

Illegal Immigration and U.S. Obligation

To make its research easily available to a broad audience, the Center for Philosophy and Public Policy publishes a quarterly newsletter: *QQ—Report from the Center for Philosophy and Public Policy*. Named after the abbreviation for “questions,” *QQ* summarizes and supplements Center books and working papers and features other selected philosophical work on public policy questions. Articles in *QQ* are intended to advance philosophically informed debate on current policy choices; the views presented are not necessarily those of the Center or its sponsors.

In this issue:

Every minute an illegal alien enters this country. What rights, privileges, and responsibilities should be accorded to these undocumented workers?

..... p. 1

“What has posterity ever done for me?” A panel of scientists, economists, and philosophers tackles the implications of our national energy policy for future generations

p. 6

A philosopher argues that the social discount rate, long a tool of economic policymaking, is unjustified

p. 8

Almost 40 percent of our all-volunteer Army is now composed of black soldiers. Is minority overrepresentation in the military unjust? What can be done to change it?

p. 11

A new book on political theory and international relations is reviewed

p. 14

Every minute, an illegal alien crosses the U.S. border and enters this country to live and work. An estimated 600,000 undocumented workers now annually join the American work force; the accumulated stock of illegal aliens in the United States has been estimated at 3–6 million. Recent public opinion polls reflect widespread anger against illegal immigration of such proportions.

There are three options for dealing with illegal migration and immigration. The first is to do nothing and allow the present flow to continue unchecked. The second is to enforce the law and bring the flow to a halt. The third is to regulate the flow by legalizing illegal immigration in various ways.

All three options involve making some sort of decision, if only by default, about the number of migrants to admit and the conditions under which to admit them. To do nothing is essentially to decide that the current number of aliens should continue to be admitted, with no special regulations governing their employment. To completely halt the flow of illegal immigration, without providing alternative legal access, is not a viable option, given the limits of our ability to police 6000 miles of border and the current dependence of U.S. employers on foreign labor.

We must, then, confront these questions: how many migrants should be admitted and what should be the terms of their admission? Nor should we answer these questions without considering the wider questions: what rights do national governments have to limit their populations? what rights of all persons, both citizens and aliens, must any national government observe? The Center for Philosophy and Public

Policy is concluding a two-year international examination into these central problems.

One migration policy proposal has been put forward by labor expert Edwin P. Reubens, in "Immigration Problems, Limited-Visa Programs, and Other Options," a working paper prepared for the Center for Philosophy and Public Policy. Reubens suggests replacing haphazard illegal migration with a large-scale guestworker program, an enlarged and modified version of our current H-2 program, which admits small numbers of foreign workers for temporary employment in specified occupations.

On the Reubens plan (see box below), both the number of migrants admitted and the terms of admission are determined by the same standard: appeal to American economic interests. According to Reubens, foreign workers, legal and illegal, currently bring considerable benefits to our economy, providing "a supply of efficient labor for low-level and low-paying jobs . . . preserving threatened U.S. firms and the jobs of American workers in such firms and industries (and) . . . holding down costs, thereby restraining inflation and imports." Reubens's foreign-worker program is designed to yield these same benefits more securely and efficiently.

Reubens defends his proposal as providing for the fulfillment of American labor needs without jeopardizing the interests of American workers. The flexibility in the number of workers admitted and the specification of the type of employment tailors labor supply to demand for labor. Furthermore, by specifying that foreign workers are to be recruited only for those jobs refused by American workers and by dictating com-

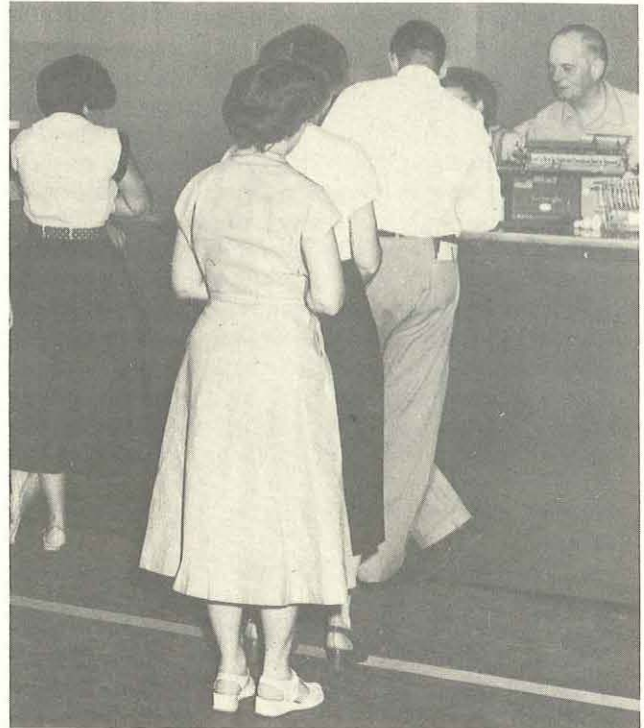
paratively high wage and work condition standards, competition between American and foreign workers is minimized. The three-year residence period is long enough to encourage foreign workers to develop an ongoing commitment to their work, thus making conditions for unionization more favorable. This benefits both foreign and domestic workers. On the other hand, the three-year visa also excludes foreign workers from permanent residence and eventual citizenship. The exclusion of dependents prevents foreign workers and their families from becoming a drain on our welfare system. Even with these restrictive conditions, Reubens believes the program would be sufficiently attractive to foreign workers to discourage alternative illegal immigration.

Of course, the lives of Reubens's foreign workers—separated from their families and loved ones, politically and culturally alienated, toiling away at only those tasks that American citizens disdain—can hardly be particularly pleasant. But their present lives and future prospects, one assumes, would be better and brighter under the program than they would have been in their home country. Foreign workers, it can be argued, enter this country, and remain in it, voluntarily. If they are not willing to accept our treatment of them, they are free to leave, and this freedom legitimizes whatever restrictions we place on their staying. They have only one choice, but it is the crucial choice: they can like it or lump it.

Against this view the objection can be raised: the Reubens plan does not adequately fulfill the rights that we are bound in justice to accord to foreign nationals living and working in our country.

The Reubens Guestworker Program

1. number admitted—several hundred thousand workers annually, on a sliding scale to accommodate variable labor demand (this figure is below the present volume of all illegal entries, but large enough to replace most of the illegal workers)
2. length of stay—one-year terms, renewable for up to three years
3. choice of employment—unrestricted choice of employer within broadly specified occupations and regions, with the specified occupations limited to low-skilled, low-paid work currently often filled by undocumented aliens
4. wages and working conditions—set by the U.S. Department of Labor to be at comparative minimums to those of domestic workers
5. tax collection—income taxes uniformly collected; Social Security taxes not withheld, but employer required to pay at the usual rate into SS and UI funds.
6. citizenship—no voting rights; residence does not lead to eventual naturalization; workers entitled to participate in social welfare programs
7. admission of dependents—not authorized; visa permits unlimited home visits by the worker and arrangements might be made to facilitate these visits



U.S. unemployment is among the highest of the Western industrialized nations; over six million Americans are waiting in unemployment lines. At the same time, there are over six million alien workers currently in the U.S. Many argue persuasively that U.S. citizens should not be forced to compete against foreign workers. Others argue that the interests of American citizens do not always outweigh the interests of foreign nationals. Photo left, courtesy USDA Photo; photo right, courtesy AFL-CIO.

THE RIGHTS OF ALIENS

James W. Nickel, Visiting Professor at the Law School of the University of California at Berkeley, argues that all human rights of foreign aliens, whether legally or illegally present in a given country, must be respected and upheld by the host government of the country in which they are residing and working. In "Human Rights and the Rights of Aliens," a CPPP working paper, he writes: "It is presence in a territory, rather than citizenship, that determines whether the government of that territory has the primary responsibility for upholding a person's rights at a particular time. Human rights flow from one's humanity, not from one's citizenship status, and thus aliens have as much claim to provision for protection of their rights as do natives."

For Nickel these rights include not only rights to personal security and to due process, such as freedom from torture and protection from crime, but rights to political participation and social and economic rights, including rights to a decent standard of living, education, and medical care. Furthermore, Nickel is claiming that governments have the very same obligations to respect and uphold these rights of foreign aliens in their territories as they have to respect and uphold the rights of their own citizens.

Nickel's argument is a brief and simple one. He

claims that obligations to provide for the protection and fulfillment of human rights fall upon those best able to assume them. In most cases, national governments are best able to protect and fulfill the human rights of those residing in their territories: it is usually the case that the U.S. government is better able to protect the rights of a visiting Frenchman (say, providing him with police protection and medical care in case

"Human rights flow from one's humanity, not from one's citizenship status, and thus aliens have as much claim to provision for protection of their rights as do natives."

of illness and accident) than the French government, thousands of miles away. Of course, this may not always be true. A powerful government like the United States may be better able to protect its citizens' rights abroad than a weak, corrupt, or unstable regime governing the country they are visiting. But insofar as the usual expectation is a reliable one, Nickel ascribes responsibility for the rights of residents to the governments of the territories in which they reside.

On Nickel's view, then, foreign workers are entitled to a broader range of rights than stipulated in most foreign worker programs. Specifically, these include participation in social welfare programs providing for fulfillment of basic subsistence rights, and political participation. Does this mean that foreign citizens should be able to vote in American elections and influence the course of American politics? It does, so long as the voter has resided in this country long enough to have acquired the relevant (fairly minimal) knowledge needed to vote responsibly and effectively. Our laws govern his behavior; it is one of his human rights to have some say in their making.

Nickel's view does not require that foreign workers be treated in all respects on a par with American workers, but only that their human rights be equally respected and upheld. Distinguished political philosopher Michael Walzer carries this concern even further.

In "The Distribution of Membership," prepared for *Boundaries: National Autonomy and Its Limits*, a forthcoming publication of the Center for Philosophy and Public Policy, he insists that residence should entail all the rights and responsibilities of citizenship: once aliens are accepted as residents in the national community, they must be accepted as full community members as well. "The members must be prepared to accept the men and women they admit as their own equals in a world of shared obligations; the immigrants must be prepared to share the obligations."

"The processes of self-determination through which a territorial state shapes its internal life must be open, and equally open, to all those men and women who live in the territory, work in the local economy, and are subject to local law."

For Walzer, foreign worker programs like Reubens's establish a two-tier society composed of privileged "family members" and underprivileged "live-in servants." "Live-in servant" workers are neither citizens nor potential citizens; their political rights are either non-existent or ineffectively exercised due to the constant threat of dismissal and deportation. Homeless and rootless, they live under a self-imposed "prison term," deprived of normal social, sexual, and cultural activities. They participate in the host country's economy, but are excluded from participation in its political system, subject to the external rule of the "family member" citizens. Walzer describes this as the rule of tyrants, however mild-mannered and benevolent their tyranny.

Walzer objects to this picture in the name of political justice and the meaning of political community. He defines his principle of political justice: "the processes of self-determination through which a territo-

rial state shapes its internal life must be open, and equally open, to all those men and women who live in the territory, work in the local economy, and are subject to local law." The alternative? Political community collapses into "a world of members and strangers, with no political boundaries between the two groups, where the strangers are the subjects of the members." The dominant characteristic of this political community is precisely its denial of what community means.

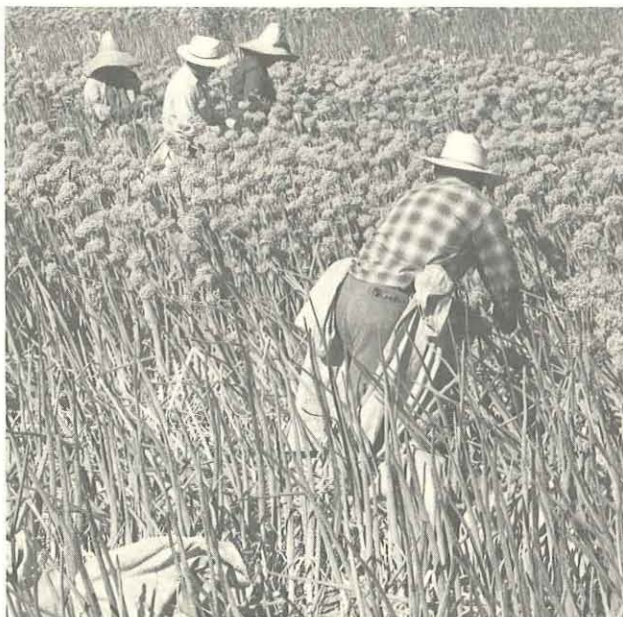
THE RIGHTS OF COMMUNITIES

Both Nickel and Walzer, then, object to the sort of restrictive conditions that are the central feature of Reubens's proposed foreign worker program. Reubens's proposal was initiated, however, to control illegal immigration by admitting legal workers in sufficient numbers to replace the current large population of illegal workers. What would be the result of extending Nickel's and Walzer's far more generous conditions to hundreds of thousands of foreign workers?

One result could be a radical alteration of the character of communities in which large numbers of new immigrants would settle. If foreign workers have full freedom of movement, to settle wherever they choose, they may well concentrate themselves in certain regions of the country. If, furthermore, they have full freedom to participate in their communities' institutions, their influence may dramatically change the nature of those institutions. Since the great majority of current illegal immigrants are drawn from Spanish-speaking countries, primarily Mexico, their impact on the language and culture of their new communities could be significant. The original citizens of those communities may feel that their ability to make effective decisions about their communal way of life is weakened by the active presence of large numbers of newcomers. Their community is becoming unrecognizably different, and its autonomy as *their* community is threatened. This threat would surely not be diminished by admitting foreign workers to all the rights and privileges of full citizenship.

Nickel and Walzer are not afraid, however, that their convictions will result in a threat to the autonomy of American communities, for both argue strongly for the right of a community initially to restrict immigration. Their defense of high standards for our treatment of foreign workers is not a defense of unlimited admission of foreign workers in the first place.

Nickel maintains that "states have the right to limit immigration to manageable numbers. The grounds for this right are . . . that establishment and maintenance of an effectively self-determining political community can be hindered by a large influx of people of a different culture and outlook—especially if these people come at a pace that makes economic and cultural integration impossible; and . . . that a state's ability to uphold rights within its own territory requires that it preserve its stability and resources." He



Between 1942 and 1964, the U.S. government brought hundreds of thousands of Mexican workers to the U.S. for agricultural employment under the bracero program. Both paralleling the bracero years and following the program's termination, there has been an accelerated growth in the number of illegal Mexican immigrants. The United States government itself, then, bears considerable responsibility for its problems of illegal immigration, and this responsibility bears upon the legitimacy of efforts to terminate the migrant flow. Photo courtesy USDA Photo.

concludes that "a state does not violate a person's rights by refusing him or her entry."

Walzer is still more emphatic. The right of a nation to choose an admissions policy is a fundamental one: "It is not merely a matter of acting in the world, exercising sovereignty, and pursuing national interests. What is at stake here is the shape of the community that acts in the world, exercises sovereignty, and so on. Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be communities of character, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life."

CONCLUSIONS

The two questions, then, of the number of immigrants to admit and the treatment of immigrants admitted are not distinct and separately answerable. Our decision about how many foreign workers to welcome may depend on how warm a welcome we are expected to give them. Reubens is willing to admit large numbers of foreigners, but only temporarily, with clear restrictions placed on their freedom of choice and right to political participation. Nickel and Walzer would grant all foreigners admitted full, or

close to full, citizenship status, but would accordingly curtail the number admitted. One objects to the Reubens view that it violates the rights of the resident foreign workers. But one could object to Nickel and Walzer that we should perhaps accept more of the world's huddled masses than their elevated standards would permit—that admission with less than full citizenship may be a more humane response to desperation than outright exclusion.

Our choices here will depend as well on how much fundamental importance we grant to national boundaries and to each national government's pursuit of its own national interest. Reubens, Nickel, and Walzer all in one way or another view national boundaries and national self-determination as extremely important. Reubens takes our national economic interest as the sufficient basis for determining how many immigrants should be admitted and the terms of their admission. Nickel and Walzer insist on national self-determination as defining limits on immigration. If we were to rethink this commitment to national sovereignty and the related view that a national government owes far more to its own citizens than to those camped outside its borders, we might come to a quite different conclusion.

For further discussion of these issues, see the Book Review, p. 14, and "The Significance of National Boundaries," forthcoming in the Spring issue.

How much less than full citizenship is full enough? So long as deep and striking differences remain between the economies of developed and developing countries, illegal immigrants are going to keep on coming, unless the Immigration and Naturalization Service takes drastic and extensive action against them, and unless we adopt Nickel's and Walzer's constraints wholesale, they are going to come in numbers sufficiently great to change the character of many American communities. But neither do we want to endorse Walzer's grim vision of a two-tier society with its inescapable tyranny. It remains for those who make public policy to devise an immigration policy that recognizes both the rights of communities and the essential personhood of all those who work within them.

The papers by Reubens and Nickel are available from the Center for Philosophy and Public Policy. See order form, p. 15. Other working papers available from the Center's research Working Group on Mexican Migrants and U.S. Responsibility are: "Foreign Labor Programs as an Alternative to Illegal Immigration into the United States: A Dissenting View," by Vernon M. Briggs, Jr., Professor of Industrial and Labor Relations at Cornell University; "Moral Boundaries and National Boundaries: A Cosmopolitan View," by Judith Lichtenberg, Assistant Professor of Philosophy at the University of North Carolina at Chapel Hill; and "Guest Worker Employment, with Special Reference to the Federal Republic of Germany, France, and Switzerland—Lessons for the United States?" by W. R. Böhring, a research director at the International Labor Office in Geneva. Boundaries: National Autonomy and Its Limits, edited by Peter G. Brown and Henry Shue, is forthcoming from Rowman and Littlefield.