THE REPORT OF THE U.S. SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY: A CRITICAL ANALYSIS

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THE MORAL BASIS OF IMMIGRATION POLICY

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The people of the United States — actually the people of virtually every sovereign nation in the world — assume that the right to admit or exclude foreigners is absolute. Although it does not receive much attention, people hold that right as essentially synonymous with the notion of political sovereignty; and in the United States, it has additional ratification in our Constitution, which grants Congress plenary power — that is, virtually unchallengable power — to admit or exclude absolutely according to its own will. Consequently, the presumption of the Select Commission and the presumption of all the past leaders of this country has been that we can decide what to do regarding immigration according to what we might find to be in our best interest as a nation.

There was a time, I imagine, when that legal dictum which allows us to decide arbitrarily whom to exclude and whom to admit perhaps had moral justification. That is, at one time perhaps, the members of the national community had a certain moral justification for exercising their political right to decide with whom they would share, divide, and distribute their resources. If we assume that we have any legal obligations morally based, then we normally assume that we owe those obligations only to those people who already belong to the national community, those people who already legally reside within our national boundaries. Everybody outside of that community is a stranger. That assumption, which has Constitutional support, allows us to do as we will with outsiders and to feel morally justified in thinking of anything that we might do for an outsider as a favor.

I take issue with that assertion less on Constitutional grounds (although we might construct a plausible argument on such grounds) than on moral and historical grounds. The assumption leads us to conclude that a fellow citizen matters most in terms of who should receive all those things that we are capable of distributing, sharing, and dividing. We talk a great deal about citizenship, but we reflect about it not at all. If anyone can accurately tell me what it means to share citizenship with somebody, I would consider it an amazing feat, because we
normally don’t think in such grandiose terms. I share things with my family, with people in my neighborhood, with other Chicanos; all those things matter because I can explain them in certain significant, intimate ways. What I share with somebody in Tennessee is beyond me. Yet the political reasoning outlined above leads to the conclusion that what I share with that Tennessean, which is nothing but citizenship, matters most in terms of making a decision about whom we will allow to share in all the things that we are capable of sharing.

I imagine that what may matter most are the kinds of ties of intimacy in history, about which we may have some vague idea; but if any of those things matter a great deal, I am hard-pressed to imagine why undocumented Mexicans in particular — and perhaps others more generally — should not share those ties at least as much as someone from Tennessee or Pennsylvania. Field studies done all over the United States have revealed that undocumented Mexicans primarily want access to jobs that will help them to support their families; therefore I cannot understand why as a moral matter they are less deserving of those jobs than unemployed coal miners from the hills of West Virginia. Many jobs in California have been traditionally filled not by Pennsylvanians but by Mexicans, both in the agricultural and more recently in the industrial sector. If historical ties lie behind what we have in mind in terms of sharing, I am at least morally skeptical of any assumption which leads to the conclusion that we give no consideration whatsoever to these Mexicans and a great deal of consideration to legal residents of the United States.

Legally, that is a shaky argument. The Constitution makes absolute our right to be unjust in a moral sense, and it relieves us of having to consider whether sharing citizenship matters more than sharing other, more important things when we address the distribution of jobs or anything else. Perhaps this way of thinking has gone unchallenged because in the past national boundaries did accurately define those people who mattered most in terms of sharing. But for over a century we in the Southwestern U.S. have shared with the people of Mexico. Therefore, those people who matter in terms of sharing are no longer completely enclosed within political boundaries. Thus arises a seldom-asked question which precedes the question of whether or not our narrowly defined national interest is best served by allowing Mexicans and others to immigrate. We ought to ask whether we have an inescapable obligation to these people if we are to think of ourselves at all as a righteous country.

If I am wrong, and we do not owe such an obligation, then the question of how best to serve the national interest is the right question. But the Select Commission’s report, while it pays lip service to the historical evidence that immigrants do good for this country, concludes that those benefits are somehow
outweighed by the detriments. The restrictiveness of the Commission's recommendations suggests that we are in a situation which is much more taxing and troublesome than the empirical evidence shows.

Finally, while the question of whom we admit may have legal insulation from the moral challenges raised here, the questions of how we treat people while they are here and how we treat those whom we are seeking to exclude are subject to serious Constitutional and statutory challenge. Such questions belong to a whole genre of issues that both state and federal law should address. We ought to be concerned with these issues because it is around these issues that the law and our sense of what is just come together. And by considering these issues, we might get some idea of how little the Select Commission thought about what really is just in immigration policy, as opposed to what the Constitution allows us to do.