

Treat illegal immigrants decently

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Everyone knows that "if it ain't broke, don't fix it". But few know that even if it is broke, it still may not be wise to fix it. One could make matters worse. The well-meaning proponents of US immigration reform learnt this lesson the hard way: their efforts finally collapsed in the Senate on June 28 and the nation was left more polarised than ever. What went wrong?

Part of the problem lay in some gratuitous mistakes. Congress and the Bush administration invited trouble by embracing euphemisms that both obfuscated the issues and prompted slugfests that further poisoned the atmosphere. Thus, the politicians had to call illegal immigrants "undocumented" when, in fact, their illegality was what really mattered. Then, the amnesty that was offered had to be called a "legalisation" process. The politically correct politician was being asked to "legalise" those who could not be called illegals.

But the notion that, simply by misnaming a phenomenon, you could squash opposition was naive. President George W. Bush also joined in, arguing that the amnesty was not an amnesty because there were conditions attached to it. If the president, notorious for his verbal gaffes, had been on the wrong side of the issue, Democrats such as myself would have been skewering him for being linguistically challenged. So we had endless, acrimonious debates on whether the amnesty was really an amnesty.

Once the pro-amnesty groups and politicians had convinced themselves that opponents were unreasonably denying what was only a "legalisation process" – or a "pathway to citizenship", according to another euphemism – it became easy to demonise them as anti-immigration and even anti-Hispanic racists. But charges of pro-Hispanic racism could just as easily have been levelled at amnesty proponents as well. In this way there was talk of racism on both sides of the political divide, poisoning the atmosphere and making political compromises that much more difficult.

The main problem, however, was that the 1986 Immigration Reform and Control Act had tried similar reforms to reduce the number of illegals in the US under President Ronald Reagan but had failed. Many who opposed the proposed reforms knew this and would not go along with them, convinced that history would repeat itself. As John Kenneth Galbraith once said about his foe Milton Friedman: "Milton's problem is that his policies have been tried."

The IRCA had a two-pronged strategy. The amnesty would take care of the stock of illegals, estimated at 6m. Only half took advantage of it, leaving an equal number in illegal status (just as the new amnesty, burdened by even more onerous preconditions, surely would). The flows of illegals were to be taken care of through enforcement at three levels: enhanced border enforcement, employer sanctions and raids against illegals who were already in the US.

None of these worked. Borders could not be controlled unless you were willing to be rough. But you could not be, because illegal immigrants are human beings and could not be treated as if they were contraband, in the manner of Elliott Ness shooting at the trucks bringing Canadian whisky to Al Capone in Chicago. Again, those caught were not incarcerated but simply sent across the border and came back again and again till they got through.

The huge expansion of border enforcement under President Bill Clinton post-IRCA was therefore ineffective, at best redirecting, instead of reducing, the inflow of illegals.

As for employer sanctions, hardly any legal actions against employers were undertaken. But even if there had been, few judges would have used draconian punishment against those giving employment to the "huddled masses" seeking work. Equally, few Americans could contemplate with equanimity a manifold increase in disruptive raids against illegals that many considered inhumane.

So, the IRCA predictably did not eliminate the problem. By the time the new reforms were being proposed, the stock of illegals had in fact doubled to an estimated 12m and seizures by the border patrol of illegal immigrants were running as high as 1m annually, with a yearly absorption of 300,000 illegal workers in the labour force.

The only significant change proposed from the failed IRCA approach was that Mr Bush had asked for a temporary guest-worker programme. The idea was that it would siphon off most of the illegals into a legal channel. But by the time it had been moulded and mauled through successive compromises, it could not be expected to do much. The final number of admissions was halved to 200,000 annually, and there were restrictions put on it that made the economist Gordon Hanson argue that the economic incentive would be for people to come in illegally instead. So, even if the proposed reforms were magically to be enacted, they would be a failure, as was the IRCA.

But all is not lost. Once passions aroused by the proposed reforms have cooled, Americans should be ready to see that a way must be found to treat illegals with the decency and respect that humanity requires, while respecting

equally the innate American sense that laws matter. After all, America's identity has been formed by immigration and an ever-expanding set of human rights. Perhaps a different and more realistic approach might get us what we could not achieve with uncompromising proposals.

In particular, why not build on the unappreciated fact that the illegals are not today the underclass with few rights that they were for many years? Immigration experts Guillermina Jasso and Mark Rosenzweig have shown that, under existing laws, almost 30 per cent of the new legal immigrants have had some illegal experience. With vastly increased ethnic minority populations, especially Hispanic, the illegals enjoy a higher comfort level than at the time of the IRCA. The Los Angeles mayor Antonio Villaraigosa gave his response in 2006 to Mr Bush's State of the Union speech in Spanish. There are numerous non-governmental organisations, such as the National Council of La Raza and civil rights groups such as the American Civil Liberties Union, that give the illegals a substantial sense of protection.

If asking for full citizenship through the amnesty is currently impossible, we can work instead to raise this comfort level to something much closer to what citizenship brings, without asking for full citizenship. Cities such as New Haven have begun to do this. It never makes sense for the best to be the enemy of the good.

The writer is a university professor of economics and law at Columbia University, and senior fellow at the Council on Foreign Relations. He is writing a book entitled *An Unfinished Agenda: Managing International Migration*

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