

Illegal Immigration

An Essay
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PERHAPS the sentiments contained in the following pages, are not yet sufficiently fashionable to procure them general favor; a long habit of not thinking a thing wrong, gives it a superficial appearance of being right, and raises at first a formidable outcry in defence of custom. But tumult soon subsides. Time makes more converts than reason.

—Thomas Paine, *Common Sense* (1776)

Illegal Immigration

by Daryl M. Williams¹

This essay visits my views about immigration. It was originally provoked by (1) the furor over Arizona's immigration laws, S.B. 1070, (2) the decision by Judge Susan R. Bolton² granting a preliminary injunction in the federal suit filed by the United States, and (3) my desire to think critically about an issue that is so polarizing; indeed, most in my family join in what is accepted as the populist view in Arizona and much of the United States. I first wrote this essay in July 2010 but have added to it as events have provoked further elucidation and I have become better informed.

My desire to think critically about this issue is partially motivated by the fact that many, perhaps most, of my friends and family are strong supporters of both securing Arizona's border and deporting immigrants who do not have papers as a condition precedent to thinking about immigration reform. Amnesty is anathema to most of my friends. The typical refrain I hear is that the law must be enforced because we are law-abiding people, "What part of illegal don't you understand?" I do not think the issues are so clear or singular, so I want my friends and my family to know why I do not join in their *démarche*.

I

I do not understand the policy that sustains the current immigration laws in the United States. There is good reason, of course, to have secure borders so that those intent upon mischief are excluded from the country, but I struggle to understand the basis of restricting those who want to come to the country to work and to contribute to the economy of the United States while

¹I am a commercial trial lawyer in Phoenix, Arizona. I have been practicing law in Phoenix since I graduated *cum laude* as a member of the charter class of the law school at Brigham Young University in 1976. My BYU undergraduate degree, with honors, is in economics. My practice has been limited to business and commercial matters, so my business/economics background has served me well. I have tried some of the most complicated and lengthiest trials in Arizona's history, including the ten-month long jury trial involving the \$577 million-dollar failure of the Baptist Foundation of Arizona, which was based on claims of securities/accounting fraud. I received a verdict in May 2010 for more than \$47 million involving an international commercial transaction; that amount owing on judgment when it was eventually entered exceeded \$52 million.

²I have appeared before Judge Bolton for both trials and motion practice. She is a fine jurist. I was disappointed when President Clinton appointed her to the federal bench because she left the superior court bench (state court trial bench) where I try most of my cases. She does not have a liberal agenda, nor does her decision reflect a liberal bias or disposition. She is not an activist judge. She is fair minded and scholarly. The fact that she was appointed by President Clinton has been used to explain why she invalidated major parts of S.B. 1070, but such criticism tells more about those who attempt to "understand" her decision than it does about the Honorable Susan R. Bolton.

sharing the basic ideals that have made our country strong from the start. Independence. Freedom. A free-enterprise system that rewards efficiency and lowest cost with the greatest share of the market. An environment where a family can be reared in safety and where one can worship or not according to the dictates of conscience. The American dream.

Immigration laws have a long history in the United States, but it was not until the Chinese Exclusion Act of 1882 and the Immigration Act of 1924 that there was discrimination against a particular people or an annual quota and national-origins scheme. Early immigration laws reflect blatant and articulated prejudice against those with particular religious beliefs and those from certain countries.³ The national-origins test found in the 1924 act and the Oriental Exclusion Act of 1924, which kept anyone from Asia out, but the Asian exclusions were eliminated in the 1940s as an expediency of the war. The national origins test in the 1924 act was not repealed until the enactment of the Civil Rights Act of 1964. National origin was replaced in 1965 with a first-come, first-served policy and quotas.⁴

³Benjamin Franklin railed against the Germans in the 1750s, wanting to keep America white and English-speaking. He did not like the “swarms” of Germans flooding Pennsylvania who did not bother to learn the language so that there had to be bi-lingual signs. He thought they could never be assimilated. Samuel F. B. Morse telegraphed the same message, but he was against Catholics and antebellum Irish immigration. Morse was a Nativist when he ran for mayor of New York in 1836. “Nativist” comes from “Native American,” which referred to white people born in America, not American Indians. Nativists formed the “American Party” in the mid-1850s, a political arm of the Know-nothing movement (“I know nothing by my Country, my whole Country, and nothing but my Country”) that was especially opposed to immigration of the Irish and Catholics. The political cartoon shown in Fig. 1 has Uncle Sam saying, “Nothing doing.” The sign over the door in the fence says “Immigrants.” and the labels over the heads of the excluded says “Rome,” “Rum,” and “Red,” meaning the drunken Irish Catholics.



Figure 1 Political Cartoon from 1928

⁴The first immigration act was the Naturalization Act of 1795, which restricted citizenship to “free white persons” who had resided in the United States for five years and renounced their allegiance to their former country. The Alien and Sedition Act of 1798 permitted the President to deport any foreigner he deemed dangerous (this act expired in 1801 before its Constitutionality was tested), and the Naturalization Act was amended that same year to require residency for fourteen years. The residency period was reduced to five years again in 1802. Importation of slaves was prohibited in 1808. The Treaty of Guadalupe Hidalgo, which concluded the Mexican War in 1848, extended citizenship to about 80,000 Mexican residents of the Southwest. The Naturalization Act of 1870 allowed only whites and those of African descent to become citizens; it barred Asians.

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The Chinese Exclusion Act of 1882, signed into law by President Chester A. Arthur, was the first significant law restricting immigration into the United States. The rays of light emanating from the coolie's head in Fig. 1, who holds an opium pipe in his left hand, read, counterclockwise from the three o'clock position, "Filth," "Immorality," "Diseases," and "Ruin to" "White" "Labor." President Arthur vetoed the first version of this act, but his veto caused a fracas in California, where the political cartoon in Fig. 1 was published, that he signed a slightly watered-down version of the law. This act barred Chinese from entering the country on the grounds that they endangered good order. It was set to expire in 1892 but was extended by the Geary Act until 1902, when it was extended again. The 1902 extension added restrictions requiring each Chinese resident to register and obtain a certificate of residence, without which he faced deportation. A Chinese person could not re-enter the United States if he left, and state and federal courts were proscribed from granting Chinese citizenship; still, the courts could be used to deport them. It was not until 1943, when the United States was an ally of Nationalist China, that the Chinese exclusion law was repealed, granting the right to immigrate to 105 Chinese each year and giving Chinese within the United States the right to seek naturalization.



Figure 1 Political Cartoon from *The Wasp*, 1881.

The Anarchist Exclusion Act of 1901 was provoked by the assassination of President William McKinley by a Polish anarchist and allowed the exclusion of immigrants on the basis of political opinions. The Expatriation Act of 1907 declared that an American woman who married a foreign national lost her citizenship.

The 1920s brought a different type of immigration legislation. The Quota Act of 1921 limited immigration to three percent of the number of a nationality group in the United States, and the Johnson-Reed Act of 1924 limited European immigration to two percent of the particular nationality group in the United States. The Immigration Act of 1924 was sponsored by Congressman Albert Johnson and Senator David Reed found its underpinnings in eugenics or racial purity, a trend that affected Germany's treatment of Jews, hopefully the nadir of this racial purity stuff. Reed told the Senate the bill was for "those of us who are interested in keeping American stock up to the highest standards—that is, people who were born here." The Oriental Exclusion Act of 1924 mooted the still-on-the-books Chinese Exclusion Act of 1882 because it effectively foreclosed any immigration from Asia, including foreign-born wives and children of U.S. citizens of Chinese ancestry (this act was effectively repealed in 1943, and all restrictions on Asians acquiring citizenship were abolished by the end of the 1940s). The Tydings-McDuffie Act of 1934

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Unfortunately, the current scheme does not work. The economic incentives that drive immigration conflict with the laws designed to regulate it. Enacting laws that conflict with economic forces in a market economy is akin to enacting laws that make gravity illegal or forbid the tides at the seashore.⁵ Realities cannot be legislated out of existence, so people ignore a law that flies in the face of reality, because, of course, the law makes no sense. Attempts to enforce such a law will always result in a black-market, and frustration with a black-market by those trying to enforce the law will lead to the what-part-of-illegal-don't-you-understand mantra. Laws, however, must be based in reality if they are to be enforced. Moreover, there must be, *ipse dixit*, a benefit to the market if the market is creating a tidal wave of demand, and that means we are better off when this demand is fulfilled. Indeed, the only way to staunch such a wave of demand would be to eliminate the system creating it: the free-market.⁶

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granted independence to the Philippines to be effective on July 4, 1946, but it also stripped Filipinos of their status as U.S. nationals while limiting immigration of anyone from the Philippines to fifty per year (Filipinos were reclassified as citizens in 1942 so they could serve in the military). The Internal Security Act of 1950 barred admission to Communists who were likely to prejudice the national interest. The McCarran Walter Immigration Act of 1952 affirmed the national-origins quota system and limited annual immigration to one-sixth of one percent of the population of the continental United States as it existed in 1920. The Immigration and Nationality Act of 1965 repealed the national origins quota system. The Immigration Act of 1990 increased the quota of immigrants allowed into the United States to 700,000 per year.

⁵Cnut the Great was king of Denmark, England, Norway and parts of Sweden at the end of the first millennium; he died AD November 12, 1035. There is a legend that he set his throne by the seashore and commanded the tides to halt so his feet and robes would not get wet. Well, the tide did not obey him, and he is reputed to have said something like, "Let all men know how empty and worthless is the power of kings, for there is none worthy of the name, but He whom heaven, earth, and the sea obey by eternal laws." *Cnut the Great* in Wikipedia, <http://wikipedia.org> (accessed March 12, 2011).

⁶One of the greatest anomalies of the immigration debate is the truculent drum-beating by self-proclaimed conservatives even though conservative think tanks and strong advocates of free enterprise eschew limitations on immigration. The Cato Institute is one of the most conservative of the conservative think tanks. Its conclusion relative to the importance of immigration in the United States, illegal or otherwise, is as follows:

The overriding impact of immigrants is to strengthen and enrich American culture, increase the total output of the economy, and raise the standard of living of American citizens. Immigrants are advantageous to the United States for several reasons: (1) Since they are willing to take a chance in a new land, they are self-selected on the basis of motivation, risk taking, work ethic, and other attributes

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beneficial to a nation. (2) They tend to come to the United States during their prime working years (the average age is 28), and they contribute to the workforce and make huge net contributions to old-age entitlement programs, primarily Social Security. (3) Immigrants tend to fill niches in the labor market where demand is highest relative to supply, complementing rather than directly competing with American workers. (4) Many immigrants arrive with extremely high skill levels, and virtually all, regardless of skill level, bring a strong desire to work. (5) Their children tend to reach high levels of achievement in American schools and in society at large.

<http://www.cato.org/immigration> (accessed July 29, 2010)(This site has links to several Cato studies on this topic that support the foregoing general conclusions; *see*, in particular, Dixon, Peter D., and Rimmer, Maureen T., “Restriction or Legalization? Measuring the Economic Benefits of Immigration Reform,” Trade Policy Analysis no. 40 (August 13, 2009), http://www.cato.org/pub_display.php?pub_id=10438).

Milton Friedman and his wife, Rose Friedman, loved free enterprise and wrote a book about the inimical effects of too much government, a theme dear to a conservative’s heart. Friedman won the Nobel Prize in economics, and his theories formed the basis of President Reagan’s approach to the economy. He was an arch-conservative who believed in open borders:

The United States is another striking example. There were tariffs, justified by Alexander Hamilton in his famous *Report on Manufacturers* in which he attempted—with a decided lack of success—to refute Adam Smith’s arguments in favor of free trade. But they were modest, by modern standards, and few other government restrictions impeded free trade at home or abroad. Until after World War I immigration was almost completely free (there were restrictions on immigration from the Orient). As the Statue of Liberty inscription has it:

*Give me your tired, your poor,
Your huddled masses yearning to breath free,
The wretched refuse of your teeming shore.
Send these, the homeless tempest-tossed to me:
I lift my lamp beside the golden door.*

They came by the millions, and by the millions they were absorbed. They prospered because they were left to their own devices.

A myth has grown up about the United States that paints the nineteenth century as the era of robber baron, of rugged, unrestrained individualism. Heartless monopoly capitalists allegedly exploited the poor, encouraged immigration, and then fleeced the immigrants unmercifully. Wall Street is pictured as conning Main Street, as bleeding the sturdy farmers in the Middle West, who survived despite the widespread distress and misery inflicted on them.

The reality is very different. Immigrants kept coming. The early ones might have been fooled, but it is inconceivable that millions kept coming to the

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A *Wall Street Journal* opinion article contrasts Utah's free-market approach to immigration, Utah being one of the most conservative states, with Arizona's reactionary populism in the following terms:

Utah's Republican-dominated legislature is weighing several guest-worker measures that would let market forces determine the level of foreign labor in the state work force. Apparently, there are still some conservative lawmakers left who, in the tradition of Ronald Reagan, don't abandon free-market principles in favor of reactionary populism when the topic turns to immigration.

. . . .

Seventy years ago, the country faced labor shortages in agriculture, so growers turned to the Roosevelt administration for help. Pressure from the Texas and California delegations in Congress led to the creation of the Bracero Program

As the program was expanded in the postwar years to meet the labor needs of a growing U.S. economy, illegal border crossings dropped dramatically. Between 1953 and 1959, illegal immigration from Mexico fell by 95%. A 1980 Congressional Research Service report notes that, "without question," the Bracero Program "was instrumental in ending the illegal alien problem of the mid-1940s and 1950s."

. . . . [M]any in Utah are convinced that an expansion of legal immigration quotas should be part of any solution. History is on their side.

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United States decade after decade to be exploited. They came because the hopes of those who had preceded them were largely realized. The streets of New York were not paved with gold, but hard work, thrift, and enterprise brought rewards that were not even imaginable in the Old World. The newcomers spread from east to west. As they spread, cities sprang up, ever more land was brought into cultivation. The country grew more prosperous and more productive, and the immigrants shared in that prosperity.

Friedman, Milton & Rose, *Free to Choose* (New York: Avon Books, 1980) at 27–28.

Riley, Jason L., "Utah Seeks a Better Way on Illegal Immigration," *Wall Street Journal* (March 5, 2011).⁷

It is important to bear in mind that the nation's immigration laws are not criminal laws in the traditional sense. Criminal laws have traditionally required a particular type of evil mind, *mens rea*, and intent to injure, *nocendi voluntas*, that must animate deliberate, anti-social acts. The punishment associated with a crime is a means (1) to achieve social control, if you view criminality from a social science perspective, or (2) vengeance and a means for protecting the public, if you are traditionalist. An individual who crosses the border "illegally" to get a job to earn money for his family is not engaged in anti-social behavior that is paradigmatically criminal; i.e., some act that offends and endangers the social order of society: killing people, burning down buildings, blowing things up, etc. Federal immigration laws recognize the non-criminal character of this "illegal" activity because they involve civil wrongs based on objective conduct without regard to intent. Federal law has not proposed to put someone in prison for a violation of civil immigration laws, so making an "illegal" a criminal offends the conceptual underpinnings and purposes of criminal law.⁸

⁷Jason Riley is a member of the *Wall Street Journal* editorial board, and the author of a book making the case for open borders, Riley, Jason L., *Let them In, The Case for Open Borders* (New York: Gotham Books published by Penguin Group (USA) Inc., 2008). The flyleaf of the book says it is "A measured argument that cuts through the cant and clamor to reveal why increased immigration is essential for keeping America strong." Mr. Riley's book is not a source for any of the opinions in this essay.

⁸Mann, Kenneth, *Punitive Civil Sanctions: The Middleground Between Criminal and Civil Law*, 101 YALE L.J. 1795 (June 1992), gives an overview of the conceptual differences between civil and criminal law, differences that infuse almost all aspects of these different types of proceedings, including the standards for burden of proof, the presumption of innocence, standards for admission of evidence, the number and agreement of jurors for a trial, etc. It is anomalous for individuals who believe in limited government to make things crimes because crimes involve the government in enforcement activities that limit individual freedoms, a good thing if the conduct so limited is anti-social, but a bad thing if the "criminals" are made so only because of some objective fact or status without anti-social behavior, like Jews in World War II. This is the reason some have been heard to argue that the police should not be bothered with immigration issues when there are real criminals who should be the focus of their efforts. A policeman stopped an undocumented worker in Phoenix during the summer of 2010 when he was driving home at night with a tail light out. He did not have a driver's license, but his companion in the car had one from Mexico. The policeman gave him a warning for the tail light and had the one with the Mexican license drive; he sent them on their way. A ride-along reporter for *The Arizona Republic* asked the officer why he did not arrest the driver. The officer said the guy was not really doing anything wrong; he was just a hard-working, tired man on his way home to his family.

II

I have heard many arguments in favor of strictly enforcing the current immigration laws. The major ones are as follows: (A) Particular groups of people should be kept out of America, whether Irish or Catholic or Asian or Hispanic or whatever. (B) Restrictions on the labor pool maintains work for citizens. (C) Some argue that the economy of the United States is not sufficiently strong to support all of these poverty-level workers or that only the select, like the well educated or specially skilled, should be permitted to immigrate. (D) There are arguments predicated on the notion that these people come to America to take advantage of social programs for which they do not pay. Finally, (E) there are arguments that immigrants increase crime. None of these arguments survive thoughtful analysis.

A. Keep Them Out and Keep America Like It Is

There are many people who like America the way it is, so they do not want things to be changed by an influx of foreigners. The history of America's immigration laws recounted in part I, *supra*, footnotes two and three in particular, shows that Nativism is not a not a new phenomenon in America, but our history shows the potential danger of this approach. Change is always difficult, but the American melting pot is part of the kitchen of change where immigrants from diverse groups have always seasoned the whole and made it better. The resulting stew is what has always made America the greatest nation in the world. Why would anyone want to change this recipe by stagnating America? America is a dynamic nation, not a stagnant, inward-turned group with wagons circled to defend some feared onslaught by a swarm of people, to use the words of Benjamin Franklin. Circling the wagons bespeaks fear. Faith in America's history of success is faith in change. America is change. Why change that?

I have a close friend with whom I have discussed immigration a great deal; he is settled on his basis for wanting fences at our southern borders like the fences keeping out the Irish Catholics depicted in footnote three, *supra*. He says, "I like America the way it is. 'They' will outnumber us if 'they' keep coming. I do not want these immigrants changing things."⁹ It is probably a good thing that my friend does not know some of my ancestors who immigrated here as early as the 1600s because "they" may not have been acceptable to him. The problem with his circle-the-wagons argument is that it seeks to preserve a *status quo* that is inconsistent with both our history and the very ideals upon which our country was established. The *status quo*, keeping Amer-

⁹He is not a proponent of fences along the border with Canada and can offer no reason why the Mexican border is his focus other than the fact that he does not want the Hispanics to change America, and he thinks that Hispanics present a greater crime problem. The Canadians, I guess, are like us, and the Mexicans are not, so far as his they-will-change-us rationalization is concerned. He is unable to find the fantastic statistics on crime upon which he casually relies to support the same arguments made against the Germans, Chinese, Catholics, and Irish in years gone by. The actual reports of law enforcement agencies, which are at odds with the heightened-crime mantra, are treated in part II, E, *infra*.

ica like it is right now, is death to the new blood that has always rejuvenated American and kept it vibrant, and it is death to America's market economy, an economy that thrives on increased and varied demand, which spurs innovation and advances. Maintaining the *status quo* is a change from what America has always been. It is like saying we do not want more inventions and progress, or that we should close the patent office because everything has already been invented that can be invented, or that we should not invent new things because what we have is good enough.

Some, perhaps, are proponents of laws restricting immigration because of uninformed beliefs, or, perhaps, there are some who lack the resources to become informed so they rely on those who fail to make the good decisions they are entrusted to make. Certainly, no one wants to be a bigot, a "person obstinately and unreasonably wedded to a particular religious creed, opinion, or ritual,"¹⁰ so even the uninformed person or the one trusting in the good decisions of others has to be prepared to change his view when reason demands a change; to do otherwise would mean one would be "unreasonably wedded" to a particular opinion.

This country is founded on the principle of blindness to race, color, creed, religion or national origin, so it makes no sense restrict entry for a particular group for arbitrary reasons, quotas, for example. That is not what America is. Likewise, American cannot avoid change out of fear that influx of a particular group of people have been or will be inimical to the *status quo*. That is not what America has ever been.

What about being overrun by the poor and downtrodden? Immigrants to America have typically not come to American from the elite. Immigrants have been, to paraphrase the inscription on the Statue of Liberty, the tired, the poor, the homeless, and the wretched refuse of other countries. These huddled masses, however, have shared one motivating hope: they have been desperate enough "to breathe free" that they have left their homes and their native countries to travel to a strange place to start with nothing but what they carried with them. It has been an incredible model of success, a constantly changing America that has made America the most desired place in the world. People would not risk so much, even their lives when they walk across the Arizona deserts, if the scheme of letting people work freely for themselves was not working.

So, why would we change this vibrant, dynamic country by circling the wagons? Why not look forward to the yet unknown changes of the future? What is there to fear about the hard-working immigrant who wants to succeed?

The baser issues of pure race or national-origin prejudice just offend both humanity and, because it is based on the highest ideals of mankind, America's notion of equality. The free market, of course, is indifference to these irrelevancies. Is this just a feint, therefore, to cover political concerns? The idea of keeping America the way it is because of the political preferences these immigrants will have when they become voters is a complex issue. In fact, it is not really an

¹⁰*Oxford English Dictionary*, Second Edition on CD-ROM (v. 4.0)(Oxford University Press, 2009) s.v. "bigot."

immigration issue. It is about suffrage masquerading in the costume of immigration. America had a very different system of suffrage under the Constitution as originally drafted and implemented than we have today. Some may not like what has happened, but it has happened. Using immigration to attempt to staunch the effects of changes that have occurred since our Constitution was adopted and mold our political climate and anticipated political views—the dispositions of future generations—is misdirected. The days of electoral bodies are gone; the days of middle-class governance, once preserved by voter qualifications, are at risk because of the effects of universal, unqualified suffrage. Our country is different from what it was in the early Nineteenth Century when Alexis de Tocqueville said, “In other words, a democratic government is the only one in which those who vote for a tax can escape the obligation to pay it. . . . So universal suffrage really does hand the government of society over to the poor.” De Tocqueville, Alexis, *Democracy in America*, Lawrence, George, trans., Mayer, J.P., ed. (New York: Harper & Row, 1969) at 210. If the effects of universal suffrage is the objection to immigration, the objections must be recognized as a backdoor and improper solution to a fundamental Constitutional issue: the right to vote.

The issues of who will govern and how they will shape American society will not be affected by stopgap, backdoor immigration restrictions. Immigration is an economic and social issue, not a criminal matter, and, as discussed below, there is more to fear from the poor within the nation than the poor entering the nation if the issue is governance by the poor.

B. Maintaining Work for Citizens and Belief in Free-enterprise

The idea that a job taken by an immigrant is a job lost to an American is appealing political rhetoric because no one wants to have someone stealing jobs of they are here illegally. But, how does one steal a job? Stealing something makes sense if there is a finite number of things, so one could steal a job if there were only so many jobs to go around. Are there? No. A market economy promotes jobs via entrepreneurship. The immigrant comes to America and gets or makes a job for himself. He gets money, which he spends. The cumulative spending results in more work for others or, to put it another way, more jobs. It is myopic to just look at the supply side of labor without considering how more workers working results in more money being spent, increased demand, and the resulting need for more jobs to produce the goods necessary to fill the increased demand.

Another aspect of more laborers in the labor force is efficiency. An immigration tariff, which is what restrictions on immigration are, means those who really do not want to work efficiently or for a lower wage get to keep jobs to the detriment of those paying the workers. Immigration restrictions, in other words, result in a regulated economy rather than free enterprise, and everyone in America should recognize that the thing which has made America strong has been free enterprise. Fundamental to free enterprise is the freedom to choose between alternatives, including hiring people at less money for the same job if they are willing to do that or firing the worker he loafs on the job. What is wrong with that? Of course, if you are the one losing your job because someone is willing to do it for less or does not waste his time while on the clock or can

do the job better, you are hurt as an individual, but the free market rewards such efforts and requires such harshness and the resulting adjustments by those who are displaced. The free market rewards efficiency, not tenure or status.¹¹

There are measurements of the effects of immigration on employment. Empirical studies that look at the health of the forest rather than an individual tree show that the economy as a whole prospers on account of even illegal immigration: the rhetoric about job displacement is a myth.¹²

C. America's Economy Lacks Strength

The notion that a free-market economy is not capable of absorbing immigrants is, also, advanced as a reason to have immigration laws. A free market, though, responds to supply and demand by finding an equilibrium where the supply and demand curves cross. Immigration increases the supply of workers. There is nothing wrong with that in a free-market economy. It is a good thing. If someone is willing to work for less, the cost of production goes down, and the cost which must be recovered on sale of goods can go down, too. That is how the market works. It is

¹¹This essay pretermits the propriety of minimum wage laws, laws that require someone to pay more for something than they would pay without the law. Over-regulation or attempts to manipulate market forces by fiat tend toward a black market in the regulated industry. If the government says you have to pay a particular amount for a product, but you can buy it for less if on the street, well, most are going to buy it on the street.

¹²Jason Riley's book, *supra* n. 7, discusses the effect of immigration on the economy, both the increased size of the economic pie and the costs associated with education, health care, etc. He cites a 2006 study by the Texas comptroller, Carole Keeton Strayhorn, that documents how undocumented immigrants affected the Texas state budget and economy. The conclusion was that the fiscal impact of illegal immigrants was remarkably positive, not negative. Ms. Strayhorn's report had the following language emphasized:

[T]he absence of the estimated 1.4 million undocumented immigrants in Texas in fiscal 2005 would have been a loss to our Gross State Product of \$17.7 billion. Also, the comptroller's office estimates that state revenues collected from undocumented immigrants exceed what the state spent on services, with the difference being \$424.7 million.

Riley at 110–111.

There is nothing startling about the positive impact of immigrants—illegal or otherwise—when one considers the fact that immigrants earn and spend money here, so the economic pie is bigger because of them.

economic incentives, market forces, that drive most illegal immigrants to walk across a desert to get a job in America. The notion that the economy cannot absorb these people is belied by the lengths to which these people will go to work here.¹³

The belief that we should only allow “qualified” immigrants offends free enterprise, as well. It is nice if there is a demand for the well educated and well-to-do, but the demand for the entry-level worker is no less important in a free-enterprise system. Allowing only a certain status is just a fall back position for those who see they have lost the field so far as general immigration limitations are concerned, and it is myopic. It is what happens during the second and third generations that really matters, and what happens in these generations is the same in a free market whether you have a long or short heritage as an American. The next generations succeed on the basis of their own merits, not the status of their parents. Is there a parent who does not want his child to be better off? Is the field worker any less likely to want his child to go to school than the educated parent? So, what difference does it make if the parents are field workers rather than scientists? The economy handles this. Someone needs to be in the laboratory working on plant genetics, but that does not mean we do not need someone in the field harvesting. Supply and demand handle this nicely. Quotas and government mandates cannot.¹⁴

¹³The housing-market bust of late 2007 and 2008 and general economic stagnation has resulted in fewer jobs in the construction and other areas requiring low-skilled workers, so fewer are incentivized to cross the border. It is not possible, in other words, to glibly say that increased fortification of the border has reduced illegal crossings because it is impossible in the real world to isolate the effects of the depressed markets and, therefore, demand for labor since 2007. *The Wall Street Journal* did publish an article about the effects of the market in the September 2, 2010, edition, “With Jobs in U.S. Scarce, Illegal Immigration Slides,” by Miriam Jordan. The article reports that “the influx of [all] illegal immigrants plunged to an estimated 300,000 annually between March 2007 and 2009, from 850,000 a year between March 2000 and March 2005.” Significantly, the study reported in the *Journal* “found that the flow of Mexicans, who represent 60% of all illegal immigrants in the U.S., plummeted to 150,000 annually during the 2007–2009 period, compared with the annual average of 500,000 during the first half of the decade.” This 70% drop in Mexican border crossings predates S.B. 1070 and reflects, therefore, just market forces.

¹⁴There is another economic problem with restrictive immigration laws. The *Arizona Republic*, the main newspaper in Phoenix, ran an article on August 12, 2010, about the effect of Arizona’s immigration laws on the economy in Arizona. The amount of money spent in Arizona by legal Mexican tourists and shoppers from July 2007 through June 2008 was \$2.7 4billion. The number of wage-and-salary jobs in Arizona directly attributable to just legal Mexican visitors, 23,000 plus. There has been a 17% decline in legal Mexican shoppers entering Arizona in the months since S.B. 1070 was passed compared with the same period in 2009. Mexico has issued a travel warning to its citizens about traveling to Arizona.

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D. Immigrants and Social Programs

Some say, interestingly, that “illegals” work in America and receive benefits for which they are not taxed and do not pay. This argument has nothing to do with the policy behind immigration laws, whether we should have them or not; rather, it has to do with the propriety of social programs. Moreover, it presumes that the only way to benefit from these social programs is to pay into them.

The presumption that one buys entitlement to social programs or transfer payments is certainly skewed because most of the *bone fide* citizens of the country who receive these benefits are not contributors. They live on the dole. In fact, many on the dole are incentivized not to work or improve their situation because of the way our welfare and social programs are designed. If we were to restrict those receiving benefits to those who have or do contribute—those who pay taxes—we would find the need for these programs sharply reduced. After all, it is the top five percent of earners paying more than half the income tax revenues and support for government programs¹⁵ and one-half of families in America pay no federal income taxes.¹⁶ It is not the top five percent nor even those who actually pay federal income taxes that benefit from the social programs. One has to wonder, therefore, how it is that those receiving the benefits from these programs are “entitled” to them.

Social programs are an effect of universal suffrage and raise issues much different from the normative question of whether one should be entitled to government subsidies—transfer payments—just because one is a citizen. Is there a right to have health insurance because you are born in America? Are you entitled to welfare because you are born in America? Are you entitled to stop working and live on Social Security because you are born in America? These are political issues, and those served by the *status quo* of our welfare systems, etc., have no incentive to change them (nor the politicians who pander to these groups in exchange for votes). Indeed, as

¹⁴(...continued)

This does not take into account, of course, the economic effects of illegals living and spending money in Arizona, which includes the payment of sales taxes. I have spoken with a major employer in Arizona who caters to Hispanics: business is down, way down, and layoffs are coming. No business expansion is on the horizon, and that means that this owner is not buying goods from other domestic companies to sell to his customers, and no expansion means he is not hiring new workers. There is a ripple effect.

¹⁵According to The Heartland Institute, 50.8% of the federal government’s income tax revenue is paid by the top 5% of earners, and the top 1% of earners pay 32.3% of income tax revenues. http://www.heartland.org/policybot/results/796/TopEarning_Taxpayers_Pay_Most_Federal_Income_Taxes.html .

¹⁶The number is actually 47% according to the Tax Policy Institute. Its report on this subject can be accessed at <http://www.taxpolicycenter.org/publications/url.cfm?ID=1001289> .

the segment of society receiving government benefits grows, the chances of changing the system will diminish unless, perhaps, there is an influx of people who will vote differently: people imbued with a work ethic, like most new immigrants.

The complacency of the poor citizen dependent upon social programs for survival is the reason there is more to fear from them than immigrants. Immigrants come looking to improve their lives. They are more likely to contribute to the economy than those satisfied with largess, and illegal immigrants are far less likely to apply for some social benefit for fear of being deported.

I think that being an American should not entitle one to welfare payments, retirement or anything else if the economic system is based on the free market. Status is not rewarded in a free-enterprise system, so there is a fundamental conflict between the notion that we get our retirement, etc., from the government because we are taxpayers or Americans. A purely free market says one should not have the right to get money for not working, social security or otherwise.

America does have eleemosynary programs. Americans have a charitable side. There is no difference between the major political parties so far as recognizing and wanting to do something for the downtrodden—widows, orphans, disabled, and others. The difference is how to accomplish it, one political faction thinks it ought to be the role of government—a mandated charity at the expense of taxpayers or those who can afford it, if you will—while the other thinks it ought to be individuals—voluntary and supported by private largess, charities, and churches. The former group does not have faith in individual largess while the latter wants the freedom to choose whether and to whom to give. Ultimately, though, both groups want to do the right thing so far as the needy are concerned.

Here, then, is the rub: should our charity be limited to citizens only and not humanity at large? Putting aside the question of how to do it and accepting the fact that America has chosen to have government programs and spend billions on worldwide humanitarian efforts, what is the rationale for limiting domestic programs to just citizens? Is it not the needy who are to be attended by these programs? It is disingenuous to argue that the needy should not receive benefits because they are not financial contributors—the needy, *ipse dixit*, never are. Rather than appealing to the prejudice of people by saying the “illegals” should not get benefits, the more appropriate focus should be the manner of disbursing this charity, whether through government or private programs, internationally or domestically.

There is another befuddling problem with the notion that “illegals” can get Social Security or other welfare benefits without paying for them. One must be enrolled to get benefits, and that means the enrollee must have a Social Security number, something he cannot get “legally” if he is an “illegal.” What does an “illegal” do, therefore? Simple. Use a false or someone else’s Social Security number to get a job. This means he is working and paying Social Security taxes without the least expectation of ever getting any benefits out of the system because he is not us-

ing his Social Security number. Most “illegals” contribute to taxes and Social Security, etc., without an expectation of receiving benefits.¹⁷

The “illegals” I know, and I know fifty or more families, I suppose, have no, none, zero, zip, expectation that they will benefit from the social programs of the United States. Yes, they may go to an emergency room for medical care, but most of the people who go to emergency rooms for medical care without paying are, likewise, impecunious. Immigrants without paperwork, though, do not care about workman’s compensation, Social Security benefits and the myriad of other transfer payments our government has seen fit to bestow at the expense of those who actually pay taxes; remember, these are basically transfer payments from the haves to the have-nots. Immigrants from Mexico are here because they can earn more net money here than they can in Mexico. They have money taken out of their paychecks for America’s social programs, but that is inconsequential to them because it is their net paychecks at which they look.¹⁸ Moreover, these are people who have a strong work ethic: they are here to earn money, and they know that they do not earn money unless they work, so they work hard to earn money. No work, no money. It is a very efficient system when it is not burdened with social legislation that is based on collective and negotiated notions of fairness and the right thing. Citizens are often incentivized not to work as a result of social legislation, but “illegals” are in a different situation: no-work, no-eat.

E. Crime

There is a lot said about the increase in crime that results from immigration, and it causes a great deal of hysteria, each side of the immigration argument making arguments that are hard to square with objective facts. The Cato Institute did a study on immigrant crimes in Arizona and

¹⁷Social Security contributions by undocumented workers are huge.

Each year, for example, the U.S. Social Security Administration maintains roughly \$6 billion to \$7 billion of Social Security contributions in an "earnings suspense file" -- an account for W-2 tax forms that cannot be matched to the correct Social Security number. The vast majority of these numbers are attributable to undocumented workers who will never claim their benefits.

McNatt, Robert, and Benassi, Frank, “Econ 101 on Illegal Immigrants,” *Business Week* (April 7, 2006).

¹⁸The retort by many of my friends about deductions from paychecks of undocumented workers is that they work for cash. That is true, of course, for a percentage of workers, but most undocumented workers work at companies and are paid with checks. Besides, long-time citizens also work for cash, and it is not uncommon in my experience to have people give two prices for a service: one for cash and one if the payment is by check. I had a worker doing some repair work at my house a few years ago who told me he wanted to be paid in cash because he had a day job and, he said, “I already pay my fair share of taxes.” I wish I could decide when I had paid my fair share of taxes. Well, I paid him with a check and sent him an IRS Form 1099.

found that such fears are based more on perception than reality. A good friend of mine recently told me, “Stop talking to me about this. I do not want the facts to get in the way of what I want to believe,” an unusually candid articulation of the problem when it comes to talking about immigrants and crime.

One big problem in the Arizona debate is that the perceptions about immigrants and crime do not square with the most basic data. After years of witnessing a rise in the number of illegal immigrants in their state, the people of Arizona are in reality less likely to be victims of crime than at any time in the past four decades.

According to the most recent figures from the U.S. Department of Justice, the violent crime rate in Arizona in 2008 was the lowest it has been since 1971; the property crime rate fell to its lowest point since 1966. In the past decade, as illegal immigrants were drawn in record numbers by the housing boom, the rate of violent crimes in Phoenix and the entire state fell by more than 20 percent, a steeper drop than in the overall U.S. crime rate.

Phoenix suffers from its share of crime, but it is not out of proportion for a large city. Among similar-sized metro areas, such as Boston, Dallas, Detroit, San Francisco and Washington, D.C., Phoenix had the lowest violent crime rate in 2008. In Detroit, which is not known as a magnet for illegal Hispanic immigrants, the rate was three times that of Phoenix.

Griswold, Daniel, “Unfounded Fear of Immigrant Crime Grips Arizona.”¹⁹

Alex Nowrasteh, a policy analyst at the Competitive Enterprise Institute, published a piece in the *Wall Street Journal* on July 28, 2010, that said:

Arizona’s law is popular partly because Arizonans fear an illegal immigrant crime wave. But crime rates in Arizona are at historic lows. According to the state Bureau of Justice, violent crime rates in 2008 (the latest year for which data are available) were lower than any point since 1976. Property crime rates have declined even more steeply, with 2008 figures lower than any point since 1966. **It is a myth, then, that illegal immigrants bring a wave of crime in their wake.**

¹⁹This article is available on the Cato Institute website along with other similar analyses. http://www.cato.org/pub_display.php?pub_id=11842

Arizona's new enforcement measures won't solve the problems of unauthorized immigration and the black market in labor. Solutions will only come from expanding legal immigration—by removing barriers to the movement of people across borders (except keeping out criminals, potential terrorists, and people with infectious diseases).

III.

The rationales for excluding immigrants by means of quotas or status or some other classification does not survive ratiocination *vis-à-vis* our economic system: free enterprise. Indeed, careful thought militates in favor of freedom of immigration—no quotas, no restrictions based on status, etc.

My personal experience likewise favors a less jingoistic attitude. The “illegals” I know are good people. They are hard workers. They have strong families. They are religious. America should embrace such people because they share core values with Americans.

I am not happy with the fact that so many of my Hispanic friends are here illegally. I do not believe, however, they are committing a crime in the traditional or moral sense. I think of traditional crime as offenses against the health, safety and welfare of society or individuals: assault, battery, theft, murder, mayhem, destruction of property, etc. What we have with undocumented immigrants are people who are, generally speaking, socially desirable. They are law-abiding people in the traditional sense. They certainly do not want trouble that will focus attention on them, which will get them deported, for example. There are problems with these people, but perhaps fewer problems than there are with any other group living at the poverty level. What is interesting, though, is what happens to these people after the first generation living in America: they become entrepreneurs and successful, just like our ancestors. That does not happen, by the way, with the native-born citizens on the dole who develop a multi-generation tradition of reliance on society for their well-being.

I, like almost every American, am descended from immigrants. Mine came here before there were immigration laws, but they came for the same reason immigrants come today. They were oppressed in their countries of origin, religiously or socially or economically, so they came to America for religious, social, or economic reasons: to better their lives. They came to live where there is freedom of choice and a free market where status and birth are not barriers to success. The first generation or two struggled, but the succeeding became and are successful. What a great paradigm. It has worked for so many Americans, why not for today's immigrants? One nice thing about competition: it does not let those who have a measure of success rest on their laurels. If there is competition from the new immigrants for jobs and efficiency, that is a boon to those already here because it will incentivize them to work more efficiently, themselves. They need to out work them. That is the free market.

It remains startling to me that there are those who would thwart the effects of the free market by raising barriers to entry so that the pool of labor is artificially restricted to the detriment of free enterprise. Why are we so far removed from freedom?

IV.

There is one more reason for my resistance to our current immigration laws and Arizona's recent law. It is more personal. It is because I am religious. I happen to believe we are all children of our Father in Heaven. I have often wondered if God is pleased with political lines between countries that separate His children. Will it make a difference to the Lord if we build a fence?

The Old Testament has something to say about treatment of aliens. One of the enumerated sins—there were not many—for which the Jews were condemned by the Lord before Jerusalem's destruction and the resulting Diaspora was the treatment of the aliens among them. "In thee [meaning Jerusalem] . . . have they dealt by oppression with the stranger [how the King James translators translated the word for foreigner or alien]; in thee have they vexed the fatherless and the widow. *Ezekiel 22:7*. "The people of the land have used oppression, and exercised robbery, and have vexed the poor and the needy; yea, they have oppressed the stranger wrongfully." *Ezekiel 22:29*. The Old Testament has many scriptures that deal with the non-disparate treatment the Lord required for foreigners. To Him, it seems, a boundary between one nation and another is nonsense.

How can someone with a religious and moral foundation rationalize the breakup of families and the deportation of individuals who were brought into this country as infants and know no other country? Is it not tantamount to oppression of the "strangers" among us? And, as discussed above, deleterious to our economy? Lots of people say that they believe in honoring and sustaining the law, but they are too quick to repeat this aphoristic refrain without deeper consideration. Was it right for the founding fathers to flout the laws of England and King George? Germany required extermination of the Jews, making it a crime even to harbor or to protect Jews from the death camps; were those laws to be honored and sustained by religious adherents to the Bible, either the Old or New Testament? Was the internment of the Japanese in World War II a "good" law? Did Rosa Parks really break a law deserving honor and support when she refused to give up her seat to a white person and move to the back of the bus? The rubric of honor and sustain, in other words, is no refuge for those who support immigration laws just because they are the laws.

Mormons are particularly patriotic when it comes to the law. Indeed, much of the support for Arizona's vitriol comes from Phoenix's "east valley," the Mesa/Gilbert area of the valley, which is heavily populated by members of the Church of Jesus Christ of Latter-day Saints ("the Church").²⁰ One of the Articles of Faith of the Church says, "We believe in being subject to

²⁰Russell Pearce, the chief proponent of Arizona's immigration laws is, like me, a Mormon. His views, however, do not reflect the official position of The Church of Jesus Christ of
(continued...)

kings, presidents, rulers and magistrates, in obeying, honoring, and sustaining the law.” *The Articles of Faith of the Church of Jesus Christ of Latter-day Saints*, Art. 12. The Mormons who cite this article of faith in support of their position on illegal immigration like black and white characterization of issues; however, these same Mormons do not consider the founder of the Church, Joseph Smith, a scofflaw even though he was a fugitive escapee from a Missouri jail at the time of his martyrdom in Carthage, Illinois; the injustice of the Missouri imprisonment, they may rationalize, justifies Smith’s escape and avoidance of process.²¹ Of course, these Mormons would not feel compelled to sustain the examples of unjust laws in the preceding paragraph either. Perhaps, then, these Mormons accede to the easiness of the answer rather than consider its rightness.

Mormons are like most people when it comes to easy answers. Easy answers are, well, easy, while thoughtful answers require linedrawing between shades of grey rather than black and white. The *Doctrine & Covenants*, which is accepted by me and the Church as scripture, contains a section on government and laws that requires more depth than the foregoing article of faith:

We believe that the commission of crime should be punished according to the nature of the offense . . . according to their **criminality and their tendency to evil** among men . . . and for the public peace and tranquility all men should step forward and use their ability in bringing **offenders against good laws to punishment**.

D.&C. 134:8 (bolding added).

What are “good” laws? Are they only those that criminalize the upset of public peace and tranquility? Are they laws that keep a man from earning a living for his family among his brothers and sisters, all children of God? Does a “good” law serve to break up families and separate children from their fathers and mothers?

Mormons who advocate closed borders, deportation of illegal immigrants, and individual states taking strong positions on immigration into the United States find themselves at cross-purposes with the official position of the Church on immigration.²²

²⁰(...continued)

Latter-day Saints, the official name of the Mormon church. Indeed, Mr. Pierce’s views are inconsistent with the official position of his church, a point elucidated in the following paragraphs.

²¹Many Mormons, to be fair, probably do not realize that Joseph Smith was a fugitive. Missouri was trying to extradite Smith at the time of his martyrdom.

²²The following news release by the Church of Jesus Christ of Latter-day Saints makes reference to *The Utah Compact*, which is a declaration of five principles intended to guide Utah's immigration discussion. The compact was signed on Veterans Day, November 11, 2010, which
(continued...)

The Church of Jesus Christ of Latter-day Saints issued the following statement of support today [November 11, 2010] following the announcement of the *Utah Compact*, a document backed by a broad spectrum of community leaders:

As a worldwide church dealing with many complex issues across the globe, The Church of Jesus Christ of Latter-day Saints promotes broad, foundational principles that have

²²(...continued)

was the anniversary of the 1620 signing of the Mayflower Compact, intended ironies, no doubt. *The Utah Compact* says:

FEDERAL SOLUTIONS: Immigration is a federal policy issue between the U.S. government and other countries — not Utah and other countries. We urge Utah's congressional delegation, and others, to lead efforts to strengthen federal laws and protect our national borders. We urge state leaders to adopt reasonable policies addressing immigrants in Utah.

LAW ENFORCEMENT: We respect the rule of law and support law enforcement's professional judgment and discretion. Local law enforcement resources should focus on criminal activities, not civil violations of federal code.

FAMILIES: Strong families are the foundation of successful communities. We oppose policies that unnecessarily separate families. We champion policies that support families and improve the health, education and well-being of all Utah children.

ECONOMY: Utah is best served by a free-market philosophy that maximizes individual freedom and opportunity. We acknowledge the economic role immigrants play as workers and taxpayers. Utah's immigration policies must reaffirm our global reputation as a welcoming and business-friendly state.

A FREE SOCIETY: Immigrants are integrated into communities across Utah. We must adopt a humane approach to this reality, reflecting our unique culture, history and spirit of inclusion. The way we treat immigrants will say more about us as a free society and less about our immigrant neighbors. Utah should always be a place that welcomes people of goodwill.

The Utah Compact was signed by a diverse group of people including Bishop John Wester, Catholic Diocese of Salt Lake; Mark Willes, Deseret Media Corporation president and CEO; Mark Shurtleff, Utah attorney general; Lane Beattie, Salt Lake Chamber of Commerce; Paul Mero, Sutherland Institute.

worldwide application. The Church regards the declaration of the Utah Compact as a responsible approach to the urgent challenge of immigration reform. It is consistent with important principles for which we stand:

- We follow Jesus Christ by loving our neighbors. The Savior taught that the meaning of “neighbor” includes all of God’s children, in all places, at all times.
- We recognize an ever-present need to strengthen families. Families are meant to be together. Forced separation of working parents from their children weakens families and damages society.
- We acknowledge that every nation has the right to enforce its laws and secure its borders. All persons subject to a nation’s laws are accountable for their acts in relation to them.

Public officials should create and administer laws that reflect the best of our aspirations as a just and caring society. Such laws will properly balance love for neighbors, family cohesion, and the observance of just and enforceable laws.

<http://beta-newsroom.lds.org/article/church-supports-principles-of-utah-compact-on-immigration> (accessed Nov. 16, 2010).

The support of the Mormon Church has not been limited to a press release in support of the Utah Compact. The Utah legislature enacted immigration legislation²³ that can fairly be characterized as antithetical to Arizona’s immigration enactments. There can be no question that the church’s position on immigration led to the enactment of Utah’s new law by a legislature populated by a substantial majority belonging to the Mormon Church, more than eighty percent. The Utah law allows undocumented aliens to obtain work permits and drivers’ licenses for themselves and their family members. Significantly, the Church sent its presiding bishop, Bishop H. David Burton, to the signing ceremony, where he spoke on behalf of the church, “Our presence

²³There were a series of immigration bills, one of which was H.B. 116, that were signed into law on March 15, 2011.

here testifies to the fact that we are appreciative of what has happened in the Legislature this session.”²⁴

The LDS Church issued an official clarification following the report in the *Salt Lake Tribune*. The church’s “newsroom blog” announced that the church “has always reserved the right to address, in a nonpartisan way, issues that have significant community or moral consequences. Immigration is such an issue. . . . Our hope is that good people everywhere will strive for principal based solutions that balance the rule of law with the need for compassion.”²⁵

The adoption by the Mormon Church of, first, *The Utah Compact*,²⁶ and, then, attendance at the Utah signing ceremony should not have been surprising to faithful members of the church because it is consistent with the well-established actions of the Church. The leader of the Mormon church is a Prophet, like the Old Testament prophets, who is revered by me and the membership of the Church as God’s oracle on earth. The Prophet has two counselors, the three of them forming what is called the First Presidency. The First Presidency, really the Prophet, is sustained by a Quorum of Twelve Apostles similar to the Lord’s twelve at the meridian of time. This is how the Prophet at the time, Spencer W. Kimball, and the Quorum of the Twelve dealt with the illegal immigrant question *vis-à-vis* worthy candidates for baptism:

²⁴Quoted by Peggy Fletcher Stack, “LDS Church takes public stance on immigration legislation,” *The Salt Lake Tribune*, <http://www.sltrib.com/sltrib/home/51439173-76/bills-burton-church-immigration.html.csp> (March 15, 2011) accessed March 23, 2011. The picture to the right shows Presiding Bishop H. David Burton speaking at the signing ceremony. Burton oversees the Utah-based church’s financial and temporal affairs. He was joined by other business, religious, legislative, and community leaders. *The Salt Lake Tribune* reported that “Burton’s presence was an extraordinary public endorsement.”



Presiding Bishop H. David Burton Speaking at Signing Ceremony of Utah’s H.B. 116

²⁵<http://newsroom.lds.org/article/a-principle-based-approach-to-immigration>

²⁶A non-Mormon commentator has noted the significance of the Church’s adoption of these immigration standards in the context of Arizona’s debate and laws on the subject. He said, “Does Pearce’s SB 1070, his opposition to the DREAM Act, his hateful plan to undermine the U.S. Constitution’s 14th Amendment comport with the Utah Compact and the LDS’ stance? Sure doesn’t look that way to me. So unless Pearce mends his ways, I’d say he’s a bad Mormon.” Lemons, Stephen, “Russell Pearce, Bad Mormon? At Least According to the Utah Compact,” *THE NEW TIMES*, Nov. 12, 2010, http://blogs.phoenixnewtimes.com/bastard/2010/11/russell_pearce_bad_mormon_at_1.php (accessed Nov. 13, 2010).

For President [Spencer W.] Kimball to express an opinion boldly and expect compliance was rare, but years later Francis Gibbons [secretary to the First Presidency] remembered an incident because it was so unusual. In a joint meeting of the First Presidency and the [Quorum of the] Twelve considering whether illegal aliens should be baptized, some of the Brethren [members of the Twelve] expressed the view that as law breakers they should not be baptized. After hearing all the views, President Kimball reportedly said, “I think they should be baptized.” That ended the discussion.

Kimball, Edward L., *Lengthen Your Stride* (Salt Lake City: Deseret Book Co., 2005) at 34.²⁷

The Church continues to baptize these “illegals” and even sends them on proselyting missions, but only within the United States so they do not have to cross an international boundary requiring them to have a passport. Indeed, rather than travel by airplane to their assigned field of work within the United States, undocumented missionaries for the Church travel to their assigned areas by car. I presume this is done so they do not have to pass through security where identification would be required.

V.

There is no doubt that the evil-minded criminal element should be arrested and punished. Those with communicable diseases should not be admitted to the United States. Those with clear criminal tendencies, like potential terrorists and enemies to the United States, should not be allowed into the United States. But, what about the honest, hard-working family man who only came or comes here for what almost all of our ancestors came: freedom and the chance to succeed? Our history and our market economy answers this question: we want and need these people because they contribute to our prosperity. Hopefully, the Good Samaritan within each of us shepherds our actions us as well.

²⁷Edward Kimball, the author of this biography, is a lawyer-son of the late Spencer W. Kimball. Edward Kimball has taught law at the BYU Law School since 1973, the first year of the school, and I was enrolled in several of his classes as a member of the charter class of BYU’s law school. He wrote this biography while his father was still alive, and, as the preface to the book recounts, his father reviewed and approved the manuscripts before the book was published by Deseret Book. Deseret Book was established in Salt Lake City 1866 as, virtually, an arm of the Church; Deseret Book is identified with the orthodox views of the LDS Church.

There is an interesting footnote that immediately precedes the quote from Kimball’s book. After noting that the head of the church usually seeks a unanimous consensus on topics, postponing decisions until a consensus can be developed, that is not always the case, “Joseph F. Smith [a prophet during the early twentieth century] on one occasion announced finally ‘what the Lord wants,’ although it conflicted with view of some apostles.” *Id.* n. 7.

The question of border security and amnesty are easier once one realizes the importance of immigrants and the economic forces at work. Something ought to be done when good men seeking work to support themselves and their families risk their lives crossing the desert because of a roadblock at the border. These people cut through the desert like those of us who cut through neighborhoods to avoid a road-blocking accident on a road. The answer to the road-blocking accident, though, is not to post police at every side street to keep cars from using the black-market route, cutting through the residential neighborhood. Police at side streets would make no more sense than it did for Cnut the Great to command the tides of the sea to stop getting his feet wet. The answer for Cnut was to move, and the answer for the traffic jamb is to unblock the road. Likewise, we need to recognize the reality of the economic tides of market demand in our free-market economy. We need to unblock the immigration road so good people are not carried by the tide through the desert because someone enacted a law that ignores the law of supply and demand, the reality of a free market. Will the criminals then use the road? Of course not. But having the road open will make it easier to identify who is well-intentioned and who is not. Criminals cannot use the road; they have to cut through. They will always dig tunnels and take advantage of immigrants risking their lives for a job and family if they think they can use them as mules or extract a tariff for transporting them here or hiding them in a drop house. We need to get these evil-minded criminals, truly criminals because they are involved in anti-social behavior, but not the family-man worker who contributes to our economy and just wants to work hard and improve his station in life. He is an American in every way except his birthplace or a piece of paper. Why throw that productive man and his family out? He should be an American. He is, eschewing form over substance, an American. We should eliminate the laws that make him live and work in a black market created by laws that would attempt to nullify the law of gravity. King Cnut got it. So can we.