

permanent status were already within the United States on temporary visas, at the time that they had their status adjusted.³⁸

Most temporary visa categories generate little controversy. Exceptions to this rule exist, however, including the H-1B visa and the various visas for foreign students, and two temporary worker visas not discussed above—the H-2A visa for seasonal farm-workers, and the H-1C visa for nurses. The H-1B and H-1C debates—of which there have been many—repeatedly find one side (often U.S.-based labor organizations) arguing that the availability of a particular visa drives down American wages and costs American citizens jobs. Meanwhile, the other side (mainly businesses and business groups) argues that there is a labor shortage in a particular field and that dire consequences (damage to U.S. economic competitiveness and technological innovation or a deterioration in healthcare) will result if the visa is not retained or even expanded.

Other interests assert themselves as well, and they illustrate the range of issues raised even by temporary immigration. For example, the foreign student visa debate has featured an economic competitiveness versus national security dynamic, with the latter interest raised in the H-1B debate as well.³⁹ The H-1C issue additionally is controversial because of a concern that the immigration of healthcare workers can devastate healthcare in the developing world. Finally, regarding the H-2A farm-worker visa, a visa that has no numerical limitation but is relatively unused, the debate features charges by employers that the visa is impractical and that the bureaucracy administers it inflexibly, while labor groups contend that the visa leads to worker abuse and exploitation, as well as to harm to American workers. According to its participants, the H-2A debate also proves either that the United States needs undocumented workers to keep food from rotting on the vine (as there is no other practical way to find the needed workers), or it proves that the United States doesn't really need undocumented workers at all (because the relative disuse of the *unlimited* H-2A program simply shows that the employing farmers' main concern is not a fear of an unavailability of workers, but an aversion to paying the higher wages and benefits mandated by the H-2A program, which sets wages that are high enough so as not to undercut native labor).

Undocumented Immigrants

For immigrants in the United States and many other countries, regularization of status, especially the grant of permanent status, constitutes a powerful legal incentive to migration. Conversely, the prospect of irregular status—with its attendant string of legal sanctions and disabilities (for example, the threat of deportation, ineligibility for many government programs, limited employment options and labor rights, and greatly circumscribed political rights)—is

a powerful legal disincentive. But as the legal incentives do not always compel migration, so too the legal disincentives do not always deter it.

Other forces are at play as well. Migration researchers find that the flow of international migrants is maintained largely by the lure of work, which is reinforced and augmented by demographic pressures and the desire to escape repressive regimes.⁴⁰ Because researchers do not expect these forces to moderate any time soon, they do not see migration in general moderating, either.

To the extent that U.S. immigration law is designed to attract talented and educated persons from around the world—and, as we have seen, to a significant extent, it is—the expected persistence of the general trend toward migration should provide many benefits to the United States. However, the expected persistence of the trend also highlights a considerable problem for U.S. immigration policy. In particular, a discrepancy exists between the strength of the forces propelling migrants into the United States and the ability of the current law to recognize in some official way the reality of their presence. Hence, the problem of the undocumented immigrant.

Recent efforts to reduce this discrepancy have proceeded on two separate and very different tracks. The first track, exemplified by the Kennedy-McCain bill that was defeated in the Senate in 2006,⁴¹ would in a sense legalize the reality, by providing many undocumented immigrants a path to legalization and perhaps citizenship, through the payment of fines and adherence to other requirements. The second track, by contrast, seeks to roll back the reality, by continuing a several-decade emphasis on ever-increasing border enforcement efforts, additionally combined with a new focus on what has been termed an "attrition" strategy. The attrition strategy, which has seen a number of local legislative successes but some judicial defeats, expressly aims at making life unbearable for undocumented migrants. Its preferred methods for doing so include the introduction of locally implemented steep fines and license suspensions for hiring undocumented immigrants or for renting housing to them.

The reality that the first track seeks to recognize and the second track seeks to reverse is a considerable one. Undocumented migrants are estimated to constitute approximately four percent of the total U.S. population, or more than 11 million people. Until the economic recession beginning in 2007, this population was increasing by about 500,000 annually in the United States.⁴²

THE U.S. IMMIGRATION SYSTEM IN LIGHT OF CATHOLIC SOCIAL TEACHING

Does the immigration system outlined in the previous section work toward the globalization sought by Catholic social teaching? Does it facilitate a culture of

solidarity and authentic development? Addressing the system as a whole, the answer is mixed. This answer is somewhat misleading, however, in the same way that it is misleading for a man standing with his head in an oven and his feet in a bucket of ice water to say that, overall, the temperature is quite comfortable, thank you. Our mixed overall appraisal similarly hides wide discrepancies. In the discussion that follows, we shall see that Catholic social teaching views U.S. immigration law as deeply problematic in some ways and quite unobjectionable, if not imitable, in others.

The previous section noted many different categories of immigration. For purposes of measuring these categories against the demands of Catholic social teaching, we propose to place the categories into the following framework, which is of our own device but has ample if implicit support in the teaching. In particular, we will look at immigration—as Catholic social teaching does—from three temporal perspectives: (1) the (unacceptable) present; (2) the near-to-middle-term future; and (3) the long term. All types of migration may be viewed from every one of these perspectives, of course, but for any one type of migration, one perspective or the other usually stands out as the most important one to consider for that particular type of migration. In all events, as we shall see, one's emphasis of a particular temporal perspective for a particular type of migration influences but does not necessarily determine one's assessment of that migration.

Undocumented Immigration: Facing the Unacceptable Present

There are many ways to approach the topic of Catholic social teaching's views on undocumented migration. With great legitimacy, one could claim human dignity as the essential starting point for the discussion, or human dignity and the common good (or the universal common good) together. One could begin with the preferential option for the poor or the universal destination of goods, or both. Each of these characteristic principles of Catholic social teaching can be applied to migration issues, and each can yield rich insights.

Because this chapter is uniquely focused on economic migration, however, we thought we might take another tack; namely, we begin by considering Catholic social teaching's outlook on work. As the privileged expression of human dignity, work has "a special place in Catholic social thought."⁴³ In fact, said John Paul II, "work is a key, probably the essential key, to the whole social question."⁴⁴ In Catholic social thought, work is not regarded solely as an instrument of production, but rather has the three-fold value of being a way to "[achieve] fulfillment as a human being," a way to provide "a foundation for the formation of family life" ("since the family requires the means of sub-

sistence . . . normally gain[ed] through work"), and a way to contribute to the common good.⁴⁵ For these reasons, "[i]f is the ethical responsibility of an organized society to promote and support a culture of work."⁴⁶

When work is unavailable, or insufficiently satisfies the purposes of work, authentic development is jeopardized. Catholic social teaching takes it for granted that serious material deprivation places a person in such jeopardy, for it takes the very realistic view that access to a certain level of material goods is necessary not only to support oneself and one's family, but also is "absolutely indispensable" to "attain the highest purposes to which [one] is called,"⁴⁷ including the purpose of contributing to the common good.

A broad conception of the migratory right flows from these conclusions. John Paul II summarized that conception by stating that a person "has the right to leave his native land for various motives—and also the right to return—in order to seek better conditions of life in another country."⁴⁸ The logic of Catholic social teaching plainly demands that this right be extended above all to the world's poor (as well as to asylum seekers), for as a rule it is they who will possess the greatest and most urgent need for "better conditions."

Is this migration—"the migration of the desperate,"⁴⁹ in John Paul II's memorable phrase—unlimited in its moral claim? The answer is no; Catholic social teaching recognizes the right of a state to regulate migration in furtherance of the common good of the receiving community. This sovereign right is itself circumscribed, however, in several respects. Generally, immigration cannot be impeded for narrow or insubstantial reasons; rather, only "grave requirements of the common good, considered objectively," can justify impeding the right to migration.⁵⁰ More specifically, the grave requirements standard is not met when immigration is restricted "merely for the purpose of acquiring additional wealth,"⁵¹ in fact, at least for highly economically developed countries, even the protection of one's current level of prosperity cannot be the sole basis for excluding needy migrants.⁵²

Given the Catholic conception of the importance of work for authentic development, and the widespread acknowledgment that undocumented workers are driven to migrate by their desire to, and material need for, work, meeting the standard for exclusion set by Catholic social teaching is no easy task for persons in the developed world. Indeed, the task seems insurmountable if one focuses on the immediate and unacceptable present, in which billions of people are left to languish with severely diminished, if not non-existent, hopes of developing their human potential.⁵³ And, with respect to undocumented migrants, this *is* the focus of Catholic social teaching. Hence, the repeated efforts in the teaching to heighten the immediacy of our unacceptable present, by noting the great stakes *on every side* that a decision to exclude entails: "How can the baptized claim to welcome Christ if they close the door to the

foreigner who comes knocking?" asked John Paul II in one of his annual migration messages.⁵⁴ The undocumented immigrant, he stated in another, is "like that stranger in whom Jesus asked to be recognized. To welcome him and to show him solidarity is a duty of hospitality and fidelity to Christian identity itself."⁵⁵ Reiterating the point again, a third message states that

Jesus' demanding assertion: "I was a stranger and you welcomed me" . . . retains its power in all circumstances and challenges the conscience of those who intend to follow in his footsteps . . . [I]n every human being [the believer] knows he is meeting Christ, who expects to be loved and served in our brothers and sisters, especially in the poorest and neediest.⁵⁶

Many more citations could be made to the same effect. In all of them, the unmistakable point is that by refusing to aid in the development of those trying "to escape from a life with no future,"⁵⁷ who even beyond the limits "imposed by law"⁵⁸ legitimately "expect our help in fulfilling their human potential,"⁵⁹ we not only guarantee others' lack of authentic development, we concomitantly reveal distortions in our own development.

Even more disturbingly revelatory, from the perspective of Catholic social teaching, is the recent popularity of "attrition" legislation expressly designed to make life unbearable for undocumented immigrants. Catholic leaders have criticized such legislation in unusually sharp language. Edward J. Slattery, the Bishop of Tulsa, for example, condemned one such law—Oklahoma's House Bill 1804—as creating "an atmosphere of repression and terror."⁶⁰ From the perspective of the unacceptable present, it is easy to see why House Bill 1804—which, among other obstacles to assistance and welcome, made it a felony to knowingly shelter or transport undocumented migrants and set up barriers to hiring them—was the target of such highly charged criticism. A staple of Catholic social thought is to emphasize the necessity for seeing and not ignoring the poor; the Gospel parable of the rich man who failed to note the beggar Lazarus at his gate is commonly cited to illustrate the point.⁶¹ At its worst, attrition legislation would by force of law command the conduct that the parable forbids while, at its best, the legislation would merely encourage the forbidden behavior. It would do this, moreover, in an attempt to discourage a population that overwhelmingly consists not of beggars, but of laborers, able, eager, and willing to work in pursuit of their own human development.

How far this treatment is from Catholic social teaching, which demands not only engagement with the poor immigrant and an attempt to help him, but also nondiscrimination, so that the immigrant is not "placed at a disadvantage in comparison with the other workers . . . in the matter of working rights,"⁶²

How different is this punitive approach, which seeks to make the undocumented immigrant an untouchable in various ways, to the U.S. Bishops' support for providing undocumented immigrants a pathway to full political and social participation, activities necessary for authentic development. And this fierce determination to drive the migrant away by depriving him of work and housing—how removed it is from the Church's commitment to stand in solidarity with those "without rights, without any security," who "are unable to find a stable home anywhere."⁶³ We said earlier that Catholic social teaching finds itself in opposition to some aspects of U.S. immigration law and in agreement with some others; nowhere is the gap between the two viewpoints any greater than it is with undocumented migration. And as attrition legislation proliferates, the gap continues to widen.

What can justify such treatment and such legislation? Proponents of attrition legislation typically state that they are not opposed to immigrants, they are opposed only to illegal immigrants. In an effort to demonstrate the strength and legitimacy of this rationale, proponents sometimes add a statement along the lines of "it does not matter if we are talking about farm workers from Mexico or wealthy English Lords: illegal is illegal." The effect is thus to dismiss distinctions that, according to Catholic social teaching, should make all the difference. The argument calls to mind Anatole France's famous statement mocking "the majestic egalitarianism of the law, which forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal bread." Catholic social teaching says it matters that undocumented workers come not in search of a respite from the duties of the manor, but in search of work they otherwise cannot find, in order to overcome the material deprivations that otherwise would thwart their human potential.⁶⁴ The majestic egalitarianism of "illegal is illegal" treats these realities as irrelevant.

The discounting of the unacceptable present is in the service of a different concern—maintaining the primacy of the rule of law—and stresses a different time horizon. The fear is the development over time of a culture of disrespect for the law. Such a development would indeed have serious and unwelcome consequences, which should not be understated.⁶⁵ It is by no means clear, however, that failures of compliance threaten the law more than the law's failure to come to terms with the consequences of the global jobs crisis. To the extent that the era of Prohibition saw the law fall into disrepute, for example, the judgment of history is that the root problem lay more in the Eighteenth Amendment itself than with the speakeasies and bootleggers who evaded it. In all events, the commercial imperatives of many businesses that employ large numbers of undocumented immigrants—landscaping, house-keeping, and various forms of caretaking, for example, among others that require a nontrivial level of intimacy and trust—are entirely inconsistent with

the development of a community reputation for law-breaking. This fact alone suggests that, if the law generally should fall into disrepute, the source of the trouble will not be traced to communities dominated by those workers.

Indeed, the clear position of the American Catholic Church is that it is the immigration status quo itself that breeds disrespect for the law and risks bringing it into disrepute.⁶⁶ The Church's position is based not only on a recognition of the untenable discrepancy between the law as it is and the strength of the forces that drive migration, but also on the recognition that—at least to some extent and in some instances—the realities that drive poor persons to migrate stem from the economic globalization that the United States and other developed nations have created and shaped to their benefit. Given this latter ground, the Church's advocacy for a legislative solution that would regularize the status of most undocumented immigrants is accordingly justifiable as a matter of restorative as well as distributive justice. These justified concerns and the legitimacy of undocumented migrants' yearning for authentic development lend great support to the Church's position that such regularization would best assure continued respect for the general rule of law, by making the specific law of immigration more worthy of respect.

Skilled and Educated Migrants: Toward Authentic Development Everywhere and a Future of Equals

While a gross mismatch exists between the U.S. immigration law and the supply of, and demand for, unskilled and lesser-skilled workers, the alphabet soup of visas noted in the previous section suggests the U.S. legal system does a much better, if not a perfect, job of accommodating market realities with regard to the immigration of skilled and educated workers. In its analysis of this migration, compared to its treatment of undocumented migration, Catholic social teaching focuses less on the circumstances of the immediate situation and more on future consequences.

Migration by skilled and educated persons to the United States for the purposes of work occurs in four contexts: (1) temporary migration from another developed country; (2) temporary migration from a developing country; (3) permanent migration from another developed country; and (4) permanent migration from a developing country. As for the first three groupings, Catholic social teaching is generally uncritical and in some respects favorable. In these cases, relevant Church documents tend to reflect mostly pastoral concerns, such as how to minister effectively to migrants and how to meet migrants' spiritual, cultural, and social needs.⁶⁷ The fourth context, regarding permanent migration from a developing country to a developed country, is another