

9-1-1982

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Barry R. Chiswick

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### Recommended Citation

Barry R. Chiswick, *Guidelines for the Reform of Immigration Policy*, 36 U. Miami L. Rev. 893 (1982)  
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# Guidelines for the Reform of Immigration Policy\*

BARRY R. CHISWICK\*\*

*In proposing optimal immigration criteria for the United States, the author focuses on the economic consequences of immigration, including the labor-market productivity of immigrants and their impact on the native population. Current immigration policy, according to the author, emphasizes kinship with a United States citizen or resident alien as the criterion for rationing immigration visas, largely ignoring the skills or likely labor-market adjustment of the visa applicant. Moreover, the enforcement of immigration law appears to be minimal and has declined in both real resources and effectiveness in recent years. The result of limited enforcement and the emphasis on kinship is the arrival of a relatively large proportion of low-skilled immigrants.*

*The author proposes a skill-based rationing system for visas as an alternative to current policy. Under this proposal, the applicant's level of skill would be the primary determinant in deciding whether to issue a visa. Except for the immediate relatives of United States citizens, kinship would play a minor role. This policy, combined with more stringent enforcement of immigration law, would raise the skill level and favorable economic impact of immigrants. In contrast, the recommendations of the Select Commission on Immigration and Refugee Policy (SCIRP) would favor low-skilled immigrants. Also, the SCIRP proposals would shift the burden of enforcing immigration law from the appropriate government authorities to employers, who would be forced to screen all workers regarding their immigration status.*

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\* This article originally appeared in *ESSAYS IN CONTEMPORARY ECONOMIC PROBLEMS: DEMAND, PRODUCTIVITY, AND POPULATION* (W. Fellner ed. 1981). The article is reprinted with the permission of the American Enterprise Institute.

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## I. INTRODUCTION

United States immigration policy may have a substantial long-term impact on the economic well-being of the country as a whole, and on its various demographic groups. It is, however, an issue on which there is much public confusion, primarily because people approach immigration policy in an emotional rather than a rational manner.

This article provides a framework for the analysis of immigration policy—the policy of granting permanent resident-alien status.<sup>1</sup> The framework focuses on both the overall economic impacts of immigration and the distribution of these impacts. This approach evaluates the economic costs and benefits of alternative immigration policies.

Immigration policy includes the laws and regulations regarding who may enter the United States. It also addresses for what period of time and for what purposes (i.e., work, study or travel) people may immigrate. The enforcement of immigration laws and regulations is equally important. A policy of stringent criteria for entry combined with lax enforcement is a policy of relatively easy entry for persons willing to violate the law.

As with most other social regulations, the original intent of immigration restrictions was to protect the health and safety of the resident population.<sup>2</sup> Restrictions created in the nineteenth century were intended to bar criminals, indigents, persons with contagious diseases, and other social misfits. Quantitative restrictions were then introduced, first against East Asians, and then against eastern and southern Europeans, partly because of racial and reli-

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1. This article deals with permanent resident aliens or immigrants, and not foreign students, visitors, or temporary workers.

2. For a brief review of the history of United States immigration law and trends, see Chiswick, *Immigrants and Immigration Policy*, in *CONTEMPORARY ECONOMIC PROBLEMS* 285-325 (W. Fellner ed. 1978) [hereinafter cited as Chiswick, *Immigration Policy*]. The major legislative development since 1978 is the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified as amended in scattered sections of 8 U.S.C.).

gious prejudice and xenophobia, and partly to protect the wages of low-skilled native workers from the competition of unskilled immigrants.<sup>3</sup> The 1965 amendments to the Immigration and Nationality Act (INA)<sup>4</sup> eliminated most of the racism and ethnocentrism implicit in U.S. immigration policy.<sup>5</sup> These amendments, and the 1978 amendments pertaining to the Western Hemisphere,<sup>6</sup> substituted kinship with a U.S. citizen or a resident alien for country of origin as the primary criterion for obtaining immigration visas.

Immigration policy has widespread economic implications because of its direct and indirect impact on the labor market. The current kinship-based policy, although superficially appealing on humanitarian grounds, has generated substantial dissatisfaction. Adopting this policy in 1965, at a time of seemingly unlimited prosperity, may have been essential for eliminating the pernicious quota system based on national origins. But in the current era of slower increases in productivity, it is even more appropriate to ask who bears the burden of immigration policy, and whether alternative and equally nonracist policies could have a more favorable economic impact.

In formulating immigration policy, the effect of immigrants on the U.S. labor market, and consequently on the income and employment of the native population, is an important consideration. Because immigrants vary widely in their employment skills, their impact is not unidimensional. Even if all immigrants shared the same skills, their impact on the native population would not be uniform because of the heterogeneity of the native population. Insights into the productivity of immigrants add a new dimension to the policy debate. They suggest that it is not only the number of immigrants that is relevant, but also the characteristics of those immigrants. The characteristics of an annual stream of immigrants are not exogenous; they largely can be determined by immigration policy.

Two alternatives to current policy will be discussed in this article. One is a skill-based rationing system in which productivity characteristics are the primary criteria for rationing visas. The other is the set of recommendations from the Select Commission

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3. Chiswick, *Immigration Policy*, *supra* note 2, at 292.

4. Act of Oct. 3, 1965, Pub. L. No. 89-236, §§ 8, 24, 79 Stat. 916, 922 (1965) (current version at 8 U.S.C. § 1101 (Supp. V 1981)).

5. See *infra* notes 8-10 and accompanying text.

6. Act of Oct. 5, 1978, Pub. L. No. 95-412, 92 Stat. 907.

on Immigration and Refugee Policy,<sup>7</sup> which would increase the role of kinship in issuing immigration visas and granting amnesty to illegal aliens. This article concludes that a skill-based rationing system better satisfies the objectives of promoting economic growth and reducing the relative size of income transfers in the economy.

## II. CURRENT IMMIGRATION: POLICY AND FLOWS

Current immigration law has its basis in the 1965 amendments to the 1952 Immigration and Nationality Act.<sup>8</sup> The 1965 amendments abolished the discredited national-origins quota system instituted in the 1920's, as well as the emphasis on skill or productivity introduced in 1952 for rationing visas.<sup>9</sup> In their place, the amendments created a "preferences" rationing system that heavily emphasized kinship with a U.S. citizen or resident alien.<sup>10</sup> Skill

7. See *infra* text accompanying notes 61, 70-88.

8. Act of Oct. 3, 1965, Pub. L. No. 89-236, §§ 8, 24, 79 Stat. 916, 922 (1965) (current version at 8 U.S.C. § 1101 (Supp. V 1981)). The 1952 Act primarily was a recodification of existing law.

9. See Chiswick, *Immigration Policy*, *supra* note 2, at 293-98.

10. The Refugee Act of 1980, Pub. L. No. 96-212, § 203, 94 Stat. 102, 107 (codified as amended in 8 U.S.C. § 1153 (Supp. V 1981)), which further amended the Immigration and Nationality Act, revised the refugee admission procedures. See *infra* text accompanying notes 33-37. The current system of the "preferences" rationing system provides,

### Allocation of immigrant visas

#### (a) Categories of preference priorities; per centum limitations; waiting lists

(1) Visas shall be first made available, in a number not to exceed 20 per centum of the number specified in section 1151(a) of this title, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in section 1151(a) of this title, plus any visas not required for the classes specified in paragraph (1) of this subsection, to qualified immigrants who are the spouses, unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence.

(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 1151(a) of this title, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interest, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 1151(a) of this title, plus any visas not required for the classes specified in paragraphs (1) through (3) of this subsection, to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

(5) Visas shall next be made available, in a number not to exceed 24 per

and refugee status were given relatively minor roles.

The basic features of current immigration law, including the changes introduced by the Refugee Act of 1980,<sup>11</sup> are outlined in Table 1. The number of immigrants "admitted" to the United States under various categories is shown for two years in Table 2.<sup>12</sup> The worldwide, country, and preference category quotas indicated in Table 1 refer to ceilings on the number of visas issued per year. The data on immigration refer to the number of persons entering the United States with an immigrant visa, or receiving a change in status to permanent resident alien. Immigrant visas need not be used in the fiscal year they are issued. Some are never used.

A person may receive immigrant status (permanent resident alien status) under one of three general categories: (1) as an immediate relative of a U.S. citizen; (2) by other kinship criteria, or (3) by occupation (skill).<sup>13</sup> Also, the Attorney General may grant refu-

centum of the number specified in section 1151(a) of this title, plus any visas not required for the classes specified in paragraphs (1) through (4) of this subsection, to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 1151(a) of this title, to qualified immigrants who are capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

(7) Visas authorized in any fiscal year, less those required for issuance to the classes specified in paragraphs (1) through (6), shall be made available to other qualified immigrants strictly in the chronological order in which they qualify

(8) A (minor) spouse or child . . . shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under paragraphs (1) through (7) of this subsection, be entitled to the same status . . . if accompanying, or following to join, his spouse or parent.

8 U.S.C. § 1153 (Supp. V 1981).

11. Pub. L. No. 96-212, 94 Stat. 102 (codified as amended in scattered sections of 8 U.S.C.).

12. Of the 601,000 immigrants "admitted" in 1978, 230,000 were already in the United States and received an "adjustment of status." Of these, 122,000 were Cuban and Indochinese refugees (28,000 and 94,000 respectively) whose adjustment of status outside the numerical limitations was made possible by legislation in 1976 and 1977. Of the 101,000 adjustments made under section 245 of the Immigration and Nationality Act, the official status at entry of nearly 60% was "temporary visitors for pleasure." Another 18% were students. An immigration visa often is easier to obtain from inside the United States than from outside. U.S. IMMIGRATION & NATURALIZATION SERVICE, 1978 STATISTICAL YEARBOOK 5-6, 10-11 [hereinafter cited as 1978 INS YEARBOOK].

13. "Private bills" are enacted in a small number of cases (138 in the 95th Congress) to grant immigrant status to individuals who otherwise would not qualify. The Federal Bureau of Investigation used bogus bribes to congressmen for introducing private immigration bills in its ABSCAM investigation of congressional corruption.

gees asylum or parole status.<sup>14</sup> This enables them to enter and work in the United States indefinitely, although most eventually obtain an adjustment of status and become permanent resident aliens.<sup>15</sup> Obtaining permanent resident alien status is the first step toward acquiring U.S. citizenship.

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14. See 8 U.S.C. § 1158 (Supp. V 1981).

15. *Id.* For example, in 1978, 122,000 Cuban and Indochinese refugees became permanent resident aliens outside of the preference and quota system under legislation enacted in 1976 and 1977. 1978 INS YEARBOOK, *supra* note 12, at 10.

TABLE 1

SUMMARY OF THE IMMIGRATION PREFERENCE SYSTEM  
UNDER THE 1965 AND SUBSEQUENT AMENDMENTS  
TO THE IMMIGRATION AND NATIONALITY ACT

1. Immigrants Not Subject to Numerical Limitation  
Spouse and minor children of U.S. citizens and the parents of U.S. citizens over age 21
2. Immigrants Subject to Numerical Limitation in the Preference System

	QUOTAS (visas per year)		
	1965-1978	1979-1980	1981-present
Eastern Hemisphere <sup>a</sup>	170,000	290,000	270,000
Western Hemisphere <sup>a</sup>	120,000		
Country ceiling <sup>b</sup>	20,000	20,000	20,000

PREFERENCE SYSTEM<sup>c</sup>

Preference	Characteristic	Maximum proportion of visas
First	Unmarried adult children of U.S. citizens	20 percent
Second <sup>d</sup>	Spouse and unmarried children of permanent resident aliens	26 percent plus any not required for first preference
Third	Professionals, and scientists and artists of exceptional ability whose services are sought by a U.S. employer	10 percent
Fourth	Married children of U.S. citizens	10 percent plus any not required for first three preferences
Fifth	Siblings of U.S. citizens provided that such citizens are at least 21 years of age	24 percent plus any not required for first four preferences
Sixth	Workers in occupations for which labor is scarce in the U.S.	10 percent
Nonpreference	Any applicant not entitled to a preference	Amount that is not required for preference applicants
	Spouse and minor children of a preference applicant can be classified with the same preference if a visa is not otherwise available	Charged to appropriate preference

<sup>a</sup>The hemisphere quotas were converted to a combined world ceiling of 290,000 visas by the 1978 amendments and reduced to 270,000 visas per year when the Refugee Act of 1980 removed refugees from the preference system.

<sup>b</sup>Country ceiling applicable to the Eastern Hemisphere under the 1965 amendments and the Western Hemisphere since the 1977 amendments.

<sup>c</sup>Preference system applicable to the Eastern Hemisphere under the 1965 amendments and the Western Hemisphere under the 1977 amendments. Prior to 1977, Western Hemisphere visas issued on a first-come, first-served basis.

<sup>d</sup>Increased from 20% with the passage of the Refugee Act of 1980. The six percent previously was allocated to a "refugee preference." This preference was dropped with the passage of the Refugee Act of 1980, which established a quota of 50,000 visas for refugees outside of the preference system, and gave the President authority to admit additional refugees. The Act changed the definition of "refugee" to a person with a well-founded fear of religious, political, or racial persecution regardless of country of origin, whereas refugee status was previously applicable only to persons fleeing a communist country or the general area of the Middle East.

SOURCE: Immigration and Naturalization Service.



TABLE 2  
 IMMIGRANTS ADMITTED TO THE UNITED STATES  
 FISCAL YEARS 1975 AND 1978

<u>Immigrant Category</u>	<u>1975</u>	<u>1978</u>
Total Immigrants	386,194	601,442
Immigrants exempt from numerical limitation	104,633	260,333
Immediate relatives	91,504	125,819
Immigrants Act of October 12, 1976, and October 30, 1977 <sup>a</sup>	--	122,441
Other	13,129	12,077
Immigrants subject to limitation <sup>b</sup>	160,460	165,743
Eastern Hemisphere	160,460	165,743
Relative preferences	95,945	123,501
First preference	871	1,120
Second preference	43,077	44,116
Fourth preference	3,623	5,954
Fifth preference	48,374	72,311
Occupational preferences	29,334	26,295
Third preference (professionals)	8,363	4,822
Sixth preference (other workers)	16,724	17,705
Their spouses and children	14,247	13,768
Refugees—seventh preference	9,129	9,724
Nonpreference, private bills, and others	26,052	6,223
Western Hemisphere	121,101	175,361
Relative preferences	--	66,796
First preference	--	2,572
Second preference	--	33,631
Fourth preference	--	5,450
Fifth preference	--	25,143
Occupational preferences		
Third preference (professionals)	--	465
Sixth preference (other workers)	--	1,183
Their spouses and children	--	2,934
Refugees—seventh preference	--	585
Nonpreference, private bills, and others	--	47,987
Natives of Western Hemisphere and Immigrants Act of 1966 <sup>c</sup>	121,101	55,411

NOTE: Dashes indicate category is not applicable.

<sup>a</sup>These acts provide for Cuban and Indochinese refugees adjusting to resident alien status in the United States.

<sup>b</sup>Except for the occupational preferences, spouses and minor children are included in the totals for the preference category of the immigrants.

<sup>c</sup>Refers to immigrants who obtained visas prior to the extension of the preference system to the Western Hemisphere.

SOURCE: U.S. IMMIGRATION & NATURALIZATION SERVICE, 1978 STATISTICAL YEARBOOK 1, 6.

### A. Kinship Criteria

The immediate relatives of United States citizens, i.e., the spouse, unmarried minor children, and parents of adult citizens, may enter the United States without numerical limitations.<sup>16</sup> Although the number of persons entering the United States in this manner had fluctuated around 100,000 per year since 1965, recently it has increased to about 125,000 per year because of the increased immigration of spouses and parents of citizens.<sup>17</sup>

Among the visas subject to numerical limitation, at least seventy-four percent (prior to the 1980 Refugee Act) were reserved for relatives of U.S. citizens and resident aliens.<sup>18</sup> In 1978, of the 165,743 immigrants from the Eastern Hemisphere subject to numerical limitation, seventy-five percent entered under the kinship preferences, as reflected in Table 2. Little use was made of the first preference (unmarried adult children of U.S. citizens and their children) or the fourth preference (married children of U.S. citizens and their spouses and children). To the extent that these preferences were undersubscribed, additional persons entered under the second preference (spouses and unmarried children of resident aliens and their children) and fifth preference (siblings of adult U.S. citizens and their spouses and children). During the 1960's and early 1970's, the kinship preferences were not subscribed fully, and "nonpreference" visa applicants were allowed to immigrate. The rapid increase in the use of the fifth preference, however, has eliminated this alternative.<sup>19</sup>

For the Western Hemisphere, until 1977, visas were issued on a first-come, first-served basis. As of 1978, new visas were issued

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16. The statute provides,

The "immediate relatives" . . . shall mean the children, spouses, and parents of a citizen of the United States: *Provided*, That in the case of parents, such citizen must be at least twenty-one years of age. The immediate relatives specified in this subsection who are otherwise qualified for admission as immigrants shall be admitted as such, without regard to the numerical limitations in this chapter.

8 U.S.C. § 1151(b) (1976).

17. 1978 INS YEARBOOK, *supra* note 12, at 5-6.

18. See Table 1, *supra* p. 899. The six percent quota for refugees was shifted to the second preference (a kinship preference) when the Refugee Act of 1980 removed refugees from the preference system. Refugee Act of 1980 §§ 201, 203, 8 U.S.C. §§ 1153, 1157 (Supp. V 1981); see *infra* text accompanying notes 33-37.

19. "Nonpreference" applicants must obtain a labor certificate (demonstrating they have a "needed" skill and a job waiting for them), invest money in a business in the United States, or satisfy some other criterion to demonstrate their economic value to the United States.

under the preference system. In 1978 more than 55,000 Western Hemisphere immigrants entered with first-come, first-served visas. Of the nearly 120,000 immigrants who entered in that year with preference system visas, fifty-six percent immigrated under the kinship preferences. Of these, immigration under the first and fourth preferences was small, in contrast to immigration under the second and fifth preferences.<sup>20</sup>

### B. *Occupational Criteria*

The 1965 amendments reserved up to twenty percent of the visas in the preference system for rationing on the basis of occupation. The third preference provides for the immigration of professionals and persons of exceptional ability in the arts and sciences.<sup>21</sup> The sixth preference provides for the immigration of skilled workers whose services are needed in occupations for which U.S. workers are in short supply.<sup>22</sup> In either situation, the immigrant and the U.S. employer are required to complete a cumbersome application administered by the Department of Labor's Office of Labor Certification.<sup>23</sup> In general, the employer must demonstrate that appropriate workers are not available in the United States at the prevailing wage for that job.<sup>24</sup>

The Office of Labor Certification has predetermined that a shortage of workers exists for some jobs.<sup>25</sup> These jobs, referred to as Schedule A jobs, include: (1) physicians in a geographic area that the Department of Health and Human Services has determined to have a shortage of practitioners in the physician's particular specialty; (2) nurses who are already registered in the state of intended residence or who have passed the examination administered by the Commission on Graduates of Foreign Nursing Schools; (3) physical therapists qualified to take the state licensing exam; (4) persons in the sciences and nonperforming arts with exceptional ability, including college teachers; (5) religious practi-

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20. The very large proportion of immigrants in the nonpreference category in 1978 was a transitional phenomenon; the preference system was introduced too recently for the kinship categories to be filled.

21. 8 U.S.C. § 1153(a)(3) (1976); *see supra* note 10.

22. 8 U.S.C. § 1153(a)(6) (1976); *see supra* note 10.

23. For the current regulations, see Labor Certification Process for Permanent Employment of Aliens in the United States, 20 C.F.R. § 656 (1982).

24. *Id.* §§ 656.20-32. This requirement is meaningless because for a sufficiently high wage—a new prevailing wage—fewer workers would be demanded and more workers already in the United States would be available to the occupation or employer.

25. 20 C.F.R. § 656.10 (1982).

tioners; and (6) managers in multinational corporations.<sup>26</sup>

The Labor Certification Office has "determined" that other occupations are not to be used as a basis for labor certification, although labor certifications are given on occasion to applicants in these occupations.<sup>27</sup> These "Schedule B" occupations include many that provide employment for immigrants who enter the United States under other criteria, including personal service attendants, cleaning staff, kitchen workers, laborers, nurses' aides, taxicab drivers, and gardeners.<sup>28</sup>

Although up to twenty percent of the visas subject to the preference system are reserved for occupational preferences, the system's impact on the skill distribution of immigrants is smaller than might appear. First, the spouse and minor unmarried children of workers receiving an occupational preference visa generally are charged to that preference.<sup>29</sup> Of the 26,295 persons from the Eastern Hemisphere who entered under an occupational preference in 1978, fifty-two percent were spouses and children, many of whom subsequently will enter the labor force.<sup>30</sup> Of the 4,582 persons from the Western Hemisphere, sixty-four percent were spouses and children.<sup>31</sup> Second, when a worker obtains a visa through a labor certification, he is not legally obligated to work for the employer or in the occupation. The extent of this "leakage" is not known. Third, there is a tendency for the occupational preferences to be used by persons who are already in the United States with nonimmigrant visas, and who are seeking an adjustment of their status. Of the 14,175 occupational-preference visas in 1978, sixty-five percent received an adjustment of status.<sup>32</sup> That is, foreigners were in the United States under a student, tourist, or other visa, or were in the United States illegally, but were able to obtain a labor certification. Finally, the cumbersome certification process, which generally requires considerable employer cooperation, gives a decided advantage to persons who already are working in the United States.

In spite of these limitations on the size and scope of the num-

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26. *Id.* Physicians and nurses, who were removed from the Schedule A list in 1976, rejoined the list in 1980. Dieticians were removed from the list in 1980, apparently because the national association asserted that there was no shortage. There is apparently no research basis for the Office of Labor Certification's determinations.

27. 20 C.F.R. §§ 656.11, .23 (1982).

28. *Id.*

29. 8 U.S.C. § 1153(a)(8) (Supp. V 1981); see *supra* note 10.

30. 1978 INS YEARBOOK, *supra* note 12, at 18-23.

31. *Id.* at 15.

32. *Id.*

ber of immigrants who may enter under the occupational preferences, the preferences are an important source of professional workers in the immigration stream. Among immigrants in 1978 who reported a profession on their visa application, nearly one-fifth of the professionals were beneficiaries of an occupational preference. As shown in Table 3, of the engineers, nurses, physicians, research workers, scientists, and college and university teachers who immigrated, more than one-quarter did so under an occupational preference. As would be expected, only a very small proportion of immigrants in other occupations received an occupational preference, with the notable exception of cooks.

TABLE 3  
 BENEFICIARIES OF OCCUPATIONAL PREFERENCES  
 BY IMMIGRANT STATUS AND OCCUPATION, FISCAL YEAR 1978

OCCUPATION	THIRD PREFERENCE		SIXTH PREFERENCE		TOTAL	PERCENT- AGE <sup>a</sup>
	ADMIS- SIONS	ADJUST- MENTS OF STATUS	ADMIS- SIONS	ADJUST- MENTS OF STATUS		
PROFESSIONAL, TECHNICAL, AND KINDRED	2,091	3,181	736	2,968	8,976	18.4
ENGINEERS	356	454	197	646	1,653	24.8
NURSES	731	238	45	479	1,493	30.2
PHYSICIANS	146	743	23	159	1,071	24.1
RESEARCH WORKERS (NOT SPECIFIED)	21	369	8	179	577	43.4
SCIENTISTS (LIFE AND PHYSICAL)	108	237	45	144	534	29.5
TEACHERS (COLLEGE AND UNIVERSITY)	47	195	47	180	469	25.3
WRITERS, ARTISTS, AND ENTERTAINERS	43	99	112	211	465	9.4
MANAGERS (EXCEPT FARM)	10	3	466	1,285	1,764	8.4
SALES, CLERICAL, AND KINDRED	2	0	145	299	446	1.3
CRAFTSMEN AND KINDRED	0	0	519	399	918	3.3
OPERATIVES (INCLUDING TRANSPORT)	0	0	119	139	258	0.5
LABORERS (EXCEPT FARM)	0	0	51	61	112	0.5
FARM (LABORERS, FOREMEN, AND MANAGERS)	0	0	27	90	117	1.0
SERVICE (EXCEPT PRIVATE HOUSEHOLD)	0	0	504	501	1,005	4.0
COOKS	0	0	399	364	763	14.3
PRIVATE HOUSEHOLD WORKERS	0	0	263	316	579	5.5
TOTAL	2,103	3,184	2,830	6,058	14,175	5.7 <sup>b</sup>

NOTE: All detailed occupations with 450 or more beneficiaries of an occupational preference are listed separately.

<sup>a</sup>Percentage of total number of immigrants reporting that occupation.

<sup>b</sup>Percentage of immigrants reporting a labor-market occupation. The figure is 2.4% if expressed as a percentage of all immigrants, including housewives, youths, students, the aged, and others.

SOURCE: U.S. IMMIGRATION & NATURALIZATION SERVICE, 1978 STATISTICAL YEARBOOK 18-23.

In summary, there are many features of the current occupational preferences that substantially reduce the program's ability to facilitate the immigration of high-productivity workers. But the preferences are an important source of high-level manpower. That there are queues for obtaining an occupational-preference visa suggests that even more high-productivity workers would immigrate if the preference quotas were increased, country ceilings on these categories were removed, and the requirements of both prearranged employment and the burdensome application procedure were eased.

### C. Refugees

The 1965 amendments to the INA<sup>33</sup> and the 1980 Refugee Act<sup>34</sup> have attempted to regularize the flow of refugees. But events have shown this to be difficult. The 1965 amendments allocated six percent of the visas within the preference system to refugees, and did not change the requirement that a refugee must be fleeing from either a communist country or the Middle East.<sup>35</sup> The 1980 Refugee Act increased the annual quota of refugees from 17,400 to 50,000 visas.<sup>36</sup> The Act defined a refugee as any person with a well-founded fear of political, religious, ethnic, or racial persecution (whether from a communist country or otherwise), and who was already in a country of first asylum.<sup>37</sup>

The 1980 Refugee Act was based on the desire to be even-handed in the treatment of persons fleeing communist and noncommunist government persecution; it was also based on the experiences of the Vietnamese boat people. The Act can be criticized for inadequately defining refugee. Moreover, the first asylum provision penalizes refugees from countries in close proximity to the United States. For example, Haitians seeking asylum in Florida claimed they were refugees from poverty and, having fled, could not return without being persecuted by an authoritarian regime. The Cuban boat people—the more than 120,000 persons who

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33. Act of Oct. 3, 1965, Pub. L. No. 89-236, 79 Stat. 916 (current version codified in scattered sections of 8 U.S.C.).

34. Pub. L. No. 96-212, 94 Stat. 102 (1980) (current version codified in scattered sections of 8 U.S.C.).

35. 8 U.S.C. § 1153(a)(7)(1976) (amended 1980); *see supra* note 18.

36. Refugee Act of 1980 § 201 (codified at 8 U.S.C. § 1157(a) (Supp. V 1981)); *see supra* note 4. The President may admit additional refugees if the situation requires. 8 U.S.C. § 1157(b) (Supp. V 1981).

37. Refugee Act of 1980 § 201(a) (codified at 8 U.S.C. § 1101(a)(42) (Supp. V 1981)).

entered the United States in 1980—technically were not eligible for admission under the Refugee Act because the United States was the country of first asylum. Although the Cubans were admitted under the Attorney General's ad hoc authority to parole persons into the United States, the status of the Haitians remains uncertain.

#### D. *Illegal Immigration and Enforcement Resources*

The enforcement of immigration law is minimal, in terms of both the magnitude of the resources and the deterrent effect of the deployment of these resources. The limited, but not negligible, enforcement of immigration law tends to attract low-skilled illegal aliens.

The number of immigration law violations is, of course, unknown.<sup>38</sup> The number of illegal immigrants in the United States has been estimated at between two and twelve million persons, but a recent view of these estimates by three statisticians at the Bureau of the Census suggests a range of 3.5 million to 6 million persons, of whom about half are Mexican nationals.<sup>39</sup> Data exist, however, on the number of apprehensions of illegal aliens. Table 4 illustrates that the number of deportable aliens located increased from 70,000 in 1960 to more than 1,000,000 per year since 1977.<sup>40</sup> Of the more than one million deportable aliens located in fiscal year 1978, nearly 950,000 were Mexican nationals who entered without inspection, as summarized in Table 5. About 28,000 Mexican nationals entered the United States under other statuses, and slightly more than 81,000 were persons of other nationalities.

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38. A person may become an illegal alien by violating the condition of a legally obtained visa (such as unauthorized employment under a student or visitor visa, or remaining in the United States beyond the date specified in the visa), entering the United States with a fraudulent visa, or making a surreptitious entry.

39. See J. Siegel, J. Passel & J. Robinson, Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States, in SELECT COMM'N ON IMMIGRATION & REFUGEE POLICY, 97TH CONG., 1ST SESS., U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST app. e (Comm. Print 1981).

40. The decline in apprehensions in fiscal year 1980, see Table 4, *supra* p. 908, has been attributed to the three-month moratorium on interior enforcement, which was intended to increase compliance with the 1980 Census, and to the diversion of Immigration and Naturalization Service (INS) resources for the registration of Iranian students and the Cuban boat people. There are no data on the extent to which the same individual is apprehended more than once in a year.



TABLE 4  
 IMMIGRATION AND NATURALIZATION SERVICE PERSONNEL,  
 IMMIGRANTS, NONIMMIGRANTS, AND DEPORTABLE ALIENS LOCATED,  
 FISCAL YEARS 1960-1980

Year	INS Personnel			Workload		
	Permanent positions	Average paid employment <sup>a</sup>	Total compensable work years <sup>a,b</sup>	Immigrants	Non-immigrants admitted	Deportable aliens located
1960	6,895	6,522	---	265,398	1,140,736	70,684
1965	7,043	6,747	---	296,697	2,075,967	110,371
1970	6,920	6,672	---	373,326	4,431,880	345,353
1975	8,020	7,992	---	386,194	7,083,937	766,600
1976	8,832	---	9,227	398,615	7,654,419	875,915
1977	9,473	---	9,705	462,315	8,036,916	1,042,215
1978	10,071	---	9,804	601,442	9,343,710	1,057,977
1979	10,997	---	11,655	460,348	---	1,076,418
1980	10,943	---	9,885	---	---	910,361

NOTE: Since 1977, the fiscal year runs from October 1 to September 30; prior to 1977, it was from July 1 to June 30. Dashes under INS Personnel indicate data not included in the source. Dashes under Workload indicate data not available.

<sup>a</sup>The data include the full-time equivalent of nonpermanent positions.

<sup>b</sup>Includes the full-time equivalent of overtime and holiday hours worked. This accounted for the equivalent of 1,484 compensable work years in 1979 and 1,771 compensable work years in 1980.

SOURCE: U.S. IMMIGRATION & NATURALIZATION SERVICE, 1978 STATISTICAL YEARBOOK 62.

TABLE 5  
 DEPORTABLE ALIENS LOCATED BY STATUS AT ENTRY AND NATIONALITY,  
 FISCAL YEAR 1978

Nationality	Status at Entry					Total
	EWI	Visitor	Student	Crewman	Other	
Europe	295	5,521	585	6,317	1,263	13,981
Asia	138	5,008	2,969	4,940	1,720	14,775
North America	968,219	33,498	944	828	9,234	1,012,719
Mexico	948,891	21,484	349	40	5,903	976,667
South America	2,708	5,557	655	919	962	10,801
Africa	28	998	1,135	507	242	2,910
Other	68	1,699	525	281	218	2,791
Total	971,456	52,281	6,813	13,788	13,639	1,057,997

NOTE: EWI = entry without inspection.

SOURCE: U.S. IMMIGRATION & NATURALIZATION SERVICE, 1978 STATISTICAL YEARBOOK 72.

The increase in apprehensions reflects a large increase in illegal immigration, which has been caused by five factors: (1) the end of the bracero program for temporary farm workers in 1964, (2) the introduction of numerical limits on Western Hemisphere immigration in 1965, (3) the prospect of amnesty as proposed by the Carter administration in early 1977, (4) improved transportation and information networks, and (5) increased competition for jobs among

low-skilled workers in the major sending countries.

The data on apprehensions reflect, in part, administrative decisions on the allocation of enforcement resources. These decisions, however, do not necessarily achieve their desired result. For example, although more apprehensions per dollar of enforcement expenditure occur if there is a relative concentration along the Mexican border, this may not be the maximum deterrent for a given enforcement budget. Apprehensions along the border may have a minimal deterrent effect if, as many believe, most illegal aliens who are apprehended and deported while entering without inspection simply try again a few nights later. Apprehension and deportation may have a greater long-term deterrent effect if they occur after an illegal alien has penetrated the border and incurred costs in locating a job and residence. Even though the cost per apprehension away from the border is higher, it is not necessarily less cost-effective in deterring illegal immigration.<sup>41</sup> The large and increasing number of apprehensions along the Mexican border suggests that the border is porous and that the cost of being apprehended is low for the illegal alien. If the probability and cost of apprehension were high, few persons would attempt illegal entry, and the number of apprehensions would be small.

Little is known about the characteristics of illegal aliens. There are reasons to believe, however, that they are not a random sample of persons desirous of, but unable to obtain, a legal immigrant visa. Rather, they are disproportionately low-skilled workers. There is a probability greater than zero that these immigrants will be apprehended at the border or in the interior. The probability of detection in the interior is greater for those who come into contact with the authorities—e.g., the police, an occupational licensing board, or the personnel department of a government agency or large firm. Persons with high levels of skill, particularly professionals who require a certification of some sort, are likely to be detected. In addition, the cost of deportation is greater for immigrants with higher levels of skill. If deported, unskilled workers

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41. David North estimated that in 1979, border enforcement, interior enforcement, and antismuggling activities by the border patrol cost \$108 per apprehension, while interior enforcement by the investigations unit cost \$156 per apprehension. The cost per apprehension for just border-control patrol activities is even less than the cost for over-all border patrol activities. See D. North, *Enforcing the Immigration Law: A Review of the Options* 17 (Sept. 1980), reprinted in *SELECT COMM'N ON IMMIGRATION & REFUGEE POLICY, 97TH CONG., 1ST SESS., U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST* app. E (Comm. Print 1981). North's study includes several ideas for increasing the efficiency of the enforcement of immigration law at the border and in the interior.

(and workers with skills that are readily transferable internationally) do not lose the value of their training in the United States. Country-specific investment in training tends to rise with the skill level. A deported skilled illegal alien finds that investments in United States-specific training are not relevant when he returns to his home country, and that some of the skills specific to the country of origin acquired prior to the illegal migration have subsequently depreciated.

The resources devoted to the enforcement of immigration are relatively small and have not kept pace with the workload.<sup>42</sup> The number of permanent positions in the Immigration and Naturalization Service increased nearly sixty percent from 1960 to 1979.<sup>43</sup> During the same period, the annual number of immigrants more than doubled, nonimmigrant admission of aliens increased eight-fold, and the number of apprehensions of illegal aliens increased fourteenfold. Not all of the increase in permanent positions reflects more resources devoted to direct enforcement activities, particularly in recent years. For example, from fiscal year 1977 to 1979 the INS operating budget increased eleven percent in real dollars, and the real resources devoted to service to the public, support operations, and program direction increased forty-seven percent during the same period. In contrast, border enforcement resources increased one percent, detention and deportation resources decreased four percent, and interior enforcement resources decreased fifteen percent.<sup>44</sup> This reallocation of resources within the Immigration and Naturalization Service away from enforcement activities, particularly interior enforcement, reflected a decision by the

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42. In addition to screening persons entering through legal gateways (a function shared with the Customs Service), and other immigration law enforcement through patrols along the border and interior enforcement, the INS administers exclusion and deportation proceedings. The State Department's Visa Service administers visa applications, and the Labor Department's Office of Labor Certification issues labor certificates. North estimated that in fiscal year 1980 there were 11,869 "immigration law enforcement positions." Of these, 8,433 were in the INS (including 2,694 in the border patrol and 1,019 in interior enforcement), 2,287 in the Customs Service, 907 in the State Department, and 242 in the Labor Department's Employment Standards Administration (enforcement of minimum-wage and farm-work regulations). *Id.* at 13.

43. See Table 4, *supra* p. 908. The INS publishes detailed tables, including tables that chart immigrants, nonimmigrants, apprehensions, and naturalizations, in its annual reports and in its 105-page 1978 *Statistical Yearbook*. But the annual reports, the 1978 *Statistical Yearbook*, and the *INS Reporter* do not include data on the INS budget, number of personnel, or number of personnel in enforcement units. Apparently, the only published information on these matters is included in the Appendix to the United States Budget.

44. The percentage increase in nominal expenditures was adjusted by the deflator for federal nondefense purchases of goods and services, which increased 14% during the period.

Carter administration to grant de facto amnesty for illegal aliens already living in the United States. Congress showed no interest in the administration's 1977 legislative proposal for amnesty.<sup>45</sup>

### III. HETEROGENEITY AMONG IMMIGRANTS

The American public commonly views immigrants either as unskilled and poorly motivated workers, or as highly successful and aggressive achievers. These characterizations focus on the extremes. The average immigrant is at neither pole, but is apparently closer to the latter than the former. More striking is the heterogeneity among immigrants. Immigrants differ almost as much as natives in their earnings, occupational distribution, schooling, and on-the-job training. They also vary widely in country of origin. Although there is a tendency for most immigrants to be adults in their twenties at the time they immigrate, this is more the case for economic migrants than for refugees.

Analytically, the productivity of immigrants is considered most fruitfully within the context of two models—the transferability of skills and the self-selection of migrants. Immigrants from English-speaking countries at a similar level of economic development as the United States are more likely to have readily transferable skills than are immigrants from other countries. This implies that they have higher earnings at arrival, and experience a smaller rise in earnings with duration of residence. Because of the greater economic incentive for migration among the most able and ambitious, if other factors are the same, immigrants, particularly economic immigrants, tend to be favorably self-selected for labor market success. Because labor market considerations are less relevant in the decision to move among refugees and tied movers (those who move primarily as a consequence of the immigration decision of a family member) in comparison with economic migrants, the latter would tend to have more readily transferable skills.

The productivity of immigrants, as measured by their labor market earnings, varies systematically with several readily measurable variables.<sup>46</sup> For example, earnings are higher for immigrants

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45. The Carter administration's proposed 1982 budget included a further decline in real resources for the INS. "Mr. Crosland [Acting Commissioner] said that the new budget would maintain the strength of the border patrol, but cut the number of investigators who look for illegal aliens inside the country and trim the number of inspectors who screen travelers at ports of entry." *Wall St. J.*, Jan. 9, 1981, at 4, col. 5.

46. See B. CHISWICK, *AN ANALYSIS OF THE ECONOMIC PROGRESS AND IMPACT OF IMMIGRANTS* (report prepared for the Employment and Training Administration, U.S. Depart-

with more schooling, whether the schooling was acquired in the United States or in the country of origin. The effect of schooling on earnings is greater for immigrants with highly transferable skills (e.g., economic migrants from English-speaking countries), and is least for refugees (e.g., Cubans). Earnings also are related positively to the number of years of labor-market experience in the country of origin prior to immigration. Again, this effect is greater for economic immigrants from English-speaking countries, and least for refugees.

Most striking is the generally positive effect of duration of residence in the United States on the earnings of immigrants. The effect is curvilinear: earnings generally rise very sharply during the first few years, and then continue to rise at a decreasing rate with the duration of residence. The magnitude of the rise in earnings with duration of residence is greater for those who must undergo the greatest economic adjustment on arrival (refugees), and weakest for those with the smallest economic adjustment (English-speaking economic migrants). Although on arrival male economic migrants have lower earnings than their native-born counterparts, if other factors are the same, economic migrants reach earnings parity after eleven to fifteen years. Thereafter, the immigrants have higher earnings.

Earnings also are related to the cause of the migration. Earnings are greater for economic migrants than for political refugees, presumably because noneconomic factors influence the migration decision of the latter, and because refugees have fewer transferable skills. Earnings on arrival are very low for refugees (again, assuming other variables are the same); although the gap narrows with a longer residence, it does not close. The data also suggest that tied movers, who base their decision to migrate primarily on the migration decision of a family member, have lower earnings than the primary economic migrant. The 1970 Census of Population evidenced that, if other forces are the same, women who married prior to immigration consistently had lower hourly earnings than those who married after immigration.<sup>47</sup> Tied movers had lower earnings and higher unemployment rates at their destination than similarly situated internal migrants who were not tied movers.<sup>48</sup> It also has been

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ment of Labor) (available from National Technical Information Service, NTIS No. PB 80-200454) [hereinafter cited as B. CHISWICK, *ECONOMIC PROGRESS*]. The data are from the U.S. Bureau of the Census, 1970 CENSUS OF POPULATION.

47. See B. CHISWICK, *ECONOMIC PROGRESS*, *supra* note 46, at 182, 200.

48. Mincer, *Family Migration Decisions*, 86 J. POL. ECON. 749 (1978).

found that, other things being equal after seven years in the United States, persons admitted under the kinship immigration criteria had lower earnings than occupational-preference and non-preference immigrants.<sup>49</sup> The superior performance of primary economic migrants in comparison with those whose migration is influenced by kinship ties, even when other measured variables are the same, is presumably related to the transferability of skill, ability, motivation for personal labor-market advancement, and continuity of attachment to the labor market.

There is a substantial difference in earnings between immigrants from advanced industrialized societies and those from less developed countries. This difference is partly attributable to the latter's fewer years of formal schooling. Even so, some substantial and significant differences remain. For example, when other factors remain constant, including area of residence in the United States and marital status, immigrants from Mexico earn about twenty percent less than European immigrants. Perhaps this arises because the earnings gain from migration from Mexico is so substantial that it is worthwhile, even if earnings are lower than average in the United States. But immigration from the higher-income countries is profitable only if higher than average earnings can be obtained in the United States.<sup>50</sup>

#### IV. ECONOMIC IMPACT

The formation of immigration policy, as with other types of public policy, would be simpler if the native population were homogeneous. Then the average impact of immigrants on the native population would be the impact on each and every native person. However, natives are heterogeneous in both their human and non-human assets. Consequently, in policy debates the distribution of the impact can be as important as, if not more important than, the overall impact.

##### A. *Unemployment Myths and Realities*

Much of the public debate regarding immigrants is expressed

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49. See D. NORTH, SEVEN YEARS LATER: THE EXPERIENCE OF THE 1970 COHORT OF IMMIGRANTS IN THE U.S. LABOR MARKET 102-04 (report prepared for the Employment and Training Administration, U.S. Department of Labor).

50. For reasons that remain unclear, if other variables are constant, the earnings differential of about 20% between Mexican-Americans and Anglos also exists among second generation Americans (native-born but with at least one foreign-born parent) and higher-generation Americans (both parents born in the United States).

in terms of unemployment. Recently, there has been bipartisan political support for the immigrant-unemployment connection: Both the Secretary of Labor in the Carter administration and the Commissioner of the Immigration and Naturalization Service in the Ford administration attributed the unemployment of at least two to three million Americans to illegal aliens.<sup>51</sup> The economic fear is that immigrants take jobs that natives would otherwise have, thereby contributing to unemployment.

It is important to distinguish between taking a particular job "slot," and depriving a native worker of a job. For example, if an immigrant takes a particular job washing dishes in a restaurant, then that job slot clearly has not been filled by a native-born worker. This visible effect generates resentment. It is, however, the availability of jobs that attracts workers into the U.S. labor market, both from the household sector (outside the labor force) and from other countries. The absolute growth in employment in the United States consistently has exceeded the growth in the numbers unemployed. There is no fixed number of jobs in the economy; the extent of employment generally increases with increased immigration, although relative wages may change.

Suppose an immigrant takes a job that otherwise would have been occupied by a native worker. The immigrant either may hoard his earnings, spend all of his earnings, or do something in between. If the immigrant hoards his earnings, the natives gain the benefit of his production, giving nothing in return but green pieces of paper that are inexpensive to produce. The effect is deflationary—it is as if the Federal Reserve System reduced the money supply by the amount hoarded.<sup>52</sup> Natives as a whole would have greater income. Native workers would allocate themselves among jobs in the labor market, and the rate of increase in the price level would be lower than otherwise. As long as there is some flexibility in wages, and workers can change jobs, no permanent unemployment is created.

More likely, the immigrant spends his earnings either in the United States or by emigrant remittances to his home country.

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51. See *Illegal Aliens Take Jobs of Citizens, Marshall Declares*, L.A. Times, Dec. 2, 1979, § 1, at 1, col. 2; Chapman, "Silent Invasion" that Takes Millions of American Jobs, U.S. NEWS & WORLD REP., Dec. 9, 1974, at 77-78. This view is not confined to the United States. "One and a half million unemployed is one and half million immigrants too many," is also the slogan of anti-immigrant elements in France. *French Directing Anger at Immigrant Workers*, N.Y. Times, Dec. 30, 1980, at A3, col. 5.

52. The deflationary effect, of course, could be offset by appropriate adjustments in monetary policy.

There is no deflationary effect, as the extra output produced by the immigrant is matched by the increase in the aggregate demand for goods and services. Employment is generated as workers produce the goods and services purchased by the immigrants.

In either instance, immigration *per se* does not result in a permanent net loss in jobs to natives, even if immigrants take particular job slots that native workers otherwise would occupy. There are, however, three circumstances in which immigration could result in increased measured unemployment, although they are not what proponents of the immigrant-unemployment connection appear to be discussing: (1) the unemployment of immigrants *per se*; (2) frictional unemployment among the native population; and (3) structural unemployment arising from wage rigidities.

Recent entrants to the labor force—whether they are youths leaving school, women entering or reentering the labor market, or new immigrants—engage in a job search. It takes time to find a job, and one way of learning about occupations and employers is to experience a variety of jobs. Higher than average voluntary job turnover is therefore a characteristic of recent labor force entrants. Recent immigrants, in particular, experience substantial upward occupational mobility, presumably often accompanied by periods of voluntary unemployment as their skills adjust to the American labor market. Recent labor-market entrants may also experience greater involuntary separations from employment since their employers had less information about them when they were hired and the workers have less seniority. Moreover, their employers have made smaller investments in their firm-specific training.

Data from the 1970 Census and the 1976 Survey of Income and Education (SIE) suggest that, other factors being equal, the number of weeks worked by adult white men in a year was lower among recent immigrants than among the native-born and long-term immigrants.<sup>53</sup> In the 1970 Census, which recorded year of immigration in five-year intervals, the foreign-born in the United States for less than five years worked three weeks less than the native-born. Immigrants in the United States five to nine years worked one week less. For immigrants in the United States for ten or more years, there was no difference from the native-born. Among the foreign-born, those in the United States for less than five years worked about three weeks fewer than others, with no

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53. The empirical analyses reported in this paragraph and the next are based on B. CHISWICK, *THE EMPLOYMENT OF IMMIGRANTS IN THE UNITED STATES* (1982).



significant differences among the six cohorts identified in the data who were in the United States for five or more years. Although the sample sizes in the 1976 SIE are smaller than in the one-in-a-hundred sample from the 1970 Census, the greater detail on specific year of immigration for those in the United States for five or fewer years is illuminating. The SIE data suggest that most of the smaller number of weeks worked among those in the United States for five or fewer years is concentrated among the very recent arrivals; the difference in weeks worked narrows rapidly, virtually disappearing by the end of three to five years.

As is true among the native-born, the number of weeks worked is greater the higher the level of schooling and the greater the extent of labor-market experience (both before and after immigration) for the foreign-born. The number of weeks worked is also greater for those whose skills are more readily transferable to the U.S. labor-market. Other things being equal, immigrants from Cuba, Southern Europe, and the Balkans worked one week less than immigrants from the British Isles, while immigrants from Mexico worked two weeks less, and those from other Latin American countries worked 1.5 weeks less.

An influx of workers due to immigration will generate frictional unemployment among native-born workers. Frictional unemployment will arise whenever there is a change in the demand for or supply of labor that affects relative wage opportunities. Some workers will quit their current jobs in search of new higher-paying jobs. Employers in sectors where workers' marginal productivity has fallen below their wages will lay off some workers. Given the change in labor market opportunities, both workers and employers invest more in information regarding the labor market, resulting in frictional unemployment. Given the immigration, the frictional unemployment represents an efficient process through which workers identify and gravitate to what is currently their best employment opportunity, and through which employers adjust their work force to the new economic conditions.

Only a small proportion of native-born workers will experience frictional unemployment arising from immigration. Additionally, this unemployment will be short-lived; it will dampen as workers find their best employment opportunities in the new environment. The extent of frictional unemployment will be less the greater the extent to which immigrants are attracted to the United States and particular occupations or geographic areas by expanding job opportunities. Frictional unemployment will be greater if immigrants are

entering stagnant occupations or economically stagnant regions. Thus, for a given size of a cohort of immigrants, frictional unemployment among the native population will tend to be smaller if the immigration is predominantly economic in nature rather than based on kinship or other criteria.

Wage rigidities, whether instituted by a legal minimum wage, a union wage, or social convention, can result in unemployment among the native-born if immigration would depress the market wage below the wage floor.<sup>54</sup> If the wage floor exceeds the market wage, more workers will offer their labor services than there are job slots. One solution is, of course, to eliminate the wage floor. A "second best" solution is to implement an immigration policy that would favor the immigration of high-skilled workers. This would cause the productivity of low-skilled native workers to rise and would reduce the pressures against the federal minimum wage. Although this policy would have particularly favorable impacts on the employment opportunities of native-born youths and disadvantaged minorities, it would also place downward pressure on the wages of the high-skilled workers.

### B. *Impact on Income*

For simplicity of exposition regarding the impact of immigrants on the level and distribution of income, assume that there are two types of workers, low-skilled and high-skilled, that within each type all workers are homogeneous, and that the only other factor of production is physical capital.<sup>55</sup> Assume also that the three factors of production are substitutes for each other, and that the production function approximates one with constant elasticity of substitution. Even in such a simplified situation, the impact of immigration is difficult to determine because of the potential for immigrant cohorts with quite different productivity characteristics. Although partially determined by external forces—such as a reces-

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54. Some of the high unemployment or low number of weeks worked among immigrants during their first few years may be a consequence of such wage rigidities. On arrival, immigrants tend to be relatively unproductive. But with the passage of time, and the increase in job experience, immigrants acquire skills that will help them obtain higher-paying jobs in the United States. By reducing the option of working in very low wage jobs that provide substantial training, the minimum wage may be impeding the upward economic mobility of immigrants.

55. The discussion in this section is based on a theoretical analysis developed in detail in Chiswick, *The Impact of Immigration on the Level and Distribution of Economic Well-Being*, in *THE GATEWAY: U.S. IMMIGRATION ISSUES AND POLICIES* (B. Chiswick ed. 1982) [hereinafter cited as Chiswick, *Immigration Impact*].

sion in one country or a revolution in another—under current circumstances and immigration quota ceilings, the characteristics of immigrant cohorts are largely determined by the United States immigration policy over a period of years.

Again, for purposes of exposition, consider the implications of two polar cases: a cohort of low-skilled workers and a cohort of high-skilled workers. The immigration of low-skilled workers reduces the marginal product of low-skilled native workers, but raises the marginal product of high-skilled workers and capital. The former effect arises from the greater labor supply of low-skilled workers, who are good substitutes in production for native low-skilled workers. The latter arises from the principle of complementarity—that the marginal product of a factor increases when the quantity of other factors of production with which it works increases. Although one native factor loses and the other native factors gain, the overall income of the native population increases. This is because the losses to native low-skilled labor are more than offset by the gains to native high-skilled labor and capital. Thus, average income among the native population increases, but the distribution of this income becomes more unequal.

The increase in the average income of the native population contrasts with the decline in the average income of the total population (natives augmented by immigrants). This decline arises from the assumption that low-skilled immigrants have lower incomes than the native population's average income. Thus, if the native population's average income is a variable of primary interest for determining the appropriate immigration policy, changes in the total population's average income may be a misleading indicator.

The decline in the earnings of low-skilled native workers as a result of low-skilled immigration is partially mitigated by the income tax and the mix of income transfers. Many of the recipients of income-contingent transfers, particularly recipients of Aid to Families with Dependent Children (AFDC), Medicaid, and Supplemental Security Income (SSI), and most of the aged recipients of Social Security and Medicare have little or no attachment to the labor market and hence do not suffer a direct adverse impact. Those who do suffer a direct impact—the working poor—may be eligible for food stamps, and, in the case of single-parent families, AFDC. If they become unemployed, the poor may be eligible for state unemployment compensation and AFDC-UP (Unemployed Parents' component of AFDC). Because the native population's aggregate income has increased, at least in principle, sufficient in-

come can be transferred from the gainers (high-skilled workers and owners of capital) to the losers (native low-skilled workers), so that all groups among the native population are at least as well off as before the immigration.

A dilemma arises, however, because by tradition as well as by law, legal immigrants (resident aliens) are eligible for the same income-transfer benefits as similarly situated natives.<sup>56</sup> The theoretical model indicates that if the low-skilled immigrants are to receive transfers that bring their incomes up to the pre-immigration income of native low-skilled workers, then the aggregate transfers will exceed the increase in income of high-skilled workers and capital. Thus, the native population as a whole can be made worse off.

With the immigration of a cohort of high-skilled workers, the wages of native high-skilled workers decline, while the wages of native low-skilled workers and the returns to capital, increase. The aggregate income, and hence the native population's average income, increases. The change in the total population's average income cannot be determined, however, without knowing whether the average income of the high-skilled immigrants is higher or lower than the income (earnings and return to capital) of the native population. The narrowing of skill differentials would appeal to those who dislike inequality in labor-market outcomes.

The rise in the wages of native low-skilled workers increases their tax payments and lowers their receipt of income-contingent transfers. Because of these resources, as well as the higher taxes paid by capital and the positive taxes paid by high-skilled immigrants, the marginal tax rates on the earnings of native high-skilled workers can be lowered. Thus, net of the tax-transfer system, high-skilled workers can be made at least as well off as before the immigration, without eliminating all of the gains of native low-skilled workers and capital. With high-skilled immigrants, equal treatment of immigrants and natives can be maintained in the income-transfer system, and all native groups can be made at least as well off as before the immigration.

Recent empirical research has examined the relation between the characteristics of immigrants and the earnings of the native-born.<sup>57</sup> The analysis has been done for adult white non-Hispanic

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56. The Social Security Act, 42 U.S.C. § 301 (Supp. V 1981), limits an immigrant's receipt of Supplemental Security Income benefits during the first three years in the United States, unless an unanticipated disability arises after immigration. SSI provides cash benefits for low-income aged and disabled persons.

57. B. Chiswick, *The Effects of Immigration on Earnings and Employment in the*

native-born men, using the 1970 Census. Holding constant the native-born person's human capital and demographic characteristics, weekly earnings among the native-born rise with an increase in the level of the foreign-born's schooling and labor-market experience. In addition, using immigrants from the English-speaking developed countries as a benchmark, earnings among the native-born rise with an increase in the proportion of immigrants from Europe and a decrease in the proportion from Cuba and other less-developed countries, while there is no differential effect for the proportion from Mexico. Thus, more highly skilled or more productive immigrants are associated with greater earnings among the native-born.

An often-expressed concern is that immigrants can take advantage of society's investment in public capital. By using roads, schools, dams, and parks that have been constructed before their immigration, immigrants "dilute" the public capital available to the native population, thereby decreasing the native population's income. Highly skilled immigrants would be substantial beneficiaries of income transfers broadly defined to include the consumption of public capital.<sup>58</sup> This point, however, confuses the timing of the construction of public capital with the financing of this capital. The construction of most public capital is financed not from current tax receipts, but rather from bonds that are retired with revenues raised from user-fees or taxes as the capital is consumed. To the extent that the public capital is paid for as it is consumed, immigrants do not gain, and there is no dilution of the natives' public capital even if it is constructed prior to the immigration.

## V. ALTERNATIVE IMMIGRATION POLICIES

The review of current United States policy has shown that kinship is the primary criterion for rationing immigration visas, and that the visa applicant's skills or productivity characteristics play a relatively minor role. There is a considerable difference between the skill levels and earnings of immigrants admitted under the kinship criteria and under the productivity criteria. More favorable impacts on the level and distribution of the native population's income arise from higher-skilled immigrants than from

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United States, Part B, (1981) (available at University of Illinois at Chicago, Survey Research Laboratory).

58. This is one of the arguments discussed in Usher, *Public Property and the Effects of Migration upon Other Residents of the Migrants' Countries of Origin and Destination*, 85 J. POL. ECON. 1001 (1977).

lower-skilled immigrants.

This section reviews two very different approaches to the reform of immigration policy.<sup>59</sup> The first is a skill-based rationing system in which an applicant's skill level, and hence the likelihood of his economic success in the United States, are the primary determinants of whether a visa is issued.<sup>60</sup> A point system is proposed for administering the program. The second approach is the set of recommendations from the Select Commission on Immigration and Refugee Policy<sup>61</sup> for modifications of the current system. The Commission's recommendations apparently would: (1) reduce the already small role of productivity characteristics in issuing immigration visas, (2) grant amnesty for illegal aliens, and (3) increase the relative and absolute number of low-skilled workers in future cohorts of immigrants.

#### A. *A Skill-Based Rationing System*

The current immigration policy could be shifted radically by focusing on productivity characteristics instead of kinship criteria. Under a productivity or skill-based policy, the primary criterion for rationing admissions would be the person's estimated productivity in the United States.<sup>62</sup> Research indicates that an immigrant's productivity, as measured by earnings and employment, appears to be related to the level and transferability of pre-immigration skills, including the level of schooling, vocational and on-the-job training, occupation, and knowledge of English. Prearranged employment also may be an aid to increased productivity.

In a productivity-based immigration policy, there is a temptation to grant visas to applicants in narrowly defined occupations in which there are "shortages," and to deny visas to applicants in "crowded" occupations. Indeed, in the occupational preferences of current immigration law, this approach has been adopted with absurd consequences. Physicians, nurses, physical therapists, dieticians, and others, are added to or withdrawn from the list of

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59. Policies regarding refugees and temporary (guest) workers are beyond the scope of this section.

60. For a detailed analysis of this approach, see P. CAFFERTY, B. CHISWICK, A. GREELEY & T. SULLIVAN, *THE DILEMMA OF AMERICAN IMMIGRATION: BEYOND THE GOLDEN DOOR* (in press).

61. The Commission was established by the Act of Oct. 5, 1978, Pub. L. No. 95-412, § 4, 92 Stat. 907-09 (1978), amended by Pub. L. No. 96-132, § 23, 93 Stat. 1051-52 (1979).

62. Productivity or skill characteristics and a point system form the basis for rationing visas in Canada, Australia, and New Zealand.

the most favored (Schedule A) occupations on the basis of political pressures of interested parties rather than on labor market studies.<sup>63</sup> Studies are not done to determine whether other occupations, such as engineering, are in equally "short supply." The economic aspects of the issues, including the subsequent occupational adjustments of the immigrants and the change in the occupational structure of the native-born labor force as a consequence of immigration, appear to play no role in the rulemaking process.

The granting of visas on the basis of narrowly defined occupations invites efforts to subvert the system. If the occupational categories are defined more broadly, however, then the adverse impact from a cohort of immigrants will be more diffused. This might help to avoid the manipulation of a skill-based rationing system by narrow occupational interests. Also, there will be less incentive for any one occupation to attempt to close their occupational category.

It is difficult for planners to know where there will be labor "shortages" and where there will be labor "surpluses" in the coming years. Occupational adjustments occur not only through the immigration of persons in the occupation but also through the substantial occupational change of immigrants after they arrive in the United States, and through the occupational change of natives. The focus in a skill-based rationing system should be on an applicant's skill level, rather than on his narrowly defined occupation.

To combine the multidimensional aspects of skills into rationing criteria, it may be necessary to adopt a point system rather than a preference system. In a preference system, as formulated under current law, a person must meet a minimum standard under any one of several categories to be eligible for a visa.<sup>64</sup> There is no possibility for combining equities under each of two or more categories to raise one's rank in the queue. But under a point system, it is the sum of the points obtained from several categories that is relevant, rather than crossing a threshold in any one category.

Under a point system, points could be earned for various productivity traits, and a visa would be issued to persons who received a minimum number of points.<sup>65</sup> Each year of schooling may be worth, for example, two points. Apprenticeship, vocational train-

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63. See *supra* notes 23-26 and accompanying text.

64. See *supra* note 10.

65. Persons exempt from the point system would be the immediate relatives (spouse and minor children) of U.S. citizens, refugees and their immediate relatives, and the immediate relatives of persons given an immigrant visa if they accompany the immigrant or come within a certain time (perhaps one year).

ing, and on-the-job training also would be worth a certain number of points. Points could be earned, possibly on a scale of zero to five, for fluency in English. Other points could be awarded for pre-arranged employment. To preserve the nonracist character of immigration policy, points should not be granted on the basis of race, ethnicity, religion, or country of origin.<sup>66</sup>

Evaluating skills and awarding points should be the responsibility of a single agency—the Immigration Service. To have this function performed in either the Department of Labor or the Department of Commerce would be to invite efforts by interest groups entrenched in either agency to subvert the system for their own purposes. As an independent agency, the Immigration Service would be subject to influences from many sources, and thus might be better able to steer a middle course.<sup>67</sup>

To reduce variations in the annual number of immigrants, a worldwide annual quota could be retained, with visas issued to those with the largest number of points among those who satisfy the threshold. To reduce the uncertainty concerning when permission to immigrate will be granted among those in the queue, additional points (that do not count toward the minimum threshold) might be given for waiting in the queue. Of course, if the queue gets too long, either the minimum threshold number or the annual quota should be increased.

The point system can be flexible to provide greater immigration opportunities for persons with relatives in the United States. This should be done without violating the rationing system's con-

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66. Canada uses a point system similar to the one suggested here for persons who are not the immediate relatives of citizens. In addition to the criteria indicated in this section, Canada gives points for the intention to settle in a geographic area that the Canadian government wishes to populate. The policy is of limited effectiveness because internal geographic mobility after immigration is not restricted. Because specific residential location would not be enforceable in the United States, and because the United States does not have a clearly defined regional policy, this would appear to be an inappropriate criterion for U.S. policy. Indeed, efforts by the federal government to disperse the Indochinese refugees geographically have been ineffective. There has been substantial internal migration from the community of first settlement to California, their preferred state of residence. See Gordon, *Settlement Patterns of Indochinese Refugees in the United States*, I.N.S. REP., Spring 1980, at 6-10.

67. There is no compelling reason for immigration matters to be part of the Department of Justice. The immigration and naturalization functions are separable, and the latter only may be an appropriate function for the Department. As an independent agency, the new Immigration Service would be less constrained by Justice Department interests in making its case for more resources for enforcement, and would be in a better position to institute regulations and recommend policy changes based on overall economic considerations. The agency shall not have cabinet status.



cern for the economic impact of immigrants. A small number of points may be awarded, for example, to applicants with relatives in the United States who will guarantee their financial support for a certain length of time. In this manner, persons who do not satisfy the general productivity criterion, but whose presence is of "consumption value" to their relatives in this country, would be more able to immigrate legally.

History provides some examples of what the proposed immigration policy's effect would be on the occupational distribution of immigrants. In 1962 Canada shifted from a kinship-based immigration policy, not unlike current United States policy, to a system with kinship criteria for immediate relatives of Canadians and a primarily skill-based point system for others. The proportion of professional and technical workers among the immigrants increased from an annual average of twelve percent in 1956-1960 to an annual average of twenty-six percent in 1962-1971. The annual average proportion of unskilled workers declined from thirty-six percent in 1956-1960 to sixteen percent in 1962-1971.<sup>68</sup>

Some may argue that the productivity criterion outlined above is antifamily—that such a dramatic change from the current system would end the humanitarian goal of family reunification. This is not so. Foreigners with more kinsmen in the United States would still be more likely to apply for an immigrant visa, because immigrating to the United States is more attractive to them than to others in their home country. Additionally, the immediate relatives of United States citizens would still be eligible for admission without numerical restrictions. For other applicants, those who have sufficient points to immigrate could do so, and could be "re-united" with family members. A person with kinsmen in the United States would have two advantages: his relatives could help him prearrange employment, and they could guarantee his financial support for the first five years. Willingness to engage in these activities is one test of the relative's interest in his kinsmen's immigration.<sup>69</sup>

Many aliens can immigrate under the current kinship criteria but not under the productivity criteria. Their immigration is at the expense of the native population, since the United States will be

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68. Parai, *Canada's Immigration Policy, 1962-74*, 9 INT'L MIGRATION REV. 449, 469-72 (1975).

69. Voluntary family dislocations that arise from economic migration are a less compelling reason for special "family reunification" visas than are the involuntary separations and dislocations often arising from situations that create refugees.

accepting a less productive worker instead of a more productive worker. The largest adverse impact under the current system is experienced by native-born low-skilled workers. These workers face greater competition in the labor market and in the allocation of income-contingent transfers from a larger number of low-skilled immigrants. The current system provides the largest benefits to the relatives of immigrants entering under kinship criteria, many of whom are themselves recent citizens and resident aliens. This inequity would be removed under the productivity criteria.

The political support for admitting a larger number of immigrants each year would be more broadly based under a skill-based rationing system than under the current kinship system. This is because of the more favorable impact of immigration on both the level and distribution of income. The extent to which the optimal number of immigrants would increase as a consequence of the change in criteria is an empirical question that warrants further study.

### B. *The SCIRP Recommendations*

The Select Commission on Immigration and Refugee Policy (SCIRP), created by an act of Congress in 1978,<sup>70</sup> released its recommendations in February 1981.<sup>71</sup> The Commission's recommendations focused on a modification of the preference system for legal immigrants, amnesty for illegal aliens in the United States, and policies to control future illegal immigration. The apparent thrust of the Commission's recommendations is to: (1) increase the role of kinship, (2) decrease the already small role of skill or productivity in rationing immigration visas, (3) increase immigration of low-productivity workers, and (4) shift much of the burden of the enforcement of immigration law onto employers through a requirement that they screen all workers for their legal status.

SCIRP recommended retaining the current policy of allowing immigration without numerical limit for the spouses, minor unmarried children, and parents of adult citizens. It also recommended adding adult unmarried children (currently the first preference) and grandparents of adult citizens to the exempt list. Under current regulations, there is little binding constraint on

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70. Act of Oct. 5, 1978, Pub. L. No. 95-412, § 4, 92 Stat. 907-09 (1978), amended by Pub. L. No. 96-132, § 23, 93 Stat. 1051-52 (1979).

71. SELECT COMM'N ON IMMIGRATION AND REFUGEE POLICY, 97TH CONG., 1ST SESS., U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST (Comm. Print 1981) [hereinafter cited as SCIRP].

first-preference visa applicants from most countries, with the exception of Mexico.<sup>72</sup>

The Commission endorsed a worldwide numerical limit and country quotas for other relatives and "independent immigrants." The recommended worldwide limit is 350,000 visas per year, with an additional 100,000 visas per year for five years to reduce the visa backlog.<sup>73</sup> The categories for other relatives would include the current second, fourth, and fifth preferences. A new category, the unmarried adult children of resident aliens, would also be included. The Commission further recommended that a "substantial" number of visas be set aside for the spouses and unmarried children of resident aliens, that there be no country ceilings for the spouses and minor children of resident aliens,<sup>74</sup> and that these visas be issued on a first-come, first-served basis. The second-preference country ceiling is severely binding only for Mexico and the Philippines. As of February 1983, second-preference applications by Mexican nationals filed in February 1974 were at the top of the queue.<sup>75</sup> The recommendations regarding the current second preference are related to the Commission's proposal of amnesty.

SCIRP views the independent immigrant category, which would replace current occupational and nonpreference categories, as a means of creating new kinship immigration streams ("new seed" immigrants), rather than as a mechanism for selecting workers with the greatest productivity in the United States.<sup>76</sup> The independent category includes a numerically limited number of persons

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72. As of January 1, 1980, Mexican nationals totaled 38% of the first preference visa backlog. *Id.* at 146.

73. *Id.* at 149. As of January 1, 1980, there was a backlog of 1.1 million visa applications, an increase of 100,000 over the previous year. *Id.* at 146. The Commissioners called for reducing the visa backlog as quickly as possible. Although no formal vote was taken, the report notes that "many Commissioners are of the view that per-country and preference ceilings—although applied to new applicants under the proposed system—should not apply to those in the backlogs." *Id.* at 150. Much of the backlog is concentrated in a small number of countries, including Mexico (25%), the Philippines (23%), and Korea (7%). The backlog exists primarily in the kinship preferences and nonpreference categories (5% in the second preference, 50% in the fifth preference and 26% in the nonpreference category), with only 7% in the occupational preferences. *Id.* at 146.

74. *Id.* at 148.

75. 5 Bureau of Consular Affairs, Visa Office, U.S. Dep't of State, Immigrant Numbers for February 1983 (No. 33, 1983).

76. "It is the Commission's hope that this category will provide immigration opportunities for those persons who come from countries where immigration to the United States has not been recent or from countries that have no immigration base here." SCIRP, *supra* note 72, at 16.

with "exceptional merit and ability in their professions."<sup>77</sup> Nonetheless, the Commission also stated,

The Commission's intent is not to provide a separate category for highly trained or needed professionals (for example, nurses, doctors, engineers), artists or other persons of merit unless they are exceptional and qualify under specific established guidelines. . . . [T]he Commission further cautions against the creation of a significant channel which could deprive other nations of the highly skilled persons they need.<sup>78</sup>

A presumably larger category of other independent migrants is also proposed, to "allow the entry of persons without family ties in the United States and of persons whose family ties are distant. . . . One possible benefit will be the increased proportion of immigrants screened for labor market impact; this will both protect U.S. workers and enhance economic growth."<sup>79</sup>

SCIRP recommended amnesty for illegal aliens in the United States as of January 1, 1980.<sup>80</sup> Once given an adjustment of status, these persons could serve as sponsors for their relatives. Amnesty would increase the number of low-skilled workers in the United States in three ways. First, the prospect of amnesty would encourage the illegal immigration of other low-skilled workers with the expectation that, once granted, amnesty would be offered repeatedly. Indeed, illegal immigration increased sharply when President Carter made his proposal for amnesty in 1977. Second, amnesty would increase substantially the demand for immigration visas by the spouses and children of those given amnesty, and many of these soon would enter the labor market. The recommendations mentioned above for more favorable treatment of this category of immigrant, especially for Mexican nationals, would allow the system to satisfy much of this increased demand for visas. Third, many illegal aliens who return home during periods of seasonal and cyclical slack in employment would remain in the United States, as their families would be with them and they would be

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77. *Id.* at 130.

78. *Id.* The Commission's view regarding the immigration of professionals is exemplified by its statement on nurses:

The Commission concludes that the continuing shortage of practicing nurses in the United States justifies the admission of foreign nurses while that shortage continues, but urges that efforts be intensified to make nursing a more attractive career to induce more inactive U.S. nurses to return to that profession.

*Id.* at 223.

79. *Id.* at 135 (emphasis added).

80. *Id.* at 76-77.

able to receive income transfers legally.

SCIRP proposes to control future illegal immigration through increased resources for border enforcement, and through employer sanctions.<sup>81</sup> The Commission favors border enforcement more than interior enforcement by the immigration authorities: "It is both more humane and cost effective to deter people from entering the United States than it is to locate and remove them from the interior."<sup>82</sup> Border enforcement may be more cost effective per apprehension, but it is not necessarily more cost effective per deterred alien. A recommendation is made for a "substantial increase" in funding and personnel for the border patrol,<sup>83</sup> but no parallel recommendation exists for interior enforcement. There are no recommendations for penalties, other than deportation, against apprehended illegal aliens, even for those who engage in flagrant and frequent violations of the law. SCIRP also endorsed the Attorney General's ruling that "state and local law enforcement officers should be prohibited from apprehending persons on immigration charges, except in alien-smuggling cases."<sup>84</sup> This ruling limits the effectiveness of interior enforcement.

In spite of this hands-off policy for official law enforcement agents, the Commission has endorsed civil penalties against employers who knowingly employ illegal aliens, and criminal penalties against employers who engage in "flagrant and extended violations of the law following the imposition of civil penalties."<sup>85</sup> The Commission was vague about the mechanism through which employers could verify a worker's legal status, stating simply that it "support[s] a means of verifying employee eligibility that will allow employers to confidently and easily hire those persons who may legally accept employment."<sup>86</sup> The report does not indicate the magnitude of these costs of employee verification, their effects on the employment opportunities of high-turnover, low-skilled American workers, or whether such verification is feasible without a national identity card. Employer sanctions are not likely to reduce employment opportunities for illegal aliens without both a reasonably foolproof means of checking a person's legal right to work, and vigorous internal enforcement.

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81. *Id.* at 46-52.

82. *Id.* at 47.

83. *Id.*

84. *Id.* at 256.

85. *Id.* at 64.

86. *Id.* at 67.

Although there is much public concern about the use of welfare and subsidized medical care by illegal aliens, the Commission did not offer any recommendations on this issue. It did not, for example, endorse or even vote on proposals that have been made to alter current regulations of the Department of Health and Human Services that bar welfare and other public aid agencies from reporting suspected illegal aliens to the immigration authorities. Indeed, it is curious that SCIRP endorsed extending the burden of enforcement to employers, while favoring the current restrictions on referrals by state and local law enforcement authorities and welfare agencies.

The overall thrust of SCIRP's policy recommendations is to increase both the number and proportion of low-skilled immigrants while decreasing the number of high-skilled immigrants. This emphasis presumably arises from the Commission's concern for "global inequities,"<sup>87</sup> and what appears to be a desire to increase substantially immigration from Mexico. In nearly every instance, recommended modifications of current policy would favor Mexican immigrants over immigrants from other countries. These policies would deprive the United States of many highly productive foreign workers, depress the earnings of low-skilled American workers, and result in increased taxes to pay for an expanded income-transfer system. The economic impacts of SCIRP's recommendations appear to have been of minor concern to the Commission.<sup>88</sup>

## VI. CONCLUSION

Immigration will continue to play an important role in American economic life. The public policy issue is not simply whether immigration per se is beneficial, but rather whether increased benefits to the United States can be obtained from changes in the number of immigrants and the rationing criteria. In an era such as the nineteenth century when public policy showed little regard for the income-distribution impacts of immigration, and when there were no public income-transfer systems to mitigate the losses to groups for whom the impact was adverse, an open-door or laissez-faire immigration policy was politically acceptable. These conditions no longer prevail, and an open-door immigration policy is not

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87. *Id.* at 20.

88. This perhaps was foreshadowed by the Commission's research agenda, which virtually ignored research on illegal aliens and the labor market impact of immigrants. *See id.* at 436-37.

politically viable. If there are to be limits on immigration, then there must be a rationing mechanism. A mechanism that would provide more rapid growth in the income of the native population and a relatively smaller transfer system is generally preferable to one that offers opposite effects.

Current immigration policy is characterized by a rationing system based on kinship and by lax enforcement of immigration law. This policy has encouraged larger numbers of low-skilled immigrants to arrive in the United States than would have been here had the rationing criteria focused on the level of skill. SCIRP apparently would increase further the role of kinship, and decrease the already small role of the productivity characteristics or skills of the visa applicants. Rather than endorsing a major strengthening of the enforcement of current immigration law, the Select Commission proposes legalizing the status of illegal aliens in the United States, and shifting much of the enforcement responsibilities to employers through sanctions against those who employ illegal aliens. The Commissioners equivocated, however, on the crucial issue of how employer sanctions were to be administered. Also, they did not address the adverse impact of the additional cost of employer screening of workers upon employment opportunities for native workers in low-wage, high-turnover jobs.

As an alternative, a two-pronged policy approach could be adopted. One prong would be the more stringent enforcement of current immigration law—not only at the border, but also in the interior. Under this approach, there would be no blanket amnesty for illegal aliens, and the responsibility for enforcing immigration law would not be shifted to employers. The second prong would involve shifting the focus in rationing visas from kinship to the applicant's level of skill. As skill is not unidimensional, a point system should be adopted to combine the diverse elements into a single number. With the exception of the immediate relatives of adult U.S. citizens, whose entry would not be subject to numerical limitations, visas would be issued to those with the greatest number of points, i.e., to those with the greatest potential productivity in the United States. Points also could be given for less immediate kinship relationships, but this should not be allowed to overwhelm the productivity criteria. These proposals would better satisfy the twin objectives of increasing the productive potential of the economy and reducing the relative size of the income transfer system than would either the current system or the Select Commission's recommendations.