

## **CHAPTER VI**

### **The 21<sup>st</sup> Century United States**

*Wide open and unguarded stand our gates,  
And through them passes a wild motley throng.  
Men from the Volga and Tartar steppes.  
Featureless figures from the Hoang-ho,  
Malayan, Scythian, Teuton, Celt and Slav,  
Flying the Old World's poverty and scorn;  
These bringing with them unknown gods and rites,  
Those tiger passions here to stretch their claws,  
In street and alley what strange tongues are these,  
Accents of menace in our ear,  
Voices that once the Tower of Babel knew.*

- Thomas Bailey Aldrich, *The Unguarded Gates* 1882

### **BACKGROUND**

It strikes the reader immediately that the United States' Immigration Policy has been and remains wholly reactive.

Prior to the 1875 establishment of Federal control of immigration and the passage of the Regulations prohibiting entry of undesirables, Congress had been spurred to interest only by:

- The Alien and Sedition Act in 1798

The perceived threat of a mood transplanted from Europe for revolution, coincidental with a substantial rise in immigrant numbers;

- The Steerage Act in 1819

The sharp increase in the rate of immigration caused in part by the speedier and cheaper passage made by the new steamboats;

- The Homestead Act in 1862

The decision to encourage the development of land for agriculture – then the known powerhouse of any economy – by encouraging immigration into that sector;

- The creation of a controlling Office of Immigration in 1864

The continuing increase in immigrant numbers not only into the agricultural sector.

The 1875 Regulations in fact were a re-establishment of the Federal control granted in 1864 but repealed in 1868 (14<sup>th</sup> Amendment) in favor of the individual States' legislatures. The return to central control seemed positive: the U.S. had suffered through the 1873 Depression and it was felt that centrally controlled immigration encouragement of the “right sort of people” would drive economic recovery.

The first three quarters of the 19<sup>th</sup> century had seen the collapse of the Chinese Empire, the disaster of the Irish Famine, the German Revolution, the French Revolution, the union of Austria and Hungary, and a growing population pressure. An atmosphere of repression, discrimination, and persecution drove immigration primarily from northwestern Europe to a country where work, land, and opportunity were plentiful.

By 1875 work, land, and opportunity were not so plentiful, and the 1882 Chinese Exclusion Act mirrored the fears of the western States' citizens that high immigration meant reducing wages and work opportunities. The unguarded gates were felt to need some defense and the streets some quietude.

This is a view that remains current today. Legislation after the 1875 Regulations seems to set the trend. The 1882 Immigration Act broadened restrictions on immigrants. The 1891 Act, the nation's first comprehensive immigration law, broadened them further. The 1892 Geary Act confirmed Chinese exclusion. The 1906 Naturalization Act added barriers to naturalization to those controlling immigration. The 1917 Immigration Act added the requirement for literacy, the 1921 Quota Law and the subsequent 1924 Johnson-Reed Immigration Act capped the numbers permitted to enter from designated nations. The 1940 Alien Registration Act added controls to those already resident but not naturalized, while the 1950 Internal Security Act barred entry to any foreigner on whom suspicion of activity prejudicial to the nation's security could be cast. The 1952

McCarran-Walters Act bundled the preceding legislation together and codified it. The 1965 Immigration and Nationality Act Amendments transferred quota restrictions away from precedent and towards ability, still under annual ceilings. The 1986 Immigration Reform and Control Act first attempted to curtail illegal immigration by employment restrictions within the country. The two 1996 "Responsibility" Acts then sharply scaled back immigrant eligibility for State benefits. Finally the 2001 USA Patriot Act enhances enforcement, expands the grounds for inadmissibility and removal, increases detention time limits and increases surveillance authority.

It does not read as a pretty package.

Seen in context of the pressures on the Governments of the time it is more understandable that reactions tended towards restriction and control. Moreover the list leaves out some important attempts at liberalization, which are considered further below.

Let us look at some of the pressures and the legislative reactions more closely. A summary list tracing all major legislation causes and effects can also be found in Appendix B, while a similar summary for immigration pressures makes up Appendix A.

## **ACTIONS AND REACTIONS TO 2000**

In **1882**, two Acts – the Chinese Exclusion Act and the Immigration Act – are landmarks at the beginning of a legislative journey: protection of the status quo; and the means to pay for that protection.

Thomas Aldrich's verse is indicative of a public pressure on the government to guard its citizens from strangers, epitomized by the Chinese. They labored for almost nothing, undercut the market, could not be understood, remained isolationist and drove themselves in competition for every opportunity for riches largely in accordance with their own rules. So powerful was their threat perceived to be that it was not until 1943, more than 60 years later, that the Act's successor legislation was repealed.

A head tax per immigrant of 50 cents was levied under the Immigration Act to pay for the controls the nation demanded. The Act broadened restrictions on eligibility, including people "likely to become public charges".

Yet economic growth demanded labor. Following Chinese exclusion large numbers of young Japanese laborers began arriving in the States. The northern manufacturing States relied on imported southern and eastern European labor. Three attempts to control demand for imported labor were made in the Alien Contract Labor Laws of **1885 -7**, to negligible effect.

Against a background of steadily increasing immigration from Russia, from Europe, from Korea, fuelled by pogroms, by poverty, overpopulation and high taxation, by the Sino-Japanese War and by the lure of an open society with available work, the need for controls was felt entirely justified. The **1891** Immigration Act increased the categories of inadmissible aliens. The **1906** Naturalization Act raised the hurdles before citizenship.

The controls continued to seek to uphold the perceived northwestern European national character. The **1907** Gentlemen's Agreement with Japan curtailed Japanese labor immigration. The **1911** Federal Study of foreign-born residents alleged the new immigrants to be less skilled, less well educated, more clannish, slower to learn English and generally to be less desirable material for citizenship than the pioneer stock. The U.S. Government responded with the creation of the Bureau of Americanization, designed to force this lesser material into the same mould. Literacy and the ability to speak English were the primary tools of the reshaping, thus the **1917** Immigration Act simply banned Asian immigration and added proof of literacy and payment of an \$8.00 tax to the existing restrictions for all other nationalities.

Damming the Eastern flow resulted in fulfillment of demand nearer to home. The Mexican Revolution (1911-17) with its attendant political and economic

instability pushed, while the wartime economy in the U.S. pulled: Mexican immigration surged.

The restrictions of the 1917 Act were the spur for the beginnings of large-scale illegal immigration.

The **1921** Quota Law was based unashamedly on the preservation of the national character. Immigration quotas were calculated by reference to the numbers of any nationality returned in the Census of 1910. Asians remained largely excluded. That exclusion was ratified and expanded in the 1924 (Johnson-Reed) Immigration Act, which imposed simple numerical ceilings on top of a reduced national percentage quota, itself slipped back to a foundation on the 1890 Census.

The Act did limit immigration. More than 10 percent of all immigration in the 1920s now originated in Mexico. The year 1924 also saw the creation of the Border Patrol Force.

The 1930s Great Depression reduced immigration demand and it was not until well after the Second World War that immigration picked up again. This does not mean that foreign workers did not enter the U.S. More than half a million Jamaicans entered in the 1940s, while more than five million Mexican guest workers were hosted under the two “Bracero” Programs and a quarter of a million war refugees and displaced persons from Europe were permitted entry in the period to the mid-1950s.

The **1940** Alien Registration Act and the **1950** Internal Security Act established much tighter control of the resident foreign-born population, meanwhile.

From the mid-1950s, however, immigration legislation slowly began to take on a new appearance.

The **1952** McCarran-Walter Act began the process of removing racial discrimination from the quota system, though some subjective restrictions remained. The **1965** Immigration and Nationality Act finally repealed the system of quotas based on nationality altogether. The **1978** Amendment Act established only a global limit on immigrant numbers. The **1980** Refugee Act established clear criteria for admission.

Illegal immigration started to grow more substantially in the 1980s. Demand was growing in the States for cheap labor in a newly prosperous age. The **1986** Immigration Reform and Control Act attempted to curtail the labor black market through a system of fines on employers, while granting amnesty to 2.7 million illegal residents and consequently their families.

The Depression of the late 1980s began a swing back from this liberal tendency. The **1990** Immigration Act nevertheless widened legal immigration

opportunity and in particular eased limits on family-based immigration. At the end of that year the Census showed 18 million foreign-born residents, a rising immigration rate and a growing illegal alien population. The mood of the nation was changing. Crime, drug problems and State benefit fraud were all perceived as centered on the immigrant. He was seen again as taking jobs from native Americans and undermining the wage rates.

The two “Responsibility” Acts of **1996** – Illegal Immigration & Immigrant Responsibility, and Personal Responsibility & Work Opportunity – greatly scaled back the eligibility of legal immigrants for a range of Federal benefits and expedited the deportation of illegal immigrants. These were draconian in effect and, by the time they were enacted, were out of synch with the mood of the nation. In **1997** and again in **1998** a new Congress mitigated many of the overly harsh restrictions of the 1996 Acts and in **2000** the so-called LIFE Act opened a means for dialog with illegal immigrants.

### ***ACTIONS AND REACTIONS IN 2001***

*One can differentiate between the America before and after September 11, 2001. The date not only changed the United States and focused the attention of the whole world on the war against terrorism but also, in the immediate aftermath of September 11, re-opened the demand for debate on immigration policy. Overnight, discussion swung from the possibility of more open borders to the urgent need for tighter security. The regularization agenda embraced earlier this year by Presidents Bush and Fox was pushed to the back burner, while Congress and the Administration considered how to strengthen border patrols, improve visa applicant scrutiny and keep better track of foreign students in the United States.*

Before September 11, President Fox had asked a divided Congress for support to grant legal status to some three million Mexicans living and working illegally in the United States, mostly in low-paid jobs. Legalization would have shifted the focus from preventing the entry of unauthorized foreigners to regularizing their status.

The Democrats still say, post September 11<sup>th</sup>, that they are contemplating legislation to grant legal status to long-time immigrants who have a proven work record and obey the laws of the United States. This would not contradict heightened security reviews of people trying to enter the country, they say.

The combination of an economic downturn and the September 11<sup>th</sup> terrorist attack has changed the U.S. immigration debate, however. The big issue has been to prevent foreigners from entering the country and committing further harm. Many Americans now see the immigrant not as a hard-working foreigner seeking the American dream, but as a potentially deadly danger.

Because the current terrorist threat comes to the USA almost exclusively from individuals who arrive from abroad, immigration policy, including temporary and permanent visas issuance, border control, and efforts to deal with illegal immigration are all critical to reduce the chance of an attack in the future.

There is a vast difference between immigrants who want to work in the States and contribute to society and those who gain admittance to the country, then overstay with the intent to bring harm to the American people. Of 19 hijackers at least 13 entered the country as tourists, business travelers or students. The difference is not possible to write into legislation.

## **SECURITY**

It is clear that security remains the top U.S. priority. Finding ways to bring longtime illegal residents into the open and to direct the flow of workers into legal channels is an important step toward an improved understanding of who is already in the country and who is coming in.

None of the hijackers appears to have crossed the border illegally, but activists from several groups say the border remains an open invitation to terrorist threats.

“If you don’t know who’s coming across the border, you don’t know who’s here,” Ben Seeley, Executive Director of the Border Solutions Task Force.

Activists have several recommendations for immigration control, some of which are being discussed already in Congress, a measure of the mood of the nation:

- Increase consulate staff assigned to check backgrounds of visa applicants
- Establish an immigration database that can be accessed by both the State Department and the Immigration and Naturalization Service. The current database systems are said to be incompatible
- Establish an entry-exit database for foreign visitors
- Require colleges and universities to help track foreign students
- Establish an electronically verifiable work eligibility document
- Tighten procedures on state-issued identity documents as driver’s licenses

According to a Zogby International poll, the overwhelming majority of Americans, across all races, regions, incomes, and political beliefs, blame lax border control and immigrant screening for contributing to the attacks, and believe that improved immigration enforcement would reduce the likelihood of future atrocities.

## **INS PRECAUTIONS**

- The INS stopped processing immigration and visa applications after September 11, 2001, leaving up to 20,000 refugees in camps abroad who were expecting to move to the U.S. The annual refugee quota for the year 2001 was 80,000; about 68,000 entered. The quota for 2002 is expected to be 70,000.
- In 1996, Congress had ordered the INS to develop a tracking system to record entrance and exit of foreigners at all U.S. ports of entry by October 1, 1998. That did not happen. Canada and northern States opposed entry-exit tracking on the U.S.-Canadian border because they feared that long lines would slow cross-border commuting, trade and tourism. INS Commissioner James Ziglar assured Congress in October 2001 that entry and exit controls would be implemented by 2003 in all airports and seaports, extended to the 50 largest land ports by 2004, and to all U.S. ports of entry by 2005.
- On November 14, 2001, Attorney General John Ashcroft announced the restructuring of the Immigration and Naturalization Service (INS). The plan changes the agency's structure by separating its Service and Enforcement functions, in an effort to improve efficiency. The restructuring establishes accountability by creating clear and separate chains of command. INS reform is scheduled to be completed by the end of the fiscal year 2003.

## **LEGAL CHANGES**

### **U.S.-Mexico legalization and guest worker programs**

The USA has informed Mexico that a new Migration Agreement on the legalization of undocumented immigrants must be postponed. Many members of Congress believe that any measure that legalizes undocumented aliens increases U.S. vulnerability to terrorist attack. The Mexican and U.S. delegations met in November 2001 and in January 2002. Officials stated that the U.S. wants to keep options open in the event that political conditions change. (Washington Post, November 21, 2001)

### **Section 245 (i)**

Prior to September 11, Congress was on the verge of approving the extension of INA (Immigration and Naturalization Act) Section 245(i), which allows certain immigrants, who have worked without authorization or who are out-of-status but are otherwise eligible to apply for permanent residence, to do so from within the United States. Where they return to apply from their home countries they face the possibility of draconian immigration consequences (the three- and ten-year bars). The compromise bill would have extended §245(i) a further four months or so. There are no plans to proceed with it now.

## **Anti-Terror Act (Patriot Act)**

Legislation signed by President on October 26, 2001 aimed at helping authorities track and disrupt the operations of suspected terrorists in the United States. The new law gives the government a freer hand to conduct searches, detain or deport suspects, eavesdrop on Internet communication, monitor financial transactions and obtain electronic records on individuals.

The key provisions include:

- Enforcement and Technology
- Certification and Detention of Suspected Terrorists
- Multilateral Cooperation
- New Ground of Inadmissibility for Money Laundering, and also
- Humanitarian Immigration Relief for Family and Employment Based Victims of the September 11, 2001 Attacks

## **Weaknesses**

The threat of terrorism requires serious response and the new provisions this Act brings, for example permitting INS and DOS access to the FBI's criminal database, are clearly necessary. But critics point out that some of the measures may increase the potential for government overreaction and abuse of innocent immigrants.

Among other provisions, it allows federal authorities to conduct "roving" wiretaps of conversations by an individual on any phone he might use, rather than simply on a single number at his home or office. The new law also gives the government wider latitude to search an individual's computer records.

More than a few civil liberties organizations are concerned the anti-terror measures confer too much power on law enforcement Agencies.

## **Aviation Security Act**

Signed by the President on November 19, 2001, the Act empowers various ground- and air-based security improvements.

### ***MULTIRACIAL AMERICA OR E PLURIBUS UNUM (from many one)***

The 2000 Census was the first count to give people an option to check more than one race on their forms. This resulted in sixty-three race categories, compared with five in 1990.

Nationally, about 2.4 percent of the country's population of 281 million considered themselves as belonging to more than one race.

According to the Census 2000 Report 40 percent of those 6.8 million U.S residents who identified with two or more races live in the West, nearly 400,000 live in New York and about 200,000 reside in Los Angeles. Almost two-thirds of the multiracial population live in ten states: California, New York, Texas, Florida, Hawaii, Illinois, New Jersey, Washington, Michigan and Ohio.

Figures now released reveal that 42 percent of those who checked more than one race were younger than 18. Only 25 percent of respondents at this age selected a single race. This may indicate that youth see their own racial and ethnic background as more relevant than their American nationality. It may indicate pride in a nationality that welcomes mixed racial background.

### ***ESCAPING THE CYCLE***

*"If only it were possible to find understanding. If only there were a dogma to believe in. Everything is contradictory, everything tangential: there are no certainties anywhere. Everything can be interpreted one way and then interpreted again in the opposite sense. The whole of world history can be explained as development and progress and can also be seen as nothing but decadence and meaninglessness. Isn't there any truth? Is there no real and valid doctrine?"*

*"There is truth. But the doctrine you desire, absolute, perfect dogma that alone provides wisdom, does not exist. Nor should you long for a perfect doctrine. Rather, you should long for the perfection of yourself. The deity is within you, not in ideas and books. Truth is lived, not taught."*

- Herman Hesse, *Das Glasperlenspiel* 1943

It is not difficult to see selfishness, greed, intolerance and fear of the unknown in the immigration law cycles in the United States.

It is not difficult to argue for a stable national character, government, economy and way of life.

It is difficult to avoid the damage caused by the one where it attempts to secure the other.

A Government expresses the will of the People. When the voice of national will is exaggerated by thoughtless over-exposure, not tempered by careful governance, but instead embraced for votes, it is impossible to avoid the wild pendulum swings of reaction that mark crude, weak, legislation.

Aldrich's verse at the opening of this Chapter portrays succinctly the insecurity engendered by anything different in someone's own home. Reactions to such insecurity need to grant time for the different to become the familiar.

The role of material greed and jealousy in the insecurity expressed must be taken into account and judged outside the individual context. Mexicans migrate in their hundreds of thousands to the States. The Chapter III discussion of the options for immigration controls over the 2,000 km (1,243 miles) border points to the logic of taking a slightly longer view of economic prosperity both sides of the border in order to reduce the flow, rather than to control it by force.

To welcome the different for the cultural and economic growth it brings is a decision for vitality that can be born only from self-confidence. To cling to the familiar alone breeds isolationism and brings stagnation.

Easy platitudes. Yet an understanding of the reasons for the immigrant surges of the 19<sup>th</sup> and 20<sup>th</sup> centuries shows them largely naturally occurring and naturally controlled. People come when the draw is strong, whatever the restrictions, legally or illegally. People stay away when the draw is weaker. The reasons are complex in both senses of the word: multi-faceted and difficult to grasp. Controls must be impossibly complex in turn to succeed.

To keep the identity of the USA familiar to its citizens, to keep them comfortable with their environment, is natural and reasonable. To define that identity within reason as a control mechanism for naturalization seems little more than the courtesy expected of a visitor to someone's home. To learn from the visitor's differences and to gain from the melange has required that Americans face their fears of change and refuse restrictive controls arising from them. The U.S. has gone a long way along this route. Applying the same values to immigration control itself, as already is begun with the naturalization process, it seems can only benefit a historically warm-hearted nation.