or who did not have at least one parent who was a legal resident.”<sup>xcvii</sup> Congressman Gary Condit (D-Modesto) introduced a second piece of

legislation which would have allocated “\$600 million to states and localities for costs related to the incarceration of illegal immigrants.”<sup>xcviii</sup> Both the Rohrabacher and Condit proposals were defeated by relatively large margins. Representative Jay Kim (R-Yorba Linda) introduced the third proposal, which was ultimately successful. Representative Kim’s legislation prevented illegal immigrants from receiving “disaster assistance from the Federal Emergency Management Agency.”<sup>xcix</sup>

In examining Proposition 187 and the three pieces of federal legislation, there are two levels of importance which must be noted. First, and most obviously, all four proposals draw attention to the extent to which undocumented immigrants benefit from public services within the United States. The four proposals all focus on the fact that society, through both the state and federal government, spends money on people who are not legally present in the United States. The second level of importance is that three of the four pieces of legislation attempted to reduce public spending on illegal residents. Representative Condit’s proposal was an attempt to shift the financial burden of illegal immigrants in the criminal justice system from the state to the federal government. Proposition 187 and the Kim proposal both sought to deny assistance to illegal immigrants. These three situations were attempts to lessen the financial burden of immigrants on the government. Since the state of California was in an economic recession, public officials sought to reduce spending in any possible way. While in California the trend of denying public services was limited to illegal immigrants, this strategy became a key element of the federal government’s ability to overhaul the nation’s welfare system.

According to Josh Bernstein, Senior Policy Director at the National Immigration Law Center (NILC), the anti-immigrant sentiment within California created the perception among

national lawmakers that such a sentiment existed across the country.<sup>c</sup> This perception converged with a simultaneously existing public sentiment against welfare to result in PRWORA's immigrant restrictions.

Prior to examining how welfare and immigration policies combined in the 1996 law, it is necessary to consider the role of modern ethnic groups in the formation of immigration policy. It seems odd that ethnic groups did not work to counter the anti-immigrant sentiment of the early 1990s. As evidenced by the actions of the Irish and German at the time of the National Origins Quota Act, ethnic groups have historically acted to influence immigration policy so that it is favorable to members of their ethnic group. It seems that Hispanic ethnic groups did not engage in a similar strategy for several reasons. First, as noted by Peter Skerry, the assimilation and ethnic politics of modern immigrant groups differ from "the classic pattern... exemplified by European immigrants."<sup>ci</sup> While previous immigrant groups worked for assimilation into American culture and society, modern immigrants often present themselves as racial minorities and seek to gain special privileges as a result of this minority status.<sup>cii</sup> A second factor contributing to the absence of the Hispanic-American voice in opposition to the anti-immigrant sentiment of the early 1990s was division within the Hispanic-American community. On issues related to immigration, there is no clear consensus within the Hispanic community. Furthermore, there is a disconnect between the opinions of Hispanic-American leaders and average members of this ethnic group.<sup>ciii</sup> The difficulty in creating consensus would have made it difficult for Hispanics to engage in any type of strategy to counteract anti-immigrant feeling.

While ethnic groups were not successful in preventing the PRWORA restrictions, they have since mobilized in response to the changes. Many Hispanic-Americans were

angered by the restrictions and responded by voting in record numbers. Between 1992 and 1996 the Hispanic Democratic vote rose from 60 to 72 percent. In the same years Asian Americans “increased their support for the Democratic ticket... from 29 to 43 percent.”<sup>civ</sup> The fact that these ethnic groups turned to the Democratic Party is in accordance with the traditional relationship between Democrats and ethnic minorities. The mobilized response of such ethnic groups was a primary factor contributing to the limited restorations that have been enacted since 1996.

### **Welfare: The Political Environment of the Early 1990s**

While anti-immigrant sentiment was centralized within California, public frustration with America’s welfare system existed nation-wide. This frustration was a second important factor that caused the immigrant provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

During the early 1990s, stories of welfare fraud and abuse of benefits dominated the public’s understanding of how the welfare system functioned. In 1991, a CBS News poll showed that 80% of Americans thought that welfare recipients were dependent on the welfare system.<sup>cv</sup> Welfare was not popular with taxpayers, administrators found the program difficult to administer, and many recipients disliked the stigma attached with receiving public benefits.<sup>cvi</sup> It was within this context that public officials began to debate various ways of reforming the welfare system.

### **President Clinton’s Promise to “End Welfare as We Know It”**

In January 1992, 90% of Americans believed that the welfare system needed to be changed.<sup>cvi</sup> As a result of this public pressure, welfare reform became an important issue during the 1992 presidential campaign. Democratic-party nominee, Bill Clinton, campaigned

on the promise to “end welfare as America knew it,” a promise which many believe ultimately forced Clinton to sign PRWORA in 1996. During the first two years of Clinton’s presidency, the administration focused its efforts on reforming the nation’s health care system rather than working to reform welfare. Clinton’s welfare proposal, the Work and Responsibility Act of 1994, was not introduced until June 14, 1994, only several months before the midterm elections.<sup>cviii</sup> Clinton wanted to introduce his plan prior to the November 1994 midterm elections so that Democratic candidates would not suffer as a result of him not acting on his campaign promise.

The Work and Responsibility Act of 1994 contained provisions designed to appeal to both conservatives and liberals. In an attempt to gain support from conservatives, the Clinton plan proposed implementing work requirements and imposing a two-year limit for the receipt of Aid to Families With Dependent Children (AFDC) benefits.<sup>ciix</sup> These more conservative approaches to reforming the welfare system were balanced by plans for job training programs and health and child care benefits, programs strongly supported by liberals. The four main ideas guiding the Clinton administration’s welfare reform efforts were providing encouragements for people to move from welfare to work, “improving child support enforcement..., providing education and training needed to help welfare recipients find and keep jobs, and limiting the length of time a person can receive benefits in order to underscore that welfare should not be a way of life.”<sup>cx</sup>

While Clinton did propose a welfare plan, it was the Republican proposal which was ultimately implemented. This fact is often blamed on Clinton’s strategy of focusing on health care reform rather than welfare reform in the first few months of his presidency.<sup>cxii</sup> Clinton’s choice to focus on health care made it impossible for Congress to give his welfare

plan any attention once it was introduced, a mere six months before the November 1994 midterm elections. By this point, Clinton had already made himself vulnerable to criticism from the Republican Party. Clinton's choice to wait to act on this issue which had been an important part of his campaign, gave the Republicans greater credibility when they began their Contract With America campaign.

### **Republicans and the Contract With America**

During the campaign before the November midterm 1994 elections, the Republican Party staged a massive, coordinated attempt to regain control in the House of Representatives. The central component of this effort was a ten-point document, known as the "Contract With America," which became the "party's campaign manifesto."<sup>cxii</sup> On September 27, 1994 the Republican Party staged a press conference in which over 300 Republican incumbents and challengers signed onto this legislative agenda. The Contract With America was a list of issues the GOP promised to address within the first 100 days of controlling the House.

The number three provision of the Contract With America called for reforming welfare, and specifically for imposing time limits on receipt of AFDC benefits.<sup>cxiii</sup> The importance of the Contract With America within the welfare reform debate is a result of the complexity of what the Contract promised to accomplish. In the Contract, Republicans promised to "cut taxes, increase military spending, and balance the budget – all at once."<sup>cxiv</sup> Ultimately the Republicans were forced to make cuts to welfare programs in order to follow through on all of these promises.

## **Combined Frustrations: Immigrants and Welfare**

During much of the 1990s public frustration over welfare remained distinct from the existing anti-immigrant sentiment. However, the law that was ultimately enacted makes it clear that these two frustrations combined to result in a public policy which makes a statement about the types of immigrants wanted within America. Within the PRWORA law, Title IV deals specifically with the issue of restricting noncitizens from receiving public benefits. This section of the law is introduced with a statement which reads,

The Congress makes the following statements concerning national policy with respect to welfare and immigration:

- (1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.
- (2) It continues to be the immigration policy of the United States that—
  - (A) aliens within the Nation's borders not depend on public resources to meet their needs... and
  - (B) the availability of public benefits not constitute an incentive for immigration to the United States.<sup>cxv</sup>

Given this introduction to the law, it is necessary to examine how the public concerns over welfare and immigration combined.

A great deal of the debate over welfare reform centered on issues such as time limits and work requirements. Although there was a rising anti-immigrant sentiment within the country, none of the ten provisions of the Contract With America dealt with immigration or policies towards immigrants already in the country. Furthermore, anti-immigrant legislation at the state level, such as California's Proposition 187, focused on illegal immigrants. Despite the early distinction between legal and illegal aliens in restricting welfare eligibility, welfare reform ultimately included provisions which prevented legally present immigrants from receiving public benefits.

During the early 1990s the frustration towards illegal immigrants stemmed from the realization that state and federal funds were being spent on this population which was not legally present in the United States. As public attention was drawn towards the costs spent on illegal immigrants, the public became aware of spending on legal immigrants.<sup>cxvi</sup> Similarly, as efforts were made to divert financial resources from illegal immigrants, it became more acceptable to divert financial resources from legal immigrants. Funding for portions of President Clinton's welfare reform proposal came from changing eligibility requirements for legal immigrants to programs such as SSI and AFDC. The changes in eligibility made by the Clinton proposal differed from those that were ultimately enacted both in the magnitude of what was cut and in the purpose of why the cuts were made. The Clinton proposal simply extended the amount of time that a sponsor's income would be deemed available to an immigrant from three to five years,<sup>cxvii</sup> a relatively small change compared to the complete disqualifications enacted by PRWORA. Furthermore, the cuts made in the Clinton plan were used to fund other parts of the welfare reform proposal.

When the Contract With America Republicans came to Congress in January 1995, they immediately began to work on what they had promised during the campaign. House Republicans proposed the Personal Responsibility Act as their welfare reform plan. Since this legislation was proposed in the context of the other Contract With America promises, elements of the legislation were designed to complement other Contract promises, even those not related to welfare. Specifically, the Personal Responsibility Act was designed to produce a "net savings of about \$40 billion over five years," a savings that would allow the Republicans to fulfill their Contract promises to reduce the deficit and provide a tax cut.<sup>cxviii</sup> The savings within the Personal Responsibility Act came from eliminating the eligibility of

legal immigrants to many welfare programs. Restricting immigrant eligibility to welfare was a “financing mechanism”<sup>cxix</sup> used by Republican lawmakers to fulfill their Contract With America promises.

Although the immigrant eligibility restrictions ultimately included in PRWORA severely limited the extent to which immigrants could receive benefits, the provisions enacted were much less restrictive than what had been originally proposed in the Contract With America legislation.<sup>cxx</sup> Immigrants rights groups, such as NILC, consider their advocacy efforts related to PRWORA to have been successful.<sup>cxxi</sup> Mr. Bernstein explained that the perception of nationwide anti-immigrant sentiment caused lawmakers to fear the political consequences of supporting immigrants. The perception of anti-immigrant sentiment resulted in an especially challenging situation for advocates.

The immigrant eligibility provisions of the Personal Responsibility and Work Opportunity Reconciliation Act are the result of several factors. First, since the passage of the 1965 Hart-Celler Act, Americans have become more aware of the negative economic impact of immigrants. This awareness turned to frustration when California, a state with a large immigrant population, experienced an economic downturn in the early 1990s. Public frustration within California towards the costs of legal and illegal immigration caused lawmakers to perceive a nationwide anti-immigrant sentiment. This perceived anti-immigrant sentiment came at a time when lawmakers also felt political pressure to reform the nation’s welfare system. The combination of public awareness about the costs of immigration and frustration with misdirected resources in the welfare system focused the debates over welfare reform on issues of economics.

While the restrictions imposed in 1996 were the result of the traditional force of economics within immigration policy, they represent a shift within this policy area by employing new methods to control the size of America's immigrant population. In the past, immigration policy focused solely on limiting the entry of immigrants. The welfare restrictions of 1996 deal with the rights accorded to immigrants once they have entered the country. This new method within immigration policy attempts to deter immigrants from coming to the United States by limiting the economic privileges that will be accorded to them once they arrive. While PRWORA is clearly a welfare law, the introduction to Title IV identifies immigration policy goals. Using welfare policy towards immigrants to accomplish immigration goals creates a new distinction between citizens and legally-present immigrants. Furthermore, this policy change eliminates any distinction between immigrant policy and immigration policy.

## Chapter Three

### Case Study of State Responses

#### New Choices for States

As established in Chapters One and Two, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) changed the nature of both benefits and immigration policy by distinguishing between legally present immigrants and citizens in the distribution of benefits. The law accomplished this both by changing federal eligibility guidelines and by increasing state flexibility in administering cash assistance.

More specifically, PRWORA ended the Aid to Families With Dependent Children (AFDC) entitlement program and replaced it with the Temporary Assistance to Needy Families (TANF) block grant. The change from an entitlement program to a block grant limited federal government spending on cash assistance. A fixed amount is annually transferred from the federal government to the states to help state governments finance programs to assist low-income residents. Since state governments would now receive a fixed level of funding, legislators believed that they needed flexibility in creating programs to address the specific needs of their communities.<sup>cxxii</sup> As part of this flexibility, states became responsible for determining the eligibility of certain immigrant groups to the state-administered, but federally-funded, TANF program. In addition, states have gained influence over the extent to which immigrants can access welfare benefits because they have needed to respond to eligibility changes within the federally administered SSI and Food Stamp programs.

## **Eligibility to Federal Programs**

As a result of the change from an entitlement program to a block grant, states received increased flexibility in the creation and administration of cash assistance programs funded by the federal government. First, states were given the ability to decide whether or not pre-enactment immigrants (those legally present in the United States on August 22, 1996) would be eligible for TANF and TANF-funded programs.<sup>cxxiii</sup> The second state choice dealt with post-enactment immigrants. Federal legislation barred immigrants that arrived in the United States after August 22, 1996 from receiving TANF funds for their first five years in the country. Whether or not these immigrants would be eligible to receive TANF at the end of the five-year bar was a decision delegated to the states.<sup>cxxiv</sup> The state flexibility in this area stems from the idea that states are best suited to understanding the needs of persons residing within their jurisdictions. As a result, some states provide TANF to immigrants, while others do not.

## **State Supplement Programs**

In addition to the choices specifically contained within the PRWORA legislation, states were faced with the unwritten choice of whether or not to create state-funded supplement programs to cover immigrants no longer eligible for the federal SSI and Food Stamp programs. Furthermore, since post-enactment immigrants are unable to receive TANF for their first five years in the country, states needed to decide whether to provide aid for this group of immigrants. State governments recognized that, although federal assistance was no longer available to many immigrants, the needs of these residents would not disappear.<sup>cxxv</sup>

As a result, some states have decided to allocate state funds to create replacement SSI, Food Stamp, and/or TANF programs.

### **Eligibility to State Programs**

The final way that states have gained power in determining the extent to which immigrants are able to access welfare benefits applies to those states that have decided to create state-funded supplement programs to replace the loss of federal benefits. If a state decided to implement state-funded programs, they are able to determine which groups of immigrants are eligible to their supplemental programs. According to the Urban Institute's report, *Patchwork Policies: State Assistance for Immigrants under Welfare Reform*, state governments have primarily used three methods to restrict access to state programs. They have prevented immigrants from receiving welfare benefits by "limiting assistance for post-enactment immigrants, limiting the population groups eligible..., and deeming the income of an immigrant's sponsor to the immigrant."<sup>cxv</sup> In general, state programs are more available to immigrants that were in the United States at the time PRWORA was enacted.<sup>cxvii</sup> States have also tended to favor more vulnerable subgroups of immigrants such as children, the elderly, and the disabled.<sup>cxviii</sup> Finally, many state programs use sponsor-deeming to determine financial eligibility. When immigrants enter the United States under the family-preference categories, they are required to have a sponsor. A sponsor is someone in the United States that promises to be financially responsible for the immigrant. With sponsor-deeming, the income of the sponsor is considered to be available to the immigrant, raising the income level of the immigrant so that they often do not meet the financial eligibility requirements to receive welfare benefits.

## **Case Study: State Responses to Welfare Reform**

States have responded in a variety of ways to the many choices created by PRWORA. Some states have made every effort to maintain the level of access to the welfare system that existed before the law was passed. States with the most generous responses to PRWORA have allowed immigrants to participate in state-administered programs, and have created state-funded programs to supplement the loss of federal benefits. The next tier of generosity includes states that have maintained immigrant participation in federally funded programs, but did not create state supplement programs. Finally, the most restrictive states barred immigrants from state-administered programs and did nothing to supplement the loss of federal benefits.

While it would seem that the size of a state's immigrant population would have had significant influence on its decision regarding immigrant access to the safety net, this does not appear to have been the case. States with large immigrant populations have the greatest need to maintain benefit availability to immigrants; however, these states also have the highest costs when they decide to meet this need. This conflict has reduced the influence of the size of a state's immigrant population on its decision of whether or not to allow immigrants to access welfare benefits.<sup>cxxix</sup> In order to understand what factors have influenced state responses to PRWORA, this chapter will consist of a case study examining how four states have responded to the increased flexibility created by the law.

### **Methodology For Determining Case Study States**

In response to the significant changes made by PRWORA, the Urban Institute, a nonpartisan research organization devoted to social policy, began the *Assessing the New Federalism* program. This project is “designed to analyze the devolution of responsibility for

social programs from the federal government to the states...<sup>cxxx</sup> As part of *Assessing the New Federalism*, researchers at the Urban Institute conducted a study of state welfare policies towards immigrants. The data collected through this study was analyzed in the report *Patchwork Policies: State Assistance for Immigrants under Welfare Reform*. In summary, the researchers concluded that welfare reform has negatively affected the extent to which immigrants are able to access the social safety net. They suggest that PRWORA “institutionalized” the idea of “treating noncitizens differently from citizens” and that although some states have attempted to maintain the availability of benefits, they “do not fully substitute for federal assistance.”<sup>cxxx</sup> Furthermore, the changes in immigrant eligibility brought by welfare reform have made it difficult for those immigrants that remain eligible to access the safety net.<sup>cxxxii</sup>

In addition to explaining how PRWORA changed immigrant eligibility to welfare and identifying problems that have resulted from this change, the *Patchwork Policies* report also presents a significant amount of data regarding state choices affecting immigrants. This data is presented in the report, *State Snapshots of Public Benefits for Immigrants: A Supplemental Report to “Patchwork Policies.”* Data from this report will be used to analyze different state responses to PRWORA.

Data from the *State Snapshots* report will first be used to select four states for the case study. The first necessary piece of information to consider is the availability of the state’s safety net to immigrants. The Urban Institute researchers grouped states into four categories of availability. States in Category One are those that “made their safety nets most available to immigrants.”<sup>cxxxiii</sup> In contrast, Category Four is comprised of states in which the safety net was “least available”<sup>cxxxiv</sup> to immigrants. The second piece of information that will be used

in identifying the four case study states is the size of the immigrant population within a state. This piece of data is important to consider because the size of a state's immigrant population does not seem to be related to the availability of benefits to immigrants within the state. Examining states with a variety of immigrant population sizes will make it possible to consider other factors that have influenced state decisions of whether or not to include immigrants in the state's safety net. The *State Snapshots* report ranks states based on the percentage of immigrants as part of the state's population. This piece of data, in addition to the ranking of safety net availability to immigrants, will be used to identify four states for the case study.

After considering the abovementioned data, the four states that will be used for the case study portion of this paper are California, Massachusetts, Colorado, and Texas. California and Massachusetts are states that made the safety net "most available" to immigrant residents. In general, this means that these states maintained immigrant eligibility to the federally funded TANF program and allocated state funding to create supplemental programs. These states will be used to identify factors that influenced a state to provide benefits to immigrants. Since these states have different immigrant population sizes, it can be assumed that factors other than immigrant population size influenced their decisions to provide benefits (See Chart 3.1 for numerical rankings and population percentages). Colorado was chosen because it has a moderate-sized immigrant population, but made more restrictive policy choices than California and Massachusetts. Colorado maintained immigrant eligibility to the federally funded TANF program, but did not create state supplement programs. Finally, Texas serves as a contrast to all of these states. Although it

has a large immigrant population, it most severely restricted immigrant access to the safety net.

**Chart 3.1: Data Influencing Choice of Case Study States**

	Noncitizens as a percentage of state’s population (state rank)	Availability of the safety net to immigrants (scale 1-4; 1 = high availability)
California <sup>cxxxv</sup>	19% (1)	1
Massachusetts <sup>cxxxvi</sup>	5% (14)	1
Colorado <sup>cxxxvii</sup>	5% (15)	3
Texas <sup>cxxxviii</sup>	9% (7)	4

**California**

**Welfare Programs Available To Immigrants**

In the state of California welfare programs are widely available to legal immigrants. California has continued to include pre-enactment immigrants in TANF cash assistance, known as CalWORKS. Post-enactment immigrants can also participate in CalWORKS after the five-year bar. In addition, California provides benefits to those immigrants that are ineligible for federally funded benefits. California maintains a state-funded TANF program for post-enactment immigrants until they qualify for federal TANF. The state also has a supplemental SSI and Food Stamp program. The state-funded programs are slightly restricted through sponsor-deeming and by limiting eligibility to subgroups of the immigrant population. The state-funded SSI program (State Cash Assistance Program for Immigrants-CAPI) and food stamp program (California Food Assistance Program- CFAP) are available to all pre-enactment immigrants and some groups of post-enactment immigrants.<sup>cxxxix</sup>

**Chart 3.2: Welfare Programs for Immigrants in California<sup>cxl</sup>**

<b>Cash Assistance</b>	
TANF for pre-enactment immigrants	YES
Provision of TANF after five-year bar	YES
State-funded TANF during five-year bar	YES

Sponsor-deeming	YES
State-funded SSI for immigrants	YES
Eligible Subgroups	Pre- and certain post-enactment immigrants
Sponsor-deeming	NO
<b>Food Assistance</b>	
State-funded food program for immigrants	YES
Eligible Subgroups	Pre- and certain post-enactment immigrants
Sponsor-deeming	YES

### **Politics and Welfare Reform**

Considering California’s role in creating the perception of anti-immigrant sentiment in the early 1990s, something that contributed to the immigrant restrictions of PRWORA, it appears contradictory that California responded to the flexibility of PRWORA by maintaining immigrant access to the safety net. Upon examination of the legislative process establishing these programs, it seems that many legislators were responding to backlash from the immigrant community. California legislators were politically motivated to maintain immigrant access to welfare.

Early in the 1997 legislative session, Majority Leader Antonio Villariagosa (D-Los Angeles) introduced AB 1197. This bill proposed to establish a supplemental SSI and supplemental food stamp program by July 1, 1997. These programs would be available to any immigrant that could not participate in the federal program solely because of the PRWORA restrictions. On June 5, 1997, AB 1197 was approved with a 45-20 vote by the state Assembly. At this point in the budget process, Democrats in the Legislature had not yet begun negotiations with Republican governor, Pete Wilson.<sup>cxli</sup> Governor Wilson had been a strong supporter of the 1994 ballot initiative Proposition 187 which sought to deny illegal immigrants from receiving public benefits.

Given Wilson's history of opposing immigrant eligibility to welfare, it is not surprising that the Democrats encountered significant resistance once the governor became involved in the budget debate. The creation of state-funded programs for immigrants was one of many issues contained in the Democrats' welfare reform proposal and opposed by Governor Wilson. Wilson's reason for opposing this provision was his fear that it would be too costly for California. Furthermore, he believed that providing welfare for immigrants was a responsibility that should be fulfilled by the federal government.<sup>cxliii</sup>

In order to counteract Wilson's opposition, Villariagosa and other Hispanic legislators engaged in a public relations campaign to garner public support for their welfare plans. In a July 22, 1997 op-ed piece, Assembly Speaker Cruz Bustamante (D-Fresno) accused the "governor and his Republican allies in the Legislature" of engaging in "the same kind of immigrant bashing that was used to win votes for Proposition 187."<sup>cxliiii</sup> Democrats also used television advertisements to emphasize the image of Governor Wilson as anti-immigrant and put pressure on him to support their welfare proposals. These commercials were recorded in both Spanish and English and were aired in regions of the state heavily populated by Hispanic residents. In one commercial Bustamante is featured saying, "I'm the grandson of immigrants who worked hard, obeyed the law and paid taxes. Governor Wilson's budget denies legal immigrants SSI after a lifetime of work. That's wrong. Legal is legal."<sup>cxliv</sup> Aligning the Republican's opposition of state welfare programs for immigrants with the anti-immigrant sentiment contained in Proposition 187 enabled Democrats to have a limited level of success with their proposals.

While Villaraigosa's AB 1197 became stalled in Senate negotiations, parts of his proposal were incorporated into AB 1576, a welfare reform bill sponsored by Assembly

Speaker Bustamante. On August 11, 1997 the State Senate amended AB 1576 to include a provision allowing for the establishment of a food stamp program “for legal immigrants who are 65 years of age or older or children losing eligibility for food stamp benefits”<sup>cxlv</sup> as a result of PRWORA. This program was set to begin on September 1, 1997 and would terminate on July 1, 2000. AB 1576 became part of the final budget package passed by the Assembly in August 1997. As a result the California Food Assistance Program (CFAP) was created.

Although CFAP was more limited than what had been proposed by Villaraigosa, it is significant that Assembly Democrats were able to implement any type of welfare assistance for immigrants under Governor Wilson. According to Lori True, an advocate working with the California Food Policy Advocates at the time CFAP was created, a primary reason that Democratic legislators had any success with their welfare plans is because the political sentiment in California had changed. Instead of fearing the immigrant issue, Assembly Democrats led by Antonio Villaraigosa and Cruz Bustamante, realized that they could use it as “a potent organizing tool.”<sup>cxlvi</sup> Proposition 187 had caused significant resentment of Governor Wilson. According to a *Los Angeles Times* article, “To many Latino immigrants and their U.S.-born children, Pete Wilson became a symbol of anti-Latino prejudice.”<sup>cxlvii</sup> In response to the intense anti-immigrant rhetoric espoused by Wilson and other Republicans in the early 1990s, many Latino immigrants became U.S. citizens, and thus gained the power to vote.<sup>cxlviii</sup> Villaraigosa and Bustamante effectively captured this new voting bloc by framing the welfare debate in pro-immigrant/anti-immigrant terms. The existence of a strong Hispanic voting bloc drastically changed California’s political environment. The implementation of CFAP in 1997 marks only the beginning of this change.

While in 1997 the influence of the Latino voting bloc was just beginning to emerge, it is clear that by 1998 it had reached full-force. During the 1998 budget process, the Legislature considered, and this time approved, a bill creating a replacement SSI program for immigrants. AB 2779 established the Cash Assistance Program for Immigrants (CAPI). This program was available to pre-enactment immigrants that were no longer eligible for SSI because of the PRWORA restrictions. When implemented in 1998, CAPI had a sunset date of July 2000.<sup>cxlix</sup> Also during this legislative session, eligibility to CFAP was extended to include pre-enactment immigrants between the ages of 18 and 64.<sup>cl</sup> These legislative accomplishments were both attributed to Antonio Villariagosa, who by this point had risen to the position of Speaker of the Assembly.<sup>cli</sup> It is also significant to note that these provisions were enacted while Pete Wilson remained governor of California. The ability of Democratic leaders to implement such legislation under Governor Wilson speaks to the power of the Latino vote.

In the 1998 election cycle, Democrat Gray Davis was elected governor of California. With Democrats in control of both California's executive and legislative branches, it became possible to expand the existing state welfare programs to include more immigrants. AB 1111, passed in 1999, deleted the July 2000 sunset dates for CFAP and CAPI. This meant that a permanent, state-funded program would exist for California's pre-enactment immigrants. AB 1111 also expanded eligibility to CFAP and CAPI to include post-enactment immigrants. However, these immigrants would only be able to participate in the programs until September 30, 2000. Immigrants enrolling in the programs under these provisions were referred to as "time limited" participants. The following year, AB 2876 extended the "time limited" enrollment date to September 30, 2001. Ultimately, the "time

limited” provision for CFAP and CAPI was deleted from the state’s welfare code. This was accomplished with AB 989, legislation sponsored by Assemblymen Chan and Cedillo and passed in 2001.<sup>clii</sup>

While Republicans, such as Governor Pete Wilson, initially posed a threat to the ability of California Democrats to implement state-funded welfare programs for immigrants, the growing political power of Latinos ultimately enabled Democrats to be successful. The political power of Latinos exploded in the late 1990s in backlash against the anti-immigrant policies supported by California Republicans in the early part of the decade. California’s changed political environment is the primary reason that the state responded so generously to the increased flexibility of PRWORA.

### **Massachusetts Welfare Programs Available to Immigrants**

Like California, the state of Massachusetts responded to PRWORA by maintaining immigrant access to the safety net. Massachusetts continued to allow pre-enactment immigrants to participate in the state’s TANF program, Transitional Aid to Families with Dependent Children (TAFDC). Furthermore, TAFDC is available to post-enactment immigrants after the five-year bar. In addition to allowing the widest access to federal programs, Massachusetts created generous state-funded programs for those immigrants not able to receive federal benefits. Supplemental TAFDC (STAFDC) is a state-funded program for immigrants ineligible for TAFDC solely because of the five-year bar. In determining eligibility for STAFDC, sponsor-deeming is not used. While Massachusetts did not specifically create a state-funded replacement for SSI, it did expand eligibility to its state-funded Emergency Assistance for the Elderly, Disabled, and Children (EAEDC) program to immigrants. EAEDC is the state’s old General Relief program that provides cash assistance

to elderly and disabled persons that are not eligible for federal-SSI. The name of the program was changed to EAEDC in 1991.<sup>cliii</sup> Because EAEDC was not specifically created in response to PRWORA, the *Patchwork Policies* report does not consider it a supplemental SSI program. However, the program does primarily function in this manner. Finally, the state of Massachusetts created a state-funded food stamp program with very broad eligibility requirements. The program is available to all qualified immigrants and sponsor-deeming is not used to determine eligibility.

**Chart 3.3: Welfare Programs for Immigrants in Massachusetts<sup>cliv</sup>**

<b>Cash Assistance</b>	
TANF for pre-enactment immigrants	YES
Provision of TANF after five-year bar	YES <sup>clv</sup>
State-funded TANF during five-year bar	YES
Sponsor-deeming	NO
State-funded SSI for immigrants	NO
Eligible Subgroups	N/A
Sponsor-deeming	N/A
<b>Food Assistance</b>	
State-funded food program for immigrants	YES
Eligible Subgroups	All qualified immigrants
Sponsor-deeming	NO

### **Politics and Welfare Reform**

In a December 18, 1996 *Boston Globe* article, then-Massachusetts governor William Weld (R) is quoted with the following response to Massachusetts’ decision of whether or not to provide welfare to immigrants. Weld said, “It’s not a question of whether we’re going to step-in... It’s a question of what approach we take, and how much we’re going to spend.”<sup>clvi</sup> Weld’s statement is an apt summary of the political debate which established STAFDC and the State Supplemental Food Stamp program and expanded EAEDC to include immigrants. Whether or not Massachusetts would provide aid to immigrants no longer covered by federal benefits was never an issue. Rather the debate was about how to best provide this assistance.

By early 1997, both the governor and members of the Massachusetts Legislature had put forth proposals suggesting different methods of aiding the state's immigrant population. The governor's budget proposal, announced in early January, represented a starting-point for the debate. His budget plan indicated that Massachusetts immigrants would be able to participate in TANF and included funding to aid immigrants losing eligibility to federal benefits programs. Immigrants cut from federal SSI would be eligible to receive a monthly stipend of \$338 from the state's emergency aid program, Emergency Aid to Elders, Disabled, and Children (EAEDC). To aid those immigrants losing federal food stamps, the governor proposed allocating \$5.5 million to Emergency Food pantries. Finally, the governor's budget included a provision that would have made cash assistance available only to immigrants residing in Massachusetts on July 1, 1997.<sup>clvii</sup>

While immigrant and welfare advocates were pleased with the general focus of the governor's budget, they were opposed to several of the budget's provisions. Specifically, they were opposed to the method of providing food assistance and the absolute bar on immigrants arriving in the state after July 1, 1997. These two issues, how to provide food assistance and the residency bar for new immigrants became the primary issues of debate during the creation of Massachusetts' state-funded programs for immigrants. Throughout the budget process, advocates worked with members of the Legislature to enact more favorable provisions. Advocates from various organizations worked together under the Legislative Action Committee, a group coordinated by the Massachusetts Immigrant and Refugee Advocacy Coalition. In order to focus their advocacy efforts, this group created the "Compact to Protect Massachusetts Immigrants," a document outlining the group's priorities for dealing with the immigrant eligibility changes resulting from federal welfare reform.

On the issue of food assistance, the Legislative Action Committee opposed the proposal to allocate money to food pantries because they thought that resources would not reach the targeted population of immigrants and refugees.<sup>clviii</sup> Instead, these advocates supported the Nutritional Assistance for Families, Elderly, and Disabled Act, a bicameral piece of legislation proposing to allocate \$13.2 million for food assistance to residents losing federal Food Stamps solely because of their immigrant status. This legislation, sponsored by Senator Thomas Norton and Representative Kevin Fitzgerald, proposed to establish a program to distribute food vouchers to state residents not eligible for any other federal or state nutrition programs.<sup>clix</sup> On the issue of the residency requirement, the advocates were completely opposed to any provision which would prevent new residents to the state from receiving benefits.<sup>clx</sup>

The next stage in the creation of Massachusetts' state-funded programs for immigrants came in May and June of 1997. Both the House and Senate had approved budget proposals, however the differences between these spending plans needed to be worked out in a conference committee. The Senate's version of the budget contained many of the "Compact to Protect Massachusetts Immigrants" priorities while the House version was more in line with what had been proposed by Governor Weld. In a June 4, 1997 letter to Senate Ways and Means Committee Chairman, Senator Stanley Rosenberg (D), leaders of the Legislative Action Committee outlined the differences between the House and Senate versions of the budget and stated their priorities for the Conference Committee. They supported the Senate plan which funded a state food stamp or food voucher program at \$10 million. In contrast, the House proposal allocated \$7 million to food banks. On the issue of the residency requirement, the Legislative Action Committee urged members to "resist a

residency requirement that is excessively harsh or unconstitutional.”<sup>clxi</sup> They specifically opposed the House proposal to impose a permanent bar on cash assistance to immigrants arriving in the state after May 1, 1997. Instead, they supported the Senate version which imposed a 60-day residency requirement within the state of Massachusetts. By July 17, 1997, the Massachusetts Legislature had approved a state budget that included many of the goals of the Legislative Action Committee. The FY 1998 budget allocated cash assistance, emergency aid, and food stamps to the state’s legal immigrant population. Massachusetts’ generous response to PRWORA can be attributed to the willingness of public officials to provide some type of assistance to the state’s immigrants no longer eligible for federal welfare.

### **Colorado Welfare Programs Available to Immigrants**

Compared to the actions of California and Massachusetts, the state of Colorado responded in a more conservative manner to the flexibility of welfare reform. While Colorado does not absolutely prevent immigrants from receiving benefits, they have not specifically taken actions to maintain the level of access which existed before 1996. In the state of Colorado, pre-enactment immigrants are still able to receive federal cash assistance through TANF. Also, after the five-year bar, post-enactment immigrants are able to participate in this shared federal/state program. While Colorado has maintained immigrant eligibility to welfare benefits where costs are shared with the federal government, the state has not allocated any state funding to replace other benefits for which immigrants are no longer eligible. Colorado does not have state-funded cash assistance for post-enactment immigrants during the five year bar, a state-funded SSI replacement, or a state-funded food stamp program. After examining the welfare programs available to immigrants in Colorado,

it seems that Colorado’s choices towards immigrants are in accordance with the lead taken by the federal government. Colorado’s policies favor immigrants that were in the country when PRWORA was passed, and by limiting immigrant access only to cash assistance, their policies encourage immigrants to become self-sufficient.

**Chart 3.4: Welfare Programs for Immigrants in Colorado<sup>clxii</sup>**

<b>Cash Assistance</b>	
TANF for pre-enactment immigrants	YES
Provision of TANF after five-year bar	YES
State-funded TANF during five-year bar	NO
Sponsor-deeming	N/A
State-funded SSI for immigrants	NO
Eligible Subgroups	N/A
Sponsor-deeming	N/A
<b>Food Assistance</b>	
State-funded food program for immigrants	NO
Eligible Subgroups	N/A
Sponsor-deeming	N/A

### **Politics and Welfare Reform**

An examination of Colorado’s political debate in response to welfare reform indicates that providing some kind of welfare assistance to immigrants was a priority for lawmakers. As early as February 1997, Colorado’s governor, Roy Romer (D), announced five priorities to be included in the state’s new welfare plan; providing assistance to legal immigrants was one item on this list.<sup>clxiii</sup> Support for the governor’s desire to aid legal immigrants came in the form of SB 171. This bill sought to aid legal immigrants by maintaining the most liberal eligibility standards to TANF as federal law would allow. In other words, this piece of legislation stated Colorado’s intent to allow pre-enactment immigrants and post-enactment immigrants after the five year bar to participate in TANF. The bill was passed by Colorado’s legislature on June 3, 1997 and took effect on July 1, 1997, less than a year after the passage of PRWORA.

Given Colorado’s deliberate attempt to maintain immigrant eligibility to the federally-funded TANF program, it is necessary to examine why this state did not further expand the safety net to immigrants. That is, why didn’t the state create state-funded replacement programs? A likely explanation is that there was a lack of political pressure for lawmakers to specifically allocate state resources towards immigrants. According to former Colorado governor, Dick Lamm (D), “immigration and immigrants are seldom major issues at the Colorado Legislature.”<sup>clxiv</sup> Such sentiment is mirrored by members of Colorado’s minority rights community who suggest that, “the effect immigrants have on Colorado politics is probably pretty negligible.”<sup>clxv</sup> Since immigrants are not a strong political force within Colorado, lawmakers most likely felt that by responding in a liberal manner to the choices specifically legislated by PRWORA, they could prevent possible political backlash. Of the many choices resulting from PRWORA, the only immigrant option specifically contained within the law dealt with eligibility to TANF. The law did not explicitly say that states could also choose to create state-funded replacement programs. Thus, Colorado’s response to PRWORA followed exactly the choices laid out within the legislation. Colorado’s response is more conservative than California and Massachusetts’ only because the state did not go above the minimum requirement.

### **Texas** **Welfare Programs Available to Immigrants**

According to the *Patchwork Policies* report, Texas is among the states in which welfare programs are “least available” to immigrants.<sup>clxvi</sup> Compared with other states in this category, Texas has the largest immigrant population. Considering the size of Texas’ immigrant population, its placement in the “least available” category makes the lack of availability of the safety net to immigrants seem even more restrictive.

The reason for Texas’ inclusion in the “least available” category is clarified by examining the state’s responses to the various policy options created by PRWORA. Texas does allow pre-enactment immigrants to participate in the TANF cash assistance program, however, the state does not extend this privilege to post-enactment immigrants after the five-year bar. Furthermore, Texas does not provide state-funded TANF to post-enactment immigrants during the five-year bar and there is no state substitute SSI program. Texas does have a state-funded food stamp program, the State Immigrant Food Assistance Program (SIFAP), however eligibility is restricted only to elderly and disabled immigrants that were receiving federal food stamps when PRWORA was enacted in 1996.<sup>clxvii</sup> Public policy researchers in Texas have called the state’s response to PRWORA “limited,” especially in comparison to “other states’ efforts.”<sup>clxviii</sup>

**Chart 3.5: Welfare Programs for Immigrants in Texas<sup>clxix</sup>**

<b>Cash Assistance</b>	
TANF for pre-enactment immigrants	YES
Provision of TANF after five-year bar	NO
State-funded TANF during five-year bar	NO
Sponsor-deeming	N/A
State-funded SSI for immigrants	NO
Eligible Subgroups	N/A
Sponsor-deeming	N/A
<b>Food Assistance</b>	
State-funded food program for immigrants	YES
Eligible Subgroups	Pre-enactment elderly and disabled immigrants
Sponsor-deeming	NO

### **Politics and Welfare Reform**

Texas’ limited response to the loss of federal benefits for immigrants can be attributed to the State Legislature’s inability to allocate the necessary funding. Since 1996, there have been numerous attempts by members of the Legislature to implement programs

aiding immigrants, but none of these proposals has been successful. The first response of Texas lawmakers to the PRWORA changes came in March 1997, the beginning of the 75<sup>th</sup> legislative session. Legislation to provide nutritional assistance to legal immigrants was introduced in both the House (HB 3431) and the Senate (SB 1067). In both chambers the legislation was referred to the appropriate committee, where the legislation was left pending for the remainder of the session.

When the State Immigrant Food Assistance Program (SIFAP) was ultimately enacted in the fall of 1997, it was not accomplished through the legislative process. Rather, Texas' state-funded food stamp program was established under the direction of then-governor, George W. Bush (R).<sup>clxx</sup> Governor Bush ordered the allocation of \$18 million to “meet the most urgent needs”<sup>clxxi</sup> of those who had been cut from federal programs. The \$18 million was allocated as a set amount, and only to be used within a period of two years. This meant that assistance would no longer be provided when the money was used or after the two year period. In response to criticism of this fact, Governor Bush's spokesperson Karen Hughes stated that, “if there is additional need, that's something legislative budget writers can consider during the next legislative session.”<sup>clxxii</sup> Considering the circumstances under which SIFAP was created, it is clear that it was never intended as a program to provide nutritional assistance to a wide-range of Texas' immigrant population. In 1998, after the limited federal restorations which returned federal food stamp eligibility to many SIFAP participants, Texas' SIFAP program served only 336 residents.<sup>clxxiii</sup> Also, the fact that it was established under executive order, rather than by legislative consent, reinforces the fact that Texas' limited response to PRWORA has been caused by the Legislature's inability to enact legislation.

The Legislature's inability to enact legislation to providing aid to immigrants continued into the 76<sup>th</sup> Legislative session, which lasted from 1999-2000. The SIFAP program was set to expire at the end of 1999. At the end of 1998, it became clear that when SIFAP expired, only \$7 million of the original \$18 million allocated for the program would have been spent.<sup>clxxiv</sup> In November 1998, the Center for Public Policy Priorities, a policy research organization in Texas, proposed several ways to use the \$11 million in remaining SIFAP funds. These proposals examined the costs of providing assistance to other subgroups of Texas' immigrant population. Ultimately, several pieces of legislation were introduced that would have used the extra \$11 million, in addition to some additional funding, to expand and maintain SIFAP. SB 1095 and HB 2702 proposed to expand the program to include legal immigrant children (in addition to the seniors and disabled already included in the program) and maintain SIFAP through the next biennium (2000-2001).<sup>clxxv</sup> These pieces of legislation were slightly more successful than similar legislation during the previous legislative session. In this case, the bills received approval in their respective committees, but they were left waiting to be placed on the calendar of each chamber. As a result, the SIFAP program expired.

Members of the State Legislature once again attempted to establish a state food stamp program for immigrants during the 77<sup>th</sup> legislative session (2001-2002). HB 1218 was introduced in February 2001. This bill would have provided benefits for elderly and disabled immigrants. HB 1218 was approved by the Texas House and reported favorably by the Senate Health and Human Services Committee. However, as with similar proposals, no action was taken on the bill by the entire Senate Chamber.

During the 77<sup>th</sup> legislative session, the Texas State Legislature also briefly considered the issue of providing TANF to post-enactment immigrants after the federally imposed five-year bar. This did not become an issue until 2001 because any immigrant entering after August 22, 1996 would have had to wait until August 22, 2001 (five years) to have the possibility of being eligible for TANF. At the time of PRWORA, states were required to submit to the federal Department of Health and Human Services a state plan indicating, among other things, whether the state would provide TANF to immigrants after the five-year waiting period. Texas' State Plan was originally drafted to indicate that the state would include post-enactment immigrants in TANF. However, this language was changed at the last minute, and without any legislative debate.<sup>clxxvi</sup>

State legislators revisited the issue in 1999, when states were required to submit a renewal of the State Plan. In 1999, state legislators asked the Texas Department of Human Services to change the policy towards post-enactment immigrants. Instead of rewriting the language to include post-enactment immigrants, the department changed it to say that “the state reserves the right to provide TANF to post 8/22/96 qualified immigrants after their 5-year bar is satisfied, *IF the legislature approves such a policy*” (emphasis in original).<sup>clxxvii</sup> As a result of this language, it became necessary for the Texas Legislature to pass legislation in order for post-enactment immigrants to be able to receive TANF. In March 2001, Representative Chavez (D-El Paso) filed HB 2395. This bill would have changed the language of the Texas State Plan so that post-enactment immigrants could receive TANF. As with other pieces of legislation proposing aid to immigrants, this bill received approval in committee, but was never considered by the entire House Chamber.

## **Analysis of State Responses**

Given the variety of welfare programs available to immigrants in the four case study states, it is clear that no one factor influenced how a state responded to the increased flexibility of PRWORA. In order to analyze the influential factors within a given state it is necessary to compare responses of states that appear to have similar characteristics.

### **Massachusetts and Colorado**

In both Massachusetts and Colorado immigrants represent a relatively small portion of the total population (5% for both states).<sup>clxxviii</sup> A small immigrant population has two implications. First, it is easy for voters and policymakers to overlook the needs of such a small segment of the population. This, combined with the fact that immigrants themselves cannot vote, means that immigrants are unable to exert significant political pressure on elected officials. The second implication is that if the state were to create state-funded welfare programs for this population, it would not incur a significant financial burden. Given that both Colorado and Massachusetts dealt with these competing influences, the states responded very differently to PRWORA.

In Massachusetts, the welfare reform debate immediately focused on how to provide assistance to those immigrants losing eligibility to all federal welfare programs. In contrast, Colorado's debate centered exclusively on whether or not to allow immigrants to participate in TANF. The possibility of providing assistance to immigrants losing eligibility to other welfare programs never entered the debate. What was assumed in Massachusetts was not even considered in Colorado. This seems to have been caused both by the relationship between the executive and legislative branches and the political ideology of each state. In Massachusetts, welfare reform was conducted under a Republican governor and a very

powerful, Democrat-controlled Legislature. In contrast, Colorado was governed by a moderate Democrat and a conservative Republican Legislature.<sup>clxxxix</sup> While Colorado governors had historically been able to strong-arm the Legislature, it seems that welfare reform occurred at a time when Colorado was shifting towards a conservative Republican era.<sup>clxxx</sup> The shift of Colorado's political majority made it difficult for Democratic Governor Roy Romer to implement liberal policies such as welfare for immigrants. In contrast, the strength of Massachusetts' Democrat-controlled legislature made it impossible for Republican Governor William Weld to strongly oppose such a plan.

### **California and Texas**

The most obvious similarity between California and Texas is that immigrants represent a significant portion of each state's population (19% and 9%, respectively).<sup>clxxxi</sup> Furthermore, these states share a similarity in the composition of their immigrant population. California and Texas are both located along the US-Mexico border, and as a result each state's immigrant population is primarily comprised of immigrants from Mexico and other Latin American countries. This location means that both states deal with the issues of border enforcement and illegal immigration. California and Texas have dealt with both the costs and benefits of immigration. Despite the similar experience shared by these states, they responded in opposite ways to the choices of PRWORA.

In California, welfare reform occurred at a time when Democrats were gaining significant power. The party controlled both chambers of the State Assembly. In contrast, Texas Democrats were losing their traditional stronghold on political offices to members of the Republican Party. Texas' welfare plan was created under a Republican governor and a divided state Legislature; Republicans controlled the state Senate and the state House had a

slim Democratic-majority. The partisan composition of each state's legislature explains the fate of the various welfare proposals. In California, proposals to provide welfare for immigrants received easy approval in the Assembly and encountered opposition once they were sent to the Republican governor. In the Texas Legislature, legislation was proposed, considered in committee, and then ignored by the entire chamber. In the several instances when legislation was approved by the Texas House, the Texas Senate then ignored it. Given the Republican control of the state Senate, this makes sense. The shifting of dominance by one party to the other that occurred in both California and Texas at the time of welfare reform was one factor that caused the different responses.

Another factor influencing the different responses to PRWORA was the relationship that existed between each state's GOP and Hispanic voters. In his book, Mexican-Americans: The Ambivalent Minority, Professor Peter Skerry argues that Texas Hispanics<sup>4</sup> engage in politics differently than their counterparts in California. The different style of politics in each state has caused each state's GOP to relate to the state's Hispanic population differently. Peter Skerry argues that the nature of political life in general is different in California and Texas. For example, in Texas it is still possible to get elected by "tirelessly walking precincts,"<sup>clxxxii</sup> while in California politicians must deal with a political system dominated by "money, media, issues, and highly paid professionals."<sup>clxxxiii</sup> Given these varying political environments, Hispanics have had more political success in Texas than in California. The success of Texas Hispanics in turn has "serve[d] to moderate the deep-seated resentments....[that] have built up over generations."<sup>clxxxiv</sup> In contrast, in California political

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<sup>4</sup> In his book Mexican Americans: The Ambivalent Minority, Professor Peter Skerry examines political activities of Mexican-Americans in both Texas and California. Although Skerry distinguishes between Mexican-Americans and Hispanics, he acknowledges that Mexican-Americans comprise the majority of the

success goes to those that are “capable of capturing the attention of dominant elites.”<sup>clxxxv</sup>

This has impacted the overall political role of Hispanics in California because leaders that are able to achieve success are most often those that are willing to “define their group in racial minority terms.”<sup>clxxxvi</sup> In short, California Hispanics tend to define themselves as a racial minority, while Hispanics in Texas do not.

In the case of welfare reform, California Assembly Democrats used the racial minority status of California Latinos as a tool to effectively organize this constituency to put significant public pressure on elected Republicans. Democrats were aided in this effort by the contentious relationship that already existed between the California GOP and the state’s Hispanic electorate. Although Texas Republicans were similar to California Republicans in that they did not support state-funded benefits for immigrants, Texas Democrats could not employ the strategies of California Democrats because the Texas GOP managed to maintain a positive relationship with Hispanic voters. According to Republican analyst Tony Quinn, “It never would have occurred to the Texas GOP... to run against immigrants, since the Latino population... forms much of the state’s business and social establishment and is growing in wealth and influence.”<sup>clxxxvii</sup> By engaging in immigrant bashing, California Republicans reinforced the racial minority approach taken by California Hispanics. In contrast, Texas Republicans were working to gain the Latino vote. This left Texas Democrats unable to engage in significant public persuasion. Because the Texas GOP represented the interests of Latino middle-class voters, these former immigrants were less concerned about the status of current immigrants. In contrast, the anti-immigrant policies of the California GOP had angered California Hispanics and reinforced the constituency’s

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Hispanic population in these states. For this reason, I will use his theories to understand the political role of Hispanics more generally.

definition of itself as a racial minority. Democrats seized upon this frustration and built public support for their policies. The nature of Hispanic politics in each state in combination with the changing roles of the Democrat and Republican parties in relation to each state's Hispanic voters was a second influential factor resulting in the different levels of public assistance available to immigrants in California and Texas.

The final factor of the different levels of welfare available to immigrants in California and Texas seems to be the traditional welfare generosity of each state. While California has typically provided a high level of benefits to needy residents, Texas has not. This precedent influences what policymakers are willing to enact and what the public will consider acceptable. Since Texas has traditionally not been generous in welfare benefit distribution, extending benefits to immigrants was outside the range of possible policy choices. In contrast, since California has historically been one of the more generous of the fifty states, extending public benefits for immigrants merely continued this trend.

### **General Trends**

Considering the various factors that have influenced the four case study states, it is clear that the tendency to maintain immigrant access to the social safety net is primarily influenced by the political leaning of a given state. Massachusetts has always been a liberal, Democratic stronghold. While California had been dominated by Republican thinking, actions of the state's Republican leaders forced the emergence of a liberal, Latino voting bloc. In contrast, welfare reform occurred at a time when Colorado and Texas, formerly dominated by the Democratic Party, were shifting to the control of the GOP. The ideological environment of these states established limits for the possible level of assistance for each states' immigrant population.

## **Conclusion**

### **Federalism and Devolution**

The varied responses to the increased state flexibility in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 reinforce a fundamental component of American federalism. That is, that power is ultimately derived from the states. In order to understand how PRWORA emphasizes this, it is necessary to consider what makes American federalism unique and the significance of the law's devolutions in the areas of immigration and welfare policy.

#### **American Federalism**

Through the act of ratifying the United States Constitution, the thirteen independent state governments consented to the formation of one national government. As a result of their consent, a federal system was created. Within this system, state governments delegate their authority over certain governmental functions to the federal level of government. The specific powers given to the federal government are enumerated within Article One of the Constitution. In addition, the Tenth Amendment reserves all nonenumerated powers for the states. Despite the fact that the Constitution identifies and limits specific powers of both the state and federal governments, there is considerable policy area in which both levels of government seem to have jurisdiction.

The shared authority over many policy areas stems from ambiguity within the Constitution. Although the Tenth Amendment reserves all nonenumerated powers for the states, Article 1 Section 8 gives the federal government the broad power to create any laws necessary for carrying out the enumerated powers.<sup>clxxxviii</sup> Upon comparison of these two Constitutional provisions, it appears that the Framers of the Constitution wanted the state and

federal governments to share authority over many governmental functions.<sup>clxxxix</sup> This shared authority creates debate when the primary question of federalism is asked. That is, which level of government should be responsible for a given activity, and which level of government should fund government functions?<sup>cxv</sup> Within the American federal system, Constitutional ambiguity makes it difficult to answer this question for policy areas such as welfare and immigration.

Throughout American history there have been periods of both federal supremacy and state power. In the decades immediately following the ratification of the Constitution, Congressional action and Supreme Court decisions of the Marshall Court centralized power within the federal government.<sup>cxci</sup> This era ended in 1835 with the death of Chief Justice John Marshall. In the following decades, national power was diminished as Court decisions increased state police powers and enabled states to regulate commerce concurrently with the federal government.<sup>cxcii</sup> Federal supremacy was once again asserted beginning in the New Deal and lasting through the Civil Rights movement and Great Society programs of the 1960s. During the Nixon presidency the “New Federalism” movement sought to “revitalize” state and local governments.<sup>cxci</sup> Through the New Federalism, states and localities gained control of implementing federally funded programs. During the 1980s the existence of categorical grant programs supported the centralization of power within the federal government.<sup>cxci</sup> At the time of the welfare reforms of the 104<sup>th</sup> Congress, significant power was centralized within the federal government.

## **Devolution**

Many policies enacted by the 104<sup>th</sup> Congress seem to represent a shift in American federalism. Quite often, the era from 1996 – 1997 is referred to as the “Devolution Revolution.”<sup>cxv</sup> Within a federal system, devolution is the process of shifting power and

responsibility of a given state function from the federal government to the local level (whether this be the state, county, or city). When devolution occurs, local governments gain significant control over the creation and implementation of a given policy. Simultaneously, local governments must also bear the financial burden of performing the given function.

Generally speaking, there are advantages and disadvantages to devolution of responsibility from the federal government to the states. Those that favor a greater local role within society argue that local governments are more familiar with the needs of their community. This knowledge enables local governments to allocate scarce resources in the most efficient manner.<sup>excvi</sup> It has typically been thought that state and local governments are best suited to determine policies which are specific to each community, such as safety and transportation.

In contrast, opponents of devolution cite the possibility for discrimination and the tendency of states to not take responsibility as their reasons for supporting a stronger federal role. In America's history, the "struggles over the distribution of federal power also represent conflict over which cultural values will be ascendant in the United States."<sup>excvii</sup> If states have significant power, it becomes possible for them to institutionalize preference or discrimination towards specific groups of their population. In order to prevent (or remedy) locally institutionalized discrimination, federalism can be used as a way of addressing ethnic and cultural conflict.<sup>excviii</sup> There is no better example of this than the policy choices made by Southern states after the end of slavery. In nearly every policy area, African-American citizens were discriminated against. The federal government was able to reduce this discrimination with the passage of the Civil Rights Act. Opponents of devolution also fear that states will be reluctant to fulfill their delegated responsibilities, beginning a so-called

race to the bottom. A central understanding within this argument is that states will want to have policies similar to each other. If one state reduces the benefits and services available to residents, it is likely that other states will follow suit. States tend to create similar policies so that one state does not become a magnet, attracting new residents that wish to take advantage of the state's generous or lenient policy in a given area. Opponents of devolution fear that by giving state governments greater control over policy, they will slowly reduce what is available to citizens, so that ultimately all states are equal in offering the lowest level of services. A strong federal government can prevent a race to the bottom by establishing minimum levels of what a state must provide to its residents.

### **Federalism and Welfare Policy**

Within the realm of welfare policy, the institution of federalism makes it necessary to ask, which level of government is responsible for ensuring that all citizens have access to a minimum level of income, health care, nutrition and housing? For much of American history the federal government has worked through the states to accomplish welfare goals. The federal government has been responsible for funding and determining eligibility while state governments have been responsible for program administration. At the time of their creation, the SSI and Food Stamp programs maintained federal supremacy over state governments. In contrast, when AFDC was created states had significant control over eligibility and benefit levels. Although the federal government did not have universal control over AFDC when it was terminated in 1996, it had gained significant influence over the program. In combination, the federal government's roles in AFDC, Food Stamps, and SSI meant that it had primary control over welfare policy at the time of welfare reform.

### **Federalism and Immigration Policy**

In the area of immigration policy, the federalism question is, which level of government is responsible for regulating the nation's borders and conferring citizenship upon residents? In theory, matters of foreign affairs and naturalization are the exclusive responsibility of the federal government.<sup>cxcix</sup> In practice however, early Congresses left a great deal of immigration policymaking to individual states. There were broad requirements for naturalization but states had the freedom to determine issues of regulation. This changed in the late 1800s when responsibility for immigration matters was specifically delegated to the federal Treasury Department. The federal government continued to consolidate its power over immigration until the 1996 reforms. At the time of PRWORA, the federal government had sole responsibility for matters pertaining to immigration and citizenship.

### **Welfare Reform and Devolution: Immigration Policy**

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 changed federal supremacy over welfare and immigration policy by devolving significant powers to the states. While it is commonly accepted that PRWORA lessened federal responsibility over welfare policy, its effect on immigration policy is an issue of greater controversy. In order to analyze the law's effect on immigration policy, it is helpful to again examine the new powers over immigrant eligibility to welfare which PRWORA delegated to the states.

As first identified in Chapter Three, PRWORA increased states' ability to determine immigrant access to the safety net by allowing states to determine: (1) whether they will provide certain federal benefits (TANF) to legal immigrants that were in the United States on August 22, 1996; (2) whether they will provide federal benefits to post-enactment immigrants after the five-year bar; (3) whether they will fund cash assistance for post-enactment immigrants during the five-year bar; and (4) the level of access they will allow to

state-funded replacement programs.<sup>cc</sup> In addition to increased power in determining immigrant eligibility to the welfare system, states are also faced with the increased responsibility of funding any benefits which they extend to noncitizens.

Given the new state powers, both in determining immigrant eligibility to welfare and in funding any participation of immigrants in the welfare system, it is clear that the state governments have gained significant control over the treatment of noncitizens that reside in their jurisdictions. This control increases the extent to which noncitizens are treated differently from citizens, a policy area which had previously been solely the responsibility of the federal government. The new responsibilities under PRWORA are significant because before states played no role in defining the meaning of full citizenship. PRWORA gave states new influence into this important policy area.

In order to more fully understand the extent to which PRWORA has devolved some of the federal responsibility over the status of immigrants to state governments, it is helpful to examine an argument in support of the opposing view. That is, that PRWORA gave few new responsibilities to the states.

In an article entitled “The state of American federalism: 1996-1997,” Sanford F. Schram and Carol S. Weissert question the commonly held idea that PRWORA delegated significant control over social policy to the states. Instead, they suggest that the 1996 reforms might actually have reinforced federal supremacy in the formation of immigration and welfare policy.<sup>cci</sup>

Schram and Weissert’s argument can best be summarized with their statement, “the ironies of devolution suggest that as we remake federalism we reinscribe it; federalism cannot help recreating itself even as it changes.”<sup>ccii</sup> The authors recognize that PRWORA

devolved significant responsibility to the state governments, but they identify provisions within the law enabling the federal government to maintain significant control over certain aspects of welfare. To further support their argument, Schram and Weissert identify several other policy areas in which reforms made during the “Devolution Revolution” might actually “dilute” the effects of the devolutionary policies.<sup>cciii</sup>

Upon closer examination of changes made to immigration policy within the era of the “Devolution Revolution” it becomes clear that Schram and Weissert’s argument cannot be strongly applied to this policy area. In addition to PRWORA, the other immigration-related piece of legislation passed by the 104<sup>th</sup> Congress is the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA). This law, passed after PRWORA, strengthens efforts to fight illegal immigration and establishes more stringent financial requirements for the admission of sponsored legal immigrants.<sup>cciv</sup> Unlike PRWORA, IIRAIRA relies on the federal level of government to accomplish its goals. For example, IIRAIRA increases the minimum income level required of individuals who wish to sponsor family members for immigration to the United States. This provision of the law was to be enacted by the Immigration and Naturalization Service (INS) and the Consular Offices of the State Department, the federal agencies responsible for issuing visas. IIRAIRA also allocates greater resources to increase the size of the Border Patrol, a division of the INS. If Schram and Weissert’s argument were to hold, reforms such as those within IIRAIRA would have to diminish the devolutionary impact of PRWORA within immigration policy.

Closer examination of IIRAIRA and PRWORA indicates that the federal-strengthening provisions of IIRAIRA were not strong enough to dilute the devolution provisions of PRWORA. IIRAIRA makes only a slight change to the sponsorship process

and allocates resources to protect the border. In contrast, PRWORA fundamentally distinguishes legally present noncitizens from citizens. After making this distinction, PRWORA gives state governments some influence in this important policy area. It seems the PRWORA's changes most significantly alter the experiences of immigrants to America.

The new responsibilities, which PRWORA devolves to the states, represent a break in the federal nature of immigration policy. During America's early years states had possessed significant control in this policy area. However, since the late 19<sup>th</sup> Century control had been firmly maintained by the federal government. By devolving some immigration control to the states, PRWORA makes it difficult for the United States to achieve a unified immigration policy.

### **Welfare Reform and Devolution: The Impact on Federalism**

In addition to the changes made in the area of immigration policy, the immigrant provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 represent significant changes in several other policy areas. The restrictions mark the first time that the federal government firmly acted upon its right to distinguish between citizens and non-citizens in the distribution of public benefits. Federal welfare laws had previously made little distinction between these groups. This distinction did not exist on the state level because states were prohibited from discriminating on the basis of citizenship status. Also, by devolving these new immigration and welfare policy-making powers to the states, PRWORA gives state governments significant control in these important policy areas. New state influences in these areas, reinforces a fundamental truth within American federalism.

As a result of the PRWORA changes, states have gained influence in policy areas that had traditionally been the sole responsibility of the federal government. Opponents of such

devolution cite the possibility for a race to the bottom as their reason for supporting a strong federal government. However, as evidenced in Chapter Three, states have responded in a variety of ways to their new responsibilities in the areas of welfare and immigration policies. While states such as Texas and Colorado have followed the federal trend established by PRWORA, other states, such as California and Massachusetts, have worked to maintain the level of immigrant eligibility to the safety net that existed before welfare reform. Clearly, a race to the bottom has not occurred.

The variety of state responses seems to have been caused by the political environment that is specific to each state. This political environment includes the traditional generosity of benefits given by the state, the partisan leaning of the state, and the role of ethnic and minority interest groups within the state's political process. Given these factors, it was impossible for states such as California and Massachusetts to reduce the benefits available to immigrants to the levels of Texas and Colorado.

The role of each state's political environment prevented the race to the bottom that was feared by many opponents of devolution. That a race to the bottom did not occur indicates that many differences exist between the fifty states which comprise the United States of America. Within each state there are varying economic and political forces that influence the state's elected officials and electorate in different ways.

It is important to understand how and why states responded to PRWORA, because these responses reinforce a fundamental aspect of American federalism. States responded differently because they face different political pressures that are unique within each state. In a sense, a race to the bottom would have preserved American federalism. While the policies enacted would have been the result of individual decisions by the fifty states, there would be

one policy regarding immigrant eligibility to welfare. In contrast, different political and economic factors in the fifty states caused varied state responses. This means that within the United States there are fifty different policies regarding immigrant eligibility to welfare.

That variety exists in such an important policy area as immigration emphasizes an inherent component of American federalism. Within this federalism, states have influence in creating policies which are fundamental to the definition of the American state. This serves as a reminder that America is a nation where power is derived from the states. While the official seal of the United States of American is inscribed with the quote “*E Pluribus Unum*” (From Many One), an important part of American political culture is that the power of the one nation is derived from the many states and the many different people who inhabit these states. The varied state responses to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, emphasize these differences.

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