

# THE REAGAN ADMINISTRATION PROPOSALS ON IMMIGRATION: THE PROBLEM OF THE UNDOCUMENTED ALIEN IN THE UNITED STATES

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In April, 1980, thousands of Cuban refugees arrived on the shores of Florida.<sup>1</sup> In May, 1980, President Jimmy Carter welcomed the refugees with "open hearts and open arms."<sup>2</sup> By September, 1980, approximately 120,000 Cuban refugees availed themselves of Carter's memorable welcome.<sup>3</sup> By that time, however, it was not at all clear that these refugees were as welcome as President Carter had suggested.

Fidel Castro's decision to encourage 120,000 of his countrymen to flee Cuba and seek refugee status in the United States rekindled the dilemma facing the United States in attempting to shape policy towards aliens and refugees. While this country prides itself on its immigrant heritage, the United States is concerned that it cannot continue past practices toward immigrants.

One of the major problems brought about by the massive influx of refugees was the inability on the part of the United States to absorb them quickly into communities.<sup>4</sup> This was particularly true in the target refugee area of Miami, Florida. Many of these refugees, jobless and homeless, turned to desperate measures to cope (including hijacking planes in order to leave the United States or turning to crime in order to survive).<sup>5</sup>

In addition to the Cuban refugees, an exodus of Haitian refu-

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1. N.Y. Times, Apr. 27, 1980, § 1, at 3, col. 4.

2. N.Y. Times, May 6, 1980, at A1, col. 1.

3. N.Y. Times, Sept. 27, 1980, at A1, col. 2.

4. N.Y. Times, Nov. 30, 1980, § 1, at 24, col. 1.

5. N.Y. Times, Sept. 18, 1980, at A20, col. 1; N.Y. Times, June 7, 1981, § 4, at 6, col. 6.

gees soon followed. By August, 1981, a total of over 800,000 Cuban and Haitian refugees had sought refuge in this country. In addition, 270,000 legal immigrants are allowed annually into the United States. Over 500,000 illegal aliens enter the United States each year at the Mexican border.<sup>6</sup> This sudden increase of disorganized illegal immigration has sparked valid concerns within the existing population of the United States.<sup>7</sup>

The problems caused by this sudden increase of population are multifaceted. In the immediate sense, it severely affects the communities to which the immigrants first arrive and then logically stay. In the long-range sense, it presents serious policy problems regarding how to handle the status of immigrants within the United States, and has a widespread effect on social policies. The problem is further compounded by opposition to exclusionary policies on the part of civil libertarians and social workers. It is admittedly difficult to reconcile new exclusionary policies with the Statue of Liberty's caption in reference to "huddled masses yearning to breathe free," which welcomes the cold and hungry. On the other hand, there are concerns on the part of Americans who fear that "[t]hose huddled masses . . . are robbing native Americans of jobs, straining community services and provoking new excesses of bigotry and xenophobia across the United States."<sup>8</sup>

In light of the above-mentioned events, public opinion and prior immigration policies, it becomes evident that there is a growing need for legislation to carefully but effectively handle the increasing illegal alien population. In response to this need, the Reagan Administration introduced legislative proposals on July 31, 1981. These proposals are an attempt to effectively and carefully handle the existing illegal aliens, and avoid or deter continued illegal entry of aliens into the United States.<sup>9</sup> The main provisions of the Administration's proposal would: (1) adopt laws to deal with

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6. N.Y. Times, Sept. 16, 1981, at A27, col. 1. See also TIME, Aug. 3, 1981, at 17, col. 1.

7. In Florida, it is not uncommon to see bumper stickers depicting this feeling: "Will the last American leaving South Florida please bring the flag?" or "I'm a native American . . . an endangered species."

8. TIME, May 18, 1981, at 24, col. 2. See also N.Y. Times, Oct. 19, 1980, § 1, at 40, col. 1.

9. *Senate Subcomm. on the Judiciary's Subcomm. on Immigration and Refugee Policy Concluded Joint Hearings with the House Comm. on the Judiciary's Subcomm. on Immigration, Refugees, and International Law of the Judiciary to Review the Administration's Policy Relative to Immigration and Refugees*, 97th Cong., 1st Sess. 5-35 (1981) (statement of William French Smith, Attorney General, Department of Justice) [hereinafter cited as *Senate Subcomm.*].

arrivals of undocumented aliens by sea; (2) impose sanctions on employees who knowingly hire illegal aliens; (3) conduct a new, experimental, temporary worker program for Mexican nationals; (4) grant legal status to certain illegal aliens currently residing in the United States; (5) increase limits of immigration for Mexico and Canada; and, (6) restructure benefits for refugees and those seeking asylum.<sup>10</sup>

The Reagan proposals are not the only measures being considered on Capitol Hill. On March 10, 1982, new legislation was proposed, supported by Senator Alan Simpson (R) Wyoming, and Representative Romano Mazzoli (D) Kentucky, Chairmen of the Senate and House Immigration Subcommittees. The bill (to be introduced in the near future) would impose fines of up to \$2,000, injunctions, and contempt citations on employers who knowingly hire illegal aliens.<sup>11</sup> Although this proposed legislation is more limited than the Reagan proposal, the latter does contain a provision for employer sanctions.

This Article will review and analyze the Reagan Administration's proposals in light of historical development within United States immigration law. The illegal alien problem, as it exists today, will be examined in comparison to the West German experience in attempting to deal with similar immigration problems since World War II. A detailed analysis of the Reagan proposals on immigration will follow, evaluating their strengths and weaknesses. A thorough understanding of the proposals requires that special attention be focused on the Mexican-American relationship.

## I. HISTORICAL BACKGROUND

The first European settlers in the United States had a more liberal attitude towards immigrants than attitudes prevalent today. The early settler, living in a strange and undeveloped environment, looked upon newcomers as an addition toward achieving greater security and strength.<sup>12</sup> After local government was established, the individual colonies were in a position to deal more effectively with matters of immigration. Policies enunciated by these governments were, however, subject to Crown or proprietor approval. Colonial encouragement of immigration took the form of inducements, such as land grants, tax exemptions and limited reli-

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10. *Id.* at 4.

11. *Wall St. J.*, Mar. 10, 1982, at 25, col. 4.

12. *See generally* 12 E.E. PROPER, COLONIAL IMMIGRATION LAW (1900).

gious toleration.<sup>13</sup>

Liberal immigration attitudes were more prevalent in the colonial period than when the states came into being; in turn, the states were more permissive in their policies than the Federal government.<sup>14</sup> It appears, however, that the different levels of permissiveness were more attributable to the level of development that the society enjoyed during the prevalence of different forms of government than to the government itself.

Generally, restrictions imposed by the early settlers were concerned with some religious affiliations<sup>15</sup> and the exclusion of the poor and infirm.<sup>16</sup> However, during the United States' first one hundred years, most immigrants who wanted to work, invest or generally prosper were admitted without difficulty.<sup>17</sup> One exception to this occurred during a two-year period in which the Alien and Sedition Act sought to exclude disloyal persons.<sup>18</sup>

The 1880s brought along legislation which anticipated United States immigration policy as it would exist during the next one hundred years. By this time, citizens of the United States had definitely acquired a nationality of their own. Most citizens were natural-born, unlike their parents, many of whom became citizens with the birth of the United States. This predominantly Anglo-Saxon population, moved by racial motivations, caused the Chinese Exclusion Act to be enacted in 1881.<sup>19</sup> In 1885, the Alien Contract Labor Law prohibited the admission of aliens coming to the United States in order to fulfill contracts to perform services.<sup>20</sup> The animus behind such legislation was threefold: (1) the United States was no longer concerned with augmenting its ranks for the purpose of settling the new territory; (2) it was felt that work to be performed in the United States should be performed by its citizens in order to stimulate the internal economy; and, (3) there was a growing fear that many of the sociopolitical ideas developing in Europe, principally Marxism, would be transplanted to the United States. The United

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13. *Id.* at 12.

14. E.P. HUTCHINSON, *LEGISLATIVE HISTORY OR AMERICAN IMMIGRATION POLICY 1798-1965*, at 389 (1981).

15. E.E. PROPER, *supra* note 12, at 17-18.

16. *See, e.g.*, 3 ACTS AND RESOLVES OF THE PROVINCE OF MASSACHUSETTS BAY 982 (A. Wright ed. 1978).

17. Ziskind, *Laws Affecting Migratory Labor: United States, Mexico, and Canada*, 4 COMP. LABOR L. 1, 2 (1981).

18. Act of June 25, 1798, ch. 58, 1 Stat. 570 (1845).

19. Act of May 6, 1882, ch. 126, 22 Stat. 58 (1883).

20. Act of Feb. 26, 1885, ch. 163, 23 Stat. 332 (1885).

States believed that such ideas were incompatible with its existing form of government. The act was later expanded to prohibit entry into the United States of the mentally ill, paupers, polygamists, anarchists, prostitutes and contract laborers.<sup>21</sup>

In 1917, with the growth of administration in the United States, the several immigration laws were codified, and the previous prohibitions of entry were repealed. In addition, a "fourth proviso" was enacted which stated that upon approval of the Secretary of Labor, "skilled labor, if otherwise admissible, may be imported if labor of like kind cannot be found in this country."<sup>22</sup>

A turning point for American immigration policy was brought about by the 1917 Act. It has been said that with the establishment of a literacy test,<sup>23</sup> United States official policy changed from one of regulation to one of attempted restriction.<sup>24</sup> Policies were not only regulatory; they became restrictive and selective as well. The literacy test, adopted over President Wilson's veto in 1917, was "recommended for its selective and 'discriminatory' ability to favor northern and western Europeans . . . ."<sup>25</sup> The reasons for the pro-immigration colonial attitudes and the fears and anxieties suffered by the early settlers were no longer existent.

There were other concerns which shaped immigration attitudes, the most significant of which was World War I. The exclusionary attitude was already taking shape in the 1880s and 1890s. The war merely served to add the extra push required to make United States immigration policy unmistakably restrictive. Prior to the passage of the 1917 Act, other legislation was adopted to curb migration, some of which imposed immigration taxes.<sup>26</sup> These taxes, however, were not sufficient to achieve their end; thus the 1917 Act was adopted.

Surprisingly, the literacy test failed to accomplish its purpose. The postwar immigrants possessed higher educational qualifications than the prewar immigrants, rendering ineffective the barriers imposed by the literacy test.<sup>27</sup> For this reason, in 1919 and 1920, Congress was still facing the problem of how to deal with increas-

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21. Act of Mar. 3, 1903, ch. 1012, 32 Stat. 1213 (1903); Act of Feb. 20, 1907, ch. 113, 34 Stat. 898 (1907); Act of Feb. 5, 1917, ch. 29, 39 Stat. 874 (1917).

22. Act of Feb. 5, 1917, ch. 29, 39 Stat. 874 (1917).

23. E.P. HUTCHINSON, *supra* note 14, at 167.

24. *Id.*

25. *Id.* at 466.

26. *Id.* at 467.

27. *Id.* at 468.

ing immigration. At that time, the United States was undergoing postwar economic prosperity while many countries were still recovering from the effects of the war. The United States was an excellent target for immigration. The only solution appeared to be the institution of a numerical ceiling or quota which would limit immigration to a specific percentage based on the number of foreign-born individuals from each country (according to the most recent census). This concept of limiting immigration was not new to the United States. In 1911, the United States Immigration Commission listed as an alternative to unrestrictive immigration, methods of restriction by setting up numerical limits. However, of all the alternatives considered by the Commission, the most favored was the literacy test.<sup>28</sup>

The first Quota Act was established in 1921.<sup>29</sup> The Quota Act was designed to limit entry into the United States to 3 percent of the foreign-born population residing in the United States as of the 1910 census.<sup>30</sup> This act, however, exempted a variety of aliens from the quota requirements. Included within the exemption were those who resided continuously in the Western Hemisphere for at least one year, foreign government officials and their families, visitors, aliens residing in the United States and returning from temporary visits abroad, and the like.<sup>31</sup> The 1921 Quota Act was scheduled to expire in 1924.

Congress, however, subsequently adopted the Quota Act of May 26, 1924.<sup>32</sup> This act was adopted after considerable debate between the House and Senate, with the House favoring a percentage rate and the Senate supporting a fixed number of immigrants. The final conference draft provided quota limits of 2 percent of the alien population residing within the United States based on the 1890 census. This provision was to remain in effect until June 30, 1927, and thereafter the act provided for a limit of 150,000 immigrants per year, distributed according to estimates of national origins composited in the United States in 1920.<sup>33</sup> This latter part of the act was postponed by subsequent acts and did not take effect

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28. U.S. IMMIGRATION COMMISSION, IMMIGRATION LEGISLATION REPORT 1:45-48 (1911).

29. Quota Act of May 19, 1921, Pub. L. No. 5, 42 Stat. 5 (1923).

30. *Id.*

31. *Id.*

32. Quota Act of May 26, 1924, Pub. L. No. 139, 43 Stat. 153 (1925).

33. *Id.*

until July 1, 1929.<sup>34</sup>

Quota laws remained basically unchanged until 1952. However, a few special provisions enacted during that period warrant mention. An agreement between the United States and Mexico provided for recruitment of Mexican agricultural workers to come to the United States with wage, travel, housing, health care and repatriation guarantees.<sup>35</sup> This program was commonly referred to as the Bracero Program. In 1947, the program came to an end. In 1951, the program was essentially reinstated by executive agreement of both nations, which was confirmed by Congress in 1952.<sup>36</sup>

The Immigration and Nationality Act of June 27, 1952, had a considerable impact on the existing law.<sup>37</sup> A major change was the affected computation of the annual quota. The maximum number of aliens to be allowed into the country was one-sixth of 1 percent of the persons of a given national origin present in the United States in 1920 (as computed from the 1924 Act).<sup>38</sup> Another change included the removal of racial barriers to immigration and naturalization,<sup>39</sup> which had the effect of curing past discrimination against individuals of Oriental origin. In addition, the act provided for expansion of grounds for exclusion. For example, if the Secretary of Labor certified that there was ample supply of manpower within the United States and that allowing foreign labor to enter the labor force would have a detrimental effect on wages or working conditions, exclusion of aliens seeking to perform skilled or unskilled labor was likely.<sup>40</sup>

Subsequent acts dealing with immigration provided for the admittance of aliens of varying nationalities without regard to the quota system.<sup>41</sup> The criteria utilized in determining admissibility

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34. Act of Mar. 4, 1927, Pub. Res. No. 69, 44 Stat. 1455 (1927); Act of Mar. 31, 1928, Pub. Res. No. 20, 45 Stat. 400 (1929).

35. Act of Aug. 4, 1942, 56 Stat. 1759 (1943).

36. Act of Mar. 20, 1952, Pub. L. No. 283, 66 Stat. 26 (1953).

37. Act of June 27, 1952, Pub. L. No. 414, 66 Stat. 163 (1953) (codified as amended at 8 U.S.C. §§ 1101-1503 (1970)).

38. Act of June 27, 1952, Pub. L. No. 414, § 201a, 66 Stat. 163 (1953) (codified as amended at 8 U.S.C. §§ 1101-1503 (1970)) states: "The preceding national origins formula was a number which bears the same ratio to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin. . . bears to the number of inhabitants in continental United States in 1920." See E.P. HUTCHINSON, *supra* note 14, at 308.

39. Act of June 27, 1952, Pub. L. No. 414, § 311, 66 Stat. 163 (1953) (codified as amended at 8 U.S.C. §§ 1101-1503 (1970)).

40. Act of June 27, 1952, Pub. L. No. 414, § 212a, 66 Stat. 163 (1953) (codified as amended at 8 U.S.C. §§ 1101-1503 (1970)).

41. Act of July 25, 1958, Pub. L. No. 85-559, 72 Stat. 419 (1959). This act provided for

of aliens into the United States varied considerably from the previous means utilized.

### *A. Abolition of the Quota System*

In 1965, perhaps the most drastic change in United States immigration policy since 1927 occurred with the abolition of the quota system based on national origin formulas.<sup>42</sup> The new system provided for an annual limit of twenty thousand visas on every country outside of the Western Hemisphere, with an overall limit of 170,000 visas per year. Within the Western Hemisphere, a ceiling of 120,000 visas was imposed; no limits were set for the individual countries.<sup>43</sup> A 1976 law abolished the special treatment for the Western Hemisphere with respect to country limits and imposed a maximum of twenty thousand visas for any country.<sup>44</sup> In 1978, pressure to admit war victims of Southeast Asia resulted in laws which allowed admittance of Indochinese refugees.<sup>45</sup> For humanitarian reasons, a refugee act was passed in 1980 to provide a systematic method for admitting all refugees of special concern.<sup>46</sup>

The preceding paragraph has shown the legislative enactments which evolved in response to the needs of both the economy and popular opinion. The United States moved from an "open door" policy, to racial restrictions, to restrictions based on economic needs, and ultimately, to restrictions based on resource limitations, thereby attempting to eliminate racial overtones on policy choices. The economic needs of today, as well as public opinion, will undoubtedly play a major role in the future of United States immigration law. Growing concern for humanitarian equality and shared responsibility for worldwide economic depression (in addition to demographic explosion) may require that worldwide needs and opinions be given greater deference in the future immigration policy of the United States.

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admittance of refugees from the Hungarian revolution. Act of July 14, 1960, Pub. L. No. 86-648, 74 Stat. 504 (1961). This provided for admittance of refugee-escapees of Communist controlled or dominated countries. Act of Nov. 2, 1966, Pub. L. No. 89-732, 80 Stat. 1151 (1967). This provided for the specific admittance of Cuban refugees.

42. Act of Oct. 3, 1965, Pub. L. No. 89-236, 79 Stat. 911, 920 (1967).

43. *Id.*

44. Act of Oct. 20, 1976, Pub. L. No. 94-571, 90 Stat. 2703 (1978), *amended by* Act of Oct. 5, 1978, Pub. L. No. 95-412, 92 Stat. 907 (1980).

45. Act of Oct. 10, 1978, Pub. L. No. 95-431, 92 Stat. 1021 (1980).

46. Act of Mar. 17, 1980, Pub. L. No. 96-212, 94 Stat. 102 (1981).



*B. The Immigration Act of 1965*

In keeping with the maximum number of aliens which recent enactments established, and in accordance with the limits imposed for each country, the Immigration Act of 1965<sup>47</sup> created a preference system to guide in the distribution of immigration visas.<sup>48</sup> The system of preferences provided:

1. Twenty percent to unmarried sons and daughters of United States citizens.
2. Twenty percent to spouses and unmarried sons and daughters of permanent resident aliens (in addition to those not used in the first preference).
3. Ten percent to professionals with exceptional abilities in "[T]he Sciences or Arts" for the general benefit of the United States.
4. Ten percent to married sons and daughters of United States citizens (in addition to the unused above).
5. Twenty-four percent to brothers and sisters of United States citizens (in addition to the unused above).
6. Ten percent to skilled and unskilled workers performing work for which labor is in short supply in the United States.
7. Six percent to refugees who may be eligible for conditional entry or adjustment of status.
8. Non-preference to any applicant not entitled to one of the above preferences, with visas issued strictly in chronological order according to applications.

Although the admission of migrant workers for permanent residence is made possible through the preference system, it is limited to only 10 percent in the sixth preference, or any balance available through the eighth category of non-preference. As a practical matter, in light of the twenty thousand-visa ceiling, only two thousand may be admitted through the sixth preference from any one country. Additionally, under the eighth category, visas are generally not available for countries which supply migrant labor.

Other provisions within immigration law govern temporary admission of aliens into the United States. For example, while a worker may not be admitted permanently, he may be admitted for temporary employment under the "H" visa.<sup>49</sup> "H-1" visas are usually issued to aliens of distinguished merit or ability, usually professionals, and rarely last longer than one year. "H-2" visas are issued

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47. 8 U.S.C. § 1152 (1981).

48. 8 U.S.C. § 1153(a) (1980).

49. 8 U.S.C. § 1101(a)(15)(H) (1976).

to skilled and unskilled workers, but only after the Secretary of Labor has certified that native workers are not available to perform the specified work and that employment of aliens will not adversely affect working conditions and wages of similarly situated native workers. The other major source of migrant labor in this country is the illegal alien market which has a significant impact on the United States employment situation.

## II. THE ILLEGAL ALIEN POPULATION IN THE UNITED STATES

It is estimated that the United States is populated by a total of 6 to 8 million illegal aliens.<sup>50</sup> A common misconception believed by many is that all of these aliens are of Mexican origin; but in the words of Abelardo Valdez:

[Immigration and Naturalization Service] INS estimates that 60 percent of the undocumented workers are Mexican, 20 percent from Carribean countries, and the remaining 20 percent from other Western and Eastern Hemisphere countries. Fifteen countries comprise the major undocumented worker source countries. They are Mexico, the Dominican Republic, Haiti, Jamaica, Guatemala, Columbia, Peru, Ecuador, the Phillipines, Korea, Thailand, Greece, India, Iran and Nigeria. Other estimates also include El Salvador and Honduras as major source countries.<sup>51</sup>

The average undocumented alien is poorly educated, young and male; often an adult farm worker who comes to the United States to work for low pay in low-status jobs. A considerable portion of his salary is often sent back home.<sup>52</sup> In fact, bank estimates reveal that these aliens send up to 30 percent of their salary home in order<sup>53</sup> to support an average of 5.4 dependents.<sup>54</sup>

Since the majority of illegal aliens come from Mexico, most of the efforts to control the flow of undocumented workers are targeted at the United States-Mexican border. There are two thou-

50. Chapman, *A Look at Illegal Immigration: Causes and Impact on the United States*, SAN DIEGO L. REV. 34-35 (1975). The exact number of illegal aliens present in the United States is unknown. *Id.* See also SELECTED READINGS ON U.S. IMMIGRATION POLICY AND LAW, 96TH CONG., 2D SESS. 3-98 (Comm. Print Oct. 1980) (prepared by Joyce Violet for the Select Commission on Immigration and Refugee Policy).

51. *Undocumented Workers: Implications for U.S. Policy in the Western Hemisphere: Hearings Before the Subcomm. on Inter-American Affairs of the House Comm. on International Relations*, 95th Cong., 2d Sess. 302 (1978)(statement of Abelardo Valdez).

52. *Illegal Aliens: Analysis and Background: Hearings Before the House Comm. on the Judiciary*, 95th Cong., 1st Sess. 12 (1977).

53. Wachter, *The Labor Market and Illegal Immigration: The Outlook for the 1980's*, 33 INDUS. & LAB. REL. REV. 342, 352 (1980).

54. ECONOMIST, Aug. 18, 1979, at 93.

sand border patrol agents assigned to guard the 1,950-mile border. However, only three hundred agents are on duty at any one time.<sup>55</sup> Most of the undocumented aliens work in the United States six to eight months and then return home.<sup>56</sup>

The primary concern created by the presence of illegal aliens is employment. The United States has labor problems of its own without the added factor of alien workers. A common contention maintains that when illegal aliens are employed in the United States, the result is displacement of United States citizens and lawful residents from the labor force.<sup>57</sup> In an attempt to discourage illegal immigration, Congress enacted a statute making it a misdemeanor on the first offense for illegal aliens to enter or stay in the United States, and a felony on subsequent offenses.<sup>58</sup> In addition, it is a felony to assist aliens to enter illegally, or to harbor, transport, smuggle, conceal or encourage illegal aliens.<sup>59</sup> It is noteworthy to mention that employing illegal aliens is expressly excluded from the statute, even if the employer knows of the employee's status.<sup>60</sup>

Although the displacement concern expressed by some observers is well taken, others argue that the presence of illegal aliens is actually helping to create new jobs by stimulating the economy as a result of their earnings being spent here.<sup>61</sup> It is also argued that illegal aliens work in a secondary labor market that would otherwise be lacking in labor. The jobs comprising the secondary labor market are dirty, hard-labor, insecure, low-status jobs with no future. Even unemployed Americans do not want these jobs; nor do Americans need to take them. A variety of social service programs cushion the unemployed American's economic situation until a job of his or her liking is available.<sup>62</sup>

Some observers take both sides of the above arguments, maintaining that a secondary labor market which nationals are unwill-

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55. *Id.*

56. *Id.*

57. See generally Chapman, *A Look at Illegal Immigration: Causes and Impact on the United States*, 13 SAN DIEGO L. REV. 36 (1975).

58. 8 U.S.C. § 1325 (1976).

59. 8 U.S.C. § 1324 (1976).

60. *Id.*

61. E.g., Fogel, *Illegal Aliens: Economic Aspects and Public Policy Alternatives*, 15 SAN DIEGO L. REV. 65 (1977).

62. D. NORTH & M. HOUSTON, *THE CHARACTERISTICS AND ROLE OF ILLEGAL ALIENS IN THE U.S. LABOR MARKET: AN EXPLORATORY STUDY* 108 (1982); Goodpaster, *Illegal Immigration*, 1981 ARIZ. ST. L. J. 651, 692.

ing to fill exists, but argue that the existence of such a market is created by the very presence of illegal aliens.<sup>63</sup> Employers lack the incentive to upgrade the status of the jobs, salaries or benefits due to the large supply of illegal aliens who are ready, willing and able to fill these positions, thus resulting in indirect displacement of nationals from the labor force.

There is considerable room for speculation regarding the true effects of illegal aliens in this country. However, it is difficult to accurately assess these effects due to a lack of accurate means to conduct a truly scientific study of the situation. An observation worth mentioning, however, is that regardless of what effects illegal aliens have had in the past, the same concerns may not be present in the future. An additional viewpoint suggests that the lot of unskilled workers within the United States during the past twenty years was a result of the post-World War II baby boom. With this oversupply of national unskilled labor diminishing, we may very possibly find ourselves in need of this outside supply of labor in the late 1980s and 1990s.<sup>64</sup>

A consideration argued by some is that illegal aliens help drain the pool of funds available for social services in the United States. The truth is, in effect, the opposite. Illegal aliens are expressly excluded by Congress from federal programs such as Aid to Families with Dependent Children<sup>65</sup>, food stamps,<sup>66</sup> medicaid<sup>67</sup> and supplemental security income.<sup>68</sup> In fact, even though aliens are excluded from these programs, they nevertheless make contributions to them. Studies on the role of illegal aliens (conducted by social scientists North and Houston) found that 77.3 percent of the tested portion paid social security taxes, 73.2 percent paid federal income taxes, and 44 percent paid into health plans.<sup>69</sup> On the other hand, they found that only .5 percent received welfare payments and only 1.3 percent had children in American schools.<sup>70</sup>

There is yet another concern that deserves attention. Many observers fear that a population explosion might spark new

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63. Salinas & Torres, *The Undocumented Mexican Alien: A Legal, Social and Economic Analysis*, 13 HOUS. L. REV. 863 (1975).

64. *Id.*

65. 42 U.S.C. § 602(a)(33) (1976).

66. 7 U.S.C. § 2015(f) (1980).

67. 45 C.F.R. § 233.50 (1979).

68. 42 U.S.C. § 426a(a)(4) (1974).

69. D. NORTH & M. HOUSTON, *supra* note 62, at 142.

70. *Id.*

problems for our society. There is a growing concern that the quality of American life will not remain the same if the Mexican population within the United States continues to expand as it has for the past twenty years, with the border between the United States and Mexico remaining open.<sup>71</sup> Some estimates state that the increase in American population due to illegal immigration might reach the 40 million mark by the year 2000.<sup>72</sup> In the words of Garham:

[T]he carrying capacity of the United States is not yet known but may easily have been exceeded already unless we fundamentally alter our energy habits, dispose of toxic chemicals and solid wastes, agriculture practices and so on . . . . Social requirements for space, privacy and unspoiled wilderness are much greater than has been acknowledged . . . and national security no longer demands masses of manpower for the defense of our frontiers.<sup>73</sup>

Of particular concern are the offspring of illegal aliens who, due to their background and upbringing, tend to perpetuate their forefathers' position in society, remaining socioeconomically disadvantaged and often functionally illiterate in their native language, with little command of the English language.<sup>74</sup>

Some would argue that the United States was once entirely composed of immigrants. These are the same individuals whom we now consider nationals: fully integrated and well adjusted to our society. However, two considerations must be taken into account. First, the population explosion was not a concern of the existing society at the time when southern European immigrants came to the United States. Second, simply because southern European descendants now appear to be well adjusted to our society, this was not necessarily so at the turn of the century. When the immigrants first arrived, many had to endure long, hard days of work, living in slums and filth, and overcrowded conditions in the core of the larger cities.<sup>75</sup>

The problem of the immigrants at the turn of the century did not particularly improve with their offspring:

The second generation was an unstable element in the situation;

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71. P. EHRLICH, L. BILDERBACK & A. EHRLICH, *THE GOLDEN DOOR: INTERNATIONAL MIGRATION, MEXICO, AND THE UNITED STATES* 237 (1979) [hereinafter cited as EHRLICH].

72. *Immigration to the United States: Hearings Before the Select Commission on Population*, 95th Cong., 2nd Sess. 404, 411 (1978) (statement of Dr. John Tanton).

73. Graham, *Illegal Immigration and the New Restrictionism*, 12 *CENTER MAG.* 54 (1979).

74. Goodpaster, *supra* note 62, at 700.

75. O. HANDLIN, *THE UPROOTED* 144, 149 (1952).

as it grew in prominence, it created troublesome problems precisely because it had not a fixed place in the society. Standing between the culture of its parents and the culture of the older America, it beared the inadequacies of the assumption that the fusion of the multitude of strains in the melting pot would come about as a matter of course.<sup>76</sup>

### III. THE GERMAN EXPERIENCE AFTER WORLD WAR II

In order to put the American migration problems in perspective, it is helpful to look at the most recent example of migrant worker movement: the post-World War II German experience. As a result of the need to rebuild Europe after the destruction brought about by World War II, parts of Europe (principally France, Germany and Switzerland) suffered a tremendous shortage of manpower.<sup>77</sup> The Treaty of Rome of 1957, which established the European Economic Community (EEC), provided a guarantee for the freedom of movement for workers of the member States.<sup>78</sup> This particular provision was specifically supported by Italy—the only EEC member which had an excess of manpower at that time. In view of the need for such manpower in the other member States, it seemed logical to channel the excess manpower toward States in need.<sup>79</sup>

By 1968, the EEC had adopted the necessary regulations which ultimately achieved full freedom of movement for workers of the member States by establishing, in effect, a “community worker” who held the rights and privileges of a national worker in any member State.<sup>80</sup> This arrangement was developed to take care of varying labor needs by spreading a whole population of workers where they were most needed. The arrangement alleviated both the labor shortages existing in some areas and severe unemployment existing in other areas. The ideal results, however, were much different from the results which were actually achieved. Only about 27 percent of the migrant workers in Europe turned out to be from other EEC member States;<sup>81</sup> industrial Europe needed more workers.

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76. *Id.* at 267.

77. Rist, *The European Economic Community (EEC) and Manpower Migration: Policies and Prospects*, 33 J. INT'L AFF. 205 (1979).

78. *Id.* at 207.

79. *Id.*

80. *Id.* at 209.

81. *Id.* at 210.

To remedy this situation, countries experiencing shortages entered into arrangements such as the German-Turkish Accord of 1961<sup>82</sup> which established a semiautonomous Turkish employment agency. The agency's function was to screen literate applicants ranging in age from 18 to 35 (45 if skilled) and compile lists of workers according to job preference (not location), giving some priority to low-skilled workers or those from depressed areas of Turkey.<sup>83</sup> Demands for these workers were made by German employers in an "anonymous" manner.<sup>84</sup> If German employers wished to hire a particular worker, this was arranged through what was termed a "nominative" request; Turkey was obligated to honor that request if the worker was otherwise qualified.<sup>85</sup> Nominative recruiting was significant as it accounted for approximately one-third of the total number of workers requested by Germany between 1965 and 1975.<sup>86</sup>

Systems such as the above-described were typical and the short-run gains were substantial. Both sides had an interest in this course of action. The recruiting country obtained the manpower needed and the sending country benefited through: (1) depleting its unemployment ranks, thus avoiding social disruption; (2) sending young, able men away to obtain training and skills that could be used in the sending country upon return; and, (3) reaping the benefit of remittances being sent home by the migrant workers, thus stimulating the sending country's economy.<sup>87</sup> The basic principle was that the worker would travel to labor-short areas for a rotation period of three to five years and then return home.<sup>88</sup>

Originally, the migrants were viewed as "an industrial army in reserve, to be called upon in times of need and then dismissed."<sup>89</sup> By and large, with the exception of a short recession in 1968, this theory proved true. However, the perspective on this situation be-

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82. Up until 1961, West Germany was able to fulfill its labor requirements by the importation of those fleeing from East Germany. However, at that time, the erection of the Berlin Wall suddenly eliminated this source of labor. This event prompted West Germany to seek another source of labor — thus the German-Turkish Accord.

83. U.S. DEP'T OF LABOR, BUREAU OF INT'L AFFAIRS, GUESTWORKER PROGRAMS: LESSONS FROM EUROPE 24 (Monograph No. 5, 1980).

84. *Id.*

85. *Id.*

86. *Id.*

87. Rist, *supra* note 77, at 202.

88. *Id.* at 203.

89. *Id.* at 213.

gan to change with the post-OPEC recession of 1973-1974.<sup>90</sup> The change manifested itself in two ways. First, the need for workers lessened due to the energy shortage. Second, the rotation system began breaking down because workers were staying longer and bringing their families with them, either legally or illegally.<sup>91</sup>

Clearly, the long-term effects of imported labor were not foreseen. The economic boom of the 1960s and early 1970s hid much of the social costs incurred by this type of program.<sup>92</sup> It appears that the migrant worker was thought to be a replacement part: to be utilized or not, according to need.<sup>93</sup> It was forgotten that each human was more than the sum of the hours he worked, and that his mere presence also had social impact.<sup>94</sup>

Germany stopped issuing labor permits in 1973,<sup>95</sup> as the economic slowdown approached and unemployment rates of migrants were similar to those of nationals. However, it became obvious that migrants were an integral rather than marginal part of the host country's economic structure.<sup>96</sup> Migrants availed themselves of social service programs, contributing to the social unrest of natives who felt that their resources were being drained by aliens.

The economic downturn not only revealed social difficulties within Germany, but also increased the economic problems of sending countries. The economic impact on the sending countries was substantial. Turkish nationals sent home \$1.4 billion in 1974; but by 1977, they sent home less than \$1 billion.<sup>97</sup> The impact on Turkey's economy was evident. Although Turkey was able to meet its foreign debts in 1974, it required Western assistance to do so in later years.<sup>98</sup>

While Germany was meeting its short-run labor demands, basic principles of social democracy and humanitarianism forced Germany to extend welfare benefits to migrant workers as well.<sup>99</sup> The German government even extended unemployment benefits to

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90. *Id.* at 203.

91. *Id.*

92. *Id.* at 211.

93. *Id.*

94. *Id.*

95. *Id.* at 212.

96. *Id.* at 213.

97. *ECONOMIST*, *supra* note 54.

98. *Id.*

99. Markovits & Kazarinov, *The Case of Migrant Workers in the Federal Republic of Germany*, 10 *COMP. POL.* 373, 379 (1978).



those migrants who lost their jobs.<sup>100</sup> This obvious disincentive to return to the home country took its toll in the social sphere of Germany. Although it was clear that migrants were economically integrated, they remained socially marginal, paving the way towards discrimination and institutionalization of an underclass.<sup>101</sup> At this point, the trend was clear for migrants to stay in Germany. Statistics showed that 57 percent of the migrants living in Germany in the mid-1970s had lived there for more than six years.<sup>102</sup>

A German public opinion poll in 1976 revealed that 50 percent polled believed that Germany's labor difficulties were caused by the presence of migrants,<sup>103</sup> even though natives would not take the jobs that migrants occupied at the current wages and status.<sup>104</sup> Such beliefs, coupled with the cultural differences between natives and migrants, produced severe xenophobic attitudes against migrants, which resulted in severe discrimination.<sup>105</sup>

This discriminatory attitude manifested itself particularly in the area of housing.<sup>106</sup> When some employers would provide housing, a "company store" paternalistic attitude was detected on the part of the employer which helped to perpetuate the underclass idea.<sup>107</sup> The government provided subsidized housing as long as the migrant could prove the presence of dependents. The dependents, however, could not legally enter Germany unless the migrant could substantiate that he had adequate housing.<sup>108</sup>

The social costs of importing a labor force are continually gaining in clarity. Language barriers and cultural differences perpetuate low-paying, unskilled positions, regardless of the fact that one is employed.<sup>109</sup> There is some evidence of a higher percentage of accidents among migrant workers due to the fact that they do not receive proper safety training. In addition, many of them cannot read warning signs.<sup>110</sup> The foreign workers tend to keep to themselves since they are usually not socially accepted by the natives

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100. *Id.*

101. Rist, *supra* note 77, at 214.

102. *ECONOMIST*, Aug. 18, 1979, at 93.

103. Power, *The Great Debate on Illegal Immigration—Europe and USA Compared*, 33 *J. INT'L AFF.* 239, 243 (1979).

104. *Id.* at 244.

105. Markovits & Kazarinov, *supra* note 99, at 381.

106. *Id.*

107. *Id.*

108. *Id.* at 382.

109. *Id.*

110. *Id.*

and, therefore, find it difficult to make friends.<sup>111</sup>

The children of migrants pose an additional problem. These children are often ridiculed by native children. Teachers are not well equipped to deal with the learning problems and challenges presented by migrant children.<sup>112</sup> In Germany in 1968, out of a total of one-half million migrant children, only about 144,000 were full-time students.<sup>113</sup> All of these children were caught in the middle of a social struggle. They were not Turks, Yugoslavs or Italians; nor was it likely that they would ever be German.<sup>114</sup> The common result was that the children were functionally illiterate. They usually left the home country too young to learn their native language well, and were often too old to learn the language of the host country.<sup>115</sup> This resulted in the perpetuation of the parents position for at least another generation.

In sum, the guest worker experience in Europe met the short-run need for labor. However, additional social problems were created with the importation of foreign labor from different cultural backgrounds. At this point it is perhaps too early to tell whether the benefits that accrued as a result of this importation of labor outweigh the social costs being paid today. In light of the present economic situation and growing social unrest among migrants, the conclusion of this cost-benefit analysis might well suggest that the costs do outweigh the benefits.

#### IV. THE REAGAN PROPOSALS ON IMMIGRATION

On July 30, 1981, the Reagan Administration, through Attorney General William French Smith, announced proposed changes in immigration laws which would supposedly assist in curbing the influx of undocumented aliens into this country.<sup>116</sup> This package was arrived at by the Administration with the assistance of a Task Force on Immigration and Refugee Policy created specifically to deal with this problem.<sup>117</sup> The Administration's proposal is composed of four major parts: (1) arrival of undocumented aliens by sea; (2) the general illegal alien problem; (3) legal immigration;

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111. *Id.*

112. *Id.* at 383.

113. *Id.* at 382.

114. *Id.*

115. *Id.* at 383.

116. See generally *Senate Subcomm., supra* note 9.

117. *Id.* at 3.

and, (4) refugee and asylum policy. These four major components are discussed in detail below.

### *A. Arrival of Undocumented Aliens by Sea*

This element of the Administration's proposal is in direct response to the Cuban and Haitian influx of aliens which took place in 1980. The Mariel boatlift added 150,000 to the 270,000 current annual total of legal immigrants, and between 500,000 to the 1 million illegal aliens entering through Mexico.<sup>118</sup>

The proposal provides for increased enforcement of existing laws to discourage and punish the assistance of aliens entering the country by sea, and proposes legislation to allow the President to prohibit travel to specified foreign countries if the suspected purpose is to transport illegal aliens. The proposal fails to mention how this suspected purpose is to be determined. In addition, the legislation would expand the Coast Guard's authority to prevent illegal alien traffic, and develop resources to accommodate aliens arriving illegally in this country until proper disposition was made.

Under this plan, exclusion proceedings would be reformed and expedited. International measures would be taken to relocate undesirable Cubans and Haitians wishing to leave Haiti (presumably by convincing other countries to take them). The President would be vested with authority to establish emergency centers and appropriate emergency funds in the event of another emergency. The plan would also provide for Cubans and Haitians already present in this country as of January 1, 1981, to apply for legal status which would eventually lead to permanent residence.<sup>119</sup>

### *B. The General Illegal Alien Problem*

Within this component of the proposal, the Administration is seeking increased resources for border patrol and other means of Immigration and Naturalization Service (INS) enforcement. Increased resources for enforcement of fair labor standard laws are also sought by the Administration.

One of the three major provisions of this section (and, for that matter, the entire proposal) is the imposition of sanctions against employers who knowingly hire illegal aliens.<sup>120</sup> This law would

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118. TIME, *supra* note 6.

119. Senate Subcomm., *supra* note 9, at 11-13.

120. See *supra* text accompanying note 60.

impose a fine of \$500 to \$1,000 on any employer who hires at least four illegal alien employees, and would authorize the Justice Department to seek injunctions against employers who follow a "pattern of practice" of hiring illegal aliens.<sup>121</sup>

While the Administration is explicitly opposed to the issuance of national identity cards, it would require employers to check documentation issued by the INS or any two of the following: birth certificates; driver's licenses; social security cards; or Selective Service System registration. In addition, both the employee and employer would be required to certify that the employee is legally vested with the right to work in the United States, and that the employer has examined the proper identifiers. Even if the identifiers turned out to be forgeries, as long as the employer made a good faith determination as to the employee's status, he would be free from liability.<sup>122</sup>

The second major portion of this section provides for a new, experimental two-year temporary worker program for Mexican nationals. This part of the proposal would allow up to 50,000 Mexican nationals to be admitted annually on a temporary basis. The stays would consist of nine to twelve months; normal wage and hour-working standards would apply (except unemployment insurance benefits). Spouses and minor children would not be allowed to join the migrant. The migrant would not be eligible for any federally funded assistance programs and would be excluded from states which certify the existence of an adequate supply of national workers. In addition, the Labor Department would allocate the national 50,000 annual ceiling among the participating states.<sup>123</sup>

The third major part of the proposal deals with the granting of legal status to certain illegal aliens currently residing in the United States. Under this section, illegal aliens residing in the United States prior to January 1, 1980, and not otherwise excludable, could apply for a new status of "renewable term temporary residence" during which term they would: (1) be entitled to work; (2) pay all appropriate taxes; (3) not be entitled to benefits of any federally funded social service program; and, (4) not be allowed to bring in spouses and minor children. This "renewable term temporary residence" could be rolled over every three years. After residing in the United States for ten years, the alien could, if not otherwise exclud-

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121. *Senate Subcomm., supra* note 9, at 6.

122. *Id.* at 6-7.

123. *Id.* at 8.

able and upon demonstrating English language capability, apply for permanent residency.<sup>124</sup>

### C. *Legal Immigration*

The legal immigration portion of the proposal would simply increase the individual country ceilings by 20,000 with respect to Canada and Mexico in order to provide for the special needs of our neighbors. This increase would streamline the process of admissions for skilled immigrants needed in this country as opposed to the present case-by-case certification of labor need (so long as the workers were independent, i.e., non-family).<sup>125</sup>

### D. *Refugee and Asylum Policy*

The last feature of the Administration's proposal would continue federally funded aid to refugees. However, it would reduce the benefits to those who normally would not qualify for welfare.<sup>126</sup>

## V. ANALYSIS OF THE REAGAN PROPOSAL

Though the proposal in its entirety claims to contain major changes, it is clear that the centerpiece of the proposal is contained within the provisions of the second component. It is questionable whether the provisions described within that section would truly achieve any positive results in light of prior experience with the Bracero Program of the post-World War II era, and the European example of the past thirty years.

The proposed sanctions to be placed on employers for hiring illegal aliens could work a disproportionate impact on aliens. Employers, not wanting to risk a fine or entanglement with authorities, would avoid hiring anyone who even looked or spoke like an alien, regardless of whether his status was that of permanent resident or citizen. Most likely it would be too cumbersome for employers engaged in seasonal agricultural work to complete the proper certifications. In order to avoid this difficulty, employers simply would not hire anyone when such hiring might result in confrontation with the INS.<sup>127</sup>

A work permit issued to all those who are qualified (short of a

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124. *Id.* at 9-10.

125. *Id.* at 16.

126. *Id.* at 17-18.

127. Goodpaster, *supra* note 62, at 704.

national identification card) could prove effective. However, a forgery-proof system would be costly and would demand much administration. In addition, a long period of time would be required to get the system working.<sup>128</sup> There is also severe opposition to any type of identification card due to the fact that it may violate civil liberties.<sup>129</sup> This argument, however, is countered by the fact that we already issue social security cards<sup>130</sup> which, in effect, many individuals use for identification purposes. Growing population and expansion of social and economic demands might require giving up some notions of civil liberty, and acceding to the use of some type of forgery-proof social security card for identification purposes.

Some sources suggest that any type of sanctions placed on an employer would result in discriminatory effects on the minority population, whether legal or illegal.<sup>131</sup> Therefore, the suggestion is simply to enforce existing tax, health, labor, social security and safety laws as an alternative.<sup>132</sup> The assumption is that stricter enforcement of existing laws would force the employer to treat all workers fairly. Exploitation of illegal aliens would no longer be allowed, thus removing the incentive to hire these individuals. This would result in backing up the flow of aliens into this country.<sup>133</sup> However, some argue that many illegal aliens are *not* exploited, or if exploited, only minimally. Strict enforcement of existing laws, although desired for the purposes for which they were intended, would offer little assistance in the effort to slow down illegal immigration. Therefore, some system for employer sanction is still needed.<sup>134</sup>

In the authors' opinion, the current proposal would place too much of a burden on employers. There might be ways to achieve the same results through different means. One alternative might be to set up an optional registry center. A citizen or legal alien would be allowed to register name, status and physical characteristics. An employer in doubt of an employee's status could call a toll-free number where a computer terminal operator would verify the legal

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128. STAFF OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, 97TH CONG., 1ST SESS., U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST 354-56 app. E (Comm. Print 1981) [hereinafter cited as U.S. IMMIGRATION POLICY].

129. *Id.*

130. 20 C.F.R. § 422.107.

131. U.S. IMMIGRATION POLICY, *supra* note 128, at 568 app. E.

132. *Id.* at 571.

133. *Id.*

134. Goodpaster, *supra* note 62, at 707.

status of the applicant. This computer search could be conducted by name, date of birth, social security number, or a variety of other identifiers. Another possible means would be to issue an optional identification card for those individuals who feel they might run into difficulties finding employment due to their physical characteristics. If an employer failed to verify the status of an individual who turned out to be an illegal alien, a sanction could be applied against the employer.

The two proposed systems are clearly not flawless, but it appears that both proposals would tend to be less violative of civil liberties than a mandatory card. Also, both of these proposals would impose minimal inconveniences on those who find themselves in need of government endorsement of their legal status.

The second major portion of the Administration's proposal,<sup>135</sup> which addresses a temporary guest worker program, poses questions fundamentally different from that of increased enforcement. At this point it should be noted that in order to deal more effectively with this problem, the Administration established the Select Commission of Immigration and Refugee Policy to study alternatives and propose recommendations to the Administration. The Commission, as an option, suggested a large scale program to the Administration which would last five years and allow entry of 500,000 workers the first year and 400,000 the second year; entry of workers would be decreased on an annual basis.<sup>136</sup> These workers would stay in the United States for a specific period of time and then return home.

The Administration, however, chose to limit the duration of the program to two years and entry of workers to 50,000 per year.<sup>137</sup> It is necessary to keep in mind the purposes of the program in order to analyze its effectiveness. The Administration is seeking to provide an orderly method by which (1) foreign labor seeking to enter the United States to work can do so, and (2) United States employers can obtain needed labor in a lawful and orderly fashion. The Commission found that in order to achieve these goals, a program beginning with 500,000 workers would be needed. This figure was arrived at because estimates indicate that approximately 500,000 illegal aliens gain access to the United States labor force

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135. See *supra* text accompanying note 123.

136. See U.S. IMMIGRATION POLICY, *supra* note 128, at 705.

137. *Senate Subcomm.*, *supra* note 9, at 8.

annually. The program proposed by the Commission would indeed help solve the disorderly influx of labor into the country.

The Administration's proposal, however, merely covers 10 percent of those aliens who are seeking entry to work. There would be no incentive for the remaining 90 percent to wait patiently until they are allowed to enter. The result would be that massive amounts of illegal aliens would still be looking for and finding work. The 50,000 figure would also be insufficient to meet the labor demands for aliens, particularly in the southern and western agricultural states.

This proposal is labeled as "experimental", the meaning of which is not entirely clear. If it is an experimental proposal contemplating the possibility of extension beyond the current two-year limit, the same criticisms mentioned above would apply for a permanent program with a 50,000-worker ceiling. If it is an experiment to gauge the impact of these guest workers in our socioeconomic structure, the experiment is invalid because economic and social impacts cannot be measured accurately with a reduced sample of the dependent variables placed in the totality of the independent variables.<sup>138</sup> The result would be that the experiment itself would be worthless. To avoid further animosity, this temporary "experiment" should not be carried out at all if it cannot be performed correctly. Keeping in mind the adamant opposition to the previous Bracero Program,<sup>139</sup> it would be wise to refrain from establishing such a program. In this context, it is useful to refer to the European experience once more, where it was found that 30 to 50 percent of the temporary guest workers became permanent residents,<sup>140</sup> which ultimately led to family unification as well.<sup>141</sup>

To this point, the proposal has been analyzed from a practical standpoint: Will it or will it not be beneficial to the United States? Two other major considerations must also be explored: (1) the effect of such programs with respect to Mexico (to be discussed later in this Article) and (2) the constitutionality of some of the provisions of this part of the proposal.

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138. There is no accurate way to properly study the impact of 50,000 workers and multiply it by ten in order to infer the impact of 500,000 workers.

139. Goodpaster, *supra* note 62, at 715.

140. SELECT COMMISSION, SAN ANTONIO REGIONAL MEETING BRIEFING PAPER, MOVEMENT OF LABOR ACROSS BORDERS IN EUROPE 3 (DEC. 17, 1979), *noted in* Goodpaster, *supra* note 62, at 715 nn.321 & 324.

141. Goodpaster, *supra* note 62, at 715. *See supra* text accompanying notes 77-115.



The proposal indicates that spouses and minor children of those allowed to enter the United States in order to work would remain in Mexico.<sup>142</sup> While it is clear that the purpose behind this is to avoid the likelihood of individuals bringing their families here and settling permanently, it is not clear whether this provision would survive constitutional scrutiny. The United States Supreme Court has repeatedly recognized the family unit as the cornerstone of our society.<sup>143</sup> In addition, numerous welfare codes throughout the land contain protective measures for children which are arrived at primarily under the assumption that, in most cases, it is in the best interests of the children to preserve the family unit.<sup>144</sup> Therefore, it seems inhuman (perhaps unconstitutional) to require that individuals who come to work in the United States in order to feed their children must be restrained from being with them during their period of employment.

The above-stated criticism of the proposal is admittedly not a strong one in view of the fact that the worker has the choice of not entering the country to work. However, a choice between work for decent wages versus growing unemployment, hunger, population explosion and social disruption is, in reality, no choice at all.

The other portion of this proposal that could possibly fail a constitutional challenge is that which would deny guest workers access to welfare, food stamps, unemployment insurance and federally assisted housing.<sup>145</sup> While in the past assistance programs were denied to illegal aliens, that determination was due to the fact that these aliens were considered non-persons in this country. Once some degree of status is given to an individual (as in this case, that of a temporary worker) implications may give rise to the possibility of subjection to equal protection analysis. While these workers are, in effect, allowed to boost the national economy through inexpensive labor, they are not allowed to reap some of the benefits enjoyed by others, such as unemployment and welfare.<sup>146</sup>

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142. *Senate Subcomm., supra* note 9, at 8.

143. *See generally* *Griswold v. Connecticut*, 381 U.S. 479 (1965).

144. *See generally* CAL. WELF. & INST. CODE § 17,000 (West 1980), § 1900 (West Supp. 1982).

145. *Senate Subcomm., supra* note 9, at 8.

146. The analysis of constitutionality of this type of legislation is affected by cases such as *Mathews v. Diaz*, 426 U.S. 67 (1976), in which the Court, while reaffirming the fact that the fifth and fourteenth amendments do apply to all aliens within the jurisdiction of the United States, further held that not all aliens needed to be placed in a homogeneous group and treated equally. This holding was rendered in the context of a challenge to residency requirements for social security benefit entitlement. It is unclear whether the same theories

The last major component of the proposal deals with the grant of legal status to illegal aliens residing in the United States prior to January 1, 1980.<sup>147</sup> This provision appears to be the simplest method by which to deal with the large population of illegal aliens already present in the United States.<sup>148</sup> This new status, which is essentially equivalent to granting amnesty, would be called "renewable term temporary residency." Granting of such status would certainly aid in the organization of both appropriate taxation and census information while allowing for more accurate assessment of a community's particular needs. In addition, it would help eliminate any exploitation which the status of "illegal" promotes. For example, employers could no longer threaten an illegal alien with disclosure to authorities in exchange for cheap black-market labor. Thus, as a general proposition, amnesty is a good proposal, removing the threat of deportation, which in many cases results in the breaking up of family units (a common occurrence when parents are illegal aliens, but their children are not); it removes the threat of property loss as a result of either the need to sell quickly or abandonment of the property. Overall, the proposal provides the opportunity for those who have been in this country and established roots to become full members of our society, and thus more productive members.

The Administration's proposal, however, falls short of meeting some of these goals. The grant of amnesty would not automatically give the alien worker the rights of a resident alien.<sup>149</sup> The "renewable term resident" would be entitled to renew his term every three years.<sup>150</sup> At the end of a ten-year period, the "renewable term resident" would be allowed to apply for permanent residency, provided that he or she otherwise qualifies as nonexcludable and demonstrates English language capability.<sup>151</sup>

This program seems to be fair. Provisions requiring "renewa-

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might be utilized in passing on the constitutionality of the formation of subclasses of aliens with equal responsibilities but unequal benefits. For recent developments in equal protection analysis as it relates to illegal aliens see *Plyler v. Doe*, 102 S. Ct. 2382 (1982), where the Court struck down a Texas statute which operated to exclude undocumented children from schools. While the Court applied the rational basis test to the statute, it found that the law in question could not have a rational basis unless it furthered some substantial goal of the state.

147. *Senate Subcomm.*, *supra* note 9, at 9.

148. *See supra* text accompanying note 50.

149. *Senate Subcomm.*, *supra* note 9, at 9.

150. *Id.*

151. *Id.*

ble term residents" to pay social security, income and other taxes<sup>152</sup> appear equitable. The major problem within this proposal, however, lies in the fact that under this new status, aliens would not have access to any type of federal assistance programs or unemployment compensation benefits;<sup>153</sup> nor would they be allowed to bring spouses and minor children into the United States.<sup>154</sup>

This provision is even more unjust in this part of the proposal than in the temporary guest worker program due to the unavailability of public assistance benefits. In the guest worker program, the worker would not be required to pay social security or income taxes. Under the new proposal, the worker fully contributes to the economy through taxes, social security and the fruit of his labor. Aside from possible constitutional challenges to this provision,<sup>155</sup> it seems inherently unfair to make one pay for benefits which he may never receive. He may be entitled to benefits after becoming a permanent resident, but there is no certainty that all workers will become permanent residents. The uncertainty is partially caused by a lack of incentive to file the complex forms and follow the intricate steps since their status can be renewed every three years. The uncertainty is increased by the fact that the English proficiency requirements would not be met by many of the applicants. (Note that under normal residency requirements, no such language proficiency requirement exists.)<sup>156</sup> Essentially, these individuals, though working legally in the United States, would never be able to obtain the same benefits that other legal residents obtain. This would result in a statutorily created underclass which has no place in our society.

The prohibition in this section of the proposal against bringing spouses and children into the United States also appears to be less equitable than that existing within the temporary guest worker program. Aside from possible constitutional challenges which may arise out of this provision,<sup>157</sup> it is defective on its face. The goal of excluding spouses and children was clear under the temporary guest worker program (avoiding permanent establishment of a

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152. *Id.* at 10.

153. *Id.*

154. *Id.*

155. See *supra* note 146 and accompanying text.

156. Life in the barrios or slums usually makes it unnecessary for children brought up therein to learn the ways of the outside world. The result often is that because, in effect, they live as if in a little part of Mexico, there is no need to learn English.

157. See *supra* note 146 and accompanying text.

home). The worker was obligated to return home after a period of nine to twelve months. However, no such concern is present with those individuals granted amnesty. The indefinite renewable term and possibility of permanent residence are clear *indicia* that these workers are viewed as permanent rather than temporary residents.

Yet, under the current proposal these individuals would be denied the right to maintain their home and normal family life for a period of at least ten years or possibly longer (versus nine to twelve months in the temporary guest worker program). An individual could be denied residency due to various factors such as English proficiency requirements or the like. Even if these individuals became residents, a spouse or child would only be entitled to enter the country under the second preference which would subject them to further delay and inconvenience.<sup>158</sup> There is also the concern of creating a new second class citizenry. One of the primary purposes for initially granting amnesty was to abolish the concept of an established second class citizenry. Ironically, by removing the concept via statute, the Administration's proposal would create another very similar class.

Review of American attitudes towards immigration is better understood by examining the history of changes in attitudes and the reasons for which they were adopted.<sup>159</sup> It is also helpful to review and draw analogies from other nations that have experienced similar phenomena.<sup>160</sup> Those sources, however, are of limited assistance in analyzing circumstances of the problem as they exist today. Notably, the circumstances surrounding the historical perspective, and the migration phenomena in other countries are quite different from those found in the United States today.

Germany, for example, voluntarily brought in guest workers, thereby creating the present problem. Surely there was some illegal immigration, particularly from Italy, Spain and Portugal. Yet there was little time for many illegal aliens to migrate, as Germany's door was opened shortly after World War II in an effort to rebuild the country. In addition, it must be considered that the problems concerning German immigration resulted from Turkish migration (originally legal—as guest workers). Thus, the problem is different from problems present in the United States. Germany allowed im-

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158. See *supra* text accompanying note 48.

159. See *supra* text accompanying notes 21-31.

160. See *supra* text accompanying notes 77-115.

migration in order to avoid severe labor shortages.<sup>161</sup> It is impossible to judge whether a shortage of labor problems would have been preferable to the problem Germany now faces. It is clear that Germany enjoys a fairly high standard of living as a direct result of the economic development partially brought about by the migrant labor.<sup>162</sup>

In the United States, however, the problems related to migration (particularly of Mexican nationals) is different. Workers were not originally brought into the United States on a massive scale in order to achieve economic strength. Although workers were brought into the country between the 1940s and the 1960s under the Bracero Program, they were brought in due to higher demands for labor on the part of agricultural employees, and in an attempt to curb the influx of illegal aliens. Since the Bracero Program was unilaterally cancelled by the United States in the mid-1960s, illegal immigration has increased. The North gravitation remains a strong force.

By examining Germany and the United States, one can clearly see the difference: Germany brought its problems home. Their guest worker programs backfired to some extent, but the problems arose as migrants were brought into the country. The United States, on the other hand, is faced with a problem created solely by the fact that the economy and standard of living are better here than in Mexico. Thus, the only rationally expected result is occurring: the have-nots want to share in the economic and social benefits readily visible from Mexico.

The circumstances surrounding the historical review also show a marked difference between the United States of the late 1800s and the United States of today, particularly in the availability of resources. It is not clear whether our economy can presently absorb millions of new, unskilled, poorly educated workers in our society as was done one hundred years ago.<sup>163</sup> Thus, examining the impact of aliens in this country one hundred years ago may not adequately indicate what would now happen with the immigration of large masses.<sup>164</sup> Some scholars, however, insist that while in the past decade we have had many unskilled workers due to the post-World War II baby boom, this will no longer be true in the 1980s. It is

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161. *See supra* text accompanying notes 77-81.

162. *See supra* text accompanying notes 92-115.

163. *See supra* text accompanying notes 71-73.

164. *See supra* text accompanying note 76.

likely there will be a shortage of unskilled labor,<sup>165</sup> thus facilitating the assimilation of aliens into our society.

A major item worthy of mention with regard to the problems caused by immigration, particularly from Mexico, is the special relationship existing between the United States and Mexico. The Administration's proposal recognizes this relationship in that the temporary worker program is directed towards Mexican nationals.<sup>166</sup> In addition, the proposal would increase by 20,000 the separate annual country ceilings for permanent immigration from Mexico to Canada.<sup>167</sup> Aside from the obvious special relationship between Mexico and the United States, that of a common 1,950-mile border,<sup>168</sup> it is important to analyze the economic and historical relationship that has occurred as a result of the geographic relationship.

## VI. HISTORICAL ASPECTS OF THE AMERICAN-MEXICAN RELATIONSHIP

The American territory which is now composed of New Mexico, Arizona, California, parts of Colorado, Utah, Nevada and Texas were once part of Mexico.<sup>169</sup> The United States obtained sovereignty over these territories as a result of the Mexican-American War and subsequent treaties entered into by the United States and Mexico.<sup>170</sup> Important factors which gave rise to United States control over the territory were the sparseness of Spanish population in the area, and the fact that small villages often acted as independent colonies sharing only a common culture—absent political, social or administrative ties.<sup>171</sup> Disunity on the part of the residents of the area, increased American migration and cultural conflicts were also factors that eventually led to the war which resulted in official recognition of a new boundary line between both countries.<sup>172</sup>

The interesting aspect of this boundary was that it was arbitrarily arrived at through negotiation. The boundary was com-

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165. See *supra* text accompanying note 64.

166. *Senate Subcomm.*, *supra* note 9. (The proposal generally attempts to achieve a solution that will satisfy Mexico as well.)

167. *Id.* at 16.

168. *ECONOMIST*, *supra* note 55.

169. Goodpaster, *supra* note 62, at 666.

170. *Id.*

171. C. McWILLIAMS, *NORTH FROM MEXICO* 81 (1940).

172. Goodpaster, *supra* note 62, at 667; C. McWILLIAMS, *supra* note 171, at 98.

posed of an arbitrary line across the Sonoran Desert, following the Rio Grande in Texas to the Gulf of Mexico.<sup>173</sup> It has been stated that this was “a border of borderlands rather than a national boundary based on economic and ethnic factors.”<sup>174</sup> There is some question as to whether the Rio Grande was successful in separating the two countries; since both nations depended on it, the reverse effect of uniting the populations of both countries could have resulted.<sup>175</sup>

The economic development of the American Southwest led to the migration of Mexican nationals seeking employment and better economic opportunities.<sup>176</sup> This phenomenon was augmented by the poverty-producing feudal land tenure system within Mexico at that time.<sup>177</sup> Federally funded projects such as the Reclamation Act of 1902<sup>178</sup> permitted the development of massive irrigation projects which allowed further exploitation of the land. This produced a need for agricultural labor to meet the demands of developers.<sup>179</sup> Mexican workers suited developers' needs: they were willing to work hard for low wages in extreme desert temperatures, with almost innate skill in the art of agriculture and irrigation in arid territories.<sup>180</sup>

The above-described phenomena contributed greatly to the pattern of migration which still exists in the 1980s. This pattern received a major boost by the Mexican Revolution of 1910 as a result of its extreme violence and dubious outcome.<sup>181</sup> Furthermore, World War I created a shortage of manpower, especially in the areas of work not directly connected with the war effort.<sup>182</sup> This led to the development of the first Bracero Program which ended in 1922, due to the economic depression and subsequent unemploy-

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173. Goodpaster, *supra* note 62, at 667.

174. C. McWILLIAMS, *supra* note 171, at 59.

175. *Id.* at 59, 61.

176. See Corwin, *The Story of Ad Hoc Exemptions: American Immigration Policy Toward Mexico*, reprinted in IMMIGRANTS—AND IMMIGRANTS: PERSPECTIVES ON MEXICAN LABOR MIGRATION TO THE UNITED STATES 136, 140 (A. Corwin ed. 1978).

177. See Corwin & Cardoso, *Vamos Al Norte*, reprinted in IMMIGRANTS—AND IMMIGRANTS: PERSPECTIVES ON MEXICAN LABOR MIGRATION TO THE UNITED STATES, *supra* note 176, at 38.

178. Reclamation Act of 1902, ch. 1093, 32 Stat. 388 (1902).

179. C. McWILLIAMS, *supra* note 171, at 185-86.

180. Corwin & Cardoso, *supra* note 177, at 38, 43, 45-47.

181. *Id.* at 51-52.

182. Kiser & Kiser, *The World War I Era*, reprinted in MEXICAN WORKERS IN THE UNITED STATES 9 (G. Kiser & M. Kiser eds. 1979).

ment within the United States.<sup>183</sup>

Despite the termination of the Bracero Program, many Mexican workers continued to cross the border where employment opportunities were greater and the standard of living was relatively higher.<sup>184</sup> Illegal migration increased during the 1920s due to a lack of adequate enforcement of immigration laws.

The onset of the Great Depression, which produced tremendous unemployment problems, marked a definite turning point in American attitudes towards the immigration of illegal labor. The Hoover Administration attempted to stimulate repatriation of illegal aliens,<sup>185</sup> but failed to do so in a centralized manner.<sup>186</sup> Most of the repatriation was done by local officials with little or no regard for the rights of those individuals involved.<sup>187</sup> By 1932, 200,000 Mexican nationals had been sent back to Mexico.<sup>188</sup> This action was considered extremely hostile by many Mexicans, and may have done "more to embitter Mexicans toward the United States than anything else in this century."<sup>189</sup>

An additional labor shortage in the highly developed agricultural Southwest was brought about by World War II.<sup>190</sup> This led to a second Bracero Program which was limited to agricultural work, with built-in protection for the alien as well as displacement safeguards to protect American workers.<sup>191</sup> Despite the wide use of this program, employers still continued the use of illegal aliens as a means to avoid some of the administrative strings attached to Braceros.<sup>192</sup> Prior to the termination of the Bracero Program in 1947, the government legalized the presence of illegal aliens by transforming illegal aliens into Braceros.<sup>193</sup> Thus, the government essentially encouraged the use of illegal aliens.

Another shift in American policy towards illegal aliens arose

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183. *Id.* at 55.

184. *Id.* at 56.

185. *Id.*

186. *Id.* at 58.

187. *Id.*

188. EHRlich, *supra* note 71, at 208.

189. MEXICAN WORKERS IN THE UNITED STATES 5 (G. Kiser & M. Kiser eds. 1979).

190. Kiser & Kiser, *The Second Bracero Era* (1942-1964), *reprinted in* MEXICAN WORKERS IN THE UNITED STATES 67 (G. Kiser & M. Kiser eds. 1979).

191. Hawley, *The Politics of the Mexican Labor Issue, 1950-1965*, *reprinted in* MEXICAN WORKERS IN THE UNITED STATES 97, 98 (G. Kiser & M. Kiser eds. 1979).

192. E. GALARZA, MERCHANTS OF LABOR 57 (1965).

193. *Id.* at 63.



in the 1950s with the institution of "Operation Wetback."<sup>194</sup> This program resulted in the deportation of over one million illegal aliens in 1954 alone.<sup>195</sup> Some observers maintain that the government began to enforce immigration laws only upon the assurance by farmers that their work force would be obtained legally.<sup>196</sup>

This program was widely criticized by liberal leaders, organized labor and church groups.<sup>197</sup> The primary criticism maintained that the program paralleled a slave system in maintaining adverse working conditions and low wages.<sup>198</sup> The growing criticism stemmed from the fact that the program was a national, federally funded project. Yet it was being utilized only by the southwest farmers.<sup>199</sup> As a result of this opposition, the Bracero Program ostensibly terminated in 1964.<sup>200</sup>

The phenomenon of Mexican migration to the North, as evidenced by this historical perspective, has been established over a long period of time. At times, this migration was actually encouraged by the authorities of the United States. There is nothing wrong with the implementation of law and policies to govern immigration in a manner favorable and responsive to the needs of the American economy. However, it is very difficult to manipulate large masses of people, allowing or disallowing entrance into the country at whim. Once patterns of entry became established, and once the migrant worker has obtained a "taste of the sweet wine" of American economy, it becomes very difficult to organize a steady flow of workers while maintaining a balance suitable to the United States' purposes. This is particularly true in light of Mexico's economic dependency on the United States.

## VII. ECONOMIC ASPECTS OF THE AMERICAN-MEXICAN RELATIONSHIP

The economies of the United States and Mexico are greatly interrelated. This is partially due to both the Mexican economic

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194. "Wetback" was the name given to illegal aliens coming into the United States by swimming or boating across the Rio Grande.

195. Hawley, *supra* note 191, at 101.

196. E. GALARZA, *supra* note 192, at 70.

197. R. CRAIG, *THE BRACERO PROGRAM 175-76* (1971).

198. Hawley, *supra* note 191, at 111.

199. EHRLICH, *supra* note 71, at 213.

200. See Note, *Aliens in the Fields: The "Green Card Commuters" Under the Immigration and Naturalization Laws* 21 *STAN. L. REV.* 1750 (1969).

system and the 150-year-old practice of north immigration by Mexican nationals.

Due to the poverty in the countryside, Mexico has become a highly urbanized and consumption-oriented society.<sup>201</sup> There still exists, however, a labor-oriented society lacking the capital with which to reward labor.<sup>202</sup> These economic aspects tend to form a vicious circle: available capital is invested mostly in imports under the assurance that these imports will be consumed, thereby assuring a return on capital. The extent of the United States' role in this economy is that about 60 percent of Mexico's imports come from the United States.<sup>203</sup> Conversely, almost 70 percent of Mexican exports go to the United States,<sup>204</sup> further illustrating Mexican dependence on the United States' economy. In addition, about one-half of Mexico's major industries are foreign owned,<sup>205</sup> many of which are owned by United States companies.

The illegal alien flow into the United States has a significant positive impact on Mexico's economy. Migration of Mexican nationals to the United States reduces unemployment in Mexico and lessens social unrest.<sup>206</sup> The practical side of this phenomenon is that Mexican illegal aliens are estimated to send back 1.5 to 3 billion dollars to Mexico annually.<sup>207</sup> This figure adds to the capital available in Mexico for investments which would otherwise not exist. This improves the Mexican economy, and yet has less adverse effect upon the American economy than one would conclude at first glance. In light of the fact that Mexico's imports from the United States amount to approximately 60 percent, much of the money earned in the United States and spent in Mexico is used to buy American products, thus completing the economic cycle and stimulating the American economy.

If the flow of illegal aliens were effectively stopped, a domino-type effect might arise whereby the Mexican economy would further deteriorate. Political stability, which is of great interest to the United States, might be jeopardized. Serious consideration should

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201. Goodpaster, *supra* note 62, at 673.

202. *Id.*

203. *Id.* at 686.

204. *Id.*

205. Portes, *Illegal Immigration and the International Systems Lessons from Recent Legal Immigrants to the United States* 26 SOC. PROB. 425, 433 (1979).

206. See W. TONEY, A DESCRIPTIVE STUDY OF THE CONTROL OF ILLEGAL MEXICAN MIGRATION IN THE SOUTHWESTERN U.S. 4 (1977).

207. D. NORTH & M. HOUSTON, *supra* note 62, at 46.

be given to the facts involved in the relationship between the United States and Mexico before attempting any major cut in the actual flow of illegal aliens into the United States.

### VIII. CONCLUSION

The preceding pages have explored various aspects of the illegal immigration phenomenon being experienced by the United States. As the world becomes more and more populated, the concerns over resource availability deepen and require that some action be taken to preserve the integrity of nations' political subdivisions. Rightfully so, the United States government has a desire, if not a duty, to preserve a high standard of living for its citizens and otherwise legal inhabitants.

The Reagan Administration's proposals and other substantially similar proposals properly appear to take action in the best interests of the population. As detailed in the preceding pages, however, there is much more involved in the formation of a particular immigration policy than obtaining immediate benefit for the United States.

In a modern world characterized by high technology, advanced communication, daily worldwide travel and economic interdependence, it appears just as important to consider the external effects of a political choice as it does to consider its internal effects. While it is desirable to stop the flow of illegal aliens coming into the United States for a variety of valid reasons, it is also desirable to avoid the economic, political and social effects which would be created by stopping that flow of illegal aliens.

The adverse economic effect imposed on the Mexican economy as a result of a block of illegal-alien flow is certainly an undesirable result from the United States' viewpoint, especially in the wake of United States support for Great Britain in its South Atlantic conflict against Argentina. The undesirable social effects which would be created by the formation of yet another class of citizens would do nothing more than fuel the fire of prejudice which has plagued this country from its very beginning.

Throughout the analysis of this Article, the authors have attempted to explore the major areas of concern in dealing with the migrant worker problems. History has shown that no solution will please all those concerned: native Americans, sending countries and existing undocumented aliens. The issues involved are complex and not susceptible to cut-and-dry solutions. It is clear, how-

**ever, that while the Reagan Administration's proposals properly address some of the most important issues, they fail to do so in a complete and adequate manner.**