

# Report of the Select Commission on Immigration and Refugee Policy: A Critique

Vernon M. Briggs, Jr.

The Select Commission on Immigration and Refugee Policy was created by Congress in 1978 and charged with the responsibility "to study and evaluate . . . existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States" and "to make appropriate legislative recommendations."<sup>1</sup> The commission's final report, issued on March 1, 1981, contained many recommendations that will directly affect employment practices and the size and composition of the labor force.<sup>2</sup>

The labor market issues are the result of the growing significance of legal, illegal, and refugee immigration to the population and labor force of the United States. During 1980, for example, more people probably entered the United States from these combined sources than in any previous year in the nation's history. One noted demographer has observed that "immigration now appears to be almost as important as fertility insofar as U.S. population growth is concerned."<sup>3</sup> The significance of immigration, however, concerns not only aggregate numbers, but also such factors as the status of immigrants who have entered the country illegally, the employment adjustment process of refugees, and the ability of local labor markets and institutions to accommodate all types of immigrants.

## Immigration Policy and Research

The comparable predecessor to the Select Commission was the Immigration Commission created by Congress in 1907 and chaired by Senator William P. Dillingham. The Dillingham Commission was "one of the most ambitious social science research projects in the nation's history up to then,"<sup>4</sup> except for the censuses. The report of the Dillingham Commission embraced racism and ethnocentrism but cloaked these concepts in the language of economics,<sup>5</sup> and

its recommendations were embodied in the subsequent legislation that required literacy tests for immigrants in 1917, set the first annual ceilings on immigration in 1921, and established the infamous national origins quotas in 1924. The restrictive and discriminatory features of these laws formed the basis of the nation's immigration system for over forty years.

The Immigration Act of 1965 purged the racial and ethnic quotas from the immigration laws and liberalized the ceiling on the number of legal immigrants who could enter the United States each year. The immediate short-term effect was to double the annual flow of legal immigrants from the average of 192,000 persons a year (from 1924 to 1965) to 390,000 persons a year (1966 to 1977).<sup>6</sup> Since 1978, the annual averages have risen dramatically. For instance, the legal immigration ceiling was set at 270,000 persons a year in 1980, but 808,000 persons actually entered the United States legally. Exemptions given to some immediate family members of U.S. citizens and a dramatic increase in the number of refugees seeking a political haven in the United States caused the ceiling to be exceeded.

The rapid growth in the annual number of legal immigrants and refugees was one of the justifications for the need to examine the existing immigration system. The other contributing factor was illegal immigration. The fact that an average of one million illegal immigrants are apprehended each year indicates that the prevailing immigration system of the nation—despite its legal complexities—is being widely circumvented. Not only are the issues complex, but the topic itself is emotional. Few other subjects go deeper to the heart of the U.S. experience—a heterogeneous society in quest of a homogeneous identity. No matter what the commission found or recommended, controversy could be expected.

The Select Commission was composed of sixteen people: four people selected by President Jimmy Carter from the general public, four members from the Senate, four members from the House of Representatives, and four cabinet

Vernon M. Briggs, Jr., is Professor of Industrial and Labor Relations, Cornell University.

members whose departments are directly concerned with immigration (the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, and the Secretary of State). In conducting its deliberations, the commission had access to the work of its own staff and the staffs of several congressional committees, the advice of dozens of consultants, and the opinions of hundreds of witnesses who testified at twelve regional public hearings. The commission also funded a limited amount of work, although the specific findings of these funded studies are not contained in the commission's report.

Apparently, the relatively short time available for the completion of its study precluded the commission from initiating any ambitious research projects that might have added to the meager store of currently available knowledge about immigration. The contention that there is an absence of sufficient knowledge to support the extensive recommendations of the commission, however, is unfair. Data are also either nonexistent or grossly inadequate about such topics as youth unemployment in local labor markets, health, employment discrimination, mental health, crime, narcotics use, environmental degradation, or available energy supplies; yet the lack of good data has in no way retarded the initiation of significant policy interventions in these areas.

### Legal Immigration

The overriding theme of the report is that the United States should continue to accept large numbers of immigrants but that the nation must confront "the reality of limitations." More specifically, the commission observed that "If it is a truism to say that the United States is a nation of immigrants, it is also a truism that it is one no longer, nor can it become a land of unlimited immigration. . . . The United States of America—no matter how powerful and idealistic—cannot by itself solve the problems of world migration. This nation must continue to have some limits on immigration." The commission concluded that the nation needs to adopt "a cautious approach" in its immigration policy and recommended that the annual level of legal immigrants increase modestly (from 270,000 to 350,000 persons), that a temporary special effort be made to clear up the existing backlog of visa requests caused primarily by efforts to reunify families (add an additional 100,000 visas each year for five years without regard to quotas for individual countries), and that a more equitable system more reflective of "our interests as a nation" be set up.

The new system would separate immigrants into two categories. One group would be immigrants who were being reunited with family members already in the country; the other would be immigrants with no relations in the United States. Currently, the two groups are mixed together, a process that has caused confusion and hardship. Prevailing legislation, however, stresses that the two main goals of immigration policy are to reunify families and to admit persons with needed skills. The commission has noted that the only way to assure that both of these goals are achieved is

to establish two separate immigration channels. Spouses, minor children, parents of adult citizens, and the unmarried sons, daughters, and grandparents of adult U.S. citizens (a slightly expanded list from that which currently exists) would be admitted without numerical restrictions. All other relatives would have to compete for the numerically limited slots that would be available annually. The immigrants without relations in this country would be admitted in a new immigration category called *independent immigrants*. For a variety of reasons, immigrants without family ties in this country have had a difficult time entering the nation legally since 1978. The present system is, therefore, highly nepotistic, and the immigration system has not been able to meet legitimate labor shortages.

The current immigration system pays scant attention to labor market effects. Except for Israel, other countries that accept legal immigrants base their admission systems largely on labor force needs. The fact that so few U.S. entry decisions are based on labor market considerations does not mean that there are not significant labor market results from these entries. The number of legal immigrants and refugees is large and, even more importantly, they tend to settle in only a relatively small number of states; 70 percent of all legal immigrants settle in California, New York, Florida, New Jersey, Illinois, or Texas. Moreover, only a few urban areas in these states are the ultimate destinations of the new settlers. The fact that legal immigration is so highly concentrated may, in part, explain why the issue of immigration reform is so low on the national agenda of pressing social issues. Unfortunately, the commission only addressed the issue of federal assistance to local areas in its discussion of refugees, but the same needs are created by legal immigrants and illegal immigrants. If immigration policy is essentially a responsibility of the federal government, it is unfair to lay the burden of accommodating federal policies on selected local communities without providing financial assistance to ease the effect on local human services.

### Refugees

The number of refugees admitted to the United States in both fiscal years 1980 and 1981 exceeded 215,000. The Refugee Act of 1980, which set an annual refugee quota of 50,000 persons, had hardly gone into effect before it was confronted by the 125,000 refugees expelled from Cuba in mid-1980. This event may be only an example of a problem that will reoccur regularly with other countries in the future.<sup>7</sup>

The report accepts the definition of *refugee* set forth in the Refugee Act of 1980: anyone who is outside his or her homeland and would face political persecution upon return. No longer are only persons fleeing from communism or the situation in the Middle East considered to be refugees. The report recommends that the limited number of refugee visas be distributed on geographical considerations and refugee characteristics so that opportunities for immigration will be well distributed. The report does not come to grips with the problem of mass requests for asylum. Aside from calling for

the establishment of contingency plans to assist in processing refugees, the report says little about what policy adjustments are needed. The president will simply have to grope with future situations as they unravel.

The report does say that refugees should be clustered in selected communities rather than dispersed nationally. While the sociology behind such a policy may be impeccable, the economic prospects for the communities that

mission also rejected the speculative literature that contends that illegal immigrants somehow take jobs that would otherwise not exist or not be filled in their absence.<sup>11</sup> Aware that shifts in supply curves have both employment and wage effects, the commission also argued that illegal immigrants tend to depress or to moderate wage rates from that which would exist in their absence.<sup>12</sup> Furthermore, the commission argued that illegal immigrants are increasingly

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become the clusters are not good. Federal aid to help meet the human service demands of the refugees was recommended. Implicit in these support programs is the fact that local labor markets will ultimately bear the long-run responsibility of adjusting to refugee employment, housing, and income needs. It is to be hoped that it will not take riots similar to those that occurred in the black ghettos of Miami in mid-1980 to highlight the fact that much more assistance is needed to urban areas confronted with an influx in refugees than mere aid to the refugees. The report, however, is silent on this crucial linkage problem.

#### **Illegal Immigration**

Increasingly the issues of refugees and illegal immigration are becoming intertwined.<sup>8</sup> Almost all discussions of illegal immigration, however, bog down in the intellectual quagmire of trying to estimate the number of people involved, but the illegality of this entry process assures that the actual size and composition of the population will never be known.<sup>9</sup> Rather than make its own estimate, the commission accepted the Bureau of the Census estimate, which placed the stock of illegal immigrants within a range of between 3.5 million and 6 million persons.<sup>10</sup> These census figures, however, were derived from a staff review of other studies that merely attempted to employ various estimating methods. All of the cited studies were based on data for various years in the early to mid-1970s; none were for 1981. The quoted range is, therefore, merely the average of noncomparable approximations from different studies, some of which were of dubious statistical validity; but these limitations will not be known to most people who will read the report. The quoted range will probably be widely cited as a maximum when it is, if anything, a minimum of the size of the illegal immigration problem as of 1981.

The commission accepted the thesis that illegal immigrants hold jobs that would often otherwise be held by citizens but not necessarily that the displacement rate is one to one—only that it is substantially more than zero. The com-

mission also argued that illegal immigrants are increasingly using social services and that these demands will probably escalate in the future. Thus, while there may be private benefits from employing illegal immigrants, there are also public costs. The report is strangely mute on the use of illegal immigrants as strikebreakers and as an antiunion force. The commission, however, concluded that "illegality breeds illegality" and that illegal immigrants in local labor markets make the enforcement of prevailing laws to safeguard employment standards difficult. Thus, the commission feared that the nation would rapidly accumulate a subclass of persons with no rights, a process that can only have a pernicious effect on U.S. society.

The commission stated that "to take no action will result in a worsening of the problems" and called for "the initiation of strong, new efforts" to curtail illegal immigration. Several of its key recommendations involved labor market policies; in particular, it recommended civil penalties (but gave no specifics) for employers who hire illegal immigrants. Such a policy, of course, would entail some form of acceptable employee identification. The commission recommended a system that would require everyone who seeks a job to establish eligibility to work. Such a universal system would minimize the fears of some ethnic groups that they might be discriminated against when they seek jobs.

Although the commission voted fourteen to two in favor of imposing employer sanctions, it voted only eight to seven (with one absent) to couple the sanctions with some form of secure employee identification. The small majority in favor of a universal identification system was "unable to reach a consensus as to the specific type of identification that should be required for verification." Apparently, a proposal to reissue social security cards that could not be counterfeited had the strongest support but not enough to be actually proposed.

Commissioner Ray Marshall, in an appendix to the report, proposed a novel identification system that would involve a postemployment rather than a preemployment identification check. His proposal would neither involve identification cards nor require employers to decide for

themselves about the eligibility of a job applicant. Rather, workers entering the labor force or changing jobs would be required to acquire a work authorization number that would be on file at a federal data bank. The number would be issued only after the individual offered some proof that he or she was a citizen or resident alien. Employers would call a toll free data bank after they had hired an individual to check citizenship eligibility and would receive a number that would be enough to comply with the employer sanction provisions.

The commission strongly endorsed a recommendation for greater enforcement of existing labor standards legislation. If existing wage, hour, safety, antidiscrimination, and farm contractor laws were enforced more adequately, some of the existing attractiveness of hiring illegal immigrants, who are less likely to complain about violations, would be mitigated, the commission reasoned. Greater enforcement, of course, would require more funding for the appropriate agencies than it is currently popular to advocate. Even if enforcement were stepped up, only the minimum standards of existing laws could be enforced. Since all available research indicates that most illegal immigrants are not employed in substandard working conditions,<sup>13</sup> greater enforcement of labor standards would not be sufficient to remedy the problem of illegal immigration.

Now almost all apprehended illegal immigrants are given a voluntary departure back to their homelands, often at the expense of the U.S. taxpayer. The commission concluded, however, that any real effort to impose stiffer penalties would most likely prove to be both unenforceable and more costly than existing practices; yet, as matters stand, violating the nation's immigration statutes incurs virtually no penalty. This circumstance makes no sense. How can any law be taken seriously if no sanctions are imposed when its terms are violated?

The commission supported increased funding for the Immigration and Naturalization Service (INS) and noted that on any eight-hour shift only 450 border patrol officers are on duty along all of the borders of the nation. The commission also recommended that more attention be given to enforcement away from the border than is currently the practice. These recommendations were among twenty-four that would require additional appropriations from Congress. In the present political context, the Reagan administration would have not only to exempt the INS from its budget reductions but also to make it an exception that is entitled to substantially higher real appropriations.

The commission did conclude that no new foreign worker program should be introduced to accommodate present or would-be illegal aliens because of the adverse effects of previous endeavors in the United States and Europe.<sup>14</sup> Nonetheless, the Reagan administration has proposed a small foreign worker program of 50,000 persons and a liberalization of some of the procedures that govern the existing temporary worker programs.<sup>15</sup>

The commission recommended some type of forgiveness for the illegal immigrants already in the country as the only way to avoid the creation of a subclass and to avoid the expense of trying to force so many people to leave the coun-

try. An illegal immigrant would have to have been in the United States for some time before an effective date set a few years before the enactment of the authorization. The effective date could not be contemporaneous with the debate and enactment of the other immigration reforms so that there would be no wholesale invasion of persons seeking to qualify before the deadline. The goal of the commission's reforms is to reduce the size of the illegal immigrant population and its vulnerability to exploitation. Forgiveness, therefore, is an essential part of this overall strategy.

Even with forgiveness, a residual group of people who will not qualify (those who cannot prove they were here before the forgiveness date) and those who do not apply even though they are eligible (because of lack of information or fear) will exist. The report merely states that, as they are apprehended, people in these groups should be subject to the existing procedures for returning them to their homelands but calls for no stiffer penalties on apprehended persons or reductions in the use of the voluntary departure system. Apparently, the commission believed that if the other proposals are all implemented the attractiveness of further illegal immigration will be lessened. This belief, of course, is far from certain.

### Concluding Observations

The report of the Select Commission succinctly describes the fact that the nation's current immigration system is in total disarray. The system is incapable of accomplishing its stated goals; unless changes are made, the situation can only worsen.

The thrust of the report pertains to the effects of not reforming the existing immigration system. Its tenor and the bulk of its findings are addressed at who is harmed by the maintenance of the status quo. Accordingly, its key recommendations are mainly of a law enforcement nature.

The report does not give adequate attention to the causes, primarily economic, of illegal immigration. As a result, the barriers to the implementation of its recommendations are not clear. If corresponding attention had been given to who benefits from leaving matters as they are and how matters have been allowed to reach the present sad state of affairs, the complexity of the quest for immigration reform would have been more clearly revealed.

The major deficiency in the report is its almost total neglect of the need to address the international factors that push people into the immigrant stream. Large numbers of people migrate only if both push and pull factors are working simultaneously. Aside from issuing a few homilies about the importance of international cooperation, the commission mainly addressed the working of the pull factors. No mention is made of the need for tariff and quota reductions on imports from Mexico and Caribbean countries; the need for enhanced development aid, technical assistance, and family planning information for developing nations in our hemisphere; the role of American private investment abroad in introducing and expanding labor-saving technologies in

these countries; and human rights protections and support for democratic principles as guides to government operations by many of these nations. Unless the push factors are reduced, a sizable reduction in the pressures that have generated current immigration problems cannot be expected. It is distressing that the commission chose not to include these concerns in its perspective and its recommendations. Over the long run the push factors may be dominant.

The commission also should have discussed the controversial but, nevertheless, imperative topic of how public policy should safeguard illegal immigrants in this country. As matters stand, these people are the prey of the most exploitative elements of American society. State legislatures and the federal government increasingly deny coverage of social legislation to needy families of illegal immigrants. The abusive treatment of illegal aliens has already raised human rights issues both inside and outside the nation.<sup>16</sup> If the nation expects to continue to reap benefits from illegal immigration, it must be willing to assume the costs as well.

The issue of immigration reform is one of the major labor force policy issues of the 1980s. The Select Commission's report is only the opening salvo of what promises to be a lengthy and heated national debate over the appropriate public policy for the nation.

#### Notes

1. Amendments to the Immigration and Nationality Act (1978), Pub. L. 95-412.
2. Select Commission on Immigration and Refugee Policy, *U.S. Immigration Policy and the National Interest* (Washington, D.C.: Government Printing Office, 1981).
3. Leon F. Bouvier, *The Impact of Immigration on the Size of the U.S. Population* (Washington, D.C.: Population Reference Bureau, 1981), p. 1.
4. David S. North and Allen LeBel, *Manpower and Immigration Policies and the United States*, Special Report no. 20 (Washington, D.C.: National Commission for Manpower Policy, 1978), p. 26.
5. Oscar Handlin, *Race and Nationality in American Life* (New York: Doubleday Anchor Books, 1968), chap. 5.
6. David S. North and William G. Weissert, *Immigrants and the American Labor Force*, Monograph no. 31 (Washington D.C.: U.S. Department of Labor, 1974), p. 5; data for the years after this monograph was published came from *U.S. Immigration Policy and the National Interest*.
7. See *Global 2000 Report to the President* (Washington, D.C.: Government Printing Office, 1980) and John K. Galbraith, *The Nature of Mass Poverty* (Cambridge: Harvard University Press, 1979), chap. 8.
8. Michael Teitelbaum, "Right versus Right: Immigration and Refugee Policy in the United States," *Foreign Affairs*, Fall 1980, pp. 21-59.
9. Vernon M. Briggs, Jr., "Illegal Immigration and the American Labor Force: The

Use of 'Soft' Data for Analysis," *The American Behavioral Scientist*, January 1976, pp. 351-62.

10. Jacob S. Siegal, Jeffrey S. Passel, and J. Gregory Robinson, "Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States," mimeographed report by the U.S. Bureau of the Census, January 1980.

11. See Wayne Cornelius, *Mexican Migrations to the United States: Causes, Consequences and U.S. Responses* (Cambridge, Mass.: Center for International Studies, 1978) and Michael J. Piore, *Birds of Passage: Migrant Labor and Industrial Societies* (Cambridge: Cambridge University Press, 1979).

12. See Walter Fogel, *Mexican Illegal Alien Workers in the United States* (Los Angeles: Institute of Industrial Relations, University of California at Los Angeles, 1978), chaps. 5-7.

13. David S. North and Marion F. Houston, *The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study* (Washington, D.C.: Linton & Company, 1976); see also Maurice D. Van Arsdol, Jr., Joan Moore, David Heer, and Susan P. Haynie, *Non-Apprehended and Apprehended Undocumented Residents in the Los Angeles Labor Market*, final report submitted to the U.S. Department of Labor under Research Contract no. 20-06-77-16 (1979).

14. See Ernesto Galarza, *Merchants of Labor: The Mexican Bracero Story* (Charlotte, N.C.: McNally & Loftin Publishers, 1964); Philip Martin and Mark Miller, "Guestworker Programs: Lessons from Europe," *Industrial and Labor Relations Review*, April 1980, pp. 315-30; Ray Rist, "Migration and Marginality: Guestworkers in Germany and France," *Daedalus*, Spring 1979, pp. 95-108.

15. U.S. Department of Justice, "U.S. Immigration and Refugee Policy," mimeographed, Washington, D.C., July 30, 1981, p. 5; this document represents the proposals of the Reagan administration to Congress for immigration law reform.

16. U.S. Commission on Civil Rights, *The Tarnished Door: Civil Rights Issues in Immigration* (Washington, D.C.: Government Printing Office, 1980).

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