

Proceedings: American Academy of Arts and Sciences, San Diego

Thursday, February 9, 2017

By Michael Nicholson (University of California, San Diego)

On Thursday, February 9, 2017, the San Diego Program Committee of the American Academy of Arts and Sciences hosted a discussion on the future of U.S. immigration policy. First, Dr. Tom Wong, Assistant Professor of Political Science at the University of California, San Diego, discussed the politics of immigration reform under the Obama and Trump administrations, placing recent debates over immigration in their historical context. Second, Dr. David FitzGerald, Professor of Sociology, Gildred Chair in U.S.-Mexico Relations, and Co-Director of UCSD's Center for Comparative Immigration Studies, discussed U.S. policy toward asylum seekers and refugees in light of Trump's January executive orders.

Dr. Wong emphasized parallels between historical and present debates over U.S. immigration policy, arguing that these debates have been undergirded by an ongoing lack of consensus in U.S. society about what it means to be "American." He started by summarizing the history of nationality-based immigration restrictions in the U.S. The first nationality-based restrictions took the form of several late 19th century laws designed to restrict Chinese migration—the Chinese Exclusion Act of 1882 and the Page Act of 1875. In 1907, the government convened a special Congressional commission on immigration—the Dillingham Commission—to evaluate the integration potential of immigrant groups, particularly Southern and Eastern Europeans. Much like today, members of Congress debated whether immigrants of particular nationalities were likely to take advantage of public benefits, increase crime, and refuse to integrate into U.S. society. The Dillingham Commission set the stage for the enactment of the National Origins Quota System, which restricted immigration by nationality from 1921 until 1965. At the height of the Civil Rights movement in 1965, strict nationality quotas were abolished, setting the stage for today's immigration policies which emphasize skills and family relationships with U.S. citizens.

Despite the rollback of nationality quotas, Wong contended, the unresolved question of what it means to be American remains at the heart of U.S. immigration debates. Whereas debates about who belongs in America once focused on ethnicity, however, much of the modern debate focuses on immigrants' legal status. In 2005, Wong argued, the proposal of H.R. 4437, the "Border Protection, Anti-Terrorism, and Illegal Immigration Control Act" or "Sensenbrenner Bill" ignited an ongoing debate about the rights of undocumented migrants that has driven an enduring wedge between Democrats and Republicans. This bill, which was defeated in the Senate, would have made undocumented migration a felony and criminalized association with undocumented migrants. It inspired the mobilization of activists calling for a path to citizenship for undocumented migrants, planting the seeds for today's immigrant rights movement. This

mobilization prompted a backlash by Conservatives, further widening the gap between Democrats and Republicans on immigration reform.

Wong's research examines how partisanship influenced Congressional voting on immigration policy between 2005 and 2014. Examining 24,000 Congressional votes, he finds that Republicans are 3.7 times more likely than Democrats to vote for bills restricting immigration. As a corollary, Democrats are more than four times as likely as Republicans to support liberal immigration legislation (e.g., legislation calling a path to citizenship for undocumented migrants, limiting migrant detention, or increasing highly-skilled immigrant admissions).

Wong also examines whether members of Congress are more likely to support liberal immigration policies when many immigrants reside in their jurisdictions. Interestingly, he finds that Republicans' voting on immigration is not significantly influenced by their districts' demography, while Democrats who live in high-immigration district are more likely to support liberal immigration policies than their counterparts elsewhere.

Ultimately, Wong's findings suggest that partisan divisions over immigration are deeply entrenched. The gap between Democrats and Republicans is widest with respect to granting undocumented immigrants a path to citizenship. The two parties converge, however, on many aspects of border security and immigration enforcement.

Drawing from his research, Wong next offered some predictions about how immigration policy might evolve under the Trump administration, given that the GOP currently controls the presidency and Congress. Wong prognosticated that the coming years may see intensified border security and immigration enforcement. Immigration detentions may accelerate and Sanctuary Cities may face increasing penalties. It is however unlikely, he contended, that reforms to the legal admission system will take root, or that undocumented immigrants will be offered a path to citizenship, in the near future. Wong also noted that conservative proposals that failed in past Congresses—notably, the institution of English as an official language and the abolition of birthright citizenship—may become flashpoints under Trump's administration as the debate over what it means to be "American" deepens.

Next, Dr. FitzGerald discussed U.S. asylum and refugee policy in light of Trump's recent executive orders. He emphasized that the management of inflows of asylum seekers depends on the cooperation of other governments and stressed the importance of executive restraint for securing cooperation on migration.

FitzGerald began by noting that only one percent of the world's estimated 21 million forced migrants are resettled in any given year. By and large, American and European reluctance to take in refugees has led many forced migrants to flee to the U.S. and Europe without prior authorization, instead requesting asylum upon or after arrival. An array of international laws—most notably the 1951 U.N. Refugee Convention and the 1967 Protocol—prohibits states from

returning migrants to countries where they will face persecution on the basis of their religion, nationality, social group membership, or political beliefs. Rather than turning away asylum seekers and potentially contravening international law then, many states, including the U.S., have embraced policies designed to prevent would-be asylum seekers from reaching their borders in the first place.

FitzGerald emphasized that cooperation with Mexico has enabled the U.S. to limit asylum inflows from Central America for the last 30 years. Mexico deported 3.27 million individuals, mostly Central Americans, between 1989 and 2015. The U.S. provides substantial support to Mexican immigration enforcement, training border agents, providing military equipment, and building migration databases. In light of Trump's executive action on border security, FitzGerald noted that immigration from Central America could increase if U.S. cooperation with Mexico unravels.

The U.S. has also attempted to limit arrivals of would-be asylum seekers through maritime interdiction. Reagan's Executive Order 12,324 provided for the interdiction of ships at sea with the goal of repatriating undocumented migrants. The U.S. Coast Guard was granted the authority to repatriate individuals when deemed appropriate. Under this policy, only those with a credible case for asylum were brought to the U.S. while others were repatriated. Following large inflows from Haiti, in 1992 the Bush Administration enabled the Coast Guard to repatriate migrants intercepted at sea without screening them. The 1993 Supreme Court decision in the case of *Sale vs. Haitian Centers Council* established the legality of repatriating immigrants intercepted outside of U.S. territorial waters.

In January 2017, Obama abolished the "Wet Foot, Dry Foot" program. This program, based on a 1994 bilateral agreement between Washington and Havana, authorized the U.S. to return vessels intercepted in U.S. waters to Cuba. Immigrants that successfully arrived on U.S. soil, however, were considered legal entrants and permitted to apply for legal permanent residence.

The U.S. has also attempted to stave off asylum inflows by detaining intercepted migrants in "offshore facilities" such as Guantanamo Bay. As Guantanamo Bay is not sovereign U.S. territory, migrants detained there lack the constitutional rights they would possess on the U.S. mainland.

Ultimately, however, much of the burden of keeping would-be migrants at arm's length is shouldered by airline and shipping staff and visa officers stationed abroad. The government has instituted sweeping preclearance programs under which airline and ship passengers must be cleared and checked against travel databases prior to traveling to the U.S. Further, following the success of a pilot program in Canada, U.S. Customs and Border Protection is increasingly posting staff abroad to inspect passengers prior to their departure. The government also levies sanctions on ships and airlines carrying passengers without proper documentation. Passengers

are also required to obtain U.S. visas in advance, and airline staff members check that passengers are properly authorized prior to their departure.

FitzGerald highlighted that such policies' effectiveness at limiting undocumented inflows of asylum seekers depends on sending states' willingness to cooperate with the U.S. Sending states must be willing to participate in information sharing about passengers, willing to cooperate with U.S. immigration agencies, and willing to accept repatriated migrants.

Questions and Answers

Dr. David Lake, the moderator, asked the speakers why the U.S. is so reluctant to take in asylum seekers. He also asked how the discussion of what it means to be a "good American" factors into asylum admissions.

David FitzGerald answered that Americans have long been hesitant to accept refugees. Past refugee groups, including Jewish, Hungarian, and Vietnamese refugees, were unpopular with the American public. Cold War era refugee admissions were guided by foreign policy logic—essentially, accepting people fleeing Communist countries embarrassed the Soviet Union.

David Lake asked if Congressional voting on asylum and refugee policy toe partisan lines in the same manner as general immigration reform policies. Tom Wong answered that the 1980 Refugee Act gives the President wide latitude over refugee admissions. Obama increased admissions of Syrian refugees to 100,000, but it is likely that Trump will limit refugee admissions to the 50,000-person baseline specified in the 1980 Refugee Act.

An audience member noted that many descendants of immigrants are lashing out against new arrivals. She asked whether it is likely that the descendants of Mexican and Latino immigrants may turn against Muslims. Wong answered that, although historically many second- and third-generation immigrants resist new immigration waves, second- and third-generation Latino immigrants may be more receptive to Muslims due to the backlash they witnessed against first-generation.

A second audience member, Ted Case, asked if scholars and those on academic visas have a higher chance of entry. Wong noted that Jeff Sessions has been pushing to change the U.S. legal admissions system to a point-based system privileging skilled migration. It is probable that family admissions and diversity admissions (the green card lottery) will be cut more than skilled immigrant admissions, although it is as yet unclear how the legal admission system will change in the near future. FitzGerald emphasized that the legal cases against Trump's travel ban rested on the fact that state university systems will lose out if postdocs, students, and faculty are barred from entering the U.S. The potential losses that state universities might experience due to the travel ban were found to give states standing to sue the federal government.

A third audience member, Tom Levy, noted that Trump has thrown the identity and core principles of the Republican Party into question. He asked whether policymakers might change their views on immigration. Wong answered that although some fissures may occur in Congress, particularly over the cost of detaining immigrants (as was the case in the debates over HR 4437), divisions over Executive Orders are more likely. Divisions among Republicans may be especially likely to take root if bills proposing the abolition of birthright citizenship, the status of Spanish relative to English, etc., come up for debate.

Gordon Gill asked FitzGerald to confirm that only 1 percent of refugees in the world are resettled. FitzGerald noted that most forced migrants—several million—currently reside in countries such as Turkey, Jordan, Lebanon, Pakistan, Iran, and Kenya that border conflict zones. Many refugee camps have hosted several generations of refugees. The U.S. provides 40 percent of the funding of the United Nations High Commissioner for Refugees, which administers most refugee camps. It is unclear what will happen to refugees living in these camps if the U.S. cuts funding to the United Nations.