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Immigration Reform: Crisis and Compromise

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IMMIGRATION REFORM: CRISIS AND COMPROMISE

RICHARD R. HOFSTETTER*

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I. INTRODUCTION

Observers may be struck by the remarkable coincidence that the Statue of Liberty and U.S. immigration law are simultaneously undergoing renovation. Both have failed to weather the years and are showing the stress of time. The Senate passed its version¹ of the Immigration Reform and Control Act (better known as the Simpson-Mazzoli bill) on May 18, 1983, and the House of Representatives passed its version² on June 20, 1984. The House and Senate conferees met in September 1984 to attempt to iron out differences between the two measures,³ hopeful that they would complete the task before the scheduled adjournment of Congress on October 5. Unfortunately, the factious conferees were unsuccessful, and immigration reform has eluded the 98th Congress.

If some version of the Simpson-Mazzoli bill becomes law under the 98th Congress, it will be the most significant reformation of U.S. immigration law and policy in more than three decades. When the venerable Lady again holds her lamp before the "Golden Door," the inscription⁴ at her feet may no longer represent America's *de facto* immigration policy.

* Attorney at law, Henderson, Daily, Withrow & DeVoe, Indianapolis, Indiana. I wish to express my deepest appreciation to Philip J. Ripani, Kelly J. Dugger, G. Bryan Miller, and Nancy K. Hofstetter for their research assistance and astute editorial comments. Special thanks to Rep. Dan Burton (R-Ind.) for the assistance of his staff in locating legislative materials of recent vintage.

¹ S. 529, 98th Cong., 1st Sess. (1983) [hereinafter cited as S. 529].

² H.R. 1510, 98th Cong., 2d Sess. (1984) [hereinafter cited as H.R. 1510].

³ Cohadas, *Conferees Begin Work on Immigration Bill*, 42 CONG. Q. 2275 (1984).

⁴ *The New Colossus*, a poem by Emma Lazarus, was inscribed on the Statue's pedestal in 1903. It reads:

Not like the brazen giant of Greek fame, / With conquering limbs astride from land to land; / Here at our sea-washed, sunset gates shall stand / A mighty woman with a torch, whose flame / Is the imprisoned lightning, and her name Mother of Exiles. / From her beacon-hand / Glows world-wide welcome; her mild eyes command / The

This article will examine the Third World population growth which has led to a massive increase in immigration to the United States, briefly summarize America's historic legislative response to immigration, and discuss the means by which legislative revisions may deal with current issues and problems.

II. ECONOMIC DEVELOPMENT AND DEMOGRAPHIC TRANSITION

A. *The Malthusian Theory of Population Stabilization*

Throughout almost all of recorded history, human population growth has been either stable or very slowly increasing. At the time of Christ, world population stood at a mere 300,000,000,⁵ and it took more than 1500 years thereafter to double.⁶ Pre-industrial societies were characterized by birth and death rates which seem appallingly high by modern standards.⁷ The balance of births over deaths always remained tenuous, but (much to man's credit) births generally prevailed.

In the 18th century, Thomas Malthus observed that man increases his numbers "geometrically" (2, 4, 8, 16, and so forth), while his means of subsistence increases only "arithmetically" (1, 2, 3, 4, and so forth).⁸ Because man's reproductive ability exceeded his ability to produce food, Malthus reasoned that population growth would eventually be checked by the scarcity of subsistence. Man, therefore, was destined to inhabit a world of scarcity.⁹

Indeed, it appears that pre-industrial populations were prevented from growing rapidly by virtue of a number of "Malthusian" checks. Although pre-industrial peoples seldom starved, they did die in unusually large numbers from diseases, particularly when susceptibility to disease was great as a result of poor nutrition.¹⁰ In addition, periodic bad harvests tended to delay marriages, also reducing the birth rate.¹¹ By any measure, those were lean times.

B. *European Population Growth and Stabilization*

During the eighteenth century the population of northern and western Europe began a steady growth which continued well into the twentieth century. This continued rise in population was due to a combination of events, beginning with the so-called "vital revolution" and culminating in the industrial revolution.¹² As the industrial revolution spread from England eastward, the populations of southern and eastern Europe began to increase as well. Technological advancements led to a steady increase in the quantity and

air-bridged harbor that twin cities frame. / "Keep ancient lands, your storied pomp!"
cries she / With silent lips. "Give me your tired, your poor, / Your huddled masses
yearning to breathe free, / The wretched refuse of your teeming shore. / Send these,
the homeless, tempest-tost to me, / I lift my lamp beside the golden door!"

⁵ WORLD BANK, WORLD DEVELOPMENT REPORT 1984, at 2 [hereinafter WORLD DEVELOPMENT REPORT].

⁶ *Id.*

⁷ See generally, W. BORRIE, GROWTH AND CONTROL OF WORLD POPULATION (1970).

⁸ T. MALTHUS, FIRST ESSAY ON POPULATION (J. Bonar ed. 1966).

⁹ Malthus' grim prediction led to the characterization of economics as "the dismal science." See, WORLD DEVELOPMENT REPORT, *supra* note 5, at 7-10.

¹⁰ WORLD DEVELOPMENT REPORT, *supra* note 5, at 58.

¹¹ *Id.*

¹² *Id.* at 60-61.

quality of food produced.¹³ Europeans also acquired a basic understanding of sanitation and disease transmission, leading to a gradual decline in the death rate.¹⁴ The populations of northern and western Europe (followed by the populations of eastern and southern Europe) entered a stage of demographic transition characterized by high "pre-industrial" birth rates, low "industrial" death rates and, consequently, rapid growth.¹⁵

The technological changes which fostered this demographic growth were largely confined to the European continent until the early twentieth century. It is no surprise, then, that the nineteenth century is perceived as the heyday of European civilization. During that time, Europeans spread across the face of the globe,¹⁶ colonizing the Americas, Australia, New Zealand, and South Africa, and bringing most of what remained under their political domination. It is no mere coincidence that the nineteenth century was also the period of greatest European migration to the United States.¹⁷

During the late nineteenth and early twentieth centuries, the growth rate of European populations began to decline.¹⁸ For a variety of reasons, families began to voluntarily limit births.¹⁹ European populations eventually stabilized at levels which were comfortably distant from the limits of subsistence, permitting an unparalleled standard of living.²⁰ Europeans completed the transition to demographic stability via low birth and death rates.

The prospect of man avoiding "Malthusian" consequences by curtailing his own power to reproduce was not anticipated by Malthus, and has led modern scholars to treat him with justifiable skepticism. The voluntary reduction in the number of births is the result of a host of factors which are present today in societies which we typically describe as economically "developed."²¹ As European populations stabilized, European immigration to the United States declined, first from the northwestern European countries, and finally from the southern and eastern European countries.²²

C. Third World Population Growth

Twenty years ago, Arnold Toynbee said:

Our age will be well remembered not for its horrifying crimes nor its astonish-

¹³ *Id.*

¹⁴ *Id.* at 63.

¹⁵ *Id.*

¹⁶ W. BORRIE, *supra* note 7, at 98. Some 51 million people left Europe between 1846 and 1939.

¹⁷ See *infra* figure 1. American folklore suggests that Europeans arrived in America to avoid religious and political persecution and to seek economic opportunity. Indeed, individuals migrated for a variety of personal reasons. Nevertheless, it was demographic growth which fueled and sustained such migrations. See *supra* text accompanying notes 12-17.

¹⁸ WORLD DEVELOPMENT REPORT, *supra* note 5, at 61.

¹⁹ This trend toward fewer births preceded the widespread use of artificial contraceptives. There is no question that artificial contraceptives simplify family planning efforts, but the availability of such contraceptives does not, by itself, reduce the number of births significantly. Demographers recognize that families respond to economic incentives to reduce the number of births, and that such incentives are present in economically developed countries. Urbanization, literacy (particularly among women), longer life expectancy, and the "opportunity cost" of a mother's time have been identified as factors which contribute to fewer births. See WORLD DEVELOPMENT REPORT, *supra* note 5, at 51-53. Consequently, population planners in the Third World are wisely focusing on incentives which affect fertility, rather than merely providing access to artificial contraceptives. *Id.* at 106-26.

²⁰ *Id.* at 61.

²¹ *Id.* at 51-53.

²² *Id.* at 62 (box 4.3).

ing inventions, but because it is the first generation since the dawn of history in which mankind dared to believe it practical to make the benefits of civilization available to the whole human race.²³

One of the consequences of European colonization and colonial domination has been the dissemination of medical knowledge and technical know-how throughout much of the world. Great strides have been made in reducing the mortality rate in Third World countries through the eradication of many diseases, the introduction of modern medicine, and improvements in diet, sanitation, and education.²⁴ Agricultural productivity has been increased with the assistance of artificial fertilizers, pesticides, and genetically altered grains.²⁵ As a consequence, death rates in most non-European areas of the world have dropped dramatically during the twentieth century.²⁶ Birth rates, however, have remained at high pre-industrial levels.²⁷ The result is a staggering explosion in human population in the Third World.²⁸

In the thirty-five years following 1950, world population has doubled.²⁹ This increase has been largely confined to so-called "developing" countries.³⁰ Mexico, for example, will increase its population *eight-fold* during this century alone.³¹ The *increase* attributable solely to the Third World during the *last quarter* of this century will exceed the total population of the globe at the beginning of this century.³²

This Third World transitional growth differs from the earlier period of European growth in a number of very important respects. The decline in the Third World's death rate has occurred at a comparatively earlier stage of economic development than that which occurred in Europe, contributing to an unparalleled increase in the world's poor.³³ Also, the *rate* of increase is far more rapid in the Third World today than it was in Europe,³⁴ which itself inhibits economic development.³⁵ Finally, the solution of out-migration, which served as a demographic escape valve for Europe, is today a less viable option.³⁶

It would of course be a mistake to regard the non-European world as a monolithic economic unit. A number of non-European countries have reached, or seem to be approaching, demographic stability via economic development. Most notably, Japan has

²³ Quoted by A. W. Clausen in his address to the Board of Governors of the World Bank and International Finance Corporation, Washington, D.C. (Sept. 24, 1984).

²⁴ WORLD DEVELOPMENT REPORT, *supra* note 5, at 63.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ According to the World Bank, "[t]he post World War II rate of population growth in developing countries is without precedent." *Id.*

²⁹ *Id.* at 7.

³⁰ BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, CURRENT POPULATION REPORTS: ILLUSTRATIVE PROJECTIONS OF WORLD POPULATIONS TO THE 21ST CENTURY, Special Studies Ser. P. 23/79 at 2 (1979).

³¹ Hofstetter, *Economic Underdevelopment and the Population Explosion: Implications for U.S. Immigration Policy*, in U.S. IMMIGRATION POLICY 55, 63-64 (R. Hofstetter ed. 1984).

³² *Id.* at 56.

³³ BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, WORLD POPULATION 1979 — RECENT DEMOGRAPHIC ESTIMATES FOR COUNTRIES AND REGIONS OF THE WORLD, Table 1 (1980).

³⁴ WORLD DEVELOPMENT REPORT, *supra* note 5, at 58-63.

³⁵ See *infra* note 37.

³⁶ Those areas not experiencing rapid population growth are, for the most part, already developed, and are not inhabited by easily subjugated peoples.

completed its demographic transition and is today a non-European country of considerable economic importance. Many nations in eastern Asia — South Korea, Taiwan, and Singapore in particular — seem to be following Japan's lead. For such countries, demographic stability and European-style consumption patterns are a reasonable, even likely, prospect. Other countries, particularly those located in sub-Saharan Africa and South Asia, are finding economic development to be elusive. To make matters worse, population is increasing most rapidly in those areas which are the poorest, with this population growth itself adversely affecting economic development.³⁷

In 1984 the World Bank issued pessimistic projections of the consequences of continued rapid population growth in the Third World:

[Assuming standard projections,] world population would stabilize around the year 2150, having risen from almost 4.8 billion to more than 11 billion. It would reach 9.8 billion by the year 2050. The population of today's developed countries would grow from about 1.2 billion today to 1.4 billion in 2050, while that of those countries now classified as developing would grow from over 3.6 billion to 8.4 billion. By the time world population stabilized, the population of India would be 1.7 billion, making it the most populous nation on Earth. Bangladesh, a country about the size of the state of Wisconsin in the United States, would have a population of 450 million. Nigeria, Ethiopia, Zaire, and Kenya, among the most populous countries in Africa, would have populations of 620 million, 230 million, 170 million, and 150 million, respectively. As a group, sub-Saharan Africa and South Asia — today's poorest countries, with the fastest population growth — would account for 50 percent of the world's people, compared with 30 percent today.³⁸

In light of such projections, it is difficult to imagine the means by which the poorest of today's developing countries will be able to avoid a "Malthusian" check to further population growth. Indeed, today we are witnessing a serious famine in parts of East Africa — the area which not coincidentally has the world's poorest people and highest birth rates.³⁹ Even the World Bank, which normally eschews pessimism, has observed:

A pessimist might wonder whether for some countries it is not already too late — whether rising unemployment and increasing landlessness will overwhelm social and political institutions; whether fragile administrative systems will be unable to maintain health programs; whether, in countries that are already crowded and still heavily reliant on agriculture, mortality will rise to check further population growth.⁴⁰

³⁷ Economists generally agree that rapid population growth adversely affects economic development. Per capita income does not improve if rising Gross National Product (GNP) is offset by a corresponding increase in population. Children enter the world as consumers, not producers, and have a predictable effect on families' ability to save. A reduction in the birth rate would thus have a beneficial effect on per capita income and savings. *WORLD DEVELOPMENT REPORT*, *supra* note 5, at 105. *But see* J. SIMON, *THE ECONOMICS OF POPULATION GROWTH* (1977). Not surprisingly, many developing countries have embarked on aggressive policies to reduce fertility. The Peoples Republic of China has achieved notable success in reducing its birth rate, which has enabled the country to enjoy a remarkable rate of economic growth. However, the strict governmental controls utilized to effect its birth control policy are very controversial. For a brief history of the development of Chinese birth control policy, *see generally* C. SUNGLIN, *POPULATION AND POPULATION POLICY IN MAINLAND CHINA* 13-24 (1977).

³⁸ *WORLD DEVELOPMENT REPORT*, *supra* note 5, at 7.

³⁹ *Id.* at 218-19, 256-57.

⁴⁰ *Id.* at 7.

Leaders in the developed world should therefore not close their minds to the prospect of a "Malthusian" situation arising in the next several decades to check further growth in the poorest countries of the Third World.

This unprecedented increase in the Third World's population has had, and will continue to have, a dramatic effect on immigration to the United States. The source and sheer number of immigrants to this country have changed dramatically in recent years. (See Figures (1) and (2) below.) Today's immigrants no longer arrive primarily from Europe, but in ever-increasing numbers from Latin America, Asia, and the Caribbean. The majority of such immigrants are seeking employment, attracted to our shores by the wealth depicted by American radio and television programs broadcast overseas and the relative poverty and lack of opportunity in their own countries. As long as the population of the Third World continues to grow rapidly, there will be an ever-increasing pool of would-be immigrants to the United States.

III. IMMIGRATION LAW IN THE UNITED STATES: 1776 TO 1985

Immigration to the United States was unrestricted until the late nineteenth century. The first attempts to control immigration were qualitative in nature, barring criminals, prostitutes, illiterates, chronic alcoholics, stow-aways, vagrants, and a host of others.⁴¹ Rising nativist sentiments led to the passage of the Chinese Exclusion Act of 1882,⁴² which was expanded in 1907 to exclude the Japanese as well.⁴³

By the early twentieth century, the origin of America's immigrants had shifted markedly from the traditional sources in northwestern Europe to eastern and southern European countries.⁴⁴ Lawmakers perceived this change as a threat to America's "Nordic" character, and enacted the first quantitative restriction of immigration with the First Quota Act of 1921.⁴⁵ This law established an annual ceiling of 350,000 eastern-hemisphere immigrants and limited the number of aliens of any nationality entering the United States to three percent of foreign-born persons of that nationality already residing in the United States in 1910.⁴⁶ This was followed on May 26, 1924 by the Immigration Quota Act,⁴⁷ an even more restrictive measure. This Act, in conjunction with the Immigration Act of February 5, 1917,⁴⁸ a qualitative measure, governed American immigration policy until 1952.

The Immigration Quota Act of 1924 fortified the 1921 Act in a variety of ways. The quantitative limit was reduced to 164,667 and the annual quota was established at two percent of the number of foreign-born persons of each nationality residing in the continental United States in 1890.⁴⁹ This had the effect of favoring immigrants from the

⁴¹ Act of Mar. 3, 1875, ch. 141, 18 Stat. 477, *repealed by* Act of Oct. 24, 1974, Pub. L. No. 93-461, 88 Stat. 1387; Chinese Exclusion Act of 1882, ch. 376, 22 Stat. 214; Immigration Act of Feb. 5, 1917, Pub. L. No. 301, 39 Stat. 874, *repealed by* Act of June 27, 1952, ch. 477 § 403(a)(13), 66 Stat. 279.

⁴² Chinese Exclusion Act of 1882, ch. 376, 22 Stat. 214.

⁴³ Act of Feb. 20, 1907, 34 Stat. 898.

⁴⁴ *See supra* figure 2.

⁴⁵ First Quota Act of 1921, Pub. L. No. 5, 42 Stat. 5, *repealed by* Act of June 27, 1952, ch. 477 § 403(a)(17), (23), (27), 66 Stat. 279.

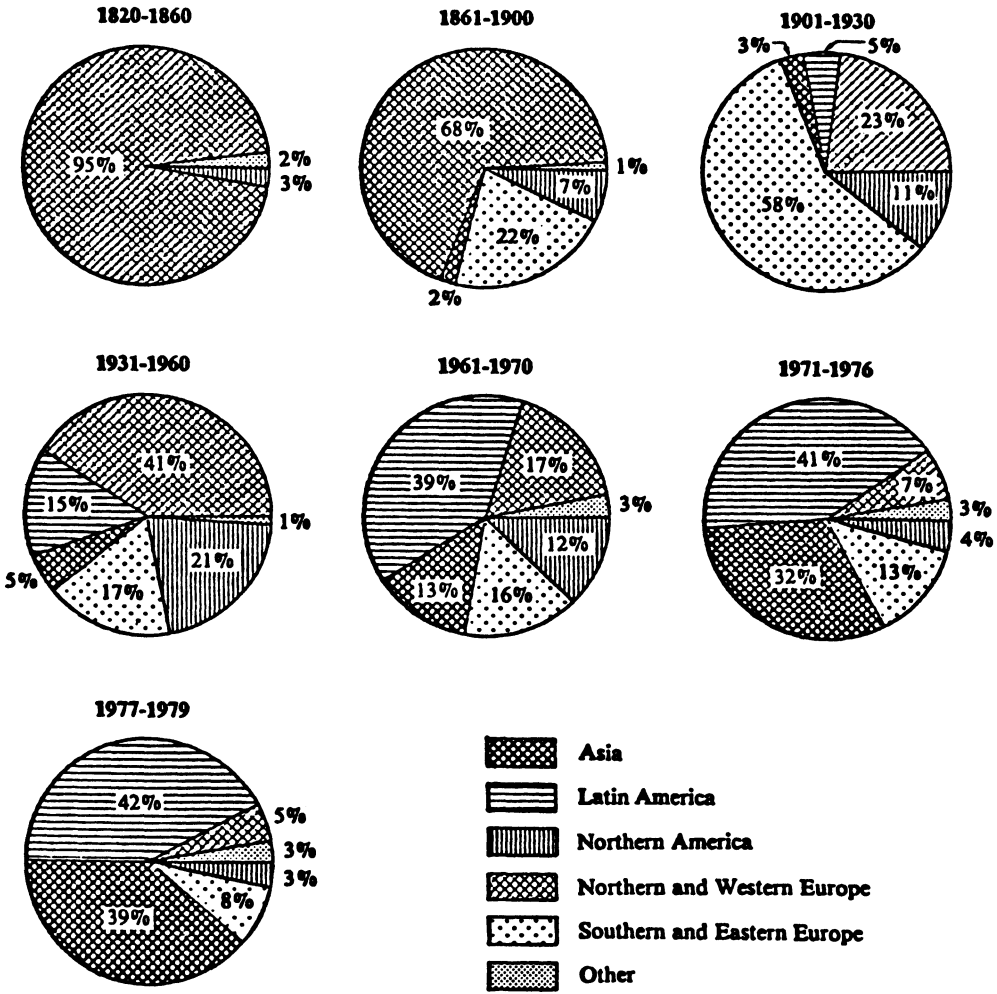
⁴⁶ Section 2(a).

⁴⁷ Immigration Quota Act of 1924, Pub. L. No. 139, 43 Stat. 153, *repealed by* Act of June 27, 1952, ch. 477 § 403(a)(23), (24), 66 Stat. 279.

⁴⁸ Immigration Act of Feb. 5, 1917, Pub. L. No. 301, 39 Stat. 874, *repealed by* Act of June 27, 1952, ch. 477 § 403(a)(13), 66 Stat. 279.

⁴⁹ Section 11(a).

FIGURE 1
Immigrants Admitted to the United States by Region of Birth
1820-1979



SOURCES: 32 POPULATION REFERENCE BUREAU No. 4 (1977); Bouvier, *Immigration and its Impact on U.S. Society* 2 in POPULATION REFERENCE BUREAU, POPULATION TRENDS AND PUBLIC POLICY (No. 2) (1981) (data for 1977-79).

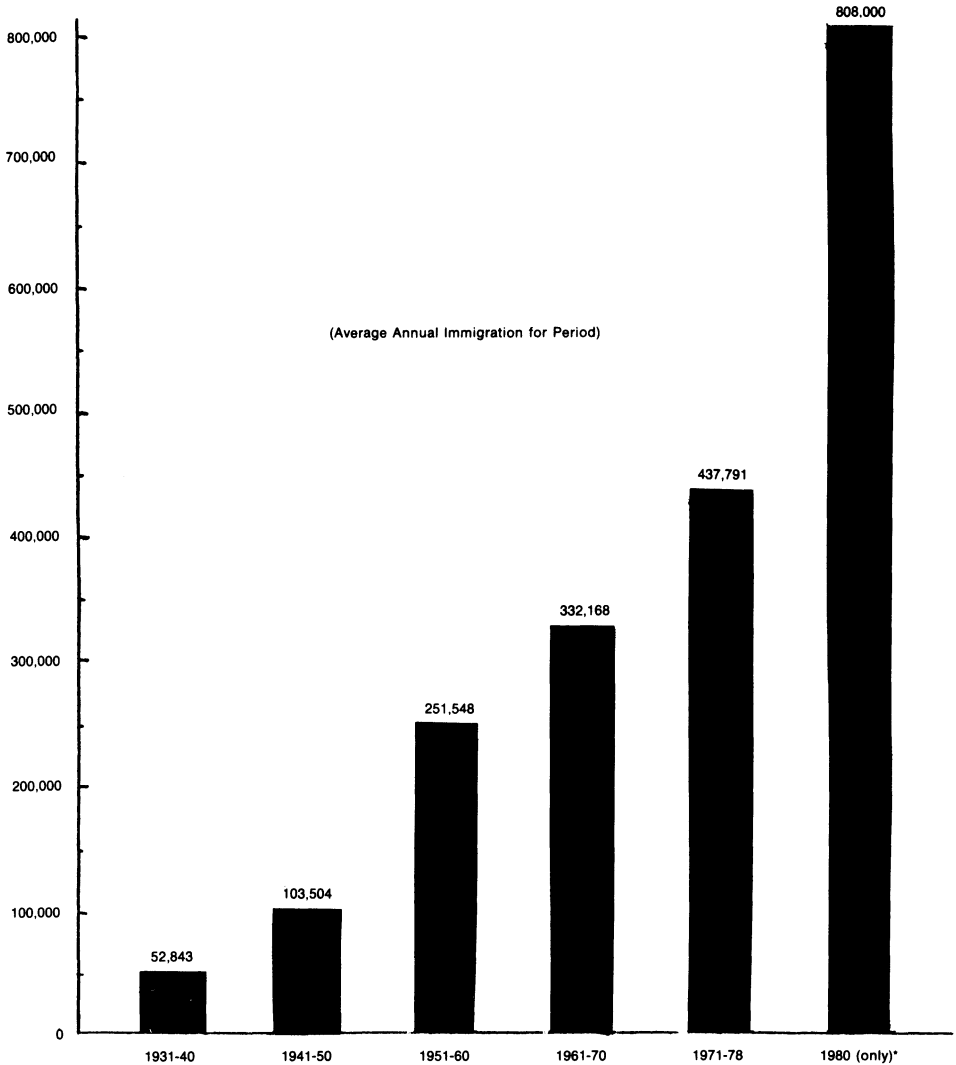
traditional sources of supply even more so than did the 1921 Act.⁵⁰ The Act of 1924 also introduced the controversial "national origins quota system," which became effective on July 1, 1929, following two postponements by joint resolutions of Congress.⁵¹

The 1924 Act accomplished exactly what it was designed to do: curb the total tide of immigration, and restrict immigration from southern and eastern Europe, in particular.

⁵⁰ Prior to 1890, ninety-five percent of America's immigrants had come from northwestern Europe. E. HARPER, *IMMIGRATION LAWS OF THE UNITED STATES* 12 (1975).

⁵¹ Abrams, *American Immigration Policy: How Strait the Gate?*, in *U.S. IMMIGRATION POLICY* 107, 108 n.9 (R. Hofstetter ed. 1984).

FIGURE 2
 Legal Immigration to the United States
 1931-1980



*Included 207,114 refugees, mainly Indo-Chinese. Not counted as immigrants but paroled in as "entrants" in 1980 were 125,000 Cubans and 17,000 Haitians.

SOURCES: Bouvier *The Impact of Immigration on U.S. Population Size* in POPULATION REFERENCE BUREAU, INC., POPULATION TRENDS AND PUBLIC POLICY (No. 1) (1981) (data for 1931-1978); U.S. SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, NEWSLETTER No. 14 (1981) (data for 1980).

However, immigration from the Western Hemisphere remained free from numerical restrictions. When World War I disrupted European immigration, Mexicans flocked to jobs in the Southwest, French Canadians to New England, and Cubans and other Caribbean Islanders to the Southeast.⁵² Mexican immigration later became institutionalized during the 1940's with the *Bracero* program, whereby agricultural workers were imported from Mexico by executive agreement.⁵³

The next major piece of legislation affecting immigration was the Immigration and Nationality Act of 1952,⁵⁴ which Congress passed over President Truman's veto. The Act of 1952 (often referred to as the McCarran-Walter Act after its sponsors in the Senate and House, respectively) brought the laws which had previously governed immigration and naturalization in the United States under one comprehensive statute. Although frequently amended, most radically in 1965, this Act remains the basic immigration law of the land.

The McCarran-Walter Act contained a modified version of the national origins quota system, and hence preserved the scheme preferential to northwestern Europeans.⁵⁵ The Act did, however, eliminate race as an absolute bar to immigration and naturalization.⁵⁶ The Act for the first time also awarded the first fifty percent of each country's quota to aliens with advanced education or special skills.⁵⁷ In addition to this preference scheme, Congress empowered the Secretary of Labor to exclude certain aliens whom it deemed to be depressing American wages. Thus, the law restricted the entry of unskilled and uneducated aliens seeking gainful employment. It also failed to impose any quantitative restrictions on Western Hemisphere immigration.

The McCarran-Walter Act was ineffective in dealing with the large numbers of mostly European refugees who began arriving in the United States following World War II.⁵⁸ Accordingly, Congress passed a number of acts⁵⁹ to admit refugees outside the quota restrictions. Between 1952 and 1965, approximately 3,500,000 immigrants were admitted, two-thirds of whom were admitted outside the regular quota system.⁶⁰

As the twentieth century progressed and European birth rates fell, the national origins quota system became increasingly unworkable. The countries of northern and

⁵² *Id.* at 108.

⁵³ The ninth proviso of § 3 of the Immigration Act of 1917, 39 Stat. 874-76, permitted such executive agreements. Executive Order No. 9322, dated March 26, 1943, was given legislative sanction by the Act of April 29, 1943, 57 Stat. 70. This Act was passed as a result of labor shortages and increased production demands imposed by World War II, and facilitated the importation of Mexican agricultural workers by waiving the requirements imposed by §§ 2 and 3 of the Immigration Act of February 5, 1917, 39 Stat. 875, and exempting payments made to such workers from withholding taxes. The Act also explicitly declined to fix, regulate, or impose minimum wages or housing standards, regulate hours of work, or impose or enforce collective bargaining requirements or union membership.

⁵⁴ Pub. L. No. 414, 66 Stat. 163 (1952).

⁵⁵ See generally, M. BENNETT, *AMERICAN IMMIGRATION POLICIES: A HISTORY* (1963).

⁵⁶ Sections 201, 202, & 311.

⁵⁷ Section 203(a).

⁵⁸ Abrams, *supra* note 51, at 109.

⁵⁹ Refugee Relief Act of 1953, ch. 336, Pub. L. No. 203, 67 Stat. 400 (1953); Act of Sept. 1957, Pub. L. No. 85-316, 71 Stat. 639 (1957). In addition, a number of Hungarians were admitted by Presidential directives. See generally, Zolberg, *The Main Gate and The Back Door: The Politics of American Immigration Policy, 1950-1976* (1979) (prepared as a background paper for the Apr. 12, 1978 meeting of the Study Group on Immigration and U.S. Foreign Policy, Council on Foreign Relations).

⁶⁰ Abrams, *supra* note 51, at 109.

western Europe failed to fill their large quotas, while southern and eastern Europe (and later the Third World) found visas in short supply.⁶¹ By the early 1960's, the national origins quota system had also become offensive to America's increasingly liberal attitude on race relations. The system was finally abolished by the Immigration Act of 1965,⁶² which substituted an elaborate preference scheme of seven categories, designed to unite families and admit highly skilled aliens without regard to race, sex, religion, or national origin.

The 1965 Act established an annual limitation of 170,000⁶³ on Eastern Hemisphere immigration, not to exceed 20,000 for natives of any single foreign state.⁶⁴ Prospectively, a limit of 120,000 on a first-come first-served basis was established for immigration from independent countries of the Western Hemisphere.⁶⁵ This was the first attempt ever to deal with increasing immigration from Latin America.⁶⁶ Children and spouses of U.S. citizens and parents of U.S. citizens at least twenty-one years old were allowed to enter the country in unlimited numbers.⁶⁷ The Act also granted the Secretary of Labor wider control over those admitted.⁶⁸ Aliens not entitled to preference as relatives of U.S. citizens were required to obtain certification from the Secretary, asserting that they would not displace or "adversely affect the wages or working conditions of workers in the same field in the United States."⁶⁹ Not surprisingly, the bill received the unqualified endorsement of organized labor.⁷⁰

A slightly modified version of the 1965 Act remains in effect today. Most notably, the Immigration and Nationality Act Amendments of 1976⁷¹ extended the preference system to Western Hemisphere countries, and the Act of October 5, 1978,⁷² combined the hemisphere quotas into a single worldwide quota. The Refugee Act of 1980⁷³ allowed as many as 50,000 refugees to be admitted each year, and permitted the President under proper circumstances to increase this number.⁷⁴ The 1980 Act also reduced the worldwide quota from 290,000 to 270,000, but continued the exemption of immediate relatives of U.S. citizens from any numerical limitations.⁷⁵

IV. PROPOSED LEGISLATIVE CHANGES

Rapidly growing populations in Latin America and elsewhere, coupled with ineffective enforcement of U.S. immigration law by the Immigration and Naturalization Service (INS), contributed to a massive increase in the number of illegal aliens entering the

⁶¹ M. BENNETT, *supra* note 55, at 212-39.

⁶² Pub. L. No. 89-236, 79 Stat. 911 (1965).

⁶³ Section 201(a).

⁶⁴ Section 202(a).

⁶⁵ Section 21(c).

⁶⁶ This new measure, which was to become effective on June 30, 1968, was adopted at the behest of Sen. Sam Ervin (D-N.C.) and won needed support for the measure from moderates and conservatives. See S. REP. NO. 748, 98th Cong., 1st Sess. (1983).

⁶⁷ Section 201(a).

⁶⁸ Section 212(a).

⁶⁹ *Id.*

⁷⁰ See *supra* note 66.

⁷¹ Pub. L. No. 94-571, 90 Stat. 270 (1976).

⁷² Pub. L. No. 95-412, 92 Stat. 907 (1978).

⁷³ Pub. L. No. 96-212, 94 Stat. 102 (1980).

⁷⁴ Section 201(a)(1).

⁷⁵ Section 203(a).

United States during the 1970's and early 1980's. Immigration to the United States, both legal and illegal, was higher during this period than at any previous time in history,⁷⁶ with the prospect of even further increase. By the early 1980's a consensus had developed that an overhaul of U.S. immigration law and policy was needed.

Still, legislators were bitterly divided as to what, precisely, needed to be done. Immigration reform had suddenly become a politically hot issue, with lawmakers scrambling to satisfy the often inconsistent desires of their constituents. Liberals and Hispanic leaders, by and large, desired to see a relaxation of immigration restrictions. Labor leaders generally sought restrictive measures to protect American workers. Conservatives and many legislators from the southwestern states desired to see new restrictions placed on undocumented aliens. Agricultural interests desired a supply of inexpensive labor. Senator Alan K. Simpson (R-Wyo.) and Representative Romano L. Mazzoli (D-Ky.) jointly sponsored a bill designed to reform U.S. immigration law. Because of the problems inherent in trying to satisfy so many divergent interests, this bill, known as the Simpson-Mazzoli Bill, has had a tempestuous legislative history.

The Simpson-Mazzoli Bill was introduced to the Senate as S. 529. After lively debate, during which it was amended several times, the bill was passed on May 18, 1983, by a vote of 76 to 18.⁷⁷ Although the bill as amended satisfied a clear majority of the mostly conservative, Republican-dominated Senate, it failed to placate both liberals and extreme conservatives. Accordingly, Senators Alan Cranston, John East, Jesse Helms, and Edward Kennedy found themselves allies in opposing the measure.⁷⁸

A companion bill was introduced in the House as H.R. 1510, and had a far more difficult time due to the sympathy of the House leadership with Hispanic constituents opposed to the bill. In 1982 the bill was not placed on the House schedule until it was too late to complete floor action.⁷⁹ In October 1983 the House leadership was able to completely block House action on the bill.⁸⁰ The leadership finally relented in 1984, and the measure squeaked through the House on June 20, 1984, by a vote of 216 to 211⁸¹ following a rancorous debate and numerous amendments.

The House version differed in a number of important respects from the Senate's, and was the more "liberal" of the two. House Democrats and Republicans were divided on the bill, although the majority of Republicans supported it while a very slight majority of the Democrats voted against it.⁸² Members of the southwestern border states, much disturbed by the bill's amnesty provision,⁸³ voted overwhelmingly against the bill.⁸⁴

On September 6, House Speaker Thomas P. ("Tip") O'Neill appointed twenty-nine conferees, including Edward R. Roybal (D-Cal.), who had led Hispanic opposition to the bill.⁸⁵ (The House group was unusually large because four committees — Judiciary, Agriculture, Education and Labor, and Energy and Commerce — worked on the bill.)⁸⁶ The House conferees met with seven Senate conferees on September 13 to negotiate a

⁷⁶ Smith, *Introduction to U.S. IMMIGRATION POLICY* 3, 3 (R. Hofstetter ed. 1984).

⁷⁷ S. 529, 98th Cong., 1st Sess., 129 CONG. REC. 56905 (1983).

⁷⁸ *Id.*

⁷⁹ Cohadas, *Immigration Reform Measure Nearing Final Vote in House*, 42 CONG. Q. 1408 (1984).

⁸⁰ *Id.*

⁸¹ Cohadas, *House Passes Immigration Bill by Five Votes*, 42 CONG. Q. 1493 (1984).

⁸² *Id.*

⁸³ See *infra* text accompanying notes 88-94.

⁸⁴ *Id.* at 1494.

⁸⁵ Cohadas, *Immigration Bill Conference to Begin*, 42 CONG. Q. 2223 (1984).

⁸⁶ *Id.*

compromise, hopeful that they would complete the revision in time for final action before the scheduled October 5 adjournment of Congress.⁸⁷ Given the diversity of interests represented in the committee, a threatened filibuster, and the fact that elections were rapidly approaching, the conferees were unable to reach a compromise.

As of this writing, immigration reform is in legislative limbo. One may only speculate that some form of the Simpson-Mazzoli Bill will be re-introduced in the 99th Congress. The remainder of this section will focus on the more controversial provisions of the bill, which will likely be incorporated into a new measure which will come before Congress. (For the sake of brevity, the author has refrained from cataloging all measures adopted by the Senate and House.)

Amnesty. The most controversial provision of the Simpson-Mazzoli Bill was its grant of amnesty to aliens who entered the United States illegally before certain cut-off dates and have since resided here continuously. The Senate bill had a two-tiered approach, allowing the Attorney General, in his discretion, to grant permanent-resident status⁸⁸ to aliens who can establish that they arrived in the country before January 1, 1977,⁸⁹ and temporary-resident status for those who can establish that they arrived before January 1, 1980.⁹⁰

The House version of the amnesty provision was far more generous than that of the Senate, authorizing the Attorney General in his discretion to grant temporary-resident status to illegal aliens who could establish that they arrived in the United States prior to January 1, 1982, and had since resided here continuously.⁹¹ The House version further authorized the Attorney General to upgrade the temporary-resident status to permanent-resident status for aliens who could establish that they had acquired, or were acquiring, a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States.⁹² Both the Senate and House versions also barred all legalized aliens from receiving federally funded public assistance for a certain period of time,⁹³ and provided for a federal grant or reimbursement to the states for the expenses of amnesty.⁹⁴

Employer Sanctions. Another controversial provision of the Simpson-Mazzoli Bill involved the imposition of penalties against employers who knowingly hired illegal aliens. This provision promised to be the most effective measure yet devised for dealing with the problem of illegal immigration, since the vast majority of illegal aliens arrive in this country for the purpose of seeking gainful employment.⁹⁵ The measure was adopted over

⁸⁷ Cohadas, *supra* note 3, at 2275.

⁸⁸ A permanent resident enjoys virtually all the rights of citizenship, with the exception of the right to vote or hold public or military office. Current U.S. law allows a permanent resident to seek U.S. citizenship after five years. 8 U.S.C.A. § 1427 (West 1970 & Supp. 1985).

⁸⁹ S. 529, *supra* note 1, at § 301.

⁹⁰ *Id.* A temporary resident is admitted for lawful residence for a limited period of time, the duration of which is established by the appropriate visa category. Examples of temporary residents are: tourists (B-2 category), students (F category), and businessmen (B-1 category). The duration of stay may often be extended. The Senate version of the Simpson-Mazzoli Bill proposed to grant temporary resident status to those aliens who arrived in the United States after January 1, 1977 but before January 1, 1980. This temporary status was to automatically terminate 3 1/2 years after such status was to be granted, unless the alien had filed an application for adjustment to permanent resident status and such application had not been denied.

⁹¹ H.R. 1510, *supra* note 2, at § 301.

⁹² *Id.*

⁹³ *Id.*; S. 529, *supra* note 1, at § 301.

⁹⁴ S. 529, *supra* note 1, at § 302; H.R. 1510, *supra* note 2, at § 304.

⁹⁵ Smith, *supra* note 76, at 3-4.

the vociferous opposition of Hispanic groups,⁹⁶ who perceived it as a threat to their growing political influence, and civil rights groups, who were concerned with the possibility of institutionalized discrimination.⁹⁷

Both the Senate⁹⁸ and House⁹⁹ versions prohibited the knowing employment of illegal immigrants in American jobs. However, while the Senate version subjected all violators to penalties, the House version subjected first-time violators to only a warning; only those employers who had been previously warned would be subjected to penalties. (Since the INS is only able to visit a very small number of all U.S. employers annually, the House version effectively precluded the use of penalties.) Both versions also required all employers with four or more employees to check each new employee to determine whether he or she is eligible for employment.¹⁰⁰

Guestworkers. Western growers have much at stake with immigration reform. The Simpson-Mazzoli Bill attempted to stop the flow of undocumented workers into the country by penalizing employers who knowingly hire them.¹⁰¹ Many such growers have come to depend upon a supply of cheap, often illegal, labor for harvesting crops. As a result, both the Senate and House versions of the Simpson-Mazzoli Bill codified a special version of the existing "H-2" temporary foreign-worker program for agriculture.¹⁰² The House version, however, was far more generous to the farming interests. Language inserted by the House Judiciary committee, for example, required warrants for "open-field" searches,¹⁰³ an apparent attempt to overrule the recent Supreme Court case of *Oliver v. United States*.¹⁰⁴ In addition, the House adopted a new open-ended "guestworker" program which would have allowed some half million workers to enter the United States for up to eleven months to harvest perishable goods.¹⁰⁵ Opponents saw the guestworker program as a revival of the now infamous *Bracero* program, and Rep. Henry B. Gonzalez

⁹⁶ Cohadas, *supra* note 79, at 1410.

⁹⁷ S. 529, *supra* note 1, at § 101(a)(3); H.R. 1510, *supra* note 2, at § 101(a)(3). Civil rights groups have complained that the employer-sanction provisions will deter employers from hiring employees who are non-white or who have foreign-sounding names or accents. Both versions of the Simpson-Mazzoli Bill minimize this possibility by requiring employers to only establish that they have complied in "good faith" with the identification requirements of that section. An employer who checks the simple documentation identified in the bill would be immune from penalty. An employer who persists in refusing employment to a non-white or foreign-sounding applicant after having been furnished such documentation would be behaving unreasonably.

⁹⁸ S. 529, *supra* note 1, at § 101.

⁹⁹ H.R. 1510, *supra* note 2, at § 101.

¹⁰⁰ *Id.*; S. 529, *supra* note 1, at § 101.

¹⁰¹ H.R. 1510, *supra* note 2, at § 101; S. 529, *supra* note 1, at § 101.

¹⁰² S. 529, *supra* note 1, at § 211; H.R. 1510, *supra* note 2, at § 211.

¹⁰³ S. 529, *supra* note 1, at § 101; H.R. 1510, *supra* note 2, at § 101.

¹⁰⁴ 104 S. Ct. 1735 (1984). The *Oliver* case involved a constitutional challenge to the search of a field of marijuana plants. By a vote of 6-3 the Supreme Court reaffirmed the rule announced in *Hester v. United States*, 265 U.S. 57, 59 (1924), that special protection accorded by the fourth amendment to the people in their persons, houses, papers, and effects is not extended to open fields. *Hester* has been the basis of INS searches of farms and has long been opposed by agricultural interests, civil libertarians, and Hispanics. Cohadas, *Rulings May Affect Immigration Debate*, 42 CONG. Q. 946 (1984). In a second case, *Immigration and Naturalization Service v. Delgado*, 104 S. Ct. 1758 (1984), the Supreme Court by a 7-2 margin upheld the legality of "factory surveys" based upon warrants with only general information. Read together, *Oliver* and *Delgado* express a willingness by the Court to interpret the fourth amendment more narrowly, in favor of the INS and other law enforcement agencies.

¹⁰⁵ S. 529, *supra* note 1, at § 101; H.R. 1510, *supra* note 2, at § 101.

(D-Tex.) bitterly remarked that it amounted to "rent a slave."¹⁰⁶ Adoption of the guestworker program also led to the withdrawal of support for the bill by organized labor.¹⁰⁷

Miscellaneous Provisions. The Senate and House versions of the Simpson-Mazzoli Bill contained a large number of less controversial measures. For the sake of brevity, this section will refer to only a portion of them.

The Senate version established a ceiling on legal admissions of 425,000 per year,¹⁰⁸ exclusive of refugees. The House version contained no similar overall limitation, but did increase the quotas for both Mexican and Canadian immigrants from 20,000 to 40,000 annually.¹⁰⁹ Both versions simplified and streamlined the procedures for adjudication, asylum and judicial review,¹¹⁰ made passing reference to the need for improved enforcement of immigration laws, and called for an increase in appropriations to fund the INS.¹¹¹ Finally, both versions imposed strict penalties against the transport of illegal aliens to the United States,¹¹² and the use, sale, or manufacture of counterfeit or altered identification documents.¹¹³

V. ISSUES AND SOLUTIONS

A. *The Domestic Impact of Immigration*

It is clear that the United States cannot absorb all would-be immigrants from the Third World. The sheer numbers alone dwarf our capacity to absorb all of them. Demand for immigrant visas will exceed supply for the foreseeable future, no matter which policy is eventually adopted. America simply cannot serve as a demographic escape valve for all of today's transitional countries as it did for Europe in the nineteenth century. There appears to be a consensus among American lawmakers to this effect. However, there is much disagreement as to how this policy should be implemented.

It is unquestionably the right of every sovereign nation to exclude unwanted people from its borders. The United States may establish any standard it desires, however arbitrary, for admitting new immigrants. However, although America has the power and authority to adopt draconian measures to deal with the immigration problem, it is unlikely to do so. Legislators will attempt to fashion an immigration policy which comports with America's sense of justice and equality, as well as its historic role as a land of opportunity for people of all backgrounds. Within this context, lawmakers must satisfy constituent special interest groups while attempting to serve the national interest. The task is not an easy one.

It would be utterly xenophobic to assume that no one outside of our borders is capable of contributing to our science, art, technology, or economy. However, "optimum" immigration rates must be established after carefully considering its effect on domestic unemployment, economic growth, environment, and social and political well-being. For example, it behooves policymakers to consider the effect of immigration on U.S. popula-

¹⁰⁶ Cohadas, *supra* note 79, at 42.

¹⁰⁷ S. 529, *supra* note 1, at § 101; H.R. 1510, *supra* note 2, at § 101.

¹⁰⁸ S. 529, *supra* note 1, at § 201.

¹⁰⁹ H.R. 1510, *supra* note 2, at § 201.

¹¹⁰ S. 529, *supra* note 1, at §§ 121-26; H.R. 1510, *supra* note 2, at §§ 121-26.

¹¹¹ S. 529, *supra* note 1, at §§ 111 & 402; H.R. 1510, *supra* note 2, at §§ 111 & 120.

¹¹² S. 529, *supra* note 1, at § 112; H.R. 1510, *supra* note 2, at § 112.

¹¹³ S. 529, *supra* note 1, at § 102; H.R. 1510, *supra* note 2, at § 102.

tion size and composition. At first glance, the addition of one or even two million additional faces per year in a population of more than 230,000,000 does not seem to be statistically significant. However, the cumulative effect of such immigration is astonishing. Immigration (both legal and illegal) now accounts for about half of the nation's population growth,¹¹⁴ and high fertility among recent arrivals accounts for a substantial portion of the rest.¹¹⁵ Although a "Malthusian" check to further increase in America's population is not a prospect in the foreseeable future, the power of such continued growth should not be underestimated.

Figure 3 below contains a number of projections of U.S. population size, given various assumptions on the level of immigration. The cumulative demographic effect of such immigration is well illustrated.

Such a dramatic increase in the country's population will tax the nation's housing, social services, schools, economic infrastructure, and environment. It will also have dramatic socio-demographic impacts: for instance, if present trends continue, whites will become a minority in America sometime between the years 2025 and 2050.

America has historically been denoted a "melting pot" of various European nationalities. Americans take pride in being an amalgamation of people from elsewhere. During the years of greatest European immigration, however, nativist sentiments in this country ran deep. Indeed, the first quantitative restrictions on immigration to the United States consisted of an attempt to preserve the ethnic makeup of the nation's white population.¹¹⁶

Time, assimilation, and intermarriage among the various European nationalities have reduced such nativist feelings. Many proponents of open-door immigration during this century maintain that Latin Americans, Haitians, Cubans, Vietnamese, Filipinos, Indians, Arabs, Africans, and Hmong tribesmen can be forged into Americans in a similar manner. However, this view fails to account for the fact that numerous non-Europeans must be absorbed into a culture that is fundamentally European — a task more formidable than that which faced the Irish who settled in Boston or the Germans who settled in Milwaukee. Even if cultural assimilation is successful, racial differences will persist, as well as the ugly prospect of racial discrimination.

Consider the experience of the American black. Notwithstanding the existence of well-intentioned legislation and social programs designed to foster greater economic and social assimilation (i.e., "integration"), blacks as a group lag behind whites in virtually all indices of economic and social well-being. In effect blacks remain a sub-culture (some would say sub-class) in America.¹¹⁷ One should query whether today's immigrants will fare any better than this Third World population which is already residing here.

The cause of the Third World's demographic malaise is, of course, economic underdevelopment. There would be no need to police our borders if the rest of the world had reached demographic stability through economic prosperity. We are, in fact, directly affected by the quality of life on the other side of the "Golden Door." Immigration debate should therefore not be confined to enforcement issues; policymakers should also explore the means by which we can foster economic development abroad.

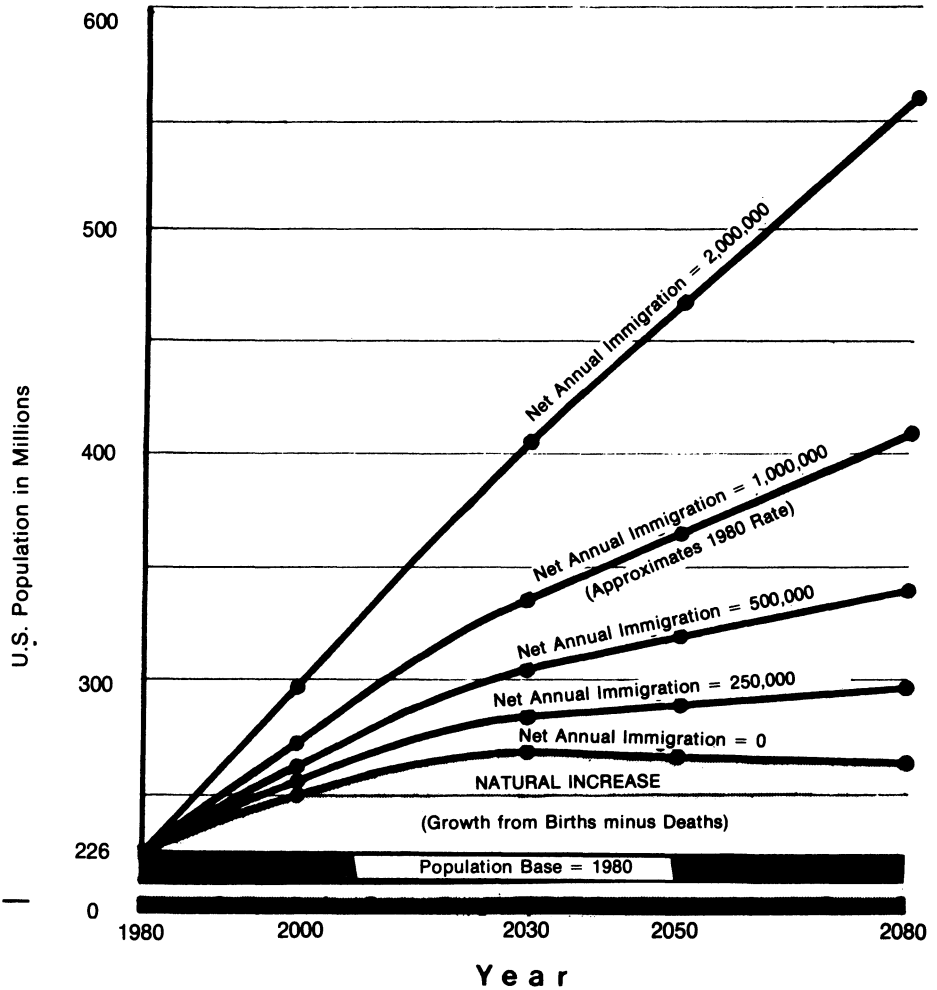
¹¹⁴ Smith, *supra* note 76, at 3.

¹¹⁵ See generally D. SPAIN, *THE UNITED STATES: JUST THE FACTS* (1983).

¹¹⁶ See *supra* notes 44-52 and accompanying text.

¹¹⁷ See generally Bronfenbrenner, *Hyphenated Americans*, in U.S. IMMIGRATION POLICY 9, 17-25 (R. Hofstetter ed. 1984).

FIGURE 3
 The Impact of Immigration on U.S. Population Size:
 Projected U.S. Population Growth by Level of Annual Immigration



SOURCE: Bouvier, *The Impact of Immigration on U.S. Population Size* 4 (Table 2) in POPULATION REFERENCE BUREAU, INC., *POPULATION TRENDS AND PUBLIC POLICY* (1981) (total fertility rate 2.0).

B. *The Need For Developmental Aid*

Just as the United States cannot absorb more than a tiny fraction of would-be immigrants to this country, it cannot single-handedly undertake the economic development of the Third World. This should not suggest, however, that any effort to extend economic aid to the Third World is futile. Properly focused economic assistance can indeed accelerate economic progress.

If such aid is concentrated on those countries from which the largest numbers of immigrants presently arrive (e.g., Mexico) it is possible that the flow of immigration from such countries could be substantially reduced. In an earlier article this author discussed

one possible means by which such a program of developmental aid could be implemented.¹¹⁸

Relatively high wages in this country and the integration of the world's economy have contributed to the gradual shift from a manufacturing to a service-oriented economy. American labor-intensive manufacturers frequently encounter stiff competition from enterprises in developing countries, where the lower prevailing wages give certain industries a competitive advantage. In order to become competitive, U.S. manufacturers must obtain either wage concessions from their employees or a public subsidy through import restrictions. Neither alternative is particularly attractive.

Such enterprises could also become competitive by relocating their manufacturing operations to a low-wage country such as Mexico, and export the goods back to the United States and elsewhere. The relocation of an internationally competitive industry to Mexico would be a bonanza to the Mexican economy, and the American consumer, meanwhile, would enjoy lower cost goods. The pressure to migrate to the United States would also diminish as Mexicans find suitable employment closer to home. American immigration policymakers should thus encourage the relocation of non-competitive labor-intensive manufacturing industries to the major sending countries.¹¹⁹

C. Enforcement: Employer Sanctions

There is perhaps no place on earth where the First World meets the Third World more abruptly than at the U.S./Mexican border. The authors of the Simpson-Mazzoli Bill correctly recognized that most immigrants are attracted to this country by the prospect of employment at relatively high wage rates. Indeed, the U.S. minimum wage currently exceeds prevailing wage rates in Mexico by three or four hundred percent. The imposition of penalties against employers who knowingly hire illegal aliens is a fresh new approach to enforcement of immigration law. If the penalty provisions are not too diluted by the conferees, it should help stem the tide of illegal immigration.

The late Professor William P. Travis observed that the U.S. minimum wage is simultaneously too high and too low.¹²⁰ It is high enough to attract millions of undocumented workers and discourage the formation of new jobs (the decline of the full-service gas station in America can be blamed at least in part on the existence of a "high" minimum wage). At the same time, the minimum wage is too low to attract sufficient numbers of American workers to what are perceived as undesirable jobs. Thus, we have the incongruous situation whereby millions of illegal aliens arrive to claim jobs at or below the U.S. minimum wage, under conditions of relatively high domestic unemployment.

To remedy the situation, Professor Travis proposed a government subsidy of the wages of American citizens in traditionally low-paying jobs,¹²¹ whereby the employer would pay less, and the employee receive more, than the stated minimum wage. A subsidy, he argued, would reduce unemployment by making work an economically

¹¹⁸ Hofstetter, *supra* note 31, at 65-77.

¹¹⁹ The United States can assist the relocation of American manufacturers by a variety of means: it can provide low-cost loans or loan guarantees, technical/managerial assistance, and cut red tape. U.S. policy currently favors foreign investment. The Overseas Private Investment Corporation (OPIC), for example, provides insurance for U.S. private investment overseas.

¹²⁰ Travis, *Migration, Income Distribution, and Welfare Under Alternative International Economic Policies*, in U.S. IMMIGRATION POLICY 81, 81-106 (R. Hofstetter ed. 1984).

¹²¹ *Id.* at 106.

attractive alternative to welfare, and reduce illegal immigration as Americans flock to traditionally shunned jobs. Travis calculated that the benefits of reduced unemployment, transfer payments and immigration would greatly exceed the cost of such a subsidy.¹²²

The employer-sanction provision of the Simpson-Mazzoli Bill could be greatly strengthened by the addition of a wage subsidy. Illegal aliens would be less inclined to immigrate if fewer jobs awaited them in car washes, hotels, and kitchens. Congress should carefully consider Professor Travis' proposal.¹²³

D. Amnesty

The amnesty provision of the Simpson-Mazzoli Bill is an attempt to deal with the thorny issue of illegal immigrants already residing in this country.¹²⁴ The actual number of illegal aliens residing in the United States is hotly disputed.¹²⁵ Nevertheless, all experts seem to agree that the numbers are increasing very rapidly. (See Figure 4 below.)

Available data suggests that our "Spanish origin" population increased by 61 percent between 1970 and 1980,¹²⁶ which should indicate the magnitude of growth of the illegal alien population. Accordingly, the cut-off date selected by Congress will have a considerable impact on the number of aliens who are granted amnesty.

The prospect of forcibly expelling millions of illegal immigrants who have resided here for years is anathema to most Americans. Critics of the amnesty provision complain, however, that amnesty rewards lawbreakers, encourages others to do the same, and robs U.S. citizens of employment.¹²⁷ The legalization issue is further complicated by the fact that the United States is one of the few countries in the world that automatically grants citizenship to anyone born within its borders.¹²⁸ The extremely high birth rate among illegal aliens in the United States is well-known.¹²⁹ The fact that the parents of such youngsters reside here illegally does not prevent them from enjoying all of the benefits of American citizenship. Consequently, a forced expulsion of illegal aliens from the country would impose tremendous personal hardship on many of their children who are now citizens of the United States. Delays in confronting the problem have obviously made matters worse.

The Simpson-Mazzoli Bill attempts to mitigate the cost of amnesty by barring illegal

¹²² *Id.* Prof. Travis was hardly a proponent of generous social programs. He was therefore quite surprised by the results of his computer analysis, which indicated that the benefits of a wage subsidy would greatly exceed costs. Fiscal conservatives should be attracted by his proposal.

¹²³ A wage subsidy should obviously be limited to those jobs thought of as undesirable, and, hence, regularly filled by illegal aliens. Initially, the wage subsidy program could also be limited to those states which border Mexico. The author recognizes that there will be problems in locating and defining jobs which merit a wage subsidy, but such problems may be overcome with thought and careful planning.

¹²⁴ It is worthy to note that there would be no such problem if the INS had been adequately funded during the 1970's so as to enable it to effectively enforce existing immigration law. This experience should dispel any doubt as to the cost-effectiveness of amounts expended on enforcement. See *infra* note 130.

¹²⁵ See Corwin, *The Numbers Game: Estimates of Illegal Aliens in the United States, 1970-1981*, in U.S. IMMIGRATION POLICY 223, 223-97 (R. Hofstetter ed. 1984).

¹²⁶ D. SPAIN, *supra* note 115, at 2. See generally Corwin, *supra* note 125, at 223-97.

¹²⁷ Cohadas, *supra* note 81, at 1494.

¹²⁸ U.S. CONST. amend. XIV, § 1.

¹²⁹ Sehgal and Viallet, *Documenting the Undocumented: Data, Like Aliens, Are Elusive*, 103 MONTHLY LAB. REV. 18, 18-21 (1980).

FIGURE 4
Conjectural Estimates of Illegal Aliens Settled in the
United States in 1981

<u>LOW</u>	<u>HIGH</u>	
5,400,000	6,790,000	<p>MEXICAN. Mostly unskilled and semi-skilled workers, male and female, who, because of border proximity, have on the average possibly 60% to 70% family dependents in the household, including many U.S. born children.</p> <p>Rough breakdown: California, 2.5-3.0 million; Texas 2.0-2.5 million; Illinois, 250,000-350,000; Colorado, 150,000-200,000; Arizona, 90,000-100,000; New Mexico, 60,000-90,000; other states, 400,000-500,000.</p>
400,000	530,000	<p>CARIBBEAN. Mainly unskilled workers and family dependents who commonly live near black and Puerto Rican populations, as in New York City, Newark, Miami, and Washington, D.C. Also includes many middle- and upper-class expatriate families, many with professional training.</p> <p>Rough breakdown: Dominicans, 140,000 to 180,000; Haitians, 150,000-200,000; Jamaicans, 80,000-100,000; plus 30,000-50,000 Trinidadians, Tobagans, Barbadians, and others, some of them in the U.S. Virgin Islands and Puerto Rico.</p>
390,000	500,000	<p>CENTRAL AMERICAN. Mostly in Hispanic areas of Los Angeles, San Francisco, New York, Chicago, Miami, Houston, and Washington, D.C., employed as common labor and domestics. But includes many student overstays, and tens of thousands of quasi-political and "economic" refugees from all social classes, mainly Salvadorans and Nicaraguans, of the latter several thousand have been granted asylum.</p> <p>Rough breakdown: Salvadorans, 200,000-230,000; Guatemalans, 70,000-110,000; Panamanians, 60,000-70,000; Nicaraguans, 40,000-50,000; other, 20,000-30,000.</p>
270,000	380,000	<p>SOUTH AMERICAN. Mostly in metropolitan cities like New York, Miami, San Francisco, Los Angeles, Miami, Houston, Chicago, and Washington, D.C. Includes a mix of overstay students and visitors, professionals, expatriates, drug traffickers, as from Colombia, and common laborers.</p> <p>Rough breakdown: Colombians, 100,000-120,000, Argentinians, 40,000-60,000, Ecuadorans, 30,000-50,000; Peruvians, 20,000-30,000; other, 80,000-100,000.</p>
440,000	540,000	<p>ASIAN. Principally in "China towns," as in Los Angeles, San Francisco Bay area, or New York City. Includes many overstay students and trainees, as well as numerous relatives who labor in small family-run shops and restaurants or in nearby garment "sweat shops."</p> <p>Rough breakdown: Chinese-Taiwanese, 300,000-350,000; Koreans, 40,000-60,000; Southeast Asians, 80,000-100,000; Japanese, 20,000-30,000.</p>
250,000	300,000	<p>FILIPINO. Mainly in California and Hawaii as unskilled and semiskilled labor, but also includes many overstay students, visitors, trainee professionals, relatives, and expatriates of all social classes.</p>

aliens seeking temporary or permanent resident status (as the case may be) from most forms of public assistance.¹³⁰ This particular provision also reflects some desire among lawmakers to penalize illegal aliens for their wrongdoing. Such a "penalty" may indeed be a small price to pay for acquiring legal residence in the United States.

There was little discussion among lawmakers and commentators of proposed requirements that all aliens seeking amnesty file delinquent tax returns and pay overdue taxes and penalties on wages earned in the United States during their illegal residency. The Internal Revenue Code makes no distinction between legal and illegal residents; both are subject to taxation on U.S. sourced income.¹³¹ A substantial number of illegal aliens earn wages "off the books" and have never filed income tax returns.

Although the Simpson-Mazzoli Bill contains no specific provision requiring aliens seeking amnesty to file delinquent income tax returns, one would expect the Internal Revenue Service to be attentive to aliens applying for amnesty. Rep. Kent Hance has argued that few aliens will try to gain legal status for fear of assessment for back taxes.¹³² Fairness dictates that such aliens be subjected to U.S. taxation as a condition of legal residency, even though the enforcement of such a requirement would admittedly be difficult. Regardless, serious consideration should be given to requiring illegal aliens to file delinquent returns and pay delinquent taxes and penalties as a condition of amnesty.

E. *Guestworkers*

The guestworker program established by the Simpson-Mazzoli Bill was a response to western agricultural interests in need of cheap migrant labor. An open-ended guestworker program was passed by the House against the recommendation of the Select Commission on Immigration and Refugee Policy (SCIRP)¹³³ and over the opposition of organized labor,¹³⁴ Hispanic organizations and civil rights groups.¹³⁵ A recent article¹³⁶ observed that employers who rely on undocumented workers are not in the mainstream of American business, and concluded that immigration is not an important economic issue for most American businesses. On this basis, one could conclude that only those agricultural interests that lobbied extensively for the guestworker provision stand to gain by its passage.

The experience of the European guestworker programs may be illustrative of the problems which may confront a new *Bracero*-type program.¹³⁷ During the 1960's, years of chronic labor shortage in Europe, European employers lobbied for the right to employ temporary foreign workers to fill industrial jobs. Not surprisingly, such "temporary" workers sought every available means to remain, and employers were anxious to minimize training costs and worker turnover. The guestworkers were soon followed by their

¹³⁰ Cohadas, *supra* note 81, at 1494. Rep. Dan Lungren (R-Cal.) estimated that the House's version of the amnesty provision would nevertheless cost \$6.6 billion between 1985 and 1989. *Id.*

¹³¹ Internal Revenue Code of 1954 (as amended), 26 U.S.C. §§ 861-79 (1982).

¹³² *Opponents Vow to Defeat Immigration Compromise Bill*, Indianapolis Star, Sept. 19, 1984, at 11, col. 1.

¹³³ STAFF OF SELECT COMM. ON IMMIGRATION AND REFUGEE POLICY, COMM. ON THE JUDICIARY, 97TH CONG., 1ST SESS., FINAL REPORT: U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST 45 (Comm. Print 1981).

¹³⁴ S. 529, *supra* note 1, at § 101; H.R. 1510, *supra* note 2, at § 101.

¹³⁵ Cohadas, *supra* note 79, at 1408.

¹³⁶ Hector, *The Non-Issue of Immigration*, FORTUNE, July 23, 1984, at 91.

¹³⁷ See generally Martin and Houstoun, *European and American Immigration Policies* 29, 29-54, in U.S. IMMIGRATION (R. Hofstetter ed. 1984).

dependents. Economic growth has since slowed, and the guestworkers now draw disproportionately upon the social programs they once subsidized. Today large numbers of nationals from Turkey, Algeria, and other underdeveloped countries inhabit American-style ghettos in the larger cities of western Europe. Philip L. Martin and Marion F. Houstoun have observed:

The guestworker compromise, so appealing in its simplicity, failed in Europe because its industrial democracies were not prepared to treat alien labor as a commodity or to break the bonds that tie migrants to their employers. The longer migrants remained, the more likely they were to have obtained rights to stay and to have their dependents join them. Since few nations proscribe family reunification, the immigration of workers resulted in still more immigration.¹³⁸

In short, the guestworker programs failed in Europe because policymakers neglected to anticipate all of the likely costs and problems generated by such programs. Europeans expected a cost-free subsidy of their industries, and instead received a growing Third World population which survives on such countries' generous social programs.

Unemployment in the United States in recent years has hovered between seven and ten percent. There are plenty of American workers available to pick tomatoes, providing the growers offer prevailing American wages and benefits. If tomatoes are too labor-intensive to be profitably grown in the United States, then perhaps the American consumer should buy Mexican tomatoes, and U.S. growers should plant crops that can be harvested by machines. In view of the failures of guestworker programs in the past, lawmakers should have been cognizant of the fact that such programs inevitably lead to a public subsidy of the interests employing such workers. The guestworker program should be excised from the Simpson-Mazzoli Bill.

VI. SUMMARY AND CONCLUSION

Immigration to the United States is at an all-time high. The number of immigrants aspiring to reach the "Golden Door" will increase even further so long as Third World population growth remains unchecked. The current level of immigration exceeds that which will serve the national interest. Therefore, steps should be taken immediately to deal with the situation.

Immigration reform is a politically sensitive issue involving many competing interests. The Simpson-Mazzoli Bill addresses a number of serious problems, and in its present form is unquestionably an improvement over the prevailing chaos. Time will tell whether lawmakers will agree on a compromise measure.

Immigration reform should focus upon developmental aid to the major sending countries as well as enforcement of applicable laws. The Simpson-Mazzoli Bill *per se* does not adopt the former approach. However, legislation fostering economic development abroad may be subsequently passed by Congress in some form other than immigration reform.

The Simpson-Mazzoli Bill imposes sanctions upon employers who knowingly hire illegal aliens, and, if adequately enforced, promises to be a highly effective means of controlling illegal immigration. This provision could be strengthened with the adoption

¹³⁸ *Id.* at 54.

of a wage subsidy. Such a wage subsidy would most likely appear as an amendment to the minimum-wage law, rather than as a specific immigration measure.

The granting of amnesty is a pragmatic means of dealing with America's increasing population of illegal aliens, the product of years of lax enforcement by the INS. The prospect of rewarding intentional lawbreakers with U.S. residency and, ultimately, U.S. citizenship, is offensive without some *quid pro quo*. Accordingly, the Simpson-Mazzoli Bill should mandate the filing of delinquent income tax returns by illegal aliens seeking amnesty.

The guestworker program is an unworkable and expensive public subsidy of agricultural interests, and hence should be excised from the bill. Foreign workers obviously need not be imported specifically for American jobs so long as domestic unemployment remains high. Agricultural lobbyists complain that a scarcity of manpower in the United States prevents the harvesting of perishable crops. This "problem" would quickly disappear if the growers were to offer prevailing American wages and benefits.

The Simpson-Mazzoli Bill cannot affect the demographic and economic factors which underlie immigration. One cannot legislate the disappearance of a global problem. Immigration will therefore remain an intractable enforcement problem for years to come. Even if the bill is finally adopted, lawmakers must continue to be apprised of the complexity of the immigration problem and be prepared to deal with it in a comprehensive fashion.