

12.6 The Contested Politics of Immigration Reform in the USA

The more than thirty year impasse over immigration reform in the USA exemplifies the growing significance of migration-related politics that demarcates the Age of Migration.

By the first decade of the 21st century, there could be little doubt that migrants were not only profoundly affected by immigration policies, but that they were capable of influencing those policies, both directly and indirectly, at least in democratic settings. The contested debate over US immigration reform bore ample witness.

As early as the 1950s, progressive Congressional members had supported sanctions to punish employers who illegally hired undocumented workers. Indeed, the government of Mexico had advocated employer sanctions in the USA in the context of the Bracero Programs, which from 1942 to 1964 brought about 5 million Mexican temporary workers to the USA, mainly for employment in agriculture in the Southwest. Employers in Texas, in particular, hired Mexican citizens outside of the agreed upon procedures leading to protests by Mexico. By 1952, both houses of the US Congress had voted in favour of employer sanctions in separate bills. But in the conference committee between the two chambers, which produced the Immigration and Nationality Act (INA) of 1952, future US President but then Senator from Texas Lyndon Johnson rewrote the bills to preclude punishment of employers who hired unauthorized foreign workers. This became known as the 'Texas Proviso', which, as amended, long remained the basis of US immigration law and policy. Hence, until adoption of the Immigration Reform and Control Act (IRCA) of 1986, unlawful employment of aliens was not subject to legal sanctions (see Chapter 8).

Disquiet over illegal migration became a US governmental concern by the early 1970s. The Nixon Administration created an interagency group to study possible federal government responses to the perceived problem. By the time of the Jimmy Carter Administration (1977-81), an Interagency Task Force on Immigration had been created. The US Congress then mandated the creation of the second federal-level commission to study immigration and to make recommendations to the US Congress and President. The Select Commission on Immigration and Refugee Policy (SCIRP)

began its work in 1979 and reported to the US Congress and the newly-elected President Reagan in 1981.

SCIRP, which convened extensive public hearings and gathered expert advice, sought to build a consensus on the future course of US policy concerning legal and illegal migration. SCIRP's creation had much to do with a Congressional impasse over how to respond to illegal migration. In the 1970s, successive Congressional efforts to impose employer sanctions were blocked, with powerful employer interest groups, in particular, leading the campaign against them (Tichenor, 2002: 3). In its recommendations to the Congress and President Reagan, SCIRP advocated adoption of employer sanctions in conjunction with implementation of a counterfeit-resistant employment eligibility document that all workers, both citizen and non-citizen, would be required to possess. SCIRP also recommended a legalization programme and opposed expansion of temporary foreign worker recruitment.

Subsequent years witnessed the continuation of this impasse that still was very much in evidence in 2006 and 2007. The Immigration and Control Act (IRCA) was adopted in 1986, but it did not create a credible employer sanctions regime. In addition to a glaring lack of enforcement, the law did not include the counterfeit-resistant employment eligibility document recommended by SCIRP. As a consequence, illegal migration to the USA, especially from Mexico, skyrocketed. In retrospect, the views of the Reagan Administration had much to do with the outcome. As a candidate for the presidency, Ronald Reagan announced that he favoured free movement of workers between Mexico, the USA and Canada (Tichenor, 2002). His Administration and its allies in Congress succeeded in vitiating much that had been recommended by SCIRP.

Hence, despite the formal imposition of employer sanctions in 1986, illegal migration to the USA surged between 1987 and 2007. In fact, US officialdom was deeply complicit with this outcome as was the US electorate. However, most US citizens favoured adoption of employer sanctions and their enforcement just as they supported legalization programmes. Perhaps more so than in other democracies, the politics of US immigration law and policymaking involved bizarre alliances between political factors and interest groups usually at odds with one another. Moreover, the preferences of key actors shifted over time. The most significant volte-face occurred in 2000 when the AFL-CIO, long the principal proponent of employer sanctions,

announced that it no longer supported their enforcement because employers allegedly manipulated enforcement to crush unionization efforts (Tichenor, 2002).

Paradoxically, trade union leaders and immigration activists of migrant-background played key roles in engineering the volte-face. The decision was particularly influenced by member unions representing large numbers of undocumented workers who had brought about a change of leadership in the AFL-CIO.

As the impasse over immigration reform at the federal level persisted, involvement of migrants and migrant-background persons in US politics became striking. State and municipal-level initiatives, usually of a restrictive nature, became commonplace. The 1994 Proposition 187 in California sought to deny most state benefits to illegally resident aliens, including schooling of children. The referendum precipitated huge rallies and marches in opposition to it. Mexican consular officials became involved in the protests. The referendum passed by a significant majority, but most of its provisions are deemed illegal by a federal judge. The *Plyler v. Doe* case ruled upon by the US Supreme Court in 1982 had previously held that local authorities in Texas could not exclude illegally resident aliens from schools. Moreover, the *Passenger Acts* decision of the US Supreme Court as early as 1849 had upheld the 'plenary powers' of the US federal government striking down efforts by municipal governments to prevent arrivals of Irish immigrants (Motomura, 2006).

References

- Motomura, H. (2006) *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States*. (New York: Oxford University Press).
- Tichenor, D.J. (2002) *Dividing Lines* (Princeton: Princeton University Press).