



## THE FENCE TO NOWHERE: THE CASE FOR A BILATERAL LABOR MANAGEMENT PROGRAM\*

ALEJANDRO PORTES\*\*

**A**s the Iraq crisis deepens without end in sight, an Administration in disgrace may seek a legislative victory elsewhere. Immigration is a good candidate since an alliance between the economic right, interested in abundant labor, and the liberal left, interested in human rights and ending migrant exploitation, may come together to defeat the nationalistic radical right. Already on the table is a democratic proposal, the Security through Regularized Immigration and a Vibrant Economy (STRIVE Act of 2007) authored by representatives Gutierrez and Flake and a parallel set of proposals recently floated by the White House. Both propose some form of legalization of the unauthorized migrant population,

plus a temporary labor program. These are their good points. However, both proposals are flawed and likely to be unworkable for reasons to be seen later on.

Until last year, legislative attempts to grapple with the problem of immigration, “our broken borders”, as Lou Dobbs daily puts it, have been dominated by the viewpoint 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.

\* Written especially for The American Prospect.

\*\* Princeton University.



- 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 on it.

Each of these points is demonstrably wrong. The voluminous evidence to that effect may be summarized as follows:

- 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 dual forces of declining domestic fertility and an increasingly educated American labor force. Declining fertility reduces the number of new entrants into the labor force and increasing education delays their entry into the labor market and leads to greater reluctance to accept low-paid menial jobs. A recent report by the Congressional Budget Office calls this labor bottleneck one of the main challenges confronting the American economy in the future.
- The menial jobs that unauthorized migrants take are commonly *not* minimum wage jobs because they are so harsh that employers are forced to pay better wages in order to attract takers. Even so, few Americans can be found to harvest fruit, dig ditches, wash dishes, and perform myriad other humble tasks. When migrants are not found to do these jobs, they commonly go begging. As illustration of a national trend, note the case of North Carolina where farmers recently advertised the availability of 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, and none finished the harvest. The story repeats itself routinely at harvest time and in construction sites 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 the presence of migrant workers slows down wage increases in the sector where they concentrate. In sectors like construction and hotel services, migrants have become preferred to native workers because of their willingness to perform the same jobs for lower, or at least, not increasing pay. However, consider the fact that if many labor intensive firms were to raise wages sufficiently to gain the attention of 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 a multitude 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. In this fashion, migrant labor ends up buttressing the employment opportunities for native workers in a number of clerical, supervisory, and regulatory activities.

Studies by economists and sociologists alike have failed to show a significant direct effect of migrant concentration on the employment rates and income levels of domestic minorities. Instead, studies by Bean and Stevens and Rosenfeld and Tienda, among others, point to a pattern of labor market segmentation in which undocumented migrants crowd at the bottom in menial service and industrial jobs, while domestic workers predominate in higher-paid clerical and administrative work. The spin-off effect or migration in creating better jobs for native workers is entirely neglected by advocates of restrictionism.

- Relative to sources of low-wage foreign labor tapped by other advanced nations such as France, Germany, and Britain, the United States is truly blessed. Not only is Mexico geographically contiguous, but it is a Christian Western nation with numerous ties to its

northern neighbor. Spanish as a world language with multiple affinities to English, and there is no resistance whatever on the part of Mexicans and Central Americans to learn the latter. 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 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,” if it is not that of being given the legal status and the 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 last year in the wake of passage of HR 4437, the harsh Sensenbrenner bill.



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 nationalistic 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 1996, economist Thomas Espenshade estimated the probability of apprehension during any border-crossing attempt at 33 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 less than 15 percent in any given trial by 2004, 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 fit between the need of Mexican and Central American migrants to find employment in order to survive and 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 the sea 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, 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 thus 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 in the first place.

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 under these precarious conditions 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 is known in the research literature as “downward assimilation”. The offspring of unauthorized migrants are at risk of following this path. Hence, the policy of migrant repression 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, recreated this time with new players.

This catastrophic situation, the direct outcome of a misguided policy, could have been prevented by understanding three simple points:

- America needs and will need massive inputs of manual 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 repress 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 can 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:

- It avoids the depopulation of towns and entire regions, which is an inevitable consequence of permanent family migration.
- It guarantees the continuation of the remittance flow, which tends to dry up when migrants bring their families to the other side of the border.
- 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 in Washington policy circles 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 a pattern of cyclical migration requires three conditions:

- Guaranteeing to migrants legal passage across the border when returning from visiting 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 operating principle is that, for migrants to return, there must be *something* for them to return to. Viable communities where families can leave in peace and children be properly educated is a first condition for this to happen. Investment opportunities for returned migrant savings is a second.

The STRIVE bill of congressmen Gutierrez and Flake and the recent proposals floated by the White House are steps in the right direction, but they contain four significant flaws:

1. To please the nationalistic right, they are loaded with so many repressive features and so many conditions for legalization as to make them expensive, burdensome, and probably unworkable. Repressive measures – more 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 re-channeling it in new directions. Making legalization cumbersome and loaded with punitive measures will play directly into the hands of smugglers and unscrupulous employers since it will discourage unauthorized migrants from coming forward.
2. These proposals seek to revamp the entire immigration system at

once without taking into account that unauthorized labor migration is a distinct phenomenon with a dynamic quite separate from other forms of migration. To resolve the current situation requires concentrated attention; not its dispersion into the multiple byways and complexities of the current immigration system.

3. The proposals address the issue of unauthorized migration universalistically, without attention to the fact that this is, overwhelmingly, a bilateral issue between Mexico and the United States. The vast majority of unauthorized migrants come from or through Mexico. Any reform measure with any hope of success must privilege this bilateral character of the flow and require close cooperation between the two governments.
4. Largely because they have been hatched in Washington, these proposals seem to assume that, once migrants cross into the United States, they will never leave. Thus, they do not sufficiently address the need for restoring the circular pattern of the flow or provide significant incentives for migrants to return.

In lieu of these proposals and the present ineffective and costly policy of border repression, a viable bilateral labor 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. \$2,000 at the Mexico-U.S. border (roughly two-thirds of 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 (\$1,000) plus all accumulated social security payments, payable through a Mexican bank.
- 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 sizable U.S. bank account. They will not receive entry fee reimbursement or accumulated social security payments since they are expected to need them for retirement here. However, their application for permanent residence will receive expedited treatment.
- 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. 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.

The Mexican state commits 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.

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 migrant families at home, eliminating the social burden of a permanent impoverished population and the likelihood of downward assimilation in the second generation.
- Prevent the depopulation of migrant-sending towns and regions, while encouraging productive investment of migrant savings upon return.
- Create an orderly program for permanent migration and settlement. Applications for permanent U.S. residence will be reduced through real incentives for return and the selectivity of permanent migrants will be assured through their records of work and general conduct while in temporary status.

If, at the end of three-to-five years, the bilateral program is yielding the expected results, it can be extended to other labor-exporting countries in Central America. This extension should not be done at once, however, since it is imperative to restore first the cyclical character and the legality of the Mexico-U.S. migratory system.

Critics who argue that migrants “take jobs away from citizens,” that they are difficult to unionize, or that a temporary labor program would create conditions “akin to





slavery” should bear the burden of proof by showing how present-day circumstances are any different from what they denounce, or how they are superior to the proposed program. These critiques are singularly inappropriate, for they tend to project into the future conditions that already exist precisely because no labor management program has been created to overcome them.

Despite its flaws, the old Mexican “Bracero” program was arguably superior to what followed it. This program was brought to an end with the 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 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.

