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# Beyond the border: on rhetoric, U.S. immigration, and governmentality

Jon Christopher Wiebel  
*University of Iowa*

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BEYOND THE BORDER: ON RHETORIC, U.S. IMMIGRATION, AND  
GOVERNMENTALITY

by

Jon Christopher Wiebel

An Abstract

Of a thesis submitted in partial fulfillment  
of the requirements for the Doctor of  
Philosophy degree in Communication Studies  
in the Graduate College of  
The University of Iowa

December 2010

Thesis Supervisor: Professor Emeritus David Depew

## ABSTRACT

The focus of this project is to consider U.S. immigration policy as a critical domain in the political management of populations in advanced liberal states. Rather than seeking to understand how discourses over U.S. immigration policy function to construct identity (national, ethnic, and/or immigrant), this project seeks to understand how debates over U.S. immigration policy function to shape, manage, and direct the conduct of migrants, immigrants, and citizens. The project avoids the emphasis in much of the extant scholarship on U.S. immigration policy on the question of identity in favor of an ethos of investigation indebted to Foucault's concept of governmentality.

Studies of governmentality eschew grand theories or unitary conceptions of the state in favor of empirical studies of techniques, programs, strategies and technologies that seek to guide, shape, and direct the conduct of others. While much of the interest of governmentality studies centers on mundane mechanisms that shape conduct, I argue that debates over immigration policy function as critical sites where the state is articulated into activities of government. The state, therefore, is not conceptualized as a source of power to be smashed. As such, policy debates are not mere deliberations by politicians and experts about the merits of particular courses of action; they are sites at which populations are made visible and particular mechanisms for shaping conduct are elevated.

As such, the project attends to policy discussions featured as part of an overall strategic shift in U.S. immigration policy from apprehension to deterrence which began in the early 1990s. The new strategy sought to prevent migrants from entering the U.S. rather than apprehending them once they were here. Analyzing congressional hearings and floor debates, this project argues that discussions of immigration control policies (ranging from the enhanced border policing initiatives, to measures aimed at eliminating the employment and social services magnets, to official English legislation), function as part of a complex of programs, techniques, procedures through which authorities embody

and give effect to particular ways of governing that seek to manage the conduct of populations both within and outside of the United States.

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Thesis Supervisor: Professor Emeritus David Depew

Graduate College  
The University of Iowa  
Iowa City, Iowa

CERTIFICATE OF APPROVAL

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PH.D. THESIS

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To Vesta

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The focus of this project is to consider U.S. immigration policy as a critical domain in the political management of populations in advanced liberal states. Rather than seeking to understand how discourses over U.S. immigration policy function to construct identity (national, ethnic, and/or immigrant), this project seeks to understand how debates over U.S. immigration policy function to shape, manage, and direct the conduct of migrants, immigrants, and citizens. The project avoids the emphasis in much of the extant scholarship on U.S. immigration policy on the question of identity in favor of an ethos of investigation indebted to Foucault's concept of governmentality.

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## CHAPTER I INTRODUCTION

As the twentieth century came to a close, immigration reemerged as a salient issue in the United States. While the concerns expressed by those who claimed that immigration, and in particular "illegal immigration,"<sup>1</sup> (namely that immigrants threatened to destroy the social fabric of the United States, stole American jobs, committed crimes, and undermined working conditions), sounded almost identical to arguments for immigration reform expressed during the close of the nineteenth century and periods of the early and middle twentieth century (Gutiérrez, 1995, p. 207), the 1990s witnessed an unprecedented expansion and intensification of efforts to "regain control" of America's southern border (Andreas, 2000). The most visible of these efforts entailed an "intensification of border policing" (Inda, 2006, p.117) anchored by a fundamental shift in enforcement strategy described in the *Border Patrol Strategic Plan: 1994 and Beyond National Strategy* as "prevention through deterrence" in which the Immigration and Naturalization Service would no longer concern itself with apprehending migrants entering the United States (U.S. Border Patrol, 1994). Mirroring the initiatives undertaken by the El Paso Border Patrol in 1993 initially called Operation Border Blockade and later renamed Operation Hold the Line, the overarching strategy of the INS for the U.S.-Mexico border focused on deterring migrants from entering the United States. As outlined in *Accepting the Immigration Challenge: The President's Report on Immigration* (1994), the shift from apprehension to deterrence would involve the expansion of the number of Border Patrol agents, the erection of "strategically placed" fencing and lighting, and the "incorporation of infrared scopes and other new technology" in order to create high visibility operations that made it virtually impossible for migrants

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<sup>1</sup> Although illegal immigration is a term that I oppose for a variety of reasons, it is the most commonly used term in debates over documented and undocumented migrants. As such I will be using the phrase illegal immigrant where appropriate throughout the project.

to enter the United States without being apprehended (p. vi). The rationale for the shift in enforcement strategy was summed up by Gus de la Vina, Western Regional Director of the Immigration and Naturalization Service; "The heightened Border Patrol presence, leading to almost certain apprehension, along . . . key sections of border . . . serves as a strong deterrent to those attempting to cross" (*Border Security*, 1995, p. 46).

Along with the "reinvention" of the INS, legislators sought to stem the movement of foreign nationals across the U.S.-Mexico border by pursuing measures designed to eliminate the "incentives" that enticed migrants to risk crossing the border (*Accepting the Immigration Challenge*, 1994). As with the shift from apprehension to deterrence in border enforcement strategy, the concept of deterrence anchored measures designed to eliminate the "magnets" that pulled migrants across the border. Of particular concern were the social service and employment magnets. Although the idea that migrants were pulled into the United States served as the justification for immigration reforms prior to 1990s, most notably the Immigration Reform and Control Act of 1986, the approval of California's Proposition 187 in 1994, which sought to deny an array of social services to unauthorized migrants was the harbinger of an array of initiatives predicated on the assumption that most migrants "come to the United States to take advantage of welfare and other public sector programs" (Johnson, 2002, p. 444). Indeed in a letter to former President Clinton, former Governor of California Pete Wilson indicated that the intent of Proposition 187 was to send the message that immigration reform must include initiatives that eliminated the incentives that enticed migrants across the border:

Proposition 187 is the two by four we need to make them take notice in Washington and provoke a legal challenge to the federal mandates that keep in place the incentives to illegal entry. It will finally force Washington to accept its responsibility for illegal immigration. (as cited in Ryan, 1996, p. 622-3)

And accept responsibility it did. In the spirit of Proposition 187 Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act). It barred "non qualified" aliens (the equivalent of 'illegal aliens') from

almost all federal social services. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Immigration Reform Act) prohibited unauthorized migrants from obtaining Social Security benefits and public housing, and provided procedures for employers, welfare workers, and INS agents to verify an immigrant's legal status (Stevens, 2000, p. 448).

More importantly, however, the Welfare Reform Act and the Immigration Reform Act sought to deter immigration, like Proposition 187 before it, by enabling local and state employees to share information regarding an immigrant's citizenship status with federal officials. Although much of the discussion of Proposition 187 centered on the denial of social services, as, if not more important, were the reporting provisions that effectively established a state scheme to detect, report, and effect the removal of undocumented migrants (Villagra, 2006, p. 299). The deterrent effect of these provisions was not lost on U.S. District Court Judge Mariana R. Pfaelzer who noted in the *League of United Latin American Citizens (LULAC) v. Wilson* (1995) that:

The classification, notification and cooperation/reporting provisions taken together constitute a regulatory scheme designed to deter illegal aliens from entering or remaining in the United States by (1) detecting those persons present in the United States in violation of either state-created criteria for lawful immigration status or federal immigration laws; (2) notifying those persons of their purported unlawful status and ordering them to obtain legal status or leave the country; and (3) maintaining a system of reporting and cooperation between state and federal agencies to effect the removal of those persons. (p.9-10)

It is precisely because of this deterrent effect that the reporting provisions of Proposition 187 were deemed unconstitutional. Insofar as these provisions constituted a regulatory scheme they represented a usurpation of federal authority as "the authority to regulate immigration belongs exclusively to the federal government and state agencies are not permitted to assume that authority" (*LULAC v. Wilson*, p. 86). The potential deterrent effect of the regulatory scheme advanced by Proposition 187 was echoed in the Welfare Reform Act and the Immigration Reform Act passed in 1996. Both contained

sections which ostensibly enabled states to carry out the reporting provisions of Proposition 187 without usurping the authority of the federal government by enacting their own regulatory schemes.

The reporting provisions of the Welfare Reform Act and the Immigration Reform Act were designed to counter so-called "sanctuary" provisions (Su, 2008, p. 1636) which prohibit municipal employees, including law enforcement officials from reporting to federal officials the presence of illegals in their jurisdiction (Seghetti et al, 2006, p. 26). Section 1644 of the Welfare Reform Act and section 1373 of the Immigration Reform Act voided "federal, state and local laws from prohibiting state and local agencies from exchanging information with the Immigration and Naturalization Service" (Fee, 1998, p. 94). As they did with Proposition 187, opponents challenged the constitutionality of these new reporting provision shortly after their implementation. Unlike the previous ruling on Proposition 187, the Second Circuit in *City of New York v. United States* (1999) dismissed claims that the reporting provisions constituted violations of the Tenth Amendment. In its ruling the Second Circuit determined that neither section compelled state and local workers to disclose information to federal officials. The provisions merely prohibited state and local officials from "restricting the voluntary exchange of immigration information with the INS," the reporting provisions of Welfare Reform Act and Immigration Reform Act merely prevented state and local agencies from enacting measures of "passive resistance" designed to frustrate federal programs (*City of New York v. United States*, p. 36). Although neither section 1644 of the Welfare Reform Act nor section 1373 compelled state and local officials and agencies to report an individual's immigration status, as had been the case with Proposition 187, both represented a concern with deterring migrants from entering the United States rather than seeking to apprehend them. By enabling the reporting of 'illegal aliens' who used state and local social services, these measures sought to create an "environment" so "hostile" to 'illegal aliens'



that they would be discouraged from, and thereby deterred from, entering the United States (Fee, p. 107).

In addition to eliminating the social service magnet, politicians and bureaucrats during 1990s attempted to make the U.S. even more inhospitable to undocumented migrants by making it more difficult for them to find jobs in the United States. In 1986 Congress attempted to eliminate the employment by passing the Immigration Reform and Control Act (IRCA) which made, for the first time, the hiring of illegal immigrants a crime (*Accepting the Immigration Challenge*, 1994). Still, the IRCA failed to have any appreciable impact on the number of migrants entering the United States (Gibek & Shteierman, 2007, p. 236). This failure might lead one to conclude that efforts to eliminate the employment magnet were destined to fail. However, immigration reform advocates countered that the failure of the IRCA simply resulted from a lack of enforcement (*Accepting the Immigration Challenge*). Even if the sanctions of the IRCA had limitations, immigration reform advocates during the 1990s contended that "reducing the employment magnet [was] the linchpin of a comprehensive strategy to reduce illegal immigration" (U.S. Commission on Immigration Reform, 1994, p. xii). By this logic any attempt to deter illegal immigration by enacting measures to create a hostile environment would fail so long as illegal immigrants were able to find employment in the United States. Thus policy makers during the 1990s claimed they would enforce the provisions of the IRCA while exploring additional measures, such as the creation of a national work registry (*Accepting the Immigration Challenge*, p. 7). The goal was to make it so difficult for undocumented migrants to find jobs in the United States such that they would decide it was not worth entering the United States.

The emphasis on deterrence even influenced those policy initiatives designed to address the perceived profound cultural and economic changes that uncontrolled immigration during the 1990s threatened to usher in (Gutiérrez, 1995). Emblematic of these efforts were proposals to declare English the "official language" of the United

States. Even though *official English* is often characterized as *English-only*, official English legislation focuses on making English the "official" language of government as opposed to "only" language that can be spoken in the United States. The key difference in the minds of those advocating official English legislation is that official English only requires all government business be conducted in English. The justification for said legislation rests on the idea that by enabling individuals to conduct business with the federal government in languages other than English the federal government contributes to the conditions undermining what is perceived to be a core, unified, American culture.

On its face, then, official English legislation seems only to be concerned with dealing with the cultural effects of immigration more generally rather than serving as a measure to stem illegal immigration. Yet while in principle, justifications for official English rest on preserving cultural unity, "official English" legislation also serves a deterrent function. That is, in many ways it function like measures designed to eliminate the incentives or magnets that are believed to be a cause of illegal immigration. The most obvious is that it deters particular language practices, however, just as important is its ability to function alongside other immigration policies whose intent is to create a hostile environment for illegal aliens.

Since the late 1800s attempts to declare English the "only" or "official" language of the United States have coincided with efforts to reform U.S. immigration policy (Schildkraut, 2005). Since the 1990s official language legislation has often been tethered to policies specifically designed to deny services to illegal aliens. The connection of official English legislation to more explicit measures designed to curb illegal immigration occurs far too often for it just to be a coincidence. Just recently for example the state of Arizona (Dorell, 2006, p. A4) and the city of Hazelton, Pennsylvania (Faiola, 2007, p. A1) considered and implemented official English policies as part of other measures designed to deter illegal immigration. Given this connection, official English legislation does more than deter any immigrant from conducting business with

the government in languages other than English. By ensuring that no one can use government services without being able to speak English, official English legislation creates another disincentive for those entering the United States to take advantage of social services. Even if states and localities could not prohibit agencies from offering social services to illegal immigrants, official English policies could make it more difficult for them to receive those services as any business with the government would need to be conducted in English. Insofar as official English legislation is often a part of measures designed to create a hostile environment for illegal aliens, it seems apparent that whether intentional or not, official language legislation produces a deterrent effect by adding another reason why illegal immigrants would find it increasingly difficult to find a better life in the United States. Thus, as with the change in border enforcement strategy and the emphasis on eliminating the perceived magnets that enticed migrants across the border, a logic of deterrence anchored language policies designed to deal with the perceived cultural threats posed by immigration.

### **The Effects of Late Twentieth Century U.S. Immigration Policy**

To be sure I am not the first to note the shift to deterrence as the linchpin of U.S. immigration policy during the 1990s. Various scholarly accounts detail the transformations in U.S. border enforcement strategy (Andreas, 2000; Inda, 2006; Nevins 2002) and discussions of the constitutionality of Proposition 187, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 highlight how during the 1990s policy makers sought to deter migrants from entering the United States by creating what amounted to a hostile environment (Arnold, 1997; Fee 1998; Hawes 1996; Johnson 2002). It is curious, then, that despite deterrence serving as the principal rationale for immigration reforms during the 1990s, the expansive literature on late twentieth century immigration policy fails to take seriously the concept of deterrence when attending to the

political implications of the policies enacted during the 1990s. This is because the emphasis on deterrence is typically relegated to nothing more than context that anchors particular scholarly concerns. Addressing this deficiency are critical analyses of U.S. immigration policy that attend to the "symbolic influence" of U.S. immigration policy (Hasian & Delgado, 1998, p 248). This genre of works proceeds either by elucidating the role of policy discourses in the "social construction of borders and national identity" (Chang & Aoki, 1998, p. 1398) or by theorizing these discourses as "practices of statecraft" (Doty, 1996a, p. 172). The former approach, based on the methods of cultural studies, which constitutes the bulk of the literature on late twentieth century immigration discourses, places the immigrant at the center of analysis. It elucidates the ways in which demonization of undocumented migrants in anti-immigration discourses function to produce and reproduce conceptions of immigrants, racial and national identities, and borders (Carillo Rowe, 2004; Chavez, 2001; Hasian & Delgado, 1998; Ono & Sloop, 2002). The latter approach, rather than placing the immigrant at the center of analysis, takes the nation state as a "pivotal object of inquiry." It emphasizes the ways in which sovereignty claims contribute to national identity formation by "normalizing a particular form of boundary-making as instrumental to contemporary statecraft" (Demo, 2005, p. 292-3).

These two seemingly opposed approaches have a premise in common. Whether one takes the immigrant or the nation-state as the object of inquiry, questions of identity (immigrant, racial, and national) constitute the principal justification for interrogating late twentieth century immigration politics in the United States. For instance Chavez (2001) predicated his inquiry into visual and textual symbols of U.S. magazine covers from 1965 to 1999 on the subject of immigration on the idea that they constitute a crucial site for the discursive constitution of the immigrant as well as the nation (p. 4). Similarly Ono and Sloop's (2002) analysis of the dominant and vernacular discourses surrounding California's Proposition 187 aims to get readers to reflect on the ways in which

immigration and immigrants are called into being by national discourses. The goal of their project is to generate interest "in constructing alternative subject positions" (p. 25). Nevins (2002), who focuses attention on the discursive dimensions of U.S. boundary making in his study of Operation Gatekeeper, contends that the proper context for studying the discursive production of boundaries is "through what Anssi Paasi sees as the 'continual process of national building . . . the process of creating viable degrees of unity, adaptation and a sense of national identity among the people'"(p. 155). Even Demo (2005), whose analysis of videos produced by the INS explores how these texts function to institutionalize particular ways of seeing and speaking about immigration, nonetheless characterizes her study as a "study of national identity formation" (p. 306). This scholarship illustrates how much of the literature concerning the symbolic influence of late twentieth century immigration politics is anchored by the idea that immigration discourses constitute an important site for the production of identities and subjectivities.

While this scholarship offers a number of important contributions, the commitment to identity has resulted in a critical oversight. For while immigration policies may serve as an important site for the production of identities and subjectivities, that is not their *raison d'être*. Rather than being directed toward constituting and stabilizing identities and subjectivities (who people are), immigration policies are concerned with directing the activity of populations--or what people actually do (Foucault, 2007, p. 322). Put another way, while the deterrence strategy operationalized through border enforcement initiatives like Operations Hold the Line and Gatekeeper and regulatory schemes like Personal Responsibility and Work Opportunity Reconciliation Act of 1996 the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 did function as critical sites of identity formation, the principal focus of border control is to influence the mobility of populations.

Let us look more carefully at these discourses. Discussions of U.S. immigration policy are rife with references to mobility and circulation. Border enforcement is

described as the effort to "restrict territorial access" (Andreas, 2003b, p. 78) and is thus characterized as serving an essential "gate-keeping function" (LeMay, 2006, p.6). Migration is often described as a "flow" which is shaped by immigration policy (Adamson, 2006; Doty, 1996a). Connelly (2006) highlights the centrality of mobility to immigration policy by noting that "efforts to shape the quantity, 'quality' and mobility of populations constitute the quintessential state-building project" (p. 198). At first glance this characterization may seem similar to the claims advanced by scholars whose principal focus is on the construction of national identity. For instance Nevins (2002) describes statecraft as the "variety of practices the state implements to distinguish citizens from aliens"(p. 161). While both Connelly and Nevins challenge statist or realist approaches to the state which conceive of the state as a "given, unitary entity" (Doty, 1996b, p. 121), Nevins contends that statecraft is an ontological practice that is concerned with determining who people are. Connelly's (1996) emphasis on the regulation of mobility, eschews questions of identity, to consider how migration policy was deployed as part of a larger project of population control designed to shape how people "disposed of their own bodies" (p. 202).

This is not to say that scholars have ignored the question of mobility altogether in assessing the implications of late twentieth century immigration policy. For instance, Andreas (2003b) contends that the shift in border enforcement strategy epitomized by Operation Gatekeeper and Operation Hold the Line represents a shift in the interests of the nation-state from traditional military concerns, in which the goal is preventing military incursions by other states, to law enforcement concerns, in which the goal is selectively denying territorial access (p. 78-80). It is not that law enforcement concerns have suddenly emerged in the contemporary moment to supplant military conceptions of the border, rather that immigration policy since the end of the Cold War has been anchored in policing as opposed to the defense of territorial borders. (Andreas, 2003b; Snyder, 2000).

While Andreas' research illustrates how contemporary border enforcement strategy reflects a concern over the mobility of populations, it stops short of considering how policies implicated in immigration control function to govern, in the sense of shaping and managing the conduct of, populations both inside and outside the territorial boundaries of the United States. This is due to a modern conception of police in which police is simply "the instrument by which one prevents the occurrence of certain disorders" (Foucault, 2007, p. 354). This is most evident when Andreas concludes that border controls along the U.S.-Mexico boundary are "less about military defense . . . and more about the policing of CTAs [clandestine transnational actors], with terrorists, drug traffickers, undocumented migrants, and smugglers leading the list of state targets" (p. 107). As such, policing is conceptualized by Andreas as a practice oriented toward the prevention of disorder and illegality. Immigration policy merely exists as a mechanism that imposes "constraints upon" particular bodies (Rose & Miller, 1992, p. 174). But what if we are to take seriously Connelly's (1996) suggestion that through migration policy the state involves itself in shaping the mobility of a population? Can the emphasis on policing within border enforcement strategy be understood not just as an attempt to eliminate what is taken to be a particular disorder (illegal immigration), but also as an attempt to manage and shape the movement of populations? Recent scholarship of the function of police within liberal democratic states points to such a possibility (Dubber & Valverde, 2008).

Anchored in Foucault's concept of governmentality, scholars from a variety of disciplines have sought to understand police power as a "modern technology of governance" oriented toward "maximizing the public welfare . . . as opposed to, say, the power to do justice" (Dubber & Valverde, 2008, p. ix). Of particular importance is Levi's (2008) analysis of anti-crime ordinances implemented by the city of Chicago in the early 1990s. Designed to eliminate the loitering of gang members which was characterized as a method for intimidating local residents, Levi highlights how these ordinances

functioned to do more than eliminate a particular disorder. Analyzing the discourses associated with the ordinances, Levi unpacks a conception of police that takes policing to be part of "an array of techniques for governing" (p. 181). Put another way Levi considers how the Chicago anti-crime ordinances sought to influence the capacities and activities of population in ways other than the imposition of coercive force. This is epitomized by his claim that these ordinances "enjoyed little success; however, they did manage to keep people from becoming idle" (Levi, p. 189).

If Andreas is correct, that late twentieth century immigration policy reflects a shift from traditional military concerns to law enforcement concerns, Levi's analysis of the Chicago anti-crime ordinances points to the value of thinking about those policies through the lens of governmentality. The most significant objection to the prevention through deterrence strategy is that it failed to limit the number of migrants entering the United States. Indeed, even supporters of the strategy note that the new policies enacted in the middle of the 1990s did little to reduce the total number of migrants who crossed the U.S.-Mexico border. Yet like the ordinances in Chicago, the prevention through deterrence strategy did influence and regulate the mobility of migrants by affecting where and how they crossed the border (Andreas, 2000; Nevins 2002). Supporters of the strategy claimed this is what it was intended to do all along. As such the strategy can be seen as part of a "tradition" of police as a method of regulating mobility rather eliminating disorder directly (Levi, 2008). Policies implicated in immigration control are more than just mechanisms to "help states stay sovereign" (Shanks, 2001, p. 1), they constitute a critical apparatus in the management of mobility and the governing of conduct. Yet it a critical question remains: What characterizes a governmentality approach to immigration policy? It is to this question that I now turn.

### **Governing the State**

In this project I am interested in thinking about how debates over policies developed by state institutions, particularly the policy initiatives designed to shift U.S.



immigration strategy from apprehension to deterrence, function not to determine the best way to exercise state power but as part of a larger web of practices to govern the conduct of a population. This approach then takes deterrence not to be the *only* desired end of late twentieth century U.S. immigration policy. Instead I consider how debates over policies implicated in immigration control recruit the state, through the regulation of borders, in the larger projects of government understood as the political management of populations. This interest in the managing, shaping, and regulating of populations owes to a body of literature informed by Foucault's work on governmentality.

During his 1977-1978 lecture series at the Collège de France, entitled *Security, Territory, Population*, Michel Foucault introduced the idea of governmentality so that scholars would be able to "tackle the problem of the state and population" (p. 116). While traditional political theory and philosophy privileged the state as a coherent, stable, autonomous terminus of power that either needed to be attacked or occupied (Foucault, 1991, p. 103), the concept of governmentality conceived of "the state" as a historical "coagulation of practices" (Valverde, 2008, p. 15) or ensemble of relations (Jessop 2007) that were a part of a much larger set of relations and practices oriented to shaping the conduct and activity of a population. The "problem of the state" was not how to contain or occupy its power, but rather to ascertain the ways in which the state, as an assemblage of practices, is oriented not toward imposing or laying down of the law but rather toward the "right manner of disposing" of men and things—the arrangement of "things in such a way that, through a certain number of means, such and such ends may be achieved" (Foucault, 1991, p. 95). Governmentality concerns not the power of the state *per se*, rather it describes a general approach to power in which "assemblages of techniques, strategies, programs and technologies," of which the state "exists" as one among many, try to affect the activity and conduct of a population (Barry, Osborne, & Rose, 1996, p. 4).

While Foucault may have coined the term, there is no single methodological or approach that constitutes the study of governmentality. In their survey of the reception of Foucault's work on governmentality in the English speaking world, Rose, O'Malley, & Valverde (2006) conclude that over the past thirty years, "the language and approach of governmentality has dispersed, hybridized with other approaches, and gone off in many different ways" (p. 100). Rather than sharing a single methodological commitment, studies of governmentality share a certain "ethos of investigation," a way of asking questions that signals a concern for understanding the relations of force that shape our present (Miller & Rose, 2008, p. 5). Studies of governmentality eschew grand theories or unitary conceptions of the state in favor of empirical studies of the techniques, programs, strategies and technologies that seek to guide, shape, and direct the conduct of others. In short, they reflect an interest in government understood, through Foucault's oft cited maxim, as the 'conduct of conduct' (Rose, 1999, p. 3). What is significant about this approach is:

. . . its insistence that to understand how we are governed in the present, individually and collectively, in our homes, workplaces, schools, and hospitals, in our towns, regions, and nations, and by our national and transnational governing bodies requires use to turn away from grand theory, the state, globalization, reflexive individualization, and the like. Instead, we need to investigate . . . the shaping of governable domains and governable persons . . . Every practice for the conduct of conduct involves authorities, aspirations, programmatic thinking, the invention or the redeployment of techniques and technologies. (Rose, O'Malley, & Valverde, 2006, p. 101)

It is this "ethos of investigation" that animates this project.

While much of the interest of scholars of governmentality centers on the mundane mechanisms (techniques of notation, procedures of examination, invention of devices such as surveys), a governmentality approach does not preclude an interest in the state. Although governmentality rejects a unified theory of the state, it does posit the state as a "center" (an assemblage of technologies, agents and agencies) that makes governing possible (Miller & Rose, 2008). The state therefore is not a source of power to be

smashed but one center among others that is articulated into activities of government. As such this project takes congressional debates over policy, and policies implicated in immigration control in particular, to be sites where particular strategies, programs, techniques, and technologies are joined to an existing assemblage of technologies, agents and agencies in order to manage, shape, and direct the conduct of migrants, as well as citizens. Thus it takes legislation to be a powerful resource for transforming particular governing designs into "mechanisms that establish, constrain, or empower certain agents or entities" to regulate the conduct of particular populations (Rose & Miller, 1992, p. 190). For example, the reporting provisions of the Immigration Reform Act empowered municipal employees to assist in the Immigration and Naturalization Service in redirecting the movements of undocumented migrants.

Just as important as the legislation, if not more important, are the debates themselves. Indeed, although scholars of governmentality give little, if any, attention to rhetoric, they do note that strategic uses of discourse play a critical role in exercising the will to govern. Thus Rose and Miller (1992) argue that the shaping of conduct depends upon "countless . . . local tactics of education, persuasion, inducement, management, incitement, motivation, and encouragement" (p. 175). Likewise Mitchell Dean (1999) contends that the problem of government is not one of identity but of "identification" in which regimes of government "elicit, promote, foster and attribute various capacities, qualities and statuses to particular agents such that these agents come to experience themselves through these capacities" (p. 32). Crucially Miller and Rose (2008) note the importance of language in rendering reality thinkable in particular terms such that it is amenable to certain kinds of action. Through particular "discursive mechanisms . . . the domain to be governed" becomes represented as an "intelligible field with its own limits and characteristic" such that is able to have certain things done to it (Miller & Rose, 2008, p. 31). Anti-immigration legislation then depends upon the discursive mechanisms needed to render immigration thinkable in particular ways. Thus the language of

immigration policy does not simply reflect or describe an extant set of conditions, places, and people, but rather functions to make those things visible such that they can be governed. It is thus my contention that the debates over policies implicated in immigration control are central enabling things like immigration and the border to become thinkable in particular ways so that the conduct of migrants as well as citizens could be shaped, managed, and directed in ways codified by particular pieces of legislation.

### **Rhetoric and the Art of Government**

Yet it seems that it is not language per se that produces this visibility effect, but it is its deployment through a set of practices. Indeed as Miller and Rose (2008) note, ascertaining how a particular realm is rendered knowable, calculable, and administrable via a particular discourse entails attending to "technical devices" of particular discourse practices (p. 30). While Rose and Miller only identify writing, listing, numbering and computing among these devices, Greene's (1998) reconceptualization of a materialist theory of rhetoric, posits rhetoric as the technical device through which a language is able to generate a visibility effect. Thus in this dissertation I hold that policy debates are more than places where politicians and experts deliberate about the merits of particular courses of action. Rather they are sites where, through particular practices, attempts are made to stabilize domains and populations so that they may be governed. Thinking about how policy debates facilitate government entails a refusal to measure the ability of authorities to govern a population solely by the enactment of a piece of legislation. It is my contention that policy debates themselves can constitute critical avenues for governing a population no matter the legislative outcome. That is, the discursive practices which compose any given debate, disagreement, or discussion on policy can elevate techniques, strategies, programs and technologies function to shape, direct, and manage the conduct of a population that are not part of the legislation under

consideration. This idea owes directly to Greene's (1999) articulation of public controversy as a "constitutive force in the production of the will to govern" (p. 8).

Noting the import of Goodnight's (1991) revitalization of controversy as part of rhetoric's disciplinary lexicon, Greene (1999) posits that a vibrant notion of public controversy enables rhetorical scholars to account for the role of rhetoric in the governing of a domain. Defining rhetoric as "a particular cultural practice implicated in the act of deliberation," Greene accepts controversy as place of sustained rhetorical engagement in which the desires of government are manifested. According to Greene, government requires controversy, insofar as a public controversy constitutes moments where commitment to the will to govern are reproduced through arguments that stake claims about how reality should be governed, managed, and/or programmed (p. 8). Through controversy governing institutions and authorities are able to affect the governing managing, and/or programming of reality. One side "wins," even if temporarily, the issue in dispute is resolved, even if for a brief moment, only potentially to be taken up again. Yet it is in that resolution where a particular rationality becomes the organizing ideal through which reality is apprehended and conduct governed. The conceptualization of controversy as essential to the art of government, however, is that it recognizes that it is not only the end of a controversy that can affect the will to govern, but that the mere existence of a public controversy affirms particular governing designs. Of rhetorical practices, Greene notes within a controversy they can confront or contribute to the continuation of a particular will to govern (p. 7). What is important is Greene does not posit that the continuation of that will to govern depends upon resolution of a public controversy. On the contrary, its effectivity depends on sustaining a controversy and in some sense not succeeding or failing.

Although Greene is not explicit on this regard one only need return to the example Goodnight (1991) borrows from Ehninger and Brockriede to expand the concept of oppositional argument. Goodnight argues that oppositional argument, while typically

thought of as marking a disagreement over particular points at issue, also includes disagreements over the "the speech acts that implicitly define the parameters of argument context and grounds (p. 5). Ehninger and Brockriede posit two possible responses that can be offered by an individual at a bus stop who finds himself confronted by another individual claiming he has taken his spot in the shade; He can either affirm the claim or deny it. Goodnight posits a third alternative in which the individual responds by raising an objection to having to argue about his rights to the shade when the time and place of the encounter render such an exchange inappropriate. While Goodnight's appropriation of the story effectively highlights his claims concerning the expansion of the idea of oppositional argument, it nonetheless presupposes some level of agreement between the interlocutors. That is, while the individuals at the bus stop have a point of a disagreement, they nonetheless share a dominant rationale that governs the disagreement. In both the original story and Goodnight's appropriation of the story, both interlocutors are governed by the norms of rational public deliberation. Even if we view the response Goodnight attributes of the person in the shade ("You talking to me?!") as confrontational rather than an opening gambit in a deliberative exchange, the remainder of the exchange is governed by the norms of rational deliberative argument. It is an example of what Ono and Sloop (1999), building on the work of Lyotard, term a "commensurable controversy," a controversy in which shared logics and institutions are used to resolve a disagreement between two or more positions. Whether or not the individuals reach an agreement about who has the right to the shade or whether or not they should be arguing about who has the right to the shade, the disagreement serves to reaffirm particular governing rationalities--in this case that the disagreement should be resolved by resorting the practice of rational reason giving. And while the resolution of a public controversy, just as the enactment of legislation, can serve as a powerful resource for rendering reality governable, so too does its very existence.

### **Project Description**

Let me clarify one point, although my inquiry takes its cue from scholarship on the theory of controversy, I do not characterize the cases which make up this project as controversies. As this project shares Demo's (2005) interest in giving greater attention to discourses produced by the "state," the concept of public controversy is far too expansive for a project with an institutional focus. Controversies escape the confines of any one particular institution. What I do take, however, from the literature on controversy is the ethos of investigation that anchors and animates Greene's conception of public controversy. An ethos of investigation, which is emblematic of studies of governmentality more generally, that focuses on how rhetorical practices enable a population to be governed, managed, and/or programmed. In doing so it recognizes that the state is not a universal autonomous source of power to be prized or dismantled (Jessop, 2007). I take the state to be a historical assemblage of practices that while institutionalized are nonetheless not unique to the "state," as they are found in other institutions (Valverde, 2008, p. 17). As Pasquino (1991) notes, the state signifies that "the site or source of power, the one great adversary to be smashed but rather one instrument among others, and one modality of 'government'" (p. 117). While this enables one to account for political rule without reducing it to the actions of an autonomous entity, the "state" is nonetheless is "articulated into the activity of government" through debates over particular pieces of legislation (Rose and Miller, 1992, p. 177). It is this articulation, manifested through the rhetorical practices that make up policy debates in late twentieth century concerning immigration reform and how it serves to shape "governable domains and governable persons" which this project takes as its central focus (Rose, O' Malley, & Valverde, 2006, p. 101).

Thus, this project seeks to undertake what Dean (2005) describes as an analytics of government, more precisely an analytics of the rhetoric of government. Dean describes an analytics of government as an examination of the "conditions under which

regimes of practices come into being, are maintained and are transformed" (p. 21). In attending to the rhetorical practices that make up debates over public policy it pays particular attention to the role of suasive discourse in deliberative exchanges in making reality and persons thinkable and governable through any number of other governing technologies including the production other suasive practices aimed at the management of conduct. The purpose of this inquiry is not to further discussions about the state, to advance (in either sense) a particular theory of rhetoric, or to advance a methodology for the study of public policy. It is, rather, to discern to how we are governed at least in part through debates over late twentieth century immigration policy so that we can begin to consider how things might be otherwise.

Part of this approach entails seeing the shift to a deterrence strategy not as a strategy designed to deny the movement of a population--to prevent the entry of so-called illegal immigrants into the United States—rather I contend that the shift to deterrence constituted an attempt by governing institutions to regulate mobility not by preventing it but by governing it. While on face the deterrence strategy represented an attempt to prohibit the movement of a population, this strategy functioned not by impeding the movement of bodies along the border but rather by "channeling the flow and activity" (Levi, 2008, p. 186) of both populations along the U.S.-Mexico border and within the United States. The shift from a rationale of apprehension to one of deterrence, signified a shift in the institutional logic under which the local, state, and federal governments sought to "guide the conduct of others" (Inda, 2006, p. 115)--not just the "others" seeking to enter the United States, but those on whose behalf these institutions operate--citizens of the United States of America. It is the contention of this project that the discourse of deterrence that subtends policy debates over particular late twentieth century immigration politics was central to this effort to regulate the activity and circulations of populations. While particular policy initiatives such as Operation Gatekeeper sought to affect behavior through the deployment of techniques and technologies (search lights, ground sensors,



fencing), the talk about deterrence in debates over particular initiatives functioned to make visible a population so that its conduct can be shaped and regulated.

Thus, in contrast to the vast majority of scholarship that begins from an interest in the ways in which the "symbolic influences" of late twentieth century immigration discourses constitute identities and subjectivities (immigrant, racial, and or national), this project demonstrates that the symbolic influence of immigration policy serves as a critical technology (in the Foucauldian sense) regulating the mobility and circulation of bodies across and within the territorial boundaries of the United States. In particular I consider congressional hearings, debates on the floor of the Congress, and statements made by members of Congress, as strategies and maneuvers that function to shape the beliefs and conduct of others in particular directions (Rose & Miller, 1992, p. 175). Of particular concern is not the details of any proposed policy, although as a particular course of action designed to effect the behavior of certain populations a particular initiative does influence the nature of the overall policy debate, rather my interest is in how the debate itself functions to shape the conduct of populations even if the policy initiative is not implemented or does not achieve its stated goals. In doing so this project seeks to extend the work begun by those such as Demo (2005) on the symbolic effects of "state" discourses. In order to proceed I have divided the dissertation into four case studies.

Chapter two examines the debates over a shift in border enforcement strategy from one based on apprehension to one based on deterrence. Focusing on a series of congressional hearings held to assess the success of the strategic shift, I argue that the prevention through deterrence strategy was designed to do more than prevent foreign nationals from entering the United States. Analyzing the testimonies of the principal architects of the enhanced border policing practices that constituted the foundation of the new approach to immigration enforcement, as well as the resulting exchanges with members of Congress, I demonstrate how a concern for managing the conduct of foreign nationals was central to the conception of the new strategy. In doing so I contend that the

strategy is predicted on a conception of police that takes enhanced border policing as part of an array of practices for shaping, regulating, and directing the conduct of populations both within and outside of the United States. My interest is in how this emphasis on conduct enabled those charged with "gaining control of the border" to assert that the strategy had improved conditions for the circulation of goods and people within metropolitan areas along the U.S.-Mexico border while also acknowledging that this improvement resulted not from preventing migrants from entering the United States but from shifting where and how they crossed the border. Ultimately it is my contention that far from "closing the border," enhanced border policing functions to *manage* the border in a manner that reflects neoliberal mentalities of rule. Thus the prevention through deterrence strategy represents an attempt to remove an impediment to local markets while still creating the conditions for American businesses to have access to a significant supply of cheap labor.

Chapter three examines the debate over the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Immigration Reform Act), focusing on the provisions designed to eliminate the conditions (jobs and access to social services) that entice foreign nationals to enter the United States. Focusing on the floor debates in the House and the Senate, I argue that in these debates there emerges a discourse of self-care that functions to position most undocumented migrants (those seeking jobs) as ideal neoliberal subjects while others (those who use social services) are positioned as deformed neoliberal subjects. Cast as simply wanting to come to the United States to make a better life, undocumented migrants are characterized as rational, calculating individuals who seek to optimize their quality of life. Their decision to enter the United States is merely a product of market based decision making; there is a demand for their labor, they need a job, they enter the United States. However, by "cutting in line," they fail to act responsibly and as such do not deserve to enter the United States. Yet their job

seeking behavior nonetheless becomes something to be idealized, something to which all those who are authorized to be in the United States should aspire to.

Cast as abusers of U.S. public assistance programs, undocumented migrants are figured as neoliberal subjects who have become deformed by America's dependency culture. Their abuse of social services is a larger reflection on the deforming effects of the welfare state which entices Americans and legal immigrants to become dependent on the state rather than assume responsibility for their social ills (poverty, unemployment, etc.). Once again, I argue, undocumented migrants become the subjects against which Americans and legal immigrants can be measured. Yet in this instance their "deformity" functions as a warrant for those authorized in the United States to assume responsibility for their social ills. As either worker or abuser of social services, undocumented migrants function to extend logics of self-care central to the dismantling of the social welfare state.

Chapter four examines debates over official English legislation that occurred during the 104th Congress (1995-1996). Although not typically thought of as an immigration policy, policy makers and bureaucrats have routinely implicated official English legislation in the controlling of immigration. In this chapter I contend that the debates over official English are more than a nativist response designed to protect a core American culture. Examining congressional hearings and the floor debate over Language of Government Act and H.R. 123 the Bill Emerson English Language Empowerment Act, I note how English itself is positioned as a mechanism, or cultural technology, for regulating the conduct of political expression. Anchored by the idea that English is central to particular behaviors of style associated with theories of deliberative democracy, I argue that the debates themselves function to elevate the regulative function of English no matter the outcome of any particular piece of legislation. Drawing on scholarship that notes the ways in which the norms and practices of deliberative democracy function to marginalize minorities and women, I conclude that this positioning of English serves to severely restrict what counts as legitimate forms of political behavior.

Chapter five concludes my investigation of policies implicated in controlling immigration in the United States by considering post 9/11 immigration policy within the legislative history of the prevention through deterrence strategy. To be sure, immigration policy since 9/11 has been conceptualized through the lens of national security. However, I contend that 9/11 was far from a defining moment that marked the birth of a new border regime. In this chapter I examine the legislative efforts of the 109th Congress (2005-2006) to overhaul the nation's immigration laws. I argue that while the emphasis on national security has led to the intensification of efforts to deter undocumented migrants from entering the United States, post-9/11 immigration policy, to this point, has been built on the conceptualization of immigration policy as a mechanism for shaping, managing, and directing the conduct of populations within and outside the United States established by previous anti-immigration legislation. The legislative efforts of the 109th Congress are particularly useful in this regard as they included provisions to: augment enhanced border policing practices; eliminate the employment magnet; and declare English the "official" language of the United States. The chapter ends by considering future directions for research.

CHAPTER II  
NOT IN MY BORDER TOWN: ON MIGRATION, POLICING, AND  
DETERRENCE U.S. IMMIGRATION POLICY

Geopolitics is alive and well, but is increasingly based on policing matters.  
Peter Andreas, "Redrawing the Line"

Police must ensure the state's splendor.

Michel Foucault, *Security Territory, Population*

In the Fall of 1995, the same time the Senate Judiciary Committee conducted hearings on the shootings at Ruby Ridge, the Senate Select Committee on Intelligence began a series of hearings to explore how the Intelligence Community should respond to what Chairman of the committee Arlen Specter described as "the demands of the post-cold war [*sic*] world" (*Renewal and Reform*, 1995, p. 1). Of particular interest to the committee was the "evolving" relationship between intelligence and law enforcement communities. With the end of the Cold War, the U.S. national security paradigm had shifted from one concerned with warfare between states to one concerned with crime (Andreas, 2003b; Andreas & Price, 2001). The prioritization of policing in the U.S. national security agenda was evidenced in the testimony of U.S. Deputy Attorney General Jamie Gorelick who told the committee:

The end of the cold war [*sic*] has changed the nature of the threats to our national security. No longer are national security risks exclusively or predominantly military in nature. Transnational phenomena such as terrorism, narcotics trafficking, alien smuggling, and the smuggling of nuclear material have been recognized to have profound security implications for American policy. As a result the Intelligence Community has increasingly focused its attention on such matters. (*Renewal and Reform*, p. 61)

Rather than eroding the importance of national security, the end of the Cold War merely served as the condition of possibility for the emergence of a new security paradigm that emphasized the importance of territorial policing. In the post-Cold War world, policing, in particular territorial policing, emerged as the pre-eminent state activity. Nowhere was this more apparent than the changes in U.S. border enforcement strategy along the U.S.-Mexico border during the 1990s as the U.S.-Mexico border became the site of more

"intensive and extensive border controls" designed to prevent undocumented migrants from entering the United States (Andreas, 2003b, p. 85).

The changes in U.S. immigration policy during the 1990s have been the subject of a number of scholarly inquiries across the humanities and social sciences. Of particular importance to this chapter is scholarship addressing the transformation of border enforcement strategy and practices along the U.S.-Mexico border during the 1990s. This scholarship focuses on: the interplay of national security concerns and immigration policy (Adamson, 2006; Andreas & Price, 2001; LeMay, 2006); the ways in which changes in border enforcement strategies reflect the transformation of the state under particular security and economic conditions (Andreas 1998, 2003b), analyses of the effects of territorial policing initiatives along the U.S.-Mexico border (Cornelius 2001, 2004; Eschbach, Hagan, Rodriguez, Hernández-León, & Bailey, 1999; Hing, 2001; Nevins, 2000, 2002; Spener, 2000), and the material and symbolic appeals of the escalation of practice and politics of border policing along the U.S.-Mexico Border (Andreas, 1998, 2000; Demo, 2005; Hing, 2004). These studies afford greater insight into the role of territorial policing in the legitimization of the nation-state amid global economic transformations that seemingly necessitate the erosion rather than reinforcement of territorial boundaries. In addition, these studies help to understand why, despite mounting evidence, the enhanced border enforcement policies undertaken during the 1990s did little to discourage undocumented migrants from crossing the U.S.-Mexico border; policy makers continued to advocate for the expansion and escalation of the famed deterrent strategy.

In spite of these contributions, methodological commitments have limited how scholars address the symbolic and material effects of the enhanced border enforcement strategies undertaken during the 1990s. These commitments include a conception of police that associates police not with the governing of conduct, but with "the elimination of disorder" (Foucault, 2007, p. 354) and an unreconstructed notion of the symbolic, both

of which foreclose the possibility of understanding how the enhanced border enforcement policies function to manage the conduct of a population even as they failed to eliminate the disorder of undocumented crossings of the U.S.-Mexico border.

Rather than reducing border policing to an essential function of the state, in this chapter I explore how, through congressional hearings dedicated to the expansion and enhancement of territorial policing along the U.S.-Mexico border, the state has been articulated into defending a certain conception of government (Rose & Miller, 1992, p. 177). Specifically, this chapter argues that through the hearings on enhanced border policing, the management of cross border population flows becomes positioned as critical to ensure the effectivity of neoliberal forms of government. In examining congressional hearings on the enhanced border policing, I seek to augment current scholarship on the policing measures of the 1990s by emphasizing the role of the symbolic in the effectuation of governmental ambitions (Rose & Miller, 1992, p. 175). Whereas much of the current scholarship posits the symbolic as an effect of other material practices--for example border policing is merely viewed as a game of image management (Andreas, 2000)--the chapter extends the idea that the political discourse on enhanced border policing functions as an "intellectual technology" that "shape[s], normalize[s], and instrumentalize[s] the conduct, thought, decisions and aspirations of others" (Rose & Miller, 2008, p. 32).

I first recount the efforts to expand and intensify the policing of the U.S.-Mexico border after 1993, the moment in time when the concept of prevention through deterrence became the centerpiece of U.S. immigration policy. I then provide a rationale for analyzing the enhanced border policing measures of the 1990s through the concept of "governmentality" by addressing Michel Foucault's (1981, 2007) theorization of police as "the entire art of government" (p. 319). Finally I will turn to a reading of congressional hearings concerning the expansion and intensification of border policing and consider how the hearings function to articulate the state into activities of

government designed to manage the conduct of undocumented migrants and U.S. citizens in accordance with neoliberal mentalities of rule.

### **From Apprehension to Deterrence: Strategic Shift in U.S. Border Enforcement**

On September 11th 2001, the seventh year of an intensive and extensive effort to control the movement of undocumented migrants across the U.S.-Mexico border was coming to a close. The "prevention through deterrence" strategy that governed border control policy under the Clinton and Bush Administrations resulted from efforts at the federal level to devise a strategy to gain control of the border and a new blockade style enforcement approach initiated by INS Sector Chief Silvestre Reyes in the City of El Paso (Cornelius, 2001, p. 662). In 1993 the Clinton Administration commissioned the Sandia National Laboratories, a federally supported facility that characterizes itself as a "national security laboratory," to study new methods to increase border security. Analyzing the nine border sectors that comprise the length of the U.S.-Mexico border, the Sandia Labs recommended that the old apprehension tactics that had constituted the cornerstone of border control policy to that time be abandoned in favor of a visible presence at the border designed to deter entries (*Border Security*, 1995, p. 15). Although the INS did not endorse all the measures advocated by the Sandia Study, the overarching concept of preventing undocumented migrants from crossing the border rather than apprehending them after they crossed the border became the strategic centerpiece for border control policy post-1993.

While the Clinton Administration was considering the recommendations of the Sandia Labs, on the morning of September 19, 1993, the El Paso sector of the U.S. Border Patrol, under the direction of newly appointed Sector Chief Silvestre Reyes, launched a local initiative that became the basis for post-1993 federal border control policy. In what was initially known as Operation Border Blockade (later renamed to Operation Hold the Line to avoid negative connotations associated with "blockade"),



Sector Chief Reyes redeployed 400 of his 650 agents along a two-mile stretch of the border running on a round the clock basis (Bean et al, 1994). Stationing them within easy sight of one another, the goal of the operation was to create a high visibility presence at the border, thereby making it impossible for undocumented migrants to enter the city of El Paso except through legal ports of entry (Spener, 2000). Results of the operation were immediate. The number of undocumented migrants crossing from the city of Juárez into the urbanized areas of El Paso decreased dramatically. Although critics questioned whether the operation had actually decreased the total number of crossings, Operation Hold the Line did at least shift *where* migrants were crossing. Relying on questionable INS apprehension statistics from only fiscal year 1994, Operation Hold the Line became proof that it was possible to deter undocumented migrants from entering the United States (Cornelius, 2001). While not directed by the Sandia study, Operation Hold the Line was heralded as visible example of the strategic shift advocated in the study and became the inspiration for border control policy policies post- 1993 (Spener, 2000). This was not lost on Sector Chief Reyes who, testifying before House Subcommittee on Immigration and Claims crowed, that "what began as a two week test to evaluate a new tactic . . . developed into an integral feature of our comprehensive enforcement strategy" (*Border Security*, 1995, p. 35).

Based on the apparent success of Operation Border Blockade, the federal government initiated an unprecedented expansion of border controls along the U.S.-Mexico border. In February 1994, the U.S. Attorney General announced a five part strategy to enforce the nation's immigration laws with the first priority of deterring undocumented entry into the United States, with particular emphasis on the U.S.-Mexico border (United States General Accounting Office, 1997). This new strategy of deterrence called for the Border Patrol to incrementally increase control of the border in four phases: phase I focused on the San Diego and El Paso sectors; phase II focused on Tucson and the three sectors in south Texas (Del Rio, Laredo, and McAllen); phase III

would increase resources for the three remaining southwest sectors; phase IV was oriented toward the remaining sectors along the rest of the U.S. land border and coastal waterways (United States General Accounting Office, 2001). Unlike previous border control efforts, the new resources were to be concentrated at key segments of the U.S.-Mexico border. Overall, the strategy called for the hiring of thousands of additional agents, the installation of ground motion detecting sensors and stadium type lighting, the construction of steel fences (formed by welding together Vietnam War surplus corrugated steel landing mats for limited segments of the U.S.-Mexico border), and the use of remote video surveillance systems and thermal imaging systems (Cornelius, 2001). By September 1997 Border Patrol officials were claiming that they had nearly completed phase I. By August 2001, they were in the process of implementing phase II (United States General Accounting Office, 2001). The first two phases were comprised of Operation Hold the Line in El Paso, followed by Operation Gatekeeper in the San Diego sector in August 1994; Operation Safeguard in the Tucson sector in 1995; and Operation Rio Grande in south Texas in 1997 (Eschbach, Hagan, Rodriguez, Hernández-León, & Bailey, 1999, 1999).

The increase in resources to mount this phased implementation of the strategy announced by the U.S. Attorney General is staggering. In less than five years the overall budget of the Immigration and Naturalization Service (INS) doubled, from \$1.5 billion in fiscal year 1993 to \$3.1 billion in fiscal year 1997. Of that \$3.1 billion dollar budget for fiscal year 1997, \$631 million was allocated to the Border Patrol, almost a 70 percent increase of its 1994 expenditures (United States General Accounting Office, 1997). Four years later the budget of the Border Patrol reached \$1.2 billion dollars, an almost 100 percent increase over fiscal year 1997. In 1993 the Border Patrol employed 3960 agents, 3,389 of which were stationed along the U.S.-Mexico Border. By August 2001, the Border Patrol employed 9096 agents with 8,475 located in the nine sectors along the Southwest border (150 percent increase over 1993 levels) (United States General

Accounting Office, 2001). In addition, prior to 1994 little "substantial fencing" existed along the U.S-Mexico border (just about 14 miles of reinforced steel fencing in the San Diego sector). However, by 1997 nearly 24 miles of additional fencing was under construction and by August of 2001 the total completed fencing along the Southwest border stretched for 76 miles (United States General Accounting Office, 1997, 2001). The deployment of additional agents and construction of additional fencing has been complemented with the infusion of new technology including high-intensity stadium lighting, infrared night-vision scopes, low-light television cameras, ground sensors, helicopters and all-terrain vehicles (Andreas, 1998; Cornelius, 2004).

The objective of this intensification of U.S. border controls was to prevent undocumented migrants from entering the United States through a deterrent effect produced by disrupting the traditional routes of entry in the United States from Mexico. Focusing on high traffic areas like San Diego, the Border Patrol sought to deter unauthorized migration by creating a more visible presence that would raise the likelihood of apprehension. The logic was simple: to affect the decision calculus of undocumented migrants by raising the cost of crossing such that the costs outweighed the benefits to such a degree that migrants would no longer want to try and cross the border. Officials, however, also recognized that by focusing on metropolitan areas like San Diego and El Paso, undocumented migrants would simply attempt to find new places to cross--as they did. Rather than undermining the plan, however, supporters of the new deterrent strategy contended that by focusing on metropolitan areas migrants would be forced to cross in more inhospitable terrain such as the deserts and mountains east of San Diego. By making it more difficult to cross, INS officials contended, the Border Patrol would be in a better position to apprehend migrants attempting to cross the border. The difficulty of the terrain would limit potential crossing points, enabling the Border Patrol to station agents where migrants were likely to cross. The ability of agents to more easily apprehend migrants due to the terrain added to the deterrent effect produced by

increasing the visibility of the Border Patrol at the border: by forcing immigrants to cross in more inhospitable terrain, they would be deterred from entering the United States both by the terrain and greater chance of apprehension while attempting to traverse it.

Despite claims of success, little evidence exists that the "prevention through deterrence strategy" has produced any substantial deterrent effect. Relying on INS apprehension statistics, the United States General Accounting Office's 1997 review (as mandated by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) of the strategy announced by the Attorney General in February 1994 concluded that the decrease in apprehensions in sectors receiving an infusion of resources indicated that "illegal aliens are being deterred from entering" (p. 29). However that review goes on to state that the flow of undocumented migrants had shifted from sectors that traditionally accounted for the most of the unauthorized activity to new sectors, or within sectors, and from urban to rural areas. While undocumented migrants may have been deterred from crossing in *metropolitan* areas, the evidence did not indicate that their crossing had been prevented. If migrants merely shifted where they crossed, any claim that the prevention through deterrence strategy succeeded in deterring undocumented crossings is dubious at best. By 2001 the United States General Accounting Office had changed its assessment concluding that while the INS had "realized its goal of shifting illegal alien traffic away from urban areas . . . rather than being deterred . . . many . . . have instead risked injury and death by trying to cross mountains, deserts, and rivers" (p. 3).

Indeed, as of 2001, there was nothing more than anecdotal evidence that migrants were becoming discouraged by the prevention through deterrence strategy. Most migrants repeatedly tried to enter the United States until they finally cross successfully (Andreas, 1998; Cornelius, 2001; Hing 2001). Studies of "return migration" reveal that the deterrent effects of the prevention through deterrence strategy were overwhelmed by liberalization of the Mexican economy (Massey & Espinosa, 1997). Market-based reforms in the agricultural sector, led to the displacement of millions of peasant farmers,

who had little choice but to go North to find work (Andreas, 1998; Purcell & Nevins, 2005). Economic changes inaugurated under the auspices of the North American Free Trade Association served to reinforce the process of market liberalization in Mexico likely intensified the exodus of peasant farmers from the countryside (Massey & Espinosa, 1997; Purcell & Nevins, 2005). With the Mexican economy unable to provide employment opportunities for the millions of farmers displaced by market-based reforms, the farmers looked to the United States and an economy that depended on a cheap supply of low-skilled labor (Andreas, 1998). The push factor of market-based reforms in Mexico combined with the "pull factor" of the U.S. job market constituted an incentive to cross the border against which the deterrent effect of the prevention through deterrence strategy could not compete.

In addition, the prevention through deterrence strategy has produced an array of unintended consequences that undermine any potential deterrent effect. Of particular concern is the increase in immigrant smuggling and what might be characterized as a reverse deterrent effect, where undocumented migrants are discouraged from returning to Mexico. First of these is the increased use of smugglers or "coyotes." In an analysis of smuggling efforts in south Texas, Spener (2000) concludes that while Operation Rio Grande may have increased the price coyotes charge to bring a migrant across the border, the amount, while not trivial, is still worthwhile for the migrant to pay if it markedly increases their chances of successfully entering the United States (p. 127). Indeed given the difficulties for U.S. law enforcement authorities in breaking up smuggling rings, threat of criminal prosecution has done little to deter smugglers (Spener, 2000). Tougher border controls have only benefited smugglers who have the resources and capabilities to evade the Border Patrol (Hing, 2001, p. 135).

The chosen deterrence strategy has also reduced the propensity for authorized migrants to return to Mexico. Data showing the continued increase of undocumented migrants working labor-intensive sectors of the economy signals that the prevention

through deterrence strategy has been more effective at "bottling up undocumented migrants in the United States than deterring them from coming in the first place" (Cornelius , 2004 p. 12). As the post-1993 border controls have made it more difficult for migrants to enter the United States fewer and fewer are willing to risk crossing back into Mexico. Many migrants, particularly those working in the agricultural sector, have been seasonal workers migrating back to Mexico in the off season (Andreas, 1998; Nevins, 2002). However the prevention through deterrence strategy, by raising the costs and risks of reentering the United States, threatens to transform "sojourner farm workers" into "settlers" (Taylor, Martin & Fix, 1997).

A study of Operation Hold the Line for the U.S. Commission on Immigration Reform has confirmed this effect. The study, based on dozens of field interviews conducted in El Paso and Juárez in early 1994, concluded that undocumented migrants who continue to cross do so less frequently, opting to stay in El Paso rather than risk apprehension (Bean, Chanove, Cushing, de la Garza, Freeman, Haynes, & Spener, 1994). Ironically then, the prevention through deterrence strategy is producing a deterrent effect-just not the one envisioned by proponents of enhanced border controls "as the commute has become more difficult and costly, the incentive to relocate closer to the workplace has increased" (Andreas, 1998, p. 602).

The effects of the prevention through deterrence strategy were best summed up by Wayne Cornelius (2004), Distinguished Professor of Political Science and Director of the Center for Comparative Immigration Studies at the University of California-San Diego:

The consequences of the current U.S. strategy of border enforcement . . . can be summarized as follows: Illegal entries have been redistributed along the Southwest border; the financial cost of entry has more than quadrupled; undocumented migrants are staying longer in the United States and more of them are settling permanently; migrant deaths have risen sharply; and there has been an alarming increase in anti-immigrant vigilante activity. The following consequences have not yet materialized: That unauthorized migration is being deterred in Mexican places of origin; that would-be illegal entrants are being discouraged at the border after multiple apprehensions by the Border Patrol and

returning home; that their employment prospects in the U.S. have been curtailed; and that the resident population of undocumented immigrants is shrinking. All of the latter outcomes were predicted by proponents of the post-1993 strategy of border enforcement. (p. 15)

It seems that by any measure the prevention through deterrence strategy has been a policy failure. Unable to realize any of its stated goals, one cannot help but wonder why the federal government continues to spend billions of dollars on a failed strategy. Any yet it has. In September 2006 Congress passed immigration legislation that focused on enhancing existing border controls through the construction of additional fencing and the deployment of additional surveillance technology (Cornelius, 2007). What accounts for the continued expenditure of political capital on strategy that has failed to achieve any of its stated goals? The answer, according to some scholars is simple: enhanced border policing has been symbolically successful even as it has been an instrumental failure (Andreas, 1998, 2000; Cornelius, 2004; Nevins, 2002). While Cornelius (2004) contends that heavy handed border policing is politically popular and therefore "there are votes to be gained from advocating such measures, regardless of their track record" (p. 23), Andreas (2000) contends that the expansion of border policing has less to do with achieving the state instrumental goal of achieving deterrence and more about "politically recrafting the image of the border and symbolically reaffirming the state's territorial authority" (p. 85). Put more simply, "border management" is a "game of image management" (Andreas, 1998, p. 606). According to Andreas, if one is to account for the effects of enhanced border policing, one must consider the symbolic functions of the escalation more so than its instrumental functions. To that end Andreas contends we must attend to "*expressive role* of law enforcement" by recognizing the performative dimension of border policing:

High-profile law enforcement campaigns that fail in their instrumental purpose can nevertheless be highly successful in their expressive function. Border control efforts are not only *actions* (a means to a stated instrumental end) but also *gestures* that communicate *meaning* [italics added]. . . . these policing practices are political popular expressions of the state's moral resolve.

Border policing , from this perspective, is not only the coercive hand of the state but a ceremonial practice, not only a means to an end but an end to itself. (Andreas, 2000, p. 11)

This is not to suggest that by escalating border policing practices, policy makers are attempting to manipulate the public to serve their own ends (Nevins, 2002). Rather, enhanced border policing practices should be seen as articulations of the state's "moral resolve" (Andreas, p. 11).

While Andreas' (2002) attention to the "audience-centered nature of border enforcement" is significant insofar as it broadens our understanding of the effects of public policy decisions it is nonetheless limited as it is subtended by a instrumental conception of "expressive" performances. The expressive function of law enforcement is, in Andreas' account, a goal-oriented activity, its purpose to construct an image of a more secure border in order to shape the perspectives of spectators regarding the moral authority of the state (1998, 2000). While significant, Andreas' account of the expressive function of border policing relies on a simplistic conception of the symbolic which precludes any consideration of the material effects of the symbolic. Border policing is merely a gesture used to achieve a particular political end. Thus an instrumentalist logic underwrites Andreas's account of both the deterrent and expressive function of border policing.

Meanwhile scholars across a number of disciplines have contributed to the growing literature on late twentieth century U.S. immigration policy that explore the material effects of the expressive function of immigration policy (Chavez, 2001; Demo, 2005; Flores, 2003; Hasian & Delgado, 1998; Nevins, 2002; Ngai, 2004; Ono & Sloop, 2002). While this project shares with these studies a commitment to accounting for the material effects of immigration discourses, as a whole these studies place emphasis on questions of identity--immigrant, national, or state. It is my contention that by attending to identity, scholars are unable to account for what may be the most significant effect of enhanced border policing practices along the U.S.-Mexico border: their ability to manage



populations. Whether or not these policies have been able to deter undocumented migrants from entering the United States, there is no question that they have "had a profound effect in terms of influencing where, how and how often illegal immigrants cross the border"(Andreas, 1998, 615). Put another way, more than just being an exercise in "image management" (Andreas), the expansion of border policing along the U.S.-Mexico border has been able to shape and normalize the conduct of others. It is this dimension of post-1993 border strategy that has yet to be sufficiently explored by scholars accounting for the continued expansion and intensification of border controls and by scholars interested in how immigration discourses contribute to the construction of immigrant and national identities.

Doing so requires a conception of border policing that takes policing as something more than just the elimination of disorder--so called illegal immigration--and instead envisions the objective of police as the "control of and responsibility for men's [*sic*] activity" (Foucault, 2007, p. 322). That is, border policing is should not understood a simply an apparatus or instrument for preventing (through deterrence) disorder, but also as means for regulating the movement of populations both within and outside the United States. Enhanced border policing practices may have failed to prevent migrants from crossing the border, but they have successfully managed to regulate the conduct of an array of populations--which I will show is precisely what they were intended to do. The link between police and government has been drawn out by Foucault's lectures on police and it is this subject to which this chapter now turns.

### **Foucault and Police**

In a series of lectures delivered at the Collège de France in 1978 and Stanford University in 1979, Michel Foucault recovers an understanding of "police" widely circulated in most European countries during the seventeenth and eighteenth centuries (Foucault, 1981). Arguing that, although 'police' has come to have a more narrow meaning in which policing is understood as an instrument for the elimination of disorder,

for much of Europe, during the these centuries and into the nineteenth, police was conceptualized as a form of government designed to ensure and improve the state's splendor (Foucault, 1981, 2007). Of course one might rightly ask, what does it mean to ensure and improve the state's splendor? Answering that question depends on what one means by splendor. For developing a conception of police as governmental technology, splendor concerned "the strengthening of the state's productive capacity and the ensuring of its internal order and security" (Levi, 2008, p. 182). Thus splendor denotes not "only the beauty of a state ordered to perfection but also its strength and its vigor" (Foucault, 1981, p. 248). Thus the beauty and vigor of the state is not ensured by an institution or mechanism functioning within the state, but by a form of government concerned with improving the state's vigor.

The question that remains is how is this splendor produced? If the objective of police is the strengthening of the forces of the state, how is this objective achieved? Foucault answers this question by turning to vision of the "police state" articulated by Turquet de Mayenne and presented to the Dutch States General in 1611. While admitting that Turquet is an "obscure" author whose text offers a utopian vision of a "police state," Foucault (1981) nonetheless contends Turquet's *La Monarchie aristodémocratique* is emblematic of a vast literature circulating in most European countries during the seventeenth and eighteenth centuries (p. 248). Turquet's project is of particular interest insofar as it postulates that every good government will be composed of four great offices each headed by a great officials: the Chancellor, concerned with justice, the Constable concerned the army, the Superintendent, concerned with finance, and the Commissioner who is in charge of the police (Foucault, 1981, 2007). While police appears along with the three other traditional institutions, its function in Turquet's project is distinct from these institutions insofar as the Commissioner is concerned with ensuring the loyalty and modesty of citizens as well as the way people conduct themselves with "regard to their wealth, their way of working, and consuming" (Foucault, 2007, p. 321). The object and

concern of the police is not simply with the prevention and elimination of disorder but rather with the conduct of the population, their activity--"the police's true object is man" (Turquet, as cited in Foucault, 1981).

The concern of police then, is the activity of the citizenry insofar as the activity is related to the state. The police is not an instrument of justice. Rather than being concerned with the disputes of the citizenry, the objective of police is the control of the citizenry's activities insofar as those activities "constitute a differential element in the development of the state's forces"--they can be singled out, managed, and oriented such that the activities of the citizenry are useful to the state (Foucault, 2007, p. 322). The task of police is the effective and efficient integration of men's activity into the development of the state's forces. Through this integration the state can, in turn, "stimulate, determine, and orient the activity" of the citizenry so that it is useful to the state (Foucault, 2007, p. 323). In this formulation circulation--the circulation of individual and the goods they produce--becomes a central police concern. If the objective of police is the control of citizen activity as it relates to the development of state forces, how is it possible to enhance forces of the state, if the police does not ensure the efficient and effective movement of the citizenry and the goods it produces? Idleness and lackadaisical activity must be prevented; goods and people must be able to circulate freely within and beyond (Foucault, 2007, p. 325).

Although police is concerned with more than just circulation as it pertains to the control of the activity of citizens, it is my contention that the post-1993 border policing strategy of prevention through deterrence, is a legacy of police concerns with activity and circulation during the seventeenth and eighteenth century. Ironically this legacy of policing has been alluded to by every assessment of the effectiveness of the prevention through deterrence strategy. Whether or not a particular evaluation of the consequences of the prevention through deterrence strategy credits it with actually deterring undocumented migrants from crossing the border, what is not in question is the ability of

the strategy to shift the points at which migrants cross the border. Critics of the strategy use this fact to characterize the post-1993 enhanced border policing an instrumental failure--if it has failed to deter undocumented migrants from crossing the border, what good is it? What is ironic is that while these same critics have also argued that assessing the post-1993 strategy on purely instrumental grounds "partly misses the point" as the strategy has "politically important perceptual and symbolic effects" (Andreas, 2003b, p.110), this too misses the point. It fails to consider how the "game of border management" entails not just the "shap[ing] of perceptions" (Andreas, 1998, p.606) but the shaping of conduct. I contend that the prevention through deterrence strategy should be seen not as a crime prevention strategy whose symbolic importance is the creation of the image of a secure border, but as a mode of police whose object is the improvement of state forces through the regulation and control of activity. While the post-1993 border policing strategy did have a preventive element, an examination of congressional hearings will show how border policing through the prevention through deterrence strategy was designed to more importantly manage the circulation of undocumented migrants to ensure the "desired mobility" (Levi, 2008, p. 186) of those authorized to be in the United States. In the congressional hearings on the post-1993 border policing strategy, unauthorized migration is articulated in terms of circulation affording state institutions, through the articulation of policy (underwritten by a logic of police that takes the field of circulation as its object), to "give effect to" neoliberal "governmental ambitions" (Rose & Miller, 1992, p.175).

### **Managing Undocumented Migrants**

Late twentieth century immigration policy has drawn the interest of scholars from political science, geography, anthropology, history, law, and communication studies. Reviewing this scholarship, Demo (2004) contends that studies of late twentieth century immigration policy tend not to be influenced by the field of rhetoric, a portion of that literature owing to the "ubiquity of constructivist epistemology across the social sciences

and humanities" has unwittingly evinced an emphasis on "the role that rhetoric plays" in the construction of nations, borders and citizenship" (p. 216). Laudable as this is, this shift has placed questions of identity at the center of these studies that emphasize the "role of rhetoric in the formation of policy and culture" (Demo, 2004). Attending to the constitutive function of language, studies of immigration policy anchored in the analysis of discursive emphasize the symbiotic relationship between the construction of immigration and national identities. Emblematic of this scholarship is Joseph Nevin's (2002) *Operation Gatekeeper: The Rise of the "Illegal Alien" and the Making of the U.S.-Mexico Boundary*, which argues "through the rhetoric it employed the justify its efforts to bring order to the U.S.-Mexico boundary" the state "helped to create the 'illegal' through the [discursive] construction of the boundary" (p. 11). Nevin's emphasis on this dynamic is reflective of similar work by scholars in communication studies such as Ono and Sloop (2002) and Flores (2003). It is my contention, that this emphasis on the symbiotic relationship of immigrant and national identities fails to attend to a critical dimension of the post-1993 immigration policy discussions concerning the prevention through deterrence strategy, namely the articulation of enhanced border controls to a logic of deterrence as "a way of governing illegal immigration" (Inda, 2006, p.117) within the context of neoliberal approaches to governing life in general.

Testimony by officials from the Immigration and Naturalization Service in Congressional hearings on U.S. immigration policy conducted after 1993 position the intensification of border policing as a way of governing undocumented migrants rather than simply as policy aimed at stopping undocumented migrants at the border. While supporters may have cast the prevention through deterrence strategy as merely designed to prevent what they believed to be a particular disorder, "illegal immigration," justifications for the new strategy actually reflect a much older conception of police, in which the concern of the police was not preventing disorder but rather managing the activities of a population. Indeed, the very condition for the articulation of the prevention

through deterrence strategy was a shift in concern from who undocumented migrants are to what they were doing.

This concern with activity is most evident in the rationales for the intensification of border policing along the U.S.-Mexico border offered by those heralded as the principal architects for Operation Hold the Line--El Paso Sector Chief Silvestre Reyes--and Operation Gatekeeper--Gustavo de la Vina, Western Regional Director of the Immigration and Naturalization Service. Testifying before the House Subcommittee on Immigration and Claims in early 1995, both Reyes and de la Vina offered accounts of the "event" that signaled the need for a shift in border enforcement strategy. Sector Chief Reyes concluded that an evaluation of the El Paso sector shortly after he became chief of that sector revealed that the strategy of apprehending undocumented migrants after they entered the United States prevented the Border Patrol from being able to "deter illegal immigration" (*Border Security*, 1995, p. 36). What led to this revelation? According to Reyes, it was the circulation of undocumented migrants through the city of El Paso:

Undocumented people were crossing in rafts and inner-tubes along the downtown corridor and running unchallenged northbound on the southbound highway lanes. . . . Nearly everywhere along the Rio Grande River between El Paso and Juarez there were groups of people huddled waiting for an opportunity to dart into El Paso. (*Border Security*, p. 36)

It was the actual movement and activities of a population that sparked Reyes' revision of the strategy and tactics of the Border Patrol in the El Paso sector. Now one might rightly argue that all immigration policy is ultimately concerned with the activities of undocumented migrants, or rather that immigration policy is a response to those activities. True enough, yet what is significant about Reyes' recounting of the impetus for Operation Hold the Line is that if the circulation of undocumented migrants is something that needs to be addressed, the strategy and tactics of those charged with regulating the border must take that circulation as its object, not the individuals who happen to be apprehended after they have been in the United States. This was

highlighted by Reyes himself, who noted that Operation Hold the Line was designed as a "high-visibility operation to deter illegal entries and to prevent the need for apprehensions" (*Border Security*, 1995, p. 37). The intensification of border policing as practiced in Operation Hold the Line would take as its object the circulation and activities of a population and attempt to govern their conduct. Operation Hold the Line was more than a shift in policy; it articulated the Border Patrol, at least in the El Paso sector, as a governing institution concerned with managing the "desired mobility" of a particular population (Levi, 2008. p. 186).

Although Operation Hold the Line is touted as the model for Operation Gatekeeper in San Diego, the official associated with the implementation of the operation, Western Regional Director Gustavo de la Vina, claimed that it was the circulation of migrants through San Diego that impressed upon him the necessity of intensifying border policing practices. Like Sector Chief Reyes, Director de la Vina came to this revelation shortly after arriving in San Diego:

Several days after I arrived in San Diego, my officers arranged for me to meet with local reporters one afternoon at an overlook along the border to do some interviews. I looked out the window of the car and saw dozens of people milling around the site. I turned to the agent who was driving, "I had no idea there were this many reporters in San Diego," I said. The agent . . . turned to me and said somewhat sheepishly, "Chief, those aren't reporters, they're illegal aliens." . . . Frankly I was flabbergasted. At the scene [sic], I saw in San Diego that afternoon--large numbers of aliens, massing in broad daylight on the United States side of the border . . . That moment marked a turning point. I resolved to work with my peers and my superiors to embark on a bold new course to reclaim the San Diego border. (*Border Security*, 1995, p. 44)

As with Sector Chief Reyes, Director de la Vina contends that the impetus for Operation Gatekeeper arose from the desire to influence the activities and circulation of a population. It is not just that there were "illegals" on the U.S. side of the border, it was that they had the audacity to "mass" and "mill around" on the U.S. side of the border. The failure of the apprehension strategy was plain to see. Undocumented migrants were

freely circulating on the U.S. side of the border. Given its emphasis on apprehensions, the Border Patrol was unable to prevent this circulation.

As in El Paso, the Border Patrol in San Diego would turn to the intensification of policing practices (constructing 14 miles of fencing, installing high powered stadium lighting, and stationing the majority of the Border Patrol agents within a half a mile of the border) in order to direct the conduct of undocumented migrants. What is significant about de la Vina's testimony is that it provides insight into the intellectual mechanisms that were the condition for the articulation of the prevention through deterrence strategy. By turning their attention to conduct and considering how that conduct might be affected, officials for the Immigration and Naturalization Service rendering "illegal immigration" thinkable in new terms.

The thinking of "illegal immigration" in terms of conduct was not lost on members of Congress. While opening the hearings on border security conducted by the House Subcommittee on Immigration and Claims in early 1995, Representative Lamar Smith (R-TX), who chaired the committee, extolled "It is amazing that until recently so little has been done to stop illegal immigration at its source by preventing people from crossing the border without permission" (*Border Security*, 1995, p. 1). Given that the United States only began taking a "aggressive enforcement posture" in the 1970s (Dunn, 1996, p. 17), it would be only fair to be skeptical of Representative Lamar's amazement, he does nonetheless highlight the shift in thinking about immigration entailed by Operation Border Blockade and Operation Gatekeeper. Up to that point a different language had been used to make sense of "unauthorized migration" influencing the policies and practices of those charged with controlling it. Prior to 1993 the Border Patrol emphasized "interdiction," described by Representative Duncan Hunter (R-CA) as "the arresting, processing, transporting, and deporting of undocumented migrants" (*Border Security*, p. 11). While after Operation Border Blockade, the Border Patrol emphasized "detering" and "preventing" authorized migrants through the intensification



of border policing practices at the border. Whereas the former emphasizes a set of practices concerned with who a particular person was and (re)moving them once their identity as an undocumented migrant had been established, the latter emphasizes a set of practices concerned with (un)desirable activity of a physical mass of people. Thus post Operation Hold the Line, Commissioner of the Immigration and Naturalization Service Doris Meissner was able to confidently state "gone are the days" when the majority of Border Patrol agents "were deployed to downtown patrols to answer rather than prevent citizen complaints" regarding the presence of undocumented migrants in the city of El Paso (*Border Security*, p. 27).

This emphasis on thinking about unauthorized migration in terms of circulation of bodies is also reflected in the differentiation of those who cross the U.S.-Mexico border. It was not surprising that not long after the Border Patrol started seeing lower apprehensions in El Paso after the implementation of Operation Hold the Line, officials within the Clinton administration began calling for a similar operation to be put into effect at what at the time was the most popular location to enter the United States: San Diego, California.<sup>1</sup> Although support for the intensification of border policing in San Diego was high, officials in the Immigration and Naturalization service also recognized that the practices implemented in El Paso could not be replicated in San Diego. While the overall strategy was sound, San Diego would require different policing tactics for two reasons: geography, and reasons for crossing the border--both of which were seen as affecting the conduct of those who crossed the border in El Paso versus those who crossed the border in San Diego. When asked if Operation Gatekeeper would entail the same resources as Operation Border Blockade, Director de la Vina claimed it would be

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<sup>1</sup> San Ysidro, the southernmost neighborhood of the City of San Diego, is home to what is considered the world's busiest land port of entry. The City of San Diego, however, is characterized as the most popular crossing point during the 1990s as migrants crossed into San Diego in other parts of the city such as Imperial Beach and Chula Vista.

impossible as the terrain around San Diego led migrants to cross the border differently than if they crossed in El Paso. Of particular importance was the lack of a natural barrier. While the Rio Grande separated Juárez from El Paso, no such barrier exists between Tijuana and San Diego. This lack of a natural barrier, according to INS officials, made crossing into the United States much easier than in El Paso as migrants did not have to contend with the Rio Grande. Director de la Vina contrasted the effect of terrain on the movement of undocumented migrants characterizing the crossing of those entering the United States through San Diego as a "one hundred yard dash" (*Border Security*, 1995, p. 45).

Urban geography, according to Director de la Vina also influenced the circulation of migrants around El Paso and San Diego. Unlike the city of El Paso, which is surrounded by desert, urbanization in California "starts from the immediate border" and continues uninterrupted to Los Angeles 120 miles away (*Border Security*, 1995, p. 56). This difference in urbanization resulted in El Paso typically serving as a destination for undocumented migrants, while those crossing in San Diego were simply passing through—they were bound for other parts of California such as Los Angeles. Geographic differences required Operation Gatekeeper to enact the prevention through deterrence strategy through different practices than the ones employed in El Paso under Operation Hold the Line. These geographic differences helped to produce dissimilar practices of crossing the border, that required the Border Patrol to tailor policing practices to the terrain in order to influence the activity of those attempting to enter the United States through San Diego. In other words, what INS officials had to contend with was not the geography per se, but how geography influenced the activities of undocumented migrants. Geography was relevant only insofar as it constituted a condition for directing the movement of undocumented migrants. Ultimately the discussion of geography is structured by a concern over how best to govern the conduct of undocumented migrants.

In addition to citing geographic differences, officials from the Immigration and Naturalization Service cited motive as a critical factor that distinguished the situation in San Diego from the situation in El Paso. Three months after the implementation of Operation Hold the Line, the House Subcommittee on Information, Justice, Transportation, and Agriculture convened a hearing to discuss, in part, whether the federal government should enact blockades at other key crossing sites along the U.S.-Mexico border, particularly San Diego. When directly asked this question, Chris Sale, Acting Deputy Commissioner of the Immigration and Naturalization Service argued that the Border Patrol had to deal with "two very distinct populations" (*Controlling the Flow*, 1993, p. 87). Director Sale characterized undocumented migrants in the El Paso sector as "day-trippers" who, because of ties in both El Paso and Juárez, rarely stayed in El Paso, opting to cross the border every day. Those who crossed in the El Paso were not from the interior of Mexico; rather they had communal and family ties and thus typically sought to enter the United States as day laborers who wanted to return to Juárez after a hard day's work in El Paso. San Diego, Deputy Commissioner Sale contended, faced an entirely different population. Mostly from the interior of Mexico, undocumented migrants who looked to enter the United States through San Diego did not plan to stay in San Diego. According to Deputy Commissioner Sale, they "are on their way north" (*Controlling the Flow*, p. 87). With no familial or communal ties in Tijuana and having spent significant resources just to get to Tijuana from the interior of Mexico, undocumented migrants had little desire to remain in San Diego and had no desire to return to Tijuana. This difference in motive did not preclude the enactment of a blockade style enforcement strategy in San Diego. But any such strategy would have to account for the difference in motive as it produced a style of movement that differed from the style of movement displayed by those who crossed in El Paso.

Claims about motive continued to serve as a justification of particularities of Operation Gatekeeper post its implementation. Commissioner of the INS Meissner,

testified that while 65 percent of those who crossed into El Paso were what the INS characterized as "daily crossers" only one percent of those who crossed into San Diego could be characterized as such; ninety-nine percent were "destined for the interior of the country" (*Border Security*, 1995, p. 52). What is noteworthy about these characterizations of the motives of undocumented migrants is that they emphasize a concern with conduct. Granted, each of the characterizations of motive are predicated on the construction of the "illegal alien." However, for the prevention through deterrence strategy to be effective, the INS had to consider the motives that influenced the conduct of undocumented migrants. This is reflected in the characterization of those who entered El Paso as "day trippers"; it was their conduct and not who they were that constituted how particular migrants were seen and thus how they were rendered visible to be act upon through the enactment particular arrays of border policing mechanisms. The conduct of the day trippers would be influenced by a set of policing practices aimed at "stopping the revolving door of illegal immigration"--the uninterrupted circulation of migrants back and forth across the U.S.-Mexico border (*Border Security*, 1995, p. 26). For Operation Gatekeeper to be a success, it needed to be tailored to a population that had no intention of going back and forth. Describing the objective of Operation Gatekeeper, Regional Director de la Vina stated that the operation was designed to address "the psychological and the sociological aspects of the motivation of these people" (*Border Security*, p. 63). Yet even when trying to describe the differences between the two operations to members of Congress, Director de la Vina was hard pressed to explain how this attention to motive influenced the actual policing practices implements under Gatekeeper. Yet the specifics of these practices are not particularly important as it the emphasis on motive that signals a thinking of undocumented migrants in terms of conduct thereby making them amendable to particular practices designed to govern their conduct. As with the distinction based on geography, the emphasis on motive reflected the INS' concern not with identity but with conduct.

Decisions on where to station agents, the use of high intensity lights at night, on how many agents were placed at the border were all predicated on a belief that terrain and motive influenced how particular migrants crossed the border. It is not that geography and motive limited the kinds of practices the INS could use. Rather, officials claimed that because differences in motivation and geography influence where and how migrants crossed the border, the INS had to tailor its enhanced policing strategy to the particularities of conduct displayed by migrants as they crossed the border at particular locations. Able to account for the conditions that influenced how and where migrants crossed the border, the INS could adopt particular practices and apparatuses designed to manage that conduct. The conduct of migrants, which was influenced by motive and geography, was the factor that determined how the overall prevention through deterrence strategy would be operationalized at particular points along the U.S.-Mexico border.

### **Nothing Succeeds like Failure**

In August 1996, almost two years after the implementation of Operation Gatekeeper, the House Subcommittee on Government Management, Information, and Technology convened a hearing to explore the operational effectiveness of border policing practices in the San Diego sector. Of particular concern was whether Operation Gatekeeper was able to "provide a deterrent to illegal aliens crossing the border" (*U.S. Border Patrol's*, 1996, p. 1). The first to testify was T.J. Bonner, National President of the National Border Patrol Council; the union representing agents of the U.S. Border Patrol. Bonner offered a scathing indictment of Operation Gatekeeper contending among other things that while initially opposing a blockade style strategy, the Border Patrol reversed its position shortly before the 1994 elections, the strategy needlessly endangered the safety and well being of agents, and that Immigration and Naturalization Service conspired to deceive the American public and Congress as to the overall effectiveness of Operation Gatekeeper. Bonner offered the following assessment of Operation Gatekeeper and of the prevention through deterrence strategy more generally:

It is clear that the strategy of deterrence simply does not work. The push of poverty in Mexico . . . coupled with the pull of relatively high-paying jobs and easy-to-obtain medical and other social benefits in the United States are very strong. As long as these factors exist, people will attempt to illegally enter the United States. (*U.S. Border Patrol's*, p.6)

Bonner's assessment targeted the heart of the deterrence strategy by questioning the ability of any enforcement strategy to raise the level of risk to such a degree that migrants would not try to cross. It typified a common objection to any border enforcement strategy that focused solely on policing the border; so long as there are jobs to be had, so long as there were industries and employers willing to hire migrants, border policing would fail to produce any substantive decrease in the number of people crossing into the United States. Bonner, however, relied on more than an assessment of motive to prove the failure of Operation Gatekeeper. He, like other critics of Operation Gatekeeper, noted that Gatekeeper had merely shifted the crossing point of migrants from Imperial Beach to East County. Representative Randy "Duke" Cunningham (R-CA), whose congressional district included part of San Diego, offered a similar assessment of Operation Gatekeeper. "Instead of stopping illegal aliens cold at the border," he claimed, "Operation Gatekeeper moves illegal traffic eastward, past our highly successful border fence -- and past our concentrations of Border Patrol personnel" (*U.S. Border Patrol*, p. 16). For Bonner and Representative Cunningham, like the overwhelming majority of scholarly and expert assessments, Operation Gatekeeper failed because it did not deter immigrants from crossing the border; it did not stop them cold at the border. Yet this begs the question. Was the goal of Operation Gatekeeper to ever stop undocumented migrants at the border? It is true that one can find statements from INS officials claiming stopping undocumented migrants from crossing the border was the goal of the prevention through deterrence strategy. For instance INS Commissioner Doris Meissner characterized the goal of the strategy as being "straightforward and clear: to raise the risk of apprehensions . . . so that the potential illegal crosser and smugglers will not attempt to cross" (*Border Security*, 1995, p. 26). Western Regional Director Gustavo de La Vina

also provided the same word for word description of the overall goal of the post-1993 border enforcement strategy (*What Resources Should*, 1995, p. 10). These statements seem to confirm the criteria for deterrence expressed by Bonner and Representative Cunningham--deterring undocumented migrants entailed stopping them at the border. The shift in the flow of traffic meant Operation Gatekeeper, and the prevention strategy overall, failed to achieve its stated goals.

There is, however, a curious moment in Bonner's testimony on the failure of Operation Gatekeeper. Immediately following his reference to the shift in where migrants were crossing the border, Bonner castigated the Border Patrol for not responding to this shift calling its lack of action "irresponsible" and "inexcusable" particularly since the Border Patrol could not "reasonably claim that the shift in traffic was unanticipated" for it "predicted the movement at the outset of Operation Gatekeeper" (*U.S. Border Patrol's*, 1996, p. 4). The accusation: the Border Patrol knew Operation Gatekeeper would shift the traffic to the east and was not prepared to deal with the shift. Yet what if shifting the traffic to the east was precisely the point? What if, despite the claims about the overall goal of the prevention through deterrence strategy, the goal was something other than, or in addition to, stopping migrants at the border?

Returning to Representative Cunningham's statement, Operation Gatekeeper seems utterly nonsensical. It expended a vast amount of resources constructing a fence and deploying agents in a narrow corridor only to have migrants go around them. Effectively Gatekeeper amounted to another Maginot Line, which migrants could circumvent as easily as the German army did in World War II. If one is to measure the deterrent effect of Operation Gatekeeper in terms of its ability to stop or prevent a disorder ("illegal immigration") then it is as much of a failure as the original Maginot Line. Yet one cannot forget that, while the Maginot Line did not prevent the German army from successfully invading France, it did affect the movement of the German army. The stated goal of the prevention through deterrence strategy may have been to stop

immigrants at the border, yet as it was operationalized along the U.S.-Mexico border the strategy was oriented to influence how and where migrants cross the border. Indeed within the testimonies of those defending the operational effectiveness of the enhanced border policing practices implemented through blockade style operations like Hold the Line and Gatekeeper, it is possible to discern an altogether different conception of deterrence--one that links border policing not conceived as an instrument to prevent disorder but a way of governing of conduct.

In the testimonies of officials from the Immigration Naturalization Service, deterrence is not always characterized in terms of stopping migrants at the border. Rather, deterrence is associated with "channeling" the activities of undocumented migrants; of controlling where and how they crossed the border. While testifying to overall the effectiveness of Operation Hold the Line, El Paso Sector Chief Silvestre Reyes noted that the operation had succeeded "in redirecting the flow away from the downtown areas to the peripheral areas of El Paso" (*Border Security*, 1995, p. 72). For Reyes this was not a failure of Operation Hold the Line; the shift was anticipated and counted on. Although Sector Chief Reyes went on to state that the operation adjusted to account for this shift by relocating where agents were stationed along the border, he nonetheless intimates that the primary emphasis of the operation was to influence the mobility of migrants--where and how they crossed. This effect was undeniable as Operation Hold the Line kept migrants moving along. According to Reyes, the "loitering of migrants" (which Reyes had cited as one of the elements that motivated his turn to enhanced policing practices) ceased as Operation Hold the Line, by targeting where migrants crossed, forced the groups to disperse (*Border Security*, p. 38). While it is likely that these groups merely massed somewhere else, if migrants attempted to mass, as they had prior to the enactment of Operation Hold the Line, the intensified policing of the border would ensure that they kept moving along. In effect, Operation Hold the Line by influencing where migrants crossed the border prevented them from gaining control of



public space along the U.S.-Mexico border. Reyes' attention to the shifting of crossing points is more than just an attempt to justify a failed policy. Couched in the language of promoting circulation, Reyes characterizes the U.S.-Mexico border as public space in need of "social ordering" (Levi, 2008, p. 180). By shifting where migrants were able to cross, evidenced by the disappearance of migrants loitering at the border, Operation Hold the Line had managed to at least influence, if not take control of, the activities of migrants at one point along the U.S.-Mexico border. This emphasis on conduct was also reflected in Sector Chief Reyes' discussion of another form of conduct eliminated by Operation Hold the Line, lane running.

Lane running, which Sector Chief Reyes also cited as a factor in the genesis of Operation Hold the Line noticeably decreased. As with the dispersal of groups migrants along the border, the decline in lane running incidents was not the result of stopping immigrants at the border, but rather a consequence of shifting the crossing points used by migrants out of city of El Paso. Migrants were not seen lane running, because they had to cross the border elsewhere not because the operation was able to stop them at the border. Sector Chief Reyes could legitimately claim undocumented migrants had been prevented from engaging in conduct they had routinely engaged in prior the enactment of Operation Hold the Line. As with the discussion of loitering, what is at stake is the ability to influence the circulation of bodies. Unlike the discussion of loitering, the emphasis on lane running calls attention to how enhanced border policing influences the circulation of citizens as well as migrants. As lane running disrupted the flow of traffic, preventing this form of conduct, ensured that citizens were able to keep moving along as well. What had been prevented was the ability of migrants to freely cross the border and to freely move or loiter in the city of El Paso.

The deterrent effect of Operation Gatekeeper was discussed in similar terms. As with Sector Chief Reyes' discussion on the goals of Operation Border Blockade, Western Regional Director Gustavo de la Vina emphasized the shifting of migrant crossing points

as a central component of Operation Gatekeeper. Discussing the flexibility the operation afforded to the Border Patrol, Director de la Vina claimed:

This flexibility is crucial since one of the primary aims of Operation Gatekeeper is to channel alien traffic away from the heavily industrialized and populated sections of the border, to the remote areas in the east where the likelihood of arrest is greater. Re-directing the alien traffic eastward is crucial because the western communities of Imperial Beach and Chula Vista are right on the border. (*Border Security*, 1995, p. 45)

Again we see a conception of deterrence not grounded in the criteria of stopping migrants at the border, but in channeling their activities. While it is certainly the case that it is the hope of the INS that by shifting the flow of undocumented migrants to locations where there is a greater chance they would be apprehended migrants will no longer desire to cross the border, Director de la Vina is well aware that this will in fact not stop migrants from trying to cross the border. Throughout the hearings never once does Director de la Vina intimate that the shift was not predicted, nor that the operation was not constructed with these shifts in mind. What "appalled" Director de la Vina was not the ability of migrants to cross the border but "the open movement of illegal aliens through the area" (*U.S. Border Patrol's*, 1996, p. 64). What is appalling is the open movement of unregulated bodies through public space. By channeling the flow of migrants through more inhospitable terrain, migrants were no longer freely able to move through San Diego. Whether affected by the agents who were stationed in the mountains to apprehend migrants trying to cross through them or the mountains and deserts east of San Diego, migrants found themselves having to alter the practices associated with crossing the border. Thus, Director de la Vina proudly proclaimed the success of Operation Gatekeeper as it was able to prevent migrants from "freely cross[ing] the border with impunity" (*U.S. Border Patrol's*, p. 70). As with Operation Hold the Line what had been deterred were the particular practices migrants engaged in--a mode of circulation--that existed due to the lack of mechanisms designed to govern those practices.

Rendering the conduct of migrants visible through a language of deterrence that emphasized policing as a way of governing conduct rather than as an instrument for eliminating disorders, the primary emphasis of both operations, as well as those that followed Hold the Line and Gatekeeper, was to shift population flows outside of metropolitan areas. From this perspective it did not matter that migrants continued to enter the United States at the same rate as they had prior to the implementation of the prevention through deterrence strategy. Crossing points shifted, as expected, to places where the border had yet to be reinforced. More than just getting undocumented migrants out of the public eye, the prevention through deterrence strategy reflected a governmental rationality concern with mobility and circulation (Levi, 2008, p. 199). As a mechanism for preventing immigration the strategy enjoyed little success. However as an apparatus oriented toward the production of particular kinds of circulation, the strategy was quite successful; a success the architects of the initial blockade-style enforcement practices had envisioned. The operations did not fail as critics contend; they produced the effects sought by those who designed the various operations.

One possible objection to this characterization of enhanced border policing practices is that the claims of INS officials about the success the prevention through deterrence strategy in shifting circulation patterns of migrants simply represent attempts by to justify a failed policy. Faced with mounting evidence that the strategy failed to deter or prevent more than a handful of migrants from crossing the border, INS officials refigured the goals of the operations so that they could claim success. Does anyone need any further proof than the claims made by the INS, that the goal of strategy was, as Commissioner Meissner testified, "clear and straightforward" creating conditions such that migrants would not attempt to cross the border?

It is not hard to ascertain a motive for such claims: protecting and augmenting budgetary allocations. The shifts in immigrant traffic simply showed that additional resources needed to be devoted to controlling the border, operations needed to be

enlarged with more agents, more technology, more fencing. Indeed INS officials did testify that if migrants were to be stopped at the border as some in Congress expected of the prevention through deterrence strategy, the INS required a substantial budgetary increases. One could argue we have already seen this effect as in 2004 (ten years after the INS adopted its prevention through deterrence strategy) Congress allocated \$3.8 billion in spending for border enforcement activities--a quintupling of what was spent on these activities a decade before (Cornelius, 2004, p. 5). The problem with this claim is that it assumes that border policing is only articulated in instrumental terms. However in each hearing, discussions of deterrence reflect a much older conception of police--one not grounded in instrumental terms. Deterrence is not articulated, despite the claims of many proponents and critics of the prevention through deterrence strategy, as stopping immigrants at the border. In every hearing, INS officials invoke a language of "population control," a concern with where and how migrants are crossing the border. The question, of course, that remains is if the prevention through deterrence strategy as enacted through the various operations could not stop immigrants at the border, why try and govern their conduct? If migrants are going to be able to cross the border then why bother spending billions of dollars each year to shift the traffic patterns? The answer: border policing is not just about governing the conduct of undocumented migrants it is also concerns the governing of conduct if those authorized to be in the United States. Attending to this dimension first necessitates a detour through recent discussions of neoliberalism as a rationality of government as it is my contention that the post-1993 intensification of border enforcement functions to give effect to neoliberal governing ambitions.

### **Ensuring Neoliberal Government through Police**

Although often presented as a political philosophy emphasizing the rule of law, limited government and the protection of individual rights, Foucault's work on governmentality articulated liberalism as a mentality or rationality of government

concerned not with the diminishing of government, but with its "dispersion and transformation into other forms" (Miklaucic, 2003, p. 327). Gordon (1991) argues that what is distinct about Foucault's perspective is that it conceives of liberalism not simply as a normative political philosophy but as a "style of thinking quintessentially concerned with the art of governing" (p. 14). Foucault contends that liberalism emerges in relation to a rationality of rule based on the conjunction of *raison d'etat* (reason of state) and *Polizeiwissenschaft* (science of police). Burchell (1996) explains that the assumption of *raison d'etat* was "that the State was able to have an adequate and detailed knowledge of what had to be governed - that is to say, a knowledge of itself - on the basis of which it could act to direct and shape that reality in accordance with its, the State's, own interests" (pp. 21-22). Against this conjunction of the reason of state and police science, "classic" conceptions of liberalism posit that it is not possible for the state or its agents to possess such a knowledge of what is to be governed, and therefore the state lacked the ability to shape and direct reality at will. Yet as a rationality of rule, liberalism is not so much concerned with questions of political sovereignty as with appropriate forms of government. Liberalism constitutes a form of government that positions the state as engaging in enabling rather than prescribing, guiding rather than directing, facilitating rather than dictating (Dean, 2007, p. 114).

Following Foucault's genealogical approach to liberalism, a number of authors have argued that neoliberalism should not be seen as a political philosophy that opposes an interventionist to a non-intervention state, as it presents itself to itself, but rather as a reorganization of liberal mentalities of rule. As early liberalism emerged as a critique of modes of government based on *raison d'etat* and police science, neoliberalism emerges in relation to modes of government associated with the welfare state. Yet as Rose and Miller (1992) demonstrate, the emergence of welfare states during the nineteenth and twentieth century signaled not so much the rise of an interventionist state as the reconfiguration of early liberal mentalities of rule. During the nineteenth century

concerns over unruly populations coupled with the deleterious social effects produced by *laissez-faire* economic policies, convinced liberal thinkers "that the liberal state must take a more active role in producing the rational, autonomous agents presupposed by liberal, democratic capitalism" (Nadesan, 2008, p. 25-26). The emergence of the welfare state signaled not so much the emergence of a new state but a new mode of government or rationality of rule anchored in the concept of solidarity, whereby the state acts to guarantee social progress (Donzelot, 1991). Conceived in this way, the welfare state did not signal the repudiation of liberalism, but rather a mode of "social government" which did not originate with the state (Rose & Miller, 1992, p. 191). The welfare-state was the culmination of programs of social government first undertaken by philanthropic and charitable organizations to address the demoralizing, fragmenting, alienating effects of early liberal mentalities of government. As a particular articulation of the state into practices of social government, the welfare state reflected a reorienting of the locus of government rather than the rise of a new kind of state.

In the wake of World War II, European intellectuals called attention to the perceived inefficiencies and failures of the welfare state. These critiques, broadly characterized as neoliberal, were ultimately concerned with the dangers of too much government (Dean, 1999). However as Dean (2002) notes, neoliberal concern with too much government was not that populations were "governed too much but that the state was liable to do too much of the governing" (p. 44). Reactivating classic liberal principles, neoliberalism counterposed the market to the state as the locus of government. While the language of the neoliberalism warns of governing too much, rather than reducing government, neoliberal reforms actually sought to disarticulate government from the state, dispersing it among non-state centers of government based on market mechanisms (Nadesan, 2008). Central to this process is the divestment of the state from the practices of social government that characterized the welfare state. This process did not represent the dismantling of the state so much as the offloading of the functions of government to what

are typically characterized as non-governmental agencies. Whereas social government posited the state as the guarantor of healthy and vibrant social relations, neoliberalism shifts responsibility for social relations to the population by casting citizens as rational, self-governing individuals:

The neoliberal forms of government feature not only direct intervention by means of empowered and specialized state apparatuses, but also characteristically develop indirect techniques for leading and controlling individuals without at the same time being responsible for them. The strategy of rendering individual subjects "responsible" (and also collectives, such as families, associations etc.) entails shifting the responsibility for social risks such as illness, unemployment, poverty, etc. and for life in society into the domain for which the individual is responsible and transforming it into a problem of "self-care." The key feature of the neo-liberal rationality is the congruence it endeavors to achieve between a responsible and moral individual and an economic-rational actor. It aspires to construct prudent subjects whose moral quality is based on the fact that they rationally assess the costs and benefits of a certain act as opposed to other alternative acts. (Lemke, 2001, p. 201)

By stressing self-care, neoliberal rationalities do not represent a decline in government but a shift in the locus of responsibility from the state to the individual. Rather than positing the state as the site of expertise for addressing social ills, neoliberalism casts individuals as their own experts, able to govern themselves in accordance with market principles. Rather than relying on state agencies to solve social ills, neoliberal reforms posit the role of the state as holding individuals responsible for self-government.

Neoliberalism positions self-government, rather than social government, as the solution to social problems, as they are result of the failure of self-government. Unemployment, poverty, crime etc are all products of unruly populations whose unruliness stems from their failure, through care of the self, to "optimize their own quality of life and that of their families" (Rose & Miller, 1992, p. 198).

Neoliberalism, however, as the above passage from Lemke notes, does not eliminate the state as a locus of government. Serving as the guarantor of the self-governing subject, the state deploys an array of institutions and apparatuses to enable and

facilitate the production and reproduction of self-governing subjects. Some of these agencies and apparatuses merely function to provide assistance to the self-governing subject, who, while attaining autonomy through care of the self, nonetheless requires access to resources to exercise optimal market decisions. Thus those who find themselves temporarily unemployed, would behave in accordance with market principles with the assistance of resources designed to facilitate employment (Dean, 2002). Perhaps more importantly, the state also constitutes an important site, within neoliberal mentalities of rule, for facilitating the self-governing of unruly populations. Individuals who have failed to take responsibility for their self-government become subject to an array of state centered authoritarian mechanisms (increased surveillance through the use of "case managers" and "advisers" and the use of sanctions and coercive measures) to ensure these individuals take responsibility for their self-government (Dean, 2002). This ensuring of responsibility serves two separate but related functions. Insofar as state agencies and apparatuses function to produce and reproduce self-governing subjects they ensure that each individual conducts himself or herself in accordance with market principles, that is by serving as guarantor, the state ensures that it does not "impede the course of things," but ensures the "play of natural and necessary modes of regulation" (Foucault, as cited in Gordon, 1991, p. 17). In addition, by facilitating the responsibility of self-governed subjects who lack some resources to optimize their interests and by rendering unruly individuals (those who are not taking the care of the self seriously) as autonomous individuals, the state ensures that self-governed subjects who require no such assistance shall not have their participation in the market disrupted. Put another way, the state plays a critical role in preserving the integrity of the market by managing the conduct of unruly populations such that they cannot disrupt the play of the market.

It is my contention that these two neoliberal concerns undergird the shift from a border enforcement strategy based on the logic of apprehension to a strategy based on deterrence.



### Optimizing Self-Governing Subjects

Given the stated goal of the post-1993 prevention through deterrence strategy (stopping undocumented migrants at the border), the strategy seems far from liberal rationalities more generally and neoliberal rationalities in particular. Rather the strategy seems to reflect a concern with national autonomy, the ability of the state to preserve its territorial integrity, and therefore its authority, through the establishment of a territorial boundary and exercising absolute control over who can cross it (Mitchell, 1991). This perspective, however, fails to account for how the discourses of the prevention through deterrence strategy construct unauthorized migration in the *language of market principles*. As noted above, although INS officials routinely mentioned the goal of the prevention through deterrence strategy was to deter immigrants from crossing the border, discussions of the deterrent effect emphasized the language of risk. Even with the construction of many miles of fencing, the creation of electronic walls, the deployment of thousands of agents at the border with Mexico, the border could still be crossed. INS officials characterized the enhanced as placing undocumented migrants at a "disadvantage" vis-à-vis the Border Patrol (*Border Security*, 1995, p. 72). Thus deterrence was achieved by attempting to raise the risk of apprehension to such a degree that undocumented migrants would decide it was no longer in their interest to attempt to cross the border. Crossing the border then is constituted as a calculated decision, undertaken by rational agents whose motives for crossing the border are grounded in the desire to secure the conditions for a better quality of life. Recall the classifications of those crossing the border used by INS officials to distinguish the kinds of policing practices enacted under Operation Hold the Line versus those enacted under Operation Gatekeeper. Whether characterized as "day trippers" or simply passing through, in both cases the INS contends what motivates the crossing is a desire to secure some kind of employment. Even if economic conditions in Mexico constituted a significant "push" factor, the decision to cross is still a calculated act. In the hearings over the prevention

through deterrence strategy, the concept of deterrence is predicated on idea that the crossing of U.S-Mexico border constitutes a form of conduct reflecting market principles. Insofar as the policing practices do not constitute an impenetrable barrier to undocumented migrants, the strategy does not hinder their conduct. Rather by deploying a set of mechanisms to increase the risk of capture, the prevention through deterrence strategy functions to "elicit, promote, facilitate, foster and attribute various capacities, qualities and statuses to particular agents" (Dean, 1999, p. 32). Prevention through deterrence depends on the characterization of migrants as rational, calculating subjects, responsible for their own self-government. Their actual crossing is not a failure of self-government insofar as it is consistent with the precepts of the market central to neoliberal modes of government.

At this point one might object that this discussion of prevention through deterrence cannot reflect neoliberal rationalities of rule as the strategy of increasing the level of risk of apprehension constitutes a regulation of the market by the state. Put more simply, border policing constitutes an attempt to obstruct the capacity of autonomous agents (undocumented migrants) to participate in the market. I contend this objection would be valid if the strategy was actually designed to stop migrants at the border. However as discussed earlier, INS officials routinely measure deterrence merely by the ability of border policing practices to shift migrant traffic away from metropolitan areas. While it is hoped that this shift to more inhospitable climates will both aid the ability of the Border Patrol to apprehend migrants and dissuade would be crossers, INS officials readily admit that migrants would continue to cross the border where the INS wanted them to cross and not where migrants wanted to cross. In essence, the strategy attempts to have migrants take responsibility for their conduct by influencing where and how they cross. Migrants cannot cross wherever it is convenient or easiest for them to cross. Their crossing must become more disciplined, more controlled--subject to administrative surveillance of the Border Patrol, undocumented migrants must care for themselves even

more than they do now if they want to successfully cross the border. Rather than obstructing market access, the prevention through deterrence strategy encourages migrants to engage in practices which Dean (2002) characterizes as "ethical despotism" in which make them even more "responsible" border crossers. Why would we want more "responsible" self governing border crossers? It enables the state to remove what is articulated as an obstruction to the ability of those authorized in the United States to optimize their quality of life and to ensure access to cheap migrant labor on which the economy depends.

Although various critics have called attention to the problems with relying on apprehension statistics to assess the effectiveness of the enhanced border policing initiatives, of particular concern to this project are qualitative measures used by INS officials, such as testimonials of local residents, to demonstrate the operational success of the "prevention through deterrence" strategy. It is my contention that through the qualitative measures invoked by INS officials one can see a concern not only with the movement and circulation of undocumented migrants, but with the movement and circulation of Americans. How do the INS and Congress know that things have gotten better? The movement and circulation of Americans within cities like El Paso and San Diego has improved.

Central to these qualitative measures are the claims that the "unimpeded" circulation of migrants across the border, adversely effects the movements of Americans. INS officials routinely cited the ways in which the movements of undocumented migrants through residential neighborhoods disrupted the quality of life of local residents. Testifying on the operational success of Operation hold the Line, INS Commissioner Doris Meissner explained that undocumented migrants "run[ning] through local neighborhoods . . . created alarm among local residents" (*Border Security*, 1995, p. 26). Residents felt unsafe as migrants moved through their neighborhoods. In addition, officials would note how residents would be disturbed "late into the night" by

neighborhood dogs barking at undocumented migrants as they moved through the neighborhood (*Border Security*, p. 24). Testifying to the effectiveness of Operation Gatekeeper, San Diego Sector Chief Johnny Williams noted how residents living in "heavily trafficked zone" (Imperial Beach) had essentially lost control of their neighborhoods (*U.S. Border Patrol's*, 1996, p. 80). As in El Paso, Sector Chief Williams noted that residents were faced with many a "sleepless night" as undocumented migrants routinely moved through the neighborhoods of Imperial Beach.

These characterizations of the effects of the movements of undocumented migrants were echoed by local residents afforded the opportunity to appear before Congress. Residents claimed that they were "continuously terrorized a steady stream of illegals" moving through their neighborhood (*U.S. Border Patrol's*, 1996, p. 254). Another noted that residents "long suffered" from the movements of undocumented migrants, and that the implementation of Operation Gatekeeper "changed the face of our neighborhoods" (*U.S. Border Patrol's*, p. 281). While Commissioner Meissner's reference to barking dogs does seem a bit comical, San Diego Mayor Michael Bixler reiterated the point noting that once the dogs began to bark residents felt "trapped in their homes" as "illegal immigrants are perceived to be desperate and lawless people" (*U.S. Border Patrol's*, p. 215). The impact on residents' quality of life was epitomized by Donna Tisdale who claimed "when you have several hundred a week . . . that adds up, with damage, trash, and sleeplessness" (*U.S. Border Patrol's*, p. 265).

As inconsequential or hyperbolic as the claims maybe, they nonetheless reflect concerns over individual rather than national autonomy. The testimonies of INS officials and residents from border cities characterize residents as autonomous agents whose ability to optimize their quality of life is adversely impacted by the movement of undocumented migrants through their neighborhoods. Lacking sleep, afraid to go out at night, citizens are unable to behave according to market principles. While the impacts are not quantifiable, the testimonies nonetheless contend the circulation of undocumented

migrants within metropolitan areas, qualitatively impacts the ability of every citizen to responsibly care for the self. It is through this concern that the state becomes articulated into practices of government. What is needed is action from state agencies to assist those who "have attained capacities for autonomy" so that they can maintain them (Dean, 2002, 48). While the prevention through deterrence strategy does not itself assist in the production of these capacities, as they are the result of other technologies and apparatuses many of which are not associated with the state, it is nonetheless articulated as critical to the maintenance of those capacities. Unable to deal with migrants moving through their neighborhoods, residents require the assistance of the state to eliminate that which threatens their ability to act as responsible self-governing subjects. Whether overtaken by fear or fatigue, residents are unable to govern themselves accordingly. By deploying practices and technologies aimed at influencing the conduct of undocumented migrants, state agencies enable residents to act as "deliberate actors who strategically maximize their interests" (Nadesen, 2008, p. 33).

Again this is reflected in the language of INS officials discussing the operational successes of the prevention through deterrence strategy. Commissioner Meissner described citizens as "relieved" that as result of Operation Hold the Line "clusters of aliens" no longer "loiter in the downtown area" (*Border Security*, 1995, p. 25). Residents are described, by Sector Chief Reyes, as feeling safer and as a result more willing to visit commercial centers such as the downtown area of El Paso (*Border Security*, 1995). Western Regional Director de la Vina extolled the fact that the mission of Operation Gatekeeper to "bring order to the city" had been "accomplished" as evidenced by the "radical difference" in the lives of residents (*U.S. Border Patrol's*, 1996, p. 63). San Diego Sector Chief Williams echoed this claim noting, that as a result of Operation Gatekeeper, residents "have been able to reclaim their neighborhoods" (*U.S. Border Patrol's*, p. 80). Even those who criticized the prevention through deterrence strategy as merely shifting the flow of immigrants, particularly those residents in East County (the

county where the flow of migrants in San Diego county was pushed into), admitted that "life is certainly much better in Imperial Beach (*U.S. Border Patrol's*, p. 20). No longer consumed with fear, residents in targeted areas and exercise their autonomy by freely circulating in newly ordered metropolitan areas. Thus, while it is certainly the case that the prevention through deterrence strategy is aimed at influencing the conduct of undocumented migrants, it is also the case that the principal justifications for the prevention through deterrence strategy articulate border policing undertaken by state agencies as essential to neoliberal modes of government. By claiming that as a result of the prevention through deterrence strategy residents would be able to strategically exercise their interests, the discourses surrounding the post-1993 enhanced border enforcement practices articulate state border policing practices into the activity of neoliberal government.

Of course, one might argue that by displacing the effects of the circulation of undocumented migrants onto other populations, the prevention through deterrence strategy merely creates another group of residents who are unable to exercise their strategic interests. This seems particularly relevant given claims that the threats to autonomy INS officials used to justify the implementation of blockade style enforcement practices in San Diego and El Paso, were now experienced by those residing in areas to which migrants had shifted. Residents from East County testified to being kept up all night, being afraid to leave their residences, and worrying about their safety (*U.S. Border Patrol's*, 1996). Indeed the effect of Operation Gatekeeper moving "illegal immigrant traffic" to the east made "life untenable for U.S. Citizens [sic] residing in what most thought was a slow-paced rural hideaway" (*U.S. Border Patrol's*, p. 283). It is precisely because the areas where migrants shifted to are less developed rural areas compared to the highly developed metropolitan areas, that the prevention through deterrence strategy makes sense within neoliberal mentalities of rule. Dean (2002) notes that neoliberal rationalities stress maximizing the number of self-governing subjects who are capable of

maximizing their interests. Thus when assessing the impact the movements of undocumented migrants on local populations, clearly INS officials concluded it was far more important to stop undocumented migrants from freely moving through metropolitan areas. Keep in mind the Border Patrol knew, especially in the wake of Operation Hold the Line, that the circulation patterns of undocumented migrants would shift to outlying areas. While they hoped this would dissuade potential crossings, it is also clear that they knew the conditions that warranted enhanced border policing practices inside cities would be reproduced in less urban areas. Rather than representing a "political ploy" as one resident of East County claimed (*U.S. Border Patrol's*, 1996, p. 185), the decision to shift where migrants crossed is nothing more than a simple market based assessment. If undocumented migrants cannot be stopped, then minimize the number of citizens whose autonomy is adversely impacted by their movements. Of course it is not possible to know whether such calculations were made in the formulation of particular blockade style policing initiatives. What it does mean, however, is that shifting the crossing points of undocumented migrants outside of metropolitan areas does reflect neoliberal market style calculations and risk analysis--mitigate the impact on the autonomy of citizens especially if there are benefits to be gained from undocumented migrants.

Although the claim that undocumented migrants take jobs from Americans is a common refrain in immigration policy debates, Djajić (2001) notes how undocumented migrants working in "dead end occupations" (such as those found in the agriculture) are critical to economic growth as "illegal alien inflows serve either to raise the earnings of complementary factors by increasing their productivity and rents or to raise the real income of natives by lowering the price of goods and services produced with undocumented foreign labor" (p. 158). Rather than taking jobs, undocumented migrants working in lowest of skilled jobs create new employment opportunities for higher skilled positions that complement the labor of undocumented migrants. Indeed, entire sectors of the economy depend on readily available, cheap, clandestine labor (Djajić, 1997). This

fact was not lost on Grace Napolitano, member of the California State Assembly, who, testifying a few months after the implementation of Operation Hold the Line in El Paso, remarked:

We . . . have got the hotel industry coming to us . . . and the agricultural business telling us you are going to decimate their workforce if you cannot have immigrants to do the job, because they make the underground economy that fosters the growth of our regular economy. . . . Every citizen has got to understand that . . . wages are going to have to shoot up because somebody has got to do that type of work. So, that means what you eat, what you wear, where sleep, is going to cost you more. (*Controlling the Flow*, 1993, p. 103)

While it is not my contention that policy makers are knowingly, deliberately, or intentionally enacting immigration policies that are designed to look like they are doing something about unauthorized migration but fail to do so in order to ensure a sizable pool of cheap, clandestine labor, I do contend that concerns over impacts of immigration policy on the market do influence the nature and scope of immigration policy. One need look no further than the lack of interest in enacting new and enforcing existing employer sanctions.

Although the hearings on the prevention through deterrence strategy emphasized the ability of border policing to deter undocumented migrants crossing the border, witnesses did argue that border policing alone would not be enough to alter the decisions of migrants to cross the border. Claiming that the availability of employment in the United States would be more than enough of an incentive for undocumented migrants to risk crossing the border, proponents of the concept of prevention through deterrence stressed an effective deterrent required interior as well as border enforcement measures. Emblematic of this thinking was the statement of Richard Gallo, National President of the Federal Law Enforcement Officers Association. "Without a sufficient immigration law enforcement presence in the interior," he said, "there really cannot be any effective deterrent" (*Border Security and Deterring*, 1997, p. 89). Proponents of interior enforcement in addition to border enforcement often stressed the need to eliminate the



"job magnet." Prior to the adoption of the prevention through deterrence strategy as the centerpiece of U.S. immigration policy, Barbara Jordan, chair of Commission on Immigration Reform argued that "both employer sanctions and enhanced labor standards are essential components of a strategy to reduce the job magnet" (*Proposals for Immigration*, 1994, p. 5). This sentiment was reinforced by Acting Associate Commissioner for Enforcement for the Immigration and Naturalization Service George Regan after it became clear that the border policing practices implemented in Operation Hold the Line and Operation Gatekeeper were only managing to shift where undocumented migrants entered the United States:

What we do need is a balanced strategy. No. 1, the reason that these people come to the United States is to seek employment. So one of our first strategies should be targeting those employers who hire the undocumented aliens--knowingly, willfully, and in violation of the law. . . . So we need to have a strategy that, yes, is focused on all aspects associated with the flow of aliens. In addition to border management, we must also have the complementing and integrating strategies for worksite enforcement in addressing the magnet that attracts these unauthorized workers along with an effort against fraudulent documentation and alien smuggling. (*Border Security and Deterring*, 1997, p. 66-67)

Despite the claims for a more comprehensive approach and the mounting evidence that the blockade style enforcement practices only shifted where migrants were crossing the border, there was little support for additional employer sanctions. Although the United States has had legislation that penalizes employers who knowingly hire undocumented migrants since 1986, employers are not required to verify the authenticity of work documents, the legislation is easily circumvented (Cornelius, 2004). Indeed a number of corporations have successfully used this loophole to evade the sanctions, but Congress has taken no steps to close it. It is clear that given congressional appropriations and lack of interest in more effective employer sanctions the "U.S. Congress has sent very clear signals to the executive branch that what truly matters in the immigration control game is border enforcement -- not interior enforcement" (Cornelius, p. 18). This

aversion to employer sanctions is predicated on the neoliberal mentality that the state should not undertake policy actions that hinder the market.

Take for example the statement by Representative Michael Patrick Flanagan (R-IL), who responding to a claim by Western Regional Director Gustavo de la Vina that employer sanctions essentially transformed employers into enforcement agents, stated that while he applauded the idea of using the employer as an "information gatherer," he had a "real problem" with enacting measures that would make it easier to sanction employers. This meant that "honest" employers who make "mistakes" would be subject to "painful" penalties designed to target "dishonest employers" (*What Resources Should*, 1995, p. 49). It is not hard to see the language of self-care in Flanagan's position.<sup>2</sup> Employers who deliberately hire undocumented workers are not taking responsibility for their self-governing, yet in this case it is not the role of the state to facilitate their responsibility--at least not through substantive sanctions as they are not precise enough to avoid adversely affecting the market. As long as those who act responsibly to maximize their interests can be subject to employer sanctions, the harm to the market caused by the sanctions outweighs any benefits to be had from penalizing those employers whose hiring of undocumented migrants disrupts the "maintenance of a liberal legal and political order" (Dean, 2002, p. 48).

I contend the decision not to enhance employer sanctions to date also reflects neoliberal mentalities of rule as their assumed effectivity for reducing unauthorized migration poses a much greater threat to the market than does the post-1993 enhanced policing practices. Once again it is critical to return to the fact that what animated the initial blockade style enforcement practices were concerns over migrants moving freely

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<sup>2</sup> The conception of employers as responsible actors would become central to discussions of the Illegal Immigration Reform and Immigrant Responsibility Act. As will be discussed in the subsequent chapter, much of the debate over the IIRIRA turned on the question of whether or not employers were victims of unscrupulous migrants who used forged documents to gain employment or whether they willfully chose to hire undocumented workers.

through metropolitan areas on the U.S.-Mexico border. Those charged with implementing the prevention through deterrence strategy in the form of enhanced border policing were well aware that the principal effect of these practices would be to shift where migrants entered the United States. Even if enhanced border policing did stop some migrants at the border, the vast majority would continue to cross, even if how they crossed the border was influenced by the blockade style operations. Given the difficult terrain migrants were now forced to traverse, the blockade style operations could be viewed as a selection mechanism, ensuring that only the fittest--those who governed their conduct accordingly--would successfully enter the United States thereby creating a stronger labor pool. Although there is no evidence that indicates this was even remotely considered by supporters of the prevention through deterrence strategy, given the numbers of migrants who perish in the mountains and deserts east of San Diego, it is the case that those who are not prepared (physically or do not have the necessary resources--food, water, clothing) for the harsh conditions are more likely to succumb to the elements. What this does mean is that pushing migrants into harsher environments is consistent with neoliberal emphasis of self-care--if migrants are going to cross it is their responsibility for ensuring they can successfully traverse these conditions. As there are plenty of migrants who are not only willing to cross but who are able to cross, the sectors of the economy that depend on cheap, clandestine labor are not adversely impacted by how the state attempts to govern the conduct of undocumented migrants. State agencies get to have it both ways--on the one hand they get to demonstrate their ability to govern the conduct of migrants by influencing how they enter the United States, on the other their actions minimize any impact on markets insofar as their actions leave open the possibility for a sizeable pool of cheap labor whose new patterns of circulation will not prevent citizens from optimizing their interests.

## Conclusions

The articulation of the prevention through deterrence strategy and attendant policing practices should not be viewed as the "state claim[ing] its old splendor in asserting its sovereign right to control its borders" (Sassen, 1996, p. 59). Rather, the articulation of border policy functions as a critical site for the articulation of the state into neoliberal mentalities of rule. What is at stake is not the authority of the state, but how the state through the articulation of its border enforcement strategy, is positioned as a locus of government within neoliberal mentalities of rule. Border policing is more than a mechanism for preventing disorder. It functions to do more than create the image of secure border. Understood through a much older conception of police, as a concern for good order, border policing functions as an apparatus deployed by the state to manage the conduct of undocumented migrants so that there is an "unobstructed capacity of the majority of national population" to optimize their market based choices. By encouraging undocumented migrants to keep moving, the prevention through deterrence strategy enables Americans to exercise their liberal autonomy. Most disturbing is that the prevention through deterrence strategy seeks to guide the conduct of those who seek to cross the border such that while in the United States they maintain capacity for autonomy. As stated repeatedly in the Congressional hearings conducted on the post-1993 border enforcement strategy, the goal of deterrence was to raise the risk of danger (apprehension, exposure to harsh environmental conditions) so that undocumented migrants would not cross. The logic of the market is hard to miss. Based on the assessment of risk, migrants would not desire to cross, or rather, only those who believed the risk was not worth the effort would not cross. As they are crossing outside metropolitan areas, populations keep moving, to wherever economic conditions necessitate their labor. If the economy needs migrant labor, then it needs only those migrants who can display the kind of care of self the state expects of its citizens. Thus the prevention through deterrence strategy attempts to have its cake and eat it too. By

managing the conduct of undocumented migrants, state institutions remove an obstacle to the autonomous subjects whose rational choices are hindered by the conduct of migrants as they cross the border in metropolitan areas while also facilitating those undocumented migrants who opt to continue crossing the border to avoid becoming an unruly population by governing themselves according to market principles.

CHAPTER III  
DEMAGNETIZING THE MAGNETS: GOVERNING ILLEGAL  
IMMIGRATION THROUGH RESPONSIBILITY

But I tell my colleagues that unless we stop some of the benefits, unless we demagnetize the magnet that is attracting these folks to come to our shores--we can put a Border Patrol person every 10 yards across our border, and we will not stop the flow because people will come here because of the attraction of benefits.

Representative John Mica, *Congressional Record*

Mr. Speaker, America is not just a nation of immigrants. It is a nation of immigrants committed to personal responsibility and the rule of law.

Representative Lamar Smith, *Congressional Record*

On September 30, 1996 President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Immigration Reform Act). A response to widespread claims that the Federal government had failed in its duty to control illegal immigration, the Immigration Reform Act, included some of the toughest measures ever enacted against undocumented migrants, particularly those crossing the U.S.-Mexico border (Fragomen, 1997). Amending the Immigration and Nationality Act, the Immigration Reform Act, while including provisions that did affect legal immigrants, was designed "to improve deterrence of illegal immigration to the United States" by increasing the number of Border Patrol agents, increasing the penalties against smuggling and document fraud, reforming exclusion and deportation law and procedures, reducing the number of documents acceptable for verifying eligibility for employment, and making clear that undocumented migrants were not eligible for welfare and other social services (*Cong. Rec.*, 1996, p. H11080).

While the Immigration Reform Act did reinforce the importance of enhanced border policing practices along the U.S.-Mexico border, it also signaled a greater commitment to interior enforcement. Influenced by the success of Proposition 187 in California (Zolberg, 2006), much of the act was oriented toward addressing the jobs and social service "magnets" supporters of illegal immigration reform on both sides of the aisle believed enticed undocumented migrants to enter the United States. Aside from the efforts taken to ensure that legal immigration would not be considered independently of

illegal immigration, the most contentious floor debates centered on how best to eliminate the perceived pull factor of jobs and social services.

Generating the most controversy were the McCollum amendment (designed to address the jobs magnet) and the Gallegly amendment (designed to address the education magnet). The McCollum amendment called for the development of a more secure, tamper-resistant Social Security card to be used for verifying employment eligibility. Touted by supporters as the answer to the use of fraudulent documents by undocumented migrants to gain employment, the card was decried by opponents as a national identification card and threat to individual liberty (Gimpel & Edwards, 1999). In the most contentious amendment of the entire legislative history of the IRA, Representative Elton Gallegly (R-CA) proposed that states be allowed to deny children not authorized to be in the United States admittance to public schools—effectively overturning the Supreme Court's 1982 decision in *Plyer v. Doe* requiring states to educate all students regardless of their status. Although both amendments failed to become part of the final bill, these amendments reflect the fact that although much of the Immigration Reform Act dealt with enhanced border controls, eliminating the employment and social service magnets was central to immigration reform during the 104th Congress (1995-1996).

The unprecedented and draconian measures enacted by the Immigration Reform Act have drawn the attention of scholars from a variety of disciplines. Existing scholarship emphasizes analyses of the political and social forces that influenced the immigration reform process. Schneider (1998) explores how the Immigration Reform Act attempts to negotiate nationalist discourses with those that embrace a "transnational economic and cultural order." Gallegos (2004) argues that the Immigration Reform Act's emphasis on developing immigration policy that reflects the national interest is animated by nativist racism—"an unconscious, group based phenomenon" that requires Americans to be white and that the "nation protect and serve whites within its borders" (pp. 1741-1745). Coleman (2008) contends that the Immigration Reform Act reflects a shared

representation of the undocumented migrant as a "geographically anomalous figure" that subtended immigration reforms during the 1980s and 1990s. Finally Schneider (2000) and Zolberg (2006) argue that the Immigration Reform Act reflects a shift in the conception of social citizenship from one predicated on entitlement to one predicated on the concepts of privilege and responsibility.

Of particular interest to this project is the work of Schneider (1998, 2000) whose analysis of the Congressional debates related to the Immigration Reform Act reveals an attempt by Congress to articulate a nationalist vision of America but with a diminished role for the state. According to Schneider (1998), members of the 104th Congress found themselves confronted with a basic dilemma: how to assuage the revival of nationalist and restrictionist rhetoric clamoring for a reform of the nation's immigration policy without compromising a commitment to minimizing the role of government. As Zolberg (2006) notes Republicans campaigning on their "Contract with America" had been swept into office in 1994, holding majorities in both the House and Senate, and preceded in earnest to "dismantle the welfare state"(411). Central to the dismantling of the welfare state was a divestment of the regulatory functions of the state itself. Thus Schneider (1998) concludes that for the believers in "small government," it was "impossible to widen the regulatory functions of the state" in an effort to stem the flow of undocumented migrants (p. 96). According to Schneider (2000) one way Congress was able to sidestep this dilemma was by emphasizing a discourse of self-reliance and responsibility<sup>1</sup> (on the part of legal immigrants and citizens) in discussions of legal immigration.

Of particular importance was the inclusion of a deeming provision<sup>2</sup> which held that legal immigrants could be deported if their sponsors were unable to ensure the

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<sup>1</sup> Responsibility also figured in terms of members of Congress for whom it was their "responsibility" to pass appropriate legislation to address the problem of illegal immigration.

<sup>2</sup> Deeming provisions are used to determine the eligibility of sponsored legal immigrants for public assistance programs. Deeming means that a sponsor's income is "deemed" to be



immigrants' self-sufficiency. Designed to limit the access of authorized migrants to public assistance, the deeming provision relocated the regulatory function of the state as it pertained to authorized migrants to the family and authorized migrants. Those migrants who were able to become self-sufficient through the assistance of their sponsors (family members) and their desire to be productive members of society were to be welcomed. Those unable to live up to their responsibilities due to their own actions or the inability of their sponsors to provide them with sufficient support faced deportation. According to Schneider (2000) this discourse of self-reliance and responsibility enabled Congress to reconcile nationalist and restrictionist discourse while adhering to the ideals of market-based capitalism. By encouraging legal immigrants to naturalize, Congress could claim it was acting to protect core American values, ensuring that those who came here legally did not reap the benefits of social and economic participation while maintaining political allegiances to "home" cultures and nations. On the other hand, by encouraging legal immigrants to become responsible citizens Congress could also claim to be acting to dismantle the welfare state--by encouraging legal immigrants to become responsible citizens, legal immigrants would not seek to abuse social services thereby enabling Congress to claim it was decreasing the size of welfare rolls without the addition of a new regulatory apparatus. Emphasizing self-reliance and responsibility as the conditions for citizenship, the Immigration Reform Act enabled Congress to "do something" about immigration without expanding the regulatory function of the state.

Although instructive, Schneider's (1996, 2000) analysis of the Immigration Reform Act remains limited by her decision to analyze the arguments made by members of Congress through the lens of political philosophy. According to Schneider, the Immigration Reform Act represented an attempt by members of the 104th Congress to

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available to an immigrant when determining the an immigrant's eligibility for a means-tested public assistance program.

decrease the size of government. A quintessential element of liberalism, Schneider's analysis of the Congressional debates over the Immigration Reform Act assumes that members of Congress were forced to undertake policy options that decreased, or at least did not increase, the size of government. While Schneider does illumine how the Immigration Reform Act contributes to the dismantling of the welfare state, her decision to view the act as an attempt to create less government unwittingly limits our ability to understand the role of immigration policy, particularly the formation of illegal immigration policy, in the articulation of neoliberal mentalities of rule aimed not just at governing the movement, behavior and conduct of undocumented migrants but also the movement, behavior, and conduct of Americans more generally. Emphasizing the Immigration Reform Act through the lens of too much governing precludes considering of how the "withdrawal of the state" can be "deciphered as a technique for government" (Lemke, 2001, p. 201). Rather than viewing the reduction of government in the Immigration Reform Act as zero sum game, it is possible to see it as an attempt to reconstrue, reorganize, and restructure modes of government, "shifting the regulatory competence of the state onto 'responsible' and 'rational' individuals" by "encouraging individuals to give their lives a specific entrepreneurial form" (Lemke, p. 202). On Schneider's view the exclusionist measures of the Immigration Reform Act aimed at undocumented migrants function to prohibit undocumented migrants from becoming responsible and self-reliant citizens--undocumented migrants are exclude from participating in government. Yet if we begin from the idea (explored in the previous chapter) that immigration policy functions to govern and manage populations it becomes possible to consider how not just the provisions oriented toward legal immigrants, such as the deeming provision, but also the measures aimed at eliminating the employment and social services magnets function to manage a population in terms the neoliberal idea of self-care.

Examining congressional debates on the Immigration Reform Act, I argue that rather than being excluded from this shifting of regulatory competence, undocumented migrants are a condition of its possibility. This chapter thus seeks to extend the "governmental approach" to immigration control (Constable 1993), by arguing that the Immigration Reform Act transforms "illegal immigration," at least in part, into a problem of 'self care' through the denial of social services. The denial of social services, while articulated as a means for deterring the unauthorized entry of migrants into the United States, functions to regulate the conduct of undocumented migrants necessitating that they become responsible, self-caring subjects, who are able to avoid deportation precisely because they have become responsible, self-caring subjects. Ironically then, undocumented migrants who are able to avoid deportation by becoming responsible, self-caring subjects become the model through which citizen and legal immigrant behavior is managed. If undocumented migrants are able to act as rational calculating economic agents able to maximize their own interests, then so too should those authorized to reside and work in the United States.

In what follows I provide a rationale for analyzing the congressional debates over the Immigration Reform Act through the lens of "governmentality." Whereas the previous chapter argued for an approach that conceptualized the post-1993 border enforcement strategy a form of what Dean (2007) terms "liberal police," this chapter examines how authorities attempt to manage unauthorized migration, through strategies which seek to activate migrants to take greater responsibility for their own government (Raco & Imrie, 2000). After situating the Immigration Reform Act as part of a larger neoliberal project to dismantle the welfare state, I turn to the congressional debates on the Immigration Reform Act, particularly those concerned with "demagnetizing" social services, and consider how rather than producing less government they actually function to transform unauthorized migration, and citizenship more generally, into a problem of self-care.

### Care of the Self as Mode of Government

In their exposition of the central methodological precepts of an analysis of "modern government" influenced by Foucault's conception of governmentality, Miller and Rose (2008) contend that government entails both procedures for representing and intervening. Procedures for representing are predicated on political rationalities, the "changing discursive fields" (Rose & Miller, 1992, p. 175) which render "particular issues, domains, and problems governable"(Dean, 1999, p. 31). But while political rationalities represent the governable, Miller and Rose (2008) contend that it is only through the deployment of technical mechanics, technologies of government, that authorities are actually able to govern. Technologies of government deploy political rationalities through a complex assemblage of "mundane programmes, calculations, techniques, apparatuses, documents and procedures" (p. 175).

These insights have been applied by scholars of "governmentality" to explain government in advanced liberal societies (Dean, 1999, Miller & Rose, 2008; Nadesen, 2008, Rose, 1993). Rose (1996b) characterizes advanced liberalism as strategies of rule that, rather than governing through society, "seek to govern without governing society, to govern through regulated choices made by discrete and autonomous actors in the context of their particular commitments to families and communities" (p. 328). Advanced liberalism illumines that neoliberal mentalities of rule only constitute one particular articulation of strategies of rule that seek "govern without society." Neoliberalism may constitute the dominant mentality of rule in the contemporary moment (Dean, 1999). However, other political rationalities such as "civic republicanism, associationalism, communitarian liberalism," which stress the limits of "overarching political programmes," also seek ways of governing "through instrumentalizing the self-governing properties of the subject of government themselves in a whole variety of locales and localities" (Rose, 1996a, p. 352). Advanced liberalism signals not the replacement of society with the self-determining free subject as the limit of government, but rather that

government is essential to the articulation and construction of autonomous free subjects. As Dean (1999) argues, the autonomous free subject is a subject whose freedom is a condition of subjection, "to act freely, the subject must first be shaped, guided and moulded in to one capable of responsibly exercising that freedom through systems of domination"(p. 165). In advanced liberal societies this subjection is not attained through the direct intervention of the state, but through the attempts by the state to "govern at a distance" (Rose & Miller, 2008). Like other mentalities of rule, individuals are identified as objects of governmental ambitions. However, forms of advanced liberalism take the individual to also be "*partner or accomplice of government*" (Burchell, 1996, p. 23). The distinguishing feature of advanced liberalism is its emphasis on what Foucault (1988) describes as technologies of the self through which subjects take responsibility for governing themselves. To be clear, advanced liberalism does not signal abandonment of government through political apparatuses, but rather a "new relationship between strategies for the government of others and techniques for the government of the self" (Rose, 1996a, p. 331).

Not surprisingly, neoliberalism has constituted the principal focus of much of the discussion of advanced liberal mentalities of rule. It bears repeating that this perspective on government takes neoliberalism to be more than just a political philosophy or ideology. As a rationality of rule it "seeks to render itself technical, to insert itself into the world by 'realizing' itself as practice" (Rose, 1993, p. 288). While all forms of advanced liberalism seek to position individuals as active agents who are responsible for governing themselves, neoliberal mentalities of rule cast individuals as active enterprising agents who seek to maximize their quality of life through market-based calculations. It is not just that neoliberal mentalities stress the importance of self-care. Rather, neoliberal mentalities of rule promote techniques of the self that "enterprise" all forms of conduct, such that all conduct operates according to a model of "competitive 'market' logic" (Burchell, 1996, p. 27). Choice and responsibility are reconfigured within

an context of competition and entrepreneurial behavior. One's conduct must reflect the decisions of a rational, calculating, enterprising individual able to maximize his or her own quality of life without the direct intervention of political institutions.

As such, the existence and avoidance of social risks such as unemployment and poverty becomes the sole responsibility of the individual. Neoliberal rationalities hold that unemployment and poverty are not the result of systemic inequalities in market mechanisms, but stem from the failure of individuals to actively take care of themselves. The unemployed, the impoverished are "author[s] of their own misfortunate" who as active agents are responsible for "the fabrication of their own existence" (Rose, 1996b, 59). The solution to these social risks is not less government, but more government--government understood not simply as institutional bureaucracy but in the managing, regulating, and shaping of conduct. Rather than provide the unemployed and those suffering in poverty with welfare, they need to be encouraged to exercise their autonomy as enterprising agents. Those who are incapable of exercising this autonomy must be trained in the "habits and capacities to do so" (Dean, 2002, p. 48). Programs that do not encourage individuals to responsibly care for themselves must be abandoned as not only to they fail to assist in the production of enterprising subjects, they undermine the techniques of self-care by promoting dependency. Those

excluded . . . are people whose self-responsibility and self-fulfilling aspirations have been deformed by the dependency culture . . . whose self-esteem has been destroyed. And, it thus follows, that they are to be assisted . . . through their engagement in a whole array of programmes for their ethical reconstruction as active citizens - training to equip them with the skills of self-promotion, counseling to restore their sense of self-worth and self-esteem, programmes of empowerment to enable them to assume their rightful place as the self-actualizing and demanding subjects of an advanced liberal democracy. (Rose, 1996b, pp. 59-60)

Thus the neoliberal agenda does not signal an era of less or smaller government, but of the shifting of governmental responsibilities to individuals within a context of market based principles.

It is the contention of this chapter that by analyzing the congressional debates over the Immigration Reform Act through this frame it becomes possible to see the Immigration Reform Act as more than just an attempt to "deter illegal aliens." It constitutes a site through which the Federal Government seeks to govern the conduct of not just undocumented migrants, but also of citizens by making them responsible for an array of social risks. Through a discourse of responsibility, the Immigration Reform Act, positions individuals—both the unauthorized and the authorized—as effects of "techniques of the self" designed to produce enterprising active agents. While the stated intent of the act is to address the problem of "illegal immigration," the act ultimately positions undocumented migrants as active *economic* agents that all citizens and legal immigrants should aspire to be. Before turning to this argument, it is important to situate the Immigration Reform Act within the attempts by the 104th Congress to dismantle the welfare state.

### **Setting the Stage for Immigration Reform in the 104th Congress**

On the morning of November 9, 1994, Americans awoke to two events that shattered the political landscape influencing the nature of subsequent U.S. immigration and welfare policies. First, the Republican party found itself with a majority in both houses of Congress, something which had not happened since the 80th Congress (1947-1948). Driven by a combination of public disenchantment with the Clinton administration and widespread publicity of their "Contract with America" (Gimpel & Edwards, 1999, p. 212), Republicans gained an astonishing fifty-three seats in the House of Representatives ending four decades of control by the Democrats. Thirty-three Democratic incumbents lost their seats, including Speaker of the House Thomas Foley, and no Republican incumbent failed to secure re-election (Abramowitz, 1995). In the Senate, Republicans managed to pick up eight seats, giving them control of the Senate. In a single night, the United States Congress went from being controlled by one party to

being controlled by the other. Claiming that they got the message, Republicans set straight to work implementing the planks of their "Contract with America."

Second, Californians had overwhelmingly supported the passage of Proposition 187, a measure designed to cut off most public services to undocumented migrants. Although Proposition 187 was quickly challenged in the courts, key members of Congress took the passage of such legislation, particularly in California, as sign that immigration reform needed to become a priority of the 104th Congress. More importantly, Proposition 187 constituted the blueprint for immigration reform in the 104th Congress. Subsequent restrictions enacted by Congress to limit the access of all immigrants to social services "duplicated many of the provisions of Proposition 187" (Ono & Sloop, 2002, p. 5). Even though immigration reform was not one of the elements of the "Contract with America," Proposition 187 in conjunction with the 1994 midterm elections set the stage for immigration reformers in the Republican party to place immigration reform on the agenda of the 104th Congress.

In addition to changes in the political landscape heralded by Proposition 187 and the 1994 midterm elections, discussions of immigration policy in the 104th Congress were influenced by efforts to enact welfare reform legislation, specifically the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act). The act was designed, as President Clinton stated during his presidential campaign to "end welfare as we know it." Despite the fact that Democrats had control of the executive and legislative branches after the 1992 elections, they had failed to pass welfare reform legislation before the 1994 midterm elections. This left an opening for the Republicans to steal the political initiative Bill Clinton had gained pledging to reform welfare when running for President, which they did with their "Contract with America" (Weaver, 2000). Emboldened by their electoral victories in the 1994 midterm elections, Republicans used their control of the House to push through a reshaping of the American



welfare system on a scale not seen since the advent of the Great Society, which the Contract sought to dismantle (Agrawal, 2008).

After 20 months of debate, numerous committee hearings and presidential vetoes of two prior bills passed by Congress, on August 22, 1996, President Clinton signed the Welfare Reform Act. While the act did not represent Clinton's vision of welfare reform, it certainly did change welfare as we know it. The Welfare Reform Act made substantial changes to family assistance and other means-tested programs, replacing AFDC (Aid to Families with Dependent Children) and JOBS (Job Opportunities and Basic Skills Training Program) with a block grant to the states dubbed Temporary Assistance to Needy Families (TANF). TANF represented a critical element of the "Contract with America," including downsizing the federal government and a devolution of authority to the states. Other provisions of the Welfare Reform Act included escalating work requirements<sup>3</sup> that contained significant penalties for states unable meet the mandated percentage of total caseloads in work activities (Weaver, 2000).

Finally, in what could only be characterized as the most draconian measures of the legislation, the Welfare Reform Act all but eliminated the ability of legal immigrants to gain access to social services. Emboldened by the belief that legal immigrants were using social services significantly more than citizens, Congress set out to "kick legal immigrants off the rolls." Prior to its enactment, legal immigrants residing in the United States essentially had the same access to public assistance as citizens. The Welfare Reform Act, however, excluded noncitizens residing in the United States at the time of its passage from participation in all federal means-tested benefits including: TANF, food stamps, Supplemental Security Income (SSI), and Medicaid (Singer, 2004). Most legal

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<sup>3</sup> Central to the Personal Responsibility and Work Opportunity Reconciliation Act was moving individuals on welfare into work activities. Thus the legislation contained requirements for states to place individuals into work activities. The requirements increased each year, hence their escalating nature, with states having to have 50% of their total caseloads in work activities by 2003 (Weaver, 2000).

immigrants who entered the United States after its passage could not become eligible for participation in federal means tested programs until they had resided in the United States for five years. The Welfare Reform Act did allow states to implement assistance programs for those who had been receiving federal assistance prior to its implementation, but they were prohibited from extending those programs to those who arrived after the legislation took effect (Fix & Passel, 2002). Although the Balanced Budget Act of 1997 did restore SSI and Medicaid benefits to elderly and disabled immigrants residing in the United States at the time the Welfare Reform Act was enacted (Fix & Tumlin, 1997), this represented only a minor restoration of benefits, as legal immigrants entering the United States are still barred from receiving federal public assistance for five years (Singer, 2004).

Animating these provisions was a discourse of responsibility and self-sufficiency which would anchor subsequent debates over immigration policy. Indeed, the principal justification for limiting legal immigrants access to public assistance programs was to promote self-sufficiency in contrast to the dependency allegedly created by welfare. Much of the scholarship on the immigrant provisions of the Welfare Reform Act focused on proving or challenging the principal assumption for those provisions--that legal immigrants used social services at a higher rate than Americans (Bean, Stevens & Van Hook, 2003; Borjas, 1999, 2001, 2002; Borjas & Hilton, 1996; Fix & Passel 1999, 2002). Agrawal's (2008) analysis of the congressional debates on the Welfare Reform Act, however illumines the ways in which the act reflects neoliberal mentalities of rule.

Applying a "Foucauldian method of analysis to Congressional discourse," Agrawal (2008) explicitly concludes that debates over welfare reform evinced a "neoliberal' conception of . . . governance" (p. 638, 667). Agrawal argues that congressional debates on welfare reform reflect an overriding concern with ensuring that U.S. public assistance programs attract the right kind of immigrant, that is, the kind who are able to be self-sufficient. Agrawal's analysis reflects how debates on the immigrant

provisions of the Welfare Reform Act turned on the articulation of self-sufficiency as the guiding precept for what kind of individual should be allowed to immigrate to the United States. Consistent with the scholarship that takes a governmental approach to advanced and neoliberalism, Agrawal demonstrates how the effect of these debates is to position immigrants who receive public assistance as becoming deformed by these programs. Their exclusion from the good life, is a function of their inability to govern themselves according to the demands of a neoliberal society. Thus immigration debates echoed discussions about the right kind of immigrant made salient during debates over welfare reform. While it is certainly possible that given the midterm elections and the passage of Proposition 187 that immigration reform would have emerged as a national priority without the Welfare Reform Act, it is certainly the case that the discourses of responsibility and self-reliance that served as the cornerstone for key provisions of the Welfare Reform Act influenced the trajectory of immigration reform in the 104th Congress. Though immigration was not a central plank of the "Contract with America," it emerged as an issue in a political environment in which how best to govern constituted a central concern of Congress. And it is the emergence of this issue to which this chapter now turns.

### **Immigration and the 104th Congress**

The passage of Proposition 187 by an overwhelming majority in California signaled to many in Congress that the time had come for the federal government to live up to its responsibility to regulate who enters the United States. However, immigration reform was not part of the "Contract with America." Although the Contract did offer proposals for limiting federal means-tested public assistance programs to legal immigrants, which was taken up as part of the Welfare Reform Act, the Contract did not posit immigration as one of the problems facing the nation. Indeed in a nationally televised address given by Speaker of the House Newt Gingrich (1995) on the progress being made to fulfill the Contract, there was no mention of immigration though Gingrich

did assert that the Contract was only the beginning of the Republicans' intent to change America.

Tichenor's (2009) work on the contentious nature of immigration as a policy issue provides an insight into why immigration reform may not have factored into the Contract with America. Although it is unlikely that Republicans were unaware of the intensification of anti-immigrant sentiment across the country in 1994, despite its popular appeal immigration as a national issue was likely to split any Republican coalition envisioned by the Contract (Tichenor, 2002). As Tichenor (2009) explains, immigration while a "potent" issue, is also a "cross-cutting" issue, defying the "standard liberal-conservative divide" (p. 2). Even proposals to limit "illegal immigration," which usually generate widespread support, nonetheless unleash rival interests that can divide partisan coalitions.<sup>4</sup> In addition, powerful organized interest groups and constituencies regularly mobilize over immigration reform, making it difficult to generate enough support for any particular immigration measure. Indeed one need look no further than the debates over the Immigration Reform Act for evidence of this dynamic. While initial proposals dealt with both legal and illegal immigrants, the mobilization of business interests which opposed any changes to legal immigration, ensured that if Congress was going to reform legal immigration, it would have to do it in a separate piece of legislation. Despite the contentiousness of immigration as a national issue, the passage of Proposition 187 by a wide margin and the Republican control of Congress set the stage for immigration reform to be taken up by the 104th Congress.

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<sup>4</sup> Tichenor (2009) notes that pro-immigration conservatives devoted to free markets, who recognize the dependence of the economy on a sizable supply of cheap labor, often clash with border hawks on the Right who see illegal immigration as a threat to national security, the rule of law, and what is perceived to be as a stable and coherent core national identity. Coalitions on the Left do not fare much better. Pro-immigration liberals concerned about the status of undocumented migrants find themselves at odds with pro-labor liberals who view illegal immigration as enhancing corporate America while threatening the livelihoods of blue collar workers.

Critical to the emergence of immigration reform was the changed of leadership of committees responsible for immigration law. The change of which party controlled each house of Congress put new leaders in charge of both the House and Senate Judiciary Committees and their respective immigration subcommittees. Although the new chairs of the Judiciary Committees, Henry Hyde (R-IL) in the House and Orrin Hatch (R-UT) in the Senate, were either ambivalent on immigration reform or conservative allies of business interests, the newly appointed chairs of the immigration subcommittees were a different story. Lamar Smith (R-TX) assumed leadership of the House immigration subcommittee while Alan Simpson (R-WY) assumed leadership in the Senate. Both were known for their restrictionist views with Simpson considered the leading expert on immigration reform in the Senate. Despite the other commitments posed by the Contract with America to produce substantive change within the first 100 days of the 104th Congress, Smith set the House immigration subcommittee to work overhauling U.S. immigration law. By the end of the first month as the chair of the Senate subcommittee, Simpson would introduce a new version of immigration reform legislation he had introduced in the previous Congress (Gimpel & Edwards, 1999). Smith and Simpson were committed to making immigration reform a priority for the 104th Congress.

Immigration reform was also spurred on by the creation the Congressional Task Force on Immigration Reform. The task force was a product of a new approach to Congressional leadership established by House Speaker, Newt Gingrich (R-GA). Designed to supplement the committee systems, Gingrich's task forces were populated by "leading members" tasked with addressing "lower-tier issues" (Gimpel & Edwards, 1999, p. 215). The leading member tapped by Gingrich to chair the task force of immigration was Representative Elton Gallegly (R-CA), who represented a Southern California district that had voted overwhelmingly for Proposition 187 (Moore, 2000). Gallegly dutifully represented the views of his district on immigration as he was known for his hardline stance on undocumented migrants and the eligibility of legal immigrants for

public assistance benefits (Tichenor, 2002). The purpose of the Congressional Task Force on Immigration Reform was "to review existing laws and practices to determine the extent of needed reform" (*Cong. Rec.*, 1996, p. H2372). Organized into six working groups, the task force focused on what it believed to be the most crucial areas of immigration policy: border enforcement, workplace enforcement, public benefits, political asylum, deportation, and visa overstays (*Cong. Rec.*, p. H2373). By June 1995, the task force was ready to present its findings and recommendations which stressed legislative reforms designed to "prevent illegal entry and to identify, apprehend and remove illegal aliens already in this country" thereby putting "an end to illegal immigration" (*Cong. Rec.*, p. H2374). Among the numerous changes to immigration law advocated by the task force was the elimination of a "powerful 'pull' factor" by denying "all federal public benefits to illegal aliens except emergency medical services" (*Cong. Rec.*).

The final impetus for immigration reform came from the publication of the findings of the U.S. Commission on Immigration Reform (U.S.C.I.R.). Also known as the Jordan Commission, it was created by the Immigration Act of 1990. The commission was comprised of nine members, with the chair being appointed by the President and the remaining members appointed by Democratic and Republican leaders of Congress. President Clinton appointed former Congresswoman Barbara Jordan (D-TX) to chair the committee due to his belief that her reputation for fairness would stifle claims that the Commission was simply an extension of the Republican controlled Congress (Gimpel & Edwards, 1999). While Jordan did support the eligibility of legal immigrants for federal public assistance programs, she also supported tougher measures against undocumented migrants whom she believed subverted the legal entry system (Tichenor, 2002). Although the language of the Immigration Act of 1990 specified that the Commission was to study "illegal immigration," subsequent amendments pushed by Alan Simpson (R-

WY) passed in 1991, struck the term "illegal" and replaced it with "comprehensive" (Gimpel & Edwards, 1999).

After conducting a variety of public hearings, soliciting the testimony of numerous experts, and visiting sites across the United States, the Commission released its report on "illegal immigration" in September, 1994 and its report on legal immigration in June, 1995. In its "Executive Summary" on "illegal immigration," the commission outlined the principles that governed its mission:

The Commission decries hostility and discrimination against immigrants as antithetical to the traditions and interests of the country. At the same time, we disagree with those who would label the efforts to control immigration as being inherently anti-immigrant. Rather, it is both a right and a responsibility of a democratic society to manage immigration so that it serves the national interest. (U.S.C.I.R., 1994, p. i)

Convinced that "unlawful immigration" could be controlled in ways consistent with "our traditions, civil rights, and civil liberties," the Commission recommended reforms that included increased border enforcement, denying public assistance to undocumented migrants, and perhaps its most controversial suggestion, the creation of a computerized registry of Social Security numbers to verify an individual's eligibility for employment. In its report on legal immigration, while the Commission supported the tripartite framework of family-based, employment-based and refugee immigration, it asserted that that the system nonetheless "must undergo major reform to ensure that admissions continue to serve the national interests" (U.S.C.I.R., 1995). The Commission called for cutting yearly immigration levels, prioritizing the admission of nuclear families, and eliminating the admission of unskilled workers. Based on the immigration reform legislation introduced by Smith and Simpson, it is clear that the recommendations of the Jordan Commission had a significant influence on the emergence of immigration as an issue for the 104th Congress. With the changes in committee structure, the creation of a Congressional task force on immigration reform, the reports of the Jordan Commission, and Republicans becoming convinced by Proposition 187 that immigration restriction

could be used as "wedge" issue among blue-collar Democratic voters in key battleground states like California and Florida (Tichenor, 2002), the stage was set for Congress to produce some of the toughest measures ever taken to prevent undocumented migrants from entering the United States.

What has been referred to as the Immigration Reform Act, fully titled the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, was the product of a House-Senate conference committee charged to resolve differences between immigration reform bills passed by the House and the Senate. In the House, Lamar Smith (R-TX), with 38 co-sponsors from both parties, including the ranking Democrat on the immigration subcommittee John Bryant (D-TX), introduced H.R. 1915, The Immigration in the National Interest Act (Gimpel & Edwards, 1999) to the House immigration subcommittee. The original bill included eight sections which dealt with improved border security, alien smuggling and document fraud, streamlining the deportation process, employment verification, limiting public benefits, facilitating legal entry, and reforming legal immigration along the lines suggested by the Jordan Commission.

After a series of amendments in the immigration subcommittee and House Judiciary Committee, the bill emerged as H.R. 2202 with the same title and the core provisions intact, including notably provisions pertaining to legal immigration. On March 19, 1995, H.R. 2202 came up for floor debate. Over the course of three days, the House would debate a number of crucial amendments particularly relevant to this project. First the rules committee allowed debate on an amendment that struck the legal immigration provisions from H.R. 2202. It is my contention that understanding the debate over this amendment is crucial to understanding how undocumented migrants are positioned as active enterprising agents. In addition, the House considered one of the most controversial amendments offered by Elton Gallegly (R-CA) permitting states to deny the admittance of noncitizen children of undocumented migrants to public schools. The amendment passed by a comfortable margin and while it was not included as part of



the legislation produced by the conference committee, the debate it sparked was anchored in the language of responsibility central to neoliberal mentalities of rule. It is these particular elements, as well as the general debate over the denial of public assistance benefits to undocumented migrants, that will serve as the focus for this chapter's analysis of House debates.

The Senate would consider S. 1664, the Immigration Control and Financial Responsibility Act of 1996, which was a combination of two pieces of legislation (one dealing with legal immigration and the other with illegal immigration) introduced by Alan Simpson (R-WY). Due to significant pressure exerted by a coalition of businesses the Senate opted to "split" the bill and only consider the provisions designed to address unauthorized migration as part of S. 1664 (Gimpel & Edwards, 1999). Although this action occurred in the Senate Judiciary Committee, when the bill finally reached the floor the distinction between legal and illegal immigration framed the Senate's consideration of S. 1644. That is, throughout the debates over S. 1644, senators routinely articulated the need to do something about illegal immigrants while lauding the contributions of legal immigrants. As in the House, this distinction would be couched in the language of responsibility and contribute to the articulation of undocumented migrants as active enterprising agents. Again a number of amendments were introduced, two of which are particularly relevant to this project. Despite the splitting of the bill, Simpson attempted to rejoin legal and illegal immigration reforms by proposing an amendment to hold legal immigration at a "level of 10 percent below the current total of regular non-refugee admissions" for five years (*Cong. Rec.*, 1996, p. S4417). The amendment suffered a crushing defeat (80-20) on the back of arguments that legal and illegal immigration were separate issues. The second amendment, sponsored by Bob Graham (D-FL), attempted to undermine the deeming requirements imposed by S. 1664. Graham targeted the deeming provisions arguing that they amounted to an unfunded mandate, a practice whereby the Congress mandates policy to states and localities without providing funds to support

compliance with the mandate, which had been ended as part of the Contract with America. If they constituted an unfunded mandated, according to existing law, they could not be enacted. While it was also defeated, Graham's amendment afforded members of Congress the chance to once again emphasize the ideas of responsibility and self-care as they pertained to legal immigrants and undocumented migrants.

Given differences in The Immigration in the National Interest Act and the Immigration Control and Financial Responsibility Act of 1996 a conference committee was convened in order to produce a piece of legislation that would be satisfactory to a majority of both houses. While the conference committee would fail to include some of the more controversial elements of each bill, such as the Gallegly amendment, the piece of legislation which emerged from the conference still held fast to the discourse of responsibility and self-care that had animated much of the debates over key provisions in the House and the Senate. What was never in question, however, was the belief that undocumented migrants should not be eligible for any form of federal public assistance. It is my contention that the unquestioned support for these provisions of the bills introduced in the House and Senate, functioned to render undocumented migrants thinkable in terms of rational, calculating, enterprising individuals. By attending to employment and social service magnets, debates over the Immigration Reform Act position undocumented migrants as rational, calculating agents, whose conduct in entering the United States disqualifies them from social and economic participation in a advanced liberal state. Yet, in rendering undocumented migrants thinkable in these terms, their conduct as rational, calculating agents becomes something to which all those also legally residing in the United States (citizens, legal immigrants, refugees) should aspire. It is to the debates over immigration reform in the 104th Congress to which this chapter now turns.

### **Immigration as Problem of Self-Care: Legal v. Illegal Immigrants**

As with the enhanced border controls implemented in Operation Gatekeeper and Operation Hold the Line, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Immigration Reform Act) was anchored by the strategy of prevention through deterrence. Over the course of the congressional debates, deterring illegal immigration was routinely invoked as the legislation's *raison d'être*. When first introduced in the House of Representatives, the Immigration in the Nation Interest Act of 1995 (legislation that would make up part of the Immigration Reform Act), the purpose of the legislation was described as amending the "Immigration and Nationality Act to improve deterrence of illegal immigration to the United States" (*Cong. Rec.*, p. H2361). While the Immigration Reform Act did include measures to expand border policing initiatives inaugurated by the Border Patrol's move to a prevention through deterrence strategy, provisions aimed at eliminating the jobs and social service magnets were characterized as essential to that strategy. The Congressional Task Force on Immigration Reform, for example, concluded eliminating the "most powerful 'pull' factors" would "deter future illegal entry" (*Cong. Rec.*, p. H2374).

Although presented as a measure to improve the deterrence of illegal immigration, much of the debate on the measures that would make up the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Immigration Reform Act) was couched in what Moore (2000) characterizes, as the "rhetoric of responsibility" (p. 127). According to Moore, unlike previous debates on immigration policy, responsibility became a key word in the debates on the immigration reform bills introduced in the House and the Senate. Indeed the very title of the final bill signals the centrality of the responsibility to the congressional debates on immigration reform in the 104th Congress. I contend that this emphasis on responsibility reflects advanced liberal rationalities of rule that seek to govern at a distance. In this case, the emphasis on responsibility signals a shift to conceptualizing illegal immigration as a problem of self-care. Emblematic of this shift

were the debates over whether or not measures to address legal immigration should be included in legislation that addressed illegal immigration.

As noted above, the legislation that emerged from committee in both chambers of Congress included provisions designed to address both legal and illegal immigration. In the House, Representatives passed an amendment to strike the provisions of the bill that addressed legal immigration. The Senate opted to split its legislation by only considering those provisions that addressed unauthorized migration. The principal justification for disarticulating legal from illegal immigration was presented in terms of responsibility. Legal immigrants should not be considered in legislation that addressed undocumented migrants because legal immigrants had acted responsibly in entering the United States. While few characterizations of undocumented migrants specifically included the term responsibility, it is not hard to see the ideal of responsibility as the cornerstone of distinctions between legal immigrants and undocumented migrants, the latter are irresponsible. Undocumented migrants were characterized by members of Congress as "violating and abusing our laws" entering at the "expense of those choose to play by the rules" (*Cong Rec.*, pp. H 2379, H 2456). Even those considered to be among the most liberal members of Congress ended up extolling the ideal of responsibility as the justification for not considering legal and illegal immigration in the same piece of legislation. Recounting the words of Barbara Jordan, Senator Edward Kennedy (D-MA) reminded his colleagues in the Senate that the United States was "a country of laws," and thus any sensible immigration policy required making a distinction between "those who obey the law and those who violate it" (*Cong. Rec.*, p. S3281). Likewise Senator Barbara Boxer (D-CA) explained that the reason there should be a separate debate on legal immigration is that "illegal immigrants choose to break our laws," whereas "legal immigrants choose to follow our laws" which on her view constituted "two distinct and important differences" (*Cong. Rec.*, p. S4021). In short, legal immigrants act responsibly while undocumented migrants act irresponsibly by engaging in, what is perceived to be,

criminal behavior. The centrality of the “rhetoric of responsibility” was extended to the quality of the debates with members of Congress indicating that it was irresponsible of Congress to include provisions dealing with those immigrants who had, by obeying the law when they entered the United States, acted responsibly. Representative Nancy Johnson (R-CT) expressed concern that "hard working legal immigrants" were "unfairly criticized" during the debates even after the legal immigrant provisions had been stricken from the House version of the bill (*Cong. Rec.*, p. H2591).

The justifications used to disarticulate legal immigrants from undocumented migrants are emblematic what Ono and Sloop (2002) identify as one of the dominant modes through which undocumented migrants are demonized in immigration discourses. What is particularly pernicious about these representations is the implication that the breaking of a particular set of laws concerning how a migrant is to enter the country signals continued criminal activity. It is not that undocumented migrants have committed a crime. Rather they *are* criminals, which is evidenced by their entering the United States without authorization. Note the structure of Senator Boxer's statement. By not using the past tense (they chose to break our laws, or even a law), Boxer implies that undocumented migrants continue to engage in criminal behavior after entering the United States. In the case of legal immigrants, not only did they obey the law when they entered "the right way," they continue to abide by the law as productive members of society. While I do not want to downplay the viciousness of these characterizations, it is my contention that these justification signal more than just another iteration of the demonizing of undocumented migrants. In addition to the demonizing effects, the characterizations of undocumented migrants as acting irresponsibly by engaging in criminal behaviors signals a view of immigration and the life of an immigrant as one self care.

The vast majority of statements differentiating legal immigrants from illegal immigrants emphasize one element: the conduct of the legal immigrant versus the

conduct of the undocumented migrant. Absent from these discussions are descriptions of legal immigrants wanting to become Americans. While there are certainly abstract descriptions of legal immigrants adding to the "fiber and fabric and strength" of the United States, such characterizations are not predicated on the claim that the contributions of legal immigrants to the cultural and economic fabric of the United States depend on them becoming citizens (*Cong. Rec.*, p. H2593). One might argue that the very idea of legal immigration carries with it the assumption of assimilation and eventual citizenship. Yet as Schneider (2000) notes, prior to the passage of the Immigration Reform Act, many legal immigrants were choosing to forego political citizenship in favor of social and economic citizenship.<sup>5</sup> It was precisely to address this condition that the deeming provisions were enacted as part of the Welfare Reform Act. And even if legal immigrants were choosing to become American citizens, the debates on immigration reform in the 104th Congress often disarticulate the value of legal immigrants from political citizenship. Of legal immigrants Senator Phil Gramm (R-TX) declared:

I believe we have room for people who want to come and work because America could not be America without immigrants. The story that is uniquely American is the story of people coming to America to build their dream and to build the American dream. I have absolutely no fear that by people coming to America legally and to work--no one should come to America to go on welfare--that America's future is going to be diminished by that process. I believe their new vision, their new energy will transform our country, as it has always transformed it, and we will all be richer for it. (*Cong. Rec.*, p. S4149)

Note that the value of the legal immigrant is in his/her ability to provide a positive economic contribution. What enriches America is his/her work ethic and energy. Enrichment of the United States is predicated on the economic activities of immigrants,

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<sup>5</sup> Drawing on T. H. Marshall's tripartite distinction between civil, social, and political citizenship, Schneider contends that many legal immigrants engage in acts of economic citizenship (they participate in the economy) and social citizenship (they are active in their communities). At the same time they refuse to become political citizens by opting not to become naturalized.

not how they choose or what they choose to identify themselves as politically. Thus the value of the legal immigrant is predicated on conduct, specifically conduct that reflects the ideals of advanced liberal mentalities of rule namely the attainment of autonomy through practices of self-care (Dean 2002).

In this light, immigration policy becomes not only a means for protecting the sovereignty of a nation, but a mechanism for encouraging individuals to govern themselves by subjecting themselves to techniques of governmentality and self-care. While it may be the case that immigration reform was, as Representative Elton Gallegly (R-CA) explained, fulfilling "the primary responsibilities" of any sovereign nation to protect its borders and enforce its laws, sovereignty was not the only justification for immigration reform (*Cong. Rec.*, p. H11078). In disarticulating legal immigrants from undocumented migrants, the 1996 congressional debates on immigration reform declared a preference for particular kinds of individuals--a preference based on their conduct and activities. Explaining the goal of immigration reform Representative Andrea Seastrand (R-CA) declared:

If we are to remain true to our heritage, we must ensure that immigration is once again seen as a noble experience that enriches America both economically and socially rather than be demeaned by criminality and deceit. That means denying the benefits of our society to those who break our immigration laws while rewarding the honesty and patience of hundreds of thousands of others with the opportunity to obtain their goal, a chance to live the American dream." (*Cong. Rec.*, p. H2458)

Immigration policy is not just a mechanism by which a state attempts to exercise control over its borders, it also functions as a reward system for those whose conduct is the product of an active agent who has taken responsibility for the "fabrication of their own existence" (Rose, 1996b p. 48). Immigration, as Representative Lamar Smith (R-TX) explained, is "not a entitlement," rather it is "a distinct privilege to be conferred"--one that can only be conferred on those who display responsible conduct (*Cong. Rec.*, p. H2380). As potential immigrants must display this conduct prior to them being granted

the "privilege" of entering the United States, immigration policy functions as a mechanism for determining which individuals display the conduct desired of all citizens in advanced liberal societies.

In terms of undocumented migrants, congressional debates characterize immigration reform as a mechanism for promoting self-care. Insofar as undocumented migrants are characterized as acting irresponsibly by engaging in criminal behavior, their behavior reflects an unwillingness to assume responsibility for their situation. Senator Boxer highlights the idea that entering the United States illegally is a choice; one is not compelled to violate U.S. immigration law. By entering the United States illegally, the undocumented migrant engages in conduct that is seemingly out of step with advanced liberal rationalities of rule. By not waiting in line, undocumented migrants fail to demonstrate ethical behaviors associated with being self-actualized autonomous actors within the confines of the nation-state. Their choices are made to appear as irrational and irresponsible and their activities once in the United States are not considered *a priori* essential to the "development of the state's forces" unlike those of legal immigrants (Foucault, 2007, p, 322). The logic of the trade-off is as follows: If governing institutions are only capable of managing a particular population size, it must restrict the number of legal immigrants. Undocumented migrants are a drain on the system, stealing jobs thereby creating the need for additional welfare programs for hard-working, law-abiding citizens and legal migrants, abusing public assistance programs, and engaging in ongoing criminal behavior. Reforming U.S. immigration policy would, as Representative Bob Stump (R-AZ) declared, "send a strong message to those who would defy our immigration laws, that their actions would not be tolerated" (*Cong. Rec.*, p. H2399). It was not the intent of Congress only to offer an authoritative decree declaring the undocumented migrants were unwanted. The "message" consisted of an array of mechanisms designed to eliminate particular kinds of undesirable conduct.



But Congress also had to address the prior question. Why were migrants crossing the border? Only by addressing this question could Congress hope to reform immigration policy in a way that would discourage migrants. Members of Congress offered two reasons, long used in immigration discourses to explain why undocumented migrants enter the United States: jobs and public assistance programs.<sup>6</sup> The solution seemed simple enough: if one wants to change the conduct of undocumented migrants, eliminate these two "magnets." The discussion of these "magnets," however, would trouble the bipolar characterization of legal immigrants and undocumented migrants that members of Congress relied upon to justify the excising of provisions oriented toward legal immigrants from the Immigration Reform Act. Indeed, in these discussions undocumented migrants begin to appear less like irresponsible individuals deformed by lax immigration policies and more like active, calculating, enterprising individuals who have rationally assessed how to maximize their quality of life without the direct intervention of governing institutions.

### **Governing Conduct through the Employment Magnet**

Ten years prior to the passage of the Illegal Immigration Reform and Immigration Responsibility Act, Congress passed what was heralded as a landmark piece of legislation to combat unauthorized migration, the Immigration Reform and Control Act (IRCA). The impetus for the IRCA, like the Immigration Reform Act ten years later, was the belief that the United States had "lost control" of its borders (Espenshade, 1995). For the first time, Congress included a series of employer sanctions designed to prevent employers from hiring undocumented migrants. Considered to be the "cornerstone" of the legislation, the IRCA employer sanctions prohibited three forms of activity: 1) knowingly hiring an undocumented migrant; 2) continuing the employment of a known

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<sup>6</sup> Although backdoor citizenship through children is often used to explain why undocumented migrants choose to cross the U.S.-Mexico border, debates over the Immigration Reform Act focused on employment and social services.

undocumented migrant; and 3) the hiring of anyone without verifying their identity and authorization to work (Fix, 1991, p. 11). Congress believed that sanctions would eliminate employment opportunities for undocumented migrants in the United States, thus removing a major incentive for migrants to enter the United States without authorization (White, Bean, & Espenshade, 1990).

Despite the centrality of the employer sanctions to the IRCA, sanctions proved to be ineffective in eliminating the employment opportunities for undocumented migrants in the United States. Proponents of employer sanctions offer two reasons, which depend on how one views the actions of employers, for their ineffectiveness. The first holds that due to the decision not to include an effective verification system such as a national identity card, employers had no easy and reliable way to verify identity and authorization to work. All that was required was for employer to maintain a record (I-9 form) demonstrating that they had asked for and examined specific documents from a list of over two dozen which could be use to verify identity and employability (Cooper and O'Neil, 2005). The lack of a reliable verification system made it easy for undocumented migrants to use fraudulent documents when applying for a job. The sheer number of documents, supporters argued, made it impossible for employers to distinguish authentic from fraudulent documents. Compounding the situation was the growth of an entire industry whose sole purpose was to provide undocumented migrants with authentic-looking documents to satisfy the I-9 requirement.

The second explanation for the ineffectiveness of employer sanctions holds that despite their centrality to the IRCA they were rarely enforced and easy to circumvent. Although the IRCA significantly expanded the budget of the Immigration and Naturalization Service, only a small portion of that increase was devoted to the enforcement of employer sanctions (Fix, 1991). Indeed by the end of the 1990s, the INS was devoting only 2 percent of its budget to worksite enforcement (Cornelius, 2004). In part due to limited resources, the enforcement of employer sanctions remained a low

priority and thus were never systemically enforced (Calavita, 1994; Cornelius, 2004). Compounding the lack of enforcement, the emphasis given in the IRCA to employers "knowingly" hiring undocumented migrants enables employers to circumvent the sanctions. Not wanting the sanctions to become an onerous burden on business, Congress made it relatively easy for employers to comply with the new regulations. If they had made a good faith check of documents they would be presumed to be in compliance. Only those who "knowingly" hired undocumented migrants would be subject to penalties (Calavita, 1994). The desire to ease the burden of verification effectively created a loophole in the sanctions making it virtually impossible to successfully prosecute employers who had indeed knowingly hired undocumented migrants (Cornelius, 2004).

It is important to note that the first explanation positions undocumented migrants as responsible for the ineffectiveness of employer sanctions. Acting deceitfully and with willful disregard of the law, undocumented migrants dupe innocent employers with fraudulent documents. Unable to tell the difference between fake and authentic documents, employers always unknowingly hire undocumented migrants and thus absolve themselves of any responsibility. The second explanation holds employers primarily responsible. Seeking to take advantage of an exploitable labor pool, employers simply asked for documents with a nod and wink, fully aware that the lack of enforcement and ease of compliance would make it difficult for them to be prosecuted. While it is the case that there is truth in both these explanations neither provides a sufficient explication of why the employer sanctions of the IRCA proved ineffective. Yet no matter what the "real" story is, these explanations profoundly influenced the congressional debates on how best to eliminate the "job magnet" during the 104th Congress.

As in 1986, congressional debates on immigration reform in 1996 began from the notion that, while border enforcement may make it harder for undocumented migrants to

enter the United States, if measures were not taken to eliminate the incentives that entice migrants to cross the border or overstay their visas, particularly employment, undocumented migrants would continue to pour into the United States. Members on both sides of the political aisle routinely argued for the need to eliminate the job magnet. In the Senate, prominent Democrats like Robert Byrd (D-WV) claimed that "the only way to effectively halt the flow of illegal immigrants . . . is to take away the biggest magnet of all . . . jobs" (*Cong. Rec.*, p. S4609). Likewise Alan Simpson (R-WY), who introduced the Senate version of the Immigration Reform Act in response to an amendment offered by Senator Bill Bradley (D-NJ) that would have created a separate office within the INS to oversee the enforcement of employer sanctions, stated "We cannot be serious about dealing with the problem of illegal immigration unless we are serious about dealing with those who knowingly hire illegals" (*Cong. Rec.*, p. S4467). As in the Senate, the refrain among members of the House of Representatives was the need to eliminate the job magnet. Representative Benjamin Cardin (D-MD) boldly claimed that "despite the rhetoric . . . border enforcement will not solve the problem . . . the lure of . . . plentiful job opportunities attracts thousands . . . each year" (*Cong. Rec.*, p. H2449). Not to be outdone on explaining the importance of dealing with the "jobs magnet," Representative Bill McCollum (R-FL) proclaimed:

I can put every person in the United States military across our Southwest border, I can seal it with a wall, and I cannot stop the people who are going to come here illegally, because they are going to come for jobs one way or another. Over half who are here illegally . . . are here because they have come on legal visas and overstayed. And the incentive for all of this is to get a job. (*Cong. Rec.*, p. H2503).

While the need to remove the "job magnet" appeared to have universal appeal, members did not agree on the proposed measures to eliminate it. Both versions of the Immigration Reform Act included a "pilot program" for confirming an individual's employment eligibility. The crucial difference between the two was the House version stipulated that participation would be voluntary while the Senate version allowed the

attorney general to require participation (Gimpel & Edwards, 1999, p. 276). The most substantive debate on these provisions occurred in the House. Representative Steve Chabot (R-OH) and Representative John Conyers (D-MI) introduced an amendment to eliminate the pilot program on the grounds that it represented a threat to civil liberties. What is significant in the debate over the verification system is that as members of Congress continually invoked the need to address the "jobs magnet," there emerges a characterization of undocumented migrants as rational economic actors who are merely trying to maximize their own quality of life, a conduct that all Americans should aspire to. This discourse emerged sometimes alongside and at others in opposition to characterizations of undocumented migrants as "criminals."

Before going further it is worth noting that during the debates on the employment verification section of the Immigration Reform Act, some members of Congress grounded their justifications for eliminating the "job magnet" in representations of undocumented migrants as criminals. Put another way, being able to acquire a job in the United States was the product of a crime (obtaining and using fraudulent documents). For instance, Representative Bill McCollum (R-FL) described the problem as one of "document fraud" and unless that problem was addressed "we can never stop employers [from] hiring illegal aliens because they do not know who they are and they get documents that are fraudulent" (*Cong. Rec.*, p. H2452). Likewise John Wiley Bryant (D-TX), ranking Democrat on the House immigration subcommittee who cosponsored the House version of the Immigration Reform Act, explained that the ineffectiveness of employer sanctions stemmed from the fact that "job applicants have discovered how to counterfeit any one of or all of the 29 documents which can be presented to prove one's status" (p. H2499). Although Representative Bryant curiously uses the term "job applicant" instead of "illegal alien," given the context of the debate it is not hard to ascertain just which "job applicants" to whom he refers. These characterizations of the "problem" reiterate the arguments that the actions of migrants are the reason employer

sanctions have proven ineffective. As such they cast employers as victims and undocumented migrants and deceitful predators able to exploit the inability of the average employer to tell a fraudulent document from one that is authentic. Others were even more generous to employers, such as Representative Charles Stenholm (D-TX) who described them as "hardworking, honest business people" who were doing "everything they [were] supposed to and still being held liable for unknowingly hiring an illegal alien" (*Cong. Rec.*, p. H2511). Employers are acting responsibly, fulfilling their obligations as required by the IRCA. Note that employers are not tainted by, nor contribute to the emergence of the fraudulent document industry. They are merely accepting the documents that are given to them and not encouraging undocumented migrants to acquire fraudulent documents so they can hire them while appearing to comply with the sanctions. Only undocumented migrants constitute the criminal element in the workplace--as it pertains to the hiring of undocumented migrants.

In debates over the verification system, however, there emerged another thread of discourse that was less concerned with undocumented migrants as criminals, focusing instead on the culpability and responsibility of both employers and federal institutions for the ability of undocumented migrants to gain employment. While those who characterized undocumented migrants as criminals for using fraudulent documents opposed the efforts of Representatives Chabot and Conyers to eliminate the verification system from the House version of the bill, members of Congress who blamed employers and the federal government for the failure of the employer sanctions included both those who supported the verification system and those who supported the Chabot/Conyers amendment to eliminate it. While they may have disagreed over the significance of the verification system, both groups characterized the employment-seeking conduct of undocumented migrants in terms consistent with advanced liberal, and in particular neoliberal, mentalities of rule. Keep in mind that the key feature of neoliberal rationalities is the promotion of techniques of the self that "enterprise" all forms of

conduct that can be reconfigured within the context of competition and entrepreneurial behavior, the neoliberal state's rationality of rule. Although the employment section of the verification section of the Immigration Reform Act may not promote this conduct, in the debates, the conduct of undocumented migrants is described as enterprising behavior. Put another by seeking employment, undocumented migrants demonstrate that they have become autonomous agents consistent with neoliberal mentalities of rule.

While one of the key objections marshaled by supporters of the Chabot/Conyers amendment to strip the verification provision from the House version of the bill was that the system invaded the privacy of all Americans,<sup>7</sup> they also contended that it would prove as ineffective as the sanctions in the IRCA at eliminating the "job magnet." If the system depended on employers calling to verify the employment status of an applicant, employers hiring undocumented migrants would never call. The point was best articulated by Representative Conyers (D-MI) who noted that "unscrupulous employers . . . can simply continue to hire illegals underground and off the record as they do today" (*Cong. Rec.*, p. H2497). Confronting the romanticization of employers by supporters of the verification scheme, Representative Calvert (R-CA) proclaimed that while "it may come as a surprise" to members of Congress "many employers knowingly hire illegal immigrants in this country" (*Cong. Rec.*, p. H2502). If opportunities for employment for undocumented migrants exist it is because employers knowingly make them available. "That," as Representative Conyers continued, "is how illegals get in" (*Cong. Rec.*, p. H2497). Yet it was not only those who opposed the verification system who attributed the "jobs magnet" to businesses located in the United States. Supporters of the verification system such as Representative Elton Gallegly (R-CA) claimed "there are businesses in this country who knowingly break U.S. law and hire illegal

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<sup>7</sup> According to opponents, the verification system was tantamount to having every American having to ask the Federal government for permission to go to work.

immigrants"(*Cong. Rec.*, p. H2501). And Representative Barney Frank (D-MA), responded to claims by supporters of the Chabot/Conyers amendment that businesses opposed the verification system arguing that of course they opposed it as "a lot of business . . . like to hire people who are here illegally"(*Cong. Rec.*, p. H2514).

While it is unclear how one could accept the premise that much of the "job magnet" was due to employers knowingly hiring undocumented migrants and assert that the verification system would work, what is particularly important in these debates is how these characterizations reconceptualize the conduct of undocumented migrants. By emphasizing the conduct of employers, these employers themselves become the reason undocumented migrants are entering the United States. It is they who are acting criminally, and while there may be disagreement over whether or not the proposed verification system can arrest that criminal conduct the space is thereby opened for characterizations of undocumented migrants engaging in "calculative actions undertaken through the universal human faculty of choice" (Rose, 1999, p. 141).

Rejecting the notion that undocumented migrants come here to abuse social services or to engage in criminal behavior, members of Congress repeatedly stressed the idea that most migrants come here to work. Indeed Representative Barney Frank (D-MA) argues that despite the discourse that characterizes undocumented migrants as freeloaders or criminals, most members of Congress "understood that most people come here to work" (*Cong. Rec.*, p. H2498). Answering the question why do most "illegal immigrants" come to the United States, Senator Barbara Boxer responded "clearly, it is to find work" (*Cong. Rec.*, p. S4021). Even those in Congress who believed employers were not responsible for the "job magnet," such as Representative Lamar Smith (R-TX), by posting employment as the "No. 1 attraction" for unauthorized migration, characterize entering the United States as an economic decision (*Cong. Rec.*, H2497). Rather than being the product of a criminal mind, the entering of the United States by migrants to find a job is cast as an economic decision. Instead of looking to abuse the system,



undocumented migrants are characterized as deliberate actors engaged in strategic risk-taking behavior. Thus, of the undocumented migrants coming to the United States in search of employment, Representative Bob Goodlatte (R-VI) asked "who can blame anybody for wanting to come to this country" (*Cong. Rec.*, p. H2504)? Similarly, Representative Ken Calvert (R-CA) while noting that undocumented migrants come from "all over the world" they all have one thing in common: "They mostly want a job [*sic*]" (*Cong. Rec.*, p. H2514).

In these descriptions, the distinctions between the so-called legal and illegal immigrant, and with it the distinction between criminals and converts to the American Dream, begins to erode. What is marked as the distinguishing feature of legal immigrants--the desire to work hard and build a better life--now defines both populations. This is not to say that members of Congress would not continue to characterize undocumented migrants as criminals. Rather it is the case that during the debate, a discourse emerged that framed both legal immigrants and undocumented migrants in neoliberal terms. Even if it did not displace the discourse of criminality, it nonetheless troubled the all too easy demonization and scapegoating of undocumented migrants.

It is also the case that these discourses, even if they distribute rational agents on both sides of the border, do not cast undocumented migrants as praiseworthy, as even though undocumented migrants are framed in economic terms their exclusion is still nonetheless warranted. Even if they are recognized as taking actions that mark them as rational economic actors, their presence is still unwanted. Never does their characterization as engaging in conduct to maximize their quality of life justify not doing something about unauthorized migration. Indeed it becomes a warrant for their exclusion. Some would argue that the United States simply cannot support the numbers of legal immigrants and authorized migrants entering the United States each year. Practically and pragmatically, they would argue, the United States needs to limit who is coming into the country. Even if they are not criminals, undocumented migrants need to

wait their turn. Others would draw a distinction between the kind of labor each was able to do. Legal immigrants are cast as highly-skilled and undocumented migrants as low-skilled with the former being preferred over the latter, although the facts are much more complicated. In addition to highlighting the racist discourse that circulates in debates over immigration reform Senator Mark DeWine's (R-OH) position highlights how members of Congress attempted to distinguish undocumented migrants from legal immigrants as economic actors:

Mr. President, I think we really do not need to be making it any harder for these talented, energetic people to come and help us build our great country. In fact, Mr. President, we became the richest, most powerful nation in the history of the world by doing exactly opposite--by encouraging them to come. No. Mr. President, America's immigration problem is not the high-quality researchers and professors wading the Rio Grande in the dead of night or scrambling over a fence to avoid the Border Patrol. We should and can crack down on illegal immigration. (*Cong. Rec.*, p. S3304)

Racist insofar as the problem of "illegal immigration" is located squarely on the brown body, ignoring that much of the problem stems from "talented and energetic" people that overstay their visas, it is nonetheless predicated on a characterization of legal immigrants and undocumented migrants as economic actors. Casting them all as unskilled becomes a warrant for their exclusion. Yet nonetheless their exclusion can function as resource for facilitating the self-governing of those authorized to be in the United States as well as a warrant for dismantling, or at the very least limiting, public assistance programs. This dynamic manifested itself in discussions on eliminating the "welfare magnet" as part of immigration reform.

### **Governing Conduct through Eliminating the "Welfare Magnet"**

As noted earlier, the welfare reforms passed by Congress in 1996 had a significant influence on discussions about ending the "welfare magnet" as part of immigration reform. Among its provisions the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act) included measures designed to limit the ability

of legal immigrants to participate in Federal means tested public assistance programs. Though undocumented migrants were not eligible for public assistance programs offered by the Federal Government, the reform of immigration policy in the 104th Congress did address the so-called "welfare magnet." While characterized as a necessary measure to deter undocumented migrants from entering the United States, discussions of the welfare magnet also functioned to cast individuals as responsible for all social risks except in times of emergency and therefore as placing the risk of deportation on their own heads. As such the debates over the "welfare magnet" were more than about deterring "illegal immigration," at stake was the very idea of what it means to be an individual residing in the United States. It is not just about the kind of immigrants America wants but about what kind of Americans, America wants.

Although no one in Congress could point to any study quantifying how many undocumented migrants were using public assistance programs, Speaker of the House Newt Gingrich (R-GA) best summed up the sentiment regarding their role in attracting undocumented migrants to the United States:

Does offering money and services attract people? . . . Do we believe people in some countries might say "I would like to go to America and get free goods from the American taxpayer?" Now if you believe people are totally coming to America with no knowledge of the free, tax-paid goods they are going to get, then I think you are living in a fantasy land. I think there is no question that offering free, tax-paid goods to illegals has increased the number of illegals. (*Cong., Rec.*, p. H2495)

For Gingrich, as for many in Congress, there was no question that the "generosity" of U.S. public assistance programs constituted a significant factor in the desire of individuals to come to the United States. One has to wonder if when hard pressed to justify this claim, Speaker Gingrich would have invoked the specter of welfare mothers long used by welfare reform advocates to support claims of abuse of public assistance programs by Americans. That aside, members from both sides of the political aisle in both Houses of Congress, and some who had argued that the principal reason authorized

migrants came to the United States was for employment, continuously asserted that welfare, and not just employment, drew undocumented migrants into the country.

Yet aside from including a provision which made noncitizen parents ineligible to receive payments for a child born in this country,<sup>8</sup> the public assistance provisions of the Immigration Reform Act seemed to do little to address the "welfare magnet." For instance, a few members of Congress, such as Senator Barbara Boxer (D-CA) noted that even as Congress was debating ending the welfare magnet, "illegal immigrants [were] already ineligible for public welfare benefits" (*Cong. Rec.*, p. S4023). Likewise Representative Nydia Velázquez (D-NY) reminded her colleagues that "illegal immigrants [were] already barred from receiving benefits by current law" (*Cong. Rec.*, p. H2384). Indeed the only exceptions to that general ineligibility were cases of medical emergency, school lunches, disaster relief, immunization, communicable disease treatment, and child nutrition, all of which, as Senator Edward Kennedy (D-MA) declared, "is the way it should be" (*Cong. Rec.*, p. S4295). Although rarely characterized as a welfare program, some members of Congress include public education among the programs that constituted the "welfare magnet." As states, in accord with the Supreme Court's 1982 decision in *Plyer v. Doe*, are required to educate all students regardless of

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<sup>8</sup> Proponents of the measure argued that undocumented migrants were able to receive public assistance by accepting the checks meant for their children born in this country. In doing so, they argued, the money never goes to the child as the parent opts to spend it on themselves. By preventing ineligible parents from accepting any assistance meant for their child, supporters claimed not only would it stop undocumented migrants from abusing public assistance programs, it would stop pregnant mothers from crossing the border so they could have their child in the United States so that they could then take advantage of welfare programs. Opponents would argue this measure was anti-child as it would prevent American citizens from receiving benefits they were legally entitled too. Children born in this country whose parents happened to be undocumented migrants would have no way to receive their benefits. Yet there is little evidence to suggest migrants with children born in this country either had those children to acquire benefits or use benefits meant for the children on themselves. While it is impossible to rule out such instances, research on migrant populations reveals minimal use of public assistance programs by undocumented migrants (Berk, M. L., Schur, C. L., Chavez, L. R., & Frankel, M, 2000). Citing employment as the reason why they came to the United States, measures to further restrict access to public assistance programs seem to have little impact on the conduct of undocumented migrants.

their legal status, members of Congress, particularly in the House of Representatives-- which amended its version of the bill to allow states to deny admittance to public schools,<sup>9</sup> asserted that free education influenced migrants to cross the border. As Representative Elton Gallegly noted, "the promise of a free education is only one of the magnets we hold up to those who would break our laws by violating our borders" (*Cong. Rec.*, p. H2488). And although members of Congress did attempt to add a provision that would require medical facilities to report an undocumented migrant to immigrant officials in exchange for reimbursement of emergency medical costs and to amend the bill to allow states to deny undocumented migrants admittance to public schools, neither measure became part of the final bill. Thus in terms of eliminating those parts of the welfare magnet the Immigration Reform Act was little more than a reiteration of current law.

Even if this was the case, welfare provisions of the Immigration Reform Act were touted as a significant step in eliminating the welfare magnet. Why? Because the Immigration Reform Act sent a message to undocumented migrants that they were not eligible for public assistance programs. Members of Congress highlighted the symbolic force of welfare provisions describing the bill as "specifying" or "saying" in no uncertain terms that undocumented migrants ineligible for public assistance programs (*Cong. Rec.*, pp. H2390; S4295). Thus, Representative C.W. Bill Young (R-FL) argued that while past legislation "sent the message you could come to the U.S. illegally and expect to receive welfare" the Immigration Reform Act sent the message that Congress was finally "put[ting] an end to this outrage" (*Cong. Rec.*, p. H2631). His colleague, Representative David Dreier (R-CA) noted that the bill made it "clear that illegal immigrants do not qualify for welfare programs" (*Cong., Rec.*, H11071). Yet welfare provisions were more

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<sup>9</sup> An amendment proposed by Elton Gallegly (R-CA). Although it received widespread support in the House, the joint version of the bill did not contain this provision.

than a symbolic gesture designed to clarify the ineligibility of undocumented migrants for public assistance programs. At stake was not just the use of social services by authorized migrants, but the use of social services more generally. The debate functioned to render individuals residing in the United States as "autonomous," i.e. as "manifesting the sturdy independence and good character of those who prefer paid employment to welfare benefits as a source of their livelihood" (Dean, 2002, p. 47). This dynamic is evident in the discussions of undocumented migrants use of public assistance.

Typically, members of Congress described undocumented migrants' use of public assistance as an *abuse* of public assistance. In these discussions, use of public assistance by undocumented migrants is what constitutes the abuse. That is, anything other than their immigration status is irrelevant to characterizations of the use of public assistance programs by undocumented migrants. As by law they are not eligible for public assistance programs, finding a way to participate in this programs constitutes abuse of the system. Representative Nathan Deal (R-GA) describes the problem posed by an undocumented migrant's use of social services:

At a time when we are struggling to provide health care, education, and social services to our own citizens, we cannot justify the depletion of our tax dollars for those who are illegally in our country. The public is correct in demanding that we act to stop these abuses. (*Cong. Rec.*, p. H2390)

Note, that there is no mention of whether or not their conduct outside of their immigration status disqualifies them from using social services. That is, there is no sense that undocumented migrants are being deformed by "dependency culture" (Rose, 1996b). Indeed, these characterizations of undocumented migrants might very well be consistent with neoliberal views of public assistance which hold out the possibility of temporary assistance for those who are regarded as "members of the improved population" who may be temporarily inconvenienced by the lack of job (Dean, 2002, p. 46). Put more simply their abuse is not a function of "welfare dependency," but rather is an effect of their "criminal" conduct.

Yet this is not the only characterization of the "abuse" of public assistance programs by undocumented migrants. Instead of characterizing the abuse as the result of criminal conduct, the "abuse" of social services is cast as a function of dependency culture which then becomes an explanation for why they enter or remain in the United States without authorization. This is reflected in the very idea of the "welfare magnet." The notion that migrants enter the United States to take advantage of "generous" public assistance programs presupposes a deforming effect of public assistance programs. The availability of these programs encourages individuals to not take responsibility for themselves. Rather than taking responsibility for their social conditions, undocumented migrants choose not to exercise their autonomy by opting to live off the state--even if they are not authorized to be in that state. If that state makes this possible, its policy has gone astray. Recall the earlier statement by Speaker of the House Newt Gingrich (R-GA) in which he posits the self-evidentness of the "welfare magnet." In the portion of the quotation excerpted on page 110, Speaker Gingrich states, "This used to be the land of opportunity. It is now the land of welfare" (*Cong. Rec.*, p. H2495). Keeping in mind that work on immigration reform was proceeding alongside work on welfare reform—that is, ending dependency,—Gingrich's statement reflects more than a concern about the lack of entitlement to public assistance. Rather it speaks to a concern about the deforming and dependency creating effects of the welfare state itself. As such, Gingrich's lament is not just that undocumented migrants are using welfare, but that welfare dependency produces unauthorized migration.

This anxiety is also reflected in the concern about attracting the right kind of immigrants, which constitutes the distinction between legal immigrants and undocumented migrants. Recall from those discussions that legal immigrants were the right kind of immigrants because they reflected the conduct of enterprising individuals who sought to maximize their quality of life. This in part explains why, despite the best efforts of the business community to keep provisions pertaining to legal immigration out

of the Immigration Reform Act, the bill ultimately did include sponsorship provisions and deeming requirements for legal immigrants. These measures were designed to eliminate families sponsoring an elderly family member who then apply for public assistance because they had no income. In short, they were designed to eliminate legal immigrants from becoming "public charges." As Representative Lamar Smith explained during the final debate on the joint House-Senate version of the bill "we should discourage those who come to live off the taxpayer" (*Cong. Rec.*, p. H11080). Although talking about legal immigrants, this statement aptly describes much of the rationale for eliminating the "welfare magnet," and discussions of the "welfare magnet" routinely invoked this idea. Take for instance that statement of Representative Bob Goodlatte (R-VI):

. . . and we need to make sure that we do not have magnets that draw people to this country, and free public education, free health care, other welfare benefits are exactly the kinds of things that attract people to the country and cause them to violate our laws entering the country (*Cong. Rec.*, p. H2492)

This statement clearly reflects that the real force of the Immigration Reform Act is to eliminate the use of public assistance programs by eliminating access to dependency-producing programs. Thus, as in the debates over employment, the conduct of undocumented migrants becomes a mechanism, or lever, through which the conduct of legal immigrants and "illegal" Americans generally can be influenced. By emphasizing the dependency producing effects of welfare, the debate on immigration reform reiterates the idea that social risks such as unemployment, poverty, and illness are born by the individual and are problems of self-care. Undocumented migrants come to the United States to (ab)use public assistance programs because they refuse to take responsibility for their self-care, to become "economically rational 'self-governing' subjects" (Nadesan, 2008, p. 32).

Still while some members of Congress claimed that the (ab)use of public assistance programs was destroying welfare programs, such claims did not serve as a



warrant for use of welfare more generally. Although discussions focused on the diversion of funds from citizens, members of Congress emphasized funds were diverted from those citizen that "need our services" (*Cong. Rec.*, p. H11078). Keeping mind the debate on immigration reform took place within the context of a reform of welfare driven by the belief that welfare produced dependency, claims about limiting public assistance to "needy Americans" still did not valorize welfare. Although some Americans may have required public assistance the discussion of the welfare dependent undocumented migrants warned Americans of the dependency producing effects of welfare encouraging them to see themselves as self-governing actors who avoid social ills by making rational calculated decisions designed to optimize their quality of life. Thus, as with the debates over the "job magnet," undocumented migrants function to provide the image of the ideal neoliberal American through their exclusion.

### **Conclusions**

“This debate is really about one’s vision of America” declared Representative Harold Berman (D-CA) (*Cong. Rec.*, p. H2591). Much of the scholarship on immigration reform discourses echoes this sentiment, highlighting the ways in which the debates traffic in nativist and racist discourses to define particular bodies, particularly brown bodies, as contagions to the perceived coherence and stability of a core American, Anglo-European national identity (Gallegos, 2004; Ono & Sloop, 2002; Schneider, 2000). In particular, scholarship on congressional debates about the Illegal Immigration Reform and Immigrant Responsibility Act illumines how discourses of criminality, disease, and pollution demonize undocumented migrants, specifically those from Mexico and Central and South America, articulating them as threats to America. It is my contention that while this scholarship is significant, it overlooks the ways in which immigration reform functions as a critical site for the governing of populations, understood in the Foucauldian sense. While it is the case that congressional debates in the 104<sup>th</sup> Congress were replete

with references to criminality, disease, and pollution, undocumented migrants were also characterized in these discussions in economic terms.

Realizing that enhanced border policing alone would constitute an insufficient deterrent effect, immigration reform advocates offered a more “comprehensive” proposal designed to address the factors believed to influence the decision of undocumented migrants to enter the United States. In positing an answer for why undocumented migrants crossed the U.S.-Mexico border, a discourse emerged that characterized migrants as rational, enterprising agents doing what was in their best interests. From a market perspective, there were jobs available due to the unwillingness of Americans to fill those positions and/or the desire of employers to exploit cheap labor, and migrants were willing to fill them. Who then could blame them for their desire to enter the United States? Cast in these terms, undocumented migrants become the epitome of the neoliberal subject. Yet, even in these terms, the exclusion of undocumented migrants was still warranted; the economy, members of Congress argued, could simply not support every foreigner who wanted to work in the United States. The only way to deter undocumented migrants was to remove what drove these neoliberal subjects to cross the border—jobs and to remove more generally the welfare state itself that once they had entered the U.S. coddled them and discouraged them from leaving.

Thus, in addition to positing undocumented migrants as contagions, congressional debates on the Immigration Reform Act, by positioning migrants as neoliberal subjects, functioned to recruit legal immigrants and the entire working class residing in the United States into practices of self-care. In economic terms, undocumented migrants represented the kind of subjects advanced liberal societies desire—calculating, rational, enterprising individuals who make responsible decisions in accordance with market principles. This inference was buttressed by the discussions of the “welfare magnet.” Whereas job seeking behavior reflected the ideal conduct of the neoliberal subject, (ab)use of public assistance programs signaled the deformation of said subject (whether they be an

undocumented migrant, legal immigrant or American citizen). Whether or not undocumented migrants were (ab)using public assistance programs was thus ultimately irrelevant or of comparatively minor significance, to the force of the discourses of self-care. If, on the one hand, undocumented migrants were using assistance programs then they became another iteration of the welfare mother deformed by public assistance to be used as an exemplar of the kind of subjects Americans should not become. If, on the other hand, they were not using the programs (and, of course, at the time of the passage of the Immigration Reform Act, undocumented migrants were already prohibited by law from participating in public assistance programs), then they had not been deformed by dependency culture and so functioned to model the self-care desired of legal immigrants and citizens. In either case, the conduct of undocumented migrant functioned as resource for discourses of responsibility and self-care designed to make individuals a partner in neoliberal regimes of government.

CHAPTER IV  
IT IS NOT WHAT YOU SAY, BUT HOW YOU SAY IT

Mr. Speaker, our nation has remained strong and united because, while we do not always agree, we share a common set of democratic ideals and values. Commitment to freedom, equality, tolerance and opportunity--not language--is what holds us together. I urge my colleagues to opposed this rule and oppose this bill.

Rep. Sheila Jackson-Lee, "Proving for Consideration of H.R. 123"

But one thing America is not. America is not a nation of separation. All our citizens are Americans. The common denominator is our language. Our language is English. The glue that binds generation after generation is both our Constitution and our English language.

Rep. James Traficant, "Proving for Consideration of H.R. 123"

Ultimately, it is the conduct of the individual, not their devotion and loyalty, that strengthens the state, through increased production, longevity, and population growth.

Jeremy Packer, "Disciplining Mobility: Governing and Safety"

The epigraphs from Representatives Jackson-Lee and Traficant typify how debates over legislation designed to declare English the official language of the federal government turn on questions of identity. Characterizing themselves as the "guardian[s] of American identity," individuals on "both sides" of the issue tend to frame their positions in the language of identity (Schildkraut, 2005, p. 21). For supporters declaring English as the "official" language of the United States is essential to preserving what it means to be American. Opponents, on the other hand, contend the passage of official English legislation will undermine that which truly makes Americans American. Whether one supports or opposes efforts to legislate official English, both sides seem to agree that it is incumbent on Congress to protect the stability, integrity, and vitality of a core American national identity.

Since the introduction of Senate Joint Resolution 72 by Senator S. I. Hayakawa in 1981, policy makers at the state and federal level have expressed increasing concerns about English's lack of "official" status. This ongoing unease has gained the attention of scholars, particularly political scientists who have sought to understand why official English legislation garners broad popular support. Particularly important to this chapter is the work of scholars that explains why some states are able to pass official language

legislation while others are not (Schildkraut, 2001; Tatalovich, 1995). Scholarship that analyzes public opinion in an effort to determine what constitutes the basis for mass support for, or opposition to, official language legislation is also significant (Citrin, 1990; Citrin, Reingold, Walters, & Green, 1990; Freindreis & Tatalovich, 1997; Schildkraut, 2003; Schildkraut, 2005). Underlying this varied scholarship is the claim that official English legislation would have no discernable impact on the daily lives of most Americans (Freindries & Tatlovich, 1997). However, debates over official English are nonetheless politically salient as to the general public “English remains an important symbol of national identity” (Citrin, et al., 1990, p. 557).

The value of this scholarship is that it troubles the all-too-easy assumption that support for official English legislation stems from racial and ethnic hostility. Rather than simply being born from nativist and/or racist attitudes, one's position on official English stems from “one's emphasis on the different components of the complex entity known as American identity” (Schildkraut, 2005, p. 22). Although this scholarship enriches our understanding of why Americans support or oppose existing legislation, its ability to account for the discursive force of these debates is limited. Indebted to unreconstructed notions of subjectivity and the symbolic (identity is conceptualized as fully present, coherent, and stable preceding encounters with the discourse) existing scholarship on official English legislation leaves much to be desired by communication scholars who take identity to be an effect of discourse.

Even more important for this chapter than the concepts of subjectivity and the symbolic that underwrite existing scholarly literature on official English legislation, is the scholarship's emphasis on questions of identity. Whether positing why a particular piece of legislation passes in certain states and not others, or explaining the widespread appeal of official English legislation, existing scholarship begins from the contention that debates over official English are principally about identity. Take for example Schildkraut (2005) who marks her contribution to the existing studies of official English legislation as

demonstrating “how multiple conceptions of American national identity shape opinions about language policies” (p.6). The justification for this contribution in part rests on Schildkraut's observation that the debates over official English are “often couched in terms that refer to ideas about what it means to be an American” (p. 21). And Schildkraut is indeed correct, much of the discussion over the necessity of official English legislation does turn on how one conceptualizes what it means to be American and the conditions for maintaining and preserving that identity. But this emphasis on identity overlooks how debates on official English legislation also evince a concern with conduct, in particular, ensuring particular kinds of political performances. Debates over official English are replete with discussions of how the acquisition of English is the basis for ensuring a vibrant and healthy democratic politics by enabling civil, reasoned, and rational deliberation. By emphasizing questions of identity, the literature on official English ignores the ways in which in the debates over official English, English is positioned not as the guarantor not of what is perceived to be a core, stable, coherent identity, but as that which is able to produce rational, calculating subjects committed to deliberative exchanges. To be sure, certain conceptions of national identity may include such practices; however, in congressional debates over official English a discourse emerges that shows little interest in shaping or molding the identity or subjectivity of individuals. Instead, the principal attraction of English in some of these debates is how the language can help to manage the activities of a population. Thus, it is my contention that by focusing primarily on identity, existing scholarship overlooks how English is characterized as a means for shaping specific modes of conduct.

Therefore, rather than viewing debates over official English as mere “symbolic politics” where our position depends on how we conceptualize what it means to be American, this chapter analyzes the ways that the debates over official English position English as a way of coordinating, codifying, and legitimating diverse and complex *practices* (Rose, 1998, p. 12). Put another way this chapter argues that debates over

official English constitute part of a “grid of government” (Rose & Miller, 1992, p. 175). Government, here, is understood as a of “conceptualizing all those more or less rationalized, programs, and strategies, and tactics for 'the conduct of conduct', for acting upon the actions of others in order achieve certain ends”(Rose, 1998, p. 12). Instead of focusing on the debates as a site of ideological struggle mediated by discourses that seek to control the meaning of particular identities, this chapter argues that English functions as a cultural technology, or as a “mechanism through which authorities of various sorts have sought to shape the conduct, thought, decisions and aspirations of others in order to achieve objectives they consider desirable” (Miller & Rose, 2008, p. 32). As a cultural technology the value of English rests on its ability to instill and cultivate the ethical attributes necessary for peaceful, rational, vibrant democratic politics. More than enabling a population to deliberate by serving as a common medium for the exchange of ideas, English is cast as a mechanism through which liberal ideals are cultivated, managing how people engage in political practice. In this chapter I also contend that only by examining the debates on official English for how they figure English as a cultural technology does it become possible to consider how particular examples of official English legislation functioned as part of a larger apparatus designed to influence the conduct of undocumented migrants seeking to cross the U.S.-Mexico border.

Before turning to an analysis of congressional debates on official English, I discuss the legislative history of the official English movement. I then move to a discussion of the ways in which language is conceptualized in scholarship on deliberative democracy, the public sphere, and spheres of argument, in an effort to consider how a language can function as more than a medium for the expression of ideas. I follow this with a discussion of Ono and Sloop's (1995) theory of “vernacular discourse” in order to posit how official English legislation can produce material effects even if it is never enacted. Finally, I turn to the analysis of discussions (both hearings and floor debates) of official English legislation (S. 356, the Language of Government Act and H.R. 123 the

Bill Emerson English Language Empowerment Act) in the 104th Congress (1995-1996). I focus on these acts for two reasons: 1) unlike previous legislation, they spawned substantive discussions in the form of hearings and floor debate; 2) during the same session it debated these acts, Congress turned its attention to reforming U.S. immigration law. Ultimately I contend that these bills and the discussions surrounding them constitute English as a mechanism able to “instill the ethical attributes of deliberative democracy” and produce citizen-subjects who are civil, rational, reasonable, and peaceful, and whose political practices reaffirm the legitimacy of existing governing institutions (Greene & Hicks, 2005, p. 102).

### **Official English History**

Although “official English” and “English-only” are often reduced to each other or used interchangeably, it is worth repeating that while “official English” may have ties to other language issues such as English-only or bilingual education, it is part of a legislative history that continually reasserts its distinction from other language debates. While one would be hard pressed to deny, even despite the ethnic heterogeneity of those residing in the United States, that English has always been the *common* language of the United States, it is equally true that the founding documents of this country are silent on the question of an *official* language.<sup>1</sup> For much of the nation's history, there was little if any concern that English had not been officially declared either as the national language of the United States or the language of government. It was not until the early 1900s, with the rise of the Americanization movement, that any serious attention was given to the question of a national language (Citrin, Reingold, Walters, & Green, 1990; Draper &

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<sup>1</sup> The terms *common* and *official* are used to distinguish the status of English within the United States. Common here is used to refer to the *de facto* status of English as the national language of the United States. Although English is considered to be the dominant language of the United States, English is not legislatively codified as the national language of the United States. An official language is one that has been declared by state institutions to be the language in which they conduct business.



Jiménez, 1992; Frenreis & Tatalovich, 1997). Fearing that the influx of immigrants from Eastern and Southern Europe threatened the prevailing customs and values that defined what it meant to be an American, the Americanization movement stressed that a single language that everyone would speak was critical to maintaining the cultural homogeneity of America. (Citrin et al, 1990, p. 536-7). Typifying this sentiment was former President Theodore Roosevelt (1992) who in a speech entitled “Children of the Crucible” stated:

We must have but one flag. We must also have but one language. That must be the language of the Declaration of Independence, of Washington’s Farewell address, of Lincoln’s Gettysburg speech and second inaugural [*sic*]. We cannot tolerate any attempt to oppose or supplant the language and culture that has come down to us from the builders of this Republic with the language and culture of any European country. The greatness of this nation depends on the swift assimilation of the aliens she welcomes to her shores. (p. 85)

Although President Roosevelt's comment is more consistent with the ideas of the English-only movement, it nonetheless illustrates that the earliest anxieties over the status of English were an outgrowth of anxieties about immigration.

Despite concerns expressed during the early 1900s by the Americanization movement, few measures were ever taken to legislatively codify English as the “only,” “national,” “common,” or “official” language of the United States. Following World War I, however, as a result of fears that children of immigrants would succumb to alien (primarily German) influences, fifteen states passed laws establishing English the “only” language of instruction in schools (Swain & Neili, 2003, p. 36). Only two states, however, (Nebraska and Illinois) enacted measures to make English the “official” language of the state. Acting through a constitutional amendment, Nebraska in 1920 became the first state to declare English as an official language (Draper & Jiménez, 1992, p. 89). In 1923 Illinois passed a law declaring its official dialect to be “American”—it was amended in 1969 to make English the official language of the state—and is credited with the earliest statutory enactment of an official English measure (Frenreis, 1997, p.

354). Not until 1978, when Hawaii amended its constitution to designate both English and Native Hawaiian as its official languages, would another state enact a measure declaring English as its official language. The only attempt, during this time, to declare an official language through federal legislation was made in 1923 when Congressman Washington J. McCormick (R-Mont) introduced a bill (H. R. 14136) establishing “American” as the official language of the United States (Tatalovich, 1995, p. 71). The intellectual sentiment of the time ridiculed the measure as being anglophobic, and the measure died after being referred to the House Judiciary Committee (Tatalovich).

Early 20<sup>th</sup> century concerns about the status of English subsided and eventually disappeared altogether with the passage of the National Origins Act of 1924 (also known as the Johnson-Reed Act). By establishing immigration quotas that favored applicants from northwestern European countries and prohibiting immigration from Japan, the National Origins Act of 1924 literally changed the face of U.S. immigration in the early 1900s. With immigration from non-English speaking southern and eastern European countries severely curtailed and immigration from Japan prohibited, nativist fears subsided and language issues disappeared from the political spotlight at both the state and federal level. If establishing English as an official language was seen as a way to combat the growing influence of “alien” values and cultural practices, immigration restrictions trumped the need for such measures.

Declining anxieties over the status of English during the 1920s suggest that proposals related to language issues are motivated primarily by nativism. And Citrin, Reingold, Walters, & Green (1990), Tatalovich (1995), and Frensdreis and Tatalovich (1997) do contend that concerns over the status of English in the 1920s were motivated by nativist fears resulting from World War I. However, this cannot be the complete story. If nativism was always the primary or sole motivator behind official language proposals, one would expect these proposals to take center stage when there is a resurgence of nativism. Yet, the literature on contemporary language debates

demonstrates that nativism is not sufficient to explain the current wave of attempts to legislate English as the official language of the United States. Since the early 1980s when federal legislators began to make concerted efforts to declare English the “official” language of the United States, nativist fears have surged and waned. Yet no matter whether the country is experiencing a resurgence or subsidence of nativist sentiment, policy makers continue to introduce official English legislation. In addition, popular support for these measures has remained high even when the public is relatively unconcerned with who is entering the country.

Contemporary debates over official English began in 1981 when former Senator and semanticist S. I. Hayakawa (R-CA) introduced Senate Joint Resolution 72 which sought to amend the Constitution to declare English the “official” language of the United States. Although Congress took no action on the bill, since 1981 a great deal of political energy has been spent to enact measures at both the federal and state level to declare English the official language of the United States (Draper & Jiménez, 1992, p. 90). At the state level, renewed interest in official English legislation began in 1981 with the Virginia legislature’s declaration of English as the state’s official language. With the passage of official English legislation in Kansas and Idaho in 2007, twenty-five states have, since 1981, declared English as their “official” language, bringing the total number of states that have passed official English legislation to thirty.<sup>2</sup> As of this writing, of the remaining twenty states, thirteen have considered official English legislation, leaving at most only seven states<sup>3</sup> that have not considered openly considered official legislation in the past three decades (Schildkraut, 2005, p. 15). With voters in Oklahoma set to decide

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<sup>2</sup> As of the writing of this chapter only twenty-five states have official English laws still in effect. The measures implemented in Alaska and Arizona were challenged and overturned by state courts. A list of states which have passed official English laws can be found at <http://englishfirst.org/englishstates/> or at <http://www.us-english.org/inc/official/states.asp>.

<sup>3</sup> Those seven are DE, MI, NV, NM, OR, VT, and TX (Schildkraut, 2005).

to whether or not to make English the official language of the state in November 2010 (Price, 2009), it is likely that Oklahoma will become the thirty-first state to declare English as its official language.

Despite Congress' lack of action on Senate Joint Resolution 72, members of Congress have introduced amendments and statues designed to declare English the official language of the United States at least once each session since 1981. Even though most of these proposals have died in committee, in 1996 the House passed the Bill Emerson English Language Empowerment Act by a comfortable margin of 259 to 169 (Schildkraut, 2005, p. 13). Much to the chagrin of its supporters in the House, the bill died in the Senate.<sup>4</sup> Despite these failures, policy makers who support official English have remained undeterred in their attempts to pass official English legislation at the federal level. In the 111<sup>th</sup> Congress (2009-2010) alone, official English legislation has been introduced three times.<sup>5</sup> Given the momentum of the official English movement at the state level, it is likely that members of Congress will continue to introduce amendments and bills to declare English the official language of the United States.

While particular official English initiatives may contain any number of provisions, they all have at least two elements in common. They declare English as the official language of government and they declare that all documents produced by government institutions only appear in English. The first ensures that any business conducted with governing institutions (state or federal) by those residing legally in the United States is conducted only in English. The second, which is seemingly redundant, prevents any document produced by governing institutions (with the exception of those

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<sup>4</sup> That the Bill Emerson English Language Empowerment Act actually made it to a floor vote is likely due to it being introduced in the wake of the 1995 referendum on Quebec's independence.

<sup>5</sup> These include S. 991 the English Language Unity Act of 2009, H.R. 1229, the National Language Act of and, H.R. 997 the English Language Unity Act of 2009.

dealing with certain emergencies) from appearing in a language other than English. Although critics contend that such official English proposals are tantamount to “English-only” initiatives, supporters routinely distance themselves from this charge claiming that these measures only affect how individuals communicate with governing institutions, and do not regulate the use of language in the home, workplace, or at non-governmental public events. Representative Bill Emerson (R-MO), one of the most vocal proponents of official English legislation in Congress, claimed that supporters are not “opposed to other languages;” they are simply interested in creating the conditions for an “unequivocal form of communication for our nation's business” (*Language of Government Act*, 1995, p. 10). While this chapter has no stake in whether or not official English initiatives mask a more pernicious English-only agenda, it is worth noting that official English initiatives are explicit in their language limiting the scope of the legislation to business conducted by state and federal governments. Ultimately, however, what matters to this project is not whether or not English becomes the sole language of the United States as a result of official English initiatives, but rather how the debate over official English positions English as a cultural technology able to instill the attributes of deliberative democracy in the U.S. population. This effect does not depend on any particular legislative outcome, nor on whether or not official English is limited to only business with state and federal governments.

### **Language and Deliberative Democracy**

Given the importance placed on notions of consent and rational deliberation among a critically informed public in democratic theory and practice, it is somewhat surprising that the “language” of politics is rarely, if ever, discussed by theorists such as Jürgen Habermas or Seyla Benhabib. Indeed, the idea of a common language seems to be presumed or taken for granted by scholars interested in the revitalization of democratic life and the “public sphere.” If, as Benhabib (1996) contends, democratic legitimacy “results from the free and unconstrained public deliberation of all about matters of

common concern” (p. 68), the lack of a common language would seem to impede, impair, or even prevent deliberative practice among those with a stake in any proposed institutional program, arrangement, or action. What binds most if not all attempts to theorize democracy, democratic politics, [the] public sphere[s], and [spheres of] public argument is the belief that “political participation is enacted through the medium of talk” (Fraser, 1997, p. 110). What appears to be taken for granted is the idea that political participation is enacted not through any medium of talk but through a *common* medium of talk. Can people deliberate issues in common if any sense of being-in-common is thwarted, fragmented, or fractured by linguistic differences? Can people understand what they have in common, if they cannot communicate with each other due to linguistic difference? The answer, given the lack of attention to questions of language in discussions of deliberative democracy, seems to be no. Based on the work of those concerned with the state of the public sphere, “collective political deliberation is only feasible if participants understand one another, and this seems to require a common language” (Kymlicka, 2001, p. 226).

While questions of language and its relation to the status of public deliberation and the theorization of democratic government might seem to be the purview of scholars of political theory, like political theorists, scholars within the field of Rhetorical Studies have long been concerned with the state of democratic politics and more specifically with the conditions of public deliberation. From Goodnight’s (1982) theorization of the personal, technical, and public spheres of argument to recent attempts to rethink the notion of controversy, scholars of rhetoric have expended a great deal of intellectual energy thinking and retheorizing the possibilities of a reinvigorated democratic politics (Goodnight 1999; Ono & Sloop, 1999; Phillips, 1999). Yet like their counterparts in political theory, these attempts to rethink, reconceptualize, and reinvigorate conceptions of public argument are premised on the ideal that political participation is enacted through a common medium of talk. For example, according to Goodnight (1982), for an

argument to be considered part of the public sphere of argument it must adhere to the following normative demands:

. . . since the public must encompass its sub-sets, the forms of reason would be more common than the specialized demands of a particular professional community. Moreover, whereas the public forum inevitably limits participation to representative spokespersons (unlike a chance discussion), an appropriately designed public forum would provide a tradition of argument such that its speakers would employ *common language* [italics added], values and reasoning so that the disagreement could be settled to the satisfaction of all concerned. (p. 219)

Goodnight's diagnosis of the decline of public argument echoes the general rule Kymlicka (2001) advances about deliberative democracy “we can expect—as a general rule—that the more political debate is conducted in the vernacular,<sup>6</sup> the more participatory it will be” (p. 214). Or does it?

Goodnight's use of a common language seems to refer to the idea of a common *vocabulary*, while Kymlicka's use of the term “vernacular” to describe a common language refers to a common *tongue*. Kymlicka (2001) thus describes democratic politics as “politics in the vernacular” where in an “average citizen” is able to debate political issues in his/her “own tongue” (p. 213). Although Goodnight never specifically addresses what he means by a common language, it is possible to derive his meaning from the example he uses to illustrate the normative demands of each sphere of argument. It is thus necessary to quote Goodnight (1982) at some length:

Begin with an example made classic by Willard, strangers arguing in a bar at the airport. . . . The statements of the arguers are ephemeral. Since no preparation is required, the subject matter and range of claims are decided by the disputants. Evidence is discovered within memory or adduced by pointing to whatever is at hand. The rules emerge from the strangers' general experience at discussion, fair judgment, strategic guile and so forth. The time limits imposed on the dispute probably have no intrinsic significance to the disagreement. The plane will take off. An

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<sup>6</sup> The vernacular in Kymlicka's work is associated with the idea of a common tongue: “. . . democratic politics is politics in the vernacular. The average citizen only feels comfortable debating political issues in their own tongue” (p. 213)

interlocutor will leave. Others may join in and continue the a discussion. Those formerly involved in the dispute may replay the disagreement, embroidering it in the retelling. But the chance encounter is at an end. Suppose that the conversation is preserved, however, and that the arguments are abstracted from their original grounding to serve as examples in supporting claims about a theory of argument. Consider Professor Willard's own arguments about the argument. In his transformation of assertions, grimaces, glances, and self-reports from the original dispute into examples which illustrate observations about the nature of argument, the concrete particularity of the original dispute is lost. But what is to be gained is the advance of a special kind of understanding among members of a professional community of which a Willard is a part, the community of argumentation scholars. In creating his statement, Willard narrows the range of subject matter to that of the interests of the requisite community. He brings together a considerable degree of expertise with the formal expectations of scholarly argument (footnotes, titles, organization, documentation, and so forth). The technical arguments are judged by referees as worthy of preservation. Once the research is published, the community addressed may join into the dispute. Of course, Willard and his critics may engage in ad hominem attacks, vestigial products of the private sphere, but what engages the community—and continues to do so long after the disputants turn to other battles—is the advance of a special kind of knowledge. (pp. 218-219)

Of particular interest is Goodnight's discussion of formal scholarly argument. Here Goodnight calls attention to the additional demands professional communities place on practices of argumentation. Yet more than just entailing conventions of citation and organization, scholarly argument is couched a language of expertise. Note how Goodnight explains how Willard's arguments about argument enable the original dispute to be used to develop a “special kind of understanding.” This specialized understanding is dependent upon Willard's knowledge of argument theory, a body of literature replete with specialized concepts, terms, and ideas with which argument scholars are conversant. Although public arguments may deploy some of this specialized vocabulary, if one of the standards of public argument is that interlocutors must employ a common language, if involved in a public disagreement over his arguments about argument, Willard should not employ the vocabulary of argument scholars. Thus Goodnight notes that questions of public significance have become increasingly difficult to notice in part due to the



proliferation of “terminologies” of professional communities in discussions of public policy (p. 235).

Yet, one might rightly ask, is not a conception of a common language as a common *vocabulary*, predicated on a common *tongue*? How can one conduct public argument through a common set of terms, if those involved in the argument do not share the same tongue? Like scholars of deliberative democracy, Goodnight's theorization of the personal, technical, and public spheres of argument assumes that deliberative politics takes place through a common *medium* of talk. Goodnight's own contribution to argument theory bears this out. His treatment of the spheres of argument reflects the normative demands of a professional community. Not only does it reflect particular conventions of citation, what counts as evidence, it is written in the language of scholars of argumentation. Yet it is also written in English. The example he cites to illustrate how a particular issue is argued as it shifts from sphere to sphere also illustrates that even as terminologies may shift, the tongue in which the argument occurs remains the same. Goodnight, like Fraser, Benhabib, and Habermas, presumes the tongue through which one expresses their ideas, has no discernable impact on the practice of deliberative politics. It is simply not considered.

What is particularly intriguing about the debates over official English is that within these debates there emerges a conception of English as more than just a medium through which democratic politics is conducted. English is characterized as being central to particular performances or ritualistic behaviors essential to what is considered within the debate as legitimate forms of political expression. These characterizations seemingly reflect Kymlicka's (2001) claim that political communication has a largely ritualistic component which is “typically language-specific” (p. 213). Put another way, to debate political issues, an individual must be more than fluent in the common tongue of the community; they must be fluent in the ritualized forms of behavior that attend each language. In this view it possible for an individual to understand a foreign language in

the “technical sense;” however, be unable to understand political debates because s/he lacks an understanding of the ritualistic elements tied to each *tongue*.

Returning to Goodnight's example of the conversation in the bar, it is possible for a non-native English speaker who “knows” English to be unable to participate in the conversation. Even if forms of argument are culture specific, Goodnight would likely contend the non-native speaker simply needs to learn the “rules” governing personal argument in the United States. Kymlicka's position, however, holds that at least some of the ritualistic elements of personal argument, may be dependent on the tongue through which argumentation occurs. In essence, learning the rules of argument, as in learning a language in the formal sense, on Kymlicka's view would not make a person “fluent” enough understand or even partake in the argument. Kymlicka's conception of a common language seemingly holds out the possibility of understanding language as a mechanism that can modify, manage, and regulate the behavior of citizen and non-citizen-subjects. Even if any given set of behaviors bears no necessary relation to any particular language, on Kymlicka's view, particular practices, or rituals, have become articulated to particular languages such that in learning the language one also learns how to engage in “appropriate” forms of political conduct. That is through the acquisition of a language one ideally is, although not necessarily, trained how to behave as a political citizen.<sup>7</sup> It is my contention, that characterizations of English, by both supporters and opponents of official English, position *American* English as a mechanism for cultivating the attributes, behaviors, and activities of deliberative democracy.

### **The Effects of Oppositional Argument**

Even if one accepts the idea that a language can function as a cultural technology, one key objection remains: official English legislation at the federal level has yet to

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<sup>7</sup> Although the phrase political citizen may seem redundant, its use reflects an awareness of scholarship that posits other modes of citizenship such as economic or social citizenship.

become law. However, recent scholarship on oppositional argument highlights the possibility of considering the discursive effects of legislation that fail to actually become law. In their expansive study of the rhetoric of Proposition 187, Ono and Sloop (2002) mark the ways in which seemingly oppositional discourses are often complicit with and thereby reinforce the ideological logics of dominant discourses. Extending their theorizations of “vernacular” (Ono & Sloop, 1995) and “outlaw” (Sloop & Ono, 1997) discourses, Ono and Sloop have recently called into question analyses of the effects of oppositional argument that fail to account for the ways in which such arguments can be complicit with dominant cultural logics and ideologies (Ono & Sloop, 2002). That is, they provide a way of thinking about the ways in which a legislative initiative can nonetheless be politically successful even if defeated.

Beginning with an example of oppositional argument that they categorize as “civic” discourse (discourse oriented toward a general audience), Ono and Sloop (2002) illustrate how arguments against Proposition 187 relied on the same racial stereotypes found in arguments supporting the measure and reaffirmed the legitimacy of government institutions to resolve immigration matters (pp. 12, 88-92). For example, they demonstrate how supporters of Proposition 187 often depicted migrants as a source of contagion. Yet when discussing the dangers of passing Proposition 187, opponents also cast migrants as a source of contagion. Ono and Sloop point to articles opposing Proposition 187 which appeared in the *Los Angeles Times* to illustrate their point. The following is one of the many examples of “civic” oppositional argument that they contend reproduces dominant cultural logics concerning migrants:

The undocumented and their children would remain among us in spite of Proposition 187, but with less education and health care. Therein lies the most perverse result of Proposition 187: It would create an underclass of illiterate and impoverished residents, deprived of basic skills, including English language skills necessary for integration of immigrant children into our society and our work force. This underclass would create new risks to public health and new breeding grounds for crime and thereby

threaten the welfare of all Californians. (Chang, 1994, as cited in Ono & Sloop 2002, p. 77)

The reproduction of dominant cultural logics, however, is not simply a hallmark of “civic” discourses. As part of their larger call for scholars in Rhetorical Studies to study “vernacular”<sup>8</sup> discourse (discourse by, for, and about local communities), Ono and Sloop (1995) caution scholars not to view vernacular discourses as inherently emancipatory. They extend that caution through their analysis of “vernacular” oppositional arguments to Proposition 187. Particularly they note how “vernacular” oppositional arguments, like their civic counterparts, positioned immigration as a national concern thereby reinforcing the legitimacy of national governing institutions to resolve immigration matters. Although they offer no direct textual evidence, Ono and Sloop (2002) contend their study of an email distribution list devoted to defeating Proposition 187 illustrates how these messages reinforce dominant cultural logics insofar as they assume that the battle against anti-immigration measures should be waged through legal challenges (pp. 120-121).

The significance of this scholarship is that it demonstrates how even if Proposition 187 had been defeated, the debates themselves would have reinforced and legitimized the conceptions of migrants on which support for the measure was predicated. Their interest in the force of oppositional argument creates a space for thinking about how legislative initiatives can produce political effects even they fail to become law.

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<sup>8</sup> It is important to note the distinct use of the term vernacular by Kymlicka and Ono and Sloop. For Kymlicka the vernacular refers to a common tongue shared by citizens of multilingual countries. For Ono and Sloop vernacular describes a form of discourse; as a discourse produced by, for, and about local communities. Given Ono and Sloop's conception of vernacular discourse, scientific discourse could be considered a vernacular discourse as long as it is produced by, for, and about a local scientific community. Keep in mind they oppose it to “civic” discourse which is oriented toward general audiences. Ono and Sloop's discussion of the vernacular never considers the language in which the discourse by, for and about local communities is spoken. The relationship of these two conceptions of the vernacular is of little concern to this chapter. Kymlicka's conception of the vernacular bears on the question of whether a language can function as a cultural technology. On the other hand, Ono and Sloop's conception of the vernacular is relevant insofar as it helps to illustrate their claims concerning the discursive effects of oppositional argument.

This insight is of particular importance to scholars of governmentality given the claim by Rose and Miller (1992) that “the enactment of legislation is powerful resource . . . to the extent that law translates aspects of a governmental programme into mechanisms “that “establish, constrain, or empower” particular modes of conduct (p. 189). Ono and Sloop's analysis of the force of oppositional argument opens the space for asking if even the mere introduction and consideration of legislation can produce a similar outcome.

While Ono and Sloop view the debates over Proposition 187 as ideological struggles entailing processes of generating and controlling the meaning of contested values, identities and symbols, nothing in their conceptualization of the force of oppositional argument necessitates these theoretical commitments (Greene & Hicks, 2005, p. 101). Rather than considering how oppositional argument reproduces dominant ideological formations, it is my contention that opposition to a piece of legislation may end up codifying the very mechanisms for shaping and managing of conduct that a particular piece of legislation seeks to enact. If both sides presuppose that a particular mechanism may in fact be useful in managing the conduct of a population and agree to the desirability of that conduct, might that not enable that mechanism to become part of programs of government not localized to the state? Indeed, it is this question that animates my approach to congressional debates over official English legislation. Driven by discourses that emphasize the managing of conduct, I contend that official English legislation can be read as an attempt to articulate the state into activity of government in order to produce desirable citizen-subjects who perform desirable political *practices* that reaffirm the legitimacy of existing governing institutions. The defeats of official English legislation should not be viewed as failures to realize these governmental ambitions. By conceptualizing English as a cultural technology able to instill particular attributes and capacities, debates over official English ultimately recruit other institutions, groups and persons into the production and managing of “prudential” conduct (Brown, 2005).

### **The Successful Failure of Official English Legislation**

Would it not be better if Americans all spoke English? The self-evident answer to this seemingly innocent question points to the political success of official English initiatives in spite of the inability of supporters to secure passage of such legislation at the federal level. While scholarship on deliberative democracy may highlight the practical and pragmatic functions of a common language in forging and maintaining political communities, it is safe to say that we do not need theories of language or deliberative democracy to explain why a community of any sort is better off if they share a common language (Kymlicka, 2001). If a language is merely understood as a vehicle for the transmission of ideas across time and space from one person to another, communities that share a language will, all other things being equal, be able to function more efficiently to accomplish tasks in common without being hindered by multiple languages. Thus supporters of official English legislation often tout the “practical” and “common sense purpose” of a common language (*Cong. Rec.*, 1990, p. 17951). As offensive as one may find official English legislation, can anyone look at their daily activities and interactions with others and honestly say they would be able to get things done as expediently and efficiently if they had to communicate with others in multiple languages?

It is not surprising then to find that within the debates over official English the trope of the Tower of Babel is used to reinforce the practical and pragmatic value of a common language. Although Christian traditions interpret the story of the Tower of Babel either as one of pride and punishment or as an explanation for cultural diversity (deClaissé-Walford, 2006; Harland, 1998; Hiebert, 2007), outside of those traditions the tower story has come to represent something different. Secular interpretations of the tower story see not a warning or explanation of cultural diversity but a warrant for a common language. Take for example Garfield (1974) who extols the virtues of the tower story as the key to unlocking the ultimate potential of science:

Thus, the Tower of Babel was a great technological achievement whose construction was unhampered by linguistic difficulties.

There was no translation problem for those early engineers. God's curse has left us essentially incommunicado. . . . mankind has suffered enough since then. We should now complete a modern Tower of Babel through the universal adoption of English as the mandatory language of science. (p. 172)

In secular traditions the story becomes a warning about the dangers of multilingualism. Bracketing the question of why the tower was constructed, secular interpretations not only emphasize the productive potential of a common language, they also position a common language as the key to progress and stability: look what we can do when we are unfettered by multiple languages. This sentiment constitutes one of the principal justifications for official English legislation. Legislating a common language is seen by proponents as essential to "progress," "efficiency," and "modernity" (*Language of Government Act*, 1995, p. 31). And just as those who see in the Tower of Babel proof of the benefits of a common language, supporters of official English legislation look to what Americans have built as a result of a common language--a vibrant, healthy stable nation.

Typifying this sentiment is a statement by Representative Emerson, who has routinely introduced official English legislation in the House of Representatives:

We feel a historical link to the English language, we built this country on ideals and dreams that we debated in English. We often had different opinions but through our shared language, we found our way to compromises that made our Nation strong. People the world over dream of living in the kind of democracy we have created here. The freedoms that we enjoy in the United States are truly the envy of the world and the English language played a key role in creating those freedoms. (*Cong. Rec.*, 1990, p. 18875)

One has to wonder whether Emerson believes that it was simply speaking English that enabled the United States to become the envy of the world. At the very least in Representative Emerson's statement the history of and success that is the United States bears witness to the value of a common language. Multilingualism thus threatens the continued success of the American project by introducing inefficiencies into the system.

Even if the inefficiencies of a multilingual state could be overcome, proponents of official English note an even greater threat posed to the American project by

multilingualism: national fragmentation. Here the argument invokes the notion that “language is important in defining the boundaries of political communities” (Kymlicka, 2001, p. 212). This idea is clearly reflected in Representative Emerson's brief narrative of the history of the United States. A common language enabled Americans to form, what in Emerson's vision is, a cohesive and stable political community. Multilingualism, then, for supporters of a common language, creates the conditions for “linguistic and social separatism” as ethnic enclaves form and splinter predicated on their use of particular languages (*Language of Government Act*, 1995, p. 9). For proof, supporters contend one only need look to Canada and the push for Quebec's independence. It is far from a coincidence that precisely when the drive for Quebec's independence became politically salient in Canada in both 1990 and 1995, members of Congress introduced official English initiatives with renewed zeal (H.R. 4424, Language of Government Act of 1990, S. 356, Language of Government Act of 1995, and H.R. 123, Bill Emerson English Language Empowerment Act of 1996). This connection was made explicit in a hearing on the Language of Government Act of 1995 conducted before the Senate Committee on Governmental Affairs in which Senator Richard Shelby (R-AL) noted that declaring English to be the official language of the United States had “become more important in view of the separatist movement in Quebec.” (*Language of Government Act*, 1995, p. 2).

Supporters of official English reduce the issue of Quebec's sovereignty to a question of language. This idea is epitomized by the state of Representative William Broomfield (R-MI) who, in the floor debate on the Language of Government Act of 1990 stated:

Mr. Speaker, as a co-sponsor of the Language of Government Act, H.R. 4424, I call attention to Canada as an illustration of why we must designate English as the official language of the United States. After years of attempting to provide equal status for English and French, Canada today is divided by bitterness, resentment, and even hatred. The secessionist movement is strong in Quebec, which is seeking recognition as a distinct society. The



message for the future of the United States is inescapable:  
 Bilingualism in government does not work. (*Cong. Rec.*, 1990, p. 17954)

Proponents of official English legislation routinely invoke the specter of Quebec as a “case in point” that demonstrates the ways in which multilingualism “promotes instability, resentment, and a threat to national sovereignty” (*Language of Government Act*, 1995, p. 5). The fact that Quebec's bid for independence failed is no consolation. So long as Canada continues to accommodate multiple languages, the threat to its stability and integrity remains. If the American experience is to continue into the future, the inference is, Americans must continue to secure the conditions that have enabled that project to remain a success to this point in time--a common language.

While those who oppose official English legislation do so on the grounds that it is unnecessary, nativist, and racist, and that it would fail to accomplish its goal of encouraging Americans and non-English speaking immigrants to learn English, they nonetheless accept without question the value of a common language. Opponents of official English argue that the question of a common language is a “non issue,” commonly citing Census data that shows that almost all Americans already do speak English (*Cong. Rec.*, 1996, p. 21191). This fact alone illustrates for them that, whether or not English is institutionalized as the official language, it already functions as the common language. What, they ask, is the point of legislatively institutionalizing that which is already socially institutionalized? The value of a common language they assert is already obvious. Take, for example, the statement offered by Representative John Patrick Williams (D-MT) during the floor debate on the Bill Emerson English Language Empowerment Act of 1996:

Of course a common language encourages unity. People on both sides of the aisle agree with that. There is no argument about that. Of course a common language promotes efficiency in our vital system, private system and economy. There is no debate about that. Of course immigrants should learn to speak the English language. That is why 97 percent of the people in this country can speak English or are on a waiting list learning [*sic*] to speak English. (*Cong. Rec.*, 1995, p. 21179)

It is worth noting that Representative Williams objects to the legislation on the grounds that it is merely being used to stir up votes in an election year. That said, his response typifies the position of most opponents of official English, who agree with supporters that English is important as a common language but nonetheless contend that official English legislation is utterly pointless.

If, as proponents charge, the point is to ensure that Americans and newly arriving non-English speaking immigrants learn English, official English legislation serves no purpose, because these already know they must learn English. As Representative Henry Bonilla (R-TX) articulates, immigrants do not need “another Washington mandate, another law with bureaucrats to enforce it, to tell us what we already know to be true fact” (*Cong. Rec.*, 1996, p. 21181). While Representative Bonilla's opposition might be explained as nothing more than a reflection of his conservative principles--official English would just be another case of big government--it nonetheless is grounded in the idea that if you want to help immigrants learn English, mandating an official language is not the way to do it. Proponents of the official English, perhaps in part due to not wanting to appear nativist and xenophobic, do not challenge claims that non-English-speaking immigrants already know that “English proficiency is an absolute necessity for advancement in our opportunity driven economy” (*Cong. Rec.*, 1996, p. 63). However, they do cite what they claim are an increasing number of incentives for immigrants not to learn English. Principal among them is the fact that the United States has no official language. Thus, supporters and opponents seemingly agree that, as Representative Chet Edwards (D-TX) put it succinctly: “The question is not whether American citizens should be encouraged to learn English . . . the question . . . is what is the best way to encourage and help [them] . . . become English proficient” (*Cong. Rec.*, 1996, p. 22263).

Linda Bosniak's extensive study of the debates over Proposition 187 may offer a way of explaining the near universal commitment by members of Congress to the value of learning English. Her analysis calls attention to a reluctance on the part of progressive

critics to marshal positions against Proposition 187 that argued on the behalf of undocumented immigrants. Stemming from a “near-sacred commitment” to the belief that countries have the “rightful authority to control both the entry of foreigners” and the “terms of their membership once present,” Bosniak (1996) concludes that progressives find themselves unable to conjure up arguments defending the interests of undocumented workers that do not appear to be a direct assault the legitimacy of state sovereignty (p. 572). As the presence of an undocumented migrant, by definition, appears to constitute a violation of state sovereignty, any defense of the undocumented can be read as an assault on the legitimacy of the state to defend its borders.

Given the positions on the necessity of common language advanced by supporters and opponents of official English, it seems a similar “near-sacred” commitment exists to the English language. How then, does one defend the interests of non-English speaking immigrants without assaulting what scholars and average Americans take to be the basis of a vibrant, stable, and productive community--a common language? While it is certainly worth noting how a commitment to the ideal of a common language serves to constrain oppositional argument, there is no doubt that it is simply easier to get things done if we speak the same language. In other words, the commitment to English may represent more than yet another instance where oppositional arguments reproduce dominant ideologies or cultural logics. Indeed, the very idea of speaking the same language to get things done is based on concept of coordinating conduct, not preserving a common identity. This conception of getting things done, however, seems to beg one important question. In what *way* are we all to speak the same language? This represents more than just a question of just whose English are we going to speak. Rather it purports to think through how one is to speak English. What kind of conduct is authorized, expected, regulated, managed, and/or maintained when the idea of English as a common language is invoked to justify a variety of policy initiatives? More than serving to contain oppositional argument, the near-sacred commitment to a English as a common

language carries with it an array of governing ambitions that opponents of official English dare not confront or question and in fact depend upon to justify their call for additional federal resources for English instruction. English is thus positioned as a “technology of government;” as a mechanism for regulating the conduct of both citizen and immigrant subjects (Rose & Miller, 2008, p. 32).

### **What is the Value of English?**

In floor debate on House Resolution 123 (a measure introduced into the first session of the 102nd Congress to declare English the official language of the United States) Representative Ike Skelton (R-MO) declared that “our English” constituted the “foundation of our just and peaceful nation” (*Cong. Rec.*, 1991, p. 18877). Skelton's homage to English can simply be seen as just another reflection on way in which learning English “empowers each generation access to the American dream” (*Cong. Rec.*, 1996, p. 22158). Yet Skelton's characterization of English depends upon English not just providing opportunity for political, social, and economic success. English is not just the language of opportunity; it is the condition of possibility for a just and peaceful nation. Although Skelton offers no explanation as to why English is the foundation of a just and peaceful nation, his assertion relies on the idea that the lack of common language invites chaos and discord. Yet this begs the question. Cannot a common language also invite chaos, discord and exploitation?

Skelton's reverence for the English language depends upon a vision of English as a depoliticized entity enabling Americans to focus on what they have in common rather than what makes them different. It is English, as stated by Senator Shelby that “allows individuals to lay aside their differences in order to communicate and share their similarities” (*Language of Government Act*, 1995, p. 5). Essential to this vision of the English language is that difference is located outside of language. English seems to be devoid of difference and so cannot be a source of difference and therefore conflict. In Skelton's view the shibboleth effect only occurs between languages. Differences are

ironed out through the acquisition of English. Through English, everyone comes to speak the same language, and as such they recognize they share something in common. United by this commonality, Americans build on what unites them, rather than stressing the differences between them.

Yet is a common language, even English, devoid of difference? Derrida's work on the question on translation calls into question the assumption on which Skelton's characterization of English depends. In *Aporias* Derrida (1993) takes up the problem of translation as part of his overall project of thinking the question of limits. What is of particular interest to him is how the institution of any line as an indivisible limit or border is always already “threatened from its first tracing” (p. 11). The institution of any indivisibility that is supposed to demarcate cultures, territories, nationalities, and even languages from each other is dependent upon, or rather made possible by, a “line that terminates all determination” (Derrida, p. 7). Derrida is not interested in edge lines *per se*, but in accounting for a limit to any demarcation that always already threatens, interrupts, disrupts any attempt to constitute an absolute, indivisible, interminable limit. The line that interests Derrida then is not something external to the tracing of a line edge that serves to demarcate the limits of a totality, such as a nation, state or language. Such a line is represented by the concept of a frontier that separates two territories implying that difference lies beyond the line (Laclau & Mouffe, 1985). Rather Derrida's interest is in something internal to the tracing of any line which in serving as the condition of possibility for the creation of any line edge, always prevents that tracing from becoming indivisible. This concept is best illustrated by Laclau and Mouffe's conception of the limits of the social:

The limit of the society must be given within the social itself as something subverting it, destroying its ambition to constitute a full presence. Society never manages fully to be society, because everything is in it is penetrated by its limits, which prevent it from constituting itself as an objective reality. (p. 127)

Of particular interest to this chapter is Derrida's discussion of limits as they pertain to the concept of language—for does any division seem anymore absolute than the demarcation between languages? To demonstrate that the limit of any language must be given within itself, Derrida turns to a sentence in French, the meaning of which escapes translation: *Il y va d'un certain pas* [literally: he goes along at a certain pace]. As an idiomatic expression, the wording of the sentence would appear to testify to the purity of the French language insofar as it is unable to be fully translated into any other language. As an untranslatable sentence that speaks itself as French, *Il y va d'un certain pas*, appears to herald an indivisible, absolute border between languages. And yet while its idiomatic nature seems to testify to the indivisibility of the French language, is there not despite this perceived purity an undecidability about how to understand it? Is it an example of idiomatic expressions? Does it testify that it belongs to the French language? Is its meaning derived from its use in this dissertation? Despite its perceived purity *Il y va d'un certain pas* “trembles in an unstable multiplicity as long as there is no context to stop us” (Derrida, 1993, p. 9).

Yet even if one were to contextualize the phrase, Derrida (1993) reminds us that “no context can determine meaning to the point of exhaustiveness” (p. 3). To the “structure of every mark” belongs the “possibility of disengagement and citational graft” enabling any mark to break with its given context and be cited in “an infinity of new contexts” (Derrida, 1988, p.12). Undecidability constitutes the condition of possibility for any mark to be grafted into a particular context, yet that undecidability always already interrupts any attempt to establish for certain how we should understand even the most idiomatic of expressions. “Babelization does not therefore wait for the multiplicity of languages” (Derrida, 1993, p. 10).

If Babelization does not wait for the multiplicity of languages the question becomes is the English language overly romanticized as a mechanism for eliminating difference? The answer would seem undoubtedly yes. As English is positioned as the

basis for a stable and peaceful nation there is little attention to the ways in which English is always already a reflection of particular interests. As there is no purity of language there is always a remainder that troubles any claim to universality supposedly reflected in the language. The particularity of the language which must be disavowed problematizes the claims that English is a pure language that enables differences to be elided through a medium that purports to create the conditions for a universal commonality for those who speak it--anyone wishing to be an American simply needs to acquire English. In positing the indivisibility of language, the debates over official English, position English as that which creates a sanitized political and national space where Americans gather together in linguistically assured unity. Particularities are placed aside and Americans only focus on what they share. English becomes the guarantor of peace and justice as its status as a common medium encourages individuals to put their special interests, bodies, and unique experiences aside in the name of achieving the greater good. Threats never come from within, but only from without, namely in the form of “foreign” languages spoken by “foreign bodies” that encourage Americans and immigrants to focus on their particularities and differences. Only by assuming the purity and indivisibility of English is one able to declare English as the foundation of a peaceful and just nation. One might rightly argue that any language could fulfill this function. Representative Skelton's homage to English can be seen as a homage to *any* language the functions as a common language. While this is a possibility, there remains a sense that there is something unique in English as the common language.

The question still remains, however, just how did a common language create this just and peaceful nation of which Skelton and others speak? Certainly there is the obvious explanation, a common language enables Americans to share ideas, develop common values and establish common goals. This idea is reflected in the statement of Representative Bill Emerson:

What has made a nation out of this hodgepodge of nationalities, races and colors represented by the immigrants who people our land? . . . The single most important reason is our common language, English. We as Americans are united, of course, by love of freedom, feelings of patriotism, respect for individual rights and love of country. These beliefs cannot be seen or felt, but they can be articulated through a common language. The English language has made possible the communication about all the various elements in our country. It is with our common language that we have dissolved mistrust and fear and drawn up understandings and agreements that make society possible. (*Cong. Rec.*, 1990 p. 17950)

Clearly this reflects the idea that a common language enables a population the ability to understand each other so that they can forge agreements. But what is it that enables the formation of these agreements? Simply because individuals are able to talk to each other does not mean that they will talk to each other, or that they will talk to each other in a manner that enables them to understand each other. A return to Goodnight's theorization of the spheres of argument is useful to illustrate this idea.

For Goodnight, each sphere of argument is composed of different normative demands, about what counts as a legitimate claim, appropriate forms of proof, and who is authorized to use particular communicative practices. It is the elevation of the normative demands of the personal and technical spheres that leads to the decline of public argument. The significance of this insight is that it highlights how, even if individuals speak the same language (tongue), there is no guarantee individuals will be able to communicate with each other. The elevation of the technical sphere results in public argument that is dominated by experts whose specialized vocabulary prevents those not part of their professional community from participating in the conversation. Simply because one can hold a discussion among a group that shares the same language does not mean that the practices of those involved in the discussion will ensure a peaceful conversation generating understanding and agreement. They could very well be disruptive, raucous, aggressive, or even pugilistic. Is there any better example than those who disrupted town hall meetings on health care in the summer of 2009 by engaging in practices meant to impede rather than foster discussion?



With this example in mind it seems only appropriate to question just how a common language is supposed to foster peace. There seems to be something more to the notion that English created a just and peaceful nation than the idea that it enables Americans to communicate. If that “peaceful and just nation” depends on the reaching of agreements, it must also be the case that those agreements presuppose, or even demand, discursive practices designed to produce the sort of agreements that lead to the possibility of a peaceful and just nation. That is, something has to influence the ways in which debates are conducted in order to produce the vision of the nation that undergirds both Representative Skelton's position on official English and those expressed in the debates in general. For both supporters and opponents of official English, that something is English itself. It is English that regulates the particular kinds of conduct necessary to forge a “just and peaceful nation.” Put another way, through the debates, English is constituted as a mechanism able to produce particular kinds of “speaking subjects.” Their conduct is thus regulated and managed by English.

### **Governing Through Language**

Of the varied justifications for official English, supporters often invoke the ideals of representative democracy to defend the necessity of a common language. For example, in a hearing held in the United States Senate on the Language of Government Act of 1995, Representative Bill Emerson (R-MO) claimed:

More than any other form of government, democracies require interaction between the people and the governing bodies, constant interaction that provides a barometer for those governing to use in determining the impact of their decisions upon the governed. A shared method of communication--a common language--is essential for this dynamic. (*Language of Government Act*, 1995, p. 9)

Emerson's statement echoes what may be the foundational principle of democratic theory: “For democracy to work, people have to talk” (Roberts-Miller, 2005, p. 459). Yet Emerson takes this one step further articulating what most discussions of democracy, particularly those concerned with deliberative democracy, take for granted--democratic

politics depends upon a common language. Although Emerson emphasizes the representative character of the American political system, it is nonetheless underwritten by the ideals of deliberative participatory democracy. Principal among these is the ideal that “bracketing political and economic power is sufficient to make speakers equal” (Young, 1996, p. 122).

Fraser's (1997) critique of Habermas's account of the bourgeois public sphere, however, demonstrates how the normative character of deliberative democracy functions to create inequalities even as it attempts to create equality by bracketing political and economic power:

This public sphere was to be an arena in which the interlocutors would set aside such characteristics as differences in birth and fortune and speak to one another as if they were social and economic peers. The operative phase here is “as if.” In fact, the social inequalities among the interlocutors were not eliminated but only bracketed. But were they really effectively bracketed? The revisionist historiography suggests there were not. Rather, discursive interaction within the bourgeois public sphere was governed by protocols of style and decorum there were themselves correlates and markers of status inequality. These functioned informally to marginalize women and members of plebian classes and to prevent them participating as peers. (p. 118-9)

Of particular interest to this chapter is Fraser's attention to how the conducting of political discussions in the public sphere depends on the regulation of conduct. In her account of the bourgeois public sphere, women and members of the working class found themselves marginalized due to the privileging of protocols of style and decorum. The marginalization of their voices (and bodies) is a function of being unable to “properly” display these privileged behaviors. Protocols of style and decorum do not just influence the composition of a message, they influence the ways bodies behave and are perceived. Thus, such protocols both articulate rules for the composition of an effective message, and also “articulate specific rules for the composition of self and others” (Hariman, 1995, p. 7). Unable to conduct themselves accordingly, women and members of the working class found themselves still marginalized within the public sphere.

Yet protocols of style and decorum are not exclusive to the bourgeois public sphere. Contemporary models of deliberative democracy that emphasize rationality, reason-giving and self-control, do more than regulate the composition of a message. In addition, as Young (1996) notes, models of deliberative democracy tend to conceive of deliberation as a contest to be won which privileges competitive and aggressive modes of speaking typically seen as masculine behavior. As such, models of deliberative democracy continue to marginalize speakers whose discourse evinces a personal tone, is based on personal experience and anecdotes, and emphasize audience participation, what Campbell (1989) characterizes as the “feminine style.”

The elevation of particular communicative styles is seen throughout debates over official English. Expressed as a concern for preventing “chaos and disharmony” (*Hearing on English*, 1996, p.10), preserving “cooperation” (*Language of Government Act*, 1995, p. 9), and maintaining the conditions for a “just and peaceful nation” (*Cong. Rec.*, 1996), there is a sense that what is needed is not just a common language but also a common communicative style that has been, is, and will be essential to a vibrant, healthy, and stable American political system. The prevention of chaos and disharmony does not follow only from being able to talk to one another; it also depends upon how individuals conduct themselves. Yet of course this begs an important question. If it takes more than a common language to ensure a vibrant and stable democratic politics, what ensures that even if people learn English they will engage in reasoned, cooperative discourse? It is English itself, for not only does it serve to enable people to speak to each other, it serves to regulated how one engages in deliberative politics.

Recall Representative Emerson's claim that democratic life in America depends on a “method of communication” (p. 9). If by “method” Representative Emerson simply means “medium” or “channel” then method is indeed a curious choice of words. Method connotes the idea of process or procedure--a way of communicating, as opposed to simply being able to use a common tongue to facilitate mutual understanding. The notion

that a method of communication is important to democracy highlights the performative character of deliberative models of communication. It is not just that those deliberating can understand each other, but that they communicate their ideas in a particular way, associated with certain styles of behavior. In debates over official English, however, it is not the protocols of decorum and style that regulate and manage the conduct of individuals, it is English itself. The ability of English to govern the conduct of Americans and immigrants is reflected in two ways: 1) the claim that English is basis for legitimate forms of political expression; and 2) the invocation of the immigrant experience particularly by non-English speaking natives who have immigrated to the United States during their lifetime.

*Express Yourself--Legitimately*

Central to the arguments for official English is the idea that multilingualism will result in the “Balkanization” of the United States (*Language of Government Act*, 1995, p. 5). This claim is premised, in part, on the simple idea that if the federal government endorses multiple languages Americans and immigrants will form separate communities. With that will come the desire to only associate with those who speak the same language, or at the very least communication between groups will become extremely difficult, resulting in the eventual fragmentation of the United States. The Balkanization claim is also premised on the idea that endorsing multiple languages serves to legitimate forms of political expression that function to undermine the pursuit of the common good. It is not just that multilingualism erodes the desire to communicate or creates barriers to communication, but that it prevents English from functioning to govern the conduct of politics. For example, Sayyid Muhammad Syeed, the Secretary General for the Islamic Society of North America, testified in a hearing on the Language of Government Act, that English “facilitat[ed] dignified participation and interaction with the system” (*Language of Government Act*, 1995, p. 23). If English is merely a means for enabling

representatives to speak with their constituents, then this vision of English is curious indeed.

My purpose here is not to argue that the claim is nonsensical, although one might certainly make this case. Rather, it is to highlight that there is a particular rationality undergirding the association of English with certain kinds of performances. If English is to facilitate certain kinds of political expression, it must then bear on, and constrain the conduct of political expression. That is, English is characterized as enabling, authorizing, and legitimating certain forms of conduct. Through English, subjects become “speaking subjects,” who manage, regulate and transform their communicative behaviors, producing dignified acts of political expression that ensure they can interact with political institutions (Greene & Hicks, 2005, p.101). In other languages they are presumptively silent. It is not that they cannot speak, but that they cannot perform correctly as they have failed to become well-regulated through English. The claim is not that citizen-subjects modify their behavior based on the expectations of appropriate political behavior, but that English transforms the behaviors of speaking subjects to the degree that they are able to effectively interact with existing political institutions as good citizens. Thus underlying the idea that English facilitates particular kinds of political behavior is a technological, in the Foucauldian sense, rather than communicative conception of language.

This conception of English as a cultural technology is reflected in claims that if the United States is to have a common language, that language must be English. Again the communicative conception of language would seem to explain this line of thinking--one need only conjure the image of the tower of Babel. Yet like the claim of fostering dignified communicative behaviors, claims as to the necessity of English to stave off some future chaos are anchored in discussions of conduct not communication. In floor debates in the U.S. House of Representatives on the Language of Government Act, Representative Earl David Hutto (D-FL), channeling the spirit of President Theodore

Roosevelt, stated that designating English as the official language the “one absolute way” to prevent the United States from “becoming a nation of squabbling nationalities”(*Cong. Rec.*, 1990, p. 17956). Likewise, Representative Toby Roth (R-WI), in the floor debate on the Bill Emerson English Empowerment Act, claimed:

I think it is about time we liberate the people. Let us give them a chance to learn the English language so they can compete in America. Teddy White and Arthur Schlesinger both have said that, as we come to the 21st century, the greatest fear they have for our country is that America is breaking up into squabbling ethnic groups. (*Cong. Rec.*, 1996, p. 21190)

Once again the concern in this passage is not the transmission of meaning, but rather styles of behavior. The fear is not just that people will not be able to understand each other, but that the use of other languages produces behaviors that disrupt the possibility for genuine democratic politics.

If the conduct of political communication is influenced by the language in which it occurs, then effective translation becomes all but impossible. Translation presupposes that meaning can be effectively rendered from one language to another. Implicit in the idea of translation is the desire for communication, “the mutual communion of souls”-- even if we speak different languages we can still understand each other by simply converting meaning from one tongue to another (Peters, 1999, p. 1). Yet that communion becomes impossible if the language in which one speaks and debates politics also shapes the very nature of how one conducts his/her political practice. Instead of engaging in “dignified” forms of expression, speakers become squabbling, bickering, backbiting rabble rousers whose communicative behavior destroys the possibility of communion. It is particular forms of conduct not the simple ability to understand that is changed by English. In the case of official English, English produces the speaking subject whose behavior reflects at least some of the norms of deliberative democracy.

More significant is that without the regulative power of English, Americans and immigrants will “ignite racial and ethnic conflicts” (*Language of Government Act*, 1995,

p. 30). As different languages enable Americans and immigrants to “accentuate their differences,” difference itself becomes a threat to the stability and integrity of the body politic, nation, and state. English then also functions to manage difference such that difference cannot threaten the perceived integrity and stability of the United States. One can hear this idea expressed clearly in the statement of Representative John Porter (R-IL):

Mr. Chairman, we are a diverse nation. We should celebrate and be proud of our diversity. . . . Immigrants have come to our shores for over 200 years, and each group has learned the central language and has integrated themselves into our society. As our nation has grown by their numbers, it has been enriched by each of them.  
(*Cong. Rec.*, 1996, p. 21178)

So long as difference is managed as diversity America prospers. So long as the conduct of immigrants is managed such that their differences are reduced simply to forms of cultural expression while their political, social, and economic behaviors reflect the ideals of the United States, the United States stands to benefit. Only English enables the conduct of immigrants, and Americans, to be oriented toward the common good thereby preventing the United States from becoming another Yugoslavia.

To be fair, opponents of official English legislation question the doomsday scenarios which anchor support for these initiatives. Representative José Serrano (D-NY), for example, charged that it is “democracy” not language that is “what holds this country together” (*Cong. Rec.*, 1996, p. 21187). Similarly, Representative William Green (R-NY) noted that it is “the love of freedom and willingness to fight for that freedom, no matter what our language” that unites Americans (*Cong. Rec.*, 1996, p. 21169). Thus the nation is bound by a common set of beliefs rather than a common language. Yet at the same time these opponents still re-center English as vital to one's ability to succeed economically and politically in the United States. Even if they discount the value of English in preventing Balkanization, English is still nonetheless essential if an immigrant or citizen is to achieve the America dream. Even Representative Serrano who sponsored an “English Plus” substitute that “recognized that multilingualism was an asset and not a

liability” nonetheless accepted the necessity of promoting “English proficiency”(Cong. Rec., p. 21187). While arguing that official English legislation was “divisive and racist” and designed merely to unite “people behind misplaced patriotism,” Representative Serrano never questioned the idea that English shapes the political behavior of those who speak it. He does not fear Balkanization, but that is only because, for him, as for other opponents of official English legislation, English is already the *de facto* common language of the U.S. English therefore does not need to be institutionalized as an “official” language. The regulative effects of English are already felt as evidenced by the vast majority of Americans and immigrants who engage in “dignified” forms of political behavior. The regulative effects attributed to English can simply be maintained by ensuring that immigrants are able to do what they already want to do--learn English. Thus while opponents disagree as to the best way to ensure that immigrants, and Americans, learn English, the notion that English can shape and manage the style of political behavior remains unchallenged.

#### *The Value of Witness*

What better way to establish the value of English than by having those who have undergone the “immigrant experience” explain how learning English changed their life for the better? Congressional hearings devoted to the question of an official language typically feature witnesses whose experience provided them with the expertise to speak to the necessity of institutionalizing English as the official language of the United States. While a few of the self-proclaimed immigrants, such as Mauro Mujica, CEO of U.S. English, represent organizations with a history of testifying on language issues, most of those testifying in the 1995 hearing claimed they were merely “concerned naturalized citizens” who as immigrants know “firsthand how important it is to know English” (*Hearing on English*, 1995, p. 72). As concerned citizens those testifying before Congress “felt that they had to get involved” (*Language of Government Act*, 1995, p. 25). Testifying to their experiences as “immigrant[s] to the United States,” they hoped they



their stories would assist members of Congress who supported official English legislation (*Hearing on English*, 1995, p. 60). More important, however, than their experiences as immigrants was the act of them successfully testifying before Congress. By describing their immigrant experiences, those testifying before Congress were proof of the ability of English to produce good citizens--how else could they be able to testify before Congress?

Central to those testifying to the immigrant experience is the idea that a common language is essential to promoting understanding and forging common bonds.

Emblematic of this discourse is the testimony of Wyoming State Representative Nimi McConigley:

In Casper, I was the only Indian woman for many years. When I am dressed as I am, in a sari with a spot on my forehead, it used to arouse a certain amount of curiosity, sometimes even put some distance between me and the people I met. But when I could speak and explain some of my cultural background . . . not only did it help people to accept me . . . but also to understand me. (*Hearing on English*, 1995, p. 61)

As those who testify before Congressional committees must be afforded the opportunity to do so, it is clear that State Representative McConigley's testimony is far from random. Her experiences in a part of the United States that no one would characterize as multicultural or heterogeneous, exemplifies the process of understanding made possible by a common language, and English in particular. Yet in addition to this communication conception of language, McConigley's citation of her immigrant experience notes how English serves a regulative function. Indeed while her story about being accepted in Wyoming seems to focus on the ability to foster understanding through a shared language, prior to telling this story McConigley notes that immigrants need to be able to "communicate effectively" with Americans and that "good communication," and not communication more generally, "promotes understanding." But what characterizes good and effective communication? The ability to speak English well? Yet what does it mean to speak English well?

Recall Fraser's critique of the bourgeois public sphere. If she is correct that protocols of style and decorum functioned to marginalize women and the working class, is it too far a leap to assert they would also function to marginalize racial and ethnic minorities? Yet Representative McConigley notes that speaking English well enabled her to elide difference, to get Americans to see past her dress and markings and accept her as an equal. McConigley's story demonstrates that a "foreigner" must assimilate to the styles of behavior of the country of which they chose to become a part. Even if her style of dress marks her as different, her regulated communicative practices enable her to be seen as just like anyone else. Difference, through communicative practices, becomes mere diversity. And it is English that shapes how one is able to communicate.

Recall that it is the testimony of a naturalized citizen, Sayyid Muhammad Syeed, which characterizes English as essential to "facilitating dignified participation" discussed above. What better way to prove his point than to have a series of naturalized citizens appear before Congress testifying to the value of English? They are proof that the acquisition of English produces good citizens who are able to testify before Congress subsuming their personal interests in the pursuit of the common good. Their behaviors in testifying before Congress are juxtaposed to the practices "professional minority activists" who, according to Linda Chavez, President of the Center for Equal Opportunity, take "to the streets to protest" in an effort to promote the interests of particular races, ethnicities and nationalities by (*Language of Government Act*, 1995, p.44). Immigrants testifying before Congress demonstrate they are interested in promoting the common good by presenting their ideas in ways that are designed to foster discussion and consensus.

The differences in political behavior of those testifying before Congress and those who take to the streets to protest official English or other proposed policies is attributed by immigrant witnesses to nothing other than the English itself. As Shahab Qarni, who emigrated from Pakistan, explains:

I could imagine coming before this committee in my capacity as President of the Asian American Union and requesting that this committee and Congress as a whole provide any and every government service and publication in the many languages in Asia. That to me seems ludicrous. However, some ethnic leaders are suggesting just that. (*Language of Government Act*, 1995, p. 26)

While able to imagine such a performance as a representative of a particular minority population, as a naturalized citizen there is something altogether “foreign” about such a request. It does not seem to be the sort of request that one who had learned English would make of the federal government. It is not just the idea that English creates a common bond between those who speak it, rather English carries with it particular styles of behavior that are antithetical to political practices that do not reflect the norms of “dignified” deliberative politics.

This idea is echoed by Linda Chavez who chastises “Hispanic activists” for “choosing to accentuate their differences” by “waving Mexican flags” while protesting Proposition 187 (*Language of Government Act*, p. 45). Note that, for Chavez, the accentuation of difference is predicated on only the waving of Mexican flags. While it is not possible to know for certain whether some or any of the protests were conducted in Spanish, given that she is testifying on the need to declare English as the “official” language of the United States, the fact that she does not criticize Hispanic activists for protesting in Spanish is telling. Chavez then seems to mark a “performative contradiction” in the actions of Hispanic activists. One should not engage in political protest and wave a flag other than the American flag, such conduct is not the conduct of “prudent subjects” (Brown, 2005, p. 43).

This example, however, seemingly calls into question the claim that English is a mechanism for shaping and managing the conduct of a population. If the activists mentioned by Chavez did protest in English and their behavior can be considered imprudent English has failed in its regulative dimensions. It is important to note here, that simply because language is cast in most instances in these debates as a mechanism for regulating conduct does not mean that regulative function is absolute or that such

limits of the regulatory function cannot be noted by both supporters and opponents of official English alike. Indeed, for supporters of official English, it is precisely because English is not the official language of the United States that its ability to shape the conduct of immigrants and Americans is so limited (and may even be on the decline). Again it is the performance of immigrant witness that illustrates the point. They know the value of English, and as their testimony before Congress demonstrates, they more than anyone else know the importance of declaring English the official language of the United States. Yet, as Miroslava Vukelich, an immigrant from the former Yugoslavia notes, English has “become a language to be used casually by some, and as little possible by others” and as a result “too many have begun to ask what this country can do for them” (*Language of Government Act*, 1995, p. 30). That English does not have “official” status undermines its regulative function resulting in an ever increasing number of immigrants and citizens engaging in selfish and non-prudential behavior. It is not that English cannot shape the conduct of individuals, rather than this function requires the backing of the state to legitimize it. By articulating English to the state through official English legislation, Congress can create the conditions for producing future prudential subjects, just like naturalized citizens whose testimony bears witness to the ability of English to produce said subjects.

That no naturalized citizen testified in the hearings conducted during the 104th Congress against the idea of declaring English as the “official” language of the United States is also telling. This is not to say that no one spoke against official English. Members of Congress were afforded the opportunity to present their objections to official English legislation. Their objections, however, only served to reinforce the claims advanced by those bearing witness to ability of English to produce “prudent subjects” who engage in “dignified” forms of political behavior. Expressing her opposition to official English, Representative Patsy Mink (D-HI) noted that “all immigrants that come to this country know” that they must become “well versed and proficient and vocal in the

English language” (*Language of Government Act*, 1995, p. 53). Similarly Representative Nydia Velázquez (D-NY) reiterated that she and other opponents of the bill never denied the fact “that learning English is the first step to . . . fulfilling the American Dream” (*Language of Government Act*, p. 59). As in the floor debates over official English legislation, opponents only took issue with the idea that English needed legal protection to ensure that Americans and immigrants would continue to learn it.

### **Conclusions**

Although not technically part of U.S. immigration policy, language policy in the United States has, in large part, been influenced by questions of immigration and the desirability of those entering the United States. Even if not seen as a measure for regulating the number of foreign nationals entering the United States, official English legislation has been proposed as a mechanism for addressing at least some of the perceived social and political consequences of immigration. Thus it is not surprising that much of the discourse surrounding official English legislation concerns discussions of what it means to be an American. For supporters English is central to American national identity, and thus its acquisition must be encouraged. And what better way to encourage the learning of English than to have the state conduct its business exclusively in English? For opponents a commitment to a set of core values and beliefs is what makes one an American, and official English legislation seems to violate those core values of independence and self-determination.

Yet it is also the case that within these debates discourses emerge that are driven by an entirely different anxiety, one grounded in concerns about styles of political behavior. Emphasizing not what individuals talk about, but how they talk, proponents of official English position English as central to the production of dignified forms of political conduct. More than simply a medium for political discussions, English functions to instill ideals of deliberative politics in citizens and new immigrants alike. English serves a managerial function, shaping those who acquire it, into “prudential

subjects” who are able, through a common medium, to arrive at the common good. Scholars, such as Nancy Fraser, Iris Young, and Karlyn Kohrs Campbell, have demonstrated how the norms of deliberative politics function to disempower or exclude particular groups. Indeed one can find, within the debates over official English, instances where the norms of deliberation are used to marginalize the political practices of minority activists. Engaging in political styles that are far from deliberative and “dignified,” minority activists are positioned as a threat to the body politic. Rather than engaging in styles of behavior that “accentuate” their differences, they must, through a recommitment to the English language, become “prudential subjects” who recognize difference as merely stylized cultural practices (clothing, food, music, and so forth).

That official English legislation has not passed at the federal level is of little consolation. Opponents of official English merely question the necessity of making English the “official” language of the United States. As such, opponents never question the regulative function of English, a function that is not dependent on its lack of “official” status. Opposition to official English is predicated on the same conception of English that underwrites the positions of those who endorse it and so the debates themselves serve to legitimize a notion of English as central to desirable American political action. Thus, much like the discourse surrounding Proposition 187, arguments against official English extend, insofar as they do not challenge, the idea that English can produce “prudential subjects.” As opponents routinely reiterate, to be successful in America it is imperative that one learns English. Or rather, success in America depends on conducting one's self appropriately, which is in part dependent on the learning of English.

CHAPTER V  
GOVERNMENT AND IMMIGRATION AFTER 9/11

In 2006, national security is about border security.

Senator John Cornyn, *Congressional Record*

In addition to whatever social issues there are with immigration or whatever criminal issues there are with immigration, there are now, since September 11 brought home to us dramatically, the terrorism aspects of illegal immigration.

Representative Peter King, *Congressional Record*

I remember being excited about my project on U.S. immigration discourses in the first week of September 2001. Mexican President Vicente Fox had just completed a three day visit to the United States in which he and President Bush advanced negotiations begun earlier that year on a comprehensive immigration agreement. For the first time a Mexican administration had come forward with an immigration proposal that conceptualized cross border migration as a shared responsibility (Fernández de Castro & Rangel, 2008). Among the initiatives discussed was a way for migrants who were paying taxes and not committing crimes to "regularize" their status, enabling them to legally work in the United States and travel back and forth to Mexico, and the establishment of a guest worker program. While Fox was in the United States I recorded every speech, public appearance, and interview as well as all the related news coverage I could. I was convinced that after only a few more days, I would have a rich supply of texts which would become part of the larger project on U.S. immigration discourses. Yet all that excitement quickly faded, just like the support for Fox's open border vision, with the devastating events of September 11th (Andreas, 2003a).

Many scholars and activists remain convinced that by 2001 U.S. national sentiment regarding immigration had moved away from the nativist and restrictionist sensibilities that spawned the draconian measures enacted during the 1990s; however, we should be cautious about such claims (Castro, 2000; Gregor, 1999; Sengupta, 2000). While it is certainly the case that by 1999 a variety of measures had been introduced in Congress to ameliorate some of the more punitive elements of the Illegal Immigration

Reform and Immigrant Responsibility Act and the Personal Responsibility and Work Opportunity Act of 1996, most of those measures failed to make it out of committee. In addition, all of these proposals were designed to reform provisions of the Immigration Reform Act and Welfare Reform Act that dealt with legal immigrants (Gregor, 2000).

In terms of unauthorized migration, those who claim that September 11th represented a landmark change in immigration discourses in the United States point to a resolution unanimously approved by the executive council of the AFL-CIO calling for the granting of amnesty for all undocumented migrants and the repeal of employer sanctions. This historical reversal by the AFL-CIO was described as "the epitaph for the last nativist upsurge in this country of immigrants" (Castro, 2000, para. 9). However when President Bush floated a "trial balloon" on the possibility of granting legal status to undocumented migrants in July 2001, he immediately faced stiff criticism from the conservative wing of the Republican Party (Martin, 2001).

In addition, Congress was in no hurry to pursue immigration reform. Indeed, by August 2001, it was clear that despite the negotiations between Fox and Bush, any reform in Congress was going to be piecemeal at best with no sweeping changes being undertaken until after the 2002 midterm elections (Milbank, 2001). And of course it is not possible to know if anti-immigration forces would have been able to stifle any proposed reform. A poll commissioned by Gallup and released just days before September 11th cast a shadow on the reforms supported by Bush and Fox. The poll titled "Americans Clearly Oppose Amnesty for Illegal Immigrants" showed that respondents overwhelmingly (67%-28%) opposed any measure designed to make it easier for undocumented migrants to become citizens (Sailer, 2001, para. 4). It could be argued that the results of this poll were ultimately meaningless as Bush and Fox were proposing to "regularize" the undocumented rather than grant them amnesty. However, while some were willing to accept the distinction, anti-immigrant groups, such as the Federation for



American Immigration Reform and the Center for Immigration Studies characterized the Fox-Bush initiative as just another amnesty program.

Given the discursive energy that was expended during the debates on comprehensive immigration reform in 2006 and 2007 characterizing earned legalization provisions as amnesty, it is highly likely that any legislation introduced in 2001 or 2002 that included "regularization" provisions would have been cast by opponents as the granting of amnesty. In light of these factors, it is much harder to see the events of September 11th as reversing what had been a softening of U.S. immigration policy (Andreas, 2002). The events of September 11th may have brought discussions of immigration reform to an "abrupt halt," but, it is far from clear that the Bush-Fox vision of regularizing migration flows between the United States would have supplanted the strategy of enhanced border policy that was the core of the reforms passed during the 1990s (Hines, 2006, p. 12).

Whether or not the events of September 11th actually reversed a softening of the enforcement-first approach to limit unauthorized migration, they did produce a substantive shift in the discussions and formation of immigration policy. In the wake of 9/11 policy makers, political pundits, and the Bush administration increasingly positioned migration as a national security issue (Ackelson, 2005; Bigo, 2002; Coleman 2007; Hing 2006). Certainly the securitization of migration, as Coleman (2007) notes, did "signpost a new change of accent," within the context of border policy, but immigration policy has always been linked to issues of national security. Indeed, rather than constituting a new articulation of immigration and national security policy, LeMay (2006) contends that the post-9/11 emphasis on national security only highlighted the already existing link. Immigration policies implemented during the 1990s confirm this linkage--particularly the connection of immigration and terrorism. Ackelson (2005), for example, notes how the first bombing of the World Trade Center was linked to individuals who had received amnesty or overstayed their visas. In addition, immigration discussions during the mid-

1990s, were influenced by the bombing of the federal building in Oklahoma City. And while Oklahoma City was an act of domestic terrorism, scholars have highlighted how the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was, in part motivated, by anxieties over future terrorist attacks (Coleman, 2005; Johnson, 2003; Johnson & Trujillo, 2007; Saito, 2006). Thus post-9/11 immigration policies are neither simply recycled versions of pre-9/11 policies nor completely new in their formulation. Scholars, for instance, have explored how, despite the continuities of pre- and post-9/11 border securitization practices, immigration enforcement, under the auspices of counterterrorism, has become increasingly focused on interior enforcement (Coleman, 2007; Coleman; 2009; Winders, 2007). Therefore, scholarship on post-9/11 immigration policy is predicated on disabusing us of the idea that 9/11 constituted a radical break from which new draconian security measures emerged.

Yet there is something unsatisfying about this particular literature--namely a lack of sustained attention to the continuities between pre- and post-9/11 policies implicated in immigration enforcement. For instance Coleman (2005) contends that post-September 11 national security laws like U.S.A. P.A.T.R.I.O.T. Act and the Enhanced Border Security Act built on well-established grounds for immigration inadmissibility long rooted in congressional immigration law reform measures (p. 194). In advancing this claim, Coleman (2005) demonstrates how key provisions of the P.A.T.R.I.O.T. Act and the Enhanced Border Security Act merely restate much of the immigration provisions and procedures enacted during the 1990s. Similarly Ackelson (2005) examines congressional legislative history and concludes that "today's security policies on the U.S.-Mexico border were not created de novo," rather they emerged from the "gradual intensification" of measures dating from the late 1970s (p. 171). In both cases, however, these claims rest only on the citation of policies enacted prior to 9/11. While useful in demonstrating that post 9-11 border securitization initiative did not just "spring out thin air," one is still left to wonder whether the extension of pre-9/11 border security practices serve similar

functions post-9/11 as they did pre-9/11. As the project has noted, in accordance with other scholarship on the functions of reform efforts during the 1990s, legislative initiatives functioned to do more than simply stop undocumented migrants from entering the United States. Recall the work of Peter Andreas on the intensification of border policing practices discussed in the second chapter. Central to Andreas' (2003b) argument is the claim that, while from an enforcement standpoint the border policing offensives of the 1990s were a failure (insofar as they failed to deter migrants from entering the United States), from a symbolic standpoint, they were politically successful. By shifting crossing points, the border control offensives of the 1990s created the image of control enabling politicians and bureaucrats to claim they were making progress toward regaining control of the U.S.-Mexico border. His point is that "border policing has always been as much about image as reality" (Andreas, 1999, p. 606).

While I have already discussed how Andreas (2000) relies on an unreconstructed notion of the symbolic to articulate the "expressive role of law enforcement," his work is worth mentioning as we consider whether or not border securitization initiatives post-9/11 function as they did prior to 9/11. In a world where immigration policy is filtered through the lens of national security, can politicians and bureaucrats design policies such that they are able to claim "symbolic" victories? When the "specter of 'terrorism' permeates the national discourse" along with any and all legislative attempts to reform U.S. immigration policy, is it possible to think of immigration policy in terms of image management (Hines, 2006, p. 13)? Is post-9/11 border policing still as much about "image" as "reality"?

Such questions cannot be answered simply by examining the context of congressional immigration reform efforts. If one is interested, as I and others are, in the symbolic functions of U.S. immigration policy then any interest in the continuities of pre- and post-9/11 requires an attention to the legislative discourses of post-9/11 border security initiatives. Put another way, what neither those who argue for a continuity

between pre- and post-9/11 immigration policy nor those who argue that 9/11 marked a reversal of the softening of immigration policy during the late 1990s attend to are the ways in which post-9/11 immigration policies and discourses function to constitute, manage, and regulate populations within and outside of the United States.

Such a project could easily be the subject of a dissertation unto itself, but I begin to consider post-9/11 immigration reforms here as way of both bringing together the insights gleaned from the analyses of immigration policies during the 1990s, and of suggesting directions for future work. Although a number of measures have been introduced since 9/11, in terms of substantive immigration reform only H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act, and S. 2611, the Comprehensive Immigration Reform Act of 2006, (both introduced in the 109<sup>th</sup> Congress) managed to garner enough support to survive a floor vote, and so I focus this chapter on the congressional debates related to these two legislative initiatives. Although neither piece of legislation managed to become law, each produced significant floor debate. In addition, while H.R. 4437 featured an enforcement-only approach, debates on both pieces of legislation ultimately turned on the question of what to do about undocumented migrants residing in the United States, a discussion which was not part of the enforcement-oriented approaches of the mid-1990s. Debates over H.R. 4437 and S. 2611 often centered on the implications of including provisions designed to allow undocumented migrants to "come out of the shadows." While opponents cast any such provision as the granting of "amnesty," supporters characterized such provisions as "earned legalization." In either case, support for and opposition to measures designed to address the undocumented residing in the United States turned on how best to manage this population and the implications these policies would have on the ability to manage "future flows" of migrants. In other words, as with the reforms of the 1990s, immigration policy was cast as critical to the "political management of populations" (Walters, 2006, p. 189).

I contend that the focus in the debates over the Border Protection, Antiterrorism, and Illegal Immigration Control Act and the Comprehensive Immigration Reform Act of 2006 on the undocumented residing in the United States, while ostensibly justified on practical (they are here we have to do something about them) or national security grounds (we have to know who is here or we have to get them out to be secure) functioned to extend and intensify immigration policy as central to optimizing self-governing subjects. That is, the debates over the inclusion or exclusion of earned legalization provisions as part of any effort to reform U.S. immigration policy, articulate post- 9/11 immigration policy to be more than simply about preserving national security; it is also about optimizing the productive capacities and capabilities of those residing in the United States. In 2006, national security may be about border security; however, that is not all that border security, even post-9/11, is about.

It might be objected that in times of war securing national borders is the primary concern motivating any and all immigration policies. Certainly after 9/11, there emerged a discourse featuring an imaginary us pitted in opposition to a threatening them--made more sinister by our inability to know where "they" are and when "they" might be coming. Thus it is not surprising that in the wake of 9/11 politicians and bureaucrats raised concerns about the ability of Arab terrorists to slip into the United States hiding amongst the camouflaging brown bodies of migrants from Latin America. To be sure this discourse featuring a call for national unity might have heightened anxieties about the border. However, as this chapter will show, the existence of this discourse cannot explain two things: 1) attempts to overhaul U.S. immigration policy, which included devoting additional resources to strengthen blockade-style policing practices did not begin until 2004, well after the most fervent discourses of national consubstantiality had begun to lose their force; 2) the emphasis on criminality and responsibility that are central to post-9/11 discussions of those policies implicated in controlling immigration pre-date the events of 9/11. Put another way, assuming a discourse of consubstantiality as the

primary motivator for all post 9/11 immigration policies, misses the ways in which neoliberal politics and concern for and about the management of documented and undocumented migrants and citizens influenced the nature of the policies and largely shaped the debates about them.

Following a brief discussion of the institutional changes enacted after 9/11 related to the enforcement of U.S. immigration laws, I turn to an explanation of the immigration reforms undertaken during the 109th Congress. Finally, I turn to a reading of the congressional debates on the Border Protection, Antiterrorism, and Illegal Control Act and the Comprehensive Immigration Reform Act of 2006 arguing that while the specter of 9/11 has resulted in an articulation of immigration policy as a key site for protecting national security, it nonetheless continues to function as practices of government designed to shape conduct in accordance with market-based principles.

### **Immigration Reform in the Context of Homeland Security**

Whether or not 9/11 represented a "turning point" in debates of immigration reform in the United States, in the wake of 9/11 policy makers increasingly linked the issue of unauthorized migration to national/homeland security (Johnson & Trujillo, 2007). This linkage was cemented with the passage of the Homeland Security Act of 2002 abolishing the Immigration and Naturalization Service (INS) and shifted the responsibility for immigration to the newly created Department of Homeland Security (DHS) (Bruno, Wasen, Siskin, Nunez-Neto, Garcia, Vina, . . . Ester, 2006; Hing 2006). As part of DHS, the functions of the former INS were placed into two divisions: U.S. Citizenship and Immigration Services (USCIS) and the Border and Transportation Security Directorate (BTS) which includes the bureau of Customs and Border Protection (CBP) along with the bureau of Immigration and Customs Enforcement (ICE) (Hing, 2006). USCIS is charged with overseeing "lawful" immigration to the United States including: naturalization, family reunification, visa petitions, humanitarian applications

and verifying employment eligibility (U.S. Citizenship and Immigration Services, 2010). Within BTS, the CBP is responsible for security at and between ports of entry along the border, while ICE is concerned with the enforcement of immigration and customs laws (Lake, 2004).

Previously the enforcement oriented INS had been under the jurisdiction of the Department of Justice (DOJ). Although after 9/11 even the DOJ emphasizes the use of the law as a "counterterrorism tool," the mission statement of the DOJ, still articulates its primary responsibility as defending the "interests of the United States according to the law" (U.S. Department of Justice, 2010). The primary responsibility of DHS is "to secure the nation from the many threats we face," which with the incorporation of the INS includes unauthorized migration (Department of Homeland Security, 2010). By moving the immigration functions of the INS to the newly created DHS whose mandate is to prioritize homeland security, immigration policy became less about upholding the "rule of law" and more of a focal point in combating terrorism (Saito, 2006). This shift in priorities is best illustrated by the mission statement the bureau of Immigration and Customs Enforcement, the largest investigative branch of DHS:

Formed in 2003 as part of the federal government's response to the 9/11 attacks, ICE's primary mission is to protect national security, public safety and the integrity of the U.S. borders through the criminal and civil enforcement of federal laws governing border control, customs, trade and immigration. ICE boasts approximately 19,000 employees in over 400 offices worldwide and an annual budget of more than \$5 billion. The agency's law enforcement authorities encompass more than 400 U.S. federal statutes that ICE is responsible for enforcing in its commitment to ensuring national security and public safety. (U.S. Immigration and Customs Enforcement, 2010)

Placement of immigration in an agency devoted to national security reflected a fundamental change in how immigration policy was viewed. Although the creation of DHS represented an effect of discourses that framed immigration as a national security concern, the institutionalization of that articulation makes it likely that immigration policy will continue to be screened through the lens of national security.

### **Reform Efforts from 2001-2007**

Although shortly after 9/11 Congress enacted national security laws that implicated borderland immigration, such as the U.S.A. P.A.T.R.I.O.T. Act and the Enhanced Border Security Act, politicians and bureaucrats seemed to have little interest in reforming the nation's immigration system (Coleman, 2005). In January 2004, President Bush attempted to turn the nation's attention to the question of immigration reform by proposing a large scale guest worker program that included granting of temporary legal status to undocumented workers already in the United States (Stevenson & Greenhouse, 2004). The timing of the announcement, and the fact that the proposal included no enforcement provisions, led some to conclude the announcement was nothing more than election politics designed to court Latino votes (Malone, 2004). Fernández de Castro & Rangel (2008) contend attracting Latino voters into the Republican Party was not the only thing motivating Bush's proposal, noting that Bush considered immigration policy reform his last chance to leave a "major mark on U.S. relations with Mexico and the rest of Latin America" (p. 150). Whatever the motivation, Bush's speech in January 2004 "can be taken as the opening gun" in a round of immigration debates that would stretch from 2005 through 2007. Congress, however, would not give serious consideration to immigration reform until the following year.

In November 2005, President Bush once again tried to jumpstart immigration reform. Travelling to the border, Bush held a press conference in which he outlined a new proposal that emphasized increased border policing, as well as increasing the use of expedited deportation (Walker, 2007). Although Bush still supported granting temporary legal status to undocumented workers already in the United States, unlike in 2004, this presidential address emphasized the idea of "chok[ing] off the flow of illegal immigrants" (Stevenson, 2005, p. A18). The shift in tone was welcomed by congressional Republicans who preferred an approach to immigration reform that emphasized enforcement (Fletcher & Fears, 2005; Mason & Martinez, 2005). And indeed



Republicans in the House of Representatives rushed to take up immigration reform. Led by James Sensenbrenner (R-WI), Chairman of the House Committee on the Judiciary, the House passed H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act, in December 2005. Representing an enforcement-only approach, H.R. 4437 was not concerned with addressing undocumented migrants currently residing in the United States. Even the idea of implementing a guest worker program after the border was secured (if such a thing were ever possible) was widely rejected by supporters of H.R. 4437. Among its numerous provisions, H.R. 4437 increased the militarization of the U.S.-Mexico border and made undocumented presence in the U.S. a felony (Martin, 2007; Walker 2007). In addition, the bill included changes to criminal laws broadening the prohibition of any form of assistance to a person not authorized to be in the United States.

The enforcement-only approach of H.R. 4437 was widely criticized as being too severe (Martin, 2008). In April and May 2006, pro-immigration rallies took place across the United States aimed at pressuring Congress to abandon the tough enforcement-only approach passed by the House (Fernández de Castro & Rangel, 2008; Hernandez, 2006). Due in part to this popular backlash, the Senate took up immigration reform on the same day President Bush delivered yet another address on immigration reform. Reiterating his proposal for a guest worker program, President Bush's proposal also included deploying up to 6000 members of the National Guard along the U.S.-Mexico border (Berestein, 2006; Rutenberg, Cloud, & Hulse, 2006). This proposal reflected Bush's preference for comprehensive reform which included increased enforcement and addressed those undocumented migrants already residing in the United States simultaneously.<sup>1</sup> Like

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<sup>1</sup> A third option advocated by members of Congress was dubbed enforcement-first. While not fundamentally opposed to a guest worker program, enforcement-first advocates stressed passing legislation that gained control of the borders before implementing any kind of guest worker or other kind of program to address undocumented migrants already residing in the United States.

President Bush, the Senate preferred a comprehensive approach to immigration reform as reflected in the title of S. 2611, the Comprehensive Immigration Reform Act of 2006, which the Senate began to debate on May 15, 2006.

Although other reform bills were introduced in the Senate, only S. 2611 managed to make it to a floor vote. Like H.R. 4437, S. 2611 included measures to expand policing operations along the U.S.-Mexico border. It did not include the more draconian measures of the House bill such as criminalizing undocumented entry into the United States.<sup>2</sup> Supporters claimed S. 2611 represented a comprehensive approach because it simultaneously enacted enforcement provisions, a guest worker program, and a path to citizenship for undocumented migrants (Martin, 2007). It is also relevant to this project that S. 2611 was amended to include, not one but two, English language provisions--one that emphasized English as the "national" language, and another that declared English as the "common" language of the United States--as part of comprehensive immigration reform. After a series of amendments, S. 2611 passed the Senate on May 25, 2006.

The dissimilar approaches of the two bills necessitated the convening of a conference committee to iron out the differences. Given claims that each bill was effectively dead on arrival in the other chamber, there was a significant chance that a compromise would not be reached. Indeed, there was never an opportunity for a compromise, as the House leadership refused to select members for the conference committee. Instead, the House, at the urging of Republican leadership including then Speaker of the House J. Dennis Hastert (R-IL), opted to convene a series of hearings to gauge public opinion on comprehensive immigration reform (Graham, 2008; Lucey, 2009). Whether or not these hearings were designed to "show the virtues of enforcement and the evils of the Senate bill," a conference committee was never convened (Martin,

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<sup>2</sup> It is a civil offense to cross the border in violation of U.S. immigration law. However, H.R. 4437 sought to make mere presence in the U.S. without proper documentation a felony.

2007). As such both H.R. 4437 and S. 2611 were cleared from the books at the end of the 109th Congress. Although there would be additional attempts in the 110th Congress to enact immigration reform, to date no major legislative reform has managed to pass either the House or the Senate.

### **Unexceptional Immigration Reforms**

It is my contention that a governmentality approach to post-9/11 immigration policy reveals that while the emphasis on national security produced an intensification of policing practices, post-9/11 policies framed through the lens of national security evince a concern for how to manage populations that were already present in the late 1990s. To be sure, discussions about regularizing the status of migrants living in the United States and the establishment of a guest worker program did seem to signal a shift away from enhanced border policing. However, despite being characterized as advocating more "open borders," nothing proposed by Presidents Fox and Bush advocated the unfettered, unregulated movement of people across the U.S.-Mexico border. Indeed the proposals were ostensibly aimed at managing the flows of migrants to the United States. The basis for the Bush-Fox initiatives was the idea that undocumented migrants are here, working hard, and not posing a threat to the United States. Those residing in the United States needed to be managed, their productive capacities channeled, while providing a mechanism for regulating others who wanted to cross the border through a guest worker program. Yet, in all this limited talk there was little discussion of eliminating the Border Patrol or terminating enhanced policing practices. So long as there remained jobs in the United States, individuals would still seek to enter the United States. Put another way, the Bush-Fox proposals did not eliminate undocumented migrants; they simply limited the number of individuals whose conduct would be regulated through enhanced border policing. While this may seem speculative, the analysis of the Border Protection, Antiterrorism, and Illegal Immigration Control Act and the Comprehensive Immigration Reform Act of 2006 provides ample evidence to suggest that any pre-9/11 policy would

have continued to position immigration policy as a critical site for the management of populations both within and outside of the United States. Even with concerns about Middle Eastern terrorists slipping across the U.S.-Mexico border, the debates over the Border Protection, Antiterrorism, and Illegal Immigration Control Act and the Comprehensive Immigration Reform Act of 2006 couch the vast majority undocumented migrants, particularly foreign nationals from Latin American, as rational, calculating interest-maximizing subjects, just as they were in the debates over the Immigration Reform Act.

*Governing through the Undocumented*

Just as they had done ten years before with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and twenty years before with Immigration Reform and Control Act, the 109th Congress (2005-2006), set out to "regain control" of the America's borders. As with the previous efforts, there were substantive differences between the bills that came out of the House and the Senate. However, the differences between the enforcement-only approach passed in the House and the more comprehensive approach passed in the Senate appeared irreconcilable, with members noting during floor debates that each bill would be dead on arrival in the other chamber. Given that House leadership refused to send members to conference committee to "iron out" the differences between the bills as had occurred in 1986 and 1996, one might assume that the two represent incommensurable approaches to immigration reform. And to some degree they do. The Border Protection, Antiterrorism, and Illegal Immigration Control Act (H.R. 4437) focused on more enforcement (border and interior) as a way of addressing migrants entering the United States and those already in the United States (better enforcement would mean undocumented migrants in the United States would return home). In stressing a comprehensive approach, the Comprehensive Immigration Reform Act of 2006 (S. 2611) was based on the idea that the only way to gain control of the border is to enact policies that direct current and future populations of migrants

through legal channels alongside enhanced enforcement practices. In spite of these seemingly irreconcilable differences, both approaches were predicated on the same neoliberal emphases of responding to the needs of the market and personal responsibility that anchored the immigration policies of the mid-nineties (Brown, 2005; Hiemstra, 2010).

The neoliberal emphasis on personal responsibility was ever-present in the floor debates for each piece of legislation. In the House, the emphasis on personal responsibility constituted the primary justification for an enforcement-only approach. Arguing that "earned legalization" was just a nice word for "amnesty," the principal architect of H.R. 4437, Representative James Sensenbrenner (R-WI), noted that H.R. 4437 "does not give amnesty to illegal aliens" because doing so "rewards somebody for breaking our laws" (*Cong. Rec.*, 2005, p. H11801). Similarly Representative J.D. Hayworth (R-AZ) asserted that any immigration reform should be guided by two principles: "number one, do not reward law breakers . . . number two, do not create incentives for even more illegal immigration" (*Cong. Rec.*, p. H11943). Proponents of an enforcement-only approach contended that earned legalization and guest worker provisions violate both principles. This idea was also reflected by opponents of the more comprehensive approach taken by the Senate. Appealing to "common sense," Senator Orin Hatch (R-UT) argued there was "no question that the millions of people who are here illegally broke the laws of the land" and therefore they should not "be rewarded for that conduct" (*Cong. Rec.*, 2006, p. S5179).

It is worth noting that proponents of an enforcement-only approach stopped short of calling undocumented migrants "criminals." Insofar as their actions crossing the border constitute an illegal act, undocumented migrants have acted irresponsibly. Replaying the arguments from 1996, undocumented migrants have not acted responsibly by waiting in line for a chance to immigrate legally to the United States. Given this conduct, they should not benefit from making an irresponsible choice. In addition, the

enforcement-only approach is designed to deter future irresponsible behavior. Explaining why he supported H.R. 4437 Representative Ernest Istook (R-OK) argued "It is difficult to obey the laws of this country when your very first act is to break them." Thus, "illegal immigration . . . encourage[d] disrespect for the law" (*Cong. Rec.*, 2005, p. H11995). Of course such a charge seemed easily deflected given that the overwhelming majority of undocumented migrants "obey the law" after entering the United States, even according to proponents of an enforcement-only approach. However, opponents of earned legalization and a guest worker program contended at a minimum these initiatives would encourage others to enter the United States "illegally." Invoking the failures of the granting of amnesty in 1986, Senator Robert Byrd (R-WV) claimed that "amnesties beget more illegal immigration" as they "encourage other undocumented aliens to circumvent our immigration process in the hope that they, too, can achieve temporary worker status" (*Cong. Rec.*, 2006, p. S4734).

One might argue these statements reflect a discourse of illegality rather than a neoliberal emphasis on responsibility. Yet as Hiemstra (2010) demonstrates, discourses of illegality work to "turn the neoliberal emphasis on personal responsibility back against immigrants" (p. 62). That is, in the context of advanced liberal societies, the discourse of illegality functions as a way of marginalizing the conduct of particular bodies that would otherwise "epitomize the neoliberal worker ideal" (Hiemstra, p. 91). While there were certainly members in both the House and the Senate who saw undocumented migrants as nothing more than "criminals taking part in immoral behavior," many who invoked the discourse of illegality to characterize the actions of undocumented migrants also cast them as the ideal neoliberal subject (Ono & Sloop, 2002, p. 32). Thus, one of the most outspoken opponents of the Senate's comprehensive approach to immigration reform, John Cornyn (R-TX), stated that he had "no doubt that in most instances--perhaps nearly all instances--people come to this country for the same reason people have always come to America, and this is for a better life" (*Cong. Rec.*, 2005, p. S4537). Likewise, Senator

Jeff Bingaman (D-NM) claimed that while he had "empathy for those workers" as there was an "unlimited supply of people who would like to come here and work" Congress needed to regulate how many could enter the United States (*Cong. Rec.*, p. S4602). Even those who characterized unauthorized migration as a crime, such as Representative Ernest Istook, nonetheless expressed their sympathy for those "who lack opportunity in their home country and who hope to find it here" (*Cong. Rec.*, 2005, p. H11995). As with those in 1996 who in, discussions of how to eliminate the employment "magnet," claimed that most migrants enter the United States to find a job, proponents of an enforcement approach to immigration reform cast the behavior undocumented migrants in terms of "market rationality" (Brown, 2005, p. 40).

Acknowledging that the choice of undocumented migrants to enter the United States reflected a rational, calculated decision designed to provide for their own needs, proponents of an enforcement approach were nonetheless able to turn this ideal back on undocumented migrants by noting that behavior was also irresponsible insofar as it broke U.S. immigration laws. The viciousness of this move is that by turning the neoliberal emphasis on personal responsibility back on undocumented migrants, the invocation of illegality as a failing of personal responsibility nonetheless "maintains the centrality of their labor in the neoliberal economy" (Hiemstra, 2010, p. 92). This is best reflected by the claim, that enforcing immigration laws reflects a "realistic" and "pragmatic" policy option. If there are indeed an untold number of neoliberal subjects who wish to come to the United States, as Senator Pete Sessions (R-TX), who was one of the most vociferous opponents of earned legalization and guest worker provisions, asked: "How many can we welcome?" (*Cong. Rec.*, 2006, p. S4876). Invoking the language of pragmatism Sessions concluded that Congress "simply cannot allow everybody in the world to individually decide they would like to come here" (*Cong. Rec.*, p. S4547). Undocumented migrants are the ideal worker. However, the market simply cannot accommodate them all. Thus, illegality becomes a mechanism for managing the supply and flow of neoliberal subjects,

while maintaining the centrality of a population of workers who must toil in difficult working conditions for paltry wages, not because the neoliberal economy depends on a large supply of cheap labor, but because neoliberal subjects take responsibility for their situation by providing for their own needs and ambitions. Put more simply, their exclusion reaffirms their centrality, or rather the centrality of subjects like them, to the American economy.

The basis for the Comprehensive Immigration Reform Act of 2006 (S. 2611) was much the same as the House bill: the need to manage the flow of neoliberal workers. Unlike the House, debates in the Senate tended to de-emphasize the question of legality, opting to stress the fact undocumented migrants in the United States were hard-working individuals who contributed to the American economy. Relying on a market-based rationality, Senator John McCain (R-AZ) noted that undocumented migrants were in the United States because "There are jobs that Americans will not fill" (*Cong. Rec.*, 2006, p. S4592). Reflecting a simple supply and demand logic, undocumented migrants enter the United States because there was a demand for their labor. Their conduct, once in the United States, confirmed that undocumented migrants reflected the ideal neoliberal worker. Thus McCain described undocumented migrants as "workers," who did not risk their lives with "goal of freeloading of us," but to "earn a wage for the betterment of themselves and their families" (*Cong. Rec.*, p. S5157). Epitomizing the overall sentiment in the Senate was the statement by Representative Jim Moran (D-VI) during the House floor debate on H.R. 4437:

There is no sector of this economy that works harder for less compensation than undocumented aliens. There is no single group of workers that believe more in the American ideal than the people that we want to isolate and disown and marginalize today. They are here because they were willing to risk everything . . . they believe that if they work hard enough, even though they will not be paid as much compensation as many of the people working beside them, but if they work hard enough, their children will have a better future, and that is why they are here. (*Cong. Rec.*, 2005, p. H11899)



Thus proponents of S. 2611 could claim that they were not simply granting "amnesty" to "law breakers," but giving hard-working neoliberal subjects the opportunity to earn the right to become citizens.

Even as the Senate embraced undocumented migrants currently residing in the United States, their framing as ideal neoliberal subjects, along with the recognition of the centrality of their labor to the economy, becomes the basis for their marginalization. Why are they here? Because the economy needs them. Why does the economy need them? Because it depends on a sizable population of workers who must toil in difficult conditions with little compensation. Put another way, there are jobs that Americans will not do because of the intense manual labor involved in those jobs and the lack of substantive compensation. As Representative Luis Gutierrez (D-IL) noted, Americans are not saying "I want my son to be a dishwasher. I want my daughter to pick grapes out there in the State[sic] of California" (*Cong. Rec.*, 2005, p. H11805). The American economy needs this labor. If Americans would do these jobs, there would be no need for undocumented migrants. Again, the undocumented migrant is held out as the ideal against which all workers should be measured. They are needed to fill jobs in particular sectors of the economy both before and after 9/11.

There is, however, the sense lurking in the embrace of the undocumented migrants, that they need to remain in those sectors. After all if they leave these jobs there will be demand for more unskilled workers. This would seem to be addressed by the inclusion of a guest worker provision that would allow U.S. employers to bring in foreign workers on a temporary basis to deal with any future labor shortage. In essence, the guest worker program was designed to tackle the problem of "future migration flows." The purpose of the guest worker provision as described by Senator Joseph Lieberman (D-CT) was to "channel future flows through legal avenues" (*Cong. Rec.*, 2006, p. S5169). Thus if after attaining legal status, former migrants did move out of labor intensive sectors of

the economy, a program was in place to ensure that future migrants could be channeled into these jobs.

Though held out to be the ideal neoliberal worker, undocumented migrants nonetheless were marginalized as an underclass whose labor was necessary so that hard-working neoliberal Americans could get the jobs that befit their status while ensuring a vibrant economy essential to their standard of living. Rather than turning responsibility back on undocumented migrants to justify their exclusion while maintaining the centrality of their labor to the economy, the neoliberal emphasis on responsibility in the Senate justified their marginalization within the economy ensuring that current and future migrants remained on the fringe of the neoliberal economy.

To say, then, that the Senate's version of comprehensive immigration reform therefore presented a more "humane" immigration policy is somewhat naive. Humane compared to the House bill--certainly. However, in both instances undocumented migrants are marginalized even as they are recognized as central to the U.S. economy. That the House bill was more draconian does not mean that the Senate's approach to comprehensive immigration reform should be applauded for offering a convoluted pathway to citizenship and a guest worker program to channel "future migration flows." Indeed, at the core of both is the ideal that populations need to be regulated according neoliberal rationalities--immigrant, citizen, and migrant--which reduce these populations to rational, calculating actors whose decisions need to reflect market-based principles, with the undocumented migrant standing as exemplar for the kind of conduct desired by proponents of U.S. immigration policy. Even given the attention in the Senate to migrants residing in the United States and to "future flows" it is the undocumented migrant that promulgates neoliberal criteria. Why not those hard working migrants residing in the United States or those "future flows" who would be channeled through the guest worker program? Because both bills reiterate the notion that if you do not enter the United States through legal channels, you are illegal. While the Senate version of the bill

provides opportunities for those in the United States to "come out of the shadows," the purpose of the legislation was also to prevent other undocumented migrants from entering the United States.

Indeed, the Senate version of comprehensive immigration reform included measures designed to intensify the prevention through deterrence strategy enacted during the mid-nineties. Senator Arlen Specter (R-PA), who played a significant role in the comprehensive approach taken in the Senate, characterized the enforcement section of S. 2611, as "one of the most important sections" of the bill and he had no doubt that this section would "help control the stream of illegal aliens entering this country" (*Cong. Rec.*, 2006, p. S4937). The enforcement section of the S. 2611 held that despite the inclusion of a guest worker program to channel future populations flows, it would be outstripped by the numbers of migrants seeking to improve their life by entering the United States. Thus, even as the comprehensive approach seemingly removed incentives for migrants to enter the United States illegally, the Senate still devoted additional resources to intensifying the blockade-style policing practices that constituted the prevention through deterrence strategy. Even if one were to assume some of this was motivated by national security concerns--the U.S. needed to limit the ability of terrorists to cross into the United States--Specter's justification rests on the belief that enhanced enforcement is central to any reform designed to stop "illegal immigration." It is also the case that, other than bad timing, nothing distinguishes these unchanneled "future flows" from those channeled through the guest worker program and those able to earn their legalization. As with those already here, they will come because they want to work hard and seek a better life--yet if they do not enter through the guest worker program they will be in violation of U.S. immigration laws. The Senate bill still depends on the discourse of illegality to turn the neoliberal emphasis on responsibility back on future migrants. Their labor is central to the economy, thus their conduct functions as the condition for

propagating the norms designed to facilitate rational, economic activity on the part of every member of society (Brown, 2005).

*Policing after 9/11: Building a Bigger Fence*

While the events of 9/11 may have intensified border policing, the policies pursued in the aftermath of 9/11 are rather unexceptional as they relied on well-established grounds concerning how the formation of U.S. immigration policy functions as part of a critical site for the management of populations. That both bills died when Congress was unable to convene a joint committee to hammer out the differences between the two bills is little consolation. If national security was the a main concern after 9/11, the death of these bills shows that something other than security was really going on. The logics of enhanced border policing and practices of self-care that serve as the basis for managing the conduct of populations inside and outside the United States are still operative in current U.S. immigration law. The addition of resources to intensify border policy reflected the idea that migrant flows needed to be channeled out of urban areas in order to remove an impediment to the functioning of local markets while maintaining the possibility for a cheap labor pool. This was best reflected in an amendment to the Comprehensive Immigration Reform Act of 2006 offered by Pete Sessions (R-TX) to build 370 miles of along the U.S.-Mexico border in urban areas. As with previous measures designed to enhance the prevention through deterrence strategy, the purpose of additional fencing in urban areas was to shift the flow of migrants away from them. That opponents of the amendment such as Ted Kennedy (D-MA) cited facts to show that "large-scale fences ha[d] been grossly inadequate" in limiting the number of migrants crossing the U.S.-Mexico border only proved the value of the fencing at managing population flows (*Cong. Rec.*, 2006, p. S4662). Overall apprehensions may have remained the same, but it was where the apprehensions had been made that mattered to proponents of the fencing. As Jon Kyl (R-AZ) noted:

We have seen the pictures of them rushing the border through the San Diego port of entry, where 200 or 300 people at a time congregate, rush the border, rush through, intermingle with the cars waiting to get through. . . . We have to stop that. One way we do that in the urban area is to have this fencing. (*Cong. Rec.*, p. S4659)

Likewise Sessions invoked the "success" of Operation Gatekeeper at removing an impediment to effective functioning of local economies:

Go to the San Diego border and talk with the people. There was lawlessness, drug dealing, gangs, and economic depression on both side of the border. When they built the fence and brought that border under control, the economy on both sides of the fence blossomed, crime has fallen, and it is an entirely different place and a much better place. (*Cong. Rec.*, p. S4653)

While fencing may have been rejected on the grounds that it was ineffective, the overall idea subtending the Sessions amendment--pushing migrants out of urban areas--remained central to U.S. immigration policy. The Sessions amendment passed 83-16, and it served to reiterate that immigration reform was a mechanism for managing population flows. That the underlying rationale for intensifying the prevention through deterrence strategy was never questioned, thus the failure of S. 2611 of to become law did not signal a rejection of the logics which had subtended U.S. immigration policy prior to 9/11. Indeed, after the failure of Congress to implement more substantive legislation, Congress managed to pass, which the President signed, the Secure Fence Act of 2006 which provided for the construction of 700 miles of double-layer fencing on the border with Mexico (Nelsen, 2007).

#### *Language as Part of Immigration Reform*

In terms of the language debate things are much less clear. Although S. 2611 was amended to make English the "national" and the "common" language of the United States, the inclusion of the language amendments reiterated the connection of language policy to immigration policy. That said, the discussion of the two amendments seemingly proved the claim advanced by much of the existing scholarship on official English legislation, that official English debates are ultimately all about identity.

The first of the language amendments was offered by James Inhofe (R-OK). The Inhofe amendment included three provisions: 1) it declared English to be the national language of the United States; 2) it established a clear language requirement for undocumented migrants already in the United States as a condition for their earned legalization; 3) it established clear guidelines for tests immigrants take to become Americans. Much like official English legislation, the Inhofe amendment stated that "unless otherwise authorized or provided by law" no person had the right to conduct business with the Federal government in any language other than English (*Cong. Rec.*, 2006, p. S4735). Opponents of this amendment charged that the Inhofe amendment would gut Executive Order 13166 issued by President Clinton which required federal agencies under the Civil Rights Act to "provide their services and materials to people with limited English proficiency" (*Cong. Rec.*, p. S4756). Thus the principal critic of the Inhofe amendment, Senator Richard Durbin (D-IL) claimed that had no objection to the provision of the amendment declaring English as the "common, unifying language of our Nation;" however, in part because Senator Inhofe would not affirm that the intent of the amendment was not to diminish any existing rights under the law, he would oppose the amendment (*Cong. Rec.*, p. S4756). In an effort to defeat the Inhofe amendment, Ken Salazar (D-CO) introduced an amendment declaring English as the "common" language of the United States. Lacking the other provisions of the Inhofe amendment, the Salazar amendment only declared that the "Government of the United States" had to "preserve and enhance" the role of English as the "common and unifying language of America" (*Cong. Rec.*, p. S4757).

In what would appear to confirm Schildkraut's (2005) claim that one's conception of national identity influences their position on official English legislation, the preference for either amendment turned on questions of national identity. Thus Ted Kennedy (D-MA), in expressing his support for the Salazar amendment, claimed he could not "understand those who say that English is a part of our national identity" asking "is that

more a part of our national identity than our common commitment to liberty or fairness or decency or opportunity?" (*Cong. Rec.*, 2006, p. S4763). Lamar Alexander (R-TN) countered that his support for the Inhofe amendment was based on that fact that while "English is our common language" it is "also part of our national identity" (*Cong. Rec.*, p. S4759). Despite vigorous objections, both amendments passed with 23 senators voting for both.

While the debates over the English language as part of the Comprehensive Immigration Reform Act of 2006 center on questions of identity rather than conduct, they did not preclude such a concern. The overall idea of declaring English as the "national" language of the United States had widespread support in the Senate so long as such a declaration would not threaten Executive Order 13166.<sup>3</sup> That is, much of the objection to the Inhofe amendment centered on the threat it posed to Executive Order 13166, the importance of English and its role were taken as a given. Similarly those who opposed the Salazar amendment did so on the grounds that it did not include the additional provisions of the Inhofe amendment. Thus unlike in 1995 there was little attention to the need for declaring English the official/national/common language of the United States.

In addition, events such as protests over Proposition 187 and Quebec's independence, both of which figured prominently in proposing, and discussions, of official English legislation during the 104th Congress, produced a discourse predicated on anxieties about styles of political behavior. The events of 9/11 did not generate the same kind of anxieties. Unease about political behaviors displayed by Americans after 9/11 did not become part of the debates over the proposed language amendments to S.

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<sup>3</sup> Sign by President Clinton, Executive Order 13166 was designed to increase the accessibility of services provided by Federal agencies for individuals with limited English proficiency. It required Federal agencies to examine the services they provide and develop programs ensure the meaningful access of those services by those with limited proficiency in English. Opponents of the Inhofe amendment charged the amendment was designed, in part, to nullify the order.

2611. In the 1995 hearings, concerns over particular modes of conduct generated a discourse that posited English as a mechanism for shaping and managing particular styles of behavior. That these concerns did not appear in 2006 does not mean that the logics of governing that underwrote official English legislation prior to 9/11 disappeared. Put another way, the absence of discussion of English as a mechanism for managing conduct after 9/11 does not necessarily signal a fundamental break with this conception of English prior to 9/11. That members of Congress were not anxious about styles of behavior in 2006 does not mean that English is no longer figured a cultural technology, only that there was little reason to emphasize its ability to shape, regulate, and manage conduct. Thus I contend that if anxieties about styles of political behavior as they pertain to language use return, so too will conceptions of English as mechanism for producing prudential subjects.

### **The Value of a Governmentality Approach to Immigration Discourses**

The focus of this project has to been to consider U.S. immigration policy as a critical domain in the political management of populations in advanced liberal states. As such it has eschewed the emphasis in much of the extant scholarship on U.S. immigration policy, particularly within rhetorical studies, on the question of identity (national, ethnic, and/or immigrant) in favor of a governmental "intelligibility" that seeks to account for the ways in which controlling immigration functions to enable the political management of populations. Rather than seeking to understand how discourses over U.S. immigration policy function to construct the identities of undocumented migrants or reproduce a particular conception of a core, fully present, and stable national identity, this project has sought to understand how debates over U.S. immigration policy function to extend particular ways of governing that seek to shape the conduct of populations (Miller & Rose, 2008). The goal has been to consider how discourses over U.S. immigration function as part of a complex of programs, techniques, procedures through which



authorities embody and give effect to particular ways of governing that seek to manage the conduct of populations in accordance with particular mentalities of rule (Rose & Miller, 1992).

In taking what Constable 1993 characterizes as a "governmental approach" to immigration control, this project argued that discussions of immigration control policies (ranging from the enhanced border policing initiatives inaugurated by Operation Hold the Line and Operation Gatekeeper, to measures aimed at eliminating the employment and social services magnets in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, to even measures which seem to have little to do with immigration control such as declaring English as the official language of the United States) demonstrated little interest in shaping subjectivity or molding identity. Rather, the principal concern was with how to manage both the conduct of individuals entering the United States without authorization (particularly the crossing of the U.S.-Mexico border by migrants) and those authorized to live in the United States such that individuals authorized to be in the United States would be able to optimize their conduct within the context of market competition and entrepreneurial behavior.

While enhanced border policing measures have been analyzed for the ways in which they contribute to the production of American national identity (Demo, 2005) or for how they produce institutional legitimacy by creating the image of a secure border (Andreas, 2000), neither approach accounts for the discourses of management that permeated both the conception of and justifications for further intensification of the prevention through deterrence strategy. When called to explain the justification for and success of intensified policing practices that constituted Operation Hold the Line and Operation Gatekeeper, those responsible for these practices noted they were designed to shift the flow of undocumented migrants out of urban areas. If the success of these policies is measured only in terms of the "image" they created of a secure border, one overlooks the effects of enhanced border policing on the conduct of undocumented

migrants. Whether or not they produced any substantive deterrent effect, critics of blockade-style enforcement practices do agree with supporters of these initiatives that they did shift where migrants crossed the border. While critics use this data to disprove the effectiveness of these practices, by overlooking the ways in which these practices participate in the managing of the conduct of undocumented migrants (where and how they cross has been restricted), they unwittingly legitimize the discourses which articulate the practices of border control as part of a program of government. From the perspective of government, Operation Gatekeeper and Operation Hold the Line were far from political failures only producing the "image" of control. Indeed while enhanced border policing may seem antithetical to the market-based ideals of neoliberal governing rationalities (border controls impede the flow of people and goods across the border), they in fact are predicated upon them. As was discussed in chapter three, neoliberal mentalities of rule embrace institutional practices designed to eliminate "obstructions" that impede the capacity of individuals to participate in the market or to act in accordance with market-based principles. Noting the ways in which undocumented crossings in major urban areas like San Diego and El Paso disrupt everyday commercial transactions, the architects of Operation hold the Line and Operation Gatekeeper testified that by shifting crossing points away from urban areas, unauthorized migration no longer had an adverse impact on local economies. Thus far from producing a hardened border, proponents of enhanced border policing justified these practices as removing an obstruction to the free play of local markets.

The most perverse aspect of these practices is that by "failing" to deter migrants from crossing the border, they ensured that American businesses would continue to have access to cheap labor. By moving crossing points away from urban areas into inhospitable desert terrain, blockade-style policing practices effectively created a filter whereby only the fittest migrants would be able to successfully enter the United States. In what amounts to a situation of "survival of the fittest" enhanced border policing creates

conditions in which one assumes increased risk of bodily injury and death in attempting to cross the U.S.-Mexico border. While it is not my claim these policies were intentionally designed to weed out the "weak," it is certainly the case that proponents of these measures embraced the idea of making it more difficult for migrants to cross the border. The expressed rationale was if the Border Patrol made it harder for migrants to cross the border they would choose not to. Yet they did continue to cross and proponents of enhanced border policing admitted this was to be expected. While not justified as creating a more robust supply of cheap labor, the shifting of crossing points functioned in just this way--as the increased number of migrants dying due to harsh weather and terrain attests. Thus if the goal of governing institutions within neoliberal rationalities is to remove obstructions to enterprising behavior, it is also the case that they should not enact practices that impede it either. Enhanced border policing in urban areas manages to succeed on both counts. By only shifting the flow of migrants, blockade-style border control eliminates conduct that was presented as impeding market-based behavior while nonetheless maintaining the possibility of U.S. businesses to have access to a cheap labor force.

The governmentality approach to immigration control also raises the centrality of a politics of self-care to the articulation of late twentieth century U.S. immigration policy. Although enhanced border policing practices have received much of the attention in scholarly literature devoted to contemporary U.S. immigration policy, scholars have also considered how contemporary immigration reforms, particularly the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Immigration Reform Act), were part and parcel of the larger project of dismantling of the welfare state. Exemplified by the scholarship of historian Dorothee Schnieder (1998, 2000), scholars have argued that during the mid-1990s, the Republican controlled Congress was faced with the dilemma of having to appease increasing demands for the Federal government to enact measures to prevent "illegal immigration" without compromising the pledge to limit the size of

government. Viewed alongside the Personal Responsibility and Work Opportunity Reconciliation Act, Schneider contends that the Immigration Reform Act should be seen as an attempt to navigate that dilemma.

While Schneider's work is insightful, her work, which is grounded in a political philosophy which holds that a central tenet of liberalism is the notion of limiting the size of government, overlooks the ways in which (despite the attempt to minimize the welfare state) the Immigration Reform Act reorganized, reconstrued and restructured modes of government such that the withdrawal of the welfare state did not signify a limiting or curtailing of government. The Immigration Reform Act represents the opportunity, as discussed in the third chapter, for governing institutions to position individuals as "partners" or "accomplices" of government. Thus what is obscured by Schneider's emphasis on the dismantling of the welfare state are the discourses of self-care that circulate throughout the congressional debates on the Immigration Reform Act and on which the act depend. While the Immigration Reform Act certainly was associated with the dismantling of the welfare states, this did not translate into less government.

This pattern is particularly reflected in discussions of the both the employment and welfare magnets. In arguing that stemming the flow of undocumented migrants required policy makers to address the sources that encouraged them to cross the border, debates over the Immigration Reform Act positioned migrants as rational economic actors, making simple cost-benefit based decisions when entering the United States. As with the policy discussions concerned with the intensification of enhanced border policing practices, there was little interest in the identities or subjectivities of undocumented migrants but in their capacities and capabilities. To be sure, there were those whose support for the Immigration Reform Act was predicated on a discursive positioning of undocumented migrants as criminals. However, even among those who characterized undocumented migrants as "criminals" there remained a recognition that most who entered the United States did so because they were looking for a job. Whether

one viewed them as a criminal or simply doing what any hard-working American would do, both characterizations relied on the rational for why migrants entered the United States--they were looking for a job. As such, undocumented migrants were positioned as quintessential neoliberal subjects, willing to optimize their behavior according to market principles--they wanted jobs, there were jobs available, they crossed the border so they could improve their lot in life rather than relying on the state. If advanced liberal societies seek to produce these kind of individuals, then why exclude them? Because their exclusion functions as a mechanism for managing the behavior of those authorized to be in the United States.

Undocumented migrants represent the kind of subjects advanced liberal societies desire—calculating, rational, enterprising individuals who make responsible decisions in accordance with market principles. However, the elimination of the employment magnet rests on the notion that there are other enterprising agents who are displaced by these workers. If American workers were not being displaced by undocumented migrants, there remained a population, deformed by social welfare programs, who could fill them. They simply needed to be reformed into proper neoliberal subjects. Undocumented migrants become the measure against which those on welfare can be measured. How can governing institutions continue public assistance programs when an untold number of individuals are willing to take responsibility for themselves and enter this country in order to better their lives? Again while not explicitly articulated, discussions of the welfare magnet that addressed anxieties about immigrants' use of social services reflected a larger neoliberal concern about the deforming effects of public assistance programs.

Whereas job-seeking behavior reflects the ideal conduct of the neoliberal subject, (ab)use of public assistance programs signaled the deformation of said subject (whether undocumented migrant, legal immigrant or American citizen). Whether or not undocumented migrants were (ab)using public assistance programs was ultimately

irrelevant to the force of the discourses of self-care. If, on the one hand, undocumented migrants were using assistance programs, then they became another iteration of the welfare mother deformed by public assistance to be used as an exemplar of the kind of subjects Americans should not become. If, on the other hand, they were not using the programs (and, of course, at the time of the passage of the Immigration Reform Act, undocumented migrants were already prohibited by law from participating in public assistance programs), then they had not been deformed by dependency culture and so functioned to model the self-care desired of legal immigrants and citizens. In either case, curtailing "illegal immigration" functions as a site for the reconstruction of active neoliberal subjects. While the policies themselves did little to train or equip individuals deformed by social welfare programs, they nonetheless functioned to encourage those deformed by dependency culture to make themselves partners in government by caring for themselves such that they can assume their rightful places within advanced liberal societies. Put another way, the debates over the Immigration Reform Act function as site for the "dissemination of social norms" designed to facilitate "rational economic action" on the part of every member of society (Brown, 2005, p. 41). As with an emphasis on subjectivity and identity, an emphasis on liberalism as a political philosophy, rather than a rationality of government, prohibits an understanding of how immigration policy functions as a critical site for the management of populations within advanced liberal societies.

In a project on contemporary U.S. immigration policy, it may seem odd that a section of the project is devoted to a study of policy debates over the status of English. If the connection is merely that in taking a governmental approach to these debates one can discern how language policy concerns more than the preservation of a core American national identity, one could rightly argue this chapter could have focused on any number of policies. Yet whether or not official language legislation is explicitly touted as part of a larger immigration control strategy (which as noted in chapter four it has been),

anxieties about the status of English are rooted in the numbers of migrants and legal immigrants entering the United States. In addition, the idea of deterrence is predicated not just on stopping migrants from crossing the border, but also on making the environment in the United States so inhospitable to undocumented migrants that they would not want to enter the United States and that those already in the United States will want to go home. While not directly designed to combat "illegal immigration," official language legislation is underwritten by the same mentality that anchors much of contemporary U.S. immigration policy. In other words, although typically couched in the language of identity, official English legislation has served another function: the management of populations. In addition, as the drive to declare official English is motivated by the belief that immigrants need to learn English, it is part of a larger assemblage of policies oriented toward "controlling" non-English speakers--authorized or not.

Although ostensibly concerned with questions of identity, the scholarly literature on official English legislation is not anchored in a "constructivist" approach, but seeks to explain how support for official English is a function of how one conceives of American national identity. Thus, in an effort to explain how "both sides" of the official English debate can claim to be guardians of American national identity, Schildkraut (2005) contends that one's conception of what it means to be an American is the basis for one's position on official English legislation. Unlike the scholarship on enhanced border policing, which examines how identities are constructed through immigration policy, scholarship on official English assumes conceptions of national identity are not (re)produced through debates over official English but are merely grounds upon which the debates take place. While scholars indebted to a more constructivist approach might find these commitments problematic, it bears repeating that a concern with identity would not be able to account for the ways in which the debates over official English, while espousing the ideals of what it means to be an American, are also concerned with

regulating the conduct of populations. That is, in these debates what is up for grabs is more than what makes one an American; it is one's very capacity to engage in legitimate political expression.

A governmentality approach to the official English debates attends to the ways in which language policy debates position the English language as not just a common medium for engaging in political expression, but as a mechanism for regulating the conduct of citizen-subjects. In articulating the necessity and value of English, both supporters and opponents of official English, cast English as essential to the performance of political expression. That is, the acquisition of English does not just enable individuals speak to one another; English functions as a mechanism for producing "prudent" conduct wherein those who acquire English engage in political life according the norms of the marketplace. Individuals act rationally considering the costs and benefits of particular ideas through which the common good is forged. The acquisition of English trains the individual to be a "subject who rationally deliberates about alternative courses of action" jettisoning affective and personal attachments which only result in squabbling and bickering (Brown, 2005, p. 43). More than just arguing that it builds a common tie between them, this idea positions English as a mechanism for both producing talk and for managing how the talk takes place.

### **Old Wine in New Bottles?**

As the brief attention to the debates over immigration reform in the 109th Congress demonstrates, post-9/11 immigration policies are far less exceptional when considered within the context of the legislative history of congressional efforts to reform U.S. immigration policy. Policies enacted after 9/11 reflect the concerns with managing populations that animated the policies enacted during the mid-1990s. This is not to say these policies are the same. Certainly the post-9/11 attention to border policing has intensified, particularly as governing institutions have become increasingly focused on interior enforcement. Yet, while framing immigration debates through the lens of



national security has contributed to the intensification of border policing, it is certainly not the case that 9/11 marks a watershed moment which put an end to discussions of a more open border. While no one can be sure what would have happened in the absence of 9/11, discussions of "earned legalization" and guest worker provisions included with the Comprehensive Immigration Reform Act of 2006 continued to emphasize the role of immigration policy in managing populations both inside and outside the United States. Far from depicting an open border, discussions of comprehensive immigration reform which include policies similar to the ones espoused by President George W. Bush just prior to 9/11 conjure the image of a carefully managed border that functions to manage the flow of current and future flows of undocumented migrants. I am certainly not arguing that a more comprehensive approach is not to be preferred over an enforcement-only approach. But I do contend that simply because a policy claims to bring authorized migrants already in the United States out of the shadows does not mean it does not share the neoliberal mentalities of rule that inform more draconian measures. In addition, given the failure of the reforms implemented in 1986 and 1996, it is dubious to suggest that the Bush-Fox proposal would have solved the "problem of illegal immigration." There is little evidence to suggest that the Bush-Fox proposal would have resulted in the abandoning of the prevention through deterrence strategy. The numbers of undocumented migrants residing in the United States, along with the numbers that continue to try and enter the United States, suggests that the number of individuals looking to enter the United States would have outstripped any guest worker program. It is disingenuous to think that those looking to enter the United States will be aware of U.S. employment numbers, or that businesses looking to exploit cheap labor would not find a way around an employment verification system. Individuals who have been dislocated, particularly by the increasing liberalization of the Mexican economy effected by the implementation of NAFTA, have moved north in search of a better life. Why would one expect them to know whether there were any jobs openings in the United

States or not? What of the thousands of Americans who hire migrants to clean their houses, work on their yards, or care for their loved ones? These cash-only jobs are part of a shadow economy that is central to many Americans' quality of life. And they are certainly not included as part of U.S. employment numbers. Thus it is not surprising that in proposing comprehensive immigration reform, policy makers have considered enforcement as central to any comprehensive reform.

Since 2006 Congress has essentially been gridlocked on immigration. The Senate did take another shot at comprehensive reform during the 110th Congress by introducing the Comprehensive Immigration Reform Act of 2007. Including many of the provisions of the 2006 legislation, the Democrats and Republicans who had drafted the bill were unable to muster enough votes to invoke cloture so the bill could be brought to a simple "yes" or "no" vote (Fernández de Castro & Rangel, 2008). Arizona's controversial immigration law (Senate Bill 1070), signed into law in April 2010, designed to seek and deport undocumented migrants; however, may spur Congress to once again consider a substantive overhaul of federal immigration law.

Touted by supporters and critics as "the broadest and strictest immigration measure in generations," Arizona's immigration bill (S.B. 1070) extends the logics that have underwritten the intensified policing practices of federal immigration policy (Archibold, Cooper, & Hulse, 2010, p. 1). Although one of the key provisions recruits local law enforcement agencies (the police) into the practice of immigration enforcement, the underlying rationale for the legislation is anchored in a much older conception of police. Whether or not it is modeled on federal immigration law as its supporters contend, the goal of S.B. 1070 is to encourage undocumented migrants to deport themselves. That is, it is predicated on the logic of deterrence. While it may be novel for requiring police to determine the immigration status of people they arrest or detain for questioning, the overall strategy of deterring undocumented migrants from crossing the border in Arizona remains consistent with existing immigration law.

The most significant impact of S.B. 1070 will not be determined until the courts determine the constitutionality of the legislation. Immediately challenged by the Obama administration on the grounds of federal preemption, a federal judge issued a preliminary injunction which prevents the implementation of the core provisions of S.B. 1070 (Pilkington, 2010, p. 14). The stage has thus been set for the Supreme Court to rule on whether or not states have the ability to formulate immigration policy. With other state legislators inquiring of those responsible for the Arizona legislation how they might enact similar policies, S.B. 1070 may be the impetus for a radical change in which institutions are able to formulate policies to regulate the conduct of the undocumented. The recent decision by the 3rd Circuit Court of Appeals which struck down a local anti-immigrant ordinance adopted in Hazelton, PA, however, does not bode well state legislators who believe states and localities, and not just Washington, have the authority to regulate immigration (Savage, 2010, p. 10).

While never touted as sending a message to Washington, as supporters of California's Proposition 187 had claimed after its passage, like Prop. 187, S.B. 1070 will likely spur Congress to address immigration reform. As of this writing the approach of the 2010 midterm elections means that Congress will not take up any major legislation. However, in mid-September, Senator Bob Menendez (D-NJ) pledged to introduce a major immigration reform bill, that would include border security provisions, an employment verification scheme, a temporary-worker program and a path to citizenship for undocumented migrants already in the United States (Wong, 2010). It is doubtful that the Senate would give serious attention to a bill introduced right before the midterm elections. The introduction of this comprehensive immigration reform legislation, especially in the wake of S.B. 1070, may be the catalyst for a new round of hearings and debates over how best to reform U.S. immigration policy. The fact that since 1980, Congress has not gone more than 10 years without attempting to overhaul U.S.

immigration policy makes it likely that Congress will not remain deadlocked on immigration for long.

Immigration issues will likely only gain in national importance in the coming years and future scholarship should continue to consider the ways in which any proposed immigration policies define and manage populations both within and outside the United States. This project has illustrated the importance of such work in addition to more traditional studies as providing a much needed window into the functions of immigration policy debates in the contemporary U.S.

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