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## **TRAVERSING BORDERS: SUPRANATIONALISM, PUBLIC POLICY AND THE FRAMING OF UNDOCUMENTED IMMIGRATION IN THE UNITED STATES AND THE UNITED KINGDOM**

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### *Abstract*

*This paper examines the issue of how undocumented immigration is framed by comparing case studies of the United Kingdom and the United States. The role of the media and social construction are integral to this debate and this has, in part, led to more domestic bills aimed at tackling undocumented immigration. In the United Kingdom, the issue of undocumented immigration has led to the recent drafting of a bill by Home Secretary John Reid to address the issue. This bill has only served to polarize the population and energize the far-right. In the United States, rival bills in the House of Representatives and the Senate have also attempted to deal with the issue and this too has led to polarization. The debate at the domestic level then is ineffective and other options should be explored at the supranational level. The European Union (EU) and the North American Free Trade Agreement (NAFTA) are considerably different, but each can be utilized to adequately settle the issue of undocumented immigration. The US should utilize NAFTA and create an*

*EU-style cohesion fund to stem the flow of undocumented workers and the UK should limit mobility and then lobby the EU to fine countries whose people flood into the country. In sum, this debate has already been framed and the best way forward is to seek an amicable solution through supranational agreements rather than ineffective national public policy.*

### *1. Introduction<sup>1</sup>*

The issue of undocumented immigration has become salient in the United States with significant interest coming from high level politicians in 2006.<sup>2</sup> This issue is also significant in the United Kingdom and much of the Western world. I will, therefore, compare how this debate is framed in the United Kingdom and the United States and how the framing affects public policy and supranationalism in each country. The main public policy issues come from the national level; however, membership in an international organization (and everything this entails) should receive

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<sup>1</sup> The author would like to thank Dr Mark Cassell (Kent State University) and two anonymous reviewers for their critiques of earlier drafts of this paper.

<sup>2</sup> Tamar Jacoby. "Immigration Nation" *Foreign Affairs*. 85(6): 50.

greater consideration in this debate. From an organizational standpoint, I will make some introductory remarks which will introduce some of the major issues within the undocumented immigration debate before outlining the social construction of this issue. The theoretical and pragmatic implications in this paper constitute a literature review which assesses the current debate (it is not a full scale review of the immigration literature). I will then go into depth with the case studies and examine the similarities and differences between the two countries. I will conclude by contrasting national policies regarding undocumented immigration, and then argue that a possible solution might be provided by their respective supranational blocs.

Perhaps the reason why this debate has garnered so much attention in the United States is because of Congressman James Sensenbrenner (R-WI)<sup>3</sup> and his attempt to crack down on an estimated 11.5-12 million undocumented immigrants in the country.<sup>4</sup> The controversy created by him frames the debate on undocumented immigration. Many media outlets refer to undocumented immigrants either as illegal immigrants,

illegal aliens, migrants or foreign workers. When I use the term “undocumented immigrants” my aim is to provide a sense of neutrality to the debate given the propensity of one side or the other to use terms that frame the issue in partisan manners rather than searching for ways to resolve it. If we start with a nonpartisan position at the domestic level, then we can proceed with a fair and just resolution at the supranational level.

Like the United States, the issue of undocumented immigration gained significant traction in the United Kingdom in 2006 as well.<sup>5</sup> Conservative leader, David Cameron (who currently polls ahead of Tony Blair and Gordon Brown for the Prime Minister post), has recently stated his desire to reduce immigration as a whole into the United Kingdom<sup>6</sup> and staunchly populist (almost racist) parties like the British National Party (BNP) have gained notoriety for their support of traditional British moorings with regards to religion, race and ethnicity.<sup>7</sup> Labour has, in turn, modified their discourse on immigration, promoting a stricter approach.<sup>8</sup> The issue is therefore becoming increasingly salient across the political spectrum in the United

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<sup>3</sup> James Sensenbrenner is a Republican from the state of Wisconsin. For the non-US reader, a congressman is designated with their party (R,D or I) and the abbreviation for their state.

<sup>4</sup> Pew Hispanic Center. [http://pewhispanic.org] “Size and Characteristics of the Unauthorized Migrant Population in the U.S.” 7 March 2006.

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<sup>5</sup> In the United Kingdom, undocumented immigrants are also referred to as “irregular immigrants”.

<sup>6</sup> Conservative Party. [www.conservatives.com]

<sup>7</sup> British National Party. [www.bnp.org.uk]

<sup>8</sup> Labour Party. [www.labour.org.uk/asylumandimmigration 04]

Kingdom and the debate now centers on reducing immigration rather than increasing it in order to protect the identity of Britain's population.

Aside from undocumented immigrants, there are other issues that have come up around this debate. In the United States, undocumented immigration raises fears of a porous border through which drugs and terrorists may pass.<sup>9</sup> While the latter has not come true yet, the former is a significant issue that hurts some vulnerable parts of American society each year. Taxation is another significant issue because undocumented immigrants pay social security and state and local taxes on their paychecks, but do not pay federal income taxes.<sup>10</sup> In the United Kingdom, undocumented immigrants also pay local taxes, but have the luxury of using the National Health Service (NHS) for free (in most cases) which burdens existing taxpayers.<sup>11</sup> Another problem in the United Kingdom is the issue of prostitution; some people (mostly women) from Eastern Europe have almost become forced labor on the streets of Britain.<sup>12</sup> Essentially, it was

these issues that led to greater media attention and exposure.

## 2. *Media Attention and Social Construction*

The issue of undocumented immigration has, at times, generated considerable media attention in both the United States and the United Kingdom. In the United States the intellectual driver behind this has been Harvard political scientist, Samuel Huntington who describes the challenges to America's national identity mainly through the vast migration of Spanish speaking people largely from Mexico and the rest of Central America.<sup>13</sup> This has culminated in widespread attention to this subject on television shows like CNN's Lou Dobbs, among others. Given this attention from the media, the issue of undocumented immigration has gained far wider notoriety than it would have otherwise outside of the states directly affected. The media focus on this issue raises the question of social construction: how is undocumented immigration shaped in this debate?

The social construction of undocumented immigration provides some insight into the lives of people that leave their respective homelands to come to a new country. The issue is highly politicized and the lens through which the immigrants are looked at depends on who is framing the issue. A

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<sup>9</sup> BBC News. [www.bbcnews.com] "US Immigration debate: key players" 15 May 2006

<sup>10</sup> Ibid.

<sup>11</sup> Andrew Pollard. "Eligibility of Overseas Visitors and People Uncertain of Residential Status for NHS Treatment" *BMJ* (329).

<sup>12</sup> E. Kofman. "Female 'Birds of Passage' a decade later: Gender and Immigration in the European Union", *International Migration Review*. 33(2).

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<sup>13</sup> Samuel Huntington. *Who Are We? The Challenges to America's National Identity*. (New York: Simon & Schuster, 2004b).

member of the MinuteMen, for instance, may take the stance that an undocumented immigrant is an alien, a lawbreaker and someone that is taking away American jobs and reducing the pay of the average American worker.<sup>14</sup> This view attempts to socially construct the undocumented immigrant in a particularly negative light.

In contrast, a member of the Latino Movement USA tries to socially construct the undocumented immigrant as a hard working person only seeking to make a decent wage to feed their families and, for the most part, a good person who obeys the law. A coalition of diverse supporters was responsible for the 1 May 2006 “Day without immigrants” boycott and this rally was an attempt to socially construct undocumented immigrants in a positive manner for an international audience.<sup>15</sup>

Social construction is important because there is a desire, in the United States, for cheap labor to fill certain low wage jobs and this was part of the reasoning behind the creation of NAFTA. In this manner, the Mexican immigrants (albeit undocumented) fill this role and allow American business owners to continue profiting with the use of their labor. This, therefore, is a positive aspect of undocumented

immigration for these business owners. It may irk many Americans, but for these business owners, it may be keeping them in business or providing them with substantial profits. In addition, the United States does not seem to have the political will to take on small business owners (with the exception of some Republican lawmakers). The risk, for the Republican Party, would be to further alienate small business owners, primarily in the south, in order to really clamp down on this issue. This is important because the Republicans will be attempting to regain control of Congress in 2008 and this is a vital constituency to them.

Similarly in the United Kingdom, the influx of cheap labor into the country allows businesses to do well financially by filling jobs with undocumented immigrants. Again, the government has little desire to get rid of these people and thus they remain. The United Kingdom differs in this regard as its undocumented immigrants mainly fill jobs in urban areas while undocumented immigrants in the United States who work mainly in construction and agriculture, both of which are more rural, or at least suburban. Nevertheless, the social construction of undocumented immigrants plays an important role for people in the United Kingdom and the United States. This also has implications on the theoretical level as to how undocumented immigrants are perceived and therefore treated.

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<sup>14</sup> The Minutemen Project.

[[www.minutemenproject.com](http://www.minutemenproject.com)]

<sup>15</sup> This involved a number of groups ranging from the Roman Catholic Church to labor unions to the Mexican-American Political Association and others.

### 3. *Theoretical and Pragmatic Implications*

#### 3. 1 *Theoretical Implications*

In the political stream typology of John Kingdon whereby an idea becomes legislation, the issue of undocumented immigration has, seemingly, found its policy window.<sup>16</sup> The solution, as proposed by James Sensenbrenner, has found its problem of “illegal immigration” and the issue has caught on like wildfire in the media. This open policy window does not mean, however, that Sensenbrenner’s solution will be viable or accepted by the public, but that it will receive its due attention. Sensenbrenner may also serve as the spokesman for this issue in the future even if his views are not salient at present. The name Sensenbrenner will likely be brought up in decades to come over the issue of undocumented immigration (if it remains an issue) because he was the primary lawmaker attempting to fill Kingdon’s policy window. We must, however, find out why the policy window opened up?

In Schneider and Ingram’s typology, the undocumented immigrant has traditionally been viewed as a deviant.<sup>17</sup> However, in a number of circles, the undocumented immigrant is seen in

much more of a favorable light, moving from deviant to contender, due to the support of the Roman Catholic Church, labor unions and small business organizations in the United States. Other groups including Hispanic support groups have framed the undocumented as being very helpful to society and “doing jobs that Americans refuse to do”.<sup>18</sup> Some people will still be less than accepting of them and oppose them politically, but they have a place in society for now. As a result of this, the framing of undocumented immigration has caused an impasse and requires an amicable solution through policy since this debate has much to do with power.

John Gaventa’s model of power and powerlessness, at least on the first two dimensions, has significant implications for framing undocumented immigration.<sup>19</sup> When an undocumented immigrant comes into a new country, he/she is at the natural disadvantage of having very little bargaining power (if any). Therefore, any given employer can hold a position of power over the undocumented immigrant because of legal status and likely information

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<sup>16</sup> John Kingdon. *Agendas, Alternatives, and Public Policies*. (New York: Longman, 2003), 166-8.

<sup>17</sup> Anne Schneider and Helen Ingram. *Policy Design for Democracy*. (Lawrence, KS: University of Kansas, 1997), 109.

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<sup>18</sup> Vicente Fox made some inflammatory comments on this subject insulting African-Americans and all Americans more broadly. Please see: CNN.com “Mexican leader criticized for comment on blacks”, [www.cnn.com/2005/US/05/14/fox.jackson] 15 May 2005.

<sup>19</sup> John Gaventa. *Power and Powerlessness: Quiescence and Rebellion in the Appalachian Valley*. (Chicago: University of Chicago Press, 1982), 21.

asymmetry (first dimension). The employer is able to take advantage of constructed barriers against the undocumented immigrant thereby keeping wages low and facing few complaints if working conditions are poor (second dimension). Undocumented immigration, therefore, has become institutionalized, but how did this happen?

Paul Pierson's notions of punctuated equilibrium and path dependency are also of use in this debate.<sup>20</sup> Punctuated equilibrium is essentially where an idea leads to substantial changes. This idea then gets positive feedback and becomes path dependent until it reaches fruition. The 2004 entrance of ten Central and Eastern European countries into the European Union served as punctuated equilibrium for the United Kingdom in terms of undocumented immigration. There has long been immigration into the United Kingdom, but the numbers are higher and from more specific locales. With regards to NAFTA, the punctuated equilibrium came in 1994 with the signing of the free trade agreement. Again, the United States has faced undocumented immigration before as the 1986 Immigration and Reform Act was supposed to alleviate this situation; however, the sheer volume of undocumented immigrants suggests a significant change here. Path dependency has resulted from the initial

punctuated equilibrium which may serve as a lesson to the United Kingdom given the short amount of time since their focusing point.

### 3.2 Pragmatic Implications

Undocumented immigration occurs, Christian Joppke argues, in America because of a strong anti-populist sentiment norm that feeds upon the notion of America as a "nation of immigrants"; whilst, in Europe, legal and moral constraints keep states from pursuing rigorous zero-immigration policies.<sup>21</sup> It is an interesting premise that in the United States the general feeling of sympathy towards immigrants comes from the thought that one's ancestors also came to the country in search of a better life. In Europe, the shrinking fertility rate has also relaxed the negative sentiment towards undocumented immigration given some need to retain a given level of population.

Demography then is an important topic in this debate. It is relevant in the United States because its population just exceeded 300 million people. Therefore, its 11.5-12 million undocumented immigrants need to be taken into account, as they now make up around 4% of the population.<sup>22</sup> The

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<sup>20</sup> Paul Pierson. *Politics in Time: History, Institutions, and Social Analysis*. (Princeton, NJ: Princeton University Press, 2004)

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<sup>21</sup> Christian Joppke. "Why Liberal States Accept Unwanted Immigration" *World Politics*. 50(2): 272.

<sup>22</sup> BBC News. [www.bbcnews.com] "US Immigration debate: key players" 15 May 2006.

United Kingdom, on the other hand, has 60 million citizens and a smaller number of undocumented immigrants will have as significant an affect on the country, most importantly on its economy. The latest figure for undocumented immigration in the UK is at 570,000 with most of these people coming from Eastern Europe (mainly Poland).<sup>23</sup> Dealing with undocumented immigration in both countries represents a puzzle that needs to be solved by politicians, bureaucrats and laypersons alike.

Tamar Jacoby notes that in the United States, polling has consistently suggested that between two-thirds to three-quarters of Americans support tougher enforcement, but also a path to earned citizenship.<sup>24</sup> Thus, the issue of undocumented immigrants is complicated and finding consensus will be extremely difficult. Again, the matter of framing is important to this debate. The MinuteMen Project was initiated in the United States to counter undocumented immigration and the MinuteMen have become, in a number of ways, the face of dissent against undocumented immigrants. In contrast, there are supporters of undocumented immigrants including a number of diverse and, interestingly, strange bedfellows ranging from business associations to labor unions to the

Roman Catholic Church.<sup>25</sup> The Roman Catholic Church has caused some grievances in the United States because some priests have chosen to support undocumented immigration.

Religion in the United States and the United Kingdom, therefore, has implications for this debate. Both have traditionally Protestant moorings and while religion may not be the deciding factor, it is an important part of the debate. The vast majority of undocumented immigrants coming into both countries are from the Roman Catholic faith (and in some cases Orthodox Christian in the United Kingdom). Does this change the debate? Samuel Huntington, in his book *Who Are We?*, examines that challenge to America's national identity.<sup>26</sup> Huntington argues that large scale immigration into the United States, both documented and undocumented, poses a challenge to American identity because it takes the country away from its traditional moorings of the English language and Protestantism. America's very identity and future, Huntington notes, depend on how this issue is dealt with now so as to be an influence on the future. The argument is not a racist one; it rests upon assimilation rather than the retention of foreign culture.<sup>27</sup>

The issue of religion in Europe, it should be noted, is quite different from the United States. With the exceptions

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<sup>23</sup> BBC News. [www.bbcnews.com] "An illegal immigration amnesty?" 14 June 2006.

<sup>24</sup> Jacoby, 51.

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<sup>25</sup> Ibid, 51.

<sup>26</sup> Huntington, 2004b.

<sup>27</sup> Ibid, 61.



of Ireland and Northern Ireland, Western Europe has the highest level of secularization in the world.<sup>28</sup> This does not, however, mean that a country like the United Kingdom does not see itself as Christian or Protestant (at least historically). There are still many within the United Kingdom (and more broadly throughout Europe) that believe in keeping the racial and cultural moorings of the country and that the best way to do this is to limit immigration. This debate has been raging in Europe for some time given the low fertility rates and the need for some immigration to keep the respective economies moving forward. Perhaps, in part, this has led to the rise of far right nationalism in Europe which manifests itself as the BNP in the United Kingdom. This is not to say that any religious person is in any way affiliated with the BNP, just that this party has exploited the racial heritage of the country to advocate a racially, religiously and culturally homogenous country.<sup>29</sup> The BNP, therefore, frames this issue in terms of identity and an external threat facing the United Kingdom.

On a purely theoretical level, the framing of undocumented immigration has serious implications. The undocumented have very few rights and

are seen as deviants by groups already mentioned in this paper. It has significant ramifications for public policy which is notable under John Kingdon's model. The theoretical model, however, is incomplete with further discussion of real cases. This is where some of the more pragmatic implications shed some light on undocumented immigration. However, we need to delve into the case studies to better understand this issue. It is, therefore, relevant to discuss the cases of the United Kingdom and the United States more thoroughly.

#### *4. Similarities in the United Kingdom and the United States*

The most basic similarity is that there are undocumented immigrants in each country and that they have become sizeable minorities. Given approximate population sizes in the United States (300 million) and the United Kingdom (60 million), almost 4% and 1% of the total population respectively is undocumented and this number may grow rapidly making them truly sizeable minorities (at least it is framed this way). The debate, therefore, has become widely documented in each country. In many parts of the United States, the issue of undocumented immigration is obvious as numerous villages, towns and cities now have strong Hispanic elements to them.<sup>30</sup> In

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<sup>28</sup> Christopher Soper and Joel Fetzer. "Religion and Politics in a Secular Europe" in Jelen, Ted and Clyde Wilcox. *Religion and Politics in Comparative Perspective*. (New York: Cambridge University Press, 2002), 169.

<sup>29</sup> British National Party. [www.bnp.org.uk]

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<sup>30</sup> On a personal note, I have encountered several towns in Oregon with overwhelming Hispanic majorities when one would assume

the United Kingdom, undocumented immigrants are also relatively concentrated, mainly in the larger cities, especially London.

The concentration of undocumented immigrants is an issue for comparison because many undocumented immigrants congregate in certain areas, some expected, and others less so. Ultimately it is the availability of jobs that determine where people settle, but this has caused some increased attention to the subject given the high percentage of Hispanics in states like California, New Mexico and Arizona. These states have, for a long time, been home to sizeable Hispanic populations and, among others, used to belong to Mexico prior to the 1840s.<sup>31</sup> The major change, however, has been the recent influx of undocumented immigrants into non-traditional states like North Carolina and Georgia.<sup>32</sup>

On the supranational level, the United States and the United Kingdom each belong to an international organization which has influences on their respective economies. The North American Free Trade Agreement (NAFTA) and the European Union (EU) are very different but there is some room for comparison

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the state to be quite homogenous outside of Portland.

<sup>31</sup> Paul Boyer et al. *The Enduring Vision: A History of the American People*. (New York: Houghton-Mifflin Company, 1998), 287.

<sup>32</sup> Samuel Huntington. "The Hispanic Challenge". *Foreign Policy*. March/April 2004.

here. While the blocs themselves do not articulate undocumented immigration, their very existence may well promulgate the movement of people from one country to another without documentation. At the outset of NAFTA in 1994, few scholars thought that free trade would have an impact on immigration into the United States. According to William Orme, "serious scholars of Mexican demography don't expect NAFTA to have any noticeable effect on Mexican immigration over the next five to ten years".<sup>33</sup> In this regard, his assessment turned out to be incorrect and reality shows a relationship between NAFTA and the undocumented immigration issue in the United States. Similarly in the United Kingdom, after the 2004 enlargement of the EU, some people feared an upsurge in undocumented immigration from Eastern Europe with now shared membership in the international organization. It is clear that international organizations have an impact on immigration, but this is a secondary comparison in this paper. A more complete comparison of international organizations will be argued in a later section of the paper.

### 5. Differences

Given the sheer volume of undocumented workers in the United States, the problem is, at this point, much greater here. However, because of

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<sup>33</sup> William Orme. "NAFTA: Myths versus Facts" *Foreign Affairs*. (November/December 1993): 9.

existing EU rules, the propensity for further undocumented immigration into the United Kingdom is possible. This has led to increased fears on the part of some constituencies in the United Kingdom and, as part of a greater debate in Europe, contributed to discussion on the issue of identity and what it means to be British. Perhaps the volume of undocumented immigration in the United States is a foreshadowing of what is to come in the United Kingdom.

The major difference, however, between the United States and the United Kingdom is the perception of immigration generally. This too is socially constructed, but is relevant to how this debate is framed in the respective countries. America prides itself on being a “nation of immigrants”; whereas, Britain has traditionally accepted immigrants, but largely characterized them as unwanted.<sup>34</sup> This was the perception of postcolonial immigration that was largely accepted by the political elites. The British society has, at times, defined itself as highly culturally homogenous (as do most European countries) and this has caused problems with non-traditional British citizens.

Another major difference between the United Kingdom and the United States is the methods through which undocumented immigrants enter the respective countries. In the United Kingdom, many undocumented

immigrants actually enter the country with legal visas to do specific work (even Eastern Europeans currently need a visa because of restrictions under the Schengen Agreement), but fail to return after their visas have expired. In the United States, many undocumented immigrants enter the country through the southern border with Mexico. These people often risk their lives to cross the border and make it through the desert conditions in the south-west of the United States.

The differences on this issue have led the United States and the United Kingdom to pursue different policies to deal with undocumented immigration. This is fueled, in part, by how this debate is framed and socially constructed. National public policy is a good place to examine how and why undocumented immigrants were framed and how each country will proceed in managing this issue.

#### *6. Existing Policies, Proposals and Platforms in the US and UK*

In the United Kingdom, the 1948 British Nationality Act was the first piece of legislation designed to designate British citizenship with regards to immigration. This provided British citizenship to all people in the Commonwealth and, within a few months, numerous people from all over the world began moving to the United Kingdom. After decades of discussion and debate on the issue, the British Nationality Act was revised in 1981 to differentiate between British citizens

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<sup>34</sup> Joppke, 287.

and British citizens of overseas territories.<sup>35</sup> The 1981 revisions served, in many respects, to reign in the 1948 Act as the economic recession of the late 1970s/early 1980s reduced the availability of jobs. This led to pressures for increased protectionism.

Since the rise of undocumented immigration has become a much more closely watched issue in the political process, the current Home Secretary, John Reid, has introduced a “Border and Immigration Bill” to tackle loopholes through which undocumented immigrants enter the country.<sup>36</sup> The United Kingdom has also attempted to tackle undocumented immigration through a Workers Registration Scheme that registers immigrants with visas that enter the country to do specific jobs. Legislation, harking back to 1981, has been tabled to tackle the issue of undocumented immigration because it has been framed and accepted as a problem in the UK. It is proof, however, that public policy has been ineffective at the domestic level and the current proposals do not indicate that they will have much success either.

In the United States, the 1986 Immigration Reform and Control Act was also the first attempt to address the issue of illegal entry into the country;

however, its critics argue that it amounted to nothing more than amnesty. This Act was supposed to stop the flow of undocumented immigrants, but, as the current statistics suggest, did little to stop it from increasing. The issue of undocumented immigration again received attention when President George W. Bush discussed reforming immigration law in his 2004 State of the Union address in response to the unsolved problems from the Immigration Reform and Control Act. More recently, James Sensenbrenner from Wisconsin initiated HR 4437, the “Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005” which passed on 16 December 2005 by a vote of 239 in favor to 182 against it.<sup>37</sup> The Act is now under review in the Senate. The Senate also passed its own piece of legislation initiated by Arlen Specter, a Republican from Pennsylvania, namely S-2611, the “Comprehensive Immigration Reform Act”. This piece of legislation provides undocumented immigrants with a path to citizenship. It passed on 25 May 2006 by a vote of 62 in favor to 36 against it, with wide support from Democrats.<sup>38</sup> Specter’s legislation, too, is waiting for reciprocation in its opposite chamber - in this case, the House of Representatives. Regardless of the legislation, neither bill provides any effective mechanism that will change undocumented immigration. Only new proposals, such as resolving the issue through possible supranational

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<sup>35</sup> Alice Bloch. “A New Era or More of the Same? Asylum Policy in the UK”, *Journal of Refugee Studies*. 13(1).

<sup>36</sup> BBC News. [www.bbcnews.com] “Reid Outlines Immigration Bill” 15 November 2006.

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<sup>37</sup> [www.govtrack.us]

<sup>38</sup> Ibid.

mechanisms, will stop the tide of undocumented immigrants entering the United States.

The issue of undocumented immigration has, in the past year, become a volatile and recognized political issue. This short time frame, however, has yielded numerous attempts to change policy, but has, thus far, failed to change existing law. There are, in both the United States and the United Kingdom, changing political platforms that revolved around the issue of immigration specifically in response to the undocumented situation. Both countries are presently trying to address the situation through the legislative process in an attempt to update and modify existing policy. However, there is only so much that can be accomplished at the national level. National public policy has proven to be inefficient in dealing with undocumented immigration and a fresh approach needs to be taken. A possible solution might therefore be found at the supranational level.

### *7. European Union (EU)/ North American Free Trade Agreement (NAFTA)*

A common factor linking the situations in the United States and the United Kingdom is their involvement in supranational blocs. In addition, most of the undocumented immigration comes from inside these organizations with the majority of people moving into the

United States from Central America<sup>39</sup> (mainly Mexico) and the majority of people moving into the United Kingdom from Eastern Europe (mainly Poland). While this is not the primary cause of undocumented immigration, it is certainly a secondary factor that needs further exploration.

The EU is, in many regards, the most advanced supranational regional bloc in the world. Its institutions, therefore, have a great deal of power over national politics. Supranationalism in the EU has a great deal of legal crossover between the respective member states. Comparatively this must be kept in mind because the EU is a unique creation.

In contrast, NAFTA is largely an intergovernmental union between Mexico, Canada and the United States. NAFTA does not have any real power outside of economic, trade and environmental issues and even then, the agreement is often overlooked until dispute settlement mechanisms are instituted.<sup>40</sup> Therefore NAFTA itself cannot be viewed in the same light as the EU. However, NAFTA can be evaluated as an economic agreement that affects the economies of the United States and Mexico and thereby

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<sup>39</sup> Central American countries do not belong to NAFTA; however, the United States is currently attempting to implement the Dominican Republic- Central American Free Trade Agreement (DR-CAFTA).

<sup>40</sup> Frederick Abbott. "NAFTA and the Legalization of World Politics: A Case Study", *International Organization*. (54).

necessitates interaction between the two countries. It may also, in part, lead to the undocumented immigration that has caused increased media attention on the issue and a resulting backlash in the United States.

The issue of undocumented immigration, however, should not be considered a surprise because it has been framed as favorable by numerous political elites in Mexico. Vicente Fox has, for much of his presidency, pushed the idea of Mexican emigration to the United States. One of Fox's predecessors, Carlos Salinas de Gortari<sup>41</sup> argued for reducing trade barriers: "You must take our goods or our people", but Fox himself urged the United States to take both.<sup>42</sup> The role of the Mexican President, therefore, has become increasingly important to the United States (where noticed or not) because of the impact of their decisions. Given the close relationship of George W. Bush and Vicente Fox before they became Presidents of their respective countries (both were Governors of Border States), Fox can be forgiven for betting his administration's fortune on a change in U.S. immigration policy. Unfortunately, he misread the situation as Bush found it politically dangerous to change immigration policy so early in his first term; and 9/11 only served to

end the negotiation formally.<sup>43</sup> Regardless of the current view of undocumented immigration, Mexico and the United States will be of great importance to each other in the future. This has led some scholars to argue for an EU style "Cohesion Fund" through NAFTA to bolster the poorer parts of Mexico in an effort to keep its economic reforms moving.<sup>44</sup> The literature and attention suggests that the vast majority of undocumented immigrants are Mexican and thus it is important to consider NAFTA and the possibility for an EU style cohesion fund to be put in place.<sup>45</sup> By framing the issue as a supranational problem, both sides may be satisfied because less people will want to leave Mexico if the economy improves. In turn, the United States will receive fewer undocumented immigrants satisfying the furor of the MinuteMen and James Sensenbrenner. Small businesses can hire cheap labor but the market will dictate fairer wages for them.

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<sup>43</sup> Luis Rubio and Jeffrey Davidow. "Mexico's Disputed Election" *Foreign Affairs*. 85(5): 83-4.

<sup>44</sup> Andres Rozental. "Integrating North America: A Mexican Perspective" in Peter Hakim and Robert Litan (eds.). *The Future of North American Integration: Beyond NAFTA*. (Washington D.C.: Brookings Institution Press, 2001), 83.

<sup>45</sup> Philip Martin and Midgely E. "Mexico-US Migration with and without NAFTA" in *Immigration: Shaping and Reshaping America*. (Ann Arbor: University of Michigan Press, 2003) [www.npc.umich.edu](http://www.npc.umich.edu)

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<sup>41</sup> Carlos Salinas de Gortari was the Mexican President from 1988-1994.

<sup>42</sup> Huntington, 2004b, 317.

This does not, however, remedy the situation in the United Kingdom. The EU and NAFTA are set-up differently to deal with undocumented immigrants and a direct comparison of the two blocs must be measured qualitatively because their mechanisms to deal with collective problems contrast significantly. For example, on the issue of mobility, the EU and NAFTA work quite differently with regards to controlling how people move. In the EU, citizens are able to move freely from one member state to another (provided that their country is part of the Schengen Agreement and that they are not a new member state); conversely, traditional borders still apply in the NAFTA countries. Undocumented immigration takes on different parameters when it comes to mobility; however, one member state could take up the issue and deal with it if it becomes an unbearable menace. Small business lobbyists are often reluctant to push the government in this direction given the benefits of a low wage work force. The issue then becomes one of mobility given that people have to enter the United Kingdom and the United States. In both the EU and NAFTA, there have been attempts to address this issue; however, it is important to examine the Schengen Agreement and how the United Kingdom can utilize the EU to better manage its undocumented immigration.

### 8. The Schengen Agreement

In 1985, the European Community signed the Schengen Agreement which

essentially removed all border controls between the signatory countries.<sup>46</sup> It was designed to create a unified approach to policing European borders and to control the amount of undocumented immigration coming into Europe.<sup>47</sup> Brussels attempted to create a community that upheld mobility between members, but keep out people from outside the organization. The United Kingdom, however, decided not to enter into the Schengen Agreement because the anti-immigration lobby remains strong (although it did sign the declaration and cooperates on policing matters).<sup>48</sup> Ironically, this has not halted the undocumented immigration that is prominent in many of the United Kingdom's largest cities.

In addition to Schengen, there is a migrant visa application system in the EU. Upon entry into the EU, new countries face possible restrictions on worker mobility of up to 7 years (this is known as the 2+3+2 formula).<sup>49</sup> The United Kingdom, with regards to the ten new accession members in 2004,

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<sup>46</sup> John McCormick. *Understanding the European Union*. (New York: Palgrave, 2002), 81.

<sup>47</sup> Jeremy Rifkin. *The European Dream: How Europe's Vision of the Future is quietly eclipsing the American Dream*. (New York: Penguin, 2004), 265.

<sup>48</sup> T.R. Reid. *The United States of Europe: The New Superpower and the End of American Supremacy*. (New York: Penguin, 2004), 208.

<sup>49</sup> European Union. [www.europa.eu]

did not restrict access to the country.<sup>50</sup> This has allowed hundreds of thousands of people from Eastern Europe to work in the United Kingdom. The problem, however, is not with legal migrant workers, but that many people overstay their visas. Undocumented immigration in the United Kingdom, therefore, is not created by illegal border crossings, but by migrant workers overstaying their visas in the country. The UK then can deal with this problem by restricting the mobility of new EU members and then lobby the EU to fine countries whose people disobey this request. Policing has proven to be quite difficult in the UK on matters of workers who overstay their visas, so bringing the EU into the picture may represent a viable way forward on this issue.

### *9. Conclusion*

Both the United Kingdom and the United States have experienced increased exposure to undocumented immigration. The issue will continue to be relevant to all societies in North America and Western Europe who require immigration to maintain their current population levels. Many people are concerned that their national identity, values and history are being changed in the wake of an influx of immigration, yet their choices are limited given lowering fertility rates. This will continue to be a factor in the foreseeable future.

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<sup>50</sup> BBC News. [www.bbcnews.com] Inside Europe.

In the United Kingdom, the numbers are not yet alarming because undocumented immigrants only make up less than 1% of the total population. However, the issue has gained traction and has gained significant notoriety on the electoral fringes (the rise of the BNP has been especially alarming).<sup>51</sup> The British Nationality Acts of 1948 and 1981 have played a role in the immigration debate in the United Kingdom, as have the changes to the EU. National public policy has proven to be ineffective at controlling undocumented immigration and fresh ideas are necessary. Despite a significant anti-EU lobby expressed through the United Kingdom Independence Party (UKIP), the EU may provide a punishment mechanism which could help to stem undocumented immigration into a specific country.

In the United States, the sheer volume of undocumented immigrants is problematic because the government has to deal and account for an extra 11.5-12 million people. National public policy has similarly played an ineffective role in dealing with undocumented immigrants from Mexico. This has, in part, led to the problem of undocumented immigration and Americans will have to decide whether Sensenbrenner's or Specter's bill is better suited to dealing with this issue. Ultimately, neither piece of legislation will be effective because it is

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<sup>51</sup> BBC News. [www.bbcnews.com] "BNP sees increase in total votes" 6 May 2005.



the interests of small business owners that have to be dealt with. By utilizing NAFTA and creating an EU style cohesion fund, the United States may best alleviate poverty in Mexico and thereby reduce the incentive for undocumented immigration.

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