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Vernon M. Briggs

Cornell University, vmb2@cornell.edu

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Immigration Policy in Free Societies: Are There Principles Involved or Is It All Politics?

Abstract

[Excerpt] Free societies with industrialized economies such as Canada and the United States are characterized by certain unique features. Among these is the fact that they both allow their citizens to come and go across their borders with few restrictions and they annually permit millions of noncitizens to travel, to conduct business, to visit, and to study in their countries with only minimal regulation. Both nations also allow some non-citizens to enter their countries and to work in competition with their citizen work-force for temporary periods under specific conditions. Furthermore, they regularly allow a generous number of non-citizens to immigrate or to take refuge as permanent residents and eventually to become citizens. It is primarily these latter situations, where work and residence issues arise, that pose the question whether years of experience have generated any principles that can guide policy makers when debates re-surface? Or, is it always simply a matter of political power and special interests at the moment that determine immigration policy on an ad-hoc basis?

Keywords

immigration, public policy, Canada, United States

Disciplines

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Comments

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The Effects of

MASS IMMIGRATION

on Canadian Living Standards
and Society

Edited by Herbert Grubel

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Immigration policy in free societies: Are there principles involved or is it all politics?

Vernon M. Briggs, Jr.

Free societies with industrialized economies such as Canada and the United States are characterized by certain unique features. Among these is the fact that they both allow their citizens to come and go across their borders with few restrictions and they annually permit millions of non-citizens to travel, to conduct business, to visit, and to study in their countries with only minimal regulation. Both nations also allow some non-citizens to enter their countries and to work in competition with their citizen work-force for temporary periods under specific conditions. Furthermore, they regularly allow a generous number of non-citizens to immigrate or to take refuge as permanent residents and eventually to become citizens. It is primarily these latter situations, where work and residence issues arise, that pose the question whether years of experience have generated any principles that can guide policy makers when debates re-surface? Or, is it always simply a matter of political power and special interests at the moment that determine immigration policy on an ad-hoc basis?

It is not that politics can ever be entirely avoided, of course, since the *sine qua non* of all democratic societies is that policy decisions have to be filtered through political institutions before they can be validated and

legitimately enforced. Rather, the issue is whether certain principles have achieved the status of quasiparameters to political dialogues when the subject of immigration policy is on the national agenda? It is understood, of course, that political discussions will necessarily lead to differences over the details of policy; but can the framework of these debates start with the recognition of certain uncontested principles?

Too often, if the United States' experience with immigration reform is instructive, the rhetoric surrounding these discussions becomes hopelessly entangled in a confusion of intentions and motivations of the participants that serve to divert public attention from the national interest to what are but crass private efforts to extract gains for special-interest groups. Policy options are endlessly re-hashed and re-debated as if they have never been discussed or tried before. Research dealing with experience with past endeavors is simply ignored. It often seems that no lessons are ever learned. The result, as one would expect, is usually stalemate in the legislative bodies as the politicians jockey for acceptable positions and widespread cynicism is generated among the populace because changes are not forthcoming while the failures of extant policies continue to fester in their local communities.

For 40 years, the United States has wrestled with attempts to reform its immigration policies after the unexpected revival of the phenomenon of mass immigration following the passage of the Immigration Act of 1965 (Briggs, 2003). In 1965, the foreign-born population totaled 8.5 million people; by 2007, the foreign-born population exceeded 39 million persons. As these unintended consequences began to emerge, the US Congress established the Select Commission on Immigration and Refugee Policy in 1978 to seek ways to respond to the unanticipated rise in immigration. Less than a decade after the Select Commission issued its final report in 1981, the US Commission on Immigration Reform was created in 1990 for the same reasons. Unfortunately, the major reforms advocated by both of these commissions have largely gone unheeded or been only half-heartedly enacted. As a consequence, immigration policy issues continue to ferment and the public is deeply disturbed by the lack of action. The troublesome issue of immigration reform is again waiting at the doorstep of the new administration and Congress that took over in 2009.

The purpose of this paper, however, is not to rehash the 40-year saga of efforts to reform immigration in the United States. It is a woeful tale too frustrating to dwell upon. Rather, the goal is to identify those parameters that, if recognized in advance as being “givens,” could have allowed reform measures to proceed. But if there is continuing disagreement over these principles, it can be anticipated that discussion in the future will once more become bogged down over policy predicates and never get to the needed reform measures themselves. Likewise, if there really are such things as immigration principles for free societies, there should be some prospect that these lessons can be generalized to apply to other nations who are similarly free, industrialized, and open to immigration flows on a regulated basis. The principles identified below are all drawn from actual quotations from debates and the literature about immigration policy in the United States.

“The open society does not mean limitless immigration. Quantitative and qualitative limits are perfectly compatible with the concept of the open society.” (Hesburgh, 1981: 25)

In a world of nation states, immigration is associated with the principle of national sovereignty. All governments have the authority to exercise control over the people who reside within their prescribed geographical borders. No nation state on Earth permits voluntary citizenship (Brubaker, 1989). Citizens in free societies believe that, in return for compulsory citizenship, they have certain rights and entitlements, which their governments must meet. The governments of these societies, in turn, expect their citizens to meet certain responsibilities. Non-citizens can only legally enter to live, work, study, travel, visit, or seek refuge under terms set by the national governments of these individual nation states. Otherwise, they can be denied entry or deported, if apprehended, if they enter the territory of the nation state without permission or violate the terms of a temporary visa. Sending violators of immigration laws back to their homelands is typically not considered to be punishment. It is simply a law-enforcement remedy.

Precisely because free societies believe they are “nations of laws,” they reserve the right to limit the quantitative number of non-citizens

who may annually enter and they can, as they usually do, also decide to specify certain qualitative features that they wish would-be immigrants to have as a condition of their admission. As such, the phenomenon of immigration in contemporary times must be recognized as being wholly a policy-driven phenomenon.

Like all public policies, the factors associated with determining the number and the characteristics of would-be immigrants are the national interests of the receiving nation state at a given time. The ensuing immigration flows, therefore, are not outcomes determined by free-market forces. They are the products of man-made decisions. And, as Napoleon once mused, “policy is destiny.”

Immigration policies exist because most citizens in nation states have a sense of nationalism by which they seek to retain the integrity of national ideologies, institutions, and boundaries. But more than nationalism is involved because free societies also believe that their existence itself serves as a beacon to others, showing the “the possibilities of freedom and the potentiality for justice in a world which sees little of either” (Hesburgh, 1981: 24). Unrestrictive immigration would render this imitation ideal impossible.

“Immigration is, in its fundamental aspects, a labor problem.”

(Gompers, 1925: 154)

In the handful of nation states in the world in which immigration is pursued and encouraged, immigration policy is composed of multiple components. But, regardless of the entry avenue, virtually all immigrants must work once they arrive. Usually, their spouses and, eventually, their children do as well. Hence, immigration policies always have labor-market consequences no matter what the rationale for their enactment.

Although seldom acknowledged in the political rhetoric, the scale of immigration flows, the human-capital characteristics that the immigrants bring with them (or the lack of same), and the geographical distribution of the foreign population always have economic implications for the nation’s labor force. These impacts upon the labor supply affect not only the immigrant labor force but also the employment, earnings, and income opportunities of the citizen labor force (that is, the native-born work force

as well as the foreign-born workers who have previously become naturalized citizens). Every change in immigration policy needs to contain an accompanying analysis of its anticipated consequences for the labor market, both in the short run and the long run.

Implicit in the recognition of immigration as being fundamentally a labor issue is the parallel acknowledgement that the enforcement of the provisions of immigration laws is part of government's duty to protect workers. In a pure sense, immigration policy is a nation's most fundamental worker-protection law: it defines who is eligible to be a member of the legal labor force subject to any other qualifications that the government might impose to refine that definition.

“Immigration policy inevitably reflects a kind of national selfishness of which the major beneficiaries are the least fortunate among us.” (Reeder, 1963: 227)

Although seldom acknowledged when immigration policy is under consideration, there are significant social-justice issues at stake for the most needy in the resident population and labor force. Much of the rationale for the admission of immigrants in free societies ignores the impacts of their actions upon the labor market. Family reunification considerations, refugee admissions, political asylum approvals, responses to the ever-present pleas of some business organizations for unskilled workers, and the presence of illegal immigrants usually mean that a disproportionate number of the immigrant inflow are low skilled, poorly educated, and often have problems with the prevailing national language. As a consequence, it is the segment of the citizen labor force that is itself low skilled and poorly educated (that is, workers in the “secondary labor market,” to use the jargon of labor economics) and those workers who have been marginalized by various social barriers (e.g., some specific segments of the population who have confronted discrimination, as well as inexperienced youths in general) that typically sustain the greatest adverse impacts of large immigrant inflows.

Too often immigration debates focus on the beneficiaries of immigration policies (that is, the immigrants themselves, employers, and sometimes consumers) while failing to acknowledge that there are always losers too, which is especially important since the losers are disproportionately

those already on the bottom rungs of society's economic ladder as well as the taxpayers in general who often are required to support or to supplement the financial needs of unskilled immigrants and refugees. One of the strongest reasons for the existence of immigration policies that limit the number of immigrants is that they protect those citizen workers who are most vulnerable to the increased job and wage competition of immigrant entry. Equity considerations are as important as efficiency considerations when immigration policy is under discussion, although the equality of these two positions is often overlooked. There are justifiable social reasons to regulate immigration entries and to seek strict enforcement of policy terms once restrictions are in place.

How significant this issue is, of course, depends on the size of the unskilled adult labor force in the country. In the case of the United States, there are over 90 million adults (that is, those persons age 25 and over in the population) who have only a high-school diploma or fewer years of educational attainment (or about half of the total adult population). Of these, over 50 million were in the civilian labor force in 2008.

Low levels of educational attainment are only part of the problem. Because so many adult immigrants are from the poorer nations on the planet, there is also reason to be concerned over the quality of the actual education many adult immigrants claim to have received during the years of schooling they did complete. Low levels of educational attainment, made worse by low educational achievement, only enhance the odds that many adult immigrants compete with the considerable pool of adult Americans who also have low educational levels and poor job skills.

This large low-skilled segment of the adult labor force consistently has the highest unemployment rates of all adult educational attainment categories. Similarly, the labor market experiences of youths who also are highly concentrated in the low-skilled labor market are typically even far worse.

Under these circumstances, an immigration policy that permits massive numbers of unskilled workers to enter the country legally and illegally and to seek work is a major threat to the economic well-being of this large segment of the labor force. Unfortunately, those who benefit from keeping the low skilled labor market in a constant state of surplus typically show little interest in the harm immigration policies can do to

those citizen workers who already have the greatest difficulty finding jobs and earning livable wages. Policymakers, however, should not have that luxury of thoughtful neglect.

“Unless there is another compelling interest, such as in the entry of nuclear families and refugees, it is not in the national interest to admit unskilled workers.” (U.S. Commission on Immigration Reform, 1995: 24)

Because of the aforementioned principle of social justice, the use of immigration policy to admit unskilled workers—other than in the specified cases of allowing unskilled members of nuclear families (that is, spouses, minor children, and elderly parents) and of refugees who are fleeing from persecution on specified grounds—should be off the table. No matter how hard advanced economies have tried, most have been unsuccessful in eliminating low-paid jobs for unskilled workers (the “secondary labor market”).

The low-skilled labor market is a unique phenomenon. It includes not only those adult workers who are unskilled; it is also open to adults who are better skilled but, because of special circumstances (such as fluctuations in national unemployment levels or the existence of certain regional pockets of high unemployment even when the national unemployment rates are low) can do the unskilled work if they cannot find jobs at their higher skill level. Better-skilled adult workers can always do unskilled work if they must but, by definition, unskilled workers cannot qualify for skilled jobs.

Moreover, youths (16–19 years old) and young adults (20–24 years old) also are major participants in the unskilled labor markets as they seek discretionary income and begin the process of acquiring work experience and independence from their parents. Employers usually prefer unskilled adult workers to youthful workers due to their greater dependency on income. But they do hire youths for many of these same jobs if they have to do so. For most youths, it is vital that they have access to the unskilled labor market as they transition from being youths to becoming adults and from becoming part-time workers to becoming full-time workers. Persons who have trouble entering the labor force during their youth usually have continuing employment difficulties in their adulthood.

Hence, given the enormous size of the available pool of citizen adults and youths who compete for the available jobs in the unskilled labor market, it is hard to imagine the existence of genuine shortages of low-skilled workers that could not be filled by offering slightly higher wages as a cure (which, of course, is what free-market economic theory would suggest). It should not be the role of immigration policy to keep wage rates low for low-skilled workers.

Furthermore, there are few if any productivity gains for the economy if unskilled adult immigrants are encouraged (or allowed) to immigrate as long as the unemployment rates for unskilled adult citizen workers are well above the national average unemployment rate for the civilian labor force and persistently remain so, which is typically the case. If by chance in the future the unemployment rates for unskilled workers do fall below the national unemployment rate and genuine labor shortages for them do develop, there is no easier public policy problem to resolve. Experience has consistently demonstrated that, if invited to immigrate, low-skilled workers will come in droves.

“Immigration can support the national interest by bringing to the US individuals whose skills would benefit our society.”

(U.S. Commission on Immigration Reform, 1995: 20)

Except for those aforementioned situations whereby there is a “compelling national interest” to admit adult persons without regard to their skill levels, legal immigration should be limited to adults who have high skill levels: persons with advanced professional degrees, persons with college degrees, and persons with specialized work skills and multiple years of on-the-job work experience. Immigration policy can, if domestic labor-market conditions warrant, supplement domestic programs of human resource development that require post-secondary levels of educations as well as those that provide specific skill training for job entry.

There should be limits on these entries, however, as immigration should never be permitted to undercut the wage and benefit levels that are needed to provide incentives to persons to invest in their own human-capital preparation and for communities to expend the tax revenues to provide such learning opportunities. But, in those occupations in which

the adult unemployment rates are significantly below the national unemployment rates for all adult workers, immigration can play a supportive role to augment the need for a greater skilled labor supply. In the process, the productivity of the labor force is enhanced and economic growth for society is encouraged. But, inviting skilled immigrants to gain permanent residence and citizenship is not the preferred route to augmenting the skill levels of the labor force. It should always be considered a supplemental route to be used only when real labor shortages can be demonstrated. “Brain-draining” other countries of their highly skilled human resources should never be seen as a reliable or socially useful long-term strategy.

The number of such employment-based skilled immigrants should be flexible but the tendency always should be to reduce the number downward as circumstances change in order to encourage domestic education and training programs to increase their graduates in the shortage occupations. Hitting a legislated entry cap (such as provided in the Immigration Act of 1990) in a specific year, therefore, should not warrant a conclusion that the existing cap is too low. A cap is a cap. A shortage in the short run should not mean automatically that more skilled immigrants be admitted. First recourse should always be to allow market forces to signal the domestic education and training system to respond. If over time it is clear that these systems cannot provide more graduates or that demographic shifts such as an aging population or declining fertility rates will adversely affect future skill availability, the numbers (that is, the cap) for skilled immigrants can be raised.

“If US immigration policy is to serve this nation’s interests, it must be enforced effectively. This nation has a responsibility to its people—citizens and permanent residents—and failure to enforce immigration law means not living up to that responsibility.”

(Select Commission on Immigration and Refugee Policy, 1981: 12)

As the United States in 2008 has an estimated 12 to 14 million illegal immigrants living in the country (even after seven amnesties since 1986 that have legalized the status of over 6 million earlier illegal immigrants), the nation’s enforcement experience can be judged to be a colossal failure of public policy. In the face of this failure, the importance of enforcing

immigration laws cannot be overstated. Immigration policy is a nation's most fundamental labor law. It sets a baseline that legally defines who is eligible to be in the domestic labor force. Common sense says that nations that claim to adhere to the principle of "the rule of law" should enforce the laws they enact, especially when they involve such basic issues as the employment, income, and working conditions of its citizens.

When politicians lack the courage to enforce immigration laws, it breeds cynicism among the populace, causes unnecessary hardship for those citizen and permanent resident workers who must compete with illegal immigrant workers, and it widely opens the door to the exploitation of illegal immigrant workers by unscrupulous employers. The responsible course for public policy is to treat the enforcement of immigration laws as being as important as all of the welcoming immigrant services that are also associated with such laws. The fact that they often are not enforced represents the seamier side of some contemporary democracies.

"Except in national emergencies, guestworker programs [for unskilled workers] are bad public policy. They may meet the short term pleas of private interest groups, but they can never meet the higher standard of being policies that serve the national interest." (Briggs, 2004: 7)

No element on immigration policy has been more thoroughly researched and more consistently found to be unworthy of adoption than the proposals to admit unskilled foreign workers for temporary periods into advanced industrialized nations other than in times of national emergencies. Known more popularly as "guestworker programs," they consistently fail in practice because they cannot reconcile two strongly conflicting goals: on the one hand, the need to protect citizen workers from the competition of foreign workers who are willing to work for wages and under employment conditions that few citizens would tolerate (they are essentially "indentured servants"); on the other, the insatiable demands of some employers who rely on labor-intensive production and service techniques for a plentiful supply of low-cost workers.

Although the simplicity of the idea of using foreign workers on a temporary basis to meet an immediate labor shortage or as a possible remedy to illegal immigration makes it seem attractive, every national

commission in the United States that has studied this notion has concluded from past experiences with such endeavors that they should not be included in a nation's immigration system. In a nutshell, they have been found to be hard to design, they are almost impossible to administer efficiently, they are politically difficult to end, they stigmatize certain jobs as being "only for foreigners," they depress wages for citizen workers in the same occupations and industries, they over-burden local health, housing, education, and social services in local communities, and they tend to encourage illegal immigration (especially by "visa overstayers").

To be successful, immigration policy debates must "overcome the four horsemen of parochialism, xenophobic demagoguery, 'knee jerkism,' and perfectionism." (Hesburgh, 1981: 25)

The downfall of most legislative efforts to reform existing immigration policies can generally be ascribed to their falling prey to one or more of these apocalyptic "four horsemen." They can destroy the best-intended reform attempts.

Parochialism

The first obstacle to overcome is parochialism. If policymakers believe that they can design comprehensive and effective measures, without regard to lessons that can be learned by looking at the experiences of other similarly situated nations and how they have wrestled with the issue in the contemporary, international setting, they will probably fail. Furthermore, the United Nations Population Council has already warned that immigration is the "human crisis" issue of the twenty-first century (UN Population Fund, 1993: 15). It notes that with about 95% of the world's population growth occurring in third-world nations and with the prospect for proportionate job growth in most of these nations ranging from poor to non-existent, the pressures in these countries to emigrate is already immense and will only worsen.

Inclusion of proposals to address the "push" factors in these countries should be part of any truly comprehensive strategy to adopt and enforce an immigration policy for the advanced economies of the world. This does not mean that the problems of these sending nations can be

solved by widely opening the doors of the advanced nations to receive the human outflow. Immigration policy alone cannot solve any of the dilemmas of these nations. But parallel efforts to provide assistance with economic development, to reduce trade barriers, to support family planning initiatives, and to link support for these programs to aggressive efforts in these countries to adhere to international human-rights standards, to adopt and to enforce labor standards, and to eliminate governmental corruption could at least reduce some of the pressures on immigration policy from refugees, those seeking political asylum, and illegal immigrants.

Xenophobic and xenophilic demagoguery

The second obstacle to overcome is xenophobic demagoguery. Although it may be impossible to “defang” (as one US senator once proclaimed) the tenor of immigration policy debates in free societies, the one issue that will kill such efforts for certain is if the debate falls prey to fear of would-be immigrants because of their race, national origins, or religions. Free societies are based on a toleration of differences and the use of diversity as an instrument of building national strength. The principle of *e pluri-bus unum* is no mere political slogan. Adherence to this concept by free societies serves as a beacon of hope to the world that people with different attributes can, in fact, live in harmony and prosper in the process.

Diversity, therefore, may be a laudable outcome but it should not be a goal *per se* of immigration policy because it is counter to the more basic human right that extols the virtue of the worthiness of the individual’s personal characteristics and beliefs. Nonetheless, diversity itself should not be considered a negative outcome to be avoided. There are legitimate reasons that free nations have immigration policies and the restrictions that are inherent in their provisions but fear of human differences should never be one of the prompting rationales. If it does, efforts at immigration reform will be either be ignored or shunted aside into diversionary debates over the actual intentions of the proponents. Xenophobic fears strengthen prejudices and serve to stifle debate, neither of which serves the national interest.

By the same token, xenophilic demagoguery also serves no useful purpose for public discussions of immigration reforms. Immigration is, as mentioned earlier, fundamentally an economic issue in terms of its societal impacts. Exaggerated and uncritical assertions that proclaim the

merits of more immigrants while ignoring their fiscal and opportunity costs on the receiving countries does little to further public debate. The mere existence of labor shortages —locally, regionally or nationally—does not mean that more immigration is necessary or desirable as a policy response. Tight labor markets can provide opportunities to direct public attention to the inadequacies of domestic training, education, and labor mobility programs, as well as being chances to re-examine the state of prevailing antidiscrimination efforts that assure that available human resource reservoirs are fully tapped. Furthermore, such efforts at human-resource development can reduce the tendency of expanded immigration to “brain-drain” skilled labor from developing nations where such supplies are always chronically short. Increasing the level of immigration is one way to meet real labor shortages; but it is not the only one or necessarily the preferred first option.

Rational creation of public policy cannot take place if the discussion is caught in a crossfire of propaganda between unloving critics (xenophobes) and uncritical lovers (xenophiles).

Knee-jerkism

The third barrier to reform is “knee-jerkism.” Immigration issues are often as complicated as they are controversial. Because nations have immigration policies for multiple reasons, there are often conflicting proposals about how these multiple objectives are to be met and their terms enforced. Quick fixes that are offered as solutions usually fail to appreciate the complexities of the multiple issues involved, they overlook long-term consequences, and they can lead to unexpected consequences.

One of the most notorious examples of “knee jerkism” is the oft-cited efforts of business proponents to press for guestworker programs for specific occupations and industries at the first sign of any difficulties recruiting workers without raising wages or improving working conditions.

Perfectionism

The fourth path to policy failure is the insistence that proposed remedies be perfect in their execution or else they cannot be enacted or must be repealed. Proposals to build border walls, enhance border management techniques, develop personal-identification systems, and adopt methods

to enforce sanctions against employers of illegal immigrants are especially vulnerable to such unrealistic expectations. As long as human beings are involved in the design and execution of public policies, there are going to be mistakes of judgment and inadequacies in implementation. They are to be expected. Experience is sometimes the only way to find out what works and what does not.

Predicting how people will respond to public-policy interventions in free labor markets is far more of an art than a science. Moreover, as times change and as experience is gained, even policies once deemed successful may have to be reconsidered. Like virtually all other labor-market policies, immigration policies should be reviewed on a regular basis, not just when a crisis arises.

“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, 1997: xvi)

This last principle states the overall performance standard for policy makers in free societies with respect to immigration policy. Adherence to this “yardstick” would assure that serving the public interest is the actual product of their efforts. It is a summary truism that requires no amplification.

The remainder—the political issues

In addition to the aforementioned general principles that might guide immigration debates, there are other uses of immigration policy about which there is less general consensus. These policies are typically justified for political reasons that vary in scope and change over time and from one nation to another even though they too have economic consequences for each nation’s labor market. They involve the admission of refugees, the granting of political asylum claims, the use of temporary worker programs for skilled workers, and the creation of special entry programs such as those for foreign investors, “diversity immigrants,” religious workers, employees of overseas embassies, victims of human trafficking, foreign students, visiting foreign scholars, and a myriad of others.

Concluding observation

When debating vital national issues such as immigration, democratic societies require participants who are informed, not merely citizens who are opinionated. “Too often,” as President John F. Kennedy once warned his nation in 1962, “we subject all facts to a prefabricated set of interpretations. We enjoy the comfort of opinion without the discomfort of thought.” Immigration policy requires thought as a predicate for action.

Countries such as Canada and the United States have now had decades of experience with the phenomenon of mass immigration. There are policy lessons that have been learned, whether or not all special-interest groups are comforted by them. These lessons—the principles described in this chapter—may not be universals that are true for all societies for all time. But they do reflect a consensus of thoughtful judgments from parties who are knowledgeable about the subject matter rather than the opinions of partisans whose views are shaped by political opportunities to gain power or private benefit. While politics does have an important and continuing role to play in the formulation of immigration policy, the range of political discourse about immigration could be narrowed considerably if politicians would concede that at least some of the issues have been resolved for the time being—and acted accordingly.

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