PEOPLE AND PLACE

REFORM AND RETREAT IN UNITED STATES IMMIGRATION POLICY

Gary P. Freeman

Immigration policy in the United States has been dominated by a form of client politics in which the relatively small number of beneficiaries of high migration have been able to prevail against the interests of the diffuse majority who pay the costs. However, in the mid 1990s, Congress introduced tighter controls on illegal immigration and restrictions on access to welfare benefits to migrants who were not citizens. There were also attempts to cut the level of legal immigration. Do these new moves indicate that client politics no longer prevails? The outcome of the push for reform suggests that the answer is no. The moves to cut the legal intake failed. Many of the measures to restrict welfare benefits have been off-set, and efforts to persuade people granted temporary asylum to depart when their visas have run out have met with obstacles. The only change which has endured is the legislation to curtail illegal immigration.

The US is just emerging from a brief but intense period of conflict over immigration policy. In the struggle over major legislation in 1996, proposed cutbacks in the legal immigration program were defeated at the same time that significant measures against illegal migration, welfare recipiency for legal immigrants, and political asylum were adopted. Since 1996, on the other hand, there have been retreats on several fronts while some important expansions of the legal program have been passed. I briefly review the main features of the 1996 legislation before turning to the subsequent developments. Taken as a whole, the story of recent immigration policy provides a basis for assessing whether the fundamental political dynamics that typically shape US immigration policy are being altered.

The dominant mode of immigration policy making in the US over the previous three or four decades has been client politics, which political scientist James Q. Wilson argues develops when the benefits of a policy are concentrated on a relatively small number of people while its costs are spread over the population as a whole.[1] Policy has been largely controlled by Congress which, in turn, is responsive to organized interests who see themselves as directly benefitting from an immigration program open to relatively large numbers of both legal and illegal permanent and temporary immigrants. Acutely attentive to changes in immigration policy, these interests have regularly defeated the less well-organized efforts of some trade unions, immigration control groups, and others seeking to move policy in restrictive directions. Client politics produces an incrementally expansive legal admissions program combined with weak and ineffective efforts to curtail unauthorized migration and work.

Is the recent outbreak of restrictionist agitation and policy an indication that client politics is being transformed? The mass media frequently labels the new politics of immigration ‘populist’, suggesting that it is a grassroots protest movement against established parties and elites, but also implying that it is tainted by nativism. Has a new style of populist, anti-

immigrant politics actually emerged? And, if so, has it resulted in outcomes that diverge from those predicted by the client politics model? Wilson distinguishes four modes of politics — client, entrepreneurial, interest group, and majoritarian — depending upon whether the benefits and costs of a policy are, respectively, concentrated and diffuse, diffuse and concentrated, both concentrated, or both diffuse. Populism is not one of these. It is closest, perhaps, to entrepreneurialism where political activists seek to mobilize the unhappy minority of voters who believe they bear the concentrated costs of a policy while enjoying at best only diffuse benefits. A truly populist politics would build on this base of seriously disaffected voters to mobilize a larger segment of followers who may be only indirectly affected by, or temporarily engaged with, immigration issues.

I will argue that a significant populist element has emerged in recent immigration politics, but that it has been limited, for the most part, to those areas of the country heavily impacted by immigration. California is the most notable instance. A citizen initiative movement there led to the passage of Proposition 187 in 1994 and helped put immigration reform on the national agenda. Even in California, however, politicians have been able to win support for restrictionist measures dealing with illegal immigration only. The great majority of American voters, even in this highly politicized environment and in a period of historically high migration, seems to care strongly only about illegal migration and produces no groundswell of support for proposals to curtail legal entries. In the end, entrepreneurial populism helped push along sweeping measures to control the southern border with Mexico, but traditional client politics held sway in discussions of the more significant legal program. This has happened during a moment when conservative immigration reform seemed more feasible than at any time since the 1965 reforms ended the national origins quota system. From the point of view of advocates of immigration, in other words, the last few years have involved some unhappy outcomes and close calls but things might have been much worse.

THE RESTRICTIONIST IMPULSE[2]

Writing in this journal before Congress had completed its work in 1996, I suggested that some modest retrenchment in the numbers of legal permanent immigrants admitted annually might pass, but doubted that Congress would remove access of legal immigrants to public benefits such as food stamps.[3] I was wrong on both counts. Major legislation was passed relating to illegal immigration and to welfare benefits for legal immigrants, but most changes to the legal program were defeated.

The main story line behind passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) was (1) that the House supported more restrictionist legislation than the Senate, (2) fierce opposition from lobby groups and the White House focused on a successful effort to kill off changes to the legal program, and (3) last minute compromises watered down a number of the features designed to combat illegal migration left in the bill.

IIRIRA deals primarily with enforcement and control of illegal entries. It adds 1,000 Border Patrol agents per year for five years, doubling the overall size of the force by the year 2000.

It requires the Immigration and Naturalisation Service (INS) to build a 14-mile triple fence along the border south of San Diego and increases penalties for smuggling aliens and for using false documents to obtain US jobs or welfare assistance. It adds 1,200 INS investigators to inspect work places for unauthorized workers and to apprehend and deport criminal aliens. Foreigners convicted of entering the US illegally, or of overstaying a previous visa, can be denied new visas from three to ten years. A pilot telephone program is established to enable employers and social service agencies to verify the status of applicants. Employer participation is voluntary, however, and a national worker-eligibility verification system mandating employer participation cannot be established without new legislation. With respect to legal immigrants, the law expands and reinforces restrictions on access to welfare benefits (see below). Sponsors of legal immigrants will need to have incomes that are 125 per cent of the poverty line (in 1996 US$19,461 for a family of four) and sponsorship affidavits will be enforceable in the courts. For asylum applicants, an INS officer will decide whether a person at the border will be granted asylum. A negative decision must be appealed within seven days to an immigration judge after which further appeals are impossible.[4] Pursuant to IIRIRA and the more generally supportive environment for toughened immigration controls, the monetary resources devoted to the INS have soared. The INS budget was US$1.5b in fiscal year (FY) 1993. In February 1998 President Clinton requested US$4.2b for FY 1999. The bulk of these new expenditures is going to border control.

Immigration also was an important issue in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), the major welfare reform legislation that President Clinton signed in August 1996. Large numbers of immigrants receive publicly-funded income and other welfare benefits. Resentment in high immigration states at the costs of providing services to illegal immigrants drove such developments as Proposition 187 in California and lawsuits by states seeking federal government cash reimbursement for the costs of illegal immigration. PRWORA turned the focus on legal immigrants. About 40 per cent of the projected US$55 billion savings over five years of the new welfare provisions were to come from the elimination of welfare benefits for legal immigrants who were not US citizens.

As of 22 August 1997, immigrants are denied access to Supplemental Security Income (SSI, the federally-funded, means-tested cash assistance program for the elderly) and Food Stamps (the federally-funded, means-tested food assistance program) until citizenship, except for certain exempt categories.[5] In addition, immigrants who arrive in the US after 22 August 1996 are barred for the first five years after entry from receiving TANF (Temporary Assistance to Needy Families — the new program replacing Aid to Families with Dependent Children), Medicaid, Title XX (social services)[6] block grant, and 'federal means-tested' programs.[7] States are, furthermore, given the option to bar both pre-1996 and post-1996 immigrants from (non-emergency) Medicaid, TANF block grants, Title XX block grant programs, and all entirely state-funded public benefit programs. Under prior law states were prohibited from discriminating against legal immigrants in the provision of assistance. Federal means-tested public benefit programs (TANF, Food Stamps, and SSI) must also take into account the income of sponsors when calculating future immigrants' eligibility for

benefits. Exempt programs are the same as for the five-year prospective bar above. Undocumented immigrants are ineligible for cash assistance and all major federal programs, except for emergency medical, public health, child nutrition, child care, child protection, and maternal care.

LEGAL IMMIGRATION AND WELFARE RESTRICTIONS

Rollbacks and reconsiderations after the 1996 Presidential Election

Immigration loomed uncharacteristically large in the 1996 Presidential election held less that three months after Congress had enacted these laws. When President Clinton signed the welfare reform bill in August he noted that many of its provisions affecting immigrants were 'unfair' and he vowed that, should he be returned to office in the fall election, he would work to rescind a number of the offending provisions. The President also pledged 'to remove bureaucratic roadblocks to citizenship to all eligible, legal immigrants' to minimize the effects of the benefits bar. Clinton directed the INS to try to swear in all persons wishing to become US citizens within six months of applying.

Patrick Buchanan, a journalist who had worked in previous Republican administrations, made immigration a central issue in his campaign for the Republican nomination. He proposed that a wall be built along the entire length of the border with Mexico to deter illegal entry and argued for reductions in the legal intake. He pushed for a five-year moratorium on new legal entries — only spouses and children of US citizens would be admitted. Buchanan opposed any kind of financial assistance for illegal aliens and wanted to make English the country's official language. He won the Louisiana primary, finished second to former Senate Majority Leader Bob Dole in Iowa, won in New Hampshire, and came in second or third in the next three primaries. California Governor Pete Wilson also made opposition to immigration central to his short-lived campaign. Lamar Alexander, a former Governor of Tennessee and a former Bush administration cabinet officer, proposed that the INS be replaced by a new branch of the armed forces to patrol America's borders. He wanted the federal government to pick up the tab for illegal immigrants in states such as California and Florida. On the other hand, candidate Steve Forbes, a wealthy publisher, was alone in taking a strongly pro-immigration stance, arguing for an increase in legal immigration and opposing a national registry of aliens eligible for work.

Once Dole had secured the Republican nomination, he attempted to use the immigration issue to win votes in the crucial state of California. On 17 October in Riverside, California Dole accused Clinton of weakening the recent immigration law (IIRIRA) during last minute negotiations. He said, 'If you are in this country illegally, you can stay in public housing, collect welfare, get free medical care and even invite family members abroad to come and join you'.

Clinton won the November election by a wide margin and Dole's poor showing spawned a debate over how immigration may have affected the outcome. An estimated 6.6 million Hispanics were registered to vote in the November elections, up from 4.8 million in 1992. Two million lived in California, 1.6 million in Texas, 570,000 in Florida, and 540,000 in

New York. About 180,000 Latinos turn 18 every year. The Tomas Rivera Policy Institute reported the results of a public opinion poll that found that 71 per cent of the Latinos registered to vote in California and 85 per cent of those Latinos naturalized since 1992 said they planned to vote for Clinton. After the election the *New York Times* reported exit polls that showed that 71 per cent of Hispanic voters nationally supported Clinton, a sharp jump from the Latino vote for Clinton in 1992.[8]

Despite Clinton's impressive victory, the 105th Congress was still held by Republicans. The leadership of the key immigration subcommittees changed in important ways, however. Although Lamar Smith of Texas, the foremost proponent of curtailing legal immigration in the House, retained the chair of the Subcommittee on Immigration, the Senate subcommittee chair went to Spencer Abraham of Michigan when Senator Alan Simpson retired. Abraham strongly opposed reducing legal immigration. In his State of the Union address in January 1997 President Clinton said 'we must restore basic health and disability benefits when misfortune strikes immigrants who came to this country legally, who work hard, pay taxes, and obey the law. To do otherwise is simply unworthy of a great nation of immigrants'.[9]

During 1997 and the first part of 1998 a number of the changes in federal and state policy which restricted migrants' access to welfare enacted the previous year were either delayed, watered down, or rescinded by Congress, the president, or the federal courts, or were made moot by state government responses. Congress lifted the ban on receipt of SSI and Medicaid for elderly immigrants on the rolls before 22 August 1996. The ban on food stamps for qualified immigrants was left unchanged at the time. However, in the spring of 1998 food stamps were restored for a broad range of legal immigrants.

The courts were also active. For example, federal judges ordered immigration judges to consider the cases of immigrants seeking to remain in the US due to the hardship their deportation would cause even though the newly imposed annual cap for hardship exceptions had been reached. The federal courts also blocked the implementation of all the provisions of California's 1994 Proposition 187 except that imposing criminal penalties for use of fraudulent documents.

In addition, federal policy change provoked state responses. Most states stepped in to make up at least a substantial part of the benefits PRWORA denied to legal immigrants. PRWORA gave the states the authority to continue Medicaid and TANF for legal immigrants who arrived before passage of the Act. A strong national economy drove up state revenues and produced large budgetary surpluses by the end of 1996 and throughout 1997. One overview of the actions in the states concluded that 'almost every state has decided, sometimes using its own money, to keep immigrant benefits intact'.[10] Because the states get the same lump sum of federal cash whatever they decide about immigrants, there was actually a budgetary incentive for states to deny immigrants benefits. Nevertheless, 'all but a few states are continuing benefits for immigrants who were here when the law took effect'.[11]

NEW EXPANSIONIST MEASURES

Apart from the about-face on the welfare front and defeats in the courts, several other developments suggest that expansionist client politics is alive and well.

1. Section 245(I) of the Immigration Act: regularising illegals

Beginning in 1994 Congress permitted qualified persons illegally in the US to pay a $1,000 fine and adjust their status to legal immigrant rather than traveling to their country of citizenship to obtain a visa from a US consulate. This arrangement (section 245(I) of the Immigration Act) was to expire on September 30, 1997, although the INS requested that it be renewed. Many persons feared that they would be caught between the 245(I) expiration and new over stayers' regulations that went into effect on 1 April 1997. Under IIRIRA foreigners convicted of entering the US illegally, or overstaying a previous visa, can be denied new visas to enter the US for three to ten years.

The Senate and the White House favored making 245(I) permanent. The House twice agreed to extend its provisions so that those already in the US would have time to file their applications. On 29 October, the House rejected, on a 268-153 vote, a motion that would have blocked permanent extension of 245(I). An estimated 200 lobbyists, including immigration lawyers, businesses, religious groups, ethnic organizations, and immigrant advocacy groups pressed Congress for the extension. Then in November, Congress acted again to permit the estimated one million foreigners illegally in the US waiting for immigrant visas to proceed under the old rules, but they would have to file their application before 14 January 1998 when section 245(I) finally expired. These measures mitigated the effects of IIRIRA for some individuals but they did not undermine its basic thrust.

2. Temporary Protected Status (TPS) and the Immigration Reform Transition Act (IRTA) 1997: allowing temporary asylees to stay

A second episode of expansionism involved temporary protected status (TPS) for asylum seekers, a legacy of the Reagan administration's foreign policies. The 1990 Immigration Act gave the Attorney General power to create TPS for nationals of specific countries and designated Salvadorans as beneficiaries of TPS for 18 months. TPS was subsequently extended by Presidents Bush and Clinton both in its duration and its coverage of several additional nationality groups. A complicated tale, the TPS saga demonstrates several typical features of immigration policy making; namely, that temporary entries are rarely temporary and that benefits given to one group are difficult to deny to others, even if their situations are vastly different.

In the 1980s about 80 percent of Nicaraguan applicants, but fewer than five per cent of Salvadorans, were granted political asylum. Critics argued that this reflected the fact that the government opposed the Nicaraguan regime while supporting that in El Salvador. A class-action suit against the INS, the so-called ABC case, was settled through a consent decree in 1991 by granting TPS to about 200,000 Salvadorans and many Guatemalans who were in the US on or before 19 September 1990. These individuals were also given work permits until the INS could review their individual requests for asylum.

TPS for Salvadorans, already extended twice, was due to expire at the end of December 1994 and the Clinton administration announced its intention to let the program lapse.[12] Nevertheless, in January 1995 the INS announced that Salvadorans living in the US with TPS would have until 30 September 1995 to obtain another immigration status before they would have to leave the country. On 3 August 1995 the INS again extended their deadline until 31 January 1996 to give the estimated 90,000 Salvadorans who had successfully appealed in the past for Deferred Enforced Departure, and who were eligible under a consent decree to apply for asylum but had not yet done so, time to file their asylum applications or otherwise change their status from TPS.

Many of those holding TPS had been in the US for more than seven years and hoped to be allowed to stay due to the 'extreme hardship' their deportation would cause to themselves or their families, a concession for which they might be eligible under immigration law. However, on 20 February 1997 the Board of Immigration Appeals interpreted IIRIRA to mean that any time spent in the US after having received from the INS an 'Order to Show Cause' why one should not be deported did not count for the purpose of establishing seven years residence.

In response to these developments the Clinton administration introduced the Immigration Reform Transition Act of 1997 (IRTA) to permit applicants for suspension of deportation in the pipeline before 1 April 1997 to be judged by the old rules in effect before the enactment of IIRIRA in 1996. This would mean that they would need to have lived in the US only seven rather than ten years and prove that their removal would produce 'extreme' rather than 'exceptional and extremely unusual' hardship.

Rep. Lamar Smith announced on 10 October 1997 that the Republican House leadership had agreed to support IRTA. An estimated 250,000 Salvadorans and Guatemalans who entered before 1990 could have their applications considered under pre-IIRIRA standards. About 50,000 Nicaraguans would get a blanket amnesty, while nationals of El Salvador and Guatemala would have to prove that their removal would cause them or their US dependents 'extreme' hardship. Including family members, IRTA was expected to result in 500,000 persons being granted permanent residency.

When IRTA was adopted in November Haitians were not included. However, on 23 December 1997 President Clinton signed an order suspending for one year the deportation of up to 40,000 Haitians who had applied for asylum by 31 December 1995, or who were paroled into the US from the military camp at Guantanamo Bay, Cuba. Clinton asserted that 'Haitians deserve the same treatment we sought for Central Americans', and that his order would 'shield these Haitians from deportation while we work with Congress to provide them long-term legislative relief'. Previous presidential 'Deferred Enforced Departure' orders permitted Salvadorans, Chinese students after the Tiananmen Square massacre, and evacuees from Persian Gulf countries to remain in the country. In October 1998, Congress adopted the Haitian Refugee Immigration Fairness Act, which will permit an estimated 50,000 Haitians in the US since 1995 to qualify for immigrant status. Haitians who applied for asylum or who were paroled into the United States have until 1 April 2000 to apply.

3. Temporary worker immigration

Agricultural guest-workers

Representatives of high-tech firms, multinationals, and agricultural employers had called for amendments to the immigration bills under consideration in 1995-96 to provide easier access to larger numbers of temporary non-immigrant workers. Bills then pending in the House and Senate would have imposed a number of financial and bureaucratic obstacles for employers seeking permanent foreign workers under the employment preference of the immigration law. Employers, while opposing these provisions, made it clear during hearings that they thought existing procedures for temporary workers needed to be eased as well.

The House Immigration Subcommittee held hearings on agricultural guest-workers in December 1995. Representatives of growers complained about the inflexibility of current law (H-2A visas for temporary agricultural workers) which requires that growers ask the Department of Labor (DOL) at least 60 days before a shortage is anticipated. In February Rep. Gallegly (R-CA) unveiled the Temporary Agricultural Worker Amendments of 1996 which he promised to attach to the immigration bill on the House floor. The plan, which was based on a 1995 report by the National Council of Agricultural Employers, would permit growers, labor contractors, or associations wanting to employ foreign farm workers to file at least 25 days before the job was to begin a labor-condition attestation with their state employment service. About 60 farm organizations, from the American Farm Bureau Federation to the Wisconsin Christmas Tree Producers sent a letter to senators and representatives on 12 February to urge the inclusion of the Gallegly proposal in immigration reform legislation.

Meanwhile, Sen. Kyl (R-AZ) had begun developing a guest-worker proposal of his own. Instead of requesting permission to import foreign workers from DOL and then waiting for DOL to certify that the grower had tried to recruit US workers at prevailing wages and with offers of free housing, transportation, and contracts for work, growers would simply 'assert' that they had taken these steps and DOL would be required to approve their applications unless they were obviously incomplete or inaccurate. In the event, no changes to the laws regulating temporary agricultural workers have passed to date. In July 1998 the Senate passed by a 2-1 margin a plan incorporating many of Senator Kyl's provisions, but the House never signed on and it was eliminated from the final version of the omnibus spending bill of which it was a part. The issue is still on the legislative agenda, but a stalemate has be en reached in which neither the proponents of reinforcing regulations to prevent abuse nor the advocates of easing them to satisfy grower complaints have prevailed. This outcome is inconsistent with the client politics model insofar as traditionally strong employer interest groups have been stymied. On the other hand, in a legislative context in which wide-ranging efforts were undertaken to stem illegal entry the fact that an expanded farmworker program was only narrowly averted is also significant. Furthermore, one of the key groups opposed to the plan was the Hispanic Caucus in the House, suggesting that the traditional immigration client groups are divided over temporary farmworker policy.

Skilled workers

Efforts to expand the H-lB program for non-immigrant skilled workers were particularly successful. Under this program employers who want to hire foreign professionals for up to six years 'attest' by filing a labor condition application with the DOL that they have tried and failed to find US citizens and legal immigrants at prevailing wages. DOL must approve their request unless it is 'obviously' inaccurate. Up to 65,000 foreign workers a year can enter through this program and since they can stay for six years, there may be a maximum of 390,000 H-lB workers in the US The Senate approved in May 1999 Sen. Abraham's American Competitiveness Act by a vote of 78-20. It would raise the ceiling on H-lB workers from 65,000 per year to 95,000 in FY 1998 and thence to 115,000 a year through 2002. The Senate rejected additional protections for American workers which were in a similar House bill sponsored by Lamar Smith that was awaiting full House action. That Bill would have required firms to certify that they had not laid off American workers, something present law, and the Senate bill, permitted. The final version, signed by President Clinton in October, contained elements of both the Senate and House versions.

The law increases the number of H-1B non-immigrant visas by 142,500 over the next three years for foreign high-tech workers. The annual ceiling, currently 65,000, will be 115,000 in 1999 and 2000 and 107,500 in 2001. It will revert to 65,000 in FY 2002. Prospective employers must pay a $500 visa fee for each application or renewal and this is to be spent on training of American workers and scholarships for American students to learn programming. Firms that have at least 50 employees of which 15 per cent hold H-1B visas must 'attest' to the Department of Labor that they did not lay off US workers and that they attempted to recruit US workers before receiving permission to hire foreigners.

CONCLUSION

What are the implications of these events for understanding the politics of immigration in the United States? One outcome of the past four years is that the tendency to compartmentalize policy making for legal and illegal immigration has been reinforced. As a result, comprehensive legislation dealing with all aspects of immigration policy is less likely than ever. No important reforms of the legal immigration program were adopted in the period under review, with the exception of the prohibition of welfare benefits to certain classes of legal immigrants and a tightening of the provisions for 'deeming' the income of sponsors of permanent immigrants. Some expansionist proposals were adopted while others were only narrowly defeated. On the other hand, the new restrictions on illegal immigration and the resources devoted to patrolling the border are substantial, even if some of the most hard-hitting measures were deleted during the legislative process.

Attempts by Republican legislators to reform the legal immigration program which included dilution of existing rights to sponsor brothers and sisters for permanent settlement (as recommended by the Commission on Immigration Reform)[13] were defeated through the lobbying efforts of pro-immigration interest groups operating in the traditional fashion of client politics. The coalition against changes in the legal program was composed of

organizations representing those having a direct interest in outcomes — employers, immigrant-rights organizations, the churches, and immigration lawyers. They were able to prevail, as Gimpel and Edwards show,[14] only because they allied themselves with a coalition of high-tech businesses (and, briefly, the Christian Coalition) which had access to Republican lawmakers. The high technology industry wished to expand and modify the H-lB program for temporary skilled visas. The Christian Coalition hoped to gain ground among ethnic constituencies by throwing its weight against legal cutbacks.

The proponents of reforms of legal immigration, on the other hand, had few organized or effective allies. The leading advocates of immigration reduction are population control and environmentalist organizations with little clout in Washington. African-American legislators, who might have been expected to be skeptical about the annual entry of thousands of unskilled immigrants, legal and illegal, joined with Hispanics and Asians to defend current immigration practices. The only part of the populist program that was realized had to do with illegal migration and welfare benefits for legal migrants. Proposals for a national moratorium on legal immigration promoted by the Federation for American Immigration Reform, or even a substantial reduction in numbers, went nowhere. Despite the fact that public opinion seems to favor cutbacks in legal admissions, Republicans in the Congress had trouble mobilizing support behind their proposals even within their own party. The disjuncture between expressed public preferences about the legal program and public policy, a gap that has been a feature of American immigration politics for years, persists with respect to the question of the size and character of the legal immigration program. With respect to legal immigration, therefore, client politics prevails and restrictionists simply lack a serious, organized constituency.

The story of controlling illegal immigration is more complicated. Here, politics has been transformed, becoming highly partisan and contentious. The old client system broke down primarily because the Republican Party gained control of the Congress in 1994. Partisanship replaced consensus on illegal immigration and clientelistic bargaining behind closed doors was no longer feasible. The old client groups that have had such influence over general immigration policy as a whole did not have access to Republican lawmakers, as just noted. Conflicts broke out into the open. Faced with the threat of comprehensive legislation, the traditional defenders of immigration causes chose to focus on protecting the legal program and, although they fought many aspects of the new policies directed at illegal migrants, they basically conceded the passage of a bill against illegal migration as the price of preventing something worse.

Populist characteristics can be seen in at least two ways. There is first the significant role played by the state of California and especially the Proposition 187 initiative in 1994. A truly grassroots affair, Proposition 187 was seized upon by entrepreneurial politicians like Governor Wilson of California for electoral purposes and to pressure the national government to pay attention to the local costs of a failed national policy of immigration control. In addition, the unusual if ultimately limited success of Presidential candidate Patrick Buchanan in 1996 helped keep immigration on the agenda.

One important constraint on populist politics is the courts. On the whole, the courts have tended to protect and extend the rights of both legal and illegal immigrants. Judicial rulings are especially important with respect to asylum and refugee policy. Although the courts are not political bodies, and their impact is more properly encompassed by analytical models that are based on the strength of norms of individual rights and the evolution of rights-based republican regimes,[15] they nevertheless are important elements of the traditional client system. Resort to the judiciary has been a critical resource for immigration advocates and minority groups unable to achieve their goals in the legislative arena. The thrust of judicial rulings has been to expand the realm of immigrant claims on the state.

In sum, the landscape has changed in the last few years. An entrepreneurial populist mode has been introduced into immigration politics. How long it is viable is unclear. Immigration, such a contentious issue in 1996, played almost no role either in the 1998 Congressional elections or in the California gubernatorial contest.[16] For the moment client politics remains dominant, restrictive proposals that deal with legal immigration have little prospect of passing and expansionist measures continue to be adopted.

References

1 See J. Wilson (Ed.), *The Politics of Regulation*, Basic Books, New York, 1980. For an application of Wilson's model to immigration politics, see G. Freeman, 'Modes of immigration politics in liberal democratic states', *International Migration Review*, vol. 29, no. 112, 1995, pp. 881-902.

2 I rely extensively on several periodical news summaries in this section. In particular, *Migration News* (http://www.migration.ucdavis. edu), the news service of the Center for Immigration Studies (CISNEWS@cis.org), and Immigrant Policy News from the National Council of State Governments (immigrant-newsl@ncsl.org). In addition, I have drawn on the comprehensive discussion in J. Gimpel and J. Edwards, *The Congressional Politics of Immigration Reform,* Allyn & Bacon, Needham, MA, 1998.

3 G. Freeman, 'Change or continuity in American immigration policy?', *People and Place*, vol. 4, no. 1, 1996, pp. 1-7

4 Another law that had major immigration implications was the Anti-Terrorism and Effective Death Penalty Act of 1996. It allowed asylum officers, with the approval of their supervisors, to exclude aliens requesting asylum from entering the US if they arrived without documents and did not have a 'credible fear of persecution', or if they entered the US illegally. When he signed the bill President Clinton criticized these features of the bill and vowed to work for their repeal in the next legislative session.

5 These include: refugees, asylees, and those granted withholding of deportation (who are eligible during their first five years in the US); veterans and aliens on active duty, their spouses, and unmarried children under age 21; and immigrants who have worked in 40 qualifying quarters, that is about 10 years.

6 Title XX refers to a section of the social security act (first passed in 1935 and amended many times since) that deals with social services to the poor and stipulates how federal monies are distributed to the states for social service programs and so on.

7 Exempt categories include refugees, asylees, and those granted withholding of deportation, veterans and aliens on active duty, their spouses, and unmarried children under age 21, and Cuban-Haitian entrants.

8 The process by which permanent residents obtain citizenship became embroiled in controversy in the period under discussion, but any reasonable assessment would have to conclude that both policy and outcomes were broadly inclusive. Applications for citizenship rose from 342,269 in FY 1992 to 1,000,000 in FY 1995, 1.3 million in FY 1996, and an estimated 1.8 million in FY 1997. About half a million persons were granted citizenship through naturalization in FY 1995 and this surged to over one million in FY 1996 (*INS Statistical Yearbook,* multiple years).

9 Migration News, March 1997

10 Associated Press, 19 October 1997

11 ibid.

12 The civil war in El Salvador had ended in 1992.

13 This Commission was created by Congress pursuant to the 1990 Immigration Act. It issued three major reports, proposing changes and reductions in the legal program, tougher efforts to control illegal entry, and a reinvigorated settlement policy. See United States Commission on Immigration Reform, *US Immigration Policy: Restoring Credibility,* USGPO, Washington, D.C., 1994; *Legal Immigration: Setting Priorities*, USGPO, Washington, D.C., 1995; and *Becoming an American: Immigration and Immigrant Policy*, USGPO, Washington, D.C., 1997.

14 Gimpel and Edwards, op.cit., pp. 243-44

15 See J. Hollifield, *Immigrants, Markets, and States*, Harvard University Press, Cambridge, 1994 and Christian Joppke, 'Why liberal states accept unwanted immigration', *World Politics* Vol. 50 (January), 1998, pp. 266-93.

16 'Immigration — the big issue of '94 — disappears from '98 debate', *Los Angeles Times*, 23 October 1998; 'Both parties courting Latinos vigorously, California GOP tries strategy of inclusion', *Washington Post*, 26 October 1998