A bottom-up solution to America’s immigration dilemma

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American policy on illegal immigrants is plagued by an inherent tension, bordering on schizophrenia. The right brain approves of them because they are immigrants and the US is a nation founded on immigration. The left brain disapproves of them because they are illegal and Americans are passionate about the rule of law.

Now, the subject is at the forefront of the 2012 presidential campaign, as the Supreme Court prepares to rule on a tough Arizona law that several other states are following. The well-worn debate between Barack Obama and Mitt Romney shows the near impossibility of agreeing a federal solution for the “undocumented” – as illegal immigrants are often called. Yet a solution may be within reach – based on competition between states for migrants’ labour.

Past attempts to reform the system through federal legislation have vacillated between the draconian and the benign. The Immigration Reform and Control Act of 1986 introduced sanctions on employers of illegal immigrants, at the insistence of unions – but left out any obligation to verify employees’ legal status, at the insistence of civil liberties lobbies, making it certain that the sanctions would be a paper tiger.

Other attempts at federal action have even been counterproductive. Democratic presidents seeking to placate the anti-immigration lobbies have taken drastic measures – Bill Clinton with military-style border enforcement, Mr Obama with unprecedented levels of deportations. But they have done little to contain, let alone reverse, the illegal influx. They have simply worsened the lives of the undocumented immigrants living in Americans’ midst.

Spearheaded by Mr Clinton, spending on border enforcement has risen from $326m in 1992 to more than $3bn in 2011. Fences and trenches were built. Illegal immigrants were forced from safer routes to attempt entry through the desert. Mr Obama, on the other hand, has shifted the focus to deporting those caught in raids that disrupt immigrants’ lives. In 2009-11, annual deportations averaged 390,000; in 2001 under George W. Bush, they averaged less than 120,000.

Neither policy has contained the influx. The estimated stock of illegal immigrants rose from 3.5m in 1990 to 12m in 2007. This year’s much-advertised stabilisation of net inflows across the
Rio Grande on the Mexican border ignores the fact that such dips often occur in periods of high unemployment. Mr Obama has also used obfuscatory executive action to turn loose deportees who have not committed serious crimes. But these releases leave these illegals in limbo: are they free to take jobs or do they sink back into the underground economy?

There is, however, a potential way out: both political and judicial. Politically, US states are divided into those that have toughened law enforcement, eligibility for benefits and identity checks, and the more humane. The former include Arizona, Alabama and Georgia. The latter include New York, New Jersey, Washington State and Massachusetts.

Now it turns out that illegal immigrants are leaving the draconian states in large numbers, which puts pressure on their economies because they need the labour. (One cartoon portrays a border fence that cannot be built because illegal immigrant labour is unavailable.) The result is that the politics in these states shifts in favour of those who would retain the illegals by being kinder to them.

Indeed, there is growing evidence that this is happening in states such as Arizona and Alabama. The result is a “race to the top”: illegals voting with their feet will force the “bad” states to follow in the footsteps of the “good”. An elusive federal consensus will no longer be necessary if interstate competition, driven by illegal-labour mobility, produces good outcomes.

The advantage of this “bottom up” solution to the issue of illegal immigration is that it builds on state rights and hence should enjoy the support of the Republicans. It offers a chance for bipartisan agreement on one of the most divisive issues in America today; and should be a consideration guiding the Supreme Court as it prepares to rule on Arizona’s law. It is an opportunity that should be seized.

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