America: Immigration, Law & American Identity

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Director’s Note

Although the immigration reform momentum of the spring of 2006 was put on hold during the 2006 elections, a review of the legislation already introduced in the 110th Congress indicates that in the coming year, once again, immigration will be a key issue on the legislative agenda.

Debate over immigration policy is not new. It has always been part of our legal, political, and cultural landscape. The three feature articles in this issue of Insights highlight many of the issues bound to arise in the coming months as Congress, the states, and other countries around the world, grapple with increasing immigrant populations. Bill Ong Hing places our current immigration reform debates in a historical context and explains the origins of the flow of undocumented workers from Mexico. Kitty Calavita describes immigration law and policy in Spain and Italy, two European countries with significant undocumented populations. Ann Morse explains why the states have become so concerned about immigration and their proposed approaches to meet immigration-related challenges.

In the Perspectives section, two scholars, Jennifer Chacón and George Grayson, answer the question of what principles should guide immigration reform. Law Review contributor Paul Martinek reveals what happens in Immigration Court and the ways in which recent policy changes have affected court proceedings and the practice of immigration law generally.

You will also find classroom lessons, activities, and resources. Use the Learning Gateways lesson to help students analyze the underlying concerns and factors that have guided immigration law and policy across time in the United States. Take a look at the Los Angeles Times article about a controversial city ordinance affecting immigrants and the accompanying activities to explore the legal questions raised by the ordinance and similar local laws around the country. Help students become political advocates through the conventions of political advocacy letter writing.

We hope that these essays and classroom resources will provide context for exploration in your classroom of immigration policy, law, and culture in our current political landscape.

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The furor over illegal immigration is palpable. With an estimated eleven to twelve million undocumented aliens in the United States, advocates for immigration reform have become louder and more visible. Opponents claim that things are out of control, that we are being overrun, that they’ve broken the law, that they take away jobs from native workers, that they use our resources, that they don’t share our values, that they don’t speak English. But in 2006, immigrants themselves took to the streets, demanding amnesty or a path toward citizenship and seeking recognition of their contributions to the U.S. economy and their basic human rights.

We are a nation of immigrants. However, we are also a nation that loves to debate immigration policy. The simplicity of that phrase “a nation of immigrants” conceals the nation’s consistent history of tension over who we collectively regard as “real Americans” and, therefore, who we allow into our community. We are not, and never have been, of one mind on that issue.

Early Debates

Although immigration laws did not become a permanent fixture in United States statutes until the mid-1800s, debate over newcomers was a part of the political and social discourse even before the Declaration of Independence. As early as 1751, icon of the New World, Benjamin Franklin, opposed the influx of German immigrants, warning that “Pennsylvania will in a few years become a German colony; instead of their learning our language, we must learn theirs, or live as in a foreign country.” He regarded those immigrants as “the most stupid of their own nation.”

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who were not “used to liberty [and thus would] not know how to make modest use of it.”

These critical statements by one of the framers of our constitution, contrast with the sentiments of George Washington, who in 1783 proclaimed, “The bosom of America is open to receive not only the opulent and respectable stranger, but the oppressed and persecuted of all nations and religions.” His words are strikingly reminiscent of the famous lines of the Jewish American poet Emma Lazarus engraved at the base of the Statue of Liberty in 1886:

“Give me your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door!”

Immigration prior to the first restrictions (1882) set the stage for debate. Those “original” people who populated the country in its initial years formed the basis for what many would regard as “real Americans.” This wave was primarily an eighteenth-century undertaking that lasted until 1803 and brought with it white, predominantly English-speaking, mainly Protestant western Europeans.

The Great Wave
A great immigration wave, which began in the 1820s and lasted until the 1920s, brought more Catholics and Jews, more southern Europeans and more non-English speakers. Chinese lured by stories of gold began arriving on the West Coast, soon followed by Japanese, Asian Indians, and Filipinos. The new diversity provoked resentment and controversy. Many of the anti-immigration stances of that period sound familiar today; the immigrants didn’t assimilate or share American values, and they stole jobs from native workers. In response to public outcry, in the 1920s, a national origins quota immigration system was imposed, favoring northern and western European immigration. Asian immigration was curtailed with the 1882 Chinese Exclusion Act, followed by a series of agreements and restrictions aimed at Japanese, Asian Indians, and eventually all Asians.

Thus, immigration data from 1820 to 1965 tell much of the story; immigration policies at first favored some groups over others. From 1820 to 1850, about 2.5 million immigrants came to the United States: almost 90 percent were European (87 percent alone from France, Germany, Ireland, and Great Britain); only 132 were Asians; and 14,688 (less than 1 percent) were Mexican. From 1851 to 1880, 228,899 Chinese, representing less than three percent of a total 7.7 million immigrants, entered the United States during that period, while European immigration dominated (88 percent). After Chinese laborers were excluded, their numbers declined; from 1891 to 1900, less than 15,000 entered out of a total of 3.7 million immigrants. During the first two decades of the twentieth century, southern and eastern European immigrants entered in large numbers. Of 14.5 million immigrants, 60 percent were from Italy, Austria, Hungary, and what became the Soviet Union. A literacy law, enacted in 1917, specifically targeted southern and eastern Europeans, and the national origins quota system of 1924 further restricted their numbers. From 1921 to 1930, immigrants from those areas declined to about 14 percent, and, from 1951 to 1960, those groups made up only six percent of all immigrants.
1965 Reforms
In 1965, the national origins quota system was cast aside after decades of criticism from presidents including Harry Truman, Dwight Eisenhower, John F. Kennedy, and finally, Lyndon Johnson. The post-1965 wave of Latin and Asian immigration resulted in new population diversity. Today, 65 percent of all lawful immigrants are from Asia and Latin America. Census data reveals that one-third of the foreign-born population in the United States is from Mexico or Central America, a quarter is from Asia, and 15 percent is from Europe. Immigration policies since 1965, from new refugee laws in 1980 to the legalization (or amnesty) program for undocumented immigrants in 1986, further changed the ethnic makeup of the country.

Undocumented Mexican Migration
Because much of the recent immigration debate is about undocumented Mexican migration, familiarity with the history of U.S.-Mexico relations offers context for understanding it. After the United States annexed Texas in 1845, border disputes continued, and the United States declared war against Mexico, eventually forcing Mexico to sign the Treaty of Guadalupe Hidalgo in 1848. Under the treaty, the United States gained California and New Mexico (including present-day Nevada, Utah, and Arizona). This amounted to 55 percent of Mexico’s territory. The treaty marked the beginning of policies that restricted the free flow of citizens both to and from the United States and Mexico.

In the later half of the nineteenth century, significant Mexican immigration to the United States was initiated by individual states seeking cheaper and more “pliable” labor. The United States and Mexico institutionalized a transient Mexican labor force, through the Bracero Program, in 1942. The terms of the agreement governing working conditions were not enforced, and abuses were widespread. The most attractive feature of this Mexican labor was its temporariness. Employers soon found undocumented Mexican migrants cheaper to hire than those employed through the Bracero Program and increasingly hired the undocumented. At the same time, funds for Border Patrols were reduced and the number of Mexicans who crossed the border without inspection grew. Political pressures led to a concerted effort along the border to deport undocumented workers forcibly back to Mexico through a government program called Operation Wetback, launched in 1954. Meanwhile, employers doubled their efforts to obtain cheap Mexican labor through the Bracero program. Claims about the social costs of undocumented Mexican immigration in 1954 echo in the claims about undocumented immigration today.

The Bracero program was officially terminated in 1964. Our current crisis of undocumented aliens from Mexico had its official roots in the demise of the Bracero program. Employers became accustomed to cheap Mexican labor and became willing to hire employees illegally residing in the country.

Current Debate
The current debate over undocumented migration is greatly focused on the economic impact of undocumented workers, and concerns about whether they take jobs from native workers or depress wages. In terms of jobs, the Bureau of Labor Statistics projects slow growth in the native workforce and concludes that immigrants—documented and undocumented—must continue to play an important role in the U.S. labor force. Calculations by the Urban Institute have suggested that if no immigrants entered the country between 2000–2015, the labor force would shrink by ten million workers. Economists predict the aging of the baby boomer generation will slow labor force growth, increase the tax burden of older, retired persons on younger workers, and drag down productivity growth. Some researchers continued on page 26

A young Mexican boy scales the fence dividing the United States and Mexico near Tijuana.
Both Spain and Italy have long been countries of emigration, sending millions of working men, women, and children to every corner of the globe since the late 1800s. In the decades after World War II, Spaniards and Italians found labor opportunities closer to home, shuttling back and forth to north and central Europe where they supplied the backbone of the industrial labor force for the post-war economic boom. This migrant stream began to reverse itself in the early 1980s, as many former emigrants returned home, and these southern European countries attracted large numbers of immigrants from beyond their borders.

Italy experienced its own “economic miracle” in the post-WWII decades, drawing large numbers of rural people from its less developed southern regions to its northern industrial centers. By the mid-1970s the gap between Italy and its northern European neighbors had narrowed. The increased employment opportunities and higher wage levels associated with this transformation attracted immigrants from Africa, Asia, and Latin America, much as in earlier years Italians had migrated north to better jobs. By 2006, approximately 4 million foreigners resided in Italy, with an estimated 300,000 being undocumented. The vast majority of these immigrants come from outside the European Union. While Africa is the largest source region, immigrants also come from eastern and central Europe, Asia, and Latin America.

Spain also experienced massive internal migrations in the midtwentieth century, when the industrial areas in and around Barcelona and Madrid, and in the Basque region, attracted the landless populations of the rural south. But the high level of external immigration beginning in the mid-1980s was new. The number of legal foreign residents in Spain went from fewer than 250,000 in 1985 to over 3 million by 2006. With just 11 percent of the population of the European Union, Spain now receives an estimated 22 percent of its immigrants.

“Spain and Italy passed their first immigration laws in 1985 and 1986, respectively.”

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The single most important country of origin is Morocco, but Spain is also host to a substantial Latin American population, not surprisingly given its linguistic and colonial-cultural ties to the region. A slightly larger share of Spain’s immigrant population is undocumented than is the case in Italy.

Spain’s economy has been shaped by a unique set of historical circumstances, most notably the Francoist regime. Since Franco’s death in 1975, the Spanish economy has grown by spurts and starts, undergoing unprecedented levels of expansion between 1986 and 1990, when over two million new jobs were created, more than in any other European country. While still lagging behind Italy in terms of real wages and standard of living, Spain too has gone far in narrowing the gap with the rest of the European Union. As in Italy, Spain’s social protections have expanded rapidly and its welfare state is now almost comparable to that of other western European democracies.

**Immigrants in the Economy**

One out of every four new hires in Italy is an immigrant. They are clustered in several sectors, the primary ones being manufacturing, construction, agriculture, domestic service, and other services, with their distribution across these sectors varying by region, gender, and nationality. More immigrants work in manufacturing in Italy than anywhere else in Europe, where they tend to be more highly concentrated in services. Wages and working conditions for immigrants vary between the north and the south of the country, even within the same categories of work. What remains constant is that they are generally worse than for local workers. Whole Chinese immigrant families working in the garment industry in southern Italy often earn the equivalent of $250 a month for 8–10 hour days.

Immigrant women in Italy are heavily concentrated in domestic service, especially elder care and child care. The need for immigrant caregivers is particularly acute in southern Europe where the welfare state is less developed than in some areas of northern Europe where state-sponsored child care and provisions for the elderly are the norm, and the demand is further accentuated by the rapidly aging population. The large metropolitan areas of Rome and Milan account for roughly half of all immigrant domestics (three out of four domestic workers in these two cities are immigrants).

As in Italy, the proportion of immigrants in the Spanish workforce has increased every year for the last two decades. The number registered with the social security administration doubled in just two years from 2000–2002, with non-European immigrants comprising four out of every ten new workers covered in the social security system. And they are even more heavily represented in the underground economy, where it is estimated that immigrants account for at least 15 percent of the workforce.

More important than their mere numbers, they fill critical niches in the Spanish economy—usually those that have been vacated by local workers. Based on Interior Ministry data, they are concentrated in agriculture, construction, domestic service, and the tourism industry, with a far smaller fraction in manufacturing than in Italy. As in Italy, immigrants in Spain provide not just a supplemental workforce, but a particular kind of workforce, i.e. one that will do the jobs, and under condi-
tions, that most Spanish workers no longer accept.

And as in Italy, the location of immigrants in different sectors varies across regions. In the south, more than 90 percent of immigrants—mostly from North Africa—work in labor-intensive, hothouse agriculture, while in the northeastern city of Barcelona they are distributed across construction, tourism, and a range of services, and in Madrid they are more likely to be found in domestic service. In every sector, immigrants occupy the most precarious niches and are usually compensated at lower rates than comparable local workers.

Immigration Law and Policy

Spain and Italy passed their first immigration laws in 1985 and 1986, respectively, and have enacted amendments and regulatory changes almost every year since then. Despite what seems like constant tinkering, some consistent themes characterize these laws. Most notably, they are based on the principle that the increasing influx of immigrants from the Third World must be controlled, or at least managed. These Mediterranean countries became the southern gate to Europe just as it was dismantling its internal borders, and pressure mounted to control the numbers who slipped in.

Consistent with the view of immigrants as temporary workers, Italian and Spanish immigration laws contain few provisions for permanent legal residency or naturalization. Citizenship is based primarily on *jus sanguinis*, translated from Latin as “right of blood,” which means that children born to immigrants within these countries do not automatically become citizens. Indeed, those born to illegal immigrants are themselves considered illegal.

Most permits to reside legally in these countries are temporary and depend on having a work permit, which must be renewed on a regular basis. Recent laws make it possible for those who can string together multiple years of temporary permits to apply for permanent legal status. However, it is extremely difficult to meet the stringent standards required to achieve this status, and relatively few have been successful. Among the most daunting of the obstacles is the requirement to work without interruption in the formal economy, thereby excluding the majority of immigrants who do at least some stints in these countries’ underground economies. Legalization programs are implemented every few years, with applications sometimes reaching several hundred thousand. Those who are legalized, however, are generally extended only temporary legality and have to demonstrate continued formal employment and navigate a maze of government bureaucracies to renew their permits.

While these laws and policies make it difficult to establish permanent legal status, at the same time government policies stress the importance of immigrant integration. The term “integration” is used in these countries to refer to social and cultural inclusion and tolerance for diversity, and is contrasted to segregation, exclusion, and rejection. Integration policies include language courses and socialization classes, as well as tolerance campaigns that encourage local populations to accept immigrants’ cultural differences.

Since passing its first immigration law in 1986, Italy has formally endorsed the notion of equal social rights for legal immigrants. Both the original 1986 law and the Martelli Law in 1990 made reference to equal access to housing, public education, social assistance, and the national health care system. The Turco-Napolitano Law of 1998 is widely recognized as the blueprint for immigrant integration in Italy today.
despite a few retrenchments made by the conservative Berlusconi Administration in 2002.

Spain has followed a remarkably similar path. The Preamble to its 1985 law spoke of “facilitat[ing] the integration of aliens into Spanish society.” By 1991, as both legal and illegal immigration increased, so too did the emphasis on integration. Resolutions, administrative decrees, and speeches before Parliament regularly warned of the need to ensure the social integration of immigrants.

A liberal law passed in 2000 over the opposition of the conservative Aznar Administration, giving immigrants equal rights to Spaniards in access to public education, health care, housing, and social security protections, and making these rights contingent on being registered in the local municipality as a de facto resident, rather than on formal immigration status.

Anti-Immigrant Backlashes
It is often said that Italians and Spaniards are more tolerant of immigrants than are their western European neighbors. Their relatively low levels of xenophobia are consistently affirmed in surveys. In one study of attitudes towards immigrants, Italians and Spaniards had lower anti-immigrant attitudes than citizens of any of the other participating European countries.

However, the low xenophobia levels are relative. Absolute levels are fairly high, with almost one-third of Spaniards and Italians saying they “strongly agree” or “very strongly agree” with statements characterizing immigrants as threatening, harmful, or dangerous. Anti-immigrant riots periodically expose the intensity of these perceptions. While the political parties that exploit xenophobia have not attained the levels of popular support evident in some other western European countries, nonetheless, immigrant advocates and those urging tolerance express concern.

The anti-immigrant backlash has many roots and comes in myriad forms. Most immigrants work in low-wage jobs that Italians and Spaniards have rejected. Not only does this mean that they are by definition economically distinct from the local population, but the low-wage nature of these jobs amplifies that distinction and traps them in poverty. The concentration of poverty within the immigrant population operates as a stigma, a sign of difference, and—for some—a mark of inferiority. Cultural and religious differences often compound this perception of difference and fuel the fire of intolerance.

The legal system arguably exacerbates this perception of difference. Despite well-intentioned programs to integrate immigrants, laws that inhibit the full incorporation of immigrants into Spanish and Italian society by limiting their ability to put down permanent roots, ensure their continued marginality. Policy-makers thus face a kind of catch-22, with immigrant workers confined to temporary and contingent permits to do work that locals mostly shun, but with this fact contributing to backlash against the impoverished immigrant population.

In the United States and western Europe, there is substantial ambivalence towards immigration, with immigrant workers filling niches in the economy but often experiencing social exclusion. Laws and policies in Spain and Italy mirror this ambivalence, on the one hand, limiting immigrant incorporation and on the other, exhorting immigrants to integrate. As the populations of these southern European countries age and birth rates plummet, these societies are increasingly dependent on immigration. How they cope with the catch-22 surrounding the immigrant influx will have major consequences for the nature of these societies in the twenty-first century and beyond.

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FOR DISCUSSION

In what industries or sectors are immigrants employed in Italy and in Spain?

How does the “underground” economy in Italy benefit employers?

What themes or trends emerge in immigration laws in Spain and Italy?

How do these countries deal with integration issues?

What does the author mean by the phrase “Wanted But Not Welcome” to characterize the place of immigrants in Spain and Italy?
Immigration: States Take the Lead

Why is immigration an issue for states?

by Ann Morse

State legislatures introduced 570 immigration bills in 2006—double the number introduced in 2005. In this article, Ann Morse discusses the key factors that make immigration such a major issue for the states at this point in time.

In 2006, state legislatures considered an unprecedented number of bills related to immigrants across a broad spectrum of policies. Legislators introduced 570 bills, double that of 2005, and vastly higher than the normal range of 50–100 bills. States enacted a record 84 bills in 32 states related to immigrants, with many bills focused on employment, law enforcement, public benefits, and human trafficking.

Why is immigration an issue for states? Three major factors: the size of the illegal immigrant population, the public perception that we’ve lost control of our borders, and frustration at the gridlock in Congress.

In the 20 years since the last comprehensive reform, immigration, both legal and illegal, is again at an all-time high. One in eight U.S. residents is an immigrant. Of 34 million total foreign-born in the United States, about one-third are here without lawful status.

Since the 9/11 attacks, there is also the perception that our immigration system is broken and the border is out of control. Although terrorists received visas to legally enter the United States rather than crossing the border illegally, several were able to fraudulently obtain state driver’s licenses, sparking state efforts to tighten identification and proof of residency requirements.

Finally, Congress deadlocked over immigration reform. First proposed by the Bush Administration in 2001, comprehensive immigration reform failed to gain traction. In the 109th Congress, the House and Senate took vastly different approaches. The House bill, H.R. 4437, increased enforcement at the border, the worksite, and the interior United States. With S. 2611, the Senate built on enforcement and added a path to legalization, if immigrants passed background checks. However, the legislation failed to pass.

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checks and paid fees and back taxes, and a new temporary worker program. Despite bipartisan efforts to find compromise, the House and Senate approaches proved irreconcilable. The policy trajectory started as enforcement only in the House, migrated to enforcement plus in the Senate, and ended in enforcement first, with the authorization of a 700-mile border fence.

States Step Forward: Balancing Enforcement and Integration

State legislators heard the public frustration and sought ways to be responsive. Without authority over immigration admissions, states tried to find a balance between the contradictory public opinions seeking enforcement against illegal behavior and the interest in integrating those who will be permanent members of the community. Many states focused on employers and ways to deter the hiring of unauthorized immigrants. Other states, however, offered protections: expansion of higher education benefits and health care, consumer protections in legal services, and assistance for victims of trafficking.

In Nebraska, for example, legislators wanted to help academically motivated immigrant students to stay in Nebraska and contribute to the state, particularly in light of the state’s aging population. Maryland decided to restore health care for some legal immigrant children; and Vermont now requires courts to advise defendants of immigration consequences when pleading guilty to criminal offenses.

In Arizona, legislators felt the federal government abandoned its responsibility, leaving them no choice but to deal with immigration. Arizona considered 48 bills and enacted seven, with three vetoed by the governor. Arizona restricted health care to citizens and legal immigrants and sent resolutions to Congress seeking an agricultural commuter worker program and additional border control assistance.

Georgia’s comprehensive bill (SB 529) garnered significant attention for considering employment, enforcement, and benefits issues in one bill. The Georgia Security and Immigration Compliance Act requires verification of eligibility for work and for public benefits, adds penalties for human trafficking, authorizes a cooperative agreement to enforce immigration with the Department of Homeland Security, and strengthens consumer protections for immigration legal services. It also requires income withholding for those who fail to provide a correct taxpayer identification number.

In Colorado, when a proposed ballot measure on immigration was invalidated by the courts, the state legislature came back into special session, enacting 10 bills and sending two more to the ballot. In addition to enforcement, worksite and benefit provisions similar to those passed by Georgia, Colorado required the state attorney general to pursue reimbursement from the federal government for all costs associated with illegal immigration.

Worksite enforcement was the number-one issue considered by states, with 37 states introducing 108 bills. Ten states (Arizona, Colorado, Georgia, Idaho, Kansas, Louisiana, New York, Pennsylvania, Tennessee, and Washington) passed 17 bills; 16 bills were enacted, and one was vetoed. In general, the laws require verification of work authorization; deny state contracts, licenses, or tax deductions; add penalties; or restrict worker benefits.

State Concerns

While the federal government has jurisdiction over whom and how many immigrants may enter the United States, state and local governments are responsible for a range of services, with commensurate costs. There is a rich and intense public policy debate stretching across these policy arenas. Many state legislators question the validity of expending state funds on a federal responsibility, but recognize the value of supporting public health and public safety goals. They are concerned that one in three immigrants is here illegally. Some worry about providing a “magnet” of services for illegal immigrants, while others point to the dependency of local economies on the immigrant workforce. They see firsthand the demographic changes in their communities, with the retiring of the baby-boom generation leaving critical gaps in the workforce. An increasing number of legislators note that immigrants also pay taxes, revive dying neighborhoods, and create new businesses.

Although the federal government has exclusive jurisdiction over immigration policy (the terms and conditions for entry into the United States), states...
and localities have become responsible for immigrant policy (the policies that help newcomers integrate into the country’s economic, social, and civic life). States implement programs required by federal law, provide services mandated by the courts, and initiate programs and policies to serve the specialized needs of their new citizens.

There is a long history of a frayed federal partnership. In 1980, the domestic refugee resettlement program was established as a shared responsibility between federal and state governments. The federal government accepted refugees from around the world, and promised to reimburse states for the cost of their social and economic integration. The original 36 months of assistance is now down to eight. In 1986, illegal immigrants were granted legal status but barred from federal benefit programs for five years. The 1986 law established a $4 billion fund to help defray the anticipated costs to states for public health, public assistance, and educational services for the estimated 3 million immigrants granted legalization. States fought off repeated attempts to raid the fund for other federal purposes. And again, in 1996, the federal welfare law barred legal immigrants from federal benefit programs for five years, shifting costs federal reimbursement for costs of incarcerating illegal immigrants who commit felonies.

A 1997 national assessment on costs and benefits of immigrants to the United States concluded that immigrants provide a net economic benefit nationally, but acknowledged net deficits at state and local levels. States continue to assess the costs that immigrants impose on their health and education services, as well as contributions in taxes and economic development.

Finally, legislators are concerned about the lack of meaningful efforts to integrate America’s newcomers. What is needed, they say, is increased funding for language acquisition and civic education, along with measures to help immigrants become self-sufficient and contributing members of their adopted communities.

The Federal Framework
The federal government has jurisdiction over immigration policy—who and how many can enter the United States and the conditions of their stay. The extensive Immigration and Nationality Act, said to be second only to tax law in the U.S. code, regulates the admission and removal of aliens. Because the federal government “occupies the regulatory field” under the Supremacy Clause of the U.S. Constitution, federal law may preempt state or local action.

The 14th Amendment of the U.S. Constitution prohibits a state from denying to anyone within its jurisdiction the equal protection of the laws, and has been used in the past to prohibit discrimination on the basis of national origin.

In 1982, the Supreme Court decision in Plyler v. Doe guaranteed public education to all children regardless of immigration status. The Court feared that denying education to illegal immigrant children would create a permanent underclass of people who, even if they became legal later on, would be illiterate, stamping them with an “enduring dis-

FOr DiSCUsSiOn

According to the author, why is immigration currently an important issue for the states? Do you agree with her analysis? Why?

How have specific states sought to be responsive to public concerns about immigration? What do you think of these specific state policies?

How does the federal framework of government impact state attempts to deal with immigration policy concerns?

Do you think the net economic benefits of immigrants to the country as a whole described by the author outweigh the deficits at the state and local level, also described by the author? Why?
Some people are fed up with illegal migration. But the fevered debate about illegal migration is distorting the way that most people in the United States think and talk about immigration reform. The primary focus of our immigration debate has been on how we might use the criminal law and immigration law enforcement techniques to bring the issue of migration under control.

There is a big problem with this approach because migration is not a criminal law problem. Migration is an economic and social phenomenon that cannot be effectively managed through criminal law measures. When we turn our attention to genuine reform of our immigration law, there are two issues that we should address before we formulate a revised immigration policy. First, we should determine the costs of existing immigration enforcement measures. Second, we should determine whether there are better ways to share the costs and benefits of migration.

Costs of Enforcement

At the moment, we spend a great deal of money trying to enforce our immigration laws. In fiscal year 2006, the budget of Immigration and Customs Enforcement, the federal agency charged with enforcing our nation’s immigration laws, will total $3.9 billion in direct appropriations and fees. That number will rise as funds are provided to build up a secure “border fence” and to increase raids of workplaces hiring undocumented workers. And that number does not take into account the costs to our judicial system of prosecuting and sentencing immigration violators and reviewing removal orders. As the number of prosecutions for illegal reentry and other immigration-related crimes continue to rise, our federal criminal justice system is increasingly overwhelmed with immigration matters.

In addition to the expense of enforcement, there are many costs of migration that are a direct result of our criminalization of migration. Noncitizens without documentation may seek fraudulent identifications to gain work authorization, leading to crimes of identity theft. Undocumented workers in the workplace may be reluctant to unionize because of the threat that their employers might report their illegal immigration status to authorities. This can hurt all workers. Undocumented migrants who are barred by new laws from obtaining driver’s licenses may feel forced to drive without insurance, putting themselves and others at risk, and generating significant costs when accidents occur.

In these cases, it is the criminalization of migration, and not migration itself, that generates costs. Ironically, if migration were not illegal, we would not incur these costs. As a general rule, we would not have to detain and deport noncitizens. Migrants could use their own, real documents for work. They could unionize with other workers without fear of the threat of deportation. They could obtain legitimate drivers licenses and insurance. But current law prevents these cost-saving measures from occurring.

Even as we have greatly increased our spending for border “security” and the criminal punishment and removal of undocumented migrants, we have also subjected more legal immigrants to deportation. If lawfully present noncitizens commit crimes, they can be deported as “criminal aliens.” The list of such deportable offenses used to be relatively small and limited to serious crimes. But over the past two decades, Congress has vastly expanded the number of crimes that will result in the deportation of lawfully present noncitizens. Many of the people who have
been deported under these expanded removal provisions are people who committed minor offenses and who have been living as legal immigrants in the United States for many years. Under current immigration law, judges have very little leeway to stop the deportation of these noncitizens.

The immigration reform proposals in Congress in 2006 would have again expanded the definition of “criminal aliens” subject to deportation, making even more lawfully present noncitizens deportable on the basis of their past or present criminal conduct. Expanding removal provisions does nothing to address the problem of “illegal” migration. After all, illegal migrants are already subject to removal under the law, since they have no legal authorization to be in the country. Instead, these expansions of criminal removal provisions turn lawfully present noncitizens into removable noncitizens, further increasing immigration enforcement costs. When people say, “I have no problem with legal immigrants,” they may be unaware that past and proposed changes to the law have generally taken aim at legal immigrants, too.

The wave of removals of lawful permanent residents and other long-time residents raises another important cost issue: We pay a high social cost for enforcing our expanding immigration removal laws. Families are broken up or uprooted and people lose the benefits of the hard work that they have poured into building a life in the United States.

**Better Ways to Share Costs and Benefits?**

All of the economic and social costs that we have incurred for immigration enforcement have not bought us a successful immigration policy. Estimates suggest that approximately 12 million noncitizens live in the United States without legal authorization, and that the number of undocumented migrants has risen even as enforcement spending has increased and as laws have been revised to increase removal provisions for more noncitizens.

The immigration debate has been framed in a way that traps us in a cycle of thinking about more ways to make migrants into criminals. It would make more sense to stop thinking about ways to push migrants into the shadows, and to think instead about ways to bring people into the open. Instead of using a sealed border as a starting point, an open-borders approach might be a better starting point for discussion.

There are certainly costs associated with a more open-border approach. Migrants, like citizens, would need the services provided by schools and hospitals. Some migrants would commit crimes and would have to be imprisoned or removed. Some localities would be heavily burdened by these costs. Moreover, in certain sectors of the economy, migrant laborers would compete with other low-wage workers for scarce jobs, and this could drive wages down in those industries (although this is also true under our current system).

But if all migration was fully legalized and regulated, we could turn our attention to pragmatic economic solutions to these economic problems. We could more effectively collect taxes from migrants and their employers. We could use these funds to cover the costs of schools and hospitals in localities with large migrant populations. We could turn our enforce-

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Politicians Should Respond to Grass-Roots Sentiment About Immigration Issues

by George W. Grayson

Political elites often march out of step with the public. No where is this more evident than with respect to immigration—an issue largely ignored by President Bush and his Democratic opponent John Kerry in the 2004 presidential campaign. Yet opinion surveys consistently find that the average citizen scorns the flaunting of the nation’s immigration laws and wants them enforced. Nearly two-thirds of likely voters in the 2006 congressional contests favored measures either that impelled illegal aliens to return home (44 percent) or large-scale deportations (20 percent).1 When provided with neutral language, the respondents overwhelmingly endorsed key provisions in a bill approved by the House of Representatives in mid-2006. This initiative called for a crackdown on unlawful workers, harsher penalties on employers who hire them, 700 miles of two-ply fencing along the border, and mandatory detention for all non-Mexican illegal immigrants arrested at ports of entry. In addition, it rejected Mr. Bush’s proposal to expand the current guest-worker program.

On the eve of the November 7, 2006, election, the Senate reluctantly went along with several of these provisions, including fencing to obtain “operational control” of the southern border. Earlier in the year, however, that body approved a 62 to 36 vote its own version of “comprehensive immigration reform.” This measure would have admitted an additional 200,000 guest workers each year to do “jobs Americans won’t do.” It also charted a route to citizenship for a large portion of the 12 million immigrants illegally residing north of the Rio Grande, provided for 370 miles of new triple-layer fencing, authorized additional border surveillance, and modestly strengthened sanctions for employers who make unlawful hires. If Congress were serious about curbing illegal entries, there are other steps that it could take:

“[T]he average citizen scorns the flaunting of the nation’s immigration laws and wants them enforced.”

1. Keep pressure on the Department of Homeland Security (DHS) to penalize firms that welcome illegal workers. It remains to be seen whether the late-2006 crackdown on the Swift & Co. meat-packing plants was a public-relations move or a serious commitment to law enforcement.

2. Direct the Department of Labor to match jobs vacated by unlawful workers with unemployed legal U.S. residents. If the pay is reasonable and conditions safe, Americans will take advantage of employment opportunities as indicated by the long line of applicants seeking positions at Swift & Co. following the DHS raid.

3. Change the priorities for granting green cards from “family reunification” to “valuable skills.” Our immigration statutes facilitate the entry of poorly educated individuals who compete with poor Anglo-, Black-, and Hispanic-Americans at a time when the country really requires sophisticated professionals.

4. Require appropriate authorities to keep tabs on foreign visitors. This is vital because a surging number of unlawful aliens first enter the United States legally only to fail to return to their home countries.

5. Begin the process of establishing a noncounterfeitable national identity card. Such a document would not only enhance national security, it would also discourage discrimination based on race or color.

6. Change the law that stipulates that anyone born in the United States is a citizen. In the age of easy, fast, inexpensive travel, it makes no sense to grant automatic citizenship to a baby born to a mother who sneaked into the country.

7. Emphasize “tough love” with Mexico. This extremely wealthy country boasts oil, natural gas, gold, silver, beaches, museums, historical treasures, and a hard-working population. The problem is that its privileged class, which has turned tax evasion from an art form into an exact science and expends anemic amounts on education and health-care, believe that U.S. taxpayers should furnish opportunities that they fail to provide for tens of millions of people. As Mexican officials demand greater access for their people to the United States, they seldom mention the wretched treatment accorded Guatemalans and other foreigners.
who attempt to enter their own country through its southern border.

Political elites at the national level are reluctant to respond to grass-roots sentiment for several reasons. First, big growers, construction giants, restaurant and hotel chains, and other well-heeled interests contribute generously to politicians. This gives rise to notions such as those spouted by Mr. Bush of “the importance of having an immigration policy that matches willing workers with willing employers.” Absent from this cant is any mention of legal status, compensation, and employment conditions.

Second, many labor unions forget the legacy of César Chávez, who regarded illegal aliens as a threat to organizing farm workers, and seek to sign up as members men and women who have broken the law to enter the United States. They seem oblivious to the fact that an enlarged pool drives down the wages of blue-collar workers.

Third, American political parties seek to cultivate the surging number of Hispanic voters, who are disproportionately concentrated in states that abound with clout in the Electoral College. The Democrats are particularly eager to place more Hispanics on voting rolls because of their overwhelming support (outside of South Florida) for its candidates. Even the Congressional Black Caucus has thrown its weight behind liberalizing immigration statutes, although illegals from Latin America drive down the wages and opportunities of Black Americans.

Fourth, even well-intended lawmakers indulge in the “America is a land of immigrants” rhetoric. In so doing, they ignore the “times out”—especially wars and depressions—that interrupted earlier waves of immigrants and allowed the newcomers to learn English and integrate into society. In contrast, since 1965 there has been an uninterrupted and growing influx of Mexicans and other Latin Americans who can live their entire lives in Spanish-speaking enclaves in the United States.

Fifth, organizations of special pleaders—the League of United Latin American Citizens, the Mexican-American Legal Defense and Education Fund, and the American Civil Liberties Union come to mind—zealously champion access to public universities, drivers’ licenses, and welfare programs for men and women who have broken the law to enter our nation. They insist on labeling these people “undocumented immigrants,” which is tantamount to calling bank robbers “unofficial withdrawal specialists.” Meanwhile, they lambaste proponents of law and order as “xenophobes,” “nativists,” “know-nothings,” and “fascists.” Major American corporations fund these interest groups whose leaders turn a blind eye to the spiraling expenditures of state and local governments on education, health services, law enforcement arising from illegal immigration.

Finally, there is the belief that “we must do something about unlawful immigrants”; namely, either legalize their presence or round them up for deportation. In fact, concerted actions on the seven recommendations listed above will encourage lawbreakers to leave the country voluntarily, while discouraging illegal entries.

Although both House Speaker Nancy Pelosi and Majority Leader Harry Reid favor a blanket amnesty for unlawful residents, they have not assigned a high priority to this concept. After all, many of the Democratic freshmen won in traditionally red districts where voters insist that laws should be obeyed. Nevertheless, immigration will become a centerpiece in the 2008 battle for the Oval Office.

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End Note
1 Survey conducted by The Polling Company for the Center for Immigration Studies that was released on October 10, 2006.

**The Swift Raid**

On December 12, 2006, 1,297 people in six states were arrested by federal Immigration and Customs Enforcement agents on suspected immigration violations at Swift & Co. meat processing plants. The company has not been charged in the raid, and denied knowledge of hiring unauthorized workers. Approximately 219 of the arrestees face criminal charges. The company reported in January 2007 that the raids will cost it $30 million—$20 million is attributed to lower operating efficiency during training of replacement employees and $10 million to costs associated with hiring new workers.
If you’re under eighteen, you can’t vote in local, state, and federal elections. But that doesn’t mean you can’t make your voice heard. Well-written, well-argued letters can be powerful and persuasive tools. You may choose to write to your state or federal Senator or Representative about a particular issue close to your heart, or a law that affects you. Elected officials want and need to hear from their constituents—that’s you. Remember that elected representatives pay attention to letters they receive. If a politician receives one letter about an issue, he or she will usually assume that at least ten other people hold a similar opinion.

You don’t need a lot of resources to write a letter. What you need is a pen, some paper, an idea, and an opinion. You need to have something to say about a law, something happening in your community, a story you read in the newspaper, or an action a member of Congress has taken. Some basic facts about your issue wouldn’t hurt, either. Facts add credibility to, or grounds for your position. If you are armed with some facts to back up and support your opinion, your letter will be stronger.

The article below outlines some of the techniques you should use to craft a powerful and persuasive letter once you’ve researched your issue a bit.

**Whom Should You Write To?**

Whom you should write to depends on what you want to write about. If you have strong opinions on a local issue that impacts you—for example, recycling in your neighborhood—you should probably write to a local politician, such as your alderman, city council member, or mayor. If the issue relates to a state matter, such as health care or the use of the death penalty in your state, you should write to your state Representative or Senator. If you have a strong opinion about a national issue, then it makes sense to write to your federal congresspersons. And if you have something to say about an issue that has recently received newspaper coverage, it makes sense to write to a Letter to the Editor (see sidebar).

You may have strong opinions about several issues, but it is usually more effective to write a separate letter about each issue.

**Drafting a Letter**

You should start your letter with an introduction to explain why you are writing and state your opinion. For example, a letter to a member of Congress might begin, “I believe schools in your constituency need more funding.”

In the body of your letter, you should state your opinion and support it with evidence or arguments. This is where your facts come into play. You should set out what you know about the topic, and also refer to any relevant action the person or institution you’re writing to may have taken. The most persuasive letters relate the reason for writing to personal experience. Explain how the issue at hand affects you personally, your friends, your family, or your community.

Make sure your letter is well-structured. Start each paragraph with a topic sentence—that is, a sentence that sets out the theme of the paragraph. Topic sentences help signal to the reader where your argument is going and make it easier to read and understand. The rest of the paragraph should elaborate on or exemplify the theme. When you move
on to your next point, start a new paragraph.

You should finish your letter with a conclusion, in which you restate your opinion and propose some action. If you are writing to an elected representative, you may wish to say politely and clearly that the stance they take will affect your vote (once you turn eighteen). Request a reply to your letter. If you ask the member to explain his or her position, you are more likely to receive a letter that replies to what you said, rather than a “form” letter. You may wish to wrap up with the words, “I look forward to hearing from you.”

Be Civil
Your letter will be most powerful if it is well argued, well structured, and civil. Letters tend to be more formal than e-mails or phone calls, and your tone should be suitably polite. Even if you have very strong feelings or emotions about a particular issue, you should be sure to keep the tone of your letter relatively restrained. Your letter is more likely to be taken seriously if you can set out your position without using emotional language or making unsubstantiated claims.

Finalizing Your Letter
Once you have a draft, carefully review and edit your letter. Remember short letters are more likely to be read in full by politicians. Edit your letter until it is clear, concise, and to the point. Make sure you follow all letter-writing conventions. You will find tips on letter-writing conventions in the Students in Action section of Insights Online.

Make Letter Writing a Habit
Writing letters is a great way to make your voice heard in government and in the public sphere. Get in the habit of writing letters to your elected representatives if you feel strongly about a piece of legislation or something happening in your community. Read the letters on the Letters to the Editor pages of your local newspapers to pick up some letter-writing tricks, and try your hand at submitting a letter to your local newspaper. And encourage your friends, your parents, and others to write letters to their elected representatives.

Finally, for a mock-up of a letter, famous examples of issue-oriented letters, and information about how to reach your congresspersons, see Students in Action at Insights Online.

Katie Fraser is a former program manager and editor with the ABA Division for Public Education.
Learning Gateways

Overview

Has America Always Welcomed Immigrants?

During this activity for secondary school students (grades 9–12), students will research and teach each other about key immigration laws and court cases across time. Students will gain a basic understanding of underlying concerns and factors that have guided immigration policy in the United States across time.

Objectives

Students will:

- Complete an Opinion Continuum activity at the beginning and end of the lesson and compare responses for change.
- Research and create a timeline of key immigration legislation and immigration-related U.S. Supreme Court decisions.
- Name key immigrant groups coming to the United States at different times.
- Describe major provisions of immigration legislation and consequence of immigration-related court decisions.
- Analyze trends in U.S. immigration policy as reflected in legislation and U.S. Supreme Court cases over time.
- Understand the federal government has authority over immigration and naturalization.
- Recognize U.S. immigration policy prior to 1965 favored immigrants from Europe.
- Learn it is permissible for an Act of Congress to treat aliens differently from citizens, and, likewise, Congress may make distinctions between classes of aliens.

This lesson was originally developed for the ABA Division for Public Education 2007 National Online Youth Summit, Coming to America: Immigration, Law & American Identity. For more information about this annual program, see: www.abanet.org/publiced/noys/home.

Material and Preparation

1. Review the activities and procedures below.
2. Review the Teacher Talking Points available on Insights Online.
3. Review the timeline provided for the lesson on p. 21. (More detail about the legislation and decisions on the timeline is available on Insights Online.)
4. Review the Glossary of Terms, available on Insights Online.
5. Decide how you wish students to complete their research.

Procedures

Part I: Opinion Continuum and General Discussion

1. As a whole or assigned small group, complete an “Opinion Continuum/Taking a Stand” exercise. Designate different parts of the room “Strongly Agree,” “Agree,” “Not Sure/No Opinion/Don’t Know,” “Disagree,” and “Strongly Disagree.”
2. Read the statement “America has always welcomed immigrants,” and ask students to react to the statement and move to that part of the room that represents their positions.
3. Ask students holding each position to provide one reason why they hold the position. Try to elicit different rationales and get students to think about their perspectives by asking clarifying questions.
4. After students express their initial opinions and hear each other’s rationales, ask if anyone would like to change their position based on the rationales of others. Why? Ask students to record their final responses on a sheet of paper. Collect the responses for later use.
5. Brainstorm a list of reasons why people might want to leave their home countries, a list of reasons why people might want to come to the United States, and a list of reasons why a country might wish to limit immigration. Capture responses on the board. (See Teacher Talking Points on Insights Online.)
Part II: Key Legislation and Court Cases in U.S. Immigration History

1. Assign each student a piece of immigration legislation or court case to research, individually, in pairs or small groups. (See Timeline.)

2. Give students one to two night(s) homework to complete their research. Ask them to focus on the following, and be prepared to concisely address each of the following bullet points (give students a time limit for reports):

   - Whom did the legislation/case affect? (What groups were entering the United States during at the time?)
   - Why was the law written or why did questions come up about the particular points of law considered in the case? (What were the underlying social, political, cultural or legal concerns/factors, and why did they come up at that particular point in time?)
   - What did the legislation or court case do (major provisions of the legislation and its consequences, or consequence of the court decision)?

Part III: Creating a Class Timeline

1. Ask students to report on their research. Explain key terms that may arise. (See Glossary of Terms, Insights Online.)

2. Create a class timeline. For example, you might ask students to bring their reports typed out on 8” x 11” sheets of paper, and post report papers around the room for reference. (Note: You might ask students to bring two copies of their papers to class; one for posting and another for you to copy and distribute as a whole packet to the class.)

3. Discuss the timeline, noting the social, political, cultural, and legal concerns/factors underlying the legislation or court case. Capture concerns/factors on the board in one to two sentences. Identify patterns, similarities, and differences.

For more information on the legislation and cases above, see the detailed timeline available on Insights Online.
Part IV: Important Factors and Concerns to Consider when Making Immigration Policy

1. Refer back to the notations on the board capturing and distilling concerns and factors underlying legislation and court cases. Have students individually choose the three concerns/factors they believe to be most important in determining immigration policies and order them from most to least important. Ask students to write a paragraph explaining their choices. The paragraph should begin with a topic sentence.

2. Instruct students to swap papers and read each other’s choices and write one constructive comment and one open-ended question on the page, after reviewing open-ended questioning. Ask students to swap again. Have students return papers to the original authors to read comments and questions. Swap a third time if you wish.

3. Debrief as a whole class. Ask:
   - How might the population of the United States look today if immigration had been regulated using different criteria, such as skills?
   - What do you think immigrants give up when they come to the United States?
   - What different views have emerged from the swapping exercise?
   - Have you changed your mind about your ranking of concerns, as a result of the exercise? Why?

Part V: Reassessing Opinions

1. Complete the Opinion Continuum activity again.

2. Ask students to refer back to their original responses. (See Part I.) How have opinions changed?

Part VI: Assessment

1. On a 3” x 5” card ask students to list one law and one court case and explain the major provisions and concerns each was intended to address.

2. Ask students to conclude by writing one paragraph on the back of the card of five sentences about something they learned during the lesson that they found surprising. The paragraph should begin with a topic sentence. Alternative assessments may be found on Insights Online.
Proceedings on the immigration status of non-U.S. citizens are heard in federal Immigration Courts, which operate in 25 states and Puerto Rico. The most common types of cases in Immigration Court are removal proceedings—formerly called deportation—in which an individual from a foreign country is seeking to remain in the United States and the Attorney General is seeking to remove the person to his or her home country.

There are three basic types of removal cases in Immigration Court:

- Ones in which someone entered the United States illegally and has been found by authorities;
- Those in which a foreign national legally entered the United States but overstayed his or her visa; and
- Situations in which a foreign national is legally in the United States but has committed a crime or engaged in conduct that the government contends has deprived him or her of the right to remain in the country.

Only those cases in which the foreign national is contesting deportation are actually heard in Immigration Court. Many times foreign nationals, realizing that they have no legal argument to stay in the United States, will voluntarily agree to leave the country.

Undocumented immigrants from Mexico and other countries who have unlawfully entered the United States often do not fight removal because they have no legal basis to do so, and they can be held in custody for long periods of time before they are sent to their home country. The mere fact that an individual has lived in the United States for many years and has been a law-abiding citizen does not give the person the legal right to remain in the United States if detected. Because of limited resources, not all unlawful immigrants are held in custody while the removal process is ongoing. But the government’s preference in recent years has been to keep people in custody for fear that, if they are released pending a hearing, they will disappear into society and not show up for the scheduled removal hearing.

In a typical removal proceeding, the immigration judge—who is an employee of the Department of Justice but is supposed to act independently—may be asked to decide whether an alien is deportable.

Some removal proceedings are conducted in prisons and jails as part of the Criminal Alien Institutional Hearing Program. In such situations, immigration judges go to the prison or jail to adjudicate the immigration status of a noncitizen who is incarcerated for committing a crime.

One of the frequently litigated issues in Immigration Court is asylum, in which foreign nationals claim they will face some kind of danger if sent back to their home country. Individuals who assert a right to asylum typically also assert a claim seeking protection under the United Nations Convention Against Torture.

An individual from a foreign country can seek asylum when no removal action is pending, or the person can raise asylum as a defense to a removal action that has been brought by the government. An affirmative application is nonadversarial when initially filed. Usually, the person seeking the application arrives in the United States and takes the initiative to proactively seek asylum. The individual is often in the United States legally when the application is filed. Unlike defensive asylum claims, an affirmative application for asylum first goes before an immigration official, who rules on the merits of the asylum claim. If the application is granted, the person can lawfully remain in the United States and, after one year, seek permanent residency status. If the application is denied, however, the matter is referred to the Immigration Court and the proceeding becomes adversarial.
If the asylum-seeker is still legally in the country when the case reaches Immigration Court, the judge reviews the validity of the asylum claim in the same manner as the initial immigration official. If the asylum-seeker is no longer in the United States legally at this point, however, the asylum claim becomes part of a removal proceeding and is treated like any other asylum claim raised as a defense to removal. When an individual has been found to be in the country illegally and raises asylum as a defense to being deported, the individual’s case moves directly to the Immigration Court proceeding, which is adversarial, and the judge rules on whether the individual has established eligibility for asylum and whether asylum is warranted, as well as ruling on any other defenses to deportation.

Proving eligibility for asylum is difficult. A person must show past persecution or a well-founded fear of future persecution based on race, religion, nationality, membership in a particular social group, or political opinion. And people who might otherwise be eligible for asylum can lose that right if they haven’t affirmatively applied for asylum, or raised asylum as a defense to removal, within one year of arrival in the United States.

Anita Sharma, an attorney with the Political Asylum/Immigration Representation project in Boston, says it’s “nearly impossible” to get asylum without a lawyer, although people sometimes attempt to do so because of financial circumstances. Immigration court is not as formal as other court proceedings and immigration proceedings are not open to the public, says Sharma. Immigration judges sometimes take a more active role in questioning witnesses than judges in a traditional courtroom.

All asylum cases are difficult, but political persecution cases “are a little bit easier,” Sharma says, particularly if the individual is from a country with a well-documented history of political oppression. In every asylum case, the credibility of the person seeking asylum is a crucial factor. Sharma points out that “most people don’t have a letter from their torturer” to prove they were tortured. “They’ve been through so much,” Sharma says. “And here we are forcing them to remember something they’re trying so hard to forget. It’s a very difficult journey.”

The decisions of immigration judges are final unless they are appealed to the Board of Immigration Appeals (BIA), an eleven-member panel in Falls Church, Virginia. Matters before the BIA generally are decided according to the written record. Parties rarely appear personally before the BIA. Decisions by the BIA can be appealed to the federal circuit court in the relevant jurisdiction. Because the standard of review applied by the courts generally looks to whether the immigration judge and the BIA committed an abuse of discretion, it is fairly unusual for a court to overturn a removal decision unless there has been an error in the application of the law to the particular facts. Although subsequent U.S. Supreme Court review is technically a possibility, it is very rare.

John Ashcroft, the Bush Administration’s first Attorney General, sparked controversy in 2002 when he announced changes to the process for appealing rulings by immigration judges. Ashcroft’s initiative cut the number of judges on the Board of Immigration Appeals from 23 to 11, and expanded a process called “streamlining,” in which BIA appeals are heard by a single judge rather than by a panel of judges. Under the policy, the BIA is encouraged to issue summary decisions—very brief orders that do not contain the full reasoning for upholding the immigration judge’s ruling.

The new Justice Department policy resulted in a dramatic decrease in the backlog of cases at the BIA, but also led to an increase in the number of appeals filed with the federal courts. In 2001, immigration appeals constituted just 3 percent of the docket of the federal appellate courts. By 2005, that number had jumped to 17 percent.

Immigration rights advocates and others, including the American Bar Association, have criticized the new procedures and urged changes. Thus far, those complaints have not caused the Justice Department to reverse course. However, in summer 2006, Alberto Gonzales—Ashcroft’s successor as attorney general—announced reforms to the immigration appeals process that addressed some of the criticisms. The changes included encouraging BIA judges to explain their reasoning in more cases, and having particularly complex cases heard by three-judge panels rather than a single judge.

The practice of immigration law has changed in recent years, notes Shiva Karimi, a Boston lawyer. She says that, when she first began practicing, more of her caseload involved “affirmative work”—representing foreign nationals who were applying for work visas. Now she spends more time trying to defend people who the government is attempting to deport.

The legal terrain for immigration lawyers has also changed considerably in recent years in ways that some say has had a negative impact on the fairness of the process. For example, the USA Patriot Act, which was adopted in the wake of the September 11, 2001, terrorist attacks, has expanded the power of the federal government in a number of ways that impact immigration procedures, including a provision for expediting deportation for foreigners considered to be a security threat. The government can conduct
hearing outside the usual Immigration Court process and use secret evidence.

And a recent law called the Real ID Act eliminated habeas corpus jurisdiction over alien removal orders. As a result, federal courts can no longer entertain petitions by foreign nationals who are challenging their detentions while the government attempts to remove them from the United States.

Despite the challenges imposed by these laws and the current immigration climate, Karimi says she “would probably cease to be a lawyer” if she couldn’t practice immigration law. “With immigration law, there’s such a reward when the case does go through and you help somebody. You can sleep better at night. You’re not just fighting with some other lawyer over money.”

Immigration: States Take the Lead
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ability” that would harm both them and the State all their lives. Furthermore, discrimination against the children would punish them for the acts of their parents, since the children had no choice in entering the United States. In 1998, California’s Proposition 187, which would have denied education, health care and other public benefits to illegal immigrants, was struck down on the logic of Plyler v. Doe.

In 1986, the Immigration Reform and Control Act (IRCA) prohibited the employment of unauthorized workers. IRCA also included a provision that states: “the provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.”

This federal framework has direct implications for state governments wrestling with immigration issues.

What’s Next?
The United States continually debates immigration, balancing pride in our history as a nation of immigrants with concerns about both public security and economic security. Twenty years ago, the nation grappled at length with the issue: It took a federal commission and Congress eight years to come to consensus on the 1986 bipartisan legislation, resulting in the legalization of three million unauthorized immigrants, new employer sanctions on hiring illegal workers, and a fund for states to provide services for the newly legalized.

From 2001–2006, the debate was reignited. Since President Bush first proposed immigration reform in 2001, federal legislation has progressed erratically, sidetracked by the war on terrorism and by other domestic emergencies. In January, a new Congress convened with Democratic leadership. It remains to be seen if the irreconcilable differences of 2006 can be overcome.

In 2007–2008, regardless of federal action, states will continue to take an active role in immigration and integration issues. Some legislation may be tested in the courts, such as federal preemption in the area of employer sanctions or state’s rights to offer in-state tuition to unauthorized immigrant students. Legislators will continue to navigate these grey areas of federalism and assess appropriate roles in immigration enforcement and integration assistance.

States may also enter new policy arenas, focused on economic and workforce development, seeking ways to promote economic opportunity and asset development for legal and temporary residents. State legislators may also consider ways to fund and encourage English language attainment and support civic engagement of immigrants residing in their states.

Neither federal nor state government can resolve this alone. The debate continues.

For Further Reading

National Council of State Legislatures
Issues: Immigrant Policy
www.ncsl.org/programs/immig/

(Search for “Immigration Bedevils”) www.stateline.org/
Migration Policy Institute
www.migrationinformation.org/
USfocus/
argue that the presence of immigrants actually helps create jobs because they are consumers as well as wage earners, and that industries such as construction, agriculture, restaurant, and hotel services are dependent on immigrant workers.

Interestingly, the employment of undocumented workers creates a windfall for the Social Security system. The Social Security taxes these workers contribute go into the Social Security trust fund, but the benefits cannot be claimed. For example, in 2003, $7.2 billion in taxes were credited to the trust fund suspense file as uncredited. Standard & Poor analysts concluded that this is attributable to undocumented workers who will never claim their benefits.

As to the effect of undocumented workers on native wages, the National Research Council has concluded that immigration has a small effect on the wages of native workers. Some researchers find larger effects, while others find none. Thus, the research appears inconclusive and dependent on particular industries and jobs. The empirical data supplies no smoking gun for the claims that immigrants depress wages.

**Conclusion**

Two Americas have always existed. Both view America as a land of immigrants. One America has embraced newcomers from different parts of the world, although, depending on the era, even its more “welcoming” vision has opposed immigration from certain parts of the world. However, this America has believed that Americans do not need to share the same background or tongue. The second America largely has remained mired in a Eurocentric (originally Western Eurocentric) vision of the “real” American as white, Anglo-Saxon, English-speaking, and Christian. This America mostly has opposed immigration, especially from regions of the world with nonwhite populations or with anarchist enclaves or communist governments.

Comprehensive immigration reform—that would address the needs of U.S. employers as well as the lives of the millions of undocumented immigrants already in the country—was blocked until after the November 2006 elections. Although President Bush pushed for a large temporary worker program and reached agreement with Democrats and moderate Republicans on such a plan, the only legislation that Congress was able to pass authorized construction of more fencing along the U.S.-Mexico border. With Democrats in control of both houses of Congress, the prospects for a temporary worker program coupled with an earned legalization plan, allowing undocumented immigrants to qualify for legal status if fines and other requirements are met, seems high. That result would recognize the long history of recruitment of immigrant workers to the United States and the contributions that they have made to the country.

### For Further Reading


### For Discussion

- What concerns about immigration and immigrants have recurred across time, and how far back can they be traced?
- Who was favored by the national origins quota system of the 1920s, and how long did that immigration policy remain in place?
- What is important about the Bracero Program?
- In your opinion, what is the meaning of the four lines from the Emma Lazarus poem quoted in the article by the author? Do you think their message is relevant to an immigrant today? Why?

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sleep in shacks that could be cages
They will take it from your wages, bracero …

So go the lyrics of the Phil Ochs song, “Bracero,” (Phil Ochs in Concert, 1966) about the plight of Mexican nationals who worked in the United States mainly as agricultural laborers from 1942–1964. These laborers were brought to the United States through a series of official agreements between Mexico and the United States that came to be known as the Bracero Program. The stated rationale for the program was to stave off anticipated World War II agricultural labor shortages, further exacerbated by the evacuation and internment of Japanese Americans in 1942. However, a Center for Immigration Studies report argues that government officials never believed a shortage would result, and indeed, no shortage existed; they created the program because big agricultural interests demanded cheap labor (Hahamovitch, 1999).

Most Braceros went to California, Arizona, and Texas, but in all, Braceros worked in 26 states. Texas was “blacklisted” by the Mexican government from 1942–1947 because of discriminatory practices. Eight other states were also “blacklisted” up until the 1950s. Workers were screened in Mexico City and guaranteed transportation, living expenses, and wages no lower than 30 cents per hour—a wage similar to that of U.S. agricultural laborers. In practice, the agreements’ guarantees were not upheld. Researchers have documented illegal pay deductions for tools and supplies, room, board, transportation, as well as substandard wages. In 1960, around the time the program was reevaluated, CBS aired “Harvest of Shame,” a documentary about farm laborers in Florida. “Harvest of Shame” was researched and produced by David Lowe, who also conducted most of the interviews, but it is more often known as Edward R. Murrow’s last documentary. Its point of view is purely subjective, and it was denounced on those grounds. But it also generated thousands of calls and letters protesting the Mexican farm labor conditions it depicted. Today, “Harvest of Shame” is upheld as one of the most important news documentaries in television history, and some scholars believe it contributed to the demise of the Bracero Program. Kitty Calavita maintains the program’s demise was sealed by President Kennedy, who objected to its human rights abuses (Inside the State, 1992).

As part of the official terms of the program, ten percent of the Braceros’ pay was withheld, to be paid upon return to Mexico. However, the Braceros never received their money. Beginning in 2001, lawsuits were filed in U.S. courts against the United States and Mexican governments and banks in the United States and Mexico to recoup the wages. The suits have been unsuccessful, partly due to the legal statute of limitations placed on the claims. In 2002, the Bracero Justice Act was introduced in the U.S. House of Representatives, to create rules under which Bracero claims could be made. In April 2005, the Mexican government approved one-time payments to qualifying Braceros. The rules for proving eligibility were strict and included turning in paperwork in person and submitting only original contracts or “Bracero cards.” Many aging Braceros in the United States continue to petition the Mexican government for their wages.
Landlords Can't Police Immigration, Suit Says

Many towns and cities across the country are passing laws aimed at undocumented workers. They range in scope from laws penalizing landlords who rent to undocumented immigrants, business owners who hire them, or the immigrants—some of whom are residing in the country legally—themselves. In this article printed in the Los Angeles Times on December 27, 2006, Miguel Bustillo describes an ordinance passed by the Farmers Branch, Texas, City Council, requiring landlords of apartment complexes to verify legal status before renting to tenants. The ordinance has led to heated community debate and four lawsuits since November 2005.

Rights groups say a city in Texas can’t require apartment managers to check on the legality of prospective tenants.

HOUSTON—A Dallas suburb that has barred landlords from renting to illegal immigrants was sued Tuesday by two civil rights groups that allege the controversial ordinance turns property owners into immigration agents and violates federal law.

The challenge by the American Civil Liberties Union and the Mexican American Legal Defense and Educational Fund seeks to derail a new law that would require property managers to check the immigration status of apartment renters in Farmers Branch, Texas. The ordinance, approved last month, is set to take effect Jan. 12.

Farmers Branch—a city of 28,000 north of Dallas that is about 37% Latino—is one of dozens of municipalities around the country that, frustrated with federal inaction, have adopted tough measures in response to illegal immigration.

Similar laws in Escondido and Hazleton, Pa., also evoked strong passions. But the Farmers Branch ordinance is seen as a turning point for Texas, a state that largely has avoided the kind of confrontational immigration policies commonplace elsewhere.

“This is the first ordinance of its kind in Texas, the beginning of what we hope will not be a lasting trend here,” said Lisa Graybill, legal director of the ACLU of Texas. “Stop and think what it would be like if every little town tried to adopt its own illegal immigration policy. It would be a nightmare.”

The ACLU and MALDEF are challenging the law on several constitutional grounds. They argue that it violates the due process clause because it does not make clear which immigration documents are acceptable and which are not, the contract clause because it interferes with a business transaction between landlord and tenant without proper cause, and the equal protection clause because it only applies to some landlords. But the primary argument is that it exceeds the city’s powers because only the federal government can enforce immigration laws.

While opponents of unchecked immigration have hailed Farmers Branch leaders, many landlords have complained that they are being thrust into the volatile immigration debate—and some business owners have complained that Latinos may no longer feel welcome in the city.

Some Texas leaders, meanwhile, have expressed concern that the city’s stance is divisive and could harm the entire state’s reputation. Last month, Farmers Branch Mayor Bob Phelps awoke one morning to find the words “Viva Mexico” spray-painted in red on the side of his house.

Tuesday’s immigration lawsuit is the third filed against Farmers Branch, which also passed a resolution last month establishing English as the city’s official language. Last week, a group of apartment owners asked a federal judge to declare the rental law unconstitutional. Earlier this month, a local real estate agent alleged that city leaders repeatedly discussed the ordinance behind closed doors, violating Texas’ open meetings law.

The city recently created a legal defense fund to collect donations from supporters and sympathizers, and has received more than $6,000.

Phelps and Councilman Tim O’Hare, who spearheaded the immigration law, did not return phone calls Tuesday. Matthew Boyle, the assistant city attorney, said Farmers Branch would not discuss any pending litigation, but noted that city leaders had anticipated challenges to the law.

“The city was overtly threatened with litigation as far back as August, when this was being discussed. So we knew it would be no surprise that some litigation would be filed, and have been preparing for it,” Boyle said.
### Timeline: Farmers Branch Ordinance 2892

<table>
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<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>November 13, 2006</td>
<td>Farmers Branch City Council unanimously passes ordinance</td>
</tr>
<tr>
<td>December 4, 2006</td>
<td>Guillermo Ramos files lawsuit in district court, Dallas County</td>
</tr>
<tr>
<td>December 22, 2006</td>
<td>Three landlords file lawsuit against city council and building inspector</td>
</tr>
<tr>
<td>December 26, 2006</td>
<td>ACLU and MALDEF file federal lawsuit against Farmers Branch</td>
</tr>
<tr>
<td>January 8, 2007</td>
<td>Farmers Branch City Council votes to put ordinance on ballot</td>
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<tr>
<td>January 9, 2007</td>
<td>ACLU and MALDEF file motion for temporary restraining order</td>
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<tr>
<td>January 11, 2007</td>
<td>Temporary restraining order issued in Ramos suit by Judge Priddy, 116th District Court, Dallas County</td>
</tr>
<tr>
<td>January 12, 2007</td>
<td>Fourth lawsuit filed against city of Farmers Branch</td>
</tr>
<tr>
<td>January 22, 2007</td>
<td>Hearing for a temporary injunction in Ramos suit</td>
</tr>
<tr>
<td>May 12, 2007</td>
<td>Referendum on revised ordinance</td>
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### Discussion Questions

1. What did the Farmers Branch ordinance seek to prevent? How?

2. Although the article does not directly explain the motivations for the ordinance, what motivations can you infer from the article?

3. According to the American Civil Liberties Union and the Mexican American Legal Defense and Educational Fund, how does the ordinance violate the Constitution?

4. Do you think that the ordinance is a reasonable way for a community to deal with an influx of undocumented immigrants? Why?

### Activities

#### Comparing Local Laws

1. Assign small groups to find and read these rent ordinances affecting undocumented immigrants, making sure one group covers each ordinance:
   - Farmers Branch, Texas
   - Hazelton, Pennsylvania
   - Escondido, California
   - Riverside Township, New Jersey

2. Have groups research the status of these ordinances. Each group should find at least one news article about the current status of the ordinance (lawsuits, injunctions, decisions not to enforce, and so on), and the legal questions it raises.

3. Reconvene the groups and ask each to explain the requirements, penalties, rationales, and status of each ordinance. Capture responses on the board.

4. Discuss the differences and similarities. Do any seem more effective than others? Conclude by asking: Given the prevalence of these types of ordinances across the country at the moment, do you think the federal government should step up to the plate and take some action, and if so, what?

*Activities continue on page 30*
Making the Case for a Law

1. After students read the Bustillo article, brainstorm a list of reasons why a city might pass such an ordinance. Capture responses on the board.

2. In small groups, ask students to read Ordinance 2892. Ask groups to identify the rationale offered for the ordinance in the ordinance text. Ask them to outline the requirements landlords must meet under the ordinance and the type of rental properties to which it applies.

3. Reconvene the class. Compare the rationale for passing the ordinance offered in the ordinance itself with the list of rationales brainstormed by students. Discuss what surprised them about the rationale provided in the ordinance. Discuss the requirements landlords must meet under the ordinance. Do they seem feasible? Why? Do the verification requirements seem fair? Why?

4. Take a hand vote for or against the ordinance. Record the results and ask students to write three sentences on a piece of paper giving their rationale. Collect the papers for later use.

5. Have students return to their groups to analyze the City Council’s Resolution No. 2006-099 (September 5, 2006), urging President Bush and Congress to strongly enforce the Immigration and Nationality Act.

6. Reconvene the class as a whole to give reports. In particular, discuss:
   - What does the resolution ask President Bush and Congress to do?

7. Ask, if you were called to vote on the ordinance, given the information you have at this particular moment, how would you vote? Take a hand count. Again, have students write three sentences on a sheet of paper explaining their rationales. Give them time to compare their rationales for their first votes with those for their second. Discuss differences or similarities.

8. Extension: Assign students to investigate information they believe would help them to evaluate whether the ordinance is necessary and how it might address the city’s concerns before taking the second hand vote. Share reports. Reevaluate the ordinance in light of the new information, then take a second vote and compare the results.

Find the public documents for the activity on Insights Online and the city council website (www.ci.farmersbranch.tx.us). At time of printing, Ordinance 2903 was unavailable. Check back soon.

Resources

The Dallas Morning News (www.dallasnews.com) has extensively covered the controversy over Farmers Branch Ordinance 2892. In addition, some Letters to the Editor about the ordinance can also be found on the Web site. New developments will in all likelihood also be covered.

The American Immigration Law Foundation (www.ailf.org) Web site includes a “Litigation Clearinghouse” section. (Look under “Legal Action Center.”) The LAC Litigation Issue Pages provide current information about challenges to state and local law enforcement efforts—including the suits filed over Farmers Branch Ordinance 2892 and similar ordinances around the country. You will find everything from Ordinance 2892 to complaints and other legal documents filed in all four Farmers Branch lawsuits.
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