

SYMPOSIUM INTRODUCTION

CRAFTING A PRODUCTIVE DEBATE ON IMMIGRATION

The only political argument in the immigration debate with overwhelming support is the proposition that the status quo is intolerable. The most obvious manifestation of current policy failure is the presence of approximately twelve million people living in the United States without legal authorization.¹ This reality presents both fundamental problems of justice and crucial questions as to the meaning of sovereignty in the twenty-first century. It is also increasingly salient. Calls to “fix” immigration policy have grown louder in the halls of Capitol Hill over the past several decades. Interlocutors across the political spectrum recognize the crucial need for affirmative policy changes, however, reform has not happened.

Why? The *Harvard Journal on Legislation*'s 2009 Symposium on Immigration Law and Reform (“*JOL* Symposium”) addressed this very question. Through the *JOL* Symposium, *Journal on Legislation* editors sought to engage the entire opinion spectrum on immigration at the policy level. Moreover, the editors saw the need for a meta-discussion of the tactical approaches to negotiating legislation that could ultimately achieve lasting immigration reform. This brief Introduction does not intend to address the specifics of various legislative arrangements. Instead, this Introduction highlights some human stories about individuals whose lives would be affected by immigration reform. Stories like these are, I believe, the key to crafting a productive public and legislative debate over immigration reform because they promote patient listening to the voices of those most affected by immigration policy in order to understand not only their positions, but also their interests.

Geographic borders, by defining the contours of state sovereignty, run throughout U.S. immigration law. Thus, the *JOL* Symposium included panels on immigration reform *and* border security for good reason. These two topics have been linked in legislative debate, and understanding the multiple realities of borders goes a long way toward understanding the constituencies of immigration reform.²

Along with two colleagues, I traveled the length of the U.S.-Mexico border in 2008, creating over twenty film vignettes exploring immigration policy, border security, and cultural change. These vignettes compose the

¹ The estimate of twelve million undocumented immigrants appears in a recent U.S. Department of Homeland Security publication. U.S. Dep't of Homeland Sec., Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2008 Population Estimates* (2009), available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2008.pdf.

² See Mary D. Fan, *When Deterrence and Death Mitigation Fall Short: Fantasy and Fetics as Gap-Fillers in Border Regulation*, 42 *LAW & SOC'Y REV.* 701 (2008).

feature film *Border Stories*, which was screened at the *JOL* Symposium. This Introduction presents several of the stories featured in the film.

Why might it be important for people who craft immigration legislation to read or watch these stories? As panel moderator and *JOL* author, Professor Richard A. Boswell, observed, the debate over immigration reform is emotional because it is about defining who we are as a nation. Thus, the consequences of being—or feeling—left out of the debate are high. In order to dial down the emotional tenor of the debate we must seek to understand the experiences of those most impacted by policy decisions. Creating a sense of connection to the people affected by these policies establishes, at a minimum, a place to begin a deliberative conversation that includes the major stakeholders.

SAMUEL MENDES, ECONOMIC MIGRANT

I met Samuel Mendes in a safe house for migrants in Nuevo Laredo, Mexico. Founded by Catholic followers of the Italian priest Juan Bautista Scalabrini, the Casa del Migrante seeks to give migrants a place to feel human, if only for a few days, before they continue their journeys across the border. Inside the courtyard in the late afternoon, migrant men wash clothes, watch soccer, talk, and smoke cigarettes. Father Francisco Pellizari, the director of the safe house, says he hopes to restore a feeling of dignity to the people who stay here. “The migrant,” says Pellizari, “is Mr. Nobody for society. He is completely anonymous.”³

Of the more than ten thousand migrants who stayed at Casa del Migrante last year, most are from Central America, particularly Honduras. To arrive at the safe house, they hop trains north through Mexico, in what many describe as a harrowing ride. “In the course of our trip,” says Samuel, a thirty-four-year old Guatemalan, “we get robbed, we don’t have enough to eat.”⁴ For Samuel, the Casa del Migrante is the last stop before crossing the Rio Grande into the United States. He says he crossed once before and received two months of jail time for illegal entry under a U.S. government policy known as “Zero Tolerance,” intended to deter illegal immigration.⁵ “My job was in Guatemala,” he said. “I grew corn. Unfortunately, it always floods there and you lose the harvest. A lot of times, you lose your house and you go broke. You say to yourself, okay where do I go? And then people come and say the United States. It’s a way out.”⁶

³ BORDER STORIES (Drew, et al. 2008).

⁴ *Id.*

⁵ See Sylvia Moreno, *Along Part of the Border, A Zero Tolerance Zone*, WASH. POST, June 18, 2006, at A3.

⁶ BORDER STORIES, *supra* note 3.

BRITT CRAIG, MINUTEMAN

Britt Craig works quietly and alone. Parked overlooking the U.S.-Mexico border near Campo, California, he spends long nights in his modified Chevrolet truck looking for migrants or smugglers. When it is cold, he stokes a tiny wood stove for warmth. When he sees something suspicious, he juggles three cell phones to make sure he will get a shred of signal.

Four years ago, Craig battened up his boat, a thirty-foot cruiser that was his home in St. Augustine, Florida. He was heeding a call to join the nascent Minutemen Project near Douglas, Arizona.⁷ He has not left the border since. "People ask me," he says, "oh, don't you feel sorry for the guy coming across? I do, but I don't feel any obligation to him. I feel obligation to Americans, every American. America is worth breaking into because it's a fine thing and it is built from wilderness. It was built by people. It is ours. It is not theirs."⁸

JACK STEINDLER, FIGHTING DEATH IN THE DESERT

Each year, hundreds of thousands of migrants try to cross illegally into the United States through the hot, remote Sonoran desert. Since 1993, nearly 2000 of them have died. Humane Borders, a faith-based organization in Tucson, provides drinking water to crossers in an effort to prevent potentially fatal dehydration.⁹ In the seven years since Reverend Robin Hoover co-founded Humane Borders, it has expanded from two water stations to ninety. Hoover claims that the stations have caused a statistically significant reduction in the number of migrant deaths in the area.¹⁰ The promise of those reductions was enough to convince Pima County officials to issue Humane Borders a \$25,000 annual contract to expand its work. The county reasoned that the water stations reduced spending on emergency rooms and morgues, amounting to an overall savings.¹¹

Jack Steindler, an eighty-five year old volunteer at Humane Borders, drives around in a pickup truck to check the water levels at Humane Borders' desert water stations. Along the way, he explained why putting water in the desert makes sense even though it is there for those crossing the border ille-

⁷ Jim Gilchrist, head of the Minuteman Project, was a panelist at the *JOL* Symposium. For a scholarly look at the meaning of the Minuteman Project, see James Walsh, *Community, Surveillance and Border Control: The Case of the Minuteman Project*, in 10 *SOCIOLOGY OF CRIME LAW AND DEVIANCE* 1, at 11–34 (2008).

⁸ BORDER STORIES, *supra* note 3.

⁹ Humane Borders, http://www.humaneborders.org/about/about_index.html (last visited Nov. 18, 2009)

¹⁰ See John F. Chamblee et al., Mapping Migrant Deaths in Southern Arizona: The Human Borders GIS (MONTH, YEAR) (unpublished manuscript, available at http://proceedings.esri.com/library/userconf/proc06/papers/papers/pap_1464.pdf).

¹¹ See Joe Burchell, *City, County Land Use as Water Sites*, ARIZ. DAILY STAR, May 5, 2005, at A1.

gally: “Because they are immigrants and they are breaking the law, yeah, that is wrong. But it doesn’t call for death by thirst in the desert. No human being would want that for another human being.”¹² He added, “You know when you stop to think, really our country is so wonderful. Part of it is because immigrants came here. Throughout history America has been the dream for so many people. Must be a good country.”¹³

CARLOS HUERTA MUÑOZ, LIVING WITH DRUG CARTELS

Ciudad Juarez, the site of a pitched battle between rival drug cartels, is not safe for the average citizen.¹⁴ Carlos Huerta Muñoz, a crime and drug-trafficking reporter with the newspaper *Norte de Ciudad Juarez*, received a death threat last year from the Federation cartel after his work revealed the names of some principal cartel members.¹⁵ After the threat, the newspaper announced that it would limit its drug trafficking coverage to official information and cut out investigative journalism on the matter. After spending some time in El Paso, Texas, while the controversy dissipated, Huerta Muñoz returned to Juarez and was transferred to the breaking news desk to keep a low profile.

Levels of drug-related violence in Juarez have reached terrifying highs; the number of cartel-related executions hit 218 in the first three months of 2008. In January, the Federation cartel published a hit list of about a dozen city police officers. To date, four of those on the list have been murdered. On top of the traditional drug business, Huerta Muñoz says drug cartels are now entering the lucrative business of human smuggling.¹⁶ “We’re caught in the middle of a war,” he says. “It can’t continue like this.”¹⁷

TOM AND DENA KAY, THE BORDER WALL

Tom and Dena Kay moved from Colorado six years ago to a rundown ranch outside of Arivaca, Arizona, which has a five-mile stretch along the Mexico border. They were long-time ranchers, but were unprepared for having Mexico as a neighbor. Thousands of head of cattle on thousands of acres of arid canyon lands are hard enough to water, rotate, and round up, say the Kays. Border crossers further complicate these tasks by damaging fences or leaving gates open. Cattle wander through the holes, get lost, and even disappear into Mexico. There is also the trash left behind by the border cross-

¹² BORDER STORIES, *supra* note 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*; c.f. Josh Meyer, *Drug Cartels Raise the Stakes on Human Smuggling*, L.A. TIMES, Mar. 23, 2009, at (PROPER PAGE #).

¹⁷ BORDER STORIES, *supra* note 3.

ers: discarded traveling clothes, toilet paper, food cans, and unending plastic bottles.

The drug smugglers cause the most concern. They tend to travel in convoys of pick up trucks—carving a network of informal dirt roads into otherwise productive land—or on horses leading mules—cutting and re-cutting the ranchers' vital barbed wire divisions. Occasionally, their presence is violent; Tom Kay says he has witnessed running gunfights between smugglers while out tending cattle. The Kays say that these disruptions cut into their already meager profit margins, costing them about \$30,000 annually in repairs. But most of that activity has disappeared since the U.S. Department of Homeland Security constructed a vehicle barrier on the stretch of border the Kays own. The Kays praise the diminutive but solid concrete-anchored structure for slowing the flow of narco-traffic.¹⁸ It is a welcome relief, but they still estimate that 1000 people cross their land from Mexico each day.¹⁹

JOSE RIVERA, BORN IN MEXICO, RAISED IN THE UNITED STATES

Jose Rivera considered himself a regular American teenager until he learned that, unlike his four sisters, he is not American. His mother brought him to Tempe, Arizona from Guadajajara when he was two years old. When he grew old enough to get a job, employers kept turning him down. His mother explained that he did not have a social security number, so he could not work legally. She got him a fake number, however, so that he could get a job in a pizza kitchen.

Three days after being arrested for fighting with a friend after his shift, Jose sat on the porch of Grupo Beta, a government agency devoted to the protection of migrants in Nogales, Sonora, still wearing his pizzeria work shirt. With no social security number or photo identification, Tempe police turned Jose over to Immigrations and Customs Enforcement. Jose was then sent to the Mariposa-Nogales port to walk across the border into Mexico, along with the hundreds of other immigrants forced to return.²⁰

¹⁸ Though Tom and Dena Kay appreciate the border barrier, critics of border fencing point out that it is not cost-effective. See, e.g., Wayne A. Cornelius, *Controlling "Unwanted" Immigration: Lessons from the United States*, 31 J. ETHNIC & MIGRATION STUD. 4, 784–85 (2005).

¹⁹ BORDER STORIES, *supra* note 3.

²⁰ Each year, roughly 65,000 undocumented immigrants like Jose graduate from high school in the United States. See Press Release, Jeffrey S. Passel, The Urban Inst., Further Demographic Information Relating to the DREAM Act (Oct. 21, 2003), [hereinafter DREAM Act Press Release] available at http://www.nilc.org/immlawpolicy/DREAM/DREAM_Demographics.pdf. National public debate about how to deal with the immigration status of these young people has recently focused on the proposed Development, Relief, and Education for Alien Minors Act ("DREAM Act"), which would provide a means to citizenship for qualifying undocumented aliens illegally brought to the United States as children. American Dream Act, H.R.1751, 111th Cong. (2009). The DREAM Act was included in an overhaul of national immigration laws that floundered in the Senate in the spring of 2007 due to partisan divides. 153 Cong. Rec. S7271-05, 7279 (2007). Congress will likely not consider the act again until 2010. Ginger Thompson & Marc Lacey, *Obama Says Immigration Changes Remain on His Agenda, but for 2010 Enactment*, N.Y. TIMES, Aug. 11, 2009, at A6. A related problem raised

While I spoke with him, Jose paused and watched as a line of new arrivals entered the migrant aid office. "I felt like I was just another teenage American because that's how I was raised," he said. "But I just recently found out that's not how it is at all. I guess this is where I belong, right? According to them."²¹

CONCLUSION

Listening to the voices of those most impacted by immigration policy means engaging in a debate about the core values of the American political community. These voices tell human stories rarely included in the public discourse on immigration policy. However, they represent the key groups that are most impacted both by the current status quo and potential future reforms. As policymakers gather in the coming months and years to work out legislative compromises that will have a decisive impact on immigration laws and enforcement, they will develop new policies that will impact a broad range of actors. How will policymakers strike the balance between those who can be legal members of this community and those who cannot? They might consider the voices of Samuel Mendez and Jose Rivera. How will policymakers strike the balance between enforcing immigration laws at the border while making it safe and vibrant for the local economy? They might consider the voices of Tom and Dena Kay, Jack Steindler, and Britt Craig. These questions are not easy and so we must build an environment that considers the experiences of those affected by the current policy. Doing so can ensure that the various interested constituencies feel that they are being heard.

Both policymakers and the public dislike that the current system allows criminal networks to profit from a porous border and creates a vast underclass of undocumented workers and families. The majority of Americans favor providing a way for undocumented immigrants to continue to live in the United States legally.²² Most also agree that an unenforced immigration regime is not a success.²³ Despite this widespread agreement that the current immigration policies should be changed, determining the specific reforms to be made will be difficult.

at the *JOL* Symposium is how to deal with undocumented parents of citizen children. See generally JAMES D. KREMER ET AL., DORSEY & WHITNEY LLP, *SEVERING A LIFELINE: THE NEGLECT OF CITIZEN CHILDREN IN AMERICA'S IMMIGRATION ENFORCEMENT POLICY* (2009), available at http://www.dorsey.com/files/upload/DorseyProBono_SeveringLifeline_web.pdf.

²¹ BORDER STORIES, *supra* note 3.

²² The Pew Research Center for the People & the Press, Values Survey, <http://people-press.org/questions/?qid=1734678&pid=51&ccid=51#top> (last visited Nov. 5, 2009) (finding that sixty-three percent of respondents in a March 2009 poll favor "providing a way for illegal immigrants currently in the country to gain legal citizenship" under certain conditions).

²³ The Pew Research Center for the People & the Press, Political & Economic Survey, <http://people-press.org/questions/?qid=1724691&pid=51&ccid=51#top> (last visited Nov. 5, 2009) (finding that fifty-one percent of respondents in a December 2008 poll think the country is "losing ground" when it comes to illegal immigration).

The following *JOL* Symposium article by Professor Boswell details one area where specific reform will be challenging: crafting an amnesty out of known tools. Professor Boswell's argument—that we can use the familiar tools of registry and cancellation of removal as the legal mechanisms of a real solution—is deliberate and convincing. Yet, while there is much to say about the details of how exactly to enact such a proposal, a lack of attention to the values that should help us construct our answer will derail attempts at reform. Grounding his proposal in the principles of family unity and humanitarianism, Professor Boswell offers us a concrete application of how these commonly shared values might look in practice. Without well-reasoned proposals like Professor Boswell's, and forums like the one created by the *JOL* Symposium, the immigration policy debate cannot advance beyond a paralyzed reality. In order to realize a shared commitment to a more just immigration system, policymakers must also commit to listening to the voices of those affected by that system.

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