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El Norte

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The profusion of proposals by politicians of left and right, the taking to the streets of Los Angeles by half a million Hispanics and sympathetic demonstrators opposing the draconian House bill, and the agonized appeal by President Bush (a real mensch who has put his politics where his principles are, and where ours should be) that "America is a nation of immigrants" (and "also a nation of laws"), all underline the fact that there is now a compelling sense of public urgency about the immigration debate that will seize the Senate this week. There should also be a sense of déjà vu.

We have been here before. Indeed, a fierce debate preceded the legislation of the 1986 Immigration Reform and Control Act (IRCA), our last statute addressing illegal immigration. But we need to learn the lessons from that debate and from the loss of any illusion among the proponents of IRCA that they finally had a handle on the problem of illegal immigration.

If we understand why IRCA failed, we will understand why the prospects of disillusionment confront us all over again, whether we move to the harsh end of the spectrum with the House bill, which criminalizes illegal immigrants (and even those who aid and comfort them), or we embrace the reforms at the benign end, such as the president's proposal for a guestworker program and the proposal of Sens. John McCain and Ted Kennedy for a quasi-amnesty for the illegals already in our midst.

While some proposals before the Senate are better than others, none will eliminate the phenomenon of illegal immigration, which is an inevitable result of the fact that we are a powerful magnet for immigrants and that we are not about to abolish the barriers at our borders. Once we accept this stark (but not necessarily depressing) reality, what we ought to aim for as an optimal solution becomes much clearer.

Illegal or 'Undocumented'?

While the problem at hand is difficult enough, it is compounded by the insistence on euphemisms that obfuscate the realities fueling the debate -- and also by the overlay of panic over security post 9/11. It has now become politically incorrect to call illegals what they are. Instead, they are to be called "undocumented," which is also an insult to our intelligence since the illegals often do have documents -- that is, faked ones. A high Mexican official once condemned me for using the I-word when I gave a generously pro-immigration speech in Vienna some years ago, arguing preachily that "God did not make us legal and illegal." Yet to drown ourselves in such false sentimentality is to forget that a central problem arises from the very fact that many react adversely to the defiance by these immigrants of the enacted immigration laws.

The fact that American demand for immigrant labor has fueled the influx is simply an explanation of the phenomenon, not its denial.

But the debate is equally set back by the gratuitous claim at the opposite end by those, such as Sen. Bill Frist, who talk incessantly of the security implications of illegal immigration. Illegal immigrants, especially the ones who cross the Rio Grande, are overwhelmingly poor: Surely, the likelihood of finding 9/11-type terrorists among them is farfetched. Everyone knows that the 9/11 terrorists were middle class and educated; and recent analyses of terrorist groups such as the Baader-Meinhof Gang, the Irish Republican Army, the Red Brigades and the Palestinian suicide bombers confirm that an unschooled, indigent terrorist is rare indeed. In short, as economists say, which policy is "assigned" to which objective is important: Tight enforcement against illegal immigration, as distinct from stricter examination of containers at our ports, for instance, is misassigned to the antiterrorism object.

In fact, the proper objectives of American immigration reform -- as was the case with IRCA, and as is the case today -- are twofold: to "gain control of the border" (i.e., to have the inflow of migrants determined exclusively by legal admissions) and to treat immigrants humanely. If we manage to eliminate illegals from our midst, both objectives would be satisfied. Immigration flows would reflect legal immigration policy. Moreover, with no illegals around, immigrants would be treated with humanity, thanks to the principle of equal protection under the law, which is substantially extended to legal aliens.

To achieve these two targets, two policies are necessary. First, the stock of illegals in our midst must be eliminated. At the time of IRCA, it was estimated at six million; studies today suggest that it has doubled. Second, new flows of illegals must be eliminated, too. In broad brush, therefore, IRCA used an amnesty to eliminate the stocks. And it used enhanced enforcement to seek to eliminate the flow. But neither worked. The reasons are instructive.

The main problem with amnesties is not just the fear that they set up expectations of further amnesties and hence stimulate greater flows. Rather, in the U.S. context, where we have both huge stocks of illegals and a sizeable queue of legal applicants, the issue always becomes one of what economists call "horizontal equity." An amnesty always appears to reward those who broke the law as against those who did not, and who have been patiently waiting for years to get in legally. So the amnesty seems unfair; and hence it gets hedged in with all kinds of restrictions, such as those currently in the McCain-Kennedy proposal, in contrast to countries like Spain, where an amnesty of illegals has worked because the stocks are small and there are few legal applicants waiting in queues. Our hedged-in amnesties always leave a fair amount of the stock of illegals in place: Only about half took advantage of it in the case of IRCA. The problem of a stock of illegals then endures. It was further compounded over time since the flows were not deterred by enhanced enforcement under IRCA.

The enhancement of enforcement is easier legislated than implemented. In particular, employer sanctions were enacted by IRCA. Some of us had forecast that the judges would let off with a slap on the wrist, no more, employers who were hiring, as distinct from exploiting, illegals. Surely, even hanging judges would not throw the book at employers who were only offering

work and a life to the destitute? But it turns out that hardly any employers found their feet held to the fire in any case, because no foolproof method of document verification was agreed upon.

Again, greater enforcement at the border was undertaken, not least with President Clinton declaring in July 1993 that "Today we send a strong and clear message. We will make it tougher for illegal aliens to get into our country." Fences and ditches were soon being constructed along the Rio Grande, the Border Patrol's budget increased manifold, and its 10,000 agents were working with advanced laser technology, aircraft, helicopters and rugged-terrain vehicles to intercept border crossings. Yet when the familiar and safer routes were blocked at the Southwest border through Operation Gatekeeper in the San Diego sector, and Operation Hold the Line and Operation Rio Grande in Texas and New Mexico, the illegals shifted their attempted entries to unsafe treks through the desert. Several have died there, creating a human rights issue where relaxed enforcement had created none. So IRCA failed to reduce the stock of illegals substantially; and the influx of illegals continued despite employer sanctions and enhanced border enforcement. At the same time, the humane treatment of illegals, as they crossed the border, deteriorated. We had not regained control of our borders; and we had taken a step backward on the human rights of illegals. Some reform!

By the time President Bush took office, the illegals were still in our midst (or in our face, depending on your politics) -- only more so. The matter could have stagnated thus. But President Bush was particularly interested in an amnesty again; it seemed to reflect his desire to attract the Hispanic vote and for better relations with Mexico. It is revealing that the first amnesty he sought was for Mexican illegals alone. On the Democratic side, the unions had been strong proponents of tighter controls. But they concluded that IRCA was not working and decided that if the illegals could not be eliminated, it was better to legalize them so that fewer illegals would undercut wages. Besides, legal workers could join unions. The churches also saw in the Hispanic illegals, almost all Christian and illiterate, not merely a way to provide succor to the needy but also to boost congregations. The demands for some cleverly disguised way of granting an amnesty therefore grew.

At the same time, these "illegals-friendly" groups were generally interested in embracing some version of the president's temporary workers program. The idea was that, if you let in more legal, that would reduce the excess demand for illegals and hence lead to reduced attempted entries.

'Taxpayer Dollars'

On the opposite side, 9/11 gave the "illegals-unfriendly" lobbyists a new lease on life through the specious security argument. The rise of the Minutemen, and efforts to use trespass laws against illegals, were manifestations of this new window of opportunity to go after the latter. And Democratic Governors Janet Napolitano of Arizona and Bill Richardson of New Mexico jumped in with declarations of emergencies to complain, as Gov. Pete Wilson had done in California, that they were "absorbing through taxpayer dollars" the costs of incarceration, healthcare, Medicaid and welfare -- a complaint in which they were joined by the governors of Missouri, Tennessee and Utah.

When all the dust is settled, the reality is that neither a realistic guestworker program nor increased border enforcement will eliminate the inflow of illegals. The average lifetime improvement of a Mexican peasant coming in at the lowest wage he can earn here has been estimated by the economist Mark Rosenzweig at \$250,000. You can bet your bottom peso that, even when the legal entries have been expanded, whether on a temporary or a permanent basis, many more will be on their way here illegally. And we are not even counting the increasing numbers who come in legally and overstay. Yet more draconian enforcement at the border again is not politically feasible. At some stage, Americans will rebel against the loss of lives and the plight of the poor Mexicans struggling against great odds to get across the border.

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As for eliminating the illegals inside the U.S., surely the notion that we can criminalize the illegals in our midst with a view to expulsion, and incarcerate or punish those who help them, is off the wall: Most Americans shudder at the very thought. Nor will we be able to reduce these stocks through any kind of de facto or de jure amnesty; and even if we do, the continuing inflows will augment the stocks again.

So why not face these realities? In place of grandiose proposals for a "new IRCA," whether tough or tender, why not leave things be? If illegals will be here no matter what we do, why not downgrade the impossible objective of "controlling our borders" and concentrate instead on the other objective that animates all Americans: that we treat immigrants with the indulgence that simple humanity requires? Now, that would be an agenda that could make us proud.

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