

9 The Legal Rights of Citizens and Aliens in the United States

Peter H. Schuck

The United States is not a nation-state like Japan. Instead, it is a state of diversities. These diversities multiply and ramify across every dimension of American social life as religious, racial, ethnic, ancestral, linguistic, economic and regional differences in turn engender other enduring diversities of a political and cultural nature. Occasionally, an ultraconservative politician like Pat Robertson or Pat Buchanan seeks to deny this fact by insisting that the United States is a Christian nation with English or European roots. To the vast majority of Americans, however, these narrow ethnocentric definitions deny what common observation confirms – the extraordinary, multidimensional, polyglot composition of the American “family.” Immigration has always driven this diversity. It will do so even more powerfully in the future.

In this paper, I focus on the legal rights and statuses of various categories of immigrants and aliens once they are in the United States – what has been called “immigrant policy” – and the way in which the events of the 1980s and 1990s have shaped these rights and statuses. The first section provides necessary context for the discussion that follows; the next discusses the legal rights of US citizens, legal resident aliens, refugee and asylum claimants, and illegal aliens. The final section explores four issues bearing on aliens’ rights, issues that are now being intensely debated in the United States and were the subject of major Legislative changes enacted in 1996. These are: (1) the treatment of aliens who commit crimes in the United States; (2) aliens’ rights to public benefits; (3) the allocation of immigration-related costs between different levels of government; and (4) the significance of citizenship.

THE LEGAL AND POLICY CONTEXT

This section summarizes four aspects of the legal and policy context: the demographic changes that immigration is spawning; the state of public opinion about immigration, which ultimately frames and shapes the legal and policy responses to these changes; the historical evolution of the immigration control system in the United States; and the current form of that system.

Demographics

Immigration is producing profound demographic changes in the United States.¹ During the last decade, the number of new immigrants (legal and illegal) exceeded those in any other decade in American history, including the 1905–14 period when 10.1 million immigrants were admitted. From 1987 to 1996, approximately 10 million immigrants were legally admitted, but several million more came or remained in the United States illegally during the decade, and an estimated 5 million of them were resident at the end of 1996.²

The level of legal admissions remains high. Not counting the almost 2.7 million aliens legalized under the amnesty program (who by 1994 had little inflationary effect on the admissions numbers), 915 000 were admitted in 1996, a large increase over the 720 000 admitted in 1995, and the 804 000 in 1994. As for emigration, an estimated 200 000 Americans leave the United States more or less permanently each year (Warren and Kraly, 1985; Dunn, 1994). Today, almost 10 percent of the US population – more than 24 million people – are foreign-born. This fraction is well below the 14 percent share in the first decade of this century, and remains somewhat below the share of foreign-born today in France, Germany and Canada, but it has nearly doubled since 1970.

Because immigrants tend to be younger and have higher fertility rates than the native-born, this proportion is rising steadily; immigrants now account for more than one-third of the population growth in the United States. This may significantly alter the racial and ethnic composition of the population, not only in states like California but in the nation as a whole, although it will have relatively little effect on the nation's median age (Espenshade, 1994). New studies by the