



Three Pathologies in U.S. Immigration Policy

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The influx of Central American child refugees is just the latest revelation of serious and enduring problems in U.S. immigration policy. Earlier this year, many media outlets highlighted the record number of deportations conducted under the Obama administration, amounting to the removal of a city of two million, equal to the combined population of Boston, Seattle, Miami, and St. Louis. Before people could wrap their heads around these numbers, the next turn of the news cycle put the spotlight on Central American children crossing the border without caretakers. Important as any of these stories may be, they simply highlight symptoms of an underlying pathology. U.S. immigration policy and debates about it suffer from three fundamental shortfalls – downplaying global factors, ignoring gaps between legal formalities and on-the-ground realities, and failing to recognize inherent costs and moral aspirations in immigration policy.

Whether in Congress or the media, U.S. policy debates about immigration too often focus disproportionately on domestic factors such as “securing borders” and ignore crucial political and economic realities in other nations. For example, the recent influx from Central America of unaccompanied children and families with children has less to do with U.S. border security than with the realities of gang violence, drug cartel activities, and ventures by human smugglers. Central American states are not all able to ensure the rule of law, and criminal organizations have flourished in countries with weak states like Honduras, El Salvador, and Guatemala; unsurprisingly, most child refugees come from the most violent countries in the region. Years ago, U.S. military involvements in those countries inhibited the rise of professionalized police and military forces able to enforce law. By contrast relatively developed Costa Rica and very poor Nicaragua at least share the capacity for more professionalized law enforcement. U.S. immigration authorities must take these realities into account in devising responses to the newest influxes – and the public needs to understand the issues, too.

Another enduring problem is that gaps between immigration laws on the books and street-level realities open the door to administrative discretion and political cross-currents, with unpredictable results. As happened when President Obama, for political and practical reasons, decided in 2012 to give predictable protection from the threat of deportation to younger United States immigrants who had been brought to the United States as children before 2007, administrative discretion can mitigate social disruptions. But Obama’s Deferred Action for Childhood Arrivals program does not resolve the plight of undocumented immigrant residents who are not so much “Americans in waiting” as people in limbo, facing the vagaries of other administrative measures and political possibilities such as more stringently enforced borders, an aggressive deportation agenda, and more draconian local-level policies.

The basic reality is that some eleven million undocumented immigrants live and work in the United States, mostly in constructive and law-abiding ways. They could not all be deported under any realistic circumstances, yet stop-gap administrative and legal measures can make these unauthorized migrants’ daily lives miserable and unpredictable. And stop-gap measures also affect U.S. citizens. For example, in 2008, when the

Immigration and Customs Enforcement agency raided the biggest employer in Postville, Iowa, it arrested 389 immigrant workers in a town of just over two thousand residents. American-born citizen children were separated from their parents, school enrollments and budgets dropped, local businesses closed, and the housing market collapsed along with the local tax base. Six years later, the town has yet to recover.

Discretion in the implementation of immigration and refugee law can lead to sudden twists. A few weeks ago, debates concerning unaccompanied minors centered around finding safe spaces for them, often with parents or relatives, until cases could be heard. More recently, however, the emphasis seems to have shifted toward rapidly processing claims of children and families with children. A Bush administration strategy pioneered in Postville – the mass processing of complicated legal cases in a compressed time frame with inadequate access to legal counsel and limits on due process – could end up leading to yet another round of inhumane effects.

In practice, discretionary measures meant to mitigate gaps in existing law can even exacerbate the problems they aim to fix. Assigning undocumented people contingent rather than stable legal statuses, for instance, can make unauthorized workers more vulnerable to exploitation by unscrupulous employers and legal professionals. Already, a billion dollar detention center industry, backed by a lobby, has emerged because the U.S. executive branch is determined to look tough about law and order issues for immigrants awaiting determination of their final status, often after being apprehended for minor infractions.

In the final analysis – and here is another reality often ignored in the media and public debates – many aspects of the current immigration impasse are rooted in difficult tensions between our hearts and our wallets. On the one hand, most Americans want national immigration policies that express who "we" are – either a tough-minded nation of laws or a welcoming nation of immigrants. On the other hand, U.S. labor markets need workers for jobs that are not being filled by natives, and employers want to attract the best workers in the global competition for the talent that drives innovation.

After World War II, the United States and other Western countries mostly abandoned the use of ethnic criteria to select legal immigrants as a way to reconcile these tensions. Recently, many countries have implemented temporary migration programs as a strategy to meet economic labor needs while preserving the imagined national community. Yet history reveals that temporary immigrants tend to overstay their legal status, and like undocumented arrivals who may or may not be temporarily exempted from deportation, they can end up with uncertain legal status. It is all too easy for a nation to accumulate more and more categories of immigrants who are less than full citizens and may even have little prospect of coming out of the shadows of illegality or problematic legal status.

If the United States pursues ever more contingent statuses for newcomers rather than viewing immigration as a step to a more permanent status, American society and democracy will be in for momentous and mostly undesirable shifts. Perpetually contingent relations between millions of less than fully documented migrants and their new home country will only bring more crises like the ones we have seen in recent years. The United States urgently needs to work out a strategy to reconcile our hearts and our wallets. We need to find our way toward stable, wise decisions not dictated by cycles of partisan elections.

As we find our way toward making such decisions, American policymakers and citizens need to take international as well as domestic realities into account and consider the costs of continuing with an ever shifting set of ad hoc, discretionary responses to fundamental, long-term dilemmas. Immigration challenges are here to stay and we have to do a better job of debating and dealing with them.

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