

Immigration Law TODAY

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Why Filipinos Call This Country Home

**H-1B Employers
Beware**

**Surviving Labor
Certification**

H-3 vs. J-1 Training

A Nation by Design: Portrait of Immigration Policy in the Fashioning of America

SELDOM IS THERE A BOOK about U.S. immigration history that thoroughly covers congressional decisions from colonial times to the present push for immigration reforms, a book that explores the broad themes and intricate details of this country's treatment of aliens and forms a wonderful backdrop for understanding this year's roller-coaster ride—otherwise known as comprehensive immigration reform (CIR). One book dares to accomplish such a feat, and paints a colorful and very detailed portrait of the varying immigration legislation that came, went, and withstood the passage of time.

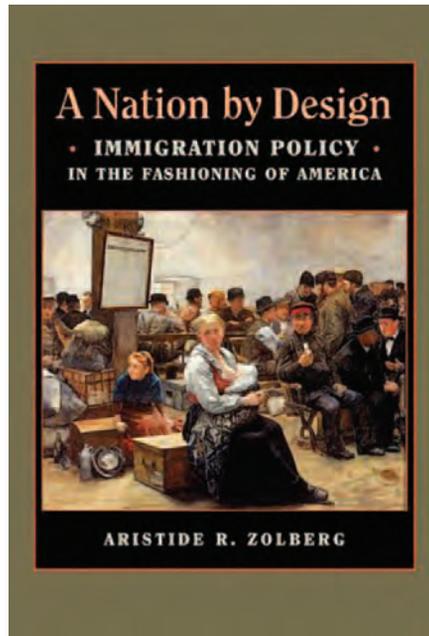
Congressional Case Study

Professor Aristide Zolberg's *A Nation by Design: Immigration Policy in the Fashioning of America* (Harvard University Press; \$39.95, hardcover) is 450 pages of text (with an additional 150 pages of footnotes) that probably will become a class-adopted book for courses studying immigration issues. The book is geared toward a more academic audience, and is not easy to read after a hard day in court. The sentences are verbose with words containing multiple syllables. The sometimes-dense style makes this book a bit of a challenge to read straight through. However, the words are used precisely and not simply for effect.

Despite the highly literary writing style, this book is still worth reading. Each chapter paints a portrait of an era in immigration history with carefully researched details. The most compelling parts were the early 1800s—a time usually left out of broad surveys of immigration history—and in 1986, where the months of to-and-fro debate on immigration foreshadowed the current complicated and fragile attempts at CIR.

Special Interest Connection

Zolberg does a wonderful job of identifying the special interests involved with each new immigration law. For example, before 1776, immigration restrictions were driven by conflict with England. He begins the second chapter by quoting Thomas Jefferson, who complained that King George was trying to starve the new colonies of labor



by limiting migration from Europe, while purposefully sending convicts, paupers, and slaves to degrade American society. The King's efforts led early settlers to support generally loose immigration policies, with specific state-by-state restrictions on certain "undesirables."

Zolberg also firmly addresses slavery—a topic often left out of immigration history. Slaves were not considered more than temporary labor and, therefore, did not benefit from efforts to enfranchise other groups of new immigrants. In fact, in the first half of the 1850s, even groups working to free slaves also collected money to send them

back to Africa. During the Civil War, the federal government used the Union Army as a place to send free blacks rather than encourage them to settle in the North.

Many U.S. history books teach that open space and religious freedom in colonial times drew immigrants who were easily received and integrated, but the reality was often harsher. While the Spanish were bringing slaves to plantations in the Caribbean and South America, the United Kingdom used "transportation" as an alternative penalty to capital punishment. Zolberg documents the English government's efforts to send Irish prisoners to the United States, with the secondary goal of wiping out Catholicism in Ireland.

Thus, even in the earliest days, migration was managed by special interests (employers in the South, the British government, etc.). In one interesting twist, Puritans were sent from England for the dual purpose of getting rid of troublemakers and creating a strong anti-Catholic base against the French in the New World.

Colonial Immigrants

Migration slowed during the early 1700s due to the high natural rate of reproduction in the colonies. The white population of the future United States grew tenfold—from 223,100 in 1700 to 2,205,000 in 1780. Only about 300,000 of that growth came from migration from Europe. Immigrants from the British isle peaked at 378,000 from 1630 to 1700. However, this number →

Zolberg describes the 20th century as starting with an “open door,” then shifting dramatically to a “closed door” in the 1920s, finally transforming into a “main gate” in the 1960s.

dwindled to less than one-third by the start of the 18th century due to death, lack of females, and reverse migration of indentured servants after completing their services. The vast majority settled in the South, where plantations required cheap labor. There was a somewhat wealthier, more educated population in the North where most settlers worked on smaller family farms.

Thus, immigration was more driven by British “pushes” than “pulls” from the colonies during the 1700s. Indentured servants and convicts made up the majority of settlers. Britain formally legalized the “transportation” of immigrants in 1718, and it became a very profitable business. To many British, sending indentured servants to the colonies seemed the perfect solution to crime, as the rugged wilderness of the new settlements might help rehabilitate convicts.

Misguided Prejudice

The common misconception that “immigrants are criminals and unable to rise above poverty” may come, in part, from early history. As early as 1751, Benjamin Franklin railed against transportation of convicts:

Thou art called our Mother Country, but what good Mother ever sent thieves and villains to accompany her children; to corrupt some with their infectious vices and murder the rest? The same indolence of temper and habits of idleness that make people poor and tempt them to steal in England, continue with them when they are sent to America, and must have the same effects.

The fear of new immigrants being different from native-born Americans also dates back to colonial days. In 1753, Franklin wrote that those who “come hither are generally of the most ignorant stupid sort of their own nation.” He concluded that immigration was unnecessary since the labor shortage “will soon be filled by natural Generation.”

By 1800, the Federalist party had adopted Franklin’s anti-immigrant stance. Thomas Jefferson—leading the opposition Republicans—used this to his advantage. States controlled by Republicans shortened waiting times for citizenship and signed up new voters from immigrant communities, particularly the Irish in New York. These voters led Jefferson and the Republicans to victory. Unlike some later politicians, Jefferson lived up to his promises regarding immigration. His first message to Congress called for lowering the number of years for citizenship on a national level from 14 to five (lower than anywhere in Europe at the time). Jefferson wanted the country to “live up to its vocation as an asylum for oppressed humanity.”

The end of the most brutal phase of the French Revolution and the suppression of Irish independence by the British reduced fears of violence and anarchy coming across the ocean with new immigrants. New Americans were expected to shed their native cultures and tongues. John Quincy Adams expressed the following thoughts in 1817:

[T]he Atlantic is always open to them, to return to the land of their nativity and their fathers . . . They must cast off their European skin, never to resume it . . . they must be sure that whatever their own feelings may be, those of their children will cling to the prejudices of this country.

Demographic Transformation

Cities were always a focus of immigration policy because of the high concentration of newcomers. By 1855, New York City housed 51 percent foreign-born residents! As a result, immigrants were usually blamed for urban problems. By the mid-19th century, Americans started to see in the cities what the future would hold—continuing waves of radical demographic transformation if immigration continued.

Benjamin Franklin’s “natural generation” forecast did not happen, and after the

Civil War, Abraham Lincoln’s Republicans called for a “system of encouragement of labor” from Europe. By the late 1800s, the labor shortage was so severe that in California, seven out of eight agricultural workers were Chinese. This foreshadowed the tremendous need for unskilled workers from Latin America today. The Immigration Service was able to regulate—to some extent—the flow of Chinese because they came by boat. There were set ports of entry, and the Chinese Exclusion Act of 1882 effectively stopped immigration from China. Closing the door on Chinese immigration in 1882 led, in part, to the wave of illegal migrants from Latin America throughout the 20th century. This wave started as early as 1900, with a few hundred Mexicans crossing the border annually for work in the fields.

National Origin Restrictions

What began with the blatantly racist Chinese Exclusion Act of 1882 resulted in the 1920 general national origin restrictions. Zolberg’s general thesis is that immigration policy was planned by special interests for their own purposes. Thus, by 1920, the business lobby no longer needed a continuous flow of migration from Europe to support industry in the United States since the great internal migration from the South and elsewhere began to supply needed workers. The process was sealed by the aftermath of World War I, which shut many Americans off from the outside world.

National origins quotas lasted three decades but began to crack during World War II. Japanese propaganda portrayed the United States discriminating against the Chinese (a U.S. ally during the war) through the Chinese Exclusion Act. As a result, Chinese-Americans won back the right to naturalize, and 100 Chinese a year were allowed to immigrate. This was a very small amount, albeit symbolically important, because it marked the decline of the policy of choosing immigrants based on their country of birth.

Immigration Law Today

The ancestor of modern immigration law was the Immigration and Nationality Act of 1952 (Pub. L. No. 82-414, 66 Stat. 163), as national origin quotas gave way to regional quotas. The final stroke eliminating regional preferences was the Immigration and Nationality Act Amendment of Oct. 3, 1965 (Pub. L. No. 29-236, 79 Stat. 911), which President Lyndon Johnson proclaimed would lead to choosing new Americans based on who they are, not where they come from. This was the start of the preference categories—with priority given to those with job skills or relatives in the United States.

Revolving Immigration Door

Zolberg describes the 20th century as starting with an “open door,” then shifting dramatically to a “closed door” in the 1920s, finally transforming into a “main gate” in

the 1960s. The main gate was more nuanced and more heavily regulated, with a “side entrance” for family, and a “back door” for illegal migration from Latin America. The resulting multi-faceted system surprised its supporters as it led to a new colossal wave of immigrants from 1970 to the present. Immigrants from the developing world increased in that time period from 42 percent to 75 percent of the total number entering the United States, and rivaled the other great wave of immigration from 1890–1920.

Mass Immigration Categories

The employment-based categories provided a foothold for new immigrants from third world countries, and the family-based categories led to large scale “chain migration.” Zolberg clearly documents what most people today do not realize—that Congress never anticipated mass immigration from Latin America, Asia, and Africa when it

passed the 1965 act. At that time, Congress wanted to follow in the spirit of the Civil Rights Act by eliminating the discriminatory parts of previous immigration laws.

Elusive Quest for Coherence

Anyone who is trying to predict the outcome of this year’s CIR debate should read Chapter 10—“The Elusive Quest for Coherence”—that chronicles the development of the Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. No. 99-603, 100 Stat. 3359). Allegiances, opinion polls, and amendments changed almost daily—with the final bill emerging at the 11th hour from a closed-door conference committee session. Whatever will happen this year, it is inevitable that the exact wording of any new law will be debated until the last second, and that the final bill will reflect a complicated mix of interests.

While IRCA is an excellent case →

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study of congressional response to the same problems that practitioners face today, the landscape is different. For one, 75 percent of people polled in 1986 said immigration should not be increased, while nearly half said it should be reduced. By 1995, 65 percent favored cuts in legal immigration. Moreover, a stable majority believed that immigrants generally tend to end up on welfare. Twenty years ago, the restrictionists had broad public support but little political infrastructure.

This contrasts with today, where after decades of experience with illegal immigrants, the majority of Americans believe immigration reform is necessary, yet the anti-immigration lobby is extremely organized and powerful. Many Americans have come to believe that, as President George W. Bush stated in the 2000 campaign, “[I]t is far more compassionate to turn away people at the border than to attempt to find and arrest them once they are living in our

country illegally.” In his victory speech at the Republican primary, Bush declared that “legal immigration is not a national weakness; it is a sign of national success.”

Furthermore, foreign-born voters cannot be discounted in the political arena. Even noncitizen aliens count in determining overall population for census and congressional redistricting purposes, and the numbers of foreign-born in the United States right now are staggering. For example, immigrants accounted heavily for California’s net population growth from 1990 to 2000.

Serious debate about the broken immigration system began in late 2001, including a bipartisan proposal by Senator Peter Wilson (R-CA) for a guest worker program. Unfortunately, the much-needed debate stopped abruptly after the 9/11 tragedy and did not resume in earnest until last year. From that point, security concerns dominated the discussion.

Post-9/11 Effect

Zolberg points out what many are coming to realize—that a good part of the post-9/11 security was a quixotic effort to look for a needle in the haystack. For example, this author’s firm has a Lebanese businessman client who waited in line for 12 hours in Boston to comply with required special registration in 2002. Such efforts drain tremendous resources and, as a practical matter, are extremely unlikely to catch terrorists. To completely protect the United States, Zolberg explains that border inspectors would have to make 1.3 billion correct decisions each year about entering people and cargo. Therefore, it is essential to balance this nation’s open society with a realistic approach to border security.

So how do Americans best protect themselves while keeping legal immigration working? Zolberg ends the book by suggesting two strategies:

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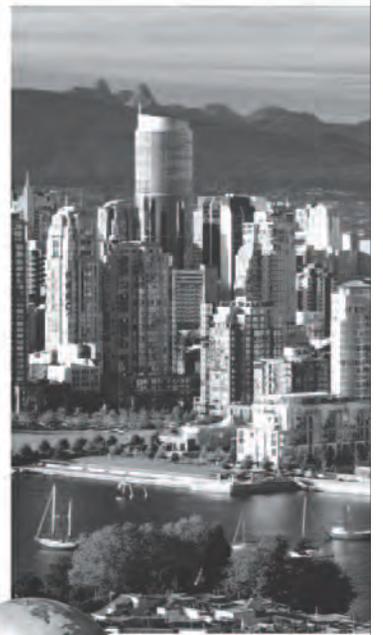


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