INTRODUCTION: IMMIGRATION AND FEDERALISM

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Two of the most important legal trends of recent years have been the dramatic changes in the nation's immigration laws and the general devolution of decision-making authority from federal to state and local governments. The papers for this symposium address the convergence of these two trends, by examining the numerous issues of policy, principle, and legal doctrine raised by the expanding role of state and local authorities in the development and enforcement of immigration policies. Analyzing the implications of the new immigration federalism from perspectives as diverse as history, civil rights, critical race theory, public policy analysis, constitutional doctrine, and international comparison, the contributing authors provide a rich account of the likely long-term consequences of the confluence of devolution and immigration reform.

Consider first the rapid swings in immigration policy. In 1996, Congress passed and President Clinton signed a raft of anti-immigrant measures that codified harsh detention and deportation policies, narrowed traditional humanitarian relief such as political asylum, and severely restricted welfare benefits for millions of indigent noncitizens and their families.[1] In many instances, punitive regulatory interpretations followed hard on enactment of these laws.[2] The restrictionist immigration agenda was plainly ascendant.

But then, a limited popular backlash against the extremism of the 104th Congress, determined grassroots and national advocacy,

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1. See Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104–132, Title IV, 110 Stat. 1214 (codified as amended in scattered sections of 8 U.S.C.); Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRA"), Pub. L. No. 104-193, §§ 400–451, 110 Stat. 2105, 2260–77 (codified as amended in scattered sections of 8, 42 U.S.C.); Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104–208, Division C, 110 Stat. 3009-546, 3009-546–724 (codified as amended in scattered sections of 8, 42 U.S.C.).

2. See, e.g., In re Soriano, Int. Dec. 3289, 211 I. & N. Dec. 516, 1996 WL 426888 (A.G. 1997) (reversing en banc decision of Board of Immigration Appeals and holding Congress intended new restrictions on relief from deportation to apply retroactively); cf. INS v. St. Cyr, 533 U.S. 289 (2001) (holding Congress did not intend similar restriction to apply retroactively).

and inescapable political realities contributed to a slight amelioration of the 1996 laws.[3] By the summer of 2001, business interests pressing to expand the domestic labor pool, the recent conversion of the AFL-CIO to a progressive immigration agenda, an emerging "special relationship" between the United States and Mexico, and electoral competition for Latino voters in this country led some to predict that a broad amnesty for undocumented immigrants and a new paradigm of immigration policy were imminent.

With the terrorist attacks of September 11, 2001, the pendulum swung again, and the public registered its support for draconian new anti-terrorism measures, racial and ethnic profiling in immigration enforcement, and the prolonged, often arbitrary detention of non-citizens. And yet, even amidst the calls for ever-harsher immigration policies, an undertow of resistance is already felt: Mexico has begun to renew its call for regularization of the status of its nationals in the United States, local police have voiced a reluctance to participate in the full-throated racial and ethnic profiling demanded by the Attorney General, Congress enacted legislation in May 2002 restoring food stamp eligibility for hundreds of thousands of immigrants,[4] and public tolerance for prolonged detention of immigrants appears to be ebbing.[5]

Now consider the contemporary revolution in state-federal relations. In recent years the Supreme Court has been preoccupied with pressing an aggressive federalist agenda. Repeatedly invalidating national laws, the Court has attempted to limit Congress's power to legislate under the Commerce Clause and Section 5 of the Fourteenth Amendment and to override the sovereign immunity of

3. See, e.g., Balanced Budget Act of 1997, Pub. L. No. 105-33, §§ 5301–5308, 111 Stat. 251, 597–603 (codified as amended in scattered sections of 8 U.S.C.) (restoring eligibility of some legal immigrants for Supplemental Security Income); Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. No. 105-185, §§ 503–504, 112 Stat. 523, 578 (codified at 8 U.S.C. § 1612(a)(2)(A), (F) (1998)) (restoring eligibility of some legal immigrants for food stamps); Act of Nov. 26, 1997, Pub. L. No. 105-119, § 111(a), (b), 111 Stat. 2440, 2458 (codified at 8 U.S.C. 1255 (1997), 8 U.S.C. 1182 note (1997)) (extending deadline for certain persons to apply for adjustment of status pursuant to Immigration and Nationality Act (INA) § 245(i) to January 18, 1998); Act of Dec. 21, 2000, Title XV ("LIFE Act Amendments"), Pub. L. No. 106-554, § 1502(a)(1), 114 Stat. 2763A-324, 2763A-324 (codified at 8 U.S.C. 1255 (2000)) (extending same deadline to April 30, 2001).

4. Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 4401, 116 Stat. 134, 333–34.

5. See, e.g., HUMAN RIGHTS WATCH, PRESUMPTION OF GUILT: HUMAN RIGHTS ABUSES OF POST-SEPTEMBER 11 DETAINEES (2002).

the states.[6] In one 5-4 opinion after another, the Court has sought to enhance the power of state and local authorities, at the expense of the federal government. Devolution of policy-making authority has enjoyed substantial public support. In addition, legal commentary has argued that the Court's new respect for states' rights should extend beyond the domestic realm to embrace an expanded role for states in foreign affairs.[7] While the events of September 11 have reminded the nation that some policy matters require a federal response, the overall public support for devolution is unlikely to evaporate.

Until recently, principles of federalism in immigration law were relatively uncontroversial. Immigration and immigrants were an exclusively federal concern, and for more than a century, states have been allowed virtually no role in the construction or enforcement of immigration law. Moreover, the Supreme Court has consistently limited the capacity of state and local authorities to regulate the status of legal immigrants, pursuant to both preemption[8] and equal protection doctrines.[9] Thus, applying one or both of these doctrines, the Court has struck down state or local discrimi-

6. See, e.g., United States v. Morrison, 529 U.S. 598 (2000) (invalidating civil remedy provision of Violence Against Women Act as unauthorized by Commerce Clause or Fourteenth Amendment); Printz v. United States, 521 U.S. 898 (1997) (holding Congress may not "commandeer" state executive officials and invalidating portions of Brady Handgun Violence Prevention Act); Bd. of Trs. of the Univ. of Ala. v. Garrett, 531 U.S. 356 (2001) (holding that Congress has not validly abrogated state sovereign immunity as to private discrimination suits for money damages under Americans with Disabilities Act); Alden v. Maine, 527 U.S. 706 (1999) (same, as to private suit in state courts under Fair Labor Standards Act).

7. See, e.g., Peter Spiro, Foreign Relations Federalism, 70 U. COLO. L. REV. 1223 (1999). The Supreme Court recently ducked an opportunity to implement this principle, however, when it declined to trim back the dormant foreign affairs preemption doctrine. Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 374 n.8 (2000) (refusing to revisit Zschernig v. Miller, 389 U.S. 429 (1968)).

8. See, e.g., Toll v. Moreno, 458 U.S. 1, 17 (1982) (invalidating state denial of student financial aid to G-4 visa holder as preempted); Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 419 (1948) (invalidating state restriction on eligibility of permanent residents for commercial fishing licenses as preempted); Hines v. Davidowitz, 312 U.S. 52, 73–74 (1941) (invalidating state immigrant registration system as preempted); Chy Lung v. Freeman, 92 U.S. 275, 280–81 (1875) (invalidating state inspection and bond requirements for new immigrants as preempted).

9. See, e.g., Graham v. Richardson, 403 U.S. 365, 376 (1971) (invalidating state welfare discrimination against permanent residents as violative of equal protection); Takahashi, 334 U.S. at 420 (invalidating anti-immigrant discrimination in commercial fishing license scheme as violative of equal protection); Truax v. Raich, 239 U.S. 33, 43 (1915) (invalidating local employment restriction on immigrants as violative of equal protection); Yick Wo v. Hopkins, 118 U.S. 356, 374

nation against legal immigrants in employment, welfare, and education.[10] On one occasion it has even invalidated state and local discrimination against undocumented immigrants.[11]

By contrast, Congress and the President possess broad power to regulate immigration, and over the same century, the courts have deferred mightily to exercises of that power, leaving immigration laws largely immune from ordinary judicial scrutiny.[12] Similarly, the courts have demonstrated extraordinary deference to the federal regulation of legal immigrants within the United States, even where those regulations discriminate in precisely the ways held invalid when undertaken by states.[13]

Recent developments have destabilized these understandings, however. First, in the 1996 welfare law, Congress authorized states to discriminate against immigrants in public benefits programs.[14]

(1886) (invalidating anti-immigrant laundry licensing scheme as violative of equal protection).

10. See, e.g., Bernal v. Fainter, 467 U.S. 216, 219-20 (1984) (invalidating bar to permanent residents serving as notary publics); Nyquist v. Mauclet, 432 U.S. 1, 12 (1977) (same, as to state restriction on student financial aid); Sugarman v. Dougall, 413 U.S. 634, 646 (1973) (same, as to state prohibition on permanent residents obtaining civil service employment); Graham, 403 U.S. at 376–83 (same, as to welfare discrimination). The Court has recognized an exception for certain state public employment classifications. See Cabell v. Chavez-Salido, 454 U.S. 432, 447 (1982) (upholding as rational state prohibition on non-citizens serving as deputy probation officers); Ambach v. Norwick, 441 U.S. 68, 81 (1979) (same, as to public school teachers); Foley v. Connelie, 435 U.S. 291, 299–300 (1978) (same, as to state troopers).

11. Plyler v. Doe, 457 U.S. 202 (1982) (invalidating denial of public primary and secondary education to undocumented children as violative of equal protection). In one other case involving undocumented immigrants, the Court declined to hold that state restrictions on the employment of such workers were preempted. See De Canas v. Bica, 424 U.S. 351, 365 (1976).

12. To mention but a few examples, see Nguyen v. INS, 533 U.S. 53 (2001) (upholding gender discrimination in naturalization statute); Mathews v. Diaz, 426 U.S. 67, 79–80 (1976) ("In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens."); Fiallo v. Bell, 430 U.S. 787, 799–800 (1977) (upholding federal immigration discrimination based on gender). Commentators have condemned this judicial deference. See, e.g., Gabriel J. Chin, Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration, 46 UCLA L. REV. 1, 5–6 (1998) (criticizing deference as relic of nineteenth-century support for racial separation).

13. See, e.g., Mathews, 426 U.S. at 86–87 (upholding federal Medicare discrimination against legal immigrants); Rodriguez v. United States, 169 F.3d 1342, 1353 (11th Cir. 1999) (same, as to federal food stamps discrimination); Mow Sun Wong v. Campbell, 626 F.2d 739, 744–45 (9th Cir. 1980) (upholding federal discrimination in civil service employment).

14. See 8 U.S.C. § 1612(b)(1) (2000) (authorizing states to determine eligibility of certain immigrants for Medicaid, Temporary Assistance to Needy Families,

Recognizing that state alienage classifications are presumptively invalid under equal protection, Congress specifically attempted to devolve the federal immigration power to the states, so that their welfare discrimination would be treated as immigration lawmaking and immune from close constitutional scrutiny.[15]

Second, the 1996 immigration laws sought to encourage state and local law enforcement officials to collaborate in the enforcement of federal immigration laws. The 1996 provisions authorized state and local law enforcement officials to enter into cooperation agreements with the U.S. Immigration and Naturalization Service ("INS") to permit direct enforcement of the federal immigration laws by local officials;[16] outlawed state and local "anti-snitch" ordinances, such as those adopted in New York, Chicago, and other municipalities, that had barred communications between local agencies and INS;[17] authorized states to deny driver's licenses to all persons "not lawfully present in the United States";[18] and required quarterly reports to the INS from all states that receive Temporary Assistance to Needy Families grants, in which states must list the name, address, and other identifying information of any person known to be "not lawfully present" in the country.[19] Moreover, the

and Title XX block grants); id. § 1622(a) (authorizing states to determine eligibility of certain immigrants for state public benefits programs); id. § 1632(a) (authorizing states to "deem" income and resources of certain poor immigrants to include income and resources of immigrant's sponsor).

15. See 8 U.S.C. § 1601(1) (2000) ("Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes."); id. § 1601(7) (state welfare rules regarding immigrants further "the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy") (emphasis added); see also H.R. CONF. REP. No. 104-725, at 378 (1996), reprinted in 1996 U.S.C.C.A.N. 2649, 2766 ("it continues to be the immigration policy of the United States that noncitizens within the Nation's borders not depend on public resources") (emphasis added); id. at 384 (discussing Graham v. Richardson), reprinted in 1996 U.S.C.C.A.N. at 2772; id. at 386 (same), reprinted in 1996 U.S.C.C.A.N. at 2774; H.R. REP. No. 104-651, at 1445 (same), reprinted in 1996 U.S.C.C.A.N. at 2183, 2504.

16. IIRIRA § 133, 8 U.S.C. § 1357(g) (Supp. V 2000). To date, one such agreement has been executed. See Memorandum of Understanding Between the United States Department of Justice and the State of Florida (July 2002) (copy on file with author); see also IIRIRA § 372(3), 8 U.S.C. § 1103(a)(8) (Supp. V 2000) (granting Attorney General the power to authorize state or local law enforcement authorities to exercise federal immigration powers in event of "actual or imminent mass influx of aliens").

17. IIRIRA § 642, 8 U.S.C. § 1373 (Supp. V 2000). See also City of New York v. United States, 179 F.3d 29 (2d Cir. 1999) (rejecting Tenth Amendment challenge to IIRIRA § 642).

18. IIRIRA § 502, reprinted in 8 U.S.C. § 1621 note (Supp. V 2000).

19. PRA § 404, 42 U.S.C. § 611(a) (Supp. IV 1999).

draconian detention provisions of the 1996 laws have resulted in an increase in immigration detainees, many of whom are held in non-federal correctional facilities in cells rented by INS.

Third, the response to the terrorist attacks of September 11, 2001 has intensified the trend toward local government involvement in immigration enforcement. For instance, the Attorney General famously requested that local officials conduct interviews of Middle Eastern men of a certain age, a demand that met with some resistance on the grounds that the approach was discriminatory, inefficient, and destructive of police-community relations.[20] In addition, many persons arrested in the racial and ethnic dragnet that followed the attacks were detained on immigration charges in county jails, which must defend in litigation federal secrecy policies as applied to locally-held detainees.[21] Perhaps most significantly, in 2002 the U.S. Department of Justice reversed a longstanding position and announced that, in its view, state and local law enforcement officials possess the "inherent authority" to make arrests for civil immigration violations.[22]

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20. See, e.g., Third City in Oregon Balks at Assisting Federal Interviews, N.Y. TIMES, Nov. 30, 2001, at B6 (describing reluctance of local police to participate in interviews).

21. See, e.g., Tamar Lewin, Rights Groups Press for Names of Muslims Held in New Jersey, N.Y. TIMES, Jan. 23, 2002, at A9 (describing lawsuit by American Civil Liberties Union of New Jersey against two county jails for refusal to release names of immigration detainees, alleging violations of state laws). But see ACLU of N.J. v. County of Hudson, 799 A.2d 629 (N.J. App. Div. 2002) (federal regulation promulgated after trial court ordered disclosure of names of detainees preempts state right-to-know and jailkeeper laws).

22. Compare Theresa Wynn Roseborough, Deputy Assistant Attorney General, Office of Legal Counsel, Assistance by State and Local Police in Apprehending Illegal Aliens (memorandum for the U.S. Att'y for the S.D. Cal.) (Feb. 5, 1996), 1996 WL 33101164 (finding no inherent state or local authority to make civil immigration arrests) with Letter from Alberto R. Gonzales, Counsel to the President, to Demetrios G. Papademetriou, June 24, 2002, reprinted in 7 BENDER'S IMMIGR. BULL. 964 (Aug. 1, 2002) ("[T]he Justice Department's Office of Legal Counsel has concluded that state and local police have inherent authority to arrest and detain persons who are in violation of immigration laws. . . ."). There is strong reason to believe that the Department of Justice's recent change of position is legally invalid, and that by enacting a detailed scheme for state or local enforcement of immigration laws, see supra n. 16, Congress has preempted any inherent authority state or local officials may possess. See Jeff Lewis, et al., Authority of State and Local Officers to Arrest Aliens Suspected of Civil Infractions of Federal Immigration Law, 7 BENDER'S IMMIGR. BULL. 944 (Aug. 1, 2002) (concluding that state and local officials lack inherent authority to "make arrests for civil violations of the INA" and may enforce civil immigration laws only where expressly authorized by federal and state law).

The papers that follow address the intersection of aggressive immigration lawmaking and general devolution of policy-making authority from federal to state and local authorities. I have argued that the immigration power is an exclusively federal one, which Congress may not by statute devolve to the states.[23] Nor, in my view, may Congress devolve the substantial immunity from judicial scrutiny that normally attends the exercise of that power.[24] The participants in this symposium explore the doctrinal and policy implications of immigration devolution, in areas where devolution has already occurred, such as welfare rules and immigration law enforcement, and in areas as yet untouched. The authors approach these questions from a number of different perspectives and, not surprisingly, disagree on the lawfulness and wisdom of immigration devolution. Together their contributions present a rich analysis of the doctrinal and policy questions raised by these important developments.

Ellen M. Yacknin is a fierce critic of the claim that states lawfully may, and as a matter of policy should be allowed to, discriminate against legal immigrants in their welfare programs, even with federal authorization to do so. As a legal services attorney at the Greater Upstate Law Project, Ms. Yacknin represented twelve seriously ill, indigent, legal immigrants who brought a class-action challenge to New York's discriminatory medical assistance rules and prevailed before the state's highest court.[25] In Aliessa v. Novello,[26] Ms. Yacknin's clients won the first case in the country to contest federally-authorized, state-imposed anti-immigrant discrimination. In her article, she offers an insider's account of the landmark litigation and a close analysis of the Court of Appeals' unanimous opinion. From the perspective of a civil rights advocate, Ms. Yacknin sketches the implications of the Aliessa decision for millions of poor immigrants and their advocates around the country. She argues that the Aliessa rule will benefit noncitizens, because over time many states will be inclined to discriminate, but Congress is unlikely to compel state discrimination in state-funded programs even if states follow the New York Court of Appeals and forbid it.

23. Michael J. Wishnie, Laboratories of Bigotry? Devolution of the Immigration Power, Equal Protection, and Federalism, 76 N.Y.U. L. REV. 493, 527–58 (2001).

24. I conclude therefore that the range of post-1996 state welfare rules that discriminate against legal immigrants are subject to heightened scrutiny and presumptively invalid. Id. at 567. See also Aliessa v. Novello, 754 N.E.2d 1085, 1098–99 (N.Y. 2001) (applying strict scrutiny to invalidate state welfare discrimination against immigrants despite federal authorization).

25. Aliessa, 754 N.E.2d at 1088–89.

26. Id. at 1098–99.

Emphasizing a public policy analysis that yields a very different conclusion from that of Ms. Yacknin, Howard F. Chang defends devolution of the federal immigration power in the context of post-1996 state welfare rules. Taking them in turn, Professor Chang rejects each of the various policy rationales offered in opposition to federal authorization of state anti-immigrant welfare discrimination. Beginning with the claimed needs for uniformity in naturalization and protection of the right of interstate travel, he observes that immigration law already incorporates divergent state criminal or marriage laws and that state welfare rules already reflect widely varying standards. As for antidiscrimination principles, Professor Chang acknowledges that the consequences of a rule of non-devolvability are at least uncertain, but concludes that adoption of such a rule might well result in more discrimination against immigrants, at the federal and state levels, than a policy that tolerates state variation and admits of the possibility of "laboratories of generosity." Finally, Professor Chang contends that neither the doctrinal principles nor political accountability concerns underlying the non-delegation doctrine justify its rejection. His thoughtful essay poses a strong challenge to those who would resist immigrant devolution on grounds of policy or principle.

Peter Schuck begins by discussing devolution and immigration law from a comparative perspective. He observes that the movement toward devolution of government decision-making is an extraordinarily powerful force around the world, even in countries with strong nationalist traditions. Professor Schuck also reminds us that the contemporary United States preference for federal immigration lawmaking is far from inevitable, as sub-federal entities in countries such as Canada, Germany, and Switzerland have significant responsibility in making and enforcing immigration policies. He cautions, however, that before state and local authorities in the United States can plausibly play an expanded role in the system for deportation of immigrants with criminal convictions, information systems must be improved and safeguards against abuse by local officials must be developed. As for state welfare discrimination, Professor Schuck emphasizes that state policies vary on nearly every conceivable subject, and moreover the "race to the bottom" predicted by many commentators upon enactment of the 1996 welfare act has yet to materialize. Thus he suggests that those who advocate an exception from the general rule favoring state policy choice must make their case on some other basis. Finally, Professor Schuck comments that an important aspect of immigration and federalism is the severe gap between state revenues collected from im-

migrants and state expenditures made on their behalf, a gap which is unjust and warrants federal intervention.

Muzaffar Chishti offers a more critical analysis of the states' expanding role in immigration policy. One of the labor movement's leading immigration theorists, Mr. Chishti is skeptical of the trend toward increased cooperation between INS and local law enforcement agencies. He argues that effective law enforcement depends on the development of a relationship of trust between local police and the communities they serve, but that police cooperation with INS is destructive of this trust and will discourage complainants and witnesses from sharing information with police. The same is true for civil law enforcement authorities, such as those responsible for investigating and remedying workplace abuses. In addition, Mr. Chishti writes, the sheer complexity of immigration laws will inevitably lead to mistakes by local police untrained in the law and to reliance on racial and ethnic profiling as a proxy for immigration status. Turning to welfare policy, Mr. Chishti notes that most immigrants who have entered the United States after 1996 have had little access to the social safety net, welfare use by mixed households has diminished due to eligibility confusion, and the new emphasis on work requirements in welfare programs specially disadvantages immigrants with limited English proficiency. More broadly, Mr. Chishti condemns the entrenchment of "immigrant exceptionalism," a notorious aspect of federal constitutional law, into state welfare policies, as well as the growing divide between a liberal and inclusive immigrant admission policy and an exclusive and fragmented set of policies affecting noncitizens after entry. He concludes by noting that one consequence of the harsh new laws has been a large increase in naturalization applications, which may lead to yet more policy reforms.

Victor C. Romero situates his analysis of the status-based disabilities that result from the recent changes to welfare, immigration, and criminal laws in both critical race theory and the history of immigration law. Professor Romero explains that there is little reason to expect that immigration policy made by the states will be any less race-based than that made and enforced by the federal government, as racism has long dominated all levels of government. Despite his resultant pessimism about the impact of devolution of welfare and immigration law enforcement on noncitizens, Professor Romero suggests that there might nevertheless be some surprising advantages in allowing states a greater role in immigration lawmaking. For instance, he contends that devolution might benefit same-gender bi-national couples, who could conceivably petition for im-

migration benefits were Vermont's civil union statute recognized under the immigration laws, in the same manner that federal immigration law incorporates state criminal, marriage, and welfare laws. Thus Professor Romero concludes that devolution is likely to be a mixed blessing, leading to many undesirable results but also creating some opportunity for progressive states to have a positive influence on the development of immigration law.

Susan M. Akram and Kevin R. Johnson examine the vilification of Arabs and Muslims in this country's political, popular, and legal cultures and the ways in which this demonization has influenced the development and enforcement of immigration law. They detail the endemic stereotyping of Arabs and Muslims in popular media, the frequent scapegoating of Arab or Muslim nations by political leaders, and the selective targeting of Arabs and Muslims in immigration proceedings such as the "L.A. Eight" and secret evidence cases. Professors Akram and Johnson argue that the nation's response to the terrorist attacks of September 11 reflects an intensification of the historic stereotyping of persons of Arab or Muslim ancestry. They conclude that the racial and ethnic profiling that has dominated the anti-terrorism campaign—the dragnet arrests of more than 1,200 Arab or Muslim immigrants, interviews of 5,000 men of certain ages and national origin, intentional delays of visa processing in Arab nations, mass arrests of nonimmigrant student visa violators from Arab and Muslim countries, and targeted efforts to remove persons from Middle Eastern countries with outstanding deportation orders—operates further to entrench deeply destructive stereotypes of Arabs and Muslims as disloyal and dangerous. Moreover, they maintain, this campaign is likely to have long-term implications for civil rights in this country. Professors Akram and Johnson predict that the aftermath of September 11 may well include further tightening of the immigration laws, resistance to progressive immigration reforms such as regularization of status, and popular support for expanded reliance on explicit racial profiling in law enforcement.

Without question, the confluence of the movements to reform immigration law and contemporary federalism arrangements will pose new challenges to old understandings in both fields. Together, the papers of this symposium identify a series of issues raised by the new immigration federalism that are likely to have a significant influence on civil rights law, immigration policy, and the allocation of power between federal and state government. The wisdom and lawfulness of expanding state authority to engage in immigration lawmaking and enforcement, in areas from welfare

rules to local enforcement of federal immigration laws, will engage courts, legislatures, and executive branch officials for many years to come. The diverse views manifested in these papers evidence the complexity of the questions raised by immigration devolution, and, fortunately, supply a useful roadmap to their sound resolution.