AMERICA'S NEW IMMIGRATION LAW: ORIGINS, RATIONALES, AND POTENTIAL CONSEQUENCES

Edited by
Wayne A. Cornelius
and
Ricardo Anzaldúa Montoya

Monograph Series, 11

Center for U.S.—Mexican Studies
University of California, San Diego Q-060
La Jolla, California 92093
OF BORDERS AND STATES:
A SKEPTICAL NOTE
ON THE LEGISLATIVE CONTROL
OF IMMIGRATION

by Alejandro Portes
The Johns Hopkins University

I am not sure the H-2 program, even in streamlined form, will work for the short harvest season in my state . . . . The system the New Mexico farmers have now works well for their needs yet the bill ignores this existing underground stream of migrant workers. It is hard to change employment habits . . .

Senator Pete Domenici
Congressional Record, Aug. 17, 1982

It is obvious that the influence of the modern state on society is quite vast. However, in certain spheres of political activity, the desires of policymakers can be effectively countered by private actors, and the application of approved policies can interact with pre-existing economic and social structures to produce unexpected results. The present controversy over immigration reform in the United States is interesting because it represents one of those instances in which that gap — between the intentions of policymakers and advisors in the capital and daily events in the rest of society — is at its greatest. This gap actually consists of two components: that between present immigration law and its implementation, and that which separates current policy debates from the structure of economic and social forces deemed in need of "reform."
In reviewing the determinants of the existing situation in immigration and immigration law, we must emphasize two key provisions of the 1965 Immigration Act. First, the law forbade unauthorized entry into the country and the overstaying of tourist and other non-permanent visas. These violations were made felonies, as was harboring an unauthorized entrant or overstayer, except that employing such a person was deemed not to constitute harboring. Second, the reunification of families in the United States was made a central criterion for admittance to permanent residence. Immediate relatives of American citizens were exempted from the quota limits established for each country, and others would immigrate under various preference categories.

Although the law exempted employers from liability, it could have been expected that the enforcement agencies of a country as mighty and as technologically advanced as the United States would easily defeat the efforts of Latin American and other Third World citizens to force their entry into the country. This expectation did not prove accurate. Once in the United States, unauthorized entrants wishing to stay could do so by marrying a citizen or permanent resident. Family reunification thus acquired a new meaning as a de facto regularization program for the unauthorized. Instead of official pardon, all they required were the favors of a single American. Up to 70 percent of legal immigrants from Mexico in recent years had resided previously in the United States and had acquired a claim during that period to one of the family reunification preferences.¹

¹. This estimate is based on the author's longitudinal study of Mexican immigrants, started in 1973. At that time, a sample of 822 legal Mexican immigrants were interviewed at border stations in Laredo and El Paso, immediately after completing immigration formalities. Results of this research have appeared in various publications. For a comparison of previously undocumented and first-time entrants, see my “Illegal Immigration and the International System: Lessons from Recent Mexican Immigrants in the United States,” Social Problems 26 (Apr., 1979): 425-438; also Charles Hirschman, “Prior U.S. Residence among Mexican Immigrants,” Social Forces 56 (June, 1978): 1179-1202.
The image of a powerful and technologically advanced country being overwhelmed by the poor of backward lands was so ludicrous that it prompted an inevitable conclusion: the United States did not want to stop the surreptitious flow. An alternative way of saying the same thing was that, while some officials and government agencies wanted to put an end to clandestine immigration, they could not do so because of forces inside and outside government. Among the many analyses of the historical origins of this situation, I find most lucid the one proposed by Robert L. Bach.²

Bach's analysis is based on the changing demand for and supply of low-wage labor in different segments of the American economy over time. In broad strokes, Bach describes the "classic" period of immigration to the United States, when the expanding American industrial economy drew heavily on the peasant labor reserves of Eastern and Southern Europe. Growing opposition to immigrant labor by domestic workers had as its ultimate cause the final settlement of the frontier, which closed the alternative of self-employment outside the industrial economy. Although working-class opposition became increasingly militant, it did not prevent the continuation and even acceleration of the immigrant flow in the years preceding World War I. After the war, attempts to re-initiate mass immigration were prevented by the National Origins Act of 1924. This legislation coincided in time with and represented an integral element of the "historic pact" between capital and organized labor, which regulated industrial conflicts in exchange for concessions to workers, such as protection from competition by foreign labor.

Underlying the support of northeastern industrial firms for the end of immigration — or at least the absence of their opposition to the move — was the availability of another huge reservoir of labor in the southern states. Employment of significant numbers of blacks in northern industries actually started before World War I, but it reached mass levels during the 1920s. By the beginning of World War II, blacks comprised a significant or majority component of the labor force in such industries as meat packing and auto making and in a number of services.

Contrary to present views, black unemployment in the inter-war period was actually lower than among whites. In the northern states, the ratio of white-to-black unemployment hovered around two-to-one for those two decades.\(^3\)

Northern industrialists could thus attend impassively to the closure of the immigration door. The same was not true in the West, where the labor needs of rapidly expanding agriculture, railroads, and mines were not being met. Southern blacks correctly opted for the superior wages and more subdued discrimination of the North, thus depriving southwestern growers and railroad builders of their labor. These conflicts were played out in the federal government in legislative debates and in the form of contradictory directives by different agencies. Bach lists several of the uneasy judicial and administrative arrangements through which southwestern capital was granted \textit{de facto} access to Mexican labor while the government attempted to preserve the image of a tightly shut immigration door in the East.

The labor needs of World War II offered a strong justification for a more open government-to-government agreement to recruit and employ Mexican workers in southwestern agriculture. The fact that the Bracero Program was no war expedient but the expression of a long-standing labor demand was confirmed by the extension of the agreement after the war, first by administrative decree and then by an act of Congress. When in 1964 the pressure of church groups and organized labor brought about a repeal of Public Law 78 (the Bracero Program), the Mexican labor flow simply went underground. Friendly local arrangements between growers and the Border Patrol and restricted Congressional appropriations ensured that immigration enforcement did not effectively impede border crossing. If anything, the new situation merely tightened labor discipline by adding the potent threat of deportation to the arsenal already in the hands of employers. This arrangement proved so workable that it quickly spread beyond the border and even the Southwest to become adopted by growers in other agricultural regions. More importantly, the clandestine flow began reaching the cities,

where it filled low-wage, menial jobs in small industrial and service firms.

At this point, Bach's analysis is supplemented by other recent studies, in particular those of Bonacich, Piore, and Geschwender. These authors concur in attributing importance to generational shifts in the supply of unskilled and semiskilled labor to industries and services, particularly in the Northeast and Midwest. As we have seen, the primary mechanism to meet that demand in the post-World War I period was internal migration, mostly of southern blacks.

The children of these migrants, like other second-generation minorities before them, aspired to significant improvements in their situation. Yet social and economic forces have pressured northern-born blacks to remain in positions similar to those occupied by their migrant parents and grandparents. Quite predictably, the blockage of their aspirations, supported by glaring racial discrimination, has led to a series of mobilizations and protests. More importantly perhaps, this frustration has also led to the progressive withdrawal of the second generation from the low-wage labor market. The resistance of younger blacks to continue filling low-prestige menial jobs for minimal wages and the absence of another ready source of domestic labor for this segment of the market underlies the progressive reliance of employers on clandestine immigrant workers.

Industries and service firms did not deliberately create this flow; they simply took advantage of an arrangement which had been working well for years in the Southwest. By redirecting these foreign workers toward the cities, urban employers gained a supply of workers that was not only new, but also qualitatively superior. The reason for this assessment is that immigrants typically have greater work motivations and a different evaluation of available wages. Whereas domestic workers often accept menial, minimum-wage jobs only when there is no alternative and leave them as soon as possible, Mexican laborers will work willingly and reliably at the same task for the

same or lower wages. Through this process, unauthorized foreign workers have become a "preferred" labor force for many industries, even when a domestic supply is available. The situation furnishes an exact parallel to that of the 1920s and 1930s studied by Edna Bonacich. At that time, southern black migrants were the "preferred" labor force.

This mode of supplying the low-wage market has worked so well that it has been rapidly extended to the entire country. Mexicans now replace blacks in the Florida citrus groves and in the traditional migrant trek through East Coast agriculture. Dominicans and Colombians are widely credited with the "revival" of the garment industry in New York, via sweatshops, and of other traditional industries in New England. In her study of the changing New York economy, Saskia Sassen-Koob suggests that unauthorized immigrants now form the backbone of an increasingly diversified personal services industry catering to the needs of white-collar workers in banking and other highly paid finance and management services.\(^5\)

At the other extreme, sources of supply have diversified also. At present, the entire Caribbean area, including Mexico, provides a vigorous impulse to the clandestine flow. The present situation is one in which towns, cities, and entire regions in these countries are closely linked, through informal networks, with labor markets in the United States. A detailed study by anthropologist Patricia Pessar documents, for example, how remote villages in the mountains of the Dominican Republic are informed, with a lag of only a few days, of changing labor market conditions in New York. Prospective immigrants and their families can tailor their strategies accordingly.\(^6\)

A few years ago, I tallied the economic interests for and against clandestine labor immigration. The balance

---


heavily favored continuation of this flow. In addition to rural and urban employers desirous of preserving access to foreign workers and prepared to fight to maintain it, an array of other groups benefit indirectly from the flow. These include larger companies which do not hire unauthorized immigrants directly, but rather subcontract production to smaller enterprises that do; it also includes middle- and upper-income workers, who benefit from the lower prices of goods and services produced with cheaper immigrant labor. Governments of the sending countries have not been known to oppose vigorously the movement either; aside from the loss of skilled workers (who may eventually return), labor migration is both a significant source of foreign exchange for these governments and a short-term means to alleviate domestic unemployment.

Finally, organized labor in the United States is seldom pitted directly against immigrants, since the latter fill demand in the sector of smaller, non-unionized firms. Although trade unions have been firmly opposed to clandestine immigration, their militance on the issue has been attenuated by the fact that most of their members have not confronted directly the threat of cheaper immigrant labor. Thus, the segment of the American population most directly and most negatively affected by the presence of unauthorized entrants is the one least able to defend itself: the non-unionized and largely minority workers forced to compete directly with immigrants for semiskilled and unskilled jobs.

This analysis was written at the time that the Carter administration was readying its proposals on immigration. The balance of economic forces just outlined led to the inevitable conclusion that, unless another vast pool of willing low-wage labor was somehow discovered, the immigrant flow would continue. Indeed, the Carter administration’s proposals faced insurmountable opposition and had to be abandoned. In their place, the President appointed a study commission. After lengthy deliberations, this commission issued a series of recom-

---

mendations which formed the basis of a new legislative effort, the Immigration Reform and Control Act of 1982.

**Employers, the State, and Prospects for Reform**

Having outlined the historical process which led to present immigration patterns and the subversion of existing law, we can now examine the character of the present immigration debate and the chances for success of the proposed legislation. Naive proponents of immigration reform continue to act as if the present situation were a matter of neglect by government and as if decisive action would therefore bring an end to the "silent invasion." However, most prominent advocates of reform are well aware of the composition and strength of the opposition. The gap between the world of policymaking and the world of labor markets and profits is not based today on misperceptions of the forces at play.

Support for continuation of unauthorized immigration has become stronger in the years following the Carter proposals as more and more firms have come to rely, directly or indirectly, on this source of low-wage labor. On the other side, a weakened labor movement does not appear to have significantly increased its ability to fight this ploy. Since the structure of economic interests is so skewed in favor of the *status quo*, the questions are: why should there be a proposal for immigration reform at all, and why should it actually stand a good chance of passage?

The missing element, in my view, is the autonomous interest of the state as a corporate entity. An elementary Marxist analysis portrays the state as a servant of capital or as torn between capital's different factions. The state does indeed preside over class society, and the long-term logic of official actions is toward preservation of the existing class order; but these functions do not confine government to the role of a mere instrumentality. As a corporate entity concerned with its own preservation, the state can and will defend the basic attributes of its sovereignty. The present struggle over immigrant labor in America is taking place not only between different social classes, but also between a segment of capital and the state.

This situation has evolved as a consequence of the very success of clandestine immigration as a supplier of low-wage labor. As long as the arrangement was confined
to rural areas in the Southwest, it did not seriously threaten the image of state impartiality and control. At that time, the flow could be defined as the low-key “concession” to regional interests while preserving the illusion of a firmly shut immigration door. The spread of this labor arrangement to the entire country, the multiplication of countries of out-migration, and the increasing transparency of the entire process has created a situation in which the state appears to have lost a major attribute of its sovereignty.

In its official commentary on the Immigration Reform Bill, the Justice Department echoes a sentiment repeated many times in recent months: “We must regain control of our borders,” declares the document, implying that they have somehow been lost to foreign forces. In fact, if control has been relinquished at all, it has been to a segment of America’s own employers. The fact that the present immigration confrontation has occurred between the state and a sector of the dominant class explains why those at the forefront of the reform movement are not the trade unions or the organizations of the ethnic minorities, some of which have actually opposed the proposed legislation. Instead, proponents include agencies and officials of the executive branch; quasi-official consultative bodies; editorial writers and academics; and an array of policy advisory groups, ranging from those motivated by xenophobic fears to those genuinely concerned with preserving the rule of law.

The intentions of many of these individuals and groups are, without doubt, commendable. However, the interest of the state in this issue has grown not so much because unauthorized immigrants are coming and are being employed as because the entire process has become so visible. The generalized perception that the government has “lost control of the borders” seriously undermines its legitimacy and hence its ability to enforce other rules domestically and negotiate with governments abroad. Had the flow remained a low-key affair, as in previous decades, the state would surely have remained willing to accommodate the interests of influential locals in the Southwest. Hence, the oft-declared need to “do

something" about clandestine immigration will lead, ultimately, not to a serious attempt to stop the flow, but to restoring the image of state control in this area. The real gap which separates proponents of immigration reform in Washington from events in the rest of the country lies in their belief that once the law has passed, social and economic reality will adjust to the legal writ.

There is no instance in the independent history of the United States in which a class of capital owners has been denied access to a preferred labor pool without either its substitution by a more vulnerable source or a protracted struggle. An incident of this kind was partially responsible for the American Civil War. Even after the defeat of the Confederacy, southern owners found devices to keep their former slaves dependent and on the land. As this essay has shown, the end of European immigration and the "historic pact" with trade unions in the 1920s came about only because industrialists had begun to tap a new and more pliable labor source from the South. Similarly, western growers and railroad builders accepted the closure of the traffic in coolie labor because Mexican workers stood ready to fill the gap. When the immigration door officially closed in 1924, administrative procedures were devised to keep the Mexican flow coming. When the Bracero Program was formally terminated in 1964, the movement simply went underground and then flourished.

Unless their pronouncements are cynical, proponents of the present reform seem to believe that this bill will actually countervail two centuries of labor relations. The proposed legislation stands a good chance of passage because of the perceived need to do something to appease the clamor against the "silent invasion." Followed perhaps by a period of vigorous and visible implementation, the new law will restore the necessary image of state control over national borders. The long-term application and consequences of this legislation are, however, another matter.

Hispanic minority organizations have correctly diagnosed the situation and for that reason are opposing the

bill as written. They realize that the charming scenarios of Washington policymakers have a way of being subverted in reality.\textsuperscript{10} In appearance, these organizations should be among the most enthusiastic supporters of immigration control, since it would presumably mean less competition for minority workers. In fact, minority leaders understand that measures taken in the name of protecting the rights of the downtrodden have in the past been transformed into new instruments of control.

In the present case, the most likely outcome is that passage of the proposed legislation will neither stop clandestine immigration nor deter its utilization. Learned proponents of the bill can go home pleased with their grand achievement, since they will not be there to pick up the pieces. In the absence of an alternative source of willing low-wage labor, employers will continue to rely on unauthorized immigrants, but they will take certain precautions to protect their businesses and themselves under the new conditions.

As production and service activities are driven underground, the situation of immigrants and domestic minorities working alongside them is likely to deteriorate. Work settings will become more clandestine, and at least part of the increased cost of doing business under the new conditions will be passed on in the form of lower wages. Production can be subcontracted down to illegal sweatshops or to those employing so few workers that they are exempt from the new penalties. Piece-rate homework will become still more common. Violations of fair labor standards laws will become even more difficult to detect.

During the debate on the proposed bill, Senator Edward Kennedy noted this crucial gap between the law and its implementation. He made the point eloquently:

\begin{quote}
It is hard to believe that the limited enforcement provisions in this bill will control these pressures, especially when we look at the cutbacks in the enforcement of existing laws — the fair labor standards law, or farm contractor
\end{quote}

\textsuperscript{10} See, for example, A. S. Torres, "Employer Sanctions and Employment Discrimination," memorandum to Senate staff, League of United Latin American Citizens, July 8, 1982.
compliance provisions, or minimum wage provisions. How in the world do we think we will ever be able to enforce employer sanctions when we can not enforce existing laws?\textsuperscript{11}

This well-founded skepticism underlies the opposition to the proposed legislation by representatives of those ethnic minorities which would presumably benefit most from it. If the above analysis is correct, passage of the bill as written will accomplish the re-legitimation of the state in a crucial area, but it will neither significantly alter the flow of unauthorized immigrants nor improve the condition of domestic workers working alongside them.

\textbf{Options}

Critics of legislative attempts at reform are themselves often criticized for failing to offer an alternative. As the preceding argument makes clear, the effectiveness of any proposed change is ultimately based not on its quality or persuasiveness, but on the strength of the forces backing it. Given sufficient time, the existing legislation or its implementation will be molded to fit the conveniences of the hegemonic classes and groups in the existing social structure. It is in this sense that the present immigration situation corresponds well to the balance of economic interests and political power.

Assuming, however, that at some future point an alliance of labor unions, minority organizations, and other groups is able to alter this balance, we may ask what alternative policy options that alliance should entertain. In my view, solution of the unauthorized entry "problem" under those conditions would not require multiple-dated amnesty programs or a multimillion-dollar identification system; rather, it could be accomplished largely on the basis of existing legislation. Such an alternative program would be based on three elements:

- \textit{Nationwide enforcement of existing fair labor standards and minimum wage legislation, regardless of the nationality and legal status of workers.} If enforcement would reach every employer and if penalties were

\begin{footnotesize}
\textsuperscript{11} Congressional Record: Senate, August 12, 1982, S.10316.
\end{footnotesize}
consistently applied, the following long-term consequences would follow:

- Firms would have less incentive to hire clandestine immigrants, since they could not be made to work “hard and scared” because of their vulnerability.

- Domestic workers would have greater incentives to compete for and hold jobs, since working conditions and wages would improve.

- Labor organizations would develop greater facilities to organize immigrant workers and incorporate them into unions, since the barriers of illegality and inferior working conditions and the threat of deportation would be removed.

Cooperation with governments of the sending countries for the promotion of small-scale agriculture and labor-intensive industries, with a parallel program of incentives for repatriation based on credit facilities. Empirical research has consistently shown that clandestine immigration does not involve the least educated and most pauperized strata of the sending population. Instead, it is composed overwhelmingly of ambitious young men who have been denied access to stable, well-paying jobs in industry or to the credit required for farming or starting a small business. Similarly, the available evidence also indicates that most unauthorized immigration is cyclical in nature and that remittances and savings not used for consumption are invested in small-scale agriculture and businesses. The availability of credit for these activities in the home country should accelerate return migration and discourage additional clandestine entries.

Stepped-up border enforcement targeted on commercial smugglers. At present, governments of sending countries have little incentive to cooperate in border enforcement programs. Besides receiving short-term economic gains from the flow, they are loath to persecute their own nationals for the “crime” of seeking a better life. These governments do, however, recognize commercial smuggling as an exploitative and even criminal activity. Suppression of commercial smuggling is thus a legitimate
goal for both sending and receiving nations; it is also more effective than efforts to apprehend individual immigrants. A joint border-enforcement program represents the counterpart of cooperation in the promotion of small-scale agriculture and industries in sending countries. The latter initiative will offer the required incentive for sending governments to cooperate in the effort against organized smuggling.

In combination, the above measures would improve the well-being of workers in both sending and receiving countries. I have provided evidence elsewhere that the differences in wage levels between less-developed and advanced economies seldom cause migration from one country to another. Instead, people migrate because they cannot obtain the minimal income required for a modest living and some opportunities for advancement in their own country. The proposed measures should increase such opportunities. In the United States, they would help break down artificial barriers between poorly-paid domestic and immigrant workers. Employers should be penalized, not for hiring foreigners, but for carrying exploitation of any person beyond the limits of what is today socially acceptable.