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RISING UP WITHOUT PUSHING DOWN: LESSONS LEARNED FROM THE SUFFRAGETTES' ANTI-IMMIGRANT RHETORIC

KIT JOHNSON[†]

American suffragist Elizabeth Cady Stanton famously wrote: “We hold these truths to be self-evident; that all men and women are created equal.”¹ Yet when suffragettes spoke of “all” men and women, they were clear about exceptions. Immigrants did not qualify. Indeed, in her own address at the First Women’s Rights Convention, held in Seneca Falls, New York, in July 1848, Stanton said that “to have . . . ignorant foreigners . . . fully recognized, while we ourselves are thrust out from all the rights that belong to citizens, it is too grossly insulting to the dignity of woman to be longer quietly submitted to.”²

This Article begins with an exploration of the anti-immigrant rhetoric of the suffragettes, noting how their nativist approach helped to secure the ultimate passage of the Nineteenth Amendment. Next, this Article explores modern parallels to the suffragettes’ story, where nativist approaches propelled success for movements around issues, people, and political parties. Finally, this Article calls upon the modern

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¹ Elizabeth Cady Stanton, Declaration of Sentiments, Seneca Falls Convention (July 20, 1848) [hereinafter Declaration of Sentiments]. Readers today may be more familiar with the similar turn of phrase from the fictionalized Angelica Schuyler in the Broadway musical *Hamilton*, who, after quoting the selfsame portion of the Declaration of Independence, followed up with “when I meet Thomas Jefferson . . . I’m ‘a compel him to include women in the sequel!” LIN-MANUEL MIRANDA & JEREMY MCCARTER, *HAMILTON: THE REVOLUTION* 44 (2016).

² Elizabeth Cady Stanton, Address Delivered at Seneca Falls (July 19, 1848), in ELIZABETH CADY STANTON & SUSAN B. ANTHONY: CORRESPONDENCE, WRITINGS, SPEECHES 27, 32 (Ellen Carol DuBois ed., 1981) [hereinafter STANTON & ANTHONY].

women's movement to take a different path: rising up without pushing down.

I. NATIVISM AND THE NINETEENTH AMENDMENT

In the 1800s, alien suffrage existed in some twenty-two states and territories across the United States.³ That is to say, in these locations, noncitizens living in the United States who were not yet naturalized had the right to vote.⁴ Some states allowed their noncitizen residents to vote because these individuals were understood to be citizens of the state itself and there was an unclear relationship between state and national citizenship at the time.⁵ As for territories, the federal government offered voting rights in exchange for settlement, granting elected representatives based on the number of "free male inhabitants" in an area rather than the number of natural-born and naturalized male citizens.⁶

Female citizens of the United States, however, could not vote. And this dichotomy rankled many suffragists.⁷ From the beginning, leaders compared and contrasted the "ignorant and

³ See Leon E. Aylsworth, *The Passing of Alien Suffrage*, 25 AM. POL. SCI. REV. 114, 114 (1931); see also GERALD L. NEUMAN, STRANGERS TO THE CONSTITUTION: IMMIGRANTS, BORDERS, AND FUNDAMENTAL LAW 63 (1996) ("The inclusion of some alien residents with other residents in the electorate became a widespread practice over the course of the nineteenth century."). There are examples of alien suffrage that predate the 1800s. See, e.g., Virginia Harper-Ho, *Noncitizen Voting Rights: The History, the Law and Current Prospects for Change*, 18 LAW & INEQ. 271, 274 (2000) (citing examples from 1692, 1704, 1747, and 1787).

⁴ See Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1393 (1993).

⁵ NEUMAN, *supra* note 3, at 64; see also Raskin, *supra* note 4, at 1400 (noting early state citizenship was given "extraterritorial consequences" as a result of "the privileges and immunities clause of the Articles of Confederation"); *id.* at 1411-12 ("[T]here may be a citizen of a state who is not a citizen of the United States in the full sense of the term. This result would seem to follow unavoidably from the nature of the two systems of government." (quoting *In re Wehlitz*, 16 Wis. 468, 470-71 (Wis. 1863))).

⁶ NEUMAN, *supra* note 3, at 64-65; see also Raskin, *supra* note 4, at 1402 ("[T]he United States Congress used alien suffrage in an instrumental way to produce immigration in the northwest territories.").

⁷ Of course, the suffragist movement was not a monolithic one. While this Section focuses on nativist rhetoric employed by recognized leaders of the fight for women's right to vote, there were other suffragettes who defended the rights of immigrants, particularly after the turn of the century. See, e.g., AILEEN S. KRADITOR, *THE IDEAS OF THE WOMAN SUFFRAGE MOVEMENT, 1890-1920*, at 138-39 (1981).

degraded” voting foreigner⁸ with the “moral quality”⁹ of the disenfranchised woman. Elizabeth Cady Stanton articulated this disjunction at the First Women’s Rights Convention,¹⁰ and many other suffragists repeated it over the next seventy-two years of the women’s suffrage movement.

Lucy Stone, who organized the first national Women’s Rights Convention two years after Seneca Falls,¹¹ questioned why “[t]he meanest foreigner who comes to our shores, who can not speak his mother-tongue correctly, has secured for him the right of suffrage,” but not women.¹² A Massachusetts woman’s paper called *The Una* made a similar case for suffrage a few short years later:

It would be a disgrace to our schools and civil institutions, for any one to argue that a Massachusetts woman who has enjoyed the full advantage of all their culture, is not as competent to form an opinion on civil matters, as the illiterate foreigner landed but a few years before upon our shores—unable to read or write—by no means free from early prejudices, and little acquainted with our institutions. Yet such men are allowed to vote.¹³

What do we make of this? At least two interpretations are plausible. One: suffragettes were xenophobic hatemongers trying to lift themselves up by pushing down. Or two: suffragettes were

⁸ Declaration of Sentiments, *supra* note 1; *see also* 2 HISTORY OF WOMAN SUFFRAGE 88, 158, 188, 307, 788, 815 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joslyn Gage eds., 1881) [hereinafter HISTORY VOL. 2] (referencing the “ignorant foreigner”); 3 HISTORY OF WOMAN SUFFRAGE 53, 64, 356, 724 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joslyn Gage eds., 1886) (referencing the “ignorant foreigner”); 4 THE HISTORY OF WOMAN SUFFRAGE 74, 415 (Susan B. Anthony & Ida Husted Harper eds., 1902) [hereinafter HISTORY VOL. 4] (referencing the “unenlightened foreigner” and “ignorant foreigners”); 5 THE HISTORY OF WOMAN SUFFRAGE 77 (Ida Husted Harper ed., 1922) [hereinafter HISTORY VOL. 5] (referencing the “the mass of ignorant immigrants who almost go from the steerage to the polls”).

⁹ Stanton, *supra* note 2, at 30.

¹⁰ *Id.*

¹¹ Debra Michals, *Lucy Stone*, NAT’L WOMEN’S HIST. MUSEUM (2017), <https://www.womenshistory.org/education-resources/biographies/lucy-stone> [<https://perma.cc/CX2C-2X7F>].

¹² Letter from Lucy Stone for the Woman’s Rights Convention (Apr. 10, 1850), in 1 HISTORY OF WOMAN SUFFRAGE 813, 813 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joslyn Gage eds., 1881) [hereinafter HISTORY VOL. 1]; *see also* Comments of Lucy Stone at the Westchester Woman’s Rights Convention (1852), in HISTORY VOL. 1, *supra*, at 524, 524 (questioning why “the foreigner who can’t speak his mother tongue” should be “entrusted with the ballot” but not women).

¹³ HISTORY VOL. 1, *supra* note 12, at 248.

making a reasoned argument that if the “meanest foreigner”¹⁴ was able to vote without grave damage to the republic, then it was both fair and sound to entrust the vote to the educated American woman. The answer is probably, predictably, something of both.

From our modern perspective, the most accessible view is likely to see the words of suffragists as repulsive scapegoating. Yet the latter, more benign view is plausibly supported by looking at some anti-suffragist rhetoric of the time—what suffragettes may have been working to counter. This anti-suffragist rhetoric raised concerns about the consequences of “the great mass of ignorant women’s votes,”¹⁵ as some thought women were more likely to vote for a “[h]andsome’ candidate” than on the basis of careful thought about politics.¹⁶

Whether these early suffragettes employed nativist rhetoric jingoistically or legalistically is not easily answered. We do know that the women’s movement experienced a pause in the early 1860s, as the Civil War “absorbed every other interest.”¹⁷ Suffragettes “who had so zealously worked for their own rights, were just as ready to help others”¹⁸ during the war by working in hospitals, supporting the United States Sanitary Commission, and taking care of family farms and businesses while men fought on the battlefield.¹⁹ Women also obtained signatures in support of emancipation, advised on military matters, and held federal employment.²⁰ Suffragettes hoped that “the lofty expressions of sentiment and frank admissions of gratitude for their war sacrifices”²¹ and their “unexpected but admittedly decisive help”²² during the war would result in granting them the right to vote. It did not. Instead, Congress passed the Fourteenth Amendment in 1868, explicitly guaranteeing the right of “*male* inhabitants” to vote.²³

¹⁴ *Id.* at 813.

¹⁵ KRADITOR, *supra* note 7, at 31.

¹⁶ *Id.* at 23.

¹⁷ HISTORY VOL. 1, *supra* note 12, at 310.

¹⁸ *Id.*

¹⁹ *Id.*; see also ELLEN CAROL DUBOIS, SUFFRAGE: WOMEN’S LONG BATTLE FOR THE VOTE 49 (2020) (discussing women’s work during the Civil War, including those women who disguised their gender and took up arms).

²⁰ CARRIE CHAPMAN CATT & NETTIE ROGERS SHULER, WOMAN SUFFRAGE AND POLITICS: THE INNER STORY OF THE SUFFRAGE MOVEMENT 35–36 (1923).

²¹ *Id.* at 34.

²² *Id.* at 36.

²³ U.S. CONST. amend. XIV, § 2 (emphasis added).

Following the Civil War, women once again took up the cause of female suffrage. Educated, white suffragists returned to their pre-war nativist arguments,²⁴ now amplified by outrage over the fact that uneducated freed black men obtained the vote before them.²⁵ Stanton, despite being an early abolitionist,²⁶ began lumping immigrants and freed slaves together in the “ignorant and degraded” category she identified decades earlier, calling on individuals to think, no doubt with horror, of the consequences of “Patrick and Sambo and Hans and Young Tung . . . making the laws.”²⁷ Even if some suffragette rhetoric about immigrants can be viewed as careful lawyering, this language cannot. By invoking what was understood at the time to be clearly offensive language,²⁸ Stanton cannot be said to be using nativist language as a pure legal argument to justify female suffrage. We need to acknowledge this invective for what it was: hate-filled vitriol designed to lift educated white women by pushing down those deemed less worthy of the franchise.

Nativist arguments did not die off in the decades following the Civil War. The 1893 National American Woman Suffrage Association (NAWSA) convention passed the following resolution:

[T]hat without expressing any opinion on the proper qualifications for voting, we call attention to the significant facts that in every State there are more . . . American women who can read and write than all foreign voters; so that the

²⁴ See, e.g., HISTORY VOL. 2, *supra* note 8, at 124 (“The great mass of our educated females understand all these great concerns of government infinitely better than that great mass of ignorant population from other countries which you admit to the polls without hesitation.” (quoting Senator Benjamin Wade, who supported suffrage in a speech to the Senate in 1866)).

²⁵ See Hannah Jewell & Grace Raver, *How Racism Tore Apart the Early Women’s Suffrage Movement*, LILY (Sept. 8, 2020), <https://www.thelily.com/how-racism-tore-apart-the-early-womens-suffrage-movement/> [<https://perma.cc/EQ49-MKCK>].

²⁶ STANTON & ANTHONY, *supra* note 2, at 8.

²⁷ DUBOIS, *supra* note 19, at 73 (alteration in original) (citing the speech Elizabeth Cady Stanton delivered at the 1869 National Convention, in HISTORY VOL. 2, *supra* note 8, at 353). Stanton did not shy away from racial and ethnic slurs. See HISTORY VOL. 2, *supra* note 8, at 94 n.* (“[I]t becomes a serious question whether we had better stand aside and see ‘Sambo’ walk into the kingdom first.” (quoting Letter from Elizabeth Cady Stanton to the Editor of *The Standard* (Dec. 26, 1865)); *id.* at 270 (questioning why “claims of Sambo, Patrick, Hans and Yung Fung to the ballot” should be supported before the women’s vote).

²⁸ See, e.g., Caldwell Ticomb, *Commentary: Tracing the Roots of “Sambo” Reveals History of an Insult*, BAY STATE BANNER, Dec. 4, 1978 (noting the word “Sambo” had a “uncomplimentary flavor long ago” citing its use in a 1841 New Orleans paper to “sneeringly refer to black males”).

enfranchisement of such women would settle the vexed question of rule by illiteracy²⁹

One could read this resolution as a return to the reasoning arguably invoked decades earlier—that women were educated and informed in contrast to ignorant foreigners. Indeed, this was the argument put forth by suffragette Emma Smith DeVoe, who traveled around South Dakota in an effort to convince the state to vote for female suffrage in the election of 1890.³⁰ She rallied supporters by arguing that a foreigner could move to the United States without “property or knowledge of our institutions” and still gain the right to vote, whereas a (white) American woman, educated, resourceful, owning property, and paying taxes, was denied that same privilege.³¹

But other invocations of the ignorant foreign vote cannot so easily be attributed to potentially benign argumentation. Some suffragists spring-boarded off the “ignorant” trope to inject a level of fearmongering that was not present in the language of early suffragettes. Consider leading suffragist Carrie Chapman Catt,³² who proclaimed in 1894 that “[t]his Government is menaced with great danger . . . the ignorant foreign vote.”³³ Catt argued that only the women’s vote could avert such danger.³⁴ Then, at the 1901 convention of NAWSA, now-president Catt spoke about the “ill-advised haste” with which the United States “enfranchised the foreigner, the negro, and the Indian.”³⁵ In characterizing alien suffrage as hasty and dangerous, Catt’s nativist rhetoric more closely mimics Stanton’s unfortunate post-Civil War invective than the pure argumentation found in *The Una* decades before.

As the women’s suffrage movement continued into the twentieth century and the start of World War I, the nativist rhetoric of suffragettes continued, and it gained traction. Anna Howard Shaw, another president of NAWSA, stumped across the

²⁹ KRADITOR, *supra* note 7, at 131.

³⁰ SARA EGGE, *WOMAN SUFFRAGE AND CITIZENSHIP IN THE MIDWEST, 1870–1920*, at 104 (2018).

³¹ *Id.* (quoting Emma Smith DeVoe).

³² Catt later founded the League of Women Voters. Debra Michals, *Carrie Chapman Catt*, NAT’L WOMEN’S HIST. MUSEUM (2015), <https://www.womenshistory.org/education-resources/biographies/carrie-chapman-catt> [https://perma.cc/SJS3-GEXD].

³³ KRADITOR, *supra* note 7, at 125.

³⁴ *Id.*

³⁵ SARA HUNTER GRAHAM, *WOMAN SUFFRAGE AND THE NEW DEMOCRACY* 22 (1996).

Midwest in favor of suffrage.³⁶ Along the way, she made two interrelated points about immigrant voters.³⁷ First, she revived the long-standing suffragist description of immigrants as “astonishingly ignorant,”³⁸ frequently recounting the story of a naturalization hearing where the noncitizen did not know the name of the president of the United States.³⁹ She contrasted the value of such a voter with the potential of educated women not yet allowed to vote.⁴⁰ This, of course, is familiar ground. What’s new is that Shaw also warned that German immigrants, in particular, were using their votes to “sabotage democratic policies.”⁴¹ The women’s vote would, Shaw argued, be “a shield against the evil schemes of foreign traitors.”⁴² Women voters, in contrast to foreigners, were loyal to the United States.⁴³ Questioning of the motives of noncitizen voters was both new and potentially explosive: identifying United States residents as “foreign traitors” would undoubtedly have consequences far beyond the cause of female suffrage. Indeed, ultimately, many German citizens in the United States were interned before the end of World War I on the basis of their questionable loyalties.⁴⁴

When efforts to obtain suffrage failed time and again, suffragists blamed the alien vote. Shaw lamented: “The fact that our Cause could be defeated by ignorant laborers newly come to our country was a humiliating one to accept”⁴⁵ NAWSA president Catt, along with Nettie Rogers Shuler, the corresponding secretary for NAWSA,⁴⁶ wrote that decades of

³⁶ EGGE, *supra* note 30, at 128.

³⁷ *Id.* at 128–29.

³⁸ *Id.* at 129. *Cf. supra* notes 8–9 and accompanying text.

³⁹ EGGE, *supra* note 30, at 129.

⁴⁰ *Id.* Shaw spoke about the humiliation of educated women being governed by uneducated foreign men. KRADITOR, *supra* note 7, at 126.

⁴¹ EGGE, *supra* note 30, at 129.

⁴² *Id.*

⁴³ *Id.* at 130.

⁴⁴ See, e.g., Adam Klein & Benjamin Wittes, *Preventive Detention in American Theory and Practice*, 2 HARV. NAT’L SEC. J., 85, 103–04 (2011) (noting some 6,300 “enemy aliens” were arrested during World War I and roughly 2,300 of those 6,300 were held in internment camps).

⁴⁵ ANNA HOWARD SHAW, *THE STORY OF A PIONEER* 251 (1915). Shaw’s comments on the presidential veto of a literacy requirement for immigrants fell along similar lines, questioning just why it was that the government believed “male ignorance is so much less ignorant than female ignorance,” the latter being so often the reason given by those opposed to their voting. See WIL A. LINKUGEL & MARTHA SOLOMON, *ANNA HOWARD SHAW: SUFFRAGE ORATOR AND SOCIAL REFORMER* 151 (1991).

⁴⁶ *Shuler, Nettie Rogers (1862–1939)*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/women/dictionaries-thesauruses-pictures-and-press->

campaigns for suffrage had been defeated “each time by a mobilization of this alien vote.”⁴⁷ Stanton, too, blamed the “ignorant vote,” by which she meant the vote of noncitizens, as “solid[ly] against woman’s emancipation.”⁴⁸ The Women’s Christian Temperance Union Collection went so far as to argue that defeat of women’s suffrage was the result of voter fraud by Germans.⁴⁹

After America joined the war in 1917, suffragists’ nativist argumentation grew still more fervent. Suffragists stressed the many sacrifices made by female citizens during the war and contrasted those contributions with the questionable loyalties of German-born immigrants.⁵⁰ As they had during the Civil War, suffragists took leadership positions in organizations supporting the United States’ efforts in World War I, such as the American Red Cross,⁵¹ seeking to prove themselves more fit voters than foreigners from countries with which they were at war.⁵² Shaw wrote that without the efforts of these dedicated (if disenfranchised) women, “the war could never have been won.”⁵³

The suffragists’ arguments ultimately won the support of President Woodrow Wilson. Before the war’s end, on September 30, 1918, Wilson addressed the Senate in support of female suffrage.⁵⁴ He exhorted the senators to accept suffrage as fair exchange for the work women were doing in the war:

We have made partners of the women in this war; shall we admit them only to a partnership of suffering and sacrifice and

releases/shuler-nettie-rogers-1862-1939 [https://perma.cc/V653-2DXX] (last visited Feb. 9, 2021).

⁴⁷ CATT & SHULER, *supra* note 20, at 293; *see also id.* at 138 (noting the organization of “the Russian vote against woman suffrage in the Dakotas, the German vote in Nebraska, Missouri and Iowa, . . . the Chinese vote in California”); *id.* at 210 (laying defeat of suffrage in 1916 at the feet of German brewers who feared temperance would follow female suffrage).

⁴⁸ Elizabeth Cady Stanton, *The Significance and History of the Ballot*, in HISTORY VOL. 4, *supra* note 8, at 316, 316–17.

⁴⁹ EGGE, *supra* note 30, at 145.

⁵⁰ *Id.* at 153.

⁵¹ *Id.* at 160.

⁵² *Id.* at 178; *see also* Sara Egge, *How Midwestern Suffragists Won the Vote by Attacking Immigrants*, SMITHSONIAN MAG. (Sept. 17, 2018), <https://www.smithsonianmag.com/history/how-midwestern-suffragists-won-vote-by-attacking-immigrants-180970298/> [https://perma.cc/H7NG-LDTT] (“In South Dakota, propaganda warned of the untrustworthy ‘alien enemy’ while celebrating patriotic suffragists who sacrificed ‘so deeply for the world struggle.’”).

⁵³ ANNA HOWARD SHAW, WHAT THE WAR MEANT TO WOMEN 5 (1918).

⁵⁴ *See generally* Woodrow Wilson, Address to the Senate on the Nineteenth Amendment (Sept. 30, 1918).

toil and not to a partnership of privilege and right? This war could not have been fought . . . if it had not been for the services of the women—services rendered in every sphere—not merely in the fields of effort in which we have been accustomed to see them work, but wherever men have worked and upon the very skirts and edges of the battle itself.⁵⁵

Of particular interest, given women's hopes for suffrage following the Civil War, Wilson went on to say that he supported women's suffrage "as I would propose to admit soldiers to the suffrage, the men fighting in the field for our liberties and the liberties of the world, were they excluded."⁵⁶

Wilson not only praised women's war efforts, he praised the voting character of women, describing them as "noble," "intelligent," and "devoted,"⁵⁷ mirroring the suffragettes' own talking points. He declared them the opposite of "slackers,"⁵⁸ an incongruously modern term but one that Catt herself had used when speaking to Congress a few months prior to Wilson's speech, in a decidedly nativist context:

When the election comes who will do the voting? Every "slacker" has a vote; every newly-made citizen; every pro-German who cannot be trusted with any kind of war service; . . . every conscientious objector and even the alien enemy. It is a risk, a danger, to a nation like ours to send millions of loyal men out of the country and not replace their votes by those of the loyal women left at home.⁵⁹

Nine months after Wilson's speech, Congress passed the Nineteenth Amendment to the United States Constitution, supporting the right of women to vote.⁶⁰ The amendment then went to the states for ratification. It took a little over a year, but the Nineteenth Amendment became law when the thirty-sixth state, Tennessee, ratified it on August 18, 1920.⁶¹

Some scholars, notably historian and professor Sara Egge, have identified the suffragists' anti-immigrant rhetoric as a key component that helped to convince states to ratify the

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ HISTORY VOL. 5, *supra* note 8, at 582.

⁶⁰ See Michael Levy, *Nineteenth Amendment: United States Constitution*, BRITANNICA, <https://www.britannica.com/topic/Nineteenth-Amendment> [<https://perma.cc/VZ3V-CPTA>] (last modified Aug. 28, 2020).

⁶¹ *Id.*

amendment securing the female vote.⁶² What remains unclear, however, is the extent to which the suffragists' invocation of nativism was (1) instrumentalist—that is, just an argument used to gain the vote, (2) a product of its time—as in “everyone hated German immigrants during World War I,” or (3) truly hateful. Yet perhaps the answer to this question is less relevant than simply the asking of it. Maybe the most important thing is to acknowledge the fact that anti-immigrant rhetoric was a go-to for suffragettes from the very beginning and throughout the ensuing seven decades of their quest to vote.

II. THE PERENNIAL APPEAL OF NATIVISM⁶³

The anti-immigrant rhetoric of suffragettes followed a well-worn path: rising up while pushing down. The temptation for one political group to pursue gains by vilifying non-nationals is strong, in large part because doing so works. In this section, I explore modern examples of issue success, personal success, and party success all owed to nativist appeals.

A strong example of issue success based on nativism comes from California in the early 1990s. California was struggling financially.⁶⁴ The state was in a deep recession⁶⁵ and reeling from the closure of military bases and reduction of the state's once-dominant aerospace industry.⁶⁶ Ten state residents responded by drafting the “Save Our State” initiative, which became the statewide ballot initiative Proposition 187.⁶⁷

⁶² EGGE, *supra* note 30, at 184; Egge, *supra* note 52; *see also* LOUISE MICHELE NEWMAN, *WHITE WOMEN'S RIGHTS: THE RACIAL ORIGINS OF FEMINISM IN THE UNITED STATES* 59 (1999) (“In the Northeast and Midwest . . . , woman suffrage was debated along with immigration restriction . . . , and the northern states' ratification of the Woman Suffrage Amendment in 1920 was soon followed by the passage of national legislation restricting immigration in 1923.”).

⁶³ ROBIN DALE JACOBSON, *THE NEW NATIVISM: PROPOSITION 187 AND THE DEBATE OVER IMMIGRATION*, at xxi (2008) (“Nativism, opposition to a minority on the basis of their ‘foreignness,’ is a consistent, and evolving, strain in American history.”).

⁶⁴ *See id.* at xx.

⁶⁵ *1998 Cal Facts: California's Economy*, CAL. LEGIS. ANALYST'S OFF. (Dec. 1998), https://lao.ca.gov/1998/1998_calfacts/98calfacts_economy.html [<https://perma.cc/ZY95-NS3P>]; *see also* James Sterngold, *A Changing California Emerges from Recession*, N.Y. TIMES (Mar. 29, 1995) (describing the recession in California in the early 1990s as “brutal”).

⁶⁶ JACOBSON, *supra* note 63, at xvi.

⁶⁷ *Id.* at xiii; BILL ONG HING, *TO BE AN AMERICAN: CULTURAL PLURALISM AND THE RHETORIC OF ASSIMILATION* 30 (1997); *see also* Scott L. Cummings, *Law and*

Proposition 187 sought to exclude undocumented migrants from public social services, publicly funded healthcare, public elementary and secondary schools, and public postsecondary educational institutions.⁶⁸ It also required social service agencies and schools to report undocumented migrants to the United States Immigration and Naturalization Service (INS),⁶⁹ the entity then in charge of national immigration enforcement.⁷⁰ The text of the initiative opened with “The people of California find and declare as follows: That they have suffered and are suffering economic hardship caused by the presence of illegal aliens in this state.”⁷¹

The campaign waged in advance of the vote on Proposition 187 was “spirited,”⁷² “hotly contested,”⁷³ “rancorous,”⁷⁴ “tumultuous,”⁷⁵ and “racially-charged.”⁷⁶ Facially, the initiative was about bailing California out of its financial woes by cutting off perceived state support for unauthorized migration.⁷⁷ Despite this fiscal hook, or in support of it, proponents of the proposition used decidedly nativist rhetoric to win voters to their cause. One sponsor stated that “[i]llegal aliens are killing us in California,” continuing: “Those who support illegal immigration are, in effect, anti-American.”⁷⁸ Another warned that unfettered migration could lead to the annexation of California into Mexico.⁷⁹ Even

Social Movements: Reimagining the Progressive Cannon, 2018 WIS. L. REV. 441, 480 (describing Proposition 187 as “the apotheosis of nativism”).

⁶⁸ CAL. ATT’Y GEN., ILLEGAL ALIENS. INELIGIBILITY FOR PUBLIC SERVICES. VERIFICATION AND REPORTING. CALIFORNIA PROPOSITION 187, at 51 (1994), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2103&context=ca_ballot_props [https://perma.cc/CTQ6-APRF].

⁶⁹ *Id.*

⁷⁰ Kit Johnson, *Women of Color in Immigration Enforcement*, 21 NEVADA L.J. (forthcoming 2021).

⁷¹ CAL. ATT’Y GEN., *supra* note 68, at 91.

⁷² Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California’s Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 629, 652 (1995).

⁷³ *Id.*

⁷⁴ Kevin R. Johnson, *Proposition 187 and Its Political Aftermath: Lessons for U.S. Immigration Politics After Trump*, 53 U.C. DAVIS L. REV. 1859, 1862 (2020).

⁷⁵ *Id.* at 1868.

⁷⁶ *Id.* at 1862.

⁷⁷ See Johnson, *supra* note 72, at 653–58 (noting the nativist rhetoric of the initiative’s supporters who saw their vote as necessary to “sav[e] California from economic ruin”).

⁷⁸ Johnson, *supra* note 74, at 1870.

⁷⁹ *Id.* at 1871.

the official argument in favor of Proposition 187 talked about the need to end the “ILLEGAL ALIEN invasion.”⁸⁰

Proposition 187 had support from high places. California's then-governor, Pete Wilson, was up for reelection, and he explicitly blamed California's fiscal woes on unauthorized migration.⁸¹ Wilson actively championed for the proposition,⁸² which was ultimately approved by Californian voters in a landslide.⁸³

Nativist rhetoric has not only yielded issue success in the United States, it has also propelled personal success. One example among many⁸⁴ is the rise of American lawyer and politician Kris Kobach. In 1996, Kobach joined the faculty of UMKC School of Law.⁸⁵ His first political position was on the Overland Park City Council in 1999.⁸⁶ By 2016, he was a nationally recognized political figure with influence in the incoming Trump administration.⁸⁷ What fueled such a rapid political rise? Nativism.

⁸⁰ CAL. ATT'Y GEN., *supra* note 68, at 54.

⁸¹ HING, *supra* note 67, at 30. Wilson ran television ads where a sinister voice remarked “they keep coming” while showing video of unauthorized migrants crossing the border. PeteWilsonCA, *1994 Campaign Ad on Illegal Immigration*, YOUTUBE, <https://www.youtube.com/watch?v=ILlzzs2HHgY> [<https://perma.cc/VXB2-B7F9>] (last visited July 22, 2021).

⁸² JACOBSON, *supra* note 63, at xvi.

⁸³ Johnson, *supra* note 74, at 1861.

⁸⁴ I could have, for example, focused on conservative media pundit Ann Coulter, author of *Adios, America: The Left's Plan to Turn Our Country into a Third World Hellhole*, which was published in 2015. Coulter gifted a copy of this work to Donald Trump in 2015 and claimed it supported Trump's ideas on immigration. See Washington Post Staff, *infra* note 114 and accompanying text; Carlos Lozada, *Did Ann Coulter's New Book Help Inspire Trump's Mexican 'Rapists' Comments?*, WASH. POST (Aug. 3, 2015), <https://www.washingtonpost.com/news/book-party/wp/2015/08/03/did-ann-coulter-new-book-inspire-donald-trumps-mexican-rapists-comment/> (quoting Coulter as saying Trump had “asked for, and received, an advance copy of my book, and he told me . . . that he's read the book cover to cover”).

⁸⁵ Nathan Zoschke, *Kris Kobach: Good, Bad or Ugly?*, UNIV. NEWS (Jan. 24, 2011), <https://info.umkc.edu/unews/kris-kobach-good-bad-or-ugly/> [<https://perma.cc/CF9L-YSYC>].

⁸⁶ Mitch Smith, *How Kris Kobach Built a National Profile*, N.Y. TIMES (Aug 6, 2018), <https://www.nytimes.com/2018/08/06/us/politics/who-is-kris-kobach.html> [<https://perma.cc/7LBM-3354>].

⁸⁷ David Weigel, *Trump Advisor Accidentally Reveals Border Wall, Immigrant-Tracking Ideas*, WASH. POST (Nov. 21, 2016) <https://www.washingtonpost.com/news/powerpost/wp/2016/11/21/trump-adviser-accidentally-reveals-border-wall-immigrant-tracking-ideas/> [<https://perma.cc/2KBW-BGYE>] (identifying Kobach as “a member of the Trump transition team who has been floated as a Cabinet member”).

In 2001, Kobach left Kansas for Washington, taking a position with Attorney General John Ashcroft as an advisor on immigration law and border security.⁸⁸ He authored the National Security Entry-Exit Registration System (NSEERS) program.⁸⁹ NSEERS was a blatantly nationalist program created in the aftermath of 9/11 to authorize governmental “enhanced scrutiny” of Arabs, Middle Easterners, Muslims, and South Asians from designated countries who were seeking entry into or living in the United States.⁹⁰ Kobach assisted with a reorganization of the Board of Immigration Appeals with an eye towards making the institution more hostile to immigrants.⁹¹ And he advocated allowing local law enforcement “to make arrests for civil violations of immigration law,”⁹² an idea that came to fruition just a few years after his proposal and has been controversial ever since.⁹³

⁸⁸ Zoschke, *supra* note 85.

⁸⁹ S. Karthick Ramakrishnan & Pratheepan Gulasekaram, *The Importance of the Political in Immigration Federalism*, 44 ARIZ. ST. L.J. 1431, 1456 (2012); *see also* Tomas Lopez & Jennifer L. Clark, *Uncovering Kris Kobach's Anti-Voting History*, BRENNAN CTR. FOR JUST. (May 11, 2017), <https://www.brennancenter.org/our-work/analysis-opinion/uncovering-kris-kobachs-anti-voting-history> [<https://perma.cc/U5LW-F82M>] (noting Kobach's official resume listed him as “architect” of the NSEERS program).

⁹⁰ RTS. WORKING GRP. & PENN STATE L. CTR. FOR IMMIGRANTS' RTS., *THE NSEERS EFFECT: A DECADE OF RACIAL PROFILING, FEAR, AND SECRECY* 4 (2012), https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1005&context=irc_pubs. [<https://perma.cc/6HFJ-GSCB>]. While the program terrifically affected the lives of the 83,519 individuals registered under the program, it did not lead to “a single known terrorism-related conviction.” *Id.* at 4, 26; *see also* The Daily Show with Trevor Noah, *Hasan the Record - President Trump's De Facto Muslim Travel Ban: The Daily Show*, YOU TUBE (Feb. 4, 2017), <https://www.youtube.com/watch?v=VcGRHGUGFTg> [<https://perma.cc/34EN-A32F>] (explaining this same data in an epically entertaining fashion).

⁹¹ *See* Lopez & Clark, *supra* note 89; Ricardo Alonso-Zaldivar & Jonathan Peterson, *5 on Immigration Board Asked to Leave; Critics Call It a 'Purge'*, L.A. TIMES (Mar. 12, 2003), <https://www.latimes.com/archives/la-xpm-2003-mar-12-na-immig12-story.html> [<https://perma.cc/Y84R-4VQ3>] (discussing the firing of five pro-immigrant judges from the BIA).

⁹² Ramakrishnan & Gulasekaram, *supra* note 89, at 1456.

⁹³ *Id.*; *see generally* Huyen Pham, *287(g) Agreements in the Trump Era*, 75 WASH. & LEE L. REV. 1253 (2018) (discussing the history of local enforcement of national immigration law). Donald Trump campaigned for president on his desire to utilize these sorts of agreements with local law enforcement. *See Transcript of Donald Trump's Immigration Speech*, N.Y. TIMES (Sept. 1, 2016), <https://www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html> [<https://perma.cc/9MVH-P9PH>] (“We will expand and revitalize the popular 287(g) partnerships, which will help to identify hundreds of thousands of deportable aliens in local jails that we don't even know about.”).

After his time in Washington, Kobach returned to Kansas and began litigating anti-immigrant cases around the country.⁹⁴ He worked for Immigration Reform Law Institute, which is affiliated with the anti-immigration group Federation for American Immigration Reform.⁹⁵ He filed challenges to in-state tuition for undocumented residents.⁹⁶ He supported local ordinances aimed at restricting undocumented migrants by requiring businesses to use e-Verify as well as ordinances barring landlords from renting to undocumented migrants.⁹⁷ Kobach did not just litigate; he also drafted anti-immigrant legislation. For Arizona⁹⁸ and Alabama,⁹⁹ Kobach drew up laws that would allow police to determine the immigration status of individuals during any legal stop, detention, or arrest, with an eye towards identifying undocumented migrants for deportation. He also drafted some of the local city ordinances that he defended in court.¹⁰⁰ His litigation and legislation efforts had a common goal: reducing unauthorized migration by pursuing a plan of “attrition through enforcement.”¹⁰¹ These moves launched Kobach’s national profile.¹⁰²

⁹⁴ See Julia Preston, *Lawyer Leads an Immigration Fight*, N.Y. TIMES (July 20, 2009), https://www.nytimes.com/2009/07/21/us/21lawyer.html?_r=1&hp [<https://perma.cc/ZPV2-H5QN>].

⁹⁵ Ramakrishnan & Gulasekaram, *supra* note 89, at 1459; see also DANIEL DENVER, ALL-AMERICAN NATIVISM: HOW THE BIPARTISAN WAR ON IMMIGRANTS EXPLAINS POLITICS AS WE KNOW IT 33 (2020) (describing FAIR’s founder as the “godfather of the modern nativist movement”).

⁹⁶ Carolyn Szczepanski, *Kris Kobach Files Another Tuition Lawsuit Aimed at Undocumented Students*, PITCH (Jan. 26, 2010), <https://www.thepitchkc.com/kris-kobach-files-another-tuition-lawsuit-aimed-at-undocumented-students/> [<https://perma.cc/D7LC-686V>].

⁹⁷ See Preston, *supra* note 94. According to an in depth investigation by Pro Publica, these lawsuits ended up costing municipalities hundreds of thousands to millions of dollars. Jessica Huseman et al., *Kris Kobach’s Lucrative Trail of Courtroom Defeats*, PROPUBLICA (Aug. 1, 2018), <https://www.propublica.org/article/kris-kobachs-lucrative-trail-of-courtroom-defeats> [<https://perma.cc/W3XD-FGWN>].

⁹⁸ Suzy Khimm, *Kris Kobach, Nativist Son*, MOTHER JONES (Mar./Apr. 2012), <https://www.motherjones.com/politics/2012/03/kris-kobach-anti-immigration-laws-sb-1070/> [<https://perma.cc/R5GE-EKG3>].

⁹⁹ Julia Preston, *In Alabama, a Harsh Bill for Residents Here Illegally*, N.Y. TIMES (June 3, 2011), <https://www.nytimes.com/2011/06/04/us/04immig.html> [<https://perma.cc/F8NV-WTQH>].

¹⁰⁰ Ramakrishnan & Gulasekaram, *supra* note 89, at 1475–76.

¹⁰¹ *News Flash: The Real Inventor of “Self Deportation,”* THIS AM. LIFE (Jan. 31, 2012), <https://www.thisamericanlife.org/extras/news-flash-the-real-inventor-of-self-deportation> [<https://perma.cc/HZ39-MG9E>]; see also Ramakrishnan & Gulasekaram, *supra* note 89, at 1481 (“SB 1070’s statement of purpose announces ‘attrition through enforcement’ as the state’s explicit goal.”); Kris W. Kobach, *Reinforcing the*

Along the way, Kobach was elected Secretary of State of Kansas, and he served two terms in that position.¹⁰³ Kobach also hosted his own talk radio program¹⁰⁴ and became a regular commentator on cable news.¹⁰⁵ He was even hired by presidential candidate Mitt Romney as an immigration advisor.¹⁰⁶

Kobach's prominence as a nationalist leader was made crystal clear when he posed for a photo op with President-elect Donald Trump in 2016.¹⁰⁷ Photographs revealed that Kobach was holding his very own strategic plan for the Department of Homeland Security, no doubt to discuss with Trump.¹⁰⁸ Subsequent congressional testimony has revealed Kobach played a critical role in convincing the Trump administration to include a hotly disputed citizenship question on the 2020 census.¹⁰⁹

Kobach's meteoric rise from an unknown midwestern law professor to a nationally-recognized¹¹⁰ White House insider stems

Rule of Law: What States Can and Should Do to Reduce Illegal Immigration, 22 GEO. IMMIGR. L. J. 459, 472 (2008) (“[A]ttention through enforcement works.”).

¹⁰² Zoschke, *supra* note 85; see also Huseman et al., *supra* note 97 (“Kobach’s profile began to rise with the headlines sparked by the ordinances.”).

¹⁰³ Stacey Vanek Smith & Bryan Lowry, *Transcript: What To Expect From Republican Senate Primary in Kansas*, NPR (Aug. 3, 2020), <https://www.npr.org/2020/08/03/898674911/what-to-expect-from-republican-senate-primary-in-kansas> [<https://perma.cc/95CM-NKX4>].

¹⁰⁴ It was called *The Kris Kobach Show*. Episodes through 2017 are available online. See *The Kris Kobach Show*, KCMO TALK RADIO, <https://audioboom.com/channel/thekriskobachshow> [<https://perma.cc/8ZJH-KBHD>] (last visited Oct. 23, 2020).

¹⁰⁵ See, e.g., Stephen Koranda, *Kobach Hits Cable News Circuit to Tout Trump Citizenship Plan*, KMWU (Nov. 1, 2018), <https://www.kmuw.org/post/kobach-hits-cable-news-circuit-tout-trump-citizenship-plan> [<https://perma.cc/FB49-STHT>]; see also Huseman et al., *supra* note 97 (“Kobach became a regular presence on conservative TV and talk radio.”).

¹⁰⁶ Huseman et al., *supra* note 97.

¹⁰⁷ Caroline Kenny, *Photo of Trump-Kobach Meeting Reveals Apparent DHS Proposal*, CNN (Nov. 21, 2016), <https://www.cnn.com/2016/11/21/politics/kris-kobach-donald-trump-department-of-homeland-security/index.html> [<https://perma.cc/F6GB-F2BV>].

¹⁰⁸ *Id.*

¹⁰⁹ Hansi Lo Wang, *Kris Kobach Discussed Census Citizenship Question with 2016 Trump Campaign*, NPR (June 7, 2019), <https://www.npr.org/2019/06/07/730756245/kris-kobach-discussed-census-citizenship-question-with-2016-trump-campaign> [<https://perma.cc/BC52-BJMX>] (reporting the controversial census question—“Is this person a citizen of the United States?”—and identifying critics’ concerns that such a question might lead households with noncitizens to not complete the census and, thus, result in an undercounting of individuals living in the United States with consequences for the distribution of federal funding and Congressional seats).

¹¹⁰ See Smith, *supra* note 86 (discussing the “national profile” of Kobach).

directly from his nativist politics. Keenly interesting is the fact that Kobach has credited Proposition 187 with sparking his initial interest in immigration reform.¹¹¹

Nativist appeals have not only led to issue success (Proposition 187) and personal success (the rise of Kris Kobach), they have also propelled party success. Of particular note in this vein is how nativist arguments during the 2016 presidential election helped Republicans not only win the presidency but also hold onto their control of the House of Representatives and Senate, giving Republicans relatively rare one-party control over both the legislative and executive branches of the United States.¹¹² Control over the White House and Senate allowed Republicans to exert remarkable dominance over the judicial branch as well, appointing three justices to the Supreme Court and 231 other federal judgeships.¹¹³

From the beginning, nativism was a hallmark of Donald Trump's run for the presidency. Early into the June 16, 2015, announcement of his candidacy, Trump challenged the quality of immigrants living in the United States without authorization: "When Mexico sends its people, they're not sending their best They're sending people that have lots of problems They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people."¹¹⁴ In that same speech, Trump spoke about ending unlawful migration to the United States, saying: "I will build a great, great wall on our southern

¹¹¹ *News Flash: The Real Inventor of "Self Deportation," supra* note 101.

¹¹² Prior to the 2016 election, Republicans last controlled both Congress and the presidency in 2007. Sarah Frostenson, *Republicans Now Control the Presidency, the Senate, and the House*, VOX (Nov. 9, 2016), <https://www.vox.com/presidential-election/2016/11/9/13572972/republicans-control-presidency-senate-house> [<https://perma.cc/Z2G9-PQ8K>]; see also Sarah Jarvis, *Fact Check: How Often One Party Has Controlled the Federal Government*, AZ CENTRAL (Dec. 1, 2016), <https://www.azcentral.com/story/news/politics/fact-check/2016/12/01/fact-check-one-party-three-branches-federal-government/94636286/> [<https://perma.cc/5U4U-8RKJ>] (listing years when one party controlled not only Congress and the presidency, but also the U.S. Supreme Court).

¹¹³ See *On the Bench: Federal Judiciary*, AM. CONST. SOC'Y, <https://www.acslaw.org/judicial-nominations/on-the-bench/> [<https://perma.cc/FQY5-B3VR>] (last visited July 23, 2021) ("In total, this outgoing administration and the Republican-led Senate confirmed 234 Article III judges, including three new Supreme Court justices and 54 circuit court judges.")

¹¹⁴ Washington Post Staff, *Full Text: Donald Trump Announces a Presidential Bid*, WASH. POST (June 16, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/> [<https://perma.cc/52PV-4LNU>].

border. And I will have Mexico pay for that wall.”¹¹⁵ These comments would come to define Trump’s candidacy as Trump aligned his campaign slogan—Make America Great Again—with his concerns over non-citizens in the United States and border security.¹¹⁶

Trump’s campaign complaints about unauthorized migration were myriad. He bemoaned the “surge” of migrants across the border,¹¹⁷ warning: “Our country will be overrun!”¹¹⁸ He complained that migrants cost America money, taking advantage of free healthcare¹¹⁹ and free college tuition¹²⁰ while flooding the country with their United States-born children.¹²¹ He argued that the quality of migrants was subpar, echoing Elizabeth Cady Stanton’s comments from more than a century and a half earlier:¹²² “most illegal immigrants are lower skilled workers with less education, who . . . draw much more out from the

¹¹⁵ *Id.*

¹¹⁶ Donald J. Trump (@realDonaldTrump), TWITTER (July 27, 2015, 3:44 PM), <https://web.archive.org/web/20200710200702/https://twitter.com/realDonaldTrump/status/625753618797457408> (“We must build a wall to secure our border. It will save lives and help Make America Great Again!”).

¹¹⁷ Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 2, 2015, 9:41 AM), <https://web.archive.org/web/20200710201629/https://twitter.com/realDonaldTrump/status/672062958613172224>; see also Donald J. Trump (@realDonaldTrump) TWITTER (July 27, 2016, 2:23 PM), <https://web.archive.org/web/20200710202947/https://twitter.com/realDonaldTrump/status/758367154232320000> (“Trump right: Illegal families crossing border set to double, 51,152 so far.”).

¹¹⁸ Donald J. Trump (@realDonaldTrump), TWITTER (Oct. 25, 2015, 4:49 PM), <https://web.archive.org/web/20200710201312/https://twitter.com/realDonaldTrump/status/658384857421205504>.

¹¹⁹ Donald J. Trump (@realDonaldTrump), TWITTER (July 18, 2015, 2:16 PM), <https://web.archive.org/web/20200710200553/https://twitter.com/realDonaldTrump/status/622469994220273664> (“It’s a national embarrassment that an illegal immigrant can walk across the border and receive free health care”); see also Donald J. Trump (@realDonaldTrump), TWITTER (Oct. 13, 2015, 10:33 PM), <https://web.archive.org/web/20200710201157/https://twitter.com/realDonaldTrump/status/654122760860495872> (“Notice that illegal immigrants will be given ObamaCare”).

¹²⁰ Donald J. Trump (@realDonaldTrump), TWITTER (Oct. 13, 2015, 10:33 PM), <https://web.archive.org/web/20200710201157/https://twitter.com/realDonaldTrump/status/654122760860495872> (“Notice that illegal immigrants will be given . . . free college tuition”).

¹²¹ Donald J. Trump (@realDonaldTrump), TWITTER (Aug. 21, 2015, 9:56 AM), <https://web.archive.org/web/20200710200820/https://twitter.com/realDonaldTrump/status/634725641972248576>. (“How crazy—7.5% of all births in U.S. are to illegal immigrants, over 300,000 babies per year. This must stop. Unaffordable and not right!”).

¹²² See *supra* notes 1–2 and accompanying text.

system than they can ever possibly pay back.”¹²³ He argued that “uncontrolled, low-skilled immigration . . . continues to reduce jobs and wages for American workers, and especially for African-American and Hispanic workers within our country. Our citizens.”¹²⁴

The criminality of undocumented migrants—“bad hombres,” in his words—was another consistent Trump talking point.¹²⁵ He frequently campaigned with families who lost loved ones in crimes committed by undocumented migrants,¹²⁶ whom he called “angel families.”¹²⁷ He tweeted: “I will end illegal immigration and protect our borders! We need to MAKE AMERICA SAFE & GREAT AGAIN!”¹²⁸

Trump’s solution for the woes of undocumented migration was to build a wall to protect the United States border. His supporters loved this idea, chanting at rallies: “Build the wall! Build the wall! Build the wall!”¹²⁹ And Trump promised his supporters: “Mexico will pay for the wall.”¹³⁰

¹²³ *Transcript of Donald Trump’s Immigration Speech*, *supra* note 93.

¹²⁴ *Id.*

¹²⁵ Janell Ross, *From Mexican Rapists to Bad Hombres, the Trump Campaign in Two Moments*, WASH. POST (Oct. 20, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/10/20/from-mexican-rapists-to-bad-hombres-the-trump-campaign-in-two-moments/> [https://perma.cc/N83C-KE94] (quoting Trump at the third and final presidential debate, held a just under three weeks before election day) (“[W]e have some bad, bad people in this country that have to go out. We’re going to get them out. We’re going to secure the border. And once the border is secured, at a later date, we’ll make a determination as to the rest. But we have some bad hombres here, and we’re going to get them out.”).

¹²⁶ Kit Johnson, *The Mythology of Sanctuary Cities*, 28 S. CAL. INDERDISC. L.J. 589, 606 (2019); *see also* *Transcript of Donald Trump’s Immigration Speech*, *supra* note 93 (mentioning victims of crimes committed by undocumented migrants in a stump speech about immigration reform and inviting “Angel Moms” to the stage).

¹²⁷ Johnson, *supra* note 126, at 606.

¹²⁸ Donald J. Trump (@realDonaldTrump), TWITTER (Feb. 12, 2016, 7:31 PM), <https://web.archive.org/web/20200710202132/https://twitter.com/realDonaldTrump/status/698303565232623616>.

¹²⁹ *Transcript of Donald Trump’s Immigration Speech*, *supra* note 93; Jenna Johnson, *‘Build That Wall’ Has Taken on a Life of Its Own at Donald Trump’s Rallies – but He’s Still Serious*, WASH. POST (Feb. 12, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/02/12/build-that-wall-has-taken-on-a-life-of-its-own-at-donald-trumps-rallies-but-hes-still-serious/> [https://perma.cc/BHL9-MQDL]; *see also* The Editorial Board, *A Chance to Reset the Republican Race*, N.Y. TIMES (Jan. 30, 2016), <https://www.nytimes.com/2016/01/31/opinion/sunday/a-chance-to-reset-the-republican-race.html> [https://perma.cc/UPQ8-WFKV] (quoting Trump) (“You know . . . if it gets a little boring, if I see people starting to sort of, maybe thinking about leaving, I can sort of tell the audience, I just say, ‘We will build the wall!’ and they go nuts.”).

¹³⁰ *Transcript of Donald Trump’s Immigration Speech*, *supra* note 93.

Trump's attacks on immigrants were not limited to undocumented migrants. He argued vociferously against the admission of Syrian refugees into the United States, tweeting "that we know little or nothing about [them]. The danger is massive. NO!"¹³¹ In another context, Trump said about these refugees: "They could be ISIS, I don't know."¹³² He even said their admission to the United States could be a "Trojan horse"¹³³ for terrorists.

Beyond refugees, Trump called for "a total and complete shutdown" of all Muslim migration to the United States¹³⁴ "until our country's representatives can figure out what is going on."¹³⁵ Candidate Trump characterized Muslims as "sick people"¹³⁶ who don't assimilate,¹³⁷ and he falsely claimed that "Arabs" in New Jersey cheered when the Twin Towers fell on 9/11.¹³⁸

Such nativist rhetoric was not limited to migrants but included those he identified as migrants. When he disliked the

¹³¹ Donald J. Trump (@realDonaldTrump), TWITTER (July 27, 2016, 6:08 AM), <https://web.archive.org/web/20200710202945/https://twitter.com/realDonaldTrump/status/758242674646323200>.

¹³² Jenna Johnson & Abigail Hauslohner, *I Think Islam Hates Us: A Timeline of Trump's Comments About Islam and Muslims*, WASH. POST (May 20, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/05/20/i-think-islam-hates-us-a-timeline-of-trumps-comments-about-islam-and-muslims/> [https://perma.cc/AX5J-UGXB].

¹³³ *Transcript of Donald Trump's Immigration Speech*, *supra* note 93 ("[W]e have no idea who these people are, where they come from. I always say Trojan horse. Watch what's going to happen, folks. It's not going to be pretty.").

¹³⁴ Tessa Berenson, *Donald Trump Calls for 'Complete Shutdown' of Muslim Entry to U.S.*, TIME (Dec. 7, 2015), <https://time.com/4139476/donald-trump-shutdown-muslim-immigration/> [https://perma.cc/BB9B-T7QE].

¹³⁵ *Id.*; see also Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 7, 2015, 5:32 PM), https://web.archive.org/web/20200313010811if_/https://twitter.com/realDonaldTrump/status/673993417429524480 (highlighting Trump's "Statement on Preventing Muslim Immigration").

¹³⁶ Johnson & Hauslohner, *supra* note 132 (quoting Trump) ("There's a sickness. They're sick people. There's a sickness going on. There's a group of people that is very sick.").

¹³⁷ *Id.* (quoting Trump) ("This all happened because, frankly, there's no assimilation. They are not assimilating . . ."); see also *id.* (quoting Trump discussing Muslims who immigrate to the United States) ("Assimilation has been very hard. It's almost — I won't say nonexistent, but it gets to be pretty close. And I'm talking about second and third generation. They come — they don't — for some reason, there's no real assimilation.").

¹³⁸ Glenn Kessler, *Trump's Outrageous Claim That 'Thousands' of New Jersey Muslims Celebrated the 9/11 Attacks*, WASH. POST (Nov. 22, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/11/22/donald-trumps-outrageous-claim-that-thousands-of-new-jersey-muslims-celebrated-the-911-attacks/> [https://perma.cc/AZW6-V4F3].

rulings coming from a United States District Court judge handling a lawsuit against him, Trump pronounced the judge unfairly hostile towards his case due to the fact that the judge was, he declared, Mexican.¹³⁹ In fact, the judge in question, the Honorable Gonzalo Curiel, was born in Indiana to Mexican parents and, so, was a United States citizen.¹⁴⁰

Donald Trump's nativist rhetoric¹⁴¹ likely played a role in securing him the Republican nomination for president,¹⁴² and ultimately, the presidency.¹⁴³ This was a huge victory for the Republican party because it gave the party control over both elected branches of the federal government.¹⁴⁴ From that position of power, the Republican party was able to influence the remaining branch of the federal government by appointing new judges to all levels of the federal judiciary.¹⁴⁵

In a similar vein to the suffragists discussed in Part I, it is worth questioning whether the invocation of nativism by modern causes, individuals, and parties—such as Proposition 187, Kris Kobach, and the Republican party as embodied in Donald Trump's 2016 campaign, respectively—has been grounded in genuine antipathy for noncitizens or merely a tool to achieve a

¹³⁹ Matt Ford, *Trump Attacks a 'Mexican' U.S. Federal Judge*, ATLANTIC (May 28, 2016), <https://www.theatlantic.com/politics/archive/2016/05/trump-judge-gonzalo-curiel/484790/> [https://perma.cc/9L5X-LMYG].

¹⁴⁰ *Id.*

¹⁴¹ Avik S. A. Roy, *With Trump as Its Nominee, The GOP Is No Longer a Conservative Party*, FORBES (May 4, 2016), <https://www.forbes.com/sites/aviksaroy/2016/05/04/with-trump-as-its-nominee-the-gop-has-officially-become-a-white-nationalist-party/> [https://perma.cc/HNK8-D7JA] (describing candidate Trump as promoting “nationalism: an approach to politics that places nativist solidarity above all other priorities. It involves nativist economics (opposing foreign trade), nativist culture (opposing immigration, whether legal or illegal) and nativist foreign policy (‘America first’ isolationism)”). Nearly two years after his election, Trump himself said: “You know what I am? I’m a nationalist, O.K.? I’m a nationalist. Nationalist! Use that word! Use that word!” Peter Baker, *Use That Word!': Trump Embraces the 'Nationalist' Label*, N.Y. TIMES (Oct. 23, 2018), <https://www.nytimes.com/2018/10/23/us/politics/nationalist-president-trump.html> [https://perma.cc/6V8K-LVVE]. Author Daniel Denver has said that “Nativism is a powerful subset of American racism and nationalism.” DENVIR, *supra* note 95, at 11.

¹⁴² Dara Lind & Matthew Yglesias, *Donald Trump and Immigration, Explained*, VOX (Aug. 22, 2016), <https://www.vox.com/2016/8/22/12552082/donald-trump-immigration> [https://perma.cc/9WJD-V8MA].

¹⁴³ Author Daniel Denvir has called Trump's presidency a “moment of maximal nativist power.” DENVIR, *supra* note 95, at 12.

¹⁴⁴ Frostenson, *supra* note 112.

¹⁴⁵ AM. CONST. SOC'Y, *supra* note 113.

goal.¹⁴⁶ Either way, we can see that nativism has been a consistent and powerful rhetorical device that has paved the way for local and national success.

III. A BETTER WAY FORWARD

The modern women's rights movement does not rely on nativist arguments to achieve its goals. Rather, in many ways, today's women's rights movement draws strength and moral legitimacy from its empathy toward and alliance with the immigrant rights movement.¹⁴⁷ As just one example, the movement to support and value domestic work has not ignored the many undocumented women working in American homes.¹⁴⁸ Feminist scholars have sought to value the work of undocumented women and support efforts to improve their labor conditions.¹⁴⁹

Yet the temptation to raise the status of even immigrant women by blaming the "other" remains. It just so happens that, in this case, the "other" tends also to be an immigrant, only a less worthy one. President Obama set the stage for this dichotomy with his announcement, in November 2014, regarding the planned expansion of his deferred action program to protect certain noncitizens present in the United States without authorization from deportation.¹⁵⁰ President Obama made his case in this way: "Felons, not families. Criminals, not children. Gang members, not a mom who's working hard to provide for her kids."¹⁵¹

President Obama's rhetoric was not only harmful, it was flawed. In the United States today, it is entirely possible for a

¹⁴⁶ We can dispense with the earlier inquiry of whether such nativism is a "product of its time" given that each of these examples is a modern one. *See supra* Part I.

¹⁴⁷ *Immigration as a Feminist Issue*, NAT'L ORG. FOR WOMEN, <https://now.org/resource/immigration-as-a-feminist-issue/> [<https://perma.cc/3QJW-B2EU>] (last visited Feb. 26, 2021) ("Immigration is a feminist issue.")

¹⁴⁸ PEGGIE R. SMITH, *Organizing the Unorganizable: Private Paid Household Workers and Approaches to Employee Representation*, 79 N.C. L. REV. 45, 92 (2000).

¹⁴⁹ *See, e.g., id.* at 88–89 (discussing unionization); Gowri J. Krishna, *Growing the Resistance: A Call to Action for Transactional Lawyers in the Era of Trump*, 7 TENN. J. RACE, GENDER & SOC. JUST. 206, 222 (2018) (discussing worker cooperatives).

¹⁵⁰ *Remarks by the President in Address to the Nation on Immigration*, WHITE HOUSE: PRESIDENT BARACK OBAMA (Nov. 20, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration> [<https://perma.cc/PNT6-N9G7>].

¹⁵¹ *Id.*

“mom who’s working hard to provide for her kids” to also be a felon. That is especially true given that entering the United States without authorization is a crime and returning without authorization is a felony.¹⁵²

While the goal of Obama’s plan—to protect certain noncitizens from deportation—was laudable, gains made by stepping on the backs of others come at a high cost. Ultimately, Obama employed nativism to win support for his deferred action programs. His version of the age-old nativist story was arguably less broad than the one employed by suffragettes, Proposition 187 supporters, Kris Kobach, or the 2016 Trump campaign, since Obama sought to separate worthy from unworthy immigrants, as opposed to rejecting all foreigners. But it was nativist. It is perhaps unsurprising that Obama would take this tack. As explored in Parts I and II of this Article, nativist rhetoric works. And it works regardless of the invoker’s motivation, whether such rhetoric is employed instrumentally or flows from heartfelt bigotry.

The rights of immigrant women in the United States need protecting, now more than ever. Under the leadership of President Trump, it became more difficult for women fleeing violence to come to the United States,¹⁵³ harder for educated married noncitizen women to work in the United States,¹⁵⁴ and easier for women to lose their right to remain in the United States.¹⁵⁵ All of these are worthy challenges to take on. It is important, however, that in doing so, advocates avoid the trap that ensnared suffragettes and instead work to rise up without pushing down.

Interestingly, modern feminists can find inspiration once more among the suffragettes of the nineteenth century. They

¹⁵² See 8 U.S.C. § 1325(a)–(b) (entry without authorization); 8 U.S.C. § 1326(b) (entry after prior removal).

¹⁵³ Attorney General Jeff Sessions referred this issue to himself and decided, in a precedential decision, that “[g]enerally, claims by aliens pertaining the domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum.” A-B-, 27 I. & N. Dec. 316, 320 (Att’y Gen. 2018),

¹⁵⁴ See Saurabh, *H4 Visa EAD 2020 News—Lawsuit Status, Trump Administration Actions*, REDBUS2US, <https://redbus2us.com/h4-ead-latest-news-updates-rule-removal-timeline/> [https://perma.cc/M7TP-9EXM] (last visited Feb. 26, 2021) (detailing the threats to employment authorization for spouses of highly skilled workers).

¹⁵⁵ See Stephanie deGooyer, *Why Trump’s Denaturalization Task Force Matters*, NATION (July 10, 2018), <https://www.thenation.com/article/archive/trumps-denaturalization-task-force-matters/>.

should look not to the storied leaders of Stanton, Catt, and Shaw, but instead to the lesser-known National Association of Colored Women.¹⁵⁶ The NACW motto, crafted more than a century ago, was “Lifting as we climb.”¹⁵⁷ One hopes the modern women’s rights movement may be inspired by these words, as it works to lift the lives of all women without pushing others down.

¹⁵⁶ See Allison Lange, *National Association of Colored Women*, CRUSADE FOR VOTE (Fall 2015), <http://www.crusadeforthevote.org/nacw> [https://perma.cc/GVY9-F7V5] (noting the NACW’s founding in 1896 and the importance of suffrage to black female reformers).

¹⁵⁷ See Devon W. Carbado & Mitu Gulati, *Race to the Top of the Corporate Ladder: What Minorities Do When They Get There*, 61 WASH. & LEE L. REV. 1645, 1647 n.2 (2004) (describing the slogan as referring “to the commitments of club members to lift each other socially, economically, and spiritually as their communities suffered the profound effects of racial discrimination”).