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American Neonativism and Gendered Immigrant Exclusions

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Post–Civil War U.S. history has been marked by two peak periods of virulent nativist public sentiment, each of which has initiated wide-ranging and exclusionary immigration legislation seeking to protect the American nation against perceived immigrant threats. The first period, which reached its zenith during the 1920s, produced legislation that explicitly prohibited immigration by members of ethnic groups deemed to be morally, culturally, and intellectually inferior to the Euro-American majority. The second peak period, beginning in the 1980s and continuing today, blames "unskilled," "undesirable," and "undeserving" immigrants for taking low-wage jobs belonging to American citizens and causing serious social problems in the United States, such as overburdened public schools and social welfare programs. These neonativist arguments have engendered exclusionary immigration legislation designed both to reduce the number of unskilled immigrant workers admitted to the United States and to prohibit the access of nearly all resident noncitizen immigrants to publicly funded social services.

American nativist ideologies and immigration policies have been widely, and I believe correctly, condemned as ethnocentric and racist (Feagin 1997; Johnson 1995, 1997; Roberts 1997). However, feminist philosophers have devoted relatively little attention to the gendered aspects of nativist thought.[1] This essay begins to remedy this oversight by analyzing recent neonativist ideologies and immigration legislation through the intersecting lenses of gender, ethnicity and race, class, and immigration status provided by the unique experiences of immigrant women. I argue that feminists ought to reject neonativism on two related grounds. First, neonativist immigration legislation is persistently, though covertly, biased against female immigrants, and particularly against poor, immigrant women from third world countries.[2]

Second, neonativist arguments in defense of such exclusionary legislation rest on insupportable normative assumptions concerning the proper aims of liberal immigration policy and the rights of resident noncitizen immigrants. I will begin by providing the necessary context for my analysis, first articulating the commitments of American anti-immigrant nativism and then describing the historical conditions that have contributed to its recent resurgence.

ANTI-IMMIGRANT NATIVISM

In his classic text on U.S. immigration, John Higman (1988) defines American nativism as

> the intense opposition to an internal minority on the grounds of its foreign (i.e. "un-American") connections. Specific nativist antagonisms may, and do, vary widely in response to the changing character of minority irritants and the shifting conditions of the day; but through each separate hostility runs the connecting, energizing force of modern nationalism. While drawing on much broader cultural antipathies and ethnocentric judgments, nativism translates them into a zeal to destroy the enemies of a distinctively American way of life. (4)

Higman's definition aptly implies that nativism can be directed at anyone perceived to be an internal foreign threat to a country, including its own citizens. Indeed, one of the most shameful periods of American public nativist sentiment culminated in the internment of Japanese American citizens during World War II.[3] However, this essay is concerned with the most common form of American nativism—that directed against noncitizen immigrants to the United States.

Two important points about American anti-immigrant nativism follow from Higman's definition. First, such nativism involves a simultaneous preference for U.S. citizens and antagonism toward immigrants deemed dangerous to American cultural, socioeconomic, and political institutions and general way of life. Second, the form that anti-immigrant nativism assumes in any particular historical period is influenced by the composition of immigrant flows and prevailing socioeconomic and political conditions. For instance, during the 1920s, nativists feared that the influx of southern and eastern European immigrants threatened to degrade American cultural institutions, whereas the economic recession of the 1980s prompted nativists to blame Mexican immigrants for suppressing wages among low-skilled workers and stealing the jobs of American citizens. Notwithstanding these variations, it is possible to identify three related anti-immigrant nativist claims.[4] One common contention is that certain immigrant ethnic groups or "races" are intellectually, morally, or culturally inferior to the Euro-American majority and thus unable to assimilate into the dominant culture. A second

nativist charge is that unskilled immigrant workers are disrupting domestic economic conditions, primarily by taking the jobs of American citizens. A final nativist assertion blames undesirable and undeserving immigrants for creating serious social problems in the United States, such as rising crime rates, failing schools, and overburdened social welfare programs.

At its core, anti-immigrant nativism is concerned with protecting the "native" population from immigrants deemed to be a threat to its interests. Consequently, nativist arguments tend to endorse policy solutions that aim to exclude members of feared immigrant groups from full citizenship or at least some of the specific rights and privileges that it entails. There are three general legislative strategies for accomplishing such targeted immigrant exclusions. First, and most obviously, immigrant admissions policies may explicitly or covertly prohibit initial immigration by members of a particular immigrant group. Second, immigration and naturalization policies may prevent resident immigrants from obtaining legal permanent resident status or naturalized citizenship on the basis of their group membership (e.g., the United States currently excludes anarchists and communists from naturalized citizenship). Third, other legislation may indirectly exclude a particular class of resident noncitizen immigrants by prohibiting their access to specific social goods, such as employment opportunities and education, and by barring them from certain rights of citizenship (e.g., social welfare rights).

TWENTIETH-CENTURY IMMIGRATION REFORMS

The United States has witnessed two "great waves" of immigration since the Civil War.[5] Each has prompted a rise in anti-immigrant nativist sentiment among American citizens, and together they subsequently generated the most far-reaching and exclusionary immigration policies in U.S. history. The first peak period extended from 1870 to 1920. Prior to this period, northern and western European migrants dominated U.S. immigration flows. However, beginning in the 1880s, U.S. industrial employers began successfully to recruit labor immigrants from southern and eastern Europe and Asia. By 1900, immigrants from these countries provided a major source of new labor for expanding U.S. industries, and by 1920, they represented the majority of U.S. immigrants. This demographic shift raised nativist fears among American citizens that the new immigrants were ethnically inferior to their predecessors. The general belief was that too many of the new immigrants lacked the intelligence, moral maturity, or cultural capital needed to assimilate into American society.[6]

Congress responded to this public nativist sentiment by enacting a series of increasingly restrictive legislation designed to preserve the integrity of American cultural and social institutions, culminating in the enactment of the

Quota Acts of 1921 and 1924.[7] These laws established the first national numerical limit on immigration and, within this overall limit, instituted a quota system that allocated new immigrant visas on the basis of national origin. Visas were apportioned based on the size of U.S. resident immigrant populations by country, so that nationals of dominant immigrant-sending countries received the lion's share of new visas. Because the 1890 census was used to measure resident immigrant populations, the national-origins quota system essentially restored the ethnic composition of immigration flows to their pre-1890s balance, increasing immigration from northern and western Europe while sharply reducing immigration from southern and eastern Europe.[8]

By the late 1950s, the earlier southern and eastern European immigrants and their adult children began vocally to criticize the national-origins quotas system as ethnocentric and racist. Building on the early successes of civil rights movements in expanding conceptions of U.S. citizenship to include previously marginalized social groups, these immigrants demanded a major overhaul of U.S. immigration policy. It came in the form of the groundbreaking 1965 Immigration and Nationality Act (INA).[9] The INA raised the annual national cap on immigration and eliminated the national-origins quotas system. In place of numerical quotas, the INA established two new principal bases for legal immigration. The first, family reunification, grants immigration eligibility to the foreign-born immediate family members of U.S. permanent residents and citizens. The second, employment immigration, enables immigrants with special skills or training to seek employment in the United States. The INA allocated 80 percent of total immigration visas for family reunification and 20 percent for employment.

The INA initiated a second great wave of immigration to the United States, with profoundly altered demographics. Between the 1960s and 2002, legal immigration grew steadily from 330,000 immigrants per year to over 1 million per year.[10] The immigration preferences set by the INA also dramatically altered the ethnic and gender composition of legal immigration flows. The termination of the national-origins quota system enabled large numbers of immigrants from Latin America and Asia to migrate legally to the United States. As a result, between 1970 and 1990, the general U.S. population grew by 20 percent, while the Asian American and Latino resident populations grew by 385 percent and 141 percent, respectively (Feagin 1997:28). The INA's new emphasis on family reunification encouraged greater numbers of women to migrate to the United States. Indeed, due largely to the INA, most legal immigrants today are female (Houstoun, Kramer, and Mackin-Barrett 1984:908–9, 913). Undocumented immigration (usually referred to as "illegal immigration") also has increased since the INA was enacted. It is impossible to determine exactly how many undocumented immigrants enter the United States each year. However, most estimates place annual rates at between

275,000 and 300,000 immigrants per year, with women accounting for nearly half of these undocumented immigrants (DeSipio and de la Garza 1998:42; Spotts 2002:601, 615; and Arp, Dantico, and Zatz 1990:23–24).

GENDER BIAS IN NEONATIVIST IMMIGRATION LEGISLATION

The volume and composition of the second wave of U.S. immigration have prompted vigorous debates among many policy makers and citizens over the future of immigration policy. Two major issues are central to these recent debates: a widespread concern that the rate of undocumented immigration is unacceptably high and a general consensus that the current composition of legal immigrant flows is detrimental to national economic interests. Proponents of both views appeal to neonativist claims in defense of their demands for far-reaching immigration policy reforms. Their arguments typically avoid the rhetoric of ethnic and cultural superiority that characterized earlier nativist positions; instead, they defend exclusionary legislation on the grounds that it is necessary to prevent unskilled, undesirable, and undeserving immigrants from undermining economic conditions and exacerbating social problems in the United States. Together, these neonativist arguments have produced the most restrictive immigration reforms since the Quota Acts of the 1920s. Although these laws do not explicitly target immigrants for detrimental treatment on the basis of their ethnicity or race, they persistently disadvantage female immigrants and potential immigrants in practice, and particularly poor, immigrant women from the third world. In doing so, neonativist immigration legislation tends covertly to reestablish the sorts of race- and ethnicity-based exclusions that characterized the first nativist period.

UNSKILLED IMMIGRANT WORKERS AND NATIONAL ECONOMIC INTERESTS

Concern about "illegal aliens" has dominated public discourse about immigration since the early 1980s. There is a widespread perception that the federal government has failed to control undocumented immigration, particularly from Mexico and Central America. The neonativist assertion that unskilled, undocumented immigrant workers are disrupting domestic economic conditions by stealing the jobs of American citizens is central to this debate.[11] A second leading position in the recent immigration debates extends this charge to documented immigrants. Proponents maintain that the composition of legal immigration flows as shaped by the INA is detrimental to national economic interests: too many unskilled and uneducated immigrants are being admitted on family visas and these immigrants tend to

compete with American citizens for low-wage jobs.[12] In the words of U.S. congressional representatives Smith and Grant (1997):

> Under [current economic] conditions, we would not want to design an immigration system that would bring to America a high percentage of unskilled immigrants who would compete with native workers for the dwindling number of low-skilled jobs. . . . Yet, our current immigration system does just this, by admitting 80 percent of legal immigrants without regard to their level of education and skill [on family reunification visas]. While the large-scale admission of unskilled immigrants is sold as humanitarianism, its primary effect is to create a cheap labor pool and render unskilled Americans unemployable. (901)

Proponents of these neonativist arguments typically recommend two legislative strategies for reducing the immigration of most classes of unskilled immigrant workers. The first seeks to regulate the access of undocumented immigrants to employment in the United States, primarily by eliminating the jobs that allegedly provide an incentive for undocumented immigration, but also by legalizing the status of resident undocumented immigrants employed in certain low-wage occupations that American citizens are unwilling to perform. For instance, the "employer sanctions" provision of the Immigration Reform and Control Act of 1986 (IRCA)[13] required employers to check the identity and work eligibility documents of all new employees and enacted penalties for employers who knowingly hire or continually employ undocumented workers. Interestingly, the IRCA also established a seasonal agricultural workers (SAW) amnesty program, which provided a means for obtaining legal permanent resident status to certain undocumented agricultural workers. To qualify, applicants were required to have engaged in seasonal agricultural work for a minimum of ninety days in the preceding year and to meet additional qualifying criteria required of all prospective permanent residents (e.g., possession of a clean criminal record, freedom from contagious diseases, and proof that one would not become a public charge).

Neonativist immigration legislation also aims to reduce the legal immigration of unskilled immigrant workers by restructuring immigrant admissions preferences so as to advantage highly skilled and well-educated immigrants. For instance, in the first comprehensive reform of legal immigration since the INA, the Immigration Act of 1990 (IMMACT)[14] substantially shifted the balance between family-based immigration and employment immigration, reducing the share of visas allocated for family reunification to approximately 70 percent, while holding employment visas steady at just over 20 percent.[15] The bill also reallocated employment immigration to favor highly skilled, well-educated workers and wealthy immigrants. Of the 140,000 employment visas annually dedicated to immigrants who have jobs waiting for them in the United States, 130,000 were earmarked for immigrants with advanced education, highly developed scien-

tific or technical skills, or significant wealth.[16] Only 10,000 visas per year were allocated to "unskilled workers," defined as workers whose occupations require fewer than two years of study or experience.

This neonativist legislation is formally gender-neutral. However, in the context of a sexist society that devalues work traditionally performed by women, laws aiming to exclude unskilled immigrant workers severely disadvantage immigrant women in practice. The immigrant admissions preferences established by the IRCA and the IMMACT, for instance, increasingly require employment in designated occupational sectors as the primary criterion for admission to legal permanent resident status yet covertly favor male-biased conceptions of labor. The IRCA's SAW amnesty program is perhaps the most straightforward example, as it explicitly offered amnesty to workers in a particular employment sector. Although the provisions of the program are formally gender-neutral, it overwhelmingly benefited male undocumented immigrants in practice, since they compose the vast majority of the seasonal agricultural labor force. Indeed, 82 percent of the total 1.3 million amnesty program applicants were male (Fitzpatrick 1997:27; Arp, Dantico, and Zatz 1990:30–31). Female undocumented immigrants, and particularly poor, undocumented immigrant women from the third world, in contrast, are overrepresented in the garment industry and in other less visible sectors of the underground economy, such as domestic work and child care, none of which were identified as a candidate employment sector for an amnesty program. Certain male-biased provisions of the SAW amnesty program also disproportionately disadvantaged the relatively few undocumented immigrant women who worked in the seasonal agricultural industry. For instance, the program included field-work positions, held predominately by male immigrants, in its restrictive definition of qualified seasonal agricultural work, but excluded agricultural support positions (e.g., cannery work), in which female immigrants were more frequently employed.[17]

The legal immigrant admissions preference scheme established by the IMMACT reinforced the IRCA's legacy of male-biased immigration preferences. Its formally gender-neutral provisions disproportionately disadvantaged female potential immigrants in at least two ways. First, since female immigrants compose more than two-thirds of family-based immigrants and less than 5 percent of employment immigrants, the shift from family-based immigration preferences to employment preferences made it more difficult for women to obtain immigration visas (Fitzpatrick 1997: nn. 7–10). Second, the IMMACT altered the employment preference scheme so as to privilege immigrant workers with advanced degrees, highly sought-after technical skills, or significant wealth. The emphasis on these attributes as prerequisites for legal immigration generally favors affluent, male potential immigrants. Yet the IMMACT also includes specific provisions that disadvantage immigrant women. For instance, the law defines unskilled labor as those occupations requiring

fewer than two years of study or experience. By explicitly classifying domestic work and child care as occupations for which one needs no training, this provision essentially imposes strict limits on the number of immigrant domestic and child care workers, who are primarily poor, third world women, legally admitted on the basis of employment preferences (Root and Tejani 1994:612).

UNDESIRABLE AND UNDESERVING IMMIGRANTS AND DOMESTIC SOCIAL PROBLEMS

Neonativist arguments assumed a different guise in the early 1990s as the fear that undesirable immigrants are exacerbating a wide range of social problems—including rising crime rates, skyrocketing demand for social welfare services, and overpopulation—began to dominate public debates about immigration. In particular, neonativists charged that undeserving undocumented immigrants are putting a heavy strain on state and local budgets by overconsuming social welfare benefits to which they have no moral right.[18] Underlying this concern is the assumption that immigrant women migrate to the United States to obtain social services and ultimately citizenship for their children.[19]

As a solution to these purported problems, neonativists proposed legislation that ostensibly would discourage undocumented immigrants from migrating to the United States by eliminating their access to publicly funded social services. For instance, had it not later been ruled unconstitutional, California's controversial 1994 Proposition 187 would have prohibited state and local agencies from providing any publicly funded services or benefits to undocumented immigrants. While undocumented immigrants have long been barred from participating in nearly every federal social welfare program, Proposition 187 also would have excluded them from the few state and local social services to which they had access: child welfare services and foster care benefits, county general assistance, battered women's counseling, and nonemergency publicly funded health services such as prenatal care and nursing home care for the elderly or persons with disabilities. Additionally, the initiative would have categorically prohibited public schools, colleges, and universities from admitting undocumented immigrants and their children. State agencies, including school districts, would be required to verify the citizenship status of every client and student and to inform federal authorities of any person reasonably suspected to be in violation of immigration laws.

Some neonativist scholars and policy-makers also supported an additional draconian measure that explicitly targeted the children of undocumented immigrants.[20] The Fourteenth Amendment of the U.S. Constitution provides

that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States."[21] This statement of the *jus soli* principle of birthright citizenship has long been interpreted as conferring U.S. citizenship on all children born on U.S. soil, regardless of the citizenship or immigration status of their parents.[22] Neonativist opponents of undocumented immigration sought to amend the Constitution to eliminate the extension of birthright citizenship to the children of undocumented immigrants. They claimed that such an amendment is necessary to eliminate the incentive for undocumented immigration created by an inclusive interpretation of the *jus soli* principle. In the words of one supporter, eliminating birthright citizenship for the children of undocumented immigrants would "discourage pregnant aliens from entering this country illegally in order to have their babies delivered free of charge and become U.S. citizens eligible for an array of benefits" (quoted in Roberts 1997:208).

Neonativist pressures also contributed to the enactment of a series of legislation that radically restructured the social welfare system as it applies to documented immigrants. Under previous law, documented immigrants were, with few exceptions, eligible for all of the social welfare benefits available to citizens.[23] However, recent neonativist legislation has severely diminished their social welfare rights, despite their continued tax liability. The IRCA initiated the trend by disallowing recent beneficiaries of the amnesty programs from receiving most federal public assistance funds, including Aid to Families with Dependent Children (AFDC), food stamps, and certain forms of Medicaid, for five years following their admission to legal permanent resident status. The Personal Responsibility and Work Reconciliation Act of 1996 (Welfare Act)[24] prohibited all documented immigrants from receiving food stamps and Supplemental Security Income (SSI) until they attain citizenship. The Welfare Act additionally barred newly arriving documented immigrants from virtually all federal means-tested benefits for five years, and for the first time authorized states to deny Medicaid, Social Services Block Grants, and Temporary Aid to Needy Families (TANF) to documented immigrants.[25] Subsequent amendments to the Welfare Act restored eligibility for food stamps and disability payments under SSI to some immigrants, and exempted refugees, asylees, U.S. veterans and soldiers, and permanent residents with forty qualifying quarters of work from most benefits exclusions.

Neonativists proudly proclaim that restricting immigrant access to publicly funded social services will dramatically reduce the socioeconomic costs of immigration. What is left unsaid is that these purported savings are borne disproportionately by poor, immigrant women and their families. This is clearly evident in the case of Proposition 187, which directly targeted programs that serve primarily women, such as publicly funded prenatal healthcare services and battered women's shelters. Barring undocumented children from public schools also would have disproportionately burdened

immigrant mothers, who typically are responsible for child care, either as single parents or by default in two-parent households. If the *jus soli* amendment were enacted, undocumented immigrant mothers would be faced with the fact that their American-born children do not have citizenship or any of the benefits that it confers. Projected savings from the Welfare Act also come on the backs of immigrant women. According to Congressional Budget Office projections, nearly one-half of the $55 billion of savings from the bill was to be achieved by eliminating benefits to documented immigrants, despite the fact that they account for only about 5 percent of all welfare recipients (DeSipio and de la Garza 1998:105; Fix and Zimmerman 1997:6). Since poor, third world immigrant women and their children typically are most in need of social services, they bear a disproportionate burden of these projected savings (Arp, Dantico, and Zatz 1990:28–29).

INSUPPORTABLE NEONATIVIST NORMATIVE ASSUMPTIONS

I have argued that neonativist legislation is persistently, albeit covertly, biased against female immigrants, and particularly against poor, immigrant women from the third world. I believe this provides sufficient feminist grounds for rejecting these laws. However, this section provides a more theoretical case against neonativism by demonstrating that the arguments offered in defense of such exclusionary immigration legislation rest on deeply problematic normative assumptions. I will begin by articulating and critically evaluating the normative assumptions associated with the neonativist assertion that unskilled immigrant workers are to blame for deteriorating domestic economic conditions, and then consider those implicit in the claim that undesirable and undeserving immigrants are responsible for overburdened social welfare programs. Throughout, my approach will be deliberately theoretically-neutral, in the sense that I attempt to appeal to moral principles that are widely shared.

Moral Claims to Admission

An important normative assumption underlies neonativist arguments that defend legislative exclusions of immigrant workers, such as those enacted by the IRCA and IMMACT, on the grounds that they are necessary to prevent unskilled immigrants from undermining domestic economic conditions. Such arguments maintain that liberal democratic states are morally free to exclude potential immigrants as necessary to protect the economic interests of citizens. This reasoning reflects the conventional assumption that states have absolute discretion over immigrant admissions and thus are entitled to adopt whatever immigration policies they judge to be in the national economic in-

terest.[26] I wish to challenge this conventional assumption on general liberal egalitarian grounds.

Egalitarianism entails a deep commitment to the principle of the moral equality of persons. Philosophers working within the liberal egalitarian tradition have always sought to determine what this principle requires of institutions and social practices within the liberal democratic state. Recently, however, they also have begun to consider what the principle of equality requires with regard to transnational institutions and practices. They contend that taking the moral equality of persons seriously entails acknowledging that nationality is a morally arbitrary characteristic, much like sex and race. Thus, they argue, at least some of our moral obligations are owed to all persons, regardless of their nationality.[27]

Of course, liberal egalitarians disagree about the precise nature of these universal obligations. Some forcefully argue that liberal egalitarian principles require liberal states to adopt an immigration policy of open borders, generally admitting all persons who desire to immigrate (Carens 1995 and Cole 2000). Although I believe this view ultimately is defensible, I wish here to outline a minimalist egalitarian position that will be plausible to the neonativist yet is powerful enough to defeat her assumption that liberal immigration policy ought to be based solely on domestic economic considerations. I contend that at bare minimum, the principle of equality requires liberal states to consider the needs and interests of potential immigrants, as well as those of current citizens, in formulating immigrant admissions preferences. In the case that the interests of different parties conflict, competing interests must be balanced, with the more pressing interests taking precedence over those less pressing. This minimalist principle leaves open the possibility that liberal democratic states possess both a broad (though not morally unconstrained) right to control immigration and a general obligation to protect the interests of citizens. However, it is also consistent with the fact that the needs and interests of some would-be immigrants may be so pressing that they create strong moral claims to admission that outweigh domestic economic considerations.[28]

Potential immigrants in at least two categories possess such strong moral claims: refugees and immediate family members of current residents.[29] Refugees have the strongest moral claims to admission, as their most pressing and vital interests are at stake. Many refugees are quite literally fleeing for their lives, while still others seek to escape persecution that is not immediately life threatening, but nonetheless profoundly diminishes their life prospects. Close family members of current citizens and resident noncitizen immigrants also have strong moral claims to admission. Such claims are derived from their fundamental interest in being able to live with their immediate families, which is arguably among the deepest of human needs. Significant to a feminist perspective, women compose the majority of immigrants

in both of these categories. Throughout the 1990s, approximately 80 percent of global refugees were women, along with roughly two-thirds of the admitted family members of U.S. citizens and legal permanent residents.[30]

It follows that even if liberal states have limited obligations to outsiders, they are morally required to admit at least some of the refugees and close family members of current residents who desperately seek admission, regardless of whether such admissions are perceived to be in the national economic interest. Some difficult questions remain, particularly concerning the point at which economic considerations may become salient, the best method for selecting immigrants within each of the relevant categories, and the proper definition of terms such as *refugee* and *family*. However, if my basic arguments are plausible, they provide grounds for rejecting exclusionary neonativist immigration legislation that protects domestic economic interests at the cost of ignoring would-be immigrants' strong moral claims to admission. In particular, my arguments suggest that U.S. legal immigrant admissions preferences ought to be restored to their pre-IMMACT balance so as to favor family reunification more strongly. It is also likely that greater numbers of refugees ought to be admitted to the United States, regardless of their education or skill levels.

The Social Rights of Noncitizen Immigrants

I would now like to address a second normative assumption implicit in neonativist discourses. Neonativists defend laws designed to bar noncitizen immigrants from publicly funded social services, such as Proposition 187, the IRCA, and the Welfare Act, on the grounds that such legislation is necessary to prevent ostensibly undeserving immigrants from abusing the social welfare system. Implicit in these arguments is the assumption that noncitizen immigrants have no moral right to social welfare benefits in their societies of residence. I wish to take issue with this assumption on grounds that it sets the scope of entitlement to social rights too narrowly. *Contra* the neonativist, liberal states are morally obligated to extend the social rights of citizenship to all long-term resident noncitizen immigrants, both documented and undocumented.

Most immigrants build lives in their societies of residence, usually with the intent to remain permanently. Upon their initial arrival, immigrants typically engage in the same sorts of endeavors as citizens who have recently moved to a new state within the country of their citizenship. They orient themselves to their new surroundings, find housing, obtain jobs, enroll their children in public schools, and begin to develop a new network of social relationships. More often than not, new immigrants are welcomed by family and friends who immigrated before them and who are eager to help facilitate their social integration. In time, the everyday lives of resident immigrants come to re-

semble the lives of citizens even more closely. They work long hours, raise families, engage in cultural life, perform community service, buy homes, practice their religions, speak the local language, and form deep and lasting friendships. All resident noncitizens are subject to the laws and authority of the state, and documented immigrants must pay taxes and register for the selective service if eligible.[31]

It is tempting to argue that the social, economic, and cultural contributions of resident noncitizen immigrants entitle them to social rights. After all, there is something intuitively unjust about a society that benefits from the contributions of a class of residents, yet prohibits their access to publicly funded social services. However, there are two problems with this approach. First, it rests on precisely those disputed empirical claims that are at the heart of the immigration debates. The question as to whether immigrants, and particularly undocumented immigrants, are a net benefit to their society is unlikely to be resolved anytime soon. Second, the argument advances an instrumentalist account of rights entitlement, predicating social rights upon social, economic, and cultural contributions.[32] This view is problematic from a feminist perspective, as it would exclude from social rights persons judged unable to contribute to their society, such as the severely disabled, and may also exclude persons whose contributions are difficult to quantify by standard economic measures, such as women who work in the home and in the underground economy.

Why, then, are liberal welfare states obligated to extend social rights to resident noncitizen immigrants? Simply put, it is because resident immigrants are members of society by virtue of their social, cultural, and economic participation, whether or not it produces a net benefit to society, and a liberal society must extend social rights to all societal members, regardless of their citizenship status.[33] To see the force of the claim that all societal members are entitled to social rights, we must consider the normative basis for such rights. An important function of social rights is to prevent the development of a two-tiered society in which one class of individuals lacks the essentials for a minimally healthy and active life. Such a two-tiered society violates fundamental liberal principles, including the principle of equal moral respect for persons. It follows that it would be unjust for a liberal state to withhold social rights from any particular class of societal members, regardless of its defining social characteristics, as this would risk creating just the sort of morally problematic two-tiered society that social rights are supposed to prevent. It is widely agreed that excluding societal members from social rights on the basis of characteristics such as sex, gender identity, ethnicity and race, religion, and sexual orientation cannot be justified. Yet excluding societal members on the basis of their formal citizenship status is no more easily legitimated, since it, too, risks creating a class of marginalized societal members who lack the essentials

for a minimally decent life. This risk is particularly severe if social rights are denied to a class of societal members who have already been made vulnerable by marginalization or oppression, such as women, people of color, and noncitizen immigrants.

I have argued that liberal democratic states are obligated to extend social rights to all societal members, including resident noncitizen immigrants. The neonativist would likely raise two objections to my argument. First, she would probably deny that noncitizen immigrants are societal members as I have claimed. Although immigrants clearly live and work in the United States, for instance, they often settle in ethnic enclaves, intentionally isolated from mainstream society. Many immigrants are intent to retain the customs of their homelands, refusing to learn English and to adopt the American culture. Moreover, undocumented immigrants live in the shadows of society and thus hardly can be considered to be full members. This objection has some descriptive merit; however, it overstates the requirements of societal membership in the morally relevant sense. While it is certainly true that some U.S. immigrants never learn English and many retain some of their native cultural practices, this lack of full cultural assimilation does not prevent them from other forms of social and economic participation, such as working or raising a family, that are themselves sufficient for societal membership. Furthermore, despite their clandestine existence, undocumented immigrants raise families, develop complex social networks, and work in the United States. Indeed, they presently sew our clothing, harvest, butcher, and prepare our food, clean our dishes, houses, hotels, and offices, and care for our children, sometimes while living in our homes. Certainly the marginalization and constant fear of exposure and deportation that undocumented immigrants experience limits the extent of their social integration. However, these constraints do not prevent them from becoming societal members by virtue of their intimate, though generally unacknowledged, participation in the social, cultural, and economic life.

Indeed, the marginalization of undocumented immigrants lends urgency to their claim to social rights. Undocumented immigrants already constitute a highly exploitable marginalized class of societal members due to their precarious legal and residential status, and their exclusion from social services adds to their general vulnerability. Employers routinely exploit undocumented immigrants' fear of discovery and deportation, requiring them to work long hours for substandard pay and no benefits, often in dangerous and unsanitary conditions. The position of female undocumented workers is particularly precarious. Undocumented women are uniquely defenseless against sexual harassment, physical abuse, and rape by employers because they are unable to seek protection from governmental authorities without betraying their immigration status. Moreover, undocumented women em-

ployed as live-in domestics and child care workers are particularly vulnerable to employer abuses due to the intimate nature of their relationship with their employers.[34] Barring undocumented immigrants from access to social services makes it more difficult for them to leave exploitative jobs and to obtain help when they have been abused.

Finally, even a neonativist who is convinced by my argument that documented immigrants are entitled to social rights would likely object that undocumented immigrants do not deserve rights because they committed the criminal offense of immigrating illegally. Surely, she would argue, this fact justifies prohibitions on their access to costly publicly funded social services. To assess the weight of this objection it is necessary to consider the nature of the legal violation involved in undocumented immigration. Neonativists typically portray undocumented immigrants as dangerous criminal invaders, eager to penetrate U.S. borders to steal the jobs and social welfare benefits rightly belonging only to citizens.[35] In truth, however, most immigrants who enter the United States without legal authorization migrate in order to live with their families or to work in undesirable jobs that citizens and legal permanent residents refuse to do. Admittedly, undocumented immigrants have broken the law, as citizens sometimes break the law. But since a liberal society does not revoke the social rights of citizens who commit nonviolent legal infractions (e.g., violating tax laws), it must not deny social rights to undocumented immigrants on the grounds that they have violated immigration laws.[36] Thus, I conclude that liberal states must extend social rights to all long-term resident noncitizens, regardless of their immigration status. In the United States, this minimally would require amending the IRCA and Welfare Act to reinstate the social rights of documented immigrants and enacting additional legislation to confer such rights to undocumented immigrants.[37]

IMMIGRATION REFORM AND FEMINIST COALITIONS

In this essay, I have criticized neonativist immigration legislation and its supporting ideologies on two related grounds. First, exclusionary neonativist immigration laws disproportionately disadvantage female immigrants, and particularly poor, immigrant women from third world countries. Second, the neonativist arguments offered in defense of such legislation rest on deeply problematic normative assumptions concerning the proper aims of liberal immigration policy and the rights of resident noncitizen immigrants. In doing so, I hope to have encouraged other Western academic feminists to join in solidarity with third world immigrants' rights activists in the difficult struggle for just and feminist immigration policy reform.

NOTES

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1. For other feminist philosophical analyses of immigration policy, see Narayan (1995) and Baier (1995).

2. The category "third world" is admittedly problematic. For the purposes of this chapter, I adopt a broad interpretation, including states in Latin America, Asia, the Caribbean, Africa, and eastern Europe.

3. Of course, this is far from the only such shameful moment. Public nativist sentiment has also targeted Native Americans, African Americans, and members of other ethnic and racial groups.

4. Although this essay is concerned with these claims as directed against voluntary immigrants and potential immigrants, they have also been directed against African Americans. Feagin (1997:13–14) provides a related discussion of nativist themes.

5. For an excellent history of U.S. immigration and immigration policy, see DeSipio and de la Garza (1998).

6. Early twentieth-century nativists tended to target racialized ethnic groups. For instance, nativists characterized Italian Catholic immigrants as an "inferior and degraded . . . Italian race stock" unable to "assimilate naturally or readily with the prevailing Anglo-Saxon race stock" of the United States (Feagin 1997:21–22).

7. The Quota Acts were accompanied by a series of legislation prohibiting immigrants from practicing certain professions, including law, medicine, and engineering. Some industrialists, most notably Henry Ford, also developed in-house "Americanization" programs to teach English and Anglo-Protestant values to new immigrant workers. Interestingly, Ford's graduation ceremony required employees, at first dressed as natives of their home countries, to walk through a large "melting pot," emerging on the other side in business suits holding American flags (Feagin 1997:25–26).

8. For example, the annual immigration quota for Italian nationals was about 5,800, compared with nearly 66,000 for British nationals and nearly 26,000 for Germans (Feagin 1997:24).

9. Public Law (PL) No. 89-236, 79 Stat. 911 (1952) (amended 1965). The INA established an annual cap of 290,000 immigrants, with a limit for any single country of 20,000. These limits were permeable, however, because immediate relatives were exempt.

10. Legal immigration, as defined by U.S. immigration law, includes persons who have been admitted under legal permanent resident status. Legal immigrants may remain in the United States permanently under this status unless they relinquish it by living abroad for lengthy periods or by committing a crime that subjects them to deportation. After five years of residence, permanent residents have the right to petition for naturalized U.S. citizenship. The category of legal immigration excludes noncitizens who are authorized to enter and remain in the United States for short periods of time for the purposes of employment, education, tourism, and commerce without the right to reside permanently or petition for citizenship.

11. Proponents of this view include Borjas (2001) and Brimelow (1996). The empirical claim that undocumented immigrants have a negative impact on the domestic economy is extremely controversial. For a trenchant critique, see Obhof (2002).

12. Borjas (2001), Brimelow (1996), and Smith and Grant (1997) defend this view; Obhof (2002) criticizes it.

13. PL No. 99-603, 100 Stat. 3359 (codified in scattered sections of 8 U.S.C.).

14. PL No. 101-649, 104 Stat. 4978 (1990) (codified as amended in scattered sections of 8 & 29 U.S.C.).

15. The remaining 10 percent of visas were dedicated as "diversity visas" to be distributed through a lottery system to nationals of countries that have made up a small share of recent immigrants.

16. Ten thousand visas were reserved for wealthy foreign businesspeople willing to invest at least $1 million in the U.S. economy.

17. Factors influencing the gender disparity among field workers include the preference of employers for male field workers, the dangers of field work for pregnant women and young children, and the difficulty of caring for children in fields that lack toilets and running water (Arp, Dantico, and Zatz 1990:30–31).

18. Proponents of this view include Brimelow (1996) and Smith and Grant (1997).

19. Roberts (1997:207–8) discusses this charge. Johnson (1995:1512) strongly criticizes this version of the "magnet theory" of immigration.

20. Supporters include a 1995 House task force on immigration chaired by Representative Ron Packard and legal scholars Peter Shuck and Rogers Smith (Chavez 1997:63–64; Shuck and Smith 1995).

21. U.S. Fourteenth Amendment, sec. 1.

22. Current exceptions to the *jus soli* rule are few: birth to foreign diplomats and invading troops and birth on a foreign public vessel.

23. The category of documented immigrant includes both permanent residents and noncitizens "permanently residing under color of the law" (PRUCOL), which refers to noncitizens residing in the United States without any formal immigration status but with the permission of the INS.

24. PL No. 104-193, 110 Stat. 2105.

25. The Welfare Act replaced AFDC with TANF.

26. Michael Walzer (1983:31–63) provides the most compelling philosophical defense of the conventional view (with some important qualifications).

27. Both utilitarian and rights-based egalitarians defend this view. For example, see Singer (1972, 1993), Carens (1995), and Pogge (1989).

28. Of course, there may be a point at which the costs of admitting immigrants become so great that a particular liberal state will be released from its obligation to admit additional immigrants. However, I need not identify this precise limit in order to establish my claim that liberal states are morally obligated to admit at least some immigrants, despite countervailing economic considerations.

29. For a related argument, see Carens (2003). Although I am unable to defend my view in this short essay, I also believe that the global poor also possess strong moral claims to admission.

30. Specifically, women composed nearly 80 percent of the 13.5 and 17.6 million global refugees during the 1990s; and in fiscal year 1994, for example, 60 percent of admitted immigrant spouses of U.S. citizens and legal permanent residents were

women, and mothers composed roughly two-thirds of admitted parents of U.S. citizens (Harris 2000:30; Fitzpatrick 1997: nn. 7–10).

31. Undocumented immigrants typically must avoid paying taxes in order to go unnoticed by governmental authorities.

32. An argument maintaining that social contributions are a sufficient, though not necessary, condition of social rights entitlement may avoid this objection. However, we would then want to know the other ways in which claims to social rights are created.

33. Indeed, I think Joseph Carens (1989) is correct that societal membership entitles members to all the rights of citizenship, if not to citizenship itself.

34. Documented abuses of undocumented live-in workers include excessive scrutiny and control, denial of basic "privileges," including personal access to the kitchen and phone, pressure to take on extra domestic chores and to do additional uncompensated work for friends and family members of employers, and prohibitions against leaving their homes unaccompanied or communicating with friends or neighbors (Romero 2003:809, 821–22).

35. For neonativist portrayals of the so-called illegal immigrant invasion, see Chang (2000: chap. 6).

36. Indeed, liberal societies do not revoke the social rights of violent criminals either. However, I hesitate to draw the analogy since being undocumented is not a violent offense.

37. Although I cannot defend my position here, I believe there is an additional argument for extending social rights to documented immigrants immediately upon their arrival based on the role of social rights in the transition to citizenship. See Wilcox (2004).

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