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Vernon M. Briggs, Jr.*

Introduction

The last time that the nation's legal immigration system was independently studied by Congress was in the mid-1960s. Following the enactment of the Immigration Act of 1965 and as a direct result of its provisions, immigration has slowly reemerged again as a substantial influence on the size and composition of the U.S. population and labor force. In contrast to all other advanced industrial nations, the United States stands alone in its willingness to admit each year hundreds of thousands of legal immigrants and refugees for permanent settlement as well as to tolerate mass abuse of its laws by an even larger annual number of illegal immigrants. Indeed, a 1986 study of contemporary American society concluded that "America's biggest import is people".

Last year Congress took some tentative action to address the major problem in the immigration policy area: illegal immigration. It is still problematical, however, whether the passage of the Immigration Reform and Control Act (IRCA) of 1986 will help reduce the overall immigrant flow to manageable numbers. The absence of an effective identification system, concern over inadequate funding for enforcement, and the omission of any attention to the powerful "push" forces (i.e., population growth, poverty, unemployment, human rights violations, and corruption in the countries of origin of the illegal immigrants) all suggest that illegal immigration will probably continue at high and, possibly, increasing levels. Moreover, the full labor market effects of the four amnesty programs created under IRCA cannot yet be estimated. The amnesty recipients will be free to search for jobs anywhere in the economy and will no longer be restricted to only certain sectors. How many of their immediate relatives who will also enter the labor force over the coming years is anybodies guess -- but the numbers should be large. Thus, the labor market of the nation is going to have to make these added accommodations over the next few years to whatever the legal immigration is also doing.

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Hence, I must say that from the outset that I am not very enthusiastic about the prospect of admitting more legal immigrants until the full ramifications and effectiveness of IRCA can be reasonably ascertained. It is, however, a propitious time to review the nature of the legal immigration system itself and I welcome the opportunity to express my views.

The Legal Immigration System: General Comments

It has long been my opinion that the legal immigration system is the heart of the problems that the nation has had with its overall immigration policy. I have felt that the policy has not been accountable, fair, or enforceable. By being accountable, I mean does the design of the policy meet the needs of contemporary society? By being fair, I mean are all persons who can fulfill the stated purpose of the policy given equal chance to qualify? By firm, I mean is the policy capable of carrying out its stated objectives.

Last year the passage of IRCA was designed to address the enforceability issue that had plagued immigration policy up until then. I think it is still an open question whether the weapons and funds Congress has provided are up to the task but there is at least temporary hope in this area.

As for the other two concerns -- accountability and fairness -- both are absent from existing immigration policy. It is in this context, therefore, that I will comment on both the Kennedy and the Simpson bills.

Accountability. The issue of accountability centers on why the nation should have a liberal legal immigration policy when all other nations of the world do not. With the exception of the treatment of refugees, asylees, and immediate family members, it seems to me that it is the role of immigrants in the labor market -- their economic role -- that should be the driving force that shapes our nation's immigration policy at this juncture of the nation's history. For regardless of what causes immigrants to come to the United States, most must seek employment to survive. Indeed, immigration presently accounts for at least one-third of the annual growth in the U.S. labor force -- a labor force that is growing at a rate much faster than that of any of our major industrial competitors. Yet today, less than 5% of the immigrants and refugees who are legally admitted to the United States each year are admitted on the basis that the skills and education they possess are actually known to be in demand by U.S. employers. The percentage is considerably less than 1% if illegal immigrants are included in the total immigrant flow.

To be accountable, the policy should be both quantitatively and qualitatively flexible in its admission mechanisms. The number who are admitted ought to be easily employed without endangering either the job opportunities or working conditions of native born workers. Thus, who precisely should be admitted should be determined by the demonstrated needs of the economy (i.e., they should help fill job shortages).

Under the existing immigration system, there is little effort given to make immigration policy accountable for its economic consequence. Instead

it embodies a hodgepodge of dubious political objectives. Unfortunately, I feel that both of the pending bills perpetuate this undesirable feature.

Although there are some rearrangements of the preference categories in both bills and some changes in treatments of refugees and immediate family members in the Simpson bill, both perpetuate the notion that the nation needs to have a continuation of substantial flows of immigrants each year. They both would admit about 550,000 to 650,000 persons a year with visas, or as immediate family members, or as refugees or asylees. If anything, both bills would allow circumstances for even more persons to be admitted. The Simpson bill at least provides for a tentative cap on immigration by forcing a trade-off between more than a "normal flow" of refugees and immediate family members with other family preference admissions unless the President declares a "refugee emergency". It also slightly reduces the definition of immediate family members. I would support the rationales behind both of these changes. The revised Kennedy bill explicitly raises the visa numbers from 270,000 to 350,000 with no changes made in the immediate family definitions and no linkage to refugee and asylee flows. There is no real rationale provided in either bill, however, as to why the nation should continue to admit so many immigrants and refugees. Under current population projections based on a total immigration flow of one million persons a year (a reasonable estimate for the annual number of immigrants, refugees, asylees, and illegal immigrants) and a continuation of the nation's existing low fertility rate of 1.8 children per woman of child bearing age (an unreasonable assumption since fertility rates of immigrants tend to be higher than for natives and the immigrant population is increasing annually), the nation will have a net population increase of 100 million persons by the year 2080 (i.e., the population will be 340 million persons in less than a century). With this in mind, there simply is no reasonable justification for increasing immigration levels simply for the sake of doing so.

Neither bill provides any quantitative flexibility in setting the aggregate number of persons annually seeking permanent settlement in the United States. Given the enormous scale of this annual flow, annual immigration levels should be linked to short run domestic economic circumstances. During periods of high unemployment such as we have had here in the 1980s and continue to have at this moment, the number of admissions should decline on a scale that is directly related to unemployment. The changes in the aggregate numbers of immigrants each year should be borne entirely by the family preference categories. The mechanism to set these annual admission levels should be given to an administrative agency of government to set each year subject only to a ceiling imposed by Congress.

Likewise, both bills retain family preference categories as the mainstay of the nation's legal immigration system. When refugees and asylees are added, it means that overwhelmingly most of those who enter will continue to be admitted without regard to whether they can contribute to the nation's labor market needs. Token changes are provided in both bills that would increase the number of non-family related immigrants -- called "independent immigrants" but the current occupational preferences (the third and sixth preferences) are kept intact in the Kennedy bill at 54,000 while being slightly reduced to 50,000 in the Simpson bill. The Kennedy bill adds a

point system to admit 50,000 non-preference immigrants that is geared to productivity factors (i.e., age, education, fluency in English etc.). The Simpson bill does the same for about 35,000 "selected immigrants" who would be admitted only on the basis of productivity factors and who could only apply for these visas abroad. Thus, both bills pay homage to labor market principles, but they are primarily designed to perpetuate the status quo whereby most of those who are admitted are done so on a non-labor market basis. Given the fact that the nation is in the midst of a rapid transformation of its industrial and occupational patterns, immigration policy should primarily be responsive to these emerging trends. If it cannot be demonstrated that immigrants can provide the types of skills needed to fill jobs that are in short supply by citizen applicants, they should not be admitted. The exceptions should only be for immediate family members or for refugees for whom the federal government is willing to bear the full financial cost associated with providing them with skills and education needed to qualify for available jobs. Other family preferences should only be admitted when, as discussed above, the domestic economy is operating at or near a full employment level (3 or 4 percent full employment). In other words, I feel it is time that immigrants should be expected to meet the same test that President John F. Kennedy asked of citizens almost two decades ago -- namely "ask not what America can do for you but what can you do for America."

I would even go so far as to say that those admitted under the occupational preferences or the independent immigrant categories should be admitted on a probationary basis for say 2 years during which time, if they cannot maintain employment in the occupations for which they were admitted, they would not be eligible to adjust their status to become a permanent resident alien and they would be expected to leave. Neither bill addresses this concern.

Also, I feel that the point systems and occupational preferences should also be qualitatively flexible. The presumptions of the proposed bills is that preferences should be given to more highly skilled and educated applicants. Under present circumstances, this is a justifiable conclusion. But it also implicitly says that this nation is incapable of preparing its citizen youths for these top-of the line jobs. I pray this is not the case. We simply cannot allow our nation's education and training systems to continue to fail to meet its obligations to prepare students for these types of high paying jobs. Presently, we have no choice but to seek some immigrants to fill some of these jobs because of the gross deficiencies in our academic and vocational training programs at all levels of instruction. But this is a sad state of affairs that should not be perpetuated. If we can address these chronic educational needs -- the U.S. Department of Labor, after all, projects that 40 percent of the growth in occupations between now and the year 2000 will be in the executive, administrative, professional and technical occupations, the employment future for many native Americans is bleak. I would prefer, however, to be optimistic and hope that human resource development will become the nation's number one domestic priority -- just as it is in Japan. If this does happen, it is conceivable that future labor market shortages will occur in the semi-skilled and less skilled occupations. If so, the one element of human resource policy that could fairly be used

to recruit workers for these types of shortages would be immigration policy. If such shortages do not materialize, of course, there should be no immigration of such persons. The point is that immigration policy should also be qualitatively flexible enough to meet whatever compositional changes might occur in the demand for labor in the future. Now the need is for skilled and educated workers; it might not be in the future. There are only minor measures in both bills that would allow the admissions system to adjust to such circumstances.

The only way to bring flexibility to the admission system is to give an administrative agency the authority to annually set both the quantitative level and the qualitative composition of immigrant flows that would both be responsive to changing labor market conditions. The detailed legislation in this area only introduces more rigidities. Immigration policy must be recognized for what it is: a key element of national economic policy. While I welcome the fact that both bills introduce point systems to determine some of those who seek to be admitted, I think that the details and the points should be set by an administrative agency in accordance with demonstrated need. I do not see why the legislation should cement certain categories and certain point values into legislation. It is too hard to change laws. These topics should be subject to regular administrative review which would, of course, have to be defended before Congress. In an ideal world, the agency making the decision would be required to conduct special research studies to back up the categories it uses and the point values it assigns at given times. Under such circumstances, I would say that the principle of using points based on certain immigrant characteristics should be extended to all of the non-family preference categories.

Both bills make the system more legalistic and mechanistic than it currently is. They reflect the fact that, by the accidental quirk of fate, the design of immigration policy was given in 1941 to the Department of Justice and the Judiciary Committees of Congress. The legal community has seized control of what is essentially an economic issue. In the process, they have created a nightmarish system whereby there is essentially no administrative discretion allowed anywhere. Just as the nation did last year with its tax codes, it is now time to simplify the immigration system.

Fairness. Both bills retain family preferences as the essential rationale for the nation's immigration. The revised Kennedy bill even adds 30,000 visas that would be made available for such would-be immigrants. It is not exactly clear whether the Simpson bill will increase or decrease the numbers over existing levels since other groups such as immediate family relatives, refugees, and asylees are lumped together in the 465,000 visas that would be available for family preferences. It seems likely that the total number of family preference visas will go up. Both bills do shift some of the weights assigned to the various preference categories. The Kennedy bill reduces the number of 4th and 5th preference visa numbers and, if I read the Simpson bill correctly, it would phase out both the 4th and 5th preference visas. I would support the direction of both of these changes. Reducing the 4th and 5th preferences is highly desireable; elimination of both would be more preferable. Both of these categories highlight the nepotistic and discriminatory nature of the existing system. In no other

realm of national life would such blatant assaults on fairness be tolerated. I see no reason why family preferences should be given any more than token mention -- perhaps for certain hardship cases -- in the immigration law. The maintenance of a system whereby 80 percent of the visa numbers are given sheerly on the basis of having a relative who is a citizen or resident alien is in my view, indefensible in this day and age.

Historically, it is well known that family reunification became the main entry route as the direct result of the efforts of persons who wanted to maintain the obnoxious national origin system during the 1965 overhaul of the legal immigration system. Over the objections of the Johnson Administration which favored labor market consideration as the primary and major rationale for the nation's immigration system, Congress did the reverse: it downplayed labor market considerations and advanced family reunification as the primary rationale. Hence, the principle of family reunification does not have a particularly proud history. In my view, it is as distasteful now as it must have been in 1965 to reformers who wanted a truly non-discriminatory immigration system.

Conclusion

It has long been my firm hope that Congress would turn its attention to the conceptually outmoded and indefensible features of the existing legal immigration system. Unfortunately, I find little in either of these bills about which I can be excited. While I am not fearful of any of the suggested changes, I am disappointed about the loss of opportunity to address a major national problem. Namely: the legal immigration system is inflexible, mechanistic, discriminatory, nepotistic, and unaccountable for its economic consequences. The entire system needs to be overhauled. Both bills propose cosmetic changes around the margins. Fundamental change is what is required.