

**The Fence to Nowhere:  
The Case for a Bilateral Labor Management Program**

Alejandro Portes

As the Iraq crisis deepened with no end in sight, an Administration in disgrace sought to score some kind of legislative victory elsewhere. Immigration seemed a good candidate since a coalition of the economic right, interested in abundant migrant labor, and the moderate left, interested in human rights and ending migrant exploitation in the workplace, could overcome the intransigent opposition of the cultural right. Accordingly, the Bush Administration teamed with liberal Senate Democrats to craft a bill that would provide a path to legalization for the estimated 10 – 12 million unauthorized migrants already in the country and stem the flow through additional border enforcement and creation of a temporary labor entry program. In the end, the Bush proposal failed, but the challenge of reform is still with us.

Until last year, legislative attempts to grapple with the problem of immigration, “our broken borders”, as Lou Dobbs puts it daily, were dominated by the agenda of the radical cultural right. As articulated by Harvard professor Samuel Huntington and given popular expression by Dobbs and other media pundits, that point of view has four parts:

- Illegal immigrants “invade” the United States against this country’s will.
- They take jobs away from Americans and lower their wages.
- They bring undesirable cultural and linguistic traits that imperil American culture as well as the hegemony of English.
- The best way of dealing with illegal migration is to suppress it by militarizing the border and, if necessary, erecting a fence. .

Each of these points is demonstrably wrong.

Unauthorized labor migrants come not only because they want to but because they are wanted, if not by everyone, at least by a large number of employers and firms in labor intensive industries. That demand – in agriculture, construction, low-tech manufacturing, and services – is

not only strong but growing, driven by the declining domestic fertility leading to slower labor-force growth, an increasingly educated American labor force reluctant to accept menial jobs, and industry's desire for cheaper workers. Recent reports by the Congressional Budget Office and the Manpower Commission have called this labor bottleneck one of the main challenges confronting the American economy in the future.

The menial jobs that unauthorized migrants take typically pay above minimum wage. Even so, few Americans can be found to harvest fruit, dig ditches, wash dishes, clean hotels, and perform myriad other humble tasks. In North Carolina last year, farmers advertised harvest jobs at \$10 an hour with health insurance and other benefits. The crops required 150,000 workers; there were 300 domestic applications of which 100 presented themselves to work on the first day. None finished the harvest. The story repeats itself routinely at harvest time throughout the country. The statement that migrant manual workers "take jobs away from Americans" is, to a large extent, a myth.

It is true that in sectors like unskilled construction and hotel services, many employers prefer migrants to native workers because of their willingness to perform the same jobs for lower, or at least, not increasing pay. However, if many labor intensive firms were to raise wages sufficiently to attract a declining domestic labor force – say to \$25 an hour for harvest work – they would have to raise prices beyond consumer tolerance or they would themselves go out of business. The continued existence of such firms – farms, ranches, construction companies, restaurants, landscaping and gardening businesses, garment factories, and many others – generates, in turn, spin-off effects in the form of better-paid clerical, administrative, and government service jobs that *are* attractive to native workers. Migrant labor thus ends up

creating employment opportunities for native workers in a number of clerical, supervisory, and governmental jobs.

While restrictionists are fond of parading native workers whose jobs were allegedly taken away by migrants, this anecdotal evidence does not hold water. Studies by economists and sociologists alike have consistently failed to show a significant direct effect of migrant labor on the employment rates and income levels of domestic groups, including African-Americans. Instead, studies by immigration scholars Frank D. Bean, Gillian Stevens, Michael J. Rosenfeld and Marta Tienda, among others, point to a pattern of labor market segmentation in which undocumented migrant workers crowd at the bottom of the market in menial service and low-paid industrial jobs, while domestic workers predominate in higher-paid clerical and administrative occupations. The spin-off effect of migration in stimulating growth of higher-paid occupations for domestic workers is entirely neglected by the nativists.

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Compared to France, Germany, Britain and other nations attracting immigrant workers, the United States is truly blessed, for we have nothing like the cultural clashes roiling western Europe. Not only is Mexico geographically contiguous, but it is a Western nation with numerous cultural ties to its northern neighbor. Mexico is a Catholic country; Spanish is a world language with multiple affinities to English, and there is no resistance whatever on the part of most Mexicans to learn English.. Poorly-educated immigrants may have difficulty in learning English, but they certainly try. Among their offspring, however, English fluency is nearly universal. Indeed what becomes “endangered” in the second generation is the capacity to speak Spanish with some fluency. Studies of the Hispanic second generation show that while over 98 percent are fluent in English, only about a third (35%) retain fluency in Spanish.

Knowledge of Spanish is a valuable resource in the modern world which many educated Americans painstakingly strive to acquire. Mexican-American children have this skill as a birthright and yet the majority lose it to the pressures of conformity to a monolingual culture. Contrary to Huntington, there is no “Hispanic challenge,” other than normalizing status and minimum opportunities to move ahead. Mexican immigrants enroll in large numbers in English classes in California and Texas, with many schools having long waiting lists. These immigrants have never mobilized politically, except in reaction to the immediate threat of criminalization and deportation, as it happened in California when the right sponsored a ballot initiative to bar undocumented immigrants from receiving public services and 2006 in the wake of passage of HR 4437, the harshly restrictionist Sensenbrenner bill.

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After more than three decades of dealing with unauthorized immigration as a police problem and spending billions of dollars in the militarization of the southern border, the United States has precious little to show for it. Under pressure from the cultural right, the Border Patrol has grown to become the largest arms-bearing branch of the federal government, apart from the armed forces themselves. Still, the unauthorized flow continues and even grows year after year. Back in 1994, economist Thomas Espenshade estimated the probability of apprehension during any border-crossing attempt at 30 percent. Since apprehended migrants sent back to Mexico try again and again, a successful attempt by the third try is almost certain. According to Douglas Massey, the probability of apprehension had actually declined to approximately 21 percent in any given trial, the reason being that, in the wake of border militarization, smuggling has become more professionalized. While it is expensive to hire a *coyote* (the going rate is about

\$3,000), a professional smuggling ring greatly reduces the chances for being caught relative to the unaided border crossings of the past.

The basic cause why the flow continues despite all these police efforts is the natural fit between the need of the Mexican poor to find better-paid employment in order to improve their economic situation and those of labor-intensive industries in the United States to find motivated workers. The fit is so strong as to defy any attempt at repression. Build a wall and tunnels will be built under it and new crossings will be found, braving the desert and death if necessary.

Border militarization has not been without its consequences, however, and they have generally been the *opposite* of those intended: because coming to the United States has become so expensive and arduous, migrants who cross the border seldom return home. Instead, they bring their families along as soon as possible. Hence, border enforcement, which has not succeeded in stopping the unauthorized flow, has succeeded in keeping these migrants bottled up on the American side of the border. The policy has been instrumental in creating a large and growing unauthorized foreign population in the United States, exactly the opposite of what advocates of that policy intended. Not incidentally, the unauthorized status of this population leads directly to its labor market vulnerability and, hence, to the exploitative practices regularly denounced by the press. These practices would not happen if migrant workers had the legal means of fighting them.

The end of the old cyclical pattern when Mexican workers crossed the border for seasonal work periods, returning to their villages and towns afterwards also means that the children of these workers now grow up in the United States. Children reared in poverty and as unauthorized aliens experience great difficulties in school and drop out in significant numbers, thereby closing their opportunities for upward mobility. Widespread discrimination, bad schools, and lack of

external assistance set the stage for the reproduction of poverty across generations and for at least some of these children to abandon manual work in order to join gangs and the drug culture. The process has been baptized in the academic literature as “downward assimilation”. Many offspring of unauthorized migrants are at risk of following this path. Hence, the policy of intransigent restrictionism has not only created what it intended to prevent, but it is laying the conditions for the perpetuation of the urban nightmare of crime, violence, and gangs in America’s cities.

This catastrophic situation could have been prevented if public policy were informed by three simple points:

- America needs and will continue to need massive inputs of migrant labor and Mexico is the natural source for filling this need.
- Maintaining the cyclical character of the flow is vital for the proper use of this labor in the interest of both countries.
- Any governmental program that aspires to succeed must seek to manage this momentous flow rather than attempt to eliminate it.

The Mexican state has assiduously courted the U.S. government in an attempt to improve the legal situation of its expatriates and facilitate their return. An agreement should be worked out between the two governments where, in exchange for granting temporary legal status to Mexican laborers, the Mexican government undertakes the creation of incentives for their return. A cyclical labor flow is in the interest of Mexico, not only the United States, for three reasons. First, it avoids the depopulation of towns and entire regions, which is an inevitable consequence of permanent family migration. Second, a back-and-forth flow guarantees the continuation of

remittances, which decline when migrants bring their families to the U.S. side of the border.

Third, it captures the savings of returned migrants, which can be invested productively in agriculture and small urban enterprises in sending rather than receiving communities.

A common fallacy is the assumption that, once on this side of the border, migrants never leave. This assumption is negated by the pattern of cyclical migration that existed before the militarization of the border and that continues to exist among legal migrants today. The reason is simple: adult men and women raised in a different language and culture generally prefer them and will return to them, if and when economic conditions permit. While a sizable minority will settle permanently in the United States, the majority would continue to make their home in Mexico if allowed to do so.

Reconstructing this pattern of cyclical migration requires three conditions:

- Giving migrants legal passage across the border when returning from visits to their families and home communities.
- Creating minimum health and educational facilities for families and children left behind.
- Generating opportunities for the productive investment of migrant savings.

The immigration reform proposal that recently died in the Senate was a step in the right direction, but suffered four fatal flaws. To please the cultural right, it was loaded with so many additional repressive features as to make legalization very expensive, burdensome, and probably unworkable. Border Patrol, more fences, more electronic surveillance, will be costly and will produce the same result as similar policies in the past: not stemming the flow, but bottling it up on this side of the border. Making legalization cumbersome and punitive will play into the hands

of smugglers and unscrupulous employers since it will discourage unauthorized migrants from coming forward.

Second, The Bush Administration proposal sought to revamp the *entire* immigration system, with a new point system. The legal immigration system functions relatively well and its few glitches could have been handled separately at a later time. The pressing issue is how to deal with unauthorized labor immigration.

Third, the Administration addressed unauthorized migration universalistically, ignoring that this is, overwhelmingly, a bilateral issue between Mexico and the United States. Any reform measure with any hope of success needs to address this bilateral character of the flow and will require close cooperation between the two governments.

Finally, the proposal mistakenly assumed that once migrants cross into the United States, they will never leave. Hence, it entirely neglected the need to restore the circular pattern of labor migration by creating conditions and incentives for return. With the failure of the Bush proposal and of the present ineffective and costly policy of border repression, a bilateral labor management program can be built along these lines:

- Every adult Mexican with a clean police record and a certifiable job offer in the United States will be entitled to a temporary labor permit upon payment of U.S. \$3,000 at the Mexico-U.S. border (roughly the going price to hire a professional smuggler).
- The permit will be valid for three years and renewable for another three. It will be contingent on staying with the first employer for a minimum of 90 days. Afterwards, the migrant will be free to look for alternative employment.

- Temporary migrant workers will have the same rights as native workers, including the right to vote for and to join unions. Income and social security taxes will be deducted from their paychecks.
- Upon permanent return to Mexico, the migrant receives half his/her entry fee (\$1,500) plus all accumulated social security payments.
- Migrants who wish to settle permanently in the United States after six years as temporary workers will be eligible to do so through a special provision of the immigration law, provided that they have a clean police record, a stable job, and a U.S. bank account of at least \$5,000. .
- Unauthorized migrants already in the United States will be first in the queue for temporary labor permits, provided that they have a clean police record and certifiable employment. All unauthorized Mexicans who come forward will be given temporary protected status while their permits are processed. They will pay the same entry fee as newcomers and be subject to the same rules thereafter. Those who can show that they have lived at least three years in the country will be eligible for permanent residence after another three years as legal temporary workers.
- The program will be initially capped at one million per year for new entrants (a conservative estimate of the present unauthorized flow). The number will be adjusted periodically in consultation with employers' associations, trade unions, and the Mexican government. QUERY: HOW WILL THIS LIMIT BE ENFORCED IF MORE PEOPLE CROSS ILLEGALLY OR THE NEW LAW SERVES AS A MAGNET FOR NEW DEMAND? TOUGHER WORKPLACE

## SANCTIONS ON EMPLOYERS FOR HIRING PEOPLE OUTSIDE THE SYSTEM?

The Mexican state would commit its support to this binational labor program in the following terms:

- Accelerating social investments in areas of migrant origin to guarantee adequate health and education facilities for families and children who remain behind.
- Continuing the current three-for-one (*tres-por-uno*) program through which every dollar remitted by migrant organizations in the United States for philanthropic or public works in their hometowns is matched by federal, state, and local government contributions in Mexico.
- Respecting the tax-free status of returned migrants' lump sum payments and creating credit programs that match the investment of these funds in productive enterprises.
- Actively policing its side of the border to prevent further attempts at border-crossing outside the legal labor program.
- Setting up a comparable temporary labor migration program for Central American workers. As Mexican migrants move north and the Mexican economy develops, job opportunities will be created that are attractive to peasants and workers in Guatemala, Honduras, and El Salvador. In this manner, an ordered, echeloned circular migration system can be established.

Mexico is not a poor, but a mid-income, country and its government is not as feeble as it is commonly portrayed in the U.S. media. The Mexican federal government has intervened forcefully and effectively in many instances of internal unrest and natural disasters; it conducts a

vigorous foreign policy; and it operates a complex network of 50 consulates on this side of the border with a variety of useful programs for its expatriates. The enormous challenge of battling the drug trade has made this government appear less effective than it really is. If migration is redefined as a bilateral labor management program, it should be quite able to fulfill its side of the bargain.

The proposed measures would have the following mutual advantages:

- Provide U.S. agriculture and other labor-intensive industries with a reliable labor force, while eliminating the present exploitation of migrant workers.
- Facilitate the organization of the migrant labor force by trade unions, as fear of employer reprisals and deportation is effectively eliminated.
- Make Mexican workers *less* competitive, since their vulnerability to employer abuses would be reduced through unionization and recourse to the courts. This should put upward pressure on wages, making manual jobs more attractive to at least some domestic workers.
- Keep more migrant families in Mexico, eliminating the social burden of a permanent impoverished population in the U.S. and the likelihood of downward assimilation in the second generation.
- Prevent the depopulation of migrant-sending towns and regions in Mexico, while encouraging productive investment of migrant savings upon return.
- Create an orderly program for those who opt for permanent migration and settlement.
- Organize an integrated labor management system in North America in which vacancies created in Mexico by departing migrants are filled, in turn, by Central

Americans, thereby reducing migratory pressures leading to U.S.-bound unauthorized migration in these countries.

Despite its flaws, the old Mexican “Bracero” program was arguably superior to what followed it. This program was ended with arguments that it was “exploitative” and “took jobs from American workers.” The clandestine flow that followed the termination of the program recreated these conditions and made them far worse. Jobs for unauthorized workers became more exploitative and employers became more accustomed to docile and cheap foreign labor over native workers. The calamitous situation that we live with today is a direct outgrowth of the end of the Bracero Program without any rational alternative put in its place.

Liberals can learn from this experience and not allow their idealistic concerns detract from what is viable and what is right. In an ideal world, Mexican and other foreign workers would have decent employment opportunities at home and would not have to migrate; American firms would hire native workers and pay them high wages with ample benefits. This is not the way things work out in the real world and striving toward these ideals gets in the way of practical and viable solutions. A well regulated temporary labor program is not ideal; it is simply the best option under present realities and, if properly handled, will do away with complaints about “broken borders” and function in the interest of workers and employers on both sides of the border.