The impact of immigration on economic welfare and social stability has been the subject of controversy in the English-speaking world since the sixteenth century. Tudor monarchs, colonial governors, and American presidents have generally supported liberal entry laws on the premise that they spur economic development. This is understandable, as a large and growing economy confers political benefits on its national leaders, both domestically and in foreign affairs. The British Parliament and the American Congress, however, reflecting the mood of a populace typically more concerned with social stability than with aggregate economic growth, have frequently taken a less sanguine view of aliens.

In the United States, social concerns—religious, racial, and ethnic—create strong political pressure to curtail entry by aliens. Yet, in what is viewed in this Article as the first phase of American immigration policy, the migration from European nations, immigration was essentially unrestricted.¹ For nearly a century and a half, economic self-interest overcame political opposition to open entry.²

The passage of the Act of May 19, 1921 (the 1921 Immigration Act) heralded the beginning of the second phase of United States immigration policy.³ Since its enactment, the nation has attempted to limit entry by immigrants without fully assessing either the long-term economic consequences of lower aggregate immigration or the criteria used for admissions. Since limitations first were imposed, only a fraction of all immigrants admitted have been selected because they possess skills that would benefit the nation. Although the

¹. This policy of open entry did not extend to non-European groups. Both skilled and unskilled Chinese workers were shut out because “Chinese laborers in the country endanger the good order of certain localities.” Act of May 6, 1882, ch. 126, 22 Stat. 58. Most other Asians (except the Japanese) were excluded by Act of Feb. 5, 1917, Pub. L. No. 301, 39 Stat. 874.

². Optimism that the nation could absorb large numbers of immigrants and the vision of the United States as a place of refuge for the oppressed of other lands also facilitated generous entry policies prior to World War I, although these factors appear to have been secondary to economic incentives.

The economy has gained from the presence of immigrants who join family members already residing in this country, these benefits are coincidental to family reunification, the principal objective of immigration policy over the last six decades.

This Article discusses the economic effects of several key immigration laws and concludes that, fortuitously, the immigrants admitted have contributed to the nation's economic development. The positive contributions include higher rates of national economic growth, a rise in per capita income, and strengthened urban core economies. However, had the nation pursued more generous entry policies since the 1920s additional advantages would have accrued, particularly to inner cities.

The positive experience of recent immigration, the changing domestic demographic patterns, and the urgent need to improve the quality of the nation's labor force suggest that immigration laws should be revised. The concluding section of this Article discusses the need to link admissions criteria more closely with domestic labor needs. The proposed approach is a modified version of the immigration statute that passed the United States Senate in 1988.

The premise for the recommended revisions is that the nation has entered a period of labor shortages which, in the absence of selective changes in the labor pool, threaten to slow economic growth. In particular, current and projected deficiencies in the scientific and engineering professions could harm the national drive to become more competitive in the world market. Increased immigration is one way to meet the short- and long-term needs of American industry and institutions and to reduce inflationary pressures that result from labor shortages.

I. The Era of Unrestricted Immigration

Immigration to this land was initially encouraged by the British Crown during the colonial period to populate a nearly empty continent. Britain attempted to restrict entry only in the latter part of the eighteenth century, when—in part as result of their liberal immigration policies—the colonies exercised their growing economic strength to seek political objectives.4

When the Republic was formed, states generally followed citizenship policies that encouraged immigration. However, political and

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social concerns associated with a rapid inflow of people from other nations were expressed even by advocates of unrestricted immigration, including George Washington and Thomas Jefferson. Anti-immigrant sentiment among the populace erupted first against Germans, followed by movements to restrict, in turn, Irish Catholics, Chinese, Japanese, and, finally, eastern as well as southern Europeans. But groups opposing alien entry lacked the political power to substantially limit European immigrants, until the 1920s, and entrants from the western hemisphere, until decades later. Economic benefits accruing to industry from a continuing flow of foreign-born workers overcame substantial but episodic popular opposition to their entry. President Cleveland vetoed legislation to exclude illiterate entrants on the premise that such workers nonetheless contributed to national growth. President Wilson vetoed similar legislation in 1915, and Congress did not succeed in overcoming presidential opposition on this issue until 1917. In fact, most occupants of the White House who expressed views on immigration policy endorsed the liberal-entry posture of the business community.

Influential landowners, industrialists, and merchants associated open immigration with increased sales and profits. Business recognized that an expanding population stimulated consumption and caused property values to rise. Furthermore, aliens represented a major source of young workers for expanding factories. Complaints by organized labor that immigrants were competing unfairly, undercutting wages, and lowering the standard of living for their members failed to arouse political support. Labor also blamed aliens for the cyclical economic downturns plaguing the nation, a phenomenon unrelated to immigration policies. To the contrary, an open-borders immigration policy helped to relieve domestic unemployment. When jobs were scarce, fewer immigrants entered the United States, while some recent immigrants returned to their native lands.


The positive relationship between domestic demand for workers and immigration levels had already been established by the 1920s.\textsuperscript{8}

During the 1920s, the business community continued to endorse a pro-immigration policy and opposed measures to severely constrain entry from eastern and southern Europe.\textsuperscript{9} But as the country grew increasingly intolerant of ethnic minorities after World War I, business could no longer prevent the passage of legislation limiting entry from "undesirable" nations. Nonetheless, during most of its existence, the United States pursued immigration policies that were in its economic self-interest.

The effects of unrestricted immigration on the American economy are illustrated by its population size and productive capacity in comparison to that of other nations. If the nation's founders had essentially sealed the border when the Republic was established, the population would be perhaps two-fifths its current size—less than that of Japan and only one-third the size of the European Economic Community.\textsuperscript{10} In the 1820s, prior to the first wave of mass immigration, the United States accounted for only a small share of the world's economy. In that first period of mass immigration, which began in the 1830s, the influx of Irish, German, and English workers provided the unskilled and skilled labor force necessary to quickly establish a manufacturing economy in urban areas.\textsuperscript{11} The massive influx of eastern and southern Europeans half a century later allowed industry to expand at a rapid rate and the United States to become the world's leading industrial power by the end of the nineteenth century. During the late 1920s, when immigration limits became fully effective, 43% of global economic output originated in the United States.\textsuperscript{12} The pace of economic growth was attributable to several factors, including an abundance of natural resources, a stable political system, and the rapid absorption of technological innovations. However, in the absence of a sizable and motivated

\textsuperscript{8} See H. Jerome, Migration and Business Cycles 239-240 (1926).
\textsuperscript{10} One estimate is that by 1920, 50% of all United States residents born since the American Revolution were immigrants or descendants of immigrants. See S. Kuznets, Growth, Population and Income Distribution 3 (1979). Since 1920, gross immigration to the United States has totalled about 20 million. Therefore, the estimate that the nation owes three-fifths of its population to immigration appears to be reasonable.
immigrant labor force, the economy could not have expanded at the rate achieved between 1830 and 1930.

One estimate is that the immigrant contribution to national economic growth during each of the four decades between 1870 and 1910 ranged from 16% to 22%.\textsuperscript{13} In addition to expanding the economy, immigrants raised the per capita income of native residents. Three factors account for the higher standard of living than would have been achieved in the absence of alien workers. First, a considerably higher proportion of immigrants than of native-born persons was employed, increasing the per capita output of goods and services. Although immigrants were somewhat less skilled, and presumably less productive, than domestic workers, high per-capita labor-force participation more than offset this disadvantage. Second, the cost of raising and educating children in the United States was reduced because most immigrants came as young adults. By 1912, estimates place the savings attributable to importing human capital at between 13% and 42% of the capital stock in the American economy.\textsuperscript{14} Immigration thus not only provided a source of labor supply and skills, but contributed to the formation of capital that accelerated the rate of development. Finally, economies of scale associated with a larger labor force in the production of goods also contributed to the nation’s per capita income growth.

II. Economic Effects of Immigration Constraints Since 1921

Since the end of World War I, numerous immigration laws have been enacted by Congress. The most significant laws from an economic perspective have been the Immigration Act of 1924 (the 1924 Immigration Act), the Immigration and Nationality Acts of 1952 and 1965 (the 1952 Immigration Act and the 1965 Immigration Act), and the Immigration Reform and Control Act of 1986 (IRCA).\textsuperscript{15} These laws have several notable characteristics in common. First, with the exception of IRCA which was aimed at curtailing illegal immigration, the intent of each was to restrict legal immigration to the

\textsuperscript{13} P. Hill, The Economic Impact of Immigration into the United States 36 (1975).


United States. Therefore, admissions criteria—who should be allowed to enter—are an important component of each measure. Second, none of the legislation was enacted principally in response to economic pressures. These laws, without exception, were passed during periods of economic expansion. Finally, each was a political remedy resulting from social concerns.

The absence of significant economic pressures leading to enactment of these laws does not suggest that the economic consequences of their passage were insignificant. The size and composition of the American labor force, particularly in urban areas, were substantially affected by these measures. However, the significance of immigration-related labor force changes differs over time as a result of shifts in the nation's economic structure, technological standing, and demographic profile.

Common to all the legislation examined in this Article is the restriction of the free flow of labor, causing a lower rate of aggregate economic growth than that likely to have been achieved in the absence of limitations. The nation's share of the world's economy has therefore declined, but the significance of this fact may be more political than economic. Since the 1920s, the United States has chosen to assign the most weight to non-economic factors—social, political, and environmental—in formulating immigration policy. In part, Congress has made conscious political decisions responding to public sentiment, which generally favors restrictive policies. Unfortunately, the economic effects of limiting immigration and applying non-economic admission criteria have rarely been the subject of a public debate likely to influence voter perceptions of immigrant contributions. There is a dearth of studies on this admittedly difficult to quantify subject. However, an understanding of how immigration laws have interacted with the economy can provide one basis for future policy deliberations.

A. The 1921 and 1924 Immigration Acts

The 1921 Immigration Act imposed as a temporary measure a ceiling of 358,000 immigrants yearly, with half the quota allocated...
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to the United Kingdom, Germany, and the Scandinavian nations.\textsuperscript{19} The more restrictive 1924 measure reduced the maximum annual influx to 164,667, based on the 1890 census distribution of population by national origin.\textsuperscript{20} The United Kingdom, Ireland, Germany, and Scandinavia were allowed 133,075 admissions, or 81\% of the total. Total annual gross admissions from eastern Europe, Italy, and Greece, the nations most severely constrained by these limits, did exceed quota limits during the 1920s, because wives, husbands, and unmarried children under the age of 21 of United States citizens could enter as nonimmigrants.

The 1924 Immigration Act, with minor exceptions, made no explicit provision to give admission preference to persons with particular skills or talents.\textsuperscript{21} Nonetheless, the proportion of professional and skilled workers who entered during the 1920s was higher than in earlier decades.

Although immigration restrictions imposed by Congress in 1921 and 1924 were not primarily linked to economic issues, several immediate and long-term economic consequences of the legislation emerged. Among the adverse initial effects of limiting the inflow of eastern and southern Europeans was a reduction in the demand for housing and consumer goods in the urban areas where most of these immigrants settled. The timing of the restrictions was particularly unfortunate. Curtailed demand for goods and services and the resulting decline in investment coincided with the farm crisis, bank failures, rising tariffs, reduced capital flows, and the stock market collapse precipitating the Great Depression.

Had immigration remained unconstrained, an estimated 2.9 million more aliens would have entered the United States during the 1920s.\textsuperscript{22} Their arrival would have stimulated the demand for

\textsuperscript{19} The 1921 Immigration Act specified that the number of aliens to be admitted would be limited to 3\% of the number of foreign-born persons of such nationality resident in the United States, as determined by the U.S. Census of 1910. This number was calculated as 357,803. See Bureau of the Census, U.S. Dept. of Commerce, Statistical Abstract of the United States 1940, at 104 table 106 (1941) [hereinafter 1940 Statistical Abstract].

\textsuperscript{20} Id.

\textsuperscript{21} Immigration Act of 1924, Pub. L. No. 139, at 56, 43 Stat. 153, 155 (1924). Ministers and college professors were exempt. In fact, only about 1,000 persons were admitted because of their professional occupations.

\textsuperscript{22} The 2.9 million number is based on total estimated net immigration from southern and eastern Europe between 1900 and 1914, excluding most immigrants from Russia (USSR) on the premise that few such persons could emigrate between 1920 and 1924 and practically none after 1925. The average net inflow between 1901 and 1914 is compared to the actual net inflow each year from 1921 to 1929. The difference, it is assumed, would be the level of potential immigration that did not take place. One study
housing and consumer goods. By itself, increased demand for goods and services could possibly have delayed, but would not have prevented, the onset of the Great Depression. Changes in fiscal and monetary policies would also have been necessary, and these would not have been directly affected by immigrant flow. Nonetheless, several factors have been identified that link the onset and severity of the Great Depression to the immigration controls imposed in the 1920s. These include a slowdown in construction, a drop in the world market price of agricultural products, and an increased dependence by Europe and Canada on United States capital.  

The extent to which additional immigration-induced investment would have reduced the severity of the Depression, particularly in northern cities, remains speculative. The California experience, however, suggests that new residents coming to northern cities might have mitigated the downturn. During the 1930s, California's urban areas continued to attract native-born migrants whose presence spurred considerable private and public construction. Between 1930 and 1940, California increased its population by 21.7% from 5,677,000 to 6,907,000, compared to growth in the balance of the nation of only 6.6% from 117.1 million to 124.8 million. Population growth was primarily due to in-migration between 1935 and 1940 when 665,000 more persons moved to California than left the state. For every person who left, more than four entered California in this five year interval. Net migration to California was twice the level of all net migration to other states. In 1929, per capita income in California was $995, 41.5% above the national average; by 1940, it fell to $889, still 41.2% above the national mean. California was able to absorb large numbers of migrants and maintain a living standard more than 40% better than the rest of the country.

estimated in 1930 a surplus of 26 million persons in eastern Europe, and 9 million in southern Europe. Estimated net immigration to the United States in the absence of constraints could have absorbed less than 10% of the surplus. See W. Moore, Economic Demography of Eastern and Southern Europe 63, 64 table 6 (1972).

23. For the most comprehensive account of the relationship between immigration and the depression, see B. Thomas, Migration and Economic Growth 191-201 (2d ed. 1973). The link between immigration constraints and capital flow is also noted in H. Fleisig, Long Term Capital Flows and the Great Depression: The Role of the United States 144 (1975).


26. *Id.*

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Favorable economic conditions can be attributed to several factors, including bountiful natural resources and productive land. But the state's dynamic population—California attracted large numbers of internal migrants and immigrants during each decade since the eighteenth century—contributed to its well-being. In 1940, 13.4% of all its residents were foreign-born, about 50% above the national average. Between 1935 and 1940, California attracted 15% of all employed immigrants who came to the country.28 Recent immigrants to California were twice as likely to be college graduates than other residents, and, when compared to non-migrants, a somewhat higher percentage of internal migrants and immigrants held jobs.29 However, in the poorest areas of the nation, especially the South which in fact attracted very few immigrants, the direct economic effects of increased immigration would have been only marginal.

Net immigration to the United States during the Great Depression, even in the absence of restrictive legislation that established national origin quotas, would have fallen substantially below the level of the previous decade as unemployment reached unprecedented levels and made the United States a less promising haven for job seekers. Nonetheless, some groups were adversely affected by the national origin quota system in the 1930s. Central Europeans, principally professionals, entrepreneurs, and skilled workers, were seeking refuge from repression in their native countries. The noteworthy contributions of the immigrants fleeing persecution who were admitted to the United States during the late 1930s suggest that entry of a central European middle class in larger numbers would have further enriched all aspects of American life.30

Hastening and deepening the Depression was a subtle, immediate effect of curtailed entry during the 1920s and 1930s, but other economic consequences were manifested with the onset of World War II. Limited immigration reduced the potential pool of workers needed as the United States prepared for and entered the war. Following the attack on Pearl Harbor, the presence of draft-age immigrants would have expanded the pool of citizens available for the armed forces. Other immigrants would have joined the labor force,

30. For a discussion of immigration during the 1930s, see L. Fermi, Illustrious Immigrants (1968).
either working in munitions factories or performing other tasks to support the war effort. While the final outcome of World War II may not have been seriously in doubt once the United States fully mobilized, the conflict might have ended with fewer casualties if more soldiers had been in uniform and if the production of military hardware had been accelerated.

After World War II massive numbers of displaced persons from eastern and central Europe were anxious for resettlement. Those not physically displaced faced economic uncertainty and might have contemplated emigrating to the United States. However, restrictive immigration policies made massive, legal resettlement impossible.\(^3\) Without legal limitations, immigration from Europe to the United States between 1945 and 1965 would have totaled several million more persons than were actually admitted, probably following the occupational profile of those admitted. Between 1946 and 1950 most immigrants were European, and 16% of all entering immigrants were professionals, as compared to 9% of the American work force.\(^3\) The percentage who were craftsmen and skilled workers was somewhat higher than among native workers.\(^3\) These statistics suggest that admission of persons desiring entry to the United States in the 1940s would have raised the average quality of the American work force.

In addition to the direct wartime and post-war effects of reduced immigration, entry limits between the 1920s and the 1960s produced more subtle, long-term consequences. These effects included reduced rates of aggregate economic growth, acceleration in the movement from rural to urban areas, and widening disparities between central cities and suburban areas. High domestic birth rates, an increase in the number of women in the labor force, and rural out-migration provided the urban labor force necessary to maintain substantial economic growth without immigration until the mid-1960s. Technological advancements achieved during World War II, combined with damages sustained by industrial facilities in western Europe and Japan, gave the United States a competitive edge in the world market for two decades. Thus, favorable economic conditions temporarily masked both shifts in internal

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31. The United States admitted only 352,000 displaced persons between 1948 and 1955 who could not have qualified under the national origin quota.
33. Id. at 200.
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migration related to fewer immigrants and the need for additional foreign-born talent to maintain high levels of economic growth.

The relocation of households from the urban core to larger, more comfortable living quarters in suburban communities has been observed since the late nineteenth century. Prior to the 1930s, new immigrants seeking inexpensive housing in the inner city claimed units vacated by upwardly mobile families. These immigrants both provided a pool of low-wage workers for manufacturing plants in the city and became entrepreneurs who started small businesses. As immigration slowed, however, a surplus of older housing led to a deterioration of inner-city neighborhoods and depressed the demand for new urban housing. Similarly, the formation of new enterprises was curtailed and economic activity declined. Thus, older cities were hurt by the dearth of immigrants who previously had periodically invigorated older neighborhoods.

Curtailed immigration did have positive effects on two groups—unskilled job holders and rural blacks. Wage disparities between unskilled and skilled workers may have been reduced, as the absence of aliens created job opportunities for native-born workers with limited skills in northern urban areas. Employment prospects and the availability of affordable housing triggered a substantial migration of southern rural blacks to the inner core of northern cities. Net black out-migration from the South totaled 878,700 during the 1920s. This migration led to higher income, better housing, and greater occupational mobility for blacks.

Although these groups gained from lower immigration, they were not the intended beneficiaries of the legislation. The dominant political motivation for the enacted restrictions was to maintain a population in northern states with predominately northern and western European ancestry. This political effort appeared successful in the short run. However, reduced alien entry ultimately contributed to a sharp rise in the non-white population in northern

34. There is some disagreement as to why unskilled worker wages climbed more slowly than did those of skilled workers. For data on wage differentials and possible causes during periods of rapid immigration prior to the late 1920s, see J. Isaac, Economics of Migration 201 (1947). Wage differentials are shown in W. Coombs, The Wages of Unskilled Labor in Manufacturing Industries in the United States, 1890-1924, at 119 table 12 (1926).


36. See, e.g., S. Kuznets, supra note 10, at 7 (lower immigration levels opened up employment opportunities for blacks).
cities because of migration from the rural South, reducing the proportion of the urban population with European origins.

B. The 1952 Immigration Act

The 1952 Immigration Act\(^3\) was the result of renewed interest in immigration in the post-war period. The Great Depression and World War II made immigration a minor issue. But after the conflict ended, admission of displaced persons resulted in often acrimonious congressional debates. Although over 300,000 refugees were admitted outside the national origin quota, the 1952 Immigration Act retained national origin as the primary basis for admission. The 1952 Immigration Act, however, did introduce the concept of giving preference to immigrants who possessed skills and talent needed in the United States. One half of all the visas in the highest priority category could be issued to such persons.\(^3\)\(^8\)

Specifically, the 1952 Immigration Act gave preference to persons with education and training that would benefit the economy, cultural interests, and welfare of the United States. This provision was incorporated partly because of labor shortages in some occupations during the early 1950s.\(^3\)\(^9\) In fact, the percentage of immigrants admitted under this preferential provision was small.\(^4\)\(^0\) The reason for this is unclear. Although the 1952 Immigration Act allowed the Department of Labor to refuse certification for the admission of non-relative immigrants if their entry would have an adverse effect on wages or working conditions of American workers, this provision was used infrequently to restrict the flow.\(^4\)\(^1\)

A more significant economic aspect of the 1952 law was that it continued to allow essentially unrestricted entry from the western hemisphere. Between 1950 and 1970, 2.7 million persons entered from this hemisphere—1.9 million excluding Canada—partially offsetting the absence of the unskilled and semi-skilled labor provided by European immigrants prior to the 1930s.\(^4\)\(^2\) Many of the labor

\(^{39}\) See Hearings Before the President's Commission on Immigration and Naturalization, House Comm. on the Judiciary, 82d Cong., 2d Sess. 633 (1952).
\(^{40}\) U.S. Nat'l Comm'n for Manpower Policy, Manpower and Immigration Policies in the United States 32-33 (1978). The report indicates that in 1964 only 8% of all immigrants entered as preference workers.
\(^{41}\) Id. at 34.
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needs of growing urban centers were met by the combination of immigrants from the western hemisphere and of migrants from rural areas; however, this source of immigrant labor did not cause the need for highly skilled and professional workers to abate. The post-World War II economic boom in western European nations reduced the incentive for skilled workers from those nations to emigrate, although many of them could have been admitted to the United States under the 1924 quota system. On the other hand, immigration by skilled workers who might have been motivated by economic or political considerations remained constrained by the national origin provisions.

The political objective of the 1952 Immigration Act—to preserve the ethnic composition of immigrants and, by extension, of the nation's population—was largely achieved, but at a price. The continued exclusion of talented individuals from Asia and other parts of the world cost the United States numerous individuals who could have excelled in this country.

C. The 1965 Immigration Act

The 1965 Immigration Act was enacted at the height of the Civil Rights movement and during a time of great domestic prosperity. Its enactment was neither in response to economic conditions nor intended to significantly increase the level of immigration. Passage was a response to exhortations by John F. Kennedy during his presidency, coupled with strong support within the Johnson administration and an upbeat national mood. The deliberations did not include the examination of economic effects likely to result from expanding the pool of immigrants.

The main objective of the legislation was to repeal the national origins provisions in effect since 1921, to admit immigrants on an equitable basis regardless of origin, and to make family reunification the primary basis for eligibility. Although the new numerical ceiling of 170,000 immigrants was only slightly above the level set under the 1952 Immigration Act, two provisions enacted in 1965 had significant economic consequences. First, to allay the concerns of organized labor that immigrants might compete with Americans for jobs, Congress incorporated a provision that only a limited number


of potential workers, other than those joining families, would be admitted. The Department of Labor would be required to certify that each admitted worker was needed and would not displace Americans. Family reunification replaced the entry preferences of the 1952 Immigration Act based on individual skill and ability. The emphasis on family reunification, in addition to satisfying organized labor and gaining its support for the measure, was socially motivated. Various groups opposed to the abolition of the national origin system promoted the family reunification approach because it was believed likely to primarily permit entry of persons of northern and western European origin who were favored by the 1924 Immigration Act.

The second economically significant provision of the 1965 legislation placed an annual ceiling of 120,000 on admissions from the western hemisphere. This action, as will be noted later, encouraged illegal entry from Latin America and the Caribbean. In fact, the number of entrants from these regions, both legal and illegal, increased following the imposition of limits.

Contrary to congressional expectations at the time of passage, the 1965 Immigration Act affected both the level of immigration and the labor characteristics of new aliens. The increase in legal immigration is attributable to the admission of more refugees and aliens eligible for entry as immediate relatives of United States citizens and therefore exempt from the mandated ceiling. The number of alien family members who are not counted toward the immigration ceiling continues to climb. The fact that a high proportion of Asians and Hispanics who are admitted to the United States apply for the entry of their immediate relatives accounts for the continued increase.

In recent years, the annual addition to the labor force from the ranks of legal immigrants has totaled more than 300,000 persons of

45. As indicated by Sen. Edward Kennedy (D-Mass.) during the floor debate on H.R. 2580, to amend the 1952 Immigration Act, the primary responsibility is placed on the applicant to obtain a visa establishing that there are insufficient workers at the requested destination. See 111 Cong. Rec. 24764-65 (daily ed. Sept. 22, 1965) (statement by Senator Kennedy).


47. The State Department predicted that a few years after the law would go into effect immigration from outside the western hemisphere would fall to 105,000-110,000 annually. This compares to the average of 98,000 under the 1952 Immigration Act. Therefore, annual immigration levels would not be significantly changed by the 1965 Immigration Act. See 111 Cong. Rec. 21781 (daily ed. Aug. 25, 1965) (statement of Representative Frank Horton).
prime working age, 15 to 44 years old. Approximately 64% of immigrants fall into this age category, compared to 47% of the total American population. 48 The characteristics of immigrant workers have changed as a result of the 1965 law, which made possible a sharp rise in immigration from Asia and, to a lesser extent, the Middle East and Africa. 49

The most visible economic impact of new immigration is associated with Asians. Their success as entrepreneurs and as professionals in science, engineering, and health care in universities and in industry is particularly notable. This growth in entrepreneurs and professionals can be linked directly to the immigration reforms of the 1965 Immigration Act, which became fully effective in July 1968.

The level of entrepreneurial activity among Asians was unexpected and is surprising because in 1980 three-fourths of the Asian population in the United States were immigrants who had resided in this country for less than 15 years. In 1982, the nation's 200,000 Asian-owned firms recorded a sales volume of $15 billion, 50 with an average of one enterprise for every twenty-five Asian residents. Three metropolitan areas—Los Angeles, New York, and San Francisco—were home to 66,000 Asian firms with $5 billion in sales. The level of Asian entrepreneurial activity is particularly striking when compared to the activity of black-owned firms. Although blacks outnumbered Asians in total population by almost six to one in 1982, the 339,000 black firms generated only $13 billion in sales.

The inflow of Asian entrepreneurs is expanding commercial activity in nearly all American cities as Chinese, Indian, Korean, and Vietnamese small businesses proliferate. These firms are found not only in traditional centers of immigrant activity but also in cities such as Atlanta and Oklahoma City, where no sizable immigrant enclaves have ever existed. Asian immigrants have spurred capital investment generated from their own profits as well as from funds channeled by Asian banks and private overseas investors. Asian interests are developing new urban shopping centers in central city


49. The total annual Asian and African quota between 1924 and 1952 was only about 2,600, and it continued to be small for another decade. See, e.g., 1940 Statistical Abstract, supra note 19, at 104 table 106.

neighborhoods that had been devoid of new investment for decades. Although their presence in minority neighborhoods is often controversial, there is little doubt that immigrant enterprises have expanded inner-city commercial activity.

Perhaps a more important result of the 1965 Immigration Act has been the increase in the number of professionals, including scientists and engineers, emigrating to the United States from Asian nations. Between 1970 and 1982, more than 215,000 such immigrants were classified as professionals, or 74% of all immigrants from third world countries. In fiscal 1986, Asian countries accounted for about one-half of all professional workers entering the United States, while European nations accounted for just under one-fifth. Asian immigrants have attained education levels well above the United States national average, with well over one-third holding at least a bachelor's degree. In northern states, 44% had attended four or more years of college.

The contribution of the Asian professional class to the economic well-being of the United States has been considerable, particularly in light of the continuing shortage of scientific and technical professionals. The flow of non-European immigrants has partially offset the inability of the United States educational system to produce a sufficient number of technical professionals with advanced degrees.

The number of Hispanic immigrants has also risen, but this increase is unrelated to the 1965 Immigration Act. These workers would have continued to immigrate, probably in even larger numbers, in the absence of limits on their entry. Immigrants from the western hemisphere, particularly Mexico and the Caribbean, provide a labor pool for factories. Workers are needed in labor-intensive, relatively low-wage industries such as apparel, textile, and leather goods where foreign competition is keen. For example, in the booming Los Angeles apparel industry, most of the 80,000

51. By 1982, 17% of all scientists and engineers in the United States were foreign-born and approximately 25% of this total were Asian. See National Science Board, Science Indicators: The 1985 Report 56.
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workers employed in 1986 were female illegal aliens. The availability of such workers is allowing numerous enterprises to compete effectively with foreign firms during a period of economic expansion when few native-born workers can be attracted to low-paying factory jobs.

New immigrants seeking affordable housing also contribute to the revitalization of deteriorating inner-city neighborhoods, sharply increasing property values and local tax revenue. Unfortunately, this process has reduced the number of moderate-income units available to native inner-city residents. The shortage of new public housing in the 1980s has compounded the affordability problem, leaving poor native-born minorities with few options.

An unanticipated effect of the 1965 Immigration Act was an increase in illegal immigration. The Asian businesses proliferating in virtually every city and suburb seek more Asian workers than can be found among legal immigrants. Language and cultural ties as well as a willingness to work long hours at modest pay encourage Asian businesses to seek undocumented workers. Chinese and other ethnic restaurants are classic examples of essentially minimum-wage, labor-intensive enterprises that provide jobs for illegal aliens without displacing American workers. Jobs for illegal aliens are also found in Korean, Portuguese, and other ethnic enterprises.

The increase in legal and illegal entry from the western hemisphere results from both push and pull conditions. First, western hemisphere immigration was limited under the 1965 Immigration Act, and at almost the same time the Bracero program, which had been initiated after World War II to provide temporary agricultural workers, was repealed. This program had created between 192,000 and 438,000 jobs annually for aliens, establishing a "pull" factor that encouraged illegal entry, particularly from Mexico. Second, deteriorating economic conditions and unstable political systems "push" young persons away from their native countries and

57. It is estimated that 52,000 jobs in competitive industries were added to the Los Angeles region by Mexican immigrant jobs that otherwise would not have existed. See T. Muller & T. Espenshade, The Fourth Wave 151 (1985).
encourage them to enter the United States—either legally or illegally—in the hope of securing one of the growing number of unskilled and semi-skilled jobs. Poorly guarded borders and reduced transportation costs have further stimulated this flow of illegal aliens.

In retrospect, the 1965 Immigration Act was successful in its political aim—to more equitably allocate the limited number of visas available for entry to the United States. The change in the geographic, ethnic, and racial distribution of immigrants since the enactment of the measure shows that this objective was achieved. From an aggregate economic perspective, the 1965 Immigration Act must also be rated a plus, because the immigrant flow resulting from its provisions stimulated economic growth. Had the national origins provisions of the 1920s remained intact, immigrants from nations outside western Europe and the western hemisphere would have represented only a small proportion of all aliens entering the United States during the last two decades. Elimination of the quota system allowed entrepreneurial activity to flourish and enabled large numbers of technical personnel with advanced degrees to join American industry. The influx from Asia and from the western hemisphere has been complementary: economic activity induced by Asian enterprise and capital investment stimulates the demand for service-sector jobs.

No studies have directly examined the effects of recent immigration on per capita income, but it is likely that such income has risen faster in some communities than it would have without the inflow of immigrants. Per capita income in places with the largest concentrations of immigrants—Los Angeles County, New York City, and San Francisco—has risen more rapidly during the last 10 years than in other urban areas. Several factors may contribute to the disproportionate increase. The proportion of professional workers among recent entrants exceeds their percentage of the total labor force,

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and income of Asian immigrants is well above the national average. The proportion of entering Asian immigrants between the ages of 18 and 44, the prime working years, exceeds the proportion in the native population. Above-average employment rates and capital accumulation strengthen local economies, contributing to their economic development. Although income growth in immigrant centers may not be directly enhanced by the immigrant population, the presence of immigrants does not appear to constrain such growth.

Per capita income statistics provide no information on income distribution, but it is reasonable to assume that economic gains from immigration are distributed unequally. Among the principal gainers are businesses that employ immigrants and middle-class households that utilize services provided by these workers.

Several potentially negative economic consequences of higher immigration levels, other than distributional effects, require comment. At the time of the passage of the 1965 Immigration Act, organized labor was anxious to limit the entry of persons likely to become active workers, fearing higher unemployment and lower wages for Americans, particularly union members. In retrospect union fears may not have been justified. No evidence exists that unemployment rates for native workers have risen measurably in areas where undocumented and other Hispanic immigrants are concentrated.

Wage rates have been affected, but it is not certain whether the impact is short or long term. In southern California, wages of unskilled workers were depressed during the 1970s, and this condition has been attributed to the presence of immigrant labor. Unskilled native-born Hispanics appear to have borne the brunt of lower wages. On the other hand, a recent study in the Southwest shows that undocumented workers have little impact on worker earnings regardless of race.

60. Immigrants collectively earn only 3% less than native workers. The median earnings of Asian immigrants exceed those of native whites. Asian immigrants are 48% more likely to earn high incomes ($35,000 or more in 1983) than native whites. See Sehgal, Foreign Born in U.S. Labor Market: Results of a Special Survey, Monthly Labor Rev., July 1985, at 21-22.

61. For a discussion of recent immigration effects on unskilled worker wages in California and black workers nationally, see T. Muller & T. Espenshade, supra note 57, at 151-55.

62. Id. at 148-51.

In New York City between 1974 and 1980, a period when close to half a million immigrants came to the city, wages were also depressed. However, the primary cause for lower than average wage growth in the late 1970s appears to be economic stagnation in the area, with immigration only a secondary factor. In the 1980s, 16% of the nation’s legal immigrants settled in the New York area although only 3.5% of the nation's population resides there—indicating very heavy immigrant concentration. Wage statistics from the 1980s indicate that wages in all sectors, including nondurable manufacturing and services where immigrants are over-represented, rose in the city above the national average. These data suggest that during periods of economic stagnation or slow growth, such as in the late 1970s, large-scale immigration will have a depressive effect on wages. But when an expanding economy creates a tight labor market, wages are less sensitive to the influx of additional alien workers. Such a conclusion based on the recent past is consistent with an earlier analysis that finds relatively small effects of immigration, both legal and undocumented, on native population earnings.

Not all researchers subscribe to these benign findings. For example, the labor economist Briggs argues that there has been a shift in the occupational structure of immigrants from professional to unskilled workers since 1970. For this reason, he questions the results of earlier studies. Briggs believes native worker wages are adversely affected by illegal immigrants, but provides no research findings to support this view.

Another potentially adverse consequence of immigration is that concentrations of immigrants in low-wage, low-skill jobs will discourage employers from introducing labor-saving equipment. This concern is understandable, given that growth of manufacturing output per hour in the United States lags well behind that in Japan, and is rising less quickly than in France, Italy, and Germany. Growth of

65. For recent immigration levels to the New York area, see U.S. Dep’t of Justice, 1985 Statistical Yearbook of the Immigration and Naturalization Service 59 table IMM 5.3; 1987 INS Yearbook, supra note 48, at 36 table 18.
66. Papademetriou & Muller, supra note 64, at 70.
68. V. Briggs, Jr., supra note 46, at 164-65. He concludes, based on a San Diego survey showing employers prefer illegal workers, that Americans are therefore displaced. However, the fact of hiring illegal aliens does not indicate whether native workers would accept these jobs if alternative work is available.
compensation per hour also lags behind other major industrial nations.\textsuperscript{69} However, this author's examination of capital expenditures in metropolitan areas and industries with a large immigrant presence, compared to those of similar industries across the nation, finds no relationship between immigrant employment and capital outlay. For example, capital investment per employee in the Los Angeles and San Francisco apparel industry in 1972 and 1982 was above the national mean, but in New York City, below average.\textsuperscript{70} In other immigrant-filled industries, the investment pattern also differs from locale to locale, suggesting that factors other than the percentage of immigrants in the labor force influence the decision to invest capital.

There also is concern that insufficient research and development dollars are invested in the private sector due to the availability of cheap immigrant labor. However, under-investment in research and development can be attributed to several causes, including federal tax policy, the clamor for short-term corporate profit, and the focus on defense-related industries. Also, the sectors of the economy most requiring investment in research to remain competitive do not include furniture or women's dresses (industries where immigrants are concentrated), but do include computer chip and transportation equipment industries (where immigrants are not over-represented). More rapid immigration, as noted earlier, should actually encourage investment, because society saves both child-rearing expenses, and outlays for the elderly.\textsuperscript{71}

For over a century, the nation has worried that immigrants can impose undue costs on government by requiring more welfare services than native-born residents. For this reason, persons who would become "public charges" have been excluded from entering the


\textsuperscript{71} See 1987 INS Yearbook, supra note 48, at 28 table 13; Bureau of the Census, U.S. Dep't of Commerce, Statistical Abstract of the United States 1987, at 23 table 26 (1987). In 1977, 73\% of legal immigrants were between the ages of 15 and 64. The percentage below the age of 14 and over the age of 65 in 1987 was 23\%, compared to 32\% for the general population. In theory, therefore, investment in recent years should have been higher than in the absence of immigration.
United States since passage of the 1882 Immigration Act.\textsuperscript{72} In considering whether recent entrants are imposing a burden on taxpayers, immigrants have to be grouped into four categories: refugees (mainly from Southeast Asia), illegal entrants, low-income legal entrants (particularly Mexicans and Central Americans), and others. Demographic and economic characteristics tend to differ among status—refugee, legal, or illegal immigrant, and social services are often made available only to aliens of a particular status. Los Angeles County, which has the highest number of refugees and illegal aliens in the nation, maintains the most comprehensive data on welfare outlays for its residents. In 1986, the county provided Assistance to Families with Dependent Children (AFDC) to 58,250 refugees (mainly Southeast Asians), or nearly one-half of the estimated 135,000 refugees in Los Angeles. The cost of providing social and educational services to Southeast Asian refugees in Los Angeles and elsewhere can be expected to exceed tax payments from this population.\textsuperscript{73}

Legal immigrants accounted for 36,010 recipients of AFDC aid in Los Angeles County.\textsuperscript{74} Because of their low earnings and large family size, Mexican immigrants to southern California pay less in taxes than they receive in educational services.\textsuperscript{75} On the other hand, non-refugee immigrants from Asia and many European nations are anticipated to contribute more in revenue than they receive in services. Tax contributions from these households are above average because these immigrants typically earn more than native Americans and are more likely to own their homes than others with similar income. Concurrently, Asian immigrants (excluding those from Southeast Asia) are about as likely to receive transfer payments as native Americans.

Undocumented adults are not eligible for most government assistance, but some nonetheless manage to obtain such aid. Their native-born children, however, are citizens legally eligible to receive

\textsuperscript{72} An Act to Regulate Immigration, ch. 376, 22 Stat. 214 (1882).
\textsuperscript{73} For a description of services received by refugees in several large cities, see Papademetriou & Muller, \textit{supra} note 64, at 82-107. Although no cost-revenue analysis specifically aimed at the refugee population has been undertaken, this income characteristic and the cost of services provided to this population indicate a fiscal deficit to federal and state governments.
\textsuperscript{74} Attachment to memorandum from Eddy S. Tanaka to Supervisors (Feb. 13, 1986) (discussing records of foreign-born persons receiving assistance) (on file with the author) [hereinafter Tanaka Memo].
\textsuperscript{75} T. Muller & T. Espenshade, \textit{supra} note 57, at 142-44.
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payments and services. In Los Angeles, 20,606 children of undocumented alien parents received AFDC payments in 1982. That number had risen to 65,780 in late 1986, or 16% of all aided children in the county.\textsuperscript{76} As illegal aliens are thought to comprise about 15% of the county's population, the rate of assistance is close to the county average.

Taking the total immigrant population into consideration, New York City's revenue contributions from immigrants were slightly below average.\textsuperscript{77} A reasonable conclusion to be drawn from available sources is that new aliens collectively require a modest subsidy from the nonimmigrant population in most cities. The level of subsidy depends on the relative size of the refugee population and the ethnic composition of new immigrants. However, immigrant earnings tend to rise more rapidly than earnings of nonimmigrants, eventually reducing or eliminating initial fiscal burdens.\textsuperscript{78}

The 1965 Immigration Act with its emphasis on family reunification did not cause a sharp rise in "public charges." But in large part because the legislation did not fully meet labor needs, the flow of illegal workers accelerated and brought with it related social problems. This, in turn, led to new legislation aimed explicitly at dealing with this problem.

\textit{D. The 1986 Immigration Reform and Control Act}

The 1986 Immigration Reform and Control Act (IRCA)\textsuperscript{79} passed after lengthy debate, responding to public concern that the growing level of illegal entry was posing legal and ethical problems for the nation. Unlike earlier immigration measures, IRCA did not change the level, point of origin, or form of legal immigration. The major objective of the measure was to reduce illegal entry. Congress believed that the loophole in the 1952 Immigration Act geared to western agriculture interests—the ability to hire illegal workers without penalty—was the major culprit causing the rise in undocumented workers.

The rationale for congressional action was primarily social and political. Congress was responding to the existence of a shadow

\textsuperscript{76} Attachment to memorandum from Eddy S. Tanaka to Michael Myanovich (Dec. 10, 1986) (discussing AFDC to citizen children of undocumented alien parents) (on file with author). The 1982 data is found in Tanaka Memo, \textit{supra} note 74.
\textsuperscript{77} E. Bogen, \textit{Immigrants in New York City} (1987).
\textsuperscript{78} Borjas & Tienda, \textit{supra} note 67, at 646-48; Sehgal, \textit{supra} note 60, at 21-22.
\textsuperscript{79} Immigration Reform and Control Act, Pub. L. No. 99-603, 100 Stat. 3359 (1986) [hereinafter IRCA].
population of several million persons who entered the United States without proper documentation, but who held legal jobs. Legislators believed the situation could be corrected by imposing sanctions on employers who knowingly hired such persons. Further, the knowledge that over a million potential immigrants were awaiting legal entry while others entered the United States and remained with impunity also swayed public sentiment. Finally, a subtle but unquantifiable factor that helped spur passage of IRCA was the ethnicity of most illegal aliens. Over 83% of all undocumented persons who applied for legalization were Hispanics.\(^8\)

In passing the legislation, Congress continued the twentieth century pattern of giving priority to non-economic issues when considering immigration law revisions. Economic problems caused by alien workers were not a prime motivation for IRCA. Although organized labor expressed some concern that undocumented workers may have contributed to high unemployment during the 1981-1982 recession, their concerns faded as the economy rebounded. Segments of the business community, fearful that the needed supply of workers would be threatened, opposed employer sanctions as did the President’s Economic Council.\(^81\)

A key provision of the 1986 legislation is the authorization of an amnesty program to legalize the status of illegal aliens who established residence in the United States before 1982. Government agencies estimated, albeit incorrectly, that about one-half of all undocumented persons—perhaps 3 million—would request and qualify for legalization. Congress included the amnesty program in the bill for humanitarian reasons, as well as to garner the support of Hispanic groups needed to ensure the bill’s passage. The legalization program could also be seen as mitigating the economic consequences of otherwise reducing the labor force by several million illegal workers. In the absence of legalization, employer sanctions could, at least theoretically, cause most illegal alien workers to lose their jobs and leave the country. This, in turn, would have a devastating impact on numerous firms depending on such workers.


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Although economic considerations generally were not given high priority, a notable exception exists. Congress established a temporary agricultural worker program aimed at providing sufficient alien workers to meet employer needs.\textsuperscript{82} Eligibility requirements for qualification as a special agricultural worker with temporary residence mandate only that the applicant worked for 90 days as an agricultural laborer in the United States during 1985-1986. Persons who qualify as temporary residents may become permanent residents after three years.\textsuperscript{83}

Almost two years have elapsed since enactment of IRCA, sufficient time to gain initial insight into both the effectiveness and the economic impact of the statute. Reducing illegal entry to the United States was the principal objective of the legislation. However, little direct evidence is available to suggest that the rate of undocumented entry has substantially slowed.

The number of apprehensions of persons entering the United States along the Mexican border has declined from its peak, but only modestly. About 1 million would-be immigrants are expected to be caught at the Mexican and Canadian borders during 1988—a higher number than apprehended in 1981 or 1982. Apprehensions are just one indicator of how many persons enter and remain in the United States without proper documentation because only a small proportion of those who attempt to enter the United States illegally are caught at the border. The more seasoned aliens find other less risky means of entry. Nonetheless, border data suggest that employer sanctions have not discouraged clandestine entry. Numerous press reports indicate that the surge of illegal entrants is continuing, particularly from Mexico.\textsuperscript{84}

Anecdotal evidence from employers traditionally dependent on undocumented workers does suggest that the illegal alien labor pool has diminished. Interviews with restaurant and hotel management and trade publications indicate that the supply of illegal workers is


insufficient, resulting in critical labor shortages. The perception in the Washington, D.C., area is that fewer undocumented aliens are available to work in 1988 as compared to two years earlier. Contrary to employer perceptions, the number of illegal aliens has probably not declined, with the exception of the 1.6 million aliens participating in the legalization program. The registration of over one million persons who claim to qualify as agricultural workers is one suggestion of continuing large numbers of undocumented workers. The large number of aliens who may be eligible for this amnesty program, and the possibilities for fraud, may make these obscure provisions the most controversial aspect of IRCA by allowing many undocumented workers to legally enter the United States.

Although employers fearing fines may be less willing to hire illegal aliens, many employers' reluctance to hire undocumented workers is offset by the decline in the number of native-born young persons entering the labor force and the even smaller number of new workers willing to consider low-wage, "dead-end" jobs. The current shortage of unskilled workers may be unprecedented. Despite labor shortages during World War II, retail and service enterprises did find sufficient numbers of workers from the retired and teenaged segments of the population to maintain operations without substantial wage increases. Because the nation has become more affluent during the last four decades, the traditional labor sources are now more difficult to tap. The elderly draw pensions while most teenagers are full-time students and unwilling to work. The inability of small businesses to hire employees crucial for their operations may compel owners to risk sanctions. The demand for workers in the restaurant and hotel industries has accelerated, leading to the concern that many small businesses will be unable to operate efficiently. With unemployment in northeastern metropolitan areas the lowest in a decade, the temptation to hire illegal aliens remains great as virtually every small business searches for workers.

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Within ethnic enclaves, the brisk business in falsified or stolen Social Security cards, driver licenses, and other forms of identification indicates that many illegal workers are purchasing needed identity documents.\(^8\) Many undocumented workers who are not part of the amnesty program find jobs with relatives and other co-ethnics within ethnic enclaves, making them extremely difficult to apprehend. Those who speak some English typically encounter few challenges in using the various forms of documentation to verify their legal residence, particularly since employers are not responsible for the authenticity of identity documents. Very few illegal aliens from Taiwan, Hong Kong, and Korea applied for legalization, yet apparently substantial numbers continue to work in large cities.\(^9\)

The Immigration Reform and Control Act's primary impact is on undocumented workers, particularly those working for native-born employers outside the ethnic enclave. Unquestionably, such workers have more difficulty finding jobs with large organizations that carefully scrutinize identity documents. In a few places, such as the Washington, D.C., metropolitan area, employers have received large fines for knowingly accepting fraudulent identity cards. But these actions do not seem to have significantly deterred employers, given their labor requirements and the willingness of undocumented aliens to work in jobs unattractive to most Americans.

Evidence so far suggests that the 1986 measure is not achieving its primary objective—permanently reducing the number of undocumented workers.\(^1\) The economic self-interest of both employers and workers is often stronger than the bite of the immigration laws. When the European flow was constrained in the 1920s, entry was controlled more readily because virtually all immigrants came by ship. Mass air travel and lengthy national borders that cannot be fully screened for clandestine passage have severely limited the ability to control western hemisphere immigration at its source.

89. Whitman, supra note 84, at 37.

90. The total number of applicants for legalization as of October 1988 was: from Korea, 5,900; from Taiwan, 3,900; and from Hong Kong, 2,300. The total number comprises only 0.7% of all applicants for the program. Most applicants entered legally but overstayed their nonimmigrant visas. Telephone interview with Toni Lake, Press Officer, Immigration and Naturalization Service (Oct. 25, 1988). The low numbers imply that numerous citizens of Asian nations working in the United States illegally have not applied for legalization.

91. The number of undocumented workers decreased in 1988 as temporary residence status was granted to persons applying for amnesty. However, additional undocumented workers who are entering the United States will probably eventually restore the pre-amnesty level.
From an economic perspective, distinct from a legal or social view, the effects of continued illegal immigration are generally positive. During the economic expansion the nation has experienced in recent years, illegal workers are needed to perform tasks most Americans are unwilling to undertake. Employers gain advantages by employing these workers, most of whom do not receive benefits enjoyed by others such as vacation pay or health insurance. In a period of economic contraction, many of these workers may return to their countries of origin, as did immigrants in earlier decades when immigration was unconstrained.

From a legal and social perspective, the consequences of illegal immigration are less positive. IRCA did not fully resolve the problem of an undocumented worker class lacking the same rights and privileges as those employed legally. Concurrently, if unintentionally, IRCA added new classes of aliens some of which will cause legal and social problems in future years. The first class, comprised of individuals who entered illegally but were given amnesty and will become eligible for permanent residence, presents no difficulties. Another class is formed by persons who applied but were not qualified for permanent residence and who may be deported. A third and larger group, several million aliens who have entered since 1981, did not apply for amnesty but intend to remain in the United States unless forced to leave. The fourth class is composed of temporary agricultural workers. Among this latter group are many who, like their predecessors in the Bracero program, will move to cities and become part of the urban labor force. IRCA may also encourage some illegal aliens to remain in the United States during periods of economic stagnation because of fears that, if they return to their native land, reentry into the United States will be more difficult than it was before IRCA.

III. The Direction of Future Immigration Policy

This brief analysis of economic effects of immigration laws reveals that the passage of various legislative acts has had a substantial impact on the nation’s economy. During the nineteenth century, the effect of the policy of unrestricted entry was mostly, but not exclusively, to provide large numbers of predominately unskilled and semi-skilled workers to build infrastructure and expand industry. Immigrants in this century increasingly have contributed skill and knowledge. Immigrants and their second-generation offspring have
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been the source of considerable scientific, technical, entrepreneurial, and cultural talent. These skills are essential to maintain the nation’s high living standard and its leadership role in the world.

In recent decades the American economy has been undergoing structural adjustments. Structural shifts in the economy, from reliance on heavy industry and mass production of goods toward an economy that requires more skilled labor, must be considered in formulating future immigration policies. The business community is justifiably worried about the decline of the American work force as compared to its competitors. The strength of Japanese production is the high literacy and educational level of its workers compared to their counterparts in the United States—not massive capital investment. Current conditions point to the need in the United States for more professional and skilled workers. At the same time, a less-skilled labor force will continue to be needed to provide services that are difficult to mechanize or automate. In the manufacturing sector, unskilled immigrants will remain concentrated in industries difficult to automate, such as apparel, leather goods, and furniture. The high standard of living in the United States includes dining out, lodging at full-service hotels, having household help when adults are employed outside the home, and enjoying other labor-intensive amenities. Immigration policy should be modified to reflect changes in the structure of the economy as well as to address needs that continue.

Many of the structural economic changes in the United States are linked to the growing importance of international trade. Following the Civil War, the American economy became essentially self-sufficient. International competition was not a major concern, as the United States consumed primarily goods manufactured within its boundaries. The nation’s ability to produce and attract from other nations talented individuals was combined with a favorable political climate that encouraged investment to assure technological dominance. In the first half of the twentieth century, this nation’s economic and technical leadership was unchallenged. Thus, little thought was given to the use of immigration laws to further the goals of national economic growth.

Today’s less favorable economic environment requires an examination of the current policy of family reunification and refugee status as the dominant criteria for permanent entry to the United

States. The American technological edge is being eroded by others, and to regain our standing, new approaches to improve the quality of our human resources must be considered.

The United States retains one advantage in comparison to its two main economic rivals, an economically integrated Europe across the Atlantic and the Japanese industrial and financial power across the Pacific. This strength is the nation’s willingness and ability to attract persons with talent and ambition from all regions of the globe. Using this advantage to substantially increase the flow of individuals who can contribute the most to the national economy would improve the quality of the work force. Greater emphasis on the economic characteristics of potential immigrants can be supported by both proponents and opponents of a more liberal entry policy.93

In part, the problem of competitiveness facing the United States stems from an insufficient supply of workers in technical occupations at the professional and skilled worker level. One pragmatic step to facilitate high rates of economic growth is to attract immigrants with the skills and talents most essential to maintaining high personal income and a favorable quality of life. Unfortunately, the United States now faces a labor shortage in non-technical occupations as well. These shortages are likely to become more acute as the number of young native Americans entering the labor force continues to fall.94 Labor participation rates for men are expected to decline below current levels in the coming decades, and the anticipated rise in the proportion of women working will not yield the number of native workers necessary to meet projected demand.

The magnitude of the labor problem can be observed by examining projected labor demand. Between 1986 and the year 2000, the nation will require almost 800,000 additional scientists and engineers.95 Insufficient numbers of Americans are currently enrolled in scientific and engineering fields to meet expected demand. The situation is particularly critical at the graduate level. Only about 43%

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93. See Simon, Getting the Immigrants We Need, Washington Post, Aug. 3, 1988, at A18, for views of an economist who favors increased immigration. For an opposing view on labor needs, see V. Briggs, Jr., supra note 46, at 259. Both, however, support the position that occupational status should be a major criterion in determining the admission of aliens.


of all new engineers receiving doctoral degrees are native-born.96 Enrollment in nursing schools is falling, although 612,000 additional registered nurses will be needed in the next 14 years to maintain an adequate health care system.97

Shortages also loom at the lower end of the occupational spectrum. The total number of new food preparation and service personnel projected to be required by the year 2000 is a staggering 4.2 million.98 The vast majority of these jobs requires only limited skills or English-speaking ability. There are probably insufficient native Americans to fill these jobs.

To meet this challenge, the nation has several immigration policy options. Politically the least controversial path is to maintain the status quo. Without new legislation, legal immigrants will continue to fill some of the vacancies in engineering, nursing, and other professions. However, given current legal entry limits, the number will not be sufficient to satisfy the needs of American industries and institutions. Currently, thousands of the most needed workers are only allowed to remain in the United States for limited periods, discouraging permanent settlement that would increase the labor pool of workers in greatest demand. The inflow will remain inadequate because relatively few persons can be admitted permanently on the basis of their skills. In the absence of stricter enforcement, illegal immigrants can be expected to continue meeting most, but not all, of the demand for unskilled or semi-skilled workers.

This nation needs new legislation to allow additional skilled persons from all parts of the globe to enter the United States; the Kennedy-Simpson Bill that passed the Senate in 1988 (Kennedy-Simpson Bill) provides the format if not the precise content for such a change.99 The Bill, which the House of Representatives will consider in 1989, would not increase the total level of immigration in the long run, but would gear the selection process to needed skills. The proposed legislation would give preference to certain groups of immigrants by expanding to nearly 120,000 the number of independent persons, those without close relatives in the United States, who are allowed to enter.

97. Projections 2000, supra note 95, at 49. However, only 30% of nurses admitted to the United States, or with adjusted status, in 1987 were beneficiaries of occupational preference. See 1987 INS Yearbook, supra note 48, at 39 table 19.
98. Projections 2000, supra note 95, at 51.
The 1965 Immigration Act allows 27,000 professional workers and 27,000 skilled or unskilled workers in occupations suffering from shortages to enter the United States annually. These quotas include family members. The total number of workers actually admitted based on their occupation last year was only 22,500; the Kennedy-Simpson Bill maintains this provision. In addition, 55,000 independent visas would be authorized to workers and their families in accordance with several criteria. Each criterion, including education, occupation, English proficiency, and age, receives a point value. The quality of the immigrant labor force would increase with application of these criteria because most applicants would have a college education or possess skills that are in short supply to be admitted under these criteria. The number of English-speaking immigrants would also increase, but the increase would not be substantial since most potential entrants can amass sufficient points without English language proficiency. Because potential immigrants who will meet the criteria are expected to greatly exceed the annual limit of 55,000 persons, a lottery from a pool of qualified workers will determine who receives a visa.

To attract more foreign capital, a provision was included in the Kennedy-Simpson Bill to give preference for admission to 4,800 independent immigrants who agree to invest $2 million in the American economy. The Senate believes that each such investment will create 10 or more jobs for American workers. Following this rationale, 4,800 individuals would add $10 billion or more in overseas funds to the economy annually, creating 50,000 jobs. Such job creation assumes no constraints on the American labor supply and that the investment is "new." In fact, some of the investment tied to the issuance of visas would take place even in the absence of this provision. Many Asian entrepreneurs have already invested in the United States and maintain residences in two nations. Therefore, congressional expectations appear unrealistic on this point. Nonetheless, on the basis of the experience of Australia and Canada, considerable

101. Id. at 38-40.
102. The 1965 Immigration Act differs in that it provides that when a quota is over-subscribed applicants are placed in a queue and become eligible in future years.
additional investment might be forthcoming from individuals leaving Hong Kong and countries threatened with internal upheaval.\textsuperscript{104}

From an economic perspective, the Kennedy-Simpson Bill would not have a dramatic impact if it were enacted. However, the congressional recognition that a key aspect of immigration policy is attracting independent immigrants with needed skills is encouraging. Congress, which would be required to review the bill every three years, is likely to increase the number of independent immigrants if labor shortages persist.

In its current form, the Kennedy-Simpson Bill has several drawbacks. As part of a political compromise to ensure its passage, the measure places an annual worldwide numerical limit of 590,000 persons on all immigration, including immediate family reunifications, for the first three years.\textsuperscript{105} Only refugees whose admissions are determined by the 1980 Refugee Act are exempt from the ceiling of 590,000 persons per year.\textsuperscript{106}

Assuming annual refugee admissions consistent with recent experience, aggregate annual immigration would total about 700,000 persons were the Kennedy-Simpson Bill to become law. In comparison, legal entrants, including refugee admissions, slightly exceeded 600,000 persons in 1986 and 1987. Because no limits currently exist on immediate family visas, legal immigration has been growing, with total admissions expected to rise further during the 1990s. Under the Kennedy-Simpson Bill, immigration in the second half of the 1990s would likely be lower than projected under the 1965 Immigration Act. Thus, an effect of the measure would be to reduce total immigration at a time when labor needs will be on the rise.

The second limitation is that the number of independent immigrants who would be allowed to enter is doubled from a very low base. The total number of persons in this category would form only 16\% of the total annual inflow, including refugees. Finally, the Kennedy-Simpson Bill would eliminate from the sixth preference unskilled or semi-skilled workers in short supply. As noted earlier, the demand for semi-skilled workers will continue, particularly in personal services. Although from an economic growth perspective

\textsuperscript{104} Australia attracted 3,535 business migrants (individuals who invested $500,000) in 1986-1987, and Canadians have also attracted business migrants from Asia, who had to invest $250,000 to be eligible for admission. See Chanda, Immigrant Lottery, Far Eastern Econ. Rev., Mar. 31, 1988, at 36. The United States would require considerably higher investment than other nations.

\textsuperscript{105} Immigration Act Report, supra note 100, at 12.

\textsuperscript{106} Id.
these workers are less important than persons with specialized skills requiring substantial education, a limited number should be eligible for admission if shortages in their occupations are evident to the Department of Labor.

An approach preferable to both current legislation and the Kennedy-Simpson Bill would be to increase to 75,000 the number of professional immigrants admitted who have skills and talents determined to be in short supply. Currently, only about 11,000 persons (excluding dependents) are admitted on the basis of their professions. The number of nonprofessionals, both skilled and unskilled, who are admitted because American enterprises are unable to find domestic workers would rise from the current 11,500 to 25,000. The number of visas granted on the basis of occupational preference for both groups (including their families) would expand from the current 54,000 to 232,000. During periods of economic decline or when a sharp rise in graduates from the native population would satisfy the needs of the public and private sectors, the number admitted under the occupation preference criteria would fall. Conversely, economic expansion could be expected to trigger a demand for more immigrants, and Congress would authorize a higher quota.

English language competence could be one of the criteria applied to select a proportion of applicants, and no more than 15% of immigrants should come from one nation in order to assure geographic balance. Finally, new immigration legislation should limit the number of fifth preference immigrants to 35,000 from the 64,800 ceiling of the 1965 Immigration Act. No "cap" would be placed on immigrants exempt from numerical limitation.

Had the above criteria been applied in 1986, total immigration in 1986 would have risen from the actual 602,000 to 744,000. But, more importantly, the proportion of all immigrants (and their families) who would have gained admittance as a result of their occupational status would have risen from 8.9% to 31.2%.

Giving preference to professional workers will attract engineers, scientists, and other professionals in short supply, and concurrently increase job opportunities at reasonable pay for Americans with limited skills. These immigrants not only fill jobs but, importantly, also create employment by their presence. Each additional professional

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107. Brothers and sisters of United States citizens can be admitted under the 1965 Immigration Act as fifth preference immigrants. The Kennedy-Simpson Bill would also reduce the allowable number of fifth preference immigrants, and would restrict the fifth preference to unmarried brothers and sisters of citizens.

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job creates employment in services and retail trades. For this reason, it is more difficult to overcome labor shortages that include all sectors of the economy by increasing immigration than to alleviate shortages in a limited number of occupations crucial to the nation's welfare. The least desirable jobs created by legal immigration probably would be filled by undocumented workers. Because the majority of these workers are single, they create little demand for public services and housing.

If more immigration represents economic gain to the nation, should Congress seriously consider returning to the pre-1921 policies of essentially unlimited entry? Viewed from a narrow, short-term economic perspective, such an entry policy has merit. Rarely, however, does—or should—a single objective dominate public policy. Even the more modest proposal espoused here, giving preference to a substantial number of highly skilled immigrants, has potential drawbacks. The nation may become too dependent on foreign-born professionals, discouraging Americans from entering these occupations. A particular ethnic group could, over time, dominate one or more professions or businesses, relegating native Americans to less-desirable jobs. These are plausible, but improbable, adverse outcomes of increasing immigration.

Issues of culture, national identity, and language are more serious problems that must be considered within the framework of immigration policy. To some commentators, even current entry levels appear excessive because they may worsen crime and cause other problems. Others distinguish between those who come legally and illegally. Thus, Professor Schuck is uneasy that "communitarian" immigration law may encourage further social and cultural fragmentation, fomenting political hostility among ethnic groups. His concern is focused on illegal immigrants and their American-born offspring who are granted citizenship despite the status of their parents. As noted earlier in this Article, a large number of these children, at least in the Los Angeles area, require and receive public support. As for legal entrants, Schuck states that even a million or more such immigrants annually "should be cause for eager celebration, not for alarm."

In reality, there are few economic or social differences between legal and illegal entrants from Mexico, the Caribbean, and perhaps

110. Id. at 302; P. Schuck & R. M. Smith, Citizenship Without Consent 121 (1985).
other nations as well.\footnote{Papademetriou & Muller, supra note 64, at 30.} For those who view the common public language of English as essential to national cohesion, absolute border control, eliminating the flow of illegal entrants, is no solution.\footnote{For a discussion of language issues, see generally N. Glazer, Bilingualism: Will it Work? Ethnic Dilemmas—1964-1982 (1983).} Most entrants, legal as well as illegal, differ in language and culture from the American mainstream.

The 1965 Immigration Act has contributed to cultural pluralism, as evidenced on the streets of virtually every large city in all regions of this nation. Hindus, Moslems, and Buddhists have joined a society in which the Judeo-Christian religious and ethical tradition was dominant. Will this diversity encourage social fragmentation and inter-group hostility? Another decade may have to pass before we can respond to this question, but the turmoil and conflict of other multi-ethnic nations supports this thesis.

Our own history suggests, but by no means assures, a more optimistic outcome—the ability to blend various cultures within the political framework evolved over two centuries. One has to acknowledge that the vast majority of those who came to this country prior to the late 1960s were invited—that is, they came legally. To what extent resentment and hostility toward those who defy our laws overshadows recognition of their economic contribution remains to be seen.

The presence of legitimate social and cultural concerns, perceived or real, shows that unrestricted entry would be politically unthinkable. In contrast to such an unrealistic approach, the modifications to current legislation proposed in this Article focus on economic needs, with only a few potentially adverse effects.\footnote{Environmental concerns associated with higher population and resulting growth have been increasing in recent years. In the future, environmental issues may come to the forefront of the immigration debate.} Acceptance of this approach would initiate the third era in the nation's long struggle to formulate equitable entry policies that are in its self-interest, a time when immigration laws are integrated with enlightened national economic policies.