
■ ■ ■

Immigration Policy: The Nation's Most Fundamental Labor Law

Vernon M. Briggs, Jr.

New York State School of Labor and Industrial Relations

Cornell University

Samuel Gompers (1925), founder of the American Federation of Labor and, historically speaking, America's most influential labor leader, wrote in his autobiography, "Immigration is, in its fundamental aspects, a labor problem" (p. 125). In most contemporary debates over immigration policy, this basic truism is forgotten. For no matter how immigrants enter the United States—as legal immigrants, illegal immigrants, refugees, asylum seekers, border commuters, or nonimmigrant workers on temporary visas—most have to work to support themselves, as do usually their spouses and, eventually, their children as well. Hence, immigration policies always have labor market consequences regardless of the motivation for their enactment. The scale of immigration flows; the human capital characteristics that immigrants bring with them and the geographical distribution of the foreign-born population always have economic implications for the nation's labor force.

If the immigration flows into the United States were small, it would not be important to be concerned with the economic consequences of the public policies that facilitate the entry of immigrants into the labor market. However, such is not the case. As of 2006, the foreign-born population has soared to 37.3 million people, or 12.6 percent of the total population of the nation (Camarota, 2007, p. 2). Of these, 11.5 million people are estimated to be illegal immigrants, but there is an additional number who are not counted (Passel, 2006, p. 2). As for the labor force, 23.1 million foreign-born people were in the civilian

labor force that year (7.1 million of whom are believed to be illegal immigrants). Indeed, the foreign-born labor force has accounted for 47 percent of the overall growth rate of the labor force from 2000 to 2006, not counting whatever number of illegal immigrant workers were missed in the official tabulations.

As for their human capital characteristics, these vary widely. Nevertheless, the fact remains that, as of 2006, almost 57 percent of the entire adult foreign-born population had only a high school or less level of education. These low educational attainment figures, of course, say nothing about the quality of the education, which is likely to be poor given the fact that over half of the immigrant population has come from some of the poorest countries on the planet. The result is that the immigrant work force disproportionately seeks work in the low-skilled sector of the United States labor market. It is, therefore, the citizen workers in this large low-skilled labor market, totaling over 48 million workers in 2006, that carry the brunt of the competitive pressures with most of the immigrant work force.

With respect to the geographical distribution, the foreign-born population is beginning to spread out more so than ever before—especially into the southeastern and prairie states. Nevertheless, it is still the case that two thirds of the foreign-born population and labor force are to be found in six states (California, New York, Texas, Florida, Illinois, and New Jersey). Within these states,

most of the immigrant population is in the local labor markets of urban areas.

As mass immigration has once again become a distinctive feature of the contemporary American experience, it is a propitious time to examine why immigration policy exists and why it is so vital to the well-being of the nation and its work force. For it is not invisible market forces that govern the movement of people across the borders of the United States (or of any other country); it is prevailing public policy that defines both what is permissible and what degree of enforcement of these provisions will be exercised.

The Primary Role of Public Policy

Unlike the other demographic factors (such as natural reproduction rates and special events such as the post-World War II “baby boom”) and social forces (such as the advent of the women’s movement) that influence the size and growth of the population and labor force, immigration is a policy-driven phenomenon. It was public policy changes in the 1920s that brought the mass immigration era of the late 19th and early 20th century to a halt. Likewise, it was public policy changes in the 1960s that accidentally revived the phenomenon of mass immigration from out of the nation’s distant past and allows it to continue to this day (Briggs, 2003). It will be immigration policy changes that will end the current mass immigration experience, should it end.

The power to determine those policies that determine and regulate the entry of foreign-born people into the United States is, as a result of a series of Supreme Court decisions in the 19th century, the exclusive responsibility of the federal government (*Ekiu v. United States*, 1892; *Henderson v. Mayor of City of New York*, 1876; *Lung v. Freeman*, 1876). Although the word “immigration” does not appear anywhere in the U.S. Constitution, the power to regulate immigration is seen to be a plenary power of the federal government that is associated with the metaphysical concept of “national sovereignty.” As with all nation states, no one has a legal right to enter, to work, to study, to travel, or to seek refuge in the United States without the expressed permission of the federal government. The authority to exercise such physical control over the movement of people rests entirely within the meaning of the term “national sovereignty,” which defines the existence of a nation state itself.

As there are no constitutional requirements or restrictions, immigration policy in the United States may literally be anything that the U.S. Congress wants

it to be. Over the years, Congress has imposed some legal obligations, as have certain international agreements (mostly associated with the treatment of refugees and asylum seekers), the terms of which federal courts may require compliance but even these obligations may be changed by subsequent congressional actions.

Thus, it is government practices that count when it comes to understanding the subject of immigration. The extant immigration policies can be expected to change as circumstances change in the evolutionary development of the nation. There is no ideal immigration policy for the United States or any universal immigration policy for all nations to pursue for all times. Like all public policies that have significant economic consequences, immigration policy is time sensitive. What may make sense at one point in a nation’s history may be inappropriate for another.

The Economic Importance of Immigration Policy

As can be implied from the previous discussion, immigration policy is the nation’s most fundamental labor market policy. In broad terms, it establishes who is eligible to be a member of the labor force of the United States: all who are citizens and a limited number of noncitizens who are foreign nationals of other countries under specific legal conditions. There may be work restrictions placed on some citizens in prescribed circumstances (e.g., child labor laws, mandatory retirement ages in certain industries, or employment limitations placed on certain persons for security reasons or because they have criminal backgrounds), but no citizen who is not institutionalized (e.g., someone in a prison, mental asylum, retirement home, or medical hospital) can be entirely kept out of the labor force. Noncitizens, on the other hand, can be legally denied access to the labor force under any circumstance—and most are.

The Economic Justification for Immigration Restrictions

It is a basic principle of neoclassical economics that the movement of labor across international borders should be unrestricted. In theory, the process would continue until such time as wage rates between nations were equalized and an imaginary equilibrium was established without the need for any formal immigration policies to regulate the process. The chief economic benefit under these circumstances is that wage levels and working conditions for workers in countries with higher wages are suppressed.

However, even the founders of the “Chicago School” of free-market economics have long recognized the folly of such reasoning in the real world—whose members, ironically, are the strongest advocates of neoclassical teachings in the United States. One of them, Henry Simons (1948), explained:

Wholly free immigration, however, is neither attainable nor desirable. To insist that a free-trade program is logically or practically incomplete without free migration is either disingenuous or stupid. Free trade may and should raise living standards everywhere. . . . Free immigration would level standards, perhaps without raising them anywhere. (p. 25)

For this reason, he concluded, “As regards immigration policy, the less said the better.” (Simons, 1948, p. 25).

However, of course, no nation can simply ignore its immigration policy and still be a nation. As noted, immigration policy defines the parameters of the legal labor force. Moreover, there are equity concerns at stake that are just as important—maybe even more so—than efficiency issues. Melvin Reder, a pioneer scholar in the study of the economics of immigration and also a strong believer in “Chicago School” market economics, has provided the key rationale for the existence of restrictions on immigration: “Our immigration policy inevitably reflects a kind of national selfishness of which the major beneficiaries are the least fortunate among us. We could not completely abandon this policy, even if we so desired” (Reder, 1963, p. 227).

In other words, there are social-justice issues that warrant immigration regulation. Immigration flows tend to involve disproportionately the entry of poorly skilled and less educated persons. This is especially the case when millions of eager but exploitable illegal immigrant workers are added to the mix. Accordingly, they tend to seek employment in the sizeable low-skilled sector of the American economy (commonly called the secondary labor market). It is those citizen and permanent-resident aliens working in that large sector who would bear most of the burden of the job competition if there were no restrictions on immigration.

In short, internal equity considerations associated with the inordinate adverse impact of immigration on workers in the secondary labor market (especially minority, female, and youth workers) mandate the existence of immigration restrictions despite any theoretical fears about efficiency losses that might accrue.

The Political Justification for Immigration Restrictions

Political libertarians, as well as some social ideologists and theologians, also tend to champion the abstract notion of the unrestricted mobility of labor worldwide. But the existence of nation states and their seeming widespread support by their respective populaces denies the feasibility of such a concept. As Rev. Theodore Hesburgh (1981), Chairman of the Select Commission on Immigration and Refugee Policy and also President of Notre Dame University at the time, explained when he presented the commission’s final report to Congress: “Immigration is a problem because nearly all peoples believe in nationalism, in nation states in which to maintain the integrity of national ideologies, institutions and boundaries” (p. 24).

He added that in the specific case of the United States, restrictions are essential not just for “narrow nationalistic purposes,” but also “because we believe our Nation has become a symbol of the possibilities of freedom and the potentiality for justice in a world which sees little of either” (Hesburgh, 1981, p. 25). He emphatically stressed that “our nationalism is not inconsistent with internationalism,” as we live in a world in which international cooperation is essential.

Nonetheless, one of the most fundamental principles of the United States is the rule of law. It follows, he reasoned, that “enforcing the limits we set for immigration in a firm, unambiguous manner, and doing so with high standards of due process” are totally consistent with our beliefs in a free and open society. Indeed, it is the foundation on which the American society rests. Open borders would not only destroy the standard of living that our economy provides; it would imperil the nation’s ability to serve as a beacon to the rest of the world in demonstrating the benefits of living in a society based on the pursuit of the principle of “liberty and justice for all.” The spread of democratic forms of government is best fostered the availability of examples for others to emulate, not by the use of pressure for others to comply.

Conclusion

For both economic and political reasons, the existence of nation states is predicated on the adoption and adherence to a set of immigration policies. The United States is no exception. These laws should be nondiscriminatory in their terms, fair in their administration, and firm in their application. But as the U.S. Commission on Immigration Policy (chaired

by former U.S. Rep. from Texas Barbara Jordan) stated in 1994: "The credibility of immigration policy can be measured by a simple yardstick: people who should get in, do get in; people who should not get in, are kept out; and people judged deportable are required to leave" (U.S. Commission on Immigration Policy, 1994, p. 2). Changing circumstances will dictate that the level of immigration and its admission criteria be altered over time to ensure congruence with evolving national interests. Demagogues and special-interest groups will constantly try to warp the prevailing policy to serve their private agendas. However, belief in a free society and the

protection of the standard of living for the workers who have built its economy means that there must be limits on the scale of immigration as well as concern about the human capital attributes of those people seeking admission from foreign lands.

However, with respect to the basic premise for the existence of immigration policies, Father Hesburgh (1981) clearly drew the relevant conclusion: "The open society does not mean limitless immigration; quantitative and qualitative limits are perfectly compatible with the concept of the open society" (p. 25). In fact, its survival depends on their implementation and enforcement.

References

- Briggs, V. M., Jr. (2003). *Mass immigration and the national interest: Policy directions for a new century*. Armonk, NY: M. E. Sharpe.
- Camarota, S. A. (2007). Immigrants in the United States, 2007: A profile of America's foreign-born population. *Backgrounder, Center for Immigration Studies*. Retrieved February 14, 2008, from <http://www.cis.org/articles/2007/back1007.html>
- Ekiu v. United States, 142 U.S. 651 (1892). Retrieved February 14, 2008, from <http://vlex.com/vid/20058418>
- Gompers, S. (1925). *Seventy years of life and labor* (Vol. 2). New York: E. P. Dutton.
- Henderson v. Mayor of City of New York, 92 U.S. 259 (1876) Retrieved February 14, 2008, from <http://vlex.com/vid/20070222>
- Hesburgh, T. (1981). *Statement*. Joint Hearings of the Subcommittee on Immigration and Refugee Policy of the U.S. Senate Committee on the Judiciary and the Subcommittee on Immigration, Refugees and International Law of the U.S. House of Representatives Committee on the Judiciary, 97th Congress, 1st Session.
- Lung v. Freeman, 92 U.S. 276 (1876). Retrieved February 14, 2008, from <http://supreme.justia.com/us/92/275/case.html>
- Passel, J. S. (2006). *The size and characteristics of the unauthorized migrant Population in the U.S.: Research report executive summary*. Pew Hispanic Center.
- Reder, M. W. (1963). The economic consequences of increased immigration. *Review of Economics and Statistics*, 25(3), 221-230.
- Simons, H. C. (1948). *Economic policy for a free society*. Chicago: University of Chicago Press.
- U.S. Commission on Immigration Reform. (1994). *U.S. immigration policy: Restoring credibility*. Washington, DC: U.S. Government Printing Office

Biography

Vernon M. Briggs, Jr., is professor emeritus of Labor Economics at the New York State School of Labor and Industrial Relations, Cornell University. He earned a BS in Economics at the University of Maryland and both an MA and a PhD in Economics from Michigan State University. He has written extensively on immigration policy issues as they impinge upon the American labor force and has frequently testified before Congress on related subjects.