against Dent. Justice Stephen Field, writing for a unanimous Court, stressed the special nature of medicine and the need for the state to ensure that the public was protected. "Few professions require more careful preparation by one who seeks to enter it than that of medicine. ... The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Everyone may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. Due consideration, therefore, for the protection of society may well induce the State to exclude from practice those who have not such a license, or who are found upon examination not to be fully qualified." After *Dent*, the state's power to regulate the medical profession was established.

Reeves and the Regulars greeted *Dent* with delight and triumph, but legal commentators were not as celebratory. Indeed, *Dent* mystified them. Influential scholars asked what exactly the boundaries of due process would be now that the states were permitted to extend their police powers to the practice of medicine. After all, prior state regulations involving liquor or sanitation had been struck down as arbitrary or for curtailing property rights. Treatises and law review articles decried the decision as interfering with rights to practice one's profession. But legal scholars eventually made peace with *Dent* by recognizing that medicine was a special sphere. Mohr deserves credit for reminding us of *Dent* and showing its importance in the history of the regulation of the medical profession.

At the time, however, *Dent* played out in personal grievances and feuds in West Virginia's towns and cities, and here we return to the two fatal shots with which the book and this review opened. In Wheeling, George Garrison, who fired the shots, was a non-Regular doctor, and his victim George Baird, was not only a Regular doctor, but the city's public health officer. The two former friends feuded over the issue of licensing. On March 7, 1891, they encountered each other in the middle of the city and exchanged harsh words. After the hurling of insults, Garrison pulled a pistol and shot and killed Baird. Garrison admitted the shooting, and even turned himself in, but argued that he had acted in self defense, having feared that Baird would shoot him first. Charged with first-degree murder, the jury convicted him of second. However, because of juror misconduct, a new trial was ordered, and the second trial ended in a hung jury. On May 28, 1892, a third trial resulted in a conviction of involuntary manslaughter and a sentence of 22 months, seven more than Garrison had already served.

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STRANGE NEIGHBORS: THE ROLE OF STATES IN IMMIGRATION POLICY

EDITED BY CARISSA BYRNE HESSICK AND GABRIEL J. CHIN

New York University Press, New York, NY, 2014. 266 pages, $45.

Reviewed by R. Mark Frey

Our nation has been stretched taut since its beginning by the pull between federal power and states' rights concerning matters such as abortion, zoning, civil rights, and, yes, even immigration. Although immigration is traditionally viewed as within the federal purview, in recent years the states have tried to resolve some of the problems associated with our immigration system. Claiming that the federal government is doing little to address the problem of "illegals," states have pushed ahead, passing legislation to "stem the tide." As can be expected, this has led to a fair amount of litigation, with even the U.S. Supreme Court weighing in, most dramatically in *Arizona v. United States* (2012), which addressed Arizona's Support Our Law Enforcement and Safe Neighborhoods Act of 2010 (otherwise known as S.B. 1070).

Although the Court found most of the key sections of S.B. 1070 unconstitutional, it held ever so subtly that one section, 2(B), did not conflict with federal law. As a result, Arizona police will be allowed to check the immigration status of any person they encounter if they "reasonably suspect" the person to be in the United States without status. The Court noted, however, that its decision "does not foreclose other preemption and constitutional challenges to the law as interpreted and applied after it goes into effect."

The Court clearly recognized that immigration lies within the province of the federal government, principally because it involves issues that are national in scope. As Justice Anthony Kennedy noted in his majority opinion, "Immigration policy can affect trade, investment, tourism, and diplomatic relations for the entire Nation, as well as the perceptions and expectations of aliens in this country who seek the full protection of its laws." Furthermore, "[p]erceived mistreatment of aliens may lead to harmful reciprocal treatment of American citizens abroad," and, as a result, "It is fundamental that foreign countries concerned about the status, safety, and security of their nationals in the United States must be able to confer and communicate on this subject with one national sovereign, not the 50 separate States."[1]

S.B. 1070 and the Supreme Court decision have prompted a heated discussion about the nature of the tension between federal and states' rights, and, although *Arizona v. United States* seems to have settled the dust a bit, the debate continues, as does a cry for some sorely needed perspective. *Strange Neighbors: The Role of States in Immigration Policy*, edited by law professors Carissa Byrne Hessick and Gabriel J. Chin, proves useful in framing the key issues and presenting the positions of both sides.

The first section, "The Recent Spate of State and Local Immigration Regulation," contains two chapters. The first chapter, written by Huyen Pham and Pham Hoang Van, provides a state-by-state analysis of state and local laws enacted between 2005 and 2009, and it uses its analysis to measure the climate for immigrants. Not surprisingly, in light of *Arizona v. United States*, Arizona came out as the state with the most negative climate for immigrants, while Illinois and California scored most positively for immigrants.

In the second chapter, Douglas Massey discusses various matters. He analyzes data and U.S. immigration policy to argue that, historically, the ebb and flow of people from Latin America to the United States were a direct result of the demands of the U.S. economy. He examines how, by 2009, however, U.S. immigration policies (especially the "War on Immigrants" and the militarization of the border) had led to a growing number of undocumented individuals becoming unable to come and go between the United States and their homelands. He also considers how the costs and risks of undocumented border crossings had led to a shift from the traditional border entry points lying between San Diego–Tijuana and El Paso–Juarez to places

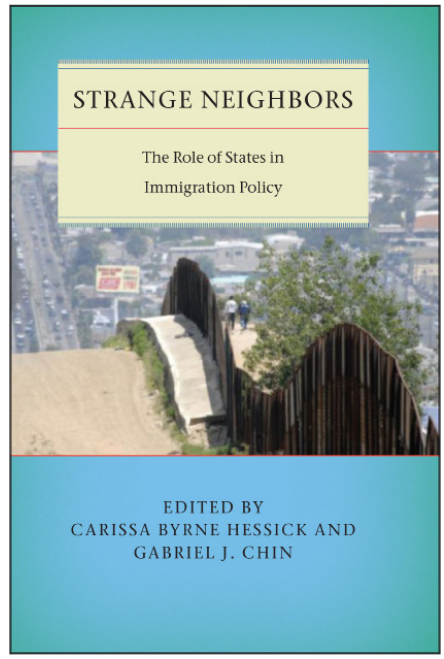
in Arizona. And, with that, Arizona emerged "as a center of anti-immigrant protest, xenophobia, and nativism."

The second section, "Historical Antecedents to the Modern State and Local Efforts to Regulate Immigration," provides further insight into the tension between federal and states' efforts to control immigration, while drawing attention to the latter's xenophobic underpinnings. In the only essay in this section, "A War to Keep Alien Labor out of Colorado," Tom Romero notes that, in early 1935, Colorado Gov. "Big" Ed Johnson was troubled by the "alien menace" from Mexico and sought to curb it through direct state action. That involved a plan to set up a camp for Mexican "aliens" at the National Guard's facility just outside Denver as well as support for local and state efforts to enforce the existing federal immigration laws. Problems ensued, however, when many of those "Mexicans" who had been rounded up turned out to be U.S. citizens. "Governor Johnson," Romero writes, "was quietly forced to stop the militarization of immigration enforcement altogether."

The third section, "A Defense of State and Local Efforts," has two chapters. The first, Reinforcing the Rule of Law: What States Can and Should Do to Reduce Illegal Immigration, was written by Kris Kobach, who currently serves as secretary of state of Kansas. Kobach is intimately involved with various state and city efforts to keep "illegal" immigrants out of the country; he played a key role in drafting S.B. 1070 for Arizona. Kobach first identifies the problem of rampant "illegal" immigration, with states feeling pressed to eliminate it. Now that "every state is a border state," states and cities need to know how to draft legislation that avoids preemption by federal law. This chapter is essentially a primer outlining how states and cities may best accomplish that objective. Kobach identifies eight areas worthy of attention and then discusses how to approach each. The areas include, among others, denial of public benefits and resident tuition rates to "illegal" immigrants, denial of driver's licenses to "illegal aliens," and cooperative state enforcement of federal immigration laws.

The second chapter in this section, "The States Enter the Illegal Immigration Fray," is by John Eastman and seeks to identify the problem of "illegal" immigration in the United States and what the states can do to eliminate it. He illustrates this through a discussion of Arizona's S.B. 1070, Alabama's Taxpayer and Citizen Protection Act, and birthright citizenship. Although both volatile and antagonistic to immigrants, Eastman successfully portrays the perspective and rationale of the states' rights side.

The fourth section, "A Critical Evaluation of the New State Regulation," contains three chapters. The first, "Broken Mirror: The Unconstitutional Foundations of New State Immigration Enforcement," by Gabriel Chin and Marc Miller, criticizes one of



Kobach's suggested areas for state action: cooperative state enforcement of federal immigration laws. What could be less intrusive than cooperation between those two levels of government? Chin and Miller point out, however, that state efforts in this vein are actually quite draconian. They note that, although the Supreme Court allows state legislation that serves legitimate state interests, it opposes veiled efforts to regulate immigration itself. And, they contend, states' rights advocates are frequently linked to the latter. That is why, they note, Kobach is so concerned with the importance of drafting language that avoids federal preemption. Chin and Miller are emphatic that, when all is said and done, *Arizona v. United States* makes clear that states cannot usurp federal power.

Rick Su's chapter, "The Role of States in the National Conversation on Immigration," suggests that the primary benefit of state-level immigration laws is that they draw attention to the importance of including states in the national conversation about immigration, immigrants, and those who are out-of-status. He notes that states should not be excluded on account of federal exclusivity.

The third and final chapter in this section is "Mary Fan's Post-Racial Proxy Battles over Immigration," a thoughtful and incisive reflection on immigration in the United States. According to Fan, both economic and political turmoil often bring anti-immigrant state legislation that its advocates justify by raising the rhetorical specter of hordes of "illegals" flooding the country. But, as she points out, "the unauthorized population actually fell by nearly two-thirds, decreasing by about a million people, between 2007 and 2009 as the recession reduced the lure of jobs." If that is so, then what is behind this state legislative activity? Fan sees it as "a proxy way to vent resurgent racialized anxieties ... [over] the 'Other'—the foreign enemy within—in a time of economic and political turmoil." That has led specifically to legislation, such as Arizona's S.B. 1070, that encourages "illegals" to leave.

The other realm of state legislative activity generated by racialized anxiety concerns children born in the United States of noncitizen parents, whether those parents are "illegal" or lawfully present in the United States. As Fan observes, those responsible for this legislation seek to rewrite the Constitution. Section 1 of the Fourteenth Amendment states: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." In *United States v. Wong Kim Ark* (1898), the Court ruled decisively that a Chinese-American born here of lawful permanent resident parents was a U.S. citizen. To hold otherwise would contravene the intent of the Fourteenth Amendment. "Automatic citizenship for U.S.-born people," writes Fan, "bound the nation to the mast against the demons of racial loathing and caste carving that resulted in decisions such as *Dred Scott v. Sandford*, ruling that descendants of African slaves, even if emancipated, cannot be citizens."

Fan observes that anti-immigrant state legislation is nothing new to the United States. In a brief historical overview, she notes the problems experienced by many populations in the United States (Italian, Jewish, Eastern European, Irish, black, Japanese, and Chinese, to name a few) and draws parallels between the arguments and rationalizations used then and those used today. Even more telling is her discussion of the Chi-

nese experience in California during the late 1800s, and the U.S. Supreme Court decisions that addressed it. In *Chy Lung v. Freeman* (1876), for example, the Court ruled unanimously that a California law interfered with Congress' power to regulate commerce with foreign nations because it required a $500 bond from every incoming passenger deemed by California's Commissioner of Immigration to be "lunatic, idiotic, deaf, dumb, blind, crippled, or infirm" or a "lewd or debauched woman." Likewise, in *Yick Wo v. Hopkins* (1886), the Supreme Court invalidated on equal protection grounds state legislation that was used selectively to prosecute Chinese laundry operators, notwithstanding the fact that the law was "fair on its face, and impartial in appearance." The same old wolf in new sheep's clothing.

The issue of implementing immigration law and policy is contentious and likely to be of interest for some time to come, because Congress seems unwilling or unable to pass meaningful legislation resolving many of the problems in our immigration system. Although *Arizona v. United States* appears to have addressed some of the concerns resulting from the tension between federal and states' rights, the battle is not over. States continue to seek the assistance of organizations such as the Federation for American Immigration Reform and of individuals such as Kris Kobach to help draft legislation that avoids federal preemption. This book provides context, perspective, and the reasoning behind both sides' positions. That makes it a valuable resource for anyone seriously interested in gaining a fuller and more nuanced understanding of the debate over federal and states' rights in the immigration realm. ⊙

Endnote

1. The Supreme Court's use of "aliens" in this quotation is unfortunate because it carries a negative connotation, whether intended or not. The use of "aliens" (as well as "illegals," and "illegal" as a modifier of "immigrants" or "aliens") dehumanizes the individuals referred to and hinders a meaningful debate over immigration law and policy.

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