U.S. immigration policy from 1965 to the present

Peter Kivisto

The current wave of immigration to the United States – the third major wave in the nation's history – commenced shortly after the passage of the landmark Immigration Reform Act of 1965 (referring to its Congressional sponsors, it is also known as the Hart-Celler Act). The legislation was passed during the heady days of the Great Society, at a time of considerable social upheaval in the United States, chiefly due to the combined impact of the Viet Nam War and the civil rights movement. As a consequence, relatively little attention was paid to this piece of legislation at the time by the public at large or by policy makers. It would appear that the sponsors and supporters of the legislation did not envision the Act as a stimulus for a major migratory wave. Nor did they think that the major source of immigration would shift from Europe to the developing nations of the Third World. As Daniel Tichenor (2002: 18) notes, "Senator Edward Kennedy, one of the bill's principal stewards, assured skeptics that the reform 'would not inundate America with immigrants from any one country or area or the most populated and deprived nations of Africa and Asia'."

Tichenor (2002: 8) contends that this legislation is part the "dynamics of U.S. immigration policy," where both major political parties have pro-immigration and anti-immigration elements. The Republicans have long been home to both free marketeers and restrictionist cultural conservatives. On the other hand, the Democrats have within their ranks both pro-immigration cosmopolitans and economic protectionists (especially labor unions). All of these elements were present at the passage of the 1965 Act, but as became clear, the free market proponents and cultural cosmopolitans got the upper hand. Perhaps the most significant feature of this Act was that it eliminated the essentially racist character of existing law, which established a rank order of preferred groups based on ethnicity, or to be more specific, national origin.

Before turning to the provisions of this Act, it is useful to place it in historical perspective. As a classic settler nation that needed population growth for economic development to occur, the U.S. has had comparatively speaking rather liberal immigration laws for much of its history. However, the operative work is comparatively. In fact, from the period after the Civil War until the passage of the National Origins Quota Act of 1924, Congress passed a series of legislative measures that were increasingly restrictive and intended to offer preferential treatment to certain nationality groups at the expense of other groups. The first such enactment occurred in 1882, when Congress passed the Chinese Exclusion Act. This particular piece of legislation had a 10-year limit. After that time, new laws were passed that were even more draconian in their effort to put a halt to immigration from China.

The nation entered a major wave of new European immigration around this time, but the newcomers increasingly came from Southern and Eastern Europe rather than Western and Northern Europe, posing a threat to WASP hegemony. With the rise of a powerful anti-immigrant movement, Congress enacted a series of laws de-

Peter Kivisto is the Richard Swanson Professor of Social Thought and Professor and Chair of Sociology, Augustana College, Rock Island, Illinois.

signed to stem this tide, including a series of literacy test bills that were intended to limit the flow of Southern and Eastern European immigrants. This trend to restrict immigrant flows from what were deemed to be undesirable points of origin culminated in the passage of the above-noted National Origins Quota Act. This legislation was actually a revision of a law passed three years earlier that imposed numerical limits on immigrants based on their nation of origin, calculated on the basis of the composition of the white population of the U.S. in 1910. The 1924 law recalculated the quotas based on the 1890 census, in effect further restricting the numbers of permitted immigrants from Southern and Eastern Europe.

The result of this law, in conjunction with the negative impact on migration of the Great Depression and World War II, was that the migratory wave ended. For the following four decades, the number of foreign born entering the nation declined significantly. During this period, a variety of laws shaped migration policies. For example, in 1943 a system of contract labor was created that allowed employers to hire Mexican workers for specified periods of time, after which they were expected to return to Mexico. Known as the Bracero Program, this was the U.S. version of what would later be called, in Western Europe, a "guest worker program." This program, which was increasingly opposed by the Mexican-American community, was finally terminated in 1964. In the wake of World War II, the flight of people from nations that had fallen under the control of the Soviet Union prompted the passage of the Displaced Persons Act of 1948. The most significant piece of legislation leading up to the 1965 Act was the Immigration and Nationality Act of 1952 (also known as the McCarran-Walter Act). While that Act reaffirmed the national quota system, it reclassified existing quotas (for example, it ended Japanese exclusion and instituted a small quota for the Asia-Pacific region). It also created a preferential system based on worker skills and on family reunification (Bean and Stevens 2003: 17–19).

With this background, it is evident that the 1965 Act represents a significant departure from the past by eliminating the quota system. The law established a set of criteria that would rank order selection preferences. Originally, it called for 170,000 visas per year for immigrants from the Eastern Hemisphere and 120,000 from the Western Hemisphere. In the former case, a 20,000 maximum limit per country was imposed (Schuck 2003: 85).

In the first place, the premium attached to family reunification meant that spouses, minor children, and the parents of U.S. citizens were exempt from these caps, so in effect there was no limit to the number of people falling into these categories who could obtain a visa. Then, seven criteria were established, each being accorded a percentage limit of the total number of visas to be allotted. These seven criteria and the respective percentages of the total are as follows: (1) unmarried adult children of U.S. citizens (20%); (2) spouses and unmarried children of permanent resident aliens (20%); (3) professionals, with preferences given to gifted scientists and artists (10%); (4) married children of U.S. citizens (10%); (5) brothers and sisters of U.S. citizens over the age of 21 (24%): (6) skilled and unskilled workers who are needed to meet specific labor shortages (10%); and (7) refugees (6%).

Contrary to the predictions of the bill's sponsors, the Act, when it took effect in 1968, unleashed a major wave of immigration. In fact, during the last decade of the twentieth century more newcomers entered the nation than during any other decade in the nation's history, surpassing the totals from the first decade of the twentieth century, heretofore the peak decade. The arrivals came overwhelmingly from Latin America and Asia. About 75 percent of the totals originated from these regions during the 1970s and much of the 1980s, with the percentage rising to over 80 percent thereafter. According to the 2000 Census, over 31 million legal immigrants resided in the United States, representing about 11 percent of the total population, a figure not reached since 1930 (U.S. Census Bureau 2002). It should be noted that immigrants represent a smaller percentage of the overall population than they did a century ago. However, because they are heavily concentrated in six states – California, Florida, Illinois, New Jersey, New York, and Texas – their impact in those localities has been profound. Perhaps one of the most significant transformations that have occurred due to the new wave of immigration is that African Americans no longer constitute the larg-

est non-European origin group, having been surpassed by Latinos. This has sometimes been referred to in public discourse as the "browning of America."

The impact of immigration during the last three decades of the twentieth century is even more significant that this cursory summary would suggest, for in addition to the influx of legal immigrants, two other categories of newcomers have also contributed to the heightened diversity of American society. The first category is that of nonimmigrant entrants who, rather than becoming permanent residents are granted visas to be in the country for a specified period of time. While tourists and diplomats fall into this category, by far the two largest groups are temporary workers and students. Many workers in this category are holders of H-1B visas, which permits employers to hire foreign-born skilled workers and allows those workers to remain in the country for six years. The enabling legislation contained in the Immigration Act of 1990 allows 200,000 such workers into the country each year. By far, a substantial majority of workers possessing these visas come from Asia and work in the high tech sector. Since its implementation, the law has been liberalized in various ways, including a provision that allows workers to move from one employer to another. By the end of the twentieth century, there were 31.4 million nonimmigrant entrants, a figure roughly equivalent to the number of permanent immigrants. Peter Schuck (2003: 89) points out that with the assistance of their employers, "many will become permanent residents despite the program's explicit temporary character and without having to leave the country or even interrupt their employment."

The second category consists of illegal or undocumented immigrants. This includes both persons who entered the country illegally ("EWI's" – entered without inspection – in U.S. Immigration and Naturalization Service parlance) and those who entered legally but overstayed their visas (what the INS calls "visa-overstays"). While it is extremely difficult to accurately measure the size of the undocumented immigrant population, Schuck (2003: 89) writes that estimates based on the 2000 census put the figure at somewhere between 8 and 9 million, with approximately half originating from Mexico and the bulk of the remainder coming heavily from Asia and other Latin American nations.

Legislation enacted since 1965 has sought to address two distinct concerns. The first focuses on refugee policy, while the second is intended to both control the flow of labor migrants in general and to deal with the problem of undocumented migrants. Refugee policy was influenced by the exigencies of Cold War politics. Thus, the Cuban Refugee Act of 1966 was in fact a continuation of refugee policies that U.S. administrations had implemented since the Castro takeover in Cuba. The presence of a Marxist government 90 miles off the shore of Florida proved to be a powerful symbol of competing ideologies in the struggle between the U.S. and the Soviet Union. Not surprisingly, the U.S. government received these political exiles warmly. The 1975 Indochina Refugee Act was in response to the U.S. defeat in Vietnam and the subsequent exodus of Vietnamese and other Southeast Asians who had sided with the Americans. This Act, in effect, began a resettlement program for these exiles. Two years later, the Act was refined to specify that 174,988 Indochinese refugees would be admitted.

The Refugee Act of 1980 was not targeted to specific groups, but rather sought to provide a more coherent set of criteria that could be used universally. The Act adopted the definition of "refugee" that the United Nations had developed. In addition, the Act expanded the annual number of asylum seekers admitted to the country and established procedures by which the Attorney General could facilitate a shift in status from temporary refugee to permanent resident. Despite the effort to standardize and rationalize the system, critics contended that during the Reagan presidency refugee policies were employed in a discriminatory manner, as asylum seekers from communist-controlled nations – such as Nicaragua – had a relatively easy time of being accepted while those fleeing right-wing dictatorships – such as exiles from El Salvador and Guatemala – were frequently denied admission.

Turning to the other type of post-1965 immigration legislation, the first significant initiative was a series of amendments to Hart-Celler, passed in 1976, that established 20,000 as a per country cap on immigrants, applicable to both the Western and Eastern Hemispheres. This was intended to limit

the flow of immigrants from some of the major migrant-exporting nations. Undocumented immigrants became a focus of attention in the Immigration Reform and Control Act of 1986. The key provision of this Act was to offer a general amnesty for 3 million undocumented residents under certain conditions. The amnesty made it possible for these individuals to obtain legal permanent resident status. The product of intense negotiating between pro-immigration and anti-immigration camps, the legislation sought to offer something for both sides. On the one hand, it included a provision that imposes sanctions against employers who hire illegal workers (these sanctions proved to be very weak). It also included the creation of a special program for agricultural workers, and it required the establishment of an office within the Justice Department that was designed to deal with charges of discrimination against immigrants. The Act also contained a provision intended to expand the diversity of the immigrant pool by creating the NP-5 program for residents of nations that had favorable quotas prior to 1965. The three major beneficiaries of this program were Canada, Ireland, and the United Kingdom. Criticism of the Eurocentric character of this program led to a comparable program for other nations in 1988, called the OP-1 program. In both cases, visa recipients were chosen by lottery.

The Immigration Act of 1990 increased the immigration cap to 675,000. Family reunification immigrants continued to receive preferential treatment under the terms of the Act. In addition, it contained refined employment-based criteria, including expanding the number of skilled immigrants entering the country. Finally, it also had a "diversity" lottery system, known as the AA-1 visa, which replaced both the NP-5 and OP-1 programs.

Anti-immigration sentiment grew during the 1990s. The passage of Proposition 187 in California signaled this change, for the referendum called for denying undocumented immigrants various social services including educational benefits for their children. The Personal Responsibility Act of 1996 followed suit by limiting the access of immigrants – legal and illegal – to public welfare benefits, including Temporary Assistance for Needy Families, food stamps, Medicaid, and Supplemental Social Security (Bean and Stevens 2003: 66–67). In the same year, Congress passed the Illegal Immigration Reform and Individual Responsibility Act. It was intended to increase border security and to streamline the process for deportation. Employer sanctions were increased (though again in practice these proved to be relatively weak and were perceived by many employers as simply a cost of doing business).

Nearly four decades after the legislation that enabled mass immigration to resume, the U.S. continues to receive substantial numbers of newcomers, as permanent residents, under the provisions of various employment and student visas, and as undocumented immigrants. This is the case despite the opposition of a majority of the public to the rate of immigration. In part this is because of a shift in the alliances that have shaped American immigration policy for more than a century. Labor, once a voice of immigration restriction, has increasingly been sympathetic to immigrants, whom they see as potential new recruits rather than as enemies of organized labor. This means that they are on the same side of this issue as major industrial and agricultural employer groups who want easy access to immigrant labor. Thus, at least for the immediate future, we can expect immigration to continue, with the various efforts aimed at containing, controlling, and structuring the flow of immigrants amounting to tinkering with a structure that in fundamental ways is not being seriously challenged.

References

Bean, Frank D. and Gillian Stevens. 2003. America's Newcomers and the Dynamics of Diversity. New York: Russell Sage Foundation.

Schuck, Peter H. 2003. Diversity in America: Keeping Government at a Safe Distance.Cambridge, MA: The Belknap Press of Harvard University Press.

Tichenor, Daniel J. 2002. Dividing Lines: The Politics of Immigration Control in America. Princeton, NJ: Princeton University Press.

U.S. Census Bureau. 2002. Census 2000: Demographic Profiles. Washington, DC: Government Printing Office.