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## INTRODUCTION: CONTEXT OF THE CURRENT IMMIGRATION DEBATE AND FUTURE PROSPECTS

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CAROL A. BUCKLER: I would like to welcome you. I would also like to introduce my co-chair for today, Arthur Helton. We have set an ambitious agenda for today, but I am confident that Arthur Helton can set the stage for this symposium. Arthur Helton is the Director of the Open Society Institute, and is a recognized immigration and refugee expert. Additionally, through his many years at the Lawyers Committee for Human Rights, he has done much thoughtful writing and wonderful advocacy, and we're very pleased to have him here.

ARTHUR C. HELTON: Thank you, Carol. At the outset I have to agree that we have taken on an extraordinarily ambitious program. I came to this realization last night while I was reviewing my introduction outline. I would like to offer a few points for our consideration during today's discussions. While we certainly will not conclude these considerations today, I do hope that they are styled in a way that will encourage discussions that are deeper and more thoughtful than many prior immigration debates. I think that it is fair to say that the issue of immigration is becoming increasingly political in the United States, and has achieved a similar status in many other areas of the world, particularly the developed world. The politicized nature of the issue sometimes excludes from careful consideration many of the deliberative policy choices made in the field.

Immigration is a topic that is visceral and quite emotional at times.

What I would like to do at the outset is to offer a few points on the international context of immigration. There are reported to be some 100,000,000 international migrants.<sup>1</sup> Among this number, there are about twenty million conventional refugees around the world who are in flight from persecution, and who, as a result, have left their countries of origin.<sup>2</sup> This is apart from another estimated twenty-five million individuals who find themselves displaced internally in their own countries by virtue of conflict and other refugee-like reasons.<sup>3</sup> So, indeed, there is a good deal of new world *disorder* resulting in the movement of people. This is a phenomenon that is clearly continuing and growing, but it is also a discrete phenomenon in the sense that it involves only about two percent of the world's population.<sup>4</sup>

There are many causes of flight and movement. One cause typically cited is economic underdevelopment and wage differentials.<sup>5</sup> Certainly, the United States-Mexico case is paramount in the minds of those who discuss the issue in North America.<sup>6</sup> Another cause is armed conflict. It is reported that between 1988 and 1991, there were more than 150 armed conflicts in the countries of the Former

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<sup>1</sup> See Eugene Robinson, *Worldwide Migration Nears Crisis—Politics, Economics Cited in U.N. Study*, WASH. POST, July 7, 1993, at A1.

<sup>2</sup> See *id.*

<sup>3</sup> U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 19 (1993) [hereinafter REFUGEE SURVEY]; see Michael J. Toole & Ronald J. Waldman, *Refugees and Displaced Persons: War, Hunger and Public Health*, 270 JAMA 600, 601 (1993) ("There are currently an estimated 25 million internally displaced persons worldwide, an increase of 9 million since 1990: of these, approximately 16 million live in Africa.").

<sup>4</sup> The current world population is approximately 6,000,000,000. See *infra* note 9 and accompanying text. "[The United Nations State of World Population report] estimates that there are at least 100 million international migrants living outside the countries in which they were born, or about 2 percent of the world's population." Robinson, *supra* note 1, at A1.

<sup>5</sup> See, e.g., Gregory C. Shaffer, Note, *An Alternative to Unilateral Immigration Controls: Toward a Coordinated U.S.-Mexico Binational Approach*, 41 STAN. L. REV. 187, 195 (1988) (arguing that the seven-to-one differential between the wages of United States and Mexican workers, along with economic underdevelopment, has caused Mexicans to migrate to the United States).

<sup>6</sup> See *id.*

Soviet Union.<sup>7</sup> Clearly, after the Cold War, there has been an increase in nationalism, secessionist movements, ethnic discrimination, and malice, including the infamous concatenation of human rights violations that we have come to call *ethnic cleansing*, which have caused people to flee their homelands.<sup>8</sup> Population growth has also been cited as a factor contributing to the movement of people. The world has a population of approximately six billion people, which is projected to grow to about ten billion by the mid-part of the next century.<sup>9</sup> This issue will be addressed at an international conference scheduled for September in Cairo concerning population and development.<sup>10</sup> Environmental degradation has also led to the movement of people. For example, deforestation and desertification have led to large scale migrations in Africa.<sup>11</sup>

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<sup>7</sup> See Walter Laqueur, *Independence May Enslave Millions; The Rush Toward National Separatism is an Invitation to Economic Ruin and to Undemocratic Rulers*, L.A. TIMES, Sept. 8, 1991, at M5 ("Earlier this year, a Soviet journal listed 75 acute national conflicts in the 'former' Soviet Union. The number has grown tenfold as a result of the rush to independence."); see also U.S. DEP'T OF STATE, DISPATCH: 1993 HUMAN RIGHTS REPORT—RUSSIA HUMAN RIGHTS PRACTICES (1994), available in LEXIS, Miltry Library, Dstate File ("Russian troops are still in place in many of the Republics of the former Soviet Union and are embroiled in a number of controversial conflicts, some involving the Russian minorities in the Republics.").

<sup>8</sup> See REFUGEE SURVEY, *supra* note 3, at 3. "Two million dollars a minute are spent worldwide on war or the preparation for war. In developing nations, there are eight soldiers for every medical doctor, and thirty times more is spent on them than on the education of children." *Id.*; see also David M. Kresock, "Ethnic Cleansing" in the Balkans: The Legal Foundations of Foreign Intervention, 27 CORNELL INT'L L.J. 208, 222 (1994).

<sup>9</sup> THE CAMBRIDGE FACTFINDER 198 (David Crystal ed., 1993); see Robinson, *supra* note 1, at A1 ("Overall, according to the [United Nations State of World Population report] the world's population grew by 93 million in 1992. The current estimated world population of 5.57 billion is expected to increase by 6.25 billion by the turn of the century, and to climb to 10 billion by 2050.").

<sup>10</sup> See Barbara Crossette, *U.N. is Facing Angry Debate on Population*, N.Y. TIMES, Sept. 4, 1994, at A1; see also Alan Cowell, *Cairo Parley Hits a New Snag on Migrants*, N.Y. TIMES, Sept. 11, 1994, at A10 ("After six days of snail's-pace maneuvering over abortion, the United Nations population conference ran into fresh problems . . . when developing nations revolted over the refusal of the United States to agree that migrants have a right to be united with their families.").

<sup>11</sup> See Gregory S. McCue, Note, *Environmental Refugees: Applying International Environmental Law to Involuntary Migration*, 6 GEO. INT'L ENVTL. L. REV. 151, 160-63 (1993).

Improvements in the facility of communications and travel, inevitable by-products of our new age, have also been cited as factors contributing to immigration.<sup>12</sup>

Clearly, the causes of immigration are complex. But I think that it is appropriate to say, in terms of the state of social science, that no single factor alone is sufficient to explain the phenomenon, and the causal connections are often uncertain. The causes of immigration are ripe for discussion at this symposium.

Along with debating the causes of immigration, policy-makers also typically offer solutions for curbing the movement of people. First in the conceptional order of solutions is what has been termed *prevention*. But, as we have seen, the causes of immigration are complex—thus, prevention is difficult. Sustainable development is often advanced as a preventive solution, but in fact, remittances from migrants abroad are estimated to total about \$71,000,000,000 per year, which dwarfs the official development assistance programs in the world, now at about \$51,000,000,000 per year.<sup>13</sup> Other proposed solutions include the following: Conflict resolution—one simply needs to look at the current situation in the Former Yugoslavia, in which about 200,000 people have died and over two million people have been displaced, to appreciate the difficulties inherent in conflict resolution;<sup>14</sup> family planning—this is sometimes advanced as an

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<sup>12</sup> See *Developments in the Law—Immigration Policy and the Rights of Aliens*, 96 HARV. L. REV. 1286, 1438 (1983) ("Developments in communication and travel, engendered in part by strong economic and political ties between source countries and the United States, have rendered [immigration] retarding factors [i.e.: 'geography and ignorance of opportunities available outside the home community'] less powerful than they once were in many nations.").

<sup>13</sup> See Edith M. Lederer, *Flood of Migration is Creating Worldwide Crisis U.N. Report Says the Unprecedented Flow has Sparked Ethnic and Economic Tensions*, PHILA. INQUIRER, July 7, 1993, at A3 (stating that according to a United Nations report, the amount of money from remittances is larger than total overseas development assistance).

<sup>14</sup> See Catherine A. MacKinnon, *Crimes of War, Crimes of Peace*, 4 UCLA WOMEN'S L.J. 59, 61 (1993) ("Serbian forces have exterminated over 200,000 Croats and Muslims thus far in an operation they've coined ethnic cleansing."); REFUGEE SURVEY, *supra* note 3, at 9 ("[In 1992], the count of refugees and displaced persons stood at 2.2 million, more than 1.4 million of whom were from Bosnia, with the remainder displaced by earlier fighting in Croatia.").

ameliorative method, but it can be quite controversial ideologically,<sup>15</sup> and information campaigns—Vietnam's and China's alerting of would-be immigrants to their prospects when they seek new homes abroad, are often cited as examples of nations' efforts to manipulate the decision-making process of large groups of individuals.<sup>16</sup>

In general, I would suggest that broad notions of avoiding people's need to move, while satisfying intellectually, are extremely difficult to achieve in practice. We are often left with a series of unsatisfactory solutions, which we have to discuss under the rubric of migration management. The kinds of management issues that we then look to, and the kinds of solutions that are offered in this regard include establishing what are called economic buffer zones.<sup>17</sup> Some consider Mexico, eastern and central Europe, and the Maghreb countries of North Africa to constitute such buffer zones.<sup>18</sup> But

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<sup>15</sup> See, e.g., Chris Hedges, *Key Panel at Cairo Talks Agree on Population Plan*, N.Y. TIMES, Sept. 13, 1994, at A10 (stating that at the U.N. conference in Cairo, the issue of international family planning programs, while introduced for the purpose of improving women's health and safety, also received wide criticism from international Islamic and Roman Catholic leaders); Alan Cowell, *How Vatican Views Cairo*, N.Y. TIMES, Sept. 18, 1994, at A25.

<sup>16</sup> See, e.g., Steven Erlanger, *Far Fewer Boat People Coming to Hong Kong*, N.Y. TIMES, Feb. 7, 1991, at A5 (noting that one reason for the decline in the amount of Vietnamese boat people arriving in Hong Kong was the Vietnamese government's agreement to provide would-be refugees with information about immigration and refugee camp conditions).

<sup>17</sup> See, e.g., Jon Marks, *The EC's New Middle East Strategy*, MIDDLE E. BUS. WKLY., May 15, 1992, available in LEXIS, World Library, Allwld File (stating that European economic assistance agreements with North African nations are inspired, in part, by a desire to build "economic growth in North Africa to stop new waves of immigration into Europe"); see also Kevin R. Johnson, *Free Trade and Democratic Values: NAFTA's Effect on Human Rights*, 27 U.C. DAVIS L. REV. 937, 965-66 (1994) (arguing that migration can be reduced by specializing in the production of labor-intensive goods, and by increasing foreign investment in Mexico).

<sup>18</sup> See Johnson, *supra* note 17, at 965-66. A member of the United Nations Economic and Social Commission for Asia and the Pacific cited the mass migration from eastern Europe to Germany, "which first turned the immigrants back only to realize later that it had to create economic opportunities in neighboring countries to stop the Exodus," as evidence that "fear of migration is going to create a tremendous amount of pressure on the industrial countries to help the Third World, particularly in the 21st century." *21st Century Could See Mass Exodus from Third World: Expert*, AGENCE FRANCE PRESSE, Oct. 9, 1991, available in LEXIS, World Library, Allwld File. France has proposed providing economic aid to halt immigration from the Maghreb. *EC Agrees*

economists tell us that the development of buffer zones, if anything, will contribute to the movement of people over the short term, typically calculated to be about ten to twenty years.<sup>19</sup> We have to keep this in mind when considering free trade arrangements such as NAFTA.<sup>20</sup>

Humanitarian assistance, or an international presence to ameliorate the reasons for flight, is sometimes cited as a solution for rampant immigration.<sup>21</sup> But again, the situation in the Former Yugoslavia provides a sobering example of the problems with this solution. For example, the Office of the United Nations High Commissioner for Refugees employs some 600 staff members in the Former Yugoslavia.<sup>22</sup> There are also some 20,000 peacekeeping troops deployed there.<sup>23</sup> Yet, we see continuing controversy over the need for evacuations from the Bosnian town of Prijedor, and the ongoing siege of Gorazde.<sup>24</sup> Despite this international presence, loss of life and the displacement of people in the Former Yugoslavia have

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*Loan to Algeria Over British Protests*, DAILY TELEGRAPH, Sept. 10, 1991, available in LEXIS, World Library, Allwld File.

<sup>19</sup> See, e.g., Thomas J. Espenshade & Dolores Acevedo, *Nafta's Trojan Horse*, N.Y. TIMES, Sept. 13, 1993, at A21 ("But in the short term—perhaps the next 5 to 10 years—Nafta could increase the number of undocumented workers migrating to the U.S. Economic development in Mexico's agricultural sector will probably promote greater privatization and consolidation of land holdings, which will displace rural workers from traditional sources of employment. These dislocated workers are most likely to migrate to urban areas in Mexico or to the U.S.").

<sup>20</sup> See Johnson, *supra* note 17, at 965-66; Espenshade & Acevedo, *supra* note 19, at A21; *Non-Trade Related Issues: Immigration*, MEX. TRADE & L. REP., Nov. 1, 1993, available in LEXIS, World Library, Allwld File.

<sup>21</sup> See Daniel W. Barkley, *Hope for the Hopeless: International Cooperation and the Refugee*, 21 COLUM. HUM. RTS. L. REV. 319, 324-25 (1989). In this regard, a function of the United Nations High Commissioner for Refugees is to provide international protection of refugees. *Id.* at 324. Furthermore, the Commissioner helps refugees solely through humanitarian means in an attempt to solve crises created by flight. *Id.*

<sup>22</sup> See Arthur C. Helton, *Sometimes a Town Must be Evacuated*, N.Y. TIMES, Apr. 14, 1994, at A20.

<sup>23</sup> See Ian Bruce, *Scots Troops Get the Job of Covering Bosnia Retreat*, GLASGOW HERALD, Oct. 31, 1994, available in LEXIS, World Library, Allwld File (noting that 23,000 peacekeeping troops were employed in Bosnia).

<sup>24</sup> See *Evacuation Plan Suspended in Bosnia*, WASH. POST, Apr. 5, 1994, at A11; John Pomfret, *U.N. Officers in Bosnia Say 'Havens' May Fail*, WASH. POST, June 5, 1993, at A1.

been massive.<sup>25</sup>

Haiti, I suppose, is the logical extreme of the notion of providing protection to would-be refugees in their place of origin. This is the practice of intercepting Haitian boat people who seek to depart Haiti in an unauthorized fashion, take them back to their country of origin, and then to let them proceed through authorized, orderly channels. This direct return program is enforced by the U.S. Coast Guard, and is again in the news because of President Aristide's recent decision to renounce this arrangement.<sup>26</sup>

International cooperation, always a worthwhile objective and a possible solution for the immigration situation, is difficult to achieve, even at the regional level. In the area of international cooperation on immigration, apart from a somewhat uncoordinated proliferation of fora and agreements in western Europe—largely inspired by efforts to achieve economic and political harmony during the last vestiges of the Cold War—there have been very few international arrangements to deal with immigration.<sup>27</sup> The agreement in 1989 to deal with Vietnamese boat people might be one example of a cooperative arrangement.<sup>28</sup> But this approach was resisted when presented as an option to deal with Haitian boat people in this region.<sup>29</sup> The overall status of immigration in the United States is in

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<sup>25</sup> See *supra* note 14 and accompanying text.

<sup>26</sup> See Lawrence M. O'Rourke, *U.S. Toughens Haiti Policy, Wants Full Trade Embargo*, SACRAMENTO BEE, Apr. 22, 1994, at A20 ("A few weeks before Clinton's inauguration, Aristide joined him in urging Haitians to stay in their country and endorsed Clinton's policy to stop Haitians at sea and return them. Aristide has since asked for a reversal of the refugee policy, saying the Haitian military has murdered returnees.").

<sup>27</sup> See, e.g., Edward Mortimer, *Lombard; Pulling Down the Frontiers*, FIN. TIMES (London), Nov. 23, 1989, at 29 (according to English Prime Minister Thatcher: "It is a matter of plain common sense that we cannot totally abolish frontier controls if we are also to protect our citizens from crime and stop the movement of drugs, of terrorists, and of illegal aliens.").

<sup>28</sup> A plan to resettle Vietnamese political refugees was formulated during a United Nations conference, held in June 1989. John A. Callcott, *U.N. Plan Addresses Vietnamese Boat Refugees*, UPI, June 15, 1989, available in LEXIS, Nexis Library, UPI File. The plan rejected British demands for forcible repatriation of Vietnamese boat people, and called for resettlement of these refugees without fear of reprisals. *Id.*

<sup>29</sup> See Al Kamen, *U.S. Seeks New Havens for Haitians*, WASH. POST, Nov. 10, 1991, at A21 (noting that several nations rejected the United States' proposal to resettle Haitian refugees abroad).

many ways a reflection of these international trends and phenomena. It is difficult to achieve regional or international arrangements. Likewise, the prospect of migration management at the international level is very uncertain.

In this regard, I suggest that we approach our discussion today in several parts. We should first consider questions of legal immigration. We in the United States are now experiencing authorized legal admissions of about one million per year,<sup>30</sup> somewhat inflated by the outcome of relatively recent legalization programs.<sup>31</sup> The categories of immigration to the United States are broken down into family-related, which has a human rights rationale in terms of family reunification, business-related, which I think is properly seen as an expression of national self-interest, and diversity—in this instance diversity in the migrant stream, which gives rise to questions of national identity and race.<sup>32</sup>

At this point, I would like to provide a few facts to help set the stage for our discussions today concerning legal immigration. Ten countries alone account for nearly sixty percent of all immigrants admitted to the United States: Mexico, mainland China, the Philippines, Vietnam, the Former Soviet Union, the Dominican Republic, India, Poland, El Salvador, and the United Kingdom.<sup>33</sup> Three-fourths of all legal immigrants settle in one of the following six states: California, Texas, New York, Florida, Illinois, and New

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<sup>30</sup> The total number of immigrants legally admitted into the United States was 1,827,167 in 1991, and 973,977 in 1992. IMMIGRATION & NATURALIZATION SERVICE, U.S. DEP'T OF JUSTICE, STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE, 1992 17 (1993) [hereinafter STATISTICAL YEARBOOK].

<sup>31</sup> See Ramon G. McLeod, *Record Number of Immigrants to California—Legal Arrivals Also Surged in Bay Area Last Year*, S.F. CHRON., Sept. 3, 1993, at A1 ("The legalization program had another effect: newly legalized immigrants could later legally bring in family members who were still in the old country.").

<sup>32</sup> See STATISTICAL YEARBOOK, *supra* note 30, at 17-19 (describing U.S. immigration categories); Michael Fix & Jeffrey S. Passel, *Amid Myths and Misperceptions of Immigration*, HOUS. CHRON., Aug. 14, 1994, Outlook, at 1.

<sup>33</sup> STATISTICAL YEARBOOK, *supra* note 30, at 21. The number of immigrants admitted from these countries in 1993 is as follows: Mexico (126,561 or 14%), mainland China (65,578 or 7.3%), the Philippines (63,457 or 7%), Vietnam (59,614 or 6.6%), the Former Soviet Union (58,571 or 6.5%), the Dominican Republic (45,420 or 5%), India (40,121 or 4.4%), Poland (27,846 or 3.1%), El Salvador (26,818 or 3%), and the United Kingdom (18,783 or 2.1%). *Id.*

Jersey.<sup>34</sup> Indeed, one-third of these immigrants settle in California.<sup>35</sup>

Apart from legal immigration, I think that we have to also consider unauthorized immigration, an issue in the debate that has focused on Mexico.<sup>36</sup> About three million unauthorized, non-nationals find themselves within the territorial jurisdiction of the United States,<sup>37</sup> a number that increases at a rate of about 200,000 per year.<sup>38</sup> This is somewhat over one percent of our population.<sup>39</sup> The questions that are often presented as being embedded in the phenomenon of unauthorized immigration include questions of border enforcement, and the success of programs like Operation Blockade in El Paso.<sup>40</sup> Additionally, questions are raised concerning employment authorization management through the Immigration Reform and Control Act of 1986, including the Act's contribution of employer sanctions to immigration enforcement options.<sup>41</sup> Involved in this phenomenon are also many concerns about discrimination against

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<sup>34</sup> *Id.* at 21-22.

<sup>35</sup> *Id.* at 22.

<sup>36</sup> *But see* Fix & Passel, *supra* note 32, at 1 ("Less than half of the country's illegal immigrants cross the southern border clandestinely; most enter legally and overstay their visas and most (two-thirds) are not Mexican.").

<sup>37</sup> *See* Tony Freemantle, *Anti-immigrant Sentiment Rises; Impact a Matter of Debate*, HOUS. CHRON., July 4, 1993, at A1 ("Estimates of legal and illegal immigrants in this country vary somewhat, but according to the Immigration and Naturalization Service, 8.9 million legal immigrants came in the last decade along with about 3 million illegal immigrants. Others put the number at 10 million or more legal and 4-5 million illegals.").

<sup>38</sup> *See* Fix & Passel, *supra* note 32, at 1 (stating that about 200,000 or 300,000 illegal immigrants enter the country each year, not 1,500,000, which is actually the number of illegal immigrants apprehended at the southern border).

<sup>39</sup> The total population of the United States in 1992, was approximately 255,000,000. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, 1993 1 (113th ed. 1993) [hereinafter STATISTICAL ABSTRACT]. Three million illegal immigrants represents approximately 1.2% of the population of the United States.

<sup>40</sup> *See, e.g.*, Eduardo Montes, *Illegal Alien Blockade Stands Tall*, ROCKY MOUNTAIN NEWS, Oct. 16, 1994, at A4 ("First dubbed Operation Blockade, it was meant to keep people from trying to cross the border illegally and to rapidly capture anyone who made the attempt . . . . [T]he number of illegal entries in the El Paso sector has decreased from the average high of about 10,000 a day before the blockade to a high of about 1,000.").

<sup>41</sup> 8 U.S.C. § 1324a (1988).

American citizens who may appear or sound foreign. Likewise, the debate over a national identity card as a way to enforce employer sanctions raises concerns about civil liberties and invasions of privacy.<sup>42</sup> Removals, as a form of enforcement of immigration laws, is certainly an issue currently being studied by the Immigration and Nationalization Service.<sup>43</sup> In this regard, questions of financial resources, and the political costs and benefits that attend removals are worth noting.<sup>44</sup> Limiting social benefits, again a fashionable remedy being discussed particularly in California, is considered to be both a deterrent, and a mechanism to reimburse state and local governments for what is seen as the impact of the failure of federal immigration policies.<sup>45</sup>

Refugees provide another distinct category for our consideration, both in terms of overseas admissions of refugees and the domestic asylum experience. From 1980 to 1993, well over one million refugees were admitted as a special humanitarian concern of the United States.<sup>46</sup> The vast majority of refugees have been from East Asia, the Soviet Union, as it was then called—Russia in

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<sup>42</sup> See Georgie A. Geyer, *The ID Crisis Over National Identity Cards*, SAN DIEGO UNION-TRIB., Sept. 30, 1994, at B5.

<sup>43</sup> See Montes, *supra* note 40, at A4; *U.S. Plan Would Prevent Repeat of Mariel Boatlift; Attorney General Janet Reno Can Declare an Immigration Emergency and Activate the Plan, Which Includes a Naval Blockade*, ORLANDO SENTINEL, Aug. 8, 1994, at A8.

<sup>44</sup> For example, Operation Blockade employed 160 to 200 Border Patrol agents every day to maintain a 24 hour, 20 mile long blockade line, and to repatriate illegal immigrants. Montes, *supra* note 40, at A4. The INS's two-year strategy to curb illegal immigration "calls for the expenditure of more than \$300 million to deploy more than 1,000 Border Patrol agents in California and Texas, expedite the removal of criminal aliens, strengthen the enforcement of sanctions on employers who hire aliens not authorized to work and make access to asylum more difficult." Arthur C. Helton, *Don't Close the Door to Genuine Refugees; Asylum: Reform is Needed, but the Administration Plan Would Beef Up Enforcement at the Expense of the Truly Needy*, L.A. TIMES, Feb. 23, 1994, at B7.

<sup>45</sup> See Ronald Brownstein, *Polarization Marks Debate on Immigration Policy; Politics: One Side Would Tighten Borders, the Other Would Punish Employers; Consensus May be Impossible*, L.A. TIMES, Nov. 30, 1993, at A1.

<sup>46</sup> See Joyce A. Hughes & Linda R. Crane, *Haitians: Seeking Refuge in the United States*, 7 GEO. IMMIGR. L.J. 74, 76 (1993).

particular—and eastern Europe.<sup>47</sup> Refugees from these countries accounted for virtually all of the refugee admissions from abroad, a policy that has given rise to charges of ideological bias during the Cold War.<sup>48</sup> In some sense, refugees are the enemies of our enemies, and during the Cold War, they were opponents of Communism. Compare the relatively small number of refugees admitted over the same period from Africa, somewhat over 40,000, to appreciate the basis of the charge of bias in the nation's refugee policy.<sup>49</sup>

Most controversial at the moment is the nation's asylum system itself, which was, to some extent, an afterthought in the Refugee Act of 1980.<sup>50</sup> Currently, the United States receives about 150,000 asylum claims each year.<sup>51</sup> The largest refugee groups seeking asylum are from Guatemala, El Salvador, Mexico, China, Haiti, and Nicaragua.<sup>52</sup> To the alarm of immigration officials, there were over 6,000 Mexican applicants last year.<sup>53</sup> Given recent events

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<sup>47</sup> The total number of Asian refugees admitted to the United States as permanent residents between 1981 and 1990 was 712,092. STATISTICAL ABSTRACT, *supra* note 39, at 12. The number of Europeans was 1,013,620, including 72,306 from the Former Soviet Union. *Id.*; see also STATISTICAL YEARBOOK, *supra* note 30, at 72-82 (providing various refugee admission statistics for 1991 and 1992).

<sup>48</sup> See Thomas D. Jones, *The Haitian Refugee Crisis: A Quest for Human Rights*, 15 MICH. J. INT'L L. 77, 122 n.217 (1993) (stating that most refugee admission slots were, and still are, reserved for people coming from the Soviet Union, eastern Europe and East Asia).

<sup>49</sup> STATISTICAL ABSTRACT, *supra* note 39, at 12; STATISTICAL YEARBOOK, *supra* note 30, at 79-80, 82.

<sup>50</sup> Pub. L. No. 96-212, 94 Stat. 102 (1980) (codified as amended in scattered sections of 8 U.S.C. (1988)).

<sup>51</sup> In 1993, 144,166 asylum cases were filed or opened in the United States, a 39% increase from the number in 1992 (103,964). STATISTICAL YEARBOOK, *supra* note 30, at 76.

<sup>52</sup> See Sarah Ignatius, *Restricting the Rights of Asylum Seekers: The New Legislative and Administrative Proposals*, 7 HARV. HUM. RTS. J. 225, 249 n.66 (1994) (during the first 11 months of 1993, Guatemala, El Salvador, China, Haiti, Mexico and Nicaragua along with five other countries accounted for almost 70% of the asylum applications filed).

<sup>53</sup> See Jo Ann Zuniga, *Mexican Asylum Claims Increase Tenfold in Year*, HOUS. CHRON., July 23, 1994, at A1 ("The number of Mexicans asking for political asylum in the United States has jumped tenfold in a years time, from 600 in 1992 to 6,205 in 1993, federal immigration authorities said.").

in Mexico, there may be more.<sup>54</sup> The backlog of asylum claims at the end of the calendar year 1993 was 360,000.<sup>55</sup>

Proposed reforms in the asylum system include statutory amendments to deprive asylum-seekers who arrive at ports of entry, such as John F. Kennedy Airport, of certain hearing rights.<sup>56</sup> One has to question how distinctions concerning refugee protection are made based on the manner of movement and arrival. Such distinctions may simply be arbitrary, and serve to deprive some asylum-seekers of hearing rights solely because of the happenstance of their arrival. Regulatory change, which has recently been proposed for public comment, would include the initiation of a \$130 filing fee, and a bar on employment authorization for substantial periods of time during which claims may be decided or appealed.<sup>57</sup> Questions have also been raised about the adequacy of resources to be invested in the adjudication of asylum claims, not only by the INS, but by another office within the Department of Justice, the Executive Office for Immigration Review, also known as the Immigration Court.<sup>58</sup>

Another point of contention is the quality of institutional management. The INS is a little over 100 years old, and has a \$1,500,000,000 budget.<sup>59</sup> As a sub-agency of the Department of Justice, the INS has a reputation for weak management, and

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<sup>54</sup> See Susan Gzesh, *Migration to the U.S. from Mexico Will Go On*, CHI. TRIB., Nov. 11, 1993, at 31.

<sup>55</sup> See Ignatius, *supra* note 52, at 225.

<sup>56</sup> *Id.* at 234.

<sup>57</sup> See *White House Unveils Refugee Asylum Plan*, HOUS. CHRON., Mar. 30, 1994, at A8. The plan to impose a \$130 filing fee for asylum applications was subsequently abandoned. Stewart M. Powell, *Many Salvadorans' Asylum to End*, SACRAMENTO BEE, Dec. 3, 1994, at A4.

<sup>58</sup> See Steve Albert, *Compassion vs. Control; Will New Asylum Rules Speed or Stifle Justice?*, LEGAL TIMES, Oct. 31, 1994, at 1 ("Other immigration attorneys claim the [Clinton administration's new asylum rules] won't speed up processing at all, but will only make the Immigration and Naturalization Service look good by shifting its backlog to the federal immigration courts of the Executive Office for Immigration Review.").

<sup>59</sup> The INS's predecessor, the Bureau of Immigration, was established in 1891. STATISTICAL YEARBOOK, *supra* note 30, at A1-3. The President's 1995 budget proposes \$2,100,000,000 for the INS, a 22% increase over its 1994 budget. *Full Text of Clinton's FY 1995 Budget*, DAILY REP. FOR EXECUTIVES, Feb. 9, 1994, available in LEXIS, Legnew Library, Allnws File.

inconsistent leadership.<sup>60</sup> Much hope is invested in new leadership at the INS, but that promise remains to be realized. Solutions currently offered by many commentators to these difficult and complex institutional management problems include the recent INS reorganization.<sup>61</sup> I am not a fan of policy-making by anecdote, but I can tell that you that last month a colleague of mine waited for six hours in line at the INS office in New York to obtain an appointment date. This may be an appropriate objective indicator of whether the INS is, indeed, providing adequate services.

In terms of asylum reform, some proposals are extreme, and certainly would have an uncertain effect in terms of the goals that are stated—fair and expeditious asylum determinations. But are resources sufficient to insure that these objectives are realized? Probably not. Immigration enforcement reforms that are expected over the next few months include strengthening border patrols, increasing the removal of criminal aliens, and better enforcement of employer sanctions.<sup>62</sup> A naturalization campaign to try to promote the assimilation of immigrants is also in the works.<sup>63</sup> To some extent this is reform by characterization—you simply do not have an immigration problem if you make non-nationals citizens, I suppose.

Today's discussions will focus on several key elements of the immigration debate. The first element is refugee protection. Is asylum, as some suggest, a Cold War luxury? The experiences of U.S. policy in regard to Haiti and China would provide appropriate recent examples of refugee protection trends. The international ramifications of U.S. policies are also worthy of note. The Haitian direct-return program resonated throughout the world last year as an innovation in refugee avoidance, perhaps to the great detriment of refugees' human rights.<sup>64</sup> The value of a comparative approach is

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<sup>60</sup> "In large part, the INS has lacked the leadership and resources to fulfill its missions." *Full Text of Clinton's FY 1995 Budget*, DAILY REP. FOR EXECUTIVES, Feb. 9, 1994, available in LEXIS, Legnew Library, Allnws File.

<sup>61</sup> "The President has a comprehensive plan which will reinvent the INS so that it can solve its problems and produce visible results." *Id.*

<sup>62</sup> *See id.*; see also Helton, *supra* note 44, at B7.

<sup>63</sup> *See, e.g.,* George F. Will, *The Assimilation Paradox*, WASH. POST, Aug. 11, 1994, at A31.

<sup>64</sup> *See* Gerald L. Neuman, *Buffer Zones Against Refugees: Dublin, Schengen, and the German Asylum Amendment*, 33 VA. J. INT'L L. 503, 503 (1993).

also worth considering. We will have an opportunity for comparative discussions today, including considerations of sister jurisdictions' criteria under the treaty-based general refugee standard. For example, under the treaty-based standard, refugees are defined as those persons with a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.<sup>65</sup> But cunning lawyering and case-by-case determinations have introduced to this definition a considerable jurisprudential gloss which varies from country to country.

Procedural reform, another element of the immigration debate, is also an issue in which comparative discussion may be appropriate. Several nations, including the United States, are considering imposing a fee for filing an asylum claim.<sup>66</sup> I suppose that, to some extent, how we deal with the costs of granting asylum will be a test of our notions of fairness and how we regard asylum, not so much in an international comparative context, but in our own system of constitutionalism and due process.

On issues of diversity, another central element of the current immigration debate, we have a chance for a spirited debate today—a nice way of saying a kind of verbal fistfight. I think that it is a challenge to accurately assess the costs and benefits of adding immigrants to our society. The diversity issue should be examined as it exists today, and how it will exist over a reasonable future period of time. Diversity is not purely an economic question. There are many intangible elements, which go to the very fabric of our national identity, that are involved in the issue. A genuine challenge, hopefully which we can address here today, is how we can usefully narrow the diversity debate. This may or may not be possible.

On issues of social policy, still other key elements of the debate, questions of constitutional entitlements, and constitutional

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<sup>65</sup> Convention Relating to the Status of Refugees, July 28, 1951, art. 1A(2), 189 U.N.T.S. 137, 152; Protocol Relating to the Status of Refugees, Jan. 31, 1967, art. I, 19 U.S.T. 6223, 606 U.N.T.S. 267, 268.

<sup>66</sup> See, e.g., *Making Refugees Pay*, N.Y. TIMES, Apr. 1, 1994, at A26 ("The new [INS] rules will impose the \$130 filing fee—which can be waived for inability to pay—and a six-month waiting period for work permits."). "The administration . . . dropped [the] plan to collect a \$130 fee from asylum applicants who could afford it . . . [D]etermining which aliens were poor enough for the fee to be waived would take too long." Powell, *supra* note 57, at A4.

dimensions, are implicated. Are we considering fundamental constitutional rights? Are those who are likely to be deprived of entitlements being singled out in a way that heightened equal protection scrutiny would not permit? Is it good or bad policy to limit access to health care? What broader impacts do immigration reform proposals have on American citizens? And certainly there is an ethical dimension to the immigration debate: Under what circumstances should we use alienage as a classification to manage or allocate essential forms of humanitarian assistance?

I think the outlook of immigration is murky. Granted, it is difficult to look ahead for a century, a half-century, or even five years. But what I suggest is that we probably can foresee a rather messy migration management exercise, characterized by, over the short term, a distinct absence of generosity. I also think that we should keep in mind that adjusting immigration policy is a relatively ineffective way to manage other policies, such as economic development, national security, health care, and criminal justice. These issues often are embedded in discussions of immigration policy, but usually in ways that obscure their true nature.

Immigration policy in this sense should be viewed on its own terms as a discrete policy area. It has profound implications regarding national identity, something which ordinary citizens have much to add to in terms of their perceptions and concerns. I think that we should draw, where appropriate, some comfort from comparative international studies and experiences. Fundamentally, I think that the future will involve an ongoing dialectic between human rights and evolving concepts of national sovereignty, which, necessarily, will be important subjects of elaboration in discourse both in the United States and elsewhere in terms of the matters we are discussing here today. Thank you.

