

# Oklahoma Law Review

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Volume 52 | Number 4

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1-1-1999

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### Recommended Citation

Harvey Gee, *Immigration and the New Nativism: A Review Essay (reviewing Immigrants Out! The New Nativism and the Anti-Immigrant Impulse in the United States, edited by Juan F. Perea)*, 52 OKLA. L. REV. 685 (1999),  
<https://digitalcommons.law.ou.edu/olr/vol52/iss4/8>

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## BOOK REVIEW

### IMMIGRATION AND THE NEW NATIVISM: A REVIEW ESSAY

IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES, edited by Juan F. Perea. New York: New York University Press. 342 pp. 1997.

*Reviewed by Harvey Gee\**

*The American Nation has always had a specific ethnic core. And that core has been white.<sup>1</sup>*

The recently enacted anti-immigration policies which target Asian and Latino immigrants are the latest manifestations of the social construction of these racial groups as foreigners not entitled to the equal protection of the law. This anti-immigrant animus is explored in *Immigrants Out! The New Nativism and the Anti-Immigrant Impulse in the United States*,<sup>2</sup> edited by critical legal scholar Juan Perea. This recently published anthology contains eighteen cutting-edge essays written by the nation's leading immigration scholars. Moving beyond the front cover, readers will find works by some of the most influential immigration scholars. This group includes Kevin Johnson, Robert Chang, Linda Bosniak, Richard Delgado, T. Alexander Aleinikoff, and others. Individually, these contributors speak out against the manner in which immigrants have been used as scapegoats during difficult economic times in this country. The result is one of the most trenchant analyses of the interrelationship of race, nativism, and the laws of immigration available to date.

At the outset, *Immigrants Out!* is divided into six sections: (1) historical themes; (2) identifying the new nativism; (3) causation of the new nativism; (4) nativism past; (5) border crossings; and (6) analyzing the discourse of immigration and citizenship. Each part provides a succinct discussion of its respective subject matter. The essays in each section are provocative and well written.

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1. PETER BRIMELOW, *ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER* 10 (1995).

2. *IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES* (Juan F. Perea ed., 1997) [hereinafter *IMMIGRANTS OUT!*].

At its core, the anthology's detailed critique of the "new nativism" emerging in the United States against newly arrived immigrants underscores the realities of global migration and the role of immigrants within American society by arguing that immigration is not really about economics, rather, it is about race. In particular, the book shows why immigration poses substantial challenges for American race relations. According to the essayists, in recent years proponents of immigration restrictions in the United States have focused increasingly only on the economic impact of immigration, and they have in turn downplayed the influence of race as motivating their demands.

Each contribution analyzes modern-day nativism to show how the ethnic background of immigrants today, as in the past, has inflamed public opinion and how race and immigration status are often combined to enhance the unpopularity of immigrants. The essayists warn that the failure to incorporate obvious racial meanings into immigration laws and anti-immigrant policies means that racism can be masked by any law that is rooted in citizenship, sovereignty, or the national interest.

Two major themes about the new nativist backlash emerge from the book's essays: (1) efforts to close the nation's borders and (2) the attempts to force recent immigrants to assimilate into American society. According to the essayists, the hostile environment in the United States toward immigrants, as indicated by the Federal Welfare Reform Act and California's Proposition 187, calls for a more meaningful review of laws affecting immigration. In particular, the essayists cite California's Proposition 187 as an example of one of the weapons that nativists have utilized to close the nation's borders. In the process, the authors illuminate the disjuncture between racialized politics and the purported race-neutral immigration laws.<sup>3</sup> Under Proposition 187, undocumented immigrants, primarily Latinos and Asians, are denied access to public school education, non-emergency health care from state and local government providers, and government social services.<sup>4</sup>

The essayists proceed to engage in a lively discussion about the legal standards that courts apply to immigration legislation.<sup>5</sup> As a practical matter, they note the inherent difficulties in challenging nativist legislation which appears to be race-neutral by cautioning that given its race-neutral language, proof of discriminatory intent would be required to state a claim of racial discrimination in violation of the Equal Protection Clause. The essayists suggest that the popular support behind Proposition 187 was the end result of a manifestation of anti-immigrant animus. They insist that the ballot measure is just one example which illustrates that even

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3. See *id.* at 206-07; see also PETER D. SALINS, ASSIMILATION, AMERICAN STYLE 16 (1997) (arguing that supporters of Proposition 187 tapped into deep-seeded anti-immigrant sentiment); Kevin Johnson, *Fear of an "Alien Nation": Race, Immigration, and Immigrants*, 7 STAN. L. & POL'Y REV. 111, 113 (1996) (stating that the ability to achieve racial goals through facially neutral means makes it difficult to ascertain the extent to which racism influences the calls for restrictionist measures such as Proposition 187). See also generally John S.W. Park, Note, *Race Discourse and Proposition 187*, MICH. J. RACE & L., Fall 1996, at 175.

4. See ANGELO N. ANCHETA, RACE, RIGHTS, AND THE ASIAN AMERICAN EXPERIENCE 96-97 (1998).

5. See IMMIGRANTS OUT!, *supra* note 2, at 206-07.

today, through the process of "racialization," immigration laws have racial meanings.<sup>6</sup>

Moreover, the essayists argue that the current backlash against immigrants has also found its way into the controversies over bilingual education and bilingual ballots, which also reflect the more fundamental debate over linguistic pluralism and the place of non-English languages in public life.<sup>7</sup> They explain how, within this conundrum, a tension exists between the pluralism/assimilationism dichotomy. The analysis of language subordination falls into two distinct categories: (1) forced assimilation through English-only laws and (2) discrimination based on foreign accent. Within their discussion, the essayists explore the tensions which exist between pluralism and assimilationism, and the use of discrimination based on foreign accent.

Pluralism asserts the value of maintaining a distinct ethnic identity through language and customs, while assimilation can be characterized as the process of incorporating ethnic groups into the dominant society.<sup>8</sup> Contrary to popular belief, the two socialization processes are not mutually exclusive. However, Americans should not be forced by law to choose one over the other. The authors take issue only when assimilation is externally mandated using laws which require conformity through common cultural norms and the exclusive use of English. This is considered to be forced assimilation, which is normally created through legislation that repeals existing laws and legislation, thus making English the official language of government.<sup>9</sup>

The essayists proceed to discuss other forms of subordination imposed upon Asian immigrants. Though it is not mentioned, Asian Americans and Asian immigrants are among those most identified with having foreign accents and among those most often subject to discrimination because of an accent. In another recent volume, legal scholar Angelo Ancheta explains the multilingual hierarchy in this manner:

Every English speaker has an accent that may reflect regional origins, whether English is the person's primary language, and even the person's level of education and placement within a social and economic class. But between dominant and subordinate English speakers, the "foreign" accent or the low-status accent can be a source of subordination.<sup>10</sup>

A prominent example of the mocking and ridiculing of foreign accents is found in former United States Senator Alphonse D'Amato's employment of a derisive Japanese accent on national radio in 1995 to lambaste Judge Lance Ito, who speaks with an obvious American accent. Senator D'Amato's action of disparaging an Asian

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6. See also ANCHETA, *supra* note 4, at 175-76.

7. See IMMIGRANTS OUT!, *supra* note 2, at 78-102.

8. See *id.* at 25-26.

9. See *id.* at 34-35.

10. Ancheta, *supra* note 4, at 121-23.

accent displayed a crude form of nativist racism.<sup>11</sup> These examples provided by Ancheta support the proposition that Asian Americans, even today, cannot avoid being perceived as foreign.

Finally, the essayists conclude by linking the new found popularity of English-only laws with the prevalence of accent discrimination. They accomplish this by explaining that the calls for the dominance of English language and eurocentricity are nothing new. This nativist sentiment has triggered proposals supporting the primacy of the English language throughout American history. The traditional norm of immigrant assimilation, not law, has made English the primary language of the United States. The essayists conclude that laws, however, have not been immune to the powerful influence of nativism.

Despite Perea's well-intended efforts, there are parts of *Immigrants Out!* which could be improved. In particular, one minor area of contention merits attention: the book is noticeably weak in its discussion of policy alternatives, especially at the Supreme Court level. This is interesting, as the Court has historically assumed an important role in creating and shaping immigration law. A focus on the Court's immigration jurisprudence would have allowed a much broader perspective. Coinciding with the release of Perea's book is Professor Frank Wu's moderate proposal for immigration reform.<sup>12</sup> According to Wu, the Supreme Court should abolish the archaic doctrine of plenary power and apply the same standard of review to immigration laws that it applies to all other laws.<sup>13</sup> This view strengthens the arguments by the essayists. Wu contends that allowing federal immigration laws to be reviewed under strict scrutiny will protect immigrants from discriminatory laws.<sup>14</sup> Strict scrutiny requires the government to present a compelling interest substantially related to the discriminatory classification, utilizing the least restrictive means available to accomplish that goal. The Supreme Court has labeled legal immigrants a "suspect class" in the context of state laws.<sup>15</sup> The Court has never afforded immigrants protection from federal laws, however, due to its interpretation of the plenary power doctrine.<sup>16</sup>

At the time of its inception, the plenary power doctrine applied to laws implicating the foreign policy of the United States. Over time, however, it has grown into a broad governmental interest that prohibits the Court from performing its role of judicial review.<sup>17</sup> The Court should now recognize the purpose behind the plenary power doctrine protecting the foreign policy of the nation. Application of a heightened review standard would protect legal immigrants not only from discriminatory federal laws but would also preserve the purpose of the plenary power doctrine. Only by subjecting federal laws affecting immigrants to strict

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11. *See id.*

12. *See* Frank H. Wu, *The Limits of Borders: A Moderate Proposal for Immigration Reform*, 7 *STAN. L. & POL'Y REV.* 35 (1996).

13. *See id.*

14. *See id.* at 39.

15. *See id.* at 43.

16. *See id.*

17. *See id.*

scrutiny will all "persons" finally be protected under the Equal Protection Clause. Applying a strict scrutiny standard will serve the concerns of both the federal government and legal immigrants. Strict scrutiny analysis will protect legal immigrants from discriminatory laws, while maintaining the federal government's interest in matters regarding foreign policy. Because strict scrutiny review forces the government to present a compelling governmental interest before any federal law affecting immigrants can pass constitutional muster, legal immigrants will be insulated from the majoritarian political process in which they have little influence.<sup>18</sup>

Nevertheless, Perea presents a compelling anthology which is a must-read for anyone interested in the immigration debate. Notably, *Immigrants Out!* breaks new ground in an area of scholarship by serving as one of only a handful of narrowly focused volumes about race, immigration, and the law written exclusively from the political left. In short, the book is an ambitious, well-written, and unprecedented compilation of the legal theory, history, and personal narratives of Asian and Latino immigrants. The book is comprehensive, given its broad scope of analysis. Perea's interpretation of immigration history and the contemporary debate helps to explain the intractability of racism and discrimination against immigrants spanning from exclusionary immigration policies and the internment of Japanese Americans during World War II, to the growing number of racially motivated crimes and increasing anti-immigrant fervor of today. Moreover, the breadth of the book's analysis transcends immigration. The theories Perea expounds should be considered relevant for anyone seriously interested in racial justice.

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18. See *id.* I have addressed in greater detail the need for an alternative approach in analyzing traditional equal protection issues by the U.S. Supreme Court in my earlier work. See Harvey Gee, Comment, *Changing Landscapes: The Need for Asian Americans To Be Included in the Affirmative Action Debate*, 32 GONZ. L. REV. 621, 643 (1997).

