

Fordham International Law Journal

Volume 14, Issue 4

1990

Article 8

G. Borjas, Friends or Strangers: The Impact of Immigrants on the U.S. Economy J. Simon, The Economic Consequences of Immigration

Arthur C. Helton*

*

Copyright ©1990 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

G. Borjas, Friends or Strangers: The Impact of Immigrants on the U.S. Economy J. Simon, The Economic Consequences of Immigration

Arthur C. Helton

Abstract

Book Review of Friends or Strangers: The Impact of Immigrants on the U.S. Economy by G. Borjas and The Economic Consequences of Immigration by J. Simon. Reviewer Arthur C. Helton argues that Professors Borjas and Simon make compelling arguments for increased and selective immigration to the United States to increase productivity and competitiveness. Helton points out, however, that both Borjas and Simon agree that an economic analysis is not the only informing principle when it comes to immigration law. Specifically, principles of human rights and refugee law, including family unity, suggest a broad notion of public good in the context of immigration.

BOOK REVIEW

FRIENDS OR STRANGERS: THE IMPACT OF IMMIGRANTS ON THE U.S. ECONOMY. By G. Borjas. New York: Basic Books, Inc., 1990. x + 274 pp. ISBN 0-465-02567-6. US\$22.95.

THE ECONOMIC CONSEQUENCES OF IMMIGRATION. By J. Simon. Oxford and Cambridge, Massachusetts: Basil Blackwell, Inc., 1989. xxxii + 402 pp. ISBN 0-631-15527-9. US\$39.95.

*Reviewed by Arthur C. Helton**

INTRODUCTION

As the 101st Congress was ending its work in late 1990 and considering legislation to reform legal immigration to the United States, the debate focused largely on the economic impacts of immigrants. This aspect of the debate is amply reflected in two books, Professor George Borjas' *Friends or Strangers: The Impact of Immigrants on the U.S. Economy*¹ and Professor Julian Simon's *The Economic Consequences of Immigration*.² Both books provide support for increased and re-constituted categories of legal immigration, particularly with a view to promoting productivity and maximizing economic advantage in the United States. While Professor Simon openly advocates substantial increases in immigration, Professor Borjas promotes a more discriminating admissions policy, which would consider factors including the national origin of prospective immigrants. These points are accommodated to some extent in provisions in the Immigration Act of 1990.³ The validity of the contentions, of course, must await full administrative implementation of this new law and further study.

* A.B. 1971, Columbia College; J.D. 1976, New York University; Member, New York Bar; Director, Refugee Project, Lawyers Committee for Human Rights, New York.

1. G. BORJAS, FRIENDS OR STRANGERS: THE IMPACT OF IMMIGRANTS ON THE U.S. ECONOMY (1990) [hereinafter IMPACT OF IMMIGRANTS].

2. J. SIMON, THE ECONOMIC CONSEQUENCES OF IMMIGRATION (1989) [hereinafter ECONOMIC CONSEQUENCES].

3. P.L. 101-649, 104 Stat. 4978 (1990).

BORJAS: IMPACT OF IMMIGRANTS IN U.S. ECONOMY

In a lucid style, Professor Borjas analyzes decennial census data to assess trends regarding the characteristics of immigrants in the United States, the impact of their immigration on the U.S. economy, and the international competition for immigrants.⁴ For purposes of the analysis, he posits an "immigration market" in which receiving countries like the United States make an "offer" to prospective immigrants who then sort themselves in accepting from among competing offers.⁵ According to Professor Borjas, national immigration legislation, in conjunction with even more determinative factors relating to differential economic conditions in the sending and receiving countries, have made the U.S. immigration offer increasingly attractive to immigrants with lesser skills than possessed by those who had come before.⁶ He previews his empirical findings at the outset:

The essence of the empirical evidence summarized here is that because of changes in U.S. immigration policy and because of changing economic and political conditions both here and abroad, the United States is currently attracting relatively unskilled immigrants. For the most part, these immigrants have little chance of attaining economic parity with natives during their lifetimes. Although these immigrants do not greatly affect the earnings and employment opportunities of natives, they may have an even greater long-run economic impact because of their relatively high poverty rates and propensities for participation in the welfare system and because national income and tax revenues are substantially lower than they would have been if the United States had attracted a more skilled immigrant flow. In short, the United States is losing the international competition for skilled workers to other host countries such as Australia and Canada, and this fact imposes costs on the American economy.⁷

4. *IMPACT OF IMMIGRANTS*, *supra* note 1, at 23, 40-55 (chapter three).

5. *Id.* at 22.

6. *Id.* at 210-12.

7. *Id.* at 18-19. While Professor Borjas asserts that immigration has a long term impact on the U.S. economy, he emphasizes that "the methodological arsenal of modern econometrics cannot detect a single shred of evidence that immigrants have a sizable adverse impact on the earnings and employment opportunities of natives in the United States." *Id.* at 81.

Professor Borjas finds a correlation between changes in the national origins of those immigrants who have recently accepted the U.S. offer to come, particularly from Asia and Latin America, and diminished skills and productivity in the recent immigrant stream.⁸ To forestall the decline in immigrant skill levels, Professor Borjas suggests a point system like that utilized in Australia and Canada, with values for characteristics deemed to enhance productivity in the United States, such as education, age, occupation, or English fluency.⁹ He is careful, however, to qualify the approach:

Although the empirical evidence suggests that the objective of any reform in immigration policy should be to increase the skill level of the immigrant flow, these policy changes need not completely ignore humanitarian considerations. To a great extent, emigration and immigration statutes reflect what a society believes about liberty, human rights, and family values. These concerns can be easily incorporated into the policy reforms. For example, extra points could be awarded to visa applicants who have close relatives residing in the United States, or visas could be sold at a discount to buyers who have these family ties. Similarly, these policies can be easily adjusted to account for sudden political changes in the source countries and to permit the entry of persons seeking refuge from political and religious oppression.¹⁰

*SIMON: THE ECONOMIC CONSEQUENCES OF
IMMIGRATION*

As an avowed advocate,¹¹ Professor Julian Simon's scholarship undoubtedly will be examined with a predisposed skepticism by economists and social scientists. He presents a relentless argument in favor of increased legal immigration into the United States, and, in the course of developing his contentions, he amasses an encyclopedic summary of the literature that assesses the economic impact of immigration in the United States. Immigrants, in his view, should "be chosen

8. *Id.* at 210-13. These characteristics correspond to greater participation in the welfare system and to income differentials in employment. *Id.* at 158-59, 165-66.

9. *Id.* at 223-25.

10. *Id.* at 227.

11. *ECONOMIC CONSEQUENCES*, *supra* note 2, at xxvii.

more for their economic characteristics and less on the basis of family connections.”¹² In the course of building his argument, Professor Simon dismisses trade theory as an appropriate analogy¹³ and he emphasizes that recent immigration has not been high by U.S. historical standards.¹⁴ Immigrants to the United States, Professor Simon finds, “tend to arrive in their 20s and 30s, when they are physically and mentally vigorous and in the prime of their work lives.”¹⁵ Furthermore, immigrants are reported to be disproportionately professional and technical persons, and have a higher rate of participation in the labor force than U.S. citizens. They tend to save more, apply more effort during working hours, and have a higher propensity to start new businesses and be self-employed.¹⁶ Simon demonstrates that immigrants use less public services than do citizens; indeed, that immigrants provide a subsidy.¹⁷ He explains that

The costs of Social Security dominate the entire system of transfers and taxes. Natives get a windfall from immigrants through the Social Security mechanism. By the time the immigrant couple retires and collects, the couple typically has raised children who are then contributing Social Security taxes and thereby balancing out the parents' receipts, just as is the case with typical native families. In this way there is a one-time benefit to natives because the immigrants normally do not arrive accompanied by a generation of elderly parents who might receive Social Security.¹⁸

Professor Simon argues that immigrants do not work a significant dilution of existing physical capital (*e.g.*, buildings and equipment)¹⁹ and that they contribute human capital in the form of technology and productivity.²⁰ He characterizes as “demonstrably bunkum” the notion that immigrants cause a diminution in natural resources.²¹ Professor Simon then proceeds to assess the aggregate effects of immigrants on the in-

12. *Id.* at 337.

13. *Id.* at 17-20.

14. *Id.* at 22-31.

15. *Id.* at 339.

16. *Id.*

17. *Id.* at 339-40.

18. *Id.*

19. *Id.* at 143-64 (chapter seven).

20. *Id.* at 165-86 (chapter eight).

21. *Id.* at 343.

comes of natives²² and finds that immigrants constitute an "excellent investment," worth, in 1975, somewhere between fifteen and twenty thousand U.S. dollars to natives.²³ While conceding some negative effects on the citizen work force in the form of job displacement, Professor Simon counsels that

immigrants not only take jobs, they make jobs. They create new jobs indirectly with their spending. They also create new jobs directly with the businesses which they are more likely than natives to start.²⁴

He finds no evidence to suggest that immigration widens income distribution in the United States,²⁵ and suggests that international migration is on the whole a positive benefit.²⁶ As to undocumented aliens and temporary worker programs, Professor Simon observes that there is some increased competition with citizen unskilled workers, but that the injury to citizens "is far less than is popularly imagined."²⁷ In terms of the overall effect of undocumented people, he explains that

[illegal] immigrants use very small amounts of public services . . . both because of their favorable age distribution and because they are afraid of apprehension if they attempt to obtain services. At the same time they pay income and Social Security taxes many times the cost of the services that they use.²⁸

Professor Simon makes several recommendations based on his findings:

Increase the volume of total immigration in substantial steps unless there appear negative effects that are unknown at present.²⁹

Consider refugees as indistinguishable from ordinary eco-

22. *Id.* at 194-207 (chapter ten).

23. *Id.* at 343. Similar recent findings were reported in West Germany in connection with the migration of ethnic Germans from Eastern Europe. See *Refugees Linked to Prosperity: West German Study foresees long-term gains from influx*, San Diego Union, Sept. 23, 1989, at A29, col. 6; see also Wysocki, *Melting Pot: Influx of Asians Brings Prosperity to Flushing, A Place for Newcomers*, Wall St. J., Jan. 15, 1991, at A1, col. 1.

24. ECONOMIC CONSEQUENCES, *supra* note 2, at 344.

25. *Id.* at 253-65 (chapter thirteen).

26. *Id.* at 266-76 (chapter fourteen).

27. *Id.* at 345.

28. *Id.*

29. *Id.* at 310.

conomic immigrants in all economic policy-making. If refugees are to be handled differently, the grounds should be non-economic rather than economic. If refugees would not be as desirable economically as other potential immigrants, pay other countries to take in some of the refugees.³⁰

Give preference to applicants with financial assets If direct investment can be made a criterion, that would be an improvement.³¹

Adopt an auction plan [that would permit immigrants to bid for admission to the United States].³²

ANALYSIS

The U.S. Congress sought in many ways to address in the Immigration Act of 1990 the points raised by Professors Borjas and Simon. Employment-based immigration was increased almost three-fold³³—from 54,000 to 140,000 to be provided annually in five categories, principally to persons of renown, executives, managers, professionals, and other skilled workers.³⁴ Included also is an investor category that permits the immigration of 10,000 entrepreneurs annually who invest from US\$500,000 to US\$3,000,000 in a new commercial enterprise that creates employment for ten or more U.S. workers.³⁵ A provision is included to diversify the national origins of immigrants coming to the United States,³⁶ and family-based immigration is continued essentially at prior levels.³⁷ The 1990 Act also establishes a Commission on Legal Immigration Reform,³⁸ to be organized after October 1, 1991, which will be mandated, *inter alia*, to consider:

30. *Id.* at 314.

31. *Id.* at 328.

32. *Id.* at 335. Professor Simon also suggests the establishment of a guestworker policy, as well as preferences in admissions for students, educational attainments, and English proficiency. *Id.* at 312-13, 318 & 327. He also promotes procedures to discourage undocumented persons from accessing public assistance. *Id.* at 319.

33. Pub. L. No. 101-649, § 121, 104 Stat. 4978, 4987 (1990).

34. *Id.* § 121(b)(1)-(3), 104 Stat. at 4987-89. Compare *id.* with 8 U.S.C. § 1151(d) (1988) and 8 U.S.C. § 1153(d)(3) & (6) (1988).

35. Pub. L. No. 101-649, § 121(b)(5), 104 Stat. at 4989.

36. Initial provision is made for 40,000 diversity visas, to increase to 55,000 in 1995. *Id.* §§ 131-32, 104 Stat. at 4997-5000.

37. *Id.* § 111, 104 Stat. at 4986.

38. *Id.* § 141, 104 Stat. at 5001-04.

(A) The requirements of citizens of the United States and of aliens lawfully admitted for permanent residence to be joined in the United States by immediate family members and the impact which the establishment of a national level of immigration has upon the availability and priority of family preference visas.

(B) The impact of immigration and the implementation of the employment-based and diversity programs on labor needs, employment, and other economic and domestic conditions in the United States.

(C) The social, demographic, and natural resources impact of immigration.³⁹

The Commission is to provide a first report to Congress on these issues by September 30, 1994, a final report by September 30, 1997, and is to conclude activities by January 1, 1998. Professor Borjas' and Professor Simon's books have not only influenced the direction of immigration policy at the outset of this inquiry, but will undoubtedly provide a baseline for further studies and considerations in view of the congressional inquiries contemplated over the course of the decade.⁴⁰

However, the on-going U.S. immigration debate should not be limited to economic impacts and narrow concepts of national self-interest. Other informing principles should be considered, including international human rights and refugee law.

39. *Id.* § 141(c), 104 Stat. at 5002. The Commission will also be required to consider and report on:

(D) The impact of immigration on the foreign policy and national security interests of the United States.

(E) The impact of per country immigration levels on family-sponsored immigration.

(F) The impact of the numerical limitation on the adjustment of status of aliens granted asylum.

(G) The impact of the numerical limitations on the admission of nonimmigrants under section 214(g) of the Immigration and Nationality Act.

Id., 104 Stat. at 5002-03.

40. Immigration policy over the next period will be of keen interest not only to federal policy makers, but also to officials in many localities. See Fiske, *New York Growth is Linked to Immigration*, N.Y. Times, Feb. 22, 1991, at B1, col. 2 (discussing preliminary census data).

Family Unity

Family reunification has long been part of U.S. immigration policy. While it might be difficult to describe as a "purpose" of immigration policy, protection of the family is a firmly established tenet which has been respected in the formulation of such policy. Specifically, protection of the family has been recognized for some years as a proper goal of international law, including immigration and refugee law. A number of the major documents of international law contain references to the family.

The Universal Declaration of Human Rights⁴¹ defines the family as "the natural and fundamental group unit of society . . . entitled to protection by society and the State."⁴² The International Covenant on Economic, Social and Cultural Rights⁴³ expands the concept, stating that "[t]he widest possible protection and assistance should be accorded to the family,"⁴⁴ and expresses particular concern for the establishment of the family and the care of dependent children.⁴⁵

In the refugee context, the office of the United Nations High Commissioner for Refugees (the "UNHCR") has given particular attention in recent years to the need for family reunification. In 1981, in response to the problem of Indochinese boat people, the Executive Committee of UNHCR adopted a number of conclusions on the reunification of separated refugee families. Included in the recommendations of the committee are provisions encouraging asylum countries to apply "liberal criteria" in identifying family members, and to grant family members the same legal status as the head of the

41. G.A. Res. 217A(III), U.N. Doc. A/810 (1948).

42. *Id.* art. 16(3).

43. G.A. Res. 2200A (XXI), 993 U.N.T.S. 3 (1966).

44. *Id.* art. 10(1).

45. *Id.* Moreover, the Final Act of the Helsinki Conference on Security and Co-operation in Europe (the "Helsinki Final Act") contains detailed provisions dealing with family unification under the human contacts section (basket III). Conference on Security and Co-operation in Europe: Final Act, reprinted in 14 I.L.M. 1292, 1313 (1975). The state parties to the Helsinki Conference pledged to "deal in a positive and humanitarian spirit" with petitions for the reunification of families. *Id.* at 1314. The family reunification provisions of the Helsinki Final Act have been used predominantly in requests to leave a particular country to join family members elsewhere, rather than to permit individuals to enter a particular country to join family members already living there. *Id.* at 1313-15.

family who was designated a refugee.⁴⁶

A general consensus as to who is and who is not part of an immigrant's "family" has evolved slowly in the United States.⁴⁷ Included as essential members, and exempt from numerical quotas or ceilings, are spouses, children, and since 1965, parents of adult U.S. citizens.⁴⁸ Excluded from family reunification provisions so far are grandparents, nieces, nephews, cousins, or other more distant relatives. Numerically restricted preferences are assigned to other close family members, including unmarried children of citizens and permanent residents, married children of citizens, and siblings of adult citizens.⁴⁹

Under human rights standards, the protection of family unity should remain a prominent theme in U.S. immigration policy. The principle is fundamental and universal. Family unity promotes the stability, health and productivity of family members, which in turn promote stability and productivity in the community and nation.

46. EXECUTIVE COMMITTEE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES PROGRAMME, CONCLUSIONS ON THE INTERNATIONAL PROTECTION OF REFUGEES 55 (Conclusion No. 24 (XXXII)) (1980). U.S. constitutional law is fundamentally in accord with these international human rights principles. See *Moore v. City of East Cleveland*, 431 U.S. 494 (1977). While there is no express constitutional right to family unification, family relations have constitutional protection. *Id.* at 503. In *Moore*, the U.S. Supreme Court went so far as to extend judicial protection in a zoning dispute to a non-traditional family unit consisting of a grandmother and her two grandsons, basing its decision on substantive rights emanating from the fourteenth amendment's Due Process Clause and from U.S. history, traditions, and social values. *Id.* at 494-506.

47. U.S. courts and administrative authorities have had difficulties in delineating the precise scope of the family in the application of immigration statutes. For example, the U.S. Court of Appeals for the Ninth Circuit admonished the U.S. Board of Immigration Appeals (the "BIA") for disregarding the possibility of hardship resulting from an alien's deportation and ensuing separation from a community in which he had regularly attended church for over ten years. *Santana-Figueroa v. Immigration and Naturalization Serv.*, 644 F.2d 1354, 1357 (9th Cir. 1981). The U.S. Court of Appeals for the First Circuit held that the BIA was required to consider the existence of a family relationship between a Haitian housekeeper and the U.S. family she had lived with for over thirty years when the BIA ruled on a request to suspend deportation. *Antoine-Dorcelli v. Immigration and Naturalization Serv.*, 703 F.2d 19, 20-21 (1st Cir. 1983). Somewhat less generously, the U.S. Supreme Court had earlier justified a statute determining that a father could not sponsor his illegitimate child for immigration purposes, whereas a mother could, noting "the absence in most cases of close family ties." *Fiallo v. Bell*, 430 U.S. 787, 799 (1977).

48. 8 U.S.C. § 1151(b) (1988).

49. *Id.* §§ 1153(a)(1),(2),(4) & (5).

General Human Rights and Refugee Law

International human rights law provides that an individual has a right to leave any country, including his or her own, and to return to that country.⁵⁰ This basic principle is embodied in the provisions of the Helsinki Accords designed to liberalize freedom of movement among the signatory countries.⁵¹

But there is a basic doctrinal contradiction. The right to leave one's country has little meaning if one does not have the right to admission elsewhere. The "right" of entry is considered to be that of the state to permit entry, not of the individual to require it. This prerogative is considered an inherent attribute of sovereignty.⁵² A universal recognition of the right of emigration, therefore, must likely await recognition that human rights considerations (especially the rights of entry and asylum) must further qualify traditional notions of sovereignty.

In that regard, an international regime of refugee law has been developed to provide protection to individuals fleeing persecution. Millions of refugees have been granted asylum and settled under this legal regime. The most recent expressions of positive international refugee law are the 1951 Convention Relating to the Status of Refugees⁵³ and 1967 Protocol relating to the Status of Refugees.⁵⁴ These treaties followed the adoption in 1948 of the Universal Declaration of Human Rights, which includes a proclamation of the "right to seek and to enjoy in other countries asylum from persecution."⁵⁵

Under international refugee law, there is no categorical right for a refugee to receive asylum. Upon flight, a refugee becomes subject to the jurisdiction of the authorities in a country of reception. Treatment must correspond with obligations to respect fundamental human rights, including the right not to be returned to a territory where the individual may be sub-

50. See Universal Declaration of Human Rights, *supra* note 41, arts. 9, 13(2) & 15.

51. See generally Helsinki Final Act, *supra* note 45.

52. See G. GOODWIN-GILL, *INTERNATIONAL LAW AND THE MOVEMENT OF PERSONS BETWEEN STATES* 137-40 (1978).

53. 19 U.S.T. 6260, T.I.A.S. No. 6577, 189 U.N.T.S. 150 (1951) [hereinafter 1951 Convention].

54. 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 (1967) [hereinafter 1967 Protocol].

55. Universal Declaration of Human Rights, *supra* note 41, art. 14(1).

jected to persecution, that is, *non-refoulement*.⁵⁶ This prohibition implies at least a limited right of entry, along with associated notions of international solidarity and burden-sharing respecting refugees, which should inform the development of U.S. immigration policy.⁵⁷

CONCLUSION

Professors Borjas and Simon, both conceding the need for further research on the subject, make compelling arguments for increased and selective immigration to the United States in order to increase productivity and competitiveness. They both agree that injurious impacts on citizens are minimal, and Professor Simon specifically argues that immigration is a virtually unmitigated positive benefit in economic terms.

As both Professor Borjas and Professor Simon suggest, however, the economic analysis is not the only informing principle. Specifically, principles of human rights and refugee law, including family unity, suggest a broad notion of the public good in the context of immigration. Indeed, if economic impacts are minimal, and certainly if immigration is a positive benefit, then productivity-based provisions could be enacted in part to subsidize the admissions of refugees and others who may be less able to contribute immediately in economic terms to the national community.⁵⁸ Such an arrangement would per-

56. *Non-refoulement* provisions are included in several U.N. documents. See, e.g., 1951 Convention, *supra* note 53, art. 33; Declaration on Territorial Asylum, Dec. 14, 1967, art. 3, G.A. Res. 2312 (XXII), 22 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6716 (1967). U.S. domestic law reflects this policy. See 8 U.S.C. § 1253(h) (1988). Even states not parties to the U.N. instruments are bound to respect *non-refoulement* as a fundamental principle of customary international law. See G. GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 97 (1983); EXECUTIVE COMMITTEE OF THE UNHCR PROGRAMME, *CONCLUSIONS ON THE INTERNATIONAL PROTECTION OF REFUGEES* 14 (Conclusion No. 6 (XXVIII)) (1980); REPORT OF THE TWENTY-EIGHTH SESSION OF THE EXECUTIVE COMMITTEE OF THE HIGH COMMISSIONER'S PROGRAMME, U.N. Doc. A/AC.96/549, ¶ 53 (1977).

57. The United States has recognized its responsibility toward refugees through the enactment of the Refugee Act of 1980, Pub. L. No. 96-212 (codified at scattered sections of 8 U.S.C.), which provides a planning mechanism for annual refugee admissions and requires the establishment of an asylum procedure. 8 U.S.C. §§ 1157, 1158(a). Approximately one million refugees have been admitted to the United States as refugees.

58. Professor Borjas notes that refugees cost about \$7,000 in social services per individual admitted. *IMPACT OF IMMIGRANTS*, *supra* note 1, at 35. However, no comprehensive cost/benefit analysis has been undertaken with respect to refugees and

haps better reflect the full character of the societal values and obligations involved in the formulation of immigration policy.

asylees. Frequently, those who seek protection in the United States from persecution in their home countries are highly skilled and potentially productive. *See* Neuffer, *Many Refugees Founder in New York Job Market*, N.Y. Times, May 24, 1987, § 1, pt. 2, at 40, col. 3.