

The Congressional Dynamics of Immigration Reform

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Introduction

Unauthorized immigration and the status of millions of undocumented immigrants in the US are subjects that for years have spurred ferocious debate over the airwaves, on campaign trails, and in statehouses across the country. Yet these fiery battles have stood in bold contrast to the deep freeze that enveloped comprehensive immigration reform in the halls of Congress. As congressional scholars like Thomas Mann and Norman Ornstein have observed, the emergence of increasingly “parliamentary parties” on Capitol Hill—parties that are ideologically polarized, internally unified, and vehemently oppositional—has yielded stalemate and dysfunction in a separation-of-powers system. And few issues rivaled illegal immigration for how great the divide was between the Democratic and Republican bases—an ideological distance replicated in Congress (McCarty et al. 2006a, b). Soon after entering office in 2009, President Barack Obama’s administration found it impossible to find key Republican lawmakers willing to work across the aisle on immigration reform. Obama officials responded to these hurdles by explaining that immigration legislation would have to come after more looming priorities such as economic stimulus, health care, and financial regulatory reform (Thompson and Herszenhorn 2009; Farrell 2009). Meanwhile, partly as a “down payment” on comprehensive reform, the Obama administration continued and expanded several enforcement programs initiated during the final years of the administration of President George W. Bush, deporting a record number of unauthorized immigrants in each of Obama’s first 2 years in office.

What a difference an election makes. During the waning stages of the 2012 contest, Republican presidential nominee Mitt Romney appeared on an online forum broadcast by the Spanish-language Univision network to assure the mostly Latino audience that, if elected, he would achieve sweeping immigration reform, while also promising not to pursue mass deportation of the 10–12 million undocumented

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immigrants living in the US. The Romney campaign invested heavily in ads on Spanish-language media in swing states, and had deployed his son Craig, who speaks Spanish, to help court Latino voters. These efforts represented an attempt to minimize Obama's strong advantage among Latino voters, the fastest-growing ethnic group in the US and a crucial voting bloc in pivotal swing states. Romney's difficulties with Latino (and Asian) voters stemmed from his endorsement during the Grand Old Party (GOP) primaries of punitive state immigration laws that would encourage "self-deportation," but they reflected a deeper estrangement between the Republican Party and the nation's growing Latino population. In the end, Obama won 71 % of the Latino vote with a 44-point advantage that was even more decisive than his 36-point margin (67 % of the Latino vote) in 2008. When he began his first term, Obama later told Univision reporters, "we could not get...a single Republican [senator], including the 20 who had previously voted for comprehensive immigration reform, to step up and say, 'we will work with you to make this happen'" (Office of the Press Secretary 2012). At the start of his second term, the changing demography of American democracy produced the seemingly impossible: the emergence of significant, bipartisan legislation tackling one of the thorniest problems on the public agenda. The purpose of this chapter is to illuminate the congressional dynamics of American immigration reform.

How Congress shapes immigration politics and policy reflects several recurrent and emergent patterns. One of the most important dynamics is the fact that the federal courts have long granted Congress sweeping control over immigration at the same time as the issue generates distinctive partisan and intraparty conflicts that regularly bedevil reform efforts. These distinctive political fissures point to a second crucial dynamic: congressional action on immigration reform requires the formation of "strange bedfellow" alliances that are unstable and demand "grand bargains" addressing disparate goals. The result is often legislation that introduces a new set of immigration policy dilemmas. Finally, one of the most crucial dynamics of congressional immigration policymaking has been a shift over time, from relatively insulated client politics to increased engagement by mass publics and key voting blocs. This expanding scope of conflict and its impact on congressional immigration politics receives the most extensive attention in this chapter. In the contemporary politics of immigration reform, lawmakers balance the demands of well-organized lobbies and advocacy groups with grassroots constituency pressures and electoral calculations. Let us consider each of these dynamics in turn.

Congressional Power and Disorienting Conflict: The Challenges of Immigration Reform

Despite broad constitutional authority to regulate immigration, Congress largely avoided doing so until after the Civil War. By the 1880s, when federal lawmakers enacted draconian Chinese exclusion laws, the Supreme Court ruled that Congress could determine who may or may not be admitted to US territory on whatever

basis as it saw fit. In the Chinese Exclusion Case (1889), the court underscored that Congress exercised “plenary” or absolute power to control immigration as part of its authority to assert US national sovereignty and to shape foreign policy in the same way as it exercised the power to declare war or ratify international treaties. Only a few years later, the court reinforced this “plenary power doctrine” in another Chinese exclusion decision: “Aliens enter and remain in the United States only with the license, permission, and sufferance of Congress” (*Fong Yue Ting v. US* 1893). The court recently reaffirmed this doctrine in one of its blockbuster decisions of the summer of 2012, *Arizona v. United States*. This decision found that key provisions of Arizona’s controversial SB1070—the so-called show me your papers law—were unconstitutional because they intruded on congressional primacy over immigration control. In sum, Congress’ absolute power over alien admission and exclusion remains a central tenet of contemporary immigration law.

Arizona’s restrictive law and others like it were symptoms of deep frustration at the state and local levels with more than a decade of gridlock on Capitol Hill over immigration reform. For Congress, logjams have emerged so regularly because the rival ideas and interests inspired by this issue make basic problem definition and legislative majorities elusive. The challenge has been more than partisan polarization. To be sure, the differences between Republicans and Democrats on immigration reform have been profound for years, but as recently as 2004, both major party platforms embraced comprehensive reform and a means for undocumented immigrants “to come out of the shadows” and enjoy “full participation in America.”

Immigration is a potent, crosscutting issue in American national politics. It defies the standard liberal–conservative divide and often polarizes major party coalitions. This is hardly new; Americans have been arguing about and taking stands on immigration since the earliest days of the republic. There are four rather durable ideological traditions that have found traction in national debates and political struggles over immigration. Consider two dimensions. The first focuses on immigration numbers, and divides those who support expansive immigration opportunities and robust numbers from those who favor substantial restrictions on alien admissions. The second concentrates on the rights of noncitizens residing in the US and distinguishes those who endorse the provision of a broad set of civil, political, and social rights (as defined by T. H. Marshall) to newcomers from those who advocate strict limitations on the rights accorded to noncitizens (Marshall 1950). These two dimensions of immigration policy reveal tensions between cosmopolitans and economic protectionists on the left, and between pro-business expansionists and cultural protectionists and border hawks on the right. Tellingly, these conflicts are especially pronounced when the agenda focuses on unauthorized immigration and those residing in the country illegally.

The rival commitments of ideology and interest unleashed by illegal immigration make basic problem definition a tall order for policymakers. Indeed, recent immigration reform efforts have captured profoundly different assumptions and conceptions of what the problem is or, for some, whether a problem even exists. Moreover, powerful organized interests and competing constituencies—from agribusinesses, service industries, and Microsoft, to labor unions, ethnic and civil rights

advocates, and church groups, to anti-immigrant activists of the Minuteman Project and Tea Party movement—regularly mobilize and clash over immigration reform. The resulting battles not only pit interest groups and constituencies allied with the Republican Party against those allied with the Democratic Party but also divide organized interests within these partisan coalitions and sometimes even among those associated with the same interest or constituency, such as internal fights on this issue within the labor movement or among environmental and population control groups.

For cosmopolitans, or pro-immigration liberals, the problem is not the presence of millions of undocumented aliens in the US, but rather their status as vulnerable, second-class persons. The chief imperative for these activists is to make the estimated 12 million unauthorized migrants living in the country eligible for legal membership. “What we want...is a pathway to their legalization,” Representative Luis V. Gutiérrez (D-IL) explains, “so that they can come out of the shadows of darkness, of discrimination, of bigotry, of exploitation, and join us fully” (Gutiérrez 2006). Latino immigrants such as the journalist and scholar Edward Schumacher-Matos add that Hispanics have proven their loyalty to the nation in countless ways, including joining the military at higher rates than most groups, which “means that we have earned our say over the direction of the country...and what we do on immigration” (Schumacher-Matos 2009). Legalization, or “earned citizenship,” initiatives draw strong support today from immigrant advocate and civil rights groups; Latino, Asian, and other organizations; religious associations; and the leading federations of organized labor.

Economic protectionists have been particularly hostile toward illegal immigration, which they view as enhancing the wealth of corporate and professional America with little concern about the consequences for blue-collar workers or the unemployed. As much as César Chávez complained bitterly in the late 1960s that undocumented Mexicans were being recruited to undermine his efforts to organize legal farmworkers, Carol Swain recently pointed to the deleterious “impact that high levels of illegal immigration [are] having in the communities when it comes to jobs, when it comes to education, when it comes to health care” (Swain 2007, pp. 4–5). Former CNN newsman Lou Dobbs regularly sounds similar themes, claiming that illegal immigration has “a calamitous effect on working citizens and their families” and “that the industries in which illegal aliens are employed in the greatest percentages also are suffering the largest wage declines” (Dobbs 2007). Economic protectionists endorse sanctions against unscrupulous employers who knowingly hire undocumented aliens, and they vehemently oppose guest worker programs, which they associate with a captive workforce subject to exploitation, abuse, and permanent marginalization. These views resonate among many rank-and-file members of labor unions and the constituencies of moderate Democrats in Congress.

For pro-immigration conservatives devoted to free markets and business growth, the chief problem is that existing federal policies fail to address “the reality,” as former president George W. Bush put it, “that there are many people on the other side of our border who will do anything to come to America to work;” in short, the US economy has grown dependent on this supply of cheap, unskilled labor (Bush

2006). For this camp, the solution lies in regularizing employers' access to this vital foreign labor; if the back door is to be closed, then this labor supply must be secured through temporary worker programs and an expansion of employment-based legal immigration. Powerful business groups in this camp also oppose employer sanctions and eligibility verification requirements as unwelcome and unfair regulatory burdens placed on American businesses, large and small.

Finally, border hawks today see the illegal immigration problem as nothing short of an unprecedented breakdown of American sovereignty that compromises national security, the rule of law, job opportunities for citizens, public education, and social services (Tancredo 2006). Mobilized by conservative talk radio, columnists, and television commentators, many Main Street Republicans are outraged that the nation's fundamental interest in border control and law enforcement has been trumped by the power of immigrant labor, rights, and votes. Amnesty or legalization proposals inspire hostile resistance from this camp, which views them as unethical rewards to those who break the rules and as stimulants to new waves of undocumented immigrants anticipating similar treatment. Likewise, temporary worker programs are scorned by these activists, because many guest workers historically have remained in the country illegally, and because they contest the notion that only foreign workers will do certain menial jobs. Border hawks believe enforcement must come first. They favor a strengthened Border Patrol and tougher security measures along the nation's borders, as well as crackdowns on unauthorized immigrants and their employers within US territory. They endorse a strategy of attrition in which targeted deportation efforts, workplace enforcement, and denial of social services and other public benefits would persuade many unauthorized migrants to return home.

It is difficult to imagine more widely divergent definitions of a public policy problem, or, concomitantly, more disparate blueprints for reform. Building majority support for legislation involving tough choices is always challenging, but it is especially so amid ideological disorientation and intraparty warfare. Clashing interests and ideals have meant that when policy initiatives are designed to meet the demands of one important constituency, they invariably incur the wrath of others, and the result has often been legislative paralysis, leaving in place a status quo in which unauthorized immigrants are a significant share of new inflows. As we shall see, these distinctive (crosscutting) political fissures also have meant that congressional action on immigration reform typically requires the formation of "strange bedfellow" alliances that are unstable and demand "grand bargains" addressing disparate goals.

Uneasy Coalitions and Faustian Bargains

The long-standing linkage between the achievement of immigration reform and so-called grand bargains among unlikely political allies should hardly surprise us. The distinctive ideological traditions inspired by American political struggles over immigrant admissions and rights reminds us that none of the four major camps identified above has been able to secure significant policy innovation independently.

Over time, major immigration reform almost invariably has required the building of incongruous Left–Right coalitions. Strange bedfellows not only abound in US immigration politics, but uneasy alliances also make nonincremental policy change possible. Faustian bargains have been recurring features of national immigration policymaking. Let us consider four of these earlier congressional compromises and their implications for unauthorized flows.

Mexican Labor and the First World War

Ironically, the origins of America’s illegal immigration dilemma can be traced to one of the most restrictive periods in our nation’s history, namely, the early twentieth century. This was a time when the federal government enacted a literacy test requirement for immigrants, a so-called Asiatic Barred Zone, a draconian national origins quota system, and an overall ceiling on annual overseas immigration that slowed European arrivals to a trickle. It was also a time when Mexican laborers were being recruited in steady numbers to develop a budding Southwestern economy. But new impediments to this labor stream emerged with enactment of the Immigration Act of 1917. The new law made all alien admissions contingent upon payment of an US \$ 8.00 head tax and passage of a literacy test. The new requirements slowed the flow of Mexican workers across the southern border, although many simply crossed without inspection or official authorization. When the First World War began, the supply of Mexican laborers was more dramatically dampened when rumors that they would be drafted into the US armed forces spurred a mass exodus (Reisler 1976, pp. 24–32).

Against this backdrop, southwestern growers, ranchers, miners, railroad companies, and supportive lawmakers pressured the Labor Department—then responsible for the Immigration Bureau and domestic enforcement—to facilitate the importation of thousands of Mexican workers. Bowing to this intense lobbying on the grounds that the war had produced labor shortages, Labor Secretary William Wilson invoked a special clause of the 1917 law (the ninth proviso of section 3) that enabled him to “issue rules and prescribe conditions...to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission” (Reisler 1976, p. 27). Wilson ordered that the literacy test, head tax, and contract labor restrictions be waived for Mexicans; he also led publicity efforts to assure potential guest workers that they would not be conscripted into the armed forces. Although Mexican contract labor was justified as an emergency wartime measure, an array of southwestern employers of low-wage labor joined with their congressional representatives in demanding extensions of the program after wartime hostilities ceased in 1918. The Labor Department again acceded to this lobbying pressure, as it did in subsequent years. Between 1917 and 1921, roughly 75,000 Mexicans worked as contract laborers in the US under Wilson’s waiver plan, along with an indeterminate number of undocumented workers (Tichenor 2002, pp. 168–170).

“Restrictions...with a bribe”: Closing the Ports and Opening the Borders

The issue of Mexican migratory labor threatened the immigration restriction movement in the 1920s. The diverse nativist coalition that emerged from the Progressive Era was united in its hostility toward Asian and southern and eastern European immigration, as well as in its devotion to eugenicist principles of racial order and Anglo-Saxon superiority. But Mexican labor flows were another matter. The northern Immigration Restriction League, the American Federation of Labor (AFL), patriotic societies, and a number of northern lawmakers favored stringent limits on Latin and South American immigration. By contrast, southern and western lawmakers and groups favoring national origins quotas for overseas immigration also extolled the virtues of a cheap and flexible Mexican labor force. Representative John Nance Garner (D-TX), President Franklin D. Roosevelt's future vice president, explained that, “the prices that [Mexicans] charge are much less than the same labor would be from either the negro or the white man” (Reisler 1976, p. 40). He assured his House colleagues that Mexican laborers were by definition temporary, powerless, and easily expelled. The Grange and the American Farm Bureau Federation adamantly opposed a change in Mexico's nonquota status. “We do not want to see the condition arise again when white men who are reared and educated in our schools have got to bend their backs and skin their fingers,” business interests like the Great Western Sugar Company explained to Congress. “You have got to give us a class of labor that will do...back-breaking work, and we have the brains and ability to supervise and handle the business part of it” (Reisler 1976, p. 175).

The uneasy 1920s coalition of northern nativists, organized labor, and southern and western restrictionists were deeply divided over Mexican labor. The controversy seemed to place the national origins quota system begun in 1921 in jeopardy. Immigration defenders attempted to exploit these fractures within the nativist coalition during legislative debates of 1924, the year when the 1921 quotas were due to expire. Representatives Fiorello La Guardia (D-NY) and Adolph Sabath (D-IL) offered an amendment that placed strict quotas on Western Hemisphere countries. Their hope was to kill the 1924 quota legislation by sundering the disparate restrictionist camp. Faced with stalemate or defeat, restrictionists called for a compromise on the divisive Mexican labor question. As one closed-border advocate declared, “I want the Mexicans kept out, but I do not want this bill killed by men who want these and all others admitted in unrestricted numbers” (Reisler 1976, p. 201).

The Immigration Act of 1924 ultimately erected formidable barriers to southern and eastern Europeans and reinforced Asian exclusion, but was decidedly permissive on Canadian and Mexican admissions. Aliens with 10 years continuous residence in a Western Hemisphere country could enter the US as nonquota immigrants. “Restrictions of immigration and setting up of un-American racial tests has been enacted through a fusion of northern Republicans from urban districts with southern Democrats, with a bribe tossed to the latter by keeping Mexico open,” observed one pro-immigration lobbyist (Kohler n.d.). As nativist reformers prepared

new quota legislation in 1928, they agreed to treat Mexican inflows as a distinctive issue. “These two kinds of restriction are quite separate and independent,” New York restrictionist Demarest Lloyd declared in reference to overseas versus Western Hemisphere migration. “We all agree that unity of restrictionists is desirable” (Demarest Lloyd to Joseph Lee 1928). Recalling the potential split in 1924, the IRL also urged coalitional comity on “the National Origins-Mexican Quota situation” (Robert Ward to Joseph Lee 1928). It even expressed sympathy for the dilemma faced by southwestern nativists. “Although the West has become racially conscious and wants to be a white civilization, it also wants to develop and to develop rapidly. For this it needs unskilled labor of a mobile type, like the Mexicans, for it cannot get white labor to do its unskilled work” (Immigration Restriction League 1928). The 1928 law codified this compromise, reaffirming a bifurcated system that imposed draconian restrictions on European and Asian immigration while remaining open and flexible toward labor inflows from Mexico and other Western Hemisphere countries.

Mexican Braceros and Undocumented Aliens

During the first New Deal, AFL leaders campaigned for legislation that would place national origins quotas on Mexico and other Western Hemisphere countries. In 1924, the AFL’s Washington office vigorously pursued legislation that would establish a 1500 annual quota for Mexican immigrants. But the AFL failed to build a broad coalition of support, and it faced insurmountable opposition from the House and Senate Immigration Committees that were dominated by southern and western legislators who favored European and Asian restrictions but welcomed Mexican labor migration (American Federation of Labor 1934). By 1938, the Immigration and Naturalization Service (INS) reported that illegal immigration from Mexico was soaring due to the construction of new highways and “automobile travel” (US Department of Labor 1939, pp. 95–96). At the start of the Second World War, southwestern growers and other business interests, joined by their legislative champions, complained to executive branch officials that war-induced labor shortages necessitated a new Mexican temporary worker program. In response, an interagency committee was formed to facilitate the importation of Mexican guest workers. In 1942, the State Department negotiated a special agreement with Mexico establishing the Bracero Program that Congress swiftly approved. Under the bilateral agreement, the US pledged that wages, living conditions, workplace safety, and medical services would be comparable to those of native workers. In turn, the Mexican government was to supervise the recruitment and contracting of braceros (Altmeyer 1942). Once the Bracero Program began, neither employers nor federal administrators saw that the negotiated protections of Mexican laborers were honored. Mexican braceros routinely received much lower wages than native workers and endured substandard living and working conditions. Contrary to the bilateral agreement, the INS permitted growers and other employers to directly recruit braceros at the border. If

Undecided Nation

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