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# THE AMERICAN DREAM—FOR THE LUCKY ONES: THE UNITED STATES' CONFUSED IMMIGRATION POLICY

## I. INTRODUCTION

The immigration question is one of great importance both in the United States and throughout the rest of the world. It is an issue that "transcends national boundaries."<sup>1</sup> It cannot be ignored or resolved entirely within our nation. It concerns the dynamics of human movement, propelled by a myriad of reasons.

This Comment argues that the restrictive immigration policy of the United States should be changed. Immigration policies should permit the number of those immigrating to the United States to fluctuate with the natural human migrations that occur in the world. This would benefit both the immigrant and the United States.

This does not mean, however, that immigration should be opened up to avoid the burden of regulation. Furthermore, the virtual impossibility of controlling illegal immigration does not mean that the United States should legalize anyone who has entered illegally. The rationale advocated in this Comment is this: Immigration is an innocent movement of people that is natural and complex. The fact that people have said in the past that immigration needs to be regulated does not mean that a relaxation of regulation now will be harmful or wrong. Neither does it mean that violation of current immigration law is in itself evil. It is only illegal because Congress said it was. Therefore, increased legal immigration, or even violation of current immigration law, is not inherently harmful or wrong.

The scope of this Comment is limited to the policy issues concerning the numerical limits placed on immigrants. Thus, it will not address exceptions to the numerical limits, unrestricted immigration for immediate family members of United States citizens, refugees, or asylees.

## II. BACKGROUND

Immigration did not become an issue in the United States, and

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1. STAFF REPORT, SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST, 47 (April 1981) [hereinafter SCIRP].

thus restricted, until the late nineteenth century. Since that time, however, a mass of legislation has been enacted. Congress has wrestled with the subject for over a hundred years. An observer on the subject notes that, "[w]rangling, confusion, and a welter of special pressures crowd the legislative record. One finds little long-range, intelligent planning."<sup>2</sup>

This absence of intelligent planning is evidenced by comments made on the subject of United States immigration. Among them are the oft repeated assertions that "it would not be in the national interest to admit all who wish to come."<sup>3</sup> Similarly, "the United States cannot accept all who would like to come . . ."<sup>4</sup> However, the documentation to support these assertions never follows—they are assumptions, nothing more. Inasmuch as the background of present immigration policy appears precarious, a reconsideration of immigration policy is in order.

### III. THE ORIGIN AND PRINCIPLES OF THE UNITED STATES SUGGEST AN OPEN DOOR POLICY TO IMMIGRATION

Since 1820 fifty-three million people have immigrated to the United States.<sup>5</sup> This land is undoubtedly a land of immigrants. As President Ronald Reagan said in his 1980 Presidential Nomination acceptance speech: "Can we doubt that only a Divine Providence places this land—this island of freedom—here as a refuge for all those in the world who yearn to be free?"<sup>6</sup>

The right to migrate was specifically recognized as early as 1641, in the Massachusetts Body of Liberties, which served as a bill of rights for the early settlers of Massachusetts.<sup>7</sup> Similarly, the Declaration of Independence contains two portions relevant to the issue of immigration. The first is the American ideal: "We hold these truths to be self-evident: that all men are created equal; that they are endowed, by their Creator, with certain unalienable Rights; that among these are Life, Liberty and the pursuit of Happiness."<sup>8</sup> The second addresses the complaints of the people: "He has endeavored to prevent the pop-

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2. J. HIGHAM, *SEND THESE TO ME* 29 (1975).

3. SCIRP, *supra* note 1, at 356.

4. *Id.* at 358.

5. IMMIGRATION AND NATURALIZATION SERVICE, *STATISTICAL YEARBOOK* 1 (1986).

6. Donnelly, *Immigration: Still the Golden Door?*, 1:22 *EDITORIAL RES. REP.* 438 (1986) [hereinafter *Golden Door*].

7. L. LEVY, *ORIGINAL INTENT AND THE FRAMERS' CONSTITUTION* 147 (1988).

8. The Declaration of Independence para. 2 (U.S. 1776).

ulation of these States . . . .”<sup>9</sup>

The unique ideal with which this country was formed—that all men are created equal and have certain inalienable rights—does not mean that only American citizens are equal and have certain inalienable rights, but that *all* men have them, whether they be American citizens or immigrants. In reference to immigrants, President John F. Kennedy proclaimed that “[t]hey were responding, in their own way to the pledge of the Declaration of Independence; the promise of ‘life, liberty and the pursuit of happiness.’”<sup>10</sup> President George Washington recognized this same ideal when he said: “The bosom of American is open to . . . the oppressed and persecuted of all nations and religions . . . .”<sup>11</sup> In 1795 he asked Americans, “humbly and fervently to beseech the kind Author of these blessings . . . to render this country more and more a safe and propitious asylum for the unfortunate of other countries.”<sup>12</sup>

The second reference to immigration in the Declaration of Independence concerns the attitude of the young nation towards settlers. The Declaration accused the King of England of trying to prevent immigration to the New World. By this complaint it is evident that the inhabitants of this land felt that immigration was an important, inherent right. Immigration was a subject close to the hearts of those who formed this great nation. It had not been so long since many of their families had immigrated to this new country. Thomas Jefferson said: “Shall we refuse to the unhappy fugitives from distress that hospitality which the savages of the wilderness extended to our fathers arriving in this land? Shall oppressed humanity find no asylum on this globe?”<sup>13</sup>

Further evidence of the nation’s early intent to allow liberal immigration was the nature of the naturalization law. Historian, Arthur Mann said that American naturalization was novel—it required a swearing of allegiance not to a monarch, but to a set of beliefs.<sup>14</sup> These laws were also the most liberal at the time.<sup>15</sup>

Strangely, just before the rash of immigration restrictions in the late nineteenth century, the Burlingame Treaty of 1868 was signed

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9. *Id.* at para 8.

10. J. KENNEDY, *A NATION OF IMMIGRANTS* 6 (1964).

11. *Golden Door*, *supra* note 6, at 438.

12. J. KENNEDY, *supra* note 9, at 69.

13. *Id.* at 70.

14. E. HULL, *WITHOUT JUSTICE FOR ALL* 8 (1985).

15. *Id.*

with China.<sup>16</sup> The language of that treaty recognized "the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of free migration and emigration of [American and Chinese] citizens . . . for purposes of curiosity, of trade or as permanent residents."<sup>17</sup> America was not just a new land: it was more than that, it was a new idea. That land was bountiful was most likely an insignificant reason for the unrestricted immigration that existed. Rather, it was because Americans felt that they were obligated to share with anyone who would venture the blessings of their new lives. These blessings have been multiplied a great number of times to many people because of the attitude the young nation had towards immigration. As President Franklin Delano Roosevelt observed: "Remember, remember always that all of us, and you and I especially, are descended from immigrants . . . ."<sup>18</sup>

The importance of immigration is further evidenced by the lack of restriction during the first 100 years of this nation's history. The Constitution provides for a uniform law of naturalization, but not immigration.<sup>19</sup> Naturalization is not the same as immigration. The naturalization clause was meant to make uniform the various rights and privileges the states were conferring upon their inhabitants, as opposed to restricting the arrival of immigrants.<sup>20</sup>

The migration or importation clause<sup>21</sup> also did not address immigration. The clause referred specifically to the slave trade<sup>22</sup> and not to immigration. The framers of the Constitution were referring to commerce and trade, not people. In 1788 Congress encouraged the states to pass laws to prevent "convicted malefactors from foreign countries . . ." from coming into the United States.<sup>23</sup> Therefore, the states, not the federal government, had the implicit power to control immigration. But it appears that the control was virtually unexercised.

In 1798 the Alien Acts were passed.<sup>24</sup> These acts were prompted by the conflict between the United States and France at the time. The acts were measures designed to protect public safety and to give the President power to deport aliens who could threaten public safety.

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16. A. ALEINIKOFF, D. MARTIN, *IMMIGRATION: PROCESS AND POLICY* 3 (1985).

17. *Id.*

18. L. ALLEN, *LIBERTY: THE STATUE AND THE AMERICAN DREAM* 265 (1985).

19. U.S. CONST. art. I, § 8, cl. 4.

20. THE FEDERALIST No. 42, at 265 (J. Madison) (H. Lodge ed. 1888).

21. U.S. CONST. art I, § 9, cl. 1.

22. *New York v. Compagni Generale Transanlantique*, 107 U.S. 59, 62 (1883).

23. E. HUTCHINSON, *LEGISLATIVE HISTORY OF AMERICAN IMMIGRATION POLICY 1798-1965* 11 (1981).

24. Alien Acts, ch. 58, 1 Stat. 570 (1798); ch. 66, 1 Stat. 577 (1798) (repealed 1881).

These acts mentioned nothing about exclusion of aliens, but deportation only. This brief attempt to deal with aliens expired after three years and cannot be construed to mean that Congress intended to restrict immigration absent the circumstances under which they were passed.

Therefore, the value and importance of immigration is evident in the lack of action by the states, absence of constitutional authority, and only a brief attempt by Congress in the 1790s to deal with immigration in a time of threat to national security. Immigration restriction did not appear to be even contemplated.

In addition to the lack of immigration restriction in this nation's young history, constitutional issues militate against a restrictive immigration policy. A recent statement of this country's commitment to opportunity and to the equality of all men came in 1982 when the United States Supreme Court ruled that the states could not deny an elementary education to the children of illegal aliens.<sup>25</sup>

The fourth amendment of the United States Constitution also resists a restrictive immigration system, such as the one currently in place in the United States. The present system is not only restrictive, it is also ineffective respecting aliens who have *already entered* the United States. This is because an effective restrictive immigration system requires control. Control comes from information about where an alien goes, what that alien does, and with whom that alien associates. However, the personal information required to maintain control is not the type to which the United States government is normally entitled because it is constitutionally protected. Effective restriction of aliens already in the United States would not only invade their privacy, but would also inevitably affect the lives of citizens. This type of regulation is inconsistent with the ideals of this country.

In sum, the United States operates a restrictive immigration system that is ineffective towards aliens already in the United States; to make the system effective would be unconstitutional.

Historian, John Higham observed that

[t]he United States had been founded upon the belief that freedom is not just a national patrimony but a universal truth which Americans hold in trust for the rest of the world. Immigration restriction did not square easily with the belief that this is a land of opportunity for all, the conviction that American freedom has a universal relevance. Any restrictive policy, moreover, inevitably entails discriminations; and a system of discrimination that does not offend

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25. Plyer v. Doe, 457 U.S. 202 (1982).

the democratic conscience has proved as yet unattainable.<sup>26</sup>

Thus, the thought, intent, and formulation of this nation, as well as the fiber of its principles, clash with the concept of restrictive immigration. Therefore, a restrictive immigration system would have to be based upon a groundwork other than the ideals on which this country was formed; and that is exactly what happened.

#### IV. RACISM PLANTED THE SEED OF IMMIGRATION RESTRICTION IN THE UNITED STATES

The very first federal immigration action took place in 1875.<sup>27</sup> These laws barred the entry of criminals, prostitutes, lunatics, and people likely to become a public charge. It was not long after that racism raised its ugly head. In 1882 Congress barred the entry of all Chinese.<sup>28</sup> The United States was not at war with China, nor was it in conflict with any other nation. Nothing justified the exclusion of the Chinese. However, it was claimed the Chinese threatened American workers and could not assimilate into the American mainstream. But this line of thinking was only a foreshadow of the type of immigration restriction to come.

Over the next thirty years, immigration became more and more restrictive as the United States tried to check the quality of its immigrants. Then, in 1921, quantitative as well as qualitative checks became law in what was called the National Origins system.

Immigration averaged close to 400,000 persons per year from 1890-1900 and over 800,000 persons per year from 1900-1910. Immigration was 4.85% of the population of the United States from 1890-1900 and 9.56% of the population from 1900-1910.<sup>29</sup> This period of immigration was not that different from earlier in the century. For example, from 1840-1850 immigration was 7.38% of the population, while from 1850-1860 immigration was 8.26% of the population.<sup>30</sup> Therefore, the ratio of immigrants to the size of the population between the early and late nineteenth century was virtually the same, except for one thing—immigrants in the early nineteenth century came from northwestern Europe, while the immigrants in the late nineteenth century came from south and southeast Europe. The existing population did not like the southern European immigrants.

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26. J. HIGHAM, *supra* note 2, at 30.

27. Act of Mar. 3, 1875, ch. 141, 18 Stat. 477.

28. Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882).

29. Golden Door, *supra* note 6, at 441.

30. *Id.*

The majority of these immigrants came from places such as Italy, Greece, and Hungary. They were quite different from the northwestern Europeans which constituted the largest portion of immigrants until that time. The customs of the southern Europeans were very different, and their languages seemed strange. Great unrest mounted in the United States about the ability of these immigrants to assimilate into the American mainstream.

In 1911 the federal government was swallowed up in this unrest when the Dillingham Commission published a voluminous report, which concluded that southern Europeans were inferior in nature and needed to be restricted.<sup>31</sup> John Higham said “[n]o one, of course, either restrictionists or antirestrictionists, confessed that the special dislike of the new immigration arose basically from a human preference for homogeneity . . . .”<sup>32</sup> This racial inferiority argument caught the American public’s attention and motivated legislation in 1921 which restricted immigration numerically depending upon the national origin of the immigrant. The 1921 Act provided for utilizing the 1910 census to determine the percentage of each nationality group within the population. Immigration would be limited to three percent of that group’s makeup of the total population.<sup>33</sup> Western hemisphere immigration was left without numerical or nationality restrictions.

The 1921 Act did two things: 1) it made race the determining factor in the United States’ immigration policy; and 2) it discriminated against southern Europeans because their immigration at the time would have been well over the three percent mark, while immigration from northwestern Europe was well below three percent.<sup>34</sup>

The 1921 Act was temporary. In 1924 another act was passed which retained the same racial grounds for immigration determination as the 1921 Act except that the 1890 census instead of the 1920 census would be used, and the three percent quota would be lowered to two percent.<sup>35</sup> The effect of this was even more discriminatory against southern Europeans. There were not as many southern Europeans in the 1890 census as there were in the 1910 census. Therefore, their representation in the total population would be smaller and, consequently, their quota would be smaller. The 1924 Act further provided that after July 1, 1927, immigration would be

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31. SCIRP, *supra* note 1, at 187-88.

32. J. HIGHAM, *supra* note 2, at 44.

33. Act of May 19, 1921, ch. 8, 42 Stat. 5.

34. S. REP. NO. 17, 67th Cong., 1st Sess. 9 (1921).

35. Immigration Act of 1924 (Johnson Act), ch. 190, 43 Stat. 153 (1924).



capped at 150,000.<sup>36</sup> Each nationality would have its proportion of the 150,000 as it bore to its proportion of the total United States population according to the 1920 census. This 150,000 appears to have been selected because immigration under a 2% quota was very close to that same number, and would be easier to figure by giving a pro-rata share in the 150,000 based on the 1920 census.

A 1928 report by the House Committee on Immigration and Nationality stated that "[i]n controlling immigration a nation would do well first to limit total numbers, then to apportion them by race. . . . Both of these elementary principles have been wisely incorporated in our permanent immigration policy by the Johnson Act of 1924."<sup>37</sup> This scheme remained the law in the United States until 1965.

Thus, from the Chinese Exclusion Act in 1882 to the 1924 Johnson Act, the United States controlled immigration on the basis of race.

#### V. THE OVERHAUL OF THE IMMIGRATION SYSTEM IN 1965 CONTINUED AN IMMIGRATION POLICY WITHOUT FOUNDATION OR DIRECTION

The 1965 amendments to the Immigration and Nationality Act,<sup>38</sup> abolished the racial National Origins system and established a numerical limitation on immigration without reference to nation of origin. The 1965 Amendments were most likely motivated by the civil rights movement, and found a strong advocate in President John F. Kennedy.

Eliminating the racial components of the immigration system was desirable. However, the enigma surrounding the legislation is whether immigration restriction needs to continue. In 1965 the reason for the racially based restriction was officially dealt its death blow when the national origins scheme was repealed. Thus, the basis of restriction was undercut, but the legislative record is bare of anyone even considering whether restriction needed to continue. This would have been the opportune time to question a restrictive immigration policy.

The 1965 Amendments set up a two-tier system. One tier restricts immigration numerically.<sup>39</sup> The other tier allows unrestricted

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36. *Id.*

37. A. SCHWARTZ, *THE OPEN SOCIETY* 106 (1968).

38. Immigration and Nationality Act Amendments of 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965).

39. 8 U.S.C. § 1151(a) (1988).

immigration for the children, spouse, or parents of a United States citizen.<sup>40</sup>

### A. The Numerical Restrictions

The 1965 Amendments and subsequent revisions hold quantitative immigration to 270,000 persons annually. When the Amendments were first enacted, the limit was 170,000. The 170,000 applied to all immigration except from the Western Hemisphere. In 1968 a limit of 120,000 was imposed on the Western Hemisphere.<sup>41</sup> This limit appears to have some basis. Immigration from the Western Hemisphere averaged 110,000 per year for ten years prior to the 1965 Amendments.<sup>42</sup> Therefore, to cap immigration at 120,000 was not unreasonable.

What was the basis of the original 170,000 limit? The answer is it was held over from the National Origins quota system. The 1965 Amendments retained the numerical basis of the National Origins scheme, but eliminated the racial determining criteria. Therefore, the numerical limit was still based on the 1920 census and the number of immigrants who would have been allowed from different nations. According to the 1920 census, the number of immigrants who would have been admitted from the Eastern Hemisphere was 158,561. Congress added 10,200 for refugees and then set the number at 170,000.<sup>43</sup>

The Senate Committee explaining the 1965 measures said the 170,000 cap "will permit immigration within what is believed to be the present absorptive capacity of this country."<sup>44</sup> In actuality, the 170,000 had nothing to do with absorptive capacity. First, there was no discussion about why 170,000 was the present absorptive capacity. Second, this number was based on a quota system which had used the 1920 census under a scheme to limit the influx of southern Europeans into this country. The 170,000 limit was clearly arbitrary and unfounded. If Congress was truly concerned about absorptive capacity, the number of immigrants would have been further restricted in 1965 because of the increased population of the United States since the early twentieth century. Nobody questioned the propriety of restricted immigration, Congress simply maintained the restrictions.

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40. 8 U.S.C. § 1151(b) (1988).

41. Pub. L. No. 89-236, § 21(e), 79 Stat. 911, 921 (1965).

42. H.R. REP. NO. 745, reprinted in 1965 U.S. CODE CONG. & ADMIN. NEWS 3336.

43. *Id.* at 3332.

44. *Id.*

## B. Allocation of the Numerical Limits and Unrestricted Immigration

In order to allocate the 270,000 limit, Congress adopted a preference system.<sup>45</sup> Under this system 80% of the 270,000 is allocated to other family members besides the children, spouse, or parents of a United States citizen. Twenty percent is allocated to those specifically applying to work in the United States. In reality only about 8.5% of the 20% allowed for workers is actually utilized for worker applicants.<sup>46</sup> The remaining percentage appears to be allocated to those entering on worker applicants' coattails, such as family members. Therefore, under the present application of the statute, worker applicants will never actually have 20% allocated to themselves as workers. They will have to share that allocation with other immigrants having some connection to them.

The 1965 Amendments provide for unrestricted immigration for the children, spouse, or parents of a United States citizen.<sup>47</sup> A Senate report explaining these provisions said "[r]eunification of families is to be the foremost consideration."<sup>48</sup> This is consistent with the type of immigrants who are actually entering the United States, because practically all of them enter based on a family connection, except for those admitted as refugees or asylees.

However, there are two inconsistencies in the other stated purposes of the immigration system. First, the report states, "emphasis should be placed on the quality of the immigrants to be admitted, rather than on the number."<sup>49</sup> However, admission of immigrants on a purely familial basis does not seem consistent with the idea of selection on the basis of quality.

Second, an additional purpose of the 1965 Amendments was to

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45. 8 U.S.C. § 1153(a) (1988).

46. IMMIGRATION AND NATURALIZATION SERVICE, STATISTICAL YEARBOOK 15, 87 (1982); *Id.* 15, 69 (1984); *Id.* 12, 38 (1986). During the years 1982, 1984, and 1986, 51,182, 49,521, and 53,625 immigrants respectively were classified as worker applicants under the third and sixth category preferences, twenty percent of 270,000 is 54,000, and therefore, it appears that worker categories are being filled by worker applicants. However, the charts distinguish the composition of those classified under the third and sixth preferences as "Principals" and "Beneficiaries." In reality, only 24,022, 22,084, and 23,162 were classified as "Principals" or worker applicants in fact, for the years 1982, 1984, and 1986 respectively. The remaining numbers of 27,160, 27,437, and 30,463 were classified as "Beneficiaries" for the years 1982, 1984, and 1986 respectively. Therefore, 8.8%, 8.1%, and 8.5% of 270,000 were the total percentages of actual worker applicants for 1982, 1984, and 1986 respectively. This averages approximately 8.5%.

47. 8 U.S.C. § 1151(b) (1988).

48. H.R. REP. NO. 745, *reprinted in* 1965 U.S. CODE CONG. & ADMIN. NEWS 3332.

49. *Id.*

“protect the American economy from job competition and from adverse working standards as a consequence of immigrant workers entering the labor market . . . .”<sup>50</sup> Present law requires the Department of Labor to certify whether the type of employment a worker applicant wants to perform in the United States is an area that is already sufficiently supplied or could be supplied by American workers. If the area of employment is sufficiently supplied or could be supplied by American workers, the applicant desiring work in that field is denied entry. But the objective to protect the American job market is by no means accomplished by unrestricted immigration for immediate family members, and allowing 80% of the numerical allowance for other family members.

Family-based immigrants are not screened as worker applicants are. However, a healthy portion of the unrestricted immigrants and 80% of the immigrants who are admitted on the basis of family are undoubtedly working, but not screened. Therefore, only a minute portion of immigrants are subject to job market screening. In fact, only about 8.5% of numerically restricted immigrants enter through the allocation for workers; the other 11.5% of the 20% allocation for workers belong to their family members.<sup>51</sup> Consequently, under the present system the notion that immigration restriction will work to protect American workers from competing immigrants is a fiction.

The Chief of the Labor Certification Division within the Department of Labor in 1979 said, “Testing the labor market for each job is time consuming, costly and aggravating to all concerned.”<sup>52</sup> In 1979 Jonathan Avirom, President of the American Immigration and Nationality Lawyers, said: “In all candor, I can say it is almost a charade or a game now, the way this labor certification process works.”<sup>53</sup>

In summary, not only was it a myth that an overhaul of the immigration system in 1965 would correct an unfounded immigration policy, but some of the social arguments against relaxed restriction are as equally meritless.

## VI. THE EVILS IMMIGRANTS CAUSE: KILLING THE MYTHS

### A. An Open Door Policy Would Not Threaten Natural Resources

Much of the argument against increased immigration is that the United States' natural resources are being depleted and that such im-

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50. *Id.* at 3329.

51. IMMIGRATION AND NATURALIZATION SERVICE, *supra* note 46.

52. SCIRP, *supra* note 1, at 400.

53. *Id.*

migration would threaten them even more. Nevertheless, in a compilation of essays addressing population growth in the United States, one writer says, "There are no substantial limits in sight either in raw materials or in energy that alterations in price structures, product substitution, anticipated gains in technology and pollution control cannot be expected to solve."<sup>54</sup> He further states that "resources are not material; they are socially defined. Coal did not become a resource until a few centuries ago. It is barely one hundred years since petroleum had any but medical and magical uses . . ."<sup>55</sup> The United States is restricted only by the limitations it wishes to put on itself. Growth has always seemed like a threat to some people. But roads have been built, schools constructed, transportation provided, and a myriad of other services that society deems essential have been planned and provided.<sup>56</sup>

This is not to intimate that if the use of resources is not checked that they will automatically conserve themselves and develop alternatives for the future. Growth must be planned. The American people must not limit themselves in what can be accomplished. They must not lock themselves into thinking that the only way to live and survive is the way that it is accomplished now. Thinking must continue to expand and new ideas develop regardless of the number of immigrants that come into this country. Indeed the last twenty years have shown how fast technology can grow. The American people must decide how new knowledge and resources will be developed and channeled to serve the future. It is true that resources are socially defined. Other resources are ready to be developed if people will not limit themselves or their capabilities.

Also, a greater influx of immigrants can lead to more ideas and new technology. For example, immigrants have been responsible for many landmark developments in science that have led to the development of new and expanded use of present resources. Some of these immigrants included: Enrico Fermi, an Italian, known for harnessing the powers of atomic energy; Alexander Graham Bell, a Scotsman, responsible for developing the telephone; and Albert Einstein, a German, renowned for the theory of relativity.<sup>57</sup>

As to resources, another writer on population said that "whether

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54. NOTESTEIN, *Zero Population Growth: What Is It?*, in THE AMERICAN POPULATION DEBATE 33 (D. Callahan ed. 1971).

55. *Id.*

56. WATTENBERG, *The Nonsense Explosion*, in THE AMERICAN POPULATION DEBATE 102 (D. Callahan ed. 1971).

57. Larson, *Enrico Fermi, Herald of Atomic Power*, in SCIENCE MILESTONES 332 (1958);

oil reserves are depleted in 2020 or 2040 or 2140 does not seem to be of critical importance; in any event a substitute must be found . . . .”<sup>58</sup> The writer went on to comment that “[w]hether we have 250 million people or 350 million is less important than what the people—however many of them there are—decide to do about their problems.”<sup>59</sup> It is inevitable that if Americans do nothing about resources, then they will be depleted whether or not more immigrants come to the United States.

The argument has been advanced that immigrants, especially illegal ones, deplete one important resource—tax dollars. This argument is unfounded. Legal immigrants pay taxes just as Americans do. Reports show that illegal immigrants pay substantial amounts in taxes and do not even take advantage of government services. For example, in 1976 a survey was conducted on 793 illegal immigrants. Of the 793 respondents, 77.3% reported social security taxes withheld, and 73.2% reported income taxes withheld. However, only 3.9% reported collecting one or more weeks of unemployment payments and only .5% reported receipt of welfare payments.<sup>60</sup> Further, in San Diego County, California, the county estimated that in 1977 it spent two million dollars in welfare services on illegal immigrants but estimated a collection of 48.8 million in taxes from illegal immigrants.<sup>61</sup>

Additionally, many are afraid that sufficient food will be a problem. However, the real problem will continue to be “one of maldistribution of food among the world’s regions.”<sup>62</sup> Approximately one-third of the world’s population does not receive enough food for normal physical growth and development.<sup>63</sup> Yet, there are many varieties of high-yielding rice and wheat that have the capability to produce more than enough food for the world’s population.<sup>64</sup> Also, prior to the drought of 1988, there was five times enough food to feed the one-third that lacked sufficient sustenance.<sup>65</sup>

Further, the World Food Conference of 1988, of which there

Schenk, *Alexander Graham Bell, Words Through a Wire*, in SCIENCE MILESTONES 224 (1958); Slosson, *Albert Einstein, The Theory of Relativity*, in SCIENCE MILESTONES 292 (1958).

58. WATTENBERG, *supra* note 56, at 104.

59. *Id.* at 105.

60. A. ALEINIKOFF, *supra* note 16, at 766.

61. W. CORNELIUS, *Illegal Mexican Migration to the United States: Recent Research Findings and Policy Implications* 123 CONG. REC. 18, 22726 (1977).

62. BOGUE, *The End of the Population Explosion*, in THE AMERICAN POPULATION DEBATE 45 (D. Callahan ed. 1971).

63. Helmuth, *World Hunger Amidst Plenty*, USA Today, Mar. 1989, at 49.

64. *Id.*

65. *Id.*

were 430 participants from 33 countries, came to the conclusion "that the symptoms of disarray stem from uncoordinated and ad hoc national economic policies, which are at the heart of the problems facing the world's food production and distribution systems."<sup>66</sup> John W. Helmuth who served as the executive coordinator of the 1988 World Food Conference said: "In 1974, the problem was perceived as a technical one—how to produce enough food for the growing world population. Today, the problem is a political one—how to achieve cooperation among nations to equitably distribute the food that is available."<sup>67</sup> Finally, protectionist trade policies, lack of internal distribution infrastructures, misuse of available land, and national debt contribute to the food shortage problem, not the ability or inability to produce sufficient food.<sup>68</sup>

Related to the production of food is the availability of land. "Even with modern machinery it no longer pays to clear land in the United States. Indeed, land has never been so abundant."<sup>69</sup> Land and space are abundant despite arguments that the United States is running out of these resources. In comparison with some industrialized nations of the world, the United States has a huge backyard. The following is a list of a few industrialized nations' population densities per square mile as of 1988.<sup>70</sup> China is included in order to show its density as the world's most populous nation.

Nation	Population	Persons Per Sq. Mile
United States	245,404,000	68
W. Germany	60,839,000	635
Japan	121,671,000	834
Great Britain	56,672,000	601
France	55,206,000	261
China	1,096,584,000	298

Demographers at the Census Bureau project that if immigration to the United States were to continue at 450,000 annually, then the population would grow until 2080 and then level off at 311,000,000. If immigration were allowed to increase to 750,000 annually, then the population would be 355,000,000 in 2080 and continue to grow into

66. *Id.* at 50.

67. *Id.*

68. *Id.* at 48-50.

69. NOTESTEIN, *supra* note 54, at 34.

70. WORLD BOOK ENCYCLOPEDIA vol. 20 at 91 (United States), vol. 8 at 145 (W. Germany), vol. 11 at 32 (Japan), vol. 8 at 337 (Great Britain), vol. 7 at 453 (France) (1988).

the twenty-second century.<sup>71</sup>

The greatest influx of immigrants came to this country from 1900-1910 when immigration was largely unrestricted. During those years, immigration averaged just over 800,000 annually.<sup>72</sup> Using the Census Bureau's projection of 750,000 immigrants annually and a United States population of 355,000,000 in 2080, density would only be 99 persons per square mile.<sup>73</sup> This projection assumes that immigration will remain constantly that high, which is not very likely. Immigration fluctuated greatly before and even after numerical restrictions were imposed.<sup>74</sup>

Even with a greatly increased population, the United States would still be a sparsely populated country compared to those of many other nations at the present time.<sup>75</sup> As of 1970 eight other industrialized nations had populations in greater proportion of foreign-born than did the United States. In 1970 about 4.3% of the United States' population was made up of foreign-born individuals. Switzerland's foreign-born population amounted to almost 17%, and Australia's was well over 20%.<sup>76</sup> The United States is not alone, and an increased immigrant population in the United States is not going to spell disaster.

#### B. An Open Door Policy Would Not Threaten the United States Job Market

The argument seems even more heated over the effect of legal and illegal immigration on the United States job market. The Economic Report of the President in 1986 stated: "[T]he evidence currently available does not suggest that native-born American workers experience significant labor market difficulties in areas that have attracted immigrants. Several studies, moreover, have shown that the presence of immigrants in labor markets is associated with increased job opportunities overall, including job opportunities for native-born minority groups."<sup>77</sup>

The report, however, claims that one of the reasons for the overall favorable effect of immigrants on the job market is because immi-

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71. Golden Door, *supra* note 6, at 448-49.

72. SCIRP, *supra* note 1, at 28.

73. Personal calculation: 355,000,000 population, divided by 3,600,000 U.S. square miles, equals 99 persons to the square mile.

74. SCIRP, *supra* note 1, at 28.

75. See *supra* note 70 and accompanying text.

76. *Id.* at 3.

77. ECONOMIC REPORT OF THE PRESIDENT 223 (1986).



gration has been low in comparison to the growth of the labor force and the population.<sup>78</sup> But caution needs to be observed in relying on such a statement. First, it is claimed to be only *one* of the reasons. Second, the reason this statement was made is that the United States has known nothing but restricted immigration for the past sixty-eight years. The claim that the favorable effect immigration has on the job market is due to its low number in proportion to the growth of the labor force and population is based on one-sided data. There is nothing to say that a larger proportion of immigration would have an unfavorable effect.

Conceding the effect of native-born workers on the job market as well as that of immigrants, the report stated that “[w]henver the supply of labor increases, either because of immigration or increased labor force participation of native-born workers, wage rates in the immediately affected market are bid down. Although total employment in that market will rise, some of those who were initially employed at the higher pre-immigration wage rate may not accept work at the lower wage.”<sup>79</sup>

It is true that wage rates may go down in the affected market, but employment will generally be up. This effect does not only come from immigrants but from any labor force increase. However, social scientists see a future need for an increased labor force. In 2010 many baby boomers will retire and leave a smaller working force.<sup>80</sup> This shortage of workers may tend to take up any slack in the job market that may exist at that time.

There is more evidence to support the argument that immigrants do not displace American workers. Wayne A. Cornelius conducted a study of the effect of illegal Mexican immigration on the job market in the southwestern United States.<sup>81</sup> He concluded immigrant workers may maintain or depress wage scales, but they did not displace American workers.<sup>82</sup> He said the work most immigrants do is physically demanding, dirty, and of low status. The jobs immigrants take were held by poor Europeans in the late nineteenth and early twentieth centuries, and by Blacks from the southern United States in the 1920s and 1930s. Since the 1940s and 1950s, Mexicans have filled those jobs.<sup>83</sup>

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78. *Id.* at 226.

79. *Id.* at 221.

80. Golden Door, *supra* note 6, at 450.

81. W. CORNELIUS, *supra* note 61, at 22726-28.

82. *Id.* at 22728.

83. *Id.*

Cornelius cited two projects undertaken in California to determine whether American workers had been displaced in work which had previously been filled by apprehended illegal Mexican immigrants.<sup>84</sup> The California Human Resources Development Agency tried to fill 2154 jobs left by illegal aliens. The recruitment failed. The Immigration and Naturalization Service tried a similar unsuccessful endeavor in San Diego County, and 90% of the 340 jobs were eventually refilled by Mexican commuter workers. Cornelius' observations support the general principle that immigrants do not take work from Americans: "The case for a more restrictive immigration policy cannot be made on the unqualified grounds that 'illegals take jobs away from native Americans' . . . ."<sup>85</sup>

Likewise, Thomas Muller, an economist with George Mason University, observed that in the 1980s 16% of the nation's legal immigrants settled around New York. Wage statistics showed that wages in all parts of the job market were above national averages. He said that

during periods of economic stagnation . . . large-scale immigration will have a depressive effect on wages. But when an expanding economy creates a tight labor market, wages are less sensitive to the influx of additional alien workers. Such a conclusion based on the recent past is consistent with an earlier analysis that finds relatively small effects of immigration, both legal and undocumented, on native population earnings.<sup>86</sup>

Muller also made an observation concerning the productivity of immigrants. "[I]n 1980 three-fourths of the Asian population in the United States were immigrants who had resided in the country for less than 15 years. In 1982, the nation's 200,000 Asian-owned firms recorded a sales volume of 15 billion, with an average of one enterprise for every twenty-five Asian residents."<sup>87</sup> Along the same line, Julian Simon of the University of Maryland, noted that immigrants are more likely than native Americans to start their own businesses.<sup>88</sup>

Therefore, at worst, immigrants may depress wage scales, but not displace American workers. However, such depressions can be caused by an increase in American workers as well. In better times, wage scales are maintained or even increased. Further, many immi-

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84. *Id.*

85. *Id.*

86. Muller, *Immigration Policy and Economic Growth*, 7 YALE L. & POL'Y REV. 101, 120 (1989).

87. *Id.* at 115.

88. Golden Door, *supra* note 6, at 446.

grants boost the economy and may even create jobs by establishing their own businesses. This is a net gain for the United States.

## VII. IMPLEMENTATION OF AN OPEN DOOR POLICY

Around 1980, Robert Finn, the American Vice Consul in Istanbul, Turkey, wrote the Select Committee on Immigration and Refugee Policy, stating that "[t]he Select Commission may decide that the current policy is the best one for the future development of the U.S. but it should first consider alternative policies."<sup>89</sup>

A policy change is needed to reverse an immigration policy that lacks direction and foundation. The writer makes the following recommendations, bearing in mind that they address broad policy issues, and not specific mechanics of a new immigration scheme. Also, these recommendations refer only to the United States' immigration policy as it relates to the numerically controlled applicants for permanent residency. These recommendations do not involve nonimmigrants, special immigrants, asylees, or refugees as defined in the present system.

Any major change in United States immigration policy will need to be implemented in a step-by-step process. The present system will need to be kept intact while changes are gradually made, until an open door to immigrants is achieved. This writer recommends the following:

- 1) Immediately cease labor certification procedures. Allocate the allowed 20% for worker applicants on a first-come, first-served basis.

- 2) Add 100,000 per year to the overall numerical limitation until all preference system backlogs are cleared. A backlog is a buildup of applications for visas over and above the annual quotas allowed for a particular country. At the present time there are approximately 2.3 million backlogged visa applications throughout the world.<sup>90</sup> After backlogs are cleared, numerical limits would continue, but they would be gradually raised. Observation would take place for a period of time in order to evaluate any unforeseen or seriously adverse conditions. Then all numerical restrictions would be lifted.

Part of this recommendation has considerable weight behind it. The Select Committee on Immigration and Refugee Policy recommended in 1981 that the numerical ceiling be set at 350,000, and that

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89. SCIRP, *supra* note 1, at 353.

90. *Immigration: Numerical Limits and the Preference System*, Cong. Res. Serv. Issue Brief (CRS) No. IB88018, at CRS-2 (June 15, 1989) [hereinafter CRS].

an additional 100,000 immigrants be allowed in order to clear the backlogs of applicants.<sup>91</sup> This is further supported by legislation that was pending in 1989,<sup>92</sup> which would have raised numerical limits from 270,000 annually to 600,000 annually.<sup>93</sup> This measure would not only help clear backlogs, but speaks to the issue that immigration is beneficial and could be raised substantially above what current levels have been.

3) Retain all the grounds for exclusion,<sup>94</sup> except those:

A. Dealing with drug addicts, chronic alcoholics, and diseased persons, to the extent that they come to the United States for bona fide treatment, and are under the care and financial support of a responsible resident. (Generally, aliens applying for admission should not be excluded for grounds that legal residents are not punished nor made responsible for. However, for public safety and security, and to prevent foreign nations from abdicating responsibility for people within their jurisdictions, some exclusion of applicants will need to remain.)

B. Dealing with labor certification, because in accordance with the writer's previous recommendation, labor certification would be abolished.

4) Continue to monitor aliens after entry so the United States government knows the number of aliens and their status. This would be a low level monitor, keeping track only of whether someone is an alien and how long that status has been maintained. This minimal record keeping would be needed to show how naturalization requirements could be met should the alien apply for citizenship. This monitoring would not offend the fourth amendment of the United States Constitution as would a fully effective restrictive system. Current methods and time requirements for naturalization would not be affected.

5) Congress, of course, would still have power to control immigration should serious national interest or security require it.

### VIII. REPERCUSSIONS OF AN OPEN DOOR POLICY

An open door policy would most likely result in increased immigration for some period of time. The concern over the effect of that

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91. SCIRP, *supra* note 1, at xxxvi.

92. *Status of Senate Bills* (S. 358, 101st Cong., 1st Sess., 1989) [1989-90] 1 Cong. Index (CCH) 21,005 (Dec. 8, 1989).

93. CRS, *supra* note 90, at CRS-14.

94. 8 U.S.C. § 1182 (1988).

increased immigration centers around the effect increased numbers of people will have on the quality of life: natural resources, job availability, tax burdens, and the interest many have in preserving the status quo. The writer recognizes that the *precise* effect increased immigration would have on natural resources and job availability is unknown. Evidence points to favorable results of increased immigration, but it is acknowledged that they are only indicators. However, should any problem surface during immigration expansion, it could be solved or isolated at that time without fear of it becoming worse. This is because, according to the writer's recommendations, changes would be made on an incremental basis. Progress and problems would be timely monitored and remedied.

As to the tax burden increased immigration might cause, the result can be reasonably ascertained. The more people, the greater burden there will be on public fiscal resources. However, increased immigration also means increased tax revenues. New immigrants would come into the country as legal aliens and would be subject to tax responsibilities. Thus, increased immigration would not be an additional tax burden.

In another light, some may feel that immigrants may be exploited and forced to work for below minimum wages and in substandard conditions. This, however, seems to be a problem unique to immigrants who are illegally in the United States; they fear that raising complaints could cost them their jobs or subject them to deportation. But, under an open door policy, immigrants would have a legal status, and therefore, would not have the fears presently felt by those in the United States illegally.

The interest in preserving the status quo can be dangerous. Such an attitude can result in harmful discrimination, a deadly effect on productivity and creativity, which may later lead to decay. The interest in preserving the status quo has already been discussed as it related to the enactment of a racially based immigration system to discriminate against southern Europeans. The interest in preserving the status quo at the turn of the century sent this country down the path of restrictive immigration. This system costs tremendous amounts of money to administer; cannot constitutionally be effectively enforced against aliens already in the country; stifles the United States' role as a haven for the oppressed and those seeking a better life; and has no legitimate purpose.

Implementation of an open door policy would not only fulfill the United States' role as a haven for the oppressed and those seeking a

better life, but would dispose of a legally unfounded system, that cannot be constitutionally enforced. It would also make significant amounts of fiscal resources available for other national concerns.

### IX. CONCLUSION

The American Dream means opportunity—opportunity to live free, progress, and to reach the highest potential a person is capable of reaching. Ancestors of present Americans had the same dream, despite various cultures, languages, religions, and beliefs. They came together in a synergistic fashion to form a nation that could not be duplicated, save a re-enactment of the past 214 years.

The people of the United States should not let the racial prejudice of the past guide this country into a policy of restrictive immigration—a policy without direction or foundation. This nation should not let lack of perception hold it captive to arguments of threatened depletion of natural resources, nor those addressed to the misguided need to protect the United States job market.

Merely because the United States may adopt an open door policy towards immigration does not mean the entire world's population will be at its doorstep. Let Americans not flatter themselves by assuming that everyone, or even great numbers, will want to come here. Many are content in their homeland, despite adverse conditions. Many are not allowed to leave their homeland. Many do not want to leave families. The cost of traveling to the United States can be prohibitive. Allow those who have the desire, who are willing to make the sacrifice, to come.

*Garnet K. Emery*

