

COMING TO AMERICA

A HISTORY OF IMMIGRATION AND
ETHNICITY IN AMERICAN LIFE

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that year Congress passed, over President Harry S. Truman's veto, the McCarran-Walter Act. While its other provisions will be discussed later in this chapter, here it must be noted that the act ended the total exclusion of racial and ethnic groups from naturalization and immigration and did what Charles Sumner had wanted to do in 1870: made the naturalization laws color blind. Just as the granting of the right of naturalization to Chinese in 1943 should be seen as a war measure, the further liberalization in 1952 should be seen as a fruit of the Cold War. Engaged in a struggle for the hearts and minds of what it liked to call the Free World, the United States could no longer afford a policy that so blatantly excluded so many. Despite this liberalization, however, the McCarran-Walter Act continued most of the discriminatory policies of the 1924 act and essentially preserved the national origins system. And, it should be noted, no one then even dreamed that immigration from Asia would, in just three decades, amount to approximately half of all legal immigration, or that immigration would be running at some five million a decade.

Displaced Persons and the New Pattern of Immigration

Although there had been grumbings, from both inside and outside of Congress, that making eligibility for naturalization global was "lowering the barriers," there was, by 1952, a very broad consensus in favor of it. Even Nevada's crusty Senator Patrick A. McCarran, who regarded himself as the guardian of America's gates and a staunch defender of the national origins concept, was in favor of it. But proposals to admit hundreds of thousands of European refugees in the immediate post-World War II period were a different matter and provoked bitter and prolonged controversy. Many Americans feared that the country might be swamped by refugees from a devastated Europe that was economically insecure and politically unstable, with Communist parties growing in almost every nation. Others, reflecting the fears of the twenties rather than the realities of the forties, worried that it was all a plot to let in more Jews. There were, in fact, few Jews among the millions of displaced persons in the Western European camps, and most of those were headed for Palestine/Israel, but the memory of what the United States had done—and failed to do—about refugees in the pre-war period was an important part of the debate that raged in the late 1940s and early 1950s.²

The political debate began at the end of 1945 when President Truman, who had ignored the growing scandal about the neglect of dis-

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Changing the Rules: Immigration Law, 1948–1980

The Immigration Act of 1924 and the national origins system it established remained the basic immigration law of the land until 1965. During the rest of the 1920s, the 1930s, and the early 1940s, the law seemed unassailable. Yet we can now see, as contemporaries could not, that the repeal of Chinese exclusion in 1943 and the granting of a token quota to Chinese was the beginning of the end for the racist and discriminatory system that was so much the product of the tribal twenties. In 1946 Congress, in separate actions, used what we can call the Chinese formula for two other Asian groups: Filipinos and "natives of India." Both groups received tiny quotas and admissibility to citizenship. For the Filipinos, as it had been for the Chinese, the change was a good behavior prize and a celebration of Filipino independence as well. The application of this formula to natives of India, who were still colonial subjects of the British Empire, was largely due to the successful lobbying of Asian Indians resident in the United States, particularly a New York merchant who called himself J. J. Singh. A prosperous Sikh businessman with great powers of persuasion and endurance (Robert Shaplen, writing in *The New Yorker*, called him a "one-man lobby"), Singh managed to get bipartisan support for his cause. Its passage left the status of Asians in a curious state. Chinese, Filipinos, and "natives of India"—who were in 1947 partitioned into the two independent states of India and Pakistan—had limited quotas and were eligible for naturalization, which meant, as had been true for Chinese, that the spouses and minor children of naturalized citizens could enter as non-quota immigrants. But all other Asians—Japanese, Koreans, and Southeast and Southwest Asians—were still "aliens ineligible to citizenship" and thus denied admission as immigrants.¹

This anomalous situation persisted for six more years, until 1952. In

placed persons for months, proposed that half of the continental European quota slots, some forty thousand per year, be reserved for DPs, who would have to meet all of the criteria of existing immigration law. One often-overlooked aspect of that Truman directive is that it, for the first time, involved voluntary agencies, most of them religious, in the official sponsorship of refugees. This relationship between the VOLAGS, as they came to be called, and the immigration process has developed enormously since that time, and, as we shall see in the final chapter, they played a crucial role in amnesty after 1986. During the first nine months of 1946 only about five thousand DPs had been admitted, and Truman began to see that any effective program would have to go outside of the quota system. In his 1947 State of the Union message the president urged Congress to "find ways whereby we can fulfill our responsibilities to these suffering and homeless refugees of all faiths." The notion that the United States had responsibilities for what happened to foreigners was consonant with American pretensions to world leadership, but it had never gained majority support in the pre-war period and was still controversial.

A bipartisan coalition, in and out of Congress, supported the president's position, and in April 1947, Representative William G. Stratton, a relatively conservative Republican from Illinois, dropped a bill into the hopper calling for the admission of one hundred thousand displaced persons annually *over and above* the quota numbers for four successive years. This would breach the quota system in a major way and was resisted bitterly by supporters of the old system. After more than a year of acrimonious debate and maneuvering, a compromise Displaced Persons Act of 1948 was passed at the end of June. It is the first piece of legislation in American history that set *refugee policy* as opposed to immigration policy.

The bill accepted the basic definition of displaced persons that had been adopted by the UN's International Refugee Organization (IRO) as people who were

victims . . . of the nazi or fascist . . . or . . . quisling regimes . . . or Spanish Republicans and other victims of the Falangist regime in Spain . . . or persons who were considered refugees before the outbreak of the second world war, for reasons of race, religion, nationality, or political opinion . . . who have been deported from, or obliged to leave their country of nationality or of former habitual residence.

To this IRO definition, which reflected an antifascist World War II orientation, Congress added a number of categories reflecting an anti-communist Cold War orientation. These included *Volksdeutsche*, persons of German ethnicity who fled or were expelled from Eastern Europe, Italian refugees from the Venezia-Giulia, and post-1948 refugees from Czechoslovakia. In one of those absurd but face-saving compromises so typical of congressional politics, it was pretended that the quota system had been left intact. All of the newcomers were charged to some specific quota, and if the quota was not big enough it could be mortgaged. Within four years, in what was an extreme but not unique case, the Latvian quota of 286 annually had been mortgaged for over three centuries to the year 2274. The total to be admitted was also a compromise. The 1948 act cut the original proposal almost in half, allowing the admission of almost 250,000 DPs over two fiscal years. Not surprisingly, as the act was running out in 1950, it was amended to run for two more years and the authorized total was upped to 415,000, slightly more than in the original bill.

Due to the increasing Cold War orientation, only a minority of those admitted under the two acts were Hitler's victims: a larger number, perhaps a majority of all who came, were members of groups that had benefited from the policies of the Third Reich. These latter were chiefly *Ostdeutsche*, ethnic Germans from Eastern Europe and some Baltic peoples. In addition we now know that, during this period and later, certain agencies of the executive branch, notably the Department of Defense and the Central Intelligence Agency, brought hundreds of former Nazis into the country for various reasons of state, including the so-called Operation Paperclip, which concentrated on rocket scientists. To legitimize this process, a little-noticed clause was added to the 1949 act governing the administration of the CIA, giving its director a quota as large as that of many small nations to admit aliens "in the interest of national security or essential to the furtherance of the national intelligence mission." In addition, an unknown number of former Nazis and even war criminals slipped through the State Department and INS screenings, which were more and more concerned with keeping out communists than fascists.

All in all something fewer than 450,000 DPs were admitted from the end of the war in Europe until the 1948 and 1950 acts expired on June 30, 1952, which works out to something over 60,000 persons per year. Despite much talk, overt and covert, about the country being flooded by Jews, Leonard Dinnerstein has calculated that nearly 140,000 Jews were admitted to the United States in the same period, fewer than

20,000 persons per year. During that time total legal immigration into the country was 1.3 million, or just below 200,000 annually and the baby boom was adding 3.4 to 3.9 million persons to the population each year.³

The struggle over the DP bills helped focus attention on the immigration laws generally, with most traditional liberals arguing for scrapping or greatly modifying the national origins system and most traditional conservatives insisting on little or no change. Essentially a continuation of the national origins system, the 1952 McCarran-Walter Act's major innovations were: the previously noted liberalization of the naturalization laws; a broadening of the family reunification provisions so that female citizens could bring alien husbands into the country as non-quota immigrants; and to give preference within the quotas to alien husbands of resident alien wives. Truman vetoed the bill, which was reenacted over his veto. The president specifically approved of the major innovations and objected to what he called the "greatest vice of the quota system":

it discriminates, deliberately and intentionally, against many of the peoples of the world. The purpose behind it was to cut down and virtually eliminate immigration to this country from Southern and Eastern Europe.

After the McCarran-Walter Act had become law, Truman appointed a Commission on Immigration and Naturalization, merely another example of the way in which his administration responded to events rather than helping to shape them. Shortly before he left the White House the commission issued a report, "Whom We Shall Welcome," which was highly critical of the 1952 act and generally consonant with the views expressed in Truman's veto message. It recommended scrapping the national origins system and instead would allocate visas without regard to national origin, race, creed, or color and issue them according to five principles: the right of asylum, family reunification, needs in the United States, needs in the "Free World," and general immigration. Although it spoke of a "maximum annual quota" it instead proposed an annual limitation on the number of immigrants to be allowed in using the same formula as did the 1924 and 1952 acts: one-sixth of 1 percent of the population annually. But where the existing act still used the 1920 census figures, the Commission proposed using the latest data (1950) with decennial updates. This would have raised the number eligible to enter annually from 154,657 to 251,162.

In addition it proposed to use 100,000 of the spaces for each of three years for the admission of refugees, expellees, escapees, and remaining displaced persons.⁴

The commission's report, at least in the short run, was an exercise in futility. The report came too late to be a factor in the 1952 election, so there was no pressure on the Eisenhower administration to do other than ignore it. McCarran denounced the report as communist inspired and insisted, falsely, that "the rock of truth is that the Act does not contain one iota of racial or religious discrimination." He pointed to the many supporters of the new law which included not only such nativist standbys as the American Legion, the Veterans of Foreign Wars, and the American Coalition of Patriotic Societies, but also organizations which spoke for new immigrant groups, such as the National Catholic Welfare Council and the Japanese American Citizens League. Modified nativism had found some strange allies, at least in terms of traditional coalitions that had prevailed in the 1920s.

Neither the liberals nor the conservatives understood the dynamics of the immigration forces in the post-World War II world. The McCarran-Walter Act, which was on the books for thirteen years, envisaged a total of just over two million immigrants in that time, while the Truman Commission's formula would have produced about 3.25 million. In fact, about 3.5 million came in legally in 1952-65, and only one-third of those admitted were quota immigrants. Both groups, essentially refighting the fights of the 1920s, focused on Europe, the traditional source of most immigration to America. For the 1950s, Europeans still represented just over half of all immigrants (52.7 percent); by the 1960s they were just a third; and by the 1980s Europeans represented only just over a tenth of all legal immigrants. Immigration from Canada, almost entirely of Europeans or the descendants of Europeans, was an important but steadily declining portion of American immigration, ranging from an all-time high of 22.5 percent in the 1920s to 12.4 percent in the 1960s, on down to 2 percent in the mid-1980s.

The great gainers, of course, were Latin Americans and Asians. Latin American immigration had been quite small until the decade 1911-20, when the combined impact of the Mexican Revolution and the wartime curtailment of European immigration pushed it to 7 percent, about half of it from Mexico. Restriction of European immigration in the next decade doubled the Latin American share, with nearly four-fifths of that coming from Mexico. The percentage dropped in the 1930s, rose back to just above the 1920s level in the labor-short World War II decade—and this figure does *not* include braceros—and then grew

steadily to reach more than a fifth of all immigrants in the 1950s and nearly two-fifths in the 1960s. In the 1970s the Latin American share of legal immigration peaked at just over two-fifths and declined in the mid-1980s to just over a third. A decline in share, it must be noted, did not necessarily mean a decline in numbers, as the total numbers of immigrants has risen steadily since World War II. The two-fifths share in the 1970s brought about 180,000 Latin Americans in each year, while the percentage in the 1980s meant that just over 200,000 came in annually. Mexicans were a large but declining proportion of these immigrants: about half in the 1950s, just over a third in the 1960s and 1970s, and just under a third in the mid-1980s.

The growth of Asian immigration was even more startling. From a mere 3 percent of all immigrants in the 1940s, it rose to 6 percent in the 1950s and nearly 13 percent in the 1960s, and zoomed to more than a third in the 1970s and to nearly half in the 1980s. The changing share, by global regions and Canada, is shown in Chart 13.1.

Not all of these changes were due to the 1952 law, as it was superseded by a quite different measure in 1965. But, as the data suggest, there were long-term forces operating throughout the post-war years. Among these were changes in Europe: Few Eastern Europeans were able to emigrate and, after the postwar European economic boom began, fewer and fewer Western Europeans wanted to. In Latin America political upheaval, steep population growth, and deteriorating economic conditions produced massive pressures to emigrate, with the United States, "El Norte," the obvious target, although there were and are significant population movements within Latin America. Continued American involvement in Asia meant more, and more varied, Asian immigration, while the process of modernization in many Asian countries produced a growing educated elite who wished to, and under the new immigration dispensations were able to, emigrate to places where their hard-won skills and capital could be advantageously and safely employed. And, over and above all these factors, were imperatives dictated to American policymakers by the Cold War and by the changing attitudes toward race and ethnicity on the part of the American people.

Nor was immigration to North America the only current. V. S. Naipaul, who emigrated from Trinidad to Britain, has written:⁵

In 1950 in London I was at the beginning of that great movement of peoples that was to take place in the second half of the twentieth century. . . . Cities like London were to change. They were to cease

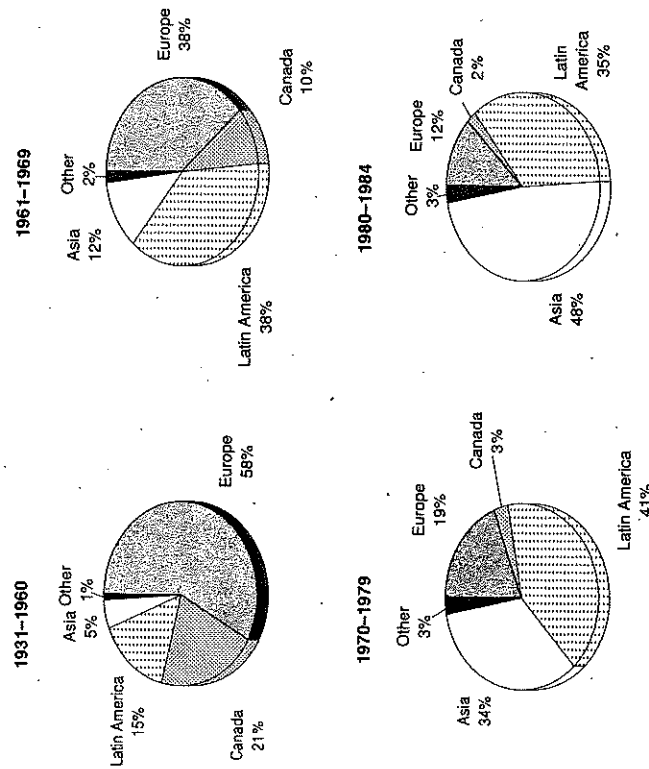
being more or less national cities; they were to become cities of the world, modern-day Romes, establishing the pattern of what great cities should be, in the eyes of islanders like myself and people even more remote in language and culture. They were to be cities visited for learning and elegant goods and manners and freedom by all the barbarian peoples of the globe, people of forest and desert, Arabs, Africans, Malays.⁶

Cold War Refugees

Although the word *refugee* does not appear in the McCarran-Walter Act, under an obscure section of it the attorney general was given discretionary parole power to grant temporary admission to unlimited

Chart 13.1

Legal Immigration to the United States by Region, 1931-1984



Source: Robert W. Gardner, Bryant Robie, and Peter C. Smith, "Asian Americans: Growth, Change, and Diversity," *Population Bulletin* Vol. 40, No. 4 (Washington, D.C.: Population Reference Bureau, Inc., 1985), p. 2.

numbers of aliens "for emergency reasons or for reasons deemed strictly in the public interest." This was the method that Franklin Roosevelt had used, without prior congressional authority, to bring in nearly a thousand refugees in 1944. In practice, this provision meant, that the executive branch could act—for Hungarians, for Cubans, for Tibetans, for Vietnamese—and that Congress could later pass legislation regularizing that action. For the next twenty-eight years Congress passed piecemeal legislation designed to meet one refugee crisis after another; one of the reasons that actual immigration was so much higher than the 1952 act envisaged. (The other was that nonquota immigration was so much greater than the experts had assumed.)

The initial such law came in the first year of the Eisenhower administration, 1953. The Refugee Relief Act of that year authorized the admission of 205,000 nonquota persons over a two-and-a-half year period. Its Cold War orientation can be seen in its description of the persons whom it would cover: "refugees," "escapees," and "German expellees." Only refugees from communism need apply. The statute defined a "refugee" as

any person in a country or area which is either Communist or Communist-dominated, who because of persecution, fear of persecution, natural calamity or military operation is out of his usual place of abode and is unable to return thereto, who has not been firmly resettled, and who is in urgent need of assistance for the essentials of life or for transportation.⁶

Similar definitions were provided for "escapee" and "German expellee" with the caveat that the latter must be of "German ethnic origin."

Although largely Eurocentric, the 1953 act for the first time made Asians eligible for admission as refugees. The DP acts had covered Europeans domiciled or born in Asia but had made no provision for ethnic Asians. Under the 1953 law five thousand such visas, fewer than 2.5 percent of the total, were authorized to include two thousand "refugees of Chinese origin," as long as they were vouched for by the Nationalist Chinese government on Taiwan, and three thousand other refugees indigenous to the Far East. A 1956 law broadened the general eligibility to include refugee-escapees from "the general area of the Middle East," defined by congressional geography as stretching from Libya to Pakistan and specifically including Ethiopia. Castro's revolution in Cuba brought Latin American refugees into the congressional definition in 1962, and the 1965 Immigration Act brought refugees into regular

immigration legislation by providing a special "seventh preference" for refugees supposed to amount to 6 percent of annual immigration. In the thirty-five years after World War II—from 1945 to 1980, when a general refugee act was passed for the first time—more than 2.25 million persons were admitted to the United States as refugees. (Others, who were actually refugees, were admitted as quota and nonquota immigrants.) Table 13.1 lists the major categories and gives the official numbers and estimates of how many persons were involved.

Table 13.1

Persons Admitted as Refugees, 1945-1980

ADMITTED UNDER STATUTE OR PAROLE AUTHORITY		NUMBER
YEARS		
1948-52	Displaced Persons	about 450,000
1953-56	Refugee Relief Act	about 205,000
1956	East European orphans	925
1956-57	Hungarians	38,045
1958-62	Portuguese (victims of earthquakes in the Azores)	4,811
1960-65	East European escapees (Fair Share Refugee Law)	19,745
1962	Chinese from Hong Kong and Macao	14,741
1962-79	Cubans	692,219
1963	Russian Old Believers from Turkey	200
1972-73	Ugandan Asians	1,500
1973-79	Soviet Union	35,758
1975-79	Indochinese (10 separate programs)	about 400,000
1975-77	Chileans	1,400
1976-77	Chileans, Bolivians, Uruguayans	343
1978-79	Lebanese	1,000
1979	Cuban prisoners	15,000
1980	Refugees, all sources	110,000
ADMITTED UNDER 1965 IMMIGRATION ACT		
1968-80	Seventh preference	about 130,000
ADMITTED WITHOUT AUTHORITY		
1980	Cuban-Haitian "special entrants" (boat people from Mariel, etc.)	140,000
Total		about 2,261,564

NOTE: Since total legal immigration 1945-80 is recorded as 10,943,489, refugees are just over 20 percent of the total.

The Immigration Act of 1965

As Nathan Glazer has astutely observed, three pieces of legislation in 1964 and 1965—the Civil Rights Act of 1964 and the Voting Rights Act and the Immigration Act of 1965—represent a kind of high-water mark in a national consensus of egalitarianism, one from which much of the country has receded in subsequent years.⁷ We are here concerned only with the immigration act, but its passage, and particularly its noncontroversial passage, cannot be understood without reference to the climate of opinion of which it was a part. Little noticed at the time and generally ignored by historians of the Johnson era, who concentrate on the more spectacular and controversial programs of the Great Society and on the escalation of the misbegotten war in Southeast Asia, it is nevertheless a vitally important piece of legislation. It finally ended the national origins system and has helped to change the face of American society. Much of what it has accomplished was unforeseen by its authors, and had the Congress fully understood its consequences, it almost certainly would not have passed.

Each of Truman's immediate successors, Dwight Eisenhower and John Kennedy, gave lip service to changes in the McCarran-Walter Act, but neither provided effective leadership to make change occur. Although Eisenhower pushed for and got greater refugee admissions, he made no proposals to amend the act until his last year in office when he proposed that immigration should be increased and that unused quota spaces, like those from Great Britain and Ireland, be allocated to countries, such as Italy and Greece, which had many more applicants than quota spaces. This would have blunted much of the nativist thrust of the act, but no congressional action was taken. During the 1960 campaign Richard Nixon pledged support for Eisenhower's proposals.

The winner of the 1960 election was an advocate of immigration reform. In 1958 John F. Kennedy had signed his name to a book, *A Nation of Immigrants*, strongly supportive of immigration as a source of national strength, and of immigration reform. Yet more than two years of his presidency passed before he sent a proposal for immigration reform to Congress. It had three major provisions:

First, that the quota system be phased out over a five-year period, with the released numbers being put into a pool to be distributed on a new basis.

Second, that the natives of no one country receive more than 10 percent of the newly authorized quota numbers.

Third, that a seven-person immigration board be set up to advise the president, composed of two members appointed by the Speaker of the House, two members appointed by the president pro tem of the Senate, and three by the president. After receiving their recommendations the president would be authorized to reserve up to 50 percent of the unallocated numbers to "persons disadvantaged by the change in the quota system" and up to 20 percent to refugees.

Otherwise, immigrants would be selected under a first-come, first-admitted procedure, based on registration at American consulates, subject to the 10 percent limitation noted above. Family reunification was to remain important, and the president proposed expanding the non-quota group to include the parents of American citizens, and to give parents of resident aliens a preferred status. Other proposed changes included elimination of the racist provisions by which persons of Asian ethnicity, wherever born, should be charged to the quota of Asian nations, that nonquota status be given to natives of Jamaica and Trinidad and Tobago as it was to other Western Hemisphere residents, that the preference structure for skilled immigrants be liberalized, and that certain persons with mental health problems should be admitted if their families could demonstrate the ability to support them. (This provision, one of the most detailed in the message, perhaps reflects the sensitivity of a man with a mentally retarded sister.)

The Kennedy proposal would have left much unchanged, including all of the ideological admission criteria, the lack of any quota restraint for Western Hemisphere immigrants, and even the total number of quota immigrants to be admitted annually, 156,700. No significant congressional action had been taken at the time of his assassination. Those who loved him assure us that, had he lived, immigration reform would have surely come. The historian can only wonder.

Kennedy's successor, Lyndon Johnson, had no proimmigrant track record. In fact he had joined the overwhelming majority of senators in voting to override Truman's 1952 veto of the McCarran-Walter Act. But President Johnson was not Senator Johnson, and 1964 was not 1952. In his first State of the Union message in 1964 Johnson endorsed immigration reform, called for an end to the national origins system, and generally endorsed the proposals that President Kennedy had made. Immigration reform was not the most pressing item on the Great Society agenda, and no legislative action took place that year. Nor did it play a major role in the 1964 election campaign, although the GOP vice-presidential candidate, William Miller, warned that the Democrat's immigration program would open the "floodgates," he quickly

backtracked when his position was attacked.

When Congress took the matter up after the election, some kind of major revision of immigration law was clearly in the cards. There was no major effort to defend the national origins concept, although a few southern senators raised the old slogans. Chief of them was North Carolina Democrat Sam Ervin, who insisted, as was the wont of those who supported the status quo, that rather than being discriminatory, the McCarran-Walter Act was

like a mirror reflecting the United States, allowing the admission of immigrants according to a national and uniform mathematical formula recognizing the obvious and natural fact that those immigrants can best be assimilated into our society who have relatives, friends, or others of similar background already here.

What Ervin and others never explained was that the "mirror" was badly distorted, like those at amusement parks, and tended to reflect not the population of the 1960s but that of a much earlier time, before the turn of the century.

The meaningful debates in Congress, however, were not over whether to change the national origins system but over how to change it. The two most disputed provisions were over whether the chief thrust of the new law would be skills presumably needed by the United States or family reunification, and over the question whether to continue the practice of having no set limit on immigration from the Western Hemisphere. Contrary to the original proposal submitted by the Kennedy administration, family unification took precedence and, in fact, dominated the bill, and a ceiling was placed for the first time on Western Hemisphere immigrants. The bill retained most of the other barriers that Congress had been erecting to immigration since the late nineteenth century, including the LPC clause, the requirements of physical and mental health, and the various ideological tests.

President Johnson signed the new law on October 3, 1965, in a ceremony held on Liberty Island in New York Harbor with the decaying and unused buildings on Ellis Island in the background. The Texas, for once, underplayed the importance of a piece of legislation for which he was responsible.

This bill that we sign today is not a revolutionary bill. It does not affect the lives of millions. It will not reshape the structure of our daily lives, or really add importantly to our wealth or our power

The bill, in fact, changed the whole course of American immigration history, although it did so along lines that were already apparent for the few who had eyes to see. In addition, it facilitated a great increase in the volume of immigration. In no year since the bill passed have fewer than a third of a million legal immigrants entered the United States, and since 1978 half a million or more have entered in most years. The most striking effect of the new law has been further to increase the share of immigration slots going to Asia and Latin America.

It is doubtful if any drafter or supporter of the 1965 act envisaged this result. In his Liberty Island speech Lyndon Johnson had looked to the past, not the future, stressed the fact that he was redressing the wrong done to those "from southern or eastern Europe," and although he did mention "developing continents," there was no other reference to Asian or Third World immigration. Members of his administration, almost certainly in good faith, had testified before Congress that few Asians would come in under the new law, and this view was shared by the nation's major Asian American organization, the Japanese American Citizens League. Although it supported the bill as a step forward, as it had supported McCarran-Walter in 1952, it complained that

although the immigration law eliminated race as a matter of principle, in actual operation immigration will still be controlled by the now discredited national origins system and the general pattern of immigration which exists today will continue for many years yet to come.

The basic thrust of the new law, which was, technically, a series of amendments to the 1952 act, was to scrap national origins and to substitute in its place overall hemispheric caps on visas issued: 170,000 for persons from the Old World, 120,000 for persons from the New. No country in the Old World was to have more than 20,000 visas. (In 1978 this was changed to a global ceiling of 290,000, with the 20,000-per-country caps applying everywhere). But a parallel system, essentially that of the old nonquota immigration system, kept a large number of persons exempt from preference requirements and numerical limitation. Table 13.2 shows the preference systems established under the 1952 and 1965 acts. It clearly shows that there was more continuity than change from one system to the other, once the discriminatory concepts of national origins and the Asia Pacific Triangle had been removed, and remembering that the basic numbers had been upped.

In practice, the law has worked quite differently from the way its

Table 13.2

Preference Systems: 1952 and 1965 Immigration Acts
IMMIGRATION AND NATIONALITY ACT, 1952

Exempt from preference requirements and numerical quotas: spouses and unmarried minor children of U.S. citizens.

1. Highly skilled immigrants whose services are urgently needed in the United States and the spouses and children of such immigrants. 50 percent.
2. Parents of U.S. citizens over age twenty-one and unmarried adult children of U.S. citizens. 30 percent.
3. Spouses and unmarried adult children of permanent resident aliens. 20 percent.
4. Brothers, sisters, and married children of U.S. citizens and accompanying spouses and children. 50 percent of numbers not required for 1-3.
5. Nonpreference: applicants not entitled to any of the above. 50 percent of the numbers not required for 1-3 above, plus any not required for 4.

IMMIGRATION ACT OF 1965

Exempt from preference requirements and numerical quotas: spouses, unmarried minor children and parents of U.S. citizens.

1. Unmarried adult children of U.S. citizens. 20 percent.
2. Spouses and unmarried adult children of permanent resident aliens. 20 percent (26 percent after 1980).
3. Members of the professions and scientists and artists of exceptional ability. 10 percent: requires certification from U.S. Department of Labor.
4. Married children of U.S. citizens. 10 percent.
5. Brothers and sisters of U.S. citizens over 21. 24 percent.
6. Skilled and unskilled workers in occupations for which labor is in short supply in the U.S. 10 percent: requires certification from U.S. Department of Labor.
7. Refugees from communist or communist-dominated countries, or the Middle East. 6 percent.
8. Nonpreference: applicants not entitled to any of the above. (Since there are more preference applicants than can be accommodated, this has not been used.)

sponsors expected. The great fallacy was the belief that there were large numbers of European immigrants ready, qualified, and able to come to America. Most seemed to think that twenty thousand annual arrivals from many European countries would absorb most of the Old World immigration visa slots. Had the 1965 act, or something like it, been passed in 1952, when Truman recommended revision, such a result would have probably been obtained. By 1965 most of those Western Europeans who wished to come were not likely to meet LPC and other restrictions. Growing numbers of Asians had been coming to the United States since 1943 and many other well-trained Asians were able to qualify under the various preference provisions of the 1965 act. Once an Asian (or anyone else) came here as a permanent resident alien, a whole cohort of other persons became eligible to enter the country as third-preference immigrants. And as soon as the original immigrant became a United States citizen, as large numbers of them did after the minimum five-year waiting period, more persons became eligible as second-preference immigrants, while others could come in exempt from numerical requirements. And, of course, those brought in as preference immigrants could start the same procedure. Since the 1965 act went into effect, the preponderance of all nonrefugee migration has been the chain migration of relatives, a process likely to continue as long as the law stays as it is and conditions in Asia and Latin America remain as they are.⁸

Although the law speaks of a global ceiling of 290,000 annually, that applies to those subject to numerical limitation. The actual numbers have been much greater. In the ten years between 1976 and 1985, for example, recorded legal immigration ranged from a low of 398,089 in 1977 to a high of 796,356 in 1980 and averaged some 546,000, 88 percent higher than the presumed ceiling. Table 13.2 shows the categories of immigrants who were officially admitted in the low and high years, 1977 and 1980. The two great variables are those exempt from numerical limitation and refugees. The former has grown steadily: in the period 1976-85 from 113,083 to 210,761 and, if the trend continues, may soon exceed the number admitted under numerical limitation. The number of refugees fluctuates. The special Cuban-Haitian entrants figure for 1980 refers to the so-called Mariel exodus and other boat people from Cuba and Haiti who were apprehended (see the discussion in chapter 15).

The question of needed professions and skills, which bulked so large in the thinking of immigration reformers in the 1960s, has proved, partially because of the slower than anticipated growth in the American economy, of minor significance. It has amounted, in recent years, to less

Table 13.3

Numbers and Categories of Immigrants Admitted, 1977 and 1980

CATEGORY	1977	1980
Subject to numerical limitation	275,531	289,479
Exempt from numerical limitation	117,857	165,325
Refugees	4,701	201,552
Cuban-Haitian entrants	—	140,000
Total	389,089	796,356

NOTE: Most, but not all, immigrants are included in the year they actually arrive in the country, but there are exceptions. Those who come as temporary immigrants but have their status changed to permanent residents are included in the year that the change of status takes place. Refugees are included in the year of their arrival, but asylees, a category added in 1980, when (and if) their status is approved.

than 4 percent of immigration. Because so many immigrants come in without regard to numerical limitation, the 20,000 cap on persons from any one country have proved chimerical. In 1985, for example, there were 61,000 legal Mexican immigrants, 48,000 Filipinos and 35,000 Koreans.

Clearly, the 1965 law has not worked out as its proponents expected. The experts simply did not know what they were talking about and had not, obviously, paid close attention to what had been happening in immigration patterns to the United States. Two major adjustments to the law, the Refugee Act of 1980 (to be discussed later in this chapter) and the Immigration Reform Act of 1986 (to be discussed in the final chapter) have not materially changed the functioning of the law. The 1965 law was enacted at a time when immigration was only peripheral to the major political and social concerns of most Americans. Under its auspices immigration grew rapidly, but it was a growth that had been going on since the 1930s, when immigration all but disappeared and amounted to just half a million persons. In the 1940s a million came, 2.5 million in the 1950s, 3.3 million in the 1960s, 4.5 million in the 1970s, and about 6 million in the 1980s. By the beginning of the 1980s, the country had witnessed the Mariel episode and was experiencing a general feeling of helplessness that came to a head during the last months of Jimmy Carter's presidency but had its roots in the war in Southeast Asia and the economic dislocations it triggered. For these and a variety of other reasons, immigration matters moved toward the center of public consciousness and began, again, to take on largely negative connotations. Before that happened or, at least, fully crystallized, the Carter administration put the first comprehensive refugee law on the statute books.

The Refugee Act of 1980

The Refugee Act of 1980 was an attempt to solve, once and for all, the problem of refugee admissions. As we have seen, no refugee policy existed in statute law before World War II, and the first refugee law came only in 1948. The 1965 Immigration Act attempted to incorporate refugee policy into a general immigration act by setting aside a constant portion of regular admissions (the seventh preference: 6 percent of a presumed 290,000, or 17,400 a year) for refugees. The number was probably unrealistic in any event. On the very day that Lyndon Johnson signed the 1965 act he also exercised his parole authority—an authority that every president since Franklin Roosevelt had exercised—to authorize a resumed flow of airlifted Cubans to the United States, a flow that would approach four hundred thousand fifteen years later when Congress was considering what became the 1980 Refugee Act. But it was the end of the Vietnam War that demonstrated clearly the inadequacy of the seventh-preference allocation. Beginning in 1975, first the Ford and then the Carter administration stitched together ten makeshift parole programs that brought four hundred thousand Vietnamese and other Southeast Asians to the United States between 1975 and 1979. It was the experience with Southeast Asian refugees that largely shaped the 1980 law, and, as events were quickly to demonstrate, that experience, in which most refugees were initially in countries of "first asylum," was not a good guide to the immediate future.

By 1979 there seemed to be general agreement that the gap between what American law authorized in terms of refugee admissions and what was actually being done was so great that a general refugee law would have to be created right away even though Congress had created a Select Commission on Immigration and Refugee Policy to survey immigration and refugee policy and make broad policy recommendations in 1981. A Carter administration bill proposed to increase the annual total of refugees to 50,000 and to reduce the annual quota numbers, by steps, to 270,000, making the total annual admission numbers 320,000 plus however many came in "without numerical limitation" from 1981 on. But the bill provided that, although 50,000 would be the normal number, the president might raise that number after annual consultation with Congress. This was, to all intents and purposes, a continuation of the president's parole power in the tradition set by Franklin Roosevelt. In the event, as table 13.4 indicates, the 50,000 number quickly proved illusory.

Table 13.4

Number of Refugees and Asylees Admitted, 1981-1985			
YEAR	REFUGEES	ASYLEES	TOTAL
1981	155,291	1,175	156,466
1982	93,252	4,731	97,983
1983	57,064	8,333	65,397
1984	67,750	11,627	79,377
1985	62,477	6,514	68,991
Total	435,834	32,380	468,214

The definition of "refugee" was broadened to conform with the United Nations 1968 definition:

any person who is outside any country of his nationality or in the case of any person having no nationality, is outside of any country in which he last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself of the protection of that country because of persecution, or a well-founded fear of persecution, on account of race, religion, nationality, membership of a particular social group, or political opinion.

This was broader than the previous statutory definition, although the Senate had "advised and consented" to the UN protocol in 1968, so this part of the new law was not a significant departure from previous policy.

But one aspect of the law did break new ground: For the first time the laws of the United States recognized the right of asylum and created a new legal category of refugee, an "asylee." Asylees are refugees and must meet the criteria for refugees. But unlike other refugees, an asylee is a person who applies for entry into the United States while already here, either legally, such as a person who came in on a student or visitor's visa or, as has often been the case since 1980, arrived illegally. The 1980 act put a cap of five thousand asylees annually, although almost immediately, partially because of federal court orders, that cap was exceeded and in 1984 more than doubled. The law also provided different ways of counting refugees and asylees. The former appear in immigration statistics in the year in which they arrive, the latter in the year in which they are approved. Both may adjust their status a year after arrival/approval and, five years after that, are eligible for naturalization with all the rights of citizenship status including, of course, the right to bring in relatives. Most aspects of this law were relatively

uncontroversial at the time of passage. The original bill sailed through the Senate 85-0 and had the cosponsorship of that political odd couple, Edward M. Kennedy on the left and Strom Thurmond on the right. At the end of World War II, making provision for any refugees had been highly controversial. Thirty-five years later the notion that the United States was obligated to take in refugees and have a generous policy toward them—or some of them—was totally uncontroversial. Having a refugee policy was part of the new American consensus.

The Mariel Crisis and the Ambiguity of Refugee Policy

The ink was hardly dry on the 1980 act—it was enacted on March 17—when the Mariel crisis began on April 21. It was an outgrowth of a complicated three-way dispute between Cuba, Peru, and the United States over the right of asylum for some 3,500 dissident Cubans in the Peruvian Embassy in Havana. The United States agreed to take in these people if they passed a screening and were allowed to go first to Costa Rica. Fidel Castro then declared that any persons who wished could leave, but they had to go directly to the United States. The dramatic boatlift from the Cuban port of Mariel to Key West and other places in South Florida began and got massive coverage on television. Cuban exiles in Miami chartered boats and violated United States law by going to Cuba to pick up relatives, friends, and anyone else there was room for. In a matter of weeks some 125,000 Cubans had arrived, shattering all notions about an "orderly" refugee policy.

The Carter administration found itself on the horns of a dilemma. On the one hand Cold War imperatives made it wish to accept those seeking freedom from communism and to embarrass its enemy, Fidel Castro; on the other hand, it wanted the bureaucratic order suggested by the 1980 Refugee Act. The result was strenuous vacillation. First there were stern warnings about breaking the law and a few fines were levied on some of the earliest boats. Then, after the public reaction to such moves seemed hostile, President Carter himself proclaimed, two weeks after the exodus had begun, that the United States would welcome with "an open heart and open arms" the tens of thousands of freedom seekers coming to Florida. Toward the end of May, amid reports that Castro was opening his jails and mental institutions and allowing the former inmates to leave, and with a noticeable cooling in public support for the boatlift, the Carter administration again "got tough," reimposing fines and even seizing some boatlift vessels, and the exodus came to a halt. In a wonderful piece of bureaucratic the gov-

ernment decided that these people (and the Haitians discussed below) were neither refugees nor asylees (the new law had gone into effect in April) but were rather "Cuban-Haitian Entrants (Status Pending)." The problem of what to do with them was complicated by fears of the then newly discovered plague of AIDS among both groups (for the Cubans, it was one of the fruits of their misbegotten war in Angola). The Reagan administration dithered about as badly as had the Carter people, but less publicly. In July 1985—more than five years after the crisis—all but about 2,500 of the Marielitos were allowed to adjust to permanent resident alien status, and in 1990 most of them would begin to be eligible to bring in family members.

Haitians, on the other hand, who began arriving in their own or chartered boats well before the Mariel crisis but in much smaller numbers, were treated in a very different way. Fleeing from a succession of corrupt authoritarian regimes from the nation with the lowest per capita income in the New World, Haitians were declared to be fleeing from poor economic conditions. Their boatlifts, which had through 1980 brought perhaps fifteen thousand persons to the United States that the government knew about, was largely halted by the Coast Guard towing their boats back to Haiti.

The government—in this case *both* the Carter and Reagan administrations—argued that a distinction had to be made between economic and political entrants lest the United States be "flooded" with refugees. There were millions of refugees in the world: One 1987 estimate spoke of 13.3 million worldwide, up from 9.9 million in 1984. But most of those were in countries of first asylum—Laos, Pakistan, and several African nations—from which entry to the United States for purposes of asylum was all but impossible. The United States government can pick and choose, through screening, the few thousands it admits annually from among these millions. The asylum seekers, the Mariel Cubans, the Haitians, the Central Americans (who will be discussed in the final chapter), the occasional elite defector, all present themselves at times and places of their choosing. In the case of refugees in faraway countries of first asylum, the executive branch has a relatively free hand: In the case of asylum seekers, the federal courts and sometimes public opinion can play a part, and Congress is more likely to intervene. The debate is an ongoing one, not likely to be settled soon. The treatment of Haitians has been ascribed to race prejudice. Representative Bruce Morrison (D, CT), chair of the House subcommittee on immigration, told a reporter in mid-1989: "There's been a lot of discrimination with Haitians. They are black, they are from a nation close to ours,

and their country isn't Communist." Government officials naturally deny this since, after the 1960s, official discrimination has no longer been permissible, another example of how the American consensus has shifted. The Miami district director of the INS, Perry Rivkind, even resorted to fantasy in his denial of what seems obvious to many: "I've always said I wish a boatload of blue-eyed Anglo-Saxon Protestants tried to enter the U.S. illegally. They too would be subject to exclusion."

Rivkind's fantasy masks a different reality. Immigration officials can no longer confidently say who is and who is not illegal. American law now legalized a certain kind of unauthorized entry: the entry of an asylum seeker with "a well-founded fear of persecution." Just what amounts to such a fear, as Congressman Morrison suggests, depends both on what kind of regime is doing the persecuting and on who is making the judgment. Such complexities seem now to be a permanent part of the once-simple matter of immigrating to America, and it is clear why some officials resort to fantasy and a nostalgia for what must seem to them, if not to others, to have been the good old days, when categories were simple and the flats of INS officials were only rarely subject to review.