

AND STAY OUT! THE DANGERS OF USING ANTI-IMMIGRANT SENTIMENT AS A BASIS FOR SOCIAL POLICY: AMERICA SHOULD TAKE HEED OF DISTURBING LESSONS FROM GREAT BRITAIN'S PAST

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I. FACTUAL BACKGROUND

In recent years the United States has experienced a steady rise of anti-immigrant sentiment comparable to "the worst periods of time in [its] history."¹ With mounting fears regarding scarce jobs and a stagnant economy, immigrants have become the unfortunate scapegoats for the ills of American society.² The tide of anti-immigrant sentiment has been profoundly influenced by factors of race, and the policies that have emerged from anti-immigrant sentiment seem to reflect this racial influence.³ This has led some to describe tough anti-immigrant laws such as California's Proposition 187⁴ as "mean spirited" and "racist."⁵

Anti-immigrant sentiment is not unique to the United States.⁶ Britain has experienced similar problems with immigration and race hatred.⁷ In the

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¹ Steven A. Chin, *Asians Criticize Policies on Aliens; Coalition Places Clinton, Wilson on Same Bandwagon*, SAN FRANCISCO EXAMINER, Sept. 19, 1993, at A4, available in LEXIS, News Library, Curnws File (quoting Bill Ong Hing, Stanford law professor and head of Immigrant Legal Resource Center in San Francisco).

² Elizabeth Rhodes, *Group Fights Anti-Immigrant Fear*, SEATTLE TIMES, Nov. 24, 1993, at E2, available in LEXIS, News Library, Curnws File.

³ Michelle A. Heller, *Stemming the Tide; Illegal Immigration into the U.S.*, HISPANIC, Apr. 1994, at 20, available in LEXIS, News Library, Curnws File.

⁴ State of California—Proposition 187, available in LEXIS, Hottop Library, Immig File [hereinafter Proposition 187].

⁵ Telephone Interview with Susan Colussy, Program Director of Immigration Services at Catholic Social Services in Atlanta (Feb. 11, 1995).

⁶ See generally GARY P. FREEMAN, IMMIGRANT LABOR AND RACIAL CONFLICT IN INDUSTRIAL SOCIETIES: THE FRENCH AND BRITISH EXPERIENCE 1945-1975 (1979).

⁷ See *id.* at 42 (stating that racism of general population in Britain affected views about immigrants and development of immigration policy).

years following World War II, anti-immigrant sentiment grew as people became concerned about cultural invasion, jobs, and the economy.⁸ The animosity was primarily directed at non-white immigrants, and the laws that emerged from this animosity were overtly racist.⁹ Anti-immigrant sentiment persisted throughout the 1960s, 1970s, and early 1980s, and has remained to this day.¹⁰

The disturbing effects of Britain's anti-immigrant sentiments and policies between 1948 and 1981 may provide useful insights into America's future.¹¹ If America is on the same road that Britain followed in the past, it may be time for a detour as we look to the future.

A. *Anti-Immigrant Sentiment in Great Britain—1948-1981*

In the years immediately following World War II, Britain maintained an open-door policy towards immigration.¹² Due to a post-war labor shortage and massive emigration, Britain needed immigrants in order to rebuild its economy.¹³ A wave of immigration therefore occurred in 1948.¹⁴ Some

⁸ See generally ZIG LAYTON-HENRY, *THE POLITICS OF IMMIGRATION: IMMIGRATION, 'RACE' AND 'RACE' RELATIONS IN POST-WAR BRITAIN* 22-41 (1992) (detailing post-World War II influx of non-white immigrants to Great Britain, and reactions of government and general public).

⁹ FREEMAN, *supra* note 6, at 44-45.

¹⁰ See JOHN SOLOMOS, *RACE AND RACISM IN CONTEMPORARY BRITAIN* 187 (1989) (noting failure of contemporary government to promote positive measures sorely needed to overcome racial inequality in British society).

¹¹ Anti-immigrant sentiment and legislation in Great Britain did not end in 1981, but for the purpose of this paper ending the inquiry at that date is sufficient to illustrate the dangers that anti-immigrant sentiment could pose for America. The year 1981 is a convenient ending point since it marks the culmination of many of Great Britain's anti-immigration laws and the anti-immigrant sentiment that produced such laws. For the significance of 1948 as a starting point see *infra* text accompanying note 14.

¹² E.g., Kenneth Lunn, *The British State and Immigration, 1945-51: New Light on the Empire Windrush*, in *THE POLITICS OF MARGINALITY: RACE, THE RADICAL RIGHT, AND MINORITIES IN TWENTIETH CENTURY BRITAIN* 161, 165 (Tony Kushner and Kenneth Lunn eds., 1990).

¹³ LAYTON-HENRY, *supra* note 8, at 9.

¹⁴ Lunn, *supra* note 12, at 161. Many people view 1948 as the symbolic starting point of post-war immigration and subsequent race problems in Great Britain. In June of that year, 492 Jamaicans arrived at Tilbury Docks seeking work, and Britain needed such workers to compensate for its post-war labor shortage. However, the government was concerned that the arrival of black immigrants would cause racial strife. *Id.* at 161-63.

immigrants, like Polish war veterans, were able to make a smooth transition into British society due to the labor shortage.¹⁵ However, ethnic groups from British colonies in the West Indies, Africa, and the Indian sub-continent were not greeted with open arms.¹⁶

The British government was displeased with the ethnic diversity of New Commonwealth immigrants. Many white British viewed colonial immigrants as inferior.¹⁷ Further, since the colonial immigrants were non-European, the government felt that they were not of "good human stock."¹⁸ Such beliefs encouraged the idea that it would be difficult to assimilate these colonial immigrants into British society.¹⁹ However, the British government did not yet feel that formal immigration controls were necessary.²⁰

¹⁵ COLIN HOLMES, *A TOLERANT COUNTRY? IMMIGRANTS, REFUGEES, AND MINORITIES IN BRITAIN* 46 (1991). Although Polish resettlement in Great Britain did not occur without difficulties, the Labour government took steps to ensure that the Polish transition would be as easy as possible. For example, the government established the Polish Resettlement Corps that assisted Polish ex-servicemen in finding jobs and housing. From efforts such as these, Polish communities developed in London, Edinburgh and Bradford. *Id.*

¹⁶ Even though their labor was needed, non-white immigrants were viewed with hostility. Many employers only reluctantly resorted to immigrant labor when no whites were available to fill jobs. Immigrant workers were subject to constant exploitation and discrimination in their economic and social lives, as they were viewed as "an inferior but necessary labour supply." John Wrench & John Solomos, *The Politics and Processes of Racial Discrimination in Britain*, in *RACISM AND MIGRATION IN WESTERN EUROPE* 157, 160-61 (John Wrench & John Solomos eds., 1993).

¹⁷ *Id.* See also SAMUEL BONHOMME, *ENOCH POWELL AND THE WEST INDIAN IMMIGRANTS* 8 (1971) (stating that it is impossible for the white British working class to regard West Indian immigrants as equals because blacks are perceived as inferior beings without morals, and "walking, talking, black something[s] that [have] given society and civilisation [sic] absolutely nothing").

¹⁸ LAYTON-HENRY, *supra* note 8, at 28 (quoting *Report of the Royal Commission on Population*, Cmnd 7695, HMSO, 1949, at 124). The Royal Commission on Population thought that large-scale immigration was impractical because the supply of "suitable" (i.e., European) immigrants was small. The Commission, and other policy makers in the early post-war period, felt that European immigrants were superior to non-white Commonwealth immigrants. *Id.*

¹⁹ *Id.*

²⁰ See Lunn, *supra* note 12, at 164. Britain needed to address its post-war labor shortage and the government wanted to maintain a public image of British openness. Even though privately the government had some concerns about non-white immigration, it did not want to give the public impression that there was a "colour bar" on immigration. Therefore, it was thought that informal controls, like negotiating with Commonwealth governments to reduce emigration to Britain, would be better for Great Britain's image. *Id.*

In the early 1950s, social elites and conservatives like Winston Churchill were becoming more concerned about black²¹ immigration.²² Churchill feared that black immigration would create a "magpie society."²³ Blacks were perceived by some conservative politicians and their followers as lazy, quarrelsome, criminal, unskilled, unenterprising, and as provoking racial prejudice.²⁴

Ironically, just the opposite was true. Blacks and other colonial immigrants worked longer hours and for less pay than their indigenous counterparts.²⁵ Generally, blacks were highly skilled,²⁶ law-abiding people,²⁷ but

²¹ "Black" is the term used to describe people of African-Caribbean and South Asian descent in Britain; basically, anyone who is "non-white" is considered to be "black." The word "coloured" has also been used to describe people who are "black" in Britain. "Coloured" is basically a code word for "subordinate." While "black" is a better term than "coloured," it is also worthy of criticism since it does not adequately describe the cultural diversity of the various groups to which it refers. See Avtar Brah, *Difference, Diversity, Differentiation: Processes of Racialisation and Gender*, in RACISM AND MIGRATION IN WESTERN EUROPE 195, 196-98 (John Solomos and John Wrench eds., 1993).

²² See HOLMES, *supra* note 15, at 55-56 (describing Churchill's "obsessive" interest in West Indian immigration).

²³ LAYTON-HENRY, *supra* note 8, at 31. Churchill was not the only conservative politician with this sort of fear. Sir Cyril Osborne had been campaigning against non-white immigration since 1950. Throughout Osborne's career his rhetoric was unapologetically racist. On October 29, 1958, in the House of Commons he said, "It is time someone spoke out for the white man in this country, and I propose to do so. . . . I refer to the urgent need for restriction upon immigration into this country, particularly of coloured immigrants." PAUL FOOT, IMMIGRATION AND RACE IN BRITISH POLITICS 129 (1965). In the February 7, 1961, issue of the *Daily Mail*, he stated, "[Britain] is a white man's country, and I want it to remain so." *Id.*

And in the December 4, 1964, issue of *Spectator*, he gave a warning to those who opposed his ideology: "Those who oppose the slogan 'Keep Britain White' should answer the question, do they want to turn it black? If unlimited immigration were allowed, we should ultimately become a chocolate-coloured, Afro-Asian mixed society. That I do not want." *Id.*

²⁴ See, e.g., FOOT, *supra* note 23, at 129. For example, Cyril Osborne felt that Britain should not import the lazy, sick, and criminal coloured people from underdeveloped countries. Britain would only end up accepting a "race problem" if it opened its doors to lazy Commonwealth immigrants who saw the British welfare state as a "honey pot." *Id.*

²⁵ LAYTON-HENRY, *supra* note 8, at 18 (citing G. Wallraff, *Lowest of the Low* (1988)).

²⁶ Nearly 50% of the male and over 25% of the female West Indian immigrants were skilled workers. However, many times only unskilled, manual labor was offered to them. TREVOR CARTER, SHATTERING ILLUSIONS: WEST INDIANS IN BRITISH POLITICS 32 (1986). See also R.B. DAVISON, COMMONWEALTH IMMIGRANTS 44-45 (noting great number of female West Indians trained in nursing, and crucial role they play in British hospitals).

even so, they occupied the lowest rungs of society and paid more in taxes than they received in social benefits.²⁸ Further, rather than provoking racial prejudice, they were often the victims of it. In housing and employment, for example, blacks and other Commonwealth immigrants were the victims of massive discrimination.²⁹ While blacks and other immigrant minorities were occupying the lowest levels of society, native-born whites were reaping the benefits of their labor through expanded opportunities for more desirable jobs.³⁰

The racial tension and discrimination that Commonwealth immigrants faced finally erupted in large-scale violence in 1958.³¹ Riots in Nottingham and Notting Hill in August and September³² propelled the issue of black immigration into the national spotlight.³³ It was after the riots that "immigration" became associated with "non-white person"—even non-white people who were born in Britain.³⁴ The riots were a galvanizing force for those who supported immigration controls. To them, the riots were evidence

²⁷ LAYTON-HENRY, *supra* note 8, at 125 (observing that blacks are more likely to be victims than perpetrators of violent crime).

²⁸ *Id.* at 18. Cf. K. JONES AND A.D. SMITH, *THE ECONOMIC IMPACT OF COMMONWEALTH IMMIGRATION* 108 (1970) (concluding that Commonwealth immigrants make fewer demands on social services than the general population, and that this fact outweighs any additional costs that may be incurred from immigrant's special health or educational needs).

²⁹ Blacks were commonly excluded from living in certain flats and rooms. Even if a black person was lucky enough to find a room, he or she could expect to be charged an informal "Black tax" of up to four times the amount of what the room was actually worth. Since blacks were relegated to the lowest paying jobs, they usually did not have the money to take out a mortgage on a house. Even if they did have the money, however, it was unlikely that anyone would sell to them, because they were black. CARTER, *supra* note 26, at 31. For personal accounts of discrimination in Great Britain, see generally FROM WHERE I STAND: MINORITY EXPERIENCES OF LIFE IN BRITAIN (Desmond Mason ed., 1986).

³⁰ See Wrench and Solomos, *supra* note 16, at 160-61 (stating that immigrants were relegated to jobs deemed unsuitable for whites).

³¹ DAVID STEEL, *NO ENTRY: THE BACKGROUND AND IMPLICATIONS OF THE COMMONWEALTH IMMIGRANTS ACT*, 1968, at 32 (1969).

³² *Id.* On August 30 there were riots involving at least 200 people in Nottingham and Notting Hill, respectively. The riots continued sporadically in both areas over the next three weeks. Some minor skirmishes also erupted in Paddington, Birmingham, and London. The riots were the result of societal discontent which some whites blamed on black immigrants. The white participants in the riots were primarily young thugs, and there is evidence that they were encouraged to commit violence by militant right-wing extremist groups. *Id.* at 32-33.

³³ SOLOMOS, *supra* note 10, at 48.

³⁴ LAYTON-HENRY, *supra* note 8, at 73.

of popular hostility toward black immigration.³⁵

The early 1960s brought an increase of anti-immigrant sentiment, violence, and policy.³⁶ Popularity-seeking politicians encouraged the volatile atmosphere.³⁷ Sporadic racial attacks, commonly known as "Paki-bashing,"³⁸ were becoming more common, and resentment of blacks as competitors for jobs was on the rise.³⁹ Many Conservative politicians picked up on this anti-immigrant sentiment and successfully ran openly anti-immigrant campaigns.⁴⁰ Parliament passed anti-immigrant legislation, and even the liberal Labour party endorsed this legislation in order to maintain its popularity.⁴¹

In 1965, the Labour party attempted to strengthen anti-discrimination laws, but these attempts were swallowed by the wave of anti-immigrant sentiment that hit in 1967.⁴² In the summer of 1967, a small number of illegal Asian immigrants landed on the beaches of southeast England.⁴³ The media and

³⁵ This evidence was strengthened by a Gallup poll taken immediately after the riots. The poll showed that 79.1% of the nation favored immigration controls; 81.5% of people in the London area supported immigration controls; and 61% of the people polled said that they would probably move if large numbers of blacks settled in their neighborhood. *Id.* at 40.

³⁶ See generally SHEILA PATTERSON, *IMMIGRATION AND RACE RELATIONS IN BRITAIN 1960-1967* (1969).

³⁷ In the 1964 general elections, particularly in Smethwick, color and race became major factors in British Politics. *COLOUR AND THE BRITISH ELECTORATE 1964*, at vii (Nicholas Deakin ed., 1965). See also discussion of Peter Griffiths, *infra* note 40.

³⁸ Contrary to what the name implies, "Paki-bashing" is not limited to unprovoked racial attacks against Pakistanis. "Paki-bashing" is associated with unprovoked racial attacks by whites against anyone who is black—Asians, West Indians, Pakistanis, etc. LAYTON-HENRY, *supra* note 8, at 125.

³⁹ Many extremist right-wing groups saw blacks as a constant reminder of British decline. The competition that blacks posed for jobs, housing, and even women was a threat to their vision of a "Greater Britain." The scapegoating of non-white immigrants was a unifying force for such organizations. PATTERSON, *supra* note 36, at 372.

⁴⁰ Peter Griffiths, a Conservative Tory candidate, was elected in Smethwick in part because he openly supported a racist anti-immigrant slogan: "If you want a nigger neighbour, vote Labour." *COLOR AND THE BRITISH ELECTORATE 1964*, *supra* note 37, at 8-9.

⁴¹ The Labour party was afraid that the Tories would continue to exploit the immigration issue for political gain. Anti-immigrant sentiment was very popular and members of the Labour party knew this. The Labour party, once strongly opposed to the anti-immigrant Commonwealth Immigrants Act of 1962 (discussed *infra* in *Legal Background*), was now hesitant about opposing it since such a stance might have reduced its public support. STEEL, *supra* note 31, at 52.

⁴² LAYTON-HENRY, *supra* note 8, at 51.

⁴³ *Id.*

Conservative anti-immigrant politicians brought much attention to these immigrants.⁴⁴ The immigrants were fleeing political persecution in Kenya, which had passed laws favoring Kenyan nationals at the expense of non-nationals—especially Asians who retained their British citizenship.⁴⁵ Conservative politicians like Duncan Sandys and J. Enoch Powell led the assault against these non-white immigrants,⁴⁶ and their efforts pressured the Labour-controlled Cabinet to place a quota on the number of British Asians allowed to enter the United Kingdom.⁴⁷

Powell soon became the most popular political firebrand against non-white immigration and the perceived threat that it posed to British identity and culture.⁴⁸ He played on the fears of British citizens and stirred up racial hatred surrounding immigration. Powell believed that net immigration should be zero, and even advocated voluntary repatriation to offset the natural increase of black immigrants already settled in Britain.⁴⁹ On April 20, 1968, he delivered the famous “river of blood” speech that made him a virtual celebrity overnight.⁵⁰ The speech was filled with references to racial bigotry and immigrants, prospective domination of the British population, as

⁴⁴ *Id.*

⁴⁵ See STEEL, *supra* note 31, at 122-31. When Kenya gained independence from Britain in December of 1963, the British government gave the Asians in Kenya the option of retaining their British citizenship. *Id.* at 125. The Asians in Kenya, especially those who retained their British citizenship, were seen by many Kenyans as a reminder of British colonialism, and as people not truly loyal to Kenya. *Id.* at 126-27. As a result there was increased animosity directed at the Asians and they were used as scapegoats for Kenya's economic difficulties. *Id.* at 127. In response to this climate, the Kenyan Parliament passed the Kenya Citizens Act and the Trade Licensing Act. The Kenya Citizens Act provided that non-citizens needed a work permit in order to work in Kenya, and the Trade Licensing Act set aside certain parts of the country where shops could only be run by Kenya citizens. Both Acts created a level of insecurity in the Asian community that induced many of them to leave Kenya. *Id.* at 130.

⁴⁶ *Id.* at 138.

⁴⁷ This was part of the Commonwealth Immigrants Act of 1968 (discussed *infra* in *Legal Background*). The Act made the Asians in Kenya who had retained their British citizenship “stateless” people—unaccepted in both Kenya and the United Kingdom. *Id.* at 151.

⁴⁸ Powell gained popularity by playing on mass fears and echoing the xenophobia of the common people. For example, he would often characterize black immigrants as a threat to the British way of life. See DOUGLAS E. SCHOEN, *ENOCH POWELL AND THE POWELLITES* 25, 71 (1977).

⁴⁹ *Id.* at 41.

⁵⁰ See THOMAS E. UTLEY, *ENOCH POWELL, THE MAN AND HIS THINKING* 14 (1968) (describing speech as turning point in Powell's career).

well as characterizations of anti-discrimination laws as oppressive to whites.⁵¹ Although the speech was denounced as racist by both Liberals and Conservatives,⁵² Powell had struck a chord in the general population by giving them a leader who represented their true prejudice and hostility towards black immigration.⁵³ Powell's racist rhetoric continued throughout the year and was a key factor in securing a Conservative party victory in the general elections of 1970.⁵⁴

In the wake of Powell's "river of blood" speech, anti-immigrant sentiment grew to epidemic levels. The extreme right-wing, openly racist and anti-

⁵¹ Early in the speech Powell connects with his audience by recounting a conversation he allegedly had with an "ordinary working man." ENOCH POWELL, REFLECTIONS OF A STATESMAN: THE WRITINGS AND SPEECHES OF ENOCH POWELL 373 (1991). The working man says, "In this country in fifteen or twenty years' time the black man will have the whip hand over the white man." *Id.* at 373-74. Powell sympathizes with the man's concern, and suggests that the man is right in believing that the country "will not be worth living in for his children" if that were to happen. *Id.* at 374.

Later in the speech, Powell says that immigration has turned the indigenous population of Britain into "strangers in their own country." *Id.* at 377. While immigrants receive all the privileges and benefits, the ordinary white citizens "f[ind] their plans and prospects for the future defeated." One such disadvantaged white person was an elderly lady who sent a letter to Powell complaining of being harassed and "followed by . . . wide-grinning piccaninnies [who] cannot speak English. . . ." *Id.* at 378.

Next, Powell warns of the growing danger of immigrants with "vested interests in the sharpening of racial and religious differences, with a view to the exercise of actual domination, first over fellow immigrants and then over the rest of the population." *Id.* at 379. The stage was then set for Powell's big finale:

As I look ahead, I am filled with foreboding. Like the Roman, I seem to see 'the River Tiber foaming with much blood'. That tragic and intractable phenomenon which we watch with horror on the other side of the Atlantic . . . is coming upon us here by our own volition and our own neglect. Indeed, it has all but come. In numerical terms, it will be of American proportions long before the end of the century. Only resolute and urgent action will avert it even now. Whether there will be the public will to demand and obtain that action, I do not know. All I know is that to see, and not to speak, would be a great betrayal.

Id.

⁵² Edward Heath, leader of the Conservative party, denounced the speech as racist and sacked Enoch Powell from the Shadow Cabinet for having given it. SCHOEN, *supra* note 48, at 34.

⁵³ See, e.g., HOLMES, *supra* note 15, at 58 (stating that Powell gained support by exploiting existing race hatred against blacks and Asians).

⁵⁴ SCHOEN, *supra* note 48, at 56.

Semitic, National Front held a march in support of Powell's speech and increased its membership to include more mainstream conservatives.⁵⁵ Racial violence and "Paki-bashing" reached an all-time high,⁵⁶ and attacks that were once sporadic had become systematic.⁵⁷ However, instead of stemming the tide of anti-immigrant sentiment or enacting legislation to improve the socio-economic conditions of non-European immigrants, the Conservative government instituted more stringent, race-based immigration policies that reflected increased hostility towards the non-white population.⁵⁸ This was done over the objections of Labour Party members who insisted that the race-based immigration controls would only exacerbate racial bias and hostility.⁵⁹

Immigration remained a hot issue in the early 1970s, due in part to the August 1972 declaration by the President of Uganda, Idi Amin, that all Asians were to be expelled from his country.⁶⁰ Most of the 50,000 Asians in Uganda were British passport holders.⁶¹ The National Front attempted to use this incident as a catalyst for more anti-immigrant legislation, but the Conservative government recognized its obligation to the passport holders and accordingly Britain accepted nearly 28,000 Asian immigrants.⁶²

⁵⁵ LAYTON-HENRY, *supra* note 8, at 90. The National Front was an amalgam of right-wing neo-fascist organizations that combined their forces in 1967. These right-wing extremists felt that the Conservative and Labour parties were too soft on black immigration, and decided to take a more extreme view on the issue than either of the two major parties. The group was openly anti-Semitic, and based its firm stance against black immigration on grounds of white racial purity. SOLOMOS, *supra* note 10, at 131. See also CHRISTOPHER HUSBANDS, *RACIAL EXCLUSIONISM AND THE CITY: THE URBAN SUPPORT OF THE NATIONAL FRONT* 6 (1983).

⁵⁶ LAYTON-HENRY, *supra* note 8, at 126 (citing Institute of Race Relations, *Race Today*, 1969-71).

⁵⁷ *Id.* at 138-39 (citing *Searchlight* magazine and N. FIELDING, *THE NATIONAL FRONT* (1981)).

⁵⁸ See, *infra* discussion of Immigration Act of 1971 in *Legal Background*. See also HOLMES, *supra* note 15, at 61 (discussing racial overtones of Immigration Act of 1971).

⁵⁹ See, e.g., FREEMAN, *supra* note 6, at 240 (referring to Labour party's Opposition Green Paper against the Immigration Act of 1971).

⁶⁰ LAYTON-HENRY, *supra* note 8, at 86.

⁶¹ *Id.*

⁶² See HOLMES, *supra* note 15, at 11-12. The manner in which the Heath Administration handled this incident enraged many conservatives, some of whom decided to leave the Conservative party and join the National Front. Indeed, the National Front may have been the ultimate victors in the resolution of the Ugandan Asian Crisis. LAYTON-HENRY, *supra* note 8, at 87. See also SOLOMOS, *supra* note 10, at 132 (stating that National Front boasted

The anti-immigrant racial tension in Britain exploded in violent confrontations between militant left and right-wing groups throughout the 1970s.⁶³ The National Front resorted to street violence in the mid-1970s, and a number of racially-motivated murders took place.⁶⁴ Many marches and violent confrontations occurred in 1977 as well.⁶⁵ By 1979 the National Front had become very popular, promising to be a strong contender in the upcoming elections.⁶⁶ At every turn, however, the National Front could expect thousands of left-wing and moderate demonstrators to protest its activities.⁶⁷

The Conservatives, through their new leader Margaret Thatcher, responded to the National Front by taking a tough stance on immigration.⁶⁸ In a 1978 interview, Thatcher identified with people who thought that immigration was out of control and felt "really rather afraid that [their] country might be swamped by people with a different culture."⁶⁹ She also suggested that the

peak membership of 14,000 to 20,000 during the panic over the arrival of the Ugandan Asians).

⁶³ See *infra* text accompanying notes 65 and 67.

⁶⁴ HOLMES, *supra* note 15, at 62. Between 1976 and 1978, there were 100 racially-motivated attacks and two racially-motivated murders in Tower Hamlets alone. Racial attacks against blacks were a constant factor of everyday life. On May 4, 1978, Atlab Ali, a Bengali man, was murdered in the Brick Lane area. Ali's death sparked a protest of 3,000 people in front of the Benthall Green police station on July 17. LAYTON-HENRY, *supra* note 8, at 139-40. While it is not clear that the National Front was responsible for all racially-motivated attacks, it is clear that the National Front participated in much violence and "provided a facilitating atmosphere for [the] perpetration" of racial attacks. HUSBANDS, *supra* note 55, at 21.

⁶⁵ One such violent confrontation occurred during a National Front demonstration in New Cross, Lewisham. The area had a large black population and the prospect of violence during the demonstration was almost certain. The gruesome nature of the resulting confrontation inspired the formation of the Anti-Nazi League, the primary left-wing group that opposed the National Front. CARTER, *supra* note 26, at 118. The Anti-Nazi League was very active in opposing the National Front, especially from 1977 to 1979. SOLOMOS, *supra* note 10, at 153.

⁶⁶ Support for the National Front actually peaked in 1977 (HUSBANDS, *supra* note 55, at 13), but it still managed to run an unprecedented 303 candidates in the general elections of 1979. LAYTON-HENRY, *supra* note 8, at 95. However, the National Front was unable to fulfill its promise of a strong showing at the elections and collapsed soon afterwards. See note 71 *infra* and accompanying text.

⁶⁷ E.g., LAYTON-HENRY, *supra* note 8, at 95-96 (Anti-Nazi League and the local Asian community of Southall rally 10,000 people to protest National Front demonstration).

⁶⁸ See HOLMES, *supra* note 15, at 63 (stating Conservatives "outflanked" National Front on immigration issue).

⁶⁹ SOLOMOS, *supra* note 10, at 129.

Conservative Party should consider an end to immigration completely.⁷⁰ Although some criticized Thatcher's anti-immigrant stance as pandering to white prejudice, her position drew virtually all votes away from the National Front and contributed to the Front's total collapse following the 1979 elections.⁷¹

In 1980 and 1981, racial tension once again resulted in violence. Riots broke out between the police and inner city immigrants who perceived them as biased.⁷² Also, racial attacks increased almost three-fold between 1980 and 1981.⁷³ Instead of addressing these concerns, however, the government stayed true to its anti-immigrant platform and passed the anti-immigrant British Nationality Act of 1981.⁷⁴

B. The Rise of Anti-Immigrant Sentiment in America—The 1990s

Anti-immigrant sentiment has clearly risen in recent years. According to Susan Colussy, Program Director of Immigration Services at Catholic Social Services in Atlanta, "Every time there are difficult economic times, *real or imagined*, we see a rise in anti-immigrant sentiment."⁷⁵ Although the U.S. economy has been generally improving and unemployment declining,⁷⁶

⁷⁰ LAYTON-HENRY, *supra* note 8, at 184.

⁷¹ *Id.* at 185-87. Thatcher's tough stance on immigration was crucial in drawing votes away from the National Front. Also, pressure from the Anti-Nazi League and fragmentation within the National Front contributed to its decline. The internal and external pressures on the National Front were too much for the organization to withstand and it completely collapsed after 1979. This destroyed any realistic hope of the National Front becoming the major political force it had threatened to become throughout the 1970s. *Id.* at 96-97.

⁷² Riots broke out between the police and ethnic immigrants in Bristol in 1980, and in Brixton during March 1981. At least 25 other cities experienced similar violence in July 1981. The riots resulted from "years of police harassment and abuse of powers" in black immigrant communities. CARTER, *supra* note 26, at 122. All of the major riots were precipitated by police action. LAYTON-HENRY, *supra* note 8, at 129. An official Parliamentary inquiry into the causes of the riots revealed that they resulted from complex socio-economic factors and racial tension. "[T]he riots were essentially an outburst of anger and resentment by young blacks against the police." *Id.* at 131.

⁷³ The General Secretary of the Union of Pakistani Organizations reported that racial attacks had increased from an average of 20-25 per week in 1980 to 60 per week in 1981. LAYTON-HENRY, *supra* note 8, at 142.

⁷⁴ See *infra* discussion in *Legal Background*.

⁷⁵ Colussy Telephone Interview, *supra* note 5 (emphasis added).

⁷⁶ Dirk Kirschten, *Second Thoughts*, THE NATIONAL JOURNAL, Jan. 21, 1995, at 150, available in LEXIS, News Library, Cumwvs File.

there is still a pervasive tenor of anti-immigrant sentiment in the country.⁷⁷ No matter how unfounded the anti-immigrant sentiment may be, the fact remains that it exists and it must be addressed.

Much of the anti-immigrant sentiment of the early 1990s is highly pronounced in states like California.⁷⁸ California, like many border states, receives a disproportionate amount of the total immigration to America each year.⁷⁹ Many Californians are concerned that too many undocumented/illegal immigrants are coming to California, and see them as the cause of California's slumping economy.⁸⁰ A belief persists that illegal immigrants are stealing jobs and draining the state's Treasury by taking advantage of public welfare benefits.⁸¹

However, in reality, undocumented immigrants improve the economy by taking the lowest quality jobs and providing cheap labor for big business.⁸² By working long hours for little pay, undocumented immigrants help to keep inflation rates low.⁸³ Most immigrants do not come to the United States to receive welfare benefits; most come to work and provide a better quality of life for their families.⁸⁴ Also, there is overwhelming evidence that undocumented immigrants pay more in taxes than they receive in public benefits.⁸⁵

⁷⁷ *Id.*

⁷⁸ See Rhodes, *supra* note 2.

⁷⁹ *Id.*

⁸⁰ Eric Bailey & Dan Morain, *Anti Immigration Bills Flood Legislature*, L.A. TIMES, May 3, 1993, at A3.

⁸¹ *Id.*

⁸² See, e.g., *id.* at A3, A22 (noting U.S. companies' propensity to seek cheap immigrant labor, and benefits that immigrants provide to overall economy by filling bottom-rung jobs).

⁸³ LAYTON-HEARY, *supra* note 8, at 67. Cf. Kirschten, *supra* note 76 ("If immigration has gotten out of hand, why is the U.S. economy humming along so nicely with inflation in check and unemployment rates falling, even in the states glutted with both legal and illegal aliens?").

⁸⁴ According to Antonia Hernandez, president and general counsel for the Mexican-American Legal Defense Fund, the assumption that illegal immigrants come to America to receive welfare benefits is not accurate. "The people [who] come to this country illegally come here to work. The vast majority of the people [work], and the children have parents [who] work." *Larry King Live* (CNN television broadcast, Nov. 10, 1994) (transcript #1275) available in LEXIS, News Library, Curnws File [hereinafter *Larry King Live*].

⁸⁵ The American Civil Liberties Union has issued a report stating: "virtually all . . . studies conclude that immigrants, both undocumented and documented, contribute greatly to the country's economy and are an asset rather than a burden to the economy. These studies note that immigrants stimulate local economies, create jobs, and pay far more in taxes than they receive in government benefits." Stanley Mailman, *California's Proposition 187 and Its*

Nevertheless, a number of anti-immigration bills were presented to the California legislature by conservative Republicans.⁸⁶ The Republicans said that the bills were a reaction to the complaints of their constituents; others saw them as an attempt to stir up anti-immigrant sentiment for political gain, and at worst, thinly-veiled racism.⁸⁷ For example, Richard Garcia, executive director of California Legal Assistance has said that when politicians in California say "undocumented [immigrant]" many of them are really saying "Latino . . . gangs . . . drugs . . . crime in the streets, [and this mentality affects] the whole [Latino] population. . . ."⁸⁸

As anti-immigrant sentiment increased in California, so did its tenor of racism. For example, when racial violence between Latino teens and white teens resulted in the death of one of the whites, lax immigration policy was blamed.⁸⁹ On October 15, 1993, several white teens, known to dislike Mexicans, threatened to run over a group of Mexican teens with their cars.⁹⁰ The Mexicans threw objects at the boys in the cars, and on a "one in a million chance," a paint roller flew through the windshield of one of the cars and killed a boy inside.⁹¹ The victim's mother, an activist in anti-immigrant organizations, declared that her son would be alive if the Mexicans had stayed in their own country.⁹² The Mexican teens, later known as the "San Clemente Six," served as an example of the "evils of unchecked immigration"⁹³ to anti-immigration groups, and an example of

Lessons, N.Y. LAW J., Jan. 3, 1995, at 3, available in LEXIS, News Library, Curnws File (quoting ACLU IMMIGRANTS' RIGHTS PROJECT, RIGHTS OF PASSAGE: IMMIGRANTS CIVIL LIBERTIES & PUBLIC POLICY 11 (July 1994)). See also THE HERITAGE FOUNDATION, HOW IMMIGRANTS AFFECT AMERICANS' LIVING STANDARD 40 (1984) (quoting Julian Simon, in a debate with Roger Conner, as saying "the evidence that illegals, even more so than legal immigrants, pay more into public coffers than they take out in services is overwhelming . . . [and] [t]o suggest the opposite is plain wrong.").

⁸⁶ Bailey & Morain, *supra* note 80, at A3.

⁸⁷ *Id.* at A3, A23.

⁸⁸ *Id.* at A23.

⁸⁹ Chi Chi Sileo, *A Death in Orange County Shatters California Dreams*, WASH. TIMES, Jan. 10, 1995, at 13, available in LEXIS, News Library, Curnws File.

⁹⁰ *Id.*

⁹¹ Forensics experts called it a "one in a million chance" that a paint roller would shatter a car window and skewer a person's skull inside the car. *Id.*

⁹² *Id.*

⁹³ *Id.*

"anti-immigrant sentiment run amok"⁹⁴ to civil rights activists.

Anti-immigrant sentiment gained momentum in subsequent years.⁹⁵ Outbreaks of racial violence were sporadic,⁹⁶ but membership in violent anti-immigrant groups like the Nazi "skinheads" had been rising since 1988.⁹⁷ Ironically, the rhetoric of anti-immigrant hate groups like the Nazi skinheads was not too far removed from that of more mainstream anti-immigrant groups. One skinhead stated that he believed in the Constitution and saw immigrants as a threat to the country, especially to white people.⁹⁸ Also, playing on the myth that all ethnic immigrants are criminals,⁹⁹ he said that he was "sick of people seeking political asylum [in America] and running drugs here."¹⁰⁰ Similar to mainstream anti-immigrant groups using the "San Clemente Six" as an example of the criminal threat that immigrants pose to whites,¹⁰¹ Nazi skinheads play on the same sorts of fears with their rhetoric.

Conservative politicians in California were quick to ride the wave of anti-immigrant sentiment, and unfortunately so were some formerly pro-

⁹⁴ *Id.* Evidence of anti-immigrant sentiment can be seen throughout the "San Clemente Six" case. The San Clemente Six were charged with conspiracy to commit murder and were scheduled to be tried as adults. Three have since been convicted of second degree murder and could face prison terms of fifteen years to life. The fate of the other three has not yet been determined. Throughout the trial the prosecutor referred to the Mexican teens as "prairie dogs" and gang members, but the young men had never gotten into trouble at school, and two of the boys were active in their church youth group. Many of the white teens, on the other hand, had records for fighting and causing trouble at school. The white teens were also known to dislike Mexicans. None of the white teens who shared responsibility for the altercation with the Mexican teens were charged with anything. *Id.*

⁹⁵ Rhodes, *supra* note 2.

⁹⁶ Bill Sedon, *Eye on Long Island*, *NEWSDAY*, July 25, 1993, at 8, available in LEXIS, News Library, Curmws File.

⁹⁷ The Anti-Defamation League reported that there were approximately 1,000 to 1,450 skinheads in twelve states in 1988, and those numbers increased to 3,500 skinheads in 160 gangs in forty states by 1993. Carlotta Gulvas Swarden, *Skinheads a Growing Cause of Concern*, *N.Y. TIMES*, Oct. 31, 1993, at 13NJ1, 13NJ8.

⁹⁸ *Id.* at 13NJ1.

⁹⁹ *E.g.*, Sileo, *supra* note 89 (blaming accidental death of white teen at hands of Latinos on lax immigration policy).

¹⁰⁰ Swarden, *supra* note 97, at 13NJ1.

¹⁰¹ See Sileo, *supra* note 89 (noting California Coalition for Immigration Reform's use of X-ray photographs of dead white teen's skewered skull in its campaign literature).

immigrant politicians.¹⁰² In June 1994, Governor Pete Wilson, showing shades of J. Enoch Powell, stated, "California and most other popular states are *under siege* by illegal immigration. It's time to do something about it. In fact, it's time to end it."¹⁰³ Also, Rep. Richard Mountjoy of California stated, "When you have indiscriminate *floods* of illegals that cross[] our borders, we will lose this great country."¹⁰⁴ Such disturbing rhetoric from prominent politicians could only fan the flames of already existing anti-immigrant and racist sentiment. While the politicians did not directly endorse Nazi skinheads or other racist groups, images of a state "under siege" and "floods" of immigrants destroying "this great country" are alarmingly similar to the fears expressed by such groups.¹⁰⁵

Wilson proposed to do something about illegal immigration through Proposition 187—the so-called "Save Our State" (S.O.S.) ballot initiative.¹⁰⁶ Proposition 187 would do nothing to deter immigration at its source, but would try to ferret out undocumented immigrants already in the United States and deny them public welfare benefits.¹⁰⁷ Public education,

¹⁰² Dianne Feinstein, a formerly pro-immigrant politician (*see* Chin, *supra* note 1), started playing into anti-immigrant fears when she warned, "Competition, fear, and anxiety are the inevitable result when the numbers of newcomers are great, and the opportunities are few." *MacNeil/Lehrer NewsHour* (television broadcast June 28, 1994) (transcript #4959) available in LEXIS, News Library, Curnws File.

¹⁰³ *Id.* (emphasis added).

¹⁰⁴ *Id.* (emphasis added). Mountjoy goes on to suggest that illegal immigrants cost the state of California over \$3 billion a year. However, as noted previously, virtually every study on illegal immigrants has determined that they contribute *more* in taxes than they consume in public benefits. Mailman, *supra* note 85. *See also* Heller, *supra* note 3 (estimating that immigrants make a net contribution of \$1.85 billion more than they receive in social benefits in L.A. County). Further, many studies cited by conservative politicians like Mountjoy and Pete Wilson have been criticized as being incorrect and nonscientific. For example, Wilson has relied on a study on the purported costs of illegal immigrants to San Diego that used a sample of only twenty-five people. *Id.*

¹⁰⁵ *See* Swarden, *supra* note 97, and accompanying text.

¹⁰⁶ Elizabeth Kadetsky, *Bashing Illegals in California: 'Save Our State' Initiative*, THE NATION, Oct. 17, 1994, at 416.

¹⁰⁷ *Id.* Section 1 of the Proposition sets out its purpose:

The people of California . . . have suffered and are suffering economic hardship caused by the presence of illegal aliens in this state. That they have suffered and are suffering personal injury and damage caused by the criminal conduct of illegal aliens in the state. That they have a right to the protection of their government from any person or persons entering this country illegally. Therefore, the people of California declare their

non-emergency medical care, and other social services would be denied to anyone "suspected" of being in the country illegally.¹⁰⁸ If individuals could not prove their legality within a specified time period, they would be forced to leave the country.¹⁰⁹

Groups that opposed the S.O.S. initiative called it "anti-children" for denying an education to youths,¹¹⁰ and racist for punishing people "suspected" of being in the country illegally,¹¹¹ as grounds for such suspicion would invariably include the person's race. When people make assessments as to who is "suspected" of being an illegal immigrant, a Latino stereotype usually comes to mind.¹¹² As a professor at University of California,

intention to . . . prevent illegal aliens in the United States from receiving benefits or public services in the State of California.

Proposition 187, *supra* note 4.

The act is supposed to save money "by making life so difficult for the undocumented that they will either go home or never show up to begin with." Kadetsky, *supra* note 106, at 416. In the long term, however, Proposition 187 could end up costing the State *more* money, and creating even greater social costs. As noted by Peter Schey, president of the Center for Human Rights and Constitutional Law, denying illegal immigrants benefits like public education "would take thousands of children and place them out on the streets, where they will undoubtedly eventually turn to crime, to gangs, to drugs, and probably at a much greater cost to the taxpayers." *Larry King Live*, *supra* note 84. Also, by denying all hospital benefits except emergency care, Proposition 187 would create situations where, for example, an illegal immigrant "with tuberculosis, who . . . need[ed] a shot that would cost \$200 . . . [would not receive] any health care services . . . until [he or she] need[ed] a lung removed, and then the taxpayers . . . foot a bill of \$40,000. . . ." *Id.*

¹⁰⁸ Proposition 187, *supra* note 4, § 5(c) (allowing state employees to deny benefits to anyone reasonably suspected of being an illegal immigrant).

¹⁰⁹ For example, § 7(e) of Proposition 187 grants an elementary school student suspected of being an illegal immigrant 45 days to verify her legal status. If she does not, § 7(f) requires that she be returned to her country of origin. Proposition 187, *supra* note 4.

¹¹⁰ See LARRY KING LIVE, *supra* note 84 (quoting Peter Schey: "[Proposition 187] is very anti-children . . . in [its] educational aspects. . .").

¹¹¹ *Id.*

¹¹² This is even true with certain Immigration and Naturalization Services (INS) officials. In one disturbing case, the mayor of Pamona California, Eddie Cortez, was mistaken for an illegal immigrant and threatened with deportation. Mr. Cortez owns an auto repair shop, and whenever he picks up auto parts from his business he wears overalls and drives a ramshackle truck. On one such occasion in the summer of 1993, the mayor was pulled over by an INS vehicle that was trailing him. The INS officials demanded that the mayor show some identification proving his citizenship, or else he would join the rest of the Mexicans on the INS bus headed for Mexico. When Mr. Cortez showed the agents that he was the mayor of Pamona, "[t]heir jaws dropped, [and they] apologized profusely . . . explain[ing] that Cortez's

Berkeley, put it, although "the citizenship rate among Mexican immigrants is comparable to that for Canadian immigrants . . . [n]obody is indignant about the Canadians taking up our seats at Kings games. . . . That's where the racist component enters in."¹¹³

Some of the primary backers for Proposition 187 lend credence to the idea that its motivation is racist. Don Rodgers, a white supremacist in the Christian Identity movement, donated \$20,000 to the S.O.S. initiative.¹¹⁴ Bette Hammond, an S.O.S. organizer, drove through Latino neighborhoods complaining of the (imagined) "stench of urine" and hypothesized that the immigrants must defecate in bushes.¹¹⁵ S.O.S. also garnered support from the Federation for American Immigration Reform (FAIR), which receives money from the Pioneer Fund, a right wing philanthropy group that sponsors studies on race and I.Q.¹¹⁶

Whatever its racial overtones, Proposition 187 was approved by the people of California in the November 8, 1994 elections by nearly 60% of the vote.¹¹⁷ The primary supporters of the initiative were white, and the primary dissenters were Latino.¹¹⁸

The passing of Proposition 187, however, did not silence those who opposed it. Within hours of Proposition 187's implementation, at least nine lawsuits were filed challenging its validity.¹¹⁹ The statute has been challenged on constitutional grounds, and its ultimate fate remains undetermined. For now, enforcement has been suspended.¹²⁰ Further, many

truck and clothing fit the profile the INS uses to identify illegal immigrants. . . ." Heller, *supra* note 3 (stating further that "Hispanic Americans who happen to fit stereotypical descriptions of illegal immigrants have become scapegoats under the rising tide of public and political pressure to crack down on illegal immigration.").

¹¹³ Efrain Hernandez, Jr. & Richard Simon, *Despite Gains, Latino Voters Still Lack Clout*, L.A. TIMES, Dec. 4, 1994, at A1, A40 (quoting Bruce Cain, associate director of the Institute of Governmental Studies).

¹¹⁴ Kadetsky, *supra* note 106, at 418.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ E.g., John Ross & Ruben Martinez, *After Prop 187, New Bonds of Solidarity: Youth Achieve New Political Awareness*, NAT'L CATHOLIC REP., Dec. 9, 1994, at 6, available in LEXIS, News Library, Cumws File.

¹¹⁸ Hernandez & Simon, *supra* note 113, at A39.

¹¹⁹ Ross & Martinez, *supra* note 117.

¹²⁰ The only part of Proposition 187 that is currently enforceable is the "increase in criminal penalties for making, selling, or using false immigration documents." *Judge Blocks Part of Anti-Illegal Immigration Measure*, REUTERS, Feb. 9, 1995, available in LEXIS, News

Latino students immediately protested the passage of Proposition 187.¹²¹ Thousands of students marched against the S.O.S. initiative.¹²² Some older leaders in the Latino community, fearful that dissidence would only strengthen the anti-immigrant fervor, did not approve of the protests.¹²³ However, as one fourteen-year-old activist put it: "Who cares if people didn't like us walking down the street? We wanted to show people we weren't scared of making noise and that the next generation was growing up and becoming aware of what is going wrong in . . . America."¹²⁴ The anti-immigrant sentiment in America drove these students to protest, and considering the growth of the anti-immigrant mentality, some have predicted that such protests could become the norm in the near future.¹²⁵

Despite the stumbling blocks that Proposition 187 has faced, anti-immigrant sentiment remains strong in America.¹²⁶ Some Republican congressmen have suggested that a federal version of Proposition 187 be implemented.¹²⁷ Also, at least fifteen states are currently considering similar legislation.¹²⁸ If this trend continues, anti-immigrant sentiment is sure to play a major role in the 1996 elections.¹²⁹

Library, Curnws File.

¹²¹ Ross & Martinez, *supra* note 117.

¹²² *Id.*

¹²³ Leonel Sanchez, *Prop. 187 Led Young Latinos to Action: Marches of November may be Wave of the Future*, SAN DIEGO UNION-TRIB., Jan. 3, 1995, at A1, available in LEXIS, News Library, Curnws File.

¹²⁴ *Id.* (quoting Annie Rios).

¹²⁵ *Id.*

¹²⁶ See Frank Trejo, *Proposition 187 Likely to Spur Protracted Fight. Both Sides Say Measure Already Having Big Effect*, DALLAS MORNING NEWS, Jan. 30, 1995, at 1A, available in LEXIS, News Library, Curnws File.

¹²⁷ See, e.g., Ross & Martinez, *supra* note 117 (naming Alan Simpson, chair of Senate Immigration Subcommittee, as considering introducing a federal version of Proposition 187).

¹²⁸ See Lourdes Medrano Leslie, *Group Seeks to Give State A Prop. 187; Wants Coast-Style Law on Illegals*, ARIZ. REPUBLIC Jan. 23, 1995, at B1, available in LEXIS, News Library, Curnws File ("Arizona is one of 15 states being targeted for a Proposition 187-style measure that would deny almost all public services to illegal immigrants. . . . [T]he other states . . . are Colorado, Florida, Illinois, Louisiana, Minnesota, Missouri, Nebraska, Nevada, New York, Texas, Vermont, Washington, Wisconsin, and Wyoming.").

¹²⁹ Colussy telephone interview, *supra* note 5. See also Trejo, *supra* note 126.

II. LEGAL BACKGROUND

A. *Anti-Immigrant Legislation in Great Britain—1958-1981*

As anti-immigrant sentiment grew in Great Britain after World War II, progressively more stringent immigration controls were implemented.¹³⁰ As mentioned previously, the Nottingham and Notting Hill riots of 1958 began the trend of stringent immigration policies after World War II.¹³¹ The British Parliament passed four major immigration laws after 1958: the Commonwealth Immigrants Act of 1962; the Commonwealth Immigrants Act of 1968; the Immigration Act of 1971; and the British Nationality Act of 1981.

The Commonwealth Immigrants Act of 1962 played on the fears evoked by the riots of 1958.¹³² The statute was a moderate measure designed to control "the immigration of all holders of Commonwealth passports except (1) those born in the UK, (2) those holding UK passports issued by the UK government and (3) those included on the passport of a person exempt from immigration control under (1) or (2)."¹³³ All other immigrants needed a voucher issued by the Ministry of Labour before they could enter the United Kingdom.¹³⁴ By restricting the number of vouchers issued for unskilled workers, the Act had the effect of excluding some non-white immigrants from the United Kingdom,¹³⁵ and broke with the long tradition of treating Commonwealth and colonial people as British subjects with equal rights of citizenship.¹³⁶

The exclusionary limits of the Commonwealth Immigrants Act of 1962 were realized when huge numbers of Asian immigrants, fleeing persecution

¹³⁰ See SOLOMOS, *supra* note 10, at 58-59 (describing purpose of immigration policies between 1961-1971 as excluding blacks, and British Nationality Act of 1981 as tightening restrictions even further).

¹³¹ See *Factual Background*, *supra* notes 31-35, and accompanying text.

¹³² LAYTON-HENRY, *supra* note 8, at 76.

¹³³ *Id.* at 75.

¹³⁴ *Id.*

¹³⁵ See HOLMES, *supra* note 15, at 54 (noting restriction of vouchers reduced flow of immigration from Caribbean and Indian sub-continent). In 1964, the Ministry of Labour received 26,153 Indian applications for unskilled employment vouchers, and issued only 550. There were also 19,292 Pakistani applications that year, and only 532 vouchers were issued. PATTERSON, *supra* note 36, at 25-26.

¹³⁶ PATTERSON, *supra* note 36, at 17.

in Kenya, came to Great Britain in 1967.¹³⁷ Since the Asians from Kenya were British passport holders, they were not covered by the Commonwealth Immigrants Act, and were therefore not subject to immigration controls.¹³⁸

The Commonwealth Immigrants Act of 1968 was designed to regulate these Asian passport holders who were not covered by the 1962 Act.¹³⁹ The Act of 1968 proposed that any citizen of the United Kingdom or its colonies who held a passport issued by the government was still subject to immigration controls.¹⁴⁰ Citizens were subject to immigration controls "unless they, or at least one parent or grandparent, had been born, adopted or naturalized in the UK, or registered as a citizen of the UK and [its] colonies."¹⁴¹

Although supporters of the Act, including Duncan Sandys and Enoch Powell, denied that it was racist,¹⁴² it clearly had racist underpinnings. The statute restricted the entry of British citizens who did not have close ties to the United Kingdom.¹⁴³ The Act created two classes of British citizens:

¹³⁷ See *Factual Background*, *supra* notes 43-47, and accompanying text.

¹³⁸ The Asian passport holders were considered to be citizens of the United Kingdom under the Commonwealth Immigrants Act of 1962. This meant that they could enter Britain free of restrictions. HOLMES, *supra* note 15, at 54.

¹³⁹ Conservative politicians like Duncan Sandys, Enoch Powell, and Sir Cyril Osbourne made it very clear that the Act would be designed to regulate non-white immigration—for primarily racist reasons. In a February 1968 speech before the Monday Club, a right wing anti-immigrant group, Sandys demanded tougher legislation on immigration, but made exceptions for New Zealanders and Australians because "they have got white faces." STEEL, *supra* note 31, at 137. Sir Cyril Osbourne, fearful of the influx of Asians, warned, "If we go on like this, there will be more blacks than whites here. . . ." *Id.* at 138. Such racist pressure led to the implementation of the 1968 Commonwealth Immigrants Act. *Id.* at 139-43.

It is ironic that such hysteria surrounded the potential influx of the Kenyan Asians. The Asian immigrants from Kenya were mostly middle-class, educated people willing to integrate into British society. They did not need social services and had much to contribute to the professional culture in Britain. *Id.* at 137.

¹⁴⁰ LAYTON-HENRY, *supra* note 8, at 79.

¹⁴¹ *Id.* This was the most controversial part of the Act. This part of the Act, § 2A, dealt with the right of citizens of the United Kingdom to enter the United Kingdom without a voucher or permit. "Citizens" now had to fulfill certain arbitrary "conditions" based on birth to be able to freely enter the United Kingdom. Birth is not a condition that anyone can fulfill through individual effort, and such a condition would automatically restrict the access of certain "citizens" to the United Kingdom in a way that could never be changed. STEEL, *supra* note 31, at 148-49.

¹⁴² STEEL, *supra* note 31, at 149.

¹⁴³ *Id.*

those subject to immigration controls and those who were not.¹⁴⁴ The majority of the people who ended up being subject to immigration controls were non-white.¹⁴⁵

When the Conservatives came to power in 1970, immigration policy became even more oppressive towards non-whites. With J. Enoch Powell leading the anti-immigrant charge, the Immigration Act of 1971 was passed.¹⁴⁶ The Act gave the government complete control over the immigration of non-patrials—people without close connections to the United Kingdom through birth or descent.¹⁴⁷ Also, by replacing employment vouchers with temporary work permits, it ended the rights of non-white Commonwealth citizens to immigrate and settle in the United Kingdom.¹⁴⁸

Immigration was further restricted in 1981 when the Conservatives passed the British Nationality Act as part of their plan to end Commonwealth

¹⁴⁴ *Id.* at 53.

¹⁴⁵ As one commentator describes it:

The effect of the qualifications concerning birth . . . was such that the overwhelming majority of UK citizens living abroad who were white (and, therefore, largely of British origin) would qualify, while the vast majority of those who had coloured skins would not do so, since it was only in the recent past that there had been a coloured community of any size in the United Kingdom.

Id. at 149 (emphasis in original).

¹⁴⁶ See SOLOMOS, *supra* note 10, at 56-57.

¹⁴⁷ LAYTON-HENRY, *supra* note 8, at 84-85. The Act distinguished between "patrials", who had the right of abode in Britain, and non-patrials who did not. The relevant categories of patrials were:

(a) citizens of the United Kingdom and colonies who had the citizenship by birth, adoption, naturalisation [sic] or registration in the United Kingdom or who were born of parents, one of whom had United Kingdom citizenship by birth, or one of whose grandparents had such citizenship.

(b) citizens of the United Kingdom and colonies who had at any time settled in the United Kingdom and who had been ordinarily resident in the United Kingdom for five years or more.

SOLOMOS, *supra* note 10, at 57.

Enoch Powell made certain that the patriality clause limited the right of abode in Britain to the first generation born abroad. LAYTON-HENRY, *supra* note 8, at 85.

¹⁴⁸ No longer could immigrants receive employment vouchers for permanent residence. Work permits did not carry the right of permanent residence. LAYTON-HENRY, *supra* note 8, at 84.

immigration altogether.¹⁴⁹ The Act narrowly defined British citizenship to include only those with close ties to the United Kingdom.¹⁵⁰ It also denied immigrants who were British subjects the automatic right to register as British citizens and take up residence in the United Kingdom.¹⁵¹

B. America—Problems for Proposition 187

Legal challenges to Proposition 187 have rendered the law, at least temporarily, unenforceable.¹⁵² Further, the litigation surrounding the statute could keep it tied up in court for years.¹⁵³ However, the legal significance of Proposition 187 should not be ignored. The statute embodies some of the most deep-seated anti-immigrant sentiment in the United States, and if it survives current legal challenges, we can expect that more anti-immigrant policies will soon follow.

While it is not clear how the courts will rule on Proposition 187, many commentators have declared that much of the statute is clearly unconstitutional.¹⁵⁴ The statute may be pre-empted by federal immigration laws with which it conflicts.¹⁵⁵ Also, the provisions of Proposition 187 that deny

¹⁴⁹ *Id.* at 196 (describing Thatcher administration's plan to end immigration and tough stance on other racial issues as "racecraft").

¹⁵⁰ *Id.* at 53.

¹⁵¹ The Act divided citizens of the United Kingdom and Commonwealth into three categories: British citizens, British Dependent Territories citizens, and British Overseas citizens. British Overseas citizens did not have the right of abode in the United Kingdom. This had the effect of excluding most British citizens of Asian origin from the right of abode. This has led some to describe the Act as "enshrin[ing] the existing racially discriminatory provisions of immigration law under the new clothing of British citizenship and the right of abode." SOLOMOS, *supra* note 10, at 60.

¹⁵² See REUTERS, *supra* note 120.

¹⁵³ *Id.*

¹⁵⁴ For an excellent analysis of all constitutional issues surrounding Proposition 187, see generally Mailman, *supra* note 85.

¹⁵⁵ Section 5 of Proposition 187 denies public social services to anyone who is not a U.S. citizen, a lawfully admitted alien who is a permanent resident, or an alien lawfully admitted for a temporary period of time. Proposition 187, *supra* note 4. Section 5(c) empowers state employees to deny public benefits to anyone "reasonably suspect[ed]" to be an illegal immigrant, and to report such immigrants for the purpose of having them deported. *Id.* Both of these provisions conflict with federal law. Congress has explicitly provided coverage for aliens under Medicaid and Aid to Families with Dependent Children (AFDC) if they are lawfully admitted permanent residents, or permanently residing in the U.S. under color of law (PRUCOL). Proposition 187 would deny services to such people since they are not lawful

undocumented children a public education will probably be struck down on equal protection grounds.¹⁵⁶ Further, since Proposition 187 does not provide a suspected illegal immigrant with a formal hearing before she is deported, it probably violates Fourteenth Amendment due process principles.¹⁵⁷

III. ANALYSIS

The similarities between the rise of anti-immigrant sentiment in post-World War II Great Britain and contemporary America are striking. In both cases, the fears of the general public were intensified by pervasive stereotypes about immigrants and opportunistic politicians. The anti-immigrant sentiment eventually resulted in increased racial hostility and violence. In response to the increased social unrest, the government would pass a Draconian law that punished the neediest members of the nation—the immigrants who already occupied the lowest rungs of society. The Draconian law would then create increased resentment and tension in the ethnic communities associated with immigration; more racial violence would ensue; and the government would consider more Draconian legislation to punish the victims. The cycle could potentially repeat itself indefinitely.

residents or admitted for a temporary period of time. Mailman, *supra* note 85. Further, allowing untrained state employees to make determinations of legal or illegal status and “effectively . . . issue . . . a deportation order” (*id.*) conflicts with the Immigration and Nationality Act’s mandate that only an immigration judge can issue a deportation order after a formal hearing in which the government bears the burden of proof. *Id.*

¹⁵⁶ Section 7 of Proposition 187 denies anyone with illegal status (as defined by Proposition 187) access to public or elementary or secondary school education. This conflicts directly with the Supreme Court’s decision in *Plyler v. Doe*, 457 U.S. 202 (1982). In *Plyler* the court invalidated a Texas statute, that denied public education to undocumented children, on equal protection grounds. *Id.* The Court was very concerned about the statute’s impact on the welfare of children and the potential social costs that would result from denying huge numbers of children an education. *Id.* As Proposition 187 is strikingly similar to the Texas statute in *Plyler*, it should be held unconstitutional under the Court’s decision in that case. See Mailman, *supra* note 85.

¹⁵⁷ Once a state employee determines that a person is reasonably suspected of being an illegal immigrant, the employee can deny that person access to social services and the suspected illegal must “obtain legal status or leave the United States.” Proposition 187, *supra* note 4, § 5(c)-(c)(3). However, due process requires that a hearing be given before public assistance is terminated. *Goldberg v. Kelly*, 397 U.S. 254 (1970). Also, a hearing must be given before one is directed to leave the United States. *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950).

Codifying anti-immigrant sentiment is not the answer to questions of immigration policy. Great Britain has repeated the cycle of resentment, scapegoating, violence, and stringent laws punishing the victims too many times for America to follow its lead. Proposition 187 is exactly the type of law that codifies anti-immigrant sentiment and leads America in a direction similar to Great Britain. Unless America wants to increase racial hatred and social unrest, it is time to move in a new direction with immigration policy.¹⁵⁸

However, even assuming that Proposition 187 represents the direction in which immigration policy is headed, there is a chance for America to avoid Great Britain's cycle of violence and scapegoating. Unlike Great Britain, where courts do not have the power to strike down unfair legislation,¹⁵⁹ American courts have the final say as to a statute's constitutional validity.¹⁶⁰ With the power to declare Proposition 187 unconstitutional, American courts are in a position to end a cycle of violence and oppression in America before it even begins. Before Proposition 187 leads to the increased violence and social strife that Great Britain experienced from its anti-immigrant policies, American courts should heed the warnings from Britain's past and strike it down.

If the courts uphold Proposition 187, the results for America could be disastrous. While supporters of Proposition 187 claim that it could save money,¹⁶¹ it would actually end up costing more in terms of dollars and social costs in the long run.¹⁶² Endorsing the denial of public benefits, like education, to undocumented immigrants can only lead to more unemployment, hopelessness, illiteracy, and ultimately crime in the immigrant

¹⁵⁸ One professor has suggested that the federal government financially assist states like California that take a "disproportionate hit" from immigration. Since immigrants pay taxes to the federal government, it may be sensible for the federal government to use this money to assist those border states in supporting the immigrant population. Some have described this option as "the best answer to proposition 187." Mailman, *supra* note 85.

¹⁵⁹ This is due to the notion of "Parliamentary Supremacy." See, e.g., W.S. HOLDSWORTH, A HISTORY OF ENGLISH LAW, Volume IV, at 186 (1937). The role of the court is to interpret and apply the law. Unfortunately for black immigrants, courts generally construed post-World War II anti-immigration laws broadly and in an oppressive manner. See PAUL GORDON, POLICING IMMIGRATION: BRITAIN'S INTERNAL CONTROLS 18-22 (describing broad retroactive application of Immigration Act of 1971).

¹⁶⁰ See *Marbury v. Madison* 5 U.S. (1 Cranch) 137 (1803) (establishing role of judicial branch in making ultimate determinations of constitutionality).

¹⁶¹ See *supra* text accompanying note 107.

¹⁶² *Id.*

community.¹⁶³ A judicial endorsement of Proposition 187 would encourage more states to pass similar legislation,¹⁶⁴ and the social costs associated with such legislation would become more widespread.

This shows the danger posed by a federal version of Proposition 187. A federal version of Proposition 187 would make anti-immigrant sentiment the law of the land. No longer would state Proposition 187 laws conflict with federal law—making federal pre-emption a less viable theory for striking down such state laws.¹⁶⁵ Even if the state laws were in conflict with the federal scheme, it would be of little significance since the anti-immigrant sentiment embodied in such state laws would already have been given a federal mandate. All of the ills associated with state versions of the federal law—crime, racism, violence, and scapegoating—would be embodied in a federal statute affecting the entire nation.

Even a federal version of Proposition 187, however, could be struck down by the courts. If the federal statute denied undocumented immigrants access to public education, for example, it would seem to violate Fourteenth Amendment equal protection principles.¹⁶⁶ If prior precedent on the issue is followed, such an anti-children measure could not pass constitutional muster.¹⁶⁷ Again, unlike Great Britain, America would have the chance to stem the tide of anti-immigrant sentiment through the judicial process before its damaging effects became widespread.

IV. CONCLUSION

Anti-immigrant sentiment is nothing new; nor is it unique to America. By examining the rise of anti-immigrant sentiment and social policy in Great Britain following World War II, one finds parallels with America in the 1990s. The lessons from Great Britain's past reveal the dangers of allowing

¹⁶³ See *supra* comment by Peter Schey in text accompanying note 107.

¹⁶⁴ See Leslie, *supra* note 128, and accompanying text.

¹⁶⁵ The *Plyler* Court admits that "the states do have some authority to act with respect to illegal aliens . . . where such action mirrors federal objectives. . . ." 457 U.S. at 225. Proposition 187 would clearly mirror a federal version of itself, thereby rendering a pre-emption argument quite weak.

¹⁶⁶ See *supra* text accompanying note 156.

¹⁶⁷ *Id.* However, it should be noted that the composition of the Supreme Court has changed considerably since *Plyler*. Justice Brennan, who wrote the majority opinion, is no longer a member of the court, and *Plyler* was a 5-4 decision. There is always the possibility that the case could be overruled.

anti-immigrant sentiment to become the basis for social policy.

If America has learned anything from Great Britain, it should be that anti-immigrant legislation like California's Proposition 187 is a step in the wrong direction. If the anti-immigrant sentiment that gave birth to Proposition 187 continues to guide America's immigration policies, the country should prepare itself for an endless cycle of violence, resentment, scapegoating, and oppressive legislation.

Whether or not the country continues this cycle, however, will ultimately be determined by the courts. Unlike the courts of Great Britain, American courts have the power to strike down oppressive anti-immigrant legislation like Proposition 187. The courts should exercise this power so that America can avoid the cycle of violence and resentment that enveloped Great Britain after World War II.