Living in a Promiseland?¹:

Mexican Immigration and American Obligations

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The triggers for these reflections are the controversies over immigration that roiled American politics in the summer of 2010 and that continued with the opening of the new Congress in January 2011, though the arguments here are also applicable to many other immigrant-receiving countries. The recent American immigration disputes have involved tensions not just between proponents of different policies but also champions of the prerogatives of different governments, national, state, and local. They include clashes between the government of the United States and government of the State of Arizona and between both those governments and some county and municipal agencies, and they involve the relationship between the governments of the United States of America and the United Mexican States, as well as relationships between American and Mexican state and municipal governments on opposing sides of their long national border.

While emotions toward Islam contributed to recent American immigration concerns, and Mexico has few Muslims, Latino immigrants generally, and Mexican immigrants in particular, have for some time been at the heart of immigration issues in the U.S. Over half of America’s current foreign-born residents are Latinos from Central and South America. Over 30% are from Mexico. Mexicans are also estimated to comprise 57% of the nation’s undocumented foreign-born population.² Consonant with these figures, the recent concerns about immigration that have contorted American politics and policies
have chiefly been worries about Latino immigrants, and especially anxieties about Mexican immigrants.

I have previously argued that one criterion for determining how the United States government should treat non-citizens is a “principle of constituted identities.” It holds that the greater the degree to which the U.S. has coercively constituted the identities of non-citizens in ways that have made having certain relationships to America fundamental to their capacities to lead free and meaningful lives, the greater the obligations the U.S. has to facilitate those relationships—though other conflicting obligations may still prove overriding and determine policies. I have also suggested that this principle implies that Mexicans may be owed “special access to American residency and citizenship, ahead of the residents of the many countries less affected by U.S. policies, and in ways that should justify leniency toward undocumented Mexican immigrants.”

Here I elaborate but also qualify that suggestion. I seek to take into account the interests and aspirations represented by American state and local governments who are recipients of Mexican immigration, particularly Arizona; the interests and aspirations represented by the Mexican national government; and the interests and aspirations of Mexicans, Mexican Americans, and Americans more generally. I contend that both Americans such as those Arizonans who feel burdened by nationally imposed immigration policies, and Mexicans and Mexican-Americans who wish to have practical and perhaps official dual nationality, have both had their identities, values, and interests shaped by coercively enforced U.S. policies. As a result, even though they have conflicting interests and aspirations, both groups have legitimate claims that the U.S. government is obligated to accommodate as much as it can. I conclude by sketching
some of the inevitably compromised policies that might respond appropriately to these clashing imperatives.

I. The Current Conflicts. On April 23, 2010, Arizona Governor Jan Brewer signed into law Senate Bill 1070, the “Support Our Law Enforcement and Safe Neighborhoods Act.” Its proponents presented the bill as a means to insure that all Arizona governments and agencies would actively contribute to enforcement of federal immigration laws, rather than abstaining from or even obstructing enforcement, as state legislators believed some local officials were doing. Among other provisions, the bill required all cities to aid immigration enforcement, first by collecting and reporting information on immigrant statuses to pertinent federal agencies, and second by requesting status information from federal immigration authorities. The law also added state penalties for violations of some federal immigration laws and for the commission of various immigration-related crimes. Most controversially, it authorized Arizona law officers to require persons to give proof of their immigration status whenever the officials had “reasonable suspicion” of illegality. Officials could also arrest immigration law violators without warrants, so long as police had “probable cause” to believe them guilty of such violations.

The Obama Justice Department immediately challenged the law on the grounds that it represented state interference with national policies concerning the enforcement of immigration laws, and because it might encourage stops, searches, and arrests on the basis of suspicions that amounted to illegal racial profiling. The President of Mexico, Felipe Calderón, and other Mexican officials also condemned the law, calling it a “violation of human rights.” On April 30th, the Arizona legislature enacted and the Governor signed a further measure guaranteeing that state prosecutors would not
investigate complaints based on “race, color, or national origin.” But on July 28, 2010, a day before SB 1070 was to go into effect, U.S. District Judge Susan Bolton nonetheless issued a preliminary injunction against its authorizations to demand proof of status and to arrest without warrants, though she allowed most of the law to go into effect. Arizona is appealed her ruling before a 9th Circuit panel. Oral arguments were held on November 1, 2010. At this writing a decision is pending.

Two related developments during the summer of 2010 merit notice. On May 12, less than three weeks after enacting SB 1070, the Arizona legislature passed and Governor Brewer signed HB 2281, which banned Arizona school districts and charter schools from offering classes or courses that were “designed primarily for students of a particular ethnic group” or that “advocate ethnic solidarity instead of the treatment of pupils as individuals.” The State Superintendent of Public Instruction said the bill was primarily aimed at ending the Chicano studies program in the Tucson schools, and on January 4th, 2011, his successor took steps to do so. The law carried further the educational goals of the Arizona voters who gave overwhelming approval in 2000 to Proposition 203, which abolished bilingual education and replaced it with English-immersion classes. Similarly, SB 1070 extended earlier Arizona measures against undocumented immigrants, including Proposition 200, the Arizona Taxpayer and Citizenship Protection Act, which required proof of citizenship to vote and obtain public benefits, and the 2007 Legal Arizona Workers Act, which prohibits businesses from hiring undocumented workers but has been only sporadically enforced.

Also in summer 2010, many prominent Republicans including Senator Lindsey Graham of Florida and Senator Orrin Hatch of Utah endorsed either an amendment to the
14th Amendment to deny automatic citizenship to children of undocumented aliens born on U.S. soil, or legislation to achieve that end, a step that a few scholars (including me in 1985) have argued to be permissible under the existing 14th Amendment. Then as a new Congress with a Republican House took its seats on January 5, 2011, a group called “State Legislators for Legal Immigration” proposed state laws declaring that children of undocumented aliens were not citizens and requiring their states to issue distinct birth certificates for those children. Representative Steven King of Iowa also promised to introduce a bill eliminating birthright citizenship for children when both parents were illegal immigrants. Although the chances of his measure being enacted either by statute or amendment are nil, and the courts are unlikely to uphold the state legislators’ laws, these proposals, along with the Arizona legislation and litigation, have kept immigration disputes near the forefront of American politics.

Even as many American lawmakers have been worrying more and more about undocumented immigrants, predominantly from Mexico, the government of the United Mexican States has in the last fifteen years taken two major steps to maintain its affiliation with its nationals who go abroad, particularly to the United States. In 1996, Mexico’s governments ratified several constitutional amendments that permitted Mexicans to hold both foreign citizenship and Mexican nationality. The amendments’ chief impacts were to allow Mexicans resident in other countries to naturalize there while still retaining their rights to own land in Mexico, to own Mexican businesses and stocks, and to transmit their Mexican property to their heirs—including children born abroad, who now automatically possess Mexican nationality without having to renounce all other citizenships, as formerly required.
Mexican law retained, however, a distinction between Mexican nationality and citizenship, and it confined voting rights to citizens, while treating Mexicans resident in other countries simply as nationals. Then in 2005, Mexico amended its constitution again to permit Mexicans living abroad who had obtained voter registration cards in Mexico and who mailed in ballots to have their votes counted in presidential elections. Efforts to permit Mexicans to register to vote entirely outside the country, to vote by other means, and to conduct campaigns in other countries met defeat.\textsuperscript{15} The attempts to expand the voting rights of non-resident Mexicans continue today, particularly on behalf of Mexicans resident in the United States. Even if these movements do not succeed, the Mexican national government has already shown great willingness to accommodate people with Mexican origins who wish to be members of both the U.S. and the Mexican economic, political, and cultural communities.

II. The Aspirations of Mexicans and Mexican Americans. As numerous scholars in several disciplines have documented, especially in the last quarter-century, such wishes to be culturally, economically, and sometimes politically both American and Mexican—rather than simply U.S. citizens—have long been expressed by many, though by no means all, persons of Mexican descent born on both sides of the border. In 1985, for example, political historian Mario García noted that after the United States took much of what is now the American southwest from Mexico consequent to its victory in the Mexican-American War, “nineteenth-century Mexicans reacted in different ways. Some refused to submit to conquest and defended themselves against Anglo control. Others, however, accommodated themselves to the transformation. Nevertheless, both groups
maintained a Mexican cultural, political, and economic presence until reinforced by extensive Mexican immigration” in the first third of the 20th century. 16

García then identified the conceptions of Mexican-American identity expressed in three southern California Mexican-American newspapers from the 1920s through the 1970s. La Opinion in the 1920s accepted the loss of Mexican lands to the U.S. but insisted that Mexicans in the U.S. remained “an organic part of Mexico” who should see themselves as serving their patria by learning skills and gaining income they could contribute upon returning home—and who should therefore not become U.S. citizens. 17 From the 1930s to the 1960s, El Espectador instead supported “a modified form of Mexican-American nationalism…the integration of Mexicans into the mainstream of American society, but not at the expense of cultural heritage.” 18 Mexican Americans and Mexican immigrants should instead embrace “a type of dual cultural citizenship.” 19 Then in the 1960s and 1970s, Sin Fronteras (Without Borders) argued that Mexicans both north and south of the border were victims of “Yankee political, economic, and cultural colonialism,” denounced immigration restrictions, and dreamed of establishing a “greater Mexican workers’ state” built from “Mexican workers on both sides of the border.” 20 Despite their differences, all three positions claimed legitimate residence for many persons of Mexican descent on what was officially U.S. soil, while also insisting on the legitimacy of their identification with Mexicans south of the border.

Subsequently, political anthropologist Leo Chavez combined ethnographic research, interviews, and regression analyses of opinion surveys to argue that undocumented Latino immigrants “can have multiple identities; they can imagine themselves to be part of their communities ‘back home,’ and they can also imagine places for themselves in
their ‘new,’ or host, communities.”

Chavez also contended that “history, social relationships, and economic structures” have expanded Mexicans’ conceptions of “where they may legitimately work…Their possible labor market includes places in the United States where they (or a relative or friend) have worked before. The political border between Mexico and the United States does not limit this expanded concept.”

Political scientists concur. In 2003, William V. Flores insisted that even after the fading of the socialist Chicano radicalism of the late 1960s and 1970s represented by Sin Fronteras, both undocumented and legally resident Latinos in the U.S. were continuing to reject “the artificial boundaries established by the state to distinguish between citizens and noncitizens” through “a counterideology that stresses Latino unity” and “cultural citizenship.” Flores maintained, however, that the society “the Latinos envision may be more like the ideal America than the America that exists,” in that it is “committed to values of democracy and social justice.” As a result, while “Latinos may not fully belong to America, their hopes and frustrations do.”

In a major new collaborative study, Luis Fraga, John Garcia, Rodney Hero, Michael Jones-Correa, Valerie Martinez-Evers and Gary M. Segura concur. They conclude that “Latinos have the same long-term goals as other Americans in similar socioeconomic circumstances” and in fact “remain more optimistic about their prospects for achieving their ‘Americano dream’ than their American counterparts.” Most are “willing to take difficult steps to achieve these goals, including ‘adapting’ so as to better fit into American society,” even as they “strive to maintain their distinct cultural and language traditions.” The authors also note that “Latinos simultaneously hold multiple identities” and also have social network that are in many cases based on country of origin; but they
also perceive “an equally meaningful and vibrant pan-ethnic identity” among “most Latinos” that “is increasingly self-conscious, crosses nationalities, and is politically relevant.” Even so, variations within and across different national-origin Latino groups mean that efforts to mobilize Latinos on the basis of shared ethnic identities and interests remain both philosophically and politically problematic.

These studies confirm that, although not all persons of Mexican descent living on either side of the border hope to build lives that belong to, that benefit from, and that shape both the United States and Mexico, many do. Those aspirations are what the Mexican government has sought to facilitate. In many regards, they are also what the Arizona government has sought to obstruct. The fact that Arizona has legislated not only against what it views as illegitimate economic and political actions by undocumented aliens, but also against educational curricula designed to support “dual cultural citizenship,” shows that the concerns of the state’s governing officials and the majority of its electorate extend beyond simply opposition to the presence of persons in violation of U.S. immigration laws. The Arizona government is opposed to the kinds of cultural, economic, and political dual citizenships that the Mexican government is encouraging and that many Mexican Americans as well as many Mexicans endorse.

What, if any, are the obligations of the government of the United States in relation to the opposed goals of these two governments, in relation to the Mexicans and Mexican Americans who favor these kinds of dual nationality, and in relation to other Americans who do not? Those are questions to which there are no easy answers.

III. The Principle of Coercively Constituted Identities. The principle that I offer as a partial guide to defining the obligations of all the governments involved—though here I
focus on the U.S. government—builds on the premise that political communities are forged and sustained in part through what I have termed “ethically constitutive stories of peoplehood,” stories expressing dominant views of the normative purposes and worth of those memberships. 28 It relies also on Will Kymlicka’s claim that persons can only have “meaningful” choices within the frameworks of the (usually multiple and complex) cultural contexts and narratives that have partly constituted their identities and values.29

The first step in my argument is the contention that members of political communities generally feel and should feel senses of obligation, varying in strength, to live up to the demands of their “ethically constitutive” stories.30 Next, I presume that the “ethically constitutive stories” advanced by the United States government, the Arizona government, the Mexican government, and the other governments involved in immigration controversies all express foundational commitments to respecting and advancing human dignity, rights, and freedoms. And even though these governments and their communities display many different understandings within them and between them concerning what those very general commitments mean, all would accept that insofar as possible, government policies should aid rather than hinder persons seeking to pursue lives those persons feel to be meaningful expressions of their identities, values, and aspirations. Finally, if we agree with Kymlicka that most people can lead meaningful lives only within the cultural contexts that have partly constituted those identities, values, and aspirations, and if we recognize that governments have often used their coercive powers to structure the cultural context and narratives that play these constitutive roles in people’s lives, then governments committed to dignity, rights, and freedom have a prima
facie obligation to help the persons whose aspirations they have coercively shaped to realize those aspirations.

This obligation has limits. All these governments have traditionally officially held, for understandable reasons, that they have special duties to their own citizens, from whom their authority derives, obligations that generally merit priority over any obligations to non-citizens. But whether or not this priority is justified, as I think it generally is, most agree that governments that honor human rights and dignity have to acknowledge some duties to human beings outside their officially delineated community. Here I am suggesting that their own values imply that modern constitutional democracies must recognize special obligations to all persons who are who they are, and who have the values and aspirations they do, partly because their identities have been constituted by the governments’ coercive measures—whether or not those persons are currently legally citizens. It seems undeniable that when governments impose a particular range of educational systems, religious practices, economic systems, marital and familial structures, forms of expression, and systems of governance on populations, punishing those who seek to live in ways outside that range, rewarding those who live as the governments wish, the governments shape if they do not indeed constitute the core values, affiliations, and senses of self of many in those populations. We should also expect that many of the people coercively shaped in these ways will feel they can best lead meaningful lives, or can only lead meaningful lives, if they pursue cultural, social, economic, and political endeavors that reflect their mandated forms of socialization—in some cases complying with those forms of socialization, in some cases seeking to adapt or resist them. And just as parents have responsibilities to and for their children,
governments should acknowledge that they have responsibilities to and for those they have helped bring into being as persons with particular dreams and prospects. In sum, governments that are committed to respecting and assisting persons’ aspirations to lead free and fulfilling lives, and who have exercised their coercive power to make those persons’ aspirations what they are, have special duties to help them pursue their preferred ways of life, insofar as the governments can do so, consistent with their capacities and their other obligations.

Or so I contend. There are many plausible objections to this claim. None is more potent than the worry that, likely many abstract moral principles, it provides no practical guidance for real-world dilemmas and is in any case politically a non-starter. Here I seek to show the contrary by considering the principle’s implications for the U.S. government’s responsibilities to, in particular, Arizona and other immigrant-receiving American states and all their citizens, including Mexican Americans, as well as to Mexican nationals. Stated in what may seem an appropriate nutshell, those implications are that the U.S. should join the Mexican government in facilitating quests for form of dual nationality or dual economic and cultural citizenship, rather than reinforcing state and local governments like Arizona’s that seek to reduce the presence of dual nationals, especially Mexicans.

Making this case involves attention to how the U.S. government has in the past as well as the present contributed coercively to the identities, affiliations, hopes and dreams of the populations involved in current immigration disputes. But the argument is not a call to rectify or make reparations for past policies. It does not seek to assess the costs of any harms done to those the U.S. has coercively shaped or to restore them to the
condition they might have had without those actions. Nor does it turn on the legitimacy of their claims for the lands, resources, institutions and ways of life that they or their ancestors held prior to the U.S. government’s coercive actions. It rests simply on the reality that the U.S. government has coercively shaped their identities, aspirations, and opportunities into what they are. It is this coercive constituting that makes it imperative for the U.S. to discern how, in regard to these persons, its core commitments to respecting and advancing human dignity, rights, and freedom in general, with special responsibilities to some, can be best fulfilled now and in the years ahead.

IV. The Role of Governments in Coercively Constituting “Anglo-Americans,” “Mexican-Americans,” and Mexicans. This is not the place for a comprehensive account of how the policies of the United States, the states along the U.S.-Mexico border, and the Mexican government have all contributed to the constituting of the identities of the communities involved in current controversies. Along with others, I have previously argued that in the Jacksonian era, aggressive American westward expansion justified partly in terms of ideologies of Anglo-Saxon racial superiority as well as the nation’s providential “Manifest Destiny” precipitated mounting conflicts with Mexico. Having provoked a Mexican attack on U.S. forces seeking to occupy disputed territory, desiring land, and concerned in part about the impact on southern slavery of Mexico’s recent abolition of the institution, the U.S. government finally declared war on Mexico in May, 1846. U.S. military forces went on to defeat Mexican armies and to occupy Mexico City. On February 2, 1848, the war ended with the signing of the Treaty of Guadalupe Hidalgo. It forfeited Mexico’s claim to Texas and, in return for $15 million, transferred northwest Mexico, including what is now California, Nevada and Utah and parts of Arizona, New
Mexico, Colorado, and Wyoming to the United States, giving up roughly half of Mexico’s lands, though lands thinly occupied by a small percentage of its population. Apart from the indigenous tribes within its modern borders and the territories acquired in the Spanish-American war, whose inhabitants have since been made U.S. nationals or citizens by various statutes, there is no other nation in the world that has been coercively compelled to surrender so large a percentage of its territory to the United States.

The Treaty gave Mexican residents of the transferred lands who chose to remain the option of obtaining U.S. citizenship. Virtually all the estimate 75,000 who stayed did so. But as the 19th and then the early 20th centuries proceeded, persons of Latino descent increasingly found themselves subjected to a wide range of discriminations by U.S. territorial and then state governments throughout the region. Prior to the Civil War, California, New Mexico, Arizona, and Texas adopted constitutions that confined voting rights and jury service to white men, though New Mexico permitted Pueblo Indians to vote until Congress changed the policy in 1853. Many new Mexican Americans were of mixed race ancestry and were deemed non-white, especially poor farmers and laborers. Most soon found themselves governed by officials, policed by state and local enforcement officials, and tried by courts with limited commitments to equal treatment. Over time many Mexican Americans responded with various forms of what scholars term “resistant adaptation”--acceptance of certain forms of assimilation in return for economic opportunities and somewhat broader rights, while refusing to accept fully the identities and statuses imposed by the American territorial and then state governments upon most persons of Mexican descent.
And though the Treaty of Guadalupe Hidalgo guaranteed that property rights of Mexicans in the transferred territories would be upheld, particular claims had to be adjudicated in American courts. They often proved unreceptive to the limited documentation many Mexicans could offer, even as state governments sometimes legislated in favor of squatter rights, actively encouraging whites to occupy Mexican-owned lands.\textsuperscript{38} The resulting trends toward loss of Mexican lands gained powerful reinforcement from the late 19\textsuperscript{th} century development policies of the Mexican government under the dictatorial President Porfirio Díaz, and the United States during its corporate-dominated “Gilded Age.” Through various means, these governments took control of lands held by indigenous tribes, churches, and many small farmers in order to assist the expansion of largely U.S.-owned railroads and mining companies on both sides of the border. U.S. agencies also created irrigation systems that made large-scale commercial farms profitable in the southwest.\textsuperscript{39} The results were that by 1890, almost all Mexicans in the American southwest had lost their land, along with innumerable small farmers throughout Mexico. Many of those farmers moved to northern Mexico and then across the border seeking employment in the fast-expanding railroads, mines, commercial farms, and in the cities beginning to grow, especially El Paso and San Antonio in Texas and Los Angeles in California. Many eventually brought their families along—though they often did so without any sense that they were forever leaving Mexico.\textsuperscript{40}

The significance of this history is that the U.S. government, American territorial and state governments, and the Mexican government all used their coercive authority in the late 19\textsuperscript{th} and early 20\textsuperscript{th} century in ways that displaced substantial populations from their former lands and homes and made them eager to gain better economic opportunities in
the United States, even though they still felt strong links to and identifications with Mexico and its territories, language and cultural traditions. The U.S. and the southwestern state governments generally welcomed the labor of these immigrants, yet they also discriminated against, especially, poorer Mexican immigrants and Mexican Americans. In Arizona, in particular, the role of the U.S. government was striking and consequential. These discriminations formed part of the heightened embrace of evolution-based doctrines of racial superiority that characterized not only the late 19th Century Gilded Age but also the American Progressive era.41

In the early 1900s, the chairman of the Senate Committee on Territories, Indiana Senator Albert Beveridge, later a leader of the Progressive Party and always a leading proponent of Anglo-Saxon supremacy, opposed statehood for New Mexico and Arizona due to their Mexican-descended populations. The 15th Amendment had abolished explicit racial restrictions on the franchise in 1870. But to gain admission to the Union, the Arizona territorial assembly imposed a $2.50 poll tax and then an English literacy test for voting in the early 1900s, effectively disfranchising poorer and less educated Mexican Americans. The Arizona state constitution then added a ban on voting by those “under guardianship,” which was used to disfranchise many with both tribal and Hispanic origins. And in 1912, the new state legislature also required voters to be able to “read the Constitution of the United States in the English language” well enough to show they were not doing so from memory.42

The United States thus used its power over admission to the Union to prompt, if not indeed compel, “whiter” and more prosperous Arizonans to see themselves as the proper governors of their state because of their racial, cultural, and class identities and to act
accordingly, or else remain territorial residents and so less than full citizens themselves. In the era of when U.S. government agencies and courts explicitly denied that the former Spanish colonies acquired in the Spanish-American war were racially and culturally fit to be fully “incorporated” into the United States, the northern European descended Americans in other states also felt authorized to enact similar restrictions on their residents with Mexican ancestry.43

In the first half of the 20th century, most of the southwestern states did so. They used various means—sometimes explicit Jim Crow segregation laws, sometimes restrictive covenants, sometimes police harassment, sometimes deportation—to impose segregated schooling, housing, and restricted economic and political rights and opportunities on Mexican Americans and Mexican immigrants who were deemed non-white. Predictably, many Mexican Americans resisted. Others responded by distancing themselves from African-Americans and espousing both the superiority of the white race and their membership within it—thereby strengthening the beliefs of all “whites” that they deserved their superior statuses. Some Mexican Americans in fact opposed further Mexican immigration, particularly undocumented immigration, seeing it as a source of their own stigmatization.44 These political circumstances helped make possible various guest worker arrangements, including the Bracero program begun in 1942, through which U.S. employers hired Mexican laborers when needed, but subjected them to harsh discriminations. The U.S. then deported the laborers—and sometimes their American-born children and other Mexican-American citizens—whenever job markets dried up.45

In the second half of the 20th century, many consequences of these past governmental policies continued. Anti-Mexican educational and residential segregation and economic
discrimination persisted even in more prosperous regions like northern California, as did divisions among Mexican Americans over how to respond, even though most embraced both American and Mexican identities in one way or another. But the triumphs of the modern African American civil rights movement; the forms of political and cultural consciousness stirred by the related Chicano movement of the late 1960s and 1970s; the expanded protections against bars to voting affecting Mexican Americans provided by the 1965 Voting Rights Act and particularly its 1975 amendments; and the rise of modern multiculturalism, all worked to limit public and private discrimination against Mexican Americans and Mexican immigrants and to encourage renewed, widespread senses of transnational Mexican American dual “cultural citizenships.”

Under pressure from allied civil rights and labor forces, Congress also ended the Bracero program in 1963. The symbolic affirmations and public policies designed to promote equal rights and to facilitate many forms of cultural diversity that the U.S. government and many state and local governments established in the Sixties and Seventies are also important ways that they have used their power and authority to constitute persons’ values and aspirations--now more inclusive.

Yet after the 1965 Immigration Act, both documented and undocumented Mexican immigration grew, planting the seeds of current immigration controversies. A major effort at comprehensive immigration reform in 1986 that sought to stem the influx of undocumented immigrants while granting amnesty to millions already present in the U.S., and modifications of those reforms in 1990, increased legal immigration from less-represented countries while failing to reduce undocumented entries, still overwhelmingly Mexicans. Though policy analysts dispute the relative amounts, most agree that the
costs of providing social services to immigrants, documented and undocumented, have since grown. These costs have fallen mostly on the state and local governments in the areas where immigrants are concentrated, even as the federal government benefits from immigrants’ taxes and the national economy in general gains from immigrant labor.\textsuperscript{50}

The decisions of the U.S. and Mexican governments as well as the Canadian government to join in the North American Free Trade Agreement (NAFTA) in 1992 only accelerated the movement of persons as well as goods across, especially, the U.S.-Mexican border.\textsuperscript{51} In the 1990s, some immigrant receiving states, particularly those in which “Anglo” majorities confronted substantial minority populations, responded by adopting their own measures to reduce immigration, in the manner of Arizona; but these measures too have had little impact.\textsuperscript{52} And as the decisions of the Arizona state legislators to require that all the state’s municipalities cooperate in immigration enforcement reveal, even within those states, some local governments and agencies have resisted efforts to “crack down” on undocumented immigrants, while others have enthusiastically cooperated.

In 1996, the U.S. government whose policies had done so much to generate contemporary immigration and to combat various forms of discrimination, began instead to reduce immigrant rights once again, particularly social welfare entitlements and procedural protections against deportation. Congress also encouraged and in some regards compelled the states to follow suit. In June of 1996, it passed the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). It expedited the exclusion and arrest, punishment, and removal of those suspected of being alien terrorists or criminals by authorizing a special removal court, limiting judicial review of deportations, speeding up
the timetable for deportation processes, limiting the discretion of the Attorney General to admit or grant asylum to suspect aliens, and making many immigration law offenses subject to the expansive punitive measures authorized by RICO (the Racketeer Influenced and Corrupt Organizations act). Its section 439 also authorized state and local officials to assist the federal government in these endeavors.\(^5^3\)

In August, President Bill Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), ending the Aid to Families with Dependent Children (AFDC) program established in the original New Deal Social Security Act and replacing it with Temporary Assistance to Needy Families (TANF) block grants to the states. The law also made immigrants arriving after its enactment ineligible for all federally funded means-tested benefit programs like TANF and Medicaid for five years, restrictions states had to enforce, though they had the option to include immigrants after the five year period. And the act denied new immigrants Supplemental Security Income (SSI) and food stamps altogether, though they could regain eligibility by naturalizing.\(^5^4\)

In September 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) increased resources for immigration law enforcement, including detentions; further streamlined procedures to expedite exclusions and deportations; further limited the Attorney General’s discretionary authority to grant entry to the needy via “parole;” banned Social Security benefits for undocumented aliens; authorized states to limit public assistance to aliens; mandated new data-collection on aliens, including requirements that educational institutions report on their foreign students; and authorized heightened worksite investigations, among other measures. Its sections 133 and 372 specifically empowered states to play larger roles in immigration law enforcement.\(^5^5\)
Consequently, when the Arizona legislature passed its recent measures requiring evidence of citizenship to vote, barring cities from granting undocumented aliens any public benefits and requiring their assistance in immigration enforcement, and authorizing police to stop and arrest persons suspected of being in the country illegally, it could and did claim it was seeking to comply more fully with federal laws that were failing to achieve their objectives, not interfering with federal policies. Again, the fact the legislature also banned Ethnic Studies classes indicates that their concerns went beyond removing illegal aliens from their state. Yet it must also be acknowledged that they were expressing ethnocultural notions of who should be an Arizonan and a U.S. resident that the U.S. government had actively fostered in the past and had arguably appeared recently to express again.

V. Toward Appropriate Policies and an Enabling Politics. Even if, as I contend, this history provides grounds for recognizing that the U.S. government has special obligations to Mexicans and Mexican Americans as a result of the ways it has coercively constituted their identities, values, and aspirations, the U.S. also has special obligations to other members of its states, local governments, and citizenry. Finding policies that can meet these obligations effectively, and building political support to enact them, are the real challenges. But quests to define those policies and win endorsements of them may be aided by recognition of the responsibilities they should seek to fulfill.

To summarize the “special obligations” case: by coercively taking the lands that many Mexicans inhabited, the United States created a population in what was now its southwest who had no choice but to accept U.S. authority and some form of membership in its community if they wished to continue to live their lives where they resided. The
U.S. and Mexican governments then both mandated forms of economic development that cost many mestizo Mexicans and Mexican Americans their farms and left them with labor for U.S.-owned production, transportation, and agricultural enterprises, on both sides of the border, as their best economic opportunities. But the U.S. territorial governments also adopted mandatory policies that provided these Mexican and Mexican American workers with restricted political, legal, residential, educational, and economic rights and opportunities. And, most strikingly in the case of Arizona, the U.S. government actively pressured the “Anglo” citizens of those regions to create states that did the same. Those patterns persisted through much of the 20th century, even as the national government began mandating an end to many forms of discrimination and encouraging various kinds of cultural accommodations, and even as its immigration and trade policies produced national revenues and economic benefits while generating social policy costs that fell most heavily on the immigrant-receiving states and locales.

It is perfectly understandable, if it is not indeed inevitable, that these past and present policies have generated large numbers of persons who in various ways feel themselves to be dual nationals—who value the economic opportunities available in the U.S., who endorse many official American values of human rights, social mobility earned through work, and democratic self-determination, but who also feel themselves to be part of Mexican cultural traditions and communities. Many see themselves as effectively compelled to seek homes and jobs in the United States and they wish to be productive, contributing residents, but they also wish to maintain as much of their Mexican cultural identities and to maintain as close ties to their relatives and ancestral regions in Mexico as possible. They see and feel in these ways in significant measure because that is how
U.S. policies, along with Mexican ones, have constructed their experiences in the world. In recent years the Mexican government, for reasons of perhaps enlightened self-interest, has responded by making adoption of formal dual citizenship more feasible and by protesting U.S. and American state actions against Mexican immigrants. The United States government is if anything more obligated to do the same.

But at the same time, the U.S. government has also used its power to shape the identities, values, interests, and policies of the southwestern and western states and their officially “white” citizens. It long fostered beliefs that those states needed to be governed primarily by whites, even as its immigration and economic policies fostered (and continue to foster) the presence of many poorer Mexican and Mexican American laborers in those states. The resulting political tensions and social policy burdens must be seen as in part things the U.S. government has coercively imposed on these citizens and states, through the same actions that have produced Mexicans and Mexican Americans with aspirations for various forms of dual political, economic, and cultural citizenship. If the U.S. has obligations that point toward facilitating these dual citizenships, then, it also has obligations to its states and localities and their citizens to help them resolve the economic and political challenges that such facilitation generates.

What policies might best respond to these conflicting imperatives? The United States, like most modern nations, has structured its immigration priorities overwhelmingly in terms of the perceived interests of its current citizens. Since 1965, American policymakers have decided this means giving priority to immediate family members, a criterion that has facilitated Mexican immigration, and to persons with economically valuable skills, a criterion that has usually favored the highly educated and
technically skilled, not most Mexican applicants for immigration. The U.S. also imposes a somewhat flexible overall cap on legal immigration that limits the numbers admitted under both criteria. It caps the immigration that can come from any individual country as well: none can receive visas in numbers exceeding 7% of the total permissible family-sponsored and employment-based entries. That currently means 25,620. Nations with large number of applicants that can meet family-sponsorship and employment criteria quickly hit their caps—especially Mexico—and collectively fill up the overall permissible visa numbers. Other nations with few recent immigrants to the U.S. or skilled applicants often fail to reach their caps.

All these immigration priorities, like the claim that the United States has some special obligations to Mexicans and Mexican Americans, are legitimately controversial—because there are reasonable arguments both for and against them that turn on a large number of empirical and normative considerations. The U.S. needs a comprehensive set of policies governing immigration and immigrants that balances competing claims via policies that can be both effective and politically sustainable; but discerning that set of policies is a huge task. Here I simply suggest some ways that the U.S. obligations I have delineated here might play into policy-making.

Precisely because U.S. policies have done so much to make Mexicans the most numerous sources of both legal and illegal immigrants to the U.S., the U.S. has strong reasons to give explicit priority to Mexicans in the legal immigration queues. One way to do so would be to allocate a substantially larger number of visas of all kinds to Mexicans, abandoning the policy of applying the same cap to all countries, regardless of their past and present relationships to the U.S. or their numbers of applicants. This might
be done without raising the overall immigration ceiling or otherwise altering immigration
categories—though raising the overall immigration cap would increase Mexican legal
immigration even more, as would changes in employment priorities to provide more visas
for employable but less skilled immigrants.

Whether permitting more Mexican legal immigrants in any of these ways would
reduce the number of Mexican illegal immigrants can be disputed, just as it is debatable
whether denying birthright citizenship to children of illegal aliens would decrease or
increase the illegal alien population over time. History gives ample evidence that the
consequences of immigration policies are often unpredictable. The arguments for special
obligations to Mexicans made here also inescapably imply special consideration for
undocumented Mexicans already in the United States, probably including some viable
paths to citizenship for those not guilty of any illegal activities except undocumented
presence. But what those paths should be, given the meritorious claims of legal
applicants for immigration and naturalization including other Mexicans, is
philosophically and politically hard to establish. To give preference in immigration
policies to Mexicans who have entered illegally over applicants from other countries who
have followed legal processes would admittedly be far from perfectly fair. Yet doing so
would bring the United States’ official immigration policies more in line with what its
actual immigration policies have been and are likely to remain, in ways that would
recognize the special status of Mexican applicants that the U.S. has coercively created.

Similarly, the U.S. has a special obligation to facilitate the adoption of official and
practical forms of dual Mexican-American political, economic, and cultural citizenship,
as the Mexican national government has done, since it has done so much to constitute
populations who have trouble conceiving of themselves as otherwise having meaningful identities and lives. The U.S. is officially already receptive to dual political citizenship, despite the language of its naturalization oath. But its policies toward immigrants stand in striking and growing contrast to Canada’s, in ways that Irene Bloemraad has found to be associated with much lower naturalization rates in the U.S.

Canada offers immigrants courses designed to aid general language acquisition as well as language skills needed specifically in the labor market; job counseling and training; a Host program that links new immigrants with resident volunteers who can help with initial settlements; and it funds community organizations to provide a range of services for immigrants including orientation, translation, interpretation, referrals to community resources, and para-professional legal and medical advice. It also gives grants to immigrant ethnic associations, funds for ethnic studies programs and the writing of ethnic histories, and it aids heritage language programs and other immigrant cultural activities.

Establishing such initiatives and requiring state and local governments to assist in them would, however, further compound the economic, political, and social pressures generated in the major immigrant-receiving states by the Mexican immigration the U.S. has fostered. The United States therefore has obligations to help alleviate those pressures. For both political and policy reasons, it is likely that any measures to encourage increased legal Mexican immigration must be accompanied by credible efforts to enforce effectively the immigration limits that remain, such as heightened border patrols and more stringent employer sanctions. The U.S. government and taxpayers across the nation should also assume the lion’s share of the costs of all immigrant settlement and assistance and social benefit programs, as well as enforcement measures.
and other policies affecting immigrants, rather than shifting many of those burdens to the states, as happened in 1996. The United States should also require that immigrant workers receive wage and working conditions that match those provided to native employees, as the Obama administration is urging, while trying to find more ways to generate greater economic opportunities and improved working conditions in Mexico, reducing economically-driven immigration to whatever degree proves possible.

Are these suggestions politically utopian? Perhaps; they certainly require the creation of favorable coalitions that do not currently exist. Yet there is more in place on which to build than may first meet the eye. Although the United States has powerful political traditions that support opposition to immigrants, especially those perceived as undesirable non-whites, it also has traditions that celebrate America as a haven for all immigrants, including ones in need. The Anglo-authored 1986 hit song invoked in the title of this essay, “Living in the Promiseland,” is a reminder that many Americans of all backgrounds can be moved by those traditions of immigrant receptivity. So is a 2009 resolution of the theologically and often politically conservative National Association of Evangelicals. Noting that immigrants “are made in the image of God and have supreme value with the potential to contribute greatly to society,” the resolution urged that “the government recognize the central importance of the family in society by reconsidering the number and categories of visas available for family reunification,” #establish a sound, equitable process toward earned legal status for currently undocumented immigrants,” and “legislate fair labor and civil laws for all residing within the United States.” Although the NAE did not address Mexican immigration in particular, its resolution invoking biblical traditions of “grace to the foreigner” praised the “positive impact of
multiple cultures on national life,” and both family reunification and pathways to legal status for the undocumented would disproportionately benefit Mexicans.  

More prosaically, today’s Latino organizations are both more pro-immigrant than their predecessors, and they work in closer alliance on many issues with a range of other civil rights organizations. The same day that the State Legislators for Legal Immigration introduced their two model bills, Wade Henderson, president of the Leadership Conference on Human and Civil Rights, announced his association would act in concert with the NAACP, the National Council of La Raza, and immigrant groups to defeat what he described as efforts to “create two tiers of citizens, a modern-day caste system.” Latinos can expect to benefit from their membership in what Desmond King and I have termed the “race-conscious policy alliance” in American politics, and though it is not nearly so politically potent as its “color-blind policy” counterpart, it still poses a major obstacle to efforts to adopt measures hostile to, especially, immigrants who appear to be objects of racial and ethnic animosities.

Despite mounting concerns over Mexican immigration, many officials in national, state, and local government agencies also still favor policies welcoming immigrants, strengthening immigrant rights, and facilitating many of the forms of cultural recognition that Mexican Americans seek. Over 50 state and local governments, for example, passed resolutions opposing Arizona’s SB 1070. One reason is that, as a result of modern immigration policies and also anti-immigrant movements that have sparked heightened rates of naturalization and voting, Latinos represent the fastest-growing sector of the U.S. electorate, and they are increasingly being elected to local, state, and national offices. Though they differ on many issues, most Latinos oppose most policies hostile to Mexican
immigrants and to aspirations to gain or maintain various forms of dual citizenship.\textsuperscript{65} Political leaders ignore these positions at their partisan peril.

And as Janice Fine and Daniel Tichenor have argued, though the American labor movement continues its longstanding internal struggles over immigration issues, particularly in regard to guest worker programs, today labor overall is far more pro-immigration and pro-immigrant rights than ever before. Most unions recognize that the labor movement in the U.S. and internationally needs to recruit service industry workers who are often immigrants; and few modern labor leaders wish to distance themselves from modern civil rights causes. As a result, rather than “a clear-cut division between restriction versus solidarity within organized labor,” today all sides in labor debates over immigration endorse “solidarity” and champion “immigrant rights.” The fights now are simply over “the best strategy to defend labor standards while welcoming new immigrant workers as the lifeblood of a revitalized labor movement.”\textsuperscript{66} In that context, Mexican Americans and Mexican immigrants can usually find labor allies at local, state, and national levels.

Finally and perhaps most fundamentally for the political prospects of immigration reform, many influential American employers and economic conservatives continue to regard relatively unrestricted Mexican labor as economically valuable, perhaps indispensable.\textsuperscript{67} Their power, which obviously remains substantial in American politics, is probably the chief reason why national policies sharply restrictive of such immigration have not been enacted. Despite the current anti-immigrant and especially anti-Mexican fervor, it is therefore not inconceivable that a potent coalition could be built in favor of restructured immigration policies that would give greater priority to legal admissions of
Mexicans, perhaps even including Mexicans currently working in the United States without legal authorization but also without any other history of illegal conduct. The construction of such a coalition would surely be aided by challenges to prevalent notions of Mexican immigrants as undeserving intruders, and by political efforts to foster acceptance that the United States has some special obligations to Mexicans and Mexican Americans—obligations that exceed U.S. obligations to many other immigrants whose identities and aspirations have been much less shaped by America’s coercive policies.

The burden of this essay has been to show that there is much to be said in favor of recognizing such obligations.

1 The reference is to the song “Living in the Promiseland,” a #1 country hit that Texan Willie Nelson sang and produced in 1986, the same year Congress enacted its last major (unsuccessful) effort at comprehensive immigration reform legislation, the Immigration Reform and Control Act of 1986 (IRCA). The song, written by Arkansas songwriter David Lynn Jones, has its first two verses:

Give Us Your Tired And Weak
And We Will Make Them Strong
Bring Us Your Foreign Songs
And We Will Sing Along
Leave Us Your Broken Dreams
We'll Give Them Time To Mend
There's Still A Lot Of Love
Living In The Promiseland

Living In The Promiseland
Our Dreams Are Made Of Steel
The Prayer Of Every Man
Is To Know How Freedom Feels
There Is A Winding Road
Across The Shifting Sand
And Room For Everyone
Living In The Promiseland


5 The text of the bill can be found at http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf.


8 “SB 1070 Appeal to the Ninth Circuit Court of Appeals,” http://www.messinglawoffices.com/SB_1070_on_appeal_9th_cir.aspx

9 The full text of the bill is at http://www.azleg.gov/legtext/49leg/2r/bills/hb2281s.pdf.


18 Ibid. 212.
19 Ibid. 213.
20 Ibid. 216, 220, 223.
24 Flores, ibid. In Latino Political Power (Boulder, CO: Lynne Rienner Publishers, 2005), Kim Geron argues similarly that Latino elected officials tend to be liberals concerned to promote economic and educational opportunities for all the less advantaged, but with special concerns to aid their Latino constituencies, including support for ethnic studies programs (198-214). In Mexican Americans: The Ambivalent Minority (Cambridge, MA: Harvard University Press, 1993), Peter Skerry also identified these priorities, though he expressed concern that Mexican American leaders were failing their constituents by emphasizing too strongly a civil-rights era “racial minority” agenda of grievances.
26 Ibid. 185.


Smith, Stories, op cit. 72-125.


Like many others, Thomas Pogge doubts that “historical arguments” have “much relevance” to present issues (Thomas W. Pogge, “Accommodation Rights for Hispanics in the United States,” in Will Kymlicka and Alan Paten, eds. Language Rights and Political Theory (New York: Oxford University Press, 2003), 105-106. In regard to language rights for Hispanics, Pogge proposes instead a “Fundamental Principle of Public Education” holding that “the best education for each child is the education that is best for this child” (118). But it is questionable whether what is “best for a child can be answered without some attention to how they have come to be who they are, with certain values and goals. If what is “best” for the child includes fulfillment of the cultural aspirations and realization of the identities that result partly from their coercive constitution by a government, then Pogge’s principle requires an education that accommodates those aspirations and identities, just as the principle of coercively constituted identities does.

Smith, Civic Ideals, op. cit., 205-06.


García Bedolla, op. cit., 42.

Meeks, op. cit., 4.

García Bedolla, op. cit., 44-45.


García Bedolla, ibid. 47-51; Meeks, ibid. 73-75; Rodriguez, ibid. 131-36.

Smith, Civic Ideals, 346-469.

Meeks, op. cit., 38, 42.
On the relationship of doctrines of Anglo-Saxon superiority to imperialism, domestic racial policies, and judicial decisions in the late 19th and early 20th century, see Smith, Civic Ideals, op. cit., 411-424, 429-453.

García Bedolla, op. cit., 51-63; Rodriguez, op. cit., 159-178; Meeks, op. cit. 109-117.


García Bedolla, ibid. 52-53; Tichenor, op. cit., 203-211.


Ibid. 392.


U.S. Immigration Numerical Limits and Caps,”


Ibid. 118-126.


“State and Local Leaders for Immigration Reform,”

Fraga et al., op. cit., 4-8.
