

INTRODUCTION

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This volume of essays is published at a time when events have placed the question of migration to the United States high on the agenda of the nation's unmet problems. Past policies are widely, and correctly, perceived to have failed. Recent opinion polls indicate that ninety-one percent of Americans want "an all-out effort" to stop illegal immigration, and not significantly fewer want legal immigration curtailed as well. A portion of this sentiment may be attributed to the spectacle of the Cuban boatlift in 1980, which brought some 125,000 undocumented aliens to Florida in the space of six weeks, and to the sizeable and uneven resettlements of refugees in this country in recent years. But the migration problem cannot be neglected as only of passing interest. The world conditions that stir migration will continue; the lamentable prospect is that they will deteriorate. If public concern again subsides before a thorough reworking of our laws and policies is accomplished, the problem may soon grow beyond remedy.

The problem is not of recent origin. For years we have pursued unrealistic policies. Through elastic avenues of legal migration, the United States now receives as many or more immigrants and refugees than at any time in our history, including the period of nearly unrestricted immigration early in this century. Owing largely to the Cuban boatlift and large refugee admissions, more than 800,000 people were permitted to enter in 1980. This is not only the largest number accepted by any country that year, but is perhaps twice as many as were received by the rest of the world combined.

Adding to the number of legal entrants the number of persons who enter the country illegally, the sum is truly breathtaking. Each year between 1,000,000 and 1,500,000 persons cross our borders illegally. Although some leave, the illegal population may grow by as much as 500,000 each year. As a result, there are estimated to be some 3,000,000 to 6,000,000 aliens now living illegally in this country. One half of our annual population growth results from immigration—and one half of that from illegal entries.

Moreover, the pressures driving the migration to the United States will increase dramatically in the coming decades. Poverty and unemployment in the Third World, where population growth outruns economic development, will rise. The International Labor Organization has estimated that the developing world would have to provide between 600,000,000 and 700,000,000 new jobs during the next twenty years merely to keep its unemployment rate from increasing. This number of new jobs is more than presently exists in the entire industrialized world. Just across our southern border lies Mexico whose population, half of which is under the age of fifteen, will double in the next generation. The unemployed and

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underemployed in Mexico may amount to as much as forty percent of its work force.

Political refugees are forced migrants of a particularly tragic sort, and their burgeoning numbers, now estimated at some 15,000,000 worldwide, place strong humanitarian claims on the free world. Lamentably, political oppression and conflict within and among nations offer little hope that refugee migrations will diminish.

Coupled with these conditions in countries of origin are the historic attraction and ease of entry into the United States. Wage rates here are five to ten times those typically prevailing in the developing world. Political freedom and tolerance, and social assistance to the least well-off, are unequalled elsewhere. Modern communication ensures that these facts are widely known, and falling costs of transportation permit rising numbers of people ready means of travel to the United States.

These "push" and "pull" factors affecting migration confront the United States with a serious dilemma: How can this country preserve its historic openness to those who seek a better life or who flee oppression, while ensuring that immigration is a fair and orderly process maintained within realistic limits? Plainly, the laws and policies of the past are not the solution. The challenge is to forge new and realistic policies which offer more hope.

There is a perceptible, if uneven, rhythm in the history of immigration reform in the United States. While not all episodes in the past are a credit to our best instincts of fairness and openness, the law has evolved generally in the direction of fairness and rationality. Three principles are discernable in this progression that, in my view, should continue to guide our national policy. First, there must be limits to immigration. Not even a prosperous and humane nation can by itself accommodate all in the world who seek a better life. Second, these limits must be drawn fairly and evenhandedly, without regard to nations or races. Third, these limits must be enforced firmly, with due regard for procedural fairness and values of individual privacy and freedom.

A general limitation on the number of persons admitted as immigrants to the United States is of relatively recent origin. Throughout most of our history immigrants came without numerical limit and no distinctions were drawn among those seeking admission. Although the Colonies and later the States enacted measures intended to discourage the arrival of paupers and other "undesirable" individuals, the Federal Government did not act to exclude classes of persons until 1876, when it barred the admission of convicts and prostitutes. It was not until 1921 that Congress first placed an overall limit on the number of immigrants who could come to the United States, though numerical limits have remained a part of the laws since then. Few people today question the necessity of some numerical limits in view of the numberless pool of would-be immigrants around the world. Choosing the actual number, however, is a much disputed and impressionistic issue given the absence of agreement on appropriate criteria and the lack of knowledge concerning the practical consequences of these numbers. The limits set in 1965, which have been only slightly changed, are thus inescapably somewhat arbitrary, though

a Senate report on the measure suggested that the figures were fixed at levels thought to reflect the present absorptive capacity of the country.

Broadly speaking, the level of immigration must remain within the political tolerance of the American people, whose view of our "absorptive capacity" is affected by a wide range of economic, cultural, and political considerations. Little more can be said without enumerating who thinks what, except to note that the current level of legal immigration is in some danger of losing its historic consensus, unless Americans can be assured that at least that limit can be enforced.

The second principle—evenhandedness in administering restrictions on immigration—has been considerably longer in coming than the recognition that limits of some kind were needed. Early restrictive measures were blatantly discriminatory. Thus, the naturalization of Chinese aliens was forbidden in 1870, and their near total exclusion effected shortly thereafter. The national origins quota laws of the 1920's self-consciously favored immigrants from Northern and Western Europe and the Western Hemisphere, and severely restricted immigration from Southern and Eastern Europe and Asia. These discriminatory quotas remained a part of the law until the comprehensive reforms of 1965 replaced them with equal ceilings on annual admissions from all countries. While strict numeric equality for all countries, large and small, does not guarantee fairness (particularly in the case of our neighbors Canada and Mexico, with whom we have long standing historic ties of migration), the principle of universalism reflected in the 1965 reforms improved upon the discriminatory quotas.

The same progress toward universalism is evident in the law's treatment of refugees. The Refugee Act of 1980 removed from the law earlier provisions expressly favoring persons who fled Communist or Mideast countries, and adopted instead the United Nations definition of refugee, without ideological or geographic limitation.

The third principle—that we are governed by the rule of law—is ingrained in this country's free and democratic traditions. But there may be no area in which the principle is more breached than the immigration laws. In 1964 some 50,000 illegal aliens were apprehended in this country. By 1980, the number of apprehensions had risen to more than 1,000,000. And these figures show more the seriousness of the problem than our success in stemming the growth of the illegal population within our country.

The borders of this country are expansive and essentially porous. They are patrolled by the Immigration and Naturalization Service, which has long been treated as the unwanted stepchild of the Federal Government, and has been denied the resources necessary to enforce the law. Controls over foreign students, tourists, and other nonimmigrant visitors to the United States have been exceptionally lax. Moreover, while in most countries it is unlawful for employers to hire illegal aliens, in the United States it is not only legal to do so, but the so-called Texas Proviso specifically shelters employers from the law against harboring illegal aliens.

While illegal immigrants once were concentrated in agricultural employment in the southwestern states, they now reside in all regions of the country. Only

fifteen percent of the illegal aliens, are estimated to work in agriculture; fifty percent are employed in service industries, and thirty percent are in blue-collar jobs.

The economic and fiscal effects of illegal immigration are disputed. However, it is likely that illegal aliens depress the wages and working conditions of American workers, particularly the least skilled, and displace a significant number of American workers. Evidence suggests that illegal aliens in some areas place substantial demands on public services, such as health care and education, but participate in cash assistance welfare programs to only a limited (though increasing) degree. At least in the nonagricultural sector, however, illegal aliens do appear to comply with tax payment obligations, including Social Security.

Whatever the economic consequences, it is widely agreed that the perpetuation of a hidden illegal class living outside the law's sanctions and protections is exceedingly unhealthy for these people—and for the nation in the long run. Sometimes subject to considerable exploitation and intimidation, these aliens may be denied the essential dignity and protections to which all are entitled. Cynicism and disrespect for legal and social institutions result.

These conditions must be remedied if our immigration laws are again to be enforced, and such enforcement is both our sovereign right and our obligation to the American people. For these reasons, the United States must act to ensure adequate legal authority both to control immigration in the future, and to deal realistically and humanely with the legacy of past failed policies.

Happily, there is an emerging consensus regarding what must be done to regain control. It is widely agreed that realistic and comprehensive reform will have to contain at least the following elements, which I am pleased to note are embodied in a number of bills now pending before Congress, including the Administration's proposed Omnibus Immigration Control Act:

1. Federal agencies which administer the immigration and refugee laws must be provided with sufficient resources to effectively and fairly enforce the laws, including those laws governing fair labor standards and practices;
2. Employers should be prohibited from knowingly hiring illegal aliens in order to eliminate the attraction of these jobs for illegal aliens and to preserve the jobs for Americans;
3. In order to deal realistically and humanely with the illegal aliens who are now here without encouraging future illegal arrivals, those who are law abiding and who have been here for a period of years should be accorded legal status; and
4. Administrative and judicial procedures for applying the immigration laws should be reformed and simplified to ensure swift but fair enforcement of the law.

The law enforcement resources of the Immigration and Naturalization Service have trailed seriously behind the Service's workload for several years. Inadequate staffing and management, including the failure to automate, have been crippling. Both the Reagan Administration and the bipartisan Select Commission on Immigration and Refugee Policy, which made its report in March 1981, recommended strengthening existing law enforcement programs. In addition, both the Administration and the Commission have proposed increased enforcement by the Wage and Hour Division of the Labor Department to discourage employment of illegal

aliens, as well as others, in violation of the Fair Labor Standards Act. Enhanced enforcement by both agencies is badly needed if the laws are once again to be credibly administered.

While conventional enforcement activities can be partly successful in stemming illegal entries, illegal migration will not be stopped, or even significantly slowed, as long as employment opportunities continue to exist in the United States without regard to legal status. Illegal aliens still will risk apprehension and the cost of being smuggled in or of purchasing fraudulent documents in order to obtain wages several times higher than the level in their countries of origin. The government cannot depend solely upon deterrence or interception at the border. For these reasons both the Reagan Administration and the Select Commission have proposed that the knowing employment of illegal aliens be prohibited. The comprehensive reform bills introduced by Senator Simpson and Congressman Mazzoli, chairmen of the immigration subcommittees of the Senate and House Judiciary Committees, contain similar provisions. A like proposal was made by President Ford's Domestic Council in 1976. Such bills twice have passed in the House, although they failed passage in the Senate.

The central concern with employer sanctions is whether a means of compliance is provided that is both nondiscriminatory and not unreasonably burdensome. Another (albeit different) concern is whether the system is easily evaded by fraud. The Administration's bill requires employers to examine existing forms of documentary identification of new employees (e.g., Social Security card, driver's license) and provides the employer a defense under the law if he has done so. The administrative burden would be minimal and, because the employer would not be required to make judgments concerning the authenticity of the documents, he would have no occasion to make subjective and possibly discriminatory judgments about persons who may appear foreign. The Administration's approach has been drawn into question by some, who believe it is essential to develop some system of determining employment eligibility which is more secure than a system of checking existing identification documents. Future experience may be the best tutor with respect to identifiers, but a simple and objective means of determining work eligibility—using either existing or new documents—is plainly necessary.

The issue of the illegal residents who are now here is a difficult one. Yet a consensus has emerged concerning what to do regarding them. It would be impractical and, in some cases, inhumane to round up and deport them all, but keeping them in an illegal class is insidious in the long run. The Reagan Administration, the Select Commission, and the Simpson-Mazzoli Bill all propose according some legal status to a large portion of the illegal aliens already living here.

The purpose of these proposals is to remove a socially unhealthy illegal class while permitting the government to focus enforcement resources on future illegal arrivals, thus avoiding the need for recurrent amnesties. The proposals differ in mechanics, but in principle it appears that some broad, if graduated, program of legalization is indispensable to a rational and humane reworking of the immigration laws.

Finally, we must reform and expedite our procedures for administering the immigration laws. Dissatisfaction with existing practice is widespread. In the past the United States has always screened and processed prospective immigrants, including refugees, overseas. Thus, those individuals actually arriving on our shores have been adjudged eligible for admission prior to arrival. Applications for political asylum by persons already in the United States have been relatively few and the cases generally clear-cut. As recently as fiscal year 1978 fewer than 3,800 asylum applications were received. But in fiscal year 1980 alone almost 20,000 applications for asylum were received, and the number of pending applications now exceeds 100,000.

In the face of these circumstances, our policies and procedures for dealing with asylum applicants, which have been generous and deliberate, have crumbled under the burden of overwhelming numbers. Under existing asylum procedures the applicant may apply for asylum and reopen asylum determinations in a multi-tiered administrative hearing and appeal system, and seek repeated collateral review in the courts. Multiple opportunities to present asylum claims are both unnecessary to ensure fairness and unworkable in light of the dramatically increasing number of aliens seeking asylum here. It is imperative that Congress reform these procedures to ensure that the immigration laws can be enforced fairly and effectively.

These four elements are the core of comprehensive and realistic immigration reform. Together they promise to sustain America's historic willingness to accept foreigners to our shores, within enforceable and realistic limits. Only through reform of this kind can we fully provide for the safety and well-being of our people, while welcoming others who truly desire to contribute to this nation's continuing experiment in liberty.

This collection of essays is a valuable contribution to thoughtful debate on the question of migration to the United States. It is said, with much disagreeable truth, that more is written and less known about immigration than any other issue of national consequence. I expect that situation is remedied somewhat by the articles published here. In any event, the problem is too pressing to delay any longer before corrective action is taken. A bipartisan consensus has emerged concerning those reforms the national interest requires; it remains to summon the national will to accomplish these reforms.