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# DEMOCRATIC GOVERNMENTS: Why They Cannot Cope With Illegal Immigration

By David North

All OECD (Organization for Economic Cooperation and Development) nations seek to control immigration across their own borders, all have created various laws, systems, and agencies to enforce bans on illegal immigration, and none are very successful in these efforts. This paper offers a tentative set of explanations for this situation.

Let me start with an example. We, in the United States, spent more than a dozen years during the Nixon, Carter and Reagan administrations debating various approaches to the control of illegal immigration, and, since late 1986, another four years experimenting with the approaches adopted in the landmark Immigration Reform and Control Act (IRCA) of 1986. We have created a lot of change in the immigration law, but have apparently not caused much long-run change in the flow of immigrants, as two sets of statistics seem to indicate.

We have developed a useful proxy measure for illegal migration across the southern border (which is the source of the major portion, probably well over half, of America's illegal migration). The measure used is the number of apprehensions of illegal migrants made by the average Border Patrol agent working at the border ("linewatch") during an average 10-hour work shift. During the last two decades, the number of arrests for the average agent's linewatch shift moved up from 0.82 in the fiscal year (FY) 1970 to 1.96 in FY 1978, to a peak of 3.94 in FY 1986, and then dropped to 2.12 in FY 1988, but by FY 1990 it was back to 3.26.<sup>1</sup>

The total number of apprehensions is a more often cited, but less useful, measure than linewatch apprehensions per shift because these are presumably affected by such administrative variables as changing Border Patrol strategies and funding levels. These are worth noting as well, however, if only to indicate the volume of activity. The nationwide apprehension totals reached a peak of 1,767,400 in FY 1986, dropped to 943,243 in FY 1989, and were up to 1,169,939 in FY 1990. About 90 percent of these arrests take place at, or near, the southern border.<sup>2</sup>

The renewed levels of illegal migration to the United States have been disheartening to the supporters of IRCA because that legislation appeared to have a good chance of reducing illegal immigration to the US. It showed promise (in the eyes of many, but not all, observers) because it took a two-level

approach to the problem: it (a) offered a major segment of the then illegal alien population legal status (the provisions were designed to favor long-time residents and those who had worked in agriculture) while (b) introducing to the US the long-standing European practice of penalizing employers who hired undocumented workers (employer sanctions).

In brief, the legislation was quite successful, but the jury is still out on sanctions. Some 3 million aliens applied for legalization, and more than 90 percent of the decisions made to date have been approvals (despite extensive fraud in the farm-worker part of the program). The sanctions program moved more slowly than legalization, employer fines have not been numerous, and much of the thrust of the law has been blunted by the ready availability of fraudulent documents for otherwise undocumented aliens.

The immediate post-IRCA dip in the various measures of illegal migration to the United States, mentioned above, probably related to the short-term impact of the legalization program. Suddenly there were 3 million people who did not need to cross the border illegally — many illegal migrants from Mexico return to their homes at Christmas time and subsequently seek to travel back to the US illegally. But it seems, from these data, that the flows of illegal entrants are rising again.

The apparent failure of IRCA to reduce the levels of illegal migration is not unique. Far from it. Most efforts by democracies to control unwanted immigration have been only partially successful, as a quick glance at the literature shows. Why did Australia and France have repeated amnesty (legalization) programs for once-illegal aliens? Presumably because of a continuing supply of aliens needing legalization. Why have France and Germany continued to tinker with their employer sanctions laws? Presumably because previous efforts were not successful enough to satisfy the governments of the day.<sup>3</sup>

It is not that immigration control is impossible. When Nigeria decided to expel hundreds of thousands of illegal aliens, they left; when the Soviet Union decided that Jews, and others, were not to depart from the USSR, they stayed. The problem arises when Western democracies seek to discourage what they regard as illegal migration.

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After watching immigration policy formation and implementation for 20 years (mostly in the United States but with forays to Australia, Canada, New Zealand, the Caribbean and Western Europe), I suggest that democracies do not control international migration well because they are reluctant to devote the needed financial, diplomatic, intellectual, and above all, emotional resources to the issue. Stated another way: the democracies are unwilling to spend enough money, make enough diplomatic demands of sending (usually otherwise friendly) Third World nations, think hard enough, or be tough-minded enough, to inflict pain on (otherwise law-abiding) disadvantaged persons, in order to manage international migration effectively.

Before examining these factors in some detail, it is only fair to note that this situation is perfectly acceptable to many players. While polls show that voters generally have a dim view of illegal immigration (and not always a charitable one about legal immigration), and while national legislatures routinely pass laws against illegal immigration and provide some money to enforce those laws, there is an articulate and powerful set of interests which is not sympathetic to the enforcement of immigration law. As is often the case in a democracy, these interests, while narrow, are strong and well-organized; they often overpower broader but fuzzier groups in the body politic.

Without getting into a discussion of the normative issues of the utility or non-utility of illegal immigration, or the more difficult set of issues dealing with what kinds of control measures are, or are not, acceptable, let us look briefly at the losers and the winners in this equation. The "Julian Simon/Ben Wattenberg School of Optimism" teaches that all immigration, legal or illegal, to a nation like the United States is a plus, but setting that to one side, there clearly are some losers and some winners in a typical industrial democracy.

The big winners are the illegal migrants themselves and their employers, many of whom prefer the hard-working, non-assertive newcomers to older hands in the nation's labor market. Lesser winners are

consumers, who sometimes pay lower prices for some goods than they would otherwise, and the Establishments in the Third World nations, who experience less pressure for a more equitable income distribution pattern and other internal reforms.

The big losers (though they often do not know it) are disadvantaged legal workers, often of minority origin, who either lose their jobs to newcomers, or, more often, find that wages and working conditions have been depressed because of the presence of the newcomers in a specific segment of the labor market. (Bankers, lawyers and intellectuals are never threatened by this kind of competition.) If the State provides welfare benefits to the displaced domestic workers, then taxpayers (who may not know about it) are lesser losers as well.

The opponents of immigration law enforcement in the United States are as powerful as they are diverse. While big business pays little attention to the issue, big farming, which has used illegal aliens and other inexpensive foreign workers for decades, is strong and played a major role in shaping IRCA to meet its felt needs. IRCA has not tightened agricultural labor markets, nor increased the normally low wages of farmworkers. While the disproportionate influence of farmers is not news in Europe, the strong role in immigration policy made by pro-migration organizations may be.

There are always foreign-born members in the United States Congress, often in significant positions. Further, and more importantly, there are small but expanding groups of native-born members from such immigrant groups as Hispanics and Asians. Finally, the even more numerous black members of Congress, who might be expected to defend the interest of their often low-income constituents against competition with newly arrived illegal immigrant workers, do not do so. The members of the Black Caucus, identifying with the members of the Hispanic Caucus, routinely support the Hispanic position on immigration issues. The politics of the chamber, in short, are more important to these black Congressmen than the politics of constituency.

When the Farm Bloc (usually Republicans) and the ethnic minorities (usually Democrats) join on an immigration issue, they are often supported by urban Democrats who, in turn, are sympathetic to immigration, generally. Those sentiments are reinforced by the network of migrant-serving agencies which provide casework assistance to the foreign-born as well as support for pro-immigration public policies. It can be a powerful coalition, particularly when one recalls that legislative party discipline, the norm in Europe, is virtually unknown in Congress.

In a sense, the struggle over immigration policy is like a struggle over environmental policy; the narrowly-focused opponents of immigration enforcement, along with their diverse allies, like the

narrowly-focused opponents of pollution abatement, have much more at stake than those on the other side of the issue. Diminishing the extent of acid rain is probably a good idea for the society as a whole, but no individuals or institutions will benefit quickly in any tangible way; reducing acid rain, however, will quickly and tangibly hurt a number of specific interests (e.g., those who mine and use soft coal). Similarly, effective immigration enforcement will bring major losses to certain narrow-interest groups, but no immediate tangible benefits to any powerful groups. This setting is one that facilitates the creation of generally popular (i.e. restrictive) immigration policies, but discourages serious support for such policies. It is in this setting that we see a lack of financial, diplomatic, intellectual and emotional support for immigration enforcement.

### **Finances**

Immigration law enforcement is not a high priority for budget writers in the United States. For example, for years there were more officers on the Capital Police Force, which guards the halls of Congress, than there were INS investigators, enforcing the immigration law in the interior of the U.S.

In terms of international comparisons, Australia and Fiji both have computer-run check-in and check-out systems which can immediately produce lists of all the persons in those two countries who no longer have legal status (i.e. they have arrived in the country, and have overstayed their period of admission). The United States has no such system. There are many other examples of the minimal funding of U.S. immigration law enforcement, including the remarkably small number of border agents at the southern border. How many other enforcement agencies make arrests at the rate of four per working shift?

### **Diplomacy**

Immigration management appears to be a low priority to diplomats as well, at least in the United States. This may reflect an element in the early professional lives of all diplomats — they must spend one tour of duty making decisions on visa applications. This is an onerous task, one in which the junior diplomat is rarely criticized for letting in what turns out to be an overstayer, but who is sometimes under heavy pressure for saying "no" to a persistent applicant. Most young diplomats flee from these consular duties as quickly as possible.

On a more significant, if grim, level, there is the question of America's alien expulsion policy; more specifically, where does the United States send the hundreds of thousands of Mexican nationals it arrests each year? In the past the INS used to fly at least some of them back into the interior of Mexico, so that they could be released near their homes, and to discourage them from trying to cross into the United States again.

Mexico objected several years ago, and the practice was abandoned. Currently, the over-whelming majority of arrested Mexican nationals are simply escorted back to the nearest port of entry — and simply wait for night to fall, and try to enter the U.S. again.

While INS would like to resume interior repatriations, and might even think about sending some apprehended Mexican nationals back over the Guatemalan border,<sup>4</sup> Mexican objections have stifled such plans. Apparently INS has never convinced the State Department that the next time the United States makes a major concession to Mexico (as it has over some debt issues) the restoration of interior repatriation might be part of the deal.

There may, in the United States, be something of a class bias at work here. The State Department, working with heads of state, and operating out of its elegant neighborhood in Washington, may have trouble identifying with the problems of the Immigration Service, a step-child agency located in Washington's slums. Whatever the cause, we spend few diplomatic chips on migration control.

### **Intellectual Efforts**

The Western democracies have not thought much about immigration enforcement strategies; certainly the United States has not. While the Border Patrol handles its tactical challenges reasonably well, as it arrays its sensors, its agents, and its airplanes within the current enforcement environment, there is no visible attempt to stretch the imagination and to think of new and better ways of enforcing the immigration law.

This is not to say that intellectuals have ignored the question of *immigration*, far from it, as this very conference shows. But the thrust of this conference, like most others in this field, is different. We are interested in the changing flows of international migration, their causes, and their effects; we may talk about encouraging economic development in sending nations, as a useful tool in long-range immigration policy, but we are not paying attention to enforcement *per se*.

I think there are two main reasons for this: individual and institutional.

Individual scholars in the field, and those controlling funding in or near the field, are likely to have been drawn to the subject from either a personal vantage point (many are first- or second-generation migrants themselves) or because they find it a fascinating laboratory for the exercise of their own interests in one of the social sciences (e.g., political science, economics, anthropology). Rarely are people drawn to the field because it provides intriguing challenges to law enforcement.

For example, there has been a rush of magazine articles, books and television shows about the newly-restored immigration control point, Ellis Island. It is

probably not surprising, but all have been written from the point of view of the immigrants, none from that of the immigration managers.

There currently is a happy exception to this generalization, as several reputable U.S. scholars in the field are paying attention to the introduction of employer sanctions.<sup>5</sup> But this is different from a study of immigration enforcement *per se*, as employer sanctions is a new kind of government regulation of business, largely a matter of bureaucrats versus businessmen, not cops versus migrants.

Similarly, while individual scholars ignore enforcement, immigration enforcement agencies tend to ignore scholars. Perhaps this is more true in the United States than elsewhere. The U.S. Immigration and Naturalization Service (INS) has only the most limited curiosity about the business of illegal immigration. For example, while INS has expanded its staff and its computer capacity in recent years, it has not taken care of the following puzzles:

- INS does not know, with any precision, the gender mix of the million or so people it apprehends annually. Its standard arrest report form (I-213), which has not been changed in decades, records the sex of the arrested alien, but data are not completed on this subject except for the apprehended Mexican nationals who are divided into two groups: men 16 and older, and women and children.<sup>6</sup>
- INS has never even sought to estimate the percentage of people attempting to cross the southern border illegally who succeed.
- Similarly, on the other side of the coin, INS has not, until quite recently, examined an old problem: to what extent are the people it apprehends newcomers, or are they persons apprehended earlier (sometimes earlier that day) by the Border Patrol; I have not seen the study in question.
- INS does not know the extent to which certain significant, easily measurable external factors (prices, or lack of rainfall in Mexico, or job opportunities in the United States and Mexico) relate to apprehension levels at the border.
- INS has quietly placed some informants, and perhaps undercover staff members, within the northbound flow of illegal aliens to secure tactical information about smugglers of aliens. That is to be expected. I doubt that any of this information, and these contacts, have been used by, for instance, a criminologist who might figure out techniques to neutralize these networks.<sup>7</sup>

How does an agency, with these handicaps, work out a coherent, creative enforcement strategy? Why don't the immigration control agencies have an

international organization of their own to exchange information on, among other things, enforcement techniques? Why are none of these agencies participating in this, and similar conferences?

There are some signs of movement within the INS, however; it currently is working on an in-house research project in which, for the first time, INS seeks to measure the costs and benefits of illegal immigration to the average undocumented migrant.

### Spending Emotional Capital

While one may argue that there is too little guilt in the enforcement of the immigration law, there is clearly an adequate supply of guilt. One gets the impression that many decision-makers in Western democracies feel badly about sending otherwise law-abiding, undocumented Third World residents back to their homelands against their will.

As a result of this conflict between guilt, on the one hand, and the letter of the law on the other, relatively few migrants are expelled by democratic governments other than the one in Washington. This is generally not recognized.

Further, most of those expelled by the United States are simply pushed across the southern border, and are likely to return the next day. In fact, in FY 1988, INS sent 937,120 illegal entrants to their homelands, but all except 17,712 were simply pushed back over the Mexican (and, to a much lesser extent, the Canadian) border.<sup>8</sup> One might compare the 17,712 serious expulsions to the population of 3 million legalization applicants.

United States expulsions, whether at the one million or the 17,000 level, loom large compared to those of other democratic nations. Although hard data are not easy to secure, my understanding is that Canada throws out no more than 1,000 per year; and that even Germany, despite much official complaining about the number of questionable asylum seekers, forces out only 10,000 or so. The United Kingdom publishes data on this point: for instance, in 1986 it enforced only 738 deportation orders, a number which rose to 776 the following year.<sup>9</sup> By expulsions, I mean the arrest of someone within the country's borders and the subsequent dispatch to another nation; I am not including denials at the port of entry (called "exclusions" in the U.S.).

The rather low level of expulsions reflects, among other things, the power of the guilt factor on the executive branch of the government. It works elsewhere as well.

In legislative debates on immigration enforcement, the opponents usually shift the subject of the debate from ends to means; i.e. from: "is illegal migration good for the nation?" to: "is this proposed enforcement technique acceptable?" We then have a debate, at least in the U.S., where the symbolism is lop-sided, particularly if it appears on television. One

does not see a domestic worker *not* getting a ten-cent-an-hour wage increase, which is hardly a telegenic concept. One sees a tall, pale-skinned, uniformed officer herding a smaller, darker, often shabbily dressed worker into a police van.

A result of America's legislative policy makers' unwillingness to spend emotional capital on this issue is the lack of a mandated work permit which would facilitate the enforcement of employer sanctions. Such cards are common on the Continent, but the suggestion of such a document in the United States raises vigorous protests from civil liberties advocates on the left, and from libertarians on the far right.

To engage in a sweeping generalization, the guilt factor (together with a substantial mix of other considerations) appears to play a role in the American judicial branch as well. United States judges, sometimes using the letter of the immigration law, and sometimes other judicial or constitutional concepts, usually rule against the Immigration Service when its cases arrive in court. A particularly steady series of defeats in court greeted INS's generally narrow interpretations of IRCA's legalization program; in virtually all cases where there was a dispute over an alien's eligibility for legal status, the alien won.<sup>10</sup>

These political factors, this lack of willingness to spend financial, diplomatic, intellectual, or emotional capital to cope with illegal immigration, are particularly evident in my own country. Some of these factors — such as the political power of migrant groups<sup>11</sup> and the role of the judiciary — are particularly American phenomena. But as long as the economies of First World countries remain relatively strong, and as long as ethnocentrism remains appropriately quiescent, it will be difficult for democracies to enforce their immigration laws vigorously. ■

#### NOTES

<sup>1</sup> The author's calculations are based on unpublished workload data from the G-23 series, provided by the Division of Statistical Analysis, U.S. Immigration and Naturalization Service, Washington, DC.

<sup>2</sup> *1989 Statistical Yearbook of the Immigration and Naturalization Service* (Washington, 1990), table 61, for FY 1986 and FY 1989 data; FY 1990 data by telephone from the INS Central Office.

<sup>3</sup> For a somewhat less pessimistic review of the ability of nations to control illegal immigration, see Mark Miller, "Towards Understanding State Capacity to Regulate International Migration: Employer Sanctions in Western Europe," a paper presented at the Southern Political Science Association, 1990, Atlanta.

<sup>4</sup> Most apprehended Mexican nationals are arrested in California; since most are from south central Mexico, most would be closer to their homes if expatriated at Mexico's Guatemalan border than they are when sent back to Tijuana, the usual practice.

<sup>5</sup> See for example, Robert L. Bach and Doris Meissner, *Employment and Immigration Reform: Employer Sanctions Four Years Later*, Immigration Policy Project of the Carnegie Endowment for International Peace, Washington, 1990; and Michael Fix and Paul T. Hill, *Enforcing Employer Sanctions: Challenges and Strategies*, the Rand Corporation and the Urban Institute, Washington, 1990.

<sup>6</sup> This is a matter of some potential interest because, as Frank Bean of the Urban Institute has pointed out, the incidence of women among those entering the United States seems to have increased following IRCA; this may be a follow-on consequence of IRCA's alien legalization programs, whose beneficiaries were largely male. Many of the women entering illegally probably relate to the men who entered illegally earlier, and subsequently became legal residents. See Frank D. Bean, Barry Edmonston, and Jeffrey S. Passel, editors, *Undocumented Migration to the United States: IRCA and the Experience of the 1980s*, Urban Institute Press, Washington, 1990, pp. 132 and 149.

<sup>7</sup> Scholars and journalists have also entered these networks; the first one probably was Jorge Bustamante who wrote about his adventures crossing the United States-Mexico border illegally in Julian Samora's *Los Mojados*, (Notre Dame, Indiana: Notre Dame Press, 1971) pp. 108-127. More recently a pair of *Miami Herald* reporters joined a group of Central Americans as they moved illegally through Mexico to the United States. One of the events they reported was a smuggler's description of the difference between the US Border Patrol agents and Mexico's police officers: the US agents will not beat you and they cannot be bribed. *Miami Herald*, January or February 1990.

<sup>8</sup> Totals derived from *INS 1988 Statistical Yearbook*, tables 60, 65 and 68.

<sup>9</sup> Immigration and Nationality Department, *Immigration, Nationality and Passports: A Report on the Work of the Departments*, Home Office, London, 1988, table 6.1.

<sup>10</sup> For more documentation, see the weekly newsletter of the United States Immigration Bar, *Interpreter Releases*, Federal Publications, Washington. It prints careful summaries of all major judicial decisions on immigration cases.

<sup>11</sup> Immigration populations play important roles in Australian and Canadian politics as well as in the United States, but their role is different because political systems are different. In Canada and Australia, interests of migrant populations are more likely to be weighed within the ministry, rather than in the inner workings of the legislature. In the United Kingdom, on the other hand, the political prowess of the migrant groups has only started to grow. Until the most recent election, for example, no non-white served in the House of Commons. (On this point: there was an unnoticed pairing of events on opposite sides of the Atlantic late in 1990. Connecticut's Republicans quietly sent a Black to the US House of Representatives from a district that was 97 percent white — a first. At about the same time in Britain, a nasty public squabble arose in the Conservative Party when a Black was nominated for a safe Tory seat to represent a predominantly white constituency.)