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Jagdish Bhagwati on IMMIGRATION REFORM

July 2009

Attached are the following Op Eds (and one Letter to the Editor)that I have written recently and going back to February 1985 in the Wall Street Journal on why the 1988 IRCA approach would fail and the latest being in July 2007 in the Financial Times on why the latest attempt at Comprehensive Immigration Reform would also fail.

1. "Control Immigration at the Border," *Wall Street Journal*, February 1, 1985.
2. "Borders Beyond Control," *Foreign Affairs*, January/February 2003.
3. "...And a New Dawn for Immigrants," *Wall Street Journal*, January 12, 2004.
4. "El Norte," *Wall Street Journal*, March 28, 2006.
5. "US immigration: no alternative to putting up with illegal aliens," *Financial Times*, April 8, 2006.
6. "Illegal immigrants deserve to be treated with decency," *Financial Times*, July 25, 2007.

The proposals to revive Immigration Reform, to which President Obama is lending his support, are unfortunately plagued by the same problems that I identified in these papers; and I am writing an essay on that.

But let me immediately note just one important problem that undercuts current reform ideas. This is that, as with IRCA and the failed effort a couple of years ago, the phenomenon of illegal immigrants in our midst CANNOT be eliminated. It is, as we economists say, not in the “policy zone”: no combination of policies exists that will remove illegals from our midst. Why? Because:

- (i) Any amnesty, even the one described euphemistically as “legalization”, will leave many illegals at the end from the existing “stocks”. The last amnesty left half of the estimated 6 million illegals without legalization. One problem is that what Congress dispenses, it can withdraw. There are no guarantees that a protracted process will not be interrupted de facto or de jure if the politics requires it.
- (ii) In any event, many illegals have settled into an equilibrium which is not as unattractive as it was at the time of IRCA; few belong to an exploited underclass in the same way because there are many ethnic groups (e.g. Hispanics) which will play for them, for example. Why emerge into the open if there is a cost to this?
- (iii) Even if the current stock is totally eliminated by the amnesty, unless we open the borders, people will keep coming in, though fewer ones may come if we have a substantial legal-entry augmentation through greater quotas or through a gastarbeiter program: both however would be opposed by the unions. As long as there is Prohibition, Al Capones can be removed but will be replaced.
- (iv) So, illegals will continue coming in. This will not change even if we beef up enforcement at the border: we have seen the huge objections to fences and ditches.

- (v) If then the stocks are unlikely to be altogether legalized, and new illegals will keep coming in no matter what we do, it is absurd to base Immigration Reform on the assumption that some combination of policies will somehow remove the illegals from our midst. That is an ILLUSION.
- (vi) So, any reform must address what we do after all the reforms we can think of, about the illegals who will not disappear. My worry is that, just as we have resorted to draconian raids and deportation of illegals so as to satiate the opponents of reforms, we will have a situation where the general ethos will be: we have undertaken massive reforms; now if we find any illegals despite that, we will put them on the rack!!! We would have made the situation WORSE for the illegals, old and new, who continue to be in our midst.
- (vii) We need therefore an altogether NEW approach which I am now writing about, which works with the indisputable notion that we will continue having illegals around.
- (viii) This leads to a new agenda which we need to contemplate now. The President needs to rethink the issue from scratch.

PS: In addition, on skilled migration issues, see Jagdish Bhagwati and Gordon Hanson, Skilled Migration Today, OUP, 2009.

Control Immigration at the Border

By Jagdish N. Bhagwati
February 1, 1985
The Wall Street Journal

Neither the problem of illegal immigration nor "solutions" like the Simpson-Mazzoli Bill -- which narrowly failed to clear a congressional conference committee and become law last year -- will go away. Attempts at reviving Simpson-Mazzoli are already under way, but the debate over immigration reform is being sidetracked by its wrongheaded approach. The bill focuses on internal solutions (employer sanctions and amnesty) when the simplest and more effective approach is an external solution, i.e. increased border enforcement coupled with reduced immigration controls inside this country. The bill's policies are, in fact, counterproductive.

In its final conference-committee form, Simpson-Mazzoli -- named after its sponsors Sen. Alan Simpson (R., Wyo.) and Rep. Romano L. Mazzoli (D., Ky.) -- had two widely shared popular objectives and two associated and less popular objectives.

One objective was to restrict illegal immigration, or what is picturesquely described as "regaining control of our borders." The other was to ameliorate the conditions that the "underclass" of illegal immigrants often face.

The first objective is primarily economic and political. It reflects alarmist judgments concerning the adverse effects of current levels of immigration. It would be best if we learned to treat illegal immigration as a phenomenon rather than a problem, but it may be too late for that. The second objective, by contrast, is social. If Mexicans live at home, miserable and destitute, distance places them beyond our view and responsibility. But if they are in our midst, even though illegally, their exploitation offends our moral sensibility.

Simpson-Mazzoli offered two policies to address these objectives. Employer sanctions were proposed. The conference-committee version would have imposed criminal penalties for persistent hiring of illegal aliens. By "cutting off jobs," the bill expected to eliminate the magnet that draws in the illegals. Coupled with the sanctions was the amnesty provision. Its principal rationale was the rescue of enormous numbers of illegals from the underclass.

Between the sanctions and the amnesty provisions the bill's proponents believed the two objectives would be achieved. But ironically, we may expect such measures to produce precisely the opposite results: The influx of illegals would increase and their status in the underclass could worsen.

Simply put, sanctions will be ineffective for several reasons rooted in our social, political and juridical traditions. At the same time, the sanctions will draw resources away from patrolling the borders, where the numbers of people who get past are affected somewhat by the level of enforcement. Thus the net result could well be an increase in illegal immigration. At the same time, by increasing the disruption -- and hence harassment -- at work that attempts at enforcing them would cause, the sanctions will only increase the sense of vulnerability that leads to the immigrants' underclass status.

The ineffectiveness of the sanctions can be safely predicted. Self-interest alone can be expected to lead employers to lobby and litigate against the Immigration and Naturalization Service, draining its budget and weakening effective enforcement. The lobbying groups of ethnic Americans who have strenuously opposed the sanctions will use similar tactics. But morality is the more critical factor and, in this instance, only weakens further the enforceability of the sanctions.

The principal problem is that we are dealing with human beings. As the Swiss novelist Max Frisch has remarked, reflecting on the European difficulties with guest workers: "We imported workers and got men." Our natural instincts make it hard to collaborate in efforts to seize and deport people, no matter what we think of illegal immigration in the abstract. Indeed, it is remarkable that when the administration incarcerated the Haitian boat people, who had no organized ethnic group here to lobby in their behalf, it did not take long for civil-liberties groups to take up the boat people's cause with eventual success.

Our courts also have repeatedly struck down discrimination against resident legal aliens. Recent Supreme Court rulings affirmed the rights of the children of illegal aliens to a public education and the right of illegal aliens to the protection of federal labor laws. More remarkable is last month's acquittal by a Corpus Christi, Texas, jury of Jack Elder on charges of illegally transporting aliens into the U.S. Mr. Elder's defense was simply a moral one, i.e., that he and his associate Roman Catholic lay workers were offering sanctuary to Salvadorans fleeing political persecution.

Employer sanctions have a poor record of results. The General Accounting Office found that the sanctions have not been particularly effective elsewhere, even though some countries such as France and Canada have subsequently chosen to increase their reliance on them.

By contrast, enhanced border enforcement has resulted in increased interceptions. Between 1965 and 1970, the number of seized illegal aliens tripled to more than 300,000 a year. In recent years, the seizures have reached as high as one million a year. Doubtless, this reflects increased attempts at entry. But stepped-up enforcement by the Border Patrol, now with more than 2,500 officers, has evidently played a major role too. Even if every intercepted alien attempts to get back in again, the higher rate of seizure as a result of increased enforcement must cut back the total number that eventually get through.

As for the amnesty program, the other pillar of the Simpson-Mazzoli architecture, it is also flawed. One can plausibly maintain that it could accelerate the influx, magnifying the total size of the illegal immigrants in the foreseeable future, while increasing their underclass status.

An amnesty implies that an illegal status with associated low wages will be transformed into legal status at significantly higher wages. Since in economics and public policy bygones are rarely bygones, an amnesty now may lead to the expectation of amnesty later, encouraging more people to attempt illegal entry -- especially if they believe wages will be higher under an amnesty than before.

If Rep. Robert Garcia (D., N.Y.) is right, as I think he is, then the most liberal amnesty program we can adopt will legalize only 25% of those already here illegally. We will thus, over time, probably have more illegal immigrants here than we do now. It is also likely that the INS may well feel compelled, once the amnesty has been offered and implemented, to "go after" and harass more intensely those who remain illegal: Those not "reborn" may appear more damnable! This would only make them more insecure, accentuating their underclass psychology and status.

I would therefore propose an altogether different approach. In essence, we should greatly diminish internal enforcement and correspondingly increase external enforcement, i.e., at the border. Border enforcement cannot eliminate, or even significantly reduce, the influx as long as we seek to control the border consistent with our traditions (which should rightly preclude Soviet-bloc-style techniques). But it does have an impact; and the measure would be sufficiently visible to satisfy those who feel that we should be "doing something" to control our border. The "price" counterpart of border enforcement could be to encourage creation of an "economic fence" at the border, by promoting investments and economic activity near the border that could act as an incentive for aliens to stop there and step off the road to the U.S. hinterland.

The downgrading of internal enforcement would mean dropping the employer sanctions. It would also mean going easy on INS enforcement, much as we did during the last census count in 1980. A de facto policy posture of this kind, which preserves the important distinction between legality and illegality, would substantially reduce the fear and consequent exploitation that the illegals suffer.

This mix of policies, which puts the focus of immigration control and reform back at the border, offers the prospect of getting as close to our shared central objectives as possible. It requires legislative action for major increases in the border-enforcement budget, and action from the White House to reduce INS enforcement at home.

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Borders Beyond Control

Jagdish Bhagwati

A DOOR THAT WILL NOT CLOSE

INTERNATIONAL MIGRATION lies close to the center of global problems that now seize the attention of politicians and intellectuals across the world. Take just a few recent examples.

– Prime Ministers Tony Blair of the United Kingdom and José María Aznar of Spain proposed at last year’s European Council meeting in Seville that the European Union withdraw aid from countries that did not take effective steps to stem the flow of illegal emigrants to the EU. Blair’s outspoken minister for development, Clare Short, described the proposal as “morally repugnant” and it died amid a storm of other protests.

– Australia received severe condemnation worldwide last summer when a special envoy of the UN high commissioner for human rights exposed the deplorable conditions in detention camps that held Afghan, Iranian, Iraqi, and Palestinian asylum seekers who had landed in Australia.

– Following the September 11 attacks in New York City and Washington, D.C., U.S. Attorney General John Ashcroft announced several new policies that rolled back protections enjoyed by immigrants. The American Civil Liberties Union (ACLU) and Human Rights Watch fought back. So did Islamic and Arab ethnic organizations. These groups employed lawsuits, public dissent, and congressional lobbying to secure a reversal of the worst excesses.

– *The Economist* ran in just six weeks two major stories describing the growing outflow of skilled citizens from less developed countries to

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developed countries seeking to attract such immigrants. The “brain drain” of the 1960s is striking again with enhanced vigor.

These examples and numerous others do not just underline the importance of migration issues today. More important, they show governments attempting to stem migration only to be forced into retreat and accommodation by factors such as civil-society activism and the politics of ethnicity. Paradoxically, the ability to control migration has shrunk as the desire to do so has increased. The reality is that borders are beyond control and little can be done to really cut down on immigration. The societies of developed countries will simply not allow it. The less developed countries also seem overwhelmed by forces propelling emigration. Thus, there must be a seismic shift in the way migration is addressed: governments must reorient their policies from attempting to curtail migration to coping and working with it to seek benefits for all.

To demonstrate effectively why and how this must be done, however, requires isolating key migration questions from the many other issues that attend the flows of humanity across national borders. Although some migrants move strictly between rich countries or between poor ones, the most compelling problems result from emigration from less developed to more developed countries. They arise in three areas. First, skilled workers are legally emigrating, temporarily or permanently, to rich countries. This phenomenon predominantly concerns the less developed countries that are losing skilled labor. Second, largely unskilled migrants are entering developed countries illegally and looking for work. Finally, there is the “involuntary” movement of people, whether skilled or unskilled, across borders to seek asylum. These latter two trends mostly concern the developed countries that want to bar illegal entry by the unskilled.

All three problems raise issues that derive from the fact that the flows cannot be effectively constrained and must instead be creatively accommodated. In designing such accommodation, it must be kept in mind that the illegal entry of asylum seekers and economic migrants often cannot be entirely separated. Frustrated economic migrants are known to turn occasionally to asylum as a way of getting in. The effective tightening of one form of immigrant entry will put pressure on another.

SOFTWARE ENGINEERS, NOT HUDDLED MASSES

LOOKING AT the first problem, it appears that developed countries' appetite for skilled migrants has grown—just look at Silicon Valley's large supply of successful Indian and Taiwanese computer scientists and venture capitalists. The enhanced appetite for such professionals reflects the shift to a globalized economy in which countries compete for markets by creating and attracting technically skilled talent. Governments also perceive these workers to be more likely to assimilate quickly into their new societies.

This heightened demand is matched by a supply that is augmented for old reasons that have intensified over time. Less developed countries cannot offer modern professionals the economic rewards or the social conditions that they seek. Europe and the United States also offer opportunities for immigrant children's education and career prospects that are nonexistent at home.

These asymmetries of opportunity reveal themselves not just through cinema and television, but through the immediacy of experience. Increasingly, emigration occurs after study abroad. The number of foreign students at U.S. universities, for example, has grown dramatically; so has the number who stay on. In 1990, 62 percent of engineering doctorates in the United States were given to foreign-born students, mainly Asians. The figures are almost as high in mathematics, computer science, and the physical sciences. In economics, which at the graduate level is a fairly math-intensive subject, 54 percent of the Ph.D.'s awarded went to foreign students, according to a 1990 report of the American Economic Association.

Many of these students come from India, China, and South Korea. For example, India produces about 25,000 engineers annually. Of these, about 2,000 come from the Indian Institutes of Technology (IITs), which are modeled on MIT and the California Institute of Technology. Graduates of IITs accounted for 78 percent of U.S. engineering Ph.D.'s granted to Indians in 1990. And almost half of all Taiwanese awarded similar Ph.D.'s had previously attended two prestigious institutions: the National Taiwan University and the National Cheng Kung University. Even more telling, 65 percent of the Korean students who received science and engineering Ph.D.'s in the United States

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were graduates of Seoul National University. The numbers were almost as high for Beijing University and Tsinghua University, elite schools of the People's Republic of China.

These students, once graduated from American universities, often stay on in the United States. Not only is U.S. graduate education ranked highest in the world, but it also offers an easy way of immigrating. In fact, it has been estimated that more than 70 percent of newly minted, foreign-born Ph.D.'s remain in the United States, many becoming citizens eventually. Less developed countries can do little to restrict the numbers of those who stay on as immigrants. They will, particularly in a situation of high demand for their skills, find ways to escape any dragnet that their home country may devise. And the same difficulty applies, only a little less starkly, to countries trying to hold on to those citizens who have only domestic training but are offered better jobs abroad.

A realistic response requires abandoning the "brain drain" approach of trying to keep the highly skilled at home. More likely to succeed is a "diaspora" model, which integrates present and past citizens into a web of rights and obligations in the extended community defined with the home country as the center. The diaspora approach is superior from a human rights viewpoint because it builds on the right to emigrate, rather than trying to restrict it. And dual loyalty is increasingly judged to be acceptable rather than reprehensible. This option is also increasingly feasible. Nearly 30 countries now offer dual citizenship. Others are inching their way to similar options. Many less developed countries, such as Mexico and India, are in the process of granting citizens living abroad hitherto denied benefits such as the right to hold property and to vote via absentee ballot.

However, the diaspora approach is incomplete unless the benefits are balanced by some obligations, such as the taxation of citizens living abroad. The United States already employs this practice. This author first recommended this approach for developing countries during the 1960s, and the proposal has been revived today. Estimates made by the scholars Mihir Desai, Devesh Kapur, and John McHale demonstrate

The reality is that little can be done to really cut down on immigration.

that even a slight tax on Indian nationals abroad would substantially raise Indian government revenues. The revenue potential is vast because the aggregate income of Indian-born residents in the United States is 10 percent of India's national income, even though such residents account for just 0.1 percent of the American population.

UNSTOPPABLE

THE MORE DEVELOPED COUNTRIES need to go through a similar dramatic shift in the way they respond to the influx of illegal economic immigrants and asylum seekers. Inducements or punishments for immigrants' countries of origin are not working to stem the flows, nor are stiffer border-control measures, sanctions on employers, or harsher penalties for the illegals themselves.

Three sets of factors are behind this. First, civil-society organizations, such as Human Rights Watch, the ACLU, and the International Rescue Committee, have proliferated and gained in prominence and influence. They provide a serious constraint on all forms of restrictive action. For example, it is impossible to incarcerate migrants caught crossing borders illegally without raising an outcry over humane treatment. So authorities generally send these people back across the border, with the result that they cross again and again until they finally get in.

More than 50 percent of illegals, however, now enter not by crossing the Rio Grande but by legal means, such as tourist visas, and then stay on illegally. Thus, enforcement has become more difficult without invading privacy through such measures as identity cards, which continue to draw strong protests from civil liberties groups. A notable example of both ineffectual policy and successful civil resistance is the 1986 Sanctuary movement that surfaced in response to evidence that U.S. authorities were returning desperate refugees from war-torn El Salvador and Guatemala to virtually certain death in their home countries. (They were turned back because they did not meet the internationally agreed upon definition for a refugee.) Sanctuary members, with the aid of hundreds of church groups, took the law into their own hands and organized an underground railroad to spirit endangered refugees to safe havens. Federal indictments and convictions followed,

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with five Sanctuary members given three- to five-year sentences. Yet, in response to a public outcry and an appeal from Senator Dennis DeConcini (D-Ariz.), the trial judge merely placed the defendants on probation.

Sanctions on employers, such as fines, do not fully work either. The General Accounting Office, during the debate over the 1986 immigration legislation that introduced employer sanctions, studied how they had worked in Switzerland and Germany. The measures there failed. Judges could not bring themselves to punish severely those employers whose violation consisted solely of giving jobs to illegal workers. The U.S. experience with employer sanctions has not been much different.

Finally, the sociology and politics of ethnicity also undercut enforcement efforts. Ethnic groups can provide protective cover to their members and allow illegals to disappear into their midst. The ultimate constraint, however, is political and results from expanding numbers. Fellow ethnics who are U.S. citizens, legal immigrants, or amnesty beneficiaries bring to bear growing political clout that precludes tough action against illegal immigrants. Nothing matters more than the vote in democratic societies. Thus the Bush administration, anxious to gain Hispanic votes, has embraced an amnesty confined solely to Mexican illegal immigrants, thereby discarding the principle of nondiscrimination enshrined in the 1965 Immigration and Nationality Act.

MINDING THE OPEN DOOR

IF IT IS NOT POSSIBLE to effectively restrict illegal immigration, then governments in the developed countries must turn to policies that will integrate migrants into their new homes in ways that will minimize the social costs and maximize the economic benefits. These policies should include children's education and grants of limited civic rights such as participation in school-board elections and parent-teacher associations. Governments should also assist immigrants in settling throughout a country, to avoid depressing wages in any one region. Greater development support should be extended to the illegal migrants' countries of origin to alleviate the poor economic conditions

that propel emigration. And for the less developed countries, there is really no option but to shift toward a diaspora model.

Some nations will grasp this reality and creatively work with migrants and migration. Others will lag behind, still seeking restrictive measures to control and cut the level of migration. The future certainly belongs to the former. But to accelerate the progress of the laggards, new institutional architecture is needed at the international level. Because immigration restrictions are the flip side of sovereignty, there is no international organization today to oversee and monitor each nation's policies toward migrants, whether inward or outward bound.

The world badly needs enlightened immigration policies and best practices to be spread and codified. A World Migration Organization would begin to do that by juxtaposing each nation's entry, exit, and residence policies toward migrants, whether legal or illegal, economic or political, skilled or unskilled. Such a project is well worth putting at the center of policymakers' concerns. 🌐

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... And a New Dawn for Immigrants

By Jagdish Bhagwati

President Bush meets with President Vicente Fox today. It is tempting therefore to consider the administration's proposed immigration reforms, unveiled last week, as a bid for the Hispanic vote. Yet such a view, with its narrow focus, would be a big mistake—not least on the part of the Democrats. The fact is that these reforms, which are intended to cover illegal immigrants from everywhere—unlike the administration's pre-9/11 proposals, which offered relief only to Mexican illegals—reflect a fundamental rethink of our immigration policy toward illegals from that underlying the 1986 Immigration Reform and Control Act.

That law assumed that the problem of illegals in our midst could be solved by a two-pronged approach. The existing stock of illegals would be eliminated by an amnesty, while the flow of new illegals would be stanching by tougher enforcement, including employer sanctions. We would then have fulfilled two objectives central to our concerns: one, "regained control of our borders," with legal immigration left as the only route into the U.S.; and two, an end to the ethical blight of an illegal underclass, simply because there would be hardly any left!

But the intended results did not materialize, exactly as some of us had anticipated. The legislation, even as it reduced the stock of illegals, did not seriously diminish the illegal inflow. And attempts at enforcement simply created major disruptions in the lives of the illegals in this country—while not dissuading potential incomers from trying to breach the fortress.

The problem was that enforcement of sanctions against employers and illegals—whether at the border or inside the U.S.—could not be car-

ried out effectively without compromising the civilized nature of our society. It was well known, for instance, that immigrants attempting illegal entry were, if caught, put on the bus across the Rio Grande—and they crossed again, and then again, until they got in. Those who were caught could not be incarcerated. Nor could one keep going into workplaces or residential areas in raids that disrupted the illegal immigrant's lives: That was not the American Way, and was too reminiscent of methods that we associate with authoritarian regimes. As for employer sanctions, which were lightly enforced, European experience confirms that judges will let off offending employers with negligible punishments; few judges could bring themselves to enforce the law against those who were simply employing, as against exploiting, immigrants.

So the illegals continued to pour in; by some estimates, the inflow has even increased. And the ethical dimension of the problem increased, too, but in an unforeseen direction. The enforcement at the border, but not at home, really got out of hand. The "border" became the "frontier"—quasimilitarized, with night sensors, fences, ditches, armed border patrol agents and helicopters. The main routes through cities such as San Diego were the initial areas of attention. But even as the attempted entries through them declined, the illegals turned to ways through arid and deadly deserts, where they were abandoned, often to their deaths, by unscrupulous "coyotes."

Since the realists among us have now accepted that illegal immigration will continue, and that eliminating it cannot be done by policies that befit a civilized country, a fundamental change of attitudes has come to pass. Thus, the labor unions, which were big supporters of the 1986 law's philosophy, have thrown

in the towel. The AFL-CIO, in a remarkable reversal, has now decided that if the illegals are going to be here anyway, the unions are better off bringing them up from the underground, giving them the rights that legal immigrants and natives enjoy—and giving them union membership cards. This is enlightened self-interest rather than solidarity, but it is good enough.

Furthermore, the growing numbers of immigrants with votes—partly due to the earlier amnesty of 1986, which added more than three million voters—has also led to immense pressure for a humane policy toward the illegal immigrants, not just from Hispanic communities.

So, both morality and practical politics have meant that the time has come for a fundamental shift in immigration policy toward illegals. Since their arrival is inevitable, we have to learn to give them rights, without necessarily granting amnesty. Blanket amnesties would mean that the distinction between legal and illegal entrants disappears, and that we have *de facto* open borders. But giving them rights (including the right to unionize) is essential to their welfare; it is also the surest way, as the unions have realized, for union politics to gain ground quickly.

We may, and will, fight over important details. But the potent truth is that the Bush administration has positioned itself at the vanguard of arguably the most dramatic and welcome change in our immigration policy. The Democrats will have to play catch-up. Once again, they have allowed the moment to be seized by a Republican president.

Mr. Bhagwati, senior fellow at the Council on Foreign Relations, University Professor at Columbia, and author of "In Defense of Globalization" (just out from Oxford), is completing a book on illegal immigration with Francisco Rivera-Batiz.

El Norte

By Jagdish N. Bhagwati
March 28, 2006
The Wall Street Journal

The profusion of proposals by politicians of left and right, the taking to the streets of Los Angeles by half a million Hispanics and sympathetic demonstrators opposing the draconian House bill, and the agonized appeal by President Bush (a real mensch who has put his politics where his principles are, and where ours should be) that "America is a nation of immigrants" (and "also a nation of laws"), all underline the fact that there is now a compelling sense of public urgency about the immigration debate that will seize the Senate this week. There should also be a sense of *déjà vu*.

We have been here before. Indeed, a fierce debate preceded the legislation of the 1986 Immigration Reform and Control Act (IRCA), our last statute addressing illegal immigration. But we need to learn the lessons from that debate and from the loss of any illusion among the proponents of IRCA that they finally had a handle on the problem of illegal immigration.

If we understand why IRCA failed, we will understand why the prospects of disillusionment confront us all over again, whether we move to the harsh end of the spectrum with the House bill, which criminalizes illegal immigrants (and even those who aid and comfort them), or we embrace the reforms at the benign end, such as the president's proposal for a guestworker program and the proposal of Sens. John McCain and Ted Kennedy for a quasi-amnesty for the illegals already in our midst.

While some proposals before the Senate are better than others, none will eliminate the phenomenon of illegal immigration, which is an inevitable result of the fact that we are a powerful magnet for immigrants and that we are not about to abolish the barriers at our borders. Once we accept this stark (but not necessarily depressing) reality, what we ought to aim for as an optimal solution becomes much clearer.

Illegal or 'Undocumented'?

While the problem at hand is difficult enough, it is compounded by the insistence on euphemisms that obfuscate the realities fueling the debate -- and also by the overlay of panic over security post 9/11. It has now become politically incorrect to call illegals what they are. Instead, they are to be called "undocumented," which is also an insult to our intelligence since the illegals often do have documents -- that is, faked ones. A high Mexican official once condemned me for using the I-word when I gave a generously pro-immigration speech in Vienna some years ago, arguing preachily that "God did not make us legal and illegal." Yet to drown ourselves in such false sentimentality is to forget that a central problem arises from the very fact that many react adversely to the defiance by these immigrants of the enacted immigration laws. The fact that American demand for immigrant labor has fueled the influx is simply an *explanation* of the phenomenon, not its denial.

But the debate is equally set back by the gratuitous claim at the opposite end by those, such as Sen. Bill Frist, who talk incessantly of the security implications of illegal immigration. Illegal immigrants, especially the ones who cross the Rio Grande, are overwhelmingly poor: Surely, the likelihood of finding 9/11-type terrorists among them is farfetched. Everyone knows that the 9/11 terrorists were middle class and educated; and recent analyses of terrorist groups such as the Baader-Meinhof Gang, the Irish Republican Army, the Red Brigades and the Palestinian suicide bombers confirm that an unschooled, indigent terrorist is rare indeed. In short, as economists say, which policy is "assigned" to which objective is important: Tight enforcement against illegal immigration, as distinct from stricter examination of containers at our ports, for instance, is mis-assigned to the antiterrorism object.

In fact, the proper objectives of American immigration reform -- as was the case with IRCA, and as is the case today -- are twofold: to "gain control of the border" (i.e., to have the inflow of migrants determined exclusively by legal admissions) and to treat immigrants humanely. If we manage to eliminate illegals from our midst, both objectives would be satisfied. Immigration flows would reflect legal immigration policy. Moreover, with no illegals around, immigrants would be treated with humanity, thanks to the principle of equal protection under the law, which is substantially extended to legal aliens.

To achieve these two targets, two policies are necessary. First, the stock of illegals in our midst must be eliminated. At the time of IRCA, it was estimated at six million; studies today suggest that it has doubled. Second, new flows of illegals must be eliminated, too. In broad brush, therefore, IRCA used an amnesty to eliminate the stocks. And it used enhanced enforcement to seek to eliminate the flow. But neither worked. The reasons are instructive.

The main problem with amnesties is not just the fear that they set up expectations of further amnesties and hence stimulate greater flows. Rather, in the U.S. context, where we have both huge stocks of illegals and a sizeable queue of legal applicants, the issue always becomes one of what economists call "horizontal equity." An amnesty always appears to reward those who broke the law as against those who did not, and who have been patiently waiting for years to get in legally. So the amnesty seems unfair; and hence it gets hedged in with all kinds of restrictions, such as those currently in the McCain-Kennedy proposal, in contrast to countries like Spain, where an amnesty of illegals has worked because the stocks are small and there are few legal applicants waiting in queues. Our hedged-in amnesties always leave a fair amount of the stock of illegals in place: Only about half took advantage of it in the case of IRCA. The problem of a stock of illegals then endures. It was further compounded over time since the flows were not dented by enhanced enforcement under IRCA.

The enhancement of enforcement is easier legislated than implemented. In particular, employer sanctions were enacted by IRCA. Some of us had forecast that the judges would let off with a slap on the wrist, no more, employers who were hiring, as distinct from *exploiting*, illegals. Surely, even hanging judges would not throw the book at employers who were only offering work and a life to the destitute? But it turns out that hardly any employers found their feet held to the fire in any case, because no foolproof method of document verification was agreed upon.

Again, greater enforcement at the border was undertaken, not least with President Clinton declaring in July 1993 that "Today we send a strong and clear message. We will make it tougher for illegal aliens to get into our country." Fences and ditches were soon being constructed along the Rio Grande, the Border Patrol's budget increased manifold, and its 10,000 agents were working with advanced laser technology, aircraft, helicopters and rugged-terrain vehicles to intercept border crossings. Yet when the familiar and safer routes were blocked at the Southwest border through Operation Gatekeeper in the San Diego sector, and Operation Hold the Line and Operation Rio Grande in Texas and New Mexico, the illegals shifted their attempted entries to unsafe treks through the desert. Several have died there, creating a human rights issue where relaxed enforcement had created none. So IRCA failed to reduce the stock of illegals substantially; and the influx of illegals continued despite employer sanctions and enhanced border enforcement. At the same time, the humane treatment of illegals, as they crossed the border, deteriorated. We had not regained control of our borders; and we had taken a step backward on the human rights of illegals. Some reform!

By the time President Bush took office, the illegals were still in our midst (or in our face, depending on your politics) -- only more so. The matter could have stagnated thus. But President Bush was particularly interested in an amnesty again; it seemed to reflect his desire to attract the Hispanic vote and for better relations with Mexico. It is revealing that the first amnesty he sought was for Mexican illegals alone. On the Democratic side, the unions had been strong proponents of tighter controls. But they concluded that IRCA was not working and decided that if the illegals could not be eliminated, it was better to legalize them so that fewer illegals would

undercut wages. Besides, legal workers could join unions. The churches also saw in the Hispanic illegals, almost all Christian and illiterate, not merely a way to provide succor to the needy but also to boost congregations. The demands for some cleverly disguised way of granting an amnesty therefore grew.

At the same time, these "illegals-friendly" groups were generally interested in embracing some version of the president's temporary workers program. The idea was that, if you let in more legal, that would reduce the excess demand for illegals and hence lead to reduced attempted entries.

'Taxpayer Dollars'

On the opposite side, 9/11 gave the "illegals-unfriendly" lobbyists a new lease on life through the specious security argument. The rise of the Minutemen, and efforts to use trespass laws against illegals, were manifestations of this new window of opportunity to go after the latter. And Democratic Governors Janet Napolitano of Arizona and Bill Richardson of New Mexico jumped in with declarations of emergencies to complain, as Gov. Pete Wilson had done in California, that they were "absorbing through taxpayer dollars" the costs of incarceration, healthcare, Medicaid and welfare -- a complaint in which they were joined by the governors of Missouri, Tennessee and Utah.

When all the dust is settled, the reality is that neither a realistic guestworker program nor increased border enforcement will eliminate the inflow of illegals. The average lifetime improvement of a Mexican peasant coming in at the lowest wage he can earn here has been estimated by the economist Mark Rosenzweig at \$250,000. You can bet your bottom peso that, even when the legal entries have been expanded, whether on a temporary or a permanent basis, many more will be on their way here illegally. And we are not even counting the increasing numbers who come in legally and overstay. Yet more draconian enforcement at the border again is not politically feasible. At some stage, Americans will rebel against the loss of lives and the plight of the poor Mexicans struggling against great odds to get across the border.

* * *

As for eliminating the illegals *inside* the U.S., surely the notion that we can criminalize the illegals in our midst with a view to expulsion, and incarcerate or punish those who help them, is off the wall: Most Americans shudder at the very thought. Nor will we be able to reduce these stocks through any kind of de facto or de jure amnesty; and even if we do, the continuing inflows will augment the stocks again.

So why not face these realities? In place of grandiose proposals for a "new IRCA," whether tough or tender, why not leave things be? If illegals will be here no matter what we do, why not downgrade the impossible objective of "controlling our borders" and concentrate instead on the other objective that animates all Americans: that we treat immigrants with the indulgence that simple humanity requires? Now, that would be an agenda that could make us proud.

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US immigration: no alternative to putting up with illegal aliens

By Jagdish Bhagwati

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From Prof Jagdish Bhagwati.

Sir, Christopher Caldwell ("Migration debate is out of control", April 1/2) makes several characteristically shrewd observations about the impassioned and divisive immigration debate in the US.

But with Congress he misses the central reality that, whether the legislation is tough or tender, the phenomenon of illegal immigration is here to stay. New inflows of illegal immigrants cannot be eliminated; nor can the numbers already in the United States be seriously dented by policy. The two-decades-old Immigration Control and Reform Act did not solve the problem; the new act will not either.

Take new inflows. Tougher enforcement through fences and ditches and expanding border patrols have not worked to reduce the inflows in the past two decades. The tender approach of a guestworker programme such as that proposed initially by President Bush, or any of its variants in Congress, can reduce the illegals attempting to cross the border; but the annual numbers under any such programme will be capped at 400,000 at most, leaving many desperate to get into the US any way they can. As long as borders are not thrown open, therefore, there will always be an illegal influx.

Even if the illegal inflows were miraculously decimated, a substantial stock of illegals already in the country would have to be legalised to eliminate illegals in the US. This means, of course, either the tough policy of expulsion or the tender policy of an amnesty, neither of which can be effective. Expulsion, with the aid of methods such as turning into criminal felons the illegals and even those who aid and comfort them, is embodied in the draconian House bill. But it is politically unworkable: it drew huge numbers of protesters out into the streets.

Nor will an amnesty or quasi-amnesty such as that being proposed by Senator John McCain and Senator Ted Kennedy work simply because it is crippled by so many qualifiers, to please those who oppose amnesties because they "reward" illegals who broke the law, that a sizeable fraction will not come out of the shadows to take advantage of it. A 1986 amnesty left half of an estimated 6m untouched; today, it would leave at least half of the estimated stock of 12m in the shadows.

In short, far too many of these millions would still remain illegal, and they would be continually fed by new illegals whose influx cannot be eliminated. There is no alternative therefore to putting up with the illegals.

But once this fact is confronted and digested, there is only one alternative before the American people: to treat the illegals with the humanity they deserve and which marks the traditional attitude to legal immigrants in a country built uniquely on immigration. The new immigration act should imply programmes, whose cost should be shared by Mexico when its nationals are involved, for teaching the mostly illiterate illegals the English language so they can integrate better. It should extend labour protections to illegals so they are not subject to exploitation. And it should divert the anti-terrorism expenditures away from harassment of the malnourished and uneducated illegals.

There is enough here to engage the attention of the US Congress, if it only would comprehend the problem it faces and the reforms that are truly needed.

Jagdish Bhagwati,



Illegal immigrants deserve to be treated with decency

Jagdish Bhagwati

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 atmospherics. 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

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 Guillermin, 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 2000 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 the 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. I never makes sense for the best to be the enemy of the good.

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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